

No. **12159**

Supreme Court of Illinois

McGhee, et al

vs.

Wight

71641  7

State of Illinois }
Fourteenth Judicial Circuit }
Stephenson County }

Pleas before the Hon^{ble}. Benjamin
R. Sheldon presiding Judge of the fourteenth judicial
Circuit of said State at a term of the Circuit Court begun
and held at the Court house in Freeport in said judicial
Circuit and in the County and State aforesaid on Monday
the 3rd day of April A.D. 1854

Present the Hon^{ble}. Benjamin R. Sheldon
Judge. George Reitzel Sheriff
Joseph B. Smith Clerk

John Wright }
vs } In Chancery
Thomas McGehee }

Be it remembered that heretofore to wit
on the 29th day of July A.D. 1852 of the September Term
A.D. 1852 of said Stephenson County Circuit Court
John Wright the Complainant in this suit by his
Solicitor appeared and filed in the said Court his bill
of Complaint in the said suit of John Wright against
Thomas McGehee in the words and figures following to wit:

State of Illinois }
Stephenson County } p

In the Circuit Court In Chancery
of the September Term A. D. 1852

To the Hon. Benjamin R. Sheldon Presiding Judge
of the fourteenth judicial Circuit in the State of
Illinois in equity sitting.

Humbly complaining sheweth unto your
Honor your Orator John Wright a citizen of the
County of Stephenson and State of Illinois that on the
fifth day of February in the year eighteen hundred and
forty six your Orator made a settlement on the West
half of the South East Quarter of Section Twelve in
Township twenty seven North of Range seven east of
the fourth principal meridian in the district of land
subject to sale at Dixon Illinois said land being
in said County of Stephenson, that your orator made
such settlement on said land under and in conform-
ity with the preemption Law of the United States
contained in the Act of Congress approved Sep-
tember 4th eighteen hundred and forty one and
entitled "An Act to appropriate the proceeds of
the sales of the public Lands and to grant preemption
rights", that said tract of land on said 5th February
A. D. 1846 was vested into title in the Government of
the United States and was subject to preemption
according to the provisions of the said Act of Congress,
that your orator made the settlement in said land
by complying with all the requisitions of said Act of
Congress, and with the intention to avail himself
of the benefit of said Law and to obtain the right of
preemption to said land.

Your orator further sheweth unto
Your Honor that within thirty days from the date

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of the settlement made on the above described tract of land as aforesaid by your orator viz. on the fourteenth day of February in the^{5th} year eighteen hundred and forty six your orator filed with the Register of the United States Land Office at Dixon Illinois (it being the Land Office for the District of Lands within which said tract above described is situated) a written statement describing the said tract of land upon which your orator had made a settlement as aforesaid and declaring the intention of your orator to claim the said tract of land above described under the provisions of the said Act of Congress entitled "An Act to appropriate the proceeds of the sales of the public lands and to grant preemption rights."

Your orator further sheweth unto your Honor that within a year after the said fifth of February eighteen hundred and forty six your orator made application at said United States Land Office at Dixon Illinois to prove up and pay for the right of preemption so claimed by him to said West half of the South East Quarter of Section Twelve in Township twenty seven North of Range seven east of the fourth principal meridian as aforesaid, that your orator deposited the purchase money therefor in said Land Office and made the necessary proof to entitle him to his right of preemption as aforesaid of said land.

Your orator further sheweth unto your Honor that said right of preemption now duly decided in his favor, and the entry of said tract was duly allowed in his name as preemptor and that upon such entry a patent has been

duly issued by the Government of the United States to your orator for said west half South East Quarter Section Twelve Township Twenty seven N. R. 7 E. of 4th P.M. a copy of which patent is herewith annexed marked Exhibit A. and your orator prays leave to refer to the same and to make it a part of this bill.

Your orator further sheweth unto Your Honor that one Thomas Mc Ghee of said Stephenson County (whom your orator prays may be made Defendant to this his bill) did on February 10th in the year eighteen hundred and forty six at private sale enter at the said United States Land Office at Dixon Illinois the said west half of South East Quarter of Section Twelve in Township Twenty seven North of Range seven east of fourth principal meridian (although your orator had already made his settlement for a preemption in said tract) with the intention to injure your orator and to deprive him of his right to said land.

Your orator further sheweth unto your Honor that in July first 1847 said Thomas Mc Ghee did under the entry of said N^o 7 S. E. 1/4 Section 12 Township 27 N. R. 7 E. made by him as aforesaid procure and obtain from the Government of the United States a patent to be issued to him for said land above described (a copy of which patent is hereto annexed marked Exhibit B to which reference is hereby prayed and that the same may be considered as part of his bill) that at the same time said patent was issued to said Mc Ghee for said land your orator had perfected his right to the conveyance of the title for said land to himself from the United States, and that in equity and of right the United States had

no title or right at that time to convey to the said Mc Ghee in said land, and that said patent was erroneously issued to said Mc Ghee and under the mistake in the part of the officers of said United States Land Office that Thomas Mc Ghee had the right to said patent.

Your orator further sheweth unto your Honor that by reason of said wrongful and erroneous issue of said patent by the United States to said Thomas Mc Ghee for said land above described your orator was for a long time hindered and delayed in the obtaining a patent from the United States ^{and did not succeed in obtaining a patent for said land} for said Land until January 20th A. D. 1862 at which time the patent a copy of which is hereto annexed was issued to your orator.

Your orator further sheweth unto your Honor that previous to the issue of said patent for said land to your orator the said entry of said land by said Mc Ghee was duly cancelled and vacated as made in fraud of your orator's rights by virtue of his presumption claim to said Land and the entry as made by your orator as aforesaid was duly allowed in the United States Land Office.

Your orator further sheweth unto your Honor that said Defendant Mc Ghee has been in possession of said above described Land ever since the issue of the patent of the same to him by the Government of the United States to wit since July 1st 1847, that said Mc Ghee still continues to hold possession of said lands and insists upon said patent as the evidence of legal title.

paramount title in him to said tract of land
above described that your orator has several
times applied to said Thomas McGhee to deliver
the possession of said land above described
to your orator and to yield to your orator his
just rights in said land and your orator has
hoped that said Thomas McGhee would have
complied therewith as in equity and good
conscience he ought to have done, but now
so it is may it please your Honor that the said
Thomas McGhee combining and confederating
together with divers other persons as yet to your
orator unknown but whose names when discovered
your orator prays may be inserted herein as
Defendants and they made Defendants and parties
hereto with proper and apt words to charge
them, how to injure and oppress your orator: the
said Thomas McGhee and his confederates respect-
ively do now absolutely refuse to give up the
possession of said West half of the South East
Quarter of Section No. twelve in township twenty
seven North of Range seven East of the fourth
principal meridian to your orator pretending
that the said Thomas McGhee is rightfully
seized of said described tract of land under
and by virtue of the patent above mentioned
issued to said Thomas McGhee by the United
States Government dated July first A.D. 1847
for said land as is aforesaid the said Thomas
McGhee and his confederates respectively in-
sisting upon said patent as conclusive
evidence of rightful paramount legal title
to said lands in the said Thomas McGhee
and at other times said Thomas McGhee and

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his confederates respectively insist and pretend that said patent issued to said Thomas M^cGhee (dated July 1st 1847) by the Government of the United States for said land as aforesaid was not obtained in fraud of the just rights of your orator as a preemptor of the said tract of land as aforesaid but that the title in and to said tract of land was duly justly and rightfully conveyed to said Thomas M^cGhee by virtue of the said patent issued for said land to said Thomas M^cGhee as aforesaid whereas your orator expressly charges the truth to be that the said patent issued by the Government of the United States on July 1st 1847 for said land above described to said Thomas M^cGhee confers upon the said Thomas M^cGhee no title in equity and right whatever to said land that the Government of the United States had on said July 1st 1847 no title in the said land to convey to the said Thomas M^cGhee that your orator was long previous to the said first day of July A.D. 1847 duly justly and rightfully entitled to a patent for said lands from the Government of the United States as a preemptor of said land and that in equity and of right the said Thomas M^cGhee ought not to issue upon or to produce said patent issued to him for said land dated July 1st 1847 as aforesaid in support of legal paramount title in him for said land.

All which actings and doings and pretences of the said confederates are contrary to equity and good conscience and tend to the manifest injury and oppression of your orator.

In tender consideration whereof and forasmuch as your orator is remediless in the premises at

and by the strict rules of the Common Law and is only relievable in a court of equity where matters of this nature are properly relievable and cognizable.

To the end therefore that the said Thomas M^cGhee and his confederates when discovered may respectively full true direct, and perfect answers make according to the best of their respective knowledge information and belief to all and singular the matters and charges aforesaid (your orator hereby waiving the necessity of the answer of the Defendants being put in under oath) and that as fully and particularly in every respect as if the same were here again repeated and they thereunto particularly interrogated as to items dates and all facts above stated and charged in detail and that the said patent (a copy of which is hereto annexed marked Exhibit B.) dated July 1st A.D. 1847 issued by the Government of the United States to said Thomas M^cGhee for said West half of the South East Quarter of Section number twelve in township twenty seven north, of range seven east of the fourth principal meridian may be set aside, cancelled and wholly vacated and that said Thomas M^cGhee may be compelled to deliver up said patent to the proper officer of your Honorable Court to be by such officer held and safely kept in custody subject (as to the farther disposition to be made thereof) to the final order of your Hon. Court, and that your orator may have such other or such further relief as the nature of his case shall require and as shall be agreeable to equity. May it please your Honor to grant unto your orator the writ of subpoena to issue out of and under the seal of this Honorable Court

to be directed to the said Thomas M. Ghee commanding him by a certain day and under a certain pain therein to be inserted to be and appear before your Honor the Chancellor in said Court of Chancery and then and there to answer the premises and further to stand to and abide such order and decree therein as shall be agreeable to equity and good conscience

And your orator shall ever pray &c.

John Wright

Complainant

C. A. Clark

Solicitor for Compt.

"Exhibit A."

Presumption Certificate

No. 31585

The United States of America. To all to whom

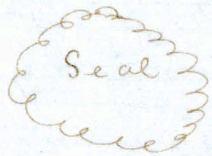
these presents shall come greeting:

Whereas heretofore to wit on the first of July 1847 a patent was erroneously issued from the General Land Office to one Thomas M. Ghee on an entry made on the 10th of February 1846 at private sale per Dixon Illinois Certificate of purchase No. 21926, for the West half of the South East Quarter of Section twelve in Township twenty seven, North of Range seven East of the fourth principal Meridian, and whereas John Wright of Stephenson County Illinois on the 14th of February 1846 filed "a notice in writing" for the said tract under the presumption law of the 4th of September

1841 alleging a settlement on said tract on the 5th of February 1846 and within a year after the said 5th of February 1846 made application to prove up and pay for the right of preemption so claimed by him which right of preemption was duly decided in his favor and the entry of said tract allowed in his name as a preemption and whereas the said John Wright has deposited in the General Land Office of the United States a certificate of the Register of the Land Office at Dixon Illinois whereby it appears that the said tract situated in the District of Lands subject to sale at Dixon Illinois and containing eighty acres according to the official plat of the survey of the said land returned to the General Land Office by the Surveyor General which said tract was purchased on the 23rd March 1850 by the said John Wright. According to the provisions of the Act of Congress of the 24th of April 1820 entitled "An Act making further provision for the sale of the public Lands and also the act of 4th September 1841 entitled "An Act to appropriate the proceeds of the sales of public Lands and to grant preemption rights" and that full payment has been made therefor as required by Law. Now know ye that the United States of America in consideration of the premises and in conformity with the several acts of Congress in such case made and provided have given and granted and by these presents do give and grant unto the said John Wright and to his heirs the said land above described (the outstanding patent in favor of Thomas McGhee dated 1st July 1847 to the contrary notwithstanding.) To have and to hold the above described tract together

with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging unto the said John Wright and to his heirs and assigns forever.

In testimony whereof I Millard Gilmore President of the United States of America have caused these letters to be made patent and the Seal of the General Land Office to be hereunto affixed. Given under my hand at the City of Washington the twentieth day of January in the year of our Lord one thousand eight hundred and fifty two and of the Independence of the United States the seventy sixth.



Recorded in Miscellaneous Books
on pages 68 + 69.

By the President Millard Gilmore
By Alex. McCormick Asst. Secy
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Jos. S. Wilson Acting Recorder of
the General Land Office ad interim.

"Exhibit B."

Certificate No. 21,926 3/4

The United States of America
To all to whom these presents shall come greeting:
Whereas Thomas McGhee of Stephenson County Illinois has deposited in the General Land Office of the United States a Certificate of the Register of the Land Office at Dixon whereby it appears that full payment has been made by the said Thomas McGhee according to the provisions of the act of Congress of the 24th of April 1820 entitled "An act making further provisions for the sale of the public Lands" for the West

half of the South East Quarter of Section Twelve in Township Twenty seven of Range Seven east in the District of lands subject to sale at Dixon Illinois containing eighty acres according to the official plat of the ^{Survey of the} said lands returned to the General Land Office by the Surveyor General which said tract has been purchased by the said Thomas McGhee;

Now Know ye that the United States of America in consideration of the premises and in conformity with the several Acts of Congress in such case made and provided have given and granted and by these presents do give and grant unto the said Thomas McGhee and to his heirs the said tract above described To have and to hold the same together with all the rights privileges immunities and appurtenances of whatsoever nature thereunto belonging unto the said Thomas McGhee and to his heirs and assigns Forever.

In testimony whereof I James K. Polk President of the United States of America have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the City of Washington the first day of July in the year of Our Lord one thousand eight hundred and forty seven - and of the Independence of the United States the seventy first.

By the President James K. Polk
By J. Knox Walker Secy



Recorded Vol 40. page 145.

S. W. Laughlin Recorder of
the General Land Office

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On which Bill were made the following
endorsements to wit

John Wright Compt.

vs

Thomas M^r Ghee
Bill in Chancery (30)

Filed July 29, 1852

John A. Clark. Clerk

C. A. Clark. Compt's Sol.

And afterwards to wit on the 18th day of September
A. D. 1852 at the September Term of said Court upon
the records of the proceedings thereof is the following
entry to wit,

John Wright

vs

Thomas M^r Ghee

In Chancery

On motion of the Complainant
by his Solicitor it is ordered by the court that Defendant
file his answer herein within thirty days after the
rising of this Court —

And afterwards to wit, on the 8th day of Nov.
A. D. 1852 the said Defendant appeared by his
Solicitor and filed in court his answer to said
Compt's Bill in words and figures as
follows to wit;

And on the same day to wit, on the 29th day of July
A. D. 1852 there issued out of said Circuit Court
a summons in the words and figures following
to wit;

State of Illinois } The people of the State of
Stephenson County } ss. Illinois to the Sheriff of
said County Greetings :-

We command you that you summon Thomas
McGhee if he be found in your County, personally
to be and appear before the Circuit Court of said
County, on the first day of the next term thereof,
to be holden at the Court House, in the town of Galesburg
in the said County, on the second Monday in the
month of September next to answer unto John
Wright upon a certain Bill in Chancery filed by
said John Wright in the said Circuit Court in the
Chancery side thereof against him, and have you
then and there this writ with an endorsement
thereon in what manner you shall have execu-
ted the same.



Witness, John A. Clark of our said
Circuit Court, and the seal of said Court
at his Office, in said County, this 29th
day of July A. D. 1852
John A. Clark Clerk

On said Summons was endorsed the following
to wit:

John Wright vs. Thomas McGhee (30) Sum. in Chancery
Executed the within by reading the within to
the within named Thomas McGhee and handing him a true
copy of the within Summons July 31st 1852

Peter D. Fisher Sheriff

Serving 50^{cts} - Copy 25^{cts} - Mileage 20^{cts} - Returning 10^{cts} = \$1.05

And afterwards to wit on the 18th day of September A. D. 1852, at the September term of said Court upon the records of the proceedings thereof is the following entry to wit:

John Wright }

vs.

Thomas McQueen }

In Chancery

On motion of the Complainant by his Solicitor it is ordered by the Court that defendant file his answer herein within thirty days after the rising of this Court

And afterwards to wit; on the 8th day of Nov. A. D. 1852 the said defendant appeared by his Solicitor and filed in ^{said} Court his Answer to said Complainant's Bill in words and figures following to wit:

In the Stephens County Circuit Court of the November Term A. D. 1852

John Wright }

vs.

Thomas McQueen }

In Chancery

The answer of Thomas McQueen the defendant in this suit to the Bill of Complaint of the said Plaintiff—

This defendant now and at all times, saving to himself all benefit of exception to the manifold errors in said complainant's said Bill for answer thereto saith—

That it is not true that the said Complainant on the fifth day of February 1846—made a settlement on the lands described in said bill— That it is not true that within thirty days thereafter the said Complainant filed

with the Register of the Land Office at Dixon a written notice of his settlement and his intention to pre-empt the same.

It is not true that within a year ^{there} after said complainant proved up his pre-emption and paid for said land. The said land was not duly entered in his name and the complainant did not get a patent for said land.

It is true that this defendant entered the same at the Land Office at Dixon and received from the General Government his patent therefor and that he has had the possession and still has rightfully the possession of said land.

That all other matters and things in said Bill are wholly groundless and untrue and this defendant therefore prays to be here dismissed with his reasonable costs herein expended.

Thos. J. Gurner
Sol. for Deft.

On which answer were made the following endorsements to wit—

John Wright

vs

Thomas McGhee

An^d

Filed Nov. 8th 1852

John A. Clarke
Clerk

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And afterwards to wit on the 4th day of April
A.D. 1853 of the April Term of said Circuit
Court the Complainant by his Solicitor filed
a Replication to the answer of the defendant
which said Replication is in words and
figures following to wit —

Stephenson County Circuit Court. In Chancery
November Term A.D. 1852 —

The replication of John Wright }
Complainant to the answer of }
Thomas McGhee Defendant }

This Repliant
saying and reserving to himself 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 insufficiencies
of the said answer for replication, thereunto
says that he will aver, maintain and prove
his bill of Complaint to be true certain and
sufficient in the law to be answered unto,
and that the said answer of the said defendant
is uncertain, untrue, and insufficient to be
replied unto by this Repliant without this
that any other matter or thing whatsoever
in the said answer contained material or
effectual in the law to be replied unto and
not herein and hereby well and sufficiently
replied unto confessed and avoided traversed
or denied is true — all which matters and
things this repliant is and will be ready to
aver maintain and prove as this Honorable
Court shall direct, and humbly prays as

in and by his said bill he has already prayed.
Charles A. Clark Solicitor for Complainant.

On which replication were made the following
endorsements to wit-

John Wright

vs.

Thomas M'Ghee

Replication

Filed April 4th 1853

J. B. Smith
Clerk

Clark Sol. for Compt.

And afterwards to wit on the 20th day of April
A. D. 1853 of the April Term of said Circuit
Court in the records of said Court for said
Term is the following entry to wit;

John Wright

vs.

Thomas M'Ghee

In Chancery

On motion of the Defendants
verified by affidavit - It is ordered by the Court
that this cause be continued to the next term
of this Court at the cost of the said defendant.

It is therefore considered ordered and adjudged by
the Court that the plaintiff have and recover of
the defendant his costs by him about his suit
at the present term of this Court expended and
that he have execution for the same.

The motion and Affidavit last above mentioned are in the words and figures following to wit:

John Wright } In the Circuit Court of Stephenson —
 vs. } County, In Chancery of the April
 Tho. McGehee } Term 1853.
 Stephenson County sp.

Thomas McGehee
 the defendant in this suit being duly sworn upon his oath says that he cannot safely proceed to the trial of this cause at this Term of said Court for want of time to procure the testimony of one George Mixture a material witness in this cause, that the whereabouts of the said Mixture cannot be ascertained, that this affiant has made diligent search and enquiries of divers persons who were supposed to know his residence to find him for the purpose of having a subpoena served upon him, and has not as yet been able to find him, or ascertain his place of residence. that this suit is brought for the purpose of establishing the right of the complainant to a certain piece or parcel of land by preemption previous to the entry of the said Land at the ^{Land} office at Dixon in this State by this Affiant, that this affiant expects to prove by the said Mixture that the Complainant did not file in the said Land office at Dixon a written notice of his settlement on said land and of his intention to preempt the same, within thirty days after his settlement on said Land, and that there is an error as to time in the filing of the

said notice that he knows of no person by whom he can prove the facts above set forth save the said George Mixture, that if this cause be continued until the next term of this Court this affiant believes he shall be able to procure the testimony of the said George Mixture in time to be used on the trial, and that this application is not made for the purpose of delay.

Thomas McGhee.

Subscribed and sworn before me this 20th day of April 1853.

Joseph B. Smith
Clerk

On which Affidavit and Motion were made the following endorsements to wit:

Stephenson County Circuit Court
Thomas McGhee

ad

John Wright

Affidavit For Continuance (13)
Filed April 20th 1853

J. B. Smith
Clerk

And afterwards to wit on the 24th day of January A.D. 1854 at the January Special Chancery Term of said Circuit Court in the records of the proceedings thereof is the following entry to wit:

John Wright

vs

Thomas McGhee

In Chancery

And has at this day come the said defendant by Turner & Meacham his Solicitors

and files his motion to dismiss the said Complainant's Bill for want of Jurisdiction

Which motion last above mentioned is in the words and figures following to wit:

Steph. Co. Cir Court	} In Chancery
Thomas M. Ghee	
John Wright ^{als}	

And now on this 23^d day of January A. D. 1854 and of the Term of January 1854 of said Court comes the said Thomas M. Ghee by Turner & Meacham his attys. and move this Hon. Court now here to dismiss this cause for the following reason to wit, with his reasonable costs

1st This Court has no Jurisdiction of this cause as appears from the bill filed by Complainant

Turner & Meacham
Sols. for Complainant

On which said motion are the following endorsements to wit:

Steph. Co. Cir Court
Thomas M. Ghee als John Wright
Motion to Dismiss

Filed January 24th 1854

Joseph B. Smith
Clerk

And afterwards to wit on the 4th day of February
A. D. 1854 at the January Special Chancery Term
of said Circuit Court in the records of the proceed-
ings thereof is the following entry to wit:

And now at this day come
the said parties and their Solicitors and this
cause coming on to be heard upon a final hearing
upon the Bill, answers, pleadings, and the proofs and
after hearing some of the evidence - progress made
in the trial when the Court adjourned -

And that heretofore to wit on the 24th day of Jan'y 1854 at the said January Special Chancery Term of said Circuit Court in the records of the proceedings thereof is the following entry to wit

John Wright (In Chancery
vs
Thomas Mc Ghee)

And now at this time come on to be heard the motion of the said defendant to dismiss the said Complainants Bill herein for the want of Jurisdiction and after the arguments of Counsel and the Court being fully advised upon the Motion order that said Motion be overruled

John Wright
 " " } Original Bill
 Thomas McGhee

John Wright
 " " } Supplemental Bill
 Thomas J. Turner

Be it remembered that on the first day of December A.D. 1853 of the ^{January Special Chancery} ~~April~~ Term A.D. 1854 of said Circuit Court the said Complainant by his Solicitor appeared and filed in said Circuit Court his Bill Supplemental against the said defendant Thomas J. Turner, in the words & figures following to wit:

State of Illinois } In the Circuit Court of said County
 Stephenson County } In Chancery of the Term A.D. 1854

To the Hon. Benjamin R. Sheldon Presiding Judge of the fourteenth Judicial Circuit in the State of Illinois in equity sitting

Complaining sheweth unto your honor your orator John Wright of said Stephenson County, that on or about July 29th 1852 your orator exhibited his original bill of complaint in this Honorable Court against Thomas McGhee as defendant thereto thereby stating that on the 5th day February A.D. 1846 your orator made a settlement on the West half of the South East quarter of Section Twelve in Township Twenty Seven North of Range Seven East of the fourth principal meridian in the district of lands subject to sale at Dixon Illinois in accordance with the act of Congress of September 4th 1841- entitled an act to appropriate the proceeds of the sales of the public Lands and to grant

preemption rights, that your orator made such settlement with the intention to obtain a preemption right of said Land, that your orator within thirty days from the date of such settlement made by him as aforesaid on said Land, filed a written notice of his settlement, said notice being a written statement describing said Land & declaring this intention of your orator to claim the said Land under the provisions of said above entitled act of Congress, that within a year from the said 5th day of February A.D. 1846 - your orator made application at the United States Land office at Dixon Illinois (it being the proper office) to prove up and pay for the right of preemption so claimed by him to said Land under said act, that your orator deposited at said Land office the purchase money for said Land and made the necessary proof to entitle him to his right of preemption aforesaid, that said right of preemption was duly decided in his favor, and that a patent has been issued to your orator for said Land by the Government of the United States, to which patent your orator prays leave to refer and to make proof thereof as may be necessary, that one Thomas McGhee Defendant to said Original Bill, did on February 10th 1846, enter at private sale said Land tract of Land at said Dixon Land office though your orator had already made his settlement thereon, that said McGhee did under the entry so made by him as aforesaid fraudulently obtain from the President of the United States a patent for said Land, though he said McGhee well knew that your orator had already completed his right to a patent for said Land as preemptor thereof, that by reason of the erroneous issue of said patent to said McGhee, your orator was long time hindered in obtaining a

patent for said Land as preemptor and purchaser thereof & did not succeed in obtaining his patent until after the issue of the said patent to said Thomas ^{that said McGhee} McGhee, entry of said Land was cancelled and set aside as made in fraud of your orator's rights & the entry of your orator duly allowed in the United States Land Office - that said McGhee took possession of said Land and retains possession and defends possession thereof by his said patent & insists that under said patent he is ~~the~~ rightfully the owner thereof and your orator charging by said original bill that said McGhee holds said patent the possession of said Land & the legal title of said Land in fraud of your orator's rights and praying that said McGhee may be required by the decree of this Court to deliver up to the proper officers of the Court to be held by such officers subject to the order of your Hon. Court the patent issued by the President of the United States to said Thomas McGhee for said Land ^{as} aforesaid praying that said patent may be cancelled set aside & wholly vacated and that your orator might have such other or such further relief as the nature of his case shall require & as shall be agreeable to equity.

And your orator further sheweth unto your Honor that said Thomas McGhee being duly served with process of subpoena appeared to your orator's said Bill and put in his answer thereto - And your orator further sheweth that the said answer hath been replied unto by your orator and the cause stands at issue but no witnesses have been examined nor has said cause ever come to a hearing.

Your orator further sheweth unto your Honor that ever since the filing of his said original Bill by your orator one Thomas J. Turner appeared as solicitor & of counsel for said McGhee in this Hon. Court

And your orator further sheweth by way

of Supplement that your orator has lately discovered since said cause was at issue or the fact is that said Thomas-McGhee did by deed dated on February 12th 1853. convey said tract of Land to said Thomas J Turner said deed is set out in the exhibit attached marked Exhibit A. that said conveyance was thus made long after said Bill was filed & to said Turner who had been solicitor in the cause, and that said Turner had full and complete notice at the time of the execution of said Deed of all the claim & right of your orator to said Land as stated and set forth in the said original Bill filed by your orator in this Court as aforesaid - and your orator charges that the said Thomas J Turner ought to be decreed to yield up said patent issued to said McGhee for said Land as aforesaid to the proper officer of this Court to be held subject to the order of your Hon. Court & that the Deed made to said Turner ought to be set aside as to said Land & the patent issued as aforesaid to said McGhee ought to be vacated.

To the end therefore that the said Thomas J Turner Deft. may answer all and every the matters and things herein before charged by way of Supplement and that your orator may have the full benefit of the said suit and proceedings against the said Thomas J Turner may be decreed by your Hon. Court to deliver up the patent issued by the President of the United States to Thomas McGhee for said Land as aforesaid if held by said Turner to the proper officer of your Hon. Court to be held subject to the further order of your Hon. Court and that said patent may be vacated and set aside by the decree of your Hon. Court & a conveyance decreed by said Turner to said Complainant for said Land, and that the said Thomas J Turner may be restrained by the injunction of this Honorable Court from conveying, transferring or making any disposition of said West half of South East quarter of Section twelve Township Twenty seven North of

Range Seven East of 4th principal meridian until the
the further order of your Hon. Court. and that your orator
may have such further or such other relief as the nature
of his case may require & as to equity shall seem meet
may it please your Honor to grant unto your orator the
writ of Summons to be issued to said Thomas J Turner
commanding him to appear & answer hereto

John Wright

State of Illinois
Stephenson County

On this 21st day of November 1853 before
me a Notary Public for Freeport in said County personally
appeared the above named John Wright and made oath
that he has heard the above Bill subscribed by him read
and knows the contents thereof and that the same is true
of his own knowledge except as to the matters which are
therein stated to be on his information or belief, and as
to those matters he believes it to be true

C. A. Clark N.P.

6585 Thomas Mc Ghee

To

Thomas J Turner

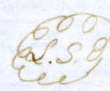
Exhibit A

This Indenture made this Twelfth
day of February in the year of our Lord one thousand
eight hundred and fifty three between Thomas McGhee
of the County of Stephenson and State of Illinois of the
first part and Thomas J Turner of the County of Stephenson
and State of Illinois of the second part. Witnesseth, that
the said party of the first part for and in consideration of
the sum of twelve hundred dollars to him in hand
paid the receipt of which is hereby acknowledged hath

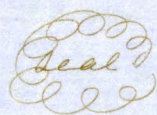
granted, bargained, sold conveyed and confirmed, and doth hereby grant, bargain, sell convey and confirm unto the said party of the second part, and to his heirs and assigns Forever all those tracts or parcels of Land situate and being in the County of Stephenson and State of Illinois, and known and described as follows to wit: The North West quarter of the South East quarter of Section number Ten (10), in Township number Twenty Seven (27), North of Range No. Seven (7), East (4), P. M. And also the South East quarter of the North East quarter of Section No. Ten (10), in Township No. Twenty seven (27), North of Range seven (7), East (4), P. M. Also the West half of the South East quarter of Section No. Twelve (12), in Township No. Twenty Seven (27), North of Range No. Seven (7), East of the fourth (4), P. M. Also the South East quarter of the South East quarter of Section No. ten (10), in Township No. Twenty Seven (27), North of Range No. Seven (7), East of the fourth (4), P. M. Together with all and singular the appurtenances thereunto belonging or in anywise appertaining. To have and to hold the above described premises unto the said party of the second part and to his heirs and assigns forever, and the said party of the first part for him and his heirs, Executors and Administrators doth covenant and agree to and with the said party of the of the second part his heirs and assigns, that he is well seized of the premises above conveyed as of a good and indefeasible inheritance in the law in fee simple and that the said premises are clear of all incumbrances whatever. And the said party of the first part the aforesaid premises unto the said party of the second part and to his heirs and assigns against the claim or claims of all and every person whomsoever doth and will warrant and forever defend by their presents,

In Testimony whereof the said party of the first part, hath hereunto set his hand and seal the day and year first above written.

Executed in presence of }
A. T. Green }

Thomas McGhee 

State of Illinois
County of Stephenson } I Abraham T. Green Notary
Public in and for the said County do hereby certify that
Thomas McGhee personally known to me to be the person
whose is subscribed to the foregoing Deed as having executed
the same appeared before me this day in person and acknow-
ledged that he signed, sealed and delivered the same as
his free and voluntary act and for the uses and purposes
therein set forth.



Given under my hand and Notarial Seal
at Freeport this Twelfth day of February
A.D. 1853

A. T. Green Notary Public

Recorded the 12th day of February 1853 at 1 1/2 O'clock
P. M.

Joseph B. Smith Clerk

Upon which Bill & Exhibit is the following endorsement
to wit:

State of Illinois
Stephenson County }

Hon. Benjamin R. Sheldon presiding
Judge of the Circuit Court of said County being now
absent from said County, upon the filing of the foregoing
Bill Supplemental let a writ of Injunction issue
in accordance with the prayer thereof.

November 24th 1853

F. W. L. Brawley

Master in Chancery for said
County

To J. B. Smith Esq Clerk }
Cir Court of said County } Fees \$1.00

John Wright vs Thomas J Turner.

Supplemental Bill

Filed Decr. 1. 1853- Joseph B Smith Clerk

And afterwards to wit. on the 3^d day of December AD 1853
then issued out of said Circuit Court a writ of Injunction
in the words and figures following to wit.

State of Illinois

Stephenson County

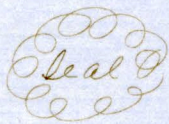
The People of the State of Illinois
to Thomas J Turner and to his Counselors
Attorneys Solicitors and Agents each
and every of them Greeting;

Whereas it has been represented to us in our Circuit Court
of Stephenson County on the Chancery side thereof on the part of
John Wright Complainant that he has lately exhibited
his Supplemental Bill of Complaint in our said Court
on the Chancery side thereof before the Hon^{ble} Benjamin
R Sheldon Judge of the said Court against you the said
Thomas J Turner to be relieved touching the matters and
things therein complained of. In which Supplemental
Bill it is stated among other things that you are combin-
ing and confederating with others to injure the said
complainant touching the matters set forth in said Bill.
And that your actings and doings in the premises are

Contrary to Equity and good conscience. We therefore in consideration thereof and of the particular matters in said Supplemental Bill set forth, do strictly enjoin and command you the said Thomas J Turner and the persons before mentioned and each & every of them under the penalty of ten thousand dollars to be levied upon your Lands goods & Chattels to our use, That you do absolutely desist and refrain from conveying, transferring or making any disposition of the following described Lands to wit: The West half of the South East quarter of Section Twelve (12) in Township Twenty Seven, (27) North of Range Seven, (7) East of the fourth principal meridian until you the said Thomas J Turner shall have put in your answer in this cause and our said Court shall have made further order thereon -

Hereof fail not under the penalty of what the Law directs

To the Sheriff of said County to Execute



Witness Joseph B Smith Clerk of our said Circuit Court and the seal thereof at Freeport this 3^d day of December AD 1853
Attest Joseph B Smith Clerk

Said writ has the following endorsement to wit.

John Wright

Thomas J Turner } Injunction

Executed the within by reading the within to the within named Thomas J Turner and gave him a true copy of the original - December 3^d 1853.

Geo. Reitzell Sheriff

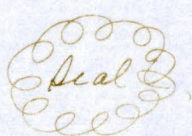
per Wm Glover Deputy

Serving 50 Copy 50 Mileage 5 return 10^c - \$ 1.15

And on the same day to wit. On the 3^d day of December
A.D. 1853 then issued out of said Court a summons
in words and figures following to wit.

State of Illinois } The People of the State of Illinois
Stephenson County } To the Sheriff of said County Greeting:

We Command you that you summon Thomas
J Turner if he be found in your County, personally to
be and appear before the Circuit Court of said County,
on the first day of the next ~~term~~ Special term thereof, to be
holden at the Court house in the town of Freeport, in
the said County, on the fourth Monday in the month of
January next to answer unto John Wright upon his
certain Supplemental bill of Complaint filed in the
Circuit Court of said Stephenson County on the Chancery
side thereof against him - and have you then
and there this writ, with an endorsement thereon in
what manner you shall have executed the same.



Witness Joseph B Smith, Clerk of our said Circuit
Court and the seal of said Court at his office
in said County this 3^d day of December
A.D. 1853

Joseph B Smith Clerk

Endorsed

John Wright vs Thomas J Turner - Ch Summons

Executed the within by reading the within to the within
named Thomas J Turner and gave him a true copy of the
original - December 3^d 1853.

Geo. Rectzele Sheriff

per Wm Glover Deputy

Serving 50. Copy 50 mileage 5 return 10 - \$1.15

And afterwards to wit. on the 24th day of January A D 1854
at the said Special Chancery Term of said Circuit Court
in the records of the proceedings thereof for said term is the
following entry to wit:

John Wright

Thomas J. Turner

} Chancery - Injunction

And now at this day comes the said
defendant and files his demurres to said Complainants
Supplemental bill.

"Said demurres is in words and figures fol-
lowing to wit:

In the Cir. Court of 2 In Chancery
Stephenson County 3

The Demurres of Thomas J. Turner
Defendant to the Supplemental Bill of John Wright
Complainant.

This defendant by protestation not confessing or
acknowledging all or any of the matters and things in
the said Complainants Bill to be true in such manner
and form as the same are therein set forth alleged doth
demur thereto and for cause of demurres sheweth that the
said Complainant hath not in and by his said Bill
Supplemental made or stated such a case as doth or
ought to entitle him to any such a case as doth or
ought to entitle him to any such discovery or relief as
is thereby sought and prayed for from and against
this defendant. Wherefore this defendant
demands the judgment of this Court whether he
shall be compelled to make any further or other
answer to the said bill, or any of the matters and things
therein contained and prays to be hence dismissed

with his reasonable Costs in this behalf sustained
U. D. Meacham
Sole for Deft.

Dated Jan'y 20th 1854

Endorsed

Steph. Co Ch' Court - Thos. J. Turner ats John Wright
Demurrer.

Filed Jan'y 24th 1854 - Joseph B. Smith Clerk

And afterwards to wit: on the 27th day of Jan'y AD 1854
of the January Special Chancery Term of said Court in
the records of the proceedings thereof is the following entry
to wit:

John Wright	} In Chancery - Supplemental Bill
"	
Thomas J. Turner	

And now at this day came on to be heard
the demurrer of the defendant by his Solicitor to the said
Complainants Bill - and after the arguments of Counsel
the Court overrules said demurrer - It is further ordered
by the Court that the said defendant be ruled to file
his answer to said Complainants Bill by Monday
morning next.

And afterwards to wit: on the 30th day of January AD 1854 in
the records of the proceeding of said Court for said Term is the
following entry to wit:

John Wright	} In Chancery
"	
Thomas J. Turner	

And now at this day comes the said defendant
and files his answer to said Complainants Supplemental
Bill

"which said answer is in words & figures following to wit

In the Stephenson County Circuit Court
of the January Special Term 1854
In Chancery

John Wright

Thomas J. Turner

The answer of Thomas J. Turner
the defendant, to the said plaintiffs said Bill of Complaint
This defendant saving all benefit of
exception to the many errors and insufficiencies in the
said bill of Complaint contained, for answer thereto saith
he believes it to be true that on or about the 29th day of
July A.D. 1852 the said Complainant exhibited his bill
of Complaint against Thomas McGhee in substance as
stated in said bill of Complaint and that the ^{said} Thomas Mc-
Ghee was served with process and did put in his answer
thereto and that said answer hath been replied unto and
that the said cause is at issue and ready for proofs &c.
It is true that at the next Term of Court after filing
said Bill against Thomas McGhee this defendant
appeared as his counsel and solicitor and has con-
tinued up to the present time and still continues to
be a solicitor for said Thomas McGhee in said suit.
It is also true that on or about the time mentioned
in Complainants Bill of Complaint, said Thomas
McGhee by deed conveyed said land to this defendant.
This defendant knows very well ^{all} that is contained
and charged in said Complainants said original Bill
of Complaint, but whether said charges are true or
false this defendant does not know but he believes
many of them to be false - This defendant does

not believe that the deed from said McGhee to this defendant ought to be set aside or annulled or that ^{he} ought to give the patent issued to Thomas McGhee.

Thos. J. Turner

State of Illinois
Stephenson County

Thomas J. Turner being first duly sworn on his oath says he drew up the foregoing answer by him signed and that the matters therein contained are true so far as he states them as of his own knowledge, and that as to those things stated to be of his information and belief he believes to be true.

Subscribed and sworn to
this 30th day of Jan'y 1854
Joseph B. Smith Clerk

Endorsed

John Wright

vs

Thomas J. Turner

}

Answer

Filed Jan'y 30th 1854

Joseph B. Smith Clerk

And afterwards to wit. on the first day February AD 1854 yet of the said January Special Chancery Term of said Court in the record of the proceedings thereof is the following entry to wit.

John Wright

vs

Thomas J. Turner

} Chancery - Supplemental Bill

And now at this day come the said Complainant by his Solicitor and files his Replication to said defendants answer

said Replication is in words and figures following to wit:

Stephenson County Circuit Court. In Chancery Special
Chancery Term 1854.

The Replication of John Wright complainant to
the answer of Thomas J Turner Defendant to Supplemental
Bill herein.

This Repliant saving and reserving to himself
now and at all times hereafter all and all manner of benefit
and advantage of exception which may be had or taken to the
manifest insufficiencies of the said answer for replication
thereunto says that he will aver, maintain, and prove his
Bill of Complaint to be true certain, and sufficient in the
Law, to be answered unto and that the said answer of the said
defendant is uncertain untrue and insufficient to be replied
unto by this repliant without this, that any other matter or
thing whatever in the said answer contained material or
effectual in the law to be replied unto and herein and
herby well and sufficiently replied unto confessed and
avoided, traversed or denied, is true, all which matters
and things this repliant is and will be ready to aver, mai-
ntain, and prove as this Honorable Court shall direct
and humbly prays as in and by his said Bill he has alre-
ady prayed.

Marsh & Clark

Solicitors for Complt.

Endorsed" John Wright vs Thomas J Turner,
Replication

Filed February 1st 1854

Joseph P Smith Clerk

And afterwards to wit, on the 19th day of April A. D. 1854 at the April Term of said Circuit Court in the records of the proceedings thereof is the following entry to wit:

John Wright }
 as } In Chancery - An original Bill
Thomas M'Ghee }

John Wright }
 as } In Chancery - On Supplemental Bill
Thomas J. Turner }

And now at this day comes on the above entitled cause for final adjudication - upon the proofs and pleadings heretofore submitted to the Court herein and it appearing to the Court that John Wright the Complainant herein did on February 5th A. D. 1846 make a settlement on the West half of South East Quarter of Section twelve (12) in Township Twenty seven (27) North of Range seven east of the fourth principal meridian in the District of Lands subject to sale at the United States Land office at Dixon, Illinois, said land being in Stephenson County Illinois. that such settlement was made under and to obtain the benefit of the preemption Law of the United States contained in the Act of Congress approved September 4th 1841 Entitled an act to appropriate the proceeds of the sales of the public lands and to grant preemption rights - and that said tract of land was subject to preemption on said February 5th 1846, and it further appearing to the satisfaction of this Court that said John Wright did follow up said settlement on said Land with the steps and acts made necessary by said

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act of Congress to complete his preemption right
to said Land and to entitle him to purchase the
same as pre-emptor and it further appearing that
said John Wright did within the time for payment
prescribed by said act of Congress - tender in
Gold & Silver coin the amount to be paid for the
purchase of said Land to the proper officer at the
Land Office at Dixon in payment for said Lands
and that said Land Officer declining to receive
said money, that the same was deposited with
said Land officer - and it further appearing
that Thomas McGhee Defendant herein did on
February 11th 1846 enter said tract of Land at
private sale at said Dixon Land Office and
that a controversy ensued between said John
Wright and said Thomas McGhee relative to the
validity of the preemption claim of said John
Wright to said Land that a trial was had
before the Land Officers at Dixon relative to said
preemption right at which both parties appear-
ed by counsel and said trial was continued
by consent of the parties from time to time
that while said trial was pending said
Thomas McGhee procured the issue by the
Government of the United States to him of a
patent for said Land said patent being issued
to him as a purchaser of said land, and it
further appearing that upon a final hearing
the Register and Receiver of the United States
Land Office at Dixon Illinois did decide the
preemption right of said John Wright to said
lands to be valid and did permit him to pur-
chase the same as a pre-emptor thereof, the

entry of said land by Thomas M^cGhee being cancelled and it further appearing that the United States did issue a second patent for said land to said John Wright conveying said land to him. the outstanding patent to Thomas M^cGhee for said land notwithstanding and it appearing that the right of said John Wright to said land under his said patent although said patent was issued subsequent to the issue of the patent for said land to Thomas M^cGhee is valid in equity and should prevail against the claim of said M^cGhee under his patent and it further appearing that said Thomas M^cGhee did while the suit brought against him by ^{said} John Wright by original Bill was pending did convey said West half of South East Quarter of Section Twelve in Township Twenty Seven North of Range Seven East of 4th principal Meridian the premises in question to Thomas J. Gurner made defendant by supplemental bill herein who took said conveyance with full notice and knowledge of all the matters and things in controversy between said John Wright and Thomas M^cGhee and it appearing that said Defendants M^cGhee and Gurner have appeared herein and the Court being fully advised as to the premises doth order adjudge and decree that the title of the defendants Thomas M^cGhee and Thomas J. Gurner to the West half of the South East quarter of Section Twelve (12) in Township Twenty Seven of Range Seven East in the District of Land subject to sale at Dixon Illinois dated July 1st 1847 and copied in the Exhibit B^a attached to the original bill herein be set aside, and for nothing esteemed as to said complainant and all persons claiming under him and that said

Thomas McGhee and Thomas J. Turner convey by proper deed of release within twenty days from the close of the present term of this Court to said John Wright all the right title and interest held by them or either of them in and to said Land and premises above described under said patent issued to said McGhee as aforesaid and under the said conveyance executed by said McGhee to said Turner of said Land as aforesaid and in case said Turner and McGhee or either of them shall refuse or neglect within twenty days from the close of the present term of this Court to execute such release as aforesaid then Joseph B. Smith is hereby appointed Special Commissioner of this Court to execute said deed of release in behalf of said Turner and McGhee, such release to be approved by H. W. S. Brawley Master in Chancery, or in case but one of said defendants shall refuse or neglect to execute such release ^{then said Commissioner shall execute such release} only in behalf of the one so refusing or neglecting to execute such release, and it is further ordered that said defendants within sixty days from the close of the present term of this Court give possession of said premises, to said Complainant and that said defendants pay the Costs herein to be taxed by the clerk.

"upon the filing of the decree in this cause come the said Thomas McGhee by his solicitor and Thomas J. Turner defendant and prays an Appeal to the Supreme Court which is granted by the Court upon condition that the said Thomas McGhee and Thomas J. Turner file an Appeal Bond with the Clerk of this Court conditioned according to law in the sum of three hundred dollars with James McGhee as security within twenty days from this day

And on the same day to wit. On the 19th day of April
A. D. 1854 yet of the April Term of said Circuit Court,
the testimony introduced upon said trial was certified by
the Court and filed herein, in the words and figures
following to wit:

John Wright

Thomas McGhee

} Original Bill

John Wright

Thomas J. Turner

} Supplemental Bill

Upon the trial of the above entitled cause the
Complainant introduced as testimony certain documents
purporting to be exemplifications from the originals
in the files and records of the General Land Office of the
United States which documents were attached together
paged and certified as follows.

General Land Office

October 27th 1852

I, John Wilson Commissioner of the General Land
Office, do hereby certify, that the annexed are true
and literal exemplifications from the originals on the
files and records of this office



In testimony whereof, I have hereunto
subscribed my name, and caused the
Seal of this Office to be affixed, at the
City of Washington, on the day and year
above written.

John Wilson
Commissioner of the General Land Office

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said certificate and said document being on file in the
Office of the Clerk of this Court. And to such certificate
the seal of the General Land Office was attached.

The first document read in evidence was as follows.

11.

No. 21,926 Land Office at Dixon Illinois. February
10th 1846. It is hereby certified, that in pursuance of Law
Thomas McGhee of Stephenson County, State of Illinois, on this
day purchased of the Register of this Office the lot or
West half of South East Quarter of Section No Twelve in Town-
ship No Twenty seven of Range No Seven, East, contain-
ing Eighty acres at the rate of one dollar and twenty
five cents per acre, amounting to one hundred dollars, and
— cents, for which the said Thomas McGhee has made
payment in full as required by law.

Now therefore be it known that on presentation of this
certificate to the Commissioner of the General Land
Office, the said Thomas McGhee shall be entitled to receive
a Patent for the lot above described.

Geo. Myster

Register.

to the receipt of which as testimony Defts. counsel
objected and his objection is overruled and he excepts
to the ruling of the Court

The second document read as evidence as
follows:

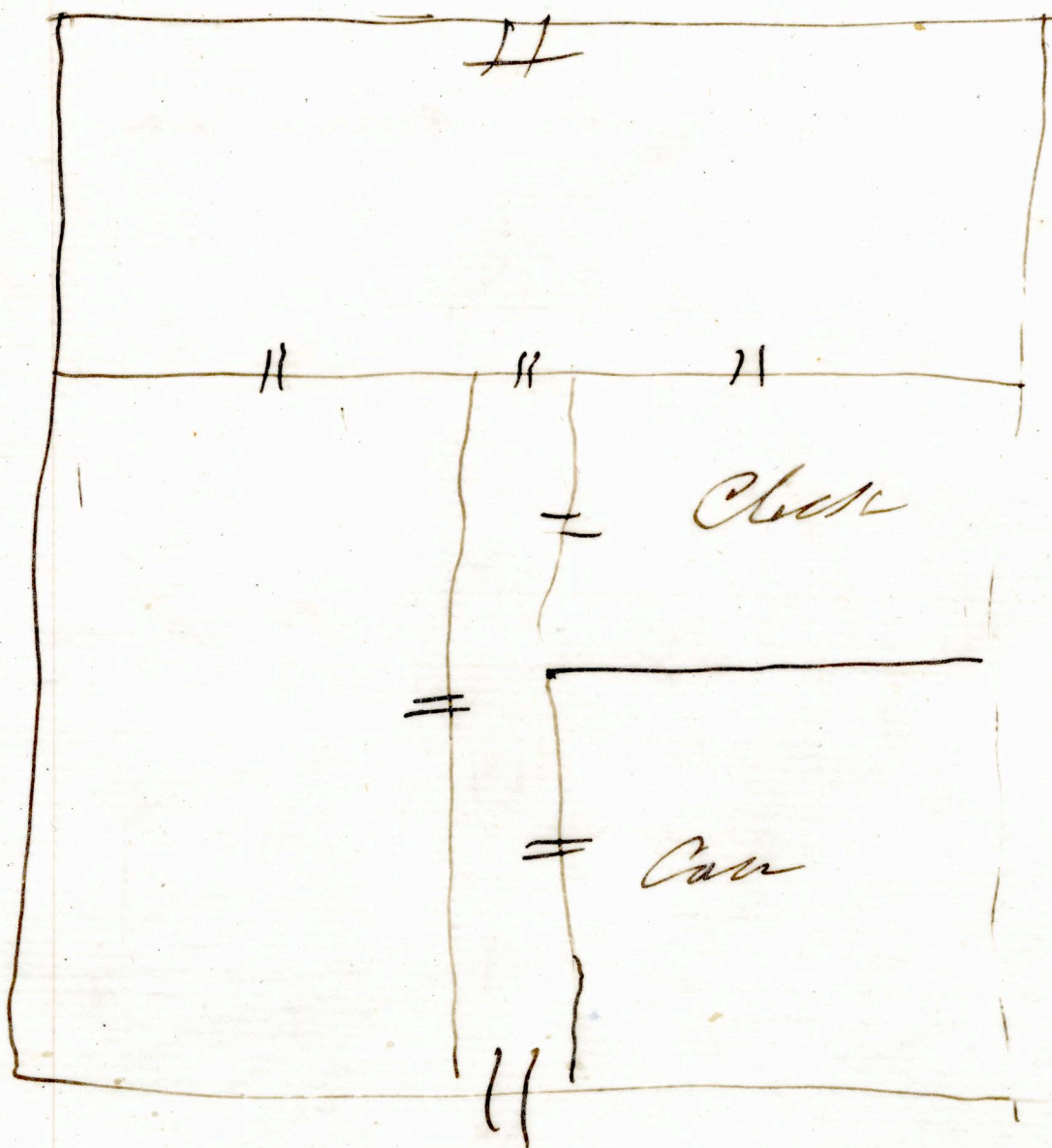
Thomas McGhee v J. B. Turner v John Wright

Wright filed this bill to vacate and set aside a patent from the U. States to McGhee dated July 1. 1847 - for the West half of the South East quarter of Section Twelve in township twenty seven North - Range Seven East of the fourth principal meridian, lying in Stephenson County - And for such further relief as to equity might appertain - waiving a sworn answer.

The facts charged in the bill show substantially that Wright claimed a pre-emption right to the tract by a settlement commenced on the 5th day of February 1846 - that on the fourteenth of the same month - he filed with the Register of the proper land office at Dixon a written statement in conformity to the provisions of the pre-emption act of 4 Sept 1841 and also made the necessary and sufficient proof and applied for and tendered the money to the land officers within one year from the date of said settlement - that said pre-emption has been duly allowed by the proper officers - the said tract has been duly entered - paid for - and patented to said Wright. 20th January 1852

That McGhee applied for the same tract - and was permitted to enter the same on the 10th day of February 1846 - and a patent issued thereon to McGhee on the 1st day of July 1847
Turner purchased of McGhee with full notice

The answers are general traverses of the right of
pre-emption in rights.



Abstract

Each

^{or}
The ~~7~~ ¹⁰ minutes. I have to look

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X

103 Submitted ^{on written argument} by stipulation

121 Submitted so far as defendant concerned

122 Submitted record drawn by Waite

[12159-25]

8

"B" Abstract of land subject to private entry, claimed under the Pre-emption Law of 4th Sept. 1841 at the Land Office at Dixon, Illinois, from the first day of February A.D. 1846, to the Twenty eighth day of the same month inclusive

Date of Notice	No. of Notice	By whom		Tract			Quantity			Commencement of Settlement
		Name	Residence	Sec. or part of Section	No. of Sect.	No. of Towns.	No. of Range	Acres	Halves	
1846	x	x x x	x x	x x	x	x	x	x	x	x x
x	x	x x x	x x	x x	x	x	x	x	x	x x
Feb. 14.	3102	John Wright	Stephenson Co. Ill.	W 1/2 S. E. 2d.	12	27th.	7. E.	80	—	Feb. 5 th 1846
x	x	x x x	x x	x x	x	x	x	x	x	x x
x	x	x x x	x x	x x	x	x	x	x	x	x x

I hereby certify that the foregoing is a true abstract of notices of pre-emption claims under Law of 4th Sept. 1841, filed at this office during the month of February last for land subject to Private Entry, from No. 3000 to No. 3188 both inclusive

Regl. Office Dixon Ill.
March 4th 1846.

Geo. Mixer
Register

to the reception of which as testimony Defendants Counsel objected and the objection was sustained and the same excluded

The third document read as testimony is as follows:

"C"

State of Illinois }
Lee County }

I John Wright of Stephenson County Illinois claiming the right of Pre-emption under the provisions of the act of Congress entitled

"An act to appropriate the proceeds of the sales of the sale of public lands, and to grant Preemption rights, approved 4th Sept. 1841, to the West half of the South East Quarter of Section Number Twelve (12) in Township Number Twenty seven (27) N. of range Number seven, east of the fourthth principal meridian subject to sale at Dixon, Ills. do solemnly swear that I have never had the benefit of any right of Preemption under this act—That I am not the owner of three hundred and twenty acres of land in any State or Territory of the United States; nor have I settled upon and improved said land to sell the same on speculation, but in good faith to appropriate it to my own exclusive use or benefit, and that I have not directly or indirectly made any agreement or contract in any way or manner with any person or persons whatsoever by which the title which I may acquire from the Government of the United States should ~~come~~^{enure} to the benefit of any person except myself

John Wright

I John Dement, Receiver of the Land Office at Dixon Illinois. do hereby certify that the above affidavit was taken and subscribed before me on this the 3^d day of February A.D. 1847

John Dement
Receiver

to the reception of which as testimony Defendants Counsel objected and the objection being overruled Defendants Counsel excepted to the ruling of the

ruling of the court

The next document read as testimony is as follows
"D"

State of Illinois
Stephenson County }
X

We Paschal L. Wright, and William Wright, of said county and State, do solemnly swear that we are personally acquainted with John Wright the applicant for a Pre-emption right to the West half of the South East Quarter of Section Twelve Township No. Twenty seven North, of Range Seven, of the Fourth principal Meridian subject to sale at Dixon, Illinois and know that he is an actual settler and erected a dwelling house thereon - that John Wright is over twenty one years of age, that he is a single man, without a wife and family, and is in possession of said land by personally residing and living in said house on said land, that said settlement was commenced by said John Wright on the fifth day of February in the year of Our Lord one thousand eight hundred and forty six, and that he has continued to reside thereon and make it his home, and to the best of our knowledge there are no salines or indications of Lead Mineral upon any part of said tract - that no part of said tract has been laid out into lots for the purpose of a village, town or city, and that we have no interest in obtaining this Preemption, and that we are over twenty three years of age and that the said John Wright is a citizen of the United States and that he did not leave land of his own in the state of Illinois for the purpose of making his claim: we do further solemnly swear that on

the fifth day of February the said John Wright
 commenced his said improvement on said land
 by hauling two hundred rails on said land for
 fencing the same, and that between the fifth
 day of February aforesaid and the tenth day
 of said month he had hauled on said
 land for fencing the same three hundred
 more rails: that on the said fifth day of
 February he hauled one load of stone for
 the foundation of the dwelling house afore-
 said, and that on the day last aforesaid he
 cut for the purpose of building said house on
 said land ten house logs; that on the day last
 aforesaid he staked out a field of about
 twenty five acres on said land, and that the
 rails aforesaid were hauled at the time
 afore-said on the lines of the said field so
 staked out, and there left - and that on the fifth
 day of February aforesaid, the said John Wright
 cut logs to haul to the saw mill, to be sawed
 into lumber to build said house, that said
 logs were hauled to the saw mill before the tenth
 of February aforesaid and sawed into lumber
 and used in said house for flooring, roof
 and doors in said house in the fore part of
 March A. D. 1846 - that on the fourth day of
 March in the year aforesaid the said John
 Wright laid the foundation of said house by
 laying one course of logs, and putting stone
 under the corners - that on the seventh day of
 March afore-said he completed the raising
 of said house on said land. The said house
 is built of logs hewed on both sides - it is twelve

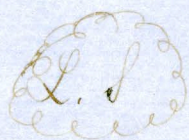
by fourteen feet in size on the ground and eight feet high between the ground and plates; it was and is covered with sawed boards; there was put in said house a floor of boards fastened with nails - there was and is an upper floor of boards laid loose - there was and is a good button door in said house - there was a glass window of six lights of eight by ten glass; the crevices between said logs was chinked with sticks and filled with mortar - that said house was finished ^{as aforesaid} on the twenty-fifth day of March aforesaid - that on the day last aforesaid the said John Wright moved into said house with his household furniture, bed and bedding, cooking utensils, crockery - that he has had and has a cooking-stove in said house, and has continued to reside in said house from the day last aforesaid until the present time, and that he has continued to work on said land and improve the same; that in the month of July last past he broke seven acres of prairie on said land, and planted, cultivated and harvested seventeen acres of corn; since the fifth of February aforesaid and since the time last aforesaid he has he has hauled and put up in fence on said land rails, which, with the rails first aforesaid amount to seventeen hundred, which said rails were laid up in fence on said land about the first of April A. D. 1846; that in the months of July, August and September last past, he prepared the ground and sowed on said land seventeen acres of wheat

Paschal L. Wright
Wm Wright

State of Illinois }
Stephenson County } ss.

A (1)

Personally appeared before the undersigned, Clerk of the Circuit Court within and for said County, Paschal L. Wright and Wm Wright whose names are subscribed to the foregoing deposition, who having been duly sworn by me, deposes and saith that the matters and things contained in said deposition signed by them are true.



In witness whereof I have hereunto set my hand and affixed the seal of said Court at Freeport February 1st A. D. 1847.

Attest: John A. Clarke, Clerk.
by Jas. L. Kyle, Deputy

to the reception of which as testimony Defendants counsel objected and the objection is overruled and Defendants Counsel excepts to ruling of Court.

The next document read as testimony was as follows

§

State of Illinois }
Lee County } ss.

I Thomas McShee, of Stephenson County and State of Illinois, being duly sworn deposes and says that he verily believes that he can prove by three good and disinterested witnesses that on the 15th day of February 1846, there was no improvement to be seen by travelling over and looking for, on the W 1/2 of S. E. 1/4 of Sec. 12 Twp. 27, R. 7, East, and I further believe that I can prove

conclusively that during the last month there has been no chimney or stovepipe to be seen from the roof of his Preemption Cabin, and further I believe I can prove from their own statements, that both of John Wright's witnesses are interested in obtaining said above named pre-emption right, and also that the said John Wright, Preemptor, and Paschal L. Wright and William Wright are brothers, and alike interested in said preemption.

Thomas M'Ghee

(B) I John Sement, Receiver of the Land Office at Dixon Illinois, do hereby certify that the above affidavit was taken and subscribed before me on this 3^d day of February A. D. 1847.

John Sement, Receiver to the reading and reception of which as testimony Defendants Counsel objected, and the objection is overruled and Defendants Counsel excepted to the ruling of the Court —

The next document read as testimony is as follows

"F."

Land Office Dixon Ill.
March 4th 1848

Sir,

X We herewith transmit to you the papers filed at this office prior to, and on the 2^d ult. in the case of the claim of John Wright to the W¹/₂ of S. E. ¹/₄ Sec. 12, T. 27, R. 7, E. Contested by Thomas M'Ghee who entered the same land on the 10th February 1846.

Said Wright filed his notice 3102 for said land on the 14th February 1846, dating his settlement on the 6th February 1846. On the 3^d February 1847, he

filed at this office that part of the testimony now transmitted marked ("A.") said Mc'Ghee was present and filed his affidavit herewith transmitted marked (B.)

It was agreed by the parties that the case should be re-investigated before any decision was made, and the 10th Feby. 1847 was appointed as the time for the re-investigation. On that day ^{the parties} came to this office with M. P. Sweet Esq. as counsel for the claimant, and the Hon. Thomas J. Gurner, and Seth B. Furwell Esq. as counsel for the contestant. The case was indefinitely continued for reasons satisfactory to us, urged by the counsel for the contestant. It was stated by us that the case could not be disposed of prior to the public sale of the Mineral Lands, as our time would be occupied in preparing for that sale, and for some time subsequent to it, in perfecting our records and Returns.

Notices were issued in June last to the Counsel of the parties that the case would be tried on the 2nd of July last. The counsel subsequently notified us that they had agreed upon a continuance till the 24th of July last. As the Receiver was to be absent at that time on leave granted by you, the counsel were notified of the fact, and that the continuance of the case must be indefinite.

In January last, notices were issued for a trial of the case on the 2nd ult. when the claimant, Wright, appeared with his counsel M. P. Sweet, and the contestant Mc'Ghee, appeared without counsel.

Our report of the case has been delayed by the absence of the Receiver in making a deposit of

the public monies.

The Receiver would state for himself that after carefully examining the proof in the proof in this case that he doubts whether the hauling upon the land on the fifth day of February 1846, by John Wright, four loads of rails about two hundred in number, brings him within the requirement of the law "has settled and improved", as it occurs in the 15th section of the prescription act of 4th Sept. 1841, inclining to the opinion that the commencement of a dwelling house is the settlement required—

Also that it may justly be assumed that the foundation or commencement of his claim is upon his settlement upon the land as fixed in his declaration notice on said 5th of February 1846.

If the Commissioner regards the hauling on of said rails on that day taken in connection with his subsequent acts sufficient to bring him within the requirement (stated) at that time the Receiver believing the commencement was afterwards followed up from time to time with improvement and acts upon the land sufficient to establish his right, would then allow the claim—

The Register regards the testimony filed as sufficient to establish the validity of the claim.

The testimony of Paschal L. Wright and Mr Wright shows that the claimant on the 5th Feby. 1846, the date of his settlement, drew two hundred rails on said land—that between the 5th and 10th of the same month he drew three hundred more rails on said land, and a load of stone for the foundation of a house—that on the 4th

March following, he laid the foundation of his house on the seventh of the same month completed the raising of it, and on the 25th of said month finished it, and moved into it, and from that time to the dates of the depositions, made it his home,

The witnesses also describe cultivation and improvement made by the claimant on said land since the date of his settlement.

The testimony of the witnesses who state that they crossed said land at different times, and particularly on the 10th February 1846, when they saw none of the rails or stone described by the Wrights, and the confirmation of their testimony by that of persons who went upon said land expressly to ascertain whether the improvements referred to could have been seen from the routes travelled by the contestants witnesses, are met by the testimony of other witnesses for the claimant, who state that they examined the routes described by the contestants witnesses, and are satisfied that the rails and stone referred to, might have been put on said land as stated, and yet not have been seen by the contestants witnesses. One of the complainant's witnesses is Aaron Chamberlain, the county surveyor of Stephenson County, who states the result of his survey of the north forty of said lot, made with reference to this case.

The testimony as to the residence of the said claimant on said land from the 25th March 1846 to the dates of the depositions is only met by the testimony of several witnesses

who state that at several times when they passed said house, they did not see the claimant living in it, or evidence that the house was occupied by any one. It is not shown that the claimant had any other home than his house on said land.

The improvements made prior to the 10th February 1846, and the residence of the claimant in the house built by him on the land, are the only matters of contest—on all other points the testimony in support of the validity of the claim is satisfactory.

Very respectfully
Your obt. servants
Geo. Myster, Register
John Dement, Receiver

P. S. I would state that the paper herewith transmitted marked (C.) was presented to the Receiver by the Contestant M^r Ghee on the 2nd ult: during the examination of this case in the presence of the parties—that while the Receiver was examining the paper, M^r Ghee presented to me a Patent No. 21,924, for the land in controversy issued to him. Soon after he said that he wanted the patent, and was told by me that as it had been presented as evidence in the case, it must be forwarded with the other papers to the Commissioner of the General Land Office. He replied that he did not intend to file it as evidence but only handed it to me that I might read it.

The Patent and the statements of the Counsel for M^r Ghee are herewith transmitted with the other papers in the case.

Hon. Richard M. Young
Comm^r Genl. Land Office
Washington D. C.

Geo. Myster
Reg^r

to the reading and recitation of which as testimony Defendants counsel objected and the objection is overruled and Defendants Counsel excepts to ruling of Court

The next document read as testimony is as follows

"G."

General Land Office

April 4th 1848,

Register and Receiver

Lincoln, Illinois:

Gentlemen,

Your letter of the 4th ult^o accompanying a mass of papers in reference to the prescription claim of John Wright to the W¹/₂ S. E. q^r Sec 12 T. 27 R. 7 E. under act of 4th Sept 1841, has been received.

This tract was entered by Thomas M^cGhee at private sale on the 10th Feb 1846, per Certificate No. 21,926 but in consequence of the filing by said Wright on the 14th of that month of a declaration under the act of 4th Sept. 1841, alleging a settlement on said land on the 5th of Feb. 1846, the Certificate of M^cGhee was suspended at this office until after the receipt of the returns from your Office for Feb. 1847, the 5th of the latter month being the time when the twelve months subsequent to his settlement would expire and within which twelve months, proof &c of Mr Wrights claim was required by law to be made.

No entry by Wright having been reported within said twelve months, nor any report received from your Office that he had in any time presented his claim and action thereon deferred

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by agreement between him and the contending party, the said suspended entry was released and a patent thereon issued on the 1st July 1847. At the special request of the Hon. J. J. Turner (who it now appears, was the attorney for said McGhee and knew of the said contest and of the postponement of the investigation as to the rights of the respective parties) which has been delivered to the party, and, as appears by endorsement on said patent, (returned by you among the papers) duly recorded in the Office of the Recorder for Stephenson Co. in the State of Illinois—

The Register and Receiver differ in opinion as to the sufficiency of the testimony to entitle Mr. Wright to the land in question; upon the point whether the hauling by said Wright, on the 5th February 1846 of four loads of rails, about 200 in number, and between the 5th and 10th of the same month, of about three hundred one rails and a load of stone for the foundation of his house, brings him within the requirements of the law "has settled and improved" as it occurs in the 15th Sect. of the act of 1841, the foundation for the house not having been laid until the 4th March, nearly a month after the land had been sold to McGhee.

The expression of the views of this office upon this point of difference between the Officers would in this case lead to no useful results, as by the issuing of the Patent the case has passed out of the jurisdiction of the Executive Department of the Government, and the rights of the pre-emption claimant, if any really exist, must be enforced by the proper judicial tribunal.

The patent which was exhibited by the Patentee McGhee, and retained by you and transmitted to this office, is herewith returned to be returned to him. By the original delivery, the title passed from

the Government to him, and the mere possession of the skin upon which the grant was written, cannot change or affect the rights acquired by him by such delivery.

Respectfully your Obedt. Servt.

Richard M. Young
Commodore

P. S. To avoid in future any occurrence of this kind, in reference to a preemption the validity of which would not be questioned, you are directed to examine and determine all pre-emption claims, interfering with private entries, upon the proof presented by the respective claimants within the period prescribed by the law to the pre-emptor - admit his right, if the proof is satisfactory and if not reject it and report the same to this Office.

The Preemptor must be prepared with his testimony prior to the expiration of the twelve months after his settlement, and the private entry claimant should be so prepared with his, at the same time. If circumstances render the latter impracticable and he desires to show the invalidity of the preemptor's claim it may be done in the manner heretofore pursued at your office, with the single exception, that the preemptor's right, if prima facie established by him, has been entered and the subsequent investigation is only to determine whether such entry shall be finally confirmed or that of the private entry claimant.

The fact of such investigation being in progress should be endorsed on the proof filed

with the preceptor's certificate and also reported
by letter to this Office

B. M. Young
Corn

to the reading and reception of which as testimony
Defendants counsel objected and the objection is
overruled - Whereupon Defendants counsel excepts
to ruling of the Court

The next document read as testimony
is as follows

"B"

Washington D.C.
Dec 17th 1849

Honorable Justin Butterfield
Sir

In behalf of John Wright of
Stephenson County Illinois a preemption claimant to
the W¹/₂ of S.E. ¹/₄ of Sec. 12, T. 27, R. 7, E. which claim
was contested by Thomas McPherson, I beg leave
to pray an appeal to the Secretary of the Department
of the Interior from the decision heretofore made
in said case by the Commissioners of the General
Land Office

I have the honor to be sir
Very respectfully

Your Obedt. Servt

M. P. Sweet

Atty for Claimant

with the ~~prescribed~~ Certificate and also reported
by letter to this Office —

R. H. Young
Clerk.

to the reading and reception of which as testimony
Defendants Counsel objected and the objection is
overruled — ~~whereupon~~ ^{and} Defendants Counsel excepts
to ruling of the Court.

The next document read as testimony is
as follows.

"I."

General Land Office
December 21st 1849

Hon Thomas Ewing,
Secretary of the Interior,

Sir,

I have the honor to transmit herewith,
on the appeal of M. P. Smeat attorney for John
Wright, the papers in the conflicting claims of said
Wright and Thomas Mc Ghee, to a tract of land in the
Sixth District Illinois —

The land was entered at private sale by
Mc Ghee on the 10th of February 1846, per Certif. No. 21926
of that Office — on the 14th of that month Wright filed
a "notice in writing" under the law of 1841 alleg-
ing a settlement on the tract on the 5th of the month,
and Mc Ghee's entry was suspended at this office
until after the twelve months subsequent to Wright's
alleged settlement had expired, when upon
application of the Hon. Tho^s. J. Turner, a patent was
issued on said entry on the 1st of July 1847, there
being no consummation of Wright's claim, within
that period, nor any report from the Land Officers,
that any attempt had been made by him to
establish his claim. On the 4th March 1848, The

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papers in the case were forwarded to this Office by the Land Officers, they differing in opinion as to the sufficiency of the testimony to entitle Mr Wright to the land in question it appearing that in due time he had presented his claim and that the examination and decision of the question had been postponed from time to time with the consent of the parties but without any notice to this office, that such proceedings had been had.

Upon examination of the case it appeared that the 5th Feb. 1846, Wright hauled four loads of rails about 200 in number, on the land and between the 5th and 10th of the same month, about 300 more, and a load of stone for the foundation of his house, and the question of difference between the Land Officers, was, whether these acts performed by Wright prior to McGhee's entry of the land, were sufficient to bring him within the requirements of the law "had settled and improved" as it occurs in the 15th section of the Act of 1841, the foundation of the house not having been laid until the 4th March 1846, nearly a month after the sale of the land to McGhee.

My predecessor in reply to the Land Officers remarked "the expression of the views of the Office upon this point of difference between the Officers, would in this case lead to no useful results, as by the issuing of the patent, the case had passed out of the jurisdiction of the Executive Department of the Government, and the rights of the presumption claimant, if any really exist, must be enforced by the judicial tribunals"
A case may very readily be conceived to

exist where the presumption claimant, between the commencement and completion of the dwelling house and other improvements necessary to show on his part a compliance with the law of 1841, may, (where the land is also subject to entry at private sale) be interfered with by a purchaser at private entry, and where the latter should yield to the former, but the acts performed by the pre-emption claimant should be such as to show unequivocally the design of settlement, and be continuously prosecuted - until that design was completed. The hauling of rails on to a tract of land, may evidence a design to fence a portion of it for cultivation but it is no evidence that the party had any intention to build a house and make such settlement as would entitle him to a right of pre-emption - the hauling of a load of stone, may in some degree, raise the presumption that it is to be used for the purpose of a habitation, but when no effort is made to carry out such design for nearly a month after such preparation is made, and after the land has been sold to another, it may well be questioned, whether such a claim exists as would justify this office in doing any act calculated to disturb the title given by the patent to the purchaser of the land.

With much respect
Your obed^t. servant
J. Butterfield
Comm^r

to the reading and reception of which as
testimony Defendants Counsel objected and the
objection is overruled and Defendants Counsel
excepts to ruling of Court

The next document read as testimony is as follows viz:
"K."

Department of the Interior
Washington January 9th 1850.

Sir,

The papers submitted with your letter of the 2nd ultimo, upon the appeal of M. P. Sweet Esq. in the case of John Wright vs. Thomas M. Ghee are herewith returned.

I do not concur with the late commissioner, that because a patent was prematurely or inadvertently issued to M. Ghee, pending the question as to the validity of Wright's claim, an examination of that claim was useless.

The papers are returned to you in order that Wright's claim may be examined and passed upon, and that he be permitted to complete his entry of the land if he be found entitled to the right of preemption —

Should the claim be established and the entry made, the question as to the proper course to be pursued, in view of the outstanding patent, can be submitted if necessary.

I am sir very Respectfully
Yrs. Obedt Servant
J. Erving —
Secretary

The Commissioner
of the General Land Office

to the reading and reception of which as

testimony Defendants Counsel objected, which objection is overruled, and Defendants Counsel excepts to ruling of Court,

The next document read as testimony is as follows
"L."

General Land Office
January 22nd 1850

Register and Receiver
Dixon Illinois;
Gentlemen,

I herewith enclose the testimony heretofore taken at your Office, in the case of Thomas M'Ghee and John Wright for the N. 1/2. S. E. 1/4 Sec. 12. Twp. 17 R. 7. E. in your District the former by entry at private sale per Cert. No. 21. 926. and the latter claiming by pre-emption under the Act of 4th Sept 1841.

On the 4th April 1848 a letter in relation to this case was addressed to your office by my predecessor declining to make any decision upon the case as submitted in letter from your Office of the 4th March previous, he regarding the issuing of the patent to M'Ghee, on his entry, as productive of results rendering it useless for the office to take any further action on the case.

From this action a recent appeal has been taken to the Secretary of the Interior who on the 9th inst returned the papers, with directions to have the case examined and passed upon, as if no patent had been issued to M'Ghee; and if Wright's claim shall be determined a legal and valid one to allow him to complete his entry, submitting hereafter if necessary the question (should such entry be allowed) as to

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the proper course to be pursued, in view of the conflicting outstanding patent.

The papers are therefore returned to your office, in order that a decision may be made by the Register or Receiver, as to the right of John Wright, under the law, either upon the showing already made, or upon other testimony, taken after notice to both parties, should additional testimony be deemed necessary by you upon any point in the case.

The instructions heretofore given as to the general principles involved in cases under the act of 1841, are here repeated, in order to serve as a basis for your determination of this case, upon the facts which are or may be established to your satisfaction.

Whenever a person enters upon a tract of public land, liable at the time to "private entry", for the purpose of making a settlement thereon so as to entitle him to the privileges of the preemption law of 4th September 1841, and commences any work or labor on the land necessary to the performance of the requisitions of that law, and continuously prosecutes such commencement to a final completion of those requisitions, that person is entitled to the protection of the law, provided, that his "notice in writing" is filed subsequent to such commencement and within the period thereafter prescribed by law, and that proof of his performance of all said requisitions, is made in time.

In this case, the hauling of two-hundred rails on the 5th Feb 1846, and of three

hundred additional rails and a load of stone between the 5th and 18th of the same month, one of themselves not sufficient to indicate that a settlement such as is contemplated by the law was designed, particularly, as it would appear, that this land liable to private entry had been cultivated by said Wright, and other members of his family for a year or two before, but if said acts were accompanied by others, tending to show a bona fide intention at that time, to complete the settlement, (as was ultimately done) and that from the said 5th Feb'y. until the 4th March following, when the foundation of his house was laid, he was continuously in the prosecution of such intent; and that when the said house was completed, he "inhabited" the same as required by law, then, a case will be presented addressing itself to your favorable attention.

Respectfully your Obedt. Servt.
J. Butterfield
Commr.

to the reading and reception of which as testimony Defendants counsel objected which objection is overruled and Defendants Counsel excepted to ruling of Court.

The next document read as testimony is as follows

"M."

Land Office Dixon Illinois
February 25th 1850

Hon. J. Butterfield.

Commr. General Land Office

Sir.

In obedience to instructions contained in your letter of January 22nd 1850, we have carefully examined the testimony in favor of,

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and advise to the Preemption claim of John Wright to the W. 1/2 of the S. E. 1/4 of Section No. 12. T. 27. R. 7 East, and also the instructions given to guide us in forming our opinion, and we are satisfied that the acts and doings of Mr. Wright were such as go to show a bona fide intention to complete his settlement upon the land as was subsequently done by him, and after a careful and thorough examination of the testimony heretofore adduced, we concur in the opinion that that filed by Mr. Wright is sufficient to establish his right to enter the said land under the provisions of the preemption law of 4th of Sept. 1841.

Herewith we return the testimony to you

We are sir very respectfully
Your Obedt. Servts.
Piles Noble, Register
Cyrus Aldrich, Receiver

to the reading and reception of which as testimony Defendants Counsel objected which objection is overruled and Defendants Counsel excepted to ruling of Court.

The next document read as testimony is as follows

"N."

General Land Office
March 15th 1850

Register and Receiver
Spring Illinois
Gentlemen

Your letter of the 25th Feb.

returning the papers in the case of John Wright against Thos. McPherson transmitted to you, with my letter of the

22nd January last, has been received.

Upon those papers you have decided, that Wright had a valid right of preemption to the tract claimed by him, but you have not advised me whether he has been permitted to enter said tract, as it was designed he should be, in the event above adverted to,

Notice of the intention to permit such entry should be given to the adverse party if the entry has not been made, or if it has been allowed, he should be advised to that effect, in order that he may take such steps as may be deemed advisable by him, under the circumstances.

Respectfully &c

J. Butterfield
Commr.

to the reading and reception of which as testimony Defendants Counsel objected and the objection is overruled and Defendants Counsel excepts to ruling of Court.

The next document read as testimony is as follows

"O."

Land Office Dixon Illinois

Hon. J. Butterfield

Commr. Gen. Land Office

Dear Sir,

We have the honor to acknowledge the receipt of your letter of the 15th ult: relative to John Wrights preemption Entry - At the time we returned the papers in that case to you, together with our joint opinion, viz: on the 25th of February, we supposed, never having heard anything to the contrary, that Wrights Entry was made and perfected so far as it could be, at the time he proved up his preemption.

we did not learn to the contrary until the 7th or 8th of March - we then learned from Mr. Wright's Counsel that the money was deposited with the late Receiver to be applied in payment of the land in case the decision of the department was in his favor - We did not deem it necessary to advise the adverse party (McGhee) of our action until we heard from you again, but we understand he has been advised of what has been done in the matter, and to day we have advised him officially agreeably to your instructions. Mr Wright perfected his entry and received his duplicate on the 23rd ult.

We are sir very respectfully
Your obedt. Servts

Edas Noble, Register
Cyrus Aldrich, Receiver

to the reading and reception of which as testimony Defendants Counsel objected, and the objection is overruled and Defendants Counsel excepts to ruling of Court.

The next document read as testimony is as follows
"P."

No. 31585 Land Office at Dixon Ill.
March 23rd 1850.

It is hereby certified that in pursuance of law, John Wright Stephenson County, State of Illinois, on this day purchased of the Register of this Office the Lot or West half of the South East Quarter of Section No. Twelve in Township No. Twenty Seven of Range No. Seven East, containing Eighty acres at the rate of one dollar and twenty five cents per acre, amounting to one hundred dollars and — cents, for which the said

John Wright has made payment in full as required by law.

Now therefore be it known, that, on presentation of this certificate to the Commissioner of the General Land Office the said John Wright shall be entitled to receive a patent for the lot above described.

Silas Noble

Register

Pre-Act 4th Sept. 1841

to the reading and reception of which as evidence Defendant Counsel objects, and the objection is overruled and Defendant's Counsel excepts to ruling of Court.

The next document read as testimony is as follows

"2."

General Land Office

May 16th 1850

Hon. Thomas Ewing

Secretary of the Interior,

Sir,

In accordance with the instructions of your letter of the 9th January last, on the subject of the conflicting claims of John Wright and Thomas K. Wheeler the papers were submitted to the Land Officers to be examined and passed upon, and they determining the right of prescription to have been in John Wright, have permitted him, per certificate, No. 31,585, to pay for and enter the land in question.

Since the information contained in the letter of the Land Officers 1st April last, of their allowance of Wright's entry, and of their having notified the adverse party that effect, I have delayed any further action, awaiting to hear from such adverse party, but a sufficient length of time having

elapsed, I do not deem it proper longer to delay submitting the question (in accordance with the intimation at the close of your letter of the 9th January last) "as to the proper course to be pursued in view of the outstanding patent" to Mr. Ghee.

With much Respect Your Obedt Servt
J. Butterfield Comr^r

to the reading and reception of which as testimony Defendants Counsel object and the objection is overruled and Defendants Counsel accepts to ruling of Court.

The next document read as evidence is as follows

"R."

Department of the Interior
Washington January 12th 1852

Sir,

I herewith return the papers in the case of John Wright vs. Thomas McGhee which were submitted with your letter of the 16th of May 1850 pursuant to the intimation contained in my predecessor's letter of the 9th of the preceding January, for instructions as to the course to be pursued in view of an outstanding patent to Mr. Ghee —

As the practice of the Government in cases of this description is understood to be the issuing of a second patent, reciting the error or inadvertency in the issuing of the former, I see no objection to such a course of proceeding in this case.

I am Sir very respectfully

Yr Obedt Servant

Alex^r. H. H. Stuart

Secretary

The Commissioner
of the General Land Office.

to the reading and reception of which as evidence Defendants Counsel object and the objection is overruled and Defendants Counsel excepts to ruling of Court.

All the above documents were attached together the pages marked by numbers and prefixed by the above recited Certificate of the Commissioner of the General Land Office and are filed in the Clerk's Office.

The complainant then produced a patent from the United States to John Wright and read the same as testimony which Patent reads as follows.

"Exhibit A"

Preemption Certificate

No. 31685.

3

The United States of America
to all to whom these presents shall come Greeting;

Whereas heretofore to-wit on the first of July 1847 a patent was erroneously issued from the General Land Office to one Thomas M. Ghee on an entry made on the 1st of February 1846 at private sale for Dixon Illinois Certificate of purchase No. 21926 for the West half of the South East Quarter of Section Twelve in Township Twenty seven North of Range seven East of the fourth Principal Meridian and whereas John Wright of Stephenson County Illinois on the 14th of February 1846 filed a "Notice in Writing" for the said tract under the Preemption Law of the 4th of September 1841, alleging a settlement on said tract on the 5th of February 1846, and within a year after the said 5th of February 1846 made application to prove up and pay for the right of preemption so claimed by him which right of preemption was duly decided in his favor and the entry of said tract allowed in his name as a preceptor; and whereas the said John Wright has deposited in the General Land Office

of the United States a Certificate of the Register of the Land Office at Dixon Illinois whereby it appears that the said tract situated in the District of Land subject to sale at Dixon Illinois and containing eighty acres according to the official plat of the survey of the said land returned to the General Land Office by the Surveyor General which said tract was purchased on the 2nd March 1850 by the said John Wright according to the provisions of the Act of Congress of the 24th April 1820 entitled "An Act making further provision for the sale of the public Lands and also the act of 4th September 1841 entitled "An Act to appropriate the proceeds of the sales of public Lands and to grant preemption rights" and that full payment has been made therefor as required by Law.

Now Know Ye that the United States of America in consideration of the premises and in conformity with the several Acts of Congress in such case made and provided have given and granted and by these presents do give and grant unto the said John Wright and to his heirs the said land above described (the outstanding patent in favor of Thomas McGhee dated 1st July 1847 to the contrary notwithstanding) to have and to hold the above described tract together with all the rights privileges, immunities, and appurtenances of whatsoever nature thereto belonging unto the said John Wright and to his heirs and assigns forever.

In Testimony whereof I Millard Fillmore President of the United States of America have caused these letters to be made patent and the Seal of the General Land Office to be hereunto affixed.

Given under my hand at the

City of Washington the twentieth day of January in the year of Our Lord One thousand eight hundred and fifty-two and of the independence of the United States the twenty sixth.



By the President Millard Fillmore
By Alex. McCormick Aft. Secy.

Recorded in Miscellaneous vol. 3

On pages 68 & 69

Jas. S. Wilson Acting Recorder
of the General Land Office ad interim

The complainant then produced a Certificate of the Register of the United States Land Office at Dixon Illinois, and Defendants Counsel admitting that such Certificate was the Certificate of the Register at Dixon Land Office it was read and is as follows;

No. 316-85-

Land Office Dixon Illinois
October 25th 1852

I Silas Noble Register of the Land Office at Dixon Illinois, do hereby certify, that John Wright of the County of Stephenson and State of Illinois, did on the twenty third (23) day of March in the year of Our Lord, one thousand eight hundred and fifty, purchase of the General Government, at this Office, the West half of the South East quarter of Section twelve (12) in Township twenty seven (27) North of Range seven (7) East of the 4th Principal Meridian - and that said land at the time of said Purchase was within the District of Lands subject to sale at this Office, and rendered subject to sale by Law; all of which appears of Record in my Office.

Given under my hand the day and year first above written.

Silas Noble. Register

On which Certificate was the following endorsement to wit:
Filed April 19th 1854. - Joseph B. Smith Clerk.

58
The Complainant then produced another Certificate of the Register of the United States Land Office at Dixon Illinois and Defendants Counsel admitting that such Certificate was a Certificate of the Register of the United States Land Office at Dixon Illinois the same was read as evidence and is as follows

No. 21,926-

Land Office Dixon Illinois
October 25th 1852

I Silas Noble, Register of the Land Office at Dixon Illinois, do hereby certify that Thomas Mc Ghee of the County of Stephenson and State of Illinois, did on the tenth day of February in the Year of Our Lord, one thousand eight hundred and forty six, purchase of the General Government, at this Office, the West half of the South East Quarter of Section Twelve (12) in Township twenty seven (27) North of Range seven (7) East of the 4th Principal Meridian. The above entry is marked on the books of this Office cancelled And that said land at the time of said purchase was within the District of Lands subject to sale at this Office, and rendered subject to sale by law; all of which appears of Record in my Office.

Given under my hand the day and year first above written -
On which Certificate was the following endorsement to wit: Silas Noble, Register

Filed April 19th 1854 - J. B. Smith Clerk

Complainant then read as evidence the answer of Thomas Mc Ghee to the original Bill herein which answer is as follows

In the Stephenson County Circuit Court
of the November Term A. D. 1852
In Chancery
John Wright }
vs }
Thomas Mc Ghee }

The Answer of Thomas McGhee the defendant in this suit to the Bill of Complaint of the said Plaintiff.

This defendant, now and at all times saving to himself all benefit of exception to the manifold errors in said complainants said Bill for matters thereto saith

That it is not true that the said Complainant on the fifth day of February 1846, made a settlement on the lands described in said bill.

That it is not true that within thirty days thereafter the said Complainant filed with the Register of the Land Office at Dixon a written notice of his settlement and his intention to pre-empt the same

It is not true that within a year thereafter said Complainant proved up his pre-emption and paid for said land. The said land was not duly entered in his name and the complainant did not get a patent for said land

It is true that this defendant entered the same at the Land Office at Dixon and received from the General Government his patent therefor and that he has had the possession and still has rightfully the possession of said Land

That all other matters and things in said Bill are wholly groundless and untrue and this defendant therefore prays to be here dismissed with his reasonable costs herein expended.

Thos. J. Guener
Sol. for Deft.

on which Answer were made the following endorse-
ments to wit:

John Wright

vs

Thomas McGhee

And

Filed Nov. 8th 1852

John A. Clark Clerk —

Complainant then read as evidence the Answer of
Thomas J. Turner to the Supplemental Bill herein
which answer is as follows

In the Jefferson County Circuit Court
Of the January Special Term A.D. 1854
In Chancery

John Wright

vs

Thomas J. Turner

The answer of Thomas J. Turner the
defendant, to the said plaintiff's said bill of Complaint
This defendant saving all benefit of
exception to the many errors and insufficiencies in
the said bill of Complaint contained for answer thereto
saith he believes it to be true that on or about the
29th day of July A.D. 1852 the said complainant
exhibited his bill of Complaint against Thomas McGhee
in substance as stated in said bill of Complaint
and that the said Thomas McGhee was served with
process and did put in his answer thereto and that said
answer hath been replied unto and that the said cause is
at issue and ready for proof &c. It is true that at the
next term of Court after filing said bill against Thomas

McGhee this defendant appeared as his counsel and
Solicitor and has continued up to the present time and
still continues to be a solicitor for said Thomas McGhee
in said suit - It is also true that on or about the
time mentioned in Complainants bill of complaint
said Thomas McGhee ^{by deed} conveyed said land to this
defendant - This defendant knows very well all that
is contained and charged in said Complainants
said original bill of Complaint - but whether said
charges are true or false this defendant does not
know but he believes many of them to be false
This defendant does not believe that the deed from
said McGhee to this defendant ought to be set aside
or annulled, or that he ought to give the patents issued
to Thomas McGhee

Thos. J. Turner

State of Illinois /
Stephenson County J. P.

Thos. J. Turner being first
duly sworn on his oath says he drew up the foregoing
answer by him signed and that the matters therein con-
tained are true as far as he states them as of his own
knowledge and that as to those things stated to be of his
information and belief he believes to be true -
Subscribed and sworn to

this 30th day of Jan'y 1854

Joseph B. Smith Clerk

On which said Answer were endorsed the following
endorsements to wit;

John Wright vs. Thomas J. Turner
Answer

Filed Jan'y. 30th 1854

Joseph B. Smith Clerk

Said Turner as counsel for both dependants here admitted the issue of a patent for said land to Mr. Ghee and produced said patent in Court.

Complainant then produced Paschal L. Wright as witness who being duly sworn gave his testimony as follows

Stephenson Cir. Court

In Chancery

John Wright

vs.

Thomas M. Ghee &

Thomas J. Turner

Of the Special Term Term 1854
Feb. 8th 1854

(The Deft. objecting)

On motion of Complainant the Court allowed the complt. after the Deft. had closed his argument to introduce evidence of the payment of money by Complt. as follows

Paschal Wright, being duly sworn says that he knows the parties to this suit - I have been acquainted with Mr. Magee since he has been in this County, suppose about 14 yrs - with John Wright all his life - with Turner since he came to this town. I know the premises in question have known it ever since it was surveyed - at least 10 yrs. - I knew it before it was surveyed - I know that John Wright made a preemption to it - I was present when he paid the money for it - It was on the 3rd or 4th day of Feb. 1849, at the Office of the Receiver of the United States Lands - at the Dixon Land Office - John Wright went in there with his proof and handed it to the Receiver - He took it and looked it over and said - it is very good - very good sir - better than 99 out of 100 - He then paid over the money \$100 in U. S. Office money (I am not sure whether it was in Gold or Silver) to John Dement the Receiver for the W. 1/2 S. E. 1/2 of Sec. 12 - Mr. Dement recd the proof & expressed his opinion on it and received

the money - I saw him take it into his possession.

This all took place in the Office in the Land Office at Dixon on the day above stated - the 3 or 4th July. 1847

The money was paid before Magee made his application to contest. —

Cross. Ex. I am the brother of the complt. I lost the claim to the land in question - I did not own it at the time it was entered - I had given it up to him - Claims were then not of much account - I did not then pretend to have any claim to it - I had some years before cultivated a part of it - At the time the money was paid Sement gave a receipt for it - I supposed that receipt was among the papers - The last I saw of it was given to Mr Sweet - It stated to be for the money and there was something in it about Magee contesting it - It did not read that it was to be paid back on Wright's failure to hold the land

Magee was at the Office at the time the money was paid and begged the privilege of contesting it. At first Sement objected to let him contest but finally consented and appointed a time to take testimony in Greenport.

I do certify that the foregoing testimony was introduced at the hearing of the above entitled cause before me.

The Court on the reception of the foregoing evidence allowed the Deft. the privilege to have the cause continued should he so desire in order to obtain testimony to rebut said evidence and on motion of the Deft. the cause was accordingly continued for such purpose.

Witness my hand and seal

Benj. R. Sheldon 

On which deposition were endorsed the following endorsements to wit:

John Wright

vs
Thomas McQueen

Testimony

Filed February 9th 1854

To the admission of which testimony defts. counsel objected this objection being overruled defts. counsel excepted to ruling of court J. B. Smith Clerk

Complainant offered to prove that the West half of the South East Quarter of Section Twelve in Township Twenty seven North of Range seven east of the fourth Principal Meridian the premises in question is in Stephenson County Illinois but Defendants Counsel admitted that said Land is so situated.

Defendants Counsel then produced and read as evidence the deposition of John Sement which reads as follows

John Wright

vs

Thomas McQueen

In Chancery

Stephenson Co. Circuit Court April 11, 1854

This day April 11-1854 came Jason Marsh Esq. Counsel for Complainant and Thomas J. Turner Esq. Counsel on the part of Defendant and John Sement a witness who being first duly sworn on oath deposes and states as follows the counsel on both sides waiving the necessity of the questions being taken down viz:

On the

deft's Witness knows the parties was Receiver of the Public Monies at the Land Office in the Dixon District Was present when John Wright attempted to prove up a preemption on the land which witness is informed is the land in controversy - At the time

said Wright attempted to to prove up his preemption to said land he did not pay for said land when said Wright came and filed his proofs before the Register and Receiver his preemption was not allowed subsequently and within the year it might have been the next day Mr. Wright said to me he wished to leave the money with me to pay for the land if the controversy should be decided in his favor and at the same time did leave the money with me At the time he so left the money with me I had no authority to receive it in payment for the land - neither Mr Wright nor myself understood that it was left in payment for the land both considering it only left for convenience I never did receive the money in payment for the land - The money remained on my hands until I was out of Office and until the day of Wright's entry - My recollection is that some person in Dixon brought the receipt I had given Mr Wright and drew the money on it. My impression is that it was either Martin P. Sweet or Cyrus Aldrich who was then Receiver of Public Monies at the Dixon Land Office. I gave Wright a Receipt for the money when he left it with me in my private capacity not as receiver as my impression is though I cannot be positive I received the money and kept it not as Receiver but in my private capacity No entry was ever made of the payment by me on the Land Office Books. I state unqualifiedly there never was a payment made to me of the purchase money for the Land - I could not receive it as a payment until a certificate was brought from the Register which Certificate Mr Wright never brought to me

Note. { The above was all that was stated on the part of Com-
plainant and the following was stated on the part of
Defendant

The practice of the Land Office in cases of this kind is officially to have nothing to do with the money — The purchase money is not receivable by the Receiver except on the Certificate of the Register that the applicant is entitled to purchase —

Mr Wright did all he could at the time to perfect a purchase but he really could do nothing for the reason that the Land Officers had decided against him or against his claim

Wright's money was drawn from me on the same day that his entry is dated on the Books of the Land Office

This being all on the part of the Defendant.

I J. W. S. Brawley Master in Chancery of the said Court hereby certify that said witness John Sement deposed under oath as above set forth.

All which is respectfully submitted

Said testimony being taken
and certified under the supervision
of the Counsel on both sides of the
Case above named — J. W. S. Brawley

J. W. S. Brawley
Master in Chancery

Fees \$5.00

Master in Chancery

On which said deposition were endorsed the following endorsements to wit

Jas. Wright vs. Thomas McGhee

Evidence of Jas. Sement

Filed April 12th 1854 —

J. B. Smith, Clerk

And the above being all the evidence produced to the Court by the parties the cause was submitted to the Court.

Given under my hand and seal

Benj. R. Thildon



Endorsed. Filed April 15th 1854, Joseph B. Smith.

Clerk

Bill of Exceptions

On the same day to wit on the 19th April A.D. 1854
Defendant filed his Bill of Exceptions - which said
Bill is in words and figures following to wit;

In the Stephenson County Circuit Court
In Chancery

John Wright

vs

Thomas McGhee

And

John Wright

vs

Thomas J. Turner

An Original Bill

Supplemental Bill

Upon the trial of these suits the said
plaintiffs offered to read in evidence the following
Certificate of the Commissioner of the General Land Office
of the United States -

General Land Office
October, 27, 1852

I John Wilson Commissioner of the General Land Office,
do hereby certify, that the annexed are true and literal
exemplifications from the originals on the files and
records of this office -

In testimony whereof, I have hereunto subscribed
my name, and caused the
Seal of this Office to be affixed,
at the City of Washington, on the
day and year above written -

John Wilson
Commissioner of the General Land Office



to the reading of which the said defendants objected and the Court overruled their objection and the said Certificate was then read in evidence and thereupon the said defendants except to the decision of the Court in overruling their said objection and permitting the said Certificate to be read in evidence, and pray that ^{thus} their Bill of exception be signed and sealed by the Court and it is done.

The plaintiff then offered in evidence the following document marked "A".

No. 21,926.

Land Office at Dixon Illinois February 10-1846

It is hereby certified, that in pursuance of Law, Thomas McGhee of Stephenson County State of Illinois, on this day purchased of the Register of this Office the lot or West half of South East Quarter of Section No Twelve, in Township No. Twenty-seven of Range No. Seven, East, containing eighty acres, at the rate of One Dollar and twenty five cents per acre, amounting to one hundred dollars, and — Cents, for which the said Thomas McGhee has made payment in full as required by Law.

Now therefore be it known, that on presentation of this Certificate to the Commissioner of the General Land Office, the said Thomas McGhee shall be entitled to receive a patent for the lot above described.

Geo. Mixer,

Register

to which the defendants objected; the Court overruled the objection and the said document was read in evidence and the said defendants then and there excepted to the ruling of the Court in overruling their said objection and permitting the said document to be read in evidence.

The said plaintiff then offered in evidence

the following document marked "C"

State of Illinois
Lee County

I John Wright of Stephenson County Illinois, claiming the right of Preemption under the provisions of the Act of Congress entitled "An act to appropriate the proceeds of the sales of the sale of public lands and to grant Preemption rights, approved 4th Sept. 1841, to the West half of the South East Quarter of Section Number Twelve (12) in Township Number Twenty-seven (27) N. of Range Number Seven East of the fourth (4) principal Meridian, subject to sale at Dixon Ills. do solemnly swear that I have never had the benefit of any right of Preemption under this Act that I am not the owner of three hundred and twenty acres of land in any State or Territory of the United States; nor have I settled upon and improved said land to sell the same on Speculation, but in good faith to appropriate it to my own exclusive use or benefit, and that I have not directly or indirectly, made any agreement or contract in any way or manner with any person or persons whatsoever, by which the title which I may acquire from the Government of the United States should enure to the benefit of any person except myself.

John Wright

I John Dement, Receiver of the Land Office at Dixon Illinois, do hereby certify that the above affidavit was taken and subscribed before me on this the 3rd day of February A.D. 1847

John Dement
Receiver

to the reading of which the said defendants then and there objected which objection was overruled by the Court and the said document was read and thereupon the said defendants except to the said ruling of the Court in overruling their said objections and permitting the said document to be read in evidence -

The said plaintiff then offered in evidence the following document marked "D"

State of Illinois,
Stephenson County /s/

We Paschal L. Wright, and William Wright, of said County and State, do solemnly swear that we are personally acquainted with John Wright the applicant for a Pre-emption right to the West half of the South East Quarter of Section Twelve Township No. Twenty Seven North of Range Seven of the fourth Principal Meridian subject to sale at Dixon Illinois and know that he is an actual settler and erected a dwelling house thereon - that John Wright is over twenty one years of age; that he is a single man without a wife or family, and is in possession of said land by personally residing and living in said house on said land that said settlement was commenced by said John Wright on the fifth day of February in the year of Our Lord one thousand eight hundred and forty six, and that he has continued to reside thereon and make it his home, and to the best of our knowledge there are no salines or indications of Lead Mineral upon any part of said tract. That no part of said tract has been laid out into lots for the purpose of a village, town, or city, and that we have no interest in obtaining this Pre-emption, and that we are over twenty three years of age, and that the said John Wright is a Citizen of the United States, and that he did,

not leave land of his own in the State of Illinois for the purpose of making this claim; we do further solemnly swear that on the fifth day of February the said John Wright commenced his said improvement on said land by hauling two hundred rails on said land for fencing the same, and that between the fifth day of February aforesaid and the tenth day of said month he had hauled on said land for fencing the same three hundred more rails; that on the said fifth day of February he hauled one load of stone for the foundation of the dwelling house aforesaid, and that on the day last aforesaid he cut for the purpose of building said house on said land ten house logs; that on the day last aforesaid he staked out a field of about twenty-five acres on said land, and that the rails aforesaid were hauled at the times aforesaid on the lines of said field so staked out and there left - and that on the fifth day of February aforesaid, the said John Wright cut logs to haul to the saw mill, to be sawed into lumber to build said house - that said logs were hauled to the saw mill before the tenth of February aforesaid and sawed into lumber and used in said house for flooring, roof and doors in said house in the fore part of March A.D. 1846 - that on the fourth day of March in the year aforesaid, the said John Wright laid the foundation of said house by laying one course of logs, and putting stone under the corners - that on the seventh day of March aforesaid he completed the raising of said house on said land. The said house is built of logs hewed on both sides - it is twelve by fourteen feet in size on the ground and eight feet high between the ground and plates - it was and is covered with sawed boards: there was put in said house a floor of boards fastened with nails - there was and is an upper floor of boards laid loose - there was and is a good batton door on said house.

there was a glass window of six lights of eight by ten glass, the crevices between said logs was chinked with sticks and filled with mortar - that said house was finished as aforesaid on the twenty-fifth day of March aforesaid - that on the day last aforesaid the said John Wright moved into said house with his household furniture, bed and bedding, cooking utensils, crockery - that he has had and has a cooking-stone in said house, and has continued to reside in said house from the day last aforesaid until the present time, and that he has continued to work on said land and improve the same; that in the month of July last past he broke seven acres of prairie on said land, and planted cultivated and harvested seventeen acres of corn; since the fifth of February aforesaid and since the time last aforesaid he has he has hauled and put up on fence on said land rails, which, with the rails first aforesaid, amount to seventeen hundred, which said rails were laid up in fence on said land about the first of April A. D. 1846; that in the months of July, August and September last past he prepared the ground and sowed on said land seventeen acres of wheat.

Paschal L. Wright
Wm Wright

to the reading of which the defendants objected and their objection was overruled by the court and the said document marked "D" was read in evidence and thereupon the said defendants except to the said decision of the court in overruling their said objection and permitting the said document to be read in evidence.

The said plaintiff then offered

(1)
(A.)
State of Illinois
Stephenson County } p.

Personally appeared before me the undersigned clerk of the Circuit Court within and for the said County, Paschal L. Wright and William Wright whose names are subscribed to the foregoing deposition who having been duly sworn by me deposition and said that the matters and things contained in said deposition signed by them are true.

L. S.

In witness whereof I have hereunto set my hand and affixed the seal of said Court at Freeport
Feb'y. 1st A. D. 1849

Attest John A. Clark Clerk
By J. S. L. Kyle, Deputy

to the reading of which the defendants objected and their objection was overruled by the Court and the said document marked D¹ was read in evidence and thereupon the said defendants except to the said decision of the Court in overruling their said objection and permitting the said document to be read in evidence

The said plaintiff then offered

to read in evidence the following document
marked "E"

State of Illinois
Lee County

I Thomas McGhee of Stephenson County
and State of Illinois, being duly sworn deposeseth and
says, that he verily believes that he can prove by three
good and disinterested witnesses, that on the 10th day
of February 1846, there was no improvement to be seen by
travelling over and looking for, on the W. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ of Sec. 12.
Twp. 27, R. 7, East, and I further believe that I can
prove conclusively that during the last month there
has been no chimney or stone-pipe to be seen from
the roof of his pre-emption cabin, and further I believe
I can prove from their own statements, that both of
John Wright's witnesses are interested in obtaining said
above-named pre-emption right - and also that the
said John Wright Pre-emptor, and Paschal L. Wright
and William Wright are brothers and alike interested
in said pre-emption -

Thomas McGhee

(B) I John Dement Receiver of the Land Office at Dixon
Illinois do hereby certify that the above affidavit was
taken and subscribed before me on this 3rd day of Feb-
ruary A. D. 1847.

John Dement
Receiver

to the reading of which the said defendants objected
and the Court overruled their objection and the said
document was read in evidence and thereupon the
said defendants except to the opinion of the Court over-
ruling their said objection and permitting the said

document to be read as evidence

The said plaintiff then offered to be read in evidence the following document marked "H"

Land Office Dixon Ills.
March 4th 1848.

Sir

We herewith transmit to you the papers filed at this office prior to, and on the 2nd ult. in the case of the claim of John Wright to the W $\frac{1}{2}$ of S.E. $\frac{1}{4}$ Sec. 12. T. 27. R. 7. E. contested by Thomas McGhee, who entered the same land on the 10th Feby. 1846.

Said Wright filed his notice No. 3,102 for said land on the 14th Feby. 1846, dating his settlement on the 5th Feby. 1846. On the 3rd Feby. 1847, he filed at this office that part of the testimony now transmitted, marked (A.) Said McGhee was present and filed his affidavit herewith transmitted marked (B.)

It was agreed by the parties that the case should be reinvestigated before any decision was made, and the 10th Feby 1847, was appointed as the time for the reinvestigation. On that day the parties came to this office with M. P. Sweet, Esq. as counsel for the claimant, and the Hon. Thomas J. Turner and Seth B. Farnwell Esq. as counsel for the contestant.

The case was indefinitely continued for reasons satisfactory to us urged by the counsel for the contestant. It was stated by us that the case could not be disposed of prior to the public sale of the mineral lands, as our time would be occupied in preparing for that sale, and for some time subsequent to it, in perfecting our Records and Returns.

Notices were issued in June last to the counsel of the parties that the case would be tried on the 2^d July last. The counsel subsequently notified us that they had agreed upon a continuance till the 24th of July last. As the Receiver was to be absent at that time on leave granted by you, the counsel were notified of the fact, and that the continuance of the case must be indefinite.

In Jan'y. last notices were issued for a trial of the case on the 2^d ult: when the claimant, Wright appeared with his counsel M. P. Sweet, and the contestant, McGhee appeared without counsel.

Our report of the case has been delayed by the absence of the Receiver in making a deposit of the public monies.

The receiver would state for himself that after carefully examining the proof in the proof in this case that he doubts whether the hauling upon the land on the fifth day of February 1846. by John Wright four loads of rails about two hundred in number, brings him within the requirement of the law "has settled and improved" as it occurs in the 16th section of the Preemption Act of 4th September 1841, inclining to the opinion that the commencement of a dwelling house is the settlement required. Also that it may justly be assumed that the foundation or commencement his claim is upon his settlement upon the land as fixed in his declaratory notice on said 5th of February 1846.

If the Commissioner regards the hauling on of said rails on that day taken in connexion with his subsequent acts sufficient to bring him within the requirement (stated) at that time the Receiver believing the commencement was afterwards followed up from

time to time with improvement and acts upon the land sufficient to establish his right would then clear the claim.

The Register regards the Testimony filed as sufficient to establish the validity of the claim -

The testimony of Paschal L. Wright and William Wright shows that the Claimant on the 5th July, 1846, the date of his settlement drew two hundred rails on said land - that between the 5th and 10th of the same month, he drew three hundred rails more rails on said land, and a load of stone for the foundation of a house - that on the 4th March following, he laid the foundation of his house on the seventh of the same month completed the raising of it, and on the 25th of said month finished it, and moved into it, and from that time till the dates of the depositions, made it his home -

The witnesses also describe cultivation and improvement made by the Claimant on said land since the date of his settlement.

The testimony of the witnesses who state that they cropped said lands at different times and particularly on the 10th July, 1846, when they saw none of the rails or stone described by the Wrights, and the confirmation of their testimony, by that of persons who went upon said land expressly to ascertain whether the improvements referred to could have been seen from the routes travelled by the Contestants witnesses, are met by the testimony of other witnesses for the Claimant, who state, that they examined the routes described by the Contestants witnesses, and are satisfied that the rails and stone referred to might have been put on said land as stated, and yet not have been seen by the Contestants witnesses. - One of the complainants

witnesses is Aaron Chamberlain, the County Surveyor of Stephenson County, who states the result of his survey of the north forty of said lot, made with reference to this case.

The testimony as to the residence of the claimant on said land from the 25th March 1846, to the date of the depositions is only met by the testimony of several witnesses, who state, that at several times when they passed said house, they did not see the claimant living in it, or evidence that the house was occupied by any one. It is not shown that the Claimant had any other home than his house on said land.

The improvements made prior to the 15th Feb'y, 1846, and the residence of the claimant in the house built by him on the land, are the only matters of contest - On all other points the testimony in support of the validity of the claim is satisfactory -

Very Respectfully
Your Obedt. Servants,
Geo. Mipter, Register
John Dement, Receiver

P. S. I would state that the paper herewith transmitted marked (b.) was presented to the Receiver by the contestant McGhee on the 2nd ult: during the examination of this case in the presence of the parties - that while the Receiver was examining the paper McGhee presented to me a patent No 21,926 for the land in controversy issued to him. Soon after he said that he wanted the Patent and was told by me that ^{as} it had been presented as evidence in the case it must be forwarded with the other papers to the Commissioner of the General Land Office. He replied that he did not intend to file it as evidence but only handed it to me that I might read it.

The Patent and the statement of the Counsel for

McGhee are herewith transmitted with the other papers in the case

Geo. Minter
Reg^r

Hon. Richard M. Young
Comm^r. Genl. Land Office
Washington
D.C.

to the reading of which the said Defendants objected and their said objection was overruled by the Court and the said Document was read in evidence and thereupon the said Defendants except to the ruling of the Court overruling the Defendants said objections and permitting the said Document to be read in evidence—

The said Plaintiff then offered in evidence the following document marked "G":

General Land Office
April 4th 1848.

Register and Receiver
Lipson Illinois

Gentlemen,

Your letter of the 4th ult. accompanying a map of papers in reference to the preemption claim of John Wright to the W. 1/2 S.E. 1/4 Sec. 12. T. 27. R. 7. E. under act of 4th Sept. 1841, has been received—

This tract was entered by Thomas McGhee at private sale on the 10th Feb. 1846 per certificate No. 21,926, but in consequence of the filing by said Wright on the 14th of that month of a declaration under the act of 4th Sept. 1841, alleging a settlement on said land on the 5th of Feb. 1846, the Certificate of McGhee was suspended at this Office until after the receipt of the returns from your Office for Feb. 1847, the 5th of the latter month being the time

when the twelve months subsequent to his settlement would expire, and within which twelve months, proof of McWright's claim was required by law to be made.

No entry by Wright having been reported within said twelve months, nor any report received from your office that he had in due time presented his claim and action thereon deferred by agreement between him and the contending party the said suspended entry was released and a patent thereon issued on the 1st July 1847 at the special request of the Hon. J. J. Turner (who, it now appears, was the attorney for said McWright and knew of the said contest and of the postponement of the investigation as to the rights of the respective parties) which has been delivered to the party, and, as appears by endorsement on said patent (returned by you among the papers) duly recorded in the office of the Recorder for Stephenson Co. in the State of Illinois.

The Register and Receiver differ in opinion as to the sufficiency of the testimony to entitle McWright to the land in question, upon the point, whether the hauling by said Wright on the 5th Feb. 1846 of four loads of rails, about 200 in number and between the 5th and 10th of the same month of about three hundred more rails and a load of stone for the foundation of his house, brings him within the requirements of the law "has settled and improved" as it occurs in the 15th Sect. of the Act of 1841, the foundation for the house not having been laid until the 4th March, nearly a month after the land had been sold to McWright.

The expression of the views of this Office upon this point of difference between the Officers would in this case lead to no useful results, as by the issuing of the patent the case has passed out of the jurisdiction of the Executive Department of the Government,

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and the rights of the preemption claimant, if any really exist, must be enforced by the proper judicial tribunal.

The patent which was exhibited by the Patentee, McHae, and retained by you and transmitted to this Office, is herewith returned to be returned to him.

By the original delivery the title passed from the Government to him, and the mere possession of the skin upon which the grant was written, cannot change or affect the rights acquired by him by such delivery.

Respectfully Your Obedt. Servt.

Richard M. Young.

Commr. —

P.S. To avoid in future any occurrence of this kind, in reference to a preemption the validity of which would not be questioned, you are directed to examine and determine all preemption claims, interfering with private entries upon the proof presented by the respective claimants within the period prescribed by the law to the preemptor — admit his right if the proof is satisfactory and if not reject it, and report the same to this office.

The preemptor must be prepared with his testimony prior to the expiration of the twelve months after his settlement, and the private entry claimant should be so prepared with his at the same time. If circumstances render the latter impracticable, and he desires to show the invalidity of the preemptor's claim — it may be done in the manner heretofore pursued at your office, with the single exception, that the preemptor's right, if prima facie established by him, has been entered and the subsequent investigation is only to determine whether such entry shall be finally confirmed or that of the private entry claimant.

The fact of such investigation

being in progress should be endorsed on the proof filed with the preceptor's Certificate and also reported by letter to this office

R. M. Young
Com

to the reading of which the said Defendants then and there objected and the Court overruled their objection and the said document was read in evidence whereupon the said Defendants excepted to the said ruling of the Court wherein he overruled their said objections and permitted said document to be read in evidence

The said plaintiff then offered to read in evidence the following document marked "H."

Washington D. C.

Dec. 17th 1849

Honorable Justin Butterfield
Sir,

In behalf of John Wright of Stephenson County Illinois a preemption Claimant to the W¹/₂ of the S.E. ¹/₄ of Sect 12, T. 27. R. 7 East. which claim was contested by by Thomas Wright, I beg leave to pray an appeal to the Secretary of the Department of the Interior, from the decision heretofore made in said case by the Commissioners of the General Land Office

I have the honor to be sir

Very Respectfully
Your Obedt Servt

M. F. Sweet

Att'y for Claimant

to the reading of which the said defendants then and there objected and the Court overruled the objection and the said document was read in evidence

and thereupon the said defendants except to the said ruling of the court in overruling their said objection and permitting the said document to be read in evidence -

The said plaintiff then offered to read in evidence the following document marked "J."

General Land Office
December 21st 1849

Hon. Thomas Ewing
Secretary of the Interior

Sir

I have the honor to transmit herewith, on the appeal of M. P. Street Attorney for John Wright, the papers in the conflicting claims of said Wright and Thomas McShee to a tract of land in the Dixon District Illinois

The land was entered at private sale by McShee on the 10th July 1846 per Certif. No. 21,926 of that Office - on the 14th of that month Wright filed "a notice in writing" under the law of 1841 alleging a settlement on the tract on the 5th of the month, and McShee's entry was suspended at this Office until after the twelve months subsequent to Wright's alleged settlement had expired, whereupon application of the Hon. Thos. J. Turner, a patent was issued on said entry on the 1st July 1847, there being no consummation of Wright's claim within that period, nor any report from the Land Officers, that any attempt had been made by him to establish his claim.

On the 4th March 1848, the papers in the case were forwarded to this Office by the Land Officers, they differing in opinion as to the sufficiency of the testimony to entitle Mr Wright to the land in question, it appearing that in due time he had presented his claim and that the examination and decision of the question had

been postponed from time to time with the consent of the parties, but without any notice to this office, that such proceedings had been had.

Upon examination of the case it appeared that the 5th Feb. 1846, Wright hauled four loads of rails, about 200, in number on the land, and between the 5th and 10th of the same month, about 300 more, and a load of stone for the foundation of his house, and the question of difference between the Land Officers, was, whether these acts performed by Wright prior to McGhee's entry of the land, were sufficient to bring him within the requirements of the law "has settled and improved" as it occurs in the 15th Sec. of the Act of 1841, the foundation of the house not having been laid until the 4th March 1846, nearly a month after the sale of the land to McGhee.

My predecessor in reply to the Land Officers, remarked "the expression of the views of the Office upon this point of difference between the Officers would in this case lead to useful results, as by the issuing of the patent, the case had passed out of the jurisdiction of the Executive Department of the Government, and the rights of the pre-emption claimant, if any really exist, must be enforced by the judicial tribunals"

A case may very readily be conceived to exist, where the pre-emption claimant, between the commencement and completion of the dwelling house and other improvements necessary to show on his part a compliance with the law of 1841, may, (where the land is also subject to entry at private sale) be interfered with by a purchaser at private entry, and where the latter should yield to the former, but the acts performed by the pre-emption claimant should be

such as to show unequivocally the design of settlement, and be continuously prosecuted until that design was completed. The hauling of rails onto a tract of land may evidence a design to fence a portion of it for cultivation but it is no evidence that the party had any intention to build a house and make such settlement as would entitle him to a right of preemption - the hauling of a load of stone, may in some degree, raise the presumption that it is to be used for the purpose of a habitation, but when no effort is made to carry out such design for nearly a month after such preparation is made, and after the land has been sold to another, it may well be questioned, whether such a claim exists, as would justify this Office in doing anything calculated to disturb the title given by the patent to the purchaser of the land.

With much respect

Your Obedt. Servt.

J. Butterfield

Commr.

to the reading of which the said defendants then and there objected and their objection was overruled by the Court and the said document was read in evidence and thereupon the said defendants except the said ruling of the court, in overruling their said objections and permitting the said document to be read in evidence

The plaintiff then offered to read in evidence the following documents marked "K."

Department of the Interior
Washington January 9th 1850

Sir

The papers submitted with your letter of the

21st ult: upon the appeal of M. P. Sweet Esq. in the case of John Wright vs. Thomas McWhie are herewith returned.

I do not concur with the late Commissioner that because a patent was prematurely or inadvertently issued to McWhie, pending the question as to the validity of Wright's claim, an examination of that claim was useless.

The papers are returned to you in order that Wright's claim may be examined and passed upon, and that he be permitted to complete his entry of the land if he be found entitled to the right of preemption.

Should the claim be established and the entry made, the question as to the proper course to be pursued, in view of the outstanding patent can be submitted, if necessary.

I am Sir very Respectfully
Yr Obedt Servant

G. Ewing.

Secretary

The Commissioner
of the General Land Office.

to the reading of which the Defendants objected and the Court overruled their objections and the said document was read in evidence.

And thereupon the said Defendants excepted to the said ruling of the Court wherein he overruled their said objections and permitted the said document to be read in evidence.

The Plaintiff then offered to read in evidence the following document marked "L".

General Land Office
January 22nd 1850

Register and Receiver
Sixon Illinois;
Gentlemen,

I herewith enclose the testimony heretofore taken at your office in the case of Thomas McGhee and John Wright, for the W $\frac{1}{2}$ S.E. $\frac{1}{4}$ Sec. 12. T. 27. R. 7. E. in your district. the former by entry at private sale per Cert. No. 21, 926. and the latter claiming by Preemption under the act of 4th Sept. 1841.

On the 4th April, 1848, a letter in relation to this case was addressed to your office by my predecessor declining to make any decision upon the case, as submitted in letter from your Office of the 4th March previous, he regarding the issuing of the patent to McGhee, on his entry, as productive of results rendering it useless for the Office to take any further action on the case.

From this action a recent appeal has been taken to the Secretary of the Interior who on the 9th inst. returned the papers, with directions to have the case examined and passed upon, as if no patent had been issued to McGhee, and if Wright's claim shall be determined a legal and valid one, to allow him to complete his entry submitting hereafter, if necessary. the question (should such entry be allowed) as to the proper course to be pursued, in view of the conflicting outstanding patent.

The papers are therefore returned to your Office. in order that a decision may be made by the Register and Receiver as to the right

of John Wright, under the law, either upon the showing already made, or upon other testimony, taken after notice to both parties, should additional testimony be deemed necessary by you upon any point in the case.

The instructions heretofore given as to the general principles involved in cases under the act of 1841, are here repeated, in order to serve as a basis for your determination of this case upon the facts which are or may be established to your satisfaction.

Whenever a person enters upon a tract of public land, liable at the time to "private entry", for the purpose of making a settlement thereon, so as to entitle him to the privileges of the preemption law of 4th Sept. 1841, and commences any work or labor on the land necessary to the performance of the requisitions of that law, and continuously prosecutes such commencement for a final completion of those requisitions, that person is entitled to the protection of the law, provided, that his "notice in writing" is filed subsequent to such commencement and within the period thereafter prescribed by law, and that proof of his performance of all said requisitions, is made in time.

In this case, the hauling of two hundred rails on the 5th Feb. 1846, and of three hundred additional rails, and a load of stone, between the 5th and 10th of the same month, are of themselves not sufficient to indicate that a settlement such as contemplated by the law was designed, particularly, as it would appear, that this land, liable to private entry, had been cultivated by said Wright and other members of his family for a year or two before, but if said acts were accompanied by others, tending to show a bona fide intention at

that time, to complete the settlement, (as was ultimately done) and that from the said 5th July, until the 4th March following, when the foundation of his house was laid, he was continuously in the prosecution of such intent, and that when the said house was completed he "inhabited" the same as required by law, then a case will be presented, addressing itself to your favorable attention.

Respectfully Your Obedt. Servt.

J. Butterfield

Commr.

To the reading of which the said defendants then and there objected and their objections were overruled by the court and the said documents read in evidence and thereupon the defendants except to the ruling of the court in overruling their said objections and permitting the said document to be read in evidence.

The said plaintiffs then offered to read in evidence the following document marked "M."

Land Office Dixon Illinois
February 25th 1850.

Hon. J. Butterfield

Commr. Gen. Land Office

Sir,

In obedience to instructions contained in your letter of January 22nd 1850, we have carefully examined the testimony in favor of, and adverse to the preemption claim of John Wright to the N. $\frac{1}{2}$ of the S. E. $\frac{1}{4}$ of section No. 12, T. 27. R. 7 E. and also the instructions given to guide us in forming our opinion, and we are satisfied that the acts

doings of Mr Wright were such as go to show
a bona fide intention to complete his settlement upon
the land, as was subsequently done by him, and
after a careful and thorough examination of the
testimony heretofore adduced, we concur in the opinion
that that filed by Mr Wright is sufficient to
establish his right to enter the said land under the
provisions of the Preemption Law of 4th of Sept 1841
Herewith we return the testimony to you.

We are sir very respectfully

Your Obedt. Servts

Silas Noble, Register

Cyrus Aldrich, Receiver

to the reading of which the said defendants objected
and their objections were overruled by the court and
the said document was read in evidence and
thereupon the defendants except to the ruling of
the court in overruling their objections and per-
mitting the said document to be read in evidence
The plaintiff then offered to read in evi-
dence the following document marked "X."

General Land Office

March 15th 1850

Register and Receiver

Spring Illinois;

Gentlemen,

Your letter of the 26th
ult, returning the papers in the case of John
Wright against Thomas McVee, transmitted to you,
with my letter of the 22nd January last, has been
received,

Upon those papers you have decided
that Wright had a valid right of preemption to

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the tract claimed by him, but you you have not advised me whether he has been permitted to enter said tract, as it was designed he should be, in the event above adverted to,

Notice of the intention to preempt such entry, should be given to the adverse party, if the entry has not been made, or if it has been allowed he should be advised to that effect, in order that he may take such steps as may be deemed advisable by him, under the circumstances.

Respectfully &c

J. Butterfield
Commr.

to the reading of which the defendants objected and their objections were overruled by the Court and thereupon the said document was read as evidence and the said defendants excepted to the ruling of the Court in overruling their said objections and permitting said document to be read in evidence

The plaintiff then offered in evidence the following document marked "C."

Land Office Dixon Illinois
April 1st, 1850

Hon. J. Butterfield

Commr. Gen. Land Office,

Dear Sir,

We have the honor to acknowledge the receipt of your letter of the 15th ult., relative to John Wrights Preemption Entry. At the time we returned the Papers in that case to you, together

with our joint opinion, viz: on the 25th of Feby. we supposed, never having heard anything to the contrary, that Wright's Entry was made and perfected so far as it could be, at the time he picked up his pre-emption

We did not learn to the contrary until the 7th or 8th of March. We then learned from Mr Wright's Counsel that the money was deposited with the late Receiver to be applied in payment of the land in case the decision of the Department was in his favor.

We did not deem it necessary to advise the adverse party (McGhee) of our action until we heard from you again, but we understand he has been advised of what has been done in the matter, and to day we have advised him officially agreeably to your instructions.

Mr Wright perfected his entry and received his Duplicate on the 23^d ult.

We are Sir very Respectfully

Your Obedient Servants

Silas Noble, Register
Cyrus Aldrich, Receiver

to the reading of which the defendants objected and their objections were overruled by the Court, and the said document read in evidence, and thereupon the said defendants excepted to the ruling of the Court in overruling their said objections and permitting the said document to be read in evidence.

The plaintiff then offered to read in evidence the following document marked "P."

No. 31585.

Land Office at Dixon Illinois,

March 23^d 1850.

It is hereby certified, that in pursuance of

Now, John Wright Stephenson County, State of Illinois, on this day purchased of the Register of this Office, the Lot or West half of the South east Quarter of Section No. Twelve in Township No. Twenty seven of Range No. seven East, containing eighty acres at the rate of One dollar and Twenty five cents per acre, amounting to One hundred dollars and — Cents, for which the said John Wright has made payment in full as required by law.

Now therefore be it known that on presentation of this Certificate to the Commissioner of the General Land Office, the said John Wright shall be entitled to receive a patent for the lot above described

Silas Noble
Register

Dec. Oct. 4th Sept. 1841

to the reading of which the said defendants objected and their objections were overruled by the court and the said document read in evidence, and thereupon the said defendants excepted to the said ruling of the court in overruling their said objections and permitting the said document to be read in evidence

The said plaintiff then offered to read in evidence the following document marked "D."

General Land Office
May 16th. 1856.

Hon. Thomas Ewing,
Secretary of the Interior

Sir

In accordance with the instructions of

your letter of the 9th January last, on the subject of the conflicting claims of John Wright and Thomas McGhee, the papers were submitted to the Land Officers to be examined and passed upon, and they determining the right of preemption to have been in John Wright, have permitted him per Certificate No. 31,585, to pay for and enter the land in question.

Since the information contained in the letter of the Land Officers of the 1st April last, of their allowance of Wright's entry, and of their having notified the adverse party that effect, I have delayed any further action, awaiting to hear from such adverse party, but a sufficient length of time having elapsed, I do not deem it proper longer to delay submitting the question (in accordance with the intimation at the close of your letter of the 9th January last) "as to the proper course to be pursued in view of the outstanding patent" to McGhee.

With much respect Your Obedt. Servt.
J. Butterfield, Commr

to the reading of which the defendants objected and their objection was overruled by the Court and the said document was read in evidence and thereupon the defendants excepted to the ruling of the Court in overruling their objection and permitting the said document to be read.

The plaintiff then offered to read in evidence the following documents marked "R".

Department of the Interior
Washington January 12th 1852

Sir,

I herewith return the papers in the case of

John Wright vs. Thomas M^r Ghee which were submitted with your letter of the 16th of May 1850 pursuant to the intimation contained in my predecessor's letter of the 9th of the preceding January, for instructions as to the course to be pursued in view of an outstanding patent to M^r Ghee.

As the practice of the Government in cases of this description is understood to be the issuing of a second patent, reciting the error or inadvertency in the issuing of the former, I see no objection to such a course of proceeding in this case.

I am Sir very Respectfully
Yr. Obedt. Servant

Alex^r H. H. Stuart
Secretary

The Commissioner
of the General Land Office—

to the reading of which the said defendants objected and the court overruled their objection and the said document was read in evidence and thereupon the said defendants except to the ruling of the court in overruling their said objection and permitting the said document to be read in evidence.

The plaintiff then read in evidence a patent to John Wright in the words and figures following

Prescription
Certificate
No. 31585

United States of America

To all to whom these presents shall come
Greeting;

Whereas, heretofore to wit; on the first of July 1847, a patent was erroneously issued from the General Land Office, to one Thomas McGhee on an entry made on the 10th of February 1846, at private^{sale} per Dixon, Illinois, Certificate of purchase No. 21,926, for the West half of the South East Quarter, of Section Twelve, in Township twenty seven North, of Range seven East of the Fourth Principal Meridian; and whereas John Wright of Stephenson County, Illinois, on the 14th February 1846, filed a "notice in writing" for the said tract under the Preemption law of the 4th of September 1841, alleging a settlement on said tract, and on the 5th of February 1846, and within a year after the said 5th of February 1846, made application to prove up and pay for the right of pre-emption, so claimed by him which right of Preemption was duly decided in his favor, and the entry of said tract allowed in his name as a pre-emptor, and whereas, the said John Wright has deposited in the General Land Office of the United States a Certificate of the Register of the Land Office at Dixon, Illinois, whereby it appears that the said tract situated in the District of Lands subject to sale at Dixon Illinois, and containing eighty acres, according to the official plat of the survey of said land returned to the General Land Office by the Surveyor General, which said tract was purchased on the 23rd March 1850, by the said John Wright according to the provisions of the Act of Congress of the 24th April 1820, entitled "An Act making further provision for the sale of the Public Lands" and also the Act of 4th September 1841 entitled "An act to appropriate the proceeds of the sales of Public Lands

and to grant preemption rights", and that full payment has been made therefor as required by law.

Now Know Ye, that the United States of America, in consideration of the premises and in conformity with the several Acts of Congress in such cases made and provided; have given and granted and by these presents do give and grant unto the said John Wright and to his heirs the said land above described (the outstanding patent in favor of Thomas M. Price dated 1st July 1847, to the contrary notwithstanding) To have and to hold the above described tract together with all the rights, privileges, immunities and appurtenances of whatsoever nature, thereunto belonging unto the said John Wright and to his heirs and assigns forever.

In Testimony whereof I Millard Fillmore, President of the United States of America, have caused these letters to be made Patent, and the Seal of the General Land Office to be hereunto affixed.

Given under my hand at the city of Washington, the twentieth day of January, in the year of Our Lord one thousand eight hundred and fifty two, and of the Independence of the United States the seventy-sixth.

By the President

Millard Fillmore

By Alex^r McBurnick Apt. Secy.



Recorded in Miscellaneous vol 3 of as. J. Wilson

on pages 68 & 69

Acting Recorder of the General
Land Office ad interim

The plaintiff then read in evidence two Certificates
of the Register of the Land Office at Dixon in the
words and figures following

No. 1

No. 31585.

Land Office Dixon Illinois
October 25th 1852

I Silas Noble, Register of the Land Office at Dixon
Illinois, do hereby certify, that John Wright of the
County of Stephenson and State of Illinois did on
the twenty third (23) day of March in the Year of
Our Lord, one thousand eight hundred and fifty,
Purchase of the General Government at this Office,
the West half of the South East quarter of Section
twelve (12) in Township twenty seven (27) North of Range
seven (7) East of the 4th Principal Meridian, and
that said land at the time of said purchase
was within the District of Lands subject to sale
at this Office, and rendered subject to Sale by Law,
all of which appears of record in my Office.

Given under my hand the day and year
first above written.

Silas Noble, Register

No. (2)

No. 21926.

Land Office Dixon Illinois
October 25th 1852,

I Silas Noble, Register of the Land Office, at
Dixon Illinois, do hereby certify, that Thomas McGhee
of the County of Stephenson and State of Illinois, did
on the tenth day of February in the Year of Our
Lord one thousand eight hundred and forty six,
Purchase of the General Government, at this office,
the West half of the South East quarter of Section twelve
(12) in Township twenty seven (27) North of Range seven (7)
East of the (4th) Principal Meridian. The above

entry is marked on the books of this Office cancelled, and that said land at the time of said purchase was within the District of Lands subject to sale at this Office, and rendered subject to sale by law: all of which appears of Record in my Office

Given under my hand the day and year first above written

Silas Noble, Register

On each of said Certificates was the following endorsement to wit

Filed April 19, 1854

Joseph B. Smith

clerk

The plaintiff then read as evidence the several answers of Thomas Mc Ghee and Thomas J. Turner, in the words and figures following to wit;

In the Stephenson County Circuit Court
Of the November Term A.D. 1852

John Wright }
as
Thomas Mc Ghee }

In Chancery

The answer of Thomas Mc Ghee the defendant in this suit to the Bill of Complaint of the said Plaintiff.

This defendant now and at all times saving to himself all benefit of exception to the manifold errors in said Complainants said Bill for answer thereto saith

That it is not true that the said Complainant on the fifth day of February 1846, made

a settlement on the lands described in said bill.

That it is not true that within thirty days thereafter the said Complainant filed with the Register at the Land Office at Dixon a written notice of his settlement and his intention to preempt the same.

It is not true that within a year thereafter said complainant proved up his preemption and paid for said land. The said land was not duly entered in his name and the complainant did not get a patent for said land.

It is true that this defendant entered the same at the Land Office at Dixon, and received from the General Government his patent therefor and that he has had the possession and still has rightfully the possession of the same land.

That all other matters and things in said bill are wholly groundless and untrue and this defendant therefore prays to be here dismissed with his reasonable costs herein expended.

That J. Turner
Sol. for Def.

On which said Answer were the following endorsements to wit

John Wright vs Thomas D. Shue
Answer

Filed Nov. 8th 1852

John A. Clark
Clerk

In the Stephenson County Circuit Court
Of the January Special Term A.D. 1854

John Wright)
vs.) In Chancery
Thomas J. Turner)

The answer of Thomas J. Turner
the defendant to the said plaintiffs said bill of
Complaint

This defendant saving all benefits
of exception to the many errors and insufficiencies
in the said bill of Complaint contained for
answer thereto saith

He believes it to
be true that on or about the 29th day of July A.D.
1852 the said Complainant exhibited his bill of
Complaint against Thomas M^r Ghee in substance
as stated in said bill of Complaint and that
the said Thomas M^r Ghee was served with process
and did put in his answer thereto and that said
answer hath been replied unto and that the
said cause is at issue and ready for proofs &c.

It is true that at the next term of Court
after filing said bill against Thomas M^r Ghee
this defendant appeared as his counsel and
Solicitor and has continued up to the present
time and still continues to be a Solicitor for said
Thomas M^r Ghee in said suit. It is also true
that on or about the time mentioned in Complain-
ants Bill of Complaint said Thomas M^r Ghee
by deed conveyed said land to this defendant.

This defendant knows very well all that is
contained and charged in said complainants said
original bill of Complaint, but whether said charges
are true or false this defendant does not know

but he believes many of them to be false.

This defendant does not believe that the deed from said Mc Ghee to this defendant ought to be set aside or annulled or that he ought to give the patent issued to Thomas Mc Ghee

Thos. J. Turner

State of Illinois {
Stephenson County } p.

Thos. J. Turner being first duly sworn on his oath says he drew up the foregoing answer by him signed and that the matters therein contained are true as far as he states them as of his own knowledge and that as to those things stated to be of his information and belief he believes to be true
Subscribed and sworn to

This 30th day of Jan'y. 1854

Joseph B. Smith - Clerk.

On which said Answer were the following endorsements to wit;

John Wright vs. Thomas J. Turner
Answer

Filed Jan'y. 30th 1854

Joseph B. Smith
Clerk

The Plaintiff then produced Paschal L. Wright as a witness who being duly sworn testified as follows:

Paschal L. Wright, being duly sworn says he knows the parties to this suit - I have been acquainted with Mr Magee since he has been in this Co. suppose about 14 yrs - with John Wright all his life

- with Turner since he came to this town.

I know the premises in question - have known it ever since it was surveyed - at least 10 yrs - I knew it before it was surveyed - I know that John Wright made a prescription to it - I was present when he paid the money for it - It was on the 3rd or 4th day of Feby, 1847, at the Office of the Receiver of the United States Lands - at the Dixon Land Office John Wright went in there with his proof & handed it to the Receiver - He took it & looked it over & said - it is very good - very good sir better than 99 out of 100 - He then paid over the money \$100 in L. Office Money (I am not sure whether it was in Gold or Silver) to John Sement the Receiver, for the W $\frac{1}{2}$ S. E. $\frac{1}{2}$ of Sec. 12 - Mr Sement recd the proof & expressed his opinion on it & received the money. I saw him take it into his possession -

This all took place in the Office in the L. Office at Dixon on the day above stated - the 3rd or 4th Feby, 1847 -

The money was paid before Magie made his application to Contest

Cross. Ex. - I am the brother of the Compt^t - I bot the claim to the land in question - I did not own it at the time it was entered - I had given it up to him.

Claims were then not of much account - I did not then pretend to have any claim to it - I had some years before cultivated a part of it - At the time the money was paid Sement gave a receipt for it - I supposed that receipt was among the papers - The last I saw it it was given to Mr Sement -

It stated to be for the money and there was something in it about Magie's contesting it - It did

not read that it was to be paid back on Wright's failure to hold the land

Magee was at the office at the time the money was paid & begged the privilege of contesting it. At first Semest objected to let him contest but finally consented and appointed a time to take testimony in the report.

I do certify that the foregoing testimony was introduced at the hearing of the above entitled cause before me -

The Court on the reception of the foregoing evidence allowed the Def^t the privilege to have the cause continued should he so desire in order to obtain testimony to rebut said evidence, & on motion of the Def^t the cause was accordingly continued for such purpose.

Witness my hand & seal

Benj. R. Sheldon 

On which said testimony were the following endorsements to wit:

John Wright vs. Thomas McPhie
Testimony

Filed February 7, 1854

J. B. Smith, Clerk

to the giving of which testimony the defendants objected and their objections being overruled and the testimony was received and thereupon the defendants except to the ruling of the Court in overruling their objections and receiving said testimony.

The defendants admitted the land in

question to be in Stephenson County.
Here the plaintiff rested.

The defendants then offered in evidence the Patent to Thomas M'Ghee in the words and figures following

Certificate No. 21,926 $\frac{3}{4}$

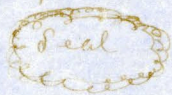
The United States of America
To all to whom these presents shall come Greeting:
Whereas Thomas M'Ghee of Stephenson County Illinois has deposited in the General Land Office of the United States a Certificate of the Register of the Land Office at Dixon whereby it appears that full payment has been made by the said Thomas M'Ghee according to the provisions of the Act of Congress of the 24th of April 1820 entitled "An act making further provisions for the sale of the public Lands" for the West half of the South East quarter of Section Twelve in Township Twenty seven - of Range seven east in the District of Lands subject to sale at Dixon Illinois containing eighty acres according to the official plat of the survey of the said lands returned to the General Land Office by the Surveyor General which said Tract has been purchased by the said Thomas M'Ghee

Now Know Ye, that the United States of America in consideration of the premises and in conformity with the several acts of Congress in such case made and provided have given and granted and by these presents do give and grant unto the said Thomas M'Ghee and to his heirs the said tract above described To have and to hold the same together with all the rights,

privileges immunities and appurtenances of what-
soever nature thereunto belonging unto the said
Thomas Mc Ghee and to his heirs and assigns forever.

In testimony whereof I James K. Polk
President of the United States of America have
caused these letters to be made patent and the
seal of the General Land Office to be hereunto affixed.

Given under my hand at the city of Washington
the first day of July in the Year of Our Lord one
thousand eight hundred and forty seven - and of
the Independance of the United States the seventy-first



By the President James K. Polk
By J. Knox Walker Secy.

Recorded Vol. 40 page 145.

L. H. Laughlin Recorder of the General Land Office

The said defendants then produced John
Dement as a witness who being duly sworn
testified as follows

John Wright (In Chancery
vs. Steph. Co. Cir. Court April 11-1854
Thomas Mc Ghee)

"This day April 11 1854 came
Jas. Marsh Esq counsel for Complainant and
Thomas J. Turner Esq counsel on the part of
Defendant and John Dement a witness who
being first duly sworn on oath deposes and
states as follows, the Counsel on both sides
waiving the necessity of the questions being taken
on the 3 down, viz

Direct 3

Witness knows the parties, was Receiver of the
Public Monies at the Land Office in the Dixon
District, was present when John Wright attempt-
ed to prove up a preemption on the land which

witness is informed is the land in controversy at the time said Wright attempted to so prove up his preemption to said land he did not pay for said land when said Wright came and filed his proofs before the Register and Receiver his preemption was not allowed subsequently and within the year (it might have been the next day) Mr Wright said to me he wished to leave the money with me to pay for the land if the controversy should be decided in his favor and at the same time did leave the money with me.

At the time he so left the money with me I had no authority to receive it in payment for the land - Neither Mr Wright nor myself understood that it was left in payment for the land both considered it only left for convenience, I never did receive the money in payment for the land - The money remained in my hands until I was out of Office and until the day of Wright's entry.

My recollection is that some person in Dixon brought the receipt I had given Mr Wright and drew the money on it - My impression is that it was either Horton P. Sweet or Cyrus Aldrich who was then Receiver of public moneys at the Dixon Land Office - I gave Wright a receipt for the money when he left it with me in my private capacity not as Receiver as my impression is, though I cannot be positive, I received the money and kept it not as Receiver but in my private capacity -

No entry was ever made of the payment by me on the Land Office Books - I state unqualifiedly

there never was a payment made to me of the purchase money for the land - I could not receive it as a payment until a Certificate was brought from the Register which Certificate Mr Wright never brought to me

Note - The above was all that was stated on the part of Complainant and the following was stated on the part of Defendant:

The practice of the Land Office in cases of this kind is officially to have nothing to do with the money - The purchase money is not received by the Receiver except on the Certificate of the Register that the applicant is entitled to purchase

Mr Wright did all he could at the time to perfect a purchase but he really could do nothing for the reason that the Land Officers had decided against him or against his claim

Wright's money was drawn from me on the same day that his entry is dated on the books of the Land Office

This being all on the part of the Defendant

I, J. W. S. Brawley, Master in Chancery of the said Court hereby certify that said witness John Lement deposed under oath as above set forth

All which is respectfully submitted

J. W. S. Brawley

Master in Chancery

Said testimony being taken & certified under the supervision & direction of the Counsel on both sides of the case above named

Fees \$5.00

J. W. S. Brawley
Master in Chancery

On which said evidence were the following
endorsements to wit

Jno. Wright vs Thomas M. Ghee
Evidence of Jno. Dement
Filed April 12th 1854,

J. B. Smith
Clerk

And this being all the testimony given and given
in the case either by the plaintiff or defendants
the Court after due deliberation rendered a decree
in the words and figures following

John Wright }
vs. } In Chancery
Thomas M. Ghee } An Original Bill

John Wright }
vs. } In Chancery
Thomas J. Turner } An Supplemental Bill

And now at this day came on the
above entitled cause for final adjudication upon
the proofs and pleadings heretofore submitted
to the Court herein and it appearing to the Court
that John Wright the Complainant herein did
on February 3rd A.D. 1846, make a settlement
on the West half of South East Quarter of Section
Twelve (12) in Township Twenty seven (27) North of
Range seven East of the fourth principal
Meridian in the District of lands subject to
sale at the United States Land Office at Dixon
Illinois said land being in Stephenson County
Illinois, that such settlement was made under &

to obtain the benefit of the preemption Law of the United States contained in the Act of Congress approved September 4th 1841, entitled an Act to appropriate the proceeds of the sales of the public lands and to grant preemption rights, and that said tract of land was subject to preemption on said February 5th 1846, and it further appearing to the satisfaction of this Court that said John Wright did follow up said settlement on said land with the steps and Acts made necessary by said Act of Congress to complete his preemption right to said land and to entitle him to purchase the same as preemption and it further appearing that said John Wright did within the time for payment prescribed by said Act of Congress tender in Gold and Silver coin the amount to be paid for the purchase of said land to the proper officer at the Land Office at Dixon in payment for said land and that said Land Officer declining to receive said money that the same was deposited with said Land Officer and it further appearing that Thomas Mc Ghee, Defendant herein did on February 10th 1846, enter said tract of land at private sale at said Dixon Land Office and that a controversy ensued between said John Wright and said Thomas Mc Ghee relative to the validity of the preemption claim of said John Wright to said land, that a trial was had before the land officers at Dixon relative to said preemption right at which both parties appeared by counsel and said trial was continued by consent of the parties from time to time, that while said trial was pending said Thomas Mc Ghee procured the issue by the Government of the United States to him of a patent for said land said

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patent being issued to him as a purchaser of said land and it further appearing that upon final hearing the Register and Receiver of the United States Land Office at Dixon Illinois did decide the presumption right of said John Wright to said Land to be valid and did permit him to purchase the same as a preemptor thereof, the entry of said land by Thomas McGhee being cancelled and it further appearing that the United States did issue a second patent for said land to said John Wright conveying said land to him the outstanding patent to Thomas McGhee for said land notwithstanding and it appearing that the right of said John Wright to said land under his said patent although said patent was issued subsequent to the issue of the patent for said land to Thomas McGhee is valid in equity and should prevail against the claim of said McGhee under his patent, and it further appearing that said Thomas McGhee did while the suit brought against him by said John Wright by original Bill was pending did convey said West half of South East quarter of Section Twelve in Township Twenty seven North of Range seven East of 4th Principal Meridian the premises in question to Thomas J. Turner made Defendant by the supplemental bill herein who took said conveyance with full notice and knowledge of all the matters and things in controversy between said John Wright and Thomas McGhee and it appearing that said Defendants McGhee and Turner have appeared herein and the Court being fully advised as

to the premises - doth order adjudge and decree
that the title of the defendants Thomas Mc Ghee and
Thomas J. Turner to the west half of South East
Quarter of Section Twelve (12) in Township Twenty
seven, of Range seven East, in the District of
lands subject to sale at Dixon Illinois, dated
July 1st 1847 and copied in the Exhibit B,
attached to the original Bill herein be set aside,
and for nothing esteemed as to said Complain-
ant and all persons claiming under him and
that said Thomas Mc Ghee and Thomas J.
Turner convey by proper deed of release
within twenty days from the close of the present
term of this Court to said John Wright all the
right title and interest held by them or either of
them in & to said Land & premises above de-
scribed under said patent issued to said Mc Ghee
as aforesaid & under the said conveyance executed
by said Mc Ghee to said Turner for said Land
as aforesaid and in case said Turner & Mc Ghee or
either of them shall refuse or neglect within twenty
days from the close of the present term of this
Court to execute such release as aforesaid then
Joseph D. Smith is hereby appointed Special
Commissioner of this Court to execute said deed
of release in behalf of said Turner & Mc Ghee
such release to be approved by G. W. L. Bradley
Master in Chancery. or in case that one of
said Defendants shall refuse or neglect to
execute such release then said Commissioner
shall execute the such release only in and behalf
of the one so refusing or neglecting to execute such
release and it is further ordered that said
Defendants within sixty days from the close of

the present term of this Court give possession of said premises to said Complainant and that said Defendants pay the Costs herein to be taxed by the Clerk

Benj. R. Sheldon

On which said decree were the following endorsements to wit;

John Wright vs. Thomas M'Ghee
Decree

Filed April 19th 1854

Joseph B. Smith
Clerk

to which the said defendants then and there excepted and prayed that these their several bills of exception be signed and sealed by the Court and it is accordingly done.

Said documents offered in evidence are more particularly described and referred to in a Certificate of the evidence in the cause signed by the Court & filed herein to which reference may be made if necessary for a more particular description of said documents

Benj. R. Sheldon 

Which said Bill of Exceptions has the following endorsements to wit

John Wright vs. Thomas M'Ghee & Thomas J. Turner
Bill of Exceptions

Filed April 19th 1854

Joseph B. Smith
Clerk

And afterwards to wit on the 8th day of May A.D. 1854
the said Defendants filed in said Court their Appeal Bond
in the words and figures following to wit:

Know all men by these presents that we Thomas McGhee
and Thomas J. Turner as principals and James McGhee
all of the County of Stephenson and State of Illinois are held
and firmly bound unto John Wright of the same place in
the penal sum of three hundred dollars to be paid to the
said John Wright his Executors administrators or assigns
for the payment of which sum well and truly to be made
we bind our selves our heirs Executors administrators and
assigns firmly by these presents jointly and severally.
Sealed with our seals, and dated this 1st day of
May A.D. 1854 -

The condition of this obligation is such
that whereas the above bounden Thomas McGhee and
Thomas J. Turner have prayed an appeal to the Supreme
Court of Illinois from a certain decree made in the Circuit
Court of Stephenson County Illinois in a certain cause in said
Court on the Chancery side ~~then~~ of said Court wherein the
said John Wright is Complainant and the said Thomas -
McGhee & Thomas J. Turner are defendants and the said
appeal having been allowed by the said Circuit Court.

Now if the said defendants shall duly prosecute their
said appeal in the said Supreme Court, and shall pay
the judgment that may be rendered against them in
said Court, in case the said decree shall be affirmed, and
also all the costs interest and damages, in case the said
judgment or decree shall be affirmed, then this obligation to
be void, otherwise to be and remain in full force & virtue.

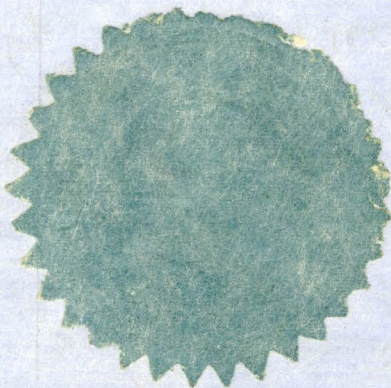
In presence of
Approved May 8. 1854 }
Joseph B. Smith Clerk }

Thomas McGhee Seal
Thos. J. Turner Seal
James McGhee Seal

Said Appeal Bond has the following indowment to wit:
John Wright vs McChes & Turner
Filed May 8. 1854
Joseph B Smith Clerk

State of Illinois
Stephenson County

I, Joseph B Smith Clerk of the Circuit Court
in and for the said County do hereby certify that the foregoing
is a full and complete record of & in the causes of John
Wright against Thomas McChes and Thomas J Turner
as the same appears upon the Books and files in my
office



In witness whereof I have hereunto set
my hand & affixed the seal of said Court
at Freeport this first day of June
A.D. 1854

Joseph B Smith Clerk

John Wright } In Ci. Court Apl. Term 1862
 " } In Chancery
 Thomas McGhee } Compt. Costs

Dock suit 7 Term 70^c Surg. Sum 35^c Entry app. & Lab. 15^c 1.20
 Surg Subpa. 35^c 3 wit. aff 30^c Filg. 10 papers 50^c 1.15
 Entry. Mo. deft. file ans. 20^c Order do 20^c Surg 1 wit. 5^c .45
 Entry decree 90^c Entry Judgt 25^c Lab. 15^c Ex & filg 45^c 1.75
 Dock. ex 10^c Entry. Shff retu 10^c Rule costs 20^c .50
\$ 5.05

Shff P. D. Fisher Exg & retg Sum. 1.05
 " Geo. Rutzelle per Glover depty. Exg & retg 1 Subpa. 40
\$ 1.45

Witness for P. L. Wright 4 days \$ 2.00
 8.50

Same }
 " } Defts. Costs
 Same }

Entry app. & Lab. 15^c Entry. Mo to dis. Bill 20^c .35
 Entry Order overrule. Mo to dis. Bill 20^c Filg. 6 papers. 20^c 50
 Entry prayer for appeal 20^c Order granty. do 20^c 40
 makey & entry Bill costs 30
\$ 1.55

A. W. S. Brantly Master in Chancery takg. Deposition \$ 5.00
\$ 6.55

John Wright } In Cui Count Apl. Term 1854
 " } In Chancery - Supplemental Bill
 Thomas J. Turner } Compl. Costs

Dock suit 2. Term 20[¢] Jury. writ 35[¢] Sum 35[¢] 90

Enty. app. & solr. 15[¢] Filg. 4 papers 20[¢] Enty. Rept. 20[¢] 55

makg & Enty. Bill Costs 30

\$1.75

J. W. S. Brawley Master in Chancery granty. Inj. fees 1.50

Shff. Geo. Rectyell exg. & retg writ per Glover depy 1.15

" " " " Sum " " 1.15

\$2.30

\$5.55

Same }
 " } Defts Costs
 Same } Clerks fees

Enty. app. & solr. 15[¢] Enty. demr. 20[¢] 35

Enty. Order overruly. demr. 20[¢] Order to file ans. 30[¢] 40

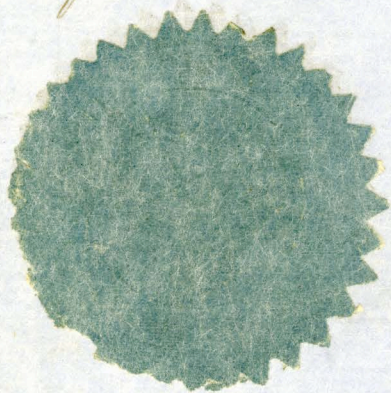
Enty. ans. 20[¢] Filg. 2 papers. 10[¢] File Costs 30[¢] 60

\$1.35

Making Complete Record \$31.20 Ent. & Seal 35 \$31.55

State of Illinois
Stephenson County

I, Joseph B Smith Clerk of the Circuit Court in and for the said County do hereby certify that the foregoing is a true copy from my fee Book of the costs and charges taxed against the Complainant in the above entitled causes, and also of the costs and charges taxed against the defendants in the above entitled causes as the same appears of Record in my Office



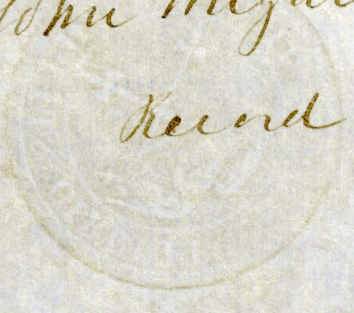
In witness whereof I have hereunto set my hand and the seal of the said Circuit Court at Grapport this first day of June A.D. 1854

Joseph B Smith Clerk

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Thomas M. Ghee et al.

John Wright

Record



Filed June 13, 1854.
S. Seland Clk.

In Supreme Court. Third Judicial District, Ill.
on appeal from Stephenson
John Wright
vs.
Thomas M. Elmer } On original Bill

John Wright
vs.
Thomas J. Turner } On supplemental bill.

The Circuit Court (in Chancery sitting)
has jurisdiction in this cause.

Bruner v. Manlove, 1st Scammon p. 160, 161 -

Isaacs v. Stet 3^d Scammon p. 98, 99.

Bruner v. Manlove 3^d Scammon p. 340, 341.

Jackson v. Lavoton 10. Johnson N. Y. Reports p 439.

Bagnell et al vs Broderick 13. Peters U.S. Reports p 439.

13 Peters 436. 120662. 9. Sm & Marshall 130-7

The decision of the Register and Review of the
Dixon U.S. Land office final as to the validity of
the presumption claim of Wright - those officers
constituting the ^{sole} tribunal having jurisdiction.

McConnell vs Wilcox 1st Scammon p 344.

U.S. Statutes Vol 5, page 453 (Presumption Law)

The certificate of the Register of the Land office at
Dixon proper evidence of Wright's purchase of the
Land in question & of the cancellation of M. Elmer's
entry - Revised Statutes p 232.

The documents from the General Land office are
admissible evidence as they are proven by the seal
of that office & relate to the matter in controversy

U. S. Statutes Vol 2 p. 717.

(The act for the establishment of a general land office)

These documents constitute proper evidence since most of the originals are on file in the general land office & can only be used through certified copies as evidence.

They are proper evidence as showing the existence of a former controversy between these parties relative to Wright's preemption claim and the instructions under which and the mode in which it was decided by the Register and Receiver.

All the letters of the Register and Receiver ^{offered as evidence} are in the nature of certificates and are admirably as evidence under the Statute - Revised Statutes page 232 § 4.

The evidence is sufficient to warrant the decree.

1. Documents from the general land office which were offered as evidence and the testimony of Archibald Wright and of John Sement show John Wright entitled to said Land as purchaser under a preemption claim having precedence in time & right to all other entry.
2. The documents from the general land office, and the certificates of the Register of the Land office at Dixon offered as evidence prove that John Wright did purchase said Land as preemptor, that his preemption right was decided in his favor by the Register & Receiver of the Land office at Dixon Ill. after a contest before them in relation to Wright's preemption claim between Wright and McShane.

and that M. Ghu's entry was cancelled

3. The patent from the United States to John Wright is evidence in this case of the conveyance of title to John Wright

4. Answer of M. Ghu admits issue of patent to him as alleged, in full

5. Answer of Turner admits conveyance & chain of premises with notice of all facts.

6. There is no error in the decree itself.

That portion of the decree ordering a conveyance of the land by M. Ghu & Turner to Wright, setting aside Turner & M. Ghu's title and ordering them to give possession is good (although not specifically prayed for in the Bill) under the prayer for general relief -

Barbours Ch. Practice Vol. 1 page 87

Burns & Manline 3^d Scamman p. 342

State Courts of Ch cannot go behind the entry to attack a Patent.

5 ~~2~~ 51. 21. 5 Sawr 2847. 811. 3 Howard 761. 7. Wh 1 (5-Gen 2202).

John Wright

vs.

Thos. M. Chas.

Brief-

J. Mark

for Defr Error

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102

State of Illinois Supreme Court
Third Grand Division

Thomas McGhee et al appellants

vs

John Wright appellee

Appeal from
Stephenson Co.

And now come the
said appellants by the S^r J James this
att^y and say there is error in record, decree
and proceedings and that said decree
ought to be reversed

And for special points
of error they assign the following

- 1st The court erred in permitting to be read in
evidence the Certificate of the Commissioners
of the General Land Office dated Oct 22nd
A^d 1832
- 2nd The Court erred in admitting to be read
in evidence the documentary evidence contained
in said record and marked by Roman letters of
the alphabet from A to R inclusive
- 3rd The Court erred in admitting the testimony
of D L Wright and all other testimony
offered and received in behalf of said
John Wright appellee
- 4th The Court erred in rendering a decree
for the plaintiff below and against the
defendants

5 The decree is not responsive to the
prayer of the bill

Thos J. Turner

Sol for Appellants

And the said Defendant in Error by
J. Marsh his Atty comes & says there
is no error &c —

J Marsh
for deft in error

57
Thomas McClelland

10
John Wright

Witnesses

James

Filed June 13. 1854.
L. Leland Clk.

57

Thos. McCune et al.

Long Night

57

2-15-29

1854