Fenwick, James v. Gill, Napoleon 1862 492/1

22/424

34/194

Fenwick (K) (P)
v
Gill (A) (D)

Glover & Shepley (K)
Tuttle & Rizzo
Casselbaum (A)

Cand. D tort possn of labor
Kerry County
1400
also damage
Rec

Rerun
Oct 63
Oct 61

Bates - Reversed & Remanded
By - Prydeman

Transcript of the record and proceedings in the Cause of James G W Fenwick against Napoleon B Gill tried before Hon. John H Stone Judge of the 9th Judicial Circuit of the State of Missouri at the April term of the Perry County Circuit Court began and held at the Court House within and for Said County on the last Monday of April AD 1861.

State of Missouri
County of Perry } Be it remembered that On the 31st day of July 1857 there was filed in the office of the Clerk of the Circuit Court within and for the County aforesaid a Petition of which Said petition the following words and figures is true copy to wit

Petition

" James G W Fenwick plaintiff } In the Perry Circuit
" against } Court Perry County Mo
" Napoleon B Gill defendant } Plaintiff States
" that On the fourth day of August 1857 he was
" entitled to the possession of the following described
" premises Situate in the County of Perry aforesaid
" to wit; the South East fractional quarter and the
" North West fractional quarter and the South
" West fractional quarter of Section thirty one and
" fractional Section thirty two and the North
" East fractional quarter of Section thirty one all
" in Township thirty five North of Range
" fourteen East Containing in all about five

" hundred and Ninety one 65/100th acres land
" being so entitled to the possession thereof that the
" defendant afterwards on the ninth day of May
" 1858. entered into Such premises, and unlawfully
" with holds from the plaintiff the possession thereof
" to his damage in the Sum of One thousand dollars.
" He further avers that the Monthly Value of the
" rents and proffits of the premises is fifty dollars.
" Wherefore he demands judgement for the recovery
" of the premises and five hundred dollars damages
" for the unlawfully with holding the Same, from plaintiff
" and fifty Dollars for Monthly rents and profits
" from the rendition of judgement. Until the
" possession of the premises is delivered to plaintiff
" and for other proper relief

Little & Rozier atty for Plff.

Upon Which Said Petition there is an affidavit of Which the following words and figures is a true Copy to wit

" James G. W. Fennick plaintiff makes oath and
" Says the above petition and Matters therein as
" Stated he believes to be true

Jas G W Fennick

" Sworn to and Subscribed to before me this 22nd
" day of July A.D. 1858.

" In Witness Whereof I hereto Set My hand and
" affix the Seal of the circuit court within and
" for the County of St Genevieve in the State of Missouri

" date last (3) aforesaid. Charles C. Rozier clerk
" By Jno Boos DC
and afterwards to wit on the 21st day of
August 1858. there was issued from the office
of the clerk of the circuit Court within and
for the County of Perry a writ on said Petition
which said writ is in words and figures as follows
to wit,
State of Missouri 9th Judicial Circuit
County of Perry To December Term 1858
Writ " The State of Missouri to the Sheriff of Perry
" County in said State Greeting
" We Command you to Summons Napoleon B
" Gill named in the annexed petition that
" he be and appear before our Judge at our
" Circuit Court on the first day of the next
" term thereof to be began and held at the Court
" House within and for the County aforesaid
" On the fourth Monday after the Second
" Monday after November next then and there
" to answer to the Complaint of James G. Hennick
" named in the annexed petition of Complaint
" therein set forth and have you then and there this
" writ and certify how you executed the same
" Witness Charles C. Ellis clerk of our said Court
" at office in Perryville with the Seal
(3) " thereof hereto affixed this 21st day of
" August 1858. Charles C. Ellis clerk

Upon Which Said Writ there was Made by
by the Sheriff of Said County a return of which
the following Words and figures is a true
Copy to wit. I the Undersigned Sheriff
" do hereby Certify that I executed the Within
" Writ by delivering to the Within Named Napoleon
" B Gill a Certified Copy of the Within petition
" and by reading the Within Summons to the
" Said N B Gill. On the 21st day of October
" A D 1858. Severius Riney Sheriff of Perry County

Be it remembered that afterwards
to wit. On the 15th day of January eighteen
hundred and fifty nine the defendant
filed in the office of the Clerk of the Circuit
Court Within and for Said County his answer
to the plaintiff Petition Which Said Petition
is in Words and figures as follows to wit,

" James G W Fennick } In the Circuit Court of
answer " against } Perry County. Mo June
" Napoleon B Gill } term 1859.

" Defendant for answer to the plaintiffs
" petition States that the plaintiff is Not and was
" Not entitled to the possession of the premises
" Mentioned in the petition, or any part thereof
" and that defendant does Not Unlawfully
" Withhold the Same from the plaintiff
" Defendant further States that the land Mentioned
" in the petition is included Within the original

" Settlement right of Joseph Fennell. deceased
" Claimed by Virtue of. Settlement inhabitation
" and Cultivation prior to and on the 20 day
" of December 1813. The Same being part of the
" public domain. on that day. That Said
" Joseph Fennell. died in posession of and on
" the premises and about the year 18. that he left a
" Widow and a Number of heirs Children that defendant
" long anterior to the Conformation to plaintiff grantor
" had acquired the right and title of the Widow
" and heirs of the Said Joseph Fennell and that
" he Defendant and them under Whom he claims
" have Successively and Continuously held and
" Occupied the Same up to the present time, That
" the only Consideration upon Which the grant to
" Martin Fennell Was founded. Was the fact of his
" being a Child and heir of the Said Joseph Fennell
" deceased And that if Said Conformation is of
" any Validity it is a Conformation enuring to the
" benefit of all the heirs of Joseph Fennell dec'd
" of Whom there were Several the Names and
" history of Whom Cannot now be given, because
" he does not Know but believes. there were Seven
" or eight of them or prehaps More. That if plaintiff
" has any title to the premises it is only to an Undiv
" ided interest of about one eighth. But respon
" dent believes he has no title Whatever. but that
" the title is in this respondent. Defendant Says

" that at the date of the act of Congress under
" which plaintiff claims, he defendant had a
" right of possession upon 160 acres of said land
" which his improvements are located. Defendant
" says that said Joseph Fenwick was lawfully
" in possession of the premises at the time of his
" death that defendant under his legal representa
" tives and of his widow and heirs. went lawfully
" into possession of the same and that plaintiff has
" given him no lawful notice to quit the premises
" before the institution of this suit. Defendant
" further says that the right of action of the plain
" tiff and his grantor if any they ever had.
" accrued more than ten years before the commen
" cement of this suit and is bared by limitation

Jno W Noell for Deft.

Upon which said petition there is an affidavit
of which the following words and figures is
a true copy to wit

" John W Noell atty for Defendant makes
" oath and says he believes the above
" answer and the matters therein as stated are
" true.

" Sworn to and subscribed
" to before me this 15th day
" of January A D 1859.
" attest Charles C. Ellis clerk

Be it remembered that afterwards to wit at a regular term of the Circuit Court of Perry County began and held at the Court House Within and for Said County on the last Monday of April being the April term of said Court for the year 1859. and on the Second day of Said term and 26th. day of the month. Said Court Made and entered upon it records a Certain Judgement or order of Which the following words and figures is a true Copy to wit.

" James G W Fenwick
" against Ejectment
" Napoleon B Gill Now at this day come
" the parties by their respective attornies and on
" Motion this Cause is Continued at the Costs of
" the defendant. Whereupon It is Considered and
" adjudged by the Court Now here that the plaint
" iff do have and recover off. and from the
" defendant his Costs of Suit in this behalf
" at this term expended and have execution
" therefor

Judgement for costs

And afterwards to wit. at a regular term of Said Court began and held at the Court House within and for the County aforesaid On the last Monday of April 1860. Said Court Made and entered upon it records a Certain order of Which the following words and figures is a true Copy to wit

affidavit

" James G W Fennick
" against } Ejectment
" Napoleon B Gill } Now again at this
" time come the parties by their respective attornies
" and the affidavit of the defendants Counsel
" this Cause is Continued at the Costs of the
" defendant Whereupon it is considered and
" adjudged by the Court Now here that the plain-
" tiff do have and recover of and from
" the defendant his Costs in this behalf at this
" term expended and have execution therefor
And Be it remembered that afterwards to wit at a regular term of Said Court begun and held at the Court House within and for the County aforesaid on the last Monday of October 1860. and on the first day of Said term and 29th day of the Month Said Court Made and entered upon it records a Certain order of which the follow-ing words and figures is a true Copy Viz.

" James G W Fennick
" against } Ejectment
" Napoleon B Gill } Now again at this
" day come the defendant and by leave of
" Court files his amended answer
which Said amended answer is in words and figures as follows to wit

amended answer

James G. Hemmick
vs
Napoleon B. Gill

In the circuit court of Perry county Mo October term 1860

amended answer filed by leave of court

The Defendant for answer to plaintiff petition Says that the plaintiff is not and was not entitled to the possession of the premises as Stated in the petition He Says that he defendant does not unlawfully with hold from the plaintiff the possession of the premises as Stated in the petition Defendant further States that he is in possession of four hundred and Seventy eight and a half acres of land Surveyed for one Joseph Hemmick in 1806 by John Hawkins Deputy Surveyor pursuant to an act of Congress as appears by a ~~certificate~~ Copy of his Survey herewith, Defendant has No Knowledge or information Sufficient to form a belief as to whether any of the land Mentioned in plaintiffs petition or part thereof or how much is included in Said Survey, that if any of the land included in the Said Survey is included and described in plaintiff petition, then defendant admits he is in possession of Such part and no more

Defendant further Says that if it be true that the land Mentioned in plaintiff petition or any part thereof is included in Said Survey then and in Case this Defendant avers that the Same

" Was prior to and on the 20th day of December 1803
" Occupied inhabited and Cultivated by one Joseph
" Hennick and Continued to be So occupied
" inhabited and cultivated by Said Joseph Hennicks
" up to and on the 16th day of January 1806. When the
" Same was pursuant to the provisions of the act of
" Congress in Such cases Made and provided duly
" and legally Surveyed to him the Said Joseph Hennick
" by John Hawkins then a Deputy United States
" Surveyor for the Teritory of Louisanna That Said
" John Hawkins Deputy Surveyor as aforesaid repor
" ted and Certified Said Survey on the 26th of
" February 1806. to Antoine Soulard then Surveyor
" General for Said Teritory Who revised and recorded
" the Same. On Said last Mentioned day That Said
" Joseph Hennick Continued to reside on Said on
" inhabit and cultivate Said land Until Some
" time about the year 1815 When he departed this
" life leaveing his Widow Hennick
" thereon, Who remained on and in posession of
" Said premises till about the year When
" She died; That her representatives took posession
" upon her death. And rented the Same out and
" received the rents for a Number of years, and
" that this defendant by Mesne conveyances and
" regular and Continuous posession from the time
" of the death of Said
" Come in the posession and occupancy and has

" Continued in the Popesion and occupancy of
" Said lands included in Said Survey down to
" the present time.
" Defendant further Says that he came lawfully
" and peaciably in popesion of the Said land
" embraced in Said Survey from them who had the
" right of popesion and that no notice has been given
" him to quit the premises prior to the Commencement
" of this Suit.
" Defendant further States that he does not Know
" under what title the plaintiff claims the premises
" Mentioned in the petition but he is informed and
" believes that plaintiff claimes Said premises
" under and in virtue of a Supposed or actual
" Confirmation by act of Congress to one Martin Fennick.
" If Such be the character of plaintiff Claim then this
" Defendant Says that So far as any of Said Confirmation
" may include lands that be within the Survey as
" hereinbefore described the Said Confirmation was
" obtained by fraud upon the heirs and legal repres
" entatives of Said Joseph Fennick that Said
" Martin Fennick did obtain a Concesion from
" the Spanish Government for five hundred
" arpens of land On the 10th of June 1797. to be
" located between Apple Creek and Brazeau
" Creek that the Said Concesion or petition
" refered to therein was fraudulently altered the
" name of Brazeau changed into that of Labiande

" alias &c come. That the reason of this fraudulent
" alteration was that the tract of land which had
" been Settled by Joseph Fennicks as before Stated
" and which had been regularly Surveyed to him
" as before Stated laid North of Brazos creek
" and therefore Martin Fennicks Conception could
" not there be located It was fraudulently altered
" at which time defendant does not know and
" thus fraudulently altered it was presented to the
" board of Commissioners in 1811 and rejected and
" again in 1835 and rejected because of Such
" fraudulent alteration; That the Said Martin
" Fennicks if he ever did obtain Such Conformation
" of title did So under and in virtue of the Settlem
"-ent and occupation of Joseph Fennicks as before
" Stated, and by false and fraudulent representa
"-tion to the effect that the representatives of Joseph
" Fennicks as well as Joseph Fennicks himself held
" and occupied the Said premises under him
" the Said Martin and as his tenants When in fact
" and truth Such Statement was utterly false and
" fraudulent, and if the Said Conformation was thus
" obtained there according to the terms of Said
" Conformation the rights of all other parties
" being reserved this defendant avers and claims
" that Said Martin Fennicks holds the Said lands in
" Trust for the representatives of Said Joseph
" Fennicks under whom this defendant claims

(13)

" J. W. & T. E. Noell for Deft.
" Napoleon B Gill Makes oath and Says he believes
" the above petition and the Matters therein as
" Stated are true
" Subscribed & Sworn to before } N B Gill
" me this 27th day of October
" 1860 C. le Ellis Clerk By
" James Burgee D C

" And afterwards to wit on the 9th day of Said term and the 30th day of October 1860 Said Court Made and entered upon it record a Certain order of which the following words & figures is a true copy to wit;

Motion to strike out Deft answer

" James G W Fennick
" against } Ejectment
" Napoleon B Gill } Now again at this
" day Come the plaintiffs by his attorney and
" files his Motion to Strike out defendant
" amended answer.

Which Said Motion is in words & figures as follows to wit

" J G W Fennick
vs
" N B Gill } The plaintiff Moves to Strike
" out the amended answer filed in this Cause
" because
" 1st it is not responsive to the petition

" 2nd it is highpothetical and Augumentive
" 3rd it attempts to enquire in to the facts which
" May have induced Members of Congress to vote
" for the law under which the plaintiff derives his
" title to the land Sued for
" 4th it is Vague uncertain insufficient and
" evasive D. C. Tuttle Atty for Plff

. And afterwards to wit On the day and year last aforesaid Said Court Made and entered upon it records another order in Said Cause of which the following words & figures is a true Copy to wit.

" James G. W. Fennick
" against Ejectment
" Napoleon B Gill

Now again at this
" day come the parties by their respective attorneys
" and the Cause being taken up for trial on the
" plaintiff Motion to Strike out Defendant
" amended answer which being Submitted
" to the Court and the Court, Not being Sufficient
" ly advised in the premises will thereof advise.

. And afterwards to wit. On the 6 day of Said term and 3rd day of November 1860 Said Court Made and entered upon it records another order in Said Cause which Said order is in words and figures as follows to wit

" James G. W. Fennick

" against Ejectment
" Napoleon B Hill } Now again at this day
" come the parties by their respective attornies
" and the Court Now being Sufficiently advised
" in the premises doth order that plaintiff
" Motion to Strike out defendant amended
" Answer be Sustained and leave is granted
" to defendant to file his answer herein on or
" before the first day of April Next. Without
" prejudicial to the trial of this cause at the
" Next term of this Court. And On Motion
" of defendant it is ordered by the Court that the
" County Surveyor of Perry County proceed to
" Survey the tracts of land in Controversy and
" that he also Survey a tract of four hundred
" and Seventy Eight and a half acres of land
" Surveyed for Joseph Gennicll by John Hawkins
" Depty Surveyor on the 16th day of January
" 1806. according to a plat on file herein duly
" Certified by the Recorder of land titles under date
" of October 23rd 1860. And that he the said
" Surveyor Shall ascertain how much of the
" lands in Controversy lies Within the boundary
" lines of said Survey of Joseph Gennicll and
" report his proceedings in the premises, Ordered
" that said Surveyor be furnished With a Copy of
" this Order together With said Certified plat of
" Survey to enable him to execute this order

" and On Motion this Cause is continued at
" Defendants Costs, Whereupon it is Considered
" and adjudged by the Court Now here, that
" plaintiff do have and recover of and from
" Defendant his Costs of Suit in this behal at
" this term expended. And have execution therefore

And afterwards to wit. At a
regular term of the Circuit Court began and
held At the Court House Within and for
the County aforesaid On the last Monday
of April. being the April term of Said Court
for the year 1861. and On the 1st day of
Said term and 29th day of the Month Said
Court Made and entered upon it records a
Certain Order of Which the following
Words and figures is a true Copy to wit

" James G W Fennick
" against
" Napoleon B Gill

Ejectment

Now at this day
" Come the defendant and by leave of
" Court and files his amended answer
Which Said answer is in Words and
figures as follows to wit

" James G W Fennick
" against
" Napoleon B Gill

In Perry Circuit Court
April term 1861
amended answer
" of Defendant filed by Consent and by leave
" of Court. in place of all proceeding answers

" with drawn

" The defendant for answer to plaintiff petition
" Says that the plaintiff is Not, and Was Not entitled
" to the possession of the premises Mentioned in the
" petition or any part thereof as therein alledged
" Defendant Says that as to the North West frl qr
" and the North East frl qr. of Section 31 Township
" thirty five North of Range 14 east. this defendant
" has Never been in possession thereof and disclaims
" all interest therein, as to the South West frl qr
" of Section 31. in the petition Mentioned this Defen
" dant is in possession of twenty three 46/100 ths acres
" thereof with South east Corner of Said quarter
" and the residue of One hundred and thirty
" Six acres 54/100ths this defendant. Never has been
" and is Not Now in possession thereof and
" disclaims any interest therein. As to the South
" East frl qr. of Said Section 31. This Defendant
" is in possession of One hundred and Six acres
" and 65/100ths bareing twenty Nine acres 35/100ths in
" the North West Corner thereof Which Never
" has been in possession of this defendant and
" Which he disclaims to hold. Defendant
" further Says he is in possession of fractional
" Section 32. in Same Township and range
" Containing about four & 68/ths acres Defendant
" further Says that as to So Much of the lands
" Mentioned in plaintiff petition here admitted

"ly defendant to be in his defendant possession
" and the plaintiff has no right to the possession
" thereof this defendant did not unlawfully
" enter upon the same and does not unlawfully
" with hold the same from the plaintiff and
" as to the residue of said lands defendant
" did not enter the same as alledged by
" plaintiff and disclaims all right to hold
" the same. J W & T. E. Noell for Deft.

To which said amended answer there is an affidavit of which the following words and figures is a true Copy to wit

" Napoleon B Gill makes oath and says he
" believes the above answer and matters
" therein as stated are true N. B Gill,
" Sworn to & subscribed before
" me this 29th day of April
" 1861. Charles C Davis Clerk

And afterwards to wit: on the 24th day of said term being the 30nd day of April 1861 said Court made and entered upon it records a certain order of which the following words & figures is a true Copy to wit

" James G W Fennick
" against Ejectment
" Napoleon B Gill Now again at
" this day comes the parties as well as by their

" respective attornies. and the Cause being
" Called. and the parties ready for trial and
" Neither party requiring a jury, the Cause is
" Submitted to the Court on the petition
" answer and evidence, and the Court Not
" being Sufficiently advised in the premises
" Will thereof advise.

And afterwards to wit on the 4th day of Said term. and 2 day of May 1861 Said Court Made and entered upon it records a Certain order of Which the following Words and figures is a true Copy to wit

" James G W Fenwick
" against Ejectment
" Napoleon B Gill Now again at this
" day Come the parties by their respective attornies
" and the Court being Sufficiently advised in
" the premises. and finds the issues for the plaintiff
" Whereupon it is adjudged and decreed by the Court
" Now here. that the plaintiff do have and recover
" of and from the defendant. the possession of the
" following described land. to wit. 23 46/100ths acres
" in the South East Corner. of South West fractional
" quarter of Section 31. Township No 35 Range 14
" East. Also the South East fractional quarter
" of Section 31. Township 35 Range 14 East Contain
" ing one hundred and Six acres and 65/100ths

" also fractional Section 32. in Same Township
" and Range Containing about four acres and
" Sixty Eight hundredths acres. and Seventy five
" Dollars for his damages. together with five
" Dollars per Month. untill the rendition
" of the premises aforesaid together with
" his Costs of Suit in this behalf expended
" and have therefor a Writ of habafacias possess
" ioem

" And afterwards to wit on the day and
Year last aforesaid Said Court Made
and entered upon it records other orders and
proceedings of which the following Words
and figures is a true Copy

" James G W Fenwick
" against Ejectment
Filing Motion for New Trial " Napoleon B Gill Now again at
" this day come the defendant and files his
" Motion for a New trial herein, which being
" Submitted is by the Court overruled, thereupon
" the defendant files his Motion in arrest of
" Judgement. Which is also by the Court overruled
" to which rulings of the Court the defendant
" objections and excepts. and tenders here
" to the Court his bill of exceptions which is by
" the Court Signed Sealed and Made part of
" the record of the record of this Cause,
" Whereupon the defendant files his affidavit

order granting appeal to Supreme Court

" and appeal bond and prays the court to
" grant him an appeal from the Supreme
" Court. Which being Submitted is by the
" Court granted. and it is thereon ordered by
" the Court that the clerk of this Court Certify
" the record phase and proceedings of this Cause
" to the Clerk of the Supreme Court at St Louis

Which Said bill of exceptions is in Words
and figures as follows. to wit

Bill of exceptions

" James G W Fenwick — In Perry Circuit Court
" against — April term 1861.
" Napoleon B Gill

" Be it remembered that the above Cause
" being Called for trial and Neither party require
" ing a Jury proceeded to the trial before the Court
" the plaintiff to Sustain the issue on his part
" gave the following evidence, The plaintiff
" offered to read in evidence, a patent dated
" February 10th 1858. of Which the following
" is a Copy to wit. The United States of America
" To All to Whom these presents Shall Come Greeting
" Whereas by the Second Section of the act of
" Congress approved on the third day of March
" One thousand eight hundred and fifty Seven
" entitled an act for the relief of Martin Fenwick
" it is declared that the Said Martin Fenwick Shall
" have the exclusive right Within one year from the

" the passage of this act. to enter at the minimum
" price of public lands Subject to private Sale, in
" the South West quarter, and the fractional North
" East quarter of fractional Section thirty one, in
" township thirty five South of Range fourteen
" East of the lands Subject to Sale at Jackson
" Missouri And Whereas the Said Martin Hemmick
" has deposited in the General land office a certif
" icate Number 35.972. of the register of the Land office
" at Jackson, Whereby it appears that full payment has
" been made by the Said Martin Hemmick for the tracts
Patent " above described. Now Know Ye that the
" United States of America in consideration of the
" premises and in conformity with the aforesaid act
" of Congress, Have given and granted, and by these
" presents. Do give Grant unto the Said Martin Hemmi
" ck and to his heirs, the Said tracts of land above
" described, with the Stipulation in Said act. That this
" patent "Shall only operate as a relinquishment of
" title on the part of the United States, and Shall
" not affect the rights of other parties To Have and
" to Hold the Same, with the appurtenances unto the
" Said Martin Hemmick, and to his heirs and assigns
" forever. with the Stipulation aforesaid
" In testimony Whereof I James Buchanan 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 hereto affixed

" Given under my hand at the City of Washington
" this tenth day of February in the year of our Lord
" One thousand eight hundred and fifty Eight, and
" of the Independance of the United States the Eighty
" Second. By the President James Buchanan by Thos
" S. Albright Secy. Jno. Wagoner Recorder of the General
" Land office Recorded in Vol 4. of Miscellaneous
" patents. on pages 22 and 23. to the reading of the patent
" Defendant objected but the court over ruled
" the same. and permitted the same to be read
" Defendant excepted, The plaintiff then offered to
" read a patent from the United States to Martin
" Gennivill. dated May 10th 1837. of which the
" following words and figures is a copy to wit

" The United States of America

" To all to whom these Presents Shall Come Greeting

" Whereas by the first Section of the act of Congress
" approved. On the third day of March One
" thousand eight hundred and fifty Seven, entitled
" an. act for the relief of Martin Gennivill" it is
" declared that Martin Gennivill is hereby confirm
" ed in his claim to five hundred arpens of land
" Situate. on the West bank of the Mississippi River
" in the State of Missouri, and described as
" follows to wit Fractional Sections five and
" Six lying North of the Private land Claim
" Surveyed to George Hamilton. Number one
" thousand two hundred and forty four in Township

" thirty five. all of Range fourteen East of the
" lands Subject to Sale at Jackson, Missouri and
" Containing in the aggregate four hundred and
" twenty five acres. and forty Six hundredths of
" of an acre. and further that the Commissioner
" of the General land office Shall Cause a
" patent to be issued to the Said Martin Hemwell
" for the lands hereby confirmed Provided, That
" Such patent Shall only operate as a relinquish
" ment of title. On the part of the United States,
" and Shall not affect the right of any third
" person, the Said tracts being designated on an
" official plat. Certified March 26th 1857. by the
" Surveyor General at St Louis Missouri, and deposited
" in the General Land office of the United States
" the aggregate of the Same, according the several
" areas designated on Said plat, appearing to be
" four hundred and twenty Six acres and Ninety
" five hundredths of an acre.
" Now Know Ye. That the United States of
" America, in Consideration of the premises,
" and in Conformity with the aforesaid act of
" Congress, Have given and Granted, and by
" these presents do give and grant unto the
" Said Martin Hemwell and to his heirs, the Said
" tracts of land above described: To Have the Stipulation
" in Said act that this patent Shall not affect the
" rights of a third person. To Have and to hold

" the same, with the appurtenances, unto the
" said Martin Gemmill, and to his heirs and
" assigns forever, with the Stipulation aforesaid
" In testimony Whereof I, James Buchanan,
" President of the United States, have caused
" these letters to be made patent, and the Seal
" L S. of the General land office to be hereto
" affixed Given under My hand at the City
" of Washington, this Sixth day of May, in the
" year of our lord one thousand eight hundred
" and fifty Seven and of the Independance of the
" United States the eight first By the President
" James Buchanan By G A Jones Secretary Jno
" Granger Recorder of the General Land office
" Recorded Vol 11. pages 317. 318.

" To the reading of this patent this Plaintiff
" Defendant objected, but the Court overruled
" the objections and defendant excepted, The
" plaintiff then offered to read a deed from
" Martin Gemmill to plaintiff dated August
" 4th 1865. of which the following is a
" Copy to wit

Deed " This Indenture Made this fourth day of August
" in the year of our lord one thousand eight
" hundred and fifty Seven between Martin
" Gemmill and Louisa Gemmill his Wife of the
" County of Anne Arundel and State of
" Maryland of the one part and James G. Gemmill

" of the County of Pike and State of Missouri of the
" other part. Witnesseth That the said Martin
" Hennicke and Anne Louise Hennicke his
" Wife for and in consideration of the Sum of
" five Thousand Two Hundred and twenty five
" Dollars. Current Money of the United States, to them
" in hand paid and Secured to be paid at or before the
" Sealing and delivery of these presents, by the said
" James W. Hennicke the receipt of which is hereby acknow
" ledged, have given, granted bargained and Sold
" enfeoffed, conveyed, released and confirmed and by these
" presents do give grant bargain and Sell enfeoff
" Convey, release and Confirm, unto the said James
" W. Hennicke and to his heirs and assigns forever, all
" that tract of land, Situate on the Mississippi River
" about four Miles above the Grand Tower
" and described in the plat as follows Fractional
" Section 5. Township 34. North Range 14 East 26.80
" acres Fractional Section 6. Township 34. North Range
" 14. East. 210 84. South East fractional quarter of Sec 31.
" Township 35 North of Range 14 East 131.63
" North West fractional quarter of Sec 31. Township
" 35 North of Range 14 East, 52.22. Fractional Section
" 32. Township 35 North of Range 14 East 4.42 South
" West quarter of Sec 31. Township 35 North Range
" 14 East 160.00 South East fractional quarter of Sec
" 31. Township 35 North of Range 14 East 5.74 Making
" together 391.65 acres. Say Five hundred and Nine

" One acres & 65/100th Situate as before Mentioned
" on the Mississippi River about four Miles
" above the Grand Tower in the County
" of Perry and State of Missouri Together with
" all the improvements rights privileges appurten
"=ances, and other hereditaments to the Same
" belonging or in any Manner appertaining and
" the reversions, remainders, reversions, rents, issues, and
" profits thereof and all the right title and
" interest and estate of the Said Martin Fennick
" and Anne Louisa Fennick his Wife in and to
" Same, To have and to hold the Said tract of land
" as above designated and described, together
" With all and Singular the premises and appurtenan
"=ces unto him the Said James L W Fennick and to his
" heirs and assigns forever for his Sole use benefit
" and behoof and the Said Martin Fennicer
" and Anne Louisa Fennick his Wife for them
" Selves and their heirs executors and administrators
" by these presents Covenant promise and agree to
" and With the Said James L W Fennick and his
" heirs and assigns, in Manner following to Wit,
" That they the Said Martin Fennick and Anne
" Louisa Fennick his Wife for them Selves & their
" heirs, Shall and Will Warrant and forever
" defend the Said tract of land hereby Sold and
" Conveyed With the premises appurtenances unto
" the Said James L W Fennick and to his heirs

" and assigns forever and against the said Martin
" Hennick and Anne Louisa Hennick his wife
" and their heirs and assigns and all persons claim
" ing or who may claim by under or through them
" and against the claim or claims of all and
" every other person or persons whomsoever In testimo
" ny Whereof The said Martin Hennick and Anne
" Louisa his wife have hereunto Set their hands and
" affixed their Seals this Sixth day of August in the
" year first herein before written. Martin Hennick
" Seal Anna L. Hennick Seal Signed Sealed and
" delivered in presence of Nathaniel Chew and
" Edward Hall.

" State of Maryland
" County of Anne Arundel } To wit

" I Nathaniel Chew a Justice of the peace in and
" for the County of Anne Arundel State of
" Maryland aforesaid, do hereby certify that the
" said Martin Hennick and Anne Louisa Hennick
" his wife did Subscribe their names and
" affix their Seals to the foregoing deed bearing
" date on the fourth day of August one thousand
" eight hundred & fifty Seven and did at the
" same time personally appear before Me at
" the House of the said Martin Hennick in the
" County and State aforesaid, The said Martin
" Hennick and Anne Louisa Hennick his
" wife being well to me to be the persons

" Who executed the Said deed and acknowledged
" the Same to be their act and deed for the
" purposes and Consideration therein Mentioned
" and expressed & also Certify as Such Justice
" of the peace in and for the County of Anne Arundel
" and State of Maryland. as aforesaid that the
" Said Anne Louisa Gunnell Wife of the Said
" Martin Gunnell and a part to Said deed
" bearing date on the fourth day of August
" in the year one thousand Eight hundred
" and fifty Seven as aforesaid personally appeared
" before Me at the House of the Said Martin
" Gunnell and being personally well Known to
" Me as the person Who executed the Said deed, and
" being by Me examined privately and apart from
" her Said husband and having the Contents and
" effects of the Said deed fully explained to her
" as required by law; the Said Anne Louisa Gunnell
" acknowledged the Same. to be her act and deed and
" declared that She had Signed Sealed and delivered
" the Same freely and Voluntarily on her part and
" Without any fear Compulsion or undue influence
" on the part of her Said husband and Wished
" not to retract it. Given Under My hand and
" Seal this Sixth day of August. in the year one
" thousand Eight hundred & fifty Seven Nathaniel
" Chew. Seal. State of Maryland. Anne Arundel County
" Ss. I do hereby Certify that Nathaniel Chew Esqr

" before whom the foregoing acknowledgments
" appear to have been made was at the time of
" so doing one of the State of Maryland Justices of
" of the peace in and for Anne arundel County
" duly Commissioned and Sworn
" In testimony Whereof I have set My Name
" & & and affixed the Seal of the Circuit Court
" for Anne Arundel County the Eight day of
" August in the year Eighteen hundred and
" fifty Seven, W. H. Green Clerk
" State of Maryland }
" Anne arundel County } Sct
" Be it remembered that on this Eight day of
" May Eighteen hundred and fifty Eight Martin
" Gemmell and Anna Louisa Gemmell his
" Wife Who are personally known to the undersigned
" Wm. A Pindle Notary Public of Said County
" and State to be the persons Whose names are
" subscribed to the foregoing deed as parties
" thereto this day appeared before me and
" acknowledged that they executed and delivered
" the Same as their Voluntary act and deed for the
" uses and purposes therein mentioned and the
" Said Anna Louisa Gemmell being by me made
" acquainted with the contents of said deed
" acknowledged on an examination apart from
" her said husband, that She executed the Same
" the Same and relinquished her dower in the

" real estate therein mentioned freely and
" Without Compulsion or undue influence
" of her said husband
" In Testimony Whereof I have hereunto Set
" My hand and affixed My Seal Notarial the
" day and Year aforesaid Thos. H Pindle Not Pub.
Upon Which said deed is the following
endorsement.
" State of Missouri ss
" County Perry Rec for Record, and duly
" recorded the annexed and foregoing Instrument
" of Writing on pages 235.236 & 237. of Vol. No 11
" one of the land records of Perryleveut
" In testimony Whereof I Charles C Ellis Clerk
" of the Circuit Court, and ex officio Recorder
" Within and for said County, have hereto Subscribed
" My name, and affixed My official Seal at office in
" the Town of Perryville in the County aforesaid
" this 27th. day of July A.D. 1858. Charles C Ellis Clerk
" and Ex officio Recorder By James Burge Deputy
" To the reading of this deed Without further proof
Bill of Exceptions of its execution Defendant objected but
" the Court overruled the objections and
" permitted the deed to be read and the
" Defendant excepted
S. T. Greenwell " The plaintiff then introduced Stephen T Greenwell
Witness " Who testified as follows. Witness knows the
" improvements on which defendants Gill

" resides. there is fifty or Sixty acres in cultivation
" and the rent is worth about three Dollars per
" acre. Some people rent for part of the crop
" Some for the fourth, and Some for the third
" It is worth about three Dollars per acre money
" rent. Wilcup has known known the place
" where defendant lives about twenty years
" Jacob Coonce Senr occupied it when Wilcup
" first knew it. he was there range from 1836
" to 1839. Jacob Coonce Jr a Son followed his
" father in the possession John Scudder Succe
" ded Jacob Coonce Jr in the possession, till the
" Defendant followed John Scudder in the
" possession and went in possession about 1849.

Evidence of John G Miller " John G Miller Sworn for plaintiff testified
" that he has known the place Still lives on for
" Many years. that he knows of no timber cut on
" it by Defendant Since 1857. except for fire wood
" Was with the county Surveyor. when he run off the
" lines or cents of the Joseph Jennick claim and
" found all the improvements inside the lines
" of that claim as run by the Surveyor Wm McPherson

" The plaintiff here closed his evidence,

Evidence of Alexius Manning " The Defendant then introduced Alexius Manning
" who testified that he knew the place where
" defendant resides and known as the
" Jennick place Since the year Eighteen

" hundred and three the father of Witness moved
" to this county in 1803. Witness then being a Small
" boy Joseph Fenwick Now deceased resided on
" and cultivated the place, the father of Witness
" Cropped with Joseph Fenwick the Season of
" 1803 Witness was at the place last fall, the
" Defendant Gill being in possession and
" Witness recognized it as the Same place on
" which Joseph Fenwick resided in 1803
" it was a Small farm then. Joseph Fenwick
" lived till about 1811 or 1812 and died on
" the Same place Never hareing removed from
" it I was frequently there from the time I
" first Came to the Country till I was grown
" and have a clear recollection of the place
" Joseph Fenwick left a Widow Chloe
" Fenwick and She continued on the place
" untill She died. I was there in 1823 or 1824
" and She was Still on the Same place the
" improvements had been enlarged Since 1803
" after the Widow died I Stayed all Night
" with old Man Coonce on the Same place
" It was the Night after the Sale of the
" Slaves Which took place Shortly after the
" death of old Mrs Fenwick, I was very young
" in 1803 but My fathers Cropping with Mr
" Fenwick and the Kind treatment of the
" old people to us has impressed upon My

" mind a better recollection than otherwise
" I might of had, I am going on 61 years old

Evidence of " Robert S Manning Sworn States that he is
Robert S Manning " Seventy three years old I knew Joseph Fennick
" deceased as early as 1803 When I first
" came to this County in the Month of May
" of that year. he lived on the place where
" defendant now resides, I was on same
" place as late as 1824 or 5. the Widow Fennicks
" then lived on it sometime between the years
" of 1805 & 1807. I was present when Joseph
" Fennick had his Claim Surveyed by John
" Hawkins Deputy U S Surveyor I carried
" the Chain part of the time and Served as a
" Marker part of the time, that Survey included
" the improvements We commenced just above
" the Mouth of little Creek that put into the
" river. The Survey was made for Joseph
" Fennick And not for Martin Fennick. Martin
" Fennicks Claim was Surveyed also but it
" was eight Miles distant from this place
" and near the place where Indian Creek
" empties into Appleriver. Martin Fennick
" was about my age. All the old mans
" boys had Claims and they were all
" Surveyed on Apple Creek. The old
" mans Claim was where he lived on the
" Mississippi River. The Boys all lived South

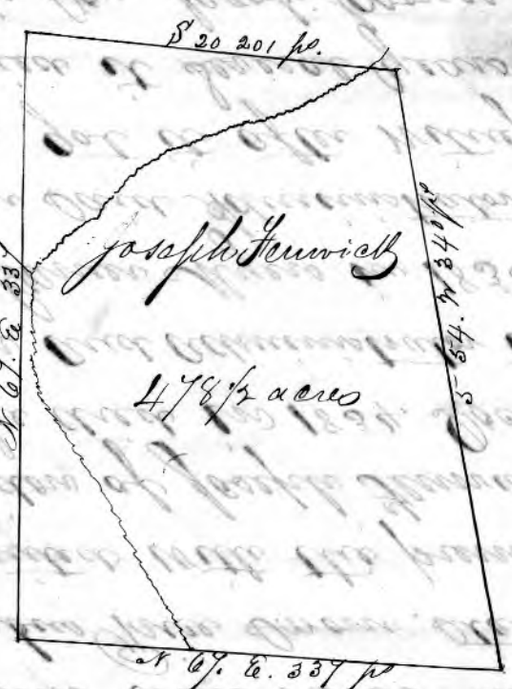
" the Old man Except Martin who was
" in Kentuckey at School. He came back
" Staid a Short time and then went to
" Maryland and never came back again,
Evidence of " Columbus Price Sworn. States that he is
Columbus Price " acquainted with the premises Chloe Fennick
" the Widow of Joseph Fennick lived on it
" till She died in 1834. Doctor Leo Fennick
" her Son and Administrator then rented it
" to one Garner Myers in 1835. Witney rented
" it from said Administrator in 1836. Jacob
" Coonce got it after Witney quit and
" occupied it Several Years and then gave
" it to his Son Jacob Coonce Jr. Jacob Coonce
" Kept it Several Years and Sold it to
" John Scudder. Scudder Sold it to Defendant
" about the year 1849. and Defendant has
" been in posession ever Since. Reuben M.
Evidence of " Young Sworn testifies Substantially the
Reuben M. Young " Same as Columbus Price proving the
" Same Chain of posession. He also stated
" that the place was Old and now that
" it was Worth about 100 to 125 $ per annum
Evidence of " Vert. A. M. McPherson County Surveyor
A. M. McPherson " testifies that he Surveyed the Claim of
" Joseph Fennick as laid down in a
" Certified plat from the Recorder of Land
" titles at St Louis the Plat and field

" Notes being here Exhibited Witness Identifies
" the Same. He also Stated that the Survey
" of Joseph Fenwick thus run off included
" all the improvements now occupied by the
" Defendant. The Defendant then read in
" evidence the platt, field notes and
" Extracts from the proceedings of board of
" Commissioners with the Claim of Joseph
" Fenwick duly Certified of which the
" following is a Copy to wit.

Claim

" Joseph Fenwick claims 478½ acres of land Situate in
" the district of Ste Genevieve under the Second Section
" of the act of Congress

Joseph Fenwicks Claim




" Territory of Louisiana District of Ste Genevieve
" January the 14th 1806. for Joseph Fenwick a tract of
" land containing 478 acres & a half, lying and fronting

„on the Missippi about four Miles above the
„grand Tower. and about two Miles above the mouth
„of Obrazo creek. – Begining at a black haw tree
„on the bank of the river. running up with the
„Course of the river. N 20 West. 26. ps. to a large poplar
„on the bank of the river; thence S 54. West. 340 ps to
„an ash tree; thence South 20 E. 201. ps to a Stake;
„thence N 67 E. 337. ps. with a part of the creek the
„begining including his improvement.

John Hawkins D.S.

„Received for record St Louis February the 26th 1806
„Antoine Soulard I.G.T.S. See record book B 248.
„Thursday November 14. 1811
„Board Met, present, John B.C. Sucus. Clement B
„Penrose & Frederick Bates Commissioners
„Joseph Henwick claiming 478½ arpens of land
„Situate Missippi, district of Ste Genevieve, produces
„record of a plat of Survey dated 16th January 1806.
„Certified 26. February 1806. It is the Opinion of the
„Board that this claim ought not to be granted
„Board adjourned till Tuesday Next Nine o'clock
„A.M. John B.C. Sucus. Clement Penrose. Frederick
„Bates. See. Minutes of old Board book No. 5. pages 407.
„419. 420. and 423.

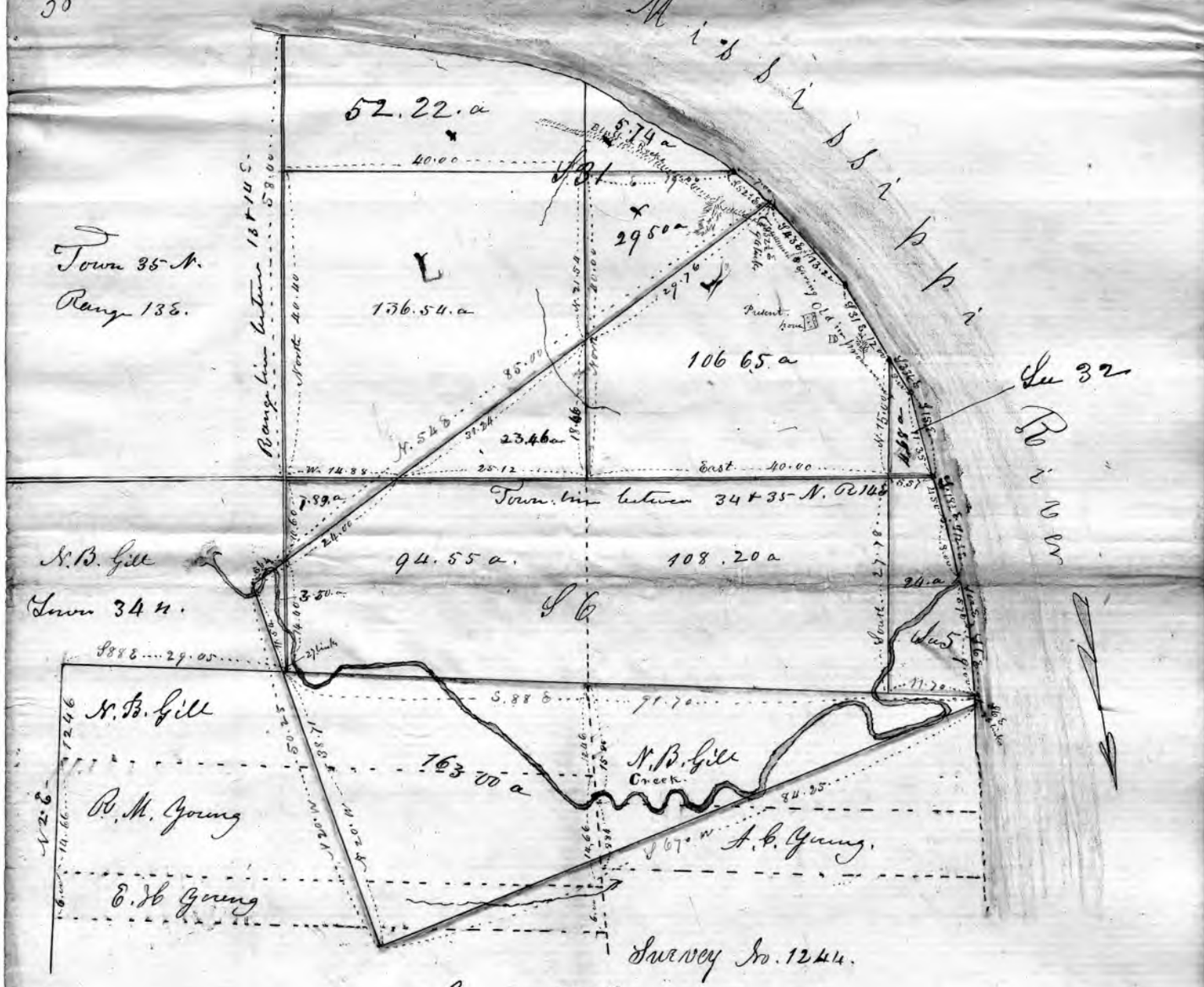
Office of the Recorder of land titles
St Louis 23d October 1860

„I Certify that the foregoing is a correct transcript from the books
„records. plats, files and documents in this office of the claim of
„Joseph Henwick to 478½ acres of land in the district of Ste
„Genevieve. Adolph Dieuxvel US Recorder of land titles in the State of Mo

(38)

The defendant then gave in evidence the Survey and field Notes. Made by Witness McPherson under an order of this Court, of which the following is a copy to wit. Plat of Surveys made in the above Case by order of the Circuit Court of Perry County Mo. at the October Term 1860.

38




George A. Hamilton

Magnetic Variation 7° 03' East.

Scale of 20 Chains to an Inch

I Archibald M McPherson County Surveyor within and for the County of Perry and State of Missouri do certify that the above plats of Surveys are true and Correct plats of Surveys made by me according to the order of the Circuit of Perry County at the October Term 1860. Surveys made on the 8. 9. & 10 & 22nd days of April 1861 Given under my hand

A. M. McPherson C.S.

"Field Notes of Surveys made by order of the Circuit
"Court in a case of Ejectment wherein G. W. Fenwick
"is plaintiff and Napoleon B Gill is defendant
"in Sections 5 & 6. Township 34. North of Range
"14. East. and in Sections 31. & 32. Township 35
"North Range 14 East.
"Notes of the South East portion quarter and the
"the South West quarter of Section 31. Town 35 N R
"14 E. Begining at Township Corner Township
"34 & 35 North Range 13 & 14 East at a Stone.
"White oak 14 inches in diameter bears North
"31. degrees West distant 35 links Black
"oak 24 inches diameter bears South 23 degrees
"East distant 18 links. (this tree is gone)
"Thence East at 40 chains 1/4 Corner. White oak 12
"inches diameter bears South 43 degrees West
"distant 81. links Thence East at 28 chains and
"50 links entered field at 40 chains a post in
"field (the bearing trees are all gone
" Then we went back to 1/4 Corner on the
"Township line a post. White oak 12 inches
"diameter bears South 43 degrees West distant
"81. links, Thence North 40 chains a Stone on
"the Side of a hill about 3 chains South of
"a bluff of Rock — Thence East 19 chains a
"Stone on the bank of the river. Thence South 52 1/2 degrees
"East 7. chains down the river, Thence South 43
"degrees East at 9 chains and 44 links branch from the

Note. this line passes over a Steep bluff of 25 or 30 feet high

" Spring enters in to the River. at 13 Chains and
" 22 links Post opposite the Stakes, Thence South 31
" degrees East down the River 12 Chains a post
" Where Section line between Sections 31 & 32 intersects
" the river,
" Thence South 15 Chains to Section corner on Town
" -ship line (the bearing trees all gone) Post. Thence
" West 40 chains to the place of beginning containing
" 136.15 acres.
" Field Notes of fractional Section 32. Township
" 35 North Range 14 East. Beginning at Section
" Corner between Sections 31. & 32. on Township
" line a post. Thence South 15 Chains a post
" on the bank of the River. Thence South 33½
" degrees East 5 Chains down the River, Thence
" South 15. degrees East. 11. Chains & 35 links a
" post Where the Township line intersects the
" river West 55½ links to the place of beginning
" Containing 4 acres & 68/100ths of an acre. Filed
" Notes of fractional Section 5 Township 34 North
" Range 14 East
" Field Notes of fractional Section 32. Township
" 35 North of Range 14 East. (Repitition by C S)
" Beginning at Section between Sections 31. & 32
" on township line a post. Thence South 15 Chains
" a post. on the bank of the River, Thence South
" 33½ degrees east. 5 Chains down the river, Thence
" South 15 degrees East 11 Chains & 35 links a post

" Where the Township line intersects the river, Thence
" West 55 7. links to the place of beginning Containing 4
" acres & 68/100ths of an acre, Field Notes of fractional
" Section 5 Township 34 North Range 14 East,
" Beginning at Section Corner between Sections 31 & 32
" Township 35 North of Range 14 East. at a post. Thence
" South at 25 80 creek S E. 27 Chains and 78 links
" the line on the North End of Georg A Hamelton
" Survey a post. Thence South 88. degrees East 11.
" Chains and 70 links a post. on the bank of the
" Mississippi River, Thence North 6 degrees West 9
" Chains up the River. Thence North 12 degrees West
" 376. links up the River to mouth of creek 150 links
" wide Thence North 12½ degrees West 8 Chains up the
" river. Thence North 18½ degrees West 450 links up
" the river. to where the Township line intersects the
" River a post Thence West 55 7. links to the place
" of beginning Containing 24 acres
" Field Notes of fractional Section 6. Township
" 34. North Range 14. East. Beginning at Township
" Corner. Township 34 & 35. N. Range 13. & 14 East
" at a Stone White oak 14 inches diameter bears
" North 31. degrees West distant 35 links
" Thence South 24 Chains and 89. links a Stone on
" the line of George A Hamelton Survey Poplar 6
" inches diamter bears S 69. W 31. links White oak
" 3 inches diameter bears North 47. degrees East
" distant 27½ links Thence South 88 degrees East.

Note by C.S
80 chains to
Comer between
Section 5 & 6

" 91 chains and 70 links a post on the bank of the
" River Thence back North 88 degrees 11 chains and
" 70 links to where the Section line between Sections 5 & 6
" intersects this Survey. Thence North 27 chains
" and 78 links to the township line Section comer
" between Sections 5 & 6 F 34. N and Section comer
" between Sections 31 & 32 F 35 N Range 14 East a
" post Thence West 80 chains to the place of
" begining Containing 210 acres and 64/100ths of
" an acre

" Field Notes of a resurvey of 478½ acres as made
" by John Hankins Dep Surveyor January 16. 1806
" Begining at a post on the bank of the River
" South 6 degrees East 86 links for the Comer of the George
" A Hamelton Survey; Thence South 67 degees West at
" 4 chains old bed of Creek at 15 chains leave old bed
" of Creed at 30 chains old bed of Creek, through
" N B Gill A. C. Young & R M Young field at 84
" chains and 25 links a post in the woods Near two Iron
" wood trees 3 inches diameter at 70 chains a Small bran-
" ch East. Could not find any marks on this line, the
" Most of the Timber has been cut down
" Thence North 20 degrees West at 38 chains and 71 links
" intersects the line of George A Hamelton on the
" North End 27 links West of where the Range line
" between Ranges 13 & 14 intersects the Survey
" at 50 chains and 25 links post on the North
" of a Small branch, Blazed a Locust 5 inches

Note by C.S. We Could not find the ash tree the timber has been Cut ~~down~~ down.

" diameter. Thence North 54 degrees East across the
" branch twice at 5. 64 links between Range 13 & 14 East
" 10 Chains & 60 links South of Township corner at 24.
" Chains Township line between Township 34 & 35 North
" 14. 88 Chains East of Township corner. Township 34 & 35
" North. at 55 Chains and 24 links line through center
" of Section 31. Township 35 North Range 14 East. North
" 18 Chains and 66. links from 1/4 corner on Township
" line 72 Chains and 43 links Bluff of Rock 18 or 20
" feet high at 85 chains a Stone on the bank of the
" river, South of a poplar Stump on the bank of the
" River, Thence South 52 1/2 degrees East 94 links down
" the river, Thence South 43 degrees East 9 Chains
" and 44 links Spring branch enters the river. at
" 13 Chains and 22 links Thence South 31. degrees
" East 12 Chains intersect the line between
" Sections 31. & 32. Township 35 North of Range 14
" East. Thence South 33 1/2 degrees East. 5 Chains
" a post on the river, Thence South 15 degrees
" East down the river 11 Chains and 35 links
" intersect the Township line between Township
" 34 & 35 North; Thence South 18 1/2 degrees East
" down the river 450 links Thence South 12 1/2
" degrees down the river 8 Chains to the mouth of
" the Creek 130 links wide. Thence South 12 degrees
" East. down the river 570 links, Thence South 6
" degrees East. down the River 9 Chains and
" 86 links to the place of beginning Containing 502. 64/100

" Chain bearers. Reuben M Young and John G Mueller
Chain bearers " Sworn as the law directs
Certificate of " I Archibald M. McPherson County Surveyor
Surveyor " Within and for the County of Perry and State
" of Missouri do certify that the above and
" foregoing are the true and full field Notes of
" Surveys Made by Me on the 8. 9. 10 & 22 days of April
" AD 1861. according to the order of the circuit court
" of Perry County Me directed Given Under My
" hand. A. M. McPherson C.S. Perry Co.
" To the honorable the circuit Court of Perry
Surveyor report. " County To the April term 1861.
" " I the Undersigned the County Surveyor of Perry
" County State of Missouri beg leave to present the the
" following as My report. to wit. I Made the Surveys
" of all the lands which the claim of Joseph Fenwick
" for 478½ acres as Surveyed by John Hawkins dept
" Surveyor on the 16th day of January 1806. according
" to a certified plat Made by the regester of land titles
" at St Louis Mo on the 23 day of October 1860. I
" find by calculation that this Survey covers of the
" South East fractional quarter of Section 31
" Township 35 North Range 14 East. 106 and 65/100th
" of an acre and of the South West fractional
" quarter of Same Section 23 acres and 46/100ths of
" an acre; and Said Survey Covers all of the North
" part of Section 6 Township 34. North Range 14 East
" Except 7 acres and 89/100 of an acre as will appear

" by the plat hereto filed, in the North West Corner of
" Said Section; Containing in the aggregate 302 acres
" and 73/100 acres. Also all of fractional Section
" 5 in Township 34. North Range 14 East Containing
" 34 acres; Also all of fractional Section 32.
" Township 35 North of Range 14 East Containing
" 4 acres and 68/100ths of an acre. according
" to the Survey I Made. Said Survey Covers
" 3 acres and 50/100th of an acre of the North
" East fractional quarter of Section 1 Township
" 34. North of Range 13 East. Also apart of the
" George A Hamilton Survey Containing about 163.
" acres. I locateing Said Survey I did Not
" find any old Marks which I could rely on.
" It Will be Seen by the certified plat that the
" Closeing line runs with the Creek a part of the
" distance and I thought that the creek would
" fix the Southern boundary of the Survey, there
" is certainly an Error in the first Course as 25
" perches will Not close the Survey it would take
" at 2.68 or 9. to make it close, the Survey as
" represented in the plat herewith filed is Nearly
" Correct it May have Changed Considerable
" in the last 33 years but it has been No farther
" South then when we run the line, All of
" Which is respectfully Submitted S McPherson
" County Surveyor. April 24. 1861.
" The defendant then read a duly certified Copy of the

" Co proceedings upon the claim of Martin Fenwick
" of which the following is a copy to wit
" To the recorder to claims to land in and for the
" territory of Louisand. Sir Please to take notice that I
" as agent claim the following tracts of land, situate
" in the district of Ste Genevieve, by virtue of five
" concessions. first A & C. 3rd. a concession to Martin
" Fenwick from Fenon Trudeau Governor for 500 arpens
" of land between Apple Creek and the river du Caps
" cing homme under date 10th June 1797. which are
" submitted to be registered and otherwise investigated
" according to law Ste Genevieve 8. December 1807
" W Fenwick
" To Mr. Zenoe Trudeau Lieutenant Governor of the
" Western part of Illinois Commanding St Louis
" Martin Fenwick of the State of Kentucky
" professing the Roman Catholic Religion, has the
" honor to represent to you, that he has determined
" to come to settle in this place. he supplicates that
" you be pleased to grant him a concession of
" 500 arpents of land superficial measure situated
" between the river called Apple and the river a la
" viande called the river of Cape St Come. the said Martin
" Fenwick to cultivate & build within the time fixed
" by the ordinance and to conform to the laws and
" constitution of the Kingdom as a good faithful and loyal
" subject. at New Bourbon May the 25 1797. Martin Fenwick
" St Louis June 10th 1797. The Surveyor Mr. Antony Soulard

" Will establish the said party on the 500 arpens of land
" Which he solicits, and his survey being completed
" Will moreover deliver it to him, in order that
" he may solicit the concession from the Governor
" General of these Provinces who is informed by the same the
" Subject (or petitioner) is the son of Mr. Joseph Fenwick the same
" whom his lordship has recomended to solicit lands
" for himself his family and the Roman Catholic Colonies
" Which he may conduct to establish themselves in this
" Western part of Illinois Zenon Trudeau

" Thursday November 11. 1811

" Board met present John B. C. Sucus Clement Penrose
" & Friederick Bates Commissioners
" Martin Fenwick claiming 500 arpens of land situate apple
" creek district of Ste Genevieve, produces record of a
" Commission from Zenon Trudeau S. Gr. dated 10 June 1797
" It is the opinion of the board that this claim ought not
" to be confirmed, Board adjourned till Tuesday nine o clock
" A. M. John B. C. Sucus. Clement B Penrose. Friederick
" Bates. See. Minutes of old board book No. 5 pages 407.
" 422. and 423. Friday April 24. 1835

Dr 151. " Martin Fenwick claiming five hundred arpents of
page 246 " land under concession from Trudeau herewith
" filed, dated 10 June 1797. Rec D ps. 44. Ms. 5-6. 422.

Testimony of Barthelemi Ste Gemme " The following testimony was taken before James H Kelf one
" of the commissioners at Ste Genevieve on the 22 April
" 1835. Barthelemi Ste Gemme, aged about sixty years.
" Who being duly sworn deposeth and saith that he

" was well acquainted Trudeau and he was
" Lieutenant Governor in upper Louisiana in the
" year 1797.; he further says that the Signature to the
" said Concession is in the proper hand writing of the
" said Trudeau, that he has often seen him
" write — Witness further says he knew the claimant
" and he was the son of Joseph Hemmick that there was
" a large and respectable family of them. and that
" the claimant at the date of the grant was a citizen and
" resident of the province of upper Louisiana and
" continued so until long after the change of Government
" Sworn to and Subscribed This 22 April 1835

" Barthelemi St Gemme

" James H Relf Commiss.

" Adjourned until tomorrow morning 9 o clock

" James H Relf

" F. R. Conway

" Saturday September 19. 1835

" The Board met pursuant to adjournment. present
" F. R. Conway. J H Relf. Fr. Le Martin Commissioners
" Martin Hemmick Claiming 500 arpents of land
2 151. " See book No 7 page 129. The Board are unanimously
" of the Opinion that this claim is destitute of Merit
" an alteration being apparent in the original
" petition on file. as noted in the translation. The Name Brazeau
" having been altered into that of river a la Biande
" alias St Come this increasing the distance for location of
" grant Several Miles, and the conditions not having

" been complied with.
" The Board adjourned untill Saturday 26th instant
" F R Conway
" James H Relf
" F. H. Martin.
" See Minutes of late Board book No. 7. pages 129. 130. 136. 245. 246 247. & 249.
" Office of the Recorder of Land titles
" St Louis 23rd october 1860
" I Certify that the foregoing is a full and correct transcript from
" the book records files and documents in this office of the
" claim of Martin Fenwick to 500 arpens of land on apple
" creek district of Ste Genevieve Adolph
" U S. Recorder of land titles in the State of Missouri.
" And the Defendant here closed his evidence
" and this being all the evidence given in the cause
" on the trial, The Defendant asked the court to
" give the following instructions to wit

(1) Deft Instruction " If the court sitting as a jury finds from the
" evidence in the case that the land in controversy was
" occupied inhabited and cultivated by one Joseph
" Fenwick prior to and on the twentieth day of
" December 1803. and that he continued to possess
" inhabit occupy and cultivate the same from a
" period prior to said twentieth day of December
" 1803. up to the time of his death and that his death
" occured many years subsequent to the said twentieth
" day of December 1803. then such possession occupation
" inhabitation and continuation constitutes a good legal

" title and is a Superior and older title than that
" of the plaintiff under his patents read in evidence
" And in Such Case the plaintiff is not entitled to
" recover any part of Such land So occupied possed
" inhabited and Cultivated.

2nd " The patent from the United States to Martin Jenn
" ick dated February 10th 1838. read by plaintiff
" Not having been Shown to have been issued by
" Authority of any existing law, or law in force at
" the time, is void and Can Confer no title on
" the grantee therein Named

3rd " The Patent from the United States to Martin Jennick
" dated May 6. th 1837. read by plaintiff Not having
" been Shown to have been issued by Authority of an
" existing law. or law in force at the time is void
" and Can Confer No title on the grantee therein
" Named

Bill of exceptions " The Court thereon took the Case under advisement
" and after advising thereon until the Second day
" after the trial had closed the plaintiff asked
" leave to introduce as evidence the act of Congr
" ess purporting to authorise the issue of the
" patent in evidence as before copied as
" they appear in a pamphlet exhibited to the Court
" and which is agreed may be exhibited in
" the Supreme Court
" to the reading of which defendant objected
" but the Court over ruled the objection and

" permitted the Same to be read and defendant
" excepted. Thereupon the Court refused to give
" the instructions asked by defendant and to which
" refusal the Defendant excepted, Thereupon the
" Court proceeded to render and did render
" Judgement for the plaintiff (which Judgement is
" copied on page 19 & 20 of this transcript) to which
" judgement the defendant excepted. Thereupon
" the defendant filed his Motion to set aside the
" verdict and judgement and grant him a new
" trial of which Motion the following is a copy to wit

" James G W Fennick — Perry Circuit Court
Defendant Motion " vs — April term 1861.
for new trial " Napoleon B Gill — The defendant comes
" and moves the Court to set aside the finding
" and judgement herein and grant him a new
" trial for the following reason

1. " Because the finding and verdict is against
" the evidence

2 " Because the Court admitted improper incompetent
" and irrevulent evidence on the part of the plaintiff

3rd " Because the Court allowed plaintiff to give
" evidence after the trial was closed and the
" instructions submitted

4 " Because the Court refused proper instructions
" asked for by defendant.

5 " Because the finding of the Court is against law

6 " Because the Judgement is for the wrong party J W & T E Noell for Deft,

" but the Court over ruled the said Motion
" and the defendant excepted, Thereupon defendant
" filed his Motion in arrest of judgement, of which
" h Motion in arrest of judgement the following
" is a Copy to wit

Motion in arrest of Judgement

" James G W Fennick } In Perry Circuit
" vs } Court
" Napoleon B Gill } April term 1861

" The Defendant Comes and Moves the
" Court to arrest the Judgement herein
" for the following reasons

1 " Because the petition does not Support the
" finding and Judgement

2nd " Because the judgement does not Conform
" to the pleddings and issues in the Case

3d " Because the finding and judgement are Contrary
" to law

4 " Because the petition does not State facts
" Sufficient to Constitute a Cause of action
" J W & T. E. Noell for Deft

Bill of exceptions " but the Court over ruled the Motion
" in arrest of judgement and defendant excepted
" To all of Which decisions and opinions of the Court
" the defendant objects and excepts and tenders here to the
" Court his bill of exceptions Which he prays May
" be Signed Sealed and Made part of the record
" herein Which is done. John H Stone Seal

State of Missouri }
County of Perry } I Charles O Ellis Clerk of the Circuit Court within and for the County aforesaid do hereby Certify that the annexed and foregoing 32 pages contains a full true and perfect Copy of the records pleas and proceedings in the above Styled Cause wherein James L McGenniss is plaintiff and Napoleon B Gill is defendant

Testimony Whereof I have hereunto Subscribed My Name and affixed My official Seal at office in Perryville this 16th day of October A D 1861

Charles O Ellis Clk

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318 ~~410~~

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October Term 1863

James G. W. Fenwick res.
against
Napoleon B. Gill ap.

Appeal Perry Cir Court

W. E.

Filed Oct 2[illegible] 61
Wm S. Glanville
clk

$10.00 paid by Mr Gill

1861 Oct 20 Apt filed
1862 Oct 25 Motion for reversal for want ~~of signment~~ Jowdy of errors
1862 Oct 29 Contd appts motion Dp 97
Copy for Wm Passalberry $16.84
1863 Oct 21 sub in Ing
1863 December 7. Reversed & Remanded. Opn filed
Dp 207

James G W Fennick Respt

v

Napoleon B Gill appt

IN SUPREME COURT,
Oct TERM, 18 62

Appeal from
Perry Circuit Court

AND now come the said Appellant and say that in the record and proceedings of the Court below, in the above entitled cause, there is manifest error, and for error said Appellant assign the following, to wit:

1. That said Court admitted improper and illegal testimony offered by Plff
2. That said Court rejected proper and legal testimony offered by Defendant
3. That the Court gave to the Jury improper and illegal instructions.
4. That the Court refused to give to the Jury proper and legal instructions offered by Appellant Defendant below.
5. That the verdict was against the evidence.
6. That the verdict was against law.
7. That the verdict was against both law and evidence, and against the law under the evidence.
8. That the verdict was against the weight of evidence.
9. That the judgment was rendered in favor of the Plaintiff when it should have been rendered for the Defendant
10. That said Court overruled the motion for a new trial, made by Defendant

11th The Court overruled the motion in arrest by Defendant

12. The Court sustained plffs motion to strike out Defendants amended answer Nov Term 1860

Jno W Stoll for applt

And now come the ..... and for joinder in error say, that there is no error in the record and proceedings of said ..... in said cause, as assigned by said .....

James G W Fenwick
Respt

} appeal from
v } Perry Circuit Ct

Napoleon B Gill
applt

Filed October 20. 1862
A W Mead Clk

Assignment of errors

Noell for applt

James G W Fenwick
vs
N B Gill

In Supreme Court
Oct term 1862

Statement of Case by Jno W Nodell for ~~Recpts~~ appellant

This was an action of Ejectment in the Perry Circuit Court. The petition in the usual form. The Defendant filed answer denying plaintiffs title and setting up title in himself. Afterwards had have to file amended answer and by amended answer alleged that the tracts of land sued for were upon the settlement right of one Joseph Fenwick that Martin Fenwick had by fraud obtained the passage of the act of Congress granting him the land when in fact Joseph Fenwick and his legal representatives were the real parties owning it. And that Defendant as owning their interest was entitled to hold possession &c. That the act of Congress enured to the real owners and that Martin Fenwick under whom plaintiff claimed was a mere trustee for the heirs of Joseph Fenwick. This amended answer at November term 1860 was stricken out and the equitable defence cut off.

Upon the trial the plaintiff to sustain his title read two patents from the United States purporting to have been issued by authority of a private act of Congress without having first given in evidence such private act. The Defendant objected but the objections were overruled and exceptions taken. After the Cause had been submitted for two days and the witnesses all gone home and the instructions

submitted and Counsel. the Court against the objections of Defendant permitted Plaintiff to read the printed act from a pamphlet to be exhibited in the Court and exceptions taken. The evidence in regard to the location of Defendant of the land described in the petition is to be found in the report of the County Surveyor. Judgment being for plaintiff. Motions for new trial and in arrest were severally made and overruled and exceptions taken and the Cause brought here by appeal

Jno W Stell for
Appellant

Jno W Stell for appellant makes the following points

1st The Circuit Court erred in striking out Defendants amended answer. Defendant Fenwick obtained the grant of the land upon the faith of Joseph Fenwicks settlement of the land prior to 1803 and by grand had his own Conception altered so as to Cover Joseph Fenwicks settlement and the grant was made by Congress upon the consideration of that settlement and occupation by Joseph Fenwick and his representatives for sixty years Continuously and the Defendant held under them he should have been permitted to show it on the trial. His answer was stricken out and he deprived of that defence It is insisted that in this the Court erred and the Cause should be

reversed and the defendant allowed to make his equitable defence

2. The evidence in the Case makes out such a title and Claim as Joseph Fenwick and his representatives as was reserved by the private act read (see the terms) and made that act inoperative because of Joseph Fenwicks "Settlement right" so clearly made out on the trial

See evidence of Robert Manning

3. The Court erred in admitting the patents to be read in evidence and in afterwards permitting the private act of Congress to be read. It is error after a trial is concluded and the Cause submitted and the parties and witnesses left the Court to permit Material evidence in behalf of one of the parties

In this Case the evidence was opened and the Defendant had an opportunity to introduce rebutting evidence or any

evidence done away with the effect of the private act.

The court erred in overruling motion for new trial and in arrest

Jas W Steele
for appellee

No 44

J G W Fenwick

vs

N B Gill

Appflts

Brief

Filed Oct 22-1862
A W Mead
Clk

To be submitted

Abd

8

James G. Fenwick
vs
Napoleon B. Gill

In the Supreme court of the State of Missouri. October Term 1862.

And the said defendant moves the court to reverse the judgment rendered by the court below in the above cause and remand the same for further proceedings because the plaintiff has not joined errors herein according to the State in such case made and provided.

Jno W Avell atty of Recvd. for appeltn

James G. W. Fenwick
vs
Napoleon B. Gill

Motion requesting the judgment of the Court below to be reversed & remanded for want of a joinder in errors

Filed Oct 24. 1862.
A. W. McLaughlin Clk

Fenwick
vs
Gill

This was an action of Ejectment for the southwest quarter and the south-east fractional quarter of Section 31 and all of fractional section 32 in Township 35 north Range 14 East.

The defendant admitted his possession of section 32 and of parts of the two quarters of section 31 and claimed title thereto, and disclaimed possession or title to the remaining parts.

At the trial the plaintiff showed title to the southwest quarter of section 31 but did not show any title to the south-east quarter of that section nor to fractional section 32.

The defendant showed no title to any part of the premises.

Judgment was given for the plaintiff for fractional section 32 and for all that part of the southeast quarter of section 31 as well as of the southwest quarter thereof which was in the possession of the defendant.

This judgment was manifestly erroneous and must be reversed.

Here in this Court the respondent offers to remit all right to recover the portions of the land not embraced in his title papers and asks the Court to modify the judgment

accordingly. Were this Court to undertake to render such judgment in this case as the Court below should have rendered it would be necessary also to apportion the damages and monthly value of the premises which the record does not furnish the means of doing with accuracy

It was urged in this Court that the Circuit Court erred in striking out an answer of the defendant, but the record does not show any exception taken to that action of the Court and the defendant filed an amended answer which stated that it was "filed by consent and by leave of Court in place of all preceding answers withdrawn"

Judgment reversed & cause remanded.

Barton Bates

Judges Bay & Dryden concur.

J 25

Fenwick

vs

Gill

Reversed & Remanded

Filed December 7. 1861

Atl. Mead

Clerk

Bates

James G & W Fenwick

vs

Napoleon B Gill

In Supreme Court
Octo T 1863

Statement for Fenwick
by Glover & Shepley

August 21/1858 Fenwick sued Gill for the possession of the following lands in Perry County.
viz

The South E fel qr
" North W fel qr
" South W fel qr
S 31.
" fel S — .32
" North E fel qr. 31
all in T 35 N R 14 E
containing about 591 65/100 a

The deft filed an answer, and then an amended answer which on plffs motion was stricken out without exception. And additional answer was then filed and on it the cause was tried. Possession of 234 6/100 acs

part of S W fil qr S 31 was admitted by deft: and on the trial the pltff recovered this act and also another tract of land for which he showed no title. For the land recovered in the S W fil qr pltff derived a title by a patent to Martin Fenwick dated May 6/1857 and deed from F to pltff dated August 6/1857

The deft showed possession of the land recovered from 1803 and insisted by an instruction this was a better title than the patent of 1857. The court overruled this point and upon the propriety of this ruling the recovery rests

Points and authorities by Glover & Shepley for Fenwick

(1) The title is presumed to be originally in the U States and the patent is therefore conclusive in the absence of an older title from the U States

(2) No lapse of time can give

a squatter on public lands
a title agt the U States

(3) The point now raised by Giles counsel that the pltffs title was younger than his suit is not maintainable. It is true that the suit was brot July 31/1857; but the first file in the course the affidavit is dated July 22/58 The date of the writ is aug 21/58 — so that the clerk's statement of the commencement of the suit is contradicted by the record itself. This point was not raised below.

4 The deft never took any step to secure a preemption and did not claim one below.

(5) The pltff Fenwick remits all right to recover in this suit the tracts not embraced in his papers; and asks the court to modify

the Judgment accordingly

Fenwick
v.
Gill
Glover & Shepley
for Fenwick