

No. **12095**

Supreme Court of Illinois

Granger.

vs.

Canal Trustees.

71641  7

Supreme Court,

In Chancery

Elihu Granger

vs. Compt

Board of Trustees of the

Illinois & Michigan Canal

Def'ts

Error from the Cook County,

Circuit Court,

of June Term AD, 1852

And now at this day, the 15th day
of June AD, 1852 of the June Term of the said Court,
Cometh the said Elihu Granger by W. Tracy his Solicitor
and says that there is error in the Record and proceedings
in the said cause and the decree rendered therein
and comes and assigns for error the following causes,

1st That the said decree rendered in said cause was
erroneous in this to wit, that the a decree should have been
rendered in favor of the said complainant in conformity to
the prayer of the said Bill, and not for the said Defendants.

2^d The Court erred in dismissing the Bill,

3^d The Court erred in not entering a decree in the above
cause in favor of the said Complainant.

Therefore for the errors above assigned and for others the
said Complainant prays that the said decree rendered here
may be set aside and vacated and that a decree may be
rendered for the said Complainant in conformity to the prayer of
the said Bill.

Chicago June 15, 1852

And D^o Dana Egan

by Allen M^y E. Clarned

Elihu Granger by

W. Tracy

Supreme Court

Elihu Granger

Compt.

vs.

Board of Trustees of
the Illinois Michigan

Canal

Def't

Assignment of Claims

Filed June 16th 1852.
S. Selamut Clk.
By P. H. Selamut Dep.

Shas before the Honorable Hugh F. Dickcy
Judge of the seventh judicial Circuit of the State of
Illinois at a term of the Circuit Court begun and
held at the Court house in the City of Chi-
cago in and for the County of Cook in said
Circuit on the third Monday being the nine-
teenth day of November in the year of our Lord
one thousand eight hundred and forty nine, and
of the independence of the United States the seven-
fourth

Present the Hon Hugh F. Dickcy Judge
David McHenry State attorney pro tem
Isaac Cook Sheriff
Attest L. H. Board Clerk

Elihu Granger

The Board of Trustees of
the Illinois & Michigan Canal

In Chancery

Be it remembered
that heretofore to wit on the twelfth day of May
A.D. 1849, came the said Complainant Elihu
Granger by Arnold Day his solicitor and files in
said Circuit Court his Certain Bill of Complaint
which is in words and figures as follows, to wit,
"Cook County Circuit Court"

To the Honorable Hugh F. Dickcy Judge
of the Cook County Circuit Court in Chan-
cery sitting.

Your orator Elihu Granger of Chicago
County of Cook and State of Illinois complaining
shews unto your Honor that in the month of
May A.D. 1841 your orator took possession of
lots numbers Two (2), three (3) four (4) and
Six (6) in Block number four (4) in the City

nal town of Chicago, And your orator further states that during the spring and summer of the year 1841 he built a root house at an expense of between thirty, and forty dollars, situated partly upon said lot No 3 and partly upon said lot No 11, also during the same season a wooden building sixty feet long by thirty feet wide having two stories one half of its length, situated partly upon said lot No 2, and partly upon said lot No 3, and placed therein an engine and other permanent machinery and put in operation a foundry and finishing shop and also during the same summer erected a wooden building of one story upon said lot No 2, and placed therein two forges, and has used and occupied the same as a blacksmiths shop, and also a lean to building on the rear of the same, and have ever since used and occupied it as a coal house.

And your orator further shews unto your Honor that during the year 1841, your orator put said lots No 3 & 11, under Cultivation, and has ever since used the same as a garden, and during the same year your orator ploughed lot No 3, And your orator further shews that the rest of said lot No 11 was used by your orator as a family yard and the rest as a Carriage yard.

And your further states that said lot No 6 was not ploughed by your orator but was carefully enclosed by him and used and occupied by him as a yard and bedding place for his horses and cows and also for stacking hay and piling up lumber. And your orator further states that he has constantly exercised acts of ownership and of occupancy over the same till after the opposition of the present board of trustees of the Illinois and Michigan Canal,

And your orator further states that he

was in exclusive possession of all of the aforesaid lots until long after the 21st day of February 1843. and has never done any act or made any stipulations to waive or limit any rights therein.

And your orator further states, that he took up his residence in the aforesaid house on said lots No 3 & 4 in the year 1841 and continued to occupy it as his private dwelling house till the year 1847 since which time and up to the present your orator has used the same as a boarding house for his hired men.

And your orator further states, that in the year 1842, and before the month of December in said year your orator built an addition to the east end of the log barn already upon said premises some 16. or 18 feet wide & from 20 to 24 feet long the same being constructed of lumber in a permanent and substantial manner, and your orator used and occupies the whole as a barn and carriage house, prior to December 1842 & has continued to do so up to the present time.

And your orator further states, that during the summer of 1842 he built upon said premises a permanent out door oven of brick and roofed the same, and that also during the same summer your orator put down a lead aqueduct extending from the water works in the building already mentioned as standing partly upon Lot No 2 and partly upon Lot No 3. to the root house before mentioned.

And your orator further states that during the same year & prior to the month of December of that year, your orator repaired the roof of the said dwelling house and painted and repaired the walls of the same and repaired it generally, and built a lean to building upon the rear of the

same 12 by 14 feet in dimensions for a back
Kitchen

And your orator further states, and shews
to your Honor that prior to December first
1842, your orator reset the posts of a large portion of
the old fence, and repaired the same generally,
and built a new picket fence, along the whole
of the South line of said Lots, No 2, 3 and No
4, and also other shorter fences to enclose a yard
for flowers and ornamental bushes and shrubs
and also built a permanent and substantial
enclosed portico of the two front doors of the said
dwelling house.

And your orator further states that
prior to December first 1842, your orator sunk
a well under the said building upon Lots
2 and 3 below the level of the Chicago river
and built a permanent aqueduct from said
river to said well, and also erected a large and
permanent out building on said Lot No 2,

And your orator further states, that in the
Spring of the year 1842, your orator built and
erected a solid fence of posts and boards upon
the South side of the Street South of the aforesaid
lots No 2 No 3 & No 4, and upon which said
lots a butt, extending from a point nearly oppo-
site the East line of said lot No 4 to well,
Street and thence to the Chicago River, and also
during the summer of the same year your orator
extended said fence Eastward along the South
line of said street to a point opposite the West
line of the original lot No 1, in said Block
No 4, and was in exclusive possession of the
land enclosed and bounded by said fence, and be-
tween it and said river prior and up to the 2nd
February A D 1843,

And your orator further shews unto your Honor that he entered upon said lots and premises with the intention of becoming the purchaser thereof and making a home of the same and that he has expended large sums of money in and about improving the said lots and premises so as above described and has used occupied possessed and enjoyed the same in an uninterrupted manner from the spring of the year 1841 up to the time of filing his bid and has made permanent and beneficial improvements to the said lots and has erected large and commodious dwellings and buildings for the purpose and with the design and object of carrying on his fur trade business, and with the intent and design of holding and purchasing said lots by right of prescription made and in pursuance of the 13th section of the act of the General Assembly of the State of Illinois entitled "an act to provide for the Completion of the Illinois and Michigan Canal and for the payment of the Canal debt approved Feb'y 21st 1843"

And your orator further shews unto your Honor that said lots and premises herein before particularly described are part and parcel of the lands granted by Congress to the State of Illinois by an Act entitled an act to grant a quantity of land to the State of Illinois for the purpose of aiding in opening a canal to connect the waters of the Illinois river with Lake Michigan Approved March 2, 1837.

And your orator further shews that said lots and premises were among other lands so donated by Congress to said State as aforesaid duly conveyed by the Governor of this State to the Board of Trustees of the Illinois and Michigan Canal and vested in the same under and

pursuance of the said Act Approved Feb, 21st 1843, and subject to the provisions thereof and the amendments thereto,

And your orator further shews unto your Honor that by virtue of the provisions of the said Act of the General Assembly of the State of Illinois the Trustees of the Illinois and Michigan Canal were authorized and empowered to sell all of the lands granted by the Act of Congress aforesaid which have not been sold by the Commissioners of the Illinois and Michigan Canal and that said lots and premises herein before described and particularly set forth are part and parcel of the lands which said Trustees were authorized to sell by virtue of said Act.

And your orator further shews unto your Honor that said lots two & three have been subdivided by said Board of Trustees into sub lots, one two, three four nine ten eleven and twelve being twenty feet each, and lot number 4 has been subdivided into lots one two three four five six seven & eight, and lot number six into sub lots one two three and four reference being thereunto had for greater certainty.

And your orator further shews unto your Honor that by virtue of the provisions of said Act your orator is now lawfully entitled to a right of preemption on said lots and sub lots and premises herein before particularly described and set forth or the right to purchase the said lots and sub lots and premises at an appraisal made in pursuance of the Statute in such case made and provided, and your orator further shews unto your Honor that in pursuance of the notice given by order of the said Board of Trustees your orator files his application for preemption.

with the said Board of Trustees and also at the same time filed with said Board the affidavits of divers Credible witnesses, fully substantiating the facts hereinbefore stated in relation to the occupancy of and improvement, made in and upon said lots and premises hereinbefore described and set forth and establishing as your orator has been informed and believes true a clear right to purchase said lots and sub lots and premises at an appraisement to be made as provided in and by said act, and within the time intent and meaning thereof.

And your orator expressly Charges that he is well entitled to the benefit and advantages granted by said act, approved the 21st July 1843 in respect to the said lots and premises hereinbefore particularly, described and set forth.

And your orator further shews unto your Honor that the said lots and premises ~~was~~ above described and set forth were a legal subdivision of the Canal lands at the time he so entered in and upon the said premises,

And your orator would further shew unto your Honor that the said lots & sub lots & premises were valued and appraised at the sum of eleven thousand four hundred & fifty dollars.

And your orator further shews unto your Honor that on the tenth day of May 1844 your orator offered to tender and did tender to the said Board of trustees the full sum of two thousand eight hundred & sixty two dollars and fifty cents, being one fourth of the amount of the appraisement of the said sub lots and premises, and also in addition thereto the sum of five hundred and fifteen dollars and twenty

five cents, being the interest on the balance of said appraisement in advance for one year and also at the same time tendered to the said Board of trustees your orator three several promissory notes, each for the sum of one fourth of the amount of said appraisal and payable respectively, one two & three years from the date thereof, bearing interest at the rate of six per centum per annum payable annually, in advance assigned by your orator which said tenders so made as aforesaid were refused & not accepted by the said Board of trustees.

And your orator further shews unto your Honor that the said Board of Trustees wholly refuse to allow your orator to purchase the said lots heretofore described at the appraisal so made as aforesaid as required according to the terms and provisions and requirements of said Act of the 21st February A.D. 1843, or to comply with the provisions of said act according to the true intent and meaning thereof, but on the contrary thereof the said Board of trustees have advertised the said lots and premises for sale on the tenth day of May 1849 and there over and give out that they will sell the same at public auction on the day aforesaid.

And your orator further states and shews unto your Honor that your orator believes that the said Board of trustees will proceed to sell the same in manner and form as aforesaid at public auction without allowing your orator to purchase the same at the appraisal unless restrained by the order of Injunction of this Honorable Court.

In tender consideration whereof and

for as much as your orator is remedied by
the strict rules of the Common law, and has relief
only in this Honorable Court wherein matters of
this nature are chiefly cognizable and relievable.

To this end therefore that the said Board of
Trustees may true strict and proper answer
make to all and singular the matters herein
charged, without such, (an answer under oath
being hereby waived pursuant to the statute
in such case made and provided) And that
the said Board of Trustees may be decreed by
this Honorable Court to allow your orator to
purchase the said lots and premises herein
before described, at the appraisal, and to receive
from your orator one fourth of the amount at
which said lots and premises are appraised
together with interest at six per cent in advance
on the balance and to accept from your orator
his promissory notes for the balance of said
appraisal payable in three equal annual
installments, in one two and three years with
interest at six per cent payable annually in
advance as provided in said Act.

Your orator being ready and willing and lawfully
offering to purchase said lots and premises & to
pay for the same according to the terms and
Conditions of said Act and to do and perform
every thing necessary ^{to be done by} your orator, and to
Comply fully with the provisions of said Act
according according to the letter and effect &
true intent and meaning thereof, or for such
other & further relief in the premises as to you
Honor shall seem meet & proper and which
shall be agreeable to equity and good Conscience.

And that said Board of Trustees may be
restrained by the order of injunction of this

Honorable Court from proceeding to sell said sub-
lots and premises, and that upon the coming in
of the answer the said injunction may be
made perpetual, and that process of summons
may be issued according to the course and
practice of this Honorable Court to the Sheriff
Cook against the said Board of Trustees of the
Illinois & Michigan Canal requiring them to ap-
pear at the next term of this Court to answer
the premises and to stand to and abide by such
order and decree as this Honorable Court shall
think proper which shall be agreeable to Equity,
& good conscience, And your orator will ever
pray &c

Amold & Lay, Attys

Elihu Granger

State of Illinois
Cook County, ss.

On this tenth day of May
1849 before me the undersigned came the above
named Elihu Granger and made oath that he
has heard read the above bill subscribed by him
that he knows the contents thereof, and that the
same is true of his own knowledge except as to
those matters therein stated to be on his informa-
tion and belief and as to those matters he believes
it to be true.

Mark Skinner Master in
Chancery, Cook Co.

I Certify that I have read the foregoing
and am of opinion that an injunction should be
granted. Let an injunction issue agreeably
to the prayer of said bill upon the Complainants
first filing with the Clerk of the Cook Circuit Court
a Bond in the penal sum of Twenty five hundred dollars
Conditioned for the payment to the Board of Trustees

after All & much Casual all Damages consequent
on unlawfully, suing out this injunction

May 10 1849

Mark Shinn

Master in Ch, Cook Co.

And on the day & year last aforesaid the said
Complainant filed his certain Bond herein
in words & figures as follows to wit

Now all men by these presents that I Elisha
Granger of Chicago County, of Cook and State of
Illinois, do here and firmly, bind unto the Board
of trustees of the Illinois & Michigan Canal in
the penal sum of Twenty five hundred dollars
Current money of the United States for the pay-
ment of which well and truly, to be made, I do
bind myself my heirs executors and adminis-
trators jointly, by these presents, I depose my hand
and seal this tenth day of May A.D. 1849.

The Condition of the above obligation is such
that whereas the above bounden Elisha Granger has
previously obtained a writ of injunction from the
Circuit Court of Cook County, restraining and Enjoin-
ing the said Board of Trustees from proceeding
to sell lots two three four and six in Block No
(41) four in the original town of Chicago and that
upon the coming in of the answer the injunction
be made perpetual, Now if the said Elisha
Granger shall pay or cause to be paid to the said
Board of Trustees all damages that may arise or
be awarded in consequence of unlawfully, suing
out this Injunction then this obligation to be void
otherwise to remain in full force and virtue.

Approved May 10 1849

Elisha Granger

Master in Chancery

Thenceforth that issued out of said Court
the proper writ of injunction in words and

figures following to wit

State of Illinois 3

Cook County, 3⁰⁰

The People of the State of
Illinois to the Board of Trustees of the
Illinois & Michigan Canal, their
Attorneys, agents and Solicitors each and
every of them Greeting;

Whereas Elihu Grainger has represented unto
the Honorable Hugh T. Lick, Judge of our Cook
County, Circuit Court in and for the County of Cook
and State of Illinois, by his bill of Complaint
herein that certain proceedings of the said Board
of Trustees of the Illinois & Michigan Canal are
Contrary to Equity, and good conscience, and
Wm. H. H. Esq. Master in Chancery of said
Court having made an order that admit
of injunction ifue herein in accordance with
the prayer of said Bill,

Now therefore you the said Board of
Trustees of the Illinois & Michigan Canal
your agents, attorneys & solicitors, and Each &
every of you are hereby, Commaned and enjoined
that from selling conveying or in any manner dis-
posing of Sub lots one (1) two (2) three (3) & four (4)
of Lot two (2) in Block four (4) in the origi-
nal town of Chicago, Sub lots one (1) two (2)
three (3) four (4) five (5) six (6) seven (7) Eight (8)
nine (9) ten (10) eleven (11) & twelve (12) of lots
three and four (3 & 4) in Block four (4) in the
original town of Chicago And Sub lots
One (1) two (2) three (3) & four (4) of Lot Six (6)
in Block four (4) in the original town of Chicago
you do absolutely, severally, abstain and desist
until the further order of said Court in this
behalf Witness L. D. Hoard Clerk

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of said Court and the seal thereof
at Chicago in said County this
10th day of May A.D. 1849,

L. D. Hoard Clerk

On the back of which said writ appears
the following endorsement to wit,

"Executed by leaving a copy of this within
with William Gooding the Secretary of the
within named Board of the Ill. & Michigan
Canal May 10th 1849,

for 1 Service \$0.50 1 copy 0.50 1 mile 0.06 1/4

Return 0.12 1/2 - \$ 1.18 7/8

Isaac Cook Sheriff C.C.

By J. A. Ruchert Deputy Sheriff

And on the same day & year last aforesaid,
there issued out of said Court the process
writ of Summons, as follows to wit
State of Illinois

Cook County, Ill.

The people of the State of Illinois
To the Sheriff of said County, Greeting

We Command you that you summon
the Board of Trustees of the Illinois & Michi-
gan Canal if they shall be found in your
County personally, to be and appear before
the Circuit Court of said County, on the first
day of the next term thereof to be holden at
Chicago in said County, on the second Monday
in June next, to answer unto a bill of Complaint
filed in said Court on the Chancery side thereof
of by Eleazer Granger,

And have your then return this
writ with an endorsement thereon
in what manner you shall have
Executed the same, Witness Louis D.

E.E.

Howard Clerk of our said Court and
the seal thereof at Chicago in said
County, this 10th day of May A.D.
1849.

L. D. Howard Clerk

On the back of which said summons is the
following return:

Executed by delivering a true copy of the
within with William Gooding the Secretary
of said Board of Trustees of Illinois & Michigan
Canal, May 10th 1849.

For service \$1.50 1 cop, .50 made 2.00
Return, 25¢ = \$1.18 3/4

Isaac Cook Sheriff C.C.

By J. A. Richert Dep. Sheriff

And afterwards to wit on the 12th day of
April A.D. 1850 came the said defendant,
by Messrs. Collins & Williams their Solicitors
to file their answer to said Bill as follows to wit
In Chancery
Cook Circuit Court.

The Answer of the Board of
Trustees of the Illinois & Michigan Canal
to the Bill of Complaint of Elisha Grainger.
These defendants now and at all times
hereafter saving and reserving to themselves
all manner of benefit and advantage of Excep-
tion to the manifest errors, uncertainties
imperfections, in said Complainant's Bill of
Complaint contained for answer thereto or
to so much thereof as they are advised is
material for them to ^{make} answer unto, Admit
That the lots 2, 3, 4, and 6, in Block
4, in the said Complainant's Bill mentioned
set forth are part and parcel of the lands

granted by Congress to the State of Illinois
by an Act Entitled 'An Act to grant a quantity
of land to the State of Illinois for the purpose
of aiding in opening a Canal to connect the
waters of the Illinois River with those of Lake
Michigan Approved March 2, 1827, And that the
lots in said Complainant's Bill of Complaint
mentioned were among other lands so donated by
Congress to said State as aforesaid duly con-
veyed by the Governor of this State to the Board
of Trustees of the Illinois and Michigan and
vested in the same under and in pursuance of
the Act of February 21st 1843, and subject to the
provisions thereof.

And these defendants further say
that some time in the year four Lord Eighteen
hundred and thirty five and while the title to
the lots above mentioned was in the State of
Illinois, the Board of Commissioners of the Il-
linois and Michigan Canal acting as the
agents of the said State erected upon said
lots three and four a building, for the use of
the officers of the Illinois and Michigan Canal
as a Canal office, and shortly after the Erection
of said building and from that time until the
month of November 1837, said building was
occupied by the said State as a canal office.

And these defendants further say that at
or about the time of the erection of the build-
ing above mentioned the said Board of Com-
missioners acting as the agents of the said State
as aforesaid enclosed Lots two, three four and
six above mentioned with a good substantial
post and board fence, and built a log stable
on the rear of lot four and a frame stable
on the rear of Lot three & that said lots and,

buildings were occupied and used by the said Commissioners from the year five aforesaid until the month of November 1837, for their own convenience and that of the officers of the Illinois and Michigan Canal.

And these defendants further answering say that the buildings and improvements so placed by them on Lots 2, 3, 4, & 6, aforesaid were erected and made at an expense to the State of Illinois of Twenty five hundred dollars and were valuable and permanent improvements.

And these defendants further answering say that in the month of November 1837 the building above mentioned being no longer used by said State for Canal purposes was rented by the Board of Commissioners to Henry L. Rucker as a dwelling house and was so used by him until the year 1841, that said Rucker during the time he occupied said building rented and occupied said Lots 2, 3, and 4, above mentioned and paid rent for said Board of Commissioners and said Rucker during the time he occupied said premises cultivated a garden upon a part of said lots.

And these defendants further answering admit that in the month of May ^{AD} 1841 the said Complainant took possession of said Lots 2, 3, 4, and 6.

And these defendants further answering say that said Complainant went into possession of said lots 2, 3, 4, & 6, as a tenant of the said State of Illinois and by the permission of the Board of Commissioners of the Illinois and Michigan Canal and occupied the house above mentioned and used the improvements

ments, agrees and make an agreement on the part of the said Complainant to pay rent for said premises so leased to him by said State of Illinois.

And these defendants deny that the said Complainant took possession of the lots in his behalf of Complainant described in his own right or as a settler upon Canal lands, but on the contrary, these defendants aver that the said Grauger entered as a tenant of said State of Illinois under an agreement to pay rent to said State for said buildings and lots, and so long as the title to said lots and buildings remained in said State of Illinois said Grauger continued to occupy said lots and buildings as the tenant of the State and paid rent to said State for the same.

And these defendants further aver and swear that the buildings and improvements which were upon the lots above mentioned and which were rented to the said Complainants, were worth at the time when said Complainant took possession of the said premises about the sum of four hundred

And these defendants further availing say that after the title of the said Lots 2, 3, 4 and A, had become vested in these defendants in pursuance of the Act of July 21st 1843, as in the said Complainant's Bill mentioned. And on the fourth day of September 1845, the said defendants by C. S. Prescott their Agent executed a lease to said Complainants for said lots 2, 3 & 4, in said Block four above mentioned, for the term of two years from the 26th day of June A.D. 1845, and said lease

was duly signed by said Complainant and delivered to these defendants by which said lease said Complainant consented to pay to these defendants the sum of two hundred and twenty five dollars per annum payable in installments of One hundred and twelve dollars and fifty cents each on the 26th day of December & the 26th day of June in each year.

And these defendants say that a part of the rent so agreed to be paid by said Trauger was paid by him to these defendants, and that judgments have been obtained by these defendants against the said Complainant in the Cook County Court and the Cook County Court of Common Pleas for the amount due from said Complainant as rent for said premises up to the twenty sixth day of June A.D. 1846.

And these defendants further answering say that ever since the entry of the said Complainant upon said lots 2, 3, 4 and 6, in said Block 4, he has occupied said lots as a tenant and that he still continues to occupy said lots as a tenant and is bound to pay rent to these defendants.

And these defendants further answering deny that the said Complainant ever entered upon any of the lots above mentioned as a settler but that he entered as a tenant of the State of Illinois and has ever since occupied said premises as a tenant, that while the title to said lots remained in the State, said Complainant occupied said premises as the tenant of the State of Illinois, and from the said 26th day of June 1845, after the title to said lots became vested in these defendants, he has continued to occupy said premises as the tenant of these defendants.

And these defendants further answering ~~say~~ deny that the said Complainant is lawfully entitled to a right of preemption to the whole or

any part of the Lands above mentioned
under and in pursuance of the 13th
Section of an act of the General Assembly
of the State of Illinois entitled an act
to provide for the completion of the
Illinois and Michigan Canal and
for the payment of the Canal debt
approved February 21, 1843 and under
and by virtue of any act of the General
Assembly of the State of Illinois.

And
these defendants further answering
say that the said Complainant after
his entry upon said Lands of Land as
the tenant of the Canal Commissioners,
for his own convenience and profit as
such tenant placed upon said Lands
some out buildings of small value and
also for the purpose of carrying on his
business more profitably erected cer-
tain frame buildings and placed
machinery therein, but these defendants
have no knowledge or information of
the size or value of said buildings nor
of the time when said buildings were erected
except from the statements of said Complainant
namely Bill, nor have these defendants any
knowledge of the Cultivation of said Lands
by said Complainant nor of the repairing
of said house fences so erected as aforesaid
said by the Commissioners of the Illinois
and Michigan Canal nor of the time
when said repairs were made except
from the statements of said Bill and
can neither admit or deny said state-
ments but leave the same to be proved

by said Complainant as he may
be advised,

And these defendants fur-
ther answering, admit that the said
Complainant took possession of the
dwelling house upon said Lots No 3
and 4 in the Year 1841 and continued
to occupy it as a Dwelling House until
the Year 1847 and has since used the
same as a boarding House for his
hired Men and that during all said
time there has been no other tenant upon
said Lots but these defendants say
that during all said time said Complain-
ant has occupied said Lots as a ten-
ant and has paid out for the same,

And these defendants further
answering deny that the said Complain-
ant entered upon said Lots and prem-
-ises with the expectation that he would
be allowed to purchase the same as a
preemptive claimant, or that the said
improvements put by him upon said
Lots prior to the 1st day of December
A.D. 1842 were put there with the
design of holding and purchasing said
Lots by right of preemption, but aver
that said Complainant entered upon said
Lots & into said House as the tenant
of these defendants & that the buildings
erected & the improvements made upon
said Lots by said Complainant were
made solely for his own convenience
as a tenant and for the purpose of more
successfully carrying on his business
while such tenant.

And the said defendants further answering admit that the said Lots Two, Three, Four, and Five have been subdivided into smaller lots as in said bill of Complainant mentioned,

And these defendants admit that under and by virtue of the provisions of the act of the General Assembly of the State of Illinois Approved Feb'y. 21, 1843 they were authorized and empowered to sell all the Lands granted by the act of Congress to the State of Illinois which had not been sold by the Commissioners of the Illinois and Michigan Canal and that the lots above set forth were part & parcels of the lands which these defendants were by said act authorized to sell.

And these defendants further answering deny that by virtue of the provisions of said act of 21st February 1843 said Complainant is entitled to a right of preemption on any of the Lots or Sublots in said Complainant's Bill mentioned or on any part or parcel thereof or that he has the right to purchase the said Lots and Sublots at an appraisal as stated in his said Bill,

And these defendants further answering admit that the said Complainant filed with these defendants his application for a preemption & filed therewith the affidavits of two persons in reference to improvements upon

Said Lots and the occupancy of the same, but these defendants expressly deny that the said officials established a right on the part of said Complainant to purchase said Lots & Sub Lots at the appraisement, as alleged in said Bill.

And these defendants expressly deny that said Complainant is entitled to the benefits and advantages granted by the act approved 21 February A.D. 1843 in respect to any of said Lots.

And these defendants further answering admit that said Lots were legal subdivisions of said General Land at the time ^{the} said Complainant entered upon the same as such tenant as above mentioned, but these defendants say that by virtue of the act of February 21st 1843 above mentioned they were authorized to divide said Lots and that in accordance with the authority given to them by said act they did divide said Lots into the lots in said Bill of Complaint mentioned and that if said Complainant was entitled to purchase any portion of said Lots he could only purchase according to the subdivisions so made by these defendants.

And these defendants further answering admit that the said Sub Lots were valued and appeared at the term of Court Thousand four hundred and fifty

dollars but these defendants say that each of said lots was appraised separately and that the said sum is the aggregate of the appraisals of said Sub Lots.

And these defendants further answering admit that on the 10th day of May A.D. 1849 the said Complainant tendered to these defendants the money and the notes of said Complainant as in said Bill mentioned & that the same were refused by these defendants & that these defendants refused to allow the said Complainant to purchase said lots at the appraisal & that they advertised the same for sale at public Auction as they were required by law to do.

And these defendants further answering say that they are informed & believe that the said appraisal of the said lots & sub lots so made as aforesaid is greatly below the real value of the same & that it would be a specification to the Complainant to allow him to purchase the said lots & sub lots or any of them, and a great loss, injury & detriment to the Canal fund.

The Board of Trustees of the Illinois and Michigan Canal with their Seal of office

by Wm. Gooding

William & Rutledge
Sgt. Solon

Secretary.

I do within and for the County and
State aforesaid, do hereby certify that
the foregoing depositions of Abner W
Granger, W Irving Granger and William
Coleland were sworn to and signed by the
said deponents before me and in my presence
and that the said depositions were taken by
me, commencing on the 16 day of December
A.D. 1850 and continued until the Twentieth
day of January A.D. 1851 at my office in
the City of Chicago in the County and State
aforesaid

Given under my hand and seal
of said Court this 20 day of January
A.D. 1851

Walter Kimball
Clerk

And afterwards to Writ, on the Eighth
day of May eighteen hundred and fifty
Commenced the said Complainant and files
his Replication which is as follows,

Counters Comaint
Enchancey

John Granger } The replication of John Granger
vs } Complainant to the answer of the
Board of Trustees } Board of Trustees of the Illinois and
Miss & Mich Canal } Illinois and Canal Company is,

This applicant having and
reserving to himself now and at all times
hereafter, all and all manner of benefit and
advantage of every description which may be had

is taken to the manifold insufficiencies of the
said answer for replication, therefore, says he
will aver, maintain and prove, his bill of
Complaint to be true, certain and sufficient,
in the law, to be answered unto; and that
the said answer of the said defendant is
uncertain, untrue, and insufficient, to be
replied unto by the repliant, without,
this that any other matter or thing whatever,
in the said answer contained, material or
effectual in the law to be replied unto, and
not hereinafter hereby well & sufficiently replied
unto, confessed and avoided, transferred or
denied is true; all which matters and things
this repliant is and will be ready to aver, main-
tain and prove as this honorable Court shall
direct, and humbly prays, avers and by his
said bill he has always prayed

Orlando & Lay, Solicitors
for Complainant

And afterwards on the fifth day of August
Eighteen hundred and fifty the said
Complainant files his supplemental bill
which is as follows to wit.

Cook County Circuit Court

To the Hon. Hugh L. Slicking, Judge
of the Cook County Circuit Court
in Chancery sitting

Humbly Complaining shews unto
Your Honor Your orator Elias Franzer

of the County of Cook and State of Illinois,
That on the tenth day of May, in the Year
of our Lord 1849 your Orator exhibited his
Original bill of Complaint in this honorable
Court, against the Board of Trustees of the
Illinois & Michigan Canal setting forth
that Your Orator had entered upon and
made improvements upon certain lots
and lands to wit Lots Numbers Two, three
four and six in Block Number four in
the original Town of Chicago with the design
and intent to purchase the same when the
same should be offered for sale by the proper
authorities of the state and that he had
remained in possession of the same until
and up to the time of filing the said bill,
that the said lots and lands were part and
parcel of the lands granted by Congress to the
State of Illinois for the purpose of acting
in opening a Canal to connect the Waters
of the Illinois River with Lake Michigan,
and that the same were after wards con-
veyed by the Governor of said State to the said
Board of Trustees under & by virtue of an
act passed Feb. 21. 1843 and that by virtue
of the provisions of the said Act Your Orator
was entitled to a right of prescription and
to purchase the same at an appraisal
made in pursuance of the statute when
the same should be offered for sale, That
Your Orator filed his claim for prescription
that the said lands were appraised and
that Your Orator offered to purchase the same
at such appraisal but that the said Board
of Trustees wholly refused to allow Your
Orator to purchase the said lots and lands

above referred to.

And Your orator further shews unto Your Honor that it was prayed in the said Bill that the said Board of Trustees might be decreed to allow your orator to purchase the said Lots and lands at the said appraisal & to receive from your orator one fourth of the amount at which the said Lots were appraised together with interest at six per cent in advance on the balance and to accept from Your Orator his promissory Notes for the balance of said appraisal payable in three equal annual instalments in one two and three years, with interest at six per cent payable annually, in advance as provided in said Act, and also praying for an Injunction, restraining the said Trustees from selling or disposing of the same. Your Orator being ready and willing and thereby offering to purchase the said Lots and lands and to pay for the same according to the terms and conditions of the said Act. Bill As by the said Bill now remaining as of record in this Honorable Court, reference being thereunto had will appear. And Your orator further sheweth by way of Supplement that since the filing of the said original Bill the said Defendants commenced a suit in the Cook County Court of Common Pleas in an action of assumpsit on the 12th day of January A.D. 1850 against your orator and afterward to wit on the 22nd day of January 1850 in the said County Court of Common Pleas filed their Declaration in the said suit complaining of the said defend-

admit that he was indebted to the said
Parties in the sum of five hundred dollars,
for the use and occupation of three certain
Lots of Land known and described as Lots
number two, three and four in the old town
of Chicago and which said Lots of Land are
the identical Lots claimed by your orator as
aforesaid is his said original Bill and to
which your orator claimed prescription in
the right to purchase the same at an
appraisal, and which said suit in Chancery
is now depending and still undetermined,
And your orator further shows unto your
Honor that the account filed with the
said Declaration is in substance as follows
to wit:

January 1, 1850 Elisha Granger

To the Board of Trustees of
the Illinois & Michigan Canal

Value and occupation of Lots 2, 3 & 4 in the
old Town of Chicago, and the house thereon
occupied and in possession of said Granger
from 26 day of June 1849 to the 26 of Decem-
ber A.D. 1849 \$500.00

and that the said Board of Trustees of the
Illinois and Michigan Canal are seek-
ing to recover from your orator for the use
and occupation of the said premises while
the said Chancery suit for the right to
purchase the said Lots is still pending
and undetermined for the use and occupa-
tion of the same from and after the time of the
tender of Money ~~extends~~ ^{injunction} & granting of the said
filing of the said Bill. And your orator
being advised that the said Defendants the
"Board of Trustees of the Illinois and

Michigan Canal cannot support such
action, and that your orator is entitled
to the right of preemption or to purchase
the said Lots at an appraisal as proposed
by his said Bill, he has by himself and
his agents several times applied to request
the said defendants to desist from proceeding
in the said action, and he was in hopes
that they would have complied with
such fair and reasonable requests as in
justice and equity they ought to have done,
But now so it is may it please your
Honor that the said Board of Trustees
of the Illinois and Michigan Canal re-
fuse to comply with your orator's said
request, and insist upon proceeding in
their said action and to compel your
orator to pay for the use and occupation
of the said Lots while the rights and title to
the same is undetermined, and since the
filing of the said bill, to the manifest wrong
and injury of your orator in the premises,

To the end therefore that the said Board
of Trustees of the Illinois and Michigan
Canal may full true and direct answer
make to all and singular the matters afore-
said (their answer under oath being hereby
expressly waived in pursuance of the statute
in such case made and provided, and
that as fully and particularly as if the
same were here repeated, and they distinct-
ly interrogated thereto, and more especially
that they may in manner aforesaid answer
and set forth, Whether your orator did not
file a bill in Chancery against them, and
for preemption to the said Lots as hereinbefore

set forth, Whether they did not commence
or cause to be commenced their suit against
your orator for the use & occupation of the
said Lots from the 20th day of June 1849 to
the 26 day of December 1849, and whether said
Lots are in controversy in the said Bill in
Chancery, and claimed by your orator as
having the right to prescription or purchase
the same at their appraisals, Whether the
said suit at Law is now pending and
undetermined in the lower County Court of
Common Pleas.

And that the said Defendants may be restrained by the Injunction
of this Honorable Court from proceeding
in the said action in the said lower
County Court of Common Pleas and from
commencing any other action or suit at
Law for the purpose of collecting for the
said use and occupation of the said
Lots & premises during the time aforesaid
or before any suit or suits for the use
and occupation of the same up to the present
time or hereafter until the final determination
and adjudication in the said
Bill in Chancery, and that your orator
may have such further or other relief in
the premises as the nature and circumstances
of the case may require and to your
Honor shall seem meet.

May it please
your Honor to grant unto your orator the
People's writ of Injunction issuing out of
& under the seal of this Honorable Court
directed to the said Board of Trustees of
the Illinois and Michigan Canal their

Comissellors, a Attorneys Solicitors and
agents Commanding them and each of
them absolutely to desist & refrain from
proceeding further against your orator
in the said action commenced against
him in the Cook County Court of Common
Pleas; and now pending therein for
the use and occupation of the said
Lots during the time aforesaid, and
also from instituting or proceeding in
any New or other action at Law for the
recovery for the use & occupation of the
said Lots and premises until the title
and rights of & to the same shall be de-
termined, and that writ of Summons
may be issued herein directed to the said
Defts requiring them to appear & answer
the premises & to abide by & perform such
decrees as may be made in the premises

And your will ever pray &
E. Granger

State of Illinois }
Cook County } ss On the 23 day of March
A.D. 1850 personally appeared before me the
above named Elisha Granger & Made oath
that he has heard read the above title Sub-
scribed by him & knows the contents thereof
& the matters therein stated one true, except
as to the matters therein stated to be on his
information & belief & as to those matters he
believes to be true

Walter Kimball Clerk
Cook & Lewis Co. Pleas

State of Illinois }
Cook County } ss The Clerk of the
Cook County Circuit Court will
issue an injunction in pursuance to the
prayer of the within bill upon the complainant
filing a bond in the sum of one thousand
dollars with
his security with the usual conditions
Giles Spring Judge
Cook Co Ct Room Pleas

The Deposition of Almon W. Granger, Wm
Henry Granger and William Townsend,
Witnesses produced, Sworn and examined
pursuant to agreement of Parties, to be read in
evidence in a certain Cause now pending in
the Cook County Circuit Court wherein Almon
Granger is Complainant and the Board
of Trustees of the Illinois & Michigan Canal
are defendants, taken on the part of the said
Complainant.

Subscribed George W. Lay, Att for Complainant
C. F. Williams, Att for Defendants

Deposition of Almon W. Granger taken
on the part of the Complainant

Q. 1. What is your Name, age, and occupa-
tion And are you acquainted with the
parties to this suit?

Answer. My name is Almon
W. Granger, My age is Eighteen Years, and
I work in my Father's Furnace, am acquain-
ted with the Complainant, but am not ac-
quainted with the Board of Trustees

Q. 2. Are you acquainted with lots two, three,
four and six in Block four in the
original town of Chicago, and if so state
their situation and how long have you
been acquainted with them?

Ans. I am acquainted with the lots but not
with the divisions, they are situated on
the North Side of the River - have been
acquainted with the lots since the Year
Eighteen hundred and forty or forty one,

at the time we moved into the City

Q. 3.

Who occupied said lots at the time you first know them, and who has occupied them since that time,

Ans.

Mr Rucker was living in the House when we moved in, and Mr. Ranger the Complainant then took possession of all the Lots and has occupied them ever since,

Q. 4.

What improvements if any were erected and put upon said lots by the said Complainant, after his going into possession and prior to the first of December eighteen hundred forty two, state the same particularly,

Ans.

The first that was done I believe was to build a Root house, at the same time an old one was torn down and filled up - there was laid an aqueduct in lead pipe connecting the well with the shop. It was built under ground, by my Father. The house was repaired thoroughly, the repairs at that time were some doors new removed, new done put in & the Roof was repaired at that time. I believe three Rooms were papered and one Room partitioned, The principal part of the House was plastered and painted inside. There was a porch made over the two front doors, an addition was built on the North West corner of the House of Rough boards for a Kitchen, one story high & about twelve by fourteen feet square. Some of the Window Cases were removed & one new one put in on the west side.

There was a Shop about fifty feet in

length and about thirty feet in width built near the South East Corner, half of it or more than half, was two stories high. It was erected for a Turnace Machine Shop and pattern Shop. There was a Steam Engine put into the building, located on a permanent foundation, a Well connected with the River by a lead pipe. Another Shop was built on the next lot East, used for a Blacksmiths Shop. This building I think was about forty by thirty feet together with a house occupied for a coal house one story in height, there was a fence built on the South End of the whole of the lots, the other fence was repaired, some new parts set and kept in order. There was a fence built from the South to the North end of the lots West of the house, part picket board. The house was banked all around there was a fence built in front of these lots near the River Edge enclosing the Wharfing lots. These improvements were all made upon the premises occupied by Mr. Granger. The fence was kept in repair on the North side of the Block & we made use of it by stacking Hay & for pasturage. There was a Shed built on the North end of the stable which came into the North end of the enclosure & two or three gates were hung. These improvements were all made prior to December first eighteen hundred forty two.

Q. Do You know of any other Matter or thing of advantage to the Complainant, I can state the same

Ans.

I do not

Cross Interrogatory by Left Counsel

Q. 1. What relation do you sustain to the Complainant, and what was your age at the time at which the Improvements mentioned in your answer to the fourth direct Interrogatory were made.

Ans.

I am a son of the Complainant, I was between Eight and Eleven years of age.

Q. 2.

State particularly the dates at which the principal improvements were made which you have specified and why you can remember said dates.

Ans.

I recollect of this Shop being commenced in the Summer after we came there, and of the aqueduct from the Shop to the River being built at the same time, the Improvements were made while I was at Mr Bennetts School, which I attended that Summer, I cannot state whether the improvements on the House were made during that Summer or the Summer following.

Q. 3.

It is simply from the fact that you attended Mr Bennetts School that Summer that you are enabled to recollect the date at which said improvements were made.

Ans.

They were made the Summer following that we moved in from the Canal, the buildings were erected that Summer the aqueduct & the principal part of the improvements were made during that Summer, Mr Bennetts School was the first that

I attended after we came to Chicago, and I remember the work was progressing during that time.

Int 4

Did you attend Bennett's school for more than one season, and if how many, and where was it kept,

Ans.

I did not attend it but one season during the summer. It was kept on the corner of Madison and State Streets.

Int 5

Have you not had frequent conversation with Complainant in reference to the improvements made upon the lots above mentioned, and has he not often given you a description of said improvements, and the date at which he stated they were erected and made,

Ans.

I have not had any conversation with him in reference to them. I believe this is the second time they have been recalled to my mind.

Int 6

When was the first time they were called to your remembrance,

Ans.

at the time of the application of the Complainant for a Prescription when I was first sworn.

Int 7

Do you mean to state that you have never conversed with said Complainant in reference to these improvements except at the two times you have mentioned. Objected to by Comp^{ts} Solicitor

Ans.

Int 8

Has to my recollection
Have you been for the last four years a constant inmate of Complainant's family, and do you mean to state that you do not recollect ever conversing with him but twice in reference to these improvements,

Objected to by Comptrolers General Solicitor

Answer

There been a constant inmate of his family, but do not recollect of his speaking of the improvements more than two or three times, and I cannot recall them to my memory.

Int 9

Now do you know that you have heard Complainant speak of his preemption two or three times, if you cannot recall those times. Do you know that he ever spoke to you once in reference to his improvements or preemption.

Ans

Because he told me he wanted me to go with him to the Canal office at the time he was making his application for a preemption, and also this time. He might have spoken of them, but I do not recollect distinctly any time.

Int 10

Will you swear that the Request since of which you have spoken in your direct examination, was to your own knowledge put up in front of said lots prior to the Month of December eighteen hundred and forty two.

Answer

I am not positive, to the best of my recollection it was done, that season.

Int 11

Do you know and will you swear that the repairs to the House, of which you have spoken were made prior to December eighteen hundred and forty two.

Ans

Most of them were, they were all to the best of my recollection.

Int 12th

Do you know that any improvements of any kind or description, was made by Complainant upon Lot six above

mentioned prior to December Eighteen hundred forty two. If You State Why You Know

Ans.

I do not recollect the situation of the lots. The fence was kept in repair. It was occupied as a pasture.

State particularly what repairs were made on the fences around lot six prior to December Eighteen hundred forty two.

Ans.

None of this lot the fence was repaired and the posts reset fence braced up. It was all kept in repair.

Int 13

What were the improvements put by Complainant of lot two prior to December Eighteen hundred forty two, State particularly.

Object to by Complainant

Ans.

I do not recollect the division of lot two or precisely where it is situated. I know it was in the enclosure.

Int 14

Do You Know that there was any improvements of any sort put upon lot two prior to December Eighteen hundred forty two.

Object to by Complainant

Ans.

The fence in front of it was an improvement. The fence was repaired around that.

Int 15

Now do you know that the fence was repaired in front of this lot. If you don't know the location of the lot.

Ans.

Because these lots were enclosed together and the fence went around the whole of them.

Int 16

Do You Know that the kitchen ~~was~~ of which you have spoken was put up

in the Year Eighteen Hundred Forty two &
if so what time in said Year

Ans In that Year or before -

But if And why do you know -

Ans It was built there for the accommodation
of Mr. Townsends family,

Direct Examination Resumed.

Is Have you any doubt from your knowl-
edge of the situation and location of lots two
three four and six, that the improvements
spoken of by you in your direct examina-
tion and referred to in your cross examination
were made upon those lots or some of them

Objected to by Supts Solicitor

Answer I have no doubt

Is Do you recollect and if so state what
was said by the said Complainant in rela-
tion to his preemption claim in the two
conversations spoken of by you in your
cross examination, state the same fully and
particularly

Objected to by Supts Solicitor

Answer I do not recollect the conversation only that
he told me I was to be a witness at the time
of his applying for a preemption

Subscribed and sworn to
before me this 16 day of
December A.D. 1855,

Almon W. Ganger,

Not Public Not

^{Mr} Deposition of Irving S. Branger

Q. 1. What is Your Name age and occupation, and are you acquainted with the parties to this Suit

Answer My Name is W. Irving Branger I am twenty years of age, I am acquainted with the Complainant, but not with the Trustees

Q. 2. Are you acquainted with lots two, three four and six in Block four in the original town of Chicago, and if so state their situation, and how long have you been acquainted with them,

Ans I am acquainted with the lots and their divisions, they are situated in Block four, two, three, and four on the South West Corner, Six is in the Middle of the North Side of the Block, have been acquainted with them since the year eighteen hundred and forty one,

Q. 3. Who occupied said lots at the time you first knew them, and who has occupied them since that time

Ans Mr Rucker occupied the house that was situated on lots three and four, The Complainant moved in to the house in the Spring of Eighteen hundred and forty one, and has occupied the premises ever since

Q. 4. What improvement if any were erected and put upon said lots by the said Complainant, after his going into possession, and prior to the first of December Eighteen hundred and forty two, state the same particularly, and what was the value of the same,

Ans In June Eighteen hundred forty one the Blacksmiths Shop was put upon lot two

abuilding about thirty feet Square one story
high, with a front eight feet wide across
the North end, used as a Coal House,
The value that building as near as I can
judge would be about two Hundred dol-
lars. In this building were put two boxes
and a Rice bench for the use of the Shop,
which is all that was contained in the
building. In July of the same Year a
building eight feet by thirty, two stories high
half the length, was put up by Complainant
on lots two and three, used as a Machine
Shop. Rounding and Pattern Shop was put
up, a A Steam Engine on a stone founda-
tion with a bellows, Caps, and Crane
for the Rounding, and lathes for the Ma-
chine Shop. a Well was dug, and an
aqueduct which connected it with the
River, was put into the building.

In the Month of May of the same Year
Nearly the whole of lots two, three, and four
were put under Cultivation, the part in front
of the House being used as a garden for Kitchen
Vegetables, which part was fenced off from
the rest of the lots, by Complainant, about
the same time a Root House was built
on Lot four, with an aqueduct sunk
below freezing point, connecting with the
foundation for supplying the House with
Water. In the Fall of Eighteen hundred
forty two about September, the House
was repaired by painting three Rooms
inside, papering two or three, removing a
partition, repairing the Windows, reglazing
a portion of them, and repairing the roof
which was leaky, a Porch covering the two

front door was built, about this time
there was a Cow shed built on the North
side of the barn which was in the encls-
ure in which lot six was, The South part
of lot six during this time was used for
peeling lumber, and blacking, say, about
October or November the Pigpen fence in
front of Lots two, three & four was
built, and a side walk six feet wide
was made of two inch planks resting on
three stringers, I think in September or
October in same Year a fence running
from near Wells street to the east side of
lot two enclosing the Water lot was built,
I think in October hundred and forty one, the
Water lots were occupied for peeling the
planks used in the fencing, The value
of the above improvements, exclusive of the
Blacksmiths Shop is Thirteen hundred
dollars as near as I can judge, at that
time.

Int 5 Do You know of any other Matters or
things of advantage to the Complainant, if
You state the same

Ans I do not

The further Examination of Witnesses
adjourned from day to day by consent
of parties

Examination Resumed January 17, 1851

Cross Examination of Jurem, Tranger.

Q 11. What is Your Relation to the Complainant
in this Suit, and what was Your age when

Complainant entered into the possession of the
Lots of which you have spoken

Ans

I am a Son of the Complainant
and was Eleven Years old at the time re-
ferred into possession of the lots of which
I have spoken

Int 2

State why you recollect
with such precision the Nature and extent
of the Improvements put upon said lots
by said Complainant, the times at which
they were made, and the particular improve-
ments that were placed upon the lots res-
pectively

Ans

I recollect the dates from a
Number of Circumstances. The Closing
of the Work on the Canal, I was very Cur-
ious to know what was going on,
and watched them closely. The Shops
that were put upon the lots of which
I have stated are now upon said lots

Int 3

Might Not some of the Improve-
ments of which you have spoken been
erected Subsequently to December Eighteen
hundred Forty two, do you know of your
own knowledge the exact time at which
said improvements were made,

Ans

The picket fence in front of lots
two, three, & four, the side walk in front
of said lots and the porch in front of the
House, I am not positive as to the date
when they were constructed, the rest of
the improvements named I am,

Int 4

Have you not had frequent
Conversations with Complainant as to the
Kind of Improvements made by him

and the time when made; and has not
Your Memory of the date when made
been refreshed by said conversations.

Ans

I have not had frequent con-
versations with him. My Memory is
fresh upon the subject, this is the
second time the subject has been called up.

Int 5

Was the How Shield of which
you have spoken in your answer to
the fourth direct Interrogatory placed
upon more than one lot, upon what
lot or lots did it stand.

Ans

I do not know that it was
placed upon more than one lot, only
that it was in the enclosure in which lots
five and six were.

Int 6

Do you know upon which
of the last mentioned lots it stood.

Ans

I do not.

Int 7

Was lot six used by complainant
previous to December Eighteen Hundred
& forty two for any purpose, but stacking
hay, and were there any improvements upon
said lot by complainant prior to
said date.

Ans

Lot six was used for stacking
hay and piling lumber. I do not know
of any improvements placed upon said
lot prior to said date. I do not know
whether the fence was repaired prior
to that time or not.

Int 8

For what purpose
were the lots and the improvements of
which you speak have spoken used
by complainant.

Ans

They were used for

Carrying on his Journey Business.

Direct Examination Resumed

Int. What is your freshest recollection as to the time when the Reques fence, the side walk in front of Lots two, three, four, and porch in front of the House were erected whether prior to December, eighteen hundred forty, two or not

Ans. My present impression is that they were built prior to December Eighteen hundred & forty two
Subscribed & sworn to before me this 17 day of May, A.D. 1855
Whitcomb Cook } W. J. Granger

Deposition of William Townsend taken
January 20. 1855

Int. 1. What is your Name, age, and occupation, and are you acquainted with the parties to this suit

Ans. My Name is William Townsend
my age is forty five, am a Cabinet Maker by trade, am acquainted with Granger, with the others, not so familiarly

Int 2. Are you acquainted with Lots two, three, four and six in Block Four in the original Town of Chicago, and if so state their situation and how long have you been acquainted with them.

Ans¹ I cannot specify the names of the lots
but the premises where Mr. Granger occu-
pies I am acquainted with. The premises
are situated on North Water Street and
Wells Street running back to King Street.
I think to the best of my knowledge, I
have been acquainted with them since the
year eighteen hundred and forty one,

Int³ Who occupied said lots at the time
you first knew them, and who has occu-
pied them since that time.

Ans¹ Mr. Granger occupied said
lots at the time I first knew them, and
he occupies them at the present time,
to the best of my knowledge.

Int² What improvements if any
were erected and put upon said lots
by the said Complainant, after his going
into possession and prior to the first of Dec-
ember eighteen hundred and forty two,
state the same particularly, and what
was the value of the same.

Ans¹ In the first place he
built a Furnace, a two story building,
do not remember the length or breadth of
it. There was a back Kitchen put upon
the house, I lived in and occupied
by Mr. Granger. A Root House was
also built near the house which
last aboves thirty or forty dollars, all these
was sunk in the Furnace, on a line with
the River, a pipe was laid to conduct
water from the River to the house, also a pipe
was laid from the Root House to the
River to conduct the water from the Root
House. Also a Temporary shed was

put up on the end of the Dock for a Car-
riage House, a Blacksmiths Shop was
also erected with a Coal House on the end,
The fences were kept in Repair about
the lots by myself. I assisted in repairing
them myself. The two lots back of the
premises, which were enclosed together
were used as a pasture and for stacking
hay, the fences about these lots was also
repaired by myself. There were Potatoes
planted on the front lots on Water Street.
Mr Ganger occupied the house, I lived
with him. The roof of the House was
repaired, and some of the Rooms were
papered. A fence was put up in front
of the lots, two, three, & four, along the
river in front of the House. I do not know
the Value of the improvements put upon
the premises except as I have stated.

The improvements I have spoken of were
all put upon the premises from the 1st of
January Eighteen hundred forty two.

Int 5 Do You know of any other Matters
in things of advantage to the Complain-
ant, Of Yes, State the same

Ans Not to my recollection.

Chaf Examined by Defendants Counsel
Cross Ex.

Do You know the corners or boundary
lines of said lots, two, three, & four above
mentioned, and Can You state upon what
of these lots the improvements of which you
have spoken in Your direct examination
were situated.

Ans I do Not know the corner or di-
visions lines of said lots by the boundaries, I
know the premises, I cannot state which
of the lots the improvements were put upon.

Int 2. Do you know that any improvements
were made upon Lot six prior to the first of
December Eighteen Hundred and forty two?

Ans I cannot specify the Number of
the lot. I repaired the fences around the
lots as I specified before that I was
determined to be true.

Int 3. Do you know that you
repaired any fence standing upon lot
six or any portion of said Lot,

Ans as I said before I did
Not know the Number of the lots.

Int 4. Might or Might not all of the
improvements of which you have spoken, have
been confined to lots two, three, and four above
mentioned.

Ans They Might as far as any
thing I know, for as I stated before
I did Not know the Number of the lots,
and they Might Not.

Int 5. When did you first enter
into said House with said Complainant,
and how did you occupy said house,
as a tenant or otherwise, and to whom
did you pay rent, if any.

Ans I entered into the House in the
Month of June or July in the Year Eighteen
hundred forty one, I made a bargain with
Mr Ganger, He was to give me so much
and furnish me house rent, which
he did. I paid No rent otherwise than
I have stated.

Q. Are you positive as to the time when said improvements of which you have spoken were made? If so why are you positive?

A. I think I am to the best of my knowledge. I think it was in the Month of March that the Canal was stopped, I went from Sangre's place on the Canal to St Louis and was gone about three Months. Returned and went into Mr. Sangre's employ, to the best of my knowledge I think it was in the Month of July that I went into Mr. Sangre's employ.

Direct Examination Resumed

Q. Will you state the situation of the lot upon which Complainant stacked his hay, piled lumber and pastured his Cows, whether in the rear of lots, two, three & four or not, and whether it was in an enclosure or not.

A. I stated before I did not know the Number of the lots, The lots that were enclosed, that were used where the hay & lumber was put, were back of the Barn, adjoining on Wells Street, Subscribed and sworn to ^{and running to Kinzie St}

before me this 20 day of
January A.D. 1851.

W. H. Kimball

clerk

Wm Townsend

State of Illinois }
Cook County } ss J. Walter Kimball
Clerk of the Cook County Court of Common

Please within and for the County and
State aforesaid, do hereby certify that
the foregoing depositions of Abner M.
Granger, W. Daring Granger and William
Sawyer were sworn to and signed by
the said deponents before me and in my
presence and that the said depositions
were taken by me, commencing on the 16th
day of December A.D. 1850 and continuing
until the 20 day of January A.D. 1851 at
my office in the City of Chicago in the
County and State aforesaid.

Given under
my hand and Seal of said Court this 30
day of January A.D. 1851

L. J.

Walter Pemberton

Clk.

and afterwards ^{to wit} on the second day of April
A.D. 1851, there was filed with the Clerk of
the said Circuit Court the following depo-
sitions, ^{and papers attached thereto} which are in the words and figures
as follows to wit:

Exhibit "A" referred to in de-
position of E. S. Prescott. M. Kimball Clerk,
This Subscribed, made and entered into this
fourth day of September in the year of our
Lord eighteen hundred and forty five Be-
tween the Board of Trustees of the Illinois
and Michigan Canal of the first part
and Elisha Granger of the City of Chicago
of the second part Witnesseth, that the
said party of the first part, for the consi-
deration hereinafter mentioned, agrees
to let and lease unto the said party
of the second part, for the term of two
years that is from the twenty sixth day
of June in the year of our Lord eighteen
hundred and forty five until the twenty
sixth day of June A.D. 1847, the tract or
parcel of Canal Land situated in the
County of Cook State of Illinois, and
known and described as follows
to wit: Lots two three and four Old
Crown of Chicago and the House thereon
now occupied by the party of the second
part, and the said party of the second
part, for the use and occupation
of said tract of land, does hereby
covenant and agree to pay and with
the said party of the first part, that
he will pay to the said party of the first
part as rent the sum of two hundred

and twenty five dollars per annum
payable in instalments of one hundred &
thirteen ~~100~~ dollars each respectively on 26th
Dec 1845. on 26th June 1846. on 26th Dec 1846
and on the 26th June 1847, for which said
rent he has executed to the said party of
the first part four promissory notes
falling due at the same time the
rents become due, according to the
terms of this lease,

And it is covenanted and agreed
on the part of the said party of the
second part, that if at any time
he shall fail to pay to said party of
the first part, the rent above stated
as the same becomes due, the said
party of the first part may at his option
declare this lease at an end and the
said party of the second part shall
quit and surrender said tract of
land to said party of the first part.
It is further covenanted and agreed
between the said parties, that in case
of non payment of rent or any part thereof
as the same falls due, according to
the terms of this lease, the said party
of the first part by its agent or attorney
shall possess the right to enter and
distrain ~~the~~ ^{any} property belonging to the
said party of the second part whether
the same be exempt from execution
and distress by law or not, for such rent
and a lien on said property is hereby
created in favor of said party of the first
part for said rent.

Now Elias at his Office in the City of
Chicago on the 14th day of December
instant at 9 O'clock AM of said day
said examination to be continued
from day to day until the same
is completed. the testimony of said
witnesses so taken to be used upon the
final hearing of the above cause
when & where you will appear
& cross examine. Dec 3^d 1850.

George W. Lay Esq
for Complt.

yours to
E. C. Larned &
E. S. Williams

for Defendant

The Depositions of Eli S. Prescott and
Joshua Becker witness produced and
taken pursuant to the notice herunto
attached to be used as evidence
in a suit pending in the Cook County
Circuit Court wherein Elihu
Spranger is complainant and the
Board of Trustees of the Illinois
and Michigan Canal are
Defendants, on the part of the said
Defendants Commencing December
14, A.D. 1850

Present E. S. Williams for Defendants

George W. Lay for Complainant

Deposition of Eli S. Prescott,

Interrogatory 1st What is your age and place of
residence and are you acquainted
with the parties to this suit and how
long have you known them or either
of them?

Answer I am forty years old, reside in Chi-

case have known the complainant
some ten or twelve years have known
the Board of Trustees since their organiza-
tion in 1845.

July 2^d Are you acquainted with lots two three
four and six in Block four Original
Town of Chicago and how long have you
known them, state their location.

Ans^r I have known their ~~lot~~ location for
the last fifteen years, they are situated
on the north side of the river between
Lansalle and Wells streets in a
Block adjacent to the River.

July 3 Who occupied said lot in the year
1836 & 1837, and for what were they oc-
cupied.

Answer I think in the year 1836 a house stand-
ing upon lots three and four was oc-
cupied by the old Board of Canal &
Commissioners they continued to
occupy the building as a Canal Office
until the year 1838 or 1839. I am not
sure which or until they moved the
Canal Office to Lockport.

July 4th What improvements were upon
said lots at the time said Com-
missioners ceased to be occupy said
House for an office, state if you
please the nature, and value of
said premises the improvements and
what particular improvements were
on each lot.

Ans^r There was the building occupied
as a Canal office, the main build-
ing one and a half stories high with

and the said party of the ~~first~~^{second} part further covenants and agrees, that in case default shall be made in the payment of the rent or any part thereof, as above stated, that from the date of such default for and during the time the said party of the second part shall remain in possession of said leased premises thereafter there shall be paid by said party of the second part, double the amount of rent heretofore stipulated to be paid, and the said party of the first part shall have and may use all the remedies for enforcing the collection of the same, given for the collection of rent by this lease. It is further covenanted and agreed on the part of the said party of the second part, that he will not relet said tract of land without the consent in writing of the said party of the first part. It is further covenanted and agreed between the said parties that no presumption of an extension of this lease shall be raised should the said party of the second part remain upon and occupy said tract of land after the expiration of the time for which the same is let to him by the terms of this lease but any such retaining of possession shall be considered a holding over after the determination of the time said lands were let to him and it is

Entered,
Rec'd just payment E. S. P.
Dec 31, 1845

expressly understood that the party
of the second part does not hereby
waive any pre-emption ^{right} he may have
to the above premises or any part thereof.
For the full true and faithful per-
formance of the covenants and stipu-
lations herein contained to be performed
on his part, the said party of the second
part binds himself his heirs executors
and administrators, jointly by these pre-
sents, In Testimony whereof the said
parties have hereunto set their hands
and seals the day and year first
above written.

Board of Trustees of the Illinois Canal
B. C. S. Prescott att^y 30
Elihu Granger att^y 30

Cook Circuit Court.

State of Illinois

The Board of Trustees of
the Illinois & Michigan
Canal, Defendant

at
Elihu Granger
Complainant

In Chancery

Sir,
You will please take notice
that we intend to examine Henry
Shugler, Joshua Kueker & El-
i. Prescott, witnesses to be produced
sworn and examined on the part
of the above named defendant
before Walter Kimball Esq Clerk
of the Cook County Court of Com-
mon Pleas.

rooms on the East & West sides there
was a log stable with a board addition
to it. ^{being} I think the lot two and three
^{with a substantial board fence lot six was enclosed}
and four were enclosed, in common
with one or two other lots on the south
side of the block with post & board fence
at that time. I should think the house
and buildings altogether were worth
from eight hundred to one thousand
dollars. the fence was ~~for~~ worth one hundred
dollars more.

July 5. There were not all of said lot used
and occupied by the officers of the Board
either for a residence, garden or pasture
or how otherwise,

Objected to by Complainant's Solicitor

Ans^r.

I do not know of any of the officers re-
siding there, some of them did sleep
there the building was occupied ge-
nerally for the Canal Office, and the
stable was used for stabling the
Canal ~~Office~~ horses and the enclosure
in which lot six was situated was
occupied as a pasture, the front lots
I am not prepared to say how long
they were used as a garden whether
before or after the Board left the Canal
Office, I cannot say.

July 6

Did you as the agent of the defendants
at any time lease to the said Com-
plainant either of the lots two three
four and six above mentioned
if yes which of them and when
was such lease made,
Objected to by Comp^t's Solicitor.

Answer As agent for the Board of Trustees I came
sometime in the summer or fall of 1845
to the Complainant lot two three and four
July 7 Was said Complainant at the time when such
lease was made in the occupancy of any of
said lots, If so which of them, and for
what did he occupy them,

Answer He was occupying said lot two three
and four, the old Canal office he was
residing in with his family. on lot two he had
quite an extensive building used as a foundry
and a blacksmiths shop one of the buildings
I might have extended on lot three

July 8. Did you at the time of leasing said com-
plainant or about said time hold any
conversation or conversations with said
complainant in reference to his previous
occupancy of said lots. If yes how
many conversations, and what was
said by said Complainant in these
conversations in reference to said
~~previous~~^{previous} occupancy. what if anything
was said by him about the payment
of rent for said lots.

Objected to by Compt. Solicitor

Answer Some time was consumed in ne-
gotiating a lease with Mr. Tranger
his first objection in entering into
a lease was that the rent asked by
me was altogether too high. We had
several conversations on the sub-
ject in which he repeatedly assigned
as a reason why I asked too much
rent, was that the rent he had been
paying was a very small sum compar-

tively, my impression is that he stated it did not cost him more than forty or fifty dollars a year, in cash; one other objection

Mr Granger had was that he was afraid that the lease might in some manner prejudice his pre-emption claim but I understood him to say he would take legal advice on the subject before he executed the lease. He afterwards executed the lease after considerable delay.

Int^g Qth Now you in said conversations refer to said lots two three & four and was the renting of said lots the main subject of conversation, did Granger say to whom he had previously paid rent. If you please to state

Ans^r The subject of renting lots two three and four was the principal topic of conversation in reference to leasing lots two three and four on those occasions I do not remember in terms to whom he said he had been paying rent. The purport of what was said at those conversations was that he had paid rent to the old Board of Commissioners.

Int^{ro} Qth Do you know or can you state any matter or thing which may be of further benefit to said defendants. If so state the same as fully as though you were interrogated as to the contents

Ans^r I am not aware that I can state any thing further.
Cross examination by Complainant's Counsel

Compt

Are you now in the employ of the defendants, If so in what capacity and how long have you been so employed

Ans^r

I have been employed by the defendants as agent of the Canal Lands since the summer of eighteen hundred and forty five and am now employed in the same capacity

Q²

Did not the Board of Commissioners cease occupying the buildings on lots two three four and also lot six, in the spring or summer of the year eighteen hundred and thirty seven,

Ans^r

I cannot say whether it was in the year eighteen hundred and thirty seven or thirty eight my first impression was that they did not go to Lockport until eighteen hundred and thirty eight or thirty nine, but I now remember that they were at Lockport in August 1838.

Q³

You stated in your direct examination that you as agent of the Board of Trustees leased in the summer of 1845 to complainant lots two three and four will you now state whether you were authorized to do so if so by whom, and did you not lease if there was any lease the buildings on the lots and not the lots themselves

Ans^r

The Board made an order at their first session in the spring or summer of eighteen hundred and forty five that the Resident trustee as he was termed at that time should

sw

see that moderate rent were exacted of
occupants of Canal lots and lands.
The resident trustee placed so much of
that business as was in my division
of Canal lands in my charge and by
the advice of the Attorney consulted in
reference to the matter, it was thought
best that I should execute the lease
as agent of the Board. I leased the
entire premises of the property belonging
to the Canal Trustees in lots two three
and four, the lots embraced in the
lease.

July 4 Was not the lease spoken of your direct
examination as made by you with
Granger in writing. If so when is the
same.

ansr It was in writing and was handed by
me to Mr Butterfield the Counsel for the
Board. I have not seen it since that I
remembered. I understood from him
it was lost. There was a duplicate
made and I think it was taken by
Mr Granger.

July 5 Was there not a provision in the said
lease expressly reserving to Mr Granger
all rights to pre-emption to said lots so
leased, when the same should be
for sale.

Question objected to by Defend Counsel
ansr There was a provision some thing of
that character. It provided I think
that Mr Granger's right to a pre-emption
to said property if he had any should
not be prejudiced by said lease.

July 6 Said not the Board of Commissioners
to your knowledge refuse to lease ~~and~~
land, and contend that they had no
authority to lease the same, and while
in authority refuse so to do,
Objected to by depts Council.

Ans I do not remember of having heard
them or their agents speak upon the
subject.

July 7 Said not Mr Granger in the conversa-
tion spoken of in your direct examination
state to you that the Board of Commissioners
always claimed that they had no
authority to lease land and that they
leased only the buildings upon lots two
three and four and that was the
reason why the rent was so low.

Ans I have no remembrance that he
alluded to the subject, the first time
I heard that idea was in a cross
question put to one of the Mr Kuckers.

July 8 At the time of the pretended leasing
made by you as before stated was
there not several notes to be signed
by Mr Granger before the lease
was consummated, and did not
Mr Granger state that after seeing
his Counsel, if his Counsel thought
he Granger was bound to lease
he would then execute the notes
and hand them to you.

Ans My present recollection of the
history of that matter is that there
were four notes drawn up to be
executed for the payment of the rent.

my impression is that Mr Granger
signed the note at the time he signed
the lease and as security was required
in all cases Mr Granger took the note
away to get some persons to sign them
with him; my impression is that he
stated he had taken Counsel in relation
to all the objections to leasing and that
the last one was removed when the pro-
vision in relation to presumption was
inserted in the lease.

Int 9th said that Mr Granger stated before in
the conversations spoken of in your
direct examination that he was entitled
to presumption to lots two three & four
and the only question to be submitted
to his lawyer was whether he Granger
was bound to pay rent at all, and did
not Mr Granger meet you the next day
after the pretended leasing and state
to you that he was advised by his Coun-
sel that he was not bound to pay rent
and that therefore he would not
execute the note.

Objected to by direct Counsel.

Answer I remember that a prominent subject
with Mr Granger in our conversations
before the lease was executed was his
presumption claim. He stated he
thought he was entitled to a presumption
to said lots. I do not remember that
he said anything whether the only
question to be submitted to
his lawyer was whether he was bound
to pay rent, or that he was advised by

his Counsel that he was not bound to pay rent, and on that account refused to execute the notes,

Int 10 Look upon the writing now shown you marked exhibit "A" purporting to be a lease from the Board of Trustees ~~of the~~ to Elmer Granger and state whether that is the duplicate lease heretofore spoken of by you as having been delivered to Granger and whether the same was executed by you.

Ansⁿ This is one of the two leases made out of which Granger took one. It was ~~sent~~ executed by me as agent of the Board. Direct examination resumed. Was any rent paid to you as the agent of the defendants by complainant for the premises specified in the lease referred to in your cross examination? If so when and how much? Objected to.

Ansⁿ I see by an endorsement on my hand writing on the back of the lease marked "A" that the first half years rent of one hundred and ~~thirty~~ dollars & fifty cents was paid on the thirty first day of December eighteen hundred and forty five five days after it ~~was~~ fell due, and I will add it was paid without protest or objection.

Int. Have you received from complainant at any time since the time last mentioned any rent for said premises? If so how and when was it paid and what is the amount?

Objected

Objected to,

Answer

I have received 300 sent directly from the Complainant but upon suits obtained against him for rent that accrued after that time, I have received various sums at different times from the officers of the law, I do not remember the amount but think some six or seven hundred dollars.

I subscribed sworn to before
me this 14th day of December } E. S. Smith
A.D. 1850 }
W. Kimball, Clerk

Examination of Witnesses resumed Tuesday
December 17th A.D. 1850,

Exempt as on the 14th Inst.

Reposition of Joshua Rucker,

Interrogatory 1st What is your age & occupation and residence, and are you acquainted with the parties to this suit,

Answer My age is between sixty four and sixty five years, I am a Clerk by occupation reside in Chicago and am acquainted with the parties to this suit.

Interrogatory 2^d Are you acquainted with lots two three and four and six in Block four in the original Town of Chicago and how long have you known them,

Answer I believe that is the number of the Block and I have been acquainted with the lots since the year eighteen hundred and thirty seven

Interrogatory 3^d Who occupied said lots when you

first became acquainted with them and
for what were they occupied,

Ans^r Part of lot three & four were occupied for
a Canal Office, a part of lot four was occu-
pied as a stable a part of lots two and
three were occupied by Col. Manning
the secretary of the Board as a Garden
when I first knew them,

July 4th How long were said lots occupied
as you have mentioned above, and who
if any one entered into possession when
said lots ceased to be occupied for
Canal purposes,

Ans^r They were occupied in the same way
until the latter part of November in
the same year, when the Books of the
Office were removed to Lockport about
that time Henry Shuckler leased the
premises of the Board of Canal Com-
missioners and moved into the house,

July 5th Were you present when said leasing was
made and what was leased at said
time to said Shuckler and was the whole
or if not, what part & what if any thing
was leased.

Objected to by Compt^r Solicitor

Ans^r I do not think I was present at the
leasing, I was at Lockport at the time I
had it from the acting Commissioner
and my son Henry Shuckler, I under-
stood from General May the acting
commissioner and my son, that he
had leased the whole premises lots
two three & four all lying enclosed
in a board fence, Lots two three & four

are the premises to which I refer, I know nothing of Henry S. Rucker leasing lot six
July 6. What portion of said lot was used by
said H. S. Rucker and how were they
used, do you know of his paying rent for
said premises, If so how much, and
to whom, did he make valuable im-
provements upon said lot or buildings
If so what and when,

Objected to by Compt. Ed:
Answer. Lots two three and four were used by H.
S. Rucker, lot three and four were partly
used a building being on them and lot
two a part of three as a garden a part of four
as a yard, I do not know how much
rent he paid, I know H. S. Rucker did
services to the Board of Commissioners
the amount he was to pay for rent I have
heard General Fry say but I do not
recollect how much he was to pay
he made some improvements but I do not
know to what amount not very valuable
he made some changes in the rooms

July 7. When did H. S. Rucker leave said
premises, did anyone else enter into
the same upon his leaving them, if so
why?

Ans. I cannot say positively when I think
it was some time in eighteen hundred
forty one I believe Mr. Granger went into
the premises about the same time,

July 8. Have you ever had any conversation
or conversations with Complainant in
reference to his entry into said premises
If so when and what was said

if any thing by said Complainant as to
the right by which he held possession
of said premises,
Objected to by Compt. Solr.

Ans^r.

I did have a conversation with Mr
Granger on that subject about the time or
shortly after his going on the premises, I un-
derstood him to say he had leased the
premises of the Canal Commissioners,

July 9

What if any thing did Granger say in
reference to the use which he was agreeing
to put said premises or any part thereof
for that use did he put a part of said lots
immediately after entering upon the
same in said conversation,

Objected to by Compt. Solr.

Ans^r.

I do not recollect that he told
me what use he was agreeing to put it
to, I believe he put a building on a part
of the lots,

July 10

What improvements were upon said lot
two three and four and six when you
first became acquainted with these
same, where were they situated &
what was their value please state
particularly

Ans^r.

The Canal Office as I have already
stated with the Barn & stable room
pick apart of lot three and four lot
two as before stated was occupied
as a garden all three of which were
enclosed in a high board fence as
also lot six was also enclosed in a
high fence with one or two others,
I suppose that the improvements were

worth from five hundred to one thousand dollars at that time. I should think a thousand dollars.

Sub 11th What if any thing was said by Complainant in the conversations to which you have referred about the terms of the leases, objected to by Comp^y Sol^r.

Ans^r I do not remember what was said on that subject.

Sub 12 Do you know or can you state any matter relating to the further benefit or advantage to the defendants? If yes, state the same fully.

Ans^r I do not know recollect any thing particularly.

Cross Examination by Complainant's Solicitor

Ques^t State where you resided during the year eighteen hundred and thirty seven, and how long did you reside there.

Ans^r I ~~resided~~ came to Chicago in March eighteen hundred & thirty seven and moved to Lockport in December of the same year and resided there until the spring or summer of eighteen hundred and forty six.

Sub 2^d Do you state from your own knowledge in your answer, to direct Interrogatories that Henry Shuckler ever set out or applied any Rent for the Canal Office or premises.

Ans^r I know that Henry Shuckler did services for the Canal Com^y.

missioners and understood from him
and then that it was to be applied for
the rent of said premises,
subscribed & sworn to before Joshua Rucker
me this 17th day of December
A.D. 1850.

W. Kimball Clerk

State of Illinois }
County of Cook } I, Walter Kimball Clerk
of the Cook County Court of Common Pleas
within and for the County & State aforesaid
do hereby Certify that the foregoing depositions
of Elisha S. Prescott and Joshua Rucker
were sworn to and signed by the said
deponents before me, and in my presence
and that the said depositions were
taken by me on the fourteenth and seven-
teenth days of December A.D. 1850 at my
office in the City of Chicago in said County
and State aforesaid

Given under my hand & seal of
said Court this 30th day of January
A.D. 1851

Walter Kimball,
Clerk

And afterwards to wit on the 2^d day of April in the year last aforesaid there was filed with the Clerk aforesaid the following depositions to wit:

Elisha Granger

The Board of Trustees
of the Illinois and Michigan
Canal

In Chancery

The deposition of
William B. Ogden a witness produced sworn
and examined on the part of the said com-
plainant taken by agreement of parties to be
used in evidence in a suit pending in the
Cook County Circuit Court between the
above parties,

Present George W. Sag Solicitor
of Complainant

E. S. Williams Solicitor for Defendant

Interrog 1st Are you acquainted with the parties
to this Suit.

Ans. Yes

Interrog 2. Are you acquainted with lots two three
and four and six in Block four Original
Town of Chicago and if so who was in the
possession of them in the year eighteen
hundred and forty one,

Ans. My recollection is that Elisha Granger
went into the possession of said lots in the
year eighteen hundred & forty one. I know
said lots.

Interrog 3^d Do you know the circumstances in relation
to the said complainants going into possession
of said premises, and any conversations in re-

Ans

lation to the same, if so state the same
Question objected to by Defendants Counsel
Mr. Granger called on me to get a place
for a Foundry in the Spring summer or fall
of the year eighteen hundred forty one and
I suggested to him to take possession of
and occupy the above lots as Canal lots
as others did, and he did so and has occu-
pied them ever since. I have a recollection
of conversing with Mr. Argo the acting Com-
missioner in relation to leasing the lot to
Mr. Granger and he replied he did not lease
Canal lots.

July 3

Who owned said lot and under whose
charge were they at the year eighteen hundred
forty one,

Ans

Question objected to by Afters Counsel
They belonged to the State of Illinois
& were a portion of the lands donated to the
State for the construction of the Illinois
& Michigan Canal by the Government
of the United States and were under the
charge of the Board of Commissioners
of said Canal.

July 4

Who was acting Commissioner during
the year eighteen hundred and forty
one and how long did he continue
so,

Ans

Isaac Argo, and he continued so
till the year eighteen hundred and forty
five

July 5

What conversations if any did you
have with General Argo at the time
or about the time the said com-
plainant went into possession of said

lots in relation to the Complainant's occupancy of them, if so state what was said by said Jry.

Objected to by Jyts Counsel.

Ans^r

I think I spoke to him about leasing them to Granger, and he replied it was not their practice to lease them any impression is that he made no objection to his occupying them.

July 6th

As you know, and if so state what was the custom and rule of the Board of Commissioners in relation to the occupancy of lots and whether they leased them or not.

Ans^r

Question objected to by Defendants Counsel. They allowed parties who chose to occupy them, but did not give leases I think.

July 7th

As you know, and if so state what buildings were put upon said lots by said Complainant and how were they placed upon the ground, were they placed upon blocks or not.

Answer

They were placed temporarily in the ground as buildings generally were at that time, they consisted of a Boarding, & Blacksmith's shop, and subsequently a large Foundry and Machine Shop.

July 8

Look upon paper marked exhibit A now shown you and state if you are acquainted with the hand writing of the same and if so whose it is.

Ans^r

I am acquainted with General Jyts hand writing and believe the paper to have been written by him, and signed by Oliver Granger.

Drop Interrogatories by A. C. Counsel
Ques Int 1 Do you know of your own knowledge, or
by Announcements with anyone of the Board
of Commissioners, that they had surveyed lands
lots or lands.

Answer No, That they did not generally lease town
lots I think.

Int 2 Were the Buildings of which you have
spoken erected by Granger prior or sub-
sequent to the 1st of December 1842,

Ans I think the Old foundry & Blacksmiths
shop were erected by Granger prior to Decem-
ber 1st 1842, The other Buildings were
erected subsequent to that time

W. B. Ogden

Subscribed & sworn to
before me this 29th day
of March 1857,

W. Kimball Clerk

State of Illinois }
County of Cook } J. Walter Kimball
Clerk of the Cook County

Court of Common Pleas within and for
the County & State aforesaid do hereby
certify that the foregoing deposition of
William B. Ogden was sworn to and
signed by the said deponent before
me, and in my presence and that
the said deposition was taken by me
on the County Clerk ninth day of March
A.D. 1857 at my office in the City of Chicago
in the County & State aforesaid.

In Witness Whereof I have hereunto
set my hand & the seal of said

301 3
Court this 29th day of March
AD 1851,

Walter Kimball, Clerk
And attached to the said deposition
was the following paper writing marked
"A" which is in the words and figures as
follows to wit:

Jacob Fry acting Commiss-
ioner of the Illinois and Michigan Canal
is hereby authorized and requested to take
out of the Bank money due on Section forty
six of said Canal and any other money
due for work on said section the sum of two
hundred dollars which sum is for rent of the
Old Canal Office in Chicago up to the first of
November 1843, Lockport Nov 11th 1843,
Elisha Granger,

And afterwards to wit on the fourth day of
April in the year last aforesaid there was
filed with the Clerk of the Court aforesaid
the following paper writing which is in words and
figures as follows to wit:

Cook County Court of Civil & Chancery
Feb'y Term AD 1850

The Board of Trustees of the Illinois
and Michigan Canal

Elisha Granger

Plaintiff

vs
Defendant

the said plaintiff by their Attorney and the
default of the said defendant having been
heretofore entered in this cause. It is
ordered that a Jury come to inquire of the

said Plaintiff damages, And thereupon came
the Jurors, a Jury of good and lawful men
to wit J. B. Meloy, M. Aymar, M. Staimond
Thomas Corney, C. J. Bogard, J. O'Sullivan, Edward
Gardin, John Ward, Wm Chappell, J. L. Carpenter,
James King and John Mc Grange, who
being duly sworn elected tried and sworn well
and truly to enquire of the said Plaintiff
damages herein, after hearing the evidence adduced
and instructions of the Court, to consider of their
verdict, and afterwards came into Court and
say one of the Jury assess the plaintiff damages
to the sum of three hundred and forty dollars
and forty seven cent.

Therefore it is considered
that the said Plaintiff do have and recover of the
said defendant their damages of three hun-
dred and forty dollars and forty seven cent in
full as aforesaid assessed and also their costs
and charges in this behalf expended and have
execution therefor,

State of Illinois }
County of Cook } J. M. Humboldt Clerk
of the Cook County Court of Common Pleas
within and for the County & State aforesaid do
hereby Certify that the foregoing is a true copy of a
Judgment entered of Record in said Court on the
twenty eighth day of February A.D. 1857 during the
February Term of said Court at the suit of
Trustees of the Illinois & Michigan Canal vs
John Grange,

On testimony whereof I have hereunto
set my hand and the seal of said Court
at Chicago this 30 day of April A.D. 1857
J. M. Humboldt Clerk

And afterwards it was on the fourth day of April
in the year last aforesaid there was filed in the
Clerks Office aforesaid the following paper writing
in the words and figures as follows to wit;

Cook County Court of Civil Cases
Feb'y Term A.D. 1857,

Trustees of the Illinois & Michigan Canal

Eliza Granger

Assumpsit

And now again came the said parties by their
Attorneys, and the Jury heretofore empanelled
in this cause also came into Court, and say
are of the Jury find the issue for the plaintiffs, and
assess their damages to the sum of one hundred
and forty seven dollars fifty cents.

Therefore it is considered that the said
Plaintiffs do have and recover of the said defen-
dant the said sum of one hundred and
forty seven dollars and fifty cents their
damages aforesaid in form aforesaid
assessed, and also their costs and charges
by them in this behalf expended and
have execution therefor;

State of Illinois
Cook County

I Walter Kimball Clerk
of the Cook County Court of
Common Pleas within & for the County & State
aforesaid; do hereby Certify that the above is
a true copy of a Ind'g & verdict entered of
Record in said Court on the eighteenth
day of February A.D. 1857, at the Feb'y Term of
said Court at the suit of Trustees of the Illinois

& Michigan Canal vs Elihu Granger,
In Testimony Whereof I have hereunto
set my hand and the seal of said Court
this 3^d day of April AD 1857,
Walter Kimball,
Clerk.

And afterwards to wit on the same day and
year last aforesaid there was filed with the
Clerk of the Court a certain other paper writing
which is the words and figures as follows to wit:

Trustees of the Illinois & Michigan Canal	}	Covenant
Elihu Granger		

This again: from the parties
by their Attorneys and also being joined herein, by
agreement of parties this case is submitted to the
Court for trial without the intervention of a jury
And the Court having after hearing the evidence
adduced and argument of Counsel finds the
case for the Plaintiff and assesses his damages
at the sum of Three hundred and fifty two
dollars and twelve cents,

Therefore it is considered
that the said Plaintiff do have and recover
of the said defendant their damages of
Three hundred and fifty two dollars and
twelve cents in for an aforesaid adjudged
to them together with their costs and
charges. By them about their suit in this
behalf expended and that they have ex-
ecution therefor,

State of Illinois }
County of Cook } Walter Kimball
Clerk of the Cook County
Court of Common Pleas within & for the County
aforesaid. Do hereby Certify that the above
is a true copy of a ^{cert} ~~cert~~ ^{copy} ~~copy~~ entered of record
in said Court on the twenty sixth day of
October A.D. 1847, at the October Term of the
Cook County Court for the year aforesaid
in the case of "Trustees of the Illinois and
Michigan Canal, vs Elisha Granger
On Testimony Whereof I have here-
^{cert} ~~cert~~ ^{copy} ~~copy~~ ^{sent} ~~sent~~ ^{unto} ~~unto~~ ^{at my hand} ~~at my hand~~ the seal of said
Court at Chicago this 3rd day of April
A.D. 1857.

Walter Kimball,
Clerk.

And after reads to wit on the same day and
year last aforesaid there was filed with the
Clerk of the aforesaid Court a certain notice
and endorsement thereon as follows to wit:
Cook Circuit Court

The Board of Trustees of the
Illinois and Michigan Canal } In Chancery
vs

Elisha Granger

vs the above named Complainant

vs.

Take notice that on the 24th day
of June instant at 11 O'clock A.M. we shall
proceed to take the testimony of Henry L.
Rucker, Joshua Rucker and Elias S. Pres-
cott witnesses to be produced sworn and

examined on the part of said defendants &
whose testimony when taken is to be used in the
above entitled cause upon the trial thereof and
Witnesses to be examined before Louis A. Board
Clerk of the Circuit Court at his Office
in the City of Chicago said examination to
be continued from day to day until the cause
is closed when where you will appear and
cross examine.

To Elihu Granger
Complainant

Yours ve,
William Butterfield
for Deft

State of Illinois }
Cook County } Austin Butterfield Jr being
duly sworn deposes says that he did on the 15th
day of June A.D. 1850, serve a copy of the within
notice upon Elihu Granger the said defendant
by leaving the same with him at his office in
the City of Chicago.

Subscribed & sworn to before me } Austin Butterfield Jr
this 24th day of June A.D. 1850 }
L. A. Board, Clerk

And also the following depositions which
are in words and figures as follows to wit.

The Depositions of Henry Rucker, Joshua
Rucker and Eli S. Prescott, of the County of
Cook in the State of Illinois witnesses of
lawful age produced sworn and examined
upon their Corporal oaths on the 27th day
of June 1850 (the examination having been
postponed from day to day from the twelfth fourth
of June 1850, by agreement of parties) at the

Office of Salt Board Clerk of the Circuit Court
of said County of Cook, by me the said Board
by virtue of the notice hereto attached, said
depositions taken as evidence in a certain
suit and matter in controversy now pending
and undetermined in said Circuit Court wherein
Elisha Granger is complainant and the Board
of Trustees of the Illinois and Michigan
Canal^{and} defendants, on the part of the said
defendants.

The said Henry S. Rucker being by me
first duly sworn to testify truth in relation
to the matters in controversy between the
said parties, testified and deposed as fol-
lows:

Interrogatory 1st. What is your age occupation residence
and are you acquainted with the parties
to this suit

ans^r I am thirty nine years old, am County Judge
reside in Chicago. I believe I know all the
parties to this suit.

Int^y 2 Do you know lots 2, 3, 4 & 6 in Block 11
Original Town of Chicago. If yes how long
have you known them.

ans^r I know said lots, have been familiar with
them for the last twelve years.

Int^y 3 Who occupied said lot when you first
knew them and for what were they occupied

ans^r Lot 3 was occupied by the Canal Office and
part of lot 4 by the Canal Office Stables & they
were all under enclosure and were com-
piled by some of the Officers of the Canal.

Int^y 4 State if you please in what years the Canal

Officers occupied said lots and when they ceased to occupy the same,

Ans. I do not know when they first commenced the occupancy of the lots they were occupying there when I first came there in August 1834 and left in November. I think of the same year

July 3rd What improvements if any were then upon said lots in August 1834. State particularly the kind & extent of said improvements and their value in your estimation (Objected to by Complainant)

Ans. The Canal Office Building was on lot 3 I believe it consisted of the main Building a story & a half high & two wings one story each the stables used by the Canal Officers were on the rear of lot four & consisted of a Log House and a Board addition to it, there was a Board fence around the whole of Block 4 excepting I think lot one, with a division fence running through the block East & West. I think there was also a root house attached to the rear of the West Wing these are all the improvements which I recollect now I should think said improvements were worth at that time from \$800 to \$1000.

July 6. Who entered into possession of said lots when they ceased to be used ^{by the Canal} Officers,

Ans. I went in soon after whether immediately upon them leaving I don't recollect. I think they had been but a short time

July 7th Did you occupy said premises as a tenant

if so under whom did you hold & was there
any written lease for said premises (Objected to)
ansr. I went in & occupied as a tenant under the
Canal Commissioners, I don't recollect whether
there was any written lease or not, I understood
from Mr. McKim the then Pres^t of the Board
about that time that the board of Commissioners
did not feel themselves authorized to lease
lots and so far as I know that custom they
were not then in the habit of doing so, I do not
recollect of having information on that subject
from any other members of the Board.

Int 3 Did not Mr Granger state in the con-
versations referred to in the your direct
examination that he had requested the
Board to grant him a permit for said lot
and that they had refused to give him a
permit, alleging that they had no legal au-
thority to grant the same. (Objected to)

Ans. I do not recollect

Int 4 Did you cultivate or improve lot two,

Ans. I did.

Int 5 Did not Mr Granger in the conversation
referred to in the your direct examination
state that he had ~~not~~ it in contemplation
to buy the lots of the State when they should
be offered for sale. (Objected to)

Ans. My recollection on that point is too indistinct
to be at all positive. I have an impression
that he said something about the probability
of his purchasing the lots at some time.

Int 6 Did not Mr Granger state in such conversation
that he had only leased the house & building

of the Comrs. & if so did he specify any period
for which he rented the same,
Ans. I did not understand him that he had
rented the buildings only. I know that he spoke
of the occupancy of the lots in connection with
the buildings. I cannot speak with any certainty
as to the term which he was to occupy them,
July 7 Did he not enter into the same with the above
situation & understanding as stated in the
Conversations referred to, of remaining more
than one year in the occupancy of the premises
Ans. I understood that he was intending to occupy
for more than one year,
July 8 Have you any knowledge whether Mr Granger
had a verbal or written lease from the com-
missioners if so state,
Ans. I have no knowledge on that subject,
July 9 Did you have any objections to Mr Granger
coming into possession of the premises,
Ans. I had no personal objections, after ascertaining
that he had permission to come in from the
Board of Commissioners,
July 10th What improvements if any did Mr
Granger make on lots 2, 3, 4, & 6 in Block
4 referred to in direct examination prior
to December 1842, state and specify the
said & the improvements as made on
each lot,
Ans. Mr Granger commenced improving &
building upon the lots immediately on
taking possession & before I left the premises
he built a Root House on Lot 3 & it may
be partly on lot 4 during the summer of 1841

He also commenced a building for his foundry
& finishing shop & work shop principally on
lot 2 & partly on lot 3 & commenced work
in the same. the same season he also erected
a blacksmiths shop on lot 2, in which he has
his hands at work. there was a well sunk in
the first mentioned building connected by
an aqueduct with the river, for the supply
of water to the engines. I think he cultivated
during that season parts of lots two & three
the next season during the year 1842 & prior
to December, he added some fencing in front
of lot 2, & cultivated lots 2 & 3, & I think part
of lot four, I think there was some further
additions or repairs to the stable & improve-
ments were made on lot 6 that I recollect
lots 5 & 6 being in the same enclosure were
used & occupied by Mr Granger during those
years for keeping & feeding his cattle & horses.

Q. Did you make any permanent improve-
ments on any of said lots & did you improve
the buildings or cultivate any portion of the
land I objected to?

A. I made improvements but they were
principally in repairs on the buildings &
stables. I should think expending one
hundred & fifty dollars in value. I cultivated
parts of lots 2 3 & 4.

Q. When did you give up the possession of
said premises & who went into possession of
the same after you left?

A. I turned out & gave up possession sometime
in the summer or fall of 1841. Mr Granger

month or before I left the premises & repaid them afterwards.

Intro^d Did you before Mr Granger the Compt^r in this suit entered into possession of said premises or about that time hold any conversation with said complainant about his getting the possession of said premises, if you please state the same fully (objected to)

Ans^r I had one or more conversations with Mr Granger in relation to his coming into the occupancy of the premises. I cannot recollect all the particulars, he informed me that he had made arrangements with the Commissioners or with Genl Fry don't recollect which by which he was to enter into the occupancy of the premises. This was before he came in. I saw Genl Fry in relation to it and saw Mr Granger afterwards told him he could take possession I think Mr Granger told me the terms on which he took it, but don't recollect what they were.

Intro^d Did Mr Granger say anything about paying the rent for said premises to the Commissioners (objected to)

Ans^r I understood him that he rented the premises and that I think he told me the amount per annum. I am not positive whether the rent was mentioned for the house or for the whole premises.

Intro^d Was Genl Fry at that time acting Commissioner? If not what was his occupation & connection with the Canal business

Ans^r he was acting as Commissioner,
Int³ Did Mr Granger in either of said communications to which you have referred state the purpose for which he intended to use & occupy said premises if so for what. (Objecting)

Ans^r He did state to me the purposes for which he intended to occupy the premises. He said he wanted to reside there with his family, board his hands & carry on the foundry business & intended to erect buildings for that purpose.

Int⁴ Do you know of any other matter or thing which will be of advantage to the defendants in this suit if so state the same fully as if you were interrogated in relation thereto.

Ans^r I am not aware of anything further, after I had satisfied myself by conversation with Genl Dry & Mr Granger that he Mr Granger that the Granger came into possession under the sanction of the Board. I paid no further attention to the matter.

Cross examined by Complainant
Int¹ Did you not when you leased the premises of Canal Com^rs as stated in your direct examination understand that they leased to you only the house & houses situated upon these lots & not the lots themselves.

Ans^r I understood that they leased all the premises but that the rent charged referred more particularly to the buildings than the lots.

Int² Were you informed by the Canal Com^rs or owners many of them at or about the time that

any subsequent time you took your lease
that they did not lease lots or that they had
no authority to lease lots, or that it was not
their custom (objected to by defts)

July 11th Did Mr Granger use & occupy any of
the Buildings for his residence during said
years 1841 & 1842,

Ans He occupied the building that I have spoken
of as being the Canal Office for his residence for
himself & family & boarding his horses during
said years & for some considerable time after
wards,

July 12 Has Mr Granger continued in the use
& occupation of the premises & the building
spoken of from the year 1841 until May 1849
and he has been in the use & occupation of them

Direct examination Resumed

July 15 Were lots 2, 3, 4 & 6 above mentioned
in the same enclosure with the Canal office
when you rented the same in 1837, & did
you during the time you occupied said
office use & occupy each of said lots,
(Objected to)

Ans Lots 2, 3, 4, 5, 6 & 7 were all enclosed
under one fence with a division fence
running East & West dividing the Block
nearly equally between them in this divi-
sion was a gate connecting the North
& South sides of the Block, soon after I
took possession lot 7 was fenced off leaving
the other lots under one enclosure with
the division fence between them as aforesaid
I used & occupied all of the lots except

7, after it was fenced off
July 16 What was the kind of fence, was it around
said lots,

Ans. An open board fence,

July 17, Did you understand in the conversation
or conversations ~~which~~ ^{with} said Granger of
which you have spoken in your answers
to former interrogatories from him, that the
premises leased to him by the Comrs in-
cluded all the lots which had been used
by you & which were embraced within
the fence of which you have just spoken,
Objected to?

Ans. I understood that he wanted to know all
the premises I occupied, as to any tech-
nical leasing of any portion of the premises
I have no distinct recollection. I was in
possession somewhat in the capacity of an
Agent of the Comrs and holding possession
further was mainly inquisitive before letting
Mr Granger into possession as to whether
he came in by authority of the Comrs.

Cross examination resumed,

July 13, Did not the Com & Officers reserve
when they gave you possession of the premises
the right to use the lots & did they reserve
the lots, whenever they had occasion du-
ring your occupation,

Ans. They reserved the privilege of stabling their
horses & letting them run in lots for six and
seven whenever they were in town & did so
use them a few times,

H. L. Rucker,

By agreement of Complainant & Defendants
Solicitor the further examination of the witnesses
herein is adjourned till Friday July 5th AD 1850,
at 11 O'clock A.M.

Saml. Bond Clerk of
Cook Circuit Court,

State of Illinois }
Cook County p }

Saml. Bond Clerk
of the Circuit Court of Cook
County in the State of Illinois do hereby certify
that previous to the examination of the said
Henry S. Rucker as a witness in the said
suit between the said Eliza Granger Com-
plainant and the Board of the Trustees of the
Illinois & Michigan Canal defendants, he
was duly sworn by me to testify the truth
in relation to the matters and in controversy
between the said complainant and defen-
dant so far as he should be interrogated
~~therein~~ concerning the same, that the said
deposition was taken at my office in Chicago
in said County of Cook on the 27th day
of June 1850, and that after said deposition
was taken as aforesaid the interrogatories
and answers thereto as written down
were read over to the said witness & that
thereupon the same were signed by said
deponent before me, at the place & on the
day & year aforesaid,

Certified under my hand and
Seal & the seal of said Court at Chicago the 24th
day of March 1851.

Saml. Bond
Clerk

And afterwards to wit on the twentieth day of May
A.D. 1837 the same being one of the days of the
May term of said Circuit Court in the year
aforesaid the following among other proceedings
were had to wit,

Elihu Granger
vs
The Trustees of the Illinois
& Michigan Canal } In Chancery

This day again came
the parties by their Solicitors and the Court having
heard this Cause and being now fully advised as
to the matters in controversy between the said
Complainants and defendant, and the questions
of law arising thereon Doth order adjudge
and decree that the said Complainant's Bill
be dismissed, to which decision of the Court
the Complainant excepts,

Therefore it is Considered that
the said defendant recover of the said Com-
plainant, their Costs and Charges by them
about this defence, in this behalf expended
and have Execution thereof.

And afterwards to wit on the 15th day of May
being of the same May term the following
among other proceedings were had in said
Court to wit,

Elihu Granger
Trustees of Ill. & Michigan Canal } In Chancery

This day came the
said Complainant by Messrs Arnold Lay
his Solicitors, and prays an appeal in this
Cause to the Supreme Court of this State which

is allowed upon the said Complainant's entering
into and filing Bond in the penal sum of four
hundred dollars within two days with James
H. Woodworth and William Harding as securities,

And afterwards to wit on the 19th day of
May 1831, the Complainant filed his appeal from
his said which is as follows,

Know all men by these presents, That we
Elihu Granger, James H. Woodworth and William
Harding all of the Cty. of Chicago County, of Cook
and State of Illinois, are held and firmly bound
unto the Board of Trustees of the Illinois and
Michigan Canal in the penal sum of four hun-
dred dollars current money of the United States,
for the payment of which well and truly, to be
made we bind ourselves, our heirs, executors,
and administrators jointly, severally & firmly,
by these presents, Sealed with our Seals and dated
this 19th day of May A.D. 1831,

The Condition of the above obligation is
such that whereas the above named Elihu
Granger has prayed for and obtained an appeal
to the Supreme Court of the State of Illinois
upon his entering into Bond in the penal sum
of four hundred dollars with James H. Wood-
worth & William Harding as security, from a
Decree of the Hon. Hugh L. Vickrey Judge
of the Cook County Circuit Court in Chancery
Sitting made on the twelfth day of May
A.D. 1831 in a Cause in which said Elihu
Granger was Complainant and the Board
of Trustees of the Illinois & Michigan Canal
are defendants. Now if the said Elihu
Granger shall duly prosecute his said appeal
with effect and shall pay all costs and damns

get that may be awarded against him on said
appeal in the said Supreme Court, that the above
obligation to be void otherwise to be and remain
in full force and virtue
In presence of

E. Granger Secy
J. N. Woodworth Secy
William Harding Secy

State of Illinois,
Cook County, 321

I Louis D. Howard
Clerk of the Circuit Court of the County of
Cook in the State of Illinois do hereby
Certify that I have compared the foregoing
pages with the Original records and files now
remaining on file in my office and that
the same are a full true and perfect
transcript of the said Records and files and
are a true copy of the same.



In testimony whereof I have
hereunto set my hand and affixed
the seal of said Court at Chicago
in said County, this 15th day
of June A.D. 1831

L. D. Howard Clerk

Cook County
Elihu Granger
vs.
Board of Trustees
of Ill. & Mich. Canal.
Record.

Filed June 16th 1852.
V. Leland Clk.
By P. H. Leland Depy.

90
25
40
180
225

AT A SUPREME COURT, begun and held at Ottawa, on Monday, the *fourteenth* day of June, in the Year of our Lord one thousand eight hundred and fifty-*two*, within and for the Third Grand Division of the State of Illinois,

Present, the Honorable Samuel H. Treat, Chief Justice,

" " John D. Caton, Associate Justice,

" " Lyman Trumbull, " "

Tuesday August 3^d 1852.

Elihu Granger *vs.*

The Board of Trustees of the Illinois & Michigan Canal } Appeal from Cook.

On this Day came again the said parties, and the Court having diligently examined and inspected, as well the Record and Proceedings aforesaid, as the matters and things therein assigned for Error, and being now sufficiently advised of and concerning the premises, for that it appears to the Court now here, that neither in the Record and Proceedings aforesaid, nor in the rendition of the *decree* aforesaid, is there anything erroneous, vicious, or defective, and that that record is no Error: **THEREFORE**, it is considered by the Court that the *decree* aforesaid be affirmed in all things, and stand in full force and effect, notwithstanding the said matters and things therein assigned for Error. And it is further considered by the Court, that the said *appellant* recover of and from the said *appellant* *their* costs by *them* in this behalf expended, and that *they* have execution therefor.

J. LORENZO LELAND Clerk of Supreme Court of the State of Illinois, do hereby certify that the foregoing is a true copy of the final order of the said Supreme Court, in the above entitled cause, of record in my office.

IN TESTIMONY WHEREOF, I ^{have} hereunto set my hand and affixed the Seal of the said Supreme Court, at Ottawa, this *sixth* day of *May* in the year of our Lord one thousand eight hundred and fifty-*three*.

J. Leland Clerk of the Supreme Court.
By P. K. Leland Depy. Clk.

Elihu Granger — }
vs. } Appeal from Cook
The Board of Trustees of the }
Illinois & Michigan Canal }

Opinion of the Court by Just Chief Justice.

This was a suit in Chancery brought by Elihu Granger against the Board of Trustees of the Illinois and Michigan Canal. The bill was filed in May 1849, & alleged in substance, that complainant in May 1841, took possession of lots two, three, four and six, in block four, in the original town of Chicago, and has ever since had the exclusive possession of the same; that during the Spring and Summer of that year, he built a root house on lots three and four; also a large wooden building on lots two and three & placed therein an engine & other machinery & put in operation a foundry and finishing shop; also a building of wood on lot two, and put two forges therein & has since used it as a blacksmith's shop - That during the year 1841, he put lots three and four in cultivation, and has since continued to cultivate the same, that he enclosed lot six which he has since used as a yard for horses, & for stacking hay & piling lumber, that he took up his residence on lots three and four in 1841, & resided there till 1847, since which time he has used the

dwelling house standing thereon as a boarding house for his workmen; That prior to December 1842, he built a large out building on the lots, an addition to the stable, an out door ursa, an aqueduct to the root house, repaired and painted the dwelling house, added a portico and kitchen thereto, made new fences, & sunk a well and constructed an aqueduct from the river to the same; That he entered on the lots with the intention of becoming the purchaser thereof, & has expended large sums of money in making permanent improvements thereon; That the lots form a part of the lands granted by the United States to the State of Illinois, to aid in the construction of the Illinois and Michigan Canal & were included in the grant made by the State to the Board of Trustees & have been appraised at the sum of \$11,450; That complainant has the right to purchase the lots at their appraised value, by virtue of the 13th section of the act of the 21st of February 1843, and the 2nd section of the act of the 4th of March 1843; That on the 10th of May 1849, he made application to the Trustees to purchase the lots, presented full proof of his right of presumption, and tendered the amount of the appraisement, but the Trustees refused the application, & are about to sell the lots at public auction; and the bill prays that the Trustees may be compelled to convey the lots to the complainant, on payment of the appraised value. An injunction was obtained restraining the Trustees from otherwise disposing of the lots. The answer admits that the lots are

a part of the canal property, and were
appraised at the amount stated; That
complainant entered into possession of
the lots in 1841, & has since retained
possession of the same, & made improvements
thereon; That he applied to purchase the lots,
& offered to pay the appraised value & that
the application was refused, & the Trustees
intended to sell the lots at public auction;
The answer alleges that in the year
1835 the Canal Commissioners at an
expense of \$2500, enclosed the lots with a
substantial fence put up two stables, &
erected a Canal Office & that the same
were used for Canal purposes until
November 1837; That the Commissioners
then rented the premises to H. L. Pucher
who occupied them till 1841 - That
complainant then acquired the
possession of the lots with the permission
of the Canal Commissioners under an
agreement to pay them rent therefor;
That in September 1845, complainant
leased the premises of the Trustees for
two years at an annual rent of \$225;
That he has paid a portion of the rent &
the Trustees have recovered judgment
against him for the balance of the
rent at that rate up to the 26th of June
1849; That complainant received the
possession of the lots as tenant &
continued in possession of, & such
made the improvements for his

temporary convenience for the purpose of carrying on his business; & the answer denies that complainant went into possession with a design of becoming the purchaser of the lots, or that he has any right of presumption to the same.

There was a replication to the answer. It appeared in evidence that in 1835, the Canal Commissioners enclosed the lots with a substantial board fence, erected a house & two stables thereon. The house was used for a Canal office, the stables for the Canal horses, & the other parts of the lots for a garden & pasture. The premises were thus used for Canal purposes until November 1837 when the Canal office was changed to Lockport & the lots were leased to H. L. Rucker who occupied them as tenant till 1841. The improvements on the lots were then worth \$1000. Rucker made repairs & improvements at an expense of \$150. In 1841 the complainant rented the premises from the Canal Commissioners & went into possession of the same which he has ever since retained. Prior to December 1842, complainant at an expense of about \$1500 made various improvements on the lots consisting of a blacksmith's shop in which were two forges & a vice bench, a coal house, a root house, a large building

for a foundry & machine shop, in which was a steam engine on a stone foundation, as well & a greduct connecting it with the river, some new fencing, a porch & kitchen, a sidewalk & repairs, painting, plastering & papering of the Canal Office, which he occupied for a dwelling house. Since that time he has resided on the premises & carried on his business there. He executed the following paper: "Jacob Fry, Acting Commissioner of the Illinois & Michigan Canal is hereby ^{authorized and} requested ~~and authorized~~ to take out of the back money due on Section forty six of said Canal, or any other money due for work on said section the sum of two hundred dollars, which sum is for rent of the old Canal Office in Chicago up to the first of November 1843. Lockport - November 11th 1843. Elihu Granger,

On the 4th September 1845, a lease was executed by the Trustees & Complainant by the terms of which the Trustees leased the lots to Complainant - for two years from the 26th of June 1845, & Complainant agreed to pay them an annual rent of \$225. in half yearly installments.

The lease contained this stipulation "That ^{and} it is expressly understood that the party of the second part does not

herely waive any presumption right he may have in the above premises or any part thereof." The first-half years rent was paid when due, & judgments have been recovered for all of the rent due at that rate up to the 26th of June 1849, part of which has been paid; On the final hearing of the case, the Circuit Court dissolved the injunction & dismissed the bill & ^{the} complainant prosecuted an appeal to this Court. The 13th section of the act of the 21st February 1843, is as follows: "Provided that in all cases where improvements were made on the said Canal lands or lots previous to the first day of February 1843, the owner of such improvements shall be entitled to purchase the said lands or lots on which said improvements are situated at an appraisement to be made as aforesaid without reference to said improvements." The second section of the act of the 4th March 1843, provides that "Any settler on Canal lands who has not made his improvements previous to the 1st day of December 1842 shall not be entitled to ^{the} presumption rights granted by the provisions of an act for the completion of the Illinois & Michigan Canal approved February 21st 1843."

In our opinion these provisions must be so construed as to apply only to cases, where persons entered on vacant & unappropriated Canal lands & made valuable improvements thereon prior to the 1st December 1842. It is indeed immaterial whether a party entered as a trespasser or under a license from the Canal Commissioners. But he must have acquired the possession for the purpose of making a settlement on the land ^{and} with the intention of purchasing the same when it should be offered for sale. Such a party could properly be considered as a settler & the owner of the improvements put upon the land. The right of prescription is confined to settlers & owners of improvements. The term settler denotes one who has personally or in his own right occupied & improved Canal land or has caused it to be occupied & improved by another for his benefit, & the term owner applies not only to a settler but to one succeeding to the rights of a settler by the purchase of his improvements. The sole object of these provisions was to secure to the settler or his assignee the benefit of the improvements by allowing him to purchase the land ~~at~~ ^{at} a valuation made irrespective of the improvements. He has the

privilege of purchasing the land on which his improvements are situated for what it would be worth if no settlement had been made upon it. This was the entire scope & design of these provisions. And no broader construction was given them in the case of *The Lyttus vs Brainard*, 12 Ill. 487. It was not the intention of the Legislature that a party should acquire the right of preemption to land set apart or reserved for canal purposes. Nor was it intended that an agent or servant of the State entrusted with the possession of improved canal land should be permitted to purchase the same at the appraised value & thereby obtain the benefit of the improvements made at the expense of the Canal Fund, as well as the advantage of an increase of value beyond the appraisement merely because he has made repairs or put improvements on the property for his own convenience. Nor was it designed that a lessee of improved canal lands should accomplish the same result, because he had made reparations to the demised premises or put fixtures or other improvements thereon for the purposes of trade or manufacture. It was the settled purpose of the Legislature that the Canal lands should be exposed to sale at public auction so that the State might realize the full benefit of any

advance upon the appraisement. And that is the only mode in which canal lands can be purchased, except where a right of pre-emption exists in favor of a settler or his assignee as before indicated. This right to purchase at the appraisement forms the only exception to the general mode of disposing of the canal lands, & a party claiming the right ought clearly to show that he is within the exception. It remains to be considered whether the complainant occupies such a position. As early as the year 1835, the lots in question were set apart for canal purposes. The same were improved by the Canal Commissioners & occupied by them until the Land Office was removed from Chicago. Although the lots were no longer actually used for canal purposes, the improvements were not ^{as} abandoned or relinquished by the Commission. On the contrary they leased the premises to Rucker & received compensation for the use of the improvements. The improvements made by him became the property of the State, inasmuch as he did not remove them before he gave up the possession. In 1841 the complainant leased the lots from the Canal Commissioners, & from that time he occupied them as tenant paying rent therefor. In a legal sense, his possession was the possession of the State. He did not occupy the premises in his own right, but as the tenant of the State. Under these circumstances he made repairs for his

own convenience & erected additional improvements for the purpose of carrying on his business. He made the reparations & improvements as a lessee of the lots, & not as a settler. Improvements put on demised premises by a tenant for his convenience, or for purposes of trade or manufacture, which can be detached without material injury to the estate, may be removed by him during the term. If not removed before he surrenders the possession, they become the property of the lessor. The complainant made the improvements with reference to his right as a tenant to remove them, & not with the design of acquiring a right of pre-emption to the lots. And he may yet assert this right of removal before he quits the premises. He cannot be regarded as a settler on the lots, for they were occupied & improved long before he obtained the possession. Nor is he in any sense the owner of the improvements made by the Canal Commissioners & Rucker, for he never acquired any interest in them by purchase or otherwise. These improvements have never been abandoned by the State, but on the other hand have ^{always} been claimed & treated as part of the canal property by the Canal Commissioners & their successors, the board of trustees. The complainant did not enter on the lots for the purpose of making a settlement, nor with the view of acquiring a permanent residence thereon. He obtained the possession of improved premises as a tenant

and for the purpose of a temporary
occupation only. He must rely on his
right to take away the improvements
erected by him or trust to the chances of
obtaining the lots at public sales.

The decree is affirmed

Elihu Granger

vs.

The Board of Trustees
of the Illinois & Michigan
Canal

Copy of judt. & opn.

Fee \$3.00.

State of Illinois

County of Adams

Lorenzo Deland Clerk of
the Supreme Court of said State for
the Third Grand Division being first
duly sworn both before and
say that the opinion a transcript
of which is hereto annexed was
not filed on record by the
Clerk for filing until after the
Adjournment of the Court at the
close of the Term at which the said
Cause was heard, and to the
best of his recollection not until
after the 4th day of September
A. D. 1852. L. Deland

State of Illinois

Ladell County

I Samuel W Raymond
Clerk of the County Court in and for said
County do hereby certify that Lorenzo Deland
whose name appears above appeared before me
and made oath that ^{the} facts set forth in the
above affidavit are true to the best of his
Recollection and belief

Witness my hand and the seal
of said Court at Ottawa this 7th
day of May 1853

S. W. Raymond Clerk

C
Chicago Waple 13th, 1853.

The Board of Trustees of the Illinois
and Michigan Canal in take
notice that on the first day of the
term of the Supreme Court of the
State of Illinois next hereafter to be
held at Ottawa the application
will be made according to the law
and the rules for a rehearing
in the case of Edith Granger vs the
parties first above named.

Edith W. Granger
Attorney for said
Granger.

Cook Co. Cir. Court

Elihu Granger

vs.

The Trustees &c.

Bill
in

Filed June 11. 1853.

Adelard C. H.

E. W. Tracy

of Conn.

Granger v The Trustees &c.

Authority in the making of the
petition

See
Levy v Arundell &c
12 Peters 218, 219 & 220

Fraser v. Board of Trustees
Supreme Court of Illinois -
John Francis Williamson
Shay & Blinn.

To the Honorable the Judges
of said Court. said applicant prays
your petition, for as
respectfully that a rehearing may
be granted in said cause,
1st Upon the ground of the
errors heretofore affidand.

2nd Because he was misadvised
by his counsel in preparing his
said cause.

3rd Because of the newly dis-
covered evidence, and the other
matters set forth in your petition's
affidavit herewith accompanying.

4th Because the said Supreme
Court based their decision in
part upon the fact of a lease
executed after the creation of
the said Board of Trustees, —
long after his said entry — and
long after his rights in the
premises were fully perfected —
in which said lease it was expressly
provided that nothing therein con-
-tained should in any way affect
his rights under the act of February
21st 1843.

5th Because his case has
not been fully argued and

presented to said Supreme Court and
to the Court below on account of his Counsel
not apprehending the law as at present
understood by the Honorable Court, to whose
decision, however, if still insisted on,
his said Counsel, as he is advised,
will respectfully defer, as they are in duty
bound, as he supposes, to do.

6th Because your said petition
can make clear proof as to the main
points of the former decision, in the
event of the case being re-opened
so as to allow him so to do.

7th Because the Trustees have
no rights as against him which the
State of Illinois have not, and
she waived her rights and all
pretended rights of theirs to contest his
claims to purchase at the appraisement.
And your petition will ever
remain very.

by
Elisha W. Tracy
his solicitor.

Supreme Court within and
for the Third Grand Division of
the State of Illinois.
Elihu Frazier

The Board of Trustees
of the Illinois and Michigan
Canal.

Plaintiff in Error
County of Cook

Elihu Frazier
being first duly sworn deposes and
says that he is the appellant in
the above entitled cause; that at
the time of and upon the filing of
the said original bill in said cause
he was advised by Isaac N. Arnold
and Eliza W. Tracy, who then
were and are practicing and pro-
fessingly competent and capable
and well reputed attorneys, and
counselors at law and Solicitors in
Chancery of the State of Illinois, and
then and now confided in by him
as good advisers in all matters in
Law and Equity, and who were then
fully advised with by this affiant,
and at the time of the hearing and
until after the decision in said
cause in the Supreme Court he
was still so advised and truly
believed - that the question whether
he had been or was a tenant of the
Commissioners of the Illinois Canal

Michigan Canal, or of the State of
Illinois, or of the Board of Trustees of
the Illinois and Michigan Canal or not,
was not a material or pertinent
question or point of inquiry in said
cause, and that any and all
matters tending either to the affirmative
or to the negative of that question
were unnecessary and immaterial
therein.

And this affiant further
says that he was not a tenant of
the lands now mentioned in
said original bill at the time of
his making entry thereon and was
not such tenant until after the
existence of the present Board of
Trustees aforesaid, and then only
subject to his claimed right of
preemption and right to be per-
mitted to buy at the appraisement
under the act of February 21st 1843,
by express reservation, as he can
fully show by affirmative and
clear testimony.

And this affiant further states
and says that after the argument
of said case in the Supreme
Court was closed he was informed
by Jacob Fry, who was the acting
Comptroller of the Illinois and
Michigan Canal at the time of
this affiant's first entry upon said
lands, and a member of said Board

of Commissioners, that he the
said Fry, remembered that
when ~~the~~ ^{their} ~~affiant~~ ^{affiant} entered upon
said lots and lands he this
affiant applied to him the said
Fry as such Commissioners and
requested to have a lease of said
premises, and that he was told
in reply by said Fry that the Commissioners
had come to the conclusion that
they had no right to lease Canal
lands or lots but that he said
Fry and said Commissioners would
execute ^{of} ~~the~~ ^{their} ~~affiant~~ ^{affiant} in case he
should enter upon said lots and
lands that he would pay them for
the use of the buildings thereon - and
that he said Fry hoped that he
~~the~~ ^{their} ~~affiant~~ ^{affiant} would settle on said
lots for the reason that he said
Fry, (as he said at the time of said
entry,) believed that he ~~the~~ ^{their} ~~affiant~~ ^{affiant}
would pay something for the use
of said buildings, and they had
received little or nothing from the
former occupants of said buildings;
and that this affiant went on
said premises with and under
that understanding and only paid
said Commissioners for the use of
the buildings, and that this was all
they claimed, and that the payments
were so made and so considered
between the parties, and that this

was all that the Commissioners ever claimed, and that they never claimed and never received any pay or rental from this affiant for said lands or lots.

And this affiant further supposes and says that he believes that said Fry will so state under oath, — that such statements are perfectly true, — and that in the event that the said Supreme Court shall in its discretion grant a re-hearing of said cause and demand the same for the purpose of allowing this affiant to take further proofs therein and elicit and produce newly discovered evidence, then he this affiant intends and expects to take the testimony of said Fry in said cause, and to elicit and prove said facts by him ~~And~~ at an early day and with all convenient dispatch; And he is informed and believes that said Fry will be in Illinois during the month of July of the present year.

And this affiant never knew of the existence of the evidence which he said Fry could furnish in the case, or that he could so state, till the conversation referred to, but that it was then at the time of said conversation newly discovered

That this Deponent can prove satisfactorily that the said Lands and lots so claimed were never reserved from settlement or sale prior to the year 1841 the date of this Deponents settlement thereon; but that the same were subdivided appraised and advertised ^{offered} for sale previous to the first sale of Canal Lands and Lots made by the now Board of Trustees of the Illinois and Michigan Canal. And further depontent saith not

Mary Public



Elihu Granger
— vs —

Board of Trustees of
Ill. & Mich. Canal

Petition for Rehearing

Filed June 13. 1853.
Island Ck.



52
Elmer Granger
by
Canal Trustees

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12090

1853