25|7

JAN 1844 # 1255

A. CAMPBELL
VS
H. CLARK
RICHMOND COUNTY

1 State of Mississippi }
County of Ray } Pleas in the Circuit Court begun and held at the Court house in the Town of Richmond County and State aforesaid on Monday the 14th day of December in the year of our Lord, one thousand eight hundred and forty, before the Honorable Austin A. Rizy Judge of said ~~Circuit~~ Court,

Be it Remembered that heretofore Court, on the 11th day of December in the year eighteen hundred and forty, Aaron Campbell, filed in the office of the Clerk of the Ray Circuit Court a transcript of the Record and proceedings had in the Case wherein the said Aaron Campbell is plaintiff and one Hiram Clark is defendant (which said Cause was Removed from Lafayette to Ray County by Change of Venue) and is in the words and figures following to wit:

State of Mississippi }
County of Lafayette } Pleas in the Circuit Court begun and held at the Court house in the Town of Lexington ~~State and County~~ County and State aforesaid on the Second Monday of December in the year of our Lord, one thousand eight hundred and thirty seven before the Honorable John F. Ryland Judge of said Court.

Be it Remembered that heretofore to wit on the twenty third day of October in the year eighteen hundred and thirty seven, Aaron Campbell by Almond his attorney filed in

the office of the Clerk of the Circuit Court for the County aforesaid his Declaration against Hiram Clark of a plea that he Rendered unto him the possession of Certain Lands and tenements which the said defendant unlawfully withholds, which said Declaration is in the words and figures following Towit—

"State of Missouri }
County of Ray } In the Circuit Court
December Term 1837

Lafayette County Towit—

Aaron Campbell Complains of Hiram Clark of a plea, Wherefore the said defendant with force and arms at the County of Lafayette aforesaid entered unlawfully into a Certain tract and its appurtenances containing Eleven eighty acres, situate in the County of Lafayette aforesaid, being the east half of the south west quarter, of section twenty one of Township forty nine, and in Range Twenty eight in the County of Lafayette aforesaid and purchased & entered by the aforesaid Aaron Campbell of the United states at its land Office in Lexington Missouri on the twenty fourth day of November eighteen hundred and Twenty four to the possession of which tenements and appurtenances thereto, the said plaintiff was ~~and~~ then and there and ever since has been & still is entitled and which said possessions of said Tenements and the appurtenances the said defendant unlawfully withholds from the said plaintiff and other

3 to the plaintiff then and there did to the great damage of the said plaintiff and against the peace and dignity of the State Viz, at the County of Lafayette aforesaid Per that the said plaintiff heretofore to wit on the first day of March 1837 at the County of Lafayette Mo and ever since has been & still is entitled to the possession of the said land with the appurtenances as above described & being so entitled the said defendant afterwards to wit on the same day and year last aforesaid & at the County ~~of~~ aforesaid entered into the possession of the said above described land with the appurtenances & unlawfully withholds the possession thereof from the said Plaintiff to the damage of the said Plaintiff of Three thousand dollars and therefore he sues &c

W. B. Almond
Atto. for plaintiff

And afterwards to wit on the day of the filing of said declaration aforesaid Clerk endorsed thereon a writ of summons, which said writ is in the words and figures following to wit

"County of Lafayette
The state of Missouri

To the sheriff of the
of the County of Lafayette Greeting
You are hereby commanded to summon
Hiram Clark if he be found in your county

4 that he be and appear before the Judge of our Lafayette Circuit Court, at the Court house in the Town of Lexington in said County on the first day of our next December Term thereof then and there to answer unto Aaron Campbell in an action of Ejectment as set forth in the foregoing Declaration to the damage of said Campbell in the sum of Three Thousand dollars, and have you then and there this Writ, and that you Certify to our said Judge how you Executed the same

Seal Witness William Sprott Clerk of our said Court with his Official Seal hereto affixed at Office this 23rd day of October 1837

Wm Sprott Clk

And Afterwards Towit on the said Second Monday of December our said Sheriff towit James Bounds Sheriff of Lafayette County by Daniel McDowell his deputy returned said Writ with his return thereon endorsed as follows towit

I executed the Within by reading the Within declaration and Writ in the hearing of Hiram Clark in Lafayette County on the 25th day of October 1837

Shffs fee $1.00 James Bounds Sheriff

By Danl. McDowell Dept. Sheff.

And Afterwards towit at the said December Term of our said Court & on the 12th day of said Month of December in the year last aforesaid came the parties aforesaid

by their attorney and the defendant files his plea of not guilty and the plaintiffs joins issue thereto and this cause is continued"—

Which said plea of not guilty & issue are in the words & figures following to wit.
"Hiram Clark
ads } In the Lafayette Circuit
Aaron Campbell } Court of December Term 1837
And the said defendant Hiram Clark by E. Burden his attorney comes and defends the force and injury when &c and says he is not guilty of the said supposed trespasses and ejectments above laid to his charge or any part thereof in manner and form as the said Aaron Campbell hath above thereof complained against him of of this he the said Hiram Clark puts himself upon the country &c
Burden Attorney
for defendant
And the said plaintiff doth the like
Almond for
plaintiff

And afterwards to wit, at a circuit court continued and held at the town of Lexington in the county of Lafayette Missouri on the tenth day of April eighteen hundred and thirty eight came the parties aforesaid by their respective attorneys, and the sheriff did cause to come the following jury to wit Fountain Lewis

6 David Marquis, Vachel Burgess, George W. Bradley (4) David Mock, William Haux Henry Bells, John H. Peck (8) Harvey Williams, William Anderson William Hickman and Alpha W. Henning (12, Twelve Good and lawful men who were sworn to well and truly try the issue Joined between the parties aforesaid, and the Jury by consent were permitted to disperse under charge of the Court to meet here again on to morrow morning, and not to converse with any person about this Suit.

And afterwards to wit, on the third day of said term being the eleventh day of said month "came the Jury empannelled and sworn on yesterday in this Cause To wit. Fountain Lovisay, David Marquis, Vachel Burgess, George W. Bradley (4, David Mock, William Haux Henry Bells John H. Peck (8, Harvey Williams, William Anderson, Alpha W. Henning & William Hickman again in to Court and the Jurors aforesaid upon their oath aforesaid do say that the defendant is not Guilty of the trespass and Ejectment as the said plaintiff hath in his Declaration alledged against him. It is therefore Considered by the Court that said defendant recover against the said plaintiff his Costs by him about his defence in this behalf laid out and Expended—

7 Memorandum on the trial of this Cause the plaintiff tendered his Bill of Exceptions numbered one, which was signed and allowed by the Court and made part of the Record

Which said Bill of Exceptions is in the words and figures following to wit

"Aaron Campbell
vs } Ejectment
Hiram Clark

Be it Remembered that on the trial of this Cause the plaintiff offered to read as evidence to the Jury the Patent which was read accordingly and is in the words and figures following viz

Certificate No. 99

The United States of America To all to Whom these presents shall come Greeting.

Whereas Aaron Campbell of Kentucky has deposited in the General Land Office of the United States a Certificate of the Register of the land Office at Lexington Missouri Whereby it appears that full payment has been made by the said Aaron Campbell according to the provisions of the act of Congress of the 24th of April 1820 entitled an act making further provision for the sale of the public lands for the East half of the south West quarter of Section twenty one in Township forty nine of Range twenty eight in the Western district of Missouri Containing Eighty acres, according to the Official plat of the survey of the said lands Returned to the General Land Office by the Surveyor General, which said tract has been purchased by the said Aaron Campbell

8

Know ye that the United States of America in Consideration of the premises and in Conformity with the Several Acts of Congress in such case made and provided have given and granted and by these presents do give and grant unto the said Aaron Campbell and to his heirs the said tract above described. To Have and To hold the same together with all the Rights, privileges immunities and appurtenances of what nature thereunto belonging unto the said Aaron Campbell and to his heirs and assigns forever—

In Testimony Whereof I John Quincy Adams 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 twenty fifth day of May in the year of our Lord one thousand eight hundred and twenty five, and of the Independence of the United States the forty ninth

J. Q. Adams

By the President
Geo. Graham Commissioner of the General Land Office

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Henry Campbell a witness for plaintiff was then sworn, and Testified that he is well acquainted with the land described

9 in the above Patent, and has known it for the last fifteen years that it lies contiguous to a tract of land on which the defendant resides and claims as his own, that the line between the plaintiff and defendant is what is called an open line being the line dividing the section East and West, and running from half Mile Corner to half Mile Corner north and south, that the line between plaintiff and defendant runs half the distance of this line so as to give to each of their land holds out one half quarter section of land that for the last fifteen years he has often seen the half Mile Corners on both the north and south side of the section, that those Corners he knows by the marks and the trees which are marked as half Mile Corners usually are by the Government surveyors, and these Corners have always been taken and understood to be the half Mile Corners as established by the Government surveyors. That since he has known said land in the Patent mentioned, a new Corner has been marked as a half Mile Corner on the South side of the section, and a line run and marked from this new Corner to the old half Mile Corner on the north side of the section, that on the section line of the South side of the section the distance between the old and new Corners is about twenty poles, and before the commencement of this suit, he heard the defendant make claim of title past the old Corner to the new Corner, and to the marked line from that Corner, and claimed it as a

part of the tract of land on which the Deft. Resides, and has his farm, and at the same time heard Deft. say that he had cut Timber off the disputed Ground which lies between the old and new lines, and that he had been advised by his lawyer to do so that suit might be brought against him for the purpose of trying the title, and that he intended to cut Timber whenever he chose off the disputed Ground & Witness further stated that a considerable quantity of timber has been cut and taken off the disputed Ground, but of his own knowledge he does not know by whom, Witness has also seen some piles of Rails on the disputed ground near the old line thrown there by Deft. to be put into fence, and thinks a part of the fence runs over the old line on to the ground in dispute, but of this is not certain, Witness has seen the old corner above mentioned often and has Recently seen it, and one of the trees had fallen down, that other was still standing, but the letters and figures constituting the mark on that tree were defaced by a blaze and something like Charcoal seems to have been Rubed on the blaze & out of the fallen tree he saw a block taken having on it the half Mile Corner mark, which block is the same shewn her in Court—

Callaway Witness for the plaintiff was then sworn and testified that he has seen what was mentioned by Henry Campbell as the old half Mile Corner on the South Side

that one corner tree which was still stan-
11 ding had the appearance of having been
defaced by a blaze and something like Char-
Coal the other had fallen down; that he took
for his guide in getting at the old half Mile
Corner a pole supposing to contain the field
notes of the Original Survey by Govern
ment, and found the tree at the old half
Mile Corner as called for by the field Notes,
that he run a Right line across from this
Corner to the half Mile Corner on the north
side of the Section a distance of One Mile
that he found the Corner trees on the north
side also, as called for by the field notes marked
as half Mile Corners usually are by
Government ~~Surveyors~~ surveys, that
in running this distance and in a Right
line from Corner to Corner the variation
of the magnetic needle was about eleven
degrees, and that the usual variation of
Government Surveys is seven and a half
or eight degrees, Witness also states that
he understood surveying and run this line
at the request of the plaintiff, Witness saw
no half Mile Corners but those above
mentioned on the north and south lines
of the Section - He also stated that he then
run a line from the South half Mile Corner
to the north with the usual variation
and missed the north half Mile Corner
near 20 poles -

Wm Hanna a witness also of the plaintiff
was also sworn, who testified that he heard

the deft. a plan and map before the institution of this suit claim as belonging to his tract of land the disputed ground this was when a Mr. Green was running for Deft. What is called the new line and at which time the deft. was present and had the line marked, He also heard him say he intended and would use and take timber off the disputed ground when he chose that it was his own and part of the tract he lived on, Witness also stated that he then saw what has been proved to be the half mile corner for the new line on the South side and at which corner was also then established by Green as the half mile corner that the corner trees were not then marked with letters, crosses or figures as corner trees usually are

Helm and James Campbell were then sworn and testified that two blocks shewn to them in Court were taken from trees at two corners on the South line one from the old corner, and one from the new corner Campbell also stated that he had seen the half mile corner tree at the new corner from which one of the two blocks was taken and it was not then marked as now with figures letters, or crosses, but that the block when taken out was marked as it now is

Daniel McDowell was then sworn as Witness

13 for the plaintiff, and on examining the blocks shewn in Court, states that the block proved to have been taken from the old Corner is marked as half mile Corners usually are, and seems to have been marked with an iron as such Corners are by the Government surveyors, and from the appearance he would suppose it had been marked some fifteen or twenty years ago about which time the land in this County was surveyed, the block from the new Corner he thinks has been much more recently marked, and is marked with O.S instead of an S. and with a Cross instead of a 4, and seems to have been cut with a knife instead of an iron.

Ish witness for plaintiff stated that he sold the half quarter joining plff's land to defendant, and before the sale informed him of the difficulties about the line and refused to stand good for ground in dispute and so provided in his deed to deft. He also stated that the trees fixed for the new Corner had no mark as half mile Corners made by the Government surveyor have, and that the trees ~~and~~ at the old Corner were so marked ever since he was acquainted with the land, he also stated that he had heard Deft. Claim the ground in dispute up to the new lines as run by Parkman and Green

14 Joshua Campbell Witness for plaintiff also gave evidence Conducing to Show that the old half mile Corner spoken of by the other Witnesses was the Corner established by the Government Surveyor, and further Conducing to show that Deft. Claimed the disputed ground—

Green Witness for defendant was then sworn who testified that in April 1836 he was called on for defendant as County surveyor to run the boundary line between the lands of plaintiff and Deft. that having run several lines of the Section full out and taken the Courses from other Sections that he commenced at the north East Corner of the Section & run the entire lenghth of the section and found the line to be about ten poles longer than a mile he then run part of the West line of the Section until he ascertained that he had found the true North West Corner he then returned to the north East Corner and run the entire lenghth of the East ~~half~~ line which was a few links short of a mile he then Calculated the Size of the section and found it Contained more than a section. he then proceeded to lay off defendant lighty acres of that Section next to plaintiff's land, and also having run out all the lines necessary to get at the half way point on the south line of the section he run a line north and South half way across the section so as to leave to the plaintiff

and defendant a full half quarter of
15 land that to run a right line north and
south from Corner to Corner of the old half
Mile Corners would give the plaintiff ninety
five acres, and the defendant only sixty five
acres, that he saw the old half Mile Corners
on both the north and south sides of the
section, and they have the appearance of
Corners established by the Government Surveyor
that the old half Mile Corners and the north
side of the section is in the centre of the
section line, but the Corner on the South
side of the section is twenty poles too far to
the east he also stated that the dividing line
thus run by him conformed to a line run
some time before by a Mr. Parkman, that
where this line terminated on the South side
of the section there were no trees marked as
half Mile Corners usually are, marked by the
Government Surveyors, and that there was
no scarcity of trees at this Corner established
by him, he also stated that the defendant was
along when he run the line but does not
remember whether any trees were then
marked along the line or at the Corner
by stakes, but remembers that they had axes
along, He also stated that he had surveyed a
great deal in this Country, and that in running
the lines as made by the Government north
and south he has found the variation
of the needle to be from six and a half to
eight degrees, that the variation in run-
ing east & west was much more irregular,
he also stated that the defendant claimed up

16 to the line as run by him, that the distance between the old Corner, and the one established by him on the South line is Twenty poles, and at the north end of the half quarter the distance between the line run by him, and the right line run from one old half Mile Corner to the other would be Ten poles

Witness says that the east and west lines of the Section are run at a variation of Seven degrees, and the line that he run through the Centre of the Section bears the same variation but a line Connecting what is claimed as to two old half Mile Corners has a variation of Eleven degrees.

Rankin Witness for Left was sworn, and states that he has been on the ground in dispute, and knows where the new line is & where the line run from one old half Mile Corner to the other is. that near the latter and on the side of it next the former he saw two piles of Rails carried thier by defendant to be put into fence and has since seen the fence up, and does not think any part of it is over the old line, He also stated that he has heard defendant claim up to the new line as run by Green-

Witness stated that he saw Mr. Callaway run the old line between Campbell & Clark, and it run over some piles of Rails put there by Clark - that he saw Clark put up the fence, and that the fence was on Clarks side of the pile of Rails and

17 not on Compbells, and that the fence was not on the old line—

Here the Testimony Closed, and this was all the evidence Given to the Jury, and thereupon and before the Jury retired from the bar, the plaintiff Moved the Court to instruct the Jury as follows.

The plaintiff moves the Court to instruct the Jury

1st That if they believe from the evidence that the defendant entered upon the land of the plaintiff described in the Declaration before the Commencement of the Suit & Claimed title thereto & Committed Trespass thereon by Cutting timber or otherwise it is in the law an ouster of the plaintiff and they must find for the plaintiff—

2nd That to Constitute an Ouster in the law it is not necessary that actual force should be used, and if they find from the evidence that the defendant has established a line or Corner within and upon the land of the plaintiff in the Declaration Mentioned & Claimed the plaintiffs land up to said ~~line~~ line or Corner as his (defendants) own property, and claimed the same as part of the tract of which he left is and was, and before the Commencement of suit, in possession, and on the same, and that all this was done before the Commencement of this suit, and that defendant has never abandoned said Claim it is an entry and Ouster of the plaintiff within the Meaning of the law

18 and they must find for the plaintiff —

3rd That if they find from the evidence that the lines and corners made by the United States surveyor on the original survey are sufficiently identified such lines and corners constitute the boundaries between the plaintiff and defendant although they vary from the corners & distances required to make up for both plaintiff and defendant full half quarters of land as called for by their respective certificates of entry or by their patents.

4th That if they find from the evidence that the boundary between the plaintiff and defendant consists of what is called open line unmarked by the United States Surveyor, and runs with the half mile line, running north and south dividing the section east and west, and further find that the half mile corners made and established by the United States Surveyor on the original survey on both the north and south sides of said section are sufficiently identified a right line from corner to corner must govern and does constitute the true boundary between the plaintiff and defendant (Given with this explanation if such right line should in this ~~place~~ case divide the section into equal parts or halves)

5th That a line or corner established by the United states surveyor and upon which a patent has issued cannot be altered because the variation of

the Magnetic needle from the true
19 Meridian is found to be greater or less
that what is considered as the usual
variation — Wood & Burch
for plaintiff

the first second and fifth of which said instructions the Court gave, but refused the third and also the fourth as asked, but gave the fourth with this explination (copied at the end of said instruction) to the opinion of the Court in refusing to give to the Jury which said third instruction, and in refusing said fourth instruction as asked and in giving said fourth instruction with said explination, the plaintiff by his Counsel excepts, and thereupon the defendant asked the three following instructions.

The defendant moves the Court to instruct the Jury that unless they believe from the testimony that the defendant was at the time of the commencement of this suit in possession of some part of the tract of land mentioned in the declaration they must find for defendant That if they believe from the testimony that no line was ever run between the lands of plaintiff and defendant by the authority of the United States & that the line up to which Clark claims gives him no more land than he is entitled to by his purchase from Dr and leaves plaintiff all the land he is entitled by his purchase from the United States And that defendant now has been in possession of said tract of plaintiff then they will find for defendant

That they must be satisfied by the evidence that the Corner claimed by plaintiff was made by authority of the United States and unless they do so believe from the evidence that said Corner is no evidence of where the middle line of the section should be run, that the proper way to divide a section is to run the entire length of one line of the section and divide said line into two equal parts and from the points so dividing said line to run a line through said section parallel to the section line and a section divided apparently is erroneous. -

That when no line has been run or marked by the United States dividing sections that the proper way is to have them run and ascertained by a County Surveyor or some other competent authority

That cutting timber on land is only trespass and does not amount to possession

That claiming land without having inclosed some part of it or residing on some part of it does not of ~~itself~~ itself amount to possession. All of which the Court gave to the Jury, To the giving of which said instructions asked by Deft. the plaintiff excepts. And thereupon the Court give to the Jury the additional instruction following. "The Court instructs the Jury. that the line dividing a section into quarters should be run from a point equi distant from the corners of the section, for instance from the half mile corner. And that half mile corner should be equi distant from the corners of

31 the Section — And to divide a quarter section into halves. the line should be run from a point equal distant from the Corners of the quarter without regard to the half mile Corners as marked by the United States Surveyor" And to the Given of which said additional instruction the plaintiff also excepts And prays that this his bill of Exceptions may be signed, sealed, Allowed, And made a part of the record which is done accordingly

John F. Ryland (Seal)

And on the said third day of said April Term the following proceedings were had. To wit.

"Aaron Campbell
against
Hiram Clark

Now at this day Came the said plaintiff by his attorney And moved the Court for Cause assigned And shown in writing to set aside the verdict of the Jury And grant him a new trial herein. Whereupon the Court being sufficiently advised of and Concerning the Law arising on said Motion Considers that the law is for the defendant And doth overrule said Motion And refuse to set aside said verdict And grant a new trial And thereupon the defendant by his Attorneys tendered his bill of Exceptions numbered Two which said bill of Exceptions is signed And allowed by the Court And made a part of the record,

Which said Motion And bill of Exceptions are in the words And figures

22 following. To wit,

Be it remembered that in the progress of this Cause and after the Jury had returned into Court with their verdict and on the same day the plaintiff for cause assigned and shown in writing moved the Court to set aside the verdict and grant a new trial herein which said motion in writing is as follows - The plaintiff moves the Court here to set aside the verdict of Jury and for a new trial of the above cause because the Court erred in refusing the instructions of the plaintiff, refused by the Court and in giving the instructions of the defendant given by the Court to the Jury and because the verdict of the Jury is against the Law and against the evidence

Almond. Wood & Buck
Attys for plaintiff

Which said motion the Court overruled and refused to set aside the verdict and grant a new trial to which opinions of the Court in overruling said motion and in refusing to set aside the verdict and grant a new trial the plaintiff by his Counsel excepts and prays that this bill of exceptions may be signed, sealed, allowed, and made a part of the record which is done accordingly

John T. Ryland (Seal)

And afterwards, To wit. On the third day of said April Term 1838 and on the 12th day of said month the following proceedings were had, To wit,

Aaron Campbell, plaintiff
vs

Hiram Clark Defendant

23 Now at this day Came the plantiff And files his affidavit praying an appeal to the Supreme Court which is granted and thereupon the said Aaron Campbell with Young Ewing and Robert Ewing his securities appear in open Court who are approved by the Court and acknowledged themselves to owe and stand indebted to Hiram Clark in the sum of Two hundred Dollars to levied of their respective goods and Chattles lands and tenements to be void in case that the appellant will prosecute his appeal with due diligence to a decision in the Supreme Court and that if the Judgment appealed from is affirmed or his appeal dismissed he will pay whatever of debt damages and Costs have been recovered against him by the Judgment of this Court together with the Interest that shall grow due thereon or that he will otherwise perform the Judgment of the Circuit Court and that he will pay pay the Costs and damages that may be adjudged against him in the Supreme Court upon his appeal — which said affidavit was in the words and figures following, To wit,

Aaron Campbell } In the Lafayette Circuit Court
vs } Ejectment
Hiram Clark }

The affidavit of the said Aaron Campbell. This affiant states that he does not make his appeal to the Supreme Court of vexation or delay but

because he the said affiant believes that he the appellant is aggrieved by the Judgment and decision of the Court rendered in this Cause.

Aaron Campbell

Subscribed and sworn to in open Court this 12th day of April 1838 Wm Pratt Clk

Pleas before the Honorable John F. Ryland Judge of the ~~Sixth~~ Judicial Circuit in the State of Missouri

State of Missouri
County of Lafayette } Be it remembered that on the 6th day of August AD 1840 Aaron Campbell by his Attorney ~~by his~~ filed in the Office of the Clerk of the Circuit Court of the County and State aforesaid a Copy of an Opinion of the Supreme Court of the State of Missouri delivered in the above Cause in which Aaron Campbell is plaintiff and Hiram Clark is defendant which said opinion is in the words and figures following, to wit.

Opinion of the Supreme Court

Aaron Campbell } Error to the Circuit Court
vs } of Lafayette County
Hiram Clark }

Campbell brought an action of Ejectment against Clark in the Circuit Court the verdict and Judgment in that Court being against him. he prosecutes this Writ of Error to revise the Judgment.

Campbell was the purchaser from the United States of the East half of the South West quarter of Section No. Twenty one in Township No. forty nine of Range No. Twenty eight

25 in the said County of Lafayette containing, according to the statement made in his Patent eighty acres Clark the appellee who was defendant in the Circuit Court seems to be admitted to be the purchaser of the half quarter section lying next east of that of Campbell appellant, and plaintiff in the Circuit Court — no evidence was given or none at least appears on the record that he or any one under whom he claims had purchased from the United States Clarks land then would be the west half of the south east of the same section above mentioned. It appears from the evidence that the quarter section corner established by the deputy surveyors of the United States in the line bounding the section on the south is twenty poles near to the south east corner of the section, than it is to the south west corner, and the consequence according to the witnesses statement that the plaintiff Campbell has in his half quarter section ninety five acres, and the defendant Clark only sixty five. To correct this inequality Clark claims to establish a new quarter section quarter equally distant from S.E. & S.W. corners of the section and run a direct line from such newly established corner to the corner of the quarter section in the bounding the section on the north.

This quarter section corner in the northern boundary line is admitted to be in the middle of the line that is to say one half mile distant from each corner

for trespasses alleged to have been committed on the disputed Ground this action was brought, The Circuit Court instructed the Jury as follows That a line dividing a section into quarters should be run from a point in one side of the Section equidistant from the Corners of the Section to a point in the middle between the two Corners of the opposite side of the Section and that if the quarter Section Corners as established in the several sides of the Section by the United States surveyor, are not in the middle of the lines connecting the Corners, no regard is to be paid to them and to divide a quarter Section into halves a line must run in like manner from a point in the middle between the quarter section Corners, established as above directed to a point in the middle of the opposite side of the quarter section.

Other instructions were asked by each party some of which were given and some refused that set out above seems to be the only one material to a correct decission of the Cause the act of Congress of the 11th of February 1805 settles the question in few words, the second Section of that act reads thus "The boundaries and Contents of the Several sections half sections and quarter Sections of the Public lands of the United States

27 shall be ascertained in conformity with the following principles, any act or acts to the contrary not withstanding. 1st All the corners marked in the survey returned by the Surveyor General or by the Surveyor of the lands south of the state Tennessee respectfully shall be established as the proper corners of subdivisions of sections which they were intended to designate.

The boundary lines actually run and marked in the survey by the Surveyor General or by the Surveyor South of the state of Tennessee respectively shall be considered as the proper boundary lines of the sections or subdivisions for which they were intended and the length of such lines as returned by either of the Surveyors aforesaid shall be held and considered as the true length thereof. And the boundary lines which shall not have been actually run and marked as aforesaid shall be ascertained by running straight lines from the established corners to the opposite corresponding corners. The third section proceeds to state that each section or subdivision of a section the contents whereof shall been or by virtue of the first section of this act shall be returned by the Surveyor General shall be held and considered as containing the quantity expressed in such return and the half sections and quarter sections which shall not have been thus

returned. Shall be held and considered as containing the one half and one fourth part respectively of the returned contents of the section of which they made a part. The act of Congress declares in express terms what I have always understood to be the common law. That is the plain dictate of reason. Viz. That land being sold by metes and bounds the purchaser so takes it the quantity more or less and if the tract contain less than it is sold he is without remedy, unless he can prove that vendor was guilty of fraudulent misrepresentation. But that the defendant should claim to make good the deficiency of his half quarter by going on the land of his next neighbour seems to be a strange doctrine. Nothing hindered Clark from ascertaining the true quantity of land in the quarter section of which he purchased from the United States one half and if he has been cheated and gave more for the land than it is worth he is not to expect the man who purchased the adjoining half of a larger quarter to make up his half. There is no proof of contract between Campbell and Clark and as Clark would have had no right of action against Campbell for this land so he can have no right to take possession of it against Campbell.

Clark must take the half of the quarter section in which his land lies. that is to say he is to find

29 the Middle of the Northern And Southern boundary line of his quarter Section and his Eastern boundary line must be a line running directly through the quarter Section from the Middle of Northern line to the Middle of the Southern boundary line and Campbell himself can take only the half of the larger quarter.

The Judgment of the Circuit Court is reversed and Cause remanded for further proceedings in Conformity to this Opinion

George Tompkins

State of Missouri
first Judicial Circuit } ss

I Robert P. Clark Clerk of the Supreme Court of the State of Missouri within and for the first Judicial District do hereby Certify that the foregoing is a full true and perfect Transcript or Copy of the Opinion of the said Court delivered in the Cause therein mentioned as fully and Completely as the Same now remains in my Office.

Given under my hand and seal of said Court at Office in the City of Boonville this Thirteenth day of April Eighteen hundred and forty—

Robert P. Clark Clerk
By Bennett C. Clark D.C.

Proper place for notice

And afterwards. To wit. At a Term of the

Circuit Court held at the Court house in the town of Lexington within and for the County of Lafayette Missouri in the 6th Judicial Circuit of said State on the 8th day of October AD 1840 before the Honorable John F. Ryland Judge of said Circuit the following proceedings were had, To Wit.

Aaron Campbell
vs } Ejectment
Hiram Clark

Now at this day came the parties aforesaid by their respective Attorneys and the Plaintiff files his petition and affidavit for a change of venue in this Cause from this Circuit on account of the prejudice of the Judge of this Court It is therefore ordered that the prayer of said Plaintiff be granted and that said Cause be sent to the County of Ray in the fifth Judicial Circuit in the State of Missouri and that the Clerk of this Court certify to the Clerk of the said Ray Circuit Court a true and perfect transcript of all the proceedings had in this Cause and it is further ordered that said Plaintiff pay the Cost of this Term.

Which said petition and affidavit are in the words and figures following To Wit. "State of Missouri }
Lafayette County } In the Circuit Court

Aaron Campbell
against } Ejectment

31 Hiram Clark

To the Honorable the Judge of the Circuit Court of Lafayette County Aforesaid Your petitioner Aaron Campbell plaintiff in the above entitled Cause would respectively show and represent that the Judge of said Circuit Court is prejudiced against Your petitioner the said plaintiff in said Cause so that he Cannot receive in said Court a fair trial on account of such prejudice. Your petitioner therefore prays that a change of venue may be awarded to some Court where the Cause Aforesaid Complained of does not exist

Aaron Campbell

State of Missouri
County of Lafayette } The said Aaron Campbell makes oath and says that the facts stated in the foregoing petition are true and that he this affiant has just cause to believe that he cannot receive a fair trial on account of the causes alleged

Aaron Campbell

Subscribed and sworn to in open Court this 8th day of October 1840

William Spratt Clerk

The Sheriff of Lafayette County filed a Notice in the above entitled Cause on the 7th day of October 1840 with his return thereon which said Notice and return is in the words and figures following, to wit,

"State of Missouri
County of Lafayette } Set In the Circuit Court

32

Aaron Campbell
against } Ejectment
Hiram Clark

Notice

The above named defendant Hiram Clark will take Notice that I will at the Court House in Lessington in said County Whilst said Court is in session on Thursday the 8th day of Octr. Inst. apply to the Judge of said Court for a Change of the venue in the above entitled Cause in which I am plaintiff and You are defendant on account that the Judge of said Court is prejudiced in said Cause When and where You may attend if You think proper. Aaron Campbell

Appropriate place for this Notice is on the 2d page after the opinion S.C.

Shffs return

Octr. 7th 1840

I hereby Certify that I executed the within Notice on Hiram Clark by delivering him a true Copy of the same on the 7th day of October 1840 — fee .50

Daniel McDowell Shff
By Riley Pool Dep Shff

State of Mississippi }
County of Lafayette } I William Spratt Clerk of the Circuit Court within and for the County aforesaid do hereby Certify that the foregoing twenty nine pages contain a copy of the orars petition and affidavit filed in said Cause and a full transcript of the record and proceedings and also the original papers filed in said Cause and forming a part of the record

In Testimony Whereof I have hereunto set My hand and affixed the seal of said Court at Office in Lexington this 2nd day of December AD 1840

William Spratt Clerk

The following fees are Set due on the within Case which accrued in this Court before the Case was taken to Supreme Court

To William Spratt Clerk		$7.27½
" Daniel McDowell Shff		9.72
" William Ish Witness		2.10
" Tipe Rankin	Do	2.40
" John Helm	Do	2.62
" Allen Helm	Do	2.70
" Ephraim King	Do	2.50
" William Helm	Do	2.80
" Joseph H Green	Do	2.35
" Ansolum L Hamsa	Do	2.35
		$36.66½

And afterwards To Wit, at a Circuit Court held at the Court house In the Town of Richmond in the County of Ray and State of Missouri, in the fifth Quarterly Circuit of said State on the 15th day of of December AD 1840 before the Hon. Austin A King Judge of said Circuit

was had the following entry. To Wit.

Aaron Campbell }
vs } Ejectment
Hiram Clark }

This Cause is Continued by Consent of Parties

And afterwards To Wit. At a Term of the Circuit Court held as aforesaid, On the 28th day of April 1841 And On the 3rd day of the April Term thereof We had the following Proceedings To Wit.

Aaron Campbell }
vs } Ejectment
Hiram Clark }

This Cause is Continued by Consent of Parties until the next Term of this Court. It is further ordered that the Surveyor of Lafayette County make a Survey of the Lands in Controversy to be made according to field notes and Corners as made and established by the General Government of the Original Surveyor And that the Surveyor give each party notice of ~~[illegible]~~ the time of Making said Survey, the same to be returned at the next Term of this Court

And Afterwards To Wit. At the June Term of Said Court, And on the 4th day thereof, being the 16th day of June 1841, We had the following further proceedings. To Wit.

35 Aaron Campbell
vs
Hiram Clark } Ejectment.

The Defendant files his Motion to set aside the report and Survey made according to an order of this Court at the last Term. the said Motion being Argued And Sustained It is therefore ordered that the Surveyor of Lafayette County make a Survey of the Lands in Controversy And that in doing so he survey so much of the Section in which said lands is situate as will enable him to positively identify the true Corner. And lands in Controversy In making said Survey he shall be governed in all respects by the Original field notes of said Section And that in Ascertaining the half Mile Corner on the South line of said Section. that he be governed in designating said Corner And if said Corner Cant be designated that he show by his report how much Land there is in Controversy. that is. how much more there is than Eighty Acres in One half quarter. And how much less in the other Eighty being the two half Quarters out of which the present Controversy has arisen. if ~~the~~ no half Mile Corner on said line Can be designated by the field notes that he then Ascertain a point equi distant from each corner of the Section on said line

And then report how the lands in Controversy are situated according to the last designated ~~point~~ corner. It is further ordered that he notify the parties to this suit a reasonable time before he proceeds to make said survey and this cause is continued until the next term of this Court

Which said motion to set aside the report and survey is in the words and figures following to wit

Hiram Clark
Ass
Aaron Campbell } Ejectment

The said defendant Hiram Clark moves the Court to reject the survey made by the surveyor of Lafayette County in this cause, and a plat of which is now filed in the same.

1st Because the survey is not made in compliance with the order of this Court.

2nd Because the survey is not made according to the field notes and corners as made and established by the General Government of the Original survey.

3rd Because the survey is not made out according to the Original field notes of said lands in Controversy. 4th Because said survey is improperly made. Doniphan

French, Sawyer & Burden Attys for Clark

And Afterwards Towit, at the September Term of said Court, and on the 2nd 3rd & 4th days thereof, being 27, 28 & 29th September 1841, were had the following proceedings Towit — *

"Aaron Campbell
vs
Hiram Clark } Ejectment

Now at this day Came the parties Ofensaid, and both parties being Ready for trial, thereupon Came a Jury Towit: O.H. Searcy, Thomas Hudson, Fredrick Brunstetter, Joseph S. Hughes, Francis Smith, Charles H. Allen, Henry Ed. Lile, John Larkey, Henry Emerson, Reuben Riggs, Benj. F. Barston and Edward Jasper, Twelve good and lawful men Who being duly Elected tried and sworn to try the Cause between the parties Ofensaid After having Gone through the evidence in the Cause by leave of the Court were permitted to disperse for the night;

And Afterwards towit, At the same Term of said Court, and on the 4th day thereof, were had the following further proceedings Towit:

Aaron Campbell
vs
Hiram Clark. } Ejectment

Now at this day Came the parties Ofensaid, and the Jury Empannelled on Yesterday appeared, and the argument having Concluded the Jury returned to the bar of the Court, and Reported that

\# Aaron Campbell vs Hiram Clark } Ejectment. In pursuance of an order made at the last Term of this Court the Surveyor of Lafayette County made his report with a plat of Survey of the lands in Controversy which is filed (which Series report is Copied in the Bill of Exceptions)

they were unable to agree in a verdict, and by consent of the parties were by the Court discharged.

And afterwards. To wit. At the February Term of said Court and on the second day thereof being the 1st day of March AD 1842 were had the following further proceedings (to wit)

Aaron Campbell
vs } Ejectment.
Hiram Clark

Now at this day came the parties aforesaid. And the said defendant by his Attorney. filed his Motion to suppress the depositions of Green & Steph McCaffrey filed in this Cause. the same being argued the same is by the Court overruled and both parties being ready for trial thereupon came a Jury. To wit. Thomas A Jacobs James Frazier Pitman & Frazier John Endsley Andrew Mills William Etherton Cobb Mitchu John Harden Rowland Ralph Samuel R Blain James Coates and Henry Boggs twelve good and lawful men who being duly elected tried and sworn well and truly to try cause between parties aforesaid after having gone through a part of the evidence were permitted to adjourn for the night

Which said Motion to suppress depositions is in the

39 Words following Towit.
"Clark
vs } Ejectment
Campbell } Feby Term 1842

The Defendant moves the Court to suppress the depositions of Green & Hugh McCafferty filed in this Cause and assigns therefor, the following Reasons. First: They are properly Certified. They were not Sealed up by the Justice and directed to the Clerk, but given to plaintiff or his agent unsealed.

Because they were not taken in pursuance of notice.

Ryland French &c
for Defndt.

And afterwards towit, at the same Term of said Court, and on the 3rd day thereof were had the following further proceedings towit

Aaron Campbell
vs } Ejectment
Hiram Clark } The Jury Empannelled on yesterday in this Cause appeared, and after hearing the evidence returned into Court the following Verdict Towit. "We the Jury find the issue for the defendant. Henry Boggess foreman

It is is therefore Considered by the

Court that the said defendant recover of the said plaintiff his costs by him expended in this behalf, and that he have execution thereof. thereupon the said plaintiff files his motion to arrest the Judgment, and also his motion for a new trial which said motions were overruled, said plaintiff files his bill of exceptions which is signed, sealed, and allowed and made apart of the record herein

Which said motion in arrest of Judgment is in the words and figures following to wit:

Motion in Arrest of Judgment

"Aaron Campbell
Against } Ejectment
Hiram Clark } Plaintiff comes and moves the Court to arrest the Judgment herein, and shows for cause. 1st The issues are not fully disposed of by the finding of the Jury
2nd The verdict of the Jury is irregular informal and otherwise insufficient to warrant Judgment thereon.

Ewing & Wood for Plaintiff

And which said motion for a new trial is in the words and figures following to wit

Motion for new trial

"Aaron Campbell
Against } Ejectment
Hiram Clark } Now at this day comes the plaintiff by his attorney, and moves the Court to set aside the verdict of the Jury herein, & for a new trial

41

And shows for Cause

1st The verdict of the Jury is against the law and the evidence.

2nd The Court misdirected the Jury as to the law.

3rd The Court erroneously refused the instructions prayed by the plaintiff.

4th The Court excluded evidence from the Jury that ought to have been admitted.

Ewing & Wood
for Pltff

And which said Bill of Exceptions is in the words and figures following to wit

Aaron Campbell
vs
Hiram Clark } Ejectment

Be it remembered that on the trial of this cause the plaintiff read in evidence the following patent, which said patent is as follows to wit.

The United States of America. To all to whom these presents shall come Greeting.

Whereas Aaron Campbell of Kentucky has deposited in the General Land Office of the United States a Certificate of the Register of the Land Office, at Lexington Mississippi whereby it appears that full payment has been made by the said Aaron Campbell according to the provisions of the act of Congress of the 24th of April 1820" entitled an act making further provision

Certificate No 99

42 for the sale of the public lands, for the East half of the South West quarter of Section twenty one, in Township forty Nine of Range Twenty eight in the Western district of Mississippi Containing eighty acres according to the Official plat of the Survey of the said lands Returned to the General land Office by the Surveyor General which said tract has been purchased by the said Aaron Campbell.

Now Know ye that the United States of America in Consideration of the premises, and in Conformity with the several acts of Congress in Such Case made and provided have given and granted and by these presents do Give and grant unto the said Aaron Campbell and to his heirs the said tract above described. To Have and To Hold the Same together with all the rights ~~and~~ privileges, immunities and appurtenances of whatsoever nature thereunto belonging unto the said Aaron Campbell and to his heirs and assigns forever.

In Testimony whereof I John Quincy Adams 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

43

L.S. the twenty fifth day of May in the Year of our Lord One thousand Eight hundred And twenty five And of the Independence of the United State the forty ninth

By the President J. Q. Adams

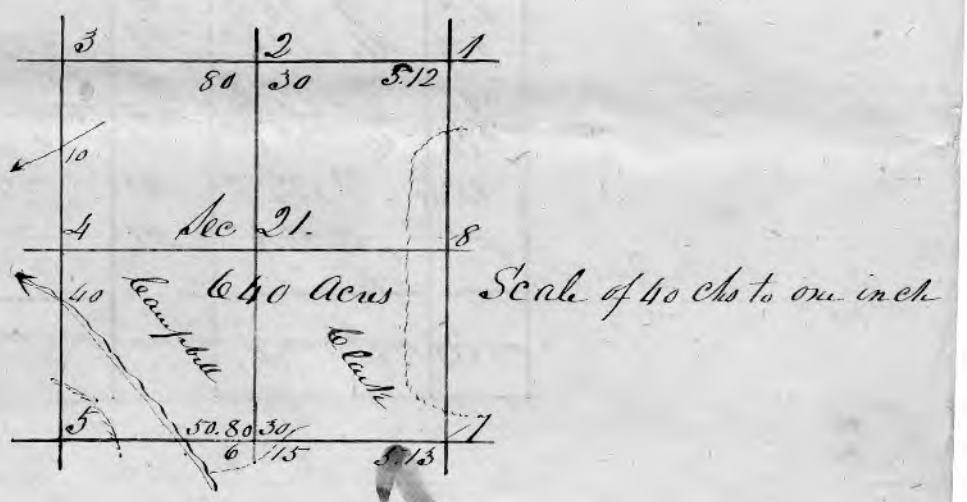
Geo Graham Commissioner of the General Land Office

Recorded Vol 1. Page 99.

The plaintiff then read in evidence the following plat Copy of a plat as Certified by the Surveyor General from the field Notes of Sect 21 Township 49 Range 28

Copy of Plat

T 49 N. R 28 W. 5th Pr Mr



Description of the Corners of the above Section

Posts	Witness trees	inches diam	Bearing trees	links dist
1	Lynn	15	N 46 W	15
	B. Oak	14	S. 55° E	50
2	B. Oak	12	N 35° W	150
	do	11	S 25° E	165
3	B. Oak	10	N 10° W	30
	do	15	S 86° E	50
4	B. Oak	12	S 19° E	150
	do	10	N 54° W	160
5	Post	in	Mound	—
6	Spanish Oak	18	S 61° E.	50
	W. Oak	16	N 42° W	40
7	B Oak	15	S 21° W	50
	do	14	N 64° W	20
8	Post in	Mound	—	—
	—	—	—	—

Surveyors Office

Saint Louis 10th of November 1840

The above plat of Section 21 Township 49 North Range 28 West of the 5th principal Meridian. is Correctly Copied from Township plat No 49 of Volume XI of Missouri plats — And the Description of the Corners of Said Section 21. And of the Quarter Section Corners on the lines thereof is Correctly Copied from the field notes of Said Township forty nine North Range 28 West — All in this Office

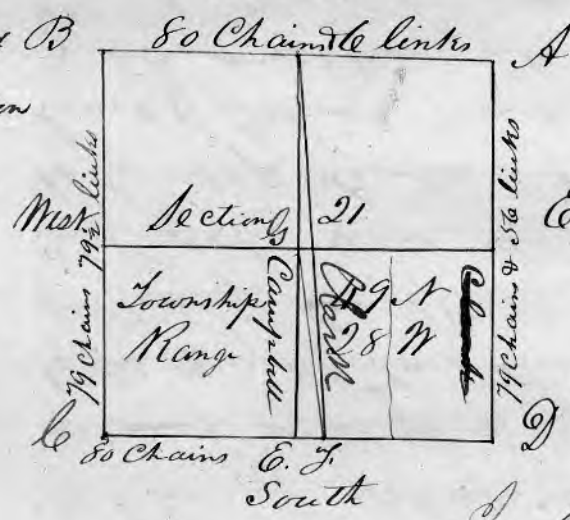
William Milburn
Surveyor of the Public Lands
in the States of Illinoise & Missouri

fees 75 Cents
Adolph Reward
1st Clk

45 the plantiff thereupon as evidence the report of George H. Gordon made under the order of this Court which report is as follows. to wit

Scale 40 Chains to the Inch

Report of G. H. Gordon



Explanatory Notes

A. Begining Corner
B. N. W. Corner
C. S W Corner in the Prairie
East D. S E Corner in an old Improvement
E. Centre of South line
F. the Corner on South line to which Campbell Claims
G. Centre of the Section

In pursuance of an order of the Circuit Court for the County of Ray and State of Missouri made at the June Term of said Court in the Year 1841. I and on the 16th & 17th Inst execute the duties assigned to me by said order as follows. To wit. by beginning at a point (at the North East Corner of Section No 21 Township No 49 North Range No 28 West of the fifth Principal Meridian) from which a Lynn 15 inches in diameter bears N 46° W. 75 links a B. Oak now about 18 inches diameter bears S. 55° E 65 links I took the distance from the Lynn for a Starting point the distance from which agreeing with the original marked line thence West between Sections 16 & 21 T 49 Range 28 and at 40 Chains & 6 links Come to the Quarter Section Corner and found the bearing trees which agrees as to the Kind of timber with the original field Notes. bearings and distances

46 not agreeing with the original field Notes
the Actual distance from the true Standing ~~[illegible]~~
N 35° West 190 links And the One Standing
S 25° E is 242 links to the true line. distance
between where the said Corners and distances
intersected the true line was 12 links I divided
that distance And Measured on Same Course
40 Chains More making in all on this line
80 Chains And 6 links And Come to a point
from which a Burr Oak About 24 Inches diam
eter bears S 86° E 50 links the other bearing
tree not to be found. thence south between
sections 20 & 21 Township 49, north Range 28
West, and at 40 chains, stoped and examined
for quarter Section Corner, found trees agree
ing with the original field notes, with
the usual marks of quarter Section Cor
ners, but neither the Courses nor distances
agreeing with the original field notes
Course continued 40 Chains making in all
80 chains which brought me into the prairie
no ~~sing~~ sign of original post or mound
to be seen at this time thence east between
sections ~~[illegible]~~ 21 & 28. Township 49. north, Range
28 West, and at 40 chains found myself
to be 20½ links south of the old marked
line (which would make the West Side
of said section 21. Township 49 N. Range 28
West 79 chains and 79½ links) I then
moved on to the old marked line and
examined for the quarter Section Corner
but could find no timber either in the
Course or distance Called for, in the
original field notes of the description

47 in said Original field notes, Course Continued 5 Chains 4 3/4 links, at which point I stuck my Jacob Staff from which an Oak down and much decayed (and which I believe to be a Spanish Oak) bears 1.61° E 50 links. a W. Oak (dead and down) bears N. 55½° W. 48 links Course Continued 34 Chains 95 1/4 links, making in all 80 Chains which brought me into an old improvement, no bearing trees to be found here, all the timber having been destroyed in making said improvement, or by some other means unknown to me, thence north between Sections 21 & 22. Township 49. North, Range 28 West my Course exactly striking and following the old marked line, and at 79 Chains and 56 links Come to the beginning Corner, falling about two feet west of said Corner making the aforesaid Section No. 21. Township 49. N. Range 28 West Contain 635 acres and twenty nine hundredths of an acre, and by running a line from the spanish Oak, and W. Oak on the south line of the aforesaid Section 21. Township 49. N. Range 28 West to the quarter Section Corner on the north side of said Section, would give Campbell 94 acres, and forty one hundredths of an acre, and Clark 64 acres and forty one hundredths of an Acre, and by running a line from the Spanish Oak, and W. Oak Claimed by Campbell as the Original

Quarter section Corner, on the South side of the aforesaid section 21. Township 49. North. Range 28 West. to the Centre of the aforesaid section 21. would give Campbell eighty nine acres and forty one hundredths of an acre, and Clark sixty nine acres and forty one hundredths of an acre, all of which can be more fully understood by an examination and inspection of the foregoing plat of Survey and explanatory notes all of which is most is most respectfully reported to Court. Given under my hand this 22nd day of September A.D. 1841

Geo. H. Gordon Surveyor
of Fayette County Mo.

Josiah Sandefale } p.c.c.
Richard Burns

Surveyors fees $6.20
Chain Carriers
2 days each 3.00
9.20

G. H. G. S. F. C.

The plaintiff then had John Helm sworn as a witness who testified that some eighteen or twenty years ago he settled a tract of land adjoining the land in dispute, that about the time of his settlement and since he has often seen the place claimed by the plaintiff as a Corner, that it is in the forks of the Creek and near a steep bank some fifty yards from where the two Creeks join, that when he first saw this point he did

49 not see but one tree that have the usual
quarter sectional Corner Mark of the govern
ment, And that was a Burr Oak that
the mark on that tree was then plain and
was marked as quarter sectional Corner usually
were by the Government Surveyor that he never
saw any other Corner tree at that point
until about the Year 1829 When one Park
=man was making a Survey from the point
And then witness for the first time saw the
Spanish Oak which was then dead and
from which witness assisted in taking the
block shown here in Court and which
has on it the usual quarter section Corner
marks. that Parkman in making his
Survey started from a point between those two
trees and ran a line across the adjoining
quarter section. And missing the corresponding
quarter sectional Corner by some four or
five four pole chains And Parkman then saw
that the Corner he started from was not the
true Corner or else it was in the wrong place
And proceeded to make his Survey from
another begining point. Witness. also stated
that he had been along this South line
on which the Corner in dispute was. and
had never seen or heard of any other quarter
sectional Corner trees on that line except
those claimed by Campbell as the Corner.

Cross Examined

A witness for the plaintiff
testified that in 1824 he run the South
line from the South West quarter of the

50 See including the land in dispute, to the Middle of the Section but did not measure the length of the line. this line he traced until he Came to what he took for the Quarter Section Corner which was in the forks of the Creek and near a Stump branch, but only recollects One tree and thinks that was a Burr Oak. the lines Could then be easily traced by the Marks, and Witness saw no other trees on the line, marked as Quarter Sectional Corner trees and thinks that if any had been so marked he would have observed them, also further stated that he had lately gone on to the South line so run by him. And to the place he then took for the Corner he saw at that point parts of two trees dead and down. One of which is a burr Oak and the other he thinks a Spanish Oak. but the end of the burr Oak was so burnt as not to shows marks for a Corner and if any such had ever been on the Spanish Oak they have been Cut out, that on this line west about 20 poles distant there is a black Oak but no White Oaks, Spanish Oaks, or burr Oaks that Witness saw.

Young Ewing — Also a Witness for plaintiff testified, that about nineteen Years ago in Company with the plaintiff he traced the South line of the Section including the Land in dispute and from the South West Corner east until they Came to a point. they took for the Quarter Section Corner which was

51 he thinks near a Steep Yellow Bank On the Creek that they then saw the Corner trees but the number or Kind of trees does not recollect. that they traced the line with the view to see if the boundary at this Corner would include a Strip of timber which proved to be on Complets line if the Corner was Correct. that he recently went on the Same line to see if he Could recognise the place where the Corner was. they found such a bank as he remembers was near the Corner And also two old trees much rotted dead And down but his recollection did not Serve him Sufficiently well to indentify that point as the Corner.

The plaintiff then read the deposition of Green McCafferty as evidence which is as follows.

That in the Years of our Lord 1817 & 1818 he was Employed by William B Rector then deputy Surveyor under the General Government of the United States to Survey a District of Country on the South Side of the Missouri River in the State of Missouri of which Destruct of Country the County of Lafayette now Composes a part. deponent further States that he Surveyed in the aforesaid Destruct Range 28 West of the fifth principal Meridian Township 49 North of the base line South of the Missouri River. And that a Certain block of wood which Contains the representation of a quarter section Corner. And here shown to

52 Deponent Contains his usual marks on Quarter Sectional Corners in the aforesaid Township and Range. And that he set up a stake at each Corner where he Surveyed said Township and Range According to the instructions of the Surveyor General.

The plaintiff then offered to read the deposition of Hugh McCafferty but the defendant objected to the reading of the following part of said deposition To Wit-

"And that he believes the marks on said block of wood to be his mark Deponent further states that they were not well acquainted with the Kinds of timber on Missouri and that they usually Called Oak timber White Oak. When they made their Corners on Oak timber particularly what is now called burr Oak and Chinkapin Oak" Which objection the Court sustained and refused to allow the plaintiff to read the above extract from said deposition and the plaintiff excepted. the plaintiff then read the remaining part of said deposition not objected to which is as follows To Wit- That he Carried One end of the Chain when Green McCafferty Surveyed a Certain District of Country on the South side of the Missouri River in Range 28 West of the fifth Principal Meridian and Township 49 North of the base line And that he marked the Corners

part rejected

5-3 And Quarter Sectional Corners And that the block of wood here shown to deponent Contains his usual mark on Quarter Sectional Corners

Joshua Campbell a witness for the Plaintiff was then sworn & testified that he was present at the Clerks office in Andrew County when the depositions of Green ~~McCafferty~~ and Hugh McCafferty were taken and had with him the same block of Wood here shown in Court which was then and there shown to the said McCafferty and is the same block of which they speak on their deposition. Witness further stated that he has been a Chain Carrier for the Government Surveyor And the mark on this block is the usual Quarter Sectional Corner mark that he has often seen the tree from which this block was taken And which was one of the trees Claimed by Campbell the plaintiff as at the Corner between plaintiff and defendant that he is well acquainted with the lines And Corners in Controversy And has been since 1822 When he first saw the Corner Claimed by plaintiff that when he first saw this Corner there were two trees standing purporting to be bearing or Corner trees the one a Spanish Oak And the other a burr oak of the White Oak Species by some called a White Oak by some Over Cup but generally known a burr Oak. that on these trees When he first saw them the marks was plain

And they then had the usual quarter sectional Corner marks and between those trees there then stood a stake such as was usually set up by the Government Surveyor for a Corner that this was then taken and understood to be the Corner. that before the land was entered. And since he traced the South line on which this Corner is situate and never saw any other trees on that line marked as Corner trees. that on this line west from this Corner something like 20 poles there is a Black Oak which was blazed as a line tree and near this tree is Claimed to be the Middle of the section And when Parkman fixed a Corner for Defendant Witness states that no White, bur. or Spanish Oaks are in the vicinity of this point.

Henry Campbell Witness for the plaintiff also testified that he has been well acquainted with the land in dispute which lies in Lafayette County, and adjoining the Witnesses land on which Witness has lived for about fifteen years that he has been along the South line of the section often, and often saw the tree claimed by plaintiff as a Corner while they were stacking and since they were down, that they had on them the usual quarter sectional Corner marks as made by the government Surveyor and Witness never saw or heard of any Corner on this line marked as a quarter

55 section Corner, Witness further stated that he was present, he thinks in 1829, when Parkman Commenced a survey from this corner they then saw that the two trees claimed ~~now~~ now by plaintiff as a ~~[illegible]~~ Corner, the one a spanish Oak, and the other Witness would call a White oak, but is called by others a barr oak, by others an over Cup oak, that the usual Quarter Section marks were plain, on both those trees, that Parkman after taking the bearing sought to find a point for a Corner, and between those trees, after tracking about found what seemed to be an old stake which had rotted or broken off near the Ground, and on further Arch found the Stubb of the stake still in the Ground which was dug out of the Ground, and at this point started as a corner, that it was in the Winter time and there was snow on the Ground but does not recollect whether ground was frozen, that he was present when Gordon made the Survey reported to Court, and the Corner reported by Gordon as plaintiff's Corner is within a few feet of where the stake was found by Parkman. Witness also stated that, that before the Commencement of this Suit he saw defendant Cutting and getting Timber off the Ground in dispute and defendant then told plaintiff that he had taken timber and intended to get more. That he had be advised to do so by his lawyer so that he might

be sued to try the title, and Witness heard Deft. Claim title beyond the ~~title~~ Corner Claimed by plaintiff and up to Parkmans line, which is about where Gordon run the line for the Centre of the Section, and that apart of defendants fence was over that line, but only on the ground in dispute, he further stated that that marks on the White or burr oak have been burned out ~~out~~, and blacked with something like fire Coals, or was burt. the marks on the Spanish Oak have been blacked out, and are the same here shown in Court.

William Ish also a witness for the plaintiff testified that in 1825. 6 or 7 he entered the eighty acres of land now claimed by Clark and which Witness sold to Clark, that before entering said land, John Helm took Witness to show him the lines and Corners, and Witness was shown the Corner now claimed by Campbell and the trees then had the usual quarter Sectional Corner marks, and Witness never saw or heard of any other quarter Section Corner on the South ~~side~~ line of the Section, and that before he sold to Clark he informed him of the dispute about the Corner, Ish also stated that before this Suit he heard Clark claim title to past the Corner Claimed by Campbell and up to the line run by Parkman

He stated that Parkman in 1829 established or fixed a Corner for him in the middle of the line. and he always claimed up to that point before he sold to Clark.
James Campbell a witness also for the plaintiff testified that he has often seen the Corner claimed by plaintiff that the two trees a spanish and bur oak were marked as quarter section corners usually are, and witness never saw or heard of any other quarter section Corner on that line, says he was present when the block here shown in Court was cut out of the Spanish oak, that this tree was then lying down and the mark on the under side, and the mark on the other was then burned off, and so decayed as not to be seen, he also stated that defendant at the time of the commencement of this suit, and before, lived on the half quarter, of which the ground in dispute is claimed by him as part that it joins the land of the plaintiff on which the plaintiff for many years before the commencement of this suit, and ever since has resided that plaintiffs house is not on the light joining defendants land but his land all joins and is one tract and most of the plaintiffs farm is on the right of which he claimed the ground in dispute to be a part.

5-8

Moses T. Rainwater witness for plaintiff testified that he has been that he has been County Surveyor of Ray County for about three years does not remember an instance in which the quarter sectional corner was exactly equidistant from section corners. And in some instances some distance from the centre and in one instance was distant one out or five chains.

Now the plaintiff closed his evidence, the defendants then reading evidence the following patent to William Ish. Which was objected to but admitted by the court & plaintiff excepted; which patent is in the words and figures following towit.

Certificate No 695. The United States of America To all to whom these presents shall come Greeting. Whereas; William Ish of Lafayette County has deposited in the General Land Office of the United States a certificate of the Register of the land office at Lexington Missouri whereby it appears that full payment has been made by the said William Ish according to the provisions of the act of Congress of the 24th of April 1820 entitled "an act making further provision for the sale of the public lands" for the lot or west half of the south east quarter of Section twenty one of Township forty nine, in Range twenty eight in the district of lands offered for sale at Lexington Missouri containing eighty acres. according to the official plat

of the survey, of the said lands returned
59 to the General Land Office by the Surveyor
General which said tract has been
purchased by the said William Ish —
Now Know ye that the United States
of America in Consideration of the
premises and in Conformity with
the several acts of Congress in such
Case made and provided have given
and granted and by these presents
do give and grant unto the said William
Ish and to his heirs the said tract
above described. To Have and
To Hold the same together with all
the Rights privileges, immunities, and
appurtenances of Whatsoever nature
thereunto belonging unto the said William
Ish, and to his heirs and assigns
forever. In Testimony Whereof I John
Quincy Adams 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 thirteenth day of May
in the year of our Lord
One thousand eight hundred
and twenty eight, and of the
Independence of the United States
the fifty second.

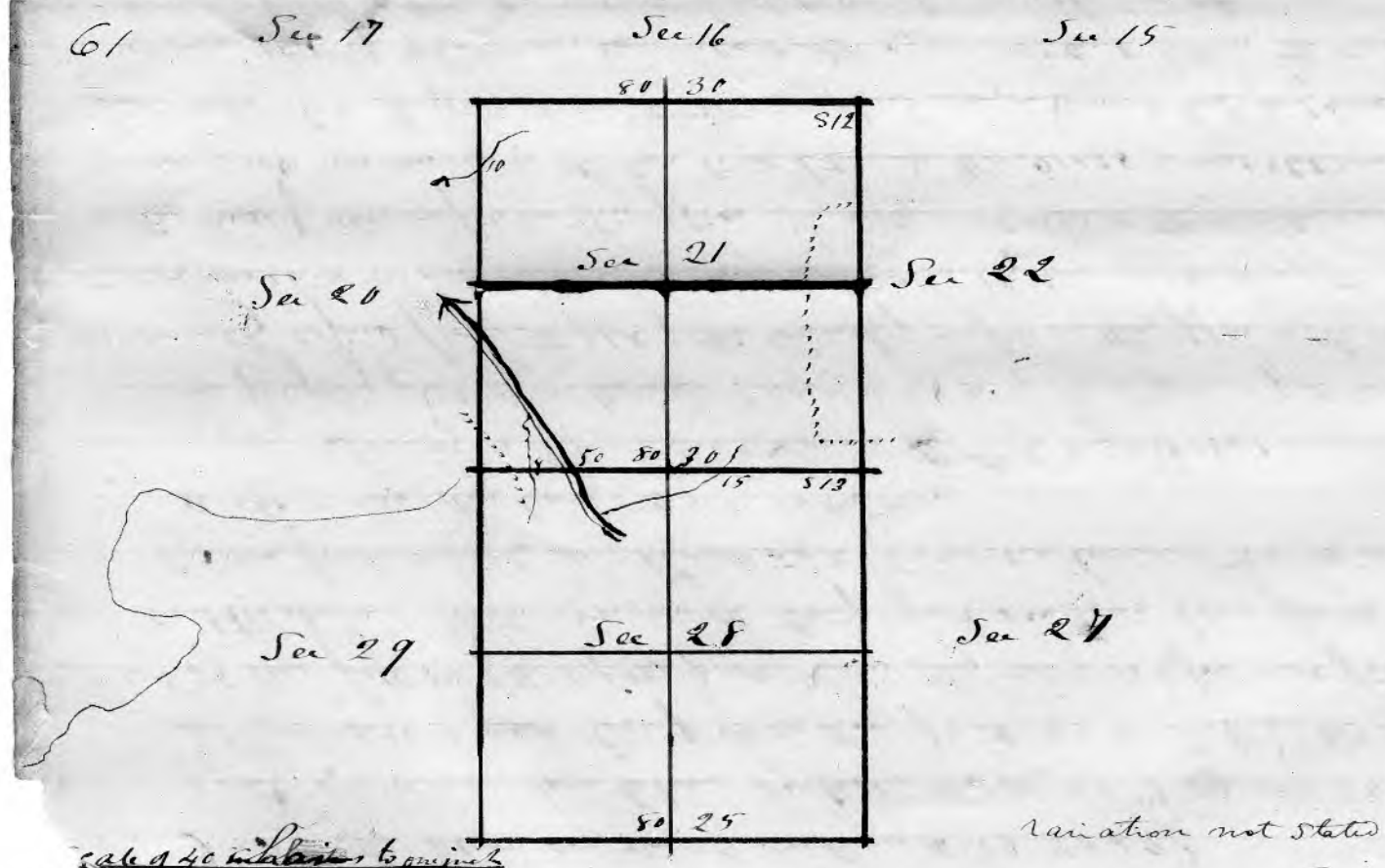
J. Q. Adams

By the president. Geo. Graham Com-
missioner of the General Land Office

Recorded Vol 2. Page 241

60 The defendant then read a copy of the field notes of the Section including the land in dispute as follows

T. 49 N. R. 28. W. 5th P.M.



Variation not stated

Scale of 40 chains to an inch

T. 49 N. R. 28

Transcript of the field notes of the corner and line around the above Section 21

Line between Sections 21 & 22

From the corner to sections 21. 22. 27. & 28, a post" from which a black oak 15 ins Dia bears S. 21 W. 50 lks A do 14 ins. dia. bears N 64 E. 20 lks." North between sections no 21: 22: T. 49 N R 28 W

10.00 entered prairie:

40.00 Raised a mound in it sett a post for 1/4 section corner

60.00 Entered timber

68.00 A black oak 10 ins dia

80.00 Sett a post for corner to Sections no 15: 16: 21: 22: T. 49 N. R 28 W from which a Lyn 15 ins dia bears N 26 W 15 lks a Oak 14 ins dia bears S 55 E 50 lks - this line mostly over broken 2 rate land Timber W & Black oak, hickory &c.

Line between Sections 21 & 22.

From the corner to Section 20. 21. 28 & 29 a post set in a mound East on a random line between Sects 21 & 28. T. 49 N R 28 W

5.00 Left the prairie

10.00 A. brook 8 lks W runs N. W.

24 50 A brook 50 lks wide runs N. W.

40.00 Sett a trap 1/4 ~~post~~ section post

62 23 50 A. brook 15 lks W R S W
80 30 Intersected the N & S line fell 13 lks S of the poste
this mile mostly 2 rate land timber on the creek, walnut,
hackberry, Lynn &c
Neste moved the temp poste on true line for 1/4 section corner
from which a Spanish oak 18 ins dia bears S 61 E 5 lks,
a W. oak 16 ins dia bears N 42 W 40 lks

Line between Sections 20 & 21

From the corner to Section 20. 21. 28 & 29 before mentioned
North between Sections 20 & 21 T 49 N. R 28 W.
17 00 out of prairie
32 50 A. creek 40 lks wide runs W.
40 00 Sett a poste for 1/4 Section corner from which a
black oak 12 ins dia bears S 19 E 150 lks A do 10 ins dia
bears N 54 W 160 lks. 72 00 A. brook ~~runs~~ 10 lks wide
runs S W. 75 25 A W oak 12 ins dia.
80 00 Sett a post for corner to Sections 16. 17. 20. 21 T 49 N R.
28 W from which a B oak 10 ins dia bears N 10 W 30 lks a
W do 15 dia bears S 86 E 50 lks - land mostly broken &
not suitably for cultivation.

Line between Sections 16 & 21

From the above corner to Sections 16. 17. 20 & 21
East on a random between Sections no. 16. 21 T 49 N R 28 W
40. 00 sett a ~~post~~ temp 1/4 section poste 80 30 Intersected the
N & S line fell 12 lks S of the poste. Land this mile as before not fit for
cultivation. Neste moved the temp post on true line for 1/4 section
corner from which a black oak 12 ins dia bears N 35 W 150 lks
a do 11 ins dia bears S 25 E 165 lks.

Surveyors Office Saint Louis 21st of August 1841

The forgoing plat of Section 21 T. 49 N R 28 W of the 5th principal meridian
is correctly copied from the plat of that township on file in this office; & the notes of
the corners & lines around the said Section 21 are correctly transcribed from the field
notes thereof, also on file in this office. The distance at which the quarter section
corner post was moved on the true line between Sections 21 & 28 is not stated on said
field notes; but the general instructions of the Surveyor General to Deputy Surveyors,
require that it should be then established equidistant between the two section corners; which brings it to 40.15 chains from either of them.

Silas Reed Surveyor of the public lands in the States
of Illinois & Missouri.

63 John Helm was then called again by defendant who testified that he was present at the survey made by Parkman commencing at the corner claimed by ~~Parkman~~ Campbell that he neither saw or heard of any stake found by Parkman, and thinks that if such a stake had been found he would have seen it, that his improvement in 1809 when he first came to the country was near this corner which he said ~~which~~ frequently, but never saw any stake, that the fire swept over that bottom, and over the corner every year when the country was first settled, and thinks if a stake had been there it would have been burnt, says that when he first came to the country which was about three years before Joshua Campbell came, he did not see a single stake standing in the grove, and never saw any any where except one or two in Pennicks prairie, that the day of Parkmans survey was a verry cold day, and the snow was three or four inches deep, and he thinks the ground was frozen

James Hughes witness for defendant testified that he was present at the survey made by Parkman, and spoken of by John Helm, that he saw no stake nor did he hear of any found by Parkman at the corner claimed by Campbell that if such a stake had been found

64 Witness would have seen or heard of it. that he then and at other times saw the Spanish Oak and burr Oak claimed by Campbell as Corner trees, and they had the usual quarter Section Corner marks, that he never saw or heard of any other quarter Section Corner trees on that line that the day Parkman made his Survey was a very Cold day, snow on the Ground and Ground frozen.

Ephraim King Witness for defendant testified, that he was present at Survey made by Parkman, and spoken of by other Witnesses, and that he did not see or hear of any stakes, that it was a very Cold day, and the snow three or four inches deep, and the Ground frozen, and they had to cut the Ground with an axe before they could drive a stake at one of the Corners.

This was all the evidence, given on either side, and thereupon the evidence being Concluded the plaintiff by his Counsel prayed of the Court the following instructions to the Jury. to wit

Aaron Campbell
vs
Hiram Clark } The plaintiff pray the Court to instruct the Jury

1st That the boundary lines actually run and marked, in the Survey by the Government Surveyor, are to be taken and Considered as the true and

proper boundary lines of the Section
65 or any less subdivisions for which
they were intended - although such bound-
ary might give to plaintiff more than
a half quarter Section, and the defen-
dant less, and although they may find
that the Quarter Section Corner was not
placed equidistant between the Section
Corners.

2nd That if they find from the evidence
that the lines and Corners made by the
United States Surveyor on the original
survey are sufficiently identified
such lines and Corners Constitute
the boundaries between the plaintiff
and defendant although they may
vary from the Corners and distances
required to make up for both plaintiff
and defendant a full half quarter
section of land.

3rd That if they believe from the evidence
that the Corner on the south line marked
E on the plate, as returned by the Sur-
veyor George H. Gordon is the true Cor-
ner as made and established by the
Government Surveyor, as the quarter
Sectional Corner, for section 21, Township
49, & Range 28, then a right line from
said Corner F, to the opposite and
Corresponding quarter Sectional Corner
on the north line of said Section is the
true, and Correct ~~Corner~~ boundary
between the plaintiff and defendant

Ewing & Wood for Pltff

all of which the Court refused to give and the plaintiff excepted the Court then gave the ~~Court~~ Jury the following instructions (to wit)

Campbell
vs
Clark

(Instructions by Court)

1. If the Jury believe from the evidence that defendant before the commencement of this suit entered on the land of the plaintiff in controversy and done any act such as cutting timber on said land for any purpose claiming right and title to the lands & the consequent right to do so it is an ouster in law & they should find for the plaintiff

2. The Jury are to take the field notes in evidence showing the length of the south boundary line of Section 21 as being the true length of the line. and further they are to take the field notes in evidence as their guide in ascertaining the point ~~equ~~ distant between the section corners to ascertain the half mile corner & if they believe the field notes as ~~not~~ direct and point them to a point midway of said section line as the place designated by the surveyor of the United States as the half mile corner there they should place it and the presumption of law is that the surveyor placed said corner where the

67 law required him to put it. And if the bearing trees of said half mile corner cannot be found as designated in the field notes they should designate any trees purporting to be bearing trees of said half mile corner. Which may be found on said South boundary of said section which are placed 20 poles east of the middle or centre of said section

3rd And if from the evidence the Jury find the half mile corner to be in the middle of the South boundary of said section then they will find for defendant

4. That the boundary lines actually run and marked in the survey by the Government Surveyor are to be taken and considered as the true and proper boundary lines of the sections or any of subdivisions for which they were intended

5th That in this cause it devolves on the plaintiff to show his title to the strip of land in controversy and that it is not necessary for the defendant to show title in himself but if he has shown title in any third person it is sufficient for him. to the giving of all of which said several instructions the court refused the first, the plaintiff by his counsel excepted, and thereupon the jury having found their verdict, the plaintiff

68 filed his Motion in Writing to set aside the Verdict and for a new trial, and also in arrest of Judgment (which said Motions are here in before insisted*) which said Motions were overruled by the Court, and to which opinions of the Court in overruling said Motion and each of them to set aside the Verdict, and for a new trial, and to arrest the Judgment, the plaintiff excepted, and prays that this his bill of exceptions may be signed, sealed, and allowed, and made a part of the record which is done accordingly.

Austin A King (Seal)

And afterwards to wit, at the same Term of said Court, and on the 4th day thereof, and after the finding of the verdict in this Cause, the said plaintiff Aaron Campbell prayed an appeal to the Supreme Court, and entered into the following Recognizance to wit.

Aaron Campbell
vs
Hiram Clark } Ejectment

Now at this day came the said plaintiff and files here in Court his Affidavit for an appeal to the Supreme Court, which said appeal is granted him, thereupon the said Aaron Campbell as principal, and James Campbell, and Joseph Lapsley as securities entered into the following Recognizance to wit.

*Insisted immediately after the judgment rendered in the case

69

The said Aaron Campbell the said James Campbell and the said Joseph Lapsly acknowledged themselves to owe and be indebted to the said Hiram Clark in the sum of five hundred dollars to be levied upon their respective goods chattels lands tenements and effects, to be void upon this Condition. That the said Aaron Campbell prosecute his appeal with due diligence to a decission in the Supreme Court and that if the Judgment appealed from is affirmed or his appeal dismissed he will pay whatever Costs have been recovered against him by the Judgment of the Circuit Court, and that he will also pay the Costs that may be adjudged against him in the Supreme Court.

Which said Affidavit is in the words and figures following to wit:

Aaron Campbell
vs } Ejectment
Hiram Clark } The said Aaron Campbell makes Oath and saith, that he does not make his appeal to the Supreme Court for the purpose of vexation or delay, but because this affiant believes that he is aggrieved by the Judgement of and decission of the Court

Aaron Campbell

Subscribed and Sworn to this 3rd day of March 1842.

N.C. Williams Clerk

Taxation of Costs

Sam Campbell vs Hiram Clark } To N.C. Williams Circuit Clerk &c

Dec	Filing Transcript from Lafay Co containing 15 Sheets	.75
1840	Docketing Suit	25
	Entering appearance	20
	Order to Continue	25
April 1841	Entering appearance	20
	Order to Surveyor of L. County	25
	Copying Same	25
	Certificate & Seal	50
	Order to Continue	25
June 1841	Entering appearance	20
	Filing 5 papers	31
	Issuing Subpoena	50
	Filing Motion to Set aside Report	25
	Order Sustaining Same	25
	Order for Resurvey	25
	Copying & Certifying Same	75
	Order to Continue	25
Sept 41	Entering appearance	20
	Issuing 2 Subpoenas	1.00
	Filing 12 papers	75
	Filing Surveyors Report & Order	31
	Swearing & Empanneling Jury	50
	Administering Oaths	.63
	Order permitting them to depart	25
	Order of Report & Jury not going	25

	Order to discharge Jury	.25
	Order to Continue	25
Feb. 1842	Entering appearance	20
	Filing 13 papers	81
	Issuing 1 Subpoena	50
	Motion to Suppress depositions	25
	Order overruling Same	25
	Swearing and Impanelling Jury	50
	administering 8 oaths	50
	Order to dispense for the night	25
	Recording Verdict of the Jury	
	Judgement against plaintiff	1.00
	Order for Execution	.25
	Filing Motion to Set aside Verdict	.25
	do do for new trial & arrest of Judgment	.50
	Order overruling 3 Motions	75
	Affidavit for an appeal Veath	31
	Order of granting Same	25
	Taking 3 Recognizances 25 ct each	75
	Filing Bill of Exceptions 4 Sheets	25
		17.85

To B. G. Brown Shff Dr.

Sept 1841	Calling 8 Witness	.50
	do Jury	25
Feb 1842	Calling 8 Witness	.50
	do Jury	25
		1.50

Chas. McDowell Sheriff of Lafayette

Sept. 1841	Summoning 4 witness	2.00

To A. L. Harrish Const Lafayette

Feb. 1842	Summoning 10 witness	2.50
June 41	do 5 do	1.25
Feb 42	do 2 do	.50
		4.25

	Total Amt brot over ———		$25.60
June 1841	To Thomas Boals		
	Summoning Witnesses	1.50	
Sept. 41	Summoning 7 Witnesses	1.75	
			$3.25
April 1841	To R. G. Bryan Dept Const C.C.		
	To Summoning Witnesses		1.50
June 41	Surveyors fees G. H. Gordon		7.97
Sept. 41	Same Same		6.20
			$14.17
	Chain Carriers		3.00
	Claims of Witnesses		
April 1841	Jesse Rankin 1 day 46 miles	$3.30	
	Same at June Term 2.. 46..	4.30	7.60
	Joseph H. Green 1 day 46 miles	3.30	
	Same at June Term 2.. 46..	4.30	7.60
	Same at Sept 1841.. 3.. 44..		5.20
			12.80
	A. L. Hannah 1 day 50 miles	3.50	
	Same at June Term 2.. 46..	4.30	7.80
April 1841	John Helm 1 day 50 miles	3.50	
	Same at June Term 2 days 50..	2.50	
	Same at Sept Term 1841. 3.. 50..	6.50	
	Same at February 1842 2.. 50	4.50	17.00
"	James Campbell 1 day 46 miles	3.30	
	Same at at June Term 2.46..	4.00	
	Same at Sept Term 3. 46	5.30	
	Same at February 1842 2.44	4.20	16.80
	Henry Campbell 1 day 46 m.	3.30	
	Same at June Term 2.50	4.50	
	Same at Sept Term 41 3 46	5.30	
	Same at February 42 2 46	4.20	17.30
June 41	Cleveland A. Gordon 2 32	3.60	3.60

	Hardy Holman 2 — 50 —	$4.50	
	Same at Sept Term 3.50	5.50	10.00
	William White 2 — 48 —	4.40	
	Same at Sept 3 — 48 —	5.40 —	9.80
	Samuel McFarland 2 — 46 —	4.30	
	Same at Sept 3 — 44 —	5.20	9.50
Sept 41	William Helm 3 — 56 —	5.80	5.80
	George H Gordon 3 — 32 —	4.60	4.60
	Young Ewing 1 — 20 —	2.00	2.00
	William Ish 2 — 32 —		3.60
	James Asbury 2 — 44 —	4.20	4.20
	Ephraim King 2 — 50 —	4.50	4.50
	James H. Hughes	4.50	4.50

Fee for this Transcript 20000 words — $20.00

State of Missouri } ss
County of Ray } I Oliby C. Williams Clerk of the Circuit Court, within and for the County and State aforesaid, do Certify that the foregoing 69 pages Contain a full true, and perfect Transcript of the Record and proceedings in the above entitled Cause wherein Aaron Campbell is plaintiff and Hiram Clark is defendant, as fully as the same appears of Record in my Office.

In Testimony whereof I as Clerk as aforesaid have hereunto set my hand and affixed my private seal having no seal of Office provided. This 2 day of July 1843.

W. C. Williams Clerk

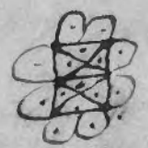
(No 16) Amended Record. 60

1255 ~~18~~ (16) ~~5~~ (16)

Aaron Campbell
vs Transcript 21
Hiram Clark

1255

JAN TERM 1844



Filed Aug. 15. 1843.
H. L. Boon clk

Ray

Campbell appellant vs
Clark appellee
Appeal from a judgement
at law of the Rock circuit court

In the Supreme court
of January Term 1844

And now at this day comes
the said Campbell by his atter
ney and says that as well
in the record & proceedings
aforesaid as in the rendition
of the judgement aforesaid
there is Error in this wise

1 By the record & proceedings afore
said it appears that the judge
ment of the circuit court was
given for the appellee whereas
by the law of the land it ought
to have been given for the ap
pellant - Therefore in that there
is manifest Error -

2 There is also Error in this to
wit - ~~In~~ By the record & pro
ceedings aforesaid it appears
that the circuit court rejected
~~certain~~ certain evidence offered upon the
trial by the Appellant - whereas
by the law of the land the
evidence so offered ought to
have been received - Therefore
in that there is Error -

3 There is also Error in this
By the record & proceedings
aforesaid it appears that

the circuit court refused certain instructions to the jury as asked by the appellant, whereas by the law of the land the instructions so asked ought to have been given - therefore in that there is manifest Error.

4 There is also Error in this Court By the record & proceedings aforesaid it appears that the circuit court gave certain instructions to the jury in relation to the law of the case - whereas by the law of the land such instructions ought not to have been given - therefore in that there is manifest Error

5 There is also Error in this Court By the record & proceedings aforesaid it appears that the circuit court refused to arrest the judgement - whereas by the law of the land the judgement ought to have been arrested - therefore in that there is manifest Error

6 There is also Error in this Court By the record & proceedings aforesaid it appears that the circuit court refused to set aside the verdict & grant a new trial - whereas by the law of the land the court ought to have granted a new trial

therefore in that there is manifest error.

Wherefore for the errors ~~afor~~ aforesaid and other errors in the record manifestly appearing the said Campbell prays that the judgement aforesaid in form aforesaid given may be set aside & altogether for nothing held & that he may be restored to all things that he has lost by occasion of the premises &c

Leonard
for Appellant

The defendant joins in error & saith there are no such errors in the judgment aforesaid or the record & proceedings aforesaid as plaintiff in error hath alledged & this he prays may be enquired of by the Court here

French & Ryland

Filed Jany 15. 1844
H. L. Boon clk

Joinder filed Jany 31.
1844
H L Boon clk

Supreme court

Campbell
appellant
vs
Clark
appellee

The clerk will
assign this as
signment of
Errors —
Leonard
Attorney

Aaron Campbell
vs.
Hiram Clarke

} Appeal from the Ray Cir cuit Court.

This was an action of ejectment brought by Campbell against Clarke — in which Clarke had a verdict and judgment.

It appears that Campbell was the owner of the East half of the South West quarter of section twenty one, Township 49 range 28; and that Clarke was the owner of the West half of the S. East quarter of the same section. The division of the section by a line running from one of the corners established by the public surveyor to the opposite corner makes the half quarter section of Campbell contain 94 41/100 acres, and that of Clarke's 64 41/100 acres. The question is as to the manner of subdividing the section. Whether the corners marked on the boundaries of sections by the public surveyor are to be regarded in subdividing ~~the~~ a section among the several owners, or whether the same is to be divided by lines equidistant from the several corners of the sections? ~~In making a survey of the~~

In making a survey of the 21st section, the surveyor reports that in running the West line at 40 chains he stopped and examined for 4th sec. corners and found trees agreeing with the original field notes with the usual marks of 4th sec. corners, but neither the courses ~~and~~ nor distances agreeing with the original field notes. Course continued 40chs. making in all 80chs, which brought him to a prairie. No sign of ~~an~~ the original post or mound was to be seen. Thence East and at 40 chs found Rinsey to be 20½ links south of the old marked line. He then moved on to

the old marked line and searched for the qr. sec. corner, but could find no timber either in the course or distance of the description called for in the field notes. Course continued 5 chs. 4 3/4 Links where ~~an bli~~ ~~ned to be~~ a Spanish oak lying down & much decayed was found bearing S. 61° E. fifty links, also a white oak lying down dead bearing N. 55½ W. forty eight links. Course continued 34 chs. 94¼ links making in all 80 chs which brought him into an old improvement, no bearing trees to be found all the timber having been destroyed in making the improvement or by other means. Thence North his course exactly striking and following the old marked line and at 79. chs. 56 Links he came to the beginning corner falling about two feet west of it.

The original field notes of the survey of the South line of the said section about which this controversy arises, called for post in mound at the Western corner. The Witness trees of the middle corner, were Spanish oak 18 inches in diameter bearing S. 61° E. 50 links distant, and a white oak 16 inches in diameter bearing N. 42° W. distant 40 links.

Many witnesses were introduced by the plaintiff, who beyond all controversy proved the fact that the corner claimed by Campbell, was the corner established by the original surveyor of the lands under the authority of the U. States. A block from one of the Witness trees to the Middle corner of the South line of the section, which appeared to be of Burr oak was exhibited to Hugh McCafferty a chain carrier and marker when the section was first surveyed; who testified that he believed the marks in said block of wood to be his, that the markers were not well acquainted with the

kind of timber on the Missouri and that they usually called oak timber white oak when they made their corners on oak timber particularly what is now called Burr oak and chinquapin oak. This evidence was objected to and excluded by the Court which exception was taken.

The Court when requested refused to instruct the jury at the instance of the plaintiff that the qr. sec. corners established by the surveyors under the U. States were to be regarded as the proper corners of qr. sec lines; and that however unequal a division of a section might be made by running dividing lines from those corners yet they must be adhered to: And instructed the jury at the instance of the defendant, that they were to take the field notes in evidence showing the length of the South boundary line of sec. 21. as being the true length of the line, and further they are to take the field notes in evidence as their guide in ascertaining the point equidistant between the section corners, to ascertain the half mile corner; and if they believed the field notes ~~to~~ direct and point them to a point midway of said section line as the place designated by the ~~said~~ surveyor of the U. States as the half mile corner, then they should place it; and the presumption of law is that the surveyor placed said corner where the law required him to put it, and if the bearing trees of said half mile corner ~~cannot be found~~ as designated in the field notes, they should disregard any trees purporting to be bearing trees of said corner which may be found on the South line of said section, which are placed 20 poles East of the middle or centre of said line.

This case was once before in this Court, 6 Mis. Rep. and it appears the same question was then involved, which is now submitted for our consideration. We have no hesitation in pronouncing our conviction of the correctness of the opinion heretofore given in this cause, and are satisfied that although the law as then declared may in a few instances give some cause of complaint, yet upon the whole its expediency and propriety cannot be questioned.

We have been referred to the case of Walters vs. Commons 2 Porter's Ala. Rep. as maintaining the doctrine, that in case of sections, the corners and boundaries are established by law and the purchaser of an entire section must take by those corners and boundaries without regard to the quantity contained within it whether it be more or less than that required by law; but that in reference to the subdivisions of sections, when a controversy arises between different claimants, the exact quantity of the section is to be ascertained, and it is to be divided by lines running from corners equidistant from the section corners, so that the holders of like subdivisions may each obtain the same quantity of land. We think an examination of the several acts of Congress relative to the surveys of the public lands will expose the error of this opinion. By the ordinance of the 20th May 1785 the surveyors of the public domain ~~were required~~ were required to lay off the same into Townships of 6 miles square by lines running due North and South, and others crossing them at right angles as near as may be. The plats of the Townships are directed to be marked by subdivisions into lots one mile square or

640 acres, in the same direction as the exter
nal lines; and the surveyors in running the external
lines of the Township were ordered, at the interval
of every mile to mark corners for the lots which were
adjacent; always designating the same in a diffe
rent manner from those of the townships.

The act of the 18th May 1796
required that townships should be subdivided
into sections containing as near as may be 640
acres each, by running through the same each way
parallel lines at the end of every two miles, and
by marking a corner on each of the said lines at
the end of every mile. The act of the 10th May
1800 prescribes the mode of subdividing sections
into half sections of 320 acres each as nearly as
may be, by running parallel lines through the same
from East to west and from ~~North to South~~
South to North at the distance of one mile from
each other, and marking corners at the distance of
each half mile on the lines running from East
to West, and at the distance of each mile on
those running from South to North.

The act of the 26th March 1804 authorized the
sale of the public lands in quarter sections and
after prescribing a mode of subdividing sections in
half and quarter sections, directed that in every in-
stance in which a subdivision ~~of the lands~~ of the
lands of the United States, as surveyed in conformity
to law shall be necessary to ascertain the bounda
ries or true contents of the tract purchased, the same
shall be done at the expense of the purchaser.

The act of the 11th Feby. 1805
prescribes general regulations for dividing Townships
into sections & subdividing such sections into half and
quarter sections. The following is a summary of these

regulations. The lands are to be laid off in Townships of precisely six miles square by lines running due North and South and East and West. On each of those lines at the distance of one mile apart, corners are to be established for sectional lines. Parallel lines are to be run through the Township each way from each sectional corner to the corresponding sectional corner on the opposite side of the Township; on each of which lines sectional corners are to be established at the distance of one mile apart which process divides the Township into thirty six sections. In running the exterior Township lines and also the interior sectional lines, intermediate half mile posts or corners equidistant between the corners of the sections are to be established as the boundaries of quarter sections. This act then prescribes that all the corners marked in the surveys returned by the surveyor general shall be established as the proper corners of sections & subdivisions of sections which they were intended to designate; and the corners of half and quarter sections not marked on the said surveys shall be placed as nearly as possible equidistant from those two corners which stand on the same line. The boundary lines actually run and marked in the surveys shall be established as the proper boundary lines of the sections or subdivisions of sections for which they were intended; and the boundary lines which shall not have been actually run and marked as aforesaid shall be ascertained by running straight lines from the established corners to the opposite corresponding corners. Each section or subdivision of section, the contents whereof shall have been or by virtue of this act shall be returned by the surveyor general, shall be held and considered as containing the exact quan-

tity expressed in such return or returns; and the half sections and quarter sections, the contents whereof shall not thus have been returned, shall be held and considered as containing the one half or the one fourth part respectively of the returned contents of the section of which they make part.

From this review of the laws of the U States relating to the survey of the public domain, it will be seen, that at one time, no subdivision of sections was made, it being divided into townships and sections only; consequently no half nor quarter section corners were established on the public surveys. The act of 1805 authorized the sale of half sections and prescribed a mode of ascertaining the contents thereof; and the act of 26th March 1804 authorized the sale of the public lands in qr. sections, which were required to be surveyed and the contents thereof ascertained at the expense of the purchaser: then came the act of 1805 above cited which prescribed a mode of ascertaining the corners of sections and quarter sections at the expense of the U. States. No lands were surveyed in this state until long after the act of 1805. The act of March 3rd 1811 first provided for the survey and sale of land West of the Mississippi. At that time the quarter section corners were required to be marked on the surveys; and these corners were by the act of 1805 to be taken as the true corners; and the provision of that act, which required the corners of half and qr. sections not marked on the surveys to be placed equidistant from the two corners of the sections were intended to be applied to surveys made prior to the time, when the sale of half sections & qr. sections was autho-

ized. Mr. Gallatin, then at the head of the Treasury Department and to whom was intrusted the superintendence of the survey and disposal of the public lands, shortly after the passage of the act of 1805 in a letter of instructions to the surveyor general, thus speaks of it: You will perceive from the enclosed act, that the principal object which Congress have in view, is, that the corners and boundaries of the sections and subdivisions of sections should be definitely fixed, and that the ascertainment of the precise contents of each is not considered as equally important. Indeed it is not as material, either for the U. States or for individuals, that purchasers should actually hold a few acres more or less than their surveys may call for, as that they should know with precision, and so as to avoid any litigation what are the certain boundaries of their tract.

Now that sections may be subdivided amongst as many holders and as valuable improvements are frequently made near lines subdividing sections, it would produce great confusion and litigation if the established corners were to be abandoned in subdividing sections and lines were to be run equidistant from the corners of sections in order to subdivide it into quarter sections. The act of 1805 does not direct, that the lines shall be so run, except when the corners and marks are not returned on the survey; when they are so returned, they are as much respected as the corners of townships or sections, however distant from the centre of the line.

If this view of the law be correct, the Court erred in refusing the

plaintiffs instructions and in giving the instruction set out above. That instruction so far as the facts of this case were concerned, was a mere abstraction, and so much as directed the jury to lay and a corner 20 poles east of the centre of the line clearly erroneous. Nor was the error cured by the subsequent instruction that the boundary lines actually run and marked in the survey by the government surveyor are to be taken and considered as the true and proper boundary lines of the sections, or any less subdivision for which they were intended. The only matter before the jury was the credibility of the witnesses; and the jury should have been instructed that if the witnesses were believed, the facts to which they deposed clearly entitled the plaintiff to recover. The instruction also seems to conflict with that well settled rule in all surveys that the courses and distances must yield to an ascertained corner or boundary. Preston vs. Bowmar 6. Wheat. And although they may have been effaced or destroyed, yet if their locality can be established by oral testimony they will prevail and the courses and distances must yield to them. 2. B. Ob 493. When the boundaries of land are fixed, known and unquestionable monuments although neither courses nor distances, nor the computed contents correspond; the monuments must govern. With respect to courses, variations of the needle, errors in the surveying instruments and other causes produce error; so mistakes as to the distances may arise from various causes. But monuments remain about them, there is no dispute

and what is uncertain must yield to that which is [illegible]certain and fixed. 6 Mass Pearman vs. Wead.

As this cause will be remanded it is necessary to express an opinion as to the ~~competency of that~~ admissibility of that part of Mr Cafferty's deposition which was excluded by the Court. We do not see any objection to the evidence. It was pertinent and served to establish the locality of the corner in dispute and we are unable to see the ground on which it was excluded

The other judges concurring the

~~We concur~~

~~Napton~~

Judgment is reversed & cause remanded

W. Scott

55.

Campbell vs. Clarke } Opinion

Scott

Filed March 4th 1844

H. L. Bone Clk

Aaron Campbell
vs
Hiram Clark } In the Supreme Court

On appeal from Ray Circuit Court

And the said Aaron Campbell by his attorney J. M. Bay, moves the Court here for leave to withdraw from the files the Transcript of the record in this Cause first filed herein for the following reason

The Original Papers in this Cause have been stolen from the Office of the Clerk of said Circuit Court & the said Campbell has no other means of supplying the loss of said Papers & prosecuting his said Suit & there being another and more perfect transcript of said record & proceedings on file in this Court the said transcript herein asked to be withdrawn is not needed in this Court

J. M. Bay
Atty for said Campbell

Aaron Campbell
vs
Wm Clark

Motion to
Withdraw transcript

Filed July 11. 1845.
H. L. Boon clk

Campbell. appellant vs Clark appellee
Supreme court. January Term 1844

Appeal from a judgement at Law of the Ray circuit court.

This was an action of ejectment by Campbell against Clark ~~in the Ray~~, instituted in the Lafayette circuit court for the E½ of the S. W ¼ of S 21. T. 49. R. 28 and was tried at the December Term 1840 on the general issue. when the Defendant had a verdict & judgement.

This judgement was reversed on appeal in this court at the April Term 1840. (6 Mo. Reps. 221.) and the cause remanded.

The cause was then remanded to the Ray circuit court and there tried at the February Term 1842

upon this trial the Plaintiff gave the following evidence

1st a patent of the 25 May 1825. from the United States to Kinney for the land in controversy

2d a copy of the survey & field notes of Section 21, taken from the U. States' Surveyor Generals office at St Louis

From these notes it appears that at the 2 quarter sectional monument established by the public Surveyors in the south boundary of Section 21, there were two witness trees. one a Spanish oak

bearing S. 61° E. distant 50 links & the other a white oak bearing N 42° W. distant 40 links

3° A survey of the land in controversy made in September 1841 by the Surveyor of the county of Lafayette, under an order of the Circuit court.

From this survey it appears that the South line of Section 21 is 80 chains in length. that there is no monument at the Quarter sectional corner in this ~~South~~ line. that ~~the~~ point in this boundary alledged by the Plaintiff to be the Quarter sectional corner established by the public Surveyor, is in the forks of a creek near a steep bank. and that ~~to~~ near this point are two trees ~~lying~~ down, one a Spanish oak, bearing S. 61° E. distant 50 links. & the other a Burr oak bearing N 55° W. distant 48 links. that this point is in the old marked line 45 chains 4½ links East of the South West corner of the section. that there are no other witness trees along the line & that if a line be drawn from this point to the opposite Quarter sectional Corner there will be in the Half Quarter West of this line 94 $\frac{40}{100}$ acres & in the Half Quarter East of this line 64 $\frac{41}{100}$ acres. and that if the line be drawn to the center of the section instead of to the opposite Quarter sectional corner

there will be in the West Half Quarter 89 $\frac{40}{100}$ acres and in the East half Quarter 69 $\frac{40}{100}$ acres.

4. Testimoney by six witnesses that in the Early settlement of the country, ~~the~~ there was a point in the south boundary of the section, in the forks of a creek and near a steep bank, claimed by the Plaintiff to be the Quarter sectional corner established by the public survey that here there were two witness trees standing, ~~one a Spanish oak~~, marked as quarter sectional corner witness trees ~~are~~ usually marked by the public surveyors, one a Spanish oak, and the other a burr oak - that this point was in the marked line, which at that time was plain & that ~~no~~ there was no corner or bearing trees midway the south line of this Quarter, nor along the line, except at the point claimed by Plaintiff to be the corner - One witness testified that in 1829 Parkman made a survey of the land - that at this point a broken stake was found lying down - ~~and~~ the point of which was ~~it in the ground~~ yet remaining in the ground and that ~~he~~ Parkman made an examination along the line for the Quarter sectional corner and could find none except the one claimed by the Plaintiff - The Depositions of Green McAfferty and Hugh McAfferty were read - the former was the U. States

Surveyor, who surveyed the Township - and he testified that the block of wood shown him and which had been taken out of the Spanish oak, and was exhibited on the trial contained the mark he usually caused to be placed upon Quarter Sectional corner witness trees - Hugh McAfferty testified that he was chain carrier & marksman for Green McAfferty when he made this survey - and that the block of wood shown him (the same taken from the Spanish oak) was marked as he marked such bearing trees -

This witness also testified in his deposition that he believed the mark on the block of wood was his mark and that at the time of making this survey they were not well acquainted with the different kinds of timber in Missouri and that they usually called oak lumber, especially Burr & Chinkapin oak, white oak - but this part of his deposition when offered by the Plaintiff was objected to by the Defendant and rejected by the court -

Another witness testified that he ~~was and~~ had been the county surveyor of Ray County for the last ten years and had never found the Quarter sectional corner monuments with the public surveys, exactly midway the sectional line, and in one instance found it 20 poles from the center.

The Plaintiff also proved that at and before the commencement of this suit the Defendant claimed and occupied all that part of the South Half of Section 21 that lay East of the center of the South boundary of the Section and west of the corner claimed by the Plaintiff.

The Defendant gave the following evidence and rested his defence

1st A patent of the 13th of May 1828 from the United States to W. Fish for the W 1/2 of the S. E 1/4 of Sec. 21. T. 49. R. 28.

2d A copy of the Survey and field notes of this Section taken from the U. States Surveyor Generals Office at St Louis.

3d Proof by three witnesses that they were present at the Survey made by Pettman in 1829 and neither saw nor heard any thing of the stake alleged to have been found by him on that occasion.

One of these witnesses testified that on that occasion and also upon other occasions he observed the two bearing trees spoken of by the Plaintiffs witnesses. Stated that they were marked as such bearing trees are usually marked. and that he never saw or heard of any other corner or bearing trees except those indicated by Plaintiff

Upon this testimony the Plaintiff moved the court for the following instructions -

1st The boundary lines actually run and marked in the Survey by the Government Surveyor are to be taken as the true and proper boundary lines of the section or any less subdivisions for which they were intended - although such boundary might give to plaintiff more than a half quarter section, and the defendant less, and although they may find that the Quarter Section Corner was not placed equidistant between the Section Corners.

2nd That if they find from the evidence that the lines and corners made by the United States Surveyor and the original survey are sufficiently identified such lines and corners constitute the boundaries between the Plaintiff & defendant, although they may vary from the corners and distances required to make up for both plaintiff and defendant a full half quarter section of land.

3rd That if they believe from the evidence that the corner on south line marked E on the platt. as returned by the surveyor George H Gordon is the true corner as made and established by the Government Surveyor, as the quarter sectional corner, for

Section 21. Township 49. & Range 28. there a right line from said corner F. to the opposite and Corresponding quarter sectional corner on the North line of said Section is the true and correct boundary between the Plaintiff and defendant.

All which instructions the court refused to give and in lieu thereof gave the following

1. If the jury believe from the evidence that the Defendant before the commencement of this suit entered upon the land of the Plaintiff in controversy and done any act, such as cutting lumber on said land for any purpose claiming right & title to the lands and the consequent right to do so, it is an ouster in law and they should find for the Plaintiff

2d The jury are to take the field notes in evidence, showing the length of the south boundary line of Sec 21 as being the true length of the line and further they are to take the field notes in evidence as their guide in ascertaining the point equi-distant between the section corner to ascertain the half mile corner and if they believe the field notes do direct and point them to a point midway of said section line as the place designated

by the Surveyor of the United States as the half mile corner, then they should place it and the presumption in law is that the Surveyor placed said corner where the Law required him to ~~place it~~ put it. and if the bearing trees of said half mile corner cannot be found as designated in the field notes they should disregard any lines purporting to be bearing lines of said half mile corner which may be found in said South boundary of said Section which are placed 20 poles East of the middle or center of said Section

3d If from the evidence the jury find the half mile corner to be in the middle of the South boundary of said Section then they will find for the Defendant

4 The boundary lines actually run & marked by the Government surveyors ought to be taken as the true and proper boundary lines of the Section or any lots subdivisions for which they were intended -

5. That in this cause it devolves on the Plaintiff to show his title to the strip of land in controversy and that it is not necessary for the Defendant to show title in himself but if he has shown title in any

other person it is sufficient for him.

Upon these instructions the jury found a verdict for the Defendant, which the Plaintiff moved to set aside. ~~because the same was~~ ~~against law and evidence~~ and his motion being over ruled he took a bill of Exceptions and appealed to this court.

And now for the reversal of this judgment the counsel for the appellant Campbell will insist upon the following

Points & authorities.

First. The testimony of Mr McAferty, which was offered by the Plaintiff, and, rejected by the court ought to have been received.

Second - The instructions asked by the Plaintiff ~~were in conformity~~ as to the boundaries of the Half Quarter section of land in dispute were in conformity with the opinion of this court given when the case was last before this

court.

Compton v Clark 6 Mo Rep 224.

Third - The ~~xxxxxx~~ instructions given by the ~~xxxxx~~ circuit court ~~upon the motion~~ ~~for~~ in lieu of the instructions asked by the Plaintiff were manifestly intended to induce the jury to find against the rule of law applicable to the case ~~as~~ laid down by this court, and ~~there was~~ ~~instructions~~ so far as they are at all intelligible are in direct hostility to that rule -

Fourth - The finding of the jury is palpably against the evidence and therefore the court erred in refusing the Plaintiff a new trial

~~The Plaintiff also proved that the Defendant claimed and occupied the land that part of the Half Quarter in controversy which lay west of the Quarter sectional corner claimed by him and East of the center of the time~~

Supreme court.

A. Campbell
appellant

vs

H. Clark
appellee

Brief for appellant

Leonard
counsel

The State of Missouri

To the circuit Court in and for Ray County — Greeting — Whereas it hath been suggested to our Supreme Court of the State of Missouri within and for the Second Judicial district that there is a diminution in the Transcript of the records and proceedings certified up to this court in a certain action lately pending in the circuit Court of the said County of Ray wherein Aaron Campbell was plaintiff and Hiram Clarke defendant in an action of Ejectment in the said Circuit Court which comes up by appeal

These therefore Command you that you send to our said Supreme Court at the town of Lexington in said district on or before the first day of our next September term thereof a full true and perfect transcript of the record and proceedings of the plaint aforesaid by whatsoever names the parties may be called therein. together with this writ —

Witness William Spratt clerk of our said Court with his official seal hereto affixed at office in Lexington this 11th day of August AD 1842

William Spratt clerk
AD

In obedience to the within Certiorari I have made out a full and ~~certified~~ and Complete Record in the Case of Aaron Campbell against Hiram Clark and Certified the same under seal of Office. Which is herewith Sent to the Clerk of the Supreme Court.

W. C. Williams Clerk
of the Ray Circuit
Court

Aaron Campbell
vs
Certiorari
Hiram Clark

Ray circuit
Court

Aaron Campbell Appellant } Appellees
vs. From the Ray C. C. } Brief
Hiram Clark Appellee }

This is an action of ejectment taken to Ray County by Change of Venue from La Fayette. It was brought by the Appellant Campbell against Clark for the East half of the South West quarter of section 21 Township 49 Range 28 in La Fayette county. Plea not guilty. The case was in this Court & decided once before in 1840 in 6 Missouri Reports page 219. & on the last hearing in the circuit Court the same state of facts were substantially before the jury, in relation to the derivation of the plaintiffs & defendants titles, & in relation to the contested Corners & lines of their respective tracts, with these differences; that in the last trial Clark it was proved that Clark derived title from William Ish, who bought of the General Government.

And on the last trial the plaintiff offered to read to the jury from the deposition of Hugh McCafferty a statement of that witness in these words "And that he believes the marks on said block of wood to be his mark deponant further states that they were not well acquainted

with the kinds of timber in Mufsouri and that they usually called oak timber white oak when they made their corners on oak timber particularly what is now called burr oak & chinkapin oak" To this statement in Mr. Cafferty's deposition defendants objected & the Court sustained the objection & plaintiff took an exception to the opinion of the Court in excluding it.

At the close of the evidence the plaintiff asked the Court to instruct the jury

1st. That the boundary lines actually run & marked in the survey by the government surveyor, are to be taken and considered as the true and proper boundary lines of the section or any left subdivisions for which they were intended although such boundary might give to the plaintiff more than a half quarter and the defendant less, and although they may find that the quarter section corner was not placed equidistant between the section corners

2nd. That if they find from the evidence that the lines & corners made by the United States surveyor on the original survey are sufficiently identified such lines & corners constitute the boundaries between the plaintiff and defendant although they may vary from

the corners & distances required to make up for both plaintiff and defendant a full half quarter section of land.
3rd That if they believe from the evidence that the Corner on the south line marked E on the platt as returned by the surveyor George H Gordon is the true corner as made & established by the Government surveyor as the quarter sectional corner for section 21 Township 49 Range 28 then a right line from said Corner F to the opposite and corresponding quarter sectional Corner on the north line of said section is the true & correct boundary between the plaintiff and defendant.
These instructions the Court overruled and instructed the jury as follows
1st If the jury believe from the evidence that defendant before the commencement of this suit entered on the land of the plaintiff in Controversy and done any act such as cutting timber on such land for any purpose Claiming right & title to the lands & the Consequent right to do so it is an ouster in law & they should find for the plaintiff
2nd The jury are to take the field notes in evidence showing the length of the south boundary line of section 21 as being the true length of the line, and further they are to take the field notes

in evidence as their guide in ascertaining the point equi distant between the section corners to ascertain the half mile corner & if they believe the field notes do direct & point them to a point midway of said section line as the place designated by the survey or place designated by the surveyor of the United States as the half mile corner then they should place it, and the presumption of law is that the surveyor placed said corner where the law required him to put it, and if the bearing trees of said half mile corner cannot be found as designated in the field notes they should designate any trees purporting to be bearing trees of said half mile corner, which may be found on said south boundary of said section which are placed 20 poles east of the middle or center of said section.

3rd. and if from the evidence the jury find the half mile corner to be on the middle of the south boundary of said section then they will find for defendant.

4th. That the boundary line actually run & marked in the survey by the ~~Government~~ government surveyor are to be taken and considered as the true and proper boundary lines of the

sections or any less subdivision for which they were intended
5th. That in this cause it devolves on the plaintiff to show his title to the strip of land in controversy that it is not necessary for the defendant to show title in himself but if he has shown title in any third person it is sufficient for him.
All these instructions were excepted to except the first.
The jury found the issue for the defendant, and the plaintiff moved in arrest of judgment for the reasons.
1st. That the issues are not fully disposed of by the finding of the jury.
2nd. The verdict was irregular, informal, otherwise insufficient to warrant judgment therein.
The plaintiff also filed his motion for a new trial for the reasons,
1st. That the verdict was against law & evidence,
2nd. That the court misdirected the jury.
3rd. That the court erroneously refused the instructions of the plaintiff
4th. That the court excluded proper evidence
Both of these motions were overruled & the case is brought here by appeal
The errors assigned are,
1st. That the judgment of the circuit court was for the wrong party.
2nd. That the court rejected proper evidence offered by the appellant

3rd That the court erred in refusing proper instructions asked by the appellant
4th That the circuit court erred in giving improper instructions.
5th That the circuit court improperly refused to arrest the judgment
6th That the circuit court improperly refused to grant the new trial asked for.

I ask to present, for the consideration of the court, in the argument of this cause the following propositions.
1st That a purchaser of the General government of a less quantity of land than a section, there being other purchasers & owners in the same section, should be entitled to an equal quantity of land with all others in the same section purchasing a like aliquot part.
2nd That a purchaser buying of the government (or deriving title from purchasers of the government) for a half quarter section of land should be entitled to one eighth of the whole section, whether the government surveyor had placed the half mile marked trees on the exterior lines of such section & equi distance from the marked corners or not.
For this see the case of Walters vs Commons
2 Porter's ~~Arkansa~~ Alabama reports 38.

Kirk Twp

Campbell Appellant
vs
Appellees Brief
Clark Appellee

Kirtley