

No. **12232**

Supreme Court of Illinois

Wall

vs.

Goodenough

71641  7

Jefferson Wall
 vs.
 Lewis S. Goodenough } Supreme Court of the State
 of Illinois within and for the
 third Grand Division of said
 State. Of the June term A.D. 1855

And now comes the said Jefferson Wall
 by D. P. Jones his attorney, and says that in
 the record & proceedings aforesaid manifest
 error hath intervened to his prejudice in
 this, to wit;

1st Because it appears by the said record that
 that the said La Salle County Court erred
 in giving & reading to the jury the said
 fourth and fifth instructions of the said
 Lewis S. Goodenough

2nd Because it appears by the said record that
 the said La Salle County Court erred in refusing
 to give & read to the jury the said Jefferson
 Wall's second instruction ~~and his qualification~~
~~in the said instruction~~ and his qualifications to
 the said Lewis S. Goodenough's second instruction

3rd Because it appears from the said record
 that evidence in this case was not such
 as to authorize the verdict of the jury
 thereon according to law

4th Because it appears by the said record that
 the said La Salle County Court erred in
 overruling the motion for a new trial

5th Because it appears by the said record that
 the verdict of the jury in this case was

not such as to authorize the rendition
of the judgement according to law

6th The complaint in this case was not sufficient to authorize the court to
reverser judgement against the said Jefferson Wall
7th The said La Salle County Court erred
in rendering a judgement in favor
of the said Lewis S. Goodenough and
against the said Jefferson Wall

And this the said Jefferson Wall is
ready to verify by the record aforesaid
wherefore & for other errors in the record
& proceedings aforesaid he prays that the
judgement aforesaid may be reversed
annulled & set aside & for nothing
estimated

W.P. Jones
Attorney for the
Appellant

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Wall vs Goodenough

Errors

This June 28. 1855.
McCraw Clerk.

And now comes the appellee & says that in
the record & proceedings aforesaid is no
error

Ble. Cook

for Appellee

State of Illinois
LaSalle County } ss

Pleas, Proceedings, and
Judgments held and taken in and before the
LaSalle County Court, in the State of Illinois,
at the Court House in Ottawa in the County
of LaSalle of March Term, to wit, of the fifth day
of March in the year of our Lord one thousand
Eight hundred and fifty five - and of the
Independence of the United States of
America the Seventy ninth,

Present & Hon. Henry G. Cotton Judge

Samuel W. Raymond Clerk

Francis Warner Sheriff

Be it remembered that on the 1st day of January
1855 a Bond was filed in the office of the Clerk of
the County Court for said County, in the words
and figures following, to wit,

Know all men by these presents, that we
Jefferson Wall, and Cornelius W. Reynolds &
John W. Stephens of the County of LaSalle
and State of Illinois, are held and firmly bound
unto Lewis S. Goodenough of the same County and
State in the penal Sum of Four Hundred dollars
Current Money of the United States, for the pay-
ment of which well and truly to be made we
bind ourselves, our heirs, Executors, and administrators,
jointly, severally and firmly, by these presents,

The Condition of the above Obligation is
Such, that whereas the said Lewis S. Goodenough,
did on the twenty sixth day of December A.D. 1854
before A.B. Smith a Justice of the peace in and

Witness our hands and seals this 30th day
of December 1854

for the Said County of LaSalle, recover a judgment
in Forceable ^{Entry} and detainer against the above bon-
dened Jefferson Wall for the possession of Lots four (4)
and five (5) in Block two (2) in days addition to
Ottawa in Said LaSalle County and State of Illinois
and also for Ten and 9/100 dollars costs therein, from
which judgment the Said Jefferson Wall has taken
an appeal to the County Court of the Said County
and State - Now if the Said Jefferson Wall shall
prosecute his appeal with effect, and shall pay
~~whatever~~ whatever judgment may be rendered by
the Court on the trial or disposal of the Said
appeal in the Said County Court, and shall
pay all rents which the Said Lewis S.
Goodenough shall be entitled to for the use and
occupation of the above described premises and
their appurtenances, from the Commencement
of Said action of Forceable Entry and detainer
until the determination thereof, then the above
obligation to be void, otherwise to remain in
full force and effect,

Jefferson Wall *Deal*
C. W. Reynolds *Deal*
John M. Stephens *Deal*

Endorsed on Back "Filed Jan'y 1st 1855"

J. M. Raymond Clerk

On the Said 1st day of January 1855, a
Summons was issued in the words and figures
following, to wit -

The People of the State of Illinois, To our Sheriff of
our County of LaSalle - *Greeting*
Whereas, in a certain cause, lately pending

in our Court, held before Aaron B. Smith, Esquire
one of the Justices of the Peace in and for our
County of LaSalle, wherein Lewis S. Goodenough
is Plaintiff and Jefferson Wall is defendant,
Judgment has been rendered by the said Justice
against the said defendant, from which the said
defendant has appealed to our LaSalle County Court.

We Therefore Command you that you Summon
the said Lewis S. Goodenough, that he personally
be and appear in our said LaSalle County Court,
before our Judge thereof, on the first day of the next
term thereof said Court, to be held at the Court
House in Ottawa, on the first Monday in March
next, at ten O'clock in the forenoon, and abide by
and perform the Judgment of our said Court
in the premises -

In Witness whereof we have caused the Seal of
our said Court to be here to affixed, and attested by
Samuel W. Raymond our Clerk thereof at Ottawa
1st day of January 1855

S. W. Raymond Clerk

On the Back of said Summons the Sheriff
Made the following return.

" Executed this writ by Reading the same
" to Lewis S. Goodenough,
" Jan'y 1st 1855

J. Warner Sheriff

" For Ret. 60

" 3 Miles 10

70 "

Endorsed " Filed March 3^d 1855

S. W. Raymond

clerk "

On the 12th day of January 1855, a Complaint,
Summons & Transcript were filed in the office
of the Clerk of said Court, which are in the
words and figures following, to wit -

(Complaint)

State of Illinois }
Saballa County }
3

Lewis S. Goodenough }

vs

Jefferson Wall }

And now comes
the said Lewis S. Goodenough plaintiff in
this suit, and being first duly sworn, according
to law on oath deposes and says that he is the
true and lawful owner of the following described
premises, to wit, Lots four and five - (4-5) in Block
two (2) in Days addition to Ottawa, Situated in
said State and County, and that all right
of possession thereof is in him, and in no
other person, and that he is now justly
entitled to the possession thereof, that he has
had ^{the} possession thereof for the term of three years
successively, and that a part of his personal
property is now in the house, situated upon
said premises, and this affiant says
that one Jefferson Wall, did, with force and
arms, in the night time, on or about, the 15th
day of October A.D. 1854, enter into & upon the said
premises without any authority or license
from this affiant or any of his agents, and
that the said Wall doth yet unlawfully detain
the said premises from the possession of this
affiant, though due notice, according to law,

hath been served upon him by D. R. Gregg
agent of this affiant to quit and deliver up
the ^{said} premises and the appurtenances thereto belonging,
yet the said Wall doth wholly refuse, the same
to do, in manner ^{or} ~~and~~ form - Wherefore this
affiant prays that the said Wall may be
summoned, to answer this Complaint in
manner and form as by Statute in such cases
made and provided,
Subscribed & sworn to this 2
18 day of Dec. A.D. 1854
before me - } Lewis S. Goodenough.
A. B. Smith J. P. ~~Clark~~

(Summons)

State of Illinois
LaSalle County } ss.

The People of the State of
Illinois. To the Sheriff or any Constable of
said County — Greeting
Whereas Lewis S. Goodenough has this
day complained under his oath against
Jefferson Wall. which said Complaint is in
substance as follows to wit:

That he the said Lewis S. Goodenough is the true
and lawful owner of the following described premises
to wit, Lots four (4) ^{and} five (5) in Block two (2) in
Days addition to Ottawa situated in said County
and State, and that all right of possession thereof
is in him, and in no other person, and that he
is now fully ~~intitled~~ entitled to the possession
thereof, that he has had the possession thereof
for the term of three years successively and that a
part of his personal property is now in the house,

Situated upon said premises, and that he the said Goodenough says that said Jefferson Wall did with force and arms, in the night time on or about the 15th day of October A.D. 1854, enter into & upon the said premises, without any authority or licence from affiant or his agent, and that the said Jefferson Wall doth yet unlawfully detain the said premises from affiant, though due notice according to law, hath been served upon the said Wall, by Daniel R. Gregg agent of this ^{said} affiant, to quit and deliver up the ^{said} premises and the appurtenances thereto belonging. Yet the said Wall doth wholly refuse so to do,

You are therefore hereby Comanded to Summon the said Jefferson Wall, so Complaind of to appear before me at my office in Ottawa in said County on the 26th day of December A.D. 1854 at 1 O'Clock P.M., to answer unto the said Lewis S. Goodenough, in an action for forcible entry and detainer, And hereof make due service and return as the law directs -

Given under my hand and Seal
this 18th day of December A.D. 1854

A. B. Smith J.P. ^{Ed.}

upon the back of which the Constable made the following return

" Executed this writ Dec 22^d 1854, by
reading the same to Jefferson Wall -
Ass. Serv & Ret — 62 1/2

1 Mile

6 1/4

1 68 3/4 D.R. Gregg Const, " "

" Filed Jan 12th 1855, M Raymond clark " "

"Manuscript"

Lewis J. Goodenough

vs

Jefferson Wall

Forceable Entry and Detainer

December 18 1854, Summ^d

issued to Gregg Const. returnable December 26th 1854,
at 1- O'clock Am,

Vermin issued to Gregg Const. Plffs Subp issued to H.
N. Kellogg, J. H. Friedenburgh & A. D. Shope - December
22^d 1854, Summ^d returned by Gregg Const. duly served,
Subp returned by Gregg Const. served - Dec 25th 1854
Defts Subp issued to William Carl - December 26th 1854
1- O'clock P. M. Vermin returned by Gregg Const. with the
following jury, Henry Green, James Douglass, James
Moston, Lucius Rathburn, Lifer H. Powers, William
True, Elisha Card, Wm^m Gurnin, Henry Deukart, Wm^m
Barger J. P. Streeter & Henry Eckelburger, jury accepted
Edward W. Bushnell & J. O. Glover for Plaintiff & P. K.
Seland for Defendant pleads not guilty -
J. Crook, H. N. Kellogg, A. D. Shope & J. H. Friedenburgh
sworn on the part of Plaintiff & Wm^m Carl, Francis
Penfield for Defendant, And after the evidence
and the arguments of the Counsel the jury return
in charge of Gregg Constable and return into
Court with a verdict of we the jury find the
defendant guilty as charged in the complaint

It is therefore considered by the Court that
the Plaintiff have and recover from the defendant
his Costs herein, and also that he have restitution
of the premises set forth in his complaint to
wit; Lots Four (4) and five (5) in Block two (2) in Days
addition to Ottawon in LaSalle County and State
of Illinois, And the writ of Restitution is hereby
awarded to said Plaintiff,

Jw^a for Costs

\$ 11.40

January 1st 1855 writ of Restitution and Execution
issued to Gregg Const for \$11.46

Jan 1st 1855 Supersedeas served from County
Court & writ returned -

Just ^s fees	Constable Gregg fees
Subp writ .12 $\frac{1}{2}$	Ser writ Sub .62 $\frac{1}{2}$
Precept for debt .50	1 mile .06 $\frac{1}{4}$
" " Sub .50	Ser & ret. Subp .75
" " Offs writ .18 $\frac{3}{4}$	3 miles .18 $\frac{3}{4}$
" " Debt " .18 $\frac{3}{4}$	Ser return & att July 2.00
In July .75	poling July .12 $\frac{1}{2}$
4 oaths to writ .56	Ser & ret Debt Subp .95
1 day att trial 2.00	\$4.70
Ent fee ^d .25	Ser & ret writ Restitution 1.00
Writ Restitution .50	2 miles .10
3.76	
Copy of proceedings	
return 2.00	
\$5.76	
July fees \$3.00	

I hereby certify that the foregoing transcript contains a full & perfect statement
had before me in the above entitled cause

Given under my hand & seal this 12th
day of January 1855

A. B. Smith J. P. *Clk*

Endorsed "Filed Jan 12th 1855"

J. M. Raymond clk

On Wednesday March 6th 1855 the same being one of the days of said Term of said Court. the following order was entered, ^{of record} in said Court, to wit,

Lewis S. Goodenough
293 vs Appeal
Jefferson Wall

3 This day came the Plaintiff by Bushnell & Gray his Attorneys - as well as the Defendant by Leland & Jones his Attorneys, Thereupon come the following Jurors of a Jury, to wit, Amos Thorne, H. W. Hopkins, Julius Lawrence, P. S. Ellsworth, Henry D. Vanance, Abel Ford, Roswell Temple, Samuel R. Lewis, Zimri Lewis, Andrew Werner, Ebenezer Noffs, Jacob Miller, who were duly elected, tried and sworn to try the issues herein according to the evidence, after hearing the evidence and arguments of Counsel the Jury retire to consider of their verdict, and after due deliberation thereon had, return into Court the following verdict, to wit, We the Jury find the defendant guilty of withholding from the plaintiff possession of the premises as in said Plaintiffs complaint alleged and described.

Thereupon the defendant by his said attorneys enters his motion herein for a new trial

On Monday March 12th 1855 the same being one of the days of said Term of said Court. the following order was entered of record in said Court to wit,

Lewis S. Goodenough }
29 } vs } appeal
Jefferson Wall }

3 This day again comes
the parties herein by their said attorneys - Thereupon
after hearing the arguments of Counsel on the
motion of the defendant Entered herein for a
new trial - the Motion is overruled by the Court
- to which ruling of the Court the defendant
by his said attorneys then and there excepts,

It is therefore Considered by the Court that
the plaintiff have and recover of the defendant
the following described premises, to wit - Lots
four (4) and five (5) in Block N^o two (2) in Days
Addition to Ottawa Situated in said State and
County - and that a writ of restitution issue
therefor - It is further Considered by the Court
that the plaintiff have and recover of the said
defendant his costs and charges herein expended
as well as in the Court below and that he have
Execution therefor -

On Friday March 16th 1855 the same being also
one of the days of said Term of said Court - the
following order was entered of Record in said
Cause, to wit,

Lewis S. Goodenough }
29 } vs } appeal
Jefferson Wall }

3 This day again comes
the parties by their said attorneys - and the
defendant prays an appeal herein which
is allowed on his entering into an appeal bond.

in the sum of two hundred and fifty dollars with good security to be approved by the Court - and by agreement of parties it is ordered that a bill of Exceptions be filed herein within two weeks - and that the bond be filed ~~herein~~ within two weeks with good security to be approved by the Court in vacation -

on the 30th day of March A.D. 1855 a Bill of Exceptions in the Cause was filed in the office of the Clerk of said ^{Court}, which is in the words and figures following, to wit,

State of Illinois } County Court within
LaSalle County } p and for said County
3 March Term thereof A.D. 1855

Lewis Goodenough }
vs } appeal
Jefferson Wall }

Be it remembered that on the trial of the above Cause before the Jury at said Term of said County Court; to wit, on the 6th day of March A.D. 1855, the said Plaintiff to maintain and support the issue upon his part introduced Henry N. Kellogg who being first duly sworn testified on the part of said plaintiff as follows - to wit, I am acquainted with the Plaintiff and also with Lots four and five in Block two in Days addition to the Town of Ottumwa in the County of LaSalle and State of Illinois on said Lot four there is a dwelling House into which Pinfield moved about a year ago this Spring. Plaintiff occupied the House

previous to Penfield who rented the same of Plaintiff. I was present and heard the bargain in relation to the case, Penfield was to pay Plaintiff three dollars a month & to have the premises one year, I think Penfield was to take care of plaintiffs things Plaintiff went in to the house two years ago last Spring and remained in it until last Spring when he rented it to Penfield who went into possession a few days after and occupied the house until last fall. I do not know exactly at what time he went out, but it was in the evening & I suppose between nine & ten O'clock. I went over to the house about midnight for the purpose of seeing how Penfield's sick child was, and saw Wall and his wife there for the first time. Wall's wife was making the bed, Goodenough had some furniture scattered around about the house, consisting of bedding, a table, chest, stand &c. At the time Wall went in to the house the key to the same was at my house, I do not know that Wall claimed the premises adversely to Goodenough - Can't tell the day of the ~~week~~ month that I first saw Wall in the house but I think it was in October - I do not know that the furniture was in the house at that time - don't know whether plaintiff gave Penfield a written lease of the premises -

(Brief Examined by Defendants Counsel)
The furniture which plaintiff left in the house was put up stairs in the Chambers by Penfield when he went in to the house

Penfield rented the whole house of Plaintiff and was to take care of the furniture. The whole house was delivered into the possession of Penfield by Plaintiff.

Isaac H. Freedomburgh was next called as a witness, and being first duly sworn testified on the part of Plaintiff as follows, to wit: There is a house on lot four in Block two in Days addition to the Town of Ottawa. I have seen Penfield in the house, Goodman occupied before Penfield, I have seen Wall about there, but have not been into the house, I do not know how Wall claims to hold title to the premises - whether adversely to Plaintiff or not.

Card was next called as a witness and being first duly sworn testified on the part of the Plaintiff as follows, to wit, I am acquainted with the premises in controversy and also with defendant, I have heard defendant say that he took possession of the premises under Dr. Reynolds - He said nothing about Penfield giving him the possession of the premises.

The Plaintiff next called A.B. Smith and D.R. Gregg who being first duly sworn testified that the Plaintiff caused a demand of in writing to be served upon the defendant requiring him to deliver the possession of Lots 4 & 5 in Block 2 in Days addition to the town of Ottawa, to the Plaintiff & that

Suit notice was served upon the defendant more than ten days before the commencement of this suit -

W. Bushnell, was next called as a witness and being first duly sworn testified on the part of the Plaintiff as follows, to wit; I was counsel for the plaintiff on the trial of this cause before the Justice of the peace - The defendant then claimed to hold the ~~possession~~ of the premises as a tenant under Dr Reynolds & proved the lease from Reynolds to him

Sylvanus Crook was next called as a witness on the part of the plaintiff and being first duly sworn testified as follows, to wit; I am acquainted with Lots 4 & 5 in Block 2 in Days addition to the Town of Ottawa - the lots are surrounded by an enclosure & both constitute one lot, There is a building on lot four in which defendant now lives He went into the house some time last fall and has remained ~~and has remained~~ there since

The Plaintiff here rested his case - The defendant then called Carl as a witness who being first duly sworn testified as follows; to wit; I am acquainted with the defendant, and also with Lots 4 & 5 in Block 2 in Days addition to the town of Ottawa Defendant went in to possession of said Lots in September or October 1854, I was present when he took possession, There was no one in the House when he took possession the doors

were open about half way - I think it was about eight or nine O'clock in the evening when defendant arrived at the house, but am not certain as I had no watch - I helped move defendant into the house, he driving one team & I the other, Pringle was not in the house when defendant went in, Defendant moved into the house in the night because Rockwood moved into the house defendant had been living in, on the day defendant moved & defendant had to leave
(Cross examined by Plaintiff)

The House defendant moved out of when was three or four miles from Days addition to Ottawa, I did not see Pringle at the House in Controversy & do not know how long the House had been vacated I staid in the house all night & helped put up the things. I do not know at what time defendant went to bed exactly - Direct examination resumed by defendant, Defendant and myself were gathering Corn on the day he moved into the house, we quit ~~gathering~~ ^{picking} Corn a little before sun-down - we started from the place where defendant had been living about dusk the roads were good my load was not very heavy, and we did not stop on the way, This was the last of September or the first of October as near as I can recollect, when we arrived at the premises in Controversy the people in the neighborhood had not gone to bed, I saw no persons about there, and did not see Pringle that night - The family arrived before I did, I returned home early the next morning -

The Defendant then called Benfield
who being first duly sworn testified as follows,
to wit, that he rented the premises in controversy
of Plaintiff for one year and went into
possession and lived on the same for about
six months, that about the thirtieth of October
1854 he moved off from the premises, leaving
the doors just closed - that he left said premises
early in the evening, that Mr Goodenough
and Mr Bushnell had previously notified
him to leave the premises & that he accordingly
did so to avoid a law suit, that
Bushnell notified him to leave about two
O'clock in the afternoon and that he went
home and that afternoon commenced moving
his things from the house, that when witness
moved into the house plaintiff had some things
there which he requested him to take charge of
& that witness accordingly took the things packed
them up and placed them up stairs in the
house which he moved in to, that witness made
no bargain or arrangement with defendant,
Dr Reynolds or any other person by which he was
to deliver the possession of the premises to
defendant, that he did not know ~~the~~
defendant at that time & that he had not
previously told either Dr Reynolds or defend-
ant that he was going to leave - that witness
did not know that any person was to take
possession of the premises after he left & that
he does not know that any person did
except defendant whom he saw there a few
days after - that he did see Dr Reynolds for
some times before he left the premises, that

witnes moved in the Night because he had previously intended to move the day he did, had said so publicly, and had told Bushnell so the day he gave him notice to quit, witness further testified that he rented the whole of the house of Plaintiff & was employed by him to take charge of the things which he left in the house

The foregoing was all the evidence in the case,

The Plaintiff by his Counsel then asked the Court to instruct the Jury on the part of said Plaintiff, as follows, to wit;

Given
1st If the Plaintiff had the possession of the premises in question and the defendant made an Entry into the premises in a Case where an entry was not given by law the law is for the Plaintiff -

Given
2^d If Plaintiff leased the premises in question to Penfield for one year and Penfield took possession of the premises under the lease and while in possession Penfield disclaimed the title of the Landlord and claimed the premises adversely either for himself or another his possession from that time was wrongful and the Plaintiff might treat the tenancy as dissolved and regain the possession of the premises in an action of this kind -

Given
3^d, The principle of the last instruction is strictly applicable to all who may have suc-

=entitled to the possession from or through
Ponfield -

4th The undisputed possession of the plaintiff
for between two and three years is evidence
of his title and right of possession in him
until a better title is shown -

5th The Possession of Ponfield is the possession
of Goodenough if the Jury believe that Ponfield
was the tenant of Goodenough, and in that
Case Ponfield could not abandon the
possession to Wall so as to defeat plaintiff's
right of possession

In the giving and reading of which said fourth
and fifth instructions of the Plaintiff the defendant
by his Counsel then and there objected which said
objection was overruled by the Court and all of said
plaintiff's instructions were by the Court given &
sent to the jury - To which decision, ruling and
acts of the Court in overruling said objections
of the defendant to the plaintiff's ^{said} fourth and fifth
instructions, and in reading and giving of the
same to the jury, the defendant by his Counsel
then & there and at the time excepted -

The Defendant then asked the Court to give
to the jury the following instructions - to wit;

1st That before the Plaintiff is entitled to
recover in this suit he must show that he had the
actual possession of the premises in question
at the time of the alleged entry upon the same

by the defendant, and also, that the defendant wrongfully or illegally intruded upon such actual possession of the plaintiff -

2^d That the leaving of the Plaintiff's goods in the upper part of the house situated on the premises in question and in the care of the tenant of said Plaintiff, if proved, does not constitute an actual possession of said premises or any part thereof in the plaintiff

not given

The defendant then asked the Court to give as a qualification to the plaintiff's second instruction, the following to wit; if the jury believe from the evidence that ^{and in possession of the premises and of Goodenough} Perrier was the tenant of Goodenough, and that he disclaimed his, Goodenough's title, and Goodenough treated the tenancy as dissolved, before Goodenough is entitled to recover in this suit he must show that he regained the premises and was in ^{the} actual possession of the same at the time of the alleged entry -

not given

Which said first instruction asked by the defendant the Court gave read to the jury; and the said second instruction asked for by the defendant and the said qualification to the plaintiff's second instruction were refused by the Court, to which ruling and decision of the Court in refusing to give to the jury said defendant's second instruction & the said qualification the defendant by his Counsel then & there & at the time excepted -

The points specifying the grounds of the motion for a new trial are -

1. That the evidence did not warrant the jury in finding the verdict

2^d That the fourth instruction asked by the plaintiff and given by the ^{Court} is erroneous -

And afterwards, to wit; on the 28th day of March A.D. 1855, - the said defendant presented this his Bill of exceptions to the Court and prayed that the same might be signed, sealed, and made a part of the record here in which is done on the day and year last aforesaid

H. G. Cotton *Clk*

Endorsed "Filed March 30th 1855"

"J. M. Raymond clerk"

And on the said 30th day of March 1855 an Appeal Bond was filed in this cause in the Office of the Clerk of said County Court which Bond is in the words and figures following, to wit:

Know all men by these presents, that we Jefferson Wall, Cornelius W. Reynolds and Patrick Ryan & Symon S. Latham of the County of Adams in the State of Illinois are held and firmly bound unto Lewis S. Goodenough of the same County and State in the penal sum of three hundred Dollars good and lawful money of the United States of America to be paid to the said Lewis S. Goodenough his Executors, Administrators or assigns to which payment well and truly to be made we bind ourselves our heirs Executors

and administrators jointly and severally, firmly
by these presents - Sealed with our seals and dated
the 29th day of March A.D. 1855,

The Condition of the above obligation is
Such that Whereas the said Lewis S. Gordenough
did on the twelfth day of March A.D. 1855 in the
County Court within and for the County of LaSalle
in the State of Illinois - recover a judgment
against the above bounden Jefferson Wall in
an action of forcible entry and detainer for the
possession of Lots four (4) and five (5) in Block two
in Days addition to the Town of Ottawa in the
County of LaSalle and State of Illinois - and also
for Costs of Suit, from which said judgment
of said County Court the said Jefferson Wall
has prayed for and obtained an appeal
to the Supreme Court of the State of Illinois.
Now if the said Jefferson Wall shall
duly ^{prosecute} his said appeal with effect, and shall
Moreover pay the amount of the Judgment,
Costs, interest and damages rendered and to
be rendered against him in case the said
Judgment shall be affirmed in the said
Supreme Court then the above obligation
to be void otherwise to remain in full force
and virtue.

Bond with, C. W. Reynolds,	Jefferson Wall	Seal
Patrick Ryan, & Lyman S.	C. W. Reynolds	Seal
Latham sureties approved	Patrick Ryan	Seal
March 29 th 1855	Lyman S. Latham	Seal

H. S. Cotton
Judge LaSalle Co. Court

State of Illinois
Sasie County

I Samuel W. Raymond
Clerk of the County Court in and for said County
do hereby Certify that the foregoing transcript is
a true full and correct copy from the record of
all the proceedings which have been had in said
County Court in the aforesaid case of Lewis S.
Goodenough vs Jefferson Wall

In testimony whereof I have hereunto
set my hand and affixed the seal
of said Court at my office in
Ottawa in said County this 3^d
day of May A.D. 1855

S. W. Raymond Clerk
"S. W. R."

Clerks fee for Record \$7.75

Jefferson ^{W. Wall} App't
vs
Lewis S. Goodenough

Record
" "

Filed June 13. 1885,
S. Island
Clark

No 91
Wall v Goodenough

Argument for appellee

I Is the complaint sufficient

The only objection taken to the complaint is that it does not show that the plaintiff was in the actual possession of the premises when the forcible entry was made.

To this we answer

It is not necessary that the complaint should show that he was in the actual possession. It is clear from the statute and also from the cases cited on the other side 3 Gilm 443 & 5 Gilm 218 that this action may be maintained by the owner of the premises when there is no actual possession. The owner who has a constructive possession may maintain the action against one who makes an unlawful entry.

The complaint alleges that the complainant is the true and lawful owner, that all right of possession is in him & in no other person. That he has had the possession ^{for} three years successively that part of his personal property is now in the house. It therefore shows that for the three years next before the making of the complaint he was in possession and these were successive years. Meaning evidently such a possession for three years in succession next before the making the complaint. The complaint therefore does show that the plaintiff was in possession on the 18th of October or thereabouts & when this entry was made and it is no

force construction to say that he was then in possession as the owner, a person says he is the owner and has had possession three years, does not this fairly mean that his possession was as such owner

Again the Complaint states that the defendant entered without authority from affiant & doth yet detain the premises from affiant unless the premises are delivered from complainant when first taken possession of by deft they can not yet be delivered

We insist therefore that it does appear that the complainant was the owner when the entry was made & entitled to possession and there was no adverse possession & this is enough at any rate it shows that the pett was in possession when the entry was made and the allegation of a possession without using the word adverse is enough, though it might be necessary to show an adverse possession at the time if there was no evidence of ownership by title papers or prior actual possession so as to make a prima facie case of title

This objection to the Complaint was not made in the Court below and we insist should not be favored now when it is too late to amend the Complaint. The necessary facts appear though not very artistically & grammatically stated but the Complaint is not so substantially defective as to be leave after trial & verdict

The amount of possession need not be direct it is sufficient if it appear of

necessary implication

21 Conn 500

5. The case upon the evidence seems to be well enough. The evidence tends to show that deft got into possession by collusion with Penfield the p[er]petrator. Penfield left in the night Kellogg's rooms late at night deft got into the house after midnight, set up an adverse possession to plaintiff. Penfield was contradicted by Kellogg by the circumstances of the case the jury were warranted in disbelieving him of Penfield of collusion with deft admitting him into the house to set up a title adverse to plaintiff surely that entry was unlawful.

But admit for the sake of the argument that Penfield left in good faith & the case stands thus. The plaintiff has shown himself seize in fee of the premises by the usual prima facie case of actual possession claiming ownership. The two lots were actually fenced one had a house on it in which he lived and being so in actual possession claiming to be the owner he leases to Penfield. Penfield according to his own testimony left the premises without the animus revertendi and the entry was at an end. The premises were vacant. Goodenough was the owner, well entered without pretense of right upon the premises thus in the constructive possession of Goodenough. And this I think makes a good enough case for Goodenough.

- 3 We do not controvert the position that if Penfield was in possession as the tenant of the plaintiff when Wall made his entry that the cause of action would have been in Penfield not in ptff. But this was not the fact.
- 4th The position that an actual entry by the plaintiff below was necessary after Penfield had vacated the lots is not sound because does not require the person seized to be in actual possession. The constructive possession is enough to maintain forcible entry & detainer in the cases where an actual entry ~~constitutes~~ by the landlord after the abandonment of possession it will be found that the statute expressly required an actual possession to maintain the action. our statute does not, But we prove actual possession the furniture of the ptff was there from the time Penfield left the apartment.
- 5th As to the 4th instruction, the principle of this instruction is that an undisputed possession of real estate claiming ownership is prima facie evidence of title, The objection seems to be that title in the plaintiff without an actual *pedis possessione* is not sufficient. This is not the law.
- 6th The 5th instruction does not lay down the doctrine that the possession of Penfield is the possession of ptff so that ptff might maintain this action ~~for~~ for an entry while Penfield was in the actual possession as tenant & no one could then so understand it for there is no

putative in the case that Penfield was in possession when debt entered

But it means this that the possession of Penfield was the possession of p'ty so that he could not abandon the possession & wall also defeat the possession which p'ty held by him as tenant or in other words Penfield could not abandon the possession & let wall into possession so as to affect the rights of p'ty

Vth The second in ought to have been refused it was a request to the court to express an opinion as to the weight of evidence The object of asking it evidently was that the facts of the p'ty goods being there when the debt entered did not make the plaintiff actually in possession and it was asked upon the supposition that an actual possession was necessary whether as a circumstance tending to show a possession it was enough was not for the court to decide

The fact to be ascertained was whether the plaintiff was in either the actual or constructive possession This was one of the circumstances tending to prove it & of the sufficiency of which the Jury was to Judge

The qualification to the p'ty 2^d instruction was properly refused for reasons above given Whittaker v Gautier 3 Gilman 443

The verdict was sufficient

Smith v Killen 5 Gilman 393.

B. L. Cook
for appellee

No 91

Wall as Goodenough

Argument for Appellee

Bl. Cook

Supreme Court within and for the 3^d
Grand Division of the State of Illinois
Of the June term thereof A.D. 1833.

Jefferson Wall

vs.

Lewis S. Goodenough

} Appeal from
La Salle County
Court

This is an action of Forcible Entry &
Detainer brought originally by Lewis
S. Goodenough against Jefferson
Wall before a justice of the peace
who rendered a judgement for the
plaintiff; from which judgement
the defendant appealed to the La Salle
County Court

The complaint is the words and
figures following, viz;

State of Illinois }
La Salle County }

Lewis S. Goodenough }

vs

Jefferson Wall }

} And now comes

the said Lewis S. Goodenough plaintiff in
this suit, and being first duly sworn
according to law on oath deposes and
says that he is the true and lawful owner
of the following described premises, to wit,
Lots four & five (4 & 5) in Block two (2)
in Days Addition to Ottawa, situated
in said State & county, and that all

right of possession thereof is in him, and in no other person, and that he is now justly entitled to the possession thereof, that he has had the possession thereof, for the term of three years successively, and that a part of his personal property is now in the house, situated upon said premises, and this affiant says that one Jefferson Wall, did, with force and arms, in the night time, on or about the fifteenth day of October A.D., 1854, enter in and upon the said premises without any authority or license from this affiant or any of his agents, and that the said Wall doth yet unlawfully detain the said premises from the possession of this affiant, though due notice according to law hath been served upon him by D. R. Gregg, agent of this affiant to quit and deliver up the said premises and the appurtenances thereto belonging. Yet the said Wall doth wholly refuse the same to do in manner as aforesaid - Wherefore this affiant prays that the said Wall may be summoned to answer this complaint as by statute in such case made and provided.

The evidence adduced on the trial of the case in the County Court which is material to the issue is

as follows, to wit

Evidence on the part of the plaintiff -

Henry N. Kellogg testified that the plaintiff moved into the house situated on the premises in controversy, two years ago last spring & remained in it until last spring when he rented it to Penfield for one year. Penfield was to pay plaintiff \$3.00 a month for the house & take care of plaintiff's things which were in the house. Penfield went into possession of the house a few days after & occupied it until last fall when he moved out. He moved out about 9 or 10 O'clock in the evening. McKee went over to the house about midnight & saw def's wife there. Plff. ~~at that time~~ had some furniture scattered around consisting of bedding, a table, chest stand &c. ^{but McKee does not know whether it was in the house or not} At the time def. went into the the key of the same was at the house of McKee. When Penfield went into the house he put the furniture up stairs.

Wm. H. Goodenough testified that he had seen Penfield in the house in controversy that Goodenough occupied it before Penfield & that he had seen def. about there.

Card testified that he had heard def. say that he took possession of the premises under Dr. Reynolds.

The plff then proved that he had served notice on the def. to deliver up possession of the premises more than ten days before the commencement of the suit

W. Bushnell testified that the def. claimed to hold the premises as tenant of Dr Reynolds & that def. proved a lease from him on the trial before the Justice

Sylvanus Crook testified that lots 4 & 5 are surrounded by an enclosure & both constitute one lot & that there is a house on lot 4

This is all the evidence on the part of the plff material to the case

Defendants Evidence

Carl testified that he moved the def. into the house in controversy in September or October 1854 - that they arrived at the house about 8 or 9 O'clock in the evening that there was no one in the house when the def. took possession & the doors were open about half way - that def. moved in the night because Rockwood, ~~lived~~ into the house def. had been living in on the day def. moved & def. had to leave. He also stated that there were no persons about the house when def. moved into it

Penfield testified that he rented the premises in controversy of plff. for one year & went into possession & lived on the same for six months - that about the 30th of October 1854 he moved off from the premises leaving the doors just closed - that he left said premises early in the evening - that plff & Mrs Bushnell had previously notified him to leave & he accordingly did so to avoid a law suit - that he was notified to leave about 2 o'clock P.M. & that afternoon commenced moving his things from the house - that he, witness, made no bargain, or arrangement with Dr Reynolds or any other person by which he was to deliver the possession of the premises to def. & did not know that any person was to take possession after he left & does not know that any person did except def.

The Court then gave to the jury the following instructions on the part of the plff. to wit,

4th The undisputed possession of the plff. for between two & three years is evidence of his title & right of possession in him until a better title is shown

3th The possession of Penfield is the possession of Grodenough if the jury believe that Penfield was the tenant of Grodenough

and in that case Penfield could not
abandon the possession to Wall so as
to defeat plffs right of possession

To the giving of which instructions the
def. objected, which objection was
overruled by the Court & the def. excepted
to the decision of the Court

~~After hearing the evidence & the arguments~~

The def. then asked the Court to give the
jury the following instruction to wit

That the leaving of the plffs goods in
the upper part of the house situated on
the premises in question and in
the case of the tenant of said plff. if proved,
does not constitute an actual possession
of said premises or any part thereof in
the plff.

After hearing the evidence & the
argument of the counsel the jury
rendered the following verdict viz
We the jury find the def. guilty of withholding
from the plaintiff possession of the
premises as in said plaintiffs comp-
aint alleged & described

Whereupon the def. entered his
motion for a new trial which
was overruled by the Court & the
decision of the Court overruling

Said motion excepted to by the
def. Whereupon the Court rendered
judgment against the def in favor
of the plff for restitution of the premises
& costs of suit

D. P. Jones
Atty for Appellant

Jefferson ⁹¹ Wall
vs
Lewis S. Governor

Abstract

Filed July 6 1855

L. Seland (lkr)

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J. Wall

vs

L. S. Goddough

1855

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