

14572

No. _____

Supreme Court of Illinois

Wiggins

vs.

Lust

Preamble.

Cases held at Duckroville within
and for the County of Morgan and
State of Illinois, before the Honorable
David M. Woodson Judge of the first
Judicial Circuit of said State, on
the 13th day of September
A. D. 1850.—

Samuel Higgins }
vs } Ejectment.
Edward Lusk }

Be it remembered that on
the first day of November 1848. the plaintiff filed in
our said office, the following declaration in ejectment
1848 together with notice, and proof of the service thereof and
declaration in this cause, to-wit,

filed State of Illinois }

Morgan County }

On the circuit Court of said County,
Samuel Higgins by his attorney complains of
Edward Lusk in custody & for that whereas on the first
day of January A. D. one thousand eight hundred and
Reclamation forty eight, the said plaintiff was possessed of a certain
tract or parcel of land, situated in the County of Morgan
aforesaid, being the west half of the South west quarter of
section number twenty two in township number fifteen
North of range number thirteen west of the third principal
meridian containing eighty acres with the appurtenances
thereof, which said tract of land, the plaintiff claims in
fee, and being so possessed thereof the said defendant
aforesaid, on the second day of January in
the year last aforesaid, entered into the said premises
and ejected the said plaintiff therefrom, and unjustly

withheld from the said plaintiff the possession thereof,
to the damage of the plaintiff One hundred dollars
therefore he sues &c. W. Thomas atty for
Plff

Notice to appear & plead
To Mr. Edward Lusk, You are hereby notified
that the declaration with a copy whereof you are now
herewith annexed, and to which copy this motion is
subjoined will be filed on the Second day of the next
term of the Circuit Court of Morgan County to wit, the
Special term to be holden on the last Monday in
October next, that upon filing the same a rule will
be entered requiring you to appear and plead to the
said declaration within twenty days after the entry
of such rule, and 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 specified in the said
declaration, dated this 2^d day of September 1848.

W. Thomas atty for Plff

State of Illinois, Morgan County ss—

Summ
Notice
Jonathan Nely deputy for Geo Davenport Sheriff
of Morgan County, being sworn in due form of law
deposed and says that he did on the 12th day of
September 1848. personally serve Edward Lusk the
defendant named in the foregoing declaration who
claims an interest in the tract of land for which
this action is brought, with a true copy of the said
declaration, and also a true copy of the notice
in writing to the said declaration subjoined, and
likewise hereto annexed—
subscribed & sworn to this 1st day of
November 1848. before me, D. Richmond Clerk

J. Nely Dep. Shff

And afterwards to wit on the same day the plaintiff in this cause filed in our said office the following bond for costs to wit;

Security I do hereby enter myself security for costs in for costs in this cause and acknowledge myself bound to pay or cause to be paid all costs which has accrued or may accrue in this action, either to the opposite party or to any of the officers of this Court, pursuant to the laws of this State, dated this 30th day of October 1848.

Wm. Thurnaby

And afterwards to wit on the same day being the first day of November 1848. the following order was entered in this cause being the Special October term of said Court to wit—

Rule to plead: The said plaintiff by William Thurnaby his attorney comes and files his declaration herein with the return of the Sheriff therein endorsed, showing that the defendant has been served with a copy of said declaration, and notice thereto Subjoined, and on motion of said plaintiff it is ordered that defendant plead to the declaration within twenty days, otherwise Judgment will be entered against him by default.

And afterwards to wit on the 13th day of November 1848 the defendant filed in our said Court the following

Affidavit affidavit to wit;

7th day Edward Luck defendant in this cause, being duly sworn makes oath and says, that he has not been served with proof in any way of the authority of the attorney for the plaintiff in this cause, to use the name of

the plaintiff stated in the declaration, wherefore he
prays a rule requiring said attorney to produce his
authority for commencing this action in the name of
the said Wiggins the plaintiff — E. Lusk

Served to & subscribed before me this 9th of November
A.D. 1848. D. Rockwell Clerk

And afterwards to wit on the same day the
Rule following Order was entered in this cause, to wit,

^{on} ^{peffs} ^{Attorney} This day came the defendant and entered
his motion predicated upon affidavit filed to rule
the plaintiff to exhibit his authority to bring this suit,
which motion is sustained, and the plaintiff has
until the first day of January next to comply with
this rule until which time the rule entered upon
the defendant to plead in this cause is suspended —

And afterwards to wit on the 20th day of January 1849
the defendant filed his plea in this cause, which is
in the words and figures following, to wit, —

20 Jan'y 49 And the said defendant by H. B. McClure his
plea, attorney comes and defends the wrong and injury
when &c and for plea says that he is not guilty of un-
lawfully withholding the premises claimed by the
said plaintiff, as is alleged in his said declaration,
and of this he puts himself upon the Country &c
H. B. McClure Deft, Atty —

And afterwards to wit on the 23rd day of March 1849 at
the March term of the Morgan Circuit Court the
following order was made in this cause, to wit,

March
1849 This day came the parties by their attorneys who
agree that both matters of law and fact may be tried

Quart.

by the Court, whereupon the testimony being heard, the Court finds the defendant guilty of the trespass in Ejectment as to an undivided half of the tract of land described in the declaration to-wit, The west half of the South west quarter of section twenty two in township number fifteen north of range number thirteen west of the third principal meridian, in the County of Morgan, being the same undivided half conveyed by defendant and wife to plaintiff, and that plaintiff is entitled to an estate in fee in and to the said undivided half of said tract of land, and the Court finds the defendant not guilty of the trespass &c. and as respects to the other undivided half of said land, whereupon it is considered and adjudged by the Court that the plaintiff recover of the said defendant the said undivided half of said tract of land, and also his costs herein expended. It is further ordered that the plaintiff have the writ of Habeas corpus possession directed to the Sheriff of Morgan County, commanding &c.

And afterwards to-wit, on the 29th day of November 1849 at the ~~second~~ term of November term 1849 of the Morgan Circuit Court aforesaid the following order was made to-wit,

Nov 29 On this day the plaintiff by his attorney moved for the Court to set aside the finding of the Court and Judgment therein, and grant a new trial in this cause under the provisions of the Statute regulating the granting of new trials in the action of Ejectment, which motion the Court sustains, and the finding and Judgment aforesaid are hereby set aside, and a new trial awarded, and in regard to the question

of payment of costs in this cause upon the granting of the new trial, the court not being sufficiently advised therein takes the same under consideration until the next term, and if the court then decides that the plaintiff is bound to pay the costs as a condition precedent or otherwise to the granting of the new trial and the plaintiff shall fail to pay the same this order shall be void and the cause stand as if this order had not been made. and the cause is continued, this order is also made subject to all exceptions or objections at the next term by the defendants attorney who is now absent.

March 1850 And afterwards took on the 13th day of March 1850 at the March term of said court the following order was made in this cause, to wit,

costs paid & cause cont'd In this cause the court decides that the plaintiff is bound to pay the costs upon the granting of the new trial herein; whereupon the plaintiff paid said costs to the clerk, and on motion of the plaintiff this cause is continued at his costs.

And afterwards took on the 13th day of September at the September term of the circuit court 1850.

Sept 1850 after said the following order was made in this cause to wit, "This day came again the parties by their respective attorneys who agreed that both matter of law and court fact may be tried by the court, and the court having heard the cause finds the defendant guilty of the trespass in judgment as to an undivided half of the tract of land described in the declaration to wit, the west half of the South West quarter of

section twenty two, in township fifteen north of range
thirteen west of the third principal meridian, in the
Judgment. County of Morgan, being the undivided half con-
veyed by the defendant and wife to the plaintiff
and that plaintiff is entitled to an estate in fee
in and to the said undivided half of said tract
and the court find the defendant not guilty of
the trespass in ejectment as respects the other
undivided half of said land, Whereupon it is
considered and adjudged that the plaintiff recover
of the defendant the said undivided half of said
tract of land and also his costs herein expended
and that the plaintiff have the writ of Habere-
re possession directed to the Sheriff of Morgan
County, bill of exceptions filed by plaintiff which is
signed and made part of the record.

The following is a copy of the bill of Exceptions
filed in this cause on the 14th day of September
Bill of 1850. term —

Exceptions Be it remembered that on the trial of this
cause, the plaintiff produced and read in evidence
the following title papers to wit, First, a patent from the
Plffs United States in the usual form, to Isaac John Clark
Little Smith, granting and conveying to him his heirs &c the
papers. Undivided half of the tract of land described in the
patent, declarations marked on the margin for exception certificate
No 6744. dated 15th October 1834. — Second — a certificate
of the register of the land office of the United States at
Springfield in the words following to wit,
Certificate Land office of the United States
of Springfield Illinois — J. Turner R. King

register of the land office of the United States at
~~Register~~ Springfield Illinois, do certify that it appears from the
records of said office that on the 3rd day of July 1832.
Minney Borwell of Morgan County purchased from the
United States the west half of the South West quarter
of section twenty two in township number sixteen north
of range number thirteen west of the third principal
meridian at one dollar and twenty five cents per acre,
I further certify that it appears from the records
aforesaid that on the 23rd day of January 1833.

Deed John Clark Smith proved to the satisfaction
of the register and receiver under the preemption
act of the 5th of April 1832. at said office that he was
entitled to a right of preemption upon the same
land, and upon such proof he was permitted
to and did purchase from the United States
the undivided half of the said land at one dollar
and twenty five cents per acre,

Given under my hand this 10th day of September
1850.

Turner B. King, Register

~~See~~ Third. A deed from Deed John Clark Smith to
~~Smith~~ John B. McDowell conveying the land described in
~~to~~ the patent to said McDowell his heirs and assigns
~~McDowell~~ dated 24th April 1833. Containing a Covenant of
warranted of title acknowledged before Daniel Wadsworth
a justice of the peace of Morgan County on the day of
its date, and recorded by the recorder of said County
on the 26th of October 1836. Fourth. A deed from
~~See~~ John B. McDowell and wife to Samuel Wiggins
~~McDowell~~ the plaintiff dated 15th March 1839. Conveying the
~~to~~ said land to the plaintiff his heirs &c without any
~~Wiggins~~ covenant or warranted of title or possession the
Execution of this deed acknowledged before the com.

of Vermillion County circuit Court Illinois, on the 16th of March 1839. and recorded in Morgan County on the 26th March 1839. Fifth - A deed from defendant

~~Edward~~ Edward Lusk and Mary Lusk his wife to the plaintiff
E Lusk conveying an undivided half of the land in controversy
to said plaintiff his heirs and ~~vs~~ this deed dated 5th of
Wiggins March 1839 acknowledged before Daniel Halls a
Justice of the peace of Morgan County on the 6th March
1839. and recorded in Morgan County on the 7th March
1839. the possession of the defendant was admitted
and that he is the same person who conveyed to the
plaintiff as aforesaid, the undivided half of said land,
and who now claims the other undivided half by virtue
of the following deeds ~~vs~~ The defendant then read as
evidence a deed from Winney Bowell the first

Defendant purchaser from the United States to Isaac Stiles
J. Stiles. conveying to him his heirs ~~vs~~ the whole land now in
Lusk controversy this deed is dated 15th of September 1832. and
Winney acknowledged on the same day before the Clerk of
Bowell the circuit Court of Morgan County, and recorded in
to said County on the 4th of February 1833. The defendant
J. Stiles then proved that said Isaac Stiles died in September
1834 intestate, leaving no widow, and that Mary Lusk
the wife of defendant was the only child of said

Stiles and the only heir to his estate The defendant
formerly claimed the whole of the land in right of
Left wife his to Stiles his wife and having conveyed an undivided half
now claims the other undivided half under the
purchase by Winney Bowell from the United
States and her conveyance to Isaac Stiles as
aforesaid. The defendant then proved that said
J. J. C. Smith died in 1834 and letters of administration
were granted on his estate 26th August 1834. the

defendant proved by Daniel Wells before whom the deed
from Smith to McDowell was acknowledged that
^{Testimony} Smith called on witness at Beardstown to write a
^{in support of} deed conveying the land to McDowell saying that he
^{to lead} owed his brother in law and wished to secure him,
^{from} (McDowell was the brother in law) that he wished the
^{Smith to} matter kept secret, he was fearful that some claim
or judgment from Indiana would follow him to
this State, which was unjust and he wanted to place
the property out of the reach of the parties having
the claim, and secure his brother in law, witness
wrote the deed it was signed and acknowledged
before him and then returned to Smith, McDowell
the grantee was not present, witness understood
that McDowell lived in Indiana or in the eastern
part of Illinois, witness does not know that said
McDowell has ever been in Morgan County, after
Smith died his widow married John Ayres who
subsequently claimed the land or some part of it
in right of his wife, said Smith died intestate
leaving no child or descendant, the defendant also
proved that the deed from Smith to McDowell
was found among Smith's papers in the possession
of his widow after his death and was placed
in the recorder's office for record by John Ayres
after he married said widow, and was delivered
back to said Ayres for the plaintiff Wiggins when
recorded, that McDowell was not present when the
deed was filed or delivered out of the office, and
there was no evidence that McDowell ever received
said deed or knew of its existence, the defendant
then read as evidence in the cause the record of

a suit decided in this court between the defendant
and his wife as complainants, and against the
heirs of Isaac J. C. Smith which record is in the
words following to wit,

Filed
Held at Jacksonvill within and
and for the County of Morgan and State of Illinois
before the Honorable Stephen T. Logan Judge thereof
sitting as a Court of Chancery on the twenty first
day of October 1836

Edward Lusk and
Mary Lusk

In Chancery

John Ayres, Eliza Ayres, John Smith exr.
John Smith jr, Andrew Smith, William
Smith, Calvin Smith, Henrietta Smith

Be it remembered
Bills in that heretofore to wit on the 19th day of March 1836.
Chancery the Complainants in this cause filed in our said

Lusk & Co. office the following bill in Chancery to wit,

apt.
Smiths
Lusk & Co. State of Illinois, Morgan County ss,
In the Circuit Court of said County,

To the Honorable the Judge of the Circuit Court of
said County of Morgan, in Chancery sitting —

Your Complainants Edward Lusk and Mary
Lusk his wife formerly Mary Stites respectfully represent
that on the third day of July 1832. one Wincy Russell
of the County of Morgan purchased of the United
States at the land office in Springfield

Illinois a tract of land situated in the County
of Morgan aforesaid known and designated in
the plat of the Survey of public lands as the West
half of the South west quarter of section number
twenty two in township number fifteen north

range number thirteen west of the 3rd principal meridian
Bill in containing eighty acres, for which she paid one
thousand hundred dollars and received from the receiver of
Land money of said land office a certificate of purchase
and a receipt for the purchase money paid as
aforesaid, all which will more fully appear by a
reference to said certificate a copy of which is herewith
filed as a part of this bill, Your Comptainants
further represent that said Minney Burrell proved
to the satisfaction of the register and receiver at
said Land office that she had resided on and
cultivated said land, so as to be entitled to pur-
chase the same under the act of Congress granting
preemption rights to actual settlers upon public
lands, that after the purchase by said Minney
Burrell as aforesaid Oraiah Stites the father of the said
Mary purchased the said land from her the said Minney
Burrell and paid her therefor one hundred and fifty
dollars and on the fifteenth day of September 1832 the
said Minney Burrell executed a deed of conveyance to
said Oraiah Stites for the said lot of land which deed
was afterwards on the fourth day of February 1833 recorded
by the recorder of Morgan County all which will more
fully appear by reference to the said deed and the
certificates indorsed thereon, a copy of which is herewith
filed as part of this bill, the said Oraiah Stites took
possession of said land after his purchase as aforesaid
and continued in the possession thereof until the
time of his death, on or about the twenty third of
January 1833. one Isaac John Black Smith applied
to the land officers at Springfield and claimed
a right to purchase the aforesaid lot of land under the

provisions of the acts of Congress granting preemption
Bills in rights to actual settlers on public lands, and the
Chamany land officers thereupon permitted him to purchase
an undivided half of said land under pretence
that said Smith was entitled to a preemption
right to one half of said land, and the receiver of
public monies at Springfield gave to said Smith
a certificate of purchase for the undivided half of
said land. Your complainants charge that the
purchase by Winney Boswell from the United States
was made in good faith and the fact of purchase
was known to said Smith at the time of his
purchase aforesaid, that the land officers had
once sold the land to said Winney Boswell and
received the pay for the same, had no right to sell
the same or any part thereof to the said Smith,
that the said Isaiah Stiles had no notice or
knowledge whatever at the time he purchased
of said Winney Boswell, that said Smith had any
claim upon or to said land that said Stiles
was an innocent bonafide purchaser. Your
complainants further charge that said Smith
had not nor never had any just or legal claim
to purchase said land or any part thereof that
said Smith knew at the time of his purchase
from the United States that said Isaiah Stiles
had purchased the same from the said Winney
Boswell, your complainants further state that
said Stiles departed this life intestate in the
month of July 1834 leaving your complainant
Mary his heir at law, she being his only child,
he left no widow nor no descendants except the

Bessie said Mary, Your Complainants were lawfully
Chamney married in the month of April 1835. and they are
Lawfully entitled to said land in right of the said Mary
by descent from the said Isaac Siles deceased,
Further heirs Your Complainants further represent that they
have possession of said land, that it is situated
on the Illinois river, and near to and adjoining
the town of Mercedora they are desirous
of selling the same but the claim of said
Smith to an undivided half prevents the
Complainants from making sale thereof, and
operates injuriously upon their rights, Your
Complainants further represent that the said
Isaac John Clark Smith departed this life
intestate in the month of September 1834 leaving
no child or children or descendants of any child
or children, his heirs at law are Eliza Smith
his widow John Smith son his father, John
Smith junior, Andrew Smith, William Smith
and Calvin Smith his brothers and Henrietta
Smith his sister the said Eliza Smith
has recently intermarried with one John
Ayres, said heirs claim an undivided half
of said land and the said John Ayres and
wife claim an undivided fourth of said land,
under and by virtue of the purchase from
the United States by the intestate Smith,
Your Complainants are desirous of quieting
the title to said land to enable them to sell
or dispose of the same without any incumbrance
or doubt about their right to the same, but
being in the possession of the same they have

Bill in no other remedy except in this Honorable Court
Chancery. Where matters of fraud &c are properly cognizable
Subscribes to the end therefore they pray that the said
John Ayres and Eliza his wife, John Smith
Smith's heirs &c John Smith jr, Andrew Smith, William
Smith, Calvin Smith and Henrietta Smith
be made defendants to this bill, and required
to answer the Statements herof as fully
and completely as though the same was
again repeated, and they thereto particularly
interrogated, and upon a final hearing of the
premises your complainants pray that said
defendants be compelled to surrender all
right title and claim which they have or
ever had in and to the lot of land herein
described, and required to convey the same
to your complainants. Your complainants pray
for the People's writ of Subpoena directed &c
Commanding &c and for all such other and
further relief in the premises as the nature
of the case requires and they as in duty bound
will ever pray &c

Thomas Atty for
Compld

The following are the Exhibits referred to in the bill
Exhibits Book — deed from Minny Beards to Irish State,
filed with and certified of the Register —

Bill in This Indenture made and entered into
Chy. this fifteenth day of September in the year of our
Lord one thousand eight hundred and thirty
two, between Minny Beards of the County of
Morgan and State of Illinois of the first part

and said and said State of the County of Morgan and
Boswell State of Illinois of the second part, Witnesseth, that
to the said party of the first part for and in consideration
States. of the sum of One hundred and fifty dollars in
hands paid, the receipt whereof is hereby acknowledged
do hereby grant, bargain sell convey and confirm
unto the said party of the second part his heirs and
assigns forever, the following described piece or parcel
of land, situated lying and being in the Springfield
district, County of Morgan and State of Illinois, and
known and designated in the plat of the United
States survey as being West half of the South West quarter
of section twenty two in township fifteen north in
range thirteen West together with all and singular the
appurtenances thereto belonging or in anywise
appertaining. To Have and to Hold, the above
described premises unto the said party of the second
part his heirs and assigns forever, and the said Minney
Boswell the aforesaid premises unto the said party of
the second part his heirs and assigns against the
claim or claims of all and every person whatsoever
doth and will warrant and forever defend by
these presents. In Witness whereof the said party of
the first part has hereunto set her hand and affixed
her seal the day and year first above written.

Minney + Boswell (read)
her mark

State of Illinois
Morgan County } J. J. Dennis Clerk of the
Circuit Court of said County do certify that Minney
Boswell whose signature appears to the foregoing
deed of conveyance and who is personally known
to me to be the identical person who signed the same

this day appeared before me and acknowledged
that she had signed sealed and delivered the same
as her free act and deed for the use and purpose
therein expressed, Given Under my hand and the
seal of said Court at Jacksonville this
(seal) fifteenth day of September in the year of
our Lord One thousand Eight hundred and thirty
two—

Gennis Rockwell clk
Filed February 4th 1833. and recorded in the recorder's
office of Morgan County Ill. in book E on page 172.
G. Rockwell recorder.

Certificate of receiver filed as Exhibit—
Land Office at Springfield Illinois
July 3rd 1832. N^o 6154.

U.S. Received from Winney Board of Morgan County Illinois
Receiver the sum of One Hundred dollars too being in full
Receipt payment for the west half of the south west quarter of
to section No twenty two, in township number fifteen north
Boswell. of range N^o thirteen west of the third principal meridian
containing Eighty acres too of an acre, at the rate of \$1.25
per acre
\$100—

John Taylor Receiver

And afterwards to wit on the 27th day of March 1836
the following summons was issued upon the filing of
the aforesaid bill to wit,

State of Illinois

Morgan County To the People of the State of Illinois
To the Sheriff of Morgan County greeting!!

Summons

on Bill

in Chy.

We Command you to Summon John Ayres
Eliza Ayres, John Smith exec. John Smith jr,
Andrew Smith, William Smith, Calvin Smith

and Henrietta Smith if they can be found in your County to be and appear before the Judge of our Circuit Court to be holden at Jacksonvill within and for the County of Morgan on the first Monday of March inst, to answer unto a bill in Chancery filed in our said Court by Edward Sisk and Mary Sisk and of this writ make legal service and due return at the time and place aforesaid.

Witness the Hon Stephen T. Logan Judge
(Read) of our said Court at Jacksonvill this twenty first day of March 1836.

Dennis Ricknell Clerk
Which writ was afterwards returned tuit on the 24th day of March 1836. by the Sheriff of Morgan County endorsed as following tuit.

Not served as herein I am Commanded for the want of time, March 24th 1836.

Wm O'Kear. Shff. M. C.
And afterwards tuit on the 3rd day of May 1836, the Complainants by their Solicitor filed in our said office the following affidavit of Nonresidence tuit.

William Thomas being sworn states that the defendants John Smith senr, John Smith jr, Andrew Smith, William Smith, Calvin Smith, Henrietta Smith in the abov entitled cause as he is informed & believes do not reside in the State of Illinois, but reside in the State of New York.
Sworn before me this 3rd May 1836. H. Thomas
Dennis Ricknell Clerk.

The following is a copy of the notice of publication and proof thereof made in pursuance of the abov affidavit tuit —

State of Illinois, In the circuit Court of Morgan County
Edward Surt and Mary Surt his wife complt.

vs 3 In Chancery

John Ayres, Eliza Ayres, John Smith conr.

Notice John Smith jr, William Smith, Andrew
publication Smith, Calvin Smith & Henrietta Smith Dfts

75 suit An affidavit having been filed showing satisfactorily
that all of the above named defendants except John
Ayres and Eliza Ayres reside out of the State of
Illinois, the said defendants are hereby notified that
a summons has issued against them in the above
entitled cause, returnable on the first day of the
next term of our said Court to be holden at the
Court house on the 3rd Monday in July next
and that unless they appear before the said Court and
answer the bill filed in said cause the same will
be taken for confessed and a decree will be rendered
according to the prayer of said bill, Given under my hand
this 3rd of May 1836 - Dennis Richmond Clerk of Court.

Jacksonville Ill 20th October 1836.

I, James G. Edwards publisher of the Illinois
patriot, a public newspaper published weekly in
Jacksonville Illinois, do hereby certify that the notice
a copy of which is hereto attached in the case of
Edward Surt and Mary Surt his wife against
John Ayres and others was published in said paper
on the 5th day of May 1836. and the publication
thereof continued for four weeks successively, the last
publication was made on the 2nd of June 1836.

James G. Edwards, publisher

The following is a copy of an alias summons

issued on this cause on the 5th day of May 1836. to wit,

State of Illinois

Morgan County } Of the People of the State of Illinois
To the Sheriff of Morgan County Greeting:

Alies No again Command you to Summon John
Sum's Ayres and Eliza Ayres his wife John Smith senr.
John Smith jr, Andrew Smith, William Smith,
Calvin Smith, Henrietta Smith, if they can be
found in your County to be and appear before
the Judge of our Circuit Court to be holden
at the Court house within and for the County
of Morgan on the third Monday of July next,
to answer unto a bill in Chancery filed against
them in our said Court by Edward Lusk and
Mary Lusk his wife, and of this writ make
legal service and due return at the time
and place aforesaid

Witness the Hon Stephen J. Ligon
(Sealed) Judge of our said Court at Jacksonville
this 5th day of May 1836.

Dennis A. Merrill Clerk
Which was afterwards returned by the Sheriff of Morgan
County endorsed as follows, to wit,

Executed this writ on the within named John
Ayres and Eliza Ayres on the 24th day of June 1836.
by reading the same to each of them, by delivering to them
a true copy of the same, the balance of the within
named defendants not found in my bailwick—

M^o O'Keefe Sheriff M^o. Ill

By M^o. J. McCord Deft

And afterwards laid on the 18th day of July 1836 at the
July term of said Court the following order was made, to wit,

July 1836 This day came as well the complainants as the
Appearance defendants John Ayres and wife, by their attorneys
of Springfield and on motion of said defendants time is given
them to answer until the first day of September
next, and the cause is to stand for trial at the next
term of this court—

And afterward to wit, on the 23rd day of August 1836
the defendants John Ayres & wife filed the following
answer in this cause to wit—

State of Illinois, Morgan Circuit Court,
Oct 36 term of October A. D. 1836— The joint
Answer and several answer of John Ayres and Eliza Ayres
J. Ayres two of the defendants to the bill of Complaint of
E. Ayres Edward Lusk and Mary Lusk complainants, these
the latter defendants now and at all times hereafter receiving
Smiths to themselves all manner of benefit and advantage
Widows of the many errors and insufficiencies in the com-
plainant's said bill of Complaint contained, - for
answer thereunto, or unto so much as such parts
thereof as these defendants are advised is material
for them to make answer unto, they answer and
say that the first allegation in said bill of Complaint
they admit it may be true that said Winney Bond
paid the sum of money in said bill mentioned for
the land therein described, that she obtained a
certificate to the whole land so claimed from the
United States, and these said defendants further
answering say, that one Isaac D. C. Smith the
same identical person spoken of in said bill of
Complaint obtained from the Land office at
Springfield on the 23rd of January 1833. certif=

=icate of payment and purchase to the undivided half
Answer of the west half of the South West quarter of section number
Ayers & Lucy two, in township number fifteen north of
range thirteen west of the third principal meridian,
containing forty acres, having an undivided half of the
said half quarter claimed by said bill of complaint,
and the said defendants allege that said Isaac D. B.
Smith obtained a preemption claim to said land
by making full and satisfactory proof to the officers of
said land office, of his being an actual settler on said land
and as such justly entitled to the same, and that the
Commissioner of the general land office to whom said
conflicting claims were referred after a full and
careful examination of the same, decided that said
Isaac D. B. Smith was thereby entitled to forty acres
of the same land, and that Mrs. Bormell was only entitled
to forty acres of the land in question, and the said
Commissioner directed the register and receiver to
notify Mrs. Bormell of said decision, and also to
correct the entry made by Mrs. Bormell of the eighty acres,
and to confine her entry to forty instead of eighty, and
to refund the money which was paid for forty acres, and
receive the money from said Isaac D. B. Smith for his
forty acres, which they did, said defendants further
answering say, that it may be true that said
Winney Bormell proved at the time to the satisfaction
of the register and receiver that she was entitled to
the whole, but it was done by imposition and false
swearing, and further answering they admit that it
may be true that Isaac Stites the father of Mary
purchased the said land from Winney Bormell, and
that he paid her for the same as is alleged in said
bill, and that she executed a deed of conveyance to

Answering the same as is alleged in the bill, and that the same
Agnes was rendered as stated in the bill, and that said Stiles
wife took possession of said land, and continued it as is
stated until the time of his decease, - said defendants
further answering say, that it is true that said
Isaac D. B. Smith applied to the land office at
Springfield and claimed a right to enter said
land under the provisions of the preemption law,
and that said land officer permitted him to purchase
an undivided half of said land, and that he
received a certificate of said purchase, but they deny
that said purchase was allowed to him through any
improper pretence on his part, but was allowed on proof
by him, made fair and bonafide, - These defendants
further answering say that the allegation in said
Minney Bormell's purchase of the whole eighty acres
was fair and bonafide is untrue, and that on the
contrary said purchase and certificate was obtained
through fraud, falsehood and imposition, said
defendants say that said allegation in said bill of
complaint that said Smith had no just claim to
the land in question is wholly untrue and without
foundation, they admit that it may be true, that
said Stiles departed this life at the time and in
the manner stated in said bill, and that Mary is
his only heir at law as stated, - The said defendants
further answering also admit that the complainants
were married as stated in their said bill of complaint
but they deny that they the said complainants are
entitled to more than forty acres of said land in
question, said defendants also admit that they
have possession of the land as stated, and that it

is situated as described in said bill the said defendants
Answer also admit that the said Isaac John Clark Smith
deceased this life as stated in said bill of complaint,
it is also true as stated that said Eliza Smith has
married John Ayres, and that he claims an undivided
half of said land, said defendants further answering
say, that they are also desirous of quieting the title
to said land, to enable them to enjoy the same, /
without incumbrance, or doubt about their right to
the same, and these defendants deny all unlawful
combinations, fraud and pretence in the said bill
charged, without that that any other thing material or
necessary for these defendants to make answers to,
and not herein, or hereby well and sufficiently
answered unto, confessed or avoided, traversed or
denied, is true to their knowledge and belief
of these defendants, all which matters and things
these defendants are ready to aver, maintain and
prove as this Honorable Court shall direct, and
herby pray to be herein dismissed with the reasonable
costs and charges in that behalf most wrongfully
sustained —

John Ayres (read)
Eliza Ayres (read)

By Walter Minchell, Solr. in Chancery —
State of Illinois, Morgan County - p. Personally
appeared before me the undersigned an acting Justice of the
peace in and for the County and State aforesaid,
John Ayres and Eliza Ayres whose names are sub-
scribed to the foregoing answer in Chancery and
who being first sworn in their oaths say, that the
matters and things contained and set forth in said
answer are true, as far as they have come to their
knowledge, and that the same are true as far as

the same have come to their knowledge through
the information of others according to their belief,

Sworn to Subscribed
before me at my office this 25th day of August
A.D. 1836 — Thomas Rogers J. P. (seal)

And afterwards tried on the 24th day of September
1836. the complainants filed the following replication
Sept 1836. to the foregoing answer of defendants Ayres wife, twid,
Replication the said complainants for replication to
to Answer. the answer of defendants John Ayres and Eliza
Ayres say, that the statements and allegations
contained in the bill are true, certain, and sufficient
in law, and that the statements and allegations contained
in the answer are uncertain, untrue and indefinite,
wherefore the complainants pray for a decree as in
their bill —

Thomas for Comptt.

And afterwards tried on the twenty first day of October
A.D. 1836, at the October term of said court the following
decree was entered in this cause twid, —

Oct '36 This day came as well the complainants by
Deane Thomas their attorney as the defendants John and
Eliza Ayres by Hewitt their attorney, and it appearing
in from a certificate filed, that the other defendants have
Smith has been notified of the pendency of this suit, by a
publication in the Illinois Patriot, a public
Newspaper printed weekly in Jacksonville Illinois
for four weeks successively previous to the last
term of this court, and they having failed to enter
their appearance herein, conformable to law

and the rules of this Court, It is Ordered that the bill as to them be taken as confessed, Whereupon the Cause being heard upon the bill, answer of defendants, John Ayres and Eliza Ayres, replication, exhibits, filed, and the Court being sufficiently advised thereon, is of the Opinion that the Complainants are entitled to the whole lot of land in the bill mentioned, being the west half of the south west quarter of section Number twenty two, in Township Number sixteen North, Range number thirteen West in the County of Morgan, And the Court doth order and decree that the said defendants do jointly or severally, execute or deliver to the said Complainants a deed or deeds of release, releasing and conveying to them all right, title and claim, which they or either of them have or ever had in and to said tract of land, and that they comply with this decree by the first day of the next term of this Court.

Appeal
to
S. Court. It is further Ordered and decreed that in case the said defendants or either of them, shall fail to execute the deed or deeds of release as required by this order, that James Berdan Master in Chancery do and he is hereby required to execute the same for and on behalf of the defendants or each of them as shall fail as aforesaid, It is further Ordered and decreed that the Complainants recover their costs herein Expended. And on the prayer of defendant John Ayres an appeal is granted him from the foregoing decree to the supreme Court, upon his executing bond in the Clerk's office within twenty days, with Thomas Beard, Thomas Wilburn, or John S. Wilburn as security in the penalty of One hundred dollars

Conditioned as required by law

And afterwards to wit on the 8th day of November 1836 the defendant John Ayres filed in a certain
Appeal said office the following appeal bond to wit,
Bond.

Know all men by these presents that we John Ayres and Thomas Beard are held and firmly bound unto Edward Lusk and Mary Lusk 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 severally and firmly with these presents, Witness Our hands and seals this 4th day of November A.D. 1836.

The condition of the above obligation is such that whereas the said Edward and Mary Lusk obtained a decree for the west half of the south west quarter of section number twenty two, in township number fifteen north, range number thirteen west in Morgan County and State of Illinois, on the twenty first day of October 1836. in the circuit Court within and for the County of Morgan, sitting as a Court of Chancery, together with costs of said suit, from which decree of said Court, the said John Ayres has prayed for and obtained an appeal to the Supreme Court of said State. Now if the said John Ayres shall duly prosecute said appeal with effect and shall moreover comply with the judgment of the Supreme Court, and shall pay all costs interest and damages rendered, and to be rendered against the said John Ayres, in case the said judgment shall be affirmed in the said Supreme Court then the above obligation to be null void otherwise to remain in full force and virtue.

John Ayres (seal)
Thos Beard (seal)

And afterwards, to-wit, on the 19th day of March 1838. at the March term of this Court the following order was made to-wit,

"In this case the following Judgment of the Supreme Court was presented and ordered to be filed to-wit—

The Court having duly considered and inspected the proceedings aforesaid in this cause, and the matters and things assigned 1838 for error, and being sufficiently advised of and concerning the same premises, are of the opinion that neither in the record of and proceedings aforesaid, nor in the rendition of the decree Supreme aforesaid, notwithstanding the matters assigned for error Court. as aforesaid, is there any error, and it is therefore ordered that the said decree be and the same is hereby affirmed and held of full force and effect, It is further considered and adjudged by the Court, that the appellees recover of the appellants their costs in this Court expended, and that they have Execution therefor, Whereupon It is ordered and decreed by the Court that the said Complainants have Execution for their costs, It is further ordered that the defendants Execute the deed required by the former order of this Court, by the last day of the present term of the Court, and in the event of their failure the Master in Chancery is ordered to execute said deed —

And afterwards to-wit, on the 22 day of November 1848 at Nov. the November term of said Court the following order was 1848 made, to-wit,

order This day came Edward Lusk the above named For Complainant and presents to the Court his affidavit Recd. showing that no deed has ever been executed and delivered to him by the defendants or any of them, in this cause, and that no deed has ever been executed and

delivered to him by the master in Chancery of this Court,
and praying that William Thomas Esqr the present master
be ordered to execute and deliver to him by the final
decree rendered in this cause at the October term of
this Court 1836, and the supplemental & further order
made by this Court at the March term thereof A.D. 1838.

Whereupon it is ordered by the Court that William
Thomas the master in Chancery execute and deliver to
the said Lusk the deed required by said final and
supplemental decrees—

The defendant also read in evidence a deed executed by
the master in Chancery of Morgan County under the
deed & decree in favor of Lusk wife against Smith's Heir and
Master in conformity with said decree, dated 6th of March 1849,
in the plaintiff objected to the admissibility of the testimony
Chancery of Waldo proving the statement of Smith to him, and
also to the admissibility of the record of the suit in
Chancery, and the deed executed by the master upon
the ground that this plaintiff could not be prejudiced
by the statements of Smith, nor by the proceedings in
Chancery, neither he nor said McDowell being parties to
the suit, nor present at the conversation between Smith
and Waldo, and also upon the ground that the patent
and register's certificate read in evidence shows that
Nancy Burrell, as plaintiff contends is only entitled
to one undivided half of the land in controversy and
that that half was conveyed to Hites, and by Hites
being conveyed to the plaintiff, but the Court overruled
the said objections and heard the said evidence
as stated in the foregoing part of this bill of
Exceptions. The defendant contends that said register's
certificate shows that Nancy Burrell purchased of the

United States, the whole of said land in 1832, and Smith again purchased of the undivided half of the same land in 1833. by proving a preemption upon said land, and it does not appear that Winny Russell had notice of the application of said Smith to prove a preemption and to enter said land, and therefore that the defendant by virtue of the purchase of the whole land by said Stiles now owns the one half of said land, being the other half remaining after his and his wife's said conveyance to the plaintiff.

The ^{foregoing} ~~following~~ being all the testimony in the cause the Court decided that the plaintiff was entitled to recover the undivided half of the land conveyed to him by the defendant and his wife, and that he was not entitled to recover the other undivided half under the title from McDowell, and gave judgment accordingly to which several decisions of the Court in admitting the evidence aforesaid, and in deciding the cause aforesaid the said plaintiff accepted at the time said decisions were given, and now here prays that this his bill of Exceptions may be signed, sealed and made part of the record herein, which is accordingly done -

D. M. Woodson (seal)

State of Mining 3
Morgan County 3
The Circuit Court of Morgan County
do hereby certify that the foregoing pages contain a true and perfect copy of the record and proceedings had in the cause of Samuel Higgins against Edward Lusk as fully and completely as the same remains of record or on file in my office

On Petition whereof I have hereto
set my hand and affixed the seal
of said Court at Jacksonville this
21st day of November A. D. 1850
Charles H. Martin Clerk

Morgan Circuit Court

Samuel Higgins

vs

Edward Leach

Copy of Record

fees \$8.00

State of Illinois, S.S.

In Supreme court of said State

Second Division, December 1850.

Bond

for Samuel Wiggins } Writ of Error from
Ex. Co. against } judgment of Morgan
Supreme Edward Leach } County Circuit Court.

Court, I do hereby enter myself security for costs
in this cause, and acknowledge myself
bound to pay, or cause to be paid, all
costs which may accrue in this action,
either to the opposite party or to any
of the officers of this court, pursuant
to the laws of the State, dated this 29th
day of November 1850.

Wm. Thomas (Seal)

State of Illinois S.S.

In Supreme Court, 2nd Division

December Term 1850.

Samuel Wiggins } Plaintiff
vs } Defendant
Edward Leach }
Left. } Morgan Circuit Court,
And the said Samuel Wiggins by his attorney
comes, and files the Record ~~of~~ of the
Inquest and proceedings of the said
Circuit Court, - and says, that
Manifest Errors have intervened, in
the Inquest and proceedings of
the said Circuit Court, to his prejudice,
and he has set down the following
causes of Error, -

First; - The Court Erred in receiving
the testimony of Samuel Waldo, stating
conversations, between the Witness, and
J. I. C. Smith, at the time the said was
executed by said Smith to McElwaine,

Second; - The Court Erred in receiving
as testimony, the Record of the said
between Edward Leach & Mary Leach
his wife Complainants against the
heirs of J. I. C. Smith Defendants,

Third; The Court Erred in deciding, and
rendering Inquest, that the Plaintiff
was only entitled to Recover one
undivided half of the Land in
controversy, -

For as the, The court Erred in not deciding
that the Plaintiff was Entitled to recover
the whole of the Land, and in not
giving Judgment accordingly
Wherefore the said Samuel Wiggins
Prays, that the Judgment aforesaid
may be Reversed, set aside, and for
nothing Value, & that Judgment be
Entered in his favor for the recovery of
the Land aforesaid.

Wm Thomas
Att for Wiggins

Saml Wiggins
in 3 copy
3 Records

Edward Lusk.

W/5

Prepared

Filed Nov^r 28th 1852

\$5 paid