

No. 12053

Supreme Court of Illinois

Board of Trustees of the
Illinois & Michigan Canal

VS.

BRAINARD

71641  7

Supreme Court
The Board of Trustees of the
Illinois & Michigan Canal
Appellants

Assignment of Errors

vs
Daniel Brainard

Appellee } And now comes
the said Board of Trustees of the Illinois &
Michigan Canal appellants by J. M. Arnold
their attorney & say that in the record and
proceedings in this case & in the several orders
& decrees entered herein & in the final decree
entered there is clear & manifest error in
this that the decree is for the appellees when
it ought to have been for the appellants.

And the said Board of Trustees come & assign
the following special grounds of error in the
record & proceedings aforesaid.

1 The decree of the Court of Common Pleas was
erroneous in deciding that the appellee was
entitled to purchase the whole of N. W. $\frac{1}{4}$ of Sec
21 in Township 39 North of Range 14 East.

The Appellee was entitled to purchase only so
much (if any) of the lots as would embrace his
entire improvements.

2 There is error & inconsequence in the decree
in this, if appellee is entitled to a preemption
to quarter section, in attempting to legalize &
make valid local Trustees Subdivision of
said Quarter Section into streets, blocks & lots
The appellee never offered to purchase it as
such, nor did he ever tender or offer to tender
his money for it, as such.

3. The City of Chicago not being before the Court. the Court had not the proper parties to pass upon the legality of such subdivision -
4. There is no prayer in the Complainant's Bill that said subdivision be legalized & made valid it was not a matter put in issue by Complainant's Bill
5. The amount decreed to be paid by appellee is less than the amount then due according to the appraisal thereof & the terms of sale fixed by law.
6. The decree is objectionable in decreeing that the appellants should execute a certificate to complainant for the premises as subdivided & platted & recorded when the application was to buy as a quarter section, the tender was as such. Relief decreed is not such as asked in the Bill -
7. It is objectionable in decreeing that appellants should execute to appellee deed of said lots & blocks so as to vest in them a good title in fee simple -
8. If the appellee is entitled to purchase said premises then the decree is erroneous in not directing them to be appraised according to the subdivision claimed in his Bill. to wit as a quarter section.
9. Application was to purchase N.W. 1/4 of 21. decree is erroneous in decreeing right to purchase in lots & blocks. Board of Trustees allowed lots 57 & 58. Their decision is conclusive -

- 10 The decree legalizes the subdivision of Board of Trustees the law directs sale in lots & legal subdivisions. If the subdivision is legal all that the appellee can claim is the right to purchase so many of these legal subdivisions as will embrace all his improvements & no more. & the court erred in allowing a larger quantity.
- 11 Scott from whom Boardman claims, was not a settler he did not reside on the land until summer of 1843. not being a settler he acquired no rights under the law. & it was error to decide in ~~his~~ favor of his ~~assignment~~.
- 12 If Scott ever acquired any rights they are not assignable. The rights to purchase are not assignable, the law was designed to benefit the settler & not the speculator & the court erred in allowing appellees to purchase at all. The complainant ~~below~~ below is not nor was he ever a settler, nor was he the owner of improvements until about the time the lots went into market.
- 13 But Scott entered into possession under a special contract as alleged & found, as follows. to wit: "on the following conditions to wit: that the said James H. Scott will not use any timber or tree of any description standing or growing upon Canal lands for any purpose whatsoever & that he will not use for fuel any timber or wood of any description situated upon any Canal lands, except the above described & that he will not permit any person to use or take any timber or wood off said land & that he will surrender the possession of said lands to the agents of the State, together with all improvements thereon, whenever the same may be

advertised for sale & that he will not sell nor transfer his right of possession. nor rent nor lease the same for a longer term than one year. He the said James A. Scott having first duly entered into bond with security according to the provisions of the above recited act. Given under my hand this 18th day of October. John B. Pitt Agent by H. L. Krueger."

This being a special contract between Court^{ts} & Scott, legislation could not change it:

By its express terms his rights were not assignable for these reasons Court erred in decreeing in favor of Brainard. & the decree is erroneous, ~~because~~ & violates Constitution of United States in as much as it violates the rights & impairs the contract between State of Illinois & Canal Trustees.

14 The premises in question at time of act of 1843 was city property. had been divided. this was known to James A. Scott when he made his improvements. The right to subdivide ~~is~~ ^{is} recognized in the decree. his improvements were made subject to their rights & the Court erred in allowing any more than the smallest legal subdivision which would embrace his improvements.

15. The decree is objectionable for the reason that it is unauthorized by & is repugnant to the Bill -

16 The appraisal is illegal. if Appellus is entitled to a decree for the whole. & then can be resold, until there has been a reappraisal according to law -

J. M. Arnold
Atty for
Canal Trustees

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

Pleas before the Honorable Hugh Wickes
Judge of the Circuit Court of the Seventh Judicial Cir-
cuit of the State of Illinois, Presiding in the Place of
the Honorable Giles Spring Judge of the Cook County
Court of Common Pleas and at his request and by agree-
ment, at a regular Term of the Cook County Court
of Common Pleas within and for the County of Cook
and State aforesaid, begun and holden at the Court
House in the City of Chicago in said County and State
on the First Monday being the Third day of February
in the Year of Our Lord one Thousand eight Hundred
and Fifty One, and of the Independence of the United
States the Seventy fifth

Present the Honorable Hugh Wickes Judge
Daniel Mc Gray Dist. Attorney
William S Church. Sheriff

Attest

Walter Kimball, Clerk

"And now at this day, that is to say, on the four-
teenth day of February A.D. 1851, as yet of the February
Term of this Court, begun and held on the First Mon-
day of February instant, the Pleas in said Court begun

and held by and before the Honorable Hugh S
Hickey Judge of the Cook County Circuit Court.
Comes the Honorable Giles Spring Judge of the
Cook County Court of Common Pleas, before whom
the Pleas in said Court continued.

It is Remembered that heretofore to wit
on the first day of September in the Year of Our Lord
One Thousand eight hundred and forty eight came
Daniel Brainerd, Complainant by David Wilson
his Solicitor and filed in the Office of the Clerk of
said Court his Bill of Complaint on the Chancery
Side of said Court, against The Board of Directors
of the Illinois & Michigan Canal, which said
Bill of Complaint is in the words and begins as
follows. to wit

State of Illinois)
Cook County Court)

To the Hon. Hugh S. Pickens Judge
of the Cook County Court in Chancery sitting

Humblly complaining shows unto your Honor,
your Orator Daniel Brainard, of the City of Chicago
in the County of Cook and State of Illinois that on
the _____ day of October in the year of Our Lord one
thousand eight hundred and forty one James H. Scott
obtained from the Agent of the Canal Lands a permit
or right to occupy the north west quarter of Section
Twenty one (21) in Township thirty nine (39) North,
Range fourteen (14) East of the ^{third} principal meridian
and that at the time he obtained such permit,
he executed to the State of Illinois his bond with
Amos Burdick as Surety, in the penalty of one
thousand dollars, ^{conditioned} as the law directs,

And your Orator further shows that said
permit was issued pursuant to the authority conferred
by Section Second of the act entitled "An Act to protect
Canal Lands against trespassers" passed March 4th
1837 and that in pursuance of said permit
the said James H. Scott entered into and upon the
said Quarter Section in the year eighteen hundred
and forty two with intention and for the purpose of
making a farm of the whole of said quarter section,
and purchasing the same whenever offered for sale
and that in pursuance of such intention, the said
Scott broke up, fenced, and raised a crop upon about
twenty acres of said quarter section, and that from
that time until the full of the year eighteen hun-
dred and forty six, the said Scott has been and
was the sole occupant in his own proper person of

Permit

act
81837

entry

1842

the said quarter section, that in said fall of 1846, this said Scott's house was burnt. That soon thereafter another house was put upon said quarter section and the same has been occupied by the tenant of said Scott, from then until the present time, and the said premises used solely and exclusively for farming purposes. And your Orator further shows unto your Honor, that the improvements and the time when made by the said Scott are more particularly described as follows: in the year 1842, he ploughed between twenty and thirty acres, enclosed the same with a post and board fence and raised a crop of corn potatoes, and other grains and vegetables upon the same, that the enclosure was made and the crop raised previous to the month of December 1842. That in the Spring of 1843 and in pursuance of the original intention when he entered said premises, he moved upon the same a house of about the value of three hundred dollars. That he built a barn and shed upon said premises, and that he dug two wells upon the same at a cost of about twenty five dollars each. One of said wells being on the East half or eighty acres and the other upon the west half or eighty acres of said quarter section. The said west half of said quarter section being used by said Scott for pasturage, and the wells on that quarter dug for the purpose and with the intention of using it for furnishing water for his cattle. That said Scott has planted shade trees, ornamented, used and cultivated the said premises in as good a manner as he would have used his own property and that said premises have been cultivated and used for farming purposes by said Scott from the time of such entry as aforesaid in the year 1842, until the present time.

And your Orator further shows unto your Honor, that the said North West quarter section is part and parcel of the land granted by the Government of the United States to the State of Illinois to aid in the construction of the Canal to connect the waters of Lake Michigan with the Illinois River known as the Illinois and Michigan Canal.

And your Orator further shows unto your Honor, that on the twenty first day of February in the year of our Lord one thousand eight hundred and forty-three an act was passed by the Legislature of the State of Illinois, entitled, "An act to provide for the completion of the Illinois and Michigan Canal and for the payment of the Canal debt." that in said Act, the above described premises, amongst other lands, was granted to a board of Trustees called in the said Act Board of Trustees of the Illinois and Michigan Canal for the uses and purposes described in said Act and that afterwards, and after the passage of said Act, in pursuance thereof a conveyance was made to the said Trustees by the Governor of the State of Illinois.

And your Orator further shows unto your Honor, that the said Canal was on or about the first day of May A.D. 1848, declared by said Trustees as completed, and that the aforesaid quarter section together with the other lands granted by said Act and did have been advertised to be sold on the first day of September A.D. 1848.

And your Orator further shows unto your Honor that the said James H. Scott, on or about the day of in the year eighteen hundred and forty-six filed with in the office of the said Board of Trustees his petition claiming a pre-emption

or right to purchase at the appraisal price, the aforesaid quarter section in pursuance of the said Act entitled "An act to provide for the completion of the Illinois and Michigan Canal, and for the payment of the Canal debt" and that since the filing of said petition or claim, affidavits of two disinterested persons have been filed in said Office proving the facts connected with the occupancy and improvements made by said Scott, being the facts herein before set forth.

And your Orator further shows unto your Honor, that said land has been appraised by a Board legally appointed in pursuance of the Authority given by the aforesaid Act entitled "An act to provide for the completion of the Illinois & Michigan Canal and for the payment of the Canal debt, and their appraisal returned and filed in the office of ~~the~~^{said} Board of Trustees and that the said quarter Section has been appraised and valued by the said appraisers ^{at} twenty four thousand two hundred and ninety seven dollars, as appears by the returns of said appraisers now on file in said Office which, by reference to the same will more fully appear.

And your Orator further shows unto your Honor, that at the time the right to purchase at the appraisal was conferred upon said Scott by the Act herein before mentioned, no subdivision or survey of said Section Twenty one, (21) of which said quarter is a part, had been made by the State of Illinois, or any person authorized by said State to survey the same, and that no other or different survey than that made by the United States had at that time been made, and that the smallest divisions made by the surveys under the authority of the United States was one quarter of a Section or one hundred and sixty acres as your Orator is informed and believes.

And your Orator further shows unto your Honor that the said Scott obtained said permits and entered ~~and entered~~ upon said quarter section for the sole and only purpose of obtaining and making a farm, and using the said quarter section for farming purposes only, and with the intention of purchasing the same when it should be sold.

X
Sale
or
Mortgage
And your Orator further shows unto your Honor that on the sixteenth day of August in the year of Our Lord one thousand eight hundred and forty eight, the said James H. Scott sold and transferred to your Orator, all of his right, title, and interest, of, in, and to the said quarter section and the right of pre-emption, and the right to purchase the same, at the appraisal, and also all right to and interest under the proofs filed by said Scott and in pursuance of such transfer, your Orator filed his petition claiming all of the rights of the said Scott of, in and to said premises, together with a copy of the deed of the said Scott to your Orator which said conveyance your Orator is ready to produce and prove, as this Honorable Court shall direct, and your Orator charges that by virtue of such settlement made by said Scott, and said Scott's transfer to him he is entitled to full right to purchase at the appraisal price the aforesaid quarter section.

And your Orator would further show that on the thirty first day of August in the year eighteen hundred and forty eight he offered to tender to the said Trustees the full sum of seven thousand one hundred and sixty seven dollars, sixty one $\frac{1}{2}$ cents being one fourth part of the amount of said appraisal and the interest on the balance, in advance

for one year— and also tendered them three several promissory notes each for the sum of one fourth part of the amount of said appraisal and payable respectively in one, two, and three years from the date thereof bearing interest at the rate of six per cent per annum payable to the Trustees of said Canal with interest annually in advance. And your Orator further shows that said Board of Trustees expressly waived the tender so offered to be made as aforesaid, and wholly refused to allow your Orator to purchase the said quarter section of land at the appraisal so made as aforesaid according to the terms and provisions of the said Act of the twenty-first day of February in the year eighteen hundred and forty three— or to comply with the provisions of said act according to the true intent and meaning thereof, but on the contrary said Board of Trustees have advertised said quarter section of land as amongst other tracts for sale on the first day of September in the year of Our Lord one thousand eight hundred and forty eight.

And your Orator further shows unto your Honor that said Board of Trustees are about to sell said quarter section at public auction without allowing your Orator to purchase the same at the appraisal aforesaid, and thereby encumber and hazard the claim and interest of your Orator in your Orator's premises and render your Orator's interest, title and claim to said quarter section doubtful and uncertain,

In consideration whereof and for as much as your Orator has no sufficient and adequate remedy at Law and can only get relief in a Court of Equity.

To the end that the said Board of Trustees may answer this Bill of Complaint and that they may be decreed to sell at the appraisal, to your Orator, the said

quarter section and to receive of your Orator the money and notes herein mentioned as having been tendered and issue to your Orator a certificate of purchase. And that the said Board of Trustees may be restrained by Injunction from selling except to your Orator at the appraisal aforesaid, or of disposing of or in any manner encumbering or dividing said premises or any part or portion thereof, and that your Orator may have such other and further relief as may be agreeable to equity and good conscience. May it please your Honor to grant the writ of Injunction pursuant to the prayer of this Bill, and that a writ of summons may issue to the said Board of Trustees of the Illinois and Michigan Canal, commanding them to appear and answer according to the course and practice of this Court and to stand to and abide by such order and decree in the premises as may seem meet and shall be agreeable to equity and good conscience.

And your Orator will ever pray &c
Daniel Brainard

State of Illinois }
Cook County } ss.

Daniel Brainard being duly sworn saith that he has read the foregoing bill that the facts stated in the foregoing bill are true so far as stated upon his own knowledge, and so far as stated upon information and belief he believes them to be true.

Subscribed and sworn to
before me this 1 Sept 1848

Hugh S. Dickey Judge Cook County Court

Let an injunction issue according to the prayer
of the foregoing bill on the complainant, filing a
bond in the sum of five thousand dollars condition-
ed to pay all damages which may arise or accrue
by reason of the wrongful issuing of this injunction
Dated this 1. Sept 1848.

Hugh S. Dickey.

Judge of Cook County Court.

And thereupon on said 1. Sept. 1848. comes the
said Daniel Brainard and files herein a bond
in words and figures following to wit:

"Know all men by these Presents that
I Daniel Brainard am held and firmly bound
unto the Board of Trustees of the Illinois and
Michigan Canal in the penal sum of five thou-
sand dollars for the payment of which well and
truly to be made I do bind myself my heirs, exec-
utors, ^{and} administrators firmly by these presents
sealed with my seal and dated this first day
of September in the Year of Our Lord one thousand
eight hundred and forty eight.

The condition of the above obligation is such
that whereas the above bounden Daniel Brainard
has this day filed his bill of complaint in the
Cook County against the said Board of Trustees
of the Illinois and Michigan Canal praying an
injunction to restrain and enjoin the said

Board from selling transferring encumbering
subdividing or disposing of the North-west Quarter

of Sicken Twenty one in Township Thirty nine
North Range Fourteen East of the Third Principal
Meridian; and the Hon. Hugh S. Dickey Judge
of said Court having order said Injunction to
be issued upon Complainants entering into Bond
in the penal sum of five thousand dollars.

Now therefore if the said Brainard shall pay
all the damages that may arise or accrue by reason
of the wrongful issuing of said Injunction then this
obligation to be void otherwise to be and remain
in full force and virtue.

Sealed & Delivered Daniel Brainard Seal
in presence of
Hyatt & Co.

And thereupon an Injunction was issued
pursuant to the order aforesaid; which said In-
junction is in words and figures following, to wit,

State of Illinois
Cook County

The People of the State of Illinois
to the Board of Trustees of the Illinois
and Michigan Canal, their Agents
Attorneys Solicitors Counsellors each
and every of them, - Greetings.

Whereas Daniel Brainard has represented
unto the Hon. Hugh S. Dickey Judge of the Cook
County Court, in and for the County and State aforesaid
by his bill of Complaint herein that certain
proceedings of you the said Trustees are contrary
to equity and good conscience, and the Judge of
said Court having made his order that the writ of

Injunction issued herein,

Now therefore, we command
you the said Trustees of the Illinois and Michigan
Canal, your Agents, Attorneys, Counsellors and Solicitors
or each and every of them that from selling, convey-
ing or disposing of except to said Complainant
Daniel Brainard at the appraised value and from
encumbering or subdividing the North West Quarter
of Section Twenty one (21) in Township Thirty nine
(39) North Range Fourteen (14) East of the Third
Principal Meridian you do absolutely and entirely
abstain & desist until the further order of our
said Court in this behalf.

Witness the Hon. Hugh S. Dickey Judge of our

Said Court and the seal thereof at Chicago
this 1st day of September A.D. 1848

James Curtiss

Clerk

Upon the back whereof is the following endorse-
ment

Cook County Court. Daniel Brainard
vs Ills & Mich Canal. Injunction. Executed
by reading the within in the presence of L
Levit Swift and Charles Oakley, Trustees
of the Illinois & Michigan Canal and delivering
them a true copy of the same Sept 1. 1848
~~2 Seres \$ 100 3 Copies 1.00 6 miles 37 1/2 Return~~
~~124 \$2.50~~ I Cook Sheriff By John Beach
Sept 1

And on the said 1st day of Sept
A.D. 1848, was also issued by said Court a Sum-
mons in words and figures following, to wit,

State of Illinois
Cook County

The People of the State of
Illinois to the Sheriff of said County
Greeting

We command you to summon the Board of
Trustees of the Illinois & Michigan Canal if they
shall be found in your County, personally to be
and appear before the Cook County Court of
said County, on the first day of the next term there
of to be holden at the Court House, in the City
of Chicago, in the said County, on the first Monday
of October next, to answer unto Daniel Brainard
to a Bill of Complaint filed in the office of
the Clerk of said Court on the Chancery side
thereof. And have you there and there
this writ, with an endorsement thereon in what
manner you shall have executed the same.

Witness the Honorable Hugh S. Dickes,
Judge of our said Court and the
Seal thereof, at the City of Chicago,
in said County, this 1 day of Septem-
ber A.D. 1848

Seal

J. Curtiss Clerk

Upon the back of which summons is the
following endorsement:

Cook County Court. Daniel
Brainard vs Ills & Mich Canal, Sumis.

Executed by reading the within in the presence of
the within named Board of Trustees of the Illinois
and Michigan Canal. Sonet Swift
and Charles Oakley the said Board of Trustees
and delivering them a true copy of the same.
Sept 1. 1848. B. S. 100 J. S. 100

~~Return, 12/1/48 \$3.00~~

I leave Shff By John Beach Sep 7/48

And afterwards to wit on the seventh day of October A.D. 1848, come the said defendant and file in the Office of the Clerk of the aforesaid Court their answer in words and figures following, to wit:

Cook County Court.

In Chancery.

The Answer of the Board of Directors of the Illinois and Michigan Canal to the Bill of Complaint of Daniel Brainard.

These Defendants now and at all times hereafter saving and reserving to themselves all manner of benefit and advantage of exceptions to the manifest errors and uncertainties and imperfections in the said Complainant's Bill of Complaint contained, For answer thereto or unto so much thereof as they are advised is material for them to make answer unto These defendants answering say That they have no knowledge or information of the said James H. Scott having obtained from the Agent of the Canal Lands a permit or right to occupy the North West quarter of Section Twenty one in —

Township Thirty nine Range Thirteen East having
executed a bond with James Burdick as security ^(See margin) as in
the said Bill mentioned except from the Statement thereof
made in the said Bill and therefore can neither
admit or deny the same, and these defendants
insist that if any legal permit was executed or bond
given it could in no wise affect the right of these de-
fendants to sell the said land nor could it in any
wise or manner give or be instrumental in giving to
the said Scott or to the said complainant or his
assignees any right to purchase the said tract of
land or any part thereof at the appraisal at such
sale and these defendants further answering say
that they expressly deny that the said James H.
Scott made any improvements previous to the first
day of December 1842, upon any part or portion of
the said quarter section of land, except ploughing and
fencing and raising a crop upon about 20 acres on
the North East Corner of the said quarter section.

These defendants have not sufficient knowledge
or information to enable them to state the exact quan-
tity of land so ploughed cultivated and fenced by the
said Scott but they deny that it exceeded the quantity
of twenty acres and believe it falls somewhat short of
that quantity. All the other improvements mentioned
in said bill as having been made upon the said
land by the said Scott were made if at all of which
the said defendants have no knowledge or informa-
tion except from hearsay and the statements in the
bill subsequent to the first day of December 1842.
and can have no effect in aid of any pre-emption
right claimed by the complainant under the acts
of the legislature upon that subject. And these de-
fendants further answering say that the said
Scott was not a settler nor did he live or reside
upon the said tract of land in the month of March

"Δ" excepting a paper a copy of which is herewith annexed marked 114, filed by the said Scott with
the clerk of the court as a part of his proof to the right of pre-emption, which paper the said defendants say was
executed without authority & can not be taken as a permit or as any form or proof, and these defendants
further say that they have no knowledge or information of the said Scott.

1843. or at any time previous thereto and therefore neither he nor the complainant or his assignees are entitled to any pre-emption right to the said land under said law. And these defendants further answering say that before and at the time and ever since the said Scott made any improvements upon the said tract of land it was and is situated within the limits of the City of Chicago an incorporated City, and that the said land is valuable for City or town lots and the same is not subject to pre-emption.

And these defendants further answering say that if it should be held that the said complainant is entitled to any pre-emption right by virtue of the said improvements made by the said Scott upon the said tract of land as aforesaid that the said complainant is only entitled to a pre-emption right or a right to purchase at the appraisal the said ~~twenty~~ acres of land in the North East corner of said quarter section upon which the said improvements are situated as the same has been laid off into lots as hereafter mentioned. And these defendants further answering say that they admit that the said North West quarter of said section of land is a part and parcel of the land granted by the government of the United States to the said State of Illinois to aid the said State in opening a canal to unite the waters of the Illinois River with those of Lake Michigan by act of Congress approved March 3^d 1827. And these defendants further answering admit that the Governor of the State of Illinois conveyed the said tract of land with other lands to the defendants on or about the 26th day of June 1845, by deed under and by virtue and in pursuance of an act of the Legisla-

ture of this State entitled "An act supplemental to an act to provide for the completion of the Illinois and Michigan Canal and for the payment of the Canal debt, approved February 21st one thousand eight hundred and forty three approved March 1st 1845, which said deed was recorded in the Recorder's office of Cook County on the 15th of July 1845 in Book 15 page 215 &c. And these defendants further answering admit that the said Canal was substantially completed sometime in May 1848, and that the said land embraced in the said quarter section has been advertised to be sold on the 1st day of September 1848 in lots and blocks as the same has been subdivided by these defendants as hereafter mentioned, And these defendants further answering say that Chicago was incorporated as a town by an Act of the Legislature of this State approved February 11th 1835 and that the said North west quarter of said section was and is near and adjoining the said town as incorporated as aforesaid and these defendants further answering say that Chicago was incorporated as a city by an act of the Legislature approved March 4th 1837, and that the said quarter section of land then was and ever since has been and still is embraced within the corporate limits of said city and from the time Chicago was first incorporated as a town as aforesaid the said quarter section of land ever since has been and still is suitable to be laid off into town lots and during all that time it has been for the interest and benefit of the Canal fund that it should be so laid off as aforesaid, and these defendants further answering say that on or about the 31st day of August in the year 1848, these defendants by virtue of the authority

in them vested by the laws of this State caused the West half Section Twenty one Township Thirty nine North Range Fourteen East which includes the said Northwest quarter of said section and also so much of the South east quarter of said section as lies west of Chicago River (which said tracts of land are situated in and near Chicago and are suitable for town lots) to be laid off into town lots and a map or plat of ^{the} same as subdivided and laid off as aforesaid to be made certified and filed for record in the Recorder's office of Cook County on the 31st day of August A.D. 1848 and which is recorded in Book 29 of Maps in said Recorder's office as by reference to said Map or a certified copy of said Map and of the said certificate and acknowledgement endorsed thereon ready to be produced by the defendants will more fully and at large appear. And these defendants further say that the said appraisers mentioned in the said Bill, to appraise the said Canal lands separately appraised each of the said lots into which the said West half of said Section Twenty one was laid off and subdivided as aforesaid. And these defendants further answering say that they are bound to sell the said tract of land in lots as it has been duly and legally subdivided and appraised as aforesaid. And these defendants further answering say that on or about the 6th day of May 1848 the said James M. Scott filed with these defendants his application for a right of pre-emption to said quarter section of land which was sworn to and subscribed by him a copy whereof is hereto annexed marked No 1. and that afterwards some time in the month of August 1848, the said Scott in support of his said claim also filed the affidavit

of Amos Burdick and the affidavit of Patrick Welch, copies of which are hereto annexed marked 2 and 3, and also the paper ~~of which~~ ^{of which} a copy is hereto annexed marked etc 4, which are all the depositions or affidavits or proofs filed or submitted by the said Scott in support of his said claim. And these defendants admit that on or about the 24th day of August 1848, the said complainant filed with these defendants his application for leave to purchase the said quarter section of land at the appraisal and also a copy of a deed from the said Scott to him as in the said bill of complaint mentioned. And these defendants further answering admit that the said complainant made a tender to them of the said money and the said notes as in the said bill alleged and that they refused to allow the said complainant to purchase the said quarter the said quarter section as in the said bill alleged.

And these defendants further answering say that lots 57 and 58 as laid down upon the said map of the said West half of said section 21 cover and include the whole of the said land in the North East corner of the North West quarter of said section upon which the said improvements made by the said Scott prior to the first day of December 1842 were situated. That the said defendants on or about the first day of September 1848, after taking into consideration and duly deliberating upon the said papers and proofs filed by the said Scott and the complainant as aforesaid decided that the said complainant should be allowed to purchase the said lots 57 and 58, being the said lots upon which the said improvements were made as aforesaid are situated at the appraisal and no more and communicated their said decision to the said complainant.

And these defendants say that their said decision so made as aforesaid is final and conclusive that complainant is entitled to purchase the said lots 57 and 58 upon which said improvements were situated and no more. And these defendants further answering say that they are informed and believe that the said appraisal of the said lots of land so made as aforesaid is greatly below the true value of the same, and of the amount which ^{the} said land in lots would bring at a public sale of the same, and that it will be a speculation to the said complainant to allow him to purchase the said land, or any of the said lot of land at the said appraisal and a great loss injury and detriment to the said Canal fund.

(L.S.)

Board of Trustees of the Illinois &
Michigan Canal with their seal affixed
Robert Stewart

Secretary

Know all men, Whereas I the undersigned Agent for the State of Illinois in pursuance of an act entitled "An Act to protect the Canal Land against trespassers, approved 4th March 1837. do by these presents permit and authorize James H. Scott to ^{Permit} take possession of the following described tract or parcel of land to wit, the North West quarter of Section No 21 in Township N^o 39 in North Range N^o 14 E. east in the County of Cook and State of Illinois, containing 160 acres, ^{on} the following conditions to wit; that the said James H. Scott will not use any timber or tree of any description standing or growing upon said Canal lands for any purpose

whatsoever, and that he will not use for fuel any timber
or wood any description situated upon any Canal
Lands except the above described; and that he will
not permit any person to use or take any timber
or wood off said land, and that he will surrender
the possession of said lands to the agents of the State
together with all improvements thereon whenever the
same may be advertised for sale, and that he will
not sell nor transfer his right of possession, nor rent
nor lease the same for a longer term than one year
And the said James H. Scott having first duly entered
into bond with security according to the provisions
of the above recited act

Given under my hand this 18th day of October
1841

John B. Will Agent
by H. L. Rucker

And afterwards, to wit, on the Eleventh day
of October A.D. 1848, the same being one of the
days of the October Term of the Court aforesaid for
the Year last named the following proceedings were
had and entered of Record to wit:

"Daniel Brainard } In Chancery
vs. Bill

The Board of Trustees of
The Illinois & Michigan Canal

On motion of the
Complainant, Solicitor the time to except or reply
to the Defendants answer herein is extended to
until the Tuesday of the Third week of the present
Term.

And afterwards to wit on

the sixteenth day of October A.D. 1848, comes the said complainant and files herein his exceptions to the answer of said Defendants; which said exceptions are in words and figures following, to wit:

Cook County Court

Daniel Brainard

The Board of Trustees of
The Illinois & Michigan Canal

Exceptions taken by the said complainant
to the answer of said Defendants to the Bill of
Complaint.

For that the said Defendants have not
to the best and utmost of their knowledge remem-
brance information and belief fully answered the
following parts of said bill.

1st That in pursuance of said permit the said
James H. Scott entered into and upon the said
quarter section in the year Eighteen Hundred and
forty six with intention and for the purpose of
making a farm of the whole of said quarter section
and purchasing the same when ^{ever} offered for sale
and that in pursuance of such intention the
said Scott broke up, fenced and raised a crop
upon about twenty acres of said Quarter Section
and that from that time until the fall of the year
eighteen hundred and forty six the said Scott has
been and was the sole occupant in his own proper
person of the said Quarter Section and that in the
said fall of 1846 the said Scott's house was burnt
that ever thereafter another house was put upon

Said Quarter Section and the same has been occupied by the tenant of said Scott from then until the present time and the said premises used solely and exclusively for farming purposes"

2^d "And your Orator further shows unto your Honor that the improvements and time when made by the said Scott are more fully and particularly described as follows— in the year 1842 he ploughed between twenty and thirty acres— enclosed the same with a post and board fence and raised a crop of corn potatoes and other grains and vegetables upon the same that the enclosure was made and the crop ~~was~~ raised previous to the month of December 1842. That in the Spring of 1843 and in pursuance of the original intention when he entered said premises he moved upon the same a house of about the value of three hundred dollars that he built a barn and shed upon said premises— and that he dug two wells upon the same at a cost of about twenty five dollars each— one of the said wells being upon the East half or eighty acres and the other upon the west half or eighty acres of said Quarter Section the said west half of the said quarter Section being used by said Scott for pasturing and the well on that quarter dug for the purpose and with the intention of using it for furnishing water for his cattle. That said Scott has planted shade trees ornamented used and cultivated said premises in as good manner as he would have used his own property and that said premises have been cultivated and used for farming purposes by the said Scott from the time of such entry as aforesaid in the year 1842 until the present time."

3 And your Orator further shews unto your Honor that at the time the right to purchase at the appraisal was conferred upon said Scott by the Act hereinbefore mentioned no subdivision or survey of said Section Twentyone of which said Quarter is a part had been made by the State of Illinois or any person authorized by the said State to survey the same and that no other or different survey than that made by the United States had at that time been made and that the smallest division made by the surveys under the authority of the United States was one Quarter Section or one hundred and sixty acres as your Orator is informed and believes.

4 And your Orator further shews unto your Honor that the said Scott obtained said permit and entered upon said quarter Section for the sole and only purpose of obtaining and making a farm and using said quarter section for farming purposes only and with the intention of purchasing the same when it should be sold.

Complainant therefore asks that said Defendants may make full answer to said Bill of Complaint and particularly to the parts herein excepted to as not being sufficiently answered
N. B. Sudd Solr.

A. M. Wilson
of Counsel

And afterwards to wit on the Twenty eighth day of October A.D. 1848, the same being one of the days of the October Term A.D. 1848 of said Court

The following proceedings were had therein and entered of Record in words and figures following to wit;

"Daniel Brainard

vs

The Board of Trustees of the
Illinois & Michigan Canal

In Chancery
Bill

And now come the Parties by their Solicitors and the said Defendant admit the sufficiency of the excepting taken by the said Complainant, to the answer of said Defendant And on the motion of said Defendant leave is granted to file an amended answer herein.

And afterwards to wit on the Thirtieth day of said October 1848, the same being one of the days of the said last named Term of said Court the following proceedings were had therein and entered of Record in words and figures following, to wit;

"Daniel Brainard

vs

The Board of Trustees of the
Illinois & Michigan Canal

In Chancery
Bill

On motion of the Complainant by his Solicitor Ordered that the leave to file an amended answer to this Bill in this cause expire in ten days from the granting of the same.

And afterwards to wit on the Sixth day of November A.D. 1848, come the said Defendants and file herein an amended answer to the Bill aforesaid; Which said Amended answer is in the words and figures following to wit.

Cook County Court

In Chancery

The answer of the Board of Trustees of the
Illinois and Michigan Canal to the Bill
of Complaint of Daniel Brainard.

These Defendants now and at all times here-
after saving and reserving to themselves all manner
of benefit and advantage of exceptions to the manifest
errors and uncertainties and imperfections in the
said Complainant's Bill of Complaint for answer
thereto or unto so much thereof as they are ad-
vised is material for them to make answer unto,
these Defendants answering say, that they have
knowledge or information of the said James H.
Scott having obtained from the Agent of the
Canal Lands a permit or right to occupy the
North-west quarter of Section Twenty-one in Town-
ship Thirty-nine North of Range Fourteen East
excepting a paper, a copy of which is hereto annexed
marked No 4, filed by the said Scott with these
Defendants as a part of his proof, the right of
preemption, which paper these defendants say was
executed without authority of law and is not a
permit or of any force or effect.

And these Defendants further say that they
have no knowledge or information of the said Scott
having executed a bond with Amos Burdick as
security as in the said Bill mentioned except
from the Statement therof made in the said
Bill and therefore can neither admit or deny the
same, and these defendants insist that if any legal
permit was executed, or bond given, it could in no
wise affect the right of these defendants to sell the

Said land, nor, could it in any wise or manner give or be instrumental in giving to the said Scott, or to the said complainant, or to his assignees, any right to purchase the said tract of land, or any part thereof at the appraisal at such sale.

And these defendants further answering say that they expressly deny that the said James H. Scott, made any improvements previous to the first day of December 1842, upon any part or portion of the said Quarter Section of land except ploughing and fencing and raising a crop upon about 20 Acres on the north east corner of the said Quarter Section as the said Bill alleges.

These Defendants have not sufficient knowledge or information to enable them to state the exact quantity of land so ploughed, cultivated and fenced by the said Scott but they deny that it exceeded the quantity of twenty acres and believe it falls somewhat short of that quantity. All the other improvements mentioned in said Bill as having been made upon the said land by the said Scott were made if at all (of which the said Defendants have no knowledge or information except from hearing and the statements in the bill) subsequent to the first day of December 1842, and can have no effect in aid of any pre-emptive right claimed by the complainant under the acts of the Legislature upon that subject.

And these Defendants further answering say that the said Scott was not a settler nor did he live or reside upon the said tract of land in the month of March 1843 or at any time previous thereto and therefore neither he nor the complainants or his assignees are entitled

X to any pre-emption right to the said land under said law

X And these defendants further answering say that before and at the time, and ever since the said Scott made any improvements upon the said tract of land, it was and is situated within the limits of the City of Chicago an incorporated City and that the said land was and is valuable for City or Town Lots, and the same is not subject to a pre-emption

And these defendants further answering say that if it should be held that the said Complainant is entitled to any pre-emption right by virtue of said improvements made by the said Scott upon the said tract of land aforesaid that the said Complainant could only be entitled to a pre-emption right or a right to purchase at the appraisal the said twenty acres of land, in the North East corner of said Quarter Section upon which said improvements are situated as the same has been laid off into lots as hereafter mentioned

And these defendants further answering say that they admit that the said Northwest quarter of said section of land is part and parcel of the land granted by the Government of the United States to said State of Illinois to aid the said State in opening a Canal to unite the waters of the Illinois River with those of Lake Michigan by Act of Congress approved March 3^d 1827.

And these defendants further answering admit that the Governor of the State of Illinois conveyed the said Tract of land with other lands to the defendants, on or about the 26th day of June 1846, by deed under and by virtue of and in

purvance of an Act of the Legislature of the State entitled "An Act supplemental to an act to provide for the completion of the Illinois and Michigan Canal and for the payment of the Canal Debt approved February 21st one thousand eight hundred and forty three, approved March 1st 1845 which said deed was recorded in the Recording Office of Cook County on the 15th of July 1845 in Book 15 page 215th &c

And these defendants further answering admit that the said Canal was substantially completed some time in May 1848; and that the said land embraced in said Quarter Section has been advertised to be sold on the 1st day of September 1848 in lots and blocks as the same has been subdivided by these defendants as hereafter mentioned.

And these defendants further answering say that Chicago was incorporated as a town, by an act of the Legislature of this State approved February 11th 1835, and that the said Northwest Quarter of said Section was and is near and adjoining the said Town as incorporated as aforesaid.

And these defendants further answering say that Chicago was incorporated as a City by an act of the Legislature approved March 4th 1837, and that said Quarter Section of land then was and ever since has been and still is embraced within the corporate limits of said City; and from the time Chicago was first incorporated as a town as aforesaid the said Quarter Section of land, ever since has been and still is suitable to be laid off into town lots, and during all that time it has been for the interest and benefit of the Canal Fund

that it should be ^{so} laid off as aforesaid.

And these defendants further answering say that on or about the 31st day of August 1848 these defendants by virtue of the authority in them vested by the laws of this State caused the West half of Section Twenty one Township Thirty nine North Range Fourteen East which includes the said North west Quarter of said Section and also so much of the South east quarter of said Section as lies West of Chicago River (which said tracts of land are situated in and near Chicago and are suitable for town lots) to be laid off into town lots and a map or plat of the same as subdivided and laid off as aforesaid to be made certified and filed for record in the Recording Office of Cook County on the 31st day of August A.D. 1848. and which is recorded in Book 29 of Maps in said Recording Office as by reference to said map or a certified copy of said map, and of the said certificate and acknowledgment endorsed thereon, ready to be produced by these Defts will more fully and at large appear.

And these defendants further say that the said appraisers mentioned in ^{the} said Bill to appraise the said Canal Lands separately appraised each of the said lots into which the said West of half of Section Twenty one was laid off and subdivided as aforesaid.

And these defendants further answering say that they are bound to sell the said tract of land in lots as it has been duly and legally subdivided and appraised as aforesaid.

And these defendants further answering say that on or about the 6th day of May 1848, the said

James H. Scott filed with these defendants his application for a right of pre-emption to said quarter section of land, which was sworn to and subscribed by him, a copy whereof is hereto annexed marked No 1, and that afterwards sometime in the month of August 1848, the said Scott in support of his said claim, also filed the affidavit of Amos Burdick, and the affidavit of Patrick Melch copies of which are hereto annexed marked 2 and 3; and also the paper a copy of which is hereto annexed marked No 4; which are all the depositions or affidavits or proofs filed or submitted by said Scott in support of his said claim.

And these defendants admit that on or about the 24th day of August 1848, the said complainant filed with these defendants his application for leave to purchase the said quarter section of land at the appraisal, and also a copy of a deed from said Scott to him as in the said bill of complaint mentioned.

And these defendants further answering admit that the said complainant made a tender to them of the said money and the said notes as in the said Bill alleged and that they refused to allow the said complainant to purchase the said quarter section, as in the said bill alleged.

And these defendants further answering say that lots 57 and 58 as laid down upon the said map of the said West half of said Section 21 cover and include the whole of the said land, in the North-east corner of the North-west quarter of said Section upon which the said improvements made by the said Scott prior to the first day of December 1842, were situated that the said defendants on or about the first day of September 1848 after taking into con-

consideration and duly deliberating upon the said papers and proofs filed by the said Scott, & the complainant as aforesaid decided that the said complainant should be allowed to purchase the ^{said} lots 57 and 58, being the same lots upon which the said improvements so made as aforesaid are situated at the appraisal and no more; and communicated their said decision to the said complainant.

And these defendants say that their decision so made as aforesaid is final and conclusive and that said complainant is entitled to purchase the said lots 57 and 58 upon which said improvements were situated and no more.

And these defendants further answering say that they are informed and believe that the said appraisal of the said lots of land so made as aforesaid is greatly below the real value of the same and of the amount which the said land and lots would bring at public sale of the same, and that it will be a speculation to the complainant to allow him to purchase the said land or any of the lots of land, at the said appraisal; and a great loss injury and detriment to the said Canal Fund.

And these defendants further answering say that they have no knowledge or information of the purpose and intention of the said Scott in entering in and upon the said tract of land; but they believe it was merely for the purpose of speculation, and not for the purpose of making a farm, upon a tract of land situated within the incorporated limits of the City of Chicago, nor do they believe that he could have ever supposed that he would have been allowed to purchase land thus situated at a price that would have enabled or authorized him to ap-

propriate or use the same for farming purposes.

And these defendants further answering say that they have been informed and believe that the said Scott moved a house upon the said twenty acres in the north east corner of said Quarter Section, some time in the summer of 1843, and not before, and that he occupied and resided in the said house until some time in 1846, when the said house was burned, that some time thereafter, these defendants do not know or have they any knowledge or information when another house was put up on the said 20 acre tract, but whether the said Scott occupied the same either by himself or by his tenants these defendants have no knowledge or information, nor have these defendants any knowledge or information, nor have these defendants any knowledge or information whether the said premises from that time have been used solely and exclusively for farming purposes as in the said bill mentioned or not.

These defendants considering that the said Scott or his assignee could only be entitled to a presumption in virtue of improvements made upon the said tract of land previous to the first day of December 1842, have confined their investigation and enquiries to the improvements made before that time, and have no knowledge or information of what has been done since, except from hear-say, and the statements made in ^{the} said bill and can therefore neither admit nor deny the same,

And these defendant further answering say that they have no knowledge or information of the said Scott building a barn or shed or of digging wells or setting out shade trees upon the

said tract of land except from the statements in said bill; and can therefore neither admit nor deny the same, but these defendants do deny that all or either of those acts or things were done prior to the first of December 1842.

And these defendants further say that they do not know nor have they any knowledge or information of the said Quarter Sections of land having been surveyed or subdivided by or under the authority of this State into smaller lots or parts previous to these defendants having surveyed and subdivided the same as heretofore stated. These defendants admit that the said section 21. had several years before been surveyed and subdivided by the United States in the same manner that all the public lands are surveyed by the United States with Sections Quarter Sections and half quarter sections.

These defendants deny that the smallest division made by the surveys under the authority of the United States was one quarter section or one hundred and sixty acres as in the said bill alleged, but on the contrary these defendants are informed and believe that United States survey the public lands into quarter and half ^{quarter} sections and make sale of the public lands in as small quantities as quarter quarter sections or forty acres.

These defendants deny that the agent of the Canal Lands granted to the said Scott any permit to enter upon the said land and say that the said Scott entered upon the said land as they believe merely for the purpose of making a small improvement, which he could call a claim, to sell out for speculative purposes, or when the

land came into market, that he might assert a claim to the land and avail himself of the sympathy of bidders, not to bid against a claimant and thereby enable himself to purchase the land for less than its real value.

(J. J.) The Board of Trustees of the
Illinois & Michigan Canal with
their Seal affixed by
Wm W Saltmistle
Acty Secy

State of Illinois f.

Justin Butterfield Attorney for the
Defendant being duly sworn saith that he is ac-
quainted with the facts in this case and ^{the} matters
and things in the foregoing answer set forth, and
the matters and things set forth in the said answer
and as stated there are true in substance and in
fact.

Subscribed & sworn to J. Butterfield

before me this 6. Nov 1848

Hugh S. Dickey

Judge C. C. Court

To which amended answer are attached papers
of which the following are true copies:

2. " Amos Burdick being duly sworn deposes and
says that in the year 1841, in the month of October
James H. Scott purchased a permit of the Canal
Board for the C. W. 74 of Dec 21. T. 39 R 14 and that
the subsequent spring he plowed about 30 acres and
enclosed it the same year with a post and board fence
that he planted it with ^{Conn} potatoes &c. That he believes
that the same year he moved a house upon the said

land. That the said Scott resided with his family in said house and cultivated the said enclosure for two years subsequently thereto and until the said affiant left Chicago. The said House and enclosure was on the N.W. 1/4 of the said N.W. 1/4 of Sec 21. This affiant also believes that the said Scott also moved a barn on the said tract the same year with the said house. The said ploughing fencing and planting of the said crops was prior to December 1842.

(Signed) Amos Burdick,

Subscribed and sworn to
before me this 10th August
A.D. 1848

(Signed) W. H. Bushnell
Notary Public.

I Patrick Welch being duly sworn saith that in the Year 1842 (to the best of my opinion) James H. Scott made improvements on the North West quarter 1/4 of Sec 21. Town 39. N. R. 14. The improvements consisted in ploughing up and enclosing about twenty acres. That potatoes and corn and garden saues was raised in said enclosure by said Scott during that season. The next year after the breaking and fencing said Scott moved a house and barn on said premises. That said Scott resided upon and cultivated said enclosure from the time the house was put on until the fall of 1846 when the house was burnt down. Since that time another house has been erected and is still on the premises.

(Signed) Patrick ^{his} Welch
marks

Subscribed and sworn to
before me this 10th August
A.D. 1848

(Signed) W. H. Bushnell

Notary Public

1. James H. Scott applies to the Board of Trustees of the Illinois and Michigan Canal for the right of pre-emption to the North West quarter of Section Twenty one in Township Thirty nine North of Range Fourteen East and being duly sworn deposes and says, That he cultivated about twenty acres on the North East corner of said quarter section in the year 1842, and has continued to cultivate the same either by himself or tenant to the present time. That in the year 1843, he put a good house of the value of at least six hundred dollars on said premises and resided therein until it was burnt down which was in the latter part of the year 1846. That since that time the said premises have been occupied by a tenant holding under him. He farther says that he settled on said premises in his own right for the purpose of making himself a home and not for the purpose of speculation. And that it was the owner of all the improvements in Dec 1842. The words "in the year 1842" interlined before signing.

(Signed) James H. Scott

Sworn to before me this

29 day of March 1848

W. L. Rucker J. P.

4. Know all Men, Whereas I the undersigned Agent for the State of Illinois in pursuance of an Act entitled An act to protect the Canal Lands against trespassers approved March 4th 1837, do by these presents permit and authorize James H. Scott to take possession of the following tract or parcel

of land to wit the North west quarter of Section No 21 in Township No 39 in North Range No 14 East in the County of Cook and State of Illinois containing 160 acres; on the following condition to wit; that the said James H. Scott will not use any timber or tree of any description standing or growing upon Canal Lands for any purpose whatever, and that he will not use for fuel any timber or wood of any description situated upon any Canal Lands except the above described; and that he will not permit any person to use or take any timber or wood off said lands, and that he will surrender the possession of said lands to the agents of the State, together with all the improvements thereon whenever the same shall be advertised for sale, and that he will not sell or transfer his right of possession nor rent nor lease the same for a longer term than one year. And the said James H. Scott having first duly entered into bond with security according to the provisions of the above recited act.

Given under my hand this 18th day of October 1841.

John B. Will

Agent

By H. L. Ricker

And afterwards to wit on the Twenty Sixth day of March A.D. 1849. came the said complainant and filed in the office of the Clerk of said Court his Replication in words and figures following, to wit;

Cook County Court

Daniel Brainard

The Board of Trustees of } The replication of the Com-
the Illinois & Michigan Canal } plainant to the answer
of the Defendants

The said Complainant saving and reserving to himself all and all manner of advantage to the manifold insufficiency of the said answer for replication thereunto says, That he will aver and prove his said bill to be true, certain and sufficient in the law to be answered unto and that the said answer of the said defendants is uncertain, untrue and insufficient to be replied unto by this complainant without this that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied is true all which matters and things this complainant is, and will be ready to aver and prove as this Hon. Court shall direct and humbly prays, as in and by his said bill he has already prayed

Judd & Wilson

Solrs for Complainant

And afterwards to wit on the Thirty first day of May A.D. 1849. the same being one of the days of the May Term A.D. 1849. of said Cook County Court the following proceedings were had therein and entered of Record in words and figures following to wit

Daniel Brainard

The Canal Trustees

Bill

By agreement of parties it is Ordered that the above
entitled causes be continued to the next term of this
Court.

And afterwards to wit on the First day of
October A. D. 1849, came the said Complainant and
filed in the office of the Clerk of the Court aforesaid
the following depositions, to wit;

"Cook County Court

In Chancery

Daniel Brainard

vs

The Board of Trustees of the
Illinois & Michigan Canal

To the above named Defendants,

Take notice that on the 8th day of August 1849
at ten o'clock A.M. before Walter Kimball Clerk of
the Cook County Court at his office in the City
of Chicago we shall proceed to take the testimony of
Amos Burdick, Henry S. Rucker, William B. Egan,
Eli S. Prescott & Thomas S. Jackson witnesses whose
testimony when taken will be used on the part of
the Complainant in the above entitled causes when
and where you can attend and cross examine said
witnesses. We shall continue from day to day until
finished.

Dated this 10 July 1849

Yours &c

Judd & Wilson

Solrs for Complt

We admit due service of a notice of which the foregoing is

a true copy this seventeenth August 1849.

William T. Butterfield

Lefts Secy.

Cook County Court

Daniel Brainard

The Board of Trustees of
the Illinois Michigan Canal

The Depositions of Henry S. Rucker, Thomas
J. Jackson and William B. Egan of the City of Chicago
County of Cook and State of Illinois witnesses of
lawful age produced and examined upon their corpo-
ral oaths by Walter Kimball Clerk of the Cook County
Court at his office in the City of Chicago as witnesses
in a certain suit and matter in controversy now
pending and undetermined in said Court wherein
Daniel Brainard is plaintiff and the Board of Trus-
tees of the Illinois and Michigan Canal Defendants
on the Chancery side of said Court on the Part of
the said complainants tender and in pursuance
of the annexed notice.

A. B. Sudd appearing for the Complainant and
E. S. Williams for the Defendants.

The said Henry S. Rucker being first duly sworn
by me as a witness according to law in the said
cause previous to the commencement of his exami-
nation testified as follows.

Interrogatory first by A. B. Sudd Counsel for the
Complainant. Where did you reside in 1841 and what
was your business at that time and in what place

Have you resided and in what business have you been engaged from that time till now.

Answer to 1st Interrogatory. I then resided in Chicago where I still reside, was then a Justice of the Peace of Cook County and have been acting as such ever since.

Int 2^d. Are you acquainted with Col John B. Witt?
If so what office did he hold in the year 1841 & 1842

Answer to 2^d Int. I know Col Witt have known him for ten years past. He was Agent for the Protection of Canal Lands.

Int 3^d. Did said Witt as such Agent ever direct or authorize you to do any thing in his name in the business of his said office, If so what was it he authorized you to do, and state whether it was in writing or parole?

Ans to 3^d Int. Col Witt was then residing at Lockport and applied to me to attend to applications that might be made to me, or referred by him to me for permits to occupy Canal Lands in the vicinity of Chicago, as it was inconvenient for him at times to come up and attend to them himself. He left with me blank bonds and permits with his signature to be used in my discretion, and after they were exhausted authorized me to write out others according to his instructions. I issued a number of permits to occupy Canal Lands and reported them to him from time to time and they

with
met his approval

Int. 4th. Look upon the paper marked Exhibit A
now shown you and state who issued the same and
in whose hand writing it is. Defendant by C.
S. Williams objects to the introduction of the Paper Ex-
hibit marked A.

Ans. to 4th Int. I issued the paper. It is in my
handwriting.

Int. 5th. At the time said permit was issued did
James H. Scott execute and deliver to you any Bond
or other paper. If so what was it and for what pur-
pose.

Ans. to 5th Int. I never issued a permit with-
out taking from the applicant a Bond in the form
furnished me by Col Will and to the best of my
recollection took the usual Bond with security from
Mr Scott at the time of issuing the permit.

Int. 6th. Look on the paper now exhibited to you marked
Exhibit B and state whether you signed your name
as a witness thereto and whether you took the ack-
nowledgment of the same. Defendants by
Williams object to Exhibit.

Answer. I signed the same as a Witness and took
the acknowledgment thereof.

Subscribed and
Sworn to before me this

29th day of Augt 1849

W. Kimball Clerk

The said Thomas S. Jackson being first duly affirmed by me as a Witness according to law in the said cause preceding to the commencement of this examination testified as follows.

Interrogatory 1st. Where do you reside and what is your occupation at present, how long have you been engaged in such business?

Answer to 1st Int. I reside in Chicago. Am a Clerk in the Office of the Register of the Land Office. Have been engaged in that occupation nearly four years and four months.

Int 2^d. Who is now the acting Register of the Land Office at Chicago. Have you seen such Person write and do you know his hand writing?

Answer to 2^d Int. Alfred Cowles is the present Register. I have frequently seen him write and am well acquainted with his hand writing.

Int 3^d. Look upon the paper now shown you marked Exhibit C and state in whose hand writing the signature is and in what capacity or office the person was acting at the date of said certificate.

Ans to 3^d Int. It is in the handwriting of Alfred Cowles who was acting as Register of the Land Office at the date of the certificate and I saw him sign it.

Int 4th. Have you compared the map as shown

by said Exhibit A with the original map of Section
21 Township 39 North of Range 14 East of the third
Principal Meridian on file in the Registry Office
at Chicago. If so state whether it is a full true
and correct copy of such original map.

Ans to 4th Int. I have compared it with said
plat and know it to be a full true and correct
copy.

Thomas T. Jackson

Subscribed and affirmed

before me this 29th day

of August A.D. 1849

W. Kimball Clerk

Adjourned by agreement to September 8th
10 o'clock A.M.

The Deposition of William B. Egan said
Egan being first duly sworn by me as a witness
according to law in the said cause previous to the
commencement of his examination testified as
follows.

Int 1. Do you reside in the City of Chicago. If
so how long have you lived there?

Ans to 1st Int. I reside in the City of Chicago and
have lived there some fifteen years.

Int 2nd Are you acquainted with the limits of the
north west quarter of Section twenty one Township
Thirty nine north of Range Twelve East and how
near do you reside to said Quarter Section

Ans to 2^d Int

I am acquainted with the line and reside less than half a mile from said line.

Int 3^d Do you know that James H. Scott cultivated and occupied said Quarter Section. If so state when he commenced his improvements and occupation, what they were and how long said Scott continued to occupy cultivate and improve said premises and what were his first and subsequent improvements. State particularly.

(Interrogatory and answer objected to by Defendants Counsel)

Ans to 3^d Int I know that James H. Scott occupied the south west quarter of Section twentyone and cultivated a part of the same. The first improvements I know of his making was in the Spring of Eighteen hundred and forty two. He enclosed some ten to twenty acres or perhaps more with post and board fence. In that season raised Corn Potatoes and vegetables, and I think there was Cattle. In the Spring of Eighteen hundred and forty three he erected a good frame house upon the quarter Section commenced living in the same and continued personally to occupy and cultivate the premises until his house was burned in the fall of Eighteen hundred and forty six. The improvements consisted in his fencing, plowing and raising crops, putting on a house as before stated with an addition thereto, with a barn and cattle shed, set out shade trees and dug a well on the west half of the quarter section which well was at least fifteen feet deep and properly cased up with brick or stone which must have cost him somewhere about twenty five

dollars and still continues a good and permanent well. After the burning of that house another took its place and was occupied. Who occupies it now I don't know.

(That part of the answer which relates to improvements subsequent to Dec first Eighteen hundred and forty two, objected to by the Defendants Counsel)

Ans^d 4th For what purpose was said quarter section used from the time of Mr Scotts first entry until the Canal Sale of Eighteen hundred and forty eight.

Ans to 4th Int. For farming purposes and no other to my knowledge.

Cross Interrogatory by E. S. Williams

1st^{Cr} Int. Was the said north-west Quarter of Section Twenty one at the time said Scott entered upon the same within the corporate limits of the City of Chicago.

Ans^d 1st Cr Int I think it was.

Int 2^d Could you say how many acres was enclosed by Scott and cultivated by Scott prior to the first day of December A. D. 1843. About ten or nearer Twenty.

Ans to 2^d Cr Int I think not less than from fifteen to twenty five acres.

Int 3^d Did the said Scott prior to the first of December Eighteen hundred and forty two reside on said quarter section.

Ans to 3^d Cr Int. That I know of

Int 4th Was the land enclosed by Scott in Eighteen hundred and forty two cultivated by him for the Year Eighteen hundred and forty three and the consecutive years

Ans to 4th Cr Int Yes

Int 5th None or were not the improvements put on said Quarter Section prior to December first Eighteen hundred & forty two of a permanent character.

Ans to 5th Cr Int Yes they were

Wm B Egan

The foregoing depositions taken, subscribed and sworn to before me

Walter Kimball Clerk

Cock County Court

Exhibit and attached to said Depositions are the following

a. Exhibits to wit Exhibit "A" referred to by H. L. Ricker

Permit Know all men: Whereas I the undersigned Agent for the State of Illinois in pursuance of an act, entitled "An Act to protect the Canal lands against trespassing, approved 14th March 1835, do by these presents permit and authorize James M. Scott to take possession of the following described tract or parcel of land to wit the north west quarter of Section 21 in Township No 39 and north Range No 14 East in the County of Cook and State of Illinois

containing the above and the following conditions, to wit: that the said James M. Scott will not use any timber or tree of any description standing or growing upon canal lands for any purpose whatsoever and that he will not use for fuel any timber or wood any description situated upon any Canal Lands except the above described; and that he will not permit any person to use or take any timber or wood off said lands, and that he will surrender the possession of said lands to the agents of the State together with all improvements thereon whenever the same shall be advertised for sale and that he will not sell nor transfer his right of possession nor rent nor lease the same for a longer term than one year. All the said James M. Scott having first duly entered into bond with security according to the provisions of the above recited act.

Given under my hand this 18th day of October 1841.

John B. Witt

Agent

By H. L. Rucker "

Exhibit "B" referred to by H. L. Rucker.

For a valuable consideration to me in hand paid by Daniel Brainard of the City of Chicago I do hereby grant bargain sell transfer assign and set over unto the said Brainard all of my right, title and interest of in and to the following described real estate; viz: the North West quarter of Section twenty one Township Thirty nine Range 14 East in the County of Cook and also all claims to the improvements upon said premises and all right of pre-emption a right to purchase at the appraisal the aforesaid premises; and also all right interest

and benefit that may arise from or grow out of any petition or application for a pre-emption to said premises and to the proofs connected therewith as well such as are now filed in the Canal office as those that may hereafter be filed therein. He shall and he shall hold the same unto the said Wainwright his heirs and assigns forever and I do hereby authorize and empower the said Wainwright to receive in his own name and for his own benefit and the Trustees of the Illinois & Michigan to sell and transfer to him the aforesaid premises or any part thereof as fully and legally as the same could be transferred to me.

Witness my hand and seal this ⁽¹⁶⁾ sixteenth day of August in the Year of Our Lord one thousand eight hundred and forty eight.

James H. Scott. {Seal}
Sealed & delivered in
presence of

H. L. Rucker

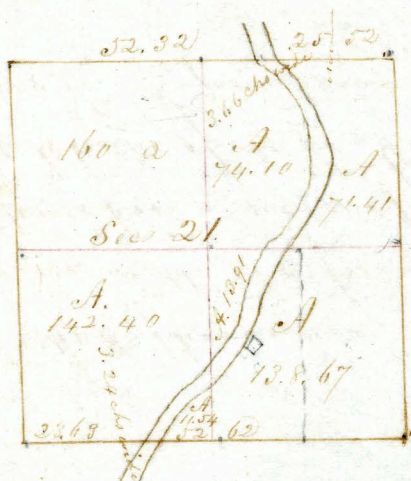
State of Illinois

County of Cook. I Henry L. Rucker, a Justice of the Peace in and for said County do hereby certify that James H. Scott who is to me personally known came before me this day and executed and acknowledged this Instrument of writing as his free act and deed for the uses and purposes therein expressed.

Given under my hand and seal this 16th day of August 1848

H. L. Rucker. {Seal} J. P.

Exhibit C testified to by Thomas T. Jackson
 Plat of Sec 21. in Township 39 North Range 14 East



I hereby certify that the above plat of Section
 No 21 Township No 39 North Range No 14 East is
 correctly copied from the plat of said Township
 on file in this Office.

Registry Office Chicago Ill.

August 28th 1849.

Alfred Cowles Register

And afterwards to wit on the Twenty fourth day
 of October A.D. 1849. the same being one of the days
 of the October Term 1849. of the Court aforesaid the
 following proceedings were had therein and entered
 of Record, to wit;

David Braintree }

vs

Canal Trustees }

Bill

The above entitled cause
 coming on to be heard in its regular order on the

docket for trial and parties not being ready for trial it is Ordered that it be continued to the next term of this Court.

And afterwards, to wit on the Twenty first day of January A. D. 1850 came the said parties and filed in the office of the Clerk of the said Court a stipulation in words and figures following, to wit:

Cock County Court }
offensive Pleas }

In Chancery

Daniel Briamard }

The Board of Trustees }
of the Illinois & Michigan } It is hereby stipulated
between the parties that all depositions now
on file in the Clerk's office and not opened shall
be opened and filed by the Clerk the same as though
done ^{under an} order of Court

Jan'y 21. 1850

Dodd & Wilson

Solrs for Complt
Millins & Butterfield

And thereupon, on said Jan'y 21. 1850. in accordance with the foregoing stipulation the following depositions were opened and filed in the office of the Clerk of said Court; (The Verdicts attached to said Depositions is not copied)

Cock County Court

In Chancery

Daniel Drainard

The Board of Trustees of
The Illinois & Michigan Canal

To Messrs William Butterfield
Sols for Deft.

Gent— Take notice that

on Saturday the twenty second day of September
just at 10 o'clock A.M. we shall apply to the
Clerk of the Cook County Court for a commission
in the above entitled cause and directed to Charles
P. Calkins of Kent County in the State of Michigan
to take the testimony of Walter Scott Benjamin
Myers and Isaac M. Mabeon residents of said
County which testimony when taken will be used
on the trial or hearing of said cause on the part
of the complainant. The following are the inter-
rogatories to be propounded to said witnesses se-
verally on the part of said Complainant.

Interrogatory 1st Where do you reside and what
is your age and occupation.

Interrogatory 2^d. Do you know James H. Scott if
so state whether said Scott ever made any improve-
ments upon or occupied the north West quarter of
Section twenty one, Township thirty nine North
Range Fourteen East. When did said Scott com-
mence his improvements. What the first and all
the other improvements were that were made by
him and what was the value of the improvements
put upon said quarter section. When did said
Scott commence residing upon said quarter section
and how long did he continue to live on the same
and in what manner did he use cultivate and occupy

the said quarter section and the varying parts thereof
and for what purposes was said quarter section
used from the year 1843 until 1846. State fully
Interrogatory 3^d Do you know any other matter
or thing of benefit or advantage to said com-
plainant. If so state the same as fully as if
particularly interrogated thereto.

Judd & Wilson

Solrs for Compl^t

Chicago 12th Sept 1849.

We admit due service of the foregoing this
12th Sept 1849

Williams & Butterfield

Defts Solrs

Daniel Brainard

vs Plaintiff

The Board of Trustees of
Illinois & Michigan Canal

Defendants

Depositions of Wit-

nesses produced, sworn, and examined in a certain
cause depending and at issue in the Court of
Chancery of the State of Illinois wherein Daniel
Brainard is Complainant and the Board of trustees
of the Illinois and Michigan Canal are Defen-
dants, before Charles P. Calkins Commissioner on
the fifth day of November 1849 at Grand Rapids
in the County of Kent and State of Michigan
taken under a commission, under the seal of
the Court dated the Twenty ninth day of Sept-
ember A. D. 1849 and in the part of the Com-
plainant

Isaac^M Watson, a witness produced before me, after having been duly sworn testified as follows:

First Interrogatory. Where do you reside and what is your age and occupation?

Answer. Says that he resides in Plainfield in the County of Kent and State of Michigan, is thirty three years of age and by profession a sack maker.

Second Interrogatory. Do you know James H. Scott, if so state whether said Scott ever made any improvements upon or occupied the North-west Quarter of Section Twenty-one Township Thirty-nine North of Range Fourteen East, When did said Scott commence his improvements, ^{what the first and all the other improvements were} ~~then~~ that were made by him, and what was the value of the improvements put upon said Quarter Section, When did said Scott commenced residing upon said Quarter Section, and how long did he continue to live on the same and in what manner did he use, cultivate and occupy said Quarter Section and the various parts thereof, and for what purpose was said Quarter Section used from the Year 1842 to 1846? State fully.

Answer to the Second Interrogatory. Says he is acquainted with James^H Scott and knows of his occupying the land; and thinks it is the North-west Quarter of Section Twenty-one Township Thirty-nine^{North Range} Fourteen East. Thinks he Scott commenced his improvements upon said land in the fall of 1841 or 1842 and the Spring following enclosed with

board fence about twenty acres of land; had broke up the same before, In May or June 1842 witness assisted said Scott in removing his house upon said land; commenced occupying said house with his family immediately thereafter. Said Scott had also a barn upon the land previous to removing the house thereon; The improvements made upon said land by said Scott were worth from five hundred to six hundred dollars. Said Scott occupied said land for the purpose of making a farm and did cultivate about twenty acres of the same and raised thereon corn, oats, beans and potatoes and also garden vegetables, and which said land was adjoining the City of Chicago on the South and being on the west side of the South Branch of the Chicago River in the State of Illinois, had also a good well of water upon said land.

Third Interrogatory Do you know any other matter or thing of benefit or advantage to said complainant. If so state the same as fully as if particularly interrogated thereon?

Answer. And to the third Interrogatory says he does not know of any other matter or thing of advantage to the complainant.

Subscribed and sworn J. H. Watson

this 3rd day of November
1849.

Charles P. Calking
Commissioner

On motion of the Complainant's counsel the

further examination was then adjourned to the 10th day of November 1849, at 5 o'clock P.M. at which time the examination was resumed as follows;

Walter Scott of Walker County of Kent a witness produced sworn and examined on the behalf of the complainant deposes and says as follows;

Interrogatory First Where do you reside and what is your age and occupation? Says that he resides in Walker Kent County Michigan and is nineteen years of age and by occupation a wash maker

Interrogatory Second. Do you know James H. Scott, if so state whether said Scott ever made any improvements upon or occupied the North-west Quarter of Section Twenty one Township Thirty nine North Range Fourteen East, When did said Scott commence his improvements, What the first and all the other improvements were that were made by him and what was the value of the improvements put upon said Quarter Section, When did said Scott commence residing upon said quarter Section; and how long did he continue to live upon the same, and in what manner did he use cultivate and occupy the said Quarter Section and the various parts thereof and for what purpose was the said Quarter Section used from the Year 1842 until 1846, State fully?

Answer. Says he is acquainted with James H. Scott and knows of said Scotts making improvements upon a Quarter Section of land adjoining the School Section on the South on the west

1842

side of the South Branch of ^{the} Chicago River in the City of Chicago Illinois; the precise government description he does not recollect, and knows of said Scott breaking up some of the land upon said Quarter Section above referred to as early as the Year Eighteen Hundred and forty two, he broke up about twenty acres of land at the time. Said Scott enclosed said twenty acres with post and rail fence in part, ditch and board in part, he also moved upon said land a house which he occupied with his family and a barn. Said Scott continued to occupy said House most of the time until it was burned and was occupying with his family at the time it was so burned, which occurred about three years since. Said Scott occupied the House for a residence and the land for farming purposes and raised thereon corn, oats, potatoes buckwheat and garden vegetables; he had set out ornamental trees; also had two mills upon said Quarter Section, one upon the East side and one on the West. Eighty both of which were good mills of water well curbed up with brick and platforms over both. Said Quarter Section was used for farming purposes as above stated from the Year Eighteen Hundred and forty two until the Year Eighteen Hundred and forty six.

The improvements placed upon said Quarter Section by said Scott as above mentioned was worth from nine hundred to ten hundred Dollars.

Interrogatory Third. Do you know any other matter or thing of benefit or advantage to said Complainant? If so state the same as fully as if

particularly interrogated thereto

Answers and says, that in the winter of Eighteen hundred and forty four and first of 1845 said Scott procured a large quantity of rails and posts for the purpose of enclosing the whole of said Quarter Section which were banked upon the north branch of the Chicago River and the Spring following were carried off by the freshet and in consequence of which he was prevented from enclosing the entire of said Quarter Section, and knows of attempts being made by several individuals at different times to settle upon said Quarter Section but were prevented by said Scott, he said Scott saying that he had a right to and claimed the same by virtue of a preemption right which he had upon said Quarter Section. The said attempts to settle upon said Quarter Section were made at various times on both East and West Eighty & at various points thereon.

Subscribed Examined & Walter Scott.
Sworn this 10th day of
November A.D. 1849

Charles P. Calkins Commissioner

State of Michigan
County of Kent } I Charles P. Calkins
Commissioner appointed by and acting under an
order of the Court of Chancery for the State of
Illinois bearing date the twenty ninth day of Sept-
ember Eighteen hundred and forty nine under
the seal of said Court do hereby certify that
Isaac W. Watson was produced before me on

The fifth day of November 1849 and after being first duly sworn by me to testify the truth in relation to the matter in controversy so far as he was interrogated thereto; which said answers to the several interrogatories were then by him subscribed to after being first by me reduced to writing on the said fifth day of November A.D. 1849 at my office in the village of Grand Rapids in said County of Kent; and I do also certify that under the aforesaid order the said Walter Scott was on the tenth day of November instant produced before me in my office in said Town and County aforesaid and being first by me duly sworn to testify the truth in relation to the matters in controversy so far as he was interrogated thereto; which said answers to the said several interrogatories after being by me first reduced to writing were then subscribed by him at the time and place last aforesaid. And I do further certify that ^{said} ~~the~~ testimony was taken to the said several Interrogatories annexed to said enclosed Commission and to none other and on the part and behalf of the complainant in the cause heretofore above entitled wherein Daniel H. Brainard is Complainant and the Board of Trustees of the Illinois and Michigan Canal are Defendants; and that the several Interrogatories annexed to said Commission were carefully read over separately to the said several witnesses and then copied herein preceding to the writing down of the said answers thereto by me and which with the aforesaid Commission are hereby returned into Court.

Given under my hand this tenth
day of November A. D. 1849
Charles P. Calhoun
Clerk of C. D. C. Commissioner

And afterwards to wit on the Sixteenth day
of March A. D. 1850 Came the said Defendant
and filed in the office of the Clerk of the Court
aforesaid the following Depositions to wit,

"State of Illinois

In Chancery

Cook County Court }
of Common Pleas }

The Board of Trustees of
the Illinois Michigan Canal }

vs
and

Daniel Brainard }

Sent.

Please take notice that on
the sixteenth day of March A. D. 1850 at Ten O'clock
in the forenoon of said day at the Office of Walter
Kimball Clerk of said Court in the City of Chi-
cago, in the County of Cook and State of Illinois
we shall proceed to take the testimony of Eli S.
Prescott Joseph C. Thompson and Alanson Wat-
son witnesses whose testimony when taken
will be used upon the hearing of said cause on
the part of the defendant when and where you
will appear & cross examine said witnesses, said
examination to be continued from day to day un-
til completed

Dated March 14. 1850

George &
William & Butterfield
To Messrs Sudd & Wilson
Comptys Saloys

We accept service of a copy of the above notice
upon us this 4th day of March A. D. 1850

Sudd & Wilson

Saloys for Comptys

The Depositions of Joseph E. Thompson, Eli
S. Prescott and Mansing Watson witnesses of
lawful age produced, sworn and examined before
me at my office in the City of Chicago on the six-
teenth day of March in the Year of Our Lord
Eighteen Hundred & Fifty in a suit now pending
& undetermined in the Cook County Court of
Common Pleas on the Chancery side thereof be-
tween Daniel Brainerd Complainant and the
Board of Trustees of the Illinois & Michigan
Canal defendants, said testimony being taken
at the time mentioned in the notice hereto
annexed & in accordance with said notice
& to be used upon the hearing of said cause
on the part of the defendants. The said witness-
es having been by me first duly sworn to
testify the truth in the said cause and the in-
terrogatories having been committed to writing
& also the answers thereto in my presence and
the said Witnesses having subscribed the same
before me.

Present A. B. Sudd Esq Solicitor for
Complainant.

E. S. Williams Solicitor for Defendants

Joseph E. Thompson being first duly sworn doth
depose and say

Interrogatory 1st. What is your age, occupation
and place of residence and are you acquainted
with the parties to this suit

Answer. I am thirty years of age, my occupation
is a surveyor and my residence Chicago and I
know the parties to this suit

Interrogatory 2^d. Are you acquainted with the
situation of the North West Quarter of Section
Twenty one in Township Thirty second Range
Fourteen East of the Third Principal Meridian?

Answer. Yes. I am.

Interrogatory 3^d. Is the said North-west Quarter of
St. within the corporate limits of the City of Chicago.
If yes how long has it been included within said
limits?

Answer. Said Quarter Section is within the corporate
limits of said City. I do not know how long said
Quarter Section has been within the limits of said
City.

Interrogatory 4th. Did you under the direction of
the Trustees of the Illinois & Michigan Canal make
a survey and subdivision of the North-west Quarter
of the above mentioned section. If yes when was

said survey made & did you make a map of the same?

Answer. I did make such survey and subdivision. Said survey was made in the month of August A.D. 1848. and I made a map of the said Quarter Section.

Interrogatory 5th. Look upon the map hereto annexed and marked Exhibit (A) and state whether the same is an exact copy of the original map of said Quarter Section made by you and filed for record in the Recorder's office of Cook County - State of what tract of land it is a map?

Answer. So much of said map as lies North of the dotted red line on the same running East and West through North Street is a correct copy of the map of the subdivision of the Northwest Quarter of said Section 21 as laid out by me in August 1848. The balance of said map represents a portion of the subdivision in the South half of said Section 21 made by me at the same time as said Northwest quarter.

Interrogatory 6th. Can you designate the part of said quarter section upon which improvements stood at the time you made your survey. If so state upon what portion of said Quarter Section were said improvements situated. To what blocks as laid out by you in 1848 were said improvements confined?

Answer. The improvements were in the North

east corner of the North west Quarter of said Section covering a part of blocks fifty seven & fifty eight as laid out by the Trustees. The red line on said blocks fifty seven and fifty eight on said map represents the line of the fence which I found upon said quarter section.

Interrogatory 7. Were there any other improvements upon any other part of said quarter section. At the time you made the survey.

Answer. The west of said Quarter Section was an open common. I saw no other improvements upon said Quarter Section.

Interrogatory 8th. Is the City of Chicago extending itself in the direction of said Quarter Section, and are buildings for residences being erected in the immediate vicinity of said Quarter Section?
(objected to)

Answer. The City is extending itself in the direction of said Quarter Section. I cannot answer whether buildings are being erected in that vicinity.

Cross examined by A. B. Fudd Complainant's Solicitor

1st Cross Interrogatory. In what did the improvements spoken of by you in answer to the sixth direct interrogatory consist?

Answer. Of a dwelling house and a cultivated

field & some sheds

2^d Cross Interrogatory. Do you mean to say that there were no other improvements on said Quarter or only that you did not see any other improvements?

Answer. I mean to say that I noticed no other improvements. I went there merely for the purpose of surveying the land & not for the purpose of taking notice of the improvements.

3^d Cross Interrogatory. Were the improvements which you saw there such as had been made for farming purposes or for city purposes?

Answer. They looked more of the character of farming improvements than City improvements. It looked like a large garden filled with garden crops.

4th Cross Interrogatory. How many acres were within the enclosure of which you have spoken about how many?

Answer. There was about 100 acres within the fence.

5th Cross Interrogatory. In the division of the North west quarter made as you have stated how much land did the smallest lot which was laid out contain and what is the general size of the blocks and lots?

Answer. The lots vary from two acres & thirty one hundredths to four acres & each block contains four lots except the west tier of blocks which contain two lots each.

6th ^{Crp} Interrogatory. How long have you known this Quarter Section?

Answer. Since August 1848.

7th Cross Interrogatory. Was there in August 1848 any other occupant or settler upon said Quarter Section than the one who lived in the house upon the improvements which you have described?

Answer. No there was no other. I noticed no other.

Direct resumed.

9th Interrogatory. Were not all the improvements which you have described confined to the North East Quarter of the North west quarter of said Section?

Answer. They were
Subscribed & sworn to } Joseph E. Thompson
before me this 16th day
of March A.D. 1850 {
W. Kimball Clerk

Eli S. Prescott being duly sworn doth depose and say.

1st Interrogatory, What is your age, occupation & place of residence and are you acquainted with the parties to this suit?

Answer, I am 39 years of age, residence Chicago and know the parties to this suit. My occupation Timber Agent of the Board of Trustees.

2^d Interrogatory, Did you at or about the time that James H. Scott filed his papers in the Canal Office for a pre-emption upon the North west Quarter of Section Twenty one Township Thirty nine Range Fourteen East have any conversation with said Scott in reference to the improvements made by said Scott on said Quarter previous to the 1st of December A. D. 1842. If so what did said Scott state in reference to said improvements (objected to)

18412 Answer, Scott held conversation with me I do not remember the time but it was before Scott filed his pre-emption papers in which he stated to me in substance that he had plowed & enclosed in 1842 some twenty acres in the North-east corner of the North West quarter of said section and that in the year 1843, moved a house within the enclosure on said Quarter Section and that he continued to reside in the house until it was burned down in 1846.

3^d Interrogatory, Are you acquainted with the situation of the North West quarter of said Section 21. If so, how long have you been acquainted with it, State what improvements were on said Quarter

ter prior to December 1842.

Answer. I have been acquainted with said quarter since the year Eighteen Hundred and thirty five. I do not know of any improvements upon the Quarter except those made by Mr. Scott and which consisted of some twenty acres of plowed land which was enclosed as stated by him and the extent of said improvements are designated by the red lines on the map marked (A) as near as I can judge.

11th Interrogatory. Was said Quarter Section at the time said Scott entered upon the same within the corporate limits of the City of Chicago.

Answer. I can't tell without reference to the Act of Incorporation.

3th Interrogatory. Has the City of Chicago been extending in the direction of said Quarter Section for several years ^{last} past as is a great part of the growth of the City of Chicago now in that direction.

Answer. It is extending Westerly at the present time faster than in any other ^{direction} and Southerly in an equal degree with the general growth of the City. There have been dwelling houses in the vicinity of said quarter for several years past. Within a quarter to half a mile North of said Quarter Section the City is thickly settled.

6th Interrogatory. Do you know what the value of

Said Quarter Section was per acre immediately previous to the first of December A.D. 1842. State what in your opinion was the value at, said time.

Answer. I cannot state. My opinion is that it was worth forty to fifty dollars per acre, but property in and around Chicago at that time had only a nominal value. There was no demand for property at the time.

7th Interrogatory. What was the business of the said James H. Scott about the time that he entered upon said land.

(Objected to)

Answer. He was a mechanic engaged in the sack making business at that time and has been engaged in mechanical business since that time.

Cross examined by A. B. Budd. Complainant's Solicitor.

1st Cross Interrogatory. Are you the land agent of the Board of Trustees & if so is it not a part of your business to attend to getting the proofs for the defendants in pre-emption cases?

Answer. I am designated by the Board the Timber Agent, and it was a part of my business to assist in collecting and arranging pre-emption proof.

Cross Interrogatory. What fire did James H. Scott's Sack Factory burn down.

Answer. I cannot state positively. I should think in the Year 1842. or 1843. It might have been 1842 or as early as 1841. It was before he moved on to the land.

Q. Cases Interrogatory. From the burning of the Sash Factory until the fall of 1844. do you know of James H. Scott being engaged in the manufacture of sash. If so state where he carried on business.

Answer. I do not remember particularly about that time. Know that some time, I should think previous to 1844. he was engaged in making panels as he told me I think in Michigan
C. S. Prescott

Subscribed & Sworn to
before me this 16th day
of March A. D. 1850

W. Kimball

Clk.

Afterwards to wit on the Twenty first day of March A. D. 1850. the following depositions were opened and filed together with a Stipulation, Interrogatories and Cross Interrogatories thereto annexed which said papers are in words and figures following, to wit:
(The Deductions, also annexed to said depositions, are not copied in this Transcript)

Cook County Court
Daniel Brainerd
The Board of Trustees of
The Illinois Michigan

It is hereby stipulated that the commission issued in this cause to take the testimony of Amos Burdick and directed to any Judge or Justice of the Peace of Porter County in the State of Indiana be so amended as to be directed to any Judge or Justice of the Peace of Lake County Indiana and the testimony when taken shall have the same force and effect as though the said commission had originally been directed to any Judge or Justice of the Peace of Lake County Indiana

Sept 3. 1849

William & Butterfield

Defty Solrs

Judd & Wilson

Solrs for Comply

(The Deedman (not copied) follows.)

Cook County Court

Daniel Brainard

vs

The Board of Trustees of
the Illinois & Michigan Canal

In Chancery

Interrogations to be
propounded to Amos Burdick a non-resident
witness

Interrogatory No 1. Were you in the Years 1841 & 1842
acquainted with John B. Witt if so what office
did he hold at that time and in what capacity
did he act

Interrogatory No 2. Did you ever at any time make
application to said Witt for permission to occupy

any portion of the Canal Lands if so state fully at what time such application was made and all that was said between you

Interrogatory No 3. What conversation took place between the said Mitt and yourself in relation to James H. Scott or any other person occupying said premises

Interrogatory No 4. What directions as to obtaining or getting permits to occupy such lands was given by said Mitt and what was done in pursuance of such directions what papers were made out on both sides and if any permit was issued to James H. Scott when and where did you last see it

Interrogatory No 5. State fully how long after the issuing of said permits it was before said Scott made any improvements upon said premises what the first improvements were and all of the improvements that you know of his making and how long said land was occupied and cultivated by said Scott

To Messrs Williams & Butterfield,
Sols for Deftz.

Gents. Take notice that on Tuesday the twenty eight day of August inst at ten o'clock A.M. we shall apply to the Clerk of the Cook County Court for a dedimus potestatem or a commission to be issued in the above entitled cause and to be directed to any Judge or Justice of the Peace of Porter County in the State of Indiana to take the testimony of Amos Burdick

a new resident witness to be used on the hearing of
the above entitled Cause on the part of the complain-
ant and that the foregoing are the interrogatories
to be propounded to said witness

Dated this 6th Augt 1849

Yours &c

Geo D Wilson

We admit due service of the
foregoing interrogatories & notice this
17th Aug 1849

Salve for Compt

Williams & Butterfield

Cook County Court

The Board of Trustees of the
Illinois & Michigan Canal

In Chancery

ad
Daniel Brainard

Cross Interrogatories to be
propounded to Amos Burdick a new resident
witness examined on the part of the complainant

Direct Interrogatory 2^d

To that portion of In-
terrogatory 2^d which requests the witness to state
what was said between Hinsman Witt at the time
of his application for permission to occupy Canal
Lands the defendants by their Solicitors object

Direct Interrogatory 3^d

To the third Interrogatory
the defendants by their Solicitors object

Direct Interrogatory 4th

If any directions
were given by Witt please state whether said di-
rections were in writing? If any papers were

made out did you see them & what papers were made out and executed in your presence? Did you see any papers delivered ~~in your presence~~ & to whom?

Williams & Butterfield

Drafts Sold

Deposition of Amos Burdick of Lake County and State of Indiana, a witness produced and sworn before me Joseph P. Smith a Justice of the Peace of Centre Township Lake County and State of Indiana at my office in said Township on the sixth day of September 1849. Taken between the hours of eight and ten A.M. of that day pursuant to the annexed depositions, to be read in evidence in a certain cause pending in the Cook County Court in the State of Illinois wherein Daniel Wain and is Complainant and the Board of Trustees of the Illinois and Michigan Canal are defendants.

The said Amos Burdick being duly sworn to testify the truth in relation to the matters in controversy so far as he may be interrogated

To the first Interrogatory witness says
Ans. He was acquainted with him by sight - he Col Witt was agent for the Canal Lands belonging to the Illinois and Michigan Canal

To the second Interrogatory witness says
Ans. In October 1841, I think it was I saw Mr Witt in the Street in Chicago and asked him if he had charge of the Canal Lands. ^{He replied that he was agent of the Canal Lands} I told him I wanted a permit on a certain piece that lay west of the South Branch joining on the River. He

told me I could have it. I then told him I only wanted the South half. Mr James M. Scott had been conversing with me. I told Mr Will Mr Scott would take the other half. Col Will replied that if Mr Scott or any other good man would take it he could have it. Col W then told me that he had authorized Esq Rucker to give permits and that we could go to Esq Ruckers at any time and get them.

To the third interrogatory the witness replies
Ans. Col Will told me that James M. Scott or any other good person might have a permit on the premises.

To the 4th Interrogatory the witness replies
Ans. Mr Col Will directed me to go to Esq Rucker who would issue a permit. In going home that afternoon I came across Mr Scott. I told him what I had done and what conversation I had had with Mr Will in regard to the premises.

Now, says I, if you are a mind to go down with me in the morning we will get our permits. Mr Scott told me to call on him in the morning and he would go down with me. I accordingly called on Scott in the morning and he and me went together to Ruckers Office; where Mr Rucker made out each of us permits for the tract of land. We ^{Bond} Mr Scott & myself entered into separate bonds, Mr Scott went my bail and I went his. I last saw Mr Scotts permit at the Canal office when proving up Mr Scotts pre-emption.

To Interrogatory 5th witness answers.
He was in the fall of 1841. probably within two

or three acres, after the issuing of the permit
Scott commenced plowing and broke up proba-
bly about eight or ten acres. In the Spring or
Summer of 1842, Scott moved his barn on the
premises and enclosed between twenty and thirty
acres with a post and board fence. ^{Shunk}
^{and knows he raised a crop on the premises that season in the Spring 1843}
Scott broke some in the Spring of 1842. Scott moved
a frame dwelling house on the premises and moved
into it himself. Witness says that Scott cultivated
the land every year commencing with 1842 until
witness left Chicago which was in October 1844.

Answer to the Cross Interrogatory
The directions given by Col Witt were not in writing.
A permit was made out for witness, and another
for Scott and a bond for each of us, all of which
I saw and they were all executed in my presence
I saw my permit delivered to ~~me~~ Scott, to him
and the bond to Esqr Rucker.

Amos Burdick
Subscribed and sworn before me this sixth day
of September 1849.

Joseph P. Smith
Justice of the Peace

State of Indiana
Lake County } Sec

I Joseph P. Smith a Justice of
the Peace of Central Township in said County here-
by certify that on the sixth day of September 1849
at my office in said Township the witness Amos
Burdick named in the annexed commission
and who subscribed the foregoing deposition was
duly sworn and examined on oath before me

upon the interrogatories and cross interrogatories annexed to said commission, that the answers to said interrogatories and cross interrogatories were written down by me and subscribed by said witness and sworn to by him.

Witness my hand and seal this 6th day of September A.D. 1849.

Joseph P. Smith (Seal)
Justice of the Peace

State of Indiana
Lake County

I David R. Pettibone Clerk of the Lake Circuit Court do hereby certify that Joseph P. Smith Esquire before whom the foregoing deposition was taken was at the date of taking the same an acting Justice of the Peace within and for said County duly commissioned and qualified according to law and that full faith and credit are due to all of his official acts as such Justice.

(S.S.)

In testimony of which I have hereunto set my hand as Clerk and the seal of the Lake Circuit Court this 7th day of September 1849

David R. Pettibone
Clerk

And afterwards, to wit on the twenty fourth day of March A.D. 1850, the following deposition was filed in the office of the Clerk of the aforesaid Cook County Court of Common Pleas to wit;

The Deposition of Mary Watson a witness produced on the part of said defendant.

who being first duly sworn testified as follows:

1st What is your age, occupation & place of residence & are you acquainted with the parties to this suit

Answer. I am about 40 years of age am a Carpenter & Joiner & reside in Chicago. I am acquainted with the Complainant and have seen the Defendants.

2^d Are you acquainted with the situation of the Northwest Quarter of Section Twenty one in Township Thirty nine in Range Fourteen East of the Third principal Meridian. If yes how long have you known said Quarter Section?

Answer. I have had some little knowledge of it for some seven or eight years past.

3^d Do you know James H. Scott. If yes do you know or can you tell whether said Scott dug a well on the west half of the said Quarter Section. If said Scott dug any well on said land in what year did he dig the same & on what part of said West half was the said well dug?

Answer. I do know said Scott. There was a well dug there. I did not see him dig it. I think the well was dug in the fore part of the summer of the Year Eighteen Hundred and forty three. The well was on the north part of the West half of said Quarter Section.

4th Do you know who dug said well & whether

the same was walled up. If you know how was it walled?
And how near to the North line and North west
corner of said Quarter Section was the well of
which you have spoken?

Answer. I think John Scott dug the well. I
did not see any person dig it. I think the well
was bricked up. I think it was about twenty
rods South and East of the North west corner
of said Quarter Section.

Qth. Was said well dug after James H. Scott
had moved his house upon said Quarter Section?
Had there to your knowledge any other well on
the west half of said Quarter Section?

Answer. The well was dug after said house was
moved on to said Quarter Section by Scott. There
was no other well on the west half of said Quarter
Section.

Qth. Do you know what time said Scott moved
his house upon said Quarter Section?

Answer. I think the house was moved in the
Spring of ~~that~~ year 1840 quite early.

Qth. Do you know what was the occupation of
James H. Scott before and at and subsequent to
the time of his moving on to the said Quarter
Section?

Answer. His occupation was that of door making.

and sash making. That was the last business that he followed until his sash-factory burned down which was in the year 1841 or 1842. My impression was it was the year 1841.

8th Did said Scott after the burning down of his Sash-factory continue in any mechanical business? If yes what business was it?

Answer: I do not know that he did

yet. Was or was not said Scott after the building of said Sash factory engaged in the manufacture of pails in Michigan & were not the said pails brought to Chicago and painted by him in said City of Chicago?

Answer: I saw him have a quantity of pails at his place painting either the fall he moved on to said Quarter Section or the next season I should think the next season.

10th What business has the said Scott followed from the time his Sash factory burned down until the present time?

Answer: I understand from Scott that he was engaged in the pail and sash making business in the State of Michigan, where I have heard from him that has always been his business.

(objected to)

11th How far was the Sash factory of said Scott

X before the same was burned down from the said Quarter Section.

Answer. I suppose it was nearly a mile from said Quarter Section.

12th. Do you know why the said Scott moved on to said Quarter Section. What were the circumstances of the said Scott at the time he moved his house on to said Quarter Section?
(Objected to)

Answer. I do not know that I could say why he went on to said Quarter Section. I know that ~~said~~ Scott was poor. He was not willing or was not able to pay his debts.

13th. Do you know of the said James M. Scott having sold his interest or any portion of his interest in said Quarter Section to the Complainant in this suit or to any other person. If so when was said sale made & what was the price given by said Complainant or any other person to the said James M. Scott?
(Objected to)

11 Answer. I think Mr Scott told me a short time before the sale of Canal Land in September 1848 that he had sold his right to the North East forty acres of said Quarter Section to the Complainant and was to receive ~~as~~ a consideration, title to one eighth of said forty acres including the part where his house was. Scott did not tell me that he had made any

location of the portion of said forty of which he was to receive the title. I understood that he was to receive so much at any rate, and that if the land was valued at less than three hundred dollars per acre he was to receive more in proportion, as the appraisal fell short of three hundred dollars per acre. I should think this was a short time before the sale came off in September 1848. Scott told me at the same time that he had sold the west Eighty acres of said Quarter Section to some one in Michigan. The price I think he told me was about \$600, that he was paid \$500, and if his (Scott's) title was sustained he was to have an additional hundred dollars. The South forty of this East Eighty. I had an ~~conditional~~ contract with Scott for. The contract was that if Scott's title to the land was sustained that he was to be released from a debt which he then owed me of about \$400. Scott said when he was here about the 1st of September 1848 or a little before that, that if I would take a claim against the land that he was to receive from Bradman and release the forty in which I held the contract that Sherman would take the forty for the same amount and release him from all further liabilities. I think there were others interested with Sherman in this forty. I complied with Scott's request.

(This answer objected to by plaintiff's counsel)

14th Do you know from your own personal knowledge anything in regard to the sale of any portion said land except the portion sold to you or is your information in reference to the other

sales of which you have spoken derived solely from conversations with said Scott?

Answer. All the information I derived in regard to said sales, except the sale from said Scott to me was derived from conversations with said Scott.

I have heard Complainant say that Scott located the place where his proportion of said forty acres was to be. Brainard said Scott expected it to be where his house was & if he took it there Complainant thought he would not get the five acres. I understood from Brainard that Scott was to have an average of the land & that he considered the land where Scott's house stood better than the average.

Cross examined by A. W. Pudd Esq. Complainant's Solicitor.

Cross Interrogatory 1st Did you sell the line or interest which Scott gave you in the premises to the Complainant?

Answer Yes, I did.

Q^d When the time Scott moved the house upon the premises until the fall of 1846 who lived in said house and occupied said premises?

Answer. I think Scott lived in it himself until it was burned up. I should think it was in the winter of 1846 and 7.

3^d Who cultivated so much of said Quarter Section as was ~~under~~ cultivation during the years 1842, 3, 4, and 5.

Answer Mr James M. Scott

4th Did any other family during the years mentioned and the last interrogatory reside upon, cultivate or occupy any portions of said quarter section. If so name the family

Answer No other family to any knowledge resided upon or cultivated or occupied said Quarter Section or any portions thereof

5th Were the improvements made by said Scott upon said Quarter Section such improvements as were made for farming purposes or were they such improvements as are made in cities or towns.

Answer to 5th ~~Interrogatory~~ Interrogatory (Cross)

I should think it was a good comfortable house and barn. It resembled a farming improvement

6th State particularly what the improvements were upon said quarter section, houses, barns, fences, sheds, ploughing & their probable value.

Answer There was a good comfortable house & a small barn & a shed & a yard. There was a good well on the East. Eight besides the one on the west which I have before mentioned. There were some other outbuildings I believe a good brick oven,

I do not know whether it was in the

house or not. Trees were set out about the deer yard, I thought there were about twenty a-cre broken up and improved and enclosed with a post and rail fence. There might have been a portion of it about the house & back fence. In my opinion the value was about seven hundred dollars.

7th. In addition to cultivating and raising crops had the said Scott any stock that he kept upon said premises? If so state what it was.
(Objected to)

Answer.

He kept from one to two spans of heavy cows and other young stock. At the time his house burned he had a mare and colt, few cows and some young stock. I don't recollect how much.

(Answer objected to by D. A. Solr.)

8th. During the time that said Scott occupied said premises as you have before stated were they used for farming purposes? Or for any other purpose? State what.

Ans. I do not know that they were used for any but farming purposes.

9th. From the time Scott went in to said premises until his house was burned as you have stated did not said Scott have more or less stock that he had kept every year on the premises?

Answer. Yes he kept stock every year.

10th Do you know of your own knowledge who dug the well on the west Eighty-acre?

Ans I do not

11th Is that well a good permanent well & is it used at the present time?

Ans It was built in a good workmanlike manner. I saw it frequently in the summer of 1849.

It was then in good condition & had the appearance of being used.

12th From the time Scott's Sash factory - as you have before stated was burned until the fall of 1846 was James H. Scott to your own knowledge engaged in any other business except cultivating the premises in question?

Answer. All that I have seen him do except attending to his farming business was to have a quantity of rails at one time that he was painting. This is all I know from my personal knowledge.

13th Do you know of said Scott getting out a quantity of rails for any purpose. If so state where he got them and for what purpose.

(Objected to)

Answer. At the time I bought a timber lot of Scott on the North Branch of Chicago River - there was a quantity of rails then made on the premises that Scott reserved. He said he had made them to fence this Quarter Section.

14th What became of said rails?

Answer The rails were drawn to the bank of the River. Some of them were rafted. He got a small quantity of them home. The water went down and left the rest of them. I believe they were afterwards got out of the river and were stolen. I am not positive whether they were driven ashore or whether the water went down and left them.

(Answer objected to)

15th About how many rails were there in the timber lot that he had got out when he sold it to you?

(Objected to)

Answer Scott claimed there were four thousand. I never counted them.

(Answer objected to)

16th How many acres would the 4000 rails using them as rails ordinarily are used fence?

Answer I should think it would fence Eighty Acres.

17th Do you know what was done with so many of the rails as Scott got down to town?

Ans I think they were used on the fence on said Quarter Section.

Direct Interrogatory 18th. Do you or do you not know that a part of the time between his entry upon said Quarter Section & his removal to Mich-

again said Scott was engaged in mechanical business in said State of Michigan. What are your means of knowledge?

Answer. All that I know is what I have heard him say. He said that he was connected with a company over there that carried on mechanical business.

(Objected to)

Interrogatory. How many of the residents of 16th the City of Chicago who are carrying on mechanical or other kinds of business in said City erected dwelling houses and improvements such as you have described in the suburbs of said City. Is it any thing unusual for such improvements to be made by the mechanics and business men of the City?

(Objected to)

Answer. I do not recollect about mechanics, there are other business men who have such improvements in the suburbs of the City.

17th. Is it not very common for business men residing in the City to keep stocks of horses & cattle in the vicinity of said City? I have not some residents of the City large stocks in and around the same.

(Objected to)

Answer. There are a great many of those living in the settled portions of the City or nearer the City than Scott who did have large stocks of cattle.

18th. Was the said Quarter Section such land as

a good practical farmer would have been likely to select for farming purposes. State the quality of the soil and whether it was good soil for cultivation. Was said land dry land or wet land.

Answer. The part that was cultivated was generally dry, there was a good deal of wet land on the quarter. It is not as good for cultivation as land in the country. It needed more manuring. I should think it was as good as most land in the vicinity of Chicago. The ridge where the house was was a desirable location it being a dry pleasant place. It would depend on circumstances. If a man wanted to make a farm near the City I should think he would be as likely to select this as any.

Interrog 19. Is farming to any great extent carried on in the vicinity of Chicago and are there any farms within the corporate limits of the City.

(Objected to)

Answer. I should think farming was not carried on to any great extent in the vicinity of the City. I should think there were some small sized farms within the corporate limits. They are not extensive farms.

(Answer objected to)

Interrog 20th. Do you call such an improvement as Scott's a farm in the ordinary acceptance of the term.

Answer. I should hardly know what else to call it.

Interrogatory 21st Do you mean to say in your answer to the third Cross Interrogatory that you know of your personal knowledge that any person of said Quarter Section was under cultivation in the year 1842.

Answer I cannot say that it did. I was not on the Quarter in the Year 1842.

Interrogatory 22^d What size was the barn on said Quarter Section?

Answer I should think the barn would not differ much from twenty feet square. It might have been twenty feet by twenty four, not larger, perhaps smaller.

Interrogatory 23^d In what year did you purchase the timber land of Scott of which you have spoken in your cross examination & at what time were the rails of which you have spoken rafted down to said quarter section & what proportion of the rails were left behind.

Answer I bought the land of him in 1844. & the rails were hauled to the river and rafted in the spring of 1845. The great proportion of the rails were left behind. Afterwards I saw some rails at Scott's house but do not know they were the same rails.

Interrogatory 24th Was the mill of which you have first spoken dug by John Scott and was the said John Scott the brother of

James H Scott

Answer. I think it was dug by John Scott but I can't say that I knew it was dug by him. John Scott was the brother of James.

Interrogatory 25. Did you know from what lot said Scott's house was moved when it was moved on to said Quarter Section?

(Objected to)

Answer. I do not know the number of the lot I know its location. It was near Clearing. It was the lot on which this Sash Factory stood.

Cross Interrogatory. When were the rails got out of which you have spoken of?

Answer. They must have been made in the winter of 1843 and 1844, previous to my buying Alanson Watson

Subscribed and sworn to
before me this 21st day of
March A.D. 1850

Walter Kimball

Clerk

And afterwards to wit on the Eighth day of April A.D. 1850 the same being one of the days of the March Special Term 1850 of the aforesaid Cotte County Court of Common Pleas the following proceedings were had and entered of record in words and figures following to wit,

"Daniel Brainard

vs

The Board of Trustees of the
Illinois & Michigan Canal

Bill in Chancery

This day came the said
Parties by their Solicitors and by agreement, It is Ordered
that the venue in the above entitled cause be changed
to the Cook County Circuit Court, Provided that
previous to the transfer of the papers and on or before
the first day of May next a stipulation in writing be filed
by the parties to this cause in this Court ordering and direct-
ing such transfer of papers and unless such stipulation is
filed as aforesaid this order is not to take effect.

And afterwards, to wit on the Thirtieth
day of October A.D. 1850. the following stipula-
tion and deposition were filed in the office of the
Clerk of said Court, to wit

Cook County Court of Com. Pleas

Daniel Brainard

vs

The Board of Trustees of the
Illinois & Michigan Canal

In Chancery

It is hereby stipulated
that the deposition of Francis C. Sherman may
be taken in the above entitled cause before Walter
Kimball Clerk immediately and notice is
hereby waived subject to all exceptions as to
competency of the evidence

Chicago 30 Oct 1850.

J. N. Arnold

Atty for Defts

A. B. Judd Solr for Comptg

Daniel Brainard

vs

The Board of Trustees of
the Illinois & Michigan Canal

In Chancery

The Deposition of Francis C. Sherman
a Witness produced sworn and examined on the
part of said Complainant taken by stipulation
of parties.

Interrogatory 1st What is your age and occupa-
tion and where do you reside

Answer My age is forty five years. I am a
brick-maker and reside in Chicago

Int 2^d Were you one of the appraisers of Canal
Lands appointed under the act to provide for
the completion of the Illinois & Michigan Canal
and for the payment of the canal debt approved
February 21st A.D. 1845 and did you act as such
appraiser and who were the other appraisers

Answer Yes. I was appraiser and acted as such
William Reddick and Paul Mathison were the
other appraisers

Int 3^d Did the Board of Appraisers of which you
were a member appraise the North-west quarter
of Section twenty one, Township thirty nine Range
fourteen East

Answer The Board appraised it.

Preliminary by Defendants Counsel

Was such appraisal reduced to writing signed by the Board of Appraisers and filed in the office of the defendants

Answer. It was

Direct Int 4th In what manner did you estimate and value the several lots and blocks in said North-west quarter of said Section Twenty one

Defendants Counsel object to this question

Answer. The valuation was ascertained by the Area

Int 5th In what manner did you ascertain what the area was of each lot and block

Answer. We ascertained from the maps furnished us by the Board of Trustees, and by the figures marked on the face of said map showing the quantity of land in each lot and block

Int 6 In the maps furnished you to make the appraisal from, was the number of acres noted on each lot and block? or did you estimate the area of each lot and block by the length of the lines as marked on said map

Answer This quarter Section I think the number of acres was all marked on the face of the maps In some of the maps we had to make the estimates and where the computation was not on the map we had to make it ourselves.

Int 7. To what part of the lands appraised by you did you apply the rule of valuation by the acre

Answer These known as cut lots and blocks.

Int 8. Explain fully how you arrived at the valuation of each lot and blocks.

Answer We valued it by the acre, ascertained how much each lot and blocks contained, and then carried out the total valuation on the several lots and blocks and graduated the price per acre according to its value and location from the River and other things around that gave it value.

By Defendants Counsel

Int 1. At the time of such appraisal had the said North West Quarter of Section Twenty one been subdivided

(Objected to by Comptes Counsel)

Answer Yes, as appeared by the maps furnished us by the Trustees.

Int 2. In making up your appraisal did you make it up with reference to such subdivisions as appeared by said maps.

Ans^r Yes, by computing the number of acres as I said before.

Int 3. Look at map marked A. attached to stipulations dated October 19th 1854, and state whether the subdivisions thereon are the same as on the maps used by you at the time of the appraisal.

Answer. I think it is except that the quantity of Acrez does not appear on Map marked A.

Int 4. Are you aware whether Canal Street had been extended and opened through said section before such appraisal.

Answer. I do not know.

Int 5. In estimating the value of a quarter section or an eighty acre tract where from its location a forty or an eighty acre tract was from its location more valuable than others how is the value of such tract estimated.

Answer. They were estimated from their location, commercial advantages and other improvements around it.

Int 6. Was such valuation attached to each Forty or was it carried to a larger subdivision.

Answer. We carried our valuation according to the subdivisions furnished us by the Trustees whether by Eightys, Forties or lots or blocks.

Int 7. Was there any other subdivision furnished you by said Board except the subdivision into lots and blocks as before stated.

Answer. No.

Int 8. Did you ever make any appraisal according to any other subdivision than as before stated

Answer No

Int 9. Was the number of acres in a Block the only element that entered into your consideration in estimating its value or did you take into consideration its position with reference to business commercial advantages and other improvements

Answer We valued it in reference to its location commercial advantages and improvements about it and fixed its value per acre

Int 10. Was the graduation made upon the same Sub divisions upon ~~the~~ same principal that you made your valuations upon

Answer Yes

Francis N. Sherman

By Defendants Counsel

Int 11. If a particular Block was so situated with reference to improvements and commercial advantages as to enhance its value how did you value it with reference to a block less favorably situated

Answer We valued the blocks higher or lower according to their commercial advantages and improvements around them by the acre. In

computing the amount the computation was made by the acre and the total amount carried to the blocks.

Int 12. What was the relative value of the South East Forty in said Quarter Section as compared with the South west Forty in said quarter section.

Answer. The South East Forty acres being nearest the River was appraised the highest being the most valuable.

Int 13. At the time of the appraisal of the South East 1/4 quarter of Section Twenty one Town Thirty nine Range Fourteen had or not streets been opened in said Quarter Section.

Answer. There had been streets opened
excepted to by S. C. Sherman
Compt. Solr.

State of Illinois }
Cook County } ss

I do hereby certify that the foregoing deposition of Francis C. Sherman was sworn to and signed by the Depoent before me and in my presence, and that the said Deposition was taken by me on the 30th day of October A. D. 1850, at my office in the City of Chicago in said County.

(J. S.)

Given under my hand and seal
of Court the day and year above
written.

W. Kimball Clerk

And afterwards was filed in the office of the Clerk
aforesaid the following agreement, to wit:

Cook County Court
of Common Pleas

Daniel Brainard

vs

The Board of Trustees of the
Illinois & Michigan Canal

The following facts are
~~admitted~~ and ~~agreed upon~~ by the parties

1st That the map of which Exhibit "A" is a copy
and which is referred to in the testimony of Joseph
Edgar Thompson was in due form of law certified
by said Thompson on the 31st day of August A. D. 1848
and by the Board of Trustees above mentioned on
the same day and was acknowledged by said
Board of Trustees by William H. Swift President,
of said Board and Robert Stuart Secretary of
the same, in due form of law on the first day
of September A. D. 1848. and recorded in the Re-
corder's Office of Cook County on the said first
day of September Eighteen Hundred and forty
eight and that said map marked Exhibit
(A) may be used as evidence on the trial of the
above case

2^d That previous to the filing of the Bill in this
case it was agreed between the parties that the
binder should be waived and that the Bill might
be filed by the Complainant herein with the same
force and effect as though the binder had been

made and kept good

Dud d & Wilson

Solrs for Comply

Williams & Butterfield

Defty Solrs

And also were filed in the office of the Clerk
aforesaid the following stipulation and appraisal
(together with a map, a copy whereof is hereafter
given), in words and figures following, to wit.

"Cock's Common Pleas

Daniel Brainard

In Chancery

The Board of Trustees
of Ills & Michigan Canal

The following facts are ad-
mitted and agreed upon in this cause as evidence
subject to all questions as to its legal competency

1st That the map hereto annexed and marked "A"
may be used in evidence in this cause

2^d That the premises in controversy in this cause,
viz, the North-west Quarter of Section Twenty one
is shown by that part of said map which lies North
of the Centre of North Street And that the map
proved by Joseph C. Thompson, a witness examined
by defendant is the same as this map so far as
the premises in controversy herein are concerned

3. That Blocks from forty seven to fifty eight both
inclusive as shown on the map hereto annexed
include the premises in controversy, that the areas

noted on the several lots and blocks include a portion of the Streets, and that the total area of all the lots and blocks as noted and marked on said map by the small figures along the lines includes the whole area of the said North-west Quarter of Section Twenty-one

4th That the certificate of appraisal hereto annexed marked Exhibit "B" and signed "Wm Gooding Sec" is a true copy of the appraisal of the premises shown by said map, that the lots and blocks in said certificate marked from forty seven to fifty eight both inclusive is the appraisal of the premises in question in this cause, and that the total appraisal is twenty five thousand two hundred and seventy seven dollars the same as alleged in the bill of complaint.

5. That before the filing of the Bill herein the Complainant offered to tender the money and do all the acts necessary to complete his purchase, that said Defendants refused to allow the Plaintiff to purchase and moving the tender authorized the filing of this Bill with the same force and effect as though the tender had been made and kept good

6. It is further stipulated and agreed between the parties to the above entitled cause that if either party is dissatisfied with the decision of this cause, that such party shall be allowed an appeal to the Supreme Court without giving bond or security as provided in the Statutes which appeal

shall stay all proceedings under the decree rendered in this Court

October 19, 1850

J. N. Arnold
Sole for Defts
Judd & Wilson
Sole for Compt^s

Exhibit (B)

Canal Trusting Subdivision of the West half of
Sec 21, T. 39, R. 14 and so much of the S. E. q^r as
lies West of the S. W¹ of Chicago River

Lot	Block	Valuation	Lot	Block	Valuation
1	4	312	2	34	150
2		225	3		125
3		200	4		90
4		200	1	35	160
5		250	2		130
1	5	220	3		130
2		75	4		130
1	14	250	5		130
2		225	6		100
3		200	7		120
4		150	8	35	120
5		150	9		120
	31	324	10		170
	32	375		36	530
1	33	80	1	37	520
2		150	2		460
3		170	3		220
4		150	1	38	397
1	34	150	2		275

[12053-53]

(Continued above)

Lot Block Valuation

3	38	378
4		378
	39	600
1	40	297
2		340
1	41	275
2		383
	42	80
1	43	580
2		550
1	44	360
2		340
3		300
4		300
1	45	312
2		292
3		253
4		273
1	46	436
2		297
1	47	450
2		425
1	48	420
2		400
3		360
4		400
1	49	480
2		440
3		420
4		440
1	50	360
2		360
3		330
4		330

Lot Block Valuation

1	51	525
2		510
3		405
4		420
1	52	640
2		620
3		480
4		500
1	53	600
2		560
3		420
4		460
1	54	650
2		500
1	55	1119
2		921
1	56	900
2		900
3		760
4		800
1	57	900
2		900
3		800
4		800
1	58	680
2		680
3		604
4		604

5972

Canal Office }
 Lockport }
 Oct. 14. 1850 }

I William Gooding Secretary of the Board of Trustees of the Illinois and Michigan Canal do hereby certify that the above and foregoing schedule is a true copy or transcript from the records of this office of the description or numbers of the lots and Blocks in the Canal Trustees Subdivision of the West half of Section Number Twenty one (21) in Township number thirty nine (39) in Range four Leon Co. (14) and so much of the South East Quarter as lies West of the South Branch of Chicago River, and the appraisement or valuation thereof as made by Joel A. Matteson, William Reddick and Francis C. Sherman the Board of appraisers under the act entitled "An act to provide for the completion of the Illinois and Michigan Canal and for the payment of the Canal Debt" approved February 3rd 1843rd.

In witness whereof I have hereunto set my hand and the official seal of the Board this 14th day of October A.D. 1850.

Seal

W^m Gooding Sec

And afterwards to wit on the Eleventh day of November A.D. 1850. the same being one of the days of the October Special Term 1850. of said Court the following proceedings were had and entered of Record, to wit;

Daniel Brainard

vs

Bill in Chancery

The Board of Trustees of the
Illinois & Michigan Canal

And now come the said parties by their Solicitors, and by agreement it is Ordered that this cause be set for hearing on two weeks

from Tuesday next at the Judges Chambers in Vacation and decree to have the same effect as if entered in term time

And afterwards to wit on the Third day of March A D 1857 the said day being one of the days of the February term of said Court for the year afore said the following Decree was entered in said Cause in the Records of said Court. to wit;

Daniel Brannan

The Board of Trustees of
the Illinois & Michigan Canal

} Bill in Chancery

This Cause having been brought to hearing by the parties upon the pleadings and proofs therein before the Honorable Giles Spring Judge of the Cook County Court of Common Pleas, at his Chambers in Chicago in Vacation pursuant to an order of said Court entered by agreement of the said parties on the Eleventh day of November in the Year of Our Lord One Thousand eight hundred and fifty; and in the October Special Term of said Court And the said Cause having been argued by Messrs Judd Wilson of Counsel for said Complainant and by Tim Annanich of Counsel for said Defendants, and the said Court having maturely considered the proofs and allegations of the said Parties respectively.

It is Ordered adjudged and Decreed, And said Court doth hereby Order adjudge and Decree that the said

Complainant is entitled to purchase of and from the said Defendants the whole of the North West Quarter of Section Twenty One in Township Thirty Nine North of Range Fourteen East of the Third Principal Meridian mentioned and described in the pleadings in this cause at the appraisal mentioned therein under and in pursuance of the Act entitled "An Act to provide for the completion of the Illinois and Michigan Canal and for the payment of the Canal Debt" approved February Twenty first in the Year of Our Lord One thousand eight hundred and Forty three.

And it is further Ordered adjudged and Decreed that the subdivision of said Quarter Section as laid down and represented on the Map or Plat thereof made and Certified by J. Edgar Thompson Surveyor on the thirty first day of August Eighteen hundred and forty eight and also Certified by the said Defendants on the same day and acknowledged by W. H. Swift President of the Board of Trustees of the Illinois and Michigan Canal before H. L. Buckley Esq Justice of the Peace which said Map or Plat was filed for Record with the Recorder of Cook County on the said thirty first day of August in the year last aforesaid was and is a legal and valid subdivision of said premises into streets lots and blocks.

And it is therefore further Ordered adjudged and Decreed that the said Complainant pay to the said Defendants at their Office at Lockport in the State of Illinois on or before the first day of April next (1851) the sum of Six thousand and sixty nine dollars and twenty five cents being one fourth part of the amount at which said lands were appraised as set forth in the pleadings and proofs in this cause.

Also the further sum of One thousand and Ninety
two dollars and forty six cents being interest on the
sum of Eighteen thousand two hundred and seven
dollar and seventy five cents, three fourths of said
Appraisal for one year, that is to say from Septem-
ber first Eighteen hundred and forty eight to Sep-
tember first Eighteen hundred and forty nine, Also
the further sum of Twelve thousand one hundred
and thirty eight dollars and fifty cents being one
fourth of the amount of said appraisal, and also the
further sum of One thousand seven hundred and
twenty nine dollars and seventy three cents being the
interest on the sum of Eighteen thousand two hun-
dred and seven dollar and seventy three cents from
the first of September Eighteen hundred and forty nine
to the first day of April Eighteen hundred and fifty
one, Also the further sum of One thousand and fifty
one dollar and seventy three cents being the interest
on the sum of Six thousand and sixty nine dollars and
twenty five cents from the first day of April to the
first day of September Eighteen hundred and fifty
one, which said sums amounting in the whole to the
sum of Twenty One thousand one hundred and eighty-
one dollar and sixty seven cents to be paid on or be-
fore the said first day of April Eighteen hundred
and fifty one.

Also that said Complainant execute and
deliver to said Defendants on or before the said first
day of April his promissory Note for the sum of Six
thousand and sixty nine dollars and twenty five
cents payable on the said first day of September
Eighteen hundred and fifty one.

And it is further Ordered adjudged and

Decreed that upon the payment of the said sum of Twenty one thousand one hundred and eighty one dollar and sixty seven cents and the execution and delivery of the said promissory note as above Ordered and Decreed that the said Defendants execute and deliver to the said Complainant a Certificate of the purchase of the said lands as subdivided, plotted, and recorded as herein before mentioned, Conditions that upon the payment of the said promissory note at maturity the said Defendants shall and will make, execute, acknowledge and deliver to the said Complainant or to such person or persons as the said Complainant shall in writing direct and appoint a good and sufficient deed of Conveyance of all and singular the said lots and blocks laid down and described on said Map or plat of said Quarter Section.

And it is further Ordered adjudged and Decreed that upon the payment of the said Note as above Ordered and Decreed the said Defendants shall execute, acknowledge and deliver a good and sufficient deed for said lots and blocks described in said Certificate to the said Complainant or to such other person as he shall in writing appoint writing in law or his appointee a good and perfect title in fee simple of said premises.

And it is further Ordered Adjudged and Decreed that the said Defendants pay the Costs of this suit and that Execution issue therefor.

To which Decree and all and every part thereof, said Defendants except, and pray an Appeal, which is allowed without Bond or Security, upon the Defendant filing with the Clerk of

the Supreme Court on or before the third day
of the next Term of the Supreme Court to be holden
at Ottumwa the Record in this cause; and the
allowance of the Appeal herein shall operate as a
stay of all proceedings herein pursuant to the stipu-
lation filed herein between the said parties,

The Board of Trustees
of the West W. Canal
vs
Daniel Brummond

And now at this day comes
the said appellee by J. A. Wilson his
attorney and says that in the record and
proceedings aforesaid and in the decree
aforesaid there is no error and prays
that said decree may be in all things
affirmed and said appellee here dis-
-waives all costs

J. A. Wilson
Atty

General Trustees

vs

Daniel Bowerman

Friend in Error

Filed June 12, 1857.
N. Keland Ck.

State of Illinois }
County of Cook } ss.

I Walter Kimball Clerk of the Cook
County Court of Common Pleas within and for the
County and State aforesaid do hereby Certify that
the foregoing is a full true and correct Copy and
Transcript of ^{readings. Exhibits. Maps. Depositions & Evidence.} all the Papers, and of the Records of said Court
now on file in my office, in the case of Daniel
Brainard vs The Board of Trustees of the
Illinois & Michigan Canal.

In Testimony whereof I have hereunto
set my hand and affixed the Seal of
said Court at the City of Chicago in said
County this 25th day of March AD 1851

Walter Kimball

Clerk

David D. Brown
The Board of Directors of the
Illinois & Michigan Canal

Filed April 30. 1854.
V. Leland C. D.

Recd. of David D. Brown
4 April 1854

Copy of the map of the land Trustees Subdivision of the West half of Section 21 Town
Range 14, and so much of the Southeast quarter, as lies West of the South Branch
of the Chicago River.



Ulrich

North

Canal Port Avenue
6. 34.

Jefferson

Canal

Lumber	2.25	2.25
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[illegible]

For all purposes.

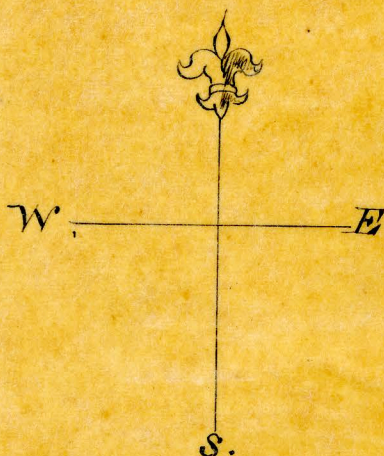
Grove

St

Scale, feet on the Van B.

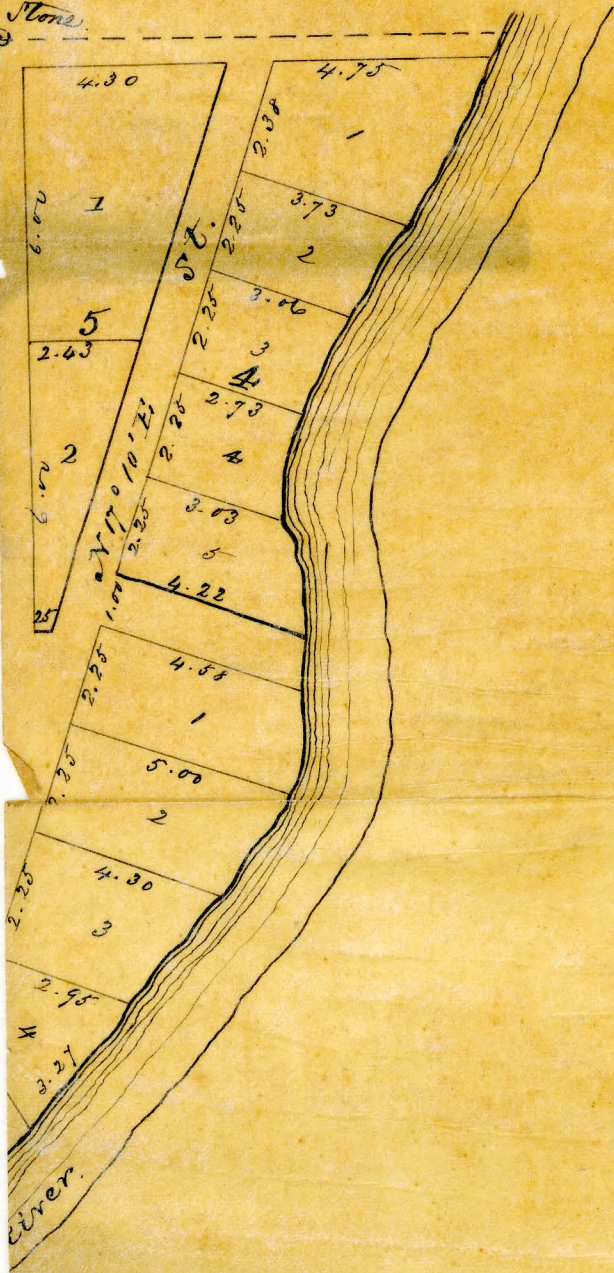
39

ch



Referred to in Stipulation
Dated October 19th 1888
& J. C. Thompson deposed to.
W. Kimball, clerk

Stone



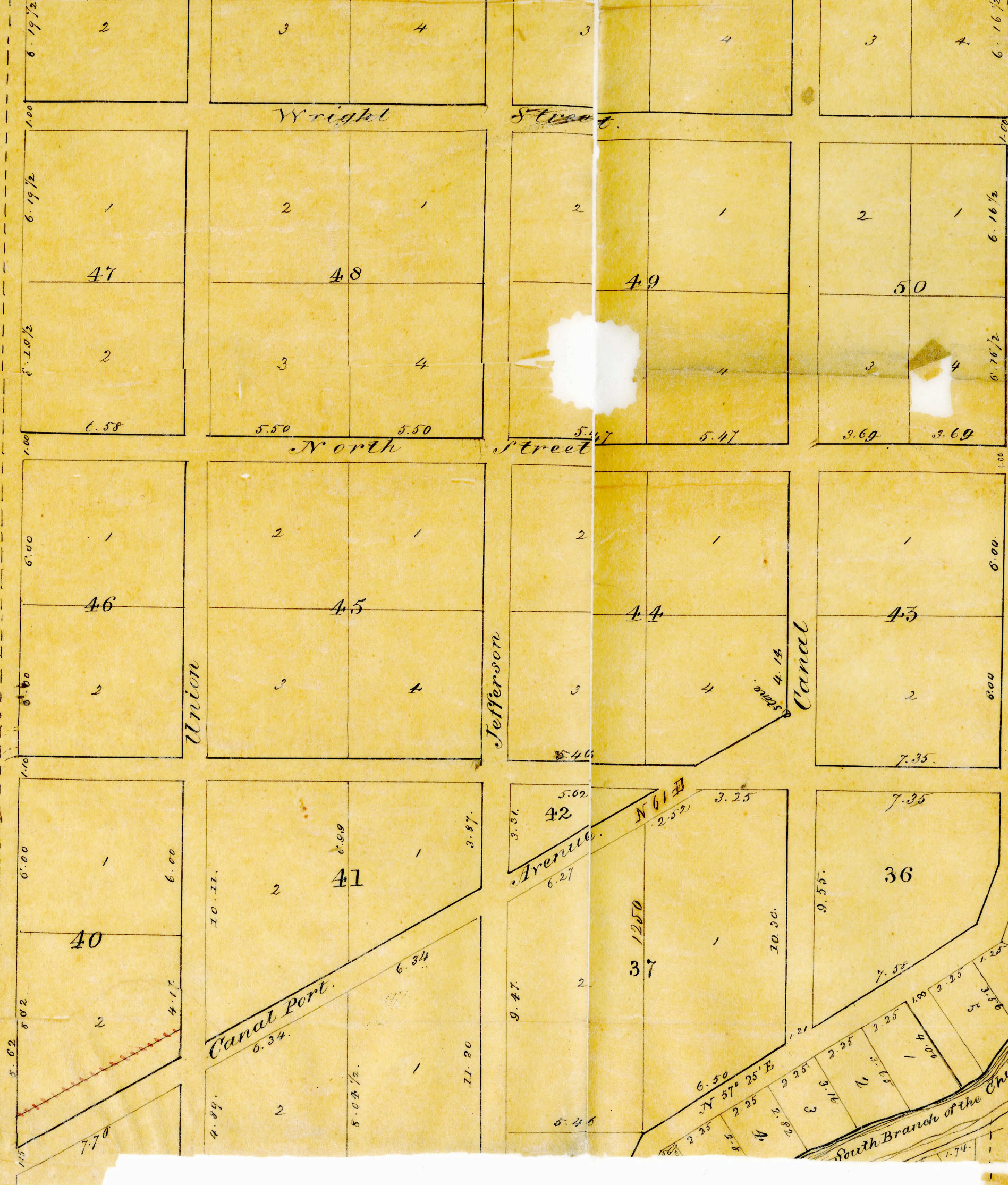
[12053]

Map A Referred to in
 Stipulation & Deposition of
 J. C. Thompson, W. Marshall
 Ch.

Under the direction of the Board
 have surveyed & laid out & de-
 of Section Number twenty one
 of Range fourteen (14) East
 much of the South east
 of the Chicago River &
 represents the survey
 made on the ground
 blocks - The figures
 the lots - The figures
 in lots and those
 the size thereof in
 denotes the corners at
 with, to perpetuate
 11 day of August



The Board of Trustees
 certify that in pursuance
 the Laws of the State of
 J. Edgar Thompson to
 Blocks & Streets
 to much of the S. E. 1/4
 Branch of the Chicago
 described in his Certi-
 survey & subdivision
 made by the late
 been by said Board
 Board of Trustees in
 annexed Plat with the
 marked, delineated
 Map of such authors
 whereof they have cau



been by said Board
 Board of Trustees in
 annexed Plat with the
 marked, delineated
 Map of such authority
 whereof they have can
 Board to be hereunto
 of said Board to be
 August A D 1848

L.S.
 Signed Attest Robert
 Secret

Canal Trustees
 R 14 and so much

State
 Court
 before
 Peace
 Judge
 Illin
 Stra
 Known
 said
 was the
 the can
 caused
 Platted
 day an

No. 20,737. Tra

Board of Trustees of the Illinois & Michigan Canal
subdivided into lots, blocks & streets the West half
of Sec 21 in Township thirty nine (39) North
of the third principal Meridian - and also
the said section as lies West of the South Branch
and do certify that the annexed Plat correctly
and subdivision of said Tracts of land as
the large figures denotes the number of the
in the centre of the lots denotes the number of
in the Streets denote the width of the same
on the lines of the lots and blocks denote
half and center. The word "Stone" on the Plat
which Stones are duly planted in the
(see). Given under my hand &
Trustees aforesaid -
J. Edgar Thompson
Surveyor.

of the Illinois & Michigan Canal do
of the authority vested in said Board by
Illinois they did authorize and direct
surveyor, to survey and subdivide into lots
the W 1/2 of Sec 21 T 39 N R 14 E and also
of said section as lies West of the South
River in the manner mentioned &
speciate hereunto annexed - The original
of the tract last above described as
Board of Canal Commissioners having
and the said
do hereby certify and acknowledge the
full length and width of streets as
and laid down thereon, to be the true
survey & subdivision - In witness
whereof the corporate seal of said
affixed and the name of the President
hereunto subscribed this 31 day of

Signed W. H. Swift

of the West half of Sec 21 T 39
the N E 1/4 as lies West of the South
Branch of the Chicago River
Scale 1/4 inch = one mile.

of Illinois
of Cook Co On the first day of September

as
River in the manner mentioned &
ificate hereunto annexed - The original
of the tract last above described as
Board of Canal Commissioners having
and the said
archly certify and acknowledge the
full length and width of streets as
and laid down thereon, to be the true
urvey & subdivision - In witness
ed the corporate seal of said
affixed and the name of the President
hereunto subscribed this 31st day of

Signed W. H. Swift

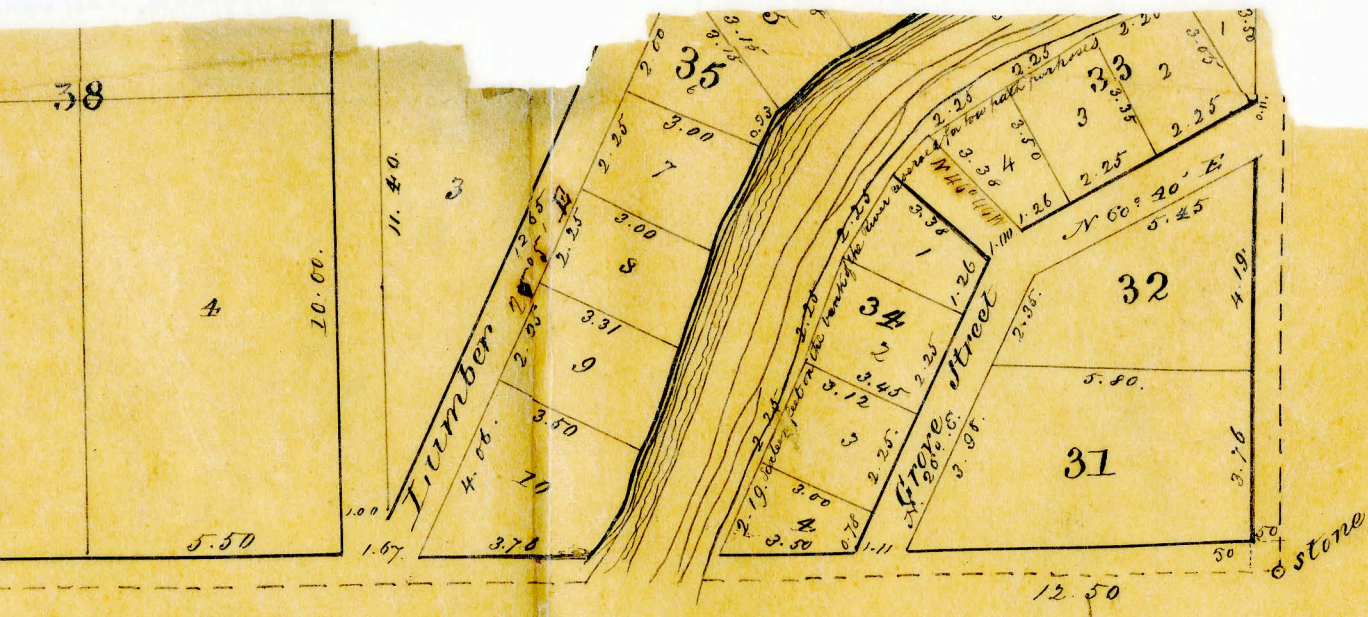
part

4
tion of the West half of Sec 21 T 39
the S E q^r as lies west of the South
branch of the Chicago River
Scale of Chart is one Inch.

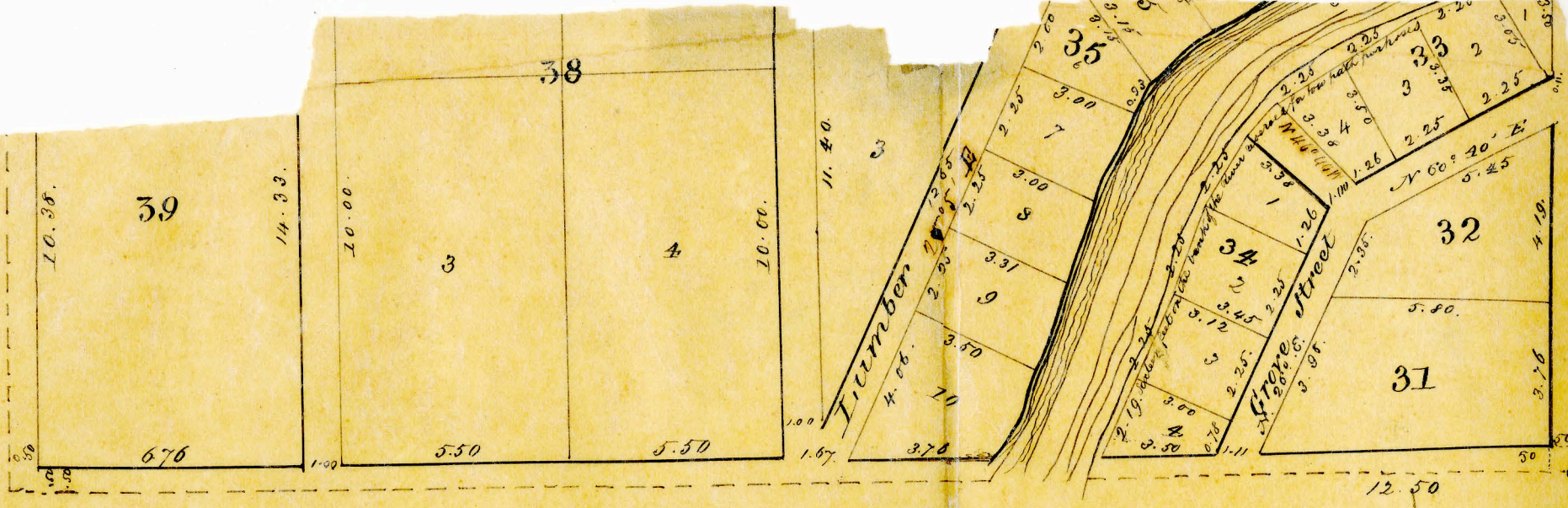
of Illinois }
ty of Cook } On the first day of September
AD 1848 personally appeared
re the undersigned, a Justice of the
in and for said County, W. H. Swift.
nt of the Board of Trustees of the
is and Michigan Canal & Robert
Secretary of said Board, both
to me to be acting as such and
ly acknowledged this Map on behalf of
Board of Trustees, and that the same
is Original and true Map or Plat of
as therein set forth, - and by them
to be so subdivided, mapped and
- Given under my hand & seal the
a year above

J. C. L. Reuter (J.P.)

a for Record August 31. 1848.



State of Tennessee
County of Boone, S.S. I Louis D Howard Clerk of the
Circuit Court and ex officio Recorder in
and for said County do hereby certify that
this map is a true Copy of the one on
Record in my Office as appears from said
Record in Book C No 29 of Maps page 58.
Witness my hand and seal of said
Court this 11th day of October 1850



Cook
Canal Trustees
15

Daniel Brainerd

43

12053

Prepared

Burk

1857