

12943

No.

Supreme Court of Illinois

Williams

vs.

Warren et al

12943

WILLIAM WILLIAMS,
vs
JULIUS M. WARREN, et. al. } *Appeal from Cook Chancery.*

POINTS FOR APPELLANT.

1. The award does not conform to the submission. The object of the submission was to settle disputes as to claim lines, and the same are not settled; *ergo*, the award is void.

Kyd on Awards, 91, 103, 129.
2, *Halst*, ch. R., 450.
5, *Smede and M.*, 712.

2. The arbitrators exceeded their authority, in awarding conveyances to be made, and their award is therefore *pro tanto* void. The excess cannot be separated from the award; therefore the whole award is void.

20, *Barb.*, N. Y., 409.
1, *Wend.*, 326.

3. One dispute, to wit: as to claim lines, specifically stated in the submission, and brought to the knowledge of the arbitrators, was not determined, therefore the award is void.

6 *Pick.* 269.
5 *Con.* 197.
1 *Wm. (Vt)* 304.

4. Award is not final: aided by the decree, it leaves the controversy as to claim lines, open to litigation.

11 *Ver.* 47.
16 *Ver.* 450.

5. An award must be certain to a common intent, capable of being understood and carried into specific execution, without the aid of extraneous circumstances.

Kyd on awards, 90, 103, 129, 191.
3 *Scam.* 431.
10 *Shep.* 259.

6. The award is uncertain in this, to wit:

1. It contains no reference whatever to the submission.

2. The phrases "in the timber," "in the big woods," and "in the prairie," descriptive of lands, are indefinite, and not used in the submission.

3. "Deed up to the original claim line," defines nothing.

4. There is no grantee named to whom the 22½ acres are to be conveyed.

5. Amount of money awarded to be paid, is not specified, nor is any date fixed by which the same can be computed.

6. By award, each party shall be at expense of surveying; but it is not stated whether of lands conveyed to or by him.

7. Award leaves it to a surveyor, not named, to be selected by disagreeing parties, to settle the lines which the arbitrators should have determined.

8 N. Hamp. 516	3 Con. 70.
3 Scam. 428.	5 Blackf. 128.
12 Wend. 377.	2 Caines 235.

8. It was error to allow an amendment to the bill on the hearing.

9. The depositions of arbitrators, and testimony of Brown after the hearing, are inadmissible to explain, render certain, or to give the award effect.

5 Pick. 291	8 N. H. 516.
2 Starkes, ev. 546, 7, 8.	2 Johns 62.
1 Wash. C. C. 448.	

10. The submission and award being a written agreement, cannot be varied by parol evidence.

6 Shep 251.	Equity cases, vol 2, pt 1, 518.
3 Paige 126.	“ “ vol 1, 573.
20 Barb. (N. Y.) 409.	2d Greenl. ev. 491

11. Award aided by the pleadings, proofs, exhibits and decree, is still uncertain.

1st The claim lines are not defined.

2d The lands to be conveyed by appellant are not definitely described.

3d No date is fixed by which to compute the 12 per cent interest on the money to be paid by appellant.

12. The *pretended* award is disowned by appellees in the bill, their proof shows it to be not the *true* award; they are therefore precluded from taking under the same.

13. Smith had incapacitated himself from conveying, and Warrens averment, of readiness to perform on Smith's part, made on the hearing, after 11 years' litigation, and having sued appellant for the rails, came too late, *at least* to charge the appellant with the whole of costs suit.

14. There is no proof that Smith offered to comply with the award within the 60 days.

15. Description of lands decreed to be conveyed, differs from the description in the pleadings, from that shown by the proof, and by the exhibits, and the descriptions in the award bill, proof, exhibits and decree, all differ, each from the other.

EASTMEN & BEVEREDGE & J. F. FARNSWORTH,
For Appellant.

186-17

Williams v. Williams

vs

Julius Warren
Appell's Brief

Filed April 28, 1869

L. Leland
Clerk

12943

William Williams

J. M. Wainwright

Agreement for depts. in error

II

In the determination of this case, the history of the Country is material. If this case had been tried at the time of the submission, or the making of the award, when the circumstances surrounding the parties and the property were fresh & well known, ~~the~~ ^{no} difficulty in the sufficiency of the award as to certainly would have existed - All would clearly have understood the award - The terms "claim" & "claim lines" were as well understood, & as plain as clear a meaning as the word government survey, now do - If an award were now made, giving a party recovery according to the government survey, it would be clear, but not more so, in fact not as much so, as would the award according to ~~his~~ claim lines -

The whole of this case is this - ~~Prison~~

The lands when these in dispute lie,
were settled upon before they were
surveyed - Each settler marked out
by lines or stakes the land which he
claimed - These lines were recognized
as the monuments of title - The Legisla-
ture recognized this means of defining
the rights of possession of the settlers, &
as defined indicated by lines & marks.

If lands thus claimed were irregular,
and when the lands were surveyed, so
the regular claim of one or more
men ran over upon lands subject
by a neighbor to presumption - It was
a necessity, that these existing presump-
tions should convey that portion of the
neighbor's claim running over on to the
land presumed -

The case under consideration is of like
nature - This land was timber - Claims of
several men ran over on to the grant in
dispute - Williams was entitled to a
presumption to the grant - his presumption
was contested - It was agreed to submit
the question of the rights of the different
claimants, & the amount they should
be entitled to to arbitration - It was
done - The arbitrator made their award -

Williams gets possession of the award, fraudulently, and withholds it from the parties & the arbitrators. This bill is filed to insert the award of Wrenn left out by mistake, and to enforce it -

The power of the Court to do this is fully sustained by the authorities cited in the bill filed -

It is affirmed by the plaintiff, in error that all the arbitrators were to determine upon the claim lines - This was evidently not the intention of the parties - The submission is general, & the clause refers to in no wise limits the general powers - All that was intended by these words was, that the decision of the arbitrators should be based on the claim lines of the parties - that they should only determine the rights of the parties by their claim lines - settle their controversies by their claim lines - It was a gross folly, to submit to arbitration the extent of their claim lines & leave the title in Williams, with no obligation to convey - This would have been done thousands of times was not the intention of the parties -

A general submission includes a power to order conveyance of

lands - This is too clear to need authorities -
But as is ~~well~~ decided, there is no
evidence that the parties offered
any evidence of claim lines or require
any decision about them - And when
there is no ita quod, the award is
good unless the party disputing
the award shows the subject was
brought before them & the arbitrators
refused or neglected to determine in regard
thereto -

In this case we ask to show that
the party convey as directed by the
award, and thus we will take the issue
of finding the land - We will endeavor
to make it certain by showing our
claim lines, & that extrinsic evidence
which we can allowed by law be introduced
to make a conveyance certain - If
the award had been that Williams
should convey according to the
government surveys or lines, it would
have been no more certain than
to convey according to the "claim
lines". In each case we should have
to prove under our conveyance, these
lines - There is thus no substantiality
such as can affect the award

II It is said the amount of money to be paid is not detained by the Court - but the decrees are given in the award since the decree by which it can be detained, and this is all that was necessary - from the time of the entry of the land -

But a conclusive answer to any such objection if there were any thing in it, is answered by the fact that Williams actually refused to receive the money tendered or any money, or make the conveyance on any terms - and by his own fraudulent act of obtaining a holding the possession of the award, he is precluded from interposing any such objection - The Court draws him the price awarded with interest as award directed by the award - This is the same as a decree for the payment of a certain sum of money with interest from the time the money became due by the terms of the contract

We think this case is one of the clearest equity, and the decree was an enforcement of the rights of the complainants long and

and unjustly withheld -
If in any particular the decree is
erroneous in form or otherwise, I
understand this Court has the power
to modify it - Referring then to the
printed Brief filed in this case
I submit this case, having heretofore
acquiesced so often & it seeming so
clear that the decree is right, I sub-
mit it, without noticing the numerous
points made by the plaintiff, in
which I can see no force

Wm Goodrich
for defts.

A. M. Mann et al
vs
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Mr Williams

Against
of defts

186-17

Tulsa April 27, 1859

A. Leland
Clerk

United States of America

STATE OF ILLINOIS, COUNTY OF COOK, S. S.

Pleas, before the Honorable George Manion

Judge of the Seventh Judicial Circuit of the State of Illinois, and Sole Presiding Judge of the Circuit Court of Cook County, in the State aforesaid, and at a term thereof begun and held at the Court House in the City of Chicago, in said County, on the

Second Monday, (being the Eleventh day) of

October in the year of our Lord one thousand eight hundred and

Eighty Eight and of the Independence of the said United States the

Eighty Third

Present, Honorable George Manion Judge of the 7th Judicial }
Circuit of the State of Illinois. }

Carlos Haven States Attorney.

John S. Wilson Sheriff of Cook County.

Attest: Wm L. Church Clerk.

Be it Remembered, that on the third day of
April A.D. 1851. there was filed in the Court aforesaid,
on the Chancery side thereof, with other papers,
and copies of record and order changing the venue
in the said case, a certain Bill of Complaint
which was originally, to wit: on the tenth day
of February A.D. 1846, filed in the Circuit Court
within and for the County of Dupage in the State
aforesaid, and subsequently, to wit: on tenth
day of May A.D. 1847, refiled in the County Court
of Cook County in said State, as appears by the
several endorsements thereon, which said Bill is
in the words and figures following, to wit:

State of Illinois }
Dupage County } ss.

To the Honorable Richard M.

Young, one of the Justices of the Supreme Court, and
presiding Judge of the said Dupage Circuit Court—

Humbly complaining, your Orator, Julius M. Warren, Warren Smith, and Reuben Austin, of the
county of Dupage aforesaid, sheweth unto your Honor, that heretofore, to wit, on the seventeenth day of
September, in the year of our Lord, one thousand,
eight hundred and forty-four, one William Williams entered into a certain writing obligatory, sealed
with his seal, which said writing obligatory is
in substance and effect, as follows, to wit—

"Know all men by these presents, that I, William Williams, of the County of Dupage, 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 to 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 seven-
teenth day of September, in the year of our Lord, one
thousand, eight hundred and forty-four— which

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said writing obligatory was, and is subject to the following conditions, to wit—

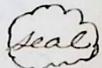
The condition of this above obligation, is such, that if the above bounden William Williams, his heirs, Executors, or administrators, on his and their part, shall and do, in all things, well and truly, stand to, obey, abide by, perform, fulfil, and keep the award, order, arbitrament, and final determination 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, Wilison, 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 claims 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 Dupage, 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 presump^{tion} right, and which said pre-

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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 decided 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, Mc. Kee, 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

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of one thousand dollars, is hereby declared to be liquidated damages, to be recovered by said Warren, Wilson, Smith and Austin, 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 him, or in his right, or by his suggestion, or direction, shall obtain said premises, that he will obtain from them such conveyances, or dispositions, 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 

Henry S. Williams 

as Security

Wm. J. Williams 

as Security -

And your Orators would further represent that the said writing obligatory, was signed and sealed by the said Henry S. Williams, and the said Wm. J. Williams, as security, for the performance of the condition of said writing obligatory, by the said William Williams -

And your Orators would further represent

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that after the making of the said above described writing obligatory, to wit, on the day and year aforesaid, your Orators made and delivered to the said William Williams, a writing obligatory, with like penalties and with like conditions, on the part of your orators, to the said William Williams, which said writing obligatory, was received and accepted by the said William Williams, for the purpose of binding and holding your Orators, to abide by, and keep, and observe the award and determination of the said arbitrator, in said writing obligatory, named, between your Orators, and the said William Williams—

And your Orators would further represent, that at the time of making and delivering said writing obligatory, by your orators, to the said William Williams, it was understood by and between your orators, and the said William Williams, that the said Joseph Wilson, named in the writing obligatory from the said William Williams to your orators, and the said Wilson should not, nor would be a party to said arbitration, and would not, nor should join with your orators, in the execution of the said writing obligatory, from your orators to the said William Williams—

And your Orators would further represent, that afterwards, to wit, on the nineteenth day of September, in the year of our Lord, one thousand, eight hundred and forty four, the said Timothy D. Woodward, James Brown, and David Mc Kee, having taken upon themselves,

the burden of arbitrating, and deciding the dispute between your Orator, and the said William Williams, mentioned in the condition of said writing obligatory, did, with the consent and agreement of your orator, and the said William Williams, proceed, on the day and year last aforesaid, to arbitrate and adjudge in the premises, and did on the day and year last, aforesaid, award and adjudge in the premises, under their respective hands, in substance, as follows, to wit-

Sept 19th 1844

The decision of arbitrators, in suit pending between J. Warren, W. Smith, and R. Austin, (meaning your orator) of one part, and Wm. Williams, is, as follows, the said Williams (said William Williams, meaning) 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, (Warren Smith, meaning) 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, (meaning at the land office in Chicago) with twelve per cent interest, until he receives his deed, which shall be within sixty days - a good Warrantee deed - The decision of the

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arbitrator is as follows—etc. 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 preempted in the big woods, furthermore, It is decided that each party shall pay what costs they have caused to be made—

Timothy D. Woodward.

(Signed)

J. Brown,

David Mc Kee.

And your Orator would further represent that the said arbitrator did at the same time, and as a part of the same award, but on a separate piece of paper, further award, in substance, as follows, to wit—
Sept 19th 1844.

§ The decision of the Arbitrator, in the suit now pending, between J. Warren, Warren Smith, P. Austin, is as follows— the said Warren Smith shall deed up to the original claim line, on the prairie, which said Smith preempted, 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 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—

Timothy D. Woodward

(Signed) J. Brown

David Mc Kee

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And your Orator would further represent that said award was, to wit, on the day and year last aforesaid, delivered to the said William Williams, and has ever since been in his possession, and control, and that the said William Williams, and his Counsel, have refused to permit your Orator, to see or inspect the same— But your Orator beg leave to refer to the same, and that the said William Williams may be compelled to produce and file the said award, to which your Orator beg leave to refer, as part of this, their Bill of Complaint—

And your Orator would further represent, that said award was so made as aforesaid, ready to be determined by the time specified in said writing obligatory—

And your Orator would further represent, that the said lands awarded to be decided, by the said Williams to the said Austin, amounted to a large number of acres, to wit, to Six acres, and Sixty five one hundredths of an acre, and was part and parcel of the said tract of land, so preempted by the said Williams as aforesaid—

And your Orator would further represent, that the land awarded to be decided, by the said Williams to the said Smith, amounted to a large number of acres, to wit, Thirty-six acres, and forty-nine one hundredths of an acre, and that the said Smith, did, within sixty days after the making of said award,

tender and offer to the said Williams, the sum of one dollar and twenty-five cents per acre, with twelve per cent interest, in the same, for said land, in pursuance of said award—

And your Orator would further represent, that the said Smith, did in pursuance of said award, offer, and is ready to convey to the said Williams, the tract of land awarded to be conveyed to the said Williams

And your Orator would further represent, that the said arbitrators, in their decision, awarding that the said Williams should deed twenty-two acres and a half acre off from the East side of the East Eighty of fractional Quarter, that Williams preempted in the Big woods, the said arbitrators omitted and left out of said award, the name of Julius M. Warren^{to}, whom the said arbitrators awarded that the said Williams should convey the same— but omitted to insert the said Julius M. Warren's name, as the person to whom the same should be conveyed, by mistake and accident— And your Orator would further represent, that the lands specified in said award to be deeded by the said Williams to your Orator, were part and parcels of the said tract of land, mentioned in said writing obligatory, and part of the same lands preempted by the said Williams, of the Government of the United States, to wit, part and parcel of the South West Quarter of Section number Thirtysone, Township Thirty-nine North of Range Number Nine, East of the Third

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principal Meridian, and the same that was in dispute, between the parties.

And your Orators would further represent that the land awarded to be deduced by the said Smith, to the said Williams, being the lands which the said Smith had purchased, was part and parcel of the South West Quarter of Section Number thirty-five, in Township Number thirty-nine, ^{North of Range Nine,} East of the third principal meridian, the same being the lands purchased by the said Smith, of the Government of the United States.

In tender consideration whereof, and for as much as your Orators has not a complete and safe remedy in the premises, at and by the strict rules of the Common Law. To the end therefore that the said William Williams (and his confederates, when discovered) may upon his respective and corporal oath, true, full, and perfect answer make, to all and singular, the said premises, as fully and particularly, as if the same, were here, again repeated, and he, thereto, particularly interrogated thereto, according to the best of his knowledge, information, remembrance or belief, and that the said William Williams may be decreed to convey to each of your said Orators, the tract of land awarded to be conveyed to each of them, by the decision, of the said Arbitrators, according to such decision.

May it please your Honor to grant unto your Orators (the premises considered) the People's writ of Subpoena, issuing out of, and under the seal of this Honorable

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Court, to be directed to the said William Williams, there
 in and thereby commanding him, on a certain day, and
 under certain penalties, therein to be inserted, personally
 to be and appear before your Honor, in this Honorable
 Court, then and there to answer, all and singular,
 the said premises, and to stand to, and abide by such
 decree and order, as to your Honor shall seem meet, and
 shall be agreeable to Equity, and good conscience, and
 your Orators will ever pray &c.

Spring & Goodrich
 Solicitors for Complainants

And afterwards, to wit, on the day and year last a-
 foresaid, there was also filed in said Court, a certain
 writ of summons, which, with the officer's return en-
 dowed thereon, is in the words and figures following
 to wit—

State of Illinois }
 Du Page County } ss.

The People of the State of Illinois
 To the Sheriff of ~~Franklin~~^{said} County—Greeting—

We command you that you summon William
 Williams, if he shall be found in your county, person-
 ally to be and appear before the Circuit Court of ^{said} ~~Franklin~~
 County, on the first day of the next term thereof, to be
 holden at the Court House in Naperville, in said coun-
 ty, on the first Monday of May next, to answer unto Ju-
 lius M. Warren, Warren Smith and Reuben Auster,
 to a certain Bill, filed on the Chancery Side of said

Court—

And have you then and there this writ, with an
encasement thereon, in what manner you executed
the same—

Edmund
Witness, B. Bill, Clerk of said Court, and
the seal thereof, at Naperville in said
County, this Tenth day of February, in the
year of our Lord, one thousand, eight hun-
dred and forty-six—



E. B. Bill, Clerk—

Served this writ, by reading in the hearing of
William Williams, and delivering him a true copy
of the same— this 24th day of February, 1846. Services,
30. 6 Miles, 37 1/2. Return, 12 1/2 — \$ 1.00 —

J. N. Murray

Sheriff—

And afterwards, to wit, on the day and year last
aforesaid, to wit, April 3rd 1851. there was filed in the
Court first aforesaid, a certain transcript of Record,
which is in the words and figures following, to wit—

United States of America,

State of Illinois } 3 p.

DuPage County } 3

Pleas before the Honorable Rich-
ard M. Young, one of the Justices of the Supreme Court,
for the State of Illinois, and presiding Judge of the Sev-
enth Judicial Circuit, in said State— at a Circuit
Court in and for the county of DuPage, in said Circuit

began and held at Naperville, in said County, on Monday, the fourth day of May, in the year of our Lord, One thousand, eight hundred and forty six, and of the Independence of the United States of America, the Seventeenth -

Present, the Honorable Richard M. Young, Judge
 William A Boardman, States Attorney -
 Robert N. Murray, Sheriff of Dupage County -
 Attest, E. B. Bill, Clerk -

Be it remembered, that on the Ninth day of May aforesaid, being one of the days of said term of Court, the following, among other proceedings, were had, to wit -

Julius M. Warren,	} In Chancery -
Warren Smith	
Reuben Austin	
William Williams	

This day, came the Complainants, G. Spring, their Solicitor, and on his motion, leave is given to the Complainants, to amend their Bill herein, by the first day of June next, and it is ordered that the Complainants Counsel deliver by that time a copy of said amendments, to Mr. Hammon, one of the Defendants Counsel, and that said Defendant shall plead, answer or demure, by the first day of July next. And by agreement of parties, the delivery of the said amendments, to the said Hammon, is to be considered

and taken the same, as if said amended Bill, was filed with the clerk of this Court

Pleas before the Honorable Jesse B. Thomas, one of the justices of the Supreme Court, for the State of Illinois, and presiding Judge of the Seventh Judicial Circuit in said State, at a Circuit Court in and for the County of Dupage, in said Circuit began and held at Naperville in said county, on Tuesday the twentieth day of April, in the year of our Lord, one thousand, eight hundred and forty-seven, and of the Independence of the United States of America, the seventy-first

Present, the Honorable Jesse B. Thomas, Judge
William H. Boardman, States Attorney
George Roush, Sheriff

Attest C. B. Bill, Clerk
By John J. Peddler, Deputy

Be it remembered that on the said twentieth day of April, the following, among other proceedings, were had, to wit-

Julius M. Warren,
Warren Smith
Reuben Austin } In Chancery-
vs
William Williams)

The presiding Judge, having been heretofore of Counsel, in this suit, It is ordered that the same be, and it is hereby transferred to the Cook County Court, in the State of Illinois-

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State of Illinois }
DuPage County } ft.

J. Edmund B. Bill, Clerk of the Circuit Court of said County, Certify that the foregoing is a true and correct Transcript of the Record in the above entitled Cause, and that accompanying herewith, are all the original papers, on file in my office, in said Suit, and that the annexed fee Bill is a true copy from my Fee Book—



Witness my name and the seal of said Court, at Naperville, in said County, this third day of May, A.D. 1847.
E. B. Bill, Clerk.

By John J. Riddler Esq. Deputy.

Julius M. Warren }
Warren Smith }
Reuben Austin }

Cir. Court. April 3. 1847.

vs
William Williams }

In Chancery
Plaintiffs Costs.

May 3. 1846. fee Bill 6 1/2 Sums file 56 1/4 leave to }
Amend 25. or plead 25. Doc app }
& atty 37 1/2 } 1.50 00

April 3. 1847. Doc 4. Ord Trans. 25. Cost Bill 37 1/2 }
Cust Seal 50. Transst. 100 } 2.25

Sherriffs fees.

Munag Ser, 50. Com. 3/ Ret 7 } 1.00
\$ 4.75

Defendants Costs

atty app 25. sloc 4. Cost Bill 3/ } 75

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And afterwards, to wit, on the same third day
of April, A. D. 1851. there was filed in the Court
first aforesaid, a certain amended bill of Complaint,
which was originally filed in the Cook County Court on the 7th day of March A. D. 1849
as appearing by the clerk's endorsement thereon, and
which is in the words and figures following, to wit-

The amended Bill of Complaint, of Julius
M. Warren, Warren Smith, and Reuben Austin, com-
plainants, against William Williams-

Humblly complaining unto your Honor, your Or-
ders, Julius M. Warren, Warren Smith, and Reuben
Austin, would represent that they filed their original
bill of complaint, in the Du Page Circuit Court, in the
above case, which cause was removed to the Cook Coun-
ty Court - and that by order of said Cook County
Court, the said Complainants had leave to amend
their said bill of complaint - and therefore the
said Complainants would show unto your Honor,
that heretofore, to wit - on or before the seventeenth day
of September, A. D. 1844. certain disputes existed be-
tween the said Warren Smith, Austin, and one Jo-
seph Wilson, and the said defendant, in relation
to the claim lines of said several parties, and the
equity and right of title of said several complain-
ants, and said Joseph Wilson, to parts and portions
of the South West Quarter of section thirty one, in
township thirty nine, north of Range nine, East, to
which, said Williams had proved up a preemption
right (and under which he obtained title thereto)
and in order to determine and settle the differences

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between ^{said} complainants and said Wilson, with said dependants, in relation to their several equitable rights, to portion thereof, among other things, the said parties agreed to arbitrate the same - by agreement in writing - and the said William Williams, on his part, entered into the following writing obligatory -

I know all men by these presents, that I, William Williams, of the County of Dupage, 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 to the said Warren, Smith, Wilson and Austin, their executors, administrators, or assigns, for which payment, well and truly to be made, I bind myself, my heirs, executors and administrators, firmly by these presents, sealed with my seal, dated this seventeenth day of September, in the year of our Lord, one thousand, eight hundred and forty four, which said writing obligatory, was, and is, in substance, subject to the following conditions, to wit -

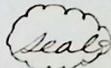
The conditions of the above obligations is such, that if the above bounden William Williams, his heirs, executors, or administrators, on his, and their part, shall, and do in all things, well and truly stand to, abide by, perform, fulfill and keep the award, order, arbitrament, and final determination of James Brown, Daniel Mc Kee, and Timothy

Woodard, arbitrators indifferently elected, and named, as well on the part and behalf of the above bounden William Williams, as of the above named Warren, Wilson, Smith and Austin, to arbitrate, award, order and decree, adjudge and determine of and concerning all, and all manner of actions, cause and causes of actions, quarrels, controversies, damages and claims 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, situated, lying and being in the county of Dupage, and State of Illinois, and known and described as being the South West quarter of section number thirtyone (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 preemption, and which said preemption 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 ~~deed~~^{deed} ed property of any of the parties hereto, or not, so as the said award be made in writing, under the hands

of said Brown, McKee, and Woodward, or any two of them, and ready to be delivered to the said parties in difference, 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, otherwise 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 arbiters, on their own knowledge, no evidence to be adduced on the part of either, 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 arbiters, 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 said Warren, Wilson, Smith and Austin, 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, Smith, Wilson and Austin, that in case his preemption shall be set aside, and any member of his family, or any person for him, or claiming under him, or in his right, or by his suggestion

or direction, shall obtain said premises, 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 
 Henry S. Williams 
 Wm. J. Williams ^{as security} 
 as security-

And your Orators would further represent that said writing obligatory was signed and sealed by the said Henry S. Williams, and said Wm. J. Williams as security for the performance of the condition of said writing obligatory, by the said William Williams, and for no other purpose whatever-

And your Orators would further represent that after the making of the above described writing obligatory, to wit, on the day and year aforesaid, your orators made and delivered to the said William Williams, a writing obligatory, with like conditions and penalties on the part of your orators, which said writing obligatory was received and accepted by said William Williams, for the purpose of ^{and holding} binding your orators, to abide by, and keep, and observe the award and determination of the said arbitrator, in said writing obligatory named, given by said Williams, and his said securities, as above set forth- And your Orators would further represent that after the making

and delivery of the said writing obligatory, by said
21 Williams, and his said securities, to your Orators,
that it was understood and agreed by and between
said Williams, and his said securities, and said
Wilson and your orators, that they should and would,
and did waive all necessity of said arbitratas con-
sidering and awarding upon any and all matters
in said writing obligatory of said Williams mention-
ed, so far as any and all disputes between said Wil-
liams, and said Wilson were concerned, and that
he, said Wilson, might, and should, and did with-
draw from said submission, and should no further
be considered or treated as a party thereto— and that
said arbitratas should, under said submission, go on
and decide the matters therein mentioned and
submitted, as between said Williams, Warren, Smith
and Austin, alone, and that the name of said Wil-
son should be left, or stricken out of said submission,
but from mistake or inadvertence, was neglected to
be stricken out of said writing obligatory—

And your Orators represent that in conformity
with such understanding and agreement, the said
writing obligatory, from your orators to said Williams,
was made by your orators alone as principals thereto,
and submitting their differences with said Wil-
liams, alone, as your Orators now recollect and charge,
which said writing was delivered to said defend-
ant, and remains in his hands, and to which, for

greater certainty, your orators refer. And your orators further represent that in conformity with such respective writings obligatory, and such subsequent agreement and understanding, said arbitrators took upon themselves, the burthen of arbitrating, and determining the disputes between your orators, and the said William Williams, mentioned in the condition of said writing obligatory, to wit, on the nineteenth day of September, A.D. 1844. and with the consent and approbation of said Williams, and your orators, proceeded on the day and year aforesaid, (said parties being present at the place of or consenting thereto) to arbitrate and adjudge the premises, and did on the day and year aforesaid, award and adjudge in the premises, and did on the day and year last aforesaid, make an award and adjudication in the premises, in writing, under their respective hands, and were about to make out copies or duplicates of the same to be delivered to the said parties, in conformity with the condition of said writing obligatory, and the subsequent agreement of the parties - but at the solicitations of said Williams, that he desired to look at the same, and at the false and fraudulent pretence and representation that he would return it to said arbitrators again, for them to make a copy for your said orators, said arbitrators relying upon such false and fraudulent pretences and agreement, gave the same into his hands,

and the said arbitrator afterwards, for the purpose of
 23 copying the same, and signing said duplicate to de-
 liver to your Orator, requested the said award from
 said Williams, but the said Williams fraudulent-
 ly and deceitfully retained the same, and refused
 to deliver the same to said arbitrator, or even to allow
 them to look at the same, and that the said Wil-
 liams, and his Counsel, have fraudulently and de-
 ceitfully, ever since, retained, and still do retain, the
 same, and refuse to allow said arbitrator, or your Or-
 ator, to have or see the same - And your Orator fur-
 ther charge that the Counsel of said Williams has
 given to them, what he pretends is a copy of the same,
 in substance, as follows, to wit -

Sept 19th 1844. The decision of arbitrator in suit
 pending between J. Warren, W. Smith, and R. Aus-
 tin, (meaning your orator) of one part, and William
 Williams, is, as follows, the said Williams, (William
 Williams, meaning) 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 in-
 terest, from the time the land was paid for, up to
 the time of the receiving of his deed, which shall
 be within sixty days, a warantee deed -

Also said Williams shall deed to said W. Smith,
 (Warren Smith, meaning) in the timber, up to his orig-
 inal claim line, for which, said Smith shall pay to

said Williams, Government price, (one dollar and twenty-five cents meaning) from the time the land was paid for at the office, (Land office in Chicago, meaning) with twelve per cent interest, until he receives his deed which shall be within sixty days, a good warrant deed.

The decision of the arbitrators is as follows— the said Williams shall deed twenty-two and half acres, off from the East side of the East eighth of fractional quarter that Williams preempted 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.

And your orator would further represent that the said arbitrators did, at the same time, and as part and parcel of the same award, which was obtained from them by the said Williams, at the same time, and by the same false and fraudulent representations, from said arbitrators, and which he has retained, and still does retain, further award, as follows, to wit—

Sept 19th 1844— 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

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on the prairie, which said Smith preempted, 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, he, Williams, receives his deed, which shall be within sixty days, a good 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.

Timothy D. Woodward

Signed

J. Brown

David Mc. Kee

And your Orator would further represent, and your Orator, Julius Warren, especially, that it is represented to them and him, by said arbitrator, that the said pretended copy of said award, is not a true copy of the same, as the said award was framed and signed by them, and existed at the time the same was so, as aforesaid, delivered by said arbitrator, to said Williams, but that the original award as made by them, and delivered to said Williams as aforesaid, awarded that said Williams should deed the said twenty two and one half acres off from the East side of the East eighty (meaning the East eighty of the south west quarter of Section thirty one, Township thirty nine, East of the third principal meridian, and part of the land referred to, in said writing obligatory) of fractional quarter that Williams pre-

empted in the big woods, to your Orator, Julius M. Warren, and therefore your orator, especially your Orator, Julius M. Warren, charges the facts so to be, and that to him said deed was awarded to be made, or that his name has been fraudulently erased by said Williams, or some one else, from that part of said award— And your Orator further charge that if said copy so furnished to your Orator as aforesaid, be a true copy of the said award, as the same was delivered to said Williams, as aforesaid, that the name of said Julius M. Warren was intended by them, to have been inserted in said award, requiring said William Williams to deed the said twenty-two acres and one half to said Julius Warren, and was omitted by mistake, in drawing up said award, and that they agreed upon and ordered that said Williams should deed to said Warren, said land, and if the name of said Warren was omitted, as the person to whom said Williams was to deed the same, it was by mistake, and entirely accidental on the part of said arbitrators—

And your Orator would further represent that said award was so made as aforesaid, and so as aforesaid, ready to be delivered by the time specified in said writing obligatory, and that the same was prevented from being copied and delivered to all the parties by the false and fraudulent representations and conduct of said defendant as aforesaid—

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And your Orators further represent that the said lands awarded to be deeded by said Williams to said Austin, amounted to a large number of acres, to wit, to six acres, and sixty-five one hundredths of an acre, and was part and parcel of the said tract of land so preempted by said Williams, as in said writing obligatory, mentioned.

And your Orators were ready, and offered to pay to said Williams, said sum of one dollar, and twenty-five cents per acre, and twelve per cent interest, for said land so awarded to be conveyed by said Williams, to said Austin, and to perform said award, on their part, on this behalf. And they aver that said Williams, within said sixty days, upon the offer of said Austin to pay said money, and interest, refused to convey said land to said Austin, as aforesaid, on payment of said money, and interest.

And your Orators would further represent that the land awarded to be deeded by said Williams to said Smith, amounted to a large number of acres, to wit, thirty-six acres, and forty-nine one hundredths of an acre, and that the said Smith did, within sixty days after the making of said award, tender and offer to said Williams, the sum of One dollar and twenty-five cents per acre, with twelve per cent interest thereon, for the number of acres so awarded to be deeded to him as aforesaid. And your orators are ready ^{and always have been ready and willing} and willing to perform ^{said} award, and

pay said money, and now offer to perform and a ward on their part, as this Court shall decree.

And your Orator would further represent that the said Smith, in pursuance of said award, was ready, and offered, and is still ready to make a good title to, and convey to said Williams, the tract of land so awarded, to be conveyed by him, to said Williams, in pursuance to said award—

And your Orator would further aver, that the said Julius M. Warren did within sixty days after the making of said award, tender and offer to said Williams, the sum of one dollar and twenty five cents per acre, for the land so awarded to be deeded by said Williams to said Warren, with twelve per cent interest, and to perform said award, on his part, and now offers to pay said price for said land, and said interest, and perform said award on his part, according to the same—

And your Orator aver that the land awarded as aforesaid, to be deeded by said Williams to your orator, severally as aforesaid, were part and parcel of the said tract of land mentioned in said writing obligatory, and part of the same lands pre-empted by the said Williams, of the Government of the United States, to wit, part and parcel of the south west quarter of section Thirty one, in Township Thirty nine, North of Range, number nine, East of the third principal meridian, and the

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same land that was so in dispute between the parties

29 And your Orators further represent that the land, so as aforesaid, awarded to be deeded by said Smith to said William Williams, was, and is, part and parcel of the south west quarter of section Thirty-five, in Township Thirty-nine, North of Range Nine, East of the Third principal Meridian, the same being the lands purchased by the said Smith, of the Government of the United States— and which said land, up to, and in conformity with such claim lines, amounts to nine acres, and $\frac{78}{100}$ of an acre— A deed of which, to said Williams, is herewith filed, and reference had to, for greater certainty, and which in conformity with, and for the purposes intended by said award, they now bring here into Court

And your Orators show a more particular description of said lands, as follows, to wit— Commencing the survey of the lands so awarded, to said Austin at the S. E. Corner of the S. W. quarter of Section 31. thence North, 84 rods, ~~thence North, 84 rods~~, thence West, 4 rods, and 15 links, thence on a direct line to strike the South line of said S. W. quarter at a point 13 rods West of said S. E. Corner, thence East 13 rods to the place of beginning, containing $6 \frac{36}{100}$ acres more or less— Commencing the survey of said lands so awarded to said Smith, at a point 13 rods West of said S. E. corner of said quarter section, thence West to the West line of said section, thence North 52 rods, thence East parallel with ~~with~~ the South line, to strike

Said Austin's West line, thence Southerly along said Austin's West line, to the South line of the sections containing $36 \frac{2}{100}$ acres more or less. And said lands so awarded to said Warren, being $22 \frac{1}{2}$ acres off the East side of the said South West quarter of Section 31, exclusive of the said lands so awarded to said Austin and Smith.

And the said lands so awarded to be conveyed to said Williams, being more particularly described as follows. Commencing on the West line of section 35. three chains, 75 links from the South West quarter corner of said section (35) thence North, $5.10'$ West on said section line 34 chains, $16 \frac{1}{2}$ links, to the centre of a highway, thence along the centre of said highway, $4^{\circ} 15'$ South of East, five chains and eighty links, thence South, $5^{\circ} 15'$ West 32 chains, 25 links, to the place of beginning containing $9 \frac{78}{100}$ acres more, or less. All of said lands being in Township 39 North Range 9. West of the third principal Meridian.

(Amendment inserted by order of Court as follows)

And your Orators further show that after the filing of the original bill in this cause, to wit, on the 13th day of August, A.D. 1847. the said Complainant Smith, and Harriet his wife, conveyed by Warranty deed to one George Packard, the same land and premises directed by said award, to be conveyed by said Smith, to said defendant, and the said Packard and Mary

31 Adeline, his wife, afterwards, to wit, on the 31st day of August, A.D. 1847. conveyed the same premises to the said complainant Julius M. Warren, by Warranty deed, and the said Warren now holds the title in fee of said premises, as by the record of said deeds, in the Recorder's office of Dupage County, more fully appears - And the said Warren hereby offers to convey by Warranty deed, the lands and premises to said Defendants, which in said award is directed to be conveyed by said Smith, upon the conditions therein named -

And your Orators further show that by the terms of said writing obligatory, said Williams was bound to convey, or cause to be conveyed, ^{any portions of said land awarded to be conveyed} by said arbitrators, to such persons as said award should direct - and that by the terms and requirements of said award, they are severally entitled to the conveyance from said defendant of such parts of said land, as and by said award decreed to be made to each severally -

And your Orators now here offer to perform said award in every respect, according to the tenor and effect thereof -

And your Orators aver that said defendant, after the making of said award, refused and declined to perform the same on his part, and expressed and declared his determination not to carry out, or perform the same on his part -

In tender consideration whereof, and for as much as your Orators are remediless, by the strict rules of the Common

Law— To the end therefore that the said William Williams, and his confederates (when discovered) may upon his, and their corporal oaths, full, true, and perfect answer make, to all and singular, the said premises, as fully and particularly as if the same were here repeated, according to the best of his knowledge, information and belief and especially that the said defendant may set forth and answer whether he has in his possession, or under his control, the said writing obligatorily above referred to, executed by your Orators to him, on said submission, or any other bond or writing relating to said submission, and if not in his power or possession, where the same is, and when and to whom, the same passed from his possession, and also that he may answer, whether he has in his possession or control, the said award so delivered to him, by said arbitrator, and if not in his possession, or control, where the same is, and in whose possession the same is, and to whom the same passed from his possession—

And that the said William Williams may declare whether it was not understood and agreed between himself, your Orators, and the said Joseph Wilson, and all parties thereto, before the making of said award, that said Wilson should withdraw from said submission, and that his name should be stricken from said bond or bonds, and that under said bond or bonds, the arbitrator should go on and determine—

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the matters in dispute between your orators, and said defendant, mentioned in said bond and bonds - the same as if the name of said Wilson had never been inserted therein - if not, how otherwise - And whether, after the meeting of said arbitrators, such was not the understanding and agreement - If not, how otherwise - And whether it was not by mistake or inadvertence, that the name of said Wilson was left in said bond or bonds, if not, how otherwise - and whether before the expiration of sixty days, from the making of said award, the said defendant did not refuse to convey said award into effect, and declare to your orators, or other persons enquiring of, or requesting him for your orators, he would not abide by, and carry out said award, or make the deeds or evidences, and which of them, of the lands as directed by said award - if not, how otherwise -

And that said defendant may be decreed to convey by good and sufficient warranty deed, to each and either of your orators, the tract of land awarded by said arbitrators, to be conveyed to each and either of them, according to the true intent and meaning of said award -

And that your Orators may have such others, further, or different relief, as to this Honorable Court may seem meet in the premises -

Spring & Goodrich
Compl'ts Sol's -

Julius M. Warren.
Warren Smith
Reuben Austin

This should come in upon the amended bill

And afterwards, to wit, on the same 3rd day of April, A. D. 1851. there was filed in the Court first aforesaid, of the Cook County Court of Common Pleas, (late Cook County, ^{Court of Cook County}) a certain transcript of records, which is in the words and figures following, to wit—

State of Illinois }
Cook County } p.

Pleas before the Honorable Giles Spring, Judge of the Cook County Court of Common Pleas, within and for the County of Cook, and State of Illinois aforesaid, at a regular Term of said Court begun and holden at the Court House in the City of Chicago, in said County and State, on the first Monday, being the Fourth day of February, in the year of our Lord, one thousand, eight hundred and fifty, and of the Independence of the United States, the seventy third—

Present— the Honorable Giles Spring . . . Judge
Daniel Mc. Flory Prosecuting Attorney
Isaac Cook ——— Sheriff

Attest Walter Kimball, Clerk

Be it remembered that in Vacation, on the first day of January, A. D. 1849. the following proceedings were had in the said Cook County Court of Common Pleas, and entered of record in said Court, in a certain suit, wherein Julius M. Warren et al, were Plaintiffs, and William Williams, Defendant, that is to say—

This should come in upon the amended bill

And afterwards, to wit, on the same 3rd day of April, A. D. 1851. there was filed in the Court first aforesaid, of the Cook County, Court of Common Pleas, (late Cook County, ^{Court of Cook County}) a certain transcript of records, which is in the words and figures following, to wit—

State of Illinois }
Cook County } p.

Pleas before the Honorable Giles Spring, Judge of the Cook County Court of Common Pleas, within and for the County of Cook, and State of Illinois aforesaid, at a regular Term of said Court begun and holden at the Court House in the City of Chicago, in said County and State, on the first Monday, being the Fourth day of February, in the year of our Lord, one thousand, eight hundred and fifty, and of the Independence of the United States, the seventy third—

Present— the Honorable Giles Spring . . . Judge
Daniel Mc. Flory Prosecuting Attorney
Isaac Cook ——— Sheriff

Attest Walter Kimball, Clerk

Be it remembered that in Vacation, on the first day of January, A. D. 1849. the following proceedings were had in the said Cook County Court of Common Pleas, and entered of record in said Court, in a certain suit, wherein Julius M. Warren et al, were Plaintiffs, and William Williams, Defendant, that is to say—

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Julius M. Warren Etal }
 vs } In Chancery-
 William Williams }

This Cause coming on to be heard upon the Bill of Complaint, and the Demurrer of the Defendant filed thereto, and having by agreement of Counsel been argued in Vacation, and there appearing to be a want of Equity in said bill - It is considered by the Court, that the said Complainants ought to take nothing by their said bill, but that the same ought to be dismissed, and the said Complainants, by their Counsel, asking leave to amend their said bill, before this decree shall be made absolute and final - It is ordered and decreed that the said Complainants may amend their said bill, upon the payment of the costs of said Demurrer, and the proceedings thereon, on or before the first day of the next term of this Court, and upon their default in filing amendments to said bill, on or before the first day of the next term that the said Bill of Complaint be dismissed -"

And afterwards, on the twenty eighth day of May A.D. Eighteen hundred and forty nine, the following ^{further} proceedings, were had in said cause, and Entered of record in said Court, to wit -

Julius M. Warren Etal }
 vs }

William Williams)

On motion of the said Complainants, Solicitors, it is ordered that the said defendant plead, answer, or demur to the said Complainants amended Bill, by the first Monday of August next-

And afterwards, on the twenty-fourth day of October, A. D. Eighteen hundred and forty-nine, the following further proceedings were had in said cause, and entered of record in said Court, to wit-

"Julius M. Warren Et al }
 vs } Bill &c.
 William Williams }

By agreement of parties, it is ordered that the said Defendant plead, answer, or demur to the said Complainants Bill, in twenty days, and this Cause is continued to the next term of this Court-

And afterwards, on the twenty-first day of February, (being one of the days of the February Term of said Court) A. D. Eighteen hundred and fifty, the following further proceedings, were had in said cause, and entered of record in said Court, to wit-

"Julius M. Warren Et al }
 vs } Bill &c.
 William Williams }

By agreement of parties, it is Ordered, that the Venue in the above entitled

cause be changed to the Cook County Circuit Court
State of Illinois }
Cook County } 3 ps

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I, Walter Kimball, Clerk of the
Cook County Court of Common Pleas, within and for
the County of Cook, and State aforesaid, do hereby cert-
ify the foregoing to be a true and correct Transcript of
all orders entered of Record in said Court, in a Certain
Suit heretofore pending therein, wherein Julius M.
Warren and others were Plaintiffs, and William Williams
Defendant



In testimony whereof, I, the said Walter
Kimball have hereunto set my hand and
affixed the seal of said Court at Chicago,
in said County, this twenty-first day of Febru-
ary A. D. 1859.

Walter Kimball, Clerk—

And afterwards, to wit, on the same 3rd day of April,
A. D. 1851. there was filed in the Court first aforesaid,
a certain demurrer, to said amended bill, which is in
the words and figures following, to wit—

Circuit Court Cook County,

In Chancery—

William Williams }
ads }
Julius M. Warren, }
Warren Smith, & }
Reuben Austin }

In Chancery

The demurrer of William Williams, defendant,
to the bill of complaint of Julius M. Warren, Warren
Smith, and Reuben Austin, complainants—

This defendant, by protestation, not confessing
or acknowledging all or any of the matters and things
in the said complainants bill, to be true, in such
manner and form as the same are therein set forth
and alleged, doth demur thereto, and for cause of de-
murer, sheweth that the said complainants have
not, in and by their said bill, made or stated such
a case as doth or ought to entitle them to any such
discovery or relief as is thereby sought and prayed for,
from or against this defendant; wherefore this defend-
ant demands the judgment of this honorable Court,
whether he shall be compelled to make any further
or other answer to the said bill, or any of the matters
and things therein contained, and prays to be hence dis-
missed with his reasonable costs in this behalf sus-
tained—

J. Young Scammon
Soli. for Deft—

And afterwards, to wit, at the December term of said
Court, to wit, on the 3rd day of January, A. D. 1852. the
following proceedings, among others, were had and en-
tered of Record therein, to wit—

Julius M. Warren }
Warren Smith, & }
R. Austin }
}

67. vs } In Chancery-
William Williams }

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By agreement of parties, it is ordered that the demurer in said Cause be set for argument on the fourth Monday in January instant, before the Judge of this Court, at his chambers—

And afterwards, to wit, at the March term of said Court, to wit, on the 30th day of March, A. D. 1855. the following proceedings, among others, were had and entered of Record therein, to wit—

37. Julius M. Warren, Et al } In Chancery.
vs }
William Williams }

This day, come the said parties by their Solicitors, and the Court having heard the arguments of the respective Counsel, on the demurer of the said Defendant to the Bill of the said Complainants, orders that the said demurer be overruled—

And afterwards, to wit, at the same term of said Court last aforesaid, to wit, on the 31st day of March in the year last aforesaid, the following proceedings, among others, were had and entered of record therein, to wit—

37. Julius M. Warren Et al } In Chancery.
vs }
William Williams }

This day comes the said defendant, by his Solicitor, and on his motion, it is ordered, that the time to answer in this Cause, be extended to the first day of May next, ensuing, and that the Complainant's Solicitor have leave to take the bill from in this cause, from the files—

* State of Illinois

Cook Circuit Court,

In Chancery—

* The answer of William Williams, to the Bill of Complaint, of Julius M. Warren, Warren Smith, and Reuben Austin, complainants, filed herein—

This defendant, now and at all times, saving and reserving unto himself all, and all manner of advantage, and benefit, of exception, to the manifold inaccuracies, insufficiencies, errors and imperfections in the said bill of complaint, contained— And protesting that the said bill is insufficient, to be answered unto, or to entitle the said Complainants to the relief prayed for in and by said Bill— Yet this defendant answering thereunto; or to so much thereof, as he is advised it is material for him to make answer ~~there~~ to— says— That at the time mentioned in the said bill of complaint— to wit, on the seventeenth day of September, A.D. 1844. this defendant had proved up a preemption, and purchased at the Land office of the United States, the quarter section of land, in said bill mentioned,

* And afterwards to wit, on the 30th day of April, A.D. 1855. the said Defendant filed in said Court his certain answer which is in the words and figures following to wit—

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to wit, the South west quarter of section No 31. in Township No 39. North Range No 9. East of the third principal Meridian, in the timber - that his said presumption, and purchase of the same, was regular, in due form, and legal, and the said ^{land} ~~land~~ was in all respects, legally and equitably, the property of this defendant.

And this defendant further answering, says that at and before the said time aforesaid, ^{this} defendant had made a claim to other lands, upon the prairie, and had made lines, commonly known as claim lines, and which were well known to the complainants - and this defendant had preempted the said prairie, and had entered the same at the land office, with the exception of a small strip, of about nine acres, which was cut off from the quarter section, by the Government survey, and which was entered at the land office, by the complainant Warren Smith, with a full knowledge of this defendant's claims thereto, the same having been improved and fenced by this defendant, and in his actual possession - and the said Smith, at the time he so entered the said strip of land, agreed to convey the same to this defendant -

This defendant settled upon the lands aforesaid, and made claim to the same, in the year A.D. 1834. and had remained in possession of the same, ever since -

And this defendant further answering, says that at or about the said 17th of September, A.D. 1844. there did exist some disputes between the parties, as to where some of the original claim lines run—some of the parties claiming that their lines run in one place, and some in another—And for the purpose of defining and settling those lines, as mentioned in the writing obligatory in the ~~same~~ ^{said} Bill mentioned, the parties did agree to submit the same to the determination and decision of the persons in said bill of complaint, mentioned, and for that purpose, this defendant did enter into a bond or writing obligatory, to submit to the determination of James Brown, Daniel Mc. Kee and Timothy Woodward, as arbitrators—And this defendant cannot say whether the bond set out in complainant's bill of complaint, is a copy of said bond or not, but thinks very likely it may be—

And this defendant further answering, says it is true that the complainants executed a bond of submission, to this defendant, which said Bond, this defendant soon afterwards delivered to his Attorneys, Seammon & Judd, and the same has never been in this defendant's possession, since—

This defendant has no recollection, whether the said Wilson withdrew from said arbitration, or not, nor does he recollect that it was agreed by the said Wilson, and this defendant, or the complainants, that Wilson should withdraw, or that the arbitrators should not

award upon, or take into consideration any disputes
 43 between the defendant and the said Wilson. Upon
 that subject, he has no recollection—

And this defendant further answering, deposes
 that the said arbitrators determined or adjudged the
 premises, and disputes, which were referred to them
 to determine— defendant admits that the said ar-
 bitrators met, on, or about the time stated, in the Bill
 of Complaint, and that they met professedly to take
 upon themselves, the burden of making a determina-
 tion and award— that their place of meeting was at
 the store of Warren Smith, (one of the Complainants)
 in Warrenton, Dupage county— this defendant was
 there present at the time— But the Complainants
 were not all present, though one or two of them, were
 present—

And this defendant further answering, upon his
 best recollection, and belief, says, that while the said
 arbitrators, and one or two of complainants, and this
 defendant, were so together, the said arbitrators had the
 custody and possession of the Bonds of submission—
 heretofore mentioned— And the said Arbitrators then
 and there made and signed, what they called their
 "decision", on two separate pieces of paper— that thereupon
 one, or more of said arbitrators, asked who ~~should~~^{was} pay
 them for their time and trouble, and declared they
 would not give up the papers, until they were paid,
 or in substance, to that effect— this defendant asked

them if they would trust him, to which they replied they would— and upon his then promising to pay them all, or a part, for their trouble, they gave him the bond, which was receiving to him, and the two pieces of paper, called their "decision"

And this defendant avers upon his best recollection, and belief, that the said arbitrators professed to have finished and concluded their labors, and to have done all they ~~have~~ intended to do— and that nothing was said by them, or either of them, about making copies of said papers, or in any manner changing the same— but the said arbitrators separated and went to their several homes, without any intention expressed, of meeting again—

And further, defendant, further answering says, that he has no recollection of pretending or promising the said arbitrators, that he would return to them, the said pieces of paper, containing their decision as aforesaid— nor of the said arbitrators requesting him so to do, at any time, nor of his refusal, so to do— And he believes that such are not the facts—

And this defendant further says, that the said decisions of the said arbitrators, above mentioned, was not, in any manner, altered, after the same were given to him, but that this defendant soon afterwards, delivered the same to his counsel, Messrs. Seamsnon and Judd—

And this defendant, further answering, says,

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denies that the said complainants, or either of them, within sixty days after the making of said award, or at any time since, tendered to this defendant, any money, for any of the lands in the said bill of complaint, mentioned — and denies that the said Warren Smith ever tendered or offered to this defendant, a deed of the prairie lands in said bill, and decision mentioned, but on the contrary, thereof, this defendant alleges that the said Smith ever refused to give this defendant, a deed of said prairie, and after the said decision of the said arbitrators, he, the said Smith, sold and conveyed the said prairie land, to one Packard, who subsequently sold and conveyed the same to the complainant, Julius M. Warren, and the said Warren has ever since, to wit, for the last four or five years, deprived this defendant, of the possession of the same —

And the said Warren, in the Spring of the year, A. D. 1853. sued and prosecuted this defendant, in an action of Trespass, in the Circuit Court of Dupage County, for the rails and fence, which this defendant had originally built, upon the said strip of prairie, and which he, this defendant, had (after the purchase by said Warren, of said piece of prairie) taken away — That a change of venue was taken in said action of Trespass, to the county of Kane, and the same was then tried at the last January Term of the Kane Circuit Court, and judgment was recovered by said Warren, for the value of

said rails against this defendant, for about twenty three dollars and $\frac{50}{100}$ besides cost - which has been paid by this defendant -

That there is no deed upon the files of this Court, of conveyance of the said prairie, executed by said Smith to this defendant - as alleged in said Bill of Complaint and if there ever was one placed upon the files, the same has been fraudulently and inequitably taken therefrom, by the said Complainants, or some of them -

And this defendant, further answering, avers that he was in this country, and had made his said claim to the timbered land aforesaid, long before the said complainants, Smith, or Austin, came into this state, and the said quarter section did not embrace any land of theirs whatever, nor were they entitled to any part thereof - nor was the said Warren entitled either in law or equity, to any part or portion of said quarter section -

And this defendant avers that the said Arbitrators had no power or authority to determine or award that either ^{party} should convey to the other, any portion of land whatever, or if at all, it was only in case this defendant's preemption should be set aside, and some member of his family, or person under his control, should deed the land, that the arbitrators should have the right to make such a determination -

And the defendant avers that his preemption has never been set aside, but his title to said quarter

remained perfect—

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That it was the duty of the said arbitrators only to fix upon, determine, and locate, the claim lines of the respective parties, that was the object of the submission, as stated in the bond—

And this defendant avers, upon his information and belief, that the said arbitrators, not having determined and awarded upon the point submitted to them, but having made a decision and award, entirely outside of the submission, their said decision and award is void, and of no effect—

And defendant denies that the said arbitrators committed any mistake in making their decision, except in mistaking the subject of difference submitted to them— And this defendant, further answering, upon his information and belief, states that even if the said Arbitrators had power and authority to make an award, determining that either party should convey lands to another (which he denies)—yet the said award is uncertain, and void that it leaves the parties to determine where the claim lines run— and to make surveys— It is uncertain in description, in quantity, and as to parties—

And defendant further answering, says, that he does not recollect saying at any particular time, that he would not carry out, or stand to the said award, or make conveyances to the said complainants, of any of the lands in said bill mentioned— but presumes he has so stated— as he has always been informed,

and believed, that he was under no obligation either in law or equity to do so - and he does not think that the said complainants, or either of them, have done, or performed any act of kindness toward him, whereby he should be called upon, to give them his farm, or any part thereof -

This defendant further answering, says that the said bond executed by the said complainants, to him, and also the said papers given him by the said arbitrators, and delivered by this defendant to his counsel, as aforesaid, cannot now be found, but as this defendant is informed, and believes, have been lost, or mislaid - and he cannot give copies of the same - nor does he know whether the same are correctly set out in said Bill of complaint -

And this defendant further answering says that any other matters in the said bill of complaint, contained, and which are material to be answered unto, and which are not herein well and truly answered unto, confessed, admitted, or denied, are not true -

Wherefore this defendant, having fully answered the said bill of complaint, prays hence to be dismissed, with his reasonable costs, and charges in this behalf, most unjustly sustained &c.

Wm. Williams -

Hainsworth & Burgess }
Solicitors . }

State of Illinois }
Cook County }
}

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William Williams, the above named dependant, being duly sworn, doth depose and say that he has heard read, the foregoing answer by him signed and knows the contents thereof, and that the same is true, of his own knowledge, except such parts thereof, as are stated upon his information and belief, and as to those parts, he believes them to be true - and further saith not -

Sworn to, and subscribed Wm. Williams -

Before me, this 25th day of April A. D. 1855.

Wm. H. Adams

Notary Public -

And afterwards, to wit, on the 30th day of April, A. D. 1855. the said dependant filed in said Court, his certain answer, which is in the words and figures following, to wit -

And On the 8th day of May, ¹⁸⁵⁵ said Complainants filed their Replication in words and figures following, to wit - Julius M. Warren Et al

as }
William Williams } Replication -

And the said Complainants, come and say that not waiving the rights of exception, or any advantage of the many errors and insufficiencies of the, and to the said

defendants answer, aver that the matter and things alleged in said bill of complaint, they will prove and maintain to be true, as this Court shall direct, and that said answer is insufficient, uncertain and evasive, without this, that any matters and things in said answer, stated and set forth, are true—

Grant Goodrich

Complts Soli.

On the 20th day of February, 1856. Said Complainants filed in said Cause, their Supplemental Bill, and an order for Injunction enclosed thereon, in the words and figures following, to wit—

State of Illinois }

Cook County }

Of the March Term of the Cook
County Circuit Court, A.D. 1856.

To the Honorable George Maniere, Judge of
said Court, in Chancery, sitting—

Your Orators, Julius M. Warren, Warren Smith, and Reuben Austin, Complainants in this Bill, complain of William Williams, of Dupage County, Defendant in this Bill, and so complaining show to your Honor— That heretofore to wit, on or before the Seventeenth Day of September, A.D. 1844. certain disputes existed between said, Warren, Smith, Austin, and one Joseph Wilson, and the said Defendant, in relation to the claim lines of the said several parties, and the equity and the right of title of the said several complainants, and the said

Joseph Wilson, and the said defendant, to parts of the South west quarter of section Thirty one, in Township
 51 thirty nine North, Range nine East of the third principal Meridian, to which, said defendant had proven up a preemption right, (and under which he obtained title thereto) and to parts of the South west quarter of section thirty five, in the same Township and Range— and in order to determine and settle the differences of said complainants and said Wilson, with said Defendant, in relation to their several equitable rights to portions of said lands, among other things, the said parties agreed to arbitrate the same by agreements in writing— And the said William Williams, on his part, entered into the following writing obligatory—

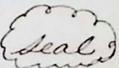
I know all men by these presents, that I, William Williams, of the County of Dupage, and State of Illinois, am held and firmly bound unto Julius M. Warren, Warren Smith, Joseph Wilson, and Reuben Austin, of the same county, in the sum of one thousand dollars, of good and lawful money of the United States, to be paid to 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, in the year of our Lord, one thousand, eight hundred and forty four, which said writing obligatory, was, and

is, in substance, subject to the following conditions, to wit— The condition of this above obligation, is such, that if the above bounden William Williams, his heirs, executors, or administrators, on his, and their part, shall and do, in all things, stand to, abide by, perform, fulfil and keep the award, order, arbitrament and final determination of James Brown, Daniel Mc. Kee, and Timothy Woodard, arbitrators indifferently elected, and named, as well on the part and behalf of the above bounden William 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 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 DuPage, and State of Illinois, and known and described as being the South west quarter of Section number thirty-one (31) in Township, number Thirteen (13) North of Range, number nine (9) East of the third principal Meridian, which is the same property, to which the said Williams has proved up a presumption, and which said presumption is contested— and also all other, the land 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

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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, Mc. Kee, and Woodard, or any two of them, and ready to be delivered to the said parties, in difference, 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 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 - 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 said Warren, Wilson, Smith and Austin, 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, Smith, Wilson and Austin, that in case his preemption shall be set aside, and any member of his family, or any person for him, or claiming under him, or in his right, or by his suggestion, or direction, shall obtain said premises, he will obtain from them, such conveyances, or disposition of any part of said premises, as said award shall require, and direct, to such persons as shall be directed in said award—

Signed, William Williams 
 Henry S. Williams 
 as security
 Wm. J. Williams 

And your Orators would further represent, that the said writing obligatory was signed and sealed by the said Henry S. Williams, and the said Wm. J. Williams, as securities, for the performance of the conditions of the same, by the said William Williams, and for no other purpose whatever—

And your Orators would further represent, that after the making the above described writing obligatory, to wit, on the day and year aforesaid, your orators made and delivered to the said William Williams, a writing obligatory, with like conditions, and penalties, on the part of your orators, which said writing obligatory was received and accepted by said William Williams, for the purpose of binding your orators, to abide by, keep, and observe the award, and determination of said arbitrators, in said writing obligatory

named, given by said Williams, and his said securities, as above set forth - And your Orators further represent that after the making and delivery of the said writing obligatory, by the said Williams, and his securities, to your Orators, it was understood and agreed, by and between said Williams, and his said securities, and said Wilson and your Orators, that they should and would, and did waive all necessity of said arbitrators, considering and awarding upon any, and all matters, in said writing obligatory of said Williams, mentioned; so far as any, and all disputes between said Williams, and said Wilson, were concerned, and that said Wilson might and should, and did withdraw from said submission, and should no further be considered a party thereto - and that said arbitrators should under said submission, go on and decide the matters therein mentioned, and submitted as between said Williams, Warren, Smith and Austin alone, and that the name of said Wilson should be left or stricken out, of said submission, but from mistake, or inadvertence, was neglected to be stricken out, of said writing obligatory -

And your Orators further state, that in conformity with such understanding and agreement, the said writing obligatory, from your Orators to said Williams, was made by your Orators alone, as principals thereto, and submitted their differences

alone with said Williams, as your Orators recollect and charge— which said writing obligatory was delivered to said defendant, and remains in his hands, and to which, for greater certainty, your Orators refer—

And your Orators further represent, that in conformity with said respective writings obligatory, and said subsequent understanding and agreement, the said arbitrators took upon themselves the duty of arbitrating and determining the matters in controversy, between your Orators, and the said defendant William Williams, mentioned in the condition of said writing obligatory, to wit, on the nineteenth day of September, A. D. 1844. and with the consent and approbation of said defendant, and your Orators, proceeded on the day and year aforesaid, (said parties being present, or consenting thereto) to arbitrate and adjudge the premises, and did on the day and year aforesaid, award and adjudge in the premises, and make an award in writing under their respective hands, and were about to make copies of the same, to be delivered to the parties, in conformity with the condition of the said writing obligatory, and the said subsequent agreement of the parties— but at the request of ^{the} said defendant, that he might look at the same, and at the false and fraudulent representation of the Defendant, that he would return it to the said arbitrators again— for them

57 to make a copy for ^{your} orators, said arbitrators relying upon such false and fraudulent representation, gave the same into his hands—and the said arbitrators afterwards, for the purpose of making and signing a copy of the same, to deliver to your orators, requested the said award from the said defendant, but the said defendant fraudulently and deceitfully retained the same, and refused to deliver the same to said arbitrators, or even to allow them, to look at the same—and that the said defendant and his counsel, have fraudulently retained the same ever since, and still do retain the same, and refuse to allow said arbitrators, or your orators, to see or have the same—And your orators further charge, that the counsel of said Defendant, has given to them, what he pretends is a copy of the same, in substance, as follows—to wit—

"Sept 19th 1844— The decision of arbitrators in suit pending between J. Warren, W. Smith, R. Austin, (meaning your Orators) of one part, and William Williams, is as follows— The said (William Williams, (the defendant, meaning) 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,

(Warren Smith, meaning) in the timber up to his original claim line, for which said Smith shall pay to said Williams, government price (one dollar and twenty-five cents, meaning) from the time the land was paid for, at the office (Land office in Chicago, meaning) with twelve per cent interest until he receives his deed, which shall be within sixty days, a good warantee deed"

"The decision of the arbitrators, is as follows the said Williams shall deed twenty two and a half acres off from the East side of the East eighty of fractional quarter that Williams preempted in the big wood— further, now it is decided that each party shall pay what costs they have caused to be made"

(Signed) Timothy D. Woodard,
 J. Brown
 David Mc Fee "

And your orator further represent that at the same time the said arbitrators, did, and as part and parcel of the same award, which was obtained from them by the said Williams, at the same time, and by the same false and fraudulent representations, and which he has retained, and still does retain— for the award as follows, to wit—

"Sept 19th 1844— 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
 58 prairie, which said Smith preempted - and said Wil-
 liam Williams shall pay to said Smith, government
 price, with twelve per cent interest, from the time the
 land was paid for, until he, Williams, receives his deed,
 which shall be within sixty days, a good warrantee deed.
 Each party shall be at the expense of surveying, and
 their deeds - Further now it is decided that each party
 shall pay what costs they have made -"

Timothy D. Woodard

(signed)

J. Brown.

David Mc. Kee "

And your Orators further state that it is repre-
 sented to them, by said arbitrators, that the said pre-
 tended copy of said award, is not a true copy of the
 same, as the said award was framed and signed
 by them, and existed at the time the same was as
 aforesaid, delivered to said Defendant, but that
 the original award as made by them, and delivered
 to said Williams as aforesaid, awarded that said
 Williams should deed the said twenty two and a half
 acres off from the East side of the quarter (meaning
 the East eighty of the South west quarter of Section
 thirty one (31) Township thirty nine (39) North of Range
 Nine (9) East of the third principal meridian, and
 part of the land described in said routing obligatory) that
 Williams preempted in the big wood, to your orator
 friend^{Mr} Warren - and therefore your Orators state the

facts so to be, and that to him, Julius M. Warren, said land was awarded to be deeded - or that his name had been fraudulently erased by said defendant or some one else from that part of said award - And your orator further charge that if said copy so furnished to your orator, as aforesaid, be a true copy of said award, as the same was delivered to said Williams as aforesaid, by said arbitrators, the name of said Julius M. Warren was intended by them, to have been inserted in said award, requiring said Defendant to deed said twenty two and a half acres, to said Julius Warren, and was omitted by mistake in drawing up said award, and that said arbitrators agreed upon and awarded that said Williams should deed said Warren, said land and if the name of said Warren was omitted, as the person to whom, said Defendant, was to deed the same, it was by mistake, and entirely accidental on the part of said arbitrators -

And your Orator further represent that said award was so made as aforesaid, and so as aforesaid ready to be delivered by the time specified in said writing, obligatory, and that the same was prevented from being copied and delivered to all the parties, by the false and fraudulent conduct of said defendant as aforesaid -

And your orator further represent that said land awarded to be deeded by said Williams to said Austin, amounted to six acres, and sixty-five hundredths of an acre ($6\frac{65}{100}$ acres) or thereabouts, and was part and

parcel of the said tract of land so preempted by said
 59 Williams, as in said writing obligatory, mentioned. And
 61 your orators were ready and offered to pay said Williams
 said sum of one dollar and twenty-five cents per acre,
 and twelve per cent interest for said land, so awarded
 to be conveyed by said Williams to said Austin, and to
 perform said award on their part, in this behalf. And
 they aver that said Williams, within said sixty days,
 upon the offer of said Austin to pay said money and
 interest, refused to convey said land to said Austin as
 aforesaid, or accept of said money and interest.

And your Orators further represent that the land
 awarded to be deeded by said Williams to said Smith,
 amounted to thirty-six acres, and forty-nine hundredths
 of an acre ($36\frac{49}{100}$ acres) or thereabouts, and that the said
 Smith did within sixty days, after the making of said
 award, tender and offer to said Williams, the sum of
 one dollar and twenty-five cents per acre, with twelve per
 cent interest thereon, for the number of acres so award-
 ed, to be deeded to him as aforesaid. and your ^{orators} are ready
 and willing, and always have been ready and willing
 to perform said award, and pay said money, and now
 offer to perform said award on their part, as this Court
 shall decree. And your orators further represent that
 said Smith, in pursuance of said award, offered, and
 still is ready to convey to said Williams, the tract of
 land so awarded to be conveyed by him, to said Wil-
 liams, in pursuance of said award.

And your orators further state that the said Julius M. Warren, did, within sixty days after the making of said award, tender and offer to said Williams, the sum of one dollar and twenty-five cents per acre, and twelve per cent interest, for the land so awarded, to be decided by said Williams to said Warren, and to perform said award on his part, and now offers to pay said price for said land, and said interest, and perform said award on his part, according to the same - but said Williams refused to receive said money, or to convey said land, as by said award he was so required to do -

And your Orators further state that the lands awarded as aforesaid, to be decided by said Williams, to your Orators, severally, as aforesaid, were parts and parcels of the said tract of land mentioned in said writing obligatory, and parts of the same lands preempted by said Williams, of the Government of the United States, to wit, parts and parcels of the South West quarter of section thirty one, in Township thirty nine, North, Range nine East of the third principal meridian, and the same land that was so in dispute, between the said parties -

And your Orators further represent that the land so as aforesaid, awarded to be decided by said Smith to said William Williams, is part and parcel of the South west quarter of section thirty five, (35) in Township thirty nine (39) North Range nine (9) East of the third principal meridian, the same being the lands purchased

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by said Smith, of the Government of the United States.

63 And your Orators further represent that by the terms of the said writing obligatory, said Williams was bound to convey, or cause to be conveyed, any portions of said lands, awarded to be conveyed, by said arbitrators, to such persons as said award should direct - and that by the terms and requirements of said award, they are severally entitled to the conveyance from said defendant, of such parts of said land, as are by said award, decreed to be made, to each severally - And your orators now here offer to perform said award, in every respect, according to the tenor and effect of the same -

And your Orators aver that the said defendant, after the making of said award, refused and declined to perform the same on his part, and expressed and declared his determination, not to carry out or perform the same on his part -

And your Orators further state that said lands so awarded to be deeded by said parties respectively, to wit, the lands so awarded to be deeded by said Williams, to said Austin, Smith and Warren, and the lands so awarded to be deeded by said Smith to said Williams, are more particularly described, as follows -

1 - Commencing the survey of the land so awarded to be deeded, by said Williams, to said Austin, at the South East Corner of the South West quarter of the said Section thirty one (31) thence running 76 rods North, along the quarter section line, thence West four rods, thence

on a direct line to the Southern section line of said quarter, at a point 13 rods West of said South East corner, thence 13 rods east, along the section line to the place of beginning, containing six acres, and sixty five hundredths of an acre, ($6 \frac{65}{100}$ acres) more or less—

2— Commencing the survey of the land so awarded to be deeded by said Williams to said Smith, at a point in the South East section line of said section thirty-one (31) 13 rods west of the said South East corner, thence west along the section line, to the South West corner of the said section 31. thence North along the section line, 32 rods, thence East till the line cuts the Western line of said Austin's survey, thence along said Western line of said Austin's survey, to the place of beginning, containing thirty-six and forty-nine one hundredths acres ($36 \frac{49}{100}$ acres) more or less—

3— The land so awarded to be deeded by said Williams, to said Waver, being twenty-two and a half acres ($22 \frac{1}{2}$ acres) off the East side of the said South West quarter of section thirty-one (31) after deducting from said quarter, the said surveys, of said Austin and Smith—

4— Commencing the survey of the land so awarded to be deeded, by said Smith to said Williams, at a point on the West line of section thirty-five (35) Township thirty-nine (39) North Range nine, (9) East of the third principal meridian, Behains, and 75

links from the South West corner of said section
 65 running thence North $5^{\circ}10'$ West on said section
 line 34 chains, and $16\frac{1}{2}$ links, to the centre of high-
 way, thence along the centre of said highway $4^{\circ}15'$
 South of East 5 chains and 80 links, thence South
 $5^{\circ}15'$ West, 32 chains and 25 links, to place of beginning,
 containing nine acres, and seventy eight hundredths
 of an acre, ($9\frac{78}{100}$ acres) more or less—

And your Orators, further show, that after the filing
 of the original bill in this cause, to wit, on the 13th day
 of August. A. D. 1847. the said complainant Smith, and
 Harriet, his wife, conveyed by Warranty deed, to one George
 Packard, and Mary Adeline, his wife, afterwards the
 same land and premises, directed by said award, to be
 conveyed by said Smith, to said defendant, and the
 said Packard, and Mary Adeline his wife, afterwards,
 to wit, on the 31st day of August, A. D. 1847. conveyed
 the same premises, to said complainant Julius M. War-
 ren, by Warranty deed, and said Warren now holds the
 title in fee of said premises, as by the record of said deeds,
 in the Recorder's office of Dupage county, more fully appears.
 And the said Warren hereby offers to convey by Warranty
 deed, the land and premises, to said Defendant, which
 in said award, is directed to be conveyed by said Smith,
 upon the conditions therein named—

And now your Orators further represent that
 sometime in the year A. D. 1844. or 1845. your Orators
 filed their Original Bill of Complaint, in the premises

in the Circuit Court of DuPage County, against the said Defendant William Williams, praying the Court to decree a specific performance of said award, by compelling said Williams, to convey to your Orators respectively, the lands awarded, to be, by him deceded to them, by the award aforesaid— and for such other and further relief, as the premises might justify. And your Orators aver that said Williams was duly summoned to answer the said original Bill of complaint, of your orators— and that afterwards, to wit, in the year A. D. 1845 or 1846. said original proceeding in chancery, was by an order of the said Du Page Circuit Court removed to the Cook County Court, and that by a subsequent order of said last-mentioned Court, it was removed for hearing, trial and final determination, to the Circuit Court of Cook County, where it is still pending and undetermined—

And your Orators further state, that since the filing of the said Original Bill of Complaint, in the premises, and more especially within the last few months, said William Williams, and his agents, servants, or employees, have been cutting and removing large quantities of trees, timbers and wood, from said lands so awarded to be deceded by said Williams, to your Orators respectively, to the great damage of the value of said lands, and are so now cutting and removing trees, timbers and wood from said lands—

And your Orators state, that by such cutting and

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removal of trees, timber and wood, said Williams has already greatly damaged said tracts of land so awarded to be by him conveyed to your Orators respectively - the extent of damage, thus already done by said Williams, being one hundred and fifty dollars, (\$150.00) or thereabouts, to the land so awarded to said Austin - five hundred dollars, or thereabouts, to the land so awarded to said Smith - and three hundred dollars or thereabouts, to the land so awarded to the said Waven -

Wherefore in just consideration of the premises, your Orators pray that a Writ of Injunction may issue against said Defendant, enjoining said Defendant, and his agents, servants and employees, from cutting and removing trees, timber and wood from said lands so awarded, to be conveyed to your Orators severally - and further enjoining said defendant, from conveying, mortgaging or otherwise encumbering said lands - And your Orators further pray that upon the final hearing of this cause, your Honor will decree that the said Defendant shall pay to your Orators, the respective measures of damage, which, as your Orators have shown, have been done by said Defendant, to said lands, since the filing of the said original Bill of Complaint, and that your Honor will decree such other and further, and different relief, as to the Honorable Court may seem fit and meet in the premises -

And to this end, your Orators pray that a summons may issue, directed to the Sheriff of Dupage

County, requiring the Defendant, to appear and answer this Bill, on the return day of the same - the oath of the defendant to his answer, being hereby expressly waived, by your Orators - and so, your Orators will ever pray &c.

J. Barker, Sol.

Julius M. Warren
Warren Smith
Reuben Austin
By J. Seamon,
their Atty, & Agent -

State of Illinois, }
Cook County }

Julius M. Warren, being duly sworn, says that the foregoing statements in said Bill, are substantially true; to the best of his knowledge, and belief -

Julius M. Warren -

Subscribed and sworn to, before me, this 18th day of February, A D, 1856.

L. D. Hoard

Clerk. Cook Circuit Court

State of Illinois } In Cook Circuit Court -
Cook County } ss.

The Clerk of said Court will issue an injunction on the foregoing bill, as prayed for therein, upon the giving a bond, by the complainant Julius M. Warren, and Jacob Woodworth, as his surety, conditioned to indemnify the defendant, of and from all costs and damages, which they may sustain

by reason of the issuing of said injunctions, in the penal sum of five hundred dollars—

In witness whereof, I have hereto set my hand at Chicago this 20th day of February A.D. 1856.

George Maniere,
Judge of 7th Judicial Circuit
Ills—

And afterwards, to wit, on the same 20th day of February, A.D. 1856. the said Complainants filed in the Court aforesaid, the certain Injunction bond, which is in the words and figures following, to wit—

Know all men by these presents, that we, Julius M. Warren, are held and firmly bound unto William Williams, of the County of DuPage, in the State of Illinois, in the penal sum of Five Hundred Dollars, for the payment of which, well and truly to be made, unto the said William Williams, his heirs, Executors, administrators, and assigns, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents—

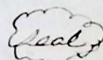
Signed, sealed, and dated this 20th day of February, A.D. 1856.

The condition of this obligation, is such, that whereas, Julius M. Warren, ^{Warren} Smith, and Reuben Austin, have lately filed in the Circuit Court, of said County of Cook, on the Chancery side thereof, a certain Bill of Complaint, praying, among other things, that a writ

of injunction, be issued against the said William Williams, enjoining and restraining the said William Williams from cutting and removing trees, timber and wood, from certain lands, therein mentioned, which writ hath been ordered to be issued upon filing bond, as required by law—

Now therefore if the said Julius M. Warren, Warren Smith, and Reuben Austin, shall pay, all, such costs, and damages, as shall be awarded against them in case said injunction shall be dissolved, then the above obligation shall be void, otherwise to remain in full force and effect—

Julius M. Warren 





Jacob Woodworth 



Approved—

And thereupon, on the same day and year aforesaid, there was issued out of the office of the clerk of the said Court, the People's writ of Injunction, directed to the said William Williams, and clothed in the words and figures following, to wit—

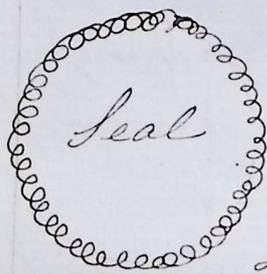
State of Illinois }
Cook County } Sct.

The People of the State of Illinois
to William Williams, his agents, servants and employ-
ees, and each, and every of them, Greeting—

Whereas it has been represented to the Honorable
 George Maniere, Judge of the Seventh Judicial Circuit,
 and presiding Judge of the Circuit Court of the County
 of Cook, in said Circuit, and State of Illinois, by Julius
 M. Warren, Warren Smith, and Reuben Austin, com-
 plainants in their certain bill of complaint, exhibited
 before said Judge, and filed in said Court, amongst
 other things that you, the said William Williams, are
 cutting and hauling off trees and timber, and wood
 from, and committing waste upon certain lands in
 Dupage County, to wit: Commencing at the South East
 Corner of the South West quarter of Sec (31) thirty one,
 thence running seventy-six rods North, along the quar-
 ter section line, thence West, four rods, thence on a di-
 rect line to the Southern section line, of said quarter,
 at a point, thirteen Rods west of said South East corner,
 thence thirteen Rods East, along said section line to
 the place of beginning, containing six acres and $\frac{65}{100}$,
 more or less, this being said Austin's survey - Commencing
 thirteen rods West of the said South East corner, thence
 West along section line to the South West corner of the
 said section Thirty one (31) thence North, along the
 section line fifty-two rods, thence East, till the Line
 cuts the western line of said Austin's survey - thence
 along said western line of said Austin's survey, to the
 place of beginning, containing $36 \frac{9}{100}$ acres, more or less
 this being said Austin's survey - Also twenty-two
 and one half acres of the East side of the said

South West quarter of section Thirty-one (31) after deducting from said quarters the said surveys of said Austin and Smith— all being in the South West quarter of section thirty-one, Township Thirty-nines North Range nine, East of the third principal Meridian, all of which is contrary to equity and good conscience— And the said Judge having under his hand endorsed upon said bill, an order that a writ of injunction issue out of said Court, according to the prayer of said bill—

Now therefore, we do hereby strictly enjoin and command you, the said William Williams, your agents, servants and employees, and each and every of you, that you do absolutely and entirely desist and refrain from cutting and removing trees, timber, and wood, from said lands, or any part thereof, and from conveying, mortgaging, or otherwise encumbering said lands, or any part thereof— until this Honorable Court in Chancery sitting, shall make ^{other} order to the contrary— Hereof fail not, under the penalty of what the law directs



Witness, Louis D. Hoard, Clerk of said Circuit Court, and the Seal thereof, at Chicago, in said County, this 20th day of February, 1856.

L. D. Hoard, Clerk—

To the Sheriff of Dupage County, to execute

And afterwards to wit, on the 22nd day of February, 1856. Said writ was returned into the Court aforesaid, endowed as follows, to wit—

I have served the within writ, by reading to the within named William Williams, and delivering a true copy of the same, to said Williams— February 22nd 1856. at ten o'clock; C. M. fees— Service, 50— Copy 50— 6 miles, 30— Return, 10— 1.40— A. C. Graves, Sheriff of Dupage County— Illinois—

And afterwards to wit, on the 14th day of March, in the year last aforesaid, the said defendant, by his said Solicitor, filed in said Court, his answer to the said Complainant's Supplemental bill, which is in the words and figures following, to wit—

State of Illinois

Cook Circuit Court,

In Chancery—

The answer of William Williams, to the Supplemental bill of Complaint, of Julius M. Warren, Warren Smith, and Reuben Austin, Complainants— filed herein—

This defendant, saving and reserving unto himself, all benefit of exception to all manner of imperfections and insufficiencies, of the said Bill, and protesting that he is not required to answer the same, He answering, says—

True it is that there were existing some disputes between the said parties, as to where their respective

claim lines were—

And true it is that for the purpose of settling and determining where the same were, this Respondent, together with the said complainants, entered into an agreement to arbitrate the said disputes, and executed writings, as set forth in said Bill substantially—

Respondent also admits that the said persons named in said writing or submission, met together as your Respondent supposed at the time, for the purpose of settling and determining said disputes, and that said meeting took place on said 19th day of September, 1844. and this Respondent admits that most, if not all the parties, were present, except the said Julius M. Warren— But this Respondent denies that the said Arbitrators took upon themselves, the burthen of making any award in pursuance of the agreement of submission— He however admits, that the said arbitrators, just at evening of said day, signed certain writings, and then, without delivering a copy thereof, to either of the parties, determined to go home, and then make copies, to be delivered to the said parties, at some future day—

Respondent admits that the said arbitrators, after starting for their homes, (it may have been) let this Respondent take the said paper or papers, which they had drawn up as aforesaid—

This Respondent denies that he had any disposition to keep said paper, or to prevent the said

arbitrator, from having it again, and states that he merely took it to Mr. Hosmer, an Attorney, and left it with him, to be copied, and that Mr. Hosmer did copy the same, which copy this Respondent returned to said arbitrator, and the same is correctly set out in said Bill, as respondent believes—

And Respondent further avers that the said copy is a true copy of the said Originals so given him by the said Arbitrator, as aforesaid, and not in any manner different—

And this Respondent further avers that at the time the said Arbitrator let this Respondent have the said paper, it was past five o'clock P. M. of the 19th day of September, A. D. 1844. and that no offer had been made to either of said parties, of copies of said award, prior thereto, nor was the same ready to be delivered, prior thereto, nor then—

This Respondent denies that the description of the Lands in said paper mentioned, to be conveyed to the parties, complainants, ^{is as} in said bill, stated, and denies that the said Complainants had any real original claim Lines in accordance with the lines mentioned and set forth in said Bill— And denies that in the award of said arbitrator, they said anything about conveying 22 $\frac{1}{2}$ acres, to "J. M. Warren"

This respondent, further answering, denies that the said complainants have been willing or anxious to perform the said award, but on the contrary, avers that

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they said Warren Smith, sometime subsequent to the said pretended arbitration, sold and conveyed away the said piece of said Land on the Prairie, mentioned in said award, and which was to have been conveyed to this respondent, and that afterwards, the said Complainant, Julius M. Warren, purchased the same, and took possession thereof, and has had the use of the same ever since, and that the said Warren brought suits, by action of Trespass, against your Respondent, to recover for the value of certain Rails, which the Respondent had, before then, put upon said Land, and had removed therefrom, and for other Trespases, which the said Warren, in said suit, alleged had been committed upon the said Land, by this Respondent, and his Servants—That in said suit, the said Warren claimed to be the owner of said piece of Prairie Land, and proved title to the same, and the said Warren prosecuted said suit, to a recovery, and had Judgment for the said trespasses against this Respondent, and this Respondent paid and satisfied the same.

This Respondent further answering, admits the filing of the original Bill of Complaint herein, and that the same is now pending in this Honorable Court—And admits that he has, by himself, and servants, from time to time, taken timber from the Lands described in said Bill, as he wanted the same for use—as he had a perfect right to do, as he

is advised and verily believes - But denies that he has
77 taken timber, to the amount mentioned and charged
in said Bill -

This Respondent, having as he is advised, sufficiently
answered the said Bill, prays to be hence dismissed,
with his costs and charges, in this behalf, most wrong-
fully sustained -

Farnsworth & Burgess -
Defts Solicitors -

William Williams

And afterwards, to wit, at the March Term of said
Court, to wit, March 24. A. D. 1856. the following proceed-
ings, among others, were had & entered of Record therein, to wit
Julius M. Warren, Warren
Smith, & Reuben Austin,)

35.

vs
William Williams)

Chancery -

This day come the said Com-
plainants, by their Solicitors, and enter herein their motion
for leave to amend their bill of complaint, filed in
this cause -

And afterwards, to wit, on the 26th day of March,
in the year last aforesaid, there was ^{filed} ~~presented~~ in said
Court, to be read on the hearing of said cause, certain
Depositions, which, with the exhibits thereto attached,
are in the words and figures following, to wit -

The Depositions of James Brown and David McKee,
witnesses of lawful age, produced, sworn and examined,
by and before me, Louis D. Hoard, Clerk of the Circuit Court

of the County of Cook, in the State of Illinois, at my office in Chicago, in said County, on Wednesday the 30th day of January, A. D. 1856. by agreement of parties, said depositions to be used and read in evidence, on the hearing of a certain cause now pending, and undetermined in said Circuit Court, on the Chancery side thereof, wherein Julius M. Warren, Warren Smith, and Reuben Austin, are complainants, and William Williams, on the part of the said complainants—

Present—Julius M. Warren, one the Complainants,
& Grant Goodrich Esq. Sol. for Complainants,
& Messrs. Hainsworth & Burgess, for Defendants—

The said James Brown, being, by me, first duly sworn, in answer to the interrogatories propounded to him, testified and deposed as follows—

Interrogatory first—Did you know the Complainants, in 1844. and the Defendant, and prior to that time?

Answer— I did—

Int. 2nd Were you acquainted with the South west quarter of section thirty-one, township thirty-nine, north of Range Nine East of the third principal Meridian, and were you acquainted with the claim lines of different persons claiming the same— If you know, also state who preempted same, if so declare—

Answer— I am well acquainted with said land, I have lived on the same section for over twenty 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 preempted said quarter, I was with
 him, when he did it—

Int 3— State the names of the persons, claiming por-
 tions of said quarter, before and after the preemption—

Answer— Reuben Austin claimed part of it, Joseph
 Wilson and Warren Smith, Julius Waver, and Carpen-
 ter claimed part of it— Phineas Graves also claimed part
 of it, and William Williams claimed—

Int 4— State whether any such claims were designa-
 ted by lines, or otherwise,

Answer— Yes sir, by claim lines—

Int 5— Look upon the paper now shewn you, mark-
 ed Exhibit 1— and state who executed the same, and
 whose names are subscribed, thereto, as arbitrators, if you
 know—

Answer— It was executed by William J. Williams,
 William Williams, and Henry Williams, The names of
 James Brown, David M. Kee and Timothy D. Woodward,
 are signed as arbitrators

Int. 6th— State whether or not, there was any, and if so,
 what arrangement between the parties, therein named,
 that Joseph Wilson should, or should not, withdraw
 from such submission—

Answer— There was an arrangement— Wilson said
 that he would withdraw, and have nothing to do with
 it, and give it up to Warren Smith, his partner—

Int. 7. State whether such arrangement was or was not

assented to by all parties, and whether the other parties and arbitrators, should or not, go on, under such understanding and agreement—

Answer— It was assented to by all the parties, and the other parties and arbitrators, were to go on, under such understanding and agreement—

Int. 8th State, if any meeting, to investigate the matters, so submitted and agreed upon, was had by said arbitrators, and who, of the said parties were present, if any

Answer— There was such meeting had by the arbitrators— William Williams was present— Mr. Austin was present— Mr. Smith was present— Am not positive whether Warren was present, or not—

Int. 9th State whether any determination was made by said arbitrators, as to the claims of said complainants in and upon said quarter section, and also to the S. W. quarter of section thirty-five, same town and range— and if so, when the same was made ready to be delivered, and whether the same was in writing—

Answer— A determination was made by said arbitrators, as to the Complainant's claim to said quarter section, and also to the S. W. quarter of section 35. same town and range— It was made ready to be delivered in 1844. I think in September, it was in writing—

Int 10th State if you remember, whether the same was or not, made ready to be delivered, within the time prescribed in the submission—

Answer— 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 party, but never did—

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

Answer— We started for home, got about a mile, or mile and a quarter, 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 the 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 me, that night, or next morning, at my house—

Int. 12— Did he return the award, as promised, and if not, why not?

Answer— He did not— I can't tell why—

Int 13— State whether any demand was made of him for it, and if so, by whom?

Answer— I called for it, myself—

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

Answer— He said he hadn't got it— He said he had taken it down to Naperville, I think to Allen's office,

to have a copy made, and had not got it back yet, but would get it right away, and give it to me. I called again for it, and he said he hadn't 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 got the original -

Int 15 - Was what he gave you, according to your recollection, a true copy? And what has become of such pretended copy, state if you know -

Answer - What he gave me was not a true copy, I know it was not - I gave the pretended copy to Mr. Warren -

Int 16 - Look upon Exhibits 2 & 3 - and state, whether to the best of your knowledge, they are the papers, so delivered to you as the copy -

Answer - It was my impression, there was but one paper, but this is the purport of the copy delivered to me, by Williams - It is a good while ago, and I am not positive, whether there were one or two papers -

Int 17 - In what respects, according to your recollection did said copy, and does said Exhibits differ from the original -

Answer - That copy says Williams was to deed twenty two and a half acres of timber, on section 31. but don't say who to - The original said it was to be deeded to Julius Warren - The original went on to state that Mr. Williams should deed to Reuben Austin, Warren Smith, up to their original claim line on the S. W 1/4 of

section 31 - then he was to deed to Julius Warren, 22 1/2 acres off the East side of East half of said quarter, 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 Williams claim - they were to pay ten shillings per acre, both ways, with twelve per cent interest, till the deeds were made -

Int 18th Can you recollect, whether, in the original, any courses or distances were given, in describing the lands, as designating the land claimed, and to be deeded by each party?

Answer - I would not be positive about that, would not say whether there were, or not - It is my impression there were not -

Int 19th - 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 any thing -

Answer - 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 piece 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 -

Int 20th Will you state the boundaries of the claims of the complainants, in this suit, as near as you can, of the land claimed and awarded, as aforesaid to

Said Complainants severally, in said quarter of ^{said} section thirty one - Look upon the Skeleton map, of said township thirty nine, now shewn you, marked no 4. and say how the lines indicated in said quarter of said section, compare with such claim lines -

Answer - The boundaries of Austin's claims are as follows - It is on the S. W. $\frac{1}{4}$ of section 31. commencing on the quarter section line, at the S. E. corner, of S. W. $\frac{1}{4}$ of said sec. 31. thence North, 76 rods, thence West, four rods, and fifteen links, thence South, I don't know the exact course, to strike the south line of the section, seventy six rods, thence East thirteen rods, to place of beginning - That comprehends Austin's claims on that quarter section - Smith's claim is bounded as follows - Commencing thirteen rods West of S. E. corner of said quarter section, thence West to the West line of said section, thence North, fifty-two rods, to the South line of the section -

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 twenty-two and a half acres, off the East side of the South West quarter, exclusive of Austin and Smith's claim - I have looked on the Skeleton map, and the lines thereon, compare with the claim lines -

Int. 21 - Look upon said Skeleton Maps and say how the lines in section thirty one, compare with the claim lines of said Williams, on said section, and a

* Thence East-parallel with the South line, on claim line, to strike Austin's west line, thence South fifty-two rods,

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awarded to said Williams, and say whether said land is prairie or timber—

Answer— I think they compare right according to my idea, and it is prairie, it is a good piece, and went to a point at one end—

Int 22nd Look upon the Exhibits marked ^{Nos} 5, 6 and 7. and say, whether any, one, or all, were presented to said defendant, and if so, at what time, and 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—

Answer— Number seven was presented to Williams, by his paying what the arbitrator said, in the award he should, the other Nos 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 of money 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 cant recollect, but he turned and walked off, and I didnt take either—

Int. 23— What, if any thing, do you know, about the tender or payment, by said Complainant Austin, of the amount of money, as directed by said award, to said Williams, or any person for him, for the land so awarded, to said Austin—

Answer— We came in and preempted (Mr. Williams and myself) land on section 31. Reuben Austin paid to Wm J. Williams, previous to the preemption, the money for the land that was subsequently awarded to Austin—

Int 24th Who transacted William Williams' business, and acted for him in this and other transactions, and was he a son of the defendant—

Answer— At that time, and until William died, he was always a sort of freeman in the business— he was a son of the defendant—

Int 25— Was the 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—

Answer— He was in the city at the time— We all stopped at the same house, but whether he present right by us, I cant say— Well I guess he did know it, because Mr. Williams and I have talked of it since—

Int 26— Was there any arrangement or agreement between those claiming lands in said township, prior to the land sale, as to the settlers deeding and redeeding to each other lands, which they might preempt or purchase, according to their claim lines, and was the defendant, a party to, and did he enter in to such arrangement, if so, state the same fully, and how it was carried out by others towards him, and state further whether such

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agreement to arbitrate, grew out of such arrangement of the settlers, or not—

Answer— There was such an arrangement, the defendant was a party to, and I think he did enter in to it— The arrangement was this, ~~we~~, the settlers, held a meeting, and appointed John Warn, to keep a book of records of each individuals claim, the agreement was, we each gave to Warn, a description of our claims, and bound ourselves to deed and redeed according to our claim lines, and not regard the government lines— Jesse Graves deeded to Williams, or his son, some land in the big woods, that one of the Williams' 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— The defendants solicitors objected to all, and every one of the complainants interrogatories, at the time of their being put—

Cross-Examination by Defendant—

Interrog 1— Was the award you have spoken of, as made by you, on two pieces, or one piece of paper?

Answer— I think on one—

Int 2— Did you sign two awards?

Answer— We did not—

Int 3— Did you sign your name in two different places, to the award?

Answer— No, sir—

It is admitted here by Complainants Solicitor, that Exhibits 2 and 3. are in the hand-writing of C. B. Homer.
 Int 4— Was there not a contest between the parties to this suit, and other claimants, of portions of the S. W. 1/4 Section 31. as to where their claim lines were, at the time of the award?²

Answer— There was some difficulty and trouble about it.

Int 5— In your answer to the 17th direct interrogatory, did you state all the difference existing, according to your best recollection, between the copy of the award, shown you, and the original—

Answer— According to the best of my recollection, I did.

Int 6. How long before the making of the award, were the government surveys made, of the land in dispute

Answer— I cannot tell exactly, I think some two or three years—

Int 7. How long before the award, did Williams preempt it—

Answer— I think he preempted it the winter before, that is my best impression—

Int 8— How soon after the making of the award, were surveys made of that quarter section, and by whom?²

Answer— It is my impression now, that so far as Austin and Smith was concerned, it was done previous, by Enos Coleman, and that they had survey bills present, at the arbitration, but Warren's was not, it was then undecided, it was surveyed, and the deed was made within a very few days, after the award was made—

89. Int 9th If you had the survey bills of Austin and Smith's claims, at the time you made the award, why did you not describe their pieces by metes and bounds, as surveyed?

Answer— The reason was this— I am no scholar— Mr. Mc Kee 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—

Int 10— Were there not various other claim lines marked upon that quarter section—

Answer— Phineas Graves claimed some portion of it, and had hacked round it, and cut timber of it, and with that exception, I know of no other, of my certain knowledge, except Austin's and Smith's, there may have been others, but I can't say—

Int 11— Did Warren have any claim line, marked up on that quarter section?

Answer— Of my own knowledge, I don't know, only know from what others told me, and it was done before I came into the country— That was a claim made of some 3 Eightys—

Int 12— Was there any claim line marked around the twenty-two and a half acres—

Answer— Not to my knowledge—

Int 13— Were you present at any time when these tracts of the quarter section were surveyed, and if so, when, and by whom?

Answer— I was, when they were surveyed by Enos Ed-
man, it was previous to the sale, but after governments
surveys were made, Austin's and Smith's were surveyed
at that time—

Int. 14— Was the defendant present at the survey—

Answer— I don't recollect that he was—

Int. 15— Had the piece on the prairie, been surveyed
at the time of the award—

Answer— It had, there was a survey bill of it at the
arbitration— It is my impression that Campbell
surveyed it—

Int. 16— Was you a witness on the trial of a case in the
Kane Circuit Court, where Julius M. Warren was plain-
tiff, and William Williams, and others, defendants,
in reference to the removal of rails, by the defendant
from a piece of land claimed by Warren— if so, state
when that case was tried—

Answer— I think I was— It was last season some
time— I can't tell exactly— It might have been in 1874—

Int. 17— What piece of land was that, upon which
Warren alleged, in that suit, that Williams had tres-
passed—

Answer— It was the gore piece on the prairie, the
same that we awarded to Williams—

Int. 18— Who occupies, and claims to own, that piece
of land now—

Answer— Julius M. Warren—

Int. 19— How long has he occupied, and claimed to

91. own it—

Answer— A number of years— can't tell how long—
Int 20— Who drew up the award which you signed—

Answer— Timothy D. Woodard—

Int 21— Who drew this Skeleton map, which has been shown you, and the dotted lines thereon, and when did you first see it?

Answer— I don't know about the Skeleton map—the dotted lines on same, were made this morning— Mr. Goodrich made the marks— I told him how it was— Reuben Austin, Mc Kee and myself claimed it yesterday—

Int 22— By what was you governed in making this measurement?

Answer— By the stakes and corners, and witness trees—

Int 23— Who set those stakes?

Answer— The Government surveyors— we started from government survey, and chained from them, to the claim lines of Smith and Austin, on that quarter section, to ascertain how much of their claims, was on that quarter—

Objection— The Complainants Solicitor objected to all the questions of defendant, at the time they were put—

Direct resumed—

Int 27— Was there any difficulty in relation to complainants claim lines, between complainants and Williams, until after Williams obtained his pre-emption, to your knowledge—

Answer— I never knew of any—

Int 28— At the time when the submission was made, was Warren in the City, and with witnesses, for any purpose, and if so, what?

Answer— He was, to try to break up the prescription—

Int 29— What induced him, and the other complainants, to withdraw their objections and efforts to break up said prescription, state if you know—

Answer— I persuaded all the parties to go home, and arbitrate it—

Int 30— State, if you know, whether at the time of the arbitration, Graves had abandoned his claim, or not—

Answer— He had, previously—

Int 31— Who assisted Williams to maintain his claim, to said land, if anyone, and what was done for that purpose—

Answer— I think there was two houses burnt, down in the woods, and Warren went in with hands, a good many times, and assisted Williams, and Warren and Williams both got timber, and hauled timber off the claim, it was understood by the neighbors, that they had the claim together, I understood there was 3 eighty's, in there, which they claimed amongst them

Witness here desires to correct his answer to the 20th direct Interrogatory, so far as it relates to the boundaries of Austin's claim, and states— "that instead length being seventy-six rods, it should be eighty-four rods—"

Cross examination resumed—

Int 24 In your answer to the 23rd direct Interrogatory, you say that Mr. Williams talked with you, about Austin having paid his son, money, as therein testified about, since that time. In those conversations, did not Mr. Williams say that he had not received the money, but had refused to receive it—

Answer— He did not— He said he calculated to deed and re-deed to everybody, and that he calculated to deed to Austin, don't know that I ever heard him say that he received the money from his son— The old gentleman and his son William, and myself, were present

Subscribed and sworn to before J. Brown—
me, this 30th January, 1856.

L. D. Ward, Clerk—

The defendant objects to all the questions put to witness, at the time—

And complainant doth the like—

The said David Mc. Kee, being by me, first duly sworn, in answer to the interrogatories, testified and deposed as follows—

It is agreed hereupon, by the parties, that the depositions of the said David Mc. Kee, may be written down by Julius G. Lombard—

Interrogatory 1st— Are you acquainted with the parties to this suit? and did you know them in 1844. and previous thereto?

Answer— I knew them in 1844. and previous thereto—

Int. 2 - Were you chosen, and did you act with James Brown, and J. D. Woodard in 1844, as an arbitrator in differences between the parties to this suit, in relation to their several claims to land, in section 31. Town 39. North of Range 9 East, and if so, state whether you made, and signed an award, and what became of the same -
 Answer - Yes sir, I did act as such arbitrator - I, with Mr. Woodard and Mr. Brown, were chosen arbitrators, and made an award to the parties - The day that the Bond called for, we did it, on our way home, Mr. Williams came after us, and wanted the award, to take a copy - We told Mr. Williams, we would give him a copy of it - if he would go home with us - He insisted he must have a copy that night - We told him we couldn't give it up, for it was not right to let him, or any one else have it - Mr. Williams 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 - I will risk his honor, and gave it to him - The award was not returned in the morning - I called for it, I think the next day, I think he said he had not done with it - After the lapse of ~~time~~^{three}, or four days, I called again for it, and he said he had given or sent it to Mr. Brown -

Int. 3. If there was any reason why you did not make out a copy of said award, before you left your place of meeting, state it, and also state whether it was read to the parties after it was made -

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Answer— The reason we did not make out a copy, of the award, was because Mr. Woodard did all the routing, and we thought we would take it home with us, make copies of it so as to give each of the parties, a copy, and keep the original, ourselves—

It was read in the presence of all the parties, excepting Julius M. Wannen, who I think, was not present.

Int. 4— Will you state, as near as you can recollect, the contents and purport of said award—

Answer— We awarded Austin, his claim— Also Smith, his claims, bounded by their claim lines, ^{awarded} also Julius M. Wannen, twenty-two acres and a half, to be taken off the East side of the East eighty of the South West quarter, running up to join Austin and Smith's claim, we went on to award Mr. William Williams, his land up to his original claim line on the prairie—

Int 5— Had you any surveys or plats before you, of the different pieces, or any, and which of them?

Answer— We had plats of all pieces of land that we had anything to do with, whether the plats were according to survey, or not, I can't say—

Int 6— Will you describe the boundaries of that part of said Section 31, so awarded to Reuben Austin, as near as you can recollect, and contained within his claim lines—

Answer— His land begins on the South East corner of the South West quarter of section 31. then run West thirteen Rods, then North, Eighty-four Rods, &

think, thence East four Rods, thence South, to the place of beginning—

Int 7. State whether the East line of said claim so awarded runs on the quarter section line, south to the place of beginning, or off from it—

Answer— We did run on that line—

Int 8. Please describe as near as you can, the boundaries of the claim of said Warren Smith, as awarded by you, to him—

Answer— The claim belonging to Warren Smith commences thirteen Rods west of the quarter section stake, then runs with the section line West to the section line, then North parallel with Austin's line, fifty-two rods— only run two lines on this piece supposing it to be as wide at the west end, as it was at the East—

Int 9. Are you sure the line from the South west Corner of the section, run North parallel with Austin's line, or that it did not run North, on the West line of the section— state which—

Answer— It run on the section line, but the distance I cannot say exactly— we suppose it to be about fifty-two rods—

Int 10. State whether or not, the said award, was signed by all the arbiters, and whether in one, or two places—

Answer— It was signed by all the arbiters, in two places— It was all on one piece of paper, one award to

97 Williams, one to Smith, Warren and Austin—

Int 11— Who, so far as you know, made the first claim on said quarter section?

Answer— Mr. Williams told me that Julius Warren, and somebody else, made that claim in the first place— I have seen Warren and Carpenter drawing timber from off there—

Int 12— Have you ever seen said award, since you gave it to Williams?

Answer— No sir, I have not—

Int 13— Do you know anything about the payment of any money, by Austin, to Williams? for the land which was awarded to be conveyed by Williams to Austin?

Answer— Yes, I know something— very little, though— After this award was kept back, heard nothing from the defendant—

Int 14— What, if anything, was awarded by you, in regard to the payment of the land, to be deeded by Williams to Warren, Smith and Austin, and what, in regard to the land to be deeded to Williams—

Answer— It was to be paid at ten shillings per acre, and twelve per cent, from the time the land was entered, until the deeds were made out, ^{also} Williams was to pay them ten shillings per acre, and twelve per cent interest—

Int 15— Have you seen and heard read today, in the Examination of James Brown, what purported to be a copy of said award? If so, state whether the same is

a copy of the original award, as made out, and signed by you, or not?

Answer— I have heard it read, and it is not a copy of the original—

Int 16— In the original, was, or not, the name of Julius Warren, mentioned as the person, to whom the land off the East side of said South West quarter of Sec 31 was awarded—

Answer— Yes it was, and it was mentioned three or four times, in the award, to the best of my knowledge—

Int 17— State whether the West line of Austin's claim, runs North, or North Easterly—

Answer— It runs North— Easterly—

David Mc. Kee—

Both parties take exceptions to the Interrogatories and answers—

Cross Examination—

Int 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 Hornes, designing that Mr. Woodward should make copies of the award, for the parties that night, are not these all the facts attending the making of the award, before you let Williams have it?

Answer— Yes sir, they are all the facts—

Int 2— Did not your award contain directions to have surveys of the land, made, by which the parties

were to deed.^o

Answer— Yes sir, ~~they were in the award~~

Direct resumed—

Int 18— Were there not surveys or plats made by Mr. Coleman, or some one else there at the time of the arbitration?^o

Answer— Plats were made as for their being accurate surveys, I could not tell—

Int 19— Are you sure there was any direction in the award, that the land should be surveyed?^o

Answer— Cannot say whether there was, or not—

Int 20— How came you to say in answer to the 2nd Cross Interrogatory, that there were such directions in the award?^o

Answer— I was hasty, and didn't think, and didn't understand it—

Cross Ex. Resumed—

Int 3— Did you at the time of the award, know exactly the number of acres in each piece, and did you know exactly where the Lines on each side of the several pieces, ran 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?^o

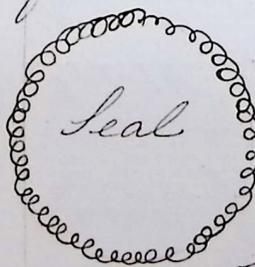
Answer— We knew how many acres were awarded to Mr. Warren, and I think the other was awarded by the claim lines— Do not know that I knew the exact number of acres— might have known, but

do not, now—

David McKee

State of Illinois }
Cook County }*ss.*

I, Louis D. Hoard, Clerk of the Circuit Court of the County of Cook, in the State of Illinois, do hereby certify, that previous to the commencement of the Examination of the said witnesses, they were duly sworn by me, to testify the truth in relation to the matters in controversy, between the said Julius M. Warren, Warren Smith, and Reuben Austin, complainants, and William Williams, defendant, so far as they should be interrogated, concerning the same, that the said depositions were taken by me, at my office, in Chicago, by consent of parties, on the 30th day of January, A. D. 1856. and that after the same were taken, the interrogatories and answers thereto, as written by myself, and the said Julius G. Lombard, as aforesaid, were read over to said witnesses, and they thereupon signed the same, at the place, and on the day and year aforesaid— And I do further certify that the annexed papers, marked Exhibits 1. 2. 3. 4. 5. 6. and 7. are all the papers produced on said Examination and referred to in said depositions, as such Exhibits—



Seal

In testimony whereof, I have hereunto set my hand, and affixed the seal of said Court, at Chicago, in said county, this 1st day of February, A. D. 1856. L. D. Hoard,
Clerk

Fees for taking this Deposition \$7.50

Know all men by these presents, that I, William Williams, of the County of Dupage and State of Illinois, am held and firmly bound unto Julius M. 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~~ the United States, to be paid to the said Warren, Smith, Wilson and Austin, their executors, administrators or assigns, for which payments, to be well and truly made, I do bind myself, my heirs, Executors and administrators, firmly by these presents, ^{sealed with my seal,} Dated this seventeenth day of September, in the year of our Lord one thousand, eight hundred and forty-four.

The condition of this obligation is such, that if the above bounden Williams, his heirs, executors, or administrators, on his, and their parts, 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 Mc. Kee, and Timothy D. 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, judge and determine of, and concerning, all, and all manner of actions, cause, and causes of action, quarrels, controversies, damages, and claims 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, sit-
 uate, lying and being in the County of Dupage and
 state of Illinois, and known and described as being
 the South West quarter of Section numbered Thirty
 one, (31) in Township Numbered Thirty nine (39)
 North of Range numbered nine (9) East of the third
 principal meridian, and which is the same prop-
 erty, to which the said Williams had proved up a pre-
 emption right, and which said preemption is con-
 tested - 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 par-
 ties, as to claim lines, whether the said claims have
 become the deeded property of any of the parties here-
 to, or not - So as the said award be made in writing
 under the hands of the said Brown, Mc Kee and
 Woodward, or any two of them, and ready to be deliver-
 ed 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, otherwise
 to remain in full force and effect.

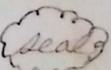
And the said Williams further covenants to

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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 said Warren, Wilson, Smith and Austin, from said Williams, upon his making such failure, refusal or neglect to perform said award as aforesaid—

Exhibit 1

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 presumption shall be set aside, and any member of his family, or any person for him, or claiming under him, or in his right, or by his suggestion or direction, shall obtain the 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—and to such persons as shall be directed in said award—

Wm Williams 


Henry S. Williams 
 as security
 Wm. J. Williams 
 as security 

I do hereby agree to accept the submission, mentioned in this Bond, and to make an award in the premises, according to the terms of such submission.
 Sept. 17th, 1844

J. Brown

David Mc. Kee

Timothy D. Woodward

The award of arbitrators in suit pending between J. Warren, W. Smith and R. Austin, of one part, and William 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 receipt of his deed, which shall be within sixty days, a good 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—

The decision of the Arbitrators is as follows— the said Williams shall deed twenty-two and a half

105 acres off from the East side of the East eighty of fractional quarter that Williams preempted in the big wood—furthermore, it is decided that each party shall pay what cost they have caused to be made

(Signed) Timothy D. Woodward

J. Brown

David Mc Kee.

The decision of the arbitrator in the suit now pending, between J. Warren, Warren Smith, B. Austin, is as follows—the said Warren Smith shall deed up to the original claim line, on the prairie, which said Smith preempted, 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 he, Williams, received his deed—which shall be within sixty days, a good warranty deed—each party shall be at the expense of surveying, and the deeds—furthermore, it is decided, that each party shall pay what costs they have made—

Timothy D. Woodward

(Signed)

J. Brown

David Mc Kee

Exhibit 3—

Exhibit 3.

(Exhibit 4)

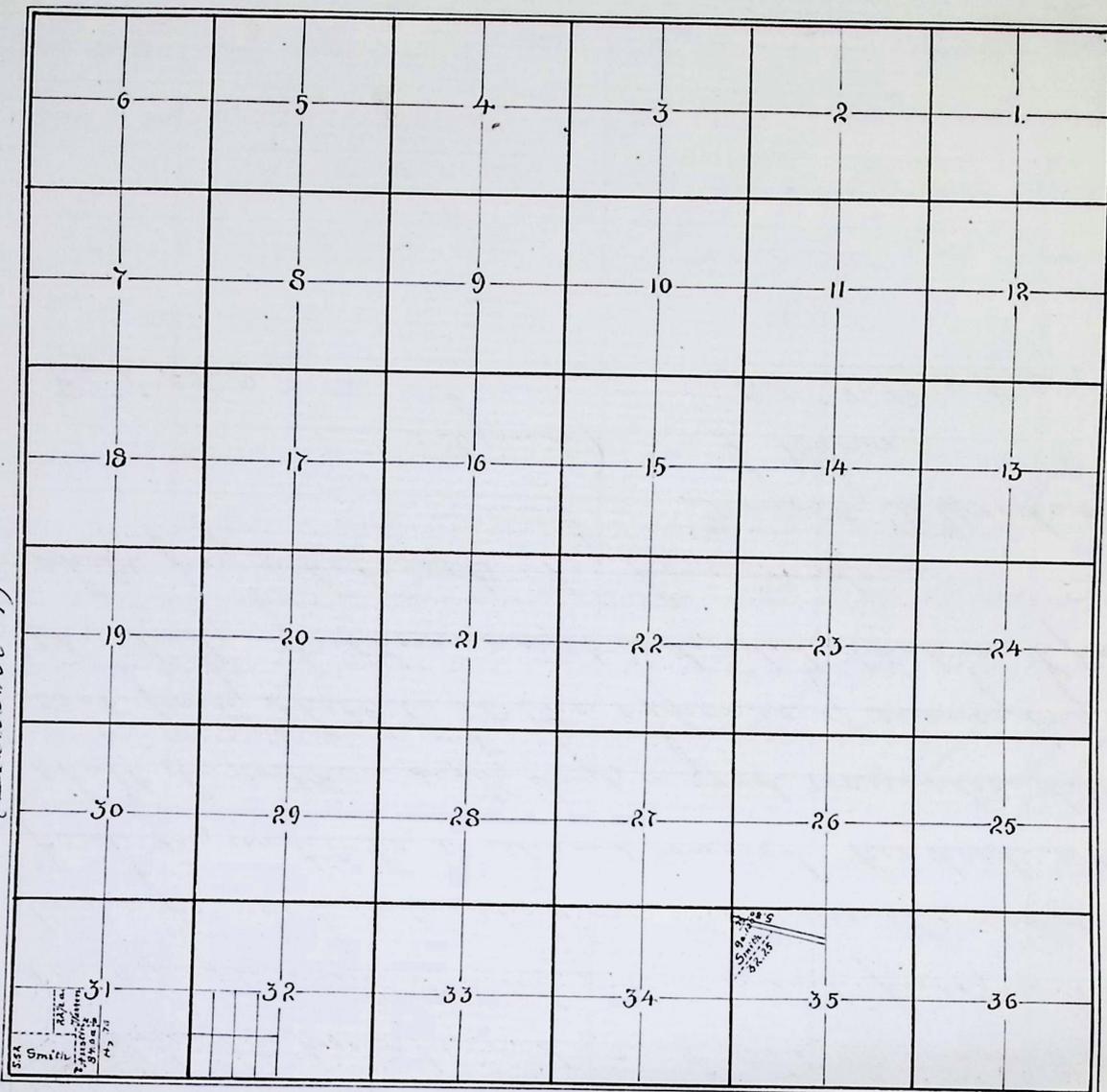


Exhibit B-

This Indenture, made this Sixth day of November, in the year of our Lord, One thousand, eight hundred, and forty-four, between William Williams (seⁱⁿ) and his wife, of Dupage County, in the State of Illinois, the party of the first part, and Warren Smith, of the aforesaid County and State, the party of the second part - Witnesseth, that the said party of the first part, for, and in consideration of the sum of

to them 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) have 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 the following described lot, piece or parcel of land, to wit - Being and Lying in the aforementioned County and State, and known and being a part of the South West quarter of Section Thirty-one, in Township Thirty nine, North Range Nine, East of the third principal Meridian - and bounded as follows, to wit - Beginning at the South West corner of the aforesaid quarter section, and running from thence East on the Township line, Thirty-three chains, and fifty links, to a stake on the West boundary

of Reuben Austin's timber lot, thence North ten chains, and seventy links, to the North boundary of the original claim of Smith and Wilson - Thence West, seventy minutes, North, thirty three chains, and seventy links to the Township line - thence South eleven chains, to the place of beginning - Containing thirty six acres, and $\frac{4}{100}$, more or less -

Together with all and singular, the hereditaments and appurtenances thereto belonging, or in anywise appertaining - and the reversions and reversioners, 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, his heirs and assigns forever - And the said party of the first part, for themselves, their heirs, executors and administrators, do covenant, grant, bargain and agree, to and with the said party of the second part, his heirs and assigns, that at the time of the enrolling and delivery of these presents, They are 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 have good right, full power, and lawful authority, to grant,

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bargain, sell and convey the same, in manner and form ~~as~~ 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, his heirs and assigns, against all, and every person or persons lawfully claiming, or to claim, the whole or any part thereof, the said party of the first part, 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, sealed and delivered

In presence of

State of Illinois)

County } sp.

I,

in

and for the said County, in the State aforesaid,
Do hereby certify, that personally
ly known to me, as the same person whose name
subscribed to the above appear
ed before me, this day, in person, and acknowledged
that he signed, sealed and delivered the said in-
strument of writing, as free and voluntary act, and
for the uses and purposes therein set forth -

And the said _____ wife of the
 said _____ having been by me exam-
 ined, separate and apart, and out of the hearing of
 her husband, and the contents and meaning of the
 said instrument of writing, having been by me full-
 ly made known, and explained to her, she acknowl-
 edged that she had freely and voluntarily execu-
 ted the same, and relinquished her dower, to the lands
 and tenements therein mentioned, without compul-
 sion of her said husband, and that she does not
 wish to retract the same

Given under my hand and seal, this
 day of _____ A. D. 184

Exhibit C.

This Indenture, made this _____ day of November,
 in the year of our Lord, one thousand, eight hundred,
 and forty four, Between William Williams, and
 _____ his wife, of the County of Dupage, and
 State of Illinois, of the first part, and Julius M. Wanner,
 of the county and state aforesaid, of the second part -
 Witnesseth, That the said parties of the first part, for
 and in consideration of the sum of _____
 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 dis-
 charged therefrom) have granted, bargained, sold, remis-
 ed, released, aliened and confirmed, and by these presents

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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 the following described lot, piece or parcel of land, to wit—commencing at the North East corner of the South west quarter of Section thirty-one, Township thirty-nine, North Range nine east of the third principal meridian—and running from thence South, eighteen chains, forty-one links—thence North, eighty-one Degrees West one chain and twenty links, thence South, eighteen and a half degrees west eight chains and four links, thence South eleven Degrees East, Two chains and fifty links, thence North eighty-eight degrees, and forty minutes west five chains and seventy links, thence North, Twenty seven chains and eighty links, to the North line of said quarter section, thence North eighty-eight degrees east, eight chains, and ninety-six links to the place of beginning—containing Twenty-two and a half acres of land—

Together with all and singular, the hereditaments and appurtenances thereunto belonging, or in any wise 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 parties 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, his heirs and assigns forever— And the said parties of the first part, for themselves, their heirs, executors and administrators, do covenant, grant, bargain and agree, to and with the said party of the second part, his heirs and assigns, that at the time of the enrolling and delivery of these presents, they were 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 had 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, his heirs and assigns, against all and every person or persons lawfully claiming, or to claim, the whole or any part thereof, the said parties of the first part, shall and will warrant, and forever defend—

In witness whereof, The said parties of the first part, hereunto set their hands and seals, the day and year first above written—

Sealed, Signed and Delivered

In presence of—

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State of Illinois }
 County } ss.

I,

in and for the said county, in the State aforesaid,
 Do hereby certify, that personally
 known to me as the same person, whose name sub-
 scribed to the above appeared before
 me, this day in person, and acknowledged that he sign-
 ed, sealed and delivered the said instrument of writ-
 ing, as free and voluntary act, and for the uses and
 purposes therein set forth—

And the said wife of the said
 having been by me examined sep-
 arate and apart, and out of the hearing of her husband,
 and the contents and meaning of the said instrument
 of writing having been by me fully made known, and
 explained to her, she acknowledged that she had free-
 ly and voluntarily executed the same, and relinquish-
 ed her dower to the lands and tenements therein men-
 tioned, without compulsion of her said husband, and
 that she does not wish to retract the same—

Given under my hand and seal, this
 day of A. D. 184

Exhibit }—

This Indenture, made the sixth day of March, in
 the year one thousand, eight hundred and forty-nine, be-
 tween Warren Smith and Harriet, his wife, of the County of
 Dupage, and State of Illinois, of the first part, and William

Williams, of the county and state aforesaid, of the second part, Witnesseth that the said party of the first part, in consideration of the sum of Twelve dollars, and fifty cents, to them duly paid, before the delivery hereof, hath granted, bargained and sold, and by these presents, doth grant, bargain, sell and convey to the said party of the second part, his heirs and assigns, forever, all the following described piece of land, to wit—commencing on the West line of section thirty-five (35) Township thirty-nine (39) North Range Nine East of the third principal Meridian Three chains, seventy-five links from the South West corner said section (35) and running thence North five degrees, ten minutes west on said section line, Thirty four chains, and sixteen and a half links, to the centre of highway—Thence along the centre of said highway, four degrees, fifteen minutes south of east five chains and eighty links, Thence South, five degrees, fifteen minutes west, Thirty-two chains and twenty-five links to the place of beginning containing nine acres, and seventy eight one hundredths of an acre—be the same more or less—

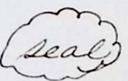
With the appurtenances, and all the estate title and interest of the said parties of the first part therein and the said party of the first part, does hereby covenant and agree with the said party of the second part, that at the time of the delivery hereof, the said parties of the first part, were the lawful owners of the premises above granted, and seized thereof in fee simple absolute, that they will warrant and defend the above granted premises,

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in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, forever, and that they are free from all incumbrances whatsoever—

In witness whereof, the said parties of the first part, have hereunto set their hands and seals, this day and year first above written—

Sealed and Delivered

Warren Smith 

In the presence of

Harriet Smith 

State of Illinois }
Dupage County } ss.

I, Geo. Waterman, a Justice of the Peace, in and for the said County, in the State aforesaid, do hereby certify, that Warren Smith, personally known to me as the same person whose name is subscribed to the foregoing instrument of writing, appeared before me this day in person, and acknowledged that he signed, sealed and delivered the said instrument of writing, as his free and voluntary act, for the uses and purposes therein set forth—

And the said Harriet Smith, wife of the said Warren Smith, having been by me examined separate and apart and out the hearing of her said husband, and the contents and meaning of the said instrument of writing having been by me, made known to her, she acknowledged that she had freely and voluntarily executed the same, and relinquished her dower to the lands and tenements therein mentioned, without compulsion of her said husband.

and that she does not wish to retract the same

Given under my hand and seal, this 24th day of March, A. D. 1849.

Geo. Waterman J. P. seal

And afterwards, to wit, at the same term of said Court, last aforesaid, to wit, April 2nd A. D. 1856. the following proceedings, among others, were had and entered of Record therein to wit—

Julius M. Warren, Warren

Smith & Reuben Austin

vs

William Williams

In Chancery—

This day again come the said parties, by their Solicitors, and the Court being now fully advised, on the motion of the said Complainants, heretofore entered in this cause, for leave to amend the amended bill filed herein, it is ordered that leave be granted in accordance with said motion—

And afterwards, to wit, on the 5th day of April, in the year last aforesaid, the said Complainants, by their Solicitor, filed in said Court, their certain Replication, which is in the words and figures following to wit—

Julius M. Warren et al

vs

William Williams

}
} Supplementary Bill—

}
} In the Circuit Court of
Cook County—

And the said Complainants, for replication to the answer of said Defendant, say that the allegations

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of said Supplementary Bill, are true, and that the
averments of said answer, are not true -

Julius M. Wanner

by J. Barker
Solicitor -

And afterwards to wit, on the 12th day of March,
A D 1858. there were filed in the Court aforesaid, in
said Cause, a certain award and Stipulation, which
are in the words and figures following to wit -

Sept. 19. 1844.

No 1 - The decision of arbitrators in suit pending between
J. Wanner, W. Smith, and R. Austin, of one part, and
William 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 dol-
lar and twenty-five cents, an acre, with twelve per cent
~~for~~ interest, from the time the land was paid for, up
to the time of received of his deed, which shall be within
sixty days, a warrantee deed -

No 2 - Also said William 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, gov-
ernment price, from the time the land was paid for,
at the office, with twelve per cent interest, until he re-
ceive his deed, which shall be within sixty days, a good
warrantee deed -

No 3 - The decision of the arbitrators is as follows - the
said Williams shall deed twenty-two and a half acres

of from the east side of the east eighty of fractional section quarter that Williams preemtioned in the big wood, furthermore it is decided that each party shall pay what cost they have caused to be made.

Timothy D. Woodward
J. Brown
David Mc. Kee

Sept 19 1844.

The decision of the arbitators, 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 preemtioned, and said William Williams shall pay to said Smith, government price, with twelve percent interest, from the time the land was paid for, until he, Williams, receive his deed, which shall be within sixty days, a good warantee deed *

Julius M. Warren et al } Book Circuit Court
vs } In Chancery
Williams }

It is hereby agreed that the papers hereto attached, are the original papers, which were delivered to Williams, by the arbitatas therein named, as their award, mentioned in the pleadings in this cause - and as such may be read in evidence, on the trial of this cause -

March 26 ¹⁷/₁₁ / 57.

Ch. Goodrich
for Compts

* Each party shall be at the expense of surveying and of their deeds - furthermore it is decided that each party shall pay what costs they have made.

Timothy D. Woodward
J. Brown
David Mc. Kee.

J. H. Farnsworth
for Deft.

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And afterwards, to wit, at the March Term of said Court, to wit, on the 24th day of March, A. D. 1858. the following proceedings, among others, were had and entered of Record therein, to wit—

Julius M. Warren et al
vs
William Williams

Ordered, on motion that the said Complainants have leave to amend their amended and Supplemental bills, filed in said Cause—

And afterwards, to wit, on the day and year aforesaid, there were filed in the Court aforesaid, in said cause, certain copies of Deeds, also Certificate of evidence taken in open Court, which are in the words and figures following to wit—

This Indenture, made this thirty-first day of August, in the year of our Lord, one thousand eight hundred and fifty-seven, Between George Packard, and Mary Adeline, his wife, of Dupage County, and State of Illinois, party of the first part, and Julius M. Warren, of County and State aforesaid, of the second part. Witneseth, that the said party of the first part, for, and in consideration of the sum of Two hundred Dollars, to them in hand paid, by the said party of the second part, (the receipt whereof is hereby acknowledged, and

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the said party of the second part forever released and discharged therefrom) have 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 the following described premises, situate, lying and being in the County of Dupage and State of Illinois, and known and described as part of the South West quarter of Section thirty-five, Township thirty-nine, North Range ^{nine} East of the 3rd principal Meridian, and bounded as follows, to wit— Commencing at the South West corner of said Section, thence North, 5^o 10' West on Section line 10, 59 chains, for the place of beginning— Thence 8^o 10' N. of E. along South line 1, 83 chains, thence N. 5^o 15' E. 23 chains, thence 4^o 15" N. of W. along the centre of Road, 5^o 51" chains, to the Section line, thence South 8^o 10' East along the Section line aforesaid, 24. 16¹/₂ chains to the place of beginning, containing 8, 96 acres of land, be the same more or less, nothing allowed for variation.

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—

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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 party of the first part, for themselves, their 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 ensembling and delivery of these presents, the said party of the first part, are 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 have 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, 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, have hereunto set their hands and seals, the day and year first above written -

Signed, sealed and delivered

In Presence of

Alfred Lerulwit seal

Mario M. Lerdner seal

State of Illinois }
 Dupage County } ss.

I, Geo. Waterman, a Justice of the Peace, in and for the said County, in the State aforesaid, Do hereby certify, that George Packard, who is personally known to me, as the real person, whose name is subscribed to the annexed Deed, appeared before me this day in person, and acknowledged that he executed and delivered the said Deed, as his free and voluntary act, for the uses and purposes therein set forth. And the said Mary Adeline, wife of the said George Packard, having been by me examined, separate and apart, and out of the hearing of her husband, and the contents and meaning of said Deed, having been by me made known and fully explained, ^{to her} she acknowledged that she had freely and voluntarily executed the same, and relinquished her dower to the lands and tenements therein mentioned, without compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand, this second day of September, in the year of our Lord, one thousand, eight hundred and forty seven.

Geo. Waterman J. P.

No 3056. Filed and recorded November 30th 1847.

State of Illinois }
 Dupage County } ss.

I, John Glos, Clerk of the Circuit Court, and ex officio Reader, of said County, do hereby

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certify that the above and foregoing, is a true copy of the record of a certain deed made and executed by George Packard and wife, of the first part, and Julius M. Warren of the second part, and recorded in Book 7. Pages 366 and 367.

Witness my hand and ^{the} seal of said Court, at Naperville, this 12th day of February, A. D. 1857.



John G. Lvs, Clerk

This Indenture, made this thirtieth day of August, in the year of our Lord, one thousand, eight hundred, and forty-seven, Between Warren Smith and Harriet, his wife, of Dupage County, and State of Illinois, parties of the first part, and George Packard of the County and State aforesaid, party of the second part - Witnesseth, that the said parties of the first part, for and in consideration of the sum of Five hundred dollars, lawful money, to them 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) have 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 Dupage and State of Illinois, and known and described as parts of the

South half of Section 35. Township 39. North Range 9.
 East of the 3rd Principal Meridian, and bounded as
 follows, to wit— Beginning at the South West corner of
 said Section, thence North, $5^{\circ} 10'$ West along the Section
 line, to the South West corner, thence $8^{\circ} 10'$ North of East
 10.36 chains along the South line, thence North $2^{\circ} 40'$
 East 21.60 chains, to the centre of the road, thence $4^{\circ} 15'$
 North of West, along the centre of said Road 13.37 chains
 to the Section line, thence South $5^{\circ} 10'$ East 24 $\frac{1}{2}$ chains,
 to the place of beginning, containing 26.91 acres more or
 less— Also commencing at the centre of the Waverly
 and Big Woods, Road, where the Road past Trueman
 Jones' corner, in and on Section aforesaid, thence South 75°
 East 4 chains to the centre of Bridge, thence down the cen-
 tre of the River, 1 chain, thence North 75° West, 4 chains
 to the centre of Jones' Road aforesaid, thence along the
 centre of said road, to the place of beginning— containing
 64 Rods more or less— Nothing allowed for Variation—

Together with all and singular, the hereditaments and
 appurtenances thereto belonging, or in any wise apper-
 taining, and the reversion and reversions, remainder
 and remainders, rents, issues and profits, thereof, and
 all the estate, right, title, interest, claim or demand what-
 soever, 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

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of the second part, to his heirs and assigns forever —
 And the said parties of the first part, for themselves,
 their heirs, executors and administrators, do covenant,
 bargain and agree to, and with said party of the sec-
 ond part, his heirs and assigns, that at the time of
 the enrolling and delivery of these presents, the said
 parties of the first part, are well seized of the premises,
 above conveyed, as of a good, sure, perfect, absolute and inde-
 feasible Estate of inheritance, in the law in fee simple,
 and have 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, his heirs and assigns, a-
 gainst 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, have hereunto set their
 hands and seals, the day and year first above written

Warren Smith

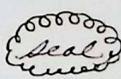
Harriet Smith

Sealed and delivered in
 presence of

State of Illinois }
 DuPage County } p.

J. William E. Leonard, a Justice

of the Peace, in and for the said County, in the State aforesaid, do hereby certify, that Warren Smith, and Harriet Smith, his wife, who are personally known to me, as the real persons, whose names are subscribed to the annexed Deed, appeared before me this day in person, and acknowledged that they executed and delivered the said Deed, as their free and voluntary act, for the uses and purposes therein set forth— And the said Harriet Smith, wife of the said Warren Smith, having been by me examined separate and apart, and out of hearing of her husband, and the contents and meaning of the said Deed, having been by me made known, and fully explained to her, she acknowledged that she had freely and voluntarily executed the same, and relinquished her dower to the lands and tenements therein mentioned, without compulsion of her said husband, and that she does not wish to retract the same— Given under my hand, this thirtieth day of August, in the year of our Lord, one thousand eight hundred and forty seven—

Dwight E. Leonard J. P. 

No 4924— Filed and Recorded 26th October, 1850.

State of Illinois }
 Dupage County } p.

J. John Glos, Clerk of the Circuit Court, and ex officio Recorder, of said County, do hereby certify that the above and foregoing is a true copy of the record of a certain deed made and executed by

127. Warren Smith, and wife, of the first part, to George Packard, of the second part, and recorded in Book 11 on pages 170 and 171



Witness my hand and the seal of said Court, at Naperville, this 12th day of February, A. D. 1857.

John Glas, Clerk
In Cook Circuit Court.
Of March 3. 1858.

Julius M. Warren
and others }
vs
Abm Williams }
James Brown—

In Chancery—
Both parties present
Farwell for Compl.
Beveridge for Deft.

I am 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 Section 31. Town 39. Range 9. in Dupage County— it is situate in the timber known and called the big woods— The defendant preempted this tract in the timber, and I was a witness for him, at the time he got the preemption— His son preempted the quarter on the prairie— This timber quarter was the only one he preempted in the big woods— This quarter is a fractional quarter—

Taken before the Judge in open Court—

This 22nd March, 1858. Subject to ^{objections} ~~exceptions~~
made at the time - the overruling of George Manierse
which was excepted to - Judge of 7th Judicial Circuit
Ill.

And afterwards, to wit, at the October term of said
Court, to wit - on the 25th day of October, A. D. 1858. the
following proceedings among others, were had and enter-
ed of Record therein, in the words and figures follow-
ing, to wit -

Julius M. Warren
Reuben Austin, &
Warren Smith

vs

William Williams

And now again at this day, come
the said parties, by their solicitors, and this cause coming
on to be heard, on the amended bill, supplemental
bill, exhibits or proofs, - After argument of counsel, and
the Court being fully advised in the premises, and it
appearing to the Court, from the amended bill, sup-
plemental bill, answer of the defendant, and the
proofs and exhibits in the case, and testimony of James
Brown taken by the Court, after the hearing of the
cause, and the same was submitted to the Court,
and upon the suggestion of the Court, that prior to
the 17th day of September, 1844. Claims had been made
upon the government lands, in the county of DuPage,
in the State of Illinois, by the several parties to this suit,

and which were designated and marked by claim lines, and such lines embraced claims, or portions of claims, on lands which had then been preempted, and that disputes in regard to the rights of said parties, and their said claims upon, and in such preempted lands, had arisen and existed between the parties here to, together with one Joseph Wilson, and that on the ^{said} 17th day of September, 1844, for the purpose of settling all disputes, and all controversies in relation to such claims, by mutual bonds of submission, made and signed by said parties, and said Williams, all disputes and all controversies in relation thereto, were submitted to the arbitrament, award and submission of Timothy D. Woodward, Joseph Brown, and David Mc. Kee, which bond on the part of said William Williams, was in the words and figures following to wit—

Know all men by these presents, that I, William Williams, of the County of Dupage, and State of Illinois, am held and firmly bound unto Julius M. 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 to the said Warren, Smith, Wilson and Austin, their Executors, administrators, or assigns, for which payment to be well and truly made, I do bind myself, my heirs, executors and administrators, firmly by these presents—Sealed with my seal, dated this seventeenth day of September, in the year of our Lord, one

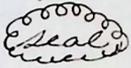
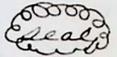
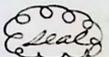
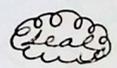
thousand, Eight Hundred and forty-four

The condition of this obligation is such, that if the above bounden ^{Williams} Williams, his heirs, executors, or administrators, on his and their parts, shall and do, in all things well and truly, stand to, obey, abide by, and perform, fulfil and keep the award, order, arbitrament and final determination of James Brown, David McKee and Timothy D. 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, judge and determine of, and concerning all, and all manner of actions, cause and causes of action, quarrels, controversies, damages and claims, 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 anywise affecting the following described real estate, situate, lying and being in the County of DuPage, and state of Illinois - and known and described as being the South West quarter of Section numbered Thirty one (31) in Township numbered Thirty nine (39) South of Range numbered nine (9) east of the third principal meridian - and which is the same property, to which the said Williams has proved up a presumption right, and which said presumption 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 the said claims have become the decided 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, Mc. Kee and Woodward, or any two of them, ^{and receipts} 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 Williams further covenants to and with the said Ware, 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 Ware, Wilson, Smith and Austin, if he fails, refuses or neglects to perform ^{up} on his part, the award to be made by said arbitrators, when the same shall be made, the said sum of one thousand dollars, is hereby declared to be liquidated damages, to be recovered by said Ware, Wilson, Smith and Austin, 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 preemption shall be set aside, and ^{any} member of his family, or any person for him, or claiming under him or in his right, or by his suggestion, or direction, shall obtain the 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 - and to such persons as shall be directed in said award -

Wm Williams 
 Henry S. Williams 
 as security
 Wm J. Williams 
 as security 

We do hereby agree to accept the submission mentioned in this Bond, and to make an award in the premises, according to the terms of such submission - Sept. 17th 1844.

J. Brown.
 David Mc Kee
 Timothy D. Woodward

And it further appearing to the Court, that the said Joseph Wilson by the mutual consent of the parties, withdrew from such submission, and by the mutual consent of said complainants, and said defendants, it was agreed that the said arbitrator, in

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Said bonds of submission, named should swend and determine, and award between the said complainants, and said defendant, of, and concerning the ~~said~~ matters and things in said bond of submission named, the same as if the name of said Joseph Wilson, had never been inserted therein. And it further appearing to the Court, that the said Timothy D. Woodward, Joseph Brown, and David Mc. Kee, afterwards, and on the 19th day of September, 1844. entered upon their duties as such arbitrators, and did on the said 19th day of September, 1844. in writing under their hands, present to the parties, the following written award, of and concerning the premises —

Sept 19th 1844.

No 1 — The decision of arbitrators, in suit pending between J. Warren, W. Smith, and R. Austin, of one party, and Wm Williams, is as follows — the said Williams shall deed to the 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 received of his deed, which shall be within sixty days, a warrant deed —

No 2. Also said William 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 receive his

deed, which shall be within sixty days, a good warrant
ee deed—

No 3— The decision of the arbitrator is as follows— the
said Williams shall deed twenty two and a half acres,
of, from the east side of the east eighty of fractional
quarter that Williams preemptioned in the big wood—
furthermore it is decided that each party shall pay
what cost they have caused to be made—

Timothy D. Woodward—

J. Brown

David Mc. Kee

Sept 19th 1844.

The decision of arbitrator in the suit now pending
between J. Warren, Warren Smith, R. Austin, is as follows—
the said Warren ~~Larson~~ Smith shall deed up to the o-
riginal claim line on the prairie, which said Smith
preemptioned— 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
he, Williams receive his deed, which shall be within six-
ty days, a good 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—

Timothy D. Woodward

J. Brown.

David Mc. Kee—

And it further appearing to the Court, that the

subject of said submission and award, was, amongst other things, of, and concerning the following real estate mentioned in said bond of submission, lying and being in the County of Dupage, and State of Illinois, and known and described as being the South West quarter of Section number 31 in Township, number 39. North of Range nine, East of the third principal Meridian, and that the same was preempted and purchased by said William Williams, of the United States, and that the same was timbered land, And it further appearing to the Court, that the said Reuben Austin had previous to the preemption of said land, paid to the son and agent of said William Williams, and for said Williams, the sum of one dollar and twenty five cents per acre, for said land so awarded as aforesaid, to be conveyed by said William Williams, to said Reuben Austin, and that said William Williams has refused to convey to said Reuben Austin, the land so, as aforesaid, awarded to be conveyed to him -

It is therefore, ordered, adjudged and decreed by this Court, that the said William Williams do, within thirty days from the date of this ~~order~~^{decree}, convey to the said Reuben Austin, that part of said South West quarter of section 31. in township number thirty nine, North of Range nine East of the third principal Meridian, up to his, said Reuben Austin's original claim line, so awarded to be conveyed by said Williams, to said Austin -

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To which order and decree, the defendant at the time, excepted—

And it further appearing to the Court, that within sixty days from the making of said award, said Warren Smith offered to pay to said William Williams, one dollar and twenty-five cents per acre, for each acre of the land awarded by said arbitrators, to be conveyed to said Warren Smith, with twelve per cent interest thereon, from the 17th day of September, 1844. the day on which said land was purchased as aforesaid, being the sum of forty six dollars, and sixty cents— and demanded a conveyance to him, of said Williams, of the land so awarded to him, said Smith, which money said Williams refused to take, and which conveyance he refused to make— it is therefore further ordered, adjudged and decreed, that said Warren Smith pay to said William Williams, within ten days from the date of this decree, said money so, as aforesaid, tendered to him, and that thereupon said William Williams, within thirty days from the date of this decree, convey to said Warren Smith, by warranty deed, that part of said South West quarter of said section thirty one, in Township thirty nine, North of Range nine, East of the third principal meridian— mentioned in said submission, in the timber, up to his, said Warren Smith's original claim line, and that in case said William Williams shall refuse to receive said money, and make such conveyance of said

land, ^{to} said Warren Smith bring said money into Court, and deposit the same with the clerk of this Court, for the said Williams, and subject to his order—

To which order and decree, the defendant, at the time, excepted—

And it further appearing to the Court, that in that part of said written award, which orders and declares that the said William Williams shall be.

The Decision of the arbitrator, is as follows, the said Williams shall deed twenty-two and a half acres of from the east side of the east eighty of fractional quarter that Williams pre-empted in the big wood—furthermore it is decided that each party shall pay what cost they have caused to be made.

Timothy D. Woodward
J. Brown

David Mc. Kee—

The name of Julius M. Warren, as the person, to whom the said twenty-two and one half acres, was to be deeded by said Williams, was by inadvertence and mistake, left out, and omitted— and that it was the award and determination of said arbitrator, that the said William Williams should deed said twenty-two and one half acres, to said Julius M. Warren— it is therefore ordered and decreed, that in this respect, the said award be ordered to be corrected, according to the fact, intention, and determination of

said arbitrator, and that the name of said Julius M. Warren, be inserted in the seventeenth line of said award, and after the words, "big woods" in that part which is marked as No 3. of said award, as the party to whom said land was to be conveyed - and that said complainant Julius M. Warren, be deemed and taken to be the person, to whom said twenty-two and one half acres were awarded - by said arbitrator, to be, by said William Williams, deeded - And it further appearing from said bond of submission, the amended and supplemental bill, answers, exhibits and proofs, together with the testimony of James Brown, introduced as aforesaid -

I am same witness heretofore examined in this case - and that acted as arbitrator between the parties -

I am acquainted with the S. W $\frac{1}{4}$ of section 31. Town 39. Range 9. in Dupage County - it is situate in the timber known and called the big woods - The defendant preempted this tract in the timber, and I was a witness for him at the time he got the preemption. His son preempted the quarter on the prairie - This timber quarter was the only one he preempted in the big woods - This quarter is a fractional quarter -

That the said fractional quarter section preempted by said William Williams, was in the big woods, and was and is, the South West fractional quarter of Section thirty one, in Township thirty-nine, North of Range Nine, East of the third principal meridian.

and that the said twenty-two and one half acres, so awarded to be conveyed to said Warren, by said Williams, was awarded to be taken from the east side of the East eighty of said quarter section, after taking out of said quarter section, the land, so, as aforesaid, awarded to said Reuben Austin and Warren Smith, it is ordered adjudged and decreed that said William Williams, within thirty days from the date of this decree, convey by good and sufficient deed, to said Julius M. Warren, twenty-two and one half acres off from the East side of the East eighty of fractional quarter section, that said William Williams preempted in the big woods - and that such conveyance be made off from the east side of said East eighty or of 2 of what remains in said eighty, to him - said Williams, after the said conveyances to said Austin and Smith, shall be made as aforesaid -

To which order and decree, the said defendant then and there excepted -

And it further appearing to the Court, that said William Williams had made a claim in the prairie, on land belonging to the United States, before the same was purchased, and the lines of such claim run over and upon the south half of section thirty-five, in township thirty-nine, North of Range Nine, East of the 3rd principal meridian, and on that part of said south half of said section preempted and purchased by said Warren Smith, and that

Said arbitrator, as aforesaid, adjudged and awarded that said Warren Smith should deed to said William Williams, up to his original claim lines on the prairie, which said Smith preempted, and that said William Williams should pay to said Smith, government price, therefore, with twelve per cent interest, from the time said land was paid for, until said Williams received his deed, which should be within sixty days from the making of said award, and it appearing to the Court, that said Warren Smith did, within sixty days from the making of said award, offer to convey said land to said Williams, so awarded to be conveyed to him, said Williams, on his, the said Williams, paying to him, said Smith, one dollar and twenty-five cents per acre, therefor, with twelve per cent interest thereon, from the time the same was purchased of the United ^{States}, being the government price therefor, but that said Williams refused to receive said deed, and pay said money therefor. And it appearing by the amended, the amendment of the annexed Bill, made upon the hearing, supplemental bill, answers, proofs and exhibits, and the said defendant admitting and averring in his answer, that the land so awarded to be conveyed as aforesaid, to him, said Williams, was, and is that part of the South half of section thirty-five, in Township thirty-nine, North of Range nine, East of the 3rd principal meridian, and bounded as follows. Commencing at the South West corner of said

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Section, thence North, $3^{\circ} 10'$ West on Section line 10, 39 chains to the place of beginning - thence $8^{\circ} 10'$ N. of E. along South line 1.83 chains, thence North $5^{\circ} 15' E.$ 23 chains, - thence $4^{\circ} 15'$ N of W. along the centre of Road $5^{\circ} 81'$ chains to the Section line - thence South $5^{\circ} 10'$ East along the Section line aforesaid 24, $16\frac{1}{2}$ chains, to the place of beginning - containing 8, 96 acres of land, be the same more or less, nothing altered ^{NEW} for Variation -
 And contains 8 acres, and $96\frac{1}{100}$ ^{ths} -

And it appearing to the Court that the said land, as is averred in the answer of said defendant, was conveyed by said Warren Smith and wife, to one George Packard, and by said Packard and his wife, to the complainant, Julius M. Warren, and said Julius M. Warren, having in said amendment to said amended bill, averred his readiness, and offered to convey the same, to said William Williams, according to the order and directions of said award, it is therefore ordered and decreed, that within thirty days from the date of this decree, the said William Williams pay to said Julius M. Warren, One dollar and twenty-five cents per acre, for each acre of said land, with twelve per cent interest thereon, from the time of the purchase of said land, from the government of the United States, and that upon such payment, or offer, said Julius M. Warren convey to said William Williams, by warranty deed, the land so awarded to be conveyed by said Warren Smith to said Williams, up to the original claim lines on the prairie which

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Said Smith preempted, and which was conveyed as
aforesaid, by said Smith and wife, to said Packard
and by said Packard and wife, to said Julius M. War-
ren, and which is described in said answer of said
defendant, and said deed of conveyance from said
Packard, to said Warren—

And it is further ordered and decreed that the said
William Williams pay the costs of this suit, and that
the complainants have execution therefor—

To all of which orders, decrees, and judgment of said
Court, as aforesaid, the said defendant, at the time
excepted— which is entered of record—

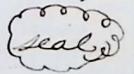
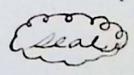
And afterwards, to wit, on the 20th day of November,
in the year aforesaid, said defendant filed his appeal
bond, which is in the words and figures following, to
wit—

Know all men by these presents, that William Wil-
liams, Sila Hench, and Henry S. Williams, of Dupage
County, in the State of Illinois, are held and firmly bound
unto Julius M. Warren, Warren Smith, and Reuben Aus-
tin, of said county, in the penal sum of one thousand
dollars, current money of the United States, the payment
of which, well and truly to be made and performed,
they bind themselves, their heirs, executors, administrators
and assigns, jointly and severally, firmly by these pres-
ents—

Witness their hands and seals, this 23rd day of Oct-
ober, A. D. 1858.

The condition of the above obligation is such, that whereas a decree has, on the day of the date hereof, been entered in the Circuit Court of Cook County, in said State of Illinois, in favor of the above named Julius M. Warren, Warren Smith, and Reuben Austin, as complainants, and against the above bounden William Williams, as defendant, touching certain Real Estate in the County of Dupage aforesaid, from which said decree of said Circuit Court, the above bounden William Williams has prayed an appeal to the Supreme Court, of the State of Illinois, aforesaid, Now therefore if the said William Williams, in case the said decree of said Circuit Court shall be affirmed by said Supreme Court, shall pay all the costs, interest and damages, and shall duly prosecute the same, then this obligation to be void, otherwise to remain in full force and effect.

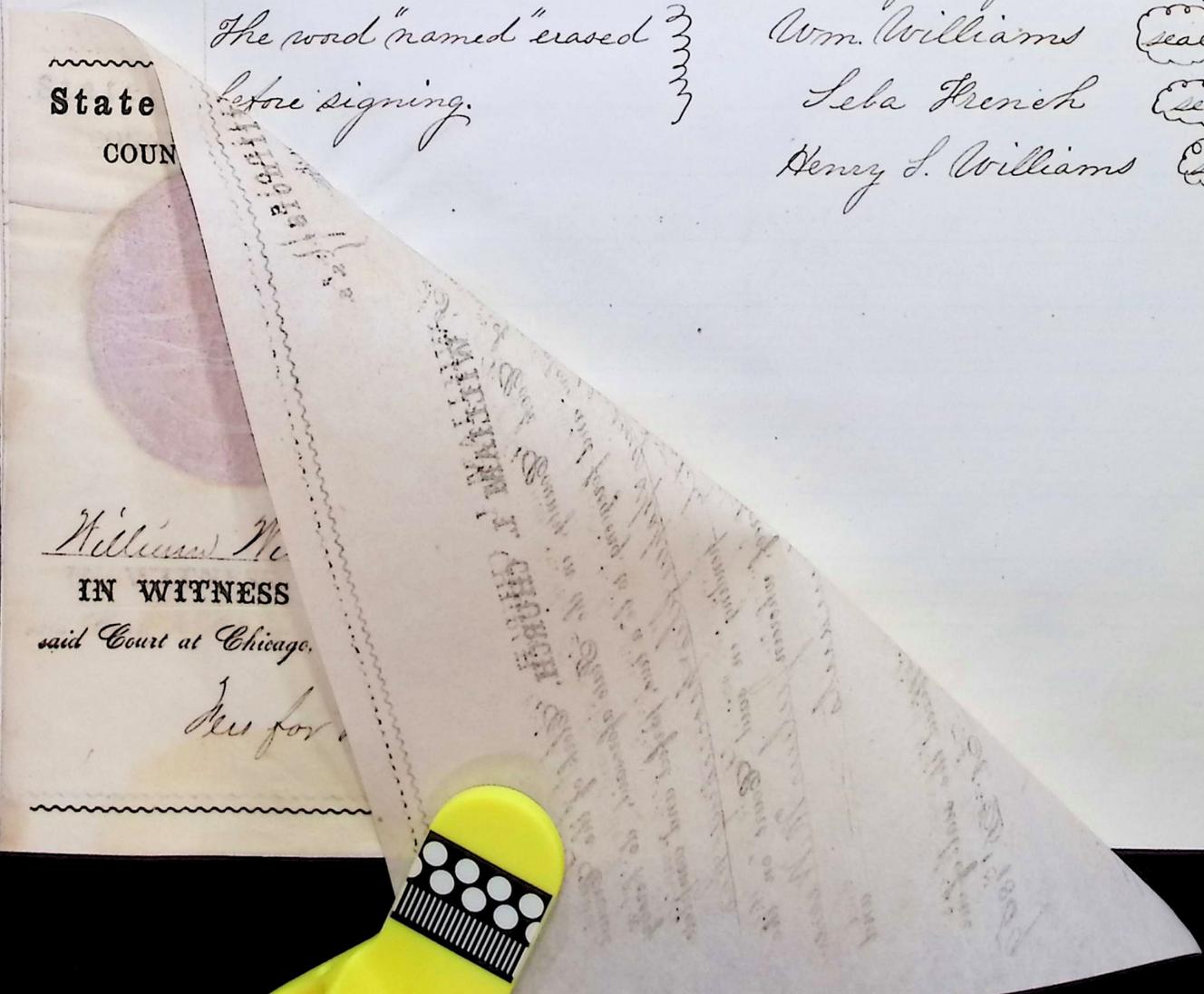
The word "named" erased before signing.

Wm. Williams 
 Leba French 
 Henry S. Williams 

State
 COUN

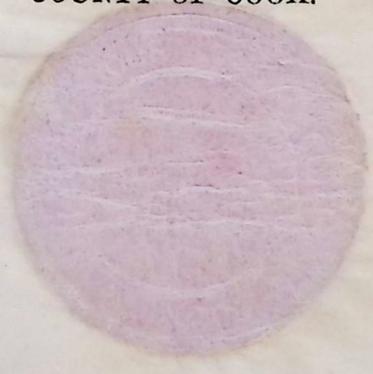
William M.
 IN WITNESS
 said Court at Chicago.

For



The condition of the above obligation is such, that whereas a decree has, on the day of the date hereof, been entered in the Circuit Court of Cook County, in said State of Illinois, in favor of the above named Julius M. Warren, Warren Smith, and Reuben Austin, as complainants, and against the above bounden William Williams, as defendant, touching certain Real Estate in the County of Dupage aforesaid, from which said decree of said Circuit Court, the above bounden William Williams has prayed an appeal to the Supreme Court, of the State of Illinois, aforesaid. Now therefore if the said William Williams, in case the said decree of said Circuit Court shall be affirmed by said Supreme Court, shall pay all the costs, interest and damages, and shall duly prosecute the same, then this obligation to be void, otherwise to remain in full force and effect.

State of Illinois, }
 COUNTY OF COOK. } s. s.



I, WILLIAM L. CHURCH, Clerk of the Circuit Court of Cook County, in the State aforesaid, do hereby certify the above and foregoing, to be a true, perfect and complete copy of the pleadings & papers filed & proceedings had & entered of record in a certain cause lately pending in said Court on the Chancery side thereof, wherein Julius M. Warren & al were Complainants and William Williams was defendant

IN WITNESS WHEREOF, I have hereunto set my hand, and affixed the seal of our said Court at Chicago, this Fifth day of March A. D. 1859

Rec for Record \$ 36 ¹⁵/₁₀₀

W. L. Church
 Clerk

United States of America }
State of Illinois } ss }

In Supreme Court
Third Grand Division
April Term 1859

William Williams

vs

Julius M. Warrental }

} Appeal from Cook Co.
}

Chancery

And the said Appellants, William Williams,
by his Counsel, Eastman & Beveridge, and J. F.
Fruensworth, comes, and for error assigns
the following, to wit:

1. The award of the arbitrators does not conform to the submission; in this to wit:

The object of the submission was to settle disputes as to claim lines, and the same are not settled by the award.

2. The arbitrators specified their authority, in awarding conveyances to be made.

3. One dispute, to wit, as to claim lines, specifically stated in the submission

was not determined by the arbitrator,

4. The award is not final: - even called by the clerk, it leaves the controversy as to claim lines open to future litigation.

5. The award is uncertain, in this twofold -

1. It contains no reference whatever to the submission.

2. The phrases "in the timber", "in the big woods", and "on the prairie", descriptions of lands, are vague and indefinite - and not used in the submission.

3. The expression, "cleared up to original claim line", defines nothing.

4. There is no grantee named to whom the $22\frac{1}{2}$ acres are to be conveyed.

5. The award does not specify the amount of money to be paid, nor does it give any data by which the amount principal and interest can be computed.

6. Each party is to be at the expense of conveying, but it does not say whether of lands conveyed to, or by him.

7. A conveyer, not named, to be

selected by the disagreeing parties, at
an definite time, is to settle lines,
the arbitrators failed to determine,

6. It was error to allow an amendment
to the Complainant's bill, at the hearing of
the cause.

7. The depositions of the arbitrators are
inadmissible to explain, render certain,
or to give the award effect.

8. It was error to take the testimony of Brown
after the hearing of the cause.

9. The award, aided by the pleadings, proofs,
exhibits and decess, is still uncertain.

The claim lines are not defined.

The lands to be conveyed by the appellant
are not definitely described.

There is no date by which to compute
the 12 per cent interest on the money to
be paid by appellant.

10. The award and decess are contrary to
equity and to the agreement among the

selected by the disagreeing parties, at
an definite time, is to settle lines,
the arbitrators failed to determine,

6. It was error to allow an amendment
to the Complainant's bill, at the hearing of
the cause.

7. The depositions of the arbitrators are
inadmissible to explain, reveal certain,
or to give the award effect.

8. It was error to take the testimony of Brown
after the hearing of the cause.

9. The award, aided by the pleadings, proofs,
exhibits and decess, is still uncertain.

The claim lines are not defined.

The lands to be conveyed by the appellant
are not definitely described.

There is no date by which to compute
the 12 per cent interest on the money to
be paid by appellant.

10. The award and decess are contrary to
equity and to the agreement among the

selected by the disagreeing parties, at
an definite time, is to settle lines,
the arbitrators failed to determine,

6. It was error to allow an amendment
to the Complainant's bill, at the hearing of
the cause.

7. The depositions of the arbitrators are
inadmissible to explain, reveal certain,
or to give the award effect.

8. It was error to take the testimony of Brown
after the hearing of the cause.

9. The award, aided by the pleadings, proofs,
exhibits and decess, is still uncertain.

The claim lines are not defined.

The lands to be conveyed by the appellant
are not definitely described.

There is no date by which to compute
the 12 per cent interest on the money to
be paid by appellant.

10. The award and decess are contrary to
equity and to the agreement among the

Letters, out of which the arbitration grew.

11 The pretended award is not admitted by the Appellees, ^{in their bill} and their proof shows it not to be the true award; they therefore are estopped from taking under the award.

12 Smith had incapacitated himself to comply with the award on his part, and Warren's agreement of securities to perform Smith's part, made upon the hearing, after 11 years litigation, and having sued appellant for the writs and recovered, came too late, at least to charge the appellant with the whole costs of this suit.

13 There is no proof that Smith offered to comply with the award within the 60 days.

14 The decree is not in conformity with the pleadings, nor the proofs, nor the exhibits, nor with all their combined,

^{& proceedings of the Court below}
15: The decree is wrong in every other respect, informal, erroneous & inequitable.

Eastman & Beveridge
J. G. Francombe for appellant

The cephalic occurs in Secy. 10m
in no such cross as an *Scypha*
in said record,

April 21/39

Goodrich Smith
Goraspala

In Suprem Court
William Williams

vs
Julius M. Warren
et al

Assignment of error

Eastman & Beverly
J. F. Farnsworth
for Appellant

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William Williams

vs

Julius M. Womack

Womack vs

Robertson

App. from book etc.

Filed March 15. 1859.

L. Seland
Clerk.

In Supreme Court

April Term 1859.

William Williams

vs

Julius M. Warren et al

} Appeal from Cook Co.

} In Chancery.

Argument for Appellant.

1 It is considered a well established principle, that an award must conform to the submission. In the case, before the Court, the Appellant claims that the subject matter, or the object of the submission was to settle all disputes existing between the parties as to claim lines, whether the claims had become the decided property of any of the parties, or not, and that there was no other controversy, at least, none as to conveyances.

This view of the submission is supported by the deposition of James Brown, witness for the Appellees, and one of the arbitrators; (see page 87. of Record.) by which it appears, there was an agreement between the early settlers, to deed and record according to the claim lines, and that the parties in this case, were parties to said

agreement. The Appellant has never refused to comply with that agreement; the only
(with the contrary seems to have been willing to do (see page 93 of the record))
the only

open question is. how much land is he to
deed, how much is to be deeded to him, or
where are the claim lines, where are the
boundaries of the lands to be deeded, and re-
deeded in accordance with that agreement?

This question, the arbitrators were in duty bound
to settle. for the terms of the submission, are plain,
explicit and positive, - being, "the object being to
settle all disputes that may exist between the
parties as to claim lines &c." Instead of settling,
they award conveyances up to the claim lines,
and leave their locality, or any disputes as
to said lines, undetermined and unsettled.

And further, the arbitrators were to settle all dis-
putes as to claim lines, whether the claims of the
parties, had been decided or not, ^{by the appellant that} It is claimed the
parties did not intend to bind themselves
to make conveyances, if awarded, of property not
deeded, and the title to which they might never
acquire, but only intended to have a final set-
tlement as to all disputes as to claim lines,
whether the claims had become the deeded
property of the parties, or not, and to leave the matter
of deeding and re-deeding to be governed by the
agreement aforesaid,

2

By the terms of the submission, the arbitrators had no authority to award conveyances. As aforesaid, they were to settle disputes as to claim lines, whether the claims were decided properly, or not. The language of the submission strongly implies, that there were claims not decided, and that there existed disputes as to the lines of such claims. If the arbitrators had awarded conveyances to be made of property not decided, the parties could not have complied with their award, and may have never been in a position to have complied with it.

But the appellant had already proved up his pre-emption right, and acquired title to the SW $\frac{1}{4}$ of Sec 31.-39-9- and in case, his pre-emption should 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, should obtain said premises, he bound himself to ^{obtain} ~~the~~ conveyances as per award should be directed; that is, if his pre-emption right held good, he was bound (and so far as the Record shows was willing,) to deed as per agreement aforesaid, among the early settlers; but, if, his pre-emption right should fail, and the title to said premises, by his suggestion, direction, or connivance, should pass to a third person, not

a party to said agreement, he bound himself to
~~make~~ ^{obtain} conveyances of such portions of said prem-
ises as the award should require and direct, &c,
and the Court will bear in mind the appellant
did not ^{ever} bind himself to ~~make~~ ^{obtain such} convey-
ances, if the title to said premises, should pass
to any other party, without any fault or connivance
on his part, Suppose, his pre-emption right had
failed, and a stranger, without his knowledge, had
stepped in and entered said $\frac{1}{4}$ Section, could the
arbitrators have awarded that he should make
conveyances of portions of said premises, and the
appellant be bound thereby? Certainly not.
Such authority is not specified in the sub-
mission, nor was it intended.

The Appellant, therefore claims, that the award so
far, as it relates to conveyances, is beyond the
authority of the arbitrators, and is *pro tanto* void—
and inasmuch, as the matter of conveyances,
is the sum and substance of the award, and can-
not be separated, or rejected therefrom, without
destroying its entire force and meaning, the
whole award is void.

3

If the Court should hold the submission to be a general one, to arbitrate &c. concerning all disputes, actions, causes of action &c. growing out of or concerning Real Estate mentioned in the submission, the arbitrators failed to determine one dispute submitted to them and brought to their knowledge, to wit, as to Claim Lines.

There may have been diverse controversies, as to said Real Estate, and the Counsel for the Appellant, for sake of argument, may admit, that all these controversies were duly submitted; but that there was a dispute existing between the parties as to the claim lines, that such dispute was submitted to the arbitrators and that they had knowledge of the same, cannot be controverted.

Among all the controversies existing between the parties, this one, concerning the Claim Lines is the only one, specifically mentioned in the submission; and the arbitrators were to award &c. on their own knowledge, no evidence to be adduced on the part of either party, and hence the strong and reasonable presumption is that the arbitrators had full knowledge of all controversies, not specifically mentioned, and of the one so mentioned,

The Amended bill, (see page 16) sets out that

certain disputes existed between the parties in relation to their claim lines to parts of said SW $\frac{1}{4}$, and to determine these disputes the parties agreed to arbitrate, &c.

The Appellant in his answer, (page 42) admits these did exist disputes between the parties, as to where some original claim lines run, and to define and settle these lines, the parties agreed to submit the same to arbitration.

The Deposition of Brown, (page 88) confirms the position assumed.

The Counsel for the Appellant, cannot conceive of any dispute as to lines, or claim lines, except as to their locality, and such disputes having been specifically submitted, and the arbitrators having full knowledge of the same, and having failed to adjudge and award concerning such disputes, Counsel consider the said award to be void, and think the authorities cited and numerous others sustain their opinion.

4. The aim and object of all arbitration is to put an end to litigation, and for this purpose, an award, of itself, when plead, should be a full and complete answer and defence, to all matters of controversy submitted to the arbitrators.

The intent of the arbitration was to settle and determine all controversies, between the parties as to said SW⁴, and especially all disputes as to claim lines, whether the claims were decided or not. To perform the award, even as directed by the decree, would be laying a foundation for extended litigation. The award, aided by the decree could be plead, but it would not be conclusive, because it means nothing, determines nothing. The dispute as to claim lines, would come up again, and to settle this point, evidence, not contained in the award, nor in the decree, would have to be adduced. The award is in no sense final upon the matters submitted, and is not therefore binding upon the parties. It does not accomplish their intention, nor the intention of the law.

5. The award is uncertain.

1. It contains no reference, by date, by mention of subject matter, or otherwise, to the submission. Apart from the names used in the award, no man would

harbor an idea that it had any relation whatever to the submission.

2. The lands awarded to be conveyed, are not described. No State, no County, no Township and Range, no Section, nor part of Section, and no reference to any record, or public survey, or corner, or road, stream, or established line, is given, by which to find their locality. If the lands are in Illinois, and in Senoige County, then two tracts are "in the timber", one "in the Big woods", and one "in the prairie." How many tracts of timber, how many "Big woods", & how many prairies, are there in Senoige County? If there are three or more tracts of timber, three of said parcels may be in separate tracts of timber, and the other parcel will be in one of two or more prairies, - in which one? - If there is but one Big woods, or piece of timber, there is but one prairie. Less the timber, greater the prairie, and inversely - hence the more definite the parcels in one, the more indefinite in the other.

3. "Lead up to the original claim line" - what is "original," and what not? on which side of the original claim line? - from what point, or other line? where is the claim line? The award answers, "in the timber," and "on the prairie."

4. The 22½ acres cannot be conveyed without a grantee. Even the omission, or mistake, as alleged in the Bill, to insert the name of Warren, ~~is at least if~~ ^{it} does not render the award nugatory, is, at least, a sufficient excuse for the appellant to refuse to perform the award, until the appellees by a proper Tribunal, have the award corrected, and this may be adduced here, as another reason why the appellant should not be subject to all the costs of litigation, in correcting such mistake, or in making an award by evidence dehors, so definite and certain, that it may be carried into specific execution.

6. Austin is to pay Williams, \$1.25 per acre, and 12 per cent interest from date of entry, or time the land was paid - and Smith is to do the same. Williams is to pay Smith the same. The price per acre is given, but not the number of acres, the rate per cent is given, but not the amount of the principal, nor time when the interest begins to run. The amount of money to be paid by the several parties cannot be computed.

And by the way, no compensation is awarded to be paid to the appellant for the 22½ acres, for which he has paid his \$1.25 per acre.

6. (see 6th point of uncertainty, printed)

7. The arbitrators, having neglected to establish the claim lines, to locate the lands, and fix their boundaries, by their award, it seems, contemplated future surveys to be made, who is to select the surveyor? If the parties cannot agree, what then? Can one party cause a survey to be made, without the consent, and against the will, of the other party, and bind him? Best if the Surveyor is agreed upon, what minutes or data has he to base his survey upon?

The case of Gullaway vs Webb, Harlin, p 318, decides, that an award, providing for surveys, is sufficiently certain, but in that case the award makes mention of a certain public survey, a matter of Record, and connects the premises in question therewith, thus giving the data upon which the survey was to be made, In the case before the Court, there is no mention in the award, of any survey, mound, stream, point, road &c, Nothing is given, except, "in the timber", "in the big woods", and "on the prairie", as a guide to the surveyor. There seems to have been nothing by which a surveyor could be guided, unless, it was the Record kept by John Warr, mentioned by witness Brown (see page 87), and

This was not a legal record, nor is there any evidence that the same was correct.

It would be impossible for a Surveyor to make the Surveys contemplated, in order to finish the award and make it certain, sufficiently so to be carried into execution, a Surveyor could not complete the work of ~~the~~ arbitrators.

5. Had the parties made conveyances in the terms of the award, they would have conveyed nothing, their deeds would have been a mere nullity, from the fact, that ~~they~~ ^{they} would describe no lands, and it would seem that the appellees saw this deficiency, and they have labored by their pleadings, exhibits, and by the deposition of two of the arbitrators and the testimony of one of them in open court, after the hearing of the cause, and 14 years after the making of the award, to search out their lands, to explain the award, to render it certain, and capable of specific execution. Allow the appellees to insert the name of Julius M. Warren, said to have been omitted by mistake, and take by the award, they take nothing. They must have the aid of a Court of Equity, and the testimony of the arbitrators, to render it beneficial to them and effective. In fact, if they take at all, they take by

a new, or another award, made by the Court, out of the testimony of the arbitrators, and contrary to the submission and award in Court, The Counsel for Appellant think the Court erred in admitting the testimony, and that the authorities cited fully sustain them in their opinion.

6. The appellers signally failed to do what they so anxiously desired and aimed to do. The award with all its aids, the pleadings, exhibits, proofs, and decree, is still uncertain.

1. The old disputes as to claim lines is still undetermined. The claim lines are not established. By the decree, the appellant is to deed to Austin, and Smith, up to their original claim lines, where are the lines? on what part of the $\frac{1}{4}$ Section.

2. By the decree, the appellant is to deed to Austin & Smith, three parts of one SW $\frac{1}{4}$. Sec 31, -39-9, up to their original claim lines, awarded to be conveyed to them by Appellant - what parts were so awarded? deed up to original claim lines, on which side? and from what other line. The decree is no more definite than the award, except it gives the Section, part of Section, Township, County & State,

The $22\frac{1}{2}$ acs. of the decess. are to be decreed exclusive of the two tracts awarded to Austin & Smith, this cannot be rendered certain until the latter are made certain.

3. No date is given by which to compute the interest on the money to be paid ^{by} the appelland, the time that Smith paid for his land on Dec. 35-39-9, is not given.

7. The Appellees pretend in their amended bill that the award set out, is not a true copy of the original award, but a pretended one. (See pages 25, 26) Their witness, Brown (page 82) swears positively that it is not a true copy, and goes on to state the difference between the pretended and the true copy, and that his impression is there was but one piece of paper. He also swears that the arbitrators did not sign two awards, nor did they sign their name in two different places (page 87) Testimony of Brown is strengthened by that of Mc Kee. (page 98)

The facts are, as shown by the proof, that the pretended copy was a true copy, that the award was upon two pieces of paper, and signed by the arbitrators in two places, and the Council claim, justly too they think, that having disowned and disapproved

the award. The appellees should be precluded, from taking under the award. After disavowing and dispeering as aforesaid, they seek in their decree, aided by the testimony of men who swore contrary to their own award, to take the benefit of that award.

- 8 It seems that if Smith, ever offered to convey according to the award, afterwards, incapacitated himself from conveying, by alienating said premises to a third party, thus treating and considering the award as null & void, and after that, the said Appellant had a right to refuse to comply with the award, at least until, there was a revulsion on the part of Warren, who became the owner of said premises, to perform on Smith's part - and when Warren sued Appellant, for removing the rails, off of said premises, his own rails, off of his own claim, and ~~to~~ which he was entitled to hold in fee, as per award, it would seem that he too repudiated the award, and when afterwards, upon the hearing of the cause, he comes in and amends his bill, by averring his readiness to perform for Smith, after 11 years litigation, after 10 years ownership of said premises, and ~~he~~ ^{he} comes

with a very true grace, and without much
equity, - ~~and~~ Allow him to go on in litigation,
making costs, without - make such averment,
and ~~then~~ come in, at the last stage of the
proceedings to make the proper averment, and
if he recovers, to compel the appellant to pay all
the costs of that protracted litigation, is inequitable
and unjust, and ought not to be tolerated
by any Court.

9 Smith never offered to comply on his part,
within the time prescribed in the award, to wit
60 days. The submission was Sept 17, 1844 -
The award was made Sept 19, 1844, - deeds should
have been delivered by Nov. 19, 1844. Brown
swears, (see page 85) after looking upon exhibit,
that "Exhibit-7" was presented to Williams,
the appellant, within the prescribed time,
Now Mr Brown is just as positive about this
as he was about the award, and seems to
be just as much in the interest of the men
for whom he swears. Now "Exhibit-7" purports
to be a warranty deed, Warren Smith & wife,
Grantors, William Williams Grantee,
Premises part of Sec 35-39-9 - bearing date
March 6, 1849 - Signed & Acknowledged Nov 24, 1849

Mr Brown must have been mistaken; the deed of Tenetereed at all, was after Nov 24, 1849, Mr Williams was under no obligation to receive it. The prescribed time of delivery having long before elapsed, and in fact Smith two years before had conveyed the land, and he then was not the owner.

10. Description of land awarded to be deeded to Austin.
- 1 By award - "up to his original claim line in the timber
 2. By amended Dec. Com. at S.E. Cor. of SW $\frac{1}{4}$, Sec 31, 39.
9. Thence N. 84. Paces. Thence W 4. rods 13 lks. Thence S. to strike S. line of said $\frac{1}{4}$, 13 rods W. of said S.E. Cor. Thence E. 13 rods to Veg. Cont $\text{\$} \frac{36}{100}$ acres.
(See page 29.)
 3. By Brown's deposition (see page 83)⁹² Brown makes N. line 4 rods 15 lks. instead of 13 links - the W. line therefore must vary.
 - 4 By McKee's deposition (see page 95) He makes N. line 4 rods only - his E. & W. lines run N & S with - whereas by Brown, the E. line is N & S, & W. line S. West,
 - 5 By exhibit - not given
 - 6 By decree, "That part of SW $\frac{1}{4}$, Sec 31, 39, 9. up to his said Austin's original claim line. be awarded

To be conveyed by said Williams to said Austin,

Description of lands awarded to Smith,

1. By award, "in the timber up to his original claim line."

By amended bill (see page 30) ~~Comm 13~~. It makes the tract 32 rods in width N + S. - and the E. line Austin's East line,

By Brown's deposition (see page 84). He makes it 52 rods N + South - North line to run east to strike Austin's W. line, thence S. 52 rods to S. line of Section - Hence if Austin's W. line runs S. West, Smith's lot laps upon Austin's lot, some 6 rods.

By McRee's deposition. (see page 96) Run S. line on Section line, then N. 52 rods, & guessed at lot of survey

By exhibit 5 - (see page 107. 8 + 9) - Width N + S, does not exceed 43 rods - and it runs North to North line, of the original claim of Smith + Wilson,

Hence Amended bill, makes N. line South of original claim,^{line} and Brown + McRee make it North of original claim line - which is right?

By decree (see page 136) That part of SW¹/₄, S 31. 39. 9, in the timber, up to his, said Smith's, original claim line,

Description of Cumulo preterea to have been awarded
awarded to Warren.

By Award, "22½ acres off from the east side of
the east eighth of fractional quarter that Williams
pre-suptest in the Big woods"

By Amended bill. (see page 30) 22½ acres off of the
east side of said $\frac{1}{4}$, exclusive of the Acres awarded
to Austin & Smith.

To take the 22½ acres off of east side, as per Terms
of Award, it would take all of Austin's lot and
part of Smith's, to avoid this difficulty, the
Appellees seek to supply the word exclusive, thus
making an entire different award.

By exhibit 6. (see page 111, 2, 3) Metes & Bounds given,
By it the line across the North end of Austin's lot is
4 rods. 20 Links - (that is, 5 more than the bill - 2 more
than Brown - & 20 more than McFee) - and the South
portion of E. line, after turning N. end of Austin's lot,
is a crooked line, and cannot correspond with
Austin's W. line, and there is a small piece in there
between the two lots belonging to Williams.

By decree (see page 136).

Now it is evident, that every line in Warren's
lots will vary, upon every change made, in any
one line of Austin and Smith's lots.

It would seem that the appellées had doubted the sufficiency and certainty of the award, and that they ~~understand~~ ^{attempted} to aid the same by their pleadings, and finding that $22\frac{1}{2}$ acres off of the East side of said $\frac{1}{4}$, would clash with Smith & Austins premises, it became necessary to insert the phrase "Exclusive &c" and finding that their descriptions as alleged, differed from those proven, and those proven differing with each other, and all differing from their exhibits which they prove to have been tendered, and doubting, fearing which or what descriptions to adopt - in their decree, they abandon all, metes and bounds, and go back to their original claim lines in the Timber, - They do not take what they allege to be theirs - They do not take what they prove to be theirs - They do not take what prove to have been tendered within the prescribed time - either of these would have been quite definite and certain, yet after all they turn to the old award, and desire to take by its vague terms.

11. If the appellées claim that any equities arise out of the Claim laws, and agreement among the early settlers respecting claims, deciding

and re-deciding re. the equities are on the side
of the appellant -

What was that agreement about deciding and
re-deciding? It was to deed and re-deed, accord-
ing to claim lines, and not request the gov-
ernment lines. By the testimony of Brown (page
87) it appears that the ~~agreement~~ arbitration grew
out of this agreement among the settlers, and
to abide the claim lines. The parties to this
suit are parties to that agreement, and to that
arbitration. Mr Brown deposes (page 79)
that Julius Warren claimed part of said
SW $\frac{1}{4}$. - and that the claims were designated by
claim lines. - and that he had lived on said Sec 31,
over 20 years - He also deposes (page 89) that there
was no claim line marked around the 22 $\frac{1}{2}$
acres, to his knowledge - the strong and reasonable
presumption is that there was no claim line
marked around the 22 $\frac{1}{2}$ acres, - for if so, how did
they know the precise amount of land? There seems
to have been no survey made thereof prior -

Now if Mr Warren's claim was marked by
a claim line, why did they not award to
the claim line, according to the agreement
agreement, and why establish a new line

contrary thereto? Why violate that compact -
Why exceed their authority? Had they had in
honor the said agreement. They would have conceded
to Mr Warren according to his claim,

- 12 It may be urged by the Counsel for the Appellees, that
Williams acted in good faith, and intentionally so
in obtaining and keeping in ^{his} possession the award.
He was entitled to the possession of the award
on the 19th day of September 1844. In getting possession
thereof, he only took his rights - and shortly after
called upon the Jurist that a true copy thereof,
we think his conduct compares favorably
with that of Mr Warren, who owes a man
for taking rails off of his own claim, and which he,
Mr Warren, is so willing to convey to him in fee -
and also with that of the two arbitrators, and
witnesses for appellees, who under solemn
oath, deny and contradict their own solemn
award.

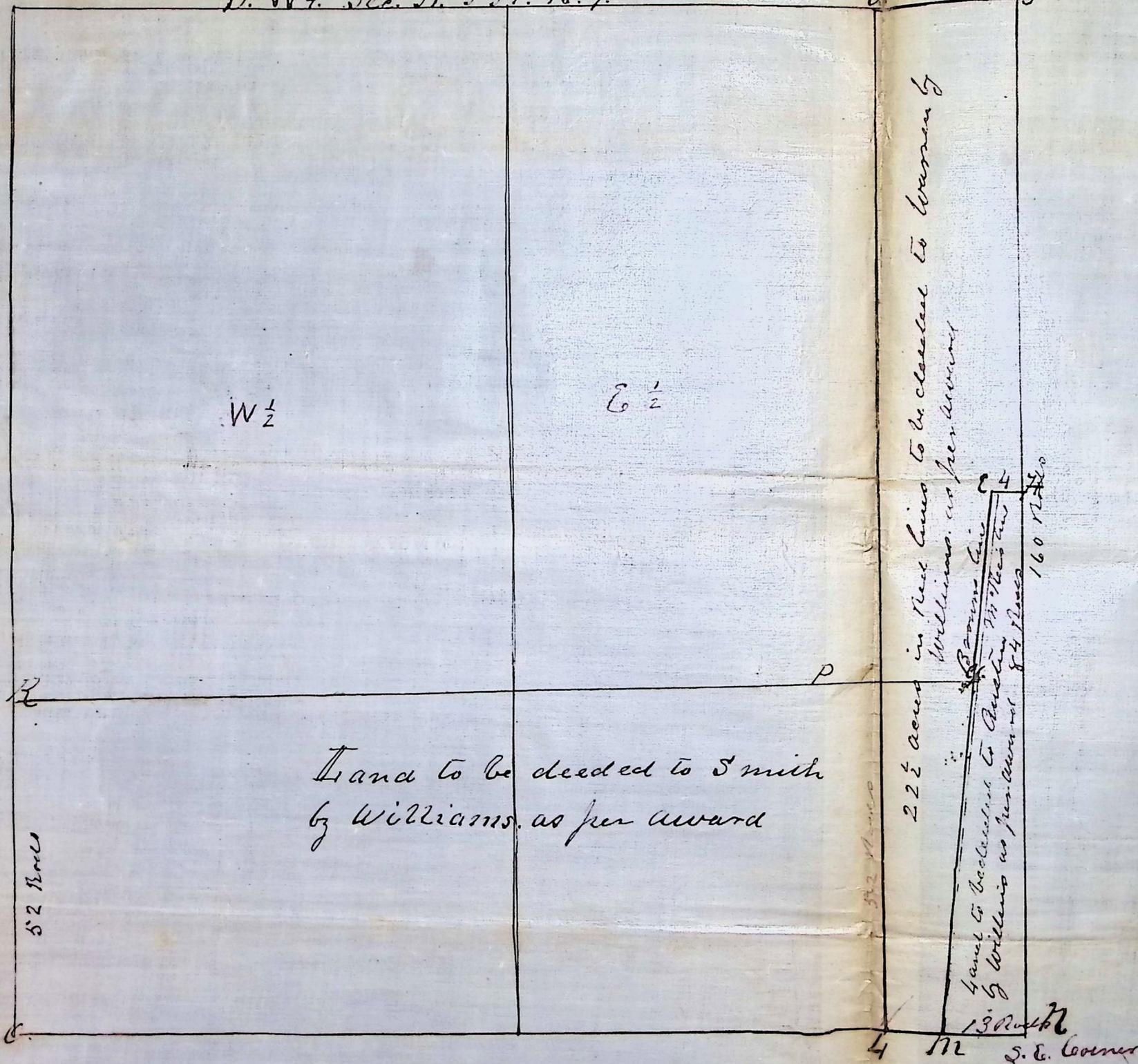
With these extended remarks we submit
the case to your Honors, fully believing, that
justice, and right are on the side of the appellants.

(See Map attached)

Eastman & Beveridge
J. F. Gaumnath for
Appellant

S. W $\frac{1}{4}$ Sec. 31. T. 39. R. 9.

Centre of Section



W $\frac{1}{2}$

E $\frac{1}{2}$

Land to be deeded to Smith by Williams, as per award

22 1/2 acres in West line to be deeded to Wagon by Williams, as per award

3/4 from line hand to bookend to Charles Williams as per award 84 Acres

160 1/2 ft

130 ft S.E. Corner

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Supreme Court

William Willis
vs

Julius M. Warren
et al

Argument for
Appellant

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