

No. 13019

Supreme Court of Illinois

Ballance

vs.

Forsyth et al

71641  7

Ballance

vs

Forryth et al

STATE OF ILLINOIS,

SUPREME COURT,

Third Grand Division.

No. **56.**
1860

Ballance

vs

Forryth

13019-

Charles Ballance } Apl Term 1860.
 Robert Forsythe } In Supreme Court
 William } Mo. to Re-instate
 Case -

State of Illinois }
 LaSalle County }

W. P. Ballance being sworn
 says, this Record appears to have been
 first filed in this Court July 26, 1855.
 On the 14th of June 1856. the writ of
 Error was dismissed for want of abstention
 (See Court docket 1856 No 44)

Ballance withdrew the record and
 refiled it May 14th 1859. He withdrew
 this record Apr 22, 1857 - as appears
 by the Court docket of that term (No 142)
 The Original record was entered May 22nd
 1854. So that it seems he kept the
 Record over two years & then he refiled
 it just 8 days before he would have
 been barred by the Statute of limitations

Affiant states that he wrote the Jour-
 nal in Error in this Cause; The time
 when it was done he does not remember
 but he knows that it was before this
 Term and that it was done at some
 prior term of the Court, and affiant

think it to the same time the Error
was assigned

Officer knows nothing in relation
to Mr Ballance, & travels in his mis-
understanding of the time when this
Court was to be holden, or of any other
key, & declining to enter the appearance
of the Parties. He had always understood
that ainder in Error is a sufficient
appearance & for the Officer saith not

I am to sign me *A. B. P.*
this 30th Apr 1860
J. Selam Ck.

Ballance is for by the Error

affidavit of
A. B. P.

File of Pl. 30. 1860

J. Selam Ck.

Suggestion. The Motion has no merits. If
complaint is not, by this time barred by the
Statute of limitations, he ought to be. But it
makes no difference. The bill is only dismissed
and if he had any cause of complaint as stated
in the bill, it is a continuing cause, and will
probably last forever.

SUPREME COURT OF ILLINOIS.

Third Division—April Term, 1859.

CHARLES BALLANCE, }
 { *vs.* } *Error to Peoria.*
ROBERT FORSYTH, *et al.* }

This was a bill in equity, filed in the Peoria Circuit Court on the 31st of July, 1852.

1 The bill sets forth that John L. Bogardus, by reason of his possession and occupancy of the southeast fractional quarter of section nine, in township eight north, of range eight east, of fourth principal meridian, became entitled to a pre-emption to the same under the pre-emption law of April 5th, 1832, and that he availed himself of the provisions of said law, and "on the fifteenth day of November, 1837, bought said tract of land from said register and receiver, pursuant to said pre-emption, and paid the said receiver one dollar and a quarter per acre therefor; and the said register and receiver then and there executed to said Bogardus a certificate of said fact; and afterwards, on the fifth day of January, eighteen hundred and thirty-eight, the United States issued a patent to said Bogardus for said tract of land"; that before the issuing of said patent, to wit, on the
2 5th of August, 1834, said Bogardus conveyed said tract of land to Isaac Underhill; that in 1836 said Underhill and Lewis Bigelow, who had become interested in said tract, surveyed it into an addition to Peoria, the survey of which is made part of the bill.

That complainant is in possession of a considerable number of the lots in said survey, (which are enumerated and particularly described.) under title from said Underhill, and believes he is, in law and equity, the owner thereof.

That in 1812 there was a settlement of Canadian French where the city of Peoria now is, and some of their houses were on the above described ground; but on account of the war of 1812, they abandoned the place and never returned.

That Congress, on the 15th of May, 1820, passed an act entitled "An act for the relief of the inhabitants of the village of Peoria," which is made part of the bill; and in pursuance thereof, Edward Coles, Register of the land office at Edwardsville, made a report, which is found in the third volume of American State Papers, and is made part of the bill.

That on the 3d of March, 1823, Congress passed an act entitled "An act to confirm certain claims to lots in the village of Peoria, in the state of Illinois," which is made part of the bill.

3 That when said law of 1823 was passed, said property, for want of inhabitants and improvements, was of little value. Any land in the vicinity could have been obtained for one dollar and twenty-five cents per acre, and some for less; but since a city of several thousand persons has sprung into existence at Peoria, and property has become valuable, doubts have been constantly thrown upon the title to property at said place, by persons who have bought up said claims—called French claims—and publicly claimed said lots, and who sometimes bring suits for them, and thereby keep a cloud over complainant's title, that prevents him from selling or leasing said property for so good a price as he otherwise might get, and of right ought to get, for it.

That Robert Forsyth and the other defendants, claim portions of said property, under said French claims, (which is specifically set forth and described,) adversely to complainant. "All of said defendants, your orator charges, claim title to some portion of said land, so belonging to your orator, as aforesaid, under some of said French claims, and by constantly asserting title thereto, and sometimes threatening to sue your orator for portions of said ground, render said ground unsalable, and prevent your orator from leasing it for so much as he otherwise could." They also claim the right to, and threaten to stop up, the streets running through said addition, and thereby depriving complainant of access to said lots, although said streets have been used by the public, as public highways, ever since 1836, and Adams street ever since 1832, and have been used by the public, ever since, without let or hindrance from any of defendants, "and Water street, and so much of Hudson street as connects it with the river, have been a public highway, established by public authority more than twenty years ago, and constantly used as such by the public."

6 The bill prays for a discovery of defendants' title, and claims, in particular, that they may "abide by and perform such order and decree as shall be made in the premises," and for general relief.

9 Appearance was entered, and motion to dismiss by Norman H. Purple, James McFadden, Alfred G. Curtenius, John L. Griswold, Robert Forsyth and Peter Menard.

Complainant then amended his bill by setting out his title in detail, to wit: 1st, Prior possession for more than twenty years; 2d, Pre-emption right under the law of April 5th, 1832; 3d, A purchase from the United States, through their agents, the register and receiver of the land office, in November 15th, 1837; 4th, A patent from the United States to John L. Bogardus; 5th, A deed from Bogardus to Underhill; 6th, Deed connecting plaintiff with said Bogardus' title, for all the lots contained in the list of interference, the originals of which will be produced on the trial.

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Afterwards, without in anywise disposing of said motion, a demurrer was filed by said Purple, McFadden, Curtemius and Griswold, Forsyth, Dumain, Bouis, Menard and Von Phul and McGill.

16 The demurrer was sustained as to parties defending, and judgment by default as to the others, and nothing further being said by complainant, the bill was dismissed as to them, but upon a motion for a decree against those defaulted, the Court refused to grant the decree.

87-56
Charles Ballantyne

vs
Robert Forsyth et al

Abstract

Filed May 14, 1859

L Leland

Clerk

SUPREME COURT OF ILLINOIS,

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ST 56

R. Forsyth
and

C. Ballance

Abstract

Filed May 14, 1859

L. L. Leland
Clerk

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571. 56
C. D. Ballan

^{ms}
R. Forsyth et al

Abstract

Filed May 13, 1889

L. Leland
Clerk

STATE OF ILLINOIS, } ss. The People of the State of Illinois,
SUPREME COURT,

To the Sheriff of the County of

Peoria

Greeting :

Because, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the Circuit Court of Peoria County, before the Judge thereof, between Charles Ballance plaintiff

and Robert Forsyth, Lucien Durmain, Antoine R. Bonis, James McFadden, Peter Menard, Norman H. Purple, the unknown heirs of Adam W. Snyder deceased, Henry Von Phul, Theodore L. McGill, Samuel Hart, the unknown heirs of Charles La Belle deceased, Alfred G. Curtin, John L. Griswold, and others the unknown claimants to portions of the south east fractional quarter of section nine in township eight north of range eight east of the fourth principal meridian

defendants, it is said that manifest error hath intervened, to the injury of the said Plaintiff

as we are informed by his complaint, the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; Therefore, We Command You, That by good and lawful men of your County, you give notice to the said

Robert Forsyth, Lucien Durmain, Antoine R. Bonis, James McFadden, Peter Menard, Norman H. Purple, the unknown heirs of Adam W. Snyder deceased, Henry Von Phul, Theodore L. McGill, Samuel Hart, the unknown heirs of Charles La Belle deceased, Alfred G. Curtin, John L. Griswold and others the unknown claimants to portions of the south east fractional quarter of section nine in township eight north of range eight east of the fourth principal meridian.

that ~~they~~ be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next, to hear the records and proceedings aforesaid, and the errors assigned, if ~~they~~ shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said

Robert Forsyth, Lucien Durnain, Antoine R. Bonis, James McFadden, Peter Menard, Norman H. Purple, the unknown heirs of Adam W. Snyder deceased, Henry Von Phul, Theodore S. McGill, Samuel Hart, the unknown heirs of Charles La Belle deceased, Alfred G. Curtemius, John S. Griswold and others the unknown claimants to portions of the South East fractional quarter of Section nine in Township eight north of range eight east of the fourth principal meridian.

notice, together with this writ.

Witness, The Hon. JOHN D. CATON, Chief Justice
of our said Court, and the Seal thereof, at Ottawa,
this 14th — day of May — in the
Year of Our Lord One Thousand Eight Hundred
and Fifty-nine.



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

Peter Thompson
 James McLeod
 Robert Thompson
 John Thompson
 William Thompson
 Peter Thompson

Charles Thompson
 as
 Robert Thompson
 Walter
 Sci Jac
 (56)

62 15
 12 05
 21 75
 205 45
 19 29
 19 66

Filed April 17, 1860
 d. Belmont
 Clerk



State of Illinois, I have duly served this writ
 Return County - by delivering a true copy of the
 same to Peter Thompson, Thomas H. Purple
 John S. Griswold, Anna Tracy, Lemtinus
 Anna Lemtinus Helen S. Lemtinus
 The other within named persons are not
 found in my county.
 Filed July 16th 1860

Wm Byrne Shff P.C.
 As J. W. Early dep
 Fees \$6.40

Served on Belmont 17th Apr 1860.

Charles Ballance

vs

Robert Forsyth et al.

} Error to Revers

The motion to re-in-state is addressed to the court. This court requires diligence on the part of litigants but the greatest disposition to diligence does not confer. Delinquency I could not be here and at ~~the~~ ^{Washington} ~~at~~ the same time I could have employed an attorney here had I known when the court would commence. By the peculiar phraseology of the law, ^{fixing the terms of} ~~establishing~~ this court that is an error that might easily be made. If this month had commenced on Tuesday the first Tuesday after the third Monday would have come a week later.

So let this in upon the terms proposed works neither injustice nor inconvenience to the defendants but that to overrule this motion will bear the plaintiffs right. This not only appears from affidavit but also from the record. More than five years have elapsed since the final decree.

I had no right to suppose any steps would be taken in the case. One of the attorneys had refused to enter the appearance of defendants and they were so scattered they could not all be served.

in time and in fact were not all sowed
with the same species

C. D. Hallam

56
Chas. D. Hallam

101
R. D. Hallam

Suggestion of
Hallam

Filed April 28, 1860
L. D. Hallam
C. D. Hallam

Charles Bellance } In Error to Peoria
 vs } Supreme Court April
 Robert Forsyth et al } Term, A.D. 1860.

The above plaintiff deposes and says that he has several important suits pending in the Supreme Court of the United States, at Washington, in most of which he is a party in interest, and in all of which he is the sole attorney for the appellants. That he was in Washington in the forepart of last winter, attending to said suits, but believing that said cases would not be reached, during the present term, he returned home to Peoria. That afterwards he received two letters from Mr. Carroll, the clerk of said ^{Court}, informing him that said cases ^{the} would probably be reached and that his presence was necessary. In pursuance to this information, he started to Washington ~~on~~ by way of Bloomington and Chicago ^{where he had business} on the 10th instant, and arrived at Washington on the 15th instant. He remained in Washington one week, waiting and preparing said cases. At the end of a week becoming satisfied that ^{his} ~~any~~ cases there would not come on at the present term, and being anxious to get back to Illinois in time for the present term of this court, which affiant supposed would commence on next Monday, affiant left Washington city.

on the evening of the ~~24th~~^{22nd} instant, and arrived
in Peoria on the evening of the 24th instant.
That night affiant was informed that this
court was in session, and immediately made
his arrangements to come to this place, and did
arrive here on the first train that came from
Peoria here, on the 25th instant, but found that
this case had been dismissed.

^{Affiant}
~~Respondent~~ could not give his personal
attendance in this court sooner, because
those cases in ~~Chicago~~^{Washington} were of much greater
importance, and concerned property of much
greater value, than any suits he had in this
court. Affiant did not employ any other
attorney to attend to this case, because he was
mistaken as to the time when this court would
be in session, and intended to return in
time to attend to it himself; and that affiant
was here in time to attend to it if it had not
commenced before the the time when he
supposed it would be in session.

Affiant however had no expectation that
this case would be ready for trial at this court,
for one of the attorneys for the defendants had
declined to enter the appearance of the de-
pendants, and although affiant had order-
ed scirefacias to be issued and served on all
the dependants, affiant had no idea that they
could all be served, for the reason that they

were numerous, and very much scattered. Some of said dependants reside in Peoria, one in Tazewell, about sixteen miles from Peoria, one resided somewhere east of Peoria, I believe in Livingston county. Several of them in St. Louis, one in New Orleans, and others were unknown. Affiant did not know until today, that there had been any appearance entered by said dependants, or any other steps taken, or expenses made by them, except the motion to dismiss.

Affiant has been at the expense of the record, making and printing abstracts, and making the usual deposit, with the clerk, of five dollars, and is now willing to ~~to~~ have this case re-instated upon terms, that the case shall be submitted at the present term upon printed briefs orally, or shall be continued, at the election of the dependants.

Upon the above statement plaintiff moves to have this case re-instated, on the docket.

C. D. Ballance

Subscribed, sworn to before me
Apr. 27. 1860. L. Island Clerk,

I would call the attention of the court to the fact that should this case not be re-instated the case is lost for more than five years have elapsed since the final decree was made.

C. D. Ballance

56
G. D. Ballou

vs
R. Forsyth et al

Filed April 28. 1860
de Leland
Clerk

SUPREME COURT OF ILLINOIS.

Third Division—April Term, 1859.

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That on the 3d of March, 1823, Congress passed an act entitled "An act to confirm certain claims to lots in the village of Peoria, in the state of Illinois," which is made part of the bill.

3 That when said law of 1823 was passed, said property, for want of inhabitants and improvements, was of little value. Any land in the vicinity could have been obtained for one dollar and twenty-five cents per acre, and some for less; but since a city of several thousand persons has sprung into existence at Peoria, and property has become valuable, doubts have been constantly thrown upon the title to property at said place, by persons who have bought up said claims—called French claims—and publicly claimed said lots, and who sometimes bring suits for them, and thereby keep a cloud over complainant's title, that prevents him from selling or leasing said property for so good a price as he otherwise might get, and of right ought to get, for it.

That Robert Forsyth and the other defendants, claim portions of said property, under said French claims, (which is specifically set forth and described,) adversely to complainant. "All of said defendants, your orator charges, claim title to some portion of said land, so belonging to your orator, as aforesaid, under some of said French claims, and by constantly asserting title thereto, and sometimes threatening to sue your orator for portions of said ground, render said ground unsalable, and prevent your orator from leasing it for so much as he otherwise could." They also claim the right to, and threaten to stop up, the streets running through said addition, and thereby depriving complainant of access to said lots, although said streets have been used by the public, as public highways, ever since 1836, and Adams street ever since 1832, and have been used by the public, ever since, without let or hindrance from any of defendants, "and Water street, and so much of Hudson street as connects it with the river, have been a public highway, established by public authority more than twenty years ago, and constantly used as such by the public."

6 The bill prays for a discovery of defendants' title, and claims, in particular, that they may "abide by and perform such order and decree as shall be made in the premises," and for general relief.

9 Appearance was entered, and motion to dismiss by Norman H. Purple, James McFadden, Alfred G. Curtenius, John L. Griswold, Robert Forsyth and Peter Menard.

Complainant then amended his bill by setting out his title in detail, to wit: 1st, Prior possession for more than twenty years; 2d, Pre-emption right under the law of April 5th, 1832; 3d, A purchase from the United States, through their agents, the register and receiver of the land office, in November 15th, 1837; 4th, A patent from the United States to John L. Bogardus; 5th, A deed from Bogardus to Underhill; 6th, Deed connecting plaintiff with said Bogardus' title, for all the lots contained in the list of interference, the originals of which will be produced on the trial.

11 "Said claimants are so numerous and so scattered, that it would be difficulty, if not impossible, ever to get all said claims adjusted, at law, and that said lots are in the midst of a growing city, and are situated at a place on the Illinois river, where the commerce of a flourishing country imperatively demands the immediate settlement of all questions pertaining to the title of said real estate.

Afterwards, without in anywise disposing of said motion, a demurrer was filed by said Purple, McFadden, Curtemius and Griswold, Forsyth, Dumain, Bouis, Menard and Von Phul and McGill.

16 The demurrer was sustained as to parties defending, and judgment by default as to the others, and nothing further being said by complainant, the bill was dismissed as to them, but upon a motion for a decree against those defaulted, the Court refused to grant the decree.

374 5-6
to Ballance

vs

R. Forsyth et al

Shelton

Filed May 14. 1859

Edmund
Clerk

9 (1)

Be it remembered that heretofore, to wit, on the thirty first day of July in the year of our Lord one thousand eight hundred and fifty two there was filed in the office of the clerk of the Circuit Court in and for the County of Peoria in the State of Illinois a Bill of Complaint on the Chancery side of said Court with plat thereto attached, which are in the words and figures following, to wit:

Bill -

To the Honorable William Kellogg, judge of the judicial Circuit in chancery sitting, humbly complaining sheweth unto your honor, your orator Charles Ballance that long prior to the year eighteen hundred and thirty two, John L. Bogardus was in possession, by actual residence of of the south east quarter of section No nine in township No eight north of range No eight east of the fourth principal meridian, and by virtue of said residence and possession, availed himself of the provisions of the Statute of the United States passed on the fifth day of April A. D. 1832 and filed such proofs in the land office at Edwardsville that on the day of A. D. 1832 the Register of said office gave said Bogardus a certificate that said proofs were adjudged sufficient and afterwards said Bogardus, to wit on the fifteenth day of November A. D. 1837 bought said tract ^{of land} from said Register and receiver, pursuant to said pre-emption, and paid the said receiver one dollar and a quarter per acre therefor, and the said Register then and there executed to said Bogardus a certificate of said fact, and afterwards to wit on the fifth day of January eighteen hundred and thirty eight the United States issued a patent to said Bogardus for said tract of land.

Bogardus
conveys to
Underhill

Your orator further sheweth unto your Honor that before the said patent was issued to wit, on the fifth day of August eighteen hundred and thirty four, said Bogardus conveyed said tract of land by deed of that date to one Isaac Underhill, and

B. & W's survey

afterwards, to wit, sometime in the year eighteen hundred and thirty six, said Underhill and one Bigelow, who had become in some way interested in said tract of land surveyed the same into the lots, streets and alleys and called it Bigelow and Underhill's addition to Peoria, a copy of which plat is herewith filed and prayed to be made a part of this bill.

Compt. prop-
-tion

Your orator further sheweth unto your honor that he is in possession of the following portions of said tract by title derived through said Underhill, to wit, lots one two and three in block fifty one. Lots three four, nine and ten, in block forty nine. - Lots ten, eleven and twelve in block forty three, Lots five six seven and eight in block thirty eight, Lots seven and eight in block thirty seven. Lots seven eight and nine in block thirty four, and twenty two feet off the north east side of lot two in block fifty. And your orator believes he has a good title both in law and equity to said lots of ground.

French Settlement

But your orator further sheweth unto your honor, that in eighteen hundred and twelve, there was a settlement of Canadian Frenchmen at the place where the city of Peoria now stands and some of their houses were on the ground above described, but on account of the troubles incident to the war that was then waging, they abandoned the place and never returned, but on the 15th day of May 1820 the Congress of the United States passed an act entitled "An act for the relief of the inhabitants of the village of Peoria in the State of Illinois" which is hereby referred to and prayed to be made a part of this deed bill, and afterwards a report was made to the Secretary of the treasury, on the subject of these claims by Edward Coles, Register of the land office at Edwardsville, which is found in the third Volume of American State papers, printed by order of the senate, and which is hereby referred to and prayed to be made a part of this bill. Afterwards on the 3rd day of March 1823 the Congress of the United States passed An Act entitled "An Act to

Act of 1820

Act 3 March 1823

B. & W's survey

afterwards, to wit, sometime in the year eighteen hundred and thirty six, said Underhill and one Bigelow, who had become in some way interested in said tract of land surveyed the same into the lots, streets and alleys and called it Bigelow and Underhill's addition to Peoria, a copy of which plat is herewith filed and prayed to be made a part of this bill.

Compt. prop-
-tion

Your orator further sheweth unto your honor that he is in possession of the following portions of said tract by title derived through said Underhill, to wit, lots one two and three in block fifty one. Lots three four, nine and ten, in block forty nine. - Lots ten, eleven and twelve in block forty three, Lots five six seven and eight in block thirty eight, Lots seven and eight in block thirty seven. Lots seven eight and nine in block thirty four, and twenty two feet off the north east side of lot two in block fifty. And your orator believes he has a good title both in law and equity to said lots of ground.

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Act of 1820

Act 3 March 1823

confirm certain claims unto to lots in the village of Peoria in the State of Illinois" which act is hereby referred to and prayed to be made a part of this bill.

Your orator further sheweth unto your Honor, that when said law of eighteen hundred and twenty three was passed, said lots were of little or no value because the country was entirely uninhabited, except by wild beasts and savages, and because not only then but for many years afterwards as good and in most instances better land would be bought in the immediate vicinity from the government or soldiers to whom the government had granted it, for a dollar and a quarter per acre, and sometimes for a less sum; but in process of time the government sold all the lands in the vicinity at a dollar and a quarter per acre, and a thriving settlement was ~~founded~~^{formed} in the neighborhood, and a city of seven or eight thousand persons has sprung into existence at Peoria, yet doubts are constantly thrown upon the title to property, at said place by persons who have bought up said french claims, as they are usually called, and they by publicly claiming said lots, and sometimes ^{bringing} ~~bring in~~ suits for the same, ^{keep a cloud} ~~keep or stand over~~ your orators title, that prevents him from selling the same or leasing it for near as good a price as he otherwise could and of right ought to be able to get, in the way of sale or lease.

Lefts claim

Your orator shows unto your honor that one Robert Forsyth claims adversely to your orator a portion of lot eight in block thirty seven - of seven in thirty seven - of lots three, four nine and ten in block forty nine, and how much more your orator does not know, but believes, and therefore charges that he claims more than the amount above specified. Your orator charges that one Lucien Dumain claims a part of said lot eight in block thirty seven and portions of other lots in said addition belonging to your orator as aforesaid, but to what extent he claims them your orator does not know, and therefore cannot state. Your orator charges that one Antoine R. Bonis claims an interest in said

lots adverse to your orator, but to what extent your orator does not know. Your Orator charges that one James M^c Fadden claims an interest adverse to your orator, and brought three several actions of ejectment against tenants of your orator, to recover portions of lot seven, in block thirty four according to said plat, which suits were tried in this Court and judgments obtained against your orator, from which decisions your orator took appeals to the Supreme Court of Illinois, and said Court after solemn argument, and due consideration, reversed said decisions. But now so it is, may it please your honor, said M^c Fadden still claims said ground and threatens to sell his claim thereto to some person out of the State of Illinois, with a view to have your orator further harassed by a suit or by suits in the United States Court, at Springfield. Your orator further shows unto your honor that he has been informed and believes that Peter Menard, Joseph Pappin, Norman H. Purple, the unknown heirs of Adam W. Snyder decd. Henry Von Phul and Theodore L. M^c Gill, Samuel Hart and the other unknown heirs of Charles La Belle, claim some interest in said lots under said French claims adverse to your orator. Your orator charges that there are some persons who own some portion of said tract by titles not adverse to your orator but hold other portions under said French claims, and are adverse to your orator, of this number are Alfred G. Hurtenius and John L. Griswold, who as your orator is informed and believe, have purchased a lot known as lot nineteen of the French village commonly called the Lavoisseur lot, which lot interferes with your orator's aforesaid lot eight in block thirty eight, and covers all the front part of it. Your orator charges that there are a great many more persons who claim an interest in your orator's above described lots, whose names he cannot now give, but hopes soon to be able to give them, when he prays to be permitted to insert them herein. Your orator prays that the aforesaid Robert Kossuth, Lucien Dumain, Antoine R. Bonis James M^c Fadden

Peter Menard, Norman H. Purple, the unknown heirs of Adam W. Snyder deceased, Henry Von Phul, Theodore L. McGill, Samuel Hart and the unknown heirs of Charles La Bell, Alfred G. Curtiss, John L. Griswold and others the unknown claimants to portions of the south east quarter of section nine, in township eight north of range eight east of the fourth principal meridian may be made defendants to this bill.

All of said defendants, your orator charges claim title to some portion of said land, so belonging to your orator as aforesaid, under some of said french claims and by constantly asserting title thereto and some times threatening to sue your orator, for portions of said ground render said ground unsaleable and prevents your orator from leasing it for so much as he otherwise could lease it for. Your orator further charges that said defendants not only claim the right to dispossess your orator of said lots, but also to stop up the streets that have been for many years running by your orators said property to wit Water street, Adams street, Harrison street, Hudson street, Walnut street and Liberty street, which would if permitted, ruin your orators said lots, by depriving your orator of access to said lots. But your orator charges that all said streets have been used by the public as public highways ever since the year 1836, and said Adams street was established as a public highway by the County Commissioners Court of Peoria County, in the fall of the year A.D. eighteen hundred and thirty two, and has been used as such by the public ever since, without let or hindrance from any of said defendants, and Water street and so much of Hudson street as connects it with the river where the bridge now is, has been a public highway, established by public authority more than twenty years ago and constantly used as such by the public, without let or hindrance from any of said defendants or any one under whom they claim.

All of which actings and doings of said defendants

are contrary to equity and good conscience and tend to the manifest injury of your orator.

For so much therefore as your orator is without remedy by the strict rules of the common law, but is relieveable only in a Court of equity, where matters of this sort are properly recognisable and relievable, and to the end therefore, that the said defendants may full, true and perfect answers make, to all and singular the allegations and charges aforesaid, as particularly as if the same were separately repeated and they severally interrogated thereunto and particularly that they may individually answer the following interrogatories to wit:

Interrogatories

1st What right title or claim had you at the date of the commencement of this suit, to either of the lots aforesaid, described as belonging to this complainant and which of said lots? and what portion do you claim.

2nd What title have you to any such lots by you claimed. Please give a copy of your title papers if any you have or an abstract of your title.

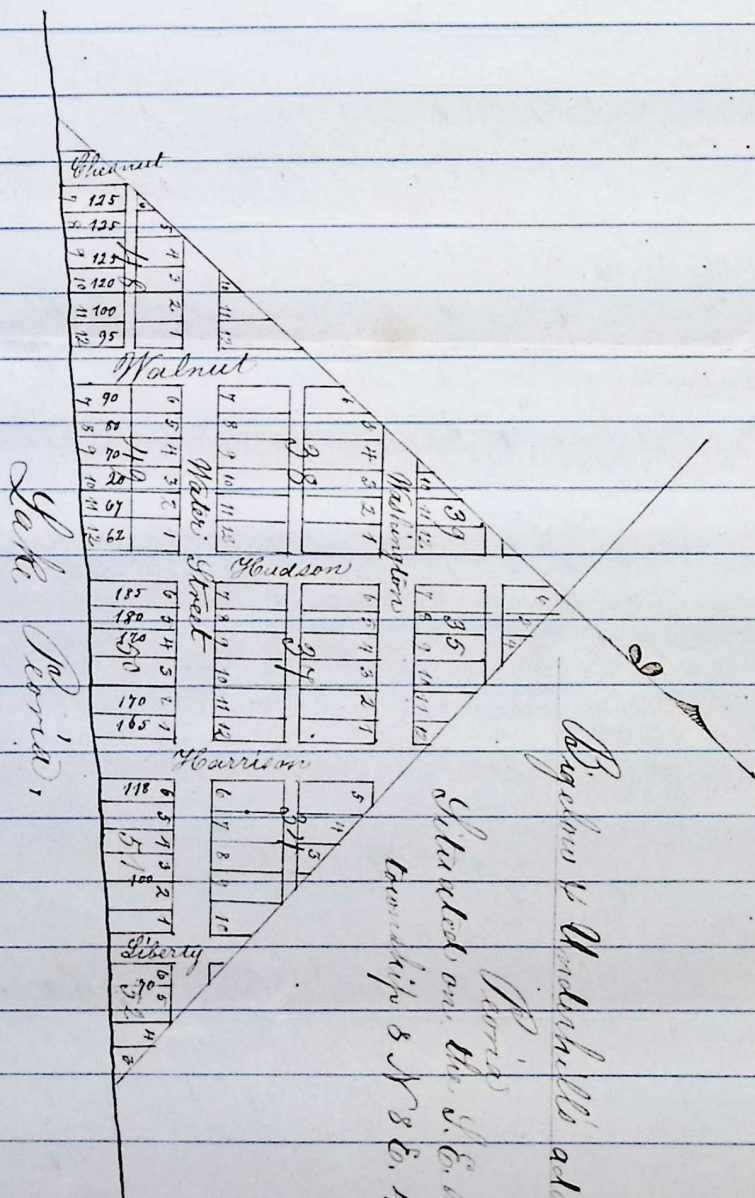
3rd Do you claim the right to shut up any of the streets in the vicinity of said lots above described as belonging to this complainant. If yes, which street or streets and what part of it or them do you claim the right to shut up and by what authority?

4th Do you claim the right to open any street through any of said lots, and if yes, which of said lots and by what authority do you claim that right? and that the said defendants may be required to come forward and exhibit their titles in this Honorable Court and that a decree may be made enjoining them and each of them from proceeding at law, or in any other mode interrupting your orator in the enjoyment of ^{said} the premises. May it please your honor to grant to your orator a writ of summons to be to said defendants directed commanding them and each of them on a certain day to be and appear in this Honorable

Court, then and there to abide by and perform such order and decree as shall be made in the premises. And that your orator may have such other and further relief as shall be agreeable to equity and good conscience and to your orator shall seem meet, your orator will ever pray &c.

C. Ballance

Plat attached
to the Bill



Proposed by W. M. Marshall & Co. atty in law
Attended on the 21st Decr 1861
Township 8 N 8 E. 4 S. 11 W.

Thereupon the clerk of said Court issued a summons in the words & figures following, to wit:

Summons -

The People of the State of Illinois

To the Sheriff of Peoria County Greeting.

We command you to summon Robert Forsyth, Lucien Durnain, Antoine R. Bonis, James M^c Padden, Peter Howard, Norman H. Purple, unknown heirs of Adam W. Snyder dec'd Henry Von Phul, Theodore L. M^cGill, Samuel Hart, unknown heirs of Charles LaBelle dec'd, Alfred G. Curtin, John S. Griswold, and others the unknown claimants to portions of the south east fractional quarter of section nine in township eight north of range eight east of the fourth principal meridian if they may be found in your County, to appear before our Circuit Court on the first day of the term thereof to be held at Peoria within and for the said County of Peoria on the third Monday of August next then and there in our said Court to answer the matters and things contained in a certain Bill of complaint exhibited against them in our said Court on the chancery side thereof by Charles Ballance and make return of this writ, with an endorsement of the time and manner of serving the same on or before the first day of the term of the said Court to be held as aforesaid. Witness Jacob Gale, Clerk of our said Court and the seal thereof at Peoria this 31st day of July in the year of our Lord one thousand eight hundred and fifty two.

Jacob Gale, Clerk

Return -

Which summons was returned by said Sheriff endorsed as follows, to wit: State of Illinois & Served on the within named Robert Forsyth Peoria County & James M^c Padden, Norman H. Purple and Alfred G. Curtin by reading to them this writ and leaving with each a true copy thereof July 31st, 1852.

James L. Riggs, Sheriff

Proceedings in Chancery before the Circuit Court begun and held in the City of Peoria in and for the County of Peoria, on Monday the sixteenth day of August in the year of our Lord

9

one thousand eight hundred and fifty two. The Honorable William Kellogg Judge of the tenth Judicial Circuit in the State of Illinois, presiding to wit

Tuesday August 24th A. D. 1852

Charles Ballance

vs

Robert Forsyth & others

} For injunction

Motion to dismiss

This day the defendants by H. O. & A. L. Merriman counsel entered a motion to dismiss the bill in this cause for want of equity on its face.

Thursday August 26th A. D. 1852

This day came the defendant Norman H. Purple and entered his appearance in this cause and the defendants James McFadden, Alfred G. Gurtinius and John S. Griswold came by their solicitor Norman H. Purple and entered their appearance in this cause, and the defendants Robert Forsyth and Peter Menard came by their solicitor H. O. Merriman and entered their appearance in this cause. This cause coming on to be heard on the defendants motion to dismiss the Bill, On cross motion of the complainant leave is given him to amend his bill in thirty days. On motion of complainant ordered that alias summons issued to those defendants not served with summons herein.

And afterwards, to wit, on the 23rd day of September A. D. 1852 the complainant filed his amended Bill of complaint in said cause, which is in the words & figures following, to wit,

Amended bill

The amended bill of Charles Ballance to a bill in Chancery heretofore filed by him, in the Peoria Circuit Court on the Chancery side thereof, against Robert Forsyth and others defendants. This Complainant further sheweth unto your honor that your orators title to said property consists

1st In prior possession, which he avers, he and those under

Complainant's title in detail

whom he claims have held of said premises for more than twenty years.

2nd A pre-emption right, established in John L. Bogardus under the pre-emption law of eighteen hundred and thirty two.

3rd A purchase from the United States through their agents the Register and Receiver at Quincy

4th A patent from the United States to Bogardus of 1/4 quarter of section nine in township eight north of range eight east of the 4th principal meridian

5th A deed from John L. Bogardus to Isaac Underhill.

6th Deeds showing that what ^{ever} title said Underhill obtained through or by said purchase was transferred to and now abides in your orator so far as the lots above set forth as belonging to your orator are concerned, copies of the certificates of said pre-emption right and entry and said patent and deed are herewith attached and prayed to be made a part thereof; and the originals thereof, together with all the deeds connecting your orator with said Underhill's title, will (if required) be produced in court, on the trial of this cause.

Your orator further sheweth unto your honor that said plat of Bigelow & Underhill's addition to Peoria was by said Bigelow and Underhill duly acknowledged and recorded, in the Recorder's office of Peoria County in the State of Illinois, pursuant to all the provisions of the Statute in such case made and provided. And moreover that the survey thereof was made by Thomas Philips who was then and there the county surveyor of said County as by law such surveys are required to be made, and that all the streets and alleys in said addition laid out and established thereby became dedicated to the public and have ever since been used by the public as public streets and alleys, and the corporation of the City and town of Peoria have ever since ^{making} the ~~fine~~ of said survey kept said streets and alleys in repair at public expense as public streets and alleys; and no one disputed the right of said Bigelow and Underhill thus to dedicate said streets.

(11)
and alleys to public use, nor the right of the public authorities of said town and city of Peoria to appropriate them to that use and keep them in repair as such.

Your orator further sheweth unto your honor that he believes and therefore charges that not one of the defendants herein who are either defendants by the original bill or by this amendment has a good title either in law or equity to the ground so by him claimed, yet the setting up of said claims operates as a cloud upon your orators title, and greatly impairs the value of it.

Your orator has been informed and believes and therefore charges that Healey O Merriman and Asa Lee Merriman attorneys at law of Peoria, Peter W. Putter of Iowa, Hamilton Murry of New York, John T Lindsay of Peoria and Laurant Bensonneau claim some interest in your orators said lots, but to what extent and under what pretense your orator does not know and therefore he cannot set forth ^{the} ~~the~~ several pretended titles, but your orator charges that they all claim adverse to your orator and under some of said pretended french claims.

Your orator charges that said claimants are so numerous and so scattered, that it would be very difficult if not impossible ever to get all the said claims adjusted at law and that said lots are in the midst of a growing city and are situated at a place on the Illinois river where the commerce of a flourishing country imperiously demands the immediate settlement of all questions pertaining to the title of said real estate. Your orator therefore prays that the above named persons may be made defendants hereto, and the same relief be granted against them severally, as is prayed against the said original defendants, and that they each, in like manner be summoned into court and required to answer not only to this amended bill, but to all the charges and allegations and interrogatories in said original Bill. And your orator as in duty bound will ever pray &c.

C. Ballance

Claimants
numerous

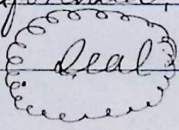
Whereupon afterwards, to wit, April 30th A.D. 1853 the clerk of said court issued an alias summons in said cause, which is in the words and figures following, to wit:

Alias summons

The People of the State of Illinois

To the Sheriff of Peoria County Greeting.

We command you as we have heretofore commanded you to summon Lucien Dumain, Antoine R. Bonis, Peter Menards, unknown heirs of Adam W. Snyder dec'd, Henry Von Phul, Theodore L. McGill, Samuel Hart, unknown heirs of Charles La Belle dec'd & others the unknown claimants to portions of the south east fractional quarter of section nine in township eight north of Range eight east of the fourth principal meridian, if they may be found in your county, to appear before our Circuit Court on the first day of the term thereof, to be held at Peoria within and for the said County of Peoria on the 2nd Monday of May next, then and there, in our said Court, to answer the matters and things contained in a certain Bill of complaint exhibited against them and Robert Forsyth, James McFadden, Norman H. Purple and Alfred G. Gusterius in our said Court on the Chancery side thereof by Charles Ballance and make return of this writ with an endorsement of the time and manner of serving the same, on or before the first day of the term of said Court to be held as aforesaid. Witness Jacob Gale, clerk of the Circuit Court of



said County, and the seal thereof, at Peoria this 30th day of April in the year of our Lord one thousand eight hundred and fifty three.

Jacob Gale Clerk

Which alias summons was returned by said Sheriff endorsed as follows, to wit:
The within named defendants was not found in this County this 9th day of May 1853.

L. B. Cornwell Sheriff
by John Boyner Deft.

Sold by
John C. Clark & Son,
68 Dock Street,
Philadelphia.

13

And afterwards on the twelfth day of May A.D. 1853 the following demurrer was filed in said cause on behalf of the defendants, to wit-

Demurrer = Charles Ballance
vs } In Chancery
Robert Forsyth & others }

And the said defendants, Purfle, McFadden, Custerius & Griswold, Forsyth, Duman, Bonis, Menard, Now Phil & Mc Gill come and say that the said complainants bill and the matters and things therein stated are not sufficient for the said complainant to maintain his said bill, therefore the said defendants do demur to the said bill and insist that there is no equity in the same and the statements therein contained and prays that the same may be dismissed.

Purfle & Langer for said Defts.
Manning & Merriman for sd. Defts.

And afterwards on the 27th day of October A.D. 1853 the complainant filed his affidavit in said cause in the words & figures following, to wit.

afft non-residents Charles Ballance
vs } In the Peoria Circuit Court Nov. Term
Robert Forsyth et al. } 1853 In Equity

I Charles Ballance do solemnly swear that Lucius Duman, Antoine R. Bonis, Henry Now Phil, Theodore L. Mc Gill, Samuel Hart and the other unknown heirs of Charles La Belle, Peter W. Potter & Hamilton Murry are not inhabitants of the State of Illinois and that as other unknown claimants to the south east fractional quarter of section No nine in township eight north of range eight east of the fourth principal meridian

are unknown to me, I cannot state their residence and further
affiant saith not

C. Ballance

Subscribed & sworn to before me this 27th day of October A.D. 1853

Jacob Gale, Clerk

On the thirtieth day of March A.D. 1854, there was
filed in said Cause a notice to non-residents of pendency
of said Cause, which with the printers certificate of the publication
thereof, thereto attached is in the words & figures following,
to wit,

notice to non-res-

State of Illinois } In the Peoria Circuit Court August term
Peoria County } A.D. 1853. Charles Ballance Complainant
vs. Robert Forsyth, Lucien Dumain, Antoine R. Bouis, James
McFadden, Peter Meenard, Norman H. Purple, unknown heirs of
Adam W. Snyder deceased, Henry Von Phul, Theodore L. McGill,
Samuel Hart, unknown heirs of Charles LaBelle deceased, Alfred
G. Lutenius, John L. Griswold and others, the unknown claimants
to portions of the south east fractional quarter of section nine
in township eight north of range eight east of the fourth principal
meridian. Notice is hereby given to the said Lucien Dumain,
Antoine R. Bouis, Henry Von Phul, Theodore L. McGill, Samuel
Hart and the unknown heirs of Charles LaBelle, Peter W. Potter
and the unknown heirs of Adam W. Snyder deceased, and the
unknown claimants to the south east fractional quarter of section
number nine in township eight north of range eight east of the
fourth principal meridian, that a suit is now pending against
the above named defendants, in the Circuit Court in and for
Peoria County in the State of Illinois on the Chancery side there-
of, wherein the said Charles Ballance is complainant and that
summons has been duly issued therein, returnable to the term
of said Court held at the Court house at Peoria, in and for
the County of Peoria and State of Illinois, on the third
monday of August A.D. 1852. Now unless you the said
Lucien Dumain, Antoine R. Bouis, Henry Von Phul,

15

Theodore S. Mc Gill, Samuel S. Hart and the unknown heirs of Charles Ex Belle, Peter W. Palter and unknown heirs of Adam W. Snyder deceased and the unknown claimants to the south east fractional quarter of section No nine in township eight north of range eight east of the fourth principal meridian, shall appear before said Court on the first day of the next term thereof, to be held at Peoria, in and for the said County of Peoria and State of Illinois, on the fourth Monday of January next, and plead answer or demurr to said complainant's bill, the matters and things therein contained, will be taken for confessed against you, and a decree entered by the said Court according to the prayer thereof. Dated at Peoria, this twentieth day of December A. D. 1853

Jacob Gale, Clerk

[Attached]

I do hereby certify that the annexed notice was published for four weeks successively in the Peoria Republican a public newspaper printed in Peoria Illinois and that the first publication was made on the 23rd day of December A. D. 1853

T. J. Pickett, Publisher

Peoria, March 30, 1854

Proceedings in Chancery before the Circuit Court at a term thereof begun and held at the Court house in the City of Peoria in and for the County of Peoria in the State of Illinois on the second Monday of May in the year of our Lord one thousand eight hundred and fifty four it being the eighth day of said month. The Honorable Ouslow Peters Judge of the sixteenth Judicial Circuit in the State of Illinois presiding to wit:

Monday May 22nd A. D. 1854

Charles Ballance

vs

For Injunction

Robert Forsyth, Lucien Dumaiz

Antoine R. Bouis, James McFadden

Peter Menard, Norman H. Purple

unknown heirs of Adam W. Snyder deceased,

Henry Von Phul, Theodore L. Mc Gill

Samuel Hart unknown heirs of Charles La Belle deceased

Alfred G. Curtin, John L. Griswold and others,

the unknown claimants to portions of the south east fractional quarter of section nine in township eight north of range eight east of the fourth principal meridian.

Issue

This day this cause came on to be heard upon the demurrer of the defendants to the complainant's bill and amended bill and the Court being sufficiently advised in the premises doth order, adjudge and decree that the said demurrer be sustained & the said complainant saying nothing further in favor of his said bill, it is ordered adjudged and decreed, that as to the defendants Purple, Mc Fadden, Curtin & Griswold, Forsyth, Du-main, Bouie, Menard, Von Phul & Mc Gill, said bill be dismissed without prejudice & that the said defendants recover their costs and have execution therefor as in cases of judgments at law.

All the other aforesaid defendants being three times solemnly called, ^{came not} but made default and said bill and the allegations therein were ordered and adjudged to be taken for confessed as against them, whereupon complainant moved the Court for a decree against them according to the prayer of said bill, which motion of complainant was overruled by the Court and complainant thereupon prayed an appeal to the Supreme Court which is granted upon his filing his own bond (security being by defendants solicitors waived) conditioned according to law in the penalty of two hundred dollars

On the 22nd day of May A.D. 1854 the said complainant filed his appeal bond in said cause in the words & figures following to wit:

appeal bond - Charles Ballance

vs
Robert Forsyth
Norman H. Purple
James McFadden et al } In Chancery
Peoria Circuit Court

Bond

I, Charles Ballance the above complainant do hereby acknowledge myself to be held and firmly bound unto Robert Forsyth, Norman H. Purple James McFadden, Albert G. Curtin, John S. Griswold and the other defendants in the above entitled cause in the penal sum of two hundred dollars, for the payment whereof well and truly to be made, I bind myself, my heirs executors and administrators jointly severally and firmly by these presents. Witness my hand and seal this 22nd day of May 1854.

The conditions of the above obligation are such, that whereas, at a term of the Circuit Court of Peoria County now in session in the City of Peoria, the above entitled cause came on to be heard upon the demurrer of a part of said defendants, whereupon said court sustained said demurrer, and dismissed said bill, from which decision of said Court said complainant prayed an appeal to the Supreme Court which appeal was by said Court allowed, upon said complainant filing his own bond for the above amount (security to said bond being by the solicitor of defendants waived) Now therefore if the said complainant shall prosecute his said appeal with effect and without delay and pay whatever costs, and abide by and perform whatever decree said Court shall require of him, then the above obligation to be void, but otherwise to remain in full force and virtue.

C. Ballance *Eseal*

State of Illinois
Peoria County I, Jacob Gale, clerk of the
Circuit Court within and for the County of Peoria in
the State of Illinois do hereby certify that the
foregoing is a full and correct transcript from the
Records of all the proceedings in said Circuit Court
in Chancery in the aforesaid Cause wherein Charles
Ballance is complainant and Robert Forsyth and
others are defendants as the same are of record
and on file in my office.

In witness whereof I hereto set my
hand and affix the seal of said Circuit
Court at my office in Peoria this
third day of July A.D. 1855.
Jacob Gale, Clerk.

Clerk's fees: for transcript, certificate and seal \$6.00
Received payment of Complainant
Jacob Gale -

Said complainant comes and says in the said
decree there is manifest error in this to wit

1st Said decree ought in equity and good con-
science to have been in favor of said complain-
ant and not in favor of said defendant

2nd Said defendants ought to have been decreed to
release to complainant their supposed right to
said premises

3rd Said defendants ought to have been
perpetually enjoined from proceeding at law
against complainants on their said supposed
legal rights

4th Said defendants ought to have been perpetually enjoined from interfering with said strips as so laid out and used as in said bill is set forth

Wherefore because of said error and other manifest in said record he prays that said decree may be set aside annulled and held for naught
&c
C. Ballance P.P.

Defendants Join in Error
Manning Menimon
(Purptd for Sifts)

~~64~~ 3-6
Charles Ballance
Robert Forsyth Stab.

Reed C Enos

Filed July 26, 1855
L. Leland Clerk.

Refiled May 14, 1859
L. Leland
Clerk
By J. B. Rice Deputy