No. 11851

Supreme Court of Illinois

Whittemore.

---

vs.

Buckland.

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95

Thos Whittemore

vs

T. & T. Buckland

1855

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1855

1851

D. W. Whittemore

vs

T. A. Buckland

31

1857

1856

Pleas before the Hon^r Edwin S Leland Judge of the Ninth Judicial Circuit of the State of Illinois at the October Term of Said Court, begun and held in and for the County of Bureau at the Court House in Said County. On Tuesday the Third day of October In the Year of Our Lord One Thousand Eight Hundred and fifty four

Present Hon^r Edwin S. Leland Judge.
Edward M Fisher Clerk
Osmyn Smith Sheriff

Daniel W Whitemore

vs

Thomas J Buckland David Clough. Mary Clough. & Amos Whitemore

Bill for Injunction

This day the Complainant comes by Cook his Solicitor and files his bill of Complaint herein in the words and figures following To wit.

State of Illinois } ss. Bureau Circuit Court of the
Bureau County } October Term thereof A.D 1854.

To The Hon E. S. Leland Judge of the Ninth Judicial Circuit.

Complaining Showeth unto Your Honor Your Orator Daniel W Whitemore of Said County. That on or about the 6th day of November A.D 1850. One Amos Whitemore

was a Resident of the State of New Hampshire. and David Clough and Mary Clough. were also Residents of said State of New Hampshire. Your Orator also Shows that Daniel Clough. the father of said David. and of the said Mary. had been a private in the 4th Regiment of United States Infantry — and was under the laws of the United States. entitled to receive from the United States One hundred and Sixty acres of Bounty land — Said Daniel Clough. was supposed at the time first aforesaid to be dead. but the place of his death and the Circumstances of the same were at the time unknown So that the said Mary Clough. & David Clough. were unable to produce such Evidence of the death of said Daniel Clough. (of whom they were the Sole heirs at Law) as would entitle them to receive a warrant for the bounty land to which their father was Entitled as aforesaid — and to which they became entitled as heirs of their father — Your Orator further shows to Your Honor that on the said 25th day of November A.D. 1840 an agreement was made by and between Said David Clough and Said Amos Whittemore. by which the said David Clough Sold to Said Whittemore all his — the Said Davids right title & interest in and to the Bounty land to be Obtained by or on account of the Services of the Said Daniel Clough for the Sum of Seventy five Dollars — which was then and there paid to him by the Said Whittemore — and Said David Clough. then and there executed and delivered to the Said Amos Whittemore — a receipt of which the following is in Substance a Copy Nov 25th 1840. This day Received of Amos Whittemore One Horse of the value of Sixty Dollars

one Saddle value five dollars - one bridle value one dollar fifty cents - one hat value two dollars and board when sick six dollars & fifty cents. making in all Seventy five dollars - and have deeded him my Title to all Bounty lands which shall be obtained for the Services of my late father Daniel Clough. Said Whittemore is to add the description of the land when it is known. Signed David Clough.

And also on the same day said David Clough executed and delivered to the said Amos Whittemore a deed of Conveyance of all his the said David Clough's Right Title and interest in all bounty lands obtained by or for the Services of said Daniel Clough. a copy of which said Deed is hereto annexed. Marked A. - and made a part of this bill - And your Orator avers that said bounty land had not been obtained at the time of the Execution and delivery of said Deed - And that it was the intention and designs of said David Clough and said Whittemore to Convey by said deed. all the Right title and interest of said David Clough in and to all bounty lands to be obtained on account of the Services of said Daniel Clough. but it was by mistake omitted to be so stated in said Deed. The words "To be" before the before the word Obtained were by mistake Omitted in said Deed - And your Orator further shows that about the same time an agreement was made by and between the said Mary Clough. and the said Amos Whittemore. whereby said Whittemore agreed with said Mary that he would be at the

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trouble and expense of ascertaining the facts in relation to the death of said Daniel Clough. if the same Could be found Out. and of Getting Such proof thereof as Should be Necessary to obtain a Warrant for Said bounty land - and if Said Warrant was Obtained to Locate the Same - And it was then and there further agreed between them - that if Said Whittemore Should Succeed in Obtaining Said Land he Should Sell the Same. and after deducting from the price thereof the amount of the actual Cash expenses of the Said Whittemore in Obtaining the Same - and the portion of the purchase money to be Received for the Said Marys portion of Said Land Should be Equally divided between Said Mary and Said Amos Whittemore - The Portion to be received by Said Whittemore to be a Compensation to Said Whittemore for his Services in investigating the Matters Obtaining the necessary proofs & in Locating & Selling Said lands.

And Your Orator further Shows that Thereupon Said Amos Whittemore Commenced Search and enquiry to ascertain the facts and Circumstances. and was engaged for Several years in Such investigation. and that Said Whittemore did ascertain that Said Daniel Clough. Died in the Year A.D 1814. in a Military Hospital - no Record of his death having been Kept. That Said Whittemore Caused the proof of the Death of the Said Daniel Clough. and that Said Mary Clough and David Clough. were his Sole heirs at Law to be made to the war department of the Government of the United States. and Thereupon -

a land warrant was Issued for the bounty land to which the Said Mary Clough and David Clough were entitled as heirs at law of Said Daniel Clough — That while Said proofs were being made and before Said Land Warrant was Issued — To wit on the 12th day of July AD 1843. the Said Mary Clough. Executed and Delivered to Said Amos Whittemore a power of attorney under her Seal by which She authorized and empowered the Said Whittemore to Receive the Said land Warrant from the War department of the united States — to locate the Same. and to transfer the land and to do all other things concerning Said bounty lands. a Copy of which power of attorney is hereto annexed marked B. and made a part of this Bill — Your Orator further Shows that Said Amos Whittemore did Receive the land warrant aforesaid — and afterwards located the Same — upon the North West Quarter of Section Thirty Two in Township No Sixteen North of Range No Seven East of the 4th principal Meridian — and afterwards to wit on the 21st day of July AD. 1845 a patent in due form of law was Issued by the Government of the united States. to Said Mary Clough and David Clough for the Said Tract of land — which patent was delivered to the Said Amos Whittemore. a Copy of which is hereunto annexed & marked C. and made a part of this bill

Said Amos Whittemore on the 26th day of February AD 1851 Sold to your Orator the South East Quarter of the North West Quarter of Section No Thirty two (32) in Township No Sixteen (16) North of Range Seven East of the 4th principal Meridian

And the Said Amos Whittemore and Makepeace his

wife on that day executed and delivered to Your Orator a Warranty deed for Said land - and Sixty Two acres of other land for the Consideration of Three Hundred and Eighty Two Dollars. a Copy of which deed is hereto annexed marked A. and made a part of this bill — Your Orator further Shows to your Honor that when Said Whitemore Sold Said land to Your Orator he Sold the interest in the Same which belonged to Said Mary Clough, as her attorney - by virtue of the power of attorney aforesaid - and it was then and there the intention of Said Whitemore and Your Orator - that the interest of Said Mary Clough, Should be conveyed to your Orator as well as the interest of the other owner of Said land - and that the Said Whitemore believed when executed Said deed to Your Orator that Said power of attorney from Said Mary Clough, Should be conveyed to your Orator - as well as the interest to him authorized him to make Conveyance of Said land in his Own name - and that Said deed conveyed the Title of Said Mary Clough — And your Orator further Shows that immediately after the Conveyance of Said land to your Orator - Your Orator entered into the exclusive actual possession of Said lands - and has continued in Such possession of the Same from thence hitherto - and that after Your Orator took Such possession - and before the third day of July 1852 Your Orator improved broke and fenced a portion of Said lands - and has ever since continued to cultivate and improve the Same —

And Your Orator Charges that his possession of Said land as aforesaid has been ever Since the Said 26th day

February A.D. 1851. notice to all the world of his rights legal and Equitable therein — And your Orator shows that the deed from said David Clough. to said Amos Whitemore a copy of which is hereto annexed marked Exhibit (A) was filed for Record in the Recorders Office of said Bureau County Illinois in which said land lies on the 18th day of July 1854. and was duly Recorded in the records of said County — and the power of attorney from said Mary Clough — to said Amos Whitemore — was duly filed for Record in the recorders Office of said Bureau County on the first day of September A.D. 1852. & duly & duly Recorded in the records of said County. — And the deed from said Amos Whitemore and Matchtable his wife to your Orator a copy of which is hereto attached Marked "D" was filed for Record in the recorders office of said Bureau County Illinois — on the first day of September A.D. 1852. and duly Recorded in the Records of said County. and Your Orator further Shows to your honor that Sometime in the year of Our Lord A.D. 1852 and after the first day of July of that Year — One Paul Monell Contriving and intending to injure and defraud your Orator and combining and confederating with the said David Clough & the said Mary Clough. fraudulently procured the said David Clough. and Mary Clough. to execute and deliver to him the said Paul Monell then Several Deeds by which they Severally quit claimed to said Monell. the said North West quarter of said Section Thirty two The said deed from said

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Mary Clough - to Said Paul Monell purports on its face to bear date on the 22d day of July AD 1852 & to have been executed for the Consideration of Twelve dollars and the Said deed from the Said David Clough. to Said Paul Monell. purports on its face to have been executed on the third day of July AD 1852. & to have been executed for the Consideration of twelve dollars- Said deeds were filed for Record in the Recorders office of Said Putnam County on the 18th day of August AD 1852. And your orator avers that at the time Said David Clough and Mary Clough. Quit claimed Said land to Said Monell for Twenty four dollars the Same was worth about thirty five hundred dollars—

And Your Orator further Shows that by a Quit Claim deed which purports to bear date on the 31st day of July AD 1852. Said Paul Conveyed his interest in the South west quarter of Said Section No thirty two. to George C Bester the Consideration recited in Said deed - being the Sum of One hundred and Seventy five dollars - and that the Said George C Bester by a quit Claim deed which on its face bears date on the 28th of February AD 1854. Conveyed his interest in Said land to One Thomas A. Buckland. and that Said deed recites a Consideration on its face of Six hundred dollars — And that Said deed from Said Monell to Said Bester - was filed for Record in the recorders Office of Said County on the 2d day of September AD 1852. And the deed from Said Bester - to Said Buckland was filed for Record in the recorders Office of Said County on the 27th day of July AD 1854.

And your Orator Charges that Both Said Baxter and Said Buckland had Notice of the Right of your Orator in the premises at the time they Received Said Deeds Respectively - and that as he is advised and believes that the deed from Said Baxter to Said Buckland was not for the Consideration of Said Sum of Sixty hundred Dollars - but was made upon a Merely nominal Consideration - and that both of Said Conveyances were in fraud of the Right of your Orator - And your Orator Shows that he and those Claiming under him have paid the taxes on Said land ever Since the Same became taxable - which was more than seven years before the Commencement of this Suit - And your Orator Shows that Said Thomas A Buckland falsely pretending that he is the owner of the Said South East quarter of the North West Quarter of Said Section number Thirty two in Town Ship Sixteen north Range Seven East of the fourth principal meridian - Conveyed by Said Amos Whitemore - to your Orator - and intending to harass and injure your Orator - heretofore to wit - at the March Term AD 1854 - of this Court Commenced an action of Ejectment against your Orator - to Recover the forty acres of land last aforesaid - from Your Orator - all which actings and doings are against Equity and good Conscience - And your Orator Charges that Said Whitemore at the time he executed and delivered to your Orator - the deed aforesaid from himself and wife was in equity

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the Owner of the undivided half of Said land— and was the authorized agent duly empowered to Sell and Transfer the remainder thereof— which belonged in Law to Said Mary Clough— And that Said Amos Whittemore did Sell and agree to Convey to Your Orator — the title of Said Amos Whittemore— and Also of Said Mary Clough — to Said land— and received a valuable Consideration therefor — Inasmuch Therefore as Your Orator is in danger of Sustaining Wrong is Remidiless except in Equity— where matters of this Sort are properly Cognisable and relievable— Your Orator prays That Said David Clough, and Mary Clough. Thomas A Buckland and Amos Whittemore may be made parties defendant to this bill, and Summoned to answer the Same — and that Said Buckland answer particularly whether he had not been informed at the time he received Said Conveyance from Baxter— that Your Orator— and Said Amos Whittemore made Some Claim to Said land— and that Said Buckland answer fully particularly what Sum he paid Said Baxter for Said Land— and when or in what manner the Same was paid or agreed to be paid— and that until the final hearing of this Cause — Said Thomas A Buckland— be restrained and Enjoined from further prosecuting his Said Ejectment against your Orator— and that upon the final hearing of this Cause— that the title of the Said Thomas A Buckland— derived from Said David Clough— and Mary Clough— through Said Morell and Baxter as aforesaid— be decreed

the Owner of the undivided half of Said land- and was the authorized agent duly empowered to Sell and Transfer the remainder thereof- which belonged in Law to Said Mary Clough- And that Said Amos Whittemore did Sell and agree to Convey to Your Orator — the title of Said Amos Whittemore — and Also of Said Mary Clough — to Said land- and recieved a valuable Consideration therefor — In consideration therefore as Your Orator is in danger of Sustaining Wrong is Remidiless except in Equity- where matters of this Sort are properly Cognisable and relievable- Your Orator prays That Said David Clough, and Mary Clough. Thomas A Buckland and Amos Whittemore may be made parties defendant to this bill, and Summoned to answer the Same — and that Said Buckland answer particularly whether he had not been informed at the time he recieved Said Conveyance from Baxter- that Your Orator- and Said Amos Whittemore made Some Claim to Said land- and that Said Buckland answer fully particularly what Sum he paid Said Baxter for Said Land- and when or in what manner the Same was paid or agreed to be paid- and that until the final hearing of this Cause — Said Thomas A Buckland — be restrained and Enjoined from further prosecuting his Said Ejectment against your Orator- and that upon the final hearing of this Cause- that the title of the Said Thomas A Buckland- derived from Said David Clough- and Mary Clough- through Said Morrell and Baxter as aforesaid- be decreed

to be absolutely null and void - as against the title of your Orator - and that said David Clough & Mary Clough be decreed to convey the last above described forty acres of land purchased by your Orator from said Amos Whittemore - by Quit Claim deed - Or for such other and further Relief as to Equity shall appertain

Cook & Eveleth
Solicitors

State of Illinois
Bureau County ss.

being duly Sworn Saith that the matters and things in the above bill Stated and Set forth. are true in Substance & in fact. So far as the Same are Stated as happening within the Knowledge of affiant. it was done ~~as~~ by him. all the other Statements of Said bill are true according to affiants best Knowledge. information & belief

Subscribed and Sworn to before me
this 5th day of October AD 1854
E. M. Fisher Clk

Daniel N. Whittemore

Exhibit A

This deed made this 25th day of November Eighteen Hundred and forty - Witnesseth - that I David Clough of Meredith - Yeoman - of the County of Belknap - State of New Hampshire in Consideration of Seventy five dollars to me paid by Amos Whittemore of Salisbury Yeoman - County of Meredith - State of New hampshire the receipt of which is hereby acknowledged - do by these presents remise. release and forever quit claim

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to the Said Amos Whittemore his heirs and assigns
forever all that Certain tract of land Situate lying and
being in the County of and State of Illinois
and Union as the quarter of Section
in Township of Range
Meaning to Convey all my Right title and interest in all
bounty lands Obtained by or for the Services of my late
father David Clough — To have and to hold the
afore described premises with the appurtenances thereunto
belonging — to the Said Amos Whittemore his heirs and assigns
forever — The Said David Clough hereby Covenanting that
he will Warrant and defend the title to the aforesaid
premises to the Said Amos Whittemore his heirs and
assigns forever against all persons Claiming under or
through him but against the Claim of none Others —
In Testimony whereof the Said David Clough has here
-unto Set his hand and Seal the day and Year above
Written — Signed David Clough L S
done in presence of L S
Benja Pettengill 2 Witnesses
Thos N Whittemore 3

Exhibit B.

Know all men by these presents that I Mary Clough
of Meredeth in the County of Belknap and State of
New hampshire — do hereby Constitute and appoint Amos
Whittemore of Salisbury in the County of Merimeck and
State of New hampshire my true and lawful attorney
for me and in my name to receive of the War department

of the united States a warrent or Warrents for bounty Land for the Services of my late father David Clough. who was a Soldier in the revolutionary war - and also in the last war with England - and died in the Service july 1814. and also to locate and Transfer Said bounty land - and do all other things concerning Said bounty land - Witness my hand and Seal this Twelfth day of July in the Year of our Lord One Thousand Eight hundred and forty three -

Signed Sealed and delivered
in presence of us
Joseph Neal Jr
Reuben Fox

Signed Mary Clough (Seal)

Exhibit C

The United States of America To all to whom these presents Shall Come Greeting - Know Ye that in pursuance of the acts of Congress appropriating and Granting land to the late army of the united States passed on and since the Sixth day of May 1812 Mary Clough. and David Clough the Children and Only heirs at Law of Daniel Clough Decd who was a private in the Company Commanded by Captain Hawkins 4th Reg. Ms. Infantry having deposited in the general land office a Warrent in their favor numbered 27277 there is therefore granted by the united States unto the Said Maggy Clough. and David Clough. the Children and Only heirs at Law of Daniel Clough - Decd the North West quarter of Section thirty Two in Township Sixteen North of Range 7 East of the 4th principal Meridian in the district of Lands

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Subject to Sale at Vincennes Illinois - Containing one hundred and Sixty Acres - according to the Official plat of the Survey of the Said land returned to the general land office by the Surveyor general - which Said tract has been located in Satisfaction of the above mentioned Warrant - in pursuance of the act of Congress approved 27th July 1842 to have and to hold the Said quarter Section of land with the appurtenances thereof - unto the Said Mary Clough and David Clough and to their heirs and assigns forever as tenants in Common and not as joint tenants - In testimony whereof I James K. Polk president of the united States of America have Caused these letters to be made patent and the Seal of the general land office to be hereunto affixed -

Given under my hand at the City of Washington the Twenty first day of July in the Year of our Lord one Thousand Eight Hundred and forty five - and of the independance of the united States the Seventieth -

By the President James K Polk

(L S) By A. Dix & Walker Secy.

S. H. Laughlin Recorder of the general land office

Recorded Vol. 1. Page 146.

Exhibit D

This indenture made this twenty Sixth day of February in the Year of our Lord one Thousand Eight Hundred and fifty one - between Amos Whittemore of Concord in the County of Merrimack and State of Illinois of the first part. and Daniel W Whittemore of the

Same County and State of The Second part-
Witnesseth- That the Said party of the first
part for and in Consideration of the Sum of
Three hundred and Eighty two dollars - in hand
paid by the Said party of the Second part- the
Receipt whereof is hereby acknowledged and the Said
party of the Second part- forever Released and discharged
therefrom - hath granted bargained. Sold. remised
aliened and Confirmed and by these presents doth grant
bargain Sell remise release alien and Confirm unto
the Said party of the Second part and to his heirs and
assigns forever. all of the following described prem-
ises Situate lying and being in the County of Bureau
and State of Illinois- viz- The South East quarter of
the North West quarter of Section Thirty two (32) in
Township Sixteen (16) North of Range Seven (7) East- Also
that part of the East half of the South west quarter
of Section Thirty Two (32) which lies the North Side of the
road as now traveled - and east of a line running from
where the west line of Said lot Crosses the Creek to where
the Creek hits the Road - also nineteen acres of the West
Side of the South East quarter of the North East quarter
of Section one in Township fifteen North of Range
Six East. Containing about 102 acres in all. Reserving a
pass way for teams to and from Stevens Saw mill
by Opening and closing gates - Together with all and
Singular the hereditaments and appurtenances thereunto
belonging or in anywise appertaining - and the reversion

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and Reversions Remainder and Remainders- rents
Issues and profits Thereof and all the estate right Title
interest Claim or demand whatsoever of the Said
party of the first part Either in Law or equity of in
and to the above bargained premises- with the hered-
itaments and appurtenances- to have and to hold
the Said premises above bargained and described
with the appurtenances unto the Said party of the Second
part his heirs and assigns forever- And the Said Amos
Whitemore for himself- his heirs executors and admin-
istrators doth Covenant, bargain and agree to and with the Said
party of the Second part his heirs and assigns- that at the
time of the ensealing and delivery of these presents the
Said Amos Whitemore was well Seized of the prem-
ises above Conveyed- as of a good Sure perfect absolute
and indefeasable estate of inheritance in the Law in fee
Simple- and hath good right full power- and
lawful authority to grant Bargain. Sell. and Convey.
the Same in Manner and form aforesaid- And that
the Same are free and Clear of all former and other
Grants. Bargains Sales- liens- judgments- Taxes Assessments
and incumbrances- of what Kind or nature soever. and
the above bargained premises in the Quiet and peaceable
possession of the Said party of the Second part- and
his heirs and assigns against all and every person or
persons lawfully Claiming or to Claim the whole or
any part thereof- Shall and will warrant and
forever defend- In Witness ~~Testimony~~ whereof the Said

party of the first part hereunto Set their hands and Seal the day and year first above written—

Sealed and delivered in presence of Henry Walker } Signed Amos Whittemore (Seal)
Mahitable Whittemore (Seal)

State of Illinois
Bureau County } Amos Whittemore being first duly Sworn Saith on Oath that the matters & things Stated in the foregoing bill as having been done by or within the knowledge of affiant are truly and Correctly Stated in Said bill.

Amos Whittemore

Subscribed & Sworn to before me
This 11th day of Oct A.D 1854
E. M. Fisher Clk

And thereupon the Complainant by his Said Solicitor Moved for an injunction herein— and the Court being fully advised in the premises— Considers that Said defendants be enjoined according to the prayer of said bill.

And afterward To wit on the 23d day of October A.D 1854. Come the Complainant herein by Cook & Kendall his Solicitors and file their precipe for process herein in the words and figures following To wit.

State of Illinois }
Bureau County } In the Bureau Circuit Court in vacation after the Oct T. 1854.

Daniel W. Whittemore } In Chancery—
vs
Buckland and Others } Milo Kendall being duly Sworn

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deposes and Says that David Clough, and Mary Clough, two of the defendants in the above entitled Cause — reside out of the State of Illinois so that process cannot be Served on them in this Cause. Miles Kendall

Subscribed & Sworn to before me
this 23d day of October AD 1854
E M Fisher Clk

Clerk will please Issue Summons against all the defendants in Said Cause & direct to Shff of Bureau — returnable at next term — and Cause publication to be made as to David Clough & Mary Clough.

Cook & Kendall Solrs for Complt—

On the Same date To wit October 23 1854 process Issued in the words and figures following To wit.

State of Illinois }
Bureau County } The People of the State of Illinois.

To the Sheriff of Bureau County — Greeting.

We Command You to Summon David Clough, Mary Clough — Thomas A Buckland, and Amos Whitemore if they Shall be found in Your County — to be and appear before Our Circuit Court — for Said County — on the first day of the next Term thereof — to be held in the Town of Princeton On the Second Monday of January next — to answer to a certain Bill of Complaint filed in Our Said Circuit Court in the Chancery Side thereof against them by Daniel A Whitemore, and further to do and receive whatever Our Said Court Shall then

and there consider in that behalf - and further ~~to~~
and this you shall in no wise omit, hereof fail not,
and make due return of this writ - with an endorsement
of the manner in which you execute the same.

Witness Edward M Fisher Clerk of our said
Court, and the Seal thereof at Princeton
this 23d day of October in the Year of
our Lord One Thousand Eight hundred
and fifty four

(L S)

Edward M Fisher Clk

I have Executed the within writ, by delivering
a true Copy of the Same to amos Whitemore. this 25th
day of October AD 1854. The within named David Clough
Mary Clough & Thomas A Buckland not found in my
County -

Asmyn Smith Sheriff
Bureau County Ills -

Pleas before the Honorable Edwin S Leland
Judge of ninth Judicial Circuit of the State of Illinois
at the January Term of the Circuit Court - begun and held
at the Court House in Princeton within and for the
County of Bureau on Tuesday the Ninth Day of January
in the Year of our Lord One Thousand Eight Hundred
and fifty five In Chancery Sitting

Present Hon[r] Edwin S. Leland Judge
Edward M Fisher Clerk
Stephen G. Paddock Sheriff

51851-10

Daniel W. W. Whittemore

vs Bill in Chancery & Injunction

Thomas A Buckland et al

Now Comes Thomas A Buckland One of the defendants by Peters his Solicitor and files his demurrer herein in the words and figures following to wit.

The demurrer of Thomas A Buckland. one of the defendants to the bill of Complaint of the Complts-

This defendant by protestation. not confessing or acknowledging. all or any of the matters or things. in and by said bill Set forth and Complained of. to be true in manner and form as the Same are therein Set forth and alledged. Saith that there is no matter or thing in said Bill contained. good and Sufficient in law to Call This defendant in Question in this honorable Court for the Same- but that there is good cause for demurrer thereto. And therefore this defendant Saith that the Said Complainants bill: in Case the allegations therein Contained were true- which this defendant doth in no Sort admit. Contains not any matter of Equity. wherein this Court Can grant any decree, or give the Complainant any Relief or assistance as against this defendant- Wherefore and for divers other errors and imperfections in Said bill Contained. This defendant doth demur in law thereto- and humbly demands the judgment of this honorable Court- whether he Shall be Compelled to put in any further or other answer to the Said Bill. & humbly prays to be

hence dismissed with his reasonable costs in this behalf most wrongfully sustained.-

Peters & Farwell
Solrs for Buckland

January 13th 1855

Daniel & Whitemore
vs
Bill for Injunction
David Clough & Mary Clough
Thomas A Buckland &
Amos Whitemore

This day came the Complainant by his Solicitor and it appearing to the Court that said Clough and Mary Clough had Received due notice of the pendency of this Suit. by publication in the Princeton Post. a Weekly newspaper Published at Princeton. for four Successive weeks- the first of which was more than sixty days prior to the first day of the present Term of this Court. and that process had been duly Served on Amos Whitemore more than ten days before the present term of this Court- and also that process had been Issued against said Cloughs. and returned "not found" and they being Solemnly called to Come into Court to plead answer or demur to said Bill. Came not but made default. It is therefore Considered that said bill be taken for Confessed as to them. But the said Thomas A Buckland having Come and entered his appearance- and filed a general demurrer to Complainants bill

[11857-11]

The Case Came on for hearing on Said demurrer. and it appearing to the Court. that there is no Equity in Said bill. Said demurrer is Sustained. and the Said Complainant declining to amend his bill. It is Ordered and decreed that Said bill be dismiped. and the Injunction dissolved. and that the Said Complainant pay the Costs of this Suit. and Complainant by his Solicitors prays an appeal herein to the Supreme Court. which is allowed by the Court. on Condition that the Said Complainant file an appeal bond herein in the penal sum of One hundred dollars. with Cyrus Sweet as Security within Thirty days from and after the adjournment of this Court.

Copy of Appeal Bond

Know all men by these presents that we Daniel W. Whittemore and Cyrus Sweet of the County of Stevens and State of Illinois are held and firmly bound unto David Clough. Mary Clough Thomas J. Buckland. and Amos Whittemore in the penal Sum of One Hundred Dollars Current money of the United States. for the payment of which well and truly to be made we bind Ourselves Our heirs Executors and administrators jointly and severally and firmly by these presents witness our hands and Seals this tenth day of January A.D. 1855

The Condition of the above obligation is such that whereas the Said Thomas J. Buckland (impleaded with Said David Clough Mary Clough and Amos Whittemore)

said on the tenth day of January AD 1855 in the Circuit Court in and for the County and State aforesaid - Recover a certain order and decree in Chancery dismissing a certain Bill in Chancery. then pending in said Court. wherein the said Daniel W. Whittemore is Complainant - and said said David Clough Mary Clough Thomas A Buckland and Amos Whittemore are defendants - from which said Order and decree of said Circuit Court. the said Daniel W Whittemore has prayed for and obtained an appeal to the Supreme Court of said State. Now if the said Daniel W Whittemore shall prosecute his said appeal with effect - and shall moreover pay the amount of the judgment. Costs. Interest. and damages rendered or to be rendered against him in case the said order and decree shall be affirmed in the said Supreme Court then the above Obligation to be void Otherwise to remain in full force and virtue.

Filed January 13 1855 — Daniel W. Whittemore (Seal)

Ed M Fisher clerk — Cyrus Sweet (Seal)

State of Illinois } ss.
Bureau County }

I Edward M Fisher Clerk of the Circuit Court in and for said County in the State aforesaid do hereby certify that the foregoing transcript is a true & complete Copy of the Record and proceedings had in this Court, in the above Entitled Cause - as on file and of Record in said Circuit Court.

In Testimony whereof I have hereunto subscribed my name and affixed the Seal of said Court at Princeton in said County this 28th day of May AD 1855 — Edward M Fisher Clerk

Postage
Clerks fees
Copy Transcript 5.25
Seal & Seal .35
$5.60

18

$11851-12

97

Danl. W. Whittaker

vs

Thos. A. Buckland

Record

Filed June 14. 1855.

L. Leland Clk.

Plea before the Hon.ble Edwin S Leland judge of the Circuit Court of the Ninth Judicial Circuit of the State of Illinois. at the October Term of Said Court. begun and held in and for the County of Bureau at the Court House in Said County. on Tuesday the third day of October in the Year of Our Lord one Thousand Eight Hundred and fifty four.

Present Hon.ble Edwin S. Leland judge
Edward McFarlin clerk
Osmyn Smith Sheriff

Amos Whittemore
vs Bill for Injunction
Thomas A Buckland Et al

This day the Complainant comes by Cook his Solicitor and files his bill of Complaint herein in the words and figures following To wit.

State of Illinois
Bureau County and Circuit Court thereof
of the October Term AD 1854.

To the Hon.ble Edwin S. Leland judge of the 9th Judicial Circuit.

Complaining Showeth unto Your honor your Orator Amos Whittemore of Said County—

That Samuel Clough who was a Soldier in the army of the united States. died in a Military Hospital in the Year of Our Lord 1814. That previous to & at the time of his death. he was a Soldier as aforesaid—

[11851-13]

and by Virtue of the laws of the United States. that his heirs were Entitled to 160 acres of Bounty land. That said Daniel Clough left Mary Clough & David Clough. his Children & Sole heirs at law him Surviving. That for many Years Said heirs were unable to obtain any certain intelligence of their father Said Daniel Clough. & to make Such proof of his death as would entitle them to Recieve from the government of the United States. a land Warrant for Said Bounty land. That on the 28th day of November AD 1840 David Clough who was then a Resident of the State of Newhampshire. made an agreement with Wm. Crater. who was then a resident of the Same State. By which Said David Clough. Sold to Wm Crater all his Interest in all the bounty land which Should be Obtained for the Service of his father the Said David Clough. for the Sum of Seventy five Dollars. which Sum was then and there paid in full by Wm Crater to Said David Clough and Said David Clough then and there Executed and delivered to Wm Crater a receipt which is in Substance as follows. Dover 28th 1840

This day Received of Amos Whittemore on horse of the Value of 60 dollars. one Saddle value 5 dollars one bridle Value 1d 50c one hat value 2. and board when Sick 6.50 making Seventy five dollars and have decided him my title to all bounty lands which Shall be Obtained for the Services of my late father David Clough. Said Whittemore is to add the description

of the land when it is drawn. (Signed) David Clough.

And the said David Clough then and there exec-
-uted and delivered to your Orator a deed of conveyance of all
his the said David Cloughs interest right & title in all
bounty lands obtained by or for the Services of his late father
Daniel Clough. a copy of which deed is hereto annexed
marked (A) and made a part of this bill. And your
Orator Shews that no bounty lands had at that time been
obtained for the Services of the said Daniel Clough. but
the said deed was intended by said David Clough. & your
Orator to convey all the interest of said Clough in the bounty
lands to be obtained for the Services of the said Daniel Clough
and the words. to be. or some words of similar import were omitted
by mistake to be inserted in said deed before the words Obtained
by or for the Services of my late father Daniel Clough.
The description of the land by ~~metes~~ not being inserted for
the reason that the land not having been obtained a descrip-
tion of the same was impossible. & it being Specified
in the receipt aforesaid that your Orator should insert the
land which should be drawn.

And your Orator further Shews to your honor that
he commenced making Search and enquiry to ascertain
the facts in relation to the death of said Daniel Clough.
and prosecuted the same for some years without success
and that on the 12th day of July A.D 1843. your Orator
made an agreement with the said Mary Clough. by
which it was agreed that your Orator should ascertain the
facts in relation to the death of said Daniel Clough.

[11851-14]

& possible and make proof of the Same to the proper depart-
ment & Should Obtain a land Warrant for the bounty land
to which the heirs of Said Daniel Clough were entitled
and to locate Said Warrant and then to transfer the
land to be thus Obtained. that the necessary Cash Expences
of Your Orator Should first be deducted from the price
of Said land. and that then half of that portion of the
purchase Money which Should have been received for the
portion of the land belonging to Said Mary Clough Should
be retained by Your Orator as a Compensation for his
time and trouble in procuring a title to Said land.

And thereupon Said Maggy Clough Executed and
did deliver to Your Orator a power of Attorney by which
She Authorized and Empowered Your Orator to receive
from the War Department of the United States a Warrant
or Warrants for bounty land for the Services of her father
Daniel Clough and also to locate and transfer Said
Bounty land. and do all other things Concerning Said
Bounty land. A Copy of which Said power of Attorney is
hereto annexed marked (B) and made part of this bill.
Your Orator did take Such Steps that he ascertained
the facts that Said Daniel Clough died in a Military
hospital in the Year 1814. and Caused proof of the Same
to be made to the War department of the Government
of the United States. and also proof that Said David Clough
& Mary Clough were the heirs at law of Said Daniel
Clough. and did Obtain and receive from Said War
department a land Warrant for 160 acres of bounty land

for the Services of the Said Daniel Clough. which land Warrant was Issued to Said Mary Clough + David Clough as heirs of Daniel Clough Deceased. And Your Orator thereupon proceeded to locate Said land warrant upon the north west quarter of Section No Thirty Two in Township No Sixteen North of range No Seven east of the 4th principal Meridian being in Said Buncom County. and afterwards to wit, on the 21st day of July AD 1845 a patent was Issued by the United States. to Said Mary Clough + David Clough Children and heirs at law of Said Daniel Clough deceased. for the land aforesaid upon which the land warrant aforesaid was located which patent was delivered to your Orator. a Copy of which patent is hereto annexed marked (C) and made part of this bill. Your Orator Shows that the deed from Daniel Clough to Your Orator a Copy of which is made exhibit (A) was filed in the Office of the recorder of Said Buncom County for Record on the 18th day of July AD 1854 + duly recorded in the records of Said Office. and that the power of attorney of the Said Mary Clough. to your Orator. was filed for Record in the recorders Office of Said Buncom County on the 1st day of September AD 1852 + duly Recorded in the records of Said Office + Your Orator Shows that the Said Amos Whitemore and those claiming under him have paid the taxes on Said land ever Since the Same became taxable.

Your Orator further Shows that about the time or Soon after the location of Said land Warrant. Your Orator removed to this State. and Settled on land

adjoining the land above described and took the control of said land and offered the same for sale according to the agreement between himself and the said Mary Clough and that on the 3d day of May AD 1852 Your Orator sold to One Philip S. Mintz the following portion of said land to wit. the North End of the west half of said North west quarter of Section No Thirty two aforesaid containing Sixty acres. the same being the North west quarter of the North west quarter of Section No Thirty two aforesaid. and the North half of the South west quarter of the said North west quarter of said Section No Thirty two. and your Orator and Mahitabele his wife on the same day executed & delivered to said Phillips S Mintz. a deed for said last described land. and also ten acres of other land for the sum of Three hundred and Sixty three dollars. which Sum was then and there paid by said Mintz to Your Orator. that portion of said land decided by Your Orator to said Mintz above described which was on Section No Thirty two was then worth three hundred dollars - and the ten acres of timber about Seventy dollars - Said Deed from Your Orator and wife to said Mintz. was duly filed for record in the recorders office of said Berrien County and duly recorded on the 4th day of May AD 1852. a copy of which deed hereto annexed marked (D) is made a part of this bill.

Your Orator further shows to Your Honor that at the time of said Sale to said Mintz Your Orator contracted to sell and convey to him the Entire title to said land as well the interest of the said Mary Clough as the interest

of the other Owner or owners of said land. and that Your orator was by the power of attorney aforesaid fully authorized to sell and convey the interest of the said Mary Clough in said land: and Your Orator believed that said power of attorney fully authorized him in his own name to convey said land to said Wintz. which he fully intended to do. and that Your Orator received the purchase money for said land that belonged to said Mary Clough as her agent & for her. Your Orator further shows that by said deed from himself and wife to said Wintz Your Orator for himself his heirs executors and administrators covenanted with the said Wintz his heirs and assigns that at the time of the delivery of said deed Your Orator was well seized of the premises described as of a perfect title in fee simple and had full power & authority to sell and convey the same in manner mentioned in said deed. that said premises were clear of all incumbrances of every nature. and that your Orator would defend the quiet and peacable possession of said premises in said Wintz his heirs or assigns against all and every person claiming or to claim the whole or any part thereof as by reference to said deed will more fully and at large appear.

And Your Orator further shows to Your honor that said Wintz immediately upon his purchase took possession of said tract of land mentioned in said deed from Your Orator & wife to said Wintz. and has ever since continued either by himself or his tenants in the actual exclusive possession of the same. Your Orator further shows that during the month of June A.D 1852 said Wintz was in possession of

[11851-16]

Said land and was at work on the same improving the same that in June 1852 Said Wintz broke about twelve acres on Said tract of Sixty acres aforesaid and during the autumn of 1852 Said Wintz built a house on Said Sixty acres and in the Month of March A.D. 1852 Said Wintz built a fence around about thirty acres of Said land and that the improvements he made during the first Year after he purchased Said land from Your Orator were of the value of two hundred and fifty dollars. That Since Said third day of May A.D. 1852 Said Wintz has been constantly in possession of Said Sixty acres working upon and improving the Same and claiming title to the Same and that Since that date his possession of Said Sixty acres has been notice to all the world of his right to the Same. And Your Orator further Shows to Your honor that Sometime in the Year of Our Lord 1852 and after the 1st day of July in that Year. One Paul Morell Combining & intending to defraud & injure your Orator in the premises and Combining and Confederating with the Said David Clough and Mary Clough fraudulently procured the Said David Clough and Mary Clough to Execute and deliver to him the Said Paul Morell their Several quit claim deeds by which they Severally quit claimed to the Said Morell all their interest in the Said South West quarter of Said Section No Thirty two. The Said deed from Said Mary Clough to Said Paul Morell purports on its face to bear date on the 22d day of July 1852. and to have been executed for the Consideration of Twelve dollars. and the Said deed from Said David Clough to Said Paul Morell purports on its face to have been

executed on the 3d day of July AD 1852 and to have been executed for the Consideration of Twelve dollars. Said deeds were filed for Record in the recorders Office of Said Bureau County on the 18th day of August AD 1852. And your Orator further Shows that at the time Said Daniel Clough and Mary Clough quit Claimed Said quarter Section of land to Said Morrill for the Sum of $24. The Same was worth about the Sum of Three thousand five hundred dollars. And your Orator further Shows that by Quit claim deed which purports to bear date on the 31st day of July AD 1852. Said Paul Morrill Conveyed his interest in the Said Northwest quarter of Said Section No Thirty two to George C Bester. The Consideration recited in Said deed being One hundred and Seventy five dollars. And that the Said George C Bester by a quit claim deed which on its face bears date on the 25th day of February AD 1854. Conveyed his interest in Said quarter Section to One Thomas J Buckland and the Said deed recites a Consideration on its face of Six Hundred Dollars. And that Said deed from Said Morrill to Said Bester was filed for record in the recorders Office of Said County on the 2d day of September AD 1852. & The deed from Said Bester to Said Buckland on the 27th day of July AD 1854. And Your Orator charges that both Said Bester & Said Buckland had notice of the Rights of Said Winty in Said premises at the time they received the Said deeds respectively. And as he is advised & believes that the deed from Said Bester to Said Buckland was not for the Consideration of the Sum of Six hundred Dollars but was made to him a merely nominal & of any Consideration.

[11851-17]

and that both of Said Conveyances were made in fraud of the rights of your Orator. and Your Orator Shows that Said Thomas A Buckland contriving to injure and oppress your orator and to make him liable on his covenants in the deed from Your orator to Said Wintz. and to Eject & remove Said Wintz from the Sixty acres of Said land aforesaid heretofore to wit. at the March Term of this Court A.D 1854 commenced an action of Ejectment against Said Wintz to recover from him the Sixty acres of land deeded to him by your orator. all of which actings & doings are contrary to Equity & good conscience. And Your Orator Shows that Said Wintz has Served a notice on your orator requiring him to defend Said Suit in Ejectment. Your orator charges that at the time he conveyed Said Sixty acres of land to Said Wintz he was the Equitable Owner of One half of Said land and was the constituted agent of Mary Clough. duly authorized & empowered to Sell all her interest in Said land and that he did Sell and agree to Convey to Said Wintz not only his own interest in Said land. but also the interest of the Said Mary Clough therein. and did receive full pay for the Same from Said Wintz. Your Orator recieved from Said Wintz. for Said Mary Clough. the payment for her portion of Said land. and that Said Wintz is now the Equitable Owner of Said land.

Your Orator further Shows that after your Orator recieved a notice from Said Wintz to defend Said Ejectment Suit he applied to Said Wintz to allow Your Orator to use his the Said Wintz. name in filing a bill in Chancery to

perfect & quiet his title to Said Sixty acres of land which Said Wintz absolutely refused to do. but insists upon holding Your Orator responsible upon his Covenants

In as much therefore as your Orator is in danger & Suffering loss & damage and is remediless except in Equity where matters of this Sort are properly Cognigable & relievable

Your Orator prays That Said David Clough Mary Clough Thomas A Buckland & Philips S. Wintz may be made parties defendent to this Bill & Summoned to answer the same and that Said Buckland answer particularly what sum he paid Said Bester for Said Land. and in what time & manner the Same was paid or agreed to be paid. and also whether he had not heard at the time he received Said conveyance that your orator or Said Wintz claimed to have some interest in Said land. and that untill the final hearing of this Cause Said Thomas A Buckland. be restrained & enjoined from further prosecuting his Said Suit in Ejectment against Said Wintz. and that upon the final hearing of this Cause that the title of Said Thomas A Buckland derived from Said David Clough & Mary Clough through Said Morrell & Said Bester as aforesaid be decreed to be absolutely null & void as against the title of Said Wintz. And that Said David Clough & Mary Clough be decreed to convey to Said Wintz by Quit Claim deed the Sixty acres of land aforesaid conveyed by your Orator to him or for Such other or further relief as to Equity Shall appertain

Kendall & Cook

Solicitors

[1851-18]

State of Illinois
Lawrence County

Amos Whitemore being first duly sworn
saith on Oath that the Statements contained in the
above bill are true in substance & in fact
Subscribed and Sworn to before Amos Whitemore
me This 11th day of October AD 1854
E M Fisher clk

Exhibit A

This deed made this 25th day of November Eighteen hundred
and forty witnesseth that I David Clough of Meredith-
Yeoman. of the County of Belknap. State of New Hampshire
in consideration of Seventy five dollars to me paid by Amos
Whitemore of Salisbury Yeoman. County of Meredith. State of
New Hampshire the receipt of which is hereby acknowledged
do by these presents remise release and forever quit
claim to the said Amos Whitemore his heirs and assigns
forever all that certain tract of land Situated lying and
being in the County of and State of Illinois and
known as the quarter of Section in
Township of Range meaning to
convey all my right title and interest in all bounty lands
obtained by or for the services of my late father Daniel Clough
To have and to hold the aforedescribed premises with the
appurtenances thereunto belonging to the said Amos Whitemore
his heirs and assigns forever. The said David Clough hereby
covenanting that he will warrant and defend the title to
the aforesaid premises to the said Amos Whitemore

his heirs and assigns forever against all persons claiming under or through him but against the claim of none others

In testimony whereof the said David Clough has hereunto set his hand and seal the day and year above written. (Signed) Daniel Clough L S

done in presence of L S

Benj a Pettengill 2d

Thos W Whittemore

Exhibit B

Know all men by these presents that I Mary Clough of Meredith in the County of Belknap and State of New-hampshire do hereby Constitute and appoint Amos Whittemore of Salisbury in the County of Merrimack and State of Newhampshire my true and lawful attorney for me and in my name to receive of the war department of the United States a Warrant or Warrants for bounty land for the Services of my late father Daniel Clough who was a Soldier in the revolutionary war and also in the last war with England and died in the Service July 1814. and also to locate and transfer said bounty land and do all other things concerning said bounty lands

Witness my hand and seal this twelfth day of July in the Year of Our Lord One Thousand Eight hundred and forty three Signed Sealed

and delivered in presence of us (Signed) Mary Clough (Seal)

Joseph Neal Jr.

Reuben Fogg

211851-19

Exhibit C

The United States of America To all to whom these these presents Shall Come Greeting. Know Ye that in pursuance of the acts of Congress approprating and Granting to the late army of the united States. passed on and since the Sixth day of May 1812 Mary Clough and David Clough. the Children and only heirs at law of Daniel Clough Dec'd. who was a private in the Company Commanded by Captain Hawkins 4th Reg U.S. Infantry having deposited in the general land office a warrant in their favor numbered 27277. There is therefore granted by the United States unto the said Mary Clough. and David Clough. the Children and only heirs at law of Daniel Clough dec'd the North west quarter of Section Thirty two in Township Sixteen North of Range 7 East of the 4th principal Meridian in the district of lands Subject to Sale at Alton Illinois Containing One hundred and Sixty acres. according to the official platt of the Survey of the said land returned to the General land office by the Surveyor General. which said Tract has been located in Satisfaction of the above mentioned Warrant in pursuance of the act of Congress approved 27th July 1842. to have and to hold the said quarter Section of land with the appurtenances thereof unto the said Mary Clough and David Clough. and to their heirs and assigns forever. as tenants in Common and not as Joint tenants. In Testimony whereof I James K Polk. President of the United States of America have Caused these letters to be made patent.

and the Seal of the General land Office to be hereunto
affixed. Given under hand at the City of Washington
the Twenty first day of July in the Year of Our Lord
One thousand Eight hundred and forty five. and
of the independence of the United States the Seventieth.
By the President James K. Polk.

(S S)

By J. Knox Walker Secy.

S. H. Laughlin Recorder of the General Land Office.

Recorded Vol 1 page 146.

Exhibit D

This Indenture made this Third day of May in the
Year of our Lord One thousand Eight hundred and fifty
two. between Amos Whittemore and Mahitabele Whittemore
wife of said Amos Whittemore of the County of Bureau
and State of Illinois of the first part. and Philips A.
Nintz. of the County and State aforesaid of the second
part. Witnesseth. That the said party of the first part for
and in Consideration of the Sum of three hundred and sixty
nine dollars in hand paid by the said party of the
second part. the receipt whereof is hereby acknowledged
and the said party of the second part forever released
and discharged therefrom hath granted bargained
sold. remised. released. aliened and Confirmed. and by
these presents do Grant. bargain Sell remise ~~release~~ alien
and Confirm unto the said party of the second part. and to
his heirs and assigns forever all of the following described
premises. Situate lying and being in the County of Bureau

[1851-30]

and State of Illinois To wit. The north end of the west half of the North west Quarter of Section thirty two in Township Sixteen North of Range Seven East of the fourth principal Meridian Containing Sixty acres. also Ten acres on the South East quarter of the North East quarter of Section One in Township fifteen South East on the west side after leaving nineteen acres deeded to Daniel W Whittemore bearing even width — Together with all and Singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions remainder and remainders rents issues and profits thereof. and all the estate right title interest Claim or demand whatsoever, of the said party of the first part, either in law or Equity of in and to the above bargained premises with the hereditaments and appurtenances to have and to hold the said premises above bargained and described with the appurtenances unto the said party of the Second part to his heirs and assigns forever. and the said Amos Whittemore for his heirs Executors and administrators do Covenant bargain and agree to and with the said party of the Second part. his heirs and assigns that at the time of the ensealing and delivery of these presents the said Amos Whittemore. was well Seized of the premises above conveyed. as of a good sure perfect absolute and indefeasible estate of inheritance in the law in fee Simple. and hath good Right full power and lawful authority to grant bargain Sell and Convey the Same in manner and form aforesaid. and that the Same are free and

Clear of all former and other grants bargains Sales liens judgments. taxes assessments and incumbrances of what Kind and nature Soever. and the above bargained premises in the quiet and peaceable possession of the Said party of the Second part his heirs and assigns against all and every person or persons lawfully Claiming or to Claim the whole or any part thereof. Shall and will Warrant and forever defend.

In witness whereof the Said party of the first part hereunto Set their hands and Seals The day and Year first above written (Signed) Amos Whittemore (Seal)
Sealed and delivered Mehitabelle Whittemore (Seal)
in presence of Cyrus Sweet

And thereupon the Complainant by his Said Solicitor moves for an injunction herein — and the Court being fully advised in the premises considers that Said defendants be enjoined according to the prayer of Said Bill

Afterwards to wit on the 23d day of October AD 1854 the Complainant by Cook & Kendall his Solicitors file their affidavit & precipic for process herein. in the words and figures following. To Wit.

State of Illinois
Putnam County ss. In the Putnam Circuit Court for Said County
in Vacation after the Oct T. 1854.

Amos Whittemore In Chancery
vs
Buckland Etal

[illegible]

Milo Kendall being duly Sworn deposes and Says that David Clough and Mary Clough two of the defendants in said Cause reside Out of the State of Illinois so that process cannot be Served on them in this Cause.

Subscribed and Sworn to
before me this 23d day of
October AD 1854.

E M Fiker Clk

Milo Kendall

Clerk will please Issue Summons against all the defts in said Cause & direct to Shff of Bureau returnable at next Term. and Cause publication to be made as to David Clough & Mary Clough.

Cook & Kendall Solrs for Complt.

And on the date last aforesaid To wit October 23. 1854 process Issued herein in the words and figures following To wit.

State of Illinois }
Bureau County } ss. The People of the State of Illinois

To the Sheriff of Bureau County - Greeting. -

We Commaund you to Summon. David Clough. Mary Clough Thomas A Buckland. and Philips S. Winby. if they Shall be found in Your County. to be and appear before Our Circuit Court for said County. on the first day of the next Term thereof to be held in the Town of Princeton on the Second Monday of January next. to answer to a certain Bill of Complaint filed in Our said Circuit Court in the Chancery Side thereof against them by Amos Whitmore and further to do and receive whatever Our said Court

shall then and there consider in that behalf. and this You shall in no wise omit. Hereof fail not, and make due return of this writ. with an endorsement of the manner in which you execute the same.

Witness Edward McFisher Clerk of our said Court and the Seal thereof. at Princeton This 23d day of October in the Year of Our Lord One Thousand Eight Hundred and fifty four Edward McFisher Clerk

(L S)

The within named David Clough. Mary Clough Thomas A Buckland. and Philips S. Wintz not found in my County.
October 27 1854

Osmyn Smith Sheriff
Bureau County Ills.

Pleas before the Honorable Edwin S. Leland Judge of the ninth Judicial Circuit of the State of Illinois. at the January Term of the Circuit Court. begun and held at the Court House in Princeton within and for the County of Bureau on Tuesday the Ninth day of January in the Year of Our Lord One Thousand Eight Hundred and fifty five.

In Chancery Sitting.

Present Hon.r Edwin S Leland Judge
Edward McFisher Clerk
Stephen D. Paddock Sheriff-

Clks fees
Transcript $5.23
Off & Seal 35
$5.58

11857-23

This day comes Thomas A Buckland by Peters & Fennell his Solicitors and files his demmer herein in the words and figures following To wit.

Amos Whittemore

vs Bill in Chancery & Injunction.

Thomas Buckland Etal

The demmer of Thomas A Buckland one of the defendents to the bill of Complaint of the Complainant.

This defendant by protestation. not Confessing or acknowledging all or any of the matters & things in and by said bill set forth, and Complained of to be true in Manner and form as the Same are therein set forth and alledged. Saith that There is no matter or thing in Said bill Contained. good and Suffecient in Law to Call in question this defendant in this Honorable Court for the Same. but that there is good Cause of Demmer thereto, and therefore This defendant Saith, that the Said Complainants bill in Case the allegations therein Contained were true. which this deft doth in no Sort admit Contains not any matter of Equity wherein This Court Can ground any decree or give the Complainant any relief or assistance as against this defendant. wherefore and for Diviers Other errors and imperfections in Said Bill Contained. This defendant doth demur in law thereto. and humbly demands the Judgment of This Honorable Court. Whether he Shall be Compelled to put in any other further or

answer to the said bill & humbly prays to be hence dismissed with his reasonable costs in this behalf most wrongfully sustained

Peters & Fawcett Sol.s for Buckland.

Filed Jany 9. 1855

E. de Fiches Clk

January 13th 1855.

Amos Whittemore

vs Bill for Injunction.

David Clough Mary Clough

Thomas A Buckland &

Philips S. Wintz.

This day came the Complainant by his Solicitor and it appearing to the Court that David Clough and Mary Clough had received due notice of the pendency of this Suit by publication in the Princeton Post a weekly newspaper published at Princeton for four successive weeks the first of which was more than sixty days prior to the first day of the present term of this Court and that process had been issued against said Cloughs and returned "not found" and they being solemnly called to come in to Court to plead answer or demur to said Bill. came not. but made default. It is therefore considered that said bill be taken for confessed as to them. And the said Thomas Buckland having come and entered his appearance and filed a general demurrer to Complainants bill. The Case came on for hearing on said Demurrer. And it appearing to the Court that there is no equity in said Bill said demurrer is sustained — and the said Complainant declining to amend his bill it is ordered

[11851-23]

and decreed that said bill be dismissed and the injunction herein dissolved. and that the said Complainant pay the costs of this Suit. And the said Complainant by his Solicitor prays an appeal herein to the Supreme Court. which is allowed by the Court. On Condition that the said Complainant file an appeal bond herein. in the penal Sum of One hundred dollars. with Cyrus Sweet as Security within thirty days from and after the adjournment of this Court.

Copy of Appeal Bond

Know all men by these presents that we Amos McKenne and Cyrus Sweet. of the County of Bureau and State of Illinois are held and firmly bound unto David Clough. Mary Clough. Thomas A Buckland and Philip S. Wentz. in the penal Sum of One Hundred Dollars. Current money of the United States for the payment of which well and truly to be made. we bind Ourselves Our heirs Executors and administrators Jointly. Severally and firmly. by these presents. Witness Our hands and Seals this tenth day of January A.D 1855.

The Condition of the above Obligation is Such that whereas the said Thomas A Buckland (impleaded with said David Clough Mary Clough. and Philip S Wentz. did on the tenth day of January A.D 1855. in the Circuit Court. in and for the County and State aforesaid recover a certain order and decree in Chancery. dismissing a certain bill in Chancery — then pending in said Court wherein

Said Amos Whitemore is Complainant. and Said David Clough. Mary Clough. Thomas A Buckland. and Philips I Wentz. are defendents - from which Said order and decree of Said Circuit Court the Said Amos Whitemore has prayed for and Obtained an appeal to the Supreme Court of the Said State - Now if the Said Amos Whitemore Shall prosecute his Said appeal with Effect and Shall moreover pay the amount of the Judgment Costs interest and damages rendered against him. or to be rendered against him in Case the Said Judgment Order and decree Shall be affirmed in the Said Supreme Court. Then the above obligation to be void otherwise to Remain in full force and virtue. Amos Whitemore (seal)

Filed Sept 13th 1855 - Cyrus Sweet (seal)

E M Fisher Clk

State of Illinois
Bureau County ss. I Edward M Fisher Clerk of the Circuit Court in and for Said County in the State aforesaid do hereby Certify that the foregoing is a full and perfect Transcript of the proceedings had in Said Court in the above Entitled Cause. as of Record and on file in my Office.

In testimony whereof I have hereunto subscribed my name and affixed the Seal of Said Court at Princeton in Said County this 30th day of May AD 1855

Edward M Fisher
Clk

Clks fees
Transcript 5-25
Off & seal 35
$5.5-8
Postage 18
$3.70

[illegible]

95

Amos Whittemore

vs

Thos. A. Buckland et al

Recvs

Filed June 14. 1855.

L. Leland Clk.

Amos Whitemore

vs Appeal from Bureau

Thomas A Buckland et al

The equitable rights set up by Amos Whitemore & his grantees, are based upon a purported sale to Amos Whitemore by David Clough, and a power of attorney from Mary Clough to said Whitemore, both before the issuing of the patent for the premises to their father David Clough. It is insisted by the Appellees that the bill shows no equity, because

1st That Amos Whitemore professed to convey in his own right and not as the agent of Mary Clough, he never put the power of attorney on record, until after her sale to Mowill, he never accounted to her for her portion of the proceeds, and he cant now insist that he was mistaken in the law in believing that he was conveying her interest, for equity cant relieve for a mistake of law. Whitemore never put his pretended conveyance from David Clough on record, until after Ejectment was instituted against Whitemore grantees. he had never filled up the blanks in the said conveyance with the proper description of the premises. Having concluding that he Whitemore never thought of claiming from either of the Cloughs, until after their sale to Mowill, but his intention was to defraud them out of the premises & the proceeds of the same, by keeping the matter secret & never putting any of the said papers on record, Having that the land was purchased with the warrant, which he had received for the services of their father.

2d This Purported Sale from David Clough & power of attorney from Mary Clough being before the issueing of the Patent are absolutely void, and confers no equitable rights upon said Whitemore or his grantees & I will refer the Court to the following laws of Congress passed in regard to Military bounty lands viz -

[1851-25]

2 Vol Laws of United States by Story, page 1205 - Chap 10th - page 1206
Chap 14 - Sec 1 & 12 - page 1243. Chap 97 - Sec 2 & 4 —
3 do page 1562 - Chap 55 - Sec 5 - page 1661 - Chap 15 - Sec 1 -
page 1664 - Chap 22 - Sec 1 - page 1721 - Chap 165 - Sec 1 & 2 -
page 1969 - Chap 177 - Sec 4
4th Laws of U.S. by Sharswood page 2410 " Chap 279 - Sec 1
5th " " " 2873 " 94 " 1 & 2 -
All the laws passed in regard to Military bounty Lands
between 1811 & 1824 both inclusive are collected in N. H.
Peples Digest from page 515 to 527 —

The act of Congress ~~passed~~ approved May 6th 1812. Provides
that such Military bounty Land warants, shall not be assignable
or transferable in any manner whatever & that no claim for
such Military Land bounties shall be assignable until after
the issuing of the patent, but such Sales or assignments shall
be null & void. 2d The act Approved April 16th 1816
makes void all powers of attorney, contracts or agreements
for the Sale of such bounty Land warants made before the
issuing of the patent. The Patent ~~issued~~ for the premises
in controversy, recites that the bounty Land warant, which
was issued to David Clough & Mary Clough, as the heirs
of Daniel Clough dec'd and which was located upon said
premises, was granted to them and that this patent issued
under the acts of Congress passed on and Since the 6th of May
1812, and the said warant was located on the premises
under the act approved July 27th 1842. This Law of 1842
provides that such warants, may be located upon any
vacant and unappropriated Lands, and also gave the
Soldiers of the war of 1812 & their heirs five years from the date of the act to
prove up and obtain their warants. For the two preceding
years there had been an intervening, the act approved Jan
27th 1835 had extended the time for the obtaining such warants
until the 26th of May 1840 & no other Law was passed
between the acts of 1835 & 1842 - the purported Sale from

David Clough to Ann Whitemore. is dated 25th Nov 1840
& the power of attorney from Mary Clough to the Same, 12th July
1843 - but the Bill Sets up, that Whitemore first made the arrangements
with her about the same time as the Sale was made by David
Clough. & the appellant insists that as these contracts were
made during this intercourse, they were not affected by
the prohibitions contained in the Laws of 1812 & 1816. but
that these Laws were not in force at that time. But
insists that
those Laws were never repealed. but always remained
in full force. although the time had elapsed for obtaining
land warrants under those Laws. & the time was extended
by Subsequent acts. but the prohibition part of
the Law was not confined to any limited period.
but was generally. and would remain in force,
until repealed, by the repeal of the Law itself, or the
enactment of some Subsequent Law that was con-
tradictory of its terms. and when the Law of 1842, extended
the period of proving up & obtaining Military bounty Land
warrants to 1847. the effect was the Same, as though the
time had been extended to that period. by the Laws of 1812
& 1816 - the mere extension of time could not possibly
alter the provisions of the Laws under which this
warrant was obtained. for this warrant as Stated in
the patent was obtained under the Laws passed on
and Since May 6th 1812 & not under the Law of
1842. for the last named Law makes no provision
for the granting of them. but merely extends the Laws
in relation thereto already in force. If A give B
a bond to convey to him B a tract of land upon B
complying with certain conditions. but expressly
providing that Such bond Should not be assignable
but the conveyance Should be to B alone. and the
Bond gives B Six months in which to perform the
conditions of the bond. and B does not fulfill
them within the Six months. but after the time has
expired A extends the time 6 months longer. would
that extension remove the prohibition against the

SJ1851-25

assignment? I think not. So congress designed these lands as a bounty to the Soldiers of 1812. and as they were generally an improvident class. Congress prohibited the sale of their claims until they had actually obtained the title for their lands. So that they would have something tangible to sell. Something that would bring a price in the market. and not permit them to sell a mere expectancy. which neither they nor their purchasers would set more than a mere nominal value upon. and because Congress prescribed definite times to obtain them. in order to hurry the Soldiers & their up to get them & afterwards extended these periods. So as they all might get their lands. Will the evident intention of Congress be defeated? & they permitted to squander without any reasonable consideration. the bounty of the United States for their services? I think not. In the law of 1842 there is a provision making the certificate of location not assignable. So that the prohibition would be true and extend to the warrants located under that law. Clearly showing that Congress designed that in no event. should these claims or warrants be assignable. but that the entire interest should remain in the Soldier & his heirs. until the patent was received & they themselves sold their lands. But even suppose that there was no law in force in regard to Military bounty land warrants at the date of the supposed sale from Daniel Clough to Whittemore & the power of atty from Many Clough & they were not entitled to any warrant & had no claim on Congress and that by the law of 1842 it revived the laws of 1812 & 1816. the same as though they had not been

on the 25th Nov 1840-
in force. the prohibition would still bar all the equities set-up in this bill. Congress has the right to give 160 acres of land to each soldier of the war of 1812 & their heirs & provide that it shall be for their benefit alone & that the patent shall alone issue to them & previous sales & agreements shall be void. and it violates no constitutional principles & does not impair the validity of contracts. because Congress has the right to prescribe whatever conditions to their gifts or bounties they see fit- and neither applicant for these gifts & bounties or any body else can take these gifts or bounties & say they will not be bound by the conditions upon which they are bestowed.

again Whitemore sets up that they are in possession and have made valuable improvements &c. but if the purported sale from Daniel Clough & the power of atty from Mary Clough to Amos Whitemore are absolutely void. then Whitemore & his grantees entered upon the premises simply as intruders. and without any color of title and right. for there were then no such sale or power of atty & it is the same as though such papers were never executed. and as to mere intruders. a possession short of twenty years would confer on them no title to the land either legal or equitable.

the fact that the Patent was issued to Mary Clough & Daniel Clough. although Whitemore claimed to be the holder of the warrant. or at least half of it & one half of the other half. shows that the genral land office refused to recognize his pretended claim because he would if he could of course had the patent issued to himself as being the owner of the three fourths & having the right also to sell the other fourth —

[113514]

Amos Whittemore

vs

Thomas A Buckland et al

Milton T Peters

argument for appellee

No 95. 96 & 97 –

Filed July 23 1855

L Leland Clk

George Rose
vs
Thos A. Buckland

Appeal from Bureau

In this case it appears that Whittemore the Grantee of Rose expected the legal purchase of Daniel Clough who was one of the heirs of Davis Clough all the right of said Daniel to any land that might be granted to Davis Clough for services in war of 1812. Mary Clough gave to said Whittemore a power of attorney to procure the warrant from the U. S. which her patron might be entitled to to take locate the same & sell the land & divide the proceeds with her, Daniel Clough & Mary Clough were the children & sole heirs at law of Davis Clough a Soldier in war of 1812 but who died in the Service in a Military hospital, at the time said Daniel & Mary Clough made the above arrangement with Whittemore the fate of Davis Clough was unknown and Whittemore was obliged to incur the expense & trouble of ascertaining where he died & proving all the facts in the case At the time said agreement was made Daniel Clough sold & assigned to Whittemore his interest in the land that might be granted to said Davis Clough & Whittemore paid Clough $75. Whittemore made the necessary proof obtained a patent to locate the same & sold to Rose. Rose has resided on the land & paid taxes

51-28

for more than 7 Years.

Point 4th Next Mrs Cole from above

Afterwards the Grantee of Buckhannon for a new nominal consideration And with notice of all the facts as the bill alledges fraudulently procured a grant Again and from Mary Cooper & Daniel Cooper paying therefor $24.00 The property at the time being worth $3600,00 Buckhannon had notice of all these facts the bill alleges when he acquired his title,
Buckhannon brought Injunction & Rose files his bill for an injunction, & which the Circuit Court sustained a demurrer

Point 1st The Conveyance from Daniel Cooper to Whitten was a valid Conveyance sufficient to pass to Whitten all rights which the patent after words conveyed to Cooper
Fisher vs Fields 10 John R 495
is a case precisely in point
Which it shall be held that the Conveyance was void under the laws of the United States

Point 2d I insist that the Conveyance was not void under the laws of United States to prove my view clearly I give the following abstract of the laws of U.S. on the subject

Laws U.S. Vol 2. page 1243 Act 6th May 1812. Sec 2 provides that secretary of War issue warrants for Military bounty lands

same warrants not assignable or transferable
act to be in force five Years.

Laws U.S. vol 2 page 1434 — Act Dec 10. 1814 The 4th section of this act authorizes warrants for 320 acres in lieu of 160 acres

Purples real Estate Statute p 620. — Act April 16. 1816 Sec 5 provides no transfer of land granted in virtue of this or any other law giving bounties or shall be valid unless executed after the patents shall be issued & delivered

Laws U.S. vol 3 p 1721 — Act Feb 20 1819 The authority granted to the Secretary of the War by the 2 section of act of 6th of May 1812 and 2d Section of act of Dec 10, 1814 revived & continued in force 6 Years from March 4th 1819.

Laws U.S. vol 3 p 1969 — May 26th 1824 The authority granted to Secretary of War to issue land warrants revived & continued in force 6 Years

Laws U.S. vol 4 p 2410 — Jan 27th 1835 Act of 26 May 1824 and act of Feb 24th 1819 revived thereby extended and continued in force from 26th of May 1834 This act expires 26th May 1840

Vol 5 p 2873 — Dec 27th 1842 That the terms prescribed for the issuing of warrants under act Jan 27th 1835 be continued in force 6 Years from date of this act

On the 25th day of November 1840 the day when Whitterson & the Clough made their agreement there was no law making the transfer of the Claim of Clough invalid The laws in relation

[11857-29]

to Bounty lands have experience by their own limitation,

The act forbidding transfers of April 16th 1816 does not reach the case it by its terms applies to warrants granted by virtue of any (then) law

The act of 1842 does not make the agreement invalid because it will be seen that that law only revives & continues in force the authority to issue warrants granted by section 2 of the act of 1812 and section 4 of the act of 1814 neither of which sections forbid the transfer

3 If the construction contended for is given to the act of 1842, it will give the law a retrospective operation which courts will never do unless required so to do by the plain language of the law

Bruce vs Schuyler 4 Gilm 221
Thompson vs Alexander 11 Ill 54
Robinson vs Rowan 2 Scam 501
Marsh vs Chesnut 14 Ill 223
Garrett vs Wiggins 1 Scam 335

When this contract was made between Whitemore & Conger there was no law making it unlawful, it was then certainly a lawful contract and will not be set aside by a law subsequently passed.

II The Bill shows that Rose was in possession over 7 years claiming title & had paid taxes all that time.

We insist that even

if the transfer by Clough & Whittemore was invalid still it was such a title as would become invincible after 7 years residence & payment of Taxes Rev Stat p 342 Sec 9 here is a title in Equity deducible from the United States which is within the language of the act.

Tuffts vs Tuffts 18 Howd 621

Little vs Harvey 2 Black 157

This title & protects an actual resident must not be an apparent legal title & connected Equitable title & by the terms of the act sufficient not even it be a good & bona fide prima facie title such as has been decided to be necessary under the law of 1839 Rev Stat p 104 Sec 8

Irwin vs Brownell 11 Ills 414

The appellant has a title deraigned in perfect good faith, An Equitable title is shown connected with the United States he has resided on the land & paid taxes 7 years he insist that he is protected by law.

Pillow vs Roberts 13 How 477

In the case of Coffin vs Harrington argued at the present term of this Court the point is as is made for the decision of the Court whether "Colour of title" within the meaning of the Statute Sec 8 pag 104 of the revised means a prima facie title or whether it only means a title sufficient on its face should this Court review its former decisions

5 1851-80

upon this Statute and decide that colour of title ~~was~~ a conveyance made in good faith which purports to convey the premises. Then these cases would be within such rule.

But in any event the appellant insists that the case made by him comes within the law of 1835 & we insist that the construction of this law given in Irving vs Brown 11 Lee 414 brings him within its provisions

I deem it unnecessary to reply to the charge of fraud made against Whittemore in the argument of appellee The Court will search in vain to find in the record the slightest pretense that Whittemore has not dealt in perfect good faith with Mary Clough & paid her the value of the property. Every charge of fraud comes with an ill grace this charge of fraud from one who is endeavoring to rob a man of his farm purchased for a fair price & acquired in good faith, by thus purchasing a title for a nominal sum which he knew to be imputable at the time.

B. C. Cook

The 3 cases 95. 96. & 97. all depend upon same questions & I do not file an argument in the other two

95. 96. 97

Rose v Burkland

Argument for appellant

Bledsoe

11

4/ 110

275

11

75

33

108

383

108

275

Amos W Whitmore
vs
Chs Burkland et al } Appeal from Benton

Burkland commenced an action of Ejectment against one Phillip S Minty to recover certain land Burkland claimed from Minty which land had been conveyed to Minty by W Whitmore. Whitmore filed his bill alleging that Daniel Clough was a soldier in the army of the United States in the war of 1814. That he died in a Military hospital that he left Mary Clough and David Clough his sole heirs, that said heirs were ignorant what had become of their father and would not make proof to obtain the bounty land to which he was entitled under the laws of the United States
On the 25 day of Nov 1840 W Whitmore purchased of David Clough all his right and claim to any bounty land which should be obtained for the services of his father, and he conveyed all his right to the same to W Whitmore by a conveyance which is set out in the bill, W Whitmore paid him therefor $75,00. W Whitmore

SJ1851-32

Made claim for Daniel Cloyd till 1843. That on the 12th day of May 1843 it was agreed by and between Mary Cloyd that Whittemore should ascertain the facts in the case as to the death of Daniel Cloyd. Make proof of them and obtain the land warrant for the heirs of Cloyd if possible and if he succeed in getting a warrant to locate it and transfer the land thus obtained to the best purchaser he could obtain and after deducting the expenses to pay half the balance to Mary Cloyd and Mary Cloyd executed and delivered to Whittemore a power of attorney for the purposes aforesaid a copy of which is set out in the bill.

In 1845 Whittemore succeed in making proof and obtaining a warrant and located it on the land in question and obtained a patent for same in the name of Daniel Cloyd and Mary Cloyd and Whittemore sold the land to Minty and given him a warranty deed in his own name. That he sold as Mary Cloyd then as her agent only authorized

and for her. That Whittemore and those under him had paid taxes on said land ever since it became taxable. That Unity has made improvements on said land to a large amount which are specified in said bill.

That in 1852 one Paul Morrell procured a quit claim deed for the premises in question from said Mary & Lloyd & said & Lloyd for $24 & that the said Burbank claims under Morrell That Neither Morrell nor any of his grantees or Burbank ever paid any pair compensation for said land which is worth $3500.00. That both Morrell and all who claim under him including Burbank had full notice & knowledge of the equity of Whittemore and Unity at the time they purchased

Prayer that Burbank be enjoined from prosecuting his suit in ejectment. That his title be subjected to the title of Unity.

General demurrer was sustained and bill dismissed which is assigned for error

"

[1851-33]

Amos H Titterman

Thos F Burkland

Abstract

11851

Daniel W. Whitemore

v

Thomas J. Buckland

Appeal from Benton

And now comes the appellant by Gloss & Cook his atty and says that in the record and proceedings aforesaid and in the rendition of the Judgment aforesaid there is manifest error in this Suit

The Court erred in sustaining the demurrer of Buckland to complainants bill

The Court erred in dismissing complainants bill

The Court erred in rendering the Judgment aforesaid in manner and form aforesaid

For which error and others in said Record manifest he prays said Judgment be reversed

Gloss & Cook
atty for appellant

And now comes the said deft in error impleaded &c and says that in the record and proceedings aforesaid, and in the Judgment aforesaid there is no error, as the said plaintiff in error alledges. Wherefore he prays ~~Judgment~~ that the said Judgment and decree may be affirmed

Milton Peters atty for deft in error

[11851-34]

97

Dan W. Whittemore

v

Thomas A. Buckland

Assignment of Errors

Filed June 30, 1858.
L. Leland Clk

Amos Whitemore
vs
Chs A Burkland et al
} Appeal from Bureau

Burkland commenced an action of ejectment as one Phillip Winty to recover certain lands Burkland claimed from Winty. which lands had been conveyed by Winty to Whitemore Whitemore filed his bill alleging that Hamil Clough was a Soldier in the army of the United States in the war of 1814 that he died in a Military hospital that he left Mary Clough one Hamil Clough his sole heir. That said heirs were ignorant what had become of their father and could make no proof by which they could obtain the bounty land to which he was entitled under the laws of U.S. On the 25 day of Nov 1840 Whitemore purchased of Hamil Clough all his title and claim to any bounty lands which should be obtained for the services of his father and he conveyed all his right to the same to Whitemore by a conveyance which is set out in the bill. Whitemore prays him therefore

[11851-3]

$ 75,00. W Whittemore made loan
for said Daniel Clough till 1843.
That on the 12th day of May 1843 It was
agreed by and between W Whittemore and
Mary Clough That W Whittemore should
ascertain the facts in relation to the
death of Daniel Clough and make proof
of them and obtain a land warrant for
the heirs of Clough if possible and
if he succeeded in getting a warrant
to locate It and transfer the land
thus obtained to the best purchaser
he could obtain and after deducting
expenses to pay half the balance to
Mary Clough and Mary Clough
executed and delivered to W Whittemore
a power of attorney for the purposes
above and a copy of which is set out in
the bill

That in 1845 W Whittemore
succeeded in making the proof and
obtained a warrant and located it on
the land in question and obtained a
patent for the same in the name
of David and Mary Clough and Whittemore
sold the land to Hunt and gave
him a warranty deed for it in his
own name. That he told Mary Clough

there as her agent duly authorized
and for her. That W. H. Herron and
those claiming under him have paid
the taxes on said land ever since
it became taxable. That Unity has
made improvements on said land
to a large amount which are
specified in said bill. That in 1852
one Paul Morrell procured a quit
claim deed for the premises in question
from said Mary H. Hand & Bourk for
$4,00 and that the said Burk claims
& claims under Morrell. That neither
Morrell nor any of his grantees nor
Burk have ever paid any fair
compensation for said land which is
worth $3500. That both Morrell and all
who claim under him including Burk
had full knowledge & notice of the
equity of W. H. Herron & Unity at the time
they purchased.

Prayer. That Burk and be
enjoined from prosecuting his suit in
ejectment and that his title be subjected
to that of Unity

General demurrer
sustained and bill dismissed which is
assigned for error.

[1851-34]

95

Amos H Hitt et al

vs

Thos A Buckland

Abstract

Filed July 11. 1855.

L. Leland Clk.

Thos Whitemore
vs
Thomas A. Buckland } Appeal from Bureau
impleaded &c

And now comes the said appellant by B. C. Cook his atty & saith that in the record and proceedings aforesaid and in the Judgment aforesaid there is manifest Error in this to wit

1 The court erred in sustaining the demurrer of the defendant to complainants bill

2 The court erred in dismissing the complainants bill

3 The court erred in rendering the Judgment aforesaid in favor of the defendant aforesaid

For which errors & others in said record manifest he prays said Judgment be reversed

B. C. Cook
atty for appellt

And now comes the said defendant impleaded &c by Milton T Peters, his atty & says there is no error in the record and proceedings aforesaid, and in the Judgment aforesaid, as the Complainant hath alledged, and set forth, wherefore he prays that the said Judgment may be ~~reversed~~ affirmed &c,

Milton T Peters
Atty for T. A. Buckland

[11851-3]

95

Amos Whittemore

vs

Thos A Bucklane

impld &c

Assignment of Errors

Filed June 30. 1858

Stebbins Clk