

No. 12304

Supreme Court of Illinois

Adams, et al.

vs.

Johnson.

63

Wm Adams et al.

vs
Jas. S. Johnson

63

12304

1854

United States of America
State of Illinois
County of Cook

SS

Pleas before the Hon. John M. Wilson
Judge of the Cook County Court of Common Pleas within
and for the County of Cook and State of said at a Special
term of said Court, begun and held at the Court House
in the City of Chicago in said County in pursuance of an
order of the Judge thereof, and to public notice given in
accordance with the Statute in such case made and provi-
ded, on the second Wednesday being the eighth day of
March in the year of our Lord one thousand eight hundred
and fifty four, and of the Independence of the United
States the Seventy eighth.

Present the Honorable John M. Wilson Judge

Daniel McShay Prosecuting Attorney

Cyrus P. Bradley Sheriff

Attest Walter Kimball Clerk

Be it Remembered that heretofore, to wit: on the Twelfth
day of September in the year of our Lord one thousand eight
hundred and fifty one, came A. D. Johnson Plaintiff by
J. H. Waghon his attorney and filed in this office of the
Clerk of the Cook County Court of Common Pleas a Precipe
for summons, ^{and Bond for custody} which said Precipe, ^{and Bond} ~~are~~ in words and figures
as follows to wit:

James D Johnson 2 Cook County Court of
 vs Common Pleas Sept.
 William H Adams Special Term A.D. 1857
 Herman Warner & apt Damages \$90,00
 Julius C Smith 3

The clerk will please issue a summons in the above cause as to Smith to Lake County and Adams & Warner Cook County.

J. W. Waghop
 Atty for Plaintiff

James D Johnson 2
 vs
 William H Adams
 Julius C Smith and
 Herman Warner 3

Cook County Court of Common
 Pleas. Ex parte.

I do hereby enter myself security for costs in this cause, and acknowledge myself bound to pay or cause to be paid, all costs which may accrue in this action either to the opposite party or to any of the officers of this Court, in pursuance of the laws of the State, dated this 3^d day of February 1852.

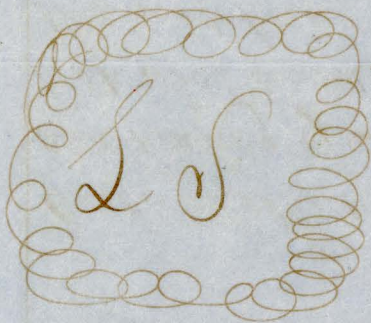
Witness
 J. W. Waghop Amos S Seely

And thereupon a summons was issued in said cause out of the Clerk's Office aforesaid, which said summons is in words and figures as follows to wit:

State of Illinois 3
 Cook County ss 3

The People of the State of Illinois, to the Sheriff of Cook County greeting
We command you to summon William A Adams Herman
Warner & Julius C Smith if they shall be found in your
County, personally to be and appear before the Cook County
Court of Common Pleas of said County, on the first day
of the next Special term thereof, to be holden at the Court
House, in the City of Chicago, in said County, on the 4th
Monday of September instant to answer unto James
Q. Johnson in a plea of trespass on the case upon
promises to the damage of the said plaintiff as he
says in the sum of Nine Hundred Dollars.

And have you then and there this writ
with an endorsement thereon, in what
manner you shall have executed the same
Witness Walter Kimball, Clerk of our
said Court, and the seal thereof, at the
City of Chicago, this 12th day of September
A.D. 1857— Walter Kimball, Clerk.



Served by reading to Herman Warner, others not
found, 12. Sept. 1857

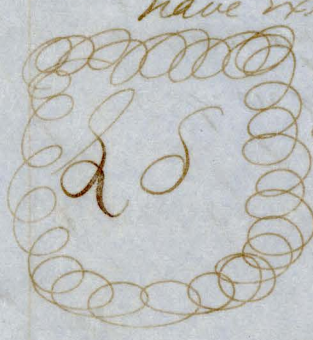
Wm L. Church Sheriff
of A.A. Dexter Dept.

State of Illinois
Cook County 3 SS.

The people of the State of Illinois, to the Sheriff of ^{State} Cook County greeting
We command you that you summon William A Adams Herman
Warner & Julius C Smith if they shall be found in your County
personally to be and appear before the Cook County Court of Com-
mon Pleas of said County, on the first day of the next

Special term thereof, to be holden at the Court House
in the City of Chicago, in said County, on the 4th Monday
of September instant, to answer unto James D Johnson
in a plea of Jussap on the case upon promises to the
damage of the said Plaintiff as he says in the sum
of Nine Hundred Dollars.

And Have you then and there this writ, with an en-
dorsement thereon, in what manner you shall
have executed the same.

 Witness Walter Kimball, Clerk of our
said Court, and the Seal thereof, at the City
of Chicago, in said County, this 12th day
of Septe^r 1851.
Walter Kimball Clerk

Executed the within writ by reading it in the presence
and hearing of Julius Smith this 12th day of September
1851. Not served on William H Adams, and Herman Warner
they not being found in my county.

L Sprague Sheriff
B J Munton Deputy

And afterwards to wit on the Twelfth day of September
in the year aforesaid the said Plaintiff filed in said
cause a Declaration which said declaration is in words
and figures as follows to wit:

Cook County Court of Common Pleas of the Spe-
cial Term of September in the year one thousand
eight hundred and fifty one

State of Illinois 3
Cook County SS 3

James O Johnson Plaintiff in
this suit, by O. W. Manghop Attorney complain of Will-
iam H Adams Herman Warner and Julius C Smith
Defendants in this suit, who summoned in a plea of
trespass on the case on promises.

In that Whereas, the said defendant heretofore to wit:
on the First day of July in the year of our Lord one
thousand eight hundred and Fifty at Chicago in the
County of Cook made and signed their certain prom-
isory note in writing, and then and there delivered the
same, bearing date the same day and year aforesaid, to
James O Johnson the said Plaintiff, in and by which
said note said defendants by the name, style and descri-
ption of William H Adams Herman Warner & J. C. Smith
jointly severally promised to pay James O Johnson
said Plaintiff, by the name, style and description of
James O Johnson or bearer one year from the date thereof
for value rec^d (received meaning) Four hundred and fifty
five dollars with interest, and the said Plaintiff avers
that the cause of action in this count set forth ac-
crued at the County of Cook aforesaid.

By means whereof, and by force of the Statute in such case
made and provided, the said Defendants became liable
to pay said Plaintiff said sum of money mentioned in
said note, and being so liable, in consideration thereof, then
and there undertook and promised to pay the same to
said Plaintiff according to the tenor and effect, intent
and meaning ~~thereof~~ of said note, to wit: at the place aforesaid
And Whereas also, the said Defendants afterwards, to wit:
on the First day of September in the year of our Lord one

thousand eight hundred and fifty one to wit, at Chicago
in the said County, became indebted unto the plaintiff
in a large sum of money to wit: Nine hundred dollars
for money before that time lent and advanced to, and paid
laid out and expended for said Defendants by said plain-
tiff at said Defendants request, and for money before
that time had and received by said Defendants to and
for the use of said Plaintiff, and also in the like sum, for
goods, wares, and merchandise, before that time sold and
delivered by said plaintiff to said Defendants at like
special instance and request, and also in the like sum
for the labor, care, and diligence of said plaintiff, before
that time done and performed by said plaintiff for
said defendants, and at the like instance and request
of said defendants, and also for the like sum for money
found to be due from the defendants to the plaintiff
on an account then and there stated between them, and
being so indebted, said defendant in consideration there-
of, then and there ^{under} took and promised, to pay said plain-
tiff, said last mentioned sum of money when thereunto
afterwards requested.

Yet the said Defendants, not regarding their said promises
and undertakings, but contriving, &c., although often request-
ed so to do, have not paid said plaintiff either of said
sums of money, or any part thereof, but so to do, have rather
to wholly neglected and refused, and still do neglect
and refuse, to the damage of said plaintiff of Nine
hundred dollars, and therefore he brings suit, &c. And
the said plaintiff avers that the several causes of action
set forth in this count accrued in the County of Cook
aforesaid.

John H. Warthrop
Atty for Plaintiff

\$445.00 One year from date for value recd we jointly
severally promise to pay James O Johnson or bearer Four
Hundred and forty five Dollars with interest—

Chicago July 1. 1850 (Signed) Wm H. Adams
Herman Warner
J. C. Smith

Money lent and advanced \$900.00
" " Had and received for Pff. m. \$900.00
" " Found to be due on account stated \$900.00
" " Wages, wages & Merchandise \$900.00
" " Labour Care and diligence \$900.00

And thereupon a summons was issued in said case
out of the Clerk's office aforesaid, which said summons
is in words and figures as follows to wit:

State of Illinois
Cook County S.S.

The People of the State of Illinois, to the Sheriff of said County greeting
We command you that you summon William H Adams
Herman Warner & Julius C Smith if they shall be found
in your County, personally to be and appear before the
Cook County Court of Common Pleas of said County, on
the first day of the next special term thereof, to be hold-
den at the Court House, in the City of Chicago, in said
County, on the 4th Monday of October next to answer unto
James O Johnson in a plea of Suspense in the case up-
on promises to the damage of the said Plaintiff as he says
in the sum of Nine Hundred Dollars

And have you then and there this writ, with an endorsement
thereon, in what manner you shall have executed the same.
Witness Walter Kimball Clerk of our said Court
and the seal thereof, at the City of Chicago, in
said County, this 30th day of September A.D. 1857.
Walter Kimball Clerk

Served by reading to the within named Adams Smith & Names
Sept. 30. 1857.

Wm L. Church Sheriff
By D. J. Wood Deput

And afterwards to wit: on the Twelfth day of November
in the year aforesaid came the said Defendants
by Stevens & Hoynes their Attorneys and filed in the office
of the Clerk of said Court their plea and Notice which
said plea and Notice is in words and figures as fol-
lows to wit:

Cook County Court of Common Pleas

William H. Adams and
Julius C. Smith impleaded
with Herman Names

as
J. D. Johnson

Agt.

And the said Defendant
Adams & Smith by Hoynes his Attorney come and defend
the wrong & injury when and say they did not im-
dulate & promise in manner and form as said Plain-

tiff has above thereof declared against them and of this
puts themselves upon the country.

And the said Plff doth } Stevens & Hayne
the like - J. H. Waughop } for Defts
Do Plaintiffs Atty }

John H. Waughop, Atty for Plff. You will please to take notice
that we shall insist upon and give in evidence under
the general issue in the trial of said cause that at said
time when as in said declaration alleged that said Plff
with intent to defraud said Defendants and induced
them to sign & execute said note did falsely and fraud-
ulently represent unto them that he & one Chas Waterman
were the owner of and had a right of sale as Patentee or
otherwise to a certain Patent right discovery known as
William Woods Patent Shingle Machine and that said
Shingle Machine would cut and manufacture shingles
without checking them, in consideration of which said
Defendants entered into a certain agreement with plain-
tiff to purchase and did purchase upon the faith
of such false & fraudulent representations believing them
to be true the right to vend ~~and~~ sell & manufacture
said William Woods Patent Shingle Machine in & for the
States of Illinois & Wisconsin excepting the counties of
Winnebago & Cook in the State of Illinois and also pur-
chased a machine manufactured after said patent
and that defendants in consideration as aforesaid agreed
to pay said plaintiff fifteen hundred dollars. One
thousand & sixty dollars of which was paid down to said
Plaintiff about the time of said purchase. And the
balance of 440 dollars was included & made payable
in & by said note so described in the declaration of
the plff in this suit, whereas in truth & in fact said

3
Plff & the said Waterman were not the owners of said Patent Shingle Machine and had not the right to sell and vend it as aforesaid, nor did nor could the said Shingle Machine so make & manufacture shingles without checking & splitting as aforesaid, whereby defendants were deceived and defrauded as aforesaid.

And defendants will further insist upon and give in evidence that the execution of said note by said defendants was obtained by circumvention & fraud used on the part of said Plaintiff - that said Plff falsely and fraudulently represented said machine as capable of making shingles without checking and that the Plff fraudulently colluding with one Herman Warner who is a joint defendant herein, induced him said said Warner to falsely ~~to~~ represent unto you defendants that he was wanted to become a joint purchaser with defendants of said machine & right to sell said Patent and would pay for and become a joint purchaser with defendants and would jointly execute said note sued upon as maker with these defendants and had also give a would execute this Warner individual note for five hundred dollars of said purchase money in addition to the sum agreed to be paid by defendants as aforesaid. and that in pursuance of such corrupt design & agreement to deceive & defraud these defendants, the said Plaintiff did agree to pay him sd Warner thirty dollars and also indemnify and save him said Warner harmless if he would sign the said note as aforesaid declared upon jointly and defendants by releasing to sd Warner his proportion or third of such amount as the Warner might become liable to pay on account of such joint signing as aforesaid. Of all which these defendants were totally

ignorant - and that by reason and on account of said
Names so jointly signing said Note as aforesaid and
having become as the said defendants supposed a joint
bona fide purchaser with them of said machine and
confiding in the representations so falsely made to them
by said Plaintiff & said Name that the Name had
executed a certain other Note for 500 Dollars in part
payment of said machine ^{and that became a bona fide & joint purchaser of said machine} & right & that said machine
would make shingles without checking them they were
induced to execute said Note so declared upon as afore-
said and make such contract as aforesaid - paying the
sum of one thousand & sixty Dollars down money & property
for said right & machine as aforesaid & executing said joint
Note sued upon for the balance. Whereas in truth & in
fact all such representations so made as aforesaid by
said Plaintiff & said Name acting in collusion with
him to these defendants were false & premeditated
being made with intent to defraud & circumvent said de-
fendants in signing & executing said Notes. Of all which
Plff had notice.

And plff will also take notice that we
shall insist upon and give in evidence that the considera-
tion of said Note has failed in this to wit that said Ma-
chine has failed to cut or manufacture shingles
without checking them as said Plaintiff expressly promised
& guaranteed and that we shall recoup the damages as
a set off in said action. And that we shall insist upon
a recovery of the sum so paid as aforesaid under such con-
tract so fraudulently made as aforesaid.

Stevens & Hogue
for Smith & Adams

James D Johnson

William H Adams

Herman Warner

Julius C Smith

Apt

And now at this day came the said plaintiff by C. H. Waughop his Attorney and the said defendants William H Adams and Julius C Smith by Frank Woodrich their Attorneys also came and the said defendant Herman Warner having been duly served with summons issued in this cause and being three times solemnly called in open Court came not nor any person in his name but makes default herein which is on motion of said plaintiff ordered to be taken and entered of record. And on motion of said plaintiff it is ordered that a jury come to assess the said plaintiff's damages against the said defendant Warner. And thereupon issue being joined with the said defendants Adams and Smith, it is ordered that a Jury come, and thereupon come the Jurors of a Jury of good and lawful men to wit.

Henry Fuller Theodore Hubbard A. H. Robinson Francis H Taylor
O. C. Rye Daniel McKellop Miles Hobbs John H Scott
Wm Sawyer Henry Meyers Wm P. Eaton and Michael Burns who
being duly elected tried and sworn well and truly to try the issues
joined as aforesaid, and diligently to inquire of and true assess-
ment make of the said plaintiff's damages against the said
defendant Herman Warner and after hearing the evidence
adduced the time of adjournment having thereupon arrived
it is ordered that the further hearing of this cause be post-
poned until to morrow morning - and by agreement of
said parties the Jury are permitted to separate.

James P. Johnson }

vs
William H. Adams
Herman Warner
& Julius C. Smith }

Apt

And now again come the said parties by their said Attorneys and the Jury empanelled in this cause also come and after hearing the argument of Counsel and instructions of the Court retire under charge of an officer of the Court to consider of their verdict and afterwards come into Court and say we the Jury cannot agree upon a verdict and thereupon by consent of parties it is ordered that the Jury be discharged.

don't
agree }

James P. Johnson }

vs
William H. Adams Herman
Warner & Julius C. Smith }

Apt

This day again come the parties aforesaid by their Attorneys aforesaid and on motion of the defendants Adams & Smith leave is given them by the Court to amend their notice as to the description of deeds. And the default of the said defendant Herman Warner having been heretofore entered herein on motion of said plaintiff it is ordered that a Jury come to assess the said plaintiffs damages against the said defendant Herman Warner and to try the issue joined with the said defendants Adams & Smith and thereupon come the Jurors of Jury of good and lawful men to wit:

Urgo Babcock William Kelly H. H. Myers Ira Reynolds E. H. Aiken
W. Pick Peter Downey Adam Amberg D. Andrews William Draper
E. S. Hammond and C. F. Stewart who being duly elected tried
and sworn well and truly to try the issue joined as aforesaid
and diligently to inquire of and true asessment make of
the said plaintiffs damages against the said defendant
Herman Warner and after hearing a part of the evidence
adduced the Court of adjournment Having thereupon arrived
it is ordered that the further hearing of this cause is post-
poned until tomorrow morning and by consent of parties
the Jury are permitted to separate.

James D. Johnson

vs

William H. Adams Herman
Warner & Julius C. Smith

Apt

And now again come the parties
aforesaid by their said Attorneys and the Jury empanelled
in this cause on yesterday also come, and after hearing the
remainder of the testimony argument of Counsel
and instructions of the Court retire in charge of an officer
of the Court to consider of their verdict and afterwards
come into Court and say we the Jury find the issues for
the plaintiff against the said defendants William H.
Adams and Julius C. Smith impleaded with the said de-
fendant Herman Warner and we assess the said plaintiff
damages against all of the said defendants to the sum of
five hundred and forty one dollars and twenty cents -
And thereupon the said defendants enter their motion there-
in for a new trial in this cause.

\$541.20

James D. Johnson

vs

Appt

William H. Adams Herman

Wanna & Julius C. Smith

And now again come the said parties by their said attorneys and the court after hearing the argument of counsel on the said defendants motion for a new trial in this cause being now fully advised in the premises overrules said motion.

Therefore it is considered that the said plaintiff do have and recover of the said defendants his damages of five hundred and forty one dollars and twenty cents in form aforesaid by the Jury here ascertained and also his costs and charges by him in this behalf expended and have execution therefor.

And thereupon said defendants enter their exceptions herein to the opinion of the Court and pray an appeal to the Supreme Court of the State of Illinois, which is allowed upon their filing bond in the sum of One thousand dollars with the usual conditions to be approved by the Court, said bond and bill of exceptions to be filed by the first day of April next.

And afterwards to wit on the Twenty Fourth day of March in the year of Our Lord one thousand eight hundred and fifty four, the said defendants in above cause filed in the Office of the Clerk of Cook County Court of Common Pleas an Appeal Bond which said Bond is in words and figures as follows to wit.

Know all men by these presents, that we William H Adams
and Julius C Smith and Thomas Allen & Wm Whitney
are held and firmly bound unto James D Johnson in the
penal sum of one Thousand Dollars lawful money of the
United States for the payment of which said sum well and
truly to be made we bind ourselves our heirs and administra-
tors jointly severally and firmly by these presents.

Witness our hands and seals this 20th day of March A.D. 1854

The condition of this obligation is such, that where-
as the said James D Johnson did on the thirteenth day of
March in the year 1854 in the Cook County Court of Com-
mon Pleas in the County of Cook and State of Illinois
the Honorable John M Wilson presiding recover a judg-
ment against the above bounden William H Adams
and Julius C Smith impleaded with Herman Warner for
the sum of Five Hundred and forty one dollars and twenty
cents damages besides costs of suit from which said judg-
ment the said William H Adams and Julius C Smith have
taken an appeal to the Supreme Court of the State of
Illinois.

Now if the said William H Adams and Julius
C Smith shall prosecute said appeal with effect, and shall
pay or cause to be paid the said Judgment costs interest
and damages in case the said Judgment shall be affirm-
ed then this obligation to be void, otherwise to remain in
full force and effect.

Approved

John M Wilson

Wm H Adams

W Whitney

Thomas Allen

J. C. Smith



And afterwards to wit on the First day of April in the
year of our Lord one thousand eight Hundred and Fifty Four
came defendants in this cause, by their Attorneys Steven Payne
and filed their Bill of Exceptions which said bill of
Exceptions is in words and figures following to wit.

Cork County Court of Common Pleas
William H Adams and
Arthur C Smith impleaded
with Herman Warner
acts
James Johnson
February Term A.D. 1854
Attest.

Be it Remembered that on the trial of the above entitled cause to wit on the 7th day of February A.D. 1854 being one of the days of the February Term of the Court of Common Pleas, the said defendant Herman Warner having failed to plead a default was entered as to him and the Jury sworn to appear as to said def^t Warner. The said Plaintiffs introduced a certain promissory note in evidence of which the following is a copy—

\$445.00. One Year from date for value received jointly
& severally promise to pay James O Johnson or Bearer Four
Hundred and forty five Dollars with interest -
Chicago July 1. 1850

Wm H Adams
Herman Warner
D C Smith

And then rested their case.

And thereupon said Defendants read in evidence to the Jury their bill of discovery against the plaintiff together with the answers of the said plaintiff to said Bill which said Bill of discovery and answers read in evidence are as follows viz;

In Chancery

To the Honorable Mark Skinner Judge of the Cook County Court of Common Pleas in Chancery sitting -

Humblly complaining sheweth unto your Honor that William H Adams of Chicago Cook County State of Illinois and Julius C Smith of Woodstock County of McHenry State of Illinois, that heretofore to wit, on or about the 1st day of July A.D. 1850 one James D Johnson of Watertown in the State of Connecticut applied unto your Orators to purchase from him the right to vend sell and manufacture "Woods Patent Shingle Machine" within, and for the States of Illinois & Wisconsin except the counties of Boone & Cook in the State of Illinois representing to your Orator that he was the rightful owner by valid deed of assignment of said Patent Shingle Machine, and that the same had been legally patented according to the laws of the United States as an original discovery, in which latter Patent had been duly issued by the Commissioner of Patents at Washington, D.C. and that said machine would cut & manufacture shingles without checking or splitting them -

And your Orator would further shew unto your Honor that the said James D Johnson colluding contriving with one Herman Warner for the purpose of deceiving and defrauding your said Orators into a pur-

chase of said right and one of the machines so represented as aforesaid, did on or about the time so specified as aforesaid represent unto your orators that He saw Warner was anxious to become a purchaser of said Patent Rights for the States aforesaid and would unite with your orators in making a joint purchase of said Patent Right of an equal one third interest therein, provided your orators would consent to become purchasers with him and that he would pay his proportion of the purchase money as summing to become as was represented unto your orators and as they confidently believed an equal & bona fide owner in one third interest of said Patent Right jointly with your orators as aforesaid.

And your orators would further show unto your Honor that confiding in said pretences so held out by the said Johnston and the said Herman Warner they agreed with the said James D. Johnston & Herman Warner to become joint purchasers with the said Warner of the said Patent Right for the States aforesaid for the sum of Two Thousand Dollars, including one of the machines manufactured after the said Patent & brought to this State by said Johnston - That your orators paid down in cash forty dollars and delivered to said Johnston several promissory notes secured by Chattel mortgages against a person in St Louis, Missouri whose name is not now recollected - amounting to the sum of one thousand Dollars - making together in cash & notes the sum of One thousand & forty (1040) Dollars paid down at the time ^{by your orators as their proportion of said purchase} of said purchase money and also executed jointly with the said Herman Warner then joint & several promissory note payable to said James D. Johnston for the sum of Four Hundred & forty five Dollars one year from the

date thereof with interest, being for the balance of said purchase money, as it was then supposed by your Orators and so represented to them by said Warner & said Johnston that said Warner had also paid down at the time of such purchase his proportion or one third of said purchase money being five Hundred & twenty dollars -

And your Orators would further show unto your Orator, that upon a trial of said machine and the application of said Patent in the manufacture of shingles, it turns out to be perfectly worthless, for the purpose represented or any purpose whatever, that it will not cut shingles as represented without checking or splitting them and that it is entirely valueless to your Orators.

And your Orators would further show unto your Honor that since the time of said purchase and the delivery of said note in payment of the balance due as aforesaid, they have discovered and so aver the facts to be, that the sale so made to them as aforesaid was contrived in fraud between the said James D. Johnston & said Herman Warner to deceive and circumvent your Orators and induce them to make said purchase and obtain said notes & money so paid & delivered as aforesaid. That said Herman Warner never paid anything down as his proportion of said purchase at said time of sale except as your Orators are informed a watch worth perhaps some thirty Dollars & twenty Dollars in cash as his proportion on the purchase of said machine sold your Orators as aforesaid, that it was contrived and agreed between said Johnston & said Warner that if the Warner would procure your Orators to make a joint purchase with him of said Patent Right by such

False & fraudulent representations as aforesaid and induce your Orators to make such payment down as aforesaid and execute their joint Note as aforesaid for the sum of Four Hundred & forty five Dollars as the balance of said purchase money, He said Johnson would release him Warner of from all liability whatever in account of his said pretended purchase of one third interest in said machine and release him in said Note by holding him harmless in its collection or by paying him back one third of the entire amount after collection, provided for the purpose of better concealing the fraud upon your Orators, it ^{ever} became ^{necessary} to enforce a collection as against him said Warner of his said proportion.

And your Orator would further show unto your Honor that the said James D Johnson has commenced a suit in this Honorable Court on the common Law side thereof against your Orators, upon said Note for the sum of Four Hundred & forty Dollars as aforesaid for the purpose of enforcing the collection thereof although the same was obtained by circumvention & fraud as aforesaid and the consideration thereof has wholly failed.

And your Orators would further show unto your Honor that they have no means of proving that said Note was given as aforesaid in part payment of said Patent Right - nor that the said Warner and said Johnson combined with intent to defraud and deceive your Orators as aforesaid & induce them to make said purchase nor that they represented that said Warner was to become a bona fide joint purchaser of one third of said Right - nor that the said Warner did not pay his proportion as represented of one third of said purchase money down at the time of said sale nor that the said

Johnson agreed to release him said Warner of & from
all liability whatever on account of said purchase & xxx
xxxxx of ~~xxxxx~~ purchase or on account of the execution
of said Note so jointly signed by him with your Orators
as aforesaid, by holding him harmless in its collection
if he procured your Orators to make such purchase as a-
foresaid. So that the said Johnson represented the
said shingle machine would manufacture shingles with-
out checking or splitting them, but can only establish
these facts by means of a discovery from the said Warner
and the said Johnson, and he is advised he cannot
safely proceed to trial of such action commenced as aforesaid
without a discovery of the matters hereinbefore stated from
said Johnson and said Warner.

To the end therefore that the
said James D Johnson and the said Herman Warner
may upon their corporal Oaths true full & perfect an-
swers make to all and singular the matters and things
hereinbefore charged and set forth and which your Orators
cannot otherwise prove & especially ^{may} set forth and dis-
cover whether said Note was not given by your Orators
to him said Johnson in part payment of said
Patent Machine, and whether your Orators did not
pay to him One thousand & forty Dollars down in cash
and Notes secured at St Louis at the time of said sale
whether said Johnson did not agree with said Warner to
release him from all liability on said purchase of
one third interest of said Patent right and hold him
harmless as against the collection of said Note of
Four Hundred & forty five Dollars now sued upon, if
he Warner would pretend to become a joint purchas-
er with your Orators & induce them to become pur-

chases as aforesaid. Whether he said Warner did not pretend to your Orators at or about the time of said purchase that he had paid five hundred dollars or thereabouts or given his individual note to said Johnson therefor? Whether he ^{paid} Johnson ever received any sum of money from said Warner on account of said purchase except the twenty dollars and a watch delivered at or about the time of the purchase alleged as aforesaid by your Orators? Whether said Warner has paid any sum of money whatever except as aforesaid or executed any note at any time for his proportion of said purchase money to said James D. Johnson or any person for him? Whether it was not expressly agreed between the said Johnson & said Warner at or about the time of said sale, that the Warner could have his one third proportion or interest in the said joint purchase without any cost or charge whatever except as aforesaid & that he would hold him harmless as against the collection of said joint note if the Warner would procure your Orators to make such purchase as aforesaid & execute said note so given as aforesaid & if not then otherwise, and that in case of a collection of said note as against said Warner the said Johnson did not agree to pay said Warner back his proportion or one third of the amount of said note in case of its collection jointly against him & your Orators. Whether they said Johnson & Warner did not both or either of them pretend & represent to your Orators that said Patent Shingle Machine would manufacture shingles without checking or splitting them, or any words to that effect & what words were used. And your Orators would further show unto your Honor, that until ^{within} the present week of the term of this Court now being held your Orators hoped and believed that

other witnesses might be found cognizant or having
personal knowledge of the facts herein stated so as to avail
them on a defence in a Court of Law. but as they are now
advised & believe the knowledge of such witnesses so re-
lied upon is not sufficient to establish said facts.
And that said Warner and said Johnson may several-
ly make a full true & perfect discovery of all the mat-
ters aforesaid. May it please your Honor to grant unto
your Orators the writ of Subpoena to be directed to said
James O Johnston and Herman Warner, commanding
them by a certain day & under a penalty to be therein
named to be and appear before this Honorable Court
then & there to answer before this Honorable Court the
premises and abide such order and decree therein as
shall be agreeable to equity & good conscience and also
to grant unto your Orators the writ of Injunction issuing
out of this Honorable Court commanding the said James
O Johnston his Agents & Attorneys from further prosec-
ting said suit upon the Note aforesaid. until the fur-
ther order of this Honorable Court as may be agreeable
to equity & good conscience & your Orators will ever pray—

Frederick H. Hogue }
Solicitors } 3

Wm. H. Adams

State of Illinois }
Cook County } 3 p.

William H. Adams being by
me duly sworn deposes and saith that he has heard
and the within Bill of complaint and knows the
contents thereof and that the same is true of his own

Knowledge except so far as therein stated to be upon
information & belief and that he believes to be true
Subscribed and sworn before me this 18th day of March
A.D. 1852
Wm. H. Adams
W. Kimball Clerk

In Chancery

The answer of James D Johnson Defen-
dant to the bill of complaint of Will-
iam H Adams & Julius C Smith com-
plainants—

This defendant now and at all times hereafter saving &
reserving unto himself all benefit and advantage of
exception which can or may be had or taken to the ma-
ny errors uncertainties and other imperfections in the
said complaints said bill of complaint contained in
answer therunto or unto so much and such parts thereof
as this defendant is advised is or are material or necessary
for him to make answer unto, this defendant answering
sath, that on or about the first day of July A.D. 1850 this
defendant did apply to the said complainants William
H Adams and Julius C Smith and one Herman Warner
to sell them, "Woods Patent Shingle Machine" or the right to
vend, sell ^{and} manufacture the same, for the States of Illinois
and Wisconsin, except the Counties of Boone & Cook in the
State of Illinois, representing this defendant as the right
ful owner by valid Deed of assignment of said Patent Shin-
gle Machine. And this defendant may have also represen-

ted, that the same had been legally patented according to the laws of the United States as an original discovery for which letters Patent had been issued by the Commissioner of Patents at Washington D. C. and that said machine would cut and manufacture shingles without checking or splitting them -

This defendant denies that he ever contrived with one Herman Hamer for the purpose of deceiving and defrauding the said complainant into the purchase of said right and one of the machines aforesaid. Saith that this defendant might have said that said Herman Hamer was anxious to become a purchaser of said Patent Right for the states aforesaid, and would unite with said complainants in making a joint purchase of said Patent Right of an equal one third interest therein provided said complainants would join him in the purchase, and did become a joint and bona fide purchaser of the one third part as this defendant believes with the said complainants.

Saith that the said complainants and said Herman Hamer did purchase of this defendant for the sum of Two Thousand Dollars (as they called the pay received by this defendant) the right to vend sell & manufacture said patent for the states aforesaid, including one of the machines manufactured after the said Patent, transported to the State of Illinois by this defendant for sale. This defendant acknowledges that he received forty Dollars in cash, and received by assignment several promissory notes secured by Chattel Mortgage against a person in St Louis Missouri amounting to ^{the sum of} one thousand dollars making together in cash or notes the sum of One thousand and forty Dollars paid in this way at the time of purchase by said Smith and Adams complainants as their proper

tion of the purchase money, and also executed a joint & several Promissory Note payable to this defendant for the sum of four hundred forty dollars one year from date thereof with interest ^{being four hundred and forty five dollars the amount of said note} being for the balance of said purchase money. And that there was no fraud in the sale on the part of this defendant, if there was any fraud any where it was on the part of said complainants in representing the notes against, ^{the money in it being to be good}

That there was no fraud deceit or circumvention between this defendant and said Herman Warner on the other hand the said complainants and said Herman Warner contrived together to cheat and defraud this defendant in trading him an old watch and doubtful paper, upon which he has never realized over sixty dollars after deducting expenses thereon in all. The considerations at the instance of the said complainant ^{ant} was called two thousand dollars to give the thing importance to enable them to sell, but the notes were known to be bad and not estimated to be worth any more in proportion than a watch received of Warner for his part in connexion with the \$20. twenty dollars paid as his part of the cash the complainants having paid twenty dollars each in the sale of the said machine as this defendant believes, saith that this defendant never agreed to release said Herman Warner from his part of the purchase money mentioned in the said note of the said machine without paying any thing therefor.

Saith that he this defendant did not agree about or at the time of the said ^{of the said machine} purchase with the said Warner to release or discharge him in any way from his liability on the said note sued on as aforesaid. Saith that the said note was given in part payment for the purchase of the said patent right by the said complainants

jointly with the said Warner to this defendant, saith that said complainants did transfer to this defendant certain Notes against a man in St Louis Missouri, of One thousand dollars on their face and called for sake of swelling up a big consideration One Thousand Dollars, but were almost entirely worthless and known so to have been by said complainants as this defendant believes at the time of the said purchase of the said machine and in addition to said Notes said defendant received of the said complainants Forty Dollars in money or cash, said Notes against man in St Louis Missouri purported to be secured by Chattle Mortgage.

Saith that this defendant may have represented that the said machine would manufacture shingles without checking or splitting them or words to that effect, do not remember the words used, but such is the ~~fact of the machine being so represented~~

J. W. Manghop
Defendants Solicitor

James D Johnson

State of Connecticut }
County of Fairfield } SS }

James D Johnson of said County being duly sworn says that he has read the within answer and knows the contents thereof and that the same is true of his own knowledge except so far as therein stated to be upon information & belief and that he believes to be true -

James D Johnson

State of Connecticut
Fairfield County City of Bridgeport Aug. 4 A.D. 1852

Then personally appeared before me
William H. Noble Clerk of the County Court within and
for said Fairfield County. James D. Johnson to me person-
ally known, and in my presence subscribed the foregoing af-
fidavit and made solemn oath that the statement
made by him in said affidavit by him subscribed is true.

In testimony whereof I have hereunto
affixed my hand and the seal of said
Court this 4th day of August 1852.
Wm H Noble
Clerk

The defence then read to the Jury the Deposition of one
Lucius V. R. Smith in file in said cause as follows.

Deposition of Lucius V. R. Smith taken to be read in
evidence in a certain cause, wherein James D. Johnson
is plaintiff and William H. Adams and Lucius C. Smith
impeached with Herman Warner are defendants now
pending and undetermined in the Cook County Court of
Common Pleas and State of Illinois, in pursuance of a no-
tice legally given to the attorneys, of the said Plaintiff by the
Attorneys of the said defendants which said notice is here
to attached.

The said Lucius V. R. Smith being duly sworn
to testify the truth in relation to the matter in controversy

between the said parties so far as he may be interrogated in answer to the following several Interrogatories answers of follows—

Interrogatory 1st Are you acquainted with the parties to this suit—

Answer. No. But I am acquainted with Julius C. Smith William H. Adams and Herman Warner—

Interrogatory 2^d How long have you been acquainted with them—

Answer. With Julius C. Smith about thirty two years and with Adams & Warner between three & four years—

Interrogatory 3^d Where have you known them last—

Answer. My last acquaintance with Adams was at Warsaw in this State and with Warner and Smith at Chicago in this State—

Interrogatory 4th Where do you reside—

Answer. In the City of Knoxville State of Illinois

Interrogatory 5. What is your occupation—

Answer. Millwright and Mechanic.

Interrogatory 6. How long have you been employed as a millwright and Mechanic—

Answer. A great portion of the time for eighteen years

Interrogatory 7th Are you acquainted with a machine called Woods patent shingle machine which the defendants purchased of the plaintiffs

Answer. I am

Interrogatory 8th At what time or about what time and where did the defendants purchase said machine of the plaintiff.

Answer. I cannot state definitely but think it was in the year 1849 or 1850—

Interrogatory 9th How long have you been acquainted with

the machine.

Answer. About two years and a half.
Interrogatory 10th State whether or not you have examined said machine closely and attempted to use said machine in making shingles.

Answer. I have examined the machine and have made shingles with it.

Interrogatory 11th When and where did you try said machine and how often.

Answer. I tried in February and March 1850 at Elgin in Kane County Illinois, at Ottawa in LaSalle County at Peoria in Peoria County at Warsaw in Hancock County Illinois and at Keokuk Lee County Iowa. I tried it repeatedly in each of these places.

Interrogatory 12th Under what circumstances and for what purpose did you try said machine.

Answer. I traveled with the machine in company with William H Adams for the purpose of selling the rights and the machines and tried it of course under the most favorable circumstances to make good shingles using the best timber ^{that} I could procure.

Interrogatory 13th How did said machine work and what kind of shingles did it make.

Answer. It worked with a lever operating in a sash containing a knife and moving between two posts at about twenty two degrees variation from perpendicular. It made bad shingles the knife cutting them rough and checking them & warping them making them of unequal thickness where there was any tendency in the grain of the timber to draw the knife in consequence of the feeder being insufficient.

Interrogatory 14th Of what value was that portion of the

machine called the feeder -

Answer. Of no value whatever -

Interrogatory 15th Could good shingles be made with that machine with that kind of a feeder -

Answer. No they appeared to be good when they were get wet, but with the exception of unevenness in thickness but when dry they showed that they were checked & split -

Interrogatory 16th Where is that machine now, and of what value is it

Answer. I suppose it to be at Keokuk in Iowa. I left it there two years ago last May. It is of no value for the purpose of making shingles -

Interrogatory 17th What is your name -

Answer. Lucius V. R. Smith -

L. V. R. Smith

State of Illinois }
Knox County } 3

I William F. Morey Clerk of the Circuit in and for the said County of Knox and State of Illinois do hereby certify, that the foregoing deposition of Lucius V. R. Smith was taken before me at my office at Knoxville in the County of Knox and State of Illinois on the 1st day of September A.D. 1853 between the hours of one and four o'clock P.M. of that day that the said Deposition was subscribed by the said L. V. R. Smith in my presence and sworn to before me on the day and year last aforesaid.

SS In Testimony whereof I have hereunto set my
Hand and affixed the seal of said Court at
Hillsboro this 1st day of September 1853.
Wm J Morey. Clerk.

The defence then introduced as a witness in said cause
one Robert Steward who being duly sworn testified as fol-
lows-

That he was a Wood mechanic and had been
a cabinet maker and was acquainted with and had
considerable experience as a machinist, that he had fit-
ted up and worked saw mills and was accustomed to
working in wood that he knew the Plff Johnson and
defendants, that he had purchased of said Johnson one
of Woods Patent Shingle machines at or about the ^{said} time
when he was here with the right to make and vend the same
for Cook County Ills that said machine was sold to wit-
ness as a specimen machine with the right aforesaid.
that witness had been invited by Johnson to go down to the
City Hotel at Chicago to see the machine work and
saw some shingles, which Johnson told him had been
cut with said machine, that the shingle bolts had been
wetted and steamed prior to cutting and as soon as any
shingles were cut they were pressed down by weight & kept
from the air & light but that as soon as dried by exposure
they would show the splits on them, that he frequently tried
with said machine to cut shingles without splitting them &
could never succeed in so doing, that he had tried said machine
with every kind of power and found it impossible to cut shin-
gles without checking, that in his opinion shingles could
not be cut without splitting with said machine and that

He was finally compelled to abandon it as useless for any purpose and that in his opinion the Lumber out of which shingles was made by said machine was of more value than the shingles, and that the shingles would be generally worthless there being not more than one in ten which was not checked in making them & that Plaintiff said he had brought two machines here, that Witness never saw the machine of defendants

Confirmed Witness Stewart further stated that he saw the machine tried and purchased his of the plaintiff after he saw it tried

The defendants then introduced a witness by the name of George W Noble who being sworn deposed that he knew the defendants, that he was acquainted with Woods Patent Shingle machine and saw the machine that Mr Stewart had spoken of the other witness that he was familiar with machinery was now running a planing machine, that Mr Robert Stewart had his machine at his shop, that it had been tried it several days and lost considerable time in attempting to make shingles with it, and had helped him in so doing. that with Stewarts machine it could not make shingles without splitting & checking them, that in his opinion shingles never could be made without splitting them upon the principle it worked upon, that no principle upon which they could work could shingles be made without ~~splitting~~ checking them Stewart was compelled to give it up that the lumber was of more value than the shingles which it made, that the shingles being split & checked were of no value while the lumber was. that he never tried the machine never took it apart to see what could

be done to make it work, but only saw it tried as it was
put up by Stewart.

The defendants then introduced Oliver Granger, who being
duly sworn deposes and said. That he was a machinist
and had been for some 30 years and followed the business
of making machines that he had seen and examined
the shingle machine of Robert Stewart, and that it
was impossible for a machine constructed upon the
principle that was, to work well, that it would necessa-
rily ~~split~~ and split shingles as the knife was forced
down through the block, without regard to the grain of the
timber and thereby breaking the fibres of the wood
instead of cutting them. Witness further stated that
he had seen various shingle machines, that he was well
conversant with the principle upon which this machine
was constructed and that in his opinion the machine
was worthless.

The defendants then introduced as a witness one Ben-
jamin J Lee who testified as follows. That he was
acquainted with the defendants and was ^{also} acquainted
with Johnson, saw Johnson and had some conversa-
tion with him, when he was round here selling rights of
Woods Patent Shingle Machine.

The defendants Counsel then asked the witness the fol-
lowing question viz:

What (if anything) did the Plaintiff
say to you in reference to the original Patent having ex-
pired of William Woods Shingle Machine. Which ques-

tion was objected to by Plffs Attorney, and the Court sustained said objection, to which ruling of the Court in sustaining said objection the defts by their counsel excepted at the time.

The defts atty. then asked the witness this other question viz. Did Johnson tell you when the Patent of the right which he was selling was obtained, viz so when did he say it was? to which question the Counsel for Plff objected, and the Court sustained said objection - to which ruling of the Court in sustaining said objection, the Defts Counsel at the time excepted.

Cross Examination. Defendant Smith had a brother a wheelwright who traveled.

And the defence closed their case by the introduction of two certain Deeds of Patent right which being duly proven were admitted as evidence to the Jury as follows.

Deed

Plaintiffs Counsel Know all Men by these Presents, That, whereas, we James O Johnson & Chas Waterman of the town of Easton County of Fairfield in the State of Connecticut are seized of all the right and power of making, constructing, using, and vending to others to be used, William Woods Patent Shingle Machine, so known and denominated, for cutting shingles, in the States of Illinois and Wisconsin. Now Know Ye, That for and in consideration of the sum of Five Thousand Dollars, to us in hand paid, the receipt whereof is hereby acknowledged we have bargained, sold, aliened and confirmed, and by these presents do bargain sell, alien and confirm unto William H Adams Julins

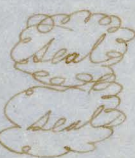
Objection to dects, Court overruled objection Plffs Counsel took an exception at the time

C Smith & Herman Warner of the town of Chicago in
the County of Cook in the State of Illinois and to their
Heirs and assigns forever the full and exclusive right
and privilege of making, constructing, using, and vending
to others ~~to be used~~ to be used, William Woods Patent Shingle
Machine, in the States of Illinois and Wisconsin excep-
ting the County of Cook and State of Illinois & the County
of Winnebago in said State. So them the said grantees
& their heirs and assigns, to build, construct, and use the
same in the States aforesaid, for and during the term
of fourteen years from the eighth day of January
A.D. 1850, the time at which said patent was obtained

In Witness Whereof we have hereunto set our hands
and seals this first day of July in the year of our Lord
1850-

J. H. Wales
Witness

James D. Johnson
Chas. Waterman



United States Patent Office Received the 23 of Septem-
ber & Recorded the 23rd day of September 1850 in
Liber 8 page 468 of Transfers of Patent Right.

In Testimony whereof I have caused
the Seal of the Patent Office to be here-
unto affixed.

Thos. C. E. Bank

Know all Men by These Presents, That, whereas, we James
D. Johnson & Charles Waterman of the town of Easton Coun-
ty of Fairfield in the State of Connecticut am seized

of all the right and power of making, Constructing,
using and vending to others to be used, William Woods
Patent Shingle Machine, so known and denominated
for cutting Shingles, in the County of Cook and State
of Illinois -

Now Know Ye, That for and in considera-
tion of the sum of Two Hundred Dollars, to us in hand
paid, the receipt whereof is hereby acknowledged we
have bargained, sold, aliened and confirmed, and by
these presents do bargain, sell, alien and confirm unto
Robert Stewart of the City of Chicago in the County of
Cook in the State of Illinois the consideration of this
deed is that the said Stewart has paid one Hundred dollars
down and has given his note of one Hundred Dollars pay-
able in six months and if the said said Stewart continues
to use the said Shingle Machine any longer than six
months from the date of this deed he is to pay said note
otherwise not. The full and exclusive right and pro-
-^{and} privilege of making, constructing, using, vending to others
to be used, William Woods Patent ~~Shingle~~ Machine
in the County of Cook in the State of Illinois to
him granted Heirs and assigns, to build, construct
and use the same as aforesaid, for and during the term
of fourteen years from the eighth day of January, A.D.
1850. the time at which said patent was obtained -

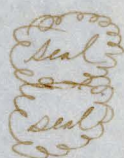
In Witness Whereof we have hereunto set our Hands and
seals this 29th day of June in the year of our Lord, 1850.

W. D. Nichols

Samuel Defnest

Witnesses

James I. Johnson
Chas. Waterman



The Plaintiff then read to the Jury the following depositions of Charles Croft, William H Croft & Eliphaz H Bradley & Charles ~~Johnson~~ ^{Johnson} Interrogatories propounded to Charles Croft a witness produced and sworn as aforesaid on the part of the said James O. Johnson and his answers thereto as follows—

Interrogatory first. What is your name, age, occupation and place of residence.?

Answer to 1st Interrogatory. My name is Charles Croft, my age is forty seven years. I am by ~~trade~~ ^{occupation} a machinist, and have been engaged chiefly for the last fifteen years in the manufacture of various kinds of Shingle machines. My place of residence is ^{the town of} Weston County of Fairfield and State of Connecticut—

Second Interrogatory. If in your answer to the first direct interrogatory you say you are a machinist please state what kind of a machinist you are and how long you have worked at the business.

Answer to Second Interrogatory. In addition to the manufacture of Shingle machines as in reply to the 1st interrogatory stated above. I have also been engaged in the manufacture of portable Grist Mills Saws and Straw Cutters and various other kinds of machines for the last 20 years—

Third Interrogatory. Have you ever constructed any of William Woods Patent Shingle machines, if yes what is the cost of the construction of one of said machines? and how many of the said machines have you ever built—

Answer to Third Interrogatory. I have constructed William Woods Patent Shingle machines on two of his Patents, and am now constructing the same on both his patents. On the 1st Patent granted 1849 I have constructed four hundred or more, on the second granted, 1850. One hundred and twenty five to one hundred fifty. There is no difference in the cost of manufacturing a machine under either patent, but prices vary according to the size. The cost of constructing a machine to

cut eighteen inch shingles is at my place & factory \$50. that of 24 inch \$60. that of 28 inch \$70.

Fourth Interrogatory. Have you ever seen the said machine in the 3^d interrogatory operate? if yes, what is its capacity for making
Accepted Shingles?

Answer to 4th Interrogatory. It has been my invariable rule to put every machine manufactured in my shop into operation by hand power under my personal observation before it leaves the shop. I have set up and put in operation in different parts of the country both by steam and water power quite a number of shingle machines under both of said patents and have seen them in full operation. From my own experience and observation I have no hesitation in saying, that the machines under both of said patents, will make perfect shingles when properly operated, and with great rapidity at the rate of about 40 shingles per minute by hand & about 60 per minute by power.

Fifth Interrogatory. How often have you seen said machine operate and what has been the means of your knowledge of its capacity for making shingles.

Answer to 5th Interrogatory. I have seen said machines operate by hand power as often as once a week, and frequently by other power, and from operating them personally and seeing them worked by others by hand & power, and critically observing the operation of the machine, together with my experience as a machinist I have formed my knowledge of the capacity of said machine for making good shingles. I have never found any more difficulty in attaching one of the machines to power & operating it than of working it by hand.

Sixth Interrogatory. What is the value of one of said machines of said Machines put up for using?

Answer to 7th Interrogatory. Such value depends entirely on the manner in which they are put up. They can be attached to saw mills at very little expense, and in as much as the value of one of the machines, ready for use, will depend very much on the cost of the fixtures it is impossible to fix any definite sum that will apply to every case -
Chas Croft

Introductions propounded to Charles Johnson of Weston a witness produced and sworn as aforesaid on the part of the said Amos D. Johnson and his answers thereto as follows -

First interrogatory. What is your name, age and place of residence, and what is your occupation?

Answer to 1st interrogatory. My name is Charles W. Johnson, my age is twenty eight years my place of residence is in Weston, in Fairfield County Connecticut & am wood worker at machinery -

Second interrogatory. Do you know anything of the success and capacity of William Woods Patent Shingle machines; if yea Please state what its success and capacity is and what it has been &

Answer to second interrogatory. I have made the principal part of all the frames of William Woods Patent Shingle Machines on both patents for the last six years at shop of Charles Croft. I have seen said machines operated by hand as often as once a week during this time, they have made uniformly perfect shingles. They will make 40 or 50 by hand per minute. There is no difference in quality made between the two patents, but the feeding apparatus in the last is less complicated than the 1st and less liable to get out of order as far as my knowledge extends. The machines have

operated successfully.

Third Interrogatory. To what extent have you known of said machines having been used? and to what extent do you know of their being used at the present time.

Answer to 3^d Interrogatory. My only knowledge of the extent to which these machines have been used consists in the number ordered which is about 50 per year.

Fifth Interrogatory. What was the value of one of the machines put up ready for using.

Answer to 5th Interrogatory. It will depend entirely upon the amount expended in the fixtures.

Charles W. Johnson

Interrogatories propounded to the said William Croft, a witness produced and sworn as aforesaid on the part of the said James D. Johnson and his answers thereto as follows.

First Interrogatory. What is your name, age, and place of residence, and what is your occupation?

Answer to 1st Interrogatory. My name is William H. Croft, I reside in Weston in Fairfield County Connecticut, my age is 39 years, my occupation is Machinist.

2^d Interrogatory. Do you know anything of the success and capacity of William Woods Patent Shingle machine, if yes, please state what its success and capacity is? and what it has been?

Answer to 2^d Interrogatory. I have been engaged in manufacturing the iron work of both of William Woods Patent Shingle machines, from the time his patents were issued. I have seen them operated as often as once a week during that time by hand power, and have seen ^{one} of the machines

Excepted made under the Patent of 1850 operate by water power near my shop. The machines have always operated well, and one now my shop has done good work, turning off shingles with great rapidity, at the rate of 30 to 40 per minute by hand, and twice as fast by steam or water power.

Third Interrogatory - To what extent have you known of said machines having been used? and to what extent do you know of its being used at the present time.

Answer to 3^d Interrogatory. Beyond the observation admitted in the answer last above given I have no personal direct knowledge Excepted except from the large quantity of machines made and sold - I should say that at least 50 have been sold, per year from our shop.

Fifth Interrogatory. What is the value of one of said machines put up ready for using.

Answer to 5th Interrogatory. The value of one of said machines put up will depend entirely upon the cost of the fixtures by which it is put up. This may be very small not exceeding in some cases \$5. and increasing to any expense that the proprietor may choose to make.

William H. Swift

Interrogatories propounded to the said Ephraim H. Bradley a witness produced and sworn as aforesaid on the part of the said James D. Johnson and his answers thereto as follows.

First Interrogatory. What is your name, age and place of residence and what is your occupation.

Answer to 1st Interrogatory. My name is Ephraim H. Bradley my age is 45 years my place of residence is Eaton Fairfield County Connecticut, my occupation a boat & She dealer and

manufacturer

2^d Interrogatory. Do you know anything of the success and capacity of Mellans Woods Patent Shingle machine, if yes, please state what its success and capacity is: and what it has been.

Ans to 2^d Interrogatory. My knowledge of the success of that machine depends upon my having seen it in operation in some 3 or 4 different places. Its success has been the very best, I never saw it make a bad shingle.

3^d Interrogatory. To what extent do you know of said machine having been used: and to what extent do you know of its being used at present.

Answer to 3^d Interrogatory. I have seen only 4 or 5 in all and have not for a year past been in the way of observing them on account of my business being away from home in the section of country in which I reside on account of the scarcity of timber and the cheap supply of pine shingle from Maine &c the use for them is not so great as in better timber regions. I should judge however from the quantity which I know to be manufactured by Charles Croft in Weston, that they must work every where to the satisfaction of all.

4th Interrogatory. What is the value of one of the said machines put up ready for using.

Answer to 4th Interrogatory. I have no practical means of putting a valuation upon them.

Eliphalet H. Bradley

This was all the evidence introduced on said trial

The Plaintiff then asked the Court to give the Jury the following instructions

1st

If the Jury believe in this case there was a sale of property to the defendants, for which the note in question was given & that such property was of some value to the Plaintiff Johnson, & that defendant have kept said property to the present time & never offered to return the same then they cannot rescind the sale even if it were fraudulent & plaintiff is entitled to recover.

2^d In order to make out a case of fraud as set up in notice it is necessary for the defendants to prove that the representations were made on some of them, that they were untrue & that the plaintiff knew them to be false when he made them, or that they were fraudulently intended by plaintiff.

3^d In this case unless the defendants have proved to the satisfaction of the Jury the defence set up in the plea and ^{notice} motion or one of them, then the plaintiff is entitled to recover.

4th Unless the Jury believe from the evidence that plaintiff has been guilty of fraud in manner & form as alleged in the notice then so far as that branch of the defence is concerned they should find for the Plaintiff and fraud is not to be presumed, it must be proved to their satisfaction before the Jury would be authorized to find plaintiff guilty.

5th The promissory note read to the Jury makes a prima facie case and the Jury should find for Plaintiff unless a defence has been proved to their satisfaction in substance as set forth in defendant's plea or notice.

which said instructions the Court gave and to the giving the jury said instructions the defendants Counsel then and then excepted.

And thereupon the Defendant Counsel asked the Court to give to the Jury the following instructions.

Fraud may consist as well in the suppression of the truth as well as the assertion of a falsehood and if the Plaintiff is believed by the Jury to have intentionally used any means to deceive the defendants in the use of the machine the right of which they were purchasers whereby they were induced to become purchasers and gave the note in question on payment the Plaintiff cannot recover.

If the Jury believe from the evidence that Johnson fraudulently represented to the defendants that Woods Patent Shingle Machine - which he said to them would make good shingles without splitting or checking them - and that by such representations induced them to purchase the right of using making & vending the same, and to give the note for such right, and if the Jury further believe that said right was worthless in consequence of such machines not making good shingles, but splitting and checking them then their verdict should be for the defendants.

That the statements made by Johnson in his Answer - about the fact of whether the machine was good or not are not evidence, nor is anything evidence in said answer which is not responsive to the Bill or outside of the discovery brought by it.

Which said instructions so asked, the Court refused to give. And then and there qualified the same so that they read as follows.

Fraud may consist as well

in the suppression of the truth, as well as the assertion of a falsehood, and if the Plaintiff is believed by the Jury to have intentionally used any means to deceive the defendants in the use of the machine the right of which they were purchasers, whereby they were induced to become purchasers and gave the note in question on payment and further believe that the machine & right were worthless the Plaintiff can not recover.

If the Jury believe from all the circumstances in this case that the Plaintiff was guilty of any fraud in obtaining the note in question, whereby defendants were induced to execute said note to said Plaintiff the Jury should find for defendants.

If the Jury believe from the evidence that Johnson fraudulently represented to the defendants that Woods Patent Shingle Machine - which he said to them would make good shingles without splitting or checking them, and that by such representations induced them to purchase the right of using making and vending the same and to give the note for such right. And if the Jury further believe that said right was worthless in consequence of such machine's not making good shingles but splitting and checking them, the law is for the defendants so far as relates to the sale of the right.

The Jury are further instructed that Johnson's answer in reference to the statements made by him to defendants at the time of the sale, is an admission that he did represent to them that said Shingle Machine would make good shingles without splitting or checking them.

That any statements made by Johnson in his answer about the fact of whether the machine was good

Given as
asked

Given as
asked

or not. are not Evidence.

If the Jury believe from the Evidence that the Testimony of Plaintiff consists of the Statements of those who merely constructed the machinery in question. While the Testimony apposed on the part of Defendants consists of Statements of witnesses who practically operated the machines in cutting Shingles it is for the Jury to determine the amount of Credit due to either, and take into consideration of their opportunity of forming a correct Judgment of the practical working of said machine.

And as thus qualified gave them to the Jury to the refusal of the Court to give said instructions as asked and to his qualifying them as aforesaid, The Defts Counsel then and there Excepted.

Then the Defendants Counsel asked the Court to give to the Jury the following instructions.

If the Jury believe from ^{the} Evidence that Plaintiff made material representations upon the sale of the machine with regard to its ability & fitness to make Shingles whereby Defendants were induced to purchase and did purchase, the right to sell such machines & gave the note in question, and it afterwards turned out that such representations were in fact false, although said Plaintiffs might not have known whether they were true or not at the time of such sale, this is such a fraud as will annul the sale, and the Law is with the Defendants.

If the Jury believe from the Evidence that a return of the machine in question was not made before the leaving of the Suit, and they also believe that the Plaintiff presented such a return or an offer to return by his continued absence from this State - up to the time of his bringing this Suit

Given as asked

then the Law is for defendants so far as a return is concerned
If the Jury believe from the evidence that the Plaintiff
Johnson on obtaining the note in question made such false
representations as to the ability of the Machine to Cut Shingles
without checking as that defendants were induced to give
the note upon the faith of those representations, Plaintiff must
fail in his recovery

Which the Court refused to do to which
refusal of the Court the defendants counsel excepted
at the time. Thereupon the Jury retired to consider
of their Verdict, and returned into Court with a Verdict
for the Plaintiff of Five hundred and forty one dollars
and Twenty Cents.

And thereupon the counsel for
defendants moved the Court for a new Trial for the
Reasons

- 1st That the Verdict was Against the Law
- 2nd The Verdict of the Jury was Against the Evidence
in the Case
- 3rd The Court erred in giving Plaintiffs Instructions
- 4th The Court erred in refusing & qualifying Instructions
asked by defendants

Which said motion the Court overruled and rendered
Judgment upon the Verdict, to Which ruling of the Court
the defendants counsel excepted at the time. And prays
that this his Bill of exceptions may be sealed which
is done

John M. Wilson Secy

State of Illinois
County of Cook S.S.

I Walter Kimball Clerk
of the Cook County Court of Common
Pleas within and for the County and State
aforesaid do hereby Certify That the above
and foregoing, is a ~~faithful~~ true and cor-
rect Transcript of the Original papers filed
in my office, in the Case of James D Johnson
Plaintiff and William Adams Herman
Warner and Julius C Smith Defendants,
and also true copies of all the proceedings
and orders as entered of record in said
Court, in said Cause.

In Testimony Whereof I have
herewith Subscribed my name
and affixed the Seal of said Court
at the City of Chicago in said County
this 17th Day of May A.D. 1854.

Walter Kimball

Clerk



Wm. H. Adams

Wm. H. Adams

Adams

Transcript

Thos. Hoyle

for fees in. 2ms

Filed June 13, 1854
L. Seland Clk.

Paid by W. H. Adams.
W. Kimball clk.

Supreme Court of Ill.

William H. Adams &

Julius C. Smith

co-pleaded with

H. Warner -

v.

James O. Johnson

Appeal from Circuit Co.,
Court of Common Pleas

And now comes said
Plaintiffs in error by Byrne & Summitt their
Attorneys and says that in the Record and
proceedings in said Cause in the said
Court of Common Pleas there is manifest error
to his
prejudice and that in rendering said
Judgment there is error. And that the same
ought to be set aside and reversed and that
he is ready to verify wherefore he prays
Judgment &c.

And for causes of Error shows -

1st That there was error in the trial of said
Cause in that the said Court gave erroneous
instruction to the Jury for said Plaintiff
below -

2^d The Court below, refused certain instructions asked by P^lffs in error which ought to have been given.

3^d Court erred below in overruling a motion for a new trial & entering judgment upon the verdict.

4th Court erred in admitting improper testimony for the Defs in error on the trial below & in excluding testimony for said Plaintiffs in error which ought to have been admitted.

5th The Judgment & verdict ought to have been rendered for Plaintiffs in Error, for costs below & Court erred in refusing a new trial as against the Law & Evidence.

6th Court below erred in refusing a new trial to P^lffs in error - on the ground that the Judge of said Court erred in his instructions to the Jury - refusing those asked for by Plaintiffs & giving those asked for on part of Defendant and
~~for the~~

9th The Judge refused to give instructions
as asked for ~~and~~ below
unless with qualifications annexed
thereto -

Trink + Lammont
- J. H. Hove -
atty for P. H. by
in Error -

When is no error I left in error
my own appearance at
port - Attrib L. H. Hove
attys for P. H. by
in Error

Supreme Court -

William H. Adams et al,

vs -

James B. Whison

Assignment

of

Errors

Filed June 19th 1854.

L. Deland Clk.

Adams & Smith
vs
Johnson

points of Argument.

The defence in this case against the note
was upon two grounds -

1st Fraud, in selling the Sept. the Patent
~~right~~

2^d Breach of Warranty, and recoupment of
damages by way of set off.

The evidence of the conduct of
Johnson, and his manner of operating
the Machine when he was operating
with Septs, shows that he knew
the Machine would not do what he
represented it would - & that he
was seeking to deceive them.

The evidence of Warranty is clear enough.
Johnson says in his Answer that he
"may have said the Machine would do
"make shingles, without checking or
"splitting them" - this is to be taken
as an admission that he did so
affirm - and Warranty.

Johnson admits in his answer that the
note \$60. in cash - & Watch - and notes
secured by chattel Mortgage of \$1000.
besides the note in suit.

The cost of a Machine is shown to be from 50 to \$70.
The only discovery asked by Adams & Smith
of Johnson was ~~at~~ what he received from

them - 2^d What representations he
made - 3^d Whether there was a collusion
between him & Warner &
And whatever else, Johnson may
have volunteered to say in his answer
are not evidence against us -

We think the Court should have permitted
us to prove Johnsons statements as to
time of expiration of patent right. It
is said by counsel for Johnson, that
we could prove the same by Johnsons
Deed to Defts. but his statement
that there was not such "right" or
that the same had expired would be
of the same character of his deed &
just as good evidence of that fact -
otherwise a party who had taken a
Deed would be estopped from
proving that there was no such
pretended patent -

One of the grounds complained
of in our notice is that he falsely
pretended to have a patent right &c.

The Circuit Court seemed to
mistake, either the defence, or
the law, of the case - His instructions
seem to be based upon the supposition
that we were seeking to disaffirm the
contract altogether - & should therefore
return the property - while that was
not the nature of the defence -

We believe it to be well settled

that a party may recomp his damages,
by way of set off. He may plead "failure
of consideration" of the note, the breach
of warranty - or false & deceitful represen-
-tations.

The jury were evidently misled
by the instructions of the court. For
certainly a clear case of cheating was
proved - Johnson himself when cutting
shingles with the machine, kept the
knives very wet, and pressed the shingles
& kept them from the sun - and from
drying, and as soon as those very
shingles were exposed to the sun, they
checked, & split.

Yet this Johnson now turns
round and says the machine "worked
well". It may have cut ~~well~~ out shingles
but they were good for nothing -

He says the riglet was worth
something. - For what? Why to defeat
somebody else with - it was worthless
for any other purpose -

The whole record shows that Johnson
was a non resident, security for costs
was filed as for a non resident. His
answer was returned in Court house -

And the Court should certainly, I think
have given the instruction asked for
in reference to the plea, rendering it impossible
to return him the property - by reason of his absence.
J. F. Fairmount - ^{Counsel} for the plaintiff

Case to Cook Co Court
Cann. Pleas.

William H. Adams, et al.

vs.

Assumpsit.

John D. Johnson

Action below was in remitting note
to which defense was that the consideration had failed,
and that there was fraud in obtaining it.

The answer plead general issue & notice that
the consideration of the note was the sale & defendants
of a Patent right in Machine "Wood's Patent Shingle Machine"
~~Defense also goes into detail that they said that Plff had~~
made certain false representations with regard to the
ability of the Machine & promised to make shingles with
facility & cheapness, which turned out to be false
specimens, and that Machine was worthless and
that defendants could recover damages as set off to
Plff claim.

The Evidence sustains the allegations as to
the consideration of the note, the falsehood of the
representations and that Plff had received in
part payment of the purchase money some \$1000
in notes & checks besides \$40 in cash & a watch
at time of bargain.

The defense placed their right of recovery on
the ground ^{1st} that the purchase of the Machine was made in the sale
the ground ^{2nd} that the Machine was worthless and that
~~the contract~~ amounted to fraud in the note and that
Plff could not recover. 2nd That the right sold to them was
worthless, & money had already been paid for the value
of what was sold them & 3rd that they had a right to
impose upon a Recompense of the difference between
the ^{value of the} Machine represented and the property actually sold.

In case of sale upon fraud or misstatement it is at the option of the purchaser to either return the property & rescind the sale, or recover the difference in its value by way of damages -

1 Greenb. Treatise 105

3 Esp. Rep. 82 -

12 Ill. R. 338. There is no doubt that upon the authority of
Buckman v. Horner - decided by this
Court. 12 Ill. Rep. P. 338 - that if a
Party asked to rescind a sale upon the
ground of fraud he must put the other party
"in as good a condition as he was in before the
sale" by a return of the property purchased,
unless the subject matter of the sale was entirely
worthless. Rest. Justice,

But in the case at Bar. There is no evidence that
shows that Deppin asked a rescission of the sale.
They had paid \$1000. which if they had sought a
rescission of the sale they would have sued for as
against the P. & T. All the cases, ~~given~~ cited of
a rescission of sale are cases where P. & T. had
disaffirmed the contract on the ground of fraud and
sought to recover back what was received by defendant
and in that case it is indispensable that ^{the} property ~~shall~~
if any was received under the contract, should be first
returned or offered back to the other party, but in as
good a condition as before the sale -

But 1st The thing sold here was
utterly worthless -

2^d The contract was not

giving the instruction with regard to a return of the property that we were asking for a return when our Plea of general assumpsit & notice showed no intention to rescind but simply a recognition of failure of consideration to the note. This instruction misleads the jury.

3^d Again we were entitled to the benefit of an defense against a return of the property - by way of recoupment of damage - to Plaintiff's right of recovery & claim on the note.

See Albiston v. Reab & Wendell 483 -

Worheer v. Earle - 2 Hill - 289 -

Cory & Gorman v. Hill - 625 -

Murray v. Mason - 18 Wendell 426,

Leases ^{lay} down general rule, that in case of unmounted money, contract cannot be rescinded if a failure takes place but otherwise in mounted and paid - where only money return offered to return property to rescind the sale.

4th But the judge refused to instruct the jury that if the Plaintiff refused - or prevented a return of the property by his absence from the Court to the time of trial brought - that Defendant was excused from a return of the property.

The general rule will hardly be questioned that he who prevents the performance of a condition cannot take advantage of its breach.

2 Bacon's Abridg. Page 338 - Fuller v. US Bank.

2 Potter 102 - 21 Arch 417 -

7 Legum 9, 94 - 1 Gilson 562 -

See Kee v. Stiller - 4 Blackford - 222 -

Abstract propositions of Law which or for as
appears from the record have nothing to do with
the case should not be given

Stacy vs. Brown - 1 Blm 214.

A Court may not refuse to give any instruction Competitive
with the Law of the Case, & applicable to the pleadings &
proof called for by either party.

Hayes vs. Brown 1 Blm 266 -

But admit if we will that fraud was necessary to have
been proven in order to let in our defense. The Court erred
in instructing upon this point refusing to hold that a
representation which turns out to be in fact false, although
the party making it did not know at the time, was
fraud at the time it was made, but the steps
are deemed strictly it is the same as party
making it had intended fraud -

Hayes vs. Brown, 18 Pick. 109
& cases cited

Presley B. Freeman 2 Smith & Brady cases 148

Longmager B. Levy 2 Mass. 517

affirmed - 4c ibid. 337

Th. Hoag
for Off in Error

Supreme Court

Mr. H. Adams.
J. C. Smith
vs. Brown -

- vs -

J. B. Johnson

Force on

Argument -