No. 12050

Supreme Court of Illinois

Gray

vs.

McFadden

71641 7

James McFadden
vs
Alfred G Curtenius
John L Griswold
Matthew Griswold
} Peoria Circuit Court
Ejectment

James McFadden
vs
William R Phelps
Benjamin L. T. Bourland
} Same

James McFadden
vs
William Peters
} Same

James McFadden
vs
Rinalt Clatten
} Same

James McFadden
vs
John Schaeffer
} Same

James McFadden
vs
John Moore
} Same

State of Illinois }
Peoria County } ss N H Purple being duly affirmed doth say that Louis Chatellion, Louis Le Compte and Meagdaline Glodon who are residents of the County of St Clair in the State of Illinois are material witnesses for the plaintiff in the preceeding entitled causes or actions of Ejectment pending in the county of

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Peoria aforesaid.

N. H. Purple

Affirmed & subscribed before me this 24th day of August A.D. 1849

Jacob Gale, Clerk

[Endorsed]

"Filed August 24th 1849

Jacob Gale, clerk."

State of Illinois
Peoria County ss I, Jacob Gale clerk of the circuit court within and for the county of Peoria in the State of Illinois do hereby certify ~~that~~ the foregoing is a full, correct and complete copy of an affirmation filed in my office on the 24th day of August A.D. 1849 in said causes, as the same remains on file in my office —

In witness whereof I have set my hands and affix the seal of said court at Peoria this 19th day of June A.D. 1851 —

James McFadden
vs
Wm R Phelps
Benjamin L J Bousland

Peoria Circuit Court
Ejectment

James McFadden
vs
Jacob Young

Same

James McFadden
vs
William Peters

Same

James McFadden
v
Renall Clarken

Same

James McFadden
v
John Schaeffer

Same

James McFadden
v
John Moore

Same

It is agreed, for the purpose of saving expenses to the parties, that the Depositions to be taken in pursuance of annexed notice be read in evidence in each of the above entitled causes, the same as if taken in each of said above entitled causes, we however waiving no other exceptions to said Depositions than as above stated, but no exception or objection shall be taken or made to reading the same in each & every of the above entitled causes on the ground that said Depositions shall taken only in the case referred to in said notice, and

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not in said above entitled causes and each of them
We also admit service of the annexed notice in due and Legal form, and waive proof thereof
Peoria Aug 7, 1849 E N Powell atty for Phelps
et al & Castenius et al } G T Metcalfe atty for
Phelps & al. / Peters. }

E N Ballance for his tenements for whom he has pleaded.

{Peoria March 29, 1851 — Onslow Peters atty of
costs of the depositions in no event to be taxed to Moore } John Moore }

Notice annexed =

James Mc Fadden
vs
Alfred G Castenius
John L Grinnold
Matthew Grinnold } Peoria Circuit Court
Ejectment

To above defts
or E N Powell
their atty.

Take notice that on the Seventh day of September next at the office of Francois Sacrois in the village of Cahokia in the county of St. Clair in the State of Illinois between the hours of 9 O'clock A.M. & 6 O'clock P.M. of that day before said Francois Sacrois a Justice of the Peace of said county, or before some other officer duly authorised by Law to take depositions I shall proceed to take the depositions of Louis Chatillon, Louis Le Compte & Madaline Glodon — residents of said county of St. Clair, to be read in evidence on the behalf of said Plaintiff on the trial of above cause and the taking of said depositions to be continued from day to day so long as may be necessary — at which time & place you can be and appear and cross examine said witnesses if you deem proper. Yours &c
H. O. Merriman for Plff.

State of Illinois
Peoria County ss: I Jacob Gale clerk of the circuit court within and for the county of Peoria in the State of Illinois do hereby certify that the foregoing is a full, true & correct copy of an agreement and annexed notice attached to the depositions of Louis Le Compte and Madaline Glodon on file in a certain cause heretofore pending in said court in which James McFadden is plaintiff and Alfred G. Cutenius John L. Griswold and Mathew Griswold are defendants as the same remain on file in my office –

In witness whereof I hereto set my hand and affix the seal of said court at Peoria this nineteenth day of June in the year of our Lord one thousand eight hundred and fifty one –

Jacob Gale, clerk –

[12650-3]

Andrew Grey, Deft. below, & appellant
vs.
James McFadden - Pff. below & appellee -

And now comes the said appellant & says that in the rendition of the judgment aforesaid, and in the record & proceedings aforesaid there is manifest error, in this, to wit, that the Circuit Court rendered a judgment against the said appellant in favour of the said appellee, when the said court should have rendered against the said appellee & in favour of said appellant -

And the said appellant also assigns for error, the following, to wit.

1 - The circuit court erred in overruling the the exceptions to, & the motion to exclude the depositions La Compt & Glordon -

2 - Said Circuit Court erred in permitting the patent from U. States to heirs of Willette to be read in evidence -

Also, in admitting the deed from Fortier & wife to Appellee to be read in evidence.

3 - The said Circuit Court erred in finding in favour of Pff. below, and against the Deft. below, the evidence failing to show a valid title in the pff. below, while it showed a valid & subsisting title in the

Appt. below.

Wherefore for the errors aforesaid & for other errors in the record & proceedings & in the rendition of the judgment, the said Appellant prays, that the said judgment may be reversed, annulled & for nothing esteemed, & he be restored to what he hath lost by reason thereof.—

Peters & Powell
for the Appellee—

Proceedings in the Circuit court within and for Peoria county in the State of Illinois at the May Term thereof in the year of our Lord one thousand eight hundred and forty nine - to wit

Tuesday, May 29th A.D. 1849

James McFadden

vs ejectment

William R. Phelps
Benjamin L. G. Bourland

This day came the said James McFadden by Norman H. Purple his attorney and filed his declaration herein and proved to the satisfaction of the court due service of a copy thereof and of the notice thereto annexed on each of the defendants ten days previous to this day, whereupon on motion of the plaintiff it is ordered that the said William R. Phelps and Benjamin L. G. Bourland plead to the said declaration in twenty days from this day -

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The said declaration was filed in the Clerks Office of said court on the day last aforesaid and is as follows, to wit

State of Illinois, Peoria County

In the Circuit Court of Peoria May Term A.D. 1849

James McFadden plaintiff in this suit complains of William R Phelps and Benjamin L J Bourland defendants in this suit, for that the said plaintiff on the tenth day of May A.D. 1849. at the County aforesaid was possessed of the following described real estate, to wit: begining at a point in the South Easterly line of French Claims numbered 1. 11. 41 and 42 as hereinafter described 49 feet from the East corner of said claim thence along the line aforesaid of said claim South 43° 30' West 61 feet to a post; thence North 40° 30' west 73 feet to a post in the South Easterly line of Water Street as laid out by Bigelow & Vandeshill; thence North 50° 30' East 60 feet along the said South Easterly line of Water Street to a post; thence South 40° 30' East sixty five feet 2 inches to the place of beginning, being part of a certain lot designated as covered by claims numbered 1. 11. 41 & 42 in the South East fractional quarter of fractional Section nine in Township Eight North of Range Eight East of the fourth principal Meridian. Illinois according to the survey approved 1st September 1840 by the Surveyor of the public lands in the States of Illinois and Missouri. The title to which said premises the said plaintiff claims to own in fee; and being so possessed thereof the said defendants afterwards to wit on the Eleventh day of May A.D. 1849 at the County aforesaid entered into the same and unlawfully withhold from the plaintiff the possession thereof to the damage of said plaintiff One hundred dollars

N H Purple
A C Merriman
Plfs Atty

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To Mr William R Phelps &
Benjamin L T Bourland

You are notified that on the first day of the next Term of the Circuit Court to be holden at the Court house in Peoria for the County of Peoria and state of Illinois, or as soon thereafter as counsel can be heard the foregoing declaration in Ejectment will be filed in said Court, that upon the filing of the same a rule will be entered requiring you to appear and plead thereto within twenty days after the Entry of such rule, and that if you neglect so to appear and plead judgment by default will be entered against you and the plaintiff will recover possession of the premises therein described

~~March~~ May 15, 1849.

N H Purple
Plfs, atty.
H O Merriman
Plfs atty

The defendants on the 9th day of June 1849 filed their plea as follows to wit.

William R Phelps Benjamin L T Bourland als James McFadden	Circuit Court Peoria County October Term A D 1849

And the said defendants by E N Powell their attorney come and defend the force and injury when &c and say that they are not guilty of unlawfully withholding the premises in the said declaration mentioned in manner and form as the said plaintiff hath alleged in his said declaration and of this they put themselves upon the Country

McCalpe & E N Powell
atty for Defts

And afterwards on the fourth day of September A.D. 1850, there was filed in said Clerk's office Exceptions to the depositions taken on behalf of the plaintiff, as follows, to wit

James McFadden
vs
Wm. R. Phelps & Benj. L. F. Bonland

Circuit Court Peoria County
August Term 1850 –

The defendants except to the reading in evidence in this case of the depositions of Louis Le Compte & Madaline Glodon, for the following reasons.

1st That Francis LaCroix who appears to have taken said depositions does not appear to have been authorized by law to take depositions.

2nd That there is no proper certificate or other evidence that said LaCroix was at the time of taking said depositions a Justice of the Peace of St. Clair County Illinois.

3rd That there is no satisfactory or other affidavit filed in this case that said witnesses resided in a different County from the County where this Court is held, were about to depart from this State, were confined in jail on legal process or unable to attend this Court on account of advanced age sickness or other bodily infirmity.

4th That said depositions are in other respects informal and insufficient.

Metcalfe, Powell & Peters for defts.

Proceedings at a term of the circuit court begun and held at the court-house in the City of Peoria in and for the county of Peoria in the State of Illinois on the fourth Monday of August in the year of our Lord one thousand eight hundred and fifty it being the twenty sixth day of said month

Present the Honorable William Kellog Judge of the tenth Judicial circuit in the State of Illinois. To wit,

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Friday September 6th A.D. 1850

James McFadden

vs Ejectment

William R Phelps

Benjamin L T Bourland

This day came plaintiff by A H Purple his attorney and the defendants by Peters & Metcalfe their attorneys, and the defendants moved the court to exclude the depositions taken to be used by the plaintiff herein, for reasons on file the court being fully advised in the premises overruled said motion. On motion of Andrew Gray by the said Peters & Metcalfe his attorneys he the said Andrew Gray is admitted and made defendant in this suit in place of the said defendants Phelps and Bourland, he the said Andrew Gray admitting himself to have been in possession of the premises at the time of the service of the said declaration in Ejectment. And now the said parties plaintiff & defendant in this suit waive their right to trial herein by jury and agree, that all matters arising in this cause both of law and of fact shall be tried by the Court. Whereupon the court having heard the evidence do find the defendant guilty of unlawfully withholding possession of the premises in the declaration described from the plaintiff in manner and form as therein stated and that the title of said plaintiff in said premises is a fee simple and do asses the plaintiffs damages herein to six cents. Therefore it is considered that the said James McFadden recover of the defendant possession of the premises in the said declaration mentioned, and that a writ of possession issue therefor: and it is further consid-

ered that the plaintiff have and recover of the said Andrew Gray the said sum of six cents his damages aforesaid, to-gether with his costs and charges by him about his suit in this behalf expended and that execution issue therefor. The defendant moved the court for a new trial in this cause, and the court being fully advised in the premises overruled said motion. ~~Therefore~~ Upon the said Andrew Gray prayed an appeal in this cause to the Supreme Court, which is allowed on his filing in the office of the clerk of this court in thirty days an appeal bond in the penal sum of five hundred dollars, conditioned according to law with Andrew McHunt as surety -

~~And afterwards, on the 13th day of September AD. 1850 the defendant filed appeal Bond in said cause in said Clerk's office as follows, to wit:~~

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On the eleventh day of September A.D. 1850, the defendant filed the following Bill of exceptions in said cause, to wit.

James McFadden } Ejectment in the Circuit Court
vs } of Peoria County August Term
Andrew Gray } A.D. 1850

Be it remembered that on the trial of this cause the plaintiff to maintain and prove the issues on his part read in Evidence to the jury empaneled to try this cause the act of Congress of May 15th 1820 and of March 23d 1823 in the words and figures following to wit,

Chap. 125. An act for the relief of the inhabitants of the village of Peoria, in the state of Illinois.

§1. Be it enacted, &c. That every person, or the legal representatives of every person, who claims a lot or lots in the village of Peoria, In the State of Illinois, shall, on or before the first day of October next, deliver to the register of the land office, for the district of Edwardsville, a notice in writing of his or her claim; and it shall be the duty of the said register to make to the secretary of the treasury a report of all claims filed with the said register, with the substance of the evidence in support thereof; and also his opinion, and such remarks respecting the claims as he may think proper to make; which report, together with a list of the claims which in the opinion of the said register, ought to be confirmed, shall be laid by the Secretary of the treasury before congress for their determination. And the said register shall be allowed twenty-five cents for each claim on which a decision shall be made, whether such decision shall be in favor or against the claims; which allowance shall be in full for his services under this act
[Approved May 15th 1820]

Chapter 196. An act to confirm certain claims to lots in the village of Peoria, in the State of Illinois.
§1. Be it enacted &c. That there is hereby granted to each of the French and Canadian inhabitants, and other settlers in the village of Peoria, in the State of Illinois whose claims are contained in a report made by the register of the land office at Edwardsville, in pursuance of the act of Congress, approved May the fifteenth, one thousand eight hundred and twenty

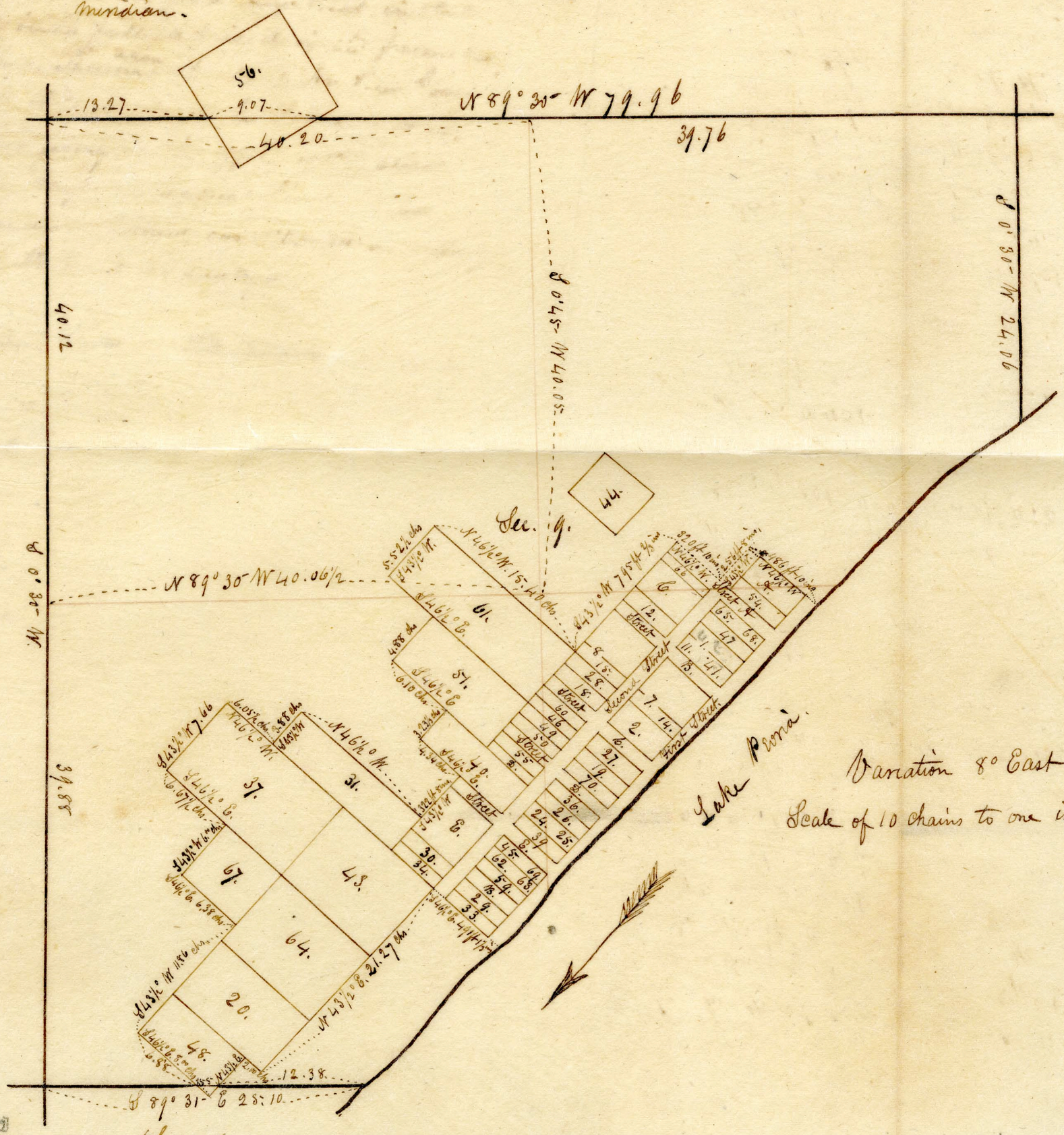
and who had settled a lot in the village aforesaid, prior to the first day of January, one thousand eight hundred and thirteen, and who have not heretofore received a confirmation of claims, or donation of any tract of land or village lot from the United States, the lot so settled upon and improved, where the same shall not exceed two acres, and where the same shall exceed two acres, every such claimant shall be confirmed in a quantity not exceeding ten acres: Provided, Nothing in this act contained shall be so construed as to affect the right, if any such there be, of any other person or persons to the said lots, or any part of them, derived from the United States, or any other source whatever, or as a pledge on the part of the United States, to make good any deficiency occasioned by any other interfering claim or claims.

§ 2. That it shall be the duty of the surveyor of the public lands of the United States for that district, to cause a survey to be made of the several lots, and to designate on a plat thereof the lot confirmed and set apart to each claimant, and forward the same to the secretary of the treasury, who shall cause patents to be issued in favor of such claimants, as in other cases.

[Approved, March 3, 1823.]

The plaintiff then offered in evidence the survey of the french lots in the village of Peoria to the introduction of which the defendant objected, which objection was overruled by the Court and said survey introduced in evidence to the jury in the words and figures following to wit,

Plat of the New Village of Peoria and of such of the outlots and field lots in the neighborhood thereof as are connected with said New Village in one continuous survey, and description of the out boundaries of the said town and continued connection of out lots and field lots situate in section 9 and 16 Township 8 North of the Base line Range 8 East of the fourth principal meridian.



Description:

Begin at the upper end of the South eastern edge of First street on the North West bank of lake Peoria; thence N 46½° W one hundred feet to the eastern corner of unclaimed lot A. 420 feet 10 inches the North corner of said unclaimed lot A. at the North East end of the S. E. edge of Second street: 486 feet 10 inches to the N E end of the N W edge of Second street: thence S 43½° W with the N W edge of Second street 256 feet 8 inches to the intersection with the N E edge of street A: thence N 46½° W with the N E edge of street A 320 feet 10 inches to the N. W end of the N E edge of said street A: thence S 43½° W 66 feet the North corner of lot No 66 at the N W end of the S W edge of said street A: 108 feet 9⅓ inches the west corner of lot No 66, and North corner of unclaimed lot 6: 322 feet 8 inches the west corner of unclaimed lot 6, and the North corner of lot No. 12: 408 feet 2⅔ inches the west corner of lot No 12, and the N W end of the N E edge of Street B: 474 feet 2⅔ inches the N W end of the S W edge of street B: and the North corner of lot No. 8: 709 feet 6 inches the North corner of lot No 15: 795 feet and ⅔ of an inch to the west corner of lot No. 8 which is also the West corner of lot No. 15 and East corner of lot No. 61 and North corner of lot No. 28: thence N 46½° W with the N. E. boundary of lot No 61 — 15 chains and 40 links to the North corner of lot No 61; thence with the N. W. boundary of lot No 61 S 43½° W 5 chains and 52¼ links to the west corner of lot No. 61, thence with the S. W boundary of lot No 61 S 46½° E 4 chains and 94 links to the North corner of lot No 51, at the intersection of the N. W. boundary thereof with the S W boundary of lot No 61: thence with the N W boundary of lot No 51 S 43½° W 4 chains and 88 links

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to the west corner of lot No 51; thence with the S. W. boundary of lot No. 51 S 46½° E 6 chains and 10 links to the North corner of lot No 40, at the intersection of the N W boundary thereof with the S W boundary of lot No 51; thence with the N W boundary of lot No 40 S 43½ W 8 chains and 23 1/3 links to the west corner of lot No 40; thence with the S W boundary of lot No 40 S 46½° E 4 chains and 34 links to the N W end of the N E edge of street E on the S W boundary of lot No 40; thence S 43½° W 66 feet to the N. W. end of the S. W. edge of street E, and the North corner of unclaimed lot E; 322 feet 8 inches to the East corner of lot No 31 at the intersection of the N E boundary thereof with the N W boundary of unclaimed lot E; thence with the N E boundary of lot No 31 N 46½° W 13 chains and 16 links to the North corner of lot No 31; thence with the N W boundary of lot No 31 S 43½° W 8 chains and 88 links to the west corner of lot No 31 at the intersection of the N W boundary thereof with the N E boundary of lot No 37; thence with the N E boundary of lot No 37 N 46½° W 5 chains and 5½ links to the North corner of lot No 37 thence with the N. W. boundary of lot No 37 S 43½° W 7 chains and 66 links to the west corner of lot No 37; thence with the South West boundary of lot No 37 S 46½° E 6 chains and 67½ links to the North corner of lot No 67 at the intersection of the N W boundary thereof with the S W boundary of lot No 37; thence with the N W boundary of lot No 67. S 43½° W 6 chains to the west corner of lot No 67; thence with the South West boundary of lot 67. S 46½ E 6 chains and 38 links to the South corner of lot No 67, on the N W boundary of lot No 64; — thence S 43½ W 1 chain and 66 links the west corner of lot No 64

and North corner of lot No. 20; 7 chains and 61 links the West corner of lot No. 20 and North corner of lot No. 48 11 chains and 86 links to the West corner of lot No. 48; thence with the S. W. boundary of lot No. 48, S 46½° E 6 chains and 88 links the point of intersection of the S W boundary of lot No. 48 with the Section line between Sections 9 and 16 Township 8 North Range 8 East of the 4th principal Meridian which point is 13 chains and 93 links N 89½° W of the corner to fractional Sections 9 + 16 on the Lake; 8 chains to the South corner of lot No. 48; thence with the South East boundary of lot No. 48 N 43½ E 1 chain and 6 links the point of intersection of the S E boundary of lot No. 48 with the Section line between Sections 9 and 16 Township 8 North Range 8 East of the 4th principal Meridian, which point is 12 chains and 38 links N 89½° W of the corner to fractional Sections 9 + 16 on the Lake; 4 chains and 25 links to the East corner of lot No. 48 on the S W boundary of lot No. 20 thence with the S W boundary of lot No. 20 S 46½° E 2 chains to the South corner of lot 20; thence N 43½ E 5 chains and 95 links the east corner of lot No. 20, and South corner of lot No. 64; 13 chains and 61 links the east corner of lot No. 64 and South corner of lot No. 43; 21 chains and 27 links to the East corner of lot No. 43 and South corner of lot No. 34 at the S. W. end of the N. W. edge of Second Street; thence S 46½° E 66 feet the S. W. end of the S. E. edge of Second street and west corner of lot No. 33; 386 feet 10 inches the South corner of lot No. 33; 491 feet 1/3 inches to the lower end of the S E edge of First street on the N W. bank of Lake Peoria; thence along the N W bank of lake Peoria the following courses and distances: N 38° E 176 links; thence N 42° E 432 links; thence N 17¾° E 150 links; thence N 78° E 72 links; thence N 47½° E 417 links thence N 37° E 188 links; thence N 44¾° E

2448 links to the place of beginning.
Then for connection with the public surveys run from said place of beginning along the N.W. bank of Lake Peoria the following courses and distances: N 44 3/4° E 1081 links thence N 50° 3/4 E 1300 links to the point of intersection of the the section line between sections 9 & 10 with the N.W. bank of Lake Peoria which point is 2406 links S 0° 30' W of the corner to sections 3. 4. 9 and 10 Township 8 North Range 8 East of the 4th principal Meridian. Also from the lower end of the S.E. edge of State street the following courses and distances along the bank of the lake were taken for connection: S 37 3/4 W 198 links, thence S 39° W 819 links, thence S 41 1/4° W 216 links, thence S 49 1/2° W 287 links, thence S 85° W 116 links to the point of intersection of the section line between sections 9 and 16 Township 8 North Range 8 East of the 4th principal Meridian which point is 2510 links S 89° 30' E of the corner to sections 8, 9, 16 and 17 of said Township.
Surveyed on the several days designated in the foregoing separate descriptions of the lots, by Joseph C. Brown Deputy Surveyor under instructions from Daniel Dunklin Surveyor of the Public lands in the States of Illinois and Missouri bearing date 11th of April 1837
Examined and approved this first day of September 1840
Signed William Milburn
Surveyor of the Public Lands in the States of Illinois & Missouri

Surveyors Office
Saint Louis May 2d 1849
The foregoing plat and description of the out boundaries of the new village of Peoria in the state of Illinois, is correctly copied from pages 79 & 80 of a book on file in this office entitled Record of Surveys Peoria Illinois J. R. Conway
Surveyor of the public lands in the States of Illinois and Missouri.

the plaintiff then offered in evidence a patent from the United States to the heirs and legal and legal representatives of Francis Millette, to the reading of which patent in evidence the defendant objected which objection was overruled by the Court and the said patent read in evidence to the jury in the words + figures following to wit

The United States of America

To all to whom these Presents shall come. Greeting

Whereas there has been deposited in the General Land Office, a certificate numbered Two of the Register and Receiver of the Land Office at Edwardsville Illinois, whereby it appears that in the Report dated 10th November 1820 of Edward Coles, Register of the Land Office at Edwardsville Illinois, the claim of Etienne Bernard is entered as Number One, the claim of Louis Pilette, in right of his wife Angelica, the daughter of the late Francis Wilette, is entered as number eleven, the claim of Felix Fontaine is entered as number forty-one [the said numbers eleven and forty one according to the Survey, being for the same land, and covering the South West part of claim number one] and the claim of Felix Fontaine is entered as number forty two, [covering according to the Survey the North East part of said claim number one] and whereas it further appears from the certificate aforesaid that the said Francis Wilette is the inhabitant or settler within the purview of the confirmatory Act of Congress approved March 1823 entitled "an Act to confirm certain claims to lots in the village of Peoria, in the State of Illinois and that it has appeared to the satisfaction of the said Register and Receiver that the said inhabitant

or settler did not prior to the said Act of 3d March 1823 receive "a confirmation of claims, or donation of any tract of land or village lot from the United States" and that the Legal Representatives of the said Francis Wilette, in virtue of the confirmatory Act aforesaid are entitled to a patent for a certain lot described as follows to wit:— The Lot containing fifty four thousand eight hundred and ninety eight square feet, and fourteen hundreths of a square foot, surveyed and designated as covered by said claims numbers One, eleven, forty one, and forty two in the South East fractional quarter of fractional Section nine, in Township eight North, of Range eight East, of the fourth Principal Meridian, Illinois, according to the survey approved 1st September 1840 by the Surveyor of the public Lands in the States of Illinois and Missouri, and whereas in the confirmatory act aforesaid of the 3d March 1823 it is provided that Nothing in this act contained shall be so construed as to affect the right if any such there be, of any other person or persons to the said lots, or any part of them, derived from the United States, or any other source whatever", &c.

Now Know Ye that in consideration of the premises, and pursuant to the second section of the act aforesaid of the 3d March 1823, there is granted by the United States to the Legal Representatives of the said Francis Wilette, and to their Heirs, the lot of land above described subject to the proviso aforesaid.— To Have and To Hold the said Lot of land, with the appurtenances unto the said Legal Representatives of Francis Wilette, and to their Heirs and assigns, forever, subject

to the proviso aforesaid.
In testimony whereof I James K Polk President of the United States, have caused these Letters to be made Patent, and the Seal of the General Land Office to be hereunto affixed

Given under my hand, at the City of Washington, the twenty eighth day of August in the year of our Lord, one thousand eight hundred and forty five and of the Independence of the United States the Seventieth

L.S.

By the President James K Polk
By J Knox Walker Secy

S H Laughlin, Recorder of the General Land Office
Recorded Vol 10 pages 50, 51 & 52

the plaintiff then offered to read in evidence the depositions of Glodon and Louis Lecompte to which the defendant objected, which objection was overruled by the Court and said depositions read in evidence to the jury in the words and figures following to wit.

James McFadden
vs
Alfred G Cutsenius
John L Grimold
Heather Grimold

In the circuit court of Peoria County

Ejectment

The Depositions of Madeline Glodon, Louis Le Compte Resident of the County of St Clair in the State of Illinois taken before the undersigned Francois Lacoy a Justice of the Peace in and for said county at my office in the village of Cahokia County of St Clair and State aforesaid pursuant to the annexed notice and agreement of the parties on the Seventh —— day of September A.D. 1849 commencing at the hour of Nine O'clock Am of said

seventh day of September A.D. 1849 and ending at the hour of 12 O'clock of the same day of the same month and year: each of the said witnesses having been first by me duly sworn to testify the truth the whole truth and nothing but the truth in relation to the matter in controversy in said suit.

The said Madeline Slodon in answer to the first Interrogatory on the part of the plaintiff —

What is your age occupation and place of residence? answering says she is fifty four years old and lives on a farm in St. Clair County in the state of Illinois

Question Did you know one Francis Willette and his wife if so when and where, and what was his wife name

Answer she knowed them both in Peoria Illinois her name was Charlotte Bath lived there fourty four years ago she died there about thirty one or two years ago — he dies there about thirty six years ago

Question, at the that you knew them did they or not live together as husband & wife and where they or not reputed to be such among all their friends & acquaintances

Answer, they were know as such and so reputed and very respectable people. Question, was said Willette a settler & french claimant at Peoria if so at what time

Answer, he was a settler at the time I knew him at peoria and during all that time and his wife lived on the same lot after his death until she died.

Question — about where was the Lot

Answer — about a half a perch above the roads of the

Lake next above Daniels Lot a gully Between Daniel and his Lot Question had he any Children at the time of his Death if so what was there names are they or any of them Dead or alive and what are the names of those now living and where do they reside
Answer they had one only, her name was Angelica Willette and she alive in the neighborwood of Cahokia St Clair County state of Illinois she is now the wife of Bartholemew Forties of said St Clair County
Question is or not said Angelica at this time, and has she or not since the Death of her parents been the only Descendant of her said parents.
Answer they had no other Children or descendant at any time
Question Did you live at Peoria when and how long
Answer I came there when I was a small Child and lived about twenty years except two years that I was absent at Cahokia and further saith not

her
Madaline Glodon
mark

Crop interogatorys by E S Powell Esq Counsil for the Defendants to Madaline Glodon
Question at about what time did Francis Willette Die
Answer I can not tell the year But she believe it has been thirty six ago
Question Did you Know Felix fontaine
Answer I Know perfectly well
Question did you not Know said Willette give the Lot on which he lived and built house to Josette Caseran — answer I never Knew Josette Caseran I Knowed Mr Willette Keeping house and never Knowed him to built house for other persons

[13250414]

Question. was Mr Wilette dead when the French settles were chased from Peoria
Answer Mr Wilette & his wife were dead when the French was chased from peoria
Question who was living on wilettes lot when the French were chaised
Answer no persons
Question did not Felix Fontaine live on the said when Captain Craig expelled the French from Peoria
Anser — no he lived neibor to the said Lot I did whether is Lot or not
Question did not Felix Fontaine cultivate the Wilette Lot after wilette & his wife was dead
Answer — no I never saw him cultivate it
Question did you know whether Francis wilette ever married
Answer no I never knew him to be married but they well thought of and where honest persons
Questions where there good many persons at peoria living to-gether without being married
Answer — no I never knew any those persons that were to marry use to come down and were married by some justice of the peace
Question how old was Angelica Wilette at the time of her farthers death
Answer I can tell but I believe she was about twelve year old
Question did you know John Baptist Mailette
Answer — no I did not know him
Question did you know Hypolite Mailette
Answer I did for he was my step father

Question after the death of Willette did Angelica ever lived on said Willette Lot
Answer no after the death of her father & mother she come to live in St. Louis
Question who was living on the Lot at the time the French was expelled
Answer she say no Body
Question did you know whether the Lot was sold by Administrators after Willettes death (Question objected by the Plaintiffs Council
Answer I dont know
Question how long after Willettes death before his daughter went to St. Louis
Answer – I dont know but it was before the war
Question how do you know that Angelica Willette was the legitimate daughter of Francis Willette
Ans I know she was Madame Willette; daughter But I dont know whether she was the daughter of Francis Willette
Question did Willette and his wife living together as husband & wife when you first knew them
Answer Yes they lived as husband and wife when I first knew them
Recexamination. Question by the Plaintiffs council when you say in answer "how did you know that Angelica Willette was the legitimate daughter of Francis Willette" you say I know she was Madame Willette daughter But I dont know she was the daughter of Francis Willette" do you or not only mean to say that no person except the mother can certainly tell who is the father of her child (Question objected to by the defendants council)

[12050-15]

answer I mean that no person can tell who his the father of her child unless it is the Mother herself.
Question how do you Know that Angelica Wilette was the daughter of Francis Wilette as stated in your direct examination
Answer I Know by them living as husband and wife and being the Reputed Daughter of him further the deponeth saith not

her
Madaline X Glogdon
mark

And the said Lewis Le Compte in answer to the first Interrogatory, Do you Know Bartholomew Fortier If so is he or not married and what is the name of his wife, were you present at their marriage and when and where did is take place
Answer I Know Bartholemew Fortier he was married to his present wife Angelica formerly Angelica Wilette about eleven years ago at Cahokia at I was present at the marriage and was a witness to the marriage
Question Did you Know Francis Wilette and his wife Charlotte if so when and where and how long did you Know them
Answer I, Knew them in Peoria about Ten or twelve years before the french settlers were driven off by Captain Craig from Peoria, they were living on a lot in peoria
Question— Did the said Wilette & wife have any Children if so what were there names and where do any of them Now Reside
Answer they had only one Daughter Angelica she is now

alive and lives near Cahokia and is now the wife of Bartholemew Fortier

Question what is your age place of Residence and what is your occupation

Answer I live in Cahokia I am sixty six years old and I farm and further saith not

Louis + his mark Le Compte

State of Illinois }
St. Clair County } SS

I Francois Lacroix one of the Justices of the Peace in and for said County, do hereby certify that the foregoing depositions of Madaline Glodon and Louis Le Compte were taken before me on the Seventh day of September A.D. 1849 between the hour of 9 O clock A.M and Six O Clock P.M of said day at my ~~at~~ my office in the village of Cahokia St Clair County Illinois that the said witnesses were first duly sworn by me to testify the truth the whole truth and nothing but the truth in relation to the matters in controversy — That the foregoing interrogatories were by me proposed to them and each of them and their answers severally to the same taken and by me reduced to writing at the time and place aforesaid and in the order and manner as appears in their said depositions aforesaid and that each of the said witnesses severally subscribed their names to their said depositions. In witness whereof I have hereto set my hand and seal at Cahokia in the County aforesaid the 7th day of September A.D. 1849

Francois Lacroix (Seal)
J.P.

[12050-16]

the plaintiff then offered in evidence a deed from Bartholomew Fortier & wife to the plaintiff, to the reading of which in evidence the the defendant objected, which objection was over-ruled by the court and said deed read in evidence to the jury in the words and figures following to wit.

This Indenture made this Seventeenth day of April A.D. 1849, between Bartholomew Fortier and Angelica his wife of St. Clair County in the State of Illinois of the first part and James McFadden of Peoria in the County of Peoria and state aforesaid of the second part

Witnesseth – That the said parties of the first part for and in consideration of the sum of Five thousand dollars to them paid and secured to be paid by the said party of the second part the receipt whereof is hereby acknowledged – have granted bargained and sold and by these presents do grant bargain and sell unto the said party of the second part and to his heirs and assigns forever in fee simple; the following described lots or tract of land that is to say – The lot or lots containing fifty four thousand Eight hundred and ninety Eight square feet and fourteen hundreths of a square foot, surveyed and designated as covered by Claims Numbered One, Eleven, Forty one and Forty two in the South east fractional quarter of fractional section nine in Township Eight North of Range Eight East of the fourth principal Meridian in Illinois according to the survey approved 1 September 1840 by the Surveyor of the public lands in the states of Illinois and Missouri, which said lots are particularly described in a certain patent from the President of the United States to the legal representatives of Francis Mitette and their heirs dated the 28th day

of August A.D. 1845 to which for greater certainty reference is hereby mailed

To have and to hold the premises aforesaid to the said party of the second part and to his heirs and assigns forever. And the said parties of the first part do for themselves and their heirs covenant and agree with the said party of the second part that the said Angelica wife of the said Bartholomew Portier is the sole heir and legal representatives of Francis Vilette mentioned and described in the patent aforesaid and that they will warrant and defend the title to the said premises against all persons claiming the same from by or through the said parties of the first part.

Witness our hands and seals this day and year above written

Bartholemew his X mark Portier (Seal)

Witness H. J. Rugg

witness to the signature of Mrs Portier. Thos Engelman

Angelica her X mark Portier (Seal)

L. M. Hopkins

Anderson Simes

State of Illinois }
St. Clair County } This day appeared before the undersigned clerk of the circuit Court of the County of St. Clair Bartholemew Portier and Angelica his wife who are personally known to me to be the persons whose names are subscribed to the foregoing deed as having executed the same and acknowledged that they had executed the same for the uses and purposes therein expressed. And the said Angelica being of lawful age and by me separate and apart from her said

[12050-17]

husband examined and the contents of the said deed having been fully made known and explained to her acknowledged that as her act and deed she had executed the same freely and voluntarily and without the compulsion or under influence of her said husband and that she does not wish to retract, and also further acknowledged that she did voluntarily and freely and without the compulsion or under influence of her said husband execute said deed and relinquish her rights of dower in and to the premises aforesaid

Witness my hand and official seal at Pekin this twentieth day of April A D 1844

(L. S.)

Theo Engelman

the defendants then admitted that the land described in the said patent to the heirs & legal representatives of Francis Milette, and also described in the said deed from Bartholomew Sartier & wife to the plaintiff included the land described in the plaintiffs declaration. This was all the evidence introduced to the jury on the part & behalf of the plaintiff.

The defendant to maintain and prove the issues on his part then read in Evidence to the jury a judgment of the Circuit Court of Peoria County rendered at the May Term of said Court A D 1844 in the words and figures following to wit:

At a circuit Court began and held at the Court house in the town of Peoria within and for the county of Peoria and State of Illinois, on the fourth Monday of May in the Year of our Lord one thousand Eight

hundred and forty four, being the twenty seventh day of the same month. Present the Honorable John Dean Caton associate Justice of the Supreme Court of the State of Illinois Assigned to perform the duties of Judge of the Ninth Judicial Circuit

State of Illinois
Peoria County } ss

Whereas Julius A Johnson Collector of said county returned to the Circuit of said county on the thirteenth day of April in the year of our Lord One thousand Eight hundred and forty four the following tracts and parts of tracts of land as having been assessed for taxes by the assessor of said County of Peoria for the year 1843 and that the taxes thereon remained due and unpaid on the day of the date of the said Collectors return, and that the respective owner or owners have no goods and chattels within his County on which said collector can levy for the taxes interest and costs due and upaid are the following described lands to wit.

Bigelow & Underhill's addition to Peoria =

Lot	Blk	Tax &c.	
"	"	"	"
5	51	"	80
"	"	"	"

And Whereas due notice has been given of the intended application for a judgment against said lands, and no ~~other~~ owner hath appeared to make defense except to such town lots as are laid off on the South West quarter of Section Nine in Township Eight North Range Eight East as a part of Bigelow & Underhills addition

[12050-12]

to Peoria it appearing to the Court on the suggestion of Charles Ballance Esquire that the same had been erroneously taxed as town lots, on consideration thereof it is ordered that no judgment be entered or sale made of such town-lots as are laid off on said quarter section) or shew cause why judgment should not be entered against the said lands for the taxes, interest, & costs due and unpaid thereon for the year herein set forth. Therefore it is considered by the Court that judgment be and is hereby entered against the aforesaid tracts and parts of tract land in the name of the People of the State of Illinois for the sum annexed to each tract or parcel of land with the costs accrued and to accrue thereon being the amount of the taxes and costs due severally thereon; and it is ordered by the Court that the said several tracts of land or so much thereof as shall be sufficient of each of them to satisfy the amount of taxes & costs annexed to them severally be sold as the law directs the defendant then read in evidence to the jury a precept issued out of said Circuit Court of Peoria County directed to the Sheriff of said County in the words and figures and figures following to wit

The People of the State of Illinois
To the Sheriff of Peoria County Greeting

State of Illinois }
Peoria County } ss. Whereas Julius A Johnson collector of said County returned to the circuit Court of said County on the thirteenth day of April A.D. 1844 the following tracts

and parts of tracts of land, as having been assessed for taxes by the assessor of said County of Peoria for the year 1843, and that the taxes thereon remained due and unpaid on the day of the date of the said collectors return, and that the respective owner or owners have no goods and chattels within his county on which the said collector can levy for the taxes interest & costs due an unpaid on the following described lands, to wit

Bigelow & Underhill's addition to Peoria.

Lot	Blk	Tax	
		$	¢
5	51	0	80
"	"	"	"

And whereas due notice has been given of the intended application for a judgment against said lands and no owner hath appeared to make defence or shew cause why judgment should not be entered against the said lands for the taxes interest & costs due and unpaid thereon for the year herein set forth;

Therefore it is considered by the Court that judgment be and is hereby entered against the aforesaid tracts and parts of tracts of land in the name of the People of the State of Illinois for the sum annexed to each tract or parcel of land with the costs accrued & to accrue thereon being the amount of the taxes and costs due severally thereon And it is ordered by the Court that the said several tracts of land or so much thereof as shall be sufficient of each of them to satisfy the amount of taxes & costs annexed to them severally be sold as the law directs

[12050-19]

(Seal)

Witness William Mitchell
Clerk of the said Circuit Court and
the seal thereof hereunto appoised at Peoria this Eighth
day of June A.D. 1844

William Mitchell
Clerk

State of Illinois }
Peoria County } ss By virtue of the foregoing process
I did with the assistance of the Clerk of the County
Commissioners Court of said County attend at the
Court house in the Town of Peoria on the tenth day of
June A.D. 1844 between the hours of 10 o'clock A.M. and
3 o'clock P.M. proceed to sell each lot or parcel of
land described in the foregoing list at public auction
commencing with the first lot therein described
and sold all lots (except those on which the
taxes were paid to me before sale) to the end of
Mills addition to Peoria inclusive, and afterwards, to
wit at three o'clock P.M. adjourned the sale to
10 o'clock A.M. of the 11th day of June inst.: June
11th at 10 o'clock A.M. sold in like manner the
lands described in said list from Mills 2d addi-
tion to the town of Peoria to the End of the said
list inclusive in the order the same are therein
described by offering the whole tract or lot of
land for the amount of taxes & costs due thereon,
and striking them off to the person or persons
who would pay the amount due on Each
tract of land or town lot for the least number
of acres or least quantity. The said Clerk Kept a

register of said sales in which was entered each lot or parcel of land exposed to sale by me the name of the purchaser, his place of residence & the quantity of land sold. Dated the 20th day June A.D. 1844 (The defendant then read in evidence to the jury a deed from the Sheriff of Peoria County to the defendant by the words and figures following to wit)

Smith Frye Sheff

Know all men by these presents That whereas at the May term 1844 of the circuit Court of Peoria County, a judgment was obtained in said Court in favour of the State of Illinois against Lot Number Five in Block number Fifty one in Bigelow and Underhill addition to Peoria in the County of Peoria and State of Illinois for the sum of One Dollar and ten cents being the amount of taxes, interest and costs assessed upon the said tract of Land for the year 1843: And whereas on the Tenth day of June 1844 Smith Frye then Sheriff of the County aforesaid by virtue of a precept issued out of the circuit Court of the County aforesaid dated the Eighth day of June 1844 and to him directed, did expose to public sale at the door of the Court House in the County aforesaid in conformatory with all the requisitions of the statute in such case made and provided, the tract of Land above described for the satisfaction of the judgment so rendered as aforesaid: And whereas at the time and place aforesaid Andrew McHunt of the County of Peoria and State of Illinois having offered to pay the aforesaid sum of one dollar and ten cents for the whole of said lot which was the least quantity bid for: the said tract of

(12050-20)

Land was stricken off to him at that price — And Whereas afterward said Hunt by endorsements on the certificate of purchase issued to him on said sale assigned the same to Andrew Gray for value received — Now, therefore I William Compher Sheriff as aforesaid for and in consideration of the sum of One Dollar and ten cents to him in hand paid by the said Andrew McHunt at the time of the aforesaid sale and by virtue of the statute in such case made and provided, have granted, bargained and sold and by these presents do grant bargain and sell unto the said Andrew Gray his heirs and assigns Lot Number Five in Block number Fifty one in Bigelow and Underhills Addition to Peoria in the County of Peoria and State of Illinois. To have and to hold unto him the said Andrew Gray his heirs and assigns forever: subject however to all the rights of redemption provided by law. In Witness Whereof I Wm Compher Sheriff as aforesaid by virtue of the authority aforesaid have hereunto subscribed my name and affixed my seal this fifth day of September 1849

William Compher
Sheriff (L.S.)

State of Illinois Peoria County ss Be it Known That on the date hereof personally appeared before me Jacob Gale Clerk of the Circuit Court within and for said County, Wm Compher personally known to me to be the real person whose name appears subscribed to the foregoing deed of conveyance

as having executed the same in the capacity of Sheriff of said County, and acknowledged the execution thereof to be his free act and deed for the uses and purposes therein expressed. In Witness Whereof I have hereunto set my hand and seal of said Court at Peoria this fifth day of September A.D. 1849

(Seal) Jacob Gale Clerk

The defendant then admitted that ever since the tax sale set forth in said tax deed the taxes on said Lot 5, in Block 51 have been fully paid, the plaintiff then admitted that the said Lot 5 in Block 51 described in the aforesaid tax deed included the land described in this declaration. The defendant then offered in Evidence and read in Evidence to the jury the plat and dedication of Bigelow & Underhills addition to Peoria in the words & figures following to wit

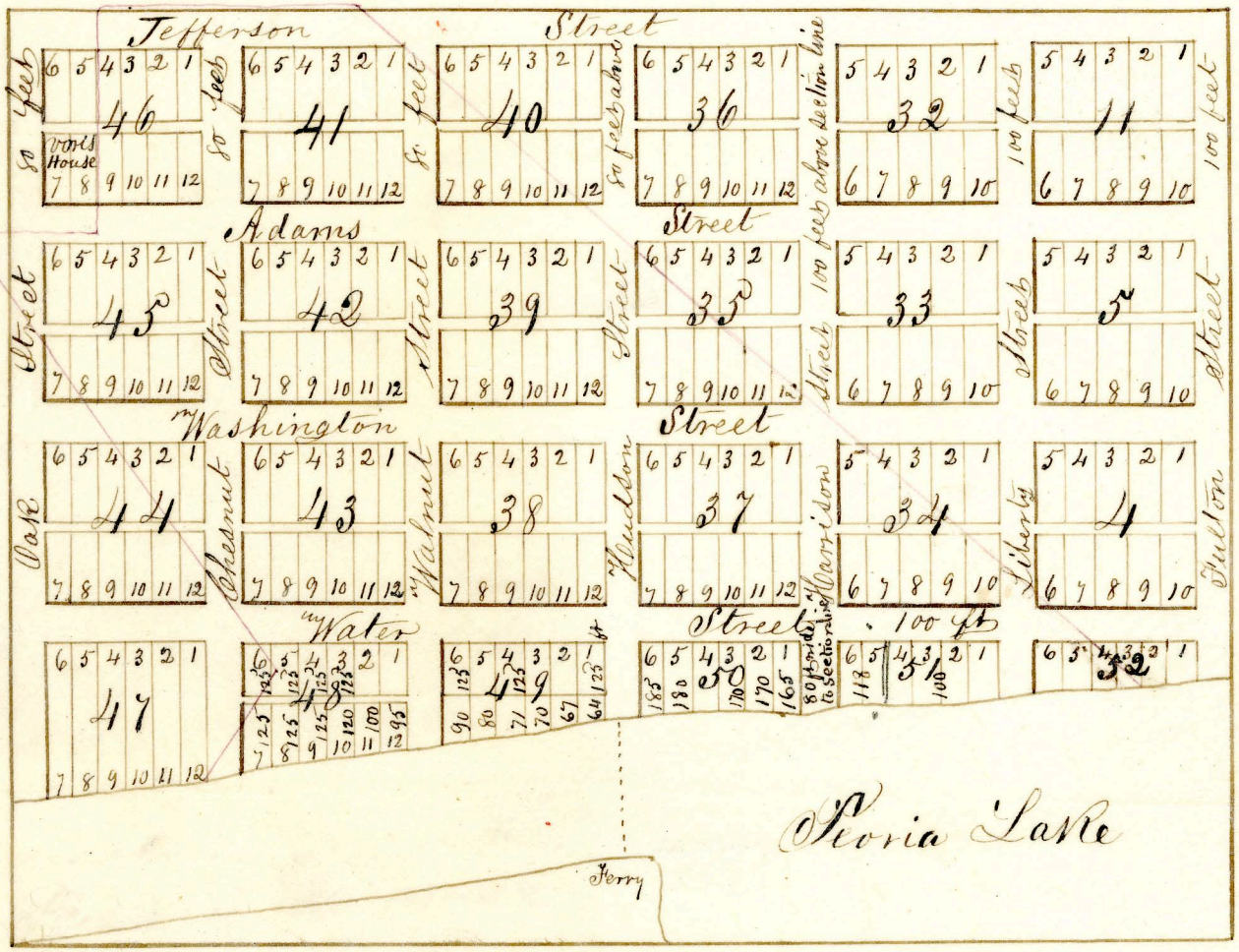
We Lewis Bigelow and Isaac Underhill do hereby declare that all that portion of the within plat which is included between the "Red lines" embracing the whole of Blocks No 37. 38. 39. 41. 42. 43 49. 50 & 51 and part of Blocks 34. 35. 40. 45. 46. 48 & 52 and which are situated partly upon the South west and partly upon the South East fractional quarters of Sections No Nine 8 & 8 E of the fourth principal meridian we have laid out as an addition to the town of Peoria and we do hereby Certify that all the Lots, Street and Alleys are of the size and dimensions as set forth in the certificate of the County Surveyor. Given under our hands and Seals this twenty second day of June A.D. 1836 Lewis Bigelow (23)

Isaac Underhill (28)

State of Illinois }
Peoria County } I Cyrus Leland a Justice of the Peace hereby Certify that on this 22d day of June A.D. 1836 the above named Lewis Bigelow and Isaac Underhill who are personally known to me to be the persons whose names are subscribed to the above instrument of writing as having executed the same personally appeared before me and acknowledged the same to be their free act and deed

Cyrus Leland Justice Peace

Bigelow and Underhill's addition to Peoria Ill



The Lots inside the Red Lines are Bigelows & Underhills addition to the Town of Peoria — Blocks 40. 41 & 42 Bigelows only —

Lots in Block 34 — 72 feet front by 171 feet deep — On Blocks 48 & 49. 60 ft front on Water Street by 125 ft deep — Blocks No. 50. 51. & 52 60 ft front, depth marked on the Plat — the Ballance of the Lots are 60 ft front by 171 ft deep — alleys 18 ft wide except the alley in Block 48 which is 14 ft wide

Surveyors Office Peoria June 22 1836 — I Thomas Phillips County Surveyor of Peoria County do Certify that the within named plat is a true and correct Survey —

Th. Phillips

and to maintain & prove the validity of such plat and dedication & not as evidence of adverse title to the plaintiff in this suit then read in evidence to the jury a patent from the United States to John L Bogardus in the words and figures following to wit

The United States of America

certificate No 13258 } To all to whom these presents shall come, Greeting

Whereas, John L. Bogardus, of New York County, New York has deposited in the General Land Office of the United States, a certificate of the Register of the Land Office, at Quincy whereby it appears that full payment has been made by the said John L Bogardus according to the provisions of the Act of Congress of the 24th of April, 1820, entitled "An act making further provision for the sale of the Public Lands," for the South East fractional quarter of Section Nine in Township Eight, North, of Range Eight, East, in the District of Lands subject to sale at Quincy, Illinois, containing Twenty-three acres, and ninety-three hundredths of an acre, according to the Official Plat of the survey of the said Lands, returned to the General Land Office by the Surveyor General, which said Tract has been purchased by the said John L Bogardus. Now, Know Ye, That the United States of America, in consideration of the premises, and in conformity with the several Acts of Congress, in such Case made and provided, Have Given And Granted, and by these presents Do Give And Grant unto the said John L Bogardus and to his heirs, the said Tract above described; To Have And To Hold the same, together

[13050-33]

with all the rights, privileges, immunities and appurtenances of whatsoever nature thereunto belonging, unto the said John L Bogardus and to his heirs and assigns forever, subject however to the rights of any & all persons claiming under the Act of Congress of 3d March 1823, entitled "an act to confirm certain claims to Lots in the Village of Peoria, in the state of Illinois"

In Testimony whereof, I, Martin Van Buren President of the United States of America have caused these letters to be made Patent, and the Seal of the General Land Office to be hereunto affixed. Given under my hand, at the City of Washington, the fifth day of January in the year of our Lord one thousand eight hundred and thirty eight and of the Independence of the United States the Sixty second.

By the President
Martin Van Buren
By. A Van Buren Secy
Hudson McGarland Recorder
of the General Land Office
Recorded Vol 1. page 149

the defendants then introduced and read in evidence to the Jury a deed from John L Bogardus to Isaac Underhill in the words and figures following to wit

Know all men by these presents that I John L Bogardus of Peoria in the County of Peoria and State of Illinois in consideration of one thousand and fifty dollars to me in hand paid by

Isaac Underhill of said Peoria the receipt whereof I do hereby acknowledge do hereby grant sell and convey unto said Underhill all my right and interest in and unto the South East fractional quarter of Section nine in Township Eight North Range Eight East of the fourth Principal Meridian in said Illinois and also in and unto the ferry established across the Illinois River in said Peoria together with the boats and other implements thereto belonging To have and to hold the same to the said Underhill his heirs and assigns for ever with all the privileges and appurtenances thereunto belonging. In Witness whereof I have hereunto set my hand and seal this fifth day of August AD 1834

John L Bogardus {LS}

Signed sealed delivered }
in presence of Orin Hamlin }

State of Illinois }
Peoria County } } This day personally appeared before the undersigned an acting Justice of the Peace in and for Peoria County John L Bogardus who being personally known to me to be the same person and acknowledged the within to be his act and deed for the uses and purposes therein contained Given under my hand & seal this fifth day of August One Thousand Eight Hundred and Thirty Four

Orin Hamlin J P {LS}

and it was therefore admitted by the plaintiff that said Isaac Underhill had, before the mapping of said plat and the dedication thereupon conveyed one undivided half of the land so conveyed by said Bogardus, to said Isaac Underhill as aforesaid to Lewis Bigelow ---- And it was further stated by the defendant and assented to by the plaintiff that all the above evidence of title to Lot 5, in Block 51, as well as to the rest of the land described in said patent to Bogardus was introduced as aforesaid to prove & maintain the legality & validity of the said plat & dedication of Bigelow & Underhill & for no other purpose. The defendant then introduced as witness Charles Ballance and George A Crook who stated on oath that Bartholemew Fortier & his wife who executed the deed herein before recited to the plaintiff, resided in Peoria & very near the land described in the patent herein before recited to the heirs and legal representatives of Wilette, from about the year 1838 for two years or more thereafter, that said Fortier during said time constantly claimed the ownership & possession of the land described in the said patent to Wilette as well, the streets laid out by Bigelow & Underhill in their said plat as the lots laid out by them in said plat so far as said patent to Wilette covered or included said streets or lots: that said Fortier attempted to take possession & enclose some part of a lot or lots as laid out by Bigelow & Underhill as aforesaid which said Fortier claimed to be in-

included in the patent to Wilette aforesaid and to be owned by him said Fortier but that said Fortier never attempted to take possession of any street or streets or part of a street as laid out by Bigelow and Underhill as aforesaid under his said Fortiers claim of ownership thereof as aforesaid, or otherwise Except that the house occupied by Fortier projected 6 or 8 feet into one of said streets. This was all the evidence introduced to the jury on the part behalf of the defendant, And the plaintiff to all the evidence offered by the defendant as aforesaid Except to the evidence & facts agreed to by the plaintiff as aforesaid from time to time as offered, objected and his objections were overruled by the Court and said evidence of the defendant read to the jury. The Jury found a verdict in favor of the plaintiff whereupon the defendant moved for a new trial because said verdict was contrary to law and the evidence which motion for a new trial was overruled by the Court and a judgment on said verdict rendered against the defendant by the Court To which judgment & verdict as well as the order aforesaid of said Court in overruling defendants motion for a new trial, and in overruling the several objections aforesaid of the defendant to the admission of the evidence on the part of the plaintiff the defendant then and there excepted, and prayed an appeal to the Supreme Court of Illinois, which appeal was granted by the Court upon the defendants entering in bonds according to law, within 30 days, in the sum of five hundred dollars with Andrew McHunt as his security And the defendants prayed the Court to sign & seal this bill of exceptions which is done this 11th day of September A. D. 1850

Wm Kellogg Seal

[12050-25]

And afterwards on the thirteenth day of September A.D. 1850. the defendant filed his appeal Bond in the office of the clerk of said court in the words and figures following to wit,

Know all men by these presents that we Andrew Gray as principal and Andrew McHunt as surety are held & firmly bound & obliged to James McFadden in the full and just sum of five hundred dollars; to the payment of which sum well & truly to be made to the said McFadden his heirs, executors, administrators & assigns, we do bind ourselves our executors, administrators & assigns, jointly, severally & firmly by these presents. In witness we have hereunto set our hands & seals. this twelfth day of September in the year of Our Lord eighteen hundred & fifty. — the Condition of the above obligation is such that whereas the said James McFadden at a term of the Circuit Court begun & holden at Peoria in & for the County of Peoria on the 26th day of August Anno Domini 1850 = recovered a judgment against the said Gray for costs & possession in a certain suit or of ejectment, wherein the said McFadden was Plaintiff and the said Gray was defendant: and the said Gray has taken an appeal from the said judgment to the Supreme Court of this State: Now if the said Gray prosecute his appeal with effect and shall pay all judgment, costs, interest & damages that shall be awarded or rendered against him in said suit by said Supreme Court in case said judgment of said Circuit Court shall be affirmed by said Supreme Court, then this obligations shall be void, otherwise to remain in

in full force & effect

Andrew Gray [L S]

Approved
Sept 12th 1850
Wm Kellogg

A M Hunt [L S]

State of Illinois
Peoria County ss: I Jacob Gale, clerk of the circuit court within and for said Peoria County do hereby certify that the foregoing is a full and correct transcript of the Record of the proceedings of said court in a certain cause therein of James McFadden plaintiff against Andrew Gray defendant as the same remains of Record and on file in my office.

In witness whereof I have hereto set my hand and affixed the seal of said court at my office in Peoria this sixth day of June in the year of our Lord one thousand eight hundred and fifty one.

Jacob Gale, clerk.

Clerk's fees: for transcript & certifying same $13.00

[12050-26]

Peoria Co.

Andrew Gray
vs
James McFadden

52

1851

Filed June 9. 1852
L. Leland Clk.

Referred

12050

$8.

Andrew Gray
vs.
McFadden

Pff.'s points & authorities =

1 = The depositions of Pff. below should have been excluded for want of certificate of Magistracy of the person taking them. —

2 = Nothing passed by the Patent. =
There was no authority to issue a patent to the legal representatives of a settler; but by the act of 1823, no patent could issue to the legal representatives of the settler. —

Cole's report shows that Willitte was not an inhabitant or settler of lot No. 42
See Nos. 11 & 42 of Cole's Report —

3 — As to Tax title.
The land was taxable as town lots as against Bogardus & those claiming him. —
Bigelow & Vanderbilt had title under the Bogardus patent, & could lay out & dedicate, & thereby become taxable. =
Fortiori by permitting the streets &c. to be used by the public, & not objecting, is to be presumed as assenting to the dedication =

On the question of dedication, see
Cincinnati vs. White 6 Peters 431
New Orleans vs. United States 10 Peters 662
Hobbs vs. Lowell 19 Pick. 405
Hinckley vs. Hastings 2 Pick. 164 note 2 –
Springfield vs. Hampshire 10 Pick. 67 –
Barclay vs. Howell's Lessee 6 Peters 498
Jervis vs. Dean 3 Bing. N. 447
Hamden vs. Sandy Hill &c. 6 Hill's Rep. 407 =

Gray vs. McFadden

Points &c. of Plff in Error

C. Peters

Andrew Gray
vs
James McFadden } Appeal from Peoria.

This was an action of ejectment commenced by the appellee against William R Phelps & Benjamin L. J. Bowland (& the appellant subsequently admitted to defend as their Landlord) to recover the premises described in the declaration as French claim No. 1. U. 41842. - To which declaration was pleaded the general issue.

Previous to the calling the cause for trial the defendants below moved the Court to reject the depositions of Louis Le Compt & Madaline Glodon for reasons on file & fully stated in the record which motion was overruled by the Court & the evidence allowed to go to the jury, to which opinion of the Court the defendants below excepted. The cause was then tried by the Court by agreement of the parties.

The Plff. below to maintain the issue on his part, first read in evidence the Acts of Congress of May 15th 1820 & March 3rd 1823 which acts are fully copied into the Bill of exceptions.

2d. A plat of the Survey of the new village of Peoria made by direction of the Surveyor General of Illinois & Missouri, Approved Sept. 10th 1840 & which is fully copied into the record.

3d A Patent from the United States to the legal representatives of Francis Willett dated the 28th day of August 1845.

4. The depositions of Madaline Glodon and Louis Le Compt as copied in the record

[12050-29]

which depositions only contain the certificate of the person before whom the depositions were taken & no certificate of the Clerk of the County Court that the person taking the depositions was a Justice of the Peace, the same being taken out of the County where the suit was pending.

5. A deed from Bartholomew Fortin & wife to the Plff. below - dated the 17th day of April 1849.

6. The defendants below admitted that the land described in the said patent to the legal representatives of Francis Willett & also described in the deed from Fortin & wife to Plff. included the land described in the declaration.

The appellant who was admitted to defend admitted the possession of the premises claimed. This was all the evidence given on behalf of the Plff. below.

The defendant below to maintain the issue on his part gave the following evidence -

1st A judgment of the Circuit Court of Peoria County rendered at the May Term of said Court 1844 for the non-payment of taxes for the year 1843 & which covered the premises in the declaration as Lot 5 in Block 57 in Bigelow & Underhill's addition to Peoria.

2d. A precept issued upon said judgment dated the 8th day of June 1844 & the Sheriff's return thereon.

3. A deed from William Campbell Sheriff of Peoria County to Andrew M Hunt by virtue of a sale made under said judgment & precept dated

September 5th 1849. The defendant below has admitted that ever since the said tax sale set forth in said deed, the taxes on said Lot 5 in Block 57 had been fully paid & the Plff. below has admitted that the said Lot 5 in Block 57 described in said deed included the land described in his declaration.

4. A plat & dedication of Bogelow & Underhill's addition to Peoria, & to maintain & prove the validity of such plat & dedication & not as evidence of adverse title to the Plff. below a patent from the United States to John L Bogardus for the S.E. frac. qr. Sec. 9. T. 8. N. R. E. 4th Meridian & dated January 5. 1838.

5. A deed from Bogardus to Isaac Underhill dated August 5. 1834 for the land covered by the Patent.

6. The Plff. below admitted that said Underhill before the making of said plat & dedication, had conveyed one undivided half of said land so conveyed by Bogardus to said Underhill as aforesaid to said Bogelow.

7. Evidence tending to prove that Fortin long before he conveyed to Plff. below had acquiesced in the laying out of the addition to Peoria by Bogelow & Underhill.

Appellant assigns, besides the general Error, the following, to wit:

1. Excluding the depositions Lee Compt. & Glodow
2. Permitting patent to heirs of Willett, & deed from Fortin & wife to Plff. below to be read in evidence.
3. In finding for Plff. below & against Dft. below.

Peters & Powell for
Appellant

12050-3b

Peoria.

Andrew Gray

vs

James McFadden

Abstract.

Filed June 12th 1837.

James McFadden
vs
Andrew Gray

Ejectment for Part of French Claim (1. 11. 41. 42)

Plaintiffs Evidence

Acts of Congress May 15th 1820
1st " " March 3. 1823

2. Plat French Claim & Survey approved 1st Sept 1840 – Objected to – Overruled

3. Patent from United States to the Legal Representatives of Francis Willette and Wife & others. dated 28th Aug A.D. 1845
Objected to – Overruled

4th
Deposition Madeline Glodon & Louis Le Compte Taken 7th Sept 1849. – Objected to – Overruled –

Exceptions to Depositions filed 4th Sept 1850

1. Secretary not authorised

2. No Certificate or other Evidence of Magistracy

3. No Evidence that witness resided in a different County from that where the Court was holden –

5th Deed from Bartholomew Sotin & Angelica his wife to Plaintiff James McFadden.
Dated 17th Apl 1849.
Objected to – Overruled –

Defendants Evidence

1. Judgment for taxes – May Term A.D. 1844 – described in the Judgt. as follows

Bigelow & Underhill's addition to Paris

Lot	Blk	Tax			
5	51	"	80		

2. Collectors Report certified by Wm Mitchell Clerk 8th June 1844.

Returned June 20th 1844.

3. Deed Wm Compher Sheriff to Andrew Gray Dated 5th Sept 1849.

Recites

Judgt. May Term 1844. against Lot 5. B. 51 for $1.10 – for tax & Costs for year 1843. Sale to Andrew M Hunt – Hunt assigned to Gray –

Sold for $0.30 more than Judgment

4. Defendant admitted all taxes paid since the tax sale.

5. Bigelow & Underhill's plat. 2 June 1836.

6. To prove the validity of the Plat and not as Evidence of adverse title Defendant read in Evidence Patent from U.S. to John L. Bogardus Dated 5th January 1838.

Subject to the French Claims.

7. Deed from John L. Bogardus to Isaac Underhill Dated 5th August A.D. 1834.

Admitted by Plaintiff that Underhill had Conveyed one Undr ½ of land to Bigelow before the town was laid out.

Admitted that Evidence was only introduced to Show the validity of the plat.

Charles Ballance testified that from 1838. 2 years after Fortier & Wife lived in Peoria near the lot in Controversy.
That Fortier during all the time claimed the land described in the Patent & the Streets laid out by Bigelow & Underhill in their plat covered by the patent. Fortier tried to take possession of the lots, but not of the Streets. Except that his house stood 6 or 8 feet in the Street
This all the Evidence
Plaintiff Objected & Excepted to all the Defts Evidence

Errors assigned

1st. Admitting Decompte & Gladons Deposition —

2. Admitting the Patent to Legal Representation of Willetts — & Deed from Fortier & Wife to Plaintiff

3. In rendering Judgment for Plaintiff & not for Deft

Mem –

Written to Gale to send copy of agreement & send Depositions of Gladon & Le Compte and affidavit of their non Residence –

1. St The Laying out of the town by Bagland and Underhill was unauthorized by law

The French claimants owned their land according to their Survey & Patents made Pursuant to them –

No One had any right to divide them into smaller quantities or lots

All those who entered upon them were trespassers.

If taxed at all they must be taxed as French lots –

No person a right to go upon my farm lay it out into town lots and tax it as such or procure it to be done –

Sheriffs Deed Recites the land sold for $1.19 – Whereas the Judgment for taxes &c. is only $0,80

Dickey

Pulpit & Merriman
Fight Shy — —

Pilers . Seys.
Depositions objected to —

Admissibility of Fortin's Patent
Not Evidence

If Patent not produced at all. the Grant & Survey would be sufficient

Fey title

Presumption of dedication to the Public

Under by. Fortier. House in the Street
Claimed it all

James McFadden
vs
Andrew Gray

Abstract