

No. 12500

Supreme Court of Illinois

Garner, et al.

vs.

Willetts.

71641  7

State of Illinois }
Mercer County } 3

October Term a. d. 1852
Mercer Circuit Court

Pleas before the Honorable Pinckney H. Walker
Judge of the fifth Judicial circuit court
of the State of Illinois in exchange with the
Honorable H. W. Meade Judge of the Sixth
Judicial circuit of the State of Illinois,
at a circuit court began and held at
the Court House in the town of Keokuk
in the county of Mercer and State of Illinois
on the fourth Monday in the month of October
in the year of our Lords one thousand eight
hundred and fifty three

Present - Hon Pinckney H. Walker Judge
James Garner Sheriff
Thomas B. Cabern clerk

And afterwards to wit on the 20th day of October a. d.
1852. it being the third day of the said term of said
court a Declaration, Notice & proof service was in said
court filed which were in the words and figures follow
ing to wit.

State of Illinois }

Mercer Circuit court

Mercer County } 3

October Term a. d. 1852

James Garner, Benjamin C. Saliaferro & John C. Sepper
complain of Levi Hillebr being in custody &c.

For that whereas heretofore to wit on the twenty
first day of October a. d. 1852. at and within the
county of Mercer and State of Illinois the said James
Garner, Benjamin C. Saliaferro & John C. Sepper
as possessors of their own right of a certain tract
or lot of lands together with the appurtenances known

and also described as lot Number Five (5) in Block
number Six (6) situated in the town of New Boston, County
of Mercer and State of Illinois which premises the said James
Garner Benjamin L. Valiaferro & John L. Pepper claims
in fee and being so possessed thereof the said Levi
Hillith on the twenty second day of October A.D. 1853
at the county aforesaid entered into the aforesaid pre-
mises and ejected the said James Garner Benjamin
L. Valiaferro & John L. Pepper therefrom and still unjust-
ly and unlawfully withholds the possession of the said
premises from the said James Garner Benjamin L. Valiaferro
& John L. Pepper to their damage Fifteen thousand
dollars whereupon for the causes aforesaid the said
James Garner Benjamin L. Valiaferro & John L. Pepper
brings suit &c.

Manning Valiaferro & Pepper
attorneys for Plt.

To Levi Hillith

Sir, You are hereby notified that the decla-
ration with a copy of which you are now herewith served
and to which copy this notice is subscribed will be
filed in the circuit court in and for the county of
Mercer and State of Illinois on the 26th day of October
A.D. 1853. that being the 3rd day of the term of said
court A.D. 1853. that upon filing the same a rule will
be entered in said court requiring you to appear and
plead to the said declaration within twenty days after
the entry of said rule, and that if you neglect so to
appear and plead, a judgment by default will be
rendered against you and the said James Garner Benjamin
L. Valiaferro and John L. Pepper will recover possession
of the premises specified in the said declaration dated
the 22nd day of October A.D. 1853

Manning Valiaferro & Pepper
attorneys for Plt.

State of Illinois }
Mercer County } John D. Murphy being duly sworn
deposes and says that he did on the twenty sixth day of
October A. D. 1853 personally serve Levi Hillitts the defen-
dant in this cause who is the actual occupant of the
premises for which the action is brought with a true copy
of the declaration hereto annexed and also with a true
copy of the notice in writing to the said declaration
subscribed and likewise hereto annexed and further
says to wit-

Sworn to and subscribed this I. D. Murphy
20th October 1853.

Thomas B. La been clerk
and afterwards to wit on the day and date aforesaid
upon the filing of said declaration, notice & proof of service
an order was by said court made in the words and
figures following viz-

James Garner Benjamin Co.
Valiafeno and John C. Pepper
vs
Levi Hillitts
Ejectment

This day came the plaintiffs by their attorney and
made proof of the due service of a notice and declaration
herein, Thereupon said declaration and notice is filed
in this court, ^{it is} thereupon ordered and ruled by the court
that the defendant appear and plead to said declara-
tion within twenty days, and that if he neglect so to
appear and plead a judgement by default will
be entered against him and the plaintiffs will recover
possession of the premises described in said declaration
and it is further ordered by the court that this cause
stand continued to the next term of this court.

And afterwards to wit on the 10th day of November
A. D. 1853. came the defendant by his attorney and
filed his plea to said declaration which is in the

Words and figures following to wit
State of Illinois ³³⁴ Mercer circuit court
Mercer County ³ To the April Term A. D. 1854

James Garner, B. C. Italiaferro }
and John C. Pepper }

Levi Hillitts

Ejectment

And the said defendant by his attorney comes and defends the said force and injury & how so and says he is not guilty of unlawfully withholding the premises claimed by the plaintiff, as alleged in their said declaration and of this he puts himself upon the country &c.

Lew. H. Thompson

atly for Defendant

And afterwards to wit at a term of the said circuit court held at the court house in the town of Keithsburg County of Mercer and State of Illinois on the third Monday in the month of April in the year of our lords one thousand eight hundred and fifty four it being the 17th day of said month.

Present Hon. H. M. Meade Judge

James Garner Sheriff

Thomas B. Cabew Clerk.

The following order was made on the 3rd day of said term it being the 19th day of April 1804 aforesaid to wit

James Warner et al

Levi Willits

Ejectment

At this day came the Plaintiff and entered
their motion predicated on affidavit for a contin-
uance of this cause and after being sufficiently
advised of and concerning the merits of said motion
it is considered by the court that the same be sustained
on the payment of costs of term. It is therefore ordered
and adjudged by the court that the defendant recover

of said plaintiffs his costs in this behalf made and expended at this term of this court and that he may have execution for the collection thereof, and that this cause stand continued to the next term of this court

And afterwards to wit at a term of the said circuit court held at the court house in the town of Keokuk county of Mercer and state of Illinois on the fourth Monday of October in the year of our Lord one thousand eight hundred and fifty four being the 23rd day of said month.

Present. Hon. H. M. Head Judge

James Garner Sheriff

Thomas B. Babew clerk.

among others the following order was made on the 2nd day of said term of court it being the 24th day of October aforesaid to wit

James Garner et al

vs

Ejectment

Levi Hillitt

And this cause being called for a hearing came the parties and their attorneys and issue being ^{joined} the parties paired a jury and for trial put themselves upon the court

And afterwards to wit on the 26th day of October last aforesaid it being the 4th day of the last aforesaid term of court, among others the following order was made by the said court. to wit

James Garner et al

vs

Ejectment

Levi Hillitt

at this day, came the parties herein and their attorneys and made their agreement in open court that this cause shall stand continued to the next term of this court, and that the same shall be tried

at the next term hereof. Whereupon it is ordered
by the court that this cause stands continued accor-
dingly.

And afterwards to wit at a term of said circuit
court held at the court house in the town of Kithsburg
on the last Monday in the month of March in the year
of our Lords one thousand eight hundred and fifty five
being the 26th day of said month

Present Hon. W. M. Heade Judge

James H. Linn Sheriff

Thomas B. Caben clerk

The following among other things were ordered by said
court on the 6th day of the term of court last aforesaid
it being the 31st day of March 1855, to wit

James Garner et al

Ejectment

vs
Levi Hilleth

And now at this time came the plaintiffs
by their attorney and entered their motion for leave
to amend their declaration herein. Whereupon it is
ordered by the court that the plaintiffs have leave
to amend their ^{declaration} filed herein and that this cause stand
continued to the next term of this court.

And afterwards to wit on the eleventh day of
August in the year of our Lords one thousand eight
hundred and fifty five, came the said plaintiffs
by their attorney and filed in the office of the clerk
of the circuit court aforesaid their amended decla-
ration in the case aforesaid which amended decla-
ration is in the words and figures following to wit

State of Illinois County of Mercer ss.

James Garner & others

Circuit court
September Term A. D. 1855

vs
Levi Hilleth

Amended Declaration

James Garner, Benjamin L. Saliaferro and John
C. Pepper, Plaintiffs by leave of the court, just had
and obtained further complain. of Levi Hillitts defen-
dant of a Plea of Trespass and ejectionment,

For that whereas heretofore, on the day and year
aforesaid at and within the county and State afore-
said, Benjamin L. Saliaferro and John C. Pepper
two of the plaintiffs were possessed in fee as of their
own right of two undivided third parts of the
premises aforesaid, to wit the premises described in
the original declaration herein and being so possessed
thereof afterwards to wit on the day and year aforesaid
by the said defendant then unlawfully entered upon
such possession and from thence and now doth unlaw-
fully withhold the possession of said premises from the
said plaintiffs to their damage as before alleged
and claimed. Wherefore re,

H. C. Goudy

Plaintiffs attorney

(No plea to amended declaration appears on file)

And afterwards to wit at a term of the said circuit
court held at the court house in the town of Keith-
burg county of Mercer and State of Illinois on the first
Monday in the Month of September in the year of our
lords one thousand eight hundred and fifty five, it
being the 3rd day of said month

Present, Hon. John S. Thompson Judge

James H. Linn Sheriff

Thomas B. Baben clerk

The following among other proceedings were had in
said court on the 7th day of September 1855, it being
the 5th day of said term of court to wit

James Garner et al

Levi Hillitts

Ejectionment

This cause coming on again and the parties appearing by their attorneys, upon their agreement a jury is drawn and the cause submitted to the court upon the issues joined and after the introduction of the evidence by both parties and consideration thereof by the court, the court finds the defendant not guilty, and thereupon the plaintiffs enter their motion for a new trial, which is overruled by the court, to which finding of the court and refusal to grant a new trial, the plaintiffs by their counsel except.

Therefore it is considered and adjudged by the court that the said defendant have and recover his costs in this behalf expended against the said plaintiffs and have execution therefor. And upon the agreement of the parties it is ordered that the plaintiffs may have leave to file a bill of exceptions during vacation within twenty days. And afterwards to sit on the second day of September A. D. 1855, came the said plaintiffs by their attorney and filed their bill of exceptions which is in the words and figures following to wit

State of Illinois County of Mercer
James Garner & others vs Circuit Court
Sept 1855
Levi Hillitt

Be it remembered that on the trial of this cause on the issue joined the plaintiffs in support thereof on their part offered in evidence the following Patents. The United States of America, To all to whom these presents shall come, greeting
Certificate Whereas Benjamin C. Taliaferro of No. 33178, Mercer County Illinois has deposited in the General Land Office of the United States a certificate of the register of the land office at Dixon whereby it appears that full payment has been made by the said Benjamin C. Taliaferro according to the provisions of the act of Congress

of the 24th of April 1820. "Entitled an act making further provisions for the sale of the public lands" for the North West fractional quarter of the North East fractional quarter of Section Thirty one, in township fourteen, of range five West in the district of lands subject to sale at Dixon Illinois containing twenty three acres and twelve hundredths of an acre according to the official plat of the survey of the said lands, returned to the General Land office by the Surveyor general which said tract has been purchased by the said Benjamin C. Saliaferro

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 Benjamin C. Saliaferro and to his heirs ~~and assigns~~ the said tract above described, so have and to hold the same together with all the rights privileges immunities and appurtenances of whatsoever nature thereto belonging unto the said Benjamin C. Saliaferro and to his heirs and assigns forever

In testimony whereof I Millard Fillmore 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 twentieth day of January in the year of our lords one thousand eight hundred and fifty three, and of the Independance of the United States the Seventy

Seventh,
By the President Millard Fillmore
Recorded Vol. 61. pages - E, By Alex. McCormick ^{Asst. Secy.}
E. S. Perry Recorder of the General Land office

The United States of America

To all to whom these presents shall come Greeting
Certificate } Whereas Benjamin C. Saliaferro of Mercer County,
No. 33182 } Illinois has deposited in ^{the} General Land office

of the United States a certificate of the Register of the land office at Dixon whereby it appears that full payment has been made by the said Benjamin B. Valiaferro according to the provisions of the act of Congress of the 24th of April 1820, "Entitled an act, making further provision for the sale of the public lands" for the south half of the North East fractional ^{quarter} and the south east fractional quarter (East Mississippi river) of Section Thirty one, township fourteen of range five West in the district of land subject to sale at Dixon Illinois, containing forty eight acres and ninety hundredths of an acre, according to the official plat of the survey of the said lands returned to the General Land office by the Surveyor General which said tract has been purchased by the said Benjamin B. Valiaferro.

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 Benjamin B. Valiaferro and to his heirs the said tract above described to have and to hold the same together with all the rights privileges immunities and appurtenances of whatsoever nature thereunto belonging unto the said Benjamin B. Valiaferro, and to his heirs and assigns forever. In testimony whereof I Willard Willmore 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 this twentieth day of January in the year of our Lord one thousand eight hundred and fifty three and of the Independence of the United States, the Seventy Seventh

Seal

By the President Willard Willmore

By Alex. Mc Cormick Asst. Secy

Recorded Vol 61, page 2. E. E. & Perry Recorder of the General Land Office

The United States of America, To all to Whom
these Presents shall come Greeting.

Whereas Benjamin L. Valiaferro of Mercer
County Illinois has deposited in the General
Land Office of the United States a certificate of the
Register of the Land Office at Dixon whereby it appears
that full payment has been made by the said Benjamin
L. Valiaferro according to the provisions of the act of Con-
gress of the 24th of April 1820, Entitled "an act making
further provision for the sales of the Public Lands," for the
North East quarter of the North East fractional Quarter
of Section Thirty one, in township fourteen of range five
west, in the district of lands subject to sale at Dixon
Illinois, containing forty acres, according to the official
plat of the survey of the said lands returned to the
General Land Office by the Surveyor General which said
tract has been purchased by the said Benjamin L. Valiaferro

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 pro-
vided have given and granted and by these presents
do give and grant unto the said Benjamin L. Valiaferro
and to his heirs the said tract above described
to have and to hold the same together with all the
right, privileges immunities and appurtenances of
whosoever nature, thereunto belonging unto the
said Benjamin L. Valiaferro and to his heirs and
assigns forever. In Testimony whereof I Willard
Gillmore President of the United State 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
1850-51

the twentieth day of January in the year of our Lords
one thousand eight hundred and fifty
three and of the Independance of the United
States the Seventy Seventh.

By the President Willard Willmore

By Alex. W. McCormick Asst. Secy

Recorded Vol. 61. Page 3. E.

E. J. Perry Recorder of the General Land Office
to the introduction of which the defendant by his
counsel objected which objection was over ruled by
the court, and the same were read in evidence to
which decision of the court, the defendant then and
there excepted. The Plaintiffs then offered in evidence
the following deeds to wit:-

Know all men by these presents that Benjamin
C. Daliaferre and Mary Ann his wife of the county
of Mercer and state of Illinois party of the first
part in consideration of the sum of One Hundred
dollars paid by John C. Pepper of the county of Mercer
and state of Illinois party of the second part, the
receipt of which is hereby acknowledged, do hereby
renew, release, sell and forever quit claim unto the
said party of the second part, his heirs and assigns
forever four certain tracts of land situated in the
county of Mercer and State of Illinois and known
and described as the undivided one third part of
the south half of the North East fractional quarter
South of the Mississippi river and the south East fractional
quarter East of the Mississippi river of Section thirty one
also the undivided one third part of the North East
quarter of the North East fractional quarter of Sec-
tion thirty one, also the undivided one third part of
the North West fractional quarter of the North East
fractional quarter of Section thirty one, all of which
above described lands are in township fourteen North

of range five West of the fourth principal meridian. To have and to hold the said premises, with all the appurtenances thereunto belonging or in any wise appertaining to the only proper use, benefit and behoof of the said party of the second part his heirs and assigns forever, And the said party of the first part covenants with the party of the second part his heirs and assigns the said lands are free from all incumbrance made or suffered by him; and that for the consideration above named, the title thereof to the said party of the second part, his heirs and assigns, against all lawful claims of all persons claiming through or under him but against none others whatsoever. In testimony whereof we have hereunto set our hands and seals this fifteenth day of February Anno Domini 1853.

Signed sealed & delivered
in presence of Thos. Baker

B. C. Valiaferro Seal
M. A. Valiaferro Seal

State of Illinois

Mercer County, 3^d Sch. Be it remembered that on this fifteenth day of February in the year of our Lord one thousand eight hundred and fifty three B. C. Valiaferro and M. A. Valiaferro his wife personally known to the undersigned clerk of the Circuit Court in and for said County to be the identical persons who executed and whose names are subscribed to the foregoing deed of conveyance as having executed the same came before me and acknowledged the same to be their voluntary act and deed for the purposes therein expressed, and the said Mary A. Valiaferro being before me made acquainted with the contents of said deed of conveyance and examined separate and apart from her husband acknowledged that she had executed the same and relinquished her dower in the premises therein mentioned voluntarily freely and without the compulsion of her husband, and that she does not wish to retract the same.

In testimony whereof I have hereunto set my hand
and affixed the seal of said court at
my office at Keokuk the day and year
just above written.

Thomas B. Calhoun clerk
Recorded Feb. 17, 1853 in book TR of deeds on pages 431 & 432

Know all men by these presents that the
Benjamin B. Galiaferro and Mary Ann his wife of the
county of Mercer and state of Illinois Party of the first
part in consideration of the sum of three hundred
dollars paid by James Garner of the county of Mercer
and State of Illinois Party of the Second part the
receipt of which is hereby acknowledged, do hereby
convey, release sell and forever quit claim unto the
said party of the second part his heirs and assigns
forever the undivided one third part of four certain
tracts of land situate in the county of Mercer State
of Illinois known and described as follows, to wit, The
North east quarter of the North East fractional quar-
ter of Section thirty one, township fourteen north of
Range five West containing forty acres, The North West
fractional quarter of the North East fractional
quarter of Section thirty one in township fourteen
north of range five West, containing twenty three
acres & $\frac{12}{100}$, The south half of the North East fractional
quarter, and the south east fractional, East of the
quarter of section thirty one in township fourteen north
of range five West containing forty eight acres and
ninety hundredths. Do have and to hold the said
premises with all the appurtenances thereto belonging
or in any wise appertaining to the only proper use
benefit and behoof of the said party of the second
part his heirs and assigns forever, and the said
party of the first part covenant with the party of the

second part his heirs and assigns, that the said is free from all incumbrances made or suffered by the said party of the first part, and that for the consideration above named the title thereof to the said party of the second part his heirs and assigns against all lawful claims of all persons claiming through or under them but against none others whatsoever. In witness whereof we have hereunto set our hands and seals this third day of September A. D. one thousand eight hundred and fifty two

Signed and sealed in
presence of Thomas B. Caben

B. H. Caliaferro
Mary Ann Caliaferro

State of Illinois

Mercer County, Ill. Be it remembered that on the third day of September in the year of our Lord one thousand eight hundred and fifty two came before me Thomas B. Caben clerk of the circuit court of the County aforesaid Benjamin C. Caliaferro and Mary Ann his wife personally known to me to be the identical persons who executed and whose names are subscribed to the foregoing deed of conveyance as having executed the same and acknowledged that they had executed the same for the uses and purposes therein expressed and the said Mary Ann being by me acquainted with the contents of said deed of conveyance and examined separately and apart from her husband acknowledged that she executed the same, voluntarily, freely and without the compulsion of her husband and that she does not wish to retract the same, Given under my hand and the seal of our said court at my office in Keokuk, this third day of September A. D. 1852.

Seal

Thomas B. Caben clerk

Recorded Feb. 2nd 1854 in Book III. of deeds on pages 373 & 374 to the introduction of which the defendant by his

counsel objected, which objection the court overruled and allowed the same to be read in evidence, to which decision the defendant by his counsel then and there excepted. The Plaintiff then offered the following agreement in writing which was read without objection in evidence to wit,

State of Illinois, County of Mercer }
James Garner et al } Circuit Court
vs } September Term A.D. 1858
Levi Willets } Ejectments

In this case for the purpose of trial at this term and not for any future term, or other trial except this cause be taken by writ of error or appeal to the Supreme Court, the parties agreed to the following facts, to wit,

1st, That the defendant has in possession of the premises described in the declaration at the time of the commencement of this suit.

2nd, That the premises described in the declaration are situated on and a part of fractional section thirty one in township fourteen north of range five west of the fourth principal meridian.

3rd That the defendant claims title and holds by regular conveyance under John H. Deniston the first Patentee.

4th, That at the time the plaintiff Benjamin C. Taliaferro purchased the premises from the United States the defendant was in the actual possession of the lot described in the declaration.

5th, That on the 13th day of May 1831 John H. Deniston filed and caused to be made certain affidavits as appears by the deposition of Councilly in the land office of the Springfield district in the State of Illinois.

6th, That John H. Deniston paid the purchase

money and procured a duplicate receipt therefor for said fractional section at the land office in the Spring field district on the 21st day of May 1832 and upon such purchase a patent issued to him which bears date Novem. 1st 1839.

7th That the premises in controversy were by an act of Congress passed February 19th 1831 included in a new district. since called the Quincy land district until some years after, when it became a part of the Dixon land district, that the President under said act located the officers of the Quincy district at the town of Quincy. That the President appointed Samuel Alexander the first Register and Thomas Carlin the first Receiver of the Quincy district and that their commissions bear date 2nd March 1831, running for four years, that the bond of Alexander bears date 19th July 1831 and his oath of office on the 20th of July 1831. and that the bond of Carlin bears date 12th July 1831, and his oath of office 19th day of September 1831.

8th That parts of the said fractional section has been occupied by John H. Deniston and those claiming under him ever since the entry by him, but not the lot in controversy.

9th That the defendant has paid taxes ever since he has been in the actual possession of the premises in controversy.

10th. The premises described in Pliffs Patent and defendants patent are the same & all for Section 31 1st W. 5 N. of 4th P.M.

H. C. Gandy
attorney for Pliffs

J. D. Beardsly &
H. M. Head

attornies for defendant

and thereupon the plaintiffs rested their cause.

And thereupon the defendant offered and tendered in support of the issues on his part the following Patent to wit -

The United States of America
Presumptively to all to whom these presents shall come Greeting
Certificated. It hereas John H. Deniston of Mercer County
No. 6028 Illinois has deposited in the General Land Office
of the United States a certificate of the Register of the
land office at Springfield whereby it appears that
full payment has been made by the said John H.
Deniston according to the provisions of the act of Congress
of the 24th of April 1820, entitled an act "making
further provision for the sale of the public lands," for
fractional section thirty one in township fourteen
north of range five West of the fourth principal
meridian in the district of land subject to sale at
Springfield Illinois, containing one Hundred and Eleven
acres and ninety two hundredths of an acre, according
to the official plat of the survey of the said lands returned
to the General Land Office by the Surveyor General, which
said tract has been purchased by the said John H.
Deniston. 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 John
H. Deniston and to his heirs the said tract above described
to have and to hold the same together with all the
rights privileges, immunities and appurtenances of
whosoever nature thereunto belonging, unto the said
John H. Deniston and to his heirs and assigns forever
In testimony whereof I Martin Van Buren 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 November in
the year of our Lord one thousand eight hundred and
thirty nine, and of the Independance of the United States
the sixty fourth.

Seal

By the President

Martin Van Buren

By W. Van Buren Jr. Secy

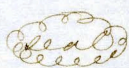
Recorded Vol. 37. Page 4. H. M. Garland Recorder of the General
Land Office.

to the introduction of which the Plaintiffs by their Counsel
objected but the court overruled the objection and
permitted the same to be read in evidence to which
decision the Plaintiffs by their counsel then and there
excepted. The Defendants then offered in evidence the
following deeds to wit.

This Indenture made and Entered into this tenth
day of July in the year of our Lord one thousand eight
hundred and fifty four, between James Garner of
Mercer County Illinois of the first part and Levi Hilt,
of the same place of the second part. Witnesseth that
the said party of the first part for and in consideration
of the sum of one hundred and fifty dollars paid by
the party of the second part the receipt thereof is hereby
acknowledged, do by these presents, grant, bargain and
sell unto the said party of the second part, his heirs
and assigns certain tract or parcel of land in
Mercer County State of Illinois and described as follows
to wit) the undivided one third part of the North East
quarter of the North East fractional quarter of Section
thirty one (31), also the undivided one third of the
North West fractional quarter of the North East
fractional quarter of section thirty one (31), also the
undivided one third of the South half of the North
East fractional quarter and the South East fractional

East of M. R. quarter of section number thirty one (31)
the latter containing forty eight acres and unity hun-
dredth all in township fourteen (14) north of Range
two five (5) West of the 4th principal meridian, (It is
expressly provided and understood that the following
warranty does not extend to the original entry of said
lands by Benjamin C. Galiafero, If said entry is set
aside or decided by competent authority to be illegal
this warranty does not confer any right on the said
Shellets to recover the purchase money of the said Garner
but to rely therefor on the Government or any person
who may be liable therefor excepting the grantee).
herein together with all and singular the heredita-
ments and appurtenances thereto belonging or in any
wise appertaining. To Have and to Hold the said
premises as above described with the appurtenances
unto the said party of second part ^{his heirs and assigns forever and the said party of the} for himself and
his heirs executors and administrators do hereby cove-
nant to and with the said party of the second part
his heirs and assigns that he is well seized of the prem-
ises above conveyed as of a good and indefeasible estate
in fee simple and has good right to sell and convey the
same in manner and form as aforesaid, and that the
said premises are free from incumbrances and that the
above bargained premises in the quiet and peaceable pos-
session of the said party of the second part, heirs and
assigns against the claims of all persons whomsoever
he will forever warrant and defend. In testimony
whereof the said James Garner and Mary Garner his
wife have hereunto set their hands and seals the day
and year first above written

signed, sealed and delivered by
in presence of John S. Thompson

James Garner 

Mary Garner 

State of Illinois

Illinois County ss I John S. Thompson clerk of the

county court in and for said county do certify that on
this day appeared before me James Garner and Mary
Garner his wife whose names appear signed to the
foregoing deed of conveyance and who are personally
known to me to be the identical persons whose names
are subscribed to said deed as having executed the
same and acknowledged that they had executed the
same as their voluntary act and deed for the uses and
purposes therein expressed, And Mary Garner wife of
the said James Garner having been by me made as
guaranteed with the contents of said deed and being
by me examined separate and apart from her hus-
band acknowledged that she had executed the same
and relinquished her dower to the premises conveyed
voluntarily freely and without any compulsion of her
said husband. Given under my hand and seal of office
this tenth day of July eighteen hundred and
fifty four.

John S. Thompson clerk
to the introduction of which the plaintiffs by their counsel ob-
jected, but the court overruled the objection and allowed
the same to be read, to which decision the Plaintiffs by
their counsel then and there excepted and thereupon the
Defendant rested, And thereupon the Plaintiffs further
on their part offered in evidence the following depositions

State of Illinois }
Wabers County }
James Garner, Benjamin C. }
Daliafeno & John C. Pepper }

vs
Levi Hillis } action of Ejectment

you will please take notice that we will
appear by attorney or in person before the clerk of the
circuit court of the county of Adams at his office in
the city of Quincy State of Illinois on Monday the

On the 27th day of March A. D. 1854. at one o'clock of said day and to continue from day to day as long as it may be necessary to take the depositions of Augustus C. Marsh resident of said city of Quincy to be read in evidence on the part of the Plaintiffs in the above entitled cause, which is now pending in the circuit court of the county of Mercer State of Illinois and will come on for a hearing at the April term A. D. 1854. When and where you can appear if you are so disposed and cross interrogate said witness Feb. 27 1854

James Garner Benjamin C. Taliaferro
and John C. Popper
By Taliaferro & Popper
attor for Plffs.

Endorse on back as follows

I acknowledge service of a copy of the within this 27th day of February 1854

L. H. Thompson
att. for def.

Deposition of Augustus C. Marsh of Quincy Illinois commenced before C. M. Woods clerk of the circuit court within and for the county of Adams in the State of Illinois at his office in the city of Quincy in said county and state on Monday the 27th day of March in the year of our Lord one thousand eight hundred and fifty four at one o'clock in the afternoon of said day to be read in evidence in a certain cause now pending and undetermined in the circuit court of the county of Mercer and State of Illinois, wherein James Garner Benjamin C. Taliaferro and John C. Popper are Plaintiffs and Levi Hillitts is defendant in pursuance of the notice hereto attached on behalf of the said Plaintiffs

The said Augustus C. Marsh being first duly sworn to testify the truth in relation to the matters

in controversy so far as he may be interrogated, doth
depose and say in answer to the interrogatories on the
part of the ^{said} plaintiffs as follows.

Interrogatory 1st. What is your name and where do
you reside.

Answer— My name is Augustus C. Marsh and
I reside in Quincy Illinois.

The further taking of Depositions was postponed
until nine o'clock tomorrow morning.

Tuesday the 28th day of March 1854
9 o'clock A. M.

The further taking of the depositions of Augustus
C. Marsh was resumed and the said Augustus C. Marsh
doth depose and say in answer to Interrogatory 2nd,
Are you or are you not Register of the United States land
office in the Quincy land district at Quincy Illinois
Answer— I am.

Int. 3rd— What was the date of the first entry in your
office as appears by your Records.

Answer— December 14th 1831

Inter. 4th, Please attach to this deposition a transcript
of the record of said entry.

Answer— I attach it as follows

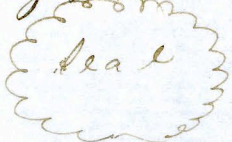
Register of Certificates Granted in pursuance of
Law to purchasers of Public Lands by Samuel Alexander
Register of the Land Office Quincy Illinois

Date of Certificate	No. of certf.	By whom purch ^d	Tract purch ^d	quantity	rate pr acre	Am ^t purch ^d
Dec. 14. 1831	3	William Doyle	base	1/2 of N. 27. 1/2 N. 31/2	50.	\$1.25. / 100

Rock Island Co. Ill.

Augustus C. Marsh

State of Illinois
Adams County 3rd. J. C. M. Hords clerk of the circuit court
within and for said county do hereby certify that Augustus
C. Marsh the said witness prior to the taking of said

deposition, and on the said 27th day of March A.D. 1854 has
by me duly sworn to testify the truth in relation to the Mat-
ter in controversy in the suit mentioned in the caption of
these depositions and notes attached so far as he might
be interrogated thereto and that the said depositions has
on the 27th and 28th days of March A.D. 1854 at my office
in Quincy in said county and state taken and reduced
to writing and signed and sworn to by said witness in
my presence. In testimony whereof I have hereunto set my
 hands and affixed the seal of said court
at Quincy the 28th day of March 1854
C. M. Woods clerk.

State of Illinois }
Mercer County } action of Ejectment
vs Levi Hillitt or his attorney
You will please take notice that ^{he} Hill appear in person
or by attorney before the clerk of the circuit court of the
county of Sangamon at his office, in the city of Spring-
field State of Illinois on Monday the 27th day of March
A.D. 1854 at one o'clock of said day and to continue
from day to day as long as ^{it} may be necessary to take
the deposition of John Counelly Sen. resident of said
city of Springfield to be read in evidence on the part
of the plaintiffs in the above entitled ^{cause} which is now pending
in the circuit court of the county of Mercer State of Illinois
and will come on for a hearing at the April Term thereof
A.D. 1854. When and where you can appear if you are
so disposed and cross interrogate said witness
Feb. 27th 1854.

James Garner, Benjamin C.
Paliaterra & John C. Pepper
By Paliaterra & Pepper atty for Defth.

Deposition of John Counelly Sen. of the city of Spring
field county of Sangamon and State of Illinois taken
before me as clerk of the circuit court at my office

on the 27th day of March A. D. 1854 at one o'clock of said day to be read in evidence in a certain cause pending in the circuit court of Mercer County State of Illinois wherein James Garner Benjamin T. Caliaferro and John C. Pepper are plaintiffs and Levi Willett, Defendant the said deposition taken on the part of said plaintiffs in pursuance to the enclosed notice,

John Connelly Jr. of lawful age being duly sworn deposed and said

Interrogatories propounded to said witness by the Plaintiffs

Question 1st. Are you or not the Register of the Land office at Springfield Illinois

Ans. — I am

Question 2nd. How does it appear from the books in your office and at what time did John H. Doniston enter the fractional section No. thirty one in township No. fourteen North Range five West of the 4th Principal meridian —

Ans. It appears upon the Journal as having been entered the 22nd day of May eighteen hundred and thirty two by John H. Doniston

Quest 3rd. Is it or not usual or not to have the plats furnished for the entry of lands in your office

Answer. I suppose that it is customary to have the plats in the offices of any particular land before that land is allowed to be entered, but I have not long been in office and cannot certainly say this is so in entry. ^{my office since I have been in} has been made in it without the plats having been furnished, and there are plats for all the lands in my district in its present limits in my office.

Quest 4. Is there any such plat or was there for the said tract of lands in question in the office at the time it was entered by said Doniston

Ans. There is no such plat now and whether there

as at the time of said entry I have no means of knowing.

Ques. 5th. Is it or not the duty of the Register when a piece of land is entered to make a mark on the land on the plat indicating that it is entered.

Ans. It is.

Ques. 6th. Do you or not know at what time the Quincy land district was formed and whether the tract of land in controversy was or was not embraced in the said Quincy district.

Answer. I understand the Quincy land district to have been formed by an act of Congress of Feb 19th 1831 which act is in my office and I also understand the land in question to have been embraced in the district as then framed.

Question 7th. Is there or not any evidence of any further proceedings in relation to the Pre-emption on the application of the said John H. Deniston for the said tract.

Ans. None that I have been able to discover after diligent search.

Cross Interrogatories on the part of said Defendant.

Ques. 1st. Is there or not any thing in your office indicating whether this entry of Deniston was or was not made upon a claim of pre-emption.

Ans. There is a pre-emption proof on file upon which Mr. Deniston made this entry, it is of date the 13th day of May 1831 and the following is a copy of that proof State of Illinois.

Sangamon County. Be it remembered that on this 13th day of May 1831 John H. Deniston of the County of Mercer Illinois personally appeared before the undersigned an acting Justice of the Peace in and for said County of Sangamon and after being duly sworn in the presence of the Register and Receiver of the land office at

Springfield Illinois deposes and says that he settled on improved and cultivated the fractional section thirty one township fourteen north of range five West of the fourth principal meridian containing acres in the year 1829 that he was in possession of said tract of land on the 29th May 1830, that he claims the right to enter the same tract of land under the provision of the Pre-emption act of May 29th 1830 and further the deponent saith not.

Sworn to and subscribed
before me the day and
date above written
Jas Carpenter

John H. Deniston

* The balance of pre-emption
proof is at the end of the Record

* See end of Record. Land office at Springfield
March 13th 1854

I John Cunnelly Jr. Register of the United States
land office at Springfield Ill, certify that the above
is a true copy of the pre-emption proof on file in my
office

John Cunnelly Junr. Register

Qu. 2. By the records in your office does it not ap-
pear that many entries of land included in the then
said Quincy district were made within your office after
the 19th Feb'y 1831, and some even after this entry by
Deniston.

Ans. It does so appear in the same manner ^{that the Deniston}
appears. John Cunnelly Junr.

State of Illinois
Sangamon County
I James H. Matheny clerk of the
circuit court within and for said county and State
do hereby certify that the foregoing deposition was
taken before me at my office as clerk of the circuit
of said county and state, on the day and date set forth
in the caption thereto that the same was reduced to
writing by me in the presence of said witness that the
same was sworn to and subscribed by said witness in

my presence at the time and place when and where
the same was taken that previous to the examination
of said witness he was ^{made} sworn to testify the truth
in relation to the matter in controversy so far as he
might be there to interrogated, that the said deposition
was taken in pursuance of the enclosed and attached
notice and at the time and place as therein specified
to wit on the 27th day of March A. D. 1854. at one o'clock
of said day, Given under my hand and seal of
E. S. } office at Springfield this 27th day of March
A. D. 1854.

Fees - J. N. Ma cherry clerk
Clerk's fees - 2.00
Witness for Geo. Connolly 50

Which were read in evidence

The defendant then offered in evidence parts of a
certain printed book having the following title to wit
General Public acts of Congress respecting the sale
and dispositions of the Public lands with instructions
issued from time to time by the Secretary of the Treasury
and Commissioner of the General Land office and official
opinions of the Attorney General on question or questions
arising under the said laws contained in part two
thereof and such parts being numbered 57, 69, 72, 77,
146, 488, 499, 501, 502, 503, 531, and list in the
appendix thereto commencing on page 1005 to the
introduction of which as evidence the plaintiffs
by their counsel objected, but the court overruled the
objection and allowed the same to be read, to which
decisions the plaintiffs by their counsel then and there
excepted, and thereupon the defendant rested. And
the foregoing was all the evidence introduced by
both parties on the trial and the same being
submitted to the court the court found the
defendant not guilty. Thereupon the plaintiffs

entered their motion for a new trial for the following reasons to wit-

1st. The court allowed improper evidence to be introduced by the defendant.

2nd. The finding of the court is contrary to the law and evidence in the case.

3rd. The Plaintiffs were entitled to recover on the Proof in the case, which motion the court overruled and refused to grant a new trial, to which decision the Plaintiffs by their counsel then and there excepted. Whereupon the court rendered judgment for the defendant for his costs against the plaintiff. To which the Plaintiffs then and there excepted, and for as much as the foregoing does not appear of the Record the plaintiffs pray that this their bill of exceptions be signed and sealed by the court and made a part of the Record in this case. Which is accordingly done

John S. Thompson Clerk

* William Deviston of the County of Mercer Illinois being duly sworn by said Justice at the same time and in the same manner as a fore stated, deposes and says that he knows that the above affidavit sworn to and subscribed by John H. Deviston, is true in every part thereof and further this deponent saith not

sworn to and subscribed before me the day and date above written

H. W. Carpenter. J. P. Magistrate

State of Illinois 33
Mercer County

I Thomas Blakeen Clerk of the Circuit
Court within and for the County and State afore-
said Do hereby certify that the foregoing ^{is a} ~~contains~~
a full and complete Record of all the pro-
ceedings had in the foregoing entitled cause
as appears from Records and files in my office

In Testimony whereof I have
hereunto subscribed my name
and affixed the Seal of my said
office at Kuttavorg this
8th day of December A.D. 1885
Thomas Blakeen Clerk

State of Illinois } Circuit Court
 Mercer County } September Term 1835
 James Barnes Etal }
 vs } Defendant
 Levi Willits }

Plaintiff costs
 Clerk fees \$5.00

Ent appearance Pffs & atty 15 Doct Sevt 4 times \$40
 Ent 4 orders of Continuance 80 Ent order filing declaration 20
 Ent order of proof Service 20 Ent Rule on Def to Plead 20
 on offt of same 10 Ent Mo for leave to amend declaration 20
 Ent order granting same 20 Ent order to open depositions 20
 opening & filing 2 depositions 20 Ent agreement waiving jury 20
 Ent order to try case at April Term 1836, 20 filing papers
 \$1.25 Issag 3 spots \$1.00 Telling 2 wit affs 20 Ent order
 filing amended declaration 20 Ent Mo for new trial 20
 Ent order overruling same 20 Making complete Record 9500
 words \$9.50. Certificate & seal to same 35 Making & ent Bill
 of costs 30 ent & seal to same 35 \$10.65

Shipp You James Barnes Shipp 1 Service \$5.25 Mileage \$1.20 Retung 10 1.55
 James He Linn Shipp 2 Service \$5.50 Mileage \$1.50 Retung 20 2.20
 J.D. Murphy 1 Service Declaration 62r Mileage 37r Retung 10 1.10
 J.H. Matheny clk Circuit Sangamon Co. Telling depositions 2 1.00
 Schunk & Ormally clk 50

Wife Mrs Torrey 4 days lect Term 1834 200 50
 Mrs Torrey Co. Sept 1835 25 Mileage 7.25 \$9.25
 38 260

State of Illinois }
 Mercer County } ss I Thomas B. Calceen Clerk of the Circuit
 Court within & for said County & State do hereby certify that the
 foregoing is a correct copy from my file Book of the costs
 and charges taxed against Plaintiff in said cause.
 In Testimony whereof I have hereunto sub-
 scribed my name and affixed my seal of office
 at Hillsburg this 8th day of December 1835
 Thomas B. Calceen Clerk

State of Illinois } Circuit Court
Warren County } September Term AD 1855

James Garner Et al }
vs }
Levi Willits } Defendant

Defendants Costs

Clerk for S. B. Locken etc

Ent appearance Defendant & atty 15
filing 3 papers 15 Ent Order of Judge 20
Ent final Judgment 25 Ent Satisfaction of
Judgt 15 Ent Order for Am 20 Assg Exp 40
Docket Sam 10 Ent Return 10 filing same 5
Making & Ent Bill of costs 20
Certificate of Seal 25 \$2.40

State of Illinois }
Warren County } ss

I hereby certify that the foregoing
is a ^{from my file books} true copy of the costs & charges taxed
against the Defendant in the foregoing

Or Testimony whereof I have
inwrit subscribed my name and
affixed the Seal of our said Court
at Rushburg this 8th day December AD
1855 Thomas Blackless Clerk

State of Illinois, 3^d Grand Division
Supreme Court, June Term, 1874.

James Garner & others
vs
Levi Willets } Error to Mercer.

And now come James Garner, Benjamin L. Saliaferro, and John L. Pepper by their attorneys and say that manifest error hath intervened in the proceedings in the Circuit Court of the County of Mercer of which the foregoing is a record, and as causes of Error they assign the following, to-wit:

1. The Circuit Court erred in admitting improper evidence on the part of the Defendant.
2. The Circuit Court found against the law and evidence for the Defendant.
3. The Circuit Court wrongfully refused a new trial.
4. The Circuit Court rendered judgment for the Defendant, when the Plaintiffs were entitled to judgment and a writ of habeas corpus.
5. The proceedings in the Circuit Court were otherwise informal and erroneous.

Whereupon they pray that the judgment aforesaid be reversed & set aside, and that this cause be remanded for a new trial in the Court below and that they have judgment in this Court for their costs &c.

Goudy & Judd

Attorneys for Plffs in Error.

James Gornertal

vs

Levi Willits & al

{ In the Supreme Ct
June 5 1856

And now comes the said
Defendants in Error pray that in the
Judgment record & proceeding aforesaid
there is no such error as is alleged
by the said Plaintiff in Error is alleged
whereupon they pray that said Judgment
may be affirmed & that they may
recover their Cost

By their said attorney

26 57
James Garner et al
Sevi Willetts
Record

Filed Jan. 5. 1856.
L. Nelson Clk.

Keithsburg Dec 11/55

To the clerk of the
Supreme Court Ottawa
Ill.

Dear Sir

You will please docket
the with enclosed case, in doing so will
find five Dollars, to pay you for your
docket fee. Please inform Messrs
Lucas Manning, & Wm C Goudy, who
are the attorneys in the case.

Yours very

Respectfully

B. C. Salafuto

Lewistown, Md. March 12/56

Dear Sir,

You will confer a great favor if you will mail to me at Rock Island on the receipt of this the record in the case of Gomer, Gallegos & Pappas vs Willets, Error from Mercer County. I am for the Plaintiffs in Error ~~and~~ Mr Manning & others are on the same side. I want the record to make abstract & have the same printed so that all interested can have it before Court meets for preparation. I will return it immediately & be responsible. The attorneys for the other side also desire this arrangement.

Will you please inform me if a record from Warner Co. of Snapp sal v Pierce has

been filed.

BV

Enclosed is one dollar
for postage.

Yours truly,

W. C. Gandy

Recd sent Mch. 15, 56
L. L.

STATE OF ILLINOIS,

Supreme Court,

ss.

The People of the State of Illinois,

To the Clerk of the Circuit Court for the county of Mercer Greeting:

BECAUSE in the record and proceedings, as also in the rendition of the judgment of a plea which was in the circuit court of *Mercer* county, before the Judge thereof, between

James G. Green, Benjamin C. Talbot
& John C. Pepper

plaintiffs, and

Levi Willetts

defendant it is said manifest error hath intervened, to the injury of the aforesaid *plaintiffs*

as we are informed by *their* complaint, and we being willing that error, should be corrected if any there be in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly without delay, send to our Justices of the Supreme Court the record and proceedings of the plea, aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the county of La Salle, on the *2^d Monday in June* — next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law;

Walter B. Scates
 WITNESS, the Hon. **SAMUEL H. TREAT**, Chief Justice
 of our said Court, and the Seal thereof, at Ottawa, this *5th* day of *January*
 in the Year of Our Lord One Thousand Eight Hundred and Fifty-*Six*

S. Seland

Clerk of the Supreme Court.

26 51
James Garner states,
by
Levi Willits
Mist of Error

Filed Jan'y 5. 1856.
L. Ireland Clk.

STATE OF ILLINOIS,
Supreme Court,

ss. The People of the State of Illinois,

To the Sheriff of the County of *Merce* - Greeting:

BECAUSE in the record and proceedings, and also in the rendition of the judgment of a plea which was in the circuit court of *Merce* county, before the Judge thereof, between

James Garner, Benjamin C. Talcifero & John C. Pepper plaintiffs,
& Levi Willetts

Defendant, it is said that manifest error hath intervened, to the injury of the said *plaintiffs*

as we are informed by *their* complaint, the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the state of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county, you give notice to the said

Levi Willetts

that *he* be and appear before the Justices of our said Supreme Court, at the next term of said court, to be holden at Ottawa, in said state, on the *22* Monday in *June* - next, to hear the records and proceedings aforesaid, and the errors assigned, if *he* shall see fit; and further to do and receive what said court shall order in this behalf; and have you then there the names of those by whom you shall give the said *Levi Willetts*

notice, together with this writ.

Walter B. Seates

WITNESS, the Hon. *Samuel H. Treat*

Chief Justice of our said

Court, and the Seal thereof, at Ottawa, this *5th* day of *January*
in the Year of Our Lord One Thousand Eight Hundred and Fifty-*six*.

L. Veland

Clerk of the Supreme Court.

James Garner et al

vs

Levi Willets

Sci fa.

Filed Jan. d. 1898

Le. Leland

Clk. H.

Mar 16

Sheriffs fees

one service of writ	50
making copy	25
2 miles travel	35
Returning	10
	<u>1,20</u>

James H. Linn Sheriff

I have served the within writ by reading the same in the hearing & also delivering a copy of the same to the within named Levi Willets on the 16th day of April AD 1898.

James H. Linn Sheriff of
Mercer County Illinois

~~26~~ 28

James Garrison
vs

Levi Willets

26

12500

1857