

8695

No. _____

Supreme Court of Illinois

Miner N. Franklin, et al,

vs.

^E
Robert McIntyre

71641  7

a State of Illinois — Be it remembered that at
Washington County — the August Term A. D. 1857
of the Washington Circuit Court
The Honorable W. R. O'Connell Judge of the
Second Judicial Circuit presiding, A cause came
on for hearing entitled as follows to wit,
b Robert McEntyre — Bill in chancery to
vs — compel conveyance of
Minor N Franklin — Real Estate
Dacey Glenn & her hus
and James Glenn

On which the following
Records and Papers appear and are on file which
are hereinafter truly copied to wit
Copy of process

c State of Illinois — ss To The People of the
Washington County — State of Illinois. To the Sher-
iff of Washington County Greeting
We command you to summon Minor N. Frank-
lin Dacey Glenn & James Glenn if to be found in your coun-
ty to appear before the Circuit Court of Washington
County, on the first day of the next term thereof to be
holden at the Court house in Nashville on the 4th
Monday in the month of March next to answer the
matters and things contained in a certain Bill in
chancery exhibited against them by Robert McEn-
tyre to compel conveyance of Real Estate, and
hereof make due return to our said Court as
the law directs Witness Harry H. Talbot
Clerk of our said Court and the Judicial Seal
thereof at Nashville this 3rd day of December A. D. 1858
} H. H. Talbot Clerk

Copy of Sheriffs return

- d. Served on M. N. Franklin by reading & delivering him a copy of the within summons this 7th day of December 1858 John White Sheriff of W. Co. Ills
- Served on James Glenn by reading and delivering him a copy of the same this 7th day of December 1858 John White Sheriff W. Co.

Copy of Complainants Bill

- e. State of Illinois vs Of the pleas of the March Term A.D. Washington County 3/1857 of the Washington Circuit Court
- f. To the Honorable Harvey W. Co. Called very Sole Judge of said Court in chancery, sitting
- g. Humbly complaining sheweth unto your Honor Your Orator Robert M. Enture of the County of Washington and State of Illinois, that on or about the day of A. D. 1854 Your Orator was the occupant of the north West quarter of Section twenty three in Township three South of Range three West in said County of Washington and State of Illinois which
- h. said land being in the district of lands subject to entry at the land Office at Kaskaskia Ills under the graduation act of Congress approved August 4th A. D. 1854 at the price of twelve and a
- i. half cents per acre and your orator being desirous of procuring the title to the north half of said north west quarter which your orator was then occupying as aforesaid and Minor N. Franklin (whom your orator prays may be made party defendant to your orators bill of complaint) also having

information that the said quarter section was wa
 cant subject to entry at the said Land office
 at Kaskaskia under the said graduation act
 at the price aforesaid of twelve and a half
 cents per acre and being desirous to procure
 the title to the south half of said east west quar
 ter of section twenty three in Township three south
 of Range three West, proposed to your orator
 that he make the entry of said quarter section of
 land each one furnishing an equal portion of mon
 ey to make the entry and pay for the same and your
 said Orator to take the certificate thereof from the
 register of said Land Office in his own name
 and after having received the cer
 tificate of entry to convey to the said minor or the south
 half of the north west quarter of section twenty three
 in Town three south of Range three West that in ac
 cordance with said proposition your orator and
 the said minor or went together to the said Land office
 at Kaskaskia for the purpose of making the entry
 of said land and upon reaching the said office
 at Kaskaskia they were informed by Daniel P. Rob
 erts the then Register of said Land office that said
 office was temporarily closed and for the time
 being the business suspended but he would make
 the necessary entry for your orator as soon as the
 office was again opened if your orator would

leave the necessary amount of money for that
purpose and make affidavit before him that
he your orator entered the said land for his
own use, and for the purpose of actual settlement
and cultivation and that he had not acquired from
the United States under the act approved August
4th 1854 more than three hundred and twenty acres
according to the actual surveys as supposed by
said act of congress approved August 4th 1854
that said minor, having furnished ten dollars
to your orator towards the payment of said land
and you orator furnishing ten dollars for that purpose
and also an additional amount to said Roberts of
three dollars ~~and~~ fifty cents of which was for the
aforesaid affidavit and two dollars and a half as
fees for entering said land for your orator that the
said Register promised to send your orator
by mail at irachville within a very short
time the Certificate of Entry that your orator having
waited some six weeks or thereabouts supposing
that the entry had been made for him by the said
Roberts but having received no information from
the said Roberts on the subject said minor went
to Kaskaskia to know the cause of neglect and
upon his arrival at Kaskaskia having learned
that the Register had failed to make the entry
aforesaid for your orator as promised he the

Wm. C. No. 1

Said Minor Or filed his affidavit with the Register under the act of Congress approved August 4/1854 and entered said north west quarter section of land with the money paid by your Orator and the said Minor Or, to said Register as aforesaid and took the certificate of entry in his own name for the whole quarter of said section. After said minor Or had entered the said north west quarter section with the joint fund of your Orator and the said Minor Or he the said Minor Or came to your Orator and told your Orator that he had filed the necessary affidavit at the land office and had entered the said north west quarter with the money deposited with the register as aforesaid by your Orator and that he the said Minor Or would convey the north half of said north west quarter of land entered by the said Minor Or as aforesaid in accordance with their said original agreement that long before the entry thereof your Orator was occupying said land and had made valuable improvements on the same and had continued there ever since the aforesaid entry by the said Minor Or, Cultivating and making valuable improvements thereon relying on the promises and agreement of the said Minor Or to convey to your Orator the said north half he being father in law to your said Orator that the said Minor

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It has occupied the South half of said quarter section as your Orator is informed and believes. That your Orator has frequently requested the said Minor It to convey by Deed unto him the said north half of said quarter section of land according to their original undertaking which he has repeatedly refused and neglected to do. Your Orator shows unto your Honor and specially charges the fact to be that the said Minor It intending to cheat swindle & defraud your Orator out of and prevent him from procuring a title to the North half of said north West Quarter of section 23 in S. 3, R. 3 W. in Washington County Illinois entered with the funds of your Orator as aforesaid sometime thereafter the exact time your Orator is not informed and cannot specially state conveyed the said quarter section to his daughter Dicey Franklin as he is informed & believes without any valuable consideration whatever but as your Orator has been informed and believes for the purpose of defrauding your Orator as aforesaid that after the conveyance aforesaid of the said Minor It to his daughter Dicey she intermarried with one James Glenn her present husband (both of whom the said Dicey and James Glenn your Orator prays may be made parties defendant to this bill of complaint

1. Your Orator shews unto your Honor that he is wholly ignorant as to whether the said deed of conveyance by the said Minor Or to his daughter Dickey is in the possession of the said Deed & her Husband James Glenn or the said Minor Or, And therefore prays to be excused from making an Exhibit of the same, said deed not being on record as your Orator is informed & believes your Orator also prays to be excused from making an Exhibit of said certificate of title or patent from the President of the United States for said ~~land~~^{land} the same being in possession of said Minor Or. As your Orator believes no record having been made of the same, On tender consideration whereof and in as much as your Orator is entirely remediless by the strict rules of law and has only an ^{a complete} adequate remedy in a court of Chancery your Orator prays your Honor to grant unto your Orator the Peoples most gracious writ of Subpoena issuing out of and under seal of this Honorable Court directed to the said Minor Or ^{Franklin Dickey} James Glenn and James Glenn dependants to this your orators Bill of Complaint. The answer of said Minor Or Franklin James Glenn and Dickey Glenn under oath being hereby specially waived And that upon a final hearing of this your Orators Bill of complaint And the

matters herein set forth your Honor do order
 a judge and decree that the said Deed so far
 as the North half of said quarter section
 is made made by the said Minor W to
 his daughter Dacey be set aside annulled
 vacated and made void and that your
 Honor do further order a judge and decree
 that the said Minor, W. convey by deed
 in fee the said North half of said quar-
 ter section to your Order and such other
 and further relief as Equity and good
 conscience may require in the prem-
 ises

Honor

Smith & Sumner
 Comptrol Solrs

Copy of Answer of Minor W Franklin
 State of Illinois. County of Washington
 Robert M Entyre

as
 Minor W Franklin
 James Glenn and
 Dacey Glenn
 vs
 3d Pil Term Washington
 Circuit Court 1859
 Bill in Chancery
 to compel conveyance
 and set aside Deed

The separate answer of
 Minor W Franklin to Comptrol bill of Complaint
 Minor W Franklin one of the defendants
 in the above entitled cause in his own prop-
 er person comes and for answer to said Com-
 plaint bill ~~present~~ filed in this

j. belonged to ~~me~~ was the money of this Respondent; that
 Complainant & Respondent returned home, awaiting
 to hear from Roberts; received no word & this re-
 spondent urged Complt to go & ascertain the cause
 of delay, but Complt utterly refused to go & swore
 he would ^{have} no more to do with it, when this resp-
 ondent was compelled to go to Kaskaskia Illinois
 to complete the purchase or lose his money that
 this Respondent made three trips to Kaskaskia
 Illinois to complete ~~the purchase~~ ^{said entry} and that the
 same was made in his own name with his own
 a. money as he had a right to do - that this Respondent
 was at great expense to procure title to said land, in
 going to Kaskaskia Illinois obtaining patent and
 paying taxes on said land since its entry to wit the
 sum of one hundred dollars not one dollar of which
 has ever been paid by Complainant or even offered to be
 b. paid; that when he purchased this land this respon-
 dent filed an affidavit that he entered it for his
 own use for settlement and actual cultivation
 under the provisions of the Act of 4th August
 c. 1854. Respondent admits he deeded said land
 to Dacey Franklin now Dacey Gernie his daugh-
 ter denies that it was done without any consideration
 and avers that said deed was executed upon ~~and~~
 d. and sufficient consideration in law - Respondent
 denies that he ever refused to deed said land to
 Complainant or was ever called on to deed
 it denies that he ever heard of Complainant claim

e. ing Compt was entitled to a deed or furnished any money to purchase said land with until the commencement of this suit; This Respondent charges and avers that complainant surrendered all claim to said North West 3/4 of section 23 of S. R. B. W long before Respondent entered it and gave up the receipt which Roberts had given Complainant for this Respondents money This Respondent denies that complainant ever made any valuable improvements on said North West 3/4 either before this Respondent purchased it from the United States or afterwards

f. g. Having fully answered all the allegations in complainants Bill that this Respondent is advised are material to be answered by him he prays to be discharged from answering further and that complainants bill be dismissed and that this Respondent have his costs and charges in this behalf expended &c

Attest: W. Franklin By his Solicitor James Falls

h. Copy of Dicy Glenn & James Glenns answer State of Illinois } Of the April Term A.D. 1859 of the Washington County } Washington Circuit Court
 Robert W. Entyre } Bill in chancery to compel conveyance and set a
 Attest: }
 W. Franklin Etal } sue deca &c

The Separate answer of Dacey Glenn and James Glenn ¹²⁴ defendants in the above cause. The said defendants last above mentioned for answer to said Complainants bill on file in this cause say - that they deny that Compl^t was occupying the $\frac{1}{2}$ of S. W. $\frac{1}{4}$ Sec. 28 T. 3. S. R. S. W. At the time specified in Compl^{t's} ^{bill} or owned or ever made any improvements thereon. Any that Compl^t D. Minor & Franklin went to Kaskaskia Illinois together for the purpose of entering said S. W. $\frac{1}{4}$ of Section 28 as alleged in Compl^{t's} bill in name of Compl^t or otherwise to the knowledge of these Respondents deny that Complainant ever furnished any money to make said entry within their knowledge any that Minor & Franklin ever agreed to convey said $\frac{1}{2}$ of S. W. $\frac{1}{4}$ to Complainant or entered with any of Compl^{t's} money to the knowledge of these Respondents they admit that Minor & Franklin conveyed said South west quarter to Dacey Glenn one of these Respondents but deny that it was done to defraud Complainant in any way or that said conveyance was made for a good consideration And without any intention on the part of this Respondent or said Dacey Glenn daughter of said Respondent to defraud said Complainant Admits she afterwards married James Glenn, Specially hereby denying all knowledge by either of these Respondents at anytime of the payment of any money by Complainant to purchase said land or any interest therein in any manner on the part of Complainant Denies that said deed remains in the possession of said Minor & Franklin And having answered all the allegations of Compl^{t's} bill

that they are advised are material for them to answer they pray to be dismissed with their costs and charges &c. Dacey Glenn = James Glenn
 their Solicitor James A. Mattes

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Copy of Replication

The Replication of Robert M^r Entyre Complainant, to the Seperate answers of Minor W. Franklin and James Glenn and Dickey Glenn Defendants of Saia Bill of the Complainant

This Replication Saving and reserving to himself all manner of advantages or exceptions which may be taken to the manifold errors & insufficiencies of the Seperate Answer of the Saia Minor W. And also of the seprate answer of the Saia James & Dickey Glenn for replication thereunto Saith that all the material Allegations in his Saia Bill of Complaint are true Certain and sufficient in Law And that the Answers of the Above named Defendants are each very uncertain evasive and insufficient in Law to be replied to by this Repliant without that, that any other matter or thing in the Saia Several Seperate Answers contained material or effectual in Law to be replied unto Confessed admitted traversed or denied is true all of which matters and things this replication is ready to aver maintain and prove as this Honorable Court shall direct
Humbly prays as in his Saia Bill he has already prayed
Smith & Sumner
Sol for complt

j. Robert McEntyre ^{Bill to} Bill to compell conveyance
 as comes the complainant by
 Minor W. Franklin Smith & Sumner his Sols
 Dacey Glenn and the Defendants by Watto
 James Glenn their Solicitor. This cause
 was continued from last term and set down
 for hearing as of this term on Bill answer rep-
 lication & evidence and the ^{court} after examining
 the same finds the issues for the complainant and
 it is ordered adjudged and decreed by the Court that
 said defendant Minor W. Franklin execute to said
 complainant a good and sufficient deed convey-
 ing to him in fee simple The North half of the South
 West quarter of Section 28 of Township 3 South of
 Range 3 West of 3rd principal meridian accord-
 ing to the prayer of said bill Appeal prayed
 Appeal granted on said defendants entering into bond
 in the sum of one hundred dollars (Conditioned as the
 law directs with Amos Watto & John Franklin
 or Mark H. parish security in 30 days from the
 date hereof)

k. Decree interlocutory copy of
 Robert McEntyre Bill to compell conveyance
 as comes the complainant by
 Minor W. Franklin and Smith & Sumner his Sols and
 James Glenn & Dacey Glenn Defendants by Watto their Solr and
 move the Court to dismiss bill motion
 overruled and defendant ruled to answer by 15th of July next
 replication to be filed & evidence to be taken & cause set
 down for hearing at the next term & Cause continued

Copy of Depositions

m. State of Illinois }
Washington County } In chancery in
Washington Circuit
Robert McEntyre } Court Aug Term 859

vs
Minor Franklin Et al } The undersigned to whom
was referred said cause to
take and depose evidence in said cause at
the last Term of said Court respectfully sub
mits the following report

n On the 26th day of August 1859 appeared
fore the undersigned complainant in person
and by his Solicitors Smith & Sumner
I also defendants Franklin & Leard in prop
er person & by their Solicitor Amos Watts.
And E. O. Jones being called and sworn
for complt states about the time of entering
bit lands, he and said M. Franklin fell in
company and way to Kaskasnia & back.

The said he was going down to some lands
he and complt McEntyre were going to en
ter together said it was bit lands and no one
but he and complt could enter it said complt
lives on a half of it The said complt had left
at Kaskasnia 1/2 the money to enter it & he Frank
lin other 1/2 & advised Franklin to make
a deed to McEntyre and take a note for 1/2 get
back again as Franklin said he was in debt

p

The Franklin said each one furnished equal
 proportion of money Except Franklin
 had to go and do the Swearing. and that
 McEntyre lived on the land and no one else
 could enter it The Franklin said McEntyre
 had before that left an affidavit with Roberts
 to enter said land. At Halls Shop Franklin
 last fall said to me that he had been willing
 to deed 40 acres of said land to said McEntyre
 but then he was not after what has hap-
 pened in the family. The land in controversy
 is in T. S. R. S. W. Jones sold land joining
 it or I think in Sec 22 McEntyre lives
 and still lives north of Franklin the land is
 timber, thinks where McEntyre lives there
 is 15 or 20 acres cleared and in cultivation
 and thinks Franklin has about the same

q

On cross Examination

r

Cant say how long
 ago this was that I fell in company with
 Franklin going to Haskardia We come together
 or at evening & at big creek Franklin got on
 my wagon & rode to Major Hairs. Witness
 states that he was in about same condition
 then, and remembers things as he is now
 had been drinking, soon had been drinking
 some and when he had drank more than
 then or now it aids his recollection knew
 nothing about this suit until last Spring

Do Four

I has not thought of these matters from time
 conversation occurred until last Spring, never
 told McEntyre if he would have me Subpoe
 need he would gain the land, but tried to
 keep from being a witness never told Africa
 Rogers as I recollect that I had told
 McEntyre that if was subpoenaed he would
 gain the land dont recollect of saying a
 word about it to said Rogers. The conver
 sation at Halls Shop was after this suit
 was commenced, I asked Minor if he would
 be pleased to settle this matter and Minor
 said he would be willing to let Mc. have
 one 40 but he should not have one half
 he said also at that conversation that he Mc
 had not paid one cent towards the land
 that he had put McEntyre there and would
 not let him have one forty only that he
 was afraid he would take his Daughter clear
 away, that McEntyre had not been to any
 expense and he Franklin had put him
 there did not beg McEntyre to deed 40 acres
 to McEntyre and told him only that I
 wished they would settle it States now
 that the conversation at Halls Shop was
 after this suit was commenced

s.

t.

Robert Booney on part of Compt being
 duly Sworn States That he went with said
 Franklin to Karpaskia to see about entering

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Bit lands Franklin come to me and said
the lands he wanted to enter was not entered
and he would have to go back after McEnzyre
I told him before he could go ^{home} there & back
the land would be entered we went to Mr
Tensenow & Franklin give Tensenow so much to
Enter the land in his F's name I know
Franklin had a paper with McEnzyres
u. name in or to it I advised him to give a
deed to Compt for one half for if he went
home after compt to enter the land
it would be gone I think Franklin said
it was the calculation for compt to have
the land to best of my recollection
Franklin said he would deed one half of
u. to compt - Cant say whether compt was
v. living on the land then or not. Know
that Franklin helped compt build a house
on the land in controversy Cant say whether
the house was built before or after the
x. entry think it was about same time Mc
w. Enzyre still resides on the land. Know
of Franklin deeding the land to his Daugh
ter I was a witness Know of no money
passing of any was passed it was before
x. I was called as a witness Know that at
that time Minor had some law suit in
town and with Vernon I some about some
fines & he said Franklin ^{said this} was the cause of his

According to his Daughter Dacey as aforesaid who was then unmarried perhaps 20 or more years of age I think McEntyre was living there on N. 1/4 of said land at the time said deed was made to said Dacey said Dacey afterwards married Jeff Glenn who lives below me

Cross Examined

24. States, Dont know whose money entered the land will not swear how the receipt read Cant say whether it was to McEntyre or or Franklin Cant say whether Dacey was married the same Spring or Spring after the deed was made Know the land entered is the land where Franklin lives & has a field

7. Elbert Parkin produced on party Complt being duly Sworn States Mr Franklin and me ^{were talking} ~~went together~~ about the land in controversy 2 or 3 times, once a year or so ago as well as I recollect he said they had entered under hit Law 1/2 was complete the other 1/2 his; dont know as he said which half was complete. Complt. has been living on land some time there is a small improvement on land saw Complt. at work improving said land thinks complete lives on N. 1/4 & Franklin on South half never heard Franklin say anything about making

I deca to complt think of ~~me~~ on
Said land about two years ago. Compl
+ married Franklin's Daughter ^{2 girls} about from
complt. Cross Examined

Q. Franklin did not say whose money enter
ed the land did not say how they entered
as well as recollect said 1/2 of said land was
his one half complt saw complt working
on said land a good deal may have seen
Franklin working on it but dont recollect
it if said... Reexamined in chief
it was reported in neighborhood
McEntyre's place that to one half Mc
Entyre and McEntyre claimed 1/2

Cross Examined

Can't see how long it was reported
a. McEntyre got information from Frank
lin that it was Franklin & McEntyre
land in partnership

b. Hugh Adams on part of complainant
being duly sworn states: Know Defendant
Franklin have heard him talk sometimes
about land in dispute first time after
land was entered he said he was not going
to move on the land but McEntyre was
that McEntyre had applica to enter ^{the} land and
had left money at land Office and an officia
rit to enter the land and that he Franklin
went down to see about the duplicate

Q R

And McEntyre's Affidavit could not be found then Franklin had entered it in his own name he was going to make McEntyre a deed to one half of St. Antoine allot if he said anything about whose money was left or whether he left the money or whose money entered the land only said he was going to make a deed to Compt for $\frac{1}{2}$ of it. In another conversation I was asking him to make a deed and he said he would not because if he did Compt would see it and take his daughter and move away the land is in Sec 23. 73 S. R. 3. W. N. W. $\frac{1}{4}$ I think any how there is where Compt now lives thinks Compt has lived on this land three years or over have seen Compt grubbing making fences cant say how much improvement is mad on the land

Cross Ex

States 1st conversation was after entry thinks Franklin did not move on said land next Spring after entry. Dont think he said anything about having furnished all the purchase money to enter said land the reason he gave was the one about States for not deeding Compt $\frac{1}{2}$ of said land this conversation was about the time this suit was commenced and I was asking him not to go to law urged both not to go to law he said he was willing to let him Compt live

live on the land as long as he pleased but would not deed it to him for the reason above stated

d. Chas Hutchings. on part of Comple being duly sworn states,

Had a conversation 2 years ago last Spring about this land with Franklin in my field I asked him if he was going to move on Saia land by a certain day he said no. But that Comple was on it at that time to best of my recollection he went on to tell me about entry of Saia land; that Comple went to Has Kaskia to enter the land left the money and affidavit with Roberts to enter the land and he Saia he went to see about the land and found it not entered as he expected & told me if he left there was a possibility that it would be entered & he thought best after consulting Gooney & Carrick to draw the money & papers and enter the land in his own name & did so entered it in copartnership and Saia he was to make McEntyre a deed to his part & that McEntyre and that McEntyre was then on the land to the best of my recollection & so would hold it without his Franklins being on it by a certain day I was at McEntyre's on Saia land last fall a year ago I think there then was 6 or 7 acres in cultivation never have heard leaving or moving

moving from Sara Land Franklin lives south of Complots about a $\frac{1}{4}$ of a mile dont know in what Section or whether it is in same Section with McEntyres or not never saw lines run it is South East of Sec 16

Cross Ex

e. States improvement I saw last fall a year ago was near Complots house South east of house at time of conversation with Franklin in my field he lives up by Maxwell not on this land I am not positive but I think he said each one he and Complot furnished equal quota of money to enter Sara Land Franklin and McEntyre commenced breaking Prairie forme in May and finished about or after 2nd June two years ago last Spring.

f. W. Maxwell on part of Complot duly Sworn States know Complot and depts in this suit heard Sara Per Franklin speak of land in controversy in fall of 1856 I think he said he was going to move to Sara Land as near as I recollect he said McEntyre had a permit to enter this land I had left the money with Roberts to enter this land & he Franklin went to see about it if the Office was open at that trip entered it in his own name from the conversation I understood they had entered it in partnership dont think there was anything said about deeding to

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comple from this conversation my un-
derstanding was it was comple's land but
in Franklin's name

Cross Examined

- g. Don't pretend to recollect all that was
said for we talked a good deal about
- h. Clark Gordon on part of Comple being
sworn states, I made the deed from
Deft Franklin to his daughter Diciey I did not
see any money paid or consideration paid I think
it was in 1855 the deed was made. I think
Diciey was present can't say certain it
was made at Franklin's house he told
me about the time the deed was made
there was some indictments against
him and he believed he would be fined
& it was unjust and he wanted to put
the land out of his hands on that account
at time deed was made think lived with her
father as one of family Don't know whether McEnye
lived on said land at time of deed making or not
lived over that way Comple here called
upon depts & read from them a deed from
Franklin to Diciey
filed herewith as an exhibit marked (A) &
proved by said Gordon that it is the deed
made by him Cross Examined
- i. In conversation spoken of Franklin
spoke about who paid for this land

when entered [Compt here objected to witness stating what Franklin said about who paid for this land) The Franklin said he entered the land with his own money borrowed and furnished the money to enter it has paid the fee himself and been at all expense this was in same conversation spoken of in chief

f. Volomon Maxwell on part of Compt July Sworn states I was at Parkersburg at time Franklin entered this land do not know where he got the money did not inquire he said nothing to me about McEntyre owning part of the money I was present as a witness to deed to day saw no money paid, the deed was made at depts Franklin's house do not know where Compt lives at that time Tracy Franklin was present I suppose when the deed was made no money paid do not know anything about a Receipt from Roberts gave me none to my knowledge

Cross Examined

I have known minor Franklin over 25 years lives for 8 years pretty near at time he Franklin Broke Prairie for Eli Hutchins he Franklin lives east of Adams in Sec 23. T. 3, S. 13, W.

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moved there between 25th of April & 1st of
May I made out the papers for Frank-
lin to enter this land and brought
home the Duplicate to him
Examined

It was two years ago last May
Franklin broke Prairie for Hatching
did not see him breaking did not
see him breaking at all heard he
was breaking for him

k.

Here Testimo-

ny for Compl. Closed

Joseph Gracefield produced on Jan
of Sept. duly sworn states

l.

I was present when Minor, Frank-
lin & Hugh Adams talked over about this
land & about this suit and about suit about
the land & Hugh told Minor he was always
fussing with his neighbors Franklin
disputed it and Adams said he was or
he would deed this land to McEntyre &
Franklin said if should deed it to McEntyre
the first time he got mad would see
it or fall it away and take Sally Ann
his wife & go off & Hugh said he ought to
deed him 40 acres (This testimony was here
objected to) I think minor said in
this conversation that the land had no

m.

er cost McEntyre anything and he did not think it his duty to give him any obj. to by complainants at time given
Cross Examined

States this this was conversation between Hugh Adams and Minor N Franklin I hear all that passed but cannot mention all that was said it was last winter I have seen what they say is the land It has been some over two years since I was at McEntyres House when they said he lived on this land he was not home McEntyre jumped on me last winter have not spoken but once since I then in quarrel this fall my out was before the talk with Adams & Franklin I think Franklin & me have talked together about this conversation between Adams and Franklin spoke about it yesterday said he was going to have me as a witness

n. John Franklin on post of defendants duly sworn, states know the parties are Father of Minor N Franklin know the land in dispute it is N.W. 1/4 of Sec 28, T3, R, 3, N, I gave dept minor ten Dollars to enter his lands at the time of his land Entries I have his note

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for it now I know said Minor went
to Kaskaskia and took McEntyre with
him in two or three days or perhaps
next day after I let him have this
money and then afterwards he said Mi-
nor went to Kaskaskia again about
entering lands not having entered the
first time don't know whether he
went a third time or not

Cross Examined

I was angry because he took McEntyre
as it took double expence I live at that
time where I have lived for 25 years
I don't know whose money he entered
the land with I say he had no money
to enter with so I let him have the
money as above stated At the time
this land was entered McEntyre lived on
this land and it was one year and
a half or maybe 2 years before Minor
moved on this land I do not know
minor went to Kaskaskia Can prove
by what the Record says I was born
in 1771 I have not abused McEn-
tyre about this land or suit

Thomas Franklin on part of depts
duly sworn states know the parties have
seen the land it is in N. W. cor of Sec
23 of T. 3, R. 3, W. from what people
say

Dont know who entered it know some
 thing about the money that was to enter
 it - I know I let minor \$10 which he
 said was to enter land (Testimony object
 ed to by compl) I think this was in
 fall of 1854 the year bit lands come
 in force. I know said minor went
 to Kaskaskia for I went with him on
 Saturday morning I let him have the
 money and we started to K Monday morn
 ing following I went with him as
 far as Shaw River He said he went
 to enter this land (objected to by compl)
 or. minor worked a good deal putting up
 the house where McEntyre lives saw
 him working & minor & McEntyre
 hauled a couple of old houses there
 and put one up McEntyre has in
 cultivation not exceeding 4 or 5 acres
 dont know who broke it up it is in
 two parcels Cross I
 did not go myself to Kaskaskia Mc
 Entyre McE never paid me back
 ten dollars McEntyre went along with
 us to see and be seen I reckon the
 same as I did, I dont know what said
 minor went for only what he said
 am brother of said minor at time
 we went to Kaskaskia no one lives on
 this land McEntyre lives in house with sa minor

1

Gile's Franklin on part of Defendants duly sworn ³⁰
 Know the land by hearsay describing
 & the surveys it is in N. W. 1/4 of sec. 29. T.
 3, S. 1, W. 3 I have known that land
 20 years or more

I know when Compt. minor &
 Thomas Franklin started to Kasaskia
 together it was about the time the bet
 act first took place at that time
 no one lived on this land It has
 been six months since I was near
 the improvements on said land the
 first improvements made minor helped
 to cut down hem and have the logs &
 raise the house & hem it down & cov
 er I helped myself to raise it this
 is the house where McEntyre lives

This was all the testimony of
 fees on either side and it is hereby
 respectfully submitted

J. C. Gosmer (Seal)
 Master in chancery
 Washington County Ills

Copy of Appeal Bond

Know all men by these presents that we
 Minor & Franklin, Dacey Glenn, James Glenn
 and John Franklin of the county of Wash
 ington & State of Illinois are held and

t

firmly bound unto Robert McEntyre
in the penal sum of one hundred Dollars
current money of the United States for the
payment of which we and each of us
Bona ourselves, our heirs Executors and
administrators and assigns jointly severally
and firmly by these presents Witness
our hands and seals this 12th day of Sep-
tember in the year of our Lord 1859

The condition of this Bona is such
that whereas the Circuit Court of Wash-
ington County aforesaid at the August
term thereof in the year A. D. 1859 on
the day of September Int entered a
decree in the case of Robert McEntyre
Complainant vs Minor vs Franklin Dicy
Glenn and James Glenn her husbanda Bill
in Chancery to compel conveyance and
set aside a certain Decree being entered
and requiring the said Minor vs Franklin to
make a deed conveying to said McEntyre the
north half of north West qr of section no
23 in Township no Three South of Range
no Three West of 3rd Principal Meridian
and setting aside the conveyance of said land
made by Minor vs Franklin & Wife to
Dicy & Franklin now Dicy Glenn on
the 7th day of April A. D. 1858 and requiring
said defendants to pay the cost of said Cause

From which decree the said defendants ^{and have taken} prayed, an appeal to the Supreme ^{court} of the state of Illinois. Now therefore if the said defendants shall well and truly abide by and perform whatever may be required of them by the decree that shall be entered therein By said Supreme court pay whatever judgement costs interest and damage may be awarded in said cause in case the judgement in said cause shall be affirmed and shall prosecute their ^{said} appeal without delay then this Bond to be void otherwise to remain in full force and effect in Law

Attest Benjamin Franklin }
 } Minor N. Franklin
 } Dicy Glenn
 } James Glenn
 } John Franklin
 } ^{his} _{mark}

State of Illinois }
 }
 } Washington County } I H. H. Talbot clerk of the Circuit
 } } court in and for the County of Washington
 } } aforesaid, do hereby certify the foregoing to
 } be a ^{free} true and correct Copy of the Record in my office, in the
 } case of Robert McCutcheon vs Miner N. Franklin, Dicy Glenn and
 } James Glenn her husband, including Bill, summons, Sheriffs re-
 } turn, answers of defendants, replication, final decree, entered
 } in said cause by said court on the day of September 1859, interlocu-
 } tory decree entered by said court at the April term 1859, depositions
 } and ^{all} evidence offered by the parties and heard by the court on the

trial of the above entitled cause, also the appeal bond which was filed within thirty days from entering the decree in this cause and that the foregoing is a true, full, perfect and complete copy of all the papers, records and evidence in said cause as appears by the originals on file in my office given under my hand and the seal of said court at my office in Nashville this 9th day of November A D 1859.

Hurry. H. Talbot Clerk

State of Illinois, Supreme Court. First Grand Division.
November Term A D 1859. Appeal

And the said Appellants come and say there is manifest error appearing in the foregoing Record and proceedings in the Washington Circuit Court and for assigning the same said Appellants set and show the following errors therein to this Court

- 1st The Court below erred in decreeing to Mr Eutypre any relief upon the case presented by the bill
- 2^d The bill, if all its allegations be true, does not entitle Mr Eutypre to the relief sought thereby & granted by the Court
- 3rd There is no proof justifying the decree in this case in favor of Mr Eutypre
- 4th The proofs in this case do not sustain the allegations in the bill
- 5th The Bill and proofs show the entry of land by Appellant Franklin, to have been in his own name for

his own use, with his own money and shows nothing
to raise a trust or create a ground of relief in favor
of McEntyre

6th The Court erred in not dismissing Complainant's
bill

7th The Court erred in rendering a decree for
Complainant below and not rendering it for
defendants below

By reason of all which said errors said
Appellants pray that the said decree of the Circuit
Court be annulled, set aside, reversed and wholly
made void and the bill of Complainant in this cause
be dismissed and as in duty bound will ever pray
&c

Haynie, Parrish & Watts

Attys for Appellants

Joinder in Error

Smith, Sumner & Underwood
Solrs for Appellee

~~Robt. M. Intyre~~
~~7P~~ 43

~~Miner & Franklin et al~~

~~Copy of Deed &~~

Miner & Franklin,
Dicy Glenn and
James Glenn Appellants
v

Robert McCarty & Appellee

Filed Nov. 14. 1857-

A. Johnston Clerk

Paid by Watts - \$500

Minor N Franklin et al }
vs }
Robert McIntyre } Appeal from Washington Co.

Depts. Brief

Act of Congress. confirming such entries.

11 U.S. Statutes at Large 186

Original act 10 27 574

Although act is illegal. Contract sometimes enforced

12. Howard U.S. R. 80

1 Eng. L & E. R. ~~284~~ 339

2 McLean R. 266. 278

A subsequent contract about goods illegally imported is good

4 Wash. C.C. R. 297

11 Wheaton R. 258

Compt. had a right under our Statute to sell his improvement

Although the entry was illegal when made. yet it was afterwards ratified by Congress. and a promise to convey a part of the lands when purchaser had possession & made improvements will be enforced

11. Texas R. 2. 93d. 390. 18. Id. 98
4 Barrow R. 4. 2069. 6 Barb R. 398. 18 Eng L & E. R. 358
Such Statutes are strictly construed 18 Texas R 19-16

Where pliff and Deft were partners in procuring
pensions and Deft agreed with pensioner for
half his pension to get the same contrary to
act of Congress. Held Deft was bound
to pay pliff his part of the contract
2 Sneed's (Term) R 454 a

Wm H Underwood &
Henry J Sumner

Deft's attys

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

15
 26
 10.80

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

Deposition of Robert Looney
 Deposition of Elbert Larkin
 Deposition of Hugh Adams

125
 12
 246
 103
 1476

Miner v. Franklin & Co

vs

Robert M. Eutyses

Abstract of Record

Agreed
Nov. 19

Filed Nov. 15. 1859.
N. Johnston Clk

Minor N. Franklin et al
vs
Robert McEntyre
Appeal from Washington, Co

Defendants Brief

Act of Congress confirming such entries
11 U.S. Statutes at Large 180
Original act 10th 574

Although act is illegal contract sometimes
enforced 12. Howard U.S. R 80
1 Eng. L & C R. ~~357~~ 339
2 McLeans R. 266-278

A subsequent contract about goods illegally imported
is good 4 Wash. C.C. R. 297
11 Wheatons R. 258

Compt had a right under our statute to sell his improvements

Although the entry was illegal when made yet
it was afterwards ratified by congress and
a promise to convey a part of the lands when
purchaser had possession & made improvements will
be enforced 11 Texas R. 2. 9th 390. 18th 98
4 Barrows R. 66.-2064. 6 Barb. R 398. 18. Eng L & C. R 358
Such Statutes are strictly construed 18. Texas R. 16-19

Where Pltff and Deft were partners in procuring pensions
and Deft agreed with pensioners for half his pensions
to procure the same. Contrary to act of Congress

Held Deft was bound to pay Pltff his
part of the Contract - 2 Sueds (Sua) R 454

Wm H Underwood &

H. Y. Sumner

attys for Deft

413-21

Amos A. Tompkins Esq

Att

Robt M. & Eugene

Deft & Pltff

Wm H Underwood &

H. Y. Sumner

attys for Deft

Franklin
v
Franklin } Appeal from Washington

This was a bill in chancery filed by the deft in error to enforce the specific performance of a bond agreement to convey lands. By the terms of the agreement as set out in the bill, the parties agreed to each furnish a certain amount of money

to enter certain lands under the "lot" act. The deft below, was to enter the lands and then convey a certain portion to the complainant. The lands were entered at the Land office at Parkersburg, by one of the defts, pursuant to the agreement with the money so furnished, after which he refused to convey the portion the Compt was to have by the terms of the contract. The complainant (deft here) filed his bill to compel a conveyance.

The Court decreed a conveyance according to the prayer of the bill, and an appeal was taken.

We insist that the Court should not have decreed a conveyance under the allegations of the bill and the proofs because

1. The agreement between the parties was in contravention of the principles

the policy, and the provisions of the Act of Congress approved Aug 4. 1854 (entitled "An act to Graduate and Reduce the Price of the Public Lands to actual Settlers and Cultivators" W & Stat at Large Vol 10 page 574) - and absolutely void,

2. The contract is void at common law; and

3. The evidence is loose and unsatisfactory to enable the court to decree affirmative relief.

By reference to the provisions of the above recited act of Congress it will be seen that the price of the public lands were reduced from \$1.25 to a "lot" an acre to actual settlers and cultivators; and no person was permitted to avail himself of the benefits of the Act, without making affidavit that he entered the lands for "his own use and for the purpose of actual settlement and cultivation or for the use of an adjoining farm or plantation owned or occupied by him." And a false oath on the premises subjected the applicant to the pains and penalties of perjury. See §. 3. of said Act.

We maintain that any contract or agreement to violate the provisions

of that statute, or which runs intended
to enact its provisions, or contravene its
policy, cannot be enforced either in
a court of law or equity. In Bouvier's
on contracts top page ~~27~~²⁶ it is laid
down that "All contracts or agreements
which have for their object anything
which is repugnant to justice or against
the general policy of the common law,
or contrary to the provisions of any
statute are void; for ex terti contractus
actio non oritur is a rule both in
law and equity; and whenever a
contract is entered into with a view
to contravene any of these general
principles there is no form of words
however artfully introduced or omitted
which can prevent courts of law and
equity from investigating the truth
of the transaction" Again on page
27, the same authority lays down this
rule. Every contract which has for its
object anything forbidden by the law
of God; as to commit murder theft
perjury or the like is void by the common
law;"

"A contract which contravenes
the policy of an act of Congress and
tends to defraud the United States

is said Gullick & Bailey v Halstead
3 (N.D) 87.

Again in the case of Hannay v Eve
3 branch 247. the supreme Court of the
United States held that an agreement
to evade a resolution of Congress was
a fraud upon the resolution and the
courts could furnish no aid in giving
efficacy to such a contract.

If a statute prohibits the smuggling
of goods and a contract is made
between two persons for carrying it on
one of whom afterwards refuses or
jays on and takes all the profits to
himself he may keep them all for
the law will never enforce the
contract against him. Congress on
contracts 38.

These are plain elementary principles
of law which have been universally recogniz-
ed and acted upon. The only difficulty
has been in their application. Here we
have a cause of action founded upon
an agreement to violate the plain provision
of a statute. The act of Congress was design-
ed to benefit the poor - the landless -
by buying certain lands within their

each, and limiting the quantity to be purchased to three hundred and twenty acres. The purchaser was required to swear that he "enters the same for his own use" or for the use of an adjoining farm or plantation owned or occupied by him."

Now if the purchaser at the time ^{he} entered it for the use of another or any portion of it for the use of another or for the use of another farm, it was a fraud upon the law, and any contract or agreement between parties in advance that any portion of the lands should be entered by one of the contracting parties for the use of the other, is prohibited under the pains and penalties of perjury; and where a statute inflicts a penalty for the doing of a particular act, that act is by implication prohibited and illegal. Compton on Contracts

It cannot be contended that the plaintiff in error could have entered the lands for the defendant in error. The law prohibited him from so doing yet here is a contract by which that very thing is to be done - not in his name it is true but for the use of the defendant in error.

If the Court should give effect to this contract the object and purposes of the law would be clearly defeated

The law says you can only enter land at a "let" an acre for your own use but the Court say you may enter for the use of another: for that is the effect of the decree in this case

Again if the plaintiff in error did not enter the lands for his "own use," but for the use of the defendant in error then his facts were false. And no agreement between parties to commit murder theft or perjury can be enforced at Common law; all such bargains are void

It is laid down - indeed settled as the true rule of law that the test whether a demand connected with an illegal transaction is capable of being enforced at law, is, whether the plaintiff requires any aid from the illegal transaction to establish his case. *Simpson v Bluff* 7. Taunt. 246.

Does the complainant require any aid from an illegal transaction. If we have not misapprehended the true scope of the contract in this case he

must rely upon the agreement made between them to furnish money with which the lands should be entered, and a promise to convey a portion of the lands so entered. The court will not deem the execution of a contract null if it be founded upon a sufficient consideration. A promise without consideration would be of no avail. What is the consideration relied upon in this case? What induced the bargain? Was it not the money which the Complainant furnished the debt? What did he furnish the money for? Was it not to obtain land at a "bit" an acre, through the debt, from the waste states? For aught that appears the Complainant may have acquired three hundred and twenty acres under the graduation Act. At all events the object and purpose of furnishing the money was to obtain title to certain lands at a "bit" an acre, and the debt promised in consideration of their advance of money to purchase lands in his own name for his own use but in reality for the use of the Complainant. The decree in this case is based upon the consideration of money furnished the debt upon his promise

to meet it in "lot" lands and convey
to him the lands so purchased - which
we hold was an evasion of the law
- a fraud upon the law, and in contra-
vention of its policy. ~~The parties~~

This is not a case of resulting trust -
no resulting trust can arise out of a
contract, to do the particular thing. A
resulting trust is an implication of
law, but if it runs the complainant
is in no better condition. No resulting
trust can arise in violation of law
- no implication of law, will be made
in contravention of a statute, its policy
or ^{which would} ~~to~~ evade its provisions

The contract then upon which the
complainant relies - upon which he
must rely is contrary to the provisions
of the act of Congress and therefore a
voidum pactum that will not
support an action. It cannot be dou-
bted that the contract was voidum
pactum if the consideration was
illegal for an illegal consideration
is no more. Gullicks v Bailey 5 Halstead
98.

The complainant, if entitled to recover
at all must trace his rights back to the

Contract; "When a contract grows immediately out of and is connected with an illegal or immoral act a court of justice will not lend its aid to enforce it, also if a contract be in part only connected with the illegal consideration and grows immediately out of it, though it be in fact a new contract it is equally tainted by it" This is the language of Chief Justice Marshall in Armstrong v Soler 11 Wheaton 258. See also Craig et al v State of Missouri 74 Peters 410 Spryfuld Bank v Minick et al 14 Mass 322 Hunt v Ruckersbocker 5 Johns 327. cited by the Chief Justice as authorities of the highest respectability.

We also cite the cases of McClyea v Hayter, 2 Porter (Ala) 148, and the Hunt v Hunt, of Robinson 1. Texas 748. and authorities there cited.

The great principle which runs through all the books is this "You shall not stipulate for iniquity" "All written upon our law agree in this no polluted hand shall touch the pure fountain of justice" So said Lord Chief Justice, Mémob

A contract declared to be illegal is not made good by the repeal of the statute Coryn on Contracts 34, citing

1 H Bl 65.

Judge Story after treating of illegal contracts on account of their being contrary to law precedes. - "And it will make no difference if the laws have been since repealed or that the war has since ceased for the contract being clearly in fraud of the law existing at the time the execution of it ought not to be enforced by the courts of the country whose laws it was intended to evade. Story's Compl 205. 1. Texas 748.

The remarks of Mr. J. Richardson in the case of Boley v West 4 New Hampshire are so appropriate we take the liberty of copying them. Said the Chief Justice "The principle that no court shall aid men who found their courses of action upon illegal acts is not only a well settled but a most salutary principle. It is fit and proper that those who make claims which rest upon violations of the law should have no rights to be assisted by a court of justice. It is fit and proper that courts should refuse their aid to those who seek to obtain the fruits of an unlawful bargain

It is fit and proper when parties
come into court to litigate claims found-
ed upon illegal contracts in relation
to which they stand in pari delicto
that they should be viewed and treated
in those transactions as cut-throats who
have forfeited the protection of the
law; and it is fit and proper that
they should be left to adjust their
mutual concerns as they can and
enjoy the fruits of their transactions
of the case as they may."

Haynes & Parvitz,
For Appellants.

Franklin & al

vs

~~Franklin~~
Mentor

Emor to Washington

Argument

Robert McENTYRE,
vs.
MINER N. FRANKLIN et. al.

} ABSTRACT OF RECORD.

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

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

No 43 - 21.

Nov. Term 1859.

Franklin et al

vs

McIntyre

App. for Writtington

Affirmed

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