

No. 1114

Supreme Court of Illinois

Adams Miller et al

vs.

County Comm. of St. Clair Co.

(379)  7

1
Shews before the Honorable Sidney Breese, Judge of the Second Judicial
Circuit for the State of Illinois, and Presiding Judge of the Circuit
Court, for and within the County of St. Clair State aforesaid, in Chancery,
begun and held at the Court thereof in Belleville on the first Monday
of November Special Term of A.D. Eighteen hundred and thirty nine and of
the Independence of the United States of America the sixty-fourth.

St. Clair County SS

Be it remembered that heretofore, to wit, on the fourth day of May, Eighteen
hundred and thirty nine, Adam S. Mills, John A. Gay, Charles Mullikin, John C. Talton,
William C. Wiggins, Andrew Christy, Melanie Christy, Joseph A. Christy, Elizabeth Christy,
Mary T. Christy (which Melanie is the widow of which J. A., Elizabeth & Mary T. are the only children
and heirs of Samuel C. Christy deceased), said children being infants and appearing by said
Melanie their next friend, Emily Pratte widow of Bernard Pratte deceased, Emilie's daughter
wife of Ramsay Brooks, Ramsay Brooks, Bernard Pratte son of said Bernard deceased, Louis
Pignet & Therese his wife, which Therese is also a daughter of said Bernard Pratte deceased,
Stephen T. Needlet & Celeste his wife, she being also a daughter of said Bernard Pratte
deceased, Louis W. Boggy & Pelagie his wife who is also a daughter of said Bernard
deceased, & Joseph Blain & Diane his wife which Diane is a daughter of said Bernard
deceased, filed their Bill of Complaint in the Clerk's Office of said Circuit Court, against,
William G. Brown, John D. Hughes, James Anderson, William Penn & Charles
Sargent, which said Bill is in the words and figures, to wit,

To the Honorable Sidney Breese Judge of the Second Judicial Circuit—

Humblly complaining shew unto your Honor, Your Orators Adam S.
Mills, John A. Gay, Charles Mullikin, John C. Talton, William C. Wiggins, Andrew
Christy, Melanie Christy, Joseph A. Christy, Elizabeth Christy, Mary T. Christy (which
Melanie is the widow of which J. A., Elizabeth & Mary T. are the only children & heirs of
Samuel C. Christy deceased), said children being infants & appearing by said Melanie their
next friend, Emily Pratte widow of Bernard Pratte deceased, Emilie's daughter wife of Ramsay
Brooks, Ramsay Brooks, Bernard Pratte son of said Bernard Pratte deceased, Louis Pignet
& Therese his wife, which Therese is also a daughter of said Bernard Pratte deceased,
Stephen T. Needlet & Celeste his wife, she being also a daughter of said Bernard
deceased, & Joseph Blain & Diane his wife, which Diane is a daughter of said Bernard
deceased, that the claim to a tract of Land containing four hundred acres lying East of the
Mississippi River & fronting the town of St. Louis in Missouri, was confirmed to Pierre Goddard

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His legal Representatives by act of Congress of the sixteenth day of April in the
in the year Eighteen hundred and fourteen whereby the title in fee simple to said tract of
Land was vested in Nicholas Jarot, purchaser & assignee of Joseph Coudaire son
& only heir of said Pierre Coudaire, is Situate in St. Clair County in Illinois & which
said tract of Land has been surveyed & located by the United States and is bounded
South by the Cahokia Commons, on the west by the Mississippi River, extending northwardly
nearly to a point opposite the Centre of bloody Island, and bounded Eastwardly by
the Cahokia Creek or River d'Abbe, that said Joseph Coudaire, conveyed the
same tract of Land to said Jarot by deed dated the seventeenth day of April in the
year Eighteen hundred and nine, and that the same Land was conveyed by Julie
Jarot widow of said Nicholas, being thereto duly empowered by the last will of said
Nicholas to Samuel Wiggins by deed dated the thirteenth day of July in the year Eighteen
hundred and twenty two; that said Samuel Wiggins by his deed dated the first
day of August in the year Eighteen hundred thirty one conveyed the same Land to
said John C. Hallon, Adam S. Mills, Bernard Ralte, now deceased, William C.
Wiggins, Samuel C. Christy & Charles Mullikin, that said John C. Hallon has sold
a part of his interest in said Land and conveyed the same by deed, to John H. Gay, & the
said Mills hath likewise sold a part of his interest in said Land to Andrew Christy,
and given his title Bond therefor, copies of which said several instruments of writing
and conveyances are hereto annexed and prayed to be taken as part of this bill as also
the said Survey, and also copies of Original documents & proofs of proceedings in
relation to said Coudaire's Claim from the United States Land Office at Kaskaskia
in Illinois, that said Bernard Ralte and Samuel C. Christy are both dead, leaving
their only heirs & representatives as to said Land the persons above named as such
in this Bill; Your Orators further State that said Pierre Coudaire settled upon said
Land and lived on it many years before said Confirmation, and that on his death,
his only son Joseph likewise claimed & conveyed the same as aforesaid: that said
Nicholas Jarot while the Owner thereof exercised acts of ownership over it as his
own, and the said Samuel Wiggins soon after he acquired his title as aforesaid
took possession of it, & continued in possession thereof as your Orators are informed and
believe claiming as his own, till he conveyed the same as aforesaid: and that ever
since his said Conveyance, his (the said Wiggins) grantees, being the persons above
named as such, took possession of the same Tract of Land, and the possession of the
same has remained in them and those claiming under them until the present time;

and

and that your Orators are now in the exclusive possession of the same tract, claiming to own it in fee simple and as they fully believe & so charge being the undoubted owners thereof in fee simple. Your Orators & Oratrices further state that the said tract of land, is bounded on the East by the Mississippi River perhaps a mile, and that the right and advantage of ferrying therefrom & of landing thereon is of great value, as the City of St Louis lies opposite on the west side of the river, and that a ferry has been owned & conducted and crossed over by the owners of said tract, from the said tract across the Mississippi, from the time when said Samuel Wiggins acquired the said land as aforesaid, down to the present moment to their great gain & emolument; Your Orators & Oratrices further represent that on March second in the year Eighteen hundred and nineteen an act was passed by the General Assembly of the State of Illinois, entitled, an act to authorize Samuel Wiggins to establish a ferry upon the waters of the Mississippi, a copy of which act is herewith exhibited as part of this bill, and that in pursuance thereof he said Wiggins, did establish a ferry on said tract within the time limited by the said act, which ferry has been kept up according to said act ever since, and was transferred by him in his said deed of the tract aforesaid, & since then has been kept up & conducted by his the said Wiggins grantees, the owners of said land, to this day, and is now conducted by your Orators & Oratrices at great labor & expense for the accommodations of the public, which ferry has been always run & is now the town of Illinois in the State of Illinois and was commenced by said Wiggins from lands that belonged to him, and while he owned it, was always run & conducted from land owned by him, and ever since he transferred it, it hath been always run from lands owned by the proprietors of said ferry, & is now run by your orators & oratrices from the same tract of land, to wit, the tract above described, and that said ferry hath always been managed and conducted by such boats as were propelled by horses or Steam, and they further state that a piece of said tract of land lying on the Mississippi near the centre of said tract was claimed by one James Piggott which claim was recognized by Government, & a patent issued therefor, & that said Wiggins acquired this piece several years before the date of the deed from Julia Janot to him and first established his said ferry on this piece, then being the owner thereof under said Piggott's legal representatives, which piece of land is included in the larger tract of Condoire and was patented by the United States to John Mc Knight & Thomas Brady in Eighteen hundred and sixteen and conveyed by them to Samuel Wiggins by deed, copies of which patent & deed ^{are} herewith exhibited and prayed to be taken as parts of this Bill, of Complaint, and they further set forth, that by the act aforesaid the right was expressly

Expressly conferred on said Samuel Wiggins his heirs and assigns, to establish and run a
ferry from his lands on the Mississippi near said town of Illinois for ever, provided no craft
or boat should be used but what should be propelled by horses, oxen or
other four footed animals, or steam; and by the second Section of said Act, it was
provided that no person except those who had their ferries established at that
place should establish any ferry of said description within one mile of the said
Wiggins' ferry, and that if any ferry were established in contravention of that act, the
boat or boats should be forfeited to said Wiggins his heirs or assigns, & might be
attached before any court in Illinois, having competent jurisdiction. Your
Orators, alledge and charge that though the general assembly have passed an act
purporting to repeal said second Section, yet that the right of ferrying remains
both as a common law and as conferred & guaranteed by said act, which
right is of great value to your Orators & Oratrices, and is protected both by the
Constitution of Illinois & of the United States, & cannot be legally infringed
taken away or destroyed without the consent of your Orators & Oratrices who are the
Successors of said Wiggins & his assigns according to the true intent and meaning
of said act & the owners of said land, and of all the said Wiggins' right & privilege
whether by said Statute or otherwise to ferry therefrom, and your Orators & Oratrices
have been and are conducting said ferry in strict conformity with the requirements
of said act, & to the full accommodation of the public, and have invested in it, upon
the full assurance of their right a great amount of Capital, relying upon the Law,
of the Land for protection & Safety in the enjoyment of their own property & privileges
and they well hoped that they would remain undisturbed in the exercise of their
undoubted privileges, & be permitted to receive the profits of their exertions & outlay
for the accommodation of the public. But your Orators & Oratrices state that
in this they have been disappointed; and that without their Consent and
contrary to their wishes, an act was passed by the said General Assembly on
the second day of March Eighteen hundred & thirty nine entitled "An act to
authorize St. Clair County to establish a ferry across the Mississippi River."
whereby William G. Brown, John Hughes, James Anderson William
Linn & Charles Sargent of St. Clair County were appointed Commissioners and
were required to examine the ground and locate a road and ferry landing
between Cahokia Creek and the Mississippi River opposite St. Louis, and it was
thereby further enacted, that said road and ferry landing should be located three
hundred

hundred feet wide, on the most eligible ground for said purpose, and that said
road and ferry landing when so located and the report of said Commissioners filed
in the office of the Clerk of the County Commissioners Court of said County of St. Clair
should be and remain, a public highway forever and that the County Com-
missioners Court of said County might cause said land on which said road and
ferry landing should have been located, to be condemned, & pay to the legal owners,
of said land the damages sustained by said owners, and after said land
should be condemned & said damages paid, out of the funds of the County, the
said Commissioners Court should have power by their agents or otherwise to enter
upon said land so condemned and establish a ferry across the Mississippi River, and
that said County Commissioners Court might either carry on said ferry for the
County itself or it might lease the same for any term, not exceeding five years at
any one time, to any persons, and it was furthermore enacted by said act, that
for the purpose of compensating the legal owners for the land thus appropriated for
public use, it should be the duty of the Commissioners Court aforesaid to cause the
Sheriff of St. Clair County to summon twelve men, who should assess the damages
which such owners of the land might sustain, by reason of the location of the said
road & ferry landing. And your Orators & Oratrices further state that the said
Commissioners William G. Brown, John D. Hughes, James Anderson, William Penn,
& Charles Sargent, have under color of said last mentioned act of assembly, proceeded
& laid out & located the said road, three hundred feet in width, across the said tract of land
so owned by your Orators & Oratrices as aforesaid confirmed to said Cordaire & legal
Representatives, to the Mississippi River, comprehending three hundred feet in width of the
landing on said River belonging to your Orators & Oratrices, and have made
their report to the said County Commissioners Court which is filed as they believe
in the Office of the Clerk of the same: and your Orators & Oratrices are
informed & believe that a meeting of said County Commissioners Court has been
or will immediately be called, for the purpose of condemning said piece of land so located
& of carrying out the said last mentioned act of assembly, and thus taking from
your Orators and Oratrices their property & valuable rights against their will,
and that too as they believe without any means of their obtaining adequate
compensation therefor. Your Orators & Oratrices invoke the aid of the
Constitution of the United States & of the State of Illinois, & of the sacred
principles of Law and justice against this attempt which they charge to be

a most manifest violation of their rights under the pretended sanction of Law. Your Orators & Oratrices alledge that under the laws & Constitutions of the Country, the right does not exist, thus to seize their property & take it from them for the very purpose of using it, for the objects for which your Orators are using it, & for which use of it, they have an express irrepealable act of assembly: and further that if under said last mentioned act of assembly were constitutional in every respect (which is denied utterly) yet that it provides a mode of assessment of damages & of compensation for said land altogether unjust, inequitable and against fundamental principles, in this, that the very party that acquires the benefit & emolument of said right of way & ferry, is made the judge of the amount of compensation, inasmuch as the jury is to be called from the County of St. Clair, in order to assess the damages, and the revenues derived from said way & ferry belong to said County, who by this act of assembly, are to acquire for their benefit the contemplated ferry, are to pay your Orators & Oratrices in purchase of the same such price as the same citizens choose to put upon it. And your Orators & Oratrices further charge that said act doth not authorize, as they understand it, any damages or compensation to them for the great injury to their vested right of ferrying now in use by them, from their own land, which must inevitably result from the establishment of another ferry at their side from the same land; nor does it allow any compensation for the great injury to them, on account of the diminution of the value of the residue of said land & right of ferrying, by the establishment of a rival ferry, at their side, and they charge generally, that said act is unconstitutional, that the proceedings of the said Commissioners is illegal, inequitable & oppressive. and will work if permitted to go on irreparable mischiefs to your Orators & Oratrices who possess an undoubted Statutory as well as Common Law privilege of ferrying from their said land & of using their own property in every way profitable to them, which is not forbidden by the Laws. Your Orators & Oratrices further alledge, that by an act of Assembly of the said State of Illinois, passed the sixth day of February in the Year of our Lord one thousand Eight hundred and twenty one, entitled an act to authorize Samuel Wiggins to make a turnpike road & for other purposes, the said Wiggins his heirs and assigns were authorized to remove the ferry which said Samuel Wiggins had established as aforesaid, upon any land that might belong to him or them on the said Mississippi River under the same privileges as were prescribed by said act of March second Eighteen hundred and nineteen, which act of

February

February Sixth Eighteen hundred & twenty one, conferred the said privilege of ferrying said
ferry, absolutely, without the reservation of the right to repeal the same a copy of which act
is hereto annexed as a part of the bill, and that the said Samuel Higgins, while owner of said
ferry & his said Successors in the Ownership of the same have kept up said ferry & main-
-tained & run the same in strict conformity, with said acts granting the said privileges & with
the Law & to the great advantage of the public, which has been and still is, well served
and accommodated thereby, and your Orators & Oratrices well hoped that they should have
been permitted to enjoy their said ferry privileges in peace, as they had a right to do:
But now so it is that the said William G. Brown, John D. Hughes, James Anderson,
William Penn & Charles Sargent, and the said County of St. Clair, combining and con-
-federating, with divers other persons, whose names when discovered, your Orators
& Oratrices pray may be inserted herein & they made parties hereto, have proceeded as
above detailed in regard to said road & ferry landing of three hundred feet in width and
are now about to appropriate the same to the use and emolument of said County as
aforesaid under color of the act of assembly in that behalf above stated: all which actings
and doings are against Equity & good conscience. To the end therefore that the said County of
St. Clair and the said above named Commissioners may have, full & perfect answers make
to all the matters aforesaid in as full & ample a manner as if the same were here
again repeated and interrogated, and that they their advisers, abettors, associates, servants
& agents, and the said County Commissioners may be restrained from proceeding to condemn
said land so located as a road of three hundred feet in width, & from further proceeding under
said act to enter upon or molest your Orators & Oratrices in their possession & use of their
said land & ferry, & may be perpetually enjoined therefrom by the decree of this Hono-
-rable Court, & that they may have such further & other relief in the premises as to
your honor may seem meet: May it please your Honor to grant a writ of Subpoena
Commanding said Brown, Hughes, Anderson, Penn & Sargent, and the said County of
St. Clair to appear and answer said Bill & abide by such decree as may
be made in the premises, and also the writ of Injunction, directed to them and
and the said County Commissioners Commanding them & Each of them their servants
& agents to refrain from further proceedings under said act in regard to said Road
& ferry landing, & the said County from condemning the same & from entering on the same
or having the right of ferrying therefrom. And your Orators & Oratrices will ever pray &c
April 30th 1839.

Adam L. Mills of & for Counsel
of the St. Clair & St. Louis Ferry.

State

State of Illinois

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St. Clair County ss } Adam S. Mills being duly sworn on his oath saith that he is one of
the complainants in above Bill and the acting agent of all the other complainants,
that the matters and things stated in the said Bill of Complaint are of the knowledge
of said complainants are true, and those stated as matters of hearsay or belief
he believed to be true. Given under my hand & seal this 2 day of May 1839.

Joshua D. Bradley *JDB*
Clinton County, Ill.

On reading & considering the within Bill, it is ordered that an Injunction be granted
according to the prayer thereof, The Clerk of the St. Clair Circuit Court will accord-
-ingly issue a writ of Injunction directed to the said William G. Brown, John D
Hughes, James Anderson, William Penn & Charles Sargent and the County Commis-
-sioners of St. Clair County, their servants, agents, attorneys, workmen & others
to enjoin and restrain them and every of them from proceeding to establish a
ferry as within complained, until the further order of the Circuit Court of St. Clair
County upon the Complainant in behalf of himself and the other owners of the ferry
named in this bill entering into bonds in the penalty of five thousand dollars with
William Kinney or Vital Janté his security, conditioned to pay to the County of St. Clair
all damages occasioned by granting this injunction, should the same upon a
hearing of the merits, be dissolved. The said Commissioners Hughes & others are not
enjoined hereby from proceeding to locate the road & assessing the damages occasioned
thereby. Given under my hand as Judge of the Second Judicial Circuit of the State
of Illinois and presiding Judge of the St. Clair Circuit Court at Chamber in Clinton County this
3 day of May 1839.

Sidney B. Cresset

And thereupon the said Complainant for himself and as agent of the other complainants having
filed his bond according to the above order of the Judge, a writ of Injunction was issued
in the words and figures following to wit:

State of Illinois

St. Clair County ss } The People of the State of Illinois

To William G. Brown, John D. Hughes, James Anderson, William Penn, Charles Sargent
and the County Commissioners of the County Commissioners Court of said County and their
workmen, labourers, servants & agents, Each & Every of them greeting.

Whereas

Whereas Adam S. Mills on behalf of himself and of the Owners of the St. Clair and
St. Louis Ferry, has lately exhibited his bill of complaint, to the Judge of the Circuit
Court, in and for the County and State aforesaid, on the Chancery Side thereof, against
you the said Wm. G. Brown, John D. Hughes, James Anderson, William Penn, Charles
Sargent, and the County Commissioners of the County, Commissioners Court of said County de-
fendants: Wherein among other things, it is alleged, that you are proceeding
to establish a ferry landing between Cahokia Creek and the Mississippi River opposite
to St. Louis, and also a ferry across the said River at said place; We therefore
in consideration of the premises do strictly enjoin and command you the said Wm.
G. Brown, John D. Hughes, James Anderson, William Penn, Charles Sargent, and the aforesaid
County Commissioners and all and every the persons above mentioned, that you and
each of you do absolutely and entirely desist from proceeding to establish a
ferry between Cahokia Creek and the Mississippi River, opposite to St. Louis, to
cross the said River, and hereof fail not under the penalty of what the Law
directs.

To the Sheriff of said County to be executed.

Witness John Hay Clerk of the said Court at Belleville this
Sixth day of May, in the year of our Lord Eighteen hundred
and thirty nine.

John Hay

And thereupon on the third Monday of August A.D. 1839 The Sheriff returned the said
Writ with following return Enclosed therein On the 6th day of June I served this
Injunction on each and every of the within named persons by leaving them a Copy of the
within Injunction.

J. B. Chandler Sheriff S.C.

Monday Morning 19th August 1839.

Adam S. Mills & others

Now this day came as well the said defendants by S. Turnbull
Wm. G. Brown & others their attorney and the said Complainants by Shields & Koerner
their Solicitors, and the said defendants by their said atty come
and file their demurrer, which is in the words & figures
following, to wit:

In Chancery in the St. Clair Circuit Court August Term 1839.

The Demurrer of William G. Brown and others defendants to the Bill

of Complaint of Adam S. Mills and others Complainants.

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These defendants by protestation not confessing or acknowledging all or any of the matters and things in the said Complainants' Bill contained to be true in such manner and form as the same are therein and thereby set forth and alledged, do demur to the said Bill, and for cause of demurrer show that the said Complainants have not by their said Bill made such a case as entitles them in a Court of equity, to any discovery from these defendants respectively or any of them, or to any relief against them, as to the matters contained in the said Bill or any of such matters, and that any discovery which can be made by these defendants or any of them touching the matters complained of in the said Bill or any of them cannot be of any avail to the said Complainants for any of the purposes for which a discovery is sought against these defendants by the said Bill, nor entitle said Complainants to any relief in this Court touching any of the matters therein complained of; whereupon and for divers other good causes of demurrer appearing in the said Bill, these defendants do demur thereto, and they pray the judgment of this Honorable Court whether they or either of them shall be compelled to make any further or other answer to the said Bill and they humbly pray to be hence dismissed with their reasonable costs in this behalf sustained.

Symon Turnbull

of Counsel for defts.

To which demurrer the Complainants by their Solicitors join, in the words & figures following to wit: And the said Complainants say, that the Bill aforesaid and the matters and things therein contained are sufficient to entitle the said Complainants to a discovery from the said defendants in a Court of Equity, and to relief against the said defendants, and pray that the said defendants be compelled to make further and other answer, as heretofore prayed by said Complainants.

James Shield & Gustavus P. Koerner

of Counsel for Complainants.

and thereupon by and with the consent of the said parties this case is set for the first day of November Special term, to which day the cause is Continued.

Monday Morning 11th Nov^r 1839

Adam

Adam S. Mills & others

v.

William G. Brown & others

Continued from last term on Demurrer

And now this day came the Complainants by Shields Gamble & Logan their Att.^s as the Defendants by Reynolds & Trumbull, Argument entered into on the demurrer - continued for further argument to tomorrow morning.

Tuesday morning 3rd Nov^r. 1839

Adam S. Mills & others

v.

Wm G. Brown & others

The parties having closed their argument, the Court takes further time to advise on.

Monday morning 11th Nov^r. 1839

Adam S. Mills & others

v.

Wm G. Brown & others & the
County Commissioners &c

And now this day came the parties by their said Att.^s and the Court being now fully advised on the argument submitted on the demurrer aforesaid, it is the Opinion of the Court, that the defendants' demurrer be sustained, and the Bill be dismissed at the costs of the Complainants, It is therefore considered by the Court, that the said defendants recover against the said Complainants their costs in this behalf expended &c. and thereupon the said Complainants by their said Attornies, come and pray an appeal, which the Court allow on the Complainant Adam S. Mills entering into bond with security in ten days with James Mitchell and Benj. J. West (whom the defendants by their Attornies accept) as Securities, in the penalty of five thousand dollars, Conditioned as the Law directs.

which bond is herewith annexed.

Amount of costs bill annexed. \$ 24.50.

State

State of Illinois
St Clair County SS

I John Hay Clerk of the Circuit Court for and within the County of St Clair do hereby Certify, that the foregoing Exemplification is a true transcript of the original papers on file in this ^{office} and of the ^{proceedings in the} Records of the Court, and that the annexed bond is the original bond given for this appeal, and that the annexed fee bill is a true transcript of the original in fee bill Book; S, page 165.

In Testimony whereof I have hereunto set my hand and Seal of said Court at Office in Belleville this thirtieth day of November

Adam L Mills & others

vs
Nancy Brown & others

St Clair Circuit Court Nov. Sp. Term 1839

1839
6th May. Filing 11 documents 68 3/4 - 1 at 9 apiece = Bond 50 filing 6 1/4 Filing bill 6 1/4 1. 31 1/4
trial of Injuria 57 filing 6 1/4. Aug. Docket 12 Enty. Subpoena 12 Affidavit 12 app 12 1. 06 1/4
7th Filing demurrer 6 1/4 filing joinder 6 1/4 filing motion to dissolve 6 1/4 Cont 25 11 43 3/4
Nov. Docket 9 12w Enty 7 1/2 25. Motion for appeal 25 1 at 9 appeal bond 6 1/4 filing 6 1/4 1. 18 3/4
making up Cert bill 3 1/4 Copy 25. Complete record 68 p. at 12 1/2 = 725 - Cert fee & Seal 50 8. 37 1/2
\$ 12. 57 1/2

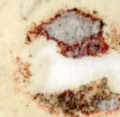
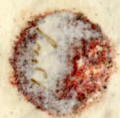
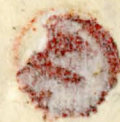
Sherriff. Docket fee 5.00
Serving on eight persons 400 Rebs 12w 8 copies 50 = 400 - mileage 64 = 400 12. 12w
a true Copy \$ 29.50

John Hay Clerk

EL-117

Clall's & Co
Camby Cont J appeal Bond

filed 12th Nov. 1839



damages in case the judgment shall be affirmed
and shall duly prosecute said appeal then
this obligation shall be void otherwise remain
in full force and virtue -

Witness present -

John Hay

J. S. Mills Seal

Whitehill Seal

B. J. May Seal

Mills et al
vs
Attest
County -

1114

Judgment affirmed
Done at New York

Wells & others vs Et Clair county
we concur in the opinion that the judgment
of the Circuit Court ^{must} be affirmed on the
ground that the bill does not set out
with clearness & certainty that Samuel
Wiggins ^{on the waters of the Mississippi river} owned any land near the
town of Union on the 2 March 1819
nor within 18 months thereafter -
on which ~~the grant~~ the grant of
the Legislature could operate, nor
does it appear with certainty that
Samuel Wiggins owned any land
on the Mississippi river on the 6th Febry 1821
to which the ferry ~~therefore~~ therefore established
by said Wiggins could be removed in pursuance of the
Act passed on the 6 Febry 1821 -

Saml Lockwood

Wm Wilson

Thomas C. Browne

A. L. Mills
vs } Opinions
The County of St. Clair

Filed June 23. 1840
Jm Duncan

Recorded

Chas. P. Mills
June 23. 1840

Copies of Documents & Exhibits filed in the Case of Adam L. Mills
John H. Gay, Charles Mulliken, John C. Hallon, William C. Wiggins, Andrew
Christy, Melanice Christy, Joseph A. Christy, Elizabeth Christy, Mary T. Christy (which Melanice
is the widow of Joseph A. Elizabeth & Mary T. are the only children and heirs of Samuel C. Christy
deceased, said Children being infants. & appearing by said Melanice their next friend;
Emily Pratte widow of Bernard Pratte deceased, Emilie his daughter, wife of Ramsay Crooks,
Ramsay Crooks, Bernard Pratte son of said Bernard Pratte deceased, Louis Peugnet &
Therese his wife, which Therese is also a daughter of said Bernard Pratte deceased, Stephen
F. Niolet & Celeste his wife, she being also a daughter of said Bernard Pratte deceased,
& Joseph Blain & Diane his wife, which Diane is a daughter of said Bernard Pratte
deceased, and Louis V. Bogy & Pelagie his wife who is also a daughter of said
Bernard Pratte deceased, on a Bill of Injunction, against, William G. Brown
John D. Hughes, James Anderson, William Penn, Charles Sargent, and the County
Commissioners of the County Commissioners Court of the County of St. Clair, in the Circuit
Court of St. Clair County in Chancery, and which was subsequently by the Complainants
appealed to the Supreme Court of this State at the 2^d Nov. term of the St. Clair County
Circuit Court: which documents & Exhibits are referred to in the aforesaid
Bill.

(Document No 1

To the Honorable Board of Commissioners of the United States Land Office sitting at
Washington.

The humble petition of Joseph Condore, humbly sheweth,
That your petitioner is a poor man and loaded with a heavy family, and came all
the way from Canada here to join my father since six years past, whereupon on
my arrival here learnt to my great sorrow that he was dead. Your petitioner sometime
since found out, that my deceased father held an improvement on which he lived for
some years and which he improved before the year 1790 on the Eastern Side of the Mississippi
opposite or near the town of St. Louis, and that unfortunately for your petitioner I
could neither read nor write and more so that it is but lately I found out this improve-
ment having been made by my deceased father Pierre Condore, and your petitioner
being sole heir to the said Pierre Condore deceased. Your petitioner prays that some
indulgence will be given to him, not so much by reason of his ignorance but on account
of his large and helpless family, this said improvement your petitioner will venture to have
purchased by the most respectable Citizens of St. Louis & Cahokia, and thereupon relies all
his hopes on your generosity and equity in getting the said improvement granted him by
(Ensign)

Congress for whom he will ever pray for ~~him~~ at the desire of Joseph Coudaire.

2

Schmittay

Clerk of the County Court at Cahokia

Je certifie à tous ceux qu'il appartiendra qu'il y a environ vingt cinq ans que j'ai connu un nommé P^re Coudaire qui résident sur la rive gauche du Mississippi en face de St Louis, sur une habitation qu'il cultivoit et dans et vendait les produits a St Louis et qu'en ma connaissance et y demeuré plusieurs années, en foi de quoi j'ai délivré le present certificat a St Louis le six Septembre 1809

Signé Aug^t. Chouteau.

Louisiana Territory District

and Township of St Louis. } Sec^t

Before me the undersigned one of the Justices of the peace in and for the township aforesaid personally came and appeared Jean Bapt^e Cortes Nicholas Hebert Secount and Hyacinthe St^r of said District who being duly sworn, on the Holy evangelist of almighty God deposes and says that about twenty six years they have known a certain Pierre Coudaire who inhabited and cultivated a certain tract of Land East of the River Mississippi fronting the town of St Louis that said Coudaire remained on the aforesaid tract during three or four years and was then in the habit of crossing said river and come to St Louis to sell the produce of his land such a tobacco melons & had a house built in said tract and that said Coudaire was obliged to abandon said tract in consequence of the indians becoming troublesome.

J. B. Cortes

Nicholas Hebert ^{his} Secount
mark

Hyacinthe ^{his} St^r
mark

Sworn to and subscribed before me
a Justice of the peace in and for the
Township aforesaid this 28th day of
October A.D. 1809

Signed - M. P. Leduc J^r.

Fredrick Bates, Secretary of the Territory of Louisiana and exercising the Govern-
ment thereof. To all to whom it may concern. Be it known that M. P. Leduc before
whom the within Subscription and Oath were made is a Justice of the peace for the
Township of St Louis in the said Territory of Louisiana duly commissioned and qualified
and that his certificate is in due form. In testimony whereof I have hereunto affixed the Seal
of the Territory.

Given under my hand at St Louis this 28th day of October one

Seal

thousand eight hundred and nine, and of the Independence of the United States of America the thirty fourth

(Signed) Frederick Bates

Registers Office Kaskaskia Jan. 1st 1817. I do certify that the proceedings from page 1 to 3 inclusive are true copies at Kaskaskia the 30th November 1809 in which the Confirmation of Pierre Coudaire No 2667 is predicated.

Michael Jones Reg^r

Extract of a List of Claims transmitted by Michael Jones Register of the Land Office for the District of Kaskaskia to the Hon. Albert Gallatin Secretary of the Treasury of the United States 18 January 1813.

Statement of claims founded on actual Cultivation & Improvement and the Act of Congress of 3^d March 1791

No of Claim 2667

Original Claimant Present Claimant
Joseph Coudaire Heir of Pierre Coudaire

Proof and Remarks

Euphiste Cortes, Nicholas Herbert LeCompte and Hyacinthe Stier, State that about 26 years ago (1783) Pierre Coudaire inhabited and cultivated a tract of Land East of the River Mississippi fronting the town of St Louis that he remained on the said tract 3 or 4 years that he had a house built on the said improvement and generally sold the produce of his said farm at St Louis. Note this statement is corroborated by the Certificate of Aug^t Chouteau of St Louis. The proceeding Claims appear to be founded in justice but which have not been claimed within the time limited by Law.

Kaskaskia January 13th 1813

(Signed) Michael Jones

Extract of a Letter from Michael Jones Reg^r of the District of Kaskaskia to the Hon. Albert Gallatin Secretary of the Treasury, dated January 13th 1813. inclosing a list of Claims including said Coudaire's.

Sir, I herewith transmit a Statement of Claims of which no notice had been filed with the register within the term limited by Law, but as these Claims appear to be founded in justice I have in compliance with the Earnest Solicitations of the Claimants ventured to make a Statement of them with the Substance of the testimony adduced in their Support. I feel the more inclined to take this Course as Mr Backus and myself stood pledged to the Claimants to do so and as the members of the late Board seemed to desire that I should make the Representation myself, as being

being better acquainted with the circumstances and facts. Should the Government confirm
them, it would be advisable to confirm to the Original claimant as his legal Repre-
-sentative as the letters papers have neither been examined nor recorded by me. xxxxx

Signed Mich^l Jones

Register's office

Kadashkia March 6th 1817

To certify that the preceding from page 4 to 6 inclusive are true extracts from a Statement of
Claims and my Letter dated 18th January 1813 transmitted by me to the Secretary of the
Treasury of the United States.

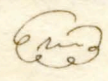
Mich^l Jones Reg^r

Document No 2.

Pardevant les temoins Soudignes fut present en sa personne Joseph Boudaire de
Cahokia Comté St Clair Territoire Indiana, lequel par les presentes a reconnu et
confesse avoir aujourd'hui, vendu, cede, quitte, transporte et delaisse des maintenant et
ci toujours a monsieur Nicolas Janot de Cahokia Comté sus dit Territoire susdit les
hoirs ayant cause, savoir quatre cents acres de terre, l'improvement situe a l'est
du Mississipi en face de la ville de St Louis a environ quatre mille et demy au dela
de Cahokia lequel quatre cent acres de terre mentionne ont ete accorde a son
defunt pere Pierre Boudaire par un acte du Congrès passe le mois de mai mil
Sept cent quatre vingt onze, et comme le dit Joseph Boudaire est le seul heritier de
son defunt pere Pierre Boudaire, lequel a par les presentes vendu, cede, quitte et
delaisse au dit Nicolas Janot les hoirs ayant cause les
susdit quatre cent acres de terre d'improvement mentionne, pour et au dit
Janot en faire et disposer lui des hoirs ayant cause comme chose a lui apparte-
-nant a commencer la jouissance de ce jourd'hui. Cette presente vente ainsi faite pour
prix et somme de cent cinquante piastres que le dit Joseph Boudaire a declare et
confesse avoir recu Content des mains du dit Nicolas Janot pour parfait serjement
des susdit quatre cent acres de terre d'improvement mentionne, et il le tient quitte
et sans retour, donc quittance etant pleinement satisfait, par ainsi convenu
Faite et passe a Cahokia le dix septieme jour du mois d'Avril de l'annee de
notre Seigneur, mil huit cent neuf, le dit Joseph Boudaire a declare ne savoir
signe, a fait sa marque ordinaire et bele de son sceau le tout en presens
En presence des temoins Soudignes, apres lecture faite.

Georg Blondeau

Am Mears

Signed Joseph X Boudaire 
marque

Illinois Territory, Saint Clair County

Be it remembered that on this 2nd day of January 1812 personally came before
me the Subscriber a Justice of the peace and for the county aforesaid William
Mears a Subscribing witness to the within deed who after being duly sworn on

the

me the Subscriber, a Justice of the peace in and for the County of St. Clair, William Means ⁵
a Subscribing witness, to the within deed, who after being duly sworn on the holy Evangelist
of Almighty God saith that he subscribes the within deed and that from his general practice of
never subscribing any instrument as an assisting witness without first having the maker of said In-
strument to acknowledge that he made and executed it, or else first seeing him make and
execute the same, and that he therefore believes he either saw said Joseph Condair make
his mark to the within deed affixed or else heard him acknowledge the same after it was executed
he does not now perfectly recollect which. In testimony whereof I have hereunto set my hand and
Seal at Cahokia this 27th Juny 1812.

John Hay S.P. *Hay*

Recorded in Book C page 52. the 29th Aug. 1814.

John Hay Recorder S.C.

Illinois Territory St. Clair County S.C.

Be it remembered that on the 11th day of August 1815 personally came before me the Subscriber
a Justice of the peace in and for the said County, Dreyz Blondeau a Subscribing witness to the
within deed, who after being duly sworn on the Holy Evangelist of Almighty God, acknowledged
and declared to have seen the within named grantor Joseph Condair make his ordinary mark
and put his seal thereto and declare the same as his act and deed to the said Nicolas Parrot,
of his own free will and accord and that he verily believes that the other witness William Means
Signed the same in his presence. In testimony whereof I have hereunto set my hand and
Seal at Cahokia the day and year above written

Raphael Widen S.P. *Widen*

Recorded the 11th August, 1815 page 121 Book C.

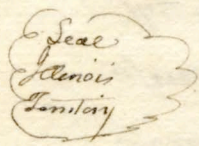
John Hay Recorder.

Joseph Phillips Secretary of Illinois Territory

Do hereby certify that Raphael Widen whose name is subscribed to the foregoing Certificate was
at the date thereof a Justice of the peace for the County of St. Clair in the Territory aforesaid, being duly
Commissioned and qualified to act as such.

In testimony whereof I have hereto affixed the Seal of the Territory, done at
Kaskaskia the ninth day of August in the year of our Lord one thousand eight
hundred and Eighteen and of the Independence of the United States the forty
third.

Joseph Phillips



This Indenture made this thirteenth day of July in the year of our Lord Eighteen hundred and twenty two between Julia Jarrot of the town of Cahokia in the County of St. Clair and State of Illinois of the one part and Samuel Wiggins of the County and State aforesaid of the other part, Witnesseth that the said Julia Jarrot for and in consideration of the sum of two thousand dollars then in hand paid by the said Grantee, the receipt whereof is hereby acknowledged and from every part and parcel thereof is therefrom acquitted and discharged. Hath granted, bargained, and sold, released and confirmed and by these presents doth grant bargain and sell, release and confirm unto the said, Samuel Wiggins, his heirs and assigns forever, all her right title, interest, claim, property, possession and demand whatsoever in all that certain tract or parcel of Land being the improvement right of one Pierre Canada and located by Nicholas Jarrot deceased in his life time, opposite the town of St. Louis in Missouri State, and known and described by the board of Commissioners for adjusting Land titles for the District of Vastaska as claim numbered two thousand six hundred & sixty Seven and Survey number seven hundred and Eighty Six as by reference

thereto

being had more fully, and at large will appear as also all the right title and claim whatsoever that the said Nicholas Jarrot might have had at the time of his death, to any piece or parcel of Land, being and lying in the said four hundred acre tract or that the said Julia Jarrot as heir at Law of said Nicholas Jarrot deceased may now have with all and singular the appurtenances thereunto belonging, in any wise thereto appertaining. To have and to hold the above mentioned tract or parcel of Land within said tract, as above described, together with all the privileges and appurtenances thereunto belonging to him the said Samuel Wiggins his heirs and assigns forever. And the said Julia Jarrot the said tract above described or any parcel or piece of Land within the said tract above described, against the claim of herself and of her heirs and assigns, claiming by, through or under her or any of them, to the said Samuel Wiggins his heirs and assigns doth by these presents bear warrant and forever defend. And it is hereby understood by the said parties, and it is the understanding, meaning and intent of these presents that should the right title of the said Nicholas Jarrot deceased at the time of his death to the aforesaid tract of Land or parcel of Land being in the said four hundred acre tract at any time hereafter become or turn out to be defective then and in that case, no recourse whatever is to be had on the said Julia Jarrot her heirs Executors and Administrators, by the said Samuel Wiggins or

or by his heirs and assigns, anything to the contrary in this deed notwithstanding.
Testimony whereof I have hereunto set my hand and seal the day and year above herein written.

Signed sealed and delivered in presence of
Scribby
Francis Jarrat.

Julie Jarrat

State of Illinois. Be it remembered that this 13th day of July A.D. 1822 personally came before
D'Clair County & me the Subscriber a Justice of the peace for and within the said County of St. Clair,
Julie Jarrat party grantor named in the within deed, and acknowledged the same to be
her act and deed, and that her right and title to the premises therein mentioned is the right
and Estate of Samuel Higgins party grantee also therein named, and his heirs and assigns forever.
Taken and acknowledged before me the date aforesaid

Scribby

State of Illinois & I Scribby Recorder of the said County of St. Clair do hereby certify that on the
St. Clair County & twenty fourth day of January A.D. Eighteen hundred and twenty three, I duly
recorded the within deed of Conveyance in E. page 157.
Given under my hand at my Office in Belleville the day and year above written.

Document No 4

Scribby

This Deed made this first day of August in the year of our Lord one thousand eight hundred
and thirty one by and between Samuel Higgins and Cornelia his wife of the City of St. Louis
in the State of Missouri of the first part and John C. Hallon, Adam S. Mills, Bernard
Pratte, Charles Mullikin & William C. Higgins of the same City and Samuel Christy
of Illinois, parties of the second part. Witnesseth that the said parties of the first part, for and in
consideration of the sum of thirty five thousand and one hundred and twenty ^{two} to them in
hand paid at and before the executing and delivering hereof have in consequence of
such sum so paid them by said parties of the second part, given, granted, sold, aliened
confermed, effected and conveyed, and do hereby grant, sell alien, confirm, effect
and convey unto said parties of the second part, the following described lands, tenements
hereditaments, rights privileges and personal property, namely a tract of land containing
four hundred acres lying in St. Clair County in the State of Illinois on the bank of the Mississippi
River opposite to the City of St. Louis, being a location made by Nicholas Jarrot and
described by the Board of Commissioners for adjusting Land Titles for the District of
Kaskaskia as Claim numbered two thousand six hundred and sixty seven, and
Survey numbered Seven hundred and Eighty Six, being the same tract which

was conveyed to said Samuel Wiggins by Julia Fenol by deed dated the nineteenth day of July⁸
in the year eighteen hundred and twenty two, recorded in the recorder's Office of said St. Clair County
in Book E. page 157, portions of which said four hundred acre tract, have likewise been con-
veyed to said Samuel Wiggins by John McNight and Thomas Brady by deed dated nineteenth
of May in the year eighteen hundred and twenty one, who obtained a patent from the United
States therefore, which deed is recorded in said Recorder's Office in book E. pages 48 & 49,
and by James Piggott, Zachary Piggott and Elizabeth Piggott by deed dated the fourth March
in the year eighteen hundred and twenty recorded in said Recorder's Office book E. pages 71. 71
& 72, and by Minnie Edwards and wife by deed dated the first day of October in the year
Eighteen hundred & twenty seven, recorded in said Recorder's Office Book F. pages 76 & 77.
and by David Coons by deed dated the fourteenth of June in the year eighteen hundred and
twenty three, recorded in said Recorder's Office Book E. pages 175 & 176 and also by John
Scott & wife & by John Boly who have executed deeds to said Wiggins also three hundred
and sixty nine acres and twenty two hundredths of an acre of land lying in said County
of St. Clair, comprising the South West fractional detached part of the South West quarter of
Section thirty six in township three north of Range ten west and fractional Sections
on two; eleven and twelve, in township two north of Range ten west, bounded South by
Land confirmed to Nicholas Jurot and West by the Mississippi, lying nearly opposite
to the City of St. Louis having been patented by the Government of the United States to
Nelson Pepper and by him conveyed to said Samuel Wiggins by deed dated the sixth
of October in the year eighteen hundred and twenty seven recorded in said Recorder's
Office in Book F. pages 289 & 290, also an Island opposite the upper part of the
City of St. Louis conveyed to said Wiggins the party of the first part by two patents issued
by the United States, the one for a fractional Section Eleven in township Two north of
Range ^{ten} west in the District of Edwardsville State of Illinois containing one hundred and twenty
Eight acres and Eighty Six hundredths of an acre, the other for fractional Section two
in township two north of Range ten west containing three acres and forty seven hundredths
of an acre lying in the same district & State, which two patents are dated the ninth day of
June in the year of our Lord one thousand eight hundred and twenty five; also a tract of
Land conveyed to said Wiggins party of the first part by Thomas Osborne & wife by
deed dated the eighteenth day of March, in the year eighteen hundred and twenty nine
which tract is described as follows, a certain tract of land situate in the County of St. Clair
aforesaid, beginning on the Mississippi River at the lower Corner of a tract of ~~land~~
thirty seven and a half acres conveyed to Robert Rankin by said Osborne in
May Eighteen hundred and twenty eight, thence continue down the River's bank &
Eight

Exhibt 20th.

Eight rods measured upon a line of the general course of the river to a post, and
 thence north fifty degrees east parallel to said Robert Rankin's lower line about forty
 rods to the foot of a ridge, and thence with said ridge northwardly to Robert Rankin's
 corner, and thence with said Rankin's line south fifty degrees west to the beginning, also
 a tract of Land in said County of St. Clair containing thirty seven acres and fifty hundredths
 of an acre bounded north by Land of Matthew Kerr, East by Land of Thomas Osborne
 South by tract of Land last above herein described and conveyed West by the Mississippi River
 being the same Land conveyed to said Samuel Wiggins by Robert Rankin by deed
 dated the day of June last past and which was conveyed to said Rankin by said Osborne;
 also all rights privileges and benefits connected with or appertenant to said Lands or any
 of them of ferrying across the River Mississippi, and all rights and benefits touching the
 ferry established and carried on there by said Samuel Wiggins, conferred on him
 by the Legislature of the State of Illinois by an act entitled an act, to authorize Samuel
 Wiggins to establish a ferry upon the waters of the Mississippi, approved March the second
 Eighteen hundred and nineteen, and also by an act of the same Legislature, entitled
 an act to authorize Samuel Wiggins to make a turnpike road and for other
 purposes, approved February sixth, in the year Eighteen hundred and twenty one, and
 by any other acts, laws, grants, licences or authority, under the State of Illinois or
 of Missouri or under the United States or from any other source whatsoever.
 Also the Steam Ferry boat, and the horse now running and employed by said Samuel
 in ferrying across from St. Louis together with the horses, oxen stable apparel &
 furniture of said boats or connected with them or employed in said business of ferry-
 ing there and all the plant, wood timber carts, utensils and personal property what-
 soever now on said Land. To have and to hold said several tracts of Land
 above described, and said rights and privileges of ferrying, and said boats &
 appendages tackle and said personal property above mentioned all rights and
 privileges connected with said Lands or appertenant thereto, to any part thereof unto
 them said parties of the second part their heirs and assigns for ever as tenants in
 common in the following proportions to wit, the one undivided fourth part of said Land
 right & property to said O'Haller his heirs and assigns, the one undivided fourth part
 thereof to said Adam S. Mills his heirs and assigns, the one undivided eighth
 part thereof to said Bernard Bratter Senior his heirs and assigns the one undivided
 eighth thereof to said Mullikin his heirs and assigns, the one undivided eighth
 part thereof to said William C. Wiggins his heirs or assigns, and the other eighth

part thereof to Samuel O'Grady his heirs or assigns, and the said Samuel Wiggins for himself his heirs Executors administrators doth covenant & agree with said O'Grady, Mills, Pratte, Mullikin, Christy, and William C. Wiggins their heirs and assigns that he doth and will for ever warrant and defend said Lands rights and personal property to the said parties of the second part their heirs and assigns only as against himself the said Samuel Wiggins, and all persons lawfully claiming or to claim by through or under him and the said Samuel for himself his heirs Executors and administrators doth further covenant and agree with said parties of the second part, their heirs and assigns, that in case said parties of the second part their heirs and assigns, shall at any time hereafter be lawfully evicted & ejected from said Lands or from any part of it then and in every such case the said Samuel Wiggins or his heirs or representatives shall pay to said parties of the second part their heirs or assigns forthwith at the rate of ten dollars per acre of said Land for so much as they shall have been so ejected from. In testimony whereof the said Samuel Wiggins parties have hereto set their hands and seals the day and year first above written.

Signed sealed and delivered in presence of

Symon B. Shaw
Henry Chouteau

Samuel Wiggins
Carmelia Wiggins

State of Missouri }
County of St. Louis } Best remembered that on this first day of August in the year of our Lord Eighteen hundred and thirty one before me the Clerk of the County Court within and for the County aforesaid, personally came Samuel Wiggins and Carmelia his wife both personally known to me to be the real persons whose names are subscribed to the foregoing instrument of writing as having executed the same and severally acknowledged, the same to be their act and deed for the purposes therein mentioned. She the said Carmelia being by me first made acquainted with the contents thereof and examined separate and apart from her husband, whether she executed the said deed and relinquished her dower to the Lands and tenements therein mentioned voluntarily freely and without Compulsion or undue influence of her said husband, acknowledged and declared that she executed the said deed and relinquishes her dower in the said Lands and tenements therein mentioned, voluntarily freely and without Compulsion or undue influence of her said husband.

In testimony whereof I have hereto set my hand and the Seal of said County Court at the City of St. Louis the day and year aforesaid.

Henry Chouteau clerk

Copied
file copy J.C.P.

Document No. 6.

13

This indenture made this nineteenth day of May in the year of our lord one thousand eight hundred and twenty one between John C. Knight and Thomas Brady and Francis Brady his wife all of the town of St. Louis of the first part, and Samuel Wiggins of the same place of the second part.

Notethat the said parties of the first part for and in consideration of the sum of seven thousand dollars lawful money of the United States to them in hand paid by the said party of the second part his receipt whereof is hereby confessed, do hereby covenant, bargain, sell remise release alien and confirm unto the said party of the second part, and to his heirs and assigns forever all that certain piece or parcel of land situate in the County of St. Clair and State of Illinois containing sixty eight acres and one hundred and twenty five thousands of an acre being the southern part of a certain tract of land being the grant of militia right made by William Henry Harrison, governor of the Indiana Territory to James Piggish deceased as a pledge of one James W. by patent bearing date at Vincennes on the twelfth day of March one thousand eight hundred and thirty and recorded in the United States Land office for the district of Kaskaskia in Book A page 448, 45. the sixth day of December one thousand eight hundred and four bounded as follows beginning at a Walnut on the bank of the Mississippi river, thence South five degrees West two hundred and eighteen perches to a cotton wood. thence South eighty five degrees east seventy three and one half perches to an Elm thence North five degrees East two hundred and eighteen perches to a spruce. thence North eighty five degrees west seventy three and a half perches to the place of beginning, joining the Mississippi on the South Vacant land on the South East Cahokia fields on the north east and vacant land on the north west.

containing one hundred acres and twenty three perches as in the
said patent described, as will appear by the conveyance of
the whole of the said land from Joseph Piggot & Hannah his wife
Daniel Quick and Nancy his wife formerly Nancy Piggot William
Patterson and Sarah his wife formerly Aseneth Piggot New-
ton Piggot to the said John C. Knight and Thomas Brady
by deed bearing date January 4. 1815 and by a release of Jones
from Francis Colcord to the said John C. Knight, Thomas
Brady by deed bearing date January 16th 1815 and which
was also granted by letter patent from the United States
to the said John C. Knight and Thomas Brady and which
property was afterwards divided between the said Samuel
Wiggins and the said John C. Knight and Thomas Brady
by order of the Circuit Court of the County of St. Clair in
the State of Illinois and the said sixty eight acres and
one hundred and twenty five thousands were allotted and
set off as the part of the said John C. Knight and Thomas
Brady ~~and as the property~~ as by the records remaining
in said Court will more fully and at large appear together
with all and singular the hereditaments and appurtenances
thereunto belonging or in any wise appertaining and the
reversion or reversions remainder and remainders unto
issues and profits thereof and also all the estate rights
title and interest claim and demands whatsoever of
them the said parties of the first part, whether in law or equity
of, in and to the above bargained premises and every
part and parcel thereof and the said parties of the
first part for the consideration above mentioned do
by these presents also bargain release and quit claim
unto the Samuel Wiggins and to his heirs and assigns
Jones all their right title claim interest estate or
demand either at law or in equity of in and to the
residue of the said tract above described exclusive
of the said sixty eight acres and one hundred and
twenty five Thousands, and also to any claim of dower
to the whole or to any part of the said tract or any

rights of ferryage under any existing laws of the State of Illinois or otherwise howsoever or any claim right or demand whatsoever belonging or appertaining or in any wise appertaining to the said premises or any part or parcel thereof. To have and to hold to the said party of the second part his heirs and assigns to the sole and only proper use benefit and behoof of the said party of the second part his heirs and assigns forever and the said John Mc Knight and Thomas Brady and their heirs covenant with the said Samuel Wiggins and his heirs and assigns the title to the said sixty Eight acres and one hundred and twenty five thousands to warrant and defend against the claim and demands of all persons howsoever unto the said Samuel Wiggins his heirs and assigns forever. Provided however that if at any time the title to the said sixty Eight acres and one hundred and twenty five thousands shall and do fail that then the said John Mc Knight and Thomas Brady shall only be answerable for the original consideration money of seven thousand dollars above mentioned with interest from the date thereof. In witness whereof the said parties of the first part have hereunto set their hands and affixed their seals the day and year first above written.

Signed sealed and delivered
in the presence of
Emel Baker.

John Mc Knight
Thomas Brady
Harriet Brady

State of Missouri
County of the Louis J. P. This day personally appears before me the undersigned deputy clerk within and for the County of St. Louis the above named John Mc Knight, Thomas Brady and Harriet Brady and severally acknowledged the foregoing deed to be their act and deed hand and seal for the purposes therein contained and the said Harriet wife of the said Thomas being by

me separate and apart from her said husband examined
acknowledged that she signed the same freely, voluntarily
and without fear, restraint, constraint or undue influence of
her said husband.

Given under my hand and seal
this ~~fourteenth~~ day of Feb 1821.
Archibald Gamble Clerk
by Emel Barker D. Clerk.

State of Illinois }
St. Clair County } I John Gay recorder of the said County
of St. Clair do hereby certify to have recorded the within
instrument of writing this thirtieth day of May A.D.
Eighteen hundred and twenty one in Book E pages 473
& 49. Given under my hand at Belleville the day and
year aforesaid
John Gay.

Document No 7.

No 7.
This deed made this fifth day of February Eighteen hun-
dred and twenty eight Witnesseth that John O'Fallon
and Caroline his wife of the County of St. Louis and
State of Missouri in consideration of six thousand five
hundred Dollars to us in hand paid by John St.
Gay of the County of St. Louis and State of Missouri
the receipt of which is hereby acknowledged do by these
presents grant, bargain and sell convey and confirm
to the said John St. Gay his heirs and assigns forever
one eighth, being the half of said O'Fallon's wife's right
title and interest to a tract of four hundred acres,
a tract of three hundred and sixty nine ²³/₁₀₀ acres frac-
tional sections one, two, eleven and twelve in Township
two North of range ten West, the is land opposite to
the upper part of the city of St. Louis, a tract of thirty
seven and a half acres acquired by Robert Raskin of
Thomas Osborn as well as another tract acquired by
Samuel Wiggins of said Osborn South of this last named

all estate in the County of St. Louis, State of Missouri 17
together with all rights privileges and benefits connected
with or appurtenant to said lands or any part of them of
passing across the River Mississippi and said J^r Fallon
and wife half of every interest acquired of Samuel
Wiggins and wife by deed dated August 10. 1831. to
have and to hold the same with the privileges and
appurtenances thereunto belonging to the said John
H. Gay, heirs and assigns forever. The said John O Fallon
and Caroline his wife hereby covenanting that they and
their heirs, executors, administrators, will warrant and
defend the title to the said premises to the said John
H. Gay his heirs and assigns forever against all persons
lawfully claiming or to claim the same whether
by through or under them and none other.

In witness whereof the said John O. Fallon and
Caroline his wife have hereunto set their hands and
seals the day and year first above written
Signed, sealed and

delivered in presence of J. O. Fallon (Seal)
Caroline O Fallon (Seal)

State of Missouri }
County of St. Louis }

Be it remembered that on this twenty
eighth day of February eighteen hundred and thirty
eight before me the undersigned Clerk of the Circuit
Court within and for the County aforesaid came John
O. Fallon and Caroline his wife, who are personally
known to me to be the same persons whose names
are subscribed to the foregoing instrument of
writing as having executed the same and severally
acknowledged the same to be their act and deed
for the purposes therein mentioned for the purposes
therein mentioned. The said Caroline being by me
first made acquainted with the contents thereof acknow-
ledged on examination apart from her said husband

that she executed the same and relinquished her dower in the
real estate therein mentioned freely and without compulsion
or under influence of her said husband.

In testimony whereof I have
hereunto set my hand and affixed
the seal of said Court at office in
the city of St. Louis the date last afore-
said.

Jno Rutland clk.

C. L. Lipp
Clerk of the Court

State of Missouri
St. Clair County Mo } Records office 23rd May 1838
do hereby certify that the within deed and certificate
were this day truly recorded in Book T. page 285 of
this office.

John Hay
Recorder S. C. C.

Copy of Exhibit No. 9.

19
The article of agreement made this sixth day of May in the year eighteen hundred thirty seven between Adam L. Mills of St. Louis party of the first part and Andrew Christy of the same place of the second part -
Witnesseth that whereas Samuel Loggins & wife by their deed dated the first day of August Eighteen hundred and thirty one made to the said Mills John O. Fallon and others conveyed to said Mills the one undivided fourth part of sundry tracts of land lying opposite to and near the city of St. Louis and of the privileges of ferrying across thereto or belonging to said Loggins under certain acts of the assembly of the State of Illinois and of the ferry boat horses Oxen utensils and other effects connected with said ferry on said land and whereas Melina Christy by deed dated the twenty fifth of April of this same year conveyed to said Mills the one undivided fourth of a tract of land in Madison County Illinois about twelve miles above St. Louis lying on the Mississippi river containing three hundred and twenty acres, for which tract of land the said Mills O. Fallon and others composing the ferry company still owe the sum of two thousand five hundred thirty three Dollars thirty three and a third cents And whereas said Mills has agreed to sell to said Christy the one half of his interest in said lands and in said ferry boats and privileges property and utensils and the said Christy has agreed to purchase the same and to become one of said Company now therefore the said Christy agrees to pay said Mills or his representatives three thousand Dollars in ninety days from the date hereof And One thousand Dollars in twelve months from this date One thousand Dollars in eighteen months from this date One thousand Dollars in two years from this date - One thousand Dollars in thirty months from this date One thousand Dollars in three years from this date all said Sums bearing interest from date at the rate of Six per Cent per annum, And said Christy further promises to pay the one eighth part of

of the debt aforesaid of two Thousand Five hundred & thirty three Dollars thirty three and a third cents and to be bound by the covenants agreements stipulations among the members of said Perry Company in the same manner as if he had signed originally the articles of Agreement and Partnership between them and the said Mills for himself his heirs and representatives covenants with said Christy his heirs and assigns that at the end of one year from this date of four Thous and Dollars and interest shall have been paid him by said Christy or his representatives that he his heirs or assigns will make execute and deliver to the said Christy or to his representatives a good and sufficient ~~their~~ general warrantee deed of the one undivided eighth of all the tracts of land described and conveyed by said deed of Miggins and wife and of the right of ferrying Concessions therewith or which are mentioned in said deed and of the said tracts of land in Madison County ~~the~~ acquired from Melina Christy and of all the boats and furniture and utensils animals and effects of said Perry Company as the same exist at this time and it is further agreed that when said deed shall be executed to said Christy or his representatives there shall be executed a mortgage on the interest conveyed to secure the purchase money not then paid and further that in case the title should fail as to any of the lands conveyed said Mills or his representatives become liable on his warrantee deed in said deed said Mills and his representatives shall be bound to pay only at the rate of ten Dollars an acre for the land lost in St. Clair County Fifteen Dollars for the land that may be lost in Madison County per acre

In testimony whereof said parties have here to

set their hands and seals the day and year first above written

Signed Sealed and delivered
in presence of -
Samuel C. Clark
John W. Mapes

A. L. Mills Seal
A. Christy Seal

Copy of Exhibit No 10.

21

An act to authorize Samuel Wiggins to establish a ferry
on the waters of the Mississippi - Approved March 2^d 1819
(Sec. 1st) Be it enacted by the people of the State of Illinois
represented in the General Assembly that Samuel Wiggins
his heirs and assigns do and they are hereby authorized
to establish a ferry on the waters of the Mississippi river near
the town of Illinois in this State and to run the same from land
at the said place that may belong to him Provided that he shall
not use any boat or water craft except such as shall be
propelled or urged through the water, by Steam horses Oxen
or other four footed animals Provided also that the same
Samuel Wiggins his heirs or assigns shall have the said
ferry in actual operation within Eighteen months from
and after the passage of this act -

Sec 2- And be it further enacted that no person or persons ex-
cept those who have ferries now established at this place shall
establish any ferry of the description aforesaid within one
mile of the ferry established under this act - and if any per-
son or persons shall contravene to the provisions of this act
run any boat or boats of the description aforesaid he she
or they shall forfeit every such boat with its furniture and
apparel to the said Samuel Wiggins his heirs and assigns
which may be attached - and recovered before any Court in
this State having competent jurisdiction -

(Sec 3^d) And be it further enacted that it shall and
may be lawful for the said Samuel Wiggins his
heirs and assigns to demand and receive the same rates
of ferrage as are now of right demanded at the
ferry established nearest to the ferry established by this act
provided that no man shall
be charged for a waggon Cart or other Carriage if
loaded than could be charged if empty

(Sec 4) And be it further enacted that the ferry hereby es-
tablished shall be subject to the same taxes as are
now or hereafter may be imposed on other ferries within

This State, and under the same regulations and ²²perfecture
And that if the provisions of the second Section of this act
should be made to appear to the General Assembly to
be injurious to the public good that then and in such
Case the said second Section may be repealed —

An act to authorize Samuel Wiggins to make a Turnpike Road and for other purposes -

(Sec. 1st) Be it enacted by the people of the State of Illinois represented in the General Assembly that Samuel Wiggins his heirs or assigns be and they are hereby authorized to make and construct a Turnpike Road of one hundred feet wide to Commence on the Mississippi River opposite to St. Louis on lands that may belong to him to run thence across the American bottom to the bluffs within two miles of George Swaggarts and to construct and erect all necessary bridges on said road and that he or they be and hereby are authorized to build and make said turnpike road through the land of any person or persons whose one or more of said gardens or Orchards or dwelling houses that when the aforesaid road is about to be carried through any improved land the maker of said road shall first obtain the Consent of the proprietor or proprietors of said ground and should the parties not agree on the amount of said damages then a jury of six reputable freeholders should be summoned and duly sworn before any justice of the peace of the County of Antisipity and impartially to assess the damages whose damages shall be paid before the said road shall be permitted to pass through such grounds.

(Sec. 2nd) Be it further enacted that as soon as the said Samuel Wiggins, his heirs or assigns shall have completed the said road it shall be lawful for him or them to give notice thereof to the person administering the government of the State for the time being, who shall thereupon forthwith appoint three discreet freeholders to view the same and report to him in writing, whether the same is completed in a workmanlike and substantial manner and upon their report in the affirmative it shall be the duty of the person administering the government of the State, and he is hereby required to issue a license, under the seal of the state permitting the

24

said Samuel Wiggins, his heirs or assigns to erect a toll gate and to collect and receive the tolls and duties hereafter granted and allowed, from all persons travelling on or using the same.

Sec. 3^d. Be it further enacted That it shall and may be lawful for the owners of any lands through which said road may pass, at any time within twelve months after the license aforesaid may be issued, if he or they shall conceive that they have sustained any damage from the road having passed through their lands to file an affidavit in the commissioners court ~~at or~~ side of the County, in which the lands are situated stating that they have sustained damage from the passage of said road through their lands whereupon it shall be the duty of the said commissioners court to appoint three discreet freeholders of the County, but not of the immediate neighbourhood of the road to estimate the damage such persons may have sustained by the road having passed through his land: and the commissioners when appointed shall give notice of the time & place of meeting, where they shall proceed to examine the ground and shall make out under oath the damage such person may have sustained and shall make a statement thereof in writing, and deliver the same in ten days thereafter to the clerk of said commissioners court, who shall record and preserve the same, for which service the clerks shall be allowed the fees of the recorder of the County, and the valuers shall be allowed three dollars each per day for the time they shall be necessarily employed in making said valuation, and the sum so awarded as aforesaid may be recovered from the said Samuel Wiggins, his heirs ~~and~~ or assigns in any court having competent jurisdiction.

(Sec. 4th) Be it further enacted. That the commissioners court of the County in which the said road may be situated shall be and hereby are authorized and required to fix the rates of toll to be collected and received as soon as the license above mentioned shall be obtained, and the said Samuel Wiggins, his heirs and assigns

are authorized and empowered to collect and receive the rates
of toll so established from all persons using said roads.
Provided however, that the said commissioners shall not
be authorized to fix any rates of toll lower than the following
for a man and horse twelve and a half cents, for one horse wagon
or carriage twenty five cents, for all other waggon and carriage
six and a fourth cents for each wheel and each horse, for single
horses and cattle six and a fourth cents each, for hogs and
sheep two cents each per head. And whereas the said Samuel
Wiggins his heirs or assigns were authorized to establish a
ferry upon the waters of the Mississippi river near the
town of Illinois in this state, and a said bar having been
formed since that time opposite said ferry, therefore
(Sec. 5) be it further enacted, that the said Samuel Wiggins
his heirs or assigns be and they hereby are authorized to
remove said ferry on any land that may belong to him or
them on the said Mississippi river, under the same privilege
as were purchased by the act entitled an act to authorize
Samuel Wiggins to establish a ferry upon the waters of
the Mississippi, approved March 2. 1819.

(Sec. 6th) Be it further enacted that if the county in
which said road is situated shall at any time be willing
to pay the original costs of said road with six per cent in-
terest thereon, to the said Samuel Wiggins, his heirs or assigns
then the said road and bridges thereon shall become a
public highway.

Approved February 6th 1821.

State of Illinois
 St. Clair County ss

I John Hay Clerk of the Circuit Court for the said County of St. Clair do hereby certify that foregoing Exemplification containing twenty five pages are a true transcript of the Exhibits or documents referred to in the Complainant's bill in this case as above mentioned on the first page hereof.

In Testimony whereof I have hereunto set my hand and affixed the Seal of said Court, at Office in Belleville this twenty eighth day of January A. D. Eighteen hundred and forty.
 John Hay

80 fo. 12- \$10.00
 Seal 50
 10.50

Adam S. Mills and others - appellants }

vs

The Com. of St. Louis - appellees }

On the second day of March 1839, the Legislature passed an act entitled "an act to authorize St. Louis Court to establish a ferry across the Mississippi River". (Laws of 1839 page 175) Commissioners were appointed by the act to examine the ground and locate a road and ferry landing between Cahokia Creek and the Mississippi river opposite St. Louis, three hundred feet wide, and the width of the ground for that purpose, and to report their proceedings to the County Commissioners Court of St. Louis County, and the road and ferry landing where so located, to be and remain a public highway forever. The second section of the act authorizes and empowers, that Court to cause the land on which the road and ferry landing should be located, to be condemned, and to pay to the legal owner or owners of the land the damages sustained thereby by the owner or owners, and after the land is condemned and the damages paid out of the funds of the Court, that Court is authorized by their agents or otherwise, to enter upon the land so condemned and establish a ferry across the Mississippi river. The third section provides, that for the purpose of ascer-

taining the land ^{to} the legal owner
or owner of the land thus appropriated
for public use, the Sheriff of said
County was required to return twelve
good and lawful men who being sworn
by him, shall, in view of the land,
ascertain the amount of damages which
such owner or owners may sustain by
reason of the location of the road and
then certify and return the same
to the County Commissioners Court &c.
then filed. An appeal is allowed
from the assessment by either party to
the Circuit Court, and upon notice of such
appeal, the Sheriff is required to
file with the proceedings before him in
the clerk's office of that Court, and
the Circuit Court is required to make
a new assessment by a jury in a
summary way manner "which
shall be final and conclusive between
the parties." The assessment was made
in presence of the parties, from which
the appellants, appealed to the Circuit
Court of that County. A writ of
certiorari was granted, a change of venue
in that case, and an application of
the appellants, the case was sent
to Jackson County. A trial was then
had, and a verdict was rendered in
favor of the appellants for six hundred
dollars, upon which, the following entry

* On the trial of the Cause, the appellants, as appears by the bill of exceptions, proved that they had been in possession of said land as well above as below, being the line on which the St. Louis ferry is and has been located, and that they obtained their possession immediately from one Samuel Whiggins, who had also been in continued and peaceable possession for years. The witness knew the land which was in years before said appellants got possession. They then asked the witness what was the value of said ferry on said land occupied and used by them, to which question the Court of St. Louis by their Counsel objected, and the objection was sustained by the Court - the Court desiring that the appellants should not inquire into the value of said ferry as to any injury done to said ferry privilege. They also asked the Court to instruct the jury that in estimating the damages to the land appropriated for the road and ferry landing, they will take into consideration the damages done to the ferry rights of the owners of the land as well as said land could pay, and if they believe from the evidence, that the owners of the land in question are now in possession and using a ferry, and that the appropriation of said land would be by the County of

W. H. Ains will require the use of said
ferry rights and before the value of
the land they will take said down again
and bring into consideration, which
do not in intention the Court re-
quire to give to which the appeal
not, excepted and have appeal
to this Court and assigned for their
review and appeal.

Adam E. Mills pro.
v.
The County of St. Albans

was made by the Court: "It is, therefore,
ordered by the Court that the Clerk certify
to the Court, Comptroller, Court of W. & A.
Court a copy of this order, and also the
damages and costs herein." *

It might, perhaps, be questioned, whether
an appeal can be taken to this Court
in a case like this. ~~The Court~~

~~where the proceedings had, de-
scribed in the report, taken place, and
that the decision in the case of "B. & C.
v. J. & K." was conclusive between the
parties."~~

The practice act (R. S.
494) provides that "appeals from the
circuits to the Supreme Court, shall be
allowed in all cases where the judgment
or decree appealed from is final,
and shall amount to a reversal of
court to the sum of twenty dollars, on
petition for a writ of habeas corpus or for
a writ of certiorari. There must be some
judgment of the Court before an
appeal can be taken. And thus
does not appear to be an appeal, the Court
does not pass upon the appeal to a
damages by rendering a judgment for
the amount found by the jury, but
simply certifies to the Court of W. & A.
Court. But passing by this point,
there being no objection to its
appeal, we will proceed to the Consideration

time of the meeting arising out of the
evidence given above, and the instruc-
tions asked for by the appellants and
replied by the Court. †

~~It is the duty of the Court to make it~~
~~the duty of the Court to make it~~ must be made to
the object of the proceedings, what was to
be received by the owner of the land, and
what ~~it~~ was the public to acquire.
The preamble to the act of 1839 (page 675)
sets forth that the present ferry opposite
St Louis is inadequate to the public wants
and that another one should be established.
For this purpose, it was necessary that a
public road should be located from
Cottleville Creek to the Mississippi river,
and to accomplish this, private property
would have to be taken for public use.
Just compensation must be made first,
and to ascertain the amount this
proceeding is instituted before the Sheriff
a jury summoned by the Sheriff. When
ascertained, it is to be paid to the
legal owner or owners of the land, when
the title vests in the public. As the
owners of the land are to receive the
full measure of redress for an appropri-
ation of their property to public use, so on
the other hand the public are entitled
to receive full value for the money they
pay. They cannot be compelled to take
anything less than a good legal title,

could not be a proper subject of inquiry. We
are therefore of opinion that the circuit court
decided right in refusing the instructions and
accordingly affirm the judgment with costs.

+ To ascertain the propriety of the instructions asked for, we must consider, admitting that the appellants exhibited sufficient proof of title to the land, what their legal rights as ~~the~~ owners of land bordering upon a water course declared navigable by law, are.

It is a principle of the common law that ferries are publici juris and can be granted by the sovereign power. If this be admitted, it follows that riparian proprietors are not thereby entitled to the franchise.

Has our statute changed this principle?

The act providing for the establishment of ferries, toll bridges and turnpike roads (R.L. 302) gives to the owners of land adjoining to, or embracing the water course over which a ferry is proposed to be established, a preference over others, provided the privilege shall not have been granted to any other person, clearly recognizing the common law principle and implying a power in the legislature to make the grant to persons other than the owner of the land.

~~Did the appellants own the land~~
All the proof exhibited by the owner of the land, the appellants, of a right to this ferry franchise, was possession in their selves and in their heirs under whom they claimed, of thirteen years only. The title was shown of no grant, and we are satisfied that the ~~proof~~ ^{proof} in show was not sufficient - as that twenty years possession ~~could not avoid~~ by which a grant might be presumed could not avoid. In giving them, to a right which was ~~not~~ ^{not} proved to exist in the appellants as owner of the land

Mills & Totten
St Clair County Appeal from St Clair Circuit Court

It is discovered, upon an examination of the bill in this cause, that there is a serious defect in the State ment, of the Complamants title to the Land, which materially affects the claim for the relief sought by the Complamants.

The Act of the General Assembly of the State of Illinois of the 2^d March 1819, under which the Complamants derive their title to the ferry, and ferry privileges, described in the bill, as the assignees of Samuel Wiggins, the grantee, named in the act, authorized the establishment of such ferry, "on the waters of the Mississippi, near the Town of Illinois, in this State", and "the running of the same, from Land at said place that may belong to him" (Wiggins). and the act further provided that Wiggins, his heirs, or assigns, should have the ferry in actual operation, within eighteen months from, and after, the passage of the act, -

The time within which Wiggins was to have established the ferry, and have it in actual operation, and by which the grant was to be in operation, in case it was not established, and in operation, by that period expired on the 2^d day of September 1820,

In the description of the Land, and its mode & time of acquisition, the bill recites, that Wiggins, became the purchaser thereof, from Julie Jarrot, by deed of the 13th day

of July 1822. and that Wiggins, by deed of the first day of August 1831, conveyed the same Land, to a portion of the Complainants, & to the ancestors of others, of the Complainants of whom they are the legal Representatives

It is further recited in the Bill, that a piece of such tract of Land, lying on the Mississippi, near the Centre of the tract, was claimed by one James Piggot, which claim was recognized by Government and a patent issued therefor, & that Wiggins, acquired, this piece, several ~~years~~ before the date of the deed from Julia Jarrot to him; and first established his ferry on this piece, then being the owner thereof, under Piggot's legal Representatives; which piece of Land is included in the large tract; and was patented, by the United States, to John McKnight, and Thomas Brady in 1816; and was conveyed by them to Wiggins, by deed, copies of which papers, and deed, are said to be exhibited with the bill. This is the entire description in the Bill, of the inception of title to the Land, by Wiggins.

With the bill no exhibits are, however, transcribed into the Record, and we are consequently uninformed, as to the Contents, or character, of the conveyance from McKnight and Brady to Wiggins, and from ~~Wiggins~~ Piggot's legal Representatives, either in point of date, or description of Land.

The Act of 1819 declares that the Ferry, shall be run from Lands, at the place named in the Act, "that may belong to him (Wiggins)"

The question here, in construing the first section of the Act of 1819, naturally arises, did the grant to Wiggins require, that he should be the owner of the Land, at the passage of the Act; or of such, as he might subsequently purchase, before the period of forfeiture of the grant. If the word may, as understood in legal parlance, be rendered; shall, it is apparent, that Wiggins, by the facts disclosed by the Complamants in their Bill, had no Land, at the place, designated in the Law of 1819, at the time of the passage thereof; and consequently he had no Estate, in the Lands, upon which the grant could operate; and the Act was necessarily nugatory in its character, and was altogether inoperative in its effect.

On the other hand, if the grant be construed, to operate on Land, which Wiggins might acquire, subsequently to the passage of the Act, & before the time limited for the commencement of the ferry, it is equally clear, that the acquisition of the Lands by Wiggins, through the purchase of Julie Jarrot, was upwards of one year, and ten months, after the time limited for the erection of the ferry, and consequently, the grant, could not attach, or act on the Land thus acquired. As to the period of acquisition, of the piece, in the centre of

the tract, represented to be a portion of the tract, acquired from Jarrold. Nothing is disclosed, in the Bill, which affords any certainty as to time. The omission to transcribe, onto the Records, the exhibits referred to in the bill, precludes the possibility of learning, when the title was acquired.

The allegation in the bill, that Higgins acquired the title, to this portion of the Land, several years, before the date, of the deed, from Julia Jarrold, is so manifestly uncertain, that no evidence is afforded by the State ment, that the title, was acquired, before the 2^d day of September 1820.

The vague, and indefinite character of the allegation, affords them, no evidence, that Higgins, was at any time, before the 2^d of September 1820, the owner of the Lands, near the Town of Illinois, in the State of Illinois contemplated in the Act of 1819, and from which the Ferry was to be put in operation. It may be said, the Demurrer, admits all the allegations of the bill to be true, and that, therefore, the complainants title to the Land, cannot be questioned. It is certainly true. The demurrer admits all that is well stated or pleaded, but it surely cannot supply defects, in substance, or cure a defective title. nor yet establish one, defectively set forth. It is too obvious to doubt, that the

title acquired in 1822 could not even
aid the acquisition of the privileges,
conferred by the grant, much less be the
foundation, on which the grant was to
operate, and vest the privileges named
in the Law. because of the posterior
period of its inception; and equally
so, is the effect flowing from the want
of the clear ascertainment of the title to
the other portion of the Land, on which
it is alleged the ferry was first established.

+ The conclusion, seems then very certain,
that ~~Loggin~~, ~~that Loggin~~ was not the owner
of any Land, within the time required
by the act of 1819. to be possessed by him, upon
which the grant could operate, and upon
this ground, alone, the injunction ~~should~~^{might}
have been dissolved, and Bill dismissed.

Other questions of grave import,
involving the constitutional character of
Law, connected with the case, have been
raised, and elaborately, and ably discussed
upon which, it does not become necessary
for this Court, to express an opinion, in order
to the decision of the cause. It would
perhaps be injudicious to express an opinion
on those points, at this time, when it is not
absolutely necessary, but more especially so,
as the questions raised, involve an enquiry
into the extent, and rightful exercise of
Legislative Action by the Gen. Assembly of this State,
which it is supposed, may arise in at least

another cause now pending in this Court
between the same parties -

I am of opinion for the reasons
given that the Judgment should be affirmed
with costs. —

Smith Justice

Since the delivering of the foregoing
opinion the exhibits referred to in the
opinion, and exhibited with the bill in
the Circuit Court, have by the Mutual
Consent of Counsel been filed here on an
inspection thereof, and the deed of McPherson
& Brady particularly, it does not appear
that any new fact is shown to induce
a change of my opinion. The title
is shown by the exhibits to be most clearly
defective, & all doubt removed thereon.

Smith Justice

Record
Atties & others
A
H. Blair County
Gannon
Justice Smith
X
clerk: affirmance
with costs =

Filed June 23. 1846
Jm Duncan

Recorded

Adam S. Mills v. John

Sup. Court

Dec. Term 1845.

vs
William G. Brown, the
County of St. Clair v. John

The deft
in the above cause now came & moved
the court to have the final order
in the above cause affirming the judg-
ment of the court entered at the Sept term 1840
as amended as to set forth the names
of the parties to said suit at length
upon the record.

S. Furbull

Atty for Deft -

Mills & others

vs
The County
of St. Clair &
others -

Motion to amend order

Filed 12th Dec 1845

Esch

Alb