

No. 8825

Supreme Court of Illinois

Robert McEntyre

vs.

Miner N. Franklin, et al,

Robert McENTYRE,
VS.
MINER N. FRANKLIN et. al.]

ABSTRACT OF RECORD.

- Page 1. *a.* Venue, term of Court and name of Judge presiding.
b. Statement of parties to bill, and title of bill.
c. Copy of Summons issued in this cause.
- Page 2. *d.* Copy of Sheriff's return of Summons.
e. Copy of Complainants bill, venue, entitled of March term, 1859, &c.
g. Complainant alleges he was occupying N W qr Sec. 23, T. 3 S. R. 3 West, on day of 1854, in Washington County, Illinois.
h. That said land was subject to entry under graduation act of August 4th, 1854.
i. Alleges that Complainant was desirous of procuring title to North half and Franklin to South half of said land.
- Page 3. *j.* Allegation that Franklin proposed to complainant, that complainant enter said land in his own name, each one to pay half of the expense, and complainant to deed one half of land to Franklin.
k. That complainant and Franklin according to said proposition went to Kaskaskia together for the purpose of making the entry, and found the office closed.
l. That Daniel P. Roberts proposed to make the entry for them when the office opened, if they would leave the money, and make affidavit that he, complainant, *entered said land for his own use, and for the purposes of actual settlement and cultivation*, and had not acquired more than 320 acres under the act of August 4th, 1854.
- Page 4. *m.* That complainant and Franklin each, furnished ten dollars to Roberts, and that complainant paid Roberts \$3,50 for affidavit and \$2,50 fees for entering said land, and that Roberts promised to send complainant a certificate of entry, &c.
n. That complainant waited, got no answer; Franklin went to Kaskaskia to know the cause; learned the entry was not made; filed *his own affidavit* under the act of August 4th, 1854, *with the money* paid by complainant and Franklin to Roberts, and took certificate of entry in his own name for whole tract.
- Page 5. *o.* That Franklin after entering said land promised complainant to deed him the North half of the tract, he, (Franklin) having filed the necessary affidavit, &c., in accordance with the original agreement.
p. That long before the entry, complainant was occupying the land, and he continued so to occupy ever since; has made valuable improvements thereon, and Franklin has occupied South half of said land.
- Page 6. *q.* That complainant has demanded a deed, but Franklin repeatedly refused to make it.
r. That Franklin has fraudulently conveyed said land to Dicy Glenn, who has since married James Glenn; that there was no consideration for said conveyance.
- Page 7. *s.* Prays to be excused from making exhibits of said deed and certificate of entry, complainant not knowing whether they are in possession of Franklin or Glenns, but believes the Patent is in Franklin's possession.
t. Prayr of Bill, that defendants be summoned and required to answer; oath waived; that the deed from Franklin to Dicy Glenn be set aside so far as N. half of said land is concerned, and that Franklin be compelled to convey same to complainant and for other and further relief, &c. Signed by Smith & Sumner, Sol'rs. for Compl't.
- Page 8. *u.* Answer of Miner N. Franklin; title of cause, &c.
- Page 9. *v.* Denies that complainant at any time in year 1854 was occupant of said N. W. qr.
w. Admits that in 1854 complainant resided on N hf of said tract, in a house belonging to this respondent.
x. Avers that respondent occupid S. hf of said tract, and was owner of all improvements on said N W qr.
y. Admits that complainant and him went to Kaskaskia together; that it was their intention then, to enter said N W qr in name of complainant, but denies that complainant furnished one dollar of purchase money or expenses, avers that this respondent furnished the money; that no purchase was then made; that money was then left to make the purchase; that said money was respondents.
- Page 10. *z.* That respondent urged complainant to go to Kaskaskia to see about entry, and complainant refused and would have no more to do with it; that respondent was compelled to go to Kaskaskia to see about the entry, or loose his money, and made two trips there for that purpose, and made it in his own name, with his own money.
a. That Franklin was at great expense, to-wit: \$200. in entering said land, &c., paying taxes thereon and obtaining patent, none of which complainant has paid back to him, or even offered to pay back.
b. That Franklin swore when he purchased said land, that he entered it for *his own use*, for settlement and actual cultivation, under provisions of act of Aug. 4th, 1854.
c. Admits he deeded the land to Dicy Franklin, now Dicy Glenn, denies that same was done fraudulently, but avers it was done in good faith for a good consideration.
d. Denies that he, Franklin, ever refused or was requested by complainant to deed N hf of said land to complainant, or even heard complainant claim any of it until commencement of this suit.
e. Avers that complainant gave up all claim to said land before respondent entered it.
f. Denies that complainant ever made any valuable improvements on said land.
g. Conclusion and prayr to dismiss bill
h. Answer of Dicy and James Glenn, denying all the allegations in complainants bill, except that alleging conveyance to said Dicy, avering that the conveyance from Miner Franklin to said Dicy was made in good faith, without any knowledge of any claim of complainant to the land.
- Page 13. *i.* Repliation of complainant to answers of all defendants, dening the allegations in said replications contained and alleging that said replications are uncertain and insufficient in law, &c.

- Page 14. *j.* Decree of Court, requiring said defendant to make a deed to complainant for N hf of N W qr Sec. 23, T 3 S R 3 West.
- k.* Appeal prayed and granted on defendant entering into bond in sum of \$100 in 30 days, &c.
- l.* Interlocutory decree, overruling motion of defendants to dismiss bill and ruling defendants to answer by 15th July, 1859, and continuing cause.
- Page 15. *m.* Deposition of complainants witnesses.
- n.* Deposition of E. B. Jones, who says he went to Kaskaskia with Franklin; returned with him; learned he was going to enter bit lands—that he and complainant were going to enter together—learned that complainant lived on half land.
- o.* Franklin said complainant had left half the money, and he, Franklin, left the other half. Witness advised Franklin to make deed to complainant and take notes for half of it back.
- Page 16. *p.* That each furnished half the money and Franklin done the swearing.
- q.* That Franklin said at another time he had been willing to deed complainant 40 acres but wouldn't do it now.
- r.* Cross examined. Don't know how long ago it's been; was about in same condition then as when deposition was taken; a little more drink aids his memory.
- Page 17. *s.* Franklin said in last conversation I had with him, that complainant had not paid one cent toward the land.
- t.* Deposition of Robert Looney. Went with Franklin to Kaskaskia to see about bit land—Franklin found land he wanted not entered, said he would have to go back after complainant—went to Pensonean and Franklin gave Pensonean so much to enter it in his, F's name.
- u.* Witness advised F. to give complainant a deed for one half the land when he went home—thinks he said it was the calculation for complainant to have half the land, and he would deed it to him.
- v.* Knows that F. helped build the house complainant lives in, on land in controversy.
- w.* Was a witness to deed from F. to his Daughter Dicy, knows nothing of any money passing between them then.
- x.* Knows Franklin was then in law-suits, and said this was the cause of his deeding it to his daughter, who was then unmarried, 20 years of age.
- Page 19. *y.* Don't know whose money was used in entering the land.
- z.* Deposition of Elbert Larkin, heard Franklin say half the land was complainants and half his, F's, didn't say which half was complainants, thinks complainant lived on north half; never heard F. say he would deed it to complainant.
- Page 20. *a.* Learned from Franklin that the land was his and complainants in partnership.
- b.* Deposition of Hugh Adams: Says he heard Franklin say that complainant applied to enter the land and left money at land office—that he went down to see about it—entered it in his own name; didn't say whose money entered it; said he was going to make a deed to complainant for half of it.
- Page 21. *c.* Thinks land is in Sec. 23 T 3 S R 3 West, N W qr.
- Page 22. *d.* Deposition of Eli Hutchings: Says Franklin told him that complainant went to Kaskaskia to enter the land; left the money and affidavit; that he went to see about the land, found it not entered; drew the money and papers and entered in his own name; so entered in copartnership; was to make complainant a deed to his part.
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- f.* Deposition of Jas. H. Maxwell: Says about same as last witness as to Franklin's admissions about entering the land; heard nothing about deeding to complainant; understood from conversation it was complainants land but in Franklin's name.
- Page 24. *g.* Don't remember all that was said.
- h.* Deposition of Clark Gordon: Saw deed made from Franklin to Dicy; heard F. say about that time there was some indictments against him and he expected to be fined, and wanted to put the land out of his hands.
- i.* Franklin said he entered the land with his own money, and paid the fees himself, in same conversation referred to above.
- Page 25. *j.* Deposition of S. Maxwell: Was in Kaskaskia when land was entered, and present when deed was made to Dicy; saw no money paid.
- Page 26. *k.* Testimony for complainant closed.
- l.* Deposition on part of Defendants: Jos. Laceyfield was present and heard Hugh Adams and Franklin talk about the land.
- m.* Franklin told Adams the land never cost complainant one cent.
- Page 27. *n.* Deposition of John Franklin, knows N W qr Sec. 23 T 3 S R 3 W, let Franklin have ten dollars to enter bit land with; complainant said Franklin went to Kaskaskia next day after I let him have the money.
- Page 28. *o.* Witness was angry with Franklin for taking complainant along; making double expense.
- Page 28. *p.* Deposition of Thos. Franklin: known the parties and land in dispute.
- Page 29. *q.* Let Miner N. Franklin have \$10 to enter bit land with in fall of 1854; knows he went to Kaskaskia within two days afterwards, to enter this land N W qr Sec. 23 T 3 S R 3 W, went with him.
- r.* Knows that said Franklin worked in putting up the house complainant lives in, &c.; that McEntyre went along to kaskaskia.
- Page 30. *s.* Deposition of Gillis Franklin: Knows the land; knows that complainant did not live on the land when they all went to Kaskaskia to enter it; knows that Franklin helped cut, hew, scalp and haul the logs that built the house complainant now lives in.
- t.* Appeal Bond filed 15th September, 1859.
- Page 32. *u.* Clerks Certificate to this copy of Record.

443

Miner & Franklin & Co

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Robert McIntyre

Abstract of Record

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Filed Nov. 15. 1859.
A. Robinson Clk

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McL. Lyon

From plain it is

Abstract - R