

14311

No. _____

Supreme Court of Illinois

Mason

vs.

McGirr

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 123

14311

Mason

75

McGee

1862

Prepared

Supreme Court of Illinois
Third Grand Division
April Term A. D. 1862.

Charles Mason,
Executor of Jesse C. Smith,
deceased,
James Smith,
Isaac Smith,
John Smith, +
Samuel Smith,
Plaintiffs in Error,
vs.
Arthur Mc Ginn, +
John P. Tilden,
defendants in error,

In Chancery

Error to the Circuit Court of
Bureau County.

The Clerk will please issue a writ
of error in the above entitled cause,
and a writ of scire facias to hear
errors, directed to the Sheriff of Bureau
County, and another to the Sheriff
of La Salle County, for service on
defendants, returnable to the April
Term of the Supreme Court.

To Lorenzo Leland Esq.
Clerk Supreme Court.
Ottawa—

Yours &c
B. F. Ayer
Solr. for Plffs
in Error

March 4th 1862.

129
Supreme Court.
Third Division

Charles Mason, et al.

v.

Arthur Mc Ginn &
John P. Tilden

Receipt

Filed Dec. 8, 1862.
L. Belmont
Clk.

Supreme Court of Illinois
Third Grand Division
April Term A. D. 1862.

Charles Mason, Executor of
Jesse C. Smith, deceased, James
Smith, Isaac Smith, John
Smith, + Samuel Smith,
Plaintiffs in error

vs.

Arthur Mc Ginn, + John
P. Liden.

In Chancery

Error to the Circuit Court of
Bureau County.

I do hereby enter myself security
for all costs in this cause, and
acknowledge myself bound to pay
or cause to be paid, all costs which
may accrue in this action, either
to the opposite parties or to any of
the officers of this Court, in pur-
suance of the laws of this State.

Dated this fourth day of March,
A. D. 1862.

B. F. Cuyler

⁷⁶
123.
Supreme Court
Third Division

Charles Mason et al.

vs.

Arthur Mc Ginn &

John P. Fildes

Security for Costs

Filed Oct. 5, 1862

L. Uland
Clk.

STATE OF ILLINOIS, }
SUPREME COURT, } ss.

The People of the State of Illinois,

To the Clerk of the Circuit Court for the County of Bureau—Greeting:

Because, In the record and proceedings, as also in the rendition of the judgments of a plea which was in the Circuit Courts of Bureau County, before the Judge thereof, between Charles Mason Executor of Jesse C. Smith dec., James Smith, Isaac Smith, John Smith & Samuel Smith—

plaintiffs, and

Arthur McGinn & John P. Tilden

defendants, it is said manifest error hath intervened, to the injury of the aforesaid Plaintiffs

as we are informed by them complaints and we being willing that error should be corrected, if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plaints aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the County of La Salle, on the first Tuesday after the third Monday in April next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 5th day of March in the Year of Our Lord One Thousand Eight Hundred and Sixty two.

L. Claude
Clerk of the Supreme Court.



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123
Charles Mason et al

vs

No. 123

vs.

Meginnis Tilden

WRIT OF ERROR.

FILED

March 2

A. D. 1862

L. Keland

Clerk.



STATE OF ILLINOIS,
SUPREME COURT.

ss. The People of the State of Illinois,

To the Sheriff of La Salle County, GREETING:

Because, In the record and proceedings, and also in the rendition of the judgments of a plea which was in the Circuit Court of Bureau County, before the judge thereof, between Charles Mason, Executor of Jesse Smith vs. James Smith Isaac Smith John Smith and Samuel Smith - - - - - plaintiffs, and Arthur McGirr & John P. Filders

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

as we are informed by their ~~complaints~~ the record and proceedings of which said judgments 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 Arthur McGirr & John P. Filders

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 Arthur McGirr and John P. Filders notice, together with this writ.

Witness, The Hon. John D. Paton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 5th day of March in the year of our Lord One Thousand Eight Hundred and Sixty-two

L. Ireland
Clerk of the Supreme Court.

Charles Mason

vs. et al.

No. 123 vs.

Arthur McGinn

vs. John P. Tilden

SCIRE FACIAS. To

La Salle Co.

For McGinn



FILED April 22 A. D. 1862

L. Leland Clerk.

Served by sealing this writ to Arthur McGinn and John P. Tilden this 11th day of April 1862

sent by me 1.10
33 miles 1.65
2.75

E. Madson
and J. A. Burtlett

Charles Mason Executor ~~of~~ Circuit Court of
of the estate of Jesse C. Smith } Bureau County
deceased } State of Illinois
vs }
Arthur McGirr, J. P. Elden } In Chancery

Charles Mason the above named party being duly sworn says that the above entitled suit was commenced some time in October or November 1859 - that at the time of its commencement he was residing in the State of Iowa - that within two or three weeks thereafter he left the said State for the city of Washington - that he returned to the State of Iowa on or about the 25th of December following & left with his family on or about the 4th of January 1860 & has ever since resided either in the city of Washington or in the city of New York

He further says that in consequence of his home being so distant from the said county of Bureau the entire supervision & management of said suit was left with Dileas Ramsey Esq. the solicitor of record in the case, with the intention & expectation that the said suit would be prepared on, to a final determination in the usual way & in accordance with the rules & practice of said court

He also states that about the last of July 1860 he addressed a letter to the Clerk of the circuit court of Bureau county, to ascertain the condition of the above entitled suit & learnt to his great astonishment not only that no steps had been taken in said suit by said Ramsey, but that at the March term of the circuit court in said county, on motion of said defendants' solicitors the said suit had been dismissed & a decree

rendered confirming in said defendant Felder
the title to certain lands, for the setting aside of
which title the said suit had been instituted

Deponent further states that it was not only
contrary to his ~~express~~ intention that the
said Ramsey had failed to urge on the pro-
ceeding in said suit with all reasonable
celerity but that he never had the least rea-
son to suspect that he had failed to do so
until long after the time when the decree
confirming the title in said Felder had
been rendered as aforesaid - that said Ramsey
had not only undertaken the charge of the case but
(as he informed this deponent) had engaged a Mr
Stipp, an attorney & counsellor at law residing
at Princeton, in said County of Bureau to keep
a watch of the case while he himself might be
absent as he lived in a different county - that
he said deponent had been more than
once assured by said Ramsey that nothing
should be left undone that was necessary
to a proper & successful prosecution of the
said suit - that learning at length from said
Ramsey that little progress had been made in
the suit & feeling anxious in relation to it he
wrote to the clerk of the ^{said} Circuit Court & received
in reply the information that the case
had been dismissed & an adverse decree
rendered as above stated - that on the
same day that this information was received
he wrote an urgent letter to said Ramsey
asking for information as to what had been
done & what remedy was within the reach of
this deponent but received no reply. He then
addressed a letter to — Stipp Esq Counsellor at

UNITED STATES OF AMERICA,

STATE OF NEW YORK,

Onondaga County,

SS,

Geo Gardner

On this thirteenth day of September 1880 before me,
~~MILLO W. LOCKE~~, a Notary Public, duly commissioned and sworn, residing in the city of Syracuse,
in said County, came Charles Mason instrument
and acknowledged that he executed the foregoing ~~Power of Attorney~~, for the uses and purposes
therein mentioned.

~~And at the same time came also~~ and I further certify that he
is to me personally known; ~~and he being by me first duly sworn, makes oath and says, that he is acquaint-~~
~~ed with~~ and that the the person making said
acknowledgment—that ~~he knows~~ is the to be the same person described in the forgoing Power of instrument
~~Attorney—that he saw the said~~ and that I saw him
execute the same, ~~and thereupon affixed his own name as a witness to its execution.~~

In Testimony Whereof, I have hereunto subscribed my name, and affixed
my Official Seal, the day and year above mentioned.

Geo Gardner

Notary Public for the

COUNTY OF ONONDAGA.



law. Princeton Mercantile Bank, Illinois. enclosing
a postage stamp but received no answer. After
this he wrote a second letter to said Ramsey with
no better success than before. In this last letter
he wrote specially (among other things) to ascertain
the exact title of the suit which he believes to be
as set forth at the commencement of this deponi-
tion but he is not quite certain that the heirs of
the estate of Jesse C. Smith deceased are not
joined with him as parties complainant;
but whatever may be the precise title there can
be no doubt as to the case intended in this af-
fidavit as there is no other case pending in
said court in which this deponent is a party
in any shape. The said McGirr & Liddell are
defendants. He therefore asks for such relief
as he may be entitled to as the nature of the case may
warrant.

Charles Mason

123

Charles Mason et al.

v.

Arthur Mc Ginn &
John P. Fildes,

affidavit



Giles H. 23. 1842

J. Seland
clerk

1
Charles Mason Executor of
Jesse B. Smith decd. James
Smith Isaac Smith John
Smith & Samuel Smith

vs
Arthur Mc Ginn &
John P. Selden

Bill in Chancery

Copy of the Bill in the above entitled Cause.

To the Hon. M. C. Hollister Judge of the Circuit Court
of Bureau County Illinois

In Chancery

To the ~~September~~ December Term A.D. 1859.

Your Orator Charles Mason Executor
of the last will and Testament of Jesse B. Smith de-
ceased Isaac Smith James Smith John Smith and Samuel
Smith heirs and legatees of Jesse B. Smith decd would represent
unto your Honor that the said Jesse B. Smith in his life-
time was the owner of the following described lands situate
in the County of Bureau in the State of Illinois and had
in them an estate in fee simple to wit The South East
Quarter of Section Twenty two (22) in Township Sixteen (16)
North of the Base line of Range Eleven (11) East of the
fourth principal meridian containing one hundred and
Sixty acres also the North East fractional Quarter of
Section Thirty Six (36) in the same Township and Range
containing Ninety two (92) Acres and $\frac{20}{100}$ of an Acre also

the undivided one half of the North East quarter of
 Section thirty Six (36) in Township sixteen (16) North of
 the Base line of Range ten (10) East of the fourth Principal
 Meridian containing one hundred and sixty acres. that the
 said last named tract of Land was purchased from the
 Government of the United States of America by Alfred H
 Tompkins and John Reynolds and that ~~later~~ patents were
 made by the said Government to them for the said land
 and which Patents are in the possession and custody of your
 Orators and are ready to be produced on the trial of this Cause.
 And that the two first named tracts of land were purchased
 from the government of the United States at their Land Office
 in Galena in the State of Illinois by John Reynolds John
 Claypool and Samuel B Chandler And that the President
 of the United States issued to them a patent for the said
 lands which patents are in the Possession of your Orators
 and are ready to be produced on the trial of this Cause as your
 honor may direct. Your Orators would further represent unto
 your honor that the said Samuel B Chandler on the tenth
 day of October Eighteen hundred and thirty nine by Deed of
 Warranty which deed was acknowledged before John Hay Clerk
 of the Circuit Court of St Clair County Illinois on the 18th day
 of October 1839 Conveyed said tract of land or his interest
 therein to John Reynolds which deed was duly recorded in
 Book 30 page 132 in the Records office of Bureau County
 Illinois on the 13th day of April 1859 And that John Reynolds
 on the 20th day of March 1846 conveyed to the said Jesse B
 Smith he being then living all his interest in the before

named and described lands - Which deed was duly acknowledged before the Clerk of the County Commissioners Court of St Clair County Illinois on the 24th day of March 1846 and was recorded in book F. of Deeds at page 240 and 241 September 24th 1847 which said deed Your Orators are ready to produce as your honor may direct. And that John Claypool on the 2nd day of September 1845 by his deed of that date conveyed at his right in and to said two first named tracts of land to said Jesse S. Smith he being then living which said deed was duly acknowledged before William Brennan as Justice of the Peace of Hancock County Illinois on the 3rd day of September 1845 and was on the 13th day of April 1859 Recorded in Book No 30 of Deeds on page 130. which said deed is in the custody of your Orators and ready to be produced on the trial of this cause as your honor may direct reference being had to said deeds and and the recording thereof. Your orators would further represent unto your honor that the said Jesse S. Smith departed this life on or about the 30th day of July AD 1850 leaving a wife and appointing your Orator Charles Mason his executor and your orators Isaac Smith James Smith John Smith and Samuel Smith his brother his legatees which said will was duly proved and admitted to probate in the County of Marshall and state of Illinois and a copy of which will is herewith filed and made a part of this your orators bill of Complaint Marked Exhibit A. and that on or about the 3 day of 1850 your Orator Charles Mason entered into bond before the County Court of Marshall County Illinois which bond was approved by the Judge of

said County Court and that the said Court granted to him letters testamentary upon said will and that he was duly qualified as said Executor and entered upon the duties of his said Office a copy of said letters testamentary as herewith filed and marked Exhibit, B, and made a part of this your Orators Bill of Complaint your Orators would further represent unto your Honor that the said Jesse C. Smith at the time of his death left a large amount of debts due and owing to different individuals and that all of said debts are not yet paid and that to pay the same it will be necessary to sell a part or all of the said land before described and with a view to make the most money for the estate your Orator Charles Mason Executor as aforesaid with the permission and by the consent of your other Orators in the latter part of the year 1856 employed one Arthur McGin of La Salle County Illinois, ^{to try} and sell said lands at private sale and that the said McGin acted as such agent during the year 1857 = 1858 and 1859 until the present time and that during the year 1857 while acting as such agent and knowing that said land had been conveyed to said Jesse C. Smith and that he had in his life time a title in fee simple to said lands received several offers for the same. that he was offered as he said fifty dollars per acre for one of said tracts being the N & Fran 14 section 36 in T 16 N 11 E and for the S. E 14 Sec 22 in the same town the sum of twenty dollars per acre and that he wrote several letters to your Orator Charles Mason Executor as aforesaid stating said offers all of which said letters will be proved and produced on the trial hereof.

Your Orator further charge that the said Arthur McGinn
 well knew that the said Jesse B. Smith in his life time had
 the title in fee simple to said lands and that the object in
 your Orator employing him to act as agent ^{was} for the purpose
 of the selling said lands for the purpose of paying the debts
 owing by said Jesse B. Smith at the time of his death and to
 leave something for the heirs. Your Orator further charge that
 the said Arthur McGinn while acting as the agent of your
 Orator Charles Mason ascertained that the deed from Samuel
 B. Chandler to John Reynolds and the deed from John Claypool
 to the said Jesse B. Smith were not recorded in Bureau County
 Illinois and intending to defraud and cheat your Orator and the
 creditors of the said Jesse B. Smith deceased and by fraud and
 misrepresentation advised and procured the said John Claypool
 and the said Samuel B. Chandler to make to him a quit claim
 deed for the said two last mentioned tracts of land and which
 deed ~~he~~ while acting as agent he caused to be recorded among
 the land records of said Bureau County and which deeds your
 Orator pray he may be compelled to produce on the trial hereof.

Your Orator would further represent unto your honor that in-
 tending still further to defraud and deceive your Orator and
 to cheat and wrong the creditors of the said Jesse B. Smith
 deceased he made a quit-claim deed for the undivided two thirds
 of the two last described ~~lands~~ tracts of land for as the deed
 says the consideration of one dollar and other considerations to
 John P. Tilden which said deed was recorded on the first
 day of May 1857 in the Recorder's office of Bureau County
 which said deed your Orator charges is in the possession and

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custody of the said Arthur McGinn or the said John P Tilden
and which your Orators pray they may be compelled to produce
on the trial hereof. Your Orators charge that said deed was made
by the said McGinn while acting as the agent of your orator
Charles Mason and that the said John P Tilden had notice
that the title to said land had been conveyed to the said Jesse. C.
Smith in his life time. And your Orators further charge that
they had no notice of the said deed from McGinn to Tilden until
long since the recording of the deed from Chandler to Rey-
nolds and the deed from Claypool to Smith and suppo-
sing that the said McGinn was acting as the Agent of your
Orators in good faith did not examine the records of said
County and did not know that the said McGinn had obtained
a deed from Chandler and from Claypoole for said lands
until since the recording of the said deed from Chandler to
Reynolds and from Claypool to Jesse. C. Smith Your Orators
therefore charge that all said actings and doings are con-
trary to equity and good conscience and done with the
intention of defrauding and deceiving your Orators and
the creditors of the said Jesse. C. Smith deceased and that the
same is a cloud upon the title of your orators and is calculated
to delay and hinder the settlement of said estate and to cause
great loss to the creditors of said estate Your Orators further charge
that the said Charles Mason has no interest in the said Estate
except as the executor and the agent of the creditors and of the heirs
of said Jesse C. Smith deceased Your Orator therefore prays
your Honor that the said Arthur McGinn and the said John P
Tilden may be made parties defendants to this your Orators Bill

of Complaint and that a subpoena in Chancery may be issued out of this honorable Court directed to them and that they may be compelled to answer all and singular the allegations herein contained but not under oath their oaths to said Answers being hereby expressly waived and that the said Deed from said John Blaypool to said Arthur Mc Ginn and said Deed from Samuel B Chandler to Arthur Mc Ginn and said deed from Arthur Mc Ginn to John P Tilden may be cancelled annulled and set aside and be for nothing esteemed and that the said John P Tilden may be enjoined and restrained from selling and disposing of the said tracts of land or in any way molesting or using the same and that your orators may have such other and further relief as shall be agreeable to equity and good conscience and as in duty bound your Orators will ever pray &c

Silas Ramsay Solr for Compl't

Copy of Endorsements on Back of Petition

" Charles Mason Exr of Jesse b Smith dec'd Isaac Smith & others vs Arthur Mc Ginn & John P Tilden. Bill for Injunction & relief. Filed October 28th 1859. E. M. Fisher Clerk S. Ramsay Compt Solr"

Pleas before the Hon^{ble} M. E. Hollister Judge of the Ninth Judicial Circuit of the State of Illinois at a term of said Circuit Court begun and held at the Court House at Princeton in the County of Bureau and State of Illinois on Monday the 12th day of December in the year of Our Lord one thousand eight hundred and fifty nine

Present Hon^{ble} M. E. Hollister Judge
Edward M Fisher Clerk
David C Norton Sheriff

To wit on the second day of said term

Charles Mason Executor of Jesse b. Smith deceased }
Isaac Smith James Smith John Smith & Samuel Smith } Injunction
Arthur Mc Ginn & John P Tilden }

Now come the said defendants by Swain their solicitor
and file their answers to the said Complainants Bill filed herein, severally in the words and
figures following to wit:

Copy of John P Tilden's separate answer.

State of Illinois } ss Circuit Court for said County
Pompean County } December Term thereof AD 1859

Charles Mason Executor of the estate of Jesse C. Smith deceased et al }

vs

} In Chancery
}

Arthur McKerrin & John P Tilden

The separate answer of John P Tilden one of the above
named defendants to the bill of Complaint of Charles Mason Executor of the estate of Jesse C. Smith
deceased Isaac Smith James Smith John Smith and Samuel B Smith Complainants

This respondent now and at all times reserving to himself all and all manner of
benefit and exceptions advantage by way of exception or otherwise to the many errors, informalities
and insufficiencies in the said Complainants said Bill of Complaint for answer thereto or unto so much
thereof as this respondent is advised is necessary or material for him to make answer unto answer-
ing saith that he has no knowledge whether the said Jesse C. Smith deceased was during his
lifetime the owner of the North East quarter of section No thirty six (36) in Township No sixteen
(16) North Range No ten (10) East of the fourth (4th) principal Meridian and Respondent disclaims
all and all manner of claim of title to the same or any part thereof

And this respondent further answering saith that it is true as he believes as
stated in the Complainants said bill that Patents were issued by the Government
of the United States to the said John Reynolds John Blaypool and Samuel
B Chandler for the South East quarter of section No twenty two (22) and
for the North East quarter of section No thirty six (36) all in Township
No sixteen (16) North Range No Eleven (11) East of the fourth (4th)
principal Meridian

And this Respondent further answering said Com =

9 - plainants said Bill saith he has no knowledge whatever in regard to the said Samuel B Chandler having conveyed his interest in said last mentioned and described tracts of land to said John Reynolds but he admits it may be true as stated in said Bill that a paper purporting to be a deed from said Chandler to said Reynolds as stated in said bill was placed on the Records of said County of Bureau on the thirteenth day of April AD 1859 but whether said paper is the deed of said Chandler or not this respondent is not advised and has no knowledge

And this respondent further answering said Bill saith he supposes it to be true as stated in said bill that said Reynolds on the twentieth day of March AD 1846 executed and delivered to said Jesse C Smith since deceased a quit-claim deed for the whole of said two last described tracts of land but which conveyed only the interest of said Reynolds being as this Respondent believes an undivided interest of one third and that the same was recorded in the Recorders Office of said County of Bureau on the twenty fourth day of March AD 1846.

And this respondent further answering said Bill saith he admits that a paper purporting to be a quit-claim deed of John Claypool to Jesse C. Smith for the two last described tracts of land purporting to bear date on the second day of September AD 1845 was on the thirteenth day of April AD 1859 placed on the Records of said County of Bureau but whether or not the same is the deed of said Claypool this Respondent is not advised.

This respondent further answering saith that he has no personal knowledge as to the death of said Jesse C. Smith or as to his having made a will or as to the appointment by him of an executor or as to who were the legates in such will, nor hath he any knowledge as to the probate of said will or the granting of letters testamentary thereon, and as to all of these matters Respondent calls for proof

This respondent further says that he has no knowledge whatever as to the condition of the Estate of said Jesse C. Smith deceased whether it was involved or not, nor has he any knowledge as to the appointment by Complainant Mason of the defendant McGirr as agent to try to sell said lands at private sale or in any other way nor has this Respondent any knowledge whatever that said McGirr ever was the Agent or acted as the agent for the sale of said lands at any time nor has this Respondent any knowledge as to said Defendant McGirr having ever received or transmitted any ~~orders~~ offers for said lands or any of them to Complainant Mason by letter or otherwise for ~~his~~ Nor has this Respondent any knowledge that Defendant McGirr knew that said Jesse C. Smith in his lifetime had the title in fee simple to said lands or any of them Nor that the object of Complainant Mason in employing said McGirr was as stated in said Bill Nor has this Respondent any knowledge in regard to said McGirr having ascertained whilst acting as agent as charged in said Bill that the said supposed deed from Chandler to Reynolds and the said supposed deed from

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Claypool to Smith were not of record in said County of Bureau and Respondent denies all knowledge of any and all frauds or fraudulent interest or misrepresentations on the part of said McGirr in obtaining the title to said lands from said Claypool and said Chandler and denies all knowledge of said McGirr having whilst acting as agent as charged in said Bill caused said deed to be placed on the land records of said Bureau County

And this respondent further answering said Complaint and said Bill with it is true that the said Arthur McGirr claiming to be the owner in fee simple of an undivided two thirds interest in said two last described tracts of, did some time during the last of the month of June or fore part of the month of July AD 1858 propose to sell the same undivided to this Respondent And this respondent states that he is a farmer and owns and resides on a farm near to one of said tracts of land and did so ~~at~~ at the time last above stated, and Respondent states that he being desirous of purchasing the said tracts of land for the purpose of improvement and cultivation, and learning that said McGirr had the same for sale applied to him to purchase said lands that said McGirr informed Respondent that he was the owner of a two thirds interest in said lands and held the same for sale and this respondent states that being fearful of the title of said McGirr he caused the records of said McGirr's title to said lands to be carefully examined and becoming satisfied from such examination from an examination of the title deeds in the

possession of said McGirr and from his statements and from his (McGirr's) that his (McGirr's) title to an undivided two thirds interest in said two last described tracts of land was good except such interest in or title to said lands as may have passed by a sale thereof made June tenth A.D. 1856 for the taxes due thereon for the year A.D. 1855 respondent did sometime during the latter part of said month of June ~~or~~ or fore part of the month of July A.D. 1858 make a verbal contract with said McGirr to purchase said lands of him that in pursuance of the terms of said contract this Respondent went into the possession of said two last described tracts of land and made valuable improvements thereon by breaking the same that on the first day of September A.D. 1858 he concluded said purchase and received from said McGirr a deed for his undivided two thirds interest in said two last described tract of lands which bears date on or about said first day of September A.D. 1858 and was on that date executed and delivered to this respondent by said McGirr + was filed for record in the recorder's office of said County of Bureau on the first day of June A.D. 1859 and duly recorded as by said deed and the certificate of acknowledgement and record thereon written will more fully appear which deed this respondent has in his possession and to which he craves leave to refer - that this respondent paid and agreed to pay said McGirr in consideration of said conveyance the sum of one thousand and four hundred dollars as follows to wit. four hundred and thirty five dollars in cash

and other valuable property on the delivery of said deed by said McGinn to this respondent, the sum of four hundred and eighty seven + $\frac{50}{100}$ dollars as appears by the note hereto attached marked (A) + made an exhibit on or about the Eighth day of March AD 1859 both of which said sums were actually paid by this respondent in good faith at the several times above specified before the filing of said complainant's said bill and before this respondent had notice of said Complainant's said claim of title, and the further sum of twenty five dollars in hay delivered by this respondent to said McGinn on or about the tenth (10) day of August AD 1859 in good faith and before notice of said Complainant's Claim of title and that said McGinn now holds this respondent's note for the sum of four hundred and seventy seven + $\frac{50}{100}$ dollars due about the fourth day of July AD 1859 which is now due and unpaid with the exception of said sum of twenty five dollars for hay delivered as aforesaid and that neither at the time of said purchase nor at any time before or since until the filing of said Complainant's said Bill has this respondent had any notice or knowledge of any kind that said Complainant had any title in or interest to said two last two described tracts of land save to an undivided third thereof neither had this respondent any notice or knowledge that any one claimed or owned any interest in said lands except as aforesaid save and except such interest or title thereto as may have passed by said sale thereof for the taxes thereon for the year AD 1855 and

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this Respondent says that the said sum of fourteen hundred dollars is the consideration paid and agreed to be paid by this Respondent to said McGinn for said land. And this Respondent further Answering said Bill said it is true as charged in said Bill that on or about the first day of May A.D. 1859 he caused said deed from said McGinn to Respondent to be filed for Record in the Recorder's office of said County of Bureau and that the same was soon thereafter recorded but Respondent denies all the fraud and fraudulent interest wherewith he is charged in said Bill in so doing and denies all knowledge of fraud on the part of said McGinn in regard to the same

And Respondent further says that that he has the said deed from said McGinn to this Respondent and the said deed from Claypool to said McGinn and the said deed from said Chandler to said McGinn in his possession ready to be brought into Court as this Honorable Court ~~shall~~ ^{shall} direct

And this Respondent further Answering said Bill of said Complainants says that at all times since said verbal Contract with said McGinn for the purchase of said lands and at all times since the execution of said deed by said McGinn to this Respondent this Respondent has in good faith been in possession of said tracts of land. And this Respondent has since he purchased said land from said McGinn and before Respondent had any knowledge of any claim or pretence of claim of said premises by said Complainants by the exhibiting of said bill herein or otherwise - made lasting and valuable improvements on said South east quarter of Section No twenty two (22) in Township No sixteen (16) North

Range No Eleven East of fourth (4th) principal Meridian by breaking one hundred and six acres thereof which was worth as Respondent believes two dollars per acre amounting to two hundred and twelve dollars (\$212) and by making eighty rods of fence of the value of Eighty five cents per rod amounting to sixty eight dollars (\$68)

And respondent says he has made lasting and valuable improvements on the said North east fractional quarter of Section No thirty six (36) in the same Township and Range by breaking Sixty three (63) Acres thereof worth as Respondent believes three dollars per acre amounting to one hundred and eighty nine (189) dollars and by grubbing seven Acres part and parcel of said sixty three Acres worth as Respondent believes the sum of forty two (\$42) dollars and by making two hundred and forty rods of fence worth one dollar per Rod amounting to two hundred and forty dollars and making the aggregate of the improvements made by this Respondent amount to the sum of seven hundred and fifty one dollars

And this respondent says he is a bona fide purchaser of said premises for the consideration fourteen hundred dollars (\$1400) paid by him and agreed to be paid as aforesaid and that he has in good faith made the improvements above stated. That he purchased said premises from said McGinn without any knowledge or suspicion of bad faith or fraud on his part, and without any participation in any such bad faith or fraud if any such there were

And respondent says that he was not in any manner

apprised that said McGiri at the time of the sale of the said premises by him to this respondent or at any time was acting as the agent of said Mason and that in the examination which this respondent caused to be made of the Records of said County of Bureau Respondent found no power of Attorney on said records authorizing said McGiri to act as such agent in the sale of said Lands

And Respondent further answering said Bill saith if it be true that said McGiri was the agent of the Complainants in making sale of said Lands to respondent that he asks this honorable Court to decree the Complainants to execute to this defendant all proper conveyances for the assuring of the title of said Premises to Respondent that the moneys already paid by this respondent to said McGiri may be by the decree of this honorable Court be found to have been paid to the Complainants on account of such sale by said McGiri to this respondent and that Respondent may be authorized to pay the balance of the purchase money due and owing by him on said purchase ~~money~~ to the Complainants in the said Bill or to such of them as may be entitled thereto

This respondent further answering saith, he believes and charges the fact to be, that said Complainants if they had any such deeds as they pretend to have had, withheld the same from record for the purpose of defrauding this Respondent or any other person who should purchase said premises from the persons appearing by the records to be the owners thereof

McGinn one of the defendants to the bill of Complaint of Charles Mason Executor of the estate of Jesse C. Smith deceased Isaac Smith James Smith John Smith and Samuel Smith Complainants

This defendant now and at all times hereafter saving and reserving to himself all benefit and advantage of exception which can or may be had or taken to the many errors uncertainties and other imperfections in said complainant's said Bill of Complaint for answer thereto or so much thereof as this defendant is advised is or are material or necessary for him to make answer unto. This defendant reserving ~~all~~ to himself all right of exception to the said bill of Complaint for answer thereto saith it may be true for anything this defendant knows to the contrary that the said Jesse C. Smith departed this life on the thirtieth day of July A.D. 1850 leaving a will and appointing the said Complainant Charles Mason his executor and the said Complainant Isaac Smith James Smith John Smith and Samuel Smith his brothers legatees and the said will may have been admitted to probate at the time and in the manner stated in said Complainant's bill of Complaint but this defendant is an utter stranger to all and every such matter and cannot form any belief concerning the same.

And this defendant further answering saith it may be true for all this defendant knows to the contrary that said Jesse C. Smith in his life time had such a title to the North East quarter of Section thirty six in Township sixteen North Range ten east of the fourth principle meridian as is

set forth in said complainant's bill of complaint but this defendant is an utter stranger to all and every such matter and cannot form any belief concerning the same

And this defendant further answering saith he denies that the said Jere C. Smith at any time during his lifetime had any such interest in or title to the South East Quarter of Section No twenty two ^{xxi} Township No Sixteen North Range Eleven East of the fourth principle Meridian and to the North East fractional Quarter of Section No thirty six Township sixteen North Range Eleven east of the fourth principle Meridian as is set forth in said Complainant's bill of complaint but on the contrary thereof that he had a fee simple title only to one undivided third of said last two mentioned tracts of land and no more

This defendant further answering saith that he has been informed and believes it to be true that a patent from the United States Government for said last two mentioned tracts of land issued to John Reynolds John Claypool and Samuel B. Schandler at the time and in the manner stated in said Complainant's said Bill

And this defendant further answering saith he believes it to be true that the said John Reynolds conveyed to the said Jere C. Smith during his lifetime on the twentieth day of March AD 1846 one undivided third of said last mentioned tracts of land but this defendant does not know the same of his own knowledge and for greater certainty craves leave to refer to the said deed when the same shall be produced

And this defendant further answering saith that he

does not know and has never been informed save by said Complainants said Bill and cannot set forth as to his belief or otherwise that the said Samuel B Chaudler conveyed to the said John Reynolds his interest in said two last mentioned tracts of land at the time and in the manner set forth in said Complainants said Bill and that he does not know & has never been informed save by said Complainants said Bill and cannot state as to his belief or otherwise that the said John Claypool conveyed his interest in the said two last mentioned tracts of land in the manner and at the time set forth in said Complainants said bill, and that he believes and charges the fact to be that if any such deeds do exist that the same were fraudulent withheld from the records of said County of Bureau by said Complainants

This defendant further answering saith he denies that he was ever appointed by said Complainant Mason agent or that he ever acted as his agent for the sale of the lands above described but said defendant charges the facts to be, that sometime in the Year AD 1856 said Complainant Mason requested this defendant to see what offers he could get for said tracts of land and to forward the propositions to said Mason for his consideration that at that time this defendant informed said Mason that said Jesse C. Smith never had any interest in or title to more than ^{one} undivided third of said two last mentioned tracts of land and that said Complainant Mason at that time told this defendant that he did not know whether the said Jesse C. Smith during his lifetime had title to more than the undivided one third of said two last mentioned tracts of land

or not, but if there was any title deed in existence to the said Jesse B. Smith to the other undivided two thirds of said two last mentioned tracts of land he would immediately place the same on the records of said Bureau County

This defendant further answering saith that he did during the year AD1857 receive offers for portions of said land all of which offers were upon condition that the title to said land was perfect in said Complainants (which offers were faithfully forwarded to said Mason) this defendant denies that he had any knowledge that said Jesse C. Smith had any title to ~~any~~ more than the undivided one third of said two last mentioned tracts of land that all of his dealings with said Mason were in good faith without any intention of cheating or defrauding the said estate or Creditors of the said Jesse B. Smith as charged in said Complainants said bill. ~~and that~~

And this defendant further answering saith that he purchased the undivided one third of said two last mentioned tracts of land in good faith without any knowledge whatever of any existing claim to the same in favor of the said Jesse B. Smith deceased or his estate or his legatees, of the said Samuel B. Chandler on or about the 19th day of April AD1858 and that the same was conveyed to this defendant by deed poll or instrument in writing executed by said Chandler et ux. on or about the 19th day of April AD1858 in consideration of the sum of five hundred dollars paid by this defendant the receipt ~~whereof~~ of which is by said deed acknowledged and which said sum was in fact

paid as appears by such deed or instrument in writing to which this defendant craves leave to refer when the same shall be produced. will appear and that the said deed was on the 4th day of June AD 1858 duly recorded in the Recorder's office of said County of Bureau

And this defendant further answering saith that by a certain deed Poll or instrument in writing under the hand and seal of the said John Claypool and bearing date on or about the 20th day of April AD 1858 the said Claypool did in consideration of the sum of five hundred dollars to him paid by this defendant the receipt of which is acknowledged and which sum was in fact paid remise and release & to this defendant the one undivided third of said two last mentioned tracts of land as by such deed or instrument in writing appears to which this defendant craves leave to refer when the same shall be produced both of which deeds Respondent has in his possession and ready to be produced as this Court shall direct will appear. And this defendant further saith that such purchase was made in good faith and without any knowledge of any existing claim or title to the said premises in the said Jesse S. Smith deceased or his legatee and without any intention to cheat and defraud as set forth in complainant's said Bill.

This defendant further answering saith he denies that he ascertained while in the employ of said Complainant Mason that the deeds if any there are from said Chandler to said Reynolds and from said Claypool to said Jesse S. Smith deceased were not recorded in the records of the Recorder's

office of said County of Bonneau. And that by fraud and misrepresentation he induced and procured the said Chandler and Claypool to make to him a quit-claim deed for said two last mentioned tracts of land as charged in said Complainants said Bill. But on the contrary thereof that he never knew of the existence of any such deed or deeds or of any instruments in writing purporting to be deeds as the Complainants sets forth to have been made by said Chandler to said Reynolds or by said Claypool to said Jesse B. Smith deceased until notified by said Complainants said Bill of Complaint. And that long before that time he purchased the undivided two thirds of said two last mentioned tracts of land of said Chandler and said Claypool in good faith and for the consideration aforesaid which has been fully paid.

This defendant further answering saith that he denies ever having been employed as agent by said Mason to sell any of said tracts of land and that he never received any compensation or promise of compensation for what he did do for said Mason.

This defendant further answering saith and he charges the same to be the fact that said Mason had no power or right to employ any person to sell or in any way dispose the whole or any part of said lands or in any way to sell or dispose of the whole or any part thereof himself and that he did not in any way act for the said Mason as requested by him in the fall of 1856 longer than during the year 1857 and that the charge as set forth in said Complainants said Bill is utterly untrue.

This defendant further saith that said Complainant Mason well knew that this defendant had deeds for the undivided two thirds of said two last mentioned tracts of land from said Chandler and said Claypool on record in the Recorder's office in said County of Bureau long before he placed deeds purporting to be from said Chandler to said Reynolds and from said Claypool to said Jesse B. Smith deceased on said records.

This defendant further answering saith he denies that he made a quit claim deed to the said John P. Tilden for the undivided two thirds of said tracts of land for the purpose defrauding & cheating or deceiving the said Complainant or any other person or persons but that on the contrary thereof some time during the month of June AD 1858 he made a verbal contract with the said Tilden to sell him the undivided two thirds of said two last mentioned tracts of land. That on or about the first day of September AD 1858 this defendant executed and delivered to the said John P. Tilden a deed of Conveyance for the undivided two thirds of said tract of Land. That at the time of such conveyance this defendant had no notice that said Complainant had any interest in the undivided two thirds of said tracts of land. That the consideration paid by said Tilden to this Respondent was fourteen hundred dollar nine hundred and forty seven dollars and fifty cents of which has been paid to this defendant and that this defendant now holds said Tildens note for a balance of four hundred and fifty two dollar and fifty cents. That this defendant did not nor would execute to said Tilden

a warrant deed for said tracts of land for the reason that there was a tax title outstanding for said tract of land founded on a tax sale for the year A.D. 1856 for the taxes for the year A.D. 1855 but sold the said lands to said Tilden subject to all said incumbrances thereon. And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said Bill of Complaint charged without this that there is any other matter cause or thing in the said Complainants bill of Complaint contained material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered confirmed traversed and avoided or denied is true to the knowledge of or belief of this defendant all of which matters and things this defendant is ready and willing to ~~swear~~ aver maintain and prove as this honorable Court shall direct. and humbly prays to be hence dismissed with his reasonable costs and charges by him in this behalf most wrongfully sustained.

Arthur M. Gerr.

To wit on the 13th Day of said Term (Dec 26, 1859)

Charles Mason Executor Etal

(vs)

Injunction

Arthur McGirr & John P. Tilden

Now come the said Complainants by Ramsey their solicitor and the defendants come by ^{their} Swain their solicitor and on motion it is ^{considered} ~~ordered~~ by the Court that this cause be set for hearing on the Bill of the Complainants and the answer of the said defendants

Pleas before the Hon^{ble} M. E. Hollister Judge of the North Judicial Circuit of the State of Illinois at a term of said Circuit Court begun and held at the Court House at Princeton in the County of Bureau and State of Illinois on Monday the twelfth day of March in the year of our Lord one thousand eight hundred and Sixty

Present Hon^{ble} M. E. Hollister Judge

Edward W. Fisher Clerk

David E. Norton Sheriff

To wit on the fourth day of said Term (March 15, 1860)

Charles Mason Executor of Jesse C. Smith

dec^d Isaac Smith James Smith John Smith & Samuel Smith

vs

Arthur McGirr & John P. Selden

}
Bill

Now come the

said Complamants by Ramsey their Solicitor and the defendants come by Bull & Peters their Solicitors and on motion it is considered by the Court that this cause be set for hearing for Thursday Morning of the second week of the present term of this Court

To wit on the Eleventh day of said Term (March 23, 1860)

Charles Mason Executor of Jesse C. Smith deceased

James Smith Isaac Smith John Smith & Samuel Smith

vs

Arthur McGirr & John P. Selden

}
Bill

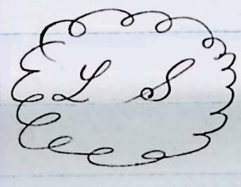
And now comes this cause on further to be heard upon the said Complainants Bill of Complaint herein the separate answers of said defendants Arthur McGinn and John P Silden and the exhibits in the cause whereupon the Court do find that said Complainants are not entitled to the relief prayed for in their said Bill of Complaint. It is therefore ordered adjudged and decreed that said Complainants said Bill of Complaint be dismissed, that said Complainants pay the costs of this proceeding to be taxed and that the title to the undivided two thirds interest in the said South East quarter of Section No twenty two and the title to the undivided two thirds interest in the said North East quarter of Section No ~~Sixteen~~ thirty six all in Township No Sixteen North Range No Eleven East of fourth principal Meridian be confirmed in said defendant John P Silden

Copy of Summons in the Above entitled cause & the Sheriff's return thereon.

" State of Illinois } ss The People of the State of Illinois
 " Bureau County } To the Sheriff of La Salle County Greeting
 " We command you to summon Arthur McGinn & John
 " P Silden if they shall be found in your County to be and appear
 " before our Circuit Court for said Bureau County on the first
 " day of the next Term thereof to be holden at the Court House
 " in the town of Princeton on the second Monday in the ~~Month~~ of
 " December next, to answer to a certain bill of Complaint filed
 " in our said Circuit Court on the Chancery side thereof against
 " them by Charles Mason Executor of Jesse C Smith dec^d James

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Smith. Isaac Smith John Smith & Samuel Smith and further
to do and receive whatever our said Court shall then and there
consider in that behalf; and this they shall in no wise omit
Hereof fail not, and make due return of this writ, with an
endorsement of the manner in which you execute the same



Witness Edward M Fisher Clerk of our said Court
And the seal thereof, at Princeton in said County,
this 28th day of October, in the year of our Lord
one thousand eight hundred and fifty nine
Edward M Fisher Clerk

Personally served the within writ by reading the same to and leaving exact copy of
same with Arthur McLean Oct 31st 1859. J. W. Fildes Nov 5. 1859,
J. Warner Shiff
by J. W. Mattocks Sept

State of Illinois } ss
Bureau County }

I Edward M Fisher Clerk of the
Circuit Court in and for said County in the state aforesaid
do hereby certify the above and foregoing to be a true copy of
the proceedings in the above entitled cause as the same
appear on file and of record in my Office

In witness Whereof I hereunto subscribe my
name and affix the seal of said Court at my
Office in Princeton in said County this 13th
day of September A D. 1860

Edward M Fisher Clerk
per Wm Hall Jenkins depy Clerk

Supreme Court of Illinois

Third Grand Division

April Term A. D. 1862

Charles Mason,

Executor of Jose C. Smith,

deceased,

James Smith,

Isaac Smith,

John Smith, &

Samuel Smith,

Plaintiffs in Error,

vs.

Arthur Mc Ginn, &

John P. Tilden,

Defendants in Error,

In Chancery

Error to the Circuit Court of Bureau
County.

And now come the said plaintiffs
in error, Charles Mason, Executor &, James
Smith, Isaac Smith, John Smith, and
Samuel Smith, by B. F. Ayer their solicitor,
and say that in the record and proceedings
aforesaid, and also in rendering the
decree aforesaid, there is manifest
error, and they have presented a writ

of error therefrom to this Court. And they state among other grounds of error therein the following:

First. The Court below erred in dismissing the complainants' Bill -
Second. The Court below erred in not decreeing that the dismissal of said bill should be without prejudice to complainants.

Third. The Court below erred in decreeing that the title to the undivided two-thirds interest in the two tracts of land ^{in said decree} ~~therein~~, mentioned, be confirmed in said defendant John P. Tilden.

And the said plaintiffs in error pray that the judgment aforesaid, for the errors aforesaid, and other errors in the record and proceedings aforesaid, may be reversed and annulled, and altogether held for naught.

B. F. Ayer

Solicitor for Plffs. in Error.

And now come said defendants by E. H. Bull their attorney and say that there is any such error in the above and foregoing record
Apr. 23rd 1862

E. H. Bull
Def. atty

123
Charles Mason & Co^{rs} & Co^{rs} & Co^{rs}

no

Arthur McGillivray + John P Tilden

Certified Copy of Record
Bureau Co Ill^o

Filed March 5, 1862.
S. Seland Clerk.