

**Sheets Vs. Selden**

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**Court :** US Supreme Court

**Decided On :** 1868

**Appeal No. :** 74 U.S. 416

**Appellant :** Sheets

**Respondent :** Selden

**Judgement :**

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**Sheets v. Selden**

**74 U.S. (7 Wall.) 416**

*ERROR TO THE CIRCUIT*

*COURT FOR INDIANA*

## **SYLLABUS**

1. The action of an inferior court as to the terms on which it will allow a complainant to amend a bill in equity to which it has sustained a demurrer is a matter within the discretion of such court, and not open to examination here on

appeal.

2. Where, under a clause of reentry for nonpayment of rent reserved, a landlord sues in ejectment in Indiana (in which state a judgment in ejectment has the same conclusiveness as common law judgments in other cases) for recovery of his estate as forfeited, and a verdict is found for him, and judgment given accordingly, the tenant cannot, in another proceeding, deny the validity of the lease, nor his possession, nor his obligation to pay the rents reserved, nor that the installment of rent demanded was due and unpaid.

3. Where, in a lease of a water power, the lease provides in a plain way and with a specification of the rates for an abatement of rent for every failure of water, the tenant cannot, on a bill by him to enjoin a writ of possession by the landlord, after a recovery by him at law for forfeiture of the estate for nonpayment of rent reserved, set up a counterclaim for repairs to the water channel made necessary by the landlord's gross negligence. He is confined to the remedy specified in the lease, a covenant that a lessor will make repairs not being to be implied.

4. In such a case, before he can ask relief from a forfeiture, he should at least tender the difference between the amount of rents due and the amount which he could rightly claim by way of reduction for failure of water.

The State of Indiana, owning a certain canal and its adjacent lands, made two leases of its surplus water, the first being made February, 1839, to one Yandes and a certain Sheets (this Sheets being the appellant in this case), and the other made January, 1840, to Sheets alone. Each lease was for the term of thirty years. Certain rents, payable semiannually on the first of May and November, were

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reserved, it being provided that if any rent "should remain unpaid for one month from the time it shall become due," "all the rights and privileges" of the lessees "shall cease and determine, and any authorized agent of the state, or lessee under the state, shall have power to enter upon and take possession of the premises" &c.; The leases contained a further provision that the lessees should not be

deprived of the use of the water by any act of the state or its agents or by the inadequacy of the supply of water for more than one month in the aggregate in one year, and that if, for the purposes of repairing the canal, preventing breaches, or making improvements to the canal or the works connected with it or the inadequacy of the supply of water, the lessees should be deprived of the use of any portion of the water power leased, such deduction should be made from the rent accruing on such portions of the power as the lessees should be prevented from using as would bear the same proportion to the yearly rent thereof as the time during which the lessees might have been deprived of its use bears to eleven months. In October, 1840, Sheets became owner of Yandes' interest in the lease of 1839.

The state subsequently sold so much of the canal, land, and water power as was embraced by the two leases, and one Selden and others, on the 2d of October, 1857, became owners under this sale.

Afterwards (Sheets being in possession under the leases and having refused for several years to pay rent), the purchasers formally demanded on the premises rents falling due on the first day of May, 1860. The lessee failing to pay them, the purchasers brought, in June, 1860, an ejectment in the Circuit Court for Indiana (in which state the action of ejectment is regulated by statute, and has the same conclusiveness as common law judgments in other cases) to recover the possession of the property, as for forfeiture from nonpayment of the rents reserved in the two leases. Verdict and judgment were given in their favor. [ [Footnote 1](#) ]

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After five years had elapsed since the commencement of the ejectment, the lessee now filed a bill in equity (the suit below) to enjoin the issuing of a *habere facias* on the judgment in ejectment and for a redemption of the lands from the forfeiture incurred for nonpayment of rent.

The bill alleged that while the ejectment was pending, the lessees tendered to the purchasers \$400 as in full for the particular rents for the nonpayment of which the

forfeitures were declared and as in full for interest thereon and the costs of suit up to that time, and that the same was now brought into court for the purchasers if they would accept it and waive the forfeiture, but it tendered nothing for rents subsequently or previously accrued. It sought to avoid such a tender by asserting an equity to set off against all rents a demand for damages on account of alleged breaches of covenants contained in the leases. As for:

1. Inadequacy in the supply of water, when by the use of proper efforts, an adequate supply might have been furnished.
2. Inadequacy of supply, owing to the culpable negligence and gross carelessness of the purchasers in failing to repair breaches in the canal banks and to remove obstructions created by the growth of grass in the bottom and sides of the canal &c.;, setting up the expense of repairs alleged to have been made by the lessee to render the supply adequate.
3. Not prohibiting lessees under subsequent leases from drawing off needed water from the mill of the original lessee to supply their own.

The claim of reductions of the rents owing to failure of water were from the 2d October, 1852, when the title of the purchasers accrued, to the 1st May, 1865, when the last installment of rents before the filing of the bill came due, and amounted to \$2,649. The rents during the same term amounted to \$4,500.

The lessee alleged as an excuse for not paying the rents on one of the leases that he had abandoned that lease and that the purchaser under the state acquiesced, and that the title so became vested in them by reverter, and declined to

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redeem that lease from forfeiture. While thus declining to redeem that lease, his bill sought to enjoin the *whole judgment*.

The defendants demurred, and the court sustained the demurrer, giving leave to the complainant to amend his bill on tender of all the rent, with interest on it that had accrued on both leases since the bringing of the ejectment, which sums the

court found to be, on one lease \$4,494.50, and on the other \$2,247.25. The complainant refusing to amend on such terms, judgment was given on the demurrer against him, and he brought the case here.

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MR. JUSTICE SWAYNE delivered the opinion of the Court.

This is a case in equity. The appellant filed his bill to

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enjoin the execution of a judgment in ejectment. The defendants demurred, and the demurrer was sustained.

The court gave leave to amend upon terms which the appellant declined to accept. A decree was thereupon entered that the bill should be dismissed, and for costs. This appeal brings the case here for review.

With the leave to amend we have nothing to do. The terms imposed were within the discretion of the court, and are not open to examination in this proceeding.

The only question before us is whether the circuit court erred in sustaining the demurrer and dismissing the case. The bill is very voluminous. We will consider the points to which our attention has been called, so far as is necessary to the proper determination of the rights of the parties.

The recovery was had in the action of ejectment upon the ground of forfeiture for the nonpayment of the rents reserved in two leases.

Both courts of law and of equity have power to give relief in cases of this kind. Courts of law give it upon motion, which may be made before or after judgment. If after judgment, it must be made before the execution is executed. The rent due, with interest and costs, must be paid. Upon this being done, a final stay of proceedings is ordered. [ [Footnote 2](#) ]

The first British statute upon the subject was the 4th George II, ch. 28. The practice is now regulated by the 15 and 16 Victoria, ch. 76.

Courts of equity are governed by the same rules in the exercise of this jurisdiction as courts of law. All arrears of rent, interest, and costs must be paid or tendered. If there be no special reason to the contrary, an injunction thereupon goes to restrain further steps to enforce the forfeiture. The grounds upon which a court of equity proceeds are that the rent is the object of the parties, and the forfeiture only an incident intended to secure its payment; that

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the measure of damages is fixed and certain, and that when the principal and interest are paid, the compensation is complete. In respect to other covenants pertaining to leasehold estates where the elements of fraud, accident, and mistake are wanting and the measure of compensation is uncertain, equity will not interfere. It allows the forfeiture to be enforced if such is the remedy provided by the contract. This rule is applied to the covenant to repair, to insure, and not to assign. Lord Eldon limited the relief to cases where the lease required the payment of a specific sum of money. The authorities going beyond this he held to be unsound, and declined to follow them. Speaking of *Wadman v. Calcraft*, [ [Footnote 3](#) ] he said the Master of the Rolls in that case held

"that, though against ejectment for nonpayment of rent the court would relieve upon a principle long acknowledged in this court, but utterly without foundation, it would not relieve where the right of the landlord accrued not by nonpayment of rent, but by the nonperformance of covenants which might be compensated in damages. [ [Footnote 4](#) ]"

Such is now the settled English rule upon the subject. [ [Footnote 5](#) ] In *Bracebridge v. Buckley*, [ [Footnote 6](#) ] Baron Wood, in a dissenting opinion, made an earnest and able assault upon this doctrine. The question may be regarded as yet unsettled in the jurisprudence of this country. [ [Footnote 7](#) ]

Lord Redesdale held that where there were unsettled accounts between the landlord and tenant which could not be properly taken at law, the payment or tender of money on account of the rent might be deferred until the rights of the parties were settled by the decree of the court, but that where the accounts were not of this character, equity would not intervene. [ [Footnote 8](#) ]

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The recovery in ejectment is an important feature in the case before us. In Indiana, the action is regulated by statute, and the judgment has the same conclusiveness and effect as common law judgments in other cases. The judgment against the appellant established the validity of the leases, that he was in possession, his obligation to pay the rents reserved, and that the installments demanded were due and unsatisfied. He is estopped from denying these facts and from setting up anything in this case to the contrary.

In the case of *Trustees of the Wabash and Erie Canal v. Brett*, [ [Footnote 9](#) ] the trustees had leased so much of the surplus water of the canal as might be necessary for the purposes specified. The right was reserved, upon paying for the mill to be built by the lessee, to resume the use of the water leased whenever it might be necessary for navigation, or whenever its use for hydraulic purposes should be found to interfere with the navigation of the canal. It was averred that the trustees had abandoned that part of the canal and suffered it to go to decay, so that the water power was destroyed and the plaintiff's mill rendered valueless. The court held that there was no implied covenant to keep the canal in repair, that the express provision for compensation in one case excluded the implication of such right in all others, and that the plaintiff was without remedy. This case, like the one under consideration, was decided upon a demurrer by the defendants.

The tendency of modern decisions is not to imply covenants which might and ought to have been expressed, if intended. [ [Footnote 10](#) ] A covenant is never implied that the lessor will make any repairs. [ [Footnote 11](#) ] The tenant cannot make repairs at the expense of the landlord unless by special agreement. [

[Footnote 12](#) ] If a demised house be burned down by accident, the rent does

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not cease. The lessee continues liable as if the accident had not occurred. [ [Footnote 13](#) ] If in such a case the landlord receives insurance money, the tenant has no equity to have it applied to rebuilding, or to restrain the landlord from suing for the rent until the structure is restored. [ [Footnote 14](#) ]

*Trustees of the Wabash & Erie Canal v. Brett* is an authority strikingly apposite in this case. In the leases set out in the bill, as in the lease in that case, the parties provided but one remedy for a failure of water. That is, an abatement of the rent in proportion to the extent and time of the deficiency. The contract gives none other. Beyond this it is silent upon the subject. This Court cannot interpolate what the contract does not contain. We can only apply the law to the facts as we find them. The appellant is entitled to the remedy specified. *Expressum facit cessare tacitum*. Neither a court of equity nor a court of law can aid him to any greater extent.

This sweeps from the case the claims set up in the bill by the appellant for offset, repairs, recoupment, and damages, leaving to be considered only the claim for a reduction of the rents in the manner stipulated by the parties.

The appellant avers that he abandoned the premises covered by the second lease, that the appellees acquiesced, and that his title thus became vested in them by reverter. This is repelled by the verdict and judgment in the action of ejectment.

He insists that, according to the provision referred to in the leases, he is entitled to a reduction of the rents specifically demanded before the commencement of the action of ejectment. The plaintiffs could not have recovered without proving to the satisfaction of the jury that the exact amount demanded was due. Any failure in this respect would have been fatal to the action. Then was the time for the appellant to assert and prove this claim. He cannot do it now. The judgment is conclusive.

The bill claims reductions of the rents for failure of water from the second of October, 1857, when the title of the defendants accrued, down to the first of May, 1865, when the last installments, before the filing of the bill, became due, amounting in the aggregate to \$2,649. The rents during the same period amounted to a much larger sum. Conceding the appellant's demand to be correct, he should at least have tendered payment of the difference between these two amounts and interest before bringing his bill. In not alleging that he had done so, the bill is fatally defective.

A case is not presented upon which a court of equity, according to the settled principles of its jurisprudence, is authorized to interpose. The spirit manifested by the appellant throughout the litigation between the parties, as disclosed by the bill, is not persuasive to such a tribunal to lend him its aid. We think the demurrer was well taken. The decree of the circuit court is

*Affirmed.*

[ [Footnote 1](#) ]

See [69 U. S. 2](#) Wall. 177.

[ [Footnote 2](#) ]

Tidd's Prac., 3 Amer. Ed. 1234; *Phillips v. Doelittle*, 8 Modern 345; *Smith v. Parks*, 10 *id.* 383; *Atkins v. Chilson*, 11 Metcalf 115.

[ [Footnote 3](#) ]

10 Vesey 68.

[ [Footnote 4](#) ]

*Hill v. Barclay*, 18 Vesey 63.

[ [Footnote 5](#) ]

2 Story's Eq., 1315, 1316; *Davis v. West*, 12 Vesey 475; *Reynolds v. Pitt*, 19 Vesey 134; *Gregory v. Wilson*, 10 English Law & Equity 138; *Eaton v. Lyon*, 3 Vesey 690; *Hill v. Barclay*, 16 *id.* 402.

[ [Footnote 6](#) ]

2 Price 200.

[ [Footnote 7](#) ]

2 Story's Eq. 1315, 1316, and notes.

[ [Footnote 8](#) ]

*O'Mahony v. Dickson*, 2 Schoales & Lefroy 400; *O'Connor v. Spaight*, 1 *id.* 305.

[ [Footnote 9](#) ]

25 Ind. 410.

[ [Footnote 10](#) ]

*Aspdin v. Austin*, 5 Q.B. 671; *Pilkington v. Scott*, 15 Meeson & Welsby 657.

[ [Footnote 11](#) ]

*Pomfret v. Ricroft*, 1 Williams Saunders 321, 322, note 1; *Kellenberger v. Foresman*, 13 Ind. 475.

[ [Footnote 12](#) ]

*Mumford v. Brown*, 6 Cowen 475.

[ [Footnote 13](#) ]

*Moffat v. Smith*, 4 N.Y. 126.

[ [Footnote 14](#) ]

*Leeds v. Cheetham*, 1 Simons 146; *Loft v. Dennis*, 1 Ellis & Ellis 474.

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