No. 14779

Supreme Court of Illinois

Blanchard

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vs.

Pratt

71641

STATE OF ILLINOIS,

SUPREME COURT,

THIRD GRAND DIVISION.

No. 142

J. W. Middleton & Co., Stationers, 196 Lake St.

Copy of Transcript from Justice's Court filed in the Office of the Clerk of the Circuit Court of the County of Bureau and State of Illinois on the 11th day of June A.D. 1863.



Thomas Pratt

vs.

Wm A. P. Blanchard,
Wm Mc Laren,
Phineas V. Blanchard &
Mark Varnum

Dec. 31. 1862 came plaintiff by his agent Otis A. Turner and filed his affidavit charging that defendants on the 9th day of Nov. 1861, at Bureau County, did unlawfully make a forcible and illegal entry into the lands and possession of plaintiff, to wit: S. W. qr. Sec. 21 T. 15 N. R. 1 E. 4th P.M. and then and there with strong hand violently, forcibly and unlawfully did enter into possession thereof and put out and dispossess said plaintiff from said lands and possessions wherein plaintiff had an estate and leasehold interest for the term, to wit, from Oct. 21. 1861 to Jan. 1. 1867; that said plaintiff was on Nov. 9. 1861 in possession of said premises under said lease which interest was then and still is subsisting, and that defendants still illegally &c hold said possession from said ~~possession~~ &c plaintiff &c. Whereupon I issued summons to Const. Huckins returnable Jan. 7. 1863 at 1 o'clock P.M., which was returned endorsed, "Served by reading to the within named defendants Wm A. P. Blanchard & Wm Mc Laren. Phineas V. Blanchard & Mark Varnum not found in my county. this first day of Jan. A.D. 1863. fees

" $3.00 A. B. Huckins Constable." Also issued 3
" plaintiffs subpoenas. 2 Served by Const. Huckins fees
" $5.75 & $4.38 - And now, to wit, Jan. 7. 1863 came
" plaintiff and said defendants Wm A. P. Blanchard and
" Wm McLaren and defendant moves on oath to continue
" this cause for the purpose of taking the deposition
" of non-resident witnesses, which motion is granted,
" and it is considered by me that this cause be continued
" until Feb. 5. 1863 at One o'clock P.M. at the costs
" of said defendants Wm A. P. Blanchard & Wm McLaren
" herein, taxed at $5.30 - Issued two pltffs. s&pas. returned
" served by plaintiffs attorney Frost, and 1 defts. s&pa.
" Also issued 1 defts. s&pa. returned served, fees $4.13,
" by Const. Huckins. And now, to wit, Feb. 5. 1863,
" came again plff. and defendants Wm A. P. Blanchard
" & Wm McLaren. Precept issued to Marshall Norton
" for a Jury, which was returned Served, fees $1.55
" And thereupon came a jury of twelve good and lawful
" men, who are, to wit: H. C. Warner, Henry Richards,
" Ed. Coleman, S. H. Phelps, H. A. Starkweather, Chs
" Robinson, N. Matson, E. S. Phelps, Orin W. Bill,
" Harry Rawson, Thos. Bolles & L. A. Stoner, who were
" duly sworn and empanelled to try this cause.
" Wm Pearson, Thos. Rhodes, L. Freeman, Joseph Pratt,
" Otis H. Turner & Wm Saddler Sworn and examined as
" witnesses for plaintiff. Lewis Pratt, John Watts, Andrew
" Douglas, Patrick Linnett, Mark Blanchard and
" John Bunnier Sworn and examined as witnesses for
" defendant. Cause continued for further trial

" till Feb. 6th 1863 at 9 o' clock AM. - Feb. 6. 1863 came
" again said parties and the jury. Trial resumed.
" And thereupon the Jury retired in custody of
" Marshall Norton & returned into Court saying
" that they are unable to agree; and thereupon it is
" considered by me that said Jury be discharged and
" that this cause be continued to Feb. 17. 1863 at 1
" o' clock P.M. for further trial, by agreement of said
" parties. 2 defts. Spas. issued, returned, one served
" by Const. Huskins, fees $5.50 - one by Const. Vannatta fees $1.05 -
" Feb. 17. 1863 came again said parties for further trial
" of this cause. And, by agreement of parties, this cause
" it is considered by me, is continued until Febuary 18.
" 1863 at 9 o' clock AM. Venire or precept issued to
" Const. Vannatta returnable Feb. 18. 1863 at 9 o' clock
" AM. Also one plaintiff's Spa. issued which was
" returned served by Const. Robt. Lyle, fees $5.75 - And
" now, to wit, February 18. 1863, came again said
" Parties. Venire returned served by Const. Vannatta
" fees $1.25 - And thereupon came the following persons
" summoned by said venire and from the bystanders,
" who were each sworn to answer questions, to wit.
" A. Cook, John Whetzel, W. H. Snow, D. Mc Donald,
" Joseph Houghton, Ozro Norton, David Knight, Everett
" Chapman, John Storm, James Harris Jr., J. K. Waldron,
" James Vandergrift, Adam Gaber, D. J. Apthorp,
" Ebenezer White, Dyre Green, Uriah Mason, Philip
" Zeigler, John Wright & J. W. Neighbor, of whom the
" following persons were duly sworn and empanelled

" as jurors to try this Cause, to wit, W. H. Snow, Ozro
" Norton, David Knight, James Harris, J. K. Waldron,
" Adam Staler, D. J. Apthorp, Ebenezer White, Dyre
" Green, Uriah Mason, Philip Zeigler & J. W. Neighbors.
" The following persons were sworn as witnesses for the
" plaintiff, to wit: Otis M. Turner, Wallace Clark, Wm
" Saddler, Wm Pearson, Thos. Rhodes, Zach. Freeman, Jos.
" Pratt & G. G. Gibons. And now it is ordered by me
" that this cause be continued for further trial until Febry
" 19th 1863 at 9 o'clock A.M. - And now, to wit, Feb.
" 19. 1863 Came again said parties and also said Jury.
" The following persons were sworn as witnesses for said
" defendants, to wit, Patrick Sinnott, Mark Blanchard,
" James Hewitt, James Currier, Andrew Douglass, Lewis
" Pratt, John Watts, John Mc Donald & Stephen Lyle.
" and thereupon the Jury retired in custody of Court.
" Vannatta to consider their verdict, and having
" agreed upon the same returned into Court with the same
" finding said defendants guilty in name and form
" as charged in the Complaint. It is therefore
" considered by me that said plaintiff recover and
" have restitution of the possession of the lands and
" possessions set forth in said Complaint, and that
" he have a writ of restitution therefor; and it is
" further considered by me that said plaintiff have
" and recover of said defendants William A. P.
" Blanchard and William Mc Laren the costs of
" suit by him herein expended, and taxed at
" eighty-two 36/100 dollars, and that he have execution

5.

" therefor. Feb. 23. 1863 appeal bonds filed by
" defts. with P. V. Blanchard Security in Sum of
" $200.
" State of Illinois, Bureau County, Ss.
" I, George O. Ide, Police Magistrate of the Town of
" Princeton in said County do certify that the
" foregoing transcript with the accompanying papers
" contains a full and correct account of the
" proceedings had before me in the above cause.
" Witness my hand and seal this 1st day of March
" A.D. 1863. George O. Ide (Seal)
" Police Magistrate

—

Copy of Summons accompanying Justice's Transcript.
" State of Illinois, Bureau County, Ss.
" The People of the State of Illinois, to the Sheriff
" or any Constable of said County:
" Whereas, Complaint has been made before the
" undersigned Police Magistrate of the Town of
" Princeton in said County, that William A. P.
" Blanchard, William McLaren, Phineas V. Blanchard
" and Mark Varnum, on the ninth day of November
" 1861 at said County, did unlawfully make a
" forcible and illegal entry into the lands and
" possessions of Thomas Pratt there situate and
" known and described as follows, to wit: the
" South west quarter of Section Twenty-six in
" Township fifteen North, Range six East of the
" fourth Principal Meridian, and then and there with

" strong hand violently, forcibly, unlawfully, did
" enter into possession thereof and put out and dispossess
" said Thomas Pratt from said premises and possessions,
" wherein said Pratt had an estate and leasehold interest
" for the term to wit, from October 21. 1861 to January 1. 1867:
" that said Pratt was then and there, to wit, on said
" Nov. 9th 1861, and prior thereto, at said County, in
" possession of said premises under said lease, which
" interest was then and still is subsisting, and that said
" William A. P. Blanchard, William Mc Laren, Phineas
" V. Blanchard and Mark Vannum still illegally and
" forcibly hold and detain said lands and possessions
" from said Thomas Pratt with strong hand, against
" the form of the statute in such case made, and not-
" withstanding said Thomas Pratt is entitled thereto.
" We therefore command you to summon said William
" A. P. Blanchard, William Mc Laren, Phineas V.
" Blanchard and Mark Vannum to appear before
" the undersigned Police Magistrate at his office in
" Princeton in said County on the 7th day of January
" A.D. 1863 at One o'clock P.M. to answer the complaint
" aforesaid. And have you then and there this
" precept. Given under my hand and seal this
" 31st day of December A.D. 1862.

George O. Ide (Seal)
Police Magistrate
Town of Princeton

" Which said summons is endorsed as follows, to wit:
" Served by reading to the within named defendants

" Wm A. P. Blanchard & Wm Mc Laren - Phineas V.
" Blanchard & Mark Vannum not found in my county
" this 1st day of January A.D. 1863.
"
" A. B. Huckins
" Constable

" Copy of Appeal Bond accompanying Justice's transcript.
" Know all men by these presents, That we, William
" A. P. Blanchard, William Mc Leran and Phineas V.
" Blanchard are held and firmly bound unto Thomas
" Pratt in the penal sum of two hundred dollars,
" lawful money of the United States, for the payment
" of which well and truly to be made, we bind ourselves
" our heirs and administrators, jointly, severally and
" firmly by these presents. Witness our hands and
" seals this twenty-third day of February A.D. 1863.
" The condition of the above obligation is such, whereas,
" the said Thomas Pratt did on the nineteenth day
" of February A.D. 1863 before George O. Ide Police
" Magistrate of the Town of Princeton in the County
" of Bureau and State of Illinois, recover a judgment
" against the above bounden William A. P. Blanchard
" and William Mc Laren for the sum of Eighty-two
" Dollars and thirty-six cents costs of suit, and also
" that he have restitution, and recover of the possession
" of the South west quarter of Section 26. T. 15 North, Range
" 6 E. 4th P.M., from which said judgment the said
" William A. P. Blanchard and William Mc Laren have
" taken an appeal to the Circuit Court of the County

" of Bureau aforesaid, and State of Illinois. Now if
" the said William A. P. Blanchard and William Mc.
" Laren shall prosecute their appeal with effect, and
" shall pay whatever judgment may be rendered by
" the Court upon dismissal or trial of said appeal,
" and further all rents becoming due, if any, from
" the commencement of the suit until the final
" determination thereof then the above obligation to be void
" otherwise to remain in full force and effect.

" Taken and approved by me this 23rd day of February A.D. 1863.

W. A. P. Blanchard (Seal)
Wm Mc Leran (Seal)
Phineas V. Blanchard (Seal)

George O. Ide
Police Magistrate
of the Town of Princeton

Whereupon an appeal summons was issued out of the Circuit Court of said County of Bureau and State of Illinois, on the 11th day of June A.D. 1863, which summons is as follows, to wit:

" State of Illinois } ss. The People of the State of Illinois,
" Bureau County } To the Sheriff of Bureau County,
" Greeting: We command you to summon Thomas
" Pratt personally to be and appear before the Judge
" of the Circuit Court in and for said County, on the
" first day of the ensuing August term thereof, to
" commence on the second Monday of said month,
" at the Court House in Princeton, to answer unto Wm
" A. P. Blanchard and William Mc Leran upon an

9.

" appeal brought into our said Circuit Court by the
" said Wm A. P. Blanchard & William McLeran from a
" judgment lately rendered before George O. Ide Police
" Magistrate of the Town of Princeton against said
" Wm A. P. Blanchard, William McLeran, Phineas V. Blanchard
" and Mark Vanum in favor of the said Thomas Pratt
" and for the sum of Eighty two & 62/100 Dollars costs of
" suit. Herein fail not, and have you then and there
" this writ. In testimony whereof I have
" hereunto set my hand and the
" seal of said Court at Princeton
" this 11th day of June A.D. 1863.

Seal
Cir. Ct.
Bu. Co. Ills.

" Geo. M. Radcliffe, Clerk
" By Cairo D. Trimble, Deputy Clerk

Which Summons is endorsed as follows, to wit:
" Served the within by reading to the within named
" defendant Thomas Pratt this 15th day of July A.D.
" 1863. Silas Battey Sheriff By A. B. Huckins Deputy.

" Copy of Record in Bureau County Circuit Court.
" Pleas before the Honorable M. E. Hollister Judge of
" the Ninth Judicial Circuit of the State of Illinois
" at a term of the said Circuit Court within and
" for the County of Bureau in the State of Illinois,
" begun held and continued at the Court House
" in Princeton in said County on the second Monday
" in the Month of August (being the tenth day of the
" said Month) in the year of our Lord One Thousand
" Eight Hundred and Sixty-three.

Present Hon. M. E. Hollister, Judge
George M. Radcliffe, Clerk
Silas Batty, Sheriff
And David P. Jones, State's Attorney.

To wit, on the tenth day of said term:
Thursday Morning 8½ o'clock August 20th
A.D. 1863. Court met pursuant to adjournment.
Present the same as on the first day.

Thomas Pratt
vs. Appeal
William A. P. Blanchard
and William McLaren

Now comes the plaintiff by Stipp & Gibons his Attorneys and the defendants come by Peters & Kendall their Attorneys, and on motion and by agreement of the said parties, it is considered by the Court that this cause be continued to the next term of this Court.

—

Pleas before the Honorable M. E. Hollister Judge of the Ninth Judicial Circuit of the State of Illinois, at a term of the said Circuit Court within and for the County of Bureau and State aforesaid, begun, held and continued at the Court House in Princeton in said County, on the second Monday in the month of December (being the fourteenth day of said month) in the year of our Lord One Thousand Eight Hundred and Sixty-three.

Present

George M. Radcliffe, Clerk
David P. Jones, States Attorney
and Silas Batty, Sheriff

And now on this first day of said term are present as aforesaid, but the Hon. M.E. Hollister Judge of said Court is not present, and thereupon according to the Statute in such case made and provided, Court stands adjourned until to-morrow.

Tuesday Morning 10 o'clock December 15th A.D. 1863. Court met pursuant to adjournment. Present the same as yesterday, and also the Hon. M.E. Hollister, Judge of said Court.

To wit, on the 4th day of said term:

Thursday Morning 9 o'clock December 17th A.D. 1863. Court met pursuant to adjournment Present the same as on the 2nd day.

Thomas Pratt

vs. Appeal

William A.P. Blanchard
and William McLaren

Now come the said parties by their Attorneys aforesaid, and the Court orders that a Jury be empanelled to try the issues herein. And a Jury comes of twelve good and lawful men, to wit, N.B. Vernon, Henry V. Bacon, Laomi J. Bates, Joseph Marple, Henry A. Smith, J.P. Dean, Andrew Sapp, Charles M. Davenport, George Hughes, Independence Stone, S.C. McLaine and David Deedins

" who are duly elected tried and Sworn well and
" truly to try the said issues herein and a true verdict
" to render according to the evidence.
To wit, on the 6th day of said term:
" Saturday morning 9 o'clock December 19th
" A.D. 1863. Court met pursuant to adjournment.
" Present the same as on the second day.
" Thomas Pratt
" vs. Appeal
" William A.P. Blanchard
" and William McLaren
" Now come the parties aforesaid
" by their said Attorneys, and also comes the Jury
" aforesaid and it appearing to the Satisfaction of the
" Court that the said Jury are unable to agree
" upon their verdict herein; It is considered by the
" Court that the said Jury be discharged from the
" further consideration of this suit and the matters
" at issue herein.

—

" Pleas before the Honorable M. E. Hollister Judge
" of the Ninth Judicial Circuit of the State of Illinois,
" at a term of the said Circuit Court within and
" for the County of Bureau in the State aforesaid,
" begun, held and continued at the Court House
" in Princeton in said County, on the Second Monday
" in the month of March (being the fourteenth day
" of said month) in the year of our Lord One
" Thousand Eight Hundred and Sixty-four

" Present Hon. M.E. Hollister. Judge
" Geo. M. Radcliffe. Clerk
" Silas Batty. Sheriff
" and D.P. Jones. States Attorney
" To wit, on the 2nd day of said term:
" Tuesday morning 9 o'clock March 15th A.D. 1864
" Court met pursuant to adjournment.
" Present the same as on the first day.
" Thomas Pratt
" vs. Appeal
" William A.P. Blanchard
" and William McLaren
" Now come the said parties by their
" Attorneys aforesaid, and the defendant Comes
" and files the affidavit of Wm A.P. Blanchard
" and Phineas D. Blanchard herein in the words
" and figures following, to wit:
" And now the said defendants enter their motion
" for a continuance herein; And after argument
" of counsel and the Court being duly advised
" in the premises. It is considered by the
" Court that the said defendants motion for
" a continuance herein be overruled.
To wit, on the 8th day of said term:-
" Tuesday morning 8½ o'clock March 22nd A.D. 1864
" Court met pursuant to adjournment.
" Present the same as on the first day.
" Thomas Pratt
" William A.P. Blanchard and William McLaren Appeal

Now come the said parties by their Attorneys aforesaid, and the Court orders that a Jury be impanelled to try the issues herein. And a Jury comes of twelve good and lawful men, to wit: Wm C. Hobbs, John Timberman, Peter Terry, George King, William Slinkle, P.M. Plumley, Lucien Marsh, Clement Freeman, Charles Mason, George Houck, David Hughes and George R. Ames, who are duly elected, tried and sworn well and truly to try the said issues herein and a true verdict to render according to the evidence.

To wit, on the 10th day of said term:-

Thursday morning 8½ o'clock March 24th A.D. 1864.

Court met pursuant to adjournment.

Present the same as yesterday.

Thomas Pratt

vs. Appeal

Wm A.P. Blanchard

and William McLaren

Now come the said parties by their Attorneys aforesaid and also comes the Jury aforesaid, and said Jury upon their oaths say, "We, of the Jury do find the said defendants guilty". And the said defendants by their said Attorneys enter their motion for a new trial herein.

To wit, on the 11th day of said term:-

Friday morning 8½ o'clock March 25th A.D. 1864.

Court met pursuant to adjournment.

Present the same as yesterday

15.

" Thomas Pratt

" vs. Appeal

" William A. P. Blanchard

" & William Mc Laren

" Now come the said Parties

" by their Attorneys aforesaid and after argument

" of counsel, and the Court being now fully advised

" in the premises, it is considered by the Court

" that the said defendants' motion for a new trial

" herein be overruled. It is therefore further considered

" by the Court that the said plaintiff have and

" recover from the said defendants all their costs

" and charges by them in and about their suit in

" this behalf expended, and that they have execution

" therefor. It is also further considered by the

" Court that the said plaintiff have restitution

" of the said premises, and that a writ of restitution

" be awarded to the plaintiff herein, directed to

" the Sheriff of Bureau County to execute.

" To wit, on the 12th day of said term:—

" Saturday morning 8½ o'clock March 26th A.D.

" 1864—Court met pursuant to adjournment.

" Present the same as yesterday.

" Thomas Pratt

" vs. Appeal

" William A. P. Blanchard

" & William Mc Laren

" Now come the said parties

" by their Attorneys aforesaid and said Jury

" upon their ~~oaths~~ Bail on motion it is considered
" by the Court, that the said defendants be
" allowed an appeal herein to the Supreme Court
" of the State of Illinois upon the said defendants
" entering into bond to the said plaintiff in the
" penal sum of One thousand dollars conditioned
" as the law directs with Mark Blanchard, Phineas
" V. Blanchard and Alonzo B. Huckins as securities;
" said bond and the bill of exceptions herein to
" be filed in twenty days from this day nunc pro
" tunc as of this day.

And afterwards, to wit, on said 26th day of March A. D. 1864 the defendants aforesaid file herein their bond in the words and figures following, to wit:

" Know all men by these presents that we,
" William A. P. Blanchard, William McLeran,
" Phineas V. Blanchard, Mark Blanchard and
" Alonzo B. Huckins of Bureau County, State of
" Illinois, are held and firmly bound unto Thomas
" Pratt of said County and State in the penal
" sum of One thousand dollars, lawful 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
" and firmly by these presents. Witness our
" hands and seals this twenty-sixth day of
" March 1864. The condition of the above
" obligation is such, that whereas the said

17.

" Thomas Pratt did on the twenty-fifth day of
" March A.D. 1864 in the Circuit Court in and for
" said County and State, recover a judgment against
" the above bounden William A.P. Blanchard and
" William Mc Leran in an action of forcible entry and
" detainer brought to ~~his~~ recover possession of lands
" described, to wit: The South west quarter of Section
" Twenty-six in Township No fifteen North, range six
" east of the fourth principal Meridian and situated
" in Bureau County and State of Illinois, from
" which said judgment of said Circuit Court
" said William A.P. Blanchard and William
" Mc Leran have prayed for and obtained an appeal
" to the Supreme Court of said State. Now if
" said William A.P. Blanchard and William
" McLeran shall duly prosecute their said appeal
" with effect and moreover pay the amount of the
" judgment, costs, interest and damages rendered
" and to be rendered against them in case said
" judgment shall be affirmed in said Supreme
" Court, then the above obligation to be void,
" otherwise to remain in full force and virtue.

" William A.P. Blanchard (Seal)
" William Mc Leran (Seal)
" Phineas V. Blanchard (Seal)
" Alonzo B. Huckins (Seal)
" Mark Blanchard (Seal)

50 ct. Rev. Stamp Cancelled

And afterwards, to wit, on the 2nd day of April
A.D. 1864 said defendants file in said Court
nunc pro tunc as of the 26th day of March 1864

their Bill of Exceptions in the words and figures following, to wit:

"State of Illinois } In the Circuit Court of the
" Bureau County } ss. March Term A. D. 1864.
" Thomas Pratt

" vs.

" William A. P. Blanchard
" and William McClerrin

" Forceable entry and detainer.

" Be it remembered that on the
" twenty-second day of March A. D. 1864, being the
" 8th day of the said term of Court, the above entitled
" cause came on to be tried before the Court and a
" jury. The plaintiff to maintain the issue on his
" part introduced witnesses who testified as follows:
" William Saddler, being sworn testified for
" plaintiff as follows: I reside in Macon, Bureau Co.
" Illinois, near the lands in dispute in this suit -
" within a mile & 3/4 from the S. W. 26. 15. 6. in this
" county - I did not reside there in '61 - I then lived
" in Brawby - I lived within 1/2 mile of the land in
" '61 - was on the same quarter - Know the parties to
" this suit - Know that Thos. Pratt done breaking on
" this land in the fall of '61 - about the middle of
" Oct - don't know the exact day, but Pratt had been
" threshing for me at the time for 8 or 9 days - & he
" asked me if I would lend him a plow - I said
" he might ~~have~~ take my brother-in-law's plow -
" He did take the plow - it was a breaking plow -
" for sod - it had cut about 17 inches - the share

" cut 15 inches - Hee asked me to go with him to help
" him start the plow - Pratt said he wanted to break
" for the purpose of taking possession of the land - that
" he had leased it - we went there - I ploughed and
" he drove the horses - I was with him about 2 hours -
" I did not measure the land but supposed it to be
" an acre & 1/2 by the eye - he said he had leased the
" land of Daniel Pauline and was breaking to take
" possession of the land - it was towards the N.W.
" corner - it was joining on the Ridge Road leading
" from Oceola to Nepouset - There was one and a-half
" acres broke as I should judge - it was not all
" broke while I was there - I left him breaking - I
" saw the land which he went around next day - it
" had been all broken up - Dana passed by while we
" were breaking - he stopped and asked me what
" we were doing, at that time - Pratt told him he
" was breaking a garden spot there in order to take
" possession of the land - I think there was nothing
" said about building at that spot - there was
" several others passed by in sight of us - they
" had to turn right on the end of the ridge road -
" I don't mind the name of any one but Dana -
" I know it was generally known that Pratt had
" taken possession of the land - I heard both Rhodes
" & Douglass speak of his taking possession - I
" heard others not land owners speak of it - There
" are 7 or 8 farmers living in the neighborhood -
" Blanchard and McLaren, Rhodeses, Pratt, Douglas

" and Hewitt - I talked about Pratt having
" possession - I mean Blanchard & McClaren in
" this suit - I don't know that defendants knew
" of Pratt having possession - I don't know when
" defendants put a house on the land - At the
" time Pratt broke there was no house on it - two or
" three weeks after the breaking there was a house
" on it - Blanchard lives about three-quarters of
" a mile from where this breaking was done - Blanchard's
" N. W. corner comes up to the corner of this quarter -
" Pratt lived about 1/4 of a mile from the S. E.
" corner of this land in question - McClaren lived
" about 35 rods from the S. E. corner of this land -
" He lived 1/2 mile from where Pratt broke - The
" land where Pratt broke was rather inclined to
" a ravine - but was easily seen from the road -
" the breaking was well done - the land was turned
" over pretty good - When Dana came along
" Pratt told Dana that he was breaking a garden
" spot for the purpose of taking possession of the
" quarter - he told Dana that he had leased
" the land of Paulene -
" Cross Ex. - I heard the two Rhodeses, Douglass
" and Dana speak of Pratt taking possession of
" the land - I never heard Dana speak of it
" except when we were breaking - the two Rhodes
" lived in the same house and I lived on Rhodes'
" farm - Douglass lived East of the land - The
" neighborhood is pretty thickly settled - the land

" was taken up all around except that quarter-
" There are about 13 farmers living within the extent
" of 1 mile of this land - I mean there are about
" 13 families within an area of a mile of this farm-
" back of this land for a distance of one mile the
" settlement is not so thick - on the west side I
" think it is thicker settled - I supposed that
" Pratt had broke 1½ acres - I was on the end of
" the land broke by Pratt when I measured it with
" the eye - never measured it - never stepped it -
" it was 3 or 4 times as long as it was wide - In
" my country they measure by Poles, Perches and
" Roods - 40 Poles make a Perch - 40 Perches one
" Rood - 4 roods One acre - Don't know how many
" Square Perches in an acre - there are 4,840 Square
" yards in an acre - three feet in one Square
" yard - I have been among land all my life -
" I judged it was an acre and a half - I knew
" the land familiarly prior to the time Pratt and
" myself went on to plow - there had been no
" breaking before that time - I went over the
" land frequently for my Cattle and Horses - I
" used to go over the Same quarter to Oceola -
" I have broken a piece on the N. W. corner of
" the Same land to scour my plow - a long piece
" running along side of the road - Elder Hewitt
" had a Yoke of Cattle on there scouring his plow
" on the Same land - it was on the Road running
" East & West where I scoured & where Hewitt

" Scoured was toward the South East running
" Cattering across - Where Elder Hewitt Scoured
" his plow was on the old road, near the South
" Side of the quarter - The breaking done by Pratt
" was near the Ridge road - I did not see Elder
" Hewitt break there - I saw his cattle at a distance.
" I knew his cattle - At the time Pratt did
" this breaking, I did suppose, or partly supposed
" I was to have an interest in this land - Pratt
" asked me if I would take ½ the land - I said
" didn't mind about it - that was all that was
" said at that time - afterwards he said I would
" have to fence the land + I said I would not
" improve other persons land - for I had not the
" money and then I didn't hear any more of it - at
" first I calculated to take the land if it suited
" me - The plow was on the premises which I
" occupied - The plow was not at Rhodes - they
" did not live at the same house with me - we
" lived 200 steps apart - the plow belonged to
" Pearson - Pearson had broke with it for me + for
" Rhodes - Rhodes did not know of Pratt getting
" the plow - Hewitt broke right in the old road,
" rather to the West Side - Pratt broke along
" Side of the Ridge Road - The families living
" near or within 1 mile of the land in Controversy
" were 13 families - Hewitt, Rhodes, Saddler, Gum-
" mersal, Lewis Pratt, Douglass, Thomas Pratt
" (Plff.) John Gunney, Mc Beth (Patrick, he is

" dead) Dana, Bennett, Blanchard, & McLaren - did
" not hear General speak of the breaking - never
" heard Blanchard & McClarren speak of the breaking
" Joseph Pratt - I am a son of the Pltff - I
" know this 1/4 in dispute - I did not see father
" break the land, but saw it was broke - it was
" near the N. W. corner - near the road along the
" Kentville - & the Ridge Road - I saw the breaking
" every time I passed - it was 1 to 1 1/2 acres -
" never measured it - I heard some of the
" neighbors speak of it - I heard McClaren one
" of the defendants say that Pratt had got
" another farm down there - It was in the fall
" after father leased the land - It was after
" father broke - I saw the Blanchard and McLaren
" house which they put on the land - McLaren
" spoke of Pratt having got the farm after Pratt
" had broke - Don't know who McClaren was
" speaking to when he said that Pratt had another
" farm - Albert Pratt was present when McLaren
" spoke of Pratt having another farm - Mr. Pratt
" I think was there - father had not obtained
" about that time any other farm - that is all I
" remember which McLaren said - I had frequent
" opportunities of knowing this 1/4 before father broke it -
" I passed over the 1/4 often in the spring & fall of
" 1861 - I went for coal & the cattle over this 1/4 -
" never noticed any other breaking except where
" persons had scoured plows - along the Ridge -

" People were in the habit of scouring plows on the
" 1/4- Hewitt scoured on the middle of the 1/4-
" Saw Hewitt's hired man scouring his plow on
" this 1/4- There was plow scouring on the N.E.
" Corner near the North road- I had seen after
" scouring along the road along the North side-
" I saw a house on this 1/4 about two weeks
" after Father broke on this 1/4- Blanchard and
" Mc Farren did breaking on this land the next
" Spring- I saw their teams- Don't know who
" lived in the house- they did break 120 or 130 acres-
" Don't know whether any one lived in the house
" the first winter- don't think any one lived in it
" that winter- I passed over the land on the North
" road after Father broke on this 1/4 and before
" any house was put on it.
" Cross Ex.- I saw Elder Hewitt's hired hand
" scour his plough on this 1/4 in Spring of 1861-
" never but one time- he was on the old road-
" never saw any one else scour ploughs there-
" That scouring of the plow was about the
" middle of the 1/4- ploughing with oxen- Father
" lived pretty near 3/4 of a mile from the N.E.
" Corner of the 1/4- don't know of my own knowledge
" that Father ever broke on this 1/4- Courrier lives
" a little over 2 miles from the N.E. Corner of this
" 1/4 in a S.E. direction- Don't know who
" McClerran was talking to when he said that
" Pratt had gotten another farm- there are

" only Lewis & Thomas Pratt in the neighborhood—
" it was in the Fall, in threshing time — it was
" about the latter end of Oct. a little after
" I saw the breaking done—
" (The defendant asked the witness the following
" questions:— 1. "Did you ever in the presence of
" James Hewitt say it would not cost your
" father anything to litigate these suits?"
" 2. "State whether on a certain occasion in the
" presence of James Hewitt, that you did not
" make the remark that your father was all
" right and that this suit would not cost him
" anything?" To the answering of which questions,
" and each of them, the plaintiff objected, and
" the Court sustained the objection, and the
" witness was not allowed or required by the
" Court to answer the same or either of them; to
" the order of the Court sustaining the plaintiff's
" objection and refusing to allow or require the
" witness to answer said questions or either of
" them, the defendant then and there excepted.)
" The house was put on the 1/4 about 2 weeks
" after Father's breaking was done. Near the latter
" end of Oct. — Did not see them when they
" were moving the house on the land — When
" I was threshing at Conners was before the
" house was on the land — because I had been on
" the land and saw no house — The threshing was
" a few days after the breaking — Did not go by

" this ¼ to go to Courriers - I went further away
" from this ¼ in going from Father's to go to Courriers -
" I do Swear the house was not on the land when
" I went to Courriers to thresh for I had been on
" the land a few days before - I don't Know what
" I was going for when I was on the ¼ - there
" were others at Courriers besides me - Lewis Pratt
" and his boy & Mc. Clarren, but I Can't remember
" all that were at Courriers when I was threshing -
" Don't Know what Mc. Clarren was talking about
" when I heard Mc. Laren Say that Pratt had
" another farm - The machine was going and
" making a noise - I was cutting band and
" Mc. Clarren was feeding the machine - There was
" a man near Mc. Laren but don't Know who it
" was - he was on the right hand Side - I had
" to be within ½ foot of Mc. Laren - Don't Know
" how near the other man was to Mc. Laren - The
" other man went off the Stand in 2 minutes -
" Heard nothing else and don't Know the man he
" was talking to -
" Recalled - The machine was running when I
" heard Mc. Laren Say that Pratt had another
" farm - don't Know whether father broke the land -
" I heard folks talk of father's breaking - Did not
" Know of any other person breaking on this land
" for the purpose of taking possession before
" father was reported to break in this ¼.
"
Pearson - I Know the land in

" dispute - I knew it in the Spring, Summer and
" Fall of 1861 - I know Pratt broke One 1/2 acres
" for the purpose of taking possession in the Fall
" of 1861 - after harvest - I think it was in
" September - Don't recollect the month precisely -
" I looked at it for the purpose of making an
" estimate of what Pratt broke - I had known
" the 1/4 2 years before Pratt broke - Don't think
" there was any other breaking before Pratt except
" scouring of plows - I scoured my plow on the
" East side of the road that runs to Oceola -
" as it runs from Nepouset to Oceola - I plowed
" along the road next the fence at different places -
" there was more broke up towards the South side
" by scouring - I never saw any other person
" scouring plows on the 1/4 beside myself - I saw
" Pratt break this piece towards the N. W. Corner -
" I spoke to Pratt as I was passing by - As
" Pratt was turning round I said, You have got
" started - I knew at that time for what
" purpose Pratt was breaking - the way I
" knew was that he came to where I was and
" where Saddler was and wanted to get a
" plow to break on that 1/4 to take possession of
" it (excepted t.) - He got the plow ~~about~~ and I
" saw him breaking about 11 o' clock of the same
" day - He got the plow about 8 o' clock - I
" heard a good many people talking through
" the neighborhood about Pratt breaking for the

" purpose of taking possession of the quarter -
" I heard Norton, the two Rhodes and a great
" many others in Neponset that heard speak of
" it - that town is near this road where people
" in that neighborhood go to do business - I did
" not hear Gunney speak of it - I heard Robt.
" Stubler and a great many others - These persons
" who I heard speaking of it lived around the
" neighborhood - I saw Blanchard & Mc. Leran
" put the house on this 1/4 about 2 weeks after
" Pratt did the breaking and after I heard these
" persons speak of Pratt having taken possession -
" they got the house at Elder Hewitts - put it
" on the S. E. Corner - I was at the house moving -
" Did not help them much - I did not hear
" Blanchard and Mc. Leran say where they were
" taking the house & what they were going to do -
" I guess that Blanchard and Mc. Leran ought
" to have knew that Pratt had broken on this
" 1/4 before they put the house on this 1/4 - They
" touched the S. W. Corner of this 1/4 when they first
" struck this 1/4 - The house was standing on
" Hewitts farm across, up the Kentville road -
" they would move the house within 1/2 mile of
" Pratts breaking - Pratts breaking was not within
" sight of where they were ~~breaking~~ moving - The
" house stood before they moved it in a N. W.
" direction - if I were standing in the Centre of the
" disputed 1/4 - They had to take the house

" around on account of the bridges - The reason
" I think that Blanchard and Mc Leran knew of
" Pratt's breaking was that it was within sight as
" they went to town, and they could not help seeing
" it - & because it was generally spoken of in the
" neighborhood - I don't know that Hewitt knew
" of Pratt's breaking before Blanchard & Mc Leran
" put the house on this 1/4 - the Rhodes knew of
" the breaking before Blanchard & Mc Leran placed
" the house on the land - This breaking of Pratt's
" was right next the road leading to town - & they,
" the neighbors passing along, could not help
" but see it - The breaking Pratt did had no
" appearance of scouring plows - I don't think any
" other breaking was done except to scour plows.
" Cross Ex. - I was not doing much of any
" thing when Pratt came for the plow - Er Saddler,
" Pratt & myself & the children were there - it was
" about 8 o'clock - I don't know what Saddler
" was doing - I have a pretty good memory -
" I was about the house when Pratt & Saddler
" spoke in relation to the borrowing the plow -
" We were all three together when Pratt got the
" plow for the purpose of breaking - he was going
" to break a piece for possession - the language
" was something in that style - he said he was
" going to break for the purpose of taking possession -
" I was sworn on the other trial & don't think I
" swore that I never heard Pratt say anything

" about taking possession - I don't know that I did
" so swear & won't say that I did so swear -
" If I did so swear on the other trial that I never
" heard Pratt say that he was going to take
" possession (I don't think I did so swear) I guess
" it was a mistake - My recollection is more apt
" to be correct when I was sworn before than now -
" My recollection is now clear and distinct as to
" what took place that morning - I heard Thomas
" Norton speak of Pratt's taking possession (at
" his house) a few days after Pratt's breaking -
" Norton commenced the conversation - Norton
" said he though Pratt & Saddler had got a
" hard bargain - Norton asked me if Pratt had
" not got a lease on that land & I told him
" that Pratt had broken for possession - he asked
" me if they had done any plowing & I said yes
" & for the purpose of taking possession - I guess
" Norton did not first get his information of me -
" Norton had heard of it in town - he said he
" did, then ~~he~~ I told him that he had broken
" for the purpose of taking possession - He got
" some of the information from me & some in
" town - He had heard in town about the lease -
" it is not a fact that Norton got all his
" information from me - he asked me if Pratt
" had done the breaking - Don't recollect what
" my business was at Norton's - Norton asked me
" if Pratt had a lease for the land - it might

" have been a week after the breaking, about a
" week, when I had the conversation with Norton -
" The house was put on the 1/4 the same fall the
" breaking was done - don't know whether it was
" in 1861 or '62 - Heard Robt. Stubble and the
" Rhodes speak of Pratt's breaking for possession
" the same fall of the breaking - It was on the
" same day I was at Norton's - Stubler was
" at Norton's - I don't recollect what Stubler
" said - Stubler said that Pratt had a hard
" bargain - Don't know that Stubler spoke of
" the breaking for taking possession - Did not
" hear of him speaking of the breaking for possession -
" I heard the Rhodes speak of the possession -
" they live 1/2 mile from the 1/4 - they are married
" men - I live not many steps from the Rhodes -
" I heard them speak of it about the same -
" I was at Rhodes about the same day of the
" breaking - Heard John Rhodes speak of
" Pratt's breaking to take possession - John asked
" me if Pratt had not gone to break to take
" possession - I heard many others besides
" the Rhodes speak of Pratt's taking possession -
" They were plowing with 2 horses - it was not
" very stiff, prairie sod - I saw him plowing
" about 11 o'clock - he got 4 or 5 times around
" the piece - The house was put on the land
" about 2 weeks after the breaking.
" Wallace Clark - I reside near the

" land in dispute - 1 1/4 miles from the Corner of
" said land - I have known the land since
" 1854 - Sometime during the latter part of
" October, I was crossing over the land and
" I saw Pratt breaking - I asked him what
" he was doing - Said he was breaking a garden
" spot - that he had leased the land for the
" term of five years and that he was breaking
" it to take possession - He wished to appriz
" the neighborhood so that they might take up
" their stock - There was about 1 1/2 acres - It
" was in the North part of the quarter - near
" the ridge road - about 40 rods from the North
" west quarter - Think the map shown correctly
" represents the Pratt breaking - There might
" have been breaking done there before Pratt's -
" but I never noticed any - This was the
" first time I ever heard of any body breaking
" to take possession - Could not state
" positively when the house was put on the land
" by Blanchard and Mc Leran, but it was after
" the breaking done by Pratt - It was understood
" by me and I never had any Conversation
" with any one except Thomas Bannister, who
" was an intimate friend of Pratt's - Don't know
" whether Blanchard and Mc Laren knew
" about Pratt's breaking - The breaking was
" well done - He was using a Tiskilwa
" breaking plow - a regular breaking plow -

" The breaking was some 30 rods long and from
" 8 to 10 rods wide - Should'nt think any one
" could pass the road without noticing Pratt's
" breaking - It was not over five rods from
" the point where the ridge road entered the
" quarter on the North - Think Pratt's breaking
" could not have been mistaken for scouring
" plows -
" Cross Ex. This breaking was done in the latter
" part of October I think - Spoke to Pratt as I
" went along - I asked Pratt what he was doing -
" He said he was breaking a garden spot - He
" asked me if I thought that would be considered
" a possession - I told him I thought not unless
" he followed it up - He was plowing with two horses -
" I should not think it a proper season to do
" breaking - It was prairie soil - trod out somewhat -
" not sufficiently worn out but that the furrow turned
" over evenly - Did not run quite parallel with the
" Ridge road - From the middle of May to the
" first of July is the proper season to break - I live
" in the middle of North east quarter of Section 28 -
" Bannister lives 1/4 mile west from my house - He
" spoke to me about the breaking - Won't swear
" positively that he spoke of breaking, but he talked
" about Pratt taking possession - This conversation
" took place a few days after the breaking - Am
" not certain whether it was before the house was
" moved on to the land - Am pretty positive it

" was before the House was put on - The circumstances
" that led me to think that no one else had taken
" possession, I proposed taking forty acres of the
" land - Pratt said he would be unable to break it
" all, and he said another party had spoken for it,
" and if he did not take it I might have it -
" Never had any other Conversation with him until
" after the Commencement of this Suit - Never knew
" of him, Pratt, doing anything on that land
" before or since that day - I saw Blanchard's
" & McLeran's teams there breaking in the Spring of
" 1862 -
" Direct Ex. resumed - I learned about a week or
" two after the Conversation with Pratt about the
" breaking, of Blanchard & McLeran putting the
" House on - Don't know for whom Bussell was
" breaking - Blanchard & McLaren fenced the
" land Next Spring - was Post and rail fence - It
" was made of Poles, black oak & bur oak - the butts
" were cut off and used as posts - I was not a
" very substantial fence - The land was fenced on
" the west by Mr. Hewitt, on the South by McLaren -
" On the east by Blanchard & Gray - these fences
" had been up before on their own land - It needed
" a mile of fence through the center for a road and
" half a mile on the North - I went into the neigh-
" borhood of Oceola, once a Month - went on to
" the land perhaps once or twice a week Some weeks -
" and Some weeks not at all - to look after Cattle -

" If there had been breaking on the extreme South &
" toward the west, I might not have seen it - I
" should suppose I might have seen regular breaking -
" I presume I could have seen it - I travelled the
" road from North east to South west frequently - If
" there was regular breaking there I believe I could
" have seen it.
" Cross Ex. resumed - There might have been breaking
" there and I not have noticed it - I never passed
" the land in the East part of the township - I then
" travelled along the North side of this quarter.
" Thomas Rhodes - Am acquainted with the land
" in dispute - have been acquainted with it five or six
" years - lived within half a mile of the land - Seen
" some breaking on the North side near the North west.
" corner - Don't remember the exact time when I first
" saw the breaking - It was in the Fall of 1861 - It was
" before I saw the house on - perhaps ten or fourteen
" days - Did not measure the land broke by Pratt -
" perhaps an acre or over - Before I saw the breaking
" I had learned that Pratt had done it - I was
" on the North side of it frequently - I never noticed
" any breaking that I called breaking, before Pratt
" broke - Have seen a furrow here and there plowed
" on the land - It was along the ridge road in
" and aside of the road - I scoured my plow -
" Don't know it was in 1861 I scoured my plow -
" I had never heard of any person breaking the
" land before Pratt's breaking - I learned from hearing

" Mr. Saddler tell about Pratts breaking - I haven't
" any particular reason for thinking it was generally
" known in the neighborhood - those that Pratt and
" Pearson and Saddler and myself talked about it -
" Saddler and Pearson and I live near together -
" Never heard any other person speak about Pratts
" breaking -
" Cross Ex. I wasn't over the quarter only on the
" North side very often - Did not see the breaking
" done - There was more talk about Pratts breaking
" after the house was moved on than before - I dont
" profess to swear there was no breaking on the
" South side of the quarter - I scoured my plow
" twice in one summer - I scoured my plow on
" the ridge road about One hundred yards South
" of the North road - Pratt never told me Pauline
" paid the expenses of this suit - Pratt proposed to
" take me in as a partner - He wanted me to go in
" and take a share with him, and said that he
" hadn't means to sense - I told him there might
" be trouble - It was before the house was put on
" and after he had done the breaking -
" Direct Ex. resumed - At the time he proposed to take
" me in, he said he had leased the land from Pauline -
" Stated the terms of the lease, but don't remember
" what they were - Never noticed any breaking on the
" South part before Pratts breaking - Did not tell
" Blanchard at the last term of this Court that
" Pratt told me that Pauline was to pay all the

" expenses.
" Otis A. Turner - Am acquainted with the lands
" in dispute - (Lease exhibited) This lease was executed
" by the parties who signed it - Those are their
" signatures -
Said lease is in the words and figures following, to wit:
" This lease made and entered into this twenty-first
" day of October A. D. 1861, By and between Daniel
" Paulin of Quincy, County of Adams & State of
" Illinois of the first part and Thomas Pratt of the
" County of Bureau & State aforesaid of the second
" part, Witnesseth; That the said party of the
" first part for and in consideration of the Covenants
" hereinafter mentioned first to be kept and performed
" by the party of the second part, hath leased and
" to farm let to the party of the second part from
" the day of the date hereof until the first day of
" January A. D. 1867, all of the South west quarter
" of Section twenty-six (26) in Township fifteen (15)
" North of Range Six (6) East in the County of
" Bureau and State of Illinois, on the following
" conditions, to wit; The said party of the second
" part hereby obligates himself to break all of the
" aforesaid land during the year A.D. 1862, and to build
" a first class fence out of the best white pine
" board and cedar posts, along the North and
" East lines of said land, and he is also to build either
" out of the aforesaid material so as to join with
" the fences on the South and west lines half of the

" strings of fence along the South and west lines of
" the land herein leased, or buy one half of the
" fence now built and standing on said South and
" west lines, of their respective owners, providing said
" fences are made of good material and built in
" a substantial manner, the cost of all the material
" in all the fencing aforesaid as well as the labor
" incident thereto is to be at the sole and proper
" charge of the party of the second part, and all
" to be put up in a good and substantial manner
" and to be kept in good and substantial repair
" by and at the proper cost of the party of the
" second part.
" And furthermore the said party of the second part
" hereby obligates himself to build a house on
" said land out of good material and to be put
" up in a substantial and workmanlike manner on
" an eligible part of the land aforesaid, at a
" cost of not more than two hundred and fifty
" dollars, and to be kept in repair by him during
" the term of this lease, all to be done at his
" exclusive charge and expense. All of the aforesaid
" improvements to be completed on or before the
" first day of January A.D. 1864.
" For and in consideration of the premises and
" covenants made and first to be kept and performed
" by the party of the second part herein above recited,
" the party of the first part in consideration of one
" dollar in hand paid by the party of the second

"part, and the Premises and Covenants to be
"kept and performed, the Party of the first
"part is to give the use of the aforesaid land
"for the years A.D. 1862 and A.D. 1863 for the
"breaking of the land as aforesaid. And the
"Party of the second part is to pay for each
"and every year thereafter to the Party of the
"first part the Sum of two hundred dollars
"per annum during the Pendency of this lease, amounting
"in all to the Sum of Six hundred dollars for the
"balance of the term. All of said last Sum
"is to be offset to the improvements above recited
"to be put on by the Party of the Second part,
"and the Same Shall be taken and deemed a
"full Compensation by the Party of the Second
"part for all the improvements above recited to
"be made and put on the said land by him.
"In Case the Party of the Second part Shall
"well and truly Carry out the foregoing conditions
"on his part to be kept and Performed, in that
"Case he Shall not be Chargeable with Money rent
"to be paid to the Party of the first part; but
"in Case he fails in any or all of the Conditions
"in that Case he Shall pay to the Party of the
"first part, in Money, the difference between the
"actual value of the improvements he may put on
"and those above recited to be built and made.
"If the Party of the Second part Prefer to use
"for posts, white oak instead of Cedar, as aforesaid

" in that Case he Shall not Charge for Such white
" oak posts more than eight cts. a piece, and the
" difference between the eight cts. their cost, and
" thirteen cts. the cost of the best cedar, the Party
" of the Second Part Shall Pay to the Party of the
" first part in Money; Said white oak Posts are
" to be Square, each Six inches. And it is furthermore
" a well understood Condition that the Party of
" the Second Part Shall not have a right to
" transfer this lease or the Conditions therein recited
" without the written Consent first had and obtained
" from the Party of the first Part.
" At the expiration of the term when the said land
" is offered for Sale by the Party of the first part
" the Party of the Second Part Shall first have
" the refusal of the land at Such Price as the
" Party of the first Part may offer it to others.
" At the expiration of the term of this lease the
" Party of the Second Part Shall deliver to the
" Party of the first Part, his heirs, executors or
" assigns the peacable and quiet Possession of
" the Premises with all the Privileges and appur-
" tenances thereto belonging without Cost or charge
" of any Kind whatever in a good Condition
" reasonable wear and decay only Excepted.
" Witness our hands and Seals day and date
" above written.
"
"

Daniel Pauldin (Seal)
Thomas Pratt. (Seal)

41.

"The plaintiff here offered in evidence a deed in
"the words and figures following, to wit:
"This Indenture made this second day of September
"in the year of our Lord One thousand eight hundred
"and fifty-one, Between George O. Kamick, Galena
"A. Kamick, John C. Burche, Susan R. Burche, Samuel
"R. Burche, and Ella A. Burche by their Attorney in
"fact Asa Turner of Adams County, Illinois, of the
"first part and Daniel Paullin of said County of
"Adams and State of Illinois of the second part:
"Witnesseth, That the said parties of the first
"part in consideration of the sum of Fifty Dollars
"to them in hand paid by the said party of the
"second part at or before the ensealing and
"delivery of these presents, the receipt whereof is
"hereby acknowledged, have remised, released,
"and forever quit claimed, and by these presents
"do remise, release and forever quit claim unto the
"said party of the second part his heirs and
"assigns forever all that certain tract or parcel
"of land situated lying and being in the County
"of Bureau and State of Illinois, known and
"described as follows, to wit: The South west
"quarter of Section Twenty-six (26) Township
"fifteen (15) North, Range six (6) East of the
"fourth Principal meridian. To have and to hold
"the said premises with all the privileges and
"appurtenances thereto belonging to the said party
"of the second part his heirs and assigns forever.

" In witness whereof the said Parties of the first
" part have hereunto set their Hands and Seals
" the day and year first above written.

" George O. Kamick (Seal)
" Galena A. Kamick (Seal)
" John C. Burche (Seal)
" Samuel R. Burche (Seal)
" Susan R. Burche (Seal)
" Ella A. Burche (Seal)
" By their Attorney in fact Asa Turner (Seal)

" State of Illinois
" City of Quincy, Adams County, Ss.

" Be it remembered that on this
" second day of September in the year of our
" Lord One thousand eight hundred and sixty-
" one, before me came personally Asa Turner Attorney
" in fact for George O. Kamick, Galena A. Kamick,
" John B. Burche, Susan R. Burche, Samuel R.
" Burche and Ella A. Burche personally known
" to the undersigned a Notary Public for said
" city of said County to be the identical person
" who executed and whose name is subscribed
" to the foregoing deed of conveyance as having
" executed the same as attorney in fact for the
" said Principals, and acknowledged the same to
" be his voluntary act and deed for the purposes
" therein expressed. In testimony whereof I
" have hereunto set my hand
" and affixed my notarial

Seal

Seal at my office in Quincy the day and year first above written.

S. P. Delano N.P.

And also the plaintiff offered in evidence a Power of Attorney in the words and figures following, to wit:

Know all men by these presents that we George O. Kanick and Galena A., his wife, of Dubuque Iowa, John C. Burche, Susan R. Burche, Samuel R. Burche and Ellen A. Burche of the City of Washington District of Columbia, heirs at law of Joseph Kanick and Rebecca his wife, late of Baltimore and State of Maryland, have made, constituted and appointed and by these presents do make, constitute and appoint Asa Turner of Quincy in the County of Adams and State of Illinois, our true and lawful Attorney for us and in our names and for our sole use, to bargain, sell and convey, remise, release and quit claim all those certain lots or parcels of land located in the Military tract and State of Illinois, known and described as follows, viz: The South west quarter of Section No. Nine (9) in Township Two (2) South and Range Six (6) West of the fourth Principal meridian. The North west quarter of Section Eight (8) in Township Seven (7) North and Range Three (3) West of said meridian. The South east quarter

" of Section Eleven (11) Township Six (6) North, Range Eight
" (8) West. The Southwest quarter of Section
" Thirteen (13) Township Six (6) South, Range Five
" (5) West. The North west quarter of Section
" Thirty-two (32) Township Five (5) North, Range
" three (3) East. The North east quarter of Section
" fourteen (14) Township Six (6) North, Range three
" (3) East; together with any and all other lands
" in the said State of Illinois in and to which
" we have any right, title or interest, either in
" law or equity as the heirs at law of said Joseph
" Karrick and Rebecca Karrick his wife. Hereby
" giving and granting unto our said Attorney full
" power and authority in the premises to use all
" lawful means in our names and for our sole
" benefit for the purposes aforesaid. And generally
" to do and perform all such acts, matters and
" things as our said Attorney shall deem
" necessary and expedient for the completion of
" the authority hereby given, as full as we might
" and could do if we were personally present,
" and finally hereby ratifying and confirming
" all the acts of our said Attorney or his substitutes
" done by virtue of these presents.
" In witness whereof we the said Parties of the
" first part have hereunto set our hands and
" seals this 19th day of February A. D. 1861.
" Signed sealed and Geo. Ora Karrick (Seal)
" delivered in presence of Galena A. Karrick (Seal)

45.

" Hugh Mc Millan } as to John C. Susan R. Samd. R. and Ellen A. Burche
" Charles D. Gedding }

Jno. C. Burche (Seal)
Susan R. Burche (Seal)
Samuel R. Burche (Seal)
Ellen A. Burche (Seal)

" State of Iowa } ss.
" Dubuque County } I. M. Allison, a Notary Public
" in and for said County do certify that George O.
" Kamick and Galena his wife, whose signatures
" appear to the foregoing Power of attorney and who
" are personally known to be the persons who
" subscribed and executed the same, did acknowledge
" the same to be their free act and deed for the
" purposes therein expressed. And the said Galena
" A. Kamick having been by me acquainted with
" the contents of said power of attorney and examined
" separate and apart from her said husband
" acknowledged that she executed the same
" voluntarily and freely and without the compulsion
" of her said husband. Given under my hand
" and seal this nineteenth day
" (L.S.) of February A.D. 1861.
" M. Allison Notary Public
" Dubuque

" District of Columbia } Be it remembered that
" City and County of Washington } on this fifth day of
" March A.D. 1861, in the City and County aforesaid
" before me Charles De Selding a Commissioner residing
" in said County duly appointed and commissioned
" by the Governor of the State of Illinois to take the

" acknowledgment and proof of the execution of
" Deeds and other instruments in writing under Seal
" to be used or recorded in the Said State of
" Illinois. Personally appeared John C. Burche,
" Susan R. Burche, Samuel R. Burche and Ellen
" A. Burche who are personally known to me to
" be the Persons whose names are Subscribed to
" the foregoing instrument as having executed
" the Same, and acknowledged that they had
" executed the Same for the uses and Purposes
" therein expressed. In witness whereof I have
" hereunto set my hand and affixed
" my official Seal as Commissioner
" of the Said State of Illinois at
" my office in the City and County
" of Washington and district
" aforesaid this fifth day of
" March A. D. 1861.

L. S.

" Charles De Selding
" Commissioner for the State of Illinois

" To the giving in evidence of the said deed and
" Power of Attorney, the defendants then and there
" objected, which objection was then and there
" overruled by the Court and the Plaintiff was
" thereupon allowed by the Court to read and he
" did then and there read in evidence to the Jury
" the said deed and Power of attorney. To the
" order of the Court allowing the Same to be read
" in evidence as aforesaid, the defendant then and

" there excepted.
" The said Otis A. Turner then proceeded to
" testify as follows:—
" I was present at the execution of this lease—when
" the lease was executed the parties went out on the
" land—examined the land and looked over it and
" talked where the best sight for a house would be—
" The spot near the ridge road on a high spot
" was determined on for the place to build the
" house—Pratt, Paulene and myself went on the
" land together—talked about his breaking and
" his commencing immediately—I saw the breaking
" which was subsequently done by Pratt on the
" West side of the Ridge road—it was a square
" piece when I saw it—I judged it to be about
" 2 acres—it was longer than wide—it was twice
" as long as wide—The breaking could be readily
" seen from any point of the road—It was plain
" to be seen from both roads—It was 1 month
" to 6 weeks after the leasing to Pratt that I
" saw the breaking—Blanchard admitted that he
" put a house on this ¼—McClelarren said he claimed
" possession of the ¼ in connection with Blanchard—
" that he and Blanchard were interested together—
" I asked Blanchard why he placed the house
" on the place & why he did so when he must have
" known of our lease to Pratt—Blanchard said
" he knew of Pratt's breaking on the place—Don't
" know of McClelarren saying anything about the

" breaking - I had been over the ¼ the day before the
" lease to Pratt - that was the first time of my ever
" being there - I passed over the ¼ in the direction
" of the Ridge road - from S.E. to N.W. - I scanned
" the land carefully - I saw in various places over
" the ¼ where persons had scoured their plows -
" I saw irregular furrows - I saw no regular
" breaking on the ¼ - Passed over the land on the
" occasion when I went to see Blanchard - I saw
" in the forks of the Ridge Road some furrows -
" I noticed an irregular No of furrows - On the
" west of the new road I saw some seven or eight
" furrows - There were no furrows on the west side
" of the old road - In the track of the old
" road it was all cut up with irregular furrows -
" some furrows, 2 or 3 on the south line between
" the old and new road - no furroughs beyond
" where the old track was worn - I have been
" over the land since I went to Blanchard's
" once or twice - I noticed the same appearances
" generally - I employed Russel in the spring
" of '62 to break on this ¼ at the instance of
" Pratt - he spoke of him as being a man who
" followed breaking & that he Pratt, was short
" of help - Russell broke about 5 acres near
" where Pratt broke, joining it on the South
" & a little to the East of it - In Oct. 1861
" Pauline & myself were in the neighborhood about
" 2 days - did not hear of any one having

" broken on that land prior to that time - Saw
" some of the neighbors - Pauline mentioned to
" them that he owned this 1/4 - after he said
" that there was no improvement on the land, we
" considered it vacant.
" Cross Ex. - I live in Quincy - I live part of
" the time in Galesburg - My business and
" Pauline's is the same - he is a dealer in real
" estate - When I came up to Neponset Pauline
" was with me - we passed over this land on
" Sunday - On Monday we leased the land -
" we met Pratt on Sunday - I was then doing
" business for Pauline on a salary - Pauline and
" I went there in a buggy - we met Pratt at
" his own house on Sunday and dined with
" him - we went out and looked at the land
" before we leased to Pratt -
" Question - Did you swear on the other trial that
" you did not go on to the land until after
" the lease?
" Answer - Don't know how I swore before - I
" think we were on the land before and after
" the lease - we were on the central portion of
" the land - I did some of the writing - think
" Pauline drew the lease - (Pauline's handwriting
" the lease is in) Pauline wrote the contract
" and I copied the second - I and Pratt
" looked up the witnesses - I was authorized
" to commence suit in Pratt's name - After seeing

" the notices in the name of Pauline, we did arrange
" with Pratt that we should use his name to
" prosecute in his name - I did ~~not~~ swear before
" Ide that I was an agent of Pratt - I was
" his agent because he authorized me to commence
" suit in his name - I suppose it was not under
" a feigned possession of Pratt that we desired
" to retain possession - I went to Pratt and
" made the arrangement to carry on this suit -
" there was nothing said about any pay - I
" asked Pratt if he would authorize me to
" commence a suit in his name as agent - I
" remember the term agent being used - I employed
" ~~Pratt~~ Russell to plow for the benefit of Pratt, -
" if we gained the suit - If we lost it would
" be the loss of Pauline - It was undetermined
" whose benefit the breaking was for at the
" time the breaking was done - Pratt's name was
" not mentioned when I hired Russell - I
" did not tell Russell that the breaking was
" for Pauline - We did not go to Quincy for
" several weeks after we made this lease - We
" went to Stark County that evening or the next
" morning - We went towards Stark Co. the
" same day on which we executed the lease -
" the next time I returned was from 4 to 6 weeks
" the house was on the land - All the conversation
" I had with Blanchard and McClelleran was after
" they had the house on the 1/4 - It was after

" that when I served the written notices on Blanchard
" and McAleran was ~~after they had the house~~
" on the 4th - I served the written notices on
" Blanchard and McAleran sometime in Dec.
" 1862 - I only made a verbal demand for
" the ~~possession~~ premises on my second visit -
" Pratt was with me when I went to Blanchard
" and spoke to me about the house being on
" the Real Estate - I was not on this 1/4 until
" in May or June - At that time Blanchards
" were plowing the land - I employed Russell
" to break - I paid him with Pauline's money -
" the first time I served the notices I served
" them in Pauline's name - the second time in
" Pratt's name - Pratt has paid part of the
" expenses - I expect Pratt looks to me to
" furnish the money to pay expenses - Pauline
" employs Attorneys through me - I expect
" Pauline's money pays the expenses of these
" suits - I was authorized by Pratt to
" conduct the suit in his name - I asked
" Pratt if he wished to continue with his lease -
" If he did we must use his name - and if
" we couldn't hold him in possession Pauline
" would pay the expenses - Pratt wanted to carry
" out the lease and retain the possession - I suppose it
" would be in support of Pauline as well as Pratt - It
" would depend upon whether it would be to the benefit
" of Pratt, whether Russell's breaking was Pratt's, or not -

" I don't know as I said to Russell who the
" breaking was for - I gave him my address and
" said when the breaking was done he would be paid
" for it - Blanchard stated that he had done
" breaking there in presence of Pratt, in May 1861 -
" He claimed to have taken possession in the Spring
" of 1861 - (Letter shown witness by defendant and
" he says, I think this is in Pauline's handwriting)
" I asked Blanchard what right he had to the
" land and he said he had the possession and that
" was all he wanted - He defied us with our title and
" told us to come on - I examined if he had a title
" and found none - Don't think he claimed the land
" under a title - He did not tell me he was
" claiming under a title - I told Pauline I did
" not know under what title he claimed - I told
" Pauline perhaps he was claiming under Strong -
" I don't remember that Mr. Blanchard at this
" Conversation said if Blanchard was in possession,
" he would have nothing more to do with it - He
" did not say so - There was not as much breaking
" done in place where Blanchard pointed out that
" he and Mc Laren had done, as was done by Pratt -
" I saw where he claimed the breaking was done,
" but I saw no breaking except such as I have
" described - I saw considerable furrows but no
" regular going round - I think there were six, seven
" or 8, possibly 9 furrows in the 3 Cornered Piece -
" On the side where there were nine furrows I did

" not count. I should be surprised to find it
" was two acres. Think there was from a quarter
" to a half acre. I supposed that the Pratt
" breaking was 3 or 4 times as large. I did not
" see any plowing in the sod west of the old
" road. It didn't have the appearance of ~~cutting~~
" breaking. Don't remember that I swore positively
" at the last term that I told Russell he was
" to do the breaking for Pauline. I recollect having
" a conversation with Mr. Currier. I spoke to Currier
" about Blanchard's claiming possession and that
" he had done some breaking there. I also told
" him that I hadn't seen any plowing except for
" scouring plows. I swear that I did not tell
" Currier that I had seen Blanchard's & Mc Laren's
" breaking before I leased to Pratt. I told him
" this Mr. Blanchard claimed that he had done
" some breaking, and that I had never seen anything
" but some irregular plowing there, and asked him
" if he knew anything about it, and he said he
" did not know of any. I had a conversation
" with Currier at his house but what time I cannot
" state. Don't recollect that I said on the
" other trial that Currier said Blanchard had
" a pretty good claim. It was sometime I
" should judge from one to two months after the
" lease, that I had the conversation with Blanchard.
" Pratt got a copy of this lease at the time he rented.
" He had it at the commencement of this suit and

has it now -

Defendants' Witnesses.

Defendants called witnesses who testified as follows;
Mark Blanchard - I reside in Oceola -,
Clark County - Defendant Blanchard is a second
Cousin of mine - I am acquainted with the
land - In May 1861 I was driving Cow to Neponset
and I saw Blanchard and his team on the land -
I passed over the road mentioned - He was
plowing - I asked him if he had bought the
quarter - He said he had got it all fixed
out right and was going to improve it - (Map
shown) he was plowing with one pair of horses -
it was an old ground plow - a Rod Plow is a
regular breaking plow - I asked him if he had
got the 1/4 and he said he had got the thing
all right and was going on to improve it - I was
driving to Neponset with a load - It was about
9 o'clock A.M. - his team was there when I came
back from Neponset - It was near noon when
I got back there - Longer was Blanchard's team -
The piece plowed on the E. side was 40 Rods -
on the West 28 Rods & on the South 20 Rods -
There was a very small piece left unbroken in
the middle of the 3 cornered piece - I passed
on that road almost every day until harvest -
I suppose the breaking done by Blanchard was
easily to be seen during that Summer - the
breaking came right up to the road - It was fenced

" near up to the East line -
" Cross Ex. - I measured this 3 cornered piece last
" week between the old road and the new road -
" The road we travelled in 1861 was gullied out
" & that is what I went by - I went by the
" west side - The old road is plain to be seen -
" it was right on the ridge - they broke it in 1862 -
" raised a crop in 1863 - raised wheat - They
" plowed it last fall - they plowed the stubble
" under - I drawed over that road in 1861, 1500
" bushels of corn - I had some help along at
" the last end - I asked Blanchard if he had
" bought the 1/4 - I asked him if he had bought
" the 1/4 because I knew he wanted to buy it -
" W. A. P. Blanchard lived South of where he was
" breaking some 80 rods - When I first saw him
" breaking there was no one with him but Conger -
" Blanchard was where the plowing was being done
" when I first saw them plowing - When he saw
" me coming he came up to me - one side of the
" plowing was right up to the road - The next
" morning I saw they had almost the whole of
" the 3 cornered piece broken up - he was still
" plowing when I went home that day - his
" team was going around the piece - quite a
" piece ~~when~~ was left when I came back that day -
" as much as had been plowed and I don't know -
" but more - I generally made the trip and got
" back by noon - They did not plow any of the

" road where I travelled - It was plowed out
" to the edge of the new road - After Mc Laren
" fenced up, it was rather steep pitch - The
" earth was not trod over outside of the road -
" Direct Ex. resumed - This plow had a rolling
" cutter -
" John Wyman - I reside in Neponset - I
" reside about 3 miles from the land in Controversy -
" My business is teaming and hauling Coal - Have
" hauled Coal across that quarter Section during
" the Summer of 1861 - Can't tell exactly what
" time of the day it was - Saw Blanchard's team
" plowing there on the west side of the new road -
" I helped Blanchard to measure it last week -
" It was 40 rods on the East, 20 on the South
" and 28 on the west side.
" Cross Ex. Can't state the exact time - I met
" Mark Blanchard about a mile and a-half
" from Neponset about 9 or 10 o' clock A.M. - I
" did not see W.A.P. Blanchard on the land -
" It was Blanchard's hired man that was
" plowing - I know it was the first breaking
" ever I saw on the quarter, and I travelled
" over the quarter quite frequently - I was not
" personally acquainted with the man who was
" breaking there - I lived in Neponset - I lived
" near Blanchard - When I met Mark Blanchard
" I had no Conversation with him - I have
" been at W.A.P. Blanchard's house often before

" he did the breaking -
" Patrick Sinnott - In the spring of 1861 worked for
" Mc. Mclarren - I know the land in dispute - I was sent
" on that 1/4 some time along in May to plough in the
" year 1861 - I plowed on the West side of the road -
" the strip was about 70 or 80 rods in length - It was
" about 2 rods wide - It was in the afternoon when
" I went out to plow - I don't know where Mc. Clarren
" was in the forenoon he was plowing - In the afternoon
" when I went to plow I found the plow there in the
" forenoon - In the afternoon the plow was stuck in the
" furrow - it was Mc. Mclarran's plow - It was the same
" plow Mc. Mclarran took out in the morning - I finished
" the land before I quit - I got through about 1/2
" hour before sundown - I had a span of horses -
" Mc. Mclarran had scoured his plow in the spring
" down below Oceola in the timber - This breaking I
" think was not for the purpose of scouring the
" plow - Don't know how long Mc. Mclarran plowed -
" He went out between 7 & 8 o'clock in the morning -
" I did not see him come in - I did not see him
" again until noon -
" Cross Ex. I am living on the land in dispute - I
" am Blanchard's tenant - I did the plowing in May
" 1861 - I was then working for Mc. Larren by the month -
" Before I went to plow I was nailing the fence
" up - When I went to plow I took the horses with
" me - I don't know why I plowed there - Mc. Mclarren
" lives about 2 1/2 miles from Oceola - The grove

" where we scoured the plow is about ½ mile from
" Oceola - it is further from McLarens to Oceola than
" it is to the grove where we scoured the plow - The
" grove from McLarens is beyond Oceola - We scoured
" the plow about the 1st of April - We had 4 acres
" to plow for corn when I broke on this ¼ - he had
" 60 acres of corn that year - I commenced work for
" McLarren in March - Before I went to McLarens
" I had been South of Rock Island - I quit work
" for McLarren the day before Christmas 1861 -
" Recalled - We went through the village of
" Oceola about ½ a mile to scour the plow -
" James Hewitt - I know the land in dispute -
" I saw McLarens team plowing (map shown) - that
" black mark on the map represents the plowing done
" by McLaren - The plowing was done on the West
" side of the road - part of the road I think was
" plowed up - it was about 80 rods long - it was
" 2 or 3 rods wide - he plowed in the spring of 1861 -
" I heard the testimony of Pratt and Saddler in
" relation to father's team plowing on this ¼ - I saw
" the team part of the time - he went down across
" the ¼ - we scoured our plow at the timber - I
" don't know what the hired man plowed there
" unless it was to scour the plow - he was plowing
" up towards the N. W. corner - It was in the afternoon
" that I saw McLarens team plowing there - It was
" Paul Sinnatt that plowed.
" Cross Ex. I saw Paul Sinnatt plowing late

" in the Spring of 1861- My father's team was on
" of team- Mc Larren's Irishman was plowing with
" a Scouring plow- I think a part of the road
" was plowed up- It did not occur to me that
" they were plowing to Scour plow- the plowing was
" not irregular- It was a hard place to Scour
" a plough along the road- Don't remember that
" the breaking Came out to the road- I don't Swear
" that it had a nice Square end like the map-
" The road is one which ran across the prairie-
" There is a road now laid out across the 1/4-
" The land is not Sandy where Mc Larren plowed-
" The old road ran over high ground- I Saw
" Some plowing done on the North line along the
" fence- I don't know whether it was Scouring or fine
" ground there-
" C. A. Hewitt- I live from 40 to 60 rods N.W.
" from the N. W. Corner of the quarter in question-
" Known it for 9 years- I have Seen both pieces
" of breaking- I could not give any description of
" either of these pieces of breaking- After the breaking
" which it was Said that Blanchard did, I
" had to Cross this breaking in my buggy- I
" Could not distinguish between Blanchards and
" Mc Ibleran's breaking- I think the breaking was from
" 2 to 3 rods wide from 40 to 60 + probably 80 +
" possibly less than 40 Rods in length- The other
" breaking Said to be Pratts, I have crossed- It
" was Smaller and an oblong- perhaps 4 or 6 or 7 rods

" wide and Some 20. rods in length - In Crossing
" the breaking I made an acute angle - There was
" an old road very near the ridge - the breaking
" of Blanchard and Mc. Larew hit into the old road
" occasionally, while the place laid out for the
" new road was left - the plowing was regular
" and Seemed to have been done with an old ground
" plow - I have used an old ground plow with a
" roller to break with - but that Kind of plow was
" not used on regular prairie - this prairie was
" fed out very much - the Season for breaking
" prairie is from 10th of May to 10th of June - it is
" said that Fall plowing is very bad - it was
" prairie fed out very much grown up to weeds -
" The prairie grass was wanting - Prairie like this
" was could have broken better with an old ground
" plow than with a sod plow - The most of that
" prairie was broken up the next Spring by Blanchard
" and Mc. Larew - Blanchard and Mc. Larew Some
" time about the 1st of Nov. 1861 came to me & wanted
" to buy a Small tenant House & Stated what they
" wanted - On the 6th of Nov. they bought the
" House - it was 16 x 24 - they Started the House
" the day they bought it - they Started directly
" South for they could not get Straight over on
" account of Sloughs in the road - I Saw the House
" on this 1/4 after they bought it - it was there in a
" very few days after they bought the House when
" I Saw it on this 1/4 - The next Spring Blanchard

61.

" and Mc Laren broke up the whole of the ¼ except
" Sloughs - they put on a miserable fence so as to
" secure the crop - The next year after the breaking
" they put on sufficient to secure the crops - fenced
" each side of the new road which runs across the
" ¼ - The fence is 2 strings through it & then from
" where it strikes the road running across the North
" end it is all fenced - They fenced in the next
" spring, of 1863 - I never sent my plow on
" that place to scour a plow - I never sent teams
" to scour a plow - My teams never scoured a
" plow on this ¼ by my direction or knowledge -
" Where I travelled in 1861 on the old travelled
" part of the road a portion was broken up, perhaps
" all of it - I couldn't say there was more
" plowed than to scour a couple of plows -
" Cross Ex. I entered this ¼ on the N. W. Corner -
" Blanchard & Mc Laren broke in 1862 & I saw
" them breaking - I think they had some Mole
" board and some Rod plows - I don't know that
" the Mole board plows are regular breaking plows
" but I know Blanchard had a regular Mole
" board plow which is a breaking plow - I passed
" by the breaking of Pratt's - it looked to be
" regularly broken and seemed to be done with a
" rod plow - the furrows were cut thin and laid out
" flat - don't know that any one lived in the
" tenant house that fall of 1861 - The house was
" a considerable distance from the road - I saw

" smoke in the house but don't know what time.
" Andrew Douglas:- Know where the land in
" controversy is - Measured the Mc Laren breaking -
" Also the Pratt breaking - Pratt's breaking was four
" rods & 12 links wide & 3 rods long - Mc Laren breaking
" two rods & 22 links wide & 80 rods long - Mr. Lewis
" Pratt helped me to measure it - Measured it
" with a chain -
" Cross Ex. Made the measurement in the fall
" of 1862 I believe - Mc Laren pointed it out but
" we knew where it was - Don't know why we didn't
" take Pratt along - The ground was all broke up
" around it - Had been broken up in the spring
" before - think it was froze some - It was in
" the forenoon - got the chain of Mr. Mc Laren -
" It was a surveyor's chain - I put down the
" figures - Mc Laren didn't do anything - Couldn't
" say whether he showed us the boundaries or not -
" Direct Ex. resumed - Could distinguish from
" the appearance of the breaking the old breaking
" from the new - Pratt's breaking was more mellow
" than the breaking of 1862 - Don't think they plowed
" through the old breaking - when they plowed the
" new - Think I am positive on that subject -
" Lewis Pratt - Know the 1/4 of land in dispute -
" I helped measure these pieces of breaking - Douglas
" and Mc Laren was present when we measured
" this land - It was a regular surveyor's chain -
" Douglas carried the hind end of the chain and

" made the minutes - I carried the fore end and
" stuck the stakes - We put the minutes down at
" every corner - I could not swear that the
" figures read by Douglas was the same made
" when we did the surveying - I had no interest in
" measuring the land - we measured the land in
" Nov. or Dec. 1862 - the ground was frozen some
" the stakes were wooden -
" Cross Ex. I don't live on that land - rented a
" piece of land last year of Phineas Blanchard -
" who has the care of the piece I leased - Parlin.
" Blanchard told me I should have it - it was
" not more than 2 days before I got it that I
" knew I was going to have it - I have sowed
" 9 bushels this spring in the N.E. corner - I rented
" of Phineas Blanchard this year - Before I
" measured the land had never heard of the
" suit between Pratt and Blanchard & McLaren -
" Did know of Pratt breaking on that 1/4 in 1861 -
" I think I saw his breaking the morning after he
" broke it - I saw a team breaking on this 1/4 in
" the spring - It was the first plowing which I
" ever knew of being done on the piece - Don't
" know that it was McLaren's breaking in the
" spring - My door is just across 1/4 to the 1/4
" in question - I was East of North -
" Stephen Lyle - Know the 1/4 in dispute - I
" saw McLaren and Blanchard breaking in the
" spring of 1862 - they had 2 Rod plows and 1

" Mole Board plow - I know when they put
" the house on the land - They started the
" house one day and got it on the next - I recollect
" of drawing the house across some plowing - don't
" recollect of it drawing harder across the plowed
" land - the 1/4 is under fence and under cultivation -
" the proper season for breaking is in the spring
" from 20th of May to 1st of July - The sod
" does not rot so well when broke in the fall
" as in the spring - The land broken in May would
" rot better than that in Oct. before - the whole
" entire 1/4 was more or less eaten out - Never
" broke any that same kind of prairie - I helped
" moved that house - We moved it from Hewitt's
" land - Could not say that I knew where
" they were going to take the house -
" The defendant then offered in evidence the
" record of a deed from Dewitt Laird to Blanchard
" and McLaren, which was objected to by ~~Blanchard~~
" ~~and McLaren~~ plaintiff - Whereupon the defendants
" called W. A. P. Blanchard and Phineas Blanchard
" who testified to the Court that the original
" deed had been sent to Fort Donaldson in
" Tennessee on the 15th of February A.D. 1864 by
" Phineas Blanchard acting as the agent of W. A.
" P. Blanchard, in a letter to James M. Gilson,
" for the purpose of getting the affidavit of said
" Gilson explaining an apparent alteration in the
" date of the acknowledgment of the original deed

"from the Deavitt Heirs by John B. Strong their
"Agent to Blanchard and Mc Laren; and that
"said deed was acknowledged before said Gilson
"as Clerk or Deputy Clerk of the Knox County
"Circuit Court on the day of the purported
"date in May 1861, and that said deed had not
"been returned - That defendants had recently
"caused a telegram to be sent to said Gilson
"inquiring for said deed and requesting him to
"return it, but that said Gilson had telegraphed
"back on Thursday last that he had not
"received the deed. Defendants stated on oath
"that they had not seen or heard of said deed
"since it was sent to Gilson, and did not
"know what had become of the same - Whereupon
"the Court admitted the record copy of said
"deed to be read in evidence to the Jury, which
"is in the words and figures following:
"This Indenture made this first day of May
"in the year of our Lord One thousand eight
"hundred and sixty-one, Between Jacob V. L.
"Deavitt, James R. Deavitt, Charles E. Deavitt,
"Ephraim H. Deavitt, Albert T. Smith, Elizabeth
"Deavitt Smith, Julia C. Deavitt, Maria Deavitt,
"by John B. Strong their Attorney in fact of
"the first part and W. A. P. Blanchard and
"William Mc Leran of the second part, Witness:
"the said party of the first part for and in
"consideration of the sum of One thousand

" dollars in hand paid by the said party of the
" second part the receipt whereof is hereby
" acknowledged and the said party of the
" second part forever released and discharged
" therefrom, have remised, released, sold,
" conveyed and quit claimed, and by these
" presents do remise, release, sell, convey and
" quit claim unto the said party of the second
" part their heirs and assigns forever, all the
" right, title, interest, claim and demand which
" the said party of the first part have in and
" to the following described lot, piece or parcel
" of land, to wit, The South west quarter of
" Section twenty-six (26) Township fifteen (15)
" North in Range six (6) East in Bureau County
" State of Illinois. To have and to hold the
" same together with all and singular the
" appurtenances and privileges thereunto belonging
" or in any wise thereunto appertaining and all
" the estate, right, title, interest and claim
" whatever of the said party of the first part
" either in law or equity, to the only proper
" use benefit and behoof of the said party
" of the second part their heirs and assigns
" forever. In witness whereof the said party
" of the first part hereunto set their hands and
" seals the day and year first above written

" Albert T. Smith L.S.

" Elizabeth Devitt Smith L.S.

" E Julia C. Dewitt L.S.
" Maria Dewitt L.S.
" Jacob V. L. Dewitt L.S.
" James R. Dewitt L.S.
" Charles E. Dewitt L.S.
" Ephraim H. Dewitt L.S.

" By their Attorney in fact John B. Strong
" State of Illinois. Knox County, ss.
" I, John H. Lewis, Clerk of the Circuit Court
" in and for said County in the State aforesaid,
" do hereby certify that John B. Strong Atty.
" aforesaid, personally known to me as the same
" person whose name is subscribed to the
" foregoing instrument of writing appeared before
" me this day in person and acknowledged
" that he signed, sealed and delivered the
" said instrument of writing as his free and
" voluntary act for the uses and purposes
" therein set forth.

" Given under my hand and
" seal this first day of May
" A.D. 1861.

L.S.

" John H. Lewis, Clerk
" by J.M. Gibson, Deputy

" John Currier - Know these parties - Know
" Turner - I had a conversation with Turner -
" + he commenced inquiring about the 1/4. in
" Controversy - The conversation was at my

" house - Turner said what breaking was done
" there was that of scouring plows - It was some
" time in Dec. 1862 - he said there was some
" 4 furrows - This conversation was before any
" suit was commenced - Turner was there on
" his way to see Blanchard.
" John A. Russell's deposition is read, which
" is as follows:
" State of Illinois, Bureau County, ss.
" Thomas Pratt
" vs. In Circuit Court
" William A. P. Blanchard Forcible Entry &
" and William McLaren Detainer.
" Deposition of John A. Russell
" a witness who is about to depart from the
" State of Illinois, taken before L. R. Winn a
" Justice of the Peace in and for said County
" at his office in Neponset in said County,
" on the 12th day of June A. D. 1863, by stipulation
" of the parties aforesaid, notice of the taking
" of said deposition having been waived
" on the part of said defendants, in presence of
" said plaintiff by his Attorney S. S. Gibons
" and in presence of said defendants by their
" Attorneys Kendall & Ide; said deposition
" to be read in evidence on the part of said
" defendants in the aforesaid suit now pending
" in the Circuit Court of said County.
" Said John A. Russell being first duly

" Known deposes and Says in answer to the
" Several interrogatories propounded to him as
" follows, to wit:
" Int. 1. What is your name, age, occupation
" and Place of residence
" Answer. My name is John A. Russell; my
" age is twenty-five years; my occupation is
" that of a farmer when I am a civilian, I
" am now in the army; my place of residence
" is Neponset, Bureau County, State of Illinois.
" Int. 2. Are you about to depart from the
" State of Illinois, if so when, and for what
" Purpose?
" Answer. I am. I shall Probably go in
" about two weeks, for the Purpose of rejoining
" my regiment near Vicksburg.
" Int. 3. Are you acquainted with the Premises
" the possession of which is in Controversy in
" this suit, to wit, the South west quarter
" of Section twenty-six in Township fifteen
" North Range six east of the fourth Principal
" Meridian?
" Answer. I am.
" Int. 4. Are you acquainted with the
" Parties to this suit or either of them; If so
" how long have you been acquainted with them
" respectively?
" Answer. I am, with Plaintiff and defendant.
" Have known Blanchard some five years and

" Mr. Laren as long; and Pratt about three years.
" Int. 5. State whether or not you have been acquainted
" with one Otis A. Turner; if yea, state when and
" where and how you became acquainted with him?
" Answer. I have. I think I became acquainted
" with him in Neponset in May 1862. I was introduced
" to him by J. B. Blake.
" Int. 6. Have you ever had any breaking to do
" upon the above described lands?
" Answer. Yes Sir.
" Int. 7. State how much of said lands you broke
" and when you did it?
" Answer. It was five acres, about the last of May
" 1862 or the 1st of June.
" Int. 8. State for whom you did such breaking
" whether for yourself or for any other person; and
" if for any other person by whom you were employed,
" and when, and for whom you were employed to
" do said breaking?
" Answer. I did the breaking for another person.
" I was employed by Otis A. Turner. He employed
" me to do the breaking in the month of May 1862, and
" he told me he employed me to do the breaking
" for one Paullin, whose first name I think is John.
" Turner told me he was an agent of Paullin.
" Int. 9. State if you know where said Paullin
" then lived?
" Answer. Turner told me he, Paullin, lived in
" Quincy, Illinois, and he gave me Paullin's address

" in regard to writing a letter.
" Int. 10. State whether or not prior to the time
" you commenced the breaking concerning which you
" have testified, any other breaking had been done
" upon the said lands; if so state how much and
" by whom such other breaking was done, if you know?
" Answer. There had. I should judge there
" was some twenty acres. Mc Laren was breaking
" on this land with one team, and Blanchard with
" two teams, before I commenced.
" Int. 11. Did you do any other breaking on said
" lands, excepting what you so did for said
" Paullin?
" Answer. I did not.

Cross Interrogatories.

" Int. 1. At the time Turner employed you, to do
" this breaking, concerning which you have testified,
" was there not considerable conversation between
" him and you; and was not Pratt's name mentioned
" in that conversation?
" Answer. There was not a great deal of
" conversation and I don't think Pratt's name was
" mentioned; If so, I don't remember it.
" Int. 2. Was anything said in that conversation
" in reference to the controversy concerning the
" title to or possession of the land, and if so,
" what?
" Answer. I think there was. I think he told
" me I would probably find Blanchard's teams

" breaking there, or something to that effect.
" Int. 3. Did not Turner say that he had
" rented the land to Pratt, and was not Pratt's
" name introduced in some way in connection with
" the land or the breaking.
" Answer. I do not think Pratt's name was
" mentioned at all in the conversation at the
" time when he spoke to me about doing the
" breaking.
" Int. 4. Do you distinctly remember the conversation
" that took place, and as it took place, at the
" time of your employment by Turner?
" Answer. I do not, that is, I do not remember
" every thing that was said.

John A. Russell

" State of Illinois, Bureau County, ss.
" I, L.R. Winn, a Justice of the Peace of said
" County, do hereby certify that the foregoing
" deposition was by me taken and reduced to
" writing at my office in Neponset in said County
" on the twelfth day of June A.D. 1863, in pursuance
" of the stipulation of the parties and in presence
" of the attorneys mentioned in the Caption to this
" deposition; that said witness John A. Russell
" was by me first duly sworn to testify the
" truth in relation to the matter in controversy
" in the said Cause, so far as he might be
" interrogated thereto; and the aforesaid questions
" propounded to said witness and the answers

" thereto were by me reduced to writing in the
" order in which they were proposed, and the
" same having been carefully read over to him, were
" signed and subscribed by him in my presence,
" the said witness having been again sworn to the
" truth thereof by me at the time and place
" aforesaid. Witness my hand and seal this
" twelfth day of June A. D. 1863.

Inter. Rev. Stamp 5 cts. Cancelled.

L. R. Winn (Seal)
Justice of the Peace

" Power of Atty. from Dewitt Heirs to John B. Strong
" is read in evidence, and the same is as follows,
" to wit:
" Whereas, Ephraim Dewitt formerly of the City
" and County of Albany, State of New York,
" died in Jersey City, State of New Jersey on the
" nineteenth day of January A. D. 1842, leaving at
" the time of his decease and him surviving his widow
" Ann since deceased and the following named
" children his heirs at law, viz: Jacob V. S. Dewitt,
" Charles E. Dewitt, Ephraim H. Dewitt, James R.
" Dewitt, Maria Dewitt, Catharine Dewitt, now
" the widow of Ralph Johnson, Elizabeth Dewitt
" wife of Albert I. Smith and Julia C. Dewitt
" all of whom are now of full age, and whereas
" the said Ephraim Dewitt was at the time
" of his decease the owner of and interested in
" certain lands lying and being in the State of

" Illinois; Now therefore, Know all men by these Presents,
" that we, the said Jacob V. S. Dewitt residing at
" Pittston, County of Luzerne in the State of Pennsylvania
" and Ephraim H. Dewitt of the City of Albany
" and State of New York and James R. Dewitt,
" Maria Dewitt, Julia C. Dewitt, Albert J. Smith,
" and Elizabeth Dewitt Smith his wife, and Catharine
" Dewitt Johnson, widow of Ralph Johnson all
" of Jersey City in the State of New Jersey, have
" made, Constituted and appointed and by these
" Presents do make, Constitute and appoint the
" said Ephraim H. Dewitt of Albany, New York,
" our true and lawful Attorney for us and in our
" Names, places and Stead to enter into and upon
" and take possession of the quarter Sections of land
" lying and being in Mc Donough County in the State
" of Illinois and known and distinguished as
" the North east quarter of Section Six of township
" five North, Range two west, and the North east
" quarter of Section two of township four North
" Range three west, and also of any and all
" other tracts and parcels of land and real estate
" whatsoever or whersoever located in said State
" of Illinois belonging to or in which the said
" Ephraim Dewitt was in any way interested
" at the time of his decease and whether standing
" in the name of said Ephraim Dewitt or otherwise
" and to or in which we are or may be in any
" way entitled or interested as the heirs or

" representatives of the said Ephraim Dewitt,
" and to grant, bargain and sell the same or
" any part or parcel thereof for such sum or
" price or upon such terms as to him shall seem
" meet, and for us and in our names, to make,
" execute, acknowledge and deliver good and
" sufficient deeds and Conveyances for the same
" either with or without Covenants and warranty,
" and until the sale thereof to let and demise
" the said lands or any part or portion thereof
" for the best rent that can be procured for
" the same, and to ask, demand, recover and
" receive all sums of money which shall become
" due and owing to us by means of such bargain
" and sale and lease or demise, giving and
" granting unto our said Attorney full power
" and authority to do and perform all and every
" act and thing whatsoever requisite and necessary
" to be done in and about the premises as fully
" to all intents and purposes as we might or
" could do if personally present with full
" power of revocation and substitution, hereby
" ratifying and confirming all that our said
" Attorney or his substitute shall lawfully
" do or cause to be done by virtue hereof, also
" hereby ratifying and confirming any lease or
" lease which our said Attorney or any person
" heretofore appointed or hereafter to be appointed
" by him may have heretofore made of any portions

" of said land. In witness whereof we have
" hereunto set our hands and seals the thirty-first
" day of July A.D. 1856.
" Sealed and delivered in Presence of
" Witness to Signature of J.V.S. Demitt
" C. F. Bowman - Winthrop W. Ketchum.
" George W. Cassedy as to James R. Demitt
" Maria Demitt
" Julia C. Demitt
" and Charles E. Demitt
" Adaline Demitt Cassedy as to
" the same parties whose signatures
" were witnessed by George W. Cassedy.
" George W. Cassedy as to A. J.
" Smith, Elizabeth Demitt Smith
" and Catherine Demitt Johnson.
" Adaline Demitt Cassedy as
" to A. J. Smith, Elizabeth
" Demitt Smith and Catharine
" Demitt Johnson

J. V. S. Demitt (Seal)
James R. Demitt (Seal)
Maria Demitt (Seal)
Julia C. Demitt (Seal)
Charles E. Demitt (Seal)
A. J. Smith (Seal)
Elizabeth Demitt Smith (Seal)
Catharine Demitt Johnson (Seal)

" State of Pennsylvania } ss. Be it remembered
" Luzerne County } that on this thirty-first
" day of July One thousand Eight Hundred
" and fifty-six before me Winthrop W. Ketchum
" a Notary Public for the Commonwealth of
" Pennsylvania duly Commissioned and Sworn
" and legally qualified to take acknowledgments
" of Powers of Attorney &c residing in the borough

" of Wilkesbarre in Said County, Personally Came
" the within named J. V. S. Dewitt & in my Presence
" executed the within Power of Attorney, and
" acknowledged the Same to be his own free act
" and deed for the purposes therein mentioned
" and desired that the Same might be recorded
" as Such according to law. In testimony
" whereof I have hereunto set my Hand and
" affixed my Notarial Seal the day and
" year above mentioned.

Winthrop W. Ketchum. Notary Public

L. S.

" State of New Jersey
" Jersey City, in the County of Hudson } ss.

Be it remembered that on this
" first day of August in the year of our Lord
" One thousand eight hundred and fifty-six
" in the City and County aforesaid before me
" George W. Cassedy a Commissioner residing
" in Said City duly appointed Commissioner by
" the Governor of the State of Illinois to take the
" acknowledgement and proofs of the execution of
" Deeds and other instruments in writing under Seal
" to be used or recorded in Said State, personally
" appeared James R. Dewitt, Maria Dewitt,
" Julia C. Dewitt and Charles E. Dewitt who
" are personally known to me to be the persons
" whose names are Subscribed to the foregoing

" Power of Attorney as having executed the same
" and acknowledged that they had executed the
" same for the uses and purposes therein expressed.
" In testimony whereof I have hereunto set my
" hand and affixed my official seal as Com-
" missioner of the said State of Illinois at
" my office in the city of Jersey City and State
" aforesaid this first day of August A. D.
" Eighteen hundred and fifty-six.

" L. S. George W. Cassedy Commissioner
" of the State of Illinois for the
" City of Jersey City in the
" State of New Jersey

" State of New Jersey
" Jersey City in the County of Hudson ss.

" Be it remembered that on the
" second day of August in the year of our
" Lord One thousand eight hundred and
" fifty-six in said City and County before
" me George W. Cassedy a Commissioner
" resident in said city duly appointed and
" commissioned by the Governor of the State
" of Illinois to take the acknowledgment and
" proof of the execution of Deeds and other
" instruments in writing under seal to be used
" and recorded in said State of Illinois,
" personally appeared Albert D. Smith and
" Elizabeth Dewitt Smith his wife and Catharine
" Dewitt Johnson who are personally known to

" me as the persons whose names are subscribed
" to the foregoing Power of Attorney as having
" executed the same, and acknowledged that
" they had executed the same for the uses
" and purposes therein expressed; and the said
" Elizabeth Dewitt Smith, wife of the said
" Albert I. Smith being of lawful age and
" having been by me separate and apart from
" her husband examined, and the contents of
" the said Power of Attorney having been made
" known and fully explained to her acknowledged
" that she had executed the same voluntarily
" and freely and without compulsion of her
" husband, and that she does not wish to
" retract. In witness whereof I have hereunto
" set my hand and affixed my official seal
" as Commissioner of the said State of Illinois
" at my office in the city of Jersey City
" and State aforesaid this second day of
" August A. D. eighteen hundred and fifty-six.

" L. S. George W. Cassedy
" Commissioner of the State of
" Illinois for the City of Jersey
" City, N. J.

" In the acknowledgment immediately preceding
" this memorandum the name Catharine Dewitt
" Johnson with the preceding word "and" were
" interlined and inserted by me before the signing
" by me of the above certificate.

" George W. Dazzedy - Commissioner for Illinois. —
" State of Illinois }
" McDonough County } ss.

I, William I. Heal, Clerk of the
" Circuit Court and ex-officio Recorder of
" said County, do hereby certify, that the
" foregoing is a true and correct copy of a
" certain Power of Attorney duly recorded in
" the records of said County in Book "G" of
" Mortgages in Pages 298, 299, 300, 301 and 302.
" Witness my hand and the Seal
" L. S. of said Court at Macomb this
" fourth day of November A.D. 1859.
" W. I. Heal Clk.
" by R. W. Smith, Deputy.

" Know all men by these presents that I
" Ephraim W. Demitt of the City and County
" of Albany and State of New York, one of
" the heirs at law and legal representatives of
" Ephraim Demitt dec^d by my own right
" and by virtue of a power of attorney with
" full Power of Substitution, given to me by
" the other heirs at law of the said Ephraim
" Demitt dec^d, have made, constituted and
" appointed, and by these presents do make
" constitute and appoint John B. Strong of
" the city of Tiffin, County of Seneca and
" State of Ohio, my true and lawful attorney

" for me and in my name, Place and Stead
" to enter into and take possession of all lands
" belonging to me and the other heirs of Ephraim
" Dewitt dec^d., situate in the State of Illinois,
" and to grant bargain Sell and convey and
" confirm the whole or any part thereof for
" such price or sum of money or on such terms
" as he may think best, and for me and in
" my name to make, execute, acknowledge
" and deliver unto the purchaser or purchasers
" thereof such deeds of conveyance as he may
" think best, and to demand, receive and
" collect all sums of money which shall
" become due and payable to me by reason
" of such Sale or Sales, giving and granting unto
" my said Attorney full power and authority
" to do and perform all and every act and
" thing whatsoever requisite and necessary to
" be done in and about the premises as full
" to all intents and purposes as I might or
" could do if personally present, with full
" power of substitution and revocation, hereby
" ratifying and confirming all that my said
" Attorney or his substitute shall lawfully
" do or cause to be done by virtue hereof.
" In witness whereof I have hereunto set my
" hand and seal this fourteenth day of August
" Anno Domini 1856.
"

E. H. Dewitt {L.S.}

" State of Illinois }
" County of Knox } ss. I. I. A. E. Holcomb, a Notary
" Public for the Town of Galesburg in said County
" and State do hereby certify that E. H. Dewitt
" whose name appears signed to the foregoing
" ~~Certificate~~ instrument or power of attorney
" and who is personally known to me to be
" the identical person whose name is subscribed
" to said instrument as having executed the
" same, and acknowledged the same as his
" voluntary act and deed for the uses and
" purposes therein expressed. Given under my
" hand and notarial seal this fourteenth day
" of August One thousand eight hundred and
" fifty-six.

L. S. I. A. E. Holcomb, Notary Public

" State of Illinois }
" McDonough County } ss. I, William D. Head
" Clerk of the Circuit Court and ex-officio
" recorder of said County do hereby certify
" that the foregoing is a true and correct copy
" of a certain Power of Attorney duly recorded
" in Book "G." of Mortgages Pages 517 and 518 of
" the records of said County.

L. S. Witness my hand and the Seal
of said Court at Macomb this
third day of November A.D. 1859.
W. D. Head. Clk. by R. W. Smith Deputy

" John Watts - I am acquainted with Pratt
" Pltff. in this suit - I have known this land
" for 5 years - I have had 2 or 3 conversations
" with Pratt - I had one conversation with
" Pratt and he said if Pauline did not do
" better with him he would abandon that 1/4 -
" Afterwards he told me that he had abandoned
" it - Nov. '62 I had the first talk with
" Pratt - the last was in January - Don't
" remember distinctly - might have been in
" December - he said he had given up the
" land and was not going to have anything
" more to do with it - This was after Blanchard
" and McLaren had moved the house on this
" 1/4 -
" Cross Ex. Reside at Neponset - My
" business principally is farming - I work at
" Carpenter work - I do not know where the
" first conversation was - don't know what
" business either of us was on - we had quite
" a long talk and was at the time when
" corn and wheat was selling very low - I
" was renting a place myself & said we
" could not pay a heavy rent - I advised
" Pratt to give it up and he said he
" would not go on with it unless Pauline would
" do better than he had been doing for there
" was 1/2 mile more fence to build than he
" supposed - Blanchard did not advise

" me to persuade him to give it up - I
" advised him on account of my own friendship.
" The last conversation was at Mr. Wilsie's
" shop in Neponset - It was in January '63 -
" I never did swear that it was after the
" commencement of this suit - I had not heard
" of the suit prior to the conversation I had
" with Pratt at Wilsie's shop - I was working
" in that shop through that month - I was
" working on a job for a school district - I
" was fixing up rollers to put maps on - I
" think it was in January 1863 - I would not
" swear positively it was in January - I don't
" think I did swear I asked Pratt how he
" was getting along with his land suit - I
" knew there was a controversy between Pratt
" and Blanchard - my best impression is that
" the conversation I had with Pratt was in
" January - I do verily believe that the
" conversation was in Jany.
" John Mc Donald - Live at Neponset -
" Know the parties to this suit - I have seen
" Pratt about 2 or 3 years since - I had 2 or
" 3 different conversations with Pratt in which
" (I think in Jany. 1863) I asked Pratt why
" he commenced his suit in Princeton - Pratt
" said that other persons were having it for
" him - I went to Pratt and told him that
" I had got caught - that he had been

" subpaned as a witness - This was some
" 3 weeks ago - Pratt said its all right -
" swear to what you are obliged to - I
" asked Pratt if he denied he had the
" conversation with me in Niles Store - I said
" if you deny it I will tell who the other
" man was who was present at the Conversation -
" He said it was true.
" Cross Ex. Blanchard came to me and
" tried to get me to tell who this other man
" was - he offered me 2 dollars - One offered
" me five dollars - The other man was Henry
" Hewitt - Blanchard did not get me to
" hunt up witnesses -
" Plaintiff then called witnesses rebutting who
" testified as follows: -
" George Gray - I remember a conversation with
" Blanchard after Pratt took possession of this
" 1/4 - The last conversation I had before the
" house was moved on the land was at Mr. Stuarts -
" Blanchard spoke to me about Pratt taking
" possession of the land - for Pratt had taken
" possession - Blanchard, Stuart and I had
" been negotiating with Riggs for the title to
" this land - Stuart had done the most of the
" writing to Erskin - Erskin had something to do
" with the Riggs land - and I told Blanchard
" that if we could get the Riggs title that
" I was willing to go in with him and take

" possession of this 1/4 - and if we could not I
" would not - I told him I would write to
" Erskin and did so - Blanchard was willing
" to do the same - This was between the time
" Pratt took possession and Blanchard putting
" his house on - He did not at that time
" say that he then had the Dewitt title.
" Cross Ex. This conversation took place
" between Blanchard and myself - There was
" no further conversation at that time - I don't
" recollect that Mc Laren was present till
" the last conversation I had with Blanchard -
" Don't recollect of speaking to Mc Laren
" except after I got a letter from Riggs -
" Blanchard and myself were going on - Stuart
" was a partner of mine - Mc Laren had
" calculated to have 40 acres of this land -
" Blanchard & Stewart had had a difficulty
" some time - I recollect when the Douglas
" & Pratt road was laid through this 1/4 - This
" purchase was simply for the Riggs title -
" We considered the Riggs title the best -
" The conversation was not many after Pratt had
" claimed to have taken possession - We talked
" about it every time we met - Blanchard said
" that Pratt had gone on and broken a small
" piece to take possession of the 1/4 - I cannot
" swear that Blanchard said that Pratt had
" taken possession by breaking a piece on the 1/4 -

" The first time I knew Pratt had taken possession
" was when Blanchard told me - He told me
" after the breaking was done and before the
" house was moved on.
" W. W. Clark - I could not state the time
" the breaking was done in the angles of the Ridge
" Road - It was in the Spring of 1862 - I
" rented some of this land of Blanchard - I
" passed across this ¼ and noticed some wide
" furrows running from S. end to North end along
" the line of the new road and noticed some
" breaking done in the forks of the road perhaps
" some 15 or 20 furrows - running around the
" piece that was at the outside of the angle -
" It was new broken then - It was the same
" kind of breaking which ran up along the road -
" Cross Ex. I don't swear that there was no
" breaking done in the Spring of 1861 - the whole
" ¼ was broke in 1862 - I would not swear
" that they were broken before 1861 - I never
" saw them in 1861 -
" Henry Carpenter - I had conversation
" with Blanchard at my own house in relation
" to this ¼. but when it was I could not tell -
" It was before the time I heard of the commencement
" of this suit - he and I were talking about
" this ¼ - I asked Blanchard what title he
" had and he said he had a number of claims -
" I understood him to say that he had not a -

" scratch of a pen at the time of Conversation -
" I don't know when it was - Did not mention
" having moved the House - Don't know the year -
" Don't remember why we talked of this piece
" of land - I think I had heard that Pratt
" had claimed the land but am not positive -
" I think it was after I heard Pratt had
" leased this land for 5 years - I am not
" positive anything about it - I cannot hear
" well and I might not have heard.
" Cross Ex. I am hard of hearing -
" Defendants called witnesses to rebutt
" plaintiffs rebutting evidence who testified as
" follows: -
" Henry Strong - I was present when the
" deed was delivered by Strong to Blanchard -
" It was about the middle of May 1861.
" Cross Ex. My name is Henry Strong - Reside
" in Camp Douglas - I have been in the army
" nearly 2 years - I enlisted at Neponset -
" Resided at Neponset when I enlisted - the
" deed was delivered in the Spring of the year
" in May A.D. 1861 - it was delivered at Blanchards
" house by my brother J. B. Strong - it was in
" the middle of May - I rode from Knoxville
" to Bureau in May 1861 - I resided in Knoxville
" I occasionally rode with my brother - We
" did not remain at Blanchards - I remember
" distinctly of J. B. Strong telling him to keep

" possession of the land - Blanchard handed
" the deed back to my brother - I know very
" well that this is a copy of the same deed -
" I read the deed on the way up - My brother
" is not a land speculator - He is agent
" for the Dewitt heirs - I can't swear positively
" that the record is a copy of the original deed -
" I am satisfied that it is the same because
" there is no necessity of its being any other -
" I know of no circumstances from which I
" can say it was in May or that it was in
" 1861 - I read this deed - I can't say
" where I was when I read it - I never
" looked at the deed since - I read it on
" the road in the buggy coming up from
" Knoxville - I remember from that reading
" that this is a copy of the same deed - I
" don't remember the parties or the description
" particularly - I read the deed a few
" days ago on the record - I suppose my
" brother gave me the deed to read - I did
" not notice any alteration in the deed particularly -
" I moved to Nepouset in the fall of 1861 - I
" can't particularly state anything I heard
" said between Blanchard and my brother -
" Something was said in regard to keeping
" possession of the land - I think my brother said
" it - I swear positively there was something
" said about possession of the land - I went

" Swear I heard the word Possession - I won't
" Swear I heard the word land - I won't
" Swear I heard the word keeping - I occasionally
" read other deeds of my brother -
" S. S. Gibons (Called by plaintiff) At the
" last term of this Court the defendants offered
" in evidence a deed from the Devitt heirs, by
" John B. Strong their attorney in fact, to
" Blanchard and Mc Laren - The date of that
" deed at that time was May 1st 1861 - There
" was a very apparent alteration in the date -
" My recollection is that the word "April" had
" originally been written. was subsequently erased
" and the word "May" written over it - further
" that the day of the month as originally written
" had been altered to the date it had at
" the time the deed was given evidence - My
" opinion is that the year had been altered
" from 1862 to 1861 - "Eighteen hundred" was
" printed and "Sixty-one" was in manuscript -
" The "Sixty-two" as I think it was originally
" written, had been written with a fine pointed
" pen and "Sixty-one" was written over it with
" a heavier pointed pen - In the acknowledgment
" the date of the year was written in figures -
" It was 1861 - The unit which was originally
" written was evidently erased and the figure "1"
" written in the place - By holding the deed up
" between myself and the light the erasures were

" very apparent -
" Cairo Trimble (Called by plaintiff) The
" deed offered at the last term by the defen-
" dants was the one Gibons testified to, I suppose.
" I examined it at that time - I examined it
" sufficiently to know it was an altered deed -
" There was an alteration at the top of the
" deed - My recollection is it was in the date
" of the deed - The word "two" was changed to
" "one" in the year - There was a change in the
" acknowledgment, but I don't recollect what
" it was -
" George W. Stipp (Called by plaintiff) I
" examined the deed of which the witnesses have
" spoken with a watch-maker's glass as carefully
" as I could; and my recollection is that in
" the top of the deed in the word "Sixty-one"
" the word "Sixty two" was originally written in
" a small hand - the word "Sixty-one" was
" subsequently written in a heavy bold hand -
" In the unit "one" I could see that some
" other word not one, but "two", or "three", had
" been written before - The date of the ack-
" nowledgment was in figures - It was 1861 -
" The final "1" had been changed - Some
" other figure, I think "2", had been scratched
" out and "1" written in the place of it -
" James S. Eckels (Called by defendants) I
" examined that deed very carefully - I didn't

" Care about the interlineations in the deed if the
" acknowledgment were all right - My
" recollection is that if there was any alteration
" in the acknowledgment it was in the word
" "May" - That was very much scratched -
" I think the unit "1" in the date of the year
" 1861 in the acknowledgment was broad - It
" may have been altered, or may not - I think
" that in the Commencement of the deed the word
" April was crossed out and May written
" above it.
" George O. Ide (Called by defendants) I was
" the Justice of the Peace before whom this Case
" was tried - I examined the deed when it was
" first offered in evidence before me - I couldn't
" tell what the alterations were - It was hardly
" possible to discover what they were from -
" I examined it with a glass at the last
" term - I couldn't trace anything under the
" writing - I didn't see that there was an
" alteration in the figure "1" in the acknowledgment -
" I held it up and saw it had been scratched -
" John M. Grimes (Called by defendants) I
" examined the deed executed by John B. Strong
" for the Dewitt heirs to Blanchard and McLean -
" I take this record to be a copy of the same
" deed - I was called upon by Blanchard
" and Strong to examine it - My attention
" was called to an alteration made in the

" upper Corner of the deed and also in the
" acknowledgment - I was familiar with Strong's
" and Gilson's handwriting - I made up my
" mind that the alteration at the top was in
" Strong's hand - My opinion is that in the top
" it had been in fine writing and that two
" strokes had been made across it - The
" alteration in the acknowledgment was in Gilson's
" or Gibson's handwriting - I think in both
" the body and acknowledgment of the deed
" there were alterations of dates and year - the
" figures in the month and in the year - I
" wouldn't swear positively that there was an
" alteration in the acknowledgment -
" Cross Ex. I don't know that I ever saw
" Gilson write - I can't state what the
" alteration in the body of the deed was - The
" word "sixty" was small and the word "one"
" was large - The manuscript in the ack-
" nowledgment was in the handwriting of Gilson -
" I can't recollect what the alteration was
" at all -
" John B. Strong - I am the John B. Strong
" that executed the deed as the Attorney in
" fact of the Dewitt heirs to Blanchard and
" McLaren - It was on a blue blank deed -
" Gilson, the Deputy Clerk of Kent County
" took the acknowledgment - This blue blank
" was a blank for 1850 - The blank had been

" partly filled up by some one before - The
" date had been filled up and I altered it -
" to the date at the time I filled up the
" deed - I executed the deed - I afterwards
" handed the deed to Blanchard - and took
" it back - this was in May 1861 - I kept
" the deed for the purpose of defending the
" title against any action of ejectment -
" Cross Ex. When I drove up to Blanchard's I
" hailed him and he came out to the buggy -
" I told him here is the deed - Blanchard and
" I had no written Contract previous to that
" time - We had a verbal Contract - I took the
" deed back to defend them in the possession
" of the land - If it was all right I was
" to have $1000. - I delivered the deed to
" him just before this suit was Commenced -
" I made the original Contract with Blanchard -
" When I delivered the deed I think Blanchard
" told me he wanted to use it in an action
" of forcible entry and detainer - I never took
" any writing by which Blanchard agreed to
" pay any money for this land - the reason
" why I did not take a note was because
" I considered him a gentleman - Blanchard said
" you keep the deed and I will take possession
" and hold under you if all is right - He
" contended that there was an outstanding title
" and he did not want to do anything except

" to hold Possession for me - The reason why
" Blanchard delivered it back when I first
" handed it to him was because he expected
" to buy Some other title.
" This is all the evidence in the Case the
" Court instructed the Jury on behalf of the
" plaintiff, as follows: -
" 1. If the Jury believe from the evidence that
" the land in question was in the Fall of 1861
" vacant and unoccupied, that then the
" plaintiff leased the Same of Daniel Pauline,
" under and by the lease read in evidence by
" the plaintiff, that the plaintiff under Said
" lease, while the land was So vacant and
" unoccupied, entered into Said land and
" broke up a portion of it, claiming the whole
" in Such open and Public manner as to apprise
" the neighborhood of Such facts, then in law
" the plaintiff had possession of the whole of
" Said land; and if the Jury further believe
" from the evidence that the defendants afterwards
" and before the Commencement of this Suit, while
" the plaintiff was So in possession of Said land
" against the will of the plaintiff and wrongfully
" and without right entered upon Said land
" and took possession thereof by putting a
" house on the Same, and breaking up and
" occupying the Same to the exclusion of the
" plaintiff, then the Jury should find the

"defendants guilty.

"2. Although the Jury should believe from
"the evidence that Blanchard and Mc Laren
"the defendants, or one of them, broke up a
"portion of ground on the land in dispute in
"the Spring of 1861, for the purpose of taking
"possession, claiming the whole, in such public
"manner as to apprise the neighborhood of
"such facts, yet if the Jury believe from the
"evidence that at the time they so took such
"possession they had no color of title to the
"tract of land in dispute, then their possession
"is confined in law to the quantity of ground
"so broken up.

"3. If the Jury believe from the evidence that
"the plowing, if any, done by defendants or
"either of them upon the land in dispute, was
"done for the purpose of scouring plows, and
"not for the purpose of taking possession
"of the land, then such plowing would not
"constitute possession of even the portion
"so plowed.

"4. The fact that the plaintiff said to
"the witness Watts, or to any other, that he
"was going to do nothing more about the
"land, or was going to give it up, if the
"Jury believe from the evidence that he
"did so say, constitutes no evidence of
"an abandonment of the premises in question,

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" if the Jury believe from the evidence such
" Conversation was after the Commencement of
" this Suit.
" 6. A cessation by the plaintiff to occupy
" the land in question, after it had been
" taken possession by the defendants, is not
" to be construed into an abandonment of the
" premises.
" 7. The fact that the plaintiff Pratt
" did not Commence this Suit for the premises
" until about a year after he might have
" done so, if the Jury believe from the evidence
" that he might have done so, raises no
" presumption that he had abandoned his
" claim to the land, but it is evidence which
" the Jury may Consider on that point.
" 8. If the Jury believe from the evidence
" that Thomas Pratt took possession of
" the premises in dispute in this Suit, and
" that afterwards the defendants, illegally
" and without right, entered upon and
" excluded him from the same, without his
" Consent, up to the time of the Commencement
" of this Suit, they should find for the
" plaintiff.
" 9. If the Jury believe from the evidence that
" at the time of the breaking by Pratt he had
" a lease or paper title to the entire quarter section
" in dispute, and he did such breaking under

" such lease or paper title, with the intention
" of taking possession of the entire tract, and
" claimed title to the entire tract, such breaking
" extended his possession to all the land
" embraced in the lease or paper title.
" 10. In actions of forcible entry and detainer
" the title to land cannot be tried by the
" jury, and the only benefit that can be
" derived by a party having a deed or
" lease, at the time of his appropriating the
" land described in it, is to extend the
" possession to the entire tract and beyond
" the limits of the improvements made by him.
" 11. Actual possession of part of a tract
" of land, by breaking or enclosing the same,
" by a person claiming under a deed or lease,
" of the whole, amounts in law to a possession
" of the entire tract to the extent of the paper
" title; and an entry upon any portion of
" the tract so situated wrongfully and without
" right and without the consent of the occupant,
" amounts in law to a forcible entry.
" 12. In order to maintain an action of forcible
" entry and detainer, it is not necessary to
" show that force was used in getting the
" possession. It is sufficient if an entry is
" made wrongfully and without right and
" without the consent of the person in possession.
" 13. If the jury find from the evidence that

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" Pratt took actual possession by breaking
" of part of the land in dispute, claiming the
" whole under a lease, and that afterwards
" while he was so in possession, Blanchard
" and Mc. Laren entered upon the land by
" moving a house upon it, and breaking or
" fencing it against Pratt's consent, wrongfully
" and without right, and that Pratt's possession
" was prior to any legal possession of the
" defendants, they should find for the
" plaintiff.
" 14. Acts done for the purpose of taking
" possession must be so open and notorious
" as to apprise the neighborhood of the
" appropriation of the land. Breaking the
" land for the purpose of cultivating and
" improving it, if it be done so openly
" and notoriously as to apprise the neighborhood
" constitutes possession. But if the acts
" done are not such as to apprise the neighborhood
" they do not constitute possession.
" 15. If the Jury believe from the evidence
" that in May 1861 Blanchard and Mc. Laren
" did plow on the land in dispute but not
" in such a manner as to apprise the
" neighborhood that it was done for the
" purpose of taking possession, then they
" did not get the legal possession. And
" if they further believe that in October 1861

" Pratt did breaking on said land for the
" purpose of taking the possession, in so
" open, public and notorious a manner as
" to apprise the neighborhood of such
" possession, and that Blanchard and
" McLaren subsequently entered upon said
" land and excluded Pratt from it
" wrongfully and without right, they should
" find for the plaintiff.
" 16. Title to land described in a deed
" is only passed by actual delivery of the
" deed. If the Jury believe from the
" evidence that there was no actual delivery
" of the deed from the Dewitt to Blanchard
" and McLaren in May 1861, the title
" of the Dewitt did not pass to them at
" that time. And if Blanchard and
" McLaren did not acquire the Dewitt
" title in May 1861, their possession cannot
" be extended to the entire quarter section,
" unless the breaking or improvements extended
" over it.
" 17. It is not necessary to show
" that force was used in getting the
" possession in order to maintain the action
" of forcible entry and detainer.
" 18. The Jury are the judges of the
" credibility of the witnesses and weight
" or value of the evidence, and if there

" is any Conflict of testimony or evidence
" upon any material point then that point
" is to be decided according to the preponderance or weight of the testimony.
" 19. If the Jury believe from the evidence that
" any witness has sworn wilfully, knowingly and
" falsely to any material point, they are warranted
" in entirely discrediting his whole testimony.
" 20. If the Jury believe from the evidence that
" the defendants without any color of title entered
" upon the tract of land in question and took
" possession thereof against the will and without
" the Consent of the plaintiff, after he had
" plowed up a portion of said land under claim
" of his lease, if any, with the purpose of taking
" possession of the entire quarter section, then
" such entry was wrongful and illegal.
" 21. Even though the Jury should believe
" from the evidence that the plowing done by
" Blanchard and Mc Laren in May 1861, was
" open and notorious and apprised the neighborhood
" of their taking possession, yet if the Jury
" further believe that they had no deed to the
" land in question in May 1861, such possession
" Can't be extended to the entire quarter section
" but is confined to the amount actually
" plowed by them. And if the Jury further
" believe that, in October 1861, Pratt plowed a
" portion of said land in such manner as to

" apprise the neighborhood for the purpose of taking
" possession of the quarter section, claiming the
" same under a lease, under these facts Pratt
" acquired the legal possession of all the land
" in the quarter section except the actual part
" plowed by Blanchard and Mc Laren in May
" 1861. But if they further believe that the
" defendants did not plow in May 1861 with
" the purpose of taking possession of the land
" actually plowed, they should find for the
" plaintiff for the entire tract if the defendants
" afterwards entered upon the land wrongfully
" and without right, without the consent of
" Pratt.

" To the giving of which instructions the defendants
" then and there excepted.

" The Court instructed the Jury on behalf
" of the defendants as follows:—

" 1. The Jury are instructed that in this
" case before the action can be maintained
" by the plaintiff, it must be proven that
" the plaintiff had the actual and not the
" constructive possession of the land in Contro-
" versy, and that the defendants made an
" illegal or forcible entry upon such actual
" possession (and kept the plaintiff from regaining
" possession); and it is not sufficient for the
" plaintiff to show merely that his right to the
" possession only was invaded by such forcible

" or illegal entry.
" 2. The title to the land in question is not in
" Controversy in this Suit. The only question for
" the Jury to determine is the question of Possession
" and it devolves on the Plaintiff not only to
" establish affirmatively and by a Preponderance
" of testimony that he was in the actual and
" Peacable Possession of the land in question,
" but also that the defendants illegally invaded
" his Possession (and kept plaintiff from regaining
" it.)
" 3. If the Jury believe from the evidence that
" the plaintiff first broke the land in Controversy
" in the fall of 1861, and that at that time the
" defendants were in the actual and Peacable
" Possession of said land, and that the plaintiff
" entered upon said land and intruded upon
" such Possession, then the Jury are instructed
" that such entry by the plaintiff was wrongful
" and he is not thereby entitled to recover in
" this Case.
" 4. If the Jury believe from the evidence that
" the acts of both parties plaintiff and defendants
" in doing their breaking upon the premises in 1861
" were sufficient of themselves to Constitute an
" act of taking Possession, and that the acts of
" defendants ~~were~~ in taking such Possession were
" Prior to the acts of Plaintiff for that Purpose,
" then the Jury will find for the defendants.

" 5. Before the Jury can find for the plaintiff,
" they must not only believe from the evidence
" that the acts of the plaintiff constituted a
" sufficient taking of possession of the land
" in Controversy, but also that the acts of
" the defendants prior thereto did not Constitute
" a sufficient taking of possession;- and
" even though the Jury should believe from the
" evidence that plaintiff's breaking was done under
" circumstances more clearly indicating an
" intention to take possession, yet if the Jury
" further believe from the evidence that defendants'
" breaking was done before Pratt's and done
" under circumstances sufficient as an act of
" possession, though not as generally known
" or the intention thereof as clearly indicated
" as that of Pratts, then the Jury will find
" for the defendants.
" 6. If the Jury believe from the evidence that
" the defendants, or either of them, did breaking
" on the premises in dispute before Pratt did,
" and that such breaking was done with the
" intention of taking possession of the land
" and that they followed up their improvements
" afterwards and put a house on the land,
" broke up a larger portion of the same and
" fenced and cultivated the land, and that
" Pratt the plaintiff after doing his breaking
" did nothing further upon the premises to indicate

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" an intention to follow up and keep possession
" of the premises, and after doing the breaking said
" that he had abandoned the premises, then
" such conduct on the part of Pratt is evidence
" of abandonment of the premises, and if the
" Jury believe that Pratt abandoned the
" premises then the Jury will find for the
" defendants, even though the Jury should
" believe from the evidence that Pratt's possession
" would have prevailed over defendants had
" he followed it up and had not abandoned
" it.

" 7. In determining the question of abandonment
" the Jury should carefully consider all the
" circumstances in the case; and if the
" following facts have been proven, to wit: the
" omission of the plaintiff to do any act other
" than breaking one acre on the land in question,
" and that at an unreasonable time of the year,
" his omission to commence suit for more than
" a year after the alleged invasion of his
" possession by the defendants, and his admissions
" of such abandonment, if such admissions have
" been proven, (they are circumstances to be
" taken into consideration), - and if from all
" the circumstances the Jury are satisfied
" that the plaintiff did abandon the possession
" of the premises (before the commencement of this
" suit), they should find for the defendants

" although they may find from the evidence
" that plaintiff's original possession was made
" in good faith and was prior to the possession
" obtained by defendants.
" 8. If the Jury believe from the evidence that the
" plaintiff, Pratt, abandoned the premises and
" only lent the use of his name to Pauline for the
" purpose of carrying on this suit, and that
" Pauline is really prosecuting this suit at his
" own cost and expense, using the name of
" Pratt for his purpose, then the Jury will find
" for the defendants.
" 9. If the Jury believe from the evidence
" that neither plaintiff or defendants did enough
" by their breaking in 1861 to constitute an actual
" possession of the premises, then the Jury will
" find for the defendants.
" 10. The title to the land in question is not
" in controversy in this suit. Deeds, leases or
" other title papers are only admissible in
" evidence in this suit to show the extent or
" boundaries of the claims of the parties, and
" if such extent or boundary of the defendants
" claims to the whole premises are sufficiently
" indicated by their acts proved by the evidence
" to the Jury, to satisfy the Jury that they
" designed by such acts to take possession
" of the quarter section in question, then it
" matters not whether the defendants had a

" paper title or not. Such acts of possession
" are just as available to them in this suit
" as though they had proved their title to the
" premises to be perfect.
" 11. In order to constitute possession the rule
" of law is that any act done, evincing to the
" neighborhood in which it is situate that the
" land is appropriated to individual use, is
" sufficient. That doing some useless thing
" on the land, such as erecting a pen, leaving
" a few rails or timbers, with intention thereby
" of excluding others and not of permanently
" improving the land, breaking an acre or
" two, especially at an unreasonable time of
" the year, would not be sufficient to
" constitute actual possession unless to
" such acts are super added others continuing
" and manifesting an intention to cultivate
" and use the land.
" 12. If the Jury believe from the evidence
" that Blanchard and Mc. Laren did their
" breaking in the spring of 1861, and that at
" that time they held a deed to themselves
" of the entire quarter Section in dispute,
" and while holding such deed they did some
" portion of such breaking under said deed,
" with the intention of taking possession of
" the entire tract, and claimed title to the
" entire tract then such breaking extended

" their possession to all the land imbraced in
" said deed; and if the Jury find from the
" evidence that said defendants held such
" possession and did such breaking as above
" indicated, prior to the possession claimed
" and breaking done by the plaintiff, then
" Jury will find for the defendants.
" 13. The Jury are further instructed that
" erasures and alterations in a deed, if made
" with the Consent of the grantor, prior to its
" delivery, do not make such deed void, and
" the same can be explained by evidence.
" Accordingly if the Jury believe from the
" evidence that the alterations alleged to
" have been made in the deed to said defendants
" were made by the witness Strong and that
" he executed the said deed as Attorney in
" fact for the grantors and afterwards delivered
" said deed to said defendants about the
" middle of May 1861, then the Jury are
" instructed that said deed is good and
" valid, and is sufficient for said defendants
" to claim under in this suit, from the date
" thereof.
" The Court in giving the instructions for the
" defendants qualified the instructions asked
" for by defendants by adding thereto as
" follows, to wit:
(Such added words are as found in this

copy of record enclosed in brackets in the
1st 2nd and 7th instructions given for defendants)
" To the qualifications of the defendants' instruc-
" tions by the Court, and the refusal of the
" Court to give the same as asked, the
" defendants then and there excepted.
" The Jury returned their verdict as follows:
" "We of the Jury do find the said defendants
" guilty." Whereupon the defendants moved
" the Court for a new trial in said cause
" because the verdict is against the law and
" the evidence and contrary to the instructions
" of the Court, which motion for a new
" trial was then and there overruled by the
" Court, and the Court thereupon entered
" a judgment in favor of the plaintiff and
" against the defendants upon the verdict
" of the Jury, and ordered the possession of
" the premises, to wit: the South west quarter
" of section number twenty-six (26) in township
" fifteen (15) North, Range six (6) East of the
" 4th principal meridian to be surrendered
" up to the plaintiff; to the orders of the
" Court overruling the motion for a new
" trial, and rendering the judgment upon
" the verdict of the Jury against the defendants
" and ordering the possession of the said
" premises to be surrendered to the plaintiff,
" the defendants then and there excepted.

110.

" and prayed the Court to sign and
" seal this his bill of exceptions and to
" make the same a part of the records
" in this case, which is accordingly done.
"
"

M. E. Hollister Seal
Judge

State of Illinois }
Bureau County } ss I George M. Rudcliffe
Clerk of the Circuit Court in and for said
County and State do hereby certify that
the foregoing Transcript of proceedings in
the Cause therein named is correct as
appears from the files and Records of my
office Given under my hand and the
Seal of said Court at Princeton
in said County this 2d day of
December A. D. 1864

Geo. M. Rudcliffe Clerk
By Chas. D. Furnace Dep.



Clerks fees Record $26.60
" " Cert & seal .35
Revenue stamps .05 $29.00

Paid by Blanchard

State of Illinois } Third Grand Division
Supreme Court } of the April Term a.d. 1865

William A. P. Blanchard
and William McLaren }
vs } Assignment of
Thomas Pratt } Errors
Appellee

Afterwards to wit at the April term of the said Supreme Court for the year A.D. 1865. before the justices of said Court come the said appellants by their attorneys Kendall & Lee, and Lay that in the record and proceedings aforesaid, and in rendering the judgment aforesaid there is Error in this to wit

1 That said verdict of the jury as rendered by them at the trial below is informal and void.

2 That said verdict of the jury is against the Evidence in said Cause

3 That said verdict of the jury is contrary to the law

4 That said verdict of the jury is contrary to the instructions of the said Circuit Court as asked for and given on behalf of the said appellants, defendants below.

5th That the said Circuit Court Erred in refusing to permit to be given to the jury testimony offered at the trial of said cause in the court below on the part of said appellants Blanchard and McLaren.

6th That the said Circuit Court Erred in not allowing and requiring the witness Joseph Pratt. to answer the questions propounded to him at the trial below by the appellants - defendants below.

7th The said Circuit court Erred in allowing to be read in Evidence to the jury on behalf of Pratt. the plaintiff below at the trial below. the deed of George O. Karrick. Galena A. Karrick. John C. Burche. Susan R. Burche and Ella A. Burche by their attorney in fact Asa Turner. to Daniel Pauline

8th The Circuit Court Erred in allowing to be read in Evidence to the jury on behalf of Pratt. the plaintiff below. at the trial below. the power of attorney of George O. Karrick. Galena A. his wife John C. Burche. Susan R. Burche. Samuel R. Burche and Ella A. Burche. to Asa Turner.

9th That said Circuit Court Erred in giving the instructions asked and given on the part of Pratt the plaintiff below

on the trial of said Cause.

10th The said Circuit Court Erred in giving to the jury at the trial below, the following instructions asked for and given by and on behalf of Pratt the plaintiff below. Towit instructions designated in the said record hereof as Numbers 2 4 6 7 8 9 11 13 15 16 19 20 and 21-

11th The said Circuit court Erred in overruling the motion made therein on the part of the said Blanchard and McLaren defendants below, for a new trial in said Cause

12th The said Circuit Court Erred in rendering judgment in said Cause, for said Pratt, the plaintiff below, and in not rendering judgment therein for said Blanchard and McLaren, defendants below -

And the said plaintiffs, appellants herein, pray that the judgment aforesaid for the Errors aforesaid, and other Errors in the record and proceedings aforesaid may be reversed and held for nothing and that said plaintiffs may be restored to all things which they have lost by occasion of said judgment

Kendall & Lee

attys for Appellants

Supreme Court Third Grand Division
Thos Pratt appellee April Term A.D. 1865

ags

William A Blanchard } Tonica & Lim
& William McLaren

— " —

and now comes the said appellee by his atty & says that there is no error in the record & proceedings aforesaid & in giving judgment aforesaid, in manner & form as above assigned, the prays that said judgment may be affirmed & his costs adjudged to him &c

Thos. G. Frost
atty for appellee

142 29
William A. Blanchard
Error
to
Thomas Pratt

Record

Filed August 4 1865
A. Lincoln
Clerk

IN THE SUPREME COURT

OF THE

THIRD GRAND DIVISION

OF THE

STATE OF ILLINOIS.

APRIL TERM, A. D., 1865.

WILLIAM A. P. BLANCHARD & WILLIAM McLAREN
VS.
THOMAS PRATT.
} APPEAL FROM BUREAU.

See record pages as designated by numerals in this margin.

1 This was an action of forcible entry and detainer, commenced by the plaintiff below, Thomas Pratt against the plaintiffs in this appeal impleaded with Phineas V. Blanchard and Mark Varnum, before George O. Ide, Police Magistrate for the Town of Princeton, in said Bureau County, on the 31st day of December, A. D., 1862. The plaintiff below, by his agent, Otis A. Turner, on the 31st day of December, A. D., 1862, filed his affidavit charging that "the defendants on the 9th day of November, "1861, at said county, did unlawfully make a forcible and illegal entry into the lands and possessions "of plaintiff, to-wit: S. W. qr. section 26, T. 15 N. R. six east 4th P. M., and then and there with "strong hand, violently, forcibly, and unlawfully did enter into possession thereof, and put out and "dispossess said plaintiff from said lands and possessions wherein plaintiff had an estate and lease-"hold interest for the term, from October 21, 1861, to January 1, 1867; that said plaintiff was on "November 9, 1861, in possession of said premises under said lease, which interest was then and still "is subsisting, and that defendants still illegally, &c, hold said possession from said plaintiff, &c."

1—5 Summons issued against all the defendants below, and was returned January 7, 1863, served on
6 and 7 William A. P. Blanchard and William McLaren. The other defendants, Phineas V. Blanchard and Mark Varnum not found.

1 to 8 The proceedings before the justice resulted in a judgment for plaintiff below, with an order for restitution of possession of the premises to plaintiff below. An appeal was taken by William A. P. Blanchard and William McLaren to the Circuit Court.

PROCEEDINGS IN CIRCUIT COURT.

8 Summons to appellee.

10 Continuance at August Term, 1863.

12 At the December term, 1863, this cause was tried before Hollister Judge, and a jury, and the jury did not agree and were discharged by the court.

13 At the March Term, A. D., 1864, defendants below moved for continuance. Their motion was
14 overruled by the Court. Trial ordered, and trial had before Hollister Judge, and a jury, who returned the following verdict: "We, of the jury, do find the said defendants guilty." Defendants entered their motion for a new trial on 25th of March, which was the 11th day of the term. On the 12th
15 day of the term the motion for a new trial was overruled and judgment was rendered for costs against
16 defendants; also that plaintiff below have restitution of the premises. March 26th, 1864, being the 12th day of the term the defendants below prayed for and obtained an appeal to the Supreme Court,
16 and 17 and filed their bond, &c., with the leave of the Court to file their Bill of Exceptions within twenty days, *nunc pro tunc*, as of the 25th day of March, A. D., 1864 Bill of Exceptions filed April 2nd, 1864, *nunc pro tunc*, as of the 26th day of March, 1864.

EVIDENCE FOR PLAINTIFF BELOW.

18 WILLIAM SADLER, sworn, testified as follows: I reside within a mile and three-fourths of the land in dispute; in 1861, I resided within half a mile of that land; was on the same quarter; know the parties to this suit; know that Thomas Pratt did breaking on this land in the fall of 1861, about the mid-

dle of October. He asked me for a plow. I said he might take my brother-in-law's plow. He took
19 it—it was a breaking plow for sod. He asked me to go with him to help him start the plow. Pratt said he wanted to break for the purpose of taking possession of the land; that he had leased it. We went there; I plowed, and he drove the horses; I was with him about two hours; I did not measure the land, but supposed it to be an acre and one-half. He said he had leased the land of Daniel Pauline, and was breaking to take possession of it; he broke joining the ridge road, leading from Osceola to Neponset, towards the north-west corner of the quarter. I should judge there was an acre and a-half broke—not all broke while I was there; I left him breaking. The next day I saw the land he went around: it had been all broken up. Dana passed by while we were breaking. He asked what we were doing? Pratt told him he was breaking a garden spot there, in order to take possession of the land. There was nothing said about building at that spot; there were several others passed by in sight of us; they had to turn right on the end of the ridge road. I know it was generally known that Pratt had taken possession of the land. I heard both Rhodes and Douglass speak of his taking possession; I heard others, not land owners, speak of it. There are seven or eight farmers in the neighborhood, Blanchard and McLaren, (defendants) Rhodes, Pratt, Douglass and Hewitt.
20 I talked about Pratt having possession; I don't know that defendants knew of Pratt having possession. I don't know when defendants put a house on the land. At the time Pratt broke, there was no house on it: two or three weeks after the breaking there was a house on it. Blanchard lives about three-quarters of a mile from where this breaking was done. Blanchard's N. W. corner comes up to the corner of this quarter. Pratt lived about one-fourth of a mile from the S. E. corner of this land in question. McLaren lived about 35 rods from the S. E. corner of this land. He lived half a mile from where Pratt broke. The land where Pratt broke was rather inclined to a ravine, but was easily seen from the road; the breaking was well done; the land was turned over pretty good. When Dana came along Pratt told Dana he was breaking a garden spot for the purpose of taking possession of the quarter. He told Dana that he had leased the land of Pauline.

CROSS EXAMINED.

I heard the two Rhodeses, Douglass and Dana speak of Pratt taking possession of the land. I never heard Dana speak of it except when we were breaking. The two Rhodeses lived in the same house, and I lived on Rhodes' farm. Douglas lived east of the land; the neighborhood is pretty
21 thickly settled; the land was taken up all around except that quarter; there are about 13 farmers' families living within the extent of one mile of this land. I never measured the land broke by Pratt—it was three or four times as long as it was wide; I have been among land all my life; I judge it was an acre and a half; I knew the land familiarly prior to the time Pratt and myself went on to plow—there had been no breaking before that time. I went over the land frequently for my cattle and horses. I used to go over the same quarter to Osceola; I have broken a piece on the north-west corner of the same land to scour my plow—a long piece running along side of the road. Elder Hewitt had a yoke of cattle on there scouring his plow on the same land. It was on the road running east
22 and west where I scoured, and where Hewitt scoured was toward the south-east, running cattering across on the old road near the south side of the quarter. I did not see Elder Hewett break there: I saw his cattle at a distance—I knew his cattle. At the time Pratt did this breaking I did suppose, or partly supposed, I was to have an interest in this land. Pratt asked me if I would take half the land? I said, "I don't mind about it." That was all that was said at that time; afterwards he said I would have to fence the land, and I said, I would not improve other persons' land, for I had not the money, and then I did not hear any more about it. The plow belonged to Pearson, and was on my place. The Rhodeses lived 200 steps from me. Pearson had broke with the plow for me and the Rhodeses. Hewitt broke in the old road, rather to the west side; Pratt broke alongside the ridge road. There were thirteen families living near or within one mile of the land in controversy—Hewitt, Rhodes, Saddler, Gumersal, Lewis Pratt, Douglass, Thomas Pratt, (plaintiff.) John Gur-
23 ney, McBeth, (Patrick he is now dead,) Dana, Bennett, Blanchard and McLaren. Never heard Gumersal, or Blanchard, or McLaren speak of the breaking.

JOSEPH PRATT: I am a son of the plaintiff; I know this quarter in dispute; I did not see father break the land, but saw it was broke; it was near the north-west corner—near the road along the Kentville and the ridge road. I saw the breaking every time I passed; it was one to one and a half acres—never measured it. I heard some of the neighbors speak of it. I heard McLaren, one of the defendants, say that Pratt had got another farm down there. It was in the fall, after father leased the land; it was after father broke. I saw the Blanchard and McLaren house which they put on the land. McLaren spoke of Pratt having got the farm after Pratt had broke. Don't know who McLaren was speaking to when he said that Pratt had another farm. Albert Pratt was present when McLaren spoke of Pratt having another farm. Mr. Pratt I think was there; father had not obtained about that time another farm. I had frequent opportunities of knowing this quarter before father broke it; I passed over this quarter often in the spring and fall of 1861; I went for coal and the cattle over this quarter. Never noticed any other breaking except where persons had scoured plows, along
24 the ridge. People were in the habit of scouring plows on the quarter; Hewitt scoured on the middle of the quarter—saw Hewitt's hired man scouring his plow on this quarter; there was plow scouring on the N. E. corner, near the north road: I had seen other scouring along the road, along the north side. I saw a house on this quarter about two weeks after father broke on this quarter. Blanchard and McLaren did breaking on this land the next spring; I saw their teams. Don't know who lived in the house. They broke 120 or 130 acres; don't know whether any one lived in the house the first winter—don't think any one lived in it that winter. I passed over the land on the north road after father broke on this quarter, and before any house was put on it.

CROSS EXAMINED.

I saw Elder Hewitt's hired hand scour his plow on this quarter in spring of 1861—never but one time; he was on the old road, never saw any one else scour plow there. That scouring of the plow was about the middle of the quarter; plowed with oxen. Father lived pretty near three-fourths of a mile from the north east corner of the quarter; don't know of my own knowledge that father ever broke on this quarter. Courrier lives a little over two miles from the N. E. corner of this quarter in a S. E. direction. Don't know who McLaren was talking to when he said that Pratt had gotten
25 another farm. There are only Lewis and Thomas Pratt in the neighborhood. It was in the fall, in threshing time—it was about the latter end of October, a little after I saw the breaking done. (The defendant asked the witness the following questions: 1st. Did you ever in the presence of James Hewitt say, that it would not cost your father anything to litigate these suits? 2nd. State whether on a certain occasion, in the presence of James Hewitt, that you did not make the remark that your father was all right, and that this suit would not cost him anything?) To the answering of which questions, and each of them, the plaintiff objected, and the court sustained the objection and the witness was not allowed or required by the Court to answer the same, or either of them, to the order of the Court sustaining the plaintiff's objection, and refusing to allow or require the witness to answer said questions, or either of them, the defendant then and there excepted.) The house was put on the quarter about two weeks after father's breaking was done, near the latter end of October. Did not see them when they were moving the house on the land. When I was threshing at Courrier's was before the house was on the land, because I had been on the land and saw no house. The threshing
26 was a few days after the breaking; did not go by this quarter to go to Courrier's—I went further away from this quarter in going from father's to Courrier's. I do swear the house was not on the land when I went to Courrier's to thresh for I had been on the land a few days before. I don't know what I was going for when I went on the quarter. There were others at Courrier's besides me. Lewis Pratt, his boy and McLaren, but I can't remember all that were at Courrier's when I was threshing; don't know what McLaren was talking about when I heard him say Pratt had another farm. The machine was going and making a noise. I was cutting bands, and McLaren was feeding the machine. There was a man near McLaren, but don't know who it was; he was on the right hand side; I had to be within half a foot of McLaren—don't know how near the other man was to him; the other man went off the stand in two minutes; heard nothing else—don't know the man he was talking to.

Recalled : The machine was running when I heard McLaren say that Pratt had another farm ; don't know whether father broke the land ; I heard folks talk of father's breaking ; did not know of any other person breaking on this land for the purpose of taking possession before father was reported to break on this quarter.

27 PEARSON : I know the land in dispute—I knew it in the spring, summer and fall of 1861. I know Pratt broke one and one-half acres for the purpose of taking possession in the fall of 1861, after harvest. Don't recollect the month precisely. I looked at it for the purpose of making an estimate of what Pratt broke. I had known the quarter two years before Pratt broke ; don't think there was any other breaking before Pratt's, except scouring plows. I scoured my plow on the east side of the road that runs to Osceola from Neponset; there was more broke up towards the south side by scouring I never saw any other person scouring plows on the quarter beside myself. I saw Pratt break this piece towards the north-west corner. I spoke to Pratt as I was passing by ; as Pratt was turning round, I said, you have got started. I knew at that time for what purpose Pratt was breaking ; the way I knew was that he came to where Saddler and I were, and wanted to get a plow to break on that quarter to take possession of it. (Excepted to.) He got the plow, and I saw him breaking about 11 o'clock of the same day. I heard a good many people talking, through the neighborhood about Pratt breaking for the purpose of taking
28 possession of the quarter. I heard Norton, the two Rhodes, and a great many others in Neponset, that heard speak of it. That town is near this road where people in that neighborhood go to do business. I did not hear Gunny speak of it. I heard Robt. Stubble and a good many others ; these persons who I heard speak of it lived around the neighborhood. I saw Blanchard and McLaren put the house on this quarter, about two weeks after Pratt did the breaking, and after I heard these persons speak of Pratt having taken possession ; they got the house at Elder Hewitt's—put it on the S. E. corner ; I was at the house moving—did not help them much. I did not hear Blanchard and McLaren say where they were taking the house, and what they were a-going to do. They touched the south-west corner of this quarter when they struck the quarter. The house was standing on Hewitt's farm, across up the Kentville road. They would move the house within half a mile of Pratt's breaking. Pratt's breaking was not within sight of where they were moving. The house stood before they moved it in a north-west direction from the center of the quarter. They had to take the house
29 around on account of the bridges. The reason I think Blanchard and McLaren knew of Pratt's breaking was, that it was within sight as they went to town and they could not help seeing it, and because it was generally spoken of in the neighborhood. The Rhodes knew of Pratt's breaking before Blanchard and McLaren placed a house on the land. The breaking of Pratt's was next to the road leading to town ; the neighbors passing along could not help but see it. The breaking Pratt did had no appearance of scouring plows. I don't think any other breaking was done except to scour plows.

CROSS EXAMINED.

I was not doing much of anything when Pratt came for the plow. Saddler, Pratt, myself and the children were there. It was about 8 o'clock. I don't know what Saddler was doing—my memory is pretty good. We were all three together when Pratt got the plow for the purpose of breaking. He was going to break a piece for possession. The language was something in that style. He said he was going to break for the purpose of taking possession. I was sworn on the other trial, and don't
30 think I swore that I never heard Pratt say anything about taking possession. If I did so swear on the other trial, I guess it was a mistake. My recollection is more apt to be correct when I was sworn before than now ; my recollection is now clear and distinct as to what took place that morning. I heard Thomas Norton speak of Pratt taking possession (at his house) a few days after Pratt's breaking. Norton commenced the conversation ; he said he thought Pratt and Saddler had got a hard bargain. Norton asked me if Pratt had not got a lease on that land, and I told him Pratt had broken for possession. He asked me if they had done any plowing, and I said, yes, and for the purpose of taking
31 possession. It might have been a week after the breaking when I had the conversation with Norton.

The house was put on the quarter the same fall the breaking was done—don't know whether it was in 1861 or 1862. Heard Robert Stubble and the Rhodes speak of Pratt's breaking for possession the same fall of the breaking ; it was on the same day I was at Norton's—Stubble was at Norton's. I don't recollect what he said ; he said Pratt had a hard bargain. Don't know that Stubble spoke of the breaking to take possession. I heard the Rhodes speak of the possession—they live half a mile from the quarter. I live not many steps from the Rhodes ; I was at Rhodes' about the same day of the breaking. Heard John Rhodes speak of Pratt's breaking to take possession. He asked me if Pratt had not gone to break to take possession. Heard many others besides the Rhodes speak of Pratt's taking possession. They were plowing with two horses ; it was not very stiff prairie sod.

32 WALLACE CLARK : I reside near the land in dispute—one mile and a quarter from the corner of the land. I have known the land since 1854. Some time during the latter part of October, I was crossing over the land, and I saw Pratt breaking. I asked him what he was doing. Said he was breaking a garden spot ; that he had leased the land for the term of five years, and that he was breaking to take possession. He wished to apprise the neighborhood so that they might take up their stock. There was about an acre and a half ; it was in the north part of the quarter, near the ridge road, about 40 rods from the N. W. corner. There might have been breaking done there before Pratt's, but I never noticed any. This was the first time I ever heard of any body breaking to take possession. Blanchard and McLaren put the house on the land after the breaking was done by Pratt. I don't know whether Blanchard and McLaren knew about Pratt's breaking. The breaking was well done ; he was using a Tiskilwa breaking plow—a regular breaking plow. The breaking was some thirty rods
33 long and from eight to ten rods wide. Shouldn't think any one could pass the road without noticing Pratt's breaking. It was not over five rods from the point where the ridge road entered the quarter on the north ; think Pratt's breaking could not have been mistaken for scouring plows.

CROSS EXAMINED.

I asked Pratt what he was doing. He said he was breaking a garden spot. He asked me if I thought that would be considered a possession. I told him I thought not, unless he followed it up. He was plowing with two horses. I should not think it a proper season to do breaking. It was prairie soil, trod out somewhat, not sufficiently worn out but that the furrow turned over evenly. From the middle of May to the first of July is the proper season to break. I live in the middle of N. E. quarter of sec. 28. Banister lives one quarter of a mile west from my house. He spoke to me about the breaking—wont swear positively that he spoke of breaking, but he talked about Pratt taking possession. This conversation took place a few days after the breaking. Am not certain whether it was before the house was moved on the land ; am pretty positive it was before the house was put on. The
34 circumstances that led me to think that no one else had taken possession : I proposed taking 40 acres of the land. Pratt said he would be unable to break it all, and he said another party had spoken for it, and if he did not take it, I might have it. Never knew of Pratt doing anything on that land before or since that day. I saw Blanchard and McLaren's teams there breaking in the spring of 1862.

Direct Examination Resumed : I learned about a week or two after the conversation with Pratt about the breaking, of Blanchard and McLaren putting the house on. Don't know for whom Russell was breaking. Blanchard and McLaren fenced the land the next spring ; was a post and rail fence —it was made of poles, black oak and burr oak ; the butts were cut off and used as poats—was not a very substantial fence. The land was fenced on the west by Mr. Hewitt, on the south by McLaren, on the east by Blanchard and Gray. These fences had been up before on their own land. It needed a mile of fence through the center for a road, and half a mile on the north. I went into the neighborhood of Osceola once a month ; went on the land perhaps once or twice a week some weeks, and
35 some weeks not at all, to look after cattle. If there had been breaking on the extreme south and toward the west, I might not have seen it. I should suppose I might have seen regular breaking—I presume I could have seen it ; I traveled the road from N. E. to S. W. frequently ; if there was regular breaking there, I believe I could have seen it.

CROSS EXAMINED.

There might have been breaking there and I not have noticed it. I never crossed the land in the east part of the township ; I then traveled along the north side of this quarter.

THOMAS RHODES : I am acquainted with the land in dispute, and have been five or six years ; lived within half a mile of the land. Seen some breaking on the north side, near the N. W. corner ; don't remember the exact time when I first saw the breaking ; it was in the fall of 1861. It was before I saw the house on, perhaps ten or fourteen days ; did not measure the land broken by Pratt—was, perhaps, an acre or over. Before I saw the breaking I learned that Pratt had done it. I was on the north side frequently ; I never noticed any breaking, that I called breaking, before Pratt broke—have seen a furrow here and there plowed on the land. It was along the ridge road, in and aside of the road. I scoured my plow ; I don't know it was in 1861. I had never heard of any person breaking
36 the land before Pratt's breaking. I learned from hearing Mr. Saddler tell about Pratt's breaking. I have n't any particular reason for thinking it was generally known in the neighborhood—Pratt Pearson, Saddler and myself, talked about it. Saddler, Pearson and I lived near together—never heard any other person speak about Pratt's breaking.

CROSS EXAMINED.

I was n't over the quarter only on the north side, very often ; did not see the breaking done ; there was more talk about Pratt's breaking after the house was moved on than before. I don't profess to swear there was no breaking on the south side of the quarter. I scoured my plow twice in one summer ; I scoured my plow on the ridge road, about one hundred yards south of the north road. Pratt proposed to take me in as a partner ; he wanted me to take a share with him, and said he had n't means to fence. I told him there might be trouble. It was before the house was put on and after he had done the breaking.

Direct Examination Resumed : At the time he proposed to take me in, he said he had leased the land from Pauline ; never noticed any breaking on the south part before Pratt's breaking.

37 OTIS A. TURNER : Am acquainted with the land in dispute, (lease exhibited.) This lease was executed by the parties who signed it ; those are their signatures. Then followed the lease, which is dated October 21, 1861, between Daniel Pauline of Quincy, Adams county, Ills., of the first part, and Thomas Pratt, of Bureau county, Ills., of the second part, whereby Pauline leases to Pratt the S. W. 26, 15, 6, from 21st of October, 1851, to January 1, 1867, in consideration that Pratt should break all the land during the year 1862, and build a first class fence out of the best white pine boards and cedar posts along the north and east lines of the land ; and, also, either build of like material so as to
38 join with the fences on the south and west lines, half of the strings of fence along the south and west lines of the land leased, or, buy half the fence built and standing on said south and west lines, of the owners, provided, said fences are made of good material and built in a substantial manner ; Pratt to be at all cost of the fences—the fences to be put up in a good, substantial manner, and to be kept in good and substantial repair by and at the cost of Pratt. Also that said Pratt should build a house of good materials, to be put up in a substantial and workmanlike manner, on an eligible part of said land at a cost of not more than $250, and to be kept in repair by Pratt during the term of the lease, all to be done at his cost and charge—all the improvements to be completed on or before January 1,
39 1864. Pratt to have the use of the land for the years 1862 and 1863 for the breaking ; after that Pratt is to pay Pauline rent, $200 per annum, during the term of the lease, amounting to $600 for the balance of the term ; this money to be offset to the improvements which Pratt shall put on the land, the same to be taken as a full compensation by Pratt for all improvements above recited to be made by him. In case Pratt shall well and truly perform on his part he shall not be charged with money rent, but in case he fails to perform any or all the conditions on his part to

be performed, in that case he shall pay to Pauline in money the difference between the actual value of the improvements he may put on and those above recited to be put on. If Pratt shall prefer to use
40 for posts white oak instead of cedar, then he shall not charge for such white oak posts more than eight cents a piece, and the difference between the eight cents, their cost, and 13 cents, the cost of the best cedar, Pratt shall pay to Pauline in money. The white oak posts to be six inches square. Pratt shall not transfer the lease or the conditions thereof without the written consent of Pauline first obtained. At the expiration of the term, when the land is offered for sale by Pauline, Pratt shall first have the refusal of the land at such price as Pauline shall offer it to others. At the expiration of the lease, Pratt to deliver to Pauline peaceable possession of the premises and appurtenances without cost or charge of any kind, in good condition, reasonable wear and decay excepted.

(Signed.) DANIEL PAULINE, (SEAL.)
THOMAS PRATT. (SEAL.)

41 The plaintiff here offered in evidence a deed in substance following. The deed of quit claim from George O. Karrick, Galena A. Karrick, John C. Burche, Susan R. Burche, Samuel R. Burche, and Ella A. Burche, by their attorney in fact, Asa Turner of Adams county, Ills., to Daniel Pauline, whereby, in consideration of fifty dollars, the parties of the first part remise and quit claim to Daniel Pauline, his heirs and assigns forever, the S. W. qr. sect. 26, township 15 N, range 6 E. Said deed
42—43 is dated Sept. 2, 1861, and acknowledged of same date before S. P. Delano, notary public, of Quincy, Ills. The Plaintiff also offered in evidence a power of attorney purporting to be from George O. Karrick and Galena A., his wife, of Dubuque, Iowa, John C. Burche, Susan R. Burche, Samuel R. Burche and Ella A. Burche, of the City of Washington, D. C., heirs at law of Joseph Karrick and Rebecca, his wife, late of Baltimore and State of Maryland, constituting and appointing Asa Turner, of Quincy, Ills., the lawful attorney of said parties to bargain, sell and convey, remise, release and quit claim all those certain lots or parcels of land located in the military tract and State of Ills., known and described as follows, viz—the S. W. quarter of section 9, 2 south, 6 west. The N. W. quarter sec. 8, 7 north, 3 west. The S. E. quarter sec. 11, 6 north, 8 west. The S. W. quarter section 13,
44 6 south, 5 west. N. W. quarter section 32, 5 N., 3 E. N. E. quarter section 14, 6 north, 3 E., together with any and all other lands in the said State of Illinois in and to which the parties of the first part have any right, title or interest in law or equity as the heirs at law of said Joseph Karrick and
45 Rebecca Karrick, signed and sealed by the parties of the first part, and dated February 19, 1861, acknowledged by George O. Karrick and wife before J. M. Allison, notary public of Dubuque, Iowa. Feb. 19, 1861, and acknowledged by John C. Burche, Susan R. Burche, Samuel R. Burche and Ella
46 A Burche, before Charles D. Selding, a commissioner for Illinois, at Washington, D. C., March 5th, 1861. To the giving in evidence of the said deed and power of attorney, the defendants then and there objected, which objection was then and there overruled by the court, and the plaintiff was thereupon allowed by the Court to read, and he did then and there read in evidence to the jury the said deed and power of attorney to the order of the Court allowing the same to be read in evidence, the defendants then and there excepted.

47 Otis A. Turner then testified as follows: I was present at the execution of this lease when the lease was executed the parties went out on the land, examined and looked over it, and talked where the best site for a house would be. A high spot near the ridge road was determined on for the place to build the house. Pratt, Pauline and myself went on to the land together, talked about his breaking, and his commencing immediately. I saw the breaking which was subsequently done by Pratt on the west side of the ridge road. It was a square piece; I judged it to be about two acres—it was twice as long as wide. The breaking could be easily seen from any point of the road—was plain to be seen from both roads. It was a month to six weeks after the leasing to Pratt that I saw the breaking. Blanchard admitted that he put a house on this quarter. McLaren said he claimed the possession of the quarter in connection with Blanchard; that he and Blanchard were interested together. I asked Blanchard why he placed the house on the place when he must have known of our lease to Pratt. He said he knew of Pratt's breaking on the place. Don't know of McLaren saying anything
48 about the breaking. I had been over the quarter the day before the lease to Pratt—that was the

first time I was ever there. I passed over the quarter in the direction of the ridge road, from S. E. to N. W. I scanned the land carefully ; I saw in various places over the quarter where persons had scoured their plows. I saw irregular furrows ; I saw no regular breaking on the quarter ; passed over the land when I went to see Blanchard. I saw in the forks of the ridge road some furrows. I noticed an irregular number of furrows ; on the west of the new road I saw some seven or eight furrows—there were no furrows on the west side of the old road. The track of the old road was all cut up with irregular furrows, some two or three on the south line between the old and new road—no furrows beyond where the old track was worn ; have been over the land since—noticed the same appearances. I employed Russell in the spring of 1862 to break on this quarter at the instance of Pratt. He spoke of him as a man who followed breaking and that he, Pratt, was short of help. Russell broke about five acres near where Pratt broke, joining it on the south and little to the east of it. In October, 1861, Pauline and myself were in the neighborhood about two days ; did not hear of any
49 one having broken on that land prior to that time ; saw some of the neighbors—Pauline mentioned to them that he owned this quarter. After we saw that there was no improvement on the land we considered it vacant.

CROSS EXAMINED.

I live in Quincy. My business and Pauline's is the same. He is a dealer in real estate. Pauline and myself came up to Neponset ; passed over this land on Sunday—we met Pratt on Sunday : on Monday we leased the land : I was then doing business for Pauline on a salary. Pauline and I went there in a buggy ; we met Pratt at his own house on Sunday and dined with him ; we went out and looked at the land before we leased to Pratt.

Question. Did you swear on the other trial that you did not go on to the land until after the lease ? Answer. Don't know how I swore before ; I think we were on the land before and after the lease ; we were on the central portion. I did some of the writing—think Pauline drew the lease. (The lease is in Pauline's hand writing) I copied the second. I and Pratt looked up the witnesses ; I
50 was authorized to commence suit in Pratt's name ; after serving the notices in the name of Pauline, we did arrange with Pratt that we should use his name. I swore before Ide that I was an agent of Pratt because he authorized me to commence suit in his name. I suppose it was not under a feigned possession of Pratt that we desired to retain possession. I went to Pratt and made the arrangements to carry on this suit ; there was nothing said about any pay. I asked Pratt if he would authorize me to commence a suit in his name as agent. I remember the term agent being used. I employed Russell to plow for the benefit of Pratt if we gained the suit ; if we lost, it would be the loss of Pauline. It was undetermined whose benefit the breaking was for at the time the breaking was done. Pratt's name was not mentioned when I hired Russell. I did not tell Russell that the breaking was for Pauline. The next time I returned after leasing to Pratt was from four to six weeks ; the house was then on the land. All the conversation I had with Blanchard and McLaren was after they had the
51 house on the quarter. It was after that when I served the written notices on Blanchard and McLaren —it was some time in December, 1862, that I served the notices. I only made a verbal demand for the premises on my second visit. Pratt was with me when I went to Blanchard and spoke to me about the house being on the land. I was not on this quarter until May or June—at that time Blanchards were plowing the land. I employed Russell to break ; I paid him with Pauline's money. The first time I served the notices, I served them in Pauline's name. The second time in Pratt's name. Pratt has paid part of the expenses ; I expect Pratt looks to me to furnish the money to pay expenses ; Pauline employs attorneys through me : I expect Pauline's money pays the expenses of the suits. I asked Pratt if he wished to continue with his lease ; if he did, we must use his name, and if we couldn't hold him in possession, Pauline would pay the expenses. Pratt wanted to carry out the lease and retain the possession. I suppose it would be in support of Pauline as well as Pratt. It would depend upon whether it would be to the benefit of Pratt whether Russell's breaking was Pratt's, or
52 not. I don't know, as I said to Russell, who the breaking was for. I gave him my address and said when the breaking was done, he would be paid for it. Blanchard stated that he had done breaking

there in presence of Pratt in May, 1861. He claimed to have taken possession in the spring of 1861. I asked Blanchard what right he had to the land ; he said he had possession and that was all he wanted. He defied us with our title and told us to come on. He did not tell me he was claiming under a title. There was not as much breaking done in place where Blanchard pointed out that he and McLaren had done, as was done by Pratt. I saw where he claimed the breaking was done, but I saw no breaking except such as I have described. I saw considerable furrows, but no regular going round. I think there were six, seven or eight, possibly nine furrows in the three cornered piece
53 —on the side where there were nine furrows I did not count. I should be surprised to find it two acres—think there was from a quarter to a half acre. I supposed the Pratt breaking three or four times as large. I did not see any plowing in the sod west of the old road. It didn't have the appearance of breaking. I spoke to Courrier about Blanchard claiming possession, and that he had done some breaking there. I told him I had n't seen any plowing except for scouring plows ; I did not tell Courier that I had seen Blanchard & McLaren's breaking before I leased to Pratt. I told him that Blanchard claimed that he had done some breaking, and that I had never seen anything but some irregular plowing there, and asked him if he knew anything about it. He said he did not know of any. Don't recollect that I said on the other trial that Courrier said that Blanchard had a pretty good claim. It was from one to two months after the lease that I had the conversation with Blanchard.

DEFENDANTS' WITNESSES.

54 Mark Blanchard : I reside in Osceola, Stark county. Defendant, Blanchard, is a second cousin of mine. I am acquainted with the land ; in May, 1861, I was drawing corn to Neponset ; I passed over the road mentioned. I saw Blanchard and his team on the land—he was plowing. I asked him if he had bought the quarter. He said he had got it all fixed out right and was going to improve it. (Map shown.) He was plowing with one pair of horses ; it was an old ground plow ; a rod plow is a regular breaking plow. I asked him if he had got the quarter, and he said he had got the thing all right, and was going on to improve it. I was driving to Neponset with a load ; it was about nine o'clock, a. m. ; his team was there when I came back from Neponset ; it was near noon when I got back there. Conger was Blanchard's man. The piece plowed was 40 rods on the east side, 28 rods on the west side, and 20 rods on the south side. There was a very small piece left unbroken in the middle of the three cornered piece ; I passed on that road almost every day until havest. I suppose the breaking done by Blanchard was easily to be seen during that summer. The breaking came right
55 up to the road. It was fenced near up to the east line.

CROSS EXAMINED.

I measured this three cornered piece last week, between the old road and the new road. The road we traveled n 1861 was gullied out and that is what I went by—I went by the west side. The old road is plain to be seen, it was right on the ridge ; they broke it in 1862, raised a crop of wheat in 1863 ; they plowed it last fall ; I drawed over that road in 1861, 1500 bushels of corn ; I had some help about the last end. I asked Blanchard if he had bought the quarter, because I knew he wanted to buy it. W. A. P. Blanchard lived south of where he was breaking, some 80 rods. When I first saw him breaking there was no one with him but Conger ; Blanchard was where the plowing was being done ; when he saw me coming, he came up to me ; one side of the plowing was right up to the road. The next morning I saw they had almost the whole of the three cornered piece broken up —he was still plowing when I went home that day : his team was going round the piece ; quite a piece was left when I came back that day—as much as had been plowed. and I don't know but more. I generally made the trip and got back by noon. They did not plow any of the road where I traveled.
56 It was plowed out to the edge of the new road ; after McLaren fenced up it was rather a steep pitch—the earth was not trod over outside of the road ; this plow had a rolling cutter.

John Wyman : I reside in Neponset, about three miles from the land in controversy. My business is teaming and hauling coal—hauled coal across that quarter section in 1861. Can't tell what time of

day it was; saw Blanchard's team plowing there on the west side of the new road. I helped Blanchard to measure it last week—it was 40 rods on the east, 20 on the south, and 28 rods on the west side.

CROSS EXAMINED.

Can't state the exact time. I met Mark Blanchard about a mile and a half from Neponset, about 9 or 10 o'clock, a. m. I did not see W. A. P. Blanchard on the land; it was Blanchard's hired man that was plowing. I know it was the first breaking I ever saw on the quarter, and I traveled over it quite frequently.

57 PATRICK SINNOTT: In the spring of 1861 I worked for McLaren. I know the land in dispute; I was sent on that quarter some time in May, 1861, to plow. I plowed on the west side of the road; the strip was about 70 or 80 rods in length; it was about two rods wide. It was in the afternoon when I went to plow. I don't know where McLaren was in the forenoon—he was plowing. In the afternoon when I went to plow I found the plow there; the plow was stuck in the furrow—it was McLaren's plow—it was the same plow McLaren took out in the morning. I finished the land before I quit—about half an hour before sundown. I had a span of horses; McLaren had scoured his plow in the spring, down below Osceola, in the timber. This breaking I think was not for the purpose of scouring the plow; don't know how long McLaren plowed. He went out between 7 and 8 o'clock in the morning; I did not see him come in—did not see him again until noon.

CROSS EXAMINED.

I am living on the land in dispute; I am Blanchard's tenant. I did the plowing in May, 1861—I was then working for McLaren by the month; before I went to plow I was nailing up fence. I don't
58 know why I plowed there—we scoured the plow about the 1st of April. We had four acres to plow for corn when I broke on this quarter. McLaren had 60 acres of corn that year. I commenced work for McLaren in March; I quit work for him the day before christmas, 1861.

JAMES HEWITT: I know the land in dispute. I saw McLaren's team plowing. (Map shown.) The plowing was done on the west side of the road—part of the road I think was plowed up. It was about 80 rods long and two or three rods wide. He plowed in the spring of 1861. I heard the testimony of Pratt and Saddler in relation to father's team plowing on this quarter. I saw the team part of the time. We went down across the quarter; we scoured our plow at the timber. I don't know what the hired man plowed there for unless it was to scour the plow. He was plowing up toward the N. W. corner. It was in the afternoon that I saw McLaren's team plowing there. It was Paul Sinnott that plowed.

CROSS EXAMINED.

59 I saw Paul Sinnott plowing late in the spring of 1861. My father's team was an ox team. McLaren's Irishman was plowing with a scouring plow. It did not occur to me that they were plowing to scour plow; the plowing was not irregular—it was a hard place to scour a plow along the road. The road is one that run across the prairie; there is a road now laid out across the quarter: the land is not sandy where McLaren plowed. The old road ran over high ground. I saw some plowing done at the north line along the fence; I don't know whether it was scouring or fine ground there.

C. A. HEWITT: I live from 40 to 60 rods N. W. from N. W. corner of the quarter in question: known it for nine years; I have seen both pieces of the breaking; I could not give any description of either of these pieces of breaking; after the breaking, which it was said that Blanchard did, I had to cross this breaking in my buggy. I could not distinguish between Blanchard's and McLaren's breaking. I think the breaking was from two to three rods wide—from 40 to 60, and probably 80 and possibly less than 40 rods in length. The other breaking, said to be Pratt's, I have crossed, it was smaller
60 and an oblong—perhaps four to six or seven rods wide, and some 20 rods in length. In crossing the breaking I made an acute angle; there was an old road very near the ridge. The breaking of Blanchard and McLaren hit into the old road occasionally, while the place laid out for the new road was

left. The plowing was regular, and seemed to have been done with an old ground plow. I have used an old ground plow with a roller to break with ; but that kind of a plow was not used on regular prairie. This prairie was fed out very much. The season for breaking prairie is from the 10th of May to 10th of June. It is said that fall plowing is very bad. It was prairie fed, but very much grown up to weeds. The prairie grass was wanting—prairie like this was could have been broken better with an old ground plow, than with a rod plow. The most of that prairie was broken up the next spring by Blanchard and McLaren. Some time about the 1st of November, 1861, Blanchard and McLaren came to me and wanted to buy a small tenant house. On the 6th of November they bought the house. It was 16 by 24 feet ; they started the house the day they bought it. They started directly south, for they could not get straight over on account of sloughs in the road. I saw the house on this quarter in a very few days after they bought it. The next spring Blanchard and McLaren
61 broke up the whole of this quarter, except sloughs ; they put on a miserable fence, so as to secure the crop. In the spring of 1863 they fenced each side the new road which runs across the quarter, and then from where it strikes the road running across the north end it is all fenced. I never sent my plow on that place to scour. My teams never scoured a plow on this quarter by my direction or knowledge. When I traveled in 1861 on the old traveled part of the road, a portion was broken up —perhaps all of it. I could n't say there was more plowed than to scour a couple of plows.

CROSS EXAMINED.

I entered this quarter on the N. W. corner. Blanchard and McLaren broke in 1862, and I saw them breaking. I think they had some mould-board and some rod plows. I don't know that the mould-board plows are regular breaking plows, but I know Blanchard had a regular mould-board plow which is a breaking plow. I passed by the breaking of Pratt's. It looked to be regularly broken, and seemed to be done with a rod plow. The furrows were cut thin and laid out flat. Don't know that any one lived in the tenant house that fall of 1861. The house was a considerable distance
62 from the road. I saw smoke in the house, but don't know what time.

Andrew Douglass : I know where the land in controversy is ; I measured the McLaren breaking, also the Pratt breaking ; Pratt's breaking was four rods and 12 links wide, and three rods long (30 rods long.) McLaren's breaking was two rods and 22 links wide and 80 rods long. Mr. Lewis Pratt helped me to measure it—measured it with a chain.

CROSS EXAMINED.

Made the measurement in the fall of 1862, I believe. McLaren pointed it out, but we knew where it was ; the ground was all broke up around it, had been broken up in the spring before ; think it was frozen some. Got the chain of McLaren—it was a surveyor's chain. I put down the figures.

Direct Examination Resumed : Could distinguish from the appearance of the breaking the old breaking from the new. Pratt's breaking was more mellow than the breaking of 1862. Don't think they plowed through the old breaking when they plowed the new. Think I am positive on the subject.

Lewis Pratt : I know the quarter of land in dispute ; I helped measure these pieces of breaking ; Douglas and McLaren were present. It was a regular surveyor's chain ; Douglas carried the hind
63 end of the chain and made the minutes ; I carried the fore end and stuck the stakes ; we put the minutes down at every corner. I could not swear that the figures read by Douglas, was the same made when we did the surveying. I had no interest in measuring the land. We measured the land in November or December, 1862. The ground was frozen some ; the stakes were wooden.

CROSS EXAMINED.

I don't live on the land ; rented a piece of the land last year of Phineas Blanchard ; I rented of Phineas Blanchard this year. Before I measured the land had never heard of the suit between Pratt and Blanchard & McLaren. Did know of Pratt breaking on that quarter in 1861 ; I think I saw his breaking the morning after he broke it. I saw a team breaking on this quarter in the spring. It was

the first plowing which I ever knew of being done on the piece. Don't know that it was McLaren breaking in the spring. My door is just across a quarter to the quarter in question. I was east of N.

Stephen Lyle: I know the quarter in dispute. I saw McLaren and Blanchard breaking in the
64 spring of 1862. They had two rod plows and one mould-board plow. I know when they put the house on the land. They started the house one day and got it on the next. I recollect of drawing the house across some plowing. The quarter is under fence and under cultivation. The proper season for breaking is in the spring, from 20th of May to 1st of July. The sod does not rot so well when broke in the fall as in the spring. The land broken in May would rot better than that in October before. The whole entire quarter was more or less eaten out. I helped move that house—we moved it from Hewitt's land.

The defendants then offered in evidence the record of a deed from Dewitt heirs to Blanchard and McLaren, and called W. A. P. Blanchard and Phineas Blanchard to prove that the original deed was lost and out of the power of the defendants to produce in court. After the examination of said wit-
65 nesses by the Court, the Court admitted a certified copy of the record of said deed to be read in evidence to the jury, which deed is in substance as follows, to-wit: An indenture made May 1, 1861, by Jacob V. S. Dewitt, James R. Dewitt, Charles E. Dewitt, Ephraim H. Dewitt, Albert T. Smith, Elizabeth Dewitt Smith, Julia C. Dewitt, and Maria Dewitt by John B. Strong, their attorney in fact, parties of the first part, to W. A. P. Blanchard and William McLaren, of the second part, whereby the
66 parties of the first part in consideration of $1000 paid, &c., by the parties of the second part, remised, released and quit claimed, and by said deed did remise, release, sell, convey and quit claim unto said parties of the second part, their heirs and assigns forever, all the right, title, interest, claim and demand which the parties of the first part have in and to the south-west quarter of section 26, in township 15 north, range six east of the 4th P. M., in Bureau county, Ills., To have and to hold the same, together with all and singular, the appurtenances and privileges thereunto belonging and all the estate, right, title, interest and claim whatever of the parties of the first part in law and equity to the only proper use, benefit and behoof of the party of the second part, their heirs and assigns forever, which
67 deed was signed and sealed by the several parties, grantors, by John B. Strong, their attorney in fact, and was duly acknowledged before John H. Lewis, clerk of the Circuit Court of Knox county, Ills., acting by J. M. Gibson, his deputy, May 1st, A. D., 1861, and the seal of the said court is attached to the certificate of said acknowledgment.

John Currier: Sworn—I know these parties; I know Turner; I had a conversation with Turner, and he commenced enquiring about the quarter in controversy; this was at my house. Turner said,
68 what breaking was done there was that of scouring plows. It was some time in December, 1862; he said there was some four furrows. This conversation was before any suit was commenced. Turner was then on his way to see Blanchard.

DEPOSITION OF JOHN A. RUSSELL.

69 My age is 25 years; am a farmer when I am a civilian—I am now in the army. My residence is Neponset, Bureau county, Ills. I am about to depart from the State—shall probably go in about two weeks to join my regiment near Vicksburg. I am acquainted with the S. W. quarter section 26, township 15 north, range six east, in controversy in this suit. I am acquainted with plaintiff and de-
70 fendants—have known plaintiff three years and defendants five years. I became acquainted with Otis A. Turner in Neponset, in May, 1862. I was introduced to him by J. B. Blake, I broke five acres of land on the above described quarter section about the last of May or first of June, 1862. I did the breaking for another person; I was employed by Otis A. Turner—he employed me to do the breaking in May, 1862, and told me he employed me to do the breaking for one Pauline, whose first name, I think, is John. Turner told me he was an agent of Pauline; Turner told me Pauline lived in
71 Quincy, Ills., and he gave me Pauline's address in regard to writing a letter; prior to the time I commenced breaking there had been, I should judge, some twenty acres of the said land broken. McLaren was breaking on this land with one team, and Blanchard with two teams, before I commenced.

I did no other breaking on that land than what I did for Pauline.

CROSS EXAMINED.

At the time Turner employed me to do breaking as I have stated, there was not a great deal of conversation between him and me ; I don't think Pratt's name was mentioned—if so, I do not remember it I think there was something in that conversation concerning the title to or possession of the
72 land. I think he told me I would probably find Blanchard's teams breaking there, or something to that effect. I don't think Pratt's name was mentioned at all at the time when he spoke to me about doing the breaking. I do not remember everything that was said.

73 POWER OF ATTORNEY from Dewitt heirs above named to Ephraim H. Dewitt to take possession of and sell any and all lands in Illinois in which Ephraim Dewitt was in any way interested at the time of his decease, and to convey such lands to the purchaser by deed, with or without covenants of warranty, with full power to make such sale and conveyance, &c., with power of substituting such
76 other person to exercise such powers as he should see fit, dated July 31, 1856, acknowledged by J.
77 V. S. Dewitt before W. W. Ketchum, N. P., July 31, 1856, and acknowledged by James R. Dewitt,
78 Maria Dewitt, Julia C Dewitt and Charles E Dewitt, before George W. Cassedy, commisioner of Illinois for the City of Jersey City, in the State of New Jersey, August 1, 1856 ; also acknowledged by Albert J. Smith and Elizabeth Dewitt Johnson; before said commissioner, George W. Cassedy, August 2, 1856.

80 Certificate of William J. Heal, clerk of the circuit court and ex-officio recorder of McDonough county, Ills., to the copy of said power of attorney recorded in the recorder's office of said McDonough county, dated November 4th, 1859.

The Power of Substitution, whereby Ephraim H. Dewitt, attorney in fact, &c., substitutes John B. Strong as such attorney in fact, with all powers to sell and convey the lands which are conferred on
81 him by the Power of Attorney, dated August 14, 1856, acknowledged before J. A E. Holcomb, N.
82 P., of Galesburg, Knox county, Ills., by said Ephraim H. Dewitt, August 14, 1856.

Certificate of William J. Heal, clerk of circuit court and ex-officio recorder of McDonough county, Ills., to the copy of said power of substitution recorded in the recorder's office of said McDonough county, dated November 3, 1859.

TESTIMONY OF JOHN WATTS.

83 I am acquainted with Pratt, the plaintiff in this suit. I have known this land for five years. I have had two or three conversations with Pratt ; he said if Pauline did not do better with him he would abandon that quarter ; afterwards he told me had abandoned it. I had the first conversation with Pratt in November, 1862 ; the last was in January—don't remember distinctly, it might have been in December ; he said he had given up the land and was not going to have anything more to do with it. This was after Blanchard and McLaren had moved the house on this quarter.

CROSS EXAMINED.

I reside at Neponset, my business principally is farming, I work at carpenter work. I do not know where the first conversation was ; don't know what business either of us was on ; we had quite a long talk and was at the time when corn and wheat was selling very low. I was renting a place myself, and said we could not pay a heavy rent. I advised Pratt to give it up, and he said he would not go on with it unless Pauline would do better than he had been doing for there was half a mile more fence
84 to build than he supposed ; Blanchard did not advise me to persuade him to give it up ; I advised him on account of my own friendship. The last conversation was at Mr. Willis' shop in Neponset : it was in January, 1863 ; I never did swear that it was after the commencement of this suit ; I had not heard of the suit prior to the conversation I had with him at Willis' shop. I was working in that shop through that month, on a job for a school district fixing up rollers to put maps on. I think it was in January, 1863, I would not swear positively it was in January. I knew there was a controversy between Pratt and Blanchard.

JOHN MCDONALD : Live in Neponset ; I know the parties to this suit ; I had two or three different conversations with Pratt in which (I think in January, 1863,) I asked him why he commenced this suit in Princeton. Pratt said that other persons were lawing it for him. I went to Pratt and told him that I had got caught ; that I had been subpœned as a witness ; this was some three weeks ago. Pratt said its all right ; swear to what you are obliged to; I asked Pratt if he denied he had the conversation with me in Niles' store. I said if you deny it, I will teli who the other man was who was present at the conversation. He said it was true.

CROSS EXAMINED.

The other man was Henry Hewitt.

The plaintiff called witnesses rebutting, who testified as follows :

GEORGE GRAY: I remember a conversation with Blanchard after Pratt took possession of this quarter. The last conversation I had before the house was moved on the land, was at Mr. Stuart's.—Blanchard spoke to me about Pratt taking possession of the land, for Pratt had taken possession. Blanchard, Stuart and I had been negotiating with Riggs for the title to this land ; Stuart had done most of the writing to Erskin, who had something to do with the Riggs land. I told Blanchard that
86 if we could get the Riggs' title that I was willing to go in with him and take possession of this quarter, and if we could not, I would not. I told him I would write to Erskin, and did so ; Blanchard was willing to do the same. This was between the time Pratt took possession and Blanchard putting his house on. He did not at that time say that he then had the Dewitt title.

CROSS EXAMINED.

This conversation took place between Blanchard and myself. I don't recollect that McLaren was present till the last conversation I had with Blanchard ; don't recollect speaking to McLaren except after I got a letter from Riggs. Blanchard and myself were going in ; Stuart was a partner of mine. McLaren had calculated to have 40 acres of this land ; Blanchard and Stuart had had a difficulty.—This purchase was simply for the Riggs' title—we considered the Riggs' title the best. The conversation was not many days after Pratt had claimed to have taken possession. We talked about it every time we met. Blanchard said that Pratt had gone on and broken a small piece to take possession of the quarter. I cannot swear that Blanchard said that Pratt had taken possession by breaking
87 a piece on the quarter. The first time I knew Pratt had taken possession was when Blanchard told me, after the breaking was done and before the house was put on.

W. W. CLARK : I could not state the time the breaking was done in the angles of the ridge road. It was in the spring of 1862 ; I rented some of this land of Blanchard ; I passed across this quarter and noticed some wide furrows running from south end to north end, along the line of the new road, and noticed some breaking done in the forks of the road, perhaps 15 or 20 furrows running around the piece that was at the outside of the angle ; it was new broken then ; it was the same kind of breaking which ran up along the road.

CROSS EXAMINED.

I don't swear that there was no breaking done in the spring of 1861. The whole quarter was broke in 1862 ; I would not swear that they were broken before 1861 ; I never saw them in 1861.

HENRY CARPENTER : Had a conversation with Blanchard at my house, but when, I cannot tell ; it was before I heard of this suit ; we were talking about this quarter. I asked him what title he had. He said he had a number of claims ; I understood him to say that he had not a scratch of a pen at
88 the time of conversation. I don't know when it was ; did not mention having moved the house.—Don't know the year, don't remember why we talked of this piece of land. I think I had heard that Pratt had claimed the land, but am not positive ; I think it was after I heard that Pratt had leased this land for five years. I am not positive of anything about it ; I cannot hear well, and I might not have heard.

CROSS EXAMINED.

I am hard of hearing.

HENRY STRONG: Called by defendants. I was present when the deed was delivered by Strong to Blanchard. It was about the middle of May, 1861.

CROSS EXAMINED.

My name is Henry Strong; reside in Camp Douglas; I have been in the army nearly two years; I enlisted at Neponset—resided at Neponset when I enlisted: The deed was delivered in the spring of the year, in May 1861. It was delivered at Blanchard's house by my brother, J. B. Strong. I rode from Knoxville to Bureau in May, 1861; I resided in Knoxville. I remember distinctly of J. B.
89 Strong telling him to keep possession of the land. Blanchard handed the deed back to my brother. I know very well that this is a copy of the same deed; I read the deed on the way up; my brother is not a land speculator—he is agent for the Dewitt heirs. Can't swear positively that the record is a copy of the original deed; I am satisfied that it is the same; I know of no circumstance from which I can say it was in May, or that it was in 1861. I read this deed—I can't say where I was when I read it; I never looked at the deed since I read it on the road in the buggy coming up from Knoxville; I remember from that reading that this is a copy of the same deed. I don't remember the parties or the description particularly. I read the deed a few days ago on the record; I suppose my brother gave me the deed to read; I did not notice any alteration in the deed particularly; I moved to Neponset in the fall of 1861. I swear positively there was something said between Blanchard and my brother about possession of the land.

90 G. G. GIBONS: (Called by plaintiff.) At the last term of this court the defendants offered in evidence a deed from the Dewitt heirs by John B. Strong, their attorney in fact, to Blanchard and McLaren, the date of that deed was May 1, 1861. There was a very apparent alteration in the date.—My recollection is that the word April had been written; was subsequently erased and the word 'May' written over it; That the day of the month as originally written had been altered; my opinion is that the year had been altered from 1862 to 1861; "eighteen hundred" was printed, and sixty-one was in manuscript; the "sixty-two," as I think it was originally written had been written with a fine pointed pen, and sixty-one was written over it with a heavier pointed pen. In the acknowledgment the date of the year was written in figures—it was 1861. The unit which was originally written was evidently erased and the figure 1 written in the place. By holding the deed up between myself and the light, the erasures were very apparent.

91 CAIRO TRIMBLE: (Called by plaintiff.) The deed offered at the last term by the defendants was the one Gibons testified to. I suppose I examined it at that time; I examined it sufficiently to know it was an altered deed. There was an alteration at the top of the deed. My recollection is, it was in the date of the deed; the word two was changed to one in the year.

GEORGE W. STIPP: (Called by plaintiff.) I examined the deed of which the witnesses have spoken with a watch-maker's glass as carefully as I could, and my recollection is that in the top of the deed, in the word "sixty-one" the word "sixty-two" was originally written in a small hand. The word "sixty-one" was subsequently written in a heavy, bold hand. In the "unit" I could see that some other word, not one, but two or three, had been written before. The date of acknowledgment was in figures; it was 1861. The final "1" had been changed, some other figure, I think "2" had been scratched out and "1" written in the place of it.

JAMES S. ECKLES: (Called by defendant.) I examined that deed very carefully. I did n't care about
92 the interlineations in the deed, if the acknowledgment was all right. My recollection is that if there was any alteration in the acknowledgment it was in the word "May" that was very much scratched. I think the unit "1" in the date of the year 1861 in the ackowledgment was broad. It may have been altered, or may not. I think in the commencement of the deed the word April was crossed out and "May" written above it.

GEORGE O. IDE. (Called by defendants.) I was the justice of the peace before whom this case was tried. I examined the deed when it was first offered in evidence before me. I could n't tell what the alterations were. It was hardly possible to discover what they were from. I examined it with a glass at the last term. I could n't trace anything under the writing ; I did n't see that there was an alteration in the figure "1" in the acknowledgment. I held it up and saw that it had been scratched.

JOHN M. GRIMES : I examined the deed ; am familiar with Strong and Gilson's hand-writing.—
93 The alteration at the top of the deed is in Strong's hand-writing ; think it had been written fine and two strokes had been made across it. I would not swear positively that there was an alteration in the acknowledgment ; I think there were alterations in dates and year in the deed and acknowledgment. Can't state what the alterations in the deed were. The manuscript in the acknowledgment is in the hand-writing of Gilson.

JOHN B. STRONG : I executed the deed as the attorney in fact of the Dewitt heirs to Blanchard and McLaren. It was on a blue blank deed. Gilson, the deputy clerk of Knox county took the acknowl-
94 edgment. The blank was a blank for 1850. It had been partly filled up by some one before. The date had been filled up and I altered it to the date at the time I filled up the deed. I executed the deed, and afterwards handed it to Blanchard and took it back ; this was in May, 1861. I kept the deed for the purpose of defending the title against any action of ejectment.

CROSS EXAMINED.

Blanchard and I had a verbal, but no written contract before I executed and delivered the deed.— I took the deed back to defend them in possession. It was all right ; I was to have $1000. I delivered the deed back just before this suit was commenced. I think Blanchard told me he wanted to use it in an action of forcible entry and detainer. Blanchard said you keep the deed and I will take possession, and hold under you if all is right. He contended, that there was an outstanding title, and wanted to hold possession for me. The reason he handed the deed back when I first delivered it to him was because he expected to buy some other title.

This is all the evidence in the case. The Court instructed the jury as follows for the plaintiff.

with the purpose of taking possession of the land actually plowed, they should find for the plaintiff for the entire tract, if the defendants afterwards entered upon the land wrongfully and without right, without the consent of Pratt.

To the giving of which instructions the defendants then and there excepted.

102 The Court instructed the Jury on behalf of the defendants as follows:

1. The Jury are instructed that in this case before the action can be maintained by the plaintiff, it must be proven that the plaintiff had the actual and not the constructive possession of the land in controversy, and that the defendants made an illegal or forcible entry upon such actual possession, (and kept the plaintiff from regaining possession,) and it is not sufficient for the plaintiff to show
103 merely that his right to the possession only was invaded by such forcible or illegal entry.

2. The title to the land in question is not in controversy in this suit. The only question for the Jury to determine is the question of possession, and it devolves on the plaintiff not only to establish affirmatively and by a preponderance of testimony that he was in the actual and peaceable possession of the land in question, but also that the defendants illegally invaded his possession, (and kept plaintiff from regaining it.)

3. If the Jury believe from the evidence that the plaintiff first broke the land in controversy in the fall of 1861, and that at that time the defendants were in the actual and peaceable possession of said land, and that the plaintiff entered upon said land and intruded upon such possession, then the Jury are instructed that such entry by the plaintiff was wrongful, and he is not thereby entitled to recover in this case.

4. If the Jury believe from the evidence that the acts of both parties, plaintiff and defendants, in doing their breaking upon the premises in 1861, were sufficient of themselves to constitute an act of taking possession, and that the acts of defendants in taking such possession, were prior to the acts of plaintiff for that purpose, then the Jury will find for the defendants.

104 5. Before the Jury can find for the plaintiff, they must not only believe from the evidence that the acts of the plaintiff constituted a sufficient taking of possession of the land in controversy, but also that the acts of the defendants prior thereto did not constitute a sufficient taking of possession; and even though the Jury should believe from the evidence that plaintiff's breaking was done under circumstances more clearly indicating an intention to take possession. Yet if the Jury further believe from the evidence that defendant's breaking was done before Pratt's, and done under circumstances sufficient as an act of possession, though not as generally known, or the intention thereof as clearly indicated as that of Pratt's, then the Jury will find for the defendants.

6. If the Jury believe from the evidence that the defendants, or either of them, did breaking on the premises in dispute before Pratt did, and that such breaking was done with the intention of taking possession of the land, and that they followed up their improvements afterward, and put a house on the land, broke up a larger portion of the same, and fenced and cultivated the land; and that
105 Pratt, the plaintiff, after doing his breaking, did nothing further upon the premises to indicate an intention to follow up and keep possession of the premises, and after doing the breaking, said that he had abandoned the premises, then such conduct on the part of Pratt is evidence of abandonment of the premises; and if the Jury believe that Pratt abandoned the premises, then the Jury will find for the defendants, even though the Jury should believe from the evidence that Pratt's possession would have prevailed over defendant's, had he followed it up and had not abandoned it.

7. In determining the question of abandonment, the Jury should carefully consider all the circumstances in the case, and if the following facts have been proven, to-wit: the omission of the plaintiff to do any act other than breaking one acre on the land in question, and that at an unseason-

able time of the year; his omission to commence suit for more than a year after the alleged invasion of his possession by the defendants; and his admissions of such abandonment, if such admissions have been proven, (they are circumstances to be taken into consideration,) and if from all the circumstances the Jury are satisfied that the plaintiff did abandon the possession of the premises, (before the
106 commencement of this suit,) they should find for the defendants, although they may find from the evidence that plaintiff's original possession was made in good faith and was prior to the possession obtained by defendants.

8. If the Jury believe from the evidence that the plaintiff, Pratt, abandoned the premises and only lent the use of his name to Pauline for the purpose of carrying on this suit, and that Pauline is really prosecuting this suit at his own cost and expense, using the name of Pratt for his purpose, then the Jury will find for the defendants.

9. If the Jury believe from the evidence that neither plaintiff or defendants did enough by their breaking in 1861, to constitute an actual possession of the premises, then the Jury will find for the defendants.

10. The title to the land in question is not in controversy in this suit. Deeds, leases, or other title papers are only admissible in evidence in this suit to show the extent or boundaries of the claims of the parties, and if such extent or boundary of the defendant's claims to the whole premises are sufficiently indicated by their acts proved by the evidence to the Jury, to satisfy the Jury that they designed by such acts to take possession of the quarter section in question, then it matters not
107 whether the defendants had a paper title or not. Such acts of possession are just as available to them in this suit as though they had proved their title to the premises to be perfect.

11. In order to constitute possession the rule of law is that any act done, evincing to the neighborhood in which it is situate, that the land is appropriated to individual use, is sufficient; that doing some useless thing on the land, such as erecting a pen, leaving a few rails, or timbers, with intention thereby of excluding others and not of permanently improving the land; breaking an acre or two, especially at an unseasonable time of the year, would not be sufficient to constitute actual possession, unless to such acts are superadded others, continuing and manifesting an intention to cultivate and use the land.

12. If the Jury believe from the evidence that Blanchard and McLaren did their breaking in the Spring of 1861, and that at that time they held a deed to themselves of the entire quarter section in dispute, and while holding such deed they did some portion of such breaking under said deed, with
108 the intention of taking possession of the entire tract, and claimed title to the entire tract, then such breaking extended their possession to all the land embraced in said deed; and if the Jury find from the evidence that said defendants held such possession and did such breaking as above indicated, prior to the possession claimed and breaking done by the plaintiff, the Jury will find for the defendants.

13. The Jury are further instructed that erasures and alterations in a deed, if made with the consent of the grantor, prior to its delivery, do not make such deed void, and the same can be explained by evidence. Accordingly if the Jury believe from the evidence that the alterations alleged to have been made in the deed to said defendants, were made by the witness, Strong, and that he executed the said deed as Attorney in fact for the grantors, and afterwards delivered said deed to said defendants about the middle of May, 1861, then the Jury are instructed that said deed is good and valid, and is sufficient for said defendants to claim under in this suit, from the date thereof.

The Court, in giving the instructions for the defendants, qualified the instructions asked for by de-
109 fendants, by adding thereto as follows, to-wit; (such added words are as found in this copy of record enclosed in brackets in the 1st, 2d, and 7th instructions given for defendants.) To the qualifications of the defendant's instructions by the Court, and the refusal of the Court to give the same as asked, the defendants then and there excepted.

The Jury returned their verdict as follows: "We of the Jury do find the said defendants guilty." Whereupon the defendants moved the Court for a new trial in said cause, because the verdict is against the law and the evidence, and contrary to the instructions of the Court, which motion for a new trial was then and there overruled by the Court, and the Court thereupon entered a judgment in favor of the plaintiff and against the defendants upon the verdict of the Jury, and ordered the possession of the premises, to-wit: the south-west quarter of section number twenty-six, (26), in township fifteen, (15) north, Range six, (6) east of the 4th principal meridian, to be surrendered up to the plaintiff. To the orders of the Court overruling the motion for a new trial, and rendering the judgment upon the verdict of the Jury against the defendants, and ordering the possession of the said premises to be surrendered to the plaintiff, the defendants then and there excepted, and prayed
110 the Court to sign and seal this his bill of exceptions, and to make the same a part of the records in this case, which is accordingly done.

Appeal bond and Bill of exceptions of said Appellants was filed 26th day of March, 1864, in accordance with the order of the Court below, and this case is now brought to this Court in due form upon appeal.

ERRORS ASSIGNED.

1. That the verdict of the Jury is informal and void.

2. That the verdict of the Jury is against the evidence.

3. That the verdict of the Jury is against the law.

4. That the verdict of the Jury is contrary to the instructions of the Court given for defendants below.

5. That the Court erred in refusing to permit to be given to the Jury, testimony offered at the trial of said cause on the part of Blanchard and McLaren.

6. That the Court erred in not allowing and requiring the witness, Joseph Pratt, to answer the questions propounded to him at the trial by defendants.

7. The Court erred in allowing to be read in evidence to the Jury, for plaintiff below, the deed of George O. Karrick and others by their Attorney in fact, Asa Turner, to Daniel Pauline.

8. The Court erred in allowing to be read in evidence to the Jury for plaintiff below, the power of Attorney of George O. Karrick and others to Asa Turner.

9 That the Court erred in giving the instructions asked and given on the part of plaintiff below.

10. That the Court erred in giving to the Jury at the trial below, the following instructions asked for and given on behalf of plaintiff below, to-wit: instructions numbered in the record 2, 4, 6, 7, 8, 9, 11, 13, 15, 16, 19, 20 and 21.

11. The Court erred in overruling the motion made by defendants below for a new trial.

12. The Court erred in rendering judgment for plaintiff below, and in not rendering judgment for defendants below.

MILO KENDALL & GEORGE O. IDE, for the Appellants.

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Blanchard & McLaren

vs

Thomas Pratt

appellee

Abstract of Record

Filed April 4 1865

L. Leland

Clerk