

No. 12650

Supreme Court of Illinois

Scott.

vs.

Willow, et al.

12650 

Henry Scott
98-1

William W. Smith
H. W. Smith

98

12650

1858

X
Papers

Be it Remembered that herebefore to wit on the last
day of April in the year of our Lord one thousand eight
hundred and fifty seven there was filed in the office of
the Clerk of the Circuit Court in and for the County of
Stearns in the State of Illinois ^{with the Clerk} ~~with the Clerk~~ with the Clerk
of the said Court for an injunction writs annexed
to in the words and figures following to wit:

State of Illinois
Tennant County, ss

William M. Whitlow

vs
Henry Scott

William H. Cazier

Charles A. Seer James Henry B. Francis to Smith

vs
Le. Chacey
Circuit Court
Tennant County
May Term
A.D. 1857

Judge of the 11th Judicial Circuit, of the State of Illinois
Humbly complaining, John Crater William Whitlow
Shews to your Honor that on or about the middle of the
month of August, A.D. 1856, your Crater was the owner
and possessed of about five thousand five hundred Rail
Road. First of the value of nearly two hundred dollars and
said Rail Road was then lying on the bank of the
Illinois river in the County of Stearns at and near the
places called Sharps Landing and Butler Landing but
your Crater had purchased said ties from him to him
prior to the date aforesaid and had paid the full value
thereof to the previous & rightful owner thereof and the
same had been delivered to your Crater at the place aforesaid.

And your Crater further shews to your
Honor that on the 8th day of September A.D. 1856 the said
William H. Cazier, said that a writ of attachment against
him William H. Cazier, before Marshall Townsend Esq a
justice of the peace in said County of Stearns Illinois

the 13th day of September A.D. 1856,

And that on the 20th day of September A.D. 1856, the
William Brown, sued out a writ of attachment before said
Justice against the goods & chattels of said Bond, which
writ was made returnable on the 26th day of September 1856.

And on or about the 9th day of September A.D. 1856
the William Gregory, sued out a writ of attachment before
said Justice against the goods & chattels of said Bond,
returnable on or about the 16th day of September A.D. 1856
and that each of said writs of attachment, were levied

upon the Rail Road Tris aforesaid. And your brother
positively alleges that said Tris were not the property good
or chattel of the said Bonds nor had the said Bonds any
interest in claim to or lien upon the said Tris or any of
them but the same were at the time of the levy of the said
attachment, the property exclusively of your brother and
for a long time prior thereto had been. And that

on or about the return day of the writ of attachment upon
said judgment was rendered thereon by said Justice in favor
of said Hellingworth for the sum of twenty nine and 80^{cts}
dollars damages and five dollars costs and in favor of said
Brown for the sum of forty one & 25^{cts} dollars damages and
five dollars costs. And in favor of said Gregory for the
sum of eight three dollars & twenty eight cents damages and
five dollars costs. And that on the 30th day of Septem-
ber 1856 Order to sell said property so attached was

issued upon each of said judgments. And William H.
Lancaster Constable in said County thereupon sold all the
said Rail Road Tris belonging to your brother as aforesaid
in satisfaction of the said judgments obtained by the parties
aforesaid against said Bond. And your brother from

then shews to your Honor that at the said Constable's sale
said Gregory became the purchaser of a portion of said
Rail Road Tris to wit, the number of

And that shortly thereafter said Gregory sold said Tris to
be bid off by him at said sale to Henry C. Scott, whom your
brother fears may be made defendant thereto and that said
Scott immediately removed said Tris to said County of Marion

and sold the same to said J. H. Crafer Charles & Lewis
James Hurry. And your Orator further avers and charges
that said Crafer at the time of the said attachment and at
the time of the purchase of said ties at said Constable's sale
well knew that said ties were not the property of said Board
but were the sole property of your Orator.
And that said Scott at the time he purchased said ties
of said Crafer and at the time of selling the same to said
Crafer well knew that the said ties were not the property
of said Board but were the property of your Orator. And
that before receiving said ties said Scott took pains to per-
fect himself against loss should the claim of your Orator
to said ties be asserted and he should take the same or
the avails thereof and that said Scott escaped with said
ties secretly & surreptitiously to prevent your Orator from re-
claiming the same. And that said Crafer and Scott
wrongfully intended to cheat and defraud your Orator in the
premises by knowingly and wilfully depriving him of his
said property. And your Orator further avers that
before said Crafer had paid to said Scott the price or
value of said ties he gave notice to said Crafer not before
the amount thereof to said Scott as said ties were the prop-
erty of your Orator but that on the 13th day of January A.D.
1857 said Scott commenced an action against said Crafer
(of which action your Orator was not advised at the time they
had no personal notice and obtained judgment against
said Crafer & Hurry for said ties to the amount
of three hundred & eighty four & fifty by the consideration of
the County Court of Platte County. And that on the day
of 1857 Execution issued upon said last-
named judgment, which is now in the hands of the Sheriff
of said Platte County who is about levying the same upon
the property of said Crafer. And your Orator further
shows to your Hon. that the said Scott has left the State of
Illinois and that he has no property in said State known
to your Orator out of which the amount of his damages should
be paid as aforesaid. And that the said Constable
who made the said attachment and sale is irresponsible
for the amount of damages sustained by him by reason of

the premises aforesaid. And as your Orator is advised has
no securities who are liable & responsible for the injury aforesaid,
and that your Orator is libelly remedied in the premises
unless he can secure the amount of the price of said tree
in the hands of said Orator. And your Orator further
shows that before he had an opportunity to reclaim said tree
from the possession of said Scott or said Orator, they had
become mingled with others of the same sort, so that their
identification was impossible. And your Orator
further shows that he is advised and believes and therefore
charges that the proceedings of said Justice Lancaster are
entirely irregular and void for want of a sufficient offi-
cial bond and writs. And that the proceedings of said
Justices are also void; All of which charges and doing
of the said Defendants are contrary to equity and good con-
science, and tend to the manifest injury of your Orator.
And whereas your Orator is libelly remedied by the rules
of law and can have relief only in a Court of Conscience.
Your Orator therefore prays that the people's Writ of Spawchi-
may issue directing, requiring & enjoining said Sheriff of
Cheshire County and said Scott that they take no farther step
for the collection of the Judgment before mentioned, until the
final determination of this cause and that said Orator,
Charles H. Star & James Hurry do not pay over the amount
of said Judgment until the final order of the Court herein &
that Francis W. Smith, be enjoined from collecting said execu-
tion. And that judgments out of Chancery may issue
requiring said Henry E. Scott & William H. Orator Charles
H. Star & James Hurry to appear before this Honorable
Court at the next term thereof and full true & perfect
answers make to all and singular the allegations and charges
herein contained as fully & perfectly as if the same were
herein again repeated, upon this several Oathful oath
expressed to the said Henry E. Scott whose oath is hereby
expressly waived, and for such other & further relief
as to equity and good conscience appertain.

H. B. Stephens
Solicitor

William W. Whittier

State of Illinois
Vernia County, ss. This day personally appeared,
before me the Subscriber William
W. Whitten who being duly sworn deposes and says that
he is Complainant, in the above cause, and that all the
facts and things stated & alleged in his said Bill of
Complaint as stated of his own knowledge are true in
substance & in fact and so far as stated upon the testi-
mony of others are true according to the best of his
knowledge and belief. William Whitten;
Subscribed & sworn to before
me the fifth day of April, A.D. 1857
C. N. Powell Judge 16 Circuit

State of Illinois
Vernia County, ss. Let an injunction issue in said
Cause restraining the said defendants as prayed for in
said Bill in The said Complainant entering into Bond
in the legal sum of seven hundred and twenty seven dol-
lars Lewis J. Harris as security Conditioned according to
the Statute in such Case made and provided
April 6th 1857. C. N. Powell
Judge 16th Circuit
And thereupon on the same day there was filed in the office of the
Clerk of the Circuit Court a Bond for injunction which is in
the words and figures following to wit:

Know all men by these presents that We William Whitten
and Lewis J. H. Harris are held and firmly bound unto
Henry B. Scott William H. Crozer Charles A. Secor James
Henry and Francis W. Smith, in the sum of seven hundred
and twenty seven dollars by us our executors or heirs
well and truly to be paid to said Scott Crozer Secor
& Henry & Smith
Signed & sealed this 6th day of April 1857
Now the condition of this obligation is such
that whereas the said William W. Whitten has this day prayed
the issue of a writ of Injunction from the Court of Chancery
in the County of Vernia State of Illinois which said writ
is about to issue against said Scott Smith Crozer & Secor

8 Hurry, enjoining a Judgment in favor of said Scott vs
said Grafer, Secor & Hurry. Now if the said Whittow
shall pay all money and costs due or to be due to the said
Scott and also all such costs and damages as shall be
awarded against him in case the injunction shall be
dissolved then this instrument to be void otherwise in force.
William Whittow, *Seal*
L. J. Henes *Seal*

And thereupon on the same day the Clerk of said Court issued out of
said Court under the seal thereof a writ of injunction to the Governor of
Perry County to execute which is in the words and figures following to wit:

State of Illinois }
Perry County } ss The People of the State of Illinois
To Henry Scott, William H. Gruger, Charles A. Secor,
James Hurry, and Francis W. Smith, their agents, attorneys
or deputies, Greeting.
Whereas William W. Whittow, has lately exhibited his bill of
Complaint to the Circuit Court in and for the County of
Perry in the State of Illinois, on the Chancery side thereof,
against you the said Henry Scott, William H. Gruger,
Charles A. Secor, James Hurry, and Francis W. Smith,
wherein among other things it is alleged, that you
Henry & Scott, on the 13th day of January, A.D. 1854, com-
menced an action against William H. Gruger, Charles A.
Secor and James Hurry, and obtained Judgment against
said Gruger, Secor, and Hurry, for three hundred and
eighty three dollars and six cents by the consideration of
the County Court of Perry County, and that on the 1st day
of April 1857 execution issued upon said Judgment
which is now in the hands of the Sheriff of said Perry
County for collection to the wrong and injury of the said
William W. Whittow, unless the Sheriff of said Perry County
and you Henry & Scott, are required and enjoined not to
take any further steps for the collection of said Judgment
until the final determination of this cause.
We, therefore in consideration of the premises do strictly

enjoin you the said Scott your agents or attorneys from
taking any further steps for the collection of said judg-
-ment, until the final determination of this cause; and
we do strictly enjoin you the said Francis M. Smith, your
agents, attorneys or deputies, from taking any further step
for the collection of said judgment, until the final determi-
-nation of this cause; and we do strictly enjoin you the
said William H. Cruger, Charles A. Secor and James M.
Herry from paying over the amount of said judgment until the
final order of the court herein.



In witness whereof, I Jacob C. Polhem, clerk
of the Circuit Court of said Pavia County,
have hereto subscribed my name and
affixed the seal of said Court at my office
in Pavia this 6th day of April A.D. 1857
Jacob C. Polhem clk

To the coroner of Pavia County to execute

Enclosed as follows: A writ of habeas corpus in favor of J. H. Scott, against the Sheriff of Pavia County, Illinois, and the coroner of said county, for the purpose of compelling the said Sheriff to deliver to the said Scott the sum of \$1000, which said writ is in the words and
language following to wit:

The People of the State of Illinois, To the Sheriff of Pavia
County—Greeting: We Command you to summon Mar-
-tin H. Scott, William H. Cruger, Charles A. Secor, & James
Herry if they may be found in your County, to appear
before our Circuit Court on the first day of the term thereof to
be held at Pavia, within, and for the said County of Pavia
to the second Monday of May next then and there, in our
said Court to answer the matters and things contained in a
certain bill of Complaint filed exhibited before our Circuit
Court on the chancery side thereof, by William H. Whillows
against the said Scott, Cruger, Secor & Herry—for
Injunction—and make return of this writ with an
endorsement of the time and manner of serving the same
on or before the first day of the term of the said Court to be
held as aforesaid. Witness Jacob C. Polhem, Clerk of our
said Court and the seal thereof at Pavia this 6th
day of April in the year of our Lord one thousand eight
hundred and fifty seven. Jacob C. Polhem, clk



Which Summons was returned by the Sheriff of said Court
into the Clerk's office of said Court, Endorsed as follows to wit;

And served on the within Named, William H. Grayer by giving
him a copy of the same and the within Named, Scott
Clauson & Henry is not on by Court April 25 1857
H. W. Smith Sheriff

And afterwards to wit on the 12th day of May A D 1857
the defendants by their attorney filed in the Clerk's office of the
said Circuit Court their demurrer to the Complainant's bill
which is in the words and figures following to wit:

x The demurrer of the defendants to a bill filed by William
H. Whitten Complainant.

These defendants by protestation not confessing
or acknowledging any or all of the matters or things con-
tained by said bill set forth and Complainant of so manner
and form as the same are therein set forth and alleged
saith they are advised by their Counsel that there is no
matter or thing in the said bill contained good and suf-
ficient in law to call these defendants in question in
this Honorable Court for the same but that there is good
cause of demurrer thereunto and therefore these defendants
saith that the Complainant said bill in law the allegations
therein contained were true, which these defendants dothin
no sort admit Contains not any matter of Equity wherein
this Court can grant any decree or give the Complainant
any relief or assistance, as against these defendants before
you and for divers other errors and imperfections in the said
bill appearing this defendant doth demur in Law thereto
& humbly demands the Judgment of this Court whether
they shall be compelled further to put in any answer.

to this said bill & humbly pray hence to be dismissed
with their reasonable costs in this behalf most wrongfully
sustained,
Wm. Williamson
for defendant

Proceedings in vacation after do. (August) A.D. 1857 of the Circuit
Court in and for Davis County in the State of Illinois in Chancery
before the Honorable Judge H. Cornell Judge of the Circuit
Court in and for the State of Illinois at his Chambers in the
City of Carver to wit:

Saturday August 8th A.D. 1857

William W. Whitlow

vs

Henry Scott
William H. Bryner
Charles A. Moore
James Hurry
Francis W. Smith

For Defendant vs

This Cause came on to be heard
upon a demurrer to the Bill of the Complainant, at the
May term of this Court and was continued for further
argument before the Judge at Chambers in vacation.
And the Council for the Complainant, and defendant
having on the third day of August A.D. 1857, appeared
before the Judge at his Chambers and the Judge having
heard the allegations of the parties and the arguments
of Council and being fully advised in the premises doth
overrule said demurrer.

And afterwards to wit on the 23rd day of November
the defendant filed in the Clerk's office of said Court a stipulation
agreed in this cause which is in the words and figures
following to wit:

Whitlow

vs

For Separation &c

Henry E. Scott

William H. Cruger

Charles A. Allen

James Hurry

Francis W. Smith

And now comes the said defendants by Head & Williamson, their solicitors and stipulate to agree that all the facts & statements set forth in said bill are true in substance & in fact. This stipulation is made only for the purpose of obtaining a final decree in this case & does not stand for any amended or future bill. — & only for a trial upon the bill as it stands.

Henry E. Scott
By Head & Williamson
their solicitors

And answered on the same day the defendants by their attorneys filed in the office of the clerk of said Court a motion for a new trial which he read the words and figures following to wit:

Whitlow

vs

For Separation

Henry E. Scott

William H. Cruger

Charles A. Allen

James Hurry

Francis W. Smith

And now comes the said defendants by Head & Williamson, their solicitors and moves the Court for final judgment

I decree in this Cause for the following reasons

1st Because the Court has decided upon demurrer to the Bill that the same is sufficient

2^d Because the defendants admit the facts set forth in the Bill to be true & make no further defence

Therefore they pray the Court to make a final Decree & Judgment herein -

by Wood & Williamson
their Solicitors

And afterwards to wit on the 14th day of December 1857 there was filed in the Clerk's office of said Court an agreement in the words and figures following to wit:

W^m Whitlow

vs
Henry & Scott et al.

We agree that the allegations in Complainant bill herein are True

Wood & Williamson
For Henry & Scott

And afterwards to wit on the 26th day of December 1857 there was filed in the office of the Clerk of said Court an agreement in words & figures following to wit:

William M. Whitlow

vs
Henry & Scott
Burger Secor Henry
and F W Smith

Circuit Court
Florida County
November Term AD
1857

I, Francis W Smith one of the defendants in this Cause do hereby enter my appearance to the action and agree that Judgment may be taken pro Confesso against me in the said Cause.

Dated this 26th Day of Dec
1857.

F W Smith (Seal)

Proceedings in Chancery before the Circuit Court at a Court Room
by and held at the Court House in the City of Cincinnati in the
County of Clermont State of Ohio on the third day of November
in the year of our Lord one thousand eight hundred and
fifty seven it being the sixteenth day of said month. Present
his Honorables Eldred H. Powell Judge of the said District Court
of the State of Ohio, Francis W. Smith Sheriff and Lemuel C.
Barnes, Clerk of said

Wednesday December 30th A.D. 1857

vs
William Whillow

For Defendant vs

Henry E. Scott

William H. Gruger

Charles A. Secor

James Herry et al

This day the cause coming
on to be heard, The Complainant, appeared by H. H.
Hopkins his Solicitor and the said defendant Scott by
Head and Williamson, his Solicitor and it appearing
that the said Defendant William H. Gruger had been
duly served with summons in the Cause and said
Gruger being three times solemnly called came not
but made default and the said defendants Charles
A. Secor, James Herry, and Francis W. Smith, having
entered their appearance to the said action and the
said Secor, Herry, and Smith being three times solemnly
called came not but made default and the said defen-
-dant Henry E. Scott by his said solicitor filing his
agreement as follows to wit: W^m Whillow vs Henry E.
Scott et al We agree that the allegations in Complaint
bills being are true, true and Williamson for Henry
E. Scott. It is therefore, ordered, adjudged and de-
creed by the Court that the said bill of Complaint be
and the same is hereby taken for confessed as against
said Defendants William H. Gruger, Charles A. Secor
James Herry and Francis W. Smith, And that as
against said Defendant Henry E. Scott, all and

Singular the allegations and charges contained in the said Complaint to said Bill be & are hereby found true in substance and fact as therein alleged and charged. It is further ordered adjudged and decreed by the Court that the injunction heretofore allowed in this case be made perpetual as to the said Defendant Henry & Scott and that he do not collect or in any manner attempt to collect of the said defendants Oruger Secor & Hurry the said Judgment mentioned in said Bill of Complaint in favor of said Scott against said Oruger, Secor & Hurry. And it is further ordered, adjudged and decreed by the Court that the said Oruger Secor and Hurry do pay over to said Complainant, William W. Whitton the amount of said Judgment recovered against them by said defendant Henry & Scott for the said Rail Road ties as stated in said Complaint and that the aforesaid injunction be modified accordingly as to said Oruger Secor & Hurry and that thereupon the said Oruger Secor and Hurry be discharged and released from the said Judgment against them recovered by the said Scott as stated in said Bill of Complaint. And it is further adjudged and decreed by the Court that said Francis W. Smith Sheriff of said Nova Scotia do proceed to collect of said Oruger Secor & Hurry the said execution issued upon said Judgment, or an alias execution upon said Judgment and pay over the amount thereof to said Complainant, William W. Whitton. And it is further decreed that alias execution be issued upon the said Judgment in favor of said Scott against said Oruger Secor and Hurry and that said Sheriff collect and pay over the same as above decreed.

And appeared to wit on the third day of February A.D. 1858 there were filed in the office of the Clerk of the said Circuit Court an Affidavit which is in the above said figures following to wit:

Know all men by these presents, that we Henry & Scott
as principal and Rezekiah M. Ward & Marion Williamson
as sureties are held and firmly bound unto William W.
Whitlow in the penal sum of eight hundred dollars for the pay-
ment of which well and truly to be made we bind ourselves
& our heirs jointly & severally firmly by these presents
The Condition of the above Obligation is such that whereas
the Circuit Court in & for the County of Peoria and State of
Illinois at the November Term thereof A.D. 1857. In a
certain Cause then & there pending wherein the said William
W. Whitlow was Complainant and Henry & Scott Francis M.
Smith William H. Bruger Charles H. Secor James Hurry
were defendants, on the Chancery side thereof it was ord-
ered, adjudged, & decreed by said Court that the injunction
in said Cause be perpetual as to said Scott & that he should
not collect the said Judgment expended in said Cause, nor
in any manner attempt the same mentioned in Complainant's
bill of Complaint in favor of Scott vs Bruger Secor & Hurry
and also that said Bruger Secor & Hurry pay over said
amount of said Judgment against them for said Rail Road
ties as mentioned in Complainant's bill to William W. Whitlow
and that said injunction be modified accordingly as to said
Bruger Secor & Hurry & that hereupon said Bruger Secor
& Hurry be discharged & released from said Judgment,
recovered against them by said Scott & that W. H. Smith
Sheriff collect said Judgment & pay over to said Complain-
ant & that said defendants pay the costs in said Cause,
From which said decree rendered on the 30th day of Decem-
ber 1857 the said Scott prayed an appeal to the Supreme
Court of the State of Illinois. Now if the said Henry &
Scott shall prosecute his said appeal with effect & without
delay and shall pay all Judgment costs interest & damage
in case the Judgment & decree be affirmed then the above
Obligation to be void otherwise to be & remain in full force
& Virtue in law. In testimony whereof we have hereunto
subscribed our names and affixed our seals the 28th day of
December A.D. 1857

Henry & Scott (Seal)
H. M. Ward (Seal)
M. Williamson (Seal)

Approved by me this 3 day of February A.D. 1858
Enoch P. Sloan Clerk

State of Illinois

Georgia County

I, Enoch P. Sloan, Clerk of the Circuit Court in and for said County and State do certify that the foregoing is a full and complete transcript of paper filed and of proceedings of our said Court in the cases wherein William N. Whitlow is complainant and Henry Lett, William C. Genger, Charles A. Seger & James Hurry & Francis N. Smith are defendants as the same appears on file and of Record in our office

Given under my hand and
the seal of said Court at Peoria
this tenth day of March in
the year one thousand Eight
Hundred and fifty Eight.
Enoch Sloan, Clerk

15- \$5.50
Henry Scott
61
William Whittier

Filed March 13, 1858.
L. Leland
Att

State of Illinois

Mary Scott impleaded
with William M. Cozart } In the Supreme
Charles A. Loomis & } Court April
James Murray } Term 1853
vs.
William W. Whitlow }

And now comes
the said plaintiff to say that
in the record & proceedings aforesaid
and in the decree aforesaid
manifest ~~error~~ ^{injustice} hath intervened
to their injury in this

1st Said decree ought not to
have been made in favor
of the defendants

2 It is contrary to Equity & is not
justified by the Bill

3 Said decree is unauthorized by
illegal & erroneous

4. Said decree ought to have
been in favor of Plaintiff in

State of Illinois

Mary Scott impleaded
with William M. Cozart } In the Supreme
Charles A. Loomis & } Court April
James Murray } Term 1853
vs.
William W. Whitlow }

And now comes
the said plaintiff to say that
in the record & proceedings aforesaid
and in the decree aforesaid
manifest ~~error~~ ^{injustice} hath intervened
to their injury in this

1st Said decree ought not to
have been made in favor
of the defendants

2 It is contrary to Equity & is not
justified by the Bill

3 Said decree is unauthorized by
illegal & erroneous

4. Said decree ought to have
been in favor of Plaintiff in

Error

S. Said Bill ought to have
been dismissed at the com-
plainant's cost—

For these rather wrong
pleinly prays that a new
deceit may be reversed and
be set aside & for costs be
held

By Mead & Williams
their Attorneys

~~State of Illinois~~

And the said defendant
in answer by H B Hopkin his solicitor
comes & says that in the record and
proceedings aforesaid and in the
recitation of the decree aforesaid
there is no error wherefore he
prays that the said decree may be
put things be affirmed with costs

H B Hopkin
for Deft

18.

Henry Southall

William W. Whellam

Assignment of
Carroll

W. W. Whellam

As. Secretary

March

Henry E Scott
appellant

vs
William W Whitlow et al
appellees

Supreme Court
Windsor
A D 1858

Defendants Argument

The Defendant in Error premises

First

That the abstract filed by the
appellant entirely misrepresents the
case, therefore earnestly desires the
Court to look into the Record

And 2nd

That the Bill was hastily drawn
and contains imperfections but is
believed to be substantially sufficient

And 3rdly

That this is by no means a proceeding
for recovery of damages as stated by
Appellants Counsel, but is the only means
of correcting a gross fraud of the said
Appellant

The Bill alleges that the Appellee
Whitlow owned a quantity of Railroad
ties then on the bank of the Illinois
River in Schuyler County.

And that about the 30th of September
1856 certain persons by the names of
Hollingsworth Brown & Gregory got
up certain irregular and void pro-
ceedings in attachment against
one William Bond. and levied the
same upon the ties of Appellee for
the purpose of cheating and defraud-
ing said Appellee and depriving him
of his said property well knowing that
the said ties were the property of ap-
pellee Whitlow and that said Bond had
no interest therein

That said ties were sold under said
void attachment proceedings and
purchased by said Gregory with the
knowledge and for the fraudulent
purposes aforesaid

and that after said fraudulent sale
proceedings said Gregory and said
Appellant Scott colluded together for
the purpose of cheating and defrauding
said Whitlow. And said Scott purchased

The Bill alleges that the appellee
Whitlow owned a quantity of Railroad
ties then on the bank of the Illinois
River in Schuyler County.

And that about the 30th of September
1856 certain persons by the names of
Hollingsworth Brown & Gregory got
up certain irregular and void pro-
ceedings in attachment against
one William Bond. and levied the
same upon the ties of Appellee for
the purpose of cheating and defraud-
ing said appellee and depriving him
of his said property well knowing that
the said ties were the property of ap-
pellee Whitlow and that said Bond had
no interest therein

That said ties were sold under said
void attachment proceedings and
purchased by said Gregory with the
knowledge and for the fraudulent
purposes aforesaid

and that after said fraudulent sale
proceedings said Gregory and said
Appellant Scott colluded together for
the purpose of cheating and defrauding
said Whitlow. And said Scott purchased

the said ties of said Gregory with full knowledge that the same belonged to said Whittow and that neither the said Gregory or said Bond had any title or interest in them, but for the fraudulent purpose of cheating said Whittow and avoiding detection said Scott secretly and surreptitiously escaped with said ties and ran them up the Illinois river to Peoria & there represented to Burger Deco & Co that the said ties were his own property and sold them to said Burger Deco & Co with the intent of putting them beyond the reach of said Whittow And the said ties were placed among others of the said kind so that they could not be identified and recovered

That Appeller Whittow as soon as he became aware of the aforesaid transactions gave said Burger Deco & Co notice of his claim to said ties & requested them not to pay said Scott for the said ties

That thereupon said Scott commenced suit for the value of said ties against said Burger Deco & Co in the County Court of Peoria County and said Burger Deco & Co

the said ties of said Gregory with full knowledge that the same belonged to said Whittow and that neither the said Gregory or said Bond had any title or interest in them, but for the fraudulent purpose of cheating said Whittow and avoiding detection said Scott secretly and surreptitiously escaped with said ties and ran them up the Illinois river to Peoria & there represented to Burger Deco & Co that the said ties were his own property and sold them to said Burger Deco & Co with the intent of putting them beyond the reach of said Whittow And the said ties were placed among others of the said kind so that they could not be identified and recovered

That Appeller Whittow as soon as he became aware of the aforesaid transactions gave said Burger Deco & Co notice of his claim to said ties & requested them not to pay said Scott for the said ties

That thereupon said Scott commenced suit for the value of said ties against said Burger Deco & Co in the County Court of Peoria County and said Burger Deco & Co

not appearing said suit and said Whittow having no notice of the existence of said suit. Judgment was recovered for three hundred and eighty five dollars and fifty cents That Execution issued upon said Judgment and was about being levied when the Bill for injunction was filed.

And the Bill also alleges that said Scott had left the State & had no property in the State, that the Constable selling said ties under said writ of attachment his securities and all others who might be made liable for said ties, are irresponsible, and that said Whittow is in danger of and will lose the said property so taken from him unless he can intercept the said Judgment so procured by obtaining an injunction.

The said Bill prays that said Scott be informed from the collection of said Judgment, that said George Scott be informed from paying the said Judgment and that C. W. Smith Sheriff of said County be informed from denying the said execution until the further order of Court.

And also prayed for such other and further relief as to equity and good conscience may appertain.

On the 6th of April 1857 an Injunction was allowed according to the prayer of the said Bill by Lord B. Bull. And thereafter a bill filed & writ of Injunction issued accordingly.

All the Defendants were either served with process or entered their appearance.

At the May term of the Circuit Court for said Circuit County the Appellants filed a Demurrer to said Bill. Said Demurrer was on full hearing overruled by the Judge at Chambers Aug. 3, 1857.

At the November Term of said Court A.D. 1857 the Appellant filed his written stipulation agreeing that all the facts alleged in the said Bill are true as charged and all the other Defendants made default.

Whereupon the Court decreed that the injunction heretofore granted be made perpetual as to said Applicant Henry W. Scott and modified as to said Burger & Scott & Henry and that they pay the said judgment to said Whittow and therefore be discharged from said judgment and that the same be collected by said Sheriff upon alias execution and paid to said Whittow

Let us now consider what is admitted by the stipulations and defaults of the Defendants below

It is admitted

1st That the Railroad Ties mentioned in said Bill were the sole property of said Whittow and that said Pound had no interest or claim therein

2nd That the proceedings in attachment upon which said ties were sold as the property of Pound were wholly irregular and void

3rd That when Gregory purchased the said ties at the said sale under

said Attachment proceedings he had full knowledge that the said ties were the property of Whittow and that Bond had no property or interest therein but intended to cheat and defraud said Whittow & deprive him of his property

4th That said Appellant Scott colluded with Gregory for the purpose of defrauding Whittow and had full knowledge of Whittow's exclusive title to said ties and that neither Gregory or Bond had any title to the same and that Scott stealthily purchased said ties and ran away with them from Schuyler to Bond to prevent detection and the recovery of the property by the owner

5th That Scott sold the said ties to George Secor & Co and afterwards obtained the judgment enjoined for their value

6th That Bond is out of the state and has no property that the said Bondable his associates and other persons legally liable are insolvent and said Whittow is in danger of losing his said property unless said judgment can be reached

It is insisted by the appellant that the Court has no jurisdiction because there is a remedy at law

Appellee replies that the bill charges and the proof shows gross fraud, and this establishes the jurisdiction of the Court Chancery without reference to the existence of legal remedies

1 Daniel Chancery Pl & Practice page 911

Stroy's Eq. Jurisprudence sec. 184 & note
And the same although the fraud may be remediable, at law

Stroy's Eq. Jurisprudence sec 184
Courts of Equity and Courts of law have concurrent jurisdiction in cases of fraud

Adams Eq. page 419 (marginal 175-176)
And neither infancy nor lapse of time will prevent the Court of Equity from correcting the fraud

Adams Eq. page 419 (marginal 175-176)
Fraud is one of the broadest grounds of Equity Jurisdiction and may be averred although there is an adequate remedy at law

Nelson vs Bockwell 14 Lb 375-

Ward vs De Zoya 2 Gilman 352-

2. Eq. Digest page 23. sec. 1

" 2. " " 24 sec 13

and cases there referred to

The Court below did not err in over-
ruling the Demurrer to Bill

Demurrer for want of equity or ju-
risdiction in the Court will not be
sustained to a bill charging fraud

1 Daniel & Henry Reading & Co	611
Wheeler vs DeJoye	251
Melson vs Brockwell	1421

The Court below did not
err in reversing the judgment men-
tioned in the bill, for "Anything which
shows that a judgment might not in
conscience to be paid will authorize an
injunction

Adams Eq. 465 (marginal 197)
Marine Ins. Co vs Boston Branch 332
Especially in cases of fraud

Lee vs Baird & Remondine	453
Emerson vs Bell	312
Humphreys vs Leggett & Co	297
2 Gilman	385
14 Ill	375

This is clearly very like
the cases of judgments obtained by fraud
so often remedied by injunction
Although no fraud was perceived

directly upon Singer & Co. to obtain the judgment. Yet the obtaining of the judgment was only an advance step of the same fraudulent course against Whiston commenced by procuring his ties from Chancery County. Scott only obtained the judgment by taking advantage of his own wrong, and if permitted to collect the said judgment will reap the advantage of fraud. Nothing but intercepting the money before it falls into the hands of the tax-payer, and appropriating it according to the desire of the Court before to the rightful owner of the cause of action upon which the judgment was rendered, can remedy the injury accomplished by the dishonest covetousness and gross fraud of the Appellant.

It may be said that if the ties were Whiston's he can recover their value of Singer & Co. notwithstanding the judgment of Scott for the same property.

It has already been shown that Equity Jurisdiction attaches on account of fraud. Also that Scott is not in this state and has no property.

consequently Equity would permit
for get Deceivers, who are innocent of
fraud to lose the amount of the
judgment to put it in the pocket
of the fraudulent and guilty party. if
they are compelled to pay the value
of the lies both to the rightful owner
and the wrongful claimant
If Whittow could recover of Burger & Son
so they would be turned over to an un-
certain action against Scott to get their
money back. Justice is reached di-
rectly by appropriating the said pay-
ment which ought next to be paid
to Scott. to pay Whittow for his property.
An important head of equity Jurisdiction
is to prevent unnecessary suits

Stamps Eq. Jurisdiction See 67-64 Ks.
The Court of Equity which extends its juris-
diction "against all who aid, abet, or prof-
it by fraud will not put the price
of dishonesty in the hands of the winner
and turn the innocent over to certain
loss

Adams Equity 419 (marginal 175-176)

It is said by the Appellant that
Anna and Gregory ought to be made

parties to the Bill

They have neither of them the slightest interest whether the said judgment be paid to said Scott or to said Whitlow according to the decree of the court below

The particular prayer of the Bill is defective. but the Bill contains the general prayer for relief and is entirely sufficient to sustain the decree

Stamps & Binding see 40 & note 4.

Covers & Binding pages 13 & 14

5 Vols. 495-

13 Vols 119 + 125

In the words of Lord Harwich. Lord Nottingham Mr Odier & Mr Robbins "General relief is the best prayer next after the Lord's Prayer"

Stamps & Binding see 41 letter part of note 2

Covers & Binding 30th 132

Mentioned in Note with 1 Edn 126 is

The case of *Wierich v. Dejoz* 2 Gil 305 is in most points similar to this and the just & forcible language of the Court in that case applies with strength to the present

H. B. H. Perkins
for Appellee

Henry Scott vs } In the Supreme Court
Wm Whitlow } April 5, 1858

Suggestions & points for
the Plaintiff by
Wm & Williamson

1. It is urged by Defendant that fraud is charged in the Bill and therefore this Court has jurisdiction.

The only charges of fraud contained in the bill are as follows:

"And that said Scott escaped with
said box secretly & surreptitiously
to prevent your orator from reclaim-
ing the same. And that said
Scott Gregory and Scott wrongfully
intended to cheat & defraud your
orator in the premises by knowingly
and wilfully depriving him of his
said property. Record page 3.

It is respectfully submitted
that there is no such charge of fraud
as will give a Court of Equity juris-
diction. A general charge of
fraud is not sufficient. Specific
statements must be made,

It is not pretended that Hollingsworth & Gregory fraudulently sued out the attachments against Pound, or that no debt was due, or that the object of suing out the attachments was to defraud Whallow. Nor is it alleged that Scott had notice at the time of the sale under the attachments that the ties were Whallows.

~~The first charge~~ It is admitted that Scott bought the ties of Gregory & of course, it follows that he paid for them - this sale is not unquestionable, he bought the ties & paid for them honestly.

Under these circumstances it is alleged that "he is compelled with the ties honestly & scrupulously to prevent the defrauded party from reclaiming them." Is it the compulsion or the intent to prevent Whallow from reclaiming them that constitutes the fraud? Suppose he had gone off openly the inquiry would have been the same. There certainly was no fraud in going off.

Henry E. Scott

vs

William W. Whitlow
Argument of Appellee

Filed April 22, 1854
S. Ireland
B.H.

H.B. Hopkins.

Now for the intent. - he went off to
prevent the Whillows from obtaining
them. Was he bound to wait for
Whillows to obtain them?

It is not alleged that Scott knew
that Whillows intended to recover
them, or that in fact Whillows
did intend to do so.

But the words "escaped surreptitiously"
are thought to imply fraud, but the
circuit cannot see the fraud.
Nor can he tell how it was a
surreptitious escape to take his
horses there to Provia where the
Complainant bid & sell them.
It is not understood how two Rail
Road Horses can be "escaped surreptitiously & secretly" when they are
brought openly on Waggon or loads
100 miles, and sold under the
nose of a pretended owner.

The other part of the charge is that
"Gagony & Scott intended to cheat &
defraud your orator in the premises
"by knowingly & willfully defrauding
"him of his said property."

This is a statement that Scott & Gregory
sintended to defraud him — an
intention to defraud amounts to nothing
— it is the act & intention together.

If the sale alone had been fraud-
ulent, ~~the~~ it should have been so
charged, which it is not —
the fraudulent act is charged
on Scott — the only thing he is
charged with, is buying the liss
of Gregory, when he knew they
belonged to Whillow. This is his
whole offence. It is not charged
that the sale from Gregory to Scott
was fraudulent, or the sale by
Scott to Crozer, Sisson & Co.
Now was Whillow defrauded
by Scott's purchasing of Gregory?
In what way was he injured by
that sale? He was placed in no
worse position than he occupied
before. It is true, that if Scott
purchased knowing the liss to
belong to Whillow, he defrauded
himself, by parting with his money
without any consideration, but how Whit-
low was injured or defrauded it
is difficult to understand.

It seems to us then, that the fraud complained of, is not contained in the Bill. It exists chiefly in the imagination of the counsel, or in the mind of Gregory & Scott, but it has never been consummated by any act.

The Bill nowhere alleges that Gregory is not responsible, or that adequate remedy could not be had of him. If any body is liable it is him. He is the person first in fault, and the decree should be against him, if against any one. It is a Bill seeking compensation for the loss - the proper person to make that compensation is Gregory.

The Bill does not allege that Scott is not responsible - it merely says "he has left the State & has not properly known to your creator." This amounts to nothing. Whether he is

on a trip to St Louis intending to
return, or whether he has gone to
remain ^{does not appear}. The cause the Complainant
dont know what property Scott has
is no reason why the Court of
Chancery should have jurisdiction.
Probably Whittow never tried to
find out whether he had property
or not.

The object of this Bill would seem
to be to give Cruger Secor & Co a
New trial in the case with Scott
or at least to prevent Scott from
collecting his judgment and thus
relieve Cruger Secor from an action
at the suit of Whittow.

Scott recovered judgment in
the County Court against Cruger
Secor & Co, a trial was had &
Cruger Secor & Co were beat.

Why should Scott be enjoined from
collecting that judgment? No
fraud is alleged in obtaining it,
— it is not asserted that it was not
a fair trial, or that Whittow was
in any way injured or damaged
by that judgment — why should

be he permitted to enjoin it? Of
what has he to complain? What
business has he to interfere in that
matter? Crozer Deane & Co do not
complain, and the sole reason why
Whitlow complains is upon the
ground that he ought to have
some money of somebody and
instead of bringing a lawsuit or
having he has filed a bill in
Chancery to get it.

This Court has no jurisdic-
tion, least of all to render
such a decree as was rendered
in this case.

Wend & Williamson
for plaintiff

28
Henry Scott
vs
William T. Holloway

Argument for
Plaintiff by
Wm. T. Holloway

Filed April 28, 1858
L. Deland
clerk

HENRY SCOTT,
vs.
WILLIAM WHITLOW.

STATE OF ILLINOIS,
SUPREME COURT.
APRIL TERM, A. D. 1858.

ERROR FROM PEORIA.

ABSTRACT.

The defendant below, on the 6th day of April, 1857, filed his bill for injunction in the Clerk's office of the Circuit Court of Peoria County, alleging that about the month of August, 1856, he was the owner of about 5000 Railroad ties, which were lying on the bank of the Illinois river, in Schuyler County, at and near Sharp's landing & Butler's landing. That he had previously purchased the same of the rightful owners, and some had been delivered to him at the places aforesaid.

That three writs of attachment were issued out from before a Justice of the Peace, of Schuyler County, against one William Pound, and levied upon said ties, upon which attachments some of the ties were subsequently sold, to satisfy the judgments obtained in the attachment suits. That the ties were purchased by William Gregory, one of the Plaintiffs, in one of the attachment suits. That said Gregory soon after sold the ties to Plaintiff, who took the ties to Peoria and sold them to William H. Cruger, Chas. A. Secor, and James Hurry. That Cruger, Secor & Hurry put them with other ties, and they could not then be identified. That Defendant notified Cruger, Secor & Hurry not to pay Plaintiff for the ties. That Plaintiff brought suit against Cruger, Secor & Hurry, and recovered judgment for \$235 50 and costs, in the County Court of Peoria County, and that execution was issued upon this judgment against Cruger, Secor & Hurry, to make the amount of the judgment.

The bill alleges that the judgments before the Justice of the Peace were void for want of sufficient affidavit heard and writ. That Gregory knew at the time of the sale that the ties were Defendant's, and that Scott knew at the time he purchased the same of Gregory that the ties were Defendant's. That Scott has left the State of Illinois, and that complainant does not know of any property belonging to Plaintiff, to make the amount of the value of the ties. The bill also charges that the Plaintiff was guilty of fraud in purchasing and selling the ties. And that the constable who made the sale is irresponsible.

The bill prays for injunction against Plaintiff to prevent his collecting his judgment, and also against Cruger, Secor & Hurry, to prevent their paying the judgment, and against the sheriff of Peoria County, enjoining him from collecting the judgment.

An injunction was granted as prayed for in the bill, and the cause was heard before Hon. E. N. Powell.

The Plaintiff demurred to the bill, and the cause was heard in vacation, and a decree rendered perpetually enjoining the Plaintiff from collecting the judgment, and decreeing that the Sheriff proceed to collect the same from Cruger, Secor & Hurry, and pay over the same to the Defendant Whitlow, and that thereupon the said Cruger, Secor & Hurry be discharged from said judgment.

WEAD & WILLIAMSON,

for Plaintiff.

Scott
" "
Whitcomb

12650

2 Florys Paris Hudson
128-129

Henry Scott }
or } In the Supreme Ct April 6, 1852
Wm Whittier }

Brief

Wheat & Wilkinson for App,

1 The Court had not jurisdiction of the
subject matter it being a mere claim
for damages 2 Story Eq. Jurispr. 128, 129

2 The proper parties are not before the
Court Pound & Gregory who are
interested are omitted.

3 The Decree is against the wrong person.
It should have been against Crozer
senior & Co. They defended in the Court
below & got beat — by the decree that
judgment is reversed.

4. It is simply an action of debt
brought in Equity to recover damages

Henry Scott

vs

William Whellon

Deaf

STATE OF ILLINOIS,
SUPREME COURT,

} m. The People of the State of Illinois,
TO THE CLERK OF THE CIRCUIT COURT FOR THE COUNTY OF *Peoria* GREETING:

ESCAUTE, In the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of *Peoria* County, before the Judge thereof, between *William W. Whitlow* plaintiff

plaintiff, and *Henry Scott* ~~in plaintiff~~ *with William H. Burger Charles A. Lee James Henry and Francis W. Smith*

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

Henry Scott 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 of July* 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.

John T. Barton
WITNESSE, The Hon. ~~WILLIAM B. SCOTT~~ Chief Justice of our said Court, and the Seal thereof, at Ottawa, this *15th* day of *March* in the Year of Our Lord One Thousand Eight Hundred and Fifty-eight

W. Leland
Clerk of the Supreme Court.

by J. H. Leland Deputy

Henry Scott & Appleton
No 78

William W. Whitlow

Writ of Error

Filed March 15, 1858
S. C. Howard
clerk

Henry Scott } In the Supreme Court
vs. } April T. 1858
Wm Whillans }

Brief
Wheat & Williamson for App.

1. The Court has not jurisdiction of
the subject matter it being a mere claim
for damages 2 Story Equity Jurisprudence
128.129

2. The proper parties are not before the
Court. William Prout & Gregory are
directly interested & are not made
parties.

3. The decree is against the wrong
person - it should have been against
Conger Lewis & Co. They defended
before the Circuit Court & got lost
- by the decree that judgment is
reversed.

4. It is simply an action of trover
brought ~~to recover~~ in equity to recover
damages.

Henry Scott } In the Supreme Court
vs. } April T. 1858
Wm Whillans }

Brief
Wheat & Williamson for App.

1. The Court has not jurisdiction of the subject matter it being a mere claim for damages 2 Story's Equity Jurisprudence 128.129

2. The proper parties are not before the Court. Williams Brand & Gregory are directly interested & are not made parties.

3. The decree is against the wrong person - it should have been against Conger Lewis & Co. They defended before the Circuit Court & got lost - by the decree that judgment is reversed.

4. It is simply an action of trover brought ~~to recover~~ in equity to recover damages.

Mary Scott

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Wm. Whittier

18