

No. 12875

# Supreme Court of Illinois

Loomis et al

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vs.

Ballance

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71641  7

307-210

Lyman J. Rouns

vs

Charles Ballance.

307

1259



Be it remembered that heretofore to wit on the first day of December in the year of our Lord one thousand eight hundred and fifty one there was filed in the office of the clerk of the Circuit Court in and for the county of Peoria in the State of Illinois a certain Bill which with the exhibits thereto attached <sup>and the order of the Master in Chancery</sup> are in the words and figures following, to wit:

Bill

" I the Hon William Kellogg Judge of the Peoria Circuit Court, in Chancery sitting, Humbly Complaining, Sheweth unto Your Honor Your Orator Charles Ballage, that in the Month of May A.D. eighteen hundred and forty seven, one Edward White and Joseph C. Parker, for a valuable consideration entered into an obligation to build a house in Peoria, for your Orator a copy of which obligation is hereto attached and prayed to be made a part hereof; and the original of which, signed with the names and respective seals of said White and Parker will (if required) be produced in court, on the trial of this cause. Said White and Parker never did fulfil said obligation in full, but they furnished some of the materials, and did much of the mechanical work of said house, though not at the time agreed on. During that year to wit A.D. one thousand eight hundred and forty seven, and previous thereto, said Parker had two brothers-in-law, to wit, Lyman J. Loomis and William J. Loomis, (both of whom are hereby prayed to be made defendants to this bill) who were brick layers and plasterers and worked at said business in partnership with said Parker, who was also a brick layer and plasterer. That said White was a Carpenter and joiner, and had a brother-in-law, and



(2)

Some times several persons working with him, in his business of Carpenter and joiner, and was in the habit of making contracts for building houses, and he and his hands doing the wood work, and said Parker and L. J. Loomis and William L. Loomis doing the masonry and plastering under some contract with him, and without any contract or understanding with the person for whom the house was to be built. Under these circumstances, and with the expectation that said White would see that the wood work would be done, and said Parker that the brick laying and plastering would be done by respective hands, said obligation was ~~received~~ <sup>received</sup> by your Orator for the consideration aforesaid. but how they were to procure it to be done, whether by partners, journeymen or apprentices, and how they were to pay them, or whether they should pay them at all, your Orator then deemed and still deems to him wholly immaterial.

Your Orator further sheweth unto your Honor, that when said White and Parker commenced said house they proceeded in the usual way, said White and those in partnership with him or in his employment doing the wood work, and said Parker and Loomis and those in their employment doing the brick laying and plastering, without any engagement by your Orator, or promise to pay any of them, and without any intimation from said Loomis that they would expect your Orator to pay them, but with some understanding (as your Orator believes and therefore charges) with said Parker, either by virtue of a copartnership existing between them, or by virtue of some contract by which he was to pay them in other work, or in some other way understood between themselves, Be this as it may, your Orator charges he never had any contract



(3)  
with said Loomis about said work, unless as partners of said  
Parker, they were interested in said contract with said White &  
Parker. He further believes and therefore charges, that when  
said Loomis' did said brick laying and the most of said  
plastering, it never occurred to them that your Orator was  
responsible or could be made pay for either said brick laying  
or plastering, except as he was liable under his contract with  
said White and Parker, and your Orator believes, and therefore  
charges, that said L. J. and W. L. Loomis knew of the contract  
under which said work was being done, while they were doing it,  
either from having seen said obligation, or from having been  
informed of its contents.

Your Orator further charges that after said brick work  
was done, and said plastering far advanced towards completion  
said Lyman J. Loomis in the presence and hearing of said  
William L. Loomis and one Owen Bosworth, and no one  
else, told your Orator that he would look to your Orator for pay  
and demanded money of your Orator on account of said plastering  
for said plastering, which was not then completed; but both  
of said Loomis' were then at work at it, but your Orator then  
and there promptly refused to pay him any thing on account  
thereof; but then and there, in the presence and hearing of said  
William and said Owen told him, that his [your Orator]  
contract was with said White & Parker, and that your Orator  
would settle with no one else for it. That your Orator had  
plasterers indebted to him, who would be glad to get the job, and  
that if said Loomises were unwilling to look to said White & Parker  
or said Parker for their compensation, they should quit then, and  
do no more work on it, yet said Lyman Lyman and William



(4)  
The defendants herein, did not quit said work, but continued until it was finished, without saying any thing more to your Orator about compensation, and as evidence that said defendants did not do said work for your Orator, nor expect him to pay for it, he charges that they not only never made any contract with your Orator, nor demanded pay, but the one time, and continued to work after being told your Orator would not pay as aforesaid, but when the work was completed they locked up said houses and instead of giving the key to your Orator, gave it to said Parker, from whom your Orator subsequently obtained it.

Your Orator further sheweth unto your Honor, that afterwards, to wit on the            day of            184    said defendants commenced an action of assumpsit, against your Orator in the Peoria circuit court to compel your Orator to pay them for said plastering, but not for the brick work, except that in the bill upon which said suit was brought, there was a small charge for laying a few bricks, about the cellar door or some such thing worth not more than four dollars, but there was no charge for laying the brick in building the houses, nor have they ever yet demanded pay for that. Your Orator knows of no reason for this distinction, for both kinds of work were done under precisely the same circumstances, with this exception, that your Orator never told said defendants to work, or not to work at laying the brick, nor that he would or would not pay them, but with regard to the plastering, he expressly told them he would not pay them. Said suit was pending in said court from the time it was commenced, as aforesaid until the third day of April A.D. 1850, when said defendants obtained a



(5)  
Verdict and judgement against your Orator for the sum of one hundred and eighty dollars and forty cents damages, and cost of suit amounting to about eighteen dollars and seventy seven cents

Your Orator further sheweth unto your Honor that at said April term of said Penna Circuit Court, after said judgement was so obtained, as aforesaid, against your Orator he prayed an appeal from said judgement to the Supreme Court of the State of Illinois, which by the judgement of said Court, was then and there allowed, upon your Orator filing with the clerk of said Court a bond conditioned according to law, with certain security, which bond your Orator duly filed according to law and thereby perfected said appeal.

Your Orator further sheweth unto your Honor that on the thirteenth day of June A D. 1850, a motion was made in the <sup>said</sup> Supreme Court by Orson Peter <sup>Esq.</sup> on behalf of said Lyman and William, and in the absence of your Orator, to dismiss said appeal for the reason that the record had not been filed, within the first three days of the term, which Motion was sustained by said Court, and said appeal was dismissed. Afterwards to wit: on the seventeenth day of said month, your Orator arrived at said Supreme Court, and made a motion to set aside said order dismissing said appeal, and to sustain said Motion filed an affidavit, which was sworn to before I, Leland clerk of said Court, June 17 1850, and a copy of which is hereto attached and prayed to be made a part of this bill. And afterwards to wit: on the nineteenth day of said month, said Motion was overruled by said court, and they refused to re-instate said cause, on their docket.

Your Orator charges that said judgement was unjust,  
1 Because he had no bargain with said William & Lyman



(6)  
but with other men who are paid for it.

2<sup>nd</sup> Because having commenced working with said Parker in laying the brick for said house, and demanding no pay of your Orator, he had a right to suppose they were working on the same terms until they informed him that they would not work under said contract

3<sup>rd</sup> That said Lyman & Williams working on said plastering, after your Orator told them he would not pay them, and if they would not take said Parker or Parker & White for pay to quit immediately, was a complete exoneration of your Orator to pay them for it.

4<sup>th</sup> If said plastering was not done under said contract, with said White & Parker, the suit should have been commenced in the name of said Parker as well as in the names of ~~the~~ said Lyman & Williams, for as the three held themselves out to the world as partners, and generally worked in partnership, they as between them and all the rest of the world were partners in every case where there was not an express agreement to the contrary.

5<sup>th</sup> The work actually done and not paid for was only worth about ninety five dollars, instead of \$180.40. There being about 568 yards of said plastering worth twenty cents, instead of thirty cents, as allowed by the jury.

6<sup>th</sup> Said Lyman & Williams never pretended before said verdict was given, that they were entitled to so much of any one, but in an account thereof rendered by them to said Parker, after it was done, and long before said action was commenced, they only claimed for it, one hundred and sixty six dollars, instead of the sum aforesaid.



(7)  
Your Orator shows unto your Honor, that it was not on account of his fault or negligence, that he did not ~~obtain~~ obtain justice at law, and a resort to a court of equity becomes necessary to obtain justice. For in the first place he could not suppose after said Lymon & Williams ~~had~~ had measured said work and rendered on account of it; they would produce in court a witness who would prove it to be worth more than their own account showed it be.

2<sup>nd</sup> Your Orator knowing that he could prove that his contract was with said White and Parker, and not with said Lymon & Williams, and that they had done the brick work of said house, under some arrangement with said Parker, or White & Parker, and without any pretence that your Orator was responsible, did not suppose it possible that they could recover anything, without showing some assent express or implied, on the part of your Orator, to pay the same, or your Orator could easily have proved that said Loomis were in the habit, as well as other plasterers in Peoria, of doing that quality of work for twenty cents instead of thirty cents per yard, when all materials were furnished by them, and forty cents per yard, when the materials were furnished by their employer. But in this case three dollars and sixty cents worth of nails, and eighteen dollars worth of lathes used in the plastering of said building by said defendants herein, were furnished and paid for by your Orator, and your Orator charges that your Orator bought said materials and put them into the hands of said defendants, supposing they were still working in the employ of said White and Parker, and they used said materials in said building, without informing your Orator that they had ceased working for said White and Parker, and your Orator charged the same in his general account of money and materials



(8)  
furnished said house, and supposed the same would be allowed him in his settlement with said White and Parker; yet the said defendants in their said suit fraudulently concealed the fact, that they had used said materials in said work, and took judgement for the full amount of what they proved said work worth, without allowing for said materials. Your Orator knows of no one by whom he could prove that said materials were paid for, by your Orator, and used by said defendants, in said building except by said defendants, but he could have filed a bill of discovery against them, to obtain said evidence, could he have supposed it at all necessary, and would have done so, but besides your Orator's reasons above given for supposing they could in no event get any judgement, he could not suppose it possible they could get judgement for said materials, when they did not furnish them, and your Orator could not anticipate that any testimony could be, or would be introduced showing that they did furnish them.

3<sup>rd</sup> Your Orator could not procure the testimony of said Oran Bosworth at said trial, for the reason that although said Bosworth had resided in Bond County, and had attended as a witness in said cause, at the instance of your Orator, yet shortly before the term of said court of ~~said court~~ at which said cause was finally tried, he became missing and it was generally reported and believed by your Orator that he had gone to California, but to what part of California your Orator could not learn. Your Orator was however apprehensive that as said Bosworth was supposed to be alive and within the jurisdiction of the United States and might upon sufficient search be found, that a bill of discovery against said defendants to discover said conversation in presence of said Bosworth would not lie.

4<sup>th</sup> By reference to the affidavit aforesaid, it will be seen that the



(9)  
 bill of exceptions was presented in time, and in the form in which it was finally signed, it had alterations in it that were material, and as further evidence of the then materiality the affidavit of Dennis Blakeley Esq. which was used by your Orator in the Supreme Court on his said motion, is hereto attached, and prayed to be made a part hereof.

By reference to said first named affidavit it will be further seen that it was not on account of your Orator's laches that said Record could not be prepared and filed, within the first three days of said Supreme Court, nor was it on account of any laches in him that he was not at said Supreme Court within said time, to ask of said Court further time to file the same, nor was it his fault as appears by the same document, that he had no attorney there to ask that indulgence of said Court, within said time.

Your Orator further charges that were it true that said defendants were entitled to recover of your orator for said work, they would not be entitled to recover said sum, and said defendants know it. In that case the account would stand as follows

### Debit Balance

To L. J. & W. L. Loomis & Co

|                                        |              |
|----------------------------------------|--------------|
| To plastering 568 yards @ 20           | 113.60       |
| Extra work proved by Horseman & Loomis | 4.00         |
|                                        | <hr/> 117.60 |

### Contra Credit

|                  |       |             |
|------------------|-------|-------------|
| By lathing nails | 3.60  |             |
| " lathes         | 18.00 | 21.60       |
|                  |       | <hr/> 96.00 |



So that even if said Orator was bound to pay said defendants, he was only bound to pay them ninety six dollars, instead of said sum of one hundred and eighty dollars and forty cents, the amount of said verdict and judgement.

Your Orator charges however that he owed said defendants nothing and that upon the evidence before the jury they ought not to have succeeded, and if the testimony of said Bosworth could have been got, they could not have succeeded. At all events, the verdict and judgement were \$84.40 too much, and that your Orator had it not in his power to obtain the evidence of said Bosworth, in said circuit court, nor obtain said bill of exceptions properly made out and signed, nor made out and signed at all in time, nor to have said record filed in said Supreme Court within the first three days of the June term thereof in A.D. 1850.

Your Orator further sheweth unto your Honor that afterwards, to wit: on the twenty sixth day of July A.D. (1850) eighteen hundred and fifty, said defendants sued out of the clerks office of the circuit court of Peoria County, a writ of fieri facias against your Orator on said judgement, directed to the Sheriff of said County to execute, which writ came to the hands of one Clark G. Cleveland, who acted as the deputy of one William Compher who had before that time acted as the Sheriff of said Peoria County, and that said Cleveland, in his character of deputy as aforesaid, on the twentieth day of September A.D. eighteen hundred and fifty, levied said writ of fieri facias on certain real estate belonging to your Orator, to wit: lot No Twelve, in Block No forty three, in Bigelow & Wadsworths addition to Peoria, and also on the South West quarter of section twenty three, township



(11)

No Nine North of the base line, and range Eight East of the fourth Principal Meridian. And afterwards, to wit on the second day of November A.D. 1850, said Cleveland acting, or professing to act as such deputy sheriff, sold both said lot and tract of land, to said Symon and William for the ~~amount~~ amount of said judgment, interest and cost a copy of which execution, and the return thereon as made by said Cleveland, is hereto attached, and ~~part made part~~ hereof. But said return was not made to the said clerk's office until the 31<sup>st</sup> day of January A.D. 1851.

Your Orator further sheweth unto your Honor that neither said Cleveland nor said Compher within ten days after said sale or at any other time filed a duplicate certificate of said sale in the Records office of said Peoria county; but more than ten days thereafter to wit on the thirty first day of January A.D. eighteen hundred and fifty one, one C. V. Smith who signed his name as a deputy of said Compher, filed a certificate of said sale, in said Records office, a copy of which certificate is hereto attached, and prayed to be made a part hereof; and for greater certainty, all the records, papers and documents belonging to said suit between said Symon and Williams, and your Orator are prayed to be taken and considered as a part hereof.

Your Orator further sheweth unto your Honor that either of said pieces of property was, at the time of said sale, worth more than four times as much as said judgment, interest and cost, and that the value of them has not declined any since. Your Orator cannot state with any certainty the value of said property, but supposes said lot twelve worth more than two thousand dollars, and said South West of section twenty three, more than fifteen hundred dollars.

Your Orator further charges that neither said Cleveland nor



(11)

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Your Orator further charges that neither said Cleveland nor



said Smith had any authority in the premises to sell said property on said execution as deputy sheriff or otherwise that said William Compher was not the Sheriff of Peoria County at the time of said sale nor for a long time previous thereto nor has he been since but had long before said sale absconded to parts unknown carrying with him a large amount of money collected in his character as said Sheriff and has not since returned to this part of the world and said Smith, Cleveland and Lyman J. Loomis and William L. Loomis well knew at the time of said sale and purchase that said Compher had absconded as aforesaid yet said Lyman and William well knowing said facts caused said execution to be issued and come into the hands of said Cleveland instead of being issued to the Coroner of said County

Your Orator further sheweth unto your Honor that said sale was not a public but a private sale and although your Orator lives in the City of Peoria and supposes he was in said city on the day said sale purports to have been made he had no knowledge of it nor does he know of any one who had <sup>but</sup> ~~lost~~ the parties concerned in selling and buying said property. According to said Cleveland's return there was but one bid made for both said lot and tract of land and that by the plaintiffs in the execution

Your Orator does not know certainly, but believes and therefore charges that there was no one present at said pretended sale but said Cleveland and said plaintiffs

Your Orator further charges that if said pretended sale should be permitted to stand, by this Honorable Court, the date thereof should not be the second of November A.D., 1850 when it purports to have been made but the thirty first day of January A.D., 1851 when there ~~is~~ was a return thereof made to the clerk and recorder



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Your Orator does not know certainly, but believes and therefore charges that there was no one present at said pretended sale but said Cleveland and said plaintiffs

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4

(13)

For your Orator charges that on said second day of November the mere form of a sale was gone through with but no money paid thereon and said pretended Sheriff refused to make any return thereof because his fees and commissions were not paid, and said pretended Sheriff treated said pretended sale as a nullity until said thirty first day of January A.D. 1851, when said plaintiffs paid said Cleveland his fees and commissions on said sale and he then, but not until then, elected to treat said transaction as a valid sale on the second day of November A.D. 1850. What authority said Smith had for certifying to a transaction which he seems to have had no hand in, and of which he does not appear to have had any knowledge, is not apparent, but if the certificate signed by him is to be deemed of force, it is manifest from it, as well as from the return of said Cleveland, that said sale is void for the further reason that a tract of land in one township and a city lot in another township were sold together, whereas a small portion of either would have been sufficient to pay said judgment, interest and costs.

Your Orator further charges that said plaintiff in said action at law did not pay to said Sheriff any part of said judgment except the costs and commissions and that if said sale should be set aside and said judgment sustained it would again be a lien on your Petitioners real estate and your Orator charges that he has a great abundance of unincumbered real estate to satisfy said judgment interest and costs.

All of which actings and doings of the said defendants are contrary to equity and good conscience and tend to the manifest injury of your Orator. In tender consideration whereof, and in as



much as your Orator is without remedy by the strict rules of the common law, and can only have relief in a court of equity, where matters of this nature are properly cognizable and relivable. To the end therefore the said Lyman J. Loomis and William L. Loomis may upon their several, and respective Corporate oaths, to the best and utmost of their several and respective Knowledge, remembrance, information and belief, full, true and perfect answer make, to all and singular the matters aforesaid, and that as fully and particularly as if the same were here repeated and they and each of them distinctly interrogated thereto, and more especially that the said defendants may in manner aforesaid answer whether they and said Parker were not at the time of doing said work or shortly before, partners in the brick laying and plastering business, and if they had been, but had dissolved said partnership, when did they dissolve it? and whether they had notified your Orator or the world of said dissolution, and with whom, if any one, they settled for laying the brick, in said house, and whether they ever had any contract with your Orator for the plastering of said house, and whether the only time they ever spoke to complainant about it I did not promptly refuse to pay, and tell them if they expected him to pay, to quit at once, and whether they did not after this go on and finish said work; and whether your Orator did not buy the nails and lath for said house, and how much of said nails and lath, and whether they did not know of said obligation of said White and Parker, to build said house, and whether said Parker or White and Parker did not pay them or in some manner settle with them for laying the brick, in said house, and whether when they commenced said plastering, they did not expect it to be settled for in the same manner, and



(15)

whether when they finished said work, they gave the possession of said house to your Orator, or whether they gave the possession thereof to said Parker, and whether said Parker did not for some time after keep said house locked up, and whether they or either of them did not see him with the Keys of said house afterwards, and how long afterwards and whether when he so had said Keys, it was not for the avowed object of compelling complainant to pay for said plastering, and whether they or either of them, did not hear said Parker offer to give said Keys to complainant if he would pay for said plastering, and whether complainant did not finally obtain the possession of said Keys from said Parker

and whether said sale was not made privately and who was present at said sale and whether it was not purposely contrived to bring on said sale when no one was present who would be likely to bid thereon and whether any money was ~~paid~~<sup>paid</sup> on said sale and when was it paid and how much was paid And whether said tracts of land and lot are not worth the sum above set forth and if not what are they worth in their opinion And whether said Kompher had not long before said sale absconded from the State of Illinois with a large amount of public money and when he absconded and whether said fact was not known to them or either of them long before said sale and how long before

And that your Orator may have such further and other relief in the premises as the nature and circumstances of this case may require and to your Honor shall seem meet

May it please your Honor to grant unto your Orator not only a writ of injunction to be directed to the said Seymour J. Loomis and William Loomis



(16)  
to restrain them from proceeding at law to collect said judgment but also to  
restrain said defendant and all other persons having or pretending to have  
authority in that behalf from executing any deed in pursuance of said sale  
but also a writ of summons to be directed to said defendants thereby  
commanding them and each of them at a certain day and under a  
certain peris therein to be limited to be and appear before this  
Honorable Court and there full true and perfect answers to make  
to all and singular the premises and further to stand to perform and  
abide such further order directions and decrees therein as to your Honor  
shall seem meet and your Orator shall ever pray &c.  
C. Ballance.

State of Illinois, }  
Peoria County, } ss.

Charles Ballance the Complainant in the above writ  
being first duly sworn deposes and says that the matters and things  
stated in the above bill of complaint to be of his own knowledge are true,  
and as far as they are stated to be upon his information & belief he  
believes them to be true

Subscribed & sworn to

C. Ballance.

before me this 1<sup>st</sup> day of

December A.D. 1851

E. G. Sanger

Master in Chancery P. C.

White & Parker "For value received we or either of us promise to erect for Charles  
contract Ballance on lot six in block forty three in the City of Peoria, viz, at  
the intersection of Washington and Chestnut streets, a two story brick  
house of the following dimensions and description, The main building



(17)

to be 18 by 30 feet; two stories high standing lengthwise to Washington street - front wall to be one and a half brick ~~thick~~ or what is called a twelve inch wall - the other walls all one brick thick - the first floor to be 18 inches above ground - First story to be  $8\frac{1}{2}$  feet between the floor and ceiling but the second story to be 8 feet between them. Lower joice to be 8 inches by two and to be supported by two brick pillars two bricks square each. Those of second story to be same and both to be 20 inches apart - Rafters to be 2 by 4 inches same distance apart - A chimney at each end with a fire place to each below and stone flues above and so constructed as not to smoke fire walls and brick cornice, the cornice of brick moulded with for the purpose if they can be got - A brick wall to be run through the middle from the ground to the square of the building - The joice of the second floor to be well bridged. Two doors in front with glass over them and two behind without glass. Two pair of stairs to wind up between the chimneys and the corner and door to each. Two board partitions up stairs from the middle wall to the end making four bed rooms with a door to each be constructed that from the head of the stairs one may pass into either without going through the other 6 windows of 12 lights of 10 by 12 glass and 4 of eight by ten glass - A cupboard in each lower room in the corner opposite the stairs with panel doors. A back part or ell for two kitchens with a cellar 7 feet between floor and joice. The size to be 14 by 20 The long way to correspond with the house but the roof to run contrary. A brick partition to run through the middle so as to divide it into two kitchens with a cellar to each. The floor to be on a level with or 8 inches below the main floor and 7 feet between the floor and ceiling. An outside ~~side~~<sup>door</sup> to each which may be battened down.



(18)  
2 windows to each with 12 lights 8 by 10 glass - 2 fire places so constructed that one chimney will do for both - A porch to each five feet wide and the length of the kitchen that is fourteen feet long - The whole to be finished in a good plain workmanlike manner, ready to be let to tenants by the first day of September next at farthest."

Affidavit  
sworn to by Coffing

"State of Illinois

Supreme Court June Term A.D. 1850

Charles Ballance

vs

Lyman J. Loomis

William L. Loomis

Appeal from Peoria

Charles Ballance the above plaintiff do solemnly swear that it was my intention after I discovered as hereinafter set forth that I could not file the record in the above entitled cause within the first three days of this court to make a motion within that time for leave to file it afterwards but being engaged at the time both as an attorney and as a party interested in several important suits in the United States Court at Springfield in this State and finding that ~~on~~ <sup>on</sup> account of said suits I could not be in this court in time I sent a telegraphic dispatch from Springfield to Ottawa on the 10<sup>th</sup> day of present month - directed to Mr. Coffing an attorney of this court in the words & figures following, to wit

"Springfield June 11, 1850

Mr Coffing



(19)

move for leave to file record after three days in Lynon Loomis. *Wm L. Loomis vs Charles Ballance* affidavit coming C. Ballance."

On the same day I wrote to said, copying by mail as follows  
"Springfield June 10, 1850

Mr Coffing Atty at Law  
Ottawa  
Ill

Dear Sir

Please receive and file the affidavit  
herewith enclosed and keep the matter pending until I come  
I have telegraphed you to day on the subject.

Yours in haste

C. Ballance

At the same time I enclosed with said letter an affidavit in the  
words and figures following, to wit:

State of Illinois

Supreme Court at

Charles Ballance

vs

Lynon J. Loomis

William L. Loomis

Of the June Term

1850

Appeal from Peoria.

I Charles Ballance the above plaintiff do  
solemnly swear that I cannot file the Record in the above cause  
within the first three days of said term of said Court for the following  
reasons There was a bill of exceptions made out in the case  
by me stating the material facts of the case & as I understood them  
but when I offered it in Court to be signed by the Judge of said



(20)  
Court Andrew Peters Esq<sup>r</sup> the attorney of said plaintiffs objected to it as being incorrect in several particulars and I withdrew it and made alterations in accordance with his suggestions. This was on the eve of the adjournment of said court. As soon as I had time to make said alterations and could find said Judge (the Hon. William Kellogg) to wit: on the same evening I presented said bill of exceptions to said Judge who upon viewing it slightly said he believed it was still imperfect but that he was too much fatigued to attend to it just then but that he would rectify it and sign it at his leisure and send it to the clerk of said court.

About the thirtieth of last month I called upon the Clerk of the Peoria Circuit Court for a copy of the record in said cause with the view of having it filed in this (the Supreme) Court within the first three days of said term and taking the necessary steps to have said cause revised and if possible reversed and was for the first time informed that said bill of exceptions had not been returned. I thereupon on that day or the next wrote to the said Judge at Leanton (his place of residence) to send said bill of exceptions to said Clerk at Peoria. The United States Court commenced its session here on the third day of this month, and it became necessary that I should leave my home at Peoria on the second day of this month to be here in time and I did — Accordingly leave Peoria on that day and came here — (Springfield) When I left home as aforesaid no answer (so far as I know or believe) had been received from said Judge. I am defendant in interest in two important land suits in the United States Court and am retained in other land suits as an attorney in said court.



(21)  
Also soon after my arrival I was summoned on the Grand Jury and have been acting and am still acting in that capacity and applied to the Honorable Thomas Drummond the day before - yesterday to be discharged upon the ground that my business in the Supreme Court requires my attention there. His Honor however refused to discharge me on the ground that that was not a sufficient excuse.

I suppose in a few days I will be in Ottawa and will be able some time during this term to file said Record and further affidavit <sup>saith</sup> not."

I further say that said Judgment is wholly unjust that I did not owe the said defendants the sum of money for which they got judgment nor any part of it and they well knew it then and do yet. That I never employed them to do the work for which said suit was brought but being informed before the work was done that they intended to look to me for pay I immediately distinctly told them I would not pay them and if they intended to look to me for pay to quit at once <sup>yet</sup> they did ~~quit~~ not quit but finished the job.

L. Ballance

Subscribed & sworn to in open court  
this 10<sup>th</sup> June 1850

Wm Pope Clerk

Clerk Court U.S.

Diet: Ill:

For some reason unknown to me said Coffing is not in attendance on said Court and I have been informed and believe that he has not been during the present term. I arrived here but



night, after night, and this morning upon enquiring I found that said telegraphic dispatch had been left by the telegrapher at the Mansion House (the hotel where said Coffing stays when in Ottawa) at which place I obtained it and said letter and affidavit were at the Post Office awaiting the arrival of said Coffing where I obtained them which letter and affidavit will if required be produced in Court on the hearing of the motion in this cause.

I further state <sup>that</sup> after I was discharged from said United States Court and on my arrival at Peoria I received said last mentioned bill of exceptions enclosed to me by mail by said Judge post marked Canton June 6. Said bill of exceptions as drawn by me and given to said Judge was as follows

Lymon J. Loomis

William L. Loomis

vs

Charles Ballance

In Assumpit

Bill of ex-  
ception in  
the above case

Be it remembered that in the trial of this cause the plaintiffs to maintain the issue on their part proved by one Morseman that they had done certain work about the cellar and had done all the plastering of a brick house belonging to defendant and that they furnished all the materials for plastering the same also the labor in preparing the materials &c. He also testified that he was a laborer on said building and that during the time the walls were being erected Joseph B. Parker and said Plaintiffs worked together as masons on said building said Parker taking the lead and acting as foreman and that sometimes defendant was about and gave in



(23)  
directions but was away from home a part of the time while the  
plastering was being done. Parker did not assist in the plastering.

Plaintiffs then proved by Luther Card that he had measured  
the plastering of said house and there were 568 yards of it and if he  
had done so he would have charged thirty cents per yard.

They then introduced Leonard L. Loomis who swore he had  
measured the work and found it about the same and the  
price the same the work spoken of was worth four dollars.

Plaintiffs here rested their case and defendant introduced  
after having proved the execution thereof a written contract for  
the building of said house signed by Edward White and Joseph C.  
Parker which is as follows (Here insert it)

~~Defendant~~ Defendant then proved by Miles Bosworth that he had  
done <sup>the</sup> most of the Carpenter and Joiners work. That he had con-  
tracted with said White to do the work and for some time worked  
under said contract but sometime in October 1847 and before  
the work was finished he told defendant he would not work  
any more without a better paymaster but if defendant would  
promise to pay for his future work he would finish it and that  
defendant agreed to do so and he finished the work and defendant  
paid him. That when he commenced working there he was a

stranger to defendant and had never seen him. White at first  
furnished materials but failing to furnish some things defendant  
furnished them. That the first time said White refused to fur-

nish lumber he told witness that defendant was to furnish it.

He thereupon called upon - defendant for it who protested that he  
was not to furnish it but after this defendant frequently furnished  
lumber and other materials. Defendant then offered to prove by



(21)

(1) said witness his defendant's declarations made when he furnished lumber and other materials to the giving of which evidence plaintiff objected and the court sustained said objections

George B. Fridley in behalf of the defendant proved that during the year 1847 Plaintiffs and said Parker worked together as Masons that while they were doing the plastering in said house he made a contract with said Parker to plaster a house for him that after the work was done Plaintiff (Lyman Loomis) called on him for the pay that he refused to pay him because his contract was with another whereupon said Loomis sued him in the name of Loomis Parker & Loomis and both said Parker and Lyman L. Loomis told him they were partners in said business also that said White became in failing circumstances before the work was completed

Defendant offered to prove by Dennis Slattery a Justice of the Peace in Boone County that while said work was progressing had sued before him for money due them for Mason work and sued as partners in the names of Loomis Parker & Loomis to the introduction of which evidence Plaintiff objected and the Court sustained said objection and said evidence was excluded

Jamison Shockley on same side proved that said Parker and Plaintiffs worked together as Masons during the year 1847 and he understood them to be partners

Plaintiffs then introduced said Parker as a witness He said the contract above referred was executed by said White and himself that he and plaintiffs worked at said house



(25)

as Masons until the walls were up That he has furnished the Motor and put up the walls under a contract with said White and the plaintiffs had worked at it under a contract with him That when the walls were up he ceased working at it (3) and plaintiffs continued and did the plastering (4) That he did not inform defendant of the terms upon which plaintiffs were working with him nor that he had ceased or would cease to work because defendant did not ask him To the introduction of this evidence defendant objected upon the ground that said Parker appeared to be an interested witness but the court overruled said objection and said evidence was given to the Jury

Defendant then asked the Court to instruct the Jury as follows (Here insert the instructions as asked for by defendant) which instructions the Court refused to give but instructed the Jury as follows (Here insert the instructions as allowed by the Court) To which decisions of the Court Defendant then and there excepted and prays this his bill of exceptions may be read, signed and made of record which is done

But said Bill of exceptions when returned to me and signed by said Judge was altered as follows In Bowditch testimony at figure 1 said Judge or some one else had interlined the words "in relation to the contract between defendant & Parker White" which not only varies said evidence materially but there was no foundation for said alteration in anything proved on the trial As far from it my avowed object was to show that all I furnished was under a protest

2<sup>nd</sup> Said Bill of exceptions was altered by having all that is said about Dennis Blakely's testimony stricken out whereas said Blakely did testify in substance as is set forth in said bill



(36)

which will more fully appear by an ~~affidavit~~ affidavit of said Blakely herewith shown to the court and prayed to be considered as a part hereof

3<sup>rd</sup> The testimony of Parker is unwarrantably altered by inserting at (3) the words "and abandoned the job altogether."

4<sup>th</sup> By inserting in said Parker's testimony at (4) the words "without direction or his being concerned therein did the plaintiff bring"

5<sup>th</sup> Said instructions had everything about instructions stricken out whereas instructions were offered by defendant which the court refused to give until material alterations were made in them

Accompanying said Bill of Exceptions was a letter to me from Judge Kellogg in which he says "If you & the counsel for plaintiffs can agree upon a bill I will sign another"

I further state that no trial can be had on the merits of the above cause without a correct bill of exceptions can be procured and that cannot be done at the present term of this - unless the plaintiffs attorney would agree with me on the facts of the case

And further affidavit faith not  
C. Ballance

Subsd & sworn to before  
me June 17, 1850  
L. Leland, clk

Copy

The People of the State of Illinois

To the Sheriff of Peoria County, Greeting:

Execution  
Commenced as  
Ballance



(27)

Whereas by the consideration of our Circuit Court, held at Peoria, in and for the county of Peoria, on the third day of April in the year of our Lord one thousand eight hundred and fifty Lyman Loomis and William L. Loomis recovered judgment against Charles Ballance for the sum of one hundred and eighty dollars and forty cents damages, which the said Lyman L. Loomis & William L. Loomis had sustained by reason of the non-performance of certain promises made to them by the said Charles Ballance and also for the further sum of eighteen dollars and seven and one half cents, costs of suit, as appears of record:

We therefore Command you, that of the goods and chattels, lands and tenements, of the said Charles Ballance you cause to be made the aforesaid sums of money, together with interest on said judgment at the rate of six per centum per annum from the time of recovering the same as aforesaid until paid as well as the further sum of seventy cents additional accruing costs and that you have the same ready, as soon as may be, to render unto the said Lyman L. Loomis and William L. Loomis according to law, Hereof fail not, and make return of this writ, with your doings, ninety days after the date hereof.



Witness Jacob Gale, clerk of our said court, and the seal thereof, at Peoria, this twenty sixth day of July in the year of our Lord one thousand eight hundred and fifty. Jacob Gale, clerk,

sheriffs  
return on  
same

"State of Illinois / By virtue of the within writ to me directed  
Peoria County / from the clerk of the circuit court of Peoria



Sheriff's Levy 50 County I did <sup>(28)</sup> this 20<sup>th</sup> day of September 1850 levy  
 Adverting 25 upon the following described real estate to wit the  
 Per Ch. on sale 641 South West quarter of Section No Twenty three (23)  
 Conf. filing 55 in Township No Nine (9) North of Range No Eight (8)  
 Return 10 East of the fourth principal meridian Also Lot No  
 781 twelve (12) in Block No forty three (43) in Bigelow

and Underhills addition to Peoria in the City of Peoria and County  
 of Peoria and State of Illinois And afterwards on the eleventh day of  
 October A. D. 1850 I advertised the above described real estate for  
 sale at the door of the Court house in the City of Peoria in said County  
 on the second day of November A. D. 1850 between the hours of 9  
 o'clock A. M. & 4 o'clock P. M. to the highest and best bidder  
 for ready money by putting up printed notices thereof in  
 three of the most public places in said County and after-  
 wards on said second day of November A. D. 1850 at the door  
 of the Court house aforesaid at two o'clock in the afternoon  
 of said day I offered said tracts of land for sale to the highest  
 bidder Separately Separately and no person having bid thereon  
 for either of said tracts I offered the said lands for sale together  
 when Symon J. Loomis & William L. Loomis the plaintiffs in the  
 execution bid therefor the sum of two hundred and twenty  
 six dollars and seventy nine cents which being the highest, best  
 and only bid the said real estate was struck off to them  
 at that price and a certificate of purchase filed in the records  
 according to law and this execution is returned satisfied

November 2<sup>nd</sup> 1850

William Compher Sheriff P. C.  
 by C. Cleveland Deputy.

("Sheriff's return filed January 3<sup>rd</sup> 1851 Mark Sale clerk.")



(28)

State of Illinois

Pena County

et al

Blakeley's  
affidavit

I Dennis Blakeley a Justice of the Peace for said county do solemnly swear that I was summoned as a witness in the case of Lyman J. Loomis and William L. Loomis as Charles Ballance lately tried in the circuit court of said county that I was informed by said defendant that he was desirous of proving by me that during the time said plaintiffs were building a certain house for defendant which was the subject of said suit they were in partnership with one Joseph C. Parker and for the purpose of refreshing my memory I carried into said court with me my Justice's docket and after being sworn in said cause and asked by said defendant to state what I knew of any thing about said partnership, I opened said docket and stated that on the 7<sup>th</sup> of October 1847 said plaintiffs or rather said Lyman J. Loomis brought a suit before me on an account in the name of Loomis Parker and Loomis and gave the full names as Lyman J. Loomis Joseph C. Parker and William L. Loomis I made this statement with my docket book open before me and read the names and date from it

Dennis Blakeley

Subscribed &amp; sworn to before me this

14<sup>th</sup> day of June A.D. 1850


Witness my hand and  
seal at Pena

Charles Kettell Clerk.



Certificate of  
Purchase

(39)  
" I ~~from~~ Wm Compher, Sheriff of the County of Peoria, and  
State of Illinois, do hereby certify that by virtue of a  
writ of fi fa dated the twenty sixth day of July A.D., 1850  
to me directed from the clerk of the circuit court of the  
County of Peoria and State of Illinois issued upon a  
certain judgment rendered by the said court at the  
March term A.D., 1850 in favor of Lyman J. Loomis and  
William L. Loomis vs Charles Ballance I did on the  
second day of November A.D., 1851 expose to public sale  
in the town of Peoria two certain tracts or lots of land lying  
and situate in the County and State aforesaid to wit the  
South West quarter of Section No twenty three (23) in township  
No Nine (9) North of Range No Eight (8) East of the 4<sup>th</sup>  
Principal meridian Also Lot No twelve in block No.  
forty three (43) in Bigelow and Underhills addition to Peoria  
in the City of Peoria County of Peoria and State of Illinois  
and that Lyman J. Loomis and William L. Loomis bid the  
sum of two hundred and twenty six dollars and seventy  
nine cents therefor which being the highest and best bid  
the said tracts or lots of land was struck off to them the  
said Lyman J. Loomis and William L. Loomis and  
that the said Lyman J. Loomis and W. L. Loomis will  
be entitled to a deed for the premises so sold to them on  
the second day of February A.D., 1852 unless the same  
be redeemed according to law Given under my hand and  
seal this the second day of November A.D., 1850

William Compher Sheriff Peoria County, Ill.  
by E. V. Smith Deputy."



(30)

"State of Illinois

Peoria County

Order for  
an injunction

In the absence of the Hon William Kellogg Judge of the Circuit Court of Peoria County from said County, I do hereby authorize and grant a writ of injunction as prayed for in the within Bill of Complaint upon the said Complainant entering into bond to said defendants in the sum of five hundred dollars with Jonathan K. Cooper as security Conditioned according to law  
Peoria December 1<sup>st</sup> 1851

E. G. Sanger

Master in Chancery P. C."

And on the same day, to wit: on the first day of December in the year of our Lord one thousand eight hundred and fifty one there was issued out of the office of clerk of said Court in said cause a writ of Summons which with the return endorsed thereon is in the words and figures following, to wit:

"The People of the State of Illinois

To the Sheriff of Peoria County, Greeting:

We command you to summon Lyman J. Loomis and William L. Loomis if they may be found in your county, to appear before our Circuit Court on the first day of the term thereof, to be held at Peoria, within and for the said County of Peoria, on the first Monday of March next then and there, in our said Court, to answer the matters and things contained in a certain Bill of Complaint exhibited against them in our said Court on the Chancery side thereof by Charles Ballance to stay proceedings at law and make

Summons  
in Chancery



(31)  
return of this writ, with an endorsement of the time and manner  
of leaving the same on or before the first day of the term of the  
said Court to be held as aforesaid.

L. S.  
Clerk

Witness Jacob Gale, Clerk of our said Court and the  
seal thereof, at Peoria, this first day of December in  
the Year of our Lord one thousand eight hundred and  
fifty one - Jacob Gale, clerk.

(Endorsement)

"State of Illinois } loved on the within named Lyman J.  
Peoria County } Loomis and William L. Loomis by reading  
to them and delivery to them a copy of this writ. January 9<sup>th</sup> 1852

James L. Riggs Sheriff

By D. D. Irons Spty."

And on the same day, to wit: on the first day of December in the  
Year of our Lord one thousand eight hundred and fifty one there  
was filed in the office of the Clerk of said Court in said cause  
an Injunction Bond in the words and figures following, to wit:

"I know all Men by these presents, that we Charles Ballance and  
Jonathan K. Cooper are held and firmly bound unto Lyman J.  
Loomis and William L. Loomis in the sum of five hundred dollars  
for the payment whereof well and truly to be made, we bind  
ourselves, our heirs, executors and administrators, jointly, and  
severally and firmly by these presents. Witness our hands and  
seals this first day of December A.D. 1851.

The Condition of this obligation is such that whereas the  
above bounden Charles Ballance has this day prayed an injunction  
against the collection of a certain judgement obtained in the Peoria

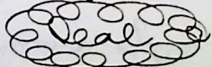
Injunction  
Bond

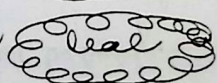


(32)

Circuit Court, by said Lyman and Williams against said Ballance, and against the execution of a certain deed for <sup>certain</sup> real estate sold on an execution issued on said judgement, and for other relief as by a bill in Chancery this day filed by said Ballance against said Lyman & Williams is at large set forth, and more fully appears, which injunction by an endorsement on said bill has been allowed and ordered to be issued by Hon Ezra S. Langer Master in Chancery for said Peoria County, Hon William Kellogg judge of the circuit court of said County being absent therefrom.

Now therefore if the said Charles Ballance shall well and truly pay all money and costs due or to be due to said plaintiffs, in said action at law, and also all such costs and damages as shall be awarded against said Complainant [Ballance] in case said injunction shall be dissolved, then the above obligation to be void, but otherwise to remain in full force and virtue

C Ballance 

Jonathan K. Cooper  "

And on the same day, to wit: on the first day of December in the Year of our Lord one thousand eight ~~hundred~~ hundred and fifty one there was <sup>viewed out of</sup> filed in the office of the clerk of said court in said cause a writ of injunction which with the return endorsed thereon is in the words and figures following, to wit:

"State of Illinois

Peoria County

J. The People of the State of Illinois

To Lyman J. Loomis, William L. Loomis and Clark Cleveland, Greeting:

Whereas Charles Ballance has lately exhibited his bill of complaint

Writ of injunction



in the circuit court in and for the County of Peoria and State of Illinois on the Chancery side thereof against you the said Lyman J. Loomis and William L. Loomis defendants: Wherein among other things it is alleged that you unjustly prosecute the said Complainant Charles Balance at law touching the matters and things therein stated and set forth: We therefore in consideration of the premises do strictly enjoin and command you the said Lyman J. Loomis and William L. Loomis that you and each of you do absolutely and entirely desist from all further proceedings at law against the said complainant - concerning any of the matters in the said Bill complained of - and you the said Cleveland and all other persons having or pretending to have authority in that behalf, that you desist & refrain from executing any deed in pursuance of the sale made on execution issued on said judgment at law - until you and each of you shall appear to and fully answer the complainant's bill and the said court shall make other order to the contrary - Hereof fail not under the penalty of what the law directs

L. J.

Witness Jacob Gale, clerk of said court  
and the Seal thereof at Peoria this first  
day of December A.D. 1851  
Jacob Gale, clerk."

[Endorsement]

State of Illinois  
Peoria County } Served on the within named Lyman J.  
Loomis William L. Loomis and Clark Cleveland by reading to  
them this unit December 15th 1851

James L. Riggs Sheriff  
By D. D. Irons Dpty."



(34)

And afterwards, to wit: on the fourth day of June in the year of our Lord one thousand eight hundred and fifty seven there was filed in the office of the clerk of said court an affidavit of Alex. G. Syng in the words and figures following, to wit:

*Syngs Evidence*  
" State of Illinois }  
County of Peoria } I, Alexander G. Syng being of lawful age,  
and first duly sworn, depose and say, that I have for several  
years been engaged in the lumber and grain business, in the im-  
mediate vicinity of Lot Twelve in Block 43 in the city of  
Peoria, and am well acquainted <sup>with</sup> the same, said lot is well  
improved, having on it a large Machine shop and foundry,  
and also a sash and door factory; but besides all said improve-  
ments, it is my opinion that said lot alone, is worth five  
thousand dollars. And further: affidavit saith not  
Alex. G. Syng "

"Subscribed & sworn to  
before me this 28<sup>th</sup> day of  
April A.D. 1855

J Ambley J. P.

[Endorsed]

"E Ballance vs Loomis & Loomis

Aff. of A. G. Syng

Filed April 30<sup>th</sup> 1855

Jno A. Jones clk

By J. D. Peterbaugh

D. C.

Filed June 4, 1857

E. P. Sloan, clk."



And on the same day, to wit: on the fourth day of June in the year of our Lord one thousand eight hundred and fifty seven <sup>filed</sup> there was, in the office of the clerk of said Court a demurrer in the words and figures following to wit

Demurrer to  
Bill

"Charles Ballance

vs

L. J. Loomis et al

Jazemell lui let

Oct. 5. 1855

And now Come the depts by Peters & Blakeley & demur to said Complainants bill & say that the same is insufficient in law to entitle the complainant to the relief he hath prayed for, or for any relief by his said bill — wherefore for the insufficiency of said bill they pray that the said bill may be dismissed &c

Peters & Blakeley = "

[ Endorsed ]

"Ballance vs Loomis et al. Demr to Bill =  
Filed Oct. 2, 1855

J. A. Jones, clk

By S. D. Ruterbaugh

D. C.

Filed June 4, 1857

E. P. Sloan, clk. "

And afterwards to wit: on the twenty ninth day of December in the year of our Lord one thousand eight hundred and fifty seven there was filed in the office of the clerk of said Court in <sup>a certain matter entitled</sup> suit of Charles Ballance vs Lyman J. Loomis et al a demurrers Answer in the words and figures following, to wit:



(36)

"Charles Balance

Demurrer &  
Answer to  
Bill

vs  
Lyman J. Loomis et al

Circuit Court Peoria Co.  
Nov Term A.D. 1857

The joint & several demurrer of Lyman J. Loomis & William Loomis and their ~~joint~~ <sup>joint</sup> & several answer to the said Complainant's bill of Complaint for injunction

These Defendants Lyman J. Loomis & William Loomis by protestation not confessing or acknowledging all or any of the said matters & things in said bill to be true in such sort or manner as the same are therein expressed & contained as to so much of said bill as seeks to impeach said judgment in said bill mentioned and which said judgment is in favor of Lyman J. Loomis & William Loomis against said Complainant because it appears by the complainant's own showing that the complainant had been guilty of laches and neglect in deferring said suit and not using diligence to procure testimony to establish his set off if any he had and that it would not have been good cause to have granted a new trial in a court of law which was the proper tribunal to give relief if he was entitled to any relief by granting a new trial because by the complainant's own showing it appears that he took an appeal and in consequence of his own neglect and laches in not prosecuting the same it was dismissed by the Supreme Court - because Complainant had from his own showing abundant opportunity to prepare for the trial of said cause both in the circuit and Supreme Court and because by the complainant's own showing



(37)  
It appears that the judgment of the circuit court was rendered after full hearing mature consideration and due deliberation of said Court because by the Complainants own showing he is indebted to complainants in about the amount for which judgment was recovered against him - Because all his said objections to said judgment could have been heard in a court of law and is not ground for relief from said judgment in a court of equity and therefore these defendants ask the judgment of this court and as to so much of said bill as these defendants have not demurred to these defendants in no sort waiving the benefit of said demurrer for answer to so much as they are advised is necessary or material to answer for answer say as follows

State of Illinois  
Peoria County

Circuit Court in and for the  
County of Peoria Nov. Term 1857

Charles Balance

vs  
Lyman J. Loomis et al

The separate answer of Lyman J, Loomis & William Loomis to the bill of complaint of complainant herein for injunction. These defendants now and at all times saving to themselves all manner of benefit or advantage of execution or otherwise that can or may be had ~~or~~ taken to the many errors uncertainties & imperfections in said bill contained for answer thereto or to so much thereof as is not demurred to in the foregoing demurrer for answer say,

These respondents admit that they did in the Peoria



(38)

Circuit Court of Peoria County recover a judgment against Complainant for the sum of one hundred & eighty  $\frac{70}{100}$  dollars as changed in Complainant's bill of Complaint and that said Judgment was never annulled set aside or in any manner reversed and further answering these respondents admit that they did to wit on the 26<sup>th</sup> day of July A.D. 1850 have execution issued on said judgment and which execution was levied on the premises in said bill mentioned and that said premises in said bill mentioned were purchased by the said William & Lyman J. Loomis these respondents - they being the plaintiffs in said execution - they deny that it was ~~in~~ <sup>in</sup> any manner necessary for these respondents to pay the deputy Sheriff or any other person the amount bid by respondents for said premises as the said deputy Sheriff would in that event have been obliged to repay the same to respondents immediately again but respondents aver that their bidding in said premises and being the plaintiffs in execution was a liquidation of said judgment as virtually as though the money had been paid by respondents on the sale thereof

These respondents further answering admit that they purchased both pieces or parcels of land in the bill mentioned at one time and that both of said pieces of land were offered and sold at the same time by the said Deputy Sheriffs to respondents as changed in said bill but respondents aver that said premises were in the first place offered by the Sheriff by his said Deputy each separately at public sale and that said Deputy Sheriff failing to get any bid whatever for either of said premises separately did thereupon offer both of said premises



(39)  
together at said public sale at the time in and place appointed, for said sale and that said respondents did thereupon purchase the said premises in said bill mentioned for the sum of \$226.79 cents which was the highest and best bid for said premises and did thereupon receive from said deputy sheriff a certificate of purchase for the same — These respondents further answering say that they did on the 3<sup>rd</sup> day of November 1850 pay said cost in said cause to said deputy sheriff

These respondents admit that said deputy sheriff as charged in said bill did file his certificate of purchase with the clerk & recorder of Peoria County but at what time is not known by these respondents but believe the same was done about the time as in the bill charged

Respondents further answering said that the said town lot <sup>was</sup> at the time of said sale encumbered by French claims and it was very doubtful at the time of said sale whether the interest of Complainant was of any value whatever or not and that said premises are yet so encumbered as respondents are informed and believe

That the said other tract of land in said bill mentioned purchased by respondents was at the time of said sale encumbered by mortgage and these respondents do not know whether the said mortgage is yet cancelled or paid or not but are informed that the same is not satisfied on the record and if the said mortgage was paid off previous to the sale & purchase by these respondents they did not know of it but that the said mortgage was for the sum of \_\_\_\_\_ dollars and duly recorded in the Recorder's Office of Peoria County and unsatisfied of Record



11

(40)

This Respondent denies that either of the said tracts of land in the bill mentioned were worth four times the <sup>amount</sup> of the judgment interest and costs but they aver that ~~they~~ the title of the Complainant to said premises were such that it was doubtful what his interest was worth - and these respondents aver that for the tract of land in the bill mentioned to wit the S. W. q. of Sec 23 in township Nine N. R. 8. East in Peoria County the complainant had not any deed of record as respondents are informed & believe to know and respondents are informed that if said Complainant has any deed for said premises it is not yet placed of record but respondents are informed and believe that Complainant has a deed unrecorded in his possession for the same

These respondents aver that they did purchase the said premises in good faith believing that they had been and yet believe that had been advertised for sale according to law and that they were purchased by these respondents for a valuable consideration and at a fair price under the circumstances

They deny that said sale was a private sale but aver that the same was in all respects public and at the door of the Court house in said County of Peoria at the time when the said sale was advertised to take place and that everything was conducted fairly and openly and according to law

These respondent do not know whether Complainant had notice of the time and place of sale of said premises or not but aver that it was not any part of their duty to notify him thereof nor was it the Sheriff's duty to give any other notice than that of posting up notices



(41)  
according to law which your respondents believe & therefore aver  
was done

This respondent admits that William Compher Sheriff of  
Peoria County previous to ~~the~~ said sale by said Sheriff had  
absconded from the County of Peoria but these respondents deny  
that the said office of Sheriff was vacant at the time of  
the sale and they further deny that they knew at the time  
of said sale that said Sheriff would not return to said  
County and resume the duties of his office of said Sheriff

These respondents deny that said deputy Sheriff so  
making said sale had no authority so to do but believe  
that said deputy had full power and authority to make  
said sale and give said certificate of purchase aforesaid

These respondents deny that said sale was made  
on the first day of January A.D. 1851 as charged in said  
bill but say that said sale was in fact made on the 2<sup>nd</sup>  
day of November 1850 when the same purports to have been  
made

And Now having fully answered every material  
part of said Complainant's bill not hereinbefore demurred to  
your respondents pray said injunction be dissolved and they  
discharged with their proper costs and charges in this behalf

Most unjustly laid out and expended

Sworn to & subscribed  
before me this 10<sup>th</sup> day  
of November A.D. 1857  
Enoch ~~Shoan~~ Clark

L. J. Loomis  
W. L. Loomis



(42)

And afterwards, to wit on the third day of March in the year of our Lord one thousand eight hundred and fifty eight there was filed in the office of the clerk of said court in said cause entitled Charles Ballance vs Lyman J. Loomis, William L. Loomis Exceptions to answer in words following, to wit:

Exceptions  
to answer

"Charles Ballance

vs

Lyman J. Loomis

William L. Loomis

In Chancery in the First Circuit Court  
State of Illinois

Said plaintiffs as to said answer to said bill files comes and excepts, and says that said defendants having submitted to answer said bill were bound by law upon their several and respective corporal oaths, to the best and utmost of their several and respective knowledge remembrance, information and belief, full, true and perfect answers, to make to ~~all~~ all and singular the matters aforesaid, and that as fully and particularly as if the same had been repeated and they and each of them distinctly interrogated thereto: yet said defendants said answer is evasive inconclusive and in no wise responsive to said bill.

More particularly said answer fails to set forth and show whether said defendants and said Parker were not, at the time of doing said work, or shortly before, partners in the bricklaying and plastering business, or if they had been but had dissolved said partnership, when did they dissolve it, nor whether they had notified Complainant, or the world at large of said dissolution; nor with whom if any one they settled for laying the bricks in said house; nor whether they had any contract with



Complainant for the plastering of said house; nor whether the  
 only time they ever spoke to complainant about it, he did not  
 promptly refuse to pay them, and tell them if they expected  
 him to pay to quit at once, nor whether they did not after this,  
 go on and finish said work, nor whether your Orator did not  
 buy the nails and lath for said house; nor whether said  
 defendants did not know of said obligations with said White  
 and Parker, to build said house, <sup>nor</sup> whether said White and  
 Parker did not pay them or in some manner settle with them  
 for laying said brick, in said house, nor whether when they  
 commenced said plastering they did not expect it to be settled  
 for in the same manner as said brick work was settled for;  
 nor whether when they finished said plastering they gave the  
 possession of said house to Complainant, or to said Parker;  
 nor whether said Parker did not, for some time after, keep  
 said house locked up; nor whether they or either of them  
 did not see said Parker with the keys of said house after-  
 wards; nor how long afterwards; nor whether when he had  
 said possession of said house, it was not for the avowed object  
 of compelling Complainant to pay said Parker for <sup>said</sup> plastering;  
 nor whether they or either of them did not hear said Parker  
 offer to give said keys to said Complainant, if he would pay  
 for said plastering, nor whether he did not finally obtain  
 the possession of said keys from said Parker; nor whether said  
 sale was not made privately nor who was present at said  
 sale; nor whether it was not purposely ~~continued~~ <sup>continued</sup> to bring  
 on said sale when no one was present, who would be likely  
 to bid thereon, nor whether any money was bid paid on said sale.



(144)

nor if it was paid, when was it paid; nor how much was paid, nor whether said tract of land and lot are not worth the sums in said bill alleged; nor what they are severally worth, in their opinion; nor whether said Compher had not, long before said sale, absconded from the State of Illinois, with a large amount of public money, nor when he absconded; nor whether said fact was not known to them, or either of them, long before said sale, nor how long before said sale.

In all of which particulars, the said Complainant excepts to the answer of the said defendants Lyman J. Loomis and William L. Loomis, as evasive, imperfect and insufficient, and humbly prays that the said Lyman J. Loomis and William L. Loomis, may be compelled to put in a full and sufficient answer thereto.  
C. Ballance."

And afterwards, to wit: on the eighteenth day of December in the Year of our Lord one thousand eight hundred and fifty eight there was filed in the office of the clerk of said court in said cause a replication of the Complainant in the words following, to wit:

Replication  
To answer

"Charles Ballance

vs

Loomis & Loomis



In Chancery

And the said Complainant says he will aver and maintain his said bill and amended bill, to be true, certain and sufficient and that said defendants answers are untrue, uncertain and insufficient, where<sup>upon</sup> he prays as by his bill and amended Bill he has prayed to.  
C. Ballance."



And afterwards, to wit: on the ninth day of March in the  
Year of our Lord one thousand eight hundred and fifty nine  
there was opened and filed <sup>at the March Term, 1859 of said Court</sup> under general order of said  
Court, in said cause the deposition of Clark Cleveland  
and Jacob Gale which with the notice &c thereto attached are  
in the words and figures following; to wit:

"Charles Ballance

vs  
Lyman J. Loomis & others  
In the Peoria Circuit Court  
March T. 1859  
In Chancery

To Charles Ballance Esqr.

Sir You will take notice that on  
Saturday the 19th day of February A.D. 1859 before Thomas  
Bailey Esqr a Justice of the Peace in & for the County of Peoria  
& State of Illinois at his office in the City of Peoria commen-  
cing at 10 o'clock A.M. of said day. I shall proceed to take  
the depositions of Lewis Keyon, William T. Meigs, Clark Cleve-  
land, John Comstock & others to be used as evidence on the  
trial of said cause on the part of the defendants when & where  
you can appear & cross examine if you shall see fit  
February 7. 1859.

H. M. Wead attorney  
& solicitor for defendants "

"I hereby accept service of the above notice & have this  
day received a copy of same  
Feby. 7. 1859 C. Ballance."



(46)  
"Depositions of witnesses taken on the 19<sup>th</sup> day of February  
A.D. 1859 Commencing at the hour of 10 o'clock A.M. of said  
day at the office of Bernard Bailey in the City of Peoria County  
of Peoria and State of Illinois and before said Bernard  
Bailey one of the acting Justices of the peace within said  
County Pursuant to the notice attached to these depositions  
to be read in evidence in a certain suit now pending in the  
Circuit Court of the said County of Peoria and State aforesaid  
wherein Charles Ballance is plaintiff and Lyman J. Loomis  
et al are defendants

Dep. of Clark  
Cleveland

Deposition of Clark Cleveland - The said Clark Cleveland  
being duly sworn deposes and says that

My name is Clark Cleveland, My age is between forty  
and fifty years My residence Peoria Illinois I have  
resided in Peoria over twenty one years

I am acquainted with the parties of this year and  
have been acquainted with them for many years

The Complainant Charles Ballance has lived in Peoria over  
twenty years. He is man of ample means  
and has been for many years

In 1850 I acted as deputy Sheriff under William <sup>Cumpher</sup> Cumpher  
I acted as such deputy under said Cumpher from the summer  
of 1846 to November 1850 when the new Sheriff was elected



(47)  
Dumfries Smith was also deputy Sheriff under Cumpher in 1850  
and acted as such until the successor of Cumpher was elected  
in November 1850

I was one of the sureties of Cumpher on his Sheriff's  
bond and also on his Collector's bond, he was also Collector  
of the State and County Revenue, of said county, he left  
Peoria the 8th of July 1850 to go Springfield as he told me  
to pay the revenue of Peoria County into the State treasury,  
I had collected from four to five thousand dollars of the revenue  
which I paid over to Cumpher the evening before he left  
for Springfield, he stated to me at that time he had money  
enough to pay whole revenue due from this county <sup>up to</sup> that  
time, he left for Springfield with money as I supposed —  
he went from here on a Steamboat I saw him after he  
got on the boat, there were no women with him to my knowl-  
edge I believe there were no women with him. In a few  
days I received word from Springfield that he had paid into the  
treasury seven or eight thousand dollars of the revenue which  
stands credited to him on the treasurer's books as I believe

I was informed  
by letter that he was going to St Louis to get the balance of the  
money which he said was deposited there to pay the state  
revenue. I heard of him a few days afterwards in St Louis  
since then I know nothing of him. I do not know  
whether he is dead or alive. I have enquired frequently  
for of many persons from different sections of the country  
and particularly of persons from California Oregon and the



(48)

Western Country generally and Texas also, and I have never been able to ascertain whether he was living or dead, I was well acquainted with his family at that time and I do not believe they have ever heard from him since he left St Louis, several weeks after he left I expected he would return and resume his duties as Sheriff I continued to act as deputy Sheriff for him for the balance of his term. Smith + myself done the greater part of the business of Sheriff up to November A.D. 1850

I am acquainted with the lot No 12 in Block No 4 & 3 in Bigelow & Underhill addition to Peoria. I have been acquainted with it for many years past. at that time it was understood and generally believed that the title of Ballance to the lots in that addition was not good and they could not have been sold at that time for any thing like their value for that reason they were supposed to be covered by French claims and it was uncertain to whom they belong. The plat shows that a part of this lot is covered by a French claim

Clark Cleveland."



Gale's Depo-  
sition

County

Jacob Gale after being duly sworn deposes and says  
I have lived in Peoria Illinois <sup>for the last</sup> twenty four  
years. I was clerk of the circuit Court of Peoria  
County for over eleven years <sup>from</sup> the fall of fall of 1844. I was  
well acquainted with William Cumpfer Sheriff of  
Peoria County during part of the year of 1850. I never  
saw him after the month of July 1850 nor heard  
nor saw any one that heard from him since that time.  
On the 20th day of July 1850 I believed Cumpfer to be a  
live and Sheriff Peoria <sup>to for</sup> County at that time.  
In the year of 1850 the titles <sup>in</sup> Bigelow & Underhills addition  
were generally looked upon with suspicion because of French  
claims and dower claim of the widow of John L. Bogardus,  
owned by John Frink as I understood and lots there  
on that account would not usually sell at their full value  
Jacob Gale

State of Illinois  
Peoria County

I Bernard Bailey an acting justice of  
the peace within and for said county and state do hereby  
certify that the said witnesses Clark Cleveland and  
Jacob Gale prior to the taking of said depositions and  
on the said 19th day of February A.D. 1859 were by me



(50)

Duly sworn to testify the truth in relation to the matter in controversy in the suit mentioned in the caption to these depositions as far as might be interrogated thereto; and that on the said 19th day February A.D. 1859 at my office in the City of Pona in said County and State were taken and reduced to writing by me and signed and sworn to by said witnesses in my presence

Given under my hand and seal  
this 19th day of February A.D. 1859  
Bernard Bailey J. P. ~~Clk~~

And afterwards, to wit: on the Nineteenth day of March in the year of our Lord one thousand eight hundred and fifty nine there was filed in the office of the clerk of said Court in said cause certain evidence in the words and figures following to wit:

"Charles Ballance

vs

Lyman L. Loomis Val.

~~William L. Loomis~~

The plaintiff to maintain his Cause introduced a mortgage from Charles Ballance to David Davis, Administrator of John W. S. Moore, deceased, in words and figures following, following to wit:

Mortgage to  
David Davis

" This deed made this fifth day of August in the Year of our Lord one thousand eight hundred and forty six

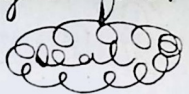


(57)  
between Charles Ballance of the first part, and David Davis  
administrator of John W. S. Moore dec'd of the second part,  
witnesseth, that that the said party of the first part, for and  
in consideration of the sum of three hundred dollars, paid by  
the said party of the second part, the receipt of which  
is hereby acknowledged, does by these presents Grant, Bar-  
gain and Sell, unto the said party of the second part,  
his heirs and assigns, a certain tract or parcel of land,  
to wit the South West fractional quarter of section number  
twenty three in township number nine North of the base  
line of range number eight East of the fourth  
Principal Meridian. Together with all and singular  
the hereditaments and appurtenances thereto belonging  
or in any wise appertaining: To have and to hold the  
said premises as above described, with the appurte-  
nances, unto the said party of the second part, .....  
heirs and assigns forever. And the said party of the  
first part, for myself and my heirs, executors  
and administrators, do hereby covenant to and with  
the said party of the second part, ..... heirs and  
assigns, that ..... well seized of the premises above  
conveyed, as of a good and indefeasible estate in  
fee simple, and ha good right to sell and convey  
the same in manner and form as aforesaid; that  
they are free from all incumbrances, and that the above  
bargained premises, in the quiet and peaceable possession  
of the said party of the second part, his heirs or assigns,  
against the claim of all persons whomsoever, he will



52

former Warrant and defend. Provided nevertheless that if the said party of the first part, his heirs, executors or administrators, shall well and truly pay to the said party of the second part, his heirs, executors administrators or assigns, the just and full sum of three hundred dollars according to the tenor and effect of a promissory note bearing even date with these presents given to said Davis by said Ballance and Jonathan H. Cooper for said sum then this deed, as also a certain note bearing even date with this indenture, given by the said party of the first part to the said party of the second part, Conditioned to pay the said sum of three hundred <sup>dollars</sup> at the time aforesaid, shall be void; otherwise to remain in full force and virtue. In Testimony whereof, the said Charles Ballance has hereunto set his hand and seal the day and year first above written.

C. Ballance 

Signed, sealed and delivered, in presence of

State of Illinois, ) ss.

Peria County. ) J. Jonathan H. Cooper a justice of the peace for said County, do certify, that on this day personally appeared before me Charles Ballance whose name appears subscribed to the foregoing deed of conveyance, and who is personally known to me to be the real person who and in whose name the acknowledgment of the above deed is proposed to be made, as having executed the same, and acknowledged the execution as his voluntary act and deed for the uses and purposes therein expressed. And ..... wife of the said ..... having been by me made acquainted with the contents of the said deed, and being by me examined separate and apart from her husband,



whether she had executed the same and relinquished her dower to the lands and tenements therein mentioned, acknowledged that she had executed the same, and relinquished her dower to the lands and tenements therein mentioned, voluntarily and freely, and without compulsion of her husband, and does not wish to retract. Given under my hand and seal at Peoria this fifth day of August eighteen hundred and forty six  
Jonathan H. Cooper, J. P."

"State of Illinois (County of Peoria) Records Office,

J. Charles Kettelle Recorder of said County do certify the within deed is duly recorded in said office in Book No 2 of Mortgages on page 546 - on this eighteenth day of September A.D. 1846  
Charles Kettelle, R. P. Co."

Also, a letter from said David Davis, which was duly proved, which is in the words and figures following, to wit:

Davis Letter

"Mr Ballance

Dear Sir

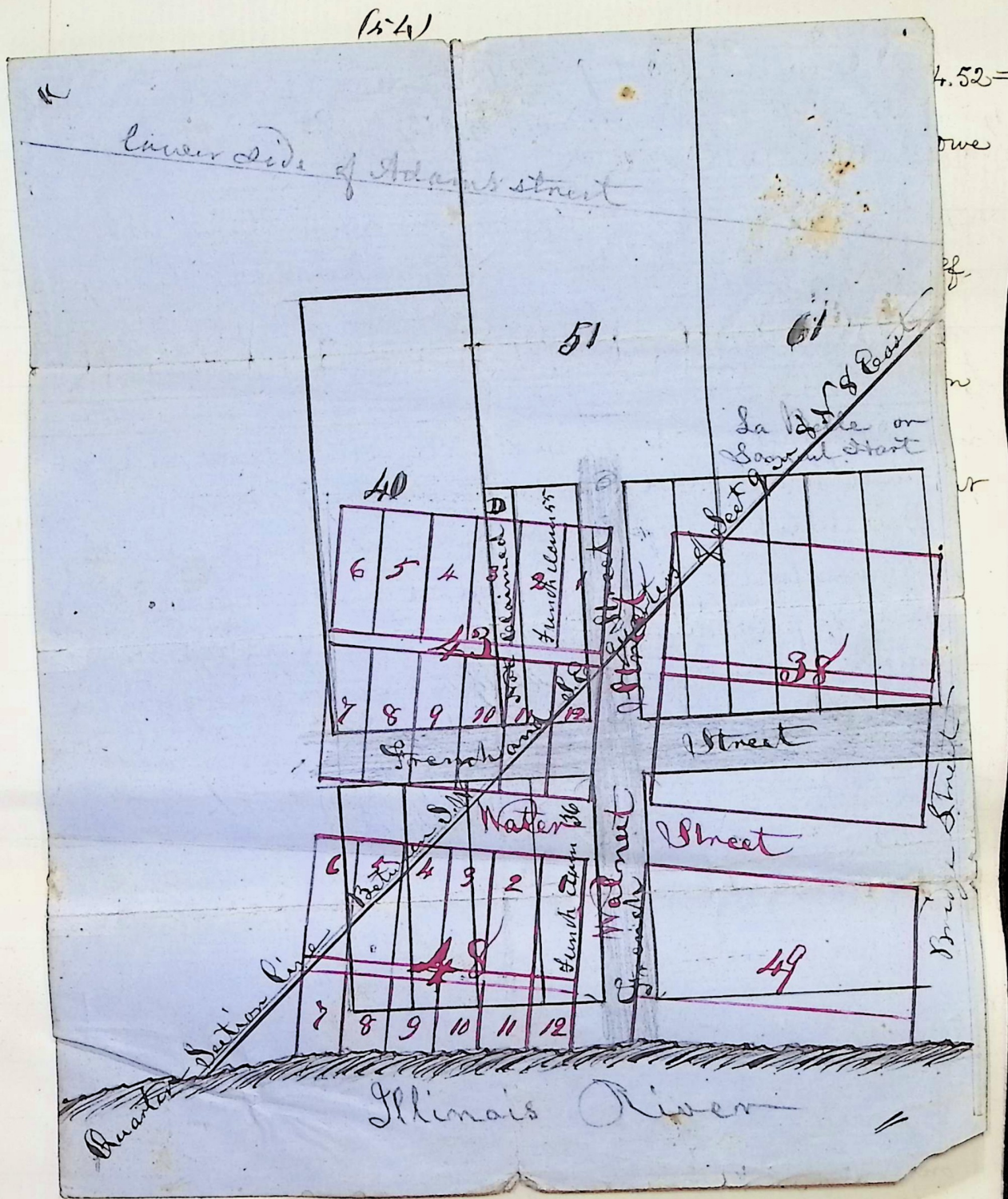
I received your letter with #17.

enclosed -

I send by Mr Powell - the note - The mortgage of my memory serves me, is in the Records Office - which you can lift

You Mistake as to \$154.52 being amt paid me Oct. 14<sup>th</sup> 1848 - that sum includes - the \$156 - paid Mr Kettelle, by you for me - I think if you will refresh your recollection, you will remember it - You mentioned to me the sum paid Mr Kettelle & I included,





These the papers and records in a certain cause between  
 Robert Forsyth, plaintiff and Charles Ballance, defendant  
 which are in words and figures as follows  
 Proceedings in the circuit court at a term thereof began  
 and held at the Court House in the City of Peoria, in and for  
 the County of Peoria and State of Illinois, on the second  
 Monday of May in the year of our Lord one thousand eight







(55)  
hundred and fifty seven, it being the eleventh day of said month.  
Present the Honorable Elihu N. Powell, judge of the 16<sup>th</sup> Judicial  
Circuit in said State, Francis W. Smith, Sheriff and Enoch P.  
Hloan, clerk, to wit:

Friday May 29<sup>th</sup> A.D. 1857

Robert Tomyth

Ejectment

vs  
Charles Ballance

This day came the plaintiff by his  
attorney and filed his declaration herein

Proceedings in the Circuit Court at a term thereof began and  
held <sup>in</sup> at the Court house in the City and County of Peoria, in  
and for said county, and State of Illinois, on the third Monday  
of November in the year of our Lord one thousand eight  
hundred and fifty seven, it being the sixteenth day of  
said month, Present the Honorable Elihu N. Powell, judge  
of the 16<sup>th</sup> Judicial Circuit in the State of Illinois -  
Francis W. Smith, Sheriff and Enoch P. Hloan, clerk, to wit:

Proceedings at a term of the Circuit Court began  
and held at the Court house in the City of Peoria,  
County of Peoria, <sup>and</sup> State of Illinois, on the second Monday of  
May in the year of our Lord one thousand eight hun-  
dred and fifty eight, it being the tenth day of said  
month, Present the Honorable Elihu N. Powell, Judge of the  
sixteenth Judicial Circuit in said State, Francis W. Smith, Sheriff  
and Enoch P. Hloan, clerk, to wit:



(56)  
Monday May 10<sup>th</sup> A.D. 1858

Robert Forsyth

vs

Ejectment

Charles Ballance

On Motion this Cause is continued

And afterwards, to wit: on the seventeenth day of May in the year of our Lord one thousand eight hundred and fifty eight there was filed in the office of the clerk of said Court in said cause an affidavit of H. L. Merriman in the words and figures following, to wit:

Affidavit for  
a Declaration  
Forsyth vs.  
Ballance

" Robert Forsyth

vs  
Charles Ballance

Peoria Circuit Court  
May Term 1858

Amos L. Merriman one of the attorneys for plaintiff being first duly sworn deposes and says that there was a declaration filed in said cause declaring for Lot fifty five in the Village of Peoria as confirmed to Michel Le Claire by the Act of Congress approved March 3, 1823, entitled "An act to confirm certain claims to lots in the Village of Peoria in the State of Illinois, which declaration was filed at the May term of said Court A.D. 1857, and that at and during the same term of said Court said defendant filed his plea in said cause, that certain depositions have been taken and filed in said cause by plaintiff that deponent has enquired of the clerk of said Court for said papers and was informed by him that the said papers have been lost and are not in his possession



and deponent further states that said papers are not on the files of this court, that deponent has himself searched in all places within his control, and has enquired of the opposite party and of the ~~the~~ opposite counsel, and cannot find the said papers.

Subscribed & sworn to before } A. L. Merriman  
me on this 17th day of May 1858 }  
E. P. Sloan, clk. }

And afterwards, to wit; on the eighteenth day of May in the year of our Lord one thousand eight hundred and fifty eight there was filed in the office of the clerk of said Court a declaration in ejectment in the words and figures following, to wit;

State of Illinois, ss.

County of Peoria, ss.

To the Circuit Court for said county  
Of the May Term A.D. 1857

Forsyth vs  
Ballance  
Declaration

Robert Forsyth

versus

Charles Ballance

Ejectment

Robert Forsyth the plaintiff in this suit, by Manning & Merrim his attorneys complains of Charles Ballance the defendant in this suit, of a plea wherefore he the said defendant with force and arms &c., entered into the following described premises:

For that heretofore, to wit, on the first day of May in the year of our Lord one thousand eight hundred and fifty seven the said plaintiff was possessed of certain premises situated in the county of Peoria in the State of Illinois, and described as follows, to wit



(58)

Lot fifty five in the Village of Peoria as confirmed to Michael Le Claire by the Confirmatory Act of Congress approved March 1823, entitled 'An act to confirm certain claims to lots in the Village of Peoria in the State of Illinois' and being so possessed thereof, the said defendant afterwards, to wit: on the second day of May in the year of our Lord one thousand eight hundred and fifty seven, entered into said premises, and that he unlawfully withheld from the said plaintiff the possession thereof and the said plaintiff avers that he claims title to said premises in fee.

Whereof said plaintiff says that he is injured, and has sustained damages to a large amount, to wit: one hundred dollars, and therefore he sues &c.

Manning & Munroe  
Attorneys for plaintiff

And on the same day, to wit: on the eighteenth day of May in the year of our Lord one thousand eight hundred and fifty eight there was filed in the office of the clerk of said court in said cause a plea of the defendant in the words following, to wit:

Plea

"Robert Forsyth

vs

Charles Ballance

In Ejectment

Said defendant comes and defends the force and injury when &c. and says he is not guilty of the trespass and ejectment in said declaration charged against him and of this he puts himself upon the country &c. C. Ballance."



Proceedings at a term of the circuit court began and held at the court house in the City of Peoria, County of Peoria and State of Illinois, on the second Monday of May in the Year of our Lord one thousand eight hundred and fifty eight, it being the tenth day of said month. Present the Honorable Elisha N. Powell, judge of the sixteenth judicial circuit in said state, Francis W. Smith, Sheriff, and Enoch P. Sloan, clerk, to wit;

Tuesday May 18th A. D., 1858

Robert Foreyth

vs

Ejectment

Charles Ballance

(On motion of plaintiff this cause is Continued at his cost

Proceedings at a term of the circuit court began and held at the Court house in the City of Peoria, in and for the County of Peoria in the State of Illinois, on the first Monday of March, in the Year of our Lord one thousand eight hundred and fifty nine, it being the seventh day of said month. Present, the Honorable Elisha N. Powell, judge of the 16th judicial circuit in the State of Illinois, John Byrner, Sheriff, and Enoch P. Sloan, clerk, to wit;



Monday<sup>40</sup> March 7th A.D. 1859

Robert Forsyth

Exigent

Charles Ballance

Trial &  
Judgement

This day came the plaintiff by Merriman his attorney, and the defendant also came, in person, waived trial by jury, and agree that all matters of law and fact in this case shall be tried by the Court - whereupon, the Court being satisfied in the premises, do find the defendant not guilty as is alleged against him in plaintiff's declaration - therefore it is considered that the said Charles Ballance have and recover of the said Robert Forsyth his costs and charges by him about his defense in this behalf expended, and that he have execution therefor."

Also the papers and proceedings in a certain cause between Louis B. Menard, plaintiff and Charles Ballance defendant, which are in words and figures following, to wit:

~~Louis B. Menard~~      ~~vs~~      ~~Def~~

~~James Bramble~~  
~~Joseph~~

" Be it remembered that heretofore, to wit: on the twenty fourth day of November in the year of our Lord one thousand eight hundred and fifty five there was filed in the office of the Clerk of said Court a Bond for costs in a cause which said Bond is in the words and figures following, to wit:



"Lewis C. Menard

vs  
James Bramble  
Joseph Barr

(61)  
In the Circuit Court Peoria County, Illinois  
November Term 1855

We do hereby enter ourselves securities for  
costs in this cause, and acknowledge ourselves bound to pay, or cause  
to be paid, all costs which may accrue in this action, either to the  
opposite party or to any of the officers of this court in pursuance  
of the laws of this state. Dated at Peoria this 24<sup>th</sup> day of  
November A.D. 1855  
Marion & Merriam "

And afterwards, to wit: on the 1st day of December in the  
year of our Lord one thousand eight hundred and fifty five  
there was filed in the office of the clerk of said court in  
said cause of Lewis C. Menard against James Bramble & Joseph  
Barr a declaration, notice and affidavit in the words  
and figures following, to wit:

Declaration

"In the Circuit Court

in and for the County of Peoria & State of Illinois.

United States of America }  
State of Illinois }  
County of Peoria }

Of the November term, in the  
year of our Lord one thousand  
and eight hundred and

fifty five Lewis C. Menard plaintiff in this suit complains  
of James Bramble & Joseph Barr defendants in this suit,  
of a plea wherefore they the said defendants with force  
and arms, &c., entered into the following described promises:  
For that heretofore, to wit: on the first day of November in the  
year of our Lord one thousand eight hundred and fifty five



(62)

the said plaintiff was possessed of certain premises, situated in the county of Peoria in the said state of Illinois, and described as follows, to wit: That part of claim thirty six in the village of Peoria confirmed to Francis Racine senior by the Confirmatory Act of Congress of 3<sup>d</sup> March 1823 entitled "An act to confirm certain claims to lots in the village of Peoria in the State of Illinois" described as follows commencing at a point in said claim known as the North easterly corner of Lot twelve in Block Forty Three in Bigelow & Underhill addition to the Town of Peoria thence Southerly along the line of Water street thirty feet - thence Northwesterly <sup>on a</sup> ~~along the~~ line at right angles with said Water street to the most Westerly line of said claim thirty six on Second street thence North easterly along said Second street to Walnut street as laid out in said Bigelow & Underhill's addition thence South Easterly along the line of said Walnut street to the place of beginning. And being so possessed thereof, the said defendants afterwards, to wit: on the second day of November in the year of our Lord one thousand eight hundred and fifty five entered into each premises, and that they unlawfully withheld from the plaintiff the possession thereof; and said plaintiff avers that he claims title to said premises in fee.

Whereof said plaintiff says that he is injured and has sustained damages to a large ~~amount~~ amount, to wit: one hundred dollars, and therefore he sues &c

Manning & Merriman  
Attorney for plaintiff.



# Notice

(63)  
"To the above named defendants Take Notice, that,  
1. On the tenth day of the November term of the circuit court within and for the county of Peoria in the and State of Illinois, now in session at the city of Peoria in said State of Illinois, & on the 29th day of November A.D. one thousand eight hundred and fifty five or as soon thereafter as counsel can be heard, a declaration, of which the above is a copy, will be filed in said court:

2. That upon filing the same, a rule will be entered requiring you, such defendant, to appear and plead to such declaration within twenty days after the entry of such rule:

3. That if you neglect so to appear and plead, a judgment by default will be entered against you and the plaintiff will recover possession of the premises described in said declaration.

Dated Nov. 23<sup>d</sup> 1855,

Yours, &c

Manning & Merriman  
Attorney for plaintiff

# Affidavit

State of Illinois, }  
County of Peoria } A. R. Tidwell being first duly sworn,  
deposes and says that he served a declaration and notice of which the within and foregoing are copies, upon the within named defendants by delivering the same to them personally on the 30th day of November A.D. 1855

Subscribed and sworn to before me, A. R. Tidwell

this thirtieth day of November A.D. 1855

Jacob Gale, clerk."



(64)  
 Proceedings at a term of the Circuit Court begun and held at  
 the court house at the City of Peoria in and for the county of Peoria  
 in the State of Illinois, on the third Monday of November in the  
 year of our Lord one thousand eight hundred and fifty five, it  
 being the nineteenth day of said month - Present the Honorable  
 Anslow Peters, Judge of the sixteenth Judicial Circuit in the  
 State of Illinois. David L. Irons, Sheriff and Jacob Gale  
 clerk, to wit:

Saturday December 1st A.D. 1855  
 Lewis C. Menard

vs  
 Ejectment.  
 James Bromble  
 Joseph Barr,

This day came the plaintiff by Manning  
 his attorney and having filed his declaration and proved  
 due service thereof on the defendants, On his motion, it is ordered  
 that the defendants plead to this action in twenty days

Proceedings at a term of the Circuit Court begun and held  
 at the Court house at the City of Peoria, in and for the county  
 of Peoria, in the State of Illinois on the second Monday of May  
 in the year of our Lord one thousand eight hundred and fifty  
 six, it being the twelfth day of said month. Present the  
 Honorable Jacob Gale, Judge of the sixteenth Judicial  
 Circuit in the State of Illinois, David L. Irons, Sheriff  
 and James S. Bartman, Clerk, to wit:



(105)  
Tuesday May 27<sup>th</sup> A.D., 1856

Lewis C. Menard  
vs  
Exposition,

James Brambley  
Joseph Barr,

The Motion of the defendants by their attorney leave is given them to file their plea herein in-  
stantly.

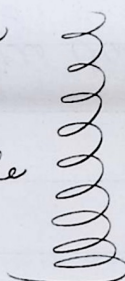
And <sup>on the same day</sup> afterwards, to wit: on the twenty seventh day of May in the year of our Lord one thousand eight hundred and fifty six there was <sup>filed</sup> in the office of the clerk of said court in said cause of Lewis C. Menard vs James Brambley Joseph Barr a plea in the words following, to wit:

"Lewis C. Menard

vs

James Brambley

Joseph Barr



In Peoria County Circuit Court

And the said defendant comes and for plea says that he is not guilty in manner and form as the said plaintiff hath thereof complained against him & of this he puts himself upon the country  
by Grove & McChesney  
he atyp."

Proceedings at a term of the circuit court began and held at the Court house at the City of Peoria, in and for County of Peoria, in the State of Illinois, on the second Monday of May, in the year of our Lord one thousand eight hundred and fifty six, it being the twelfth day of said month. Present the Honorable Jacob Cole, Judge of the sixteenth Judicial Circuit, in the State of Illinois, David T. Brown, Sheriff, and James S. Barkman, clerk, to wit:



Thursday <sup>(66)</sup> May 29<sup>th</sup> A.D. 1856

Lewis C. Menard

vs

Ejectment.

James Bramble &

Joseph Barr

On Motion of the plaintiff this cause is continued to the next November Term of this court but at the cost of the defendants for this term of court, therefore it is considered, that the said Lewis C. Menard have and recover of the said James Bramble + Joseph Barr his costs and charges by him about his suit in this behalf expended and that he have execution therefor.

Proceedings at a term of the circuit court began and held at the court house in the City of Peoria, in and for the county of Peoria and State of Illinois, on the first Monday of March, in the year of our Lord one thousand eight hundred and fifty seven, it being the second day of said month, Present the Honorable Elihu N. Powell, Judge of the Sixteenth Judicial Circuit in the State of Illinois, Francis W. Smith, Sheriff and Enoch P. Sloan, clerk, to wit:

Tuesday March 3<sup>rd</sup> A.D. 1857

Lewis C. Menard

vs

Ejectment

James Bramble &

Joseph Barr.

By Agreement of parties herein  
this cause is continued



67

Proceedings in the Circuit Court at a term thereof began and held at the Court house in the City of Peoria, in and for the County of Peoria and State of Illinois, on the second Monday of May in the Year of our Lord one thousand eight hundred and fifty seven, it being the eleventh day of said month, Present the Honorable Elihu N. Powell, judge of the 16<sup>th</sup> Judicial Circuit in said state; Francis W. Smith, Sheriff and Enoch P. Sloan, clerk, to wit:

Monday May 11<sup>th</sup> A.D., 1857

Louis C. Menard  
vs  
James Bramble  
Joseph Barr

Ejectment

Agreement  
to consolidate  
date

By Agreement of parties Charles Ballance Counselor is substituted in the place of James Bramble and Joseph Barr, as defendant in this cause; and it is further agreed by the parties herein that the suit of Louis C. Menard vs William Peters, shall be consolidated with this action and considered as one suit.

Be it remembered that heretofore, to wit: on the twenty fourth day of November in the Year of our Lord one thousand eight hundred and fifty five there was filed in the office of the clerk of said court a bond for costs in the words of the following, to wit:

Louis C. Menard

vs

William Peters

In the Circuit Court Peoria County, Illinois,  
November 2<sup>nd</sup> Term, 1855



(68)

We do hereby enter ourselves securities for costs in this cause, and acknowledge ourselves bound to pay, or cause to be paid, all costs which may accrue in this action, either to the opposite party, or to any of the officers of this Court, in pursuance of the laws of this state, Dated at Peoria, this 24th day of November A.D. 1855. Manning & Merriam

~~Proceedings at a term of the Circuit Court begun and held at the Court house at the City of Peoria, in and for~~

And afterwards, to wit: on the first day of December in the year of our Lord one thousand eight hundred and fifty five there was filed in the office of the clerk of said court in said cause a declaration, notice & affidavit in the words and figures following, to wit:

Declaration

"In the Circuit Court

in and for the County of Peoria State of Illinois

United States of America  
State of Illinois  
County of Peoria

Of the November term, in the year of our Lord one thousand eight hundred and fifty five

Levin C. Menard Plaintiff in this suit complains of William Peters defendant in this suit, of a plea wherefore he the said defendant with force and arms, &c., entered into the following described premises: For that herebefore, to wit: on the first day of November in the year of our Lord one thousand eight hundred and fifty five the said plaintiff was possessed of certain premises, situated in the County of Peoria in the said State of Illinois, and described in the will of said deceased as follows, to wit: that part of claim thirty six & seven by the



(69)  
Confirmatory Act of Congress of 8<sup>d</sup> March 1823 entitled "an act to  
Confirm certain claims to lots in the village of Peoria in the State  
of Illinois." described as follows Commencing at the "most Westerly  
Corner of said claim thirty six on Second street, thence Southeasterly  
along the line of said claim thirty six - eighteen feet to the  
line of Water street as laid out by Bigelow and Underhill  
over said lot - thence North Easterly along the line of said  
Water street thirteen feet thence North Westerly at right  
angles with said Water street to Second street thence  
along the line of said claim thirty six South Westerly  
to the place of beginning and being so possessed thereof, the  
said defendant afterwards, to wit: on the second day of November  
in the year of our Lord one thousand eight hundred and fifty five  
entered into such premises, and that he unlawfully withheld from the  
plaintiff the possession thereof, and said plaintiff avers that the  
claim title to said premises is fee.

whereof said plaintiff avers that he is injured and  
has sustained damages to a large amount, to wit one  
hundred dollars, and therefore he sues &c

Manning & Merriam  
Attorney for plaintiff."

Notice

"To the above named defendant Take notice that  
1. On the tenth day of the November term of the cir-  
cuit Court within and for the State of Illinois, now in  
session at the City of Peoria in said State of Illinois & on  
the 29<sup>th</sup> day of November A.D. one thousand eight hundred  
and fifty five or as soon thereafter as counsel can be heard,



a declaration, of which the above is a copy, will be filed in said court:

2. That upon filing the same, a rule will be entered requiring you, such defendant, to appear and plead to such declaration within twenty days after the entry of such rule:

3. That if you neglect so to appear and plead, a judgment by default will be entered against you and the plaintiff will recover possession of the premises described in said declaration.

Yours &c

Dated Nov. 23<sup>d</sup> 1855

Manning & Morrison  
Attorney for plaintiff

Affidavit

"State of Illinois,  
County of Peoria, } A. R. Tidwell being first duly  
sworn, deposes and says that he served a declaration  
and notice of which the within and foregoing are copies,  
upon the within named defendant by delivering the same  
to him personally on the 28th day of November A.D. 1855—  
A. R. Tidwell

Subscribed and sworn to before  
me, this 28th day of November  
A.D. 1855,

Jacob Gale, clerk, "

Proceedings at a term of the circuit court begun and held at the  
court house at the city of Peoria in and for the County of Peoria in the State of



71

Illinois on the third Monday of November in the year of our Lord  
one thousand eight hundred and fifty five, Being the nineteenth  
day of said month - Present the Honorable Onslow Peters, Judge  
of the sixteenth Judicial Circuit in the State of Illinois,  
David D. Irons, sheriff and Jacob Gale, clerk, court:

Saturday December 1st A.D. 1855.  
Lewis C. Menard

vs  
William Peters Ejectment.

This day came the plaintiff by Manning  
his attorney and having filed his declaration and proved  
due service thereof on the defendant, on his motion it is  
ordered that the defendant plead to this action in twenty days.

Proceedings at a term of the circuit court begun and held  
at the Court house at the City of Peoria, in and for the County of  
Peoria, in the State of Illinois, on the second Monday of May in the  
year of our Lord one thousand eight hundred and fifty six, it  
being the twelfth day of said month. Present the Honorable  
Jacob Gale, Judge of the sixteenth Judicial Circuit in the State  
of Illinois, David D. Irons, sheriff and James S. Barkman, clerk,  
court:

Tuesday May 27th A.D. 1856  
Lewis C. Menard

vs  
William Peters Ejectment

(On Motion of the defendant by his attorney leave  
is given him to file his plea herein ~~instant~~ instant.



(73)

And on the same day, to wit: on the twenty seventh day of May in the year of our Lord one thousand eight hundred and fifty six there was filed in the office of the clerk of said court in said cause a plea in the words ~~and figures~~ following, to wit:

"Lewis C. Menard

vs

In Peoria County Circuit Court.

William Peters

Now comes the defendant and defend  
+ for Plea says that he is not guilty in manner &  
form as the Plaintiff hath thereof complained against  
him and of this he puts himself upon the country  
By Grove & Maly  
his attys."

Proceedings at a term of the Circuit Court begun and  
held at the Court house at the ~~Court house~~ City of Peoria, in  
and for the County of Peoria, in the State of Illinois, on the second  
Monday of May in the year of our Lord one thousand eight  
hundred and fifty six, it being the twelfth day of said  
month. Present the Honorable Jacob Gale, Judge of the six-  
teenth Judicial Circuit in the State of Illinois, David D. Brown  
Sheriff, and James S. Bartman, Clerk, to wit:

Thursday May 29th A.D. 1856

Lewis C. Menard

vs

Ejectment

William Peters

On Motion of the Plaintiff this cause is continued



273

to the next November Term of this court but at the costs of the defendant for this term of court, therefore it is considered that the said Lewis B. Menard have and recover of the said William Peters his costs and charges by him about his suit in this behalf expended and that he have execution therefor.

Proceedings at a term of the circuit court begun and held at the Court house in the city of Peoria in and for the county of Peoria in the State of Illinois, on the third Monday of November in the year of our Lord one thousand eight hundred and fifty six, it being the seventeenth day of said month, Present the Honorable Elisha N. Powell, Judge of the sixteenth judicial circuit in the State of Illinois. David D. Irons, sheriff and Enock P. Sloan, clerk, to wit:

Friday November 21st A. D. 1856

Lewis B. Menard

vs

Ejectment

William Peters

By agreement of parties this cause is continued to next term of court.

Proceedings at a term of the circuit court begun and held at the Court house in the city of Peoria in and for the county of Peoria in the State of Illinois, on the first Monday of March in the year of our Lord one thousand eight hundred and fifty seven, it being the second day of said month. Present the Honorable Elisha N. Powell, Judge of the sixteenth judicial circuit in the State of Illinois: Francis W. Smith, sheriff and Enock P. Sloan, clerk, to wit:



(74)

Tuesday March 3<sup>d</sup> A.D. 1857

Louis E. Menard

vs

Ejectment

William Peters

By agreement of parties herein this cause is continued.

Proceedings in the circuit court at a term thereof begun and held at the Court house in the City of Peoria, in and for the County of Peoria and State of Illinois, on the second Monday of May in the year of our Lord one thousand eight hundred and fifty seven, it being the eleventh day of said month.

Present the Honorable Elisha N. Powell Judge of the 16<sup>th</sup> Judicial Circuit in said State, Francis W. Smith, Sheriff and Enoch P. Loan, clerk, to wit:

Monday May 11<sup>th</sup> A.D. 1857

Louis E. Menard

vs

Ejectment

William Peters

By Agreement of parties Charles Ballance and Lord is substituted in the place of William Peters, as defendant in this cause, and cause continued.

<sup>OP</sup>  
Proceedings in the circuit court at a term thereof begun and held at the Court house in the City and County of Peoria, in and for said County, and State of Illinois, on the third Monday of November in the year of our Lord one thousand eight hundred and fifty seven, it being the sixteenth day of said month. Present the Honorable Elisha N. Powell



(75)  
Judge of the 16th Judicial Circuit in the State of Illinois—  
Francis W. Smith, Sheriff, and Enoch P. Sloan, clerk, to wit:  
Monday November 23<sup>d</sup> A.D. 1857

Judgment  
for defend-  
ant

Louis C. Menard

vs

Ejectment

Charles Ballance

This day came the plaintiff by A.L. Merriam  
his attorney and the defendant by Gross his attorney, and waive  
trial by jury and agree that all matters both of law and  
fact arising in this cause shall be tried by the court;  
and the Court being fully satisfied in the premises do find  
the defendant guilty not guilty. Therefore it is considered  
that the said Charles Ballance go hence without day, and  
recover of the said Lewis Louis C. Menard his costs and  
charges by him about his defence in this behalf expended,  
and that he have execution therefor.

Proceedings at a term of the circuit court began and held at  
the Court house in the City and County of Peoria, State of Illinois,  
on the third Monday in the month of November in the year of our Lord,  
one thousand eight hundred and fifty eight - it being the fif-  
teenth day of said month. Present, C.N. Powell judge of the  
sixteenth judicial circuit in said State, Francis W. Smith  
Sheriff and Enoch P. Sloan, clerk, to wit:

Thursday November 18<sup>th</sup> A.D. 1858

Louis C. Menard

vs

Charles Ballance,



(76)

Judgment  
vacated

This day came the plaintiff by Morrison  
his attorney, and on his motion the judgment in this case entered  
against him on the 23<sup>d</sup> day of November A.D. 1857, (the costs  
having been paid) is vacated, and this suit is re-docketed  
for a new trial.

Proceedings at a term of the Circuit Court begun and held at  
the Court house in the City of Peoria, in and for the County of Peoria  
in the State of Illinois, on the first Monday of March, in the year of  
our Lord one thousand eight hundred and fifty nine; it being the  
seventh day of said month. Present the Honorable Elihu N. Powell,  
Judge of the 12th Judicial Circuit in the State of Illinois,  
John Pryner, Sheriff and Enoch P. Sloan, Clerk, to wit:  
Friday March 18th A.D. 1859

Lewie A. Menard.

vs.

Ejectment

Charles Ballance

Suit dismissed  
by plaintiff

This day <sup>came</sup> the plaintiff by his attorney  
and dismissed his suit at his costs. //

I hereby Certify that the foregoing evidence was  
given in this cause on behalf of the complainant  
and is properly included in the record March 19th  
1859  
E. N. Powell. "

And on the same day to wit: on the nineteenth  
day of March in the year of our Lord one thousand  
eight hundred and fifty nine there was filed in



the office of the Clerk of said Court in said cause  
 certain evidence <sup>& bill of exceptions</sup> in the words following to wit:

"Charles Ballance

vs

Lyman Loomis & Co.

Wolf's evidence

Thornton Wolf being first duly sworn, says,

I knew Mr Compher, former Sheriff of this county -

It was my understanding that Compher was a married man - I have seen his wife.

Question - Do you know when Compher left here?

Answer - I do. -

Question - Do you know whether Compher took any woman with him when he left here?

This question overruled by the court.

Question - Do you know whether Compher was intimate with other women besides his wife?

This question overruled by the court.

Capt. Moss  
& Rouse's  
evidence

The Complainant proposed to prove by Capt. Moss and Dr Rouse, that they had received letters from the South, stating to them that for the sum of one thousand dollars, Compher could be brought back, or information given where he could be found. The Court overruled the taking of this evidence.

I hereby certify that the complainant on the trial of this cause proposed and offered to prove by the witnesses therein named the facts stated in the foregoing memorandum.



(78)

to which proof the attorney of the defendants objected and the court sustained the objection and excluded said testimony for the reason that it was foreign to the matter in controversy to which opinion of the court the complainant excepted and prayed that this his bill of exceptions might be signed & sealed which is done.

E. N. Powell, *Seal* //

And on the same day to wit: on the nineteenth day of March in the year of our Lord one thousand eight hundred and fifty nine there was filed in the office of the clerk of said court in said cause certain evidence in the words and figures following to wit:

Balance

vs

Loomis

Williamson's  
testimony

OK, Williamson being sworn says

I will state that I examined the record in Recorder's office of Peoria Co. in relation to the S.W. qr. 23.9 N.E. Co. in Peoria County - I found on record a deed from James B. Armstrong to John Armstrong dated May 13. 1836, recorded July 6. 1839; also deed from John Armstrong & wife to Benjamin F. Wood, dated July 3<sup>d</sup> 1839, recorded July 8. 1839; also a deed executed by J. B. Anderson Marshal of the U.S. for the State of Illinois purporting to be on a judgment sale against Benjamin F. Woods to James Miller, executed December 4. 1845; also a deed from James Miller wife to Charles Ballance, executed August 5<sup>th</sup> 1846, not recorded until



(79)  
Oct. 28<sup>th</sup> 1857. I find on the Mortgage records in the  
Recorders Office a mortgage executed by Benjamin F. Wood to  
Henry Wood for \$1000<sup>00</sup> dated September 27<sup>th</sup> 1839 and  
recorded Oct. 1<sup>st</sup> 1839 to secure a note bearing 6 per cent  
interest for the sum of 1000<sup>00</sup> - also another mortgage  
executed by Benjamin F. Wood to Jesse W. Fell for 886<sup>00</sup>  
dated Oct. 3<sup>d</sup> 1839 recorded Oct. 5, 1839; also another mortgage  
executed by C. Ballance to David Davis for the sum of 300<sup>00</sup>  
dated August 5, 1846 recorded Sept. 7, 1846, all of which  
Mortgages are on record in the Recorders office of Peoria  
County, and from any thing appearing of record in said  
office said Mortgages are unsatisfied.  
O. W. Williamson."

"Ballance

vs

Loomis

John Armstrong, being sworn. Says

Benjamin F. Wood was my son in law, and he died  
about 13 years ago - I knew him about 8 years before he died.  
Henry Wood was Benjamin F. Woods father. Henry Wood has  
been dead about nine years. I never heard of Henry Wood  
lending Benjamin F. Wood, one thousand dollars or any other  
sum of money - I never until yesterday heard of a thousand  
dollars or any other sum of money being loaned by Henry Wood  
to Benjamin F. Wood in 1839 - Nor of a Mortgage having been  
given to secure the same. Henry Wood in his life time nor his  
executors since, to my knowledge has never attempted to collect  
said sum of money. If such attempt had been made I think

John Arm-  
strong's evi-  
dence



(80)

I should have known it.

John Armstrong."

I hereby certify that the foregoing evidence was taken in open Court on the hearing of this cause and the same was reduced to writing by the clerk under the direction of the Court and the same is evidence in the case March 19th 1859

E. N. Powell."

"Ballance

as

Loomis

Frye's ev-  
dence

Smith Frye being first sworn says =

I was acquainted with Wm Compher - he was Sheriff of this County previous to 1850 and in 1850 - he accepted the office of Sheriff and acted as Sheriff; he left here about the 1<sup>st</sup> of July 1850; he told me that he left to go to Springfield to pay taxes - he abandoned his office at that time and has not been back since; it was notoriously known that said Compher had run away - the whole community knew the fact - Compher had a wife and children here - he abandoned them and it was generally believed that he ran away with other women; there was much inquiry made as to the whereabouts of said Compher by his securities & others

I knew his family and the said Compher has never returned to his said family to my knowledge

I am acquainted with the P. W. gr. dec. 23. 9 N. S. E. on 2<sup>d</sup> Nov. 1850 said tract was worth 15¢ per acre  $\frac{1}{3}$  down the balance in 1, 2, & 3 years with 6 per cent interest, or 10¢ per



acre in cash. I know lot 12 in Block 43 in Bigelow's Underhills addition to the City of Peoria. On the 2<sup>d</sup> of Nov. 1850 said lot was worth 140¢ per foot  $\frac{1}{3}$  cash and balance in 1, 2 & 3 years with 6 per cent interest - or 30¢ per foot in cash, said lot <sup>was</sup> 60 feet front by 171 feet deep.

Compher ran away with large amounts of public money said to be about 12 thousand dollars

### Cross Examination

After Compher left Clark & Co. land & G. V. Smith acted as deputy sheriffs under the appointment of Compher until the expiration of Compher's term of office. No one else acted as sheriff or deputies during that time. Heyl was Coroner at that time, said Coroner did some business at that time for those who had doubts as to the authority of the said deputies to act.

I don't know any thing about Mr Ballance's title to the land named. The price I named is for the land with perfect title unincumbered. There were disputes as to the title to the lot at the time named. The price I put to that lot was for a perfect & unincumbered title. I do not know that any of that lot was covered with French claims. French claims in some instances have been held as the paramount title. I think some of the French claims have been beaten. The lot named was susceptible of division - three lots could have been made. The division could have been made so that 20 feet on corner of Water & Walnut Street would have been worth



(82)

40¢ cash per foot. & the other lots would have sold for 500¢ each.

If said lot had been cut in three lots on Walnut street the lot cornering Water & Walnut would have been worth 800¢ and the other two 500¢ each

The quarter of land alluded to was susceptible of division into 80<sup>\*</sup> acre lots without impairing the valuation. Each 80 acres would have been worth more than 500¢.

Smith Frye"

I hereby certify that the foregoing evidence was taken in open court in said cause and was reduced to writing by the clerk under the directions of the court and the same is proper evidence in the cause March 19<sup>th</sup> 1859

E. N. Powell."

\* This should  
have been  
40 acres



(1841)

Proceedings in Chancery before the Circuit Court begun and held in the City of Peoria, in and for the County of Peoria and State of Illinois on Monday the first day of March in the year of our Lord one thousand eight hundred and fifty two - the Honorable William Kellogg, Judge of the tenth Judicial Circuit in the State of Illinois, presiding, to wit:

Wednesday March 3rd A.D. 1852

Charles Ballance

vs

To stay proceedings at law.

Lyman J. Loomis,

William L. Loomis,

This day came the defendants by Peter Blakeley their Solicitors and enter a motion to dissolve the injunction herein because no cause ~~is~~ for such injunction is shown by the bill.

Monday March 8th A.D. 1852

Charles Ballance

vs

To stay proceedings at law.

Lyman J. Loomis

William L. Loomis

This day this cause came on to be heard upon the motion of the defendant to dissolve the injunction herein. On consideration whereof, the court over-ruled said motion.



(55)  
Proceedings in Chancery in the circuit court at a  
term thereof began and held at the Court house in the City  
of Peoria, in and for the County of Peoria and State of  
Illinois on the first Monday of the Month of March in the  
Year of our Lord one thousand eight hundred and  
fifty eight (it being on the first day of said month)

The Honorable Elihu N. Powell Judge of the sixteenth  
Judicial Circuit of said State presiding, to wit:

Monday March 8th 1858

Charles Gallance

vs

Injunction - Venue from Tazewell Co.

Leiman J. Loomis,

William L. Loomis,

This day came the Complainant by Grove  
his solicitor and filed his exceptions to the answer of de-  
fendants herein filed.

Proceedings in Chancery before the Circuit Court at a  
term thereof began and held at the Court house, <sup>in the City of Peoria</sup> within and for  
the County of Peoria and State of Illinois on the third Monday  
of the Month of November (it being on the fifteenth day of  
said month) in the Year of our Lord one thousand eight  
hundred and fifty eight - Present the Honorable Elihu N.  
Powell, Judge of the sixteenth judicial circuit of said State,  
to wit:

Monday November 15th 1858



(86)

Charles Ballance

vs  
Lyman J. Loomis  
William L. Loomis

For Injunction - Venue from Jazguel Co.

This Cause having come on for a hearing at the present term upon the demurrer filed by respondents to a portion of Complainant's bill and the exceptions filed by complainant to respondents answer, and the Court being fully advised in the premises doth order and decree that said ~~demurrer~~ demurrer be sustained, and that said exceptions be overruled.

Proceedings in Chancery before the circuit court at a term thereof 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 <sup>first</sup> ~~third~~ Monday of the month of March (it being on the seventh day of said month) in the year of our Lord one thousand eight hundred and fifty nine. Present the Honorable Elisha N. Powell Judge of the sixteenth Judicial Circuit of said State, to wit:

Monday March 21st A. D. 1859

Charles Ballance

vs  
Lyman J. Loomis  
William L. Loomis.

For Injunction - Venue from Jazguel Co.

This day this cause came on to be heard upon the bill, exhibits, answer, replication and testimony, and the Court being fully advised in the premises doth order, adjudge and decree that the said complainant pay to the said defendants

Final de-  
cree

Final de-  
cree



(87)  
Lyman J. Loomis and William L. Loomis the sum of two hundred and ninety five dollars and twenty eight cents together with the interest on said sum from the date hereof on or before the first day of July next. the said sum being the amount of the judgment recovered by the said Lyman J. and William L. Loomis against the said Charles Ballance as mentioned in said Bill and the interest on said judgment up to the date hereof and the costs recovered on said judgment.

It is further ordered, adjudged and decreed by the court that upon the payment of said sum of money at the time herein limited together with the interest thereon as is herein provided that the said sale of the lands named in said Bill be and the same is hereby set aside, annulled and held for naught and that the Sheriff his deputy or the successor or successors of such Sheriff be and they are hereby perpetually enjoined and prohibited from executing to said Lyman J. or William L. Loomis or either of them or to any other person a deed for said lands and lot by virtue of said sale as described in said Bill.

It is further ordered, adjudged and decreed by the court that in case the said complainant shall fail, neglect or refuse to pay the said sum of money and the interest thereon as hereinbefore mentioned at the time stipulated herein then in that event the said sale be and the same is hereby ratified and affirmed and the Sheriff of Peoria County is hereby fully authorized and empowered to make, execute and deliver to said Lyman J.



§§

and William L. Loomis their heirs or assigns. a deed for the said land and lot in pursuance of the certificate of purchase given them on said sale

It is further ordered, adjudged and decreed by the Court that in case the said Complainant shall pay the said sum and interest thereon at the time herein stipulated then in that event each party in this suit is to pay his own costs. But if the said Complainant shall fail to pay the said sum and interest in manner as aforesaid then in that event the said Bill is to stand dismissed and the complainant is to pay the whole of the costs

E. N. Powell. \*

And afterwards, to wit: on the sixteenth day of April in the year four Lord one thousand eight hundred and fifty nine there was filed in the office of the clerk of said Court in said cause an Agreement in the words following, to wit:

"Charles Ballance

vs

Sydney D. Loomis

William L. Loomis

In Chancery

Agreement  
with regard  
to record

It is agreed that in lieu of the whole plat of Peoria being copied into the record as a part of the Complainant's evidence that only the smallest plat (on file) of lot twelve in block forty three and the adjoining grounds shall be copied but that each party shall



have a right (if he thinks proper) to use on the argument  
of the case. *Murrows Map of Peoria*

It is further agreed that none  
of the entries for continuances, nor removing the case  
to Jazewell, nor remanding it back to Peoria need  
be copied into the Record.

C. Ballance for self  
H. M. Mead for defendants."

State of Illinois  
County of Peoria

I, Enoch P. Sloan, clerk  
of the Circuit Court in and for the County  
of Peoria in the State of Illinois, do hereby  
certify, that the foregoing is a true and  
correct transcript from the records and  
files of my office in a certain suit  
entitled Charles Ballance against Lyman J. Loomis & William L. Loomis.  
In witness whereof, I have hereto set my hand and affixed the seal  
of said court at office this nineteenth day of April in the year  
of our Lord one thousand eight hundred and fifty nine.  
Enoch P. Sloan, clerk

Fees \$35.00



Charles Ballance

vs

Lymon Loomis et al

} Sup Court April Term 1859

- Page 1 The bill
- 10 White & Parker contract
- 18 Affidavit sent to copying and filed in Supreme court
- 22 The bill of exceptions in the law case
- 26 Execution Loomis et al vs Ballance
- 27 Sheriff's return on same
- 28 Blakeley's affidavit
- 29 Certificate of purchase
- 30 Order for an injunction — Summons in Chancery
- 31 Injunction bond
- 32 Writ of injunction
- 34 Lynes Evidence
- 35 Summons to Bill
- 36 Sumner and answer
- 42 Exceptions to answer
- 44 Replication
- 46 Deposition of Clark Cleveland
- 49 Hale's Deposition
- 50 Mortgage to David Davis
- 53 Davis' letter
- 54 Map of lot 12 B. 43 and adjoining grounds  
Affidavit pro a
- 56 Declaration in Forsyth vs Ballance
- 57 Declaration in said case
- 58 Plea to same
- 60 Trial & judgement in same
- 61 & 62 The declaration in The Merand case
- 67 Agreement to consolidate said suits

C. Ballance.



- 75 Indgement for debt in Menard vs Ballance
- 76 Indgement vacated — And dismissed
- 77 The testimony of Mr. Wolf Dr Rouse & Capt Mosbrun et
- 78 Williamson's testimony
- 80 Armstrong's evidence — Also Smith Faye's
- 86 The decree sustaining the demurrer and overruling  
the exceptions
- 88 Final decree
- 88 Agreement with regard to the record

I agree that Charles Ballance may  
appear knows upon the within record

A. W. Wend  
Atty for R. B. in Error



Charles Mallance

vs

Symon I Loomis &

William I Loomis

In the Supreme court,  
April term, A.D. 1859.

And now comes said <sup>Charles</sup> ~~Appellant~~, Mallance,  
and saith that in the record and proceedings  
aforesaid, and in rendering said final de-  
cree there is manifest in this, to wit,

1<sup>st</sup> said court erred in sustaining said  
demurrer, to a portion of said bill.

2<sup>nd</sup> said court erred <sup>in</sup> overruling said ex-  
ceptions to said answer.

3<sup>rd</sup> <sup>said</sup> court had no right to make any other de-  
cree than that said sale be set aside, and said  
pretended officer perpetually enjoined from  
making a deed under it.

4<sup>th</sup> said sale being absolutely void, said  
court had no right to decree that under certain  
circumstances, it be confirmed.

5<sup>th</sup> said court ought to have enjoined the  
proceedings at law in toto, and granted the  
parties a hearing in equity - at least a new trial at law.

For which errors and others appearing in  
said record, complainant prays that said  
decree be reversed, annulled, set aside and  
for nought esteemed, and that said proceedings  
at law may be forever enjoined.

C. Mallance.



And now come the said Lyman J  
Loomis & William L Loomis by Weed  
their attorney say that no such ~~record~~  
~~as are~~ errors as are alleged within have  
intervened in the within entitled cause  
and that they may be enquired of  
by the Court By Weed their  
Attorney

Buller vs Loomis et al

Errors assigned

Filed April 29, 1839  
L. Leland  
Clerk



Symon J Loomis &  
William S Loomis  
vs

Charles Ballance

In the Supreme Court  
April Term 1859

And now comes the said Plaintiff  
in Error and says that in the record and proceedings  
aforesaid and in the decree aforesaid manifest  
error hath intervened to their injury in this

1. The Court erred in not dissolving the injunction  
and dismissing the Bill

2. The Court erred in rendering any decree against  
the Plaintiffs

3. The Court erred in rendering the decree that  
was rendered

For which reasons the said  
plaintiffs pray that said decree may be  
reversed annulled, set aside & for naught  
held, & that the Bill may be dismissed

By Their  
Solicitor

And now comes said Charles Ballance and says that  
the errors above complained of have not intervened upon  
said Record to the injury of said Symon J. & William S. Loomis  
and this he prays may be enjoined of by the court =

Charles Ballance, by J. K. Cooper  
his atty.



307  
Lyman of Loomis Rd  
or  
Charles Ballance  
Error to Peoria

Filed April 22. 1859  
L. Leland  
clerk