

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 209.

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IN THE SUPREME COURT,

Third Grand Division, }

APRIL TERM, A. D. 1860. }

HENRY FOREMAN *Et Al.*

Appellants.

VS.

FREDERICK M. BALDWIN,

Appellee.

APPELLANTS' POINTS.

The evidence in this case tends to show, that while negotiations were pending between Baldwin and Foreman for the exchange of a house and lot, which Baldwin was to have of Moss, with Foreman for goods, and before any trade was completed (Rec. p. 34, 92 and 93) Tripp entered into an arrangement with Baldwin by which Tripp was to take a portion of said goods, amounting to some \$5,000, to be selected by Tripp's agent, (Rec. 49, 94.) That this arrangement was communicated by the parties thereto to Foreman, (96) and it was assented to by him at the same time of assenting to the trade with Baldwin, (34). That Tripp thereby became interested in the contract at the time of its inception as a contract.

This was the defendants' theory of the transaction. The plaintiffs' theory, on the contrary, was that Tripp dealt exclusively with the plaintiff and not with defendants; that the goods which Tripp had were to be deemed as sold to plaintiff, and defendants owed no duty to Tripp, and so the Court instructed the Jury, but refused to submit to the Jury on behalf of defendants the converse of plaintiff's instruction.

The appellants insist that they did not have a fair trial in the Court below, and assign as reasons —

I.

That the Court should have given the first instruction asked by them.

If it was right to give the first instruction on the part of the plaintiff, then we insist that, as the evidence admits of two theories, it was the duty of the Court to submit to the Jury the converse of the plaintiff's proposition.

The humane provision of constitutional law, that "no person shall, for the same offense, be twice put in jeopardy of his life or limb," is cheerfully extended by Courts to all criminals, no matter how deep their guilt; and the kindred maxim of the common law "that a man shall not be twice vexed for one and the same cause" being equally well supported by the claims of justice, whose sword shall never be twice unsheathed for the same civil injury—by considerations of public good, which is interested in having an end to litigation—should here be so kept in view that the defendants, whatever may be their alleged misconduct, could not be deprived of that protection it was intended to secure.

If the evidence should satisfy the Jury that the facts were, as submitted in the first instruction on behalf of defendants, which the Court refused, we say it is clear that Baldwin ought not to recover damages on the goods which were selected and taken by Tripp.

1. Because the right of action for such injury was in Tripp, and this suit would be no bar to an action brought by him for the same; and, therefore, if this judgment stands, defendants could be twice vexed for one and the same cause.

2. There was no such case presented by the plaintiff's declaration. He could recover only upon the ground that he had been made liable over to Tripp by reason of the misconduct of the defendants, and there is not an allegation of the kind in his pleadings.

3. There is nothing in the pleadings or in the proof showing that misconduct in selecting the goods, which Tripp had, occasioned any damage to Baldwin. "Fraud without damage or damage without fraud" says Croke J. in 3 Bulstrode's Rep. 95, "gives no cause of action, but when these two do concur and meet together then an action lieth."

Lord vs. Martin, 18 Ill. 290.

II.

The Court erred, in refusing the second instruction asked on the part of defendants. The suit was brought against four defendants; the contract was by parol, and it became a material question on the trial, (it being alleged in the declaration that the contract was made with all of the defendants,) whether it was in fact so made with all, or with one only. The release under the hand and seal of the plaintiff, recited that the contract was made with Rudolph Foreman, and the consideration received from him. "The express mention of one thing implies the exclusion of another." The recital in an instrument under seal operates as an estoppel upon the party making it.

III

The court also erred in refusing the fifth instruction asked on the part of defendants; and in adding the qualification thereto. The plaintiff claimed to recover for misconduct on the part of defendants, as to the manner of selecting the goods and fixing the prices to the same; and also for fraudulently abstracting a portion of them after they were selected, and substituting others of inferior quality.

Now the instruction as asked, was confined, as was the defendant's right to do, to a part only of the grievances complained of, viz: The manner of selecting or charging therefor. It did not purport to ask the Court to charge that the release would be a bar to the abstracting of the goods after they were selected, or for any fraudulent devices in procuring an acceptance of them. But the Court added: "This is the law if the defendants delivered to *plaintiff* and *Tripp* the *same goods which had been selected*, and used no fraudulent devices to mislead the plaintiff into an acquiescence or into an acceptance of the goods."

The failure to deliver, after selection, the same goods which had been selected, could not, certainly, have the effect to make defendants guilty of misconduct in the selection, when done in the manner supposed by the instruction asked.

This instruction was based upon evidence, (see rec. pp 156 to 158 including 158,) and submits to the jury to find from the evidence certain facts, which, when found, show that when the plaintiff signed, sealed and delivered the release, he did it with his eyes open, (see rec. p 160,) so far as the matter of selecting the goods and affixing the price was concerned.

But this qualification also assumes that if the defendants failed to deliver to *Tripp* the same goods which he had selected, then they are liable to the *plaintiff*, not merely for the misconduct of not *delivering*, but for the manner of selecting, or the prices charged for said goods.

This instruction is based on facts which preclude the idea of fraud, and we submit, that under such facts as are therein submitted, the release would be a complete bar to any recovery on account of the manner of selecting, or the prices charged for said goods.

IV.

By refusing the sixth instruction asked by defendants, the Court in effect goes the length of holding that, although the goods *Tripp* was to have were in fact selected and set apart for him by the joint act of himself and the defendants; yet, if the defendants, after that, interfered with and abstracted a portion of those so set apart, the plaintiff, *Baldwin*, could recover for such injury.

The declaration avers that before these goods were selected, the house and lot were conveyed to defendants, which was payment of the price, and when the goods were thus selected from the mass and set apart for *Tripp*, the title vested in him. He could have brought replevin or trover for them, or case against the defendants as bailees : so that, if the store of the defendants had burnt and these goods destroyed, the loss would not have fallen on defendants.

In *Mason vs. Lockbarrow*, 1 H. Blackstone's R. 363, Lord Loughborough says :
" A destination of goods by the vender to the use of the vendee ; *the marking them, or making them up to be delivered ; the removing them for the purpose of being delivered*, may all entitle the vendee to act as owner, to assign and to maintain an action against a third person into whose hands they have come."

Lansing et al. vs. Turner, 2 Johns. R. 16-17.

V.

The Court should have given the seventh instruction as asked by defendants.

The release under the hand and seal of the plaintiff, acknowledges the receipt of the consideration of the premises from Rudolph Foreman in full for the same, and *releases and discharges him from any further claim therefor*. Now these goods were the consideration for said premises, and a release and discharge from any *further claim* for the goods, or in other words, for the consideration, would certainly include every incident arising from the selection of them, or the prices affixed thereto. But the Court added to said seventh instruction a qualification in these words : " Unless fraud or circumvention were used in obtaining the release." By this qualification and the second instruction given by the Court on behalf of the plaintiff, the Court submitted the question of fraud, in obtaining the release, to the Jury.

Fraud cannot be presumed but must be proved. There is not a word of evidence in the case tending to prove that this release was obtained by fraud, and it was therefore error to submit that question to the Jury.

Bradley vs. Grosh 8 Barr. (Penn.) 49.

Fraud cannot be given in evidence in a Court of *law* to avoid a deed, unless it be fraud in the *execution* of the instrument.

Anderson vs. Johnson and others, 3 Sandf. R. 1.

Taylor vs. King, 6 Munf. 358.

Dorr vs. Munrell, 13 Johns. R. 430.

Franchot vs. Leach, 5 Cow. R. 506.

VI.

The Judge erred in examining the witness Hale at length, and then refusing to the defendants the right of cross examining.

VII.

The Court erred in excluding the witness Adolph Katz for incompetency.

The pardon given in evidence in terms restored him to all he had forfeited by reason of his conviction. But the Court, upon the authority of Greenleaf's evidence, 1st Vol., sec 378, held that the executive had not the power by his pardon to restore competency, because the disability was not a consequence of the conviction according to the principles of the common law, but was annexed by the express words of a statute. (See Scates comp. p. 405, sec 174.)

The proposition in Greenleaf is this: "The rule that a pardon restores the competency and completely rehabilitates the party is *limited* to cases where the disability is a consequence of the judgment, according to the principles of common law. But where the disability is annexed to the conviction of a crime by the express words of a statute it is generally agreed that the pardon will not, in such case, restore the competency of the offender; *the prerogative of the sovereign being controlled by the authority of the express law.*"

Now, the first branch of the above, that the rule that a pardon restores competency is *limited* to cases where the disability is a consequence of the judgment by common law principles is not necessarily true. It would depend, as to that, upon the real test whether the prerogative of the sovereign was in part controlled by the authority of the express law. The *statute* might annex the disability, and at the same time the executive be clothed, by the constitution, with the power to pardon, and in his discretion restore to competency. What inherent difficulty can there be in this? The statute which declares the infamy of the offender is merely declaratory of the common law. It was in force prior to the present constitution. The constitution of 1818, article 3, sec. 5, was this: "He (the Governor) shall have power to grant reprieves and pardons after conviction except in cases of impeachment."

To this power in the new constitution are added some important provisions. Article 4, sec. 8. "The Governor shall have power to grant reprieves, commutations and pardons after conviction for all offences except treason and cases of impeachment, *upon such conditions, and with such restrictions and limitations as he may think proper*, subject to such regulations as may be provided by law, relative to the manner of applying for pardons." By those provisions the executive may in his discretion continue the disability or remove it.

The decisions made upon the English statute do not apply. That statute, 5 Eliz. c. 9, expressly provided that the offender should never be admitted to give evidence in Court of justice *until the judgment be reversed*. 1 Phil. Ev. 35. As the sovereign cannot, by the law of England, *reverse* a judgment, this statute by express words took away the prerogative of restoring to competency. 5 Espinasse R. 94, and the disability was made a part of the judgment, (see form of sentence, 6 East's R. 327.)

2 Russell on crimes 976 (note q.)

9 Bac. ab. 416, 417.

Rex vs. Ford, 2 Salk, 689 id. 513.

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Rex vs. Grupe, 1 Ld. Raym. 256.

W. K. McALLISTER,

For Appellant.

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HENRY FOREMAN *Et Al.*

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V.S.

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Appellee.

APPELLANT'S POINTS.

I.

The Court erred in permitting Hale to testify as to the condition and prices of the goods delivered to Tripp—see page 5 of abstract—and especially in permitting Hale to testify to the estimate that he had made as to how the prices of the goods received by Tripp compared with New York Manufacturers' prices.

It placed the witness in the place of the Jury as to the damages to be awarded to the plaintiff.

Massure vs. Noble, 11 Ill. 531.

Dunlop vs. Berry, 4 Seam. 328.

The exceptions preserved as to Tripp's testimony, and Minor's testimony, on page 6 of abstract, are upon the same grounds.

The other objection to the testimony, viz: that the plaintiff could not recover for anything relating to the goods received by Tripp, will be presented in the points made upon the instructions.

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The other objection to the testimony, viz: that the plaintiff could not recover for anything relating to the goods received by Tripp, will be presented in the points made upon the instructions.

II.

The Court erred in refusing defendant's counsel a further cross examination of Hale—see page 5 of abstract. The Court had permitted Hale to testify to his estimate, that the goods were one hundred per cent., and over, higher than they should be. Hale had not been examined upon either side as to his knowledge of the cost of material and manufacture. In answer to the Court he specifies the cost of material and manufacture and says he made his estimate upon that calculation. Yet the Court denied defendant's counsel the right of cross examining him upon the new matter, viz : his knowledge of the basis of his estimate. "When a witness has been examined in chief the other party *has a right* to cross examine him."

1 Greenleaf Ev. s. 445.

Certainly the right to cross examine as to matters brought out by the Court is the same.

III.

The Court erred in rejecting Katz as a witness.

Art. iv sec. 8 Const. of Ill. confers on the Governor the authority to grant pardons upon such conditions and with such restrictions and limitations as he may think proper. The pardon in this case was pure and simple, acquitting Katz of the offense and restoring him to all he had forfeited. Therefore it wiped out his infamy and placed him, before the law, in pristine innocence.

It is no answer to say that his rejection is by a rule of evidence, because the rule of evidence is a part of the punishment; by the same reasoning he might be excluded from the polls under the name of regulations concerning elections, and with all the arguments drawn from views of public policy in its favor, that can be urged in favor of sustaining the rule of evidence.

IV.

The Court erred in giving the first instruction on the part of the plaintiff and in refusing the first and sixth instructions asked by defendants.

The testimony of Tripp and Hale at least tended to show, and authorized the defendants to insist before the Jury, that the transaction between Tripp and Baldwin was a transfer by Baldwin to Tripp of \$5,500 worth of goods, to be taken by Tripp from the store of the defendants in such kinds as suited Tripp. That Baldwin had no interest in the selection of them. That so soon as the agreements between the plaintiff and the defendants, and between the plaintiff and Tripp, were made and the defendants were informed of the latter agreement and had assented to the goods being selected by Tripp, or by Hale for him, then there was a privity between Tripp and the defendants and by mutual consent they might have substituted something else, as for instance \$4,000 cash or a city lot in lieu of the \$5,500 worth of goods and as a satisfaction for them, and Baldwin would have had neither right, nor probably inclination, to complain. Then if any wrong was committed by the defendants, as to that \$5,500 lot of goods, Tripp was the party injured and to sue.

That he could sustain an action the following authorities show :

Dunshee vs. Hill, 20 Ill. 499.

Low vs. Martin, 18 Ill. R. 290.

Weatherford vs. Fishback, 3 Scam. R. 170.

McCoy vs. Herbert, 9 Leigh R. 548.

Pasley vs. Freeman, 3 Term R. 51, and the notes thereto in 2 Smith leading cases.

Benton vs. Pratt, 2 Wend. R. 385.

Doubtless under the authority of the case of *Dunshee vs. Hill*, above cited, and of *Bristow vs. Lane*, 21 Ill. 194; *Brown vs. Strait*, 19 Ill. 88, and *Eddy vs. Roberts*, 17 Ill. 505, Tripp might even have maintained assumpsit for the non delivery, or breach of warranty of the goods against the defendants.

But whether there was such a privity between them as to ground an action *ex contractu* upon or not, in case for the fraud no such objection could arise; no privity of contract in such action would be necessary.

Langridge vs. Levy, 2 M. & W. 519.

Hines vs. Krihblinger, 14 Ill. 469.

Pasley vs. Freeman, 3 Term 51.

The loss, if any, fell upon Tripp. It could do Baldwin no injury that Tripp

did not get his dues. This action is not based upon any liability over of Baldwin to Tripp; there is neither allegation or proof of any such liability, nor could there be under the circumstances; for if Tripp was cheated and should complain to the plaintiff it would be sufficient for the plaintiff to answer that it was not his fault, but Tripp's own neglect in confiding in others—that he should have examined his goods before accepting them.

Therefore Baldwin could not sue the defendants as to the \$5,500 lot of goods. *Fraud in the defendant and damage to the plaintiff* must concur or no action lies.

Pasley vs. Freeman, 3 Term 51.

Morgan vs. Bliss, 2 Mass. 111.

In this last case, which was case for deceit, Ch. J. Parsons says “an act done in pursuance of an unlawful intent and without occasioning actual damage, is no ground for a civil action.”

The party defrauded, and those injured by the fraud, can alone take advantage of it.—16 Ill. 215.

“Fraud can never, in judicial proceedings, be predicated of a mere emotion of the mind, disconnected from an act occasioning an injury to some one. A fraudulent transaction implies a wrong done as well as a person injured.”

4 Selden R. 97.

By the first instruction of the Court for the plaintiff, and by the refusal of the first and sixth instructions asked by the defendants, the Jury were left to find in favor of Baldwin a verdict for the damages which Tripp alone had sustained.

VAN BURENS & GARY,

Attorneys for Appellants.

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Supreme Court

Foreman et al

vs
Baldwin

Appellants Points

Van Buren & Gary
& W. R. McAllister
App'ts.
Clerk for ~~the~~

Filed April 18, 1860

L. L. Lamer.
Clerk

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APPEAL FROM

SUPERIOR COURT

OF CHICAGO.

APPELLEE'S POINTS.

This was a special action on the case for fraud and deceit by the Foreman Brothers defendants, in the Court below, concerning an agreement with Baldwin plaintiff below, by which they agreed to sell and deliver to him, clothing and dry goods amounting, at New York or eastern manufacturers' prices, with fifteen per cent. added, to the sum of \$7,500.00 in exchange for a house and lot in the city of Chicago. The abstract of record furnished by the appellants is so meagre and unsatisfactory, that it will require an examination of the record itself, to obtain a correct understanding of the case. The declaration contains four special counts and one count in trover. The fraud and deceit, as alleged, consists in the falsely and fraudulently naming and giving of prices to clothing and goods as New York or eastern manufacturers' prices, with only fifteen per cent. added, which were at least fifty per cent. above such prices, and in falsely and fraudulently representing, that the prices so named and given were the same as those upon the New York invoices or bills of purchase, and in false and fraudulent assurances and

promises, that they, the Foreman Brothers, stood ready to and would produce and exhibit to Baldwin such bills of purchase, and thus satisfy him that the prices so named and given by them were correct, and in false and fraudulent promises and assurances that the goods selected should be marked at the correct prices according to such bills, and properly packed in boxes and delivered so packed, and in fraudulently substituting and packing in boxes, in part, other inferior and different kinds and qualities of clothing, from the kinds selected upon which prices had been so by them named and given, and in marking clothing and goods much higher even than the prices so fraudulently named and given, being at least one hundred per cent. (instead of fifteen per cent.) above New York or eastern manufacturers' prices, and in fraudulently stating after the clothing and goods had been by them packed in the boxes, that the boxes contained the kinds, quality and quantity at the prices agreed to make up the requisite amount, thus deceiving and defrauding Baldwin, and inducing him to accept and receive the boxes of clothing and goods so packed, as and for a fulfillment of the agreement by the Foreman Brothers, and to procure and deliver a deed of the house and lot, executed by Moss and wife, in whom was the legal title. (See first four of the said counts of declaration at pages 7 to 19, inclusive of record.)

The proofs fully sustained the allegations, indeed the frauds proved were even more aggravated than the frauds alledged.

It appears from the testimony of unimpeached witnesses, competent to judge of prices, that the Foreman Brothers, in fact, succeeded in putting off upon Baldwin goods at over one hundred and fifty per cent. above New York or eastern manufacturers' prices, from two and a half to three times as high as such manufacturers' prices. (See testimony of the witnesses Minor at pages 79 to 85 inclusive of record, of Tripp at page 101, of Ely at pages 113 to 116 inclusive, of Ross at pages 119 to 121 inclusive, of King at pages 123 to 125 inclusive, also copy of bills rendered by Foreman Brothers, with prices which they actually put to the goods as packed and delivered.

The witnesses Minor and Tripp give the number and prices to each article of Goods produced in Court as specimens, as the same were entered on the bills, these articles are subsequently shown to the witnesses Ely, Ross and King, each competent judges, and they put a valuation upon each article, which shows that the goods were marked and charged upon the bills by the Foreman Brothers from two and a half to three times as high as they should have been; and it also appears from the testimony of Minor, that the kinds of which specimens were not

obtained, were charged at as high rates upon the bills (with a few unimportant exceptions) as those of which specimens were produced, (see pages 84 and 85 of record.)

Hale's judgment is, that those articles he examined ranged from one hundred to two hundred per cent. above New York or eastern manufacturers' prices, (see page 45 of record,) and the evidence was abundant to show that this result was brought about by the most cunningly devised and skillfully executed scheme of chicanery and fraud on the part of the Foreman Brothers.

It was proved beyond question, that by the agreement goods were to be delivered at New York or eastern manufacturers' prices with only fifteen per cent. added, of sufficient quantity to amount to \$7,500 in payment of the purchase price of the house and lot, (see testimony of Mappa, page 31 and 32 of record, Hale's testimony at pages 34 and 35 of record, also Scanlan's testimony, (a witness called by the Foremans,) pages 141 and 142 of record.)

Baldwin was from the country, (Oswego, Kendall County, Ill.) His principal business was farming, (see page 85 of record,) and his knowledge of merchandise and its value was very limited. This the Foremans undertood, as Scanlan informed them that "Baldwin was not much acquainted with goods, and very likely they could get a good price out of him, probably \$2,000 more than they were worth;" and when Baldwin was inclined to be off about the trade they were anxious to complete it; told him "they wanted to make a fair, upright trade—let him have the goods at New York manufacturers' prices; that they wanted to keep him as a customer"—they told him so several times, (see testimony of Scanlan, pages 145 and 146 of record.) And when Hale went to examine their goods and prices they were at first shy of him, refused to talk with him, said they were dealing with Baldwin, and when he told them that he was only there to examine the goods and prices with reference to Tripp, trading for a portion of them with Baldwin if Baldwin completed his trade with them, they professed to be willing to trade fair with Mr. Baldwin—"that he should have the goods at 15 per cent. above New York or Eastern manufacturers' prices, and said that if all he wanted was to look through the goods he might do so." He looked over the clothing and picked out or indicated to them the kinds Tripp wanted, and sufficient in quantity as near as he could judge to amount to \$5,000 (see page 34 of record.) As they named over prices to him Hale complained that they were too high, but that if they were to produce the bills of purchase that was all he wanted. They said they would produce their bills and he should have a fair and honest thing; "that they would

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bill off and box them up and put the Eastern manufacturers' prices to them what they were worth and add 15 per cent. to them, and make the bill out the next morning." This was Friday or Saturday. Hale was to come the next Monday and look the matter over, (see page 35 and 36 of record.)

Hale went to store again the next Monday, in the forenoon; found Baldwin and the Foreman brothers there. He asked them what they had done; they told him they had gone on and selected a few of each kind that he (Hale) had selected, enough to make up the bill (that Tripp was to have of Baldwin.) They said that what he (Hale) had picked out came to about \$3,000, and that they had selected a few of each kind that he had selected, enough to make up the complement. He asked them if they had them billed off; they said they would make out the bills and would have it done pretty soon.

He went there in the afternoon with Tripp—asked them about the bill; they said it was not made out—they would have it done as soon as they could—that their book-keeper was out; they said they would make out a bill that day and produce the New York bill, and add the per centage, and everything should be done all right and straight; that they would attend to it all right—that they need not be alarmed—that they could get the goods the next day. Hale says Baldwin finished picking out his goods that day. That Monday afternoon when he was there the Foremans were boxing up the clothing and goods; several boxes were packed and they were nailing them up, (see pages 36 and 37 of record.)

During the interviews Hale had with the Foremans, they told him they manufactured their own clothing East. He asked them how their goods were bought. They said they bought their clothes low at cash, and manufactured as low as anybody could.

Hale testified that when he went there Monday in the forenoon they were boxing up the goods and nailing up the boxes, (see page 38 of record.) That when he left there in the afternoon pretty much all the clothing and goods were boxed up, (page 39 of record.) Hale also testified that on this Monday they said they had examined the title to the house and lot and were satisfied with it, and Baldwin gave them the deed, (page 39.)

The next day Hale went to Minnesota on business. It will be observed that the prices named to Hale, which he complained of as too high, and which the Fore-

bill off and box them up and put the Eastern manufacturers' prices to them what they were worth and add 15 per cent. to them, and make the bill out the next morning." This was Friday or Saturday. Hale was to come the next Monday and look the matter over, (see page 35 and 36 of record.)

Hale went to store again the next Monday, in the forenoon; found Baldwin and the Foreman brothers there. He asked them what they had done; they told him they had gone on and selected a few of each kind that he (Hale) had selected, enough to make up the bill (that Tripp was to have of Baldwin.) They said that what he (Hale) had picked out came to about \$3,000, and that they had selected a few of each kind that he had selected, enough to make up the complement. He asked them if they had them billed off; they said they would make out the bills and would have it done pretty soon.

He went there in the afternoon with Tripp—asked them about the bill; they said it was not made out—they would have it done as soon as they could—that their book-keeper was out; they said they would make out a bill that day and produce the New York bill, and add the per centage, and everything should be done all right and straight; that they would attend to it all right—that they need not be alarmed—that they could get the goods the next day. Hale says Baldwin finished picking out his goods that day. That Monday afternoon when he was there the Foremans were boxing up the clothing and goods; several boxes were packed and they were nailing them up, (see pages 36 and 37 of record.)

During the interviews Hale had with the Foremans, they told him they manufactured their own clothing East. He asked them how their goods were bought. They said they bought their clothes low at cash, and manufactured as low as anybody could.

Hale testified that when he went there Monday in the forenoon they were boxing up the goods and nailing up the boxes, (see page 38 of record.) That when he left there in the afternoon pretty much all the clothing and goods were boxed up, (page 39 of record.) Hale also testified that on this Monday they said they had examined the title to the house and lot and were satisfied with it, and Baldwin gave them the deed, (page 39.)

The next day Hale went to Minnesota on business. It will be observed that the prices named to Hale, which he complained of as too high, and which the Fore-

mans assured him should be tested by the New York bills, were on an average not one half as high as the prices finally charged on the bill by them, (page 43 of record.)

Some four or five days after Hale went to Minnesota Tripp went to Foremans' store alone, with an order from Baldwin for that part of the goods that he was to have of Baldwin, and called for the goods. One of the Foremans said they were all right; they were put in boxes, and the boxes were all ready for him. Tripp asked for the bill of the goods, and was told that it was not made out, but that they would have it very soon, that they had been very busy and hadn't had time to make it out; he was requested to call again and they would have the bill in a short time; he told them he wished to have it made as soon as they could. This was in the forepart of the day.

He went again the next morning and called for the bill—was told by the clerk that it was not quite finished, he requested them to send the goods over to his store, they said they would and sent them that day, and shortly after sent the bill (see page 97 and 98.)

As soon as he received the bill Tripp opened the boxes and compared the goods with the bills; found that the goods agreed with the bills in kinds, quantity, and prices charged. Discovering that the goods were charged enormously high, he went immediately and remonstrated with M. R. Foreman, said the goods were not all of the kinds selected, and were charged enormously high.

Foreman said they were all right, were of the same kinds selected by Hale, except there was not enough, and he and Baldwin duplicated some of them. Foreman said the goods were all right, and the trade was all right. That he had to do with Baldwin, and had nothing to do with Tripp, only to deliver to him what Baldwin was to have, (98 and 99.) That portion of the goods not delivered to Tripp were sent by the Foreman Brothers by railroad to Baldwin at Oswego, Ill., (page 79 of record,) together with the bill in evidence, they were opened and found to correspond with the bill in kinds, quantity and prices.

When Hale returned from Minnesota and learned the state of things, he went over to the Foremans' store. They appeared (as Hale says,) rather offish; they said but little to him, did not want to talk with him. He stayed but a little while and went away, (page 45.) Some time after, about a week, more or less, he went

there again with Baldwin. He told them the goods were not as bought, not as he had picked them out that they had put in things he did not buy. Baldwin told them he was dissatisfied with the bargain, with the goods, he said they had not billed them to him as they agreed to, that the goods were not as contracted for, that they should let him have them at New York manufacturers' prices with 15 per cent. added, but they had not done so. They said the trade was made, and that was all right, they had nothing to do with him further. He (Baldwin) said that he thought they had ought to make it right, or do something in the matter. They said they had nothing to do with him, and wouldn't do anything with him and that he could go away, (page 46.)

Hale told them the goods were not as contracted, that they had not billed them as they told him the prices; that they agreed to show him the bills and had not done so. They said they had nothing to do with him, and that he might go away; and they went into their office and shut the door, and told him to leave the house. Hale wished to see the bills. They said they had nothing to do with him. Baldwin also inquired for the bills. No bills were produced. Baldwin told them his house and lot was worth all he asked for it in money, and he sold it to them cheap, and expected to have the goods in the same way. They said they had made the trade with him, and that was all they had to do with him, (page 47.) That they did not make two trades, (page 48.)

These are some of the leading facts, showing the outrageous fraud perpetrated, and the artifices used to accomplish it. By doubling and even tripling prices, and thereby diminishing quantity in proportion, they figured up the amount of the purchase price of the house and lot, and by chicanery and fraud put these goods off upon Baldwin as a full compliance with the agreement on their part, when, in fact, a careful calculation and estimate will show from the undisputed testimony that the goods actually delivered did not amount at the agreed prices to but a little over \$3,500, leaving a deficit in value of over \$3,900; still the Jury only found a verdict for \$2,500, and it is from the judgment on this verdict that the Forman Brothers have taken an appeal to this Court.

I.

The so-called release introduced by the defendants, had not the force or effect claimed, (page 167 of record.) The witness Grodell, who was the book-keeper of the defendants at the time and in their interest, and whose testimony was equivo-

eating and contradictory in itself, and to a great extent contradicted by the whole current of the evidence in the case; testified that this paper was handed to him by Rudolph Foreman, drawn up (but not in the hand-writing of either of the defendants, and in whose hand-writing it does not appear) with directions to have it signed by Baldwin, that he (Grodell) had it presented to Mr. Baldwin, and Mr. Baldwin signed it—but as appears before a single box of the goods was delivered, and before Baldwin had discovered or had any intimation of the fraud that was being practiced upon him. And the defendants claimed that this paper, even though obtained by fraud, absolutely cut off Baldwin's claim, by way of estoppel. But it could have no such effect.

1. Because it was a mere receipt acknowledging the receipt in full of the consideration of house and lot conveyed, and as such, even though free from the taint of fraud, could be explained, limited or contradicted by parol testimony.

Walnath vs. Horton, 5 Gilman, 437-441.

In assumpsit for the consideration money, the acknowledgment of its receipt in full under seal, may be contradicted by parol 15, Ills. 232—20 Johns, N. Y., Repts. 338. So it may be shown that the real consideration was a verbal executory contract to build a house instead of money paid as expressed in receipt.

Kinzie vs. Penrose, 2 Scam., 515.

A receipt for \$41 cash for lumber sold, may be contradicted by showing that a check and not cash was received. 11 Barbour, N. Y., 515.

A receipt purporting to be for cash received may be contradicted, by showing that it was in fact for a promissory note. 1 Watts & Serg. 321.

A cash consideration expressed and acknowledged in a bill of sale may be contradicted by showing that the real consideration was not cash, but a negro. 6 Alabama, 811, 1 McCord. (law) 514.

A receipt for cash to be accounted for, may be shown to be for a land contract of less value than face of receipt. 8 Barbour, N. Y., 48.

An acknowledgment under seal of receipt of cash consideration, may be contra-

dicted by showing that the real consideration was iron of a specified quantity, valued at a stipulated price. 16 Wend., 460. See also 22 Vermont, 380—23 Vermont, 494—497—11 Humphrey, 308—16 Conn., 383—1 J. J. Marshall, 387.

A seal adds nothing to a receipt, nor does it prevent its contradiction—10 Vermont, 96—17 Mass. Reps., 249; nor does the addition of the words “and release and discharge from any further claim therefor,” add to the effect of the paper, or make it anything but a receipt, or prevent its explanation or contradiction by parol testimony.

The acknowledgment of the receipt of the consideration in full uncontradicted, is just as complete an acquittance and discharge, as when express words of release and discharge are added, and if the former can be contradicted, for the same reason can the latter. This is not only plain upon reason, but is supported by express authority. See 16 Wend., 460, 461 above cited; also 2 Zabriskie, 680, 691, 695.

Wolf vs. Hanver, 1 Gill, Maryland, 84.

Taggart vs. Stanbury, 2 McLean, 543.

These authorities would seem conclusive. Indeed to deny this position, would lead to the grossest absurdity, for this paper having been signed and delivered before any of the goods, as well might the defendants have refused to deliver any part of the consideration, still holding the house and lot, and reposing upon this so called release as an estoppel, as to deny the plaintiff's right to go behind it in this suit for damages for fraudulently depriving him of a part of the consideration, a position which even these defendants will not have the hardihood to assume.

2. But viewed in any light, this pretended release was subject to attack on the ground of fraud, and it was not error of which the defendants could complain, that the Court below by instructions left this question of fraud to the Jury under the evidence. The obtaining of this release in advance, was but an additional circumstance to show the original fraudulent designs of these parties, it was but a shallow attempt to cover up fraud, and “it is an old maxim, that it is the very essence of fraud to attempt to cover up fraud,” per Breese justice, 20 Ills., 280.

Fraud vitiates all transactions, even the most solemn acts and deeds known to the law—Fermor's case, 3 Cokes Reps. 77—1 Burrows, 396; deeds and other speciali-

ties may be annulled and claims thereunder defeated in Courts of law, as well as equity, on the ground of fraud. Courts of law have con-current jurisdiction with Courts of equity, over questions of fraud in such cases. Nor are parties restricted at law to mere questions of fraud affecting the execution of the instrument, as the fraudulent mis-reading or the fraudulent substitution of one instrument for another. Breese reports 234—3 Scam. 32, 34, 35—3 Scam. 113, 115—17 Ills. 263—8 Peters, 244, 252; 12 Peters, 11, 22, 23—22 Pick. 546—3 Foster, N. H., 535—9 Georgia 532—2 J. J. Marshall 181—185—11 Vermont 323—Story's Reps. 135, 147—149.

Even where it is held that the party is restricted, at law, to fraud affecting the execution, the rule is only applied to defences attacking the consideration for fraud, in suits brought on or based on specialities, and in the same cases where it is applied, the Courts concede that in a cross action directly for the fraud (as is the case at bar) the sealed instrument does not estop the plaintiff. See opinion of Tompkins, Justice—*Vroman vs. Phelps*, 2 Johns, N. Y., 178, 179—13 Wend. 527—529; also, opinion of Savage Ch. J., 15 Wend. 357; and even where applied, the Courts seem constrained to confess that no very good reason can be urged in support of the rule. Opinion of Savage Ch. J., 4 Wend. 473.

3. But again, should it be held that this instrument is anything more than a mere receipt, then it is insisted that the Jury were warranted from the circumstances in finding that there was fraud affecting its execution within the strictest rule ever held by any Court, and that Baldwin did not know or mistrust that he was executing a release fully acquitting the parties from all claim for damages for frauds that they were practicing upon him; indeed, how can it be claimed that Baldwin understood that he was releasing damages for frauds of the very existence of which he was then ignorant?

II.

The second instruction asked by the defendants below, was properly refused. The testimony was ample, that the trade was in fact between Baldwin and all of the defendants. See copies of bills as rendered, pages 127, 128 and 131, and Mill's testimony at page 119 of record, also the testimony of the witnesses Scanlan, Mappa, Hale and Tripp. Nor does this seem to be disputed, but it is sought again to estop Baldwin from claiming the benefit of the real facts proved, by

virtue of this so-called release. The authorities cited under first point apply with equal force here. But as more directly to this point, see *Hersom et al vs Henderson*, 3 Foster, N. H., 498. Again, it is only the parties to an instrument as between themselves, who are estopped, and estoppels are always mutual. Henry, Benjamin and Joseph Foreman, not being parties to this instrument, there could be no estoppel by its recitals as between them and Baldwin. 1 Bouvier's Law Dic. page 482—3 John Cases, N. Y., 101—2 John's Reps. 382—4 Peters 83. And surely Rudolph cannot be heard to object that the other defendants were made joint parties with him in the suit to share its burdens. But suppose none but Rudolph were interested in the trade; if the others assisted in the perpetration of the fraud, they were as much liable as though interested in its anticipated fruits. 3 Scam. 170—173—11 Metcalf 356—2 Day 381.

III

As to instructions given and refused at the trial, in addition to what has already been said, we insist,

1. That the instructions given at the request of the plaintiff, (pages 171 and 172 of record,) and the third, fifth and seventh instructions for the defendants as modified by the Court, and given, (pages 173, 174, 175, 176, 177 and 178 of record,) presented the law of the case as applicable to the testimony, fully, and at least as favorably for the defendants as they could legally claim; and substantial justice having been done in this respect, the judgment should not be disturbed, even though other instructions in and of themselves proper were refused—19 Illinois 59.

2. In so far as the first and sixth instructions asked by the defendants, contain anything in addition to what was given, they seem to be based upon the hypothesis, that by the agreement with Tripp, (assented to by the Foremans,) Tripp was to take a certain amount of goods from the Foremans, to be selected by himself upon his own responsibility, he dealing directly with the Foremans in such selections, looking to them, and not to Baldwin for the requisite amount, and that the goods which finally went to Tripp, were in fact so selected by him, and hence it is claimed that if any fraud was committed as to these goods, the Foremans were liable therefor directly to Tripp, and not to Baldwin.

But this hypothesis was based upon no evidence, and was directly opposed to the positive and uncontradicted testimony, and for this reason these instructions were properly refused—19 Ills. 29, 510—20 Ills 115, 478—1 Story 146.

The agreement between Tripp and Baldwin was proved by Tripp himself, and by no other witness. Tripp testified that he made the trade with Baldwin, that he was to have the goods of Baldwin if Baldwin made the trade with the Foremans at 10 per cent. off from the price Baldwin was to have them of the Foremans, and told Baldwin that he would have Hale go over and look at the goods before he finally consummated the trade with him, (page 93 and 94 of record,) and if he found the goods reasonable he would trade, but that he would have nothing to do with picking out the goods. He says, "I told him (Baldwin) I would have nothing to do with going over and picking out the goods or anything of the kind, Mr. Hale might go and select out a portion of the goods as he thought would be best goods for me to sell at auction, and if the bills were shown him and were straight, I would take the goods at the agreement made as I have just stated; we agreed upon a trade upon these terms," (page 95 of record.) Hale did accordingly go to the store and name or select the kinds suitable to sell at auction, but not of sufficient amount to complete the quantity Tripp was to have of Baldwin, and went away leaving the selection uncompleted and the goods unpacked and undelivered, and afterwards Baldwin and the Foremans completed the selection and made up the amount, and the goods were put up and boxed as the goods of Baldwin, (page 34 to 37 inclusive of record,) and after the goods were packed in the boxes, Baldwin gave specific directions to the Foremans not to deliver them to Tripp till he got back from Indiana, where he was going to complete the trade with Tripp, (see Grodell's testimony, page 163 of record.) And afterwards these goods so boxed, were only delivered to Tripp upon the specific direction or order of Baldwin, (page 97 of record.) After Tripp opened the goods and discovered the fraud he went immediately to the Foremans, and made complaint that the goods were enormously high. Rudolph replied, that "they were all right and the trade was all right, that he (Foreman) had to do with Baldwin, and that he had nothing to do with me (Tripp) only to deliver to me (Tripp) what Baldwin was to have," (pages 98 and 99 of record.)

The bill of these very goods was made out by the Foremans, as goods sold by them to Baldwin and not to Tripp, (see bill dated September 13th, at pages 127 and 128 of record.) With this state of the case there was no question but that the Foremans dealt with Baldwin in every respect, as to this bill the same as the other, and if there was fraud the Foremans were liable to Baldwin therefor, and Baldwin was liable to Tripp upon his contract for any deficiency in this bill, and

when plaintiff commenced proving that Tripp had actually claimed damages of Baldwin on this bill which had been allowed, the defendants objected, and the plaintiff gave no evidence as it probably was immaterial, the Foremans being equally liable, and to the same amount, whether Baldwin gave away, destroyed or sold these goods at a profit or at a loss, (page 102 of record,) 6 Metcalf 246. So far as these instructions contained the same propositions embraced in those given they were properly refused. 12 Ills. 261—20 Ills. 443—457.

3. The fourth and ninth instructions asked by the defendants, were properly refused. The statute of frauds has no application to this case for the reason that the agreement was executed on the part of Baldwin, by the conveyance of the house and lot; it was an agreement on the part of the Foremans to deliver a given quantity of goods which had been paid for, by the conveyance to them of a house and lot, and they were just as much bound to fulfill its obligations in every respect as though the goods had been paid for in cash; this position is supported by ample authority. 17 Mass. Reps. 249—1 J. J. Marshall 387—23 Vermont 494—497—11 Humphrey 308—15 Alabama 276—2 John. Reps. 338—9 Cow. 266.

4. Some of the instructions and especially the fourth and ninth, were so enigmatical and complicated as to tend rather to mislead than instruct the Jury, and were therefore improper. 3 Gilman 380—381.

5. If any of the instructions refused should be held to contain in part legal propositions, still, being connected with illegal propositions, it was correct in the Court to reject the whole instruction. 3 Barbour, N. Y., 548—552.

IV.

The witness Adolph Katz, was properly excluded; the Governor's pardon did not restore his competency. He having been convicted of larceny, was by the statutes of Illinois " forever thereafter " rendered incompetent. Revised statutes, Chap 30, sec. 62, 63, 174 It is only the common law disability which a pardon removes, and not a disability created by express statute. Then it becomes a fixed rule of evidence which the Governor's pardon cannot over-ride; such are the authorities—1 Greenleaf's Ev., sec. 378, and cases cited in note. No other construction would give any effect to sec. 174 of statute, as the disability subject to

restoration by pardon, would have existed at common law. 11 Foster N. H., 314—1 Day 485—8 Metcalf 531.

V.

No errors were committed by the Court below, either in admitting or rejecting evidence, and

1. The question to the witness Scanlan as to the fair market value in cash of the house and lot was properly excluded. The house and lot was fully examined by the Foremans before purchase, and its quality known; nor was there any claim or pretence of fraud or breach of warranty in relation thereto. (Hale's testimony, pages 34 and 39, and Scanlan's testimony, pages 140 and 141 of record.)

The measure of damages therefore, was the difference between the aggregate value of the goods delivered and the aggregate value of the goods agreed to be delivered in analogy to cases of fraud or breach of warranty as to quality of property sold. 20 Ills. 184—11 Metcalf, 356—1 Comstock, 305.

The Foremans had agreed, upon a sufficient consideration, to deliver to Baldwin goods, at fixed prices, sufficient in quantity to amount to \$7,500 and they were bound, at least, to make their contract good by responding in damages equal to the value of the goods, of which they had fraudulently deprived him by raising the price, and thus, in proportion, diminishing the quantity. 1 Scam. 313—2 Scam. 344—1 Jones (Law) 402.

The cash value of the house and lot, therefore, was immaterial upon the question of damages or for any purpose.

2. The question put to Ely as to wholesale cash prices at Chicago as compared with New York manufacturer's prices, was competent. It was asked for the purpose of ascertaining the cash value at Chicago, of the goods of which Baldwin had been deprived, for the purpose of recovering the amount in cash.

3. It was discretionary with the Court whether to allow defendants further to examine Hale after the questions by the Court. They had already examined him at great length upon the same subject. (See cross-examination of Hale, from page 49 to 76; also, examination by Court, page 76 to 78 of record.)

4. Hale showed sufficient knowledge to be competent to give his opinion as to value, as compared with New York manufacturer's prices. Besides, his answers were more favorable than Ely's and King's, whose competency was beyond question, and whose opinions were not attacked by testimony offered by the defendants. (pages 43, 44, 45 of record.)

FARWELL, SMITH & THOMAS,

Attorneys for Appellees.

209-23

Supreme Court

Henry Foreman
et al

vs

Fredrick M Baldwin

Appellees Points

Filed April 24, 1860
L. Leland
Clerk

Dorwell Smith &
Thomas Co
appellee

S U P R E M E C O U R T .

HENRY FOREMAN,
BENJAMIN FOREMAN,
RUDOLPH FOREMAN, AND
JOSEPH FOREMAN,

Appellants,

V S .

FREDERICK M. BALDWIN,

Appellee.

ABSTRACT OF RECORD.

Rec. p. 2. This was an action on the case commenced by the appellee against the appellants in the Cook County Court of Common Pleas, returnable to February term, A. D. 1859.

7 to 20. The declaration in the first four counts alleges in substance that defendants bought of the plaintiff a house and lot in Chicago, which the plaintiff procured to be conveyed by one John D. Moss to Rudolph Foreman, one of the defendants, at their request, for which they were to pay him \$7,500 in goods from their store, at New York or Eastern manufacturers or wholesale prices with 15 per centum added; and that they fraudulently deceived him in prices, charged higher prices after the goods were selected than were named when they were selected, substituted other goods of inferior quality for those selected, and abstracted a part of those selected.

20. The fifth count is in trover for the goods.

21. Plea not guilty.

21 to 25. The cause was tried in the Superior Court of Chicago at the October term, A. D. 1859.

31. On the trial Charles W. Mappa, a witness for the plaintiff, testified that by a
32. verbal contract the defendants bought of the plaintiff the house and lot in question
for \$7,500, which they agreed to pay him in goods at wholesale or manufacturer's
prices with 15 per cent added.

34. Daniel H. Hale, a witness for the plaintiff, testified that in conversations which
35. he had with defendants, they said they were to give plaintiff \$7,500 for the house
and lot in question in goods at 15 per cent. above New York or Eastern manufacturer's
prices.

92. Ezekiel Tripp, a witness for the plaintiff, testified that he made a trade with
Baldwin to exchange with him a stock of goods that witness had in Indiana for
some clothing that Baldwin was to obtain from the Foremans. Baldwin came to
93. witness and said he wanted to start a store in the country, and could get a trade with
Foreman Brothers for a stock of clothing by trading a house and lot for which he
had traded a farm—that he didn't want the entire stock of clothing for a country
trade—if he could exchange with witness for a stock of goods witness had at Crown
Point he would make the trade with them—said he was to have the goods from
them at 15 per cent., and that witness could have them at 15 per cent. above New
York manufacturer's prices—that was the trade he had with defendants. He would
take witness' goods at Crown Point at 10 per cent. above the New York cost bills,
adding 10 per cent. for transportation. Baldwin had made a trade with Moss and
had to pay him \$1,500. If witness made the trade with Baldwin, witness was to
pay the \$1,500 to Moss—witness told Baldwin that he would make the trade;
94. provided, that he would do what he said—that witness should have the goods of
Foreman at New York manufacturer's prices, after they added 15 per cent. Baldwin
was to deduct to witness 10 per cent. and witness would assume the \$1,500 to
Moss, payable in thirty and sixty days. Witness told Baldwin that he would have
Mr. Hale go over and look at the goods before he finally consummated the trade
with him, and if he found the goods were reasonable enough so as to throw a part
of them into the auction room and obtain upon them the \$1,500 witness would have
to pay Moss, he would make the trade. Witness had Mr. Hale go over and make
the examination of the goods for that purpose, and went on and closed the trade
with Baldwin, understanding with him that he was to have the goods at the prices
before stated, and that the Foremans were to show the New York manufacturer's
bills.

95. Witness told Baldwin that he would have nothing to do with picking out the
goods, or anything of the kind—that Mr. Hale might go and select out a portion
of the goods, as he thought would be the best goods to sell at auction, and if the
bills were shown him and were straight, he would take the goods at the agreement
just stated. They agreed upon a trade upon these terms. Mr. Hale went over and

96 selected what he said was about the amount of the bill. He could not tell exactly, he rather thought it would not come quite up ; he then left the next morning for Minnesota. Witness went to Foreman's first with Baldwin after Mr. Hale had been there, and selected out a portion of the goods. Saw Rudolph Foreman, who showed the different classes of goods Hale had picked out. Witness told Foreman that he (witness) had been making a trade with Baldwin, and was to have a certain amount of goods in Foreman's store, provided they were all satisfactory. Foreman then went on and told witness that certain piles of goods had been picked out by Mr. Hale. Foreman had understood that witness was to have them, because they had told him so. He said they would bill the goods and put them up, and probably there was not enough picked out to fill up the amount, but they could tell after they

97 got them all up. Went there again three or four days or a week after and asked for the goods that had been picked out by Baldwin for him, and brought an order from Baldwin for them. Foreman said they were all right—put in boxes and the boxes ready—thinks they were nailing the last box then. Asked for the bill ; he said it was not made out ; would have it very soon ; had been very busy. Witness told Foreman that he was to have the goods at New York manufacturer's prices, adding fifteen per cent. Foreman said that was all right ; that was his trade with Baldwin ; that witness was to have the goods at fifteen per cent above the New York manufacturer's prices ; thinks they sent the goods the same day to his store.

98 Got the bill, (the bill of Sept. 13, 1858, copied in the record at pages 127 to 130), and opened the boxes and compared the contents of the boxes with the bill ; the articles and amounts agreed with the bill ; went directly back, after opening the goods, and told Rudolph Foreman that he was very much dissatisfied with the amount of goods he had got, and the kinds and prices. That the goods were enormously high, and it was very singular that Mr. Hale, a man that was a good judge of goods, should pick out a lot of goods at those prices. Rudolph Foreman undertook to explain that it was all right, and the trade was all right ; that he had to do

99 with Baldwin, and that he had nothing to do with witness, only to deliver him what Baldwin was to have. Witness found a large amount of over-coats ; he claimed that a good many of what witness called over-coats were business coats, and that they were the same that Mr. Hale had picked out. Witness asked him if he would exchange some and give other coats for them and a few were so exchanged for other kinds of clothing by witness with Foreman.

106 ON CROSS EXAMINATION, in answer to the question, "You say you told
 107 Foreman at one time you were to have the goods at a certain price ; how long was that after you had purchased of Baldwin ? Tripp said : "I think I told him the same thing, when I went there to look at the goods with Mr. Baldwin at the time I agreed to make the purchase of Mr. Baldwin. I think I told him when I went after my bills ; I think I told him after I made the purchase of Baldwin, three or

four days ; I think I went down to Indiana before the last time. The goods were then in his store in boxes ; that was after he had selected them for me. When Mr. Hale came back, after looking at the goods the first time, he told me the goods were marked too high, twenty-five or fifty per cent. I sent him there to examine the goods for me, because he was a better judge than I was of goods. He had dealt in that longer. I regard Mr. Hale as a competent judge of that kind of goods."

111 Hale further said when he told Tripp that the goods were too high : " But if you get the bills and they produce them, and you get them according to the New York manufacturer's prices, it will be all right with you.

33 Daniel H. Hale, a witness for the plaintiff, testified : That he went to the store
34 of the Foremans to look at their stock of goods ; priced the goods, looked them
over a little, and told them what I had come for. Mr. Tripp wished me to go and
look at the goods and see if the goods and the prices were right. Saw the Fore-
mans ; they showed me the prices and kinds of goods, and after I had looked at
them : I told them what I had come for. They said they would rather trade with
Baldwin, so I went off. The next day, I think, Baldwin went with me, but won't
be certain whether it was him or Mr. Tripp. I told them all I wanted was Mr.
Tripp wished me to pick out the goods, as I was better acquainted with goods than he
was—that all I wanted was what was fair and an honorable transaction. They said
they wanted nothing but a fair transaction. That they would trade fair with Bald-
win, and he should have the goods at fifteen per cent. above the New York or Eas-
tern manufacturer's prices, and if that was all I wanted, I might go on and look
through the goods, and if it suited them or me and Mr. Tripp or Mr. Baldwin, that
they would trade. I looked through the goods, and picked out, I supposed, pretty
near enough to make the bill, \$5000, that Mr. Tripp was to have in goods. They
35 said they would produce the bills, and we should have them at cost, and they would
add fifteen per cent. to what they cost. Baldwin was not there when I picked out
the goods ; I was alone. I was to come in again, and conclude the balance of the
36 bill ; to look at the prices. Thought I had picked out enough, nearly for \$5000 ;
didn't add it up as I was going again and they were in a hurry. I told them some
of the prices were too high, but if they produced their bills, it would be all I wanted.
Went again, and found Baldwin and the Foremans there. They said they had se-
lected a few of each kind that I had selected, enough to make up my bill of \$5000, of
37 the same kinds I had selected. Asked for the New York bills ; they did not pro-
duce them ; said we need not be alarmed ; they would attend to it all right ; every
thing should be straight and right. Baldwin had just finished picking out his
goods. He had got them all picked out, and took me around and showed me what
he had bought. Baldwin and Foreman said, that what I had selected came to about

\$3000, and that they had made up the complement of the same kinds. They were boxed up, and were nailing them when I was there.

49 ON CROSS EXAMINATION, he stated that he went three times to the Fore-
mans' store before the goods were finally selected—went at the request of Tripp.
Tripp and he were partners, but he had no interest in the purchase of these goods.
51 Went because he was a better judge than Tripp, and if Baldwin and the Foremans
traded, Tripp and Baldwin were to trade upon the same terms.

39 On his direct examination, Hale having testified that when Tripp received his
goods he was absent in Minnesota, and that on his return, Tripp showed him the
goods he had received and he examined them ; was then examined by the plaintiff,
as to the condition and prices of the goods received by Tripp. The defendants'
counsel objected to any evidence as to the condition or prices of the goods selected
40 and delivered to Tripp, which objection being overruled by the Court, the defend-
ant's counsel excepted.

44, 45 Hale also testified, on the part of the plaintiff, that he had made an estimate
to ascertain how the prices of the goods received by Tripp compared with the New
York manufacturer's prices, and was then asked by the plaintiff's counsel : "What
did you ascertain ?"

The defendant's counsel objected to the testimony.

1st. On the ground that it is a matter between other parties than the plaintiff.

2d. Because the witness is not qualified to give an opinion.

3d. Because it does not come under the contract in the case.

This objection was overruled by the Court and the defendants' counsel excepted,
and the witness testified that they were a hundred per cent. and over higher than
they should be—some of them nearer two hundred per cent.

76, 77, After the counsel on both sides had examined Hale, as to the selection by him
78, 79 of goods for Tripp and as to the condition and prices of the goods received by
Tripp, the Court then examined him as to the cost of the material, cutting and
making of one of the coats received by Tripp, and what the profit of the manu-
facturer would be, and whether he made such a calculation in making his estimate,
which Hale answered in the affirmative ; and thereupon, the defendants' counsel
offered to examine him as to his knowledge of the facts testified to by him in an-

swer to the interrogatories propounded by the Court. But the Court stated that the counsel on both sides had once concluded the examination and cross examination, and could not be permitted to examine him further. To which decision of the Court the defendants' counsel excepted.

100 Ezekiel Tripp, on the part of the plaintiff, having testified that he was not acquainted with New York manufacturer's prices, but was with market prices of the goods he had received from defendants, (the lot of \$5,500), and that he had bought in Boston and New York, was then asked by the plaintiff's counsel how the prices at which he had bought compared with the prices on the bill of the goods he received from the defendants, to which question the defendants' counsel objected, but the objection was overruled by the Court, and the defendants' counsel excepted; and thereupon, the witness answered, that the goods he received were from fifty to one hundred per cent. higher than he had previously bought.

Daniel H. Hale, Ezekiel Tripp, George V. Minor, James H. Ely, William P. Ross and Henry W. King were all examined at great length on the part of the plaintiff, as to the goods, and their condition and value.

119 William B. Mills was a witness for the plaintiff, to prove that the defendants composed the firm of Foreman Brothers.

126 John D. Moss proved the conveyance of the house and lot to Rudolph Foreman.

79, 80 George V. Minor, a witness for the plaintiff, having testified that he was a clerk for the plaintiff when the goods mentioned in the bill of September 14, 1858, were received by the plaintiff at Oswego, and that certain articles of goods, which were produced in Court, were the same which were specifically mentioned on the bill of September 14, 1858, the bill being also in court, was then asked by the plaintiff's counsel:

84. " How did the articles, samples of which have not been shown you here, but which were on the bill, compare in prices and value with the articles which you have been shown ? "

To which question the defendants' counsel objected, and the objection being overruled by the Court, they excepted, and the witness answered that there was no material difference—that they might have been a little lower, that is that they might have been a little nearer to the value charged in the bill.

128. The bill of goods received by Tripp.

131. And the bill of goods received by the plaintiff at Oswego, were also given in
91. evidence by plaintiff; also the deed to Rudolph Foreman.

145. John Scanlan, a witness for defendants, having testified, among other things, that he was acquainted with the value of real estate in Chicago at the time of the trade, was then asked by defendants' counsel: "What was the fair market value in cash, at that time, of the house and lot," in question?

This question was objected to by plaintiff's counsel as incompetent from any source, though they admitted that the witness was abundantly able to tell. The objection was sustained by the Court and the defendants' counsel excepted.

148. The defendants' counsel called as a witness on the part of the defendants, Adolph Katz, to whom the plaintiff's counsel objected as incompetent, giving in evidence the record of the Recorder's Court of the City of Chicago, showing that he was convicted in that Court at the February term, A. D. 1859, for petit larceny. The plaintiff's counsel read in evidence a pardon, dated the 24th day of March, A. D. 1859, by Governor Bissell, of said Adolph Katz, fully pardoning and acquitting him of the said offence and restoring him to all he had forfeited by reason of such conviction, which pardon was duly issued and under the great seal of the State of Illinois.

Defendants' counsel proposed to prove, by said Adolph Katz, that he was a porter in defendants' store at the time the goods were selected—that the same goods which plaintiff selected were put into the boxes, nailed up, marked and delivered according to the plaintiff's directions. The counsel for the plaintiff objected to the competency of the witness, which objection the Court sustained and refused to permit the witness to be sworn, to which decision the defendants' counsel excepted.

156. Louis Grodell, a witness for defendants, testified that he was the book-keeper of defendants at the time of the trade with Baldwin—that he saw Baldwin sign the
160. release copied below—that the goods had all been selected when the release was
162. signed and thinks they were in the boxes. The evidence of this witness is the only evidence concerning the making of the release.

The release is as follows :

167. "Whereas, I have sold to Rudolph Foreman the south thirty-one feet of lot number 4, in block thirteen, in Bushnell's addition to Chicago, the title of which

was in JohnD. Moss, and John D. Moss having conveyed the same to said Rudolph Foreman. Now, I hereby acknowledge the receipt of the consideration of said premises of said Foreman in full for the same and release and discharge from any further claim therefor.

September 13th, 1858.

F. M. BALDWIN. [SEAL]

168. Ignatz Bostwick, on the part of the defendants, testified that after the trade the plaintiff brought back and exchanged some of the goods with the defendants.

The Court instructed the Jury on the part of the plaintiff—

171. 1. If the Jury believe from the evidence, that with respect to the goods which Tripp was to have, Tripp dealt with the plaintiff and not with the defendants, and that Hale selected goods merely for the accommodation of Tripp and the plaintiff, then the goods which were sent to Tripp are to be deemed sold by the defendants to plaintiff and not to Tripp.

172. 2. If the Jury believe from the evidence, that the release, introduced in evidence by the defendants, was fraudulently obtained by them from the plaintiff, then such release is void.

To the giving of each of which instructions the said defendants' counsel excepted.

The defendants' counsel asked the following instructions :

173. 1. If the Jury believe from the evidence, that while negotiations for the contract in question between the plaintiff and defendants were pending for the goods in question, and before such contract was completed, the plaintiff made a contract with Tripp to the effect, that if said contract with defendants was completed said Tripp should take a portion of said goods at the store of the defendants, and pay plaintiff in other goods therefor—that Tripp should select the said portion at defendants' store for himself—that said arrangement between plaintiff and Tripp was communicated by them to defendants and they agreed to the same before the goods were selected, and the goods were selected in pursuance thereof by Tripp or his agent, then the plaintiff is not entitled to recover in this action in respect to the said portion of the said goods so selected by said Tripp.

Which instruction the Court refused, and the defendants' counsel excepted.

173. 2. That the recital in the release given in evidence by the defendants is binding and conclusive upon the plaintiff—that he made the contract in question with Rudolph Foreman, and that he received the consideration for the real estate in question from him, and he is now estopped by the release from denying that the contract was made by Rudolph, and from claiming that the other defendants were parties to it.

Which instruction the Court refused, and the defendants' counsel excepted.

- 175 5. If the jury believe from the evidence, that before the goods in question were selected at defendants' store, the plaintiff made an arrangement with Tripp by which he or his agent were to select a portion of said goods ; that the plaintiff was present when his part of said goods were selected, and a portion of those which Tripp was to have ; that he, plaintiff, assisted in selecting the same ; that the same identical prices, which the defendants charged for said goods, were then and there declared to him, and he knew what they were. That if Hale was the agent of said Tripp, and was present at the time of selecting the residue of the goods which were to go to Tripp and assisted in selecting the same, that the same identical prices, which the defendants charged for said goods, were then and there stated and declared off in the hearing of said Hale. That after all of said goods were selected as aforesaid, the said plaintiff executed and delivered to defendant, Rudolph Foreman, the release dated the 13th September, 1858, read in evidence ; such release is a bar to any recovery in this action on account of the manner of selecting, or the prices charged for said goods.

- 178 Which instruction the Court refused to give in that shape. But having added thereto as follows :

“ This is the law, if the defendants delivered to plaintiff and Tripp the same goods which had been selected, and used no fraudulent devices to mislead the plaintiff into an acquiescence or into an acceptance of the goods.”

The Court gave the instruction as qualified ; to which qualification, defendants' council excepted.

175. 6. That if the Jury believe from the evidence, that a portion of the goods in
176. question were selected at defendants' store under an arrangement made between plaintiff and Tripp that the plaintiff should sell and said Tripp should buy the same

of plaintiff for certain other goods, or the payment by Tripp of certain money for plaintiff, that such portion were in fact selected by Tripp or his agent and set apart by Tripp or his agent, and the defendants for him said Tripp. Yet the plaintiff is not entitled to recover anything in respect of said portion so selected and set apart, although the Jury believe from the evidence that the defendants, after such selection, interfered with said goods by taking out apart and substituting others in their place or by changing the prices charged at the time of such selection.

Which instruction the Court refused, and the defendants' counsel excepted.

176. **7.** If the Jury believe from the evidence, that the release, read in evidence, was executed by plaintiff and delivered to the defendant, Rudolph Foreman, after the goods in question were all selected and the prices thereof fixed, such release is a complete bar to the plaintiff recovering anything in this action on account of the manner of selecting or affixing the prices of said goods.

Which instruction the Court refused to give in that shape but having added thereto as follows :

“ Unless fraud or circumvention were used in obtaining the release.”

The Court gave the instruction as qualified, to which qualification the defendants' counsel excepted.

176. **8.** If the Jury believe from the evidence that the goods in question were the consideration for the premises and house and lot described in plaintiff's declaration, that after said goods were selected and put up in the condition in which the plaintiff or said Tripp received them, and the prices charged by defendants were affixed thereto, the said plaintiff executed and delivered to Rudolph Foreman the release read in evidence, such release is a complete bar to the plaintiff recovering for anything in reference to said goods which occurred prior to the delivery of such release.

Which instruction the Court refused and the defendants' counsel excepted.

- 177 **10.** If the jury believe from the evidence, that Hale was the Agent of Tripp in respect to the selection of a portion of the goods; and that he, before the goods were selected, informed Tripp that the price was too high, there can be no recovery in this suit, by reason of said portion of the goods in question being charged too high.

Which instruction the Court refused, and the defendants' counsel excepted.

24 The jury found a verdict for plaintiff with \$2,500 damages, and defendants' counsel moved for a new trial.

25 Which motion the Court overruled, and the defendants' counsel excepted.

25 The Court rendered judgment for the plaintiff on the verdict, and the defendants' appealed to this Court and assign for error, the following :

182 1. Admission of improper testimony.

183 2. Exclusion of proper and competent testimony.

 3. Refusing to defendants' counsel the right to cross-examine the witness Hale.

 4. Excluding the witness Katz.

 5. The giving the several instructions on the part of the plaintiff.

 6. The refusing instructions on the part of defendants, and qualifying those given on the part of defendants.

 7. The overruling the motion for new trial.

VAN BUREN & GARY,

Defendants' Attorneys.

W. K. McALLISTER,

Of Counsel.

209
Superior Court

Henry Forman
et al
Appellants

vs

Nedrick M Baldwin
Appellee

Abstract

Van Buren & Gary J
W K McAllister
atty for Appello

Filed Apr 18, 1860

L. Delmond

Clerk

Supreme Court
Henry Foreman
et al Appellants
vs
Frederick M Baldwin

To the Honorable the Judges of the Supreme Court.

The Petition of Henry Foreman et al respectfully shows, that they the said appellants appealed to the Supreme Court from the judgment entered against them in this cause and the same was at the last Term of this Court affirmed.

The Petitioners beg leave to show & represent that the judgment in their opinion ought to have been reversed for the following reason. That it appears by the testimony & abstract pages 2-3-4-5, that the ~~appellants~~ ^{defendants} made a contract with the appellee plaintiff by which they agreed to sell him a quantity of goods for \$7500. - at 15 per cent above New York prices - That before the goods were selected, the plaintiff agreed to sell one ~~half~~ ^{half} \$5500. of the

Same goods - the goods were yet in the
Hammitt Store, & had not been ~~yet~~ selected
~~a portion~~. Tripp then sent Hale to look
at the goods for him. Hale returned
& told Tripp "the goods were marked
"too high 25 or 50 per cent" abstract
p 4, Dec. 107 - after that Tripp
again sent Hale to select the goods
for him, he selected about \$5000
worth, & Baldwin selected the balance.
The defendants claim that the plain-
tiff Baldwin, cannot recover against
the defendant for any damages for
the goods selected by Hale for Tripp
Because

1 It is not claimed, at any rate there
is no evidence to show, that the same
goods selected were not delivered

2. Tripp selected the goods himself
they were delivered to Hammitt
(by him agent Tripp), he knew the prices
& knew as Hale says, "that the goods
were marked too high 25 or 50 per
cent", he therefore had no claim over
against the Plaintiff. See Puff point
page 2 - also page on points of the
Gusser & Gray. If Tripp could not
sue Baldwin, then Baldwin

has sustained no damages - if he
has sustained no damages, he cannot
maintain the action as to that lot of \$500
The action is on the case, predicated up
on a fraud, & no privity of Contract
is necessary. See authorities cited on
pag 3 of Points of Rest Duren & Gay

3 - The action is predicated upon the ~~fact~~
supposition that the defendants actually
charged more for the goods than the Con
tract price, (that is, the New York cost
with 15 per cent added) - now as we
have above shown, Hall examined
the goods for himself he knew they were
cheap from 25 to 50 per cent too
high, yet he took them at that price
(Abstract p 4). ~~Now even if Hall~~
~~received these goods at a certain price~~
~~which he knows is too low~~

Now suppose the Plaintiffs
had taken those goods at a certain
price, knowing they were marked
too high, could he have maintained
action upon the ground that they were
marked too high? where is the fraud?
There can be no recovery except for
fraud, & there can be no fraud where

There is no deceit - If the party acts
for with full knowledge of all
the facts he is not defrauded -
Now Trupp stands in that situation
- he could not maintain an action
against any one, Certainly not against
the Plaintiff - Suppose Trupp had
said, I know your goods are too
high - they are not put at New York
prices, not 15 per cent added, but never
theless, I am making a good bargain
with Plaintiff and I will take them,
- The plaintiff could not have interfered.
- or Suppose Trupp had taken
some other property of dependents
in lieu of the goods - Could Plaintiff
have interfered? - The Plaintiff sent
Trupp to dependents to ^{select} for the goods,
he and so. if therefore they practiced any
fraud it was upon Trupp & not upon
the Plaintiff as to this lot of goods

The dependents have respectfully
prayed for a rehearing, for a super-
seas -

Henry Foreman
Benjamin Foreman
Joseph Foreman
Joseph Foreman

New Brunswick
Sept 21st

Sup Cant

Governor
us Apr

Baldwin

Pilot for Rehear
ing

Van Dusen
Sept 1842

We have the making of the issue here, & we don't present that as an issue - Our right here is, to ask that the law alone be administered whether the suitor be of the "just or the unjust -

As Justice C. J. said in 17 Ill. 72. "Judges have no right to feel, or at least to make it a predicate of their judgment - It is the head, and not the heart; and from it must proceed justice, legal justice, though the heavens fall by the fiat -"

We suppose it not necessary either to justify, or apologise for, the conduct of the appellants, before asking that the errors of the Court below be corrected, & shall therefore pass over the first six pages of the printed points of the appellee without other observations -

1. The testimony of the execution & delivery of the release was direct & positive - The handwriting was open to the inspection of any friends of the appellee who

might be acquainted with his signature - The instructions on both sides are based on the hypothesis that it is his - The burden of showing a fraud in the execution or delivery of it rested upon him - None appeared - Groedel was the only witness - See pages 160-162 Record -

The Cases cited by appellee, so far as ^{we have examined them} are not in point, as to the effect of the release - They are cases of receipt not under seal, or of conveyances in which the receipt of the ~~money~~ consideration was acknowledged - The first Class are of another dignity - the latter Class have grown into an exception to the general rule, which exception the appellee now asks the Court to substitute for the rule -

But in this Court a release is still regarded as binding -

Kingsley v. Kingsley 20 Ill. 208.

The appellee's statement that the 1st and 6th instructions asked by the appellants were "based upon no evidence", requires an examination of the record - There, will be

no ground to avoid the Release can be given in evidence
receipt such as goes to the execution or delivery -
See the Cases collected in 2 Phillips Cr. 687 -
Library Collection -

found on pages 33 to 37 inclusive,
49, 51 and 92 to 99 inclusive
abundance of testimony to
warrant the jury in adopting
our theory as to the transfer
by Baldwin to Tripp, of the right
of selection from the store of
the appellants, of goods to the
amount of \$5500 - That the
whole beneficial interest to that
extent was in Tripp - Whether
the priority of Contract passed
or not is immaterial - The
action is not based upon the
Contract - It is but inducement.

The question is not between whom
the trades were made, but upon
whom was the fraud practiced
& who sustained the loss -

Tripp got the goods - He disposed
of them for his own use - He
could not claim damages from
Baldwin, for Baldwin could
answer him that it was his
business to see to the goods he
got for his \$5500 -

As to the other points, our printed
brief, we believe, sufficient -

Van Buren & Camp

Atty. for appls.

Leaving it to the jury to find fraud in
in obtaining the release when no
evidence of fraud upon that matter
was in the case, is error.

Coughlin v. The People 18 Ill. 266 &
Cases there cited —

209
23
Freeman et al
vs
Baldwin

Prints of app'ts.
in reply

Filed May 23. 1860
S. Leland
Clerk

Van Buren & Co
attys of app'ts.

S U P R E M E C O U R T .

HENRY FOREMAN,
BENJAMIN FOREMAN,
RUDOLPH FOREMAN, AND
JOSEPH FOREMAN,

Appellants,

V S.

FREDERICK M. BALDWIN,

Appellee.

ABSTRACT OF RECORD.

Rec. p. 2. This was an action on the case commenced by the appellee against the appellants in the Cook County Court of Common Pleas, returnable to February term, A. D. 1859.

7 to 20. The declaration in the first four counts alleges in substance that defendants bought of the plaintiff a house and lot in Chicago, which the plaintiff procured to be conveyed by one John D. Moss to Rudolph Foreman, one of the defendants, at their request, for which they were to pay him \$7,500 in goods from their store, at New York or Eastern manufacturers or wholesale prices with 15 per centum added; and that they fraudulently deceived him in prices, charged higher prices after the goods were selected than were named when they were selected, substituted other goods of inferior quality for those selected, and abstracted a part of those selected.

20. The fifth count is in trover for the goods.

21. Plea not guilty.

21 to 25. The cause was tried in the Superior Court of Chicago at the October term, A. D. 1859.

31. On the trial Charles W. Mappa, a witness for the plaintiff, testified that by a
32. verbal contract the defendants bought of the plaintiff the house and lot in question
for \$7,500, which they agreed to pay him in goods at wholesale or manufacturer's
prices with 15 per cent added.

34. Daniel H. Hale, a witness for the plaintiff, testified that in conversations which
35. he had with defendants, they said they were to give plaintiff \$7,500 for the house
and lot in question in goods at 15 per cent. above New York or Eastern manufactur-
er's prices.

92. Ezekiel Tripp, a witness for the plaintiff, testified that he made a trade with
Baldwin to exchange with him a stock of goods that witness had in Indiana for
some clothing that Baldwin was to obtain from the Foremans. Baldwin came to
93. witness and said he wanted to start a store in the country, and could get a trade with
Foreman Brothers for a stock of clothing by trading a house and lot for which he
had traded a farm—that he didn't want the entire stock of clothing for a country
trade—if he could exchange with witness for a stock of goods witness had at Crown
Point he would make the trade with them—said he was to have the goods from
them at 15 per cent., and that witness could have them at 15 per cent. above New
York manufacturer's prices—that was the trade he had with defendants. He would
take witness' goods at Crown Point at 10 per cent. above the New York cost bills,
adding 10 per cent. for transportation. Baldwin had made a trade with Moss and
had to pay him \$1,500. If witness made the trade with Baldwin, witness was to
pay the \$1,500 to Moss—witness told Baldwin that he would make the trade;
94. provided, that he would do what he said—that witness should have the goods of
Foreman at New York manufacturer's prices, after they added 15 per cent. Bald-
win was to deduct to witness 10 per cent. and witness would assume the \$1,500 to
Moss, payable in thirty and sixty days. Witness told Baldwin that he would have
Mr. Hale go over and look at the goods before he finally consummated the trade
with him, and if he found the goods were reasonable enough so as to throw a part
of them into the auction room and obtain upon them the \$1,500 witness would have
to pay Moss, he would make the trade. Witness had Mr. Hale go over and make
the examination of the goods for that purpose, and went on and closed the trade
with Baldwin, understanding with him that he was to have the goods at the prices
before stated, and that the Foremans were to show the New York manufacturer's
bills.

95. Witness told Baldwin that he would have nothing to do with picking out the
goods, or anything of the kind—that Mr. Hale might go and select out a portion
of the goods, as he thought would be the best goods to sell at auction, and if the
bills were shown him and were straight, he would take the goods at the agreement
just stated. They agreed upon a trade upon these terms. Mr. Hale went over and

96 selected what he said was about the amount of the bill. He could not tell exactly,
 he rather thought it would not come quite up ; he then left the next morning for
 Minnesota. Witness went to Foreman's first with Baldwin after Mr. Hale had been
 there, and selected out a portion of the goods. Saw Rudolph Foreman, who showed
 the different classes of goods Hale had picked out. Witness told Foreman that he
 (witness) had been making a trade with Baldwin, and was to have a certain amount
 of goods in Foreman's store, provided they were all satisfactory. Foreman then
 went on and told witness that certain piles of goods had been picked out by Mr.
 Hale. Foreman had understood that witness was to have them, because they had
 told him so. He said they would bill the goods and put them up, and probably
 97 there was not enough picked out to fill up the amount, but they could tell after they
 got them all up. Went there again three or four days or a week after and asked
 for the goods that had been picked out by Baldwin for him, and brought an order
 from Baldwin for them. Foreman said they were all right—put in boxes and the
 boxes ready—thinks they were nailing the last box then. Asked for the bill ; he
 said it was not made out ; would have it very soon ; had been very busy. Witness
 told Foreman that he was to have the goods at New York manufacturer's prices,
 adding fifteen per cent. Foreman said that was all right ; that was his trade with
 Baldwin ; that witness was to have the goods at fifteen per cent above the New
 York manufacturer's prices ; thinks they sent the goods the same day to his store.
 98 Got the bill, (the bill of Sept. 13, 1858, copied in the record at pages 127 to 130),
 and opened the boxes and compared the contents of the boxes with the bill ; the
 articles and amounts agreed with the bill ; went directly back, after opening the
 goods, and told Rudolph Foreman that he was very much dissatisfied with the
 amount of goods he had got, and the kinds and prices. That the goods were enorm-
 ously high, and it was very singular that Mr. Hale, a man that was a good judge
 of goods, should pick out a lot of goods at those prices. Rudolph Foreman under-
 took to explain that it was all right, and the trade was all right ; that he had to do
 with Baldwin, and that he had nothing to do with witness, only to deliver him what
 99 Baldwin was to have. Witness found a large amount of over-coats ; he claimed
 that a good many of what witness called over-coats were business coats, and that
 they were the same that Mr. Hale had picked out. Witness asked him if he would
 exchange some and give other coats for them and a few were so exchanged for other
 kinds of clothing by witness with Foreman.

106 ON CROSS EXAMINATION, in answer to the question, "You say you told
 107 Foreman at one time you were to have the goods at a certain price ; how long was
 that after you had purchased of Baldwin ? Tripp said : "I think I told him the
 same thing, when I went there to look at the goods with Mr. Baldwin at the time
 I agreed to make the purchase of Mr. Baldwin. I think I told him when I went
 after my bills ; I think I told him after I made the purchase of Baldwin, three or

four days ; I think I went down to Indiana before the last time. The goods were then in his store in boxes ; that was after he had selected them for me. When Mr. Hale came back, after looking at the goods the first time, he told me the goods were marked too high, twenty-five or fifty per cent. I sent him there to examine the goods for me, because he was a better judge than I was of goods. He had dealt in that longer. I regard Mr. Hale as a competent judge of that kind of goods."

111 Hale further said when he told Tripp that the goods were too high : " But if you get the bills and they produce them, and you get them according to the New York manufacturer's prices, it will be all right with you.

33 Daniel H. Hale, a witness for the plaintiff, testified : That he went to the store
34 of the Foremans to look at their stock of goods ; priced the goods, looked them
over a little, and told them what I had come for. Mr. Tripp wished me to go and
look at the goods and see if the goods and the prices were right. Saw the Fore-
mans ; they showed me the prices and kinds of goods, and after I had looked at
them : I told them what I had come for. They said they would rather trade with
Baldwin, so I went off. The next day, I think, Baldwin went with me, but won't
be certain whether it was him or Mr. Tripp. I told them all I wanted was Mr.
Tripp wished me to pick out the goods, as I was better acquainted with goods than he
was—that all I wanted was what was fair and an honorable transaction. They said
they wanted nothing but a fair transaction. That they would trade fair with Bald-
win, and he should have the goods at fifteen per cent. above the New York or East-
ern manufacturer's prices, and if that was all I wanted, I might go on and look
through the goods, and if it suited them or me and Mr. Tripp or Mr. Baldwin, that
they would trade. I looked through the goods, and picked out, I supposed, pretty
near enough to make the bill, \$5000, that Mr. Tripp was to have in goods. They
35 said they would produce the bills, and we should have them at cost, and they would
add fifteen per cent. to what they cost. Baldwin was not there when I picked out
the goods ; I was alone. I was to come in again, and conclude the balance of the
36 bill ; to look at the prices. Thought I had picked out enough, nearly for \$5000 ;
didn't add it up as I was going again and they were in a hurry. I told them some
of the prices were too high, but if they produced their bills, it would be all I wanted.
Went again, and found Baldwin and the Foremans there. They said they had se-
lected a few of each kind that I had selected, enough to make up my bill of \$5000, of
37 the same kinds I had selected. Asked for the New York bills ; they did not pro-
duce them ; said we need not be alarmed ; they would attend to it all right ; every
thing should be straight and right. Baldwin had just finished picking out his
goods. He had got them all picked out, and took me around and showed me what
he had bought. Baldwin and Foreman said, that what I had selected came to about

\$3000, and that they had made up the complement of the same kinds. They were boxed up, and were nailing them when I was there.

49 ON CROSS EXAMINATION, he stated that he went three times to the Fore-
mans' store before the goods were finally selected—went at the request of Tripp.
Tripp and he were partners, but he had no interest in the purchase of these goods,
51 Went because he was a better judge than Tripp, and if Baldwin and the Foremans
traded, Tripp and Baldwin were to trade upon the same terms.

39 On his direct examination, Hale having testified that when Tripp received his
goods he was absent in Minnesota, and that on his return, Tripp showed him the
goods he had received and he examined them; was then examined by the plaintiff,
as to the condition and prices of the goods received by Tripp. The defendants'
counsel objected to any evidence as to the condition or prices of the goods selected
40 and delivered to Tripp, which objection being overruled by the Court, the defend-
ant's counsel excepted.

44, 45 Hale also testified, on the part of the plaintiff, that he had made an estimate
to ascertain how the prices of the goods received by Tripp compared with the New
York manufacturer's prices, and was then asked by the plaintiff's counsel: "What
did you ascertain?"

The defendant's counsel objected to the testimony.

1st. On the ground that it is a matter between other parties than the plaintiff.

2d. Because the witness is not qualified to give an opinion.

3d. Because it does not come under the contract in the case.

This objection was overruled by the Court and the defendants' counsel excepted,
and the witness testified that they were a hundred per cent. and over higher than
they should be—some of them nearer two hundred per cent.

76, 77, After the counsel on both sides had examined Hale, as to the selection by him
78, 79 of goods for Tripp and as to the condition and prices of the goods received by
Tripp, the Court then examined him as to the cost of the material, cutting and
making of one of the coats received by Tripp, and what the profit of the manu-
factuer would be, and whether he made such a calculation in making his estimate,
which Hale answered in the affirmative; and thereupon, the defendants' counsel
offered to examine him as to his knowledge of the facts testified to by him in an-

swer to the interrogatories propounded by the Court. But the Court stated that the counsel on both sides had once concluded the examination and cross examination, and could not be permitted to examine him further. To which decision of the Court the defendants' counsel excepted.

100 Ezekiel Tripp, on the part of the plaintiff, having testified that he was not acquainted with New York manufacturer's prices, but was with market prices of the goods he had received from defendants, (the lot of \$5,500), and that he had bought in Boston and New York, was then asked by the plaintiff's counsel how the prices at which he had bought compared with the prices on the bill of the goods he received from the defendants, to which question the defendants' counsel objected, but the objection was overruled by the Court, and the defendants' counsel excepted; and thereupon, the witness answered, that the goods he received were from fifty to one hundred per cent. higher than he had previously bought.

Daniel H. Hale, Ezekiel Tripp, George V. Minor, James H. Ely, William P. Ross and Henry W. King were all examined at great length on the part of the plaintiff, as to the goods, and their condition and value.

119 William B. Mills was a witness for the plaintiff, to prove that the defendants composed the firm of Foreman Brothers.

126 John D. Moss proved the conveyance of the house and lot to Rudolph Foreman.

79, 80 George V. Minor, a witness for the plaintiff, having testified that he was a clerk for the plaintiff when the goods mentioned in the bill of September 14, 1858, were received by the plaintiff at Oswego, and that certain articles of goods, which were produced in Court, were the same which were specifically mentioned on the bill of September 14, 1858, the bill being also in court, was then asked by the plaintiff's counsel:

84. " How did the articles, samples of which have not been shown you here, but which were on the bill, compare in prices and value with the articles which you have been shown ? "

To which question the defendants' counsel objected, and the objection being overruled by the Court, they excepted, and the witness answered that there was no material difference—that they might have been a little lower, that is that they might have been a little nearer to the value charged in the bill.

128. The bill of goods received by Tripp.

131. And the bill of goods received by the plaintiff at Oswego, were also given in
91. evidence by plaintiff; also the deed to Rudolph Foreman.

145. John Scanlan, a witness for defendants, having testified, among other things, that he was acquainted with the value of real estate in Chicago at the time of the trade, was then asked by defendants' counsel: "What was the fair market value in cash, at that time, of the house and lot," in question?

This question was objected to by plaintiff's counsel as incompetent from any source, though they admitted that the witness was abundantly able to tell. The objection was sustained by the Court and the defendants' counsel excepted.

148. The defendants' counsel called as a witness on the part of the defendants, Adolph Katz, to whom the plaintiff's counsel objected as incompetent, giving in evidence the record of the Recorder's Court of the City of Chicago, showing that he was convicted in that Court at the February term, A. D. 1859, for petit larceny. The plaintiff's counsel read in evidence a pardon, dated the 24th day of March, A. D. 1859, by Governor Bissell, of said Adolph Katz, fully pardoning and acquitting him of the said offence and restoring him to all he had forfeited by reason of such conviction, which pardon was duly issued and under the great seal of the State of Illinois.

Defendants' counsel proposed to prove, by said Adolph Katz, that he was a porter in defendants' store at the time the goods were selected—that the same goods which plaintiff selected were put into the boxes, nailed up, marked and delivered according to the plaintiff's directions. The counsel for the plaintiff objected to the competency of the witness, which objection the Court sustained and refused to permit the witness to be sworn, to which decision the defendants' counsel excepted.

156. Louis Grodell, a witness for defendants, testified that he was the book-keeper
of defendants at the time of the trade with Baldwin—that he saw Baldwin sign the
160. release copied below—that the goods had all been selected when the release was
162. signed and thinks they were in the boxes. The evidence of this witness is the only
evidence concerning the making of the release.

The release is as follows :

167. "Whereas, I have sold to Rudolph Foreman the south thirty-one feet of lot number 4, in block thirteen, in Bushnell's addition to Chicago, the title of which

was in JohnD. Moss, and John D. Moss having conveyed the same to said Rudolph Foreman. Now, I hereby acknowledge the receipt of the consideration of said premises of said Foreman in full for the same and release and discharge from any further claim therefor.

September 13th, 1858.

F. M. BALDWIN. [SEAL]

168. Ignatz Bostwick, on the part of the defendants, testified that after the trade the plaintiff brought back and exchanged some of the goods with the defendants.

The Court instructed the Jury on the part of the plaintiff—

171. 1. If the Jury believe from the evidence, that with respect to the goods which Tripp was to have, Tripp dealt with the plaintiff and not with the defendants, and that Hale selected goods merely for the accommodation of Tripp and the plaintiff, then the goods which were sent to Tripp are to be deemed sold by the defendants to plaintiff and not to Tripp.

172. 2. If the Jury believe from the evidence, that the release, introduced in evidence by the defendants, was fraudulently obtained by them from the plaintiff, then such release is void.

To the giving of each of which instructions the said defendants' counsel excepted.

The defendants' counsel asked the following instructions :

173. 1. If the Jury believe from the evidence, that while negotiations for the contract in question between the plaintiff and defendants were pending for the goods in question, and before such contract was completed, the plaintiff made a contract with Tripp to the effect, that if said contract with defendants was completed said Tripp should take a portion of said goods at the store of the defendants, and pay plaintiff in other goods therefor—that Tripp should select the said portion at defendants' store for himself—that said arrangement between plaintiff and Tripp was communicated by them to defendants and they agreed to the same before the goods were selected, and the goods were selected in pursuance thereof by Tripp or his agent, then the plaintiff is not entitled to recover in this action in respect to the said portion of the said goods so selected by said Tripp.

Which instruction the Court refused, and the defendants' counsel excepted.

173. 2. That the recital in the release given in evidence by the defendants is binding and conclusive upon the plaintiff—that he made the contract in question with Rudolph Foreman, and that he received the consideration for the real estate in question from him, and he is now estopped by the release from denying that the contract was made by Rudolph, and from claiming that the other defendants were parties to it.

Which instruction the Court refused, and the defendants' counsel excepted.

175 5. If the jury believe from the evidence, that before the goods in question were selected at defendants' store, the plaintiff made an arrangement with Tripp by which he or his agent were to select a portion of said goods ; that the plaintiff was present when his part of said goods were selected, and a portion of those which Tripp was to have ; that he, plaintiff, assisted in selecting the same ; that the same identical prices, which the defendants charged for said goods, were then and there declared to him, and he knew what they were. That if Hale was the agent of said Tripp, and was present at the time of selecting the residue of the goods which were to go to Tripp and assisted in selecting the same, that the same identical prices, which the defendants charged for said goods, were then and there stated and declared off in the hearing of said Hale. That after all of said goods were selected as aforesaid, the said plaintiff executed and delivered to defendant, Rudolph Foreman, the release dated the 13th September, 1858, read in evidence ; such release is a bar to any recovery in this action on account of the manner of selecting, or the prices charged for said goods.

178 Which instruction the Court refused to give in that shape. But having added thereto as follows :

“ This is the law, if the defendants delivered to plaintiff and Tripp the same goods which had been selected, and used no fraudulent devices to mislead the plaintiff into an acquiescence or into an acceptance of the goods.”

The Court gave the instruction as qualified ; to which qualification, defendants' council excepted.

175. 6. That if the Jury believe from the evidence, that a portion of the goods in
176. question were selected at defendants' store under an arrangement made between
 plaintiff and Tripp that the plaintiff should sell and said Tripp should buy the same

of plaintiff for certain other goods, or the payment by Tripp of certain money for plaintiff, that such portion were in fact selected by Tripp or his agent and set apart by Tripp or his agent, and the defendants for him said Tripp. Yet the plaintiff is not entitled to recover anything in respect of said portion so selected and set apart, although the Jury believe from the evidence that the defendants, after such selection, interfered with said goods by taking out apart and substituting others in their place or by changing the prices charged at the time of such selection.

Which instruction the Court refused, and the defendants' counsel excepted.

176.

7. If the Jury believe from the evidence, that the release, read in evidence, was executed by plaintiff and delivered to the defendant, Rudolph Foreman, after the goods in question were all selected and the prices thereof fixed, such release is a complete bar to the plaintiff recovering anything in this action on account of the manner of selecting or affixing the prices of said goods.

Which instruction the Court refused to give in that shape but having added thereto as follows :

" Unless fraud or circumvention were used in obtaining the release."

The Court gave the instruction as qualified, to which qualification the defendants' counsel excepted.

176.

8. If the Jury believe from the evidence that the goods in question were the consideration for the premises and house and lot described in plaintiff's declaration, that after said goods were selected and put up in the condition in which the plaintiff or said Tripp received them, and the prices charged by defendants were affixed thereto, the said plaintiff executed and delivered to Rudolph Foreman the release read in evidence, such release is a complete bar to the plaintiff recovering for anything in reference to said goods which occurred prior to the delivery of such release.

Which instruction the Court refused and the defendants' counsel excepted.

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10. If the jury believe from the evidence, that Hale was the Agent of Tripp in respect to the selection of a portion of the goods; and that he, before the goods were selected, informed Tripp that the price was too high, there can be no recovery in this suit, by reason of said portion of the goods in question being charged too high.

Which instruction the Court refused, and the defendants' counsel excepted.

24 The jury found a verdict for plaintiff with \$2,500 damages, and defendants' counsel moved for a new trial.

25 Which motion the Court overruled, and the defendants' counsel excepted.

25 The Court rendered judgment for the plaintiff on the verdict, and the defendants' appealed to this Court and assign for error, the following :

182 1. Admission of improper testimony.

183 2. Exclusion of proper and competent testimony.

3. Refusing to defendants' counsel the right to cross-examine the witness Hale.

4. Excluding the witness Katz.

5. The giving the several instructions on the part of the plaintiff.

6. The refusing instructions on the part of defendants, and qualifying those given on the part of defendants.

7. The overruling the motion for new trial.

VAN BUREN & GARY,

Defendants' Attorneys.

W. K. McALLISTER,

Of Counsel.

209
Superior Court.

Henry Foreman
vs
Appellants

Frederick M Baldwin
Appellee

Abstract

Vankin & Gary &
W B M^cAllister
attys for Appellants

Filed Apr. 18. 1860 -

L. Leland
Clerk

United States of America }
State of Illinois. Cook County } ss.

Meas. Before the Honorable the Judges of Superior
Court of Chicago, within and for the County of
Cook and State of Illinois at a regular term of
said Superior Court of Chicago begun and held
at the Court House in the City of Chicago in said
County and State on the first Monday being the third
day of October in the year of our Lord one thousand
eight hundred and fifty nine and of the Independence
of the United States of America the Eighty fourth.

Present The Hon: John M. Wilson, Chief Justice
of Superior Court of Chicago
Wm. H. Higgins & Grant Goodrich . . . Judges
Carlos Haven Prosecuting Attorney
John Gray Sheriff of Cook County.

Attest

Walter Kimball, Clerk.

Be it remembered that heretofore to wit on the Twentieth day of January A. D. Eighteen hundred and fifty nine came Frederick M. Baldwin by Goodrich Farwell Smith his Attorneys, and filed in the Office of the Clerk of the Cook County Court of Common Pleas (now the Superior Court of Chicago,) his certain Process and Affidavit for Capias, in the words and figures following to wit.

' Cook Co: Court. Com. Pleas.

Frederick M. Baldwin

— (vs) —

Responds on the case

Henry Foreman, Benjamin
Foreman, Rudolph Foreman
and Joseph Foreman ... }

Damages \$4000⁰⁰

Clerk will issue Capias, on accompanying Affidavit to Sheriff of Cook County, returnable to February Term 1859 and oblige.

Goodrich, Farwell Smith

Attys for Resp."

"State of Illinois }
Cook County . . } ss.

Frederick M. Baldwin of Oswego, Mendota Co. Illinois, being duly sworn says that he has a just cause of action against Henry Foreman, Benjamin Foreman, Rudolph Foreman and Joseph Foreman and a just claim for damages amounting to at least the sum of Five thousand dollars sustained by this affair by reason of the fraudulent and wrongful acts of them done and

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committed as hereinafter particularly stated: That the following is a true statement of the substantial or chief facts constituting such cause of action viz:

The said Henry Foreman, Benjamin Foreman, Rudolph Foreman and Joseph Foreman are now and for a long time have been partners doing business in Chicago in the County of Cook aforesaid under the name and style of "Foreman Bros" and dealing at Wholesale in Ready made Clothing and having their place of business at Number 46 Lake Street.

Sometime in the Month of August last said this affiant made a special agreement with the said firm for the sale and conveyance to them of a certain piece of Real Estate, being a house and Lot on North La Salle Street in Chicago for the sum or price of Seven thousand ~~and~~ five hundred dollars to be paid in their Goods at the New York Manufacturers prices with fifteen per cent added. Pursuant to such agreement this affiant and certain persons who were to have of this affair a portion of the Goods went to the said Store of Foreman Brothers and looked over their Stock of goods and selected Goods in whole at prices named by the said Foreman Brothers amounting to nearly or quite the said sum of Seven thousand five hundred dollars.

A portion of the goods which were to be sent to this affair at Oswego and which amounted at the prices named to the sum of Twelve hundred dollars or thereabouts, were actually picked out and placed by themselves and the greater portion of the Goods and amounting at the prices named to the further sum of Five thousand five hundred dollars or thereabouts were at the same time also selected and properly designated by one Daniel H. Hale the Agent of one Ezekiel Trippe who was to have such goods of this affair.

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At the time such goods were so selected the said Henry Foreman stated to this affiant that the prices named as aforesaid were in accordance with the agreement so made between them and this affiant as above mentioned, but that they would find their Bills of purchase and show them to this affiant, and that this affiant should have the goods as agreed upon at 15 per cent advance above the New York Manufacturers prices.

At the time such Goods were so selected as aforesaid the said Henry Foreman told this affiant that the Bills of the Goods should be made out for this affiant and for the said Trip, and that the Goods should be boxed, and that those selected by this affiant should be shipped to him at Oswego, Kendall Co and that those selected for the said Trip should be delivered to him.

The greater portion of the said Goods so selected were packed in boxes on the day last aforesaid and before this affiant left the Store.

And this affiant further says that after such Goods were so selected and the assurances were so made by the said Henry Foreman, this affiant supposing that they were acting in good faith and would do as agreed, delivered unto the said firm a Deed of the said Real Estate, which Deed was from John D. Mose and wife to the said Rudolph Foreman, this affiant having before that time not purchased the said Real Estate, but not having taken a deed of the same to himself, and it being the request of the said firm that the deed should run to the said Rudolph Foreman instead of to all of the members of said firm.

This affiant further says that the said firm did not deliver the said Goods so selected as aforesaid nor make out Bills of the same at the prices mentioned or agreed upon.

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but on the contrary thereof after several weeks delay they sent to this affiant at Oswego certain boxes of goods which they claimed were the goods selected by him, and about the same time gave him a bill of the goods so sent, and on an examination of such goods and bill it appeared that they had taken out a large portion of the goods so selected by this affiant and as this affiant believes more than one half of such goods, and had in such bill charged for the goods so sent more than twice as much as they had agreed to sell them for, and had substituted and put in some articles at a high price which were nearly or quite worthless, and which had not been purchased or selected by this affiant, all of which was done fraudulently and with intent to cheat this affiant and without his knowledge.

And this affiant further says that he also examined the Goods and Bill delivered to said Shipps and found that the said "Norman Brothers" had fraudulently made similar changes & alterations in reference to the Goods selected for him and the prices for the same.

And this affiant says that the whole amount of the Goods so delivered to this affiant, including those which were received by the said Shipps were not worth more than the sum of Three thousand dollars estimating the same at the New York Manufacturers prices with Fifteen per Cent added, and that this affiant has sustained a damage from the said fraudulent and wrongful acts of the said Norman Brothers, to at least the sum of Five thousand dollars, as this affiant verily believes.

And this affiant further says that the benefit of whatever judgment may be obtained against the said Henry Norman, Rudolph Norman, Benjamin Norman and Joseph Norman will be damaged

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unless they be held to Bail.

Suono to before me this }
20th day of January 1889 }
W. Kinnale. Clk."

Frederick W. Baldwin."

And therefore accordingly on the said Twentieth day of January
in the year of our Lord one thousand eight hundred and fifty nine
there issued out of and under the Seal of said Court a certain Paper
Writ, commonly called a Writ of Capias; Which said Writ with the
Shuffle Return thereon endorsed is in the words and figures in
following, to wit,)

And thereafter to wit on the third day of September A. D. Eighteen hundred and fifty nine the said Plaintiff filed in the office of the Clerk of said Court his Declaration in said cause; That said Declaration is in the words and figures following to wit:

'State of Illinois } Cook County Court of Common Pleas.
Cook County) ss. February Term A. D. 1859.

Frederick M. Baldwin Plaintiff in this suit by & through Smith & Thomas his attorneys complains of Henry Truman Benjamin Foreman, Rudolph Foreman and Joseph Foreman, Defendants being in custody of a Writ of Habeas Corpus in the case.

1 For that whereas the said Plaintiff heretofore to wit on the 28th day of August A. D. 1858 at the City of Chicago in said County of Cook at the Special instance and request of the said Defendants, bargained with the said Defendants to exchange with the said Defendants a certain piece or parcel of Land of the said Plaintiff known and described as being the South Thirty one feet of Lot Number four in Block number Thirteen in Bushnell's

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addition to Chicago in the said County of Cook, which piece of Land was at the time and place aforesaid of great value, to wit, of the value of Seven thousand and five hundred dollars, for certain ready made Clothing and Dry Goods of the said Defendants of the value of Seven thousand five hundred dollars, to be selected by the Plaintiff out of the Stock of goods of the Defendants at their Store in Chicago aforesaid, at the New York Manufacturers prices with fifteen per Cent added.

And the said Plaintiff says that he did afterwards to wit on the day and year aforesaid and at the place aforesaid with the knowledge and at the request of the Defendants, select from the said Stock of Goods of the Defendants, at their said Store a large quantity of ready made Clothing and dry goods, which if estimated at the prices then and there named for the same by the Defendants with the Plaintiff were of great value to wit of the value of Seven thousand five hundred dollars; and the defendants, at the time such selection was so made by the Plaintiff, intending to deceive and defraud the Plaintiff, and for the purpose of inducing him to perform the said agreement on his part and for the purpose of fraudulently obtaining a deed of the said parcel of Land and the possession of the said Land, knowingly, falsely and fraudulently represented and promised unto the Plaintiff that the prices so named by them as aforesaid were the New York Manufacturers prices with only fifteen per Cent added, that their (the said Defendants) Bill of Purchase would show that the prices so named were to the New York Manufacturers prices with only fifteen per Cent added; that they (the said Defendants) would find such Bills and exhibit them unto the Plaintiff to satisfy him that the prices so named were correct and as so represented; that

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the said Clothing and dry goods so selected should be properly packed and delivered to the Plaintiff, and requested the Plaintiff to deliver unto them a deed of said parcel of Land.

That the said Plaintiff says that he confiding in & believing the said false and fraudulent representations, allegations & promises so made by the Defendants and not knowing the contrary thereof, was thereby induced to and did then, there select the said ready made Clothing and dry Goods as aforesaid and delivered unto the Defendants a deed of the said parcel of Land, which deed was from John D. Moss and Mary Jane his wife grantors therein named, unto the said Rudolph Foreman, grantee therein named, the Plaintiff having before that time, to wit, on the day and year aforesaid, at the place aforesaid, purchased the said parcel of Land of the said John D. Moss, but not having received any other deed therefor, and the said Defendants having requested the said Plaintiff that the said Rudolph Foreman alone should be named as the grantee in the said deed, in and by which Deed the said John D. Moss and wife did make their heirs and heirs, convey unto the said Rudolph Foreman his heirs & assigns, the said parcel of Land; and afterwards, to wit, on the day and year last aforesaid, the said Rudolph Foreman took possession of the said parcel of Land under and by virtue of said deed and still retains possession of said Land.

That the Plaintiff says that the said prices so named by the Defendants for the ready made Clothing and Dry Goods so selected by the Plaintiff, were not the New York Manufacturers prices with only fifteen per Cent added, but on the contrary a much greater per Centage was added, to wit, fifty per Cent, all of which was at the time and place aforesaid, well known unto the Defendants, that the

Defendants have not at any time exhibited the said bills of purchase unto the Plaintiff, although often requested so to do, but have fraudulently and wrongfully refused to do Exhibit such bills unto the Plaintiff, to wit, at the time and place aforesaid.

That the said defendants did not properly pack and deliver unto the Plaintiff the ready made Clothing and Dry Goods, so selected by the Plaintiff as aforesaid, but on the contrary afterwards, to wit, on the day and year last aforesaid, at the place aforesaid, knowingly wrongfully and fraudulently abstracted and retained a large portion of the Clothing and goods so selected of great value, to wit, of the value of Five thousand ~~thousand~~ dollars, and delivered the said Plaintiff the balance only, not so abstracted, and have not delivered unto the Plaintiff the goods and Clothing so abstracted and retained, nor any part thereof, although often requested so to do, but to deliver the same or any part thereof unto the Plaintiff have hitherto wrongfully and fraudulently refused and still do so refuse.

2 And whereas also the said Plaintiff heretofore to wit on the Twentieth day of August in the year of our Lord one thousand eight hundred and fifty eight to wit, the County of Cook aforesaid at the special instance and request of the said Defendants bargained with them (the said Defendants) to exchange with them a certain other piece or parcel of land lying and being in the County of Cook in the State of Illinois, to wit, The South Thirty one lot of lot number four in Block number thirteen in Bushnell's addition to the City of Chicago in said County of Cook, of great value, for certain other ready made Clothing and dry goods of the said Defendants to be selected out of the stock of Goods of the said Defendants in their

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Store in the said City of Chicago in quantity sufficient to amount
in value to the sum of Seven thousand five hundred dollars at the
New York Manufacturers prices with fifteen per Cent added.

That the said Plaintiff says that afterwards to wit on the
day and year aforesaid at 1 o'clock, the County of Cook aforesaid
by the said Plaintiff for the purpose of carrying out and perfecting
the aforesaid bargain and at the request of said defendants
proceeded with them, the said Defendants, to name and select the
kinds, classes, qualities, numbers and descriptions of ready made
clothing and the kinds, qualities and descriptions of dry goods
comprised in said Stock out of which the quantity aforesaid at the
prices aforesaid was to be taken; And the said Defendants then &
there at the time of such selection well knowing the said New York
Manufacturers prices and intending to deceive and defraud the said
Plaintiff in the premises, falsely, fraudulently and deceitfully named,
fixed and gave to the said Plaintiff prices upon the said kinds
classes, qualities, numbers and descriptions of ready made clothing
and upon the kinds, qualities and descriptions of dry goods by them
shown to him for purposes of selection, as and for said New York
Manufacturers prices with fifteen per Cent added and falsely &
fraudulently and deceitfully stated, represented and affirmed to said
Plaintiff that the said prices so named, fixed and given by them
were in fact the New York Manufacturers prices with fifteen per
Cent added and the said Plaintiff confiding in the aforesaid false and
fraudulent statements and representations of the said defendants and
believing the same to be true and not knowing to the contrary, was
thereby induced to and did then and there name and select the said
kinds, classes, numbers & descriptions of ready made clothing and the

prices, qualities & descriptions of dry goods upon which the said Defendants so falsely, fraudulently and deceitfully named fixed and gave such prices as aforesaid as the Clothing and dry goods out of which he would receive and accept the aforesaid purchase price of said land and did then and there name a sufficient quantity of each to be selected out of and separated from said Stock to amount in the aggregate to a large sum in value to wit to the said sum of Seven thousand five hundred dollars.

And the said Plaintiff says that the said Defendants further intending to deceive and defraud the said Plaintiff in the premises afterwards to wit in the day and year aforesaid at to wit, the County of Cook aforesaid in the absence and without the knowledge of said Plaintiff deceitfully and fraudulently selected out of and separated from said Stock and packed and enclosed in boxes large quantities of ready made Clothing and dry Goods of kinds qualities and descriptions differing from & inferior to the Clothing & dry Goods so as aforesaid selected by said Plaintiff, together with some Clothing and Dry Goods like that so selected by said Plaintiff and deceitfully and fraudulently marked large quantities of said Clothing and dry Goods so packed and enclosed in said boxes at prices much higher than the prices so as aforesaid named fixed and given by them, to said Plaintiff at the time of such selection by him and thereupon then and there falsely and fraudulently stated represented and affirmed to said Plaintiff, that the Clothing and Dry Goods so packed & enclosed in said boxes were of like kinds, classes, number descriptions and prices with those so as aforesaid named & selected by said Plaintiff, and were in quantity sufficient to amount in value at such prices to a large sum to wit Seven thousand five hundred

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and eleven dollars and fifty cents.

And the said Plaintiff says that he also confiding in said last named false and fraudulent statements and representations of said Defendants and believing the same to be true and not knowing to the contrary was thereby together with all of the aforesaid false and fraudulent and deceitful statements representations and conduct of said Defendants in the premises induced to and did afterwards from on the day and year aforesaid as to wit the County of Cook aforesaid accept of and from said Defendants the said clothing and dry Goods so by them packed and encased in said boxes as aforesaid as and for Clothing and dry Goods of like kinds ^{classes} qualities and descriptions with those so named and selected by said Plaintiff as aforesaid and in quantity sufficient to amount in value to a large sum to wit the said sum of Seven thousand four hundred and eleven dollars and fifty cents at said New York Manufacturers prices with fifteen per cent added, and to that amount to be applied upon and as a part of the said Seven thousand five hundred dollars the purchase price of said Land and delivered to the said Defendants a good and sufficient Deed of Conveyance of the aforesaid piece or parcel of Land, which Deed was duly executed and acknowledged by and John D. Moss and ^{Mary} Jane Moss his wife as grantors therein named to the said Defendant Rudolph Foreman as grantees therein named, the said Plaintiff having before that time purchased the said piece or parcel of Land of said John D. Moss, but not having received any other Deed therefor and the legal title thereto being then and there vested in said John D. Moss, and the said Defendants having then and there requested the said Plaintiff that the said Rudolph Foreman alone should be named as the grantee in said deed, while

said Deed of Conveyance was then and there accepted and received by said defendants as and for a full and complete compliance with the fulfillment of the aforesaid bargain on the part of said Plaintiff.

That the said Plaintiff avers that the price so as aforesaid named fixed and given by said Defendants upon the several kinds classes qualities numbers and descriptions of said Clothing and Dry Goods at the time of such selection by said Plaintiff were not the said New York Manufacturers prices with fifteen per cent added but on the contrary there were a large two cent age to wit fifty per cent above said New York Manufacturers prices, that large quantities of said Clothing and Dry Goods so by said Defendants packed and enclosed in said boxes, were by the said Defendants marked packed and enclosed therein at prices much above to wit One hundred per cent above the said New York Manufacturers prices; That the aggregate of the said Clothing & Dry Goods so by said Defendants packed and enclosed in said boxes was at said New York Manufacturers prices with fifteen per cent added of a value much less than the said sum of Seven thousand four hundred and eleven dollars & fifty cents, to wit Three thousand dollars less in value all of which was then and there to wit at the County of Cook aforesaid well known to the said Defendants By means of which false fraudulent and deceitful statements representations acts and conduct of the said Defendants in the premises as aforesaid the said Plaintiff has been injured and has sustained damages in a large sum of money to wit the sum of Three thousand dollars at to wit the County of Cook aforesaid.

And whereas also the said Plaintiff heretofore to wit on the twenty eighth day of August in the year of our Lord one thousand eight hundred and fifty eight at to wit the County of Cook aforesaid at the special instance and request of the said Defendants bargained with the said Defendants to exchange with them the said Defendants a certain other piece or parcel of Land lying and being in the City of Chicago in said County of Cook to wit The South Thirty one feet of lot number four in Block Number Thirteen in Buckwells Addition to said City of Chicago of great value for certain other ready made clothing and dry Goods of the said Defendants in their Store in Chicago aforesaid, in quantity sufficient to amount in value to the sum of Seven thousand five hundred dollars at the New York Manufacturers prices with fifteen per Cent added, and the said Plaintiff says that the said Defendants afterwards to wit on the day and year aforesaid at to wit, the County of Cook aforesaid intending to carry out and complete said bargain on their part with intent to deceive and defraud the said Plaintiff in the premises, fraudulently and deceitfully packed and enclosed in boxes ready made clothing & dry goods of and from their said Stock of Goods and thereupon there and there stated represented and affirmed to the said Plaintiff that the said clothing and Dry Goods so by them packed and enclosed in said boxes as aforesaid were so packed and marked at New York Manufacturers prices with fifteen per Cent added and were in quantity sufficient to amount in value at said New York Manufacturers prices with fifteen per Cent added to a large sum to wit Seven thousand four hundred and eleven dollars and fifty Cents.

And the said Plaintiff says that he confiding in believing the aforesaid false and fraudulent statements and representations of the

said Defendants and not knowing to the contrary thereof was thereby induced to and did then & there accept of and from said Defendants the said clothing and Dry Goods so by them packed and enclosed in said boxes as and for clothing and dry goods in quantity sufficient to amount in value at said New York Manufacturers prices with fifteen per Cent added to a large sum to wit the said sum of Seven thousand four hundred and eleven dollars and fifty cents and to that amount to be applied upon and as a part of the said Seven thousand five hundred dollars the said purchase price said Land, and delivered to said Defendants a good and sufficient deed of Conveyance of said Land, which deed was duly executed & acknowledged by one John D. Moss and Mary Jane Moss his wife as grantors therein named to the said Defendant Rudolph Foreman as grantee therein named (the said Plaintiff having before that time purchased the said Land of said John D. Moss, but not having received any other deed therefor and the legal title thereto being then & there vested in said John D. Moss and the said Defendants having then & there requested the said Plaintiff that the said Rudolph Foreman alone shall be named as the grantee in said deed; which said deed was then and there accepted and received by the said Defendants as and for a full and complete compliance with and fulfillment of said obligation on the part of said Plaintiff.

And the said Plaintiff says large quantities of the said ready made clothing and Dry Goods so by said Defendants packed and enclosed in said boxes were not packed and marked at New York Manufacturers prices with fifteen per Cent added and were not in quality sufficient to amount in value at said New York Manufacturers

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prices with fifteen per Cent added. to the sum of Seven thousand four hundred and eleven dollars and fifty cents but on the contrary there were marked packages and enclosed in paid boxes at prices much above 10 unit, One hundred per Cent above said New York Manufacturers prices with fifteen per Cent added and were in quantity much less than sufficient to amount in value to said sum of Seven thousand four hundred and eleven dollars and fifty cents at said New York Manufacturers prices with fifteen per Cent added and were much less in value in the aggregate at said prices than said sum of Seven thousand four hundred and eleven dollars and fifty cents to wit Three thousand dollars less in value - all of which was then and there well known to the said Defendants - By means of all which false and fraudulent statements representations acts and conduct of the said Defendants the said Plaintiff has been injured and has sustained damage in a large sum to wit in the sum of Three thousand dollars.

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And whereas also the said ~~Defendant~~ Plaintiff heretofore to wit on the Twenty eighth day of August in the year of our Lord one thousand eight hundred and fifty eight at 10 unit, the County of Cook aforesaid at the special instance and request of said Defendants or bargained with the said Defendants to exchange with them the said Defendants a certain other piece or parcels of land lying and being in the City of Chicago in said County of Cook, to wit, The South Thirty one feet of Lot Number four in Block Number Thirteen in Bushnell's Addition to said City of Chicago of great value for certain other ready made clothing and Dry Goods of the said Defendants to be selected out of the Stock of Goods of the said Defendants in their Store in Chicago aforesaid in quantity sufficient to amount in value to the sum of Seven thousand five hundred dollars at Eastern Manufacturers

prices with fifteen per cent added.

And the said Plaintiff says that the said defendants afterward to wit on the day and year aforesaid at to wit, the County of Cook aforesaid pretending to carry out and complete said bargain on their part with intent to deceive and defraud the said Plaintiff in the premises fraudulently and deceitfully packed enclosed in boxes ready made clothing and dry goods of and from their said stock of goods and thereupon then & there stated represented and affirmed to the said Plaintiff that the said clothing and dry goods so by them packed and enclosed in said boxes as aforesaid were packed and marked at Eastern Manufacturers prices with fifteen per cent added and were in quantity sufficient to amount in value at said Eastern Manufacturers prices with fifteen per cent added to a large sum to wit Seven thousand four hundred and eleven dollars and fifty cents.

And the said Plaintiff says that he confiding and believing the aforesaid false and fraudulent statements and representations of the said defendants and not knowing to the contrary thereof was thereby induced to and did then & there accept of and from said defendants the said clothing and dry goods so by them packed and enclosed in said boxes as an for clothing and dry goods in quantity sufficient to amount in value at said Eastern Manufacturers prices with fifteen per cent added to a large sum to wit, the said sum of Seven thousand four hundred and eleven dollars and fifty cents and to that amount to be applied upon and as a part of the said Seven thousand five hundred dollars the said purchase price of said Lands, & delivered to said Defendants a good & sufficient deed of conveyance of said Lands which deed was duly executed and acknowledged by one John P. Moss and Mary Jane

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Moss his wife as Grantors therein named to the said Defendants -
 Rudolph Foreman as grantees therein named (the said Plaintiff
 having before that time purchased the said Land of said John D. Moss
 but not having received any other Deed therefor and the legal title
 thereto being then & there vested in said John D. Moss and the said
 Defendants having then and there requested the said Plaintiff that the
 said Rudolph Foreman alone should be named as the Grantee in
 said deed: Which said deed was then and there accepted & received
 by the said Defendants as and for a full and complete compliance
 with and fulfillment of said bargain on the part of said Plaintiff.

And the said Plaintiff says that large quantities of the said
 ready made Clothing and dry Goods so by said Defendants packed
 and enclosed in said boxes were not packed and marked at Eastern
 Manufacturers prices with fifteen per Cent added and were not in
 quantity sufficient to amount in value at said Eastern Manufacturers
 prices with fifteen per Cent added to the said sum of Seven thousand
 four hundred and eleven dollars and fifty cents, but on the contrary
 thereof were marked packed and enclosed in said boxes at prices
 much above to wit, One hundred per Cent above said Eastern
 Manufacturers prices with fifteen per Cent added, and were in
 quantity much less than sufficient to amount in value to said sum
 of Seven thousand four hundred and eleven dollars and fifty cents at
 said Eastern Manufacturers prices with fifteen per Cent added and
 were much less value in the aggregate at said prices than said sum
 of Seven thousand four hundred and eleven dollars & fifty cents to wit
 Three thousand dollars less in value - all of which was then and there
 well known to the said Defendants. By means of all which false and
 fraudulent statements representations acts and conduct of the said Defendants

the said Plaintiff has been injured and has sustained damage in a large sum to wit, in the sum of Three thousand dollars.

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And whereas also the said Plaintiff heretofore to wit, on the first day of December in the year 1858 at Chicago aforesaid was lawfully possessed as of own property of certain goods chattels wares and Merchandise to wit Five hundred Coats, five hundred vests, five hundred pairs of pantaloons, five hundred shirts, five hundred collars, five hundred pairs of socks, five hundred handkerchiefs and five hundred caps of great value to wit, of the value of Five hundred dollars and being so possessed the said Plaintiff afterwards to wit on the day and year aforesaid and at the place aforesaid casually lost the said Coats, vests, pantaloons, shirts, collars, socks, handkerchiefs and caps out of his possession and the same afterwards to wit on the day and year aforesaid and at the place aforesaid came to the possession of the said defendants by finding, yet the said defendants with knowing the said Goods and Chattels to be the property of the said Plaintiff, and of right to appertain and belong to him, but contriving and fraudulently intending craftily and subtly to cheat and defraud the said Plaintiff in this behalf, hath not yet so delivered the said Goods and Chattels or any Clothing, Cloths, dry goods and Yarned Notions or any or either of them or any part thereof to the said Plaintiff, although often requested so to do, and afterwards to wit, on the day and year last aforesaid at the place aforesaid came and disposed of the goods ready made Clothing, Cloths, dry goods and Yarned Notions to their own use, all which is to the Plaintiffs damage in the sum of Three thousand dollars and therefore he brings suit &c

Harrell, Smith & Thomas. Defts Atty's.

And hereafter to wit on the tenth day of October in the year of our Lord one thousand eight hundred and fifty nine came the said Defendants by Van Buren and Gary, their Attorneys, and filed in the Office of the Clerk of said Court their Plea to said Declaration which said Plea is in the words and figures following to wit

"Superior Court of Chicago.

Rudolph Foreman, Henry
Foreman Benjamin Foreman
and Joseph Foreman . . .
vs
Frederick M. Baldwin . . .

And the said Defendants by Van Buren and Gary their Attorneys come and defend the wrong and injury whereof and say that they are not guilty of the supposed wrongs or any or either of them, or any part thereof above laid to their charge, in manner and form as the said Plaintiff hath above complained against them, and of this they put themselves upon the Country.

Van Buren & Gary
Defts Attys."

And afterwards to wit on the twelfth day of October (being one of the days of the said October term of said Court) in the year of our Lord one thousand eight hundred and fifty nine the following proceedings were had in said cause and entered of record in said Court, to wit.

Frederick M. Baldwin

(12)

Harry Foreman, Benjamin
Foreman, Rudolph Foreman } Pres/ars on the case,
and Joseph Foreman . . . }

This day comes said Plaintiff by Farnelle Smith and Thomas his Attorneys and said Defendants by Van Buren & Gray their Attorneys also come and issues being joined herein it is ordered that a Jury come Whereupon comes the Jury of good and lawful men to wit

Cornelius Kanouse, Wm B. Adams, H. W. Lemare, Richard Williams, Natho Gray, L. W. Gray, Frederick Townsenc, W. L. Sherwood, M. L. Satterlee, E. J. Allen, William Wayman & Orson Felt who being duly elected tried and sworn to by issues joined aforesaid after hearing front testimony adduced, and the hour of adjournment having arrived, it is ordered that the Jury separate until tomorrow morning.

And afterwards to wit on the thirteenth day of October (being 1st of the said October term of said Court) in the year of our Lord one thousand eight hundred and fifty nine, the following further proceedings were had in said cause and entered of record in said Court, to wit

Frederick M. Baldwin

(12)

Harry Foreman, Benjamin

Pres/ars on the case.

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Foreman, Rudolph Foreman }
and Joseph Foreman . . . }

And now at this day again comes the parties to this suit by their respective Attorneys aforesaid and the Jury empanelled herein on yesterday for trial of this cause also come and after hearing further testimony, and the hour of adjournment having arrived, upon agreement of the parties it is ordered the Jury separate and meet the Court tomorrow morning.

And afterwards to wit on the fourteenth day of October (being date of the said October term of said Court) in the year of our Lord one thousand eight hundred and fifty nine, the following further proceedings were had in said Cause and entered of record in said Court to wit

" Frederick M. Baldwin

(vs)

Henry Foreman, Benjamin }
Foreman, Rudolph Foreman }
and Joseph Foreman . . . }

Trespass on the Case,

And now again come the parties to this cause by their respective Attorneys as aforesaid, and the Jury empanelled herein for the trial of this Cause also come and after hearing all the testimony adduced, arguments of Counsel and instructions of the Court retired to consider of their Verdict, and the hour of adjournment having arrived upon agreement of the parties it is ordered that when the Jury shall have agreed upon a verdict they shall reduce the same to writing, sign and seal the same and

afterwards separate and meet the Court.

And afterwards to wit on the fifteenth day of October (being the first of the said October Term of said Court) in the year of our Lord one thousand eight hundred and fifty nine, the following further proceedings were had in said cause and entered of record in said Court, to wit.

" Frederick M. Baldwin

(u)

Henry Foreman, Benjamin	} Trustees on the case.
Foreman, Rudolph Foreman	
and Joseph Foreman . . .	

And now again comes the parties to this cause by their respective Attorneys as aforesaid and the Jury empaneled herein for the Trial of this cause also come and submit their Verdict and say to the Jury find Defendants guilty and assess the Plaintiffs damages herein to the sum of Twenty five hundred dollars.

And thereupon said Defendants submit their Motion herein for a new trial in this cause.

And afterwards to wit on the twenty ninth day of October (being the first of the said October Term of said Court) the in the following the year of our Lord one thousand eight hundred and fifty nine, the following further proceedings were had in said cause and entered of record in said Court, to wit.

" Frederick M. Baldwin

(w)

Henry Foreman, Benjamin
Foreman, Rudolph Foreman
and Joseph Foreman . . .

Defendants in the case.

And now at this day again comes said Plaintiff by Samuel Smith & Thomas his Attorneys and said Defendants by Van Buren & Gary their Attorneys also come and counsel being heard on the Motion heretofore submitted herein by said Defendants for a new trial in this cause, and due deliberation being thereupon had and the premises fully understood it is considered by the Court that Defendants said Motion for a new trial be and the same is overruled.

Therefore said Plaintiff ought to have judgment on Verdict of the Jury rendered herein as aforesaid.

Therefore it is considered said Plaintiff do have and recover of said Defendants his damages of Two thousand five hundred dollars in form aforesaid by the Jury here found and assessed, and also his costs and charges in this behalf expended and have execution thereof.

And thereupon said defendants pray an Appeal herein to the Supreme Court, which is allowed to them upon condition that they file herein their Appeal Bond in the sum of Thirty five hundred dollars with security to be approved by a Judge of this Court said Appeal Bond with Bill of Exceptions to be filed within 40 days.

And thereupon accordingly on the fifteenth day of November in the year of our Lord one thousand eight hundred and fifty nine came the said Defendants and filed in the Office of the Clerk of said Court, their Appeal Bond in said cause; Which said Bond is in the words and figures following to wit:

"Know all Men by these Presents that we Henry Foreman Rudolph Foreman, Benjamin Foreman and Joseph Foreman as principals and Simeon Powell, Abraham Liebenstein and Lazarus Silverman as their sureties, are held and firmly bound to Frederick M. Baldwin in the penal sum of Three thousand five hundred dollars for the true payment whereof to the said Frederick M. Baldwin his executors administrators or assigns we hereby bind ourselves our heirs executors and administrators

Witness our hands and seals this 3rd day of November A.D. 1859.

The condition of the above obligation is such that whereas the said Frederick M. Baldwin did at the October Term A.D. 1859 of the Superior Court of Chicago recover in said Court a judgment against the said Henry Foreman, Benjamin Foreman Rudolph Foreman and Joseph Foreman for the sum of Two thousand five hundred dollars, with the cost of suit from which said judgment the said Henry Foreman, Benjamin Foreman Rudolph Foreman and Joseph Foreman have appealed to the Supreme Court of the State of Illinois

Now if the said Henry Foreman, Rudolph Foreman Benjamin Foreman and Joseph Foreman shall pay the said

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judgment costs, interest and damages in case the said judgment shall be affirmed and shall also duly prosecute their said appeal when the foregoing obligation shall be void - otherwise to remain in force.

Signed, sealed and delivered
in presence of

Walter Kimball Clerk

Henry Foreman (Seal)

R. Foreman (Seal)

B. Foreman (Seal)

Joseph Foreman (Seal)

Simon Powell (Seal)

Approved by me

Wm H. Higgins
Judge

A. Lieberstein (Seal)

Sargus Silverman (Seal)

"State of Illinois
County of Cook" } R

Simon Powell, Abraham Lieberstein, and Sargus Silverman, being severally duly sworn each for himself said that he is worth double the amount specified in the annexed bond as the pecuniary thereof over and above all his debts and liabilities and exclusive of property exempt from execution.

Subscribed and subscribed before

Simon Powell

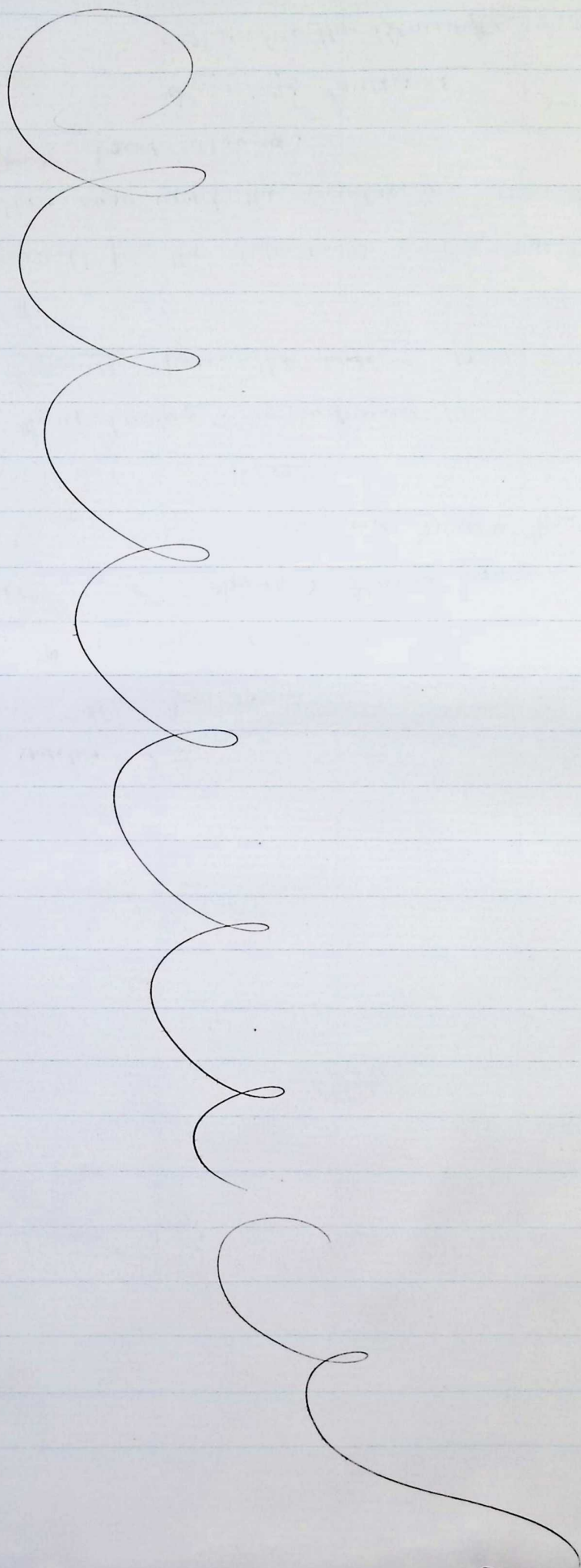
on this third day of November

A. Lieberstein

A.D. 1859

Sargus Silverman."

Walter Kimball Clerk"



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And afterwards to wit on the thirce day of December in the year of our Lord one thousand eight hundred and fifty nine came the said Defendants by their said Attorneys and filed in the Office of the Clerk of said Court their Bill of Exceptions in said cause; Which said Bill of Exceptions are in the words and figures following, to wit.

Frederick W. Baldwin

(vs)

Harry Foreman. Rudolph Foreman
Benjamin Foreman & Joseph
Foreman

In the Superior Court of
Chicago. October Term
A. D. 1859.

Be it remembered that heretofore to wit on the 12th day of October A. D. 1859 the above cause came on for Trial before the Hon: Wm. H. Higgins one of the Judges of said Court and a Jury when the following proceedings were had, to wit,
Messrs Farwell, Smith & Thomas appeared for the Plaintiff,
H. K. Mc Allister Esq^r and Messrs Van Buren & Gary represented the Defendants.

A Jury having been impanelled.

Mr Farwell opened the case at some length on behalf of the Plaintiff.

Counsel for the Defendants stated that they preferred not to open their case until the conclusion of the Plaintiffs evidence which the Court allowed.

Plaintiffs Evidence.

Charles H. Mappa called by the Plaintiff, being duly sworn was examined in Chief by Mr Farwell and testified as follows.

Q. Are you acquainted with the parties in this suit?

A. Yes Sir, I am.

Q. Did any of these parties apply to you for the purpose of making a trade push as has been alleged to?

A. Mr. Baldwin came to my office in the last of August 1858 and he asked me if I knew of an opportunity to exchange a house and lot in Town here for a stock of goods. I told him I probably could find something of the kind. I saw Mr. Scanlan during the day & I asked him the question & he replied that he knew of some clothing that could be exchanged for a house and lot. I asked him who had the clothing. He said "Foreman Bros" I mentioned the fact to Mr. Baldwin & we went then to Foreman Bros with Mr. Baldwin. Mr. Scanlan was with us. Me and Mr. Scanlan & Baldwin went. We saw some two or three members of the firm there I don't know that I know their first names. I know them by sight.

Q. What was done?

A. I introduced Mr. Baldwin to Mr. Foreman & told him what he wanted and that if the prices of the goods he increased & the house was such as they wanted they could make the trade. They looked out some goods at that time. Mr. Baldwin did, I think if I recollect right. Mr. Baldwin said he would come again & call the next day. I think, I went there two or three times I think with Mr. Baldwin and he was making an examination, looking at the goods somewhat. No trade was closed at that time. I was not present when the

B/ trade was concluded, I understood however. —

Mr New Bureau. No matter.

A. Well I understood from the parties that the trade was made. Both from Mr. Baldwin and from the Foreman Bros. — one Mr Foreman, & I don't know but one or two of them. They were very much in the habit of two or three of them talking very nearly at the same time. I understood it from the Foreman at their store.

B. What was said then. the price of the property?

A. Yes, also about it I understood from the Foreman's that the trade was made. It was at Mr. Foreman's store. I think Mr. Rudolph Foreman was present. I know his first name. He is the only one of the Brothers I do know. This is the man (present in court).

B. Were any other Foreman's present?

A. Yes: the eldest, the tallest one, & another one. I don't see the other one here now.

B. Any one else present besides these?

A. Yes the Bookkeeper & Mr. Baldwin. This one Mr. Rudolph Foreman this brother, the elder one, did most of the talking. They both talked about the house, its price, and the price of the goods. Rudolph Foreman talked more about the price of the goods. Mr. Baldwin thought in the first place that he ought to have \$8000 for his house. He afterwards agreed to sell the house for \$4500 & Mr. Foreman agreed to let him have goods at —

Mr New Bureau. Which Foreman?

A. Rudolph Foreman.

B. State all that was said about the prices?

A. He agreed to let him have them at Wholesale or Manufacturers prices, I don't remember distinctly which with 15 per cent added.

Mr Smith - Was the word "Wholesale" used?

A. Yes Sir, it was to the best of my recollection.

Q. Do you recollect any other expression they used in regard to the price of the goods except Wholesale or New York Manufacturers prices?

A. No Sir, I don't recollect anything more now. It (the property) was on North La Salle Street. I have seen the property. I saw it before Mr Baldwin traded with the Foreman Bros. Mr Baldwin went with me to see it.

Q. On this talk between these parties was it stated where the property was?

A. Yes, they stated, or rather Mr Baldwin stated where his house and lot was. He told them it was on North La Salle Street. He described the house as being a brick house - a very fine one, very finely finished, marble mantel pieces & finished in the very best style. He said, I think, that Mr Moss built it for himself and took a great deal of pains. He said he was to have it of Mr Moss. Mr Moss was living in it (at this time).

Q. Was Mr Hall present at Foreman's place at any of these times?

A. I think I went at one & saw Mr Hall there once. Mr Baldwin & Mr Hall were there. I went there alone and found them there. This was after I understood the case to be connected.

Q. Did Mr Stale ever go with you to the Store before the trial during these times?

A. I don't recollect that he did. He may, but I don't recollect it.

Bros Examined by Mr Van Buren.

Q. Was there any written agreement made at the time you mentioned?

A. I never saw any Sir.

Q. You was not present when the Contract was consummated?

A. No Sir. only they stated it to me, that is all Sir.

Daniel, W. Hale called by the Plaintiff, being duly sworn was examined in Chief by Mr Farnell and testified as follows.

Q. How or in what business were you engaged in August & Sept & October of last year?

A. I was selling goods - Clothing, over on Randolph Street - about that time - 1114 Randolph.

Q. For whom?

A. For myself & Mr Tripp.

Q. Did you at that time go to the Clothing Store of the Foreman Bros to look at their Stock of goods?

A. I did, I went about that time. I can't tell the day now without referring - in Sept or Oct. somewhere.

Q. Have you anything to refer to?

A. No.

Q. Who went with you if any one?

A. The first time there was no one went with me, I went alone. I priced the goods, looked them over a little and told

them what I was come for.

Q. Thus did you go?

A. Mr Tripp wished me to go and look at the goods & see if the goods and prices were right.

Q. Who did you see?

A. The Korimans - three or four of them I think, those are his, I went around and priced the goods with them. They showed me the prices of the goods & the kinds of goods & after I had looked at them I told them what I had come for. They said they would rather trade with Mr Baldwin so I went off and said nothing more at that time. I went I think the next day I believe Mr Baldwin went with me, but I won't be certain whether it was him or Mr Tripp. I think one of them went with me. I told them all I wanted was Mr Tripp wished me to pick out the goods as I was better acquainted with goods than he was, knew what they worth & all I wanted was what was fair, & an honorable transaction. They said they wanted nothing but a fair honorable transaction - that they would trade fair with Mr Baldwin & he should have the goods at 15 per Cent above New York or Eastern Manufacturers prices. They said if that was all I wanted I might go on and look through the goods & if it suited them or me & Mr Tripp or Mr Baldwin that they would trade, that they had went and seen the house & was satisfied with that and would trade. I looked through the goods at that time & commenced picking out & picked out I supposed pretty well enough to make the Bill \$5000. that Mr Tripp was to have

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in goods. I picked out until I thought I had pretty near enough to make up the bill \$500.

Q. Go on.

A. They said they would bill them off that I then up that the Eastern Manufacturers prices to them what they were worth and add 15 per Cent to that and make the bill out the next day or next Monday. This I think was Saturday or Friday. I won't be certain which, it lasted I think over Sunday. I was to come in Monday morning & look the matter over.

Q. Was anything paid as to satisfying parties about these prices?

A. They said they would produce the Bills and we should have them at Cost & they would add 15 per Cent to what they cost. He was to have the Horse & Lot for \$7500.

Q. Was Baldwin present at the Store during this selection or at this time?

A. I think it^{1st} was not there until during the first day I was there. The second day I am talking of. The second day I didn't pick any out.

Q. Was Baldwin there the day you picked the goods out?

A. No Sir, I think not, I think I was alone.

Q. That was the second day you was at the Store?

A. Yes Sir. - This Friday or Saturday.

Q. Was anything more paid or done at that time?

A. I think nothing more than I was to come in Monday & conclude the balance of the bill - to look at the prices.

Q. As this interview did they produce any New York Bills to show the prices?

A. No they did not.

Q. This day you thought you had picked out goods nearly to amount to the sum of \$5000.³

A. Yes, I didn't know nothing about it, more than I had been all over the goods. I didn't add it up as I was going on Monday and they were in a great hurry they could not do anything more that night & as I was coming in on Monday they said it would be just as well. I told them to go on & make out the Bill at the prices and Monday I would complete it and add the 15 per cent too how it would come out.

Q. Did they name the prices to the goods as you looked over them?

A. Yes, on that day to some of them. I told them "they were too high some of them" but said I "if you produce your bills that is all I want," I want a fair honest thing."

They said they would produce their Bill & I should have a fair honest thing - that was all they wanted. I went Monday, I think about 10 o'clock. Mr Baldwin and the Foreman's were there.

Q. Did any one go with you?

A. I won't be certain whether there was or not. I think that was Monday. I won't be certain - either Monday or Tuesday or Monday - the first part of the week. Mr Baldwin & Messrs Foreman's were there, whether any body else or not I don't know. I think all the Foreman's were there. I asked them what they had done. They told me they had gone on & selected a few of each kind that I had selected - enough to

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make up my bill of the same kinds I had selected - the \$5000. I asked them if they had them billed off? They said they would make out a Bill & would have it done pretty soon. This was in the forenoon I think. In the afternoon I was there again I think with Mr Tripp. I asked them about the Bill. They said it was not made out. They would have it done as soon as they could. Their Bookkeeper was out.

Q. Did they this day produce any New York Bills?

A. No Sir. They said they would make out a bill that day already & produce the New York bill & add the per centage and everything should be done all straight and right - that they would attend to it all right, that we need not be alarmed - that we could get the goods next day I think. Mr Baldwin was there that day - had just finished picking out his goods. He had got them all picked out & took me around and showed me what he had bought. That was Monday.

Q. On this Monday you spoke of their having told you they had selected from the same kinds of goods you had selected to make up the balance?

A. Yes Sir. They said what I had picked out came to about \$3000 & they had selected a few of each kind that I had selected - enough to make up the complement.

Q. Who did they say had selected these?

A. Mr Baldwin & Mr Foreman. He said he had selected them. Mr Baldwin was there on Monday. He was there during this conversation. I think there were several boxes of them packed I think. They were boxed up, & they were in making them up when I was there. several boxes. This was

Monday afternoon. I stayed only a short time - perhaps an hour or an hour & a half. I think Mr Balawin went away with me; I won't be certain about that, but I think he went away with me. I think he went with me there in the afternoon. I was there I guess a couple of hours. I don't really recollect whether Balawin went away with me or not. At those interviews they said they manufactured these goods East. I could not designate the place whether it was New York, or some other place. It was in the Eastern Cities somewhere. This was Monday and Saturday, the first and second time I was there.

Q. You mean the first time you made a selection?

A. Yes Sir.

Q. How did this statement arise?

A. I wanted to know how the goods were bought, whether they were bought well or not. They said they bought their clothing at cash & as low as anybody could buy them. & they manufactured them themselves as low as anybody could manufacture them.

Q. When you went there Monday were the goods boxed up?

A. I think they were; yes they were boxing them and putting them up when I went there Monday at 10 o'clock I should judge it was Monday or Tuesday, the first time after Sunday.

Q. Did you go there again?

A. Yes Sir, that was in the afternoon. Tuesday morning, early in the morning I started to Minnesota & was gone there 13 days. & I didn't go there again until I returned. I went there and saw the bills.

Q.

On this Monday or Tuesday how many goods were boxed up or pretended to be boxed, when you left?

A.

Pretty near all of them I should think. In the afternoon I went there to see the bills they were drawing off & they told me they were not made up - that their Bookkeeper was busy & hadn't got them made up.

Q.

Was anything done about the title to the property before you went to Minnesota?

A.

Mr Baldwin went & deposited the Deeds, or I think had left them there with them to look over. They had went and looked at the title and was satisfied it was right and to take them. He gave them the Deeds. I think this was Monday at the completion of the trade - about that time.

On my return from Minnesota I went there again. I went about the first time. I was gone 13 days. I started to ~~go~~ Minnesota the next day. On my return I saw all the goods that he had, that I had picked out according to the way that they said in Mr. Tripp's Store. I saw a lot of goods in Mr. Tripp's Store. Mr. Tripp said they were the goods -

Q.

Objected to.

Did you examine the goods Mr. Tripp pointed out?

A.

I did, they were at No 100 Lake St.

Q.

Did you examine any bill? (handing witness a document)

A.

I did, That is the bill, I compared the Bill to the goods, which were shown to me

Mr

Mr. Callister objected to my evidence as to the condition or prices of the goods selected and delivered to Mr. Tripp.

This objection was overruled by the Court and
Defendants bought them and there excepted

Q. You looked over the goods and this bill, did you find any
articles mentioned on this bill?

A. Yes, I found the Articles there which are mentioned on this
bill.

Q. How did the Goods which you examined compare with
those which you have selected?

A. A part of them were - I should judge somewhere about
one half of them or nearly that.

Q. Were there any goods there which you had not selected?

A. Yes!

Q. What part?

A. About one half of them.

Q. About one half of these \$3000?

A. I supposed from looking over the bill that there was
about one half of the goods I had selected.

Q. By the Court.

From the whole of the Goods before you - Do you mean
 $\frac{1}{2}$ or $\frac{1}{4}$ of these?

A. Perhaps $\frac{1}{3}$ of these - Still I don't say nothing positive
about that; it was only a rough guess. There were a good
many I never selected.

Q. Did you examine these goods particularly in reference to that?

A. I did.

Q. Have you put your finger on any Articles (presenting the
bill) which you had not selected which you remember now?

Q. There is some Boston Overcoats the first one is No 383. This I didn't select "No 383" is "12 Boston Overcoats" put here at "\$9.50" a piece. "6 Black Dits" I suppose Boston Overcoats is "No 4441" at "\$13.00" a piece. There is "Union Cassimere business Coats" There are several of them here; I don't know which ones they are. There is a good many of that kind here that I selected.

Court. Give those you did not select?

A. Well I think there is as many again of these "Union Cassimere Coats" as I selected. It is difficult to tell to separate without the goods are compared. There is "No 611, 6 Black Coats at \$18.45" These I think I selected at \$11.00.

There's this "6 Sheep Gray" I don't recollect if selecting. It is No 473. "6 Sheep Gray Overcoats" at \$9.50. No 465 12 Middy heads @ \$9.50. These are Overcoats, I don't remember if selecting them. No 383 - 12 Boston Overcoats @ \$9.50.

Q. Is that the same item you selected before?

A. No Sir, it is another item in another part of the bill. "No 369. 6 dits @ \$11.00". "No 395. 6 Mohair overcoats @ \$11.84 1/2". "No 455 - 12 dits @ \$9.25"

Q. What next?

A. That is as near as I can tell about them. I cannot go on and designate numbers here, without the goods to compare that I didn't pick out, just looking at the bill. I have done that the best I could from my recollection of the Bill when it came. I think I have gone through the bill as far as I can tell anything about it from the Bill. There is "12 Brown business coats No 61 at \$13.00." I don't recollect anything about

them.

Q This was on your return from Minnesota?

A Yes - there 13 days - and I made this Examination.

Q Was your attention called at this time to this matter as to whether there were goods in there which you had not selected?

A Yes Sir. I examined in reference to that, but not particularly in reference to marking the Bill at that time, but at that time I found there were quite a good many goods on the Bill, which I had not selected nor bought, and the goods I had bought ^{were} very high and a good many more of them, than I had picked out. There I had picked out half a dozen, there were 18 sometimes.

Q Did you discover in the goods which you examined after you returned from Minnesota any goods, the prices of which had been mentioned by them when you examined before?

A Yes Sir. I discover some of them on this bill.

Q Do you discover on that bill any goods the prices of which were named by the parties when you made the selection?

A I do.

Q Mention some of these Articles?

A Some "Union Calumet business Coats" No 481 @ \$8.87

Q What you selected what prices did they name for these articles?

A They named \$4.25. These I marked on Examination when I came from Minnesota. I compared them. I selected them. & I bought them for a particular purpose. I then selected the prices. The marks are here now. I bought them to sell

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at Auction. There is some 11 Dozen of the Coats. I bought some 3 or 4 dozen. There was some 14 dozen charged here. They said they would be about \$4.25, when I made my examination. "Of 920 - 12 do at \$8.45" - \$11.25 was named when I made the selection. "Of 606 - 12 do @ \$10.25." \$11.45 was the price named to me. "Of 803 - 12 Black Union Cassimere Coats @ \$12.25." I think \$6.25 was named to me. I made these minutes on my return I made them just as near as I could from what I could think. Thus I can recollect more about than most anything yet.

Q Does the minute remain there to the Bill?

A Yes Sir, That's the same Memorandum. Here is "6 Union Cassimere do", it is "6 Black Cassimere Coats No 616 @ \$18.75. I recollect the Coats of that kind on my return. They named \$11.00 to me I think. I have told them as near as I can according to the best of my recollection.

Q Had you had any experience before this in the Clothing business?

A I have for some 14 years previous to this time: - No, about 12 years, most of the time in Lake Co. Indiana, I have been doing a general business in Dry goods & ready made Clothing - a general variety Store.

Q Had you ever purchased Goods in New York?

A Yes, I think in 1856. before that I think some 3 or 4 years in New York. In 1856 was the last I think I purchased in Boston. I purchased in Chicago. I generally bought about \$1000.00 worth at a time. Spring & Fall. Since then I have been in this business. I have bought about 2000 this fall in

Boston not in New York.

Q Have you since this time bought any Goods any where else besides Boston?

A No Sir, except a few in Chicago.

Q Do you know how the Boston & New York prices compare?

A They are about the same. Some things may be a little higher in one place than the other. It may be a little different. I went through a pretty extensive stock in New York this fall. looked them over. I did not purchase. I went to a large house and was some two hours, looking over them, this fall.

Q At the time you examined these Goods of the Foreman's had you a knowledge of New York Manufacturers prices for this kind of Goods?

A I think I had. I generally calculate to keep posted on what Goods are worth.

Q Did you make an estimate to ascertain how the prices of these Goods compared with the New York Manufacturers prices?

A I did not make a written estimate.

Q Did you do any such thing as make an estimate?

A Yes I did.

Q What did you ascertain?

Objections to be by Defendants Counsel.

1. On the ground that it is a matter between other parties than the Plaintiff.

2. Because the witness is not qualified to give an opinion, &

3. That it does not come under the Contract in the case.

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This objection was overruled by the Court and Defendants Counsel, then & there excepted.

A. That they were a hundred per cent higher than they should be.

By the Court. That was not the question.

A. I made an Estimate in reference to that.

Mr. McAllister moved to strike out the answer.

Motion overruled by the Court and Defendants Counsel excepted.

Q. How do the prices on this bill compare with the New York Manufacturers prices of these Articles at the time of the trade?

Objected to by Defendants Counsel, but the objection was overruled by the Court and Defendants Counsel then and there excepted.

A. I made an estimate at that time that it was a hundred per cent and over higher - at least One hundred per cent.

Q. Is that your opinion now?

A. Yes Sir, it is, & on examination of the goods prices I think more than that. I should think nearer 200 on some of them, not on all of them. I went over and saw the Firm shortly after my return, but didn't say anything to them about this matter the first time I went. I went in and talked to them about one thing or another, but they appeared rather offish. They said but very little to me, and did not want to talk with me and I only stayed a little.

Q. Did you go over there after that time?

A. I did I think somewhere about a week after that. Perhaps not so long. Perhaps a little longer. I can't tell exactly.

I went over there and talked with them about the matter & told them.

Q Did any one go with you this second time?

A Mr Baldwin went with me. I told them the goods were not as I bought them - not as I picked them out - that they had put in things I didn't buy.

Q Was this the beginning?

A Yes, Mr Baldwin went in and commenced and told them he was dissatisfied with that bargain. with the goods. He said they had not billed them to him as they agreed to.

Q How long was this after the trade?

A Perhaps 3 weeks. I had been to Minnesota 2 weeks & this was about a week afterwards - As soon as I got back or shortly after, the first time Mr Baldwin came up, he had been down to his place, where he lives.

Q What was next said?

A He told them the goods were not as he contracted for them, but that they should let him have them at New York Manufacturers prices. \$15 per Cent and he said they had not done so. They said the trade was made and that was all right. They had nothing to do with him any further. He said that he thought they had ought to make it right. They ought to take the goods back, or make it right or do something in the matter. They said they had nothing to do with him and wouldn't do anything with him & that he could go away. I told them then. I talked to them considerable. I told them the goods were not as contracted. that they had not billed

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them as they were told me the prices. that they agreed to show me the Bills - as they had not done.

Court. How could they have Bills if they manufactured them themselves?

Mr Farwell. Manufacturers always make out Bills of their goods - their own goods.

Witness. I told them they had not shown me the Bill they agreed to. They said they had nothing to do with me I might go away & went into the Office & shut the door and told me to leave the House & I did.

Q Was Mr Baldwin present?

A He was.

Q What became of Baldwin?

A He remained there.

Q Do you think of anything more that was said then?

A I don't think of anything particular more than that I told them I wanted to see the bills on that occasion. They said they had nothing to do with me and asked me to leave. Mr Tripp inquired for the Bills when he was there. I don't recollect whether Mr Baldwin did on this occasion or not. I think he did too, but I don't know certain. I could not say positive about it.

Q Were any Bills produced on this occasion?

A They were not. Mr Baldwin told them his house & lot, was worth all he asked for it in money & he had sold it to them cheap & expected to have the goods in the same way. They said they had made the trade with him & that was all they had to do with him. He said he would

rather let them have the land back & let them have the goods that he could not sell them, nor do anything with them at the prices.

Q On this occasion did Baldwin have any Goods with him which they had sent down to him at Oswego?

A He had a lot of undershirts & Collars & Chemises & White goods in a Trunk that he said he never brought of them nor gave them.

Q Did he pay so while you were there to them?

A Yes, they said they hadn't nothing to do with him. They didn't make two trades.

Q How many Foreman's did you see on this occasion?

A I think they were all there - 3 or 4 of them. This interview was in the front part of the Store on the Second Floor.

Q Who was present besides yourself & the Foreman's?

A I could not say whether any body else was present or not. I have no recollection of it.

Q Did Baldwin go with you when you left?

A No he stayed there a short time.

Q Did you have any interview with the Foreman's after this?

A No Sir!

Q Did they ever at any time present any of these New York Bills or did you see them?

A No Sir.

49 Cross Examined by Mr Van Buren.

Q How many times did you go to the Foreman's to examine these Goods, before they were finally selected and packed?

A I think I was three times. Once before they were selected. The second time I went I selected part of them.

Q At whose request did you go?

A At the request of Mr Tripp - Ezekiel Tripp.

Q Why did he wish you to examine these Goods?

A He had some talk of trade with Mr Balawin for them. That was when I first went. He was going to trade for \$5000 - if he could get them at prices - \$5000 or \$5500 I don't recollect. Somewhere about there.

Q How he put you to see these Goods and examine the prices?

A Yes!

Q How were they examined then to satisfy you?

A Yes!

Q What report did you make to Tripp?

A I told him they agreed to purchase their New York Manufacturers Bills of prices that him have them at 15 per cent above that cost.

Q Did you tell about your Examination?

A I told him I had made an examination of some of them and they had told me something near what they would be worth. I told him some of the prices they had given me were too high, a good deal.

Q How much too high did you tell him they were?

Q I don't recollect now whether I told him any certain per cent or not. I told him they were a good deal too high & they agreed to produce the Bills & give 15 per cent —

Q Never mind we understood about the Bills. You told him they were too high?

A Yes:

Q Now knew then that they were charged too high when you told him?

A I knew it that was the price some of them were too high. They gave me some too high & some very fair. I knew they were charging him too high & so told Tripp.

Q The second time you went you were sent by Tripp again?

A Yes:

Q When Tripp had made his bargain & you went and selected them?

A I think he had made no bargain particularly, unless he could get them right.

Q Do you know whether or not he had made a bargain?

A I think he had not.

Q Do you know?

A He had not.

Q Now know then?

A Yes.

Q You know all that Tripp does?

A I know he hadn't made a bargain.

Q Who sent you?

Q Mr. Tripp & Mr. Baldwin both wanted I should go

Q Who did you select them for?

A Mr. Tripp.

Q Why?

A Because he wanted me to. He thought I would be more likely to know what they were worth than he. He talked of trading for them.

Q At the trade was made by Baldwin & Foreman, that he was to trade with them?

A Yes, if he got them at 15 per Cent. He was to have them at the same rate from Baldwin that Baldwin got them from Foreman.

Q If Foreman made the trade with Baldwin he was to have the goods at the same rate?

A Yes, on the same terms.

Q He selected you because you were acquainted with the prices and value of goods?

A I suppose so.

Q Were you & Tripp partners at the time?

A No were.

Q On what business?

A The Clothing business.

Q Where?

A Here.

Q How long had you been partners?

A Only a short time. We had no papers of partnership. I did not ask for them. We had been partners perhaps two or three months.

- Q How long have you known Tripp?
- A I guess 6 six months. I think not any longer.
- Q Where did you know him?
- A Down in Lake Co Indiana, at Benterville.
- Q Were you ever at Valparaiso, Indiana?
- A Yes.
- Q Was Tripp ever there?
- A I presume he has been. He has been there with me sometimes.
- Q Has he been to your knowledge?
- A Yes.
- Q How why did you say you presumed he had been there?
- A I can't see him there at that time.
- Q How many times did you see Tripp at Valparaiso?
- A I have seen him there within the last year, 2 or 3 times. I don't think I had ever seen him there when we lived in Chicago and the track was made. I think I never saw him at Valparaiso before that.
- Q Did you ever know of his selling Patent rights there in Indiana?
- A I had heard so - that he had sold them at Valparaiso and in Indiana.
- Q What to?

Objected to as not proper Cross Examination
Objection overruled.

- A I knew him to sell some to the Nichols boys & to

Young & Mr Knight. Still I don't know anything about that, I never saw him sell.

Q Did you know of his selling any to a man named Butts?

A Yes I saw him do that.

Q What did he sell?

A He sold some Counties in Illinois.

Q What was the Patent?

A A Store.

Q When was that?

A I think about 2 years ago. That Sale was made in Indiana.

Q Were you there at the time?

A I was.

Q What did he get for his Patent?

A I guess he got Notes.

Q How many?

A About \$2600 in Notes I guess.

Q Who signed them?

A Mr Butts I guess.

Q Who else?

A I signed one of them.

Q How are you pretty sure he gave notes?

A How? Yes!

Q How much was the one you signed?

A I think \$1300.

Q And the one he signed was \$1300?

A Yes.

Q What else did Butts give?

A I don't know whether he ever gave anything else, I gave some Land near Rob Station.

Q Did Butts pay you anything for your Land?

A I don't think he has paid his notes at all. I gave my notes & then I gave Mr Tripp some Land & took up the notes.

Q When did you give the Land to Tripp for that Note?

A I think about a month or two after that I gave him some Land near Rob Station.

Q How much?

A Eighty Acres.

Q How long had you owned that Land?

A I guess about two years.

Objection to.

Objection overruled.

Q Who did you get that Land of?

A I think I bought it of Mr Rolenis.

Q What did you give for it?

A About \$400.

Q What did you pay him?

A Property.

Q What kind of property?

A Horses, I guess, I think it was horses in some of our dealings together. He was in partnership, Mr Rolenis & I.

Q And Tripp took that for the \$1300 Note?

Q Yes.

Q Did Tripp get anything else out of Butts but his Note?

A I think not.

Q Did he get a farm?

A I think not.

Q Did he get a Mortgage?

A He might on part of it. He didn't to my knowledge. I heard he got one. I didn't see it.

Q He didn't get it at that time?

A After that in a few days, I think Butts gave him a Mortgage on 15 or 20 acres of land. I don't know for how much I never saw it.

Q How long had you known Tripp at that time?

A I guess a week or two.

Q The first went to Butts & asked him to buy that Patent right?

A I don't know. I didn't go to him to ask him to buy it. Mr Butts came to me & proposed to buy it.

Q Was there any understanding between you & Tripp before you made this Sale to Butts?

A No Sir.

Q Was there any understanding between you & him that you should get Butts to buy that Patent right & you should pretend to be a Partner & then that your Note should be given up to you by Tripp?

A No Sir, there was no such understanding.

Q Did you buy with any body else any other Patent rights from Tripp?

Q Yes Sir.

Q What?

A I bought part of Minnesota.

Q Who joined you in that?

A A man named Helmst.

Q Where did he live?

A In Indiana at that time.

Q What did he sell him?

A He sold him Minnesota.

Q What Patent?

A The same thing.

Q What was he to get?

A He gave him some property.

Q You say you & Mr Helmst bought the Patent for Minnesota?

A Yes Sir.

Q What did you pay?

A I paid some land and he did too I guess.

Q How much did he pay?

A I don't know. I don't think he paid any land. I guess he let some notes go.

Q How much?

A \$1300.

Q Did you give your notes for the same amount \$1300.

A No Sir, Yes Sir, I think I did too.

Q What did you do?

A I took them up & sold him 80 acres of Land.

Q The same 80 acres?

Q No Sir, 80 acres lying South East from Centreville -

Q When was that?

A It was about the same time.

Q What did you do with that Patent right?

A I have sold a part of it I have part of it now.

Q Did you and anybody else buy a Patent right from Tripp?

A No Sir.

Q Did you and Fursten buy a Patent right of him?

A I don't know anything about it I am sure.

Q How you in any other Patent right?

A No Sir.

Q On this last instance you signed, did you take up your notes?

A I think it was some two or three months that I traded
this time look up my notes.

Q Do you know of Mr Whitmore of Valparaiso buying any?

A No Sir, no Patent rights. I am not acquainted with him. He may be there now. I should not know him if I saw him.

Q Where were you living at the time of this purchase?

A Centreville, Indiana.

Q Where was this purchase made?

A They were made there.

Q Do you know of Tripp selling any other Patent rights?

A I think he sold considerable many over there.

Q Did you assist him in selling Mr Cram a Patent right for his store?

A No Sir.

Q Did you assist him in selling any Mortgages or other securities he had taken of land?

A No Sir, I raised some Mortgages I had to Mr Crane for food. Mr Tripp raised some he had & I raised some I had & we took the stock together, - Crane Brothers.

Q What was the stock you got?

A A Stock of clothing.

Q What was the value of it?

A It was valued I think at \$16,000.

Q How turned out \$8000 of Mortgages?

A No Sir, I turned out two.

Q And Mr Tripp the balance?

A Yes.

Q Who were these against?

A Against a man named David Munn and John Laws. They lived in Indiana. I sold them a Steam Mill.

Q Did you advise them to make the sale to Tripp?

A No Sir, I didn't advise them at all. They were strangers to me. I don't know the Mortgages Mr Tripp turned out to them.

Q Don't you know Tripp tried a man to give these Mortgages on worthless swamp lands?

A No Sir.

Q Don't you know they were swamp lands?

A No Sir, I never saw any land, any where know nothing about them.