

No. 14607

Supreme Court of Illinois

Brill

vs.

Stiles

71641  7

STATE OF ILLINOIS,

April 5, 1864

SUPREME COURT,

THIRD GRAND DIVISION.

[Redacted]

No.

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- 10

J. W. Middleton & Co., Stationers, 196 Lake St.

1864

Dr. J. W. Middleton

75

St. Louis

Supreme Court of Illinois,

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1864.

HENRY BRILL AND AGESILAUS ROCKAFELLER,

PLAINTIFFS IN ERROR.

ELIAS B. STILES AND FREDRICK A. SOULE,

DEFENDANTS IN ERROR.

Abstract of Record.

1 At the April Term, 1858, of the Lee County Circuit Court, the plaintiffs in error filed their Bill of Complaint on the chancery side of said Court, against the defendants in error, to the effect following:

2 That on or about the first day of June, 1854, said plaintiff in error, Brill, purchased of said plaintiff in error, Rockafeller, the N. E. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ of Section 15, Town 20, North, Range 8, East 4th P. M., in said Lee County, for which he paid him \$100; that the said Rockafeller, on the 16th day of September, 1854, executed to the said Brill a deed for the said premises, which deed was duly recorded in the Recorder's Office of said Lee County on the 9th day of April, 1855, and contained the usual covenants for title and a general warranty; which said covenants are still binding upon the said Rockafeller. That the said Brill immediately entered into the possession of said premises and has ever since continued in the possession of the same.

That the said Rockafeller on the 17th of December, 1853, entered the said land at the United States Land Office in

Dixon, in said Lee County, with and by virtue of a certain Military Bounty land warrant, which said warrant was deposited and left with the Register at said Land Office; and that the said Rockafeller then and there received from the said Register a certificate of the entry of the said land, commonly called a Duplicate Certificate, in the words and figures following:

3 "Dixon, Illinois, December 17th, 1853. Military Land Warrant, No. 37655, in the name of Aaron Slack, has this day been located by Agesilaus Rockafeller upon the N. E. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ of Sec. 15, T. 20, N. R. 8, E. of 4th P. M. subject to any pre-emption claim which may be filed for said land within thirty days from this date. Contents of tract located, 40 acres." [Signed] "Hugh Wallace, Register."

That there was no pre-emption claim filed for said land within said thirty days nor at anytime thereafter.

That at the November Term, 1857, of Lee County Circuit Court, the defendant Stiles brought an action of ejectment against said Brill to recover the possession of said premises and eject the said Brill therefrom, which was still pending in said court; and that Stiles was endeavoring to prosecute the same to effect against the said Brill. That the title of the said
4 Stiles to said premises consists of a deed from said Soule and wife to said Stiles, bearing date July, 18th, 1856; and that the title of said Soule consisted of a patent from the United States to him, bearing date November 1st, 1855, which patent was issued on a certificate of entry of said premises from the Register of the Dixon Land Office aforesaid, dated the 16th of June, 1855, and was issued long after the entry of the said lands by the said Rockafeller as aforesaid.

The Bill prays that the said Stiles & Soule [may] be made parties defendants] and that they be summoned to answer &c.; but not to answer under [oath,] the same being waived;
5 that the said Stiles may be restrained by injunction from further prosecuting said action of ejectment, or instituting any other proceeding at law for the recovery of the said premises or any part thereof; that the patent issued to Soule be vacated and set aside &c., and also prays for general relief; which Bill is sworn to by complainants.

6 At the November Term, 1858 of said Court, the defendant Stiles filed his separate answer to said Bill, admitting that he believed it to be true that Brill purchased the land of Rockafeller as stated in the Bill; that as to the purchase of the land

from the United States, or the location of the same with a
7 Military Land Warrant, by the said Rockafeller, he believed
it to be true that an attempt was made to locate said land by
said Rockafeller, and that a certificate of entry as set forth
in the Bill was issued by the Register of said Land Office to
said Rockafeller as alleged in the Bill; but further answer-
ing says that said entry so attempted to be made by said
Rockafeller, by said Land Warrant, was in fact void for
some cause not now known to said defendant; and was by the
Government of the United States cancelled and annulled by
and through the order of the Commissioner of the General
Land Office; and that after the said location and entry of
said land had been so cancelled the same was sold by the said
Register to said Soule; and a patent thereof issued to him as
alleged in the Bill; and that Soule conveyed the same to
Stiles as alleged in Bill of Complaint; and that Stiles com-
menced an action of ejectment to recover the possession of
said lands and is prosecuting the same as alleged in Bill.

8 To which answer the complainants below filed a general
9 replication.

10 At the November Term, A. D. 1860, of said Court, the
following proceedings were had and orders made in said cause:

“On this day [Dec. 23, 1860.] came the complainants by
Edsall & Sheffield their solicitors, also came the defendants
by Heaton & Goodwin their solicitors, and the com-
11 plainants motion for an injunction coming up for hearing, is
by the Court overruled. And thereupon the defendants
moved to dismiss this case for want of equity, which said
motion is by the Court sustained, and this case is dismissed.
It is ordered, adjudged and decreed by the Court that the
said complainants pay all the costs in and about this suit ex-
pended, and that execution issue against them therefor.”

The errors assigned are as follows:

14 FIRST, The Court below erred in not granting the Injunc-
tion and rendering a decree for the relief prayed for.

SECOND, The Court erred in dismissing the complainants
Bill for alleged want of equity.

15 THIRD, The Court erred in rendering a decree against
complainants, below, for costs.

JAS. K. EDSALL,
Att’y for Pliffs. in Error.

91 13

Henry Bull et al
Plffs in Error

v.

E. B. Stiles et al
Abstract of Rec

Filed April 12, 1864

L. Leland Clerk

Supreme Court of Illinois,

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1864.

HENRY BRILL AND AGESILAUS ROCKAFELLER,
PLAINTIFFS IN ERROR.

vs.

ELIAS B. STILES AND FREDRICK A. SOULE,
DEFENDANTS IN ERROR.

Abstract of Record.

1 At the April Term, 1858, of the Lee County Circuit Court, the plaintiffs in error filed their Bill of Complaint on the chancery side of said Court, against the defendants in error, to the effect following:

2 That on or about the first day of June, 1854, said plaintiff in error, Brill, purchased of said plaintiff in error, Rockafeller, the N. E. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ of Section 15, Town 20, North, Range 8, East 4th P. M., in said Lee County, for which he paid him \$100; that the said Rockafeller, on the 16th day of September, 1854, executed to the said Brill a deed for the said premises, which deed was duly recorded in the Recorder's Office of said Lee County on the 9th day of April, 1855, and contained the usual covenants for title and a general warranty; which said covenants are still binding upon the said Rockafeller. That the said Brill immediately entered into the possession of said premises and has ever since continued in the possession of the same.

That the said Rockafeller on the 17th of December, 1853, entered the said land at the United States Land Office in

Dixon, in said Lee County, with and by virtue of a certain Military Bounty land warrant, which said warrant was deposited and left with the Register at said Land Office; and that the said Rockafeller then and there received from the said Register a certificate of the entry of the said land, commonly called a Duplicate Certificate, in the words and figures following:

3 "Dixon, Illinois, December 17th, 1853. Military Land Warrant, No. 37655, in the name of Aaron Slack, has this day been located by Agesilaus Rockafeller upon the N. E. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ of Sec. 15, T. 20, N. R. 8, E. of 4th P. M. subject to any pre-emption claim which may be filed for said land within thirty days from this date. Contents of tract located, 40 acres." [Signed] "Hugh Wallace, Register."

That there was no pre-emption claim filed for said land within said thirty days nor at anytime thereafter.

That at the November Term, 1857, of Lee County Circuit Court, the defendant Stiles brought an action of ejectment against said Brill to recover the possession of said premises and eject the said Brill therefrom, which was still pending in said court; and that Stiles was endeavoring to prosecute the same to effect against the said Brill. That the title of the said
4 Stiles to said premises consists of a deed from said Soule and wife to said Stiles, bearing date July, 18th, 1856; and that the title of said Soule consisted of a patent from the United States to him, bearing date November 1st, 1855, which patent was issued on a certificate of entry of said premises from the Register of the Dixon Land Office aforesaid, dated the 16th of June, 1855, and was issued long after the entry of the said lands by the said Rockafeller as aforesaid.

The Bill prays that the said Stiles & Soule may be made parties defendants and that they be summoned to answer &c.; but not to answer under oath, the same being waived;
5 that the said Stiles may be restrained by injunction from further prosecuting said action of ejectment, or instituting any other proceeding at law for the recovery of the said premises or any part thereof; that the patent issued to Soule be vacated and set aside &c., and also prays for general relief; which Bill is sworn to by complainants.

6 At the November Term, 1858 of said Court, the defendant Stiles filed his separate answer to said Bill, admitting that he believed it to be true that Brill purchased the land of Rockafeller as stated in the Bill; that as to the purchase of the land

7 from the United States, or the location of the same with a
Military Land Warrant, by the said Rockafeller, he believed
it to be true that an attempt was made to locate said land by
said Rockafeller, and that a certificate of entry as set forth
in the Bill was issued by the Register of said Land Office to
said Rockafeller as alleged in the Bill; but further answer-
ing says that said entry so attempted to be made by said
Rockafeller, by said Land Warrant, was in fact void for
some cause not now known to said defendant; and was by the
Government of the United States cancelled and annulled by
and through the order of the Commissioner of the General
Land Office; and that after the said location and entry of
said land had been so cancelled the same was sold by the said
Register to said Soule; and a patent thereof issued to him as
alleged in the Bill; and that Soule conveyed the same to
Stiles as alleged in Bill of Complaint; and that Stiles com-
menced an action of ejectment to recover the possession of
said lands and is prosecuting the same as alleged in Bill.

8 To which answer the complainants below filed a general
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10 At the November Term, A. D. 1860, of said Court, the
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“On this day [Dec. 23, 1860.] came the complainants by
Edsall & Sheffield their solicitors, also came the defendants
by Heaton & Goodwin their solicitors, and the com-
11 plainants motion for an injunction coming up for hearing, is
by the Court overruled. And thereupon the defendants
moved to dismiss this case for want of equity, which said
motion is by the Court sustained, and this case is dismissed.
It is ordered, adjudged and decreed by the Court that the
said complainants pay all the costs in and about this suit ex-
pended, and that execution issue against them therefor.”

The errors assigned are as follows:

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tion and rendering a decree for the relief prayed for.

Second, The Court erred in dismissing the complainants
Bill for alleged want of equity.

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JAS. K. EDSALL,
Att’y for Plffs. in Error.

Henry Brill
et al
Defts in Error

^{N.}
Elias B. Stiles et al
Defts in Error

Attorney of Re-

Filed April 12. 1864
J. Leland CM

Page 1.

State of Illinois }
Lee County } S.S.

Hear in the Lee County Circuit
Court on the Chancery side thereof in the 22nd
Judicial Circuit of the State of Illinois; in a
certain matter lately therein pending, wherein
Henry Drill, and Aquilanus Rockefeller were
Complainants, and Elias B. Stiles, and Andrew A. Soule
were Defendants, on a Bill for Injunction

Be it remembered that on the 25th day of April.
A.D. 1858, the said Complainants filed in the office
of the Clerk of the Circuit Court, within and for
the said County of Lee, their certain Bill of Complaint
and which said Bill of Complaint is in the words
and figures following: that is to say: -

"State of Illinois }
Lee County } Lee County Circuit Court
of the April Term 1858
To the Honorable John B. Estess, Judge of the
Circuit Court in & for said County -

Travelling
complainings unto your Honor, your Orators
Henry Drill & Aquilanus Rockefeller, respectfully
shew unto your Honor, that heretofore to wit: on or
about the first day of June 1854, your Orator
Henry Drill purchased of said Aquilanus Rock

a fellow, the North East quarter of the South West quarter of Section N^o 15 in Town 20 North Range 8 East of the fourth P.M. containing forty acres of land be the same more or less, for which he paid him the sum of One Hundred Dollars. That your Orator the said Asahel Rockafellow on the sixteenth day of September MD 1854, gave to the said Henry Brill a Deed of the said premises, which said Deed was duly recorded in the Records Office of Lee County aforesaid on the 9th day of April MD 1855 and contained the usual covenants of title, and a general warranty which said covenants are still binding upon the said Rockafellow - and that your Orator Henry Brill immediately entered into the possession of the said premises, and has continued in the possession thereof up to the present time - And your Orators further shew that your Orator the said Asahel Rockafellow on the seventeenth day of December AD 1853, entered the said tract of land, at the United States land office in Dixon, in said County of Lee with and by virtue of a certain military Bounty land warrant, to wit land warrant Number thirty seven thousand six hundred and fifty five (37655) which said land warrant was deposited and left with the Register at said land office - and that your said Orator Asahel Rockafellow, received of and from the said Register a certificate of the entry of said land, commonly known as a duplicate certificate in words and figures as follows to wit: "Dixon Illinois December 17th 1853

3.

" Military Land Warrant No 34655 in the name
 " of Aaron Snod has this day been located by
 " Agislaus Rockafellow upon the NE $\frac{1}{4}$ of SW $\frac{1}{4}$
 " of Sec 15 Town 20 N. Range 8. E of 4th P. M.
 " subject to any pre-emption claim, which may be
 " filed for said land within thirty days from this date
 " Contents of tract located
 " 40 Acres Hugh Wallace Register "

And your Orators further shew unto your Honor
 that there was no pre-emption claim filed for said
 land within thirty days after the issuing of said Registers
 Certificate, nor at any time thereafter

And your Orators further shew unto your Honor
 that at the November Term AD 1854 of the Circuit
 Court of the said County of Lee one Elias D. Stiles
 brought an action of Ejectment, against your
 Orator Henry Brill, by which he seeks to eject your
 Orator the said Henry Brill from the premises
 described, and to recover the possession thereof of
 and from your said Orator Brill That said action
 of Ejectment is still pending in the said Court
 and the said Stiles is still endeavoring to prosecute
 the said suit to effect against the said Brill -

And your Orators further shew unto your Honor
 that they are informed, and believe to be true that the
 title of the said Stiles to the said premises consists

of a Deed from one Frederick A Soule & wife to him
said Stiles, bearing date as your Orators are informed
and believe true the 18th day of July AD 1856 - And
that the title of the said Frederick A Soule consisted
of a Patent from the United States to him the said
Soule, bearing date November 8th 1855, which said
Patent was issued on a certificate of entry of the said
premises from the Register at the Dixon Land Office
aforesaid, which said Certificate bears date the six
teenth day of June AD 1855, and was issued long after
the entry of the said premises by the said Rockefeller
as aforesaid and numbered (38131)

All of which wrongs and wrongs are contrary to
equity and good conscience, and tend to the manifest
injury of your Orators in the premises. Wherefore as
your Orators are wronged in the premises by the
strict rules of the Common law, and can only
have adequate relief in a Court of equity where
matters of this nature are properly cognizable and
relievable - Your Orators pray the intervention of
your Honorable Court, and that the said Elias B Stiles
& Frederick A Soule be made joint defendants herein
and that said Stiles and Soule now be summoned
to answer this your Orators Bill of Complaint, but not
to answer under oath, which is hereby expressed, prayed
and that the said Elias B Stiles his attorneys, counsellors
solicitors, officers or agents, may be restrained by an
injunction issuing out of said Court, in the

5.

Chancery side thereof, from proceeding against your
 Onitor Brill in the said action of Ejectment com-
 menced against him as aforesaid, now pending and
 at issue for the recovery of the said premises and also
 from instituting or proceeding in any other action
 at law for the recovery of the said premises or any part
 thereof, - that the said Patent so issued be ~~set aside~~
 to the said Sule, may be vacated and set aside
 and held for naught, and that your Onitors may
 have such other and further relief as to which
 they shall be entitled in the premises, and shall be
 agreeable to equity & good conscience -

Edw & Sheffield
 Solicitors

Henry Brill
 Agstebans Rockafellow

State of Illinois } ss
 Lee County

Henry Brill, and Agstebans Rocka-
 fellow the above named complainants, each being duly
 sworn according to law each for himself, says that the
 matters and things, stated upon the foregoing Gellups
 their knowledge are true, and as to all other matters
 & things stated in the foregoing Bill upon their know-
 ledge are true, and as to all other matters therein
 stated, that they are true to the best of their knowledge
 & belief

Henry Brill

Subscribed & sworn to before
 me this 14th day of April 1858
 George C. Haskell
 Clerk

Agstebans Rockafellow

6.

and which said Bill of Complaint is endorsed to wit:
 "Filed April 21st 1858 Geo E. Haskell Clk
 " for Joseph Paul D.C. "

And afterwards to wit on the 29th day of November A.D. 1858 the said Defendant Stiles filed his answer in the words following to wit:-

"State of Illinois } Lee County Circuit Court
 Lee County } of the November Term A.D. 1858

Henry Drill et al

Elias B Stiles et al

The answer of Elias B Stiles, one of the above named Defendants to the above named Complainant's Bill of Complaint filed herein -

And the said Elias B Stiles comes & saving and reserving to himself all & all manner of exception to the said Complainant's Bill of Complaint for answer saith, That as to the purchase of the tract of land in said Bill described by the Complainant Rockafeller & the payment of the sum of One hundred dollars he says he has no knowledge, but believes the same may be true, that as to the purchase of the said land from the General Government of the United States or to the location of the same with a military land warrant

as therein alleged he says that he believes it to
 be true that an attempt was made to locate
 said land warrant in said bill described upon
 said land by said Rockafeller & that a certificate
 of entry as set forth in said bill was issued by
 the Register of said land office to said Rockafeller
 as in said bill is alleged, but this defendant further
 answering saith that said entry so attempted to be
 made by said Rockafeller of said land warrant
 upon said land was in fact paid for some cause
 not now known to this Defendant and was by the
 said Government of the United States cancelled
 and annulled by & through the order of the Com-
 missioner of the General land office. And after
 the said entry and location of said land by said
 land warrant was cancelled the same and was
 by said Register of the land office, at said Dixon, sold
 to said Frederick A. Seale said land, & that the United
 States did issue and cause to be issued, a patent
 for said land, to said Seale as in said bill is
 alleged & the said Seale did convey the same
 to this defendant by deed, as in said bill is alleged
 & they did commence an action of Ejectment
 against the said Complainant Brill as in said
 bill is alleged, which said action of Ejectment is
 still pending. And the said Defendant Stiles having
 fully answered said Complainant's bill of Complaint
 herein prays that the Supplication herein be dismissed
 & that the said Defendant hereof be dismissed

with his reasonable acts &c.
 Elias B Stiles

Antony & Alston
 Sols

And the said answer of the said Stiles is endorsed
 as follows to wit: "Filed Nov 29th 1858

" J. S. Deane & Co
 " J. S. Deane & Co

And afterwards to wit: on the 15th day of April
 1859 the said Complainants filed their
 Replication in the words following to wit:

"State of Illinois } ss.
 In County } Lee County Circuit Court
 of the May Term AD 1859
 In Chancery

The Replication of Henry Brill and Apollonia
 Rockafellow Complainants to the answer of Elias
 B Stiles who is replied to by said A. C. Deane
 These

replicants, avowing and swearing to themselves now
 and at all times hereafter, all and all manner of
 benefit and advantage of exception, which may
 be had or taken to the manifold deficiencies
 of the said answer, for replication thereunto
 say that they will now and maintain and prove
 their bill of Complaint to be true certain and

9.

sufficient in the law to be answered on to;
and that the said Answer of the said Defendant
Stiles is uncertain, untrue, and insufficient
to be relied on by these plaintiffs without this
that any other matter or thing whatsoever in
the said Answer contained, material or essential
in the law, to be relied on, & not herein & hereby
well and sufficiently, relied on, confessed and
avoided, traversed or denied is true, all which
matters and things these plaintiffs are and will
be ready to aver, maintain and prove, as this
Honorable Court shall direct, and humbly pray as in
and by their said bill they have already prayed

James H. Colwell
Sol for Compts "

And which said Replevin is endorsed as
follows to wit:-

"Filed April 15" 1859

" J. S. Boardman Clerk

" Joseph H. Bull Dep "

And afterwards to wit: at a Regular Term
 of the said Lee County Circuit Court, begun and
 holden at the Court House in the City of Dixon
 the seat of justice of said Lee County, on the said
 Monday to wit on the Twenty sixth day of November
 in the year of Our Lord, One Thousand Eight Hundred
 and Sixty; then and there being present the
 Honorable John O. Eastman Judge of the
 said 22^d Judicial Circuit: presiding

Isaac S. Boardman Clerk of said Lee County
 Circuit Court—

and

Lester Harding Sheriff of said Lee County:

On the Twenty third day of December AD 1860
 came being one of the regular days of the
 said November Term of said Court, the following
 proceedings were had in said cause in said
 Court as appears to us of Record, that is to say

" Henry Brill, and
 Agostinus Rockefeller

" Elias B. Stiles, and
 Frederick A. Soule

} Bell for
 Injunction ~

On this day came the
 Complainants by Edsall & Sheffield their Solicitors
 also came the Defendants by Henton & Graham
 their Solicitors, and the Complainants motion for

11.

and Injunction, coming up for hearing, is by the Court overruled.

And thereupon the Defendants move to dismiss this case for want of Equity, which said motion is by the Court sustained; and this case is dismissed. It is ordered and decreed by the Court that the said Complainants pay all the costs, in and about this suit expended, and that Execution issue against them therefor."

State of Illinois }
Lee County } ss

I, Benjamin F. Shaw, Clerk of the Circuit Court in and for said County of Lee and State of Illinois, do hereby certify that the foregoing is a true and correct Exemplification of all the papers and proceedings in said cause, as appears from the files and Records yet remaining in my office.

Witness Benjamin F. Shaw Clerk of the said Lee County Circuit Court, and the Seal thereof at Dixon this 21st day of December A.D. 1863.



Benjamin F. Shaw Clerk
vs Joseph Bull & Co.

13.

(Bill of Costs)

Henny Brill's Agreements Rockefeller }
 Elias D Stiles and }
 Frederick A Gould } Imposition

Receipts
 Cost

attys 25; Doc case 90; 8 continuances \$1.60; fil 2 pms 10 = \$2.85
 Amos fil 40; Imposition 50; mns for Imposition 20 Sals 1.25
 Transcript 45 \$3⁰⁰ Bill of Cost 30 Cops 20 - \$4.10
 \$8.20

Debits Cost

attys 25; fil pms; Ord over mns for Imposition 20 50
 mns to dismiss 20; Ord duty mns 20; Ord dismiss 20 60
 Bill of Cost 25; pms 10; Bill of Cost 30 Cops 20 Cops had to 40 \$1.25
 \$10.55

I certify the foregoing to be a correct copy of
 Costs in said cause

Benj: F Shaw Clerk
 Joseph Ball DC

J H Edsall paid \$3⁵⁰ on Transcript

91 13

Henry Brill &

Agencians Rock-
feller
Pg. in error

Elias B. Stiles &
Frederick A. Soule
Pg. in error

Manuscript of Record

Filed January 16th 1864
L. Leland, Clerk

Elias B. Stiles et al
Defts ~~Compt~~ in error

~~Compt~~
Defts Brill et al
Pg. in error

as above assigned: and then forth they pray that the
said decree and judgment may be affirmed and
that their costs may be affirmed, and that the costs
adjudged to them &c

By Geo. W. Goodwin atty
for Defendants in error



In the Supreme Court of the
State of Illinois - Midl Grand
Division: Of the April Term
A.D. 1864.

Henry Brill &
Agassians Rockefeller
Plaintiffs in error }
} Error &
} Lee Co.
Elias B. Stiles and
Frederick A. Soule
Defts in error }

State of Illinois }
Lee County } of James K. Edmull
attorney for the Plaintiffs ^{in error}
in the above entitled cause
being first duly sworn says that
the above named Frederick
A. Soule is a non resident of
this State further this deponent
swears not - James K. Edmull

Subscribed & sworn to before
the undersigned Notary
Public in & for the City of
Chicago in said Lee County.
this 4th day of January A.D.
1864. Witness my hand and
Notarial seal



Daniel C. Ellis
Notary Public

91

13

Henry Brill et al
Depts in error

Elias B. Stiles D
Frederic A. Lowe
Depts in error

Affidavit of
Nonresidence of
Lowe

Filed January 16. 1874
L. Leland
Clerk

State of Illinois }
Mind Grand Jurisdiction } P

Supreme Court of the State of Illinois,
April Term A.D. 1864,

Henry B. Hill &
Agencies Rockefeller
Plffs in error

Elias B. Stiles and
Frederick H. Soule;
Defts. in error -

" James K. Edhall
attorney for the Plaintiffs in error
herein being duly sworn says
that the above named Frederick
H. Soule one of the defendants
in error in this suit is not a res-
ident of this State, & further saith
not & c James K. Edhall

Subscribed & sworn to before
the undersigned Notary
Public in & for the City of
Sixon in the County of Lee &
State of Kansas. In testimony
whereof I have hereunto set
my hand & notarial seal
at Sixon aforesaid this 26th
day of February A.D. 1864.

Samuel C. Ellis
Notary Public

91 13

Henry Bull et al
Plffs in error
~

Elias B. Stiles et al
Defts in error
App for writ of new
residence

Filed Jan'y 27. 1864

of Salem

Jameson & Morse, Printers, Chicago.

In the Supreme Court of Illinois,
THIRD GRAND DIVISION.

APRIL TERM, A. D. 1864.

HENRY BRILL AND
AGESILAUS ROCKAFELLER,
Plaintiffs in Error,

vs.

ELIAS B. STILES AND
FREDERICK A. SOULE,
Defendants in Error.

BRIEF OF DEFENDANTS IN ERROR.

The bill filed in this case seeks to enjoin a suit, pending at the time of filing the bill, in the Lee county Circuit Court, in which Stiles, one of the defendants below, was plaintiff, seeking to recover, in an action of ejectment, the possession of the premises described in the bill from Brill, one of complainants below and defendant in said ejectment suit. The only allegation of the bill showing, or attempting to show, an equitable right in complainants to the premises, is the allegation that "Rockefeller, on the 17th day of December, A. D. 1853, entered the said tract of land at the United States Land Office, in Dixon, in said Lee county, with and by virtue of a certain military bounty land warrant, to wit: Land warrant number 37,655, which said land warrant was deposited and left with the Register of said land office; and that said Agesilaus Rockefeller received of and from said Register a certificate of the entry of said land, commonly called a duplicate certificate, in words and figures as follows:

'DIXON, Illinois, December 17th, 1853.

'*Military Land Warrant No. 37,655*, in the name of Aaron Slack, has this day been located by Agesilaus Rockefeller, upon the N.E. $\frac{1}{4}$ of S.W. $\frac{1}{4}$ of Sec. 15, Town 20, N. range 8, E. 4th P. M., subject to any pre-emption claim which may be filed for said land within thirty days from this date. Contents of tract located, 40 acres.

"[Signed]

HUGH WALLACE, Register."

Bill shows that the United States afterwards conveyed the same land, by patent, to defendant, Soule.

Upon this showing the defendants submit :

I.

That the complainants show no equitable title or interest in the land ; that the mere act of depositing a land warrant with the Register does not, in fact, constitute an entry, no matter what complainant may call it ; that under the law,

See Act of Congress of Sept. 28th, 1850,

and the regulations of the Commissioner, issued thereon, a written application by the warrantee must be made to the land officers to enter the land, and the warrant must be relinquished, in due form, to the United States. Under the act of 22d of March, A. D. 1852, making bounty land warrants assignable, and regulations of commissioner thereunder, this application and relinquishment must be made by the legal assignee. It is not averred in the bill, nor does it in any manner appear, that said land warrant was assigned by deed or instrument of writing, according to such form, and pursuant to such regulations "as was prescribed by the Commissioner of the General Land Office."

It does not in any manner appear, from said bill, that said land was subject to entry or location by military bounty land warrants. It not being averred that, at the time of such attempted location, there was no "actual settlement and cultivation on said land."

See Act Congress of 28th Sept., A. D. 1850, Sec. 3d.

It is submitted, that there is no act of Congress authorizing or directing the Register to issue such a certificate as the one set forth in the bill, and no act of this State making them evidence of any fact, whatever ; and in the absence of such laws, nothing is to be presumed upon the faith of said certificate ; but if the law were otherwise, still the certificate does not show any right in Rockafeller, but rather in Aaron Slack, if in any person.

In the case of *McDowell vs. Morgan*, 28th Ill., 528, cited by plaintiffs in error, all these objections were met by averments in the bill.

This bill, to give the complainant a *prima facie*, equitable title to the land, should have averred that the entry was in the name of Rockafeller ; that he was the assignee and owner of the land warrant ; that it was lo-

cated, and that he made the application to locate it, in the manner and according to the law, or the rules and regulations of the land office ; or it should have shown, specifically, what was done, showing enough to show a compliance with the law and regulations of the land office ; and in the absence of such showing the court will presume that the patent was legally and rightfully issued to Soule.

II.

The bill does not show that the complainant, Brill, had not a good defense to the ejectment suit at law. The bill alleges that the title of Stiles is a deed from Soule and wife to him. It does not aver that such deed was a deed of this or some other land ; that it was in due form of law, or that it, in fact, conveyed the title from Soule to Stiles. The suit in ejectment was still pending, the court had not as yet passed upon the legal title, and it is submitted that no bill like the present lies until the court has passed upon the legal title.

But even if the law is otherwise, still the complainant must then show, by legal averment and statement, that there is clearly no defense at law ; that is, he must aver and show that the plaintiff in ejectment has a good, legal title on which he would be entitled in ejectment to to recover the premises.

GEO. P. GOODWIN,
Att'y for Defendants in Error.

Hon Judge. Welles

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Supreme Court
Third Grand Division
April Term A.D. 1824

Henry Brill &
Agst. Tans. Rockefeller
vs. *in error*

Elias B. Stiles &
Andrew H. Laule
vs. *in error*

Brief for Defendants
in error

Filed April 27. 1824
L. Seland
Clerk

Geo. P. Woodward
Att'y for Defendants
in error

STATE OF ILLINOIS,
SUPREME COURT.

} ss. The People of the State of Illinois,

To the Sheriff of Lee County, GREETING:

Because, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the Circuit Court of Lee County, before the Judge thereof, between Henry Baile & Agasilans Rockafellow

plaintiffs, and Elias B. Stiles & Frederick A. Soule

defendants, it is said that manifest error hath intervened, to the injury of the said plaintiffs

as we are informed by their complainants the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law: Therefore, We Command You, That by good and lawful men of your County, you give notice to the said Elias B. Stiles and Frederick A. Soule

that they be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next, to hear the record and proceedings aforesaid, and the errors assigned, if they shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said Elias B. Stiles & Frederick A. Soule

notice, together with this writ.

Witness, The Hon. John W. Galton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 16th day of January in the year of our Lord One Thousand Eight Hundred and Sixty-four



L. Leland
Clerk of the Supreme Court.
J. D. Rice Deputy

Henry Brill. Dec

No. vs.

Levi N. Stiles Dec

SCIRE FACIAS.

Filed... Jan'y... 27... A. D. 1864

J. Delaney Clerk.

State of Illinois }
 Lee County } executed the within
 writ by reading the same to & in the
 presence and hearing of the within
 named Elias B. Stiles at Dixon in
 said Lee County this twenty fifth day
 of January A.D. 1864. The within
 named Frederick A. Gould not found
 in my County the 1864.
 Dixon, January 25th 1864.
 service .30
 Return .10
 60 cts
 Received Sheriffs fees of J. K. Edsall
 Plaintiffs atty.
 C. F. Lynn Sheriff
 Mr J. W. Lewis Deputy.

STATE OF ILLINOIS, }

LA SALLE COUNTY.

STATE OF ILLINOIS, SUPREME COURT.—Within and for the Third Grand Division of said State.

Henry Brill and Agesilaus Rockafellow vs. Elias B. Stiles and Frederick A. Soule. Error to Lee county Circuit Court.

Whereas, the said Henry Brill and Agesilaus Rockafellow have sued out a Writ of Error from said Supreme Court to reverse a judgment obtained by said Elias B. Stiles and Frederick A. Soule against said Henry Brill and Agesilaus Rockafellow in the said Circuit Court of Lee county, which said Writ of Error is now pending in said Supreme Court; and whereas, a Writ of Scire Facias has been duly issued herein, returnable on the first day of the next term of the said Supreme Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next, according to law; and whereas, also, it appears by affidavit, on file in the Clerk's office of said Supreme Court, that the said Frederick A. Soule is a non-resident of the State of Illinois, and without the reach of the process of said Supreme Court.

Now, therefore, you, the said Frederick A. Soule, the said defendant in error, whose non residence appears as aforesaid, are hereby notified to be and appear before the justices of said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next, to hear the Record and proceedings brought into said Supreme Court on return of said Writ of Error and the errors assigned, if you shall see fit, and further do and receive what the Court shall order in this behalf.

Dated this twenty-third day of January, A. D. 1864,

L. LELAND, Clerk.

JAMES K. EDSALL, Attorney for Plaintiffs in Error.

This Certifies, That the annexed Notice in *Henry Brill et al.*
vs. *Stiles and others* was inserted *four*
weeks successively in the OTTAWA FREE TRADER, a weekly
newspaper published at Ottawa, La Salle County, Illinois,
commencing with the number of said paper dated *Feb-*
ruary 6th A. D. 1864, and ending with the number dated
February 27th A. D. 1864

PRINTER'S FEE \$ 5.00



W. Osmer Publisher.

Per T. Barton

Received payment
By J. K. Edsall,
Plaintiffs atty

91

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Drill

22

States

Filed April 21. 1869
L. Selous
Clerk