

13489

No. _____

Supreme Court of Illinois

Stolp.

vs.

Hoyt, et al.

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United States of America } ss.
State of Illinois - Kane County }

Pleas before the Honorable Isaac G. Wilson,
Judge of the Thirteenth Judicial
Circuit of the State of Illinois and
Sole Presiding Judge of the Circuit
Court of Kane County in the State
aforesaid, and at a regular Term
thereof, begun and held at the Court
House, in the village of Geneva in
said County, on the third Monday
(being the twenty first day) of May
in the year of our Lord one thousand
eight hundred and sixty, and of
the Independence of the United
States the Eighty fourth.

Present:- The Hon. Isaac G. Wilson,
Judge of the 13th Judicial Circuit.

" Edward S. Joslyn, State Attorney

" Ethan J. Allen, Sheriff
of Kane County.

Attest:
Paul R. Wright
Clerk

Be it Remembered, that heretofore
to wit, on the 20th day of October, AD 1854, a
Bill was filed in the office of the Clerk
of the Circuit Court of said County, on the
Chancery side thereof, which is in the words
and figures following, to wit:—

State of Illinois }
Kane County } Do the Hon. Isaac C.
Wilson, Presiding Judge
of the Kane County Circuit Court, in Chancery
sitting, &c:—

Your orator, Charles Hoyt, of said
County of Kane respectfully sheweth that on
the 8th day of June, AD 1842, and for a long
time previous thereto, one Samuel McLearty
and his brother was the owner, and in posses-
sion of a settlers claim on government lands
in the Town of Aurora in said County, situated
on Section Twenty two, Township thirty eight,
North range eight, East of the third prin.
meridian, on the East side of Koa River,
on which they had erected a flouring or grist
mill, a saw mill, and a mill dam across
said River, that previous to the said 8th day
of June 1842, the said McLearty's had been
the owners and in possession of a like
claim on said section on the west side of

said river, which they had sold, together with one half of said River, and water power made by said mill dam for a valuable Consideration, to one Gaphua Lake who erected thereon, and put in Operation, a Saw mill, that after such sale and purchase and improvements by said Lake, and on or about the 21st day of August, AD 1842 your orator purchased of said Lake all his right, title, and interest in said claim, water power, saw-mill and mill dam for which he paid the said Lake a large sum, to wit: about Eight thousand dollars, and took possession of, and improved the same by erecting thereon a large and extensive flouring mill, and has been the owner, occupier, and in possession of the same from thence hitherto.

That previous to the survey and sale of said lands by the Government of the United States the said Mc Cartys had laid out a town, and sold lots on said Section twenty-two, on the East side of said river, at Aurora and the said Lake had done the same on the west side of said river; that at the time said lands were to be sold at Chicago to wit. in June, AD 1842, and as the said Lake, who then resided in Ohio had sold out all, or nearly all of his interest in

said Section 22, and your Orator also having sold nearly all of his interest, except about four acres, including said mills, mill dam, water power, and other improvements on said four or five acres, it was agreed among the settlers and owners of property on said Section Twenty Two, that Theodore Lake, a brother of said Gaphna, and a resident of Aurora, and owner of lands on the west side of said river in said Town should enter and purchase from the Government at the Sale thereof, the north west fraction of the South west quarter of said Section Twenty two, containing twenty seven and $\frac{1}{2}$ acres, and convey by proper deeds to the several and respective owners thereof. And your Orator is informed, and believes that a similar arrangement was made among the settlers and owners on said Section twenty two, on the East side of said river, with the said Samuel Mcarty, for the entry, purchase and conveyance by him of the South East fraction of the South East Quarter of said Section twenty two.

That afterwards to wit, on the 8th day of June, AD 1842, in pursuance of said arrangement, the said Samuel Mcarty entered and purchased from the Government at the

land sales in Chicago, the said South East fraction of the South west quarter, and the west half of the South East quarter of said Section Twenty two, and that the said Theodore Lake, at the same time and place entered and purchased the said north west fraction of the said north west quarter section.

And your Orator further shows that the said McCarty caused a plat of the Town of Aurora on the East side of said river to be recorded in the recorder's office of Kane County, and that according to said recorded plat, the mills and mill dam on the East side of the river on said Section Twenty two, are situated on Block number Two; that said Theodore Lake, also caused a plat of the town of Aurora, on the west side of said river, to be recorded as aforesaid from which said plat so recorded it appears that your Orators said mills, mill dam and water power are situated on Block number one, and thereon described and designated as "Charles Hoyt's Mill Lot."

And your orator further shows that on the 8th day of February, A.D. 1843, a patent for the said north west fraction of the South west quarter of said section twenty two, was duly made and issued to the said Theodore

Lake as the purchaser thereof, a copy of which said Patent is hereto attached, and marked (A) which your orator prays may be made part of this Bill, that afterwards to wit. on the 13^d day of July, AD 1844. the said Theodore Lake, and together his wife, made, acknowledged, and delivered to your orator a deed in fee simple of the lands belonging to your orator as aforesaid, and situated on said north west fraction of said South west quarter of Section Twenty two, including your orators mills, mill dam, and water power, a copy of which said deed is hereto attached and marked (B) which your orator ^{also} prays may be taken as part of this Bill of Complaint.

And your Orator further shows that there is an island containing about ten acres situated immediately below, and South of the said mill dam between the recorded plats of East and West Aurora, which was originally a part of the said McLearty's claim, and by them sold to Frederick Stolp, together with certain water power to be taken from the mill dam, & was not originally surveyed by the General Government, but was afterwards by the request of the person in possession surveyed and returned to the land office in Chicago, as an Island on the

South west quarter of said Section twenty two, and containing ten and ¹⁸/₁₀₀ acres and which was on the said 8th day of June, A. D. 1842, entered and purchased by one Frederick Stolp; that previous to that time said island had for a long time been in the possession of one Joseph G. Stolp who had a wool carding & cloth dressing factory, situated immediately below the East half of said Mill dam, and by some arrangement with the said Mc-Carty's used water from their part of said dam for the purposes of said factory, that in February, A.D. 1843, as appears by a deed on record in the Recorder's office of said County of Boone the said Samuel Mc-Carty conveyed to the said Joseph G. Stolp, the right to draw a certain amount of water from his the said Mc-Carty's half of said mill dam, that some time afterwards in the years 1847 & 1848, the said Joseph G. Stolp erected a large woollen factory on the west bank of said Island some distance below the said dam, and also a short distance below your Orator's mills, your Orator's mills being situated on the West and the said Stolp's factory on the East bank of the west channel of Fox River, that in order to supply his said factory

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with water power from the said mill dam, the said Stoep caused to be made a large open race or canal about nine hundred feet long, about forty feet wide and about five or six feet deep from said mill dam to his said factory, and has continued to use the same for that purpose from thence hitherto; that the building formerly occupied by said Stoep as a wool carding and cloth dressing establishment near the mill dam as aforesaid has been converted into a grist or flouring mill, now owned or occupied by one James Pyfe, and is supplied with water from said dam by sale or lease from the said J. G. Stoep, that there is now, and has been for a long time in full operation upon said Island a planing mill and other machinery, owned by, or in the possession of John W. Van Orsdell, and which is also supplied with water from said race or canal by sale, lease or permission from said Joseph G. Stoep, that the mills on the East side of said river, built by the said M^cCartys as aforesaid, is also supplied with water power from said mill dam, and owned at this time by Elijah Ryde, and Daniel M^cCarty, and by them or one of them leased to one Rezekiah Gifford.

And your orator further shows that by an arrangement with the owners of the East half of the River, the said mill dam was divided and apportioned between them and your orator so that each one had his allotted share of said mill dam to keep in repair. And your orator further shows that since he has owned and occupied his said mill and dam, he has always kept his part of said dam in good order and repair, and in so doing has necessarily expended a large amount yearly for that purpose, that he has been and still is the legal and lawful owner of one half of said mill dam, and the water power created thereby; that he has neither sold nor leased any part thereof but has and still does retain the same for the purpose of supplying his said mills, and should have abundance of water for that purpose, if the other proprietors and occupiers kept their part of said dam in order and repair, and used no more water than they are legally and justly entitled to.

And your orator further shows and charges the truth to be that for the last six or eight years, he has been greatly damaged and injured annually in his said business in consequence of not having

sufficient water power to propel the machinery of his said mill; that such deficiency has not been caused by any want of care or attention on the part of your orator in the reparation of his part of said mill dam, but has been wholly and solely caused by the other owners and occupiers not keeping their proportion of said dam in proper order and repair by using more than their just proportion of said water power, and by the wasteful, careless, and reckless manner in which they draw the water from said dam, and apply it to the use of their machinery as aforesaid, and your orator especially charges that the said Joseph G. Stolp, and those claiming under him is now and has been for years past, drawing from said mill dam much more water than he or they are legally or justly entitled to.

And your Orator further shows that he has repeatedly and earnestly remonstrated with the other owners and occupiers of said mills, mill dam, and water power, and especially with the said Stolp upon the injury and injustice done to your orator by them in the manner of their and his use of the said water, and has, from time to time,

and at various times endeavored to enter into some just and equitable arrangement with them, and especially with the said Stolp, by which each one should take and receive his just proportion of said water and water power, without unnecessary injury to one another.

And your orator further shows that he has from year to year submitted to the wrong and injury aforesaid, in the hope that some amicable and just arrangement would eventually be made between the proprietors of the said water power, that the injury done to him is of such a character, varying in extent, according to the seasons, that it is and would be impracticable, if not impossible, by any legal and competent testimony to establish and ascertain in a Court of law the amount of damages sustained by your orator as aforesaid, but now so it is, may it please your honor, that the said proprietors and occupiers of the said water power, and especially the said Joseph G. Stolp, contriving and intending to injure and aggrieve your orator in the premises wholly refuse, or decline to enter into any just and equitable agreement and arrangement for a proper and just ascertainment

and adjustment of their several rights and interests in the water power aforesaid, but on the contrary thereof continue to neglect the necessary and proper reparation of their proportion of said mill dam and continue to use and waste the said water in the same careless extravagant and reckless manner as aforesaid, all of which actings and doings are contrary to equity and good conscience, and tend to the manifest wrong and injury of your Orator.

Your Orator therefore prays that the said Joseph G. Stolp, Daniel McLearty, Elijah Heyde, James Dyke, John M. Van Osdel and Hezekiah Gifford may be made defendants to this Bill of Complaint, and that they may full, true and perfect answers make to all and singular the matters and things herein stated, charged, and set forth as full and particularly as if thereto specifically interrogated, and that in the meantime an injunction may issue from this Court, restraining the said defendants from drawing or using water from said mill dam as aforesaid, until the rights of the respective owners thereof may be settled and adjudged by this Court, and for the purpose of ascertaining and adjusting the rights of said owners, your

Orator prays the appointment of a suitable number of qualified, discreet persons as Commissioners under the order and direction of this Court, whose duty it shall be to ascertain the manner, form, conditions, time, and to what extent each of the said owners may draw and use waters from said mill dam and to do all other acts necessary and proper for the purpose of ascertaining and adjusting the several rights of the parties in the premises and that they make report to this Court at as early a day as practicable; and that your orator may have such other and further relief in the premises as the nature of the case may require, and be agreeable to equity and justice. may it please your honor to grant unto your orator the usual process of Summons against the said defendants, Commanding them to appear before this Court at the next Term thereof. answer make to this Bill of Complaint, and to stand to and abide by such orders and decree as may be made in the premises.

Chas Hoyt by
Plato & Jerrett his
Sols

Plato & Jerrett
Sols of Compl.

(A) Copy of U. S. Patent to Theo. Lake.

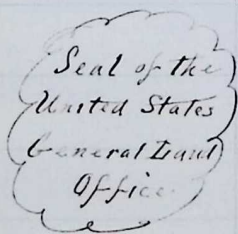
Certificate No. }
13,095

The United States of America, Do all to whom these presents shall come greeting:—
Whereas, Theodore Lake of Kane 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 Theodore Lake, 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 lands" for the north west fraction of the South west quarter of Section Twenty two, in Township thirty eight, North of Range eight, east, in the district of lands subject to sale at Chicago Illinois, containing twenty seven acres and twenty seven hundredths of an acre, according to the official plat of the survey of the said lands, returned to the General land office by the Surveyor General, which said tract has been purchased by the said Theodore Lake, 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 Theodore Lake, 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 Theodore Lake, and to his heirs and assigns forever. In Testimony whereof, I, John Tyler, 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 eighth day of February in the year of our Lord one thousand eight hundred and forty three, and of the Independence of the United States the sixty seventh

By the President,

John Tyler.
by R. Tyler, Sec'y.



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& d

J. Williamson

Recorder of the General Land Office

(B.) Copy of Deed from Theod Lake & wife to Chas. Hopt.
This Indenture, made this thirteenth day of July in the year of our Lord one thousand eight hundred and forty four, between Theodore Lake and Esther S. Lake his wife

of the County of Kane & State of Illinois,
party of the first part and Charles Koyt of
the same County and State, party of the sec-
ond part, witnesseth that the said party of the
first part, for and in consideration of one
Hundred dollars to him 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
discharged therefrom, hath granted, bargained,
sold, remised, released, aliened and confirmed
and by these presents doth 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 de-
scribed lot, piece or parcel of land, to-wit,
Lots No. one, three, four, five & six, in block
number one (saving and reserving from said
Lot number six all such part thereof as here-
tofore conveyed to Roswell Wilder) the said
premises bounded as follows, viz. on the East
by Fox river, on the South by lot number
seven in said block, on the West by the
Centre of River Street, and on the North by
a line commencing at a point sixty four and
one half feet ($64\frac{1}{2}$) South of the North west
corner of said block number one, and run-
ning thence South forty seven degrees East,

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to Fox river, containing about four acres and thirty eight hundredths of an acre, be the same more or less, in the town of west Aurora, County of, Keane & State of Illinois, according to the survey of said town, and recorded in the Recorder's Office of said County & there designated as "Charles Kozy's Mill lot." upon which lot now stands a Flouring or Grist Mill, Saw mill and other buildings - Together with all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder or remainders, rents, issues and profits thereof, and all the estate, right, title, interest, claim, or demand whatsoever of the said party of the first part, either in law or equity, of, in and to the above bargained premises, with the hereditaments and appurtenances, Do Give 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 party of the first part, for himself and for his heirs, executors and administrators doth 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

enscaling and delivery of these presents,
he is 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 hath 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, judgments, taxes, assess-
ments, and incumbrances of what kind and
nature soever, and the above bargained prem-
ises, 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 party
of the first part shall and will warrant
and forever defend

In Witness whereof the said party
of the first part hath hereunto set his hand
and seal the day and year first above written.

Sealed and Delivered }
in Presence of }
Robert Robinson }

Sherrone Lake L.S.

Esther Lake L.S.

State of Illinois }
Horne County } ss J. Robert Robinson, a Justice

of the Peace in and for the said County -
in the State aforesaid, do hereby certify
that Theodore Lake and Esther S. Lake
personally known to me as the same persons
whose names are subscribed to the above
Warranty Deed, appeared before me this day
in person, and acknowledged that they signed
sealed and delivered the said Warranty Deed
as their free and voluntary act, and for the
uses and purposes therein set forth, and the
said Esther S. Lake, wife of the said Theodore
Lake having been by me examined, separate
and apart, and out of the hearing of her
husband, and the contents and meaning of
the said Warranty Deed having been by me
fully made known and 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 13th day of July. A.D. 1844.

Robert Robinson L.S.

Justice of the Peace.

(Endorsed)

Received for Records July 15th 1844 at 9 o'clock A.M.
and recorded in Book 5 of Deeds at page 85 & 86.

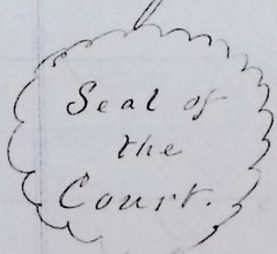
Geo. W. Gorton.

Recorder, Kane County, Ill.

And afterwards, to-wit, on the 21st day of October. AD 1854, a Summons was issued out of the Clerk's office aforesaid which is in the words and figures following, to-wit:—

State of Illinois }
Kane County. } The People of the State
of Illinois to the Sheriff
of said County, greeting:—

We command you that you summon Joseph L. Stolp, Daniel McCarty, Elifab Heyde James Dyer, John M. Van Osdel & Hezekiah Clifford, if they shall 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 Geneva, in said County, on the first Monday of November next, to answer unto the Bill of Complaint of Charles Hoyt, filed on the Chancery side of said Court, against them for relief. And have you then and there this writ, with an endorsement thereon, in what manner you shall have executed the same.



Witness Luther Dearborn, Clerk
of our said Court, and the seal thereof,
at Geneva, in said County this 21 day
of Oct. AD 1854.
Luther Dearborn
Clerk

6.

Upon which summons there appears
an endorsement, which is in the words and
figures following, to wit:

Executed the within writ, Oct 25th
1854 by reading and delivering a copy of
the same to Jls Stolp, Elijah Hyde, James
Hyde, and leaving a copy of the same with
the family of Heseckiah Gifford & Daniel
McCarthy, they not being found in my
county. John W. Van Orsdell not found
in my county.

A. B. Spalding.
Sheriff of Kane Co.

And afterwards to wit, on the 6th day
of November AD 1854, the same being one of
the days of the November Term of said Court,
1854, the following among other proceedings
were had and entered of Record, to wit:

Charles Hoyt. }
v } Bill for Relief
Joseph G. Stolp, et al. }

This day comes the
defendants, by their Solicitor, and
moves the Court to strike the Bill from
the files.

And afterwards To wit on the 15th day of January
A.D. 1855^{there} was filed in the office of the clerk
of said court an answer in the words &
figures following To wit:

In Chancery before the Hon.
Isaac G. Wilson Judge of
Kane County circuit court
Illinois

The answer of Joseph
G. Stolp one of the defendants to the bill of
complaint of Charles Hoyt Complainant.

This defendant now and at all times
hereafter saving & reserving to himself all
manner of benefit and advantage of
exception to the many errors and insuffi-
cencies in the complainants said bill of
complaint contained for answer therunto so
much or such parts thereof as this defendant
is advised is material for him to make
answer unto he answers and says that he
admits that Samuel Mc Carthy & Brothers
owned as Settlers claim on Government land
in Aurora on both sides of Fox River in
said town of Aurora Kane co Ills. that Mc
Carthy erected a dam across said river in
Aurora that Mc Carthy sold one half of dam
and on West side to G. Lakes prior to the land sale

by Government that Lake built Saw Mills &c
that Hoyt purchased of Lake and built Grist
Mill &c That M^{rs} Carty laid out a town on
East side & J. Lake on West side That Theodore
Lake purchased about 27 1/2 acres of Government
in June A.D. 1842 at Land Sales &c. & deeded &c.
That M^{rs} Carty purchased of Government on East
side of Fox River and that Hoyt's Mill dam & water
power are in Block No. 1 on West side That M^{rs}
Carty's Mills on East side are in B. 5. That Theodore
Lake received his patent of the land on West side
on the 8th day of February 1843 that Lake deeded
to Hoyt to wit July 13th 1844

Further answering admits that there is an Island
between the West & East platted towns which ex-
tends above ^{the} ~~mouth~~ dam and South from the
Mill dam containing ten 1/100 acres as per
Government Survey and which was originally
a part of said M^{rs} Carty's ^{land} Brothers claim
across which island is built said dam and
further admit that Frederick Stolp purchased of
said M^{rs} Carty in A.D. 1835 or 1836. water power
from said dam for the defendant J. G. Stolp
and that said Island was platted and surveyed
by the Government as an island and purchased
at the land sales at Chicago June 8th 1842 by
Frederick Stolp purchased of said M^{rs} Carty for
Joseph G. Stolp the defendant in S. M. gr. Sec. 25 & 38

R. S. & P. M. containing ten ¹⁸/₁₀₀ acres purchased at
Government price which Island divides Fox River
into two channels the west & East channels
and further admits that previously Joseph G
Stolp had possession of said Island built
Wool carding & cloth dressing establishment
and used water from the dam by purchase
from M^{rs}. Carty since 1835 or 1836 that in 1847
& 1848 he built a woolen Factory on said Island
and dug race from dam to Factory that the
old cloth dressing establishment is converted
into a Gristmill and occupied by James
Tye also there is a sash & door factory on
said Island occupied by John M Vandell
drawing water from the race by lease from
the defendant Stolp and the defendant further
answering denies that he is under any obligation
to keep the ~~note~~ dam in repair Further denies
that he uses water from said dam more than
he is entitled to use and that the defendant
Stolp and those claiming under him do
not use as much by some four thousand
cubic inches from said dam ^{as per} ~~as per~~ his
deed from M^{rs}. Carty saving & reserving his
reparian rights as the said Stolp is entitled
to use from said dam And the said defendant
further answering says that he purchased by
Ondrick Stolp of the said M^{rs}. Carty Water

down from said dam in 1835 or 1836 M^cCarty then
having a settlers claim to said water power and
has had ever since and still does have possession
of said water power being the water power from
said dam that his purchase was previous to the
purchase by Z. Lake that on the 8th Jan 1842
Frederick Stolp for Joseph G. Stolp purchased by
conveyance from U. S. Government at the land
sales in Chicago Illinois the said Island in
S. N. 6th Sec. 22 T. 38 N. R. 8 E. 3^d P. M. as per certifi-
cate of said date which ready to be produced
as this court may direct that on ~~the~~ the 26th
day of Oct. 1843 the said Frederick Stolp conveyed
the said Island by Deed to the said Joseph G.
Stolp as per his deed of said date which is
recorded in Kane County Ills which is ready
to be produced, &c. And the said defendant further
answering says that on the first day of February
1843 he purchased by deed of Samuel M^cCarty
water Power in addition to his riparian ^{rights} by virtue
of his fee simple in said Island to one half of the
water in said river the right to draw from the
half of the Mill dam of said M^cCarty in the
town of Aurora Kane Co Ills water sufficient to
drive or carry ~~the~~ ^a wheels or wheels requiring
an amount of water equal to Three Hundred
& four cubic inches to be used by said Stolp
his heirs &c for any purpose also the right to draw

and use water from the dam aforesaid water sufficient to drive ~~and~~ carry a wheel or wheels requiring an amount of water power equal to Eight Hundred cubic inches for the purpose of Cloth dressing, Manufacturing &c. and also in addition to the last mentioned water power the said Stopp is to have as much more water as he the said Stopp may want for the purposes aforesaid The said Mr. Carty reserving from the last grant sufficient water to drive Eight run of Stone &c. The said Mr. Carty covenanted with said Stopp to keep said dam in good repair and in such condition and height as to furnish the quantity of water aforesaid with a head of five feet which deed is recorded in the Records office of Kane county Illinois on the 6th day of March 1843 at 11 A.M. in B. 3. p 307.8 which deed is ready to be produced &c.

And the said defendant says he has owned & occupied said Island & water power since 1836 in quiet & peaceable possession that said Mr. Carty owned said Island by virtue claim & water power at the purchase of him in 1835 or 1836 and the defendant says by said deed he is entitled to 1104 cubic inches of water by virtue of said last mentioned deed in addition to his riparian rights from said dam and that he uses in his water power factory about two

Hundred & fifty cubic inches of water and not
to exceed 300. cubic inches that said Tyfo uses
one hundred and forty four cubic inches as for
dud to Margaretto his wife That said John
W Varnasdell has ^{by leave} a right to use two hundred &
fifty cubic inches from said race and the
defendant says that he and those claiming
under him do not use more water than the said
Stolf is entitled to use from said dam and
that he does not use as much water as he
is entitled to use by some four hundred cubic
inches besides his riparian rights And the
defendant further answering says that water
is measured by the issue of the wheel and
not at the Head Gate

All which matter & things the defendant
is ready to aver maintain & prove as the
honorable court shall direct and humbly
prays to be hence dismissed with his reasonable
costs & charges in that behalf most wrongfully
sustained.

J. L. Stolf

A. P. Fuller
Sol for deft.

State of Illinois,
Kane County } On this 8th day of January A.D.
1855 before me personally appeared

the above named J. G. Stolp and made oath
that he has read the above answer subscribed
by him & knows the contents thereof and that
the same is true of his own knowledge except
as to those things matters stated to be on his infor-
mation and belief and as to those matters he
believes it to be true

Subscribed & Sworn to
before me this 8th day
of January A.D. 1855
A. B. Fuller J. P.

And on the said fifteenth day of January
A.D. 1855 ^{there} was filed in the office of the clerk of
the said Court the answer of defendants Vanosdell
& Type in the words & figures following to wit:

In Chancery before Hon.
Isaac G. Wilson Judge of
the Kane County Circuit Court Illinois }

The Joint ^{several} answer of
John M. Vanosdell and James Type two of the
defendants to the bill of complaint of Charles
Reynolds Complainant These defendants now and
at all times hereafter saving and reserving to
themselves all manner of benefit and advantage of

exceptions to the many errors & insufficiencies in the
complainants said bill of complaint contained for
answer thereto so much or such parts thereof
as these defendants are advised is material for
them to make answer unto they answer and
say they admit that they have water privileges
that the said Jefe says he a-right to own
Hundred & forty four inches of water to be
drawn from the dam as per J. H. Stolps Deed
to Margarett his wife and that he occupies a grist
^{mill} converted from the old cloth dressing estab-
lishment and the said John M. Danosdell
admits that he occupies a sash factory in
Aurora in said Island by lease from J. H.
Stolp with a right to use two Hundred & fifty
two cubic inches of water from the said race
the said John M. Danosdell denies that he
uses more water than he has a right to
use and further answering says that water
is measured by the issue of the wheel and
not at the head gate and that the said Stolp
having a deed for Eleven Hundred and four
cubic inches is entitled to so much water
measured at the wheel and not at the head gate
and further answering says he believes the said
Stolp does not use as much water as he is
entitled to use by his deed of Eleven Hundred and
four cubic inches

And the said Type answering says that he denies that he uses more water than he is entitled to use that the issue of his wheel does not exceed One Hundred and forty four inches and that water is measured by the issue of the wheel and not at the head gate And further answering says that he believes the ^{said} Stoll does not use as much water as he is entitled to use by some four hundred inches All which matters & things these defendants are ready to aver and maintain and prove as this honorable court shall direct and humbly pray to be hence dismissed with their reasonable costs and charges in that behalf expended Most wrongfully sustained.

A. B. Fuller	}	James Type
Sol for depts		John M. Varnsdell
		by A. B. Fuller his atty

State of Illinois }
 Kane County } On this 15th day of January
 A.D. 1855 before me personally
 appeared the above named ~~John M.~~ James Type
 and made oath that he has heard ^{read} the ~~the~~
 above answer subscribed by him and knows
 the contents thereof and that the same is true
 of his own knowledge except as to those matters
 stated to be on his information and belief and
 as to those matters he believes to be true

Subscribed & sworn to
 before me this 15th day
 of January A.D. 1855
 A. B. Fuller J.P. }

Charles Hoyt }
 J. B. Stolp }

And afterwards I wrote on the 25th day of
 January 1855, ^{there} was filed in the office of the clerk
 of the said court a replication in the words &
 figures following to wit:

Charles Hoyt
 or
 J. B. Stolp et al. }

Rau County Circuit Court
 Jan. Special Term A.D. 1855

The replication of Charles Hoyt
 complainant to the separate answer of Joseph
 B. Stolp one of the defendants to the bill of complaint
 filed in this cause. This replicant saving &
 reserving to himself all and all manner of advan-
 tage of exception to the manifold insufficiencies
 of the said answer for replication thereunto saith
 that he will aver and prove his said bill to
 be true certain & sufficient in the law to be
 answered unto and that the said answer
 of the said defendant is uncertain untrue &

insufficient to be replied unto by this replicant
without this that any other matter or thing
whatsoever in the said answer contained
material or effectual in the law to be replied
unto confessed and avoided traversed or
denied is true All which matters and
things this replicant is and will be ready to
aver and prove as this honorable court shall
direct and humbly pray as in and by his said
bill he has already prayed

Plats & Jewett

Charles Hoyt

Sol complets

And afterwards do mit on the 25th day of
January A.D. 1855^{there} was filed in the office of
the clerk of said court a Replication in the words
& figures following to wit:

Charles Hoyt

J. G. Stolpetal

} Law county circuit court
Jany special term A.D. 1855
In Chancery

The replication of Charles Hoyt
complainant to the joint & several answer of John
W. Varnsdell and James Tyffe two of the defendants
to the bill of complaint filed in this cause
This replicant saving & reserving to himself all

all manner of advantages of exception to the Manifest
insufficiency of the said answer for replication
thereunto says that he will avow and prove his said
bill to be true certain & sufficient in the law to
be answered unto and that the said answer
of the said defendant is uncertain untrue &
insufficient to be replied unto by these replicants
without this that any other matter or things whatsoever
in the said answer contained material or effectual
in the law to be replied unto confessed &
avoided traversed or denied is true all which
Matters & things this replicant is and will be
ready to avow and prove as the honorable court
shall direct and humbly prays as in and by
his said bill he has already prayed
C. Hoyt-

Plato & Jewett
counsl. Solrs

And afterwards to wit: on the 1st day of February
AD 1855. ~~the following~~ ^{an} Answer was filed in the Clerk's
Office of s^d Kane Co. Circuit Court, ^{which is} in the words and figures
following to wit:

State of Illinois

Kane County Circuit Court
January Special Term 1855
In Chancery

The separate answer of Daniel McCarty to the
Bill of Complaint of Charles Hoyt Complainant.
filed herein against this Defendant and others.

This Defendant now and at all times saving
and reserving unto himself all benefit of Exception
to the manifold insufficiencies of ^{the} said Bill. for
answer thereto, and to so much thereof as the
Defendant is advised it is necessary for him to
make answer unto he answering says that
upon information he believes that it is true that
Samuel McCarty and his brother were the owners
(at the time in said Bill stated) and possessors of the property
in said Bill described upon both sides of Fox River in
Aurora and also of the Island between the two channels
of said River, and that the said Samuel ^{and} Brother
did erect a Dam across said River and build Mill
thereat as stated in the said Bill of Complaint.

This Defendant also upon information believes it
to be true that the said Samuel McCarty purchased

of the General Government the land lying upon the East side of said River including the East end of said Dam & that he laid out a town called Aurora thereon as in said Bill stated. This defendant further answering says that he knows nothing of his own knowledge of any sale by the said Samuel McCarty & Brother of the claim & possession and part of the Mill Dam on the West side of said River to the said Lake. nor of his own knowledge does he know of any sale by said Lake to the Complainant. But this defendant has been informed that such was the fact. and that the said Lake entered the said land on the said West side of the River and that he laid out a town thereon called West Aurora.

This Defendant admits that the localities are correctly described in said Bill.

This Defendant does not know of any arrangements between the said Lake & the said Complainant & others in reference to the deeding or entering of the said lands on the West side of said River.

This Defendant further answering admits that the said Complainant has been & now is in possession of the Mills on the West side of said River as mentioned in said Bill and drawing Water from said Dam for the space of Eleven or twelve years last passed. and this Defendant believes that the said Complainant is the owner of said Mills - But whether the said Complainant has been or is using or drawing more water from said

Dam than he is legally & justly entitled to, this Defendant has no personal knowledge,

This Defendant further answering says that he has no personal knowledge of how much water the said Complainant is justly entitled to draw from said Dam but he has been informed that the said Hoyt has a Deed of one half of said Water. but whether this right is prior to the right or right of others. this Defendant ~~will~~ does not know. and therefore neither admits or denies the same but leaves it to the proofs.

This Defendant further answering says that by Deed dated the twentieth day of April A.D. 1847. Executed by Merseus Peck to this Defendant. this Defendant became the purchaser and owner of one half of the Grist or Flouring Mill, ^{erect} ~~erect~~ by the said Samuel McCarty as aforesaid and of Water power from said Mill Dam sufficient to run two runs of Stones & Machinery attached as by reference to said Deed a copy of which is hereto attached & marked "Exhibit A," & made a part of this Answer. will more fully & at large appear

And Defendant avers that the said title which he thus acquired accrued and came through and from the said Samuel McCarty and brother and that the same, as this Defendant is informed accrued to the Grantee of the said McCarty prior to or at least as early as any other interest purchased of the said McCarty. And this Defendant further answering ~~answering~~ says that by Deed from the said Samuel McCarty dated March first A.D. 1845.

this Defendant purchased from the said Samuel McCarty one other quarter of the said Grist Mill of the said Samuel with the appurtenances and one quarter of the lot on which the same was standing &c as by reference to a copy of said Deed hereto attached marked "Exhibit B." and made a part of this answer. will more fully appear. and this Defendant avers that by said last mentioned Deed. he purchased & became the owner of Water Power from said Dam sufficient to run one run of Mill Stones & machinery attached. That by Deed from the said Samuel McCarty to this Defendant dated the tenth day of May AD 1847 this defendant further became the owner and purchaser of the remaining one fourth of said Grist Mill and appurtenances & lot & water power sufficient to run one other run of Mill Stones. as by reference to a copy of said Deed hereto attached marked "Exhibit C" and made a part of this answer will more fully appear.

And this Defendant avers, that by virtue of his said Deeds, he has a legal right to sufficient water power to be taken from said Dam. to run four runs of Mill Stones

That on the first of September AD 1854 this Defendant leased his said Grist Mill & appurtenances to Hezekiah Gifford. Charles Gill and William Dickens for the term of three years from December first AD 1854 and the said Lessees took the possession of the same under the said lease.

This Defendant further answering says, that himself

& those claiming under him as he believes, have at all practicable times kept the proportion of the said Dam in order & in such repair as is necessary for carrying on business & running the machinery of his said Mill if the other parties claiming water power from said Dam had kept their proportion thereof in proper order & repair. That to the best of his knowledge & belief he has not used nor have or do those using his claim to said Water power under him been in the habit of using a greater amount of Water from said Dam than he is justly entitled to by virtue of his right ~~claim~~ aforesaid. but on the contrary has not used as much water as he is legally entitled to use from said Dam, but that if the same is done by any person & the water from said Dam is used in a reckless & unauthorized manner, it is by some other person or persons than the Def^e or his said Tenants.

That he has ever been willing & ready & still is ready & willing to enter into any just & equitable arrangements with the other owners, or occupants & users of said Water power to keep said Dam in proper order & repair & prevent unnecessary injury to one another & thereby expressly denies any & all combinations with any other persons or persons or intentions to injure the said Complainant in the enjoyment of his rights & privileges in & to the same & that he knows nothing of any damages sustained by said Complainant as in said Bill set forth. But if the same are by him said Complainant sustained as this Def^e believes they are occasioned by the negligence, recklessness, carelessness or intentions of some other person than the Def^e. And this Defendant further answering says

& those claiming under him as he believes, have at all practicable times kept the proportion of the said Dam in order & in such repair as is necessary for carrying on business & running the machinery of his said Mill if the other parties claiming water power from said Dam had kept their proportion thereof in proper order & repair. That to the best of his knowledge & belief he has not used nor have or do those using his claim to said Water power under him been in the habit of using a greater amount of Water from said Dam than he is justly entitled to by virtue of his right ~~claim~~ aforesaid. but on the contrary has not used as much water as he is legally entitled to use from said Dam, but that if the same is done by any person & the water from said Dam is used in a reckless & unauthorized manner, it is by some other person or persons than the Def^t or his said Tenants.

That he has ever been willing & ready & still is ready & willing to enter into any just & equitable arrangements with the other owners, or occupants & users of said Water power to keep said Dam in proper order & repair & prevent unnecessary injury to one another & thereby expressly denies any & all combinations with any other persons or persons or intentions to injure the said Complainant in the enjoyment of his rights & privileges in & to the same & that he knows nothing of any damages sustained by said Complainant as in said Bill set forth. But if the same are by him said Complainant sustained as this Def^t believes they are occasioned by the negligence, recklessness, carelessness or intentions of some other person than the Def^t. And this Defendant further answering says

that from his best information and belief, the right of the
defendant to the water power, sufficient to run two runs
of Stones as conveyed by the aforementioned deeds from
Samuel McCarty to the Defendant, are only subject to
the right of the said Complainant to one half of the
said water power, and to the right of the said J. S. Stapp to
draw from said Dam about Eleven hundred cubic inches of said
water— And defendant avers that the said Stapp's interest of
1100 inches of water as aforesaid, should be properly measured
at the Dam, and not at the issue of the wheel, according
to the best information and belief of the Defendant— and
he therefore charges such to be the fact all of which
the Deft. will maintain & prove &c. This Defendant
therefore having answered fully as he is advised every
thing in the said Bill contained material for him to
make answer unto, prays hence to be dismissed
with his costs & charges &c.

Daniel McCarty

Barr & Harbison

Counselor for Deft.

State of Illinois }
Kane County } ss.

Daniel McCarty being duly
sworn doth depose and say
that he has heard read the
foregoing answer by him subscribed and is
acquainted with the contents thereof and that the
same is true of his own knowledge except such

matters as are stated upon information and belief, and
as to those matters he believes them to be true
Sworn to and subscribed } Daniel McCarty
before me this 1st day of }
February A D 1855 }
L. Dearborn. Clerk

Exhibit A.

Copy of Deed from. Messena Peck.

This Indenture made the Twentieth day of April in the
year of our Lord One thousand Eight hundred and Forty seven
Between Messena Peck now of the County of Kane and State
of Illinois party of the first part and Daniel McCarty of the
same place of the second part. Witnesseth that the said party of
the first part for and in consideration of the sum of Twenty
four hundred Dollars to him 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 discharged} therefore
has granted bargained sold remised released aliened and con-
firmed and by these presents does 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
premises situate lying and being in the County of Kane and
State of Illinois and on the East side of Fox River in the
Village of Aurora bounded and distinguished as follows to wit:
Commencing Twenty two (22) feet North of the North West corner of the
Grist Mill Thence Easterly & parallel with the Grist Mill &

Broadway. Thence South to the corner of Broadway & Main Street
Thence West to a ^{point} ~~and~~ South to the East end of the great Mill
Thence West forty feet. Thence North to the place of beginning, being
the undivided half part of the above described piece of land
Together with an undivided half part of a water power sufficient
to run four run of Stones with the machinery attached to them
The said party of the second part purchases the water power
as it now is & is hereafter to be at ^{all} the expense of keeping it up
& in repairs. Together with all and singular the heredit-
aments and appurtenances therunto belonging or in anywise
appertaining. And the reversion and reversion remainder and remainders
rents issues and profits thereof. and all the Estate right title and
interest claim or demands whatsoever of the said party 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
party of the first part for herself her heirs executors and
Administrators does 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 executing and delivery of these presents
the said party of the first part was 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 had good right full power and lawful authority to
to grant bargain sell and convey the same in manner and
form aforesaid. And that the same are free and clear from

all former and other grants bargains sales liens judgments
 Apsements ^{And} incumbrances of what kind or nature soever, and
 the above bargained premises in the quiet and peaceable poss-
 -ession of the said party of the second part. his heirs and
 assigns against all and every person or persons lawfully claim-
 ing or to claim the whole or any part thereof the said party
 of the first part shall and will Warrant ^{And} forever defend

In testimony whereof the said party of the first part
 has hereunto set her hand and seal the day and year
 first above written.

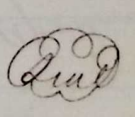
(Signed) Mersenn Peck 

Sealed ^{and} delivered
 in presence of
 John King }

State of Illinois }
 Kane County } ss. I, John King a Justice of the Peace
 in and for said County in the State aforesaid.

do hereby certify that Mersenn Peck who is personally known to me as
 the real person whose name is subscribed to the annexed Deed
 appeared before me this day in person and acknowledged that she
 executed and delivered the said Deed as her free and voluntary
 act for the uses and purposes therein set for the

Given under my hand the Twenty first day of April
 in the year of our Lord one thousand eight hundred and
 Forty Seven

John King J.P. 

(Copy of endorsement.)

Received the within Deed for Record April
21st 1847 at 11 o'clock A.M. and Recorded the same
in Book No 9 of Deeds at pages 588 + 589
Geo. W. Gorton

Record

Kaua de

Adls

"Exhibit B"

This Indenture made this First day of March in
the year of our Lord One thousand eight hundred and Forty
five Between Samuel McCarty of Aurora Kaua
County ^{and} State of Illinois of the first part and Daniel
McCarty of the above named place and State aforesaid
of the second part. Witnesseth that the said party of the
first part for and in consideration of the sum of Two
thousand dollars good and lawful money to me 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
thereon released and discharged therefrom) hath granted bargained
sold remised released aliened and confirmed and by their
presents doth 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 premises situate lying & being in the County
of Kaua and State of Illinois viz. the undivided one

the fourth of the Aurora Grist Mill with all appurtenances
thereunto belonging. Also the undivided fourth of said Grist
Mill Lot. And also the one half of ^{Saw} ~~Said~~ Mill known as Mc
Cartys Saw Mill with all appurtenances thereunto belonging and
the undivided one half of said Saw Mill yard being a
part of Block No Five in the Village of Aurora. Also the
one half of water power occasional or accruing from surplus
water not previously sold from the Aurora Dam. Also
the undivided half of Lots No one (1) Two (2) Three (3) and
four (4) in Block No Thirty (30) And also the undivided
half of the South forty four feet (44) of Lot No Six (6) in
Block No Four (4) And also the undivided one half
of the East half of Lot No Eleven (11) in Block No Six (6)
lying & being in the Village of Aurora.

Together with all and singular the hereditaments and
appurtenances 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 party
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 Samuel McCarty for himself and his
heirs executors and administrators doth 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 making

and delivery of these presents the said Samuel McCarty was well seized of the premises above conveyed as of a good sure perfect absolute and indefeasible estate of inheritance in law in fee simple and hath 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 from all former and other grants bargains sales liens judgments taxes assessments 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 party of the first part shall and will Warrant and forever defend. In Testimony whereof the said party of the first part hath hereunto set his hand and seal the day and year first above written

(Signed) Samuel McCarty 

Sealed and delivered
in presence of }

State of Illinois
County of Hamilton

I, Robert Robinson a Justice of the Peace in and for said County in the State aforesaid do hereby certify that Samuel McCarty who is personally known to me as the real person whose name — Subscribed to the annexed Deed appeared before me this day in person and acknowledged

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has executed and delivered the said Deed as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and seal this Eighteenth (18th) day of April in the year of our Lord one thousand eight hundred and Forty five 1845

Robert Robinson 
Justice of the Peace

Endorsement.

Received for Record April the 24th 1845 at 10 o'clock A.M.,
and Recorded the same in Book No 6 of Deeds. at Pages 440 & 441

Geo W Gorton
Recorder Kane Co. Ill.

"Exhibit C."

This Indenture made the Tenth day of May in the year of our Lord One thousand Eight hundred and Forty five Between Samuel McCarty and Emily his wife of Aurora Kane County and State of Illinois of the first part and Daniel McCarty of the same place and State aforesaid of the second part: Witnesseth that the said party of the first part for and in consideration of the sum of One Thousand Dollars lawful money 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 discharged therefrom) have granted bargained sold remised released aliened and confirmed and by these presents do grant

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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 to wit: Lying and being in the Village of Aurora Kane County State of Illinois Being a part of Block No (5) known as the Grist Mill lot and bounded as follows beginning sixty (60) feet West of the corner of Broadway and Main Streets on the North side of Main Street. running thence North thirty parallel with Broadway thirty six feet nine inches (36.9) Thence East parallel with Main Street twenty four (24) feet. Thence North thirty parallel with Broadway five feet three inches (5.3) Thence East parallel with Main Street thirty six (36) feet to Broadway. Thence North thirty along Broadway thirty three (33) feet. Thence West parallel with Main Street. One hundred Eighty five feet ^{or six inches} (185.6) thence South to the corner of Grist Mill supposed to be fifteen feet (15) thence West to Fox River. thence South along said River to Main Street. thence East along the North side of Main Street to place of beginning. being an equal undivided one fourth of the above described premises together with an equal undivided one fourth of the Grist Mill located on said premises with water sufficient to run one run of Stones under a five foot head. Also a piece or parcel of land situated in the above named County and State aforesaid Commencing at a point fifty four rods and four (4) feet. South and seven rods East of the North West corner of Sec. 16 of Twp. 11 N. Range 8 E. of Sect. 16 of Twp. 11 N. Range 8 E. of the Third (3) Principal Meridian, ^{running} thence South fifty two (52) rods thence East thirty five (35) Rods. thence North Six degrees, thirty

minutes East. fifty two Rods five (52.5) ft. thence West forty two Rods
two (42.1) ft. to the place of beginning by the same more or less
Also an Equal undivided half of Lot No one (1) in Block No
thirty. Situated in the Village of Aurora Kane County
State of Illinois. Also the undivided half of the East
half of Lot No Eleven (11) in ~~Lot~~^{Block} No Six (6) together with
all and singular the hereditaments and appurtenances
thereunto belonging or in anywise appertaining; and the
reversions and reversions remainder and remainders
rents issues and profits thereof; and all the Estate
right title interest claim or demand whatsoever of the said
party of the first part either in law or equity of in and to the
above bargained premises with the hereditaments and
appurtenances. Do 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 party 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
present they were 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 had 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 from all former
and other grants bargains sales liens judgments taxes
assessments and incumbrances of what kind or nature

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sower, 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 party of the first part shall and will Warrant and forever defend.

In Witness whereof the said party of the first part have hereunto set their hand and seal the day and year first above written.

Sealed ^{and} delivered
in presence of
John King

Samuel McCarty 
Emily McCarty 

State of Illinois
Kane County

I John King a Justice of the peace in and for the said Kane County in the State aforesaid do hereby certify that Samuel McCarty personally known to me as the same person whose name is subscribed to the above Warranted Deed appeared before me this day in person and acknowledged that he signed sealed and delivered the said Warranted Deed as his free and voluntary act for the uses and purposes therein set forth, and the said Emily McCarty wife of the said Samuel McCarty having been by me examined separate and apart and out of the hearing of her husband and the contents and meaning of said Warranted Deed having been by me fully made known and 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 Seventeenth day of May A.D. 1847
John King J.P. *Quid*

Endorsed

Received the within Deed for Record
August 23^d 1847 at 3 o'clock P.M. & Recorded
the same in Book No 10 of Deeds at page
263. 264

Geo W. Gorton

Recorder

Kane Co. Ill.

And afterwards, to-wit. on the 1st day of February, AD 1855, there was filed in the office of the Clerk of said Court, an answer, which is in the words and figures following, to-wit: -

Joseph G. Stolp, Daniel McCarty, Hezekiah Gifford et. als.	}	In Chancery.
at Charles Hoyt.		Jany Special Term AD 1855.
		Kane Co. Cir. Court.

The answer of Hezekiah Gifford, one of said defendants to the Bill of Complaint of Charles Hoyt, the Complainant.

This Deft. now and at all times hereafter, saving and reserving to himself all benefit & advantage of exception which can or may be had to the many errors, uncertainties & other imperfections in the said Complainant's said Bill of Complaint, for answer therunto, or unto so much or such parts thereof as this Deft is advised is or are material or necessary for him to make answer unto this Defendant Answering Faith

That he knows nothing of his own knowledge as to the rights of the

said Complainant, as set forth in his Bill of Complaint. He knows nothing of his own knowledge in regard to the sale & purchase of said claim from said Samuel McCarty to said Gaphua Lake, or from said Lake to said Complainant, nor as to the understanding existing between the parties as set forth in said Bill of Complaint at the time said land is averred to have been purchased from the United States, nor as to the conveyance from said Theodore Lake to said Complainant, nor as to the rights, privileges &c. of said Stoep in said water power & mill dam. But this Defendant is informed & believes the same to be true that said complainant is in possession of a flouring mill on the west side of said river in Aurora & has been for eleven or twelve years past & during said time has been using & supplying said mill with water from the said Aurora dam, but whether to a greater or less extent than he is legally entitled, this Defendant cannot either admit or deny - This defendant further says that he is in possession of the flouring mill & using water from said Dam on the East side of said Fox River & the same in said Bill referred to in connection with Charles Gill & William Dickson.

under a lease of said mill from Daniel Mc-
Carty one of said Defendants by a lease
dated September first AD 1854, a copy of which
marked "A." is hereto attached & which this
Deft. prays may be taken as part of his
answer which lease extends for the term
of three years from Dec. 1st 1854 & claims
no right or title to the same from any other
person, & is informed and believes the same
to be true that said Daniel McCarty is the
owner of said flouring mill, and entitled
to draw from said dam sufficient water for
all purposes connected with said mill, but
as to the rights & privileges of said Daniel Mc-
Carty under whom he claims, expressly refers
to the answer of said McCarty in this cause,
& prays that the exhibits therein referred
to & set forth may be taken as part of this
his answer herein.

This Deft. further answering says that
he knows not of his own knowledge of any
arrangement between the owners or users of
water from said dam by which the same
was and is to be kept in repair, but this
defendant, and his said co-tenants, as he
believes, have done, and is still ready and
willing to do in the premises all that he or
they are, or may be required to do by virtue

of their occupation as aforesaid of said premises - This defendant further answering denies all combinations or intentions on his part with any other of inferring said complainant in his rights in said waterpower or the use thereof - Also denies that he uses the water from said dam in a careless, extravagant & reckless manner, or to a greater extent than he has a right to do, according as he is informed & believes his rights are in the matter. And this Defendant knows nothing in regard to the damages or injuries sustained by said Complainant as set forth in said Bill. or of his cause of complaint in the premises, & having answered &c. prays to be dismissed &c. with his reasonable costs &c.

H. Gifford

Subscribed & sworn to
before me this 23rd day
of Janry. AD 1855.

Jas. G. Barr J.P.

Jamesworth Sol for Deft

Exhibit "A."

This Agreement made & entered into this first day of September one thousand, eight hundred & fifty four between Daniel Mc Garty of Aurora, Kane County, Illinois of the

first part. & Charles G. H. Kezekiah Gifford.
 & William Dickens of the same place of the
 second part. Witnesseth, that the party of the
 first part hereby leases his mill known as the
 Aurora Mills, to the party of the second part
 for the term of three years from the first day
 of December next, for the sum of Six hundred
 & thirty one ⁵⁶/₁₀₀ dollars (\$631.56) per year until
 December first 1855, to be paid monthly as follows,
 to wit, Fifty two dollars & sixty three cents per
 month on the last day of each month, & after
 the time aforesaid until the expiration hereof.
 at the rate of seven hundred & fifty dollars
 per year payable at the times as aforesaid
 in installments of sixty two dollars & fifty
 cents per month.

And the said party of the first
 part agrees to do all repairs of machinery
 that fails, when said repairs amount to over
 five dollars; And the said party of the
 second part agree to do all repairs at their
 own expense, that amount to no more than
 five dollars under —

In case any part of mill dam
 or floor should give out that belongs to
 the party of the first part, then rent is to
 cease till such dam or floor is repaired so
 that said mill can run. If the party of

the first part wishes to do any repairs on said mill so that the mill cannot be run, then rent is to cease, till such times as the mill can be run again.

The said party of the second part, hereby bind themselves, their heirs, executors, administrators & assigns & each of them faithfully to pay the said rent & every part thereof, at the times & in the manner & amounts above specified; And if said party of the second part fail to pay, at the end of each month the sum due as above specified, according to the true intent and meaning of this agreement, then this agreement shall be null & void - and the said party of the second part are to give up possession of said mill. The party of the second part agree to leave said mill at the expiration of said Term in as good condition as said party found it, the natural wear & decay excepted.

In Witness whereof, we have hereunto to one other of like tenor & date set our hands & seals the day & year first above written.

(Signed.)

Daniel M. Cartiz	Seal
Chas. Gill	Seal
Wm. Cifford	Seal
Wm. Dickens	Seal

And afterwards, to wit, on the 2^d day of February, A.D. 1855, there was filed in the office of the Clerk of said Court an answer, which is in the words and figures following, to wit: -

Daniel M'Carty, Elijah	} In Chancery. Kearse Co. Cir. Court. Jany. Special Term A.D. 1855.
Keyde et. als.	
ats Charles Keyde.	

The answer of Elijah Keyde, one of said Defendants to the Bill of Complaint of Charles Keyde, the Complainant.

This defendant reserving to himself all right of exception to the said Bill of Complaint for answer thereto saith,

That he knows nothing of his own knowledge of the rights of said Complainant in & to the said water power & mill dam, but this defendant has been informed & believes it to be true that said M'Carty were in possession of a claim & sold their claim to the property on the west side of Fox river & west half of mill dam to said Lake & said Lake sold to said Keyde. That Theodore Lake entered & received a patent for said land & caused a town plot to be

laid out & deeded to said Complainant & Complainant erected mill & Samuel McLearty entered land, laid out town plot, erected Mills on East side of Fox river & that mills are situated as Complainant hath set forth in said Bill.

This Deft. also admits that said Stoep has erected mills & is using water & dug race. That said Dyfe is occupying mill & using water. & that Vanassell is occupying shop & drawing water as said Complainant has set forth in said Bill.

This Defendant further answering says that he is in possession of the saw mill referred to on the East side of Fox River & drawing water from said dam for the purpose of running the same under & by virtue of a deed from Samuel McLearty to this Defendant & one L D Brady, dated the 21st day of March, AD 1853, in & by which deed the said Samuel McLearty deeded all his remaining interest in the said water power to this Deft. & the said Brady & the said Brady afterwards by Deed dated the 23^d day of December, AD. 1853, conveyed to this Deft. his interest therein - which deeds or copies thereof are ready to be produced as the Court shall direct, which

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this defendant believes, & therefore charges the fact to be, entitles him to a much greater quantity of water than he is accustomed to use, or is necessary to impel his said saw mill & machinery connected therewith & at least there would be sufficient water to impel the same at any all seasons of the year if the other parties using water from said dam, should not draw therefrom a greater amount of water than they are legally & justly entitled to, & each and everyone should keep his just & proper proportion of said dam in repair. Also that he is entitled to all the water power from the East half of said dam subject to the right of said Daniel M^cCarty to sufficient water to drive four run of stones with machinery attached for milling purposes. And to the said J. G. Stolp, his heirs or assigns three hundred & four cubic inches of water to be used for any purpose, & also eight hundred cubic inches for the purpose of wool carding or cloth dressing, or the manufacturing of cloth & also, in case the balance should be a greater quantity than would be required to run six run of stone, then subject to the right of said Stolp to use the same for the purpose last aforesaid.

And this Defendant believes the same at any usual stage of water is a much larger amount than he is in the habit of using as aforesaid.

This Defendant further answering says that he knows nothing of any damages sustained by said Complainant as set forth in his said Bill, & avers that he ever has been & still is ready & willing to enter into any just and equitable arrangement whereby said dam should be kept in repair, & each person claiming water power therefrom should keep his just & legal proportion thereof in repair & hereby expressly disclaims any intention on his part or any combination with any other person or persons to injure said Complainant in his rights in & to said water power.

And having answered fully herein this Deft prays hence to be dismissed with his reasonable costs &c.

Karnsworth & Barr }
Defts Solicitors }

E. Hyde, Deft.

State of Illinois }
Kane County } ss

Elijah Hyde being duly sworn says that he has heard the above Answer read & as to the things therein stated upon his knowledge he knows the same to be true, & to those matters stated upon his belief, he believes the same to be true. E. Hyde.

Subscribed & sworn to before me this }
2nd day of February, AD 1855. }
J. G. Barr. }

And afterwards writ on the 14th day
 of May A.D. 1855 there was filed in the Office of the Clerk
 of said Court a Deposition of Russel C. Mix John S.
 Hauchett, Myron Blakely, Martin B. Miller and Samuel
 McCarly which are in the words and figures following, to wit:

Charles Knight
 vs.
 Joseph G. Stolpe
 Daniel H. Carly
 James Dyke
 Elijah Hyde
 John W. Vanordell
 Ezekiah Lifford

Kane County Circuit Court.
 In Chancery.

Depositions of Russel C.
 Mix John S. Hauchett
 Myron Blakely, Martin

B. Miller Samuel H. Carly witnesses produced, sworn
 and examined before me the undersigned a Notary Public
 in and for the County of Kane and State of Illinois, commen-
 -cing on this 20th day of April A.D. 1855 and continuing
 from day to day as mentioned and specified in the said
 Depositions hereto attached in the presence of H. B. Plato
 Solicitor for the Complainant - and A. B. Fuller Solicitor for
 Defendants Stolpe Dyke & Vanordell and John H. Har-
 -worth Solicitor for Defendants Hyde, McCarly & Lifford
 taken in pursuance of the notice hereto attached numbered
 "C."

B. A. Parks
 Notary Public.

Deposition of Myron Blakely a witness
produced sworn and examined on the part of Complainant.

Int 1

What is your name, age, occupation, and place of residence and do you know the parties, and how long have you known them each respectively.

Ans.

Myron Blakely, age forty two years Mill Right by occupation Aurora Kane County Illinois I know all the parties except Rifford. I do not know that I know him. I have known Hoyt, Stolp, McCarty and Hyde about twelve years I have known Dyer about a year and a half. The others not known so long.

Int 2

Are you acquainted with the Mill Dam the Mills and other Machinery propelled by water from the dam at Aurora? and if so how long have you known the same.

Ans

I am acquainted with all of them. I have known the Mill Dam and some of the Mills for the last twelve years

Int 3

State what Mills, Manufactories or other Machinery is ^{or} propelled by the water from said Dam and who are or have been in the occupation or possession of each respectively during the time you have known them?

Ans

The old McCarty Grist Mill on the East side of the River Samuel McCarty occupied the Mill about twelve years ago. I think Daniel McCarty subsequently and there and for the last year it has been occupied by

hill & Lifford. The mill is about thirty feet below the
dam and on the East side of the River. I think there is two
or three run of stone in the mill. There is a Saw Mill. It
stands on the North West corner of the Grist Mill and forms
part of the Dam. I do not know who formerly occupied the
Saw Mill but for the last two years it has been occupied by
Elijah Hyde. There is two water wheels and one saw. one
of the wheels is "Riches Counter Vent". The other is one of the
old reaction wheels. The next mill is a Grist Mill occu-
-pied by James Dyfe on the Island it stands some
forty or fifty feet below the dam and some ten feet West of
the East Channel of the River. There is two run of stone
Two reaction water wheels it is supplied by water from the Dam
by a Plank Flood some twenty feet in length and four
or five feet wide and six feet deep. The water is taken from
the dam at the West side of the East Channel. The next is
a ^{Saw} Factory occupied by Vanzordell situated on the Island
between thirty and forty rods below the Dam. It is suppl-
-ied by water from J. B. Stolps race by a Plank Flood
about six rods square. The next is Stolps Wooden Fact-
-ory it is on the said Island below Vanzordell's saw fact-
-ory about ten rods it is supplied by water from a race
commencing at the dam and terminating at his factory
The water enters Stolps race from the Dam about forty
or fifty feet West ~~from~~ of Dyfe's floor. The race is ^{made}
by excavation and embankments. The race is some
thirty feet on top or the surface some four or five feet
deep. Stolps factory contains two reaction water wheels.

The next is Skyp's Flouring Mill on the West bank of the West Channel of the river, and about One Hundred and fifty feet below the Dam. There is five reaction ^{water} wheels and four run of stone it is supplied with water by a race from the Dam the race is made by excavation and ear-bankments, some thirty five feet on top and twenty feet on the bottom and about five feet deep.

Int 4th What amount of water is used or is necessary to propell the Machinery of Skyp's Saw Mill.

Ans The issues of the Saw Wheel measures eight hundred inches. The issues of the gig wheel measures one hundred and eight inches.

Int 5th What amount of water is used or is necessary to propell the machinery in Skyp's Mill?

Ans One Wheel issues one hundred and fifty inches. The other wheel two hundred and fifty inches.

Int 6th How much water do the wheels in Skyp's factory issue?

Ans I built the wheels some four or five years ago. The wheels were built to issue Two Hundred and fifty inches of water each. I know of no change in the wheels since they were built.

Int 7th How much water do the wheels in Skyp's Mill Issue?

Ans They were built to issue one hundred and ninety six inches each I know of no change in the wheels since they were built.

Cross examined by Fuller for Defts Stolp, Vauzsell & Hyde.

cross Int 1st

How is the Grist Mill & Saw Mill on the East side of the River supplied with water?

Ans

It is supplied with water from the Dam.
Myron Blakely.

Deposition of Russel C. Mix a witness produced sworn and examined on the part of complainant.

Int 1st

What is your name, age, occupation place of residence and do you know the parties in this suit and how long have you known them each respectively?

Ans

R. C. Mix I am forty eight years old, mill right. Aurora Kane Co. Illinois I know all the parties to this suit. I have known Capt. Stolp, McCarty & Hyde about thirteen years. I have known the others two or three years.

Int 2nd

Are you acquainted with the Mill Dam the Mills and other machinery propelled by water from the dam at Aurora and if so how long have you known the same?

Ans

I am I have known the Mill Dam & Mills for thirteen years some of them have been built since.

Int 3rd

State what Mills Manufactories or other machinery is ^{are} propelled by the water from said Dam and who are or have been in the occupation or possession of the same during the time you have known the same

Ans.

4 the quantity of water used by each respectively?

The McCarty Lint Mill as near as I can ascertain uses eight hundred inches of water. The Hyde Saw Mill uses nine hundred and eight inches of water, on the two wheels. Dyers Mill uses four hundred inches on both wheels. Vauzdel's Sash factory one wheel issues ~~two~~ (2) hundred and fifty inches. The other wheel I think it issues more but I do not know. Stolpe's factory the two wheels issue five hundred inches. Hay's Mill issues nine hundred and eighty inches of water.

Adjourned until one o'clock
at the same place April 20th 1853.

Q^{nt} 4th

State in what manner these Mills and
Manufactories are supplied by water from the dam?

Ans.

Mr Dyers Mill is supplied by a plank
flood one hundred and thirty two feet long six feet
wide and six feet deep. The depth of the water at this
time is four and half feet the opening at the dam is of the
same size, which is sixty six feet west from the center of
Dyers flood. Stolpe's factory is supplied by a
race which is fifty five rods in length of an average width
of fifty two feet on the surface. The center of the opening in
the Dam for the race is sixty six feet west from the center
of Dyers flood. The opening at the dam is twenty two
feet wide and the water is seven feet deep at the head
gate. The Vauzdel Sash factory is supplied from
the same race thirty six rods below the dam by a plank
flood twenty six feet long thirteen and one half feet wide

and the water is eight feet deep in it. Hay's Mill is supplied by water from the dam by a race about twelve rods in length. it is about fifty feet wide on the surface and about six feet deep at the head. The opening at the dam is about fifty feet wide by six feet deep.

Sub 5th

State if you know the height of the Dam and its condition?

Ans

The dam is about six feet high between surfaces. The West half of the dam is very tight. It is composed of plank, timber, stone and gravel. The East half of the Dam has not quite as many stone it is composed of stone, timber, plank and gravel. The dam part is about as good as the West half of the dam, but there is more leakage in consequence of there being a greater number of openings. The center of the dam is about one hundred feet West of Stolps race.

Sub 6th

If there is any considerable leakage or waste of water from the flumes, races, mills or manufacturing state where and to what amount as near as you can?

Ans

Stolps race is composed of gravel land there is a little leak to it but to no great extent about the flume of Dyke there is some waste all the way from the mill to the dam a little. There is some leakage at Vanordell's Sack factory a little more than there should be. Stolp has a waste gate up close to the factory when it is shut there is no waste but when it is opened there is a good deal. I have seen it

open a good deal of the time and I have seen it shut a good deal of the time.

Int 7th

Do you know how much heads or full Stalp is using on the wheels of his factory if so how much?
(Obj. by Stalp)

Ans

About seven feet I think.

Int 8

How much at the each factory of Vauzsdell

Ans

Seven feet.

Int 9th

How much at Dyfys mill?

Ans

Six feet.

Int 10th

Do you know whether Mr Skipt has been unable to run his mill in consequence of a lack of water power for any time for the within within the last five years and if so state when and for what length of time as near as you can. (Obj. by Stalp)

Ans

There is a time generally in the summer when he is short of water and is not able to run his mill it is so about every year it is from two to three months each year it is usually in August September and October

Int 11th

State whether or not ~~whether or not~~ that is the season in which water power is the most valuable to Mr Skipt in his business.

Ans

I think it is.

Int 12th

Do you know how much water there is in Fox River at Aurora at a slow or minimum stage if you state the amount (obj of Stoltz)

Ans

I do not know exactly but at the calculation I make of it: there would be from two to twelve thousand cubic feet would pass per minute.

R. C. J. mix

Cross examined by J. Answorth.

Cross Int 1st

What proportion of the water let into Stoltz race in your opinion is wasted by evaporation, absorption, leakage or otherwise in the dry season (obj of Stoltz)

Ans

I should think that ten per cent of the water is wasted

Cross Int 2nd

Can you tell the difference in quantity between eleven hundred inches of water under a head of five feet and eleven hundred inches under a head of seven feet and if so what is the difference. (obj of Stoltz)

Ans

Through an ~~aperture~~ aperture of eleven hundred inches under a five foot head there would issue eight thousand two hundred and fifty one cubic feet of water per minute, under a seven foot head through a like aperture would issue nine thousand six hundred and twenty six cubic feet of water per minute making a difference of thirteen hundred and seventy cubic feet per minute descending fractions.

Cross Int 3rd

Has the new mill of Hyde been run in the dry season?

Ans

I should think it had not.

cross Int 4th

Has Mr Cart's mill been run during the dry season and if so how many run of stone?

Ans

It has been run during the dry season sometimes one run of stone and some times two run.

R. C. Mix

cross Int 1st

Prof Intergotaries by Muller

Did you ever see Stolps wheels in his factory, spoken of by Bakely after they were put up.

Ans

Yes I have seen them.

cross int 2nd

What is the size of the buckets-

Ans

About eleven and one half inches ^{deep} if I recollect right and three and one half inches the other way.

cross Int 3rd

Do you know to a certainty the amount of water issues from Stolps wheels in his factory?

Ans

I think that I made the patterns ~~my~~ self for the bucket my self, the calculations which I made was for two hundred and fifty inches each I have not seen the wheels since they were put in.

cross Int 4th

In putting the wheels together according to your plan could they be so put together as to issue only a hundred and fifty inches as well as two hundred and fifty inches?

Ans

Not if they were put according to my plan but they could be so put together as to issue only one hundred and fifty inches

cross Int 5th

Do you know of your own knowledge that the wheels in Stolps factory issue two hundred and fifty inches of water each?

Aus

I never have measured the wheels since they were made. I saw the wheels before they were put into the pit. Salway's supposed that they were made according to my plan.

Cross Int 6th

Do you know of your own knowledge that the wheels in Stolpe's factory issue two hundred and fifty inches each?

Aus

I cannot answer in any other way than I have.

Cross int 7th

Have you ever measured the wheels at the Sash factory to ascertain the amount of water they draw?

Aus

I have measured one of them I put it together myself it issues two hundred and fifty inches

Sworn & Subscribed
before me this 20th day of
April A.D. 1855.

R. J. Parks Notary Public

R. C. Mix

Adjourned until the 3rd day
of May A.D. 1855 to eleven o'clock A.M.

May 3rd and pursuant
to adjournment all of the parties present by their Solicitors
Deposition of Samuel McCarty a
witness produced sworn and examined on the part of
Complainant -

Int P.

What is your name, age, occupation and
place of residence and do you know the parties and how
long have you known them each respectively.

Aus

Samuel McCarty forty five years Mill right
Aurora Kane County Ill. I know all of the parties

Int 2^d

I have known them ever since they have resided in Aurora
How long have you resided in Aurora

Ans

over twenty years.

Int 3^d

State if you know who originally owned the water power
and built the dam across Fox river at Aurora

Ans

Myself and my brother Joseph M. Carty

Int 4th

What mills or machinery if any did you build
and where?

Ans

A flouring mill and ~~saw~~ saw mill on the
East side of the River immediately below the dam.

Int 5th

Do you now own any of the water
power at Aurora?

Ans

I do not

Int 6th

To whom did you first sell any of the
water and how much did you then sell and when
was it (obj. by Deft Stolp that it must be shown by the
papers.)

Ans

The first sale was of the West half of the river
to Zaphur Lake it was in the fall or winter of A.D. 1834

Int 7th

How now owns the flouring mill and saw
mill which you erected.

Ans

Daniel McCarty owns the flouring mill
and Elijah Hyde the saw mill

Int 8th

What was the mill mill or ~~mills~~ ~~ma-~~
machinery erected on the east side of the river or below the
East half of the dam and by whom.

Ans

The mill was a wool carding and cloth dress-
ing factory erected by Joseph B. Stolp.

Int 9th

Ans

How near to the dam was that built.

Int 10th

About fifty or sixty feet below the dam.

What is that building used for at this time and by whom is it used

Ans

A part of the building has been removed and the remainder has been remodelled and is now used for a grist mill of James Dyfe

Int 11th

When was it changed into a grist mill

Ans

In the years A.D. 1853. & A.D. 1854.

Int 12th

Is the water wheels any further below the dam than formerly and if so how much.

Ans

The principal wheel is now twenty to twenty five feet further below the dam than formerly.

Int 13th

At the time you sold water power to Joseph L. Stolp was it understood where the same should be measured and if so when was it to be measured (objected to by Dr. Fuller)

Ans

It was understood that it should be measured at the dam.

Int 14th

Had Stolp then erected his principal wooden factory?

Ans

He had not.

Int 15th

Was it then understood when he was to build it and if so when was it. Obj. by Stolp

Ans

I think he had made his location of the ground where he was to put it. It was at the location when the old factory was coming down close to

the road and near the dam at that time Stolp did not own the land where the factory is now built.

Int 16th

Are you acquainted with Stolp's race from the dam to his factory and the gates attached to the race?

Ans

I am acquainted with them.

Int 17th

Can you tell how much water the said Stolp usually draws from the dam through the head gates of said race and if so how much? (obj. of Stolp)

Ans

I have measured the gates at some two or three different times when he has been running his machinery and I found that he was drawing from the dam into his race from three to four thousand inches and I think that is a fair average when he is running his machinery.

Int 18th

Can you tell how much water is usually drawn from the dam by the flume leading to Dyff's mill. if so how much

Ans

(obj. of Stolp) I cannot tell with any accuracy I should judge however that it averages from six to eight hundred inches.

Int 19th

In speaking of inches do you mean cubic inches?

Ans

Yes.

Int 20th

State whether much of the water drawn into Stolp's race is wasted and if so how much about what proportion if it is in your judgment?

Ans.

I should think there was considerable waste in

the water I should think from one fourth to one sixth of the water is wasted. The wastage is the greatest in a dry time a great part of the time a good deal of water runs over the waste gate at the factory.

Int 21st

Do you know whether Hyde runs his saw mill when the water is low and if so how is it?

Ans

I think there is a spell every season when the water is extremely low in which he does not run.

Int 22nd

Do you know how much water is used by the wheels in the saw mill and if so how much?

Ans

I do not know precisely I have examined the wheel before it was put in and since it ~~was~~ is so constructed that it discharges only about one half of the water. that the actual issues of the wheel will measure I should judge that the wheel discharges not far from four hundred inches. there is a small wheel called the gig wheel which is used at intervals when the other wheel is stopped to run back the logs.

Int 23rd

Do you know ~~Mr~~ McCarty, how many runs of stone are usually run at one time in Daniel McCarty's mill in the dry season, if so how many?

Ans

There is a considerable part of the season they are not able to run but one run of stone to any advantage, they occasionally run two run when they are in a hurry but not to much advantage

Samuel McCarty.

Cross examined by Miller.

Cross Sub 1st

Did you execute a deed to Lake when you sold to him one half of the dam and river in A.D. 1834 or did you sell it to him by parcel or in what manner

Ans

I do not know that there was ever any papers made between me and Lake in reference to the sale of the half of the Dam and river I have no recollection about any. The bargain was made by my Brother Joseph who died in A.D. 1840.

Cross Sub 2nd

Did you execute a deed to Hyde and Brady of the saw mill.

Ans

I did.

Cross Sub 3rd

Did you execute a Deed of the grist mill and water power to Daniel McLeary?

Ans

I did to the one half the other half was deeded to George E. Peck.

Cross Sub 4th

Are you the person named in a Deed as grantor to one Joseph B. Stolp of water power from the said dam

Ans

I am I suppose

Cross Sub 5th

How did you first convey the water power to Stolp being the water power conveyed previous to the execution of the Deed.

Ans

By bonds.

Cross Sub 6th

Was the time you had the conversation with Stolp in regard to the location of the factory before, at the time, or since the execution of the Deed to Stolp?

Ans

It was long before at and about the time and before the execution of the bonds.

cross int 7th

In your direct examination you state that Stolp lets into his race three thousand cubic feet inches of water how did you estimate that he lets in that amount and do you mean to be understood that he uses that amount?

Ans

I ascertained the amount by actual ~~amount~~ measurement by taking the width of the head gate and the height that the gate was raised the gates are about twenty feet in the dam they were raised about two and one half feet. it is partly used and partly wasted.

Cross Int 8th

When the race is full of water and the gates shut down at the lower end of the race at the factory will there then three thousand ^{inches} or any amount run into the race from the dam

Ans

There will not three thousand inches. there is ~~great~~ quite an amount of water running in all the time to supply the leakage and waste water and quite a current of water running in all the time under the gates.

cross Int 9th

In your direct examination you state that from one fourth to one sixth of the water is wasted in the race, state how you make this estimate?

Ans

I have obtained that when the gates of the sack factory are shut down there is a large amount of water escaping down the tail race of the sack factory, also from the woolen factory and flumes - Dykes mill and quite a large amount from the race along issuing out into the river leakage, and from these facts I judge that the wastage of water is equal to what I have above stated.

Cross Feb 10th

Does Stolpe's Islands extend above and below the dam?

Ans

It does not extend above the dam his island does not it extend below the dam about one hundred rods

Cross Feb 11th

Ans

Does the island extend above the dam? It does a very little I should judge that it does not on an average extend more than twenty feet above the dam. the base of the dam covers most of the island above the dam the island is all under water,

Cross Feb 12th

State whether or not the channels of the river on each ~~or~~ each side of the island are equal or nearly so and if not which side is the largest.

Ans

They are now nearly equal. They were not formerly so the West side was the largest formerly if the dam was taken away the west channel would still be the largest.

Dict resumed

Feb 1st

Does or not Stolpe's race under the dam insecure? (obj by Stolpe)

Ans

I think that every opening or cut in a dam tends to weaken it.

Feb 2nd

Does or not the flume leading to Stolpe's mill under the dam insecure? and if so in what manner? (obj by Stolpe)

Ans

I think that it does make it somewhat insecure it is not properly put in the timber is light and insufficient the plan and manner of putting it in

is not adapted to the place

Int 4th

Do you know whether the wheels are blocked in the sash factory and the water suffered to run to waste when the machinery is idle?

Ans

They are occasionally but I cannot state to what extent.

Int 5th

State if you know whether Stolf uses more water on his wheels than is usual upon wheels of a like size at McCarty's Mill and if so why?

Ans

I think he does because he has a foot and a half more head and consequently flows more water from his wheels of like size

Sworn to & subscribed before me this } Samuel McCarty
3rd day of May A.D. 1855

B. A. Parks

Notary Public

(The Defendants Stolf, Vau-
-orsdell and Frye object to the testimony of Samuel
McCarty being given on account of his interest in the
event of this suit said McCarty being the grantee
originally of all the water power about which the above
controversy is and also objects to parol evidence being
given to show title to any of the parties to the water power)

Deposition of Martin B. Miller a
witness produced and sworn on the part of Defendants
Stolf Frye & Vauorsdell who being duly sworn on
oath say.

Int 1st

What is your name, age, occupation, place of residence and do you know the parties to this suit?

Ans

Martin B. Miller, fifty six years joiner Aurora Kane Leo Illinois. I know all the parties to this suit.

Int 2nd

Are you acquainted with the water wheels in Stolps factory?

Ans

I am I put them up.

Int 3rd

State how many water wheels there are and what amount of water they issue?

Ans

Two water wheels as near as I can recollect they were made to issue Two hundred and fourtens & one half inches of water each. They may have worn so as to measure Two hundred and twenty inches each at this present time.

Int 4th

State who built the wheels and had charge of the setting them up?

Ans

I had the charge of putting up the wheels Mr. Mix and his men commenced them I made the buckets and put the wheels together and hung them or put them in the pit.

Int 5th

State whether or not the wheels are so made as to obviate all leakage and wastage of water around the wheels and flumes? (obj. of Counsel)

Ans

I think they are as well as can be or were at the time they were put up. There will be some leakage around the wheels and flume any way.

Int 6th

Are you acquainted with the

Ques race leading from the dam to Stolps factory if so state the condition of the said race whether good or bad
 Ans I am, the banks of the race are good there is a little leak about the bulk head of the side flumes

Sub 7th Explain for what purpose the waste gate at the factory is built?
 Ans It carry off the waste water at a high stage and to prevent it from running over the banks of the race.

Sub 8th State what per cent of this water in this race would waste by evaporation in your opinion.
 Ans A small portion excepting at a season of the year when the ^{air} weather is very warm it would not exceed five per cent.

Cross Sub 1st Cross examined by Farnsworth.
 Were the water wheels in Stolps factory ~~constructed~~ constructed according to the plan and pattern of Nix the projector.
 Ans They were made according to Mr Nix's plan but were not put up with the same issue which he designed. The buckets were constructed in their issue, they were designed for three and one half inches issue and were made for three and one quarter ^{inch} issue as near as I can recollect.

Cross Sub 2nd Who did the work who made the wheels?
 Ans Mr Nix's men Myron Blakely and Columbus

Penny commenced the wheels. Mix got up the flume and Blakely and Penny commenced the work on the wheels and I and a Frenchman to work for me finished the wheels there are all the men who did any work.

Cross Int 3^d

Could not the water in Stolps race be prevented from running over the banks as well by shutting down the head gates as by means of a waste gate?

Ans

In shutting down the head gates it would prevent the water from coming into the race in a measure but when the wheel gates were shut the water in the race would naturally seek the level of the water in the dam and in a light stage of water it would overflow the banks of the race.

Cross Int 4th

Would that be the case if the head gates were closed.

Ans

It would not if they were shut down

tight

Cross Int 5th

Without shutting the head gates and without a waste gate would there be any danger of the banks of the race overflowing if they were of a proper height?

Ans

If the banks of the race were as high as the highest point in which ~~is~~ the dam there would not be any danger.

Cross examined by Plato.

Cross Int 6th

How long since you have examined or taken notice of the wheels in Stolps factory.

Ans

I do ^{not} know as I have examined them since they were put up some five or six years ago.

Sworn and Subscribed before me
this 3^d day of May A.D. 1855
B. J. Parks Notary Public

Martin B. Miller
"

Deposition of John S. Stanchette a
witness produced sworn and examined on the part
of the complainant.

Int 1st

What is your name, age, occupation
and place of residence and do you know the parties
to this suit?

Ans

John S. Stanchette forty seven years civil engineer
Aurora Kane County Illinois I know most of them.

Int 2^d

How long have you been engaged in the
occupation of civil engineer and how long have you re-
sided in this State and in what public works have
you been engaged?

Ans

Twenty years I have resided in
this State. Twenty one years on the Illinois and
Michigan canal I was engaged for twelve years I have
been on Rail Road works and surveying generally and
for the last three years in the Cook County drainage as
engineer.

Int 3rd

Do you know the quantity of water in Fox
River at Aurora and are you acquainted with the
dam and water power and Mills at Aurora

Ans

I am acquainted with the water power and
the location of the Mills I assisted William

Goodwin & Captain Swift & E. B. Salcott of Lockport gauging the stream at this point for the purpose of ascertaining the amount of water in the run at Aurora with a view of using the water for the purpose of a feeder to the Illinois & Michigan canal in the Spring of A.D. 1844. The computation at that time was about twenty four thousand cubic feet per minute. The water at this time was ^{not} very high, or very low, but at a medium spring stage.

In the year A.D. 1850 at the request of Wm. Goodwin Secretary of the Illinois & Michigan canal in the summer at a time of extreme low water I again gauged the stream at Aurora about one mile above the dam at Lebars Wildes field. I then found ten thousand cubic feet per minute of water in the river I think the gauge was made in the month of August or September of that year.

Q At 4th Have you made a plat or drawing representing the location at Aurora of the Dam Mills factory as shown on said plat and is the same correct.

A Yes I have, I believe it to be correct. (New witness presented a plat which is marked Water Power at Aurora Kane Co Illinois and by consent of parties made part of the testimony to be returned by me with the deposition.)

J. L. Kauchett

Cross examined by Fuller

Ques Int 1 In a deed wherein a grantor grants to a grantee water power sufficient to drive or carry a wheel or wheels requiring an amount of water equal to three thousand inches more or less how should the water be measured at the issue of the wheels or in what manner State the same - Obj. by Compt.

Ans It should be measured at the issue of the wheels
Quesit Resumed.

Int 1 In a deed wherein a grantor grants to a grantee the right to draw water from a mill dam sufficient to drive or carry a wheel or wheels requiring an amount of water equal to three hundred inches more or less How should the water be measured at the dam or in what manner

Ans It should be measured at the wheel

Int 2 Where should the wheels be placed for the purpose of using the water so drawn from the dam - Obj. by Fuller

Ans It should be placed at a reasonable distance to take the greatest advantage of the volume of water

Q^{nt} 3^d . What is a reasonable distance in your opinion
Obj. by Fuller

Ans From fifteen to twenty feet

Q^{nt} 4th Suppose a man grants to another the right
to draw from a Mill dam Three Hundred
cubic inches of water under a five foot
head where should that be measured when
he uses it or at the place where it is taken
from the dam Obj. to by Fuller

Ans It should be measured at the dam

Q^{nt} 5th What difference as you understand it is there
between the terms Three Thousand Hundred cubic
inches of water and a wheel or wheels
requiring Three Hundred cubic inches of
Water to draw them

Ans An apparatus sufficient to let through three
Hundred inches of water at the dam under
a five foot head would not afford them
the advantages of a five foot head on the
wheel in my opinion not from any practi-
cal experience I have had. The difference
could be but slight if any

Q^{nt} 6th Will not three Hundred cubic inches of
water at a good head be sufficient to run
a wheel requiring Three Hundred cubic

inches of water at same head. of J. Fuller

Ans It will I think

Qut 7th Now if the grant of that three Hain and inches of water requires that it should be taken from the dam where should it be measured

Ans It should be measured there

Qut 8th Will an orifice at a dam of three hundred square inches let through water sufficient to drive or carry a wheel or wheels the issue of which measures three hundred cubic inches

Ans If the wheels receive the water from the orifice directly from the head it will supply the wheels

J. L. Hauchett

Sworn & Subscribed

before me this 4th day of
May A.D. 1855

B. F. Parks Notary Public

State of Illinois
Kane County

I Benjamin F. Parks Notary Public do and for said county State aforesaid do hereby certify that the above foregoing depositions of Myron Blackley Rueser & Miss Lucien B. Miller Samuel McLeary & John L. Hauchett were taken before me at the time & place mentioned therein that each of said witnesses were each first duly sworn and after said depositions were taken they were carefully read to each of said witnesses & subscribed by them in my presence and were again duly sworn that the depositions by them signed were true

In witness whereof I have hereunto set my hand & seal this
12th day of May A.D. 1855

B. F. Parks Notary Public

{ Seal,
Notary }

Notary fees
 114 folios 1/- \$14.25
 ad 5 oaths .30
 certificate & Seal .50
 \$15.05

Witness fees R. C. Mix on day \$5.50
 Myron Blakely " .50
 Samuel W. Carty " .50
 Martin B. Miller " .50
 John S. Hancock " .50
 Total fees \$17.55

By consent of parties I have also given into
 the hands of the clerk a wrap mentioned in
 the deposition and not folded in this
 deposition B. F. Parks

Charles Wight }
 Joseph G. Stoop }
 Daniel W. Carty }
 Et. al. } Notary Public
 Kane County Court.
 Kane County. In Chancery
 Do the above named
 defendants you will please
 take notice that on the 20th day of April
 A.D. 1855 at 10 o'clock A.M. of that day
 before Benjamin F. Parks a Notary Public
 of said County at his office in Aurora I
 shall proceed to take the deposition of Russell
 C. Mix John S. Hancock Myron Blakely
 Martin B. Miller Samuel W. Carty and such
 other witnesses as may be in attendance

2-5
which depositions when taken will be used as
evidence in the cause now pending in said
court on the chancery side thereof wherein
I am complainant and Joseph G. Stolp
James Hyde Daniel M^c Cartz Elijah Hyde
John W. Mansdell & Helyeah Gifford are
defendants

Gmo &c
C. Hoyt
by Plato his solicitor

State of Illinois }
Kane County } ss

Oswen J. Palmer being
duly sworn doth depose and say that on the
10th day of April inst- he delivered a copy of
the foregoing notice to Joseph G. Stolp Elijah
Hyde James Hyde & Daniel M^c Cartz
Sworn & Subscribed } O. J. Palmer
before me this 20th
day of April A.D. 1855 }
J. E. Parks Notary Public

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And afterward to wit on the 14th day of May A.D. 1855 the same being one of the days of the May term of said court for the year A.D. 1855 The following among other proceedings were had and entered of record in said Court to wit: -

Charles Hoyt
v
Joseph G. Stolp. } Bill for Relief

This day comes the defendant Stolp by A.B. Fuller his solicitor and on his motion leave is given to amend answer in the cause.

And afterward on the 18th day of May A.D. 1855 ^{there} was filed in the office of the clerk of the said court the amended answer of Joseph G. Stolp in the words & figures following to wit-

In Chancery before Isaac
G. Wilson Judge of the
Kane county circuit court
of Illinois }

The answer of Joseph
G. Stolp one of the
defendants to the bill of complaint of Charles
Hoyt complainant The defendant now and
at all times hereafter saving and reserving to

himself all manner of benefit and advantage
of exception to the many errors & insufficiencies
in the said complainant's ^{said} bill of complain-
ant contained for answer therunto so much or
such parts thereof as this defendant is advised
is material for him to make answer unto he
answers & says he admits that Samuel Mc-
Carty & Brother owned as a settlers claim on
Government land on both sides of Fox River
in Aurora Kane County & State of Illinois
on section 22 S 38 T. R 8 E 34 P. M. prior to the
sale of the Government land by the United
States that they erected a dam across Fox
River prior to the sale of the said Government lands
that they sold some interest on their settlers claim
on West side of river also their claim to one
half of the dam to Gophna Lake prior to the
Government sale of said lands by parcel
That said Lake erected a saw mill on West
side that Hoyt purchased as this defend-
ant is informed by parcel his Gophna Lakes
interest to said dam and saw mill in August
21st 1842 and took possession on West side &
erected a Flommy Mill that previous to the ^{survey} ~~sale~~
of the land by Government of the United States
McCarty laid out a town on east side &
Gophna Lake on West side at Aurora that
Thorton Lake purchased at Government sale

27 1/2 acres more or less in June 8th 1842 at the
land sales in Chicago Illinois on West side
of said River and that Samuel Mc. Carty
purchased land on East side at Government
sales in June 1842 in Chicago Illinois that
Theodore Lake received a patent of land on
West side of the River in February 1843 that
July 14 1844 Theodore Lake & wife died to said
Hoyt the mill Lot on west side And further
answering says admits that there is an Island
between the platted town on the west and
east side at Aurora across which a part
of said dam is built extending above and
below said dam said Island containing
as per government survey 10 + 18/100 acres
which was originally a part of Mc. Cartys
settlers claim and that they sold their settlers
claim to said Island to Frederick Stolp
together with certain Water power from said dam
in 1835 or 1836 that said Island was platted
and surveyed as an Island at the same time
of the original survey by the United States Govern-
ment and purchased of Government in June
8th 1842 at the land sales in Chicago Illinois
by Frederick Stolp at Government price that
previously the defendant had possession of
said Island built wool carding & cloth
dressing establishment and used water

from the dam and that in 1847 & 1848 he built
a woolen Factory on said Island & dug a
race from the dam to the Factory and uses
water from the dam and that the old carding
establishment has been converted into a
Grist Mill and occupied by James Tyffe
and uses water from said dam by deed from
the defendant to Margant Tyffe of 144 inches
of water that there is a planing & sash
Factory on said Island occupied by lease by
John M. Vansordell using water from the Race
having a right to draw ~~252~~²⁵² inches by said
lease that ^{the} defendant so understands that
there was an arrangement made between
Hoyt & Mr. Carby about keeping in repair
said dam that Hoyt was to keep West half and
Mr. Carby east half And the said defendant denies
that he uses more water than he is entitled to use
from said dam and denies that he has made
any arrangement by which he is to keep in
repair one half of said dam and says that he
does not use as much water from said dam as
he is entitled to use

And the defendant further answering says that
he is the owner in fee simple of the said Island
that Frederick Stolf purchased said Island
of the United States Government in Jan 8th 1842
at the land office in Chicago Illinois

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the Island in S. $21\frac{1}{4}$ Sec 22 S 38^N R 8 E 3^d P. M. as per
his certificate from the United States a copy of
which is hereto annexed marked A which
is made a part of this answer and this defend-
ant says that said Island was platted &
surveyed by the United States Government
as an Island previous to the said sale of said
Island by Government as aforesaid and that
the said Frederick Stolp received a conveyance
from Government of said Island and
that on the 26th day of October A.D. 1843
the said Frederick Stolp conveyed the said
Island to the said defendant Joseph S. Stolp
by deed as per his deed of said date which is
recorded in the Records office of Kane county
Illinois a copy of which is hereto annexed &
marked "B." which is made a part of this
answer And the defendant further says that
said Island lies between the east & west
platted towns in the bill mentioned at Aurora
in Kane county & State of Illinois which
Island divides Fox River into two channels
One channel running upon the east side of
said Island and one channel running
upon the West side of said Island that
the channel upon the west side previous to
the dam being erected was some larger than
the East channel that the said dam is

built across the east channel of the River west
and across channel of said river the channels afore
said That said Island extends a part above the
dam above the dams across the respective channels
the remaining part of said Island below the said
dam And the defendant says he is informed
and advised by his counsel that he is the owner
of and has the right to use one half of the water
that would naturally run into the said east
channel and one half of the water that ~~would~~
would naturally run into the west channel
and that by virtue of his riparian rights
is the owner of one half of each channel
and has a right to use one half of the water
of said river from said dam as a Riparian
owner And the defendant believes he is
so entitled as Riparian owner and claims
the right to use one half of the water by
virtue of his riparian rights And the
defendant says that the said Hoyt is the owner
of the land upon the West shore of the west
channel and uses water from the dam
by a race to his Mill and that Samuel
M^c Cartty formerly owned the land upon
the east shore of the east channel and
that while the said Samuel M^c Cartty was
owner of the land on said east shore of
the east channel he purchased of said

Samuel McEarty water power in addition to his riparian rights the right to draw from the east half of said dam water sufficient to drive or carry a wheel or wheels requiring an amount of water equal to three hundred & four cubic inches to be used for any purpose also the right to draw and use water from said dam sufficient to drive or carry a wheel or wheels requiring an amount of water equal to Eight hundred cubic inches for the purpose of wool carding manufacturing &c and also in addition to the grants aforesaid as much more water as the said Stolp may want for the purposes last aforesaid the said McEarty reserving from the said last grant water sufficient to run eight run of stones the said McEarty covenanteeing with said Stolp to keep said dam five feet high and in good repair and in such condition to furnish the quantity aforesaid with a head of five feet which deed was executed on the 1st day of February A.D. 1843 and recorded in the recorder's office of said Kane county on the 6th day of March A.D. 1843 at 11 am. in Book 3 page 307 &c a copy of which and is hereto annexed marked C. which is made a part of this answer that by virtue of said deed he is entitled in addition to his riparian rights to 1104 cubic inches

of water to be measured by the issue of the wheels
and the said defendant says he has had peace-
able possession of said Island and used
water from said dam since 1836 that he
purchased an interest as aforesaid in said
Island of said Mrs. Carty his interest as a settler's
claim And the defendant further says that
he uses water as follows he has in his factory
two wheels which are capable of issuing each
214 1/2 inches each & that he does not use as
this defendant believes to average over 300 inches
and that he deed to Margantte A. Tyffe
the right to use 144 inches & that he has leased
to John W. Vanosdell and James S. Wright
the right to use 252 inches of water for said
Sash Factory conditionally A copy of said deed
to Margantte A. Tyffe is hereto annexed

Marked D a copy of said lease to Vanosdell
and Wright is hereto annexed Marked E
which are made a part of this answer

And the defendant further answering says that
the said Water Power is as your orator believes
and is informed capable of furnishing water
to drive or carry a great number of wheels
requiring an amount of water equal to
some 6000 inches and that the West channel
would furnish water power sufficient to carry
wheels requiring some 2000 inches and the

east channel some 1600 inches that Hoyt uses
in his Mill as your Orator is informed 980
inches that the Mills on East side use as your
Orator is informed 1708 inches

All which matters and things this defendant
is ready to aver maintain and prove as this
honorable court shall direct

And this defendant submits to this honorable
court that all and every of the matters in
the said complainants bill mentioned & com-
plained of are matters which may be tried & de-
termined at Law and with respect to which
the said Complainant is not entitled to
any relief from a court of equity and
this defendant hopes he shall have the same
benefit of this defence as if he had demur-
red to the said complainants bill

And the defendant humbly prays to be
hence dismissed with his reasonable
charges and costs in that behalf most
wrongfully sustained

A.B. Fuller Sol for deft- } J. G. Stolp

State of Illinois }
Kane County }

On this - day of May A.D.
1855 before me personally
appeared the above named J. G. Stolp and
made oath that he had heard read the above

Answer Subscribed by him & Kirms the contents
thereof and that the same is true of his own
knowledge except as to those matters stated to
be on his information and belief and as to
those matters he believes it to be true
Subscribed and Sworn to }
before me this 14th day of May } J. H. Stolp
A.D. 1855 A. B. Fuller J. P. }

Exhibit "A"

Land Office at Chicago Illinois
June 8th 1842

N^o. 10.101

Received from Frederick Stolp
of Kane county state of Illinois the sum
of 12 Dollars & 72 cents being in full
payment for the Land in S W 1/4 of
Section N^o. 22 Township N^o. 38 North
Range N^o. 8 East of third Principal Meridian
containing 10 acres & 18 hundredths of an
acre at the rate of \$1.25/100 per acre
\$12.72
E. W. Wadduck Receiver

Exhibit "C"

This Indenture Made this first day of
February in the year of Our Lord One
thousand Eight Hundred & Forty three
Between Samuel M^c. Carty of the county of
Kane and state of Illinois of the first

part & Joseph G. Stolp of the same place of
the second part Witnesseth that the said
party of the first part for and in consider-
ation of the sum of Five Hundred dollars
to him in hand paid by the said party of
the second part the receipt whereof is hereby
acknowledged hath granted bargained
sold remise released aliene and confirm-
ed and by these presents doth grant bargain
sell remise remise release aliene and confirm
unto the said party of the second part and
to his heirs and assigns forever all the
following described rights privileges & ease-
ments and water power in the town of
Aurora County & State aforesaid Viz the right
to draw from the half of the Mill Dam
of the said party of the first part in the
town aforesaid water sufficient to drive or
carry a wheel or wheels requiring an
amount of water equal to three hundred
and four cubic inches to be used by the
said party of the second part his heirs or
assigns for any purpose and also the right
to draw and use water from the dam
aforesaid water sufficient to drive or carry
a wheel or wheels requiring an amount of
water power equal to eight hundred cubic
inches to be used by the said party of the second part

his heirs or assigns for the purpose of wool carding
Cloth Dressing or the Manufacturing of cloth and
also in addition to the said last mentioned water
power the said party of the first for himself
his heirs executors administrators and assigns
doth hereby covenant & agree to and with the
said party of the second part his heirs and
assigns to furnish the said party of the second
part his heirs or assigns as much more water
power as he or they may or shall require
for the purposes last aforesaid saving &
reserving to the said party of the first part
his heirs or assigns from the said last mentioned
water power water sufficient to drive Eight run
of Mill Stones of the usual size with the
necessary Machinery And the said party of the
first part for himself his heirs executors ad-
ministrators and assigns doth hereby covenant
and agree to and with the said party of
the second part his heirs and assigns to keep the
said Mill dam in such condition and of
sufficient height to furnish the said water
power with a head of five feet

Together with all and singular the heredita-
ments & appurtenances therunto property belonging
or in any wise appertaining and the reversion
& reversions remainder and remainders
unto issues and profits thereof and all

the right title interest claim or demand whatsoever of the said party of the first part with in Law or equity of in and to the above bargained and described rights privileges and easements and water power

To have and to hold the said rights privileges easements and water power above bargained and described with the appurtenances unto the said party of the second part his heirs & assigns forever. And the said party of the first part for himself his heirs executors and administrators doth covenant and agree to & with the said party of the second part his heirs and assigns that at the time of the executing and delivery of these presents he is well seized of the rights and privileges above conveyed as of a good pure perfect and indefeasible estate of inheritance in the law in fee simple and hath good right and lawful authority to grant bargain sell and convey the same in Manner and form as aforesaid and that the same are free and clear of all former and other grants bargains sales or incumbrances of whatsoever kind or nature and the above bargained rights privileges easements and water power 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 party of
the first part will forever warrant and defend
In witness whereof the said party of the
first part hath hereunto set his hand and
seal the day and year first above written.
In Presence of } Samuel M^c Carty
W. B. Photo }

State of Illinois
Rand County } ss I William Shirds a
Justice of the Peace in
and for said County in the State aforesaid
do hereby certify that Samuel ~~M~~ M^c Carty
personally known to me as the same person
whose name is subscribed to the annexed
Warranty Deed appeared before me this
day in person and acknowledged that he
signed sealed and delivered the said
instrument of writing as his free and
voluntary act for the uses and purposes
hereunto set forth
Given under my hand and seal at my
Office in Aurora in the County and State
aforesaid this 20th day of February
A.D. 1843
William Shirds Justice of the Peace

Received for Record Mar 6th 1843 at 11 o'clock
A.M. Recorded in Book 3 at pages 307 &
308 David Dunkham Recorder
Kane Co. Ill.

Exhibit E.

This Indenture made this Twentieth day of
April One thousand Eight Hundred and
Fifty between Joseph L. Stolp of Aurora
County of Kane and State of Illinois party
of the first part and Samuel G. Wright of
Tiptonville County of Dapage and John W.
Vansdell of Chicago County of Cook both of
the State of Illinois party of the second part
Witnesseth that the party of the first part in
and for the consideration herein after men-
tioned doth rent or lease to the party of
the second part their heirs or assigns for the
term of One year with the privilege of con-
tinuing the same for the term of Five or
seven years for the sum of Two Hundred
Dollars for each year which sum shall
be paid in equal installments of Fifty Dollars
at the expiration of each quarter (of three months)
The building situate on the Island at Aurora
County & State aforesaid and known as the
Blind Sash & Door Factory together with the

planning machinery in said Factory and water
sufficient for a wheel drawing not less than
two Hundred and fifty two inches (252)
being the same that is now attached to said
Factory for the purpose of carrying on the business
of making blinds Sash Doors & Raining Lumber
also together with all that part of said Island
lying South of the South Bridge crossing Fox
River at said Village of Aurora to within (40)
Forty feet of a small dwelling house on said
Island for the purpose of erecting Sheds and
other conveniences for said factory as also for
a lumber yard for the sale of & storage of
Lumber The water to be taken out of the race
way leading from the dam to the Woolen
Factory should said party of the first part
either in person or by his representatives give
to the said parties of the second part notice to
stop their machinery on account of the water
being too low to run said Sash factory except
to the detriment of the woolen factory or any
portion of the machinery attached to said
Sash factory it is agreed by and between
the parties aforesaid that the rent of the water
which is valued at One Hundred & twenty
five (\$25) Dollars per annum shall cease in
proportion to the quantity of water withdrawn
and be renewed at such times as the said

party of the second part may have the privilege to
 use said water Furthermore no damages shall
 be claimed by the parties of the second part for
 any delay that may be occasioned by any
 flood ~~wood~~ or break in the dam or raceway
 or any unforeseen accident provided that ~~the~~^{the}
 said accident be repaired in a reasonable length
 of time nor shall rent be charged for the
 time lost by such accident nor shall the
 parties of the second part be held responsible
 for any accident that may happen to the
 building or other property by an overflow of
 water, ice or by fire or in any other way
 except by gross negligence on their part.
 It is further understood that said parties of
 the second part shall not at any time rent or
 otherwise dispose of any part of said water
 to disconnect the ^{same from} said Factory and it is
 further understood and agreed that the party
 of the first part shall not sell rent or lease
 any other portion of the water he now owns or
 he may hereafter own for any business to
 be carried on to the detriment of the parties of
 the second part in said Factory said business
 being the manufacture of Doors Sash Blinds
 also planing lumber &c. and it is further
 agreed that should said parties of the second
 part put up any permanent improvements on

Said premises the party of the first part agrees
to take such improvements at a fair valuation
that may be put upon them by two or three
disinterested individuals two years to be allowed
for the payment of such valuation without interest
And it is further agreed that at the expiration
of said lease said factory shall be returned
together with all property rented to the said
party of the first part his heirs or assigns by
the parties of the second part their heirs or
assigns in as good order & condition as
when entered upon by the said parties of
the second part reasonable wear and tear
excepted

Witness Our hands & seals this twentieth
day of April A.D. 1850

Signed in presence of Isaac Whittam	J. V. Stolp	Seal
	Jas. L. Wright	Seal
	John W. Vanortell	Seal

Seal

Exhibit "B."

This Indenture made this Twenty Sixth day of October in the year of Our Lord One Thousand Eight Hundred & fifty three between Frederick Stolp And Amanda his wife of the county of Dupage and state of Illinois of the first part and Joseph V. Stolp of the county of Kane & State aforesaid of the second part

Witnesseth that the said party of the first part for and in consideration of the sum of Twelve Dollars and Seventy two 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 discharged therefrom has granted bargained sold remised released aliened & confirmed and by these presents does 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 to wit The ^{South West quarter} of Section number Twenty Two in Township Thirty Eight North Range Number Eight East of the third Principal Meridian containing ten acres & Eighteen Hundredths of an acre in the county of Kane and state of Illinois Together with all and singular

the hereditaments and appurtenances therunto
belonging or in any wise appertaining and
the reversion & reversions remainder & remain-
ders rents issues and profits thereof and all
the estate right title interest claim or demand
whatsoever of the said party 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 ~~mentioned~~
bargained and described with the appur-
tenances unto the said party of the second
part his heirs and assigns forever and
the said party of the second part for him-
self his heirs executors & administrators does
covenant grant bargain and agree to
and with the said party of the second part
that at the time of the enrolling and delivery
of these presents he is well seized of the premises
above conveyed as of a good sure perfect
absolute and indefeasible estate of in-
heritance in the law in fee simple and
has 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 judgments taxes assessments and

incumbrances of what kind or nature were
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 party of the
first part shall and will warrant and
for ever defend

Fredrick Stolp Esq

Sealed and delivered

Amanda Stolp Esq

in presence of B. Winton

State of Illinois
Kane County, ss I Burr Winton a Justice
of the Peace in and for
said County in the state aforesaid do hereby
certify that Fredrick Stolp personally known
to me as the same person whose name is
subscribed to the annexed and appeared
before me this day in person and acknowl-
edged that he signed sealed & delivered
the said instrument of writing as his free
and voluntary act for the uses &
purposes therein set forth And the said
Amanda wife of the said Fredrick
Stolp having been by me examined
separate and apart and out of the hear-
ing of her husband and the contents &

Meaning of the said instrument of writing
having been by me made known to her
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 & Seal this 13th
day of May A.D. 1844 Bur Master *Real*
Filed June 5th 1854 at 12 o'clock M. *Justice of the Peace*
Book 5 page 197 G. W. Gorton recorder

State of Illinois }
Kane County } ss A. Luther Dearborn
Clerk of the circuit
Court in and for the said County in the
State aforesaid do ^{heavily} certify that the above
and foregoing is a true copy of the deed
from Stolp to Stolp as appears of record in
my office

Witness my hand & ^{official} Seal at
Geneva this 14th day of May
A.D. 1855 A. Luther Dearborn
Clerk

Exhibit - D.

This Indenture made the second day of May in the year of Our Lord One thousand Eight Hundred and fifty three Between Joseph G. Stolp and Temperance his wife of Aurora Kane county & State of Illinois of the first part and Margarett Ann Stipe of the same place of the second part Witnesseth that the said party of the first part in consideration of the sum of Seven Hundred Dollars to them duly paid before the delivery hereof have granted bargained and sold and by these presents do grant bargain sell and convey to the said party of the second part his heirs and assigns forever all the following described premises Situate lying and being in the County of Kane & State of Illinois & known and described as follows to wit: My Red Shop known as My old Wool carding establishment together with one foot of water to be drawn from Mc Cartys Dam also the land from the dam South to within sixty feet of my yellow house and west to within ten feet of the East bank of my race Thence running ^{to} within ten feet of the bottom slope of the race embankment back to the dam With the appurtenances and all the estate

title and interest of the said parties of the first
part therein and the said parties of the first
part do hereby covenant and agree with the
said party of the second part that at the
time of the delivery hereof the said parties of
the first part are the lawful owners of the
premises above granted and seized thereof
in fee simple absolute that they will
warrant and defend the above granted
premises in the quiet and peaceable posses-
sion of the said party of the second part
his heirs and assigns forever and that
they are free from all incumbrances
whatsoever

In witness whereof the said parties of the
first part have hereunto set their hands &
Seals the day and year first above written
Signed Sealed & Delivered
in Presence of B. F. Parks

J. G. Stolp (Seal)
Thompson Stolp (Seal)

State of Illinois
Kane County } ss Benjamin F. Parks Notary
Public in and for the said
County in the State aforesaid do hereby certify
that Joseph G. Stolp who is personally known
to me as the real person whose name is
subscribed to the above deed appeared before

me this day in person and acknowledged that he executed & delivered the said deed as his free and voluntary act for the uses and purposes therein expressed set forth And the said Temperance wife of the said Joseph having been by me examined separate and apart and out of the hearing of her husband and the contents & meaning of the said deed having been by me made known and fully explained to her acknowledged that she had freely and voluntarily executed the same and relinquished her dower to the lands & 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 3^d day of May AD 1853 B. F. Parks Notary Public
Filed & Recorded May 27 1853 at 11 1/2 A.M.

Lathu Dearborn Recorder

State of Illinois
Laud County

I Lathu Dearborn clerk of the circuit court in and for the said county in the State of Illinois & ex officio Recorder thereof do hereby certify that the above foregoing is a true & correct copy of the deed from J. C. Stapp & wife to Margaret Ann Stapp as appears of Record in my office Lathu Dearborn clk

{ Court
Seal }

And afterwards, to-wit, on the 19th day of May, AD 1855, the same being one of the days of the May Term of said Court 1855, the following among other proceedings were had and entered of Record in said Court, to-wit: -

Charles Koepf.	} Bill for Relief.	
Joseph G. Stolp		
et. al.	} This day comes the	
		by --- their solicitors, &
	enters their motion to suppress the Deposition of ---.	

And afterwards, to-wit, on the 29th day of May, AD 1855, the same being one of the days of the May Term aforesaid 1855, the following among other proceedings were had and entered of Record in said Court, to-wit:

Charles Koepf	} Bill for Relief.	
Joseph G. Stolp		
et. al.	} This day come the Com-	
		plaintants by Plato & move the
	Court for an Injunction herein.	

And afterwards, to-wit, on the 2^d day of June, AD 1855, the same being one of the days of the May Term aforesaid 1855, the following among other proceedings were had and entered of record in said Court, to-wit:—

Charles Hoyt. }
v } Bill for Relief
Joseph G. Stoep }

et. al. } This day comes on to be heard the Complainant's motion heretofore entered herein for an Infraction in this Cause & after argument of counsel the Court being fully advised, overrules said motion.

And afterwards, to-wit, on the 14th day of November, AD 1856, the same being one of the days of the November Term of said Court, 1856, the following among other proceedings were had and entered of record in said Court, to-wit:—

Charles Hoyt. }
v } Bill for Relief
Joseph G. Stoep }

et. al. } Continued by agreement of parties.

And afterwards, to-wit, on the 26th
day of February, AD 1857, the same being
one of the days of the February Term of
said Court, 1857, the following among other
proceedings were had and entered of record
in said Court, to-wit:—

Charles Koyt. }

v
Joseph G. Stolp }

et. al. } This suit continued by
agreement.

And afterwards, to-wit, on the 6th day
of July, AD 1857, the same being one of the
days of the July Special Term of said
Court, 1857, the following among other
proceedings were had and entered of
Record in said Court, to-wit:—

Charles Koyt }

v
Joseph G. Stolp. }

Danl. McCarthy. }

Elijah Koyde, chal. }

Bill for Relief.

This cause continued
by agreement.

And afterwards, to-wit. on the 12th
day of February, AD. 1858, the same being
one of the days of the January Term
of said Court, 1858, the following, among
other proceedings were had and entered of
record in said Court, to-wit:—

Charles Koop }
v } Bill for Relief.
Joseph G. Stolp }

et. al. } This cause continued on
motion of Plato, Solicitor
for Complainant.

And afterwards, to-wit. on the 7th
day of June, AD. 1858, the same being one
of the days of the May Term, of said
Court, 1858, the following among other pro-
ceedings were had and entered of record
in said Court, to-wit:—

Charles Koop }
v } Bill for Relief
Joseph G. Stolp }

et. al. } This cause continued
on Complainant's motion.

And afterwards, to-wit. on the 12th day of March, AD 1859, the same being one of the days of the February Term of said Court, 1859, the following, among other proceedings were had and entered of Record in said Court, to-wit:

Charles Hoyle. }
v } Bill for Relief.
Joseph G. Stolp }
Daniel McLearty }
et. al. }

This day, on motion of Wm B. Plato, Solicitor for Complainant, it is ordered by the Court that this Cause be set down for hearing at the next term of this Court, on the pleadings and proofs.

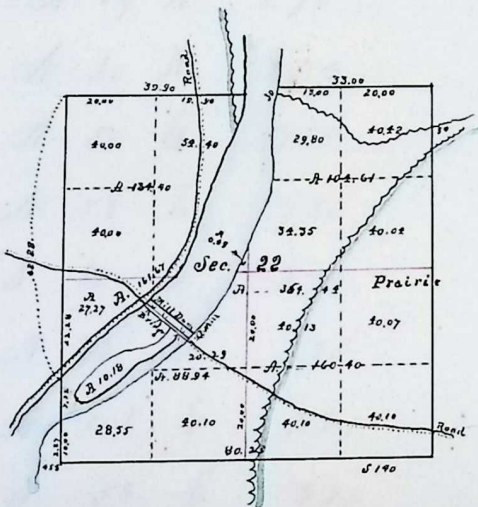
And, afterwards, to-wit on the 12th day of December AD 1859, the same being one of the days of the November Term AD 1859 of said Court, the following among other proceedings were had and entered of Record in said Court, to-wit:-

Charles Hoyle. }
v } Bill for Relief.
Joseph G. Stolp }
Daniel McLearty }
et. al. }

This day on motion of Plato, Solicitor for Complainant, this cause is set down for hearing upon Bill, answer, Replication and proofs.

And afterwards, to wit, on the 12th
day of December, AD 1859, there was filed
in the office of the Clerk of said Court,
two Maps, and the certified notes of the
Surveyor General accompanying the same,
all of which are correctly copied as follows.
to wit: -

Tp. 38. NR 8. E 3^d P.M.



Office of the Surveyor General
for Illinois and Missouri
St Louis Nov. 21st 1859

The above plat of Section 22 Township 38
North Range 8 East of the 3^d principal

Meridian is correctly copied from the authenticated plat of said
township on file in this office

Geo. Loughborough
Surveyor General

Geo. Loughborough
Surveyor General

Commenced at corner to Sections 21. 22. 27. + 28 Township
 38 North Range 8 East running East 15.00 chains
 North 15.00 " To the
 East bank of Fox River. Thence West 3.50 across part of
 Fox River to an Island. Thence as follows:

S 62 W 2.90

N 89 W 3.70

N 20 W 2.70

N 50 E 7.50

N 58 E 7.50

S 80 E 2.70

N 63 E 3.80

N 48 E 2.20

S 55 E 2.20

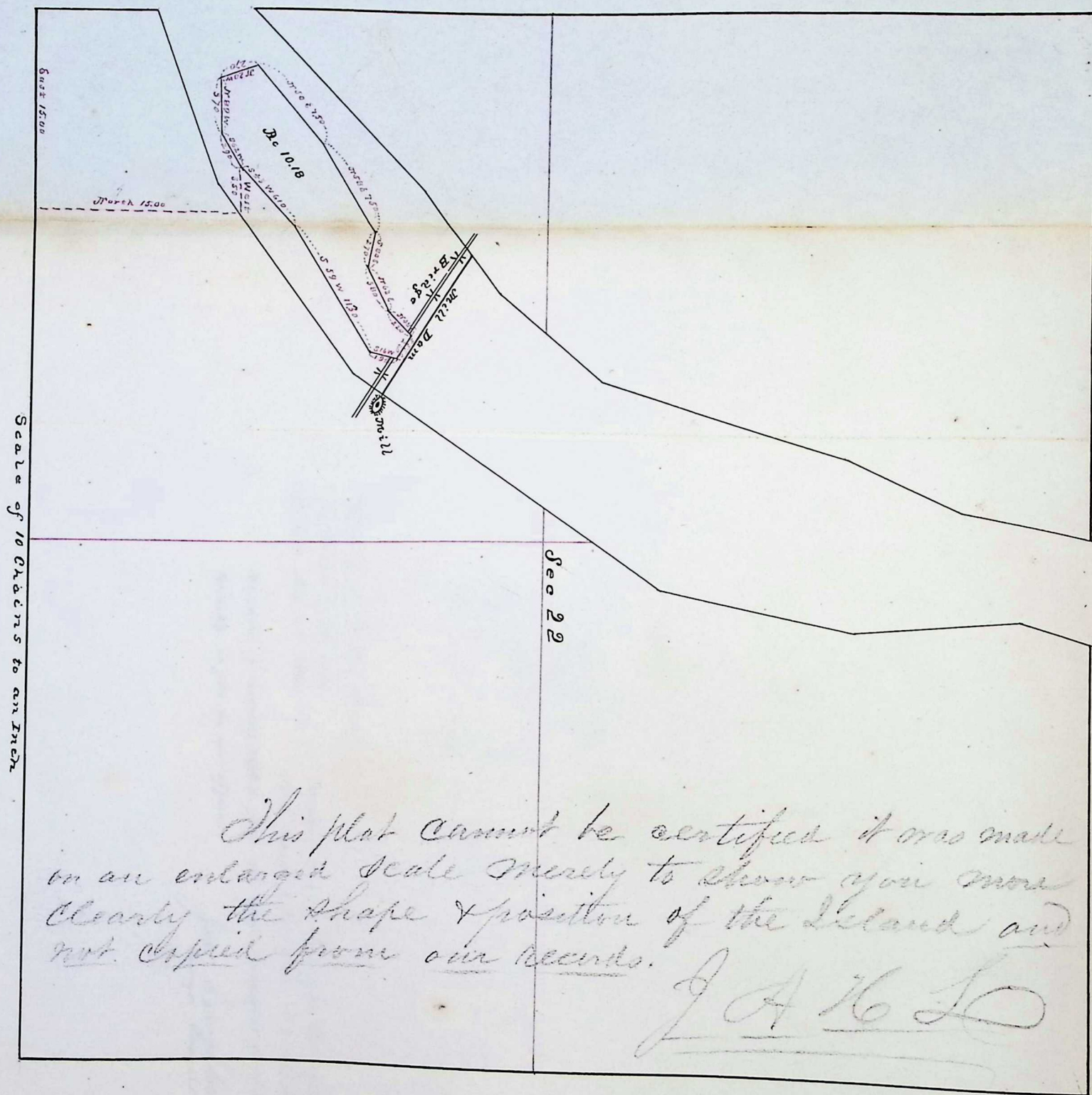
S 10 W 1.90

S 59 W 11.30

S 43 W 6.10 To the place of beginning on
 the Island. Land level & dry good soil no timber

Office of the Surveyor General
 for Illinois and Missouri

Saint Louis Nov 21st 1859 } The above notes of the
 meanders of an Island of Fox River in Sect 22 Twp. 38 N R 8
 E of the 3^d pl Mer. are correctly copied from the original
 field notes of the Survey thereof on file in the office
 Jno Loughborough
 Surveyor General



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And afterwards. to-wit. on the 23rd
day of June AD 1860, the same being one of the
days of the May Term, of said Court, 1860
the following among other proceedings were
had and entered of record in said Court, to-wit.

Charles Kooyt.

Joseph G. Stoep, Daniel
McCarty, Elifah Royde,
James Dyfe and Margaret
his wife, John M. Van Orsdell
Hezekiah Gifford

Bill for Relief.

This cause coming
on to be heard upon
the Readings, Exhibits
and Proofs in this

case, viz.:- Exhibit "(A)" copy of the United
States Patent to Theodore Lake Exhibit "(B)"
copy of Deed from Theodore Lake and wife
to Charles Kooyt, attached to, and a part of
the Bill of Complaint in this cause, the
depositions of Myron Blakely, Russell C.
Mia, Samuel McCartney, Martin B. Miller,
John L. Kauchett, a certified plat of Section
22. Township thirty eight. North Range 8.
East of third Principal meridian and the
notes of the meander of an Island of
Fox River in said Sec 22 from the Surveyor
Generals office, St. Louis made Nov 21st 1859
and the exhibits attached to and made

part of the answers filed herein, and the Court, being fully advised in the premises, doth order, adjudge and decree, and it is hereby ordered, adjudged and decreed that the said Complainant Charles Keoyt his heirs and assigns is the owner of and well entitled to the western one half of the river, ^{the} mill dam in the pleadings described and also to one half of the water power created by said mill dam to be used from the western half of the said mill dam - It is further ordered adjudged and decreed by the Court that Daniel McCarty his heirs and assigns are the owners of and well entitled to draw from the easterly half of the said mill dam and from the said easterly half of said water power in preference to all other persons water sufficient to run four runs of stones with the necessary machinery attached. It is further ordered, adjudged, and decreed that the said James and Margaret Dyfe, their heirs and assigns, are next entitled to draw from the easterly half of the said mill dam and water power one hundred and forty four inches of water. It is further ordered adjudged and decreed by the Court that after deducting the said half of the said water adjudged and decreed as aforesaid to said Charles

Wright, his heirs and assigns, and also after deducting the quantities of water above in this decree adjudged and decreed to said Daniel M^cCarthy and James and Margaret Dyke respectively, and to their respective heirs and assigns, then, and not before the said Joseph G. Stolp his heirs and assigns are entitled to draw from the easterly half of the said mill dam, and from the remainder of the said easterly half of the said water power one hundred and sixty inches, to be used by said Joseph G. Stolp, his heirs and assigns for any purpose, and also the right to draw and use from said remainder of the said easterly half of the said water power to be taken from the easterly half of the said mill dam water sufficient to drive a wheel or wheels requiring an amount of water equal to eight hundred inches to be used by the said defendant Joseph G. Stolp, his heirs and assigns, for the purpose of wool-carding, cloth dressing, or manufacturing of cloth, and also in addition to the said last mentioned eight hundred inches of water it is further ordered, adjudged and decreed, that the said Joseph G. Stolp his heirs and assigns are entitled to draw from the easterly

half of the said mill dam, and the said remainder, as much more water power as be the said Joseph G. Stolp or his heirs or assigns may or shall require for the purposes last aforesaid, saving and reserving to the defendant, Elifah Hyde, his heirs and assigns from such remainder, sufficient to drive eight run of mill stones of the usual size with the necessary machinery attached. It is further ordered, adjudged and decreed that the amount of water adjudged to the said defendants, the said Joseph G. Stolp and James and Margaret Hyde, their heirs and assigns shall be measured at the mill dam and not at the wheel or wheels where the same is used in the factory or other place. It is further ordered, adjudged and decreed, that Russell C. Mear, Joel M^c Kee & Wm Panton be, and they are hereby appointed Commissioners to make Partition, divide off, and set apart to the several persons in this decree above named, and to their respective heirs, ^{and assigns} the amount of water to them respectively and their respective heirs and assigns in this decree, above ordered, adjudged and decreed, so that each of the said persons, and their respective heirs and assigns can and may have the full use

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benefit, enjoyment and profit according to the priorities and preferences in this decree of the amount of water or water power adjudged and decreed in this decree above, to said persons respectively, and that the said Commissioners proceed without unnecessary delay to make the said division of the said water, and to report to the Court at the next Term thereof their proceedings in the premises and also the manner in which they shall have divided the said water, and secured the use thereof to the persons, their heirs or assigns, entitled to the same according to the priorities and preferences and requirements of this decree. It is further ordered, adjudged and decreed that the parties to this suit respectively, and their heirs and assigns, and their agents and servants be, and are hereby perpetually enjoined from drawing, using, or taking from the said mill dam any greater amount of water than he or they are entitled to by the terms of this decree, and only when by the priorities and preferences mentioned and set forth above in this decree, he or they are entitled to use such water.

State of Illinois }
Kane County. }

I, Paul R Wright, Clerk
of the Circuit Court in and
for said County, do hereby certify that the
foregoing is a complete Transcript of the
Record in the case of Charles Koop, Com-
plainant against Joseph G. Stolp, et al, De-
fendants, being a true copy of the Bill,
Summons and return of officer thereon,
Answers of Stolp, Van Osdel & Kye, McCarty,
Gifford and Koyde, Replications to answers
of Stolp, Kye & Van Osdel, Depositions of
Miss Wanchett, Blakely, Miller and McCarty,
and the amended Answer of Stolp, Maps & notes
of Surveyor General, together with all the orders
of Court entered of Record in said cause
as appears from the Records and files of
my Office.



Witness my hand and the seal
of said Court at Geneva, in
said County, this 17th day of
September, AD 1860.

P R Wright
Clerk

To The April Term A D - 1861 -

Joseph Stolp

vs

Charles Hoyt

Daniel McCarty

James Fyfe &

Mayaret Fyfe his wife

Error to Circuit Court
of Kane County -

And now comes the said Joseph G. Stolp by Dickey & Wallace his attorneys & says that in the record & proceedings and decree aforesaid there is manifest error and asks that the said decree & proceedings may be set aside reversed & for naught held - and as a special assignment of errors shows the Court the following -

- 1st - The decree of the Court is void for uncertainty -

- 2nd - The decree of the Court does not allow to plaintiff in error so great a share of said water power as he is shown to have been & to be entitled to -

- 3rd - The decree grants too great a share of said water power to Complainant

- 4th The decree adjudges to Complainant priority not justly belonging to him & in two great a degree
5. The decree adjudges to Saml McCarty this assigns to great a share of said water power
- 6th It grants McCarty & assigns priority ~~to~~ which they are not entitled -
- 7th The decree fails to protect the rights of plaintiff in error - as it should do by requiring McCarty & his assigns to keep the dam close & a five feet head
- 8th The Court erred in directing the water drawn to be measured at the dam - & in failing to lay down any rule by which it may be measured
- 9th The decree ought to have been in favor of the plaintiff in error & against the Complainant -

Dickey & Wallace

Supersedeas allowed upon plaintiff
in Enon - filing supersedeas bond - in
the penalty of two thousand
dollars with Jeremiah Goodwin and
Joseph Rising as security
Sept 24 - 1860

J. D. Eaton

g. using
any greater

101 178
Joseph Storp
Charles Hoyt Storp

113

1861

Filed Sept. 28, 1860
L. Leland
Genl R

13489

1867

Stock
Hoyt Storp