No. 14346

Supreme Court of Illinois

James.

vs.

Bushnell et al.

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STATE OF L

SUPREME COUR

Third Grand Division

14346

No. 143

James
vs
Bustrill

1862

Rehearing

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION.

APRIL TERM, 1862, AT OTTAWA.

JOHN JAMES,
vs.
WASHINGTON BUSHNELL, *et al.* } *Error to LaSalle.*

1 Bill in Chancery filed Dec. 21, 1857, by Bushnell & Gray *vs.* John James, Daniel Ward and others, alleges—That compl'ts are seized in fee simple as tenants in common of the un. $\frac{1}{3}$ of the un. 10-16th parts of a part
2 of N $\frac{1}{2}$ of W $\frac{1}{2}$ of SE $\frac{1}{4}$ of Sec. 18, T. 33, Range 5, describing the lands
3 by metes and bounds. That said land is covered with timber and contains a valuable coal mine. The defendants, except James, claim some interest in the land. That James is engaged in mining coal upon land adjoining, which belongs to Daniel Ward, and has made an entrance on the land of Ward near the line of the land in which complainants are interested, and
5 has run the entry into the lands first described, and is mining coal therein, and has taken out of said lands 200 tons of coal, and is still digging coal from said land and converting it to his own use; and has cut a large quantity of timber on said land, and is still engaged in cutting timber thereon, without consent of the owners of the land; and that such acts work an irreparable injury to the freehold. That James is not responsible in damages.
6 Prayer that James be enjoined. That all the defendants answer, but not under oath. That an account may be taken and James required to pay
7 for the coal and timber he had taken, and for general relief.
17½ Nov. 11th, 1858, James' answer filed. Denies, upon his belief, that compl'ts have any title to the land claimed; insists that if they have such title, they have a remedy at law. There may be coal and timber on the land claimed by compl'ts, but def't has no knowledge of the extent or value of the same. Denies that Ward has any title to the premises described in

20 the bill; admits that Ebenezer Jackson, Gordon S. Hubbard and the unknown heirs of Josiah S. Lawrence, have, or claim to have, some interest in the land. Denies that he has taken any wood or coal from land belonging to compl'ts. Defendant alleges that said NW ¼ of said SE ¼ of said Sec. 18, was conveyed by James H. Reading and William T. Hopkins to Charles H. & Hiram C. Gould, and that they are the legal and equitable
21 owners thereof, and that they, for a valuable consideration, conveyed to him ¼ interest in the coal upon said land, August 20th, 1855, at which time def't took possession of the land, and held possession until Nov. 8th, 1858, when he conveyed his interest in the same to Edwards Hughes, for a valuable consideration; that said Hughes has held possession of the land ever since, for himself and Gould and the owners. That one acre off the East side of said NW ¼ of SE ¼ of said Sec. 18, was sold for taxes for 1844, to one William E. Jones, and conveyed to him by the Sheriff deed, dated
22 March 5th, 1851. William Jones died; Mahlon D. Ogden and Edwin H. Sheldon, his executors, who conveyed said one acre to Reading & Hopkins, March 1st, 1855, and Reading & Hopkins conveyed the same to Gould, under whom def't took possession. That everything that he has done on
23½ the lands described was done on said one acre. Denies every other allegation in the bill.

23 Replication to James' answer filed Nov. 13, 1858.

24 Decree entered Dec. 5th, 1859, perpetually enjoining James and all acting under him, from interfering in any way with said land.

There were no exhibits filed with the bill.

There is no testimony preserved in the record.

14 John James and Daniel Ward were served with process; the other defendants were never brought before the Court.

24 The bill was dismissed as to all the defendants but James.

ERRORS ASSIGNED.

1. The Court erred in hearing the case, when the proper parties were not before the Court.

2. The Court erred in rendering a decree against def't, James, without evidence.

3. The Court erred in rendering the decree aforesaid in manner and form aforesaid.

POINTS AND AUTHORITIES.

1. The bill shows that there were other parties interested in the land, who were entitled to be heard. An account is prayed.

2. The answer shows that Charles H. Gould, Hiram C. Gould and

Edward Hughes were necessary parties to the proceedings.

Prentiss vs. Kimball, 19 *Ill.*, 320.

3. The record shows no proof whatever to support the decree.

Stacy vs. Randall, 17 *Ill.*, 467;
Wilson vs. Ninney, 14 *Ill.*, 27;
Ward vs- Owens, 12 *Ill.*, 283;
Nichols vs. Mourton, 16 *Ill.*, 113;
Ryan vs. Miller, 14 *Ill.*, 68;
Cummings vs. Cummings, 15 *Ill.*, 33.

J. W. Redding
~~GLOVER, COOK & CAMPBELL~~
For Pl'ff in Error.

143

John James
vs
Washington Bushnell et al

Plffs Brief & Points
& Abstracts –

Filed May 1. 1862
L. Leland
Clk.

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

To the Clerk of the Circuit Court for the County of 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

Washington Bushnell & Oliver C. Gray

plaintiffs and

John James

defendant, it is said manifest error hath intervened, to the injury of the aforesaid

James

as we are informed by his 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 plaint 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 31st day of March in the Year of Our Lord One Thousand Eight Hundred and Sixty two.

L. Leland
Clerk of the Supreme Court.

183 143

John James

No. 143 vs.

W. Bushnell et al.

WRIT OF ERROR.

FILED March 31st A. D. 1862

L. Leland

Clerk.

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

To the Sheriff of La Salle County, 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 Washington Bushnell & Oliver C. Gray plaintiffs, and John James defendant, it is said that manifest error hath intervened, to the injury of the said John James 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 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 Washington Bushnell & Oliver C. Gray that they 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 record and proceedings aforesaid, and the errors assigned, if they 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 Bushnell & Gray notice, together with this writ.

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 31st day of March in the year of our Lord One Thousand Eight Hundred and Sixty-two.

L. Leland
Clerk of the Supreme Court.

78
X

John James

No. 143 vs.

Washington Bushnell
& Oliver C. Gray —

SCIRE FACIAS.

FILED April 27 A. D. 1862

L. Leland Clerk.

Served by reading this writ to Washington Bushnell and Oliver C. Gray this 4th day of April 1862

Ser & Ret 1,10
2 miles 10
$1,20

Ed Hatsmean Sh
per Grow Dep

1

State of Illinois } ss
LaSalle County }

Pleas before the Honorable Madison E. Hollister Circuit Judge for the Ninth Judiciae District in said State and the Presiding Judge of the LaSalle County Circuit Court, at a term of said Court commenced and held at the Court House in Ottawa in said County, on the first Monday in the month of February, the Same being the first day of February in the year of our Lord, One Thousand Eight Hundred and fifty Eight, and of the Independence of the United States of America the Eighty Second

Present the Honorable
Madison E. Hollister, Presiding Judge
John H. Nash Clerk
Eri S. Watterman Sheriff
O. C. Gray, States Attorney pro tem.

Be it remembered that heretofore to Wit: On the 21st day of December AD 1857, a "Bill of Complaint" was filed in the office of the Clerk of the Circuit Court of said County, which bill of Complaint is in the words and figures following To Wit:

2

State of Illinois } ss In the Circuit Court thereof in
LaSalle County } Chancery to February Term AD
1857.

Washington Bushnell and
Oliver C Gray
vs
John James Daniel Ward
Gurdon S Hubbard. Ebe=
nezer Jackson and the
Unknown heirs of Josiah
S Lawrence deceased

To the Honorable
Meadison C Hollister
Judge of the 9th Ju=
dicial District of
said State.

Your complainants

Washington Bushnell and Oliver C. Gray both of LaSalle County and State of Illinois respectfully represent and show unto your Honor that they are each seized in fee simple as tenants in common of the undivided one third of the undivided eleven sixteenth parts of the following real estate in said County to wit: a part of the North half of the West half of the South East quarter of Section Eighteen (18) in Township thirty three (33) of range Five (5) East of the third principal Meridian containing thirty six (36) acres and one hundred and nineteen (119) rods. three acres (3) and forty one (41) rods. having been excepted out of said tract which formerly contained forty acres (40) by William Richey and Dolly his wife in their Deed to Lorenzo Kimball as will more fully appear by reference to the Records in

State of Illinois } ss In the Circuit Court thereof in
LaSalle County } Chancery to February Term A.D.
1857.

Washington Bushnell and
Oliver C Gray
vs
John James Daniel Ward
Gurdon S Hubbard. Ebe=
nezer Jackson and the
Unknown heirs of Josiah
S Lawrence deceased

To the Honorable
Madison C Hollister
Judge of the 9th Ju=
dicial District of
said State.

Your complainants
Washington Bushnell and Oliver C. Gray both of
LaSalle County and State of Illinois respectfully
represent and show unto your Honor, that they are
each seized in fee simple as tenants in common
of the undivided one third of the undivided eleven
sixteenth parts of the following real estate, viz.
said County to wit: a part of the North half of
the West half of the South East quarter of
Section Eighteen (18) in Township thirty three (33)
of range five (5) East of the third principal
Meridian containing thirty six (36) acres and
one hundred and nineteen (119) rods. three acres
(3) and forty one (41) rods. having been excepted
out of said tract which formerly contained
forty acres (40) by William Richey and Dolly his
wife in their Deed to Lorenzo Kimball as will
more fully appear by reference to the Records in

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the Office of the Recorder of said County to which reference is hereby made. And your complainants further show that said tract of land is covered with a growth of timber and contains a vein of stone coal from four to six feet in depth as your complainants are informed and believe, which is very valuable. Your complainants further represent that Daniel Ward of said County Gordon S. Hubbard of Cook County in the State of Illinois, Ebenezer Jackson, who resides somewhere in the State of Connecticut and the unknown heirs of Josiah S. Lawrence, deceased, who reside somewhere in the State of Ohio, all of whom are hereby made defendants to this Bill of complaint, each have, or claim to have some interest in said tract of land. Your complainants further show that one John James of said County of LaSalle is engaged, and has been for a long time engaged, in mining coal upon certain tract of land belonging to said Daniel Ward which joins said first described land in which your complainants are interested as aforesaid, on the East and has made an entrance for said mine on the land of said Ward near the East line of the land in which your complainants are interested as aforesaid, and within the last three months, under the pretence of avoiding a horse-back in said mine, has passed and entered by himself and his servants & workmen upon the lands first herein

described, in which your complainants are interested as aforesaid, and has dug out of the same a large quantity of coal, amounting as your complainants are informed and verily believe to about the quantity of two hundred tons of coal, and has carried the same out at the entrance, a mouth of the mine, on the land of said Ward as aforesaid, which said coal before the same was dug out, and carried away as aforesaid, was a part and parcel of the real estate first herein described. And your complainants are informed and verily believe that said James, by himself and his servants and workman is still digging and carrying away as aforesaid, large quantities of coal daily, from said real estate in which your complainants are interested as aforesaid, and has sold and is selling and converting into money for his own use, the coals so dug, & carried away as aforesaid. And the said James by himself, his servants and workmen have cut down and carried away and appropriated to his own use for props and other mining purposes a large quantity of trees and saplings being and growing on the said real estate, first herein described, in which your complainants are interested as aforesaid amounting in all as your complainants have been informed and verily believe to about one hundred such trees and saplings, and is still at such times as he wishes

5. cutting down and carrying away other trees and saplings on said real estate, all of which actings and doings of the said James and his servants and workmen acting under his authority are trespasses on the real estate in which your complainants are interested as aforesaid, and have been done and are still doing by him and them; without the consent leave or license of your complainants, or of the other parties, before mentioned who have an interest in said real estate, but wholly contrary thereto, and that the same work an irreparable damage to the said freehold in which your complainants are interested as aforesaid, and your complainants believe that said James is not responsible for the damage, which he has done as aforesaid, and is still doing to said land And your com=plainants having no full aggregate and com=plete remedy at law and being remediless in the premises without the interference of a court of equity where such matters are properly cogni=zable and relievable, prays that the process of summons may issue out of and under the seal of this Honorable Court against the said John James, Daniel Ward, Gurdon S Hubbard, Ebenezer Jackson and the unknown heirs of Jerah S Lawrence deceased, and that each and every of them may be compelled to answer all and singular the premises, but not under oath, their respective

oaths being hereby expressly waived. And that said James may be compelled to answer, but not under oath, the amount of coal he has so dug, carried away and sold, as aforesaid, as well as the number, kind and value of the trees and sappling he has cut down, carried away and appropriated to his own use of from and out of said real estate. And that on the final hearing of this cause the said James may be decreed to account for and pay to your com-plainants, what may be due to them for said coals dug and carried away as aforesaid as well as for said trees and saplings cut down and carried away as aforesaid. and that an account may be taken of the same under the direction of this Honorable Court, And may it please your Honor, in the mean time to grant unto your complainants a ~~ext~~ writ or writs of injunction issuing out of and under the seal of this Hon-orable Court to be directed to the said John James, to restrain him, his servants workmen and agents, from committing any waste, spoil or destruction upon the real estate in question in which your complainants are interested as aforesaid and from cutting down timber or other trees or saplings growing upon said real estate and from mining and digging or carrying away any coals out of said real estate, as well as from carrying away any coals he has already

9 dug out of said real estate, which is not carried away, as well as from committing any other or further trespass on said real estate, in any way, or entering upon, interfering or intermeddling with said real estate or any part thereof in any way whatever, either by himself his servants, workmen or agents. And that your complainants may have such other and further relief in the premises as equity and good conscience may require. &c.

Washington Rushnell.
and Oliver C Gray.
In person.

State of Illinois }
LaSalle County } ss.

Oliver C Gray being first duly sworn says, that the several matters and things herein stated of his own knowledge, he knows to be true as therein stated and that the several matters and things stated upon his belief or the information of others he believes to be true as therein stated.

Subscribed and sworn to before me this 18th day of December ad 1857. John H Stark Clerk pr G. Harrington Deptg.

Oliver C Gray.

Let an Injunction issue according to the prayer of the foregoing Bill or complaint entering into bond in

8 the penal sum of Five hundred dollars, with good se=
curity, conditional as the law directs.

Ottawa Decr 18, 1857. Wm. E. Hollister.

Judge Mc.

9 Be it remembered that heretofore To Wit, On the 21st day of December AD 1857. An "Injunction Bond" was filed in the office of the Clerk of Said Court, which is in the words and figures following To Wit,

"Know all mens by these pres=
=ents that we Washington Bushnell Oliver C. Gray & George W. Gray, are held and firmly bound unto John James in the Sum of Five Hundred Dollars to the payment of which we Jointly and Severally bind ourselves, our heirs executors and administrators, Sealed with our Seals and dated this 19th day of December AD 1857.

The Condition of the above obligation is Such, that whereas the above named Washington Bushnell and Oliver C. Gray have obtained an allowance of an injunction in the Circuit Court of Lafalle County in the State of Illinois, to injoin and re=
=Strain the Said John James from digging and carrying away Coals and cutting down and carrying away trees and saplings from certain premises described in Said bill of complaint.

Now if the said Washington Bushnell and Oliver C. Gray. shall pay said John James all moneys, costs and damages, which said James may or shall sustain, and which may or shall be decreed against them, in case said injunction shall be dissolved, then this obligation shall be void, otherwise to be and remain in full force and virtue in law

Washington Bushnell (Seal)
by Oliver C. Gray his atty in fact
Oliver C. Gray (Seal)
Geo. F. Gray (Seal)

Be it remembered that heretofore To Wit: On the 21st day of December AD 1837, a writ of Injunction was issued out of and under the seal of said court, which said Writ, and the endorsements thereon is in the words & figures following To Wit:

State of Illinois } The People of the State
Lasalle County ss } of Illinois to John James
Greeting: Whereas
Washington Bushnell & Oliver C. Gray have lately exhibited their bill of com-plaint to the Judge of the Circuit Court in and

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for said county and State, on the Chancery side thereof, against you the said John James & other defendants wherein, among other things it is alledged, that you are committing great waste and damage in digging and mining coal on the land of said complainants to wit: on the N ½, N ½, SE ¼, Sec 18, Town 33, North Range 5, East of the third principal Meridian. We therefore in consideration of the premises aforesaid do strictly enjoin and command you the said John James, your workmen, laborers, servants, and agents, and all and each of you, that you do forthwith, absolutely and entirely desist from committing any waste, spoil or destruction upon the said real estate, in which the complainants are interested, and from cutting down timber or other trees or saplings growing upon said real estate, and from mining or digging, or carrying away any ~~any~~ coals, ~~already dug~~ out of said real estate,* which is not carried away, as well as from committing any other or further trespasses on said real estate in any way, until you and each of you shall appear to and fully answer the complainants

* as well as from carrying away coals already dug out of said Real Estate

bill, and the Said Court make other order to the Contrary. Hereof faie not under the penalty of what the law directs.

To the Sheriff of Said County to execute.

Seal

Witness John F. Nash, Clerk of Said Court and the Seal thereof at Ottawa this 21st day of December AD 1857

J. F. Nash Clerk

58

Bushnell & Gray
vs
John James
} Injunction

Served by reading the within writ to John James and delivering to him a true copy thereof this 21st day of December 1857.

Fees: S & R 60
8 miles 40
$1.00

E. L. Waterman Shff
per A. E. Young Dpty

Filed January 30, 1858
J. F. Nash
Clerk

13 Be it remembered that heretofore To Wit: On the 21 day of December AD 1857. a Summons was issued out of & under the Seal of Said Court. which Summons & the endorsements thereon are in the words & figures following To Wit:

State of Illinois } The People of the
La Salle County } ss State of Illinois
To the Sheriff of
Lafalle County Greeting: We
Command you to Summon John James
Daniel Ward. Gordon S. Hubbard
Ebenezer Jackson, and the unknown
heirs of Josiah I Lawrence dec^d 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 1st day of February
next, to answer to a certain bill of com
-plaint, filed in our Said Circuit Court
on the Chancery Side thereof against them by
Washington Bushnell and Oliver C. Gray
and have you then and there this writ
and make return thereon in what manner
you execute the Same.

Witness John H
Nash Clerk of Said Court and the

#

Be it remembered that heretofore To wit, On Monday February 8th 1858, the Same being one of the days of the February Term of Said Court for Said year, an order was entered of record in Said cause which is in the words & figures following, To wit,

"Washington Bushnell & Oliver C. Gray vs John James & others } In Chancery

On Motion of the Complainants it is ordered that the rule for an answer herein be discharged and that this cause be continued.

Seal of Said court at Ottawa this 21 day of December AD 1857.

Seal

J. G. Nash Clerk

58 Washington Bushnell & Oliver C. Gray vs John James et alia } Sums in Chancery To February Term 1858.

Served by reading the within Sum^s to John James and Daniel Ward and delivery to each of them a true copy thereof this 21st day of December 1857. The other defendants not found in this County

Fees S^r & R^t 1.10. 16 miles 80. 2 copies 1.00 $2.90

E. S. Waterman Shff
per A E Snow Dpty

Filed January 30, 1858.
J. G. Nash Clerk

"See paper on margin"

Be it remembered that heretofore To Wit: On Friday February 5. 1858 The Same being one of the days of the February term of Said Court for said year, and order was entered of record, in Said Cause, in the words & figures following To wit:

15 Washington Bushnell & Oliver C. Gray
vs } In chancery
John James Daniel Ward
Gurdon S Hubbard, Ebenezer Jackson
and the unknown heirs of Josiah S. Law-
-rence Dec^d.

On Motion of the Complain-
-ants, the defendants are ruled to file an
answer herein on or before Tuesday Morn
-ing next

Be it remembered that heretofore
To Wit: On Wednesday November 3
1858, the Same being one of the days
of the November Term of Said Court
an order was entered of record in
the words and figures following
To Wit:

"Washington Bushnell &
Oliver C. Gray
vs }
John James, Daniel Ward
Gurdon S. Hubbard, Ebenezer Jackson
and the unknown heirs of Josiah S.
Laurence dec^d

On Motion of the
Plaintiffs the defendants James and

Ward, are ruled to file their answers herein, on or before the coming in of the Court next Monday Morning.

Be it remembered that here to-fore to Wit: On Monday November 8th 1858. the Same being one of the days of the November Term, for Said year, an order was entered of record in Said cause, which is in the words and figures following To Wit:

"Washington Bushnell & Oliver C Gray vs John James, Daniel Ward, Gurdon S. Hubbard, Ebenezer Jackson, and the unknown heirs of Josiah S. Lawrence decd } In Chancery

This day again come the plain-tiffs in their own proper persons and the defendants James and Ward being three times Solemnly called in open court Come not, nor any one for them but make default, and it appearing to the Court, that they have been duly Served with Summons, and that they are in de-fault of answer, On motion of Complain=

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#

Be it remembered that heretofore to wit, on Tuesday November 9th 1858, the same being one of the days of the November Term of Said Court for Said year, an order was entered of record in Said cause in the words & figures following to wit!

Washington Bushnell
& Oliver C. Gray
vs
John James, Daniel Ward,
Gordon S. Hubbard, Ebenezer Jackson
and the unknown heirs of Josiah S.
Laurence decd.

} In Chancery

On motion of the defendants by Glover & Cook their Solicitors and on their motion it is ordered that the default heretofore entered herein against the defendants James and Ward and the order referring this cause to a Master be and the Same are hereby set aside, and leave granted to Said defendants James and Ward to file an Answer herein.

-ants it is ordered by the Court that the bill herein be taken pro-confesso, against the defendants by default for want of answers. and that this cause be referred to the Master in Chancery to take the necessary proofs and report the Same to this Court.

(# "See paper pasted on margin")

Be it remembered that heretofore To Wit: On the 11th day of November 1858, The Answer of "John James" to com-plainants bill was filed in the office of the Clerk of Said Court, which is in the words & figures following To Wit:

"State of Illinois } In the Circuit Court
LaSalle County } ss thereof, In Chancery
February Term 1858.

John James, Gordon S. Hubbard, Ebenezer Jackson et ale Defts — on Bill for Injunction

vs

Washington Bushnell, Oliver C Gray, Complainants — Answer

The Several Answer of John James one of Defendants

in the Said Bill of the Said complain=
=ants named.

This defendant now and at all times hereafter Saving & reserving to himself all manner of benefit & ad=vantage of the manifest errors uncer==tainties & insufficiencies in the com==plainants Said bill of complaint con==tained, Nevertheless for answer thereunto or So much and Such parts thereof as he is advised it is material or necessa=ry for him to make answer unto he answers and Says he has no knowledge that the Said complainants or either of them, have any title in fee Simple or otherwise to any part of the North half of the West half of the South East Quarter of Section Eighteen in Town=Ship Thirty Three of Range Five East of the third Principal Meridian

Nor does this defendant be==lieve that Said complainants or ei==ther of them have any Such or any other title to Said land or any part thereof and therefore leaves Said com=plainants to make Such proof of their title to the Same as they may be adui==sed and think proper. This defendant however in further answering insists

that if Said complainants were such title to Said land as they have alledged in their Said Bill of complaint that then they have an adequate remedy at common laws and need not invoke the aid of a court of equity to afford them proper relief against such acts as they have in their Said bill alledged against the Said defendants, but may properly prosecute the Same in a court of Law. This defendant therefore insists that their Said bill of complaint according to their own Showing Should be dismissed

And this defendant in further answering Says that for aught he knows there may be Same trees growing upon Said land described in Said bill and Some Stone coal in or upon the Same But of the quality or extent he has no knowledge and leaves the Said complainants to make Such proof thereof as to them Shall Seem proper.

And this defendant in further answering Says that he has no knowledge that the Said Daniel Ward has any title to the premises described in Said Bill, nor does he suppose or believe he has any and therefore leaves them to make Such proof of

Said Wards title as they may think proper, But this defendant admits that the Said Ebenezer Jackson, Gordon S. Hubbard & the unknown heirs of Said Josiah S. Lawrence have or claim to have Some interest in Said tract of Land.

And the Said John James in further answering for himself denies that he has taken any timber wood or coal from any land belonging to the Said Complainants or either of them, and he leaves the Said Complainants to make such proof thereof as they may think proper

And the Said James in further answering for himself alledges that the Said North West Quarter of the Said South East quarter of Said Section Eighteen in Township Thirty three, Range Five was conveyed by James N. Reading & William G. Hopkins to Charles H. & Hiram B. Goold and that the Said C. H. & H. B. Goold, are the true legal and equitable owners of the Said North West Quarter of Said South East quarter of Said Section Eighteen and that the Said Charles H. & Hiram B. Goold

21

on or about the 20th day of August AD 1835, for a valuable consideration to them in hand paid by this defendant conveyed to him the one fourth interest in the coal on said tract of land, by virtue of which this defendant took possession of the land on the fifteenth day of August AD 1835 and has ever since until the Eighth day of November AD 1858, when he conveyed his interest in the same to one Edward Heughs for valuable consideration to him in hand paid held the ~~premises~~ possession of the same for himself and the said Charles H. & Hiram B. Goold as he had the legal & equitable right to do without any hindrance from the said complainants, or any other person and that since that time the said Edward Heughes has been in the possession thereof. And this defendant further alledges that one acre of land ~~off the~~ off the East side of the said North West Quarter of the said South East Quarter of said section Eighteen was sold by the Sheriff of the County of Lafalle for the Taxes of the year AD 1844 and that the same was at said sale

Struck off and Sold to one William E. Jones late of Chicago and that the Same was duly conveyed to him by Said Sheriff in pursuance of said Sale by deed bearing date the 5th day of March AD 1851. and to which said Deed & the proceedings and judgment on which Said Sale was made & the proceedings had on Said Sale this defendant begs leave to refer

And this defendant in further answering alleges that Said William E. Jones has departed this life leaving Meahlon D. Ogden & Edwin H. Sheldon, the executors of his last will & testament, and that the Said Meahlon D. Ogden & Edwin H. Sheldon executors as aforesaid by deed dated March 1st 1855. conveyed among other lands to Said Reading & Hopkins the Said one Acre off Said East side of Said North West quarter of Said South East quarter for a valuable consideration to them in hand paid, and that the Same was conveyed by Said Reading & Hopkins to Said Charles H. & Hiram C. Goold as aforesaid under whose conveyance as aforesaid this defendant took & held possession of the Same as aforesaid.

23

Be it remembered that heretofore To Wit: On the 13th day of November 1858, a Replication was filed in the office of the Clerk of said Court which is in the words & figures following To Wit:

State of Illinois } In the Circuit Court thereof
LaSalle County ss } in Chancery November Term AD 1858

Washington Bushnell et al
vs
John James et al

The Joint and several replication of Washington Bushnell and Oliver C. Gray Complainants, to the answer of John James one of the defendants, These replicants saving and reserving to themselves all, and all manner of advantage of exception to the manifold insufficiencies of the said answer for replication thereunto say, that they will aver and prove their said bill to be true certain and sufficient in law to be answered unto, and that the said answer of the said defendants is uncertain, untrue and insufficient to be replied unto by this replicant 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 shall direct, and prays, as in and by his said bill he hath already prayed

Bushnell & Gray
in person.

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And this defendant further alledges that the work done by this defendants and which was enjoined by said com=plainant, was all done on the said one acre on the East side of said North West Quarter of said South East Quarter on which land this defendant had under the said Goolds a just & legal right to enter & work

And this defendant denies all manner of unlawful combination & confederacy where=with he is by the said Bill charged with=out this, that there is any other matter, cause or thing in the said complainants Bill of complaint, contained material or necessary for this defendant to make answer unto and not herein & hereby well and suffici=ently answered, confessed, traversed, and avoided or denied is true to the knowledge or belief of this Defendant, All which mat=ters & things this Defendant is ready to aver, maintain, and prove as this Hon=orable Court shall direct, and humbly prays to be hence dismissed with his reasonable costs & charges in this behalf most wrongfully sustained

John James
Defr.

"See paper on margin"

Be it remembered that heretofore To Wit, On Monday December 5th 1859 an order or "Decree" was entered of record of record, the same day being one of the days of the November Term of said Court for said year, which decree is in the words & figures following To Wit:

Washington Bushnell & Oliver C Gray
vs
John James, Daniel Ward, Gurdon S. Hubbard, Ebenezer Jackson, and the unknown heirs of Josiah S. Laurence decd

In Chancery.

This day came Washington Bushnell & Oliver C. Gray the complainants in their own proper persons, and dismiss their said Bill of Complaint, as to the defendants, Daniel Ward, Gurdon S. Hubbard, Ebenezer Jackson, and the unknown heirs of Josiah S. Laurence deceased, and the said John James, one of the defendants being three times solemnly called came not but made default, and thereupon this

25 cause came on to be heard upon the Bill of the complainants, the answer of Said John James thereto, the replication of the Said complainants to Said answer exhibits and testimony, and the evidence and arguments of Counsel being heard the Court do find the equity of the case to be with the complainants. It is therefore ordered, adjudged and decreed, and this Court by virtue of authority therein vested do hereby, order, adjudge and decree that the injunction heretofore allowed by this Court against the Same John James in this cause, be and the Same is hereby made perpetual, and it is further ordered, adjudged and decreed that Said John James, he and he is hereby forever restrained from committing any waste Spoil or destruction upon the real Estate in Said Bill of complaint described, and from cutting down Timber or other Trees or Saplings growing upon Said real estate and from mining or digging or carrying away any Coals out of Said real estate

And from committing any other or further trespasses upon Said real estate in any way, or entering upon, interfering or intermeddling with

Said real estate, or any part thereof in any way whatever, either by himself, his Servants, workmen or agents and that Said James pay the costs of this proceeding, in thirty days from the rising of this Court, and in default thereof, that execution issue therefor as upon judgments at law.

State of Illinois } I. Absalom B. Moore
Lafalle County } ss Clerk of the Circuit Court, in and for Said County, do hereby Certify that the foregoing is a true, full, & perfect copy of the record, of Said Court, and the papers on file in the foregoing entitled Cause, as now appears, from the records and papers on file in my office.

Witness Absalom B. Moore Clerk of Said Court, and the Seal thereof at Ottawa this 28th day of March AD 1862.

A B Moore, Clerk

Ms. fee $6.

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And now comes the said plaintiff in error and says that in the record & proceedings aforesaid and in the rendition of the decree aforesaid there is manifest error in this to wit

1st The court erred in hearing the case when the proper parties were not before the court

2d The court erred in rendering a decree against deft Lamos without evidence

3d The court erred in rendering the decree aforesaid in manner & form aforesaid

Glover Cook & Campbell
for pltff in error

And now come the said Washington Bushnell, Oliver C. Gray, and Lemuel Reed, defendants in error, and say that in the record and proceedings aforesaid, there is no error.

Gray, Avery & Bushnell
Attys. for defts. in error

Filed May 1. 1862
L. Lilance
Clk.

183. 143

John James
vs
Washington Bushnell
& Olivia C. Gray

Record

Filed Mch. 31. 1862
L. Leland
Clk.

Compared Rec Nov 2