

**Brief Synopsis of Vernon County Missouri Court Case - February 1875 Term**

**Nannie E. Bracken and Charles F. Bracken vs.**

**Emily Wray [Daughter of Noah Caton & Fanny McDermid] and John Wray her husband, and B. Y. Estes**

<u>Page</u>	<u>Brief Description of Documents</u>
1	<b>New File Begins</b>
2	<b>Case file folder front.</b> Court term Feb 1875. Nannie E. Bracken & Charles F. Bracken [her husband] vs. Emily C. [Caton] Wray; John Wray, her husband; B. Y. Estes.
3	<b>Ejectment petition by Bracken against Estes for possession of real estate:</b> SE 1/4 of NW 1/4 of Section 21; and S 1/2 of NE 1/4 of NW 1/4 Section 20; and SW 1/4 of SE 1/4 Section 20 all in Twp 36 Range 31, containing 100 ac more/less.
4	<b>Page 2 of petition.</b> Recovery of stated land plus \$1,000 for damages sustained plus rents & profits of property plus costs of lawsuit.
5	<b>Cover page of petition.</b> Filed 9 Jan 1875.
6	<b>B. Y. Estes summons</b> to appear in court 2nd Monday Feb 1875 to answer petition.
7	<b>Sheriff Wm. B. McGinnis served Estes</b> with papers.
8	<b>Cover page of Sheriff's statement.</b>
9	<b>Answer to ejectment petition by B. Y. Estes and John Wray and Emily Wray.</b>
10	<b>Page two of answer to petition.</b>
11	<b>Cover page of answer to petition;</b> filed Feb 11, 1875
12	<b>Notice to take Depositions in Columbia, MO on Aug 20, 1875.</b>
13	<b>Depositions statement by Lewis M. Sintzler,</b> a Notary Public, Boone Co, MO.
14	<b>Sintzler says depositions of witnesses John B. Little, John Prewitt and Joel Hawkins were taken by him.</b> Prewitt resides 15 miles from Columbia and Hawkins 8 miles from Columbia. Sintzler's fee was paid by John B. Little, acting for the plaintiff.
15	<b>Page 2 of Sintzler's statement.</b>
16	<b>John B. Little deposition.</b> Aged 56 yrs. He knew Mrs. Bracken's mother who was Nancy Caton before she was married. Nancy Caton married a man by the name of Neal. They lived in Boone Co, MO. Nancy Caton was a daughter of Jemima L. Caton. From his earliest recollection until he was about seventeen years old, Nancy Caton lived with Jemima L. Caton, until Little married and came to MO. Nancy Caton did not marry before Little came to MO but after he left KY. He had lived close to Jemima Caton in what was then Mercer Co, KY. It is now Boyle Co. Knew family intimately.
17	<b>Page 2 of John B. Little deposition.</b> According to his understanding, Noah Caton was the husband of Jemima Caton. His understanding is that Noah Caton left KY and came to MO and settled near St. Charles (hearsay evidence objected to). Mrs. Bracken, daughter of Nancy Neal, formerly Nancy Caton, wife of Henry Neal, was born in Boone Co, MO and after moved to Mercer (now Boyle) Co, KY with her mother Nancy Neal. After Henry and Nancy Neal and their daughter went back to KY Little visited in KY and recognized Nancy Bracken, dau of Henry...
18	<b>Page 3 of John B. Little deposition.</b> ...and Nancy Neal. "recognized their daughter Nancy Neal who afterwards became Nancy Bracken." The daughter was the only child of Henry and Nancy Neal as far as he knew. Nancy Neal and Noah Caton are dead to best of his knowledge (objected to as Little did not know that by his own knowledge). He knew that Jemima Caton is dead as he saw her buried. On cross, Little stated that Mrs. Bracken is his niece, and Nancy is the only child of Noah and Jemima Caton that he ever heard of.
19	<b>Page 1 John Prewitt deposition.</b> Lived in Boone Co, MO since 1836; aged 79 yr next Oct. Lived in Mercer (now Boyle) Co, KY. He knew Jemima Caton in KY. He knew George Caton, father of Jemima Caton. Was in KY from 1808 until 1920 when moved to Howard Co, MO.
20	<b>Page 2 John Prewitt deposition.</b> Moved to Boone Co in 1836. Lived in same KY neighborhood with Jemima Caton's father, abt 5 miles distant and half from old Mr. Hurley who was Jemima Caton's grandfather. When first knew Noah Caton, he was reputed to be married to Jemima Caton. Noah Caton at that time lived at Jemima Caton's father's house, supposed about 3 yrs. They were recognized as married to each other. Was 1808 or 1809 that he first knew them. While Noah and Jemima Caton

	were living together, they had a daughter born afterward named Nancy Caton. Best recollection is that Nancy Caton was born in spring of 1811. In the fall after the birth of Nancy Caton, Noah Caton...
21	<b>Page 3 John Prewitt deposition.</b> ...left KY and it was rumored that he came to MO to pay his father a visit. Noah and Jemima Caton were cousins - the children of brothers. I knew Nancy Caton from infancy until after she grew up and after her marriage and frequently saw her. She married a man named Henry Neal. He last saw Nancy & Henry Neal several years ago on their visit to MO. Prewitt was married in 1836. Nancy & Henry Neal had an infant dau who is now the defendant, Nancy E. Bracken.
22	<b>Page 4 John Prewitt deposition.</b> Nancy & Henry Neal came to Boone Co, MO to live but declined and returned to KY. Six or seven yrs later Prewitt made a visit to KY and learned that Nancy Neal had died. During this visit Prewitt saw Neal's daughter at the house of a lady with whom her father, Mr. Neal, had left her to be raised and recognized the daughter with a strong resemblance to her family on both the Neal and her mother's side. Prewitt recognizes the plaintiff as the girl who was called Nancy Neal. Several yrs after Mr. Neal, wife and child were at Prewitt's house, Jemima Caton removed to Boone Co, MO. Prewitt knew Jemima Caton during the time she lived in MO; Jemima Caton is dead but cannot give exact date she died in Boone...
23	<b>Page 5 John Prewitt deposition.</b> ...Co. She is the same Jemima Caton who lived in KY with Noah Caton as husband and wife. Jemima Caton had a red mark, looking something like a cancer, on the left side of her lower lip. Prewitt saw it every time he ever saw her. The mark was more like a blackberry in season. Prewitt stated that Nancy Neal, dau of Noah and Jemima Caton, was born in spring of 1811, and I distinctly recollect that Nancy Caton Neal was born before the breaking out of the war of 1812 with Great Britain. <b>Cross examination:</b> Some three months after the marriage of Noah and Nancy Caton, she gave birth to a child, and about two years after that another was born. The last one was Nancy Caton. The first child was not regarded as the child of Noah Caton. The last one Nancy Caton was acknowledged...
24	<b>Page 6 John Prewitt deposition &amp; beginning of Joel Hawkins deposition.</b> ...as the child of Noah and Jemima Caton. She was acknowledged and believed to be the only lawful child of Noah and Jemima Caton. I do not know that the Noah Caton who died in Vernon Co, MO was the same Noah Caton whom I knew in KY. Re-examination: Prewitt knew or heard of but one Noah Caton, is in good health, and traveled more than 20 miles today to give deposition. <b>Joel Hawkins deposition begins.</b>
25	<b>Page 2 of Joel Hawkins deposition.</b> Hawkins is 61 yr old next Dec; lives in Boone Co, MO; been married abt 31 years. Hawkins married a daughter of Jemima Caton, whose name was Zerelda E. Hawkins knew Nancy Neal whose husband was Henry Neal. Hawkins became acquainted with Henry & Nancy Neal 30 yrs ago when the Neal's came to MO on a visit. This was the visit referenced by Prewitt in his deposition. The Neal's came here intending to remain but after about 18 months they returned to KY. Hawkins knows Nancy E. Bracken, Plaintiff., as the child of Henry & Nancy Neal. Nancy Bracken was born at Hawkins house in Boon Co. After Neal's returned to KY, correspondence was kept up between the Hawkins and Neal families.
26	<b>Page 3 Joel Hawkins deposition.</b> Plaintiff visited Hawkins frequently and is the same child born to Henry and Nancy Neal. Noah Caton came to Boone Co and stopped at Benj. Miley's, about 3 miles of Hawkins house. He came to Boone Co for the purpose of getting Nancy Neal to go home with him to Vernon Co. It was Hawkins understanding that Noah Caton lived in Vernon Co. Mrs. Neal declined going with him because she and her husband had concluded to go to KY on account of Neal's brother's illness and wanted Mrs. Neal to go to KY with him, and promised to do a child's part by her. Hawkins knew Jemima Caton well; she died about 5 yrs ago, in 1870 or 1871.
27	<b>Page 4 Joel Hawkins deposition.</b> Jemima Caton died in Boone Co and Hawkins was at her burial at Bethlehem Church in Boone Co. Hawkins saw her after she died and recognized her as the Jemima Caton he had known. There was a peculiar mark, of reddish-purple color near one corner of her mouth, about the size of a blackberry. By general repute, Nancy Caton who married Neal was the daughter of Noah and Jemima Caton. It was the general repute in the Caton family that Noah and Jemima Caton were cousins. Noah Caton's father was named Jesse Caton. Jemima Caton's father was George Caton. George and Jesse Caton were brothers, according to my understanding from the Caton relatives and those who knew them. <b>Cross-examination:</b>
28	<b>Page 5 Joel Hawkins deposition.</b> Hawkins was not acquainted with Noah Caton but knew it was Noah Caton who came to Boone Co by the message he sent by Mr. Miley to Nancy Neal but doesn't recollect

	that Mr. Miley said it was Noah Caton. Hawkins never saw Noah Caton. <b>Re-examined:</b> Hawkins never saw Noah Caton to know him but may have been him and not known it was him.
29	<b>Page 1 Lewis M. Sintzler sworn statement.</b> Certifies that John B. Little, John Prewitt, and Joel Hawkins were sworn to testify the while truth of their knowledge touching on the matter. Their statements were reduced to writing and signed by them in Sintzler's presence.
30	<b>Page 2 Lewis M. Sintzler sworn statement.</b> Statements taken Aug 21, 1875. Filed Aug 23, 1875.
31	<b>Subpoena to John H___ [name spelled various ways in documents; presumed to be John Harberson b. 1880, died 1879] and Moses Brown</b> to appear Vernon Co Court 3 Nov 1875.
32	<b>Sheriff Wm. B. McGinnis served John Harberson</b> on 28 Oct 1875 and <b>Moses Brown cannot now be found</b> in Vernon Co, MO. 28 Oct 1875. with papers.
33	<b>Subpoena to James Bryan</b> to appear Vernon Co Court 3 Nov 1875.
34	<b>Sheriff Wm. B. McGinnis served James Bryan</b> 2 Nov 1875.
35	<b>Page 1 John Harberson deposition.</b> Deposition taken at Harberson's house. Aged 76 yrs, born & raised in Mercer Co KS and was acquainted with Noah Caton and Jemimah Caton and live 1-1/2 mile of Jemimah Caton's father. Noah and Jemimah Caton lived together as man and wife in KY. They lived at Jemimah Caton's father's...
36	<b>Page 2 John Harberson deposition.</b> ...1-1/2 mile from Harberson's father's. There was one child, Nancy, recognized by the family as the child of Noah Caton and Jemimah Caton. This is the only child Harberson ever saw or heard of that was recognized as theirs. Noah Caton that Harberson knew in KY left the neighborhood and moved away from his wife. Harberson was acquainted with Noah Caton that lived and died in Vernon Co, MO and the same Noah Caton he knew in KY and was recognized as the husband of Jemimah Caton. The morning after Harberson moved to Vernon Co, Noah Caton went to Harberson and asked him to say nothing about the transactions of his marrying in KY, that he had raised a family here and it would expose him and do Harberson no good. Harberson promised he would not and did not until this lawsuit. Defendant Council objected to the statement as hearsay evidence. Harberson said it was reported there he lived that John McGraw, married Noah and Jemimah Caton and McGraw told Harberson that he did. Defendant Council again objected as hearsay evidence.
37	<b>Page 3 John Harberson deposition.</b> Harberson left Mercer Co KY in 1826 or 1827 but cannot say how long before that time Noah Caton left. Statement by Granville Hoss, notary.
38	<b>Page 4 John Harberson deposition.</b> Continued statement by notary.
39	Pages 39, 40, 41, and 42 have paragraphs and in left margin is written Given Obj or Refused Obj by some of the paragraphs. These are transcribed as best they could be interpreted.  The plaintiff must recover on the strength of their town title, and the plaintiff having failed to make out by evidence satisfactory title to the lands in controversy, in any part thereof, the finding must be for the defendants.
40	Unless the Court setting as a jury is satisfied from the evidence, that Nancy E. Bracken one of plaintiffs is the legitimate child of Nancy Neal, born Nancy Caton, and that Nancy Neal born Nancy Caton was the legitimate child of Noah Caton, the finding must be for the defendants.  The evidence offered by plaintiffs to show the marriage of Noah Caton to Jemima Caton and the evidence offered by plaintiffs to show the marriage of Nancy Neal to Henry Neal was insufficient to establish said marriage.  Although this court setting as a jury may believe from the evidence that Nancy E. Buchanan one of plaintiffs is the legitimate child of Nancy Neal, and further believe that Nancy Neal is the legitimate child of Noah Caton; and although the court should further find, that Nancy Bracken is an heir of Noah Caton decd, and that she has an interest in the real estate in controversy, yet she can only receive one eleventh part of said real estate the evidence being clear that there were ten other heirs of Noah Caton decd by Fanny McDermid.
41	If the court, setting as a jury shall find that the Noah Caton who it is ___ died in Vernon County in 1862, was married to Jemima Caton in 1808 in the State of Kentucky, and that said Jemima Caton was living

	and the wife of said Noah Caton at the time of his death [lined out: and that plaintiff, Nancy Bracken, is the sole descendant or heir of said Noah Caton by virtue of said marriage], then the court declares the law to be that the marriage between said Noah Caton and [very faint writing: Fanny McDermid] in 1814, was null and void ab initio, and the issue of said marriage cannot inherit of said Noah Caton in common with the issue of the marriage between said Noah and Jemima Caton, and therefore, the fining must be for plaintiffs.
42	If the court, sitting as a jury, shall find that Noah Caton was lawfully married to Jemima Caton in Kentucky about 1808, and that as a fruit of that marriage there was born one child only, named Nancy Caton; and that said Nancy Caton was afterwards lawfully married to one Henry Neal, and that as the issue of said latter marriage there was born only one child, viz., the plaintiff Nancy Bracken; and shall further find that said Nancy Neal died in 1844, leaving no children other than said plaintiff; and shall further find that said Noah Caton died in Vernon County in 1862 and was then the husband of said Jemima Caton, and owning the land in controversy, and that said Jemima Caton died in 1867 then the court should make a general finding for all the ___ estate in said lands although the court may further find that said Noah Caton was married to Fanny McDermid in 1814, and that defendant Emily C. Way, was born of that marriage.
43	If the Court, sitting as a jury, shall find that Noah Caton, who died intestate in Vernon Co, MO in 1862, was married to Jamima Caton in Kentucky about 1808, and that there was born as the fruit of that marriage on child, named Nancy Caton, and that said Nancy was afterwards, about 1842, married to Henry Neal in Kentucky, and that there was born as the fruit of that marriage one child, viz., the plaintiff Nancy Bracken; and shall further find that said Jemima Caton died in 1864, and that said Nancy Neal died, without other heirs than said plaintiff, in 1844; and shall further find that the land in controversy belonged to said Noah Cayton [sic] at his death, then the finding should be for plaintiff.
44	<b>Motion to set aside findings and grant new trial.</b> In the Circuit Court of Vernon Co, MO. Nov. Term 1875 Nancy E. Bracken & Charles F. Bracken plaintiffs vs. B. Y. Estes et al Defendants. Now at this day comes the Defendants by their attys and moves the court to let order the finding of the court, and grant them a new trial for the following reasons to wit 1 - Because the admitted improper & illegal evidence on the part of plffs. 2 - Because the court refused to admit papers evidence on the part of Defendants. 3 - Because this court refused proper declaration of law on the part of Defendants. 4 - Because of an improper declaration of law on the part of plaintiffs. 5. Because the evidence for the plaintiffs __ t_ ought to be further Defendants. Hunter Wright & Johnson, Attys for Defendants.
45	<b>Cover page. Motion to set aside finding and grant a new trial.</b> Filed Mar 6, 1875.
46	<b>Execution for Costs. Nannie E. Bracken &amp; C. F. Bracken against John Way, Emily C. Wray &amp; B. Y. Estes. Plaintiffs to pay \$30.19 costs. Filed 2 Oct 1876.</b>
47	Sheriff Wm. B. McGinnis certifies that he returned the voucher execution wholly unsatisfied by order of Plaintiffs' Atty W. J. Stone 6 Nov 1879.
48	<b>Execution for Costs. B. Y. Estes, Emily C. Wray and John Wray her husband \$30.19 for costs.</b> Filed 9 Apr 1877.
49	Sheriff Wm. B. McGinnis certifies that he collected the fee in full without levy or sale and return the same satisfied in full 30(?) Apr 1877.
50	<b>Bracken &amp; Bracken v. Estes Wray &amp; Wray)) Nov Term 1875 Judgment for Bracken for 1/4 of land and \$45.45 damages and Rents 75. per month stay of execution till May 6<sup>th</sup> 76. Record F 395 J. F. Norman, clk.</b>