

8434


No. _____

Supreme Court of Illinois

Hiram Blankenship et al

vs.

John M. Stout

71641  7

ABSTRACT.

HIRAM BLANKENSHIP, et. al. } PLAINTIFFS IN ERROR.
vs. } ERROR TO MARION COUNTY.
JOHN M. STOUT. } DEFENDANT IN ERROR.

1 Bill filed for relief on 19th of February, 1859.

2 Allegations of Bill.

That Complainant was on the 4th day of Oct. 1854, a minor of the age of twenty years, was on intimate terms with Spencer Blankenship deceased, the ancestor of the Defendants.

3 That on said 4th of Oct. 1854, Complainant was the owner in fee simple of the south-east quarter of section (20) town one (1) north of range four (4) east in Marion county, Ills. At said date complainant was a citizen of Fayette county, Ills., and ignorant of the location and value of his said Land. That said Spencer Blankenship being then alive, was acquainted with the exact location and value of said Land and knew the ignorance of Complainant in reference to location and value of said Land.

4 Said Blankenship knowing the confidence of complainant in him and his reliance upon his knowledge and integrity proposed to complainant to go on to and show him his land.

That said Blankenship with a fraudulent design took complainant on to and showed him a different tract of Land, wholly different and vastly inferior to the Land of Complainant and worthless when compared with it. That complainant believed and relied on the untrue and fraudulent representations and showing of the said Blankenship and relying as aforesaid was induced to accept the proposition and offer of the said Blankenship for said land.

5 Sold and conveyed said tract of Land to said Blankenship for forty dollars. The land pointed out by
6 Blankenship, then and now worthless—the land of complainant then and now worth four dollars per acre—
acted in the Sale without the advice of friends was a minor, relied upon the good faith, integrity and friendship of Blankenship, that since making said deed, complainant has been absent from State till recently. Since his return and within the last twelve months has learned the facts above related.

7 That said Blankenship at the time of the taking knew the minority of complainant and by deception and fraud was induced to make the Sale and conveyance aforesaid.

8 That since Complainant returned to this State and the discovery of the fraud in his case, he has been diligent in getting the case in the Court.

That Spencer Blankenship died 20th March 1856, and left Hiram Blankenship and the other Defendants his heirs at law.

9 Prayer of the Bill.

That the Deed of Oct 4th, 1854, be delivered up to Complainant and the Record thereof be canceled and
10 that an account be taken of the rest and profits of lands since 4th of Oct. 1854, and that the amount due Complainant over the Forty dollars purchase money and interest, and decree to be paid to Complainant, and that a receiver be appointed of the rents and profits of the Land that the Defendants be by injunction restrained from selling land.

Prayer for general relief and

Affidavit of the truth of Bill.

17 March term 1859. Defendants interpose a general Demurrer and assign special courses.

1st. The allegations of the Bill show fraud on the part of Complainant and foul hands.

2nd. Not entitled to the equity prayed as the facts stated in the Bill show that Complainant had full knowledge of his rights.

18 Demurrer overruled by the Court and Defendant ruled to answer.

19 Answer of Defendants—contents. They believe Complainant was owner of the said tract of Land as charged and that he conveyed same to their ancestor Spencer Blankenship as charged. Admit the death of ancestor as charged.

20 Deny that said Spencer had notice that Complainant was a minor at date of Sale.

They charge that Complainant represented himself to be a man and that if he was not, he committed a fraud on the Government in the purchase and a fraud on said Spencer in the Sale of said Land.

21 They deny that said Spencer ever showed Complainant a different tract of Land or was guilty of the slightest fraud in the premises, that Complainant was a stranger that come into the neighborhood after he bought under the graduation or bit Act the land in question, with the other quarter section joining and that the said Spencer had thought his minor son Hiram Blankenship made an improvement on the quarter section sold by Complainant to said Spencer. That Complainant was desirous to sell and said Spencer desirous to buy said Land because of said improvement thereon, and that he said Spencer had under the said bit act the special privilege of entering said land as a cultivator and occupant thereof.

22 That said Complainant knowing that he had done wrong proposed to buy said improvement or to sell said Land to said Spencer and would not rest satisfied till the matter of the wrongful entry was disposed of.— That said Spencer bought the Land in good faith and paid Complainant double what the land cost him.— That said Spencer confiding in his said purchase till the Complainant had received from Government a patent for said Land had lost his right under the acts of Congress to have the entry of Complainant set aside as fraudulent.

23 That complainant bought three hundred and twenty (320) acres of land, sold to Spencer one hundred and sixty (160) acres including said improvement and continued for a long time to own the other one hundred and sixty (160) acres. They admit that complainant was for a short time out of the State of Illinois, but deny that he changed his residence, and charge that he was absent as a fugitive from justice. Apprehending an arrest for making oath that he wanted said land for agricultural purposes. They deny all fraud on the part of said Spencer and deny generally all the allegations in the bill.

- 55 Exceptions to answer—Argumentative untrue scandalous and leave given to file Replication.
- 29 Testimony of William Wilkins—witness for defendant some acquainted with parties—become acquainted with Stout in fall after the price of land had been reduced, he came to house of witness and wanted to know if witness was acquainted with the twentieth (20th) section in town one(1) range four (4) east—could show it to him, witness told complainant he knew where the corners were in the north side of the section.
- 30 Witness went with complainant, could not remember all that was said, complainant said he owned the east half of the section, witness showed him the half-mile corner in the center of the section on north side, then showed him the north east corner, complainant asked witness if he knew south line—witness said he did not help run that line but could go in that direction with him—they went complainant inquired if there was any improvements on the land—witness thought not but after going as they supposed on the line witness told complainant that if they were near the line there was a field on it—an improvement which he thought belonged to one of the Mr. Blankenships, perhaps Hiram Blankenship. Complainant then wanted to go west and see Mr. White's land, think complainant enquired where Mr. Hiram Blankenship lived, witness give him directions how to get there, think complainant said he paid a bit per acre for the land.
- 31 This visit to the land and conversation was sometime in the fall season, and was before he learned from or Spencer Blankenship told him that he had bought the land. Thinks complainant said he would go and see Blankenship about the improvement whether he owned it—and does not know age of Hiram Blankenship, he married young—twenty years old or upwards—witness lived at same place, and within two or three miles of the land for twenty-five years. Knows the land, and the land generally in that neighborhood. The land in question was about on an average with the other lands around.
- 32 Witness assisted in running out the land adjoining the Stout land and knows now that the improvement in question was on the land bought by Blankenship.
- 33 Testimony for the complainant.
- 34 James Donoho testified that he knew the parties. Witness judged that Spencer Blankenship knew the land in question—having a large sugar orchard on it. Witness had a conversation with said Spencer about land thinks it was the land in question. Spencer said he bought a piece of land of Stout over where his son lived—that he expected that he would loose it. Stout being a minor or boy—did not know value of land when sold. Thinks it worth five dollars per acre; could not remember the tenth part of what passed in the conversation; could not tell when it was; how long it was after 4th Oct. 1854, or before the death of Blankenship March 1858.
- 35 Frederick Beck—knew the parties. Thinks the land worth now four or five dollars per acre. Had a conversation with Marion Blankenship about his father showing complainant the land and who said that when Stout come to look at his “we took him right across, up and down them rock cliffs. Went on Joes branch, it was raining down pretty heavy, you had better believe. He got tired looking at his land, and then he said if that was the best of his land he did not ever expect to settle or come on it again. The lands refered to by Marion were not the Stout land, but it belonged to White. The White land was not so good upon the whole as the Stout land.”
- 36 The land of White and Stout lie in the same section.
- 37 Elizabeth Stout—mother of complainant, testifies that complainant will be twenty-five years of age on the 19th day of September eighteen hundred and fifty-nine. His father is dead. He resided with witness till he was eighteen years old. He then went to live with one Robert F. White at Vandalia. Thinks he lived with White one year; after that worked at trade. She received letters from him as often as once a year. Never received a letter from him from Texas. Does not know that he ever was in Texas. Does not know that he has been out of the State to reside since he left her. Thinks he was at home four years ago but does not know with certainty.
- 38 John T. Harris testified.—Had in fall of 1854 a talk with Spencer Blankenship about “bit land.” The land of witness had been entered by some one. Blankenship said to witness, that he ought to do as he had done, buy his land from the person who had entered the same. That he had taken complainant to the points thence west into the bottom or creek flats, thence west until he got onto the hills again, thence home again; and said to complainant, here is the land, look for yourself; be your own judge. That complainant become willing to sell. Does not know it was the land of complainant, or that Blankenship had an improvement on it, but inferred from the conversation that it was the land which Blankenship had bought that he had showed to complainant.
- 39 Replication to answer—Replication general.
- 40 August term of court for 1859, the cause came on to be heard. After argument the court continued the cause with leave to complainant to take additional testimony as to age of complainant; and leave to defendant to take testimony March term 1860 cause came on again to be heard.
- 41 Deposition of Elizabeth Stout taken a second time in Bond County, opened and read—testimony.
- 42 A paper marked “exhibit A” is shown the witness—which paper purports to contain the date of the births of the Stout family, a family record by which it is shown that the complainant was born on the 19th day of September 1835. Believed said writing to be the hand writing of deceased husband, because he kept the ages of the family on a similar paper. Said writing has been in my possession since the death of my husband till the last two years. About two years ago Rebecca White took the same to copy in the big Bible.
- 43 Rebecca White testifies—she is a sister of complainant. “Exhibit A” is shown her. Thinks it to be the hand writing of her father. Got it from her mother two years ago, has had it since till last fall when she handed it to complainant. Knows complainant was absent in 1854 was in Texas about one year.
- 44 30th March 1860 cause came on to be heard by the court March Term.
- 45 Finding of the court as a foundation for the decree. 1st, that complainant (by the additional testimony taken on the suggestion of the court) was born on 19th September in the year eighteen hundred and thirty-five. 2nd, that complainant attained his age 19th of September eighteen hundred and fifty-six. 3d, that conveyance mentioned in bill was made 4th October eighteen hundred and fifty-six, and while complainant was a minor. 4th, that the bill of complainant was filed 19th of February eighteen hundred and fifty-nine within

the three years limited by law in case of minors. 5th, that bill of complainant was filed two years and six months after complainant had become of full age, and, therefore, the court pronounces its decree in conformity to the prayer of the bill, and the court in addition to the prayer in the bill decreed the Master in Chancery of Marion County to make and deliver to complainant a warrantee deed to the lands in controversy at request of complainant and being satisfied that the consideration to said lands be paid to defendant.

ERRORS ASSIGNED.

- 1st. The decree of the court is contrary to law.
- 2nd. The decree of the court is contrary to the evidence.
- 3rd. The court erred in rendering a decree against the Master in Chancery.
- 4th. The court erred in rendering a decree on the supplemented evidence in the case which did not support any averment in the bill.

SILAS J. BRYAN, Atty. for Comp't.

Blankenship

by

Stout

8434

Filed Apr. 14. 1860
N. Johnston M

Offen