

No. 1068

Supreme Court of Illinois

William C. Greenup

vs.

Robert M. Porter et al

(379)  7

Pleadings before the Hon^{ble} the Circuit
Court for the County of Cook in the State
of Illinois, In Chancery sitting, had at
the Court house in Charleston, at a Circuit
Court ~~beginning~~ and ^(held) on the 19th day of
September in the year of our Lord one
thousand eight hundred and thirty nine

Be It Remembered that heretofore to wit on the 13th day
of September 1838, William C. Greenup by Davis J
Horman his Solicitors filed in the Clerk's office of said
Court a bill in Chancery, in the words and figures
following to wit, To the Hon^{ble} the Judge of the fourth
Judicial Circuit in Chancery sitting The Bill of your
Orator William C. Greenup humbly Complaining, Sheweth
unto your honor, that on the 11th day of October one
thousand eight hundred and thirty six one Thomas H.
Williams recovered against your Orator a Judgement
in the Cook County Circuit Court for the sum of fifty
two Dollars & seventeen Cents upon which said Judgement
an Execution was issued on the 8th day of February
in the year one thousand eight hundred and thirty
seven, and the following property belonging to your
Orator was sold under and by virtue of said Judgement
and Execution to wit Lots Numbers six thirty six & thirty seven
situate in the Town of Greenup and the North East quarter
of the North East quarter section twenty seven in Township
number nine North in Range eight East of the third prin-
-cipal meridian, and upon such sale on the sixth day of
March one thousand eight hundred and thirty seven
Charles W. Stubb became the purchaser thereof and
your Orator further represents to your honor that after
the sale under the aforesaid Judgement and Execution, and

before the day for the redemption of the premises had expired
William Jeffris then Sheriff of the County of Coles, and
whom your Orator prays may be made a party to this
Bill, informed your Orator, that the day of redemption
would not expire until some time in the month of
June one thousand Eight hundred and thirty Eight, that
your Orator relying upon the information aforesaid left
his residence in Nandalia some time in the month of
March preceding the aforesaid month of June for the County
of Coles with the intention of redeeming said Land but
ascertained on his arrival there that the ^{time} for the redemption
had expired on the sixth day of the aforesaid month of
March and your Orator further represents and shews to your
honor that afterwards to wit on the fourth day of April
one thousand Eight hundred and thirty Eight your Orator entered
in to a Contract with one Robert M. Porter, a Judgement Creditor
of your Orator by which said Contract said Porter covenanted
to & with your Orator to become the purchaser and redeem
the aforesaid premises under his said Judgement, from the
said first purchaser according to the terms and stipulations
in said Contract contained and which Contract your
Orator prays may be taken as a part of this his Bill
which said agreement was filed in the Clerks office of said
County September 12th 1838 which said Contract is as follows
to wit, This agreement made and concluded between
Robert M. Porter of Coles County and William C. Grump
of Sangamon County in the State of Illinois this fourth day
of April in the year 1838, is as follows whereas the
Sheriff of Coles aforesaid did sell on an execution an
Execution issued from the Clerks office of the Circuit
Court of Coles in the name of Thomas Williams
against the said William C. Grump Lots N^o 36 & 37

in the Town of Greensburg and the North East quarter of
North East quarter of Section N^o 27 in Township N^o 9 North
in Range N^o 8 East, on the sixth day of March in
the year 1837, to Charles W. Stubb for the sum of seventy five
Dollars, and whereas the same remains unredeemed by the
said Greensburg according to the Law in such Cases made and
provided and whereas the said Robert M. Porter, did on
the 22nd day of January in the year 1838, recover a Judgement
^{against} the said William C. Greensburg before James M. Ward a Justice
of the peace in Colles County for thirty three Dollars & twenty
seven Cents besides Cost of suit which said last mentioned
Judgement remains unsatisfied and whereas the said Robert
M. Porter is indebted to John and Byrd Monroed of Colles County
in a sum of money nearly equal to the amount of the
said last mentioned Judgement and the said Porter having
the right as a Judgement Creditor to redeem, the said
Greensburg property sold as aforesaid within three months from
the sixth day of March last by paying the sum of
seventy five Dollars and interest thereon at the rate of
ten per centum from the date of said sale to the Sheriff
of Colles County for the benefit of the said Purchaser
Now the said William C. Greensburg hereby undertakes
and binds himself to place in the hands of the said
Robert M. Porter at Charleston in Colles County a sum of
money sufficient to redeem the purchase money aforesaid
together with the said per centum interest on or before
the first day of May next and also a sum of money
sufficient to pay the amount of the Judgement of the
said Porter against the said Greensburg in the hands of
the said John & Byrd Monroed to be applied in dis-
-charge of the demands of the said Monroed against
the said R. M. Porter and the balance if any to be paid
to said Porter by the said Monroed and now the

Said Robert M Porter hereby agrees and binds himself that he will cause the money to be placed aforesaid by the said Greenup to redeem the said Greenup's property, aforesaid and that when the money aforesaid shall be paid to the said Mouras as aforesaid that he will assign transfer and set over to the said Greenup, all the right title and claim whatsoever which may have a right to by virtue of the said redemption in and to the said Property ^(above) when required so to do after the payments shall be made as aforesaid Intestimony whereof the parties aforesaid have here unto set their hands and seals and bind themselves each to the other for the full performance of their respective undertakings signed duplicates

Wm C Greenup Esq
R M Porter Esq

And your orator further represents and shows to your honor that he has fully paid and the aforesaid Williams judgement as will more fully appear by the receipt and acquittance of Charles W. Kabb the purchaser under said judgement (whose receipt and acquittance is hereby filed and which your orator prays may be taken as a part of this his bill) which said Receipt and acquittance was also filed on the 12th day of September 1838. and is in the following words to wit: Know all men by these presents that whereas I Charles W. Kabb of Coles County State of Illinois did on the sixth day of March in the year 1837 purchase from the Sheriff of Coles County aforesaid Certain property belonging to William C. Greenup which the said Sheriff had levied upon as the property of said Greenup to satisfy an execution from the Circuit Court of Coles County in the name of Thomas Williams against said Greenup consisting of three Lots in the Town of Greenup and the improvements thereon and forty acres of Land Comprising a part

of the Town of Woodbury in the said County of Coles
all of which was sold to me for the sum of Seventy five
Dollars as will more fully and at large appear by reference
to the Sheriffs Certificate and the records in the Clerks office
of Coles County aforesaid. And Whereas the said William
G. Greenup has fully paid and satisfied me for the amount
of the said Purchase money interest & costs according to
law and has also paid the residue of the said Judge-
ment, I therefore do by these presents release and assign-
transfer and set over all my right title & interest in and
to the said Greenups property to him again and request the
Sheriff of said County to Counsel & refuse to further-
proceed on the same so far as I have any interest
Claim or concern Given under my hand and seal this
16th day of April in the year 1838. Charles W. Nabb
Witness Byrd Monroe: The Sheriff of Coles County will
please compute the amount of sale & interest & also the
balance due on the judgment & execution and state it
on this paper & leave an other with J. B. Monroe for my
information May 25th 1838 Charles W. Nabb

And also that he has fully paid the Judgment of
John & Byrd Monroe against said Robert M. Porter (the
Judgment referred to in the Contract between your Orator
and the aforesaid Robert M. Porter) which sum exceeds
the amount of said Porters Judgment against your
Orator, yet the said Robert M. Porter and William Jeffris
Sheriff of Coles County with the knowledge of the payment of
of the aforesaid Williams Judgment and also of said
Judgment of John & Byrd Monroe against said Robert
M. Porter, so contrived to cheat and defraud your
Orator out of his just and lawful rights in the premises
aforesaid that the said Sheriff fraudulently conveyed
the the premises aforesaid on the sixth day of June one

Thousand Eight hundred and thirty Eight to the said Robert M Porter, and the said Robert M Porter and David Porter conspiring together to cheat and defraud your orator out of his just and legal rights in the premises and with knowledge of the satisfaction of the two Judgments above mentioned and also the fraudulent conveyance from the Sheriff aforesaid to Robert M Porter so procured it that the said Robert M Porter conveyed to said David Porter the Premises aforesaid on the tenth day of June one thousand eight hundred and thirty Eight for a false signed and pretended consideration, and the said David Porter has since entered into the possession of the premises aforesaid and forcibly ejected Your Orator therefrom, all of which doings and actings are against equity and good conscience. Intender consideration whereof your Orator prays your Honor to grant to your Orator your gracious Writ of Subpoena, that the said Robert M Porter William Jeffris and David Porter may be called upon to answer upon oath the Charges herein set forth and and upon a final hearing your orator prays your Honor to annul and set aside the aforesaid Conveyances from William Jeffris Sheriff of Cooks County to Robert M Porter and also the Conveyance from Robert M Porter to David Porter, and to grant such further relief in the premises as to your Honor shall seem meet and proper in the premises and your Orator as in duty bound will ever pray &c.

Davis & Gorman

Solrs for Compt.

Where upon the following Subpoena Issued to wit.
State of Illinois, The People of the State of Illinois
Cooks County & to the Sheriff of Cooks County Greeting

We Command you that you summon Robert M Porter William
Jeffris and David Porter personally to be before and appear
before the Circuit Court of Colles County on the first day
of the next term thereof to be holden in Charleston on
the twentieth day of September Inst. to answer the matters
and things contained in a certain bill in Chancery
exhibited against them by William C. Greenup and that
they shall not omit under the penalty of what the
Law directs and have you then there this Writ
Witness N. Ellington Clerk of the said Court
at Charleston this 12th day of September
A.D. 1838. N. Ellington Clerk

Which said Subpoena was returned by the Sheriff
not served Sept 20th 1838 A. Compton Sheriff & Co
and afterwards to wit on the 29th day of September
1838. an alias Subpoena issued in the Words and figures
to Wm. State of Illinois. Colles County &c The people of
the State of Illinois. To the Sheriff of Colles County Greeting
We Command you as we have heretofore Commanded
you, that you summon Robert M. Porter William Jeffris
and David Porter personally to be and appear before the
Circuit Court of Colles County on the first day of the
next Term thereof to be holden in Charleston on the twenty
third day of March next, to answer the matters and
things, contained in a certain bill in Chancery -
exhibited against them by William C Greenup and
that they shall not omit under the penalty of what
the Law directs, and have you then there this Writ
Witness N. Ellington Clerk of the said Court at Charleston
this 29th day of September 1838. N. Ellington Clerk
Which said Subpoena was returned by the Sheriff of
said County with the following endorsement to wit
served the within 17th January 1839, and the 8th of October

and the 17th of October 1838. on William Jeffris and David Porter by giving a Copy of the Summons.

A. Thompson Sheriff C. C.

and afterwards to wit at a Circuit Court begun and held in the Town of Charleston County of Coler and State of Illinois on the nineteenth day of September 1839. and Continued and held on the 25th day thereof in the year aforesaid. the following Order was then made to wit

William C. Greenup Complainant

vs

Robert M. Porter et al Defts

Bill in Chancery
(and now at this

day came the defendants by O. B. Ficklin their Solicitor and filed their demurer to the Complainant: Bill herein. Which said demurer is in the words and figures to wit, State of Illinois Coler Circuit Court SS
The demurer of Robert M and David Porter and William Jeffris defendants to a bill of William C. Greenup Complainant, these defendants by protestation not confessing or acknowledging all or any of the matters or things in and by the said bill complained of and set forth as true in manner and form as the same are therein and thereby set forth and alledged saith that they are advised by their Counsel that there is no matter or thing in the said bill contained, good and sufficient in law to call these defendants in question in this Honorable Court for the same, but that there is good Cause of demurer there unto, and for Cause of demurer these defendants saith that by the Complainants own Shewing Charles W. Nabb should be a party to said Bill and that the Complainants Bill (if true which is in no wise admitted) contains not any matter

of equity whereon this Court can ground any decree
or give the Complainant any relief or assistance as
against these defendants wherefore and for divers
other errors and imperfections in the said Bill —
appearing these defendants doth demur in law there-
unto: and humbly demands the judgement of the Court
Whether we shall be Compelled to put in any further
or other answer to said Bill and humbly pray to be
hence dismissed ~~with~~ with their costs &c. & therein for
defts. Joinder in demurer Under &c for Compt,
and after arguments had the Court not being
sufficiently advised took time &c.

and afterwards to sit on the 29th day of
September 1840. at a Circuit Continued and held
in and for said County the further order and decree
were made to sit.

William C Greenup Compt

vs

Chancery

Robert M Porter et al defts } and now at this day
Came the parties by their Solicitors, and the Court
now being sufficiently advised, what judgement to give
in this case it is ordered and decreed by the Court
here that the defendants demurer to the Complainants bill
be sustained and that the complainant take nothing
by his bill and the defendants recover of the Com-
plainant their costs and charges by them about
their defence expended & thereof have execution &c.

The following Receipt and notice was also filed in
this case on the 12th day of September to wit,

Charleston June the 4th 1848. Received of W^m C Greenup
by John Vandike Constable through the hands of

Byrd Monroe thirty six Dollars and thirty three & half
Cents in full of a Judgment received before me
in favour of Robert McPorter & against Wm C Greenup
given under my hand & seal this day above written
James M Ward Justice of the peace

Notice to William C. Greenup and John Martin
You are hereby required to remove from and quit
the premises which you hold of mine situate in
the Town of Greenup Coles Co: Ills within ten days
from this time Dated August 8th 1838
Yours &c Robert M. Porter.

State of Illinois
Coles County I Nathan Ellington Clerk of the Coles
Circuit Court do Certify that the foregoing is
true and perfect copy of the record and proceedings
had in the foregoing case.

In testimony whereof I have hereunto
set my hand and affixed the seal
of said Court at my office in
Charleston this 16th day of December
A.D. 1840

N. Ellington Clerk

Chas. for \$5.81.

State of Illinois, Supreme Court. ss

William C. Grunup }
vs }
Robert M. Foster }
William Jeffries & }
David Foster }

Of the July Term in the year
of our Lord one thousand
eight hundred and forty one

And the said William C.
Grunup plaintiff in error
by Trumbull his attorney comes and says that
in the record and proceedings aforesaid and
in the rendition of the judgment aforesaid
there is manifest error in this, to wit:

First. That the Summons to the Complainants
bill should have overruled.

2^d. That the Court erred in entering judg-
ment upon the Summons in favor of the
defendant whereas judgment should have
been given in favor of Complainant.

For which and other errors apparent upon
the record and in the proceedings aforesaid
the said plaintiff in error prays that said
judgment may be reversed, set aside and
for nothing held.

S. Trumbull
for Plaintiff in error

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William C. Shump.

vs

Robert M. Foster

et al.

Assignment of

shares

Filed 8th July 1841

W. C. Shump.

C. C. Shump.

Notes

William C. Greenup
vs Z. Rice
Error
Robert M. Porter
William J. Jeffers
David Porter

Filed Dec. 22
1840. J. M. Duncan

1068

W. C. Gunn
Robert ⁷ & D. Porter } In Chancery

The defendants in error by their attorney
move the court to ^{quash the writ of error &} dismiss this cause on
the ground that a writ of error ~~does not~~
cannot emanate from this Court to bring up
a chancery cause from a circuit court
Fielder for Dft

M. C. Greene
in motion
to assign
R. D. Porter & Co.

Filed Dec 23
1840
G. M. Duncan

State of Illinois, sct.

The People of the State of Illinois,

To the Clerk of the Circuit Court for the County of *Boles*

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 *Boles* county, before the Judge thereof, between

William C. Greenup plaintiff and *Robert M. Porter, William Jeffers & David Porter*

defendant it is said manifest error hath intervened to the injury of the aforesaid *plaintiff* as we are informed by *his* complaint, and we being willing that error (if any there be) should be corrected 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 our 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 *Springfield* ~~Vandalia~~ in the county of

~~Fayette~~, on the *Second Monday of December* ~~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. William Wilson, Chief Justice of our said Court, and the seal thereof at *Springfield* ~~Vandalia~~, this *fourteenth* day of *December* in the year of our Lord one thousand eight hundred and *forty*

J. M. Dumas Clerk

Supreme Court

William C. Gray

3 } White Enor
3

Robert M. Porter

Wm Jeffery &

Dana Porter

Filed Dec^r 22,

1840. J. M. Duncan