

No. 13149

Supreme Court of Illinois

warren et al

vs.

Williams

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 232.

1860
Watson
vs
Ketchum

13148

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IN THE SUPREME COURT,
STATE OF ILLINOIS.

APRIL TERM, 1859.

UNITED STATES OF AMERICA, }
State of Illinois, Cook County, } ss.

Page 1.

Pleas before Hon. GEORGE MANIERRE, Judge of 7th Judicial Circuit. October Term, 1858.

JULIUS M. WARREN, }
WARREN SMITH, }
REUBEN AUSTIN, }
vs. }
WILLIAM WILLIAMS. }

In Chancery.

February 10, 1846.—Bill of Complaint filed in Circuit Court of Du Page Co., re-filed May 10, 1847, in County Court of Cook Co.; filed April 3, 1851, in Circuit Court of Cook Co.

Original Bill sets out the following Bond of Submission, to wit :

“KNOW ALL MEN BY THESE PRESENTS, That I, William Williams, of the County of Du Page, and State of Illinois, am held and firmly bound unto Julius Warren, Warren Smith, Joseph Wilson and Reuben Austin, of the same county, in the sum of one thousand dollars of good and lawful money of the United States, to be paid the said Warren, Smith, Wilson and Austin, their executors, administrators or assigns, for which payment well and truly to be made I do bind myself, my heirs, executors and administrators, firmly by these presents. Sealed with my seal, dated this *seventeenth* day of September, A. D. 1844.

2.

“The condition of this above obligation is such that if the above bounden William Williams, his heirs, executors and administrators, on his and their part, shall and do, in all things, well and truly stand to, obey, abide by, perform, fulfill and keep the

- award, order, arbitrament and final determination of James Brown, David McKee and Timothy Woodward, arbitrators indifferently elected and named, as well on the part and behalf of the above bounden Williams as of the above named Warren, Wilson, Smith and Austin, to arbitrate, award, order, adjudge and determine of, and concerning all and all manner of actions, cause and causes of action, quarrels, controversies, damages and claim whatsoever, at any time heretofore had, made, suffered, committed, or depending by and between the said parties, for or on account of, concerning or in any wise affecting the following described real estate, situate, lying and being in the County of Du Page, and State of Illinois, and known and described as being the south-west quarter of section number thirty-one, (31,) in township number thirty-nine, (39,) north of range number nine, (9,) east of the third principal meridian, and which is the same property to which the said Williams has proved up a pre-emption right, and which
3. said pre-emption is contested, and also all other the lands, real estate, and property belonging to either or any of the above named Julius Warren, Warren Smith, Joseph Wilson and Reuben Austin, which may be affected by the award to be made by the said arbitrators, *the object being to settle all disputes that may exist between the parties as to claim lines, whether said claims have become the deeded property of any of the parties hereto or not*, so as the said award be made in writing, under the hands of the said Brown, McKee and Woodward, or any two of them, and ready to be delivered to the said parties in difference, or such of them as shall desire the same, on or before five o'clock P. M. of Thursday, the nineteenth day of September, in the year of our Lord one thousand eight hundred and forty-four, then this obligation to be void, or else to remain in full force. And the said William Williams further covenants to and with the said Warren, Wilson, Smith and Austin, that the said submission shall be made to the above named arbitrators on their own knowledge, no evidence to be adduced on the part of either party, and further said Williams agrees and covenants to pay the sum of one thousand dollars to said Warren, Wilson, Smith and Austin, if he fails, refuses or neglects to perform, upon his part, the award to be made by said arbitrators, when the same shall be made, and the said sum of one thousand dollars is hereby declared to be liquidated damages, to be recovered by the said Warren, Wilson, Smith and Austin,
4. from said Williams, upon his making such failure, refusal or neglect to perform said award as aforesaid, and the said Williams further covenants and agrees, under the same penalty, to and with the said Warren, Wilson, Smith and Austin, that in case his pre-emption shall be set aside, and any member of his family, or any person for him, or claiming under or in his right, or by his suggestion or direction, shall obtain said premises, that he will obtain from them such conveyances or disposition of any portion of said premises as said award shall require and direct, to such persons as shall be directed in said award.

"(Signed,)"

"WILLIAM WILLIAMS. [Seal.]"

5. The Bill *avers* the making of a bond of like penalties, like conditions, on the part of complainants; the delivery thereof, on the day and date of former bond, to said William, and its acceptance by him: also *avers* that it was mutually understood that said Wilson would not be a party to said arbitration, nor join in said bond.

6. The bill further avers that on the 19th day of September, 1844, the said arbitrators, by the consent of all the parties, proceeded to arbitrate and adjudge in the premises, and on that day did award and adjudge, *in substance*, as follows:

(Copy of supposed Award, as set out in Bill.)

"The decision of arbitrators in suit pending between J. Warren, W. Smith and R. Austin, of one part, and Wm. Williams, is as follows: the said Williams shall deed to said R. Austin up to his original claim line in the timber, and said Austin is to pay

to said Williams one dollar and twenty-five cents an acre, with twelve per cent. interest from the time the land was paid for up to the time of receiving of his deed, which shall be within sixty days; a warrantee deed.

"Also said Williams shall deed to said W. Smith in the timber up to his original claim line, for which said Smith shall pay to said Williams Government price from the time the land was paid for at the office, with twelve per cent. interest until he receives his deed, which shall be within sixty days—a good warranty deed.

7.

"The decision of the arbitrators is as follows: said William Williams shall deed twenty-two and a half acres off from the east side of the east eighty of fractional quarter that Williams pre-empted in the *big woods*. Furthermore, it is decided that each party shall pay what costs they have caused to be made.

(Signed,)

"TIMOTHY D. WOODWARD,

"J. BROWN,

"DAVID McKEE."

Further Award on separate piece of paper.

The decision of the arbitrators in the suit now pending between J. Warren, Warren Smith, R. Austin, is as follows: the said Warren Smith shall deed up to the original claim line on the prairie, which said Smith pre-empted, and said William Williams shall pay to said Smith government price, with twelve per cent. interest from the time the land was paid for until Williams receives his deed, which shall be within sixty days; a good and sufficient warrantee deed. Each party shall be at the expense of surveying and their deeds; furthermore, it is decided that each party shall pay what costs they have made.

"(Signed,)

"TIMOTHY D. WOODWARD,

"J. BROWN,

"DAVID McKEE."

8.

Complainants represent that said award was, on said Sept. 19th, 1844, delivered to said Williams, and has been ever since in his possession, and they have not been permitted to see it, and ask that said Williams be compelled to produce and file the same. Also represent that said award was made as aforesaid, ready to be delivered by the time specified in said bond; and also that the land awarded to said Austin amounted to 6 65-100 acres, and was part of tract pre-empted by Williams; and also the land awarded to said Smith amounted to 36 49-100 acres, and that said Smith did, within said 60 days, tender to said Williams the sum of \$1 25 per acre, with twelve per cent. interest, pursuant to said award, and that Smith offered, and is ready to convey to Williams, pursuant to same.

9.

10.

Complainants further represent that the arbitrators, in awarding the 22 1-2 acres to be deeded, as in said award is mentioned, by *mistake* and *accident* left out the name of said Julius M. Warren as grantee of said conveyance; that the lands to be deeded as per award, by said Williams to complainants, were part of same tract mentioned in said bonds, and of the same lands pre-empted by Williams, to wit: part of S. W. 1-4, S. 31, 39, 9, and the same was in dispute between the parties, and also that the land awarded to be deeded to Williams by Smith, which he had purchased, was part of S. W. 1-4, S. 35, 39, 9.

Specific Relief asked. That said Williams convey according to said award. Oath not waived.

SPRING & GOODRICH, for Compl'ts.

April 3, 1851. Transcript from Du Page Circuit Court, first filed in Cook County Court:

UNITED STATES OF AMERICA, }
STATE OF ILLINOIS, Du PAGE Co., } ss.

13. Pleas before the Hon. Richard M. Young, May Term, 1846.

JULIUS M. WARREN *et al.* }
vs. } In Chancery.
WILLIAM WILLIAMS, }

May 9, 1846. Leave given complainants to amend their bill by June 1st, and defendant ordered to plead, &c., by July 1st.

14. April 20, 1847. *Change of Venue* to Cook County Court.

15. April 3, 1851. Certificate of Clerk.

16. April 3, 1851. *Amended Bill*, filed first Nov. 7, 1849, in Cook County Court.

Said *amended* bill mentions *original* bill, *change of venue*, and the order of Cook County Court granting leave to *amend* the bill. *Amended* bill sets out that on or before Sept. 17, 1844, certain disputes between the parties existed, in relation to their claim lines, and the equity and right of title of said complainants to parts of said S. W. 1-4, S. 31, 39, 9, to which said Williams had proved up a pre-emption, and to determine these disputes and their equitable rights, the parties agreed to arbitrate, and that said Williams, for this purpose, entered into following bond:

17.

(*Copy of Bond here inserted—same as in Original Bill.*)

18 & 19.

20. Complainants aver the making and delivery of bond on their part, and the with-
21. drawal of Wilson by consent of all parties, as in *original bill*.

22.

Complainants represent that on Sept. 19, 1844, said arbitrators, having assumed the burthen of arbitration, did, by the consent of said Williams, the parties being present, arbitrate and award in the premises, and make their award in writing, under their hands and seals, and were about to make copies thereof, to be delivered to the several parties, but upon the solicitations of Williams, and his false pretences and representations, they delivered said award to him, and that he fraudulently retained the same, and refused to deliver or to show the same to said arbitrators, or to said complainants.

23.

24 & 25.

Complainants *charge* that the counsel of Williams has given them what he *pretends* is a copy of said award, *in substance*, as follows:

(Here is inserted copy of *pretended* award, appearing upon two pieces of paper.
(Copy same as in *original Bill*.)

26. Complainants represent that it is represented by said arbitrators that said *pretended* copy is not a true copy of said award, as made by them and delivered to said Williams, as aforesaid, but that the *original* award so made by them awarded the said 22 1-2 acres to said Julius M. Warren, and therefore the said Warren especially charges that said tract was awarded to him, and that his name had been fraudulently erased, by said Williams, or some one, from said award, and they charge if said *pretended* copy is a true copy, the name of Julius M. Warren was omitted in said award by mistake.

They represent that the award was ready to be delivered by the time specified in said bond, but the same was prevented from being copied and delivered, by the fraudulent representations and conduct of said Williams.

27. They further represent that the land awarded to Austin amounted to 6 65-100 acres, and was part of the land pre-empted by Williams; that they were ready, and offered to pay \$1 25 per acre, and 12 per cent. interest thereon, for said land, and they aver that Williams, within said sixty days, upon the offer of said Austin to pay said money and interest thereon, refused to convey the said land. And also that the land awarded to said Smith amounted to 36 49-100 acres; that Smith, within said sixty days, tendered to Williams \$1 25 per acre, with interest thereon, as aforesaid, and also a readiness to perform, at all times, the said award on their part; and also that Smith was
28. ready and offered, and still is ready to convey to Williams, pursuant to said award.

29. They aver that said Warren, within said 60 days, tendered to said Williams the sum of \$1 25 per acre, with interest thereon at 12 per cent., for the land so awarded to him, and he now offers to pay the same: also avers that said lands awarded to be deeded by Williams, were parts of land mentioned in said bond, and part of the same pre-empted by him, to wit: S. W. 1-4, S. 31, 39, 9, and that the land awarded to Williams, is part of S. W. 1-4, S. 35, 39, 9, purchased by said Smith of Government, and which said land, up to claim lines, amounts to 9 78-100 acres, and that they file a deed thereof to said Williams, for reference, &c.

(Here follows a particular description of said lands.)

Tract awarded to Austin.

Com. at S. E. cor. of S. W. 1-4, S. 31, thence N. 84 rods, thence W. 4 rods 13 links, thence on a direct line to strike S. line of said S. W. 1-4, 13 rods W. of said S. E. cor. thence E. 13 rods, to beg., containing 6 36 100 acres.

Tract awarded to Smith.

30. Com. 13 rods W. of said S. E. cor., thence W. to W. line of said Sec., thence N. 32 rods, thence E. parallel with S. line to strike said Austin's W. line, thence southerly along Austin's W. line, to South line of Section, containing 36 49-100 acres.

Lands awarded to Warren, being 22 1-2 acres off of the East side of said S. W. 1-4, Sec. 31, exclusive of the lands awarded to Austin and Smith.

Tract awarded to Williams.

Com. on W. line of Sec. 35, 3.75 chains from S. W. Cor. of said Sec., thence N. 5 deg. 10 min. W. on section line 34 chains 16.1-2 links, to centre of highway, thence along centre of highway, 4 deg. 15 min. S. of E. 5 chains 80 links, thence S. 5 deg. 15 min. W. 32 chains 25 links to beg., containing 9 78-100 acres, all of said lands being in T. 39, R. 9, E. of 3d P. M.

Amendment inserted by Order of Court, on the hearing of said Cause—shown in Record in Red Ink.

31. Said amendment shows a conveyance of lands awarded to Williams, by said Smith and wife, August 13, 1847, to George Packard, and a conveyance of said lands by Packard and wife, August 31, 1847, to said Julius M. Warren, and an offer of Warren to convey to Williams, as per award.

Complainants aver a readiness to perform said award on their part, and a refusal on part of Williams.

32. *Amended* bill to be answered under oath.

33. Specific relief prayed as in original bill.

34. April 3, 1851. Transcript from the Cook County Court of Common Pleas, (late Cook County Court:)

STATE OF ILLINOIS, } ss.
COOK COUNTY,

Pleas before the Hon. Giles Spring, Judge of the Cook County Court of Common Pleas. February Term, 1850.

35. JULIUS M. WARREN *et al.*, }
vs. } In Chancery.
WILLIAM WILLIAMS,

January 1, 1849. *In vacation*, by consent of parties, *demurrer* to bill was heard, and from want of equity in bill it was considered the same ought to be dismissed, but upon request of complainants to amend, it was ordered that they amend by first day of next term.

36. May 28, 1849. *Ordered*, that defendant plead, &c., by first Monday of August next, to *amended* bill.

Oct. 24, 1849. By agreement of Counsel, *ordered*, that defendant plead, &c., in twenty days, and cause be continued till next term.

37. February 21, 1850. By consent of Counsel, *change of venue* taken to Circuit Court of Cook County. Certificate of Clerk.

In Circuit Court of Cook County.

April 3, 1851. Defendant files his demurrer to *amended* bill.

38. Copy of demurrer.

39. January 3, 1852. By agreement, demurrer set for argument fourth Monday of said month, at Chambers.

March 30, 1855. *Demurrer*, upon argument, *over-ruled*.

40. March 31, 1855. On motion of defendant's Solicitor, time to answer is extended to May 1st.

April 30, 1855. Defendant files his answer.

41. *Answer.* Defendant says that on Sept. 17, 1844, he had proved up a pre-emption, and purchased at the Land Office of the United States, said S. W. 1-4 of Sec. 31, 39, 9, in the timber, and that said land, in all respects, lawfully and legally was his property. Also says that at and before said time he had made a claim to other land upon the prairie, and had made claim lines, which were well known to complainants; that he had pre-empted the said prairie, and entered the same, except a small strip of about 9 acres; which was cut off from his claim by the Government Survey, and was entered by said Smith, with a full knowledge of his right thereto, the same having been improved and fenced by said defendant, and in his actual possession, and that said Smith, at the time he entered said strip, agreed to convey the same to him; that he settled upon said lands and made the claim thereto, in 1834, and had remained in possession ever since.

42. Defendant admits that on or about Sept. 17, 1844, there did exist some disputes between the parties, *as to where some original claim lines run*, and for the purpose of defining and settling these lines, the parties agreed to submit the same to the arbitrators aforementioned, and that said bond may be a copy, and that said complainants executed a bond of submission to him. He states that he has no recollection about Wilson withdrawing from said arbitration, or of any agreement in relation thereto.

He denies that said arbitrators determined or adjudged the disputes referred to them. He admits that said arbitrators met about the time stated in said bill, and for the purpose therein stated; that he was present, but that all of complainants were not present.

And he says that while they were so together, the said arbitrators had the cus-

44. today and possession of the bonds of submission, and then and there made and signed what they called their "decision," on two separate pieces of paper, and one or more of said arbitrators asked who would pay for their time, &c., and said they would not give up the papers until they were paid; defendant asked if they would trust him; they said they would, and upon his promising to pay, they gave him the bond coming to him, and two pieces of paper, called their "decision."

He avers that said arbitrators professed to have concluded their labors, and that nothing was said about making copies, but that they separated without any intention expressed of meeting again. He says he has no recollection of promising said arbitrators to return to them said pieces of paper, or of their requesting him so to do, or of his refusal, and that said decision of said arbitrators was not altered after the same was given him, that he soon thereafter handed the same to his counsel, Scammon & Judd.

45. He denies that said complainants, or either of them, within said 60 days, or at any time since, tendered to him any money for any of said lands, and that said Smith ever tendered to him a deed of said *prairie lands*, in said bill and said decision mentioned, but, on the contrary, alleges that said Smith ever refused to give him a deed of said *prairie lands*; and after said decision, said Smith sold said prairie land to Geo. Packard, who afterward sold the same to said Warren, who has for the last five years deprived him of the possession thereof.

And that said Warren, in spring of 1853, sued him in an action of trespass, in Circuit Court of DuPage County, for the rails and fence built upon said strip of prairie by him, and which, after the purchase of said strip by said Warren, he had taken away; that a *change of venue* in said action was taken to Kane Circuit Court, and judgment recovered by said Warren, for value of said rails, which has been paid by him.

46. That there is no deed on file in this court, made by said Smith, conveying to him said premises.

47. He avers that he was in the country, and made his claim to the timbered land aforesaid, long before Smith or Austin came into this State, and that said 1-4 section did not embrace any land of theirs whatever, nor were they entitled to any portion thereof, nor was said Warren entitled to any part thereof in law or equity. Also avers that said arbitrators had no power to award that either party should convey to the other, or, if at all, it was only in case his pre-emption should fail; and he avers that the same did not fail, but that his title to said 1-4 section remained perfect; that it was the duty of said arbitrators only to fix upon, determine, and locate the claim lines of the respective parties, as stated in the bond.

He avers that having awarded in matters outside of said bond of submission, their said decision and award is void. He denies that said arbitrators made any mistake, except in the subject of difference submitted to them. He states if said arbitrators had authority to direct conveyances (which he denies) the said award is *uncertain* and *void*; it leaves the parties to determine where the claim lines run, and to make surveys; uncertain in description, in quantity, and as to parties.

48. He says that the bond given by complainants to him, and said papers, delivered to him by said arbitrators, cannot now be found; that he believes the same have been lost or mislaid.

A general denial of all other matters not answered unto, confessed, admitted, or denied.

(Signed)

WM. WILLIAMS.

FARNSWORTH & BURGESS, Solicitors.

49. Copy of affidavit to answer.

May 8, 1855, replication filed.

- 50 to 68. Feb. 20, 1856. Complainants file their *supplemental* bill, with an order for an injunction. Said supplemental bill is the same in substance and effect as the amended bill, and was filed for the purpose of enjoining said defendant from committing waste, &c.

- 69, 70. Injunction bond and approval.

- 71, 72. Injunction issued Feb. 20, 1856.

73. Feb. 22, 1856, injunction served.

March 14, 1856, defendant files his answer to supplemental bill.

- 74 to 77. This answer is same, in substance and effect, as defendant's former answer to amended bill. He admits he has taken timber from said premises, and claims he has a perfect right so to do, as he is advised and believes.

March 24, 1856, motion to amend bill.

March 26, 1856, are filed the depositions of James Brown and David McKee, with exhibits on behalf of the complainants.

78. Depositions taken January 30, 1856, by agreement of counsel, before L. D. Hoard, Clerk of said Circuit Court of Cook county.

Present—Julius M. Warren, one of complainants.

GRANT GOODRICH, Complainant's Solicitor.

FARNSWORTH & BURGESS, Defendant's Solicitors.

Deposition of James Brown.

1. Did you know complainants in 1844, and defendant, and prior to that time?
 Ans. I did.

2. Were you acquainted with S. W. 1-4 sec. 31, 39.9, and with the claim lines of different persons claiming the same? If you know, state also who pre-empted same.

79.

Ans. I am well acquainted with said land. I have lived on the same section for over 20 years. I am acquainted with the claim lines because I claimed some of it myself. My claim run on to that quarter section. William Williams pre-empted said quarter. I was with him when he did it.

3. State the names of the persons claiming portions of said quarter, before and after the pre-emption.

Ans. Reuben Austin claimed a part of it. Joseph Wilson, Warren Smith, Julius Warren, and Carpenter, claimed part of it; Phineas Greves also claimed part of it, and William Williams claimed part.

4. State whether any such claims were designated by lines or otherwise.

Ans. Yes, sir; by claim lines.

5. Look upon paper marked "exhibit 1," and state who executed the same, and whose names are subscribed thereto as arbitrators, if you know.

[Exhibit 1 is bond of submission and acceptance of arbitrators.]

Ans. It was executed by Wm. J. Williams, Wm. Williams, and Henry Williams. The names of James Brown, David McKee, and Timothy D. Underwood, are signed as arbitrators.

6 and 7. [Prove that Wilson withdrew from the arbitration, by consent of all parties, and the others were to go on.]

80.

8. State if there was any meeting had by said arbitrators to investigate, and which of said parties were present.

Ans. There was such meeting held by the arbitrators. Williams was present, Smith was present, Austin was present; am not positive whether Warren was present or not.

9. State whether any determination was made by said arbitrators as to the claims of said complainants in and upon said 1-4 section, and also to S. W. 1-4 sec. 35, 39.9; if so, when made, and ready to be delivered, and was the same in writing?

Ans. A determination was made by said arbitrators as to the complainant's claim to said 1-4 sec., and also to the S. W. 1-4, sec. 35, 39.9; it was ready to be delivered in 1844, I think in September; it was in writing.

10. Was the same ready to be delivered within the time prescribed in the submission?

81.

Ans. It was. We made our decision, reduced it to writing, and signed it, within the time subscribed in the submission, but had not time then to make copies for the parties, but read it over to them, and proposed to take the paper home to make copies for each, but never did.

11. State what became of said award, and the reason why copies were not made as contemplated.

Ans. We started for home, got about a mile, when Mr. Williams came on the run and overtook us, and wanted us to go back to his house and give him a copy that night, or let him take the award and make a copy, and he would return it that night or next morning. It was so late in the day we concluded we could not go back that night, and we consented to let him have the award by his promising to deliver it to me that night or next morning at my house.

12 Did he return the award, as promised? If not, why?

Ans. He did not. I can't tell why.

13. Was any demand made of him for it? If so, by whom?

Ans. I called for it myself.

14. What objection did he make, if any, to letting you have it?

Ans. He said he had n't got it; had taken it down to Naperville, I think to Allen's office, to have a copy made, and had not got it back, but would get it right away and give it to me. I called again for it. He said he had not got it yet, and after that he gave me a copy. I wanted him to keep the copy and give me the original. Said they had not got it, but gave me what they called a copy. I never saw the *original*.

82. 15. Was what he gave you, according to your best recollection, a true copy, and what has become of such *pretended* copy?

Ans. *What he gave me was not a true copy; I knew it was not.* I gave the *pretended* copy to Mr. Warren.

16. Look upon exhibits 2 and 3, and state whether, to the best of your knowledge, they are the papers so delivered to you as the copy. (*Exhibits 2 and 3 are copies of award.*)

Ans. It was my impression there was but one paper, but this is the purport of the copy. It was a good while ago, and I am not positive whether there was one or two papers.

17. In what respect did the copy, and does said exhibit, differ from the original?

83. Ans. That copy says Williams was to deed 22 1-2 acres of timber in Sec. 31, but don't say to whom. The *original* said it was to be deeded to Julius Warren. It went on to state that Williams should deed to Austin and Smith up to the original claim line, on the S. W. 1-4 of Sec. 31, then he was to deed to Julius Warren 22 1-2 acres off of the E. side of the E. 1-2 of said 1-4, exclusive of what was awarded to Smith and Austin. Then Smith was to deed to Williams, on the prairie, a certain *gore* piece, which joined Williams on the east of his claim. They were to pay 10 shillings per acre, both ways, with 12 per cent. interest till the deeds were made.

18. (Witness says that he thinks no courses or distances were given in the *original*.)

19. What had you before you and the parties at the time of such investigation and award, describing the land particularly, embraced in the claims of each, if anything?

Ans. We had a survey bill of Smith and Wilson's, of what they claimed, and the same which was awarded to Smith, and the survey bill of Austin's claim. Williams claimed the pieces on the prairie. I think we had a plat of it, but whether we had a plat or survey bill I can't recollect positively.

20. Witness is asked to state the boundaries of the land claimed and awarded and to look upon map, (Exhibit 4,) and say how the lines there indicated compare with the claim lines.

84. Ans. The boundaries of Austin's claim are as follows: It is on the S. W. 1-4 of Sec. 31, com. on 1-4 sec. line, at S. E. cor. of S. W. 1-4 of said Sec. 31, thence N. 76 rods, thence W. 4 rods 15 links, thence South, I don't know the exact course, to strike South line of Sec., 76 rods, thence E. 13 rods to beg. Smith's claim is bounded as follows: Com. 13 rods W. of S. E. cor. of said 1-4 sec., thence W. to W. line of said sec., thence N. 52 rods, thence E. parallel with S. line on claim line, to strike Austin's West line, thence S. 52 rods, to S. line of sec. Warren's claim I cannot give the boundaries of. If I recollect right, it was described in the award as follows: Warren was to have 22 1-2 acres off the E. side of S. W. 1-4, exclusive of Austin and Smith's claim. I have looked upon map, and the lines thereon compare with claim lines.

85. 21. Witness is asked to look upon said map, and say how the same compares with Williams' claim lines, and whether the land is prairie or timber.

Ans. I think they compare right; it is prairie—a gore piece.

22. Look upon exhibits ⁵ 3, 6 and 7, and say whether any one or all were presented to said defendant, and if so, at what time, for what purpose, and if any money was tendered at the time, if so, to whom and how much, and all that was said and done in relation thereto.

Ans. No. 7 was presented to Williams, by his paying what the arbitrators said, in the award, he should. Nos. ⁵ 3 and 6 were also presented to Williams; they were presented within the sixty days, for him to sign; there was money tendered to Williams at the time; the amount was the amount mentioned in the award, with interest, and some few shillings over, according to the quantity of lands called for by the deeds. Waterman presented the bag of money and the deeds to Williams to execute. What Williams said I cannot recollect, but he turned and walked off, and did not take either.

23. (Is in regard to a tender to Williams or his agent, by Austin, for the land awarded to him)

86. Ans. He came in and pre-empted, (Williams and myself,) land on Sec. 31. Austin paid Wm. J. Williams, previous to the pre-emption, the money for the land subsequently awarded to Austin.

24. Who transacted Williams' business, and acted for him, in this and other transactions, and was he a son of defendant?

Ans. At that time, and until Williams died, he was always a sort of a foreman in the business; he was a son of defendant.

25. Was defendant in this city at the time the money was paid to his son, and was he present, or did he know of it, to your knowledge?

Ans. He was in the city at the time, we all stopped at one house; I guess he did know it.

26. (Is relative to an arrangement between the settlers about deeding and re-deeding, according to claim lines.)

87. Ans. There was such an arrangement. The defendant was a party to, and I think he did enter into it. The arrangement was this: The settlers held a meeting, and appointed John Warn to keep a book of records of each individual's claim: the agreement was this, we each gave Warn a description of our claims, and bound ourselves to deed and re-deed, according to our claim lines, and not regard the government lines. Jesse Groves deeded to Williams or his son some land in the big woods, that one of the Williams's claimed. Mr. Williams claimed other lands, which were not deeded to him. The agreement to arbitrate did grow out of the arrangement between the settlers, and the agreement to abide the claim lines.

Objection. Defendant's Solicitor objected to all and every one of complainant's interrogatories, at the time of their being put.

Cross-examination. 1. Was the award you have spoken of as made by you, on two pieces or one piece of paper?

Ans. I think on one.

2. Did you sign two awards?

Ans. We *did not*.

Did you sign your name in two different places to the award?

Ans. *No, sir.*

88. It is admitted here by complainant's Solicitor that the exhibits 2 and 3 are in the handwriting of C. B. Hosmer.

4. Was there not a contest between the parties to this suit, and other claimants of portions of S. W. 1-4, Sec. 31, as to where their claim lines were, at the time of the award?

Ans. There was some trouble and difficulty about it.

5. (Witness is asked if, in answer to 17th interrogatory, he stated all the difference between the copy shown him and the *original award*.)

Ans. According to the best of my recollection, I did.

6. And ans. It appears that the government survey was made some two or three years before the making of the award.

7. And ans. That Williams pre-empted the winter before the award was made.

8. How soon after making the award were surveys made?

Ans. It is my impression now that so far as Austin and Smith were concerned it was done previously, by Enos Coleman, and that they had survey bills present, but Warren's was not. It was then undescribed. It was surveyed and the deed was made within a very few days after the award was made.

89. 9. If Austin and Smith's survey bills were present, the witness is asked why they did not award by metes and bounds.

Ans. The reason is this: I am no scholar, Mr. McKee was not either, and Mr. Woodward was not much better, and we wanted to get at it the shortest way we could, and as we understood claim lines better than anything else, we described them in that way.

10. Were there not other claim lines marked upon that 1-4 section?

J. Groves claimed some portion of it; had hacked round it, and cut timber. With that exception, I know of no other, except Austin's and Smith's. There may have been others, but I cannot say.

11. Did Warren have any claim line marked upon that 1-4 section?

Ans. Of my own knowledge I don't know. Only knew from what others told me, and it was done before I came into the county—that was a claim made of some three eighties.

12. Was there any claim line marked around the 22 1-2 acres?

Ans. Not to my knowledge.

13. Were you present at any time when these tracts of the 1-4 section were surveyed; if so, when and by whom?

90. Ans. I was, when surveyed by Enos Coleman. It was previous to the sale, but after government surveys were made. Austin's and Smith's was surveyed at that time.

14. Was defendant present at the survey?

Ans. I don't recollect.

15. Had the piece on the prairie been surveyed at the time of arbitration?

Ans. It had. There was a survey bill present at arbitration.

16. Were you a witness on trial of a case in Kane Circuit Court, wherein Julius M. Warren was plaintiff, and Wm. Williams *et al.*, defendants, in reference to the removal of rails by defendants from a piece of land claimed by Warren; if so, state when that trial was?

Ans. I think I was. It was last season some time, I can't tell exactly. It might have been in 1854.

17. What piece of land was that ?

Ans. It was the *gore* piece on the prairie, the same that we awarded to Williams.

18. Who occupies and claims to own that piece of land ?

Ans. Julius M. Warren.

91.

19. How long has he occupied and claimed to own it ?

Ans. A number of years ; can't tell how long.

20. Timothy D. Woodward drew up the award.

21. He don't know who drew the skeleton map. The dotted lines were made this morning by Mr. Goodrich.

22. In making measurements they were governed by stakes, corners and witness trees.

23. Stakes were set by government surveyors.

Objection. Complainant's Solicitor objected to all the questions of defendant, at the time they were put.

92.

Direct Examination Resumed. 27. Was there any difficulty about claim lines between the parties before Williams obtained his pre-emption ?

Ans. I never knew of any.

28. When submission was made, was Warren in the city, and with witness for any purpose, and if so, what ?

Ans. He was : to try to break up the pre-emption.

29. What induced him and the other complainants to withdraw their objections and efforts to break up said pre-emption ?

Ans. I persuaded all the parties to go home and arbitrate.

30. At the time of the arbitration had Groves abandoned his claim ?

Ans. He had previously.

31. Who assisted Williams to maintain his claim to his land, and what was done for that purpose ?

Ans. I think there were two houses burnt down in the woods. Warren assisted Williams. Both got timber, and hauled timber off of the claim. It was understood they had the claim together. I understood they claimed among them 3 eighths in there.

Witness here corrected his answer to 20, direct interrogatory, by stating that instead of 76 rods it should be 84 rods.

93.

Cross Examination Resumed. 24. In answer to 25, direct interrogatory, you say that Williams talked with you about Austin having paid his son money. In these conversations did Mr. Williams say that he had not received the money, but had refused to receive it.

Ans. He did not ; he said he calculated to deed and re-deed to everybody, and that he calculated to deed to Austin.

Subscribed and sworn to Jan. 30, 1856.

(Signed)

JAMES BROWN.

Defendant objects to all questions put to witness at the time.

And complainant doth the like.

Deposition of David McKee.

1. Witness knew parties previous to 1844.
94. 2. He acted as an arbitrator with Mr. Woodward and Mr. Brown, in differences between the parties in relation to their claim lines in sec. 31, 39.9, and made an award to the parties the day the bond called for. On our way home Mr. Williams came after us, and wanted the award to take a copy. We told him we would give him a copy if he would go home with us. He insisted that he must have a copy that night. We told him we couldn't give it up. He still insisted, and pledged his word and honor if we would let him have it he would return it to us that night or the next morning. Mr. Brown said let him have it. It was not returned in the morning. I called for it the next day. I think he said he had not done with it. After 3 or 4 days I called again, and he said he had sent it to Mr. Brown.
95. 3. Reason why arbitrators did not make copy, and whether the award was read?
Ans. The reason why we did not make a copy was because Mr. Woodward did all the writing, and we thought we would take it home with us, make copies for the parties, and keep the original. It was read in presence of all the parties excepting Julius M. Warren.
4. Will you state as near as you can recollect the contents and purport of said award.
Ans. We awarded Austin his claim; also Smith his claim, bounded by their claim lines; also awarded Julius M. Warren 22 1-2 acres, to be taken off the east side of E. 80 of S.W. 1-4, running up to join Austin's and Smith's claim. We went on to award Williams his land up to his original claim line on prairie.
5. Had you any surveys or plots before you?
Ans. We had plots of all the pieces of land that we had anything to do with. Whether plots were according to survey or not I can't say.
96. 6. *Boundaries of land awarded to Austin*—Commencing at S.E. corner of S.E. 1-4 sec. 31, thence west 13 rods, thence north 84 rods, I think, thence east 4 rods, thence south to beginning.
7. He makes east line to run on section line.
8. *Boundaries of Smith's claim*—Commencing 13 rods west of 1-4 sec. stake, thence with section line west to section line, thence north parallel with Austin's line 52 rods—only run two lines on this, supposing it to be as wide at the west end as at the east end.
9. The west line run on section line. We supposed it to be about 52 rods.
97. 10. The award was signed by all the arbitrators in two places. It was all on one piece of paper. One award to Williams, one to Smith, Warren, and Austin.
11. Who made the first claim on said 1-4 section?
Ans. Mr. Williams told me that Julius M. Warren and somebody else made that claim in the first place. I have seen Warren and Carpenter drawing timber off there.
12. (Has not seen the award since handed to Williams.)
13. (He knows something, very little though, about the payment of money to Williams by Austin for land awarded to Austin.)
14. (By the award the parties were to pay ten shillings per acre for the land awarded, and 1-2 per cent. interest thereon from the time the land was entered.)

98. 15. (He has heard read during Mr. Brown's examination what purported to be a copy of original award, and says it is not a copy of the original.)

16. (In the original the name of Julius M. Warren was mentioned as the person to whom the 22 1-2 acres were awarded, and his name was mentioned three or four times in the award.)

17. (The west line of Austin's claim runs northeasterly.

Both parties except to interrogatories and answers.

95. *Cross Examination.* 1. You settled upon the terms of the award as between the parties and reduced it to writing, and then read it over to those who were present, and kept it in the possession of one of the arbitrators, and started for your house, designing that Mr. Woodward should make copies for the parties that night—are not these all the facts attending the making of the award before you let Williams have it?

Ans. Yes: they are all the facts.

2. Did you not award to have certain surveys of the land made, by which the parties were to deed?

Ans. Yes, sir.

99. *Direct Examination resumed.* Were there not surveys or plots made by Mr. Coleman, or some one else, there at the time of the arbitration.

Ans. Plots were made; as for their being accurate surveys I could not tell.

19. (Cannot say that he is sure there were directions in the award to have the land surveyed.)

20. How came you to say there were such directions?

Ans. I was hasty, and didn't think, and didn't understand it.

Cross-examination resumed. 3. Did you, at the time of the award, exactly know the number of acres in each piece, and did you know exactly where the lines on each side of the several pieces run, their courses and distances, accurately, so that you could, and did give them, in the award by which the parties were to deed, without any further survey?

Ans. We knew how many acres were awarded to Mr. Warren, and I think the other was awarded by the claim lines. Do not know that I knew the exact number of acres; might have known, but do not now.

100. Certificate of L. D. Hoard, Clerk, attached to said depositions.

101, 2, 3. Exhibit No. 1, being copy of submission bond on part of Williams, set out above.

104. Endorsement of acceptance by the arbitrators.

104, 5. Exhibits Nos. 2 and 3, *pretended award.*

106. Exhibit No. 4, skeleton map.

107, 8, 9. Exhibit 5. A deed filled out for Williams and his wife to execute. Warren Smith named as grantee—purporting to have been drawn Nov. 6, 1844—consideration blank—premises described as part of sec. 31, 39.9, commencing at southwest corner of said 1-4 section, thence East on Town line 33 chs. 50 lks. to stake on west line of Austin's timber lot, thence north 10 chs. 70 lks. to north line of the original claim of Smith and Wilson, thence west 70 min. north, 33 chs. 70 lks. to Town line, thence south to beginning, 36 49-100 acres.

111, 2, 3. Exhibit 6. Warranty deed, filled out, for Williams and wife to execute. Julius M. Warren named as grantee—purporting to have been made November, 1844—consideration blank—description of premises, commencing at northeast corner of southwest quarter of sec. 31, 39.9, thence south 18 chs. 41 lks., thence north 81 ° west, 1 ch, 20 lks., thence south 18 °, 30' west, 8 chs. 4 lks., thence south 11 ° east 2 chs. 50 lks., thence north 88 °, 40' west, 5 chs. 70 lks., thence north 27 chs. 80 lks. to north line of said 1-4 section, thence north 88 °, east 8 chs. 96 lks. to beginning, 22 1-2 acres.

113, 4, 5. Exhibit 7. Warranty deed, dated March 6, 1849—Warren Smith and wife grantors—William Williams, grantee—consideration \$12.50—premises, part of sec. 35, 39.9, described by metes and bounds. Signed and acknowledged March 24, 1849.

116. April 2, 1856, motion to amend *amended* bill allowed.

April 5, 1856. Replication to defendant's answer to supplemental bill filed.

117, 8. March 12, 1856, filed the original award (which is upon two pieces of paper), and stipulation of counsel that it is the original, and as such may be read in evidence. Said original agrees with the *pretended* copy, with one or two slight immaterial variations.

119. March 24, 1858. On motion, complainants allowed to amend their *amended* and *supplemental* bill.

120, 1, 2, 3, 4, 5, 6. Same date. Certified copy of deed from George Packard and wife to Julius M. Warren, dated August 31, 1847, and also of deed from Warren Smith and wife to George Packard, dated August 30, 1847, filed. Same deeds referred to by deft., in his answer.

127. Testimony of James Brown, taken after the hearing of said cause, both parties present by their Counsel, in open court, before the Judge, March 22, 1858.

"I am the same witness hereto examined in this case, and that acted as arbitrator between the parties. I am acquainted with the S. W. 1-4 of Sec. 31, 39, 9, in Du Page County. It is situated in the timber land known and called the big woods. The defendant pre-empted this tract in the timber, and I was a witness for him, at the time,

to get the pre-emption. His son pre-empted the quarter on the prairie. This timber quarter was the only one he pre-empted. This quarter was a fractional quarter.

Which was objected to by defendant's Counsel. Objection overruled, and exception taken.

128. October 25, 1858. *Decree entered.*

Decree recites that, *it appearing* to the Court from the amended bill, &c., proofs, &c., and *testimony of James Brown, taken after the hearing of the Cause*, that prior to Sept. 17, 1844, claims had been made upon government lands in Du Page County, by the several parties, and one Joseph Wilson, and that disputes had arisen about the rights of the parties, growing out of their claims; that to settle these disputes, on said Sept. 17, 1844, they, with said Wilson, submitted these matters of difference to Timothy D. Woodward, Joseph Brown, and David McKee, for arbitration—

130, 1, 2. (Here follows bond of submission and the acceptance of the arbitrators.)

133. that said Joseph Wilson, by mutual consent of the parties, withdrew from the arbitration; that said arbitrators did, on Sept. 19, 1844, arbitrate in the premises, and make their written award as follows:

134. (Here follows the award as stated in Bill.)

135. that the subject of submission and award was concerning real estate in Du Page County, Ill., known as S. W. 1-4, Sec. 31, 39, 9, pre-empted and purchased by said Williams; that said Austin, previous to the pre-emption, had paid the son and agent of said Williams \$1 25 per acre for the land so awarded to him; that Williams had refused to convey the same; it is therefore *ordered*, &c., that Williams, within thirty days, convey to said Austin that part of said S. W. 1-4, Sec. 31, 39, 9, up to his, said Austin's, original claim line, so awarded to be conveyed by said Williams to said Austin.

136. (*To which Order, &c., the defendant at the time excepted.*)

136. *It also appearing*, that within sixty days from the making of said award, Smith offered to pay Williams \$1 25 per acre for each acre awarded to him, and 12 per cent. interest from the date of purchase of said land, (being \$46 60,) and demanded a conveyance, and that Williams refused the money and to make the conveyance, it is further *ordered*, &c., that Smith pay Williams, within ten days, the sum aforesaid, and that thereupon said Williams, within thirty days, convey, by W. deed, to Smith that part of said S. W. 1-4, Sec. 31, 39, 9, in the timber, up to his, said Smith's, original claim line.

137. (*To which Order, &c., the defendant at the time excepted.*)

138. *It also appearing*, that in the award, (*here follows that part which mentions the 22 1-2 acres*), the name of Julius M. Warren was omitted by mistake, and that it was the determination of said arbitrators that Williams should convey said 22 1-2 acres to said Warren, it is therefore *ordered*, that the said award, in this respect, be corrected by inserting the name of Julius M. Warren after the words "big woods;" and it fur-

137.

ther appearing from the amended bill, &c., proofs and testimony of James Brown, introduced as aforesaid, the said fractional quarter section pre-empted by Williams was in the "big woods," and is the S. W. 1-4, Sec. 31, 39, 9, and that said 22 1-2 acres was awarded to be taken from the east side of east eighty of said 1-4 Sec., after taking out of said 1-4 Sec. the land awarded to said Austin and Smith, *It is ordered* that Williams within thirty days, convey to said Warren 22 1 2 acres off from the east side of east eighty of the fractional quarter section that Williams pre-empted in the big woods; that such conveyance be made off the east side of said eighty, exclusive of that decreed to be conveyed to Austin and Smith.

(To which Order, &c. defendant at the time excepted.)

140.

It also appearing, That Williams had made claim in the prairie, that the lines of said claim run over and upon the south half of sec. 35, 39.9, on that part thereof pre-empted by Smith; that said arbitrators awarded Smith to convey to Williams up to his original claim lines on the prairie which Smith pre-empted; and said Williams should pay within 60 days to said Smith government price therefor, and 12 per cent. interest thereon; and that said Smith did within said 60 days offer to convey said land so awarded, on the said Williams paying him \$1.25 per acre, and interest thereon as aforesaid; that Williams refused to receive said deed and pay said money, and that by the amended bill, and amendment thereto, made upon the hearing, &c., proofs, &c., that the land so awarded to be conveyed to Williams is part of south half of section 35, 39.9 (metes and bounds and courses given); that said land was conveyed by Smith to Packard, and afterwards by Packard to Warren, and Warren having, by the said amendment, averred his readiness to convey according to said award: It is therefore, ordered, &c., that within 30 days said Williams pay said Warren \$1.25 per acre for each acre of said land so awarded, with 12 per cent. interest thereon, as aforesaid; and that thereupon said Warren did convey the said land to said Williams, up to the original claim lines on the prairie which said Smith pre-empted.

141.

142.

To all which orders, &c., the defendant at the time excepted.

Nov. 28, 1858, defendant files his appeal bond.

143.

Here follows appeal bond and Clerk's certificate.

GOODRICH, FARWELL & SMITH, for Complainants.

FARNSWORTH, EASTMAN & BEVERIDGE, for Defendant.

136 Warren
vs
Millianus

Abstract

Filed April 22, 1857
H. L. Leland
Clerk

13149

IN THE SUPREME COURT,
STATE OF ILLINOIS.

APRIL TERM, 1859.

UNITED STATES OF AMERICA, }
State of Illinois, Cook County, } ss.

Page 1.

Pleas before Hon. GEORGE MANIERRE, Judge of 7th Judicial Circuit. October Term, 1858.

JULIUS M. WARREN,
WARREN SMITH,
REUBEN AUSTIN,
vs.
WILLIAM WILLIAMS.

In Chancery.

February 10, 1846.—Bill of Complaint filed in Circuit Court of Du Page Co., re-filed May 10, 1847, in County Court of Cook Co.; filed April 3, 1851, in Circuit Court of Cook Co.

Original Bill sets out the following Bond of Submission, to wit :

“KNOW ALL MEN BY THESE PRESENTS, That I, William Williams, of the County of Du Page, and State of Illinois, am held and firmly bound unto Julius Warren, Warren Smith, Joseph Wilson and Reuben Austin, of the same county, in the sum of one thousand dollars of good and lawful money of the United States, to be paid the said Warren, Smith, Wilson and Austin, their executors, administrators or assigns, for which payment well and truly to be made I do bind myself, my heirs, executors and administrators, firmly by these presents. Sealed with my seal, dated this *seventeenth* day of September, A. D. 1844.

2.

“The condition of this above obligation is such that if the above bounden William Williams, his heirs, executors and administrators, on his and their part, shall and do, in all things, well and truly stand to, obey, abide by, perform, fulfill and keep the

- award, order, arbitrament and final determination of James Brown, David McKee and Timothy Woodward, arbitrators indifferently elected and named, as well on the part and behalf of the above bounden Williams as of the above named Warren, Wilson, Smith and Austin, to arbitrate, award, order, adjudge and determine of, and concerning all and all manner of actions, cause and causes of action, quarrels, controversies, damages and claim whatsoever, at any time heretofore had, made, suffered, committed, or depending by and between the said parties, for or on account of, concerning or in any wise affecting the following described real estate, situate, lying and being in the County of Du Page, and State of Illinois, and known and described as being the south-west quarter of section number thirty-one, (31,) in township number thirty-nine, (39,) north of range number nine, (9,) east of the third principal meridian, and which is the same property to which the said Williams has proved up a pre-emption right, and which
3. said pre-emption is contested, and also all other the lands, real estate, and property belonging to either or any of the above named Julius Warren, Warren Smith, Joseph Wilson and Reuben Austin, which may be affected by the award to be made by the said arbitrators, *the object being to settle all disputes that may exist between the parties as to claim lines, whether said claims have become the deeded property of any of the parties hereto or not*, so as the said award be made in writing, under the hands of the said Brown, McKee and Woodward, or any two of them, and ready to be delivered to the said parties in difference, or such of them as shall desire the same, on or before five o'clock P. M. of Thursday, the nineteenth day of September, in the year of our Lord one thousand eight hundred and forty-four, then this obligation to be void, or else to remain in full force. And the said William Williams further covenants to and with the said Warren, Wilson, Smith and Austin, that the said submission shall be made to the above named arbitrators on their own knowledge, no evidence to be adduced on the part of either party, and further said Williams agrees and covenants to pay the sum of one thousand dollars to said Warren, Wilson, Smith and Austin, if he fails, refuses or neglects to perform, upon his part, the award to be made by said arbitrators, when the same shall be made, and the said sum of one thousand dollars is hereby declared to be liquidated damages, to be recovered by the said Warren, Wilson, Smith and Austin,
4. from said Williams, upon his making such failure, refusal or neglect to perform said award as aforesaid, and the said Williams further covenants and agrees, under the same penalty, to and with the said Warren, Wilson, Smith and Austin, that in case his pre-emption shall be set aside, and any member of his family, or any person for him, or claiming under or in his right, or by his suggestion or direction, shall obtain said premises, that he will obtain from them such conveyances or disposition of any portion of said premises as said award shall require and direct, to such persons as shall be directed in said award.

“(Signed,)

“WILLIAM WILLIAMS. [Seal.]”

5. The Bill *avers* the making of a bond of like penalties, like conditions, on the part of complainants; the delivery thereof, on the day and date of former bond, to said William, and its acceptance by him: also *avers* that it was mutually understood that said Wilson would not be a party to said arbitration, nor join in said bond.

6. The bill further avers that on the 19th day of September, 1844, the said arbitrators, by the consent of all the parties, proceeded to arbitrate and adjudge in the premises, and on that day did award and adjudge, *in substance*, as follows:

(Copy of supposed Award, as set out in Bill.)

“The decision of arbitrators in suit pending between J. Warren, W. Smith and R. Austin, of one part, and Wm. Williams, is as follows: the said Williams shall deed to said R. Austin up to his original claim line in the timber, and said Austin is to pay

to said Williams one dollar and twenty-five cents an acre, with twelve per cent. interest from the time the land was paid for up to the time of receiving of his deed, which shall be within sixty days; a warrantee deed.

"Also said Williams shall deed to said W. Smith in the timber up to his original claim line, for which said Smith shall pay to said Williams Government price from the time the land was paid for at the office, with twelve per cent. interest until he receives his deed, which shall be within sixty days—a good warrantee deed.

7.

"The decision of the arbitrators is as follows: said William Williams shall deed twenty-two and a half acres off from the east side of the east eighty of fractional quarter that Williams pre-empted in the *big woods*. Furthermore, it is decided that each party shall pay what costs they have caused to be made.

(Signed,)

"TIMOTHY D. WOODWARD,

"J. BROWN,

"DAVID McKEE."

Further Award on separate piece of paper.

The decision of the arbitrators in the suit now pending between J. Warren, Warren Smith, R. Austin, is as follows: the said Warren Smith shall deed up to the original claim line on the prairie, which said Smith pre-empted, and said William Williams shall pay to said Smith government price, with twelve per cent. interest from the time the land was paid for until Williams receives his deed, which shall be within sixty days; a good and sufficient warrantee deed. Each party shall be at the expense of surveying and their deeds; furthermore, it is decided that each party shall pay what costs they have made.

"(Signed,)

"TIMOTHY D. WOODWARD,

"J. BROWN,

"DAVID McKEE."

8.

Complainants represent that said award was, on said Sept. 19th, 1844, delivered to said Williams, and has been ever since in his possession, and they have not been permitted to see it, and ask that said Williams be compelled to produce and file the same. Also represent that said award was made as aforesaid, ready to be delivered by the time specified in said bond; and also that the land awarded to said Austin amounted to 6 65-100 acres, and was part of tract pre-empted by Williams; and also the land awarded to said Smith amounted to 36 49-100 acres, and that said Smith did, within said 60 days, tender to said Williams the sum of \$1 25 per acre, with twelve per cent. interest, pursuant to said award, and that Smith offered, and is ready to convey to Williams, pursuant to same.

9.

10.

Complainants further represent that the arbitrators, in awarding the 22 1-2 acres to be deeded, as in said award is mentioned, by *mistake* and *accident* left out the name of said Julius M. Warren as grantee of said conveyance; that the lands to be deeded as per award, by said Williams to complainants, were part of same tract mentioned in said bonds, and of the same lands pre-empted by Williams, to wit: part of S. W. 1-4, S. 31, 39, 9, and the same was in dispute between the parties, and also that the land awarded to be deeded to Williams by Smith, which he had purchased, was part of S. W. 1-4, S. 35, 39, 9.

Specific Relief asked. That said Williams convey according to said award. Oath not waived.

SPRING & GOODRICH, for Compl'ts.

April 3, 1851. Transcript from Du Page Circuit Court, first filed in Cook County Court:

UNITED STATES OF AMERICA, }
STATE OF ILLINOIS, DU PAGE Co., } ss.

13. Pleas before the Hon. Richard M. Young, May Term, 1846.

JULIUS M. WARREN *et al.* }
vs. } *In Chancery.*
WILLIAM WILLIAMS, }

May 9, 1846. Leave given complainants to amend their bill by June 1st, and defendant ordered to plead, &c., by July 1st.

14. April 20, 1847. *Change of Venue* to Cook County Court.

15. April 3, 1851. Certificate of Clerk.

16. April 3, 1851. *Amended Bill*, filed first Nov. 7, 1849, in Cook County Court.

17. Said *amended* bill mentions *original* bill, *change of venue*, and the order of Cook County Court granting leave to *amend* the bill. *Amended* bill sets out that on or before Sept. 17, 1844, certain disputes between the parties existed, in relation to their claim lines, and the equity and right of title of said complainants to parts of said S. W. 1-4, S. 31, 39, 9, to which said Williams had proved up a pre-emption, and to determine these disputes and their equitable rights, the parties agreed to arbitrate, and that said Williams, for this purpose, entered into following bond:

18 & 19. (*Copy of Bond here inserted—same as in Original Bill.*)

20. Complainants aver the making and delivery of bond on their part, and the with-
21. drawal of Wilson by consent of all parties, as in *original bill*.

22. Complainants represent that on Sept. 19, 1844, said arbitrators, having assumed the burthen of arbitration, did, by the consent of said Williams, the parties being present, arbitrate and award in the premises, and make their award in writing, under their hands and seals, and were about to make copies thereof, to be delivered to the several parties, but upon the solicitations of Williams, and his false pretences and representations, they delivered said award to him, and that he fraudulently retained the same, and refused to deliver or to show the same to said arbitrators, or to said complainants.

24 & 25. Complainants *charge* that the counsel of Williams has given them what he *pretends* is a copy of said award, *in substance*, as follows:

(Here is inserted copy of *pretended* award, appearing upon two pieces of paper.
(Copy same as in *original Bill*.)

26. Complainants represent that it is represented by said arbitrators that said *pretended* copy is not a true copy of said award, as made by them and delivered to said Williams, as aforesaid, but that the *original* award so made by them awarded the said 22 1-2 acres to said Julius M. Warren, and therefore the said Warren especially charges that said tract was awarded to him, and that his name had been fraudulently erased, by said Williams, or some one, from said award, and they charge if said *pretended* copy is a true copy, the name of Julius M. Warren was omitted in said award by mistake.

They represent that the award was ready to be delivered by the time specified in said bond, but the same was prevented from being copied and delivered, by the fraudulent representations and conduct of said Williams.

27. They further represent that the land awarded to Austin amounted to 6 65-100 acres, and was part of the land pre-empted by Williams; that they were ready, and offered to pay \$1 25 per acre, and 12 per cent. interest thereon, for said land, and they aver that Williams, within said sixty days, upon the offer of said Austin to pay said money and interest thereon, refused to convey the said land. And also that the land awarded to said Smith amounted to 36 49-100 acres; that Smith, within said sixty days, tendered to Williams \$1 25 per acre, with interest thereon, as aforesaid, and also a readiness to perform, at all times, the said award on their part; and also that Smith was ready and offered, and still is ready to convey to Williams, pursuant to said award.

28. They aver that said Warren, within said 60 days, tendered to said Williams the sum of \$1 25 per acre, with interest thereon at 12 per cent., for the land so awarded to him, and he now offers to pay the same: also avers that said lands awarded to be deeded by Williams, were parts of land mentioned in said bond, and part of the same pre-empted by him, to wit: S. W. 1-4, S. 31, 39, 9, and that the land awarded to Williams, is part of S. W. 1-4, S. 35, 39, 9, purchased by said Smith of Government, and which said land, up to claim lines, amounts to 9 78-100 acres, and that they file a deed thereof to said Williams, for reference, &c.

(Here follows a particular description of said lands.)

Tract awarded to Austin.

Com. at S. E. cor. of S. W. 1-4, S. 31, thence N. 84 rods, thence W. 4 rods 13 links, thence on a direct line to strike S. line of said S. W. 1-4, 13 rods W. of said S. E. cor. thence E. 13 rods, to beg., containing 6 36 100 acres.

Tract awarded to Smith.

30. Com. 13 rods W. of said S. E. cor., thence W. to W. line of said Sec., thence N. 32 rods, thence E. parallel with S. line to strike said Austin's W. line, thence southerly along Austin's W. line, to South line of Section, containing 36 49-100 acres.

Lands awarded to Warren, being 22 1-2 acres off of the East side of said S. W. 1-4, Sec. 31, exclusive of the lands awarded to Austin and Smith.

Tract awarded to Williams.

Com. on W. line of Sec. 35, 3.75 chains from S. W. Cor. of said Sec., thence N. 5 deg. 10 min. W. on section line 34 chains 16 1-2 links, to centre of highway, thence along centre of highway, 4 deg. 15 min. S. of E. 5 chains 80 links, thence S. 5 deg. 15 min. W. 32 chains 25 links to beg., containing 9 78-100 acres, all of said lands being in T. 39, R. 9, E. of 3d P. M.

Amendment inserted by Order of Court, on the hearing of said Cause—shown in Record in Red Ink.

31. Said amendment shows a conveyance of lands awarded to Williams, by said Smith and wife, August 13, 1847, to George Packard, and a conveyance of said lands by Packard and wife, August 31, 1847, to said Julius M. Warren, and an offer of Warren to convey to Williams, as per award.

Complainants aver a readiness to perform said award on their part, and a refusal on part of Williams.

32. *Amended* bill to be answered under oath.

33. Specific relief prayed as in original bill.

34. April 3, 1851. Transcript from the Cook County Court of Common Pleas, (late Cook County Court:)

STATE OF ILLINOIS, } ss.
COOK COUNTY, }

Pleas before the Hon. Giles Spring, Judge of the Cook County Court of Common Pleas. February Term, 1850.

35. JULIUS M. WARREN *et al.*, }
vs. WILLIAM WILLIAMS, } In Chancery.

January 1, 1849. *In vacation*, by consent of parties, *demurrer* to bill was heard, and from want of equity in bill it was considered the same ought to be dismissed, but upon request of complainants to amend, it was ordered that they amend by first day of next term.

36. May 28, 1849. *Ordered*, that defendant plead, &c., by first Monday of August next, to *amended* bill.

Oct. 24, 1849. By agreement of Counsel, *ordered*, that defendant plead, &c., in twenty days, and cause be continued till next term.

37. February 21, 1850. By consent of Counsel, *change of venue* taken to Circuit Court of Cook County. Certificate of Clerk.

In Circuit Court of Cook County.

April 3, 1851. Defendant files his demurrer to *amended* bill.

38. Copy of demurrer.

39. January 3, 1852. By agreement, demurrer set for argument fourth Monday of said month, at Chambers.

March 30, 1855. *Demurrer*, upon argument, *over-ruled*.

40. March 31, 1855. On motion of defendant's Solicitor, time to answer is extended to May 1st.

April 30, 1855. Defendant files his answer.

41. *Answer.* Defendant says that on Sept. 17, 1844, he had proved up a pre-emption, and purchased at the Land Office of the United States, said S. W. 1-4 of Sec. 31, 39, 9, in the timber, and that said land, in all respects, lawfully and legally was his property. Also says that at and before said time he had made a claim to other land upon the prairie, and had made claim lines, which were well known to complainants; that he had pre-empted the said prairie, and entered the same, except a small strip of about 9 acres; which was cut off from his claim by the Government Survey, and was entered by said Smith, with a full knowledge of his right thereto, the same having been improved and fenced by said defendant, and in his actual possession, and that said Smith, at the time he entered said strip, agreed to convey the same to him; that he settled upon said lands and made the claim thereto, in 1834, and had remained in possession ever since.

42. Defendant admits that on or about Sept. 17, 1844, there did exist some disputes between the parties, *as to where some original claim lines run*, and for the purpose of defining and settling these lines, the parties agreed to submit the same to the arbitrators aforementioned, and that said bond may be a copy, and that said complainants executed a bond of submission to him. He states that he has no recollection about Wilson withdrawing from said arbitration, or of any agreement in relation thereto.

He denies that said arbitrators determined or adjudged the disputes referred to them. He admits that said arbitrators met about the time stated in said bill, and for the purpose therein stated; that he was present, but that all of complainants were not present.

And he says that while they were so together, the said arbitrators had the cus-

44. today and possession of the bonds of submission, and then and there made and signed what they called their "decision," on two separate pieces of paper, and one or more of said arbitrators asked who would pay for their time, &c., and said they would not give up the papers until they were paid; defendant asked if they would trust him; they said they would, and upon his promising to pay, they gave him the bond coming to him, and two pieces of paper, called their "decision."

He avers that said arbitrators professed to have concluded their labors, and that nothing was said about making copies, but that they separated without any intention expressed of meeting again. He says he has no recollection of promising said arbitrators to return to them said pieces of paper, or of their requesting him so to do, or of his refusal, and that said decision of said arbitrators was not altered after the same was given him, that he soon thereafter handed the same to his counsel, Scammon & Judd.

45. He denies that said complainants, or either of them, within said 60 days, or at any time since, tendered to him any money for any of said lands, and that said Smith ever tendered to him a deed of said *prairie lands*, in said bill and said decision mentioned, but, on the contrary, alleges that said Smith ever refused to give him a deed of said *prairie lands*; and after said decision, said Smith sold said prairie land to Geo. Packard, who afterward sold the same to said Warren, who has for the last five years deprived him of the possession thereof.

And that said Warren, in spring of 1853, sued him in an action of trespass, in Circuit Court of DuPage County, for the rails and fence built upon said strip of prairie by him, and which, after the purchase of said strip by said Warren, he had taken away; that a *change of venue* in said action was taken to Kane Circuit Court, and judgment recovered by said Warren, for value of said rails, which has been paid by him.

46. That there is no deed on file in this court, made by said Smith, conveying to him said premises.

47. He avers that he was in the country, and made his claim to the timbered land aforesaid, long before Smith or Austin came into this State, and that said 1-4 section did not embrace any land of theirs whatever, nor were they entitled to any portion thereof, nor was said Warren entitled to any part thereof in law or equity. Also avers that said arbitrators had no power to award that either party should convey to the other, or, if at all, it was only in case his pre-emption should fail; and he avers that the same did not fail, but that his title to said 1-4 section remained perfect; that it was the duty of said arbitrators only to fix upon, determine, and locate the claim lines of the respective parties, as stated in the bond.

He avers that having awarded in matters outside of said bond of submission, their said decision and award is void. He denies that said arbitrators made any mistake, except in the subject of difference submitted to them. He states if said arbitrators had authority to direct conveyances (which he denies) the said award is *uncertain* and *void*; it leaves the parties to determine where the claim lines run, and to make surveys; uncertain in description, in quantity, and as to parties.

48. He says that the bond given by complainants to him, and said papers, delivered to him by said arbitrators, cannot now be found; that he believes the same have been lost or mislaid.

A general denial of all other matters not answered unto, confessed, admitted, or denied.

(Signed)

WM. WILLIAMS.

FARNSWORTH & BURGESS, Solicitors.

49. Copy of affidavit to answer.

May 8, 1855, replication filed.

50 to 68. Feb. 20, 1856. Complainants file their *supplemental* bill, with an order for an injunction. Said supplemental bill is the same in substance and effect as the amended bill, and was filed for the purpose of enjoining said defendant from committing waste, &c.

69, 70. Injunction bond and approval.

71, 72. Injunction issued Feb. 20, 1856.

73. Feb. 22, 1856, injunction served.

March 14, 1856, defendant files his answer to supplemental bill.

74 to 77. This answer is same, in substance and effect, as defendant's former answer to amended bill. He admits he has taken timber from said premises, and claims he has a perfect right so to do, as he is advised and believes.

March 24, 1856, motion to amend bill.

March 26, 1856, are filed the depositions of James Brown and David McKee, with exhibits on behalf of the complainants.

78. Depositions taken January 30, 1856, by agreement of counsel, before L. D. Hoard, Clerk of said Circuit Court of Cook county.

Present—Julius M. Warren, one of complainants.

GRANT GOODRICH, Complainant's Solicitor.

FARNSWORTH & BURGESS, Defendant's Solicitors.

Deposition of James Brown.

1. Did you know complainants in 1844, and defendant, and prior to that time?
 Ans. I did.

2. Were you acquainted with S. W. 1-4 sec. 31, 39.9, and with the claim lines of different persons claiming the same? If you know, state also who pre-empted same.

79. Ans. I am well acquainted with said land. I have lived on the same section for over 20 years. I am acquainted with the claim lines because I claimed some of it myself. My claim run on to that quarter section. William Williams pre-empted said quarter. I was with him when he did it.

3. State the names of the persons claiming portions of said quarter, before and after the pre-emption.

Ans. Reuben Austin claimed a part of it. Joseph Wilson, Warren Smith, Julius Warren, and Carpenter, claimed part of it; Phineas Greves also claimed part of it, and William Williams claimed part.

4. State whether any such claims were designated by lines or otherwise.

Ans. Yes, sir; by claim lines.

5. Look upon paper marked "exhibit 1," and state who executed the same, and whose names are subscribed thereto as arbitrators, if you know.

[Exhibit 1 is bond of submission and acceptance of arbitrators.]

Ans. It was executed by Wm. J. Williams, Wm. Williams, and Henry Williams. The names of James Brown, David McKee, and Timothy D. Underwood, are signed as arbitrators.

6 and 7. [Prove that Wilson withdrew from the arbitration, by consent of all parties, and the others were to go on.]

80. 8. State if there was any meeting had by said arbitrators to investigate, and which of said parties were present.

Ans. There was such meeting held by the arbitrators. Williams was present, Smith was present, Austin was present; am not positive whether Warren was present or not.

9. State whether any determination was made by said arbitrators as to the claims of said complainants in and upon said 1-4 section, and also to S. W. 1-4 sec. 35, 39.9; if so, when made, and ready to be delivered, and was the same in writing?

Ans. A determination was made by said arbitrators as to the complainant's claim to said 1-4 sec., and also to the S. W. 1-4, sec. 35, 39.9; it was ready to be delivered in 1844, I think in September; it was in writing.

10. Was the same ready to be delivered within the time prescribed in the submission?

81. Ans. It was. We made our decision, reduced it to writing, and signed it, within the time subscribed in the submission, but had not time then to make copies for the parties, but read it over to them, and proposed to take the paper home to make copies for each, but never did.

11. State what became of said award, and the reason why copies were not made as contemplated.

Ans. We started for home, got about a mile, when Mr. Williams came on the run and overtook us, and wanted us to go back to his house and give him a copy that night, or let him take the award and make a copy, and he would return it that night or next morning. It was so late in the day we concluded we could not go back that night, and we consented to let him have the award by his promising to deliver it to me that night or next morning at my house.

12 Did he return the award, as promised? If not, why?

Ans. He did not. I can't tell why.

13. Was any demand made of him for it? If so, by whom?

Ans. I called for it myself.

14. What objection did he make, if any, to letting you have it?

Ans. He said he had n't got it; had taken it down to Naperville, I think to Allen's office, to have a copy made, and had not got it back, but would get it right away and give it to me. I called again for it. He said he had not got it yet, and after that he gave me a copy. I wanted him to keep the copy and give me the original. Said they had not got it, but gave me what they called a copy. I never saw the *original*.

82. 15. Was what he gave you, according to your best recollection, a true copy, and what has become of such *pretended* copy?

Ans. *What he gave me was not a true copy; I knew it was not.* I gave the *pretended* copy to Mr. Warren.

16. Look upon exhibits 2 and 3, and state whether, to the best of your knowledge, they are the papers so delivered to you as the copy. (*Exhibits 2 and 3 are copies of award.*)

Ans. It was my impression there was but one paper, but this is the purport of the copy. It was a good while ago, and I am not positive whether there was one or two papers.

17. In what respect did the copy, and does said exhibit, differ from the original?

Ans. That copy says Williams was to deed 22 1-2 acres of timber in Sec. 31, but don't say to whom. The *original* said it was to be deeded to Julius Warren. It went on to state that Williams should deed to Austin and Smith up to the original claim line, on the S. W. 1-4 of Sec. 31, then he was to deed to Julius Warren 22 1-2 acres off of the E. side of the E. 1-2 of said 1-4, exclusive of what was awarded to Smith and Austin. Then Smith was to deed to Williams, on the prairie, a certain *gore* piece, which joined Williams on the east of his claim. They were to pay 10 shillings per acre, both ways, with 12 per cent. interest till the deeds were made.

83.

18. (Witness says that he thinks no courses or distances were given in the *original*.)

19. What had you before you and the parties at the time of such investigation and award, describing the land particularly, embraced in the claims of each, if anything?

Ans. We had a survey bill of Smith and Wilson's, of what they claimed, and the same which was awarded to Smith, and the survey bill of Austin's claim. Williams claimed the pieces on the prairie. I think we had a plat of it, but whether we had a plat or survey bill I can't recollect positively.

20. Witness is asked to state the boundaries of the land claimed and awarded and to look upon map, (Exhibit 4,) and say how the lines there indicated compare with the claim lines.

Ans. The boundaries of Austin's claim are as follows: It is on the S. W. 1-4 of Sec. 31, com. on 1-4 sec. line, at S. E. cor. of S. W. 1-4 of said Sec. 31, thence N. 76 rods, thence W. 4 rods 15 links, thence South, I don't know the exact course, to strike South line of Sec., 76 rods, thence E. 13 rods to beg. Smith's claim is bounded as follows: Com. 13 rods W. of S. E. cor. of said 1-4 sec., thence W. to W. line of said sec., thence N. 52 rods, thence E. parallel with S. line on claim line, to strike Austin's West line, thence S. 52 rods, to S. line of sec. Warren's claim I cannot give the boundaries of. If I recollect right, it was described in the award as follows: Warren was to have 22 1-2 acres off the E. side of S. W. 1-4, exclusive of Austin and Smith's claim. I have looked upon map, and the lines thereon compare with claim lines.

84.

85.

21. Witness is asked to look upon said map, and say how the same compares with Williams' claim lines, and whether the land is prairie or timber.

Ans. I think they compare right; it is prairie—a gore piece.

22. Look upon exhibits ⁵ 5, 6 and 7, and say whether any one or all were presented to said defendant, and if so, at what time, for what purpose, and if any money was tendered at the time, if so, to whom and how much, and all that was said and done in relation thereto.

Ans. No. 7 was presented to Williams, by his paying what the arbitrators said, in the award, he should. Nos. ⁵ 5 and 6 were also presented to Williams; they were presented within the sixty days, for him to sign; there was money tendered to Williams at the time; the amount was the amount mentioned in the award, with interest, and some few shillings over, according to the quantity of lands called for by the deeds. Waterman presented the bag of money and the deeds to Williams to execute. What Williams said I cannot recollect, but he turned and walked off, and did not take either.

23. (Is in regard to a tender to Williams or his agent, by Austin, for the land awarded to him)

86.

Ans. He came in and pre-empted, (Williams and myself,) land on Sec. 31. Austin paid Wm. J. Williams, previous to the pre-emption, the money for the land subsequently awarded to Austin.

24. Who transacted Williams' business, and acted for him, in this and other transactions, and was he a son of defendant?

Ans. At that time, and until Williams died, he was always a sort of a foreman in the business; he was a son of defendant.

25. Was defendant in this city at the time the money was paid to his son, and was he present, or did he know of it, to your knowledge?

Ans. He was in the city at the time, we all stopped at one house; I guess he did know it.

26. (Is relative to an arrangement between the settlers about deeding and re-deeding, according to claim lines.)

87.

Ans. There was such an arrangement. The defendant was a party to, and I think he did enter into it. The arrangement was this: The settlers held a meeting, and appointed John Warn to keep a book of records of each individual's claim: the agreement was this, we each gave Warn a description of our claims, and bound ourselves to deed and re-deed, according to our claim lines, and not regard the government lines. Jesse Groves deeded to Williams or his son some land in the big woods, that one of the Williams's claimed. Mr. Williams claimed other lands, which were not deeded to him. The agreement to arbitrate did grow out of the arrangement between the settlers, and the agreement to abide the claim lines.

Objection. Defendant's Solicitor objected to all and every one of complainant's interrogatories, at the time of their being put.

Cross-examination. 1. Was the award you have spoken of as made by you, on two pieces or one piece of paper?

Ans. I think on one.

2. Did you sign two awards?

Ans. We *did not*.

Did you sign your name in two different places to the award?

Ans. *No, sir.*

88. It is admitted here by complainant's Solicitor that the exhibits 2 and 3 are in the handwriting of C. B. Hosmer.

4. Was there not a contest between the parties to this suit, and other claimants of portions of S. W. 1-4, Sec. 31, as to where their claim lines were, at the time of the award?

Ans. There was some trouble and difficulty about it.

5. (Witness is asked if, in answer to 17th interrogatory, he stated all the difference between the copy shown him and the *original award*.)

Ans. According to the best of my recollection, I did.

6. And ans. It appears that the government survey was made some two or three years before the making of the award.

7. And ans. That Williams pre-empted the winter before the award was made.

8. How soon after making the award were surveys made?

Ans. It is my impression now that so far as Austin and Smith were concerned it was done previously, by Enos Coleman, and that they had survey bills present, but Warren's was not. It was then undescribed. It was surveyed and the deed was made within a very few days after the award was made.

89. 9. If Austin and Smith's survey bills were present, the witness is asked why they did not award by metes and bounds.

Ans. The reason is this: I am no scholar, Mr. McKee was not either, and Mr. Woodward was not much better, and we wanted to get at it the shortest way we could, and as we understood claim lines better than anything else, we described them in that way.

10. Were there not other claim lines marked upon that 1-4 section?

J. Groves claimed some portion of it; had hacked round it, and cut timber. With that exception, I know of no other, except Austin's and Smith's. There may have been others, but I cannot say.

11. Did Warren have any claim line marked upon that 1-4 section?

Ans. Of my own knowledge I don't know. Only knew from what others told me, and it was done before I came into the county—that was a claim made of some three eighties.

12. Was there any claim line marked around the 22 1-2 acres?

Ans. Not to my knowledge.

13. Were you present at any time when these tracts of the 1-4 section were surveyed; if so, when and by whom?

90. Ans. I was, when surveyed by Enos Coleman. It was previous to the sale, but after government surveys were made. Austin's and Smith's was surveyed at that time.

14. Was defendant present at the survey?

Ans. I don't recollect.

15. Had the piece on the prairie been surveyed at the time of arbitration?

Ans. It had. There was a survey bill present at arbitration.

16. Were you a witness on trial of a case in Kane Circuit Court, wherein Julius M. Warren was plaintiff, and Wm. Williams *et al.*, defendants, in reference to the removal of rails by defendants from a piece of land claimed by Warren; if so, state when that trial was?

Ans. I think I was. It was last season some time, I can't tell exactly. It might have been in 1854.

17. What piece of land was that?

Ans. It was the *gore* piece on the prairie, the same that we awarded to Williams.

18. Who occupies and claims to own that piece of land?

Ans. Julius M. Warren.

91.

19. How long has he occupied and claimed to own it?

Ans. A number of years; can't tell how long.

20. Timothy D. Woodward drew up the award.

21. He don't know who drew the skeleton map. The dotted lines were made this morning by Mr. Goodrich.

22. In making measurements they were governed by stakes, corners and witness trees.

23. Stakes were set by government surveyors.

Objection. Complainant's Solicitor objected to all the questions of defendant, at the time they were put.

92.

Direct Examination Resumed. 27. Was there any difficulty about claim lines between the parties before Williams obtained his pre-emption?

Ans. I never knew of any.

28. When submission was made, was Warren in the city, and with witness for any purpose, and if so, what?

Ans. He was: to try to break up the pre-emption.

29. What induced him and the other complainants to withdraw their objections and efforts to break up said pre-emption?

Ans. I persuaded all the parties to go home and arbitrate.

30. At the time of the arbitration had Groves abandoned his claim?

Ans. He had previously.

31. Who assisted Williams to maintain his claim to his land, and what was done for that purpose?

Ans. I think there were two houses burnt down in the woods. Warren assisted Williams. Both got timber, and hauled timber off of the claim. It was understood they had the claim together. I understood they claimed among them 3 eighths in there.

Witness here corrected his answer to 20, direct interrogatory, by stating that instead of 76 rods it should be 84 rods.

93.

Cross Examination Resumed. 24. In answer to 25, direct interrogatory, you say that Williams talked with you about Austin having paid his son money. In these conversations did Mr. Williams say that he had not received the money, but had refused to receive it.

Ans. He did not; he said he calculated to deed and re-deed to everybody, and that he calculated to deed to Austin.

Subscribed and sworn to Jan. 30, 1856.

(Signed)

JAMES BROWN.

Defendant objects to all questions put to witness at the time.

And complainant doth the like.

Deposition of David McKee.

1. Witness knew parties previous to 1844.
94. 2. He acted as an arbitrator with Mr. Woodward and Mr. Brown, in differences between the parties in relation to their claim lines in sec. 21, 39.9, and made an award to the parties the day the bond called for. On our way home Mr. Williams came after us, and wanted the award to take a copy. We told him we would give him a copy if he would go home with us. He insisted that he must have a copy that night. We told him we couldn't give it up. He still insisted, and pledged his word and honor if we would let him have it he would return it to us that night or the next morning. Mr. Brown said let him have it. It was not returned in the morning. I called for it the next day. I think he said he had not done with it. After 3 or 4 days I called again, and he said he had sent it to Mr. Brown.
95. 3. Reason why arbitrators did not make copy, and whether the award was read?
Ans. The reason why we did not make a copy was because Mr. Woodward did all the writing, and we thought we would take it home with us, make copies for the parties, and keep the original. It was read in presence of all the parties excepting Julius M. Warren.
4. Will you state as near as you can recollect the contents and purport of said award.
Ans. We awarded Austin his claim; also Smith his claim, bounded by their claim lines; also awarded Julius M. Warren 22 1-2 acres, to be taken off the east side of E. 80 of S.W. 1-4, running up to join Austin's and Smith's claim. We went on to award Williams his land up to his original claim line on prairie.
5. Had you any surveys or plots before you?
Ans. We had plots of all the pieces of land that we had anything to do with. Whether plots were according to survey or not I can't say.
96. 6. *Boundaries of land awarded to Austin*—Commencing at S.E. corner of S.E. 1-4 sec. 31, thence west 13 rods, thence north 84 rods, I think, thence east 4 rods, thence south to beginning.
7. He makes east line to run on section line.
8. *Boundaries of Smith's claim*—Commencing 13 rods west of 1-4 sec. stake, thence with section line west to section line, thence north parallel with Austin's line 52 rods—only run two lines on this, supposing it to be as wide at the west end as at the east end.
9. The west line run on section line. We supposed it to be about 52 rods.
97. 10. The award was signed by all the arbitrators in two places. It was all on one piece of paper. One award to Williams, one to Smith, Warren, and Austin.
11. Who made the first claim on said 1-4 section?
Ans. Mr. Williams told me that Julius M. Warren and somebody else made that claim in the first place. I have seen Warren and Carpenter drawing timber off there.
12. (Has not seen the award since handed to Williams.)
13. (He knows something, very little though, about the payment of money to Williams by Austin for land awarded to Austin.)
14. (By the award the parties were to pay ten shillings per acre for the land awarded, and 1-2 per cent. interest thereon from the time the land was entered.)

98. 15. (He has heard read during Mr. Brown's examination what purported to be a copy of original award, and says it is not a copy of the original.)

16. (In the original the name of Julius M. Warren was mentioned as the person to whom the 22 1-2 acres were awarded, and his name was mentioned three or four times in the award.)

17. (The west line of Austin's claim runs northeasterly.

Both parties except to interrogatories and answers.

95. *Cross Examination.* 1. You settled upon the terms of the award as between the parties and reduced it to writing, and then read it over to those who were present, and kept it in the possession of one of the arbitrators, and started for your house, designing that Mr. Woodward should make copies for the parties that night—are not these all the facts attending the making of the award before you let Williams have it?

Ans. Yes; they are all the facts.

2. Did you not award to have certain surveys of the land made, by which the parties were to deed?

Ans. Yes, sir.

99. *Direct Examination resumed.* Were there not surveys or plots made by Mr. Coleman, or some one else, there at the time of the arbitration.

Ans. Plots were made; as for their being accurate surveys I could not tell.

19. (Cannot say that he is sure there were directions in the award to have the land surveyed.)

20. How came you to say there were such directions?

Ans. I was hasty, and didn't think, and didn't understand it.

Cross-examination resumed. 3. Did you, at the time of the award, exactly know the number of acres in each piece, and did you know exactly where the lines on each side of the several pieces run, their courses and distances, accurately, so that you could, and did give them, in the award by which the parties were to deed, without any further survey?

Ans. We knew how many acres were awarded to Mr. Warren, and I think the other was awarded by the claim lines. Do not know that I knew the exact number of acres; might have known, but do not now.

100. Certificate of L. D. Hoard, Clerk, attached to said depositions.

101, 2, 3. Exhibit No. 1, being copy of submission bond on part of Williams, set out above.

104. Endorsement of acceptance by the arbitrators.

104, 5. Exhibits Nos. 2 and 3, *pretended award.*

106. Exhibit No. 4, skeleton map.

107, 8, 9.

Exhibit 5. A deed filled out for Williams and his wife to execute. Warren Smith named as grantee—purporting to have been drawn Nov. 6, 1844—consideration blank—premises described as part of sec. 31, 39.9, commencing at southwest corner of said 1-4 section, thence East on Town line 33 chs. 50 lks. to stake on west line of Austin's timber lot, thence north 10 chs. 70 lks. to north line of the original claim of Smith and Wilson, thence west 70 min. north, 33 chs. 70 lks. to Town line, thence south to beginning, 36 49-100 acres.

111, 2, 3.

Exhibit 6. Warranty deed, filled out, for Williams and wife to execute. Julius M. Warren named as grantee—purporting to have been made November, 1844—consideration blank—description of premises, commencing at northeast corner of southwest quarter of sec. 31, 39.9, thence south 18 chs, 41 lks., thence north 81 ° west, 1 ch, 20 lks., thence south 18 °, 30' west, 8 chs, 4 lks., thence south 11 ° east 2 chs, 50 lks., thence north 88 °, 40' west, 5 chs, 70 lks., thence north 27 chs, 80 lks, to north line of said 1-4 section, thence north 88 °, east 8 chs, 96 lks to beginning, 22 1-2 acres.

113, 4, 5.

Exhibit 7. Warranty deed, dated March 6, 1849—Warren Smith and wife grantors—William Williams, grantee—consideration \$12.50—premises, part of sec. 35, 39.9, described by metes and bounds. Signed and acknowledged March 24. 1849.

116.

April 2, 1856, motion to amend *amended* bill allowed.

April 5, 1856. Replication to defendant's answer to supplemental bill filed.

117, 8.

March 12, 1856, filed the original award (which is upon two pieces of paper), and stipulation of counsel that it is the original, and as such may be read in evidence. Said original agrees with the *pretended* copy, with one or two slight immaterial variations.

119.

March 24, 1858. On motion, complainants allowed to amend their *amended* and *supplemental* bill.

120, 1, 2, 3,
4, 5, 6.

Same date. Certified copy of deed from George Packard and wife to Julius M. Warren, dated August 31, 1847, and also of deed from Warren Smith and wife to George Packard, dated August 30, 1847, filed. Same deeds referred to by deft., in his answer.

127.

Testimony of James Brown, taken after the hearing of said cause, both parties present by their Counsel, in open court, before the Judge, March 22, 1858.

"I am the same witness hereto examined in this case, and that acted as arbitrator between the parties. I am acquainted with the S. W. 1-4 of Sec. 31, 39, 9, in Du Page County. It is situated in the timber land known and called the big woods. The defendant pre-empted this tract in the timber, and I was a witness for him, at the time,

to get the pre-emption. His son pre-empted the quarter on the prairie. This timber quarter was the only one he pre-empted. This quarter was a fractional quarter.

Which was objected to by defendant's Counsel. Objection overruled, and exception taken.

128. October 25, 1858. *Decree entered.*

Decree recites that, *it appearing* to the Court from the amended bill, &c., proofs, &c., and *testimony of James Brown, taken after the hearing of the Cause*, that prior to Sept. 17, 1844, claims had been made upon government lands in Du Page County, by the several parties, and one Joseph Wilson, and that disputes had arisen about the rights of the parties, growing out of their claims; that to settle these disputes, on said Sept. 17, 1844, they, with said Wilson, submitted these matters of difference to Timothy D. Woodward, Joseph Brown, and David McKee, for arbitration—

130, 1, 2. (Here follows bond of submission and the acceptance of the arbitrators.)

133. that said Joseph Wilson, by mutual consent of the parties, withdrew from the arbitration; that said arbitrators did, on Sept. 19, 1844, arbitrate in the premises, and make their written award as follows:

134. (Here follows the award as stated in Bill.)

135. that the subject of submission and award was concerning real estate in Du Page County, Ill., known as S. W. 1-4, Sec. 31, 39, 9, pre-empted and purchased by said Williams; that said Austin, previous to the pre-emption, had paid the son and agent of said Williams \$1 25 per acre for the land so awarded to him; that Williams had refused to convey the same; it is therefore *ordered*, &c., that Williams, within thirty days, convey to said Austin that part of said S. W. 1-4, Sec. 31, 39, 9, up to his, said Austin's, original claim line, so awarded to be conveyed by said Williams to said Austin.

136. (*To which Order, &c., the defendant at the time excepted.*)

136. *It also appearing*, that within sixty days from the making of said award, Smith offered to pay Williams \$1 25 per acre for each acre awarded to him, and 12 per cent. interest from the date of purchase of said land, (being \$46 60,) and demanded a conveyance, and that Williams refused the money and to make the conveyance, it is further *ordered*, &c., that Smith pay Williams, within ten days, the sum aforesaid, and that thereupon said Williams, within thirty days, convey, by W. deed, to Smith that part of said S. W. 1-4, Sec. 31, 39, 9, in the timber, up to his, said Smith's, original claim line.

137. (*To which Order, &c., the defendant at the time excepted.*)

138. *It also appearing*, that in the award, *there follows that part which mentions the 22 1-2 acres*, the name of Julius M. Warren was omitted by mistake, and that it was the determination of said arbitrators that Williams should convey said 22 1-2 acres to said Warren, it is therefore *ordered*, that the said award, in this respect, be corrected by inserting the name of Julius M. Warren after the words "big woods;" and it fur-

137.

ther appearing from the amended bill, &c., proofs and testimony of James Brown, introduced as aforesaid, the said fractional quarter section pre-empted by Williams was in the "big woods," and is the S. W. 1-4, Sec. 31, 39, 9, and that said 22 1-2 acres was awarded to be taken from the east side of east eighty of said 1-4 Sec., after taking out of said 1-4 Sec. the land awarded to said Austin and Smith, *It is ordered* that Williams within thirty days, convey to said Warren 22 1 2 acres off from the east side of east eighty of the fractional quarter section that Williams pre-empted in the big woods: that such conveyance be made off the east side of said eighty, exclusive of that decreed to be conveyed to Austin and Smith.

(To which Order, &c. defendant at the time excepted.)

140.

It also appearing, That Williams had made claim in the prairie, that the lines of said claim run over and upon the south half of sec. 35, 39.9, on that part thereof pre-empted by Smith: that said arbitrators awarded Smith to convey to Williams up to his original claim lines on the prairie which Smith pre-empted; and said Williams should pay within 60 days to said Smith government price therefor, and 12 per cent. interest thereon; and that said Smith did within said 60 days offer to convey said land so awarded, on the said Williams paying him \$1.25 per acre, and interest thereon as aforesaid; that Williams refused to receive said deed and pay said money, and that by the amended bill, and amendment thereto, made upon the hearing, &c., proofs, &c., that the land so awarded to be conveyed to Williams is part of south half of section 35, 39.9 (metes and bounds and courses given); that said land was conveyed by Smith to Packard, and afterwards by Packard to Warren, and Warren having, by the said amendment, averred his readiness to convey according to said award: It is therefore, ordered, &c., that within 30 days said Williams pay said Warren \$1.25 per acre for each acre of said land so awarded, with 12 per cent. interest thereon, as aforesaid; and that thereupon said Warren did convey the said land to said Williams, up to the original claim lines on the prairie which said Smith pre-empted.

142.

To all which orders, &c., the defendant at the time excepted.

Nov. 28, 1858, defendant files his appeal bond.

143.

Here follows appeal bond and Clerk's certificate.

GOODRICH, FARWELL & SMITH, for Complainants.

FARNSWORTH, EASTMAN & BEVERIDGE, for Defendant.

186-17
Guthrie M. Warren & Co.

vs

William Williams

Abstract

13149

Filed April 22, 1859

Leland
Clark

