

13569

No. \_\_\_\_\_

Supreme Court of Illinois

Williams

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vs.

Ballance

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71641  7

STATE OF ILLINOIS,  
SUPREME COURT,  
Third Grand Division.

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No. **338.**

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1000  
Williams

vs

Ballou

12569  
Circuit

Anythg 29 March 1860  
Hon: John D. Cutrow

Dear Sir: I will be  
obliged to you if you will  
inform me what the Court  
has done with the case of  
Williams vs Ballance born to  
Provia in which you had  
written the opinion and after  
wards suspended it last win-  
ter at my request. If an  
reargument is to take place  
we wish to be prepared.  
Also please inform me what  
was the result of a case  
tried at Mt. Vernon in fall  
of 1858 involving the same  
general propositions to some  
extent. If convenient please  
write me at Quincy.

Respectfully Yours  
J. Grimshaw

Archibald Williams  
vs  
Charles Ballance & Provic  
& Henry Bellogg

I make the following suggestions.

No defence is made out under act of 1839 - there is in the record no proof of payment of taxes by any person.

No defence is made out under act of 1835 -

Record p. 14 shows that S. W. q. 9. S. A. & E. of which this lot forms part was duly laid out into town lots by Ballance on 13 - Feb. 1846 & plat recorded by Ballance 10 Apr. 1846 at that time Ballance resided in quarter section in a Brick House, but not 22 on this lot.

122  
About 1844 Ballance leased the premises in controversy to Cole for a distillery. Cole enclosed lot with a high strong fence and built a distillery and appurtenances on it. Bellogg is in possession of premises for distillery under lease to

Cole. No one resides  
on premises, but Lessee  
live in city of Provia  
half a mile distant  
on an other quarter  
section.

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Act of 1835 - requires re-  
sidence under <sup>connected</sup> title de-  
ducible of record for  
seven successive years  
next preceding bringing  
of suit

Act of 1835 - in Rev. Code  
1845 - p 349 section 9.

J. Winsham

Archibald Millar

vs.

Charles Ballance

Henry Kellogg

Suggestions as

to facts

A. Winsham

for Appellant.



neither of the judges has my brief, I have one left, that I will furnish the court.

3<sup>rd</sup> Mr. Williams having got both this case and that of Lueder vs. Kidder up to suit himself, ought to be satisfied, with the decisions.

4<sup>th</sup> I do not know who submitted the case of Lueder vs. Kidder to the court, but if it was Mr. Williams or any of the lawyers who act in concert with him in these contraventions, he ought not to have done it.

That was a sham case gotten up by lawyers on the same side, between two neighbors, between whom there was not, and never had been any controversy: commenced not in term time, but in vacation, and an order made in vacation by the judge of our court for a change of venue to Madison, for the purpose of carrying the case from there to the supreme court at Mount Vernon, and there after a sham trial, between persons on the same side, obtain a decision that would unhouse hundreds of our population, <sup>without their knowledge of such a suit,</sup> As I went on to look out for operations of this kind, I wrote to a lawyer at Edwardsville to get the suit dismissed, as a sham suit. He however instead of doing it, took the other side, without answering my letter, or giving any reason for his course, <sup>and</sup> got a record made up as those gentlemen desired it to be done, and carried the case up to this court, sitting at Mount Vernon. I could get

no answer from him, but through another channel, I learned the state of the case, and wrote to Mr. Nelson to oppose them in the Supreme court, and have the case dismissed, as a sham case. When the parties met there, and were confronted by Mr. Nelson, they asked for a continuance, to obtain counter affidavits. This was granted.

The present case of Williams vs. Prallance, was a bona fide controversy, pending in the U.S. Circuit court, at Chicago, but in the name of Carl vs. Prallance. I told Mr. Williams that I was tired of that mode of doing business, but was willing at any time to meet him before the Supreme, <sup>at any time,</sup> where I could have a fair hearing, on the question. He proposed that if I would agree to meet him at the first term of the court to be held at Ottawa, that he would dismiss this suit, at Chicago, and bring a suit for the same land at Peoria, and let a judgement be entered pro forma, and an appeal taken to this court, at its last term, and the case argued here then. All this was carried out in good faith on my part, but it now seems that the parties were at the same time endeavoring to forestall the opinion of the court, by urging for a decision on the ex parte case, before I could

be heard in this. They had the fixing of the  
facts on both sides in the first case, and  
~~and~~ on their own side in this, and if,  
under such circumstances as these, they  
are hurt, they ought to be satisfied, at least  
quiet.

C. Ballantr.

~~135~~ 338  
A Williams

Mr

C B Zalloua

Filed April 28, 1860  
L. Deland  
Clerk

Archibald Williams }  
24. }  
Charles Ballance }

To the Honorable the Supreme Court  
of the State of Illinois. —

Your petitioner respectfully but earnestly asks your honors to grant him a re-hearing of this case. It is the first time in the course of his practice that he has made such an application & he would not now make this application if he had not a strong & decided conviction that your honors under a heavy pressure of business had failed to bring to the consideration of the case the attention which its importance required

That conviction is founded upon the history of the action of the court upon the question involved & the history of this particular case as well as the character of the opinion under review. In *Ballance vs Ripson* 12 Illinois 329. Ballance claimed under the same patent that he does in this case & against precisely the same kind of title as in this case. The Court in that case say "we inclined to the opinion that so much of the land within the ancient village of Peoria, as was confirmed to the settlers and inhabitants by the act of 1823, was, by the terms of that act, necessarily withdrawn from sale, or further appropriation; & consequently, that the defendant acquired no title as against the claimants or their legal representatives, by virtue of his prescription & subsequent

entry. The lots claimed were by the provisions of that act set apart & appropriated to a particular purpose, they were thereby severed from the mass of the public lands, they ceased to be the subject matter of public sale, or private entry."

The case of Edwards vs Koonil decided by this court at the Term 1865 presented the precise question involved in this case & the court unanimously decided against the defence. It is true that at the instance of Mr. Bullance the court withheld their opinion and permitted Mr. Bullance to withdraw the record from the files of the court.

The present case was argued & submitted one year since & after eight months the Chief Justice delivered his opinion in which he says the question in this case is whether the patent issued to Charles Bullance in 1838 created in him a claim & color of title made in good faith to that portion of the land described in the patent which subsequently proved to be embraced within a French claim as specified in the following clause inserted in the patent: "Subject however to the rights of any & all persons claiming under the act of Congress of 3<sup>rd</sup> March 1823, entitled an act to confirm certain claims to lots in the village of Peoria in the state of Illinois."

The Chief Justice then proceeds to decide that Bullances Patent did create in him claim & color of title &c & that he had made out a good defence under the limitation law of 1839. But when reminded that there was no proof

of the payment of taxes as required by that act. The case was again taken under consideration the present opinion written by the Chief Justice is the result of that consideration. It is with deference & respect submitted that that opinion is according to all the principles of the Law applicable to the case as ~~indefensible~~ <sup>indefensible</sup> as the former one.

The Chief Justice says "that the patent to Ballance was a sufficient title to satisfy the requirements of the Statutes of limitations of 1835 we have already decided in the case of Lender vs Kidder - anti & the only remaining question is wheather the defendant has the possession required under by the Statute under this title. The patent is for the South West fractional quarter of section Nine in town eight North of Range eight East of the third meridian & was issued in January 1838. As early as 1832 Ballance made a claim to this fraction & commenced making improvements but resided on an adjoining quarter most of the time till 1844, when he moved into a new house he had built on the fraction. In the mean time he had laid out the fraction into town lots & leased the one in question to Cole who has by himself or sub-tenants occupied the premises. Under that lease as tenants of Ballance ever since did Ballance occupy the premises described in the patent. since 1844 by actual residence thereon? the fact simply is that he did."

Now it is respectfully submitted that Ballance never occupied the lot in question at all, his occupation of a part of the quarter which belonged to him was no occupation of an-

-other part of the same quarter which did not belong to him.

His entry upon the first was a rightful entry. Upon the latter it would have been wrongful to hold that an entry upon land which belonged to him would also be an entry upon other land which did not belong to him, would be to make him a trespasser by construction - But this question is clearly settled by authority the statute of 1835 was copied from a statute of Kentucky & by a well known canon of interpretation it was <sup>adopted</sup> with the construction which has been put upon it by the Kentucky courts. In Kentucky where two patents interfere & the owner of the junior patent settles upon part of the land embraced in his patent - but not on any part of the land covered by the elder patent. the decisions are numerous & uniform that his settlement & possession does not extend to the interference.

The junior patentee entering upon his patent interfering with the elder grant but not within the lapse or interference does not acquire possession in <sup>fact</sup> part of the interference.

Bodley vs Logue 29 J. Marsh 255. -

Smith vs Mitchell 1 A. K. Marsh 207

When a party takes possession of land without the elder grant & afterwards extends his possession over a portion of the elder grant the limitation commences from the time he makes such extension Smith vs Morrow 10 Barr. 239.

When there is no adverse possession there can be no doubt a man by an entry into a tract of land may acquire possession of the whole provided he may lawfully enter upon the whole but to construe an entry into that part

to which he has a right to be to give him possession of an other part to which he has no right would be making an act which was right in itself tortious by construction.

*Fribble vs Smith* 4 Bibb 257. see also

*Braydall vs Speed* 1 A.K. Marsh 106

*Calk vs Linn* 1 A.K. Marsh 346

*McCawin vs Salmon* 11 B Mon 98.

*Roberts vs Long* 12 B Mon 197.

But here the case is much stronger. There is no pretence that Ballance resided on any part of the quarter previous to 1844. & before that time he had divided the quarter into town lots & actually leased the lot in question for ten years to Cole. The only purpose of dividing the quarter into town lots was to sell the lots to different individuals. & How the appropriation of one of these lots to his Ballance's own use as a residence & building a dwelling house thereon & residing in it extends his residence over all the other lots in question difficult to comprehend. It is believe<sup>d</sup> that his residence would be limited to the lot thus appropriated & would not extend to other lots of which he was the absolute owner; but however this may be it could not extend over lots which he had sold either in fee, in fee Tail, for life, or for years. The purchaser in either of the cases would be entitled to the possession. An entry by Ballance would be tortious and he could be turned out as a trespasser. Ballance had sold this lot to Cole for ten years before he resided on any part of the quarter. During the ten years, he Ballance had no right to reside on or occupy it & the record shows that it was during all that time in the actual occupation of Cole, & his tenants, the only persons who had a right to occupy it. For the purposes of

the limitation law, the possession of Cole may be regarded as  
the possession of Ballance. But in determining the nature <sup>and</sup> character  
of that possession we must look to the manner in which Cole  
occupied the lot & not to the manner in which Ballance  
occupied a different lot. Cole was the only person who did  
or could legally occupy this lot. ~~The question whether~~  
he occupied it by actual residence thereon must be determined  
alone by his occupation & it is not pretended that he occupied  
it by residence. The court then erred in deciding what they  
say was the only question in the case.

But it is submitted that there was another question  
in the case worthy of the consideration of the court but  
which your honors seem entirely to have overlooked

That is whether the holding of Ballance subject to the  
title of the plaintiff was adverse to that title. If this question  
is to be decided by the law as uniformly decided by the courts  
in England and this country, it can only be held that his  
possession was not adverse but in subordination to the  
plaintiff's title.

Chief Justice Marshall ~~has~~ ~~expressly~~ ~~said~~  
~~in~~ ~~the~~ ~~case~~ ~~of~~ ~~Kirk~~ ~~vs.~~ ~~Smith~~ 6 Curtis 52.  
says one of the rules applicable to limitation laws, "which  
has been recognized in the courts of England, & in all others  
where the rules established in those courts have been adopted  
is that possession to give title must be adversary - the word  
indeed, is not to be found in the Statutes, but the plainest  
dictates of common justice require that it should ~~be~~ be  
implied."

It would shock that sense of right which must be felt equally by legislators & by Judges, if a possession which was permission & entirely consistent with the title of another, should silently bar that title - Several cases have been decided in this court, in which the principle seems to have been considered as generally acknowledged (in the state of Pennsylvania particularly), it has been expressly recognized. To allow a different construction would be to make the statute of limitation a statute for the encouragement of fraud. - A statute to enable one man to steal the title of another by professing to hold under it. No laws admit of such a construction. This court in the case of *Turney vs Chamberlain* 15 Illinois R. 273. says "To constitute an adverse possession sufficient to defeat the rights of action of the party who has the legal title, the possession must be hostile in its inception, & so continue without interruption for the period of twenty years - It must be an Actual, visible & exclusive possession, acquired & retained under claim of title, inconsistent with that of the true owner"

In the case of *Kirk vs Nichols* 2, 3 Marshall 169. & the court say "It is an universal rule of law, as well as a principle of justice and policy, that the possessions shall be held according to the title under which it is acquired."

The rule is admitted by the counsel for the appellants. But he insists that it applies only to the relation of Landlord & tenant, by express contract; and that therefore a person who is put into possession by the act of the law

independently of the force of will or agency of the heirs or devisees, is not embraced by the reason of the rule. We think differently: In either case, the reason is the same, In each good faith exacts of the tenant the same allegiance, to the title under which possession was acquired, and in each therefore, the law will equally protect the rights of the reversioner. In *Smith vs Burtis*, 9 Johnson 180, the court say "The possession for ever so long a time, stripped of the circumstance, that it is unaccompanied with the claim of the entire title, will not amount to an adverse possession, barring those who have the real and legitimate title." — In *Jackson vs Sears*, 10 Johnson 440 the court say "The acceptance of a deed of the premises in 1786 from his parents, by Henry Misabough, the father of the lessor of the Plaintiff, does away the force of the testimony of Rev. Kaffellow, that he had previously held adversely to the rightful title of his mother, or if he had previously so held, the adverse possession then terminated, and he held under his parents such right as the deed conveyed."

In *Jackson vs Cairns*, 20 Johnson 306, the court say "We perceive then, that Rogers' continuance in possession after the termination of the estate, he held in the right of his wife, was a tenancy at sufferance — not tortious as regarded the true owners, and consequently not hostile or adverse to their right. Her claim of title, and building on the premises, can have no effect, for it does not appear that was ever brought home to the knowledge of the lessors,

I do not intend to admit that had the claim been known to them, that a mere claim of title, by a tenant at sufferance, would create a disseisin or a possession adverse, to the true owner." In Popcroft v Allett, 16 Curtis 148, The Court say of a clause in a deed precisely similar to the clause in the Ballance patent, that it was a condition in the nature of a covenant real running with the land, and binding on all persons who claim title through such deed.

The idea of one man holding the possession of land in subserviency to the title of another could not be expressed in more apt terms, than those used in Ballance's patent "To have & to hold" "to hold" the land subject to the rights of the Plaintiff. Suppose Ballance to have taken possession of the land under a deed absolute on its face - declaring, at the time of doing so & during the continuance of his possession, that he held the land subject to the rights of the Plaintiff. No person would pretend in that case that his possession would be adverse to the title of the Plaintiff - Yet that case would be no stronger than the present one - Ballance by his patent is repeating, that declaration continually and that declaration is in the nature of a covenant real running with the land & binding on all who claim title through the patent. He cannot whilst he claims through that patent hold adversely to the right of the Plaintiff because he is under covenant to hold subject to it. - (See also 9<sup>th</sup> Johnson 167.)

At any rate before his possession can be adverse he must openly disclaim holding in subjection to his

right & notice of this disclaimer must be brought home to  
the Plaintiff - In <sup>Ziller</sup> ~~Ziller~~ lessee vs Eckhart, 16 Curtis 120  
this Court says that "Where possession was originally  
taken and held in subordination to the title of the real  
owner, a clear, positive, and continued disclaimer and  
disavowal of the title, and assertion of an adverse right  
and be brought home to the party, are indispensable  
before any foundation can be laid for the operation of  
the statute, otherwise the grossest injustice might be  
practiced; for without such notice, he might well rely  
upon the fiduciary relations under which the possession  
was originally taken and held, and upon the subordi-  
nate character of the possession as the legal result of  
those relations."

Now there is not a particle of evidence, that  
such a disclaimer was ever brought to the  
notice of the plaintiff or those under whom  
he claims,

Archibald Williams

Archibald Williams

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vs

Charles Bellance.

Petition for re-hearing

Filed April 23, 1860

L. Leland

Clk

Be it remembered that on the  
Twenty sixth day of November in the year of  
our Lord one Thousand Eight Hundred and  
fifty eight, there was filed in the circuit court  
of the County of Peoria and State of Illinois a  
Declaration in the words and figures following  
to-wit:

Declaration

In the Circuit Court of the County  
of Peoria Nov - Term 1858

Archibald Williams

vs  
Charles Ballance  
Henry Kellogg

1 } Exponent

2 }

3 }

Archibald Williams

Plaintiff in this said Complaint of Charles Ballance  
and Henry Kellogg the Defendants in this said  
for that whereas on the first day of January  
A.D. 1858 at the County of Peoria the said  
plaintiff was possessed of the following described  
real Estate to-wit:

Part of the South West fractional quarter  
of Section nine (9) in Township Eight (8) North  
of Range Eight (8) East of the fourth principal  
Meridian and known and designated on the  
plat and Survey of the Village of Peoria as appro-  
ved by the Surveyor General for the States of

2 Illinois and Missouri on the 1<sup>st</sup> day of September  
AD 1840 as claim Number Fifty nine (59) in  
said Village of Peoria. The title to which he claims  
in fee. And the said plaintiff being so posses-  
sed thereof, the said Defendants on the 2<sup>nd</sup> day  
of January AD 1858 Entered into said premises  
and unlawfully withheld from the plaintiff the  
possession thereof to the Damage of the  
said plaintiff One Hundred Dollars, and therefore  
he brings Suit. - N N Purple,

Att'y for plff

And thereupon afterwards on said  
Twenty-sixth day of November AD 1858 the  
said Defendants <sup>filed</sup> their plea to said Declaration which  
plea is in the words and figures following to wit

Pls

Archibald Williams

vs

Charles Ballance

Henry Kellogg

In the circuit court of  
Peoria County -

Nov. Term 1858

And now come the said De-  
fendants the said Charles Ballance in Person and  
the said Henry Kellogg by his Attorney Charles Bal-  
lance and defend the force and injury whereof  
and say that they are not guilty of unlawfully  
withholding the possession of the premises in  
said Declaration described from the said plaintiff  
and this they pray may be enquired of by the County  
&c

3 Nov. 24, 1858. Balance for Defendants

Proceedings before the circuit court <sup>at a</sup>  
<sup>term thereof</sup> began and held at the Court house in the city  
of Peoria within and for the County of Peoria and  
State of Illinois on the third Monday of November  
in the year of our Lord One Thousand Eight Hundred  
and fifty eight (it being the fifteenth day of  
said month) The Honorable Elisha A. Powell  
Judge of the sixteenth judicial circuit of said State  
presiding

Friday November 26<sup>th</sup> 1858

Incognit

Archibald Williams

Ejectment

vs  
Henry Kellogg  
Charles Ballance

This day came the parties  
and by agreement a jury is waived and this cause  
is submitted to the Court for trial and the  
Court being fully advised in the premises, by the  
consent of parties do pro forma find that  
the said Defendants are not guilty of unlaw-  
fully withholding the possession of said premises  
in said plaintiffs declaration mentioned, It is  
therefore further ordered and adjudged that the  
said Defendants have and recover of the said  
plaintiff their cost in this suit in that behalf  
expended, and that ~~they~~<sup>they</sup> have Execution therefor

4 Whereupon the said plaintiff prayed an appeal to the Supreme court, which by consent of parties is allowed without any bond or security being given for the prosecution thereof.

And afterwards <sup>Said 26th day of November A.D. 1858</sup> said plaintiff filed a bill of exceptions to the Opinion of the Court in this cause, which bill of exceptions are in the words and figures following to-wit:

<u>Bill of Exceptions</u>	Archibald Williams	Ejectment for French
	vs	Claims 1759 in Peoria
	Charles Ballance	In the Circuit Court of
	Henry Kellogg	Peoria County Illinois

Be it remembered that upon the trial of this cause the plaintiff to maintain the issue on his part offered and read in evidence 1<sup>st</sup> an act of congress entitled

"An act for the relief of the inhabitants of the village of Peoria in the state of Illinois" Approved May 15. 1820

2<sup>nd</sup> An act of congress entitled "An act to confirm certain claims to lots in the village of Peoria in the state of Illinois" Approved March 3<sup>rd</sup> 1823

3<sup>rd</sup> The Report of Edward Lewis Register of the land office at Edwardsville made in pursuance of said first recited act to the Secretary

5 of the Treasury of the Treasury of the United States on the 10<sup>th</sup> November 1820 and printed in the third volume of American State papers containing documents legislative and Executive of the Congress of the United States in relation to Public Lands from the first Session of the first Congress to the first Session of the Twenty-third Congress from March 4, 1789 to June 1834 selected and Edited under the authority of the Senate of the United States by Walter Jones Secretary of the Senate on pages from 421 to 431 inclusive

1<sup>st</sup> A certified Copy of the Survey and plat of the village of Peoria made in pursuance of the act of Congress aforesaid and under the direction of the Surveyor General of the States of Illinois and Missouri, and approved by said Surveyor on the 1<sup>st</sup> day of September AD 1840. which said plat and Survey is as follows (Here insert the Same)

2<sup>nd</sup> A certified Copy of a separate plat of said Lot or French Claim No (59) <sup>is as follows</sup> being the land for which the Suit is brought which, (Here insert the Same)

3<sup>rd</sup> A deed from John Baptiste Blondeau to Adam W Smyar dated the 22<sup>nd</sup> day of October AD 1825.

This Indenture, made and concluded this twenty second day of October in the year of our Lord One Thousand Eight Hundred & twenty five between

John Baptiste Blondeau of the County of St Clair  
State of Illinois of the one part & Adam W Snyder  
of Peoria do prob. County & State aforesaid of the  
other do hereby testify that the said John Baptiste Blondeau  
for and in consideration of Five Dollars to him in  
hand paid by him the said Snyder, and him the  
said Snyder forever therefrom discharged have this  
day sold, bargained, granted, released & confirmed  
to the said Snyder his heirs and assigns forever  
a certain Lot or parcel of land, lying and being  
at a place called Peoria, near or about Fort  
Clark on the Illinois River in the County of Peoria  
& State of Illinois, described on the list of lands or  
lots entered in the Land Office at Edwardsville  
One half acre lot bounded as follows, Eastwardly  
by a Lot owned by John De Mouchelle, Southwardly  
by a Lot of Francis Defie, be the same more or less  
to have and to hold the same to him the said  
Adam W Snyder his heirs and assigns forever, with  
all and singular the rights and privileges thereto belong-  
ing, and further the said John Baptiste Blondeau  
for himself and his heirs the premises aforesaid to  
the said Adam W Snyder & his heirs forever warrant  
and defend against the legal claim or claims of  
all persons whatsoever. In testimony whereof the  
said John Baptiste Blondeau has hereunto set  
his hand and affixed his seal the day and  
date above written

7  
Signed sealed and delivered

in presence of -

Forster Amistead, O'Beiter

Jean Baptiste <sup>his</sup> Blondeau <sup>Seal</sup>  
mark

State of Illinois, <sup>27th</sup>  
St Clair County, <sup>3</sup> Personally appeared before me  
the undersigned Justice of the  
peace for St Clair County and state of Illinois the  
within named John Baptiste Blondeau and he  
acknowledged the within deed of bargain and sale to  
be his voluntary act and deed and requested the  
same to be recorded as such - Witness my hand  
and seal this 22<sup>nd</sup> day of October 1825.

Joseph Frolier JP Seal

State of Illinois, <sup>4</sup>  
St Clair County, <sup>3</sup> <sup>27th</sup> I John May clerk of the  
county Commissioners Court of the said County  
St Clair (and ex officio recorder of Civil Commission)  
do hereby certify that Joseph Frolier Esquire  
the person whose name is subscribed to the foregoing  
certificate was at the time of executing the same  
an acting justice of the peace of said County  
and duly commissioned and qualified and to all  
such his official acts full faith and credit  
are and ought to be given - In witness whereof  
I have hereunto set my hand, seal of said Court  
at Bellville this Twenty seventh day of July in  
the year of our Lord Eighteen hundred and thirty  
five, and of the Independence of the United States

of America to wit -

Seal

John May

State of Illinois  
Pena County I James S Barkman clerk  
of the Circuit Court and Offices Recorder for the  
County of Pena in the State of Illinois do hereby  
certify that the foregoing is a full and correct <sup>copy</sup> from  
the Records of a Deed and of the certificates thereto  
as the same stands recorded on pages 183-4-5  
in Book E in the Recorders Office of said County -  
In witness whereof I have hereunto set my hand  
and affix the seal of said Court at my Office  
in Pena the County <sup>Eight</sup> ~~15~~ day of July  
A D 1856 James S Barkman Clerk of the Court

4th A Deed from Adam W Snyder & wife  
to Alfred Cooles dated July 24<sup>th</sup> 1835, which  
said Deed is as follows

This Deed made this 24<sup>th</sup> day of July  
in the year of our Lord One Thousand Eight Hundred  
and thirty five between Adam W Snyder and  
Adelaide Snyder wife of the said Adam both  
of the County of St Clair and State of Illinois of  
the first part and Alfred Cooles of the same  
County and State of the second part Witnesseth  
that the said Adam W Snyder and Adelaide his  
wife for the consideration of one thousand and  
Eighty five Dollars to them in hand paid by the

9  
Said Alfred Cowles and him the said Alfred  
therefrom forever discharged have given, granted,  
bargained and sold to the said Alfred Cowles his  
heirs and assigns forever the three following aforesaid  
lots of land situate and being in the Village of Peoria  
in the County of Peoria State of Illinois to wit,

One lot containing one half acre fronting on the  
Illinois River and known as lot belonging to Jean  
Baptiste Blondeau as marked and entered in the  
Registers Office at Edwardsville. Two other lots  
of one half acre each, one fronting the Illinois river  
the other immediately in the rear of said first lot  
and numbered by Hamiltons survey as lots numbered  
thirty three and thirty four and marked as Lots of  
Antoine Ray, each lot supposed to contain one  
half acre each be the same more or less to have  
and to hold the above mentioned and described  
three lots of ground to him the said Alfred  
Cowles his heirs and assigns forever. And the  
said Adam W Snyder and Adelaide his wife  
for themselves and their heirs do covenant to  
and with the said Alfred Cowles his heirs and  
assigns that they are well seized of the premises  
and they will forever warrant and defend the  
same to the said Alfred Cowles his heirs or  
assigns - In testimony whereof the said  
Adam W Snyder and Adelaide Snyder have  
hereunto set their hands and seals the day and

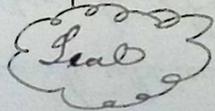
year and above written

signed sealed &  Adam W Snyder   
delivered in presence of  Adelaide Snyder 

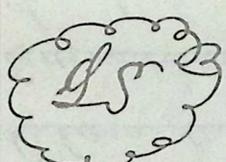
State of Illinois } Personally came and appeared  
St. Clair County } before me on the 27<sup>th</sup> July  
1835 the undersigned Justice of the Peace in & for  
said County & State the within named Adam W  
Snyder and Adelaide Snyder his wife who are  
personally known to me as the real persons who  
signed the foregoing deed and acknowledged to  
have signed and sealed the same for the purposes  
therein contained of their own free will without  
fraud or collusion and now at the same time came  
Adelaide Snyder wife of the said Adam W Snyder  
who first being examined by me separate and apart  
from her said husband, freely acknowledged to have  
signed & delivered the within deed of her own  
free will without the threats or persuasion of  
her husband, and desired the same to be recorded  
as such, and that she relinquishes her  
dower therein John Murray J.P. 

State of Illinois } I John Hay Clerk of the  
St. Clair County } County Commission   
(And ex-officio recorder of civil Commissions) do hereby  
certify that John Murray Esq - the person whose name  
is subscribed to the foregoing certificate was at the

11  
time of Executing the same an acting Justice  
of the peace of said County duly commissioned  
and qualified and to all such his official  
acts full faith and credit are and ought to be  
given. In testimony whereof I have hereunto  
set my hand and seal of said Court at at  
Belleville this first day of August in the year  
of our Lord Eighteen hundred and forty five, and  
of the Independence of the United States of America  
the eightieth

 Seal

John May Clerk

State of Illinois } I James S Barkman Clerk  
Peoria County } of the Circuit Court and Ex-  
- officio Recorder for the County of Peoria in the  
State of Illinois do hereby certify that the foregoing  
is a full and correct copy from the records of a  
Deed and of the certificates thereto as the same  
stands recorded on pages 185-6-7 in Book E in  
the Recorder's office of said County - In witness  
whereof I have hereunto set my hand and affix  
the Seal of said Court, at my Office in Peoria  
 the twenty eighth day of July AD 1856  
James S Barkman Clerk

8<sup>th</sup> Deed from Alfred Cowley to the  
Plaintiff Archibald Melvin's dated the 16<sup>th</sup>  
day of September AD 1857 which said deed

is as follows

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"Know all men who see these presents that I Alfred Cowles of the County of Santa Clara and State of California for the consideration of Five Thousand Dollars to me in hand paid by Archibald Williams of Quincy in the State of Illinois have given, granted, bargained, sold and confirmed, and for the consideration aforesaid do hereby grant bargain sell and confirm unto the said Archibald Williams and his heirs forever All of a certain piece or lot of land in the City of Provia, State of Illinois, being French Claim Lot No Fifty nine as contained in the Report of Edward Coles, and confirmed to John Baptiste Blondeau, being the same lot conveyed by said John Baptiste Blondeau to Adam W Snyder and conveyed by said Snyder to Alfred Cowles with the privileges and appurtenances and appurtenances to the said Archibald Williams and his heirs. To Have and to Hold to the said Archibald Williams the said granted and bargained premises with the appurtenances to him and his heirs forever. And I the said Alfred Cowles for myself and heirs, covenant, to and with the said Williams his heirs and assigns to warrant and defend the said granted and bargained premises against all claims,

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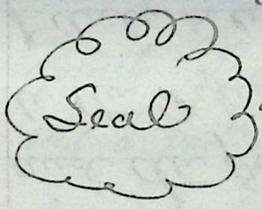
on my part, or the part of any person or persons claiming or to claim of by through me. In witness whereof I have hereunto set my hand and affixed my seal at San Jose in the County and State aforesaid on the sixteenth day of September 1857

Alfred Cowles 

State of California

County of Santa Clara  $\frac{2}{3}$  On this sixteenth

day of September AD One Thousand Eight Hundred and fifty seven before me John B Hewson a County Clerk in and for said County personally appeared Alfred Cowles to me personally known to be the individual described in and who presented the annexed instrument and acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned and I further certify that said Deed is executed in conformity with the laws of this State. In witness whereof I have hereunto set my hand and affixed my <sup>official</sup> seal the day and year

 Seal

first above written

John B Hewson County Clerk  
By Levi P Peck Deputy

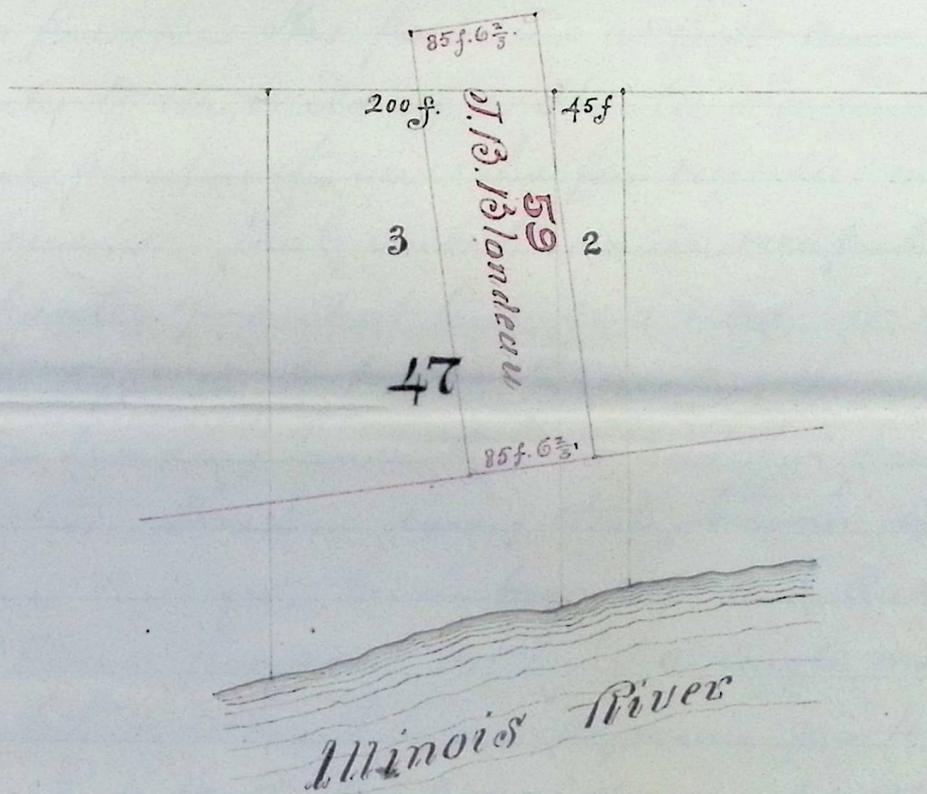
The plaintiff further proved that the lot in controversy was situated on the South West fractional quarter of Section nine in Township

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Eight North of Range Eight East of the  
 fourth principal meridian in Peoria County  
 Illinois, That said fractional quarter was laid  
 out into Town lots by survey duly authenticated on  
 the 18<sup>th</sup> day of February 1846. That the survey  
 and the plat of the same was acknowledged  
 by the Defendant Ballance on the 10<sup>th</sup> of April 1846.  
 & duly recorded in the Office of the Recorder of Peoria  
 County; And that the annexed plat marked  
 "A" is a correct representation of claim (59)  
 for which this ~~action~~<sup>action</sup> is brought as laid down  
 upon Lot two (2) and three (3) in Block forty  
 seven (47) in said Ballance's addition to Peoria  
 as surveyed & platted acknowledged and recorded  
 as aforesaid; the red lines, marks, writing and  
 numbers representing the said plaintiffs French  
 claim and the black lines, figures &c the said  
 Ballance's addition to Peoria aforesaid  
 (Here insert the plat)

15-

"A"



The red lines in the above plat represent French Claim No. 59. The Black lines represent a part of Ballance's Addition to Texas as surveyed by him on the S.W. 1/4 of Section nine in T. 8 North of Range 8 East of the fourth principal Meridian

17- The Defendant then proved that Charles Ballance took possession of the South West fractional quarter of Section Nine (9) in Township Eight (8) North of Range Eight (8) East of the fourth principal meridian in the Spring of 1832 as a squatter with a view of obtaining a pre-emption right under any act of Congress that might be passed. His possession at first amounted only to the building a shanty or inferior house and planting the seeds of a few vegetables in a small inclosure. That said Ballance occupied said Shanty for a short time as a residence but getting the place in so bad a habitation he removed to a boarding house kept on another part of said Section. Sometime during that Summer said Ballance enlarged his improvements and enclosure to three or four acres, but being a single man he continued to board on an adjoining quarter of said Section until the fore part of the year AD 1834 when he bought a house and commenced house keeping with a Sister on said adjoining quarter Section, and kept house with her until the 24<sup>th</sup> March AD 1836 when he was married and lived in said house with his wife and other members of his family until the month of May AD 1844. In the year AD 1842 said Ballance commenced building his present residence which is a large two story Brick house on said South West quarter Section, and got it so

200  
far completed that in May 1844 he removed  
with his family from said former residence into said  
new Brick house and has resided there with  
his family ever since - In 1834 he enlarged  
his improvement and continued to enlarge it from  
time to time until by 1840 he had not less than  
fifty acres of it in cultivation and has cultivated  
a large portion of said tract every year since the  
year 1834, and during all that time he has  
claimed to be the owner and in possession of all  
of said South West quarter until as he sold or  
leased portions of it and Surrender such portions  
to the purchasers or lessees. From the time said  
Ballance took possession of said tract of land as  
aforesaid until 5<sup>th</sup> April 1832 he claimed as  
a squatter merely; from the 5<sup>th</sup> April 1832 to  
the 9<sup>th</sup> June 1836 after which he claimed to be  
in possession, also by virtue of the pre-emption  
law of that year and by virtue of those two pre-  
emption laws and proofs filed in the land office  
at Quincy in pursuance thereof, and the certifi-  
cate of the Register of the Sufficiency of said  
proofs until the 27<sup>th</sup> day of November 1837 when  
said Ballance entered said quarter section of land  
at the Land Office at Quincy and received from  
the Receiver of said Land Office a duplicate  
receipt a copy of which signed "Thomas Carlin"  
is hereto attached, and a receipt from the Register

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of said Land Office signed Samuel Leach  
which is also hereto attached and by virtue  
of these papers he also held possession of said  
premises until the issuing of the patent from  
the United States to said Ballance on the 24<sup>th</sup>  
January 1838 a copy of which signed Martin  
Van Buren is hereto attached, which said copy  
marked severally "C" "D" & "E" are hereto  
attached and are as follows

Per Act 1836

Receiver Office Quincy Illinois

No. 13293

27 November 1837

Received from Charles Ballance of  
Perry County Illinois the sum of One Hundred  
and Eighty four Dollars and twenty eight  $\frac{3}{4}$   
cent, being in full payment for the South West  
fractional quarter of Section No nine Township  
No Eight North of the base line of Range No  
Eight East of the 4<sup>th</sup> principle meridian con-  
taining One Hundred and forty seven acres  
and  $\frac{43}{100}$  of an acre at the rate of One  
Dollar and twenty five cent per acre  
\$184.28 $\frac{3}{4}$  Tho Carlin Receiver

Copy

US Land Office Quincy Ill

27 November 1837

I do hereby certify that Charles Ballance

in Lot No (3) in Block No (47) to Almiran S  
Cole for the purpose of a Distillery. That said  
Cole immediately enclosed the same with a high  
and strong fence and built thereon a Steam Dis-  
tillery, a Brick Malt house, several expensive hog  
houses, Corn houses &c. That Henry Kellogg one  
of the defendants was at the time of the com-  
mencement of this Suit in possession of and occupy-  
ing said premises as a Distillery Establishment  
under said lease <sup>made</sup> to said Cole and under said  
Ballance's title. That said premises have been  
occupied by said Cole, Kellogg, & others holding  
under said lease and said Ballance's title continually  
from the time said Cole took possession as aforesaid  
until the commencement of this Suit as a Distillery  
and place of business and they kept their office and  
books of accounts therein but neither of the said  
persons resided on said premises with or without a  
family but each of them had their families  
and residences in the city of Peoria or another  
quarter of said Section about one half mile from  
said premises. Said residences were on high and  
eligible ground for residences. Said Distillery is  
ground in the vicinity of much land subject to  
inundation and not eligible for family residences  
Said inundated land lies immediately opposite across  
the Illinois River

The parties admitted that the Defendants

were in possession of the premises at the time of the filing of the declaration in this cause and at the time of the acceptance of the service of the same and continue still in such possession.

The plaintiff then gave in evidence the application of Charles Ballance to enter said land which is as follows.

Ballance's Application

No 13293 27<sup>th</sup> day of November 1837

I Charles Ballance of Peoria County and State of Illinois do hereby apply for the purchase of the South West fractional quarter of Section Numbered One in Township Numbered Eight North of Range Numbered Eight East of the fourth principal meridian containing One Thousand and forty seven  $47/100$  acres according to the returns of the Surveyor General for which I have agreed with the Register to give at the rate of One Dollar and Twenty five cents per acre, subject however to the rights of any and all persons claiming under act of Congress 3<sup>rd</sup> March 1823 Entitled an act to confirm certain claims to land in the Village of Peoria in the State of Illinois

C Ballance

It was agreed by the parties that the act of Congress aforesaid and the Report of Edward Coates need not be copied into this record, but

that the same might be read and used upon  
the trial of this cause in the Supreme Court in  
the same manner and with like effect as though  
they had been copied at large into the record -  
And it was further agreed by the parties that  
a Judgment pro forma might be entered in  
this case in favor of the Defendants which shall  
be considered in the Supreme Court as though  
entered upon a special verdict upon a trial by jury  
and that the Defendants will enter their appear-  
ance to this cause in the Supreme Court  
without further or other notice upon the plain-  
tiff filing a copy of the record in said Court  
and that said cause shall proceed to trial in  
the same manner as though an appeal or writ  
of Error had been taken or prosecuted in said  
cause; and it was further agreed and stip-  
ulated between the parties that the plat and  
Survey of said French Claims numbered  
H & S as part of plaintiffs Evidence, and  
the plat and Survey of Ballances Addition  
to Peris need not be copied into the record  
but that the same if duly certified may be  
filed or used as part of the record in this cause  
in the Supreme Court

Upon the hearing of the cause the Court  
pro forma gave judgment in favor of the Defendants

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to which said ruling of the said Court the  
plaintiff then and there accepted and requested  
the Court to sign and seal this bill of exceptions,  
which is done

E A Powell Seal

State of Illinois  
Peoria County

I Enoch P. <sup>clerk</sup> Stow, of the  
Circuit Court within and for said County  
do hereby certify that the foregoing is a full  
and complete transcript of the records and  
proceedings of said Court in a certain suit  
between Archibald Williams as plaintiff  
and Charles Ballance and Henry Kellogg, are  
Defendants as the same appears of record and  
on file in my Office



Witness my hand and Seal of  
said Court at my Office in Peoria  
this Twenty first day of December  
A.D. 1858

\$5 Paid for Record



- Said appellant says that in the foregoing record and proceedings there is manifest error in this to wit
- 1st. The Court Erred in finding for defendants.
  - 2- The Court erred in rendering judgment against plaintiff, when by law the finding of Court should have been for plaintiff, and the judgment of Court for plaintiff upon such finding.
  - 3 The Court Erred in not finding for plaintiff and rendering judgment in his favor recovery of premises in controversy & for costs.

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Wherefore & for divers other  
Errors Apparent in said Record  
said appellant prays that  
said judgment be reversed  
William Christian Williams

State of Illinois  
Adams County, & ss

Archibald Williams the aforesaid  
appellant being first duly sworn de-  
poses and says that the matters  
presented by the foregoing Record  
were litigated in good faith  
about a matter in actual con-  
troversy between the parties and  
that the opinion of this Court is  
not sought with any other design  
than to adjudicate and settle  
the law relative to the matter in  
actual controversy between the  
parties to the Record.

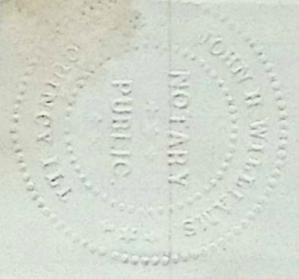
Archibald Williams

Subscribed and sworn to

Before me this 2<sup>nd</sup> day  
of March A. D. 1859.

Geo L Williams

Notary Public



Archibald Williams }  
vs } Error to Petition  
Charles Ballance }

Said defendant says there are no such errors  
in said record as said plaintiff has alleged  
and of this he puts himself upon the court for  
trial &c and prays that said judgment be  
affirmed with costs  
C Ballance

Filed March 15, 1859  
J. A. [unclear]  
Clerk

of [unclear] & [unclear]  
of [unclear]

Charles Ballance  
Henry Hoallog

