

14020

No. _____

Supreme Court of Illinois

Phelps et al

vs.

Kellogg

Proceedings in the Circuit Court in and for the County of Peoria,
in the State of Illinois at a term thereof begun and held at the Court
House in Peoria, on the third Monday in the month of November
in the year of our Lord one thousand eight hundred and fifty
three - it being the twenty first day of said month.

Present the Honorable Anselm Peters, Judge of the six-
teenth Judicial Circuit in the State of Illinois, to wit,

On the sixteenth day of December in the year
of our Lord one thousand eight hundred and fifty
three, there ^{was} filed in said Court a Declaration, and
notice, affidavit of service and defendants plea to said
Declaration, which are in the words & figures following.

Declaration - State of Illinois. In the Circuit Court
Peoria County, Co. County of Peoria Nov 1853

William R. Phelps

Benjamin L. W. Baulton

Washington Cook

William Kellogg

William R. Phelps, Benjamin
L. W. Baulton & Washington Cook plaintiffs
this suit complain of William Kellogg defendant
in this suit for that on the first day of December
A. D. 1853, the said plaintiffs were furnished with the
following described real estate to wit, for number
five in block number fifty one in Sigler's
And since addition to this the said real estate

on a part of the North East fractional quarter of
 Section Number Nine in township number Eight
 North of the base line of range number Eight East
 of the fourth principal meridian. The title to which
 they claim in fee, and the said plaintiffs being in
 possession thereof, the said defendant on the 2nd day
 of November A. D. 1853 entered into said premises
 and unlawfully withheld from the plaintiffs the possession
 thereof, to the damage of the said plaintiffs one hun-
 dred dollars, and therefore they bring suit &c.

Plurp & Trower
 Attys for Plffs

State of Illinois, In the Circuit Court of
 Peoria County, Peoria County, Secomb Term 1853.
 William W. Hoops
 Benjamin D. S. Searles
 Washington Beckler
 vs
 William Kellogg
 An Ejectment,
 Just Court.

William W. Hoops Benjamin D. Searles
 & Washington Beckler plaintiffs in the
 said complaint of William Kellogg defendant in
 this case entered on the first day of December A. D.
 1853 the said plaintiffs were possessed of the portion
 inly described as a part, to wit the undivided
 third part of lot number Four in block number

fifty one in Bigelow & Underhills Addition to Town, the
said lot being situated on a part of the South East
fractional quarter of Section number nine in township
number eight North of the base line of Range number
Eight East of the fourth principal meridian. The title
to which they claim in fee and the said plaintiff being
in possession thereof, the said defendant on the 1st day
of November A. D. 1853, entered into said premises and un-
lawfully withheld from the plaintiff the possession thereof,
to the damage of the said Plaintiff one hundred dollars
and therefore they bring suit etc.

Thorp & Howell

Attys for Defd

To William Kellogg Esq. You are notified
that on the this day of the present term of the circuit
court to be holden in and for the county of Union, and
soon thereafter ye court can be held, the foregoing
declaration in Exemption will be filed, and a return
will be entered requiring you to appear and plead
thereto within twenty days aft the entry of said return;
and that if you neglect so to appear and plead, judg-
ment by default will be entered against you, and
the plaintiff will recover possession of the premises
described in said declaration December 15th 1853.

Thorp & Howell

Attys for Defd

State of Illinois,
Tonia County, ss.) Mark M. Aiken being duly sworn
says that he served the foregoing declaration and notice
on the defendant within named by giving a true copy
of the same, this 15th day of December A.D. 1853.
Subscribed and sworn to } Mark M. Aiken.
before me, this 15th day of }
Decem^{ber}, 1853 } Jacob Hale, d. B.

Wm R. Phelps

Benjamin L. T. Bourland
Washington Cooke

vs

William Kellogg,

In the Circuit Court
of Tonia County,
Nov. Term 1853.

And now comes the said defendant,
and for plea to plaintiff's declaration says Action non
because he says that he is not guilty of unlawfully
withholding the possession of the premises in said dec-
laration, ^{mentioned} nor any part thereof as stated in said dec-
laration and of this, he puts himself upon the country, &c
Dec. 16 1853, C. Ballance

Atty for deft.

Plff doth the like

Purple + house for Plffs.)

And afterwards on the seventeenth day of December
A.D. 1853, the following proceedings were had in
said cause in said court at the term aforesaid,
to wit,

William W. Phelps
Benjamin L. T. Bourland
Washington Locke

In Equities

vs
William Kellogg,

This day came the parties by their
respective attorneys and agree that all matters
both of law and fact arising in this cause shall
be tried by the Court without the intervention of a
jury, whereupon the Court having heard the proofs
and allegations of the parties respectively and being
fully advised in the premises, do find the said William
Kellogg not guilty of unlawfully withholding from the
plaintiffs the possession of the premises in their dec-
laration mentioned — Therefore it is considered
that the defendant go hence without day and have and re-
cover of the plaintiffs his costs and charges by him about
his defense in this behalf expended and that he have
execution therefor. The Plaintiffs entered a motion for a
new trial in this cause, which motion was over-ruled by
the Court. The Plaintiffs prayed an appeal from this judgment
to the Supreme Court of this State, which is allowed by the agree-
ment of parties without filing bond & security as required
by statute in such case made & provided.

William R. Phelps

Benjamin S. V. Bouldin

Washington Locke

vs

William Kellogg.

Government for lot (41)

in Block (51) in Biglows

& Underhills addition to Peoria.

Be it remembered that upon the trial of this cause in the Circuit Court of Peoria County, the plaintiffs to maintain the issue on his part offered evidence and proved that on, before and after the 5th day of April A. D. 1832 John L. Bogardus was a settler and house keeper on the $\frac{1}{4}$ fractional $\frac{1}{4}$ of Sec. (9) in Township Eight (8) North Eight (8) East of the 4th principal meridian of which the land in controversy is a part, that as such settler and house-keeper he was entitled to a pre-emption right to said fractional quarter section under the Act of Congress approved April 5th 1832 entitled "an act supplementary to the several laws for the sale of the Public lands"

That his right to a pre-emption was in due form of law proved on the 4th day of August A. D. 1832.

That a certificate of pre-emption was in due form of law issued to the the said John L. Bogardus on the 4th day of August A. D. 1832 upon his filing his said proofs of a right of pre-emption, which said certificate is as follows.

Land Office, Quincy, January 4 1832

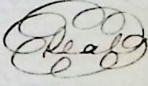
I hereby certify, that on the fourth day of August 1832 John L. Bogardus of Teonia, in the State of Illinois filed in this office evidence of his right of pre-emption to the South East fractional quarter of Section Nine in Township Eight North Range Eight East of the fourth principal meridian, under the Act of Congress of April 5, 1832.

Sam Alexander
Register,

That on the 5th day of August A. D. 1834 John L. Bogardus made to Isaac Underhill a deed as follows,

"I know all Men by these presents that I, John L. Bogardus, of Teonia, in the County of Teoria, and State of Illinois, in consideration of one thousand and fifty dollars to me in hand paid by Isaac Underhill of said Teonia the receipt of which I do hereby acknowledge, do hereby grant, sell and convey, unto said Underhill, all my right and interest, in and unto the South East fractional quarter of Section Nine in Township Eight North Range Eight East of the fourth principal meridian in said Illinois, and also in and unto the Ferry established across the Illinois River in said Teonia together with the boats and other implements thereunto belonging, to have and to

Hold the same to the said Isaac Underhill, his heirs
and assigns forever, with all the privileges and ap-
purtenances thereunto belonging. In Witness whereof,
I have hereunto set my hand and seal, the fifth
day of August A. D. 1834.

John L. Bogardus 

Signed, Sealed & delivered

in presence of

Ann Hamlin.

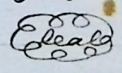
which said deed was duly acknow-
ledged, and recorded in the office of the Recorder of Peoria
County on the 13^d day of August A. D. 1834,

That said Isaac Underhill at the time
of the execution of said deed paid the full amount of the
purchase money therein specified,

That on the 13^d day of July A. D. 1832,
the said John L. Bogardus made, executed and delivered
to Lewis Bigelow and Samuel C. McAllen a deed
in substance as follows

"I know all Men by these presents that I, John L.
Bogardus of Peoria, in the county of Peoria & State of
Illinois in consideration of Five thousand dollars
to me paid by Lewis Bigelow and Samuel C. McAllen
of said Peoria, the receipt whereof is hereby acknowl-
edged do hereby bargain, grant, sell and convey
unto the said Bigelow and McAllen, their heirs and
assigns forever, two undivided third parts of all my right,

title and interest, in and unto the South East fractional quarter of section Nine in ~~is~~ township Eight North Range Eight East in the Military tract in said Illinois, together with two thirds parts of the Ferry established over the Illinois River at the outlet of Lake Teoria, with the boats, Saws & other craft belonging to the said Ferry, and all the implements and apparatus thereto belonging. To have and to hold the same to the said Bigelow and Mc^{re} Clure, their heirs and assigns forever, with all the privileges and appurtenances thereunto belonging and I do hereby covenant with the said Bigelow and Mc^{re} Clure, that if at any time hereafter I shall acquire any further or additional title to the said lot of land, the same shall enure to them in proportion to the interest hereby conveyed to them. In Witness whereof, I the said John S. Bogardus hereunto set my hand and seal, this thirteenth day of July A. D. 1832.

John S. Bogardus 
Signed, sealed & delivered in presence of Warren B. Bogardus }

Which said deed was duly proved and recorded in the Records Office of Teoria County, on the 8th day of August A. D. 1832

that on the 15th day of November A. D. 1837⁹⁰ the said John S. Bogardus under his pre-emption right entered and purchased said land of the United States at their land office in Quincy Illinois, and received certificate of purchase therefor, as follows,

Land Office Quincy Ill. 15 November 1837.
It is hereby certified that John L. Bogardus of New
York did this day enter or purchase the South East frac-
tional quarter of Section No. 9 in Township No. Eight
North of Range No. 8, East of the 4th principal meridian
containing twenty three $\frac{93}{100}$ acres as appears of record
in this office. Samuel Leech, Register,

That the purchase money for the entry and purchase
of said land was furnished by said Underhill and
said purchase made with his money

That on the 5th day of January 1838 the
land in question before described was in due form
of law patented to the said John L. Bogardus under
his pre-emption and certificate aforesaid.

That on the 6th day of June A.D. 1833
Samuel C. McClure by his deed of that date duly
acknowledged, ^{June 13, 1833 conveyed} all his interest in said premises to
said Lewis Bigelow.

On the 22nd day of June 1836 Lewis Bige-
low and Isaac Underhill laid out this fractional quarter
into blocks & lots and platted, acknowledged and re-
corded the same in due form of law under the name
of "Bigelow & Underhills Addition to Peoria" on the same
day & year last aforesaid, said plat & acknowledgment was
recorded in the Records Office of Peoria County,

On the 14 June 1838 Lewis Bigelow deeded the lot in question to Isaac Underhill in due form of law.

On the 7th March 1842, Isaac Underhill in due form of law deeded the same lot to Alfred G. Curtiss which deed was recorded in the office of the Recorder of Teoria County, March 11th 1842.

On the 30th January 1850 Alfred G. Curtiss in due form of law deeded the same lot to James M^o Fadden which deed was duly recorded April 23, 1850 in the office of the Recorder of Teoria County, and, on the 22nd day of April 1850 the said James M^o Fadden in due form of law by his deed of that date conveyed the same lot to the said plaintiffs which deed was duly acknowledged & recorded on the 23 April 1850

It was further proved by the plaintiffs that immediately after said fractional quarter was laid out into town lots the said Bigelow and Underhill exercised acts of ownership over the said fractional quarter by actually occupying portions of the same, and by offering the said lots for sale at public auction and selling many of them to various persons who went into possession under such sales & purchases and have notoriously continued such possession and

occupation ever since. That the said plaintiffs and those under whom they claim title as aforesaid have been in possession of said lot (untill the entry of the defendant thereon on the day mentioned in the declaration, more than ten years last past, and have paid all taxes which have ever been assessed on said lot and that such possession has been open, public & notorious & well known to the defendant. That the said defendant was in possession of said premises on the day of the service of the declaration in this cause claiming to hold the same adversely to the Plaintiffs

On the part of the defendant and for the purposes of his defence it was proved,

That John L. Bogardus died on the 2nd day of June 1838, that previous to his death he made a will which was duly proved and recorded on the 7th July 1838. That Mary Ann Bogardus wife of the said John L. Bogardus was duly appointed Executrix in said will with full power to sell and convey the real estate of the said John L. Bogardus. That she was duly and properly qualified as Executrix under the laws of the State of Illinois, and afterwards, to wit: on the 25th day of September A.D. 1845 as such Executrix by her deed of that date conveyed the said fractional quarter section of land to Seth L. Cole.

This was all the evidence in the cause. By consent of parties the cause was submitted to the court for trial without the intervention a Jury and the court being now sufficiently advised in the premises finds the issue joined in favor of the defendant, that the said defendant is not guilty of unlawfully withholding the possession of the premises in said declaration described as stated in said declaration.

The Plaintiffs entered a motion for a new trial for the reasons that the finding of the court was against law and evidence — The court over ruled said motion and the plaintiffs then and there excepted to the opinion of the court, both upon the finding aforesaid and in overruling said motion for a new trial. & requested the court to seal this bill of exceptions which is done.

Onslow Peters ^{of} Clerk

State of Illinois

Peoria County } I Jacob Gale Clerk of the Circuit Court of said Peoria County, hereby certify, that the foregoing is a full and correct transcript from the record of all the pleadings and proceedings in said court in the above mentioned cause as the same remains of record and on file in in my office.

In witness whereof I hereto set my hand and affix the seal of said court at my office in Peoria this 24th day of December A.D. 1853

Jacob Gale, Clerk.

Clerks fees for transcript \$3.75

William P. Phelps
Benjamin L. J. Bondard
Washington Coakle
no.
William Kellogg

Appeals from Poria
In the Supreme Court
of Illinois

And now come the said Plaintiffs
ley Purple & Powell their attorney say that
in the Record and proceedings in the rendition
of the Judgment aforesaid there is manifest Error in
this to wit.

1. Said Court Erred in overruling said Plaintiffs
Motion for a new Trial.

2. Said Court Erred in rendering Judgment in
favor of the defendant when said Judgment
should have been for the said Plaintiffs

For these and other Errors in said Record said Plaintiffs
pray that the Judgment of said Circuit Court be
reversed and wholly for nothing assigned.

Demanding \$ 1854.

For the Plaintiff for P.P.P.

And the said defendant says that in the Record and pro-
ceedings and in the rendition of the Judgment aforesaid, there
is no Error & he Prays that said Judgment may be affirmed

January 3rd 1854

14020

to Prothonotary
for Dept

\$ 5.00 paid
by Lincoln

Prepared