

14187

No. 14187

Supreme Court of Illinois

Lender

vs.

Kidder.

In the Circuit Court for said County:

Of the *November* Term A. D. 185*7*

Alvin Keddar

VERSUS

Julius H. Keddar

Ejectment.

Alvin Keddar the Plaintiff in this suit, by *Joseph Pratt* his attorney complains of *Julius H. Keddar* the defendant in this suit, of a plea wherefore he the said defendant with force and arms, &c., entered into the following described premises:

For that heretofore, to-wit, on the *first* day of *September* in the year of our Lord one thousand eight hundred and *fifty seven* the said plaintiff was possessed of certain premises situated in the county of *Florida* in the State of Illinois, and described as follows, to-wit:

As to much of claim No. Eighteen (18) in the village of Florin conferred to Pierre Savasseur dit Chamberlain by an act of Congress approved March 3^d 1853 Entitled "An Act to confirm certain claims to lots in the Village of Florin in the State of Illinois as is covered by Lot No. Twelve (12) in Block No. First - West (39) in the Bidlow & Underhill Addition to Florin in the County of Florida and State of Illinois"

and being so possessed thereof, the said defendant afterwards, to-wit, on the *second* day of *September* in the year of our Lord one thousand eight hundred and *fifty seven*, entered into such premises, and that he unlawfully withhold from the said plaintiff the possession thereof; and the said plaintiff aver that he claim title to said premises in fee.

Whereof said plaintiff says that he is injured, and has sustained damages to a large amount, to-wit:

One Hundred

Dollars, and therefore he sues &c.

Joseph Pratt

Attorney for Plaintiff

John Brown 2

William B. Brown

Olea

Filed, Sept. 30, 1857
Charles Brown, et al

Filed October 7th 1857
T. Robinson
et al

To

John G. Lueder
Defendant in this suit,

3

TAKE NOTICE,

1. That on the ~~first~~ day of the next ~~Rule day~~ Term of the Circuit Court within and for the county of *Polk* aforesaid, to-wit, at the Court House in *Polk* in said county and State, on the ~~first~~ *Monday* day of *October* in the year of our Lord one thousand eight hundred and ~~fifty seven~~, or as soon thereafter as counsel can be heard, a declaration, of which the foregoing is a copy, will be filed in said Court.

2. That upon filing the same a rule will be entered requiring you, such defendant to appear and plead to such declaration, within twenty days after the entry of such rule.

3. That if you neglect so to appear and plead a judgment by default will be entered against you, and the plaintiff will recover possession of the premises described in said declaration.

Dated at *Polk* this *twentieth* day of *September*
A. D. 185 *7* *Philet Pratt*
Attorney for Plaintiff

STATE OF ILLINOIS,
COUNTY OF

} ss: *Charles K. Purples*

being first duly sworn, upon his oath says that he served a declaration and notice, of which the within and foregoing are copies, upon the within named defendant by delivering the same to him personally, on the *twenty fifth* day of *September* Anno Domini Eighteen hundred and *fifty seven*

Subscribed and Sworn to before me this *28th*
day of *September* A. D. eighteen hundred and
fifty *Seven*

Charles K. Purples

M. Purples
Notary Public

307^a 1807

Wm. Kidden

VERSUS

Julius P. Leander

DECLARATION IN EJECTMENT.

Filed Sept. 30, 1857
Eusebio Leander, clrk

Filed Oct. 7th 1857
J. C. Springer
clrk

4

Proceedings in the circuit court in and for the county of Peoria and state of Illinois, in vacation after the May term of said court in the year of our Lord one thousand eight hundred and fifty-seven, to-wit:-

Wednesday, September 30, 1857.

Alvin Kiddes

vs.

Ejectment.

Julius G. Leuder

This day came the plaintiff by his attorney and filed his declaration and notice herein; and also came the defendant and filed his plea to said declaration.

Thursday, October 1st 1857.

Alvin Kiddes

vs.

Ejectment

Julius G. Leuder

This day came the parties to this suit by their respective attorneys, and agreed that the court may make an order for a change of the venue in this cause to the county of Madison in this state, whereupon it is ordered by the court that the venue in this cause be changed to the county of Madison aforesaid, in this state.

Be it remembered that on this first day of October, AD 1857, there was filed in the clerks office of the Peoria County circuit court, an agreement for a change of the venue in the cause between Alvin Kiddes, plaintiff and Julius G. Leuder, defendant, in words and figures following, to-wit:-

5
Alvin Ridder
vs.
Julius G. Leuder

Peoria Circuit Court
Vacation, after May 1, 1857.

It is agreed that the judge of said court in vacation may make an order for a change of the venue in this cause to the county of Madison in said state of Illinois.

Dated Sept

1857
N.H. Purpely Plffs atty
Manning Merriman,
atty for Deft.

And on the day and date of the filing of the aforesaid agreement for change of the venue in this cause, there was also filed in the clerks office aforesaid, the order of the judge of our circuit court, ordering the change of the venue aforesaid, in words and figures following to wit:-

Alvin Ridder } In Peoria Circuit Court
vs. }
Julius G. Leuder } In vacation after May
Term AD 1857.

And now on this day the parties appeared by their attorneys and by agreement of the parties it is ordered that the venue in this cause be changed to the county of Madison, state of Illinois.

Oct. 1st 1857.

C. N. Powell.

State of Illinois,
Peoria County }
J. V. Enock, Clerk of
the circuit court in and for said county and
state do certify that the foregoing is a true copy

6

of the proceedings in this cause wherein Alvin Kinder is plaintiff and Julius G. Leuder is defendant, as the same appears of record in my office, and that the papers herewith transmitted marked 1, 2, 3, 4, are all the papers appertaining to said cause, filed in my office.

Given under my hand and the seal of said court at Peoria this first day of October A.D. 1837.

Ornoch J. Sloan, Clerk.

Plaintiff's costs	\$2.65
Def'ts costs	\$1.00
	<hr/>
	\$3.65

Alvin Redden ⁶
vs Ejectment
Julius G. Leuder

Pemba Co. Circuit Court
Transcript
of
Proceedings

Filed Oct. 7th 1857
J. O. Springer
CLK

Oliver W. Madden } Peoria Circuit Court
vs } Vacation after May 1. 1887
John G. Linder }

It is agreed that the Judge
of said Court in Vacation may
make an order for a change
of the venue in this cause
to the County of Madison
in said State of Illinois
dated Sept 1887

A. K. Supt. P. P. S. atty
Wm. J. McCarroll
attys for deft -

3

Alvin Keddar
^{vs}
Julius G. Lueder
Agreement for Change
of Name

Filed Oct 1st 1857
Eus et J. Floan, clk

Filed Oct. 7th 1857
J. O. Springer
clk

6

10

Alvin Rider
vs
Julius G. Sueder

In Ploria Circuit Court
In vacation after
May Term Ad 1857.

And now on this day
the parties appeared by their at-
tornies and by agreement of the
parties it is ordered that the
venue in this cause be changed
to the County of Madison, State
of Illinois
Oct 1. 24 1857.

E. B. Powell

Alvin Kieder⁴
vs
Julius G Lueder
Order for change
of Term

filed, Oct. 1st 1857
Ernest J. Sloan, clk

Filed Oct. 7th 1857
J. C. Springer
clk

Indies 4. S. Smedley
Remo from Remo Co.
Oct. 3, 1837


It is agreed that this
Cause be taken to the Court House
at Mount Remo, by either party, without
filing Bond - We each agree to enter
the appearance of the appellee in
said Supreme Court at said Term
dated Oct 3, 1837

Manning & Minnie
Attys for appell

P B Foulke for Plffs.

5

Filed Oct. 24th 1857
T. C. Springer
clerk



herein is tried by the Court, whereupon the Court heard
 the evidence and being sufficiently advised in the premises
 finds the defendant guilty of unlawfully withholding
 the premises as alleged in the Plaintiff's declaration
 and that the said Plaintiff is entitled to an estate
 in fee of in and to the Premises therein described
 To wit. So much of Claim No. Eighteen in the village
 of Peoria confirmed to Pierre Larassens dit Chambulans
 by an act of Congress approved March 3^d 1823 entitled "an act
 to confirm certain claims to lots in the village of Peoria
 in the State of Illinois as is covered by Lot No. Twelve
 (12) in Block No. Thirty third (39) in Bigelow's & Underhill
 additions to Peoria in the County of Peoria and State of
 Illinois, said Premises being situate in the County of
 Peoria and State of Illinois, It is therefore considered
 by the Court that the Plaintiff have Judgment for and recover
 in fee simple the premises aforesaid in manner and form
 as described in his said declaration and that he also recover
 of and from the Defendant his proper costs to be taxed and
 have execution therefor &c. And it is further ordered
 by the Court that the Plaintiff have the People's writ of
 Possession issued out of and under the seal of this Court
 directed to and commanding the Sheriff of Peoria County
 to cause the said Plaintiff to be put in possession of the
 said land according to the force and effect of his said recovery
 and the Statute in such case made and provided. Whereupon
 the said Defendant prays an appeal to the Supreme
 Court of the State of Illinois which is allowed according

to the agreement on file and it is further agreed by the parties that the original papers herein may be withdrawn from the files and transmitted to the Supreme Court as the Record herein.

State of Illinois }
Madison County }p

I Thomas A. Springer Clerk of the Circuit Court within and for the County of Madison and State of Illinois do hereby certify that the foregoing is a true copy of the proceedings and orders of Court in said cause wherein Alvin Kieckes is Plaintiff and Julius K. Lueder is defendant as the same appears of record in my office - And I do further certify that the papers hereto attached, ^{+ marked 1, 2, 3, 4, 5, 6, + 7} and the original papers on file in my office and ordered to be withdrawn by consent of parties -



Given under my hand and the seal of said Court at office in Edwardsville this 4th day of November AD 1857.
Thos A Springer Clerk

Julius G. Sander

by

Alvin Keador

Appeal from Madison

14187

Filed 17th November 1857.

Noah Johnston Clerk

Prepaid \$5. by Robert
Fenwick Esq. of St. Louis.

State of Illinois }
Madison County } 3p

Alvin Kiddle

vs

Julius G. Leader

Madison Circuit Court October Term 1857
Exemption. Change of venue
from Peoria County -
Be it remembered

that on the trial of this cause upon the issues joined, the plaintiff to maintain the issue upon his part offered and in evidence as follows -

1st ~~The~~ Act of Congress approved May 15th 1820, entitled "an act for the relief of the inhabitants of the village of Peoria in the State of Illinois"

2nd The Report of Edmund Coles dated Nov 10. 1820, & communicated to the Senate of the United States January 10. 1821 & contained in Volume 3. of American State Papers relating to Public Lands, commencing on page 421 and that part of the Report & proof relating to Lot 18. as follows

Lot 18. Pierre Larousse dit Chantelaine claims a lot in Peoria bounded northwardly and westwardly by unoccupied lands eastwardly by a street separating it from the lot of Louis Bisson and southwardly by a cross street

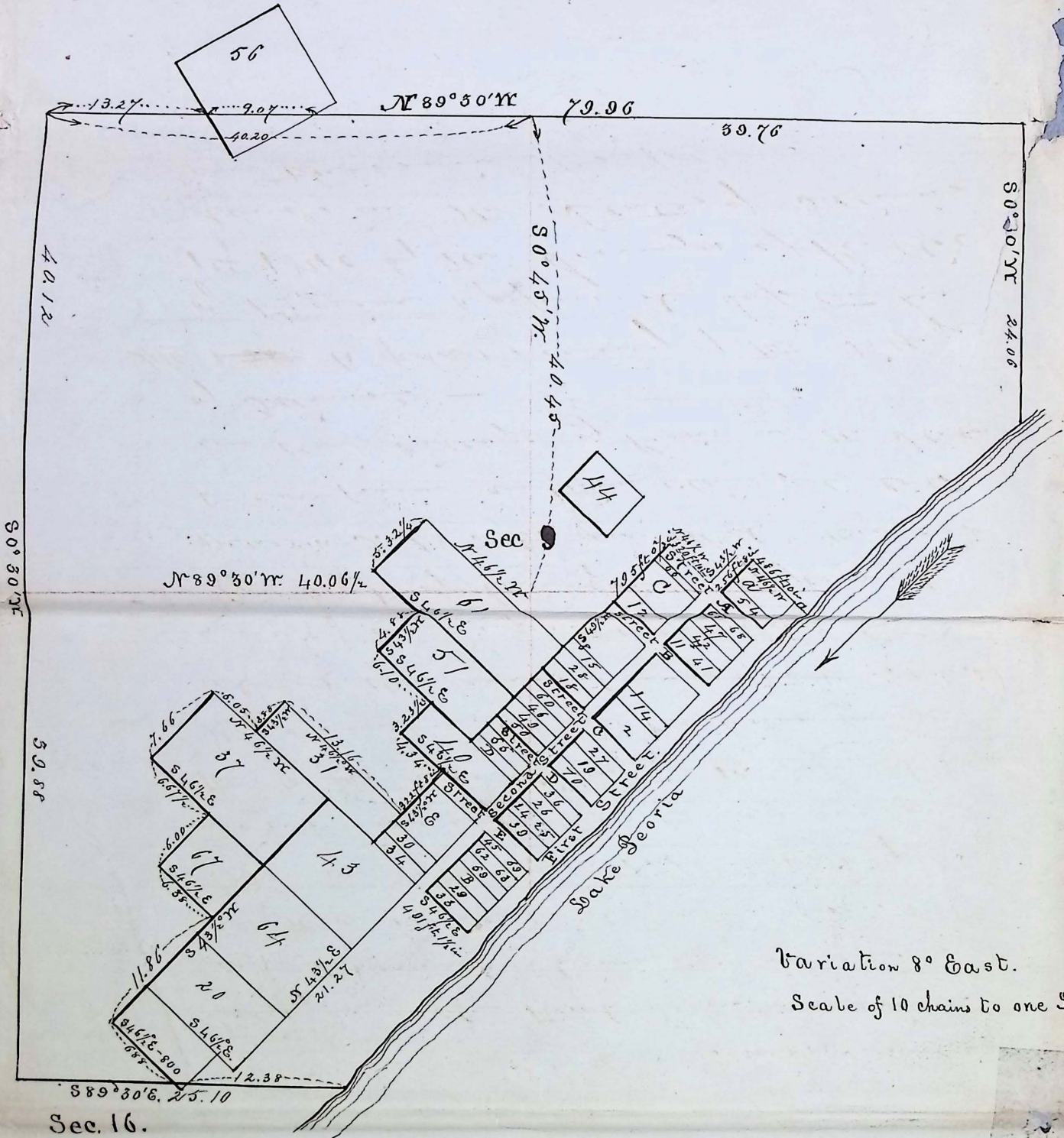
Proof

Hippolyte Maillet & Michael L. Curie testify on oath that Pierre Larosiere dit Chamberlain found in and built a house on the above described lot about the year 1898 but they do not know whether he ever occupied the house or cultivated the said lot they describe the lot to have been about the usual size that is about a half an acre or thereabouts —

3^d An act of Congress approved March 3, 1823, entitled "An act to confirm certain claims to lots in the village of Peoria in the State of Illinois —

4th ~~the~~ A plat & survey of the Village of Peoria approved September 1st 1840 by the Surveyor of Public Lands in the State of Illinois and Missouri as follows

Plat of the new village of Peoria and of such of the out lots and field lots in the neighbourhood thereof as are connected with said new village in one continuous survey and description of the out boundaries of the said Town and continued connections of out lots and field lots situate in sections 9 and 16 Township 8 north of the base line Range 8 East of the 4th Principal Meridian.



Description. Begin at the upper end of the south Eastern Edge of first street on the North West bank of Lake Peoria. Thence N 46 1/2° W. one hundred feet to the eastern corner of unclaimed lot "a" 420 feet 10 inches the North corner of said unclaimed lot "a". at the North East End of the south east Edge of second Street 486 feet 10 in to the N.E. end of the N.W. Edge of second Street. Thence South 48 1/2° W. with the N.W. edge of second Street 256 feet. 8 in to the intersection with the N.E. edge of "a". Thence N 46 1/2° W. with the N.E. edge of street "a" 320 feet. 10 in. to the N.W. end of the N.E. edge of said Street "a".

Thence S. $43\frac{1}{2}^{\circ}$ W. 66 feet to the North corner of lot no 66. at the N. W. end of the South west edge of said Street "A".

108 ft $9\frac{1}{2}$ inches the West corner of lot no 66 and North corner of unclaimed lot "C". 322 ft 8 inches the west corner of unclaimed lot "C" and the North corner of lot no 12. 105 ft $2\frac{1}{2}$ inches the west corner of lot no 12. and the N. W. end of the North East edge of Street "B". 474 ft $2\frac{1}{2}$ inches the North west end of the South west edge of Street "B". And the North corner of lot no 5.

Next Page



20 of lot no 8. 719 ft. 6 in the North corner of lot no 15. 795. and $\frac{1}{2}$ of an inch to the West corner of lot no. 8. which is also the West corner of lot no 15. and East corner of lot no 61 and North corner of lot no 28.

Thence N. $46\frac{1}{2}^{\circ}$ W. with the N. E. boundary of lot no 61. 05 chains and 40 links to the North corner of lot no 61. Thence with the N. W. boundary of lot 61.

S. $43\frac{1}{2}^{\circ}$ W. 5 chains and 52 $\frac{1}{4}$ links to the West corner of lot no 61. Thence with the S. W. boundary of lot no 61. — S. $46\frac{1}{2}^{\circ}$ E. 4 chains and 94 links to the North corner of lot no. 61. at the intersection of the N. W. boundary thereof with the S. W. boundary of lot no. 61. Thence with the N. W. boundary of lot no 51. S. 43° W. 6 chains and 88 links to the West corner of lot no. 51. — South 6 chains and 10 links to the North corner of lot no 40. at the intersection of the N. W. boundary thereof with the S. W. boundary of lot no 51. Thence with the N. W. boundary of lot no. 40. S. $43\frac{1}{2}^{\circ}$ W. 3 chains and 23 $\frac{1}{3}$ links to the West corner of lot no 40. Thence with the S. W. boundary of lot no 40. S. $46\frac{1}{2}^{\circ}$ E. 4 chains and 34 links to the N. W. end of the N. E. edge of Street "E" on the S. W. boundary of lot. no. 40. Thence S. $45\frac{1}{2}^{\circ}$ W. 66 feet to the N. W. end of the S. W. edge of Street "E." and the North corner of unclaimed lot. E. 322 ft. 8 in. to the East corner of lot no 31 at the intersection of the N. E. boundary thereof with the N. W. boundary of unclaimed lot. E. Thence with the N. E. boundary of lot no. 31.

N. $46\frac{1}{2}^{\circ}$ W. 13 chains and 16 links to the North corner of lot no 31. Thence with the N. W. boundary of lot no 31.

S. $43\frac{1}{2}^{\circ}$ W. 3 chains and 88 links to the West corner of lot no 31. at the intersection of the N. W. boundary thereof with N. E. boundary of lot no 31 Thence with the N. E. boundary of lot no. 31.

N. $46\frac{1}{2}^{\circ}$ W. 5 chains and 5 $\frac{1}{2}$ links to the North corner of lot no 37. Thence with the N. W. boundary of lot no 37. — S. $43\frac{1}{2}^{\circ}$ W. 7 chains and 66 links to the West corner of lot no 37 Thence with the S. W. boundary of lot no 37.

S. $46\frac{1}{2}^{\circ}$ E. 6 chains and 6 $\frac{1}{2}$ links to the North corner of lot no 67. at the intersection of the N. W. boundary thereof with the S. W. boundary of lot no. 37. Thence with the N. W. boundary of lot no 37.

S. $43\frac{1}{2}^{\circ}$ W. 6 chains to the West corner of lot no 67 Thence with the S. W. boundary of lot no. 67. — S. $46\frac{1}{2}^{\circ}$ E. 6 chains and 35 links to the South corner of lot no 67 on the N. W. boundary of lot no 64. Thence S. $43\frac{1}{2}^{\circ}$ W. 8 chains and 66 links to the West corner of lot no 64 and North corner of lot no 20. 7 chains and 61 links to the West corner of lot no 20 and North corner of lot no. 48. 11 chains and 86 links to the West corner of lot no. 48. Thence with the S. W. boundary of lot no. 48.

S. $46\frac{1}{2}^{\circ}$ E. 6 chains and 88 links to the point of intersection of the S. W. boundary of lot no 48. with the section line between sections 9 and 16. Township 5 North Range 8 east of the 4th principal Meridian which point is 12 chains and 38 links N. $89\frac{1}{2}^{\circ}$ W. of the corner of fractional sections 9 and 16 on the Lake 8 chains to the South corner of lot no 48. Thence with the S. E. boundary of lot no 48.

N. $43\frac{1}{2}^{\circ}$ E. 1 chain and 6 links to the point of intersection of the S. E. boundary

of lot no. 48. with the section line between the sections 9 and 16. Township 8 North Range 8 East of the 4th principal Meridian which point is 12 chains and 38 links $N 89 \frac{1}{2}^{\circ} W$ of the corner to fractional sections 9 and 16 on the Lake 4 chains and 25 links to the East corner of lot no 48 on the S. W. boundary of lot no 20 thence with the S. W. boundary of lot no 20 $S. 46 \frac{1}{2}^{\circ} E$ 2 chains to the South corner of lot no. 20.

Thence $S 43 \frac{1}{2}^{\circ} E$ 5 chains and 95 links the east corner of lot no. 20. and South corner of lot no 64. 18 chains and 61 links the east corner of lot no 64 and south corner of lot no 43. 21 chains and 27 links to the east corner of lot no ~~43~~ and south corner of lot no. 34. at the S. W. end of the N. W. edge of Second Street.

Thence $S. 46 \frac{1}{2}^{\circ} E$. 66 ft the S. W. end of the N. E edge of second street and West corner of lot no 33. 386 ft 10 in. the South corner of lot no 33. 491 ft 1 ¹/₃ in to the lower end of the south east edge of first street on the N. W. Bank of the Lake Peoria. Thence along the N. W. Bank of Lake Peoria the following courses and distances

$N 38^{\circ} E$. 176 Links; thence
 $N 42^{\circ} E$. 432 links; thence
 $N 17 \frac{3}{4}^{\circ} E$. 150 links; thence
 $N 7 \frac{1}{2}^{\circ} E$. 72 links; thence
 $N. 47 \frac{1}{2}^{\circ} E$. 477 links; thence
 $N 34^{\circ} E$. 185 links; thence
 $N 44 \frac{3}{4}^{\circ} E$. 2448 links to the place of beginning. —

Then for the Connection with the public surveys run from said place of beginning N. W. Bank of the Lake Peoria the following courses and distances.

$N 44 \frac{3}{4}^{\circ} E$. 1081 links; thence
 $N 56 \frac{1}{4}^{\circ} E$ 1300 links to the point of intersection of the section line between sections 9 and 10 with the N. W. Bank of the Lake Peoria which point is 2406 links $S 0^{\circ} 30' W$ of the corner to sections 3, 4, 9, and 10. Township 8 North. Range 8 East of the 4th principal Meridian also from the lower end of the S. E. edge of first street the following courses and distances along the bank of the lake when taken for connections.

$S 53 \frac{1}{2}^{\circ} W$. 198 links; thence
 $S. 39^{\circ} W$. 819 links; thence
 $S. 41 \frac{1}{4}^{\circ} W$. 216 links; thence
 $S 49 \frac{1}{2}^{\circ} W$. 287 links; thence
 $S 85^{\circ} W$. 116 links to the point of intersection of section line between sections 9 and 16 Township 8 North Range 8 East of the 4th principal Meridian which point is 2510 links $S. 89^{\circ} 30' E$ of the corner to sections 8, 9, 16 and 17 of said Township

Surveyed on the several days designated in the foregoing description of the lots by Joseph C. Brown Deputy Surveyor under instructions from Daniel Smith Surveyor of the public lands in the State of Illinois and Missouri bearing date the 11th of April 1837

Examined and approved the first day of September

William Milburn

Surveyor of the public lands of the States of Illinois

Office of the Surveyor General

Saint Louis February 21st 1850

I certify that the foregoing Plat and description of the new bill of Peoria and certificate of approval thereto by Surveyor General Milburn are correctly copied from pages 79 and 80 of the Record of surveys of Peoria in this office

Wm. Lewis Clark
Surveyor General

24

5th a certified copy of the Plat
Survey of claim No 18. as
follows

Plaintiff then proved that
 Pierre Larousseau dit Chambelain
 and wife civil prior to the year
 1830, having only one child
 to wit Angelique, ^{who afterwards became the} wife of
 Benjamin Roi dit King.

Plaintiff then introduced
 great in evidence a seal from
 Benjamin Roi dit King and
 Angelique his wife to
 plaintiff in words and
 figures following to wit

27

This Indenture, Made this twenty second day of October

in the year of our Lord, One Thousand Eight Hundred and Fifty five. Between Charles S. Hempstead, Benjamin Roi dit King & Angelique Roi his wife of the first part, And Abner Wheeler of Peoria Illinois party of the second part;

Witnesseth--That the said party of the first part, for and in consideration of the sum of fifteen hundred dollars

paid by the said party of the second part, the receipt of which is hereby acknowledged, do by these presents, bargain, sell, transfer and Quitclaim, unto the said party of the second part, his heirs and assigns, all our right, title, interest and claim, both legal and equitable, of, in and to that certain tract or parcel of Land, situated in the County of Peoria and State of Illinois and described as claim No 87th or as confirmed to Pierre Larocque dit Chenebain by the Confirmatory Act of Congress approved March 3 A.D. 1823 entitled an Act to confirm certain claims of lots in the Village of Peoria in the State of Illinois

Together with all and singular the hereditaments and appurtenances therunto belonging or in any wise appertaining. To Have and to Hold the said premises as above described, with the appurtenances, unto the said party of the second part, his heirs and assigns, Forever. And the said party of the first part, do Hereby Covenant and Agree to and with the said party of the second part, and his heirs, that they will forever Warrant and Defend the title to the premises above conveyed to be free from the claim of ~~the sellers~~ and their heirs, and from the claim of all and every person claiming by, through, or under them or their heirs, but against the claim of None Others.

In Testimony Whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

Signed, Sealed and Delivered in presence of
Wm. Fisher
Benj. & King Jr
witness

Benjamin Roi dit King
Angelique Roi
witness

STATE OF ILLINOIS,
Safayette COUNTY, appeared

SS. I William W. Fisher a Justice of the Peace for said County, DO CERTIFY, That on this day before me personally Benjamin Roi dit King & Angelique Roi

whose name appear personally known to me to be the real person who and in whose name the acknowledgment is proposed to be made, and ACKNOWLEDGED the execution thereof as a voluntary act and deed for the uses and purposes therein expressed. AND Angelique Roi wife of the said Benjamin Roi dit King having been by me made acquainted with the contents of the said deed, and by me examined separate and apart from her said husband, acknowledged that she had executed the same, and relinquished her dower to the lands and tenements therein mentioned, voluntarily and freely, and without compulsion of her said husband and does not wish to retract

andamp... Given under my Hand and Seal of office at Peoria, this third day of December A. D. 1855 - Wm. W. Fisher Justice of the Peace

Wm. W. Fisher Justice of the Peace

State of Wisconsin
County of Lafayette

Circuit Court.
Clerk's Office

I John N. Williams, Clerk of

the Circuit Court in & for said County State (the same being a court of Record) do hereby certify that
Wm. W. Fort, the person subscribing the within certificate of acknowledgment was at the date thereof and acting Justice of the Peace in & for said County & State regularly elected & qualified & fully authorized to take acknowledgments & proofs of conveyances be recorded in this State & that I am well acquainted with the hand writing of the said Wm. W. Fort, & verily believe that the name "Wm. W. Fort" subscribed to the said certificate, in his proper & genuine signature, and I further certify the within deed is executed and acknowledged in conformity with the laws of said Wisconsin.

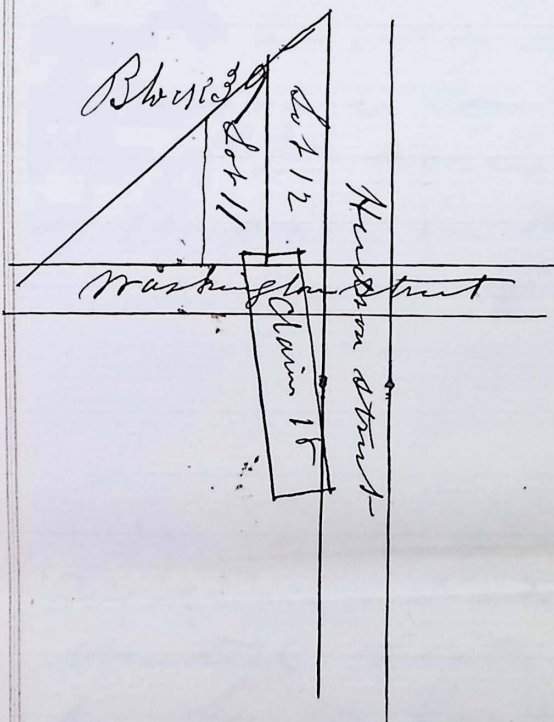
In testimony whereof I have hereunto set my hand & seal of said court at Shellbourn in said County this 10th day of December A.D.

1855
John N. Williams

Clerk

29

The plaintiff then introduced in evidence a connected plot showing the interference of Claim 18, in the Village of Peoria and Lot 12, in Block E 29 in Bigelow & Mudgett's addition to the town of Peoria, which is as follows



31

Defendant introduced in evidence
a certificate as follows

Land Office Quincy Ills

13th November 1837

It is hereby certified that John
L. Bogardus of New York did this
day enter or purchase the
South East fractional quarter
of section No 9. in Township
No Eight north of Range No
Eight East of the 4th principal
Meridian containing twenty
three ⁹³/₁₀₀ acres as appears
of Record in this office
John Lusk
Register

Defendant must read in
evidence a Patent from the
United States to John L. Bogardus
for South East fractional
quarter section No 9 in
Township Eight north of
Range Eight East as follows

Certificate
No 13258

The United States of America.
To all to whom these Presents shall come Greeting
Whereas John. S. Bogardus of New York County
New York. _____

has deposited in the General Land Office
of the United States, a certificate of Register
of the Land Office at Quincy _____
whereby it appears that full payment has
been made by the said John. S. Bogardus—
according to the provisions of the act of Con-
gress of the 24th of April 1820 entitled

"An act making further provision for the
sale of ~~Land~~ the Public Lands" for the South
East fractional quarter of section nine in
Township eight North of range eight east in
the District of Lands subject to sale at
Quincy, Illinois, containing twenty three acres
and ninety three hundredths of an acre.

_____ according to the official plan of the sur-
vey of the said lands returned to the
General Land Office by the Surveyor Gen-
eral, which said tract has been purchased
by ^{the} said John. S. Bogardus. _____

Now Know Ye That the United States
of America, in consideration of the prem-
ises, in conformity with the several acts
of Congress, in such a case made and
provided, Have given and granted
and by this presents, Do Give and Grant

unto said John Bogardus
and to his heirs the said tract above
described To have and to hold the same
together with all the rights, privileges,
immunities and appurtenances of
whatsoever nature, there unto belong-
ing unto the said John S. Bogardus.

and to his heirs and assigns
forever. Subject however rights of any &
all persons claiming under the act of
Congress of 3^d of March 1823 entitled

"An act to confirm certain claims
to lots in the village of Senia of the
state of Illinois" In Testimony
Whereof, Martin Van Buren

President of the United
States of America, have caused these
Letters to be made Patent and the
Seal of the General Land Office
to be hereunto affixed

Given under
my hand at the city of Washington the
fifth day of January in the
year of Our Lord one thousand eight
hundred and thirty eight and of the
the Independence of the United States
the sixty second

By The President:

Martin Van Buren

By Atan Buren Secy

Recorded 601.

Page 149

Ark. Parlor

Records of the General
Land Office

34

Defendant with rest in
order a seal from John
L. Bogardus of Grand
Middletown ~~is~~ follows

35 I know all men by these presents that I
John L. Bogardus of Peoria in the County
of Peoria and State of Illinois: In con-
sideration of one Thousand and fifty Dollars
to me in hand paid by Isaac Underhill of
said Peoria: The receipt of which I do
hereby acknowledge do hereby grant sell &
convey unto said Underhill all my
right and interest in & unto the south
east fractional quarter of section nine
in township eight north range eight
east of fourth principal meridian in
said Illinois and also in & unto the
ferry establish across the Illinois river
in said Peoria: together with the boats
and other ~~the~~ implements there unto belong-
ing to have & to hold the same to the said
Underhill, his heirs & assigns forever
with all the privileges & appurtenances
there unto belonging me.


In witness whereof I have hereunto
set my hand & seal this fifth day
of August A.D. 1854.

Signed, Sealed & Delivered
in presence of Orin Hamlin

John L. Bogardus
Seal

State of Ill.
Illinois
Peoria County

This day personally appear before the undersigned & acting Justice of the Peace in & for Peoria County, John M. Bogardus who being personally known to me to be the same person & acknowledge the within to be his act & deed for use & purposes there in contained. Given under my hand & seal this fifth-day of August One thousand eight hundred & thirty-four.

Wm. Hamilton J. P. 

Defendant then introduced & read in Evidence deeds from Isaac Meddell & Lewis Bigelow to defendant of Lot 12. in Block 39 in Bigelow & Meddell's addition to the town of Peoria in said County state which reads #

It was proven that defendant has occupied said Lot twelve including the part in controversy by actual residence thereon from the year 1845. until the commencement of this suit

were admitted in Evidence, & conveyed which were purporting to convey by a private bill in favor the said Lot.

Plaintiff then introduced and read in evidence a copy of the application of Joseph Bogardus for the purchase of the South East fractional quarter of section nine in township eight north of Range eight East, which was as follows to wit -

Pract 1832

No. 13258, 15th day of November 1837
 I, John, L. Bogardus of New York county New York State, do hereby apply for the purchase of the South East fractional qt. of section numbered nine in Township numbered eight north of range numbered eight east of the fourth principal meridian containing twenty three & $\frac{93}{100}$ acres according to the return of the surveyor General, for which I have agreed with the Register to give at the rate of one Dollar & twenty five cents per acre, subject however to the rights of any and all persons claiming under the act of Congress 3rd of March 1825 Entitled "an act to confirm certain claims to lots in the village of Plover in the state of Illinois. J. L. Bogardus by

Isaac Underhill est

4 (2393 40
575 1/4
29.9 1/4

I Samuel Such Register of the Land office at Quincy Illinois do hereby certify that the foregoing section above described contains 25⁹³/₁₀₀ Acres as mentioned and that the price agreed upon is of 1.25 per acre,

Samuel Such Register
Registers office Quincy Illinois
Mar. 3. 1852

I Henry Astbury Register of the U.S. Land office at Quincy Illinois do hereby certify that the foregoing is a true copy of the original application No. 73258 made by J. L. Bogardus by Isaac Underhill, Asst. Comm. & filed in this office & under which the land was entered by said Bogardus & the ~~land was~~ said 15th day November A.D. 1837

Henry Astbury Register
Reg fee 50c paid

4 (2393
575 1/4) 40

I Samuel Such Register of the Land office at Quincy Illinois do hereby certify that the foregoing section above described contains 25⁹³/₁₀₀ Acres as mentioned and that the price agreed upon is of 1.25 per acre,

Samuel Such Register
Registers office Quincy Illinois
Mar. 3. 1852

I Henry Astbury Register of the U.S. Land office at Quincy Illinois do hereby certify that the foregoing is a true copy of the original application No. 73258 made by J. L. Bogardus by Isaac Underhill, Agt. now & file in this office & under which the land was entered by said Bogardus & the ~~land was~~ said 15th day (November A.D. 1837

Henry Astbury Register
Reg. fee 50c paid

SUPREME COURT OF ILLINOIS.
FIRST GRAND DIVISION.
NOVEMBER TERM, A. D. 1857.

ABSTRACT.

Record Page.

Julius G. Lender, }
 vs. } Error to Madison.
 Alvin Kidder. }

11. This was an action of ejection, brought by Kidder against Lender in the Peoria Circuit Court at the Nov., term 1857 for the recovery of so much of claim No. 18 in the village of Peoria confirmed to Pierre L'Assesseur Dit Chamberlain by an act of Congress approved March 3rd 1823, as is covered by lot No. 12, in Block No. 39 in Bigelow and Underhill's addition to Peoria.
4. The declaration and Plea filed September 30th, 1857, both in usual form.
5. Order of change of venue to Madison County by agreement.
12. Papers filed in Madison circuit court, October 24, 1857, by consent of parties; a jury
13. being waived the cause was heard by the court.
16. First, the plaintiff offered and read in evidence the act of Congress approved May 15th, 1820 entitled an act for the relief of the inhabitants in the village of Peoria, etc., 2nd the report of Edward Coles dated Nov., 10, 1820, contained in volume 3 Am. S. P. relating to Public Lands page 421—showing that Pierre La Vasseur Dit Chamberlain claimed a lot in
17. Peoria, bounded Northwardly and Eastwardly by unoccupied land etc., and proof that he built a house on the same and fenced it in in 1798. 3rd, an act of Congress approved March 3rd 1823, entitled an act to confirm certain claims to lots in the village of Peoria, in State of Illinois.
- 18, 19, 20, 21, 22. Fourth, a plot of the village of Peoria approved September 1st 1840 by the surveyor of Public Lands in Illinois and Missouri. Fifth, a certified copy of the Plot and survey of claim No. 18 and 6th plaintiff proved that Pierre La Vasseur Dit Chamberlain and wife both died prior to the year 1830, leaving but one child Angeline, who afterwards married Benjamin Roi Dit King. Seventh plaintiff introduced and read a deed from Benjamin Roi dit King to Alvin Kidder purporting to convey the land in controversy. Eighth, plaintiff
29. then introduced in evidence a plat showing the interference of claim 18, in the village of Peoria and lot 12, in block 39, in Bigelow and Underhill's addition to the town of Peoria.
31. Defendant then offered in evidence first a certificate of the register of the land office at Quincy Illinois, certifying that John L. Bogardus did on November 15, 1837, purchase or enter the E., fractional fourth of Section (9.) in T. 8, N. R. 8, E. of the 4th Principal meridian containing twenty-three and nine-ty-three hundredths acres. 2nd, a patent from the United States, to John L. Bogardus, for the same land described in certificate; subject however to the rights of any and all persons claiming under the act of Congress of March 3rd 1823, entitled an act to confirm certain claims to lots in the village of Peoria, and 3rd, a deed from John L. Bogardus to Isaac Underhill. 4th, defendant then introduced and
- 35, 36, 37. read in evidence deeds from Isaac Underhill and Louis Bigelow to defendants for lot 12, in Bigelow and Underhill's addition to Peoria, which deeds were admitted in evidence and purporting to convey the fee in said lot.
- It was moved that defendant had occupied the premises by actual residence thereon for 12 years—from 1845, to the commencement of this suit,
39. The plaintiff then introduced and read in evidence a copy of the application of John L. Bogardus for the purchase of the land described in the patent to him, (Bogardus.)
41. This being all the evidence the court found for the plaintiff, whereupon the defendant entered a motion for a new trial which motion was overruled.
13. Defendant then prayed an appeal to the supreme court which was allowed as judgment in file.

49

Sender

vs

Kiddor

Filed 28. Nov. 1857.

A. Schuster cllk

Officer

SUPREME COURT OF ILLINOIS.
FIRST GRAND DIVISION:
NOVEMBER TERM, A. D. 1857:

ABSTRACT.

Record Page.

Julius G. Lender, }
vs. } Error to Madison.
Alvin Kidder. }

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17. 3rd, an act of Congress approved March 3rd 1823, entitled an act to confirm certain claims to lots in the village of Peoria, in State of Illinois.
- 18, 19, 20, 21, 22. Fourth, a plot of the village of Peoria approved September 1st 1840 by the surveyor of Public Lands in Illinois and Missouri. Fifth, a certified copy of the Plot and survey of claim No. 18 and 6th plaintiff proved that Pierre La Vasseur Dit Chamberlain and wife both died prior to the year 1830, leaving but one child Angeline, who afterwards married Benjamin Roi Dit King. Seventh plaintiff introduced and read a deed from Benjamin Roi dit King to Alvin Kidder purporting to convey the land in controversy. Eighth, plaintiff then introduced in evidence a plat showing the interference of claim 18, in the village of Peoria and lot 12, in block 39, in Bigelow and Underhill's addition to the town of Peoria.
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- It was moved that defendant had occupied the premises by actual residence thereon for 12 years—from 1845, to the commencement of this suit.
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41. This being all the evidence the court found for the plaintiff, whereupon the defendant entered a motion for a new trial which motion was overruled.
13. Defendant then prayed an appeal to the supreme court which was allowed as judgment in file.

Sender

by

Receiver

R. S. Nelson
T. B. Fouke
Off
O. Williams
W. H. Simpson
for Dep.

Filed 28. Nov. 1857.

A. Johnston M

NOVEMBER TERM, A. D. 1857.
FIRST GRAND DIVISION.
COURT HOUSE OF DISTRICT



SUPREME COURT OF ILLINOIS.
FIRST GRAND DIVISION.
NOVEMBER TERM, A. D. 1857.

ABSTRACT.

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vs. } Error to Madison.
Alvin Kidder. }

11. This was an action of ejectment, brought by Kidder against Lender in the Peoria Circuit Court at the Nov., term 1857 for the recovery of so much of claim No. 18 in the village of Peoria confirmed to Pierre Lavoiseur Dit Chamberlain by an act of Congress approved March 3rd 1823, as is covered by lot No. 12, in Block No. 39 in Bigelow and Underhill's addition to Peoria.
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27. Defendant then offered in evidence first a certificate of the register of the land office at Quincy Illinois, certifying that John L. Bogardus did on November 15, 1837, purchase or enter the E., fractional fourth of Section (9,) in T. 8, N. R. 8, E. of the 4th Principal meridian containing twenty-three and nine-ty-three hundredths acres. 2nd, a patent from the United States, to John L. Bogardus, for the same land described in certificate; subject however to the rights of any and all persons claiming under the act of Congress of March 3rd 1823, entitled an act to confirm certain claims to lots in the village of Peoria, and 3rd, a deed from John L. Bogardus to Isaac Underhill. 4th, defendant then introduced and read in evidence deeds from Isaac Underhill and Louis Bigelow to defendants for lot 12, in Bigelow and Underhill's addition to Peoria, which deeds were admitted in evidence and purported to convey the fee in said lot.
- 35, 36, 37. It was moved that defendant had occupied the premises by actual residence thereon for 12 years—from 1845, to the commencement of this suit.
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13. Defendant then prayed an appeal to the supreme court which was allowed as judgment in file.

49

Sender

to

Receiver

A. Williams
for self

Wesman
for self

Dec 28. Nov 1857.

A. Johnston *AM*
11

41

which was all the evidence offered
in the case. Whereupon the Court
found the issue for the Plaintiff
upon which the Defendant interposed
a motion for a new trial as at
common law which motion
alleged the finding of the Court
was against the law and the
evidence and the evidence which
motion was overruled and
judgment rendered for the said
Plaintiff to which the Defendant
at the time excepted and prays
the Court to sign and sign & seal the
his bill of exceptions and make the
same part of the record in this case
which is done accordingly.

Wm H. Sargent ^{Seal}

And now comes the ^{Appellant} Plaintiff ~~in error~~ by his
attys Manning & Herzman and says that
in the foregoing record there is manifest
error in this to wit

- 1st The Court erred in finding the issue in
favor of the Plaintiff below
- 2nd The Court erred in overruling the motion

3rd The court Erred in rendering a Judgement for the Plaintiff

Manning & Merriam
^{Appellant}
Atys for Plaintiff in Error

And now comes the ~~defendant in Error~~
Appellee by his Atys Williams Gresham
& Williams and says that in the foregoing
record there is no error. That the court
below did not err in finding the issue
for the Plaintiff nor in overruling the
motion for a new trial nor in declaring
Judgement for the Plaintiff

Williams Gresham & Williams
Atys for Appellee

Filed Oct. 24th 1857
F. O. Springer clerk

Filed 17. Nov. 1857
N. Johnston CM
11

As is claimed from John L. Bogardus, to whom the Government issued a Patent subject to the rights of all persons claiming under said Act of 3^d March 1853, that said Sudder has not. Nor is he in possession under the said title claimed by deponent, nor is there any contract between deponent & said Sudder in relation to said Lot, although deponent has made offers to sell to said Sudder his (deponent's) interest in said Lot both before and since the commencement of this suit but that no sale has been made.

Deponent further states that this is not a fictitious suit, but that the same was brought by deponent to recover the possession of said Lot — unless before the said ended said Sudder should purchase from deponent — deponent further states

That Charles Ballance is
not attorney for defendant in
said cause, nor as defendant
is informed & believes is, his
attorney for said Lueder,
nor has said Ballance
any interest in the premises
in suit as defendant is
informed and believes, and
defendant believes that said
Ballance has no authority
from any person interested
to appear in said cause,

Subscribed & sworn to before
me this 17th day of Dec. 1857
Witness my hand & seal
Notarial at Peoria
Bernard Bailey, N.P.

Alvan Kidder

1857

Supreme Court of Illinois,
November Term, 1857.

Alvin Kidder

vs
D. G. Luder

} In Ejectment

I Charles Ballance, of Peoria, do solemnly swear that I am well acquainted with the parties litigant, and premises in litigation in the above entitled ^{cause} and know, as well as such things can well be known, that the above is altogether a pititious ^{case} and that no decision of this court in this suit will, in any way, affect the interest of the parties thereto, but that ~~but~~ that this suit was clandestinely brought, to effect the interest of myself and others, who are not parties to this suit, and who it was not intended should know of it.

There has been much litigation ^{in the United States courts} about what are known at Peoria as French claims, and the judge at said court, in a number of cases, had decided that the Statute of limitation, of Illinois, commonly called the limitation law of 1835, was not a bar to said claims. To reverse said decision, I carried several suits, ~~to~~ by writ of error to the Supreme court of the United States, and said Supreme court decided that said decision was wrong, and that said ^{law} ~~decision~~ would bar said claims.

Said decisions were published in March last, after which I was informed that certain attorneys at law, who were interested in prosecuting said claims, intended to make up a case, and get a decision from the supreme court of Illinois contrary to said decision of the supreme court of the United States, on account of which deemed it my duty to watch said parties, and prevent a clandestine opinion from being obtained.

Afterward, at the last May term of the Circuit court of Peoria county, a suit was docketed, and a declaration in ejectment filed, in a cause wherein Robert Forsyth was plaintiff, and William H. Granger was defendant. From the fact that this suit was docketed quietly, without being called in court, at the close of a long term, and that the suit was between parties who did not claim adversely to each other, I was satisfied that it was a sham suit, got up to effect those suits, in the Supreme court, and I not only kept an eye upon said pretended suit, but employed two other lawyers to do so. The term passed without any steps being taken in said suit. After court was adjourned, Norman H. Purple, who is employed by ^{some of} the speculators in said French claims, to prosecute myself and others, and A. S. Merriam, who is employed by others of said speculators, entered into a written agreement, in the clerk's office of said court, for a change of venue, in said pretended suit, from said Peoria county to Sangamon county. I made arrangements to go to Sangamon to meet said parties, but before ^{time} for the Sangamon court had arrived, I discovered that the agreement filed in said clerk's office had been altered, by striking out the word Sangamon, and inserting the word McLean, and was informed by E. P. Sloan, the clerk of said court, that said alteration was made by said attorneys, and that judge E. N. Powell, the judge of said court, had made an order in vacation, in the presence, and at the request of said attorneys, removing said cause from Peoria circuit to McLean circuit court. I thereupon determined to confront them in said McLean court, and to enable me to do so, I not only watched the movements of said Purple and Merriam to ascertain when they would go to McLean, to attend

ascertain when they would go to McLean, to attend

To said suit, that I might take passage in the same train, and go with them, but I am satisfied that they became convinced that such was my design, and employ persons to mislead ^{me} as to the time of their departing; for they actually did go, and Charles Purple, the son of said Norman, a young man who keeps his father's office, in Peoria, told me that his father had started to Chicago. I however, out of abundant caution, took ^{passage on} the next train for Bloomington, to seat of justice of said McLean county. I got there, in the evening, before said court had adjourned, but ascertained that said Purple and Meriman had arrived there, before me, and submitted said cause, pro forma, and the judge of said court, without any examination of said cause, by the consent of said parties, decided said cause, and signed a bill of exceptions, which had previously been prepared, by said attorneys, and having done so, they disappeared, and as I suppose, returned to Peoria, before I arrived.

On the same day, I entered a motion in said court to set aside said judgment, upon the ground that it was a sham suit; but the judge of said court determined not to decide said motion, without a notice being served on said Purple and Meriman. Whereupon I returned to Peoria, and served a notice on said Purple and Meriman, that on a certain day, I would take up said motion; and I employed William F. Bryan, a lawyer of Peoria, to go to Bloomington and attend to it for me. By said Bryan I am informed and believe, that when he got to Bloomington, he met one David McCulloch (who was a student of law of said Meriman, and who in some capacity keeps his office, and attends to his business in his absence) who appeared to resist said motion, but said court, upon the motion of said McCulloch, and ^{for} cause shown by him, continued said motion until

The next term of said court.

In that case, said Purple as the actor, prepared all the papers, but ^{Say} Meriman, whose interest it was, if that had been a genuine suit, that my motion should prevail, sent his agent or partner to resist me.

To sustain said motion, I filed affidavits and documents showing, as I suppose, beyond a doubt, that that was a sham suit, and that all the title that the plaintiff in said suit, ever had, had long before been conveyed to dependant's land-lord.

As the docket ^{ing of} this case, in court, although privately, gave me the means of watching their proceedings, they afterwards commenced the present suit, in vacation, and obtained an order of said judge, also in vacation, for a change of venue to Madison county, with an agreement to carry the case by appeal to Mount Vernon, instead of Ottowa. Upon discovering this, I wrote to Hon. Joseph Gillispie to watch the case, and if any action was attempted to be taken, to move to continue it long enough to enable me to file affidavits and documents showing the case to be a fictitious one, and I gave him such information as I deemed necessary to present said motion. To this letter, I received no answer, and when I supposed time enough had transpired for some action to have been taken in the case, I wrote to said Gillispie for information. To this letter also I failed to receive any answer. I then wrote to the clerk of the court to know what had been done in the case. To this letter also I failed to receive an answer. A letter was then written by said Bryan, & on my behalf, to M. G. Dale, an attorney at law at Edwardsville, to obtain information on said subject, who on the 28th wrote a letter containing the following most remarkable sentence. "I have examined

the case of Kidder vs Lueder - find that I Giddespe Esq
appeared for plff. and P.D. Hauke Esq. for defen^{ce}.

I have talked with both said Kidder ^{and Lueder} on the subject
of this suit, and said Kidder denied the existence of it,
and said if any such suit had been brought it was
without his knowledge. Mr Lueder said that said
Merriman had asked his permission to use his
name in a suit to get ~~the~~ supreme court to give
a decision on the statute of limitation, and he
said he had no objections, provided he was indem-
nified against cost, which said Merriman agreed
^{to do} but he said there was really no controversy between
him and said Kidder, about said ground. He said
there had once been, that said Kidder brought a French
claim, that at one corner, interfered with ~~with~~ his
property, but that he and said Kidder agreed to com-
promise the matter, by him paying said Kidder fifty
dollars; and that no decision, in this suit, will effect,
or is designed to effect the title to the proper described
in said declaration.

And further affiant doith not

C. D. Dallance.

State of Illinois
Peoria county, Ill. }

I Enoch Sloan, Clerk of Circuit Court of said county
do certify that Charles Dallance did on the seventh
day of November 1857 make oath before me
according to law that the above affidavit to which his
his name is subscribed so far as he states facts from
his own knowledge is true and so far as he states
facts from the information of others he believes them
to be true

Enoch Sloan, clk

State of Illinois,
Pavia County

J. M. Pople being
Sworn says that the suit in Ejunctant
of Alvin Kipper vs Julius C. Kipper
Commenced in the Circuit Court of Pavia
County, and now pending by appeal
in the Supreme Court of this State in
the first grand division is as he
is informed and believed a real and
not a fictitious suit; that the Parties
severally claim title to the land in the
manner stated and set forth in the
records, and that the suit was instituted
for the purpose of determining
the rights of the parties under their
respective claims and titles as stated
in the records and further saith not

Subscribed & Sworn to
before me this 24th Dec

1857

Henry Jones

Notary Public

Pavia City

Illinois

J. M. Pople

Julius G. Linder appellant }
vs }
Alvin Kilder Appellee }
} In the Supreme
} Court of the
} State of Illinois
(First grand division)

The Parties to this suit hereby stipulate and agree that the venue herein shall be changed to the Second grand division of the Supreme Court to be held at Springfield in January next, and that all the Papers and records on file in the case shall be transmitted for the with, with this agreement, to the Clerk of the Supreme Court at Springfield aforesaid

Waring & Menninger
Attys for Appellant
Peru Iowa 24. 1857.

M. D. Pulte
Att'y for Alvin Kilder

1
Supreme Court of the State of Illinois
First Grand Division Mt Vernon Illinois
November Term A. D. 1857

Julius G Lender

vs } Appeal from Madison
Calvin Kidder

Argument for Appellee

This was an action
of Ejectment brought by the plaintiff
against the defendant to recover Lot 18
in the French Village of Peoria which
was granted by the act of Congress of the
30th of March 1823 "To confirm certain
claims to lots in the village of Peoria in
the State of Illinois" to Pierre Savassour
dit Chamberlain. The plaintiff
proved title in himself by conveyances
from said grantee & is entitled to recover
unless his action is barred either by
the act of the General assembly of the
State of Illinois of January 17th 1835
to amend an act "to amend an
act for the limitation of actions & for
avoiding vexatious Law Suits" or the
act of 1839 to quiet
possession and confirm titles to land
The defendant resided on the land
& paid all the taxes legally assessed

thereon for more than seven years next
preceeding the bringing of this suit under
a patent from the United States dated

and granting the fractional gr of Section
on which said lot is situated to John
L Bogardus "Subject however to all
the rights of any and all persons
claiming under the act of Congress
of the 3rd of March 1823 entitled
"An act to confirm certain claims
to lots to lots in the Village of Peoria
in the State of Illinois"

The only question presented for
the consideration of the court is
whether that residence and payment
of taxes under such claim of title
constitutes a bar to the action under
either of the aforesaid acts of the General
Assembly of Illinois. The first provides
that "every real ~~property~~ ancestral or
Mixed action or writ of right brought
for the recovery of lands tenements or
hereditaments of which any person
may be possessed by actual residence
thereon having connected title in law
or equity deducible of record from
this State or the United States

or from any public officer or other person authorized by the laws of this State to sell such land for the nonpayment of taxes, or from any Sheriff Marshall or other person authorized to ~~sell~~ such land on execution or under any order judgement or decree of any court of record shall be brought within seven years next after possession being taken as aforesaid; but when the ^{title} possession shall ^{be} acquired after taking such possession the limitation shall begin to run from the time of acquiring title"

By the other it is declared that every person in the possession of lands or tenements under claim and color of title made in good faith and who shall for seven successive years continue in such possession and shall also during said time pay all taxes legally assessed on said lands or tenements shall be held and adjudged to be the legal owner of said lands or tenements to the extent and according to the purport of his or her paper title"

Possession under these acts to bar an action must be adverse

In Kirk vs Smith 6th Curtis 52.

Chief Justice Marshall delivering the opinion of the Court speaking of the Pennsylvania Seven years act ^{say} if it were to be considered as a limitation it must be governed by those rules which apply to acts of limitation generally.

One of these which has been recognized in the courts of England & in all others where the rules established in those courts have been adopted is that possession to give title must be ~~adversary~~ adversary. The word is not indeed to be found in the Statutes but the plainest dictates of common Justice require that it should be implied.

It would shock that sense of right which must be felt equally by legislators & by Judges if a possession which was permissive & entirely consistent with the title of another should silently bar that title. Several cases have been decided in this Court in which the principle seems to have been considered as generally acknowledged.

And in the State of Pennsylvania particularly it has been expressly recognized.

To Allow a different construction would

be to make the Statute of Limitations a
Statute for the encouragement of fraud—
a Statute to enable one man to steal the
title of another by professing to hold under
it. No laws admit of such a construc-
tion.

In Adams on Ejectment (46) it is
said it may be safely laid down that
an adverse possession will be nega-
tived by when the parties claim under
the same title, when the possession of one
party is consistent with the title of the
other, when the party claiming title has
never in contemplation of law been out
of possession, and when the possessor
has acknowledged a title in the
claimant.

The Supreme Court of Illinois in
the case of Turney vs Chamberlain
(15 Illinois 279) say. To constitute
an adverse possession sufficient
to defeat the right of action of the
party who has the legal title the posses-
ion must be hostile in its inception
and so continue without interruption
for the period of twenty years. It must
be an actual visible and exclusive
possession acquired and retained

under claim of title inconsistent with that of the true owner"

It is evident that the possession of the defendant when tested by these ~~general~~ principles is not adverse to the title of the Plaintiff. It was taken and retained in subjection to that title.

It is to be inferred from the opinion of the court in Bryant & Rouse vs Forsyth Bogardus by his patent acquired the title to the entire quarter subject to be defeated as to the Village lots when such lots should be surveyed then the occupant after the approval of the Survey in 1845 was in the situation of a tenant at sufferance and his possession could not become adverse without an open and notorious ^{dis avowed} holding in subjection to the title of the rightful owner known to such owner.

It is equally clear from the adjudged cases that his possession was not adverse to the plaintiffs title.

In Kirk vs Smith cited above the land was held under the following warrant Viz. "Pennsylvania St. By the Proprietaries

Whereas Bartholomew Sessang of the

County of Lancaster hath requested that
we would Grant him to take up two
hundred acres of Land situated between
Codoms Creek and Little Conwaga Creek
adjoining the Lands of Killam Smith
and Phillip Herntz on the west side
of the Susquehanna river in the said
County of Lancaster for which he agrees
to pay to our use the sum of fifteen pounds
ten Shillings current money of this
Province for each hundred acres and
the yearly quit-rent of one half penny
sterling for every acre thereof These are
therefore to authorize you and require
you to survey or cause to be surveyed
unto the said Bartholomew at the
place aforesaid according to the method
of Townships appointed the said
quantity of Two Hundred acres
if not already surveyed or appropri-
ated and make return thereof
into the secretaries office in order
for your confirmation: for which
this shall be your sufficient warrant
which survey in case the said Bar-
tholomew fulfill the above agreement
within six months from the date hereof
shall be valid otherwise void. Given

under my hand and seal of the
land office by virtue of certain powers
from the said Proprietaries at Philadelphia
this Eighth day of January Anno
Domini one thousand Seven hundred
and forty two

George Thomas

"To W^m Thomas Surveyor General"

"In virtue of this warrant a survey
of the land claimed by Caleb Kirk
one of the Plaintiffs in error was made
on the 12th of October 1747 in favor
of Jacob Wagner the then holder of
the warrant by various mesne
transfers. The title was regularly
deduced by various conveyances
from Wagner to Kirk accompanied
with possession

No Grant has been issued for these
lands. Ten pounds in part of the
consideration was were paid about
the date of the warrant & there is
no proof of the Payment of the resi-
due

Penns Lissu brought this writ of
Ejectment the case was decided
by the Supreme Court of the United
States at the February Term 1824

The Court below held ~~that~~ the Pennsylvania act of 1705 - commonly called the seven years law to be inapplicable to the case. By this act it is enacted "That seven years quiet possession of Lands within this Province which were first entered on & upon an equitable ~~title~~ right shall forever give an unquestionable title to the same against all during the estate whereof they are or shall be possessed except in cases of infants &c"

The supreme court held that the possession of those who held under this conditional warrant was consistent with, and not adversary to the title of the Proprietaries. The court say "The proprietary permitted the purchaser to hold the land subject to his claim to the purchase money and the purchaser held under the admission that the land remained liable to the purchase money * * * *
* * * Certainly during this state of things the purchaser could not be considered as holding a possession adversary to the title which he acknowledged. This is certainly a much

Stronger case than the present one
See 4 Howard (16. S) R 289.

In the case of Kirk vs Nichols (299
Marshall, 168-70) it is held that
a widow holding land in right of
dower cannot by purchasing a title
adverse and paramount to that of
the reversioners & under which she
acquired the possession defeat its rever-
sionary right or prevent a restitution
of possession to the reversioners by aliena-
tion of all her right to another by deed
for a valuable consideration. The court
say "It is an universal rule of law as
well as a principle of Justice & policy
that the possession shall be held according
to the title under which it was acquired"

The rule is admitted by the counsel
for the appellant but he insists it
applies only to Landlord and Tenant
by express contract & that therefore
a man who is put into possession
by the act of the law independently of the

4
Will or agency of the heirs or devisees is not embraced by the reason of the rule. We think differently. In either case the reason is the same. In each gives faith exacts of the tenant the same allegiance to the title under which possession was acquired & in each therefore the law will equally protect the rights of the reversioner".

In Smith vs Burtis 9 Johns 180 The Court say "But Buckman's entry claiming as tenant in common under the same title as that of the lessors of the plaintiff qualified his entry and admitted the title of lessors; so that neither Buckman nor the defendants could set up that entry as adverse to the common title or as injurious to the rights of the other tenants in common. A possession for ever so long a time stripped of the circumstance that it is unaccompanied with the claim of the entire title will not amount to an adverse possess. in barring those who have the real and legitimate title. When therefore Buckman avowed by his acts and declarations that he did not mean to usurp the possession to himself but that he

entered in subservency to the same title and as tenant in common his possession lost its adverse character as he regarded all those who had right & title in the premises"

In Jackson vs Sears 10 Johns 110 Henry Sensabaugh entered into the possession of land in 1776 & in 1786 he accepted a deed for the same land of his father and mother. The land belonged to his mother but the deed was not acknowledged by his mother Henry occupied the land about forty years claiming it as his own The Court say "The acceptance of a deed of the premises in 1786 from his parents by Henry Sensabaugh the father of the lessor of the plaintiff does away the force of the testimony of Rock a fellow that he had previously held adversely to the rightful title of his mother, or if he had previously so held the adverse possession is terminated and he held under his parents such right as the deed conveyed"

Jackson vs Stevens 16 Johns 116 is to the same effect

So also is Jackson vs Gains 20 Johns 303

7

These cases all proceed on the ground that the defendant had recognized or admitted the title of the Plaintiff. In this case the defendant has not only recognized and admitted the Plaintiff's title but he has expressly agreed to hold in subjection to it.

If the true construction of the Patent is that it conveyed the whole tract subject to be defeated as to the Village lots by the approval of the survey thereof then the original entry was rightful and consistent with the title of the Plaintiff and after the approval of the survey the defendant was precisely in the situation of a tenant at the termination of his lease and his possession after that time like that of a tenant holding over at sufferance; it is not adverse in either case. The defendant in this case claimed under or subject to the title of the Plaintiff as fully and completely as a tenant does under that of his Landlord and his possession is consequently consistent with and not adverse to the title of the Plaintiff. See

Jackson vs Burton 1st Wend 343

Butler vs Phelps 17 Wend 642

Marston vs Butler 3 Wend 149

Jackson vs French 3 Wend 337

Jackson vs Mancus 2 Wend 357

In Jackson vs Cairns 20 Johns 306

The Court say "We perceive then that Key's continued in possession after the termination of the estate he held in right of his wife was a tenancy at Sufferance not tortious as regarded the true owners and consequently not hostile or adverse to their right His claim of title and building on the premises can have no effect for it does not appear that this was ever brought home to the knowledge of the lessors I do not mean to admit that had the claim been known to them that a mere claim of title by a tenant at Sufferance would create a disseizin or a possession adverse to the true owner" The clause in Bogardus Patent "Subject however to all the rights of any and all persons claiming under the act of congress of March 3rd 1823 entitled an act to confirm certain

claims to lots in the village of Peoria in the State of Illinois" is either an exception out of the grant or a condition annexed to it. If the former then Bogardus had neither title nor color of title to the lots excepted & Bogardus and those claiming under him are not within the protection of the seven years limitation laws

Foxcroft vs Mallitt 16. Curtis 148

Hawkins vs Bang 9 Curtis 428

If the latter then he held the French village lots subject to a condition subsequent and his title was subject to be divested upon the happening of the condition which is the location of the claims of the settlers who were entitled to lots under the act of Congress aforesaid, then the entry of Bogardus was lawful and he had a right to hold said lots subject to the rights of those settlers until the condition happened. His possession until that time was clearly consistent with and not hostile to the title of the settlers and after that time he was in no respect different from a tenant for the life of an other after the death of that other. Both

would be tenants at sufferance.

In Foxcroft vs Mallett 16. Curtis
the Commonwealth of Massachusetts on
the 15th day of February 1820 conveyed
Township N^o 3 to Williams College on
condition that the grantee should
give security that they would within
three years place on said Township
thirty families as settlers and con-
vey to the head of each family a
lot of 100 acres of average quality and
value of said land at \$5. per lot

Williams College on the 15th day of
February 1820 conveyed without giving
said security conveyed this Township
to Nathaniel Ingersol who gave said
security

Ingersol on the 5th of June 1827 conveyed
to Samuel T Mallett a portion of
said Township " Subject however to
the condition that the said Mallett
shall perform his part of the settling
duties in proportion to the land
conveyed. On the same day to secure
the consideration for the purchase and
to pay the same to Williams College in
behalf of said Ingersol still indebted
to the College Mallett conveyed the same

premises to said College.

The debt secured by that mortgage not being paid the College instituted a suit to foreclose the same in the year 1832 & recovered judgement June 20, 1839

In the meantime namely May 11th 1835 the College transferred its rights under the mortgage to one Webber who in the same year conveyed a moiety of them to Foxcroft the Plaintiff Webber & Foxcroft in July 1836 petitioned the Superior Court of Maine for a partition of what they held in common with others & Lots N^o 11. in 4th & N^o 11. in the 5th Range were set off to them in severalty & on the 4th of November 1836 Webber released all his right in them to Foxcroft

Samuel Mallett after the conveyance to him by Ingersol and the mortgage to the College proceeded to put on the land various settlers under the reservations and conditions in the deed to him and at a meeting of the proprietors of the Township for the purpose of dividing the same April 16, 1828 Nos 11. of the 4th & 11 of the 5th Range were set off to Samuel Mallett with other lots making four

teen in all and described as being lots which he had sold to settlers, as so much towards his share in said lands: and on the 12th of August 1829 he executed a deed of those lots to David Mallett the demandant who bought his writ of right - and recovered them of Foxcroft the defendant. The court say "The case then stands thus If the title to these lots passed under the mortgage from Samuel Mallett to the college without condition except as security for the debt the plaintiff in error is now possessed of them in Severalty and should retain them. But if the title to them did not pass at all by that mortgage on account of the exceptions or reservations either in it or the prior deed which are applicable to the premises or if it passed on conditions which have since vested those lots in David Mallett as settler lots under the act to encourage the sale and settlement of lands in Maine then he as settler and grantee of the same ought now of right to possess them"

Remarking upon these words in the deed to S. Mallett "Subject however to the

condition that the said Mallett shall perform his part of the settling duties in proportion to the land conveyed". The court say "There can be no doubt that this language whether following or preceding the description of the premises was intended to constitute an integral part of the deed itself and to limit the extent and nature of the grant. They must be construed as relating only to the subject matter looking to the whole deed and the obvious intent of the parties in the whole. The whole to be held subject to the condition that the said Mallett shall perform his part of the settling duties or in other words first on his proportionate number of families and convey to the head of each a hundred acre lot for only \$5". The court incline to the opinion that these words constitute a condition and not an exception. "The nature of the transaction" say they "as well as the language may well be regarded always in deciding whether a case is a reservation or condition. But whichever the last clause should be

Considered as operating consistent with legal principles the result on the interests of the parties would be much the same.

In the former view as an exception or reservation the land afterwards set apart for these lots would be regarded as never passing at all to the mortgagee or his grantee while in the latter view as a condition it would pass but only on condition of being vested in the settlers as soon as set apart and conveyed to them & as the latter has already been done the title would not be now in the tenant in either of these views. Were it necessary to give validity to the clause & it would be bad either as a reservation exception or condition it would be no unusual stretch of construction to consider it as a covenant to stand seized to the use of the settlers & in this way reach a like result * * * * * Making these important clauses then in the deed from Ingham operative & near as may be in conformity to the original design which was both legal and laudable why should they not bind subsequent Mortgagees and Grantees? Samuel

Mallett having obtained no interest in the Six Thousand acres so far as regards the lots then marked and reserved and none whatever in the whole tract free from the condition and charge we have been describing - of other lots to be afterwards marked and assigned as there have been to settlers - how could he pass to others by a mortgage a greater interest than he obtained. The condition or charge was on the land as an incumbrance by the very terms of the deed to him and he could not if he tried convey a title to the land which should be free from it. Such a condition attaches to the land whenever it goes although the same pass through the hands of a hundred men Shep Touch C. C. Perkins Sec 818 2nd Preston on Conveyances 412 - 1 Co Litt 230. b

In our view it operates like a covenant which runs ~~with~~ the land and all assigns are bound by covenants real that run with the land
Spences Case 5 Coke 16-17
Co Litt 47^a - Shep Touch 161. C C
Com Dig Condition 3 D & E 396
1 Paige 412-455

I have made these lengthy quotations because the case is very much like the one under consideration and in this as in that case the result is the same whether we regard the words "Subject however &c" as an exception or reservation, condition ~~condition~~ or covenant to stand seized. In the former case Bogardus and his grantee have no title to the lots excepted and in the two latter cases their possession was held in subordination to our title and consequently was not adverse.

But in this case the language in my opinion must be regarded as an exception and not as a condition.

"The nature of a transaction as well as the language may well be regarded always in deciding whether a case is a reservation or ^acondition."

A charge like this imposed in a deed by the state though using words of reservation was adjudged to be a condition in Hoag vs Dean 13 Maine 31; & same case 15 Maine 216 - Dunlap vs Stearn 11 Mason 347. - So a provision may be inserted in an instrument as to land which will be construed either as a

condition or a covenant as seems most appropriate. Bac Abr Condition G And words of limitation may be taken for a condition. Leon Dig Condition A" 16. Curtis 149 It may be added that words of condition may construed as an exception or reservation.

Looking to the nature of the Grant to Bogardus and the circumstances under which it was made we find the grant to Bogardus was of a fractional quarter section of land and that quarter embraced within its boundaries some of the Village lots of Peoria the general laws for the sale of the public lands authorized the Register and Receiver of the land office to sell the lands which had been surveyed by the proper authorities.

While the land was in this condition subject to sale the act of the 3rd of March 1823 was passed granting to certain settlers the title to lots within this quarter section and directing that they should be surveyed and conveyed by patent.

This act of itself and without any express prohibition of a sale by the Register and Receiver immediately deprived them of all power to sell to

any person ^{any of} the lots so granted. They had no authority to vest in any person any description of title legal or equitable absolute or qualified in the lots granted by act of Congress to the Peruvia settlers.

They had power however to sell the ballance of the quarter section but these lots were scattered over it so that it would have been difficult if not impossible to have given a particular description of the portions of the quarter which had not been so granted.

It was under these circumstances that Bogardus applied to the land officers to make the grant in question subject to the rights of those settlers and that the officers sold and the President afterwards granted it to him subject as aforesaid. Now what did Bogardus intend by this language in his application? Did he intend to buy land which the officers had no power to sell or did he intend to buy that which they were authorized to sell? Did the Land officers intend to sell land which had been withdrawn from their jurisdiction or did they only intend to sell that which remained subject to their jurisdiction? Did the

President intend to grant land which had been previously granted by Congress or did he intend to grant only so much as had not been previously granted? Undoubtedly all the parties intended to buy and sell so much only as was subject to sale and the phraseology of the application certificate was adopted as a convenient and only practicable mode of description. Upon this construction the Register & Receiver & President did their duty they sold only what they had a right to sell. Upon any other construction they violated their duty, they attempted to sell what they had no right to sell. For this reason alone the former construction should be adopted.

These lots then are excepted out of the grant and consequently neither Bogardus nor those claiming under him have any title to them. This is the construction adopted by the Supreme Court of the United States in the case of Ballance vs Forsyth 12 Curtis 366. They say "The statute did not protect the possession of the defendant below. His Patent excepted these lots; of course he had no title under it for the lots were excepted." If the patent to Bogardus be of

Prior date the reservation in the patent
and also in his entry was sufficient
notice that the title to these lots did not
pass. And this exception is sufficiently
shown by the acts of the government."

This court has adopted the same con-
struction *Ballance vs Tim et al* 12 Ills 329
The act of 1837 requires possession under
claim and color of title and declares
that the occupant shall be adjudged
the owner to the extent and according
to the purpose of his paper title.

Now what is the extent & purpose of
the defendant's paper title in this case.
If the proviso in the patent is an excepti-
on or reservation then its extent is all
the quarter section except the reserved
lots, they are not embraced within its
extent. If the proviso is a condition
and not an exception then its purpose
is to hold the lots granted to the settlers
subject to the rights of those settlers and
the defendant being adjudged the owner
of the ~~lots~~ lots in question subject to the
rights of the plaintiff he cannot by vir-
tue of that ownership hold it against
the plaintiff: that would be to hold
it in defiance of and not in subjection

to his rights Tenants at will for years or life
 or in tail whether coming by contract with
 the owner or not all hold subject to his
 rights As well might they after the termi-
 nation of their estates claim to hold ~~against~~
 against the owner of the fee as for the
 defendant to hold against the plaintiff
 in this suit - Holding in subjection to the
 plaintiffs title he may as in the case of
 tenants ~~in common~~ hold at sufferance
 until the possession is demanded But
 he is bound to yield the possession when it
 is demanded and if he refuse to do so
 he may be turned out by suit at law
 The result then in this case is the same
 whether the proviso is considered a
 condition or an exception. Being on the
 face of the title it attaches to the land in
 the nature of a real covenant & is notice to
 all persons who claim under it. I submit
 in conclusion that the defence set up
 in this case can only be sustained by
 the entire overthrow of all the well established
 principles of law applicable to the case and
 adopting in their stead by a species of judicial
 legislation - for it cannot be called adjudica-
 tion a set of new & untired rules and principles
 if indeed they deserve to be dignified
 with the name of principles.

See Dr. L. 1875 p. 145 - See p. 17.

A. Williams & Wm. H. Underwood
 Printers for the State

A 9
Lender

vs.
Widdler

Argument of
Depts

1857

Filed Nov. 1857

N. Johnston Clerk

Plover Nov 25/87

W. L.

Enclosed find copy^m
in case of Trade & Retail
which please file in the
case or if subse^{nt}
in part of Dept. know
the Court to oblige

W. L.
W. L. Johnson

1857

St Louis Nov 15th 1857

Mr Noah Johnson

Mount Vernon Mo

Dear Sir

Yours of the 11th Inst.
was duly received as per request I
enclose you five Dollars - please
acknowledge receipt and oblige

Respectfully yours

Robert Forsyth
by J. L. Capin

J. G. Lander

My

Alain Kildow

Letter of Robert
Forsyth Esq

1857

John Sueda } See the Sup Court
Appellant } of Illinois
vs }
Abra Kiddle } 1st Grand Division
Appellee }

A. S. Munnice
being just duly sworn deposes
says that he is attorney for
appellee, that he is acquainted
with the title of the respective
parties to this suit and that
the titles are as set forth in
the Record filed in this case,
and that this suit was brought
for the purpose of testing the
rights of the respective parties
to the land in controversy
& further says not

Subscribed & sworn to A. S. Munnice
before me Notary Public
in the City of Peoria County
of Peoria & State of Illinois
Witness my hand & seal
Notarial this 26th day
of December 1837
Bernard Baily Notary