

12386

No. _____

Supreme Court of Illinois

Phelps.

vs.

Smith.

71641  7

State of Illinois

Fourteenth Judicial Circuit

Jo Daviess County

Pleas in the Circuit

Court began and held with

in and for the County of Jo Daviess aforesaid on
the fourth Monday of November in the year AD 1851
before the Judge of said fourteenth Judicial Circuit
Court to wit Hon Benjamin R. Sheldon

William A Phelps, Plff

vs
Bradner Smith } Defendants

Be it remembered that
heretofore to wit on the 29th day of November
AD 1851 in the November Term AD 1851 of said
Circuit Court for said Jo Daviess County the said
William A Phelps by his Attorney filed in open
Court his Bond for Costs together with his decla-
-ration & notice to said Defendant in Eje-
-ction which said Bond for Costs & decla-
-ration are in the words and figures following to
wit -

State of Illinois } In the Jo Daviess County Circuit Court
County of Jo Daviess } Nov. Term 1851

Wm A Phelps, Plaintiff

vs
Bradner Smith, Defendant } In Ejection

I do hereby enter myself security for costs in
this cause, and acknowledge myself bound
to pay, or cause to be paid, all costs which
may accrue in this action, either to the
opposite party, or to any of the officers of
this Court in pursuance of the laws of this
State. Dated at Galena this 29th day of Dec. AD 1851
J. P. Stevens *J. P.*

Approved

Wm A Bradley

Clerk of Jo Daviess County Circuit Court

Endorsed

Filed, Nov 29th 1851

Wm A Bradley Clerk

State of Illinois }
Jo Daviess County } In Circuit Court of said County
Nov Term 1851

William A Phelps the plaintiff in this suit com-
plains of Bradner Smith, the defendant in this
suit in a plea of Trespass and ejectment, for that
whereas heretofore, to wit on the first day of October
AD 1851 at the County aforesaid the said plaintiff
was possessed in his own right in fee of the
following described premises to wit the undi-
vided half of lot No Nine (9) and the undivided
half of Lot No eight (8) said Lot eight fronting

forty-seven (47) feet more or less on Water Street
and running Westwardly Sixty-nine by Seventy-
nine feet more or less containing .08 of an
acre be the same more or less, and said
Lot Nine (9) fronting forty-seven (47) feet more
or less on said Water Street and running
Westwardly fifty-eight by Sixty-nine feet (58 by
69) containing .067 of an acre more or less as
known and designated on the plat of the late town
now City of Galena said premises, being situate
in said County and State aforesaid, and the
said defendants afterwards to wit: on the day and
year aforesaid, to wit: at the County aforesaid
while the said plaintiff was so possessed of said
premises as aforesaid entered into the same
and possessed himself of said premises
unlawfully and still ^{with} holds the same from the
said plaintiff unlawfully and wrongfully

And whereas also the said plaintiff heretofore
to wit: on the first day of October A.D. 1851
at the County aforesaid was possessed in
his own right in fee of the following described
premises situate in the City of Galena County
and State aforesaid, to wit: Lot No. Seven (7)
said Lot seven fronting forty-seven (47)
feet more or less on Water Street and running
Westwardly Seventy-nine by eighty-nine (79 by 89)
feet containing .09 of an acre more or less as

known and designated on the plat of the
late town now City of Galena; And the
said Plaintiff being so possessed thereof, the
said defendant afterwards to wit on the
day and year last aforesaid to wit at
the County aforesaid entered into the said
last described premises and unlawfully withheld
- as from the said Plaintiff the possession thereof
to the damage of the said Plaintiff of five hund-
- red Dollars \$500, & therefore he sues &c

J. P. Stevens, Atty
for Plff.

To Bradner Smith the
the above named defendant)

You are hereby notified that
the above declaration in Ejectment will be filed in the
Circuit Court of Jo Daviess County, State of Illinois
on the 29 day of November Inst of the present
term of said Court, that upon filing the same
a rule will be entered requiring you to appear
and plead to said declaration within twenty
days thereafter and that if you neglect to ^{or} appear
and plead a Judgment by default
will be entered against you and the
said Plaintiff, William A Phelps will recover
the possession of said premises in said
declaration mentioned

Galena Nov 27th 1851.

Endorsed

J. P. Stevens, Atty for Plff

Will pro as to this Court -

State of Illinois }
Jo Daviess County }

I, Christopher C Saunders
Sheriff of said County do hereby certify that I
did on this 28th day of November AD 1851, serve
the within declaration & notice by leaving a
true and correct copy of the same with the
within named Bradner Smith
Sworn to & Subscribed by C. C. Saunders Sheriff
before me this 29th day of
November AD 1851

Wm H Bradley Clerk

Endorsed

Filed Nov 29th 1851

Wm H Bradley Clerk

And afterwards do wit-on the same day to
wit-on the said 29th day of November in said
November Term AD 1851 of said Court-in the
Record of the proceedings thereof in said cause
is the following entry to wit-

William A Phelps

vs
Bradner Smith

Ejectment

The Plaintiff by his Attorney
files his declaration & notice and on his motion
It is ordered by the Court that the same be

Docketed and that the Defendant be ruled
to plead within Twenty days from this date,

And afterwards to wit on the 23^d day of
December as yet of the said November Term
AD 1851 of said Court the said defendant by
his Attorney filed in open Court his motion
to dismiss which is in the words and figures
following to wit;

Bradner Smith & Circuit Court Nov^r
Add Term AD 1851
William A Phelps

The said Defendant comes
& moves the Court to dismiss this Cause because
of want of Security for Costs the said Plaintiff
being a Non Resident now and at the Comm-
encement of this action

Washburne
Hoyt & Wilson Attys for
Defendant

Endorsed
Filed Dec 23^d 1851
Wm H. Bradley Clerk

And afterwards to wit on the 24th day of
December as yet of said November Term
AD 1851 of said Circuit Court in the record
of the proceedings thereof in said Cause is the

Following entry to wit:-

William A Phelps
vs
Bradner Smith } Ejectment

The Plaintiff by his Attorney moves the Court for leave to amend the writ for costs by entitling it as of the November Term of this Court - same is returned as of the 29th Novr AD 1851 which is done by consent of J P Stevens the Securis - and on Motion of the Defendant by Attorney leave is granted him by the Court to plead instantly and the defendant by his Attorney files his plea and the plaintiff by his Attorney comes and enters a Noll prosp. as to the 2^d Count of his declaration

The Plea of the Defendant referred to in said last recited order is in the words and figures following to wit;

State of Illinois D Davis County
Circuit Court Nov 5 1851

Bradner Smith
vs
William A Phelps } In Ejectment

The said defendant comes and defends and says he is not guilty of the ^{said} supposed grievances in the

Declaration mentioned in manner & form therein
alleged and of this he puts himself upon
the Country

By Washburn
Hoyt & Wilson
for Deft.

Endorsed

Filed Dec 24th 1851

Wm H Bradley Clerk

And afterwards to wit on the 13th day of March
AD 1853 in March Term AD 1853 of said
Court in the Record of the proceedings thereof in
said Cause is the following entry to wit

William A Phelps
vs
Bradner Smith Ejectment

Now at this day came the
parties by their Attorneys and upon issue joined
thereupon came a Jury of good and lawful men
to wit William Wadleigh, Frederick Tucker,
George Etherly, Samuel Dob, Alden Syrel
Thompson Simpson, William L Hope, Samuel Elliot,
Jacob Reber, J. C Stone, Joseph Finley & J. P. Dezoza
who were duly elected tried and sworn and
after hearing a part of the evidence on the part
of the Plaintiff the further consideration of the Cause

is postponed until to Morrow Morning at half
past Eight O'clock A.M.,

And afterwards to wit on the 16th day of
March A.D. 1853 in said March Term A.D. 1853
of said So Davies County Circuit Court
in the record of the proceedings thereof in
said Cause is the following entry, to wit,

William A. Phelps,

vs
Bradner Smith,

Ejectment.

The Jury yesterday empanelled
in this Cause this Morning returned into Court
and now came again the parties by their Attorneys
and after the evidence ~~was~~ had been all
introduced both on the part of the Plaintiff
and defendants and a part of the arguments
of counsel heard the further argument of
counsel is postponed until to Morrow
Morning.

And afterwards to wit on 17th day of March in
said March Term A.D. 1853 of said So Davies
County Circuit Court in the Record of the
proceeding thereof in said Cause is the
following entry, to wit;

William A Phelps

vs

Bradner Smith

Ejectment

Now at this day came the parties by their Attorneys. And now came also the Jury heretofore empannelled and after hearing the concluding arguments of Counsel and receiving instructions from the Court they retired to consider of their verdict, and It is ordered by the Court by agreement of the parties by their Attorneys that the Jury when they shall have agreed upon their verdict may sign and seal the same and disperse and meet the Court to morrow morning

And afterwards to wit on the 18th day of March in said March term AD 1853 of said Court in the Record of the proceedings thereof in said Cause is the following entry to wit:

William A Phelps

vs

Bradner Smith

Ejectment

The Jury heretofore empannelled in this Cause this morning returned into Court with the following verdict to wit: That the Jury find the defendants not Guilty of Withholding the premises described

in the declaration of the plaintiff And the Plaintiff by his Attorney, moves the Court for a new trial and files his reasons therefor

The motion of the Plff. referred to in said last-recited order is in the words and figures following to wit:

Phelps
vs
Smith
Expectant

In the Circuit Court
March Term 1853

And the said plaintiff comes and moves the Court for a new trial in this cause on the following reasons.

- 1 Because the finding of the Jury is contrary to Law
- 2^d Because the finding is contrary to the evidence
- 3 Because the Court refused to give the plaintiff instructions from 1 to 8 inclusive
- 4 Because the Court gave the depts instructions
- 5th and for other reasons apparent in the Record and proceedings in said cause

Stevens & Johnson
Plff Attys.

Endorsed

Filed March 18th 1853

Wm. H. Bradley Clerk

And afterwards to wit on the 28th day
of March AD 1853 in said March Term
AD 1853 of said To Davis County Circuit
Court in the Record of the proceedings thereof
in said Cause is the following entry to wit.

William A Phelps
vs
Bradner Smith } Ejectment

Now come on to be heard
the motion ^{of the Plaintiff} heretofore filed by his attorney
for a new trial of this cause which after
argument by Counsel is taken under
advisement by the Court.

And afterwards to wit on the 29th day of
March AD 1853 in said March Term AD 1853
of said To Davis County Circuit Court in
the Record of the proceedings thereof in
said Cause is the following entry to wit.

William A Phelps
vs
Bradner Smith } Ejectment

The Court having fully
considered and being fully advised upon the
motion of the plaintiff heretofore filed
by his attorney for a new trial of this
cause overrules the motion. And on Motion

of the defendant by his Attorney for judgment
upon the verdict of the Jury heretofore found
and returned. It is thereupon considered
by the Court that the defendant have and
recover of the Plaintiff his costs by him
about his defence in this behalf expended
and that he have execution therefor.

And afterwards to wit on the 22nd day of
August AD 1853 in August term of said
AD 1853
To Daviess County Circuit Court in the
Record of the proceedings thereof in said
Cause is the following entry to wit

William A Phelps }
vs } Ejectment
Branner Smith }

On Motion of the Plaintiff
by his Attorney the plaintiff having paid the
costs herein It is ordered by the Court that
the Judgment heretofore rendered in this
Cause be vacated and that the Cause be re-
stated upon the docket.

And afterwards to wit on the 1st day of Decem-
ber AD 1853 as yet of the November Term AD 1853
of said To Daviess County Circuit Court
in the Record of the proceedings thereof in
said Cause is the following entry to wit.

William A Phelps }
vs }

Ejectment -

Bradner Smith }

On Motion of the Plaintiff
by his Attorney. It is ordered by the Court that
an Attachment issue against Chas R
Bennett & Milton Wadleigh delinquent wit-
-nesses herein returnable Instantly

And now came the parties by their Attorneys
and upon Issue joined thereupon came a Jury
of good and lawful men to wit. Timothy Hallen
Lyman Davis Henry Rogers, Joachim Long
Abraham Roberts, Nelson Crowell, John D Mc-
Kinley, Charles Hummelman, Thomas Hicks,
William Whitson, Samuel Breed & George
Renwick. Who were duly elected tried
and sworn, and after hearing the evidence
and a part of the Argument of Counsel
the further Argument of Counsel is postponed
until to morrow morning at 9 o'clock

And afterwards to wit on the 2nd day of
December AD 1853 as yet of said November Term AD
1853 of said Toadain County Circuit Court in
the Record of the proceedings thereof in said
cause is the following entry to wit -

William A Phelps }
vs }

Ejectment

Bradner Smith }

The Jury heretofore impaneled in this cause this day returned into Court and after hearing the concluding arguments of counsel the Jury retired to consider of their verdict. It is ordered by the Court by agreement of the parties by their Attorneys that the Jury when they shall have agreed upon their verdict may sign and seal the same and disperse and meet the Court in the morning.

And afterwards to wit on the 5th day of December AD 1853 as yet of said November Term AD 1853 of said St Davie County Circuit Court in the record of the proceedings thereof in said cause is the following entry to wit:

William A Phelps }
vs } Exemption
Bradner Smith }

The Jury heretofore empaneled in this case having this day been returned into Court and reported that they were entirely unable to agree upon a verdict. It is thereupon considered by the Court that the Jury be discharged.

And afterwards to wit on the 29th day of March AD 1854 in March Term AD 1854 of said St Davie County Circuit Court

in the Record of the proceedings thereof
in said Cause, is the following entry
to wit:

William A Phelps }
vs } Ejectment
Bradner Smith }

Now as this day came
the parties by their attorneys and upon
issue joined thereupon came a Jury
of good and lawful men to wit Oliver
Haskell, Hugh McGuire, Valentine Beck, Geo D
Clark, Martin Gray, James Martin, John
Smith, Leopold Tapsen, William Eumor,
Benjamin Britton, Thomas Leary, Stephen
Mentzimer, who were duly elected tried
and sworn, and after hearing a part
of the evidence, the further trial of the
cause is postponed until to Morrow
morning

And afterwards to wit on the 30th day of
March A D 1854 in said March term A D 1854
of said Court in the Record of the proceedings
thereof in said Cause, is the following entry
to wit:

William A Phelps }
vs } Ejectment
Bradner Smith }
The Jury heretofore

empaneled in this cause this day
returned into Court. And now came
again the parties by their Attorneys and
^{after} hearing the remainder of the evidence
and the arguments of Counsel the Jury
retired to consider of their verdict. And
it is ordered by the ^{Court} by agreement of the
parties by their Attorneys that the Jury
when they shall have agreed upon their
verdict may sign and seal the same
& disperse & meet the Court in the morning

And afterwards to wit on the 31st day of
March A.D. 1854 in March term A.D. 1854
of said Court in the record of the proceeding
thereof in said cause is the following entry
to wit

William A. Phelps }
vs } Ejectment
Bradner Smith }

The Jury heretofore em-
paneled in this cause this morning returned
into Court with the following sealed verdict
to wit; We the Jury find the defendant not
guilty. And the Plaintiff by his Attorney
moves the Court for a new trial & files
his reasons therefor.

The Motion of Plaintiff Referred to
in said last recited order is in the words
and figures following to wit;

Wm A Phelps } Ejectments In the Circuit
vs } of St Davies County vs
Braden Smith } the March Term A.D. 1854.

and the said Plaintiff comes and
moves the Court for a new trial in this case
for the following reasons

- 1st Because the Court admitted improper
and illegal evidence for the defts.
- 2nd the Court rejected proper and legitimate
evidence offered by Plff
- 3rd Because the Court gave improper instr-
uction for the Defs
- 4th Because the verdict of the Jury is contrary
to the instructions of the Court given for
Plff
- 5th Because the verdict of the Jury is
contrary to law
- 6th Because the verdict of the Jury is contrary
to the evidence
- 7th Because the verdict of the Jury is contrary
to law - evidence and the proper instructions
of the Court
- 8th And for other and further good reasons

J. P. Stevens &
Wm Johnson for Plff

Entered
Filed March 31st 1854
Wm H. Bradley Clerk

And afterwards do Wit on the 1st day of April
AD 1854 as yet of said March Term AD 1854
of said Jo Daviess County Circuit Court in
the Record of the proceedings thereof ^{in said cause} is the
following entry do Wit
William A Phelps

vs
Ejectment
Isaac Smith

Now as this day came on
to be heard the motion of the plaintiff heretofore
filed for a new trial of this cause which after
argument by Counsel the Court intimating an
opinion, the Plaintiff by his Attorney moves
the Court to dismiss his suit which latter
motion is resisted by the defendant by his
attorney and overruled by the Court to which
decision of the ^{Court} plaintiff by his Attorney
excepts. And the Court overrules the motion
of the plaintiff by Attorney for a new trial
of this cause, to which decision of the Court
the plaintiff by his Attorney excepts & on
motion of the defendant by his attorney for
Judgment upon the verdict of the Jury
heretofore found and returned It is
thereupon considered by the Court that the

defendants have and recover of the plaintiff his costs by him about his defence in this behalf expended and that he have execution therefor. And the Plaintiff by his Attorneys prays an appeal to the Supreme Court which is granted upon the plaintiffs entering into Bond in the sum of Two hundred dollars conditioned according to law with Hezekiah A. Gear Madison Y. Johnson, & Isaac Stevens, or either of them as security within forty days from this date, and it is further ordered by the Court that the Plaintiff by his Attorneys have until the first day of the next term of this Court within which to prepare and file this bill of exceptions and that the same may be filed some previous time as of the present term of this Court.

And afterwards to wit on the 3^d day of May A.D. 1854 the said Plaintiff filed in the office of the Clerk of the Circuit Court of said Davidson County his Appeal Bond which is in the words and figures following to wit:

Know all men by these presents that we William
A. Phelps of Fayette County Ohio and
Isaac Stevens of Jo Daviess County
Illinois are held and firmly bound unto
Bradner Smith of Jo Daviess County and
State of Illinois in the penal sum of Two
hundred Dollars current money of the United
States for the payment of which well and
truly to be made we bind ourselves our
heirs executors and Administrators
jointly and severally and firmly by
these presents Witness our hands and
seals this 22nd day of April A.D. 1854

The Condition of the above obligation is
such that Whereas the said Bradner Smith
did on the first day of April A.D. 1854 in
the Circuit Court in and for the said
County of Jo Daviess and State of Illinois
recover a Judgment against the above
bounden William A. Phelps (on a verdict
rendered by a Jury of not guilty in an action of
Ejectment at the suit of said Phelps) for the
sum of Twenty Two Dollars and sixty five
Cents costs from which said Judgment
of the said Circuit Court the said William
A. Phelps has prayed for and obtained an
appeal to the Supreme Court of said
State Now if the said William A. Phelps
shall duly prosecute this said appeal

State of Illinois To David County &

William A Phelps } In the Circuit Court
vs } of David County
Baudner Smith } March Term AD 1854

Be it remembered on ^{this} the day of
March AD 1854 in the Circuit Court of said County
this Cause came on to be heard before the Hon^{ble} Ben-
jamin R Sheldon and a Jury when the following
proceedings were had

The Plaintiff to maintain the
issue on his part introduced and read in
evidence the Deed from Lyard to Phelps. Which
said Deed together with the Certificates thereto annexed
is in the words and figures following to wit:

Mineral Point
Crawford County
Michigan Territory
Novr 8th 1821

To Capt A B Legate

Supt of States Lead Mines

Sir I have this day sold transferred and
set over and by these presents do grant bargain
sell transfer and set over unto Wm A Phelps his
heirs and assigns ^{all} my right title interest or claim
whatsoever, in and to the three lots of ground
own in the Town of Galena David County,

State of Illinois Situated on Wharf Row. (The numbers not recollected) supposed to be either Lots 4, 5 and 6 or 5, 6 and 7, bounded as follows on the east by Peore River on the West by Main Street on a triangular square and on the South by a lot granted to me in the Spring of 1828 and sold by me to W Barnett and on the North by a Street, alley, or other lots.

The most Southern of these three Lots was granted by permit to myself in the Spring of 1828 the other two adjoining was granted to John Ward and Nathaniel Johnson, One Lot to each, and by them transferred to me, all of which is entered on record in the Permit book, Given under my hand and seal this the 8th November 1829

R. P. Guyard 

Approved Nov 9th 1829

Thos L. Segate

Supplement.

Territory of Wisconsin

County of Iowa

3

William Henry of the

Town of Mineral Point

in said County and Territory being duly sworn his Oath says that he was well acquainted with R. P. Guyard whose name appears to the annexed deed of Conveyance or letter addressed to Thos L. Segate dated at Mineral Point Nov 8th 1829 when said Guyard resided in Galena and

when he lived at Mineral Point. And that he
(affiant) has seen much of said Guyard's hand
writing and has frequently seen him write and
is well acquainted with his handwriting.
This affiant knows that said Guyard lived
at Mineral Point in the year eighteen hundred
and twenty nine when the annexed Deed appears
to have been given. And this affiant believes
that the signature "R J Guyard" to the said
Deed is in the hand writing of the said R J
Guyard. This affiant further says that he
was well acquainted with Thomas C Legate
and knows that he was acting Superintendant
of the United States Lead Mines on the 9th of Novem-
ber A D 1829. he is also well acquainted with the
hand writing of the said Thos C Legate and has
frequently seen him write and believes that
the words and signature on the left of the annex-
ed Deed - "Approved Nov 9th 1829 Thos C Legate
Sup U S L M" are in the hand writing of the said
Thos C Legate. And further this affiant says not
(Signed) William Henry

Territory of Wisconsin
County of Iowa } I the undersigned Clerk
of the district court of said County and
Territory which is a court of Record certify
that William Henry of the Town of Mineral Point
who is personally known to me to be the person

mentioned in the foregoing Affidavit and
who signed the same in my presence
being also known to me to be a competent
and credible Witness came before me in
his own proper person and made oath to
the facts stated in the foregoing Affidavit

In Witness of which Affidavit so
made and of the facts so stated as
well as of those stated herein I have
hereunto set my hand and the
Official Seal of said Court at
Mineral Point this 16th day of June
A.D. 1847

William T. Henry Clerk
Dist. Court U.S. State
Iowa Co. Wis. Ter

State of Illinois
J. Daniel Waring ^{3rd} Recorder Office Galena
June 18th 1847.

I Jeremiah Bettis Recorder in and for said
County do certify that the annexed Deed of
Transfer &c are Recorded in Book 4 of Deeds
pages 384 and 385.

Attest Jeremiah Bettis

State of Iowa
County of Dubuque

I the undersigned Clerk
of the District Court of said
County and State (which is a Court of Record
do certify that Thomas McKnight of said Coun-
ty a competent and credible witness to me
personally known, came before me in his
own proper person and being by me duly sworn
according to law stated under oath that he
personally knew and was well acquainted with Robert P
Guyard whose name appears to the annexed deed
of conveyance or letter addressed to Thomas C. Legate
dated at Mineral Point Nov 8th 1829 and well
knew his signature having repeatedly transacted
business with him and having frequently seen
him write, that he the said McKnight was
the assistant Superintendant of the Lead
mines in 1828 and in 1829 and as such Superin-
tendant granted the permits referred to in said
Deed as having been granted to said R. P. Guyard
John Ward, and Nathaniel Johnson and himself
(the said McKnight) made the transfers on the
Permit Book of the two lots permitted to said
Ward and said Johnson and as such assistant
Superintendant transacted that business
with the said R. P. Guyard and other business
by which means he became familiar with said
Guyard's hand writing, The said McKnight
further stated under oath that he had particularly

examined the signature "R. P. Guyard" to the said
Deed of Nov 8, 1829 and verily believed that the
name of R. P. Guyard subscribed to said
deed is in the hand writing of said R. P. Guyard
and was thereto subscribed by him and I further
certify that the said Thomas McKnight further
stated under oath that he personally knew and
was well acquainted with Thomas C. Legate for
several years prior to his death which took
place in March 1846 and knows that he was
acting superintendent of the United States Lead
mines on the 9th of November 1829 and was well
acquainted with the hand writing and signature
of the said Thomas C. Legate and well knew the
same having repeatedly and frequently seen
him write and transacted business with him
and that he had particularly examined the
signature "Thos C. Legate" and verily believed
that the words and signature on the left of the
annexed deed "Approved Nov. 9, 1829 Thos C. Legate, Sup. U. S. M."
are in the hand writing of the said Thomas C. Legate
and were thereto subscribed by him. In testimony where-
of the said Thomas McKnight has hereunto this day sub-
scribed his name in my presence as having sworn to
the facts heretofore stated, and I have hereunto subscribed
my name as clerk of the said Court and affixed the seal
of said Court at Dubuque this 4th day of February A.D. 1848

J. P. Van Hagen Clerk
Dist Court

Thos McKnight

State of Illinois }
To Daviess County } p Records Office Galena, February
5th 1848. I, Cyrus Aldrich Recorder
in and for said County do certify that the within Deed
of Conveyance and the Annexed Affidavits & Certif-
icates are recorded in Book I. of Deeds, pages
340, 341 and 342 -
Attest Cyrus Aldrich, Recorder

The Plaintiff then read in Evidence the following
acts of Congress

"An act authorizing the laying
off a Town on Bear River in the State of Illinois
and for other purposes" "Approved Feb. 5th 1829,"
Also an act to amend an act entitled an act
authorizing the laying off a Town on Bear River
in the State of Illinois and for other purposes"
Approved the fifth of February AD 1829. Which said
last Act was approved July 2nd AD 1836, and
here referred to as though incorporated at large

The Plaintiff then introduced & examined
Wm. H. Bradley who testified that he was the clerk
of the Circuit Court and Recorder in and for
Daviess County and held the office for a number
of years and that the Record Book by him
then produced was the records of the adjudications
made by the Commissioners appointed to determine

the Claim to Lot in Galena under the the
above entitled acts of Congress. and that the
same is deposited in his office by law as a public
Record of land titled in said County and
that the same was delivered to him as and
is the Adjudication of said Commissioners
aforesaid.

The plaintiff then read as evidence the
following entry from said Record, having lines
drawn across the face of them & writing on the face
& margins as follows (on page of Commissioners Record 140)

Tuesday March 7th 1837

Commissioners met pursuant to adjournment
present

Daniel Mann

John Turner

(The following is said Commissioners Record page 170 under said last date)

~~The Legal representatives of Robert P Gayard
claimants originally No 5 under present Survey No 8 Wharf
Row and in support of their Claim produced a certified
copy of a permit granting the same to Nathaniel Johnson dated
April 6th 1828 Signed by W^m Knight with a transfer end-
orsed thereon assigning the same to the said Robert P
Gayard and J B Morehouse. The Commissioners are of
opinion that the legal representatives of Robert P Gayard are entitled to
a preemption to said Lot No 8 embracing 42 feet front on Water Street
extending Westwardly 69 feet by 29 feet containing .28 of an
acre of the first Class.~~

See page 844

Certificate received

Certification Issued.

(The following on said Comrs Record page 171 of said date last-mentioned)

The Legal Representatives of Robert P Gayard
claim Lot Originally No 6, under present Survey
No 9 Wharf Row and in support of their claim produ-
ced a certified copy of a permit granting the
same to John Ward dated September 18th 1828
signed by Th^o MacKnight Asst Supt La ms. with
a transfer endorsed thereon assigning the
same to Robert P Gayard & D B Mordhouse

The Commissioners are of opinion that
the Legal Representatives of Robert P Gayard
are entitled to a preemption to said Lots No
Nine as the Legal Representatives of John Ward
embracing 47 feet front on Water Street run-
ning Westwardly 58 by 69 feet containing .067 of
an acre of the first Class.

(The following is a copy of page 342 of said Comrs Record to wit)

Galena March 9th 1838

Commissioners met - present

Daniel Warr 3

Samuel Leech 3

John Turner 3

Commissioners

And proceeded with their duties

Galena March 10th 1838

Commissioners met - present

Daniel Warr 3

Samuel Leech and 3

John Turner 3

Commissioners

Commissioners Office Galena March 10th 1838

Matthias C Comstock Claims Lot No One on
Peere River designated on the recent Map of Survey
of the Town of Galena as made by the Commissioners as
being Lot No. Eighty Six on Water Street And in
support of his Claim shows the following facts
and evidences 1st A permit on Record in the
Record kept by the Superintendent of the U S
Lead Mines page 101 now in the Commissioners
Office in the words following to wit

"James Lockwood is permitted to occupy Lot
No One on the Peere River North and adjoining
Lockwood's warehouse under the usual
regulations. Galena March 28. 1829 Thos. M. Knight
apt Supt U.S.L.M."

"Secondly a deed of said Lot properly executed
by James A Lockwood to Daniel Whitney & Thirdly
a deed properly executed from Daniel Whitney
to himself for the same Lot, he proves that
the said Lockwood immediately or within the time
required by the 'usual regulations'"

(The following is a copy of page 343 of said Comstock's
procured timber had the same brought on
the Lot and proceeded to erect a building on
the same.)

The Commissioners are of Opinion that the
permit being the foundation of the above Claim
and as the above permit bears date subsequent

to the passage of the Act of Congress of the 5th of February 1829 under which preemption rights are guaranteed. that the said claim be rejected, the power and authority of the Superintendants to grant permits to Lots having expired at the passage of the Act aforesaid

Commissioners Office
March 12th 1838

Commissioners met present
Daniel Mann
Samuel Peck
John Turney

Commissioners

and proceeded with the discharge of their duties

Commissioners Office
March 13th 1838

Commissioners met present
Samuel Peck
John Turney

(The following is a copy of page 344 of said Comd^{rs} Record. to wit.)

Certificate Issued

The Legal Representatives of Robert P. Maynard claim one undivided half Lots originally No 5 & 6 = under present survey No 8 & 9 Water St. 1 and Dickinson B. Horsehouse claims the other half of said Lots and in support of their claim

produced evidence that said Lots were improved
in the year 1828 by said Robert P Lygard and
Dickinson B Morehouse

The Commissioners are therefore
of opinion that the Legal representatives of
Robert P Lygard are entitled to a prescription
of one undivided half of Lots No Eight & Nine
and Dickinson B Morehouse the other half of said
Lots said Lot^{No 8} fronting 47 feet on Water Street
and running Westwardly 69 by 79 feet Containing .08
of an acre And Lot No 9 fronting 47 feet on Water
Street and running Westwardly 58 by 69 feet Containing
.067 of an acre of the first Class

Hezekiah H Lear applies for a rehearing in relation
to the Lygard Claim. The Commissioners having
before acted upon said Claim are of opinion
that they have no power or authority to open said
case for further investigation and therefore reject
said application.

(The following is a copy of page 345 of said Comrs
Record to wit)

Certificate Issued

Samuel D Carpenter and Dickinson B Morehouse
claim Lots No. 3, 4, 5 & 6 in Block No 36 and out-
Lots No. 3, 4, 5 & 7 in Block 37, and in support of
said Claim produced evidence that said the same

was improved by the said Samuel D Carpenter in the year 1828 also a transfer, (filed with the testimony in the foregoing case) of one undivided half of said claim to the said Dickinson B Morehouse from said Samuel D Carpenter.

The Commissioners are therefore of the opinion that the said Samuel D Carpenter & Dickinson B Morehouse are entitled to a preemption to said out Lots No three, four, five and six in Block No Thirty Six, and out Lots No three, four five and seven in Block No Thirty Seven containing in all four, 304 acres of the first Class

Galena March 14th 1838

Commissioners met - present

Samuel Leech
John Turney

(The following is a copy of page 347 of said Court Record to wit)

Galena March 15th 1838

Commissioners met - present

Daniel Warr
Samuel Leech & 3
John Turney 3 Comm's

Certificate Issued

Matthias Shears claims Lots No 2, 20, 21, 22 & 23 and in Support of his claim produced a regular permit granting said Lots, two,

Twenty & Twenty one, above Meekers to Warren
Spear dated August 5th 1826 "and Signed"
Charles Smith Wt Supt. U.S. Mines" with
transfers Endorsed thereon as follows to wit:
from Warren Spear to Abalom Carlyle Approved
Nov 1st 1828 from Abalom Carlyle to Dudley
Simmons August 22nd 1832 and from Dudley
Simmons to Matthias Shears dated July 13th
1833 Said Shears also produced evidence
of occupancy and improvement of the above
named Lots No Twenty-two & Twenty-three by the
said Warren Spear, in the years 1828 and
1829 which were transferred as above

The Commissioners are of opinion that Matthias
Shears is entitled to a preemption to Lot No
Two above Meekers fronting 50 feet on Gratiot
Street and running Eastwardly 61 by 95 feet to
Shears Street containing .062 of an acre. Also
Lots No. 21, 22 and 23 fronting in all 200
feet on Branch Street and running Westwardly
to Shears Street containing in all, .544 of an acre
of the first Class.

Wm H. Brady further testified that said Commis-
sioners while passing on Claims 1: lots in Galena
had a clerk to keep a Record of their proceedings
that his brother Philip Brady was the Clerk a
part of the time and that the various entries
above set forth are in his hand writing. That
in the two entries above marked and referring
pages 170 & 171 the name Dickinson B Morehouse
appears to be written in a larger hand with
a different pen and ink, and afterwards. But
witness thinks the name above is in his Brothers
hand writing.

The Plaintiff then introduced and
read as evidence (The Defendants Counsel having
and admitting without proof the Signature and official
character of Silas Noble) The Certificate of
Entry of lots Eight and Nine (8) & (9) as follows

Nos 224 & 225.

Land Office Dixon Illinois
October 3^d 1850

I, Silas Noble Register of the Land Office at
Dixon Illinois, do certify that the Legal Representatives
of R. P. Guyard & D B Morehouse of the County
of Jo Daviess and State of Illinois did on the twent-
ieth day of February in the year of our Lord
One thousand Eight hundred and thirty eight
purchase of the general Government, at this
Office the Lot numbered Eight on Water Street

in Galena To Daviess County Illinois contain-
ing eight hundredths of an Acre also Lots numbered
nine on Water Street above mentioned containing
sixty seven thousandths of an Acre, and that
said Land at the time of said purchase was
within the District of Lands subject to sale at
this office and rendered subject to sale by Law
all of which appears of Record in my Office
Given under my hand the day and year first
above written

Silas Noble Register

The Plaintiff then introduced and examined
Christopher E. Saunders, who testified that
at the execution of said Writ in this case that
the defendant, Bradner Smith was in the possession
of said Lots eight and nine described in the
Plaintiffs Declaration and as the Sheriff of To
Daviess County he executed the writ in
this case on him, while in the occupancy of a
stable on said Lots. That said Smith was in
the possession of said Lots long before and after
the commencement of this suit.

The Plaintiff then introduced
& examined Charles R. Bennett who testified
that he was a Surveyor and that he laid off the
Town of Galena in the year 1837 under the direction
of the Commissioners and made the Plat of the
Town, which was then produced & identified

as the original Map or plat. Said Witness Stated he knew Wharf Lots or Wharf Row but did not know how they were situated on the Ground, as he had never surveyed them and did not know the front line or depth other than from an old Map or Survey belonging to the Superintendents Office, which was here produced and identified, which Witness Stated was before him when he made the Survey, and he believed the same to be correct.

Thus prior to the Survey being made by Witness; all that Ground between Wharf Row and Main Street - was vacant ground, and in making the Survey by the direction of the Commissioners, he laid out a Street along the river over a part of Lots known as Wharf Row paying no attention to the Survey of said Wharf Row Lots, and laid out the vacant ground back, and between said Street so laid, and Main Street, as will more fully appear by a diagram hereto attached.

Witness further Stated that from the old Map before him, and the description of the lots in Gayards Deed to Phelps, Lots five and six of Wharf Row, would take a considerable part of Lot eight and nine (8/4 (9) by present Survey, not so much of Lot nine (9) as Lot eight (8); but Witness could not tell how much as he only judged from the plat and measurement by the scale indicated on the plat. That this Old

plan was the one used in the Superintendent's ^{office} and
on Witnep's subsequent survey under the
Commissioners was frequently referred to and
found correct. Witnep states he did not know
the boundary of Wharf row lots, as he paid no
attention to the lines of said Lots in making
his survey, and all that he knows about the
boundary of said Lots and their depth he
derives from the Map of the old survey in
the Office of the Superintendent. None of
the Lots under the present survey run
to the River. There is a Street forty feet wide,
laid out between Lot Eight and Nine and
the River. Old Wharf row lots run down
to the River.

The Plaintiff introduced and examined
Capt H A Lear who testified that he was very
well acquainted with Robt J Guyard in
the years 1827 & 8 he resided in Salem and
was in business with O B Morehouse that in
the latter part of '28 they failed and closed
up their business and Guyard went to Mineral
Point where he continued to reside until
1830 or 1831 when he left the Country and he
has never seen him since or heard of
him in this Country he last sight of him
for several years until 1847 when he received
a letter from him from Mason Geo. in

relation to some matters connected with a Secret Society, they were both members of. That he had corresponded with him since. The last letter he had received from him was in 1851.

To all of which last testimony in relation to the receipt of letters said defendants Counsel objected unless said letters were produced and the plaintiff failing to produce said letters or to prove the loss of them or in any manner to account for their nonproduction the Court sustained said objection & excluded said testimony from the Jury and the plaintiff then and there excepted which was allowed.

The plaintiff then asked said Witness. If he knew ^{whether} Robt. P. Gayard was living in the year AD 1850. Witness answered that he only knew the fact from having received letters from him which were now in his possession. Witness thinks he left the letters with plaintiffs Attorney Mr. Stevens (which Attorney was then and there present in Court and examining said Witness) but dont remember accurately. Knows he showed him the letters but can say what became of them was well acquainted with Gayards hand writing. It was a peculiar hand and could not well be mistaken. feels positive. { he is satisfied from the subject matter and

Contents of the letters as well as his knowledge of his hand writing he is sure said letters are from said Dwyer

To the answering of said questions and the answers as given the defendant then and there objected unless the said letters were produced. The Court ruled that to warrant the admission of the testimony the letters should be produced, or their non production be satisfactorily accounted for which plff. failing to do & the Court sustained the objection and excluded said answers as testimony from the Jury and the plaintiff then and there excepted.

This being all the evidence offered by the plaintiff in chief

The defendant to maintain the issue on his part introduced and examined Dan Mann, who testified that he was one of the Commissioners appointed by the President to adjudicate claims to Ross in the Town of Galena. That Turner and Genl Leach were the other Commissioners. That said Commissioners remained in Sepins near Two years. Said Witness stated they had a clerk and took down and preserved the evidence that was heard by them in regard to the various claims to lots, that said evidence was sent to the Commissioners of the General

② The Commissioners of Land Office thought it was necessary that the titles should all be passed again by a full board and each came up and all the proceedings were reviewed by a full board.

Land Office at Washington City. They were also required and did keep a record of all adjudications made by them. That the Record here produced and in evidence is the Record of their adjudications and is the same Book spoken of by Wm H Bradley.

Defendant then asked said Witness. "Did you as one of said Commissioners sit to adjudicate on every claim that came before said Commissioners?" The Plaintiffs Attys objected to said question as contradicting or tending to contradict the Record. Which objection was overruled by the Court and said Witness answered that he did sit and pass upon every claim that came before said Commissioners for their adjudication. Which ruling question and answer was then & there excepted to by Plff. Defendant then asked said Witness. "If you know who filed and prosecuted the claim to the lots in dispute before the Commissioners State the same. To the asking and answering of said question the plff objected, Because the Record was the best and only evidence, because the Record shows Wann was not present that day. Which objection the Court overruled. And Witness answered and stated Dickerson B Morehouse was the person who filed and prosecuted said

Claims before said Commissioners, and of this the Witness was certain. That he knew said Morehouse well. and of his acting in some matters as Administrator of R. P. Guyard. That said Guyard and Morehouse had been partners in business about the year 1829 or 30 and failed in business. to the answering of said questions and answer under the ruling of said Court the Plff then and there excepted. The defendant then asked said Witness. In what Capacity or Character said Morehouse did file & prosecute said claim before the Commissioners. Which question was objected to by ^{the} Plff the objection overruled by the Court, and Witness answered

He did not know in what Capacity he prosecuted the Claim and Plff then and there excepted. Witness was then shown said Deed from Guyard to Phelps and asked the following question, "Can you state whether said Deed was before the Board of Commissioners. To which question the Plaintiff objected, the Court overruled the objection, and ^{said Witness answered} said deed or paper was not before the board for if it had been before them the action of the board would have been different. Witness further testified that the permit Book of the Superintendent. may have been before the board but mostly a certified

Copy of said Permit Book was used as evidence upon which the board acted. This was the principal evidence before the Board. The defendant then asked said ~~evidence~~ witness. What was said and done by said Morehouse before the Board of Commissioners when he was prosecuting the claim to the lots in dispute. Which was objected to by the Plff and objection sustained by the Court. But the Defendant was allowed to ask said witness. "What did Morehouse do before the Board while prosecuting the claim to said lots in dispute. Which was objected to by Plff. Objection overruled by the Court and witness answered. Morehouse was before the board and filed & prosecuted the claim to said lots. And witness knew he was acting generally as administrator of Guyard who was then supposed to be dead. But in what character Morehouse was before the board witness cannot say.

Defendant then asked said witness "Who did the Board intend to give said lots to when they awarded said lots to the legal representatives of R. T. Guyard, was it to Phelps, Morehouse or Who? which question was objected to and objection sustained by the Court. Defendant then asked, What was the habit of your board in issuing certificates and what was done after a claim was

fraped upon. to Whom did you give the certificate and what was done with it? Which was objected to by the Plff, Overruled by the Court, and excepted to by the Plff. and Witness answered. It was the habit of the Board when a claim had been allowed to issue a certificate and hand it to the person who prosecuted the Claim before the board whether he was the party, attorney or agent, and the party receiving the Certificate could go to the Land Office and enter the lots in the name of the person or persons named in the Certificate.

7 Thus Witness further stated he did not know to whom the certificates for the lots in dispute was given or who entered the lots or in what capacity Morehouse prosecuted the Claim before the board. To the best of his belief the certificates in question were delivered to D B Morehouse. To the asking of all the questions to this Witness tending to explain or contradict said Record, or what took place or evidence offered before said board was at the time the same was offered objected to by the plaintiff. the objection overruled & then & there excepted to.

8 The defendant then offered in evidence the record of the award of Commissioners. as follows to wit:

Certificate Issued
The legal representatives of Robert P Guyard

claim one undivided half Lots originally No 5 & 6 - under present survey No 8 & 9 Water Street and Dickinson B Morehouse. Claims the other half of said Lots - and in support of their claim produced evidence that said Lots were improved in the year 1828 by said Robert P Guyard & Dickinson B Morehouse

The Commissioners are therefore of opinion that the Legal Representatives of Robert P Guyard are entitled to a preemption to one undivided half of Lots No eight & nine and Dickinson B Morehouse the other half of said Lots. Said Lot No 8 fronting 47 feet on Water Street and running Westwardly 69 by 79 feet containing .08 of an acre and Lot No 9 fronting 47 feet on Water Street and running Westwardly 58 by 69 feet containing .067 of an acre of the first class.

Mr Mann in Continuation stated that the entry on page 344 of said record is in the handwriting of the Clerk of said Board of Commissioners

Mr Mann also stated he was personally present at the time this claim was adjudicated. Which was objected to by plff because it contradicted the record but the Court overruled the objection and admitted the testimony which plff then read and there excepted to. The claim was before the Commissioners for

several months. Mr Warm also stated on his
Cross examination that if Phelps or any one for
him had ever appeared before the Commis-
sioners Clanning said Lots he would have
recollected it. These Lots were the subject of a
great deal of discussion.

The record was made up by the Clerk often
when one of the Commissioners was absent
and the name of such Commissioner
would be left out. it would not be corrected
next time being considered of no importance.

The Defendant then introduced a file of the
Galena Gazette a newspaper published in
Galena and read as evidence a notice
by said Commissioners to Claimants. which
said notice is as follows, to wit;

Commissioner's Office Oct 5th 1836
Ordered by the board that Public notice be
Given that the Commissioners will be prepared
to receive Testimony on Monday the 17th inst.
relative to Claims to Lots from No 1 on the Prairie
to No 46, and on Monday the 24th inst on
all the Lots between Main and Bench Streets, as
far as Moses Meekers Garden and on Monday
the 31st instant on all other Lots included in
the old Survey or within the limits of Galena
and that the board of Commissioners
will sit from day to day

until the testimony is completed

John Turney }
Daniel Mann } Commissioners
3

The defendant then introduced the Letters of Administration granted by the probate Court to Dickerson B Morehouse on the Estate of Robt P Guyard, which was then and there objected to by the plaintiff as irrelevant and improper which objection was overruled by the Court and the Plaintiff then and there excepted and the same was read to the Jury as evidence which said letters are in the words and figures following to wit:

State of Illinois }
County of Jo Daviess } 3rd for The People of the State of
Illinois, to all to whom
these presents shall come Greeting
Know ye that Whereas Robert P Guyard late
of the County of Jo Daviess and State of Illinois
did intestate as it is said on or about
the first day of July 1834 having at the
time of his decease goods & Chattels and
effects in this State which may be lost, destroyed
or diminished in value, if Speedy care be not
taken of the same; to the end. Therefore that
said property may be collected and preserved

for those who shall appear to have a legal
right or interest therein, we do hereby appoint
Dickerson & Morehouse, of the County of Jo-
David and State of Illinois Administrators
of all & singular the goods and Chattels,
rights, Credits and effects Which were of the
said R D Lyard at the time of his decease
with full power and Authority to secure
and collect the said property and debts
wheresoever the same may be found in this
State, and in general to do and perform
all other acts which now are or hereafter may
be required of him by law

Recd
E. B.

Witness John Turney Judge of Probate in &
for the said County of Jo David at his
Office in Galena this 7th day of March 1836.

John Turney Judge
of Probate
H

The defendants then offered and read as
evidence a notice published by J B Morehouse
as Admr. for the purpose of showing that he
acted as such Admr., which was objected to by
the plaintiff objection overruled by the Court,
and notice read as evidence to the Jury for the
purpose aforesaid and plaintiff then and there ex-
-cepted. Which said Notice is in the words
and figures following to wit

Administrator's Notice

Notice is hereby given to all persons interested or concerned, that I shall apply to the Circuit Court, in and for the County of Lo Davie's, at the next term thereof to be holden in the town of Galena, on the second Monday of August next, for the sale of so much of the Real Estate of Robert P. Lyard, deceased, situate in the town of Galena, as will be sufficient to pay the debts of said deceased, the personal property being insufficient for that purpose

J. B. Morehouse Admin^r of
Rob^t. P. Lyard, dec^d.

Galena June 4th 1836

J. S. M. Bartlett, printer - and publisher
of the N. W. Gazette & Galena Advertiser Certify
that the Annexed Advertisement has been published for 6 weeks successively in my paper the first publication June 18th 1836 and last July 13th same year

J. S. M. Bartlett

The defendant then offered and read in evidence the Petition papers and Judgment on petition to sell Real Estate, for the purpose of showing Morehouse acted as Admin^r. Which

were each severally objected to by the Plaintiff when offered, the Objection ~~was~~ ruled by the Court and the same was read as evidence to the Jury for the purpose aforesaid, and the Plaintiff then and there excepted

The Petition above referred to is in the words and figures following, to wit;

To the Hon^{ble} the Circuit Court in and for the County of Jo Daviess in the State of Illinois

The Petition of Dickinson B. Morehouse of the County of Jo Daviess Aforesaid Administrator of all and singular the rights Credits &c of Robert P. Guyard late of said County deceased must respectfully represent, That on the ~~14th~~ ^{15th} day of March instant there was granted to your Petitioner by the Judge of Probate of the said County letters of Administration in due form upon the Estate of said Robert P. Guyard deceased, that he knows of no personal ~~property~~ estate of said Guyard whatsoever in the said County or elsewhere nor has your petitioner reason to believe that he died possessed of any. That at the time of his death said Guyard was indebted to the late firm of Guyard Morehouse & Co for the use of the assignees of Moses Thomas of Philadelphia the sum of 3255 dollars ^{75 cents} with interest on the

notes a list of which & when due is hereto
annexed - Which debt is admitted to
be just and due and is the only claim
as yet presented to your petitioners Who further
represents that the only property that he
knows of as belonging to said Guyard in
his life time, is the claim, title and right
of him at the time of his death in and to your
Town Lots in the Town of Galena Namely - Lot
Number three (3) of Wharf Row so called granted
to said Guyard by permit dated March 12th
1828 also Lot Number four (4) adjoining the above
granted to said Guyard by permit dated March
23rd 1828; also Lot Number five (5) in same
row granted April 6th 1828 by permit to
Nathaniel Chason and by him transferred
and assigned to said Guyard December 11th
1828 - also Lot Number six (6) adjoining
the above, granted by permit dated September
18th 1828 to John Ward and by him transferred
November 29th 1828 to said R. P. Guyard, all
which in relation to said lots will more fully
and at large appear by reference to the Book
of permits & the Survey of the lots in said
Town of Galena.

Your Petitioners further represent
that said Robert P. Guyard died without
leaving any Widow, Child or Children
or devisees to his knowledge to serve any

notice of this application upon but he
 has given public notice as the law requires
 in the nearest Newspaper (a copy of which
 is hereto annexed) of his intention of the
 present application. In consideration
 of all which facts herein before stated he
 prays the aid of this Court in the prem-
 ises, that you will order & decree a
 sale of the right title claim and interest of
 said Robert P. Engard in & to the town lots
 herein before described for the payment of
 the debts of said Estate according to the
 Statute in such case made and provided &c
 D. B. Morehouse Adm'r

List of Notes given to Engard Morehouse & Co by
 Robt P Engard viz all dated at Salem Sept 22nd 1829

1 st	due	Nov	1830	for	\$ 500.00
2 ^d	due	Nov	1830	"	500.00
3 ^d	due	Nov	1831	"	255.75
4 th	due	June	1832	"	500.00
5 th	due	Nov 3	1832	"	500.00
6 th	due	Nov 3	1833	"	500.00
7 th	due	June 3	1834	"	500.00
					<u>3255.75</u>

With interest thereon from the time
 they became respectively due

D B Morehouse Adm'r

State of Illinois }
Co Davis County } I do hereby certify that
Dickerson B Morehouse
has been duly appointed Administrator of
the Estate of Robert P Guyard deceased, given
under my hand and Sealed this 18th day of
August 1836

John Turner Seal
Law Judge of Probate

Endorsed

Filed August 18th 1836

S. Smoker Clerk

And afterwards to wit on the 15th day of August
A.D. 1836. At the August Term of said Co Davis
County Circuit Court, in the Record of
the proceedings thereof, ^{in said matter} is the following entry
to wit:

In the Matter of
Dickerson B Morehouse Adm^r } For Sale of Real Estate
of Robert P Guyard deceased }

And now at this day
came the said Dickerson B Morehouse Admin-
istrator of said Robert P Guyard deceased by
his Attorney and filed his petition and proved

that he has given Notice of his intention
to apply to this Court in the North Western
Gazette & Galena Advertiser printed in the
Town of Galena for six weeks previous to the
term of this Court and the Court being satisfied
that there is not sufficient personal estate
of said Robert P. Guyard to pay the debts
thereof do order and decree that the Real
estate in said petition mentioned to wit
(four town lots in the Town of Galena namely
Lot number three (No 3) of Wharf Row so called
granted to said Guyard by permit dated
March 12th 1828 also lot number four (No 4)
adjoining the above granted to said Guyard
by permit dated March 23^d 1828 also Lot number
four (No 4) adjoining the above granted to said
Guyard by permit dated March 23^d 1828 also
lot number five (No 5) in said Row granted
April 6th 1828 by permit to Nathaniel Johnson
and by him transferred and assigned
to said Guyard December 11th 1828 also lot number
six (No 6) adjoining the above granted by
permit dated September 18th 1828 to John
Ward and by him transferred November 29th
1828 to said R. P. Guyard all of which in relat-
ion to said Lots will more fully appear by
reference to the book of Permits and the Survey
of the lots in said Town of Galena) be sold
by said Administrator at Public sale on

the premises, on the fourth Monday of September next between the hours of ten in the morning and five o'clock in the morning evening first giving three weeks previous notice in some Newspaper printed in the town of Galena. The terms of Sale to be One fourth of the purchase money in hand the other three fourths on a credit of six twelve and eighteen months with interest thereon from date of Sale, upon notes with approved security by the petitioner, and that the said Administrator execute to the purchasers deeds of conveyance in due form and that he make return of his proceedings in this matter to the next term of this Court.

And afterwards to wit on the 15th day of April A.D. 1837, at the April term of said Lord Avep. County Circuit Court in the Record of the proceedings thereof ^{in said matter} is the following entry to wit.

I B Morehouse Admin } In the Matter of the
R P Gayard dec'd } Order of Sale of Real Estate
This day came said
petitioner by his Attorney and it appearing that
the lots of Ground in the town of Galena ordered
by at the last term of this Court in this case
were not sold by said Administrator upon

Upon Motion of said petitioner by his said
Atty it is Ordered by the Court that said
petitioner sell at Public Sale according to
Law in the Town of Galena, all the Town Lots
mentioned in his said petition upon the same
terms of payment as in the order of the last
term directed and that he make return of his
proceedings to this Court

The Defendant then offered in evidence
the deposition of Wm Stearns & the permits
& exhibits thereto attached to the reading of
which the plaintiff objected which objections were
overruled by the Court and said deposition
permits & exhibits was read as evidence
to the Jury and the Plaintiff then & there ex-
-cepted.

Said Deposition & Exhibits referred to is in
the words and figures following to wit:

State of Illinois }
In Duwess County } Phelps vs Smith, Ejectment
in Circuit Court, said County
Charles S Hempstead being duly sworn states that
Wm Hempstead is a witness in the above Cause,
and this affiant is informed and believes,
that he is about to depart this State, and
will not be here at the next term of this Court
He therefore desires to have his deposition taken
according to the Statute in such case made
& provided

Subscribed & sworn before me this 12th October 1853
Wm C Bostwick J.P.
Chas S Hempstead

Phelps vs Smith, Ejectment in Cir Court Ill
To Stevens Johnson

Atty. for Plaintiff in said
Cause of Phelps vs Smith, Take notice that
on Tuesday the 25th day of October 1853 I
shall take the deposition of Wm Hempstead
a witness for the defendant in the above Cause
before Wm C Bostwick Esq. a Justice of the Peace
in and for the said County, between the hours of nine
in the morning and six in the evening of the said
day. You can then and there attend
and cross examine if you see proper
Washburn
Atty for Smith Defd

Endorsed
Accepted Service of the within notice
Oct-14th 1853

J P Stevens

Deposition of Wm Hempstead of Jo Daviess
County in the State of Illinois, a witness
produced sworn and examined before William
C Bostwick a Justice of the Peace in and
for said County at his office in Galena in
said County between the hours of 9 o'clock
in the morning and 6 o'clock in the evening
on the 25th day of October 1853 in pursuance
of the annexed Notice to be used if need
be in the trial of a certain Cause depend-
-ing in the Circuit Court of said
County wherein William A Phelps is
plaintiff and Bradner Smith defendant
in ejectment - on the part and behalf of
defendant

William Hempstead of lawful age
being first duly sworn deposes and says
in answer to

Interrogatory 1st. Are you acquainted with Dickinson
B Morehouse formerly residing in Galena

if you how long have you known him

Answer I have known said Dickinson & Morehouse
ever since the year 1838

Question 2nd Have you ever acted as agent for said
D. B. Morehouse and did you procure for
him certain patents from the Land Office
at Dixon, if so when and for what lots
state all you know about it

Answer I have acted as the general agent of
said Dickinson & Morehouse, since the
year 1840 and while acting as his agent
he left with me a number of duplicate rec-
eipts of the Receiver of the Land Office
for the district of lands subject to sale
at Galena Illinois, upon which I received
the patents and amongst which was
one for Lot No three (3) on Main ^{Water} Street
in the late town of Galena to the legal rep-
-resentatives of Robert P. Guyard which
said patent is here now shown to me and
which I annex hereto and mark it with
the letter "A" to be taken as part of this
my deposition. Also one other patent
issued to the legal Representatives of said
Robert P. Guyard for Lot No seven (7) on Water
Street in the late town of Galena and which
said patent is now here shown to me and

by me herunto annexed marked letter "B"
and to be taken as part of this my deposition
— also one other patent to the
legal representatives of said Robert P
Luyard and Dickinson B Morehouse
for Lot No eight (8) on Water Street in
the late town of Galena, and here now
shown to me and herunto annexed and
marked letter "C" and to be taken as part
of this my deposition

And also One other Patent issued to the
Legal Representatives of said Robert P
Luyard and Dickinson B Morehouse for
Lot No Nine (9) on Water Street in the late
town of Galena and now here shown to me
and herunto annexed and marked "D"
and to be taken as part of this my deposition
all of which said patents I received from
said Land Office at Dixon Illinois, with
the Duplicate receipts of the Receiver for
said Lots I also deposited on file with the
then Receiver of the Land Office at Dixon the
duplicate preemption certificates for said
lots I also signed by the commissioners all
of which I received from said Dickinson B
Morehouse for the purpose of procuring
from the Land office, the patents for
said lots for said Dickinson B Morehouse
Wm Hempstead

State of Illinois }
In Daviess County }

I William C Postwick
acting as a Justice of the Peace in and for
said County, do certify that the above deposition
was taken by me at the time and place men-
tioned in the Caption thereof, that the said
Witness was first duly sworn and that the
same was carefully read to said Witness
and signed by him and that he was
then again finally sworn thereto.

Witness my hand this 25th day of October
AD 1853

Wm C Postwick, J. P.

October 31st 1853. The deposition having closed
having been closed before the hour fixed
for same. By consent of parties the attorney
of the plaintiff not having been present
when the direct-Interrogatories were propound-
ed. the same are opened and Isaac B. Stevens
attorney for the plaintiff propounds to said
Witness the following cross interrogatories
to wit: The said Attorney objects to
all that part of the answer of Witness to
2nd interrogatory in Chief that relates to
los. No. 7 or to patents for the same

Question 1st Where does Dickinson B. Warehouse now
reside or is he stopping in Galena.
Answer * His family are in Galena at present

* I do not know where he now resides his family
are in Galena at present.

and I understood that he intends to make
Galena his residence.

Question 2nd In acting as the agent for D B Morehouse
did you ever act for him as Administrator
of any estate and if so of what estate, and
at what time

Answer I once paid for him as Administrator
of Robert S Guyard's Estate some money
which I charged to the Individual account
of said Morehouse, but do not recollect the
time, not even the year in which same was
paid. I never acted generally as agent for him
as Administrator of any estate. This payment
was made many years ago

Question 3rd In paying the money, as stated in
your last answer did you do so at the special
request of said Morehouse or did you act in
the matter and then inform him of what you
had done

Answer I had no special instructions from him
on the subject nor did I inform him at the
time, but the said amount paid for him as
aforesaid by me was repaid by him afterwards
in settlement of our accounts

Question 4th Did you ever procure from the Dixon
Land office patents for any other person than
Dickinson B Morehouse and if so how often

have you so acted and how many patents
procured for other persons than yourself

Answer I have procured from said Land Office
patents for other persons than said D B
Morehouse cannot say how often ^{or} how
many persons

Question 5th State if you can whether the
times that you have thus acted in procuring
patents for other persons was once or twice
few or many

Answer I have but very seldom procured patents
for land from the Dixon Land Office unless
I was interested in the land directly or indirectly
I cant say how many cant say whether once
or twice or how many

Question 6 Have you ever owned or claimed any
part of lots 8 & 9 in controversy in this suit
or have you any interest either directly or
indirectly in the event of this suit

Answer Not that ^{I know of} I have no interest in the
result of this suit.

Wm Hempstead

State of Illinois

So Davis County

I the undersigned Justice of the
peace in and for said County do
certify that the foregoing deposition of William
Hempstead on Cross examination was
taken before me on this 31st day of October

1853 by Consent of parties that said
Hempstead was first duly sworn and that
said crop examination was reduced to
writing by me and that same was carefully
read to said Witness and signed by
him and that he was then finally sworn
thereto

Witness my hand this 3rd day of October 1853.
Wm. C. Boatwick

Exhibit A referred to in answer to Interrogatory
2nd in foregoing Deposition is in the words
and figures following to wit

Receivers Receipts } The United States of America
Registers Certificate } To all to whom these presents shall come
No 223. } Greeting

Whereas the Legal Representatives of Robert
P. Guyard of St. Davie County Illinois have
deposited in the general Land Office of the
United States a certificate of the Register of
the Land Office at Galena, whereby it appears
that full payment has been made by the
said Legal Representatives of Robert P. Guyard
as aforesaid according to the provisions of
the act of Congress of the 2^d day of July 1836
entitled an act to amend an act entitled an act

Authorizing the laying off a Town on Bear
River (Pere River) in the State of Illinois
and for other purposes approved fifth
February 1829, for Lot numbered three on
main Land Water Streets, containing
eight hundredths of an Acre in the Town
of Galena & according to the official plat
of ^{the} survey of the said Town, Returned to the
general Land Office which said lot has been
purchased by the said Legal Representatives
as aforesaid Now know Ye, that the United States
of America, in Consideration of the premises, and
in conformity with the several acts of Congress,
in such case made and provided, have
Given and Granted, and by these presents Do
Give and Grant unto the said Legal Represen-
tatives as aforesaid, and to their heirs the
said Lot above described; To Have and
to hold the same together with all and
~~Singular~~ the rights, privileges, immunities, and
appurtenances of whatsoever nature, thereunto
belonging unto the said Legal Representatives
as aforesaid, and to their heirs and assigns
forever. In Testimony Whereof, James K Polk
President of the United States of America, have
caused these Letters to be made Patent and
the Seal of the General Land Office to be
hereunto affixed.

Given under my hand at the City

PP
Jad
G

of Washington the first day of
January in the year of Our Lord
One thousand eight hundred and
forty six. And of the independence
of the United States the Seventieth

By the President, James K Polk

By J. Snow Walker Secy

S. H. Laughlin Recorder of the

Recorded Vol 1 pag 223. 3

General Land Office

Exhibit "B" above referred to is as follows
to wit

Receivers Receipt &
Registers Certificate
No. 222 in

The United States of America
To all to whom these presents shall come
Greeting;

Whereas The Legal Representatives of Robert P. Gayard
of Jo. Davie^{County} Illinois have deposited in the
General Land Office of the United States, a Certificate
of the Register of the Land Office at Galena whereby
it appears that full payment has been made by
the said Legal Representatives of Robert P. Gayard
as aforesaid according to the provisions of the
act of Congress of the 2nd day of July, 1836, entitled
an act, to amend an entitled an act an-
thorizing the laying off a Town on Bear
River (Peore River) in the State of Illinois,
and for other purposes approved fifth

"B"

* this said Lot above described; To have and to hold the same together with all the rights, privileges, immunities, and appurtenances of whatever nature thereunto belonging, unto the said Legal Representatives as aforesaid, and to their heirs;

February 1829. For Lot numbered seven, on Water Street containing nine hundredths of an Acre, in the Town of Galena, according to the official plat of the Survey of the said Town, returned to the general Land Office, which said Lot has been purchased by the said Legal Representatives as aforesaid. Now Know ye, that the United States of America, in Consideration of the premises, and in Conformity with the several Acts of Congress, in such case made and provided, have given and Granted and by these presents Do give and Grant, unto the said Legal Representatives as aforesaid and to their heirs* and assigns forever. In Testimony Whereof, James K Polk President of the United States of America, have caused these letters to be made patent and the Seal of the General Land Office to be hereunto affixed; Given under my hand at the City of Washington, the first day of January in the year of our Lord one thousand eight hundred and forty six and of the Independence of the United States the Seventieth; By the President; James K Polk



By J Knox Walker, Secy
S A Loughlin Recorder, of the General Land Office

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Exhibit Marked "C" is as follows to wit,

Receivers Receipt
Registers Certificate
No 225

The United States of America
To all to whom these presents shall come Greeting
Whereas the Legal Representatives

of Robert P. Maynard and Dickinson B. Morehouse,
of Jo Davie County Illinois have deposited in
the general Land Office of the United States a
Certificate of the Register of the Land Office
of the United States, a certificate at Galena
whereby it appears that full payment has
been made by the said Legal Representatives
as above named according to the provis-
ions of the Act of Congress of the 2nd day of
July 1836 entitled an Act to amend an Act
entitled an Act authorizing the laying off
a Town on Bear River (Silver River) in
the State of Illinois, and for other purposes
approved fifth February 1829, for Lot
numbered eight, fronting ^{front} seven feet on
Water Street and running Westwardly Sixty-
nine by seventy nine feet containing eight
hundredths of an Acre, in the Town of Galena
According to the official plat of the survey of
the said Town, returned to the general Land
Office, which said Lot has been purchased by
the said Representatives of Robert P. Maynard
and Dickinson B. Morehouse: Now know
ye that the United States of America in

Consideration of the premises, and in Conformity
with the several acts of Congress, in such case
made and provided, have given and grant-
-ed. And by these presents Do give and Grant
unto the said Representatives of Robert P.
Guyard and Dickinson B Morehouse and
to their heirs the said Lot above described
to have and to hold the same, together with
all the rights, privileges, and immunities
and appurtenances of whatsoever nature
thereunto, belonging unto the said Represent-
-atives of Robert P. Guyard and Dickinson
B Morehouse and to their heirs and assigns
forever, as tenants in common and not as
Joint tenants.

In testimony Whereof I James K. Polk
President of the United States of America
have caused these letters to be made Patent,
and the Seal of the General Land Office to
be hereunto affixed. Given under my hand
at the City of Washington the first day of
January in the year of Our Lord one thousand
eight hundred and forty six and of the independence
of the United States the seventieth. By the
President James K. Polk



By J. P. Walker Secy
S. H. Laughlin, Recorder of the General Land Office
Records, Vol 1, Page 225

G

Exhibit "D" referred to is as follows to wit

Receivers Receipt } The United States of America
Registers Certificate } To all to whom these presents shall come greeting
No 224 } Whereas The Legal Representatives
of Robert P Guyard and Dickinson B Morehouse
of Jo Davis County Illinois have deposited
in the General Land office of the United States,
a certificate of the Register of the Land Office
at Galena whereby it appears that full pay-
ment has been made by the said Legal
Representatives as above named, according to
the provisions of the Act of Congress of the 2nd
day of July 1836 entitled an Act to amend an
act entitled an Act, Authorizing the laying off
a town on Bean River (Tever River) in the
State of Illinois and for other purposes approved
fifth February 1829 for Lot numbered nine front-
ing forty-seven feet, on Water Street, and
running Westwardly fifty eight by sixty nine
feet containing sixty seven thousandths of
an acre in the town of Galena
According to the official plat of the survey of
the said Town returned to the general Land Office,
which said Lot has been purchased by the said
Representatives of Robert P Guyard and Dickin-
son B Morehouse as aforesaid. Now know ye, that
the United States of America, in consideration of
the Premises, and in conformity with the several

acts of Congress, in such case made and provided
have given and granted, and by these presents
Do Give and Grant unto the said Represen-
tatives of Robert P. Guyard, and Dickinson &
Morehouse and to their heirs the said Lot
above described; To have and to hold the same
together with all the rights, privileges, immunities
and appurtenances of whatsoever nature there-
unto belonging unto the said Representatives
of Robert P. Guyard, and Dickinson &
Morehouse and to their heirs and assigns
forever, as tenants in common and not as
joint tenants. In testimony whereof I
James K. Polk President of the United States
of America, have caused these letters to be made
Patent, and the Seal of the General Land Office
to be hereunto affixed.

Given under my hand at the City
of Washington, the first day of January
in the year of our Lord One thousand
eight hundred and forty six and
of the Independance of the United States
the Seventieth

By the President James K. Polk

By J. Knox Walker Secy
J. H. Laughlin Recorder of
the General Land Office

Remaind Vol 1 page 224.



The defendant then offered in evidence the following Tax Receipts after first showing by C S Hempstead that he had paid the same to the same to the various collectors in said receipts named Witnep further stated that he was the owner of the One undivided half of said Lots in dispute in the case by purchase from Dickerson B Morehouse and for himself and as agent for Morehouse as Administrator, he had paid all taxes and assessments since about the year 1842 or 3. that he had some filling done on said lots and during all the time he had been paying the Taxes he had received the rents for himself and Morehouse as Administrator of Cuyard.

Witnep further stated he was present frequently before the Commissioners during these adjudications. That he did not know the plaintiff in this suit, and is confident he never was before the Commissioners. If he had been Witnep thinks he would have known it. It was the practice for Attornies to appear and prosecute Claims before the Commissioners as well as agents and parties. Thus Witnep appeared in various cases as an Attorney, Mr Hoge, Drummond and Smith indeed all the Attornies that was here

frequently appeared and prosecuted claims before the Commissioners.

The Defendants then read in evidence the Tax Receipts under said objection from the plaintiff which was overruled by the Court then and then excepted to by the plaintiff.
As follows

Received of R. P. Gayard By C. S. Hempstead
Agt. \$11 Dollars 20 cents, being the amount in
full of his State and County Taxes for the year
1843. State Tax \$3.20. County Tax \$8.00
1/4 of 3.9.8.7 Maine value \$16.00
Eli. A. Bond Collector

J. B. Morehouse Administrator to the
Estate of R. P. Gayard & C. S. Hempstead City of
Galena for Taxes on the following described
Property for the year 1843. C. S. Hempstead Agt.
Lot 7 & 8. 9 Water St 15.00 \$3.75

Rec^d of C. S. Hempstead the Amount

Rich^d Seal

City Collector

Rec^d Galena Dec 24. 1844 of R. P. Gayard Ins.
for C. S. Hempstead the sum of \$18.55 the State &
County Tax for 1844 on Lots - 3. 7 & 8 & 9 Water St - in
the City of Galena
County Tax \$12.50
State 6.05

Alex^r Young
Sheriff & Collector of St. Clair
County - Illinois

C. S. Hempstead Agt
for R. P. Guyard Estate Dr to City of
Galena for Taxes on the following lots for the
year 1844. Lot 3 Main St. Value \$300.

7	"	"	"	500
1/2 8 & 9	"	"	"	500
				<u>4000</u>

Rec^d Payment \$15.00
Rich^d Seal Collector

Rec^d Galena February 9. 1846 of Hempstead
^{Trust} Agents for Estate of R. P. Guyard Fifteen
Dollars for City Taxes on Lot 3 Main St. B. B. \$300.00

7	"	"	B	500.00
---	---	---	---	--------

1/2 8 & 9 Water

at 3/8 p 100. \$15.

"	"	300.00
		<u>\$400.00</u>

for 1845

Rich^d Seal Collected

Rec^d Galena Feb^r 16th 1847 of D. Marchance City Taxes
on the following Lots for 1846 for C. S. Hempstead Agt
for Lots 7, 8 & 9 Water St. Val. 2000

Taxes 3/8 \$7.50

Rich^d Seal

City Collect

Received of Estate of Guyard by C. S. Hempstead
Twenty three dollars and forty cents, being
amount in full of his State & County Tax in Dis-
trict Number One ⁱⁿ Jo Daviess County, for the
year 1847 on the following Real Estate to wit

Lot 7 & 1/2 8 & 9 in Block B City of Galena
 M^{rs} Green Mortgage & State Tax \$11.40
 County Tax

$\frac{12}{23}$ 40

W. B. Green, Collector

Rec^d Galena Dec. 3^d 1847 of R P Hugard
 by C S Hempstead ag^t the sum of Three⁷⁵/₁₀₀
 Dollars for City Taxes on Lot 7 Block B valued \$400.00
 1/2 Lots 8 & 9 Block B 600.00
 for 1847 \$3.75

Rich Seal
City Collector

Received of Estate of R P Hugard the sum
 of Twenty five dollars and forty cents, being
 amount in full for State County and School
 Tax in District Number One, in Peoria County
 Illinois for the year 1848 on Real Estate as follows:

	value	Total value	County	State	School	Total
Lot 7 Block B	1000					
1/2 Lots 8 & 9 " "	100	2000	15.00	7.40	3.00	25.40

Galena Jan 18th 1849

W. B. Green Collector

Rec^d Galena Jan 9. 1849 of R P Hugard by
 C S Hempstead ag^t the sum of Four⁰⁰/₁₀₀ Dollars
 for City Taxes on the undivided 1/2 of Lot 8 & 9 in
 Block B on Water Street

for 1849
 \$4.68

Rich Seal City Collector

Received of R P Guyard by C S Hempstead
 Nine teen $\frac{65}{100}$ dollars in full for State County & School
 Tax on Lot 7 & undivided half Lots 8 & 9 Block B
 for the year 1849.

value 1750	State 1415	City 8.75	School 1.75	Total 19.65
------------	------------	-----------	-------------	-------------

W B Green
Collector

Rec^d Galena Aug 24/51 of C S Hempstead for R P Guy-
 -ard Four $\frac{50}{100}$ dolls being City tax for 1851 on Lot 7
 Block B W T River at \$900 tax $\frac{1}{2}$ pr ct
 \$450.

A. S. Jackson Collector
P

Received Galena January the 18. 1851 of Estate
 R P Guyard by C S Hempstead the sum of
 Twenty four $\frac{59}{100}$ Dollars in full for State County
 and School Tax in District Number one So
 Davis County Illinois. for the year 1850 on Real
 Estate as follows

Description	value	Total value	State Tax	County Tax	School Tax	Total
Lot 7 Block B	750					
Undiv. 8 & 9	1000	1750	10.15	12.25	2.19	24.59

W B Green Collector
P

Rec^d Galena March 30/52 of C S Hempstead for R P Guyard
 nine $\frac{50}{100}$ dolls being City taxes for 1851 on the following
 Lots viz

Lot 7 Block B Value 900 Tax \$4.50

Undiv. 8 & 9 " " 1000 \$5.00

A. S. Jackson Collector
P

Received, Galena February the 17. 1852 of R P
Guyard Est by C. S. Hempstead the sum of
Twenty five $4\frac{1}{10}$ Dollars in full for State,
County and School Tax, in District Number
One, St Davie County Illinois for the year
1851 on Real Estate, as follows:

Description, value	State Tax	County Tax	School Tax	Total
Lot 47 Block B 750	10.56	12.25	2.63	25.44
and $\frac{1}{2}$ 8 & 9				
1000				
1750				

10.56
12.25
2.63
25.44

W B Green
Collector

Received, Galena. March the 2 1853 of R P
Guyard by C S Hempstead the sum of Twenty
two $8\frac{1}{10}$ Dollars in full for State and County Tax
in District No 1 St Davie County Illinois for
the year 1852, on Real Estate as follows to

Description	value	Total value	State Tax	County Tax	Total
Lot 7 Block B 750	750				
and $\frac{1}{2}$ 8 & 9	1000	1750	10.56	12.25	22.81

10.56
12.25
22.81

W B Green Collector
Dist No 1 St Davie County Ill

Recd Galena March 15/53 of R P Guyard's
Legal Representatives by C S Hempstead agent
Twenty Four $3\frac{8}{10}$ dols being City & School Tax for
1852 on the following lots viz

Lot 7 Block B value	12.00
and $\frac{1}{2}$ 8 & 9 B	13.00
	25.00

City Tax	18.75	75 ¹⁰⁰ on the One hundred
School do	5.63	22 ¹ / ₂ " " do do
<u>\$24.38</u>		H. J. Jackson Collector

This being all the evidence offered by the defendants in said cause

The Plaintiff then called & examined H H Gear who testified that he was acquainted with the Plaintiff. That in 1829 and up to about 1832 or 3 he was engaged as a Smelter in Mineral Point, when he closed up his business, and Witnep did not see him for several years and not until about 1843 or 4 when he called on Witnep in Erlena. That prior to that time he had received letters from him in Ohio in regard to this property, and by his directions he Phelps had employed Judge Drummond as his Attorney in relation to these Lotts. I have no recollection of seeing Phelps here during the session of the Board. I was absent during the early part of the session of the board, but was present during the latter part of the session. If Phelps had returned I think I should have known it. he might have returned and I know it

The Plaintiff then introduced ^{examined} Judge Drummond who testified that he knew Mr Smith very

well in his life time, that he was an Attorney
here during the time the Commissioners set
to adjudicate on claims and frequently ap-
peared before them in the prosecution of claims
that Smith died not in 1838 or 9 and his
Books and papers went into the hands of
Col Wright, that he purchased some of the
Books and his note was turned over to Jos
Drum in payment for rent. That the Deed
of Guyard to Phelps in this case he seen ten
or twelve years ago that he first seen it in
the possession of Col Wright, after he was
employed Col Wright gave the Deed to
him, Witnep was employed and correspond-
ed with plaintiff several years before he
seen him. Had this deed several years
in his possession thinks he received the deed
in 1840 but not be positive, knows he got it
between 1839 & 43 Witnep wrote the Certificates
of authentication Had the Deed in his hands
for the purpose of bringing a suit for this
property but, delayed bringing the suit on
the grounds that the Burnett vs O'Leary
was then pending, and involved the same
questions & a settlement in that case would
determine this, Witnep retained the deed until
he was appointed Judge when he by direction
of Plaintiff handed it over to Mr Stevens
in this case. ^{Judge} Drummond also stated he

was not certain he saw the Deed from
Guyard to Phelps in C. Wright's possession

This being all the evidence in said Cause
both on the part of the Plaintiff and defend-
ant.

The Plaintiff asked the following
instructions

The Plaintiff asks the Court to instruct
the Jury

If they believe from the evidence
in this Cause, that Guyard by his deed in
1829 sold and transferred all his interest
to Phelps in Wharf Lots 5 and 6 of Old Survey,
and that Lots 8 & 9 of the present Survey
was granted by the Commissioners in the
place of Lots 5 & 6 (a part of which was taken
for Water Street) and if they further believe
from the evidence that Phelps under the
deed from Guyard, is the legal Representative
to whom the Lots were awarded by the Commissioners
and the defendant Smith has in the posses-
sion of said Lots 8 and 9 at the time
of bringing this Suit then the Jury should
return a verdict for the Plaintiff

Given

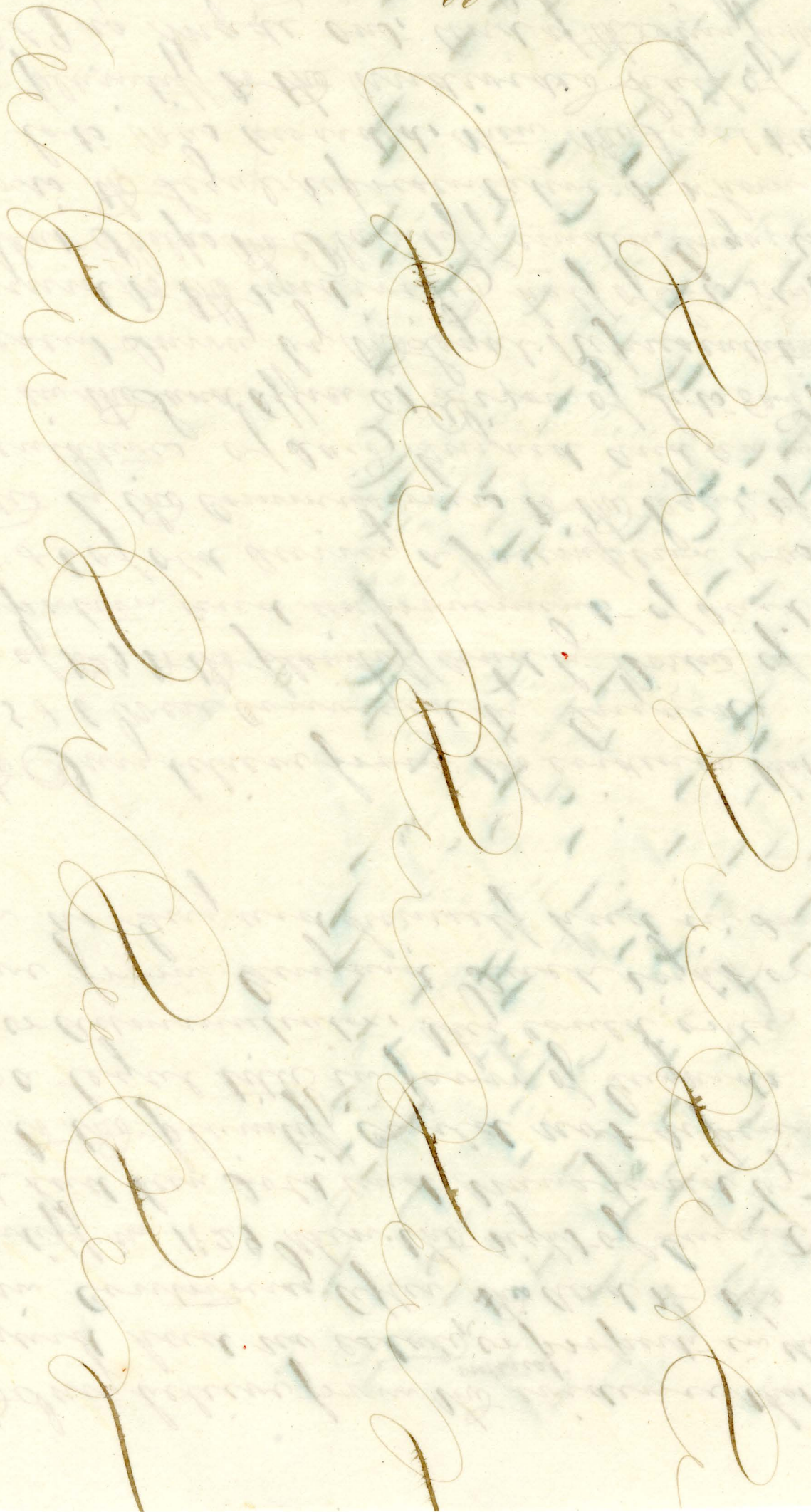
Given

If the Jury believe from the evidence that Guyard had no estate ^{interest} or property in the lots in controversy after this deed to the Plaintiff in 1829 then the rights of Guyard which had been sold and transferred by him to the plaintiff could not ripen into a legal title in favor of Guyard's heirs or administrator. They could only derive from Guyard such right or claim as Guyard himself had in said lots

"
If the Jury believe from the evidence that lots 5 & 6 were conveyed by Guyard's deed of 1829 to the plaintiff and by virtue of occupation and improvements of said lots 5 & 6 of old survey a presumption was granted by the Commissioners to the legal representatives of said Guyard and an entry made in the Land Office as Dixon of Lots 8 and 9 of present Survey by the Legal Representatives of Guyard to the undivided half of Lots 8 and 9 and that Phelps the Plaintiff under Guyard's deed is the Legal representative to whom said lots was awarded, then the Legal title of the plaintiff to the undivided half of Lots 8 & 9 is made out. And if the Jury further believe that Smith was in possession of said lots at the time of bringing this

Given

Suit. Then the Jury should find a
verdict for the Plaintiff



The Plaintiff asks the Court to instruct the Jury

1st That if the Jury believe from the evidence that lots eight and nine, as mentioned in the Plaintiff's declaration was awarded by the Commissioners to the Legal Representatives of Robert P. Guyard and Dickinson B. Morehouse in the place of Old Lots five and six in Wharf Row - and if the Jury further believe that Phelps the Plaintiff is the grantee and Legal Representative, to whom the lots were awarded, of Robert P. Guyard, to the undivided half of said lots, and that the defendant was in possession of the lots at the commencement of this suit then the Jury will find for the plaintiff

2nd That the decision of the Supreme Court of the State of Illinois until the same is reversed and annulled are of binding effect - and the Court and Jury are bound by said decision. If the Plaintiff has shown prima facie a good title to recover

3rd To enable the defendant in this case to defend his possession successfully - upon their own title, that title must be shown to be a good and subsisting legal title and superior in Law to that shown by the Plaintiff. Otherwise it opposes to legal bar to the recovery in the action of Ejectment (3 Howard Repts 759)

Given
4th If the Jury believe from the evidence that the Plaintiff has shown *Prima facie* a good title to recover, and the defendant sets up no title in himself but seeks to maintain his possession as a mere intruder by setting up a title in third persons, with whom he has no privity. In such a case it is incumbent upon the party setting up the defence to establish the existence of such an outstanding title beyond controversy. It is not sufficient for him to show that there may possibly be such a title. If left in doubt - that is enough for the Plaintiff. He stands on his *Prima facie* good title (6 Peters Rept 312)

Given
6th If the Jury believe from the evidence that Guyard had no estate interest or property in the lots in controversy after the execution of this Deed in 1829 but the right thus transferred passed all his interest in said lots to the Plaintiff and said lots had been awarded by the Commissioners to the "Legal Representatives" of said Guyard, and that Phelps as grantee under said deed is the legal representative of said Guyard to whom the lots were awarded then the Jury will find for the Plaintiff

7th If the Jury believe from the evidence that the

rights of preemption to the undivided half
of Lots eight & nine of the present survey
was granted by the Commissioners by virtue
of improvements and occupancy of lots
five and six in Wharf Row of old survey
then the action of the Commissioners in
favor of the "legal representatives" of said
Guyard as to the right of Preemption to
the undivided half of lots 8 and 9 of present
survey is Conclusive, and if the Jury
further believe that the Plaintiff Phelps
under Guyard's deed to him is the Legal
Representative to Whom the lots were award-
ed and that said lots were entered from
the General Government under and by
virtue and in conformity to the award
made by the Commissioners, then a legal
title vested in Phelps notwithstanding
Morsehouse's Agent may have received
the patents from the Land office But the
Law will intend he received it for
Phelps, and they will find for the
Plaintiff

The Defendants asked the following instruc-
tions. Nos 2 & 3 which are marked given
by the Court on the Margin of them

1st That in Actions of Ejectment the rule of law is that the plaintiff must recover upon the strength of his own title and not upon the weakness of the title of his adversary

2nd That before the plaintiff Phelps can recover in this action he must show a complete and perfect ^{legal} title in the lots set out and described in his declaration

3^d That the lots claimed by plaintiff in his declaration being entered in the name of the legal Representatives of R J Guyard it does not follow that the plaintiff is the legal representative of said Guyard as regards these lots because said Guyard deeded him the lots as described in his said deed from said Guyard. that the term legal representative in this case is to be construed according to the intention of the party using the same and that there is a question of intention to be considered in the construction of that term and that this is not to be gathered solely from the instrument itself but in part from concomitant circumstances and the existing state of things, and the relative situation of the parties to be affected by it.

4th That when a grant is made to the "legal representatives" of a person by a board of Commissioners it will be held to be a grant to the person who filed and prosecuted the claim as legal representatives before such board of Commissioners provided he so filed & prosecuted the claim for himself no one else & no other claim was brought to the notice of the Commissioners.

5th If the Jury believe from the evidence in this case that Dickerson B Morehouse filed the claim for the lots in dispute as the Administrator of R P Guyard for the Estate of Guyard and for no one else and as such Administrator prosecuted the claim to said lots for the Estate of the said R P Guyard & for no one else before the board of Commissioners created by the Act of July 2nd 1836 amending the Act authorizing the laying off a town on Bear River and that the said Morehouse as such administrator for the estate of Guyard & for no one else entered the said lots at the Land Office, then the term "Legal Representatives" as used in the patents to the lots in controversy should be construed by the Jury to mean the Administrator of the said Guyard and not the said Phelps

6th Thus if the Jury believe that the lots in dispute are other than and different lots from those conveyed by Guyard to the plaintiff by the instrument of writing introduced on the trial and that the claim to the said lots 8 and 9 was presented to & prosecuted before the said Board of Commissioners by D B Morehouse and entered by him at the land office by ^{as} the Administrator of said Guyard for the estate of Guyard & for no one else and granted by the said board of Commissioners to him as their administrator of the said Guyard then the plaintiff can not recover in this action

Thus by the said instrument in writing of Guyard to Phelps Guyard has made no covenants which prevents him his heirs or administrators from setting up a title derived from the United States, to the lots sued for or even to the lots on Wharf Row. ^{the said lots on Wharf Row,} if this suit had been brought to recover possession of

8 Thus if the Jury believe from the evidence that under the law and under the practice existing at the time that the Commissioners said that they gave their Certificate to every person to whom they had awarded a preemption right and that it was necessary for such person to whom had been awarded such

Given

presumption right to present such certificate to the Land Office, before he could be permitted to enter the lot or lots to which he had such presumption right then if the Jury further believe from the evidence, that Dickerson B Morehouse received such Certificate from such Commissioners and that he afterwards received from the receiver a receivers receipt for the said lot and upon said receivers receipt has obtained patents for said lots that is - is good evidence to the Jury ^{tending} to show that said Morehouse entered the said land at the Land Office

Higgins &
Hooper & Campbell
Atys for Deft
(11)

Given

If the plaintiff has failed to show that he had the legal title to the lots in controversy then the Jury ought not to find a verdict for the plaintiff

10

If the Jury believe from the testimony that D B Morehouse as the Administrator of the estate of R D Guyard, ^{for the benefit of such estate} for no one else, presented a claim as the legal representative of said Guyard to the board of Commissioners that it allowed to him as such representative

for the benefit of such Estate & for no
one else & that he obtained the Certificate
from said Board & paid for the land des-
cribed in said Certificate & took the
title in the name of the legal representatives
of Guyard - and that Phelps the plaintiff
never claimed the said lots before the Com-
missioners & that no one else did for
him. Then although the Board of Commissioners
allowed the claim of the legal representatives
of said Guyard, still this would not con-
fer upon Phelps the plaintiff a title to said
lots if such was not the intention of the
Board of Commissioners, and of said Morehouse
provided the facts were as herein before
set forth.

11 The mere fact that the Commissioners al-
lowed the lots to the legal representatives
of Guyard does not of itself vest the
title in Phelps, ^{the plaintiff} if it appears from the ev-
idence that such was not the intention
of the Board of Commissioners and of
Morehouse.

12 The question for the Jury to determine is to
whom did the Board of Commissioners grant the
lots? To Morehouse as the legal representative, or to
Phelps as the grantee or legal representative of Guyard. To
which of them did the board grant the lots?

Refused

13. On the absence of any evidence either from the appearance of the Deed or otherwise, as to when the interlineation was made in the deed in this case it must be presumed to have been subsequent to the execution of the Instrument; and if so the interlineation is a material alteration of the deed and renders it void. S. 28-40 C.C. Sec.

Given

14. If the Jury believed from an inspection of the deed that the interlineation is in another hand writing from the body of the Deed & from the signatures thereto & no evidence has been given explaining the interlineation this is a circumstance against the deed & which ought to be explained by the party offering the deed in evidence

15

Refused

If the Deed appears on its face to have been altered or interlined it is incumbent on the Plaintiff to explain the alteration or interlineation; & that in the absence of all evidence, ^{either} from some note of the interlineation on the face of the paper or otherwise to show when the interlineation was made it must be presumed to have been subsequent to the execution & delivery of the deed. and if it was so altered since

Such alteration it avoids the deed and
makes it null and void unless it is shown
that Guyard assented to the alteration

16

Every alteration or interlineation not noted
on the Deed detracts from its credit &
renders it suspicious & this suspicion
the party claiming under the Deed is
held bound to remove either by the appear-
-ance of the Deed or by other evidence

17 An alteration or interlineation may sometimes
be explained by the appearance of the instru-
-ment itself, as in a case where the Jury
can see from an inspection of the deed or
writing that the body of the deed & the inter-
-lineation are in the same hand writing
& must have been made at the same time
or where the interlineation is in the hand
writing of the grantor or maker of the deed.
But in the absence of any evidence either
from the appearance of the deed or otherwise,
as to when the interlineation was made
the Court presumes it to have been since
the Execution of the deed - And if the Plaintiff
has failed to furnish Evidence either from
the appearance of the Deed or otherwise,
that the interlineation was made before
or at the time of the delivery of the deed

then the interlineation of the deed makes it void

- 18 If the Jury believe from the testimony that Phelps the plaintiff never appeared before the board of Commissioners & that no other person appeared for him and that Phelps or no other person for him interposed a claim before the board of Commissioners for the lots in controversy & that the grant of said Lot was not made to Phelps the plaintiff as the legal Representative of Guyard then the Jury ought to find the defendant Not Guilty

- 19 If the Jury believe from the testimony that the board of Commissioners granted to the legal representatives of Robert P Guyard the lots in controversy & that Dickinson B Morehouse as the Administrator of the said Guyard claimed the said lots before the said board of Commissioners for the Estate of said Guyard alone and not for Phelps the Plaintiff or any other representatives of Guyard and that the attention of the board was never in any manner called to Phelps Claim or that of any other legal representative then the Jury ought to find the defendant Not Guilty

Phelps
vs
Smith

Volume

If the Jury believe from the testimony that a better legal title exists in the heirs of R P Gayard, or his "legal representatives" than in Phelps the Plaintiff, then they ought to find a verdict for the Defendants; unless they shall further believe from the evidence that William A Phelps was the person intended by the term "legal representatives".

To the giving of which said instructions of the defendant the Plaintiff which are marked by the Court "Given" on the Margin of them, the Plaintiff then and there excepted,

Thereupon the Jury returned the following verdict to Oris.

We the Jury find the Defendants Not Guilty

Oliver Marble
Thos O'Seara
Martin Gray
Hugh McGuffee
Benjamin Britton
Valentine Beck
James Martin
Stephen Menzies
Leopold Masser
George Smith
George Clark
Wm Connor

When the Plaintiff made the following
motion to wit-

William A Phelps } Ejectment in the Circuit of
vs } Do Davie County to the March
Bradner Smith } Term of 1854.

And the said Plaintiff comes and
moves the Court for a new trial in this case for the
following reasons

- 1st Because the Court admitted improper and
illegal evidence for the defendant.
 - 2^d The Court rejected proper and legitimate
evidence offered by Plff
 - 3^d Because the Court gave improper instructions
for the Def^{ts}
 - 4th Because the verdict of the Jury is contrary
to the instructions of the Court given for
plff
 - 5th Because the verdict of the Jury is
contrary to law
 - 6th Because the verdict of the Jury is contrary
to the evidence
 - 7th Because the verdict of the Jury is contra-
-ary to law evidence and the proper Instru-
-ctions of the Court-
 - 8th And for other and further good reasons
- J P Stevens & M Y Johnson for
Plff

Endorsed

Filed March 31st 1854

Wm H. Bradley clk

On the hearing of said Motion the Court made
the following decision and ruling. To wit;

April 1st 1854

William A Phelps

vs

Bradner Smith

} Ejectment

Now at this day came
on to be heard the motion of the
Plaintiff heretofore filed for a new hearing trial
of this cause which after argument by counsel
the Court intimating an opinion the Plaintiff
by his Attorney moves the Court to dismiss
his suit; which latter motion is resisted by the
defendants by his Attorney and overruled by
the Court to which decision of the Court the
Plaintiff by his Attorney excepts, and the Court
overrules the motion of the Plaintiff by his
Attorney for a new trial of this cause
to which decision of the Court the Plaintiff by
his Attorney excepts & on motion of the defend-
ant by his Attorney for Judgment upon
the verdict of the Jury heretofore found and
returned. It is thereupon considered by the
Court that the defendants have and recover
of the Plaintiff his costs by him about his
defence in this behalf expended and that

He have execution therefor, and the Plaintiff
by his Attorneys prays an Appeal to the Supreme Court
which is granted upon the plaintiffs entering
into bond in the sum of Two hundred dollars
conditioned according to law with Hezekiah
H. Gen. Madison G. Johnson & Isaac P. Stevens
or either of them as security within forty days
from this date, and It is further ordered
by the Court that the Plaintiff by his Attorneys
have until the first day of the next term
of this Court within which to prepare and file
his Bill of exceptions, and that the same
may be filed any time, as of the present
term of this Court.

To Which Ruling and decision
of the Court in overruling the motion for a new trial
the Plff then & there excepted and prays an Appeal
to the Supreme Court, and the same is hereby certified
in accordance to Law.

Given under my hand & Seal
Benj R Sheldon Seal

Endorsed

Filed as of April 1st 1854

Wm H. Bradley, Clerk

Filed May 25th as above

State of Illinois
Jedburgh County

I William A Bradley
Clerk of the Circuit Court in and for said
County, do hereby certify that the foregoing
transcript is a true, full and correct copy
from the record of all the proceedings which
were had in said Circuit Court in the
aforesaid case of William A Phelps
vs. Bradner Smith.

In testimony whereof I have
hereunto set my hand and
affixed the seal of said Court
at my Office in Galena in
said Jedburgh County this
12th day of June A.D. 1854
Attest William A Bradley clk

Fee for this Record	\$20.89
Citizens' seal	85-
	\$21.24

Paid 4

And now at this day comes the said
Phelps and says there is manifest error
in the Record and proceedings in the
above cause. And to his injury, And shows
to the Court the following errors. To wit

1st That the Court erred in admitting improper and illegal evidence for the defendant

2nd The erred in rejecting proper and legal evidence offered by the Plaintiff

3rd The Court erred in giving improper instructions for the defendant

4th The Court erred in refusing to grant a New Trial

5th The Verdict of the Jury is contrary to the Law and the evidence in the cause

6th The verdict of the Jury is contrary to the proper instructions of the Court

7th The Court erred in permitting Warr a witness to contradict or explain the Record of the Commissioners

8th The verdict and Judgment should have been for the Plaintiff instead of the defendant

Wherefore he prays for the Errors aforesaid that said Judgment may be reversed annulled and for nothing taken and that the Plaintiff be restored to his rights to

M V Johnson

J P Stevens Plff Atty

Since Appellee says there is no error in the record proceeding, aforesaid

Higgins & Shotton
Atty for Appellee

79
Wm^u A. Phelps
vs
Bradner Smith

Record

Filed June 14. 1854.
Island Ctts.

Phelps & Smith.

It was a question of fact as to who was intended by the term "legal representative". 4 Gil 494-854 M 234 12 Mis 255 = 14 Mis. 420 = 8 How U.S. 338. 6 Eng & Sum 8 & 99 = and the ~~cases~~ will not now disturb the finding of two juries on this point.

We proved that Morehouse was the Administrator of Guyard. That is to say he was his "legal representative" & that he appeared before the Board & prosecuted the claim & that it allowed to him & there can be no doubt that he was the person intended by the term "legal representative". The intention is to be gathered from concomitant circumstances & the existing state of things. 4 Gil 494 = Again it was being manifested by the record that "any other persons entered said land & claim" "ing to represent the said Guyard the land" "will intend that the entry was made by himself" "as the legal representative &c. 4 Gil 493 -

But in our case we prove that other persons did enter this land & that Phelps did not.

The cases (even ones included) all agree, that the party prosecuting the claim before the Board & entering the land - is the legal representative - within the meaning of the acts of Congress. 12 Mis. 255 14 id 420, 424 - 8 How U.S. 338 4 Gil. 493. 494 - 8. S. & M. 234 = 6 Eng & Sum 8 & 99 -

卷之三

[Faint handwritten notes, possibly bleed-through from the reverse side.]

Phelps
J
Smith

Points & authorities

Phelps
H
Smith

Points & authorities

[Handwritten notes, likely bleed-through from the reverse side of the page.]

Phelps
 10
 Smith

360
 720
 1080
 1080
 720
 2880

8 360 6666666666
 8600000000
 2880

Johnson

4 Gilman 471-43

Higgins for Sept in Error

" 6 Eng Law & Egt 99 of "Legal representations"
 These words cannot be
 decided upon unless they
 are explained in some
 other part of the deed.

1 Mo 255 = 12 Peters
 14 " 420 = 6 " 763-70

5 Gilman 252

Where a paper appears to have
 been altered it is incumbent
 on the party claiming under it
 to explain

Stevens for Sept in Error closing

Howard 328 & 1216 Pet. show difference
 between these acts
 of Congress & this

Phelps
&
Smith

Phelps } Guyard Deed to Phelps dated
" } Nov 8th / 1829
Smith } Approved Nov 9 / 29 - transferred all
his interest to Phelps his heirs & assigns.
Then Guyard had ~~not~~ interest in the lots, after
the transfer - Phelps his grantee represented him

The Act of Congress granted to certain persons
lots, and established a Board of Commissioners to
determine the right

On the 7th March 1837
The Commissioners award lots in dispute to the
Legal Representatives of Guyard

Lots 8 & 9 Entered on the 20th July 1838.
at the Land Office by the Legal Reps & Merchants

Afterwards on the 13 March 1839
The Commrs award same lots to Legal Rep &
Merchants

Warr not being present

Then comes the letters of Adms -
Why are they introduced - Are irrelevant - Guyard
had no interest - And the award was to his Legal
Representatives. not to him

If he had no grantee the Adms - was not his
legal representative to Lands, But his heirs -

Look to the peculiarity of Patents

Examine Warr Evidence in connection with
the Records. It contradicts and explains the
Records -

J

- and I will all come with
 Emma - Barbara and - Barbara will be with
 Joseph and I have known all kind - therefore we had
 with of the - comfortable
 with me - and all coming on had all
 - and first, about a comfortable day
 should I please to all of that

2381 Mount St. Vincent
 12 March 1831
 Dear Sir
 I have the honor to acknowledge the receipt of your letter of the 10th inst. and in reply to inform you that the same has been forwarded to the proper authorities for their consideration. I am, Sir, very respectfully,
 Yours, &c.
 J. M. Smith

1821 Nov 28
The Committee on the
Education of the
Colored People of
the District of
Columbia
to the
House of
Representatives

The first of these is the fact that the
 the first of these is the fact that the
 the first of these is the fact that the

[illegible]

He contradicts the Record - by being present -
= when the Record shows he was not present -
He swears the deed was not before the Board -
= And he not present -

He swears the decision would have been different
When it took 2 out of 3 to make the decision
He swears as to the intention and who the
Board meant by Legal Reps

The business of the Board was not to determine
who was the Legal Reps - Nor did they decide
any such a thing or they would have awarded
it to the person by name

This was a question for the Court to determine
who was the legal represent^t, and not the Board

Then as to the Instructions, they are error -
3, 4, 5, 6, 10, 11, 12, 18, 19 - 20

The intention, is the intention of Congress - not the
Court or Merchouse

The Court had nothing to give - They had to
determine who come ^{within} ~~under~~ the Law -

Who is Guyard's heir or Legal Reps - not the Adm^r
The Evidence shows he is alive -
' And an Adm^r is his heir - '

Guyard has no claim to day, the award is not
to him -

He can have no adm^r, as he is not dead
His heirs are not his Legal Reps until he dies -
Who else, than his granter, can be a legal
Rep^t.

Phelps vs Smith Excerpt

Johnson

3' 4' 25" 10' 11' 15' 18' 19' 20

35

3' 4' 25" 10' 11' 15' 18' 19' 20

the two - argued & continued in the intention of reaching the point - but the

at last the two - argued & continued in the intention of reaching the point - but the

the two - argued & continued in the intention of reaching the point - but the

the two - argued & continued in the intention of reaching the point - but the

the two - argued & continued in the intention of reaching the point - but the

the two - argued & continued in the intention of reaching the point - but the

The confirmation here is to the Legal Rep^t and not to Guyard - his heirs or to his Adms, or the person prosecuting the claim, But to the person, who by law succeeded to Guyard's rights, This would be his grantee Phelps -

How could his Adms succeed to Lands, he only represented the personal Estate,

The real Estate ^(if such he had) passed to ~~this~~ heirs

Here Guyard had nothing to pass to his heirs, They took nothing - even if he had been dead

It is not a question of intention by the Board
The intention, is the intention of Congress -

Who did Congress intend, by the Grant -

Was it the Adms. who represented the personal Estate

Or the heirs of Guyard who had no interest ~~after~~ 1829 -

Or was it ^(his Grantee) his Grantee who succeeded to all his rights

Here the title that passed by the ^{Deed of Grant to Phelps} & the Confirmation of the Board of Com^{rs} -
passed to the benefit of Phelps his
Grantee

12381-57

Phelps

or

Smith

Ejectment

M^y Johnson
Ally of
Phelps