

No. 14683

Supreme Court of Illinois

Root

vs.

Wood

14683

STATE OF ILLINOIS,

SUPREME COURT,

THIRD GRAND DIVISION.

No. 228

J. W. Middleton & Co., Stationers, 196 Lake St.

Root
vs
Wood

DAVID ROOT,	}	<i>Appeal from Court of Common Pleas of the City of Aurora. Defendant's Brief and Points.</i>
<i>Plaintiff in Error,</i>		
<i>vs.</i>		
THEODORE WOOD,		
<i>Defend't in Error.</i>		

First. The only plea interposed by the defendant in the Court below, was the general issue. No plea of offset. No plea setting forth a judgment and execution against Samuel Wood. No plea and no proof that Samuel Wood was owing Root anything. And Root attempted and offered evidence by which he attempted to show that there was some sort of fraud about the property. It is a question whether in an action of assumpsit it could be set up. But most certainly when Root is in no wise affected by the fraud—has no claims or demand, or at least shows none—he cannot hold the property fairly purchased of Theodore Wood, and at the same time refuse to pay for it. The property belonged to either Samuel Wood or Theodore Wood. Samuel Wood sold it to Root as the property of Theodore Wood; and Root purchased it as Theodore's property. It made a good title to Root; for if Samuel Wood had any interest, he, after selling it as Theodore's property, is most certainly estopped from claiming it of Root after the sale. Then, so far as the case stands, Root got a good title. If he wants to rescind the sale he must return the property, or offer to. He cannot set the sale aside and rescind the contract without doing so.

12 *Ill.* 338,

13 *Ill.* 610,

5 *Ill.* 390.

He keeps the property, but won't pay for it. He cannot do that. The evidence was not competent for the purpose of impeaching Samuel Wood, for the reason that no foundation was laid to impeach him. His attention was not called to the time, place, and circumstances. It is not necessary to read an authority on that question. The evidence had no business to go to the jury. It did not help instruct the jury on the question of the issues they were trying. It would tend to lead the jury away from the real issue presented.

No question of fraud could possibly arise upon the issues presented. The plaintiff in error did not know that Samuel Wood was in debt to him, nor to anybody else; nor did he offer to show it. But he wanted to come in and show fraud, and then keep the property and not pay for it. Even if the issue would permit it, the most that the proof showed was that Samuel Wood let his son go to war, and he agreed to take care of his property while he was gone. He, Samuel Wood, made a fair bargain in the name of Theodore Wood for the property with Root. Root gets the property, puts the notes in his drawer, and gets the cattle into his yard, the fence all up, and then he won't pay for the property, but keeps the property and tries to set up fraud; though so far as the issues joined are concerned, and the proof offered or attempted to be offered, it is none of his business. The affidavit for a new trial cuts no figure. It does not show newly discovered evidence. He knew of the evidence before the trial. Why did he not get it?

B. F. PARKS, for Defendant in Error.

228

166

Root

As

Moor

Depts. Suggestion

Since May 10. 1864

L. L. L. L.

David Root } In Supreme Court
Appellant } Third Grand Division
Theodore Wood } April Term AD 1864
Appellee }

Suggestions of Counsel for Appellant
upon the Brief of Appellee —

The counsel for the Appellee mistakes the nature of this case in his statements of the same wherein he says: — "All the evidence offered by the defendant was for the purpose of showing that the property purchased by him, as the property of Appellee, was the property of Samuel Wood."

The Appellant claims that he never purchased any property of Theodore Wood or of any agent of his; but that he did purchase of Samuel Wood the property in controversy he Samuel Wood acting in making such sale on his own account and not as the agent of anyone but in making such sale sold property belonging to him and of which he was in possession and which he sold as his own property and for which he alone can answer —

The appellant claims that the bringing
suit for the property thus purchased
is simply a shift to avoid the arrange-
ment for payment previously made
(and which arrangement, when we
are sued by the party of whom we
purchased can then be relied upon).

At present the appellant relies upon
the plea of the General issue and anything
which has a tendency to disprove the
allegation of the appellee that he sold
to the appellant the property in question
and that we promised him to pay
for the same is competent evidence
in this case —

Hence it was that the counsel for the
defendant in the Court below sought
to introduce the evidence which he
did and all of which as also the
instructions which he asked be believe
to be competent —

Plato G. Smith
Attys for Appell

Again is it insisted by The Appellus Counsel
B & F Parks that the Appellant bought the
property in question as Theodor Wood's
property which by our plea we deny -

It may be very probable that Appellant
got a good title as Parks insists he
did - Nor does Rant want to rescind
the sale - Nor keep the property and
not pay for it - But he does ~~want~~
want to pay the man of whom he
bought and in the name of whom
It is true that Samuel Wood says that
the property was Theodor's and he sold
it as the agent of Theodore but to determine
whether this was true or not it became
necessary to examine all the acts and
sayings of Samuel Wood in connection
with the property while he was in the
possession of the same and this we
sought to do but were not allowed to
do so -

"But," says Parks, "Rant has got the property
and now tries to set up fraud"

Not so at all in the case intended -

The fraud is in the pretence of the Appellant
that he has sold us property which we
will not pay for - being the man who
owned the property in fact and who sold

the same to Appellant as his property
on as a witness to swear to such claim
of the appellee and then seek to deprive
us of privilege & right of showing the
true facts as to the ownership of the
property and the probable way it was
disposed of —

If the pretence of the appellee is true and
the statements of witness Samuel Wood why
are counsel so averse to any investigation
as to the ownership of this property —

If the doctrine contended for by appellee in this
case is true then in every case of a sale of property
with a special arrangement for payment (in the case
of the vendor if you please) the vendor by pursuing
the course adopted in this case may recover
in cash what was to be paid differently —

D. & S.

Attys.

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In Supreme Court

Rant

Wood

Suppositions upon
Samuel Wood by
Appellee —

Filed May 14. 1864
S. L. Leland
Clerk.

D. S.

Attys.

Supreme Court of the State of Illinois, THIRD GRAND DIVISION.

APRIL TERM, A. D. 1864.

DAVID ROOT, *Appellant*,
vs.
THEODORE WOOD, *Appellee*. } *Assumpsit*.

APPEAL FROM THE COURT OF COMMON PLEAS OF THE CITY OF AURORA.

ABSTRACT OF THE RECORD IN THE CASE.

Page of Record.

- 2 December 23rd, 1862, Summons issued from Kane County Circuit Court to
Root, (the Defendant below,)—service had same day.
- 3 The same day Wood filed his declaration in Assumpsit, in said Kane County
Circuit Court.
Declaration containing two special and the common counts.
The first count alleges that on the 19th day of December, 1862, at Batavia, in
4 said Kane Co., in consideration of seven head of young cattle to the Defendant
Root, delivered at his request; and also four Promissory Notes of fifty dollars
each, dated 8th July, 1862, and due in sixteen months, ten per cent. interest, made
by Lewis Martin, and payable to Plaintiff, Theodore Wood, also delivered to said
Root by the Plaintiff at his Defendant's request: the said Defendant promised to
pay Plaintiff two hundred and forty-four dollars when requested, &c.
- Second count similar to the first, charging the sale and delivery of cattle and
notes.
- 5 Common counts for money lent; money paid; money had and received;
6 goods sold and delivered; labor done; account stated in the sum of two hun-
dred and forty-four dollars.
- 8 February 2nd, 1863, motion by Defendant for a rule on Plaintiff to file securi-
ty for costs.
- 11 Plea of the general issue filed February 5th, 1863.
- 9 February 9th, 1863, Venue changed by agreement to Court of Common Pleas
of the City of Aurora.
- 13 June 22nd, 1863, a jury trial was ordered, and on the 23rd of June, 1863, the
15 jury returned into Court with their verdict, finding for the Plaintiff, two hundred
16 and forty-four dollars which was entered of record.
- Defendant moved for a new trial.
- June 29th, 1863, Motion for new trial overruled, and judgment upon the ver-
dict ordered to be entered. Defendant excepts and prays an appeal, which is
granted. Defendant allowed to file bill of exceptions within five days, and an
Appeal Bond in the sum of \$500, to be approved by the Court, within twenty
days.
- 17 July 1st, 1863, bill of exceptions duly signed and filed by the Defendant as
follows: Be it remembered that on the trial of this cause, the Plaintiff, to sus-
18 tain the issues on his part, introduced as a witness, Samuel Wood, who being
duly sworn, testified as follows, to wit:
I have lived in the County twenty-three years. I know Theodore Wood, the
Plaintiff, he is my son, he is now at Vicksburg, a private in the U. S. army. He
lived with me the last two years before he went to the war. He rented the farm.

and I lived on it, and he lived with me. When he went away he left some notes with his sister Mettie. There were four notes of \$50 each, made by Lewis Martin. Three or four months after Theodore went away, Root, the Defendant, said he would buy the notes. I went and got them from Mettie, who had possession of them. Root was to give the face of the notes, less a deduction of ten per cent. Then there was six yearlings, steers, which Theodore left upon the place for me to dispose of. The first time Root came over after I had the notes, I told him they were Theodore's, and that one third of the Steers belonged to Derby and Barker. Root was to give \$8 per head for the seven head of cattle, making \$244 in all. I told Root when he came after the steers, that I had heard he had been buying notes against me; if so, we could not trade. Root said he had no notes against me. When we got to where the cattle were, Root asked if there
19 was any incumbrance on the steers. I told him no. We then drove them into Root's yard. Root wanted the steers drove in another yard, and we drove them in and put up the two pair of bars. I then went with Root into his house. He asked me for the notes, and I showed them to him, and he took them and put them into his desk, and turned the key, and said to me, then I am going to pay you off in your own paper, offering me some paper. I did not look at the paper—don't know what they were. I told him that was not the trade, and I would not accept them. I demanded the notes I had given him, and he told me that he would not give me the notes. The notes were payable to Theodore Wood. I told Root before, and at the time of the sale, that the property, the notes, and the cattle in question belonged to Theodore Wood, and I sold them to Root as agent for Theodore, and as the property of Theodore, and not as my property.

Cross-Examination. Theodore went to the war in the fall of 1862. Theodore rented the farm of Derby and Barker, and I worked on the farm more or less at no particular price for my services. I had been on the farm three or four years
20 when Theodore went away to war. I bought the farm of one McQuire. I owed Derby and Barker and assigned the Bond for the farm right over to them. I went into possession at the time I purchased, and continued in possession; and when Theodore became of age he rented it. The year I went on to the farm, I bid off the same at a tax sale. I told Theodore I would let him have my tax title, and he might make what he could out of it. I had used most of the products of the farm to pay Derby and Barker, and Theodore complained about it, and so I assigned to him my tax certificate. There was some ten head of cattle on the farm. I sold two of them, and took the money. I had some stock on my farm at Blackberry, and it was sold on an execution, and Derby and Barker bid it off, and let me have it to take on to this farm. The steers sold Defendant were from some of the cows taken by me on to this farm, from the Blackberry farm. Question by Defendant. "What arrangement was made between you, Derby and Barber, in reference to the cows you took from the Blackberry farm on to this farm on which you lived, when Theodore went to war, as to its increase, use, disposal, &c." (Question objected to by the Plaintiff, and the said objection sustained, to which ruling of the said court in sustaining said objection the Defendant by his counsel, then and there excepted.) The steers sold
21 Defendant were yearlings, little more than a year old when sold. Theodore Wood gave a Quit Claim deed of his interest in the farm acquired by the tax title, to Lewis Martin, and these four notes were for that. I bid off the land for taxes the first year that I went on the farm, in my own name, held the certificate about one year, and assigned the same to Theodore, for work done by him, and for grain had from him, and for debts paid by him, for me, &c., and Theodore Quit Claimed his interest under the same to Lewis Martin for about \$320. Mr. Martin came over to see me about the tax title, and I told him that I bid off the land, but that Theodore held the deed for the same, and I went with Martin to see Theodore, and Martin agreed to give so much for the title.

Question by the Defendant.—What conversation took place between Theodore Wood, Martin, and yourself, when Martin made the bargain for the Quit Claim of the tax title? (The question objected to by the Plaintiff, and objection sustained by the Court, to which ruling of the Court the Defendant by his Counsel at the time excepted.) ~~Witness answers.~~ Those Martin Notes were made payable to Theodore because I owed him, We all talked about the trade. Theodore gave the Notes, and a power of Attorney to his sister Mettie. She got married after Theodore went away, and when she came up I told her that Root would buy them, and she gave them to me. Theodore sold some property before he went away, but did not dispose of any of the stock or grain on the farm. He told me I might sell them. I told Root before I got the Notes that they were Theodore's. Theodore's name was on the back of the Notes, but he did not assign them to me. In Theodore's assignment of the Notes he made them payable to bearer.

PLAINTIFF HERE RESTS.

- 22 Defendant then offered in evidence the Deposition of Lewis Martin as follows:
23 (Here follows notice of application for Commission to take Deposition of Martin,
and copy of Interrogatories, and acknowledgment of service of same; also copy
28 of Commission for that purpose; also Commissioners' heading of Deposition to
the Interrogatories and Answers.)

Interrogatory 1st.—What is your name?

Answer.—Lewis Martin. Age, 39 years old; occupation, farming; place of residence, Dayton, Newaygo Co., State of Michigan.

Interrogatory 2nd. Do you know the parties, Plaintiff and Defendant?

I do; I have known the Defendant twelve years, and Plaintiff about five years. I knew David Root, Winfield, Du Page Co., Illinois. I know Theodore Wood in the same town, and also at Ball Mound, Kane County.

Interrogatory 3rd.—Do you know one Samuel Wood, the father of the Plaintiff, Theodore Wood; if so, state where and how long you have known him?

I do know Samuel Wood, the father of Theodore Wood; about the time and place I did Theodore.

Interrogatory 4th.—State whether you ever made four Promissory Notes for Fifty dollars, each signed by you, and payable to said Theodore Wood, bearing date July 8th, 1862, due sixteen months after date, with interest at ten per cent?

I did make four Notes of \$50 each, and payable to Theodore Wood—the date about that time as near as I can recollect.

- 29 Interrogatory 5th.—State for what such Notes were made, to whom the same were delivered, with whom the negotiation was had which led to the making and delivery of said Notes, and the reasons fully why said Notes were delivered to the person to whom they were delivered, and why said Notes were made payable to Theodore Wood—state particularly?

Those Notes were made to purchase a tax title of our farm, and delivered them to Samuel Wood. Negotiation was made with Samuel Wood. The reasons fully was, that while I was at Mr. Root's residence, Mr. Wood (Samuel Wood) came there, and informed me that he had a tax title of our farm, and now he was going to have Eight Hundred Dollars out of me before I could have it. But I told Mr. S. Wood that he had had the use of the farm for a long time, three or four years, for nothing, and had never payed us the first cent for the use of the farm. I protested against the injustice of the thing, so he finally concluded to take Three Hundred and about Twenty dollars. Now when I was drawing the Notes Mr. Samuel Wood says, draw them running to Theodore (Mrs. Wood's son.) Why so, says I? Mr. Wood says I am owing some, and if the Notes run to him, (Theodore,) they will be safe. So I drew them running to Theodore, as

desired, and delivered to Samuel Wood in presence of a Justice of the peace. I do not recollect his name, and Mr. D. Root and Theodore Wood.

Interrogatory 6th.—Did you ever make payable to said Theodore Wood any other Notes ? if yea, describe those Notes particularly ; also state for what the same were given, (if any,) to whom given, with whom the negotiations which led to their delivery was had, and the reasons why said Notes were made and delivered to the person to whom they were so delivered.

- 29 I did make one Note at the same time and place, and for the same purpose, delivered at the same time to Samuel Wood, with the others, but due in a month or two from date. (I do not recollect exactly.) Amount One Hundred and about Twenty dollars. Negotiation all the same as above ; all the same reasons, and all concerned the same thing.

Interrogatory 7th.—If you state that you gave any Notes signed by you to Theodore Wood, and if you state that such Notes were given to purchase a tax title, or to redeem land in which you were interested from a tax title, state who owned or held such tax title, and with whom you made the negotiations in regard to the purchase of the same, and state how it was that the person holding said title held the same, or why he held the same—state fully all you know about it.

The Notes were given to redeem from a tax title in which I was interested, and to procure a Quit Claim deed for the same from both Theodore and Samuel Wood, but the tax title was in the name of Theodore Wood, but as Mr. Samuel Wood had done all the business and said it was his claim anyhow, I had both sign the Quit Claim deed. Whether Mr. S. Wood said at that time that the Tax deed was given to Theodore for the same purpose that the Notes were I cannot swear positively, but it seems from the best of my memory that there was something said to that effect, but I do know that was the colors he sailed under.

Interrogatory 8th.—If you state that you made Notes payable to Theodore Wood, describe the same and state, also, whether the negotiation which led to the delivery of the Notes, was had between yourself and Theodore Wood, or between yourself and some other person, and if with some other person, state with whom, and why the Notes (if any) were made payable to Theodore Wood—state fully and particularly.

- 30 The description is as near as I can recollect. They were not written for value received, (for I had not received any value at all, but protested against the unjust claim through the whole transaction ;) I had had no notice until then, but what the taxes were all paid, but to the contrary, on enquiring many times of Mr. Wood and Mr. Walter Germain, and had been informed every time that they were paid. Although Theodore Wood was in company with us most of the time during the negotiation for the Quit Claim deed and Notes, he had no more to say about it than any son of his age, would be likely to have if not interested—any more than a son would be likely to have.

LEWIS MARTIN.

- 32 To the introduction of which as evidence the Plaintiff objected, because the same was irrelevant, improper and incompetent evidence, and the Court sustained the objection, to which ruling of the Court in sustaining said objection, and in refusing to allow said Deposition to be read in evidence, the Defendant by his Counsel at the time excepted to.

- 33 Samuel Wood recalled by Defendant. (Paper shown witness.) It is my signature at the bottom of this paper. I delivered the property described in said paper to the purchaser therein mentioned. The property specified in this paper was a portion of that left on the farm when Theodore went to the war, and which I afterwards sold.

Defendant then offered to read said paper shown the witness in evidence, which said paper is in the words and figures, to wit :

Know all men by these presents, that I, Samuel Wood of the town of Winfield, County of DuPage, State of Illinois, have this 26th day of November, 1862, sold to and delivered into the possession of E. A. Hinckly of the Town, County, and State aforesaid, the following described property, all being upon the farm now occupied by me. Seven Cows, twelve tons of Hay, one Sow and ten Pigs, one Mower and Reaper combined, together with all the appurtenances thereunto belonging, one Plow, one Horse Hay Rake, and also agree, it being a part of, and included in the sale, the right and privilege to move into the house now occupied by me, and also the right to use barn upon said premises for the benefit of said stock, and also sufficient room in hog pen upon said premises to
34 keep the above described hogs, also room in Granery to keep grain, also room in cellar to keep necessities for family. All stock having the right to run at large upon said farm. The said Hinckly having the right to enter upon, and take full possession of the above described property and premises, the thirtieth day of November, 1862, for the sum of \$160, to be paid to Derby and Barker of Batavia, as follows: thirty dollars the fifteenth day of May next, thirty dollars the fifteenth day of August next, one hundred dollars the first day of December, 1863.

S. WOOD.

Filed, June 23rd, 1863.

C. P. JOHNSTON, CLERK.

The introduction of which paper in evidence was objected to by Plaintiff, and the said objection was by the Court sustained, and not permitted to be read to the Jury, to which ruling of the Court in sustaining said objection, and refusing to allow said paper to be read to the Jury as evidence, the Defendant by his Counsel at the time excepted.

William Griffith was next duly sworn who testified as follows:—I know Samuel Wood and Theodore Wood the Plaintiff. I lived within about one mile of
35 the farm they occupied. I never knew of Theodore Wood owning any personal property. I had a conversation with Samuel Wood (Theodore Wood's father) after Theodore went to the war, about buying steers, that he afterwards sold the Defendant Root.

Question.—State what was said at the time you have spoken of having conversation with Samuel Wood in regard to buying said steers by Samuel Wood, as to the ownership of the steers. The question objected to by the Plaintiff, and the objection sustained, to which ruling of the Court in sustaining said objection, and refusing to allow said witness to answer said question the Defendant by his Counsel at the time excepted.

The Defendants then offered to prove by said witness Griffith, the statements made by said witness Wood in relation to the ownership of said property made after Theodore went to the war, and before the said sale to the said Defendant Root, and while the same was in the possession of said witness Wood. Which said Court refused to allow to be done, but decided that all evidence as to statements made by the witness Wood as to the ownership of the said property were
36 irrelevant, improper and incompetent, and refused to allow the Defendant to introduce any further evidence as to such declarations, to which ruling and decision of the Court in thus refusing to allow the Defendant to introduce evidence of said statements of said witness Wood, the Defendant by his Counsel at the time excepted.

The foregoing is all the evidence introduced in the above entitled cause.

The said Court then at the instance of the Plaintiff instructed the Jury as follows:—

If the Jury believe from the evidence that if Samuel Wood sold the property, as the property of Theodore Wood, then Samuel Wood cannot set up title in himself, nor can any person for him, except a Judgment Creditor, and there is
Given. no evidence that Defendant is a Judgment Creditor.

40. tend the June term of this Court, that thereupon said witness said, no matter about that, he would attend the trial if desired, and agreed to attend said Court, and be present at the trial. That Friday or Saturday before the Monday of Jury trials, the said witness went away expecting to return on Monday the first day of the Jury trials; that this case was called for trial before cases previous in order on the docket was tried or otherwise disposed of for the term; thus this Defendant had to come on this trial before the arrival of said witness, this Defendant not knowing that said witness was gone from home, but expected certainly that he would be in attendance by Tuesday morning, to which time said cause in the trial thereof continued, but Defendant found on Monday night that said witness had not returned, and therefore said trial was closed without him. That Defendant was not able to procure his attendance before the close of the trial on Tuesday morning, Defendant not knowing where to find said witness, or that Defendant knows of no other person by whom the same facts can be proven. That Defendant expects to procure the attendance of said witness on the trial of the case, if a new trial can be granted.

DAVID ROOT,

Subscribed and sworn to before me, this }
30th day of June, A. D. 1863, }

C. P. JOHNSTON, CLERK.

41. And also assigned the following reasons for said motion.
1. That the Court erred in admitting improper evidence on the part of the Plaintiff.
 2. That the Court erred in excluding relevant and proper evidence offered by the Defendant.
 3. That the verdict was against the law and evidence.
 4. The Court erred in giving Plaintiff's instructions.
 5. The Court erred in refusing the Defendant's instructions as asked.

Which motion the Court refused to grant, and entered a Judgment upon the verdict, to which decision of the Court in overruling said motion for a new trial and refusing to grant the same, and in entering a Judgment upon the verdict, the Defendant by his Counsel at the time excepted, and prays that this his Bill of Exceptions may be signed, sealed, &c., which is done.

R. G. MONTONY, JUDGE. [Seal.]

Filed, July 1st, 1863. C. P. JOHNSTON, CLERK.

44. July 18th, 1863. Appeal bond filed in conformity to the order of the Court.

Errors assigned.—

1. That the Court erred in admitting improper evidence on the part of the Plaintiff.
2. That the Court erred in excluding relevant and proper evidence offered by the Defendant.
3. That the verdict was against the law and evidence.
4. The Court erred in giving Plaintiff's instructions.
5. The Court erred in refusing the Defendant's instructions as asked.
6. The Court erred in overruling Defendant's motion for a new trial.

PLATO & SMITH,

Attorneys for Appellants.

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Abstr

Filed April 20. 1864

L. Leland Clerk

12 Page
UNITED STATES OF AMERICA,
STATE OF ILLINOIS,
COUNTY OF KANE,
City of Aurora. } ss.

Pleas, before the Honorable
R. G. Montany The Judge of the Court of Common
Pleas of the City of Aurora, at a regular Term of said Court of Common Pleas of the City
of Aurora, begun and held at the Court Room in the city of Aurora, in said County and
State on the third Monday (the 19th day) of October
in the year of Our Lord one thousand eight hundred and Sixty three and of the
Independence of said United States the Eighty Eighth

Present The Honorable

R. G. Montany The Judge of said Court.
C. J. Montany States Attorney.
J. H. Whipple Sheriff of Kane County.
Attest, Charles P. Johnston Clerk.

The Court opened by Proclamation.

Be it remembered that heretofore, to wit, on the twenty third day of
December A. D. 1862, the same being one of the days of the regular
Term, A. D. 1862 of said Court, the following, among other proceedings were had, and
entered of record in said Court, to wit: process for assumpsit
was filed in the Circuit Court of Kane County & 1st
State of Illinois }
County of Kane } ss. Circuit Court of Kane County
February Term A.D. 1863

Theodore. Wood }
vs } Assumpsit Damages \$500.00
David. Root }

The clerk of said Court will issue
a summons in the above cause directed to the
Sheriff of Kane County in a plea of assumpsit
returnable at the next February Term of said
Court A.D. 1863 to the damage of the plaintiff

3rd Page of five Hundred Dollars

To J. C. Moore Esq. Clerk B. H. Parks Plaintiff's Attorney

Given December 20th 1862

Filed this 23rd day of December 1862

J. C. Moore clerk

^{sup}Filed March 13th 1863

C. P. Robinson clerk

And afterwards to wit - on the
23rd day of December AD 1862 the following Summons
was issued out of and under the seal of said
Circuit Court to wit

State of Illinois

Name County

The People of the State of Illinois to
the Sheriff of said County. Greeting:

We command you that you Summon David Root
if he shall be found in your county personally to be
and appear before the Circuit Court of said Name
County on the first day of the next Term thereof to
be holden at the Court House in Genoa in said
Name County on the first Monday^{of} February next
to answer unto Theodore Wood in a plea of
Assumpsit to the damage of said plaintiff as
he says in the sum of Five Hundred Dollars
And have you then and there this writ with
an endorsement thereon in what you shall have

1st Page executed the same

Government
Stamps Seal
thereon

Witness Thomas C. Moore clerk of said
said Court and the said thing at Geneva
in said County this 23rd day of December
A.D. 1862 J. C. Moore clerk

Personally served this writ December 28th 1862
by reading the same to David Root, Joseph W. Whipple
Sherriff Rome County

Filed Feb 2^d 1863

J. C. Moore clk

Filed March 13th 1863

C. P. Johnston clerk

And afterwards to wit on the 28th day of
December A.D. 1862 the following declaration was filed
in said Court to wit-

State of Illinois of the February Term A.D. 1863
County of Rome

Theodore Wood plaintiff in this
suit by A. F. Parks his attorney complains of David
Root defendant who is summoned &c of a plea of
trespass on the case on premises. For that whereas
the said defendant brought to wit: on the 19th day
of December in the year of our Lord one thousand
eight hundred and sixty-two at Batavia to wit:

4th Page

at said County of Home for and in consideration of seven head of young cattle to him delivered at his defendant's request and also four several promissory notes of fifty dollars each bearing date on the to wit 8th day of July 1862 and due in sixteen months after date with interest at ten per cent on said notes made by Lewis Martin and payable to said plaintiff also delivered by said plaintiff to said defendant at his special instance and request the said defendant then and there indebted and promised to pay plaintiff Two hundred and forty four dollars when by the said defendant should be requested so to do and yet though often requested so to do since the delivery of such goods and chattels by said plaintiff to said defendant yet so to do has wholly neglected and refused and still does so neglect and refuse and for that whereas at the place aforesaid at the time aforesaid the said defendant was further indebted to said plaintiff in the further sum of Two hundred and forty four dollars for seven other head of young cattle sold and delivered to the said defendant by the said plaintiff at the agreed price of eight dollars per head also for four other promissory notes of fifty dollars each bearing date on the to wit 8th day of July 1862 and due in sixteen months after date with interest at ten per cent per annum made by one Lewis Martin and payable to said plaintiff

5th Page

Sold and delivered to the said defendant by the said plaintiff at defendant's special instance and request for the agreed and stipulated price of one hundred and eighty-eight dollars And the said defendant being so indebted on the day and year and at the place aforesaid then and there undertook and promised to pay the same when he should be thereto requested and though often requested has not paid the same nor any part thereof to the said plaintiff And whereas also the said defendant afterwards to wit on the 18th day of December in the year of our Lord one thousand eight hundred and Sixty two to wit at said County became and was indebted to the plaintiff in a large sum of money to wit; five Hundred dollars for money before that time lent and advanced to said defendant by said plaintiff at said defendant's request and also in the like sum ^{for} money before that time paid said out and expended for said defendant by the said plaintiff at the like ^{special} request of said defendant and in ^{the} like sum for money before that time had and received by said defendant to and for the use of said plaintiff and also in the like sum for goods wares and merchandise before that time sold and delivered by said plaintiff to said defendant at the like special instance and request and also in the like sum for the labor care and

6th Page

diligence of the said plaintiff before that time
done and performed by said plaintiff for said
defendant and at the like instance and
request of said defendant; And being so
indebted said defendant in consideration thereof then
and there undertook and promised to pay said plaintiff
said several sums of money above mentioned when thereunto
afterwards requested. And whereas also the said
defendant afterwards to wit on the same day and
year last aforesaid and at the place aforesaid
accounted together with the said plaintiff of and conce-
-rning divers other sums of money before that time due
and owing from the said defendant to the said plain-
-tiff and thereunto then being in arrears and unpaid
And upon such accounting the said defendant was
found to be in arrears and indebted to said
plaintiff in the further sum of Two Hundred
and forty four dollars And being so found in
arrears and indebted to said plaintiff the said defend-
-ant, in consideration thereof afterwards to wit on the
same day and year last aforesaid and at the place
aforesaid undertook and then and there faithfully
promised the said plaintiff to pay unto the said
plaintiff the said sum of money last above mentioned
when he the said defendant should be thereunto
afterwards requested. Yet the said defendant not
regarding his said promises and undertakings but
continuing &c although often requested so to do has

Page 7th not paid said plaintiff either of said sums of money above mentioned on any part thereof but so to has hitherto wholly neglected and refused and still do neglect and refuse to the damage of said plaintiff of five hundred dollars and therefore he bring this suit etc

B. F. Parks plaintiff Attorney

Copy of Voucher and account sent on
For seven head of Young cattle at 800 per head \$ 5600
For four notes of \$500 each made by Lewis
Martin payable to Theodore Wood with
interest at ten per cent bearing date July
8th 1862 due sixteen months after date
Sold Debt by Pfft \$188.00

David Root

To Theodore Wood Dr

To money lent and advanced	\$500.00
To money paid lend out and expended	\$500.00
To money had and received to and for the use of Plaintiff	\$500.00
To Goods, Wares and Merchandise sold and delivered	\$500.00
To labor and services	\$500.00
To balance due on account stated	\$244.00

5

Filed this 23rd day of Dec 1862

J. C. Moore Clerk

Filed March 13th 1863

C. P. Johnston Clerk

United States of America
 State of Illinois
 Name County } ss

Plas at a regular
 term of the Circuit Court of said County of Name
 begun and held at the Court House in Geneva
 in said County on Monday the second day of
 February in the year of our Lord one thousand
 eight hundred and sixty three being the first Monday
 in said month

Present Isaac. C. Wilson Judge
 Joseph. H. Whipple Sheriff
 Chas. J. Wetmore State Atty

Attest

J. C. Moore Clerk

Be it remembered that hitherto to wit on the
 second day of February A D 1863 the same being one
 of the days of the February Term of said Court the
 following amongst other proceedings was had and
 entered of record in said Court

8238 Theodore. Wood }
 vs } Assumpsit
 David. Root }

Now comes the defendant by
 Plato Smith his attorney and enters his motion
 for a rule on the plaintiff to file security for

9th Page costs herein.

And afterwards to wit on the
9th day of February A.D. 1863 the same being
one of the days of the February Term of said Court
the following amongst other proceedings was had
and entered of Record in said Court to wit

8238 Theodore. Wood }
vs } Assumpsit
David. Root }

This day came the parties
by their respective attorneys and on their agreement
the Court orders the venue in this cause changed
to the Court of Common Pleas in the City of Aurora
and that the clerk of this Court transmit to the
clerk of said Court of Common Pleas the papers
on file in this cause and a transcript of the
proceedings had in this Court in this cause

State of Illinois }
Kane County }^{ss}

J. Thomas C. Moore clerk of the Circuit
Court in and for the County and State aforesaid
certify the foregoing to be a true and full trans-
cript of the proceedings had and entered of record
in a certain cause lately pending in said Court
wherein Theodore Wood was plaintiff and David

10th Page

Root was defendant and I further certify that the accompanying papers numbered from 1 to 5 inclusive are the original and all the papers on file in said cause

Seal

Witness Thomas. C. Moore clerk of
said Court and the seal thereof
at Geneva in said County this
10th day of March AD 1863

T. C. Moore Clerk

Filed March 13th 1863

C. P. Somerton Clerk

And on the second day of
February AD 1863 the following affidavit was
filed in the Circuit Court of Rome County and State of
Illinois in said cause to wit

State of Illinois } In the Rome County Circuit Court
Rome County } 3rd February Term 1863

David. Root

vs } Action of Assumpsit
Shedden. Wood }

David Root being sworn on oath
says that he is the defendant in the above suit and
that he knows the pecuniary condition of the said
Shedden Wood the plaintiff therein and that the

Subscribed & Sworn to before me } David Root
this 2^d day of Feb'y 1863

Filed Feb 2/63

(3)

C. P. Johnston Clerk

State of Illinois }
Harris County } ss. Harris County Circuit Court
July Term A.D. 1863

And the said defendant by
Plate and Smith his attys comes and defends the
wrong and injury where and saith that he

12th Page did not undertake or promise in manner and
form as the said plaintiff hath above thereof comp-
-lained against him and of this he puts himself
upon the County &c
And the Plaintiff }
doth the like }
B. J. Parks } Plato & Smith
 Attys for Defendant

Filed July 5th 1863

J. C. Moore clerk
(4)

Filed March 13th 1863

C. P. Johnston Clerk

And afterwards to wit on the
16th day of March A.D. 1863 the same being one of
the days of the regular march term^{A.D. 1863} of said Court
of Common Pleas of the City of Amherst the following
among other proceedings were had in said Court
and entered of record in said Cause &c. To Wit:

Shedden Wood

as
David. Root

} Openyset Change of venue

This day comes the parties
to this suit and by agreement this cause is
continued for the term

13th Page

And afterwards to wit on
the 22^d day of June AD 1863 the same being
one of the days of the regular June Term AD 1863
of said Court of Common Pleas the following
among other proceedings were had in said cause
and entered of Record in said Court &c. &c.:

Theodore. Hood

vs

David. Root

} Assumpsit - Change of name

On this day came the
parties by their attorneys and on motion of
plaintiff It is ordered by the Court that a Day
come whereupon come twelve good and lawful
men to wit:

J. L. Glover. John. H. Hallaw. Wm. Scarlett
Wm. Howell. N. N. Baxter. Thomas. Thayer
Clinton Cushing. George. Mosher. J. B. Hatch
Albert. Vaughn. R. Mansard & Joseph. Spaulding
who being each severally called tried elected and
sworn according to law also came and after hearing
a portion of the evidence adduced the hour of
adjournment for the day having arrived and
by agreement of Counsel

It is ordered by the Court that
the Day empanelled herein may separate and
meet the Court to morrow morning at 9
O'clock. A. M.

And afterwards to wit on the
23^d day of June A D 1863 the same being
one of the days of the regular June Term A D 1863
of said Court of Common Pleas

15th day

The following among other proceedings were had in said cause and entered of record in said Court to wit:

Shedden, Hood

vs

David Root

} Appraisit

} Change of venue

On this day came the parties by their attorneys and the Jury heretofore empanelled in this cause also came and after hearing the balance of evidence adduced arguments of counsel for the respective parties and instructions of the Court retired to consider of their verdict in charge of an officer

And also on the same day to wit the same being one of the days of the regular Term Term AD 1863 the 25th day of June AD 1863, the following among other proceedings were had in said cause and entered of record in said Court to wit:

Shedden, Hood

vs

David Root

} Appraisit

} Change of venue

On this day again came the parties to this cause by their attorneys and the Jury heretofore empanelled in this cause also came and return their verdict into open court as follows to wit. Be the Jury find.

16th Page Judgment for the plaintiff in the above
entitled action for Two Hundred and
Forty four Dollars which is hereby ordered
to be entered of Record

Thereupon comes the defendant
who enters herein his motion for a new
trial

And afterwards to wit on the
29th day of June AD 1863 the same being one of the days
of the regular June Term AD 1863 the following
among other proceedings were had in said
cause and entered of record in said Court
to wit:

Thodore, Wood

vs } Assumpsit
David. Root } Change of Demand

On this day came the parties
to this suit by their attorneys and the Court being
sufficiently advised concerning the motion of the
defendant for a new trial herefore entered in
this cause It is considered by the Court
that the said motion be overruled and that Judg-
ment be entered upon the verdict herefore rendered
by the Jury unpermeled in this cause and
that ^{said} plaintiff have and receive of said defend-
ant his damages of Two Hundred and Forty
four Dollars in full aforesaid assessed and

17th Page also his costs and charges in this behalf expended
and have execution therefor

Thereupon comes the defendant
by his attorneys who enters herein his exceptions to
the decisions of the Court in overruling his motion
for a new trial and entering Judgment upon
the verdict

Thereupon comes the defendant by
his counsel and prays an appeal to the Supreme
Court of the State of Illinois

It is ordered by the Court
that the appeal be allowed upon the defendant
entering into bonds in the sum of Five Hundred
Dollars to be approved by the Clerk - and that said
defendant have twenty days to file his Appeal
Bond herein and five days to file his Bill
of Exceptions herein

And afterwards to wit
on the 1st day of July AD 1863 the following Bill
of Exceptions was filed in said case in the clerk
office of said Court - to wit

State of Illinois

Kane County

City of Aurora

Shelley Wood

vs

David Root

In the Court of Common

Places of the City of Aurora

Term AD 1863

Be it remembered that on

18th Page the trial of the above entitled cause the plaintiff
to sustain the issues on his part introduced
as a witness Samuel Wood who being duly
sworn testified as follows to wit-

I have lived
in the County twenty three years I know Theodore
Wood the plaintiff he is my son he is now at
Richmond a private in the U. S Army he
lived with me the last two years before he went
to the war. He rented the farm and I lived
on it and he lived with me when he went
away he left some notes with his sister Nettie
There were four notes of \$50. each made by Lewis
McArthur. Three or four months after Theodore
went away Root the def said he would buy
from Nettie who had possession of them
the notes. I went and got them. Root was
to give the face of the notes less a deduction of
ten per cent. There were six yearlings
steers which Theodore left upon the place for me
to dispose of. The first time Root came over
after I had the notes I told him they were
Theodore's and that one third of the steers belonged
to Derby and Barker. Root was to give eight
dollars per head for the seven head of cattle making
\$56.00 in all. I told Root when he came after
the steers that I had heard that he had heard
if so we could not trade. Root said he had no note against me
buying notes against me, when we got to where
the cattle were Root asked if there was any

19th Page incumbrances on the Steers I told him no
He then drove them into Root's yard
Root wanted the Steers down in another year
we drove them in and just up the two. for of
I then went with Root into his house
Barre, He asked me for the notes and I
showed them to him and he took them and
put them into his desk and turned the key
and said to me then I am going to pay you
off in your own paper offering me some
paper I did not look at the paper don't know
what they were I told him that was not the
trade and I would not accept them I
demanded the notes I had given him and he
told me that he would not give me the notes
The notes were payable to Theodore Wood I told
Root before and at the time of the sale that the
property the notes and cattle in question belong-
ed to Theodore Wood and I sold them to Root
as agent for Theodore and as the property of
Theodore and not as my property

Cross Examination

Theodore went to the war in the
fall of 1862 Theodore rented the farm of Derby
and Barker and I worked on the farm
more or less at no particular price for my
services I had been on the farm three or
four years when Theodore went away to war
I bought the farm of one Mc Guire I owned

Doby and Barker and assigned the Bond
for the farm right over to them I went
into possession at the time I purchased
and continued in possession and when
Theodore became of age he rented it The year
I went on to the farm I bid off the same at
a tax sale I told Theodore I would let him
have my tax title and he might make what
he could out of it. I had used most of the products
of the farm to pay Doby and Barker and
Theodore complained about it and so I assigned
to him my tax certificate There was some
ten head of cattle on the farm I sold two of
them and took the money I had some stock on
my farm at Blackburn and it was sold on
an execution and Doby and Barker bid it off
and let me have it to take on to this farm
The Stew sold defendant's wine from some
of the cows taken by me on ^{to} this farm from the
Blackburn farm. Question by def. What
arrangement was made between you Doby
and Barker in reference to the cows you took
from the Blackburn farm on to this farm on
which you lived when Theodore went to New
as to its increase and disposal? Question
objected to by the plaintiff and the said objection sustained
and to which ruling of ^{the} said court in sustaining
said objection the defendant by his counsel then

21st Page

and then excepted. The Steno sold Defendant was
yearlings little more than a year old when sold
Theodore Wood gave a Debit Claim deed of his
interest in the farm acquired by the tax title to
Lewis. Martin and these four notes were for
that I bid off the land for taxes the first
year ^{that} I went on the farm in my own name
held the certificate about one year and assign-
ed the same to Theodore for work done by him
and for grain had from him and for debts
paid by him for me &c and Theodore Debit
Claimed his interest under the same to Lewis
Martin for about \$30.⁰⁰ Mr Martin came
over to see me about the tax title and I told
him that I bid off the land but that Theodore
held the deed for the same and I went with
Martin to see Theodore and Martin agreed
to give so much for the title.

Question by the Dep. What conversation took place
between Theodore Wood, Martin and yourself when
Martin made the bargain for the Debit Claim
of the tax title. The question objected to by the
plaintiff and objection sustained by the Court to
which ruling of the Court the Defendant by his
counsel at the time excepted. Witness answers
These Martin notes were made payable to
Theodore because I owed him &c all talked
about the trade Theodore gave the notes and

23^d Page

a power of atty to his sister Mattie She got married after Theodore went away and when she came up I told her ^{that} Root would buy them and she gave them to me. Theodore sold some property before he went away but did not dispose of any of the stock or grain on the farm He told me I might sell them I told Root before I got the notes that they were Theodore's Theodore name was on the back of the notes but he did not assign them to me. On Theodore's assignment of the notes he made them payable to bearer

Plaintiff here Root

The defendant then offered in evidence the Deposition of Lewis. Martin as follows.

State of Illinois
Kane County }

In the Court of Common Pleas
of the City of Aurora

Theodore Wood

vs

David Root

To the said Theodore Wood or B. F. Parker his attorney. You are hereby notified that on the ninth day of March AD 1863 at Two O'clock in the afternoon of said day we shall apply to Charles J. Johnston the Clerk of said Court of Common Pleas of the City of Aurora at his office in said City for a delinquent Potestatum or Commission to be issued out of and under the seal of said Court and directed to John W.

23^d Page. I, John H. Grover, of Port Huron in the County of Newaygo
and State of Michigan authorizing and requiring him
to cause Lewis Martin of Port Huron in the County and
State last aforesaid (who is a necessary witness on the part
of said defendant and residing ~~within~~ ⁱⁿ the State of Illinois and
in the State of Michigan to come before him the said John H. Grover
and to take said Martin's deposition upon such interrogatories
as may be enclosed with or attached to said commission to be
read as evidence in the above cause on the part of the defendant -
a copy of which interrogatories is hereto attached where and
where you may appear and file ^{and join in said commission} cross interrogatories, if you see
fit. Given at Port Huron July 27th 1863. Plato Smith atty for defendant.

State of Illinois

Newaygo County

Interrogatories to be administered to
Lewis Martin of Port Huron in the County of Newaygo State
of Michigan a witness to be produced sworn & Exam-
ined under and by virtue of the annexed commission before
John H. Grover of Port Huron, County & State last aforesaid in a
certain cause now pending and undetermined in said Court
of Common Pleas of the City of Aurora in said Newaygo County
wherein Theodore Wood is plaintiff and David Post
is defendant on the part of said defendant.

Interrogatory 1st What is your name age occupation
and place of Residence

Interrogatory 2^d

Do you know the parties plaintiffs and
defendant in the caption of these interrogatories
mentioned or either and which of them and how long have you

24th Page know them respectively and where did you know them

Interrogatory 3^d Do you know one Samuel Wood the father of the plaintiff Theodore Wood if so state where and how long you have known him

Interrogatory 4th State whether you ever made four promissory notes for fifty dollars each signed by you and payable to said Theodore Wood bearing date July 8th 1862 due sixteen months after date with interest at ten per cent

Interrogatory 5th If you answer to the 4th interrogatory that you did make such notes State for what such notes were made to whom the same were delivered with whom the negotiation was had which led to the making and delivery of said notes and the reasons fully why said notes were delivered to the person to whom they were delivered and why said notes were made payable to Theodore Wood State particularly

Interrogatory 6th Did you ever make payable to said Theodore Wood any other notes if you describe those notes particularly also state for what the same were given (if any) to whom given with whom the negotiations which led to their delivery was had and the reasons why said notes were made and delivered to the person to whom they were so delivered

Interrogatory 7th If you state that you gave any notes signed by you to Theodore Wood and if you state that such notes were given to purchase a tax title or to redeem land in which you were interested from

215th Page a tax title state who owned or held such tax title and with whom you made the negotiations in regard to the purchase of the same and state how it was that the person holding said title held the same or why he held the same state fully all you know about it

Interrogatory 8th If you state that you made notes payable to Theodore Hood describe the same and state also whether the negotiation which led to the delivery of the notes was had between yourself and Theodore Hood or between yourself and some other person and if with some other person state with whom and why the notes (if any) were made payable to Theodore Hood State fully and particularly
Plate Smith

Atty for Defendant

I accept service of a copy of the foregoing this
27th day of February AD 1863

B. J. Parks for Puff

State of Illinois

County of Kane

City of Aurora

88

The People of the State of Illinois

Do John H. Investment Esq
of Portanna, ^{of the} County of Newaygo and State
Michigan

Whereas it has been represented to us
that Lewis. Martin Esq of Portanna is the

28th Page

County of Newaygo and State of Michigan
a material witness in a certain cause now
depending in our Court of Common Pleas of
the City of Aurora in and for the City of
Aurora in the County of Kane aforesaid
between Theodore Wood Plaintiff and David
Root Defendant and that the said witness
resides at Pontiac County of Newaygo and State
of Michigan aforesaid without the said State
of Illinois and that the personal attendance
cannot be procured at the trial of the said cause

Now know ye that we in confidence
of your prudence and fidelity have appointed
you commissioners to examine the said witness
and do therefore authorize and require you to
cause the said witness to come before you at such
time and place as you may therefore designate
and appoint and diligently to examine the said
witness on the oath or affirmation of the said
witness by you first duly in that behalf admin-
istered and faithfully take the deposition of the
said witness upon all interrogatories inclosed
with or attached to these presents both on
the part of the said plaintiff and of the said
defendant and some others and the same
when thus taken together with this commission
and the said interrogatories to certify into our
said Court of Common Pleas of the City of Aurora

27th Page with the least possible delay

Seal

Witness Charles. P. Johnston clerk of
our said Court-and the seal thereof
at Aurora in said County this
ninth day of March A D 1863

Charles. P. Johnston clerk

The Deposition of Lewis. Martin of the
County of Newaygo and State of Michigan
A witness of lawful age produced sworn
and examined upon his corporal oath on the 24th
day of March A D 1863 at the office of John. M.
Grovesten in the town of Dayton, Newaygo and
State of Michigan John. M. Grovesten a commis-
-sioner duly appointed by a decision pro-
-tector or commissioner issued out of the clerk's
file of the Circuit Court of Kane County in the
State of Illinois bearing test in the name of
Charles P. Johnston esq clerk of the said Circuit-
Court with the seal of said Court-affixed thereto
and to me directed as such commissioner for
the examination of the said Lewis. Martin
a witness in a certain suit and matter in
controversy now pending and undetermined in
the said Circuit-Court-wherein Theodore
Hood is plaintiff and David. Root is
defendant-in behalf of said Theodore Hood as
well upon the cross interrogatories of the plaintiff

28th Page as on the interrogatories of the defendant which
were attached to or inclosed with the said
commission and upon more others

The said Lewis Martin being first-
duly sworn by me John M. Brewster as a witness
in said cause previous to commencement of his
examination to testify the truth as well on the part
of the plaintiff as the defendant in relation to the
matters in controversy between the said plaintiff
and defendant so far as he shall be interrogated
testified and depone as follows

Interrogatory 1st What is your name, Answer Lewis Martin
Age 39 years old occupation Farming Place of
residence Dayton Newaygo County State of Michigan

Interrogatory 2^d How you know the parties plaintiff
and defendant

I do I have known the defend-
-ant twelve years and plaintiff about five years
I know David Root Winfield Du Page Co
Illinois I know Theodore Wood in the same
town and also at Ballmornd same County

Interrogatory 3^d -

I do know Samuel Wood the father of
Theodore Wood about the time and place I
did Theodore

Interrogatory 4th

I did make four notes of fifty dollars
each, ^{and} payable to Theodore Wood the date about

29th Page that time as near as I can recollect
Interrogatory 5th

Those notes were made to purchase a tax title of our farm and delivered them to Samuel Wood negotiation was made with Samuel Wood the reason fully was that while I was at Mr Root's residence Mr Wood (Samuel Wood) came there and informed me that he had a tax title of our farm and now he was going to have Eight Hundred Dollars out of me before I could have it. But I told Mr S. Wood that he had had the use of the farm for a long time three or four years for nothing and had never paid us the first cent for the use of the farm I protested against the injustice of the thing so he finally concluded to take three hundred and about twenty dollars now when I was drawing the notes Mr Samuel Wood says draw them running to Theodore (Mr Wood's son) why so says I Mr Wood says I was owing some and if the notes run to him (Theodore) they will be safe so I drew them running to Theodore as desired and delivered to Samuel Wood in presence of a Justice of the peace I do not recollect his name and Mr D. Root and Theodore Wood

Interrogatory 6th

I did make one note at the same time and place and for the same purpose delivered

30th Page at the same time to Samuel C. Froot with the others but due in a month or two from date (I do not recollect exactly) amount One Hundred and about Twenty Dollars negotiation all the same as above all the same reasons and all concerned the same thing

Interrogatory 7th

The notes were given to redeem from a tax title which I was interested and to procure a Quit Claim Deed for the same from both Theodore and Samuel Froot but the tax title was in the name of Theodore Froot but as Mrs Samuel Froot had done all the business and said it was his claim anyhow I had both sign the Quit Claim Deed Whether Mrs S. Froot said at that time that the tax deed was given to Theodore for the same purpose that the notes were I cannot swear positively but it seems from the best of my memory that there was something said to that effect but I do know that was the color he sailed under

Interrogatory 8th

The description is as near as I can recollect is (they were not written for value received) (for I had not received any value at all) but protested against the unjust claim through the whole transaction I had, had no notice until then but what the taxes were all paid

but to the contrary on enquiring many times of Mr. Wood and Mr. Walter Germain and had been informed every time that they were paid altho Theodore Wood was in company with us the most of the time during the negotiation for the Quist Claim Dred and note he had no more to say about it than any son of his age would be likely to have if not interested any more than a son would be likely to have

Lewis. Martin

The above deposition is true according to the best of my knowledge

Lewis Martin

I John M. Crovett of the County of Muskegon and State of Michigan a Commissioner duly appointed to take the deposition of the said Lewis Martin a witness whose name is subscribed to the foregoing deposition do hereby certify that previous to the commencement of the examination of the Lewis Martin as a witness in the suit between the said Theodore Wood and the said David Root defendant he was duly sworn by me as such Commissioner to testify the truth in relation to the matter in controversy between the said Theodore Wood plaintiff and the said David Root defendant so far as he should be interrogated concerning the same That the

32^d Page. Said deposition was taken at my office in the Town-
 -ship of Dayton and County of Newaygo and the
 State of Michigan on the 24th day of March A. D 1863
 at One O'clock in the afternoon and that after said
 deposition was taken by me as aforesaid the inter-
 -rogatories and answers thereto as written down
 were read over to the said Witness and that
 thereupon the same was signed and sworn to
 by the said deponent before me the oath being
 administered by me as such Commissioner at
 the place and on the day and year last aforesaid
 Signed John M. Croverton
 Commissioner

Witness fees travel two miles	12	cts
One days attendance	50	62
Commissioners fee for administering oath	13	cts
Taking Deposition	48	91

Opened and filed Verne 16th 1863

C. P. Johnston Clerk

To the introduction of which as evidence the plaintiff
 objected to because the same was irrelevant-improper
 and incompetent evidence And the Court sustained
 the objection to which ruling of the Court in sustaining
 said objection and in refusing to allow said depoi-
 -tion to be read in evidence the defendant by his
 counsel at the time excepted to

Witness Samuel Wood recalled by defendant
 Paper shown Witness It is my signature at the
 bottom of this paper I delivered the property
 described in said paper to the purchaser therein
 mentioned The property specified in this paper
 was a portion of that left on the farm when
 Theodore went to the war and which I after-
 wards sold Defendant then offered to read
 said paper shown the witness in evidence
 which said paper is in the words and figures
 to wit:

Know all Men by these presents
 that I Samuel Wood of the Town of Winfield
 County of DeW Page State of Ill have this ²⁶
 day of November 1862 Sold to and delivered
 into the possession of C. A. Hinckley of the
 Town, County and State aforesaid the following
 described property all being upon the farm now
 occupied by me Seven Cows Twelve tons of Hay
 One Sow and ten Pigs One Mower and Reaper
 combined together with all the appurtenances there-
 unto belonging One Plow One Horse Hay Rack
 and also agree is being a part of and included
 in the sale the right and privilege to move
 into the House now occupied by me and
 also the right to use Barn upon said premises
 for the benefit of said stock and also sufficient
 room in Hay Rack upon said premises to

34th Page Says the above described Hogs also room in
Granary to keep grain also room in cellars
to keep necessaries for family all stock having
the right to run at large upon said farm
the said Heineckly having the right to enter
upon and take full possession of the above
described property and premises the thirtieth
day of November 1862 for the sum of One
Hundred and Sixty dollars to be paid to Doby
and Barker of Batavia as follows Thirty
dollars the fifteenth day of May next Thirty dollars
the fifteenth day of August next One Hundred
dollars the first day of December 1863
S. Wood

Filed June 23^d 1863

C. P. Johnston Clerk

The introduction of which paper in evidence
was objected to by plaintiff and the said objection
was by the Court sustained and not permitted
to be read to the Jury to which ruling of the
Court in sustaining said objection and refusing
to allow said paper to be read to the Jury as
evidence the defendant by his counsel at the
time excepted

William Griffith was next duly sworn
who testified as follows I knew Samuel
Wood and Theodore Wood the plaintiff, I

35th Page

lived within about one mile of the farm they occupied I never knew of Theodore Wood owning any personal property. I had a conversation with Samuel Wood (Theodore Woods father) after Theodore went to the War about buying Sters that he afterwards sold the defendant Root

Question State what was said at the time you have spoken of having conversation with Samuel Wood in regard to buying said Sters by Samuel Wood as to the ownership of the Sters The question objected to by the plaintiff and the objection sustained to which ruling of the Court in sustaining said objection and refusing to allow said witness to answer said question the defendant by his counsel at the time excepted

The defendant then offered to prove by said witness Griffith the statements made by said witness Samuel Wood in relation to the ownership of said property made after Theodore went to the War and before the said Sale to the said defendant Root and while the same was in the possession of said witness Wood Which said Court refused to allow to be done but decided that all evidence as to statements made by the witness Wood as to the ownership of the said property were irrelevant and improper and

36th Page

incompetent and refused to allow the defendant to introduce any further evidence as to such declarations to which ruling and decision of the Court in thus refusing to allow the defendant to introduce evidence of said statements of said witness Wood the defendants by their counsel at the time excepted

The foregoing is all the evidence introduced in the above entitled cause

The said Court then at the instance of the plaintiff instructed the Jury as follows -

If the Jury believe from the evidence that if Samuel Wood sold the property as the property of Theodore Wood then Samuel Wood cannot set up title in himself nor can any person for him except a Judgment Creditor and there is no evidence that defendant is a Judgment Creditor

If the Jury believe from the evidence that Samuel Wood (The father of Theodore Wood) sold the property as the property of Theodore Wood they must find for the plaintiff

To the giving of each ^{of said} instruction

Given

Given

34th Page = ctions by said Court - on the part of the plaintiffs
the defendant by their counsel at the time
excepted.

The said defendant then asked the ~~said~~ Court
to instruct the Jury as follows

If they Jury believe
from the evidence that the witness Samuel Wood
had control and possession of the personal property
said for as agent of Theodore Wood the plaintiff
and yet while offering the same for sale and
selling the same to the defendant declared such
property was his Samuel Woods, and not Theodore
Woods such declarations are proper for the Jury
to consider in determining the ownership of
the property

The Jury are instructed that a fraudulent
=ent sale of property while binding between the parties
are void as to bona fide purchasers from the
fraudulent grantor without notice of the fraudulent
grantor claim and while the grantor was in
possession And if they believe from the evidence
that the defendant bought the property said for
from Samuel Wood and not from the
plaintiff then the plaintiff is not entitled
to recover

The Jury are instructed that if they

38th Page

Refused

believe from the evidence that the defendant purchased the property in good faith from Samuel. Hood without notice of Theodore's claim and while Samuel Hood was in possession of the same to the same, then although as between Theodore Hood and Samuel Hood the property was the property of Theodore yet if they believe the defendant a bona fide purchaser from Samuel. Hood the Jury should find for the defendant

Which said Court refused to and to which ruling and decision of the Court in refusing to give said instructions as asked by said defendant the said defendant by his counsel at the time excepted

The Jury found a verdict for the plaintiff and assessed his damages at Two Hundred and Forty four Dollars - The defendant then moved the Court for a new trial, ^{in the case} and the defendant read the following affidavit in support of said motion

State of Illinois }
Frank County } ss
City of Aurora }

Theodore Hood

vs
David. Post

In the Court of Common Pleas
of the City of Aurora of the
County of Cook A.D. 1863

David Post being duly

39th Page

Sworn deposes and says that he is the defendant in the above entitled cause That one E.A. Kinchey a neighbor of this defendant residing near defendant was a witness on whom this defendant depended in the trial of said cause That this defendant expected to prove by said Kinchey that he said Kinchey was present at the time of the sale and delivery to defendant by Samuel Hood of the Stubs and notes spoken of on the trial of this cause and that said witness Samuel Hood at such time said to said defendant in answer to a question by said defendant as to whether there was any incumbrance on said Stubs that the said Stubs were his property and there was no incumbrance whatever on them And further defendant expects to prove by said Kinchey that at the time of the delivery of the said notes to defendant by Samuel Hood the said Samuel Hood said that the notes were always his anyhow and that Thedlow had endorsed them to him this making them doubly his - Defendant further says that about two weeks previous to sitting of the present term of this court he procured from the clerk of the same a subpoena and for said witness that a day or two after this defendant saw said witness and told him he had a subpoena for him to attend the same Term of this court that thereupon said witness said no matter about that

149th Page he would attend the trial if desired and agreed
to attend said Court and be present at the trial
that Friday or Saturday before the Monday of Jury
trials the said witness went away expecting to return
on Monday the first day of the Jury trials that this
case was called for trial before cases previous in
order on the docket was tried or otherwise disposed
of for the term, thus this defendant had to come on
this trial before the arrival of said witness this defen-
-dant not knowing that said witness was gone from
home but expected certainly that he would be in
attendance by Tuesday morning to which time
said cause in the trial thereof continued but
defendant found on Monday night that said
witness had not returned and therefore said trial
was closed without him That defendant was
not able to procure his attendance before the close
of the trial on Tuesday morning defendant not
knowing where to find said witness or

that defendant knows
of no other person by whom the same facts can
be proven That defendant expects to procure
the attendance of said witness on the trial of
the case if a new trial can be granted
Subscribed and sworn to }
before me this 30th day of } David Root
June AD 1863 }

C. P. Johnston Clerk

414th Page Filed June 30th 1863

C. P. Johnston Clerk

in the case for the following reason

1st That the Court erred in admitting improper evidence on the part of the plaintiffs

2^d That the Court erred in excluding relevant and proper evidence offered by the defendant

3^d That the verdict was against the law and evidence

4th The Court erred in giving plaintiffs instructions

5th The Court erred in refusing the defendants instructions as asked

which motion the Court refused to grant and entered a Judgment upon the verdict to which decision of the Court in overruling said motion for a new trial and refusing to grant the same and in entering a Judgment upon the verdict the defendant by his counsel at the time excepted And prays that this his Bill of Exceptions may be signed sealed &c which is done

R. C. Montgomery Seal
Judge

Filed July 1st 1863

C. P. Johnston Clerk

The following instructions were refused on the part of the plaintiff by the Court & viz

If the Jury believe from the evidence that Theodore Hood by his agent, Samuel Hood sold joint notes and cattle to defendant then the plaintiff is entitled to recover, and under the issue the question of whether or not Theodore Hood was fraudulently owning and holding the same for Samuel Hood is utterly immaterial and no person but a Judgment creditor armed with an execution can raise the question of such fraudulent ownership if the same should exist

The only question for the Jury to determine is did Theodore Hood by Samuel Hood sell the property to defendant then if he did then defendant should pay

And afterwards to wit on the
18th day of July A.D. 1863 the following appeal Bond
was filed in this case in the ^{Clerk's} office of said Court
to wit-

Know all men by these presents
that we David Root and Gardner & Buchanan
of Du Page County State of Illinois are held
and firmly bound unto Theodore Wood of
said County and State in the penal sum
of Five Hundred Dollars to the payment
of which well and truly to be made we do
by these presents jointly and severally bind
ourselves our heirs executors and administrators
Sealed with our seals and dated this 18th
day of July A.D. 1863

The condition of the above
obligation is such that whenever the said Theodore
Wood has obtained a certain Judgment rendered
in the Court of Common Pleas of the City of Aurora
in Kane County and State aforesaid at the same
Term thereof A.D. 1863, against David Root
for the sum of Two Hundred and Forty Four
Dollars - damages and costs of suit from which
said Judgment the above bound David
Root hath taken an appeal to the Supreme
Court of the State of Illinois

Now if the said David Root

Shall prosecute his said appeal with effect
and shall pay the Amount of said Judg-
ment costs interests and damages in case the
said Judgment of the said Court of Common
Pleas shall be affirmed by the Supreme
Court then the above obligation shall be
void otherwise in full force and effect

David Root Esq
Gardner, D. Buchanan Esq
State of Illinois }
County of Kane } ss
City of Aurora }

I, David Root the principal
in the within Bond do solemnly swear that
I am a Freeholder in the State of Illinois and
am worth the sum of Five Thousand Dollars
over and above all debts whatsoever and I
further swear that Gardner, D. Buchanan
the surety herein is according to my best know-
ledge and belief is a Freeholder in the State
of Illinois and worth Two Thousand Dollars
Subscribed and sworn to
before me this 18th day }
of July AD 1863 } David

Approved this 18th day } C. P. Johnston Clerk
of July AD 1863 C. P. Johnston
Clerk }

Filed July 18th 1863

C. P. Johnston Clerk

STATE OF ILLINOIS, }
COUNTY OF KANE, } ss.
City of Aurora.

I, Charles P. Johnston

Clerk of the Court of Common Pleas, of the City of Aurora, in said City, County and State,
do hereby certify that the above and foregoing transcript is a true, correct and complete
copy of the file and Record in a certain cause
lately pending in said Court of Common Pleas of the City of Aurora, wherein.....

Theodore Hood is Plaintiff and
David Root is Defendant as ap-
pears to us of record.

Witness, my Hand and Seal of Our
Court, at the City of Aurora, in said County
and State this Eighth day of

March A. D. 1864

Charles P. Johnston CLERK.



Court of Common Pleas, Aurora,

Thodore. Hood

vs.

David Root

Copy of Record

Filed this day of

..... A. D, 1862.

..... Clerk.

Fees.

89 Folios..... 976

Cert. and Seal..... 3.50

Stamp

\$... 10.10

State of Illinois } In the Supreme Court
Third Hand Division } To the April Term A.D. 1864
David Root, Appellant

vs
Theodore Wood, Appellee } Assignment of Error

And now comes the said Appellant and says that in the record and proceedings aforesaid there is manifest error in this to wit:

- 1st The Court erred in admitting improper evidence on the part of the plaintiff
- 2nd The Court erred in excluding relevant and proper evidence offered by the defendant
- 3rd The verdict was against the law and the evidence
- 4 The Court erred in giving the plaintiffs instructions -
- 5 The Court erred in refusing the defendants instructions as asked -
- 6 The Court erred in overruling defendants motion for a new trial -

By reason whereof the said Appellant prays that said judgment may be reversed &c

Plato G. Smith
Attys for Appellant.

And none ever the defendant
and says that there are no such
news in the record and
proceedings as above signed
Felix Blanchard
& Leland

Sept. 11, 1877

²²⁸
Common Pleas Aurora

Theodore Wood

vs

David Root

Copy of Record

Filed April 20, 1864
L. Leland
Clerk

Fees

97 Folios 9.70

Cert. & Seal 3.5

Stamp 5

\$13.20