

No. 14272

Supreme Court of Illinois

Shaver

vs.

Woodward

STATE OF ILLINOIS,

SUPREME COURT,

Third Grand Division.

14272

No. 297.

Saver
vs.
Woodard

SUPREME COURT OF ILLINOS,

THIRD GRAND DIVISION.

APRIL TERM THEREOF, A. D. 1862.

ANTHONY H. SHAVER }
 ^{vs.}
LEVI WOODWARD and } *Appeal from Ogle.*
JACOB P. SHAVER. }

ABSTRACT OF THE RECORD.

- 1 BILL in chancery filed in Ogle County Circuit Court by appellant against appellees, at the March term, A. D. 1854.
- 2 Bill states that complainant borrowed of Jacob P. Shaver, who is his father, and resides in the State of New York, \$444.50, and to secure the payment gave said Jacob P. Shaver a mortgage on fractions one and two of the North-east quarter of Section three, Town seventy-three, Range seven, east of the 4th P.M.

August, A. D. 1853, complainant borrowed of said Jacob P. Shaver a sum sufficient to make the whole amount \$950, and agreed to give said Jacob P. Shaver a deed of fraction No. 2 and W. $\frac{1}{2}$ of fraction No. 3, and also a lot of timber land in Elkhorn Grove, being the most easterly of two tracts that said complainant owned in said Grove.
- 3 Said conveyance was not then executed, because it was then inconvenient to make the same, but it was agreed such conveyance should be executed and should operate only as a mortgage to secure the payment of said \$950, and also \$50 left by said Jacob P. Shaver with complainant, to be expended on said

premises; that said complainant should have the right to redeem said premises upon repaying the said sum of \$1,000, and seven per cent. interest. This right of redemption was subject to one condition, which was that, on the return of the said Jacob P. Shaver to his residence in New York, if one of his other sons should desire to remove West, the land should be deeded to such son who was, in such case, to enter upon and improve such land, which would have been a benefit to the adjoining lands of complainant.

4 On the return of said Jacob P. Shaver, none of his sons were willing to remove West, and the conveyance became a simple mortgage on the payment of one thousand dollars and interest. On the 30th day of September, A. D. 1853, complainant executed a conveyance of the aforesaid land, except the timber land, and sent the same to the said Jacob P. Shaver. The timber land was not included, because it was impossible to give an accurate description of it. The land conveyed was worth \$1,500.

5 Defendant, Woodward, resided near complainant, and had been a member of complainant's family, and was originally in the neighborhood in New York, where Jacob P. Shaver resided, and well knew the right that complainant had in the premises and the bargain between him and Jacob P. Shaver aforesaid, and had frequently applied to complainant to buy the land, and had offered him \$1,300 for the same, but failing to buy the land of the complainant, went to the residence of the said Jacob P. Shaver in, New York, and falsely and fraudulently represented to the said Jacob P. Shaver that he had agreed with complainant that he, said Woodward, might have said premises, and that he was to pay said Jacob P. Shaver \$1,000 and arrange the residue with complainant.

6 Jacob P. Shaver refused to make said conveyance without an order in writing from said complainant. But Woodward assured him that he left in a great hurry and had no time to procure such order; that the bargain was all consummated between said complainant and said Woodward, and that much time and expense would be saved if the said Jacob P. Shaver would receive a thousand dollars and make the conveyance. All of which representations were false and fraudulent. Said Jacob P. Shaver relied on said representations, and did convey said land to said Woodward, and did receive the one thousand dollars from him.

7 Oath to the answer waived.

8 Prayer that the deed from Jacob P. Shaver be set aside.

Amendment to bill filed March 13th, 1856, states that since the filing of the original bill, complainant has discovered that there was a mistake made in the deed made by him to Jacob P. Shaver in a description of the land. That in said deed it is described as the NW $\frac{1}{4}$ and SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ fractional quarter of Sec. 3, Town 23, Range 7, east of 4th p. m.; that the NE $\frac{1}{4}$ of said section 3 is divided into 4 lots—lots 1 and 2 contain 158.16 acres; lot 3, 79.08 acres; lot 4, 110.40 acres.

Complainant never had any interest in lots 2 and 4; that the description should have been lot 2 and the W $\frac{1}{2}$ of lot 1 of said quarter; that by the deed only the title to the W $\frac{1}{2}$ of lots one and two passed said Shaver; that the North-east and North-west quarters of the North-east quarter of said section three were premises in which complainant never had any interest, and which he did not intend to convey.

11 The same error was continued in the deed from Jacob P. Shaver to Woodward.

12 Complainant offers to pay to Woodward the sum of \$1,000 and interest, and prays that Woodward may be required to convey the premises, so far as they were correctly described, to him.

Copy of deed from complainant to Jacob P. Shaver.

16 The answer of Jacob P. Shaver admits the statements of the bill to be true.

25 The answer of Woodward admits that Jacob P. Shaver is the father of complainant, and says he has no knowledge of complainant's borrowing money of said Jacob P. Shaver; denies that the sum of \$950 was loaned by Jacob P. Shaver to complainant; denies that the conveyance from complainant to Jacob P. Shaver was intended to operate as a mortgage.

27 Admits the conveyance from complainant to Jacob P. Shaver. Denies that he ever had any knowledge that said conveyance was intended as an absolute conveyance; that he paid Jacob P. Shaver \$1,000 in full payment for the land; admits the mistake

in the deeds, in the description of the land; offers to have the same corrected; denies that he made any representations to the said Jacob P. Shaver, as charged in the bill, or that he offered to buy the land of complainant, as charged; denies that the lands were worth fifteen hundred dollars; says that they were worth but a thousand.

Replication.

Deposition of *Jacob P. Shaver*. I loaned Anthony H. Shaver \$444.50 in August, 1846, and took a mortgage on some land he owned in Ogle county. In August, 1853, I loaned him another sum, which made the whole amount loaned \$950. He agreed to convey to me one hundred and seventy acres of prairie land, contiguous to his farm, and north and north-west therefrom, and ten acres of timber in Elkhorn Grove, being the most easterly of two ten acre tracts in said Grove, owned by complainant. The deed was a mere security for the repayment of \$950 and seven per cent. interest. Complainant was to have his own time to pay in, provided he paid the interest. But it was agreed between us that if either of my sons should go out and settle on the land and improve it, then I was to deed the land to him, and he was to pay me the sum complainant owed me. At the time I loaned complainant the last sum, I left with complainant fifty dollars (\$50) which, in case either of my sons did take said premises, was to be retained by complainant in consideration of releasing to his brother this bargain. And in case neither of my sons desired to go West, the \$50 was to be added to the \$950 and be repaid by complainant. Anthony did make the conveyance to me, which I attach to my deposition. I am advised that there is a mistake in the description, but being unacquainted with the government lands I cannot tell whether it is so or not. The deed did not embrace the timber lands, which I considered of no consequence, as complainant assured me he would repay me the money in a short time if I desired it. The reason why I took a deed instead of a mortgage was, we both felt anxious that one of my sons should go and settle near Anthony. I thought it would be much more convenient to effect that object by taking a deed than by taking a mortgage.

Woodward, I think, knew all about the interest Anthony had in the premises. He told me that Anthony told him all about it. I think he knew about it about the time I let Anthony have the money, in April or May, 1854. Woodward came to my

residence in the state of New York, and told me he wanted to buy the land that my son, Anthony, deeded to me. I told him it was not my land to sell, that I only held it in security for about \$1,000 that Anthony owed me. He came to my house a day or two after and told me that he had bought out Anthony's interest; that Anthony had released the land to him; that by the arrangement he was to pay me a thousand dollars, and the balance he had or would settle with Anthony. I told him he should have brought a line to that effect. He replied that Anthony would have given him one but that it would have cost him three or four miles travel, and considerable trouble, to have got it, and he concluded to come without it—but the whole matter was right. He continued his applications, entreaties, and representations, until at last I told him that if he would make the same statement before the magistrate, who took the acknowledgement, that he had to me, I would deed him the land. In May, 1854, I gave him a deed for the land described in Anthony's deed to me. If there is a mistake in one there is probably in the other. When he went before the magistrate to have the deed acknowledged, I told Mr. Douglass, the magistrate, the terms upon which I executed the deed—that the land belonged to my son, Anthony; that I only held it as security for the money I let him have; that I was bound to re-deed it on payment of the money; that I objected to deeding the land to Woodward till I could hear from Anthony in writing, but Woodward told me the matter had all been arranged between him and Anthony; that Anthony had intended to have given him a writing to me.

45 He was to pay me the \$1,000 and arrange the balance with Anthony. Mr. Woodward stated that what I said was all true. The magistrate told me there would be no risk in making the deed under such circumstances, and I made it.

46 Testimony of *Alexander B. Douglass*. My age is 35. I reside in Delaware county, New York. Not acquainted with complainant. In May, 1854, Levi Woodward and Jacob P. Shaver came to my office to get a deed drawn and acknowledged. I prepared the deed from one Mr. Shaver, brought with him from his son, Anthony. I was Justice of the Peace. After the deed was prepared, and before it was executed, and before the consideration was paid, Mr. Shaver stated to Woodward and myself upon what conditions he executed the deed. He said the land belonged to Anthony. That Anthony had deeded to him to secure him for money he let him have, \$1,000 I think he said.

That it was the express understanding between him and Anthony that if one of his other sons should not conclude to go West, and take the land and pay him the amount Anthony owed him, that Anthony was to have the land without any conditions whatever upon the repayment of the money loaned and interest. That this was the express bargain made with Anthony before
 47 the deed was executed by him. That Woodward had told him that Anthony had agreed to let him have his interest in the land. That he was to come and get a deed and pay the \$1,000. That the balance had been arranged between him and Anthony. That he, Shaver, had refused to execute the deed unless he was authorized to do so by Anthony. That Woodward had told him that Anthony had intended to have given him an order authorizing the deed to be made to him, but that he started off in a hurry—that it would have cost him some trouble and travel to have seen Anthony, and he concluded to come without it. Woodward assented, and said it was all right. That he had told Mr. Shaver so. That he was to or had paid Anthony for his interest in the land. Mr. Shaver then asked me if there could be any risk of his executing the deed under such circumstances. I told him I thought not. Woodward said there could be none at all—Mr. Shaver would find it just as they had talked it over. Mr. Shaver then executed the deed.

49 Copy of the deed attached to the deposition.

Deposition of *Elizabeth Shaver*. I know the parties. I re-
 54 sided in the family of Anthony Shaver six months in 1854. Levi Woodward resided one mile from Shaver's. He formerly lived in Shaver's family. I saw him twice at Shaver's house while I lived there. At that time Anthony Shaver claimed to own the
 55 land referred to lying north and west of his farm, being a tract of 120 acres. I know that Woodward knew of the interest Anthony Shaver claimed in the land, from the act that Woodward tried to purchase the land from Anthony Shaver. The last of April, 1854, I heard Woodward offer Anthony Shaver \$1,300 for the said land. Shaver replied he could not have it, that he had bought it expressly for his own use. Two or three days afterwards Woodward went to the state of New York.

Defendant's proof.

59 Deposition of *Sally Webster*. Age 51. Live in Polo, Ogle county. Acquainted with the parties. Anthony Shaver is a brother of mine. Jacob Shaver is my father.

60 I was at the residence of my father, in New York, when Woodward came there to buy the land in Illinois. I did not hear the
 62 conversation in relation to the land. Father's family consisted of my father, a brother and sister, a hired girl and hired man.

64 Deposition of *George R. Webster*. Age 52. Farmer. Live in Polo, Ogle county. Know the parties.

The following testimony was objected to:

I had a conversation with Jacob P. Shaver about the land I suppose Mr. Woodward owns in Illinois. It was the season Shaver got it of Anthony, I think. He said he had bought the land of Anthony. I think he said it cost him about \$800—it might have been more or less. He told me where the land was, more or less. He did not give the numbers. Don't recollect that timber land was mentioned, or how many acres.

67 *Elizabeth Shaver*. Age twenty. Live at Buffalo, Ogle county, Illinois. I am acquainted with Anthony Shaver. I lived in his family six months. I did hear a conversation between Anthony H. Shaver and Woodward in regard to this land. Woodward offered \$1,300 for the land. Shaver refused to sell it. Said he wanted it himself. This was before Woodward went to the state of New York.

69 *John Anderson*. Age 50. Occupation, farming. Live in Ogle county, Illinois. In the spring prior to Woodward buying the land, Anthony told me he had sold the land to his father. His father wanted him to take it back again, but that he declined taking it back. That he got out of debt by selling the land. That his father was an old man and might drop away. That if he did take it back his notes might come into some person's hands that he did not want to have them. Something was said about his brothers Lyman and Aaron,—about Lyman's coming out here to settle. Don't recollect the particulars of the conversation.

72 *Nicholas N. Shaver*. Age 49. Reside in Ogle County. Think I knew of Jacob P. Shaver owning land on Rock river in 1854. I wrote to him to know whether he would sell the land, not knowing for a certainty that he was the owner. By the answer I concluded he was the owner. I think he said it was for sale, as things had not turned out as he expected. I think it was a thousand dollars, or else the offer was a thousand dollars. I may have the letter here, but I don't know it.

73 *Cross Ex.* Anthony Shaver wished me to say to father not to sell the land, as he wanted it back. Anthony stated that he was to have the land if his brother did not want it.

78 *John Hodges.* Age 54. reside in Carrol county. I know complainant and Woodward. Had a correspondence with Jacob P. Shaver by Nicholas N. Shaver. I wanted to purchase the land in question. The answer returned by letter to Nicholas N. Shaver was that I could.

80 *Gilbert Finkle*, a witness sworn—not in the notice—testimony taken by agreement of counsel, to be allowed or rejected as might thereafter be determined by Henry A. Mix. Age 23; residence Whiteside county, and deposition proves nothing.

Case heard, bill dismissed, at complainant's costs. Appeal.

83 Appeal bond.

ERRORS ASSIGNED.

84 First. The Court erred in rendering the decree aforesaid, in manner and form aforesaid.

POINTS AND AUTHORITIES.

1st. The deed from Anthony H. Shaver to Jacob P. Shaver was in fact a mortgage. *Tilson vs. Molson et al.* 23 Ill. 48.

2d. Woodward had notice of the facts, so that he only succeeded to the same rights that Jacob P. Shaver had, as mortgagee of the land. Complainant had the right to redeem from him. See testimony of Jacob P. Shaver and Douglass.

3d. Woodward was guilty of a fraud in procuring the conveyance from Jacob P. Shaver, and cannot gain any advantage by such fraud.

26 Dec. 1878.

Wm. Book &
Campbell

Shaven

29

Woodward

Abstracts Points

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296

296

Filed May 9, 1862

J. L. Leake

CLR

John Barton Payson

1862

UNITED STATES OF AMERICA,
STATE OF ILLINOIS, COUNTY OF COOK, SS.

Pleas, before the Honorable, the Judges of the Superior Court of Chicago, within and for the County of Cook and State of Illinois, at a regular Term of said Superior Court of Chicago, begun and holden at the Court House, in the City of Chicago, in said County and State, on the first Monday, being the First day of April in the year of our Lord One Thousand Eight Hundred and Sixty one and of the Independence of the United States of America the Eighty fifth

Present, The Honorable John M. Wilson Chief Justice of the }
Superior Court of Chicago. }

Nau. B. Higgins }
Grant Governor } Judges.

Carlos Hansen Prosecuting Attorney.

Anthony C. Hennig Sheriff of Cook County.

Attest, Walter Kimball Clerk.

Be it remembered that heretofore to wit on the
fifteenth day of June in the year of our Lord
one thousand eight hundred and sixty there
issued out of and under the seal of said
Court a certain Process Writ of Summons, on
the Chancery side thereof, in a certain suit
wherein Barbara Padelford was complainant and
Benjamin F. Quinby, Joseph H. Low, John H.
Thompson and William F. D'Wolf were defendants
Which said Summons with the Sheriffs return
thereon indorsed & the security for costs thereon
paid, are in words and figures as follows to wit

"State of Illinois
County of Cook & S.

The People of the State of Illinois
to the Sheriff of said County, greeting.

We command you that you summon Benjamin F. Quincy, Joseph H. Low, John H. Thompson and William F. O'Hall if they shall be found in your County personally to be and appear before the Superior Court of Chicago of said County of Cook on the first day of the next term thereof, to be holden at the Court House in the City of Chicago in said County on the first Monday of July next to answer unto Edward Paeleford vs his certain Bill of Complaint, filed in said Court on the chancery side thereof.

Also have you there and there this writ with an endorsement thereon in what manner you shall have executed the same.

Seal.

Witness Walter Kimball Clerk of our
said Court and the Seal thereof at
the City of Chicago aforesaid this
fifteenth day of June A. D. 1860.

Walter Kimball. Clerk

(Enclosed)

"Served this writ by reading & delivering
copies thereof to the within named B. F. Quincy, Joseph
H. Low, John H. Thompson & William F. O'Hall this
21st day of June 1860. John Gray Sheriff
by Chas. S. Perry. Deputy"