

11972

No. _____

Supreme Court of Illinois

Granger.

vs.

Bd. of Trustees.

71641  7

Elihu Granger } Error to Cook County.

Board Trustees of
Illinois Michigan
Canal —

In 1841. Granger took possession of Lots. (2. 3 & 4) and as he claims of Lot (6) in Block (4) in Chicago. Made some improvements on (2. 3 & 4) before Dec. 1842. amounting in value to perhaps \$1500. Previous to this time from 1836. these lots had been occupied by the Canal Comrs for a Canal Office. Stable, garden and pasture grounds &c. all enclosed by said Comrs with a substantial fence and on which they erected a Canal Office &c worth at the time of ~~Granger's~~ Entry the sum of \$1000.00. The Canal Office was removed to Lockport in Nov. 1837; and on the removal of said office the Canal Comrs rented said premises to one Henry I. Rucker who entered upon and occupied the same, paying rent until the summer or fall of 1841. When Rucker being informed by Granger & by Genl. Fry acting Comr. that Granger had rented the premises at some certain Rent- (not recollected) consented that Granger should take possession, and permitted him to move into the house before he Rucker moved out.

The Evidence shows beyond controversy that Granger entered on the premises as the tenant of the Canal Comrs agents of the state. Evidence shows no improvement on lot Lot (6)

Before the appoisement and advertisement for the sale. Lots 2 & 3 were subdivided by Trustees in sub Lots. 1. 2. 3. 4. 9. 10. 11. 12. 20 feet each

Lot 4 into 1. 2. 3. 4. 5. 6. 7. 8

Lot 6 into 1. 2. 3. 4.

and were advertised for Sale by such
Subdivisions.

Elihu Grogan }
27 }
Council Minutes }

Prin 16 -

1st Point

Pre-emption to Settlers on Canal Lands
only granted to Settlers and owners of im-
provements

Act 21. February 1843. Sec. 13, P. 45.

Act 4 March 1843 Sec. 2. P. 49.

A Settler is one who personally occupies and
resides on lands.

2. Land Laws 109.

A tenant is not a settler, neither is he in contemplation
of the pre-emption act of 1843. An owner of improvements
on canal lands.

The two acts must be construed together as
forming parts of one and the same act. They
were passed in Panama - Both pending
before the Legislature at the same time and
only 13 days difference between their approval

This being the construction the law would then
read, every Settler being the owner of
improvements &c

2. Point

Grouger was not, a Settler nor owner of improvements within the meaning of the pre-emption law.

1st. because at the time of the passage of the law, he was a tenant, occupying buildings and improvements made by, and belonging to the State; paying rent therefor

2 A tenant is not entitled to a pre-emption under any circumstances; . He does not occupy in his own right.

His possession and occupancy is the possession and occupancy of his landlord

2. Lands Laws 60. 61-109

3 The relation of the parties is not changed or affected by the passage of the Pre-emption law of 1843.

Its existence was even admitted by Grouger by the Payment of Rent & the Execution of a lease subsequent to that time,

Thus he stipulated in the lease that his right to a pre-emption should not be affected by the lease.

This was only an attempt to dispute the title of his landlord

5. Whatever right Grouger had accrued to him at date of the passage of the law

4- Because by giving this construction to
the law we appropriate at least \$1000.00
of buildings & property belonging to the State
and canal funds to a private person
thereby diminishing that funds - which it
has ever been the settled policy of the State
to Foster & protect.

Mustus vs Braintree

12th Jls. 504.

3rd Point

This Right of Pre-emption Can only be Con-
strued to extend to lands which had been
improved and settled upon, and which prior
to such improvement & Settlement were
vacant, unoccupied and unimproved

This I understand to be the settled rule
of Construction with regard to all pre-
emption laws.

No person Can Enter either forcibly, Peaceably
or by permission as tenant upon another's
improvement or Settlement and protect
his Entry under a Pre-emption Claim

Although the decision in the case of the Trustees
vs Bromands uses the broad language that
in that Case it was immaterial whether Scott
Entered under a permit or as a trespasser
that the law is sufficiently comprehensive
to embrace all classes of persons who made
improvements previous to the time limited by
the act,, Yet it is not thereby intended
to express the Opinion that under no cir-
cumstances could a person make improvements
upon Public Land lands without being
entitled to a pre-emption

Whenever an improvement is made by the State upon Canal lands for Canal purposes this is "ipso facto," a reservation from Sale or pre-emption of the land or lots thus improved— An actual appropriation for Canal purposes.

Such is the case here—the State had taken possession of these lots— Erected a Canal Office thereon for Canal purposes Had never abandoned them; Never released nor relinquished her improvements & By her tenant was in actual possession of the lots and improvements at the time of the Passage of the act of 1843.

The tenant shew his rights—
That he might remove his improvements put on for the mere purpose of trade
Made them with such knowledge & not with any view to a pre-emption

Suppose the Canal Comrs had moved their Office back from Lockport to Chicago, or to any other place; and some person either as a trespasser a tenant or by permission had obtained possession of the Canal Office there? and was in such possession at the time of the passage of the Act of 1843— Would he be the owner of these permanent improvements & entitled to a pre-emption on the lots on which they are located, even if he had repaired a window or painted a wall of the building

Just as much and no more than would a stray Irishman who had put up a shanty on the tow path of the Canal, get a prescription upon the tow path - and a right to purchase it at an appraisement, in case the bed of the Canal should happen to be changed and the land adjoining offered for sale.

Both are alike reserved and appropriated for Canal purposes.

The act of the location of the Canal itself is the only reservation in its favor from the operation of the prescription law. Ninety feet on each side when located is reserved to enlarge its capacity - But the act of Location alone constitutes the Reservation.

It follows as a consequence that whatever is necessarily appropriated or used or expended or built, or improved by the State with a view to aid in or forwards its construction, is incident to and forms a portion of the Canal itself as property; & If lands it is reserved for that purpose.

The Court, Not only had a right but they were bound to do this.

Act. 15 Feby 1831. Sec 11. P 14

" 9 Jany 1836 Sec 20. P. 19

As Conclusive Proof that the Genl. Assembly
did not intend ~~to~~ ^{extend the right of presumption} ~~the~~ property which had been
improved by the State or the Canal Com.^y I
refer to the Act of 21. February 1843. Sec. 10
P. 43. The same act containing the pre-emption
Provide - in which not only the Canals & lands
& lots, but the buildings & Erections thereon
belonging to the State are granted, pledged,
and conveyed to the trustees.

(Any other Construction of the law would
involve us in endless difficulties and
embarrassments,

Who was the owner of the improvements
at the time of the passage of the act of 1843.

The State owned a building &c

Worth ————— \$1000.00

Gauger had made perhaps — 1500.00

Rucker — some

Townsend some -

Neither those made by the State Rucker or
Townsend were owned in any sense by
the Compt.

4th Point

The Complainant can not have the relief sought for by this bill for the Reason that the lots have been subdivided, and if he is entitled to any pre-emption, it can be only to the lot, or subdivided upon which his particular improvements are situated; the evidence failing wholly to shew on which lots or subdivided said improvements were made—

The Power on the Part of Com^{rs} to subdivide town lots or lay out towns; so long as that power is not abused; and is exercised bona fide for the purpose of enlarging and fastening the canal funds is unquestionable

Act 15th Feby 1831. Sec 7 P 13.

Same Power is transferred to Trustees

Act 21st Feby 1843 Sec. 8. P 43.

Trustees as ordained 12 Ms 504.

This Right of Pre-emption is purely a bounty
a Privilege to be exercised, Subordinate to the
Policy of the General law.

Trustees vs Brainerd 12' Ms. 584

This privilege is only to purchase such lots, or
Subdivisions of lots as embrace his improvements
at the time of appraisement. Idem - 588

Because up to the time of the appraisement
and offer to sell, the Power to lay out towns
or subdivide lots in towns already laid out
rests in the Com^{rs}, and their Successors the
Board of Trustees; To be exercised by them
in their discretion for the benefit of the Canal
Funds

The remarks here made apply to lots 2.3 & 4
As to Lot (C) there can be no reasonable
pretence that, in any event the Complainant
can be entitled to a Pre-emption as it

The only Evidence of any improvement on
that lot is some trifling repairs to the
fence with which it had been pre-
viously enclosed; and it is altogether

uncertain whether these repairs were made
before or after Dec. 1842.

Clinton, Orange
Co. N.Y.
The Board of Trustees
of the State of Michigan
Canals

Brief

45

11972

1852

Ottawa May 7th 1833.

Rec^d of Wth Lland the original Recora
from Cork County in the care of
Eliza Prange in The Director of the
Union of the American Canal (Affairs)

E. W. Tracy

E. W. Tracy
Recpt. for Record

May 6, 1853.

Elihu Granger } Appeal from
vs. } Cook Circuit
Trustees of Ill. & } Court.
Mich. Canal - }

In Sup. Court of the
3^d Grand Division.

The appellant filed his bill in May 1849, to obtain an injunction against the defendants to restrain them from selling Lots No. 2, 3, 4, & 6, in Block No. 4, in the Original Town of Chicago (the same being a portion of the lands granted to the said Trustees by the State) and a public sale, and a decree that they should permit him to purchase and should sell to him the said lots at the legalized appraisement heretofore made, upon the ground, as alleged in the bill, that he was a settler & had made improvements upon said lots and lands, and was so entitled to purchase at such appraisement, by, and according to, and within the meaning of, the

laws of the State, and that said Trustees had refused to accept a lawful tender of the required amount which he had made for such purchase, and had disregarded and denied his said rights, and were about to sell said lots at public auction, to the highest bidder on the usual terms of such Canal Sales.

The Injunction was granted.

The answer admitted the occupancy and did not deny the improvements made by the appellant, but admitted the same, but set up a pretended tenancy alleged to have existed from 1841, when the Settlement was made, admitted the tender and refusal and denied the right of pre-emption.

After the replication, the proofs were taken, and showed the material facts of the bill, but also showed that the Complainant had paid the Canal Commissioners from time to

time for the use of the buildings
and improvements which had
been made & placed upon the
premises by the State before his
occupancy, and the Court
dismissed the bill after hearing,
from which decision an appeal
is taken to this Court—

Elihu Granger
vs.
Board of Trustees
of Ill. & Mich. Canal
Abstract.

Filed June 30th 1852.

Elihu Granger & Supreme Court
vs. June Term, 1852.
Trustees Ill. & Mich. Canal

This is a Bill in Chancery to enforce a pre-emption claim to Lots 2, 3, 4 & 6 in Block 4, Original Town of Chicago under the 13th Sec. of the act of Feb. 21, 1843.

The facts are as follows —

These lots were the site of the old Canal Office in Chicago. They were all enclosed by a substantial fence by the Commissioners of the Canal in 1836 — and a building erected which was occupied for sometime by them as a Canal office. They also erected barns & outbuildings & cultivated & used the land within the enclosure. In the fall of 1837, the Canal office was removed to Lockport & the premises above described were leased to Henry S. Rucker who occupied them as a tenant, and paid rent to the Commissioners therefor, until the fall of 1841 — at which time Rucker with the permission of the Trustees surrendered the possession to the Complainant who entered as a tenant and paid rent for the premises — The improvements which had

been erected by the Commissioners at the time they were let to the complainant were worth about \$1000 -

The complainant afterwards erected some buildings for the purpose of carrying on his business - and made from time to time repairs to the building & fences & outbuildings of the premises rented to him by the Commissioners -

The defendant made no improvements on Lot 6, & there is no direct evidence of any repairs to the fences in front of that lot - The lots in question were afterwards subdivided by the Trustees into twenty feet lots in manner following - Lots 2 & 3, were subdivided together into Sublots 1, 2, 3, 4, 9, 10, 11 & 12. Lot 4 into Sublots 1, 2, 3, 4, 5, 6, 7 & 8. Lot 6 into Sublots 1, 2, 3 & 4.

The Bill sets forth the appraisement of all the Sublots together to have amounted to the sum of \$11450 - and a tender of that amount in money & notes. Rucker during his tenancy made repairs & improvements to the amount of about \$150. These are all the material facts.

Defts. points.

- 1 The clause in the act of Feb. 21, 1843 giving pre-emption rights is to be strictly construed.
- 1 The object of the law is to establish security for a loan, & it is to be liberally construed to effect that object.
- 2 These grants are ex gratia & without consideration.

1 Scam. 116 Carson vs. Clarke & Wilson C.J.

12 Illinois 476. Trustees vs. Brainard.

3. It is a grant from the State & is to be construed most-strictly against grantee.

2 Greenleaf; Cruise p 304.

11 Peters 546.

The law of Feb. 21. 1843 & of March 4, 1843 are to be construed together being in *pari materia* & passed by the same Legislature.

- 3 Gilman 230. Bruce vs. Schuyler.

Taking these two laws together & to establish a pre-emption right

There must be 1. an owner of improvements - 2. They must have been made by settler prior to Dec. 1842.

3.

A tenant is not within the meaning or the letter of the pre-emption clause in these acts—

- 1 Because a tenant is not an owner of the improvements made by him, but is estopped from asserting any adverse title,
3 Peters 47.

A tenant is not within the equity or intent of the statute.

No legislation was necessary to save the improvements of tenants—

The pre-emption laws apply to wild, unimproved lands & not to those under actual occupation.

The effect of such a construction would be to deprive the depts. of the benefit of their improvements, while it is unnecessary to save those of competent

4.

A tenant is not a Settler.

When a word is used in a statute which has a fixed & generally established meaning, it will be deemed to have been intended in that sense.

1 Greenleaf Ev. p. 337.

The word Settler in connexion with pre-emption rights & claims had acquired a general & established meaning at the time of the passage of these acts -

That meaning did not include the settlement or improvements of a tenant. These were deemed to be the improvements of his landlord & capable of being made the basis of a pre-emption claim on the part of the landlord.

See Land Laws U.S. vol. 1. p. 473.

Instructions & opinions vol. 2. p. 61. p. 542. 637-596-

5th. The construction contended for by the Complainant ~~named~~ would be an infringement of the contract made by the State with the Trustees.

See Preamble - Act of
Feb 1843.
Canal Law p 41

The law of 1843 creates a vested lien upon the Canal lands & revenues.

The rent of these premises was as much revenue as the tolls.

By Sec. 10. Same law - grants expressly the structures, buildings & improvements.

These improvements were as much a part of the security as the Canal itself & no part of this security could be impaired -

6. These lots were expressly Reserved from entry by individuals

The Canal Commissioners had an implied power as a necessary incident to the discharge of their duties to reserve & occupy such portion of the Canal lands as the construction & business of the Canal required.

This power is also expressly given -
See Canal Laws p. 14.

Act of Feb. 1831 Sec. 11.

Act of Jan. 9. 1836 Sec. 20. p. 19.

" " " " " 39 " 22.

The Commissioners in the discharge of their duties under these acts had actually inclosed these lots and appropriated them for Canal purposes.

They could not become the subject of any pre-emption claim -

Wilcox vs. Jackson 13 Peters -

7th

The complainant, if entitled to anything, is entitled only to the lots which include

his improvements— There is no allegation in the bill that the Sublotting was illegal, or that there was any fraud or abuse of power by the Trustees in making it. The right of sublotting is fully established in the case of Trustees vs. Brainard.

There are no improvements shown on Lot C- & the Court can in no event establish any right of presumption to this lot—

The bill does not show the amount of the appraisement of any of the Sub-lots.

No decree can be rendered for anything less than the whole, because the amounts to be paid for any less quantity does not appear.

Cook
Elihu Granger
4
Muscles Ill. & Mich.
Canal

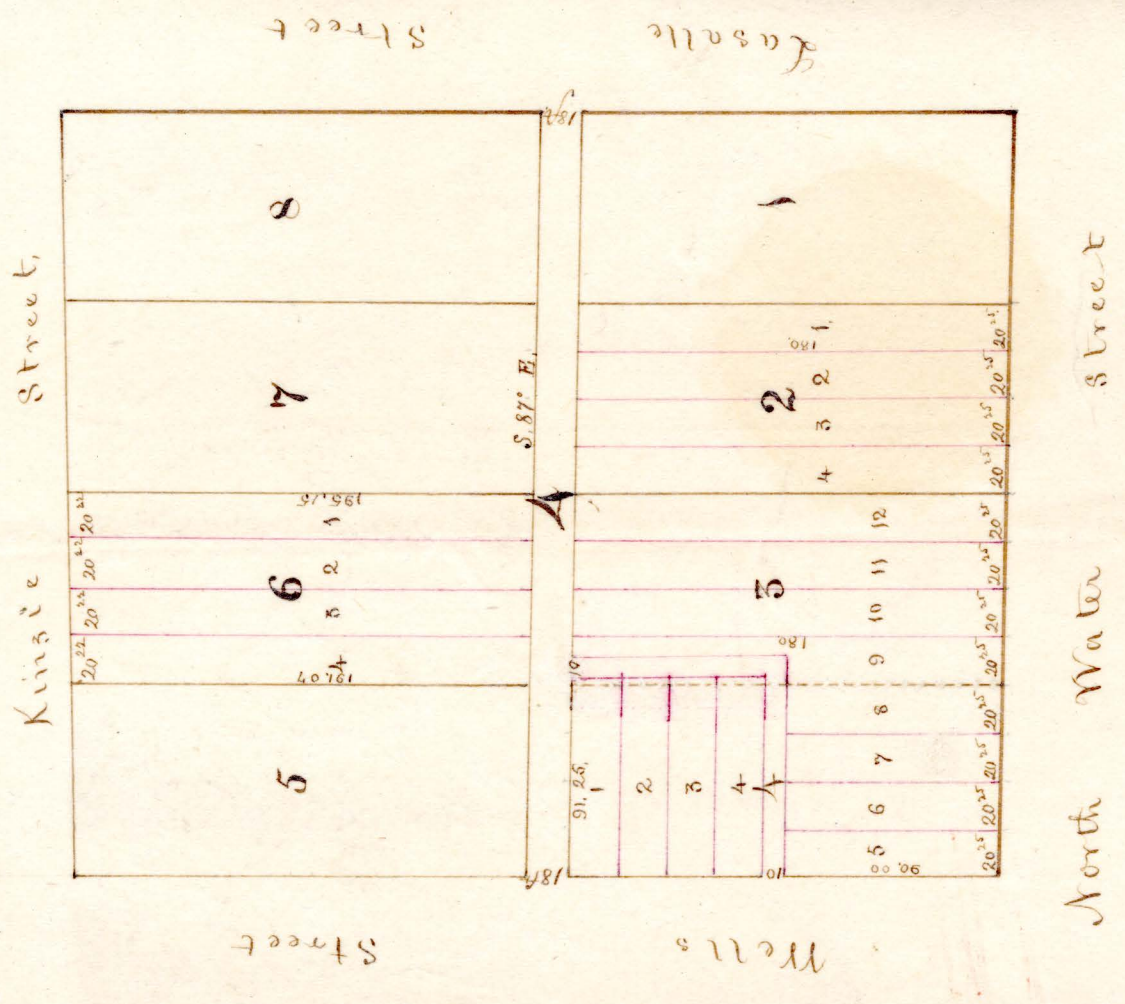
Abstract & points
of apoplexies' earned.

paid July 6th 1852.

28
30
84000

33
84
264
2720

Block A, in the Original Town of Chicago.



Chicago River

State of Illinois }
Cook County } ss I Louis D. Moard Clerk of the Circuit Court
and Ex Officio Recorder of the County of Cook in the
State of Illinois do hereby Certify that the
Block number four is the Original Town of Chicago, as
appears from the record of the map of said Original Town
of Record in my office, and also of the subdivision by
said trustee of Lot number two (2) three (3) four (4)
and six (6) in said Block four, as appears by the record
of the subdivision of said lots, now remaining in my office.
That the Block lines represent the said Original Survey, and the
red lines, the subsequent subdivision of said lots 2, 3, 4 & 6.
In testimony whereof I have hereunto set my hand
and affixed the seal of said Court at Chicago
this 10th day of July, 1882,
L. D. Moard Clerk