

14287

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

# Supreme Court of Illinois

res. of Mt. Palatine

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Academy vs.

<sup>N</sup>  
Kleinsch~~midt~~tz et al

STATE OF ILLINOIS,  
SUPREME COURT,  
Third Grand Division.

No. 285.

14287

*Part 1*

*Memorandum*

1852

SUPREME COURT OF ILLINOIS,  
THIRD GRAND DIVISION,  
APRIL TERM, A. D. 1862.

THE PRESIDENT, &c.,  
of Mt. Palatine Academy,  
vs.  
KLEINSCHNITZ, ET AL.

ADDITIONAL ABSTRACT OF RECORD BY DEFENDANTS.

The book of records of the Mt. Palatine Academy and Judson College, used in evidence in the court below, is, by agreement, before this court. It is a part of the record, and the Plaintiffs having printed no part of it, the Defendants have printed those portions of it which they deem most material, with explanatory remarks as to the remainder.

This book purports to be, and it was proved to be, the records of the corporation created by the act of March 3d, 1845, containing from pages 1 to 11 inclusive entries from April 5, 1845, to July 30, 1850, under the heading of Mt. Palatine Academy; and from pages 25 to 63 inclusive entries from March 1851 to June 26, 1857, under the head of Judson College.

On page 10 is a reference to the list of stockholders of the Mt. Palatine Academy, on the last page of the book. The number of shares is 48.

On page 12 is a list of the stockholders of the Academy and College—number not given.

On page 13 is an account of a meeting under the name of Mt. PALATINE ACADEMY, under date of February, 1860—evidently interpolated on blank leaves left by the corporation on opening under the head of JUDSON COLLEGE. This purports to be by seven stockholders, the names of four of whom only appear in either list.

On page 10 is a list of the Trustees who were in office when the amendment was passed, to-wit: Higby, President, Fisher, Sec., Powell, Winters, Warner, Bly, Curtis, Wright, McLay, Reynolds, Cross, and Howard, and who were identically the same persons named as corporators by the amendment.

On page 17 is this entry: "At the session of the Legislature of the State of Illinois, held in the winter of 1850-51, an act was passed agreeable to a petition of the President and Trustees of the Mt. Palatine Academy, incorporating said Academy into a College, styled "The Judson College," with an academic, normal and female departments. The said act was passed February 17, 1851. Notice being given to the Board that their petition was granted, on March 10, 1851, a meeting of the Board was called under the provisions of the new charter for the purpose of electing officers of the Board for the ensuing year. A quorum being present, the following were elected for the ensuing year: Rev. C. M. WRIGHT, President; Rev. C. Cross, Secretary.

On motion, voted that C. M. Wright have the charge of the institution till the first of April 1852. \* \* \* \* \*

"On motion, voted that the Secretary obtain of the former Secretary all the books, papers, monies, etc, that belong to the board of Trustees.

CHARLES CROSS, Secretary."

From this on, it appears that the business was done in the name of, and the entries made under the head of "Judson College," and there was all the business pertaining to the management of the Academy and College.

On page 19 are these entries:

"Feb. 17, 1852. On motion voted that C. Cross and E. Reynolds be a committee to draw up a series of resolutions and regulations for the institution."

UPPER COURT OF ILLINOIS

Again, "Feb. 17, at a meeting of the Board of Stockholders of Mt. Palatine Academy and Judson College, held for the purpose of electing, according to the provisions of the new charter, a Board of Trustees of Judson College and Mt. Palatine Academy, the following persons were elected for the ensuing year:— Thomas Powell, James Curtis, C. Winters, E. Reynolds, L. Davis, L. Warner, E. Higgins, F. Foyle, G. S. Bailer, Charles Cross and G. H. Weston."

On page 26, Feb. 17, 1853, a similar entry.

On page 40, Feb. 17, 1854, a similar entry as to election of officers of "said institution." At this time J. M. Beach, the witness, was elected.

So also page 49, Feb 17, 1855.

Also page 57, Feb. 18, 1856, which was the last election before the sale of the property.

On page 49 is this entry, Feb. 9, 1855: "On motion, voted to petition the Legislature to repeal the amendment of the charter made to the original charter of the Mt. Palatine Academy, changing the name of said Academy to that of "The President and Trustees of Judson College," and revive the original charter as first passed by the Legislature. On motion, C. Winters and John Colvin were appointed a committee to make an agreement with the stockholders of Judson College in reference to the repeal of said amendment of said charter."

This failed to pass for want of time. See page 50.

On page 62 is an order recognizing the debt to Aaron Butler of \$1305 61, and order for execution of deed of trust to secure the payment of it, by John Colvin, the then President, on which sale was subsequently made.

On page 13 (of the interpolated entries by the 7 pretended stockholders) is this entry:—*Resolved*, That this Board proceed to assert the rights of the corporation to the Mt. Palatine Academy property; to inform the present occupant of the same, and to commence a suit therefor, provided the stockholders and others furnish written pledges that the expenses of the prosecution shall be met.

Two or three meetings of the same import, and nothing more.

Of these 7 pretended stockholders, bearing the names of Otis Fisher, John W. Laughlin, James Curtis, Larned Davis, Isaac Woodbury, George Woodbury, and Ephraim Reynolds, it appears by this record that Fisher owned 4 shares, Curtis 4 shares, Davis 1, Reynolds 1, of the total 48 shares; and that they had taken part in all or nearly all these proceedings under the title of "Judson College;" and that Curtis, Fisher and Davis (see page 58) were members of the Board that ordered the sale of the property. Reynolds was a member of the board in 1853. The other of these 7 pretended stockholders are strangers to the record hitherto.

# SUPREME COURT OF ILLINOIS.

## THIRD GRAND DIVISION.

APRIL TERM, A. D. 1862.

THE PRESIDENT, &C.,  
of Mt. Palatine Academy, }  
vs. }  
KLEINSCHNITZ, ET AL. }

### DEFENDANTS' POINTS AND AUTHORITIES.

I. The act of 1851 was an amendment of the act of 1845, engrafting upon the old corporation enlarged powers with a new name, and did not create a new corporation, leaving the old, under its first name, in existence.

1. The act refers to the title, and makes it necessarily a part of it. The act cannot be understood without the title. It could not be determined what "*said Academy*" referred to, and the title calls the act an amendment.

2. In this, and in many other respects, the language of the act is obscure and may well, without the title, admit of different constructions; and the rule in such cases is to refer to the title to remove such doubt and obscurity. This was the rule in England when the clerk of the House in which the act originated gave it its title. It is much more so in this country where the Legislature establishes the title.

1 Ham, 468, *Burgett vs. Burgett*.

"The title is framed in the same manner as the bill, and is sanctioned by the vote of both branches of the Legislature. We may therefore consider it as explanatory of the object of the law."

2 Paine's C. C. Rep, 585, *Ogden vs. Strong*, the same statement is made.

And see 15 J. R. 89, *Wodroff vs. Gilchrist*.

do do 358, *The People vs. The Utica Insurance Company*.

4 Gill & J. 1, *Canal Company vs. R. R. Co.*

12 do 17, *Lucas vs. Blair*.

2 Cranch 358, (1 Dal. 423,) *United States vs. Fisher*.

Dwarris on Statutes, 633.

3. In case of doubt, too, as to the construction of the language of the act, courts will look at other aids to discover the *intention* of the Legislature, which is the needle of interpretation. They will look to the cause of making the statute—the then present status which it was intended to improve—the existing evils or defects which it was intended to redress and remove.

The records of the corporation (the contents of which all the corporators were bound to know), page 14, state that this "act was passed agreeable to a petition of the President and Trustees of Mt. Palatine Academy, incorporating said academy into a college, styled, 'THE JUDSON COLLEGE, February 17, 1851.'" Such a petition then was before the Legislature, and this act was in response thereto; and by the proper rules of construction they intended to incorporate the *said academy into a college, styled 'THE JUDSON COLLEGE.'*"

5 Sandf. 16, 37, *Freeman vs The City of New York*. (An act was passed on the petition of citizens; held could refer to the petition to aid in its construction.)

Davies (C. C.) 45, *United States vs. Webster*.

"When the words of the enacting part are ambiguous, or may admit of a larger or more restricted signification, then reference may be made to the preamble to determine which sense is intended by the Legislature. The reason is that the preamble states the grounds and objects of the law, and when the reason and grounds of the law are made known in any other manner equally certain and authentic they

are entitled to have the same influence in the construction of a statute as the preamble, if the rendering of the words is doubtful, because every law should be carried into effect according to the intention of the law maker, when the intention can be certainly known." In this case reference was had to an executive document printed for the House, and which was before the House when the bill under discussion was passed.

- 1 Pick. 248, *Holbrook vs. Holbrook*.
- 25 Maine (12 Shep.) 493, *Winslow vs. Kimball*.
- 21 Ver. (6 Wash.) 152, *Catlin vs Hale*.
- 2 Paine, C. C. Rep., 587, *Ogden vs. Strong*.

4. When the language is doubtful (and we believe in any case) it is proper to regard cotemporaneous construction; and, we believe also, the subsequent construction and usage of the parties interested. The entry on the corporation records last quoted was the first act of those interested—the corporators—after which the Board of Trustees of Judson College continued to act, controlling all for about seven years, till all the property was sold to pay debts; and, among other things, in 1855, (see corporation records, p 49,) voted "to petition the Legislature to repeal the amendment of the charter of the Mt. Palatine Academy, *changing the name* of said Academy to that of The President and Trustees of Judson College, and *revise* the original charter as first passed by the Legislature."

5 Iredell's Eq. Rep. 71, *Att'y Gen. vs. Bank of Cape Fear*.

"Where, by the penning of the statute, its meaning is rendered doubtful, long usage is a just medium by which to expound it, upon the maxim that the *jus et norma loquendi* are governed by usage. This rule governs in the construction of the fundamental law of the land, the Constitution of the United States. A cotemporary exposition, and acquiesced in for a period of years, fixes the construction."

- 1 Cranch. 299, *Stewart vs. Land*.
- Vaugh. Rep. 169, *Shepard vs. Gosnold*.
- 2 Paine's C. C. R. 587, *Ogden vs. Strong*.
- Dane's Ab., vol. 6, 598, ar. 6, sec. 11.

5. Such a construction as would produce injustice and crime should be avoided. By the act of 1851, "The said college was to be, and remain on, said section one"; thus giving, if Judson College was a new corporation, the use of the property of one corporation to another.

6. That the President and Trustees of Mt. Palatine Academy originally, and the President and Trustees of Judson College after the act of 1851, and action under it, constituted *one only* continuous corporation appears from many other items. The corporators named in the new act were the existing President and Trustees of Mt. Palatine Academy, twelve in number; the capital stock the same, \$15,000; the shares the same, \$50 each; the amount of land to be held the same, 1,000 acres; amount of money to be held the same, \$20,000; the provisions of the two acts almost precisely the same, except those of the latter *enlarging* the academy into a college.

II. And if this act of 1851 was an amendment of the act of 1845, and if the title can be read as a part of it, or as an exponent of it, then it only continued the old corporation with enlarged powers. To say that, being simply an amendment, it modified the *old*, and yet created a *new*, corporation is simply absurd. To say that a new corporation was brought into life to co-exist with the old in closer than matrimonial alliance, bone of its bone and flesh of its flesh, one spirit and one will, so that even the corporators themselves did not and could not discover the difference between them, or even that there were two, to fraternize and harmonize in the same institution, is likewise absurd.

The argument of Plaintiffs' counsel is only based on the letter of the enacting clauses of the act of 1851, making no use of the key of construction afforded by the title. The difficulties of construction it presents show, in a pre-eminent degree, the propriety and the necessity of seeking other proper aids to construction. But, these other aids being found, their argument falls to the ground, and all their authorities are utterly inapplicable.

III. The Plaintiffs claim that the corporation entitled "The President and Trustees of Mt. Palatine Academy" is still a live corporation. Then it is after a non-user of its franchises for about ten years, up to 1860, when, only, there was a pretended action of a small minority of its corporators in a very questionable manner; and its corporators all the while knowing that another corporation, of which themselves were members and actors, had usurped and swallowed up all its franchises and property, which amounts to an abandonment.

The action of the seven pretended stockholders in 1860 and afterwards should be regarded but as a sorry attempt to galvanize a defunct, soulless corporation into life for the purpose of unjustly depriving the honest purchasers of their property, who had paid a large amount of money and the full value of the premises, under inducement: *held out even by at least four* of these seven stockholders. And further, this action should not be deemed to be sufficient to justify the bringing of this suit as the act of the corporation (if still in existence).

IV. Although it be held that the corporation entitled "The President and Trustees of Mt. Palatine Academy" be still in existence, yet the evidence is that the corporation entitled "The President and Trustees of Judson College" has had peaceable possession of the premises since 1851, up to the time of sale. The presumption of law is that, if they were not owners, they were tenants from year to year. Their deed would give their right of possession to their grantee, and so the defendants, who were tenants of Wolf, the last grantee, would be tenants from year to year and entitled to notice to quit before suit brought. As no proof of such notice was made, and the presumption of such tenancy was not rebutted, *all other matters being out of the case*, the defendants were entitled to a verdict and judgment.

We hold that there were no erroneous instructions given, but if there were, as plaintiffs could not win with this point against them, such instructions could do no harm.

E. S. HOLBROOK, }  
T. P. HALLIGAN. } For Defendants.

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The President &c  
of the Palatine Academy

Klein Schmitt et al

Offs Abstract

Permits & Authority

Filed June 16, 1842

J. Selman

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# SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION.

APRIL TERM THEREOF, A. D. 1862

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THE PRESIDENT AND TRUSTEES }  
OF MT. PALATINE ACADEMY, }  
Plaintiffs in Error, }  
vs. } *Appeal to Putnam.*  
ANDREW KLEINSCHNITZ AND }  
MICHAEL GRESS, }  
Defendants in Error. }

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THE decision of this case depends upon the construction of the Act of the General Assembly of 1851.

The construction of the Court below was, that the Act of 1851 was an amendment to the Act of 1845, and that if the Academy Corporation accepted the amendment, and acted under the Act of 1851, that thereby it changed its name to Judson College, but still remained the same identical corporation under a new name and with enlarged powers.

This is the construction which defendants ask this Court to place upon the Act of 1851.

The construction insisted upon by the plaintiffs is, that the Act of 1851 was, as by its title expressed, an amendment to the Act of 1845, but that the amendment did not extinguish the old corporation of 1845, nor merge it into the corporation of 1851 under a new name, to wit: Judson College; but that it created another separate and distinct corporation, with corporators therein named, and with objects, purposes, and powers therein expressed and limited, and left the old corporation and its rights and franchises still in existence under its old name, the "President and Trustees of Mt. Palatine Academy," and that such latter corporation still continues to exist.

The defendants seem to have taken the position in the Circuit Court, that it was necessary for them to show *user* and *acceptance* by the Academy Corporation. Plaintiff's counsel dissent from this position, and say, that if the Act of 1851 was intended by the Legislature to supersede the corporation of 1845, then such Act would so operate without any acceptance by the corporation of 1845; for the Legislature, in the charters of each, expressly reserves to itself the right to amend the charter. This leaves the case to be decided solely on the construction of the Act of 1851, without reference to any subsequent acts of parties. The Act had the same effect, so far as the rights of the corporation of 1845 were concerned, on the day it was approved, that it did the day this suit was commenced.

Then what was that effect? Let us examine the *Act*.

The title to the Act of 1851 purports to be "An Act to amend an Act entitled 'An Act incorporating the Mt. Palatine Academy,' by incorporating *in connection therewith* a college, by the name and title of Judson College."

Would the Legislature have adopted all this verbiage if it merely intended to change the name of the *Academy* to *Judson College*? And how would one corporation be "*in connection*" with another which ceased to exist the moment the second corporation was created? Counsel for plaintiff cannot understand such "*connections*." They insist that the title shows clearly, that the Legislature contemplated the existence of two corporations; otherwise how could one be incorporated with the other?

When we examine the body of the Act, we find still more forcible reasons for rejecting defendant's construction.

Section 1st names corporators and style of the corporation. "The said College, in connection with said Academy as an academic department, to be and remain on, &c." "The trustees shall be elected yearly by the *stockholders* of said *College and Academy jointly*."

Sec. 3d provides that "The trustees shall have power to prescribe and regulate the course of study in said College and academical department." These are all the provisions which in any way refer to the Academy. The Legislature again uses the expression, "the said College in connection with said Academy," &c.

"The trustees shall be elected yearly by the stockholders of said College and Academy jointly."

How could there continue to be stockholders in the Academy, who could participate jointly with the stockholders of the College, if the Academy corporation ceased to exist? We can see no reason in such a provision, if the Academy corporation ceased to exist. It would present the anomaly of a stockholder and no corporation or joint stock company in which his stock was held.

The 3d Sec. very properly gives the control of the academical and collegiate departments to the trustees elected jointly under 1st Sec., and authorizes them to appoint teachers, &c.

In examining the Act, it will be perceived that wherever the Academy is referred to in the Act, it is in such a manner as to rebut the inference that the College and Academy are the same corporation.

But aside from this, there are other things which rebut such presumption.

The Act names a new body of corporators, an act very unusual, if not unprecedented, in simply amending a corporation charter.

There is no enactment providing for the transfer of the property, franchises, and *liabilities* of the old corporation to the new. If the creditors of the old corporation were seeking payment of their claims of the new corporation, could it not reply that it had never assumed such liability? The Act of the Legislature did not transfer the property or the liabilities of the Academy to the College.

Again, each of the Acts provides that the respective corporations may raise a capital stock of \$15,000. The Act of 1845 provides that the Academy may raise a capital stock, in shares of \$50 each, not exceeding \$15,000.

The Act of 1851 provides that the College "shall have power to raise a capital stock, or *college fund*, in shares of \$50 each, to the amount of \$15,000."

Now the question might naturally arise, what is the limit under the two acts of the capital stock of the two corporations, or of the one corporation, Judson College? For aught that appears, all the \$15,000 Academy stock might have been taken prior to 1851. If the Academy was merged into the College, the stock would also be merged, and it would be stock in the College; and the College could only hold the \$15,000 stock, and could issue no new stock.

The true construction is, that the Academy stock still continued stock held in the Academy corporation, and might amount to \$15,000, or 300 shares. The College corporation was authorized to issue \$15,000 stock, or 300 \$50 shares, and this without regard to the amount of stock which had been issued by the Academy; and in the aggregate the two corporations might issue \$30,000 in stock, but neither could exceed the \$15,000. Would it be contended that, if the old corporation had issued say \$10,000 in stock, that the College could only issue \$5,000 more, making the \$15,000, the amount which they are authorized to issue? Yet this Court must so decide, if it sustains the construction of the Court below, that there was a mere change of name. Plaintiff's counsel insist that Judson College was authorized to issue \$15,000 in stocks under its charter, without regard to any stock then held in, or issued by, the Academy. And if, *a fortiori*, the College issued its \$15,000 stock, whatever stock had been taken in the Academy remained stock in the Academy as before, and as before put by plaintiff's counsel, how could the old stock be held in a corporation which had ceased to exist?

It may be insisted by the defendants, that though the Academy corporation still existed, yet that the President and Board of Trustees had control of its franchises and property. This theory can not be sustained. The Judson College Board were to have control of the academic department to be continued in the College, and in view of such control the stockholders in the Academy were given a voice in electing such Board; but their power was confined to employment of teachers, and making rules and regulations for the students in such department in connection with the College, and did not so operate as to vest the title in the real estate which has been donated to the Academy, in the College, nor did it give them any control over its stock; nor could they prevent such Academy corporation from continuing to issue stock in the Academy, if the whole \$15,000 had not been issued; nor could they themselves issue such Academy stock. Neither would the College be liable for the debts previously incurred by the Academy.

It is no new principle, that one Board of Directors or Trustees of a corporation may have the general control and supervision of two or more corporations, and each of such corporations continue to have a separate existence with separate rights and property, the common Board having the exercise of *certain specified* powers of the corporations, of which class of cases the one at bar is an illustration.

But there is one other argument on this part of the subject which plaintiff's counsel regard as conclusive.

If nothing further was to be done by the old corporation under its charter of 1845, why did not the Legislature insert a repealing clause of the Act of 1845? They had the power, for the charter expressly provides

that the Legislature may "modify, amend, or *repeal* this charter whenever the public good may require it." See Dartmouth College Case, 4 Wheat. 706, 711.

Obviously the Legislature did not intend, by the Act of 1851, to repeal the Act of 1845, or they would have done so. It considered that the Academy still existed; that its stock still existed; that its property was still held by it, and that it was still liable for its debts, liable to sue and be sued; and it left its charter in full force, with the simple exception that the 3d Sec. of its charter, or some parts of it, was repealed by implication, the Act of 1851 giving the power of employing teachers, and regulating the *school*, to the Judson College Board, *in the election of which Board the Academy stockholders were to have a joint vote with the stockholders of the College.*

We will examine the case with reference to the authorities and adjudged cases.

In Angell & Ames on Corporation, p. 752, it is said: "It may become a question of great practical importance whether the charter be one of revival merely, or a charter of a new incorporation. This is not to be determined by the collateral facts, that the name of both corporations, the new and the old, that the officers and a majority of the members are the same, and that the business of the old corporation was for a time done and its debts paid by the new one."

In 2d Mason's Rep. p. 44, Justice Story says: "It is certainly true that a corporation may retain its personal identity, although its members are perpetually changing; for it is its artificial character, powers, and franchises, and not the natural character of its members which constitute that identity, and for the same reason corporations may be different, although the names, the officers, and the members of each are the same. An insurance company, composed of the same natural persons and officers, and with the same name as an existing incorporated bank, would still be a different corporation from the bank. The similarity of name, of officers, or of members, *or even of objects*, can not then, *per se*, establish the identity of corporations created at *different times, by different charters*, and having a distinct, independent being. And one incorporation may transact the business and pay the debts of another incorporation, without thereby merging in the latter its distinct corporate existence. There is, indeed, a repugnancy in the statement of the proposition that *two* corporations are in point of law the same, for it would at the same time establish that there is but *one* corporation."

Apply these principles to the case at bar. The defendants insist that the objects of the Academy and College were the same. It may be true. The objects of both these corporations was educational; but this would not make them the same identical corporation. The business, or a

specified part of the same, viz.: employing teachers, &c., may have been transacted by the College Board; but that would not merge the corporations.

Story says there is a repugnancy in saying that two corporations are the same in point of law. Is there not much greater repugnancy in saying that there could be stockholders in the Academy to act jointly with any other corporation, if the Academy was merged in the College?

The counsel for plaintiffs earnestly insist that this Court carefully examine the case of *Bellows vs. Hallowell & Augusta Bank*. There is much in the facts and reasoning of the Court in that case, which is in point in this case. 2 Mason Rep. 31.

On page 44 the Court say: "The character of the new bank was granted by the Act of 23d June, 1812, Ch. 47, while the old bank was in existence." *It was the same in this case.*

"It does not purport upon its face to be a grant to an existing corporation, but to private individuals." *It was the same in this case.*

New corporators, and a different number, were named. It purports on its face, not any new or further grant of corporate powers to the Academy, but to incorporate, in connection with it, a new corporation by the name of Judson College.

"Its capital stock is less by \$50,000 than the old bank." In this case the capital stock is the same; but the College is authorized to issue the \$15,000 stock without making any reference in the Act to stock which had been taken in the Academy.

"The stock is to be held, not by the stock holders of the old bank, but by certain persons named in the Act, and their associates and assignees." This case is parallel. The stock (\$15,000,) is to be issued by the Judson College Board, and held by the persons who may take it. The old stockholders do not become College stockholders, but continue to be holders of Academy stock, *and vote as such.*

"The Act refers, also, to the old bank as an existing corporation, and declares, not that the directors of the old bank *shall* be the directors of the new, 'but that any director of the Hallowell and Augusta Bank, now existing, may be eligible as a director of the bank hereby established.'" In the case at bar, the old corporation is referred to as an existing corporation, yet it grants all the franchises granted in the Act to a new body of corporators; neither does it pretend to extinguish the old corporation,

nor to divest it of any of its franchises; the provision that the new board named should transact certain business pertaining to such corporation not divesting it of any franchises, or merging it into the new. Admitting, however, that the power given to the new Board divested the old corporation of a portion of its franchises, the employment of teachers, &c., still other franchises would remain vested in it. The right to sue and be sued, to implead and be impleaded, to receive conveyances of land and hold the same, and to take by donation or otherwise, and the title to land previously acquired by it would certainly still remain in it. For it was not necessary or contemplated, that the new Board should be invested with the title to the real estate of the old corporation in order to exercise the powers named. It would be an injustice to the old stockholders to permit it so to operate. They would have nothing to show for their stock.

Pursuing Story's argument.

The next point made by him is not parallel, and is the only point in the case which is not.

Concluding the argument he says:

"Upon the very face of the charter, then, enough appears to show that the Legislature contemplated the erection of a new corporation. And if the language had not been so express, *the same must have been the conclusion of law; for every charter must be taken to be a grant of a new corporation, unless it be granted to an existing corporation.*"

We consider this *conclusive*. The Act shows upon its face that the Legislature contemplated the erection of a new corporation, to wit: "Judson College," and was a grant of franchises not to an "*existing corporation*," but to a *new corporation*, in which the corporators are named, and the franchises granted to them, not as members of an *existing corporation*, but as individual and new incorporators.

Much of the reasoning of this Court, in the case of *Bruffet et al. vs. Great Western R. R. Co.*, 25 Ills. 357, is in point in this cause, though that case was decided on a principle not involved in this case. The Court say: "Debts incurred by an incorporation can not be released or transferred by legislative enactment." *A fortiori* neither can their property. The Legislature, in the grant to the Academy, reserved the right to modify, amend, or repeal the charter; but this would not be a right to create a new corporation and transfer to such new corporation and corporators the franchises and property of the old incorporation; nor could they transfer the liability for the debts of such corporation from the old to the new. And if it was the intention of the Legislature (and we insist it was not) to transfer the franchises and property of the new corporation, the Act would be unconstitutional and void; for they reserved no such right in the charter: they only reserved the right to

amend, modify or repeal, when the public good should require it. Would it be an amendment to create a new corporation with new corporators, who might or might not accept such appointments, without any provision that the stockholders in the old corporation should be stockholders in the new? Certainly not. It would be a transfer of property by legislative enactment. This could not be done. No such power was reserved in the grant. The old corporators did not accept the grant subject to any such conditions, and they can not now be imposed upon them.

If all the property passed from the *control* of the Academy, it would not produce a disorganization of the corporation. "The company may exist after its property is gone," 25 Ills. 357. Then the jury should have found for plaintiffs on the issue of *nul tiel* corporation.

"What, then, was the effect of the Act of 1859? It created a new company, with rights, privileges, and franchises similar to those enjoyed by the Great Western R. R. Co., but it by no means repealed the charter of that Company," &c. (See this part of opinion in full, 357.)

We think this is a parallel case, and all the reasoning of the Court in point.

We desire to incorporate into this argument the able opinion in *Thrasher vs. Pike Co. R. R.*, 24 Ills. 404. In that case it seems to have been the impression among the officers and stockholders of the Co., that the charter of 1857 superseded that of 1854, and that subscriptions to the Co. of 1854 were payable to the Co. of 1857; but the Court decided the corporations to be distinct corporations. The opinion is too long to insert here, but we think the case in point, and ask a careful comparison between that case and the case at bar.

There is another point to be met in this case.

The old corporation existed, and the old corporators or their successors were in office and corporators at the time of the passage of this Act of 1851. That Act named a new body of corporators. It is a principle of law too well settled to be disputed that such corporators may refuse to accept such appointment, or to organize under the charter. What then would be the condition of the Academy corporation? Defendants deny that the old Board continued to exist as a body corporate. The new corporators are vested with the corporate powers, but refuse to accept the charter, or to organize as authorized in the Act. It would not be contended that the old corporators could assume to act, if, as is contended by the defendant, they were repealed out of office. Yet, whatever effect that Act was designed to have upon the corporate rights of the Academy, it took effect immediately upon the passage of the Act. It was not dependent on any question of consent, unless it was designed to transfer

property to a new corporation, as above argued in this argument, in which case it would have been absolutely void, and without any reference to the refusal or acceptance of the new charter by the new corporation.

But, admitting that the incorporators named in the Act of 1851 accepted the charter, we suppose the book shown to the Court will show the time when Judson College did organize. What would be the condition of the Academy during the time which elapsed between the passage of the Act and such organization? It is no longer Mt. Palatine Academy, for the Act takes effect immediately, and there is no longer such a corporation by that name. The old incorporators are not the Board for Judson College, for that is not yet organized, and the time within which it is to be organized is not specified in the Act. They may organize immediately or they may suffer the charter to slip through their fingers for non-user. Then in what condition is the Academy? We have the word—there is an *interregnum*. “There is no king in Israel, and every man may do what seemeth good in his own eyes.” (We don’t warrant our scripture quotations.)

The property and franchises during such *interregnum* are in abeyance, defendants would say, waiting for the new corporation to be organized, that they may vest and be transferred. And the “Academy” is transformed into a “College:” the chrysalis become a butterfly. We do not so understand it. If the old corporation was dissolved, it was done before any corporation existed to fill its place. Then its real property would revert to the donors, its personal property and franchises to the state. The land in controversy would revert to C. Winters, the donor, and when the new incorporators organized under the Act, no matter how long after, say one year, could they call on Winters for a conveyance, or claim that by organizing they vested the title in themselves? Grant on Corp. Law, Section 55, p. 303, 304.

We think some construction should be placed upon this Act which would relieve it from such ambiguities, inconsistencies, incongruities, repugnancies, and absurdities.

The construction insisted upon by plaintiffs, is plain, natural, and consistent, both with the words of the Act and what might be reasonably supposed to have been the intention of the Legislature.

Every other provision in the charter remains unrepealed, either expressly or by implication.

If the Court has any doubts as to the construction to be placed upon this Act, the plaintiffs should have the benefit of such doubts, unless it is clear that the intention of the Legislature was to merge the Academy into the Judson College, and repeal the Academy out of existence, the Court should reverse the judgment. The title of Mt. Palatine Academy being, at the time of the passage of the Act of 1851, clear and indisputable to the land and franchises, it should not be divested of such title and franchises by any doubtful construction of the Act of the Legislature.

The counsel for the plaintiffs may, in pursuance of agreement, make some further arguments and points in writing, when they see defendant's brief, which has not yet been submitted to them.

MARK BANGS & T. M. SHAW,  
*Atty's for the Plaintiffs.*

91 285

President & Trustees  
Mt. Palatine Academy

vs

A. Kleinschmidt

Pltffs Aagt.

Filed May 15, 1862

J. Leland

clerk

SUPREME COURT OF ILLINOS,

THIRD GRAND DIVISION.

APRIL TERM THEREOF, A. D. 1862

THE PRESIDENT AND TRUSTEES  
OF MT. PALATINE ACADEMY,  
Plaintiffs in Error,  
*vs.*  
ANDREW KLEINSCHNITZ AND  
MICHAEL GRESS,  
Defendants in Error. } *Error to Putnam.*

PLAINTIFF'S POINTS.

I.

The Court should have admitted the entries in the book purporting to be the record of the President and Trustees of Mt. Palatine Academy, and offered by plaintiff's in evidence.

II.

The Court should not have admitted in evidence, the entries in said book, under the head of Judson College, nor the deeds to which the plaintiffs objected.

III.

The Court misconstrued the act of 1851, in refusing the plaintiffs' instructions, and in giving those on the part of the defendant.

Angell and Ames on Corporation, 752.  
Bellows v. Hallowell & Augusta Bank, 2 Mason C. C. 31.  
Coxman v. Same, 14 Mass. R. 58.  
Bruffett *et. al.* v. Great Western R. R. Co., 25 Ills. 353.  
Thrasher v. Pike Co. R. R. Co. 25 Ills. 398.  
Grant on Corp. (Law Library) 55, p. 303-4.

BANGS & SHAW,  
*For Plaintiff in Error.*

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The Pres. & Trustees of  
Mt. Palestine Academy

vs

A. Kleinschütz —

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Pitts. Ports

Y. U. S. May 13. 1812

J. L. Linn  
CML

SUPREME COURT OF ILLINOIS,  
THIRD GRAND DIVISION,  
APRIL TERM, A. D. 1862.

THE PRESIDENT, &c.,  
of Mt. Palatine Academy,  
vs.  
KLEINSCHNITZ, ET AL.

ADDITIONAL ABSTRACT OF RECORD BY DEFENDANTS.

The book of records of the Mt. Palatine Academy and Judson College, used in evidence in the court below, is, by agreement, before this court. It is a part of the record, and the Plaintiffs having printed no part of it, the Defendants have printed those portions of it which they deem most material, with explanatory remarks as to the remainder.

This book purports to be, and it was proved to be, the records of the corporation created by the act of March 3d, 1845, containing from pages 1 to 11 inclusive entries from April 5, 1845, to July 30, 1850, under the heading of Mt. Palatine Academy; and from pages 25 to 63 inclusive entries from March 1851 to June 26, 1857, under the head of Judson College.

On page 10 is a reference to the list of stockholders of the Mt. Palatine Academy, on the last page of the book. The number of shares is 48.

On page 12 is a list of the stockholders of the Academy and College—number not given.

On page 13 is an account of a meeting under the name of Mt. PALATINE ACADEMY, under date of February, 1860—evidently interpolated on blank leaves left by the corporation on opening under the head of JUDSON COLLEGE. This purports to be by seven stockholders, the names of four of whom only appear in either list.

On page 10 is a list of the Trustees who were in office when the amendment was passed, to-wit: Higby, President, Fisher, Sec., Powell, Winters, Warner, Bly, Curtis, Wright, McLay, Reynolds, Cross, and Howard, and who were identically the same persons named as corporators by the amendment.

On page 17 is this entry: "At the session of the Legislature of the State of Illinois, held in the winter of 1850-51, an act was passed agreeable to a petition of the President and Trustees of the Mt. Palatine Academy, incorporating said Academy into a College, styled "The Judson College," with an academic, normal and female departments. The said act was passed February 17, 1851. Notice being given to the Board that their petition was granted, on March 10, 1851, a meeting of the Board was called under the provisions of the new charter for the purpose of electing officers of the Board for the ensuing year. A quorum being present, the following were elected for the ensuing year: Rev. C. M. WRIGHT, President; Rev. C. Cross, Secretary.

On motion, voted that C. M. Wright have the charge of the institution till the first of April 1852. \* \* \* \* \*

"On motion, voted that the Secretary obtain of the former Secretary all the books, papers, monies, etc, that belong to the board of Trustees.

CHARLES CROSS, Secretary."

From this on, it appears that the business was done in the name of, and the entries made under the head of "Judson College," and there was all the business pertaining to the management of the Academy and College.

On page 19 are these entries:

"Feb. 17, 1852. On motion voted that C. Cross and E. Reynolds be a committee to draw up a series of resolutions and regulations for the institution."

Agam, "Feb. 17, at a meeting of the Board of Stockholders of Mt. Palatine Academy and Judson College, held for the purpose of electing, according to the provisions of the new charter, a Board of Trustees of Judson College and Mt. Palatine Academy, the following persons were elected for the ensuing year:— Thomas Powell, James Curtis, C. Winters, E. Reynolds, L. Davis, L. Warner, E. Higgins, F. Foyle, G. S. Bailer, Charles Cross and G. H. Weston."

On page 26, Feb. 17, 1853, a similar entry.

On page 40, Feb. 17, 1854, a similar entry as to election of officers of "said institution." At this time J. M. Beach, the witness, was elected.

So also page 49, Feb 17, 1855.

Also page 57, Feb. 18, 1856, which was the last election before the sale of the property.

On page 49 is this entry, Feb. 9, 1855: "On motion, voted to petition the Legislature to repeal the amendment of the charter made to the original charter of the Mt. Palatine Academy, changing the name of said Academy to that of "The President and Trustees of Judson College," and revive the original charter as first passed by the Legislature. On motion, C. Winters and John Colvin were appointed a committee to make an agreement with the stockholders of Judson College in reference to the repeal of said amendment of said charter."

This failed to pass for want of time. See page 50.

On page 62 is an order recognizing the debt to Aaron Butler of \$1305 61, and order for execution of deed of trust to secure the payment of it, by John Colvin, the then President, on which sale was subsequently made.

On page 13 (of the interpolated entries by the 7 pretended stockholders) is this entry:—*Resolved*, That this Board proceed to assert the rights of the corporation to the Mt. Palatine Academy property; to inform the present occupant of the same, and to commence a suit therefor, provided the stockholders and others furnish written pledges that the expenses of the prosecution shall be met.

Two or three meetings of the same import, and nothing more.

Of these 7 pretended stockholders, bearing the names of Otis Fisher, John W. Laughlin, James Curtis, Larned Davis, Isaac Woodbury, George Woodbury, and Ephraim Reynolds, it appears by this record that Fisher owned 4 shares, Curtis 4 shares, Davis 1, Reynolds 1, of the total 48 shares; and that they had taken part in all or nearly all these proceedings under the title of "Judson College;" and that Curtis, Fisher and Davis (see page 58) were members of the Board that ordered the sale of the property. Reynolds was a member of the board in 1853. The other of these 7 pretended stockholders are strangers to the record hitherto.

# SUPREME COURT OF ILLINOIS.

## THIRD GRAND DIVISION.

APRIL TERM, A. D. 1862.

THE PRESIDENT, &C.,  
of Mt. Palatine Academy,  
vs.  
KLEINSCHNITZ, ET AL.

### DEFENDANTS' POINTS AND AUTHORITIES.

I. The act of 1851 was an amendment of the act of 1845, engrafting upon the old corporation enlarged powers with a new name, and did not create a new corporation, leaving the old, under its first name, in existence.

1. The act refers to the title, and makes it necessarily a part of it. The act cannot be understood without the title. It could not be determined what "*said Academy*" referred to, and the title calls the act an amendment.

2. In this, and in many other respects, the language of the act is obscure and may well, without the title, admit of different constructions; and the rule in such cases is to refer to the title to remove such doubt and obscurity. This was the rule in England when the clerk of the House in which the act originated gave it its title. It is much more so in this country where the Legislature establishes the title.

1 Ham, 468, *Burgett vs. Burgett*.

"The title is framed in the same manner as the bill, and is sanctioned by the vote of both branches of the Legislature. We may therefore consider it as explanatory of the object of the law."

2 Paine's C. C. Rep. 585, *Ogden vs. Strong*, the same statement is made.

And see 15 J. R. 89, *Wodoruff vs. Gilchrist*.

do do 358, *The People vs. The Utica Insurance Company*.

4 Gill & J. 1. *Canal Company vs. R. R. Co.*

12 do 17, *Lucas vs. Blair*.

2 Cranch 358, (1 Dal. 423,) *United States vs. Fisher*.

*Dwarris on Statutes*, 633.

3. In case of doubt, too, as to the construction of the language of the act, courts will look at other aids to discover the *intention* of the Legislature, which is the needle of interpretation. They will look to the cause of making the statute—the then present status which it was intended to improve—the existing evils or defects which it was intended to redress and remove.

The records of the corporation (the contents of which all the corporators were bound to know), page 14, state that this "act was passed agreeable to a petition of the President and Trustees of Mt. Palatine Academy, incorporating said academy into a college, styled, 'THE JUDSON COLLEGE, February 17, 1851.'" Such a petition then was before the Legislature, and this act was in response thereto; and by the proper rules of construction they intended to incorporate the *said academy into a college, styled 'THE JUDSON COLLEGE.'*"

5 Sandf. 16, 37, *Freeman vs The City of New York*. (An act was passed on the petition of citizens; held could refer to the petition to aid in its construction.)

*Davies (C. C.) 45, United States vs. Webster*.

"When the words of the enacting part are ambiguous, or may admit of a larger or more restricted signification, then reference may be made to the preamble to determine which sense is intended by the Legislature. The reason is that the preamble states the grounds and objects of the law, and when the reason and grounds of the law are made known in any other manner equally certain and authentic they

are entitled to have the same influence in the construction of a statute as the preamble; if the rendering of the words is doubtful, because every law should be carried into effect according to the intention of the law maker, when the intention can be certainly known." \*In this case reference was had to an executive document printed for the House, and which was before the House when the bill under discussion was passed.

1 Pick. 248, Holbrook vs. Holbrook.

25, Maine (12 Shep.) 493, Winslow vs. Kimball.

21 Ver. (6 Wash.) 152, Catlin vs. Hale.

2 Paine, C. C. Rep., 587, Ogden vs. Strong.

4. When the language is doubtful (and we believe in any case) it is proper to regard cotemporaneous construction; and, we believe also, the subsequent construction and usage of the parties interested. The entry on the corporation records last quoted was the first act of those interested—the corporators—after which the Board of Trustees of Judson College continued to act, controlling all for about seven years, till all the property was sold to pay debts; and, among other things, in 1855, (see corporation records, p 49,) voted "to petition the Legislature to repeal the amendment of the charter of the Mt. Palatine Academy, changing the name of said Academy to that of The President and Trustees of Judson College, and revise the original charter as first passed by the Legislature."

5 Iredell's Eq. Rep. 71, Att'y Gen. vs. Bank of Cape Fear.

"Where, by the penning of the statute, its meaning is rendered doubtful, long usage is a just medium by which to expound it, upon the maxim, that the *res et norma loquendi* are governed by usage. This rule governs in the construction of the fundamental law of the land, the Constitution of the United States. "A cotemporary exposition, and acquiesced in for a period of years, fixes the construction."

1 Cranch. 299, Stewart vs. Land.

Vaugh. Rep. 169, Shepard vs. Gosnold.

2 Paine's C. C. R. 587, Ogden vs. Strong.

Dane's Ab., vol. 6, 598, ar. 5, sec. 11.

5. Such a construction as would produce injustice and crime should be avoided. By the act of 1851, "The said college was to be, and remain on, said section one", thus giving, if Judson College was a new corporation, the use of the property of one corporation to another.

6. That the President and Trustees of Mt. Palatine Academy originally, and the President and Trustees of Judson College after the act of 1851, and action under it, constituted *one only* continuous corporation appears from many other items. The corporators named in the new act were the existing President and Trustees of Mt. Palatine Academy, twelve in number; the capital stock the same, \$15,000; the shares the same, \$50 each; the amount of land to be held the same, 1,000 acres; amount of money to be held the same, \$20,000; the provisions of the two acts almost precisely the same, except those of the latter *enlarging* the academy into a college.

II. And if this act of 1851 was an amendment of the act of 1845, and if the title can be read as a part of it, or as an exponent of it, then it only continued the old corporation with enlarged powers. To say that, being simply an amendment, it modified the *old*, and yet created a *new*, corporation is simply absurd. To say that a new corporation was brought into life to co-exist with the old in closer than matrimonial alliance, bone of its bone and flesh of its flesh, one spirit and one will, so that even the corporators themselves did not and could not discover the difference between them, or even that there were two, to fraternize and harmonize in the same institution, is likewise absurd.

The argument of Plaintiffs' counsel is only based on the letter of the enacting clauses of the act of 1851, making no use of the key of construction afforded by the title. The difficulties of construction it presents show, in a pre-eminent degree, the propriety and the necessity of seeking other proper aids to construction. But, these other aids being found, their argument falls to the ground, and all their authorities are utterly inapplicable.

III. The Plaintiffs claim that the corporation entitled "The President and Trustees of Mt. Palatine Academy" is still a live corporation. Then it is after a non-user of its franchises for about ten years, up to 1860, when, only, there was a pretended action of a small minority of its corporators in a very questionable manner, and its corporators all the while knowing that another corporation, of which themselves were members and actors, had usurped and swallowed up all its franchises and property, which amounts to an abandonment.

The action of the seven pretended stockholders in 1860 and afterwards should be regarded but as a sorry attempt to galvanize a defunct, soulless corporation into life for the purpose of unjustly depriving the honest purchasers of their property, who had paid a large amount of money and the full value of the premises, under inducements held out even by at least four of these seven stockholders. And further, this action should not be deemed to be sufficient to justify the bringing of this suit as the act of the corporation (if still in existence).

IV. Although it be held that the corporation entitled "The President and Trustees of Mt. Palatine Academy" be still in existence, yet the evidence is that the corporation entitled "The President and Trustees of Judson College" has had peaceable possession of the premises since 1851, up to the time of sale. The presumption of law is that, if they were not owners, they were tenants from year to year. Their deed would give their right of possession to their grantee, and so the defendants, who were tenants of Wolf, the last grantee, would be tenants from year to year and entitled to notice to quit before suit brought. As no proof of such notice was made, and the presumption of such tenancy was not rebutted, all other matters being out of the case, the defendants were entitled to a verdict and judgment.

We hold that there were no erroneous instructions given, but if there were, as plaintiffs could not win with this point against them, such instructions could do no harm.

E. S. HOLBROOK, }  
T. P. HALLIGAN. } For Defendants.

No 285

The President of  
of the Kellogg Academy

to  
Klemens Schmitz

Depts. Obstetrics  
Gynecology & Pediatrics

Dear Sir,  
I have the honor to acknowledge the receipt of your letter of the 10th inst. in relation to the matter of the Kellogg Academy. I am sorry to hear that you are unable to attend the meeting of the 15th inst. but I trust you will be able to do so on the 22nd inst. I am sure that your presence will be of great value to the Academy. I am, Sir, very respectfully,  
Your obedient servant,  
J. H. Kellogg

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The President &c of the Mt Palatine Academy  
vs Almschmitz et al.  
Further argument by defendants

We had not intended to submit to your Honors more than the foregoing points and reference to authorities embracing a short extract from a leading case on each point — supposing that this ~~case~~ would be sufficient to place the case of the defendants beyond successful controversy — but hearing that the case has already been decided adversely to the defendants, we think proper to exercise further diligence by ~~sum-~~menting on those authorities and the testimony in the case — so that if possible an end may now be put to the controversy.

We are surprised at the position taken by plaintiffs in their argument, to wit; that the Act of 1851 was, as by its title expressed, an amendment to the Act of 1845; yet still that it created a new corporation.

This is altogether an afterthought since the trial below, and evidently a far-fetched, impotent conclusion, drawn not from the design of the parties and the will of the Legislature, but only from a hypercritical analysis of the mere words of the Act

of 1851. We had supposed ~~that~~ if it were conceded that this act was an amendment to the former that it was also conceded that ~~that~~ there was but one continued corporation. To say that an amendment to an act of incorporation created a new incorporation (certainly unless the reason and design be most explicit) seems too absurd to merit a refutation. This would be mending a book by making a new one. What is the essence of an act of incorporation? It is the changing - the modification of it.

But this verbal criticism does not open up anything decidedly adverse to our position. The language does not indicate clearly and in a faultless manner to one that shuts his eyes to the design of the incorporators - as interpreted by their petitions and their acts - either one thing or another - but still is more consistent with the position that the new act simply modified the old corporation than that it created a new one.

The modification of the old corporation by "incorporating therewith a college" is simply enlarging its powers so as to embrace a college - and thus modified, it bears a new name: "incorporating therewith" making it a part

of the same body - "flesh of its flesh bone of its bone".

The counsel's ~~assumption~~ that it is a corporation "in connection therewith" is a begging of the question - it is a College in connection therewith - with said Academy.

"The Trustees shall be elected yearly by the Stockholders of said College and Academy jointly" - a clumsy phrase, it is true, but what is the meaning of it? The Academy was in operation, stocks had been issued and a certain amount of funds had been raised for this purpose. Now there was a larger scheme, more funds were wanted, new stocks was to be issued under a new name, and the then existing stockholders under the name of the Academy retained their position and ~~power~~ <sup>power</sup> and constituted a portion of the corporation of the corporation as it was modified by the new Act - And this is the meaning of this phrase and like phrases as often as they occur.

"In connection with said Academy as an Academic department". This word "department" shows that the Academy did not exist by itself, but was a part only of an institution.

In passing, it may be well to remark

that this title "An Act to amend" (which plaintiffs admit shall be read with the Act) is an expression of the understanding of the Legislature of the meaning and design of the Act; and as the expression of one thing is the exclusion of another it is simply an amendment and not the creation of a ~~cor~~ new corporation.

Said College and Academy as an Academic department "to be and remain on Section One". There is much in this provision that indicates the unity of the institution. This property, Section One, and all improvements thereon, were, by this amendment, put into the possession, and under the control of the corporation of Jackson College. If this latter were not the same corporation as the former, then the Legislature committed the atrocious wrong of giving the property of one person to another, as we have said before - but more than this, the oversight of design, of possession, of control, of action, the solidarity of being, bespeak a singleness, and not a plurality of personalities. These are not institutions but simply "the institution".

Plaintiffs Counsel say that there was no provision for "the transfer of the property, franchises and liabilities of the old corporation to the new." For the plain reason that there was no new corporation, and consequently, no transfer. But we will suggest that if the Legislature intended to create a new corporation and forcibly install it upon the property of the old, it would not have made some terms as to such occupancy; would have regulated in some way, upon principles of justice, the apparently conflicting rights of the two corporations, and not have made one the complete subsidy and serf of the other without any chance of redress.

The counsel ask, as to the liabilities of the old corporation, "could it not assume reply that it never assumed such liability? To be sure it could if it were a new, distinct corporation but it did not, but honestly undertook to pay, and in so doing turned out the property, on Mortgage, to Aaron Butters the Creditor, - a proceeding in which a majority of the stockholders took part, and only a small minority after four or five years of silence (with knowledge) are found to complain (and probably only upon

the suggestions of Counsel learned in  
the Law showing some <sup>certain</sup> advantages of  
verbal criticism (which the simple corpora-  
tors and even more scholarly professors  
of the institution had never thought of.)  
The other provisions of the new Act  
rehearsed by plaintiffs Counsel go far to  
show the ownership of the institution rather  
than otherwise. Their suggestion as to the  
names of the incorporators being used is  
answered by the fact that these identical  
persons were the then Trustees of the  
Academy. Their suggestion as to the  
Amount of Stock ~~is answered~~ <sup>is answered</sup> by the evidence  
of the record-book, not what ~~might have~~  
been, but that in fact ~~that there were~~ there  
but forty eight shares - so there was ample  
opportunity for the issuing of stock in the  
College fund.

The criticisms of plaintiffs counsel on the  
language of the Act are valuable in one  
respect: - they show the necessity of resorting  
to the title of the Act as an aid to dis-  
cover the meaning of the Act. But the use  
of the words "said Academy" with no  
antecedent except that found in the title  
alone renders it necessary to read the title.

We quote at large from 1 Horn. - as it is very applicable <sup>to</sup> other points in the case as well as this.

"The intention of the law makers may be collected from the cause or necessity of the Act - and Statutes are sometimes construed contrary to the literal meaning of the words. It has been decided that a thing within the letter was not within the Statute unless within its intention. The letter is sometimes restrained, sometimes enlarged; and sometimes the construction is contrary to the letter. The object of our Statute appears from its title to be the prevention of frauds and perjuries; and although it is said that the title forms <sup>no</sup> part of the Act yet the reason of this dictum seems to be the practice of Parliament by which the title is prefixed to the Statute at the discretion of the clerk of the house in which the bill originated, but such is not the practice with us. The title is framed in the same manner as the Bill, and is sanctioned by the vote of both branches of the Legislature. We may therefore consider it explanatory of the object of the law."

In the case of in 2 Horn 585, this language is used "It is observed by the learned Mr Dru that it is said in many English books that the title

of a Statute is no part of it because the Clerks add it - but this reason does not hold in the United States where the Legislature makes the title as much as the preamble or body of the Statute."

J. Rep.  
In the case in 15 ~~18~~ 358 this language is used. "Where the words of a statute are obscure or doubtful \* the intention of the Legislature is to be resorted to in order to discover their meaning. A thing within the intention is as much within the Statute as if it were within the letter; and a thing within the letter is not within the Statute if contrary to the intention of it."

We call your Honors attention to this language as particularly applicable to our next point. The language in Dorris on Statutes is this "When the mind labors to discover the intention of the Legislature it seizes upon everything, even the title, from which aid may be derived." These words are frequently referred to and adopted. On 4 Hill & G. Rep. it is stated that the English rule against consulting the title does not obtain in this country - and insists "that the preamble of a Statute is a key to its construction."

But we will not pursue this point farther

as plaintiffs Counsel, by their position that the Act of 1851 was "an Amendment" as its title imports, renders it unnecessary.

We had supposed that this, simply, would end the matter that if this Act were an Amendment to the first Act, then that no new corporation were created; but only the old one was modified. We think so still. But as this seems to be controverted and the construction of the Act is still in doubt we will look to such other aids as we may find to show that no new corporation was created. These are referred to under our 3<sup>d</sup> & 4<sup>th</sup> Special heads, which, with the authorities, we will consider together, as so many of the cases apply to both points.

The history and facts are all on the side of the defendants.

It clearly appears that in 1845 certain persons became incorporated under the name of "the President and Trustees of Mt Palatine Academy" - that they organized - sold 48 shares of stock - obtained some land - built an Academy and operated it - that they kept a record of proceedings - that in the winter of 1850 they petitioned the Legislature for an Amendment of their charter "to incorporate said Academy into a College styled "The Judson College" - that they obtained such

an Amendment - adopted it - adopted the  
new name - proclaimed it abroad - issued new  
stocks - built another building on the same  
piece of land - used the same record book -  
ran the institution for five or six years,  
never pretending to be but one corporation, nor  
to act in a two fold capacity - petitioned the  
Legislature "to repeal the amendment of the Charter  
made to the original charter of the Normal  
Academy changing the name of said Academy  
to that of "The President and Trustees of Johnson  
College" and revive the original charter as first  
passed by the Legislature" - that this failed to  
be done for want of time - that they acknowledged  
a debt due to Aaron Butler of \$1305, 61 - gave  
a mortgage on the property to pay said debt  
- that under this mortgage defendants became  
vested with the possession, and their landlord,  
Wolf, became vested with the title,

Now can any one or all these things be referred  
to to show the construction to be put upon the  
Act? We contend that they can.

In 5 Sandf. p 37 this language is used.

"But if any doubt arise from the terms  
employed by the Legislature it has always been  
held as a safe means of collecting the intention,  
to call in aid the ground and cause of making

the Statute and to have recourse to the preamble, which, according to Chief Justice Dyer, is a key to open the minds of the makers of the Act, and the mischief which they intended to redress."

The question discussed was ~~proper~~ "Was it proper to refer to the petitions of citizens for the passage of the law to aid in its construction? - and it was held that it was proper - and it was done."

This case is precisely similar. The parties here have placed on their record evidence, and an admission of the fact, that there was such a petition - and what it contained. The Act of 1851 was a private law. The Legislature acted solely in response to this petition. Hence we have the desire of the parties petitioning, the evil sought to be remedied and the intent of the Legislature.

The next case quoted in Davief is equally strong. Besides what is already quoted the case reads thus (on the question if the Court would ~~consult~~ consult a document printed for the use of the House when the Bill was pending before it.)

"If it does not bring before the Court the objects and intention of the law makers, as a preamble, at least it affords a medium of exegesis against which the Court cannot shut its eyes, without excluding from its consideration what would have an influence on every mind studious of ascertaining the real intent of the law maker"

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The case in 1 Peck 9 justifies a reference to the preamble to discover the intention of the Legislature when the words are unambiguous.

On 21 Ven. this language is held -

"On construing Statutes the rule is to ascertain the intent of the Legislature which is to be gathered from the language used, taken in connection with the subject matter and having reference to all that is said upon the subject."

This is what we ask in this case, and if it be done, it is easy to see the result.

Why should not the parties interested be themselves their own interpreters? As to contracts this Court in 12 Ells 219 say that they will, as far as possible, make the parties their own interpreters - and in 4 Gill, <sup>man</sup>544 "where the language is ambiguous Courts uniformly endeavor to ascertain the intention of the parties and to give effect to that intention," - and these principles have ever been sustained by this Court.

The case in 5 Crdell & G Rpts is quite apropos to the case at bar.

The Bank of Cape Fear was, by its Charter, to pay the State something, but what it was was a matter of doubt - but the Bank went into operation, and by its ~~past~~ acts put a construction on the Statute - and continued for some time.

Afterwards the question was raised as to its true construction, and the Court uses the language quoted in our brief and holds the Bank to its own construction, supported by usage.

By the light of this authority the decision of the case at bar is easy. Who should be better interpreters of the rights of the M<sup>r</sup> Salative Academy under this Amendment than the Corporators themselves acting individually and in a corporate capacity at the time that the amendment was ~~made~~ obtained? They have shown in their interpretation what they wanted, what they petitioned for, what the legislature gave them. They have induced others to adopt and pay out money on their interpretation. And shall they be told now by this Court that they were utterly mistaken? And shall those that had confidence in them be told that they have lost their money?

Another fragment of history is made by this book of records — in the entry made by seven pretended stockholders interpolated on the blank leaves left by the corporate officers on the adoption of the Amendment. This speaks for itself.

It is a moral fraud; whether a legal fraud or not it is for this Court to say.

This record book is in the hands of the Clerk for the use of the Court. We have printed

portions of it, and we appeal to it for proof of our position that the corporators (as also the Legislature that acted for the corporators) understood the act of 1851 to be an ~~ad~~ amendment of the Act of 1845; that it did not create a new corporation, but modified the old, engrafting upon it enlarged powers with a new name which the corporators adopted, and used for years, and which they (a large majority of them) have not denied to this day.

What we say in reference to this Act of 1851 is that it is very clumsily and indifferently drawn - probably by one of the corporators - and not by one learned in the law. Through the whole record book there is the same want of perspicuity and correctness in the use of language - But all this shall not vitiate - nor vitiate against that construction which is in accordance with the intention of the parties and the Legislature.

The authorities quoted by plaintiffs do not affect the views maintained by our authorities. We hardly care to controvert them; for the cases are not sufficiently analagous to this to merit mention.

In the case in 2 Mason the Act under discussion referred to the old Bank as an

existing corporation and provided for  
 business to be done between the two cor-  
porations. The old corporation had a limited  
 existence. The Court say "Every charter must  
 be taken to be taken a grant to a new corpora-  
 tion unless it be granted to an existing corpora-  
 tion". Very well. The Act of 1851 was a grant  
 to an existing corporation as shown by  
 the title of the Act. Is not that language  
 pregnant with this, the converse proposition,  
 - that a grant to an existing corporation  
 must not be taken to be a grant to a new cor-  
 poration? There it was said also that "if the act  
 was an amendment it would not be binding  
 until accepted, and it was not accepted," but in  
 the case at bar the amendment was accepted.

The Councils deductions from this case are  
 all lame in this - that they persist in con-  
 sidering the Act of 1851 without the title.

We do not see the pertinancy of their other  
 authorities. It is true that the phraseology of  
 the body of the Act of 1851, if alone considered;  
 would seem to indicate a grant of powers to  
 the corporators named. But these corporators  
 were the twelve Trustees of the Academy - the  
 Legislature has stamped the act as an Amend-  
 ment - the corporators treated it before and  
 afterwards as an Amendment, and we cannot

believe that this Court will do differently.

Not to enlarge more on other points we insist that the fourth point is well taken, though this Court may hold that all others are not. This is based on defendants 3<sup>d</sup> instruction. In case of tenancy the presumption of law is in favor of a tenancy from year to year. Such tenancy must be limited by notice to quit before suit in ejectment can be maintained.

The logic is this.

Let it be granted that "The President & Trustees of Mt Salatin Academy" are the owners of the land. The Legislature, by the Act of 1851, placed "The President and Trustees of Jackson College" in possession of the premises. The evidence is that the former corporation consented to this, and the second corporation held for several years, and transferred their possession to the defendants. The defendants then were entitled to notice to quit before suit brought and the verdict of the jury was right as to this issue.

On page 26 of the record it is shown by the witness Gunn that C. M. Wright, the professor who had charge of the school declared while teaching in the Academy that the institutions

would no longer be known as Mt. Salatine  
Academy, but as Judson College. As shown  
by the evidence it has since been universally  
so known in community. The name or  
institution of Mt Salatine Academy is known  
only as a matter of history, one of the  
things that were!

Shall this community now be startled  
with <sup>the</sup> astounding intelligence that everybody has  
been mistaken - that the name - the spirit  
- the body of the old corporation is still alive  
and is hunting up its old possessions?

E. J. Holbrook.

J. P. Halligan  
Attys for  
W. J. G. J. G.

Ms 285  
The Pres & Secs of  
the Mt Salatin  
Academy  
vs  
Kleinshmidt et al

Defts Abstract Points  
Authorities & Argument

Filed June 16, 1862.  
S. Seland  
Clk.

E. S. Holbrook

J. A. Neilligan  
Defts Atty.



the said defendants afterwards, to wit: on the 15th day of March, A. D. 1860, at the county aforesaid, entered into the said premises; and the said plaintiffs further aver, that the said defendants unlawfully withhold from the said plaintiffs the possession of said premises, to the damage of said plaintiffs one thousand dollars, hence this suit, &c.

M. BANGS & T. DENT,  
Plaintiff's Attorneys.

3 Notice filed with narr.

Gives notice to defendants that the plaintiffs on the 16th day of March, A. D. 1861, the same being sixth day of the Term of said Court, now being held at the Court House, in Hennepin, in said county, at opening of Court, will file the foregoing declaration; that a rule will be entered, requiring defendants to appear and plead within twenty days from time of entering rule; that in default thereof, judgment by default will be entered against defendants, and each of them severally, and plaintiffs will recover possession of the premises.

M. BANGS & T. DENT,  
Plaintiff's Attorneys.

Dated March 14, 1861.

4 Affidavit of Otis Davis, on back of notice, shows notice of service of declaration and notice, by Otis Davis, on each of defendants, by copy, on the 15th day of March, A. D. 1861. Said Davis further deposed in said affidavit, that said defendants were, on the 15th day of March, A. D. 1861, in the possession and in the actual occupancy of the premises described in declaration.

On same day, 16th March, the following order was entered in said Court, in said cause.

5 "Now comes the said plaintiffs, by Mark Bangs and T. Dent their attorneys, and file their declaration and notice in this cause, and make due proof of the service of the same, by delivering a true copy of said declaration and notice to said defendants, and thereupon, on motion of said plaintiffs, it is ordered that the said defendants be and they are hereby ruled to appear and plead to said declaration, within twenty days from this date, and that if they neglect to appear and plead, judgment by default will be entered against them, and the plaintiffs will recover possession of the premises."

6 April 7th, 1862, defendants filed their pleas.

First Plea. Not guilty.

Second Plea. Defendants not in the actual occupancy of the premises at the time of the commencement of the suit.

Third Plea. "And for a further plea in this behalf, said defendants say that the said plaintiffs were not and are not a corporation in manner and form as set forth in their declaration, and ought not, as such corporation, to maintain this suit, and of this the defendants put themselves upon the county."

Plaintiffs joined in the issues to the country.

7 October Term, A. D. 1861, Oct. 28, 1861.

Cause passed, at plaintiff's cost, for the first day of this Term, plaintiff not being ready for trial.

8 Oct. 30, 1861.

Jury empannelled and sworn, and, after hearing the evidence, "do upon their oaths, say: we, the jury, find the defendant not guilty."

Plaintiffs enter a motion to set aside the verdict herein, and also a motion for a new trial, on common law grounds.

Oct. 31, 1861.

Plaintiff's motion to set aside verdict and for a new trial, overruled.

9 "Therefore it is considered, ordered, and adjudged by the Court, that the said defendants have and recover of the plaintiffs their costs herein expended, to be taxed, and that they have execution therefor."

Plaintiffs pray an appeal, which is allowed, on plaintiffs entering into bond of \$200, conditioned as required by law. Bond to be joint and several with security, to be approved by Clerk by agreement of parties. Bond and bill of exceptions to be filed in 90 days.

Bill of exceptions filed Jan. 28, A. D. 1862.

10 Shows that on the trial of this cause before the judge and a jury, on the 30th of Oct., 1861, plaintiff introduced the following testimony:

13 The plaintiffs introduced in evidence, and read to the jury, an act entitled "An Act to incorporate the Mt. Palatine Academy," as also the title of the same, passed by the General Assembly of the state of Illinois, and approved by the Governor, March 3d, 1845. The act and title is as follows:

In force,  
Mar. 3, 1845.

AN ACT to incorporate the Mt. Palatine Academy.

Corporation  
created.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly, That Isaac Woodbury, Thomas Powell, Otis Fisher, Hiram Larned, Christopher Winters, William Johnson, William Johnson, jr., Nathan Kingsbury, and Peter Howe, and their successors, be, and they are hereby created a body politic and corporate, by the name and style of the "President and trustees of Mt. Palatine Academy," and by that name and title to have perpetual succession. The same academy being and to remain on section number one, township number thirty-one north, range number one west of the third principal meridian in Putnam county; the number of trustees shall not exceed twelve, they shall have power to elect the necessary officers out of their own body. The trustees shall be elected yearly by the subscribers or stockholders of said academy. They shall have power to fill vacancies that may occur in the interim, and in case of a failure to elect at the proper time, the trustees shall continue in office until their successors are elected and qualified.*

What section  
academy to re-  
main on.

Officers to be  
elected.  
How trustees  
to be elected.

Extent of the corporate powers. 1845. SEC. 2. The corporate powers hereby bestowed, shall be the following, to wit: To make contracts, to sue and be sued, plead and be impleaded, and to grant and receive by their corporate name; to accept, to acquire by purchase, or sell property, real, personal, or mixed; in all lawful ways to use, employ, manage, and dispose of all such property, and all money belonging, or that may belong to such corporation, in such ways as to them shall seem best calculated to promote the objects of the institution; to have a common seal, and to alter the same at pleasure; to make such by-laws for the management of the academy as shall not conflict with the laws of this state or the United States.

Duty of Trustees. SEC. 3. The trustees shall have power to prescribe and regulate the course of study in said academy; to fix the rate of tuition and other academic expenses; to appoint instructors and other officers and agents necessary to manage the concerns and interests of the institution, and to define their duties and fix their compensation, and, if necessary, to remove them; to erect suitable buildings; to purchase books and all other necessary apparatus; to make rules for the regulation of the conduct of pupils, and to expel such as are disorderly.

Corporation may raise a capital stock. Proviso. SEC. 4. This corporation shall have power to raise a capital stock in shares of fifty dollars each, to the amount of fifteen thousand dollars, exclusive of sums given by donation, bequest, or otherwise, and the funds, rents, income of said property of whatever kind, to be devoted exclusively to purposes of education: *Provided further*, that said institution shall not hold more than one thousand acres of land at any one time, and in the manner the donors shall direct within five years from the time such donation was made, or revert to said donor or donors, or their heirs: *Provided always*, said institution shall not hold more than twenty thousand dollars.

SEC. 5. Any five of the trustees shall constitute a quorum to do business.

What branches taught. SEC. 6. There shall be attached to said academy, a department in which shall be taught such branches as are usually taught in common schools.

Free to all denominations of christians. SEC. 7. The benefits and privileges of said institution shall be open alike to all religious denominations, yet it shall be under the control of the Baptist denomination.

SEC. 8. The legislature shall have power to modify, amend, or repeal this charter whenever the public good may require it.

Approved, March 3d 1845.

- 13 *Joel M. Beech*, witness sworn on part of plaintiff, testified: That he resided near the plat of Mt. Palatine Academy; had lived there ten or twelve years; had a town lot of near ten acres near Mt. Palatine; never had any connection with academy as trustee, or otherwise; it was in operation under the name of Judson College; knew of the organization of Mt. Palatine Academy only by reports, and by holding the records, &c.; never attended meetings of trustees of Mt. Palatine Academy; the records of Mt. Palatine Academy were put into witness' hands as secretary of board of trustees of Judson College, in 1855 or 1856; when witness came to Mt. Palatine, he did not know then that there was a Mt. Palatine Academy building; it was called the Judson College. When witness bought property in Mt. P., in 1847, it was known as Mt. Palatine Academy; was then a flourishing school; Fisher and Wright
- 14

were carrying it on at that time; it was then the Mt. Palatine Academy; witness bought his place of Rev. Mr. Fisher, as principal; did not know president and trustees at that time as such; the Mt. Palatine Academy was situated on plat of Mt. Palatine, on lot number 3, contained probably ten acres. In 1850 or '51, witness came to Mt. P.; was then 125 students in academy; was same building then as now. A book, purporting to be the records of Mt. Palatine Academy, shown witness; witness testified that the book shown him, was the book put into his hands as the records of Mt. Palatine Academy, could not say he knew the hand writing, (upon examining the book;) much of the hand-writing is Fisher's handwriting; knew the men and their signatures; signatures of Laughlin and Davis in their handwriting, the other signatures seem to be in same hand writing as the record; handwriting in fore part of the book much like Fisher's; never attended meetings of president and trustees of Mt. Palatine academy; Fisher is man referred to as principal.

- 16 *Cross Ex.* When witness returned to Mt. P., in 1851, the institution was known as Judson College; the same continued to occupy up to 1855, so far as witness knew; large school run out, and they put in a single teacher.

17 *Otis Davis*, sworn as a witness on part of the plaintiff, testified: That he had lived at Mt. P. twenty years; never attended the meetings of the president and trustees of Mt. Palatine Academy; was there at the time of erection of academy building; think it was built about 18 or 19 years ago; was called Mt. Palatine Academy; witness was now 22 years old; attended the school at different times; was acquainted with some of the trustees of Mt. Palatine Academy; the trustees were Otis Fisher, Nathan Kingsbury, Samuel Puffer; could give no more names; this might have been in 1844 to 1846; thought Hiram Larned and Christopher Winters were trustees—Thomas Powell, also Mr. Curtis; thought he could recollect of Wm. H. Bartwell being a trustee; thought Peter Howe, Ephraim Reynolds, and Charles Cross were trustees of Mt. Palatine Academy; Warren and John Higbee were trustees; thought there were some persons acting as president; did not know who they were at any time; the ones mentioned by witness were those who came to meetings of the board, and acted in that capacity; witness did not attend meetings; did not remember who directed about improvements; it is same building now as when witness first saw it; knew of its being erected; it is in north-east corner of town.

Andrew Kleinschnitz and Michael Gress about 16 April, 1861, were living in the academy building; lot covered about 10 acres, and is not enclosed; academy building is near centre, from east to west, near south edge; no inclosure around the house.

*Cross Ex.* Defendants occupied different rooms in the same building; one occupied rooms up stairs, and other on first floor.

19 Witness was, at time Fisher *et al.* were trustees, about seven or eight years old.

The Pratt building stood east of academy building; built for a boarding house by Pratt, eight years since; did not know who controlled it; did not know what corporation built the Pratt House.

The corporation which had control in 1853, was called Judson College; some of the persons who had formerly been trustees of the academy, were, in 1853, trustees of the college.

From 1852-3-4 did not know what corporation had control of the school in the academy, nor who was in possession at that time; thought it was incorporated then as Judson College.

20 *Re-examined* by plaintiff. Did not know whether, in 1853 and 1854, and about that time, there continued to be an academic department; defendants obtained possession under Mr. Wolf, as witness understood it; defendants said they would not pay Wolf any rent until this thing was settled.

*Cross Ex.* Kleinschnitz stated that Wolf wanted him to stay in building to take care of it.

21 *Nathan Kingsbury* testified on part of plaintiff: Was an old resident of Mt. Palatine; lived there 18 years; knew of the academy building on lot 3, a large square lot left for the purpose, when the town was laid out, in the north-west corner of the town; the building was erected after the act of incorporation of March 3d, 1845; they were the trustees of the Mt. Palatine Academy; they opened a school there, and carried it on for a number of years—for five or six years; did not know, only from report, that they had an academic department under the college; witness worked, under a contract, on the academy building; it was entered into under the name of the president and trustees of Mt. Palatine Academy; the president and trustees had meetings where subscriptions were had for this building; witness was one of the original corporators; witness resigned.

Plaintiff offered to prove by the witness that another trustee was elected in his place. Defendant objected—that the record was the best evidence. Court sustained the objection, and plaintiff excepted.

22 Witness was present at the meetings of the board, as a board, frequently; attended a call for a meeting within a year or two; was held in district school house, a year ago last fall or spring; was present until they elected their trustees, and then went away. Witness shown what purported to be the records of president and trustees of Mt. Palatine Academy; would not like to swear to the handwriting; thought the book was the book or such a book as they had at their meetings and around with them.

23 *Cross Ex.* Last meeting mentioned by witness was at school house, not on ten acre lot; went from noticing the call; the last meeting before that, was some years before that; have had some talk about it, and tried to buy the academy back from Wm. Pennell. Witness never knew of

any other corporation than the president and trustees of Mt. Palatine Academy; had nothing to do with the corporation after 1850; went to the meeting some two or three years since.

25 *Henry Gunn*, sworn as a witness on the part of plaintiff, testified: Had lived about Mt. Palatine since 1849; resided one mile west, five or six years; was an institution there, then called Mt. Palatine Academy; commonly went by the name of the president and trustees of Mt. Palatine Academy; witness' recollection was that C. Winters was president; Otis Fisher was principal at that time; he had an assistant; the trustees of the academy had control of the institution; was never present at any meetings of the board; was not positive about improvements in 1849 or 1850, by incorporation Mt. Palatine Academy. Witness attended school there, while under their control; was towards the year 1850; did not know as an academic department was continued there under the direction of the Mt. Palatine Academy; in later years was under the control of trustees of college, subsequent to 1849 or 1850; there was a primary department by that name, so far as witness now recollected. Book purporting to be the book of records of the Mt. Palatine Academy was here shown witness; the first part was in the handwriting of Otis Fisher, as was the body of the record; the next entry was in the handwriting of John M. Laughlin, including signature; the next was also in Laughlin's handwriting; could not testify as to Duer's writing.

26 *Gross E.a.* Moved to Mt. Palatine in 1849, and lived near there until spring of 1855, commenced attending school at Mt. Palatine Academy in latter part 1850; thought it was chartered as a college in 1850 or '51; could not say what became of the president and trustees of Mt. Palatine Academy after the charter of Judson College; was under their control; attended school before the charter of the college; C. M. Wright and Mr. Jenks were teachers when witness attended school; they continued there until the next spring after 1850 or 1851; teachers before 1851, professed to act under trustees of academy, subsequently under trustees of college; C. M. Wright professed to act under college charter, a short time after the charter of the college; Prof. Wright was elected president of the board of trustees; while Wright was acting as teacher, before the charter of college, he was employed by the trustees of academy, after the charter, he professed to act under the trustees of Judson College; witness never attended any of the meetings of the board of trustees of the academy; from that time on, Wright professed to act under the Judson College. Wright, immediately after the act of 1851, said, while teaching school, that the institution would no longer be known as Mt. Palatine Academy, but as Judson College. Knew Mr. Winters; believe he did, as trustee, assume to control as trustee of college; did not know as to Powell or Fisher, after 1850; the board of trustees of Judson College controlled the academy after the new charter; as near as witness recollected, they signed papers in that way; witness did not say as to title, spoke only of the control of it, that is, the school was under their control; spoke only of the control of teachers.

Plaintiff offered to read in evidence entries in the book brought into Supreme Court, by agreement, purporting to be the entries or records of Mt. Palatine Academy. Defendants insisted that the whole book should be given, in evidence, and objected to plaintiffs reading, in evidence, the entries under the head of Mt. Palatine Academy, without giving the remainder of the book in evidence. Court sustained defendants' position, and plaintiff excepted.

28 The parties stipulated that said book should be shown to the Supreme Court.

29 Plaintiffs read in evidence, a patent from the U. S. A. to Christopher Winters, dated Oct. 1st, 1839, of sec. 1 T. 31 N, R 1 W 3d P. M.

31-2-3 Plaintiffs then offered and read in evidence a conveyance from Christopher Winters and wife, of first part, and "Christopher Winters, Otis Fisher, Hiram Larned, Larned Davis, James Curtis, Peter Howe, Wm. Johnson, and William Johnson, jr., the present president and trustees of Mt. Palatine Academy, and their successors in office authorized to be elected by an act of the General Assembly of the state of Illinois, approved March 3d, 1845, as president and trustees aforesaid, of second part;" consideration, "one dollar to them in hand paid, and a donation by them, made for the erection and support of the said academy." The grant is to the said "president and trustees, of the party of the second part, and their successors, forever."

The description is, "all that tract and parcel of land situated and being in the county of Putnam, in the state of Illinois, known and described as follows, to wit: commencing at the north-east corner of section one, township thirty-one north, of range one west of the third principal meridian, thence running west eighty rods, thence south one hundred and twenty rods, thence east eighty rods, and from thence north to the place of beginning, with the exception of such lots as have heretofore been deeded by them within the aforesaid tract, which said lots will probably not exceed five in number."

*Habendum*, "To have and to hold the above described premises unto the said president and trustees of Mt. Palatine Academy, and their successors in those offices, forever, to use and apply the same as they are authorized by the act of the General Assembly aforesaid, for the support and maintenance of the academy aforesaid."

General warranty.

Certificate of acknowledgment.

34 Defendant objected to reading deed in evidence, on ground: 1st. That it did not appear that the grantees in the deed were trustees of said academy; 2d. The grantor was one of the grantees; 3d. Does not purport to be to trustees in their corporate capacity. Objection overruled; defendant excepted.

- 35 Plaintiff offered in evidence the plat and deed of dedication of the town of Mt. Palatine. See plat.
- 36 Surveyor's certificate—county surveyor—certifies to correctness of plat, as surveyed by him 25th June, 1849.
- 37 Deed of dedication describes dedicators as "president and trustees of Mt. Palatine Academy, proprietors of the town of Mt. Palatine." Signed and sealed by George Kingsbury, Joel Reynolds, and eleven others. No date to deed.
- 28-9 Certificates of acknowledgments dated 25th June, 1849, and 31st August, 1849.
- Defendants objected.
- 1st. That the dedication is made by persons who do not appear to be owners in fee of the lands dedicated.
- 2d. That the interlineations have not been explained; the interlineations being a name erased, and "Thomas Powell," written over it; another, an erasure, and "Putnam" written over it; another, an erasure, and "see" written below it. Deed appeared to be properly acknowledged. Court admitted the plat for purposes of identification, but refused to permit it to be read to the jury as evidence, but only as a memorandum—excluded the deed. Plaintiff excepted.
- 40
- 41 *Joel M. Beech* recalled: The academy is situated on lot number 3, in north-west corner of the town; the lot lays in NE corner of sec. 1, T. 31 N., R. 1 W., 3d P. M., in Putnam county, Ills: lot number 3 is bounded on east by Samuel Puffer's property; it is 40 rods across the north end of town; lot extends half way across; from meridian line to east line of lot was 20 rods; thought lot was 20 rods square; this lot is in north-west corner of the plat, and plat is in north-east corner of said section number one. Witness supposed lot was square, and contained ten acres; witness was mistaken, it was 40 rods square, and contained ten acres; witness helped chain the town twice; helped Blake survey it. Shown the plat; date on plat was about the time witness helped survey it; academy lot was the lot in NW corner of the town; runs half way across the 80 acre lot; the strip was 80 rods wide, and was 80 rods north and south; was 40 rods to meridian line; runs 40 rods south; is square or nearly so; before 1849, there was a village of Mt. Palatine; their deeds were written as the proposed town of Mt. Palatine.
- Plaintiffs again offer plat in evidence, with the foregoing testimony, for the purpose of identifying the lot, but the same was excluded by the Court. Plaintiff excepted.
- Plaintiffs rested.
- 42 Defendants ask rule on plaintiffs to elect as to which of the defendants they will proceed against. Rule denied, and defendants excepted. Defendant moves to dismiss the suit for want of evidence for plaintiffs. Motion overruled, and defendants excepted.

Defendants' attorneys gave plaintiff's attorneys notice to produce, upon the trial, the book of record of minutes of proceedings and by-laws of corporation formerly known as the president and trustees of Mt. Palatine Academy; also the book of records of minutes of proceedings and by-laws of the corporation known as the president and trustees of Judson College. Under the notice, plaintiffs' attorney produced the book mentioned in bill of exceptions, being same one as shown to Supreme Court. Defendant offered the book in evidence. Plaintiff objected to reading the entries under the head of Judson College. Objection overruled, and whole book given in evidence. Plaintiffs in apt time excepted.

43  
44-5-6 Defendants offered in evidence an act of the General Assembly of the State of Illinois, with the title thereof, approved Feb. 17, 1851. It is as follows:

In force February 17, 1851. AN ACT to amend an act entitled "An Act incorporating the Mt. Palatine Academy," by incorporating in connection therewith a college, by the name and title of Judson College.

SECTION 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That Thomas Powell, Christopher Winters, John Higby, Norman Warner, W. Y. Bly, James Curtis, C. M. Wright, Otis Fisher, James McLay, Ephraim Reynolds, Charles Cross, A. M. Howard, and their successors, be and they are hereby created a body politic and corporate, by the name and style of the "President and Trustees of Judson College," and by that name and title to have perpetual succession. The said college, in connection with said academy as an academic department, to be and remain on section number one, township thirty-one north, of range one, west of the third principal meridian, in Putnam county. The number of trustees shall not exceed twelve; they shall have power to elect the necessary officers out of their own body. The trustees shall be elected yearly by the stockholders of said college and academy jointly. They shall have power to fill vacancies that may occur in the interim, and in case of a failure to elect at the proper time, the trustees shall continue in office until their successors are elected and qualified.

§ 2. The corporate powers hereby bestowed, shall be the following, to wit: To make contracts, to sue and be sued, plead and be impleaded, and to grant and receive by their corporate name; to accept, to acquire by purchase, or sell property, real, personal, or mixed; in all lawful ways to use, employ, manage, and dispose of all such property, and all money belonging, or that may belong to such corporation, in such ways as to them shall seem best calculated to promote the objects of the institution; to have a common seal, and to alter the same at pleasure; to make such by-laws for the management of said college and academy as shall not conflict with the laws of this state or the United States.

§ 3. The trustees shall have power to prescribe and regulate the course of study in said college and academical departments, similar to other colleges in the U. S.; to appoint instructors and other officers and agents necessary to manage the concerns and interests of the institution, and to define their duties and fix their compensation, and, if necessary, to remove them; to erect suitable buildings; to purchase books and all other necessary apparatus; to make rules for the regulation of the conduct of pupils, and to expel such as are disorderly.

- Capital stock. § 4. This corporation shall have power to raise a capital stock or college fund in shares of \$50 each, to the amount of fifteen thousand dollars, exclusive of sums given by donation, bequest, or otherwise, and the funds, rents, income of said property of whatever kind, to be devoted exclusively to purposes of education: *Provided further*, that said institution shall not hold more than one thousand acres of land at any one time, and said lands to be appropriated in the manner the donors shall direct within five years from the time such donation was made, or revert back to said donor or donors, or their heirs: *Provided always*, said institution shall not hold more than twenty thousand dollars.
- Proviso.
- Further prov.
- Quorum. § 5. Any five of the trustees shall constitute a quorum to do business, and on recommendation of the faculty grant those degrees usually granted by other colleges in the United states.
- Primary department. § 6. There shall be attached to said academy, a department in which shall be taught such branches as are usually taught in common schools.
- Control. § 7. The benefits and privileges of said institution shall be open alike to all religious denominations, yet it shall be under the control of the Baptist denomination.
- Power of rep'l. § 8. The legislature shall have power to modify, amend, or repeal this charter whenever the public good may require it.

§ 9. This act to take effect and be in force from and after its passage.

Approved, Feb. 17, 1851.

- 47 Plaintiff objected; objection overruled, and act and title given in evidence. Plaintiffs in apt time excepted.

23 *Joel M. Beech* called as a witness for defendant: That he first came to Mt. Palatine in 1847 or '8; came back again in 1850 or 1851; president and trustees of Mt. Palatine Academy were then operating, and continued to operate several years; witness did not know of any acts of Judson College, only that witness was elected trustee of the college; was present at the meeting at the district school house, and one in the academy; Mr. Pennell was present at one, also Colvin and some others; did not remember if Cross was present; witness was elected trustee in 1855. Shown book now in Supreme Court; that was the book they kept; after part purports to be record of Judson College; thought he was present at the time named in record, in 1854; thought it likely the persons named in record, as present, were there; recognized in record, handwriting of John Colvin, Sandy, and Bross; witness was treasurer at that time, and did not serve as secretary; the book was placed in witness' hands; he had it from one meeting to another only; was never present at the meetings but twice, the times named; the school continued right along; they never had anything but an academic school; witness supposed they acted under the act of 1851; Fisher continued to be teacher; knew of his acting afterwards as trustee; about the time of witness' resignation, school had pretty much run down.

Witness did not know who controlled the property, *only from hearsay*; after school closed, it was vacant most of the time, except on Sabbath; was occupied principally as a place of worship, after the school

run down; a building was put up on the lot by Pratt; Pennell afterwards owned it; did not know whether the corporation was in debt in 1854 and 1855; the back part of book was nearly all in handwriting of Colvin.

- 49 *Cross Etc.* By control, witness meant carrying on the school; knew nothing about the title to property.

Defendants offered to read in evidence, a deed of conveyance from John Colvin, as president and trustees of Judson Collège, to Aaron Butler. Deed recites: "whereas the president and trustees of Judson College, party of the first part, of Mt. Palatine, &c., have executed one certain promissory note, of even date herewith, payable to Aaron Butler or order, after the date hereof, for the sum of fifteen hundred and fifteen and forty-seven one-hundredth dollars, a note bearing date with this deed, and payable one day after date, and executed by John Colvin, the president of the *board* of trustees of said Judson College, interest to be paid at the rate of ten per cent., now, therefore, the said president and trustees of Judson College, &c., (consideration.)

Description. Lot number three, in the town of Mount Palatine, according to the original plat of said town, and known and designated as the college square, and the buildings thereupon, one known as the Pratt building, the other the old college building.

Conveys the premises "in trust; nevertheless, that in case be made in the payment of said note, or any part thereof, according to the tenor and effect of said note, then, on the application of the holders of said note after publishing a notice," &c., specifies time and manner of notice; requires sale to be at door of court house, in town of Hennipin. Butler is to sell the premises at public auction, to the highest bidder for cash; to execute deeds of conveyance to purchaser; out of proceeds he is to pay, 1st, costs and expenses of sale; 2d, principal, and interest on note. Upon payment of note, Butler to reconvey premises to grantors.

- 52 General warranty, and special warranty against incumbrance.

Signed and sealed, 7 July, 1857.

Witness, GEO. DENT. JOHN COLVIN, Prest. B. T. [SEAL.]

Certificate of acknowledgment recites that, "John Colvin, as President of Judson College, who is," &c.

- 53 Plaintiffs objected to the deed being admitted in evidence, on the grounds,

1st. That the President and Trustees of Judson College had no title, and had no right to convey the lot mentioned in deed.

2d. That the deed is not properly executed.

Court overruled the objection, and permitted the deed to be read in evidence. Plaintiffs in apt time excepted.

53-6 Defendants offered in evidence, a conveyance from Aaron Butler to William A. Pennell.

Recitations refer to deed of President and Trustees of Judson College to Aaron Butler, and the record thereof.

That default was made in payment of note; that said note was still held by Butler; that Butler caused to be published, in the "Hennepin Weekly Tribune," published in Hennepin, Putnam county, Illinois, a notice of sale of lot, in pursuance of said deed—notice published 30 days before sale; that Butler, at time and place mentioned in notice, to wit: on 2d Sept., 1857, between the hours of 10 A. M., and 4 o'clock, P. M., at court house, in Hennepin, proceeded to make sale of the real estate, at public auction, to the highest bidder for cash; that he struck off and sold the premises to William A. Pennell, for \$1,590 06, he being the highest and best bidder; that sum was required to pay the note, interest, and costs of sale; that it was necessary to sell all of said premises to pay same; that therefore, William A. Pennell became the purchaser of all right and equity of redemption of the said President and Trustees of Judson College.

"Now, therefore be it known, that the said Aaron Butler, party of the first part," &c., conveys the premises to Pennell. Description same as in deed to Butler.

Covenants with Pennell that provisions of the deed of trust have been complied with.

Dated Sept. 2d, 1857.

56 Certificate of acknowledgment.

57 Plaintiff objected.

1st. That Butler had no title or authority to convey.

2d. That the conveyance was not properly executed.

3d. That defendants do not show that any such notice was given of sale, as required in trust deed from President and Trustees of Judson College to Butler, or that defendants show that any of the conditions in the trust deed were complied with by Butler, previous to executing the power in trust deed to convey.

Court overruled the objection, and admitted the deed in evidence. Plaintiff in apt time excepted.

59 Defendants offered in evidence, a deed from William A. Pennell and wife to Martin Wolf.

This conveyance was a quit claim deed, in usual form, with covenants of warranty against the acts of Pennell. Describes lot 3 in Butler's deed, but says nothing of buildings. Dated 15th Dec., 1857.

60 Certificate of acknowledgment.

Plaintiffs objected; objection overruled and plaintiffs excepted.

61 *Joseph Wolf*, sworn on part of defendant, testified: That his father bought the property of Mr. Pennell, some time in Dec. 1857.

Defendant rested.

The above was all the evidence in the case.

The plaintiffs asked the Court to give the jury the following instructions:

62 1. That the patent offered in evidence, conveyed the title in fee simple, to section 1, in township 31 north, in range 1 west of the third principal meridian, in said Putnam county, to Christopher Winters.

2. That the deed offered in evidence, from Christopher Winters and his wife, to Otis Fisher, Christopher Winters, Hiram Larned, Larned Davis, James Curtis, and others, as the President and Trustees of Mt. Palatine Academy, the title in fee simple to the land therein described.

3. That if the jury believe from the evidence that the premises described in the plaintiff's declaration as a certain tract of land situated in the north-east quarter of section one, in township thirty-one north, of range one west of the third principal meridian, in the county of Putnam, aforesaid, and known and described as lot number three, (3,) in the town of Mt. Palatine, was included in the description of the premises conveyed by the deed offered in evidence, from Christopher Winters and his wife to the President and Trustees of the Mt. Palatine Academy, as set forth in the 2d instruction above, then, in that case, they should find that Christopher Winters and his wife did, by said deed, convey to said President and Trustees of the Mt. Palatine Academy, the plaintiffs, the title in fee simple to the premises so described in said declaration.

63 4. That if the jury believe from the evidence that the President and Trustees of Mt. Palatine Academy *ever held* the title in fee simple to the premises described in the declaration, they must find that such title in fee simple to said premises still is held by said President and Trustees of Mt. Palatine Academy, (if such a corporation existed when this suit was brought,) unless the jury further believe from the evidence, that such President and Trustees of Mt. Palatine Academy have parted with such title to said premises.

5. If the jury believe from the evidence that the President and Trustees of Mt. Palatine Academy do now hold the title in fee simple to the premises described in the declaration, they should find the defendant *guilty*.

6. The jury are instructed that the only way by which the President and Trustees of Mt. Palatine Academy could divest themselves of a title in fee simple to land held by them, would be by deed made by the

order and upon the authority of said President and Trustees of Mt. Palatine Academy, made or appointed by them in their incorporate capacity.

- 64 7. That the President and Trustees of Mt. Palatine Academy could convey no title to any land to the President and Trustees of Judson College, or to any other person or body corporate, except by deed as specified in the last of the foregoing instructions.

8. That no matter what part may have been taken or what acts may have been performed by individuals (as such) in connection with or pertaining to the president and trustees of Judson College or any other incorporation, who may once have held the office of either president or trustee in the corporation of the President & Trustees of Mt. Palatine Academy, as any and all such acts could have no effect whatever upon the title to any land which said president and trustees of Mt. Palatine Academy may have held at any time.

9. The Legislature or General Assembly of the state of Illinois has no power, by direct legislation or enactment, to take land away from one corporation and give it to another.

- 65 10. The same person may lawfully be either president or trustee of two or more incorporations at the same time, and such person's official acts as a member of one of such incorporations would have no power or force to bind thereby any other corporation of which he might at the same time be an officer; and if the jury believe from the evidence that any one or more persons did, at any time, hold the office of either president or trustee in both the corporations of the President and Trustees of Mt. Palatine Academy, and President and Trustees of Judson College, then, in that case, any act of any such person as trustee or president of the President and Trustees of Judson College could have no effect whatever to transfer the *land* of the president and trustees of Mt. Palatine Academy to the President and Trustees of Judson College.

11. If the jury believe from the evidence that the General Assembly of the state of Illinois, in 1845, passed an act, which was approved on the 3d March, 1845, incorporating the President and Trustees of Mt. Palatine Academy; that under and by virtue of said act said corporation elected or appointed a president and a board of trustees; that they went on and got up a school building, established and maintained for a considerable length of time a school under their direction and control, then the said president and trustees of Mt. Palatine Academy would to all intents and purposes become a body corporate, or, in other words, a corporation, and as such could buy and sell, hold and convey lands and tenements, or other property.

12. To prove the existence of a corporation, it is sufficient to produce the charter and prove acts done under it and in conformity with it: written proof that all the preliminary steps, &c., were taken is not necessary.

13. A corporation acting as such cannot be questioned collaterally on the ground that it has not complied with its charter.

14. The fact that the same persons are members of two separate corporations, or were officers of two different corporations at the same time, does not necessarily work a discontinuance of either of said corporations, but both of such corporations may so exist together.

67 15. An incorporation can take no notice except in its corporate capacity, nor can it give its consent except by its corporate authority.

16. If the jury believe from the evidence that, after the passage of the act incorporating the president and trustees of Mt. Palatine Academy, an academy building was erected and a school carried on under said act, this is sufficient to show that said president and trustees became and were a corporation under said act.

17. The patent to Christopher Winters, and the deed from him to the president and trustees of Mt. Palatine Academy, are sufficient to vest a title to the land in said deed described in said president and trustees, and to sustain the issue under the first plea.

~~18. If the jury believe from the evidence that the defendants were, at the commencement of this suit, in possession of the lot described in the declaration, the jury should find for the plaintiff under the second plea.~~

19. If the jury believe from the evidence that, under the aforesaid act approved March 3, 1845, there was an organization as, and business under the name of, the President and Trustees of Mt. Palatine Academy, and that the land described in said deed from Christopher Winters includes the lot in controversy, and that defendants were in possession of said lot at the commencement of this suit, this evidence (in connection with the title paper read on the part of the plaintiffs) is sufficient to sustain the issues on the part of the plaintiffs under all the pleas.

20. The act approved Feb. 17, 1851, did not divest the plaintiffs of title to the lot in controversy, if the plaintiffs had such title.

21. If the plaintiffs had such title, then, in the absence of a deed or conveyance from them in their corporate name, the presumption is that the title to said lot is still in the plaintiffs, but this presumption may be rebutted by proof.

22. No consent of itself of plaintiffs (should *such* appear) to allow the president and trustees of Judson College to carry on the school, occupy or control the building or property, would transfer the title from the president and trustees of Mt. Palatine Academy to the president and trustees of Judson College, or to authorize the conveyance of said property from said president and trustees of Mt. Palatine Academy.

24. Only the legal title is to be regarded. No mere equitable (if any) should govern in reference to the verdict.

24. If the jury find for the plaintiffs, they will state in the verdict that they find the defendants guilty, and that the plaintiffs were seised as of an estate in fee.

25. The jury are instructed that defendant's 3d instruction should be qualified by showing any such possession to have been for school or educational purposes.

70 26. The jury are instructed that the act of the General Assembly of the state of Illinois, entitled "An Act to amend an act incorporating the Mt. Palatine Academy by *by* incorporating in connection therewith a college by the name and title of Judson College," in force February 17, 1851, created a separate and distinct corporation from the President and Trustees of Mt Palatine Academy; that by said act the said Academy corporation was to be and remain as an academic department in connection with said college corporation; that the trustees of said college corporation should be elected yearly by the stockholders of the said college corporation, and by the stockholders of said academy corporation jointly; that the said college corporation did not supersede or take the place of said academy corporation in any respect, such as to transfer the *stock* or lands of the academy corporation to the college corporation, or as, in any way, to affect the interest in the stock or the title to the lands of said academy corporation; that, so far as their stocks and lands were concerned at the date of said act's being in force as aforesaid, the ~~president and trustees of Mt. Palatine Academy and the president and trustees of Judson College~~ were two separate and distinct corporations, and the land of one could be conveyed or transferred by the one to the other only by deed duly authorized by the corporation so conveying acting in its corporate capacity.

71 27. The jury are instructed that the act of the General Assembly of the state of Illinois, in force Feb. 17, 1851, incorporating the President and Trustees of Judson College, did not convey or transfer to said corporation any lands that the President and Trustees of Mt. Palatine Academy may have owned at that time, nor has said act at any time since its passage conveyed or transferred, or had any effect to convey or transfer any such lands to said President and Trustees of Judson College.

And if the jury believe, from the evidence, that the President and Trustees of Judson College never obtained any title to the premises described in plaintiff's declaration, except under and by virtue of the legal operation of said act, then the President and Trustees of Judson College would have no title whatever to said premises.

The Court gave to the jury instructions marked No. 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 20, 21, 22, 23, and 24 respectively, but refused to give to the jury instructions marked No. 17, 19, 25, 26, and 27 respectively.

The Court also refused to give the jury the instruction marked No. 5, but modified and altered the same to read as follows :

72 "If the jury believe from the evidence that the president and trustees of Mt. Palatine Academy do now hold the title in fee simple to the premises described in the declaration, they should find the defendant guilty; provided the jury believe, from the evidence, that the defendants were in possession at the commencement of this suit, and provided defendants did not hold possession as tenants under and by the assent of plaintiffs."

And gave the same, as modified by the Court, to the jury, to which decision of the Court in refusing to give to the jury each and every one of said instructions marked No. 17, 19, 25, 26, and 27 respectively; and in refusing to give instruction marked No. 5, as asked for by plaintiffs, and in giving the same as modified by the Court, the plaintiffs then and there, by his counsel, excepted.

Defendants asked the following instructions :

73 1. That the act of the legislature of Feb. 17th, 1851, entitled "An Act to amend an act entitled an act incorporating the Mt. Palatine Academy by incorporating in connection therewith a college by the name and style of Judson College," is an amendment to the act of March 3d, 1845, entitled "An Act to incorporate the Mt. Palatine Academy," (read in evidence by plaintiffs,) and if the corporation under the first act accepted such amendment, and acted under it, and adopted the name of President and Trustees of Judson College, then, from the time of such user, the President and Trustees of Mt. Palatine Academy, was no longer the name of such corporation.

And if the jury find, from the evidence in the case, such acceptance and user, they should find for the defendants, on their plea that there is no such corporation as the President and Trustees of the Mt. Palatine Academy.

.2 Unless the jury find for the plaintiffs on *all* issues in the case, their verdict should be for the defendant.

74 3. If the defendants, or those under whom they claim the right to occupy the premises, were in the peaceable possession of the premises claimed by plaintiffs, for several years, claiming a right of occupancy from said plaintiffs, with the knowledge and consent of plaintiffs, then the presumption of law is, that defendants hold by a tenancy from year to year, which could not be terminated except by the assent of defendants, or by notice by plaintiffs to defendants, or those under whom they claim, to surrender possession of the premises, before the commencement of this suit.

And if the jury find from the testimony and such presumption of law that there was such a tenancy, and that no such notice was given, they will find for defendants.

Plaintiffs objected to the giving of each of the defendants' instructions. Court gave each and every one of them, and plaintiffs excepted.

Verdict—"We, the jury, find the defendants not guilty."

75 Plaintiffs entered motion, as at common law, to set aside verdict and grant new trial. Motion overruled, and plaintiffs excepted.

Plaintiffs entered motion in arrest of judgment. Motion overruled, and plaintiffs excepted.

Judgment against the plaintiffs.

76-7 Appeal bond.

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#### ERRORS ASSIGNED.

- 79
- 1st. Circuit Court excluded competent testimony on the part of the plaintiff.
  - 2d. Said Court admitted incompetent testimony on the part of the defendant.
  - 3d. Said Court erred in refusing to give plaintiff's instructions.
  - 4th. The Court erred in modifying plaintiff's instructions.
  - 5th. In giving defendant's instructions.
  - 6th. In overruling motion for a new trial.
  - 7th. In overruling motion in arrest of judgment.
  - 8th. The judgment was for the defendants, when it should have been for the plaintiffs.

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President & Trustees  
vs.

Kleinschmidt, et al.

Abstract of Record

Dated May 6. 1842.  
J. Selman  
clerk

1  
State of Illinois,  
Putnam County } ss.

Pleas before the Honorable  
Samuel L. Richmond, Judge of the 23<sup>rd</sup> Judicial  
District of said State - At a Term of the Circuit  
Court of said County of Putnam, begun and held at  
Kennebrik, in the Court House, on Monday the Twenty-  
eighth day of October A.D. 1861.

Present Hon. Samuel L. Richmond, Judge &c.  
James H. C. Poal, State's attorney,  
Harvey B. Zeeper, Sheriff,  
John P. Kerberich, Clerk.

Be it remembered that heretofore, to wit: March  
16<sup>th</sup> A.D. 1861, a Declaration & Notice were filed  
in said Court, which are in the words & figures  
following, to wit:

State of Illinois,  
Putnam County } ss.

Circuit Court of said County -  
March Term A.D. 1861 -

The President  
and Trustees of Mt. Palatine Academy, the Plain-  
tiffs in this suit, by M. Bangs and T. Dent their  
Attorneys, Complain of Andrew Kleinschultz and  
Michael Gref, the defendants, served, &c., in  
a plea of Ejectment -

For that the said Plaintiffs

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became and were, to wit: on the 3<sup>d</sup> day of March A.D. 1845, at the County aforesaid, and thence hitherto, have been, and now are, a body politic and Corporate by the name and style of The "President and Trustees of Mt. Palatine Academy" under and by virtue of an act of the General Assembly of the State of Illinois entitled "An act to incorporate the Mt. Palatine Academy," approved March 3, 1845, and, as such body politic and Corporate, became and were, heretofore, to wit: on the 1<sup>st</sup> day of October<sup>A.D.</sup> 1859, at said County, possessed of a certain tract of land situated in the North East quarter of section one, in Township Thirty-one North, of Range one West of the Third Principal Meridian, in the County of Putnam aforesaid, and known and described as Lot No. Three (3) in the Town of Mt. Palatine, which said premises the said Plaintiffs claim in fee. And being so possessed thereof the said Defendants, afterwards, to wit: on the 13<sup>th</sup> day of March A.D. 1860, at the County aforesaid entered into the said premises.

And the said Plaintiffs further aver that the said Defendants unlawfully withhold from the said Plaintiffs the possession of said premises, to the damage of said Plaintiffs one thousand dollars; hence this suit &c.

M. Bangs &  
D. Dent Plaintiffs' attorneys

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"To Andrew Kleinshmitz and Michael  
Luss, the Defendants named in the foregoing  
Declaration :

Take notice that on Saturday the 16<sup>th</sup>  
day of March A.D. 1861, the same being the sixth day  
of the Term of the Circuit Court of the County of Put-  
nam aforesaid now being held at the Court House  
in Keosauqua in said County, the above named  
Plaintiffs, The President and Trustees of Mt. Pala-  
tine Academy will, at the opening of said Court  
in the morning of that day, or as soon thereafter  
as Counsel can be heard, file the foregoing decla-  
ration in Ejectment, that upon filing the same  
a rule will be entered requiring you the said  
Defendants to appear and plead to said Declara-  
tion within twenty days after the entry of such  
rule, and that if you neglect to appear and plead  
a judgment by default will be entered against  
you and each of you severally, and the Plaintiffs  
will recover possession of the premises -

Keosauqua, March 14, 1861.

M. Bangs & V. Dent  
Plaintiffs' Attorneys

The following is a true copy of the affidavit  
on the back of said Declaration & Notice, to-  
wit:

State of Illinois  
Putnam County } s. Otis Davis being

duly sworn says on oath, that he did on the 15<sup>th</sup> day of March A.D. 1861 serve the foregoing Declaration and notice in Ejectment on the within named Andrew Kleinschmitz and Michael Gref, the defendants within named, by serving a true copy of the said Declaration on the said Andrew Kleinschmitz and Michael Gref. And the said Otis Davis further says that the said Andrew Kleinschmitz and Michael Gref are in the possession, and in the actual occupancy of the premises in said Declaration described.

Subscribed & sworn to, before me, } Otis Davis - "  
 this 16<sup>th</sup> day of March A.D. 1861. }  
 John R. Berberich, Clk. } "

On the same day, to wit: March 16, 1861, the same being one of the days of said Court, at said March Term A.D. 1861 - the following order was entered of record, viz:

(6<sup>th</sup> day of said Term)  
 Saturday, March 16, 1861.

Court met pursuant to adjournment  
 Present same as yesterday -  
 "The President and Trustees }  
 of Mt. Palatine Academy }  
 vs } In Ejectment -

J

Andrew Kleinschmitz and }  
Michael Gess. }

(March 16, 1861.)

Now come the said Plaintiffs by  
M. Bangs and J. Dent their attorneys, and file  
their Declaration and notice in this cause,  
and make due proof of the service of the same  
by delivering a true copy of said Declaration  
and notice to said Defendants; and thereupon,  
on motion of said Plaintiffs, it is ordered that  
the said Defendants be and they are hereby  
ruled to appear and plead to said Declaration  
within twenty days from this date, and that  
if they neglect so to appear and plead, a judg-  
ment by default will be entered against them  
and the Plaintiffs will recover possession of the  
premises -"

Afterwards to wit: April 2, 1861, the follow-  
ing pleas were filed in said Court, to-wit:

"State of Illinois, In the Circuit Court of said County  
Putnam County J. and the March Term A.D. 1861 -  
The President and Trustees of }  
Mt. Palatine Academy }  
vs. } Ejectment -  
Andrew Kleinschmitz }  
and Michael Gess. }  
And the said An-

C

drew Kleinschmidt and Michael Gress by C. J. Holbrook, J. Lyle Dickey and J. P. Halligan their Attorneys, come and defend the force and injury, when &c. and say that they are not guilty of unlawfully withholding the premises claimed by the Plaintiffs in their declaration or any part thereof as alleged, and of this they put themselves upon the Country -

"Plff doth the like  
D. & B. "

And for a further plea in this behalf said Defendants say that they were not, and that neither of them was in the actual occupancy of the premises mentioned in the said Declaration of the Plaintiffs, at the time of the commencement of this suit, in manner and form as set forth in said Declaration and the service thereof, and of this they put themselves upon the Country

"Plff. doth. the li  
D. & B. "

And for a further plea in this behalf said Defendants say that the said Plaintiffs were not and are not a corporation in manner and form as set forth in their declaration, and ought not as such corporation to maintain this suit, and of this the Defendants put themselves upon the Country -

"Plff doth like  
D. & B. "

C. J. Holbrook }  
J. Lyle Dickey }  
J. P. Halligan } Defendants Attys

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Afterwards, to wit: October 28, 1861, being the first day of the abovenamed October Term A.D. 1861, the following order was made, in said cause - viz:

"The President + Trustees of Mt. Palatine Academy vs. Andrew Kleinschnitz + Michael Gress	}	Ejectment. -
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Now come the Plaintiffs by Dent + Bangs their attorneys and the Defendants by Halligan and Kolbrook their attorneys, and the Plaintiffs not being ready for trial - it is <sup>considered</sup> ordered and adjudged by the Court that this cause be passed at the Plaintiffs costs for the first day of this Term, Therefore, it is ordered that the said Defendants recover of the said Plaintiffs their costs herein expended, for said first day of this Term, to be taxed, and that they have execution therefor."

Afterwards, the following order was had, to wit:  
(Third day of said term)

Wednesday October 30, 1861 -

Court met pursuant to adjournment -

Present same as yesterday -

"The President + Trustees of Mt. Palatine Academy vs. Andrew Kleinschnitz + Michael Gress	}	Ejectment
-------------------------------------------------------------------------------------------------------	---	-----------

Now again come the Plaintiffs, by their attorneys, Dent & Bangs, and the Defendants, by Halligan & Holbrook, their attorneys, as also a jury of good and lawful men, to-wit: Enoch Fimble, Augustus Cassel, Adam Anderson, Joseph M. Whitney, Leonard Studypin, Isaac Wilson, George Taylor, Henry C. Thomas, Robert M. Carr, Thomas Alexander, Benjamin Yancy, and John Bear come and are duly sworn and after hearing the evidence do upon their oaths say - "We the jury find the defendants not guilty" -

And now again come the Plaintiffs, by their said attorneys and move the Court to set aside the verdict herein, and also make a motion for a new trial in this cause, on Common law grounds -

afterwards the following order was entered in said cause -

(Fourth day of said Term)

Thursday October 31, 1861.

Court met pursuant to adjournment -

Present same as yesterday -

The President & Trustees of Mt. Palatino Academy	}	Ejectment =
Andrew Kleinschmitz +		
Michael Gress	}	

9 And the Court having duly considered the motions hereinbefore made to set aside the verdict herein and for a new trial in this cause - It is ordered that the same be and they are hereby overruled - Therefore, it is considered, ordered and adjudged by the Court that the said Defendants have and recover of the said Plaintiffs their costs herein expended, to be taxed, and that they have execution therefor.

And now again come the Plaintiffs by their attorneys, Dent & Bangs and pray an appeal to the Supreme Court which is allowed upon the Plaintiffs entering into Bond in the sum of Two hundred dollars, conditioned according to Law - which Bond is to be joint and several with surety thereon, to be approved by the Clerk of this Court (by agreement of parties) to be filed within ninety days, together with their Bill of Exceptions in same time -

Afterwards, to wit: January 28<sup>th</sup> A.D. 1863 a Bill of Exceptions was filed in said Court which is in the words & figures as follows, viz:

"State of Illinois,  
Rutnam County } &

In Circuit Court of said County.

March Term A.D. 1861.

The President and Trustees }  
}

of Mt. Palatine Academy }  
 vs. } Ejectment -  
 Andrew Kleinschmitz & }  
 Michael Gress } }

Be it remembered that on the trial of the above cause at the October Term A.D. 1861 of said Court, (being the 30<sup>th</sup> day of October A.D. 1861 and one of the days of said Term) a Jury having been impaneled and duly sworn to try said cause - The Plaintiffs introduced in evidence and read to the Jury an Act entitled an Act to incorporate the Mt. Palatine Academy passed by the General Assembly of the State of Illinois and approved by the Governor of said State on the 3<sup>rd</sup> day of March A.D. 1845 - which said Act as also the title thereof as read to the Jury is as follows: "An Act to incorporate the Mt. Palatine Academy" -  
 Section 1. Be it enacted by the People of the State of Illinois, represented in the General Assembly that Isaac Woodbury, Thomas Powell, Otis Fisher, Hiram Larned, Christopher Winters, William Johnson, William Johnson Jr, Nathan Kingsbury and Peter Howe and their Successors be and they are hereby created a body politic and corporate by the name and style of the "President and Trustees of Mt. Palatine Academy," and by that name and title, to

have perpetual succession. The same Academy being and to remain on section number one, Township Number Thirty-one North, Range number number one, West of the Third Principal Meridian, in Putnam County; the number of Trustees shall not exceed twelve, they shall have power to elect the necessary officers out of their own body. The Trustees shall be elected yearly by the subscribers or stockholders of said Academy. They shall have power to fill vacancies that may occur in the interim, and in case of a failure to elect at the proper time, the Trustees shall continue in office until their successors are elected and qualified.

Sec. 2. The corporate powers hereby bestowed shall be the following, to wit: To make contracts, to sue and be sued, implead and be impleaded and to grant and receive by their corporate name; to accept, to acquire by purchase, or sell property, real, personal or mixed; in all lawful ways to use, employ, manage and dispose of all such property, and all money belonging, or that may belong to such corporation, in such ways as to them shall seem best calculated to promote the objects of the institution; to have a common seal and to alter the same at pleasure to make such by-laws for the management

12 of the Academy as shall not conflict with the laws of this State or the United States.

Sec. 3. The Trustees shall have power to prescribe and regulate the course of study in said Academy; to fix the rate of tuition, and <sup>other</sup> Academic expenses; to appoint instructors and other officers and agents necessary to manage the concerns and interests of the institution and to define their duties and fix their compensation. and if necessary to remove them; to erect suitable buildings; to purchase books and all other necessary apparatus; to make rules for the regulation of the conduct of pupils and to expel such as are disorderly.

Sec. 4. This corporation shall have power to raise a capital stock in shares of fifty dollars, each, to the amount of fifteen thousand dollars exclusive of sums given by donation, bequest or otherwise, and the funds, rents, income of said property, of whatever kind to be devoted exclusively to purposes of education; Provided, further, that said institution shall not hold more than one thousand acres of land at any one time, and in the manner the donors shall direct within five years from the time such donation was made or revert to said donor or

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donors or their heirs; Provided always ~~said~~ institution shall not hold more than twenty thousand dollars.

Sec. 5. Any five of the Trustees shall constitute a quorum to do business.

Sec. 6. There shall be attached to said Academy, a department in which shall be taught such branches as are usually taught in common schools.

Sec. 7. The benefits and privileges of said institution shall be open alike to all religious denominations, yet it shall be under the control of the Baptist denomination.

Sec. 8. The Legislature shall have power to modify, amend or repeal this Charter, whenever the public good may require it.

Approved, March 3, 1845. "

Joel M. Beach sworn as a witness on part of Plaintiffs testified -

That he (witness) resided near the Plat of the Mt. Palatine Academy; that it run past his place: witness had a town lot of ten acres near Mt. Palatine - witness had lived there <sup>or twelve</sup> ten years - never had any connection with Academy as Trustee or otherwise. It was in operation under the name of Judson College, (?)

14 Know of the organization of the Mt. Palatine Academy only by reports & by holding the records &c.

Never attended meeting of the Trustees of Mt. Palatine Academy - The Records of the Mt. Palatine Academy were put into witness's hands as Secretary of the Board of Trustees of Judson College - were put into his hands in 1855 or 1856.

Plaintiff's attorney asked and requested witness to answer the following interrogatory - State whether when you came here you knew of persons having acted as President & Trustees of Mt. Palatine Academy:-

Witness answered that he did not know that there was then an Academy building - it was called the Judson College -

When witness bought property there in, he thinks 1847, it was known as Mt. Palatine Academy, was then a flourishing school. Mr. Fisher and Mr. Wright were carrying it on at that time. It was then the Mt. Palatine Academy. Witness bought his place of Rev. Mr. Fisher, as Principal. Did not know President and Trustees at that time as such - The Academy was situated on Plat of Mt. Palatine on Lot No. Three - Suppose it contained probably ten acres. After 1847 witness

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returned to Mt. Palatine in 1850 or 1851. In Academy was about 125 students. (2) was same building then as now -

A book purporting to be the records of the Mt. Palatine Academy shown witness - Witness testified that the book shown him was put into his hands as the records of the Mt. Palatine Academy - could not say that he was acquainted with the hand-writing - Have considerable of Fisher's hand-writing - Upon examining the writing in Book above named as shown witness - Witness testified that much of the hand-writing in same was Fisher's hand-writing - Knew the men and their signatures - The signatures of Mr. Laughlin and Mr. Davis are in their hand-writing - The other signatures seem to be in same hand-writing as the Record - The hand-writing in the front of book look very much like the hand-writing of Mr. Fisher - witness attended no meeting of the President & Trustees of the Mt. Palatine Academy - This Fisher is the same man referred to as Principal -

On cross-examination said witness further testified. -

That when witness returned to Mount Palatine in 1851 the Institution

was known as Judson College. The same continued to occupy up to 1855, so far as witness knew - Large school run out and then they put in a single Teacher -

Otis Davis sworn as a witness on part of the Plaintiffs testified -

That he had lived at Mt. Palatine twenty years. Never attended the meetings of the President and Trustees of the Mt. Palatine Academy; was there at the time of the erection of the Academy building - Don't know exactly but think the Academy was built about eighteen or nineteen years ago - It was called the Mt. Palatine Academy - Witness was twenty-two years old at present time - Attended the school at the Academy at different times, two or three months at a time - was acquainted with some of the Trustees of the Mt. Palatine Academy. The Trustees were Elder Otis Fisher, Nathan Kingsbury, Samuel Puffer - witness could not then give the names of any others who were Trustees - This might have been in 1844 to 1846 or about that time somewhere - Thought Mr. Keiram Larned and Christopher Winters were Trustees, Tho<sup>s</sup>. Powell also Mr. Curtis. Thought he could recollect of Mr. Wm. H. Bartwell being a Trustee. Thought Peter Rowe, Ephraim Reynolds and Charles Cross

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were Trustees of the Mt. Palatine Academy -  
 Did not remember Johnson - Warren and  
 John Higbee were Trustees - Did not remember  
 Robinson or Bly - Thought there were persons  
 acting as President - Did not know who they were  
 at any time. Could not tell who is now acting  
 as President - Witness thought he ought to know  
 the present Trustees Laughlin and Morrison.  
 The ones mentioned by witness were those who  
 came to the meetings of the Board and acted in  
 that capacity - Witness did not attend the meet-  
 ings. Did not remember who directed about  
 improvements. - It is the same building now  
 as when witness first saw it - witness knew of  
 its being erected. It is North East corner of  
 the Town - Did not know the No. of the Lot. -

Andrew Kleinschultz and Michael  
 Gress about the sixteenth day of March A.D.  
 1861 were living in the Academy building. -

The Lot witness supposed covers about  
 ten acres - not enclosed - The Academy  
 building is situated near the center from  
 East to West - near South edge. No. enclosure  
 around the house -

Witness testified upon cross examination by De-  
 fendants Counsel.

That the defendants oc -

occupied different rooms in the same building. Kleinschmitz occupied the East room South of Chapel Room - Chapel room was at North end of building on first floor - being the old school room - Kleinschmitz had from first door to the Chapel room. On East side of the door is a room - He occupied the one on the East side - He had a wife then. He worked by the month for witness thought Mr. Demmes -

The other man lived in the second floor - Hall on second floor whole length - rooms on each side - Had a wife - Did not know of his occupying more than one room. He was at work by the month for Abram Wright - The Defendants did not lay any claims that witness knew of. They occupied the rooms which were all the claims which were visible to witness - The large room was called the Chapel Room - That was what witness called it - Was not occupied at that time for that purpose that witness knew of - They have had meetings there some-times and some-times not - The meetings were generally held on Sunday + some-times on other days - Did not know who had the control of the Chapel - There was no garden on Lot last March - There had been a building on the Lot known as the Pratt building - From 1844 to 1846 witness knew Trustees -

Witness was at that time about seven or eight years old at the time these men were Trustees of the Mt. Palatine Academy - Witness referred to Otis Fisher, et. al. -

The Pratt building was a building that stood East of the Academy built for a boarding-house - It was built by Pratt - Did not know who controlled it - Thought it was some seven or eight years since it was built - Witness lived there at that time - Did not know what Corporation built the Pratt building - ~~ing~~ The Corporation which had control in 1853 was called Judson College, some of the persons who had formerly been Trustees of the Academy were in 1853 Trustees of the College - From 1852 - 3 + 4 or thereabouts; did not know what Corporation was controlling the school in the Academy - Did not know who was in possession at that time - Thought it was incorporated then as Judson College - Did not remember if Fisher, Earned and the others served at that time - It was in 1853 or 4: witness thought it was incorporated as Judson College -

Being re-examined by Plaintiffs attorney the same witness testified -

Did not know whether in 1853, 1854 and about that time there continued to be an Academic department - The Defendants obtained possession

under Mr. Wolf as witness understood it - Defendants said they shouldn't pay Mr. Wolf any rent until this thing was settled - Defendants said Wolf had at different times wanted them to pay rent to him, but they did not want to, for fear they would have to pay it twice. -

There was a privy attached to the building -

Cross examined by Defendants -

Kleinsehnitz stated that Wolf wanted him to stay in the building to take care of it and see that it did not get damaged - The same evening he stated the amount, but did not know what it was. They were both together up stairs - They both of them partially told over what claims they had - but witness did not remember - Thought Michael stated also but did not remember how much. -

Nathan Kingsbury sworn as a witness on part of Plaintiffs testified. -

Witness was an old resident of Mount Palatine - Lived there eighteen years - Knew of the Academy building on Lot 3 a large square lot left expressly for the purpose when the Town was

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laid out in the W. West corner of the Town —  
 Witness knew of the erection of the building — It  
 was erected after the Act of incorporation — after  
 March 3, 1845 — They were the Trustees of the Mt.  
 Palatine Academy — They opened a school there  
 and carried it on a number of years — quite a  
 number — They must have run a school  
 there five or six years — Did not know only  
 from report that they had an Academic De-  
 partment under the college — Witness worked  
 under a contract on Academy building —  
 It was entered into under the name of the  
 Resident and Trustees of Mt. Palatine Academy  
 The President and Trustees had meetings where  
 subscription was had for this building —  
 Witness handed in his resignation which was  
 accepted — Witness was one of the original  
 incorporators —

Plaintiffs offered to prove by witness that  
 another <sup>not</sup> trustee was elected in his place —  
 Defendants objected for the reason that the  
 Record was best proof and the Court sustained  
 the objection to which decision of the Court  
 in sustaining said objection and exclu-  
 ding the testimony, the Plaintiffs then and  
 there excepted —

Witness's impression was that he did not

meet with the Board after that to do any business with them - Witness was present a good many times at the meetings of the Board prior to the building of the Academy - was with them at their meetings as a Board frequently -

Witness attended a call for a meeting within a year or two -

It was held at the District School-House - was held some little time ago, a year ago last fall or spring - Thought it was a year ago in the spring - Was held at District School-House in Mt. Palatine - was there until they elected their Trustees and then went away - Witness was here shown what purported to be the Records of the President and Trustees of the Mt. Palatine Academy - Witness would not like to swear to the handwriting - Thought he had seen the book at different times - Thought the book shown him was the book or such a book as they had at their meetings and around with them. -

Upon Cross-examination by the Deft's Counsel witness testified - That the last meeting mentioned by witness was at a

School-House - not on the ten acres -  
 Witness went from noticing <sup>the</sup> call - The last  
 meeting before that that witness attended  
 was some years before that - Have had  
 some talk about it - and tried to buy the  
 Academy back from Wm Pennell. He had  
 purchased it - Witness tried to buy it of  
 Wm Pennell - Did not know who is in posses-  
 sion -

Int. by Defendants -

Did you have it rented of Wm.  
 Pennell?

Plaintiffs objected to the witness's  
 answering the question

The court held it to be immaterial  
 and sustained the objection -

For which decision of the court in sus-  
 taining said objection and in not per-  
 mitting the witness to answer the interog-  
 atory - The defendant by his counsel then  
 and there excepted -

Int. by Def.

Who from 1850 on for years had the pos-  
 session of the premises?

Plaintiffs objected to the witness answer-  
 ing the interogatory - The court sustained  
 the objection -

Witness never knew of any other

incorporation than the President and Trustees of the Mt. Palatine Academy - Did not have anything to do with the Corporation after 1850 - Witness lived some two or three miles out of Town - Went to the meetings some two or three years ago. -

Henry Gunn sworn as a witness on part of Plaintiffs testified -

Had lived about Mt. Palatine since February 1849, resided one mile West five or six years - was an Institution then called Mt. Palatine Academy, commonly went by the name of President & Trustees of Mt. Palatine Academy - Witness's recollection was that C. Winters was President, Otis Fisher was Principal at that time - He had an assistant - The Trustees of the Academy had control of the Institution - Witness was never present at any of the meetings of the Board - am not very positive about improvements in 1849 and 1850 by Incorporation Mt. Palatine Academy. Witness attended School then while under their control - was towards the year 1850. Did not know as an Academic department was continued there under the direction of the Mt. Palatine Academy. In later years was under control of

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Trustees of College subsequent to 1849 or 1850 -  
There was a primary department by that name so far as witness recollected now -

The book purporting to be the Records of the Mt. Palatine Academy was here shown witness -

The first part is in the hand-writing of Otis Fisher - was acquainted with the hand-writing - witness had corresponded with Fisher and seen him write - The body of the Record was in the hand-writing of Otis Fisher -

The next entry was in the hand-writing of John M. Laughlin including signature - The next was also in Laughlin's hand-writing - could not testify as to Mr. Decker's hand-writing -

Upon being cross examined by Deft's Counsel the witness testified -

Witness moved to Mt. Palatine in 1849 in February - Lived a mile from Town and continued to live there until Spring of 1855 - Witness began to go to School at the Mt. Palatine Academy in the latter part of 1850 -

Thought it was chartered as a College in 1850 or 1851 - could not say what became of the President and Trustees of the Mt. Palatine Academy after the charter of Judson College

Was under their control - Witness attended  
 school before the Charter of the College - C. M.  
 Wright and Mr. Jenks were teachers when  
 witness attended school there - They con-  
 tinued there until the next spring after 1850  
 or 1851 - Teachers before 1851 professed to act  
 under Trustees of Academy, subsequently  
 under Trustees of College - The teachers were  
 under the <sup>Judson</sup> College - C. M. Wright professed  
 to act under the college charter, a short ~~of~~  
 time after the charter of college - Prof. Wright  
 was elected President of Board of Trustees -  
 While Mr. Wright was acting as teacher before  
 the charter of College he was employed by the  
 Academy - after the charter he professed to  
 act under the Trustees of Judson College -  
 Witness never attended any of the meetings  
 of the President and Trustees of Mt. Palatine  
 Academy - From that time on Mr. Wright  
 professed to act under the Judson College -  
 Wright immediately after act of 1851 said  
 while teaching school that the Institution  
 would no longer be known as Mt. Palatine  
 Academy but as Judson College -  
 Knew Mr. Winters - believe he did as Trustee  
 assume to control as Trustee of the college -  
 Did not know as to Mr. Powell or <sup>Mr.</sup> Fisher after  
 1850 - The Board of Trustees of Judson Col. -

lege controlled the Academy after the new charter — as near as witness recollected — they signed papers in that way — witness did not say as to title — spoke only of the control of it — that is the school was under their control — spoke only of control of teachers —

Plaintiffs here offered to read in evidence to the Jury a book purporting to be the Records of the President and Trustees of Mount Palatine Academy and also in back part of book purporting to be the Records of the President and Trustees of Judson College and asked permission to read the entries therein which purported to be the Records of the Mt. Palatine Academy without reading the entries therein purporting to be the Records of Judson College. The Defendants insisted that the whole the whole book should be given in evidence and objected to the Plaintiffs reading the entries under the head of the Mt. Palatine Academy without giving the remainder of the book in evidence —

The Court sustained the position of Defendants and refused to permit Plaintiffs to read the entries offered to be read by him — unless he would give the whole book in evidence —

As which decision of the Court the defend-  
ants then and there excepted. —

The parties stipulated that said book  
should be shown to the Supreme Court —

Plaintiffs produced and read in evi-  
dence to the Jury a Patent from the United  
States to Christopher Winters for section one  
Township 31 N. R. 1 W. 3<sup>d</sup> P. M., dated October  
1<sup>st</sup> 1839, which Patent was read to the Jury  
as follows:

"The United States of America ;

To all to whom these presents shall come,

Greeting:

Certificate,

N<sup>o</sup>: 3554

Whereas Christopher Winters, of DeWitt  
County, Illinois, has deposited in the Gener-  
al Land office of the United States, a certificate of  
the Register of the Land office at Galena, whereby it  
appears that full payment has been made by the  
said Christopher Winters according to the provisions  
of the act of Congress of the 24<sup>th</sup> of April, 1820, entitled  
"An act making further provision for the sale of the  
public lands," for Section one, in Township  
Thirty-one, of Range one West, in the District  
of Lands subject to sale at Galena, Illinois, con-  
taining six hundred and sixty acres, accord-  
ing to the official Plat of the Survey of the said

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lands, returned to the General Land Office by the Surveyor General, which said tract has been purchased by the said Christopher Winters -

Now Know Ye, That the United States of America, in consideration of the premises, and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant, unto the said Christopher Winters and to his heirs, the said tract above described; To have and to hold the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said Christopher Winters and to his heirs and assigns forever.

In Testimony Whereof, I, Martin Van Buren, President of the United States of America, have caused these letters to be made Patent, and the seal of the General Land Office to be hereunto affixed. -

Given under my hand, at the City of Washington, the First day of October, in the year of our Lord one thousand eight hundred and Thirty-nine, and of the Independence of the United States the Sixty-fourth.

By the President: Martin Van Buren.

By M. Van Buren, Jr. Secy -

Recorded, Vol. 7, page 326. H. M. Garland, Recorder of the General Land Office.

General Land office,

February 18, 1861.

I, Joseph S. Wilson, Commissioner of the General Land office, do hereby certify, that the annexed is a true and literal exemplification from the Patent Records of this office

In Testimony Whereof, I have hereunto subscribed my name, and caused the Seal of this office to be affixed, at the City of Washington, on the day and year above written. -



J. S. Wilson,

Commissioner of the General Land office.

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Plaintiffs then offered in evidence and read to the jury a conveyance from Christopher Winters & his wife which conveyance as read to the jury is in the words and figures following:

"This Indenture, made and entered into this Nineteenth day of March in the year of our Lord one thousand eight hundred and forty-six - Between Christopher Winters and Margaret his wife of the County of Rutnam and State of Illinois of the first part, and Christopher Winters, Otis Fisher, William Larned, Larned Davis, James Curtis, Peter Howe, William Johnson, William Johnson, Jr. the present President and Trustees of Mt. Palatine Academy, and their successors in office authorized to be elected by an act of the General Assembly of the State of Illinois, approved March 3<sup>rd</sup> 1845 - as President and Trustees aforesaid of the second part - Witnesseth that the said Christopher Winters and Margaret his wife for and in Consideration of the sum of one dollar to them in hand paid and a donation by them made for the erection and support of the said Academy have granted, bargained, sold, released and confirmed, and by these presents do grant, bargain, sell, release and confirm unto the said

President and Trustees, the party of the second part and their successors forever, all that tract or parcel of land situated and being in the County of Putnam in the State of Illinois, known and described as follows, (to wit): Commencing at the North East corner of section One, in Township Thirty-one North of Range One West of the Third Principal Meridian, thence running West eighty (80) rods; thence South one hundred and twenty (120) rods; thence East eighty (80) rods and from thence North to the place of beginning, with the exception of such Lots as have heretofore been deeded by them within the aforesaid tract which said Lots will probably not exceed five in number. Together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining. — To have and to hold the above described premises unto the said President and Trustees of Mt. Palatine Academy, and their successors in those offices forever. To use and apply the same as they are authorized by the act of the General Assembly aforesaid for the support and maintenance of the Academy aforesaid. And the said Christopher Winters and Margaret his wife do and will warrant and forever defend the aforesaid premises by these presents unto the said Christopher Winters, Otis Fisher, Hiram Larned,

Larned Davis, James Curtis, Peter Howe, William Johnson, and William Johnson, Jr. as President and Trustees of the Mt. Palatine Academy aforesaid and their successors in those offices elected by and under the provisions of the act aforesaid against the claim or claims of any and all persons whomsoever.

In Witness Whereof, the said Christopher Winters and Margaret his wife of the first part have hereunto set their hands and seals the day and year above written.

Signed, sealed and delivered } C. Winters L.S.  
in presence of } Margaret Winters L.S.  
George Dent. } 3

State of Illinois,  
Putnam County, I. G.

I, Geo. Dent, a Justice of the Peace in and for the said County, do hereby certify that Christopher Winters and Margaret his wife whose signatures appear to the foregoing deed and who are personally known to me to be the persons described in and who executed the same, appeared before me this day in their persons and acknowledged that they executed the same for the uses and purposes therein mentioned. And the said Margaret Winters wife of the said Christopher Winters having been by me examined separate and apart from her said

husband and the contents of the said deed having been by me fully made known and explained to her, acknowledged that she had executed the same, for the uses and purposes therein mentioned and relinquished her dower to the premises therein described voluntarily, freely, and without compulsion of her said husband -

Given under my hand and seal this  
day of March A.D. 1846.

George Dent ~~Seal~~  
Justice of the Peace. :-

To the reading of which conveyance as evidence to the jury the Defendants then and there and before the same was read objected, on the ground first that it did not appear that the grantees in said deed were Trustees of said Academy because the grantor was also one of the grantees because it did not purport to be to them in their Corporate capacity - but the Court overruled said objection and permitted the same to be given in evidence, to which decision of the Court in overruling said objection and in permitting said conveyance to be given in evidence the Defendants by their Counsel then and there excepted -

Plot of Mount Palestine situated in the North East Corner of Section One, Township 31 North R. 14. 3rd P. Meridian.



Post set + stone planted.

Post set + stone planted.

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Plaintiffs here offered in evidence the Plat and a deed of Dedication of the Town of Mt. Palatine - which Plat and Deed of Dedication are as follows:

The following is a <sup>Copy of</sup> Plat of Mt. Palatine -

The following is a copy of the Deed of  
Dedication of said Town -

"Lots are 248 feet square except when  
otherwise described on the Plat.

Academy square 568 by 566.

State of Illinois  
County of Putnam 3

I, John P. Blake, County  
Surveyor of Putnam County do hereby certify that  
the above and foregoing is a correct Plat of the  
Town of Mount Palatine, as surveyed by me.

In Testimony Whereof, I have hereunto set my  
hand and seal at Kennepin this 23<sup>rd</sup> day of  
June A.D. 1849.

John P. Blake, ~~Plat~~  
County Surveyor -

Know all men by these presents, that we Eu-  
nice O. Woodbury, James Curtis, Thomas Powell,  
Joel Reynolds, Joel Reynolds, William F. Dewees,  
George Kingsbury and John Higby, Otis Fisher,  
Thomas Powell, Norman Warren, Walter Levi-  
se, Charles Cross, Sylvester Brigham, Daniel  
Robinson, President and Trustees of Mt. Palatine  
Academy, proprietors of the Town of Mount Pala-  
tine have caused the same to be surveyed  
by the County Surveyor of Putnam County -

as designated on the above Plat, and the said Plat thereof to be made by him, and we do hereby relinquish for the public the streets and the public grounds as therein designated -

In Testimony Whereof we have hereunto set our hands and seals this -

George Kingsbury		John Higby	
Joel Reynolds		Otis Fisher	
Eunice O. Woodbury		Norman Warener	Seal
William Dewees		Charles Cross	Seal
James Curtis		Walter Levisa	Seal
		Daniel Robinson	
		Silvester Brigham	
		Thomas Powell	

State of Illinois,  
Lee County J. P.

Be it remembered that on this the Twenty-eight day of June A.D. 1849, before me the undersigned, a Justice of the Peace, in and for said County in person came John Higby, Otis Fisher, Norman Warener, Charles Cross, Walter Levisa, Daniel Robinson, Silvester Brigham, Thomas Powell to me personally known to be the identical persons whose names are subscribed to the above Plat of the Town of Mt. Palatine, as proprietors thereof, who acknowledged the said Plat to be their free act and deed for all the uses and purposes

therein designated.

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

Isaac Harding, *J.P.*  
Justice of the Peace.

State of Illinois,  
Lee County *J.P.*

I, Charles T. Chase, Clerk of  
the County Commissioners' Court in and  
for said County, certify that Isaac Harding  
whose name is subscribed to the within Cer-  
tificate was on the day of the date thereof, an  
acting Justice of the Peace, in and for said  
County duly Commissioned and qualified,  
and as such full faith and credit should  
be given to his official acts.

In Testimony Whereof, I have hereunto set my  
hand and the seal of said Court at Dixon  
in said County of Lee, this Second day of July  
A.D. 1849.

Charles T. Chase, Clerk.


State of Illinois,  
Putnam County *J.P.*

Be it remembered that on  
this Thirty-first day of August A.D. 1849, before  
the undersigned, a Justice of the Peace, in

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and for said County, in person came George Kingsbury, Joel Reynolds, Eunice O. Woodbury, William Deemes and James Curtis to me personally known to be the identical persons whose names are subscribed to the above Plat of the Town of Mt. Palestine as proprietors thereof, who acknowledged the Plat to be their free act and deed for all the uses and purposes therein designated.

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

E. W. Gilliland   
Justice of the Peace."

Plaintiffs offered to read the same <sup>as evidence</sup> to the jury -

The defendants by their counsel objected to the same being read as evidence to the jury and alleged as reasons why the same should not be permitted by the Court to be read in evidence

1<sup>st</sup> That the Dedication is made by persons who do not appear to be owners in fee of the lands dedicated -

2<sup>nd</sup> That the interlineations have not been explained - the interlineations being a name erased and Thomas Rowell written over it - another an erasure and Rutnam written above it - another an erasure + Lee written below it - said Deed appeared to be properly acknowledged -

The Court admitted the Plat in evidence for purposes of identification but refused to permit it to be read to the jury as evidence but only as a memorandum - The Court excluded the Deed of Dedication - to which decision of the Court in refusing to permit said Plat and Deed of Dedication to be given in evidence to the jury the Plaintiffs by this counsel then and there excepted -

The Witness Joel M. Beach being recalled by the Plaintiffs testified -

That the Seminary or Academy is situated on Lot No. 3 in the North West Corner of the Town - The Lot lays in the North East Corner of section one - Township Thirty-one North, Range one West of the 3<sup>rd</sup> P. M. in Putnam County Illinois - The Lot No. 3 is bounded on the East by property owned by Samuel Puffer - It is 40 rods across - The North end of Town - The Lot extends half way across - From the Meridian line to the East line of the Lot was 20 rods - witness thought - The Lot is just twenty rods square - This Lot is in North West Corner of Plat and the Plat is in North East corner of section No. one as above - witness supposed the Lot was square and contained ten acres - witness was mistaken

as to its being twenty rods - It was 40 rods from Meridian on the East and less on the Town line on the North and contains ten acres being forty rods square. -

Witness helped chain the Town twice - did not know date exactly - good while ago - Helped Mr. Blake survey it - That was the second time - witness shown the plat -

The date on Plat was about the time that witness helped survey it. The Academy Lot in Mt. Palatine was the Lot in North West corner of the Town - could not tell the number of feet, but it runs half way across the eighty acre lot - The strip was 80 rods into (The Town strip) and was eighty rods North and South - was 40 rods to the meridian line - Runs 40 rods South - Is square or nearly so -

Before 1849 there was a ~~large~~ village of Mt. Palatine - Their Deeds were written as the proposed Town of Mt. Palatine -

The Plaintiffs again offer the Plat in evidence with the foregoing testimony for the purpose of identifying the Lot - but the same is excluded by the Court - to which decision of the Court in excluding the same the Plaintiffs then and there excepted -

Plaintiffs here rested their case -

The Defendants ask the Court to rule the Plaintiffs to elect as to which of the defendants he will proceed against - The Court denies the rule and refuses to rule the Plaintiff to such election - to which decision of the Court in denying the rule - the defendant then and there by his Counsel excepted -

Defendant here entered a motion to dismiss the suit for want of evidence for Plaintiff -

The Court overrules Defendants motion to dismiss - to which ruling of the Court in overruling said motion said defendant then and there excepted -

Defendants attorneys gave Plaintiffs attorneys notice to produce upon the trial of this cause the book of record of minutes of proceedings and Bye-Laws of the Corporation, formerly known as the Resident and Trustees of Mt. Palatine Academy - also the book of record of minutes of proceedings and Bye-Laws of the Corporation known as the Resident and Trustees of Judson College - Under above notice Plaintiffs attorneys produced the book above mentioned (that is Book mentioned in Bill

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of Exception) The defendant then offered the book in evidence - Plaintiff objected to the reading of the entries under the heading of Judson College - objection overruled - to which decision of the Court in overruling said objection and in permitting said entries to be read in evidence the Plaintiff then and there excepted - The whole book was then read in evidence to the Jury -

Defendant offered in evidence an act of the General Assembly of the State of Illinois with the title thereof, approved February 17<sup>th</sup> 1851 entitled "an act to amend an act entitled an act to incorporating the Mt. Palatino Academy by incorporating in connection therewith a College by the name and title of Judson College - which said act is as follows: -

"Section 1. Be it enacted by the People of the State of Illinois, represented in the General Assembly, That Thomas Powell, Christopher Winters, John Reighy, Norman Warner, W. Y. Bly, James Curtis, C. M. Wright, Otis Fisher, James Mc Lay, Ephraim Reynolds, Charles Cross, A. M. Howard, and their successors, be and they are hereby created a body politic and corporate, by the name and style of the "President and Trustees of Judson College" - and by that name and title to have perpetual succession. The said College, in connection

with said Academy as an academic department, to be and remain on section number one, Township number Thirty-one, North, of Range One West of the Third Principal Meridian, in Rutnam County. The number of Trustees shall not exceed twelve; they shall have power to elect the necessary officers out of their own body. The Trustees shall be elected yearly by the stockholders of said college and Academy jointly. They shall have power to fill vacancies that may occur in the interim, and in case of a failure to elect at the proper time the Trustees shall continue in office until their successors are elected and qualified.

§ 2. The corporate powers hereby bestowed shall be the following, to-wit: to make contracts, to sue and be sued, to plead and be impleaded, and to grant and receive by their corporate name, to accept, acquire by purchase, or sell property, real, personal or mixed, in all lawful ways; to use, employ, manage and dispose of all such property and all moneys belonging or that may belong to such corporation, in such ways as to them shall seem best calculated to promote the objects of the institution; to have a common seal, and to alter the same at pleasure; to make such by-laws for the management of said college and Academy as shall not

45 Conflict with the laws of this State or the United States. —

§ 3. The Trustees shall have power to prescribe and regulate the course of study in said College and Academeal departments, similar to other colleges in the United States; to appoint instructors and other officers and agents necessary to manage the concerns and interests of the institution, and to define their duties and fix their compensation, and if necessary to remove them; to erect suitable buildings; to purchase books and all other necessary apparatus; to make rules for the regulation of the conduct of pupils, and to expel such as are disorderly.

§ 4. This Corporation shall have power to raise a capital stock or college fund, in shares of fifty dollars each, to the amount of fifteen thousand dollars, exclusive of sums given by donation, bequest or otherwise; and the funds, rents, income of said property, of whatever kind, to be devoted exclusively to the purposes of education; Provided, further, that said institution shall not hold more than one thousand acres of land at any one time, and said lands to be appropriated in the manner the donor shall direct, within five years from the time such donation was made, or revert back to said donor

46 or donors, or their heirs: Provided, always, that said institution shall not hold more than twenty thousand dollars

§ 5. Any five of the Trustees shall constitute a quorum to do business, and on recommendation of the faculty grant those degrees usually granted by other colleges in the United States. —

§ 6. There shall be attached to said Academy a department in which shall be taught such branches as are usually taught in common schools.

§ 7. The benefit and privileges of said institution shall alike be open to all religious denominations, yet it shall be under the control of the Baptist denomination.

§ 8. The legislature shall have power to modify, amend or repeal this charter whenever the public good may require it.

§ 9. This act to take effect and be in force from and after its passage. —

Approved Feb. 17, 1857. "

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To the reading of which in evidence the Plaintiff then there objected, but the Court overruled said objection and permitted the same to be read in evidence and the same was given in evidence as above - to which decision of the Court in overruling said objection & in permitting the said act to be read in evidence the Plaintiff by his Counsel then and there excepted. -

Joel M. Beach, examined as a witness on part of the defendant testified - That he first come to Mt. Palatine in 1847 or 1848 - came back again in 1850 or 1851 - The President and Trustees of Mt. Palatine Academy was then operating and continued to operate for several years - Witness did not know of any acts of Judson College only that witness was elected Trustee of the College & was present at the meetings at a District School-house & one in the Academy - Mr. Fennell was present at one, Mr. Calvin and some others were present - Did not remember it - Cross was present - witness's name is Joel M. Beach - Witness was elected Trustee in 1855 - witness shown book purporting to be Records of Mt. Palatine Academy and Judson College - That was the book they kept -

The after part purports to be the Records of Judson College - Thought he was present at the time named in Record 1854 - Thought it likely that the persons named in Record as present were there - He recognized in the Record the hand-writing of John Colvin - also of Mr. Lundy and Mr. Brog - Witness was Treasurer at that time and did not serve as Secretary. The book was placed in witness's hands. He had it from one meeting to another only - was never present at the meetings but twice - the times above named - The school continued right along - They never had anything but an Academic school - Witness supposed they acted under the act of 1857 - Mr. Fisher continued to be their teacher - Knew of his acting afterwards as Trustee - The Institution about the time of my resignation - the school had pretty much run down - Witness did not know who controlled the property only from hearsay - After the school closed it was vacant most of the time, except on sabbaths. It was occupied principally as a place of worship after the school run down.

A building was put up on the Lot by Mr. Pratt - Mr. Pennell afterwards owned it.

Int. by deft. Was the Corporation in debt in

1854 and 1855?

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Plaintiff objected to the witness answering the interrogatory —

Objection overruled by the Court & witness was permitted to answer —

Witness answered that he did not know anything about it. —

Witness knew Mr. Colvin's hand-writing. The back part of the Records are nearly all in Mr. Colvin's hand-writing — Did not look over the book much while book was in witness's possession.

Upon cross examination by Plaintiff's attorneys witness testified —

That by the word Control witness meant the carrying on of the School — as to the title to the property he never heard that brought up and knew nothing about it. —

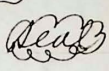

Defendant here offered to read in evidence to the jury a Deed of Conveyance from John Colvin as President of Trustees ofudson College — which deed was in the words and figures following:

"Whereas, the President and Trustees ofudson College party of the first part

of Mount Palatine in the County of Putnam in the State of Illinois, have executed one certain promissory note of even date herewith, payable to Aaron Butler or order after the date hereof, for the sum of fifteen hundred & fifteen &  $\frac{47}{100}$  dollars. A note bearing date with this deed and payable one day after date, and executed by John Keelin the President of the Board of Trustees of said Judson College. Interest to be paid at the rate of ten per cent.

Now, therefore the said President and Trustees of Judson College party of the first part to secure the payment of said note, according to the tenor and effect, in consideration of one dollar and the further sum of fifteen hundred & fifteen &  $\frac{47}{100}$  dollars the receipt whereof is confessed, doth grant, bargain, sell and convey unto Aaron Butler of the County of Putnam in the State of Illinois and to his heirs and assigns forever, the premises described as Lot number Three in the Town of Mount Palatine, according to the original Plat of said Town, and known and designated as the College square, and the buildings thereupon, one known as the Pratt building, the other the old College Building — situated in the Town of Mount Palatine, County of Putnam State of Illinois. Together, with all and singular, the privileges

and appurtenances therunto belonging —  
 In trust, nevertheless, that in case — he made  
 in the payment of said note or any part thereof,  
 according to the tenor and effect of said note,  
 then on the application of the legal holder of ~~the~~  
 said note the said Aaron Butcher after publish-  
 ing a notice in a newspaper printed in the Count-  
 ty of Putnam or Salisbury thirty (30) days before  
 the day of such sale, to sell the said premises,  
 and all right and equity of redemption of the  
 said President and Trustees of Judson College  
 party of the first part their heirs and assigns  
 therein, at public auction, at the Court House  
 door in said Town of Bennepin, to the high-  
 est bidder for cash at the time mentioned in  
 such notice and to make, execute and de-  
 liver to the purchaser or purchasers thereof  
 a deed or Deeds for the premises so sold, and  
 out of the proceeds of such sale, to pay all costs  
 or expenses incurred in advertising and sell-  
 ing said premises — also the principal and  
 interest due on said note — And further  
 Trust, upon payment of said note accord-  
 ing to the tenor and effect thereof, then to  
 re-convey said premises to the party of the  
 first part at his cost. And the said President  
 and Trustees of Judson College party of the  
 first part for themselves and their heirs

executors and administrators, covenants with the said Aaron Butler that they are well seized of said premises in fee simple, and that they have good right and full power to grant, bargain and sell the same in form aforesaid; that the same are free from all incumbrance, and that they will and their heirs, executors and administrators shall forever warrant and defend the same against the lawful claims of all persons. Signed and sealed this Seventh day of July A.D. 1857. John Calvin Pres. B. G.   
 Witness- George Dent. 

State of Illinois }  
 County of Putnam } Ss.

I, Geo. Dent, Clerk of the Circuit Court in and for said County, in the State aforesaid, do hereby certify, that John Calvin as President of Hudson College who is personally known to me as the same person, whose name is subscribed to the foregoing Deed appeared before me this day in person, and acknowledged that he signed, sealed and delivered the said instrument of writing, as his free and voluntary act for the uses and purposes therein set forth. Given under my hand and official seal of office

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this seventh day of July A.D. 1857.  
Geo. Deub, Clerk. "

The Plaintiff objected to the reading of the same in evidence to the jury on the grounds -  
1<sup>st</sup> That the President and Trustees of Judson College had no title and had no right to convey the Lot mentioned in Deed -

2<sup>nd</sup> That the Deed is not properly executed -

The Court overruled the objection of the Plaintiff - and permitted the Defendant to read the same in evidence which was then read to the jury as above - to which decision of the Court in overruling said objection and in permitting said Deed of Conveyance to be read in evidence to the jury the Plaintiff by his Counsel then and there excepted -

Defendant then offered to read in evidence to the jury a Deed of Conveyance from Aaron Butter to William A. Pennell - which deed is as follows:

"Whereas the President and Trustees of Judson College by Deed dated July 7<sup>th</sup> A.D. 1857, conveyed to Aaron Butter certain real estate, as will more particularly appear by reference to said Deed - which is recorded

in the Recorder's office of Putnam County, in the State of Illinois in Book 26 on pages 10 & 11. And whereas default was made in the payment of the note in said deed mentioned according to the tenor and effect of said and said note being still held by said Aaron Butter, the said Aaron Butter did cause to be published in the "Hennepin Weekly Tribune", a newspaper published in Hennepin Putnam County, Illinois, a notice of a sale of said real estate under and in pursuance of said Deed: which notice was published in said newspaper thirty days before the day of sale - And whereas the said Aaron Butter did at the time and place advertised by the publication of said notice, viz: on Wednesday the second day of September A.D. 1857, between the hours of ten o'clock A. M., and four o'clock P. M., of said day at the Court-House in the Town of Hennepin in said County of Putnam, proceed to make sale of such real estate, at public auction, to the highest bidder for cash, and did then and there strike off and sell to William A. Pennell, of the County of Putnam aforesaid, the said premises in said deed described, for the sum of Fifteen hundred and ninety dollars and six cents - the said Pennell

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being the highest and best bidder, and that being the highest and best bid for said premises - and that sum being required to pay said note with interest thereon, and the costs for advertising and selling said premises, and the whole of said premises being necessary to be sold to raise that sum by the sale. Whereupon, the said William A. Pennell became the purchaser of all right and equity of redemption of the said "President and Trustees of Judson College" -

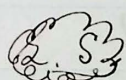
Now, Therefore, Be it known, that the said Aaron Butler, party of the first part hereto, in consideration of the premises and of the sum of Fifteen hundred and ninety dollars and six cents, to him in hand paid by the said William A. Pennell, does hereby bargain, sell, remise, release, transfer, and convey unto the said William A. Pennell, his heirs and assigns forever, the Real Estate and premises so sold, the same being situated in the said County of Putnam, to-wit: Lot No. Three in the Town of Mount Palatine, according to the original Plat of said Town, and known and designated as the College square, and the buildings thereon, one known as the Pratt building, the other the old College building. -

Together with all and singular

the hereditaments and appurtenances thereunto belonging, or in anywise appertaining. To have and to hold the same, and all right and equity of redemption of the President and Trustees of Hudson College, unto him the said William A. Pennell, his heirs and assigns forever. —

And the said Aaron Butten covenants with the said William A. Pennell, his heirs and assigns, that the provisions of the aforesaid, Deed of Trust have been complied with in advertising said property and making sale thereof as aforesaid —

In Witness Whereof, the said Aaron Butten hereunto sets his hand and seal this Second day of September A.D. 1857.

Aaron Butten   
Trustee &c. —

State of Illinois,  
Putnam County) ss.

I, George Dent, Clerk of the Circuit Court, in and for said County, do hereby certify, that Aaron Butten, who is personally known to me to be the person described in and who executed the foregoing Deed, this day personally appeared before me and acknowledged that he executed the said Deed voluntarily and freely, for the uses

and purposes therein mentioned —

Witness my hand and the seal of said Court, this 2<sup>nd</sup> day of September A.D. 1857.  
George Dent, Clk. "

57  
The Plaintiff objected to said Deed being admitted in evidence on the grounds  
1<sup>st</sup> That Butten had no title or authority to convey —

2<sup>nd</sup> That the conveyance was not properly executed —

3<sup>d</sup> That that defendants do not show that any such notice was given of sale as required in Trust Deed from President and Trustees of Judson College to Butten or that defendants show that any of the conditions in the Trust Deed to Butten was complied with by Butten previous to exercising the power in Trust Deed to convey —

The Court overruled Plaintiffs objection and admitted the Deed in evidence and the same was read to the jury as evidence — as above —

To which ruling of the Court in overruling said objection and in admitting said Deed to be read in evidence the Plaintiff by his counsel then and there excepted. —

The defendant offered in evidence a Deed of conveyance from William A. Pennell to Martin Wolf - which deed is as follows:

"This Indenture, made this Thirteenth day of December in the year of our Lord one thousand eight hundred and fifty-nine - Between William A. Pennell and Evaline his wife of Putnam County, Illinois, parties of the first part, Martin Wolf of LaSalle County Illinois party of the second part - Witnesseth, that the said part of the first part, for and in consideration of Fifteen hundred dollars to them in hand paid by the said part of the second part, the receipt whereof is hereby acknowledged, and the said party of the second part forever released and discharged therefrom, have remised, released, sold, conveyed and quit-claimed, and by these presents do remise, release, sell, convey and quit-claim unto the said party of the second part, his heirs and assigns forever, all the right, title, interest, claim and demand which the said party of the first part have in and to the following described lot, piece or parcel of land, to-wit:

Lot number Three (3) in the Town of Mount Palatine, County of Putnam and State of Illinois, according to the recorded Plat of

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said Town, more particularly known as College Square, in said Town.

To have and to hold the same. Together with all and singular the appurtenances and privileges thereunto belonging, or in anywise thereunto appertaining, and all the estate, right, title, interest and claim, whatever of the said party of the first part, either in law or equity, to the only proper use, benefit and behoof of the said party of the second part, his heirs and assigns forever.

And the said parties of the first part, for themselves and their heirs, executor and administrators, doth covenant, promise, and agree to and with the said party of the second, his heirs, executors, administrators and assigns, that they hath not made, done, committed, executed or suffered, any act or acts, thing or things whatsoever, whereby, or by means whereof the above mentioned and described premises, or any part or parcel thereof, now are, or at any time hereafter shall, or may be impeached, charged or incumbered in any manner or way whatsoever.

In Witness Whereof, The said parties of the first part hereunto set their hands and seals the day and year first above written.

Signed sealed and delivered in } William A. Pennell *Read*  
 presence of John M. Hardlaw } Eueline A. Pennell *Read*

State of Illinois,  
Putnam County,

I, Geo. Dent, Clerk of the Circuit Court in and for the said County, in the State aforesaid, do hereby certify, that William A. Pennell + Evaline his wife, personally known to me as the same persons whose name are subscribed to the foregoing instrument of writing, appeared before me this day, in person, and acknowledged that they signed, sealed and delivered the said Instrument of writing as their free and voluntary act, for the uses and purposes therein set forth. And the said Evaline A. Pennell wife of the said William A. Pennell, having been by me examined, separate and apart, and out of hearing of her said husband, and the contents and meaning of the said instrument of writing having been by me made known to her, acknowledged that she had freely and voluntarily executed the same, and relinquished her dower to the lands and tenements therein mentioned, without Compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand and seal,  
this Thirteenth day of December A.D. 1859.

Geo. Dent, Clk. "

Q. S.

61 To the reading of which in evidence the Plaintiff objected, but the Court overruled said objection and admitted the same in evidence, and it was read to the jury as above -

To which decision of the Court in overruling said objection and admitting the same in evidence the Plaintiff then and there excepted -

Joseph Wolf sworn as a witness on part of the Defendant testified -

That his father bought the property of Mr. Pennell some time in December 1857

Here the Defendant rested his case -  
The above was all the evidence in the case.

The Plaintiff by his counsel asked the Court to give the jury the following instructions marked nos. "1" - "2" - "3" - "4" - "6" - "7" - "8" - "9" - "10" - "11" - "12" - "13" - "14" - "15" - "16" - "17" - "18" - "19" - "20" - "21" - "22" - "23" - "24" - "25" - "26" - + "27" respectively -

"1st. That the Patent offered in evidence conveyed the title in fee simple to section 1 in Township 31 north, in Range 1 West of the Third Principal Meridian in said Putnam County to Christopher Winters -"

62 "2?"

That the deed offered in evidence from Christopher Winters and his wife, to Otis Fisher, Christopher Winters, Hiram Earned, Earned Davis, James Lewis and others, as the President and Trustees of Mt. Palatine Academy conveyed to the President and Trustees of Mt. Palatine Academy the title in fee simple to the land therein described" — .

"3?"

That if the jury believe from the evidence that the premises described in the Plaintiffs Declaration as "a certain tract of land situated in the North East quarter of section, one, in Township Thirty-one North, of Range one West of the Third Principal Meridian, in the County of Putnam aforesaid, and known and described as Lot No. Three (3) in the Town of Mt. Palatine" was included in the description of the premises conveyed by the Deed offered in evidence from Christopher Winters and his wife to the President and Trustees of Mt. Palatine Academy as set forth in the 2<sup>d</sup> instruction above, then in that case, they should find that Christopher Winters and his wife, did, by said deed, convey, to said President and Trustees of Mt. Palatine Academy, <sup>the</sup> Plaintiffs — the title in fee simple to the premises so described in said Declaration".

68 "4

If the Jury believe from the evidence, that the President and Trustees of Mt. Palatine Academy ever held the title in fee simple to the premises described in the declaration, they must find that such title in fee simple to said premises still is held by said President and Trustees of Mt. Palatine Academy, (if such an incorporation existed when this suit was brought) unless the Jury further believe from the evidence that said "President and Trustees of Mt. Palatine Academy" have parted with such title to said premises." —

"5-

If the Jury believe from the evidence that the "President and Trustees of Mt. Palatine Academy" do now hold the title in fee simple to the premises described in the declaration — they should find the Defendants guilty —"

"6-

The Jury are instructed that the only way by which the President and Trustees of Mt. Palatine Academy could divest themselves of a title in fee simple to land held by them, would be by deed made, by the order, and upon the authority of said President and Trustees of Mt. Palatine Academy, made or appointed by them in their incorporate capacity."

64 "7.

That the President and Trustees of Mt. Palatine Academy could convey no title to any land to the President and Trustees of Judson College or to any other person or body corporate, except by Deed as specified in the last of the foregoing instructions. —

"8.

That, no matter what part may have been taken, or what acts may have been performed, by individuals (as such) in connection with, or pertaining to the President and Trustees of Judson College or any other incorporation — who may once ~~have~~ held the office of either President or Trustee in the corporation of the President and Trustees of Mt. Palatine Academy, as any and all such acts of any such individuals could have no effect whatever upon the title to any land which said President and Trustees of Mt. Palatine Academy may have held at any time. —

"9.-

The Legislative, or General Assembly of the State of Illinois, has no power, by direct legislation or enactment to take land away from one corporation and give it <sup>to</sup> another? —

"10.-

The same person may lawfully be either

President or Trustee of two or ~~three~~ more incorporations, at the same time; and such persons' official acts, as a member of one of such corporations, would have no power or force, to bind thereby, any other corporation of which he might at the same time, be an officer— and if the Jury believe from the evidence that any one or more persons, did at any time hold the office of either President or Trustee in both the corporations of the President and Trustees of Mt. Palatine Academy, and, the President and Trustees of Judson College. Then in that case any act of any such person as Trustee or President of the President and Trustees of Judson College could have no effect whatever to transfer the land of the President and Trustees of Mt. Palatine Academy, to the President and Trustees of Judson College."—

"11.— If the Jury believe from the evidence that the General Assembly of the State of Illinois in 1845 passed an act— which was approved on the 3<sup>d</sup> day of March A.D. 1845— incorporating the "President and Trustees of Mt. Palatine Academy: that under and by virtue of said act said corporation elected or appointed a President and a Board of Trustees, that they went on and got up a school building

established and maintained for a considerable length of time, and a school under their direction and control, then the said President and Trustees of Mt. Palatine would to all intents and purposes become a body corporate or in other words a Corporation - and as such could buy and sell, hold and convey lands and tenements or other property."

"12. - To prove the existence of a Corporation it is sufficient to produce the Charter, and prove acts done under it, and in conformity with it, written proof that all the preliminary steps &c. were taken is not necessary."

"13. - A Corporation acting as such cannot be questioned collaterally on the ground that it has not complied with its Charter."

"14. - The fact that the same persons are members of two separate Corporations or even officers of two different Corporations at the same time, does not necessarily work the discontinuance of either of said Corporations, but both of such Corporations may so exist together."

"15. - An Incorporation can take no notice

- 67 except in its corporate capacity— nor can it give its consent, except by its corporate authority. —
- "16. — If the jury believe from the evidence that after the passage of the act incorporating the President and Trustees of Mt. Palatine Academy, an Academy building was erected, and a school carried on under said act, this is sufficient to show that said President and Trustees became and were a corporation under said act. —
- "17. — The Patent to Christopher Winters and the deed from him to the President & Trustees of Mt. Palatine Academy are sufficient to vest a title to the land in said deed described in said President and Trustees and to sustain the issue under the first plea. —
- "18. — If the jury believe from the evidence that the defendants were at the commencement of this suit in possession of the lot described in the declaration — the jury should find for the Plaintiffs, under <sup>the</sup> second plea. —
- "19. — If the jury believe from the evidence that under the aforesaid act approved March 3, 1845,

there was an organization as, and business under the name of the President and Trustees of Mt. Palatine Academy, and that the land described in said deed from Christopher Wintew includes the Lot in controversy, and that defendants were in possession of said lot at the commencement of this suit, this evidence (in connection with the title paper read on the part of the Plaintiffs) is sufficient to sustain the issues on the part of the Plaintiffs under all the pleas."—

"20. — The Act approved Feb. 17, 1857 did not divest the Plaintiffs of title to the lot in controversy, if the Plaintiffs had such title."—

"21. If the Plaintiffs had such title, then in the absence of a deed or conveyance from them in their corporate name, the presumption is that the title to said lot is still in the Plaintiffs," but this presumption may be rebutted by proof—

"22. No consent, of itself, of Plaintiffs (should such appear) to allow the President & Trustees ofudson College to carry on the school, occupy or control the building or property, would transfer the title from the President & Trustees of Mt. Pala-

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time Academy to the President & Trustees of Judson College, or to authorize the conveyance of said property from said President & Trustees of Mt. Palatine Academy." —

"23. — Only <sup>the</sup> legal title is to be regarded. No mere equities (if any) should govern in reference to the verdict." —

"24. — If the jury find for the Plaintiffs, they will state in the verdict that they find the defendants guilty, and that the Plaintiffs were seized as of an estate in fee." —

"25. — The jury are instructed that Defendants 3<sup>d</sup> instruction should be qualified by showing any such possession to have been for school or educational purposes." —

"26. — The jury are instructed that the act of General Assembly of the State of Illinois entitled "An act to amend an act incorporating the Mount Palatine Academy" by by incorporating in connection therewith a college, by the name and title of Judson College, in force February 17, 1857, created a separate and distinct corporation from the President and Trustees of Mt. Palatine Academy — That by said act the said

Academy Corporation was to be and remain as an academic department, in connection with said College Corporation. That the Trustees of said College Corporation should be elected yearly by the stockholders of the said College Corporation and by the stockholders of said Academy Corporation jointly. That the said College Corporation did not supersede or ~~take~~ the place of the said Academy Corporation in any respect such as to transfer the stock or the lands of the Academy Corporation to the College Corporation, or as in any way to effect the interest in the stock or the title to the lands of said Academy Corporation —

That so far as their stocks and lands were concerned at the date of said acts being in force as aforesaid, "The President and Trustees of Mt. Palatine Academy" and the "President and Trustees of Johnson College" were two separate and distinct corporations, and the land of one could ~~not~~ be conveyed, or transferred by the one to the other, only by deed duly authorized by the corporation so conveying, acting in its corporate capacity."

"27. — The Jury are instructed that the act of the General Assembly of the State of Illinois in force February 17, 1857 — incorporating

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the "President and Trustees" of Judson College "did not convey or transfer to said Corporation, any lands that the "President and Trustees of Mt. Palatine Academy" may have owned at that time, nor has said act at any time since its passage conveyed or transferred, or had any effect to convey or transfer any such lands to said President and Trustees of Judson College -

And if the Jury believe from the evidence that the "President and Trustees of Judson College" never obtained any title to the premises described in the Plaintiffs' Declaration, except under and by virtue of the legal operation of said act, then the "President and Trustees of Judson College" would have no title whatever to said premises -

The Court gave to the Jury instructions marked No. "1" - "2" - "3" - "4" - "6" - "7" - "8" - "9" - "10" - "11" - "12" - "13" - "14" - "15" - "16" - "18" - "20" - "21" - "22" - "23" + "24" respectively - but refused to give to the Jury instructions marked No. "17" - "19" - "25" - "26" + "27" respectively -

The Court also refused to give the Jury the instruction marked No. 5 - but modified and altered the same so as to read

as follows:

"If the Jury believe from the evidence that the "President and Trustees of Mt. Palatine Academy" do now hold the title in fee simple to the premises described in the declaration, they should find the Defendants guilty, Provided the Jury believe from the evidence that the Defendants were in possession of said premises at the commencement of this suit and provided Defendants did not hold possession, as tenants under and by the assent of Plffs."

And gave the same as modified by the Court to the Jury - To which decision of the Court in refusing to give to the Jury each and every of said instructions marked "No. 17" - "19" - "25" - "26" - & "27" respectively - And in refusing to give instruction marked "No 5" as asked for by Plaintiff and in giving the same as modified by the Court - The Plaintiffs then and there ~~objected~~ excepted his Counsel excepted -

The Defendants asked the Court to give to the Jury on their behalf the following instructions marked No. 1 - 2 & 3 -

- "1. That the act of the Legislature of February 17<sup>th</sup> 1857 entitled an "act to amend an act entitled "An act incorporating the Mt. Palatine

Academy" by incorporating in connection therewith a college, by the name and title of Judson College" is an amendment to the act of March 3<sup>d</sup> 1845 entitled "An act to incorporate the Mt. Palatine Academy" - (read in evidence by Plaintiffs) and if the Corporation under the first act accepted such amendment and acted under it and adopted the name of President and Trustees of Judson College - then from the time of such user the "President and Trustees of Mt. Palatine Academy" was no longer the name of such Corporation.

And if the Jury find from the evidence in the case such acceptance and user they should find for the Defendants on their plea that there is no such Corporation as the President and Trustees of the Mt. Palatine Academy" -

"2. - Unless the Jury find for the Plaintiffs on all issues in the case their verdict should be for the Defendants -"

"3. - If the Defendants or those under whom they claim the right to occupy the premises, were in the peaceable possession of the premises claimed by Plaintiffs for several years claiming a right of occupancy from said Plain-

tiffs, with the knowledge and consent of Plaintiffs, then the presumption of law is that defendants hold by a tenancy from year to year which could not be terminated, except by the assent of Defendants, or by notice by Plaintiffs to Defendants, or those under whom they claim, to surrender possession of the premises before the commencement of this suit—

And if the jury find from the testimony and such presumption of law, that there was such a tenancy, and that no such notice was given, they will find for defendants." —

To the giving of each and every of which instructions to the jury the Plaintiff then and there objected — but the court overruled said objection — and gave to the jury each and every of said instructions as prayed for — to which decision of the court in overruling said objection and in giving each and every of said defendants instructions the Plaintiff by his Counsel then and there excepted. —

The jury having found a verdict as follows:

"Be the jury find the defendants not guilty" —

The Plaintiff entered a motion as at Common Law that the verdict of the jury herein be set aside and a new trial granted the Plaintiff herein -

The Court overruled said motion to set aside the verdict herein and to grant ~~the~~ Plaintiff a new trial in this cause and refused to set aside the verdict of the jury or grant a new trial to the Plaintiff in this cause -

To which decision of the Court in overruling said motion to set aside said verdict and grant Plaintiff a new trial herein and in refusing to set aside said verdict and in refusing to grant Plaintiff a new trial herein the Plaintiff by his counsel then and there excepted -

The Court being about to enter judgment against the Plaintiff on the verdict the Plaintiff entered a motion in arrest of judgment - but the Court overruled said motion in arrest of judgment to which decision of the Court in overruling said motion in arrest of judgment the said Plaintiff by his counsel then and there excepted -

The Court then entered judgment against the Plaintiff on the verdict -

And for as much as the matter

aforsaid do not otherwise fully appear  
 of Record the Plaintiff by his Counsel, then  
 and then and at the time of said trial  
 prayed the Court to sign and seal this his  
 Bill of Exceptions and make the same a  
 part of the Record which is done, at the  
 time of said trial accordingly <sup>and</sup> this Bill  
 is made part of the Record in said cause  
 which is done -

Jan'y 28<sup>th</sup> 1862. } S. L. Richmond *Seal*  
 Judge 23<sup>d</sup> Judicial District

The following is a copy of the appeal  
 Bond, to-wit:

" Know all men by these  
 presents that we the President & Trustees of  
 Mount Palatine Academy as principals &  
 John W. Laughlin as security are held and  
 firmly bound unto Andrew Kleinschmitz &  
 Michael Gress in the sum of Two hundred  
 dollars for the payment of which well and  
 truly to be made, we bind ourselves our  
 heirs, executors and administrators, jointly,  
 severally and firmly by these presents -

The condition of the above obligation  
 is such that, Whereas at the October Term  
 A.D. 1861 of the Circuit Court, of the County of  
 Putnam and State of Illinois, on the fourth

day of said Term of said Court, the said Andrew Koleschmity & Michael Gress, recovered a judgment against the said President & Trustees of Mt. Palatine Academy for costs in a suit of Ejectment against them from which judgment the said President & Trustees of Mt. Palatine Academy have prayed for and obtained an Appeal to the Supreme Court, of said State, upon their entering into Bond in the sum of Two hundred dollars, with security to be approved by the Clerk of said Court, by the agreement of the parties, to be filed in ninety days from the date of said judgment. —

Now if the said President & Trustees of Mt. Palatine Academy shall prosecute their said Appeal to effect, and pay whatever judgment, Damages, interest & costs may be awarded against them in case said judgment shall be affirmed, then this Bond shall be void, otherwise remain in full force & effect —

In Witness Whereof, The said President & Trustees of Mt. Palatine Academy have hereunto for said Corporation set their hands & affixed the seal of said Corporation —

Dated this 27<sup>th</sup> day of January A.D. 1862, John Morrison, President,  
 John W. Laughlin, Secretary,  
 John W. Laughlin Seal

Mt. Palatine  
 L. S.  
 Academy

which said Bond had the following endorsement on the back of the same, viz:  
 "Filed & approved by me this 27<sup>th</sup> day of  
 Jan'y A.D. 1862.

John P. Herberich

Clk. Cir. Court of Putnam Co. Ill.

State of Illinois  
 Putnam County }  
 I, John P. Herberich,  
 Clerk of the Circuit Court in and for said  
 County in the State aforesaid, do hereby cer-  
 tify that the foregoing Transcript is a  
 correct, true and complete Copy of the Process,  
 Readings of the respective parties, the affida-  
 vit of the service of the Declaration on the defend-  
 ants, the Verdict, the Judgment, all orders made  
 therein by the Court, Bill of Exceptions filed  
 therein and the appeal Bond filed therein -  
 as therein set forth - in said cause - as ap-  
 pears from the Record and files of said cause  
 in my office -

Witness my hand and the seal of said  
 Court at Keokuk, in said County this 19<sup>th</sup>  
 day of April A.D. 1862.

John P. Herberich, Clerk

Clerk's fees:

Making Transcript & certf & seal \$20.00

J. P. Herberich, Clk

and now comes the said  
plaintiffs in error the said  
President & Trustees of Mt.  
Soldiers Academy and say by  
Mark Bangs and J. M. Shaw  
their attorneys - and say that  
there is manifest error in  
the record and proceedings  
aforesaid in this to wit:

- 1<sup>st</sup> That said Circuit Court  
erred in excluding proper & best  
competent testimony on the  
part of offered on the part of  
the plaintiffs
- 2<sup>nd</sup> That said Court erred in  
admitting incompetent testimony  
on the part of the defendants
- 3<sup>rd</sup> That said Court erred in  
refusing to give to the jury  
each and every <sup>of the</sup> instructions  
offered by said Court <sup>and by</sup> on the  
part of the plaintiffs and refused  
by the Court.
- 4 That said Court erred in  
refusing to give to the jury instructions

marked O to 5 as asked for by the plaintiffs and in modifying the same and in giving the same to the jury as modified by said court.

5<sup>th</sup> That said court erred in giving to the jury each and every of the instructions <sup>given</sup> on the part of the defendant

6<sup>th</sup> That said court erred in overruling plaintiffs motion for a new trial in said cause

7<sup>th</sup> That said court erred in overruling plaintiffs motion in a matter of judgment in said cause

8<sup>th</sup> That the said court rendered judgment against the plaintiffs <sup>and</sup> in favor of the defendant whereas by the law of the land the judgment should have been rendered in said cause for the plaintiffs and against the defendant -

Wherefore and because of the said errors and others not mentioned the said plaintiffs

may state the said judgment  
may be reversed and that the  
plaintiffs may be restored to all  
things which he has lost by  
reason of said judgment.

Mark Bangs &  
J. M. Shaw  
attys for plaintiffs

And now comes the said defendants  
in error and say there is no error in  
said record as plaintiff in error has  
alleged, and ask that the said judgment  
be affirmed

E. S. Hollbrook &  
J. P. Halligan  
attys for Defdts in error

91. 285  
Pres. & J. M. P. O.  
by  
Kleinschmitz et al  
Recd

Filed Apr. 24, 1862  
L. Seland  
Clerk