

No. 14250

# Supreme Court of Illinois

Swarthout

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vs.

Heacock

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STATE OF ILLINOIS

SUPREME COURT,  
Third Grand Division.

278  
No. 117.

~~14250~~

*Dwight*

*vs*

*Hearsey*

1862

*Prepared*



## III.

The defendant was not entitled to redemption provided for in cases of a mortgage. The Statute concerning redemption only applies to decrees in chancery, for sale of property under a foreclosure of mortgage. See 12 Ill. 487.

So, too, in case of a sale for a mechanic's lien, this Court has held that there is no redemption.

This bill is filed to compel defendants to pay up, or that the contract be terminated. We do not ask for any decree of *sale*.

## IV.

As to the money assessed for damages in condemning the land for railroad purposes, it was deducted from the amount due plaintiff.

E. & A. VAN BUREN,  
*Atty's for Def't in Error.*

Supplement

Amateur

and

Necessaries

Kept Private

Edw. Westman  
Kept Private

Filed Apr 30 1862

J. J. Leland  
Clerk

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Pleas, before the Honorable, the Judges of the Superior Court of Chicago, within and for the County of Cook and State of Illinois, at a regular Term of said Superior Court of Chicago, begun and holden at the Court House, in the City of Chicago, in said County and State, on the first Monday, being the Eleventh day of December in the year of our Lord One Thousand Eight Hundred and Sixty One and of the Independence of the United States of America the Eighty Sixth

Present, The Honorable John W. Miller Chief Justice of the Superior Court of Chicago. }

Saml. H. Higgins } Judges.  
Grant Goodrich }

Charles H. Henshaw Prosecuting Attorney.

Anthony C. Henshaw Sheriff of Cook County.

Attest, Thos B Carter Clerk.

Be it remembered that heretofore on the 9th day of May in the year of our Lord One Thousand eight Hundred and Sixty one, Henry L. Spontmont by his Solicitor filed in the Office of the Clerk of the Superior Court of Chicago, his certain Bill of Complaint, in the words and figures following, to wit:

In Superior Court of Chicago  
In Chancery

To the Honorable the Judges of the Superior  
Court of Chicago. In Chancery sitting.

Humbly complaining sheweth unto your  
Honors your Orator Harry L. Smartmont  
of the County of Cook in the State of Illinois,

2  
That on the thirty first of October eighteen  
hundred and fifty five your Orator became the  
owner & held a certificate duly made and issued  
by the Board of Trustees of the Illinois & Mich-  
igan Canal, of the purchase of a lot of land  
owned by said Board of Trustees described as the  
South Half South South of Equal Section  
Number Twenty three (23) in Town Number thirty  
eight (38) of Range <sup>North</sup> Number twelve (12) East of  
the third principal Meridian containing three  
hundred acres more or less.

That being such owner your Orator  
did on the said thirty first day of October Eighteen  
hundred and fifty five, make & execute a certain  
agreement with one William O. Hancock of the  
County of Cook aforesaid by which it was  
agreed that after your Orator had procured  
a deed to said land above mentioned, and  
specified in said certificate your Orator would  
cause the said title so procured by him of  
said Trustees, of said land, to be conveyed to  
said William O. Hancock his heirs and  
assigns by a good and sufficient deed of conveyance  
or instrument in writing assuring & conveying  
to him, as good & clear a title as he should  
or might receive from said Trustees by reason

of said certificate above mentioned upon this  
(the said William C. Hencock) paying to your  
Orator, and the said agreement was upon the  
express condition of the said William C. Hencock  
paying to your Orator the following sums of money  
that is to say, on the first day of May eighteen  
hundred fifty six Seventy five Dollars.  
On the first day of May 1857. the further  
sum of three hundred and thirty five dollars.  
& fifty eight cents (\$335.68), on the first day  
of May, 1858. the further sum of three hundred  
& seventy one dollars & eighty seven cents  
(\$371.87), On the first day of May 1859.  
the further sum of three hundred dollars.  
On the first day of May 1860. the further sum  
of three hundred Dollars., and on the first  
day of May 1861. the further sum of two  
thousand three hundred dollars. at which  
time that is to say upon the first day of May  
1861. and upon payment of the moneys afore-  
said your Orator was to make a deed  
of conveyance as aforesaid to said Hencock.  
and the said Hencock then and there accepted  
the said agreement and had the same recorded  
in the office of the recorder of Cook County. and  
the said Hencock then & there agreed to make  
the said payments according to the agreement  
aforesaid.

Your Orator further shows unto your  
Honors, that afterwards, to wit, on or about  
the 24<sup>th</sup> day of August 1857. the said William C.  
Hencock, sold, assigned & transferred to Andrew  
Garrison of the City of Chicago, one undivided  
half part of all his right, title & interest in the

Contract mentioned, referred to & the land & premises above mentioned.

Your Orator further shows that after the said assignment & transfer to said Andrew Garrison, but at what particular time Your Orator does not know & has not been informed the said Andrew Garrison, as Your Orator has been informed & believes conveyed the said undivided half of said premises, so as afore-  
said conveyed to him, to one Isaac O. Garrison of the State of New York.

4  
Your Orator further shows unto your Honors, that on the 26<sup>th</sup> day of May 1856, the said William O. Hearock paid your Orator upon said Contract, the sum of twenty five dollars, and on the 27<sup>th</sup> day of May 1857, the said Hearock paid to your Orator the further sum of four hundred & thirty five dollars & fifty eight cents, upon said Contract, and that no other or further sums of money have at any time been paid upon said Contract and that the balance is still due and unpaid according to the terms of said Contract.

And your Orator further says, that since the making of said Contract your Orator has obtained from the Canal Trustees a good & legal conveyance of title to said lands & now has the same.

And your Orator further shows that he has frequently applied to the said Andrew Garrison and the said William O. Hearock to pay the balance due to your Orator upon said Contract, or to surrender & cancel the said agreement, both of which they wholly refuse.

to do, and insist & claim that they may at any  
time hereafter pay the amount that may be due  
to your Orator & compel him to give them a  
Deed for the same. & they insist that your  
Orator cannot at law or in Equity terminate  
the said Contract, & that they are not obliged  
to pay said instalments as they become due.

And your Orator further shows unto  
your Honors that he has at all times been ready  
& willing to execute & deliver, to said Deed or  
his assigns a conveyance of said premises,  
according to the terms of said Contract on the  
making the payments according to the terms and  
conditions of said Contract.

5  
And your Orator further shows that  
for the years 1858 & 1859. the said Defendants  
have neglected & refused to pay the tax upon  
said property & your Orator has been obliged  
to pay and has paid them as follows, for the year  
1858. the sum of sixteen dollars & seventy five  
cents, and for the year 1859. the further sum  
of thirty three dollars & fifty three cents.

But notwithstanding, may it please your  
Honors, that the said Andrew Garrison, William  
O. Hancock & Isaac O. Garrison combining  
& confederating together, to and with divers  
other persons unknown to your Orator, but  
whose names when discovered your Orator  
may be made parties hereto, &c.

All which doings & pretences  
of the said confederates are contrary to equity  
and good conscience, and tend to the manifest  
wrong and injury of your Orator.

I do find thereof that the said William  
O. Hencock, Andrew Garrison & Isaac D.  
Garrison and their confederates may respect-  
ively fully, true, direct and perfect answers make  
upon their respective Corporal oaths according  
to the best of their respective knowledge, informa-  
tion and belief to all & singular the matters &  
charges aforesaid, as fully and particularly  
as if they were there to specially interrogated  
paragraph by paragraph, and that the said  
defendants may be decreed by this Honorable  
Court to pay to your Orator the amount now  
due and unpaid, with interest thereon upon  
the contract made with your Orator & the said  
William O. Hencock & referred to in Bill of  
Complaint, this together with the amount  
he has paid for taxes by a short day to be  
expressed by said Court or in default thereof  
that the said contract be decreed to be termi-  
nated & the said defendants forever precluded  
foreclosed from any rights or remedy under  
said contract, from the right to a specific  
performance of said contract, or in any way  
enforcing the same, from redeeming said land  
& that the said contract be entirely annulled  
& the title to said property therein mentioned  
absolutely vested in your Orator, or for such  
further or such other relief as the Court shall  
deem proper.

Your Orator prays that a summons  
may be issued by this Court directed to the  
said William O. Hencock, Andrew Garrison  
& Isaac D. Garrison in this suit commanding  
them to appear at the next term of this

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Court, and answer the said Bill of Complaint according to the practice of this Court.

C. Van Buren  
Sol for Compt

Henry L. Smartwout  
By C. Van Buren his Atty

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And thereupon, to wit, on the day and year aforesaid then issued out of and under the seal of said Court, two Copies writ of Summons, which said writ with the Sheriff's return thereon endorsed in the words and figures following to wit:

State of Illinois

County of Cook } The People of the State of Illinois  
to the Sheriff of said County, Greeting:

We Command you that you summon William O. Hexock, Andrew Garrison<sup>es</sup> and Isaac D. Garrison, if they shall be found in your County, personally to be and appear before the Superior Court of Chicago, of said County of Cook, on the first day of the next term thereof, to be holden at the Court House in the City of Chicago, in said County, on the first Monday of June next, to answer unto Henry L. Smartwout in his certain Bill of Complaint filed in the said Court on the Chancery side thereof.

And have you then and there this writ, with an endorsement thereon, in what manner you shall have directed the same.

Seal

Witness Myself, Walter Kimball, Clerk of said Court, this 9<sup>th</sup> day of May A.D. 1861.  
Walter Kimball Clerk.

Served this writ on the within named Defendant Andrew  
Garrison and William O. Heacock as by his movement of  
acceptance by delivering a copy thereof to them the other  
Defendant not found in my County. the 19<sup>th</sup> day of June 1861.  
Anthony C. Hoag Sheriff  
by John C. Nelson Deputy.

I duly accept service on the within process  
W. O. Heacock.

And afterwards, to wit: on the 15<sup>th</sup> day of the month of June aforesaid  
the said Defendant filed in the office of the Clerk of said  
Court his certain affidavit of non residence in the  
words of figures following, to wit:

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Superior Court of Chicago  
In Chancery  
Henry L. Stratton  
vs  
William O. Heacock, Andrew Garrison  
and Isaac P. Garrison

State of Illinois  
Cook County J. Henry L. Stratton the above plain-  
iff being sworn says Isaac P. Garrison, one of the above  
Defendants resides out of this State so that process cannot  
be served upon him.

Subscribed & sworn before me this 15<sup>th</sup> May 1861.

Walter Kimball Clerk

Henry L. Stratton

And afterwards, to wit: on the 3<sup>d</sup> day of  
June in the year aforesaid, the said Defendants  
William O. Hancock & Andrew Garrison filed  
in the office of the Clerk of said Court their  
certain answer, in the words of figures following  
to wit:

Superior Court of Chicago  
William O. Hancock & In Chancery  
Andrew Garrison  
vs  
Henry L. Smartwout  
impleaded with Isaac D. Garrison

The Answer of William O. Hancock  
& Andrew Garrison to of the defendants in this Cause  
joint & several to the bill of Complaint filed  
herein.

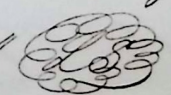
These defendants now and at all times  
hereinafter saving and reserving unto themselves

respectively all benefit and advantage of description  
which can or may be had or taken to the many  
errors, uncertainties or other imperfections in the  
Bill of Complaint contained for answer therunto  
or unto so much or such parts thereof as these  
defendants are advised is or are material or  
necessary for them to make answer unto or  
unto so much and such parts thereof as these  
defendants are advised is or are material or  
necessary for them to make answer unto say.

9 They admit that said Henry L. Swartmont  
did on the 3<sup>rd</sup> day of October 1855 make and  
execute a certain agreement to said General Cox  
which it was agreed that after the said Complain-  
ant had procured a deed of the South half of  
Section <sup>twenty</sup> three in Town Number thirty eight of  
Range Number twelve East of the third principal  
Meridian containing three hundred acres  
more or less. He would convey the same to said  
General Cox. But these defendants deny that Com-  
plainant was the owner of said certificate  
as he alleges in his bill of Complaint, but in truth  
and in fact the said William O. Hancock was  
the owner thereof and the said Complainant  
only became the assignee of said certificate  
upon the agreement and understanding as  
hereinafter mentioned - and these defendants  
further answering say said Swartmont was  
to reconvey the said Land by such title &  
same title that he receives of said Trustee  
but these defendants deny that the said agree-  
ment is of the effect or words, as in said Bill of  
Complaint is stated, and that said agreement  
on the part of said Complainant to said defend-

and Hancock is in the words and figures following  
viz: "Whereas William O. Hancock has this  
" day made an absolute assignment to me of a  
" Certificate of purchase of Lot of Land issued  
" by the Board of Trustees of the Illinois and  
" Michigan Canal describes therein as  $\frac{1}{2}$  South  
" of Canal of Section No 23. in Township No 39.  
" of Range No 12 East of the third principal  
" Meridian containing three hundred acres  
" more or less. Said Certificate is dated Chicago  
" May 9<sup>th</sup> A.D. 1834. and said Land is now in the  
" possession of said William O. Hancock  
" Now therefore for and in consideration of said  
" ~~assignment~~ <sup>assignment</sup> and in consideration of the payments  
" hereinafter to be made out the part of said Han-  
" cock I agree to take up the two notes given  
" by said Hancock to said Trustees according to  
" the terms thereof & as specified in said Certificate  
" & said notes are thereby paid in full & to be de-  
" livered up and cancelled - And also con-  
" nant and agree to and with said William  
" O. Hancock that after I have procured the said  
" deed therein said Certificate mentioned, that  
" I will cause the same the said title as pro-  
" cured by one of said Trustees of said Land  
" above mentioned to be conveyed to said William  
" O. Hancock his heirs or assigns by a good & valid  
" sufficient deed of conveyance or instrument  
" in writing assuring & conveying to him as good  
" and clear a title I shall or may receive from  
" said Trustees by reason of said Certificate & as-  
" signment above mentioned - upon his paying  
" to me and the same is in the express condition of

"I'm paying to me the following sums of money  
 "and at the times expressed as follows, viz  
 "May 1<sup>st</sup> 1856 (\$75) Seventy five dollars  
 "May 1<sup>st</sup> 1857 (\$325<sup>00</sup>) Three hundred & twenty five<sup>00</sup> Dollars  
 "May 1<sup>st</sup> 1858 (\$371<sup>00</sup>) Three hundred & seventy one<sup>00</sup> Dollars  
 "May 1<sup>st</sup> 1859 (\$300) Three hundred dollars  
 "May 1<sup>st</sup> 1860 (\$300) Three hundred dollars and  
 "May 1<sup>st</sup> 1861 (\$2300) Twenty three hundred dollars  
 "the same being the last payment at which  
 "time May 1<sup>st</sup> 1861 the said moneys being paid  
 "as aforesaid the said deed or conveyance as  
 "aforesaid mentioned to be given by me to said  
 "Hancock as aforesaid is to be made & delivered  
 "to him"

"Witness my hand & seal this 31<sup>st</sup> day  
 of October 1855  
 "Witness "H. L. Stratton" 

And these defendants further say the above is the last and only written obligation on the part of said Stratton to this Defendant Hancock in regard to said Land, and was given upon the various Consideration & agreement hereinafter expressed & these defendants admit that Hancock & so they aver the fact to be, did on the 24<sup>th</sup> day of August 1857, for value received sell, assign & set over to said Andrew Garrison the undivided one half part of all his interest in the said above mentioned contract & Land & premises therein mentioned at the time mentioned in said bill of Complaint.

And defendants further answering say such undivided one half part of said Land mentioned in said contract was sold & con-

rec'd by Deed by Andrew Garrison & wife to  
said defendant Isaac D. Garrison by deed  
dated on or about the first day of September  
1857 ~~1858~~ which said deed was duly recorded  
about the same time in the Recorder's Office  
of Cook Co. and of which assignment at the  
time & conveyance thereof from said Hancock  
to Andrew Garrison & from him to said Isaac  
D. Garrison said Smartwout at the times they  
or shortly afterwards had notice.

12 And these defendants further answering  
admit that the above obligation of said Smartwout  
to said Hancock was duly recorded in Cook County  
Illinois but deny the making of or the recording  
of any other different from the same. And  
these defendants also charge & admit that  
said Hancock has paid said Smartwout said  
sum of seventy five dollars & also the sum of  
three hundred and twenty five dollars & sixty  
eight cents at the times mentioned in said  
Bill of Complaint on said obligation, and  
this defendant Hancock charges in addition  
thereto that he paid said Smartwout the additional  
sum of \$5<sup>00</sup> which said Smartwout at the  
time refused & neglected to credit to him as  
payment on said obligation, and these defend-  
ants insist they should in justice be credited  
& allowed that additional sum as payment.

And these defendants further answer-  
ing say, that on the 10th day of April 1858, said  
William C. Hancock made an assignment  
still in force of all his property both real  
& personal including his interest in said  
obligation & said land in question to said

Andrew Garrison for the benefit of his creditors  
& which assignment was recorded April 24. 1838  
in Cook County Ill. of which said assignment  
said Brantmont had notice & which will be  
proved when and where this Court shall direct  
and a list of the creditors of said Heacock  
are named in a Schedule to the same and  
these defendants insist they should be made  
parties to this suit.

And these defendants admit said  
Brantmont has called on said Heacock for  
further payment on said obligation in truth and  
in fact he served a notice in writing which he  
claimed to have terminated the same & that  
he should claim the land as owner thereof,  
such notice was given sometime in the Summer  
or Fall of Oct. 1838.

13  
And these defendants say when so called  
upon for payment he was entirely unable to meet  
such payments. And these defendants further  
alleging charge the truth to be that because  
the said certificate had been assigned to said  
Brantmont & the title to said land was in said  
Brantmont and he claiming to be the owner  
thereof both said Heacock & his said assignee  
Andrew Garrison have been entirely unable  
to sell and dispose of the said land for any  
price whatsoever either to pay Brantmont  
any thing thereon or to benefit the creditors of  
said Heacock. Whereby said Heacock  
& said Andrew & said Wm. D. Garrison have  
been greatly injured & which amount of damage  
so done to them ought to be allowed to them in  
justice & equity as so much of payment & property

in the mean time having depreciated in value.

And these defendants further answering say, & they deny that said Grantmont was the owner of said certificate of purchase of said Land issued by said Board of Trustees to said William O. Hancock as he said Complainant in his said Bill of Complaint alleges, but on the contrary these defendants say that on said 3<sup>rd</sup> day of October 1835. Said certificate being the property of said William O. Hancock was assigned by him to said Grantmont for the security of the payment of money then lent & to be lent & advanced by said Grantmont to said defendant Hancock upon the oppressive, wrongful, illegal & usurious rate of interest of fifteen per cent per annum and upon no other consideration whatever save said above obligation on the part of said Grantmont which was part and parcel of said usurious & oppressive agreement and said Grantmont neither in Law, justice or equity, had any other ownership to said certificate, but as security as aforesaid. And these defendants allege & charge the facts in regard to giving said assignment of said certificate by Hancock to Grantmont & the giving of the above mentioned obligation of said Grantmont to him, that the giving of said assignment & the giving the said obligation were concurrent acts and part & parcel of the same transaction and were made & done to cover up an usurious, & illegal transaction & to secure the payment of said usury & the principal money paid

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to said Hancock that on the 16<sup>th</sup> day of August 1855  
 said Smartmont loaned to said Hancock the sum  
 of \$250 at the usurious and illegal rate of interest  
 of fifteen per cent per annum & at the same  
 time it was agreed that said Complainant should  
 loan to defendant other money to the amount  
 in all of \$1000 at said illegal oppressive &  
 usurious rate of interest of fifteen per cent per  
 annum. And said defendant was to secure  
 said Smartmont by his said certificate of pur-  
 chase of the land in question and these defend-  
 ants say that in accordance with said agreement  
 and understanding between said Complainant  
 & said Hancock said Smartmont did advance  
 other sums of money at said usurious rate of  
 interest of fifteen per cent per annum to said  
 Hancock the amounts & when received are herein  
 after mentioned & these defendants say that  
 in accordance to said agreement and understand-  
 ing said Hancock did on the 31<sup>st</sup> day of October  
 1855. make an absolute assignment or by  
 the terms thereof of said certificate of purchase  
 of said land to said Complainant upon the  
 express agreement & understanding between  
 them that said Smartmont should lend him  
 said sum of One thousand and dollars at the  
 usurious rate of interest as aforesaid, the said sum  
 of \$250 & usurious interest thereon being part of  
 said amount, and taken as so much towards  
 said one thousand dollars to be lent to said Han-  
 cock as aforesaid at the usurious & illegal interest  
 of fifteen per cent per annum as aforesaid, and  
 the said Smartmont was to take up the said two  
 notes coming due for said land to said Complainant

16  
Trustees and the money in fact to said Hancock  
for that purpose (after said notes were taken up  
by said Smarttrott then said Hancock was to up  
the amount thereof, to said Smarttrott together  
with the illegal and usurious interest of fifteen  
per cent per annum thereon) and in said ob-  
ligation of said Complainant to said Hancock  
said two notes are mentioned, the first note being  
for the sum of \$596<sup>2</sup>/<sub>10</sub> and came due May 10.  
1836. the other note for the sum of \$563<sup>2</sup>/<sub>10</sub> and  
came due May 10<sup>th</sup> 1837. neither of said notes  
were interest, and after the said notes were  
paid the amount thereof as aforesaid should  
be paid by said Hancock together with the  
usurious and illegal interest of fifteen per cent  
per annum - and said Smarttrott was to take  
up said notes when they became due pay the  
money in lieu of said defendant Hancock to said  
Cathal Trustees and receive said deed of said  
Land as security and hold the same as security  
for the payment of said notes & said amount of  
\$1000 and said usury & illegal interest both on  
said notes, and said amount thereof afterwards  
to be paid, and this defendant Hancock was to  
have five years from the first day of May  
A.D. 1836, in which to pay the same, said amounts  
of principal & said usurious & illegal interest  
thereon of fifteen per cent per annum.

And these defendants state the  
said above amount of \$1000 so agreed as  
aforesaid to be lent to said Hancock as  
aforesaid was paid to him by said Smart-  
trott, at the following times, & in the following  
manner.

1<sup>st</sup> August 16 - 1855 - Paid \$250  
 2<sup>d</sup> Oct 31. 1855 - \$432<sup>50</sup> at the time  
 of giving said obligation & certificate  
 3<sup>d</sup> Dec 5<sup>th</sup> 1855 \$200  
 4<sup>th</sup> Dec 13<sup>th</sup> 1855 \$100  
 turned account \$10 with left Garrison  
 the way from Aug 16<sup>th</sup> 1855 on \$200 7.50 to date of obligation  
 \$1000.00 being the said

One thousand dollars included according to said  
 agreement in said obligation of said Grantmont  
 to said Heacock together with the said usurious  
 illegal & oppressive interest thereon of fifteen  
 per cent per annum - and these defendants  
 allege & charge the above amount as above  
 received was all the consideration here -  
 received for the assignment of said certificate  
 of purchase & the above obligation of said Grant-  
 mont to said Heacock copy of which is given  
 above. And these defendants further say  
 said complainant & said Heacock agreed and  
 it was understood between them and the said  
 payments to said Grantmont were fixed with  
 reference thereto & that after said notes were  
 paid said Grantmont should hold said land  
 for the security for the payment of said sum  
 of money & said notes the whole together to be  
 a loan of two thousand dollars and to bear  
 interest and said Heacock was to pay the same  
 & the usurious, illegal oppressive & ruinous rate  
 of interest of fifteen per cent per annum  
 all this was agreed to & understood by and  
 between said Heacock & Grantmont before  
 the making of the assignment of the said  
 certificate, and at the time of the giving of said

Obligation by Swartwout to Pinu - and these  
defendants allege & charge the truth to be that  
said payment of seventy five dollars (\$75) in  
said obligation mentioned was the usurious and  
illegal interest of fifteen per cent per annum  
on the said \$1000 from October 31<sup>st</sup> 1855 to  
May 1. 1856. although written as payment was  
said usurious interest - so also was the said  
second payment being the fifteen per cent,  
the usury aforesaid upon said \$1000 & the said  
usury of fifteen per cent upon the said first  
note together with the balance due on the  
note over and above which Swartwout had to  
pay to take up said note & proportion the  
same to said agreed loan of \$2000 - so also  
was the third payment the same usury as  
aforesaid the amount of said usury of  
fifteen per cent per annum on the whole  
sum of loan (said last note being paid) together  
with the sum of \$62<sup>50</sup> paid to said Trustees  
to take up said last note to make said loan  
the said amount of \$2000, it at the time of  
drawing said paper being agreed & understood  
as part of said usurious agreement that said  
Hancock should in said 2<sup>d</sup> & 3<sup>d</sup> payments pay  
said excess of said notes over \$1000. making  
in thereby <sup>the sum of \$1075 so paid as aforesaid</sup> a loan of \$2000 at the usurious  
rate of interest as aforesaid - the payments of  
\$200 each to be made May 1<sup>st</sup> 1859 & May 1. 1860  
also in said obligation mentioned is the usurious  
& illegal interest of fifteen per cent per annum  
on said principal sum of \$2000, and the last  
sum of \$200 therein mentioned to be paid May  
1<sup>st</sup> 1861. is said principal sum of \$2000 & the

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5  
said \$300 the illegal & usurious rate of interest  
of fifteen per cent per annum added thereto.

119  
And these defendants allege & charge  
that all of said payments in said obligation  
mentioned are nothing but said illegal, oppres-  
sive & usurious interest of fifteen per cent per  
annum & the sum of \$148<sup>75</sup> the excess of  
said notes over five hundred dollars each  
& the amount thereof is included in said 2<sup>nd</sup>  
& 3<sup>rd</sup> payments & of the sum of \$2000 mentioned  
in said last payment - \$700 of which is nearly  
as stated as aforesaid.

120  
And these defendants further averring  
say because of the payments made by said  
William C. Hencock of \$75. at one time & the  
sum of \$341. at another as above stated the  
same ought to be deducted from the amount  
of said principal sum of \$2000. And also  
all such further sums as by the Statutes of this  
State then in force which entered in & made  
part of said Contract gave the right to said  
Hencock to claim as penalty or forfeiture.

And these defendants insist & claim by  
virtue of the facts above set forth, they should  
have all the rights, claims and advantages as  
if they had specially plead the same, and the Statutes  
then & now in force in regard to the rate of  
interest & the rights, penalties of forfeitures granted  
& given by virtue of the same.

And these defendants insist that of right  
the said Grantment ought not to have & retain  
the title to said Land, or these defendants be  
foreclosed because of his usury & oppressive  
conduct & agreement as aforesaid, or that he

5  
said \$300 the illegal & usurious rate of interest  
of fifteen per cent per annum added thereto.

119  
And these defendants allege & charge  
that all of said payments in said obligation  
mentioned are nothing but said illegal, oppres-  
sive & usurious interest of fifteen per cent per  
annum & owe the sum of \$148<sup>75</sup> the excess of  
said notes over five hundred dollars each  
& the amount thereof is included in said 2<sup>nd</sup>  
& 3<sup>rd</sup> payments & of the sum of \$2000 mentioned  
in said last payment - \$700 of which is nearly  
as stated as aforesaid.

120  
And these defendants further averring  
say because of the payments made by said  
William C. Hencock of \$75. at one time & the  
sum of \$341. at another as above stated the  
same ought to be deducted from the amount  
of said principal sum of \$2000. And also  
all such further sums as by the Statutes of this  
State then in force which entered in & made  
part of said Contract gave the right to said  
Hencock to claim as penalty or forfeiture.

And these defendants insist & claim by  
virtue of the facts above set forth, they should  
have all the rights, claims and advantages as  
if they had specially plead the same, and the Statutes  
then & now in force in regard to the rate of  
interest & the rights, penalties & forfeitures granted  
& given by virtue of the same.

And these defendants insist that of right  
the said Grantment ought not to have & retain  
the title to said Land, or these defendants be  
foreclosed because of his usury & oppressive  
conduct & agreement as aforesaid, or that he

be allowed to declare said obligation forfeited, as by his claiming ownership to the same & in fact by his notices entirely hindering defendants from paying him or disposing of said Land that defendants be now allowed the full time if any part of said principal shall be found unpaid to pay the same that has transpired between the Service of said notice & the 1<sup>st</sup> day of May 1861.

20  
And these defendants further answering say said Grantmont has never offered either of their said notes above mentioned & they have no knowledge that either of said notes have been cancelled & only upon the statement of said Grantmont have they any knowledge that he has paid the same or received a deed of the land in question & shall therefore insist that the payments of said notes & said deed or title in kind be produced & proved & that he never had any claim until he had cancelled said notes to the knowledge of these defendants at least to the knowledge of said Heacock.

51  
And these defendants deny all knowledge of said Grantmont paying taxes, but insist & claim it was his duty so to do & that he has no claim on either of said defendants for the payment of the same or any part or portion of the same.

And these defendants further answering say since the said complainant gave the above bond or obligation in question to said Heacock (copy being given as aforesaid) and about the time he should have paid the last note & received a deed of the land in question a Rail Road Company has constructed a

21  
track across said Land that takes or said  
Grantmont has sold to them several acres of land  
of the same, said Rail Road Company is usually  
or commonly known as the Chicago & Solist  
Railroad or Railway Company & the track  
is now used by the Chicago & St. Louis  
Rail Road Company. And these defendants  
say said Company have caused to be con-  
structed across the breadth of the lot of land  
above mentioned said 300 acres their Rail Road  
track and have also taken & fenced in the  
land adjoining said track and now claim to be  
the owner thereof not only of the land on which  
the track is laid but also that which is so fenced  
in being in all some six rods wide including  
some where over ten acres of the said land, and  
all of which they have taken to their own use  
and these defendants further say that said  
lot of land in said obligation of said Grant-  
mont to said Heacock mentioned was and is  
bounded on the West by the Illinois & Michi-  
gan Canal & that said Rail Road by their  
track & fences have entirely cut off said  
300 acre Lot from said Canal & from the use  
of the water therein for agricultural purposes  
& thereby greatly injured & damaged said  
lot of land besides the acres of land so taken  
as aforesaid. And these defendants further  
say that at the time of the giving said Certificate  
& the making of the payments as aforesaid to  
said Grantmont for security as aforesaid, the said  
Land was considered to be as if there was well  
worth the sum of Six thousand dollars, and  
these defendants insist, show & charge

the fact to be that said lot because of the making  
said track taking said amount of land & so entirely  
as aforesaid cutting off said lot from the use of  
the water in said Canal the same is damaged &  
lessened in value, to the amount at least of one  
thousand dollars & the same will be proved  
where & when this Court shall direct.

22 And these defendants further answering  
say that neither of them have ever sold, given  
granted or consented or permitted said Rail  
Road Company or any person or any agent  
or person acting in its behalf to lay said track  
or take said land for any purpose, or to use  
the same for any purpose whatsoever, or even  
given or granted the privilege to construct said  
track across the same or have they either  
of them been served with any process at law  
or been party to any proceedings by which such  
right or land could be taken held or used  
but on the contrary thereof about the time  
the track was being constructed across said  
lot said Stratton claimed to own said  
land and that he was entitled to the damages  
& did so act in regard thereto that neither of said  
defendants have received any thing because  
of said track being laid or land taken as  
aforesaid or any damages in the premises.  
What said Stratton did in the premises  
these defendants are unable to say but they  
charge he did so act in the premises that  
said Rail Road Company has the free  
use & the right & title to the land so taken  
by them & these defendants as against said  
Rail Road Company are entirely remediless

in the premises & they & the said Isaac D. Garrison  
 are cut off & barred from all claims of damages as  
 against said Rail Road & owners of said track  
 & that they have the full complete right to continue  
 to use & occupy or dispose of the same upon infor-  
 mation & belief said Smartmont they charge has  
 compromised said claim for damages but for  
 how much or in what way they are not informed  
 as all the acts & doings of said Smartmont in regard  
 thereto have been conducted on his part with  
 reference to his own advantage & with the intent  
 & purpose that these defendants should be kept  
 ignorant in the premises - and now these defendants  
 insist if the Court should still deem that said  
 Smartmont has it in his power to make a deed as  
 he agreed then the above amount of one thousand  
 dollars the value of the land & taken & the dam-  
 age aforesaid be allowed them as so much  
 payment on said principal sum above mentioned.

23

And these defendants further averring say  
 since the giving of said obligation of said Smartmont  
 to said Hancock, that across the East end along  
 the East line of said above mentioned 300 acre lot  
 a Road or highway has been laid out & the land  
 taken from said lot for said highway purpose  
 & said lot thereby injured & damaged for which  
 road or highway no right or permission has  
 been obtained of either of these defendants or  
 Isaac D. Garrison & neither of them have received  
 any compensation therefor or has any allowance  
 been made to either of them therefor, and the  
 conduct of said Smartmont has been such that  
 they have been unable to & cannot make any  
 claim for damages, although such damages

Said New will amount to the sum of One hundred dollars and such Highway was & is an injury to each amount to the said lots. neither have these defendants been served with process or notice by which said land could be taken for such highway purpose. And these defendants insist that aforesaid sum of One hundred be also in justice allowed them as payment as aforesaid.

And these defendants say that said Emment-prot immediately after the service of the notice aforesaid held out said land for sale & tried to sell the same as owner & claimed he was the legal lawful owner of said land until last summer so claimed to be the owner having the right title thereto to the wrong & injury of these defendants.

And these defendants deny all combination & Confederation as charged in said Bill of Complaint, and what in said Bill of Complaint is not herein answered avoided & denied is fully denied & having thus answered these defendants pray to be hence dismissed with their costs & expenses in this behalf expended &c.

Garrison & Ansonson  
Editors for Defts  
J. R. Ansonson  
of Counsel

Andrew Garrison  
Wm O. Heacock

State of New York  
Crest County of  
William O. Heacock &  
Andrew Garrison defendants whose names  
are subscribed to the above answer being duly  
sworn say they have read the said

24

above answer & know the contents thereof & that  
the same is true of their own knowledge respectively  
except what is therein set forth as information  
& belief and as to those matters they each of them  
believe the same to be true.

Subscribed & sworn to  
before June 3<sup>d</sup> 1861.

Wm. C. Hancock  
Andrew Garrison  
Joel P. Garrison

Wm. C. Hancock  
Andrew Garrison

25  
And afterwards, to wit: on the 15<sup>th</sup> day of June  
in the year aforesaid, the said Complainant  
by his Solicitor filed in the office of the Clerk  
of said Court his certain Replication in the  
words & figures following, to wit:

Superior Court of Chicago  
In Chancery

Henry L. Smartmout

vs  
William C. Hancock  
Andrew Garrison &  
Joel P. Garrison

The Replication of  
Henry L. Smartmout Complainant to the answers  
of William C. Hancock & Andrew Garrison two  
of the above defendants to the Bill of Complaint  
of the above Complainant.

This Replicant having & receiving thereof

self all & all manner of advantage of exceptions  
to the manifold insufficiencies of the said Answer  
for replication thereto &c. That he will aver  
& prove his said Bill to be true, certain & suf-  
ficient in the law to be answered unto, and that  
the said Answer of the said Defendants is uncertain  
vague & insufficient to be replied unto by this Plaintiff.  
without this that any other matter or thing objected  
in the said Answer contained material or effectual  
in the law, to be replied unto, confessed and avoided,  
traversed or denied, is true, all which matters & things  
this Plaintiff is & will be ready to aver & prove as  
this honorable Court shall direct & humbly pray  
as in & by his said Bill he has already prayed.  
E. Van Buren  
Sol: for Compt.

26

And afterwards, to wit, on the 17<sup>th</sup> day of the month  
& year last aforesaid, the appearance of the said  
Defendant Jane G. Garrison was filed by  
Garrison & Anderson Defendants Solicitors in the  
words of figures following, to wit:

Superior Court of Chicago  
In Chancery  
Henry L. Stractmont

vs  
William O. Hancock et al

We hereby appear for Defendant Jane  
G. Garrison & the Clerk will please enter the same.  
June 14/61.

7  
And afterwards, to wit: on the 3<sup>d</sup> day of  
July in the year aforesaid, said day being  
one of the days of the July Term of said  
Court, the following among other proceedings  
were had and entered of Record in said Court,  
to wit:

Henry L. Swartfront

27  
William C. Hengest, Andrew Garrison  
vs Isaac R. Garrison. Bill

This day comes the said Complainant  
by C. Van Buren his Solicitor and the said  
Defendants by Garrison & Anderson their Soli-  
citors also present, and by agreement of the  
parties made now here in open Court, it is  
ordered that this cause be set down for hear-  
ing on Tuesday the ninth day of July instant.

# Illinois and Michigan Canal

Know All Men by these Presents, That the Board of Trustees of the Illinois and Michigan Canal, under the authority vested in said Board, by the Act of the Legislature of the State of Illinois, of February 21. 1843, entitled "An Act to provide for the completion of the Illinois and Michigan Canal, and for the payment of the Canal debt," has sold to Henry L. Grantmont, the following described tract of land, to wit: the South half South of Canal, of Section Twenty three (23) in Township Thirty eight (38) North of Range Second (2) East of the third principal Meridian, excepting and reserving therefrom as much as is occupied by the Canal <sup>and its navigations</sup> and a strip of ninety feet (90 feet) wide on the South side thereof, said tract containing Three Hundred (300) acres more or less.

Said tract being a portion of the land granted by the United States, by the Act of March 31. 1827. and the 29<sup>th</sup> August 1842. to the State of Illinois, to aid said State in opening a Canal to connect the waters of the Illinois River with those of Lake Michigan, and by said State granted to the said State of Illinois Board of Trustees of the Illinois and Michigan Canal for the purposes set forth in said Act of said State, of Feb. 21. 1843.

Know Ye Also, that the said Henry L. Grantmont, paid to the Treasurer of the said Board of Trustees the sum of Two Hundred and Fifty (250) dollars and — cents. being in

full payment of the purchase money for said land, and made according to the conditions set forth in the Act of January 9, 1836, entitled "An Act for the construction of the Illinois and Michigan Canal."

In Consideration thereof, and the premises the said Board of Trustees of the Illinois and Michigan Canal, has granted, bargained and sold, and by these presents does grant, bargain and sell unto the said Henry L. Grant front the said tract of land above designated and described.

I have and to hold the same together with all the rights, privileges, immunities, appurtenances thereto belonging unto the said Henry L. Grant front his heirs and assigns forever.

In Witness whereof, the said Board of Trustees of the Illinois and Michigan Canal has caused the Corporate Seal of said Board to be affixed herunto, and the names of the President and the Secretary of said Board to be herunto subscribed this Twenty Ninth day of September in the year of our Lord, Eighteen Hundred and Fifty Eight.

H. Smith President

H. Godding Secretary

State of Illinois

Cook County

1859

Filed for Record 30<sup>th</sup> April  
Recorded in Book 5 of Canal Deeds page 236.

H. L. Church  
Clerk.

Chicago (October) 31<sup>st</sup> October A.D. 1835

29 For Value received of Henry L. Smart-  
mont. I do hereby agree to pay and cause to be  
paid all the taxes that may be assessed against  
or upon the land mentioned and described in  
the certificate issued by the Illinois and Mich-  
igan Canal Trustees or Board of Trustees -  
Act of 1824. or cause the same to be paid of  
whatever name or nature, or pay to him all  
the taxes, costs & expenses he may pay thereon,  
or be put to by reason of my not paying the  
same - the said certificate being by me duly  
assigned to said Smartmont - and he having  
given to me a contract by the paying on my  
part of certain sum of money to re-deed the  
same to me. Contract dated Oct 31. 1835.

And when said deed mentioned in said  
certificate is given I agree to pay all costs & expense  
of Recording the same & in procuring the same, that  
is officers fees &c. Wm. O. Hancock.

\$562.50.

Illinois & Michigan Canal Office  
Chicago May 9. A.D. 1834.

Two years after date, for value received promise to  
pay to the Board of Trustees of the Illinois & Michigan  
Canal, at the office of said Board, in the City of Chicago  
the sum of Five hundred fifty two Dollars and 50  
cents, with interest at the rate of six per cent. per annum.  
payable annually in advance - (the first year's interest  
having been advanced hereon) Wm. O. Hancock.

Endorsed Interest hereon paid to May 9. 1836.

\$562.50 Illinois & Michigan Canal Office  
Chicago May 9 A.D. 1837.

30

Three years after date, for value received  
promised to pay to the Board of Trustees of the Illinois  
and Michigan Canal, at the office of said Board  
in the City of Chicago, the sum of Five hundred  
Sixty Two Dollars and 50 cents, with interest at  
the rate of six per cent. per annum, payable  
annually in advance (the first years interest  
having been advanced hereon).  
Wm O. Heacock.

Endorsed Interest hereon paid to May 9 1836  
Interest hereon paid to May 9 1837.

Treasurer of Illinois  
Cook County & Received of C. L. McIntire Fifteen Dollars and 68  
cents, in full of the following Taxes and Acs, due for the year 1861 on the follow-  
ing described real estate and on personal property, as valued below, to wit:

Chicago June 21<sup>st</sup> 1861.

Part of Section	Section	Town	Range	Acres	Valuation	State & C. Tax	Town Tax	Sch. Tax	Rd. Tax	Total
S 1/2	23	38	12	228 <sup>22</sup>	1096					15.04
										64
										\$15.68

J. H. Boyden  
per Geo B Boyden  
Treasurer.

Superior Court of Chicago }  
Doct. Henry }  
Henry L. Sneath }  
vs }  
William C. Hendrick et al }

It is stipulated that the proofs  
taken in a former suit, in some Court  
between some parties may be used on the trial  
of this cause. the same as if taken in this cause.  
Done 14/61.

C. Van Buren  
Sole for Compt.

Garrison & Anderson

9  
State of Illinois } Superior Court of Chicago  
Cook County } in Chancery

William O. Hancock et al }  
vs }  
Henry L. Smartwout }

32 The deposition of William O. Hancock, one of the defendants taken before L. Corine Greer master in Chancery of Cook County, on the 15<sup>th</sup> day of September 1860, by consent and stipulation of the respective parties, the same to be used on the trial of said cause, subject only to objections as to competency and other legal exceptions.

William O. Hancock

The defendants Solicitors produced and offered as a witness William O. Hancock one of the defendants, to prove the usury, alleged in the answers of both defendants. The Solicitors objected to his examination on the ground of incompetency.

1 What is your name, age, occupation and residence, are you one of the parties to this

Smith, and do you know the other parties.

Ans My name is William O. Hancock I am 33 years of age, am a farmer, reside in the Town of Lyons Cook County, I am one of the defendants, I know the ~~defendant~~ defendant Andrew Garrison, not the other defendant.

Q Did you at any time in A.D. 1835. loan of Compt any sum or sums of money, if you state how much, on what terms & the terms & conditions fully.

Ans I did loan money of Compt in 1835 in Aug<sup>r</sup>. I made the arrangement by which I was to have \$1000 - I was to give him an assignment of a contract or certificate from the Trustees of the Illinois and Michigan Canal for the sale by them to me of the land in question. Mr Stratton on the 16<sup>th</sup> August handed me over in part fulfilment of the arrangement \$250. and I gave him a due bill for the time being for that amount. On the 3<sup>rd</sup> Oct. following he paid over to me the further sum of \$432.50, and I then gave him an assignment of the certificate above referred to. On the 5<sup>th</sup> day of December following he gave to me the further sum of \$200. On the 13<sup>th</sup> December he gave me \$100. more which was all the money I received of him. At the time I assigned the certificate to him, he gave back to me an agreement a true copy of which is set out in my answer filed in this cause.

At the same time, he gave me an order on Mr Garrison the Solicitor of defunct anti, which I received as part of the \$1000. At the same time the interest on the \$250 received by me in August was Cash at the rate of 15 per cent from to the 3<sup>rd</sup> Octobor from Aug. 15. the interest amounting to \$7.50. The whole of said sums amounting to \$1000.00.

34

3 State the agreement and understanding between you and said Emment, in relation to the assignment of said Certificate, and the said obligation given by him to you, the rate of interest, agreed upon, time of payment, explain fully the terms of payment as written in said instrument and as you agreed, state fully the whole transaction and what in said agreement is wrong.

Ans At the time the assignment of the Certificate to him, it was made to secure the money I had then received, and the money specified in the agreement to be paid to the Canal Trustees for my benefit. I was to have the money for five years, and pay him at the rate of 15 per cent per annum, annual ly on the first day of May in each year. There were two notes to the Trustees one for \$596.25. and the other for \$403.75. Mr. Emment was to take up these notes at maturity and I was to pay him interest on the amounts thereof. from that date respectively at the rate of 15 per cent. and I was also to pay him at the time of his paying those notes, all the

money that should be required on each note to take up the same, over and above \$500. for each of said notes. The agreement above referred to by me and set out in my answer was then drawn in accordance to this understanding and Contract I have recited.

4 State what payments mentioned in said agreement is the interest you have spoken of at the rate of 15 per cent, and what is principal.

Ans I shall have to divide up the payments. The first payment of \$75 mentioned in the Contract is the interest at 15 per cent on the \$1000. from Oct 31. 1853. to May 1. 1856. The second part of \$335.<sup>68</sup>/<sub>100</sub> as mentioned in the Contract includes \$96.25. the amount of the excess of the ~~2<sup>nd</sup>~~ note to mature, to the Trustee over \$500. The balance of the \$335.<sup>68</sup>/<sub>100</sub> is the interest at 15 per cent, on the principal. The third payment of \$341.81. is made up first item \$62.50. (except over \$500 of the second note to the Trustee, the balance is interest at 15 per cent. on the principal sum. The 4<sup>th</sup> payment of \$300 is interest at 15 per cent on the principal sum of \$2000.

The fifth payment of \$300. is also interest on the like principal at 15 per cent.

The sixth and last payment is interest at 15 per cent on the like principal sum, and includes the principal of \$2000 (making) \$2300 in all.

5 State whether the assignment of the certificate

of the land in question and the taking from Complainant of the agreement above mentioned were concurrent acts, executed for the purposes aforesaid.

Ans They were concurrent acts and executed for the purposes I have stated.

36 Q State whether or not you have paid the Compt any money on said agreement if so when and how much

Ans I paid him \$75. in the month of May, about the 1<sup>st</sup> or 2<sup>d</sup> of May 1854. the further sum of \$341. and some cents, they being the 1<sup>st</sup> and second payments which matured under the agreement.

7 Q State when the notes, in what month mentioned in said Canal Trustee's Certificate.

Ans They matured in the month of May in the years 1856 + 1858 - I think they matured May 4.

8 Q Has Compt at any time shown you the deed or shown or offered you the notes prior to the commencement of this suit.

Ans He has not.

9 Q In the 2<sup>d</sup> or 3<sup>d</sup> payments mentioned in said agreement was the amount computed and intended to be computed simply the interest at 15 per cent and the excess of said Trustee's note over \$1000.

Ans They were so computed and intended to be.

11 Was there any other consideration for the assignment of said certificate, save the consideration you have already stated.

Ans There was not.

The Compt. by his Solicitor objects to all the testimony foregoing impeaching or attesting the written agreement referred to.

### Cross Ex

1X By whom was the written agreement referred to drawn up.

Ans By Andrew Garrison the Solicitor of Defendants.

2X Was the arrangement <sup>made</sup> and the agreement drawn up by him and under his advice.

37

Ans Yes, he was our attorney, attorney for both parties I believe.

3X Does the written agreement embrace the contract between the parties as it was actually made.

Ans Yes, as near as language could specify it.

4X Are the notes now shown you by Compt. the notes given by you to the Canal Trustees, and referred to in the agreement and in your previous answer, if you give the dates and amounts.

Ans They are the same. They are dated May 9. 1854  
one for \$562.50. payable two years after date  
with interest at 6 per cent payable annually  
in advance. The other is for the same amount  
payable 3 years after date with interest as in  
the first note, in advance.

57 Have you paid any of the taxes on the land  
described in the agreement. if not have you  
been asked to pay the same.

38 Ans I have not paid any - the collector called  
on me last winter to pay them. Told the  
collector to call on Mr Stratton for the taxes.  
It was here stipulated to be admitted  
on the trial subject to all legal exceptions as  
to the competency of the evidence. that the Compt  
paid taxes on said land on the 30<sup>th</sup> April 1859  
the sum of \$16.75  
and on the 3<sup>rd</sup> February 1860 \$2.53

Direct resumed

1 Since the making the contract above referred  
to, has there been a Rail Road laid across  
this land if yes, state where on the same  
& the damage to the land thereby, and the value  
of the land occupied by the Rail Road.  
(Not objected to by Compt)

Ans The Del Rio & Chicago Rail Road has laid a track di-  
agonally across the north west corner, between  
the Illinois & Michigan Canal, and the land,  
occupying the whole length of the track a strip 100  
feet wide, and cutting off the land from the Canal

I should think there was about ten acres oc-  
cupied by the Grand Road. The damage to the  
whole land I would estimate the damage  
at not less than one thousand dollars.

Sworn to and subscribed to  
before me this 13<sup>th</sup> day  
of September 1860.

W<sup>m</sup> O. Hancock.

L. C. Freer  
Master in Chancery  
Cook Co.

39

I L. C. Freer Master in Chancery of Cook  
County do hereby certify that on the 13<sup>th</sup> day of  
Sept 1860 appeared before me at my office.  
The parties complainants and defend ants in  
the above entitled cause, and by stipulation  
the said Defendant William O. Hancock  
was examined as foregoing, he having been  
first duly sworn according to law, the said  
deposition to be used on the trial of said  
Cause subject only to legal exceptions, and  
as to competency

L. C. Freer  
Master in Chancery  
Cook Co.

Chicago Sept 14. 1861.

Henry L. Matthews Superior Court of Chicago  
in Chancery  
vs  
W<sup>m</sup> O. Hancock et al

Deposition of Robert  
P. Pollock taken by and before Calvin Wolf  
a Justice of the Peace in and for the County

of Cook and State of Illinois, to be used in  
the trial of a certain cause pending in the Superior  
Court of Chicago in which Henry H. Smartmont is  
Complainant & William C. Hancock et al are defend-  
ants on the part and behalf of Defendants.

This deposition is taken by agree-  
ment of parties in the presence of Counsel for  
both Complainant.

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The Witness Robert P. Pollock being duly  
sworn deposes & testifies as follows in answer to  
Questions depts. Solo. A. Garrison.

Question 1<sup>st</sup> What is your name, age, occupation, residence  
& do you know the parties to this suit, if so how long?

Answer My name is Robert P. Pollock my age is  
28 years, I am a farmer, I reside in the Town  
of Lyons Cook Co. Ill. - I know H. H. Smartmont  
& depts. Garrison Hancock. I do not know the other.

Question 2<sup>d</sup> Do you know the location of the Sp. Sec. 25. S. 38. R.  
12 E. 3<sup>d</sup> P.M. if so when do you reside in  
regard to the same. State if you know, whether  
any portion of said land is occupied by a Rail  
Road if so by what R.R. when the same was  
constructed, whether now occupied there and  
if any, the value thereof & whether said land  
is located upon a Canal or not, if so what Canal.  
& whether said R.R. is so built as to cut off said  
land from said Canal & the water therein State  
your knowledge fully on the subject, how was  
the value of said land in the Spring of 1837.

I now show much if any said land is worth up  
in consequence of the taking of said <sup>land</sup> for said  
R.R. purposes and the damage if any done  
to said land by said Rail Road.

41  
Answer I do know the location of said land, I live  
on the East side of said land and adjoining it.  
I never saw said land surveyed, but can still  
very near by my own lot. I suppose  
the Rail Road is the Deloit & Chicago Rail  
Road it crosses said tract of land. The Cars  
are marked Chicago Alton & St. Louis. The  
road was constructed over said land I think in  
1857. I am not certain. I now occupies it. I  
think the track of the R.R. occupies about 5  
acres worth at this time about \$10 per acre. Said  
land is located upon the M & M's Canal. &  
the Rail Road is so located as to cut off the tract  
of land from the Canal & the water therein. The  
lands in that vicinity were worth more in the Spring  
of 1857. than now. I consider the land at that  
time was worth \$5 per acre. Said tract of land  
I consider is not worth as much by \$5 per acre  
in consequence of the taking off the strip for Rail  
Road purposes, in fact if I was occupying it  
I would not have it there for double that sum

Crop & by Vm B. B. Compt. Solr.

+ Ques 1<sup>st</sup> What is the whole tract of land worth.

Answer I value it at \$10 per acre

\* Ques 2. How far does the Rail Road run across  
said track.

Answer Accross one side of the track.

Re Ex How wide does the Rail Road take.

Answer I cannot tell. R. P. Pollock

192  
191

State of Illinois  
Cook County, I Calvin D. Hoyle a Justice of the  
Peace in and for said County, do hereby certify  
that the foregoing deposition of Robert P. Pollock  
was taken by and before me at the office of E.  
Went Duren in the City of Chicago on the 5<sup>th</sup>  
day of July A.D. 1861. by agreement of the parties  
to the suit mentioned in the caption to this deposition  
and to be used on the trial of said cause. I further  
certify that prior to the examination of said witness  
I on the day & place aforesaid said witness was by  
me duly sworn to testify the truth in relation  
to the matter in controversy in said suit mentioned  
so far as he might be interrogated and the  
foregoing questions were put to & answered by said  
witness, and after said deposition on the day  
and at the place aforesaid, the same was signed  
and sworn to by said witness in my presence.  
Given under my hand and  
Seal this 5<sup>th</sup> day of July A.D. 1861.

Calvin D. Hoyle

For Value received of Andrew Garrison I do hereby sell, assign  
transfer & convey to him the undivided half part of all my rights  
title & interest in the within Contract & that land & premises therein mentioned  
to pay the 2 parts of the payments therein mentioned & have the said undivided half part of  
the said & premises therein mentioned - Aug 24. 1837. W. O. Hancock

Whereas William O. Hancock has this day  
made an absolute assignment to me of a certificate  
of purchase of lot of land issued by the Board  
of Trustees of the Illinois and Michigan Canal  
described therein as 5 1/2 South of Canal of Section  
No 23. in Township No 35. of Range No 12 East  
of the third principal meridian containing  
30 acres more or less, said certificate is dated  
Chicago May 9 A.D. 1834. and said Land is  
now in the possession of said William O. Hancock.  
Now therefore, for and in consideration of the said  
assignment and in consideration of the payments  
therein after to be made on the part of said Hancock.  
I agree to take up the two notes given by said  
Hancock to said Trustees according to the tenor  
of & as specified in said certificate - & said notes  
are thereby paid in full & to be delivered up or  
cancelled - And I also covenant & agree  
to and with said William O. Hancock  
that after I have procured the said deed therein  
said Certificate mentioned, that I will cause  
the same the said title so procured by me  
of said Trustees of said Land above mentioned  
to be conveyed to said William O. Hancock his  
heir or assigns by a good and sufficient deed  
of conveyance or instrument in writing affur-  
ing & conveying to him a good and clear title  
I shall to pay receive from said Trustees by  
reason of said certificate and assignment  
above mentioned, upon his paying to me  
and the same is on the express condition  
of his paying to me the following sum  
of money and at the times expressed  
as follows viz:

May 1<sup>st</sup> 1856. (\$75) Twenty five dollars  
 May 1<sup>st</sup> 1857. (\$350) Three hundred & thirty five <sup>67</sup>/<sub>100</sub> dollars  
 May 1<sup>st</sup> 1858. (\$371.00) Three hundred & seventy one <sup>44</sup>/<sub>100</sub> dollars  
 May 1<sup>st</sup> 1859. (\$300) Three hundred dollars  
 May 1<sup>st</sup> 1860. (\$300) Three hundred dollars  
 May 1<sup>st</sup> 1861. (\$2000) Twenty three hundred dollars.

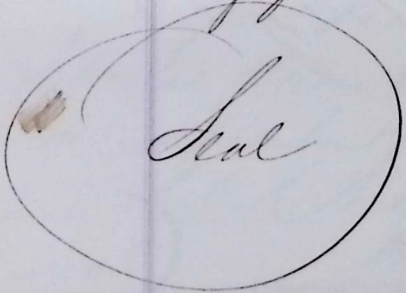
The same being the last payment at which time  
 May 1<sup>st</sup> 1861. the said money being paid as  
 of <sup>the said dec. or company as possessors</sup> ~~the said~~ mentioned to be given by me to said  
 Hancock as aforesaid, to be made & delivered  
 to him.

Witness my hand and seal this 3<sup>rd</sup> day  
 of October A.D. 1855.  
 Witness H. L. Grantmont

44

State of Illinois }  
 Cook County }  
 J. Louis D. Hoard  
 Clerk of the Circuit Court in and for the  
 County of Cook, in the State of Illinois,  
 do hereby certify, that H. L. Grantmont  
 who is personally known to me as the real person  
 whose name is subscribed to and who executed  
 the annexed Bond for a deed this day appeared  
 before me and acknowledged that he executed  
 the said instrument of writing freely and volun-  
 tarily for the uses and purposes therein expressed.

In Testimony whereof I have  
 hereunto set my hand and af-  
 fixed the seal of said Court  
 at Chicago, in said County,  
 this Seventh day of November  
 in the year of our Lord one



Thousand eight hundred and fifty five

L. D. Howard

Clerk of the Circuit Court

Endorsed

State of Illinois  
Cook County. Filed for Record Nov 7/55.  
+ Recorded in Book 99 of Deeds page 667.  
L. D. Howard  
Clerk.

" Rec'd on W O Hancock seventy five dollars  
May 26 - 1856  
H. L. Swartwout

~~1335 68~~

" 45 Received of W O Hancock, Three hundred &  
thirty five dollars & sixty eight cents on the within con-  
tract. (1335 68)  
Chicago May 24<sup>th</sup> 1857  
H. L. Swartwout.

" I have conveyed by Warranty deed the  
undivided one half of the within described  
Real Estate to Isaac A. Garrison the same  
to be his  
Sept 1. 1858. A. Garrison  
Witness  
J. Garrison.

466011

Superior Court of Chicago  
William O. Hengock et al  
vs  
Henry L. Spatrunk

State of Illinois  
Cook County

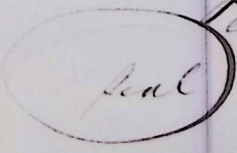
Catrin D. Wolf being  
duly sworn says he was a Justice of the Peace  
in & for the County of Cook aforesaid during all  
of the year 1857. It is now, that the Deputee  
Chicago Rail Road Company by John B. Preston  
Secretary & agent of said Rail Road Company  
made application to him as such Justice of the  
Peace for the appointment of three House Holders to  
assess damages & that the accompanying appli-  
cation to him therewith produced in such application  
so made to him by said Preston & the signature  
thereof the signature of said John B. Preston &  
also herewith produced is the appointment of  
this deponent of James G. Rees, Charles B. Far-  
well & Alex. Wolcott said House Holders & also their  
Report, signature, thereto and the genuine signature  
of this deponent to said Report & the genuine hand  
writing & signatures of said Rees, Farwell &  
Wolcott respectively such papers are <sup>now</sup> held by  
said deponent & ever have been as such Justice  
of the Peace.

46

Catrin D. Wolf  
J.P.

Subscribed & sworn to before  
me September 17. 1861.  
Peter H. Witt

Notary Public



13  
To Calvin D Wolf a Justice of the Peace of the  
County of Cook and State of Illinois.

The Joliet & Chicago Rail Road  
Company a Corporation Created by an Act  
of the General Assembly of the State of Illinois,  
Entitled "An Act to Construct a Rail Road  
from Joliet to Chicago passed February 15<sup>th</sup>  
1855. represent that said Corporation is author-  
ized to lay and construct said Rail Road  
by said Act, and that the same is required to  
pass over the Lands described and claimed  
to be owned as follows - One hundred feet  
in width through the NE 1/4 of S. E 1/4 of Sec 20. T. 37. N. R. 11 E. 3 P. 27 W.  
claimed by

47 Through the E 1/2 of S. E 1/4 of Sec 20. T. 37. N. R. 11 E. 3 P. 27 W.  
claimed by Trudale & others

Through the NW 1/4 of NW 1/4 of Section 20. T. 37. N. R. 11 E. 3 P. 27 W.  
claimed by Thomas Radding & others.

Through the E 1/2 of N. W 1/4 of Sec 20. T. 37. N. R. 11 E. 3 P. 27 W.  
claimed by Ch. Lee & others.

Through the NW 1/4 of S. E 1/4 of Sec 20. T. 37. N. R. 11 E. 3 P. 27 W.  
claimed by Ch. Lee & others

Through the NW 1/4 of the S. E 1/4 of Sec 19 T. 37. N. R. 11 E. 3 P. 27 W.  
claimed by Ch. Lee & others

NW 1/4 of NW 1/4 21. T. 37. N. R. 11 E. 3 P. 27 W.  
claimed by Illinois Stone Co & others.

S. E 1/4 of S. W 1/4 of 21 T. 37. N. R. 11 E. 3 P. 27 W.

Claimed by Minori Stone & others  
Through part of S. W<sup>4</sup> of 21 S. 37. N. R. 11 E. 3 P. 70.  
Claimed by Minori Stone & others  
E<sup>1/2</sup> of Sec 21. S. 37. N. R. 11 E. 3 P. 70.  
Claimed by D. Scully & others  
S. W<sup>4</sup> of Sec 22 S. 37. N. R. 11 E. of 3 P. 70.  
Claimed by Farmer & others  
S. E<sup>1/4</sup> of Sec. 15. S. 37. N. R. 11 E. of 3 P. 70.  
Claimed by Buller Norton Brown & others  
W<sup>1/2</sup> of S. W<sup>4</sup> of Sec 14 S. 37. N. R. 11 E. 3 P. 70.  
Claimed by Murphy & others.  
E<sup>1/2</sup> of S. W<sup>4</sup> of Sec 14 S. 37. N. R. 11 E. 3 P. 70.  
S. W<sup>4</sup> of Sec 14 S. 37. N. R. 11 E. 3 P. 70.  
Claimed by Cook & others  
W<sup>1/2</sup> of E<sup>1/4</sup> of Sec 14 S. 37. N. R. 11 E. 3 P. 70.  
Claimed by A. Carter & others  
E<sup>1/2</sup> of S. E<sup>1/4</sup> of Sec 16 S. 37 N. R. 11 E. 3 P. 70.  
Claimed by Mrs Keen & others  
S. W<sup>4</sup> of Section 11 S. 37. N. R. 11 E. 3 P. 70.  
Claimed by Trustees of St. M. Canal  
S. W<sup>4</sup> of Sec 12 S. 37 N. R. 11 E. 3 P. 70.  
Claimed by H. Gaffney & others.

S. E 1/4 of N. E 1/4  
E 1/2 of N 1/4 Sec 33. T. 38. N. R. 12 E of 3 P. M.  
Claimed by R. R. Hancock & others.

S. E 1/4 of 28. T. 38. N. R. 12 E. of 3 P. M.  
Claimed by C. V. Byer & others

S. W 1/4 of Sec 27. T. 38. N. R. 12 E. of 3 P. M.  
Claimed by Riley Fitzpatrick & others

N. W 1/4 Sec 27. T. 38. N. R. 12 E of 3 P. M.  
Claimed by Dennis Fitzpatrick & others

E. prof S. E 1/4 of 22 d. 38. N. R. 12 E of 3 P. M.  
Claimed by H. S. Curtis & others

W. prof S. W 1/4 of 23 d. 38. N. R. 12 E of 3 P. M.  
Claimed by H. S. Hancock & others.

N. prof Sec 23 T. 38. N. R. 12 E of 3 P. M.  
Claimed by Trustees of St M Church

W. prof S 1/4  
S. E 1/4 & N. E 1/4 of 14 T. 38. N. R. 12 E of 3 P. M.  
Claimed by D. J. Lake & others.

E. prof S. E 1/4 of 14 T. 38. N. R. 12 E of 3 P. M.  
Claimed by J. Pain

N. W 1/4 of 13. T. 38. N. R. 12 E of 3 P. M.  
Claimed by A. Kearney & others

S. W 1/4 of 12 T. 38. N. R. 12 E of 3 P. M.  
Claimed by S. Houghton & others.

W/2 of S E 1/4 of 12 T. 38. N. R. 13 E of 3 P.M.  
not included in Snow of Summit claimed by Jones & others

E/2 S. E 1/4 of 12 T. 38. N. R. 13 E of 3 P.M.  
Claimed by P. Kearns & others

Sec. 7, T. 38. N. R. 13 E of 3 P.M.  
Claimed by J. Wentworth & others

W/2 of N 1/4 of 8 T. 38. N. R. 13 E of 3 P.M.  
Claimed by E. Collier & others

E/2 of N 1/4 of 8 T. 38. N. R. 13 E of 3 P.M.

57

S 1/2, South of Canal, of 5 T. 38. N. R. 13 E of 3 P.M.  
Claimed by Alex. Campbell & others

W/2 of N. E 1/4  
S. W 1/4 of 4 T. 38. N. R. 13 E of 3 P.M.  
Claimed by Kacut & others

W/2 of S. E 1/4 of 4 T. 38. N. R. 13 E of 3 P.M.  
Claimed by J. Wentworth & others

E/2 N. E 1/4 of 4 T. 38. N. R. 13 E of 3 P.M.  
Claimed by H. B. Ogden & others

N/2 of 3 T. 38. N. R. 13 E of 3 P.M. claimed by Jones of 1 m Canal

S of Canal S W 1/4 of 35 T. 39. N. R. 13 E of 3 P.M.  
Claimed by H. Daily & others.

And that a portion of said owners severally object thereto and cannot agree with said Company on the amount of Damages

which such owners may severally claim by reason  
of said Rail Road passing over said Lands  
respectively

You are therefore hereby requested  
to cause those whose holders to appear before you  
to assess the damages which they shall believe  
such owners will each sustain by laying out  
and constructing said Rail Road over and  
about the additional value which such Lands  
will derive from the construction of said Road  
in pursuance of an Act entitled Right of Way  
approved March 3<sup>d</sup> 1845.  
Chicago 24 June 1837. J. P. Preston

52

State of Illinois  
Cook County of.

The People of the State of Illinois  
To James H. Rice Charles B. Farwell and  
Alex Wolcott Greeting  
Whereas it has been represented to the undersigned a  
justice of the Peace of said County of Cook by  
the Joliet and Chicago Rail Road Company  
by John B. Preston their Secretary and agent  
representing said Company who are authorized  
to lay out and construct a Rail Road from  
Joliet to Chicago in pursuance of an act of the  
General Assembly of the State of Illinois entitled  
"An Act to Construct a Rail Road from Joliet  
to Chicago approved February 15<sup>th</sup> 1835.  
That said Rail Road is required to pass

through the lands hereinafter described, and that the owners and claimants of each of said tracts or parcels of land object thereto and cannot agree with said Rail Road Company as to the amount of damages which each of such owners may claim by reason of the laying out and construction of said Rail Road and said Rail Road Company has requested three honest holders to be appointed to examine said grounds herein described and assess the damages in pursuance of an act of the General Assembly of the State of Illinois entitled "Right of Way" approved March 3<sup>d</sup> 1845.

It is therefore given the said James H. Lee Charles B. Farwell & Alex<sup>r</sup> Wolcott honest holders of said County are hereby appointed to examine the ground in said County described as follows, viz:

One hundred feet in width through the following described tracts of land that is to say fifty feet on each side of the centre line of said Road now set and established.

53

E 1/2	of S. E 1/4	of Sec 20	T 37	R 11	of 3 <sup>d</sup> P. M.
W 1/2	of N. W 1/4	" "	30	" 37	" " " "
E 1/2	of N. W 1/4	" "	30	" 37	" " " "
W 1/2	of N. E 1/4	" "	30	" 37	" " " "
W 1/2	" S. E 1/4	" "	19	" 37	" " " "
W 1/2	" S. W 1/4	" "	21	" 37	" " " "
N E 1/4	" S. W 1/4	" "	21	" 37	" " " "
pt	" N. W 1/4	" "	21	" 37	" " " "
	" N. E 1/4	" "	21	" 37	" " " "
	" S. W 1/4	" "	22	" 37	" " " "
	" S. E 1/4	" "	15	" 37	" " " "
W 1/2	of S. W 1/4	" "	14	" 37	" " " "
E 1/2	of S. W 1/4	" "	16	" 37	" " " "

through the lands hereinafter described, and that the owners and claimants of each of said tracts or parcels of land object thereto and cannot agree with said Rail Road Company as to the amount of damages which each of such owners may claim by reason of the laying out and construction of said Rail Road and said Rail Road Company has requested three honest holders to be appointed to examine said grounds herein described and assess the damages in pursuance of an act of the General Assembly of the State of Illinois entitled "Right of Way" approved March 3<sup>d</sup> 1845.

It is therefore given the said James H. Lee Charles B. Farwell & Alex<sup>r</sup> Wolcott honest holders of said County are hereby appointed to examine the ground in said County described as follows, viz:

One hundred feet in width through the following described tracts of land that is to say fifty feet on each side of the centre line of said Road now set and established.

53

E 1/2	of S. E 1/4	of Sec 20	T 37	R 11	of 3 <sup>d</sup> 7 <sup>th</sup> M.
W 1/2	of N. W 1/4	" "	30	" 37	" " " " "
E 1/2	of N. W 1/4	" "	30	" 37	" " " " "
W 1/2	of N. E 1/4	" "	30	" 37	" " " " "
W 1/2	" S. E 1/4	" "	19	" 37	" " " " "
W 1/2	" S. W 1/4	" "	21	" 37	" " " " "
N E 1/4	" S. W 1/4	" "	21	" 37	" " " " "
pt	" N. W 1/4	" "	21	" 37	" " " " "
	" N. E 1/4	" "	21	" 37	" " " " "
	" S. W 1/4	" "	22	" 37	" " " " "
	" S. E 1/4	" "	15	" 37	" " " " "
W 1/2	of S. W 1/4	" "	14	" 37	" " " " "
E 1/2	of S. W 1/4	" "	16	" 37	" " " " "

	N. W 1/4	"	"	14	"	37	"	"	11	"	"
W 1/2 of	S. E 1/4	"	"	14	"	37	"	"	11	"	"
E 1/2	"	"	"	14	"	37	"	"	11	"	"
	S. W 1/4	of	11	T	37	A. R.	11	E	of	3	P. M.
	S. W 1/4	"	12	"	37	"	"	11	"	"	"
W 1/2 of	S. E 1/4	"	12	"	37	"	"	"	"	"	"
E 1/2 of	S. E 1/4	"	12	"	37	"	"	11	"	"	"
E 1/2	"	"	12	"	37	"	"	11	"	"	"
W 1/2	"	"	12	"	37	"	"	11	"	"	"
E 1/2	"	"	5	"	37	"	"	12	"	"	"
W 1/2	"	"	5	"	37	"	"	12	"	"	"
	"	"	5	"	37	"	"	12	"	"	"
S. W 1/4	"	"	7	"	37	"	"	12	"	"	"
E 1/2	"	"	7	"	37	"	"	12	"	"	"
W 1/2	"	"	7	"	37	"	"	12	"	"	"
E 1/2	"	"	33	"	38	"	"	12	"	"	"
S. W 1/4	"	"	33	"	38	"	"	12	"	"	"
S. E 1/4	"	"	33	"	38	"	"	12	"	"	"
E 1/2	"	"	33	"	38	"	"	12	"	"	"
	"	"	28	"	38	"	"	12	"	"	"
	"	"	27	"	38	"	"	12	"	"	"
	"	"	27	"	38	"	"	12	"	"	"
E 1/2	"	"	22	"	38	"	"	12	"	"	"
W 1/2	"	"	23	"	38	"	"	12	"	"	"
	"	"	23	"	38	"	"	12	"	"	"
W 1/2	"	"	14	"	38	"	"	12	"	"	"
S. E 1/4	"	"	14	"	38	"	"	12	"	"	"
E 1/2	"	"	14	"	38	"	"	12	"	"	"
	"	"	13	"	38	"	"	12	"	"	"
	"	"	12	"	38	"	"	12	"	"	"
W 1/2	"	"	12	T	38	A. R.	13	E	of	3	P. M.
E 1/2	"	"	12	"	38	"	"	12	"	3	"
	"	"	7	"	38	"	"	13	"	3	"
W 1/2	"	"	8	"	38	"	"	13	"	3	"

54

E 1/2	N 1/4	8	- 38	- 13	- 3	-
S 1/2	South of Canal of Sec 5	5	- 38	- 13	- 3	-
W 1/2	E 1/4	4	- 38	- 13	- 3	-
	S 1/4	4	- 38	- 13	- 3	-
W 1/2	S. E 1/4	4	- 38	- 13	- 3	-
E 1/2	E. E 1/4	4	- 38	- 13	- 3	-
	W 1/2	3	- 38	- 13	- 3	-
South of Canal of	N 1/4	35	- 39	- 13	- 3	-

Which said grounds and Lands shall be pointed out to you by the said John B. Preston Secretary or agent or some other authorized person and you shall assess the damages which you shall believe such owners severally will sustain over and above the additional value such lands severally will derive from the construction of such Rail Road and make two written reports thereof signed by at least a majority of you one of which you will deliver to <sup>the</sup> said Rail Road Company and the other to me.

55

Given under my hand and seal  
 this 24<sup>th</sup> day of Jan<sup>r</sup> A.D. 1834.  
 (John D. Wolf Seal)  
 Justice of the Peace

State of Illinois  
 Cook County J.  
 We James H. Rice, Charles J. Farwell and Alex. Wolcott householders of the County of Cook having been appointed to do and perform the matters and things mentioned in the foregoing instrument do solemnly swear that we will impartially examine the ground

and tracts & parcels of Land therein mentioned  
and to be pointed out to us by said Joliet &  
Chicago Rail Road Company or their Agent or  
agents and assess the Damages such Owners or  
Tenants will sustain over and above the addi-  
tional Value such Lands will derive from the  
Construction of the Rail Road mentioned in said  
appointment

56

Sworn to and subscribed }  
to before me this 24<sup>th</sup> day }  
of June A.D. 1857 }  
Calvin D Wolf }  
Justice of the Peace }  
Alfred Wolcott }  
C. J. Farrell }  
James H. Rice }

## Report

State of Illinois  
Cook County J.

The undersigned having been  
appointed by Calvin D Wolf a Justice of the  
Peace in and for the County of Cook and  
State of Illinois to assess the damages which  
we shall believe the owners of the lands here-  
inafter described will sustain over and above  
the additional value which said Lands will  
derive from the construction of a Rail Road  
across the same to be constructed in pursuance  
of an act to construct a Rail Road from  
Joliet to Chicago" approved February 15.  
1855. after having been duly sworn faithfully  
and impartially to examine the ground which  
shall be pointed out to us by said Rail Road

Company or a person duly authorized to lay out and construct the said Rail Road, do report that we find the damages which the owner or owners of each of the following described tracts or parcels of land as will now more fully appear by reference to the annexed map will sustain over and above the additional value which each of said tracts or parcels of land will derive from the construction of such Road as follows.

57

Part of Section	Section	Town	Range	Length of		Width	Amount of	Amount of
				Line through	Cent			
				Chs	Links	of Right of Way	Damages off from Canal	Damages within 90 ft of Canal.
West 26 rods of N <sup>1</sup> / <sub>2</sub> of N.W. 1/4	30	37	11 E	5	50	100 ft	\$25	
N <sup>1</sup> / <sub>2</sub> of S.E. 1/4	19	37	"	11	75	100	}	
S <sup>1</sup> / <sub>2</sub> of N.W. 1/4	30	37	"	23	40	100		
N <sup>1</sup> / <sub>2</sub> of E 1/4	30	37	"	11	27	100	200	
N <sup>1</sup> / <sub>2</sub> of N.W. 1/4	22	37	"	22	—	100	250	
E <sup>1</sup> / <sub>2</sub> of S.W. 1/4	22	37	"	21	99	100	1	
N <sup>1</sup> / <sub>2</sub> of S.E. 1/4	15	37	"	17	60	100	40	
E <sup>1</sup> / <sub>2</sub> of S.E. 1/4	15	37	"	21	75	150	50	
S.W. 1/4	14	37	"	23	10	150	100	
N.W. 1/4	14	37	"	5	—	150	10	
S.E. 1/4	11	37	"	9	07	150	50	
S.W. 1/4	12	37	"	47	80	150	145	
N <sup>1</sup> / <sub>2</sub> of S.E. 1/4	12	37	"	11	90	100	40	
N <sup>1</sup> / <sub>2</sub> of N.E. 1/4	12	37	"	11	90	100	40	
E <sup>1</sup> / <sub>2</sub> of S.E. 1/4	12	37	"	23	70	100	70	
E <sup>1</sup> / <sub>2</sub> of S.E. 1/4	5	37	12	38	70	100	62	\$174
N <sup>1</sup> / <sub>2</sub> of S.E. 1/4	5	37	12	38	70	100	62	\$38
N.W. 1/4	5	37	12	44	57	100	31	\$29
S.E. 1/4	02	38	12	20	27	100	45	
S.E. 1/4	28	38	12	1	46	100	10	
N.W. 1/4	27	38	12	4	—	100	7	8
S.E. 1/4	27	38	12	46	60	100	73	102

E 1/2 S. E. 1/4	22	38 "	12 "	20	50	100	50	
W 1/2 S. W. 1/4	23	38 "	12 "	27	06	100	41	29
A 1/2	23	38 "	12 "	56	42	100	45	55
W 1/2 S. E. 1/4	14	38 "	12 "	30	21	100	75	
S. E. 1/4 A. E. 1/4	14	38 "	12 "					
E 1/2 S. E. 1/4	14	38 "	12 "	26	65		60	
S. W. 1/4	12	38 "	12 "	19	20		60	
W 1/2 S. W. 1/4	8	38 "	10 E	21	50		65	
E 1/2 S. W. 1/4	8	38 "	13 "	17	60		50	
S of Canal S 1/2	5	38 ch	13 E	46	80	100	64	96
S W 1/4	4	38	13 "	43	50	100	150	
E 1/2 S. E. 1/4	4	38	13 "	21	80	100	100	
A 1/2	3	38	13 "	83	20	100	164	236
S. E. 1/4	34	39	13 "	2	80	100	30	
W 1/2	21	39	11 "	21	19	100		
A. E. 1/4	21	37	11 "	43	03	100		
W 1/2 S. W. 1/4	33	38	12	25	69	100	80	
E 1/2 S. W. 1/4	33	38	12	12	20	100	40	
W 1/2 S. E. 1/4	33	38	12	20	30	100	80	

58

Chicago August 15. 1837.

James H. Rice  
 C. P. Farwell  
 Alex. Wolcott

Rec<sup>d</sup> Aug 25. 1837 \$3150<sup>00</sup>/<sub>100</sub> dollars being  
 deposited on the foregoing  
 Catharine D. Wolf  
 A. P.

And afterwards, to wit, on the 2<sup>nd</sup> day of December in the year aforesaid, said day being one of the days of the December Term of said Court, the following among other proceedings were had and entered of Record in said Court, to wit:

Henry L. Spatnunt  
 vs  
 William C. Hancock, Andrew Garrison  
 and Isaac L. Garrison  
 Final Decree.

59 This Cause having been brought to a hearing at the October Term of this Court A.D. 1851. upon the pleadings and proofs, and after hearing Mr E. Van Meter of Counsel for Complainant and Mr Andrew Garrison for Defendants, and it appearing that on the 3<sup>rd</sup> day of October 1851. the Complainant and the Defendant William C. Hancock made and entered into a certain agreement as is substantially set forth in the Bill of Complaint, and is more particularly set forth in the Answer in said Cause and hereafter set forth in this decree.

And it appearing that William C. Hancock has assigned a portion of his interest in the said Contract to the Defendant Andrew Garrison and that said Andrew Garrison has assigned some interest in the same to the Defendant Isaac L. Garrison. And it appearing that the Illinois & Alton & Chicago Rail Road Company had instituted proceedings according to Law and Custom a small portion of said land for a track

for the Rail Road and that the damages have  
 been assessed at \$45.00. And it further appear-  
 ing that the said defendants have not, nor have  
 either of them made any payments upon said  
 Contract, except the sum of \$75# in the month of  
 May 1856 and the further sum of three hundred  
 and forty one dollar in May 1857. Which was  
 for the principal interest of the second payment  
 mentioned in said Contract, but have made  
 default and that there is due to the said Com-  
 plainant upon said Contract according to the  
 terms of said Contract on the day of entering this  
 decree after deducting all payments made thereon.  
 and after deducting \$45# so as aforesaid assessed  
 as damages for damages, the sum of thirty four  
 hundred and forty nine dollars and twenty  
 four cents, and it appearing that the complain-  
 ant was at all times <sup>and justly</sup> willing to perform the said  
 agreement on his part. It is therefore ordered,  
 adjudged and decreed that the Contract referred  
 to in the pleading in this cause and which is  
 herein after set forth be and is hereby terminated  
 and annulled, and the said defendants and each  
 and every of them are hereby forever foreclosed  
 from the right of redeeming the premises mentioned  
 in said Contract, and from the right to a specific  
 performance of said Contract or in any way enforcing  
 the same. unless the said defendants or some one  
 of them, shall within ninety days from the date  
 of entering this decree pay unto the Clerk of this  
 Court the sum of thirty four hundred and forty  
 nine dollars and twenty one cents with interest  
 thereon from the second day of December 1861.  
 the date of filing this decree at the rate of six

per cent. per annum for the said Complain-  
ant. And it is further ordered that if the  
said defendants or any one of them shall within  
ninety days from the day of entering this decree  
pay into this Court unto the Clerk thereof the said  
sum of Ninety four hundred and forty nine dollars  
and twenty four cents with interest as aforesaid  
then it is decreed that the said Complainant  
shall immediately hereafter make, execute and  
deliver a good and sufficient deed of convey-  
ance to the said defendants or such of them  
as shall make said payments as aforesaid.  
This said deed assigns, securing and conveying  
a good and clear title in fee as he has received  
from the Canal Trustee by reason of the certificate  
referred to in said Contract of the said premises  
mentioned in said Contract which said Contract  
is as follows. "Whereas William C. Heacock  
"has this day made an absolute assignment  
"to one of said certificates of purchase of lots of land  
"issued by the Board of Trustees of the Illinois  
"and Michigan Canal described therein as S/2  
"South of Canal of section No 23 in Township No  
"38 of Range No 12 East of the third principal  
"Meridian containing two hundred and more  
"or less. Said certificate is dated Chicago  
"May 9 A.D. 1834. and said land is now in  
"the possession of said William C. Heacock.  
"Now therefore for and in consideration of said  
"assignment and in consideration of the pay-  
"ments herein after to be made on the part of said  
"Heacock. Do give to take up the two notes given  
"by said Heacock to said Trustee according to the  
"terms thereof and as specified in said certificate.

And said notes are thereby paid in full and to be  
 delivered up and cancelled, and I also covenant  
 and agree to and with said William C. Hancock  
 that after I have procured the said deed therein  
 said certificate mentioned, that I will cause  
 the same the said title to be procured by one of  
 said Trustees, of said land above mentioned  
 to be conveyed to said William C. Hancock  
 this being assigned by a good and sufficient deed  
 of conveyance or instrument in writing assuring  
 and conveying to him as good and clear title  
 shall or may be received from said Trustees by reason  
 of said certificate and assignment above  
 mentioned upon his paying to me, and the  
 same is on the express condition of his paying  
 to me the following sums of money and at the  
 times expressed as follows viz: May 1<sup>st</sup> 1856. (\$75.)  
 Seventy five dollars, May 1<sup>st</sup> 1857. (\$350) Three  
 hundred and fifty five dollars, May 1<sup>st</sup> 1858.  
 (\$375) Three hundred and seventy five dollars,  
 May 1<sup>st</sup> 1859. (\$300) Three hundred dollars,  
 May 1<sup>st</sup> 1860. (\$300) Three hundred dollars, and  
 May 1<sup>st</sup> 1861. (\$250) Twenty three hundred dollars  
 the same being the last payment at which  
 time May 1<sup>st</sup> 1861. the said moneys being paid.  
 as aforesaid the said deed or conveyance as  
 aforesaid mentioned to be given by me to said  
 Hancock as aforesaid is to be made and delivered  
 to him.

Witness my hand and seal this 30<sup>th</sup> day of  
 October 1855.

H. L. Smartmont

And it is further agreed and decreed that the defendant  
 shall pay the costs of this suit.

State of Illinois  
County of Cook  
I, Thomas B. Carter  
Clerk of the Superior Court of Chicago within  
and for the County of Cook and State of  
Illinois. do hereby certify, that the foregoing  
is a full, true and complete transcript of all  
the papers on file in my office & proceedings  
of Court & Final Decree entered of Record  
in said Court, in a certain Cause wherein  
Henry L. Stratmont was Complainant  
and William C. Hengock, Andrew Im-  
pison & Isaac D. Garrison Defendants.

Witness my hand & the  
Seal of said Court at the  
City of Chicago in said  
County, this 2nd day of  
April A. D. 1862.  
Thomas B. Carter Clerk



Supreme Court

William O Heacock  
vs et al  
Henry S Swartwout

Of April Term A.D. 1862

Afterwards to wit inside April Term before the judges of said Court now here comes the said William O Heacock & Andrew Garrison by their Attorney A Garrison and say that in the record and proceedings aforesaid and the matters therein contained there is manifest error in this to wit

The Court erred in decreeing in favor of Complainant when in justice <sup>equity</sup> such decree should have been for defendant;

Erred in decreeing contrary to the answer and evidence that said Contract & Assignment of Certificate was not in the nature of a Mortgage & security for a Loan of Money

Erred in not decreeing the transaction usurious & deducting such usury from the amount of principal found due

Erred in decreeing that such contract was terminated & defendant foreclosed from redemption & that Complainant had always been ready to perform on his part when he had not offered & could not give such title as he agreed & in decreeing pay ment within 90 days

Erred in not deducting the pay ments from the principal sum & in not pronouncing the balance claimed usury

Erred in not decreeing Plaintiff was not entitled to any sum so long as the Land ~~was~~ occupied by the Rail Road under title & Complt could not convey such as he agreed ~~unless~~

Erred in not deducting the damages from defect of title & the damage done by the Rail Road. \$1000 for the Highway \$100

Erred in decreeing the Land liable for taxes paid by Complt & making such taxes part of the sum claimed & decreed for in admitting the Heacock Contract to pay for the same as evidence

Erred in decreeing that there was due Complant on said Contract the sum of thirty four hundred & forty nine  $\frac{24}{100}$  dollars -  
Erred in decreeing interest on the ~~unpaid~~ payments -

Erred in not giving full force & effect to defendant's Answer as ~~the~~ evidence in the Cause

And the said defendant, for the errors aforesaid & others in the record & proceedings, aforesaid pray <sup>since</sup> judgment & decree be reversed & held for Complt & that be restored in all things which they have lost by occasion thereof

A. Garrison  
Atty

Supreme Court of Illinois  
Third Grand Juror  
Henry J. Swartwout  
vs. Adolphus  
William O'Keefe  
M. J. M. J.

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and now comes the  
defendant in error by Ed A. Van Patten  
Left Attorney, and says there is no error  
in the record or proceedings in this case  
or in any judgment there & the defend-  
ant prays that the judgment may be in  
all things affirmed

Ed A. Van Patten  
Atty for deft in error

148 278  
Wm O. Hearock  
H. S. Swainson  
Recd & Envs

Filed Apr. 24, 1862  
L. Keland  
Clerk.

Fees \$20.00 paid  
by Wm Garrison  
J. B. Carter  
Clerk