

No. 12550

Supreme Court of Illinois

Darst

vs.

Marshall

71641  7

157 = 65

Jacob Darst.

Isreal M. Marshall

157
19

12550

1858

X

Prepared

State of Illinois
Knox County } ss.

Pleas. before the Honorable
John S. Thompson, Judge of the South
Judicial Circuit in the State of Illinois
at a court. begun and held at the
Court House in the City of Knoxville on
the fourth Monday of September in the year
of our Lord One Thousand Eight Hundred
and fifty six

Present Hon. John S. Thompson Judge
James H. Stewart Prosecuting Atty. Gen. Tenn.
Hiram S. Mowry Clerk
Cornelius Buckle Sheriff

Jacob Darst

Israel M Marshall } Ejectment

Be it remembered
that hereupon to wit on the 24th day of
September A.D. 1855 the Plaintiff in this suit
filed his Declaration and notice herein which
reads in words and figures following to
wit;

State of Illinois } Jacob Vincent Cant
Holt County } Sept Term A.D. 1855

Jacob Darst the Plaintiff in
this suit by his Attorneys complains of
Israel M Marshall the defendant in this
suit.

For that whereas the said Plaintiff
on the first day of August A.D. 1855 was
possessed of the following described premises
to wit: The North west quarter of section thirty
two of Township Ten north in Range One East
of the fourth principal Meridian in Holt County
which said premises the said plaintiff claims
in fee. And he the said Jacob Darst being so
possessed thereof the said Israel M Marshall after
wards to wit on the second day of August 1855
entered into said premises, and that he
unlawfully withholds from the said plaintiff

the possession thereof to the Plaintiffs damage
of two hundred dollars and therefor sue &c
Wood & Linder
Attys for Plaintiff

To Isaac M. Marshall

You are hereby notified
that the Subjoined Declaration with a copy
whereof you are now served will be filed in
Court on the first day of the next Term
of the Circuit Court to be holden in and for
Knox County at the Court House in the
town of Knoxville in Knox County, State of
Tennessee on Monday the 24th day of September
A.D. 1855

That upon filing said declaration
a rule will be entered requiring you to
appear and plead to said declaration
within twenty days after the entry of such
rule and that if you neglect so to appear and
plead a judgment will be entered against
you and the plaintiff will recover possession
of said premises in said declaration described

Wood & Linder

Attys for Plaintiff

State of Tennessee
Knox County

} Circuit Court Knox Co Tns

Jacob Darr

vs
Israel M Marshall

Cornelius Runkle being duly sworn upon his oath says that he did on the 8th day of September A.D. 1855 personally serve Israel M. Marshall the defendant in this suit who is the actual occupant of the premises sued for in this action with a true copy of the Declaration and notice hereto annexed and above set forth, by delivering to him a true copy of the same and further saith not

Cornelius Runkle Sheriff

Subscribed & sworn to

In presence of this 10 day of September 1855
I J. J. J.

Wm. J. Munn Clerk of the Circuit Court New Co. Illinois

And afterwards to wit on the 12th day of October A.D. 1855 comes the defendant in this suit by his Attorneys and files his plea herein which is in words and figures following

State of Illinois } In the Circuit Court
New County } of Sept. Term 1855
Jacob Darr }
vs }
Israel M Marshall } Exponent
And the said

defendant comes and disputes the wrong
and injury where &c. and says that he is
not guilty of unlawfully withholding the
possession of the said premises above in
said declaration described and of this he
puts himself upon the country &c

Hearing & Verdict

Atty Gen Deft

And now on this day to wit on the 24th day
of September A.D. 1885. At and during a term
of said Court began and held as aforesaid
the court made an order herein which reads
in words and figures as follows to wit.

Jacob Darso }
vs } Exponent
Israel M Marshall }

This day came the
plaintiff and made ~~the~~ proof of the serving
the declaration & notice thereto attached, and
on his motion it is ordered by the court that
the defendant plead to the plaintiffs declaration
filed herein within twenty days from the date
hereof. And in case of failure or neglect so
to do a judgment will be taken against ~~them~~
him by default, and the plaintiff will recover
possession of the premises in his declaration descri-
bed, and it is further ordered that this

Cause stand continued until the next
term of this court

State of Illinois
Knox County 3 SS

Pleas before the Honorable John
S. Thompson Judge of the Sixth Judicial District
Circuit in the State of Illinois: at a court
began and held at the Court House in the
City of Knoxville on the fourth Monday
in the month of April in the year of our Lord
One thousand Eight hundred and fifty six
it being the twenty eight day of said
month

Respect Honorable John S. Thompson Judge
A. M. Leary States Attorney
C. Beukle Sheriff
H. J. Mery Clerk

At this term of said court, this cause
was continued under a general order of
said court which reads as follows to wit

Ordered that all causes not otherwise
disposed of, be continued until the next term
of this court

State of Illinois)
Knox County } ss

Plas before the Honorable
John S. Thompson Judge of the Sixth Judicial
Circuit in the State of Illinois at a Court
begun and held at the Court House in the
City of Knoxville on the fourth Monday in the
Month of September in the year of our Lord, one
thousand eight hundred and fifty six it being
the twenty second day of said month

Present Honorable John S. Thompson Judge
A. M. Craig State Attorney
Cornelius Cunkle Sheriff
Herman S. Moray Clerk

And on the 30th day of September AD 1856
during said September term of said Court the
following order was made herein to wit;

Jacob Darst

vs

Israel M. Marshall

Exigent

This day again came
on this cause for hearing on the defendants
motion made herein on yesterday for a continuance
herein, after being advised in the premises, it is
ordered by the Court that the motion be

testament. And that this cause be continued
until the next term of this Court at the
defendants costs. Therefore it is considered by
the Court, that the plaintiff have and
recover of the said defendant, his costs
by him at this term of this Court expended
and may have execution thereon

State of Illinois }
Knox County } ss

Then before the Honorable John S. Thompson
Judge of the South Judicial Circuit in the
State of Illinois at a Court begun and holden at
the Court House in the City of Knoxville on the third
Monday in the month of April in the year of our
Lord one thousand eight hundred and fifty
seven, it being the twentieth day of said month
in said year

Present Honorable John S. Thompson Judge
James B. Stewart States Attorney
George W. Enke Sheriff
Leophas Arms Clerk

And afterwards, to wit on the 23^d day of April it
being the fourth day of said Court, this cause
came on for trial, the record of which in words
and figures as follows, to wit:

Jacob Darst

vs

Israel M. Marshall

}
} Ex parte

This day came the parties
hearing and the court being advised in the
presence of And their attorneys, and issue
being joined, for trial, dispensed with a jury, and
for trial put themselves upon the court, and after
hearing part of the evidence, this cause, for
further hearing is continued until tomorrow
morning

April 24th A.D. 1857

Jacob Darst

vs

Israel M. Marshall

}
} Ex parte

This day again came the
parties and their attorneys in this suit, and after
hearing the remainder of the evidence herein &
the arguments of counsel, it was taken under
advisement by the court until the next
term of this court

State of Illinois

West County

Heas before the Honorable
John S. Thompson Judge of the South Judicial
Circuit in the State of Illinois at a court
begun and held at the Court House in the

City of Knoxville on the third Monday in the month
of October, in the year of our Lord one thousand eight
hundred and fifty seven, being the nineteenth
day of said month

Present Hannah John S Thompson Judge
James H Stewart States Attorneys
George W. Etkin Sheriff
Cephas Arms Clerk

And afterwards to wit on the 6th day of November
in said year, at and during said term of
court - a judgment was entered in said cause
which is in words and figures following to wit:

Jacob Darst
" }
Israel M Marshall } Judgment

This cause came on for hearing
and the court being advised in the premises it is
considered by the court that the issues are
for the Defendant. Therefore it is considered
by the court that the defendant be and remain
in the quiet and peaceable possession of the
premises in the Plaintiffs declaration mentioned
and described. And it is further considered by
the court that the defendant have and recover
from the said Plaintiff his costs by him in
this suit expended and may have

Execution therefor

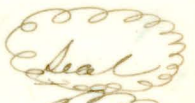
And afterwards to wit on the
7th day of November during said term of said
Court. came the Plaintiff by his Attorney, and
Prays the Court for an Appeal to the Supreme
Court. Therefore it is ~~ordered~~ ordered by the
Court, that an appeal be allowed, And that the
Plaintiff have 60 days to file Bill of exceptions
And Appeal Bond with Henry Lander as
Security in \$200 Dollars

Which Bond was filed in the office of the Clerk
of said Court on the 23^d day of November
A.D. 1837 and reads as follows to wit:

Know all men by these presents that we
Jacob Darst as principal and Henry Lander as
Security are held and firmly bound unto Nathl
M Marshall in the penal sum of Two hundred Dollars
good and lawful money, for the payment of which
will and truly to be made. We bind ourselves, our
heirs Executors & Administrators jointly by these presents
signed & sealed & dated this 23^d day of November
1837

The condition of the above obligation is such
whereas the above bound Jacob Darst has prayed
an Appeal from a certain Judgement rendered

against him in the Circuit Court of Cook County
Ills at the October term thereof 1857 wherein said
Darst was Plaintiff & Israel M Marshall defend-
ant in an action of Ejectment where appeal
is to be taken to the Supreme Court of the State
of Illinois to be held in the third grand
Division. Now if the said Darst shall pro-
secute his said Appeal to effect and pay
whenever judgment cost & damages may be
rendered against him in ^{con} said judgment shall
be affirmed then this Bond to be void. else to
remain in full force

Jacob Darst 
Henry Landy 

Approved by me this 23^d day
of November A.D. 1857

Cyrus Lewis Clerk

State of Miners }
Knox County } SS

Pleas before the Honorable
John S. Thompson Judge of the South Judicial
Circuit of the State of Miners, at a Court be-
gan and held at the Court House in the
City of Knoxville on the third Monday of the
Month of October, in the year of our Lord One
thousand Eight hundred and fifty seven
being the nineteenth day of said Month in
said year

Present Honorable John S. Thompson Judge
Cephas Arms Clerk

George W. Fink Plaintiff
Jacob Darst Defendant
as

Israel H. Marshall) Ejectment

Be it remembered that
herein to wit on the 23^d day of November
A.D. 1857, the said Plaintiff filed his bill of
Exceptions, which reads in words and figures
following to wit

Jacob Darst

as) In the Knox Circuit
Israel H. Marshall) Court Oct Term 1857

Be it remembered that on
the trial of this cause the Plaintiff showed

title in fee to the premises in contrary
derivel from the United States, by Letters
Patent and conveyances from the Patentee
to himself.

The possession of the premises
by the defendant, at the time of the com-
mencement of this suit, was admitted
Here the Plaintiff rested

The defence then offered in evidence
a Deed from the Auditor of State, on a sale
made for taxes 16th January 1828, dated
5th Feby. 1830 to John Gillson Jr. as
follows:- the defendant stating that it was
offered only for the purpose of showing a connected
chain of title to make out his defence under
the Limitations Laws, and the Court admitted
the deed in evidence for that purpose only.

The Auditor of public accounts of the State of
Illinois to all who shall see these presents greeting
Know ye that whereas I did on the 16th
day of January A.D. 1828 at the Town of Vandalia
in conformity with all the requisitions of the several
Acts in such cases made and provided. Expose
to public sale a certain tract of Land, being

the north half of section thirty two Township
ten north in range One East of the 4th
principal Meridian, for the sum of Three
Dollar and 48 Cents, being the amount
of the tax for the year 1827, with the interest
and cost chargeable on said tract of Land
and whereas at the time and place
aforesaid James Mason offered to pay
the aforesaid sum of money for the
whole of said tract of Land, which was
the last quantity bid for; and the said
James Mason has paid the sum of
Three Dollar and 48 Cents into the
Treasury of the State - I have granted
largement and sold, and by these presents
as Auditor of the aforesaid State do grant
Bargain & sell the whole of the north half of
Section thirty two in Township ten north in range
One East of the 4th principal Meridian, to John
Tillson Jr. Assignee of James Mason, his heirs &
assigns. I have and to hold said tract
of Land to the said John Tillson Jr and his
heirs forever subject however to all the rights
of Redemption provided, ^{for} by Law

In testimony of which the said Auditor
has hereunto subscribed his name and affixed
his seal this fifth day of February AD 1830
E. C. Barry

To the admission of this deed in evidence the plaintiff objected, but the objection was overruled and the plaintiff then & there at the time excepted.

Defendant next offered in evidence a Deed from John Tillsan & wife to Moses Allen dated 27 April 1830 - as follows

Know all men by these presents that I John Tillsan of Hillsboro in the County of Montgomery State of Illinois for and in consideration of the sum of Ten thousand dollars to me in hand paid by Moses Allen of the City of New York. Guttman the receipt whereof I do hereby acknowledge, have remised, released and forever quit claimed and for myself and for my heirs by these presents, entire release and forever quit claim unto the said Moses Allen his heirs and assigns the following described tracts of Land to wit North west twenty nine ten North three east, North West twenty eight ten North three east, North West and North East Thirty two ten North one East South east Thirty one ten North one East. South West of Thirty ten North one East, South east and South West of ten, ten North four east - North West Eleven ten North four east North West Twenty seven ten North two East - South West thirty three

nine North four East South West twenty
nine Thirteen North three East - South
East four nine North four East South West
twenty two Eleven North three East South East
fifteen Quarter North four East - South West
thirty four nine North three East, South East
thirty four nine North three East, South West twenty
six ten North three East - South East twenty
eight Ten North three East South West Eight
ten North three East North West twenty six
Quarter North four East South East twenty six
Ten North three East - Being in all
Two hundred and eighty two Quarter sections
of One hundred and sixty Acres each, a-
mounting to Forty five thousand one hundred
and twenty Acres of Land, Situate in the
Tract appropriated for Military Bounties in
the State of Illinois each quarter section
of which contains one hundred and sixty
Acres as per Auditors deeds from the Auditor of
Public Accounts for the State of Illinois delivered
herewith. To have and to hold the afore-
mentioned premises with all the privileges &
appurtenances thereto belonging to him the
said Moses Allen his heirs and assigns
forever. So that neither I the said John
Tillson Jr. nor my heirs, nor any other person
claiming from or under me or them or in

the same right or stead of me or them
shall or will, by any way or means have
claim, or demand any right or title
to the aforesaid premises or to their appurte-
nances, or to any part or parcel thereof
for ever. And the said John Tillsam Jr
for himself, his heirs Executors & Administrators
and assigns doth hereby covenant promise and
agree by and with the said Moses Allen
his heirs Executors Administrators and assigns
that the taxes on said Lands have been
duly paid on the several lots of land since
bought of the State for the taxes due thereon
up to the first of August One thousand Eight
hundred and twenty nine & that he has not
done, permitted, nor suffered, nor will he do
any act, deed matter or thing whatsoever
wherby, or by means wherof, the said Moses
Allen shall or may in any manner or way
be hindered Barred or defeated from having
or enjoying the several ^{parts or} parcels of Land and
premises. In witness whereof the said
John Tillsam Jr and Christiana my wife in
testis that she relinquishes all right of
Dower in and to the above described premises
have hereunto set our hands and seals this
twenty seventh day of April in the year of
our Lord One thousand eight hundred and
thirty

John Tillsen Jr. *Seal*
Christiana Tillsen *Seal*

Signed sealed and delivered in presence
of Benjamin Willis Beta White

State of Illinois }
Montgomery County } ss.

I, Hiram Roundtree Clerk
of the County Commissioners Court for the County
afore said do hereby certify that on this day the
above named John Tillsen Jr and Christiana his
wife personally known to me to be the identical
persons named in and who executed the above
and foregoing deed personally appeared before
me and acknowledged the same to be their free
act and deed for the uses and purposes therein
mentioned. The said Christiana being examined
by me separate and apart from her said husband
declared that she had relinquished her right of
dower to the land and premises contained in
the same deed freely, willingly, and voluntarily
without either persuasion or threats from her
said husband. In Testimony whereof I have
hereunto set my hand and affixed the seal
of said Court at Hillsboro this twenty
eighth day of July in the year of our Lord
One thousand eight hundred and
thirty and of the Independence of the
United States the fifty fifth. Hiram Roundtree
Recorded August 3. 1830 Book B. Page. 322

This deed was objected to ~~and~~ ^{but} the objection was overruled and the deed admitted in evidence only for the same purpose as the first deed and the Plaintiff at the time accepted.

Defendant next offered a deed from Moses Allen and wife to Chas J. Moulton and others dated 14th Nov 1835 & a deed from Moulton and others to Thomas Dunlap and Samuel Lamb dated 30th April 1838 which were admitted.

The Defendant next offered a Deed from Samuel Lamb & Thomas Dunlap to Israel M. Marshall dated 1 Nov 1841, which was not recorded, as follows

This Indenture

made the first day of November in the year of our Lord One thousand eight hundred and forty one between Samuel Lamb. and Thomas Dunlap, both of the City of Philadelphia, of the first part, and Israel M. Marshall of Knox County Minor of the second part Witnesseth. That the said parties of the first part, for and in consideration of the sum of Four hundred and Eighty dollars of lawful money of the United States of America, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged.

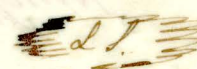
Exhibit "B"

have devised, released, and quit claimed
and by these presents do devise, release,
and quit claim, unto the said party of
the second part, and to his heirs and assigns
for ever, all that certain piece or parcel of land
situate, lying and being in the State of Illinois,
in the tract appropriated by acts of Congress
for Military Bounties, known and described
as follows (viz. the North West quarter of Sec-
tion thirty two in Township two North
Range One East of the fourth Principal
Meridian, containing One hundred and
sixty Acres. Together with all and singular
the tenements the tenements hereditaments and
appurtenances therunto belonging, and all the
estate, right title, interest, property, possession
claim and demand whatsoever, as well in
law as in Equity, of the said parties of the
first part of in and to the above described
premises, and every part and parcel thereof,
with the appurtenances; To have and to hold
all and singular the above mentioned
and described premises, together with the
appurtenances, unto the said party of the se-
cond part, and to his heirs and assigns
for ever.

And the said Samuel Lamb and
Thomas Dunlap do severally, and not jointly

nor the one for the other, but each for him-
self, covenant, promise and agree, to and
with the said party of the second part, his
heirs and assigns, each for himself, and
his heirs, executors and administrators, that
he hath not made, done, committed executed
or suffered any act or thing whatsoever
whereby the above mentioned and described
premises, or any part or parcel thereof, now
are, or at any time hereafter shall or may
be impeached, charged, or encumbered in
any manner or way whatsoever

In witness whereof the said parties of the first
part ^{have} hereunto set their hands and seals, the
day and year first above written.

Signed sealed and } L. Lamb
delivered in the presence } J. Dunlap
of J. Taylor } 


State of Pennsylvania }
City and County of Philadelphia } ss.

On the thirtieth
day of November one thousand eight hundred
and forty one, personally came before me Frederick
Taylor subscribing witness to the within in-
strument, with whom I am personally ac-
quainted, who being by me duly sworn
did depose and say, that he resides
in Queen Street in the said City, that

he Venerable Lemuel Lamb and Thomas Dunlap the persons described in, and who executed the within indenture; that they acknowledged they executed the same for the uses purposes and considerations therein mentioned, and that the said Frederick Taylor, subscribed his name as a witness thereto

In testimony whereof, I have subscribed my name, and caused my Notarial seal of Office to be hereunto affixed, the thirtieth day of November in the year of our Lord one thousand eight hundred and forty one

Edward Houst

Not Pub

Also, a copy of an agreement from the Illinois Land Company to Israel M. Marshall dated the fifteenth day of June 1841 as follows

This Agreement made this fifteenth day of June in the year of our Lord one thousand eight hundred and forty one between the Illinois Land Company, of the first part, and Israel M. Marshall of Knox County and State of Illinois of the second part witnesseth, That the said parties of the first part for and in consideration of the sum of fifty dollars part of the purchase money hereinafter mentioned, now

"Exhibit A"

actually paid in, and upon the express
condition, which is hereby declared a condition
pendant, that the said party of the second
part his heirs executors administrators or assigns
shall and do well and ~~truly~~ faithfully perform
the covenants hereinafter mentioned, on the
part of the said party of the second part, first
to be kept and performed, do hereby, for themselves
and the survivors of them, their successors and
assigns covenant promise and agree to exe-
cute and deliver to the said party of the
second part, a deed of Quit Claims, with
covenant against their and each of their acts,
of and for all that certain piece or parcel of
Land situate lying and being in the State
of Illinois, in the tract appropriated by Act
of Congress for Military Bounties, and known
and described as follows. North West quarter
of Section thirty two of Township Ten North
in Range one East of the fourth principal
Meridian. And the said party of
the second part, doth hereby, for himself his heirs,
executors, administrators and assigns, covenant
promise and agree to and with the said
parties of the first part, their successors or assigns
as follows to wit First to pay to the said
parties of the first part, their successors and
assigns, the just and full sum of One hun-
dred and forty five dollars on the 1st

Monday of June 1842 the further sum of
One hundred and forty three dollars on the
1st Monday of June 1843, the further sum of
One hundred and forty two dollars on the
1st Monday of June 1844, together with interest
at the rate of six per centum per annum
on the said last three sums, from the date
hereof until the same be respectively paid
Each of said payments to be made at
Quincy in said State of Illinois

Secondly at the time of the delivery of the
deed for said premises by the said parties
of the first part to repay to the said parties
of the first part all taxes assessed on said prem-
ises from the fifteenth day of June One
thousand eight hundred and forty one, &
the interest thereon at the rate of six per cen-
tum per annum until paid

Provided always, and these presents are upon
the express condition, that in case of the fail-
ure of the said party of the second part
his heirs, executors administrators and assigns, in
the performance of all or either of the covenants
and promises on his part to be performed, said parties
of the first part shall have the right to de-
clare this contract void and thereupon to
recover by distress upon the premises or other-
wise all the interest which shall have -

In witness whereof the said parties to these presents have hereunto interchangeably set their hands and seals the day and year first above written

The Illinois Land Company by
John Tillson Jr. atty
in presence of
Daniel McK
for Chas. Morton
Graft M. Marshall

Receipts for money on above agreement

Recd Quincy 27. June 1842 of J. M. Marshall Nineteen
25/100 Dollars on this agreement

John Lillsay Jr Capt
for Lieut. Norton

Newville 25 Aug
 \$57.77 Due { \$107.91
 \$57.00 Dollars on this account
 Paid by { 100.00 Paid
 Marshall 791 Left John Kemp paper
 with Sanderlin
 To be paid to Sanderlin

\$110 Quincy July 13. 1843 Received of Mr Israel
M. Marshall by the hand of Mr John Paine
One hundred and 4 Ten Dollars on this a
greement

Lucius Kingman for the
owner J. R. Randolph

\$205 July 3. 1843 Received on this agreement Two
hundred and five dollars on this agreement
by the hand of Charles Morton

Lucius Kingman
for the owner
J. R. Randolph

which agreement now was recorded

Also the depositions of Lucius Kingman and
tax receipts attached as follows

Collectors office

Keosauqua May 25 1842

State of Illinois 3
Keosauqua County 3 ss

Rec'd of John Tillson Jr Taxer
72¹/₂ per Dollars tax due State and County for year
1841 on following Lands

160 S E 31 10 x 16	3.90
160 NW 31 9 " 3.11	2.94
160 NW 32 10 " 11	2.94
160 NE 18 9 " 1 "	2.94
	<u>12.72</u>

J. Hymale Col
By J. S. Runkle Dy Col

Exhibit D.

Exhibit "C"

State of Illinois } Collector's Office Knoxville
 Knox County } May 2 D. 1842
 Received of Lucius Kingman
 the sum of three dollars and 68 cents
 being in full for State, County, & Road Tax on the
 following described land for the year 1842

No. of Acres	Description	Year	Rate	Value	Tax
160	NW 34. 10 N. 3 E	1842	/	480	1 84
160	NW 32 10 N. 1 E	"	/	480	1 84
					3,68

Geo. Looman Col
 By H. J. Rumble Dep Col

Exhibit "D"

State of Illinois } Collector's Office
 Knox County } Knoxville Feb 22. 1843
 Received of John R. Randolph the
 sum of three dollars and 5 cents. being
 in full for State and County tax on the following
 described land for the year 1843

No. of Acres	Description	Year	Rate	Value	Tax
160	NW 32 10 N 12	1843.		480	3.05
160	NW 34. 10" 3 E	"	Paired by N. S. L. by		3 05

Geo. Looman Collector

State of Illinois }
Knox County }

Knox Circuit Court
April Term AD 1837

Isaac Darst

vs
Israel M. Marshall } Ex. Am.

To H. M. Threl Attorney
for the Plaintiff in above entitled cause

You are hereby notified that I will
cause the deposition of Lucius Kingman a
resident of Adams County in the State of
Illinois to be taken before the Clerk of the
County Court of said County at his office
in the Court house in the City of Quincy
in said County on the second Wednesday in
the Month of January next to be read in
evidence in the above entitled cause

Israel M. Marshall

By his Attorney George S. Harding

I acknowledge service of a copy of the foregoing

notice

Henry Landis

Dec 9. 1836

for Darst

Depositor of Lucius Kingman. Taken
before me John Field, Clerk of the County Court
of the County of Adams in the State of Illinois,
at my office in the Court House in the City of
Quincy in said County, on the second

Wednesday in the month of January A.D. 1857
by virtue of the annexed notice, to be read
in audience in a certain suit now pending
in the Circuit Court of Knox County in the
State of Illinois wherein Jacob Darst is Plaintiff
(and) Isaac M. Marshall is defendant in a
suit of Ejectment

Lucius Kingman a resident
of the County of Adams and State of Illinois
age fifty two years or thereabouts being duly
sworn deposes and says in answer to the
several interrogatories hereafter propounded as
follows

Interrogatory 1. What is your name and residence,
have you or not been acquainted with John
Tillson Jr and Charles Morton formerly residents
of Quincy Illinois? Have you or not seen their
writings and are you, or not acquainted with their
hand writing? Are they living or dead?

Answer. My name is Lucius Kingman and
I reside in Quincy Illinois, have been acquaint-
ed with Charles Morton & John Tillson Jr. for many
years till their decease and was acquainted
with their hand writing - Both are dead
I have often seen them, write and read
their hand writing very well.

Interrogatory 2. Look at the instrument in
writing now shown to you marked Exhibit "A."

purporting to be a contract between the Illinois Land Company and Israel M. Marshall dated 15th Jan 1841 and state whether or not the same was executed as it purports to be by "John Tillsam Agent for Charles Morton" if you know the same, And state if you can in whose hand writing is the said signature and contract

2 Answer - The contract was executed by Charles Morton for John Tillsam Jr Agent of the Illinois Land Company. Said Morton being one of said Tillsam's confidential Clerks, the hand writing is Charles Morton's. I have seen them both write and have had correspondence with each, on business matters of our office, (and thus know their hand writing)

Interrogatory 3 Look at the deed now shown to you marked Exhibit "B." purporting to be made by Samuel Lamb (and) Thomas Dunlap conveying to said defendant a tract of Land. And state, if you can, whether you are or are not acquainted with the hand writing of the said Grantors, and if yes, how you became so acquainted, and whether or not in your opinion their signatures to said deed are genuine or forged - are the witnesses to said deed living or dead, where do or did they reside - Do you, or do you not know

the handwriting of said witnesses. if any state
whether of all or which of them, And how you
became acquainted with their hand writing?
Are their signatures to said Deed as such
witnesses, in your opinion genuine or forged?—

3 Answer — The deed was executed by Lemuel
Lamb & Thomas Dunlap; I am well acquainted
with their hand writing; have had much
correspondence with L. Lamb — have seen him
in our office at Quincy Illinois, have received
a large number of deeds from them; duly
executed and witnessed as the said deed
is. And which we have duly delivered to
sundry persons who purchased land on contract
executed by John Gillson Jr Agent, by Charles Morton
or myself as his clerks, and I now have in
my office 18 or 21 deeds executed by said Lamb and
Dunlap & witnessed by the same party all whose sig-
natures I truly believe are genuine and true And
not forgeries J. Taylor in whose presence the
Deed was executed has left the country for
Europe or part unknown — we were well acquaint-
ed with him & his hand writing having seen him
write And have had much correspondence with
him as Secretary of the Illinois Land Company, and
in whose hand writing the deed executed by
Lamb & Dunlap to Israel M. Marshall is
drawn up And I truly believe his signature

to be genuine and not a forgery

Interrogatory 4 - State if you know whether the taxes on the North West quarter of section thirty two (32) in Township Ten (10) North in Range one (1) East described in said deed and contract for the years 1841 1842 & 1843 were paid, and if by whom they were paid.

4 Answer The N. W. 32 - 10 N. 1 E. the contract and its value, was given to John Tillson Jr in the last part of April or early May in the year 1842 - instead of money due him by the Illinois Land Company, and the taxes for 1841. were paid on said lot for him. The taxes of 1842 on said lot of land were paid in my name for John R. Randolph to whom the said contract for N. W. 32, 10 N. 1 E. had been given for payment of money and so charged to him on my books - taxes for 1843 on said lot of land were paid by us for said Randolph in his name and charged to his acct by us

Interrogatory 5 - Under what title did said John Tillson Jr. and said John R. Randolph claim said land during said years, during which as you state they paid the taxes on said land? State the connection with the

same fully and at large Also look at
the then tax receipts now shown to you
marked "D," "E," "F" Respectfully state when
said tax receipts were obtained by said
defendants

5 Answer - The Illinois Land Company owned
the NW 32 10 N 1 E - Lamb and Dunlap
were the Trustees and held the title - The
Company owned John Tillsaw Jr. many in
April or May 1842 this contract for NW
32 - 10 N 1 E. was given to John Tillsaw Jr.
as so much cash - and he then ordered the
taxes paid for 1841 - John Tillsaw Jr then gave
the contract to Robert Tillsaw as cash, and
he gave it to John R. Randolph and the taxes
of 1842 - were paid in my name for him, and in
1843. in his name - the business was done in
my office And the contract and deed, and
papers, and tax receipts, were all left with me
in Quincy both by John Tillsaw Jr Robert Tillsaw
and John R Randolph; these tax receipts con-
taining other lots on then NW 32 10 N 1 E
have been kept in my office until a few months past
when they were sent to defendant's attorney - the
NW 32 10 N 1 E was sold to Israel M. Marshall
as a tax title - Tillsaw and Randolph only
claimed the land as I have stated under the title
sold by the Illinois Land Company to the defendant

and conveyed to him by Lamb & Gunkle and
paid said taxes as such owner under said
sale and contract to Marshall in the place
of the Illinois Land Company.

Lucius Kneymen

State of Illinois }
Adams County } ss

I, John Fuld Clerk of the
County Court in and for said County do hereby cer-
tify that the said witness Lucius Kneymen prior
to the taking of said deposition, and on the second
Wednesday, being the 14th day of January AD 1857
was by me duly sworn to testify the truth in rela-
tion to the matter in controversy in the suit
mentioned in the caption of this deposition (and
attached notice, so far as he might be interro-
gated in relation thereto, and that the said
deposition, was on the 14th day of January AD,
1857 at my Office at the Court House in said
County of Adams and State of Illinois taken
and reduced to writing, and signed and
sworn to by said witness in my presence.

L. S.

Given under my hand and the seal
of the County Court at my Office
in Quincy this 14th day of January
AD 1857 John Fuld Clerk
County Court

Also the receipts for the payment of taxes by
Israel M. Marshall for the year 1844, 1845
1846, 1847, 1848

To the introduction of all which
evidence the plaintiff by his counsel objected
(but not because the signatures were not proved, nor
because of copies being used) but because the same
were irrelevant and improper evidence. The
deft stating that the object of offering the said
deed and contracts & receipts was to show color
of title or connected title, to protect him under
the limitation laws and for that purpose the same
were admitted and the objection was overruled
and the plaintiff at the time then and there
accepted.

Defendant then called John Le Latimer
who testified, that he had known the Land since
1831 - it was then vacant. In 1833 one West cut
a set of Logs for a Cabin on it. In 1834 the
brother of the witness bought the Logs for Marshall
the defendant and also the claim of West
(they called it a claim).

In 1835 the defendant moved
on to the Land in his wagon, staid a few
days in his wagon, put up a temporary Camp
then took the Logs & put up a cabin or hut
and moved into it - made arrangements to
winter his stock.

In the winter of 1835 and Spring

of 1836 he got out rails, and fenced a small field in 1836 & broke up the ground, & has been in ~~actual~~ possession, by actual residence there ever since. but ^{had} only a small part of the quarter enclosed. Broke 4 or 5 acres in 1836. And planted an orchard - has used and treated it as his farm.

In 1837 he continued his improvements, the house has been occupied ever since by depts tenants, a considerable part of the pasture lot was fenced by 1837. These improvements were continued until there is now a pasture fenced containing from 60 to 80 acres besides the small field, which was cultivated and planted as an orchard. The depts Barn is on this quarter. 20 or 30 acres were enclosed in 1840 & the whole of the pasture lot and orchard was enclosed by 1842 or 1843.

The defendant first squatted on the land and said he intended to buy it as soon as he could find the owner. He has claimed it as his own since 1840.

This witness testified at cross examination that Jacobs West cut a set of house logs in the land in 1833 or 1834 but did not live on the land. Witness brother bought the logs for Marshall, at his Marshall's request. Marshall moved from Kentucky in August 1835. The logs had been bought before that time. He went on to the land in his wagon.

Defendant came out from Kentucky in spring of 1834 to look at the country. Saw

This Land, and said if he could get more claim he would settle on it, and buy the title when he could find it - He bought the Tax Title of the Quincy Land Company in 1840

When he went on to the land he claimed no title except a squatters claim and did not claim any title till 1840

Most had no title to the Land and never lived on it - all the claim he had was by cutting the logs to the south west corner of the Lot

There is 60 or 80 acres of Prairie on the quarter and the balance is brush and timber. A portion of it was timber then, about 20 acres. The Deft has by himself and tenants been in the actual possession of said Land by residence there since 1836 and has always openly claimed it, as his farm since he bought the tax title in 1840

Defendant next offered in evidence the following deed from Peter Land to Abraham D. Swartz, at a sale for taxes of 1840 for taxes of 1839 dated Nov 15 1842. as follows to wit

No. 4231 Know all men by these presents that whereas at the May Term 1840 of the Circuit Court of Knox County a Judgment was obtained in said Court in favor of the State of Illinois, against the North half of Section thirty two in Township One north of Range One East of the fourth principal meridian containing three

Hundred and twenty acres for the sum of Eight
dollars and forty seven cents, being the amount
of taxes interest and costs, assessed upon
the said tract of Land for the year 1839. And
whereas on the eighth day of June 1840 J. Peter
Fraus Sheriff of Knox County aforesaid, by
virtue of a precept issued out of the Circuit
Court of the County aforesaid dated the 2^d day
June 1840 and to me directed did expect
public sale at the door of the court house in
the County aforesaid in conformity with all the
regulations of the State in such cases made &
provided, the tract of Land above described
for the satisfaction of the Indebtedment so enclosed
as aforesaid, and whereas at the time and
place aforesaid, Abraham D Swartz of the
County of Knox and State of Illinois, having offered
to pay the aforesaid sum of Eight Dollars &
Forty ~~seven~~ seven cents for the whole of said
tract of Land which was the least quantity
bid for, the said tract of Land was struck off
to him at that price. Now therefore I Peter
Fraus Sheriff of the said County of Knox for
and in consideration of the said sum of Eight
dollars and forty seven cents to me in hand
by the said Abraham D Swartz at the time of the
aforesaid sale, and by virtue of the Statute in
such case made and provided, have granted
bargained and sold, and by these presents do

grant bargain and sell unto the said
Abraham D Swarts his heirs and assigns
the whole of said tract of land being
the North half of section Thirty two in Township
Ten North in Range One East. Situate in the
County of Knox (and) State of Illinois. It have
and to hold unto him the said Abraham
D Swarts his heirs and assigns forever.
Subject however to all the rights of Redemption
provided by Law

In witness whereof I Peter Frans
Sheriff of aforesaid by virtue of
the Authority aforesaid have hereunto
subscribed my name and affixed
my seal this fiftenth day of No-
vember. 1842 Peter Frans Sheriff

State of Illinois Knox County ss

Be it known that on
the day of the date hereof personally appeared
before me H. J. Rumble clerk of the County
Commissioners Court within and for said
County Peter Frans, personally known to me
to be the real person whose name appears subscribed
to the foregoing deed of conveyance, as having
executed the same, in the capacity of Sheriff
of said County and acknowledge the
execution thereof to be his free act and
deed for the uses and purposes therein

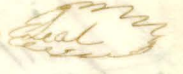
Expressed

In witness whereof I have hereunto
set my hand and seal of said
court at Newville this 15th day
of November A.D. 1842
H. J. Bunkle Clerk c.c.c.

Also a Deed from Abraham D. Swarts wife
to Charles Moulton dated 27th May 1842 as
follows.

No. 4086 Know all men by these presents that
we Abraham D. Swarts and Ann his wife, of
the County of Knox and State of Illinois, for and
in consideration of the sum of four dollars twenty
three & 1/2 cents now in hand paid by Charles
Morton of Adams County and State of
Illinois the receipt ^{whereof} of which we do hereby ac-
knowledge have bargained sold and quitclaimed
and by these presents do bargain sell and quit
claim, subject however to the right of Redemp-
tion, unto the said Charles Morton, and to his
heirs and assigns forever, all our and each of
right title interest estate claim and demand
both at Law and Equity, in and to all that part
piece of Land situated and described as follows
to wit. the North west quarter of Section Thirty
two in Township Ten North in Range One East

and in the county of Knox and State of
Illinois with all and singular the heredita-
ments and appurtenances thereto belonging.
In witness whereof we have hereunto set our hands
and seals this Twenty seventh day of May in
the year of our Lord one thousand eight hundred
and forty two

Abraham D Swarts 

Ann B. Swarts 

I David Rice a Justice of the peace for Knox County
+ State of Illinois do certify the words "subject to the
right of Redemption" were interlined in the above deed
between lines seven and eight were duly acknowledged
by the said grantor

David Rice J.P.

State of Illinois }
Knox County }

I David Rice a Justice of the peace
of said County do do certify do certify that Abraham
D Swarts and Ann his wife whose signatures appear
to the signatures appear to the foregoing deed and
who are personally known to me to be the persons descri-
bed in and who executed the same, did ~~personally~~
~~they~~ personally acknowledge that they had executed
the said conveyance for the uses and purposes
therein mentioned. And the said Ann B. Swarts
having been by me made acquainted with the
contents of the said deed and examined separately
and apart from her said husband, acknowledged
that she had executed the same and relinquished
her dower to the premises therein conveyed voluntarily
fully and without compulsion of her said husband

Given under my hand and seal this
Twenty seventh day of May in the year of our
Lord one thousand eight hundred and forty
Two
David Rice ~~Notary~~ J.P.

Also a deed from Charles Morton wife to Isaac
M Marshall. dated 15th January 1845 as
follows

No. 6530 This Indenture made the fifteenth day of
January in the year of our Lord One thousand
Eight hundred and fifty five between Charles
Morton and Rebecca Morton his wife of Adams
County State of Illinois of the first part, and Isaac
M Marshall of Knox County State of Illinois
of the second part. Witnesseth That the said parties
of the first part for and in consideration of the
sum of ten Dollars lawful money of the United
States of America, to him in hand paid by the
said party of the second part the receipt whereof
is hereby acknowledged, have devised released, &
quit claimed and by these presents do devise,
release and quit claim unto the said party of
the second part and to his heirs and assigns
forever all that certain piece or parcel of land
situate lying, and being in the State of Illinois
in the tract appropriated by acts of Congress for
Military Purposes. Known and described as
follows viz One hundred and sixty Acres

being the North West quarter of Section Thirty
two of Township Two North of Range one East
of the fourth principal Meridian Together
with all and singular the tenements hereditaments
and appurtenances thereto belonging, and all
the estate right title interest property possession
claim and demand whatsoever as well in Law
as in Equity of the said parties of the first
part of in and to the above described premises
and every part and parcel thereof with the
appurtenances. To have and to hold all
and singular the above mentioned and
described premises together with the appur-
tenances unto the said party of the second
part, and to his heirs and assigns forever.

In witness whereof the said party of the
first part, have hereunto set their hands and
seals the day and year first above written
sealed and delivered Charles Morton 
in presence of Rebecca H. Morton 

State of Illinois Adams County set

Be it remembered that on the fifth day
of February in the year of our Lord one thousand
Eight hundred and forty five Charles Morton and
Rebecca Morton his wife personally known to the
undersigned Clerk of the County Commissioners
Court of said County to be the identical persons
who executed, and whose names are subscribed

the Plaintiff at the time excepted

It was agreed that no exceptions should be taken to any of the papers for the reason that signatures were not proven, or that copies were used instead of the originals

John C. Lattimer being recalled testified that in 1841 the defendant also built a large barn on the tract of land in controversy

John G. Lauburn testified that the receipt of the money on the contract from the Illinois Land Company to Marshall is in the hand writing of Charles Norton - Recollects that the papers were left with him and presumes the deed was delivered by him to Marshall - thinks it was delivered ~~by~~ in 1844 or 1845 when the last payment on the contract was paid - Dont know that the contract shown is the same, but thinks it is the same contract - Was runned at various times papers from the land company for Marshall Dont recollect delivering the deed to Marshall Cant certainly identify the deed but it resembles the one delivered to Marshall The last payment on the contract was made in 1844 or 1845 of this he had no recollection except from the papers - From the list of his recollection he received a small sum of money from Marshall

for Norton and delivered him the contract &
deed. He surrass this from his general re-
ollections of the affair and from his examination
now of the contract and deed. He cannot
now recognize that deed as the one delivered
by me. At the time he delivered the contract
he delivered a deed with it but cannot certain-
ly say whether this the one or not. but it re-
sembles the deed delivered by him to Marshall
and thinks it is the one from its appearance.
This was all the evidence in the case, and
whereas the foregoing matters do not appear
of record, it is ordered, that the same be in-
corporated into a bill of exceptions and allowed
and signed & sealed which is done
John Thompson 

State of Illinois }
Knox County } p.

I Leephias Armes clerk of
the Circuit Court within and for said
County do hereby certify that the above and
foregoing is a true copy of the record in said
Cause so far as ^{the same appears of record in} ~~it~~ ^{my office} ~~the bill of exceptions~~



In testimony whereof I have hereto
set my hand affixed the seal of
said Court at the City of Knoxville
this 28th day of December 1857
Leephias Armes Clerk

Fees \$9.50 Paid by Plaintiff
and 200

Postage 15

Manuscript

Jacob Darst

vs

Asa M. Marshall

Jacob Ward
vs

Samuel M Marshall

vs

State of Illinois
Supreme Court &
France Kirsine
April Term 1858.

Appeal from Knox County

Now Comes the said Jacob Ward by
his attorneys, and says that in the
record and proceedings of the said Circuit
Court of Knox County there is manifest
and manifest error and assigns for
error

1st Said Circuit Court erred in permitting
the said deed from the Auditor of said
State to John Tilsen Jr. and from John
Tilsen Jr to Moses Allen to be read in
evidence

2nd Said Circuit Court erred in permitting
said deed from Sarah and Benjamin to
said dependent to be read in evidence

3rd Said Circuit Court erred in permitting
said Contract from the Illinois Land
Company to said dependent to be
read in evidence

4th Said Circuit Court erred in
permitting the deposition of Lucius
Kingman to be read in evidence

5th Said Circuit Court erred in permitting
so much of said deposition of Knigman
to be read as shows or tends to show title
or color of title to said premises in the
Illinois Land Company, or in John Tilsen
Jr. or John R. Randolph.

6th Said Circuit Court erred in permitting each
and every of ^{the} said tax receipts attached
to the deposition of said Knigman to be
read in evidence.

7th Said Circuit Court erred in permitting
parol evidence that the tax of A.D. 1842
paid in the name of Lucius Knigman
was paid for John R. Randolph.

8th Said Circuit Court erred in admitting
evidence of the payment of the taxes
for the years 1841, 1842 & 1843, and each
of them, under any title, or color or
claim of title in the Illinois Land Company.

9th Said Circuit Court erred in per-
mitting the evidence of the payment
of taxes as stated in the deposition
of said Knigman under any claim
and color of title attempted to be
shown in said cause to rebut the
defendant's defence under the
act of A.D. 1837 as a limitation law.

or for any purpose under said act.

10th Said Court then in permitting the said tax deed from Peter Monroe Sheriff to Abraham D Swerts to be read in evidence

11th Said Court then in permitting said deed from Swerts to Charles Morton and from said Morton to the Defendant to be read in evidence

12th The said Circuit Court then in rendering judgment in favor of said defendant in said Cause

13th Said Circuit Court then in determining that said defendant was entitled to the benefit of the limitation act of A.D 1835 or the act of 1839, upon the facts shown in said Cause

14th The said Circuit Court then in not rendering judgment for the Plaintiff upon the facts shown in said Cause

Wherefore for the reasons aforesaid the said Jacob Deast prays that the said judgment of the said Circuit Court may be reversed set aside, annulled for nought here, held and

Esteemed,

Wm. D. Manning & Son
for Appellants

In Multo Est erratum

Geo. H. Harding for Appellees

Great Hall
N. 157

James M. Marshall

Decease

Great Hall Appellants
us

James M. Marshall
us

Filed April 20. 1885
L. Deland
Clerk

Jacob Leerst
vs.
Israel Mc Marshall } In the Supreme
Court April 5
1858

Statement & points for Plaintiff
By Weed & Williamson

Another argument is filed by Manning &
Lander on same side

This is an action of Ejectment for the
recovery of the NW 32, 10 N 1 E in Knox
County

The plaintiff showed a perfect
title to the land derived from the
United States. The possession was ad-
mitted. X

The defendant then offered in evidence
a Deed for the premises from Lamb &
Dunlap dated 1st Nov 1841, and also
a copy of an agreement for a Deed
from the Illinois Land Company to
defendant dated 15th June 1841
agreeing to convey the land to him
upon payment ~~thereof~~. Of the purchase
money. The last payment was to
be made in June 1844. The defen

The defendant then proved a Deed from the Auditor to John Wilson Jr dated 5th
July 1830 for a lay sale of 1828 & a deed from Wilson to Elmer Allen dated April
27, 1830. - He also offered a deed from Allen to Montrose & from Montrose to Lamb &
Dunlap where two last deeds were introduced

dant was also to refund all taxes paid by Lamb & Dunlap after the sale. Neither the Deed nor agreement was ever recorded.

Defendant then proved that John Tilton Jr. as agent for ~~Charles Horton~~ paid taxes on the land for the year 1841. That Lucius Kingman paid the taxes for 1842, John R. Randolph for 1843 (1843) and that the defendant paid the taxes thereon for the years 1844 - 45 - 46 - 47, & 48.

The defendant then proved that he went on to the land in the year 1835 and put up a cabin and has had possession ever since. He has had only a small part of the quarter fenced. He first squatted on the land ~~he~~ claimed no title, and said he intended to buy the title as soon as he could find it.

The Kingman a witness for defendant states that the Agreement for the sale of the land by the Illinois Land Company to Marshall was executed by Tilton as their Agent - that in the year 1842 the interest ~~of~~ of the Company in the

land and Contract was turned over
to John Tillson Jr to pay a debt
— that Tillson turned it over to
Robert Tillson and Robert Tillson
turned it over to John B Randolph
~~to~~ in lieu of money.

The Deed from Lamb & Dunlap ~~to~~
(who were trustees of the Illinois Land
Company) ~~was~~ Marshall was
not delivered until 1844, or 1845

The defendant also introduced a Deed
from The Sheriff of Knox County to
Abraham D Sweetz under a tax
sale of 1840 for taxes of 1839 dated
Nov 15, 1842 for the land in controversy
also a Deed from A D Sweetz wife
dated 27th May 1842 to Charles
Morton and a Deed from Charles
Morton to defendant dated 15th
January 1845 conveying the same
land.

The case was tried by the Circuit Judge of Knox County, without a jury and he rendered a judgment for the defendant to which decision the plaintiff excepted.

The plaintiff now makes the following points by Mead one of his counsel, and other Counsel will make other points.

I. 1st The deed from Abraham D. Swartz to ^{Morton} ~~Morton~~ conveyed no title or claim of title, because he ^{Swartz} had nothing to convey. He had no title from the Sheriff under the sale for taxes. He deeded to Morton on the 27th May 1842, whereas the deed from the Sheriff was not executed until the 15th November thereafter. It was a Quit Claim deed & did not convey the title afterwards acquired by him.

Frank vs Harst 14 Ill 304

Phelps vs Kellogg 15 do 187

If his title must have been recorded, so as to make it notorious. It is an ingredient of necessary to show an adverse possession. If proper notice must be given & so notorious, so must his claim of title be

II Had the defendant such a title as is required by the Limitation Act of 1835.

1st He had no connected in law or Equity deducible of record He failed to connect himself with the Deed from the Auditor of 16th January 1828

2 If he had done so it would not have aided him unless he had shown that the Auditor was authorized to sell the land

3. No judgment was introduced and no authority shown in the officer to sell the land. The Act says the Sheriff must be authorized to sell. An Auditor could sell without a judgment, but a Sheriff cannot - He must show a judgment & precept - He then sells under an order of Court

4. Under this Statute the possession must have been adverse which it was not.

#

III Had he a title under the Limitation law of 1829?

1. He had a Deed from Lamb & Dunlap dated 1st Nov 1841 but not delivered until the year 1844 or 1845.

2. He did not show a payment of taxes for seven successive years. His agreement with the Illinois Land Company was not recorded, and he did not pay the taxes for 1841, 1842 & 1843.

They were paid by John Tillson Jr for 1841, by Lucius Knigman for 1842 and by John R Randolph for 1843. It is true that the defendant had agreed to pay to the Illinois Land Co, all the taxes they should pay on said land after the 15th of June 1831, but the taxes for that year were not assessed until after that date. The taxes of 1842 & 1843, were not paid by Marshall. It may be true that he agreed to refund them to whoever should pay them, but that

is not a payment of taxes within the meaning of the limitation act of 1839. It is no payment of taxes - it ^{is} merely an agreement to refund money paid by another. It became a matter to be charged to him in his account with the Land Co, & if not paid, he could not get his deed, but it was no payment of taxes. It does not appear at what time he refunded the money, whether in ~~apt~~ time or not, or whether it was ever refunded to the persons who paid the taxes.

3. The object & purpose of requiring the party in possession to pay the taxes was to notify ~~any adverse claim~~ the owner of the land of the adverse possession & claim, and this can only be done by a payment in his own name.

Little vs Alleguerie 2 Maine 176
The Proprietors vs Laborer &c 2 do 275

4. If the payment of taxes for 1841, 1842, & 1843, was made by Marshall within the meaning of the law of 1839, under which ~~pay-~~
ment title was it made? The title he bought of the Illinois Land Co or the one he bought of Morton?

Tellson, Kingman, and Randolph could each claim that they paid the taxes, & yet strange as it may seem Marshall claims the same thing.

Suppose Marshall had not paid the Illinois Land Company for the land under his contract then would he have paid the taxes for those years? According to the most liberal view for defendant, the question would be decided by the result viz whether he did or did not pay for the land. No two men can pay taxes at the same time with the same money. If Tellson, Kingman & Randolph paid the taxes for them-
selves and if they paid them for them-
selves, Marshall did not pay them

If Marshall paid them, Tillson
has did not pay them. And if
Marshall did pay them then
he has seven years payment of taxes
under his claim for sale of taxes
of 1840, which ^{he} didn't get of the
Illinois Land Company.

If he paid them, then two
separate persons ^{could} claim the benefit
under adverse claims viz Randolph
& Marshall provided Marshall
had failed to pay the Illinois Land
Co for the land.

5. We contend that as possession to be adverse, must be open notorious & exclusive, for the purpose of giving notice to the owner of the land, so must the claim & color of title, be as open notorious and exclusive as the possession, and the payment of taxes must be in the name of the person in possession under the claim & color of title, for the same purpose viz, notifying the owner of the land.

The owner is entitled to know that the person in possession has claim & color of title, and the proper way of giving ^{this} notice is to place it on record. The person in possession cannot conceal his paper claim, & at the end of seven years, produce it for the first time, & say his title has become perfect. So his payment of taxes cannot be concealed by getting other men to pay the taxes in their own name. He must pay them openly in his own name so as give the owner notice of his intention to hold the land. Actual notice of these facts may be brought home

to the owner of the land in some other way than recording, but in the absence of all other notice, recording ought at least to be required.

I consider these questions fully settled by the case of Mc Lellan vs Reynold 17th Illinois Rep.

When a man goes into possession of my land claiming it ~~as~~ his own I am bound to know that if he remains in possession twenty years his claim will ripen into a title, but I am not bound to know from that fact that he has title from this State or the United States derived of record, nor I am I bound to know that he has color of title, nor can I ascertain that fact unless he places that color of title upon record, nor can I know that he is paying taxes, unless he pays them in his own name. In shortening the time required to ~~obtain a title~~ bar the claim of the owner, the legislature

did not require the acts & claims
necessary to make the bar complete,
to be any less open and notorious
than under ^{the} 20 year limitation law

Indeed, these acts, should
be more open & notorious, because
the time is so materially lessened
And this notoriety should be given
to each & every requirement of the
statute.

I know that the Supreme Court
~~has~~ decided in relation to a subse-
quent purchaser of land, which is
in the possession of a prior purcha-
ser whose deed is not recorded
that ^{such} possession is tantamount to
notice to the subsequent pur-
chaser of whatever claim the
party in possession really has
But it is conceived that this
has nothing to do with the question
under consideration

IV. The claim & color of title was not made in good faith. He was in possession, he purchased one title of the Illinois Land Company, - and then obtained a Deed under another claim of title from Charles Morton. All these acts show that he had no faith in his claim - much less good faith, and he was already in possession under the true owner. He claimed fraudulently trying to steal the land.

V. When did the possession of the defendant become adverse?

He went on to the land in 1835 without claiming it, and with no intention of claiming it, but with the express intention of buying the title when he could find it.

1 A person who enters without claiming title is deemed to hold for the rightful owner & it is the possession of the true owner.

Jackson vs Sharp 9 Johnson 165

Criswell
vs
Atkins
7. Watts
581.

1 Johnson 156.

6 do 218

2 Sch & Lef Rep 97.

Sailor vs
Hertzog
2. Watts
184.

And where persons settle on land
without claiming any right to it
they are held to hold under the
legal title and their possession enures
to his benefit

Bell vs Fry 5. Dana (Ky) 341

5 Cowen 92. 3 Litt 34, 12 Map 327

12 do 331.

2. An adverse possession depends
upon the intention at the time of the
entry. In this case the defendants
did not intend to claim adversely
Angell on Limitations 404 406 413
415 427. 446 453

There was, then, no adverse posses-
sion up to the time of the delivery
of his deed in 1844, or 1845.

Turney vs Chamberlin 15 Ill 273

3. The next question is did his possession ever become adverse, and if so, when did it commence?

He was on the land under the lawful owner, his possession was the possession of the owner, Being thus in possession he purchased a claim of title from the Illinois Land Company on the 15th June 1841. This was a secret private arrangement. It was not recorded, — no notice of it was given to the world or to the owner of the land, he did not pay taxes in his own name, nor was there any change in the character of his possession. Could he in this way & by these means make his possession adverse? What notice had the owner or the world of his change of intention? And if his possession ever became adverse when did it commence? When he bought his deed made his contract or when he got his Deed?

But we contend that his possession never did become adverse to the true owner and could not, without

such clear open and positive acts
as would put advise the owner of
his change of possession

Mc Lellan vs Kellogg 17. Ill 504

When possession of land has been con-
sistent with, or in submision to the
~~true owner~~ title of the real owner
nothing but a clear unequivocal
and notorious disclaimer & disavowal
of the title of such real owner brought
home to the party will render the
possession however long continued
adverse

Rigg vs Cook 4 Gilman 351

Zeller vs Eckhart 4 Howard 289

Millison vs Watkins 3 Peters 43

Jackson vs Barton 1 Wendell 341-2

Harrison vs Poole 16 Alabama 167

2 he 18 do 417.

Wilson vs Weatherly 1 Scott & Mc Lord 373

The case of Jackson *vs* dem Belden
vs Thomas 16 Johnson Rep 293 would
seem to conflict with the above
positions & authorities, but does not
really do so. The language of the
Judge is broad & loose — the point
was not in the case.

In that case the defendant was in
possession claiming title under Hal-
comb's patent & he took possession after
the granting of the Patent to Halcomb.
The case of Jackson *vs* Frost & Corwin
346 explains & qualifies the doctrine
of the case in 16th Johnson, and
confines it to the purchase of a title
prima facie good. There was no
such title in this case.

157 = 65
Jacob Harst
or
Grace M. Marshall

Statement & points
by
Wheat & Williamson
for R. H. J.

Filed May 4, 1858
L. Leland
clerk

Another argument is filed by Mead
on same side

Next us Marshall Lander for
Appellant makes following points

The Auditors tax title ^{in this Record} Commences,
by showing first a Contract for a deed
dated 15 June 41. from Ills Land Co. to
the Defendant.

Second a deed from ~~Ills~~ Lander
Dunlap to deft. dated 1 Nov. 41.

which was delivered in 1844 or 45.

Tax of \$42. for 41 p^{rs} by Tillson for him^{self}

Tax of 43 for 42 p^{rs} by Randolph for him^{self}

Tax of \$44 for 43 p^{rs} by Knigman for Randolph

Taxes for 1844, 1845, 1846, & 1847. p^{rs} by Marshall

3rd Claiming adverse possession
under the Contract for a Deed from
Ills Land Co. they having neither
possession nor title, as against the
true owner. Can only protect the
defendant as to his actual inclosure
& possession

18 Ills 238.

5 Pick ¹³⁵ 138

2 Greenl. 273

3 Greenl 316

2 Grunt 176

10 Shop 204.

2. Defendant's Contract not being
Recorded he can only claim
adverse possession as against the
true owner to the extent of his
actual inclusions

This principal recognized 18 Feb 228
~~5 Feb 135 & 138.~~ 2 Maine 286. 178
4 Mason 326

3. Original Entry not being hostile
It is presumed to be under the real
owner 9 J.B. 163. { 7 Watts 581

3 J.C. 124. { 2 Watts 184

12 J.B. 365. { 5 Dana 341

16 J.B. 293 { 5 Cow 92 *

McClelland vs Kellogg 17 Feb 503

4. Adverse possession under Color
of title Can not be claimed
under a Contract for a Deed until
the purchase Money is paid and
the party becomes entitled to a Deed

the purchase Money in this case
was not paid until 1844.

5 There is no Connection between
Ills Land Co & Scrub & Randolph
- The possessions under the Contract
& under the Deed Can not be
Connected to make out adverse
possession Act on Eject. 446 (note 3)

6 It is said that there was an agreement
that Marshall should repay the taxes
paid by the Illinois Land Company, and
that therefore the payment of such taxes by the
Company was a payment by him.

But there never was any agreement
that he should repay the taxes paid by Tillson
or Randolph.

They paid them for their own security.
No agreement is shown that they should pay
them for the Company or Marshall. It was
their own voluntary act. The payment of
taxes by 3^d persons, and not at all connected
with his rights. He did not pay the taxes,
but permitted others to pay them.

There is no evidence that Marshall
ever repaid any of these taxes

Randall & Tillson paid taxes under their
contract, not under the title.

7 Was no payment of Taxes for the years 41, 42, & 43. within the meaning of the 8th Sec. the party in possession claiming title must pay the taxes the Statute is "Every person in actual possession or who shall for 7 successive years pay &c." See Stat. 11 Ills 412, 414.

8 Three things must Concur 1st actual possession 2nd Claim & Color of title 3rd payment of Taxes
11 Ills 412

to make out a Case under the act in question

9 The payment of Taxes required in the 8th Section was intended as an additional means of informing the true owner that his title was being cut off by adverse possession. it is one of the acts necessary to make out adverse possession and must be tested by the same principal ^{that} other acts of adverse possession are

10 The law of adverse possession proceeds upon the principle that the real owner has notice actual or constructive that another is occupying his land claiming it as his own and knowing the fact the owner acquiesces and consents to an abandonment of his rights 17 Ills 501.

11 The acts must be Visible Open Exclusive hostile & so continue. Notorious & not secret that the owner may know what is going on. 17 Ills 501 1 Mass 483. 4 Ch. 416. 7 Ch 381 3 Met. 125. 1 Mr Leam 266. 1 Shep 178. 11 Ills & J 367. 2 Mr Muller 495 & Pick 172.

12 If the acts necessary to constitute adverse possession are done in such a manner as to exclude the knowledge of the owner no adverse possession can exist 1 Shep 29 10 Ch 417.

13 The ~~acts~~ things done by the party in possession are acts presumptive of an intention to assert ownership 10 Peters 412.

14 Adverse possession can never arise from ignorance or mistake the party must intend to do what he does, the quo animo is the test

15 Teste by these principals how can it be said that Marshall paid the taxes for 41, 42, & 43? how could the owner ever know that his title was being cut off step by step by the payment of taxes by Marshall?

And how can it be said that Marshall himself knew that the taxes were being paid for himself?

16 The party in possession under a contract of purchase is liable for the taxes 12 Ells 444. 14 ib 458. the true owner has a right to expect Marshall to pay the taxes if he suspected he was losing his land by ^{another paying the taxes} ~~the payment~~

Harst
M
Marshall
Brief of points
& authorities

by
Manning & Lauder

17 If the Construction Contended for is not Correct, then the party in possession might secretly procure the taxes paid in the name of third persons for the very purpose of obtaining the benefit of the Limitation act in question & thus secretly practice a fraud upon the true owner & get his land without his knowledge or even a chance to know that it was being lost and thus make the act a law of forfeiture & not limitation

18 The Ills Land Co. is not a person Capable of Conveying Land - no evidence to show that such Company is composed of natural persons - no Corporation of that sort by Law -

The Contract Comes from "The Ills Land Co." of the first part.

The Debt Owed to be made under the Contract Comes from Lamb & Dunlap no evidence to connect the title between the Co. & Lamb & Dunlap

Marshall's possession was and is in
subordination to that of the real owner.

The Limitation law of 1835 Can
have no application in this case
because 1st the old tax title is
not deduced from any record nor
is it Connected in law or Equity
nor derived from any public officer
or

Nor under the tax title of 1840 because
that title is not deduced from any
record no judgment being shown

The title of 1840 is not Connected
in law nor Equity; the Sheriff's
deed was made on the 15th day of
Nov. 1842 to Swarts. ~~and was only~~
and the deed from Swarts to Norton
was made on 27th May 1842. was
only a Quit Claim this last deed
was made before the time of
redemption expired the tax sale was
made on 2 June 1840. Time of
redemption expired 2 June 1842.
it conveys no title whatever

Never was any taxes paid under
this tax title of 1840 until 1845.

Warrant for Sale 14 Dec 3 06

19

Marshall's possession is subordinate to the right and title of the plaintiff.

1. He enters not as a trespasser merely but under a claim of intention to purchase of the real owner.
2. The owner has notice of this. The possession continues the same. No limitation runs against the owner.
3. To change the character of the possession as against the owner he must at least have notice of that change.
4. The purchase of a pretended title from ~~one~~ any person would be no notice of such change - for his claim was to purchase of the real owner.
5. It is not sufficient that he should merely change his claim - the knowledge of the change must be brought home to the owner.

McClellan v. Kellogg 17 Ill, 503

Doart 15th = 65
W

Merrill
Proof of points made
by Manning & Lander
for appellant

Filed May 6. 1858
L. Leland
CLK

Supreme Court April Term 58.
Jacob Hart Appellant

vs
Israel M Marshall Appellee
Points made by Manning &
Lander for Appellant

The defendant to defeat plaintiffs title shows first a Contract for a deed from the "Illinois Land Co." to himself dated 15 June /41.

Second a deed from Lamb & Dunlap dated 1st Nov. 1841. which was delivered in 1844 or 1845; which he offers as claim & Color of title under under the Limitation Law of 1837. Sec. 8. together with the payment of taxes as follows

Tax for /41. paid by John Tielson in his name

Tax for /42. paid by John B Brumfield in his name

Tax for /43. paid in name of Kingman for Brumfield

Tax for 44. 45. 46. & 47. paid by Marshall Defendant

1st Defendant under the Contract from
Dels Lauce Co, they having neither possession
nor title can not claim adverse posses-
sion only to the extent of his actual in-
-closure as against the true owner

This principal recognized in 18 Dels 238.
3 Pick 135. & 138. 2 Speer 273. 3 ib 316.
2 ib 176. 10 Ship 205.

2nd The Contract from Dels Lauce Co. they having
no title & the Contract not being Recorded
is no claim & Color of title to protect def-
-endant further than his actual
inclosure 2 Maine 286. ib 178. 4 Mason
326.

3rd Original entry not being hostile posses-
sion is presumed to be held under the
true owner 9 John B 163. 7 Wells 581.
3 John Cas 124. 2 Watts 184. 12 John B 365.
5 Wane 741 17 Dels 503 Authenticers are
unnecessary on this point

4th The Deft. Could not claim adverse
possession under his Contract until

he paid the purchase money and became
entitled to a deed; for until that time
he only has a Contract for a title or
color of title & not the title or color
of title. his last payment was made
in 44 or 45. if true.

5th No connection is shown between the
title from Ill. Land Co & the title from
Smith & Hunsley sufficient to enable
respondent to connect the two, for the
purpose of making out his period of
time. See also on Eject 446 (note 3)

6th Randolph & Gillson paid the taxes for
41, 42, & 43. for themselves under a supposed
right in the Contract & not under any
right or title in the Land

It is said there was an agreement
on the part of Marshall to repay the
taxes paid by Ill. Land Co & that therefore
the payment of taxes by them was payment
by Marshall. But there was no agree-
ment, that he should repay the taxes
paid by Gillson & Randolph

They paid them for their own secu-
rity and not for Marshall

No agreement is shown that they
should pay them for the Company nor

for Marshall, it was their own voluntary
act for their own Security; then Marshall
did not pay them but permitted them
to pay by 3^d persons

7 Then there was no payment of taxes
for 41, 42, & 43, within the meaning of the
5th Sec. The Statute is that the party in
possession shall pay &c See Stat.

11 Ills. Irwin vs Brownell 412 & 414.

Under this act 3 things must concur
1st Actual possession for 7 successive years
2 Claim & Color of title. 3^d payment of
taxes for 7 years by the party in possession
1 Ills 412. & 414.

The Statute is prescriptive & requiring
the taxes paid, was intended to permit
additional notice to the true owner of the
adverse possession; it is made one of the
indispensable acts ~~see~~ to constitute
an adverse possession, and consequently
must be tested by the same principles
that other acts of adverse possession are.

The law of adverse possession proceeds
upon the principle that the real owner
has notice actual or constructive that
another is occupying his land claiming
it as his own, and that the true owner

after the requisite period acquiesces & consents to an abandonment of his rights 17 Ills 301. But to make such acts available they must be Visible Open Exclusive & Hostile & So Continue; notorious and not secret that the owner may have a chance to know what is going on 17 Ills 301. 1 Mass 483. 41b 416. 7 ib 381. 3 Met. 125. 1 Mc ~~Quinn~~ ^{Lean} 266. 1 Ship 178. 11 Gill & F 767. 2 McMillen 498 & Pick 172.

If the acts are done in such manner as to exclude the presumption of notice to the owner then adverse possession can never exist 1 Ship 27. 10 ib 417.

The things to be done are the acts presumptive of the intention to assert ownership 10 Peters 412.

Adverse possession can never arise from ignorance or mistake on the part of the occupant, he must honestly intend to occupy the land & pay the taxes as his own believing it to be his; the quo animo is the test. So if the acts of adverse possession are done independent of the will & intent of the occupant he cannot adopt the same as his acts, depending upon whether they may or may not be to his advantage.

So far from the taxes for 41, 42 & 43 being
paid by Marshall, Can it be said that
he even knew at the time that they
were being paid for his benefit.

The party in possession under a Contract
for a deed is liable to pay the taxes &
the owner has a right to expect the taxes
paid in his name in case he suspected that
he was losing his land by such payment
14 Ills 458. 12 Id 444.

Then the taxes should have been paid
by Marshall in his name that the owner
might know that his title was being cut
off year by year by such payment
Any other construction would make
the act a law of forfeiture & not a
limitation.

If this is not the true construction
then the occupant might secretly procure
the taxes paid in the name of a third
person for the very purpose of deceiving
the owner & getting his land without
his knowledge.

8th There is no evidence to show who or
what the Illinois Land Co is; there is
no such corporation & they or it Can

no more convey a title to land or
color of title than could the "Ill River"
acting by its agent Chen Merton

No evidence that there was such a
Company composed of natural persons

The Limitation Law of 1835. Can not
help the Defendant

1st Because his old title is not derivable
of Record nor Connected in Law or Equity

2nd It is not derived from any public
officer authorized to convey

Neither can the defendant protect
himself under his tax title of 1840,
not under the act of 1839. because he
has shown no payment of taxes under
it having acquired it in 1845.

Nor under the act of 1835. because he
has shown no judgment & Precept to auth-
orize the Sheriff to sell the land

Under the Auctioners Sales for non payment
of taxes no judgment & Precept were required
he only had to advertise & sell under the
law

But the Sheriff had no authority except
from the judgment & Precept

The Case of Train vs Brownell 11 Ills
is no authority in favor of sales by
Sheriffs

The tax title of 1840 is not Connected
in law nor equity; the the Sale was
made 2 June 1840, Time of Redemption
Expired 2 June 1842.

The Sheriff's Deed to Swarts the purchaser
was made 15 Nov. 1842

The Deed from Swarts to Montore was
made 27 May 1842 before the time of
Redemption Expired & was a Quit Claim
Deed

Warrant as Sheriff 14 Ills 306.

The Deed only Conveys what interest
Swarts had which was no interest but
a mere expectancy of an interest

Manning & Lances
for Appellant

Warrant 157-65
Marshall
Brief points
for Appellant by
Manning & Lances

Filed May 8. 1858
L. L. Leland
CLK

Supreme Court April Term /58.

Jacob Darst appellant

^{vs}
Israel M Marshall Appellee

Points Made by H Gauder
for appellant

The defendant to defeat
plaintiffs title shows first a
Contract for a Deed from the
"Illinois Land Co." to himself dated
15 June /41. Second a Deed from
Lamb & Dunlap dated 1st Nov. 1841
which was delivered in 1844 or 1845;
which he offers as claim & Color of
title under the Limitation law
of 1839 Sec. 8. together with the
payment of taxes as follows
Taxes for /41. paid by John Lillson in
his name.

Tax for /42. paid by John R Randall
in his name

Tax for /43. paid in name of Kingman
for Randall.

Tax for 44. 45. 46. & 47. paid by Marshall
defendant

1st Defendant under the Contract from
Ells Land Co. they having neither
possession nor title Can not Claim
adverse possession only to the extent
of his actual inclosure as against
the true owner - this principle
recognized in 18 Ills 238. 5 Pick
135. & 138. 2 Greenl 273. 3 ib. 316. 2 ib
176. 10 Shep 205.

2 The Contract from Ells Land Co. they
having no title & the Contract not
being Recorded is no Claim & Color
of title & protect defendant further
than his actual inclosure
2 Maine 286. ib 178. 4 Mass 726.

3 Original entry not being hostile ^{possession} is
presumed & he held under the true
owner 9 John. 163. 7 Watts. 581. 3 John
Cas 124. 2 Watts 184. 12 John R 365.
5 Dana 341. 17 Ills 503. authorities are
not necessary on this point.

11 The deft. Could not claim adverse possession under his Contract until he paid the purchase money & became entitled to a deed for until that time he only had a Contract for a title or Color of title, & not the title or Color of title his last payment was due in 1844.

5 No Connection is shown between the title from Ills Land Co & the title from Lamb & Dunlap sufficient to enable Defendant to connect the two for the purpose of making out his period of time, Adams on Eject. 446. (note 3)

6 Randolph & Tillson paid the taxes for 41, 42 & 43. for themselves under a supposed right in the Contract & not under any right or title in the land,

It is said there was an agreement on the part of Marshall to repay the taxes paid by Ills Land Co & that therefore the payment of taxes by them was payment by Marshall, But there was no

agreement that he should repay the taxes paid by Tillson & Randolph.

They paid them for their own security and not for Marshall. No agreement is shown that they ~~paid them for~~ should pay them for the Company nor for Marshall it was their own voluntary act for their own security; there Marshall did not pay them but permitted them paid by 3rd persons.

7 There was no payment of taxes for 41, 42 & 43, within the meaning of the 8th section ~~of the act~~. The Statute is that the party in possession shall pay. See Stat. 11 Gls 412, 414.

Under this act 3 things must concur 1st actual possession for 7 successive years, 2nd Claim & Color of title, 3rd payment of taxes for 7 years by the party in possession. 11 Gls 412.

The Statute is peremptory & requiring the taxes ^{paid} was intended to furnish additional notice to the true owner of the adverse possession. It is made one of the indispensable acts ~~necessary~~ to constitute an adverse possession.

And Consequently, ^{must be tested} by the same principles that other acts of adverse possession are tested by,

The law of adverse possession proceeds upon the principle that the real owner has notice actual or constructive that another is claiming occupying his land claiming it as owner, and that the true owner after the requisite period, acquiesces & consents to an abandonment of his rights, 17 Ills 501. But to make such acts available they must be Visible, Open, Exclusive & Hostile & so continue; notorious and not secret that the owner may have a chance to know what is going on 17 Ills 501. 1 Mass 483. 4 ib 416. 7 ib 381 3 Met. 125. 1 McLean 266. 1 Shep 178. 11 Gill & J 367. 2 McMullen 495. 6 Pick 172.

If the acts are done in such manner as to exclude the presumption of notice to the owner then adverse possession can never exist 1 Shep 27. 10 ib 417.

The things to be done are, ^{the} acts presumptive of the intention to assert ownership 10 Pick 412

adverse possession Can never arise from ignorance or mistake on the part of the occupant, he must honestly intend to occupy the land & pay the taxes as his own believing it to be his, the quo animo is the test. So if the acts of adverse possession are done independent of the will & intent of the occupant he can not adapt the same as his acts depending upon whether they may or may not be to his advantage.

So for from the taxes for 41, 42 & 43 being paid by Marshall, Can it be said that he even knew at the time that they were being paid for his benefit?

Then the taxes should ^{have been} paid by the party in possession in his name that the owner, ^{might} ~~could~~ know that his title ^{was} ~~is~~ being cut off year by year by the occupant paying such payment; Any other Construction would make the act a mere law of forfeiture & not a limitation.

If this is not the true Construction then the occupant might secretly procure the taxes paid in the name of a third person for the very purpose of deceiving the owner & getting his land without his notice

The party in possession under a contract is bound to pay the taxes & the owner has a right to deduct the taxes paid in his name 12 Ill. 444. 14 id. 458.

8 There is no evidence to show who or what the "Iles Land Co. is, there is no such Corporation, and ^{they or it} Can no more Convey a title to land or Color of title than could the "Iles River" acting by its agent Chas Weston,

No evidence that there ~~is~~ ^{was} such a Company composed of natural persons

9 The Limitation law of 1835: Can not help the Defendant.

1st because his old title is not admissible of Record nor Connected in law or equity

2 it is not derived from any public officer authorized to Convey &c

Neither Can the defendant protect himself under his tax title of 1840; not under the act of /39. because he has shown no payment of taxes under it having acquired it in 1845.

nor under the act of /35. because he has shown no judgment & Precept to authorize the Sheriff to sell the land.

Under the Auctions Sales for non payment of taxes no judgment & Precept were required he only had to advertise & sell under the law

but Sheriff could not do that without
a judgment & Precept.

The Case of Innes vs Brownell 11 Ills
is no authority in favor of sales by Sheriffs

The tax sale of 1840 is not Connective
in law or Equity on this Record

The tax sale was made 2 June 1840
time of Redemption Expired 2 June 1842

The Sheriff's Deed to Swarts the purchaser
was made ¹⁵ ~~27~~ ^{For} May 1842.

The Deed from Swarts to Norton
was made ~~15 Jan 1842~~ 27 May 1842, &
before the time of Redemption expired
and was a Debt Claim Deed

Want us think 14 Ills 306.

He could only convey what right
he has in the land at the time of
making the deed, which ^{was} no interest
but a mere expectancy of an interest

Manning & Lauer
for Applicant

Kearst 157-65
u

Manhall

Proof of fourth man
for appealant by
Manning & Lancer

Filed May 6. 1858
L. Leland
clerk

Jacob Darst

"

Israel M. Marshall

1. Title by actual residence under Law of 1835.

1. Under connected title deducible of record from the Auditor's deed.

The title is deducible of record.

Collins vs Smith 18 Ill. p. 162. 163.

Mony vs Bodwell 11 Ill. 414.

Page's heirs vs Chins heirs 4 Dana. 54

It is from a party authorized to sell.

The general authority is all that is required.

~~The Sheriff had the same right & authority to sell with the Auditor; the title in each case could not be read without proof of the prerequisites of the Statute.~~

It can make no difference that a part of the deeds were excluded because the acknowledgments were defective; they were good Evidence in equity if not in law of title.)

2. Unan connected title from the Sheriff's
deed.

The Sheriff had the same general
authority to sell with the Auditor. It can
make no difference that the requirements of
the Statute were different, in the former case
requiring Judgment & precept, in the latter
proper advertisement, &c.

The title is connected in Equity and
in Law. The deed to Morton provides
for the conveyance of a title which
had not yet "past redemption" by its
terms, recites a consideration, and uses
apt language to convey all and every kind
of interest & claim in the land.

It is a cardinal rule in the construction
of deeds that the intention of the parties
shall prevail, if by law it may. Enough,
at any rate, ~~it~~ is here to show evidence from which
the Court or Jury had the to presume
& infer that Swarts sold Morton his title
got from said Sale.

10 Johns. 456; 18 Johns. 78

3 Johns. ; 14 Ill. 306 & Cases cited.

2nd Title by actual possession under law of 1839, under Auditors deed, &c.

1. The deed from Lamb & Dunlap to the defendant of Nov. 1, 1841. was sufficient color of title under the law of 1839.

McClellan v Kellogg 17 Ill. 501.

Lafayette v Jackson 8 Cow. 589

Jackson v Camp 1 Cow. R. 605.

The court had the right to find that the deed was delivered at its date or in 1844 as they thought most probable...

But admitting that the deed was delivered in 1844, the Contract was sufficient color of title by the authorities referred to. Judge Drummond has decided this identical question that a contract was color of title in a case determined in the United States Circuit Court. The case is not reported & the name I cannot give. There is no difference in principle between one writing & another making color of title.

3rd The taxes were paid as appears by the deposition of Kingman by him & Randolph by him as agents in 1842 & 1843 under this Contract & on the title of Lamb & Dunlap. Qui facit per alium facit per se. This was a payment by Marshall. The receipts on the bond show that he repaid this money.

4th The possession of the defendant was adverse from the date of said contract when he acquired title.)

6 Barr. 225-227.

8 Cow. 590-603.

16 Johns. R. 293; 301.

13 do 115. n. a

5 Cow. 484

13 B. Mon. 437.

Every possession is presumed to be adverse until the contrary is shown.

La Trambles v Jackson 8 Cow. 590.

Notice of the adverse possession is not necessary to constitute it.

Taylor's devisees v Burnside 1 Crat. 199. 207.

Adverse possession is at best a question for the jury to determine; & here at worst there was conflicting

Evidence

4 Hallst. 149; 2 Duff. 309

3 Dana 336.

George D. Hanning
attorney for appellee

157 65

Durst
in
Marshall

W. H. Harding
att. for appellee
Brief.

Filed May 8, 1858
L. Leland
clerk

JACOB DARST,
vs.
 ISRAEL M. MARSHALL. } *Ejectment.*

APPEAL FROM KNOX.

PLAINTIFF filed his declaration for the recovery of the north-west quarter of section thirty-two, township ten north, range one east, of the fourth principal meridian, at the September Term of the Knox Circuit Court, to wit: the 24th day of September, 1855. Plea, not guilty.

The Cause was tried by the Court, without a jury, at the April term of said Court, 1857, and taken under advisement by the Court until the October term, 1857, when judgment was rendered for the defendant, at which last named Term Plaintiff filed his bill of exceptions, which shows that the plaintiff proved title from the United States by a regular chain of Conveyances to himself, which were read in evidence, without objection.

The possession of the said premises by defendant at the time of commencing suit was admitted.

Here the plaintiff rested.

1. Defendant to prove title on his part offered in evidence a deed for said premises from the Auditor of State, under a tax sale made 16th January 1828, dated 5th July 1830, to John Tilson Jr., which was offered for the purpose of defence, under the Limitation laws, and admitted for that purpose by the Court.

2nd. A deed from John Tilson Jr., and wife, to Moses Allen, conveying said premises, dated 27th April 1830, for the purpose of making defence under the Limitation laws, to the admission in evidence of said two last named deeds: the plaintiff objected, which objections were overruled by the Court, and the Plaintiff at the time excepted.

Defendant next offered in evidence a deed from Moses Allen and wife, to Chas. F. Moulton and others, date 14th November 1835; and a deed from said Moulton and others, to Thomas Dunlap and Lemuel Lamb, date 30th April 1838. To the Land in question both of which last named deeds were objected to by Plaintiff, and excluded by the Court.

Defendant next offered a deed from said Lamb & Dunlap, to himself, for said premises, dated 1st November 1841, which last named deed was never recorded. Also, a Copy of Agreement for a Deed from the Illinois Land Company to Israel M. Marshall, the defendant, dated 15th June 1841, whereby said Land Company bound themselves to convey to said Marshall the land in question, in consideration of the payment by Marshall of \$50,00 cash in hand, \$150,00 on 1st June 1842, \$150,00 on 1st Monday of June 1843, \$142,00 on 1st Monday of June 1844, with interest. Said agreement contained the following clause by which defendant agreed, "at the time of the delivery of the Deed for said premises by the said parties of the first part, to repay to the said parties of the first part all taxes assessed on said premises from the fifteenth day of June one thousand eight hundred

meaning
 That a mere contract to convey is not
 claim & color of title - especially when
 the obligor himself had no title -

*Insists that until purchase money is paid
 for title cannot protect himself by statute of limitation
 until he pays all of the purchase money*

no connection between Randolph and
Sisson and Sando when the taxes of 1841
1842 & 1843 were made - were these taxes pd
in priority to the title & Marshall bound to
refund them.

Notice that Randolph & Sisson paid in Ireland i
nation of the title was necessary - that the
payment must be made by the person in
possession & owner of the claim & color

that there was no judgment & execution
against the land for taxes of 1839 - and
therefore the class that came with
in the Statute of 1835 - authorizing actual
purchase under tax deed.

Handing deft.

16 JOR 293-301-

8 Cans 603

5 " 484

6 Berr-225-24

1 Grotton 199-207-

2 Basted 309

3 Berr 336

In regard to adverse pos
session.

agreed Tax and of sale of 1840. Recorded in 1844

and forty one, and the interest thereon, at the rate of six per centum per annum, until paid." upon which agreement were receipts for the purchase money paid by Marshall.

One of which receipts was dated 27th June 1842, for \$19,25, signed "John Tilson Jr., Agent for C. Morton."

Another for \$51,77, date 28th June 1841, signed by "John Tilson Jr., Agent for Chas. Morton."

Another for \$110,00, date 13th July 1843, signed "Lucius Kingman, for the owner J. R. Randolph."

Another for \$205,00, date 3rd July 1843, signed "Lucius Kingman, for the owner J. R. Randolph." Which said agreement never was recorded.

Defendant next offered the Deposition of Lucius Kingman, date 14th January 1857, to which was attached and exhibited said Agreement from the Land Company, and said Deed from Lamb & Dunlap, to the Defendant, and also three several tax receipts for the payment of the taxes on said land, as follows;

"STATE OF ILLINOIS, } ss.
Knox County.

COLLECTOR'S OFFICE,
Knoxville, May 25th, 1842.

Received of John Tilson Jr., twelve dollars seventy-two cents tax due State and County, for year 1841, on following lands:

S. E. 31. 10 N. 1 E.	\$3 90.
N. W. 31. 9 N. 3 E.	2 94.
N. W. 32. 10 N. 1 E.	2 94.
N. E. 18. 9 N. 1 E.	2 94.

\$12 72.

Signed, G. Plymale, Collector."

STATE OF ILLINOIS, } ss.
Knox County.

COLLECTOR'S OFFICE,
Knoxville, May 22nd, 1843.

Received of Lucius Kingman, the sum of three dollars and sixty-eight cents, being in full for State, County and Road Tax, on the following described land, for the year 1842:

N. W. 36. 10 N. 3 E.	\$1 84.
N. W. 32. 10 N. 1 E.	1 84.

\$3 68.

Geo. Lowman, Collector.

STATE OF ILLINOIS, } ss.
Knox County.

COLLECTOR'S OFFICE,
Knoxville, Feb. 22, 1844.

Received of John R. Randolph, the sum of three dollars and five cents, being in full for State and County Tax on the following described land, for the year 1843.

N. W. 32. 10 N. 1 E. }	\$3 05.
N. W. 34. 10 N. 3 E. }	

\$3 05.

Paid by N. Selby.

Geo. Lowman, Collector.

Need.

Insists that the Swatts died to reactance
to did not pass title that Swatts obtained after
third hands from the sheriff - 14 Ills.

that under the act of 1835 the deeds should
have been recorded to entitle him
occupant to its benefits

17 Ills. that under the act of 1839 an agreement
to purchase of the Illinois land co not
on record did not constitute claim
& color of title.

that the payment of taxes to Kingman
Lilian & Randolph was not a payment
by Marshall although he was bound to
pay the taxes to the co. & if it was his pay-
ment which title did he pay under

Kingman vs Marshall
17 Ills. when did advise possession common?
not in its inception - he then disclaim no

5 Ills.

title & his possession was the possession
of the owner. The should he not
have given notice to advise to have
made it advise - when he claimed to
have advise it was only to his neighbors
& no notice given to owner -

4 Hamond 295.

that to make his possession good he
should have bought a prima facie
good title -

16 J R 293.

5 Cas. 346.

Said Kingman states, the Illinois Land Company owned the land, Lamb and Dunlap were the trustees, and held the title; the Company owed John Tilson Jr., money.

That the Contract to Marshall was executed by the Illinois Land Company, by John Tilson, Agent for said Company, by Chas Morton; that he had seen them both write, and knew their hand writing.

That in April or May 1842, said contract and its value was given to John Tilson Jr., by the Illinois Land Company, instead of money due said Tilson, and the taxes for 1841, were paid in name of said Tilson for himself. John Tilson Jr., then gave the Contract to Robert Tilson, as cash, and Robert gave it to one John R. Randolph, as so much cash; and the taxes of 1842 were paid in the name of Kingman, for said Randolph; and tax of 1843 was paid by witness, in the name of said Randolph for him, and so charged to him on the books.

That said Contract, the Deed to Marshall, and tax receipts, were all left with witness, in Quincy, by John Tilson Jr., Robert Tilson, and John R. Randolph: the tax receipts contained other lands than the one in question, and were a few months before taking the Deposition, sent to the Defendant's Attorney.

The land in question was sold to Defendant as a tax title.

Tilsons and Randolph only claimed the land as above stated, under the title sold by said Land Company, to Marshall; and they paid the taxes as such owners under said sale and contract, in the place of the Land Company.

Defendant next offered in evidence tax receipts for the payment of taxes on the land in question, for the years 1844, 1845, 1846, 1847, and 1848: to all which evidence the Plaintiff objected, (but not because signatures were not proved, nor because copies were used), but because the same were irrelevant and improper evidence; but the Court overruled the objections and allowed the evidence to be read for the purpose of showing color of title or connected title to protect the Defendant under the Limitation Laws, to which ruling of the Court the Plaintiff then and there excepted.

John C. Latimer sworn, stated that the Land in question was vacant when he first knew it in 1831; in 1833 a man by the name of West cut a set of Cabin logs on the land. In 1834, brother of witness bought the logs and West's claim, for Defendant.

In 1835, Defendant moved from Ky. on to the land, in his wagon, put up a temporary camp, then put up a cabin with the logs, made arrangements to winter his stock: in winter of '35 and spring of '36 he made rails and fenced a small field; has had possession by actual residence thereon ever since, but had only a small part of the quarter enclosed. Broke up 4 or 5 acres in 1836, and planted an orchard; has used it as his farm.

He continued his improvements in 1837, the house has been occupied by tenants ever since; these improvements were continued until there is now a pasture fenced of from 60 to 80 acres, besides the orchard. The Defendant's barn is on this ground. The whole of the pasture and orchard were inclosed by 1842 or 1843.

Defendant first squatted on the land, and said he intended to buy it as soon as

he could find the title : has claimed it as his own since 1840, built a large barn on it in 1841.

On cross examination he stated that West never lived on the land, nor had any title to it. That Defendant came out from Ky. in 1834, to look at the country, saw this land, said if he could get West's claim, he would settle on it, and buy the title when he could find it. He bought the tax title in 1840 : claimed nothing but a squatter's claim when he first went on to the land, and never claimed any title until 1840. 60 or 70 acres of prairie on the quarter, the balance is brush and timber. Defendant has openly claimed the land as his own since he bought the tax title.

Defendant then offered a Deed from Peter Franc, Sheriff, to Abraham D. Swarts, under tax sale of 1840, for tax of 1839, dated November 15th 1842, conveying the land in question.

Also a Deed from Abraham D. Swarts and wife, to Charles Morton, dated 27th May 1842, conveying said land.

Also a Deed from Charles Morton and wife, to Defendant, dated 15th January 1845.

To the introduction in evidence of said three last Deeds, Plaintiff objected : the Defendant stated that he offered the Deeds to show connected title or color of title to protect him under the Limitation Laws of 1835 or 1839, or either of them, for which purpose only the Court admitted the same, and the Plaintiff excepted.

It was agreed that no exceptions should be taken to any papers, on account of Signatures not being proved, nor because copies were used instead of originals.

John G. Sanborn sworn, stated that the receipts for money on the contract were in the hand writing of Charles Morton. Recollects that the papers were left with him (witness), and presumed the Deed was delivered by him to Marshall when the last payment was made, in 1844 or 1845. Can't say that the contract shown is the one that was left with him, but thinks it is. Had received at various times papers from Land Company, for Marshall. Do n't recollect delivering the Deed to Marshall. Can 't identify the Deed as being the one left with him, it resembles the one.

Last payment on Contract was made in 1844 or 1845 ; of this he has no recollection, except from the papers ; thinks he received a small sum of money from Marshall, for Morton, and delivered him the Contract and Deed ;—this he states from his general recollection of the transaction.

Thinks he delivered a Deed to Marshall, can 't say the one shown was the one, but thinks it looks like the same.

The above was all the evidence in the case.

JACOB DARST,
vs.
ISRAEL M. MARSHALL.

STATE OF ILLINOIS.
Supreme Court, 3rd Grand Division.
APRIL TERM, A. D. 1858.

APPEAL FROM KNOX COUNTY.

AND now comes the said Jacob Darst, by his attorney, and says that in the record and proceedings of the said Circuit Court, of the said Knox County, there is manifest and manifold error, and assigns for error:

1. Said Circuit Court erred in permitting the said deed from the Auditor of said State, to John Tillson, Jr., and from John Tillson, Jr., to Moses Allen, to be read in evidence.
2. Said Circuit Court erred in permitting said deed from Lamb and Dunlap to said Defendant to be read in evidence.
3. Said Circuit Court erred in permitting said contract from the Illinois Land Company to said Defendant, to be read in evidence.
4. Said Circuit Court erred in permitting the deposition of Lucius Kingman to be read in evidence.
5. Said Circuit Court erred in permitting so much of said deposition of Kingman to be read as shows or tends to show title or color of title to said premises in the Illinois Land Company, or in John Tillson, Jr., or John R. Randolph.
6. Said Circuit Court erred in permitting each and every of the said tax receipts attached to the deposition of said Kingman, to be read in evidence.
7. Said Circuit Court erred in permitting parol evidence that the tax of A. D. 1842, paid in the name of Lucius Kingman, was paid for John R. Randolph.
8. Said circuit Court erred in admitting evidence of the payment of the taxes for the years 1841, 1842 & 1843, and each of them, under any title, or color or claim of title in the Illinois Land Company.
9. Said Circuit Court erred in admitting the evidence of the payment of taxes as stated in the deposition of said Kingman, under any claim and color of title attempted to be shown in said cause to entitle the Defendant to a defence under the act of A. D. 1839 as a limitation law, or for any purpose under said act.

10. Said Court erred in permitting the said tax deed from Peter Frans, Sheriff, to Abraham D. D. Swartz, to be read in evidence.

11. Said Court erred in permitting said deeds from Swartz to Charles Morton, and from said Morton to the Defendant, to be read in evidence.

12. Said Circuit Court erred in rendering judgment in favor of the said Defendant in said cause.

13. Said Circuit Court erred in determining that said Defendant was entitled to the benefit of the limitation act of A. D. 1835, or the act of A. D. 1839, upon the facts shown in said cause.

14. Said Court erred in not rendering judgment for the Plaintiff upon the facts shown in said cause.

Wherefore, for the errors aforesaid, the said Jacob Darst prays that the said judgement of the said Circuit Court may be reversed, set aside, and for nought had, held and esteemed.

Wm. Manning

LANDER & LINDSAY,

for Appellant.

