

12381

No. _____

Supreme Court of Illinois

Haddon.

vs.

Shontz.

71641  7

55

Morris Hadden

vs.

David H. Shontz

55

2381

1854

Supreme Court. June Term 1854.
 Morris Hadden vs David H. Shumtz
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United States of America
State of Illinois

Pleas before the Honorable Isaac G. Wilson
Judge of the thirteenth Judicial Circuit of
the State of Illinois at a term of the Kane
County Circuit Court began and holden at
the Court House in Geneva on the thirteenth
day of February in the year of our Lord
One thousand Eight Hundred and fifty-four

Present

Hon. Isaac G. Wilson

Judge

Mr. W. Boyer

State attorney

A. B. Spalding

Sheriff

Attest - L. Dearborn Clerk.

Be it remembered that heretofore to wit on
the day of in the year of our Lord One thousand
eight hundred and fifty there was filed among in the
said Kane County Circuit Court the following Transcript - among
other papers which are in the words and figures following
to wit.

State of Illinois
Kendall County

Pleas before the Hon. Edwin S. Leland
Judge of the Ninth Judicial Circuit of the
State of Illinois in which is Kendall
County at a Term of the Kendall County
Circuit Court began & held at the Court-
house in Osceola in said County on the 24th
day of November in the year of Our Lord
One Thousand Eight hundred & fifty two

Present.	The Hon. Edwin S. Leland	Judge aforesaid
"	Burton C. Cook	State Attorney
"	Charles S. Townsend	Sheriff
Attest	John M. Brothers	Clerk

Be it remembered that heretofore to wit
on the thirteenth day of March in the year of Our Lord
One Thousand Eight hundred & fifty two the same being
one of the days of the March Term of said Court in the
year last aforesaid the following amongst other proceedings were
had in said Court to wit

Morris. Madden

vs
David H. Shonts

Bill for Enjoinment

This day by agreement of parties
this cause is referred to the Master to take proofs

And afterwards to wit on the Eleventh day
of December in the year of Our Lord One Thousand
Eight Hundred and fifty Two the same being one of the
days of the November Term of said Court in said

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year last aforesaid the following other proceedings were
had in said Court to wit:

Morris, Madden (Bill for Injunction
David H. Shontz)

This day by agreement of parties
the venue in this cause is changed to Kane County and
it was ordered by the Court that the Clerk of this Court
transmit & certify to the Clerk of said Court all papers on
file in this cause as well as a copy of all orders made
in the same

State of Illinois (
Kendall County) I John M Crothers Clerk
of the Circuit Court of said
County certify the foregoing to be a true & perfect & complete
transcript of the Orders made in this cause in said Court
and that the papers entitled in said cause marked with
figures from 1 to 8 inclusive are all the papers appertaining
remaining on file in my office. That the Injunction in
this cause is not on the files & that I have no recollection of
its ever having been on the files

In testimony whereof I have hereunto set
my & the Seal of said Court at Oswego this
22^d day of April 1858

John M. Crothers Clerk

And Whereas it appearing from the files
of the Court Circuit Court of Kendall County that there was
filed in the Clerk's Office of said Court on the 30th day of
September A.D. 1857. the following Bill for Injunction which
is in the words and figures following to wit:

State of Illinois
Kendall County, ^{ss}

Kendall County Circuit Court
of the November Term AD 1857
In Chancery

To the Honorable J. L. Dickey Judge of the Ninth
Judicial Circuit of the State of Illinois and presiding Judge of
Kendall County in said State. — Humbly Complaining
Sheweth unto your Honor your Orator Morris Hadden of the
County of Kendall and State of Illinois aforesaid that your
Orator is seized in fee simple and is the owner and is in possession
of the following described lands situated in the County of Kendall
and State of Illinois aforesaid that is to say about thirty acres
of the North part of the North west quarter of the South East
quarter of Section One in Township Number thirty seven
North Range Number six east of the third principal Meridian
and also about sixty acres of the South and west part of
lot Number one of the North East quarter of Section Number
One of Township 3 Range as aforesaid. And your orator ~~would~~
further sheweth unto your Honor that a stream of water
which is called and known as Big Rock creek runs through
both pieces of land of your Orator which are described
as aforesaid. And your Orator further sheweth unto your
Honor that there is adjoining said Big Rock creek on each
side of said Water Course and upon the land of your Orator
as aforesaid valuable bottom & meadow land and also some
valuable timber or wood standing and growing upon said
lands and also a valuable stone quarry as your orator believes
upon said lands described as aforesaid and also a valuable
mill site or water power upon the land of your orator
described as aforesaid created by said Big Rock creek running
through said lands of your orator as aforesaid and
your orator further sheweth unto your Honor that one
David H. Shantz of the County of Kendall and State

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of Illinois and who your orator prays may be made a party defendant to this your Orators Bill of complaint. is about to erect and threatens to erect a Dam across the waters of the said Big Rock creek and immediately below upon said the lands of your orator described as aforesaid so as to dam obstruct back up and raise the waters of said Big Rock creek so as to overflow injure and spoil the lands of your orator described as aforesaid also the stone quarry wood or timber ^{being} upon said lands of your orator described as aforesaid and also to injure and spoil the water power of your orator upon said lands described as aforesaid. your orator therefore prays the premises considered that your honor may grant to your orator the Relief writ of Injunction issuing out from this Honorable Court to be directed to the said David W. Shannette his agents attorneys and servants or any persons under him that they shall cease and be restrained from damming or obstructing the waters of the said Big Rock creek aforesaid so as to injure raise and overflow the lands of your orator described as aforesaid so as to injure damage or spoil the water power stone quarry timber or wood of your orator described as aforesaid and your orator further prays that a summons may ^{be} issued and directed to the said David W. Shannette commanding him on a certain day (to be therein named) to be and appear before this Honorable Court and true full and complete answer make to all and singular the allegations of this your Orators Bill of complaint in as full and explicit a manner as if the same were hereagain repeated but not upon his corporal Oaths which is hereby expressly waived and your orator further prays that that upon a final hearing upon this case that a perpetual injunction may be ~~issued~~ ^{decreed} restraining said David W. Shannette from damming said Big Rock creek so as to raise said water to overflow or injure the lands of your orator

described as aforesaid or injuring or destroying the water power Stone quarry wood or timber of young orator described as aforesaid

And for such other and further relief as in equity and good faith may be entitled to receive from this Honorable Court

Morris Wadden By
Wm. Crothers his Solicitor

State of Illinois
Kendall County

George W. Wadden being duly sworn on oath doth depose & say that he has heard the foregoing Bill of complaint read & that he knows that the matter and things therein set forth to be true except so much thereof as is stated that complainant believes & that he believes to be true

Subscribed & sworn to before me
this 30th day of September 1857

Geo. W. Wadden

John W. Crothers and

The clerk of Kendall County Circuit Court will issue an injunction in accordance with the prayer of this Bill on complainants entering into Bond conditioned according to Law in the sum of One Thousand Dollars with Geo. W. Wadden as his security

Sept 30 1857

John W. Crothers Master
in Chancery Kendall
Co Illinois.

And whereas on the said 30th day of September 1857 the following Bond was filed in said cause of which the following is a true copy to wit

Know all men by these presents that we Morris Wadden as principal and George W. Wadden as security are held and firmly Bound unto

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David H. Shantz in the penal sum of One Thousand Dollars
lawful money of the United States to the payment of which
well and truly to be made we hereby bind ourselves our heirs
Executors and Administrators jointly severally and firmly
by these presents signed, sealed by us this 30th day of September
AD 1837 the condition of ~~the~~^{the above} obligation is such that whereas
the above bounden Morris Wadden has this day filed his
Bill of complaint in Chancery for an injunction in the
Office of the clerk of the circuit court in and for the county
of Kendall & State of Illinois on which an injunction
is about to issue by order of the Master in Chancery in and for
said county

Now if the said Morris Wadden shall pay
or cause to be paid all such damages & costs as shall be
awarded against the complainant in case said injunction
shall be dissolved then the above obligation to be void oth-
erwise to remain in full force & virtue

Morris Wadden *seal*
Per Mr. Wadden *seal*

And whereas on the said 30th day of September
AD 1837 an injunction issued out of & under the seal of
said Kendall county circuit court of which the following
is a true copy to wit

The People of the State of Illinois
to David H. Shantz Greeting

Whereas Morris Wadden
had duly filed in the Office of the clerk of the circuit court
in and for the county of Kendall & State of Illinois his Bill
of complaint against you on the Chancery side thereof
& obtained from the Master in Chancery in and for said
county an order thereon commanding that an injunc-
tion issue according to the prayer of said Bill of com-
plaint on the filing by said complainant his Bond

with George W. Hadden as his security in the penal
sum of one thousand dollars conditioned as by statute
provided and whereas the said complainant has complied
with the condition in said order specified Now therefore
We do ^{command} you the said David A. Shontz your agents
attorneys servants or other persons under you that you
do cease and desist from damming or obstructing the waters
of Big Rock creek in said county in such a manner as
to cause said waters to injure or overflow the following real
estate in said county of Kendall to wit. about thirty
acres of the North part of the North west quarter of the South
East quarter of Section Number one in Township Number
thirty seven North Range Number six East of the 3^d principal
meridian also about sixty acres of the South & west part
of Lot Number one of the North East quarter of Section
Number one of Township & Range aforesaid or the timber
trees quarries or water power thereon situate lying
or being ~~thereon~~ until other order shall be made by our
said Circuit Court to the contrary under such penalty as
is provided by the statute in such cases made aforesaid

Witness John W. Crothers clerk of said Court
the Seal thereof at Oswego this 30th day of
September A.D. 1857

John W. Crothers
And upon the Basis of said injunction
was the endorsement of the Sheriff of Kendall county which
is in the words of figures following

Served the within notice upon the within
named David A. Shontz on the thirtieth day of September
A.D. 1857 by Exhibiting & reading the same to him & also
by delivering to him a true copy thereof

C. D. Townsend

Sheriff

1 Serwin 50
1 copy 50
10 miles 50
per 12
140

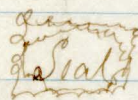
9
and whereas on the said 30th Day of September 1857 a
summons issued out of & under the Seal of said (Kendall)
County of which the following is a true copy to wit

State of Illinois
Kendall County,

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

We command you to summon David W. Shultz if
to be found in your county personally to be and appear
before the circuit Court of said County on the first day
of the next term thereof to be holden at the Court House
in Oswego on the 20th Day of November next to answer
a certain bill of complaint filed in our said ^{circuit} Court
on the chancery side thereof against him by Morris Hadden

And have you then & there this writ and make due
return thereon in what manner you shall think proper

 Seal

Witness John W. Crothers Clerk of said
Court and the seal of said Court at Oswego
this 30th day of September A.D. 1857

John W. Crothers, clerk
and upon the back of said summons
was the endorsement of the said Sheriff of Kendall County
in the words of figures following to wit

Served the within subpoena upon the within
named David W. Shultz on the 13th Day of September
A.D. 1857 by exhibiting & reading the same to him also
by delivering to him a true copy thereof

C. D. Townsend

Sheriff

Served 50. copy 50 mileage 50
ret 10. Total \$1.60

and whereas Do wit on the 28th Day of November 1851¹⁸⁵¹
there was filed in the Office of the Clerk of the Circuit Court
of said Kendall County the following "Answer" which is in
the word and figured following Do wit

State of Illinois ()
Kendall County vs Circuit Court of said County
November Term AD 1851

The answer of David W. Shouse to
the Bill of Complaint of Morris Wadden against him

This Respondent saying & reserving all
all manner of exceptions to the manifold Errors & circumstances
of said bill for answer thereto saith that each & every al-
legation in said Bill contained is untrue

This Respondent further answering says
that a short time before the commencement of this suit
he was engaged in repairing a dam across Big Rock creek
in Kendall County & that the time of the service of process
upon him & at the time of the service of the writ of Injunction
upon him this said dam was completed & the pond made
by said dam nearly full that said dam is situated upon
the following ^{described} premises situated in said Kendall County
viz part of the South East quarter of Section One in Township
thirty seven North of Range Six East of the third R.M. de-
scribed as follows Beginning at a stake on the west line
of said quarter which stake ^{stands} ~~stands~~ four chains & twenty
four links South from the North West corner of said quarter
thence South seventeen degrees and forty five minutes East
Eighteen chains & fifty four links to a white oak tree
thence South thirty five degrees and fifty five minutes
west three chains and ninety five links thence South

seventy degrees & twelve minutes west three chains and forty seven links to a stake on said west line of said quarter which stake stands thirteen chains and ninety links north from the south west corner of said quarter thence north along the west line of said quarter to the place of Beginning containing six acres & two hundredths of an acre. The variation of the Needle being 7° East which said premises with the appurtenances Respondent says were conveyed to him by the said Morris Wadden (who was then seized in fee of the same) on the twenty second day of October in the year of our Lord one thousand eight hundred & forty five by deed a copy of which is hereto annexed and made part of this answer and mandated "Debitis" &c.

Respondent further says that said dam was erected at the place ^{first} now is on or about the first day of September in the year of our Lord one thousand eight hundred and thirty six & it has been used without interruption from that time to the time of the service of the Injunction in this case for the purpose of flowing a pond of water to propel a Saw mill situated upon said premises & that said dam is now as high as it was when it was ^{originally} erected and it is as low as it has been at any period between the time of its erection & the present time & Respondent says that he does not intend to raise it any higher nor cause it to flow any more land than has heretofore been flowed by it nor than was flowed by it at the time of said conveyance to him.

This respondent further says that the said Morris Wadden well knew of the existence of said dam from the time of the construction thereof to the time of the filing this Bill & well knew what land was flowed by it & that during all that time he acquiesced in the use of the same & after the conveyance to this respondent licensed & permitted this respondent to use the same & to flow any of his lands

which were then flowed thereby & to expend large sums of money in repairing the said dam & mill without any objection on the part of said complainant and the respondent avers that by the aforesaid acts of the complainant this respondent has acquired & acquired the right to continue his dam at its present height and to flow any land of complainant which would be flowed by said dam and this respondent further says that owing to the imperfect & indefinite description of the land, alleged to be flowed by said dam raising the water, it cannot be ascertained whether the lands attempted to be described will be flowed by the pond made by said dam or not.

Respondant further says that upon the service of the injunction upon him in this case he opened the gates at his dam & permitted the water to flow out from said pond.

Respondant further says that at the time of the erection of said dam & for many years thereafter the lands flowed by the pond made by said dam were owned by the Government of the United States & that any lands the said Morris Wadden may now own which are flowed by said pond were purchased by him from the United States with a pond then flowed upon them & subject to the right of the occupant of said mill to flow them.

And having fully answered his prayer to be hence dismissed with his reasonable costs.

Exhibit "A"

This Indenture made this Twenty second day of October in the year of our Lord one thousand Eight Hundred and forty five Between Morris Wadden and Sally his wife of the county of Kendall and State of Illinois parties of the first part and

David M. Shouts of the county and State aforesaid
 party of the second part. Witness etc that the said parties
 of the first part for and in consideration of the sum of Seven
 Dollars and fifty-four cents to them in hand paid by the
 said party of the second part. (the receipt whereof is hereby
 acknowledged) and the said party of the second part. the
 receipt whereof is hereby acknowledged and the said party
 of the second part forever released and discharged therefrom
 have granted bargain sold remised released aliened and
 confirmed and by these presents do grant bargain sell remise
 release alien and confirm unto the said party of the second part
 and to his heirs and assigns forever all the following described
 lot piece or parcel of Land situate lying and being in the County
 of Kendall and State of Illinois and being a part of the South
 East quarter of Section No one in Township thirty-seven North
 of Range six East of the third principal Meridian and bounded as
 follows to wit: Beginning at a Stake on the west line of said
 quarter which Stake stands four chains & twenty-four links
 South from the North west corner of said quarter thence South
 seventeen degrees and forty five minutes East eighteen chains
 and ~~forty~~^{fifty} four links to a Stake white oak tree. Thence South
 thirty-five chains five degrees and fifty five minutes west
 three chains and ninety-five links thence South seventy degrees
 and twelve minutes west three chains and forty seven links to a Stake
 on the said west line of said quarter which Stake stands thirty
 chains and ninety links North from the South west corner
 of said quarter thence North along the said west line of said quarter
 to the place of Beginning containing six acres and three
 hundredths of an acre of Land to the said more or less
 Together with all and singular the hereditaments and appurten-
 ances thereunto belonging or in anywise appertaining and the
 Reversion and reversions remainder and remainders rents
 issues and profits thereof and all the Estate right title

Interest claim or demand whatsoever of the said parties of the first part either in Law or equity of in and to the above bargained premises with the hereditaments and appurtenances to have and to hold the said premises above bargained and described with the appurtenances unto the said party of the second part and to his heirs and assigns forever. And the said parties of the first part for themselves their heirs Executors and administrators do covenant grant bargain and agree to and with the said party of the second part his heirs and assigns that at the time of the enrolling and delivery of these presents they are well seized of the premises above conveyed as of a good sure perfect absolute and indefeasible Estate of Inheritance in the law in fee simple and have good right full power and lawful authority to grant bargain sell and convey the same in manner and form aforesaid and the same are free and clear of all former and other grants bargains sales liens taxes covenants and incumbrances of what kind or nature soever and the above bargained premises in the quiet and peaceable possession of the said party of the second part his heirs and assigns against all and every person or persons lawfully claiming or to claim the whole or any part thereof the said parties of the first part shall and will warrant and forever defend

In Witness Whereof the said parties of the first part herewith set their hands and seals the day and year first above written

Sealed Signed & Delivered
in presence of Archibald Sears
J. McMillan

variation of the	Morris Hadden	seal
needle 7° East	Gally Hadden	seal

State of Illinois
Stark County, ss

J. Joseph McMillan a
Justice of the peace in & for
the said County and State aforesaid do hereby certify

that Morris Wadden & Sally Wadden personally known to me as the same person whose names are subscribed to the above Instrument of writing & who executed the same 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 Sally Wadden wife of the said Morris Wadden having been by me examined separate and apart and out of the hearing of her husband and the contents and meaning of the said instrument of writing having been by me made known and fully explained to her she acknowledged that she had freely and voluntarily executed the same and relinquished her dower to the Land 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 Twenty second day of October 1845

J. H. Helms

Justice of the peace

And whereas afterwards to wit on the 13th Day of December A.D. 1845 the following Replication was filed in said Clerk's office of Kendall County which is in the words and figures following to wit

State of Illinois

Kendall County Circuit Court

Morris Wadden

v

Thouts

In Chancery

And now comes the said Morris Wadden the complainant and for a replication to the answer of the said Thouts the defendant says

This replicant saving and reserving unto himself all and all manner of advantage of Exception to the

Manifest insufficiency of the said answer said that he will ever maintain & prove his said Bill to be certain and sufficient in the Law to be answered unto and that the said answer is uncertain untrue and insufficient to be replied to by the said defendant without this: that any other matters and things whatsoever in the said answer contained material or effectual in the Law to be replied unto confessed avoided or denied is true all what matters & things the defendant is & will be ready to prove as this honorable Court may direct

And humbly prays as in his said Bill he hath already prayed

Morris. Wadden

By Bridley & Nelson

Complains to Court

And afterwards & suit on the 21st Day of May AD 1853 there was filed in the clerk's office of the Kane County Circuit Court an affidavit of which the following is a true copy to wit

State of Illinois

Kane County Circuit Court

Morris. Wadden

(In Chancery)

David H. Shreve

Change of Venue from Kendall County
Kendall County vs

Morris Wadden the complainant - the complainant in this cause being duly sworn doth depose and say that George W. Wadden of Kendall County is a Material Witness for defendant in this cause that it is Material to the rights & interest of complainant in this cause that he should have the benefit of the testimony of the said George W. Defendant further says that the said George W. Wadden is a party to the injunction Bond in

this case having signed the same as his deponent's
 security, that he can prove ^{by} the said George McFadden
 that at the time of the injunction in this case was obtained
 the said defendant was engaged in the work of damming
 Big Rock Creek mentioned in the complainant's Bill
 so as to flow the deponent's land and that he was
 engaged in the same work when the injunction was
 served and that he can prove by him more particular-
 ly than by any other witness the condition of the dam
 & the water at the time, and its effect upon complainant's
 land as he was there present & a witness to the same and
 he can also prove by the said George McFadden facts that
 he can not prove by any other witness within his knowledge
 at this time that is to say, that the complainant has frequently
 at different times complained to defendant and to others who
 were formerly in possession of the premises about letting
 the water of said creek back upon his land, and warned
 them and gave them notice that he should prosecute them
 for so doing and that a very short time before filing the
 bill in this cause and before said injunction was
 obtained and before the last work was done to prevent
 which said injunction was obtained & Bill filed
 complainant again protested to defendant against
 the damming said creek so as to flow complainant's
 land and give him express notice that he was determined
 to maintain and defend his rights in relation thereto
 that in doing so he should do he should have ~~recourse~~
 recourse to the Law if necessary to prevent the flowing
 of his lands deponent further says that ^{having the} said George
 Mc signed said Bond was a matter of and it
 was done without properly understanding or reflecting
 upon its consequences and that unless another Bond
 be substituted and the said George McFadden released

so that complainant may have the benefit of his testimony
herein he will be in danger of sustaining great loss &
damages and further says not

Subscribed & sworn to before Morris Hadden
this Eighteenth day of May
AD 1853 before me

J. H. Nelson

Justice of the Peace of Kendall County
Illinois

State of Illinois
Kendall County

I George W. Hartwell Clerk of the
County Court in and for said County
do certify that Joseph W. Nelson whose signature appears
subscribed to the above acknowledgement was at the time of
subscribing the same on the 18th day of May 1853 was an acting
Justice of the Peace in said County duly commissioned & sworn to
In Witness whereof I have hereunto set my hand
& affixed the Seal of said County Court at my Office in Quincy
this 19th day of May AD 1853

Geo W. Hartwell Clerk

And whereas afterwards to wit on the 24th day
of May AD 1853. the following Bond was filed in the
Clerk's Office of of said State County Circuit Court of
which the following is a true copy to wit

I know all men By these presents
that me Morris Hadden & William P. Boyd of the County
of Kendall and State of Illinois are held and firmly Bound
unto David W. Shouts of the same place in the penal sum
of One Thousand Dollars lawful money of the United States
to be paid to the said David W. Shouts his Executors
Administrators or assigns to which payment to be well

And truly Made we bind ourselves our heirs Executors
and administrators jointly severally & firmly by these presents
Sealed with our seals dated the nineteenth day of May
AD 1853.

Whereas the above bounden Morris Wadden did on
the thirteenth day of September AD 1853. file his certain
Bill of complaint in the Kendall County circuit court
on the Chancery side thereof against the said David
M Shouts and thereupon sued out and obtained an injunction
against the said Shouts which by change of venue is now pending
& undetermined in the same County circuit court. And
therefore the condition of the above obligation is such that
if the above bounden Morris Wadden shall well & truly
pay or cause to be paid all such costs & damages as
shall be awarded against him the said complainant
in consequence or by reason of his having sued out the
said injunction then the above obligation to be void
otherwise to remain in force

Morris Wadden *Seal*
William P Boyd *Seal*

And afterwards to wit on the 9th of November
1853. there was filed in the said Clerk's office of same
County the following Notice, which is in words & figures
following to wit

State of Illinois
Kendall County Circuit Court
Morris Wadden }
v } In Chancery
David M. Shouts }

See take notice that the
deposition of George M. Wadden of the County
of Kendall in the State of Illinois will be taken before

John M. Crothers Esq Clerk of the Kendall County Circuit
Court in State of Illinois or some other competent person
at the Office of said Crothers in Oswego in said County of
Kendall on the forth day of November next commencing
at 10 O. Clock in the forenoon of that day & continue
until said deposition be taken said deposition to be read
in evidence on the hearing of the above entitled cause
on the part of the complainant -

Dated Oct 21. 1853

J. H. Nelson

To David H. Shantz the
above named depts his
love & counsel

Sol. for Compt

State of Illinois
Kendall County Geo

George M. Hadden being duly
sworn says that he handed
a copy of the above notice to Defendant David
Shantz on the 22^d day of October A.D. 1853

Subscribed & sworn to before
me this 4th day of Nov 1853

Geo M Hadden

Jr M Crothers clerk

Page Emption
Certificate
No 10939

The United States of America to all
to whom these presents shall come. Greeting
Whereas James Way Hadden of Kendall County
Illinois has deposited in the general land Office of the United
States a Certificate of the Register of the land Office at Chicago
whereby it appears that full payment has been made by the
said James Way Hadden according to the provision of the
act of congress of the 24th of April 1820 entitled an act making
further provisions for the sale of the Public lands for the South
East quarter of Section One in Township thirty seven North
of Range six East in the district of Land Subject to Sale
at Chicago Illinois containing One hundred and sixty Acres
according to the Official plat of the Survey of the said land
returned to the General Land Office by the Surveyor General
which said tract has been purchased by the said James
Way Hadden 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 James Way
Hadden and to his heirs the said tract above described To
have and to hold the same together with all the rights privileges
immunities and opportunities of whatever nature thereunto
belonging unto the said James Way Hadden and to his
heirs and assigns forever

In Testimony Whereof James K
Polk 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 April and the Year
of Our Lord one Thousand Eight hundred and

forty five and of the Independence of the United States the
 Sixty Ninth

Seal

By the President James K. Polk

By J. Henry Walker Secy

Recorded Vol 24 Page 419

J. H. Laughlin Recorder of the
 General Land Office

Pre-emption
Certificate
No. 113.64

The United States of America To all to
whom these presents shall come. Greeting
Whereas Morris Hadden of Kendall
County Illinois has deposited in the General Land
Office of the United States a certificate of the Register of the
Land Office at Chicago whereby it appears that full payment
has been made by the said Morris Hadden according to the
provisions of the act of Congress of the 24th of April, 1820 entitled
an act Making further provision for the sale of the Public
land for Lots numbered One and two of the North East quarter
of Section One in Township thirty seven North of range six
East of the third principal Meridian in the district of Land
subject to Sale at Chicago Illinois containing One Hundred
and fifty nine Acres and seventy six hundredths of an acre
according to the Official plat of the Survey of the said Lands re-
turned to the General Land Office by the Surveyor General
which said tract has been purchased by the said Morris Hadden
Now Therefore 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 Morris Hadden 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 Morris
Hadden and to his heirs and assigns forever

In Testimony whereof I, James K. Polk 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 May in the year of our Lord
One Thousand Eight Hundred and forty five

Seal

and of the Independence of the United States the sixth March
 By the President James H. Root

By J. Henry Walder Secy

Recorded Vol. 25 Page 142

J. H. Laughlin Recorder of the General Land Office

This Indenture made this Twenty Second day of October
in the year of Our Lord one thousand eight hundred and forty
five. Between Morris Wadden and Sally his wife of the County
of Kendall and State of Illinois parties of the first part and
David N. Sharts of the County, and State of said party of the
second part Witnesseth that the said parties of the first part
for and in consideration of the sum of Seven Dollars and fifty
four cents to them in hand paid by the said party of the
second part the receipt whereof is hereby acknowledged
and the said party of the second part forever released and dis-
charged therefrom have granted bargained sold remised deli-
vered aliened and confirmed and by these presents do grant
bargain sell remise release alien and confirm unto the
said party of the second part and to his heirs and assigns
forever all the following described Lot here or parcel of
Land situate lying and being in the County of Kendall and
State of Illinois and being a part of the Southeast quarter of
Section No One in Township Thirtieth Seven North of Range Six
East of the third principal meridian and bounded as follows
to wit. Beginning at a stake on the west line of said quarter
which stake stands four chains and twenty four links South
from the North West corner of said quarter thence South
seventeen degrees and forty five minutes East Eighteen Chains
and fifty four links to a white oak tree thence South thirty
five degrees and fifty five minutes west three chains and
ninety five links. Thence South seventy degrees and
twelve minutes west two chains and forty seven links to
a stake on the said west line of said quarter which stake
stands thirteen chains and ninety links North from the Southwest
corner of said quarter thence North along the said west line
of said quarter to the place of beginning containing six
acres and two hundredths of an acre of Land be the same
more or less Together with all and singular the hereditaments

and appurtenances. Thereunto belonging or in any wise
 appertaining and the reversion and reversions remainder
 and remainders rents issues and profits thereof and all the
 estate rights title interest claim or demand whatsoever of
 the said parties of the first part either in law or equity of in
 and to the above bargained premises with the hereditaments
 and appurtenances. To Have and to hold the said premises
 above bargained and described with the appurtenances
 unto the said party of the second part his heirs and assigns
 forever. And the said parties of the first part for themselves
 their heirs executors and administrators do covenant grant
 bargain and agree to and with the said party of the
 second part his heirs and assigns that at the time of the en-
 suing and delivery of these presents they are well seized
 of the premises above conveyed as of a good sure perfect
 absolute and indefeasible estate of inheritance in the law
 in fee simple and have good right full power and lawful
 authority to grant bargain sell and convey the same
 in manner and form aforesaid and that the same
 are free and clear of all former and other grants bargains
 sales liens taxes covenants and incumbrances of
 what kind or nature soever and the above bargained
 premises in the quiet and peaceable possession of the said
 party of the second part his heirs and assigns against all
 and every person or persons lawfully claiming or to claim
 the whole or any part thereof the said parties of the first
 part shall and will warrant and forever defend
 Sealed Signed and delivered } Morris. Wadden Seal
 in presence of } Sally. Wadden Seal
 Archibald. Seane }
 J. H. Nelson } Variation
 State of Illinois }
 Boone County } J. Joseph H. Nelson a justice of

Variation of the Recorder of Boone

the peace in and for the said County and State aforesaid
do hereby certify that Morris Hadden & Sally Hadden
personally known to me as the said persons whose names and
subscribed to the above instrument of writing & who executed
the same appeared before me this day in person & 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 Sally
Hadden wife of the said Morris Hadden having been by me
examined separat- and apart and out of the hearing of her husband
and the contents and meaning of the said instrument of
writing having been by me made known and fully explained
to her she 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 Twenty-second
day of October 1845-

J. H. Nelson ^{June} Seal

Justice of the Peace

and upon the back of the above deed was the certificate
of the Recorder which is in the words and figures following
to wit

State of Illinois of I hereby certify that this Deed
Kendall County, ^{1st} was filed in this Office for record November
22^d 1845-at ten O'clock am & duly
Recorded in Book C. pages 217. & 18

Norman Dorey
Recorder's Office Oswego December 15th 1845- Recorder

This Indenture Made this Twenty Second day of
October in the year of our Lord One thousand eight hundred
and forty five. Between James Wadden and Electa his wife
of the County of Kendall and State of Illinois parties of the first part
and Morris Wadden of the County and State aforesaid party of the
second part, Witnesseth that the said parties of the first part for
and in consideration of the sum of Five hundred Dollars to them
in hand paid by the said party of the second part. the receipt where-
of is hereby acknowledged have granted bargained sold
remised released aliened and confirmed and quit claimed
and by these presents do grant bargain sell remiss release
alien confirm and quit claim unto the said party of the second
part and to his heirs and assigns forever all the following des-
cribed lot piece or parcel of land Situate Lying and being in
the County of Kendall and State of Illinois and known
and designated as the South East quarter of Section No
One in Township Thirty Seven North of range six East of
the third principal Meridian containing One hundred
and sixty acres to the said Morris or his heirs. Together
with all and singular the hereditaments and appurtenances ther-
unto belonging or in any wise appertaining. And the reversion
and reversionary remainder and remainders rents issues and
profits thereof. And all the estate right title interest claim
or demand whatsoever of the said parties of the first part
either in law or equity of in and to the above bargained prem-
ises with the hereditaments and appurtenances. To have and
to hold the said premises above bargained and described
with the appurtenances unto the said party of the second part
his heirs and assigns forever. And the said parties of the
first part for themselves their heirs executors and administrators
do covenant grant bargain and agree to and with the said
party of the second part his heirs and assigns that the above
bargained premises in the quiet and peaceable possession of.

Said party of the second part his heirs and assigns. That the
 against-all and every person or persons lawfully claim-
 ing or to claim the whole or any part thereof, by through or under
 them and none others, the said parties of the first part shall and
 will warrant and forever defend

In Witness whereof the said parties of the first part have
 herewith set their hands and seals the day and year first
 above written

Signed Sealed and
 delivered in presence of

James W. Hadden ^{James}
 Electa Hadden ^{Electa}

The word "^{one} ~~one~~" in the 12th line

written on an erasure. and the word
 profession in the 20th line interlined before executed

J. W. Nelson

Archibald Leans

State of Illinois {
 Kane County {

I Joseph W. Nelson
 Justice of the Peace in and
 for said county and State

ofore said do hereby certify that James Hadden and Electa
 Hadden personally known to me as the same person whose
 names and subscribed to the above instrument of writing
 and who executed the same 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 Electa Hadden wife of the said James Hadden
 having been by me examined separately and apart and out
 of the hearing of her husband and the contents and meaning
 of the said instrument of writing having been by me made
 known and fully explained to her she 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 return the
same

Given under my hand and seal this Twenty second day
of October 1845.

J. H. Nelson [Seal] Antigua

Morris Hadden
vs
David H Shouts } In Chancery

Deposition of Henry M Bingham
witness of lawful age produced examined and sworn
on the 20th day of November AD 1851 at 10 o'clock
Am before John M Crothers Master in Chan
& State of Illinois a his office in & sworn in said County of Kendall
- City in & for the County of Kendall to be read in
evidence on the trial of the above entitled Cause
now pending in the Circuit Court of said County
as evidence in behalf of Defendant

Henry M Bingham being first duly sworn
in answer to interrogatories propounded to him deposes
as follows

Int 1st by Defendant

What is your age, residence &
Occupation

Ans- My age twenty five, occupation a farmer
Residence Town of Gommonauk DeKalb
County Illinois

Int 2 - Are you acquainted with the parties Com-
- plainant & Defendant in this Suit - If yes,
how long have you known them

Ans - I have known both parties since a year
ago the 13th of last March

Int 3 Do you know of any stream of water
running through Township 37 North
6 East of the 3rd principal meridian
in the County of Kendall & State of Illinois
If so please state what stream it is

Ans - Yes Sir the stream of Big Rock

Int 4 - Have you any knowledge of any
mill dam on ^{Big Rock creek} said stream or near
- tion one in said Township, if so state who

owns or is in possession of the same to your knowledge & describe its location & situation & how long have you been acquainted with the same
 Ans. - Yes Sir I have - Mr David H Thouts the Defendant is in possession of it & I suppose owns it - He has been in possession of it to my knowledge ^{The mill dam lies some 200 yds above the stream empty & dry nearly} since a year ago the 13th day of last March - The Mill is on the West Side of the stream - I have been acquainted with the location & situation of the same a year ago the 13th of last March

Int 5 - Please state whether you ever worked for David H Thouts previous to September 1851 upon said dam mentioned in your answer to the last Interrogatory - If so what was done at that time upon said dam

Ans Yes Sir. I did they hauled some gravel upon it - It was put on the East Side of the dam when I first worked for him - ~~we~~ threw some stumps which were felled into the dam away from the dam that was all I know of

Int 6 - Did you work for Defendant upon & in repairing said dam heretofore spoken of by you in September 1851 at the time of the Service of process & at the time of the Service of the writ of Injunction upon Defendant & if so state upon what portion of the dam the repairs were being made, state fully the Condition of the dam at that time and how long were you in said work

Ans. - Yes Sir I was, the repairs were being made upon the West part of the dam on the West

Side of the Mill, the West part of the dam was torn away by water, all the west part was torn away except a few logs I mean the part between the Mill & the bank about fifteen feet. The rest of it remained the same as it had been, we had got some Stone piled in & some logs that had come out of there before & some willows and piled on top of them and some straw on top of that and some dirt on top of that. We had not finished it when the infuncheon was served & we stopped. The water drained through as we had not put stuff enough on to stop it when we were repairing it. It was not as high by ten inches as the other part of the dam, because we had not finished it. The water did not run over the dam. We were engaged in repairing the West end of the dam at this time one day & three quarters - three hands, an ox team & Cart

Qut 7 Do you know of any other repairs being made upon said dam other than those of which you have spoken since the 13th of March a year ago

Ans No sir

Cross examination by Complainant

Qut 1st

State whether that part of the dam of which you have spoken as being repaired, was built in the water or upon the land or partly in the water & partly upon the land and how much? State particularly how the same was situated

Ans - The Stone some of them, and some ~~water~~ straw was thrown into the water, that part of the dam

was built on the land, the stream or main Channel was on the other side of the mill

Int 2 - State whether or not the dam if it had been completed on the west side of the mill would have been on a level at the top with the remainder of the dam, or higher or lower and if there would have been any difference how much

Ans - It would not have been any higher or lower if it had been completed

Int 3 -

State whether or not the old dam east of the mill was on a level at the top - If not State when & how much it varied

Ans -

It was not - about two thirds of the way across from the west bank on which was the mill was four inches ^{lower} than the third on the east side

Int 4

State if that part of the dam which you were repairing or not would if it had been completed been on a level at the top with the dam on the east side of the stream and whether it was the intention of Defendant Shouts when the injunction was served to raise it to that height - State the variance if any - objected to

Ans - No Sir it would not - It would have been 4 inches lower - I don't know his intentions - he was a man that never told his ^{humble} how he was going to do a fine work

Int 5 - State whether the water run over the dam in the month of October or November 1851

Ans - It did not to my knowledge - obj to Henry W Bingham

State of Illinois
Kendall County for I John W. Crothers Master in
Chancery certify that the foregoing
deposition of was signed & sworn to by the deponent
Henry W. Bump and before me & taken by me at my
Office in Oswego said County on the 20th day of Novem-
ber, 1852 commencing at 10 o'clock am.

Given under my hand and Seal as such
Master this 20th Day of November 1852

John W. Crothers
Master in Chancery
Kendall County Ill

Deposition of Archibald Sears of the County of ^{Wayne} ~~Wayne~~ & State of Illinois a witness of lawful age produced Sworn & examined upon his corporal oath on the 8th day of March AD 1852 at the hour of ten o'clock am of said day before John M Crothers Master in Chancery & Clerk of the Circuit Court of Kendall County in the State of Illinois at the office of said Clerk in pursuance of the attached notice as a witness in behalf of Defendant David H Thouts in a certain Suit pending in said Circuit Court in Chancery wherein Morris Hadden is Complainant & David H Thouts Defendant

The said Archibald Sears being first duly sworn by me before the commencement of his Examination to testify the truth so far as he should be interrogated in relation to the matter in Controversy as well on the part of the Complainant as the Defendant testify & depose as follows to wit

Interrogations propounded by Defendant

Int -

What is your age occupation & place of Residence

Ans My age is 50 years, my occupation farmer
Residence Little Rock

Int 2^d Are you acquainted with the parties Complainant & Defendant in this Suit

Ans I Am

Int 3 Are you a Surveyor & acquainted with Surveying

Ans I Am

Int 4 Have you ever made a survey of the land in question in this Suit

Ans Yes Sir

Int 5 Are you acquainted with the following described premises, part of the South East quarter of Section one in Township 37 North Range 6 East of the 3^d P M described as follows, Beginning at a stake on the west line of said quarter in which stands 4 chains & 24 links South from the North ^{West} Corner of said quarter thence South 17° 45' East 18 chains 54 links to a white oak tree thence South 35° 50' West 3 chains & 95, thence thence South 70° 12' West 3 chains & 47 links to a stake on the said West line of said quarter which stake stands 13 chains & 90 links North from the South ^{West} Corner of said quarter, thence North along the West line of said quarter to the place of Beginning containing Six acres & 3/100 of an acre, variation of the needle being 7° East? Objected to by Complainant

Ans I do not recollect the courses & distances but the general description embraces a piece of land owned by or in possession of Mr. Shonts the Defendant and is the land on which his dam is with the exception that a small portion of the dam is on the South West Quarter of Section One

Answer objected to by Complainant

Int 6 Are you acquainted with the location of the dam of the Defendant & if so please describe its location on said piece of land & make a plat of the land with the dam on it & the Creek above the dam

Ans I am acquainted with it & it lies on the South East Quarter of Section one Township 37 North Range 6 East ~~Quarter~~ of Section one Township 37 North of the 3^d P M with the exception of a

of a small portion located on the South West Quarter of said Section one. This plat produced by me marked (A) embraces the land with the dam on it & the creek above the dam. I mean that it embraces that part of said land which is overflowed.

Int⁷ State how long the dam has been there & whether it has always been of the same height.

Ans The dam if I recollect right was built or commenced in the summer of 1836. I cannot say whether it was finished that fall or not. The height I know nothing about whether it has been raised or not.

Int⁸ Was this dam on the land on the 22 day of October 1845 of the same height that it was on the 30th day of September 1851?

Ans I do not know.

Crop Interrogatories

Int^{1st} Who was on the 30th of September 1851 the owner & in possession of the land that is adjoining to & lying north & up the creek from the land you described in your answer to the 5th interrogatory.

Objected to by Deft

Ans 2nd Morris Hadden was north & east of it up the creek from it.

Int^{2nd} How much land was Hadden in possession of that lies adjoining and up the creek from that land described in said 5th interrogatory & what was the quality of the land and whether up land or bottom land and state the particular quarter that the Big Rock Creek run through of land belonging to Morris.

Adden & make a map of said land & also of the land overflowed by the Defendants dam? Objected by Defendant

Ans. His whole farm nearly, lies north of it, some hundreds of acres & adjoining to it, some of it bottom, some of it barren & some timber & some prairie. The Creek runs through the North East Quarter of Section One & the South East Quarter. It runs through the North West Quarter of the South East Quarter of Section One, it runs through 30 acres on the north & west part. The Map here produced by me Marke (B) in that part which is colored represents the mill pond. The words & figures on this map are marked correctly so far as I believe. Answer objected by Defendant

Int 3^d State how many acres of the Complainants land if you know was flowed previous to the 30th of September 1857 by the erection of the Defendants dam and state your means of knowledge that is whether you made a Survey of Ss's land that flowed

Ans. Below the Galena road & above Shonts' line there were about 22 acres that were covered with water, I made a Survey of the land, but I can not recollect the date I would state it was some time last fall previous to the fall court

Int 4 How deep did the water stand on the 22 acres spoken of in your answer to the 3^d Cross interrogatory

Ans. In some places there was but little water in other places it runs too deep to wade, but

This tract was first described by Archibald
 Orr in answer to the Commission of his
 Majesty's Government



S. E. 1/4 of sec. 1 T. 37 N. R. 6 East

The above Plot of D. H. Shantz's Mill-Pond was produced
 by me on my examination & marked (A)
 A. Sears

The above courses are reckoned from the present Magnetic Meridian 1852

A. Sears Surveyor

H. Shontz

Map

I had no means of knowing its depth as I travelled round it

Int 5 State whether or no Big Rock Creek runs through the following described land, that is to say, about 30 acres of the North part of the North West Quarter of the South East Quarter of Section one in Township 37 North Range 6 East of the Third principal Meridian & also about 60 acres of the South & West part of lot number one of the North East Quarter of Section number one aforesaid, and how does the said land or any part of lie in reference to the said Galena road when it crosses said Creek

Objected to by Defendant

Ans - It does run through both of said described pieces - The first of said pieces lies all of it, South of the Galena Road and something like nearly two thirds of the other also lies South of it, on the first described piece there is nearly 12 acres between the bluffs & ^{1 of the other about 10 acres} ^{between the bluffs & the water} ^{covered with water} ^{excepting} some knolls, the water on the last mentioned piece is not deep on the North part

Int 6 State whether or no there is a good mill seat or water power upon the lands of which you have spoken in your answer to the last interrogatory & was formed by the waters of Big Rock Creek if your answer is yes state how said water power is affected by the erection of Defendants dam

Objected to by Plaintiff

Ans I do not know whether it is a good mill seat or not - If there is a mill seat there Mr Shonts dam would injure it - It would back up the water and over flow it

Int 7 State whether or no if a dam were erected near Complainant's South line & above it, it would not create as good a mill power as Defendant has & not overflow Complainant's any more than it is by the erection of Defendant's dam
 Objsd to by Defendant

Ans I think if a dam were raised to the same height it would flow back further, I should think there was some fall between Hadden's South line & the dam, as to the amount it is guess work. The distance from the dam to the South line is 16 rods on the East bluff & about 25 on the West

Int 8 State how high the Defendant could raise a dam at its present location without flowing the lands of Complainant

Ans - If the dam was away from there & the water permitted to take its natural course I do not think he could raise it two feet. Still I may be mistaken

Int 9 Do you wish to be understood as swearing that there is two feet fall between the dam & the lands of the Complainant which you say is 16 rods on the East & 25 on the West

Ans I do not

Int 10 State how much fall there is as near as you can judge

Objsd to by Defendant

Ans - I have never taken a level - I have stated that I think it could not exceed 2 feet. I have no means of judging correctly about it

Int 11 State whether the water is backed up above when it overflows so as to cause it to rise above

the natural Current + if so to what extent
+ to what distance

Ans When I examined it the water seemed
to be higher than it used to be but I never
saw it except when we crossed it above the
bridge when I surveyed it I examined about
thirty four or five rods higher up but did
not know how it was previously - I could
not tell whether it was above its natural
current, because I never examined it when
the dam was down

Int 12 Was you acquainted with the county previous
to the Government Survey

Ans I was

Int 13 Did Mr Shonts have a dam when his dam
is

Ans I do not know whether he was in the country

Int 14 State whether the line between the complain-
ant and the Defendant which is 25 rods above
the dam was not the old claim line between
the claim of the complainant and the claim
which is now occupied by the Defendant
Objected to by Deft

Ans - I believe it was

Int 15 Was you present at the Land Sale when
these lands were purchased of Government
objected to

Ans I was

Int 16 Did the inhabitants or claimants form any

rules or regulations for the purpose of securing their respective right at the land sale or come to any agreement or understanding in relation thereto - if you state what they were

Ans.

Objected to

The Regulation that was entered into by the People of the Township was that they should deal to each other according to their claims, provided each one furnished his quota of money - The Resolution of the meeting was that when one person owing a part of a quarter had the money, he was to buy the land & deal to the others according to their claims within a specified time

Answer objected to

Put 1st State whether the parties to this Suit or either of them were present at this meeting referred to in your last answer or objected to these regulations. State what you know on the subject - Objected to by Deft

Ans

It is my impression they were both present but I cannot say positively. I would state further that in Chicago a day or two previous to the sale there was a meeting called of those of the inhabitants of the Township present for the same purpose, at which meeting the parties to this Suit I think were both present - at that meeting it was agreed that the old claims should be respected and that they should deal & paid accordingly, and I think the parties in the suit acted in accordance therewith

State of Illinois } Answer objected to by Defendant -

Kendall County } On this Thirtieth day of March 1853 at the Village of Little Rock in said County and during the talking

of Evidence in the Cause of Morris Hadden
vs David H Thout personally came before
John M Crothers Master in Chancery taking
Evidence in said Cause Archibald Sears
whose Deposition was taken by said Master
in this Cause on the 22^d day of March 1852
who being first Sworn on oath says that
On due reflection he is satisfied that his an-
swer to the 14th Cross interrogatory of said
Deposition is erroneous in this that he
therein says in speaking of the meeting
"The parties to this suit were both present"
Whereas on reflection I am convinced
the Complainant was not present, and wishes
his said Deposition corrected in this parti-
cular

Archibald Sears
Subscribed & Sworn to
before me this 31st day of March
1853 and Amendment concurred
in by parties John M Crothers
Master in Chancery

Int 18 State whether Mr Thout has not stated to you
that he and Mr Hadden deeded to each other
according to their claim lines
and He has

Int 19 State whether the land you have described
in your answer to the 5th direct interrogatory
was ever owned by the Complainant If so State
whether Complainant purchased the same by
an agreement with the Defendant, and whether
the same land was deeded by the Complainant

to the Defendant and what was the consideration therefor, whether there was any other or different Consideration only that the Defendant had a Settlers claim upon the land, and the Defendant furnishing the money to purchase the land from the Government of the United States

Objected to by Defendant

Ans. If my recollection serves me right and if it does not it can easily be corrected, the Complainant did deed that part of the South ^{East} quarter of Section one Township Thirty Seven North of Range Six East of the third principal Meridian which is now in possession of said Defendant. As to whether there was an agreement specially between the parties I don't recollect that I ever heard them say - I think the same land was deeded by the Complainant to the Defendant I know of no other consideration for said deed except that the Defendant had a Settlers claim upon the land and furnished the money to purchase it from the United States - I can't say whether the Defendant furnished the money at the time of the purchase - It was a rule made in our Township that if the money was not paid at the time they were to allow interest on it

Put 20, Was you a Subscribing witness to a deed from James W. Hadden ^{Elect. Hadden} to Morris Hadden of the South East quarter of Section one, Township Thirty Seven North Range Six East of the third principal Meridian

Ans. I was, That deed is here annexed and marked (C)

Direct examination resumed

Int 1 Please state whether you mean by your answer to the 1st & 2^d Cross interrogatories, an enclosure, if not what kind of possession do you mean to swear that Hadden had?

Ans He live on the land adjoining and exercises ownership over this land - There is partial enclosures, but I think that at the time I surveyed it, it was not enclosed.

Int 2 How do you know that the flowing at the time of your survey for Hadden was occasioned by the dam

Ans I know from the water not flowing the land when the pond was drawn off

Int 3 Was it a high or low stage of water in the Creek at the time you made the survey for Hadden

Ans - I cannot say positively that it was either

Int 4

Can you say positively that there was not sufficient water in the Creek to have flowed the land to the same extent, if the dam had not been there

Ans I Can - Archibald Sears

State of Illinois
Kendall County } ss;

I John M Crothers
Master in Chancery & Clerk of the Circuit
Court of said County, certify that the foregoing
Deposition was sworn & signed by deponent
Archibald Sears & was taken before me at my

Office in Oswego Kendall County Illinois
 Commencing on the 8th day of March
 AD 1852 at the hour of 10 O'clock am & con-
 tinuing till Completed. I further certify that
 the enclosed papers marked A & B are
 the papers referred to by witnesses.

In testimony whereof I have
 hereunto set my hand & Seal of
 said Court at Oswego in said County
 the 9th day of March AD
 1852 John M Crothers
 Clerk

Deposition of Archibald Sears a witness
produced examined & sworn before John M Crothers
Master in Chancery & clerk of the Circuit Court in
& for the County of Kendall & State of Illinois at his
office in the Town of Osage in the State & County aforesaid
said on the 19th day of November A.D. 1852 by Complainant
in a certain cause now pending in the Kendall
County Circuit Court in the State aforesaid on
the Chancery Side of said Court the same being
a bill for injunction, wherein Morris Hadden is
Complainant & David H Shouts Defendant - Said De-
position to be read in evidence on the trial of said
cause in behalf of said Complainant said wit-
ness having been duly sworn in answer to the
several interrogatories propounded to him by
Complainant & Defendant depose as follows
on the production of this writ, defendant enters an objection

Deposition of Archibald Sears

Put 1st by Complainant -

What is your age occupation & place
of residence

Ans Occupation a farmer age 50 years, Residence
Little Rock Kendall County Illinois

Put 2 Are you acquainted with Morris Hadden
& David H Shouts parties to this suit & if you how
long have you known them

Ans I am - I have been acquainted with Mr Hadden
something like 20 years & with Mr Shouts
something like ten years

3 Where do the said parties reside

Ans They reside in the Town of Little Rock Ken-
dall County - Mr Hadden has resided there about

15 years + Mr Shouts I should think as much as ten
 Int 4th Are you acquainted with the location of
 Section one in Township 37 North of Range Six
 East of the 3^d principal meridian in the County
 of Kendall + of the North part of the North West
 Quarter West quarter of the South East Quarter
 of said Section + of about 60 acres of the South
 + West part of Lot number one of the North East
 Quarter of said Section? + how long have you
 been acquainted with them if you?

Objected to by Deft Solr

Ans I am acquainted with these pieces - I have
 been acquainted with them ever since the
 land was surveyed by Government

Int 5 State if you Morris Hadden was in posses-
 sion of the land described in the 4th interroga-
 tory or any part of it on the 30th day of Septem-
 ber AD 1851 or at any time before + if so what
 portion of the same, how long had he been
 in possession - Objected to by Deft Solr

Ans I believe he was in possession at that time
 of the North + West part of the North West Quarter
 of the South East Quarter of said Section one, the
 quantity of land I can not tell exactly, I should
 think as much as 25 acres on lot number 1
 I should think in the neighborhood of sixty
 acres

Int 6 Do you know of any stream of water run-
 ning thro Section No one, Township Thirty Seven
 North, of Range 6 East of the Third principal
 Meridian in the County of Kendall Illinois, and
 if so please state what stream and thro what portion

of said Section it runs and the course of said Stream

Ans There is a Stream of Water, running thro Section one, It runs thro lot No 1 of the North East Quarter and the North West Quarter of the South East Quarter - The Stream is called Big Rock ^{Creek} and it runs in a South Westerly direction

Int 7 Please State the quality kind & condition of the land thro which Big Rock Creek runs on Section number one Town Thirty Seven North Range Six East of the Third Meridian in the County of Kendall

Objected to by Dept

Ans It runs thro bottom land part of it is timber land and a part has no timber on it except brush

Int 9 Who is now in possession of the land ascribed in the answer to the 7th Interrogatory & when did he come into possession of the same & how long has he continued to be in possession

Objected to

Ans Morris Hadden owns & is in possession of part of it. Morris Hadden owns the South & West part of lot number one & the South & West part of the North West quarter of the South East Quarter of said Section about 60 acres on lot number 1 of the North East Quarter of Section one & about 25 acres on the North West Quarter of the South East Quarter of said Section I believe he came into possession of it in 1837 and has continued I believe in possession of it ever since

Answer Objected to

Int 9 Do you know any thing of a Stone quarry

& Mill Seat on either or both & which of them on Big Rock Creek upon Section Number one Township Thirty Seven North of Range Six East & if so, what their location how situated upon what portion of said Section and who was in possession of the same on the 30th of September A.D. 1857 & when did he come into possession & how long has he remained in possession of the same State all you know about said Stone Quarry & Mill Seat

Objected To

Ans I do of both a Stone quarry & a mill Seat. There is a mill Seat on the South West quarter of the South East Quarter of said Section also a Stone quarry on the South West Quarter of said Section. Deft Shonts was in possession of the mill Seat & Stone quarry on the 30th day of September 1851. I believe he came into possession of it in 1842 & has remained in possession ever since then, there are Stones projecting out of the bluff on the South East Quarter of the said Section one, it is about 20 rods or more above the mill on Morris Hadden's land. There is a fall of water on the North West Quarter of the South East Quarter of said Section in possession of Morris Hadden. I do not know whether the fall is sufficient for a mill or not — Answer Objected To

Sub 10 Do you know the amount of fall on the Creek between the last water fall mentioned in your last answer & Shonts Mill?

Ans I do not

Sub 11 Have you any knowledge of David H Shonts the Defendant making erecting or repairing

any mill dam across big rock creek at any place
or threatening to do & if so state at what place
& when & all you know in relation to it

Ans I dont know that I do know any thing
about it

Int 12th Have you any knowledge of any mill dam across
big rock creek on section number one Township
37 North Range 54 East of the 3^d principal meridian
& if so state where it is who is in possession of it
& all you know about it

Ans There is a mill dam across big rock creek
on the South West Quarter of the South East
Quarter of said section one. It is near the
North West corner of said lot. W. Thont^{the defendant} is in
possession of it & has been I believe since 1842.
I think from the water below the dam to
the top of the dam is about 6 feet. The dam
has been there about 15 or 16 years - a por-
tion of it has been carried off I can not say
when some of it went out some years ago &
some is out now, they have saved since the
first went out

Int 13th State if you know the amount of fall be-
-ween Thont's Mill dam & the South line of
the land that you have described as in the
possession of the complainant - objected to

Ans From the top of the water on Morris Had-
dens South line to the top of the lower end
of the plank under the waste gate, the fall
is 8 inches as near as I could take the level

Int 14 State if you know what has been the effect
of the dam previous to & up to the 30th of Septem-
ber 1851 as to obstructing the current of Big Rock

Creek & as to its overflowing its banks above
 & as to its effects upon the land upon the north
 West quarter of the South East-quarter & the South
 & West part of lot number one of the North East
 Quarter of Section one aforesaid & as to the tim-
 ber Soil herbage of the same & upon the Stone
 quarry & mill Seat thereon & state all you know
 about it

(Objected to,

Ans The Dam prevented the stream from flowing
 in its natural manner & caused it to overflow
 its banks. It overflowed or surrounded some
 thing like 22 acres when I surveyed it about a year
 ago. I surveyed all the bottom from the old Galena
 Road to Haddens South line & made it about 24 acres.
 It set it back to the bridge on the old Galena
 road about 120 rods - there were some islands
 or knolls covered with brush, the timber having
 been principally taken off (in the 22 acres) which
 were out of the water. About 2 acres of the land
 referred to as being surveyed by me near the
 road was not overflowed. There is a fall in
 the stream above Haddens South line, whether
 sufficient for a mill seat or not I can not say
 raising water would bring the water back
 on this fall, if there is a mill seat it would
 insure it, but whether there is I do not know.
 All I know about a quarry is that there are
 stones projecting out - whether there is a quarry
 there I do not know. The effect probably would
 be to kill the timber but which was cut off after
 the pond was raised & to prevent the grass from
 growing.

Int 15 Who is in possession of the land described by

by you in your last answer as covered & surrounded by water & how long has he been in uninterrupted possession thereof

Ans Morris Hadden has been in the possession of it I think about 15 years

Int 16. Please state if you know or give us your best judgment if you do not know how high a dam may be erected if at all at Shouth Mill where the dam now is without setting the water back upon Morris Haddens land & also how high it may be erected without setting it back as it was when you surveyed it?

Ans I do not know from the top of the water below the dam a raise of one foot would bring the water on a level with the water ~~as it now is~~ as it now is at Haddens South line. From the top of the water below the dam a dam raised 5 feet would set the water back as far as it was when I surveyed it - that is my judgment

Int 17 Would a dam raising the water one foot from the top of the water immediately below the dam produce hydraulic power sufficient for milling purposes or for the purposes of this Mill of Shouth

Ans I should think it would not

Int 18 What kind of mill is the one of Shouth

Ans A Saw Mill

Int 19 State whether or not big Rock Creek is now running within its natural current - if not in what degree it varies from it and whether any part & if so what part of said dam is now down

Ans I think it is not. It sets back I should think above Haddens South line. The west part of the dam what they call the waste gate is out

that however does not draw the water down to its natural channel as it originally was
 Int 2^d Do you mean to be understood that a dam one foot high as before expressed would set the water back to Haddens line when the stream was running within its banks in its natural channel, or not?

Ans I mean to be so understood
 all the above questions objected to by Dep.

Wheat Crop Examined by Defendant

Int 1st In measuring the height of the dam did you measure from the bottom of the Wheel or from the top of the water as it now is below the dam

Ans From the top of the water as it now is below the dam

Int 2^d Do you know the distance from the bottom of the Wheel to the top of the water below the dam

Ans I do not

Int 3^d Will you state the precise location of the dam, where & upon what part of the land it is situated upon the lands you have described

Ans The dam is on the on the South West Quarter of the South East quarter of Section one. It is near the North line of this 40 acre lot & the West end of the dam comes near the West line of the Quarter

Int 4 Do you know of any quarry on the West side of the stream above the line between Morris Haddens & D H Shouts

Ans I do not

Int 5 On which side of the dam is the Stone Quarry

Ans It is on the East Side of the Creek below the dam
Int 6

Does Morris Hadden own or has he possession of the
land on the East Side of the Creek next above
& North of D H Thouts? (Objected to)

Ans I Can not say positively but it is my impress-
sion that he does

Int 7 Does Elijah Hadden own or is he in possession
of lands on the East Side of the pond & above the
dam - if so please describe it

Ans I believe he has - I don't know that Elijah
Hadden owns to the Creek I think he does not

Int 8 Have you any means of knowing whether
he does come to the Creek - If so state them

Ans I Surveyed the land for James Hadden when
he owned it

Int 9 Do you know that Morris Hadden is in
possession of the lands for 60 rods immediately
above the line between Morris Hadden &
D H Thouts on the East Side of Big Rock Creek

Ans He is reputed to own it & have it in possession

Int 10 Did James Hadden once own & have
possession of the lands described in the last
interrogatory on the East Side of Big Rock Creek
& if so do you know of his giving up possession
of it & if so to whom? (Objected to)

Ans I believe he pre-empted it - My impression
is he did it to Morris Hadden

Int 11 Was the mill dam of which you have
spoken any higher on the 30th of September 1857
than it has been for the last 15 or 16 years, or any
higher than it was in the year 1845

Ans I do not know

Direct examination resumed

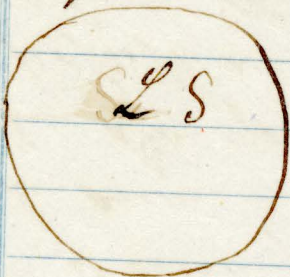
Int. 1

Are you a practical Surgeon

Ans I believe I am I profess to be

Archibald Sears

State of Illinois }
 Kendall County } I John M Crothers Clerk
 of the Circuit Court & Master in Chancery
 of said County - Certify that the above Deposition
 was taken before me at my office in oswego in
 said County on the 19th day of November 1852
 Commencing at 9 o'clock A.M. & that the same
 was subscribed & sworn to before me by said
 Deponent -



In Testimony whereof I hereunto set
 my hand & Seal as such Master
 in Chancery & also the Seal of said
 Circuit Court at oswego in said County
 this 19th day of November A.D. 1852

John M Crothers Clerk
 & Master in Chancery

Deposition of Nathaniel J Robbins of the
County of Kendall & State of Illinois a witness
of lawful age produced Sworn & examined upon
his Corporal oath on the 8th day of March A.D.
1852 at the hour of Am of said day before John
M Crothers Master in Chancery & Clerk of
the Circuit Court of Kendall County in the State
of Illinois at the office of said Clerk in Ossage
in said County in pursuance of the attached
notion as a witness in behalf of Defendant
David H Shonts in a certain suit pending in said
Circuit Court on the Chancery Side thereof wherein
Morris Hadden is Complainant & David H Shonts
Defendant

The said Nathaniel J Robbins being first duly
Sworn by me before the commencement of his exam-
ination to testify the truth so far as he should be
interrogated in relation to the matter in contra-
versy as well on the part of Complainant as the
Defendant testified & deposed as follows to wit

Interrogatories propounded by Defendant

1 Int

What is your age occupation & place of Residence

Ans My age 47 years, Residence Little Rock Kendall
County, my occupation farmer

Int 2 Are you acquainted with the parties complain-
ant & defendant in this suit & how long have you
known them

Ans Yes I am - I have known Mr Shonts about
9 years & Mr Hadden I think 14 years

Int 3 Are you acquainted with the premises own-
-ed by the Defendant, If you state how & where they are situated

Ans - I think I am, they are situated upon Big Rock Creek about half a mile below the old Galena Road on the creek on Section One Range Six East I think

Int 4th Are you acquainted with the location of Defendant's dam & how long have you known it

Ans I think I am - I have been acquainted with it I think 15 years since it was first built I was there at the time it was built

Int 5th To whom did the land belong at the time of the erection of the dam - objected to by by Complainant's Solicitor

Ans It was Government Land - ~~now~~ objected to by Complainant's Solicitor

Int 6th Do you know how high the dam was when it was erected

Ans - I do not

Int 7th Do you know whether the dam of the Defendant is higher or lower now than when first erected?

Ans I do not know but I think it is higher

Int 8th When was it made higher

Ans Two years ago I think it was raised higher I had heard say it was

Int 9th Did you ever know the number of feet head & fall of the dam

Ans I could not say whether I ever did or not I do not recollect now

Int 10th What part of the section is the dam on?

Ans I could not tell

Int 11th Was the dam of the Defendant where it now is on the 22nd day of October A.D. 1845?

Ans I think it was I don't know that it has been moved, some part has been washed out & rebuilt in the same place

Int 12th Was the land that would be flowed by the filling of the Pond on the 30th day of September

Ad 1857 or that was flowed at that time
the same that was flowed when the same belong-
ed to Government and the same that was flowed
on the 22 day of October 1845 Objected to by Compls Solr
Ans Yes Sir I think it is (Answer Objected to by Compls Solr)

Exop Interrogatories propounded by Complainant
Int 1st

State in what County the dam which you have spoken of
is situated

Ans Kendall

Int 2 State whether or not the waters of Big Rock
Creek are obstructed by the Defendants dam
which you have spoken of Objected to by Defts Solr

Ans Not just now I think it has a clear
passage now I do not think it sets back any

Int 3 State whether or not the waters of Big Rock
Creek were obstructed by the Defendants dam
on the 30th day of September 1857 and whether
or not the Defendant was at work erecting
that dam about that time

Objected to by Defts Solr

Ans The waters of Big Rock Creek were obstructed
by the dam He erected the dam or repaired it about
that time or along after Harvest in the latter
part of the season - I do not recollect the
time the water was let in

Int 4 State as near as you can the course
of Big Rock Creek for one mile above the
dam - (Objected to by Defts)

Ans It ~~is~~^{was} as near as I could guess bear-
ing a little to the West of South

Int 5 State whose land lies directly north of

the dam up Saw Creek & who was in possession of it on the 30 of September 1851 - Objected to by Deft

Ans Mr. Shonts has ^a piece lying North, how far up it runs I cannot tell & Morris Haddens is North of that. They are in possession east of his own land
Objected to by Defendant

Int 6th State how near the dam Morris Haddens South line is & whether his land is situated on each side of the creek above the dam (Objected to by Deft)

Ans I should think it was within probably 30 rods & lies on both sides

Int 7 State how far the waters of Big Rock are backed up by the Defendants dam (Objected to by Deft)

Ans Somethg like half a mile

Int 8 State what kind of land is on each side of the creek & adjacent thereto for half a mile above the dam, whether it is bottom land ^{timber land} or whether or no any stone quarries are upon the land (Objected to by Defendant)

Ans On the East Side is the bluff & on the West Side is bottom & has formerly been covered with timber. Whether the bluff runs on the East Side immediately next to the Creek all the way down I cannot tell. The bottom land is some times 40 rods & some times 30 rods wide I should think I do not know whether there are any stone quarries on it or not - (Answer objected to)

Int 9 State whether the bottom land you have spoken of would be flowed by the Defendants dam on the 30th day of September 1851 or was flowed (Objected to)

Ans A part of it was flowed about that time I could not say how much, probably about two thirds of the highest part was not flowed

Int 10 State whether or not the water on the 30th day of September

1857 Should be raised to run over the Defendants dam, whether the dam would overflow any of Morris Hadden's lands if so what lands and State all you know about it (objected to by Deft)

Ans Will I Should think about two thirds of the land of Mr Hadden below the road between the bluffs would be overflowed when the pond was full the road is the old Galena road about a half mile above the Saw Mill

Int 11 State how far you reside from the dam and whose land adjoins you on the East & on the South
Objected to

Ans I live ^{something} over half a mile above the dam Morris Hadden adjoins me on the East & David Shonts on the South & Morris Hadden owns a small 3 cornered piece on the South

Int 12 State whether you have been in the habit of crossing Big Rock Creek at the old Galena Road which you before spoke of from the time of the erection of said dam till the 30th of September 1857 & how far do you live from said crossing & how often

Ans I have been in the habit of crossing since the bridges were erected or near there a few rods above since the time the dam was erected some times once a week, sometimes two or three times a week, some times two or three times a day

Int 13 State from your Observation in crossing the creek as stated in your answer to the 12th Cross in interrogatory whether the dam of the Defendant did not flow the lands of Morris Hadden in the year 1857 and on or about the 30th of September 1857 worse than it did when it was first erected & whether every time the dam has been erected by the Defendant

if it has not flowed it worse. Objected to by Deft

Ans I think after the dam was repaired it did flow back further than it did when it was first erected. I never observed that it flowed back every time the dam was repaired. I do not know that it flowed back on or about the 30th of September 1851 further than it did before.

Int 14 State whether the Defendant did or did not some three or four years ago raise the said dam one log higher than it was originally built & whether or no you then observed that the lands of Complainant were more overflowed than they were before.

Ans A part of the dam has gone off several times & was rebuilt. I can not say whether it was raised any higher. I thought however that the water set back further. I noticed this within two three or four years.

Int 15 State whether any of the land or timber of the Complainant which lies between the dam & the Bridge has been injured or damaged by the overflowing of the water occasioned by Defendant's dam.

Ans I could not say that the land is materially injured if the water was now let down. The timber was principally cut off since & before Mr Hadden came there. Some that was left died.

Int 16 State what was the effect of the water on the bottom land between the dam & bridge on or about the 30th of September 1851 as the Defendant then had the dam erected (Objected to by Deft)

Ans The water overflowed part of the land of course it could not be ploughed.

Int 17 - State what effect the water has ^{on} other lands that are not overflowed which are adjoining the lands that you have spoken of that were overflowed & whether or not it causes large bunches of willows to grow in the bottom land

Objected to by Deft

Ans I can not say what effect the water has upon the lands not overflowed. Willows grow in the bottom, but whether the water flowing over the land makes them grow I cannot say

Int 20 State whether or no the lands behind the dam & budy were good meadow lands or not

Objected to

Ans I think they were naturally good meadow lands

Int How far above the line where the water by means of the dam overflowed the land does the water set back so as to fill the banks or nearly so, though the land on either side may not be actually overflowed

Objected to by Deft

Ans I can not say probably eighty rods it sets back - It is guess work

Int How far are the banks of the Creek above the usual flow of the water in its ordinary current

Ans Probably about 2 feet

Int State whether or not in your opinion the raising of the water so as to fill the banks will not have the effect to saturate the land with water so as materially to injure it, though it may not be actually overflowed & if in your opinion it is so state what the effect would be

Objected to by Deft

Ans I think for produce it would affect the land. I think for grass it would not materially. Where there is timber I think it would injure it when it comes pretty much to the surface of the land.

Int State whether there were willows on the land before the dam was built.

Ans I do not recollect certainly but I think there were some.

Direct Examination resumed

Int 1 Do you remember the year when the floom was moved from the East side ^{to the West} of the Creek & if so when.

Ans I recollect its being moved but can not say how long since.

Int 2 Did you help move the floom? did Doty also.

Ans I think I did not but can not say whether Doty did or not.

Int 3 In your answer to the 13th Cross interrogatory when you speak of the waters flowing back faster than when the dam was first erected was not that flow occasioned by unusual rains & not by the raising of the dam.

Ans I do not think that it had risen by unusual waters but by the rise of the dam. I thought so then & I think so still.

Int 4 Do you know of your own knowledge that the dam has ever been raised any higher since it was first built.

Ans I say I do not only from the appearance of the water. N J Robbins
State of Illinois

73
Kendall County) ss. I John M Crothers
Master in Chancery & Clerk
of the Circuit in & for said County Certify that the
forgoing deposition was subscribed & sworn to
before me by Nathaniel J Robbins & taken by me
at my office in Oswego Kendall County Illinois is
on the 8th day of March AD 1852 Commencing at
10 O'clock A M — In testimony whereof
I have unto Set my hand & the Seal of
said Court at Oswego in said County
this 9th day of March AD 1852
John M Crothers
Clerk



Deposition of John Warner Samuel B Bartlett
& Isaac Hatch

Witness produced examined & sworn before John
Mc Crother Master in chancery in & for the County
of Kendall & State of Illinois on the part of the
Defendant in pursuance of an order of reference
in a cause in chancery removed by Change of
Venue from the Circuit Court of Kendall County
to the Kane County Circuit Court wherein Morris
Hadden is Complainant & David H. Shoult is De-
fendant & taken in pursuance of previous
agreement of parties & the order of said Master
fixing the time for taking evidence in said cause
at the office of Robert N. Matthews in the Village
of Little Rock in said County of Kendall and parties
having commenced taking evidence on the part
of Complainant on the 24th day of February 1853
and on the part of Defendant on the 26th day of
said Month & continued from day to day said
Witness being first duly sworn by said Master
do depose as follows

Deposition of John Warner

Int 1 By Defendant

Ans State your name residence age & occupation
My name is John Warner Residence Kendall
County Illinois age 30 I am Millwright & Grindings
& Sawing

Int 2 Do you know the parties to this suit & if so how
long have you known them

Ans I am acquainted with Mr. Shoult I have known
him about 3 years. I am not acquainted with Complainant

Int 3^d Do you know the Saw mill known as Shonts Saw mill - If so State its location - If you have made any repairs on said mill what were the repairs? When made - State to the best of your knowledge & recollection
Objected to

Ans^r I know a mill known as Shonts Saw Mill - It is located on Big Rock Creek in the County of Ben Hall & what Town I could not tell I have made repairs on it - I put in a new water wheel for the saw & some other repairs - The repairs were made three years ago this next June, ^(as was objected to)

Int 4 State if you know what number of feet fall there was at the dam & what your means of knowing edge at that time
(Objected to)

Ans There was if I recollect 7 feet 7 inches & a half I levelled it from the top of the dam to the top of the water below

Int 5 If you were restricted to any particular number of feet fall of water by Defendant Shonts State what that fall was
Objected to

Ans I should state I was restricted to 7 feet 7 inches & a half

Int 6 State if you confined your repairs to the restrictions so given you by Defendant Shonts
Objected to

Ans Yes Sir I did

Int 7 State the amount of repairs & how much you received for the same
(Objected to)

Ans My repairs amounted to fifty Dollars & Expenses I received that amount

Cross examined by Complainant

Int 1 Did the level you say you made enable you to ascertain any thing more than the head of the

water there would be in the pond when full
If so state what further information you
obtained by it

Ans No Sir I don't know as I did

Int 2^d Did you ascertain by that level how far up
the creek the pond would extend on the water
set back or where that level would strike the sur-
face of the water in the stream

Ans No Sir I did not

Int 3 Did you then ascertain how much fall there
was if any below the dam? or can you now state
how much fall there was if any? and was there
any fall - please state fully how much (Objected to)

Ans There is some fall below the dam, but I could
tell how much I did not level it

Int 4 What part of the dam was it on that you took
the level was it at either end or in the middle
or at some other point please state particularly

Ans It was as nigh the middle as I could tell
probably a little more on the East side

Int 5 State whether or not any part of the dam had
then been recently been torn away & if you
what part & how long before you made the repairs
was it, and had the breach been repaired & built up
at that time (Objected to)

Ans I could not say whether any part had been torn
away recently but it was in good repair when I left

John Warner

Subscribed taken & sworn to before me at the office
of R. A. Matthews in Little Rock, Kendall County
Missouri February 26th 1853

John H. Crothers, Master in
Chancery Kendall County Missouri

2 days

adjourned until March 30th 1853

77
April 1st 1853 Examination by Defendant
Resumed

Samuel B. Bartlett Sworn

Interrogatory 1st -

Are you acquainted with the mill & the dam on Big Rock Creek originally built by Elyah Pierce & since owned and occupied by the Defendant David H. Shouts near Morris Hadden on Section One Town 37 North Range 6 East of the 3^d Principal Meridian. If so state what was the height of the dam in 1840, 1843 & in September or the four part of the fall of 1851 (Objected to)

Ans I am acquainted with the mill though I don't know the survey lines there & don't know what section it is on - In the winter of 1841 I put in a water wheel - the dam was about 7 feet & 10 inches high - In 1843 I think it was nearly the same - I have no knowledge of the height of the dam in September or four part of the fall 1851

Int 2 What was the height of the dam in 1851

Ans Well it was 6 feet in some places & in some places 7 feet & 6 inches

Int 3 What is your age occupation place of residence

Ans My age is 37 years. I formerly worked at millwright business, my residence Little Rock

Cross Examined by Complainant

Int 1 Do you know where the line between Shouts & Hadden crosses the Big Rock Creek

Ans I do not know for certain I know the fence line above the mill

Int 2 did you ever take a level of Big Rock Creek from any point above the mill to the mill if so state from what point & the result

Ans I took a level from the mill to the East end of the dam and from that to a stump standing 30 or 40 feet above the mill. It was to ascertain how high the water stood in the mill or how high the dam was. It was this winter

Int 3

Warren B Bartlett

2 days

Subscribed & sworn to before me this 15th day of April 1853 at Little Rock John M Crothers M C

13

Sworn Hatch Sworn

Int 1

What is your age occupation & place of residence

Ans My age is 37 my occupation buying & selling goods at present - I live in Little Rock

Int 2 Are you acquainted with the mill & dam on Big Rock Creek originally built by Elijah Pierce & since owned & occupied by Defendant Shouts near Morris Haddens, if so state when the same was built & what was the height of the dam in 1838 1843 & in September or forepart of the fall of 1851?

Ans I suppose I am acquainted with the mill & dam I first knew it in the spring of 1838. I attended it at that time I should think 3 or 4 weeks at that time I should think the dam was somewhere from 7 feet 8 or 9 inches to 8 feet - In 1843 my best opinion is it was not as quite as high in September or fall of 1851 I should think it was lower than in 1843 I should think not more than 7 feet & a half on an average

Cross examined by Complainant

Int 1 Does the dam of the Defendant set back the water

of Big Rock Creek upon the lands of Complainant
& if so to what extent how much land does it
overflow according to the best of your judgment

Ans Will Sir I dont know any thing about the lines &
Could not tell any thing about the quantity of land - I should
suppose in high water it set back to the Galena road

Isaac Hatch

Subscribed & Sworn to before me this 1st day of
March 1853 at Little Rock

2 days

John M Crothers

Master in Chancery

State of Illinois
Kendall County } I John M Crothers master
in Chancery of said County Certify & Report that the
above depositions of John Warner Samuel Bartlett & Isaac
Hatch were taken by & before me & subscribed & sworn to
before me at the office of J. N. Matthews in Little Rock
in said County at the times certified to at the bottom of
said depositions respectively, that those & the depositions
of Archibald Sears Nathaniel Robbins & Wm Bingham
herewith enclosed & which were also taken & sworn
to before me at the times & place & in the manner certified to
at the bottom of said depositions were all taken by the
consent & in the presence of the parties & their respective
Solicitors & that the same are all the evidence pro-
duced before me by said Defendant in said Cause

In testimony whereof I hereunto set my
hand & Seal this 22nd day of April
AD 1853

John M Crothers

Master in Chancery



Sold by
John C. Clark,
68 South St.
Boston.

Morris Hadden
vs
David H Thonts } In Chancery - Bill for injunction

Depositions of Robinson Doty Jesse Pease
& James M Hadden witnesses produced examined &
sworn before John H Crocker Master in Chancery in
& for the County of Kendall & State of Illinois at the
Village of Little Rock in said County Commencing
on the 24th day of February AD 1853 on the part of
Complainant in the above entitled Cause to be
read in evidence on the trial thereof on the part
of the Complainant & which said Depositions were
taken in pursuance of an agreement of the parties
fixing upon the said time & place for the purpose
of taking testimony in said Cause entered into
before said Master - said witnesses having been
first severally & duly sworn depose as follows
to wit

Robinson Doty Sworn

Int 1st by Complainant

What is your name age occupation &
place of residence

Ans Robinson Doty is my name - age forty, occupa-
tion a farmer my residence Little Rock, Kendall
County & State of Illinois

Int 2 Are you acquainted with the parties in
this Suit that is to say Morris Hadden Complain-
ant & David H Thonts Defendant & how long have
you known them

Ans I am. I have known them both nearly
ten years

Int 3 How far do you live from them & each of them

& how long have you lived within that distance of them

Ans About one mile I should think as near as I can come at it. About the same distance from each. I have lived within that distance about Ten years

Int 4 Upon what section & quarter section of land do you reside & in what Township & Range

Ans I am on the North East quarter of Section Two Township 37 North Range 6 East of the 3^d Principal Meridian

Int 5 Do you know upon what section & quarter section of land Morris Hadden resides & if so please state it

Ans He resides on Section one on the North East quarter I think in Township 37 Range 6 East of the 3^d Principal Meridian

Int 6 State if you know upon what particular section Township & Range David H Shouts resides

Ans on Section one Township 37 Range 6 East of the 3^d Principal Meridian

Int 7 On what particular subdivision of that section does he reside

Ans I think it is the South East quarter

Int 8 On what part of that quarter

Ans The west half I think of the South East quarter

It is now admitted by the parties that the line between the South East & South West quarter of said Section one runs through the house of Defendant Shouts where he now resides & that a memorandum be entered herein of said admission

Int 9 Are you acquainted with the subdivision of the North

East Quarter of Section one so as to state in what direction the Subdivision line runs
(Objected to by Defendant)

Ans I am not

Int 10 Do you know where lot number one of the North East Quarter of said Section number one is located

Ans No Sir I could not tell

Int 11 Is there any road or public Highway running by the dwelling house of Morris Hadden the Complainant in this Case & if so in what direction does it run & by what name is it known

Ans There is a road I run, nearly West bearing a little North. It is called the Chicago & Galena Road

Int 12 Do you live upon any road or highway & if so upon what road?

Ans I do live upon the road described in my last answer

Int 13 How near to this road & upon which side of it does Defendant Shouts live?

Ans I should say he lived a hundred rods South of this road, perhaps more but I should say that

Int 14 Does any Stream of water Cross the Chicago & Galena Road between your house & the house of Morris Hadden

Ans Yes Sir

Int 15 What Stream is that

Ans Big Rock Creek

Int 16 Is Big Rock Creek bridged on that road & if so how far from the house of Morris Hadden

Ans It is about 30 rods from Morris Hadden's house

Int 17 What is the make of the land at the place where the bridge crosses on each side of the Creek

Ans At the East Side it is a high bluff, on the West Side it is bottom land so called

Int 18. How near the bluff on the East Side does the Creek run

Ans It runs close to the bluff at the foot of it

Int 19 How wide is the bottom land on the West Side of the Creek

Ans About Eighteen or twenty rods

Int 20 How far up & down the Creek does the bottom land extend

Ans Not over a hundred rods down I should judge - How far up I could not say

Int 21 Does the bottom land within your knowledge extend any distance above the bridge & if so what distance

Ans It does a mile or more

Int 22 How far up & down the Creek does the bluff on the East Side of it extend

Ans I should judge a mile or more both ways

Int 23 Is there any bluff on the West Side of the Creek where the Chicago & Palena road runs & if so how far from the bridge is that bluff

Ans There is Eighteen or twenty rods from the bridge

Adjoined till 9 o'clock tomorrow morning

Int 24 How far does the bluff up & down by Rock Creek on the West Side of the bottom land you have spoken of extend

Ans I should judge Eighty or ninety rods below the road & rather further above I should judge

Int 25 State whether or not the bottom land you have described about is enclosed with a fence

Ans A part of it I think is - all below the road & a part of it above

Int 26 How much above the road

Ans I should judge from four to eight acres

Int 27 Who is in possession of any one of the bottom land

So enclosed

Ans Morris Hadden

Int 28 How long has he been in possession

Ans Nearly ten years. I don't know how much longer

Int 29 Please to describe the said bottom land particularly as to the quality of soil whether it is timbered land or otherwise & how it is if not timber land

Ans In places it is wet - some slough - in other places it is dry land & has been timbered I should judge from the stumps

Int 30 Please to state whether it is adapted for meadow or cultivation under the plough or to what purposes may it be properly applied

Ans A portion of it might be ploughed I should judge the balance would be better suited for meadow

Int 31 Is there now any timber standing or growing on said & if so upon what part of it & what is the kind & quality of the timber?

Ans There is very little below the road on the bottom below the road the timber consists of willows mostly a few plum bushes & there may be a few larger trees, but a few if any - There is not much above the road as far as the bottom is fenced I think. The quality of what timber there is above the road is about the same as that below

Int 32 State whether or not the Chicago & Calumet road crosses the bottom land you have testified to, if so upon what section & particular subdivision of the section

Ans It does on section one Township 37 Range 6 East of the 3^d Principal meridian on the North East quarter I should think

Int 33 How far above the South line of the North East quarter

Ans About 40 rods, a trifle over I should judge about 40 rods

Int 34 State whether Big Rock Creek or any other Stream & if so what Stream runs through or by the side of said bottom land between the bluffs before described by you
(Objected to)

Ans Big Rock Creek runs ~~between them~~ through them

Int 35 What is the course or direction of Big Rock Creek as it runs at this place

Ans It runs South bearing a little West

Int 36 State whether or not, if you know the fact, Big Rock Creek is now confined within its natural banks or channel
(Objected to)

Ans I know nothing to the contrary

Int 37 How long since you saw the Creek

Ans I think I was across the last Sabbath & saw it across by the Galena road

Int 38 Does Big Rock Creek when it flows in its natural Channel & unobstructed flow over any part of the bottom land you have described in your testimony & if any what part of it & how much

Ans I think it does not flow over any part of it except in high time of water

Int 39 Is the said bottom land or any part of it now overflowed by the creek
(Objected to)

Ans I don't know whether it is or not

Int 40 Have you examined the Creek & bottom land recently for the purpose of ascertaining that fact or not

Ans I have not

Int 41 Have you any knowledge of David H Thouts erecting a dam across Big Rock Creek below the bottom land described by you or threatening to erect or build any such dam at any time within two years last past if so state what you know on that Subject
(Objected to)

Ans I went by there ^{Some time} about the middle of September a year ago, I saw hands at work on the dam at the mill
Some few days after that I saw Mr Shouts, I asked him how he got along on the dam, he told me there was an injunction served on him & he had to stop work
(Answer objected to)

Int 42 When was you when you say you went there and what place do you mean by the term there

Ans By the term "by there" I mean Mr Shouts house & Saw Mill

Int 43 Upon what stream if any does Mr Shouts Saw Mill stand

Ans Big Rock Creek

Int 44 How far from Shouts dwelling house of which you have before spoken is this Saw Mill

Ans Eight or ten rods perhaps

Int 45 How far was the dam upon which you saw the hands at work from the said Saw Mill

Ans The end of the dam joins right up to the Saw Mill there is a floom, waste way or something between the dam & the Saw mill

Int 46 Which end of the dam

Ans The west end of the main dam is next to the mill

Int 47 Did you know the men that you saw at work upon the dam & if so who were they

Ans I think one was Bingham & others ^{who they are} I am not positive,

Int 48 What Bingham

Ans I do not know his other name It was the man that was at work for Mr Shouts

Int 49 Was the dam above or below the bridge crossing big rock creek on the Chicago & Galena road

Ans Below

Int 50 How far below

Ans In the neighborhood of a hundred rods. It may be more
 Int 51 On what Quarter Section was it Objected to?

Ans I think the main dam is on the South East Quarter on the west half

Int 52 On what part of the West half describe it particularly as to location

Ans I could not tell whether it is on the north or South part of the West half

Int 53 State what was the height of the water above the dam and whether it overflowed the banks of the Creek when you saw the men there at work

Ans I have no means of knowing the height of the water whether it overflowed its banks or not I don't recollect at that time

Int 54 After you saw the men at work upon the dam was the bottom land you have spoken of or any part of it overflowed by Big Rock Creek & if so how much of the land in your judgment was so overflowed

Ans There was part of it I could not tell how much

Int 55 How far did the overflowing extend up the Creek from the dam & how near to the bridge did it come

Ans I never took notice enough to tell anything about it

Int 56 What time or when was ^{that} you saw the land so overflowed

Ans I think it was a year ago last fall or in the fore part of the winter

Int 57 Was the water in the Creek above the pond at more than its usual height at that time or not

Ans It was not that I know of

Int 58 Do you know what caused the overflowing & if so what was it?

Ans I suppose it was the dam across by the mill

Int 59 Do you recollect whether or not the water flowed back upon any land north of the fence you have spoken of as enclosing the bottom land

Ans I think not - not to my knowledge -

Int 60 I mean the South fence next to the mill dam. Is that the fence you allude to in your answer to the 59th in interrogatory

Objected to

Ans No Sir

Int 61 Will you now state whether or not the water flowed back above that South fence. State your recollection upon the subject

Ans I think the water set back under the bridge that is on the North Side of the fence on the West Side of the bottom next to the bluff

(answer objected to)

Int 62 What fence do you refer to in your answer to the last interrogatory describe it particularly

Ans To the fence on the South Side of the road across the bottom

Int 63 How near to the side of the road is this fence

Ans I should judge a rod & a half from the center of the road - may be two rods

Int 64 State whether or not the Chicago & Galen road was fenced on both sides across the Big Rock Creek bottom

(objected to)

Ans It is (objected to)

Int 65 How long since the fence on the North Side of the road was made?

Ans I should think it was three years perhaps more

Int 66 How long since the bottom above the road was enclosed with a fence?

Ans I should judge it was three years maybe more

Int 67 Is there or not a separate field enclosing the bottom South of the road - please state

Ans I believe there is

Int 68 How is the South fence of that enclosure constructed & who built it?

Ans I think it is part of the way a board fence, but across the bottom it is a picket I don't know who built it

Int 69 When was the last mentioned fence built?

Ans Well I saw the fence some time last fall

Int 70 What in your judgment is the said bottom land worth per acre in the situation it now is

Ans Well I suppose it is worth ten twelve or fifteen dollars an acre. I am not very well posted in the price of land & can not tell exactly

Int 71 What would the said bottom land be worth in your judgment with Shoute Mill dam at the height it was at the time spoken of by you in the Summer of 1851

Ans It would not be worth much for farming purposes (Objected to)

Int 72 Would it be valuable for any other purpose than farming

Ans I think not

Int 73 How far above the picket fence across the bottom did the water set back upon the land according to your best judgment in the fall of 1851

Ans Well I should judge in the middle of the bottom 60 or 70 rods and on the West side of the bottom towards the West edge further back

Int 74 Do you know what is the condition of Shoute Mill dam at the present time as to obstructing the water in big Rock Creek? and whether or not the waste gate of the said dam is now open. State how it is

(Objected to)

Ans I think the waste gate is open. It dont obstruct the water but very little if any

Crops Examined by Defendant

Int 1st When was the dam you have spoken of first built

Ans I dont know. It was then when I first came into the County nearly ten years since

Int 2 Who was in possession of the mill & dam nearly ten years ago when you first came into the County? (objected to)

Ans Mr. Shouts I believe

Int 3 Do you know the height of the dam at the time you first became acquainted with it. Was on the 30th of September 1851 and had it remained at that height between the time you first became acquainted with and the 30th day of September 1851

Ans I dont know the height of the dam at the time I came into the County. I had no means of knowing the height of the dam only by seeing it as I passed by. I never measured it. I dont know whether it was or was not as high when I first came into the County as it was on the 30th day of September 1851 or not. The dam has gone out & been rebuilt a portion of it, but as to the height whether higher or lower I can not say

Int 4 How many men were at work on the dam at the time you spoke of in your answer to the 41st interrogatory?

Ans Well I am not sure I merely passed by & saw them at work. There were one or two & might & might have been more. I did not notice

Int 5 How long did they work & how much work was done at that time?

Ans I dont know how long they worked or how much

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work was done I saw them at work there, that is all I know about it

Int 6 Were the men at work on the dam or on the land West of the Mill at that time

Ans They were at work on that portion of the dam on the West Side of the Mill where the water washed the out

Int 7 Would the work being done at that time & at that place be calculated to effect the main dam you have described as being East of the Mill

Objected to

Ans Well I don't understand the question & therefore I don't know

Int 8 Would the work that you saw doing at that time make the main part of the dam either higher or lower

(Objected to)

Ans I should not think that the work I then saw doing would have any effect on the part of the dam already built

Int 9 In your answer to the 41st interrogatory do you mean to say that Defendant Shoute was building a dam or only repairing the dam which was built when you first came into the County nearly ten years ago. Please explain

Ans Whether there had ever been a dam built there before I can not tell on the West Side of the Mill I mean the water had washed around there and they were filling it up

Int 10 When was the bottom land you have spoken of South of the road enclosed & by whom

Ans Last fall I never saw any one to work on the fence that I know of

Int 11 What portion of the bottom land which you

have described South of the road is Slough & what portion is plough land & what portion is timber

Ans The South end of the bottom towards the Mill I know but little about the north part is Some dry land & Some wet & Some is Mellow brush What proportion might be ploughed I can not say
Int 12 Has not Complainant Hadden but larger quantities of timber from the bottom land you have described within the last 4 years

Ans There has been timber cut & taken off of there within that time but by whom I can't say

Int 13 Did you ever see Big Rock Creek upon section one that you have described before the dam was built

Ans No Sir

Int 14 What was the Stage of water when you say the bottom land was overflowed in your answer to the 5th interrogatory. was it high or was it low

Ans I don't recollect as to the water in the channel or as to the height of the stream

Int 15 Please state if the distances courses & quantity of land & height of water you have testified to on your direct examination is from actual measurement or only from common observation

Ans From common observation

Re examined by Complainant

Int 1

do you know whether or not any portion of the dam which you saw when you first came into the country was standing at the time you saw the men at work

as stated by you in your answer to the 41st Interrogatory in Chief - If any part how much & what part

Ans The middle of the dam was standing I think the same as when I came into the country - I think there is a portion of the East end & West end that has gone out within the time & has been rebuilt

Int 2 State if you know the fact whether or not the dam that you saw when you first came into the Country & referred to in your answer to the first Cross interrogatory was standing on the land belonging to the Government of the United States at that time

Objected to

Ans 1

I cannot say positively

Int 3 Do you know whether or not the land on which that dam stood & the surrounding Country had been surveyed by the Government of the United States when you came into the Country - And if so state how it was (Objected to)

Ans I think it had

Int 4 In your answer to the third Cross interrogatory you state "the dam has gone out & been rebuilt a portion of it" State how often since you came into the Country the dam has gone & how often it has been rebuilt & at what times or times & what portion of the dam has been rebuilt

Ans I think a portion of it has gone out at two different times & perhaps more than two. I think as near as I can recollect about three years ago a portion of the East end was carried out by a freshet, my impression is that it was in the Spring but I am not positive - It was rebuilt in the course of the next Summer or fall

I should judge 20 or thirty feet went out at that time - I think there had been a portion ^{out} before that time & was rebuilt. I can not tell the time. I could not tell how much

Int 5 On which side of the mill were the men at work when you saw Bingham at work on the dam

Ans On the west side

Int 6 State whether or not the dam which you saw when you came into the country extended as far west as the place where you saw the men at work in September 1851

Ans I think it did

Int 7 Do you know whether or not Shouts the Deputy Ant in September 1851 when you saw the men at work or any time previous to the 30th of September 1851 & during that year had extended the dam further west into the west bank than the dam which you saw when you came into the country extended (Objected to)

Ans I think he did by filling up where the water had washed the bank away on the west side of the mill

Int 8 What distance had he so extended the dam

Ans I can't say

Int 9 Can you now say that the dam or place where the men were at work when you saw them was the same dam which you saw when you first came into the country (Objected to)

Ans I suppose it was

Int 10 Were the men at work when you saw them on that part of the dam which you say was extended into the west bank to fill up where the water had been washed round or were they at work

upon some other part of the dam (Objected to)

Ans They were at work on the west part where the water had washed round

Int 11 Was there any dam built there at that particular place when you first came into the country Objected to

Ans I can not say

Int 12 What effect would this portion of the dam have if any upon the waters in the creek or pond

Ans It would help to raise the water

Int 13 State whether or not this west end of the dam in the west bank was on a level with the main part of the dam or was it higher or lower

Ans I can't say

Int 14 State whether or not the dam which you saw when you came into the country & which has been from time to time repaired as you say, flowed or let back the water of big rock creek upon the bottom lands which you have described & if so how much land was overflowed & how far up the stream did the overflowing extend according to the best of your judgment Objected to

Ans It did I should judge water or 15 acres perhaps more were overflowed, on the west side of the bottom I should judge it overflowed ^{nearly} 100 rods from the mill, not so far on the other side & the middle

Int 15 What effect has that overflowing had upon the soil

Ans It keeps all kinds of vegetation from growing where it flows & the timber, when it flows near to it

The Crop examined by Defendant

Int 1 Would the extending of the dam in length on the west side of the mill tend to make the water overflow more land, than

would be overflowed had it not been washed out

Ans I dont know that it would

Int 2 Would not the water overflow a portion of the bottom land you have spoken of in high water or freshet without the dam

Ans I think it would Robinson Doty
Subscribed & sworn to before me at the office of R
A Matthews at Little Rock Kendall County Illinois
February 26 1853

John M Crothers Master
in Chancery Kendall County
Illinois

Deposition of Jesse D Pierce

Int 1 What is your name age, place of residence & occupation

Ans My name is Jesse D Pierce, age 30. residence Bristol Township Kendall County Illinois, occupation a farmer

Int 2 Are you acquainted with Morris Hadden & David H Thront parties to this suit - If you how long have you known them

Ans I am acquainted with them, I have known them something over 5 years

Int 3 - Please state your place of residence particular
ly as to locality - Please give the Township, Range
& Section & the subdivision of the Section on which
you reside

Ans I reside on Section 6 Township 37 N Range
7 East of the 3 Principal Meridian on the

North West Quarter of Said Section

Int 4 Do you know where Morris Hadden lives & how far do you reside from him - please state the locality of his dwelling house particularly according to your knowledge of the same

Ans I know where he lives, I should judge I live about 50 rods from him. He lives on the North ^{East} West Quarter of Section one Township 37 N Range 6 East of the 3^d principal Meridian some 8 or 10 rods from the South line of that Quarter

Int 5 Do you know where David H Shonts resides & if you please state his place of residence & where his dwelling house stands

Ans I do know where he lives & I think it is on the South West Quarter of Section one before described

Int 6 Is there any stream of water running near his house, if you please state what stream it is & what is the general course of the stream

Ans There is a stream of water running by his house known as Big Rock Creek - its course is Southerly bearing a little West

Int 7 Please state if you know through what lands the said stream runs from a point one mile North from the said Shonts dwelling house - describe the lands by Sections & Subdivision according to the public Survey

Objected to

Ans Through the South East ~~West~~ North East Quarters of Section one, further than that I am not well enough acquainted with the lands to say

Int 8 Is there any mill upon that stream near said Shonts dwelling house & if so what mill is it & how far from his dwelling house & in what direction

from his dwelling house

Ans There is a Saw mill stands upon that Stream known as Shouts Mill I should think about ten rods from his house & nearly South

Int 9 What is the make of the land where Big Rock Creek passes through the North East & South East quarters of Section one Town 37 N Range 6 East of the Third principal meridian and above said Shouts Mill objected to

Ans It is bottom or meadow land

Int 10 How much land according to your judgment is bottom land on said Quarter Sections

Ans Well as near as I could tell by Superficial judgment there is 35 acres probably more

Int 11 Do you know where the South line of the said North East of Section one crosses said Creek

Ans I do or nearly so

Int 12 How much of the bottom land lies North of that line if any and bordering on it

Ans Somewhere from 20 to 25 acres

Int 13 Have you seen a picket fence running across the bottom on the South East Quarter of one and or a part of it objected to

Ans I have seen a picket fence standing there (objected to)

Int 14 State on which side of Shouts Mill that fence runs & how far from the mill objected to

Ans On the ^{North} ~~West~~ side I could not say ^{exactly} how far from the mill probably about 20 rods

Int 15 How much of the said bottom land is there in your judgment between the picket fence and the South line of the North East quarter of Section one if any

Ans I should think 15 acres possibly not so much

(99)

but as near as I could judge

Int 16 State whether the bottom land you have described lies all on one side of said creek & which side, or does the creek run through the same please state how it is

Ans There is bottom land on each side of the creek on the North East quarter the bottom lands lie chiefly on the West side of said creek, on the South East quarter the creek divides the bottom lands leaving a portion on each side of the creek

Int 17 How much bottom land if any is there between the picket fence and the mill described by you as Shont's Mill?

Ans Probably 5 acres as near as I could judge, may be not so much

Int 18 State if you know who is in possession of the ^{said} bottom land lying north of the Picket fence

Ans Morris Hadden I believe

Int 19 How long has he been in possession to your knowledge

Ans Something more than 5 years

Int 20 Is there any portion of the said bottom land north of said picket fence, timber land, and if so how much

Ans There is a portion of it has some willows, a few young oaks & some plum trees on it, there may be some five acres or rising that, of that kind

Int 21 What is the balance of the said bottom north of the Picket fence, meadow or plough land or what kind of land is it

Ans There is a part lying directly north of the Picket fence that is such bottom land as you would

expect to find after a mill pond having stood on it & some more that is indifferent grass land at present & some of the balance of good mowing land about 10 acres (objected to)

Int 22 Do you know of any stone quarry on any part of the said bottom land on or near the top of the said creek north of & near to said packet fence If you please to describe it & state what you know about it (objected to)

Ans There is good evidence of a stone quarry being there although it has never been opened to my knowledge. It is on the East bluff directly on the creek I saw in the Spring of 1849 when the water was out of the dam a fair appearance of stone that was covered at an ordinary height of water in the dam according to my best recollection it is a little North of the packet fence, it may be 4 or 8 rods I could not say positively (Objected to)

Int 23 Do you know of any public road running across the said creek or bottom land by you described if you what road & upon what land is it located give the Section & quarter Section or other subdivision if you know it & in what direction does it run over said bottom

Ans There is a road running across said bottom called the Chicago & Galena road located upon the North East Quarter of Section one, it runs a little North of West

Int 24 How far from the South line of the said North East Quarter does the road run

Ans Some 45 rods I should think

Int 25 Does any part of this bottom land you have des-

- Crabs lie north of the road & if so how much

Ans There is a part of it lies north of the road, I should think nearly ten acres

Adjourned till March 31st

March 31st Examination resumed

Int 26 Since your answer to the 23rd Interrogatory have you made any examination of said Stone quarry or for the purpose of ascertaining how much of a Stone quarry there is upon Bay Rock Creek at the place mentioned by you in said answer or near there. If you state the result of such examination

Ans I have been over the ground since and at intervals along the East bluff for forty rods or more there is good indications of Stone and there is one place I see has been opened and some Stone taken out that were of a fair quality ranging from three to six inches in thickness

Int 27 State whether this was above the picket fence or not & how far from it

Ans It was north of the Picket fence & above it The open quarry was in the westward of forty rods above it

Int 28 Is this open quarry above or below the Galena road - State how it is situated in reference to said road

Ans It below or south of the Galena road some sixty rods or more

Int 29 State on what Quarter Section if you can the Stone quarry is situated

Ans It is on the South East Quarter of Section One

Int 30 At what height from the waters edge or surface of the creek are the stones in the quarry situated

Ans I should think about $2\frac{1}{2}$ feet above the surface of the Creek, that is the upper layer of stones at the open quarry I mean at the ordinary height of water in the creek

Int 31 When did you make this Examination

Ans I think it was on the 22 day of this month

Int 32 State whether or not the Big Rock Creek was then flowing in its natural channel at that place uninterrupted by any dam below it

Ans It was or nearly so - The interruption at the breast of the dam is but slight at the present time

Int 33 Can you form any estimate of the value of that stone quarry & how much in your judgment is the value of the same (Objected to)

Ans I can form no definite opinion as to the value of the stone quarry further than that there may be an unlimited amount of stone taken from it

Int 34 Are stones taken from a quarry in that neighborhood of any value & if so how much are they worth per cord (Objected to)

Ans They are of value & are worth two dollars per cord

Int 35 How far above Shouts Mill are there indications of a quarry

Ans The ground that I passed over commenced some 15 or 20 rods above the mill or dam breast on the East side of the creek or north from the dam

Int 36 State whether or not any portion of the bottom land north of Shouts Mill & north of the sand packet fence on Big Rock Creek has to your

Knowledge been overflowed with water at any time if so how much of said bottom land has been so overflowed, when & how said bottom land was situated that was so overflowed, How long was it so overflowed & what was the cause of its being overflowed (Objected to)

Ans In a previous interrogatory put to me Touching the quality of land on said bottom I give the answer according to my best Superficial judgment, Since that time I have been over the land & have now a plat of the Survey before me from which I can answer more definite - There are 20 acres lying North of the picket fence which is north of the mill that has been overflowed with water - the bottom land overflowed is situated on the North West quarter of the South East East quarter of Section one & on the North East Quarter also of Section one

It has been overflowed from the fall of 1848 to my knowledge with an interval in the Spring of 1849 up till the Spring or Summer of 1851 The erection of the dam at Defendant Shout's mill caused it

Int 37 What in your judgment would be the value of the said bottom land per acre if Rock Creek were permitted to flow without interruption in its natural Channel (Objected to)

Ans It would be worth as much at least as the rest of his Mr Haddens land in connection with it say \$20 per acre

Int 38 Look at the Map filed in this cause marked

(P3) produced by Archibald Sears in his answer to the 2^d Cross interrogatory of his Deposition herein & State whether or not the plot you speak of in answer to the 3^d interrogatory be a true copy of the map marked (P3), & if not State in what it differs

Ans By comparing them I should think it was a true copy

Int 39 Have you any knowledge of Defendant Shouts erecting or building a dam across big Rock Creek or threatening to do so or of throwing any obstruction whatever in the creek to obstruct the same in its natural current at any time in the year 1851 if so State when it was, all you know particularly on that Subject (Objected to)

Ans I think it was in the latter part of August or Beginning of September 1851 that David Shouts repaired or rebuilt that portion of the dam which had been washed out at the mill of David Shouts which caused the water to be obstructed & set back as far as the Galena road some hundred rods or more north of the mill & overflowing the water the bottom land before described

Int 40 To what height did Defendant raise the dam in 1851 if you know please State (Objected to)

Ans I do not know

Int 41 Do you know whether it was higher or lower than the dam had previously been at that place herein State how it was in that respect

Ans I think the water set back further than I ever knew it before

(185)
Int 42 What effect if any had the flowing back of the water by means of the said dam upon the Stone quarry you mentioned in your answer to the 26th interrogatory herein

Ans The Stone was covered with water so that the quarries could not be worked

Int 43 Do you know the State of the water in Big Rock Creek & in the pond occasioned by Shouts ^{mill} dam before Shouts worked upon the dam in the Summer of 1857. State whether or not the Creek was down to its natural current & the pond out by means of a break in the dam or any other cause when he commenced his work on the dam that season

Ans I can not remember positively what the condition of the dam & creek was at that time, but I think the Creek ran nearly in its natural Channel

Int 44 Do you know of any fall in the Big Rock Creek above the said Picket fence & below the Galena road or any mill seat or place on said Creek between the points above mentioned where water power could be obtained for hydraulic purposes If so State particularly concerning it

Ans I saw the Creek levelled last fall & from the picket fence to the Galena road or nearly there I think there was between 4 & 5 feet fall

Int 45 Please state & point out on the plat referred to by you in your answer to the 36th interrogatory and now on file herein marked (1) the place & position of said picket fence & mark the same by a red line

Ans I have dotted the line which designates the fork
at fence with a red pencil on the line dividing
the lands of Morris Hadden & David H. Thorns

Int 2 Does that Plat represent the position of the
lands in the possession of the parties in this Suit
respectively ^{from the same assertions of said lands} & if not state wherein it differs

Ans I believe it does represent the lands in all
material points

Memorandum. Parties acknowledge the execution
of Deed marked (C) referred to by Archibald
Sears in his deposition

Cross Examined by Defendant

Int 1

Who made the plat which you have here introduced

Ans

Squire Sears I understand drew it up or made
it

Int 2 When was that Plat made

Ans I could not tell

Int 3 When was the plat first shewn to you & how
did it come into your possession

Ans This morning was the first I saw of the plat
I picked it up off of the table or took it out of
George Haddens hands I dont know which

Int 4 At whose request or how did you come to refer
to that map

Ans It was at no ones request Sir, & it was nothing
but a casual reference

Int 5 How did you come to refer to that map, if you
were not requested so to do

Ans I thought if the plat was drawn out intelligibly

it would place before me the bottom lands such as I have been describing to you before

Int 6 How did you learn that that map was made by Esquire Sears

Ans I was told some time since by George Hadden that Esquire Sears was to make him a definite plat of the land & when I saw him produce it the morning I believed this to be the plat referred to

Int 7 What means have you of knowing that this map is correct

Ans None save the integrity of the man that I believe drew it up

Int 8 Why did you state in your answer to the 36th interrogatory that you could answer more definitely from the map which you produced if you know nothing of the correct map of that map

Ans Because the figures then indicating the quantity of land agree more nearly with my observation of the same land gone over not long since

Int 9 How do you know there is 20 acres of the bottom land lying between the pocket fence & the Galena road

Ans I have been over the land Sir & that is according to the best of my judgment

Int 10 Have you made any survey of the bottom land since the commencement of making this deposition

Ans I have made no authenticated survey of it

Int 11 What kind of a Survey have you made of
any

Ans None except being on the ground

Int 12 Had you ever been on the said bottom lands
previous to the Commencement of making this
Deposition

Ans I had, but not with a view to ascertain the
quantity of lands at any time

Int 13 Do you not know that there are two Islands
on the bottom land you have spoken of

Ans I do. I endeavored to make allowance for
those in estimating the land which was over-
flowed as I did

Int 14 Do you believe the Plat which you have
produced to be a true representation of the lands
there described

Ans It seems to me that it is

Int 15 Does the map or plat which you have pro-
duced show or describe the 2 Islands on said
bottom lands

Ans Where the leading is omitted on the map
which leading is intended to represent the over-
flow of water when the dam was up as I
understand it. the omission is intended to repre-
sent the Islands on that part not overflowed
at the North part of the pond & near the Galena
Road

Int 16 Where is the other Island situated which
you have spoken of besides the one at the
North end of the Pond & near the Galena Road

Ans I think it is not on the map, there is one of
unnatural size nearly South of the one laying

near the road & from the size of the one shown

on the map I should judge that to be included

Int 17 What is the distance between the two Islands
you have spoken of

Ans It can't be but a rod or two

Int 18 Do you know where the center East & West
line of Section one crosses Big Rock Creek

Ans I do

Int 19 Does that line cross the bottom on the lower
Island

Ans 20. Do you know the distance from that center
or quarter line to the Galena Road

Ans Well as near as I can tell it is somewhere
in the neighborhood of 45 rods

Int 21 How much land is there in your judgment
in the upper Island you have spoken of

Ans There may be something over two acres

Int 22 What is the length of the other or lower Island
in your judgment

Ans In length it is 10 or 15 rods that will include
however all the little cut offs during high water

Int 23 What portion of the bottom lands lying be-
tween the picket fence & the Galena Road has
Willows & plumb trees upon it

Ans Something near 5 acres I should judge

Int 24 For what purpose is the land best adapted?
or what use can be made of it

Ans It is better adapted to Grass although it
could be made plough land some of it

Int 25 What would be the expense of clearing & pre-
paring that plat which has Willows upon it
suitable to raising Grass

Ans I could not say

Int 26 What in your Judgment would be the expense

Ans I think I could fit it for putting grass seed on it for twenty Shillings per acre

Int 27 Is there not a considerable portion of the bottom lands between the packet fence & the Galena Road that is Springy Slough & bog holes & which is unfit for any purpose

Ans I think not Sir

Int 28 Is there any of said bottom land that is Springy & has Bog holes upon it

Ans There are some Springs & Bog holes close to the west Bluff in the Spring of the year & in their undrained State are some what mired but are good pasture lands in the Summer Season

Int 29 What is the bottom land you have described South of the Galena Road worth per acre separate & detached from other lands

Ans If I owned the land separate and detached from other lands I think I would be good for \$50 per acre for it

Int 30 Why would it be worth more separate than attached to other lands

Ans The water privilege & Stone quarry

Int 31 How much would the land be worth without the water power & Stone quarry

Ans I should think the land itself would be worth \$20 per acre for agricultural purposes for growing grass

Int 32 Is the stone quarry on the bottom land you have described

Ans I should think part of the quarry would be under

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sed in the bottom land & there are strong evidences
that it extends across

Int 33 Is the stone quarry you have described as having
been opened on the bottom lands or in the
bluff

Ans The stone quarry that has been opened is at
the foot of the bluff

Int 34 Does any portion of the bottom land you
have described lay between the creek & the bluff
at that place where the stone quarry has been opened

Ans There is not

35 Do you know the height of the dam in 1848
when you first became acquainted with the prem-
ises

Ans I do not

Int 36 Was the dam at that time in good repair
& at its usual height

Ans It was in repair but the usual height I know
nothing about

Int 37 Has the dam been kept up since that time
& until August or September 1851? (Objected to)

Ans With ~~the~~ the exception of the spring of 1849
when it was carried away by a freshet & at one
other time since then, it seems to me, there was
a slight break made in the dam I believe
it has been kept up until the time referred to

Int 38 Was the dam all carried away in the spring of
1849.

Ans It was not

Int 39 What was the extent of the break at that time
in 1849 or where or on what part of the dam
was it

Ans I think there was about 30 feet at the East end of the dam as near as I could judge

Int 40 Who repaired that breach objected to

Ans Mr Shouts I believe

Int 41 What was the expense in your judgment of the repairs upon the dam at that time in 1849
Objected

Ans I could form no idea whatever

Int 42 What amount of labor did it require & how long was the breach in being repaired (Objected),

Ans I do not know

Int 43 Did you ever see Defendant Shouts or his hands at work repairing that breach (Objected to)

Ans I have no recollection now of ever seeing them at work at it

Int 44 What means have you for knowing that Defendant Shouts repaired the breach at that time in 1849 (Objected to)

Ans Because I had always understood that David Shouts was possessor of the mill property & was running his saw mill himself & I supposed that it was by his authority the dam was repaired

Int 45 What was the other breach you have spoken of what was the extent of it & where was it

Ans I havent a very distinct recollection of that but I think it was in the following Spring in 1850 I may be mistaken but I think it was then, a portion of the West end of the dam I believe was carried away I could not say what the extent was - I don't think I ever saw it to notice it particularly - The breach was east of the mill

Int 46 On which bank of the Stream is the mill situated

Ans On the West bank

Int 47 When were the repairs being made at the time you speak of on your direct examination in 1851

Ans The principal repairs were made on the west side of the Mill when the water had washed round

Int 48 Do you know the extent of the breach at that time in 1851?

Ans I do not

Int 49 Were you then or did you ever see the breach that was made at that time

Ans Yes I have seen the breach It may have been 15 or 20 feet in width, but was not in connection with the main dam or main breach ^{was} of the dam

Int 50 Were the repairs completed on the 30th of September 1851 or was that breach ever fully repaired

Ans I could not say whether they were completed or not according to the design of the people

Int 51 Have you been in the habit of having sawing done at that Mill since the year 1848 & up to the year 1851

objected to

Ans I have

Int 52 Do you know of Complainant Morris Hadden having sawing done at that Mill during the time spoken of in the last interrogatory objected to

Ans I think he has had some done during that time

Esse d Perce

Subscribed & Sworn to before me this 31st day of March 1853 at Little Rock in Kendall County

John M Crothers, master in Chancery

Adjourned till tomorrow morning

April 1, 1853 Examination resumed by Court

Amos W. Hadden Sworn

Int 1 What is your age residence & occupation

Ans Age 33 residence Little Rock Kendall County
occupation farming

Int 2 Do you know the parties to this suit if you
how long have you known them

Ans I know the parties I have known Mr. Shanks
I suppose some 8 or 10 years, the Complainant
is my father

Int 3 Are you acquainted with the location &
situation of Section one Town 37 N R 6 East
of the 3^d principal meridian

Ans I am Sir

Int 4 Do you know where the quarter section
lines in said Section ^{of Section one} are, and are you acquainted
with the location of the North East & South
East quarters of said Section

Ans I am

Int 5 Have you been on the said Quarter Sections
or either of them & which of them if either & do
you know the position situation & make of
the land of said quarter?

Ans I have been on both & known the situa-
tion & make of them

Int 6 Is there any stream of water running
through or over the said North East & South
East Quarters of Section one or either of them
if you state upon which quarter section
it runs over & what part of said quarter or
quarters what is the general course of the

Stream & by what name is it known

Ans Big Rock Creek runs somewhat diagonally across or through the North East Quarter and runs across the North West corner of the South East quarter. Its general course is West of South through both these quarters

Complainant here produces Patent from the U S to James May Hadden for the South East Quarter Sec 1 T 37 N R 6 E 3rd pr Meridian (2) also patent from U S to Morris Hadden of Lots no 1 & 2 of NE 1/4 S 1 T 37 N R 6 E 3rd pr Meridian marked (3)

Int 7 Look upon the patent now produced by the Complainant & marked (2) & state whether or not any of the land you have now described is embraced in it & if so what part of it

Ans The South East Quarter of Section Township 37 North of Range is embraced in it - (Objected to)

Int 8 State whether or not you know of any bottom land lying on said Creek or adjacent thereto on either of said quarter sections, if yes state how much in your judgment & how the same is situated & where? State what you ^{know} about it

Ans I should judge there were some 10 or 12 acres on the South East Quarter it is on the North West Quarter of that Quarter, on the North East quarter I should there was about 40 acres It extends through the quarter & is on the South

most part of it

Int 9 State if you know whether David B Shonts the Defendant is in possession of any portion of the South East Quarter & if so how much & what part of the said quarter

Ans I think that he is in possession of about 5 or 6 acres of the west side of the quarter commencing near the center & running to the North Corner, but am not certain as to whether it goes to the North Corner & has been in possession of it I suppose 8 or 10 years as long as I have been acquainted with him

Ans 10 Look upon the map now shown to you made an Exhibit herein & marked (B) & State whether or not the same gives a proper & true representation of the land in possession of Shonts referred to ~~you~~ in your answer to the last interrogatory & whether it gives a true & proper representation of the lands owned & in possession of Morris Hadden

Ans I should think it did

Int 11 How much of the bottom land ^{described by} you is on Shonts part of the quarter ~~contrary to you~~

Ans I should think 2 acres or more I have not noticed it particularly

Int 12 State whether or not there is any fence on the bottom land you have described dividing the lands of Shonts & Complainant & if so what kind of fence is it

Ans There is a picket fence ^{dividing the lands} running South East & North West

Int 13 Is the Picket fence on the dividing line between the parties to this Suit & if so on what side of the same do their lands respectively lie

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Ans It is the dividing line, Mr. Shonts is on the South
& Complainant on the North

Int 14 Do you know any thing of the Defendant
having erected a dam across Big Rock Creek
or attempting to do so, or threatening to erect a
dam across said creek or of his making any
obstructions whatever to the natural flow of
the Current of said Stream upon said South East
Quarter or any part of it in the year 1851 - If you
state when it was & where & all you know on
the subject

Ans Will Sir I can not say that I know of Mr
Shonts putting any obstruction in that year on
that quarter

Int 15 Do you know of Defendant Shonts making
or erecting any dam across big Rock Creek
if you state when it was & where it was situated
& all you know about it

Ans I know of Mr Shonts repairing a dam at
various times, I think it was in the latter part
of winter or in the spring of 1849, the dam is
mainly situated near the centre of the West line
of the South East Quarter of Section one, the
land is in the possession of Mr Shonts before referred
to. I think in the spring of 1849 or latter part
of the winter about 40 feet of the dam went
out on the East side. That was repaired
& I have seen him plank the dam & drawing
gravel at various times I could not tell
when exactly - I think in the fore part of the
fall of 1851 he partially completed an extension
of his dam on the west side of it. His dam being washed out previous

to that time he went on in the fall of 1851 to repair it

Int 16 State whether the repairs you speak of in 1851 was previous to or after the 30 day of September of that year

Ans I should think it was previous to that day

Int 17 How far from the Picket fence & on which side of it is the said dam

Ans The dam is ^{on} at the South of the picket fence, the distance of from 12 to 20 rods I should think

Int 18 Have you any knowledge of a Stone quarry on Big Rock Creek upon the lands in possession of Morris Hadden. If so state where the same is located & describe the distance & extent & value of the same particularly

Ans There is stone on the East side of the creek commencing on the line between Hadden & Shouts & extending some 60 rods north putting out of the bank, also they have opened one place some three or four rods in length I don't know that I should be able to say what the value of it is

Int 19 What is the location of the stone in reference to the water in the creek. how high above the surface of the stream do the strata of stone lie

Ans I should think about 3 feet above the surface of the creek

Int 20 Have you any knowledge of any mill seat or fall of water in Big Rock Creek above Shouts dam & Mill & upon either of the quarter sections which you have referred to. If so describe them particularly

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Ans On the South East Quarter there is a fall of water & bluffs on both sides which I suppose constitutes a mill site, on the South east quarter from Mr Shonts line to the North line of said quarter I should suppose there was about from $3\frac{1}{4}$ to 4 feet - the creek was rapids

Int 21 State if you have assisted in taking a level at that place - if so when & the result

Ans I was present at the time a level was taken & assisted & my recollection is there was from $3\frac{1}{2}$ to 4 feet fall also judging from the general make of the ground - I think it was within a year past

Int 22 State whether or not you took the level from the line between Hadden & Shonts to Shonts Mill & dam & the result, (objected)

Ans We did & made about 8 inches fall from picket fence line to the mill

Int 23 How far does the mill stand from the dam

Ans The mill & dam are connected

Int 24 Did you take the level to the mill or to the dam

Ans We took the level to the North East corner of the mill

Int 25 Do you mean to represent or not that the mill forms part of the dam or in a straight line with it across the stream - State how it is

Ans There is a portion of the dam on each side of the mill leaving a gap which the mill fills up

Int 26 State what effect if any the said dam at Shonts

Mill has had upon the water in the said Big Rock Creek & upon the said bottom land & mill seat & stone quarry previous to the repairs or work which you say was done in the year 1857

Ans The effect of the dam was to raise the water & to overflow wholly & partially from 20 to 25 acres of land, to destroy all use of that land, the use of the mill site & prevent the working of the quarry

Int 2^d State if you please whether or not the waters in Big Rock Creek were set back so as to overflow said land after the work done on the dam in 1857 if at all & to what extent

Ans It was set back for a short period to near or about its usual height

Crops Examined by Defendant's Solicitor

Int 1 When was it you first saw the lands you have described as being in possession of Shonts & Hadden and the lands upon which the mill & dam is built

Ans About the 13th day of June 1837 I think

Int 2 Do you know when the mill & dam was first built if so state when & who built the same

Ans Well Sir the dam & mill were there in June 1837 they were at work then & completing the dam I think It was built by Elijah Pearce

Int 3^d When did the Defendant come into the possession of the dam & mill

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Ans. Well I think Mr. Shouts jointly with his brother exercised possession over it some 8 or 10 years ago

Int 4 Has the Defendant been in possession of & occupied & kept the mill & dam in repair & in use since that time

Ans I think he has as a general thing

Int 5 How near does the Complainant reside to the mill & dam & mill mentioned & how long has he resided there

Ans He has lived within about 200 rods of the dam since the summer of 1837

Int 6 Has the Complainant had any sawing done at the mill & if so for how long a time & to what amount

Objected to

Ans Resided at home from 1837 to 1840 & drew logs to the mill & lumber from there up to 1843. I may have drawn 20 logs a year & might be 40 - I think it would average ~~about~~ least 20 (Objected to)

Int 7 Who took the timber from the bottom land you have spoken of & when was it taken

Ans Well Sir I should think in the Spring of 39 & winter of 40 & 41 the timber above the mill was ~~taken~~ off by Complainant my father

J. M. Hadden

Subscribed & sworn to before me

at Little Rock this 1st day of April 1853

John M. Brothers Master
in Chancery

State of Illinois
Randall County } ss: John M Crothers Master
in Chancery of said County certify & Report
that the foregoing depositions were taken
by & before me & subscribed & sworn to
before me by the defendants at the office of
R N Matthews in Little Rock at the times cer-
-tified to by me at the foot of said depositions
respectively & that the taking of said testimony
Commenced upon the 24th day of February
1852 & continued by adjournment until com-
-pleted, that they together with Archibald
Sears whose deposition enclosed herewith
was taken at the time & place mentioned &
Certified to therein were all the witnesses pro-
-duced on the part of the Complainant & I
further certify that the parties were present
either in person or by their solicitors at
the taking of said testimony

In testimony whereof I hereunto set
my hand & seal as said Master
at Oswego in said County the 23rd
day of April A D 1853

John M Crothers 
Master in Chancery

Deposition of George M. Hadden a witness
produced examined & sworn before John M. Crothers
Clerk of the Circuit Court of Kendall County
Illinois at his office in Oswego in said County
on the 4th day of November AD 1853 at 10 o'clock
A.M. which Deposition was taken in behalf of
Complainant to be read in evidence of a certain
Cause now pending on the Chancery side of
the Circuit Court of Kendall County in said State
wherein Morris Hadden is Complainant & David
H. Shonts Defendant. Said witness having
been first duly sworn doth depose as follows
Interrogatory 1st by Complainant

What is your age, place of residence
& occupation

Ans My age is thirty six years. My residence
Little Rock, Kendall County Illinois. My occu-
pation a farmer

Int 2^d Are you acquainted with the Complainant
& Defendant in this Cause & if so how long
have you known them & what relation if
any are you to either party

Ans I am acquainted with them. I have been
acquainted with Mr. Shonts ever since he has
been in the Country some 10 or 11 years. the
Complainant is my father, I am not related to Shonts.

Int 3^d State if you know where Morris Hadden the
Complainant & David H. Shonts the Defendant
reside

Ans Mr. Shonts resides on the South West Quarter
of Section one Town 37 North Range 6 East. Mr
Hadden resides on the North East Quarter of
same Section. I rather think the quarter Section

line between the South East & South West Quarters runs through Mr. Shouts house so that I am not certain as to which Quarter he does reside on

Int 4 State whether or not the Defendant David H Shouts is the owner or in possession of any mill dam which is situated across or in the waters of Big Rock Creek - If your answer be yes please describe the land & location of said Mill dam & in what County the same is situated

Ans He is in the possession of a mill dam on Big Rock Creek. It is situated on the South East Quarter of Section one Town 37 Range 6 the main portion of it. The West end is on the South West Quarter of said Section - It is in Kendall County

Int 5 State whether or not the Mill dam you have spoken of in your answer to the 4th interrogatory obstructs, dams or raises any stream of water or water course. If your answer be yes state what stream or water course & state the height of said dam as near as you can

Ans When the dam is up it obstructs the waters of Big Rock Creek. That portion of it that is standing now is from 6 to 8 feet above the water on the lower side

Int 6 State whether or not the said Mill dam obstructs the waters of Big Rock Creek so as to overflow the lands that are now or have been overflowed by water in consequence of the

Situate upon said creek above said dam

Ans It does

Int 11 State whether or not the complainant Morris Hadden is the owner or in the possession of any lands that are now or have been overflowed by water in consequence of the erection of said mill dam if your answer be yes, please to describe said lands & about how many acres are or have been so overflowed

Objected to

Ans It is in possession & the owner of lands on the North West Quarter of the South East Quarter of Section one & of land on the South & West parts of lot No 1 of the North East Quarter of Section one between 30 & 40 acres on both pieces that are overflowed & saturated when the dam is up at its ordinary height

Int 8 State in what way if any has the erection of the said dam affected the lands that are owned or are in possession of Morris Hadden the complainant and describe said lands if any have been affected by the erection of said dam

Ans It has covered a portion of it with water about from 20 to 25 acres 12 or 13 acres of which are on the North West $\frac{1}{4}$ of the South East Quarter of Section one on each side of Big Rock Creek & from 11 to 12 acres on the South & West parts of Lot No one on the North East Quarter of said Section on both sides of Big Rock Creek. There is a portion that the water sets back into & saturates about from 7 to 10 acres. There is a portion about from 15 to 20 acres covered with timber it has drowned the timber off. There is a stone quarry

126 on it- It covers that- it renders the greatest portion of it unfit for cultivation whilst the dam is up - a portion of it was formerly meadow & a portion of timber

Int 9 State whether or not the Complainant Morris Hadden ever notified or warned the Defendant Davis & Shouts not to erect said dam so as to overflow or injure the lands of said Complainant- State fully what you know of any thing in relation to such notice being given

Ans He has- in the Spring of 1849 there was a break in the dam, and a portion of the dam was carried out, and Mr Shouts was notified not to put it up so as to overflow Complainant's land- he said he had a pretty good lot of logs at the mill & would like to repair it so as to saw them out if no more. The Complainant told him he had been overflowed as long as he could stand it- a short time after that Mr Shouts came to me & spoke about repairing the dam- I told him he must not do it so as to set the water back on our land- he said he thought he should put it up & saw out what logs there were on the yard & he should get some - I said on the subject & if he thought it would pay he should put it up- I told him he must not do it that the dam had been a great curse to us & we could not stand it any longer- In the fall of 1851 in September 9th he gave him a written notice not to put the dam up

Int 10 Look on the paper marked (A) & State whether

or not the Complainant ever served a copy of
of said notice on paper on the Defendant David
H. Shouts Statefully in relation to the paper or
notice

Ans Mettup looks upon the paper & says - He did
I served the notice on Mr. Shouts myself by request
of Complainant. It was served on September 9th
1851. I saw the Complainant sign it. It is his signa-
-ture. I served it by delivering him a copy of said
paper marked (a)

Crop examined by Defendant

Int 1 Have you any interest in the event of this
Suit

Ans I do not know that I have any particular
interest other than that the Complainant is
my father

Int 2 Do you not know that the Complainant
Morris Hadden has willed the property to you
which you have been describing in your Depo-
sition

Objected to by Complainant

Ans I do, but he is still living & may alter his Will

Int 3 Have you not managed this Suit since its Com-
mencement up to the present time

Ans I have acted as agent for him in this matter
as I do in all the rest of his business matters

Int 4 Did you not file the bill & commence this Suit
without the knowledge of Complainant at that time

(127) [2381-66] Ans I did not

Int 5 Did the Complainant know of the commencement

of this Suit at the time it was commenced
 Ans He did

Int 6 Was the Complainant Morris Hadden known
 of the taking of your Deposition to day
 Objected to

Ans He does I presume. It has been talked over
 in the family for the last ten days

Int 7 Did the Complainant Morris Hadden Cause or
 direct the taking of this Deposition to day
 or was it not your voluntary act
 Objected to

Ans Mr Helme brought the notice up to our house
 & directed it to be served on Mr Shouts. My father
 was present when Helme was there & talked the
 matter over

Int 8 Who talked the matter over

Ans There was my father, Mr Haight - Myself & I think
 there was one or two men - Helme said whilst he
 was writing the notice, that I did not see Mr Shouts
 that day he would serve it on Mr Matthews as the
 time was short

Int 9 When was the dam first built you have spoken
 of in your deposition

Ans I have heard it was built in 1836 or some
 portion of it Objected to

Int 10 When was the timber drawn off that you
 have spoken of in your answer to the 8th direct
 interrogatory

Ans It commenced dying off in 1838 & has been
 dying off ever since

Int 11 Was the timber not cut off of the land you have

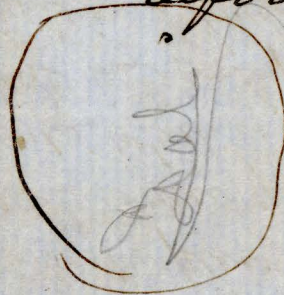
Described, by the Complainant before the Defend
ant should come into possession of the dam
Ans Part of it was before that since

Direct examination resumed

Int 1 When did you see the Complainant Morris
Hadden last

Ans I saw him this morning a few minutes before
I started Geo M Hadden

State of Illinois
Kendall County I P I John M Crothers
Clerk of the Circuit Court of said County Certify
that the above Deposition was taken by & before
me at my office in Oswego in said County on the
4th day of November AD 1853 Commencing
at 11 o'clock A.M. & that the same was made
read to witness & subscribed & sworn to by him
before me at my office on the year aforesaid
The testimony whereof I hereunto set my hand
& the seal of said Court at Oswego in
said County this 4th day of November AD
1853
John M Crothers
Clerk



(V30) Copy of Exhibit (A) referred to in
the Deposition of George M Hadden
to David H Shonto

of the Town of Little Rock Kendall County Illinois

Sir — I am informed that you contemplate the erection
or repairing of a dam across Big Rock Creek in said Town on the premises
now in your possession & that you intend to build a dam across said stream
at or near the place aforesaid to such a height as will stop or impede the nat-
ural course of said stream and set the waters of the same back upon my
land, which is situate in said Town being a part of the East half of Section
One in Township Thirty seven North of Range Six East of the Third Principal
Meridian. I therefore take this opportunity to notify you that I shall
stand upon my legal & equitable rights whatever they may be, & defend them & I give
you notice that if you in any manner impede
or divert the natural current of said stream or throw any obstruction
into the same or make, erect, or repair any dam across said creek
or stream so as to ~~divert~~ divert or impede the same or cause it thereby
to rise or flow back upon my said land or saturate the same
with water or in any other manner to injure me or disturb
or abridge my rights or interests I shall look to the law for protection
& redress.

Dated September 8th 1857.

Yours &c

George M Hadden

(A)

This paper was exhibited to George M Hadden on
his examination & is the paper marked (A) referred to in the
10th direct-interrogatory of said deposition

A. M. Crothers

Notary Public

Commissioner

Deposition of Joseph M Helme a witness
produced examined & sworn before John
M Crothers Clerk of the Circuit Court of Kendall
County Illinois on the 14th day of November 1853
at the office of said Clerk in Oswego in said
County on the part of the Defendant in a cer-
tain cause pending on the Chancery Side of
the Circuit Court of Kane County in said
State wherein Morris Hadden is Complainant
& David H Shouts is Defendant to be read as
evidence in the trial of said cause on the
part of Defendant - said Helme being first duly
sworn deposes as follows

Int¹ Look upon the paper here shown you
marked (M) & State whether you were a Subscri-
bing Witness to the same at the time it was expe-
-ted & whether the signatures thereon are genuine

Ans I suppose I have no doubt I was a Sub-
scribing Witness, the name on the left side of
the paper J M Helme, is in my own hand writing
& the Certificate of acknowledgment is my own
hand writing. I can't speak of the signatures
of the Grantors from my own knowledge
J M Helme

State of Illinois
 Kendall County

I John M Crothers clerk of
 the Circuit Court of said County
 certify that the foregoing deposition of [unclear] was taken by
 and before me ~~his~~ at my office in [unclear] on the
 4th day of November 1853 and was read to said
 Witness by him subscribed & sworn to at my said
 Office the day & year last aforesaid

Seal

In Testimony whereof I hereunto set
 my hand and Seal of said Court the
 day & year aforesaid

John M Crothers
 Clerk

And Whereas afterwards writ on the 10 day
May A.D. 1883 the same being one of the days of the said
Kane County circuit court the at the May Term thereof the follow-
ing among other proceedings were had which is in the words
and figures following to wit

Moorns Wadden

v
David M. Shontz

Bill for Injunction

This day comes the defendant by Plea
his attorney and moves the court to dissolve the Injunction

And afterwards writ on the 18th day
of February A.D. 1884 the same being one of the days of the
Kane County circuit court of the February Term thereof
A.D. 1884 the following among other proceedings were had to wit

Moorns Wadden

v
David M. Shontz

Bill for Injunction

And now comes the Complainant by
J. M. Kelley his solicitors and the defendant by Plea
his solicitor and thereupon after argument of counsel having
been heard and the court now being fully advised in the
premises. It is Ordered adjudged and decreed and this
court by virtue of the authority therein vested doth order
adjudge and decree that the bill filed in this cause by the
Complainant be dismissed without prejudice to the Com-
plainant and that the defendant recover his costs in this
cause to be taxed and have execution therefor. And
thereupon the Complainant by his said solicitors comes and
excepts to the decree aforesaid. And prays an appeal to the
of this cause to the Supreme Court which is granted and

leave is given the complainant to file an appeal bond
in the penal sum of One thousand dollars with J. D. Pierce or Thomas Sidd as his Security bond to be filed
in forty days

And whereas afterwards to wit on
the 22^d day of March A.D. 1834 the following Bond
was filed which is in the words and figures following
Bmt

Know all men by these presents that we
Morris Hadden and Jesse D. Peirce of the county of Kendall and
State of Illinois are held and firmly bound unto David H. Shontz
of the same place in the penal sum of one thousand dollars good
and lawful money of the United States of America to be paid to the
said David H. Shontz his Executors Administrators or assigns
to which payments well and truly to be made we bind ourselves
our heirs Executors and Administrators jointly and severally by
these presents sealed with our seals dated the Twenty Second
day of March A.D. 1854

Whereas at the last February term of the Kane
county circuit court in said State of Illinois began and held at the
court house in General in said Kane county on the thirteenth day
of February A.D. 1854. in a certain cause then pending and in said
court on the chancery side thereof in which the above bounden Morris
Hadden was complainant and the above named David H. Shontz was
defendant the final judgment and decree of said court was rendered
and entered of record in said ^{Court} ~~County~~ in favor of the said Shontz
and against the said Hadden from which judgment & decree the
said Hadden prayed for and has taken an appeal to the Supreme
court of the said State of Illinois. Now therefore the condition of
the above obligation is such that if the said Morris Hadden
shall duly prosecute his said appeal and shall pay the judgment
cost and interest and damages in case the said judgment shall
be affirmed then the above obligation to be void otherwise of force

Morris Hadden ^{Sealed}
Jesse D. Peirce ^{Sealed}

State of Illinois
Kane County

I Luther Dearborn Clerk of the Kane
County Circuit Court do hereby certify that the
above and foregoing is a full perfect and complete copy of the
Transcript from Kendall vs. Bill for Injunction Bond for
Injunction writ of Injunction. Summons Answer Replication
affidavit Bond. Notice. Patent from the United States to
James H. Hadden. Patent from United States to Morris Hadden
deed from James H. Hadden to Morris Hadden dated 23rd Oct
1845 deed from Morris Hadden ^{vs} to David A. Shonts dated 23rd
Oct 1845. deposition of Henry H. Bingham deposition of Ar-
chibald Sears deposition of Archibald Sears deposition of
Nathaniel I. Robbins deposition of Samuel B. Bartlett dep-
osition of John Harne deposition of Isaac Hatch depositions
of Robinson Ledy Jere. St. Pierce James M. Hadden deposition
of Geo. M. Hadden deposition of Joseph H. Helm. Bond for appeal
map of Archibald Sears and copy of Record of Kane County
is a full negt in said cause
as appears from the Records and files of my said Office

Witness my hand and the Seal of said Court
at General in said County this 29 day of
May A.D. 1854

Luther Dearborn
Clerk

38
Morms. Hadden

v
David H. Shonts

Copy of Record

Filed June 13. 1854.

L. Delaney Clerk

Fee \$ paid by Blackwell

Clerk



Hadden
" David H Shanty

Supreme Court Ottawa
June Term 1854.

I. The principle of injunctive relief against a tort is, that whenever damage is caused or threatened, to property admitted or legally adjudged to be the plff by an act of the deft. admitted or legally adjudged to be a civil wrong and such damage is not adequately remediable at law, the inadequacy of the remedy at law is a sufficient equity, and will warrant an injunction against the commission or continuance of the wrong.

Adams. Eq. 207. 217.

The points to be established by the complainant in this case to entitle him to an injunctive writ.

1. Title to property overflown.

2. The fact of overflowing the lands in question.

3^d. The wrongfulness of such act.

4th - That the damage therefrom was ^{not} remediable at law.

II. If the facts necessary to establish these several points are admitted by the defendant, then there is no occasion for their establishment in a court of law. - The right of trial at law is one which must be claimed by the deft.

Supp Dury in Reg 44. 43.

- 6 Harr 340

Dury 224. 221.

4 Reg Law & Equity 23

Walker Ch Rep 112

9 Johns 507

4 Gains Ch 53.

2. In this state, where the same person holds the law & equity side of the court, questions of law will be decided by the Chancellor, and while formerly in England it was necessary to have the legal questions established in a court of law. Yet that practice is now abolished in England by Statute of 15 & 16 Vict ch 58. as useless, and it ought to be held to be inapplicable to the constitution of our courts and binding upon them.

III. ~~The complaint has established by the admission of the~~

The defendant by his answer admits all the facts necessary to entitle the complainant to an injunction

1. The lands which the complainant says are wrongfully overflowed the defendant admits, and so it appears in evidence, were patented by the complainant from the United States, and the ~~edict~~ claims title to the land below upon which the dam is built under the same patent and under ~~the~~ a deed from the complainant. Upon this point there can be ^{no} question to submit to a jury, and consequently there was no necessity of trial at law to establish this part of the complaint case.

2. The fact of the defendants dam causing the water to run back upon and overflow the lands of the complainant is also admitted by the answer. - The answer avers that the dam in question does not overflow the complaint land more than the old one in the same place did.

The parties then go into evidence to show how high the old dam was, and the height of the present dam by which it appears from the depts own showing, that the full upon depts land is not over two feet, and that the dam is at least seven feet high, and thus showing beyond all question, the fact of overflowing. ~~to~~ The extent of the overflowing is not material. -

3. The wrongfulness of the act complained of, follows as a matter of course from the couplets ownership of land overflowed, and from the fact of such overflowing, unless the deft sets up some excuse or justification of the act complained of - The whole question then upon this part of the case, depends upon the matter set up by the defendant. - There are first

1st A licence -

That this will not avail the defendant, or give him a right to a trial at law is settled by the case of
Woodward v. Kirby . . . 11 All R. 157

2^d. The complainant's acquiescence -

It will not be contended that the question of acquiescence is to be tried in a court of law.

The only question then upon this point is whether there has been such acquiescence, as in equity to deprive the couplet of his remedy by injunction

Acquiescence is of no account, unless it has been such as to place the opposite party in a different position from what he would have been in, had ^{no} such acquiescence ~~and~~ taken place -

5 Beav 229

3. That the drd from the complainant to the defendant conveyed the right to overflow the complainant's land to the extent it was then overflowed, as an appurtenant to the six acres thereby conveyed. The construction of this drd does not require a trial at law.

522

2 C & J 126. Those things which are absolutely necessary to the use of the thing conveyed pass as appurtenant to the principal thing. When a mill is conveyed, those things which are necessary to the use of the mill &c will pass.

So when land is conveyed, and there is no access to it, a right of way passes of necessity, but an easement by an old way will not pass.

Gale & Wheatley on Easms 73. 85.

3. Hunt 24. 2 Bing 83.

But when land is conveyed, no right over adjoining lands passes. because it may be necessary to use the land in a particular manner, because it is not necessary to use the land in that particular manner.

1 B & P 371

17 Mass 443

3 Rawle 256. 16 M & W 483. 3 Mass 280

IV The overflowing of lands is such damage as is not adequately
remediable at law - This point has been repeatedly
settled and is not a debatable question.

7 W & S 9

Brief

Hadden

"

David H Shantz

1 Nov 50 1872

Blackwell & Pickette
for App.

Opened and Filed May 10th 1833
L. Deakins
clerk

Land of Morris Hadden

Land of Morris Hadden

Lot No 1 of the N. E. 1/4 of Sec. 1

11.35 acres

7.23 chains

6.65 acres

2.70 chains

Land of M. Hadden

8.55 chains

Big Rock Creek

Land of Morris Hadden

Deed of 37th N. H. Range 6 E. of 3rd P. M.

Platt of
A. Sears

50' 600
0.5' 618
24' 48
28' 45
12' 491
10' 01

12381