

Jefferson County Circuit Court
Case Files - Civil

Box

20 Folder 57

November 1867, No. 109

Cook, William

vs

Hensley, James

Ejectment

26 acres in U.S. Survey 2018

T41N4E; \$250 damages; survey

map

William Cook, - Plaintiff } In the Circuit Court
 Against } of Jefferson County Mo.
 James Hensley, - Defendant } Nov. Term 1867.

The Plaintiff states that on the first day of January 1860, he was entitled to the possession of the following described Land, situate in Jefferson County Missouri, to wit, a Tract or parcel of Land, containing Twenty Six acres, being in United States Survey No. 2518, Conformed to Thomas Watson, in Township forty one, of Range Four East, and bounded on the North & West by Land of James Hensley, on the South, by Land of William Cook, and on the East, by the Eastern line of said Survey, and described by a line, commencing on said Eastern line of said Survey, $10\frac{67}{100}$ chains South of the North East Corner of said Survey, and running West parallel with the Northern line thereof, $37\frac{50}{100}$ Chains, - thence South $10\frac{50}{100}$ chains, - thence East 40 chains, - thence North on the Eastern line of said Survey $7\frac{50}{100}$ chains to the place of the beginning, And being so entitled to the possession of said Tract of Land, that the Defendant afterwards, to wit, on the 2nd day of January 1860, entered into such premises, and unlawfully withholds from the Plaintiff the possession thereof to his damage in the sum of ~~two~~ hundred and fifty dollars, - He further says that the monthly value of the rents and profits of said premises is five dollars. Wherefore he demands judgment for the recovery of the premises aforesaid and one hundred and fifty dollars damages for the unlawfully withholding of the same from the Plaintiff, and five dollars for monthly rents & profits from the rendition of judgment until the possession of said premises is delivered to Plaintiff, & for other proper relief.

Abner Green
 Attorney for Plaintiff,

In Jefferson Circuit Court
Nov, Term 1867

William Cook

vs,
James H. Cook

Petition in

Exonment

Let summons issue

Against

Wm. Cook

Filed Oct. 9th 1867

Chas. Adams, Clerk

By Ed. Adams, Sep. 11

THE STATE OF MISSOURI, } ss.
COUNTY OF JEFFERSON.

THE STATE OF MISSOURI,

To the Sheriff of the County of Jefferson—Greeting:

We command you, that you summon

James Searley

if he be found in your County, that
he be and appear before the Hon. Judge of our Circuit Court, on the
first day of the next term thereof, to be begun and held at the town of Hillsboro,
within and for the County of Jefferson, on the ~~first~~ Monday after the
~~fourth Monday~~ of November next, then and there to answer unto

William Cook

upon *his* original petition, a copy whereof is hereunto annexed and
accompanies this writ, and have you then there this writ.

Witness, ELIAS F. HONEY, Clerk of our said Circuit Court,
with the seal thereof hereunto affixed, at office in Hillsboro, this

Ninth day of *October* A.D. 18*67*

Elias F. Honey

Clerk Circuit Court.

By *A. W. D. Dept*

Mo 109

TO

JEFFERSON CIRCUIT COURT.

November Term, 1867

Wm Cook,

vs
James Hensley.

(original)

John Williams
Sheriff per \$1.00

Served Oct 17th

I Execute this Writ in Jefferson County Mo
on the 17th Day of October 1867 By Deliv-
ering to James Hensley a true copy of this
Writ and Petition as furnished by the
Clerk

John Williams
Sheriff

State of Missouri }
County of Jefferson } In the Jefferson Circuit Court
November 25th 1867, among other proceedings
the following were had to wit;

Wm. Cook }
vs }
James Kensley } Leave granted defendant to file
answer fifty days before next term, And ordered
by the Court that the ^{County} surveyor, make a true and
complete survey of the Lands in controversy in
Plaintiffs Petition described, make a plat of
the same, and report herein at the next term
of this Court, and this cause is continued,

A true copy from the Record.

Witness my hand and the seal of said Court
at office this November, 25th 1867,

Elias F. Noris, Clerk
By E. F. Noris, Deput

I served the Writ in Jefferson
County Mo on the 24th Day of
April 1868 on Wm G Reed by
Presenting the to him
John Williams
Sheriff

2928

Wm Reed
James H. Hensley

Order for surveyor
to survey lands

Original
Sheriff fee 50

William Cook In the Circuit Court of
vs Jefferson County
James Hensley Missouri

Now at this day comes
the Defendant and answering the Plaintiffs
Petition says that it is not true as is
alleged in the Petition of Plaintiff, that
Plaintiff was on the 1st of Jan. 1860 or at
any other time entitled to the possession
of the Land described in said Petition
or any part thereof, and denies that
Defendant did on the 2nd of Jan. 1860
enter into the possession of said Land
and emphatically denies that he now
unlawfully withholds the same from
the Plaintiff, and denies that Plaintiff
has sustained damage in the sum of
Two hundred and fifty Dollars or any
sum whatever by reason of any
act of defendant ^{in withholding the possession of said Land} and denies that
Plaintiff is entitled to recover possession
of said Land from Defendant or
any sum of money for rents and
profits of the same!

For further
Answer Defendant says that about
the year 1838 or 1839 one Henry Cook
the ancestor of Plaintiff being the owner
of the Land described in said Petition of

Plaintiff made a verbal Contract with Defendant for the sale of said Land to Defendant and did then and there sell said Land to Defendant that it was then agreed by and between said Henry Cook and this Defendant that said Defendant should pay to said Henry the sum of Fifty Dollars in Consideration of which said Henry did agree with Defendant to sell and convey to him the said Land, that said Henry Cook and Defendant then measured said Land off and Defendant paid to said Henry said sum of fifty Dollars which was received by said Henry in full payment and satisfaction of the Contract price of said Land and Defendant then went into the possession of said Land with the full knowledge and consent of said Henry, that said Henry at the time told Defendant that he would make Defendant a Deed of conveyance of said Land at any time, the Defendant might call on him for it, and Defendant says that immediately after he purchased said Land from said Henry Cook

as aforesaid he went into the possession of the same as his own absolute property under said Contract & purchase & expecting and believing that said Henry would make to him a Deed for the same and made valuable and lasting improvements on said Land that is to say he cleared about Twenty acres of the same and put it in Cultivation and fenced said Land with new rails and built a house thereon all of which improvements were of the value of about Two hundred Dollars that Defendant made all of such improvements ^{in good faith} believing that his Title to said Land would be made perfect by said Henry making him a Deed for the same, but so it was said Henry failed to execute said Deed that said Henry lived for many years after said sale to Defendant but never at any time set up any Claim or Title to the same but at all times recognized the same ^{as} Defendant's property. Defendant says further ~~that~~ that he has no knowledge or information sufficient to form a belief as touching the Claim of Plaintiff to said Land or by what ~~right~~ claim

he pretends to have right or claim of right to the same. Defendant is wholly ignorant as to whether said Plaintiff has any Deed or writing of any kind from any person who at any time pretended to have title to said Land or not but does not believe that he has but avers that Defendant has been in the absolute actual occupancy of said Land for the last thirty years holding and claiming the same as his own absolute property adversely to all the world that his said possession has been notorious, and that Plaintiff well knew of such possession of Defendant and well knew that Defendant was cultivating & possessing the same under claim of title thereto by purchase from said Henry for many years and that if said Plaintiff has any Deed or writing for any part of said Land, ~~then~~ then Defendant avers that at the time of receiving such Deed or writing or if Plaintiff has ever paid any consideration for any part of said Land, and as to

these points Defendant is wholly ignorant
then Defendant avers that at the time
of receiving such Deed or Writing or of
paying such Consideration that the
Plaintiff ~~at all times~~ had full
knowledge of all the rights of ~~Defendant~~
Defendant in and to said Land
and that Defendant had purchased
the same from said Henry and paid
him therefor & had taken possession
under said Contract and ~~carried~~
occupied the same for many years
as his own and made valuable and
lasting improvements thereon as aforesaid

So that Defendant says that it
would be a manifest fraud on
this Defendant for said Plaintiff
to be permitted now to recover the
possession of said Land from this
Defendant, and Defendant says that
he has been in the actual occupancy of
said cleared & cultivated Land for
more than twenty five years next before
the bringing of this suit so that his title is
now good by the Statute of Limitations

and in consideration of the
premises Defendant prays the court
that Plaintiff may be compelled by

a Decree of this Court to perform
Specifically the aforesaid Contract
of his said ancestor, so far as he
~~had~~ would have been interested in
Said Land he decents from said
Henry if said Henry had not made
Said Contract with Defendant & that
the Court will decree that said
Plaintiff execute to Defendant a deed
of conveyance therefor & in case of a
failure of Plaintiff to execute said
deed that the Court will by its
Decree divest Plaintiff of all right
& claim to said Land as one of the
heirs of said Henry Coote and
vest the absolute title thereof in
Defendant. & for other proper relief

G. J. Johnston &
J. Jos. Williams
Attys for Defendant

Mem Book

by
James Henley

Andrew & Deane

Given May 8 1868
to H. H. Henley

COUNTY OF JEFFERSON.

The State of Missouri,

To

John G. Ford

You are Hereby Commanded, That setting aside all manner of excuse and delay, you appear before our Circuit Court for the County aforesaid, on the 19th day of May 1868, at Hillsboro, then and there, to testify and the truth to say in a certain matter of controversy, now pending in our said Court, wherein

John Ford is

Plaintiff, and

Amos Penning

Defendant, on the part of Plaintiff and herein you are in no wise to fail.

WITNESS, ELIAS F. HONEY, Clerk of our said Court, with the seal thereof hereto affixed, at office, this 21st day of April . . . A. D. 1868.

Elias F. Honey (Seal)

Is Obediently

SUBPŒNA.

TO

Jefferson Circuit Court

May TERM, 1868.

Cook
vs
Kensley

Don't Off

Wm. G. Reid +

Sheriff fee

50

I certify this in of before me and in the
my the 6th day of Oct and 1868 on Wm. G.
Reede by reading the return to them.

John McChesnut
Sheriff

COUNTY OF JEFFERSON.

The State of Missouri,

To

John Williams (Ind) *Stephen Hendrick*
Alfred Hendrick *William Hendrick*

You are Hereby Commanded, That setting aside all manner of excuse and delay, you appear before our Circuit Court for the County aforesaid, on the *1st day of May 1868* at Hillsboro, then and there to testify and the truth to say in a certain matter of controversy, now pending in our said Court, wherein *John Cook* is

Plaintiff, and

James Hendrick is

Defendant, on the part of

Defendant and herein you are in no wise to fail.

WITNESS, ELIAS F. HONEY, Clerk of our said Court, with the seal thereof hereto affixed, at office, this *8th* day of *April* . . . A. D. 186*8*.

Elias F. Honey Clerk.

Per Theodore D. A.

SUBPÆNA.

TO

Jefferson Circuit Court

May TERM, 1867.

Wm Cook
vs
James Kinsley

For Debt.

Wm Williams (veda) +
Stephen Kinsley +
Wm Kinsley +
Wm Kendrick +
Sheriff fee \$2.00

I served the within of a subpoena on the
20th day of June 1868 on Wm Williams & Stephen
Kinsley, at Kinsley and Wm Kinsley's
by meeting the same to each of them

Wm Williams
Shirley

COUNTY OF JEFFERSON.

The State of Missouri,

To

Levin W. Hays & John Decatur

You are Hereby Commanded, That setting aside all manner of excuse and delay, you appear before our Circuit Court for the County aforesaid, on the *19th of May 1868*, at Hillsboro, then and there to testify and the truth to say in a certain matter of controversy, now pending in our said Court, wherein

your Court is

Plaintiff, and

Amos Hensley Jr. is

Defendant, on the part of

Plaintiff

and herein you are in no wise to fail.

WITNESS, ELIAS F. HONEY, Clerk of our said Court, with the seal thereof hereto affixed, at office, this *27th* day of *March* . . . A. D. 186*8*.

Elias F. Honey Clerk.

Per C. J. Honey Deputy

SUBPŒNA.

TO

Jefferson Circuit Court

May ... TERM, 1861

Cook
vs
Hensley

For Plaintiff
Jerome D. Dover
Wm. Beckenley &
John Williams
Sheriff fee \$1.00

I executed the within Subpoena
Hensley on June 10 & over and Wm Beckenley
on Reading the same to each of them
John Williams Sheriff

William Cook, - Plaintiff } In the Circuit Court
 Against } of Jefferson County
 James Mensley, - Defendant }

The Plaintiff moves the Court to strike out all of Defendant's Answer filed in the above cause, except what is contained in the first paragraph, ending with the words, "or any sum of money for rents and profits of the same," - for the following reasons;

- 1- The Defendant for further Answer, claims that he bought the land in Controversy in 1838, or 1839, of Henry Cook, Plaintiff's ancestor, - but does not allege that his Contract for the same was in writing.
- 2- Defendant by his own showing, presents no Equity for a specific performance of his pretended verbal Contract for said Land, - that his claim is barred by limitation and lapse of time, - and that a stale Contract of thirty years standing is too remote to invoke a Court of Equity to enforce specific performance of a Contract, - and especially against a third person who purchased and received a Deed for said Land some eight or ten years ago.
- 3- Defendant's assumed Equitable claim to said Land, is no defence to this action, - it shows no equity against Plaintiff's ~~the~~ legal title to the land.
- 4- It is not Competent in law to enforce a verbal Contract for specific performance of a Contract as against a third person, - being a purchaser for value, & without notice.
- 5- Defendant by his own showing has been guilty

of such gross laches and neglect as to preclude
him from the aid of a Court of Equity, to enforce his
claim as against third persons, who were not a
party to his pretended contract.

} Abner Green
Attorney for Plaintiff

In Circuit Court
Jefferson County

William Book

vs.

James H. Ensey

Proton

To shew out from of
Capt. Samuel

Orlando May 18th 1868
E. H. Stoner D.D.

Book against
Thursday }

The services rendered by Mr. & Mrs. Burroughs
in the above case by order of the Board
Board of Education Co. me dated
Nov 12th 1867

\$ 8.00

William Cook, Plaintiff } Petition for title to
or } land.
James Hensley, Defendant }

Now at this day comes the respective parties to this suit in their own persons as well as by attorneys and all and singular the matters in controversy between them being submitted to the Court neither party requiring a jury and after the trial had proceeded a short time the parties, both plaintiff and defendant agreed upon a compromise of the matters in dispute and agreed that this Court should enter judgment according to such compromise which is as follows. The said Plaintiff is to have all of the twenty seven ⁴⁰/₁₀₀ acres in dispute which lie east of Sandy creek and the said Defendant is to have all of said disputed land which lie west of Sandy Creek and the said Defendant to pay the costs of this suit. The twenty seven ⁴⁰/₁₀₀ acres which is in dispute in this action is described as follows. viz: The same is bounded N. E. by forty acres of land owned by Defendant, on the N. W. by one hundred acres of land owned by defendant, on the South West by land of now owned by Jacob

Given but lately owned by Plaintiff and
on the S.E. by the S.E. boundary line of M. S.
Survey No 2018, Y. 41, ^{situated in Jefferson Co. Mo.} & 46, more partic-
ularly described as beginning at ^{a point} on the
S.E. boundary line of M. S. Survey 2018 ten $\frac{70}{100}$
Chains from the East Corner thereof, thence
N.W. ^{parallel} with the N.E. boundary line of said Survey
thirty seven $\frac{75}{100}$ Chains, ^{thence} ~~thence~~ W ten $\frac{59}{100}$ acres,
~~thence~~ S. Westward ~~with~~ parallel with the W
boundary of said Survey, ~~thence~~ ^{thence} a ten $\frac{50}{100}$ Chains
thence S.E. to a point on the S.E. line of said
Survey four $\frac{44}{100}$ Chains W of the beginning
corner, ^{with the line of said survey} ~~thence~~ N.E. from $\frac{44}{100}$ Chains to place.
It is therefore Considered and adjudged
and decreed by the Court that Defendant
^{he is hereby} ~~he~~ divested any title in law or equity which
he may have to all that part of the
above described twenty seven $\frac{46}{100}$ which
lies East of Sandy Creek, and that the
title to that part thereof ^{the same is hereby} be vested abso-
lutely in Plaintiff and that Plaintiff
he and he is hereby divested any title in law
or equity which he may have to all that
part of the said twenty seven $\frac{46}{100}$ acres which
lies West of said Creek and that the title
to the same be ~~vested~~ and the same is hereby
absolutely vested in Defendant. It is
further adjudged that Plaintiff recover of

and from Dependant his Carts in this behalf
laid out & expended and have recented thereof
^{by consent of parties it is ordered}
and that both parties have each a writ of
possession for that portion of said land
decreed to each as above.

Cross
s
Hendley

Steele

Book
= no =
Hewletts

Billed May 19 4868
B. D. Money Co.