

12453

No. _____

Supreme Court of Illinois

Ballance

vs.

Menard, et al

71641  7

Be it remembered, that heretofore to wit, on the thirty first day of July in the year of our Lord one thousand eight hundred and fifty two, there was filed in the office of the clerk of the Circuit Court of Peoria County in the State of Illinois, a Bill of Complaint, which is in the words & figures following, to wit,

To the Honorable William Kellogg, Judge of the Peoria County Circuit Court in Chancery, sitting,
Humbly complaining sheweth unto your Honor your orator Charles Ballance that he has been in ^{the} possession of the South West quarter of section Three of Township Eight North of Range Eight East of the fourth Principal meridian by inclosing and cultivating a part and claiming the whole ever since early in the Spring of the year eighteen hundred and thirty two, that some time during that year your orator filed Proof of Pre-emption in the land office at Quincy, to avail himself of the provisions of the Pre-emption law of 5th April A.D. 1832, which proofs were adjudged by the Register and Receiver of said office sufficient to entitle your orator to a pre-emption to said tract of land and the said Register gave your Orator a certificate thereof a copy of which is hereunto attached and prays to be made a part hereof, but there being no place in said office of said township your orator could not then pay for said tract of land, but he was in the actual possession of a part as aforesaid and claimed possession

according to the description in said paper. Afterwards to wit: on the fifteenth day of November A.D. 1837, the plat of said township having been furnished to said office by the Surveyor General whose office is at St. Louis, Your orator availed himself of the provision of the pre-emption law of A.D. 1836, and entered said land at said land office and paid the Receiver of said office one dollar and a quarter per acre besides the fees due said officers for their services in allowing the pre-emption right and said Register then and there executed to your Orator a certificate of said entry, a copy of which is herewith annexed and prayed to be made a part hereof.

Your Orator further sheweth unto your Honor that afterwards to wit, on the day of A.D. 1838, the President of the United States issued to your Orator a patent for said land which will be produced on the trial of this cause.

Your Orator further sheweth unto your Honor that prior to the Spring of Eighteen hundred and forty four Your Orator had no house on said tract in which he could reside, but lived on an adjoining tract and cultivated the one above named, but having built a residence on said tract during the year eighteen hundred and forty two and eighteen hundred and forty three he removed with his family into said residence in the Spring of the year eighteen hundred and forty four and has constantly resided there ever since, and now resides there.

Your Orator further sheweth unto your Honor that sundry other persons are now in possession of defined portions of said lot, but they all hold either by purchase or lease, under Your Orator, and in most cases, if not all, your Orator is responsible to said persons by way of warranty for the title to said lots or parcels of ground, and your orator well hoped to be able to enjoy his said property in peace with let or hindrance from any one.

But now let it be, may it please your Honor, that divers persons pretend, and for many years have pretended to have titles to portions of said property, adverse to the right of your Orator and his said vendees and tenants, and by constantly claiming said ground and sometimes threatening to sue for the same, or portions thereof, they keep a cloud hanging over your Orator's title, that lessens its value and prevents your Orator from selling the same, Those persons who hold adverse to your Orator claim title under a law of Congress passed on the 15th of May 1820, entitled "An Act for the relief of the relief of the inhabitants of the village of Keokuk, in the State of Illinois," and an Act passed the 3rd day of March 1823, entitled "An Act to confirm certain claims to lots in the village of Keokuk, in the State of Illinois."

Your orator cannot now state all the persons who claim under these laws & adverse to your orator, portions of said tract of land but your Orator gives the names of all persons whom he knows have such claims and prays to be admitted to insert the others herein as soon as he ascertains their

names and such as he cannot ascertain the names of, he prays to be permitted to proceed against, under the name of unknown claimants, or the unknown heirs and legal representatives of the said claimants where the the claimants name can be ascertained but he is dead and the names of his heirs and legal representatives cannot be ascertained.

Your Orator Charges that Peter Menard, John F. Dorly, Samuel West, Gran Hamlin, Norman H. Purple, James Daugherty, Joseph Papin, Robert Foyth, Henry B. Stillman, Edward T. Tesson, Maypote Maicer, Lucien Durnain, Antoine P. Bouris and Richard Gregg claim title to portions of said tract under some of the original claimants under said law, and also they claim the right to stop up the streets and public highways passing through said tract of land, and to open other streets through said tract of land by virtue of or according to a plat of said ground made in A. D. 1837. but not approved until Sept. first 1840, although your Orator charges that said French streets have not been used as such since A. D. 1812, and if any part of one of them has been used it has been because it accidentally to that extent co-incided with the streets and public highways herein-after described but those streets have been wholly abandoned as such ever since the year eighteen hundred and twelve as aforesaid and in some places they have been cultivated for many years, and in other places they have been long since built on, one distillery and its appurtenances, which stands in one of said streets and which has stood there and was originally built

there without objection from any one, so far as your Orator knows, for about nine years cost the Proprietor more than eight thousand dollars, whereas your orator charges that Water street running through said tract, and so much of Hudson street as lies between said Water street and the Illinois river were established as a public highway by the county commissioners court of the county of Fulton when Teoria county composed a part of Fulton, about twenty five years ago, and has ever since been used by all who thought proper to use the same as a public highway and said Adams street was established as a public highway, by the county commissioners court of Teoria county, about twenty years ago, and has ever since been used by the public as such, without let or hindrance from any one, and without objections from any one, so far as your Orator knows and believes, said Walnut, Chestnut and Oak streets were dedicated to the public for streets, more than seven years ago, by your orator and said Walnut and Chestnut streets have actually been used by the public, as public highways during said time, without let or hindrance from said defendants, and without objections from any one so far as your Orator knows or believes; but said Oak street is yet in the possession of your orator but subject to be turned over to the public, as soon as they need it for a street.

All of which actings and doings of the said defendants are contrary to equity and good conscience and tend manifestly to the injury of your Orator in the premises;

For as much therefore as your orator is without relief by the strict rules of the common law, but is relievable only in a court of equity where matters of this sort are properly cognizable and relievable, and to the end that the said defendants, may be required upon a day and under a penalty to be by this Honorable Court affixed to appear in this Honorable Court and then and there under their several and respective corporal oaths full true and perfect answers make to all and singular the allegations aforesaid as particularly and specifically as if each of the said allegations was here repeated and they and each of them thereunto particularly interrogated and that they they and each of them shall answer to the best of their respective knowledge, remembrance and belief,

1st Whether Your Orator does not hold under the title above set forth.

2nd Whether your Orator has not been in possession of said premises for the time and in the manner above specified

3rd What title have you to said premises, if you have any title papers set them out in your answer.

And that all said defendants may be required to release to your Orator whatever title they may claim to any part of said tract of land or that they may be perpetually enjoined from setting up the same against your Orator. And that your Orator may have such other and further relief in the premises as may be equitable and just and to your Honor shall seem meet. May it please your Honor to grant unto your Orator a writ of summons or subpoena out of

Chancery to be directed to said defendants commanding
them as aforesaid and your Orator will ever pray &c.
C. Ballance.

Whereupon the clerk of said court on the same day issued out of
said court under the seal thereof a summons directed to the
sheriff of Peoria county, in the words and figures following, to wit,
The People of the State of Illinois.

To the Sheriff of Peoria County, Greeting
We command you to summon Peter Menard, John F. Darby,
Samuel Heart, Uran Hamlin, Norman H. Purple, James
Daugherty, Joseph Tapin, Robert Forsyth, Henry B. Steeman,
Edward P. Tesson, Hypolite Mailler, Lucien Dumain,
Antoine R. Louis & Richard Gregg, if they may be found
in your county, to appear before our circuit court on the first
day of the term thereof, to be held at Peoria within and for
the said county of Peoria on the 3rd Monday of August next
then and there, in our said court, to answer the matters and
things contained in a certain bill of complaint exhibited
against them in our said court on the Chancery side thereof
by Charles Ballance and make return of this writ with an
endorsement of the time and manner of serving the same, on
or before the first day of the term of the said court to be held as aforesaid.

Witness Jacob Gale, clerk of the circuit court
of said county, and the seal thereof, at Peoria,
this 31st day of July in the year of our Lord
one thousand eight hundred and fifty two,
Jacob Gale, clerk.



which summons was returned by said sheriff into said clerk's office
endorsed as follows, to wit:

"State of Illinois,

Peoria County. } Served on the within named Norman H.
Purple, James Daugherty, Robert Foyth, Henry B. Stillman,
Richard Gregg, and Joseph Tapin by reading to them this
writ, and leaving with each a true copy thereof, August 5, 1852.
James L. Riggs, Sheriff, T. C."

Proceedings in Chancery before the circuit court began and
held in the city of Peoria, in and for the county of Peoria, on
Monday the sixteenth day of August in the year of our Lord
one thousand eight hundred and fifty two, the Honorable William
Kellogg Judge of the tenth Judicial Circuit in the State of
Illinois, presiding, to wit:

Wednesday August 25th A.D. 1852.

Charles Ballance

vs

J. Injunction &c,

Peter McEnara, John F. Darby, Samuel Hart,
Oran Hamlin, Norman Purple, James Daugherty,
Joseph Tapin, Robert Foyth, Henry B. Stillman,
Edward P. Ferson, Hypolite Maillot, Lucien Dumain,
Antoine R. Louis & Richard Gregg.

This day the defendants by H. C.

H. L. McEniman their counsel entered a motion to dismiss the bill
filed in this cause for want of equity on its face.

Thursday August 26th A.D. 1852.
Charles Ballance

As

For Injunction &c.

Peter Mcenara, John F. Darby, Samuel Hart,
Gran Hamlin, Norman H. Purple, James Daugherty,
Joseph Tapin, Robert Forsyth, Henry B. Sticeman,
Edward P. Sisson, Hyppolite Mailler, Lucien Dumain,
Antoine R. Bonis & Richard Gregg.

This day the defendants Peter Mcenara, Joseph Tapin, and Robert Forsyth, came by Healey O. Merriman their Solicitor and the defendant Norman H. Purple in person and entered their appearance in this cause. This cause coming on to be heard on the defendants motion to dismiss the complainants bill, on cross motion of the complainant leave is given him to amend his bill in thirty days. The complainant dismissed his bill as to the defendant Hyppolite Mailler and on his motion ordered that alias summons issue to the other defendants not served with summons herein.

And on the 23rd day of September A.D. 1852. there was filed in said cause an amended Bill in the words and figures following, to wit:
The Amended bill of Charles Ballance to a bill in Chancery now pending in the Hon^{ble} Circuit Court wherein he is complainant and Peter Mcenara and others are defendants,

This Respondent further sheweth unto your Honor that he holds said South West quarter of section Nine, 1st by possession and occupancy for the space of twenty years, 2nd by virtue

of the Statute of limitations connected with said purchase made in November Eighteen Hundred and thirty seven and ^{3rd} by said patent from the United States, and transfers connecting Your Orator with it.

Your Orator further charges that John T. Lindsay and Jacob Darr who are hereby prayed to be made defendants to this bill claim some right or interest in said tract of land but to what extent or in what manner Your Orator cannot state, but their said claims are derived from some of said persons who claim under said law of eighteen hundred and twenty three and are adverse to the said titles of your Orator, but your Orator charges that none of said defendants who are made defendants by said original bill or this amended bill have titles that are valid either in law or equity, as against your Orator.

Your orator further charges that being the owner and possessor of said tract of land as aforesaid he did on the tenth day of February 1846 procure one George C. Mc^radden who was then County Surveyor of Rona County, to survey said tract of land into lots, blocks, streets and alleys as a part of Rona and called said survey Gallanes Addition to Rona, and said plan was then and certified and recorded by said Mc^radden, and acknowledged by said Gallanes, and recorded in the Records Office of Rona, all in pursuance of and according to the provisions of the statute in such case made and provided, a copy of which plan certified as aforesaid is herewith appended and prayed

to be made a part hereof. And Your Orator charges that by reason of the premises there was a complete dedication so far as your Orator could make it of said streets and alleys, to the City of Peoria for the use of the public, and by reason of no one objecting thereto nor claiming damage therefor for many years said dedication became complete as against all the world.

Your Orator further charges that said defendants, all claim the right and some of them threaten to stop up said streets and alleys so as to prevent the public from traveling on them, which if done would ruin Your Orators said property by preventing access to it.

All of which actings and doings of said defendants are contrary to equity and good conscience and tend manifestly to the injury of your Orator, wherefore he prays as before he has prayed, and also that said defendants may each and every of them be enjoined from stopping up or in any wise incumbering said streets and alleys; And Your Orator will ever pray &c.

C. Ballance.

And afterwards on the eleventh day of October A.D. 1823, there was filed in said Court an affidavit in the words & figures following, to wit:

Charles Ballance,

vs

In Chancery. Peoria Circuit Court.
Peter Menard et al.

I Charles Ballance do solemnly swear that
John F. Darby, Samuel Hart, Orrin Hamlin, Joseph Quinn,

Robert Ferryth, Edward P. Tesson, Lucien Durnain and
Antoine R. Bonis are not inhabitants of the State of Illinois,
and that the other unknown claimants to portions of said tract
of land not being known to affiant he cannot state their
residence but he supposes they generally reside out of the
State of Illinois. And further affiant saith not.
Let Decree.

Subscribed sworn to before me }
this eleventh day of October A.D. 1853. }
Jacob Sale, clerk. }

Afterwards on the 30th day of March A.D. 1854 a certificate of
publication of notice of pendency of said suit was filed in said cause
which is in the words and figures following to wit
State of Illinois, In the Circuit Court, Peoria County.
Peoria County, vs. August Term A.D. 1853.
Charles Ballance, complainant.

vs

In Chancery.

Peter Menard, John F. Darby, Samuel Hart,
Oran Hamlin, Norman McPhee, James Daugherty,
Joseph Capin, Robert Ferryth, Henry D. Steiman, defendants.
Edward P. Tesson, Hyppolite Meisler, Lucien Durnain,
Antoine R. Bonis and Richard Gregg.

Notice is hereby given to the
said John F. Darby, Samuel Hart, Oran Hamlin, Joseph Capin,
Robert Ferryth, Edward P. Tesson, Lucien Durnain and Antoine
R. Bonis that a suit is now pending against the above-named

defendants in the Circuit Court in and for Peoria County in the State of Illinois, on the chancery side thereof, wherein the said Charles Ballance is complainant, and that summons has been duly issued therein, returnable to the term of said court held at the court house at Peoria, in and for said county of Peoria and State of Illinois on the third Monday of August A.D. 1852.

Now unless you the said John F. Darby, Samuel Hart, Uran Hamlin, Joseph Papin, Robert Forsyth, Edward P. Tesson, Lucien Durnain and Antoine R. Louis, shall appear before the said court on the first day of the next term thereof, to be held at Peoria, in and for the said county of Peoria, and State of Illinois, on the fourth Monday of January next, and plead, answer or demur to said complainant's bill, the matters and things therein contained will be taken for confessed against you, and a decree entered by said court according to the prayer thereof. Dated at Peoria, this 23rd day of December A.D. 1853. Jacob Gale, clk.

[Amended]

I do hereby certify that the annexed notice was published for four weeks successively in the Peoria Republican a public newspaper published in Peoria Illinois, and that the first publication was made on the 23rd day of December A.D. 1853.

March 30, 1854,

J. J. Tackett,
Publisher.

State of Illinois
Peoria County I Jacob Gale, clerk of the Grant
Court of said County of Peoria do hereby certify that the
foregoing is correct transcript of the Record and proceedings
and pleadings &c. in a certain cause in said Court in Chancery
wherein Charles Ballance is complainant and Peter Menard,
John G. Darby, Samuel Hart, Oran Hamlin, Norman
H. Purple, James Daugherty, Joseph Papin, Robert Forsyth,
Henry B. Stillman, Edward P. Benson, Hyppolite Maillet, Lucien
Lumain, Antoine R. Davis, Richard Gregg, John V. Lindsay and
Laub-Larst are defendants, as the same remain of Record
and on file in my office -

In witness whereof I hereto set
my hand and affix the seal of said
court at my office in Peoria
this 18th day of April A.D. 1834
Jacob Gale, clerk.

Clerk's fees for transcript & certificate \$4.00 -

[12453-8]

C. Ballance

vs

P. Menard et al

Transcript of record

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