

14245

No. \_\_\_\_\_

# Supreme Court of Illinois

Shepard

---

vs.

Goodenough

---

STATE OF ILLINOIS,

SUPREME COURT,

Third Grand Division.

~~14245~~

No. 11.

Shepard

vs

Goodenough

1862

Paper

State of Illinois vs Pleas before the Honorable Madison  
Saballe County vs E. Hollister Circuit Judge for the  
North Judicial District of the State  
of Illinois and the presiding Judge of the Saballe County  
Circuit Court at a Court Commenced and held  
in and for the County of Saballe at the Court House  
in Ottawa on the second Monday in November the  
same being the tenth day of November in the year  
of our Lord One thousand eight hundred and fifty  
six and of the Independence of the United States the  
eighty first.

Present

The Honorable Madison E. Hollister Presiding Judge  
John F. Cook Clerk  
William H. L. Wallace State Attorney  
Francis Warner Sheriff

On the 29<sup>th</sup> day of October 1856 a bill in  
Chancery was filed in the name and figures  
following viz:

On the 29th day of October A.D. 1856, a Bill in Chancery was filed in said Court, in the words and figures following, viz:

To the Hon. M. E. Hollister Judge of the Circuit Court in and for LaSalle County Illinois.

Humblly complaining sheweth unto your Honor your orator John Shepard a citizen of the County and State aforesaid, That on the 8th day of May 1856, your orator purchased Lot 4 in Block No. 2. in Days addition to the Town (now City) of Ottawa of Dr. Cornelius W. Reynolds for the consideration of one hundred and fifty dollars and took his deed therefor, bearing date the day and year aforesaid, which was duly executed, acknowledged and delivered to your orator on the day of the execution thereof, as will more fully appear by reference to said deed and acknowledgment, which said deed will be ready to be produced in Court on the hearing of said cause. And your orator further shews unto your Honor that on the 8th day of July A.D. 1856, he took possession of the dwelling house situated on said Lot, together with the premises, the same being vacant and unoccupied and has continued with his family in the quiet and peaceable possession of said dwelling house and premises from the date of his purchase as aforesaid until the present time. Your orator would further represent unto your Honor, that he is now threatened to be ousted from the possession of said premises by Francis Warner, Sheriff of

said LaSalle County by virtue of a writ of possession issued by Samuel W. Raymond, Clerk of the County Court of said LaSalle County under the Seal of said Court in a certain proceeding wherein Lewis S. Goodenough was complainant and one Jefferson Wall was defendant, of forcible entry, taken by appeal from A. B. Smith-Eggo, a Justice of the Peace in and for said County of LaSalle; and such proceedings were had thereon as that afterwards, to wit, at a term of said County Court held at Ottawa in said County on the day of September A.D. 1856 - the said Wall was convicted of forcibly entering with strong hand in and upon the said premises as above described, and thereupon the said Court ordered restitution of said premises to said Goodenough and the writ aforesaid. Now your orator says that he was not a party to said suit, nor had he any thing to do with the same, but avers that he purchased the said premises in good faith, and has occupied the same in like good faith up to the present time. Now your orator would further represent and show unto your Honor, that he is informed and believes that sometime about the 3<sup>d</sup> day of April A.D. 1855, the said Jefferson Wall abandoned the possession of said premises and the same remained vacant and unoccupied for some time until Wm. A. Wells took possession, and after him one Harvey Dodge, who subsequent to the purchase of the premises by your orator, had also abandoned said premises and your orator took possession of the same under & by virtue of his purchase as aforesaid, and not by any collusion or

understanding with said Wall, or any of the persons above named who occupied said premises abandoned by said Wall.

And your orator disclaims holding any interest in said premises under said Goodenough or any other person claiming by, through, or under him, but claims title to the same by purchase as aforesaid, and is now in the actual possession of said premises under and by virtue of his said deed and purchase as aforesaid.

And your orator further represents and shews unto your Honor that said Goodenough has given out in speeches that he is the rightful owner of said premises, whereas in truth and in fact the said Goodenough as your orator is informed and verily believes is not the rightful owner of the same, nor can he shew any title or chain of title whatsoever therefor, but pretends to claim title through one Sylvanus Crook, and he from one Lavinia & Frederburgh: that said Crook purchased said lot and premises of Wm. J. S. Lavinia and wife and J. H. Frederburgh & wife, and obtained a deed therefor, which appears to have been recorded on the 15th day of May A.D. 1854.

Now your orator further says that said Reynolds from whom your orator obtained title, obtained a deed from said Lavinia for said lot 4 in Blk. No. 2, and the same was duly acknowledged and recorded in the Recorder's office of said LaSalle County on the twelfth day of May A.D. 1854, about three days before the

Deed of Lavinia & wife - and Frederburgh & wife  
was recorded in the same Recorder's Office,  
All which will more fully appear by reference  
to the Certificates of said Recorder - endorsed  
upon said deeds. Now your orator says  
that he had no knowledge of said Crook's title  
to said lot except as he derived it from the  
records of deeds as aforesaid, and relying  
upon the title of said Reynolds, he believed  
and still believes that said Reynolds' title  
was good and paramount to said Crook's  
from whom said Goodenough claims title.  
Now the truth is, as your orator is informed  
and believes and he so charges, that said  
Goodenough has no title to said Lot, but  
claims to hold a bond for a deed for the  
same from said Crook.

Now your orator prays that he may be  
protected in the possession of said premises,  
which he obtained in good faith by the pur-  
chase so made as aforesaid, and to that  
end, he prays that said Francis Warner  
& Lewis S. Goodenough be made defendants  
herein, and that your Honor will grant  
an Injunction against the said Francis Warner  
Sheriff as aforesaid, enjoining him or any of  
his deputies from the execution of said writ,  
and from disturbing your orator in his pos-  
session of said premises, and that upon a  
final hearing of said cause, your Honor will  
make said injunction perpetual: And that  
the People's most gracious writ of subpoena  
be issued against said Francis Warner, and

2

said Lewis S. Goodenough & that they be re-  
quired to answer the allegations of this Bill,  
and if the said Goodenough has any title to  
said Lot, he be required to exhibit and shew  
the same on the trial of said cause. And  
to grant to your orator such other and  
further relief in the premises as equity may  
seem to require, as your orator in duty-  
bound will ever pray &c

John Shepard.

State of Illinois. }  
LaSalle County ss. } John Shepard the  
complainant in the  
above Bill, after being duly sworn, deposes  
and says, that the statements made in said  
Bill are true, except such as are made  
upon the information of others, which he  
believes to be true.

John Shepard.

Subscribed and sworn  
to before me this 16th.

day of October 1856.

J. W. Raymond  
Clerk.

Let an Injunction issue according to the  
prayer of the foregoing Bill, on Complainant's  
entering into Bond with good & sufficient  
Security - in the penal sum of two hundred  
dollar, conditioned as the law directs,

Oct. 27th. 1856.

M. E. Hollister.  
Judge &c -

Afterwards, on the 29th. day of October A.D. 1856.  
a Bond was filed in said Court in the words  
and figures following, to wit:

Know all men by these presents that we,  
John Shepard and John W. Stephens and John  
Shaw are held and firmly bound unto Lewis  
S. Goodenough and Francis Warner Sheriff of  
LaSalle County, State of Illinois in the penal  
sum of Two hundred dollars lawful money  
of the United States for the payment of which  
wee and truly to be made, we bind ourselves  
our heirs, executors and administrators jointly  
severally & firmly by these presents.

The condition of the above obligation is such  
that whereas the above John Shepard has this  
day sued out a writ of injunction from the  
Circuit Court of LaSalle County Illinois against  
the said Lewis S. Goodenough and Francis Warner  
Sheriff as aforesaid, restraining them from all  
further proceedings under a certain writ of res-  
toration in favor of the said Lewis S. Goodenough  
and against one Jefferson Wall issued out of  
the Clerk's Office of the County Court of said  
LaSalle County. Now if the said John  
Shepard shall pay all such costs in said  
suit and all such damages as shall be  
awarded against the said complainant in case  
said injunction shall be dissolved, then this  
obligation to be void, otherwise to remain in  
full force and effect.

Dated at Ottawa. Oct. 27th. A.D. 1856.

John Shepard Seal  
John M. Stephens Seal  
John Shaw, Seal

Afterwards, on the same day, a summons in chancery issued out of our said Court, against said Lewis S. Goodenough and Francis Warner, as also a writ of injunction, both of which are in the words and figures following, to wit,

STATE OF ILLINOIS, } ss.  
LA SALLE COUNTY,

The People of the State of Illinois:

To the Sheriff of La Salle County, Greeting:

WE command you to summon

Francis Warner & Lewis S. Goodenough.

if to be found in your county, personally to be and appear before the Circuit Court of said county, on the first day of the next term thereof, to be holden at the Court House in Ottawa, on the 10th day of November next, to answer to a certain bill of complaint filed in our said Circuit Court, on the chancery side thereof, against them by John Shepard

; and have you then and there this writ, and make return thereon in what manner you execute the same.

WITNESS, JOHN F. NASH, Clerk of said Court, and the Seal of said Court, at Ottawa, this 29th day of October A. D. 1856

Seal

J. F. Nash Clerk.

State of Illinois } The People of the State of  
LaSalle County Ill. } Illinois to Francis Warner  
Greeting:

Whereas John Shepard Complainant has lately filed in the office of the Clerk of the Circuit Court of said County, his Bill of Complaint against you, the said Francis Warner and one Lewis S. Goodenough defendants wherein among other things it is alleged that you the said Warner are directed by virtue of a certain writ of possession, to evict and disturb the complainant in the enjoyment of certain premises in said Bill set forth.

We therefore in consideration of the premises do strictly enjoin and command you the said Francis Warner as Sheriff of said County, and all of your deputies and servants and each of them to absolutely and entirely desist from disturbing said complainant in the possession of Lot four in Block Two in Day's Addition to the Town (now city) of Ottawa in said County and State, by virtue of a writ of possession directed to you from the office of the Clerk of the County Court of said County, until you shall appear and fully answer the complainant's Bill, or the Circuit Court of said County make further order to the contrary. Hereof fail not under the penalty of what the law directs. To the Coroner of said County to execute. Witness John F. Nash Clerk of the Circuit Court of said County and the Seal thereof at Ottawa this 29th. day of October 1856.

John F. Nash, Clerk  
Seal

Afterwards, at the November Term A.D. 1856.  
 (November 26th) of our said Circuit Court  
 the defendants, by Bushnell & Gray, their  
 Attorneys, filed in our said Court a Demur-  
 rer in the words and figures following to  
 wit:

State of Illinois Sasago County, Ill.	} In the Circuit Court thereof, in Chancery sitting, November Term A.D. 1856.
John Shepard	} The Demurrer of Lewis S. Goodenough, and Francis Warner to the Bill of Complaint
vs. Lewis S. Goodenough and Francis Warner	} exhibited against them by John Shepard, Complainant.

These defendants by protestation, not con-  
 fessing or acknowledging all or any of the  
 matters or things in and by the said Bill  
 set forth and complained of to be true, in  
 manner and form as the same are therein  
 set forth and alleged, say they are advised  
 by their Counsel, that there is no matter or  
 thing in the said Bill contained good and  
 sufficient in law to call these defendants in  
 question in this Honorable Court for the same,  
 but that there is good cause of Demurrer  
 hereunto, and therefore these defendants say  
 that the Complainant's said Bill, in case the  
 allegations therein contained are true, which  
 these defendants do in no sort admit, con-  
 tains not any matter of equity- wherein

This Court can ground any decree, or  
give the Complainant any relief or assistance  
as against them these defendants: Wherefore  
and for divers other errors and imperfections  
in the said Bill appearing, these de-  
fendants do demur in law thereto,  
and humbly demand the judgment of this  
Honorable Court, whether they shall be  
compelled to put in any further or other  
answer to the said Bill: and humbly pray  
to be hence dismissed with their reasonable  
costs, in this behalf most wrongfully sus-  
tained.  
Bushnell & Gray,  
Sols. pro. defts.

On Tuesday February 24<sup>th</sup> 1837 the remaining  
one of the Judges of the February Special Term of said  
Court for the year 1837, said Special Term having  
been appointed by said Judge at the November Term  
of said Court for the year 1836 - an order  
was entered of record in the above entitled cause  
in the words and figures following viz:

John Shepard }  
Lewis S. Goddard } In Chancery  
& Francis Warner }  
After due deliberation thereon  
had it is ordered by the Court that  
the defendants demur to Complainant's bill be  
overruled. To which decision of the Court defendants  
Consent & cts.

And afterwards, to wit: on Thursday December 8<sup>th</sup> 1857 the Court being one of the days of the Christmas term of said Court for the year 1857 the following further and final order was made and entered of record in said cause viz:

"John S. Spauld  
" "

Lewis S. Gardinier  
& Francis Warner

}  
} On Chancery

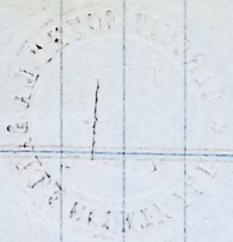
} It appearing to the Court that  
} at the February special term of this  
} Court for the year AD 1857 that the

defendants demurred to complainants bill was overruled on motion of defendants solicitors it is ordered that judgment be entered herein against said defendants on said demurrer, said defendants counsel being obliged by the decision of the Court in overruling the demurrer,

It is further considered by the Court that the complainants have and receive of the defendants his costs and charges by him herein expended and that he have execution therefor

State of Illinois, J. H. Nash Clerk of the Circuit  
Jedaliah County, 3 Court in and for said County and  
State do hereby certify that the above and  
foregoing comprises a true, full, perfect & complete  
record in the case of John Shepard vs Lewis S. Goodenough  
& Francis Mann as the same appears of record  
and on file in my office

In Testimony Whereof I have hereunto set my  
hand and the seal of said Court at Ottumwa  
this 28<sup>th</sup> day of April 1857  
J. H. Nash Clerk



11 81 ~~144~~ 11  
John Shepard

as  
Lewis S. Goddungho  
Francis Warner

Recd

Filed April 22. 1859  
L. Leland  
Clerk

Refiled March 8. 1860  
L. Leland  
Clerk

Gray & Washburn City

~~to the Clerk~~

Fees \$ 5.50  
paid by O. C. Gray

STATE OF ILLINOIS, } ss. The People of the State of Illinois,  
SUPREME COURT,

To the Sheriff of the County of La Salle

Greeting :

Because, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the  Circuit  Court of  La Salle  County, before the Judge thereof, between  John Shepard

plaintiff, and  Lewis S. Goodenough and Francis Warner

defendants, it is said that manifest error hath intervened, to the injury of the said

defendants

as we are informed by  their  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 Ottawa, 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 Shepard

that  he  be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next, to hear the records and proceedings aforesaid, and the errors assigned, if  he  shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then, there the names of those by whom you shall give the said  John Shepard

notice, together with this writ.

Witness, The Hon. JOHN D. CATON, Chief Justice of our said Court, and the Seal thereof at Ottawa, this  8<sup>th</sup>  day of  March  in the Year of Our Lord One Thousand Eight Hundred and ~~Fifty~~  Sixty

L. Leland   
Clerk of the Supreme Court.  
 J. B. Rice

96 St  
Lewis S. Goodenough  
at al as

John Shepard  

---

Scire facias

Filed April 24 1860  
L. Leland  
clerk



STATE OF ILLINOIS, } ss. The People of the State of Illinois,  
SUPREME COURT,

To the Clerk of the Circuit Court for the County La Salle 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 La Salle County, before the Judge thereof, between John Shepard

plaintiff, and Lewis S. Goodenough & Francis Warner

defendants, it is said manifest error hath intervened, to the injury of the aforesaid ~~plaintiff~~ defendants

as we are informed by their complaint and we being willing that error should be corrected, if any there be, 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 the Supreme Court the record and proceedings of the plea aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the County of La Salle, on the first Tuesday after the third Monday in April 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 our said Court, and the Seal thereof, at Ottawa, this 8<sup>th</sup> day of March - in the Year of Our Lord one thousand eight hundred and fifty six  
L. Leland

Clerk of the Supreme Court.  
J. B. New Deputy

11 11 37  
Lewis S. Goodenough  
Etal vs

John Shepard  

---

Writ of Error

Filed March 8. 1860  
L. Leland  
Clerk

STATE OF ILLINOIS, } ss. The People of the State of Illinois,  
SUPREME COURT,

To the Sheriff of the County of La Salle Greeting :

Because, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the Circuit Court of La Salle County, before the Judge thereof, between John Shepard

plaintiff, and Lewis S. Goodenough & Francis Warner

defendants, it is said that manifest error hath intervened, to the injury of the said ~~plaintiff~~ defendants

as we are informed by their 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 Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; Therefore, We <sup>as we have heretofore commanded you</sup> Command You, That by good and lawful men of your County, you give notice to the said John Shepard

that he be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next, to hear the records and proceedings aforesaid, and the errors assigned, if he shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said John Shepard notice, together with this writ.

Witness, The Hon. JOHN D. CATON, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 6<sup>th</sup> day of February in the Year of Our Lord One Thousand Eight Hundred and ~~Fifty~~ Sixty two

L. Leland  
Clerk of the Supreme Court.  
J. B. Rice Deputy

lll 11  
Lewis S. Goodenough  
Et al

~~7~~ John Shepard

Scire Facias

Served by reading this writ to John Shepard  
This 27<sup>th</sup> day of July 1862

Sum 60  
Fees 05  
65

Filed April 22, 1862  
L. Leland  
Clerk

Law  
F. H. W.



STATE OF ILLINOIS—SUPREME COURT,

THIRD DIVISION—APRIL TERM, 1851.

---

LEWIS GOODNOUGH and FRANCIS WARNER, Plaintiffs in Error,  
vs.  
JOHN SHEPPARD Defendant in Error.

---

ERROR TO LA SALLE.

---

BRIEF FOR PLAINTIFFS IN ERROR.

The bill of complaint shows in appellee, a clear legal title, and therefore a Court of Chancery will not lend its aid to him, Courts of Law being the proper tribunals before which to settle all questions involving title to land, excepting where questions of accident, mistake or fraud intervene, and the bill of complaint in this case contains no positive charge, or even intimation of the existence of either of these causes, in this case.

Courts of Equity will not grant relief against a judgement at law, where the case in equity proceeds upon a defence equally available at law.

See 2nd Stories Equity Jurisprudence—Sec 894.

Eden on Injunctions—Ch. 16, page 349.

2nd Greenleaf Chancery—page 198.

2nd do do do 429.

3rd do do do 217.

Where a party has a clear remedy at Law, he cannot come into a court of Equity, unless he shows in the first instance the existence of circumstances, over which he has, and never has had any control, which would render it impossible for him to set up and establish his claim in a Court of law.

See 3rd Leigh, page 1.

4 Hen. & M., 491.

4 Howard, U. S. R., 141.

A Court of Equity will not give relief upon grounds of which the party might have availed himself in a Court of Law.

See McCoy vs. United States Bank.

5 Hammond—548.

2nd Page. Rep.—497.

14 Johnson—515.

New York vs. Connecticut—4 vol. 3.

18 (3 Washburne) Vermont—365.

Walk C. R.—120.

A Court of Chancery will not sustain a suit where there is adequate remedy at law.

See *Courts vs. Warren*, 17 Maine, R.—404.

*Sheldon vs. Sheldon*, 2 Root—512.

*York Mann, Co. vs. Cutts*, 18 Maine—204.

*Lathrop vs. Bennett, Kirby*—185.

*Wood vs. Pratt*, 2 Ham.—23.

*Bright vs. Alexander*, 4 J. J. Marsh—96.

*Hall vs. Davis*, 5 do 290.

2 do 12

*Standifer vs. McWhorter*, 1 Stewart—532.

2 Leigh—490.

*Batchelder vs. Elliot*, 1 Hen. & M.—10.

1 Root—499.

do do 207.

do do 317.

*Hardin*—123.

N. C. Term, R—112.

3 Litt—380.

*Chesapeake & Ohio Co. vs. Young*, 3rd Md.—480.

A Court of Equity will not interfere to settle questions of title to real estate.

See *Shepley vs. Rangly, Davis*—242.

*Rayland vs. Green*, 3 & M.—194.

9th Howard, W. S.—356.

1 Littell—147.

9th B. Mann—66.

A Court of Law is the proper tribunal for the adjudication of Legal titles, and it is only in extraordinary cases that a Court of Chancery will assume the trial of such titles; and even where a Legal title is necessarily and unavoidably involved in a suit in Chancery it is the common custom of the English and American chancellors to send such cases into the Courts of law to be tried. And bills filed for the purpose of settling Legal titles, or preventing interference with ones possession of land or personal property are looked upon with suspicion, and tolerated only in the most extraordinary cases.

See *Trustees vs. Gray*, 1 Littell—147.

In this case the Bill prays for an injunction restraining the Sheriff of the County from executing the process of a competent tribunal, based upon the final judgment of the Court, and without alleging accident, fraud or mistake, in the obtaining of such judgment, or in any of the attendant proceedings. And further shows the complainant to be in an easy position, where he can readily have all his legal rights adjudicated; surely such a proceeding is an anomaly, and without parallel in the Books.

GRAY, DUSHINELL & AVERY,

for Plaintiffs in error.





bill denies all right and title in said Goodnough to said premises, &c., and claims title in Appellee.

The bill admits that Appellant claim title to the premises by virtue of a deed from Sylvanus Crook, and that one Livina and Fredenberg deed said premises to said Crook, and that the deed was recorded May 15th, 1854, and that the deed from Reynolds to Appellee, of said premises, was filed for record on May 12th, 1854, three days before the deed under which Appellant Goodnough seeks to hold the premises.

4th. The Appellee disclaims all knowledge of the first conveyance by Lavina and Fredenberg to Crook, until the same was placed upon record as aforesaid; that Appellee believed when he bought said premises from said Reynolds, that the same were free from incumbrance, and that Reynolds had the absolute title thereto. The Bill then charges that the only title the Appellant, Goodnough, had to said premises, was by virtue of a bond of Agreement by Crook to Goodnough.

4 & 5 Then follows the usual prayer for an injunction against said Appellants, restraining them, &c., followed with a prayer that upon final hearing the injunction may be made perpetual, &c.

5th. Shows that the bill was properly sworn to, and an order by M. E. Hollister, Judge, and allowing injunction, &c.

6th. Shows the filing of Bond, in accordance with Judge's order.

7th. Shows issuing and service of summons in proper form.

8th. Shows writ of injunction, service, &c., in due form.

9th. At the Nov. term of the Circuit Court, 1856, the Appellants appeared and filed their demurrer to the said Bill of Complaint in usual form.

10th. That on Feb. 24th, 1857, at special term of said Circuit Court, the Court overruled the demurrer to Bill of Complaint, and Appellants excepts thereto.

11th. Shows that demurrer, as aforesaid, was overruled, and that final judgment was entered thereon. Def't having abided by decision of the Court thereon.

Now comes the said plaintiffs in error, and say that the said judgment of said Court is erroneous, because they say that the court erred.

1st. In overruling the demurrer to Bill of complaint.

2nd. In rendering final judgment against Appellants below.

3rd. In rendering judgment for costs against Appellants.

*Gray* BUSHNELL & AVERY, for Appellants.

11 3176 11  
Goodenough et al  
109

Sheppard

Abstract

Filed Apr 19, 1860

L. Leland  
Clerk