

No. 12004

# Supreme Court of Illinois

Ballance, et al.

---

vs.

Thomas.

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71641  7



Charles Bullance }  
Francis Voris }  
vs }  
Joseph J. Thomas } In the Supreme  
Court of the State  
of Illinois  
of Grand Jurisdiction

Term Term 1838

An Error to Review

And the said plaintiff in Error Francis Voris comes and says there is manifest error in the Record & proceedings of the Circuit Court of Prairie County in this Court.

1. The Court erred in the admission allowing the Judgment for Taxes entered at the April Term of said Court A.D. 1840 against the lot, in controversy to be received as evidence the Record of the same showing that the said Judgment was void -

2. The <sup>said circuit</sup> Court erred in refusing to permit the report on which said Judgment was founded to be read in evidence to the Jury

3. Said Circuit Court erred in overruling the motion of the plaintiff in Error to exclude <sup>from the Jury</sup> said the evidence given by the defendant in Error.







And the said Appello Honorat Court  
And say that in the Record of proceedings  
aforesaid and in the rendition of the Judg-  
ment aforesaid there is no error  
Wherefore he Prays that the same may be  
affirmed

Done 24<sup>th</sup> 1857

J. W. Phelps  
for Appello



71

Paris ce. vs Thomas

A rept. of error

Filed June 17. 1850.  
V. Ireland Clk.



Be it remembered that at the May Term of the circuit court within and for Peoria county in the State of Illinois in the year of our Lord one thousand eight hundred and forty seven, to wit, on the fifth day of June A.D. 1847, there was filed in said court a declaration, notice thereto annexed and affidavit of the service thereof, which are in the words and figures following, to wit,

Declaration  
1st count

State of Illinois  
County of Peoria  
Circuit Court  
May Term A. D. 1847

Charles Ballance and Francis Norris complain of Joseph Thomas for that whereas on the first day of January A. D. 1847, at Peoria aforesaid the Ballance & Norris were proprietors of a certain lot of grounds in the city of Peoria to wit Lot numbered seven in block numbered twenty eight, being the same on which said Thomas now resides together with all the appurtenances thereunto belonging or in anywise appertaining the title to which said premises they the said Ballance and Norris claim in fee simple and that being so proprietors thereof the said defendant Joseph Thomas afterwards to wit, on the first day of March in the year of Christ one thousand eight hundred and forty seven, at the County aforesaid entered into the said premises and unlawfully withheld from the said Ballance & Norris the possession thereof to the damage of the said plaintiff one hundred dollars and therefore he sues & Charles Ballance -

2nd count

And for that whereas afterwards to wit, on the first day of January A. D. 1847, at Peoria aforesaid, the said Charles Ballance, was proprietor of a certain other lot of grounds in the city of Peoria to wit, Lot, numbered seven in block numbered twenty eight being the same on which said Thomas now resides, together with all the appurtenances thereunto belonging, the title to which said premises he the said Charles Ballance claims in fee simple, and that being so proprietors thereof, the said defendant Joseph Thomas, afterwards, to wit, on the first day of March in the year of Christ one thousand eight hundred



and forty seven, at the County aforesaid, entered into the said premises and unlawfully withheld from the said Ballance the possession thereof to the damage of the said plaintiff one hundred dollars, and therefore he sues &c

3<sup>rd</sup> count }

And for that whereas on the first day of January A. D. one thousand eight hundred and forty at the County aforesaid, one Francis Woris was possessed of the said lot above described together with all said appurtenances the title to which said premises he the said Woris claims in fee simple and that being so possessed thereof the said defendant Joseph Thomas afterwards to wit, on the first day of March A. D. 1840 - at the County aforesaid entered into the said premises and unlawfully withheld them from said Woris to the damage of the said Woris one hundred dollars and therefore he sues &c

C. Ballance  
Atty for Plffs

notice }

To Joseph Thomas defendant in the above suit - Sir you are hereby notified that on the second day of June next, it being the eighth day of the May Term of the Circuit Court for said County in the present year the above declaration will be filed in the said Circuit Court, that upon filing the same a rule will be entered requiring you to appear and plead to said declaration within twenty days after the entry of said rule and that if you neglect so to do a judgment by default will be entered against you and the plaintiff will recover possession of the premises described in said declaration

C. Ballance  
For Plaintiffs

affidant of  
service

I John C. Carter do solemnly swear that on the twenty second day of May A. D. 1847, I delivered a correct copy of the above declaration and notice to the above Joseph J. Thomas -  
Subscribed & sworn to before me  
this 4th June 1847 -

J. C. Carter J. P.







Tuesday April 2<sup>nd</sup> A.D. 1850

Mrial } 3

Charles Ballance

Francis Norris

vs

Ejectment

Joseph Thomas

This day came the plaintiff of Ballance in person and Merriam attorney for said Norris and the defendant of Cople & Nocton his attorneys, and issue being joined - It is ordered by the Court that a jury be impannelled to try said issue where upon came twelve good and lawful men to wit, Thomas Humphrey, Benjamin Lane, Samuel Howe, Samuel Craghouse, Christian Long, Jackson Miller, Isaac W. Mansfield, Samuel Seely, Griffith Dickerson, Abiothar Penkhurst, Harrison Gregory, and Jesse Moffatt - who being duly chosen, tried and sworn to well and truly try the issue joined and a true verdict give according to evidence the evidence having been fully heard, retired to consider of their verdict -

Wednesday, April 3<sup>rd</sup> A.D. 1850

Charles Ballance

Francis Norris

vs

Ejectment

Joseph Thomas

Verdict & judgment }

This day came the jury impannelled in this cause on yesterday and on their oaths answered do say, We of the jury do find the defendant not guilty of the trespass or ejectment laid to his charge in manner and form as the plaintiff have complained against him - Therefore it is considered that the said Joseph Thomas go hence with <sup>out</sup> delay and have and recover of the said Charles Ballance and Francis Norris his costs and charges by him about his defence in this behalf and that execution issue therefor

And afterwards on the fifth day of April A.D. 1850 a Bill of exceptions duly signed and sealed by the Judge of said Court was filed of Record in said Cause in the words and figures following, to wit.



Bill of exceptions

Charles Berlemee  
vs  
Francis Norris

Peoria Circuit Court  
March Term 1850

Joseph J. Thomas

On this day this cause came on to be tried and the plaintiff Norris sustained the issue on his part offered and read in evidence a Patent from the United States to the County Commissioners of Peoria County - which is in the words and figures following.

copy of Patent

Certificate No 7823 - The United States of America. To all to whom these presents shall come greeting - Whereas, under the provision of the Act of Congress approved on the second day of March, one thousand eight hundred and thirty three, entitled, an act to authorize the County Commissioners, for the County of Peoria, in the State of Illinois, to enter a fractional quarter Section of Land for a seat of Justice, and for other purposes: Aquila Wren, John Boyle, and Edwin S. Jones, County Commissioners, have deposited in the General Land Office of the United States, a Certificate of the Register of the Land Office at Springfield, whereby it appears that full payment has been made by the said Aquila Wren, John Boyle, and Edwin S. Jones, County Commissioners, for the North East fractional quarter of Section nine, in Township Eight, North of Range Eight, East of the Fourth principal Meridian, in the State of Illinois, containing one hundred and forty seven acres, and fifty hundredths of an acre, according to the official plat of the survey of the said Land, returned to the General Land Office by the Surveyor General, which said tract has been purchased by the said Aquila Wren, John Boyle, and Edwin S. Jones, County Commissioners.

Now know ye that the United States of America, in consideration of the premises, and in conformity with the several acts of Congress, in such case made and provided, have given and granted,



and do by these Presents, Do give and grant unto the said Aquilla Wren, John Boyle, and Edwin S. Jones, County Commissioners, the said Tract above described, To have and to hold the same together with all the rights, privileges, immunities and appurtenances of whatsoever nature thereunto belonging unto the said Aquilla Wren, John Boyle, - and Edwin S. Jones, County Commissioners, - and to their successors in office, and assigns, forever, provided, nevertheless, that the purchase of the said Tract, and this Patent therefor shall not be construed so as interfere with the claim or claims of any other person or persons to the said fractioned quarter section - In testimony whereof I, Andrew Jackson, President of the United States of America, have caused these Letters to be made Patent, and the seal of the General Land Office to be hereunto affixed -  
 Given under my hand at the City of Washington, the sixteenth day of December in the year of our Lord one thousand eight hundred and thirty four, and of the Independence of the United States the fifty ninth - By the President

(Seal)

Andrew Jackson  
 By A. J. Donelson Sec'y

Elijah Hayward, Commissioner of the General Land Office

Vol 15, pages 501 & 502

[annexed]

Certificate annexed  
 to copy of Patent

General Land Office -  
 In accordance with the seventh section of the Act of Congress, approved the 4th of July, 1836, entitled, an Act to reorganize the General Land Office, and with the Act of Congress approved the 3d of March, 1843, entitled, an Act in relation to the exemplification of the Records of Land Patents and other evidences of title, and amendatory of the Act entitled, an Act



to reorganize the General Land Office. J. J. Butterfield  
Commissioner of the General Land Office, do hereby  
certify, that the annexed is a true and literal  
exemplification from Vol 15, pages 501, and 502  
of the Patent Records of this Office. The Records  
of the patent in this case, of which the annexed is a  
literal exemplification as aforesaid, was omitted  
to be signed as required by law, as appears from  
the records of the same in this office, but the 1st  
Section of the act of March 3d 1843, above referred to,  
provides, that "where such exemplifications are admitted  
in evidence, they shall be deemed and held to be  
of the same validity in all proceedings, whether at  
law or in equity, as if the names of the officers signing  
and countersigning the same, had been fully inserted  
in such records."

In Testimony whereof, I have  
hereunto subscribed my name, and caused the  
seal of this Office to be affixed, at the City of  
Washington, on the day and year first above written  
(Seal)

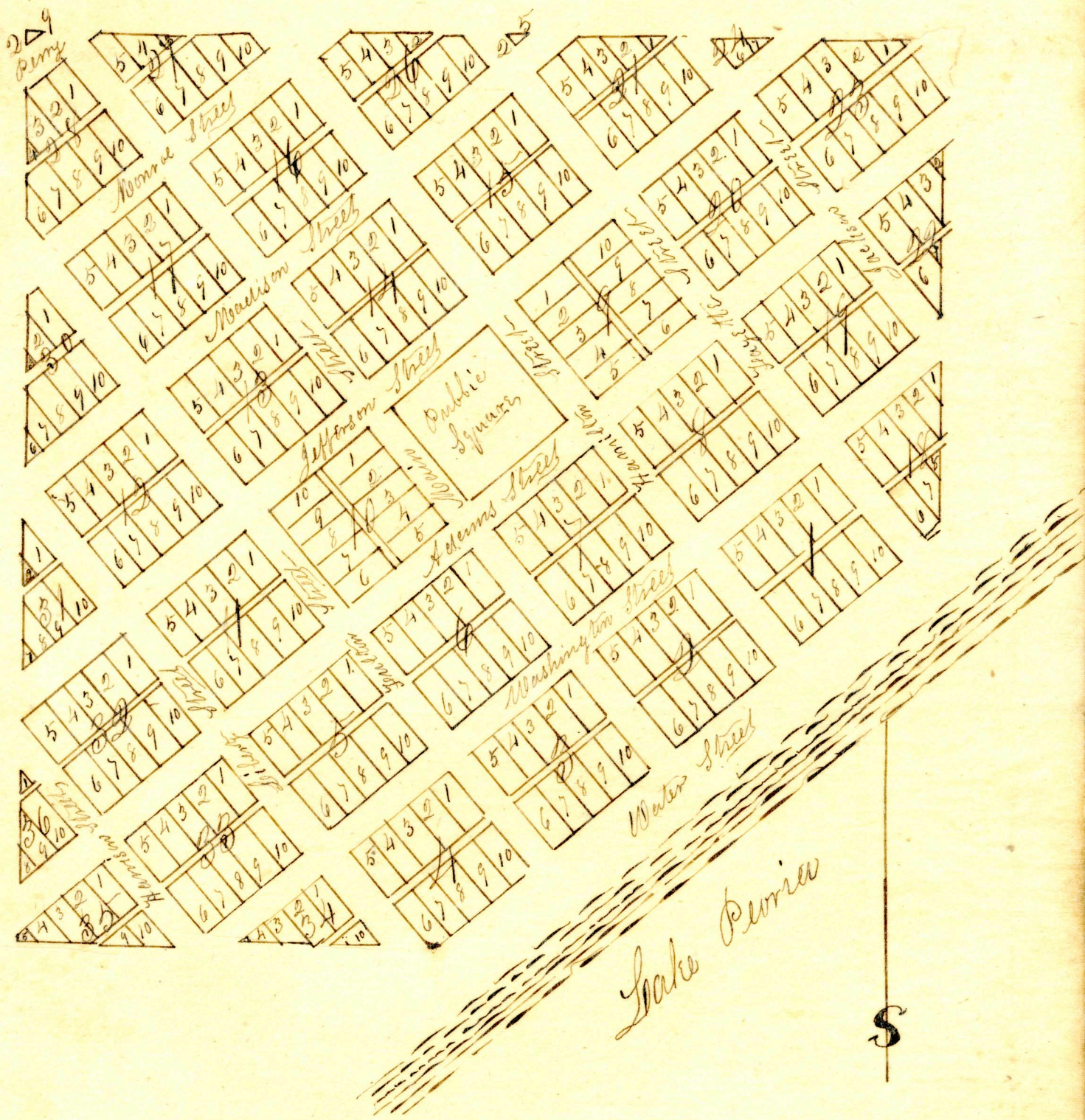
J. Butterfield  
Commissioner of the General Land Office"

Which patent was objected to by the Defendants  
for want of a proper certificate, and admitted by the  
Court the Defendants excepted to the decision —  
admitting the same —

The said plaintiff next offered & reads  
in evidence a plat of the town of Peoria as recorded in the  
proper office as follows to wit —



# Plat of Peoria



I Charles Ballance surveyor of the County of Peoria in the State of Illinois hereby certify that the above is a true plat of the town of Peoria as the same is recorded in my office. The first sixteen blocks counting the Public Square for me were surveyed some years ago and recorded in the Recorder's office of this county the residue was recently surveyed by myself & the whole recorded as above this day in my office. Water Street contains all the ground between the front row of blocks & the river or Lake, & is of



various widths but every over one hundred feet. The other  
Streets are all one hundred feet wide, the alleys eighteen and  
the lot seventy seven two feet, by one hundred & seventy  
one except the fractions which are of various sizes as represented  
by the plat. The town is laid off upon & includes the North East  
fractional quarter of section No 9 in T. 8. N. of the base line  
& 8 East of the fourth principal meridian. Given under  
my hand & seal this twenty seventh day of May in the  
year of Christ 1834 — A. Ballance S. P. C. (Seal)

State of Illinois. Peoria County, &c. on the twenty  
eighth day of May in the year 1834, personally appeared before  
me Orrin H. Emelin a Justice of the Peace in & for the County  
aforesaid A. Aquilla Wren, John Coyle, & Edmund S. Jones County  
Commissioners of said County who are personally known to  
me and acknowledged that above plat as the same is certified  
by the Surveyor to be a true plat of said town so far to the  
North east as Fayette Street the residue is at present reserved  
but all the Streets alleys & the Public Square are granted for  
Public uses according to the Deeds below which was sealed  
& signed in my presence, Orrin H. Emelin J. P. (Seal)

Know all men by these presents that we Aquilla  
Wren, John Coyle, & Edmund S. Jones County Commissioners of  
Peoria County do hereby grant (according to the Statute in such  
case made & provided) all that part of N. E. fractional quarter  
of section 9 in Township 8. N. Range 8 East, North of the  
base line & east of the fourth principal meridian, which is  
situated on the South west side of Fayette Street as the same  
is represented on the above plat for a town to be called Peoria  
and all the Streets alleys & the Public Square as  
therein laid & exhibited we hereby grant for public purposes  
to be & remain forever the property of said town according  
to said Statute. Given under our hands & seals this  
twenty eighth day of May 1834 —

A. Wren (Seal)  
John Coyle (Seal)  
E. S. Jones (Seal)



Deed from  
County Comrs.  
to Norris

Said plaintiff met read in evidence as deeds from A. Wren, Samuel T. McKean and William J. Phelps as the County Commissioners of said County to Francis Norris, for the Lot in controversy in the words and figures following  
"To wit, - This Deed, made this tenth day of March Eighteen hundred and thirty seven, Witnesseth, That the County Commissioners of the County of Peoria State of Illinois in consideration of six to nine dollars fifty ct to them paid by Francis Norris of the County of Peoria State of Illinois the receipt of which is hereby acknowledged, do by these presents grant bargain, sell, convey and confirm to the said Francis Norris his heirs and assigns, Lot no seven in Block no Twenty eight in the town of Peoria in the County and State aforesaid, reference being had to the plat on Records, of said Town, To have and to hold, the aforesaid premises, with the appurtenances thereunto belonging to the said Francis Norris his heirs and assigns forever, the said County Commissioners hereby Covenanting that they will warrant and defend the title to the aforesaid premises to the said Francis Norris his heirs and assigns forever, against all persons whomsoever - In testimony whereof the said County Commissioners have hereunto set their hands and seals the day and year above Written, Done in presence of 3

A. Wren (Seal) Saml T. McKean (Seal)  
William J. Phelps (Seal)

State of Illinois  
County of Peoria J. William Mitchell Clerk of the County Commissioners Court within and for the County aforesaid duly commissioned and qualified, do certify Aquilla Wren, Saml McKean, and William J. Phelps are the legal acting Commissioners of said County and who signed and sealed the above deed, did severally acknowledge that they executed the said conveyance for the uses and purposes therein mentioned - Given under my hand seal of said Court at Peoria this tenth day of March in the year of our Lord one thousand eight hundred and thirty seven, William Mitchell. clk

County Seal

do Comd of P. Co -



Said defendant admitted in open Court by his Council that he was at the time of the commencement of this suit in possession of the premises in controversy — The plaintiff here rested his case —

Draft against  
land A.D. 1840

The defendant offered to submit to the Court the following order and judgment of the Circuit Court at the April Term A. D. 1840. for taxes assessed for the year 1839. in the words and figures following to wit —

At a Circuit Court begun and held in the town of Peoria in the County of Peoria in the State of Illinois, at the Court house, on Monday the Thirteenth day of April in the year of our Lord one thousand eight hundred and forty. present the honorable Thomas Ford Judge of the ninth Judicial Circuit —

State of Illinois Peoria County Sel.

Whereas Christopher Orr Collector of said County, returned to the Circuit Court of said County, on the thirtieth day of March A. D. 1840, the following tracts and parts of tracts of land, as having been assessed for taxes by the assessors of said County of Peoria for the year 1839. and that the taxes thereon remain due and unpaid on the day of the date of the said Collectors return, and that the respective owner or owners have no goods and chattels within his County on which the said collector can levy for the taxes, interest and costs due and unpaid on the following described lands to wit —

Town of Peoria

Lot	Block	Cross	Tax
7	27	47	1.75
6	28	"	.75
7	28	"	4.00
6	30	"	3.50
7	31	"	.20
1	32	"	3.50
"	"	"	" "

And whereas, due notice has been given of the intended application for a judgment against said lands, and no owner hath appeared to make defence or show cause why judgment



\* To the reading of which to the full accordance to plaintiff there are due objections and appear the whole record of the proceedings in the Circuit Court including the report of the Sheriff and collectors report on the case aforesaid in support of such objection, but the Court overruled the objection and permitted said judgment to be read in evidence to the jury to which decision of said Court said plaintiff then made there excepted. The said report is in the words and figures following to wit:

should not be entered against the said lands for taxes, interest and costs due and unpaid thereon, for the year herein set forth. Therefore, it is considered by the Court, that judgment be made is hereby entered against the aforesaid tracts lands parts of tracts of lands in the name of the State of Illinois, for the sum annexed to each tract or parcel of lands, being the amount of taxes, interest & costs due severally thereon, and if it is ordered by the Court, that the said several tracts of lands or so much thereof as shall be sufficient of each of them to satisfy the amount of taxes, interest, and costs annexed to them, severally, be sold, as the law directs." †

† List of Clergy and other real estate situated in the County of Peoria and State of Illinois, on which taxes remain due and unpaid for the year 1839.

Town of Peoria

Owner's Name.	Lot.	Block.	Coos.	Tax
Silas Merrill	10	26	16	1 62
	7	27	do	1 75
Samuel Newcomb	6	28	do	75
Joseph J. Thomas	7	28	do	1 00
Loomis & Parker	6	30	do	3 50
	7	31	do	20
Mathew Brown	1	32	do	3 50
"	"	"	"	" "

Note by the Printer: The valuation of each lot or tract is omitted for want of sufficient figures. The tax is 50 cents on each hundred dollars, so that the valuation can be known by the amount of the tax. Thus the first lot in the list is taxed \$2.50, the valuation, therefore, is \$500, the second lot is taxed \$1.75, - valuation 350, and so on.

Notice is hereby given, that application will be made to the Circuit Court of Peoria County, at the April term, for judgment against said lands and town lots, for said taxes, interest, and costs thereon, and for an order to sell said lands for the satisfaction thereof. And all the lands against which judgment shall be pronounced, and for the sale of which such order shall be made, will be

Report of collector



exposed to public sale on the first Monday of next month, at the  
Court house, in Peoria, in said County, for the amount  
of said taxes, interest, and costs due thereon, to continue from  
day to day, untill all are sold  
Peoria, February 15, 1840. Christopher Orr Col. P.C.

State of Illinois, Peoria County  
I do hereby certify, that the foregoing advertisement for the  
sale of lands in the County of Peoria was duly published on  
the fifteenth day of February, A. D. 1840, in the Peoria Register  
and North Western Gazetteer published in Peoria, Peoria County  
Illinois, and that the number of Transcripts and notices  
corresponds with the number of newspapers printed that  
week, and distributed to each subscriber and to each officer  
in the State of Illinois as directed by Law  
Peoria, Mo. 28, 1840. Saml. H. Davis, Editor & publisher

State of Illinois Peoria County. I Christopher Orr  
Collector of said County do hereby certify that the within  
& foregoing tracts & parts of tracts of lands and town lots  
were assessed for taxes in said County for the year 1839,  
and that the taxes and costs thereon remain due and  
unpaid, and that the owners of said lands and town lots  
have no goods and chattels in my County whereon to levy  
for the taxes & costs due on the same. Given under my  
hand this 30<sup>th</sup> day of March A. D. 1840.  
Christopher Orr Collector  
of Peoria County "

The defendant then offered and read in evidence the  
precept to the Sheriff in the words and figures following to  
wit: -

"State of Illinois Peoria County, The People  
of the State of Illinois to the Sheriff of said County Greeting,  
Whereas Christopher Orr Collector of said County returned  
to the Circuit Court of said County, on the thirtieth day of  
March A. D. 1840, the following tracts and parts of tracts of  
lands as having been assessed for taxes by the assessors of said  
County of Peoria for the year 1839, and that the taxes thereon

Precept for }  
sale of land }



remain due and unpaid on the day of the date of the said  
 Collectors return and that the respective owner or owners  
 have no goods and chattels within his County on which  
 the said collector can levy for the taxes, interest and  
 costs due and unpaid on the following described lands  
 to wit, -

Description	Town of Peoria			
	Lot	Block	Coast	Tax
	10	26	47	1.00
	6	27	"	2.00
	7	27	"	1.75
	0	28	"	.75
	7	28	"	4.00
	6	30	"	3.50
	7	31	"	.20
	"	"	"	" "

And whereas due notice has been given for the intended  
 application for a judgment against said lands and  
 no owner hath appeared to make defence or show cause  
 why judgment should not be entered against the said  
 lands for taxes, interest and costs due and unpaid  
 thereon for the year herein set forth, Therefore it is considered  
 by the Court that judgment be and is hereby entered against  
 the aforesaid tracts and parts of tracts of lands in the name  
 of the State of Illinois, for the sum annexed to each  
 tract or parcel of lands, being the amount of taxes, interest  
 and costs due severally thereon, and it is ordered by the  
 Court that the said several tracts of lands or so much  
 thereof as shall be sufficient of each of them to satisfy the  
 amount of taxes, interest and costs annexed to them  
 severally, be sold as the law directs - and make return  
 of your doings herein together with this list within twenty  
 days after the day of sale - Witness William Mitchell  
 Clerk of our said Court and the seal thereof at Peoria  
 this 30th day of April A.D. 1840 -

(Seal)

William Mitchell  
 Clerk



Return to Precept

State of Illinois Peoria County, Execute the within by selling the lands within described or so much thereof as may struck off to the lowest bidder who offered to pay the amount due on each tract for the least number of acres, The Clerk of the County Commissioners Court of said County who attended at the said sale kept a register thereof in which was entered the number of acres sold, and the names of the purchaser - Dated this seventh day of May A.D. 1840

Thomas Bryant S. P. C.

The dependents next recd and offered in evidence to the Jury a deed of the Sheriff to Lawrence Riegg in the words and figures following to wit -

Tax title deed 3

Now all men by these Presents, That Whereas at the April Term, 1840 of the Circuit Court of Peoria County, a judgment was obtained in said Court, in favor of the State of Illinois, against Lots No Seven in Block No, Twenty Eight in the Town of Peoria in the County & State aforesaid - for the sum of Four Dollars and Forty Seven cents, being the amount of taxes, interest and cost, assessed upon the said tract of land for the year 1839, and whereas on the fourth day of May 1840, Thomas Bryant, Sheriff of the County aforesaid, by virtue of a precept issued out of the Circuit Court of the County aforesaid dated the 30th day of April 1840 and to him directed, did expose to public sale, at the door of the Court house in the County aforesaid, in conformity with all the requisitions of the Statute in such case made and provided, the tract of land above described, for the satisfaction of the judgment so rendered as aforesaid, and whereas, at the time and place aforesaid Lawrence Riegg of the County of Peoria and State of Illinois having offered to pay the aforesaid sum of four dollars and forty seven cents for the whole of said lot, which was the least quantity bid for, the said tract of land was stricken off to him at that price, - Now Therefore, I Christopher Cor, Sheriff of the said County of Peoria, and successor of Thomas Bryant, for and in consideration of the said sum of Four Dollars and Forty seven cents, to me in hand paid by the said Lawrence Riegg, at the time of the aforesaid sale, and by virtue of the Statute in such case made and provided



have granted, bargain and sold, and by these presents  
do grant, bargain and sell, unto the said Laurason  
Reyes his heirs and assigns, the whole of said Lot No Seven  
in Block No Twenty Eight in the Town, County & State  
aforesaid - To have and to hold unto him the said  
Laurason Reyes his heirs and assigns, forever, subject,  
however, to all the rights of redemption provided by law,  
In Witness Whereof, Christopher Orr, Sheriff as aforesaid, by  
virtue of the authority aforesaid, have hereunto subscribed  
my name and affixed my seal, this third day of June 1846

Christopher Orr (Seal)  
Sheriff

State of Illinois Pecoria County, be it known, that on the  
day of the date hereof, personally appeared before me William  
Mitchell, Clerk of the Circuit Court within and for said  
County Christopher Orr, 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 acknowledged 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 the seal of said Court, at Pecoria, this  
third day of June A. D. 1846,

(Seal)

William Mitchell Clerk

The defendant heretofore his case - [plaintiff?]  
The defendant next offered in  
evidence to the Court the said Report of the Sheriff above  
recited and moved the Court to exclude the evidence  
read to the jury by the defendant, to the reading of which  
report as evidence defendant objected and opposed said  
motion and the Court sustained said objection to the  
reading said report and overruled said motion to exclude  
said evidence to which decision of said Court excluding  
said evidence & overruling said motion said plaintiff  
thereunto then excepted -

The plaintiff then proved that all  
tax due upon said Lot in controversy since the date of  
said tax sale had been paid by the defendant and again



offered to read said report in evidence which was objected to by the defendant and the Court excluded the evidence to which decision of said Court in excluding said report as evidence the plaintiff expects

The plaintiff reads in evidence to the jury a Bond executed by said plaintiff Norris to said defendant in the words & figures following to wit

Bond of 3  
Norris to Thomas

Know all men by these presents that I Francis Norris am held and firmly bound unto Joseph J. Thomas of the Town of Peoria, State of Illinois in the penal sum of one thousand five hundred dollars lawful money of the United States, the payment of which well and truly to be made, I bind myself my heirs etc. and assigns firmly by these presents, signed with my hands and sealed with my seal, and dated at Peoria this 18 day of November in the year of our Lord 1837, Now the conditions of this obligation is such, whereas said Thomas hath purchased from me, Norris lot number seven (7) in Block Number twenty eight in the original Town of Peoria it being the same lot that was conveyed to Francis Norris by the County Commissioners of Peoria County by deed bearing date on the 10th day of March 1837, said Thomas purchased said lot for the sum of seven hundred & fifty dollars, and has this day executed his two several notes for the payment of said lot, one of them for four hundred dollars with eight per cent interest per annum payable on the 18th day of November 1841 and the other for three hundred & fifty dollars which may be discharged in cabinet furniture within 7 months from the date - Now provided said Thomas shall well and truly pay or cause to be paid said notes according to their tenor & then shall I Francis Norris make and execute a good and sufficient Deed of conveyance for said Town lot aforesaid, then this obligation to be forever void, otherwise to remain in full force and effect

Witness James Alexander 3 Francis Norris (Seal) "

Which Bond was produced under notice by the defendant on the trial of this cause said plaintiff then called Alexander Wash as a Witness who being sworn deposed



that the defendants entered into possession of said Lot in 1837, 1838, or 1839, and lived on it a year or two and went away and was absent about two years from Peoria and returned and went again upon said Lot to reside and has resided there ever since. The plaintiff then called John C. Heyle who testified that said Thomas the defendant left Peoria in 1839 and was absent about two years -

The Plaintiff again offered said report as evidence which was objected to by defendants and the objection sustained by the Court and the Plaintiff excepted to said decision of said Court in sustaining said objection -

The defendants then proved by A. A. Benjamin that the time said defendant left Peoria he did not know but he did know that he was absent in 1840, and particularly at the time of the election - That the defendant after his return from the East went into possession of said Lot and resided there ever since - That sometime perhaps two or three years thereafter the defendant told Witness that he got the Lot through the management of George C. Bestor, and that he occupied the same under said Bestor -

Defendants then read in evidence to the jury the deposition of Alonzo Nurse which is in the words & figures following to wit -

State of Illinois, Rock Island County, Deposition of Alonzo Nurse a resident of the County and State aforesaid of lawful age, taken before me, H. W. Wilson Clerk of the Circuit Court of the County of Rock Island, State of Illinois, on the Eleventh day of December A. D. 1849, commencing at 12 O'clock M. of said day at my office in pursuance of the within Notice -

To the first interrogatory the said Witness answering saith - I am acquainted with the parties to the suit and have known them ten or eleven years -

To the second Interrogatory he saith, I know that Wm. M. Nurse occupied a Lot in Block No twenty eight, and I think it was Lot seven in the Town of Peoria, Illinois he occupied it under George C. Bestor, about one year, from about the Month of June 1841, to about the



Month of Nov 1849, by the consent of George C. Bester —  
To the third Interrogatory, he sayeth he believes  
possession of said Lot to Joseph Thomas, —

To the fourth Interrogatory, he sayeth Lot then  
occupied by William M. Nurse is located near the Lot  
owned by the Episcopal Church in Block Twenty Eight —  
and was occupied under George C. Bester, and Joseph  
Thomas went into possession of said Lot under Wm M.  
Nurse, about May or June of 48. — I know that Wm  
M. Nurse did not occupy any more than one Lot in  
Penn under George C. Bester. —

To the fifth Interrogatory he sayeth, I only knew  
it is the same Lot from what Thomas told me —

To the sixth Interrogatory, he sayeth he thinks  
of nothing more that will be of benefit to the Duff —  
Alonzo Nurse —

State of Illinois }  
Rock Island County } I Frazer Wilson Clerk of the Circuit  
Court of the County of Rock Island hereby certify that the  
above deposition Given taken before me at my office of the  
Court house in the Town of Rock Island on the Eleventh day  
of December A. D. 1849 commencing at 12 O clock P. of said  
day that previous to the taking of said Deposition the said  
Witness was by me duly sworn to testify the truth the whole  
truth and nothing but the truth, in answer to the Interroga-  
tory propounded, and after the said answers were  
reduced to writing by me, the same were signed by the  
said Witness in my presence, — Given under my hand  
and the seal of said Court at Rock this 11th day of December  
A. D. 1849  
(Seal) Frazer Wilson  
Clerk —

The defendants then reads in evidence to the  
jury a. Deed from Dawson Rieff to George C. Bester —  
which is in the words and figures following to wit. —

" Now all Men by these Presents that Dawson  
Rieff of the City and County of St. Louis in the State of Missouri,  
for and in consideration of the sum of Ten Dollars to me in  
hand paid by George C. Bester of the County of Penn in the



State of Illinois the receipt of which is hereby acknowledged  
Both by these presents, I send bargain sell convey and forever  
quit claim unto the the said Bestor, all that certain piece  
or parcel of land - Known and described as all of Lot  
No seven (7) in Block No. Twenty eight (28) in the town  
of Peoria County of Peoria and State of Illinois - and being  
the same land purchased by said Riegg at the sale for  
the taxes of 1839 in May 1840. - To have and to hold, the above  
described land, and premises to the said George B. Bestor  
his heirs and assigns forever, the said Riegg hereby covenant  
ing, that he hath not done any, act, or thing whereby the  
said land, can be in any way charged, or encumbered.  
In testimony whereof, the said Saurason Riegg hath  
hereunto set his hands, and seal, this twenty eighth day  
of April A. D. 1843 -  
Done in presence of } Saurason Riegg (S)

State of Missouri, City & County of St Louis. -  
I Joseph Mc Neil, Notary public in and for the County  
& State aforesaid do certify that this day personally appeared  
before me Saurason Riegg personally known to me to be  
the person who signed and sealed the above deed and  
who acknowledged that he executed the same for the use  
and purposes therein mentioned - Given under my hands  
and seal this 28th day of April A. D. 1843 -  
J. Mc Neil  
Notary Public -

(Seal) The Defendant here again rested his case -  
The plaintiff then recalled the said Keyle who testified that  
while defendant was absent in 1840 he was called upon by  
said Bestor to appraise some furniture for said defendant  
to be paid to plaintiff Norris on the purchase of the Lot, but  
no appraisement was made nor property paid to his  
knowledge, and that said Bestor was ex brother in  
Law of defendant & that he supposed said Bestor to be agent  
of defendant at that time - This evidence was objected  
to by the Defendant - Said plaintiff here again offered  
as evidence the Records of the proceedings anterior to said



judgments upon said, and the foundation of said judgments including the said Report, which was objected to by the defendants and the Court sustained said objection and excluded said Records from being read as evidence to which decision of said Court in sustaining said objection and excluding said evidence said plaintiff then excepted

The plaintiff then produced two Books of the assessor of said County of Peoria, one purporting to be a list and appraisement of lands listed under the Statute by the owner and the other of unlisted lands, for the year 1839. & said plaintiff proved by S. G. Prath that he is Deputy Clerk of the County Court of Peoria County, that he had been in the said office about two months, that the said Books were in said office and as part of the Records & used & referred to as such of said office, and was a certificate of William Mitchell as Clerk thereon, whose signature he knows well and who was, Clerk of the County Commissioners Court of said County in 1839 & 1840.

And offered to read from said Book of Listed Lands an entry in the words and figures following to wit

Alphabetical List of taxable property in district No 8 in the County of Peoria & State of Illinois for the year 1839 - Filed in the office of the Clerk of the County Commissioners Court of Peoria County and State of Illinois the first day of May A.D. 1839 - etc  
William Mitchell Clerk

Names	Lot		Block value	Total value of Block
	Peoria	Sum		
Thomas Thomas	4	28	10	10
" "	6	28	150	150
Thomas J. S.	7	28	800	800
Thomas Thomas	9	28	350	350
do do	10	28	400	400
Leiston Theodore	7	30	500	500
"	"	"	"	"



I do hereby certify that foregoing is a true copy of the original  
list of all the taxable property being enrolled in District  
No 8 for the year ending May 1st 1839

Lewis Howell Clerk

And offered also to prove that the defendants have  
personal property out of which said taxes might have been  
collected, to the reading of which as evidence the defendants  
objected, and the Court sustained said objection and refused  
to permit said entry to be read as evidence to the jury to  
which decision said plaintiff excepted. — This may be all  
the material evidence —

On behalf and as request of the plain-  
tiff the Court instructed the jury as follows to wit —  
The plff Novis asks the Court to instruct the jury that the  
plaintiff has shown a perfect title to the lot in question  
unless defeated by the tax title given in evidence. <sup>2</sup> That if  
the defendant was in possession of said lot at the time  
the tax title was acquired under said contract of  
purchase from the plff, he was so far a tenant of the plain-  
tiff Novis, that he cannot attain to any other person, or pur-  
chase in any outstanding title, or set up any such outstan-  
ding title as a defence to this action —

The plaintiff requested  
the Court to give to the jury the instruction, in the words  
and figures following to wit. — The plff Novis asks the  
Court to instruct the jury, that if the defendant went onto  
the lot in question under the bonds given in evidence, and  
by himself or agents or tenants was in such possession at the  
time of the levy and sale of the lot for the taxes of 1839, the  
defendant is estopped from setting up the tax title given  
in evidence as a defence to this suit and the jury will  
disregard that title —

Which instructions the Court refused  
to give to which decision the plaintiff excepted. —  
On behalf and as request of the defendants the Court gave the  
following instructions — The Defendants Counsel  
requested the Court to instruct the jury that the defen-  
dant has shown a legal title to the premises in question



in George O. Bestor and that if they believe from the evidence that at the time of the service of the Declaration in this case, said Defendant was in possession of the property in question under said Bestor or under any person who entered or claimed under said Bestor the plaintiff cannot recover — That the declarations of Thomas are evidence to prove under whom he entered and claimed, provided they were made at the time of his entry or occupancy —

Previous to giving which the plaintiffs objected and the Court overruled the objection and gave said instructions to which decision in giving said instructions each of them on behalf of the defendant said plaintiffs there and then excepted —

The jury returned a verdict that the defendant was not guilty of unlawfully withholding said premises — The plaintiffs moved the Court to set aside said verdict and grant a new trial of said cause, and assigned the following reasons to wit —

- 1<sup>st</sup> The said verdict is against law —
2. Said verdict is contrary to law
3. Said verdict is contrary to the instructions of the Court
4. The Court erred in instructions given to the jury on behalf of defendant, and in refusing instructions prayed for by the plaintiff —
5. The Court erred in excluding evidence offered to be given by the plaintiff —
6. The Court erred in admission of evidence offered by the defendant

H. O. Mcerrinew  
for plff Woris —

The Court overruled the motion to set aside said verdict, and grant a new trial, to which decision of said Court in overruling said motion said plaintiffs there and then excepted — and the Court rendered judgment upon said verdict —

The plaintiff pray the Court to sign seal and make of Records this his bill of exceptions which is done  
Wm Kellogg (Seal)



State of Illinois  
Bond county, Ill.



I Jacob Lake clerk of the said court within  
and for the county of Bond in the State of  
Illinois do hereby certify that the foregoing is  
a correct transcript truly taken and copied  
from the records and proceedings of said court  
in a certain case therein of Charles Wallace  
and Francis Davis plaintiffs against Jacob Thomas  
defendant as the same remain by record made in my office  
On testimony thereof I have set my hand and affix the seal of  
said court) at Bond this eight day of May 1850 -  
Jacob Lake clerk.  
Docket fee for transcript - attached post \$9.00  
Jacob Lake clerk

71 Bond

Francis Davis imp'd.  
vs  
Joseph J. Thomas  
Rec'd

Filed June 17. 1850.  
L. Keland Clk.

350

Prepared

12004

75-75 Clk.