BOMPART, LOUIS F. et als.* ✓ STUMPF, C. AND VERTY, JOHN MARCH 1967 COUNTY OF ST LOUIS

584/5

FOLDER 2 OF 2

OLD 661/5 AFFIRMED

* SEE LIST ON FOLDER 1

INVOLVED:

LANDS AND LAND TITLES

Louis F. Bompart, sal
Resp.t
v.
C. Stumpf, sal
Appellant,

IN SUPREME COURT,
oct. TERM, 1866

AND now come the said Appellant and say, that in the record and proceedings of the Court below, in the above entitled cause, there is manifest error, and for error said Appellant — assign the following, to-wit:

1. That said Court admitted improper and illegal testimony offered by Respondent
2. That said Court rejected proper and legal testimony offered by Appellant —
3. That the Court gave to the Jury improper and illegal instructions.
4. That the Court refused to give to the Jury proper and legal instructions offered by Appellant —
5. That the verdict was against the evidence.
6. That the verdict was against law.
7. That the verdict was against both law and evidence, and against the law under the evidence.
8. That the verdict was against the weight of evidence.
9. That the judgment was rendered in favor of the Respondent when it should have been rendered for the Appellant —
10 That said Court overruled the motion for a new trial, made by Appellant —
11. That the ~~[illegible]~~ the entry of remittitur, is illegal — & insufficient —
12. That there was no new judgment Entered after remittitur was allowed —

Hill & Forrish
Attys of Appellant

And now come the Respondents and, for joinder in error, say that there is no error in the record and proceedings of said Circuit Court in said cause as assigned by said Appellants

Krum - Kellogg
Attys for Resp.t

209.

Oct. 7. 1866.

Bompart

v.

Stumpf.

Assignment of Errors.

Filed Oct 18 1866
C. T. Fitzback
Clk

Bompart, Respondent
vs
Stumpf, Appellent

In the Supreme Court
88 March Term 1867

The appellent submits

I Though the confirmation to Francis Deschenguette embraced the lot in question, his papertitle prior thereto only showed him entitled to the sixty feet on the corner of 2nd and Plum streets. The title to the lot in question was held by his half=
= sister Teresa Cerre, only child of Michael Lami, under deed from Bongnor in 1778.=

II The Appellents, claimed under this ancient deed and though less weight of evidence is required where party takes possession with color of title (25 Mo. 197) the testimony showed adverse and continuous possession in Appellents, and those under whom they claim from 1836 down to present time.

III The 5, 7th 8th and 9th Instructions offered by Appellents properly put the question of limitations to the jury and should have been given.

IV The instruction given by the court is erroneous = cumulative disabilities are not allowed (33 Mo. 190) If the Appellents entry was in 1836 - the only disability available to the Respondents Phillips, was the infancy of their mother; if the entry was after 1836 & any time prior to 19 Sept 1846 (date of death of Mr. Phillips) the only disability available to them was the coverture of their mother - the instruction then is erroneous because by it the jury are told that if at time possession was taken either of the plaintiffs were under the age of twenty one years, or a married woman,

the time during which they, or either of them, were under the ~~age~~ said age of 21 years, or a married woman will not be deemed or taken as any portion of the said ten years.

Again the instruction is erroneous in not distinguishing and informing the jury that if they found that any of the Respondents or their parents labored under the disability of coverture or infancy at time possession was taken by appellants &c - then the time during which they or either of them were married woman or under the age of 21 years as against them should not be deemed or taken as any portion of the said ten years - For the want of such distinction, though the jury may have believed that Appellants had had open, notorious &c. possession for a period of ten years before 14 of November 1859 they may have very well concluded that the disabilities of some were available to all the Respondents

The jury should have been told that they could find in favor of some Respondents and against the rest

V The 6th Instruction offered by appellants should have been given - The intrusion of Phillips upon the property, if immediately and successfully Evicted by the claimant, constituted no bar in his possession - and the jury should have been so informed -

VI The three Deeds of Trust given by Cerre, and which were subsequently paid by him and satisfaction entered, were acts showing that he claimed to own the property - and as acts of ownership were proper Evidence to go to the jury as much so as paying taxes - or any other act of like character -

VII That 12th Instruction asked by appellant should have been given – the subsequent remittitur did not cure the error – The remittitur was insufficient, illegal, and without warrant of law.

E. F. Farish
of Counsel for Appellant

88

March T. 1867

Bompart.
v
Stumpf.

Appellant's Brief

Filed April 30. 1867
O. J. Fishback Clk
per E. M. Cady Dep

Louis F. Bompart et al
Respondents

vs

C. Stumpf et al
Appellants

Respondents established a perfect legal title to the lot in question. D. Hugo by deed dated Jany 28th, 1824 conveyed to Francis Duchonquette 30 feet front by 150 feet in depth bounded North by land of said Duchonquette, East by 2d Street, West by land of Duchonquette and South by Hugo

The certificate of confirmation dated April 22d 1825 shows a confirmation of the lot in question with other property to Duchonquette

The deed from Liberge to D. Hugo read in evidence by the Appellants dated January 15th 1805 vests the title to the lot in question 30 by 152 feet in the said Hugo. In this deed the property is bounded on the North by F. Lami (called as Dowling testifies Duchonquette)

Duchonquette denses the property in question to the plaintiffs Ancestor Francis Bompart.

There is then no doubt that the legal title to the property is vested in the plaintiffs

The only question which the jury could consider was whether the Statute of Limitations had run against the plaintiffs so as to bar their right

Respondents insist that from the

Appellants own evidence it is apparent that neither the said M. B. Cerre or those claiming under him lived in open visible, continuous exclusive and adverse possession for ten years next preceding the institution of this suit.

The witness Dowling testifies that while he was Constable some time between 1846 & 1850 William Philips was in the possession of said property for three months claiming to be one of the owners of the same, Phillips found the house empty. The Statute of Limitation then did not begin to run until after this time. Dowling could not testify that Phillips was not in possession as late as August 1850

Then again the testimony of the principal witnesses for Appellants is contradictory, Dowling testifies that Louis Martin occupied the house in 1840, — Eliza Martin wife of Louis, testified that her husband was the tenant of Cerre in 1848, Her youngest child now 18 years of age was one month old when she went into the house

G. T. Knolle testifies that in May 1842 Cerre employed him to work upon said house to the amount of $90. The house was then vacant

J. B. Hortig testified that F. Duchouquette built the house on the lot in question in 1829 or 1830

Respondents submit that the evidence of the Appellants do not sustain the defence

of the Statute of Limitation

The Respondents in addition to the evidence of the legal paper title proved that P. L. Cerre the father of M. S. Cerre was one of the executors of the will of Duchouquette in which the property in question was devised to Francis Bompart

It is fairly inferable from these circumstances that if M. S. Cerre rented this property in 1836 or 1837 that he was acting as the agent of his father the executor of the estate, and that by cunning contrivance and craft he afterwards sought to claim a right to the lot in question by virtue of his possession - There is no evidence that the possession was adverse to Respondents unless the testimony of Dowling that he put Cerre in possession between the years 1846 & 1850 ~~[illegible]~~ includes an adverse possession

Peter Labom testified that he built the house upon the lot in 1829 & 1830 for F. Duchouquette

C. Rodman testified that Bompart collected rents for the house in question

Francis Pornier testified that in the year 1840 & 1841 he collected the rents for the property in question for F. Bompart who then lived in the Country

The Respondents have established a perfect proper title, have proved that they were in

possession of the property in question at the death of Duchouquette, were receiving the rents for the same in 1840 & 1841, were in possession by Phillips for several months between 1846 & 1850

Appellants possession if they ever had possession before 1850, was ~~broken~~ interrupted by Phillips who then for months occupied the premises

At no time could the possession of the Appellants be regarded as open notorious and adverse to Respondents, It was not continuous There was no evidence of an open notorious or continuous possession ever after the year 1850

The instructions given by the Court put the whole case fairly before the jury

There was no error in entering a remittee. 3 Mo. Rep. 28. McAllister v Mullenply.

No 88
In the Supreme Court
March Term 1867

Louis F Bernard Ag
Ch Stanford Ag
Bond of Rec
Rowe & Kelly
Attys for Rs

Filed April 30 1867
C J Fishback Ak
per E M Yaly Dep

Louis F. Bompart et al Respondents
vs
C Stumpf et al. Appellants

In the Supreme Court
March Term 1867

This suit was brought Nov 14th 1854 to recover a lot or parcel of ground in the city of St Louis

Appellants in their answer deny the unlawful possession, deny plaintiffs right to the possession of the lot in question and affirm an adverse possession of ten years

To maintain their title plaintiffs read in evidence a certificate of confirmation to Francis Deuchonquette dated April 22d 1825 90 feet front by 150 to 300 in depth

Also an unrecorded deed from Dominique Hugo to Francis Dauchonquette dated Jany 28th 1824 and acknowledged on said 28th day of January, This deed conveys 30 feet front by 150 feet deep, bounded East by 2nd Street, West by said Dauchonquette

Also the will of Francis Dauchonquette dated July 22d 1833, Proved August 15th 1835, By this will Paschal L Cerre, the father of Michel L Cerre was appointed one of the executors, The will devises the lot in question to the children of Francis Bompart, the plaintiffs in this suit.

Also a deed from Henry F Bonpart to William Prairie dated July 7th 1848 conveying to said Prairie his interest in the lot in question

Eugene Allen testified that the rent of the property was of the value of from $12, to $15. per month

Peter Laton testified that in the years 1829 or 1830 he built a house on the lot in suit for Francis Dauchenquette who died soon after The house was first built in the front of the lot, It has since been moved back, It was moved back 10 or 15 years ago, Dauchenquette was never married and had no children

C Roderman testified that he came to St Louis in the Spring of 1833, that he knew Francis Bonpart who then lived at the corner of 3rd & Plum Streets, he thought Bonpart collected rents or had them collected for him for the house and lot in dispute, He died in 1845 or 1846 and left the following children, Therece Margarette, Louis F. & Henry Bonpart, Henry died after his father, Witness left St Louis in April 1849 and returned in January 1851, knew all of F Bonparts children Margaret married Wm Phillips & Therece married Wm Prairie Wm Phillips died between the years 1848 & 1851 [redacted] leaving two children, Robert & Elizabeth Phillips, Robert was 7 or 8 years old

and his sister two years younger at the time of their mothers death, Henry died unmarried and intestate he died between 1849 & 1851, There were two other children Bonaventure & Baptiste, Bonaventure died when he was 14 years old - Baptiste is still living, Prairie went to the mountains before 1848 and has never returned.

We heard not long ago that he was at Salt Lake. Wm. Phillips died between 1848 and 1851, On Cross examination witness stated that Francis Douchenquette left one sister named Teresa Lami who married Rosal Cerre who had three children Rosal, Michel S. & Catharine Cerre, now Mrs Papin, Rosal died in 1856, Michel in 1861, Mrs Papin still lives. The father of the four sons, Henry, Francis, Baptiste & Pierre Douchenquette was Francis Douchenquette Sr. who died in St Genevieve leaving a widow, Therese Bouis who married Michel Lami who lived in St Louis, By Michel Lami she had one child named Therese Lami, who married Pascal L Cerre Margaret Bompart was born September 14th 1820, was married September 14th 1837 to Phillips, and she died September 19th 1846, Robert Phillips is alive but Elizabeth died two years ago. Louis F Bompart was born April 9th 1828

Plaintiffs read in evidence the

certificate of baptism of Louis Bompart, Also of Therese Bompart, also of Margaret Bompart, Also Marriage certificate of Therese Bompart dated February 18th 1841, Also certificate of Marriage of Margaret Bompart dated September 14th 1837.

Francis Poirier testified that he had lived in St Louis since 1839 and known the property in question, In 1840 & 1841 he was living with Paul Berger, from April 1840 to Nov 1841 and collected rent from this property for Bompart who was living in the country at the time

Paul Berger testified that he had lived in St Louis since 1812 and known the property in dispute, Mr Poirier collected rents for the property on Plum Street between 2d & 3d does not recollect of collecting rents on 2d Street the tenants called and paid me money at my store

Defendants introduced a deed of Nicholas Rougemier to Michael Lami dated Dec. 3d 1778 (pages 26-7-8)

Also Marriage contract between Cerre & Lami dated Feby 12th 1797

Also quit claim deed from P. L. Cerre to G. P. Cerre et als dated July 1st 1838

Also deed of G P Cerre to M L Cerre

Also deed of G. P. Cerre et al to M. S. Cerre

John B Hasting testified that he lived nearly opposite the lot in question & has known it for sixty odd years. A small house was built on it in 1829 or 1830 by F Dauchenquette whom I knew very well. he died in 1833 of cholera and witness made his coffin. At an early date Dauchenquette had something to do with this lot but after his death M. S. Cerre took possession, this was some years after his death sometime in 1840 to 1844 Cerre took possession. The house was then on front of lot but was afterwards moved back. Francis Dauchenquette had possession of the lot from my earliest recollection. He lived in the house on the corner and rented the other house. Bouzeman was tenent after Martin. That Cerre moved the house 18 or 19 years ago. Both Dauchenquette & M. S. Cerre had possession of this lot at different times

David Adams testified that he had lived in St Louis some 68 years and knew the lot in dispute knew it when it was a garden. Francis Dauchenquette built house in 1830 He lived with a mulatto woman in the house on corner of 2d and Plum Streets. ~~Louis~~ Martin & Bouzeman lived in house in question

Peter Garrett testified that he

had lived in St Louis for 58 years and known lot in dispute. A man by the name of Brashier lived there in 1836. He was a brick mason, After Brashier Mr Martin lived there. In 1842 or 3, Martin said he rented of Cerre.

H. G. Soulard testified that he knew the lot & M. S. Cerre In 1837. a man by the name of Brashier was living there. He told me that he rented of Cerre

Eliza Martin testified that she was the widow of Louis Martin, Knowe the lot in dispute to have been claimed by M S. Cerre. Her husband was the tenant of Cerre. This was in 1848. My youngest child now 18 years old was one month old when I went into the house

J. T. Knott testified that he was a carpenter and builder and made repairs on the lot in dispute in May 1842. The house then stood on the Street. Mr Cerre employed me. The house was not occupied when I made the repairs. The amount of repairs was $90 and

The deposition of Richard Dowling was read in which he states that he has known the property in question for 49 years Old Francis Lanni (called Donchinquette) lived on the corner and this property was a garden and occupied as such

and the property South of it was owned by Demuyne Hugo. Louis Martin occupied the house in 1840 he is now dead but his wife is living. Her name is Eliza. I know they were living there in 1840. I have collected the rents of this property for M. S. Cerre. I do not recollect how long or in what years I got a yearly tenant for him who was responsible and then turned it over to him. From August 1846 until August 1850 I was Constable for the 1st & 2d Wards. I knew Phillips who was related to the Bonparts. I had a suit in favor of Cerre against Phillips who said he found the house empty and claimed the property as one of the heirs and moved into the house. Do not believe that he was in the house over three months. It was after this time that I collected the rent for Cerre. Some time when I was constable at what time I cannot say, I delivered possession to Cerre. F Douchenquette has been dead over 30 years

Defendants offered to read several deeds from M. S. Cerre, six pages from 41 to 52 which were excluded

Defendants read in evidence a deed of B. V to Dubreul dated July 18, 1790

Also deed of Dubreul to Bureda and wife dated May 7th 1792.

Also deed from Baracho to Francis Douchenquette dated May 2d 1800

Also a deed from Bingenier to Alvorey dated March 11th 1785

Also deed of Alvorey to Liberge dated March 6th 1802

Also deed of Liberge to D Hugo dated Jany 15th 1805 This deed bounds the property on the ~~West~~ North by F Lami (Douchenquette as Dentery Certifies) and the property runs from 2d to 3d Street 120 feet front

Dominique Hugo conveyed the lot in question to Douchenquette in 1824, The deed of Liberge to D. Hugo dated Jany 15th 1805 bounds Hugo's lot on the North by Francis Lami who is proved to be the same person as Francis Douchenquette

Knox & Smith
Attys for Respondents

No. 88
In the Supreme Court
March Term 1867

Louis F. Bernpert et al
v.
C. Stumpf et al appellees
Statement of error

Filed April 30. 1867
A. J. Fishback Clk
per E. M. Cady Dep

Huge is not to be held liable in case of failure of title to the land.

United States To Francois Deschorquette	Certificate of Confirmation Dated 22nd April 1825 issued by Thos. Hunt, under act of Congress 26 May 1824 Supp. to act 13 June 1812.

N.B. = This confirmation Embraces the Corner lot of 60 ft. by 300. and also the 30 feet adjoining with depth of 150 feet - being the lot in question

Francois Deschorquette To Theresa, Margarite Bonaventura Henry and Louis Bompart - Children of Francois Bompart	Will - made in 1833 Proven 15th August 1835, Bequeaths balance of his property, recited to be 90 feet front on 2nd street by

depth westwardly of 150 feet Bounded north by Plum, & Embracing lot in question

Henry T. Bompart To William Prairie	Deed dated 7 July 1848 in consideration of $50.- Conveys lot in question

Theresa Bompart was born 20 October 1818 married William Prairie 18 February 1841

Margaret Bonpart was born 14 Sept 1820 married William Phillips 14 Sept 1837. Died on 19 Sept 1846 leaving two children Robert & Elizabeth, aged respectively 7 or 8 and 5 or 7 -
Robert is still living Elizabeth died in 1864

Bonaventure was born 16 Nov 1822
Died 5th February 1837

Henry Bonpart born —— died between 1849 & 1851.

Louis Bonpart was born 9th april 1828.

Baptiste Bonpart was born 16 March 1836

Francois Bonpart, the father of these children died in 1845 or 1846

Defendants title is as follows.

Nicholas Bongenor
To
Michael Lamic } Deed dated 3rd Dec 1778. in consideration of 500. lbs of Deer Skins conveys a horse power mill furnished with all its movements & implements, for grinding and manufacturing flour, the whole in good order such as it actually

exists, with the building containing the same of fluted posts in the ground covered with straw, 30 ft. Square, and the ground on which is is situated, which is only 30 ft front by 150 feet deep — Bounded in front by 2nd Street, rear & south by Bongenon and North by Joachim Valet — the whole as it actually exists, without any reservation on the part of said Bongenon, to whom the whole belongs, having acquired it from Leclede and he himself having put up the buildings: possession to commence from this day ~~Michael Sami~~

Michael Sami died, leaving but one child Therese who on 12th Feby 1797 married Pascal Leon Cerré The issue of this marriage was three children, viz: Gabriel P. Cerré Catharine Cerré (afterwards Mrs Papin) and Michael S. Cerré The two former conveyed their interest in lot in question to Michael S. Cerré -

François Douchorquette was a half-brother of Terese Sami =

Having had his half sister's lot confirmed to himself, in 1829 or 1830 he built a house upon it - He died in 1833 Soon afterwards Michael S Cerré took possession of it - He ~~has~~ was in possession of it & had a tenant there by name of Brashar in 1836 & 7 See testimony of Chenot, Peter Garratt, and Henry M. Soulard (pp of transcript 37-38)

In May 1842 - Cerre put the premises in repair,

(see testimony of J.T. Knott. p 39

Cerré had tenant by name of Louis Martin then in 1840 see deposition of Dowling as to date or Garratt's testimony p 39

Between 1846 & 1850 William Philips, intruded upon the property & was put out immediately by Cerré by process (see testimony of Dowling p 39)
After that Dowling collected the rents for Cerré - till he got a yearly tenant for the property when he turned it over to cerré The Defendants Stumpf was a tenant of Cerré's in 1858 and at the time of suit; and before that he had another tenant there by same name, who was there for some years (see testimony of Alcan and Kortz p. 17 & 36)
The house was built on the street - Cerré moved it back 18 or 19 years ago

As Evidence of acts of ownership - the appellant offerred separately to read three deeds of trust given by Cerre upon this property & the releases thereof - to wit: two to St Louis county Dated Aug 7th 1852, & October 2nd 1854 - and one to Dwight Durkee's trustee Dated 17th July 1858 Each to secure several Thousand dollars. - The court excluded same.
The Court refused all of Appellants instructions - and gave the following

If the Jury believe from the evidence that the certificate of confirmation dated the 22nd day of April 1825, made by Theodore Hunt to Francois Douchonquette, and the will made by Francois Douchonquette in 1833 and the deed from Henry Bonpart to William Prairie in 1848, are genuine, and that said confirmation, will, and Deed Embrace the land in question, and that the Plaintiffs are descendants of said Francois Bonpart, then the Plaintiffs have shown a prima facie title to said land, and must recover in this action, unless the jury are satisfied from the evidence in this cause, that the defendant or those under whom they claim have had open, notorious, continuous & visible possession of said land, claiming the same as their own against all persons whatsoever for a period of ten years before the 14 day of November 1859 in which case the Defendants must have a verdict at your hands:- But if the Jury should find such adverse possession was taken, and further find that at the time it was so taken either of the Plaintiffs were under the age of 21 years, or a married woman, then the time, during which they or either of them, were under the said age of 21 years or a married woman will not be deemed or taken as any portion of the said ten years - If the Jury find for the Plaintiffs they will find the value of the rents & profits of the land down to the present time; and will further find the monthly value of the rents & profits.

The jury found in favor of Respondent, assessed damages at $500.- & monthly rents & profits at $15.

Motion for new trial was duly filed, ~~argued~~ argued & submitted.

The Respondents then offered to file a remittitur as to 1/25 of the land & 1/25 of damages (nothing was remitted of monthly rents) Against the objection of Appellants, the remittitur was permitted.

The motion for a new trial was then overruled —

Appellant makes the following Points

1st The Court Erred in refusal of appellants instructions

2nd The Instruction given is erroneous..

3rd The verdict was against the evidence

4 The rimittitur is illegal & without warrant of law

5 The court rejected legal & competent Evidence offered by appellant.-

Edw. T. Farish

of Counsel for Appellant

88

March T. 1867

Bompart
v
Stumpf.

Appellant's
Statement & Points

Filed April 30 1867
O. J. Fishback Clk
per E. McCauley Dep

Louis F. Bonpart, William C. Prairie and Therese Prairie, Robert H. Philips and Elizabeth Philips - minors by their guardian Louis F. Bonpart. Respondents

vs

C. Stumpf. et al appellants

In the Supreme Court No - 88 March Term 67

This is an action of Ejectment brought for the recovery of a lot of ground on the west side of second street, sixty feet South of Plum in the City of St Louis, having a front of 30 feet by a depth of 150 feet.

The Respondents claim as devisees, or as the heirs of devisees of Francois Deschonquette.

The appellant holds as tenant of Michael S. Cerré, or rather of his devisee, his widow, Mrs. Helene Cerré;

The title of Respondents is as follows:

Baptista Joachim Valet
To
Louis Dubreuil

Deed dated Sunday August 1st 1790 60 feet front on 2nd by 300. ft deep - bounded North by Cross, street

(N.B this Deed is for the lot corner of 2nd & plum.

Louis Dubreuil
To
Louis Barada and Maria Beynet, his wife

Deed dated 7 May 1792

Conveys same property

This deed made by Fify Bougenon (son of Nicholas Bougenon) passed no title as his father had already in 1778 conveyed the lot to Lami.

Louis Barada
To
Francois Douchouquette

Deed dated May 2nd 1800.
Conveys same property

Nicholas alias Fify Bougenon
To
Eugenio Alvarelz

Deed dated 11 March 1785.
Conveys 2 lots each 120 by 150 feet, bounded on one side by Louis Barada, other by Joachim Valley, rear by 3rd Street & front by 2nd Street

Eugenio Alvarelz
To
Francis Liberge

Deed dated 1802 conveys 125 feet by 300 feet deep South by August Chouteau North by F. Douchouquette rear on 3rd front on 2nd.

Francis Liberge
To
Dominique Hugé

Deed dated 15 Jany 1805 conveys lot on 2nd South by Chouteau, rear by 3rd, north by Francis Lami,

Dominique Hugé
To
Francois Douchouquette

Deed dated 28 Jany. 1824 (but never recorded) in consideration of $1.00 quit claims piece of land 30 feet by 150 french measure bounded East by 2nd Street & north by Douchouquette.

This deed contains the agreement that