No. 8577

Supreme Court of Illinois

Hiram Blankenship et al

vs.

John M. ~~Pre~~ STOUT

71641 7

State of Illinois
Marion County } ss

Pleas and Proceedings had in the Circuit Court in and for the County of Marion and State of Illinois in a certain Cause heretofore pending in said Court between John W Stout Complainant and William Byers et als Defendants.

Be it Remembered That on the 19th day of February A D 1859 said Complainant filed in the office of the Clerk of the Circuit Court of said County his Bill for Relief against said Defendants in words & figures following Towit

"State of Illinois
Marion County } ss

Of the March Term of the Marion County Circuit Court A D 1859

John W Stout
vs
William Byers, Nancy Byers
Noah Blankenship,
Huston Blankenship,
Marion Blankenship,
John Blankenship,
William Blankenship,
Lucinda Keck late
Blankenship

Bill for Relief

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John Keel her husband
and Elisha Blankenship
Martin Blankenship
Washington Blankenship &
Nancy Blankenship are
minor heirs of Spencer
Blankenship Deceased
and said Nancy Byars
late Blankenship and said
Hiram Blankenship Admin
-istrator and Administrator
of said Spencer Blankenship
Deceased

To the Honorable H. H. S.
O'Melveny Judge of the Second Judicial Dis
trict of the State of Illinois in Chancery sitting

Humbly Complaining showeth unto your
Honor your Orator John N Stout a citizen of
Marion County State of Illinois That on the
4th day of October A D 1854 your orator was a minor
under the age of twenty one years. Doubt of the
age of twenty years, and was then on terms of in
-timacy and friendship with and had great confi
-dence in the good faith and professed friend
-ship to your orator of one Spencer Blankenship
of said County who has since deceased and who
is hereinafter particularly mentioned.

That on said 4th October A D 1854

Your Orator was the owner in fee simple of the following described tract or parcel of Land situate in said County of Marion Iowa, The South East quarter of Section Number twenty (20) Township one (1) North of Range Number Four (4) East of the third (3d) principal Meridian Containing 160 acres and which he held by Patent from the United States Government.

That your orator being such owner was entirely ignorant of its location and value other than its bare description as above given and which was derived from said Patent. That your Orator then resided in Fayette County Illinois and knew little about Marion County That your orator on or about said day was in Marion County to see said Blankenship about said Lands And your orator avers and charges the fact to be that said Spencer Blankenship being then alive Iowa on or about said 4 October AD 1854, was well acquainted with the exact location of said tract of Land and was well acquainted with and knew its value, and was well aware and knew your orators ignorance of same other than his knowledge of his naked right to Lands of the number and general description aforesaid.

That said Spencer Blankenship knowing your orators said ignorance and your orators desire to be informed respecting said Lands and knowing your orators

reliance upon and confidence in the good faith and integrity of him said Spencer Blankenship proposed to your orator to go upon, view and examine said tract of Land. But your Orator avers and charges the fact to be that Spencer Blankenship intending to deceive and defraud your orator, did take your orator on certain Land in said County which Land said Spencer Blankenship informed your orator was the said tract of Land so owned by your orator as aforesaid but your Orator distinctly avers and charges the fact to be that said Spencer Blankenship did not in fact take your Orator on said tract of Land so owned by your orator but on other and different Land which other and different Land so represented by the said Blankenship as your orators said Lands was of an inferior and worthless quality and not of the quality of your orators said Land. That said Blankenship did then and there untruly deceitfully and fraudulently state to your orator said inferior and worthless land so shown as aforesaid to be your orators said tract of Land described above when in fact and truth it was not your Orators said Land, nor of the good quality of your orators said Land but inferior to and worthless as compared therewith.

And your orator showeth unto your Honor and avers the fact and truth to be, and so charges, that he fully and entirely believed the said fraudulent and deceitful representations of said Spencer Blankenship

to be strictly true and relied on the good faith of said Spencer Blankenship, and was totally unsuspicious of him. And your Orator avers that so relying on said Blankenship and his said representations and believing and trusting in his integrity and friendship your Orator was induced through same to accede to the offer of said Spencer Blankenship for the sale of said tract of Land hereinafter described, supposing it to be said worthless Land so shown your Orator as aforesaid. That your Orator in such faith, reliance and implicit confidence on the good faith of said Blankenship and ignorant and unsuspicious of fraud did sell and convey said hereinafter described tract of Land to said Spencer Blankenship.

That such sale and conveyance was made by Warranty Deed on or about said 4th October 1854 and was executed and dated that day for and in consideration of the sum of forty Dollars which warranty Deed so executed and delivered by your orator to said Spencer Blankenship appears of Record in the Recorders office of the County of Marion State of Illinois in Book I page 463 of said Records. That said Warranty Deed was executed by your Orator by the discription of John M Stout of Fayette County State of Illinois, where your Orator then resided.

And your Orator avers and charges that said sum of forty Dollars therein expressed as the consideration was the only consideration your Orator received

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for said tract of Land.

And your Orator avers and charges the truth to be that the Lands shown to your Orator as his Land as hereinbefore stated was then and is now worthless and unprofitable and that the Land really owned by your Orator and so conveyed as aforesaid in ignorance and through the deceit and fraud of said Spencer Blankenship was then and now is valuable and profitable for use and worth at least $4 per acre amounting to the value of $640.

And your Orator avers and charges that at the time of the execution delivery and acknowledgment of said warranty Deed your Orator was a minor under the age of twenty one years to wit of the age of twenty years. That he executed and delivered said Deed without the aid or advice of Guardians or friends and in full confidence and reliance upon the good faith of said Spencer Blankenship and trusting upon his professed friendship and general Character and totally unsuspicious of deceit or fraud.

And your Orator further showeth unto your Honor that since the making and delivery of said Deed he has been absent from this State; and has but recently returned to this County and State and that since his return and within twelve months last past he for the first time learned the true value of said tract of Land so conveyed as aforesaid and the entire falsity of the Representations of said Blankenship and the deceit and fraud practised by him upon your

Orator hereinbefore stated of all which Your Orator was therefore ignorant and unsuspicious.

And Your Orator avers and charges the fact to be that said Spencer Blankenship at the time of the execution and delivery of said Deed by Your Orator, well knew Your Orator was a Minor and under the age of twenty one years. Don't twenty years of age and also that he well knew Your Orators Confidence in and reliance upon him. and Your Orators total ignorance of said Land and its value and Your Orators inexperience and well knew the said Land so conveyed and really belonging to Your Orator was worth $600 or thereabouts and well knew the Land so shown Your Orator as aforesaid was not Your Orators Land and so knowing he nevertheless represented to Your Orator $40 was a fair and adequate price for said Land really owned by Your Orator which Your Orator charges though probably true as to said Land ~~really owned~~ shown to Your Orator was a deceit and fraud on Your Orator as to said Land really owned by Your Orator.

And Your Orator avers and charges that had he then known the true location and value of said Land so really owned by him and been shown his own real Land he would not have executed said Deed but being deceived and defrauded as aforesaid he accepted said $40 and executed said Warranty Deed.

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And your Orator avers that he has used all due and reasonable diligence since the discovery of said fraud. and since his return to this State to get the aid of this Honorable Court in Chancery sitting

And your Orator shows unto your Honor that said Spencer Blankenship departed this life on or about the 20th day of March A.D. 1856. leaving him surviving his widow the Defendant Nancy Blankenship now Nancy Byars who has since married the Defendant William Byars — and also leaving him surviving as his children the Defendants Hiram Blankenship, Huston Blankenship, Marion Blankenship, John Blankenship, William Blankenship Lucinda Blankenship now Lucinda Keel wife of the Defendant John Keel. Elisha Blankenship, Martin Blankenship Washington Blankenship and Nancy Blankenship, which said Elisha, Martin Washington and Nancy Blankenship are minors under the age of twenty one Years and which said Hiram, Huston, Marion John and William Blankenship and said Lucinda Keel late Lucinda Blankenship are as your Orator is informed and believes adults

And your Orator showeth that said Defendants Nancy Blankenship now Nancy Byars and said Defendant Hiram Blankenship are duly appointed administrators of the good chattels rights credits and effects which were of said Spencer Blankenship at the time of his decease, appointed by the

County Court of Marion County Ills on or about 8th April AD 1856. and which Estate is unsettled and unclosed in said County Court as Your Orator is informed and believes

And Your Orator showeth unto Your Honor that all said representations and doings of said Spencer Plaintiffship were and are fraudulent and contrary to Equity and good Conscience and tend to the manifest wrong and injury of Your Orator. In Consideration whereof and forasmuch as Your Orator can only have adequate relief in the premises in a Court of Equity where matters of this nature are properly Cognizable. To the end therefore Your Orator prays that said Defendants be ruled by this Honorable Court to answer specifically and particularly each and every the material allegations herein made as though they were thereto particularly interrogated, the oath of said Defendants being hereby expressly waived.

And that a guardian Ad litem be appointed for said minor Defendants and that they answer this Your Orators Bill of Complaint according to the Course of this Honorable Court.

And that upon a full hearing hereof Your Honor will order decree and declare that the said warranter Deed of the 4th day of October AD 1854 so recorded in said Recorders office of Marion County Book I page 463 was obtained from Your Orator while a minor as aforesaid by mis

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representation and fraud and ought to be delivered up to be cancelled, and that same may be delivered accordingly and that said Record thereof be cancelled.

And that an account may be taken of all and every the profits arising out of said Land since said 4 Oct 1854, and of the amount paid by said Spencer Blankenship to your Orator as the Consideration of said Warranty Deed of 4 Oct 1854, and of the Interest thereon. And that the amount of said last mentioned sums of money may be set off against the said profits so to be ascertained, and that the full amount of what if any thing is due to your Orator be ascertained and that same be ordered and decreed to be paid to your Orator, your Orator offering to pay said Consideration of $40 and Interest thereon hereby tendering same into Court. And that your Honor will order decree and adjudge that your Orator be declared owner of said Land and premises as if no such Warranty Deed had been executed and that the Decree of this Court to that effect rendered herein be recorded in said Recorders office and operate as a Reconveyance to your Orator of same, or that the Master in Chancery be directed to execute to your Orator a sufficient Warranty Deed of said Lands to that effect.

And that your Honor will grant to your Orator the Peoples writ of Injunction restraining and enjoining the said Defendants their agents

Solicitors attorneys and Counsellors perpetually from interfering in any way or manner with the said Lands or any part thereof. And that a Receiver be appointed by this Honorable Court of the Rents issues and profits thereof.

And that your Honor will grant the Peoples writ of summons directed to said Defendants William Byars and Nancy Byars his wife Huram Blankenship, Huston Blankenship Marion Blankenship, John Blankenship William Blankenship Lucinda Keet late Blankenship and John Keet her Husband and to Elisha Blankenship, Martin Blankenship, Washington Blankenship Nancy Blankenship, which Elisha, Martin, Washington and Nancy Blankenship are minor heirs of said Spencer Blankenship deceased and to said Nancy Byars late Blankenship and said Huram Blankenship Administratrix and Administrator of said Spencer Blankenship deceased, Commanding them to be and appear before this Honorable Court to be holden in the Court House in the Town of Salem at the March term of said Court AD 1859

And that your Orator may have such further and other relief in the matters aforesaid as the nature and circumstances of this case may require and to your Honor shall seem just

And as in duty bound will ever pray &c W W Willard

Sol for Complainant

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State of Illinois Marion County ss.

John N. Stout the above named Complainant being duly sworn saith the foregoing Bill and the matters and things therein set forth are true to the best of his knowledge and belief.

Subscribed and sworn before me this 1st day of March AD 1859

James S Martin Clerk
By James Bassett
Deputy Clerk."

John N Stout

Whereupon summons issued against said Defendants in words & figures following Joint

"State of Illinois
County of Marion } ss

The People of the State of Illinois, to the Sheriff of said County Greeting,

We command you to summon William Byers & Nancy Byers, his wife, Hiram Blankenship, Huston Blankenship, Marion Blankenship, John Blankenship, William Blankenship Lucenda Keel late Blankenship & John Keel her husband, Elisha Blankenship, Martin Blankenship, Washington Blankenship & Nancy Blankenship, which Elisha Martin, Washington & Nancy Blankenship are minor heirs of Spencer Blankenship Deceased, and said Nancy Byers late Blankenship and said Hiram

Blankenship administratrix & Administrator of said Spencer Blankenship deceased if to be found in your County to appear before the Circuit Court of Marion County on the first day of the next term thereof, to be holden at the Court House, in Salem, on the 3d monday in the month of March next to answer John W Stout in his Bill for Relief and hereof make due return to our said Court as the law directs.

Witness, Harrison W Eagan, Clerk of our said Court and the official seal thereof at Salem, this 19th day of Feb. A D 1859

L S

H W Eagan Clerk
By J. D. Kane
Dept."

Endorsed by Sheriff as follows

"March the 1 1859 I have this day served the within summons by reading and delivering a true copy to John Blankenship. Elesha Blankenship William Blankenship Washington Blankenship Martin Blankenship March the 2n 1859 I have this day served the within summon by reading and delivering a true copy to William Byers and Nancy Byers his wife to Hiram Blankenship and Nancy Blankenship to Nancy Byers late Nancy Blankenship administratrix and administrator of Estate of Spencer Blankenship Deced

Jo Shultz Sheriff By W S Eastland Dep."

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John Keele Lucinda Keele Houston Blankenship &
Marion Blankenship not found

Jo Shelly Sheriff
By W T Eastland
Dept S.

And afterwards Towit on the 9th day of March 1859 Hiram Blankenship one of the Defendants herein filed in the office of the clerk of said Court his affidavit to rule Complainant to give Bond for Costs &c which affdt is in words & figures following Towit

"John W Stout
vs
William Byers et al
March term Marion Circuit Court for 1859 In Chancery

Hiram Blankenship one of the Defendants in the above entitled cause first being duly sworn according to Law upon his oath says that said Plaintiff is a Young and single man and has no fixed habitation or property to the knowledge of affiant to secure the costs that may accrue in this cause if the same should be decided against him and that unless he be required to give bond for the costs in the action the officers of the Court and the Defendants are in danger of loosing the same And further more affiant says not

Hiram Blankenship

Subscribed & sworn to before me this 9th day of March AD 1859
W H Eagan Clk."

And afterwards at the March term of said Court the Hon N. K. S. O'Melveny presiding, the following order was made Dowit

"John M Stout
vs
William Byars and others
} Wednesday March 23 1859
Bill for Relief

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And now at this day came the Defendants by Bryan & Schaffer, Haynie & Smith their Solicitors and move the Court for a rule on the Complainant founded on affidavit that he give security for costs, which motion, the Complainant being present by his solicitors Willard & Bassett the Court allows and gives time to the Complainant to show cause why such security should not be given for costs by next monday week."

Whereupon said Complainant on the 25th day of March AD 1859 filed his Bond as ruled which is in words & figures following Dowit

"State of Illinois
Marion County
} ss
Of the March term 1859
Marion County Circuit Court

John M Stout
vs
William Byars & Nancy Byars his wife, Hiram Blankenship
} Bill in Equity for Relief

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Huston Blankenship, Marion Blankenship
John Blankenship, William Blankenship,
Lucenda Keel late Blankenship &
John Keel her husband, Elisha
Blankenship, Martin Blankenship
Washington Blankenship & Nancy
Blankenship which Elisha, Martin
Washington & Nancy Blankenship
are minor heirs of Spencer
Blankenship deceased and
said Mary Byars late Blankenship
and said Hiram Blankenship ad
=ministrator and Administratrix of
said Spencer Blankenship deceased

We do hereby enter ourselves security for costs in this cause in the penal sum of two Hundred Dollars and acknowledge ourselves bound to pay or cause to be paid all costs which may accrue either to the opposite party or to any of the officers of this Court in pursuance of the Laws of this State Dated this 24th March 1859
Attest as to J. M. Stout

James Bassett John M Stout (Seal)
Robert J White (Seal)

Approved by me this
day of March 1859
H W Eagan Clk.

Whereupon the Court upon said 25th March 1859 made the following order Towit,

"The Complainant having filed Bond for costs with security, the Court having examined same approves thereof. Came again the Defendants by their Solicitors and Counsel and move the Court that the Complainant be ruled to deposit the money we mentioned in the prayer of said Bill in Court, and that proceedings herein be stayed until such deposit be made. Whereupon the Complainant by his solicitors enter cross motion for leave to amend said Bill of Complaint. And the Court having duly considered said motion and cross motion and having heard Counsel thereon allows said cross motion to amend."

And afterwards on the 8th day of April AD 1859 being of the March term of said Court said Defendants by Bryan their atty files their Demurrer to Complainants Bill in words & figures following Towit,

"Byers et al
Als
Stout } Bill in Chancery

And the said Defendants come by Bryan their atty and say that the Bill of Complainant is not sufficient in Equity or Law to require the said Defendant to answer

(18)

the same and prays the Judgment of the Court as to its sufficiency

Bryan & Schaffer for Defs

And for special cause say that from the allegations of the complaint he does not come into the Court with clean hand in this that he fraudulently obtained title to said Land in his bill described

2 The Bill does not show a right a right to the equity prayed, in this that he the complt have full knowledge of the ownership of his land

Bryan & Schaffer".

Whereupon the Court on said 8th April 1860 made the following Order Dowit

"The Defendants having filed their demurrer herein to the Bill of Complaint, the same came on for argument and the Court having heard argument thereon overrules said Demurrer with liberty to Defendants to answer and they are hereby ruled to file their answer herein by 1st July next and this cause is hereby ordered to be continued until the next term of this court and the Court sets same for hearing at the next term of this court."

Whereupon said Defendants by their Attys file their answer on the 28th day of May 1859 as ruled by this Court which is in words & figures following Dowit

"Of the August term of the Marion Circuit Court 1859

John M Stout
vs
William Byers et al

Bill for Relief
Answer of Defendants

The answer (Joint & Several) of William Byers. Nancy Byers Hiram Blankenship Hester Blankenship. Marion Blankenship Merion Blankenship John Blankenship William Blankenship Lucinda Keel John Keel (Elisha Blankenship James M Blankenship George W Blankenship Nancy J Blankenship (minors) And the said Defendants answing the Bill of Complaint of the said Complainant or so much thereof as they are advised is material for them to answer for answer say that they are informed and believe that the Complainant did as charged in his said Bill of Complaint in October 1854 owned the tract of Land by him described and that he did at the date stated in said Bill convey the said tract of Land to the said Spencer Blankenship deed acknowledged & Recorded to these Respondents as charged in said Bill. Respondents admit the death of the said Spencer and that said tract of Land has descended to these Respondents as charged by complainant and the Complainants states truly the facts in reference to the administration of the estate of the said Spencer deceased. But Respondents deny that at the time of the sale of said Land to the

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said Spencer that he had Notice or Knowledge of the fact that said Complainant was a minor under 21 years of age but assert the truth to be that the said Compt represented himself to be a man of age & capable of transacting his own business and the Respondents do now insist that at the time of said sale Compt was of the age of 21 years and had but a short time before the the said sale bought said Land of the Government of the United States under the graduation or bit act at the price of 12½ cents per acre and under that act no person but a free white person of the age of 21 years & upwards could become a purchaser whence Respondents show that the Compt was either 21 years of age before the purchase of said Land aforesaid or he commited a gross fraud upon the Government of his Country and also commited a fraud upon the said Spencer Blankenship in representing himself to be of full age and that he had lawfully bought said Land of the Government as aforesaid. Respondents expressly charge that the said Compt assured the said Spencer Dt that he had bought the said Land & that he had a good right to sell the same & Respondents further charge that the entry of the compt according to his own showing was a nullity under the Law of the United States and an outrage on the said Spencer & therefore Respondents charge that compt has no equity on the ground of minority at the

time of the sale of said Land to the said Spencer
Dec, Respondents deny emphatically that the
said Spencer Blankenship did as charge by
Complt show other or different Land than that
sold by complainant to him fraudulently or
otherwise and charge the truth to be that the Complt
knew well the meets & bounds of his said tract of
Land before he ever saw the said Spencer died
or made sale thereof to him. And Respondents
charge that at the time of the purchase of said
Land as aforesaid by complt the said Spencer
had made an improvement on said Land through
his minor son Marion Blankenship who was occupy
ing said Land at the time of the purchase thereof
by complt and the said Spencer or the said Marion
his son had the right & the special privilege under
said act of Congress to buy of the general Government
the said tract of Land at twelve & one half cents
per acre and that the said Complt trespassed and
that fraudulently on the Legal rights of the Spencer
& his said son in buying the said Land and in making
a false oath to the effect (at the time of said
purchase) that the said tract of Land was not
occupied by any person for agricultural purposes
at the time of said purchase by complt. And
that shortly after the said purchase Complt came
to see said Land & after being fully informed
as to the meets and bounds of the same and that

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there was a Legal claim to the same and improvement as aforesaid thereon he came to the said Spencer and Confessed that he had entered his improvement and that he was sorry for what he had done but that he could not leave till he made the matter all right with the said Spencer & his Son aforesaid and prospered to buy the said improvement of them or deed them the Land and proposed to take 25 cts per acre for the Land just enough to cover the costs and expenses above the 62 per acre the original costs of said Land. And the said Spencer bought the Land of Compt in good faith and paid him therefor at the rate aforesaid. Here again Respondents charge that the Compt has no equity in his Bill upon the ground that the said Spencer or his said Son Marion who had become of age at the time of the sale by Compt to the said Spencer had under and by virtue of the said Land of Congress a right to have set aside the entry of the Compt for a fraud on them and that they would have done so but for the fact of the reasonable proposition of Compt to sell the same to the said Spencer and having bought of Compt & took title from him in good faith have lost their right to have cancelled the said Entry of Compt — and hence the injustice of not the inequity of the effort of Compt to take advantage of his own wrong. But Respondents farther charge & show that

Compt at the time of the purchase aforesaid by him of the said tract of Land bought 320 acres and sold to the said Spencer 160 acres owing to the improvement on the same as aforesaid and that Compt kept the remaing 160 acres for same & then sold the same and knew well the whole bounder of the 320 acres at the time of the sale to sd Spencer of the 160 acres and did for a longtime afterwards when he sold the other 160 acres and all the time since & Respondents charge all the allegations of the Compt to the contrary are wholly untrue, Respondents believe that Compt was for a short time out of the State of Illinois but that he did change his residence he being a citizen at the time of Fayette County Ills and was in fact while out of the State a fugitive from Justice and was under the conviction that he would be prosecuted for the oath he had taken to get the said Land from the Government of the U. S. but did all the time of his absence keep up a correspondence with persons living in the neighborhood of said as to his interest therein &c & Respondents deny all fraud and unfair dealing on the part of the said Spencer &c in the premises with Compt and do hereby in deny all the allegations in Compt Bill which have not been specially referred to and specifically answered and allege the matters and

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things set out in in this Thm answer to be true and having fully answered all they are advised is material for them to answer in Compts Bill ask to be discharge hence with their reasonable costs in this behalf most unjustly expended

Haynie & Smith
Byan Schaffer
Sols for Respt Defts

Nancy Byers William Byers Hiram Blankenship Anston Blankenship, Marion Blankenship John Blankenship William Blankenship Lucinda Reed John Reed Elisha Blankenship, James N Blankenship Nancy Blankenship."

And afterwards at the August term 1859 Court Aug 16th the following order was by said Court made Court "And now at this day came the parties by their solicitors and Defendants answer being filed on motion of James Bassett for Complainant leave is given to file Replication and it is ordered that James S Martin Master in Chancery take further testimony and report he at this present term."

And afterwards Doit on the 24th day of Aug AD 1859 At being of the Aug term of said Court said Complt by his solicitors files Exceptions to Defendants answer in words & figures following Doit

"

State of Illinois } of the August term AD 1859
Marion County ss } of Marion County Circuit Court

Exceptions taken by John M Stout Complainant to the joint and several answer of William Byars Nancy Byars Hiram Blankenship Anston Blankenship Marion Blankenship John Blankenship William Blankenship Secunda Keell John Keel (Elisha Blankenship James M Blankenship Nancy Blankenship minors) Defendants to the said Complainants Bill of complaint.

1st For that said answer is insufficient, untrue, argumentative and scandalous.

2nd — It is insufficient. In that it refers to the graduation or bit act and assumes certain rights and obligations thereunder without specially pleading same, as an act of Congress of the United States or as a statute of any state. The Complainant cannot reply to an insufficiently pleaded act or statute.

3rd — It is untrue In that it assumes that said graduation and bit act supposing it to be

L L —

an act of Congress of the United States required an affidavit from free white persons of 21 years upwards—

4th — It is argumentative — In that among other things in stating said graduation or bit act it argues "That no person but a free white person of 21 years of age and upwards could become a purchaser and hence" &c. and again on the 5th page in arguing the case in such terms as "and hence" and again in arguing propositions of moral science as "and hence the injustice if not unequity of the effort of Complt to take advantage of his own wrong." The general character of the answer is an argument at bar rather than a statement of facts, and is untrue in its premises and assumptions even as an argument.

5th It is scandalous In that it states Complainants entry of the Lands as an "outrage" on said Spencer Blankenship — and further it is scandalous in alleging this Complainant was a fugitive from Justice and was under the conviction that he would be prosecuted for the oath he had taken to get the said Lands from the government of the U S" — All which is an assumption based on the supposition that said Graduation act required such an affidavit, and that same had been made — he gives no date to see and read such affidavit and has not produced and proved it.

6th The answer is not signed by Defendants or any of them but only by their solicitors, which embarrasses Complainant should he seek redress in an action at Law for the scandal above alleged. And which signature is not in accordance with the rules of this Court. Therefore said Complainant excepts to the answer of said Defendants as evasive imperfect and insufficient and humbly prays that the said Defendants may be compelled to put in a full and sufficient answer thereto.

John M Stout
Complainant
By Willard & Bassett
his Solicitors."

And afterwards Dowit on the 25th day of Aug 1859 the following order was by said Court made Dowit "

On Motion, leave is given to open Depositions herein."

which Depositions as as follows Dowit "

Of the August term of the Marion Circuit Court 1859

John Stout
vs
Elizabeth Byers et al } Bill in Chancery to cancel Deed &c

W W Willard atty for the

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Compt in the above entitled cause You will hereby take Notice that we will in person or by atty attend before John W Merritt Esqr at his office in Salem as a Justice of the Peace for the County of Marion & State of Illinois on the 25th day of July 1859 at 10 o'clock A.M. & continue from day to day till through for the purpose of taking the deposition of William Wilkins which when taken we will offer to read in evidence on the trial of said Cause which is now pending on the Chancery side of said Court & undetermined therein when & where you can attend & cross examine said Witness

Elizabeth Byers et al for
Haynie & Smith & Bryan & Schaffer
Solrs

I acknowledge service July 15th 1859
W W Willard atty

July 16th 1859 issued subpe to T J M McMackin Constable
25 July 1859 at 10 AM.

1859 July 25th Wm Wilkins examined
& claims his attendance 25

fees of Constable serg subp 25 mileage 65
90

26 folio of 72 words $3.25

Macon County Circuit Court

John W Stout
vs
Elizabeth Byersstad

of the August term
A D 1859

Bill in Chancery to cancel Deed &c

Deposition of William Wilkins taken in the above entitled cause before the undersigned a justice of the Peace on the 25th day of July 1859 taken in pursuance of the notice hereto annexed, the said Witness having been produced and sworn according to Law on the part of the defendants herein as follows Doth:

First Interrogatory.

Are you acquainted with the parties to this suit?

Answer Yes sir some.

Second Interg. State when and ~~where~~ under what circumstances you became first acquainted with John Stout the Complt in this cause?

Answer I became acquainted with Mr John Stout four or five years ago this coming fall; it was the fall of the year after the Lands in Illinois had been raised at a bit an acre. He came to my house in that fall and wanted to know if I could tell where the 20th section of Down!

J G

[8577-13]

Range 4 East of the third principal Meridian was and could show it to him. I told him I knew where the corners were on the North side of the section.

Third Interry. Please state all that you said to Mr John Stout and all he said to you at the time referred to about said Land and what you did, if anything in reference thereto? The question objected to by W Willard for the Complainant.

Answer. I cannot recollect all that passed at that time but I recollect some. Mr Stout wanted me to show the Land to him and I went with him to show it. He said he owned the East half of that (the twentieth section) I showed him the half mile corner the centre of the section on the North side; we then went on to the North East corner and I showed him that. He then wanted to know if I knew the South line and where it would run. I told him I did not help to run that South line but I would go with him in that direction We went in that direction. He enquired of me if there was any improvement on the Land and I told him I did not think there was. When we went in that direction I told him there was a field which if we went anywhere near the line I thought would be on it I told him the field belonged to I thought one of the Messrs Blankenships

I thought Marion Blankenship. When we turned he said he wanted to go West to see Mr White's Land. I think I told him I did not know where Mr Whites Land lay but I thought it lay across the creek I think that he enquired where Mr Marion Blankenship lived and I gave him directions how to get there and we came on some distance together and then parted.

Fourth Interr. State what Mr Stout said if any thing, about the time he bought said Land and what he paid for it per acre

Answer I think he said he paid a bit per acre for it

Fifth Interr. State if he said, or you could gather from his Conversation, how long he had owned said Land at the time of the interview between you above referred to?

Answer Well I dont recollect if he said how long or not.

Sixth Interr State if you know about the time that the Complainant Stout conveyed a part of said Land to Spencer Blankenship. and whether the sale was before or after you had your Conversation above referred to with him?

Answer I dont know only what Spencer Blankenship told me about it.

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[8577-14]

Seventh Interg. State whether you think the Conversation you had with Stout was before or after the 4th day of October AD 1854.

Answer I cant tell the date I have but little chance to get at it.

Eighth Interg If the deed from Mr Stout the Complainant to Spencer Blankenship Conveying 160 acres of said Land – it being the South East quarter of Section twenty Town 1 N. R. 4 East was dated on the fourth day of October AD 1854 then was your Conversation referred to with Stout at or about that time or before or after that time? Question objected to by the Solicitor of Complainant

Answer It was somewhere in the fall season when myself and Mr Stout had that Conversation.

Ninth Interg State you please as well as you can remember whether your Conversation with Stout was before or after Spencer Blankenship told you about buying said Land? (objected to by Mr Hillard)

Answer It was before Spencer Blankenship told me about buying said Land.

Tenth Interrogatory State if you please whether the improvement referred to by you would fall upon the North or South half of said Half Section owned by said Complainant

Answer — I suppose it would fall upon the South half (Question and answer objected to Mr Hilland for the Complainant)

Eleventh Interr — State if you please what Mr Stout said if any thing, about selling said Land or a part of it to Mr Blankenship or any other person because of the improvement thereon.

Answer — Well I dont recollect what was said precisely, but he said something about going to see him about the improvement and whether it did belong to him or not; or whether it was on the Land or not. I did not know whether it was on the Land but I thought it was.

Twelfth Interr — State if you please if you know now whether the improvement referred to by you is situated on the South East quarter of said Section twenty?

Answer — Only by information. I did not help to run the line or see it run but the best information I have is that it is on said said South East quarter of Section twenty.

Thirteenth Interr — State if you please what relation Marion Blankenship was to Spencer Blankenship and what was the age of said Marion on the 4th day of October 1854.

J. G.

[3577-17]

Answer — He was the son of Spencer Blankenship I do not know his age: He was married quite young but I cant tell his age.

Fourteenth Inty. State what your means of information are as to his age and how old you think Marion was on 4th day of October 1854 (Was he twenty one years old then or was he under that (objected to by Mr Willard for the Complainant)

Answer — I have heard his father speak about his age the time he was married but I cant tell his age — He was very young then — I think he was in the neighborhood of twenty years of age and upward

Fifteenth Inty State how long you have lived where you now live — How far you live from the land of Complainant and whether you are acquainted with the lands in that neighborhood generally

Answer — I have lived where I now live twenty five years or more twenty six or seven may be — the land of the Complainant is two and one half or three miles from my place of residence. I am some tollerably well acquainted with the lands in that neighborhood generally. I I have been over a good deal of it.

Sixteenth Inty You will please state how the said south East quarter of section twenty compares with

the land in that neighborhood in quality of soil and growth of timber.

Answer Well it is timbered land, there may be some farms on it but I dont know I did not help run it out.

Seventeenth Interr State whether the soil of said quarter section is about the same, better or worse than the lands surrounding it in same neighborhood

Answer I guess it is about on an average with the balance so far as I know it.

Eighteenth Interr State if there is a good growth of timber on it and whether it be the same or about the same or superior to timbered land in that neighborhood.

Answer I think there is some pretty good timber on some part of it and I expect it is about the same as other timbered land in that neighborhood.

First Cross Interrogatory. State whether you are a surveyor or not and what were your means of knowing the lines of that particular land referred to above?

Answer I am not a surveyor. I carried the chain to run the North line of section twenty from East to West, that is the way I got it.

Second Cross Int'y Did you assist in running any other line of that tract of land?

[8577-18]

75—

Answer — I have six since the Land has been entered I carried the chain to run the line between Stouts Land in said section and White's Land.

Third Cross Inty — Might not Marion Blankenship on the 4th October 1854 have been twenty one years of age and over?

Answer — He might so far as I know but my guess was that he was twenty years old and upward

Fourth Cross Inty — Did you know at the time spoken of in the Conversation with Stout who made the improvement referred to and whether that improvement was on the Complainants Land?

Answer — Either Mr Keil or Mr Blankenship made the improvement I dont know which I did not know whether it was on the Land or not but I thought as we went near the line that it was on the Land.

Fifth Cross Inty — State if you know whether Stout saw Mr Spencer Blankenship at the time or about the time that he had the Conversation with you.

Answer — I dont only from what Mr Spencer Blankenship told him.

Sixth Cross Inty — State if you did not tell Mr Stout in that Conversation that Mr Blankenship could give

him more information about the land and whether the improvement was upon it than you could.

Answer Yes sir I told him that he, Blankenship could tell him more and whether the improvement was on it or not.

Being re-examined by Defendants the said Witness answers as follows;

1st Re-examing Intg State if you did not become satisfied when assisting in running the line between White and Stout that the improvement referred to was on Stouts half of the section and the south part of that half?

Answer Yes sir,

2nd Re-examg Intg State if you told Stout in said Conversation that he had better see Mr Blankenship and make some friendly settlement or agreement about retaining his improvement if he had done so?

Answer Well I dont recollect precisely about it, but I know there was some Conversation about seeing him about it

William Wilkins

Taken sworn to and subscribed before me this 25th day of July AD 1859 at Salem Marion County Illinois

John H Merritt J.P.
Marion Co Ills

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State of Illinois

Marion County SS The Deposition of James Donoho and Frederick Beck of the County of Marion and State of Illinois a witness produced sworn and examined before James S Martin Clerk of the County Court of said County on the 13th day of August AD 1859 at his office in the Town of Salem in said County to be read as evidence on the hearing of a certain suit in Chancery now pending and undetermined in the Circuit Court of said County wherein John M Stout is Complainant and William Byars and others are Defendants on the part of the Complainant.

John M Stout vs William Byars et als

The said James Donoho being first duly sworn according to Law deposeth and saith in answer to the several Interrogatories on the part of the said plaintiff as follows viz

Question 1 Do you know the parties Complainant and Defendants in the title of these Interrogatories named or either and which of them, and how long have known them respectively.

Answer — I know the Plaintiff about six months. I know all the Defendants, the older ones all my life, the younger ones all their lives.

Question 2 — Do you or not know the present age of the Complainant, if yea state your sources of knowledge?

Answer I do not know his present age

Question 3 — Whether or no were you acquainted with Spencer Blankenship deceased in Bill named on or about the 4th Oct 1854. If yea whether or no were the Complainant and said Spencer Blankenship acquainted. If so state the terms of such acquaintance whether intimate and friendly or otherwise And if so, state whether or not said Spencer Blankenship professed friendship to said Complainant and whether said Complainant professed any, and what Confidence in said Spencer Blankenship

Answer — I knew Spencer Blankenship on 4 Oct 1854. I do not know whether the Complainant and said Spencer Blankenship were then acquainted

Question 4 — Do you know whether or no was the Complainant at any time and what owner of the S E¼ of Sec 20 T 1 N R 4 E in Bill discribed. Do you know whether or no said Complainant knew the location or value thereof on or about said 4 Oct 1854

Answer, I do not know.

Question 5 — Do you know whether or no said Spencer Blankenship knew said Land if so state the extent of his knowledge thereof and your sources of information

Answer I judge that he knew the Land, He must

have known the Land very well having a sugar orchard on the Land for years to my knowledge according to the way the surveyor run it his son had some improvement on it

Question 6 — Do you know whether or no of any applecation made by said Complainant to said Blankenship to show him said Land, if yea state fully all you know

Answer — I do not know of any.

Question 7 — Do you know whether or no said Spencer Blankenship professed to show said Land to the complainant as in Bill stated. If yea did he show him said Land, or any, and what Land state all the circumstances fully

Answer — I do not know anything about it

Question 8 — Had you or not at any time Conversation with said Spencer Blankenship about his purchase of said Land from Complainant. If yea state fully the particulars of such Conversation If no, did said Spencer Blankenship ever speak about such purchase in your hearing If yea state the particulars of what he said.

Answer — I had some Conversation with him about this piece of Land. I supposed it to be that

piece of Land. He told me he purchased a piece of Land of Mr Stout over there where his son lived – He said he expected he would lose it, he being a minor, or a boy I wont state which.

Question 9 What was the value of said Land so sold at the time of said purchase. Do you know its present value State all you know.

Answer – I do not know the value of the Land at that time. I think the Land worth $5 an acre.

Question 10 – Have you ever heard Mr Blankenship make any statements about showing land to said Complainant –

Answer – Not any

Question 11 – Do you know of any matter or thing that may tend to the benefit and advantage of the Complainant herein. If you declare the same as fully as if you had been thereunto particularly interrogated

Answer I do not know of any thing.

his
James X Donoho
mark

(49) Cross Examined on part of Defendants.

1 — State if you please when you had this Conversation with Spencer Blankenship, that is to say how long was it after the 4 Oct 1854, and how long it was before his death.

Answer — I cannot tell.

2 — State as well as you can recollect about how long it was after he bought the Land of Stout whether six months, one year, or any other period of time

Answer — I could not tell — he did not tell me the time he bought the Land he only said he purchased it

3 — State if you please what mr Blankenship said in that same Conversation about how he found out that Stout was a boy or minor.

Answer I do not recollect of his saying

4 — Are you sure that he said without any qualification in that Conversation and of his own knowledge that Stout was a boy or minor, and if so state all that he did say about it in that same Conversation

Answer — He stated that Stout was a minor or a boy in that same Conversation. He did not say

how he knew it or how he found it out.

5 — Did not Spencer Blankenship say in that same Conversation that he had bought this Land of Stout, and that Stout let him have it because his son Marion had an improvement on it.

Answer — Not that I recollect of

6 — State what Blankenship did say in that Conversation about how he came to get that piece of Land of Stout

Answer He did not tell one as I recollect how he come by it.

7 — State where this Conversation occurred and who was present.

Answer — It was at Mr Blankenships own house I do not recollect of any one being present, the family were knocking about while we were talking.

8 — Can you fix the date of this Conversation befor Mr Blankenships death

Answer I could not tell.

9 — State if you please if Mr Blankenship did not say in that Conversation that the Land referred to had been bought under the bit act

[5777-88]

by Stout.

Answer — I could not say whether he did or not. it was understood by us it was bit Sand.

James his X mark Donohoe

Direct Examination resumed

Question — Was it your understanding or your and Blankenships understanding it was bit Sand.

Answer It was my understanding and I think it was his from the Conversation.

James his X mark Donohoe

Cross Examination resumed.

Question — State if you can now remember all that did pass in the Conversation of which you speak.

Answer I do not remember it all not the tenth part of it.

James his X mark Donohoe

The said Obedenck Beck being first duly sworn according to Law deposeth and saith in answer to the several Interrogatories on the part of the said plaintiff as follows.

Question 1. Do you know the parties Complainant and Defend

ants in the title of these Interrogatories named or either and which of them and how long have you known them respectively.

Answer. I know the Complainant about six months. I know the defendants some three years.

Question 2 – Whether or no did you know Spencer Blankenship in Bill named on or about 4 Oct 1854.

Answer I did not.

Question 3 – Do you or not know the present age of the Complainant John M Stout.

Answer I do not

Question 4 Whether or no to your knowledge was said Stout owner of the S E¼ of Sec 20 T 1 N R 4 E. did he know its location or value about said 4 Oct 1854

Answer No

Question 5 – Whether or no to your knowledge did said Spencer Blankenship on said 4 Oct 1854 know said Land.

Answer I know nothing about it.

Question 6 – Do you know of any application made by said

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Complainant to said Blankenship to show him said Land.

Answer I do not

Question 7 – Had you at any and what time any Conversation with said Spencer Blankenship about his purchase of said Land from Stout State the particulars if you had such Conversation.

Answer None that I recollect

Question 8 – Did you know the value of the Land on said 4 Oct 1854 – or its value now.

Answer – No I suppose it worth about four or five Dollars per acre now.

Question 9 – Did you ever have any Conversation with Defendant Marion Blankenship relative to the showing of this Land to Stout by Spencer Blankenship deceased

Answer Yes

Question 10 State what it was

Answer – Marion told me that when John Stout came to look at his Land we took him right across up and down them rock cliffs pretty west 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 expect ever to settle or come on it again

Question 11 · Is the Land referred to in your answer the last Interrogatory that which Blankenship bought of Stout.

answer No the Land that Marion told me about and which I referred to did not belong to Stout it was Whites Land.

Question 12 — How would the Land Blankenship said he showed to Stout compare with the Land belonging to Stout.

answer It was as good as some of it and some of Stouts was a good deal better.

Question 13. What was your understanding at the time of such Conversation of what said Marion Blankenship intended to convey.

Objected to

answer I do not know in particular. I did not know what he intended I knew the Land he was telling me of was not Stouts Land.

Question 14 — Do you know of any matter or thing that may tend to the benefit or advantage of the Plaintiff in this cause. If yea declare the same as fully as if you had been thereunto particularly interrogated

Frederick X Beck

answer No.

[P-577-94]

Cross Examined by Defendants

Question 1 Please state if the Land of White and Stout do not join and both tracts lie in same section.

Answer They do.

Question 2 – Please state if Marion did not say in the same Conversation that his father Spencer Blankenship had bought of Stout that part of his entry on which his improvement was situated

Answer He did not.

Question 3 Please state what Marion Blankenship did say if anything in reference to a purchase of part of Stouts entry by his father in same Conversation.

Answer Nothing more was stated than I said

Frederick Beck

State of Illinois }
Marion County } ss I do hereby certify that the above depositions of James Donohoe and Frederick Beck was sworn to and signed by the deponents before me and in my presence and that said Depositions were taken on the 13th day of August AD 1859 at my office in said County between the hours of 10 o'clock A.M. and 5 o'clock P.M. of said day

Given under my hand and seal of office at Salem this 13th day of August AD 1859

Jas T Martin Clk

August term Warren Circuit Court 1859

John M Stout
vs
William Byars et al } Bill of Complaint

Elizabeth Stout a witness introduced by Complainant being first duly sworn deposeth as follows Doth. That said Complainant will be twenty four years of age on the 19th day of September 1859 that she cannot recollect the date of his birth not being a scholar but that she has her knowledge of his age by comparing with the ages of her other children. She further states that her husband father of Complainant is dead — and further that her son the Complainant herein resided with her until he was about eighteen years of age that he then went to live with one Robert F White of Vandalia that she thinks he remained with him about one year, that after that he worked at his trade in different parts of the State, that she received letters from him frequently she thinks as often as once a year. that she never received a letter from him from the State of Texas. That she hear him speak of going to Texas, But dont know whether he went or not. that she dont know whether he went or not, that she dont know whether or not he has been out of the State to reside since he left her to live with White. I think the Complainant was

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at home four years ago but cant say with any
certainty. he might have been ~~present~~ absent

his
Elizabeth x Stout
mark

John T Harris a witness introduced by Complain
ant being first duly sworn deposeth as follows
Sowith In the fall of 1854 I had a Conversation
with Spencer Blankenship in regard to bit acre
Land he Blankenship said to me why did you
not do like I did refusing to my Land having
been entered from me I asked him how that
was he said buy it like I did that he had
take him on to the points thence west into the
bottoms or creek flats, thence west untill he got
onto the hills again thence home and that
he said to him heres the Land look for you
=self, be your own Judge. and that he become
willing to sell. I dont know that it was the
Land belonging to Complainant or that Blank
=ship had an improvement on same, but
inferred that it was from the Corporation

John Thomas Harris

State of Illinois
Marion County } SS I James T Martin Master in
Chancery of said County do certify
that the foregoing evidence was taken before me on this
20th day of August 1859 Jas T Martin
master in chy

And afterwards Doit on the 26th day of August AD 1859 said Complainant by his Solicitor filed their replication to Defendants answer which is in words & figures following Doit

State of Illinois } Of the August Term of the
Marion County } ss Marion County Circuit Court AD 1860

John M Stout
vs
William Byers et al } Replication to answer

This Replication of John M Stout Complainant to the joint and several answer of William Byars, Nancy Byars, Hiram Blankenship Newton Blankenship Marion Blankenship John Blankenship William Blankenship Lucenda Keel, John Keel (Elisha Blankenship James M Blankenship Nancy J. Blankenship minors)

This Repliant saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer for Replication thereunto saith that he will aver and prove his said Bill to be true, certain and sufficient in the Law to be answered unto, and that 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, confessed and avoided traversed or denied is true. All which matters and things this replicant is and will be ready to aver and prove as this Honorable Court will direct and humbly prays as in said Bill he hath already prayed

John M Stout
By Willard & Bassett
his Solicitors."

Thereupon the Court on said 26th Aug 1859 makes the following order Dowit.

"And now at this day this cause bring set down for hearing on pleadings and proofs cause on to be heard. And the Complainant appears by H Willard & James Bassett his solicitors and the Defendants appear by Bryan Schaffer and Haynie Parish & Smith their Solicitors. And the Court having heard the Bill, Answer, Replication and testimony and having heard Counsel on both sides takes this cause under advisement with liberty to Complainants to take additional testimony respecting age &c of Complainant & the Defendants may take testimony".

And afterwards at the March term AD 1860 of said Court Dowit March 20th the following order was made in said cause Dowit

"And now at this day came the Complainant by Bassett & Willard his Solicitors and on their motion leave is given to open Depositions herein."

Whereupon Depositions were opened which are as follows Towit;

"State of Illinois } Of the March term AD 1860
Marion County ss } Marion County Circuit Court

John W Stout
vs
William Byars and others.
} Bill for Relief

Gentlemen

You will please take Notice that pursuant to the Statute in that case made and provided I will cause the deposition of Elizabeth Stout, Rebecca White (wife of Leander White) and Leander White witnesses on the part of the above named Complainant John Stout, to be taken before Alexander Nelson Esquire Clerk of the Circuit Court of Bond County State of Illinois at his office in Greenville in said County on Monday the 5th day of March AD 1860 Between the hours of Eight O'clock in the forenoon and six O'clock in the afternoon of said Day and to continue from day to day until through, which depositions when taken will be read in evidence on the trial of

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the above entitled cause now pending in the Chancery side of Marion County Circuit Court aforesaid and undetermined when and where you can attend and Cross examine said Witnesses.

Dated Salem February 20th 1860

Willard & Bassett
Complts Solicitors

To Haynie Smith
Bryan & Shaffer Esqrs
Defts Solicitors.

Endorsed as follows "We hereby acknowledge service of this Notice Feb 21 1860
Bryan & Schaffer
Haynie & Smith
Solicitors for Defendants."

As of March term 1860
Marion Circuit Court

State of Illinois Marion County ss.

John W Stout

vs

William Byars & others

Bill for Relief

Interrogatories to be exhibited on the part of the said Complainant to Elizabeth Stout, Rebecca White, and Lauden White witnesses to be produced and sworn and examined in a certain Cause now depending in Marion County Circuit Court State of Illinois on the Chancery side thereof wherein said John Stout is Complainant and William Byars and others are Defendants, on the part of said Complainant.

First Interrogatory. To be administered to each of said Witnesses

Are you acquainted with or do you know

the parties Complainant and Defendants in the title to these Interrogatories named or any and which of them. State your knowledge &c.

Second Interrogatory to be administered to each of said Witnesses

Are you related to said Complainant if so. please state your relationship –

Third Interrogatory to be administered to the witnesses Elizabeth Stout and Rebecca White only.

Look upon the paper writing now produced to you (marked A) and purporting to be a Record of "our ages" or a family record of ages of the Stout family. Of whose handwriting is the said paper writing as you know, or for any and what reason believe. State what relationship, if any the writer of said paper writing if known to you bore to the Complainant State whether or not the writer thereof if known to you is living State whether or no said paper writing was in your possession, if yea State when and how it came to your possession How long it remained in your possession and if yea when, How and to whom you parted with it, State fully and declare the truth &c

Fourth Interrogatory to be administered to the witnesses Leander White & Rebecca White

Do you of your own knowledge

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know whether or no the Complainant herein was absent from the State of Illinois at any time if yea. State when, and how long he was absent, and where he was so absent if at all. State fully & declare the truth &c

Fifth Interrogatory to be administered to all said witnesses

Do you know of any other matter or things touching the matters in question in this cause which may tend to the benefit or advantage of said Complainant. If yea set forth the same and all the circumstances thereof fully, and at large according to the best of your knowledge, remembrance and belief as if you had been thereto particularly interrogated

Willard & Bassett
Complts Solicitors
Salem Ills.

State of Illinois
Bond County } ss Depositions of Elizabeth Stout Rebecca White witnesses produced sworn and examined at Greenville in the County of Bond and State of Illinois before the Abe Kelsoe Clerk of the Circuit Court in and for said County in pursuance of the annexed Notice to be read in evidence in a certain cause now pending in the Circuit Court of the County of Marion State of Illinois on the Chancery side

of said Court: for Pleas wherein John W Stout is Complainant and William Byers & others are Defendants –

Elizabeth Stout of lawful age being duly sworn doth depose and say, in answer to interrogatories propounded on the part of said Complainant –

Interrogatory 1st

Are you acquainted with or do you know the parties Complainant and Defendants (in the above entitled cause) in the title to these interrogatories named or any and which of them? State your knowledge &c.

Answer – I am acquainted with John W Stout the Complainant – I am not acquainted with the Defendants.

Interrogatory 2nd Are you related to said Complainant? if so state your relationship?

Answer He is my Son.

Interrogatory 3rd Look upon the paper writing, now produced to you (marked A) and purporting to be a Record "of our ages" or a family Record of ages of the Stout family of whose writing is the said paper writing? If you know. State the reason you have for so believing and for what purpose said paper writing was kept?

State what relationship if any the writer

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of said paper writing if known to you, bear to the Complainant? State whether or not the writer thereof if known to you is living? State whether or not said paper writing was in your possession if so state when and how it came to your possession? How long it remained in your possession? and if you when, where, how and to whom you parted with it? State fully and declare the truth &c

Exhibit A

Eliza J Stout was born the 10th day of May in the year of our Lord 1824.....

Rebecca A Stout was the 17th day of September in the year of our Lord 1828

George Stout was born the 27th day of February in the year of our Lord 1830.....

William J Stout was born the 8th day of December in the year of our Lord 1833.....

John Stout was born the 19th day of September in the year of our Lord 1835.....

Mary Stout was born the 2 day of January in the year our Lord 1837 she died the

Our Ages

Thomas Stout was born the 15th day of December in the year of our Lord 1795..... T

Elizabeth Stout was born the 15th day of December in the year of our Lord 1814..... E

Philip Stout was born the 0th day of May in the year of our Lord 1816..... P

Andrew J Stout was born the 10th day of May in the year of our Lord 1818.....

Harvey Stout was B

Answer

I believe said writing to be in the hand writing of Thomas Stout my deceased Husband and father of said Complainant. The reason I have for believing it to be in his hand writing is that he said Thomas Stout kept the ages of the family on a paper writing just similar to that one now shown to me. he always put down the age of each child on said paper writing - said paper writing was kept for the purpose of a family Record of the Stout family - The said writer Thomas Stout is not living - he is dead - The said paper writing came into my possession when said Thomas Stout died and remained in my possession ever since until about two years since when Rebecca White took possession of it at my house for the purpose of copying said ages into her large bible. that is all I know about it that I can recollect of now.

Interrogatory 4th Do you know of any other matter or thing touching the matters in question in this cause which may tend to the benefit or advantage of said Complainant, if you set forth the same, and all the circumstances thereof fully, and at large according to the best of your knowledge, remembrance and belief, as if you had been thereto particularly interrogated?

Answer

I do not now recollect of any thing more that would be of any benefit or advantage to said Complainant

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more than I have stated
Subscribed and sworn to before me this March 5th 1860
Alex Nelson Clerk

Elizabeth her X mark Stout

Rebecca Ann White a Witness produced on part of said Complainant who being duly sworn says in answer to the following Interrogatories

Interrogatory 1st I am acquainted with the Complainant John M. Stout, the other parties I am not acquainted with.

Interrogatory 2nd Are you related to said Complainant if so please state your relationship

Answer Said Complainant John M Stout is my Brother.

Interrogatory 3rd Look upon the paper writing now produced to you (marked A) and purporting to be a record of "our ages" or a family Record of ages of the Stout family. Of whose hand writing is the said paper writing? If you know give the reasons for your belief and for what purpose said paper writing was kept? State what relationship if any the writer of said paper writing if known to you bore to the Complainant? State whether or not the writer thereof if known to you is living? State whether or no said paper writing was in your

possession? if yea state when and how it came to your possession. how long it remained in your possession, and if yea when, how and to whom you parted with it? State fully and declare the truth &c

Answer I believe said paper writing now shown to me (marked A) is in the hand writing of Thomas Stout my deceased father - The reasons I believe said paper writing to be in the hand writing of said Thomas Stout my deceased father is that I am acquainted with his hand writing and know this paper was shown to me (marked A) to be in my fathers writing. and that my father said Thomas Stout kept said paper writing for the purpose of a family Record of the ages of his family. Said Thomas Stout was father of said Complainant John W Stout. Said Thomas Stout is now dead - Said paper writing was in my possession I took it from the possession of my mother Elizabeth Stout about two years since. It remained in my possession ever since I got possession of it until some time last fall when I gave it to said Complainant John W Stout.

Interrogatory 4th Do you of your own knowledge know whether or know no the Complainant herein was absent from the State of Illinois at any

6

[2577-3]

6 Q time? If yea, state when and how long he was absent and where he was so absent if at all? State fully and declare the truth &c

Answer I do - he was absent in the year 1854 - he was in the State of Texas about one year -

Interrogatory 5th Do you know of any other matter or thing touching the matters in question in this cause which may tend to the benefit or advantage of said Complainant? If yea set forth the same, and all the circumstance thereof fully and at large according to the best of your knowledge remembrance and belief as if you had been thereto particularly interrogated.

Answer - I do not know of any thing more that I can recollect of at this time that would be of any benefit or advantage to said Complainant John M Stout

Subscribed & sworn to before me this March 5th 1860

Rebecca Ann White

Abe Nelson Clerk

State of Illinois }
Bond County } ss I Alex Nelson Clerk of the Circuit Court in and for said County, do hereby certify that in pursuance of the Notice hereto attached on Monday the 5th day of March AD 1860 Between the hours of Eight O'clock in the forenoon and 6 O'clock in the afternoon of said day. Elizabeth Stout and Rebecca Ann White two of the Witnesses named in the annexed Notice appeared before me at my office in the Court House in the Town of Greenville — That said Witnesses were first duly sworn by me to testify the truth in relation to the matter in Controversy Between John M Stout Complainant and William Byers & others, now pending in the Circuit Court of Marion County State of Illinois, so far as they should be interrogated — That after being by me so sworn the several interrogatories and the answers to the same of the witnesses testifying were by me reduced to writing in the order in which they were propounded and answered in the presence of said witnesses — That after so writing the same as aforesaid the said witnesses each at the foot of her own deposition signed her name thereto in my presence, that after the signing of said Deposition by said Witnesses as aforesaid the whole interrogatories and answers thereto were again read by me

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[8579-32]

to said witnesses each of whom were again duly sworn by me that the answers to the interrogatories propounded to each witness respectively were true –

In Testimony whereof I have hereunto subscribed my name and affixed the seal of said Court at Greenville this 5th day of March AD 1860

Alex Nelson Clerk

Clerks fee for taking Deposition $2 00 paid by John M Stout the Complainant".

Whereupon the Court on the 30th day of March AD 1860. being of the March term. made the following order Viz't "This cause being set down for hearing on Bill answer, Replication and testimony came the Complainant by Bassett and Willard his Solicitors and the Defendants by Bryan & Shaffer Haynie, Parrish & Smith their Solicitors and the Court having heard the Bill, answer, Replication & testimony read, and the additional testimony on part of the Plaintiff being read and the Court having heard the argument of Counsel and having duly considered the allegations of said Bill of Complaint as to Complainants minority and the evidence in said additional testimony doth find that said Complainant was born on the 19th day of September in the year of our Lord 1835. And the Court finds further that he attained his full age of twenty one years on the 19th day of September AD 1856. That the Conveyance mentioned in Bill was made on the 24th day of October 1854 while Complainant was a minor. And the Court finds that the Bill of Complaint herein was filed on the 19th day of February 1859 within the three years limited by Law in case of minors seeking avoidance of acts done during minority after attaining their full age Viz't, That said Bill of Complaint was filed two

years and six months after Complainant had attained his full age. The Court on due examination of the premises, and Consideration of the facts proven doth now pronounce its Decree. And doth grant the prayer of Complainants Bill and to that end doth order direct, declare and decree that the warranty Deed in Bill described dated 4th October AD 1854 and made between John M Stout Complainant and Spencer Blankenship now deceased and recorded in the Recorders office of Marion County Illinois in Book I page 463 was obtained from said Complainant while he was a minor. and the Court doth now order, direct and decree that said Deed be and the same is hereby set aside, Cancelled, and declared null and void at law and in Equity to all intents and purposes. And the Court doth further Order and Decree that the Record of said Deed in said Recorders office be cancelled. And it is further ordered and decreed and adjudged that said Complainant John M Stout is owner in fee of the Lands and premises described in said Deed Towit.
The South East quarter of Section Number twenty (20) Township One (1) North of Range Number Four (4) East of the third (3rd) principal Meridian Containing one hundred and sixty acres (160) situate in Marion County State of Illinois. the Execution and acknowledgement and Record of said

Warranty Deed notwithstanding in anywise.
And it is further Ordered and Decreed that James S Martin Esquire Master in Chancery of Marion County do on the request of said Complainant or his solicitors execute to said Complainant a good and sufficient warranty Deed of said Lands herein described. And it is further ordered adjudged and Decreed that said Master in Chancery do deliver said Warranty Deed to said Complainant on being satisfied that the Consideration in said Deed of 4th October 1854 with Interest thereon at six per cent per annum be paid to the Defendants or their Legal Representatives or deposited with the Clerk of this Court, or he may receive same himself. And the Court now computes said Consideration and Interest and finds the Consideration aforesaid to be forty Dollars ($40) and the Interest to be ($14:70) making the sum of $54:70 to be paid as herein directed. And it is further ordered adjudged and decreed that said Defendants and each of them be and they are hereby perpetually enjoined they and their agents, Solicitors attorneys and Counsellors from interfering in any way or manner with said Lands or any part thereof. And it is further ordered adjudged and decreed that the Defendants pay the costs in this cause incurred and this cause is removed from the Docket."

EJ

[8577-34]

(68)

State of Illinois
Marion County } I, N. W. Eagan Clerk of the Circuit Court of said County do hereby certify the foregoing to be a full true & complete transcript of the Records and proceedings had in our said Court in the above entitled cause as the same remains on file in my office.

Given under my hand and official seal at Salem this Oct 16th 1860

N. W. Eagan Clk
P. S. D. Hance Dep

Appellant
Complainant – Reason Montgomery
Comes & assigns for Error in the foregoing Record 1st Error of the Court in overruling the Demurrer
2d The error of the Court in overruling to the evidence
3d The Court erred in rendering a decree against the Minors in chancery
4th The Court erred in admitting a decree in the Supreme Court in the case which does not support any allegation in the Bill – Bills & Answers &c

Pro Appellants

Appellees defendants
Assign Error
Shearer & Stokes
& Bassett Atty for
Deft in Error

Filed Oct. 23. 1860
N. Johnston Clk
Pet by Bryan & Stone

Q. M. Stout

State of Illinois,
SUPREME COURT,
First Grand Division. } ss

The People of the State of Illinois,

To the Sheriff of Marion County.

Because, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the Circuit Court of Marion county, before the Judge thereof between

John M Stout plaintiff and Hiram Blankenship, William Byers, Nancy Byers his wife, Austin Blankenship, Marion Blankenship, John Blankenship, William Blankenship Lucinda Keel, John Keel, Elisha Blankenship, Martin Blankenship, Washington Blankenship & Nancy Blankenship defendants it is said that manifest error hath intervened to the injury of said Hiram Blankenship as we are informed by his complaint, the record and proceedings of which said judgment, we have caused to be brought into our Supreme Court of the State of Illinois, at Mount Vernon, before the justices thereof, to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county, you give notice to the said John M Stout

that he be and appear before the justices of our said Supreme Court; at the next term of said Court, to be holden at **Mount Vernon**, in said State, on the first Tuesday after the second Monday in November next, to hear the records and proceedings aforesaid, and the errors assigned, if he shall think fit; and further to do and receive what the said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said John M. Stout notice together with this writ.

WITNESS, the Hon. John D Caton Chief Justice of the Supreme Court and the seal thereof, at MOUNT VERNON, this twenty-third day of October in the year of our Lord one thousand eight hundred and sixty.

Noah Johnston

Clerk of the Supreme Court.

[8577-34]

21

SUPREME COURT.

First Grand Division.

Hiram Blankenship

Plaintiff in Error,

VS.

John M Stout

Defendant in Error.

SCIRE FACIAS.

FILED.

Shows service of this writ by leaving the same with John M. Stout October 30 1880

Fees 30
Serv 50
10
$1.00

Geo. Shultz Sheriff
Morris C. Allen

HIRAM BLANKENSHIP, et. al.
vs.
JOHN M. STOUT.

BRIEF.

1st Point; no equity in the bill.

2d Point; complainant fraudulently obtained the land in question and cannot equitably ask to vacate the conveyance.

3d Point; the allegations of the bill show that the complainant below had been of age over three years before he filed his bill to vacate the deed—he therefore lost his remedy.

4th Point; the complainant by the sale defeated the right of defendant to have canceled the entry of complainant which was a fraud on them, to allow complainant now to vacate would permit complainant to profit by his meditated wrong.

[8577-35]

SILAS L. BRYAN, Aty. for Pl'ff. in Error.

21

Blankenship
vs
Stout

Petition, Brief

Filed Nov. 14. 1860.
N. Schweitzer Clk

November term Supreme Court
Mount Vernon Aug 22 1860

Hiram Blankinship, impleaded with
William Byers
Nancy Byers his wife
Kusten Blankinship
Marion Blankinship
John Blankinship
William Blankinship
Lucinda Reel
John Reel
Elisha Blankinship
Martin Blankinship
Washington Blankinship &
Nancy Blankinship
vs
John M Stout

} Plaintiff in Error

} Error to Marion Co.
Defendant in Error

The clerk of the Supreme court for the first grand division of said court to be holden in November 1860 will please issue the usual process in the said cause direct to the Sheriff of Marion County for service the County of the Residence of the said defendant in Error

Silas L Myers Atty for Plf

[2577-37]

21

Praecipe for writ

Hiram Blankenship
indebted &c

vs

Jacob Stout

Filed October 23. 1860.
N. Johnston Clk

Ryan
A.G.

November term Supreme Court
at Mount Vernon for 1860.

John M. Stout
vs
William Ryerson et al } Bill in Chancery

Know all men by these presents that we Hiram Blankenship and
of the County of Marion and State of Illinois are held and firmly bound unto John M. Stout in the sum of one hundred dollars lawful money of the United States for the payment of which sum to be well and truly made we and each of us jointly and severally bind ourselves our heirs and assigns firmly by these presents. Witness our hands & seals this 14th day of September 1860

The condition of the foregoing obligation is such that whereas the said Hiram Blankenship one of the appellants in the foregoing and above entitled cause has prosecuted his writ of Error from the decision of the Marion County Circuit Court & the Supreme Court of the State of Illinois, now if the said Hiram Blankenship shall well and truly and without delay prosecute his said writ of Error and upon the dismissal of ~~said~~ writ of Error or the affirmance of the decree in said cause by the said Supreme Court will well and truly pay or cause to be paid all costs that may be made by reason of the prosecution

of the said wits. of Essex as aforesaid
and all costs that may be adjudged or
damages awarded against him
by the said Supreme Court upon
the suit prosecuted thereof the said
obligation shall be null & void
otherwise to remain in full
force and effect

Given under our hands and
seals the day & year above written

A P C Allen (Seal)
Hiram Blampenship (Seal)

Bond for Stay
Vs
William Rogers et al
Bond for
Costs in Supreme
Court 1860

Filed October 23, 1860.
R. Johnston Clk

ABSTRACT.

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

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 throught 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

31 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.

32 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.

37 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.

38 Testimony for the complainant.

39 James Donoho testified that he knew the parties. Witness judged that Spencer Blankenship knew the

40 land in question—having a large sugar orchard on it. Witnesss 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 Blanken-

44 ship March 1858.

46 Frederick Beck—knew the parties. Thinks the land worth now four or five dollars per acre. Had a conversation with Marion Blankenship abort 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

47 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."

48 The land of White and Stout lie in the same section.

49 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

50 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.

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.

51 Replication to answer—Replication general.

52 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 defend-

53 ant to take testimony March term 1860 cause came on again to be heard.

54 Deposition of Elizabeth Stout taken a second time in Bond County, opened and read—testimony.

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 posession 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.

60 Rebecca White testifies—she is a sister of complainant. "Exhibit A" is shown her. Thinks it to be the

62 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.

65 30th March 1860 cause came on to be heard by the court March Term.

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 L. BRYAN, Atty. for Comp't.

21

Blankenship

vs

Stout

Filed Nov. 14. 1860.

N. Johnston Clk

HIRAM BLANKENSHIP, et. al.
vs.
JOHN M. STOUT.

BRIEF.

1st Point; no equity in the bill.

2d Point; complainant fraudulently obtained the land in question and cannot equitably ask to vacate the conveyance.

3d Point; the allegations of the bill show that the complainant below had been of age over three years before he filed his bill to vacate the deed—he therefore lost his remedy.

14th Jur R 1858

4th Point; the complainant by the sale defeated the right of defendant to have canceled the entry of complainant which was a fraud on them, to allow complainant now to vacate would permit complainant to profit by his meditated wrong.

Statutes of Mass & United States 18[illegible]

10th vol Pet 57th 14th Howe 11th Pet 186

SILAS L. BRYAN, Aty. for Pl'ff. in Error.

Agr for Complainant

JONAS HITE. et al.
vs.
JAMES HOSS.

BRIEF.

1st. The bill contradictory and absurd—the court should have sustained the demurrer—Story's equity pleading, sec. 638.

2d. A total want of diligence manifest from the bill.—Story's equity pleading, sec. 404,414; Mas. R. 312, 20, 21; 3 McLain R. 41; 7 Blackford 329; 15th Ohio R. 313, 26; Maine R. 11; Jack's. R. 243; 3d. Johnson's chan. R. 124; 3d Paige R. 204; 2 Johnson's ch. R. 488.

3d. The bill would not have been filed as a matter of right, but simply by leave of the court. No leave asked or granted. Story's equity pleading, sec. 412.

SILAS L. BRYAN, Att'y. for Plt'ff.

Age of complainant, bar
under disposition

State of Illinois,
SUPREME COURT,
First Grand Division. } SS

The People of the State of Illinois,

To the Clerk of the Circuit Court for the County of Marion Greeting:

Because, *In the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of* Marion *county, before the Judge thereof between*

John M Stout *plaintiff and* Hiram Blankenship, William Byers, Nancy Byers his wife, Austin Blankenship, Marion Blankenship, John Blankenship, William Blankenship, Lucinda Hill, John Hill, Elisha Blankenship, Martin Blankenship, Washington Blankenship & Nancy Blankenship *defendants it is said manifest error hath intervened to the injury of the aforesaid* Hiram Blankenship

as we are informed by his *complaint, and we being willing that error, if any there be, should be corrected in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given; you distinctly and openly without delay send to our Justices of our Supreme Court the record and proceedings of the plaint aforesaid; with all things touching the same; under your seal, so that we may have the same before our Justices aforesaid at* **Mount Vernon,** *in the County of Jefferson, on the* 1st Sunday after the 2d Monday in November *next, that the record and proceedings, being inspected, we may cause to be done therein; to correct the error, what of right ought to be done according to law.*

WITNESS, *the Hon.* John D Caton *Chief Justice of the Supreme Court and the seal thereof, at* MOUNT VERNON, *this* twenty third *day of* October *in the year of our Lord one thousand eight hundred and* Sixty.

Noah Johnston
Clerk of the Supreme Court.

[2577-43]

21

SUPREME COURT.

First Grand Division.

Hiram Blankenship

Plaintiff in Error,

VS.

John M Stout

Defendant in Error.

WRIT OF ERROR.

Issued & FILED 23d Oct. 1860.

A. Johnston Clk

ABSTRACT.

HIRAM BLANKENSHIP, et. al. vs. **JOHN M. STOUT.** } **Plaintiffs in Error.** **Error to Marion County.** **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 fradulent 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 recited.

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 throught 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

31 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.

32 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.

37 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.

38 Testimony for the complainant.

39 James Donoho testified that he knew the parties. Witness judged that Spencer Blankenship knew the

40 land in question—having a large sugar orchard on it. Witnesss 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 Blanken-

44 ship March 1858.

46 Frederick Beck—knew the parties. Thinks the land worth now four or five dollars per acre. Had a conversation with Marion Blankenship abort 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

47 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."

48 The land of White and Stout lie in the same section.

49 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

50 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.

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.

51 Replication to answer—Replication general.

52 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 defend-

53 ant to take testimony March term 1860 cause came on again to be heard.

54 Deposition of Elizabeth Stout taken a second time in Bond County, opened and read—testimony.

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 posession 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.

60 Rebecca White testifies—she is a sister of complainant. "Exhibit A" is shown her. Thinks it to be the

62 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.

65 30th March 1860 cause came on to be heard by the court March Term.

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 convey-ance 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 L. BRYAN, Atty. for Comp't.

21

Blankenship

vs

Stout

Filed Apr. 14. 1860

N. Johnston Clk

No 21

Nov. Term 1866.

Blankenship

vs

Stout

Error to Marion

Affirmed

8577

HIRAM BLANKENSHIP, et. al.
vs.
JOHN M. STOUT.

BRIEF.

1st Point; no equity in the bill.

2d Point; complainant fraudulently obtained the land in question and cannot equitably ask to vacate the conveyance.

3d Point; the allegations of the bill show that the complainant below had been of age over three years before he filed his bill to vacate the deed—he therefore lost his remedy.

14th Leas R 158

4th Point; the complainant by the sale defeated the right of defendant to have canceled the entry of complainant which was a fraud on them, to allow complainant now to vacate would permit complainant to profit by his meditated wrong.

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SILAS L. BRYAN, Aty. for Pl'ff. in Error.