

No. **12320**

Supreme Court of Illinois

Moorehouse

vs.

Phelps

71641  7

Morehouse
vs
Phelps

105

1857

12320

105
Dickinson B. More

vs

William A Phelps

105

~~12333~~

1857

State of Illinois
Fourteenth Judicial Circuit
To Danvers County
Pleas in the Circuit Court
begun and held within and
for the County of To Danvers
aforesaid on the third Monday of the
month of October A.D. 1856 before the Judge of
said Fourteenth Judicial Circuit to
wit, the Hon. Benjamin R. Sheldon
George M. Mitchell Esqr. Clerk
Wm. W. Rowley Sheriff

William A. Phelps
vs
Frederick Smith, Defendant

Best remembered
that heretofore to wit on the 29th day of
November A.D. 1851 the said, above named
Plaintiff by his Attorney filed in the Clerk's
Office of the Circuit Court in & for the
County & State aforesaid a Bond for costs
together with a Declaration & Notice in
Ejectment which said Bond for costs
is in the words and figures following
to wit

State of Illinois
To Danvers County
To wit In the To Danvers County
Circuit Court Now Term

1851

Wm A Phelps Plaintiff

vs

Bradner Smith. Defendant

In Ejectment

I do hereby enter my-
self 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 pur-
suance of the laws of this State

Dated at Galena this 29th day of Dec. A.D. 1851

J P Stevens J.B.

Approved

Wm H Bradley, Clerk of J Davie's County, Circuit Court
Endorsed, "Filed Nov 29th 1851"

Wm H Bradley Clerk

The Declaration and Notice are in the words
and figures following to wit,

State of Illinois

Jodavies County

In Circuit Court of said
County Nov Term 1851 William

A Phelps the Plaintiff in this suit compl-
ains 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 A.D. 1851 at the County
aforesaid, the said plaintiff was

possessed in his own right in fee of
the following described premises to wit
the undivided 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 said Water Street and
running Westwardly fifty eight by sixty
nine feet (58 by 69) containing less of an
acre more or less. Known and des-
ignated on the plat of the late town now
city of Galena. Said premises being
situated in said County and State
aforesaid and the said Defendant
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 prem-
ises unlawfully and still withholds
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

Ball pros. as to this
County.

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 .92 of
an acre more or less as known and
designated on the plat of the late town
now City of Yakima; 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
withholds from the said plaintiff the
possession thereof to the damage of the
said plaintiff of Five hundred 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 Davie
County State of Illinois on the 29th 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 do so 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 J P Stevens Atty for
Plff

Endorsed
State of Illinois
In Daviess County, J P Christopher C Saunders Sheriff
of said County do hereby certify that said,
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 & subscribed before me
this 29th day of November AD 1851
Sherriffs fees
Serving & ret^d \$1.50

Wm H Bradley

Clk

Endorsed

Filed Nov 29th 1851

Wm H Bradley Clk

And afterwards to wit on the said 29th
day of November AD 1851 at the November
Term AD 1851 of said, Jo Davies County
Circuit Court in the Record of the proce-
-dings thereof in the above entitled cause
appears of Record the following entry
to wit,

William A Phelps

vs Ejectment

Bradner Smith

The Plaintiff by

his Attorney files his decla-
-ration and 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 24th day
of December AD 1851 the above named
Defendant by his Attorney came and
filed his plea which is in the words and
figures following to wit,

State of Illinois

Jo Davies County Circuit Court Nov^r: S 1851

Bradner Smith

ads

William A Phelps

In Ejectment

Dickinson B. Mershon
adm^r of Robt P. Gayard

The said Defendants
Come and defend and
say they are not guilty

of the said supposed grievances in
the Declaration mentioned, in manner
and form therein alleged, and of this
they put themselves upon the Country

By, Washburne
Hoyt & Wilson
for Dft.

Endorsed

Filed Dec^r 24th 1851

Wm H Bradley Clerk

Refiled 25th Aug^r ¹⁸⁵⁴ by leave of the Court

Geo W Mitchell clk

4 And afterwards to wit on the 2^d day
of February AD 1855 the Clerk of the Supreme
Court of the State of Illinois at Ottawa filed
in the Office of the ^{clerk of the} Circuit Court of said
Jadawic County the following Certificate
to wit

At a Supreme Court begun and held at
Ottawa on Monday the 12th day of June
in the year of Our Lord One thousand eight
hundred, and fifty-four within and for the third
Grand division of the State of Illinois

Present the Honorable Samuel H Treat. Chief Justice

" " John D Caton Associate Justice

Walter B Seales " "

Friday August 4th 1854

William A Phelps }
vs } Appeal from Jo Davie's
Bradner Smith } 3

On this day came again the parties and the Court having diligently examined, and inspected, as well the record and proceedings aforesaid, as the matters and things therein therein assigned for Error, and being now sufficiently advised of and concerning the premises, are of opinion, that in the Record and proceedings aforesaid, and in the rendition of the Judgment aforesaid there is manifest Error. Therefore it is Considered by the Court that, for that Error and others in the Record and proceedings aforesaid, the Judgment of the Circuit Court in this behalf rendered be reversed, annulled, set aside and wholly for nothing esteemed, and that this Cause be remanded to the Circuit Court for such other and further proceedings as to law and justice shall appertain. And it is further Considered by the Court that the said Appellants recover of and from the said Appellee his Costs by him in this behalf expended and that he have Execution

Therefore, I Lorenzo Seland Clerk of
the Supreme Court of the State of
Illinois do hereby certify that the foregoing
is a true copy of the final order of said
Supreme Court, in the above entitled cause
of Record in my office



In testimony whereof, I hereunto
set my hand and affixed, the
Seal of the said, Supreme Court at
Ottawa, this 12th day of January
in the year of Our Lord one thousand
eight hundred and fifty, five
L Seland

Clerk of the Supreme Court

Endorsed

Filed Feb'y 2nd 1855

W. H. Bradley Clerk

And afterwards do wit, on the 23^d day
of March A.D. 1855, at the March Term
A.D. 1855 of said, Jo Daviess County Circuit
Court in the Record of the proceedings
thereof in said Cause, appears the follo-
-wing entry to wit

William A Phelps

vs

Bradner Smith

Ejectment

In Motion of Defendant

upon affidavit filed this Cause is continued
to the next term of Court as the Costs of
Defendants. And it is ordered by the
Court that Execution issue for said Costs.

The affidavit mentioned in the last
recited order is in the words and
figures following to wit:

Circuit Court
St Davids County Illinois
March Term 1855

William A Phelps
vs
Madame Smith } In Ejectment

The said Defendant being
duly sworn according to Law doth depose
and say that he cannot safely proceed
to trial in this Cause on account of the
absence of Charles S Hempstead who
is a material Witness on the trial of this
Cause as he is informed and believes
that the said Charles S Hempstead
is a resident of ^{the city of} Galena that he has
not been subpoenaed as a witness in
this Cause for the reason that he
is an Attorney of this Court and has
been in Attendance during the term
and this Defendant supposed he would

Continue in Attendance and be ready
to testify at any time when the case
should be called for trial. But on
Wednesday Morning the 21st Inst. he
was suddenly and at very short
notice summoned to go to Chicago
on important business and has not yet returned
to Galena. That he expects to prove by the said
Witness that he has been the agent of Dickinson
& Morehouse, the Administrators of R. P. Guyard
who claims the lots the Interest for which is
sued for in this case (the Defendants being
tenant in possession at time suit was
brought) as belonging to the estate
of said Guyard, that as such agent
of said Morehouse Administrator
as aforesaid he has had the con-
tinuous possession of said Lots
since their purchase of the United
States in 1838 and has paid the
taxes thereon as such agent ever
since. That the plaintiff was never
to his knowledge before the Commis-
sioners to settle claims to Galena
Town Lots, to claim the right of preemption
of said Lots, and he would have known
it if he had been as he practiced before
said board himself. That he knows of

no other witnesses by whom he can so
fully prove the most of said facts
^{and that he expects}
to have said witness here at the next term
of this Court to testify in this case
and that this application is not
made for delay but for the furtherance
of Justice in the premises

sworn & subscribed, *B. Smith*
before me this 22nd day
of March A.D. 1855

John G. Potts D.P.

Endorsed

Filed March 23^d 1855

W.B. Green Clerk

And afterwards to wit on the 17th of May
A.D. 1855. at the May Term A.D. 1855 of said
Judiciary County Circuit Court in the
Record of the proceedings thereof in
said cause appears the following
entry to wit

Wm. A. Phelps

Ejectment

vs
Bradner Smith

Now at this day

came on to be heard this

cause upon issue joined & thereupon
came a jury of good and lawful
men to wit David Reed, Jonathan
White, James Entwistle & Jacob Bonke

Miner Baldwin, Wm Pence, M Coleman
Samuel Blake, J. H. Morse, Charles Denis
William Virtue, Joseph Vincent. Who were duly
elected tried, and sworn, after hearing
the Evidence and argument of Counsel
they retired to consider of their verdict
and after a short absence, returned
into Court with the following verdict
to wit, We the Jury find the Defendant
guilty of unlawfully withholding the
property premises described in the plain-
tiff's declaration and we find the
estate established on the trial to be
an estate in fee simple. It is therefore
considered by the Court that the plaintiff
have and recover possession of said
land and premises to wit the undivided
half of lot number nine (9) and the
undivided half of lot number eight (8),
said lot eight (8) fronting forty seven
feet more or less on Water Street and
running Westwardly sixty nine by seventy
nine feet more or less containing $\frac{68}{100}$
of an acre be the same more or less
and lot nine fronting forty seven feet
more or less on said Water Street and
running Westwardly fifty eight by sixty
nine feet (58 by 69) containing $\frac{67}{100}$ of an acre

more or less. known and designated on
the plat of the laid town Iron City of
Galena, said premises being situate in
said County and State aforesaid. And
it is further Considered by the Court that
the plaintiff have and recover of the
Defendants their Costs by them about
their suit in this behalf expended, and
that he have Execution therefor and
that the plaintiff be awarded, a writ
of possession herein.

And afterwards to wit on the 29th day
of May A.D. 1855 as yet of said May
Term A.D. 1855 of said Circuit Court
in the record of the proceedings thereof
in said Cause appears the following
entry to wit

Wm. A. Phelps

vs. Ejectment
Bradner Smith

Now at this day
Came the Defendant
by his Attorney and files his Motion
to vacate the Judgment & for a new
trial under the Statute in this Cause.

The Motion referred to in the
last recited order is in the words and
figures following to wit

Wm A Phelps vs Bradner Smith
In the Circuit Court of the
May Term AD 1855
To Daviess County Illinois
Ejectment

Now at this day
comes the Defendant (Bradner Smith) in
the above entitled Cause and moves the
Court to set aside the verdict and
Judgment rendered against him in
this Cause and for a New trial under
the Statute

Wiegley & Sweet
Attys for Defs

Endorsed,

Filed May 29th 1855

W B Green Clerk

And afterwards to wit on the same day
to wit on the 29th day of May as yet of
said May Term AD 1855 of said Jc
Daviess 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 at this day came the

parties by their Attorneys. The Motion
of the Defendants heretofore filed for a
new trial of this Cause under the Statute
is sustained by the Court. It is therefore
on Motion of the Defendant by his Attorney
ordered by the Court that the Judgment
heretofore rendered in this Cause be
vacated and that a new trial be gra-
-anted upon the payment of all the
costs recovered under the said
Judgment.

And afterwards to wit on the 2nd day of Nov-
-ember at the October Term AD 1855
of said Circuit Court in the Record
of the proceedings thereof in said
Cause appears the following entry to
wit,

William A Phelps

vs

Bradner Smith

Ejectment

Now at this
day came the Defendant
by his Attorney and filed his Motion
for leave of the Court to substitute
Dickinson B Morehouse as Defendants
herein in lieu of Bradner Smith

The affidavit and motion referred to in
the last recited order is in the words and
figures following to wit

W A Phelps

vs Ejectment
Bradner Smith In Cir Court D C Ill
Oct Term 1855

Dickinson B Morehouse who comes and
asks the Court to be made a defendant
in this suit, in the place & stead of said
Smith makes oath that he claims the
interest in the lot sued for in this case
as the administrator of one R B Gizard
and that as Dickinson B Morehouse
he leased the same to the said defend-
ant by the lease which is hereto ^{annexed} attached
and made a part of this affidavit

9
Signed & sworn to before me
this 2nd day of November 1855

Benf. Coombe

Justice of the Peace

I hereby agree that it shall be considered
for the purposes of the trial of the above
cause that the said Morehouse was
in possession of the premises in the
premises sued for at the time of suit
brought, and that the proof of the possession

of said interests in said premises at
the time of suit ^{brought} by said Morehouse and
said Smith is hereby waived

By Washburne Atty for Def

Phelps vs Smith } Notice of D B Morehouse to be admitted
as Co defendant. Comes the within
named Morehouse on the above
affidavit and pray the Court to be allowed
to come as a Co defendant with said Smith
and defend this suit

By Washburne his Atty

Endorsed

Filed Nov 2nd 1855

W B Green Clerk

And afterwards to wit on the 3^d day of
November as yet of said October Term
AD 1855 of said, To David County Circuit
Court in the Record of the proceedings
thereof in said Cause appears the fol-
-lowing entry to wit

William A Phelps

vs

Ejectment (returned from Supreme Court)

Bradner Smith

}

Now as this day

Came the parties by their
attorneys and thereupon came on to be heard
the motion of the Defendant to substitute
Dickinson B Morehouse as Defendant
in this Cause in place of Bradner

Smith. Which Motion after argument
by Counsel is overruled by the Court.
To which ruling of the Court, the Defendant
by his Counsel excepts & thereupon
on Motion of Dickinson B Morehouse
Landlord of the Defendant by C B Washburne
Esqr. his Attorney he is permitted to come
in as a Co Defendant with the Defend-
-ant his tenant said Morehouse admit-
-ting that he was in possession of the prem-
-ises sued for & the interest in them
sued for at the time of the commence-
-ment of this suit, to which permission
the plaintiff by his Attorney excepts.

10 And afterward, D wit on the 3rd
day of November. as yet of said October
Term AD 1855 of said Jodavick County
Circuit Court. in the Record of the proceedings
thereof in said Cause, appears the follo-
-wing entry D wit.

William A Phelps &

vs

Bradner Smith

Ejectment

By agreement
of the parties, ^{their} by their
attorneys. It is ordered by the Court that
this Cause be continued to the next May
Term of this Court upon stipulations

sified
by Defendants, Attorney waiving time
to appeal to Supreme Court.

The stipulations referred to in
the last recited entry are in the words
and figures following to wit:

Phelps v. Smith
In Ejectment
Oct Term 1855

It being agreed by the parties
to this suit, by their Attorney that this
Cause shall not be tried, at the next
March Term of the said Court, but
shall be set down for trial at the
next May term of this Court. And it
is hereby further agreed by the At-
torney of the said Defendants, that
if there should not be time enough
left after the trial at the said May
term as allowed by the Statute
to take the said Cause by appeal
to the Supreme Court. I agree not
to take advantage of the want of
time but to take the case up in
"season" for trial at the June term
of said Supreme Court 1856. in
case said Judgment shall be against
the Defendant, or let the Judgment in the
Circuit Court stand.

Washburne for Deft

Endorsed

Filed Nov 3rd 1855

W B Green Clerk

"

And afterwards to wit on the ^{19th} day of May
at the May Term A D 1856 of said, Jr
Davies County Circuit Court in
the Record of the proceedings thereof in
said Cause appears the following

entry to wit

W A Phelps

vs

Bradner Smith

Ejectment

The defendant by
his attorney comes &

moves the Court for leave to file two
additional Pleas which motion is
sustained by the court & said Pleas
are filed

The Pleas referred to in the last
above recited order are in the words
and figures following to wit

The State of Illinois

County of Davies

In the Circuit Court of
said County of the May Term 1856

Bradner Smith and
Dickinson B Morehouse

ads

William S Phelps

Pleas of this Barred Continuance
filed by leave of the Court

And now at this day to wit of the

19th Day of May in the year of our Lord
One thousand eight hundred and fifty
six. it being the first day of the May
Term aforesaid, of said Court to which
day and term, all the proceedings in this
Cause were continued from the October
Term AD 1855 of said Court which was
begun on the third Monday of October
in the year aforesaid, to wit from the
fifth Day of November AD 1855 as yet of
said October Term comes the said
Defendants by E B Washburn their
Attorney and saith that the said Plain-
tiff ought not farther to have or maintain
his aforesaid action thereof against him
the said Defendant because he saith that
after the last continuance of this Cause
that is to say after the said October
Term AD 1855 to wit on the said
fifth day of November in said term
of said Court from which time
this Cause was regularly continued
as aforesaid to the present Term thereof
and before this day to wit on
the 19th day of January in the
year of our Lord. One thousand
eight hundred and fifty six
at the County of Payette in the State

of Ohio the said plaintiff and Eliza
Ann his wife by their Deed of Conveyance
sealed with their seals bearing date
a certain day and year therein men-
tioned to wit the day and year
last aforesaid. granted bargained,
sold and conveyed ^{and confirmed} for a Consider-
ation in said Deed mentioned to
wit the sum of Twenty one hundred
and seventy five Dollars in hand
paid to the said plaintiff the receipt
whereof is in said deed acknowledged
all those certain Lots ^{pieces} or parcels of
^{Land &} premises in the said plaintiff's Decl-
aration in this Cause described, to
Madison Y Johnson and Isaac P
Stevens of the City of Galena County of
Jo Davie and State of Illinois which
said Deed of the said plaintiff and
his said wife was duly acknowledged
on the 23 day of January A.D. 1856
by the said plaintiff and his wife
and delivered to the said Madison
Y Johnson and Isaac P Stevens
and by the said Johnson and Stevens
filed for Record in the Records office
of said County of Jo Davie. And by said
Recorder duly recorded on the 27th

Day of February Ad 1856 in Book "Y"
of Deeds pages 243 & 244 as will more
fully appear reference being had to
said Records. which said Deed of
Conveyance not being in possession
of the said defendants & the said
defendant having no control over
the same he cannot produce to
this Court. And prays that a certified
Copy of said Record of said Deed
under the hand of the Clerk of the
Circuit Court of said County of So
Davis and the seal of said Court
thereunto attached, and now to the
Court here shown may be taken
and received in place of said original
Deed. Said Defendants further
avere that by virtue of said Deed
of Conveyance all the estate right
title interest and claim of said Plaintiff
in and to the said lands and
premises in the said Plaintiff's decora-
-ation described ^{were} by the execution
and delivery of the said Deed of
Conveyance vested in the said Madison
Y Johnson and Isaac P Stevens
And that the said plaintiff now neither
has nor pretends to have any interest

or estate of any name or description whatsoever in or to the same. And this the Defendants are ready to verify. Therefore they pray Judgment if the said plaintiff ought further to have or maintain his aforesaid action thereof against them the said Defendants &c

13 And for a further plea in this behalf the said Defendants by leave of the Court &c says that the said plaintiff ought not further to have or maintain his aforesaid action thereof against them the said Defendants because that after the last continuance of this Cause at the October Term A.D. 1855 of this Court to wit on the 5th Day of November A.D. 1855 as yet of the October Term aforesaid from which term this Cause was regularly continued as aforesaid to the present term of this Court and upon this day to wit on the 19th Day of January A.D. 1856. at the County of Payette and State of Ohio the said plaintiff and Eliza Ann his wife made and executed and on the 23^d Day of said Month of January duly executed acknowledged according to the laws of the State of Ohio their certain Deed of Conveyance which

said Deed and Acknowledgment are in
the words and figures following, to wit,
that is to say,

This Deed made this nine-
teenth day of January in the year of
Our Lord One thousand Eight hundred
and fifty six Between William A Phelps
and Eliza Ann Phelps his wife of the
County of Fayette and State of Ohio of
the first part and Madison W Johnson
and Isaac Stevens of the City of Galena
County of Jo Daviess and State of Illinois
of the second part Witnesseth, that the
said party of the first part for and
in Consideration of the sum of Twenty
One hundred Dollars and Seventy five
Dollars to the said party of the first
part in hand paid by the said party
of the second part the receipt whereof
is hereby confessed and acknowledged
have granted bargained sold and
conveyed and by these presents doth
grant bargain sell convey and confirm
unto the said parties of the second part
their heirs and assigns forever all
the following described Lots or parcels
of Land situate lying and being in
the County of Jo Daviess and State

of Illinois to wit. The whole of Lot Seven.
said Lot Seven fronts upon Water Street
in the City of Galena County and State ^{last} aforesaid,
forty seven feet also the undivided half
of Lots eight and nine said last mentioned
Lots fronting upon Water Street in said
City of Galena, each of said Lots being
forty seven feet front upon ^{said} Water Street
in said City of Galena. All of said Lots
above named, being situated on the west
side of Galena River in said City
of Galena as will more fully and at
large appear by reference to the plat of said
City of Galena. To Have and to hold the
same together with all and singular
the appurtenances and privileges there-
unto belonging or in anywise there-
unto appertaining. And all the estate
right title interest and claim whatsoever
of the said party of the first part either
in Law or equity to the only proper use
benefit and behoof of the said parties
of the second part their heirs and assign-
-ns forever. And the said party of the
first part the aforesaid tract or parcel
of land and premises unto the said
parties of the second part their heirs and
assigns against the Claim or claims

of all and every person whatsoever claiming by through or under him doth and will warrant and forever defend by these presents.

In Witness whereof the said party of the first part hath hereunto set his hand and seal the day and year first above written signed sealed & delivered William A Phelps *WAP*
in presence of *W* Eliza Ann Phelps *EAP*
said C Plunk *C*
Geo B Gardner

State of Ohio *W*
Payette County *W* I George B Gardner a Justice
of the peace in & for said County
and the State aforesaid do hereby certify
that William A Phelps and Eliza Ann
Phelps are personally known to me as the
persons whose names are subscribed
to the annexed deed appeared before me
this day in person and acknowledged
that they signed, sealed, and delivered the
said Instrument of writing as their free
and voluntary act for the uses and
purposes therein set forth and the
said Eliza Ann Phelps wife of the said
William A Phelps having been by me
examined separate and apart and

out of hearing of her said husband and
the contents and meaning of the said,
Instrument of Writing having been by
me made known and fully explained,
to her she acknowledged, that she had,
freely and voluntarily executed the same
and relinquished her dower to the land,
and tenements therein mentioned without
compulsion of her said husband, and
that she does not wish to retract the
same. Given under my hand and
seal this Twenty-third day of January,
A.D. 1856.

Geo B Gardner E.B.

The State of Ohio

15-
Payette County

I Richard Watkinson Clerk
of the Court of Common Pleas,
in and for the County aforesaid, do hereby
certify that Geo B ~~Gardner~~ Gardner whose
genuine signature appears above is and
was at the time of signing the same a
Justice of the peace in and for said County
of Payette duly commissioned ^{and sworn} for said
County of Payette duly commissioned, and
sworn and that full faith and credit are
due to all his official acts as such.

Witness my hand, and seal of
Office at the Court House at

Washington this 23^d day of January
A.D. 1856
Richard Wilkin Clerk

Which said Deed so made executed and
acknowledged, by the said plaintiff and
his said Wife as aforesaid, the said pla-
intiff & his said Wife duly delivered, to
the said Madison & Johnson and Isaac
Stevens. The grantee in said Deed mentioned
and was by the said Johnson & Stevens
afterwards filed for record in the Recorder
office of said County of DoDarius and
by the said Recorder duly recorded
in Book "G" of Deeds in pages 243 & 244
as by reference to said Record will
more fully appear

And the said Defendants
aver that the Land & premises mentioned
and described in the said plaintiff's de-
claration in this Case and for the recovery
of the possession whereof this Action was
commenced by the said plaintiff
and a part of the Land and premises
described in said Deed of the said
plaintiff and Wife to the said Johnson
and Stevens above recited and that

in and by the said deed so executed.
Acknowledged & delivered as aforesaid,
the said plaintiff conveyed to the said
Madison & Johnson and Isaac P Stevens
all his right, title & interest of any and
every kind in & to the land and premises
described in his said declaration, and that
the same are now absolutely vested in the said
Johnson & Stevens the Grantees in said deed na-
med; and that the said plaintiff now neither
has nor claims & have any interest or estate
of any name or description whatsoever in or
to the same

16 And this the said Defendants are
ready to verify. Wherefore they pray judgment
if the said plaintiff ought further to have
or maintain his aforesaid action thereby
against them the said Defendants &c

E. B. Washburn &
Wigley & Jewett
Attys for Defs

Endorsed

Filed this 19th day of May 1856
Geo M Mitchell Clerk

And afterwards to wit on the 19th day of August at the August Term A.D. 1856. of said Jo Daviess County Circuit Court, in the Record of the proceedings thereof in said Cause appear the following entry to wit

William A Phelps

vs

Bradner Smith

} Ejectment

} Now came on to be heard the Demurrer heretofore filed by the plaintiff by his Attorney to the two additional pleas filed under leave of the Court at the last term which Demurrer after argument is taken under advisement by the Court

The Demurrer referred to in the last recited entry is in the words and figures following to wit

W A Phelps

vs

Bradner Smith

} In the Circuit Court
May Term A.D. 1856

And now at this day comes the said plaintiff and as to the said first and second pleas of Pius Darre Continuance filed at this term of this Court of the said Defendants. Said plaintiff saith the same is not sufficient in law and he

is not bound to make answer thereto
Wherefore he doth demur and for Special
Cause of demurrer shows to the Court
the following

Because the Statute restricts
the Defendant to the plea of ^{the} general
issue above

2nd Because said pleas are
insufficient in substance and form
and improperly filed

3^d Because the facts set forth and plead-
ed in said plea are not sufficient to
dismiss the same.

4th And for other ~~and~~ sufficient reasons
Wherefore he doth demur and pray Judgment

Johnson

Plff Atty

Verdict on Demurrer

E B Washburne
& Wighly & Jewett
for Defts

Endorsed

Filed 20th May 1856

Geo M Mitchell clk
And afterwards writ on the 25th day of
August as yet of said August Term
AD 1856 of said, To Darrys County Circuit
Court in the Record of the proceedings

thereof in said Cause appears the following entry to wit
William A Phelps

vs } Ejectment
Bradner Smith } The Court having
fully considered and being
fully advised, upon the Demurrer her-
etofore filed by the Plaintiff by his
Attorney to the Defendants Pleas of Prais
Darnum Continuance heretofore filed
by leave of the Court sustains the
Demurrer and on motion of the Def-
endants Attorney leave is granted
him by the Court to withdraw said
pleas of Prais Darnum Continuance and
also to refile the plea of General Issue
which is accordingly done

And afterwards to wit on the
27th day of October at the October Term
A D 1856 of said Indiana County Cir-
cuit Court in the Record of the proceedings
thereof in said Cause appears the following
entry to wit -

William A Phelps

vs } Ejectment
Bradner Smith and } Now at this day
Dickinson B Morehouse } came the parties by
their Attorneys and

upon issue joined thereupon came a
Jury of good and lawful men to wit
Wm DeCamp J D Glidden J O Martin
David James Lewis Leach Jesse
Holdcomb. Orson Hunt, Cha^s Goodham
Jm Hogan A M Keillips J L Lawrence
H Van Valkenburg, who were duly elected
tried and sworn after hearing a
part of the evidence, the further
consideration of this cause is post-
poned until tomorrow morning.

18

And afterward to wit on the
28th day of October as yet, of said, October
Term A D 1856 of said, So. District County
Circuit Court in the Record of the pro-
ceedings thereof in said, Cause appa-
ars the following entry to wit

William A Phelps

vs

Exemption

Bradner Smith and
Dickinson B Morehouse

Now at this
day came again the
Jury yesterday empan-

eled herein and after hearing the
arguments of Counsel they retired
to consider of their verdict and
after a short absence they returned
into Court with the following.

Verdict to wit "We the jury find the Defendants guilty of unlawfully with-
-holding the possession of the undivided
half of Lots Eight and Nine as described
in the plaintiffs declaration and find
the estate established in the plaintiffs
to be an estate in fee and we also
assess their damages for withholding
the premises at One hundred, eight
four Dollars and thirty seven ^{one half} Cents
and the Defendants by their Attorney
moves the Court for a new trial here-
-in & files his Motion & reasons therefor

The Motion referred to in the last above
recited order is in the words and
figures following to wit

William A Phelps

vs

B Smith & D B

Morehouse

In the Circuit Court of the
Lot Term AD 1856.

Now at this day
come the Defendants by Washburne
Wiegley and Jewett, and move the
Court for a new trial in this Cause
for the following reasons
1st The verdict is against the evidence
and the weight of evidence
2^d The Court gave improper instructions

to the jury at the instance of the plaintiff
& The Court refused the instructions
of the Defendants which should have
been given to the jury.

Washburne Wiegley & Jewett
Attys for Defts

Endorsed

Filed 28th Oct 1856

Geo W Mitchell Clerk

19 And afterwards to wit on the 1st day of
November A.D. 1856 as yet of said
October Term A.D. 1856 of said Jo
Davies County Circuit Court in
the Record of the proceedings thereof in
said Cause is the following entry
to wit.

William A Phelps

v

vs Ejectment

Bradner Smith and
Dickinson & Morehouse

Now at this day
came the plaintiff by
his Attorney and enters
a remittiter for the sum of One hundred
-red and Eighty four Dollars and thirty
seven & one half cents. And now comes
on to be heard the motion heretofore
filed by the Defendants by their Attorney
for a new trial herein which motion

after argument is overruled by the Court to which ruling and decision of the Court the Defendants by their Attorney, excepts, and the Plaintiff by his Attorney moves the Court for Judgment upon the verdict of the jury heretofore entered, & It is thereupon considered by the Court that the Plaintiff have and recover of the possession of the said Land & premises to wit The undivided half of Lot Number Nine (9) and the undivided half of Lot Number Eight (8) Said Lot Eight (8) fronting forty seven feet more or less on Water Street and running Westwardly sixty nine by seventy nine feet more or less containing $\frac{67}{100}$ of an acre be the same more or less and said Lot Nine fronting forty seven feet more or less on said Water Street & running Westwardly fifty eight by sixty nine feet (58 by 69) containing $\frac{67}{100}$ of an acre more or less known and designated on the plat of the old town now City of Galena said premises being situated in the County of Jo Daviess and State of Illinois. And it is further considered

by the Court that the plaintiff have
and recover of the Defendants his
cost by him about his suit in
this behalf expended, and that Grant-
ion issue therefor And the Defend-
ants by their Attorneys pray for
an appeal to the Supreme Court which
is granted Conditioned that said
Defendants file an appeal bond
with the Clerk with Charles S
Hempstead as Security in the sum
of One Thousand Dollars in thirty
days from the rising of this Court

20

And afterwards to wit on the 21st day
of November as yet of said October Term
AD 1856 of said Indiana County Circuit
Court in the Record of the proceedings
thereof in said Cause appears the
following entry to wit

William A Phelps.

vs

Bradner Smith and
Wickinson B Morehouse

Effectment

Now at this day
Come the Defendants
by their Attorney and
move the Court to set aside so much
of the order heretofore entered in this
Cause by which the said Defendant Smith
prayed an appeal to the Supreme Court

And the said Motion being sustained by
the Court It is ordered, by the Court
that D B Morehouse one of the Defend-
ants in this Cause be Allowed an appeal
to the Supreme Court from the judgment
heretofore entered in this Cause by en-
tering into Bond with Charles S Hem-
stead as security in the sum of One
thousand Dollars within thirty days from
the rising of this Court to which ruling
and decision of the Court the plaintiff
by his Attorney excepts

And afterwards to wit on the 12th day of
December AD 1856 the said Defendant
D B Morehouse comes & files with the
Clerk of said So. Davis County Circuit
Court his Appeal Bond which is
in the words and figures following
to wit

Know all men by these pres-
ents that we Dickinson B Morehouse as
principal and Charles S Hemstead
as security are held and firmly bound
unto William A Phelps in the penal sum
of One thousand Dollars for the payment
of which well and truly to be made we
bind ourselves our heirs executors and

Administrators jointly and severally
-ly by these presents sealed with our seals
and dated this Twelfth day of December
AD 1856.

21. The Condition of the above obligation
is such that Whereas the above named
William A Phelps did at the October
Term of the Circuit Court of Cook County
Illinois obtain a judgment in a certain ac-
-tion of ejectment against the above named
Dickinson B Morehouse who was impleaded
with one Bradner Smith; and Whereas the
said Morehouse did at the October Term
of the Circuit Court aforesaid pray an app-
-eal from said Judgment to the Supreme
Court of Illinois and Whereas the said
prayer of the said Morehouse was granted
conditioned that he would enter into
Bond in the sum of One thousand Dollars
with the above named ~~defendant~~ Charles
S Hempstead for security within thirty
days of the rising of said Court and
Whereas the said Circuit Court at the
October term thereof aforesaid did rise
on the 24th day of November AD 1856
Now if the said Dickinson B Morehouse
shall prosecute his said appeal with
effect & shall pay to said William A

Phelps whatever Judgment costs interest
and damages may be rendered against
him the Said Morehouse on the Trial or
dismissal of said Appeal in the
Supreme Court-aforesaid then the
above obligation shall void otherwise
to remain in full force and effect
Approved D/B Morehouse Seal

Approved

Q B Warehouse Seal

Approved
M Rowley Clerk
Endorsed

Chas B Hempstead Seal

Endorsed

Filed Decr 12th 1856

Mr Rowley Clerk

The Bill of Exceptions as
Certified by the Court is in the
Words and figures following
to wit

State of Illinois
In Danvers County

At the October
Term of the Circuit
Court of Danvers
in said State, A.D. 1856

William A. Phelps
vs
Bradner Smith &
Dickenson B. Morehouse

Ex'tment

Be it remembered that
on this the day of November A.D.
1856 and yet at the October Term
of said Court, the above entitled cause
came on for trial before a jury -
And the Plaintiff to maintain the
issue on his part offered in evidence
a certain Deed from R. P. Gayard
to the said Plaintiff in the words
and figures following:

R. P. Gayard } Mineral Point Bradford County, Wisconsin
D. & Transfer }
William A. Phelps } To Capt. J. C. Leysake
Supt. U. S. Lead Mines
Jr

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
I own in the Town of Waller &
Dennis County State of Illinois
situated on the Wharf Row, the
numbers not recollectd) Supposed
to be either lots 4, 5 and 6 or 5, 6
and 7, bounded as follows on the
East by River, on the West
by Main Street or a triangular
square and on the South by a
lot granted to me in the Spring
of 1828, and sold by me to M,
Bennett, 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 gran-
ted 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 8th November 1829
Approved Nov 9th 1829

Thos. C. Lejarto 3 R. P. Guyard (253)
Capt U. S. L. M.

Territory of Wisconsin
County of Oconto

William Henry of the
Town of Mineral Point in said
County and Territory, being duly
sworn on his Oath says, that he
was well acquainted with R. P.
Guzard whose name appears to
the annexed Deed of Conveyance or
letter addressed to Thos. C. Legate
dated at Mineral Point Nov 8th
1829, when said Guzard resided
in Galena, and when he lived at
Mineral Point, and that he (affiant)
has seen much of said Guzard's hand
writing, and has frequently seen
him write, and is well acquainted
with his hand writing, that affiant
knows that said Guzard lived at
Mineral Point, in the Year Eighteen
Hundred and Twenty nine, when
the annexed Deed appears to have
been given, and that affiant believes
that the signature, R. P. Guzard
to the said Deed is in the hand
writing of the said R. P. Guzard
that affiant further says that he was
well acquainted with Thomas C.

Legate, and knows that he was acting
Superintendent of the United Lead Mines
on the 9th of November A.D. 1829,
He is also well acquainted with the hand
writing of the said Tho. C. Legate
and has frequently seen him write
and believes that the words and sig-
-natures on the left of the annexed
Deed "approved Nov. 9, 1829 Tho.
C. Legate Sup. U. S. L. M." are in
the hand writing of the said Thomas
C. Legate, and further this affiant
says not.

(Signed) William Henry

Justice of the Peace in &
County of Iowa

I the undersigned
Clerk of the District Court of said
County, and Justice, 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 fore-
-going 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 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 J. Henry Clerk
Dist Court U. States
Iowa Co. Wis. Ter.

Endorsed Filed June 18th 1847 at 9 o'clock A.M.

State of Illinois
Jas Davis's County
I Perennial Pettis Recorder in and
for said County do certify that the
aforesaid Deed of transfer &c are
recorded in Book No. of Deeds page
384 & 385

Attest Perennial Pettis

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 County a competent
and credible witness, & 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 in the annexed Deed of
Conveyance or letter addressed to
Thomas A. Legate, dated at Mineral
Point Nov 8, 1829 and well knew
his signature, having repeatedly trans-
acted business with him and
having frequently seen him write;
that he ~~said~~ the said McKnight was
the assistant superintendent of the
Lead Mines in 1828 and 1829 and
as such superintendent granted the
permits referred to in said Deed as
having been granted to said R. P.
Guyard, John Ward and
Nathaniel Dolson 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 Superintendent trans-
acted that business with said
R. P. Gutzard, and other business by
which means he became familiar
with said Gutzard's handwriting
the said McKnight further stated
under oath that he had partic-
ularly examined the signature
"R. P. Gutzard" to the said Deed
of 1829, and verily believe
that the name of R. P. Gutzard
subscribed to said Deed is in
the handwriting of said R. P.
Gutzard and was truly sub-
scribed 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 super-
intendent of the United States lead
mine on the 9th of November 1849
and was well acquainted with
the handwriting and signature

of the said Thomas C. Legate and
well known to some having re-
peatedly and frequently seen
him write, and transacted business
with him, and that he had partic-
ularly examined the signature
"Thos. C. Legate" and very believe
that the words and signature, on
the left of the annexed Deed
"Approved Nov 9th 1829 Thos. C. Legate
Jus. U. S. M." are genuine in the
hand writing of the said Thomas
C. Legate, and were there subscribed
by him.

In testimony whereof the said
Thomas M. Knight has hereunto
this day subscribed 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 the 4th day
of February A.D. 1848.

Thos M Knight
R. P. Van Hook Clerk
Dist Court

Endorsed Filed Feb 5th 1848 at
9 o'clock A.M.

State of Illinois Records Office Salina
Joel Ames's County February 5th 1848

Clymus Aldrich, Recorder
in and for said County do certify
that the within Deed of conveyance
and the annexed affidavits & certificates
are Recorded in Book I of deeds, page
340, 341 and 342.

26 Next Clymus Aldrich Recorder
In the reading of said deed in evidence
the defendants objected generally, and
that said deed did not describe
the property mentioned in the decla-
-ration, which objections were over-
ruled by the Court, and said
Deed was read in evidence, to the
Jury, to such ruling, by the Court
and the admission of said deed
in evidence, the defendants then
and there excepted.

The Plaintiffs then offered in evidence
the certificate of the Register of the
Land Office at Dixon, showing the
entry of lots eight and nine, which
was admitted in evidence the
certificates without objection
as follows:

N^o 224 & 225 } Land Office

City Illinois October
3^d 1851

J. Silas Noble

Register of the Land Office at
Lyon Illinois, do certify, that the
Legal Representatives of R. P. Guyard
& D. B. Morehouse of the County of Jo.
Dane's and State of Illinois did
on the Twentieth day of February
in the Year of our Lord one thousand
and Eight Hundred and Fifty Eight
Purchase of the General Government
at this Office, the lot numbered Eight
on Water Street in Galena Jo. Dane's
County Illinois containing Eight
Hundredth of an acre, also lot
numbered nine on Water Street
above mentioned containing Sixty
Seven thousandth of an acre, and
that said land at the time of said
Purchase was within the District
of Land 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 } Silas Noble
the day and Year first above } Register
written,

The Plaintiff to further maintain the
issue on his part, offered and read
in evidence to the Jury the patents
issued by the United States Government
to the legal representatives of Robt P,
Ginzard and Dickenson B, Morehouse
for lots eight and nine described in
the declaration of Plaintiff;

Receivers Receipt & 3

Register Certificate } The United States, of America
No. 228 } To all to whom these presents
shall come greeting;

Whereas the legal representatives of
Robert P. Ginzard and Dickenson B,
Morehouse, of St. James 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 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, authorising the laying
off a Town on Bear River

Lower River, in the State of Illinois
and for other purposes, approved
fifth February 1829 for Lot num-
bered eight, fronting forty seven
feet on Water Street, and running
Westwardly sixty nine, by twenty
nine feet, containing eight hun-
dredths of an acre, in the Town
of Bureau, according to the official
~~map~~ plat of the survey of the said
Dover, returned to the General Land
Office, which said lot has been
purchased by the said Representa-
tives, of Robert P. Gayard 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 granted, and by these
presents do give and grant unto the
said Representatives of Robert P. Gayard
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 immunities and appur-
tenances of whatever nature

11
the same belonging, unto the said
Representatives of Robert P. Gayard
and Dickinson B. Moulhouse 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. Knox Walker Secy
S. H. Laughlin Recorder of the
General Land Office

Recorded Vol. 1

Page 225

Received Receipt of The United States of
Registers Certificate of America, To all
No. 224. whom these presents shall

Come greeting; Whereas the legal
Representatives of Robert P. Gayard
and Dickinson B. Mordhouse of
Davies 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 Rep-
-resentatives as above named acc-
-ording 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 ^{on} a Town of Bear
River (Haver River) in the State of
Illinois and for other purposes
approved fifth February 1829 for
lot numbered nine fronting forty
seven feet on Water Street and
measuring westwardly fifty eight
by fifty nine feet containing
fifty 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. Ginzard and Dickinson
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 Representatives of Robert P.
Ginzard 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, immunities, and
appurtenances of whatever nature
hereunto belonging unto the said
Representatives of Robert P. Ginzard
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, & hereunto affixed,
Given under my hand and Seal
of Washington the first day of Jan-
-uary in the Year of our Lord one
thousand eight hundred and
forty six and of the Independence
of the United States the nineteenth

By the President

James K. Polk

By J. Rufus Walker Secy

S. H. Laughlin

Recorder of the General Land Office

Recorded Vol 13

Page 224

The Plaintiff further offered in evidence the Record Book of the Commissioners to adjust and settle the preemption claims to lots in Galena which Record Book was admitted to be the Record and adjudications of the Commissioners appointed to settle preemptions, & Lots in Galena and read in evidence thereon the following order:

The legal Representatives of Robert P. Ginzard claim lot originally No 5 under present survey No 8 of Wharf Run and in support of their claim produced a certified copy of a permit granting the same to Nathaniel Johnson dated April 6th 1828, signed Th. McKnight with a transfer endorsed thereon assigning the same to the said Robert P. Ginzard and D. B. Merchouse.

The Commissioners are of opinion that the legal Representatives of Robert P. Ginzard are entitled to a preemption to said lot No 8 embracing 117 feet front on Water Street, running westwardly 69 feet by 79 feet containing 108 of an acre of the first claim.

See page 344

Article 30 see page 344

Certificate Issued

See page 844

The legal Representatives of Robert P. Guyard, claim lot originally No 6 under present Survey 1899 Wharf Row, and in support of their claim produced a certified Copy of a permit granting the same to John Ward dated September 18th 1828 signed Th McKnight apt Supt & a ms with a transfer endorsed thereon assigning the same to Robert P. Guyard & D P Morehouse. The Commissioners are of opinion that the legal Representatives of Robert P. Guyard are entitled to a prescription to said lot No nine as the legal Representatives of John Ward embracing 47 feet front on Water Street running westwardly 58 by 19 feet on Water Street running containing .067 of an acre of the first class.

The Plaintiff further read in evidence from the same record of the Commissioners the following adjudication and award by the Commissioners

Certificate Issued

The legal Representatives of Robert
 P. Gungard claim one undivided
 half ^{lot} originally lot 5 & 6 = undivided
 Survey lot 8 & 9 Water Street and
 Dickinson B. Morehouse claim the
 other half of said lots and in
 support of their claim produced
 evidence that said lots were im-
 proved in the year 1828 by said
 Robert P. Gungard & Dickinson
 B. Morehouse

The Commissioners are of
 opinion that the legal representatives
 of Robert P. Gungard are entitled to
 a presumption to one undivided half
 of lots lot 8 & 9, and Dick-
 inson B. Morehouse the other half
 of said lots, said lot 8 & 9 fronting
 47 feet on Water Street and run-

ning westwardly 55 ft 69 feet by 79
 feet containing .08 of an acre, and lot 9 fronting 47 feet on Water Street and running westwardly 55 ft 69 feet
 containing .06 of an acre of the
 first class

The Plaintiff further to maintain
 the issue on his part introduced
 and read as evidence to the
 Jury the acts of Congress of
 1829 & 1836 authorizing the laying
 off a bar on the Bear River and

see page 170 & 171

31

appointing Commissioners as
follows to wit;

1. Be it enacted, &c,
That a tract of
land, in the State of Illinois,
at and including "Galena" on
Bear River, shall, under the di-
rection of the Surveyor of the
Public Lands, for the State of Illinois
and Missouri, and the Territory of
Arkansas be laid off into Town lots
Streets and avenues, and into out
lots, having regard to the ~~streets~~
lots and streets already surveyed,
in such manner and of such
dimensions, as he may think
proper; Provided; that the tract
so be laid off shall not exceed
the quantity contained in one
entire section ^{nor the Town lot, ^{one}}
^{town lot, exceed the quantity of two acres each}
quarter of an acre each nor shall the
When the survey of the lots shall be
completed, a plat thereof shall
be returned, to the Secretary of
the Treasury, and within twelve
months thereafter the lots shall
be offered to the highest bidder
at Public sale, under the

direction of the President of the United States, and at such other times, as he shall think proper; Provided, that no town lot shall be sold for a sum less than five Dollars; and provided further, that a quantity of ground, of proper width on the said river and running therewith the whole length of the said town, shall be reserved from sale for public use, and remain forever a common highway.

2.

And lest further enacted, that it shall be the duty of the said Surveyor, to class the lots already surveyed, in the said town of Salina into three classes, according to the relative value thereof, on account of situation and ~~eligibility~~ eligibility for business, without regard however to the improvements made thereon; and previous to the sale of ^{the} said lots as aforesaid, each and every person, or his, her or their legal representative or representatives, who shall heretofore have obtained from the agent of the

United States, a permit to occupy
any lot or lots, in the said Town
of Salina, or who shall have
actually occupied and improved
any lot or lots, in the said town
or within the tract of land hereby
authorised, to be laid off into lots,
shall be permitted to purchase
such lot or lots by paying therefor
in cash, if the same fall within
the first class, as aforesaid, at
the rate of twenty five dollars per
acre, ^{if within the second class at the rate of fifteen dollars per acre} and if within the third class
at the rate of ten dollars per acre;
Provided, that no one of the
persons aforesaid shall be per-
mitted to purchase by authority
of this section, more than one
half acre of ground; unless
a larger quantity shall be neces-
sary to embrace & permanent im-
provements already made.

Approved February 5 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 fifth February

Eighteen Hundred and Seventy nine
1. Be it enacted, &c, that all acts
and duties required to be done
and performed by the Surveyor
of the States of Illinois and
Missouri, and the Territory of
Arkansas, under the act to
which this is an amendment
shall be done and performed
by a Board of Commissioners,
of three in number, any two
of whom shall form a quorum
to do business; said Commission-
ers to be appointed by the Pres-
ident of the United States, and
shall, previous to their entering
upon the discharge of their
duties, take an oath or affirmation
to perform the same faithfully
and impartially.

33
2. And Be it further enacted,
that the ^{said} Commissioners shall
also have power to hear evidence
and determine all claims
to lots of ground arising
under the act to which this
is an amendment, and for
this purpose, the said Commis-
sioners

Are authorized to administer
all oaths that may be necessary
and reduce to writing all
the evidence, in support of
claims & presumption presented
for their consideration; and
when all the testimony shall
have been heard and considered
the said Commissioners shall
file with the Register and Receiver
of the Land Office at Helena,
the testimony in the case, to-
gether with a certificate in favor
of each person claiming the
right of Preemption, and
upon making payment to
the Receiver at Helena, for
the lot or lots to which such
person is entitled, the Receiver
shall grant a receipt there-
for, and issue certificates of
purchase to be transmitted
to the General Land Office
as in other cases of the sale
of Public lands.

3. And be it further enacted,

That the Register and Receiver
at Salina, after the Board of
Commissioners have heard
and determined all the cases
of preemption under the Act
to which this is an amendment
shall expose the residue of lots
of Public Land to the highest bidder
after advertising the same, in
two public newspapers at least
six weeks prior to the day of sale,
in the same manner as provided
for the sale of the Public Land,
in other cases; and after paying
to the Commissioner, the Compen-
sation hereinafter allowed them
and all the other expenses incident
to the said survey and sale the
Receiver of the Land office shall
pay over the residue of the money
he may have received from
the sale of lots of said land, by
preemption, as well as at public
auction into the hands of the
County Commissioner of Osage
County, to be expended by
them in the erection of Public
buildings, and the construction

of suitable wharves in the Town
of Salina ~

11. And Be it further enacted,
that the Commissioners appointed
to carry this Act into effect
shall be paid by the Receiver \$4
Dollars each, per day, for their
services, for every day, they
are necessarily employed,
"Approved July 2^d, 1836"

It was then admitted by the
Court for the defendants
that the defendants were
in the exclusive possession
of the lots described in the
Plaintiff's declaration at the
time of the bringing of this suit
and up to the present time but
demanded that the lots described in
the deed were the same lots
mentioned in the declaration
and of which they were in the
possession;

The Plaintiff then introduced
and examined as a witness

Bennett
Wadley

Star

Charles R. Bennett who testified
that he was a Surveyor
and was employed by the
Commissioners to Survey
the lots in Galena Ill
under the act of Congress
and as such Surveyor, in
connexion with James
Craig now deceased, he
did Survey and lay off
the lots in controversy.

35- That the lots mentioned in
the Deed from Guyard &
Phelps were laid off by the
agents of the United States
Lead Mines, and were called
and known as "Wharf Row"
and laid along the River
South of Warren Street acc-
ording to the Plat, the lots
ran into the River, and extend-
ed back so as to embrace a
part of lots eight and nine
by present Survey.

On surveying the lots
into lots, by order of the
Commissioners under the
Act of Congress, we paid

no attention & there six "Wharf
Row" lots, but now the street
over them paying no attention
to them but crowding them
back lots five and six (5 & 6)
in which row by being ^{present} crowded
back became a part of lots eight
and nine.

It was necessary to lay out
a street along the River and
in doing so we had to run over
these wharf lots, but lots eight
and nine, by present survey,
represent lots five and six in
"Wharf Row" when the street was
surveyed wharf Row instead
of running to the River were
pushed back, and a street
was laid out between the lots
as laid out, and the River,
and lots eight and nine was
surveyed in lieu of five and
six - the numbers eight and
nine by the new survey repre-
senting and being a part of
lots five and six by old
survey -

I took the lots known as
Wharf Row, for Water Street
under the order of the Com-
missioners in laying off
the Town, and lots eight
and nine was by order
of the Commissioners given
instead, and represented lots
five & six, and is a part of
the same ground, embraced
in original lots five and six.
I made three maps of the
Town of the Town. The one
before me was one of the
original maps. I never sur-
veyed the lots in Wharf Row
and from the Scale on the map
of old survey, think they were
about one hundred and twenty
feet deep, - Water Street as
laid out was forty feet
wide - the line of the lots
by the old and new survey
were not parallel - I judge
from the distance run back
that a part of five and six are
embraced in eight and nine.

The Plaintiff then introduced
and examined Milton Madleigh
who testified that he was City
Surveyor since 1849. Knows
lots ~~and~~ eight and nine
in Block B, in dispute.
Does not know of his own
knowledge anything about
lots five and six. Has
surveyed these lots, and at
one time made a diagram
and run a survey of them
with Capt. Craig. Since
1846 the street has been increas-
ing in width in front of these
lots and is now about fifty feet
wide at the junction on the
line at Market Street & is
probably eighty feet wide.

This being all the evidence
introduced by the Plaintiff

The defendants to maintain the
issue on their part introduced
and offered in evidence the
letter of administration granted

& Dickerson B, Morehouse on the
Estate of Robert P. Guyard which
are in the words and figures
following to wit;

State of Illinois }
Do Danies County } 2d

The People of the
State of Illinois to all to whom
these presents shall come greeting;
Know Be; that whereas Robert
P. Guyard late of the County of
Do Danies and State of Illinois,
did willstate as it is said, on
or about the 1st day of July 1834,
leaving at the time of his decease
goods and chattels and effects in
his 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
B. Morehouse of the County of Do
Danies and State of Illinois

Administrator of all & singular the
goods, and chattels, rights, credits
and effects which were of the said
R. P. Kingard at the time of his
decease, with full power and
authority to receive and collect
the said property and debts, when
soever 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.

Witness John Turney Judge of
Probate in & for the said County
of Ordanier, at his office in
Salina this 7th day of March
1836 —

John Turney Judge
of Probate

In the reading of said letters of
Administration in evidence the
Plaintiff then and there objected
which objection was overruled by
the Court and the same were
read to the Jury and the Plaintiff
excepted —

The defendants then introduced and read as evidence to the jury the same Laws of Congress relative to laying off a Town on Bear River and the amendments thereto which had been previously ~~read~~ offered and read by the Plaintiff

38
The defendants then introduced and examined as a witness, David Nann, who testified that John Dorney, Samuel Leach and himself were appointed and acted as the Commissioners to settle the preemptions to lots in Galena, under the act of Congress and the amendment thereto. That have been read as evidence in this case. That said Commission had a clerk, and kept a Record of their proceedings and identified the Record being the same in evidence in this case

That after they organized and appointed Mr Leach & Dorney the Town, they gave notice for all persons

to come in, and prove up, their
claims & lots

The Commissioners proceed
ed to act under the instructions;
and complied with the law and the instructions
they had. We required the party claim-
ing lots, to produce and file
proof in writing showing he
was entitled to the same under
the Law, and if we adjudged
the proof sufficient we granted
duplicate certificates, one to be given
to the claimant to go to the
local Land office, and enter
the lots mentioned therein at the
minimum price, the other to be
sent to the general Land office
~~But~~ R. B. Morehouse appeared
before the Commissioners and
filed a claim for himself and
as administrator of R. P. Guyard's
Estate to lots Eight and nine
now in dispute and the same
was awarded to R. B. Morehouse
and the legal Representative of
Robt. P. Guyard by the Commis-
sioners, no other person claimed the
lots

The Deed offered in evidence was never presented to me, and never before the Board or offered in evidence, before the Commissioners. And I can state to the best of my recollection that neither Phelps or any person for him ever offered that deed (the ^{one} offered and read by the Plaintiff) before the Commissioners and claimed said lots as I would have remembered the Deed if I had even seen it before, =

39

On Cross Examination this witness stated that there was an award in the first place to the legal representative of R. P. Guyard alone, which was reconsidered and the final award was to D. B. Morehouse and the legal Representative of Robert P. Guyard. This witness does not remember the reason of the change, but supposes additional proof was introduced - the first award may have been entered when only two of the Commissioners

were present, dont remember who
presented the claim, when the
first entry was made, afterwards
when Mr Beach came on they
examined them all and made
the final awards.

The defendant then offered in
evidence and read to the jury
the following certificate from
the Commissioners to adjust
the title to Lots in Salena:

Commissioner Office
Salena Illinois 20th
day of February 1838

We certify that the legal Represent-
atives of Robert P. Gayard and
Dickinson B. Morehouse are
entitled to preemption to Lot 16
lying fronting forty seven feet
on Water Street, and running
Westward 69 by 79 feet
Containing 08 of an acre
and that the same is of the
first class,
Given under our hands

date above written

John Turney }
Paul Wain } Commissioners
Paul Beach }

Commissioners Office Galena
Illinois 20th day of February
1838 }

We certify that the Legal Repre-
sentatives of Robert P. Gayard
and Dickenson B. Morehouse are
entitled to a preemption & lot 40
nine fronting forty seven feet on
Water Street, and running Westward
fifty eight by six nine feet con-
taining 0.67 of an acre and
that the same is of the first
Class.

Given under our hands the
date above written

John Turney }
Paul Wain }
Paul Beach }
Commissioners

The Dependant then offered in
evidence and read to the Jury
the following Record and pro-
ceedings of the General Land Office

Galena Nov 14th 1828
Mr R. P. Guyard and D. B. Morehouse
To Joseph Taylor For
Building a wall on Lots 5 & 6
Wharf Row 122 1/2 feet long & 4
feet high & 3 feet thick at
\$2.50 per perch \$148.31
Received Payment in full
Joseph Taylor

Commissioners Office Galena
22nd Nov 1836
D. B. Morehouse on his Oath
says in the year 1828, that
R. P. Guyard and D. B. Morehouse
improved Lots originally, 5 & 6
& under present survey, 8 & 9
Wharf Row, and paid to Joseph
Taylor \$148³¹/₁₀₀ for Building a
wall on said lots - and possessed
the same in the year 1829
D. B. Morehouse
Sworn to before the
undersigned Daniel Mann
John Turney

Joseph Daylor on his Oath says
that he is acquainted with the
facts set forth in the foregoing
Bill and affidavit and that they
are both true and correct

Joseph Daylor
Sworn to before the
undersigned

David Wain }
John Dumes } Commissioners

Commissioners Office Salem

Illinois 20th day of February 1838

41 We certify that the legal Representa
tives of Robert P. Gayard and
Dickinson B. Morehouse are
entitled to a preemption to Lot 10
Eight fronting forty seven feet on
Water Street and running Westward
by 69 by 79 feet, containing
10¹/₂ of an acre, and that the same
is of the first class

Given under our hand
the date above written

John Dumes }
David Wain } Commissioners
Samuel Beech }

Commissioners Office

Galena Illinois 20th day of February 1838
We certify, that the legal representatives
of Robert P. Guyard and Dickinson
B. Morehouse are entitled to a
presumption to Lot 10th nine fronting
47^{feet} on Water Street, and running
Westwardly 58 by 69 feet contain-
ing, 067 of an acre; and that
the same is of the first class,
Given under our hands the day above
written

John Turrey }
David Mann } Commissioners
Saml Beech }

N^o 224 } Land Office Galena
Illinois 20th day of February 1838
I do hereby certify that the legal
representatives of Robert P. Guyard
and Dickinson B. Morehouse
according to the Certificate of the
Commissioners then appointed to
investigate the title of Lots in the
Town of Galena, are entitled to
a presumption to Lot 10th nine
fronting forty seven feet on

11

Water Street and running west-
wardly & by 69 feet, containing
.067 of an acre, and that
the same is of the first class,
Henry B. Druett

Register

Receivers Office Galena
No 2244 Illinois, January, 20 1838

Received from the legal
representations of R. P. Gayard
and D. B. Woodhouse, of St.
Lawrence County, Illinois, the
Sum of Five Dollars, in cents
being in full payment for Lot No
nine in Water Street, containing
 $\frac{.067}{100}$ of an acre, in the Town of
Galena

\$5.00

John Deament
Receiver

No 2243 Land Office Galena
Illinois Feb, 20 1838

It is hereby certified, that, under
the provisions of the Act of Congress
approved on the 2^d day of July,
1836, entitled; An act to amend
an act, entitled, An act author-
izing the laying off a Town

42

on Bear River, Green River) in
the State of Illinois, and for
other purposes, approved fifth
February, eighteen hundred and
Twenty nine," the legal repre-
sentatives of Robert P. Guyard
and Dickinson B. Morrill of
DeKalb County, Illinois
have, this day, purchased of
number nine, fronting 47
feet on Water Street and
running Westwardly 38 by
69 feet containing fifty ^{square}
thousandths of an acre in
the Town of Salem for the
sum of \$100 & 00/100, which
they have paid in cash, to
the Receiver of Public Money
(it appearing by the certificate
No. of the Commissioners app-
ointed under the said act,
that they were entitled to
become the purchasers of the
said lot as a preemption right
for the sum, it being in the
first class of lots)

Now Know Ye that on the

presentation of this Certificate to
the Commissioner of the
General Land Office, the
said legal representatives of
Robert P. Ginzard and Dick-
inson B. Morehouse shall
be entitled to receive a patent
for the said lot.

Henry B. Pratt
Register of the General
Office —

(Endorsement on the preceding Certificate
of the Register is the following: Cer-
tificate of the Receiver.)

Land Office Dixon Ill.

July 18, 1845.

It is hereby certified, that, on the 15th
of Feb, 1828, the legal Representatives of
Robert P. Ginzard & Dickinson B. More-
house, purchased the within, described
lot as set forth within, for which they
shall be entitled to receive a Patent
upon Presentation of the Certificate to
the Commissioner of the Gen'l Land
Office.

John Bennett Receiver

N^o. 225. Land Office Galena

Illinois 20th day of Feb'y, 1838

I do hereby certify, that the legal representatives of Robert P. Guyard and an old Dickenson B. Morehouse according to the certificate of the Commissioner, who is appointed to investigate the title to lots in the Town of Galena, are entitled to a preemption to Lot No Eight fronting forty seven feet on Water Street and running Westwardly 69 by 79 feet - containing .08 of an acre; and that the same is of the first class

Henry B. Pratt
Register,

N^o. 225

Receiv^{er} Office Galena

Illinois Feb'y 20th 1838

Received from the legal Representatives of R. P. Guyard and D. B. Morehouse, of Jackson County Illinois the sum of Five Dollars in cents being in full payment for Lot No Eight in Water Street containing .08 in the Town of

Galena
\$300

John Reimund,
Receiver

N^o 225

Land Office, Galena Illinois,
Feb 20th 1838

It is hereby certified, that, under the provisions, of the Act of Congress, approved on the 2nd day of July, 1836, entitled; "An act to amend an act entitled" "an act authorising the laying off a Town on Bean River, (Beaver River) in the State of Illinois, and for other purposes, approved Fifth February, eighteen hundred and Twenty nine;" the legal representatives, of Robert P. Guyard and Dickerson B. Morehouse, of Co. Davies County, Illinois, have, this day purchased Lot numbered Eight, fronting 49 feet on Grater Street and running Westward by 69 by 79 feet - containing eight hundredths of an acre, in the Town of Galena, for the sum of Five Dollars, which they have paid in cash to the Receiver of Public Monies;

44

(it appearing by the Certificate, etc.
of the Commissioners appointed
under the said act, that they
were entitled to become the pur-
chasers of said Lot, as a prescriptive
right, for that sum, it being in
the first class of lots.)

Now know Ye, that, on
the presentation of this Certificate
to the Commissioner of the
General Land Office, the said
legal representatives of Robert
P. Ginzard, and Dickerson B.
Morehouse, shall be entitled to
receive a Patent for the said Lot,
Henry B. Pratt

Register of the Land Office
(Endorsed ^{on the} ~~to~~ above)

Land Office Dixon Mo.
July 10th, 1848

It is hereby certified, that on the
20th of February, 1838, the legal
Representatives of Robert P. Ginzard
& Dickerson B. Morehouse pur-
chased, the within described Lot,
as set forth within; for which
they shall be entitled to receive

a Patent, on presentation, of
this Certificate to the Commission
of the General Land Office;
John Belmont
Receiver

General Land Office
May 3rd 1856

I Thos. A. Kendrick's Commission
of the General Land Office, do hereby
certify, that the annexed are
true and literal exemplifications
of the original papers on file in
this office.

In testimony whereof I have
hereunto subscribed my name
and caused the Seal of this
Office to be affixed at the City
of Washington on the day and
Year above written

Thos. A. Kendrick's
Commission of the
General Land Office

[Faint, illegible handwriting, likely bleed-through from the reverse side of the page. The text is arranged in several horizontal lines across the page.]

In the admission of which evidence
the Plaintiff then and there
objected, and the Court overruled
the objection, and admitted
said evidence, and the plaintiff
excepted,

The Defendants then offered in
evidence the petition of R. B. Morehouse
as administrator of R. P. Gingard
to the Circuit Court praying for
leave to sell the Real Estate of
the deceased & pay debts against
the estate, in the words and figures
following & wit:

46 To the Hon. the Circuit Court in
and for the County of DoDange
in the State of Illinois -

The Petition of Dickerson B.
Morehouse of the County of DoDange,
aforesaid, Administrator of all
& singular the rights credits &c
of Robert P. Gingard late of said
County, deceased, most respect-
fully represents, that on the
7th day of March instant
there was granted to your
petitioner, by the Judge of Probate

of the said County, letters of adminis-
tration in due form upon the
Estate of said Robert P. Guyard
deceased; that he knows of no
personal 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, More
house & Co for the use of the assignees
of Mon Thomas of Philadelphia the
sum of 3200 dollars 75 cents
with interest on the notes a list
of which and when due is hereto
annexed - which debt is admitted
to be just and due and is the
only claim, as yet presented &
your Petitioner, who further re-
presents 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 four acres

lots, in the Town of Salem
namely - Lot number three
(103) of Wharf Row so called
granted to said Gungard by
permit dated March 12th 1828
also lot number four (104)
adjoining the above granted
to said Gungard by Permit
dated March 23rd 1828 -

Also Lot number five (105)
in said Row granted April
6th 1828 by permit to Nathaniel
Johnson and by him transferred
and assigned to said Gungard
December 11th 1828 - Also lot
number six (6) adjoining
the above granted by permit
dated September 18th 1828 to
John Wond & by him transferred
November 29th 1828 to said R. P.
Gungard 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 Salem;

47
Town petitioner further
represents, that said Robert P.
Gungard died without leaving

any widow, child or children
or devisees to his knowledge to
serve any notice of this appli-
cation upon, but he has given
Public notice as the law requires,
in the nearest newspaper
(a copy of which is annexed)
of his intention of of the present
application — in consideration
of all which facts hereinbefore
stated, he prays the aid of this
Court in the premises; that you
will order & decree a sale of the
right title claim & interest of said
Robert P. Gungard in & to the
Dower lots hereinbefore described
for the payment of the debts of
said estate, according to the
statute in such case made
and provided &c

R. B. Morehouse
Admin'r &c

List of debts given to Gungard
& Gungard Morehouse &c
by Robert P. Gungard viz —
all dated at Salem Sept: 22nd 1829

1 st	due Nov	1830	for	\$ 500.00
2 nd	due Nov	1830	"	500.00
3 rd	due Nov	1831	"	200.75
4 th	due Nov 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>\$ 3200.75</u>

With interest thereon from date
day became respectively due

R. B. Morehouse
Adminr

Endorsed "Filed August 15th 1836"
S. Snider Clerk

48

Also that is written thereon as
follows:

State of Illinois }
For Dams & Corns } Sch

I do hereby certify
that Dickerson B. Morehouse
has been duly appointed, Admin-
istrator of the Estate of Robert
P. Gurnard deceased, Gwinnett
my hand and seal this 18th
day of August 1836

John Denny J. S. J.
late Judge of Probate

In the admission of which evidence
(as the defendants did not propose
to follow up the evidence and
show that any order was
ever made or any ^{further} proceedings
had) The Plaintiff then and
there objected, the Court overruled
the objection and allowed the
Petition to be read as evidence
to the Jury and the Plaintiff
then and there excepted,

~~The defendants then ~~did not~~
~~also~~ introduced and examined
Charles Hempstead, as a witness~~

The defendants then offered
and read in evidence to the
Jury the Depositions of Wm
Hempstead and the Patents
for lots eight and nine, as follows:
State of Illinois }
Dadams } P Phelps vs Smith
Experiment

In Circuit Court, said County
Charles S. Hempstead, being
duly sworn, states that Wm
Hempstead is a witness in

the above cause, and this affidavit
is informed and believed that he
is about to depart this State
and will not be here at the
next term of the Court, He
therefore desires & have his
deposition taken according
to the Statute in such case
made and provided -

Subscribed & sworn
before me this 1st day of October 1853

Wm. C. Postwick
J.P.

Phelps vs Smith & Experiment in
Circuit Court of D.C.

J. Stevens & J. Adams

Attys for Plaintiffs in said
Cause of Phelps vs Smith:

Take notice that on Tuesday the
25 day of October 1853, I shall
take the deposition, of Wm. C. Postwick
a witness for the defendants in
the above cause before Wm. C.
Postwick Esq, a justice of
the Peace, in and for the
said County, between the hours
of nine in the morning, and

On in the Evening of the said
day, you can then again come
attend and cross examine if
you see proper

Washington Atty for
Smith Deft

Endorsed "accepted service of Atty
within Oct 14th 1853

J. P. Stevens

Deposition of William Hempstead of
Jo Daviess County, in the State of
Illinois, a witness produced sworn,
and examined before William C.
Bastwick a Justice of the Peace
in and for said County, at his
office at Salina, in said County, between
the hours of 9 o'clock in the morning
and 6 o'clock in the evening, on
the 20th day of October 1853 in pursuance
of the annexed notice, to be used,
if needed, in the trial of a certain
cause, depending in the Circuit
Court of said County, wherein
William A. Phelps is plaintiff and
Bradner Smith defendants, in
ejectment on the part and
behalf of defendant

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

Interrogatory 1st Are you acquainted
with Dickinson B. Morehouse,
formerly residing in Galena, if
yea, how long have you known
him:

Answer, I have known said Dickinson
B. Morehouse ever since the year
1828,

Question 2nd Have you ever acted as
agent for said 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 B.
Morehouse, since the year 1840,
and while acting as his agent
he left with me a number of
duplicate ~~certificates~~ receipts of
the Receiver of the Land Office
for the District of Land, subject
to Sale at Dixon Galena Illinois
upon which I received the

patents and amongst which
was one for lot No 3 (3)
on Main and Water Streets
in the late Town of Salina &
the legal Representatives of Robert
P. Snyard which said Patent
is here now shown to me, and
which I annex hereto, and
mark it with the letter "A" &
be taken as part of this my
deposition.

Also one other patent issued
to the legal Representatives of
said Robert P. Snyard for lot
No Seven (7) on Water Street
in the late Town of Salina
and which said patent is now
here shown to me, and by me
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. Snyard, and Dickerson
B. Morehouse for lot No Eight
(8) on Water Street in the late
Town of Salina, and here now

Shown to me, and hereto annexed
and marked letter "C"
and also taken as part of
my deposition, and also one
other patent, issued to the legal
representatives of said Robert
P. Gunzard, and Dickerson B.
Morehouse for lot No. nine (9)
on Water Street, in the City
of Geneva, and now hereto shown
to me, and hereto annexed
and hereto annexed marked
"D" and also taken as part of
this my deposition,
All of which said patents, I re-
ceived from said Land Office at
Dixon Illinois - with the dupli-
cate receipts of the Receiver for
said lots, I also deposited or left
with the then Receiver of the Land
Office at Dixon, the duplicate pre-
emption certificates for said lots
signed by the Commissioners -
all of which I received from
said Dickerson B. Morehouse
for the purpose of procuring
from the Land Office, the
patent for said lots for said

Division B. Morehouse
W^m Hempstead

State of Illinois
Old Davis 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 in me at the time
and place mentioned in the
Caption thereof, that the said
witness was first duly sworn
and that the same was care-
fully read to said witness
and signed by him and
that he was then again finally
sworn that

Witness my hand this 25th
day of October 1853
W^m C. Postwick Jp.

October 31' 1853 -

The deposition 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 pro-
pounded, the Deems are opened
and Isaac P. Stevens attorney
for the Plaintiff propounds to
said Witness the following cross
interrogatories & wit:

The said attorney objects to
all that part of the answer
of witness to 2nd interrogatories
in chief that relates to lot 107
or to patent for the same —

Question 1st " When does Dickinson B.
Morehouse now reside, or is he
stopping in Galena

Answer — I do not know where he
5-2 now resides his family are in
Galena, at present, and I under-
stand that he intends to make
Galena his residence

Question 2^d " In acting as 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 P. Buzzard
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 3^d 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, after-
wards in settlement of our
accounts.

Question 4^a Did you ever procure from

the Dixon Land Office, patents
for any other persons than D. B.
Morehouse, and if so
how often have you so acted
and how many patents pro-
cured 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 for
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 inter-
ested in the land, directly or
indirectly - I cant say how
many, cant say whether once
or twice or how many

Just 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 the result of this suit
W^m Hempstead
"

State of Illinois
J^d 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 the
31st day of October 1853 by
consent of parties, that said
Hempstead was first duly sworn
and that said cross 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 to do
Witness my hand this 31st day

of October 1853

M^{rs} E. Bostwick B. J. P.,

The Patents referred to in the annexed
Depositions of M^{rs} Hempstead are as
follows:

One marked "A" referred to as follows
& wit:

Receivers Receipt of } The United States
Register's Certificate } of America
No. 223 } To all to whom
these presents shall

Come Greeting: Whereas the Legal
Representative of Robert P. Guyard
of Cook 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
had been made by the said Legal
representative of Robert P. Guyard
as aforesaid 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 of or Bear River (Bear
River) in the State of Illinois

and for other purposes approved
fifth February 1829, for lot num-
bered three on Main and Water
Streets containing eight hundred
of an acre in the Town of Salem
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,
the said lots above described
to have and to hold the same
together with all the rights, privileges,
immunities and appurtenances
of whatsoever nature thereto
belonging, unto the said Legal
Representatives as aforesaid and

to their heirs and assigns forever
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 twentieth
By the President

James K Polk

Attest
C. Seal
C. Seal

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

5-5- Recorded Vol 1 }
Page 223 }

Marked (B) Patent

Receiver Receipt & The United States
Registers Certified of America,
No. 222 } To all persons
these presents shall
Come Greeting: Whereas the legal

representatives of Robert P. Guyard
of Jackson County Illinois have
deposited in the General Land
Office of the United States a certificate
of the Register of the Land Office
at Salina whereby it appears
that full payment has been
made by the said legal representat-
ives of Robert P. Guyard as afore-
said, according to the provisions
of the act of Congress of the
2^d day of July 1826 entitled
an act to amend an act
entitled an act, authorizing
the laying off a town on
Bear River (Haver River) in
the State of Illinois, and for
other purposes, approved fifth
February 1829 for lot numbered
seven, on Water Street contain-
ing nine hundredths of
an acre, in the town of Salina
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 ~~Be~~ 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
the said lot above described;
To Have and to Hold the same
together with all the rights, privileges,
immunities, and appurtenances
of whatsoever nature, thereto
belonging, unto the said Legal
Representatives as aforesaid and
to their heirs and assigns forever
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 Government
and 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 seventeenth

By the President

James K Polk

By J. Knox Walker Secy
of the General Land Office
Recorded Vol 1

Page 222

Patent Marked (A) &
as follows

Receivrs Receipt & the United
Registers Certificate of States of
No 228. Annua

To all to whom
these presents shall come greeting;
Whereas the Legal Representatives
of Robert P. Sengard and
Dickinson B. Morehouse of the
State of Illinois have deposited
in the General Land Office of the
United States, a certificate of
the Register of said Land Office
at Galena, whereby it appears
that full payment has been

made by the said Legal Repre-
sentatives as above named,
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 (Haver
River) in the State of Illinois, and
for other purposes, approved fifth
February 1829 for a Town and
eight fronting lots situated
on Water Street, and running
westwardly fifty nine, six
seventy nine feet containing
eight hundredths of an acre
in the Town of Salina -
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 Represen-
tatives of Robert P. Gayard 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 made and provided
Have ^{given and} granted and by these
presents do give and grant
unto the said Representatives
of Robert P. Gayard and Dick-
erison B. Morehouse and to
their heirs, the said lot above
described; Do Have and do Hold
the same, together with all the
rights, privileges, immunities,
and appurtenances of what-
soever nature, Unto belon-
ging unto the said Representatives
of Robert P. Gayard and
Dickerson B. Morehouse
and to their heirs and assigns
forever, as tenants in common
and not as joint tenants.

In testimony whereof I have
R. Polk President of the United
States of America, 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

Bein 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 Sec'y

J. H. Laughlin Recorder of the

General Land Office

Recorded Vol 1 3

Page 225 3

Patent marked (R) is as
follows to wit:

Received of the United
Register of the United States of America
No. 224 3 To all whom these

5-8 presents shall come greeting,
Whereas the legal Representatives of
Robert P. Ginzard and Dickinson B.
Morehouse of Cook 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 as above named,
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 (Bear
River) in the State of Illinois
and for other purposes approved
fifth February 1829 for lot
numbered nine fronting forty
seven feet on Water Street,
and running westwardly fifty
eight, by sixty nine feet, con-
taining sixty seven thousandths
of an acre, in the Town of Salem
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 Representa-
tives of Robert Pluzard and
Dickinson B. Newhouse as afore-
said, Now Know Ye that whereas
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 Represent-
atives, of Robert P. Gayard 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, immunities
and appurtenances of what
soever nature the same
belonging, unto the said Rep-
resentatives of Robert P. Gayard
and Dickinson B. Morehouse and
to their heirs and assigns forever
as tenants in common and not
as joint tenants

5-9
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 December in the
Year of our Lord one thousand
eight hundred and forty six

and of the Independence of the
United States the Twentieth,
By the President

James K. Polk

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

Recorded vol 13

Page 224

The defendants then introduced
and examined Chas. Humph-
reys as a witness who
testified that he had acted
as the agent and attorney of
D. B. Morehouse one of the
defendants and as such attorney
had made out the petition for
him as administrator of R.
P. Snyard Estate asking
for the sale of these lots among
others - Whiters is the owner
of the other half of these lots
in controversy -

For several years ago these
lots were a mud hole - Drained
them many years ago and

have had charge and possession and
have drawn the rent ever since
of these lots - Since the first
corporation tax was paid in
1836 - I have paid the taxes
and drawn up the Rent up
to the present time for Morehouse
as administrator of R R Snyard's
Estate, The Plaintiff in this
case was the first man to dis-
pute the title to the lots in 1847

60 I was acting for Morehouse as
administrator of Snyard -
The lots have always been in
my possession for myself
and as agent of Morehouse as
Adminr of Snyard and are
now in my possession -

I was frequently before the
Commissioners for myself
and others, I know that
Morehouse represented lots eight
and nine before the Commission-
ers

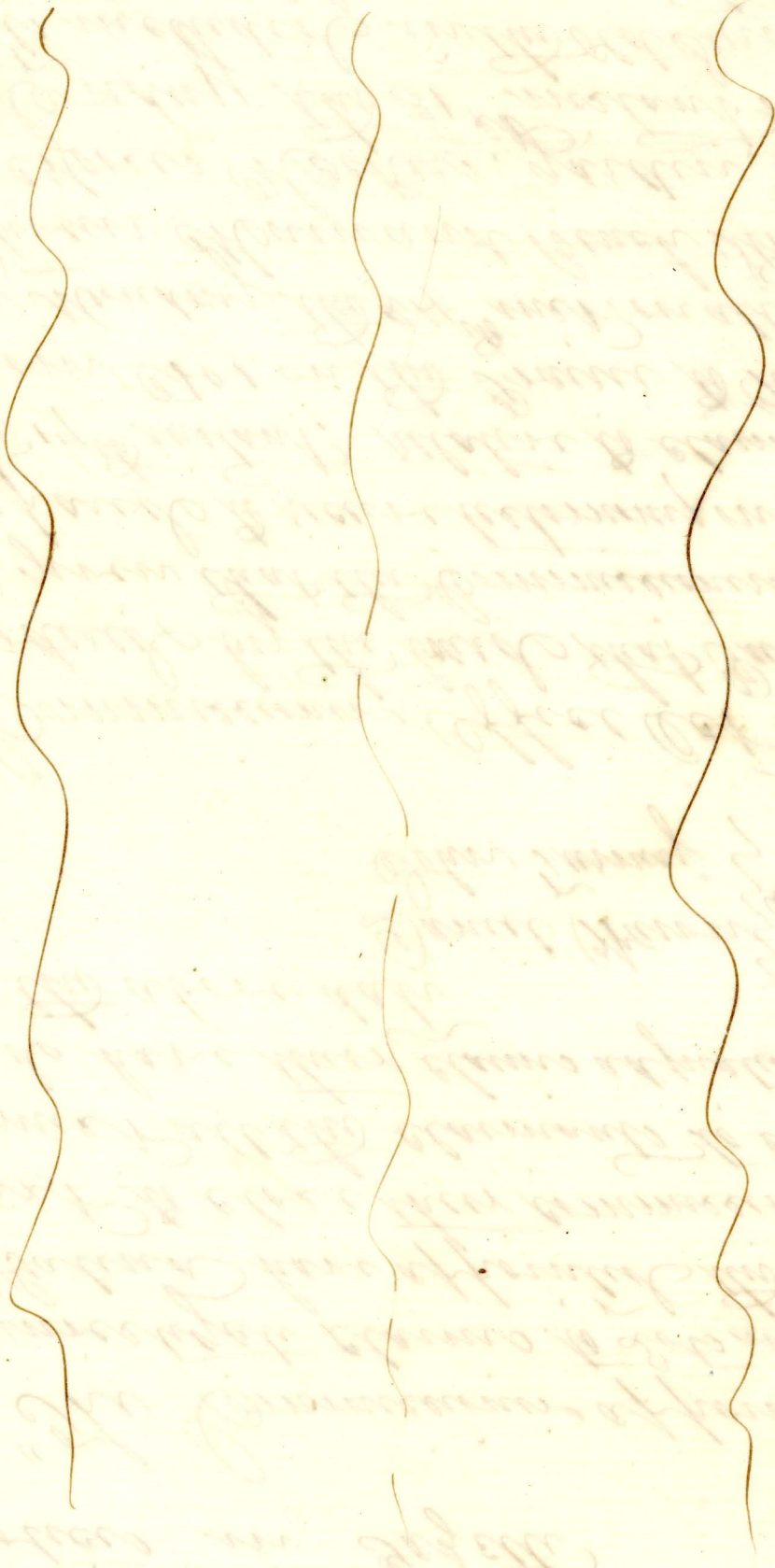
The Defendants then offered
and read in evidence the following
notices in Gazette

"The Commissioners appointed
to investigate claims to Lots in the town
of Galena have appointed the 8th of April
next to close their commission, and
request all the claimants to come forward
and have their claims adjusted prior
to the above date

Daniel Hawon }
John Turney } Commissioners

61 "Commissioners Office Oct 5, 1836
Ordered by the board that Public Notice
be given that the Commissioners will be
prepared to receive testimony on Monday
the 17th instant, 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 Moores, garden, and on
Monday the 31st instant on all other
Lots included in the old Survey within
the limits of Galena and that the board
will sit from day to day until the
testimony is completed

John Turner / Commissioner
Daniel Warrick



The defendants then offered and
read in evidence a lease for the said
Lots to Bradner Smith
Check with box copy found,

Which is as follows

This Indenture made
This Thirty first day of July A.D. 1857
Between Charles Hempstead for him-
self and as agent of do R Morehouse
late of Galena Illinois and Bradner
Smith of same place Witnesseth that
The said CH Hempstead, and do R
Morehouse for the consideration hereinafter
expressed, doth hereby demise and
Lease unto the said Bradner Smith
those certain Lots of ground in the City
of Galena to wit Lots no 18/ 19/ 20/ 21/ 22/ 23/ 24/ 25/ 26/ 27/ 28/ 29/ 30/ 31/ 32/ 33/ 34/ 35/ 36/ 37/ 38/ 39/ 40/ 41/ 42/ 43/ 44/ 45/ 46/ 47/ 48/ 49/ 50/ 51/ 52/ 53/ 54/ 55/ 56/ 57/ 58/ 59/ 60/ 61/ 62/ 63/ 64/ 65/ 66/ 67/ 68/ 69/ 70/ 71/ 72/ 73/ 74/ 75/ 76/ 77/ 78/ 79/ 80/ 81/ 82/ 83/ 84/ 85/ 86/ 87/ 88/ 89/ 90/ 91/ 92/ 93/ 94/ 95/ 96/ 97/ 98/ 99/ 100/ all in
Block B, on West side of the River
as designated on Plan of survey of
said City To hold for the Term of one
year and three months from the date here
of signing and paying Therefor at
the end of every Three months during the
said Term, unto the said Hempstead
and Morehouse or their assigns the sum

of Eighteen ²⁵ Dollars during the
continuance of this lease and the said
Bradnor Smith covenants to pay the
said Rent in manner aforesaid and
deliver up the said premises to the
said Hempstead & Merchoner or their
attorney, peaceably and quietly, at the
end, of the said Term in as good con-
dition as the same now are or may be
put into by the said Bradnor Smith
reasonable wear and tear, and tear
and, fire and other casualty excepted
provided always, and these presents
are upon the express condition that if
the said rent or sum of Eighteen ²⁵
Dollars or any part thereof shall be
behind and unpaid for the space of
Ten days next after the said Term
of Payment wherein the same is app-
ointed to be paid as aforesaid or if
the said Bradnor Smith shall sub-
lease the said premises without the
consent of said Hempstead & Merchoner
as hereinafter provided that then and
in either of said cases it shall and
may be lawful for said Hempstead
& Merchoner their heirs and assigns
into the said premises to enter and

63
The same to have again, repossessed,
and enjoy and anything hereunto
to the contrary thereof notwithstanding
and it is further agreed by the parties
hereto that the said Bradner Smith
his executor and administrator shall
not nor will at any time or times du-
ring said Term again or set nor,
underlease or underlet said premises
premises to any other person, and the same or in
any manner part with the occupation
or possession of the same without the spe-
cial licence and consent of said
C. S. Hempstead & L. E. B. Morhouse then
being or again in writing under his
or their hands and seals first had
and obtained.

~~And it is further agreed that at
the end of the Term of this Lease, said
Bradner Smith or his assigns shall have the
privilege of renewing said Lease, estate
& the appurtenances from said Lots 8, 9, 10.~~

In Witness whereof we have hereunto set
our hands and seals the day and year
first above written

J. Smith Com
Of Hempstead Lead
D. B. Corbourn Com
Of Hempstead Lead

1852 March 2, By cash \$18 75
Augt 19, " accr 24 00
" " due bill to augr 42 75
32 25 75.00

March 31 1853 paid in full to
1 nov - 1852 \$18 75

This being all the evidence (with
the original Map of the Town
of Sausal) on the trial of said
cause on the part of the
Plaintiff and Defendants respectively —

The Plaintiff then asks the Court to instruct the Jury as follows:

If they believe from the evidence in this cause, that Guyard by his Deed in 1829 sold and transferred all his interest to Phelps the Plaintiff in wharf Lots 5 and 6 of old survey, and that Lots 8 and 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, and the defendant Smith was in the possession of said Lots 8 and 9 at the time of bringing this suit, then the Judge should return a verdict for the Plaintiff.

If the Jury believe from the evidence that Guyard by his deed in 1829 transferred all his interest in the lots in controversy to Phelps & that Guyard had no estate interest or property in the lots in controversy after the date of his deed to the plaintiff in 1829, then the right of Guyard which had been sold and transferred by him to the plaintiff could not ripen into a legal title in favor of Guyard.

heirs or administrators 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 pre-emption was granted by the commissioners to the legal representatives of said Guyard and an entry made in the Land Office at Dixon of Lots 8 & 9 of present Survey by the legal representatives of Guyard to the undivided half of Lots 8 & 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 suit, then the Jury should find a verdict for the Plaintiff.

Gives

Gives

65-
Given
The Plaintiff asks the Court to
instruct the Jury
1. That if the Jury believe from the
evidence that Lots eight and nine
as mentioned in the plaintiffs dec-
laration was awarded by the Comm-
"issurers & the legal representatives of
Robt P. Guyard and Dickerson
B. Morehouse in the place of old
Lots five and six in or near row,
and if the Jury further believe that
the Plaintiff is the grantor and "Legal
Representative" of Robt P. Guyard
& the undivided half of said Lots
and that the defendant was in the
possession of the Lots at the comm-
"encement of this suit then the Jury
will find for the Plaintiff

Given
2. That the decision of the Supreme
Court of the State of Illinois until the
same is reversed and annulled are
of binding effect and this Court and
Jury are bound by said decision.

god If the Jury believe from the
evidence that Guyard executed
to the Plaintiff a deed of the Lots
in controversy in 1829 and that

Guyard had no estate interest or property in the Lots in controversy after the execution of his deed in 1829. But that the right thus transferred passed all his interest in said Lots to the Plaintiff and that said Lots had been awarded by the Commissioners to the "Legal Representatives" of said Guyard and that Phelps as granted under said Deed is the legal representative of said Guyard. Then the Jury will find for the Plaintiff.

4th If the Jury believe from the evidence that the right of preemption to the undivided half of Lots eight and nine of the present survey was granted by the Commissioners by virtue of improvements and occupation of Lots five and six in whole from 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 from the ^{evidence} ~~execution~~ that the Plaintiff

Charles Phelps

Guyard

GIVEN

Phelps under Guyards Deed to him is the "Legal Representative" 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 rested in Phelps notwithstanding Moorehouse's agent may have received the Patent from the Land Office. But the Law will intend he received it for Phelps and they will find for the Plaintiff.

66

GIVEN

1st If the Jury believe from the evidence that Guyards was entitled to a preemption and that he sold and transferred his interest in said Lots 8 & 9 to the Plaintiff Phelps in 1829 and afterwards the Commissioners awarded and the Government issued the Patent to the Legal Representative of said Guyards, then Phelps as grantee of Guyards is the Legal representative, and the Jury should find for the Plaintiff.

6th The Legal representative as used
in this law, is the party in interest
whose identity was uncertain and who
succeeded to the rights of Guyard
It means the party who legally
represents the interest which was
once vested in Guyard - and
by virtue of which right the law
authorized the Lots to be entered
and if the Jury believe from the
evidence that Guyard was intitled
to a preemption to the Lots in controversy
and parted with all his interest to
Phelps by his deed in 1829 then Phelps
is the legal representative and the
Jury should find for the Plaintiff

To the giving of which instruc-
tions by the Court the defendants
then and there objected and ex-
cepted

The Defendants then asked the Court to
instruct the jury as follows

William A Phelps The defendants, by their
vs Counsel pray the Court
Bradner Smith et al to instruct the jury as
 follows

69. 1 That the true Construction of the Act of
Congress of the 5th of February 1829 in its
second section is that the "Persons Legal"
Representative or Representatives" used
in said section mean such person
or persons as may be the Administrator or Administrators Executor or
Executors of the party who may before
have obtained from the agent of the United
States a permit to occupy any of the
Lot or Lots in the Town of Gallena (The
Town named in the Act) or who shall have
actually occupied and improved any such
lot or lots situated within the Tract of
Land authorized by the Act to be laid
off into lots, and that such person and
no other, was authorized under such
permit, or occupation and improve-
ment to purchase under that section
and that consequently if the jury find
that the Defendants Dickinson

B Morehouse was the Administrator of Robert D Guyard mentioned in the evidence, and that there never was any ~~evidence~~ other Administrator or executor of said Guyard, and that he as such Administrator paid the Purchase money for the lots in dispute to the Receiver at Gilena and obtained from him a Receipt for the same and a certificate of purchase for such lots and that these were transmitted to the general Land office and a patent issued accordingly that then the said Defendant has title to the lots under said Act and its supplement of the 2nd July 1836 and that therefore the plaintiff is not entitled to Recover

2- That if the Jury find from the evidence that Dickison B Morehouse was as stated in the first Instruction the sole Administrator of Guyard and that in that Capacity he claimed before the Commissioners Appointed under the Supplementary Act of the 2nd July 1836 to be entitled to the lots in dispute by preemption title and that the said Commissioners heard

Refused

and considered all the evidence offered
in support thereof and that neither
the plaintiff nor any other person ever
claimed the same before said Comm-
-issioners at any time and if they further
find that the Commissioners did
thereupon decide said Administrator
to be entitled to said Lots as the
Legal representative of Guyard
and did file with the Register and
receiver at Galena the Testimony
in the Case together with their
Certificate in favor of said Adminis-
-trator and that he did thereupon
and as Administrator of Guyard pay
the purchase money for said Lots to
such receiver and obtain his rece-
-ipt therefor and his certificate of
purchase and that these were by
him transmitted to the general
Land Office And the Patents issued
offered in evidence by said Defendants
was sent to him and have been
in his possession ever since
claiming to be owner of the Lots there-
-in mentioned, And that these are
the Lots in dispute in this case
that when the said Defendant is the

Refused

68

owner of said Lots by virtue of
said facts and according to the
true construction of the said Act
of Congress of the 3rd February 1829
and the 2nd July 1836, and that therefore
the plaintiff is not entitled to recover
Endorsed

Filed Nov 11th 1854
J. M. R. Clerk

Which said instructions were
refused by the Court - & the
refusing to give said instruc-
tions by the Court, the defend-
- ants then and there excepted -
and afterwards and after
a short absence, the jury re-
- turned the following verdict;

We the jury find the
Defendants guilty of unlawfully
withholding the possession
of the undivided half of lots
8 and nine as described in
the Plaintiff's declaration, and
find the estate established
in the Plaintiff to be an estate
in fee, and we also assess
his damages for withholding
the premises at \$184,37½

(Signed)

Wm Hogan
Alex^r McKillups
Dessey Holman
Henry Vanvorttenturf
Ludwig Lersch
James Martin
Orson A Hunt
J. D. Giddens
Wm De Camp
James Lawrence
Charles Northam
David James

Whereupon the defendants moved
the Court for a new trial and filed the
69 following reasons, to wit:

Wm A. Phelps,

v
B. Smith & R. B.
Warehouse

3
3 In the Circuit Court
3 of the Oct Term
3 1858

Now at this day
come the defendants, by Washburn
Weigley & Perrett and move the
Court for a new trial in this cause
for the following reasons

1, The verdict is against the
evidence, and the weight of

vidence

2 The Court gave improper instructions to the jury at the instance of the Plaintiff.

3 The Court refused the instructions of the defendants which should have been given to the jury
Washburne, Higley & Duvett
Attys for Defs.

And the Plaintiff then and there by leave of the Court entered a remittance for the damages found by the jury - which motion for a new trial was overruled by the Court, to which ruling and decision ^{by} the Court in overruling said motion for a new trial the defendants then and there excepted, and thereupon the Plaintiff moved the Court for judgment on the verdict of the jury.

And thereupon the Plaintiff
moves the Court for Judgment
on the verdict of the Jury.

Which Judgment is in the words
and figures following To wit:

William A Phelps

vs

Ejectment

Bradner Smith and
Dickinson B. Morehouse }

Now at this day comes
the Plaintiff by his atty and enters
a remittitur for the sum of One hundred
and Eighty four Dollars and thirty seven
& one half cents, and now come on to be
heard the motion heretofore filed by the
Defendants by their atty for a new trial
herein which motion after arguments
argument is overruled by the Court to
which ruling & decision of the Court
the the Defendants by their attorney & atts
and the Plaintiff by his atty moves the
Court for Judgment upon the verdict
of the jury heretofore entered, It is
thereupon considered by the Court that
the Plaintiff have and recover
possession of said Land & Premises

To wit: The undivided half of Lot
number nine (9) and the undivided
half of Lot number Eight (8) said Lot
Eight fronting forty seven feet more
or less on Water Street and running
westwardly sixty nine by seventy nine
feet more or less containing $\frac{1}{100}$ of an
acre be the same more or less, and said
lot nine fronting forty seven feet
more or less on said Water Street &
running westerly fifty eight by
sixty nine feet (58 by 69) containing
 $\frac{1}{100}$ of an acre more or less. Shown
& designated on the Plat of the late
Town now City of Galena said
premises being situated in the county
of Jo Daviess and State of Illinois
and it is further considered by the
Court that the Plaintiff have and
recover of the Defendants his costs
by him about his suit in this behalf
expended and that Execution issue
therefor and the Defendants by their
attorney prays an appeal to the Supreme
Court which is granted conditioned
that said Defendants file an appeal
Bonds with the clerk, with

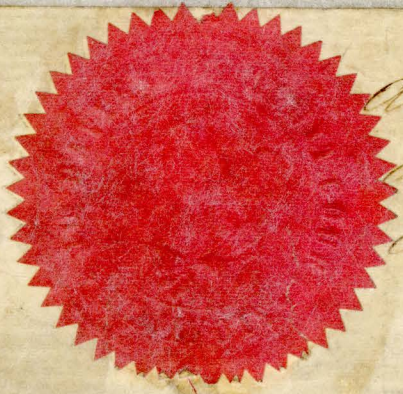
Charles S. Comptrol as security in
the sum of One thousand Dollars
in thirty days from the rising of
Court.

And the Defendants demur
and are excepted and pray
that their Bill of Exceptions
may be signed and sealed
by the Court in pursuance of
Law

Which is accordingly
done

Benj R Sheldon

71
State of Illinois }
In Davis County } I Wm R Rowley Clerk of
the Circuit Court in and for the County
and State aforesaid hereby ^{certify} the foregoing
to be a true and correct manuscript
from the records and papers on file in my
office of all the proceedings which were
had in the said Circuit Court in the
aforesaid case of Wm A Phelps vs Braden
Smith et al; since the return of the same
to this Court from the Supreme Court of Ills.
In testimony whereof I have
hereunto set my name



and affixed the Seal of said Court
at my office in Galena this 15th
day of April A.D. 1857
Attest W.R. Rowley Clerk

Receivd \$36.20

Certified 35

\$36.55

W.R. Rowley clerk

Richardson & Marchant } In the Supreme Court
William A. Phelps. } Of the State of
Grand Jurisdiction
Of the Term of April
1857.

Appeal from to Habeas

And now Comes the said appellant
By - Nashburn his attorney and
says that in the record of the
proceedings aforesaid and in
the rendition of the judgment
aforesaid manifest error hath
intervened to his prejudice in
this Court.

1. That it appears by the
record aforesaid that the
said Circuit Court erred
in admitting evidence
offered by the said appellant
in the trial of the said Cause
before the jury aforesaid

2. That it appears by the said
record that the said Circuit
Court erred in rejecting
proper evidence offered by

the said appellant upon
the trial of the said issue
before the jury aforesaid

3. That it appears by the
said record that the said
Circuit Court erred in
giving each and every of
the ~~following~~ ^{said} ~~instructions~~ ^{appellate} instructions aforesaid
to the jury aforesaid upon
the trial of the said issue

4. That it appears by
the record aforesaid that
the said Circuit Court
erred in refusing the
instructions aforesaid asked
on the part of the said
appellant to the jury
aforesaid

5. That it appears by
the record aforesaid
that the said Circuit
Court erred in overruling
the motion of the said appellant
for a new trial in
the cause aforesaid

6. That it appears by
the record aforesaid that
the said Circuit Court
erred in rendering
judgment upon the
verdict aforesaid in
favor of the said
appellee when by the
law of the land said
judgment ought to have
been in favor of the
said appellant.

~~And~~ And thus
the said appellant
is ready to verify by
the record aforesaid &c.
Wherefore he prays that
the said judgment may
be reversed, annulled
set aside & for nothing
claimed &c.

Washburne Jr

Morehouse
vs
Phelps

Supr Court App^l Term 1857

And now at this day comes the said
defendant in error and for joinder in ~~error~~
thereto, says there is no error in the Records
and proceedings as the same appears of Record
And that the Judgment and proceeding of
the Circuit Court should be affirmed in all
things Wherefore he prays Judgment &c

M^y Johnson
for deft in error

105-
Morehouse
vs
Phelps

argt of errors &
joinder.

Filed Apr 30. 1857
Leland
Clerk

Morehouse Supreme Court
is Ejectment April Term 1857.
Phelps

In this case the plaintiff has assigned six errors.

- 1st Improper evidence admitted
- 2nd Proper evidence rejected
- 3rd In giving Plff Instruction
- 4th In refusing defts Instructions
- 5th In overruling Motion for New Trial
- 6th In rendering Judgment for Plff -

Under these assignment of Errors - They make the following points.

As to the Identity of the lots.

- 1st Morehouse is the Legal Representative
- 2nd The deed to Phelps is invalid
- 3rd Phelps abandoned his claim
- 4th Commissioners granted the lots, intending and thinking Morehouse was the Legal Rep^{re}
- 5th Instruction given are not Law & there Instructions should have been given.

And Mr Blackwell make another point That a tenant in Common cannot maintain this Suit - And that we are barred by Statute of Limitations - They being in the adverse possession

1 Purp Statute 506 Sec 21.

The deed is sufficient to transfer the interest

What interest was intended to be transferred
by this Deed

The right acquired to occupy the lots under
the permit of the Superintendent

By reason of this permit he was entitled
to a preemption

This Deed connects us with the right
to preemption under Guyard, and by virtue
of his right to a preemption the legal representative
was authorized to enter the lots -

The preemption was no title - It was
only a proposition on the part of Government that
a party entitled to a preemption might enter
the lots - no body else could

Guyard was entitled to a preemption -
and by his Deed he transferred that right to
Phelps - then Phelps could enter the lots -

Now what right had Morehouse - It
could only be done under Guyard's right to a
preemption - and that passed to Phelps under
Guyard's deed -

Then the "legal representative" was
the person who held the right by virtue of
Guyard's preemption

It would have been a fraud for
Morehouse to enter the lots as Legal Representative
he did not represent the party entitled to preemption
that passed to Phelps - no other could enter the lots

Morehouse

- Supr Court

vs

April Term 1857

Phelps

As to the point of identity of the lots in dispute - There can be no doubt by the adjudication of the Commissioners that fact is settled 5+6 are 8+9

See the order

Again By the evidence of Bennett and Wadleigh the identity is established fully -

Bennett shows it a part of the same original lots 5+6 - by new Survey 8+9

The Jury have found the fact, their identity

As to the first and second errors, There is no objection to any evidence - or was any evidence excluded by the Court

As to the question of Legal Representatives Congress does not undertake to say who are the Legal Representatives

That is a question of fact to be determined by Proof before the Court

In this case the Adm^r is not the Legal Representative as shown by the proof

1st The Adm^r has nothing to do with the Real Estate - only in particular cases

2 The certificate and Patent both show the lots were granted and Patents

to the Legal Representative

It shows there were two separate and distinct interests conveyed by the Patent

1 To Morehouse and undivided half

2 To the Legal Representatives of R P Guyard as tenants in Common and not joint tenants

See Patent

3 The Patent shows they were tenants in Common and not joint tenants

The grant to the Legal Representative is to the party whose identity ^{was} uncertain and who succeeded to the rights of Guyard. The party who represented the interest which was vested in Guyard - by virtue of which the lots were entered by preemption

That was a question of fact, and has been determined in this case

It was the right of preemption in Guyard that authorized the entry of the lots - And when he transferred that right by his deed and the lots were awarded to his legal Rep^t. It must be his grantee not Administrator

As Administrator he could have no more interest than Guyard had. If Guyard had nothing the Adm^r got nothing

Adm^r not named in the Act, Government never intended the Adm^r.

Then if he took nothing as Agent - How
could he have any interest whatever

He could take no interest to himself
by virtue of his being Agent - As that could
only be acquired by virtue of the preemption
to Guyard - that has been transferred to
Pheep

It would have been a fraud on the
Government to allow Morehouse because
he was Agent to enter the Land for him-
self

If he entered the land (which we
deny) he entered it for Guyard's grantee
if it was done as Agent - If for himself
it would have been a fraud

The instruction of the Plff below are proper
in every instance - They submit a correct proposition
of Law - And allow the Jury to find the facts
"Who is the Legal Representative" and they find
that fact

The Instructions asked by the deft below
are improper and irrelevant and if given
would has misled the Jury and are not the
Law of the Case

Not only the Law of this case has
been settled by this court in two cases
Bumett

vs 4 Gil 488
Deloney

But this identical case has
been determined by this court in
the case of

Phelps
vs 15 Ills Rept 572
Smith

The intention of the Commissioners have
nothing to do with the Titles. They could only
find who were entitled to a preemption

The Patent confers the title on
the legal Representative and the Law
settles who that legal representative is

The Commissioners could only find who
were entitled to preemptions

Here they find the legal
representative was entitled to the lots a
preemption And the proof points him out

And the Government issue the Patent in the
name of the legal representative, leaving it
to the Courts, from the facts to determine
that question

A Tenant in Common cannot plead the Statute of Limitation against his Co-tenant
The possession of one is the possession of both - until he evicts him - then, and not till then, can he maintain Ejectment

I would enquire when the Statute commenced running in this case - It could not commence until an adverse possession was set up - And Tenants in Common don't generally hold adversely - until one sets up an exclusive possession, as in this case - When his Co-tenant may bring Ejectment

In this case the Record shows

- 1 That the lots were awarded to the legal Representatives alone by the Commissioners
- 2nd Afterward that award, was set aside, and an Award made to Morehouse & Legal Representatives
- 3 The Patent shows the land was paid for by the Legal Representatives, and not Morehouse
- 4 The Patent shows they were tenants in Common and not joint tenants

Construction of a United States Law - Ask that the cause may be certified

Here no Law of Congress is set aside

It is only which of the parties claiming is the Legal Representative and that is a question of fact and law

My Johnson
deputy

Morehouse

is

Phelps

Point & Bnd

of dist ~~the~~

Mr Johnson

Filed May 1st 1857

Dickenson B. Shorehouse, appellant } appeal from the
William A. Phelps, appellee } Circuit Court of the
To the Honorable, } County Court of Illinois,
} To Supreme Court of
} the State of Illinois 1857.
} Circuit

The Supreme Court of the State
of Illinois, or the Honorable Walter B.
Reese, Chief Justice thereof:

Your petitioner Dickenson B. Shorehouse
the appellant in the above entitled cause
represents that the said Supreme Court
has rendered a final judgment
in the said cause, and that in the
decision thereof by the said Supreme
Court of the said State of Illinois ~~that~~
~~was drawn~~ which is the highest
Court in which a decision can be had
in said State, there was drawn in question
the construction of two certain acts of the
Congress of the United States, to wit: an
act entitled "An act authorizing
the laying off a town on Bear River
in the State of Illinois, and for other
purposes," approved February 5, 1829, and
also an act entitled "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 February
5, 1829," approved July 2, 1836. And
your petitioner further represents that
the decision of the said Supreme
Court of said State of Illinois in the
said cause was adverse to the
right and title claimed by your
petitioner, as appears of record. He
therefore prays that ~~there~~ ^{it} may be cer-
tified in this case that in the

decision thereof there was drawn
in question the constitution of the Statute
above described, in order that the
Case may be removed to the
Supreme Court of the United
States.

Sickles B. Buchanan
By his attorney,

Richard W. M.

Worcester
v.
Shepley

—

Petition. 44

Filed May 30. 1857
L. Seland
Clerk

Lickens B. Merhew } appeal from
v. } the Circuit
William A. Phelps } Court of the District
County Illinois, &
Supreme Court of
said State & of
Texas 1857.

It is ordered by the Court, that it be
certified in this case that there
was shown in question the Constitution
of two certain acts of Congress of the
United States, to wit: an act entitled
"an act authorizing the laying off
a town on Bear River in the State
of Illinois, and for other purposes,
approved February 5. 1829; and
also an act entitled "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 February
5. 1829," approved July 2. 1836, and
that the decision of the said Court
was adverse to the ^{and the thereby set up} right, and
title claimed by the said appellant,
Lickens B. Merhew, under the
said Statutes of the United States

Marshall
V.
Helfs
—

Ordn. 4.

Filed May 30 1857
L. Leland
Clerk

United States of America, f;

The United States of America
To The Honorable, the judges of the Supreme Court
within and for the State of Illinois, Greeting;

Because, in the Record and proceedings
as also in the rendition of the Judgment of a plea
which is in the said Supreme Court of the State of
Illinois, before you, or some of you, being the highest
Court of law or Equity of the said State, in which
a decision could be had in the said suit between
Dickinson B. Morehouse appellant, and William
A. Phelps, Defendant ^{in appeal} wherein was drawn in question
the validity of a treaty or Statute of, or an authority
exercised under, the United States, and the decision
was against their validity; or wherein was drawn
in question the validity of a Statute of, or an auth-
ority exercised under said State, on the ground of
their being repugnant to the Constitution, Treaties,
or laws of the United States, and the decision was
in favor of such their validity; or wherein was
drawn in question the construction of a clause of
the Constitution, or of a treaty, or Statute of, or
commission held under, the United States, and the
decision was against the title, right, privilege, or
exemption specially set up or claimed under such
clause of the said Constitution, Treaty, Statute or com-
mission, a manifest error hath happened, to the
great damage of the said Dickinson B. Morehouse,
as by his complaint appears;

We being willing that Error, if any hath been,
should be duly corrected, and full and speedy jus-
tice done to the parties aforesaid in this behalf, do
command you, if judgment be therein given, that
then under your seal, distinctly and openly, you

send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that Error, what of right, and according to the laws and custom of the United States, should be done.

The seal of the Supreme Court of the United States, featuring a circular design with the words "SUPREME COURT OF THE UNITED STATES" and a central emblem.

Witness the Honorable Roger B Taney chief justice of the said Supreme Court, the thirtieth of May, in the year of our Lord one thousand Eight Hundred and fifty seven

William H Bradley Clerk of the Circuit Court of the United States for Northern District of Illinois

Dickinson B Morehouse

vs

Wm A Phelps

Copy of Writ of Error
filed, in pursuance of the
Statute of the United States
in such case made &
provided, for the above
named Wm A Phelps
Defendant in Error, & for his
attorney

E B Washburn } Attorney
 } for Plff
 } in Error

Filed June 7. 1857

The United States of America

To William A Phelps - greeting

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the first Monday of December next pursuant to a writ of error filed in the Clerk's office of the Supreme Court of the United States wherein Dickenson B. Morehouse is plaintiff in error and you are defendant in error, to show cause, if any there be why the judgment rendered against the said plaintiff in error, as in ^{the} said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Hon. Walter B. Seates Ch. Justice of the Supreme Court of the State of Illinois this thirtieth day of May, in the year of our Lord one thousand eight hundred and fifty seven.

Walter B. Seates Ch. Justice
of the State of Illinois

The State of Ohio }
Fayette County ss }

On this thirteenth day of October in the year of
our Lord one thousand eight hundred and fifty seven
personally appeared James Stout Constable before
me, the subscriber a Justice of the Peace in and
for said County and makes oath that he delivered
a true copy of the within citation to William A.
Phelps on the 13th day of October A.D. 1857

James Stout
Constable

Sworn to and subscribed before me this day and
year last aforesaid

J. W. Blizard J. P.

Constable fees .50 cts
Justice fees 25 cts
75 -

Richard A. Mowbray
by
William A. Phelps
Copy of the Citation
sent to Mr. Mowbray
Sept. 20th 1857

United States of America
The State of Ohio
Secretary of State's Office.

I, James H. Baker Secretary of State
of Ohio do hereby certify that J. W. Blizard Esq.
whose attestation is herewith annexed was
on the day of the date thereof, an acting
justice of the Peace, within and for the County
of Fayette in the State of Ohio duly com-
missioned as such; that he is the proper
officer to take such attestation, that his at-
testation is in due form; and that his
official acts are entitled to full faith and
credit, as well in Courts of Justice as
thereout.

In testimony whereof I have herewith
subscribed my name, and affixed
the Great Seal of the State of Ohio,
at Columbus the 2nd day of November
in the year of our Lord one thousand
eight hundred and fifty seven.

J. H. Baker

Secretary of State



THE
UNITED STATES



Express Comp'y

WILL FORWARD
BANK-NOTES,
GOLD AND SILVER,
MERCHANDISE
AND PACKAGES,

DAILY TO

NEW YORK,	PHILADELPHIA,
BOSTON,	ALBANY,
BUFFALO,	DUNKIRK,
CLEVELAND,	DETROIT,
DAYTON,	CINCINNATI,
SANDUSKY,	TOLEDO,
CHICAGO,	ROCK ISLAND,
ST. LOUIS,	IOWA CITY,

AND OTHER PRINCIPAL

TOWNS and CITIES

Of the West & South-West,

CALIFORNIA

AND

EUROPE.

UNITED STATES EXPRESS COMPANY.



Ottawa Nov. 24 1857

Received of

one package said to contain record in Morehouse
v. Phelps valued at

Dollars, and marked William Thomas Carroll Clerk of Supreme Court U.S.
Washington D.C. Buffalo

which we undertake to forward to only, perils of navigation excepted.
And it is hereby expressly agreed, that said United States Express Co., are not to be held liable for any loss or damage, except as forwarders only: nor for any loss or damage of any box, package or thing for over \$150, unless the just and true value thereof is herein stated; nor for any loss or damage by fire; nor upon any property, or thing, unless properly packed and secured for transportation; nor upon fragile fabrics, unless so marked upon the package containing the same; nor upon any fabrics consisting of, or contained in glass.

FOR THE PROPRIETOR,

AGENT.

Galena, Illinois.

Nov. 6. 1857.

E. Seland, Esq.

Clerk Supreme Court.

Ottawa, Illinois.

Dear Sir:

I enclose you the citation
served on Phelps in the case of
Churchouse v. Phelps. I now want
the record made up as soon as
possible and sent to the clerk of
the Supreme Court ^{U. S.} at Washington
D. C. I send you the directions from
the Supreme Court for taking care
from the State Courts. They will afford
you some assistance in making up the
record. You will see the original cita-
tion and service must go up. You
will also be careful to copy into
the record the certificate of the

Subs. Com. certifying that the construction
of an U. S. Statute was involved
in the case. &c. &c.

I want the record at Washington
by the first day of December next.

Please send it by Express directed
to

William Thomas Carroll, Esq.,
Clerk. Subs. Com., U.S.
Washington, D.C.

and pay the charges. At the same
time you send the record, unto
me at Washington, enclosing your
bill for making out the record,
and express charges, paid, and I
will immediately remit you from
W. If you have any difficulty in
making up the record and want any
information, please call on Hon. B. C. Cook.

I am,

Yours, &c.

Wm. T. Carroll

Ant. due & sent for for record & in Nov. 25.57 - 78.75

also. costs in case - \$124.72 deducting for printing
abstracts & advanced for \$20. & perhaps
\$36.55 - Circuit Clerk's Transcript, -

Know all men by these presents, That we, Dickinson B. Morehouse & Charles S. Hempstead
are held and firmly bound unto William A Phelps

in the full and just sum of *one thousand dollars*
to be paid to the said William A Phelps

certain attorney, executors, administrators, or assigns; to which payment well and truly to be made, we
bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed
with our seals, and dated this *27th* *Both* day of *May*
in the year of our Lord one thousand eight hundred and *fifty seven*

WHEREAS lately at a *Term. of the Supreme Court of*
the State of Illinois
in a suit depending in said Court, between Dickinson B. Morehouse
and William A Phelps -

was rendered against the said Dickinson B. Morehouse for
costs and affirming the Judgment of the Circuit Court
of Lee County, Illinois
and the said Dickinson B. Morehouse

having obtained *a writ of error* and filed a copy thereof in the clerk's office of the said
Court to reverse the *Judgment* in the aforesaid suit, and a citation directed to the said
William A Phelps

citing and admonishing to be and appear at a Supreme Court of the United States, to be holden at
Washington, the *first* Monday of *December* next.

Now the condition of the above obligation is such, That if the said
Dickinson B. Morehouse

shall prosecute *said writ of error* to effect, and answer all damages and costs if *he*
fail to make *his* plea good, then the above obligation to be void, else to remain in full force
and virtue.

Scaled and delivered
in presence of }

Thos Dorman

Chas S Hempstead

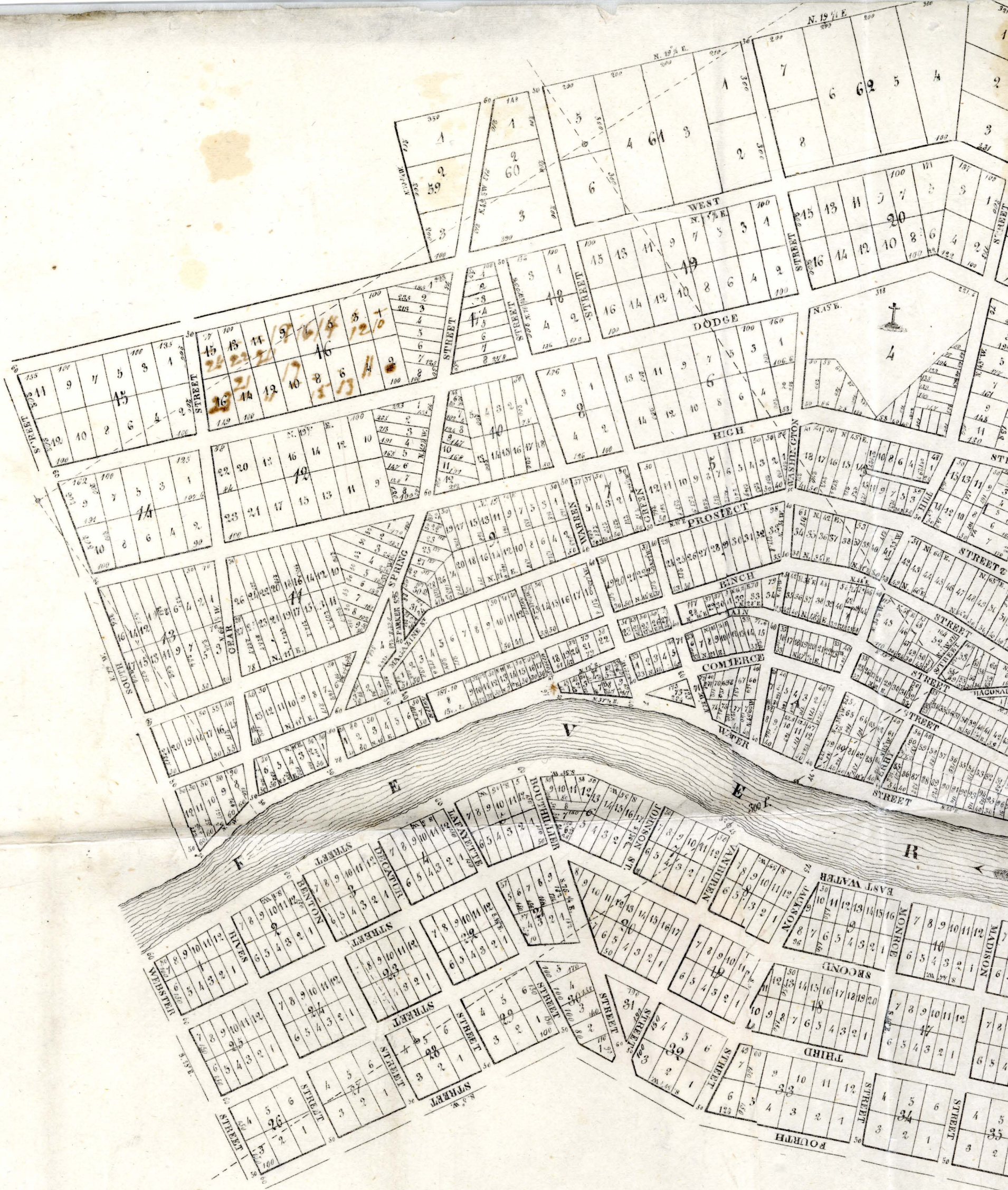
[SEAL.]

[SEAL.]

[SEAL.]

APPROVED BY

W. B. Scates Ch. Justice Illinois *D B Morehouse*



GALENA

ILLINOIS

Scale of 400 Feet to an Inch

*B



State of Illinois, ss.

Supreme Court, Third Grand Division, at Ottawa :

The People of the State of Illinois,
To the Clerk of the Circuit Court of *Jo DeCamp* County, GREETING :

WHEREAS, in a certain plea between *William D. Phelps* plaintiff and *William B. Morehouse* and *Bradley Smith* defendants, lately depending in the Circuit Court of said county, wherein judgment was rendered for the said *plaintiff* and against the said *defendants* and the said *Morehouse* having appealed from the judgment of said Court, rendered against *his* as aforesaid, to the Supreme Court, held at Ottawa, on the *1st Sunday after the 3^d Monday* and in pursuance of the said a transcript of the record and the proceedings in the plea aforesaid was transmitted. And, also, whereas it hath been suggested, on the part of said *Morehouse* that the said record has been diminished, inasmuch as *The Original plat of the Town of Galena* hath not been sent up; and forasmuch as the said Supreme Court are not satisfied that there is a sufficient record sent in the plea aforesaid, but in the record there is a diminution: YOU ARE, THEREFORE, HEREBY COMMANDED, that, without delay, the said *plat* therein you cause to be transmitted to the Supreme Court, *to be held at Ottawa, on the (now and session at Ottawa) instant* next, without any diminution or addition whatsoever, to the end that speedy justice may be done in the premises, according to law; whereof you are in no wise to fail; and send you then there this writ.

WITNESS, the Hon. *Walter B. Seales* *SAMUEL H. TREAT*, Chief Justice of said Court, and the seal thereof, at Ottawa, this *30th* day of *April* in the year of our Lord one thousand eight hundred and fifty-*seven*.

L. Leland
Clerk of the Supreme Court.
By J. M. Rice Deputy



I herewith, return the within writ, accom-
panied, with the Original plat of the Town of
Salina as Sam Withers Commanded

Wm Rowley Clerk

To David C. C. Court

I Charles R. Bennett Surveyor of the
Town of Galena by appointment from the
Commissioners appointed from the Comm-
-issurers appointed under the Act of Congress
of the 2nd July 1836 for the Survey of the Town of
Galena &c & County Surveyor of the County
of Jo Daviess State of Illinois. Do hereby certify
the above to be a correct Diagram of the
survey of the Town of Galena embracing 640
situated on both sides of Terre River & on
the East & west sides of the 4th principal
Meridian The Corner of sections 24 & 13, Town-
-ship 28 North Range 1 West of the said 4th
principal Meridian being near the Centre
of the Town as will appear by reference to
the above plat. The Course of the Streets
& the width of the same are denoted correctly
in letters & ~~signs~~ figures also the size of
each lot. The lots on some of the streets
are numbered, from one upward, some
part of the Town is numbered, by Block
& the lots in each Block numbered from
one upwards.

Galena March 28th 1838

Charles R. Bennett sur^r Town of
Galena & County of Jo Daviess

Recorded this Eighteenth day of February A.D. 1842.

Jeremiah Bettis Recorder

State of Illinois
To David County

I Wm R Rowley Clerk of the
Circuit Court, & Ex Officio

Recorder in and for said County in
the State aforesaid hereby Certify the

annexed ^{Plat} foregoing to be a true & correct copy
Original Plat of the Town of Galena

same appears of Record in my
in Book "F" of Deeds page 63.

In testimony whereof I have hereunto
set my name and affixed the
seal of said Court at my Office
in Galena this 4th day of
May A.D. 1857

Attest Wm R Rowley Clerk