No. 12408

Supreme Court of Illinois

Roberts.

vs.

Eddy.

10

Portens B Roberts

vs

Joseph A Eddy

90

1856

12408

Be it remembered that heretofore to wit: on the 7th day of November A.D. 1855 there was filed in the office of the clerk of the Circuit Court of Peoria County in the State of Illinois, a declaration in a certain cause wherein Joseph A. Eddy and Jabish P. Eddy are plaintiffs and Portus B. Roberts is is defendant, which said declaration is in the words and figures following, to wit:

Declaration.

"State of Illinois } Peoria Circuit Court
County of Peoria } To the November Term A.D. 1855

Joseph A. Eddy &
Jabish P. Eddy plaintiffs } Assumpsit
vs
Portus B. Roberts, defendant }

Portus B. Roberts, defendant in this suit was summoned to answer Joseph A. Eddy and Jabish P. Eddy plaintiffs in this suit in a plea of trespass on the case on promises and thereupon the said plaintiffs by their attorneys complain &c.

For that whereas heretofore to wit: on the first day of January A.D. 1851, and before the making of the promises and undertakings of the said defendant hereinafter mentioned at the County of Peoria and State of Illinois, one Williams was engaged in the business of cutting cord wood, and for the purpose of carrying on such business had in his employment divers and numerous hands, men and servants, and then and there agreed with the said plaintiffs, in consideration that the

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said plaintiffs would sell and furnish to said hands men and servants goods out of the store of the said plaintiffs, upon the direction of either the said Williams or one Ames the agent of said Williams that then the said cordwood cut by the said men hands and servents should be and remain the property of the said plaintiffs, until the said Williams should pay for the said goods so furnished as aforesaid, and the said Williams then and there undertook and faithfully promised said plaintiffs in consideration of the premises to pay them for said goods within a reasonable time after their delivery to said hands men and servants.

And the said plaintiffs aver that they relying upon the said promise and undertaking of said Williams, and upon the said agreement that the said cord wood should remain their property as aforesaid, afterwards did furnish and deliver to said hands men and servants goods out of their store and upon the direction of the said Ames as agent of said Williams goods of great value to wit: to the value of one thousand dollars, which was and remained due and unpaid by said Williams or any other person or persons until the time of the making of the promises and undertakings of the said defendant hereinafter mentioned.

And afterwards to wit on the tenth day of May A.D. 1855, at the County aforesaid, the said defendant in consideration that the said plaintiffs would then and there discharge and release the said Williams from his said liability to pay said plaintiffs the said sum so remaining due and unpaid by and from said Williams to said plaintiffs

he the said defendant then and there undertook, and faithfully promised the said plaintiffs to pay them the said sum so remaining due and unpaid on account of the said goods so furnished the said hands men and servants as aforesaid, within a reasonable time then next ensuing, the day and year last aforesaid, and the said plaintiffs aver that in consideration of the said promise and undertaking of the said defendant they did discharge and release the said Williams from his said liability to pay the said money so due from him to said plaintiffs. Yet the said defendant not regarding his said promise and undertaking has not paid to said plaintiffs said sum of money nor any part thereof, although a reasonable time for such payment has long since elapsed and although said defendant hath been often requested so to do.

And whereas also afterwards to wit on the first day of January A.D. 1855 at the County aforesaid the said plaintiffs entered into another agreement with the said Williams of like tenor and effect of the said agreement set forth in the first count in this declaration mentioned, between said Williams and said plaintiffs, and the said Williams then and there undertook and faithfully promised said plaintiffs to pay them whatever sum of money the value of the goods furnished to said hands, men and servants, should amount to within a reasonable time thereafter, and that said plaintiffs should have and retain a lien upon the said cord wood to be cut under said last mentioned agreement, until the said last mentioned sum of money should be paid; and thereupon said plaintiffs aver, that the said Williams by his said

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hands men and servants did cut a large amount to wit: one thousand cords of wood, upon which said plaintiffs had a lien by virtue of said promise and undertaking of said Williams for whatever sum might be due said plaintiffs for goods furnished as aforesaid, and the said plaintiffs relying upon such promise and undertaking and such lien did furnish to said last mentioned hands men and servants a large amount of goods and of great value to wit: of the value of one thousand dollars, which remained due and unpaid, and for which said plaintiffs of right had their said lien on the said last mentioned wood.

And thereupon and afterwards to wit: on the first day of May A.D. 1855 at the County aforesaid, the said defendant in consideration, that the said plaintiffs would then and there permit the said defendant to take possession of the said last mentioned cord wood fully released and discharged from the said last mentioned lien of the said plaintiffs, he the said defendant undertook and then and there faithfully promised the said plaintiffs to pay them the said last mentioned sum of money within a reasonable time thereafter, and the said plaintiffs aver, that relying upon the said last mentioned promise and undertaking of the said they did then and there permit the said defendant to take possession of the said last mentioned cord wood, fully discharged and released from their said last mentioned lien: Yet the said defendant not regarding his said promise and undertaking last afo. said did not nor would pay said last mentioned sum of money, nor any part thereof

within a reasonable time nor at any other time although often requested so to do.

And whereas also afterwards to wit, on the first day of January A.D. 1855 at the County aforesaid one Williams was indebted to the said plaintiffs in a large sum, for goods wares and merchandize and groceries before that time sold and delivered to the said Williams his agents and servants at the special instance and request of the said Williams to wit; in the sum of one thousand dollars, and the said defendant then and there having in his employment a great number to wit; twenty hands, workmen, laborers and servants, and desiring that the said plaintiffs should advance bargain sell and credit to said hands workmen laborers and servants, what ever goods, wares, merchandize and groceries said hands, workmen laborers and servants might request, out of the store of said plaintiffs, in consideration that the said plaintiffs would thereafter advance bargain sell and credit to said hands workmen laborers and servants, whatever goods, wares merchandize and groceries they might request out of the said store of the said plaintiffs, he the said defendant then and there undertook and faithfully promised said plaintiffs ~~to plaintiffs~~ to pay them the said plaintiffs the sum of the said indebtedness of said Williams to said plaintiffs, and also to pay to said plaintiffs the values of said goods wares, merchandize and groceries, advanced, bargained sold and credited by said plaintiffs to the said hands workman, laborers and servants all within a reasonable time thereafter.

And the said plaintiffs aver that relying upon

the said promises and undertaking of the said defendant they the said plaintiffs did afterwards to wit: on the day and year last aforesaid advance bargain sell and credit to the said hands workmen, laborers and servants, goods wares merchandize and groceries to a large amount and of great value to wit of the value of one thousand dollars.

Yet the said defendant not regarding his said last mentioned promise and undertaking did not nor would within a reasonable time thereafter pay the said plaintiffs the said indebtedness of the said Williams, nor any part thereof, nor the said value of the said last mentioned goods wares and merchandize although often requested so to do.

And whereas also afterwards to wit on the first day of April A.D. 1855, at the County aforesaid, the said defendant was indebted to the said plaintiffs in the further sum of one thousand dollars for divers goods wares merchandize groceries spirits, hardware and crockery, before then sold and delivered by the said plaintiffs to the said defendant his agents workmen and servants at the special instance and request of the said defend; and being so indebted, he the said defendant in consideration thereof afterwards to wit on the day and year last aforesaid, at the County aforesaid undertook and then and there faithfully promised the said plaintiffs to pay them the said sum of money whenever he should be thereunto afterwards requested.

Yet the said defendant not regarding his said several promises and undertakings but contriving and intending to wrong injure and defraud the said plaintiffs in that

behalf has not as yet paid the said several sums of money nor any nor either of them nor any part thereof although often requested so to do but to pay the same or any part thereof has hitherto neglected and refused and still neglects and refuses to their damage eight hundred dollars and therefore they sue.

Manning & Merriman
Attys for plfs."

And on the same day to wit, the 7th day of November A.D. 1855 there was also filed in said Clerks office a copy of the account sued on, which is in the words and figures following, to wit:

"State of Illinois } Peoria Circuit Court
County of Peoria } To November Term A.D. 1855

Joseph A. Eddy &
Jabish P. Eddy plaintiffs
vs
Portens B. Roberts, defendant

Copy of account on which said suit is brought

Portens B. Roberts

To J. A. & J. P. Eddy Dr.

To amt. assumed by you on account of Williams $1000.00
To goods wares and merchandize furnished your hands at your request 1000.00
$2000.00

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Proceedings at a term of the Circuit Court, begun and held at the Court house in the City of Peoria in and for the County of Peoria, in the State of Illinois on the third Monday of November, in the year of our Lord, one thousand eight hundred and fifty five it being the nineteenth day of said month. Present the Honorable Onslow Peters, Judge of the sixteenth Judicial Circuit in the State of Illinois, David D. Irons Sheriff and Jacob Gale, Clerk to wit:

Thursday November 22nd A.D. 1855

Joseph A. Eddy
Jabish P. Eddy
vs
Porteus B. Roberts
} Assumpsit

The Plaintiff by Manning and Merriman their attorneys move for a rule on the defendant to plead.

Friday November 23rd A.D. 1855

Joseph A. Eddy & Jabish P. Eddy
vs
Porteus B. Roberts
Assumpsit

On the motion for a rule on the defendant to plead herein, it is ordered that the defendant plead by monday morning next to this action.

And afterwards, to wit: on the twenty sixth day of November A.D. 1855, the defendant filed in the said cause the following pleas, which are as follows,

And afterwards to wit on the twenty third day of May A.D. 1856 the plaintiffs filed in said cause their replication to the 2nd plea of the defendant, which replication is as follows

"Joseph A Eddy &
Sabish P. Eddy
vs
Porter Roberts

And the said plaintiffs for replication to the second plea by the said defendant say precludi non because they say as to so much of said plaintiffs damages in said plaintiffs declaration demanded as are alledged on account of the breach of said defendants promises to pay the debt and liability of said Williams that such promises were made upon a new and valuable consideration at the time of making such promises respectively whereby such promises were taken out of the operations of the said statute of frauds by said defendant pleaded in said plea, and this said plaintiffs are ready to verify.

And as to the residue of said plaintiffs damages demanded in said declaration on account of the breaches of said other promises therein set forth the said plaintiffs say such other promises were not made to pay the debts and answer for the defaults and miscarriages of the said Williams. And this they pray may be inquired of by the Country, wherefore they pray judgment &c

Manning & Merriman
Atty for plfs.

And the said defendant says that the said plaintiffs Replication and the matters and things therein contained are not sufficient in law for the said plaintiffs to have and maintain his said action against the said defendant and that he is not

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bound to answer the same and this he is ready to verify.

Wherefore he prays judgment &c

Purple & Pratt for deft.

And on the said 23rd day of May the plaintiffs in said cause filed their amended replication to plea No. 2 of the defendant, which is as follows

"Eddy & Eddy vs. Roberts.

Amended replication to 2d plea

And for replication to said 2d plea said plaintiffs say precludi non, because they say that the said several promises and undertakings in said several counts mentioned are not promises and undertakings specially made to pay the debt and answer for the defaults and miscarriages of the said Williams within the meaning and intent of the statute in such case made and provided and of this he puts himself upon the country &c

Manning & Merriman

for Plfs

Deft. doth the like

Purple & Pratt for defts.

Pleas

Joseph A Eddy & Jabish P. Eddy vs Portus B. Roberts

In the Circuit Court of Peoria County. Assumpsit

And now comes the said defendant and says, actio non because he says that he did not assume and promise in manner and form as stated in the said plaintiffs declaration and of this he puts himself upon the country &c

Plaintiffs do the like &c

Purple & Pratt for deft

Manning & Merriman

And for further plea in this behalf to the said several counts in said declaration mentioned said defendant says actio non, because he says, that the said several counts are for one and the same cause of action and not other or different and that the said several promises and undertakings in said several counts mentioned are promises and undertakings specially made to pay the debts and answer for the default and miscarriages of the said Williams in said declaration mentioned, and that there was no contract, agreement or promise in writing nor any note or memorandum thereof made executed or signed by this defendant, nor by any other person thereto by him lawfully authorized at the time of the making of the said several promises in said counts in said declaration mentioned, nor at any other time & this the said defendant is ready to verify, wherefore he prays Judgment &c.

Purple & Pratt

Defts Attys.

And as to said second plea plaintiffs say that the same

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is insufficient in law to bar their said action & this they are ready to verify &c. Manning & Merriman for pltffs

& for a special cause of demurrer pltffs say that said plea amounts to a plea of "general issue."

Friday May 23rd 1856

Joseph A. Eddy
Jabish P. Eddy
vs
Porter B. Roberts

Assumpsit

This day this cause came on to be heard upon the demurrer of the said plaintiff to the 2nd plea of the said defendant and was argued by Counsel and the Court being fully advised in the premises are of opinion that the said plea and the matter therein contained are sufficient in law to bar the said plaintiff from his action against the said defendant, whereupon on the motion of the plaintiff leave is given him to withdraw his said demurrer and reply to said 2nd plea, And this cause again coming on to be heard upon the demurrer of the defendant to the replication of said plaintiff to said 2nd plea and was argued by Counsel and the Court being fully advised in the premises is of opinion that said replication is insufficient in law for the plaintiff to maintain his action, whereupon on motion of plaintiff leave is given him to amend his replication to said 2nd plea. It is ordered by

the Court that a jury be empannelled to try the issues in this Cause whereupon Came a jury of twelve good and lawful men to wit; Samuel Dimon, Adam Troxel, John Hinzey, L. B. Cornwell, Virgil Henry, Matthew Brown, John Alter William Lineback, Milton Hasbrook William A. Herron, Daniel McCoy, & Peter Booth who being duly Chosen, tried and sworn well and truly to try the issues joined and a true verdict give according to evidence and the evidence having been fully heard retired to consider thereof

Saturday May 24th A. D. 1856

Joseph A. Eddy
Jabish P. Eddy
vs Assumpsit
Portens B. Roberts

This day Came the jury aforesaid and upon their oaths aforesaid do say we ~~say~~ of the jury find the issues for the plaintiffs and assess their damage at the sum of one hundred and ninety seven dollars.

Whereupon the defendant moves for a new trial for the following reasons

1st Because the verdict is against law and ~~as~~ evidence.

2 Because the verdict is against the instructions of the court

3. Because the court misdirected the jury in giving the instructions asked by the plaintiff

4 Because the court refused to give the instructions

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as asked by the defendant.

5. Because the Court qualified the instructions asked by the defendant.

Friday May 30th A.D. 1856

Joseph A. Eddy
Jabish P. Eddy
vs Assumpsit
Portens B. Roberts

This day came on to be heard the motion of the defendant for a new trial and the Court being fully advised in the premises, overruled said motion, Therefore it is considered that the said Joseph A. Eddy & Jabish P. Eddy have and recover of the said Portens B. Roberts the sum of one hundred and ninety seven dollars his damages aforesaid by the jury assessed and also ~~his~~ their costs and charges by them about ~~their~~ ~~his~~ suit in this behalf expended and that they have execution therefor. The defendant prayed an appeal in this case to the Supreme Court of this State which is allowed him on his filing in the office of the clerk of this Court in thirty days an appeal bond in the penal sum of three hundred and fifty dollars payable to the plaintiffs with George T. Harding as surety and conditioned according to law.

~~the~~

And afterwards to wit: on the thirteth day of May in the year of our Lord one thousand eight hundred and fifty six there was filed in said cause on the part and behalf of said defendant his bill of exceptions in said cause which is as follows

Joseph A. Eddy Jabish T. Eddy vs Torteus B. Roberts.	Circuit Court Floyd County May Term 1856. Assumpsit.

Be it remembered that on the trial of this Cause the Plaintiffs to maintain this issues on their part produced Samuel Hutchinson a witness who testified as follows, That about the last of September A.D. 1854. one — Williams came down near Lancaster and commenced getting out wood - that at the first he employed six or eight hands and afterwards eight to ten - that the Plaintiffs were at that time doing business at Kingston as Merchants and that

witness was their agent and business man at Kingston - that Williams came and spoke to witness about getting goods for his hands, said he wanted to get goods for his hands and would pay for them at the end of the month - said it would be all good for the wood should be mine till I got my pay. I let him have goods on his orders. I was acting as Agent for the Pfiffs the furnished Williams with goods from about September 6. 1874. till about the first of December of that year, the whole amount of goods furnished was about three hundred and forty four dollars Williams paid some by furnishing some logs to the Kingston Coal Company dont know how much.

I saw Williams and he said he would get away some wood and settle it all up. I must heard that the defendant had bought the land on which Williams was cutting wood and had bought the wood from Williams. I never saw Roberts the defendant.

John L. Parsons came down soon after and gave orders on the Pfiffs for goods and managed the wood. He professed to act as the agent of Roberts. The same hands or a part of them continued on with the work after Williams quit, they got goods at Pfiffs store. The plaintiffs live in St. Louis. I manage their business at Kingston.

On Cross examination said witness testified as follows

I got pay for all the goods I sold after Williams

left; they were also paid for and more too about one hundred and fifty dollars more, and that the account was all paid except the balance on the account which was $197.00. He also testified that the amount of Williams's account was justly due against Williams when said account was made with plaintiffs

Mathew L Wilson then testified as follows:
I knew Hutchinson in 1864 he was the agent for Piffs. I also then knew Roberts the Deft. – Heard Roberts say that he had bought the land on which Williams was cutting wood, and had purchased the wood as it stood from Williams. I was at work for Williams – I got goods at the Piffs. store, – several of the hands got goods there – Heard Roberts say this about middle of Nov. at time Williams quit – Williams and Roberts came down together Roberts said he had bought the wood as it stood and was to pay all that was back on the work – dont know whether Williams was present or not. Mr. Roberts said he was to pay the Store debt and would be down in a week or ten days and arrange it – said he thought he should make no change in the work. – He asked if the hands were getting goods at the store – said the hands might go on and get goods until he came down again. He sent no word by me to Hutchinson. Never heard any thing else at any other time. – Roberts afterward told me in Peoria that Parsons was his agent. – Parsons came down five or six days after Roberts came down – Roberts paid me some money. –

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Parsons employed People to cut and haul wood as the agent of Roberts.

On cross examination witness stated.

I continued in the employ of Roberts. He paid me all I worked for him. He paid all the rest of the hands so far as I know. I heard no complaint – He paid Williams so far as I know – He said he wanted to make the same arrangement at the store that Williams had. – I know of no contract, between Roberts and Eddys in regard to Williams debt.

Witness stated that Roberts said he was to pay Williams's store debt to plaintiffs, and that Parsons came down and managed the business in regard to the wood and made contracts in regard to the business, this was some time after Roberts had bought out Williams

B. F. Ames then testified as follows:

I was agent for Williams – gave orders to hands for goods in his name – knew the hands got goods at Pffs. store, Deft. left Parsons to transact business for him – suppose Parsons made contract for deft. relative to the wood – think there was about 400 cords of wood cut when deft. purchased of Williams. I continued work under Roberts – got my pay for all the time I worked – never heard any complaint that the hands did not get their pay.

John H. Hutchinson testified as follows.

I know Pffs. have seen Roberts. I was clerk in the Pffs store, Parsons came to me about the 25th of Nov. 1854, said he

was Roberts agent — said he wished all those account, made out and charged to Roberts, as he assumed them as agent. — said he wanted to go on as Williams had done. — I told him the old account must be settled. He said if I would let them go on another month that he would pay the whole amount at the end of the month. — We paid orders afterwards to hands. Dont know of any payment being made. — Never saw Roberts at Kingston but once. — Roberts paid for all that was sold after he came there: that Parsons came to witness and wanted further credit for goods and provisions for the hands on defts orders I refused unless the Williams debt was settled. Parsons then agreed that if I would let them have such credit for another month on defts orders the defendant would pay up both the new debt and the Williams debt — to this I consented and I did let him have the credit for another month and let the hands have goods & provisions accordingly. I was clerk in the plaintiffs store, and acting for the plaintiffs.

Emsley Henderson testified as follows
Robert said he had bought Williams out and would have to assume the debts. That the defendant said he had bought Williams out and was to pay Williams's store debt to the plaintiffs.

Mathew L. Wilson recalled testified
I had got goods on Williams account and when I settled with Roberts he brought that against me.

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Saml. Hutchinson recalled testified

About first of December Parsons told me the Williams account would be paid about the last of December.

John L. Parsons was called by the defendant and testified that he was employed by the defendant, to superintend the cutting of the wood, and see to the payment of the hands, that for the purpose of paying hands he drew orders on the plaintiffs store, that all the money for goods got by Roberts hands after he took possession of the work was paid to plaintiffs, that he never agreed as agent to pay the debts contracted by Williams or his hands, and never had any authority to make any such agreement from Roberts, that Roberts told him to get from Plaintiffs the accounts against said Williams & his hands, which remained due, and to save out of the wages of the hands all that could be saved to pay said claims against them or said Williams, and that he did do so, from time to time on settlements made with the hands and accounted for the amount to the said plaintiffs.

The defendant then called Edwin W. Morris, who testified that on the 28th day of March A.D. 1853, and after defendant and his hands had quit work upon the Job referred to by the other witnesses, and after Roberts had sold out the land to him the witness, he settled with the plaintiffs agent Samuel Hutchinson for the amount of the goods, got by the defendant and his hands and took a receipt for the ballance

then paid (which receipt was then offered and read in evidence and is as follows)

"$ 117 66/100 Kingston March 28, 1856

Rec.d of Mr Roberts & Morris one hundred & seventeen 66/100 Dollars on ordering of woodchoppers up to date

J. P. Eddy & Co"

that at the time of the payment of said sum as aforesaid nothing was said, by said Hutchinson about the liability of the defendant to pay the ballance of the accounts contracted by Williams or his hands, and that said Hutchinson said he expected the plaintiffs would have to lose the ballance of their account against said Williams and his hands.

This was all the evidence

The Counsel for the defendant asked the following instructions:

"1st That unless the defendant authorized the agent to assume the payment of the debts of Williams any contract made by him with the plaintiff would not bind the defendant.

2 That a promise to pay the debt of a third person is not binding unless there is some note or memorandum in writing signed by the parties to be charged or by some agent of his, lawfully authorized

3 That if the Jury believe from the evidence that Parsons as agent of Roberts did assume or agree to pay the debt of Williams if plaintiffs would continue to advance goods to the hands of defendants such promise is void under the Statute of frauds and is not binding on the defendant.

4th That the plaintiffs in this suit is not entitled to recover upon any of the common counts for any goods sold to any person except the defendant, or to those in his employment.

5th That under the 2 first counts in the declaration the plaintiffs cannot recover unless they have proved either that a promise was made to pay Williams debt in consideration that the plaintiffs would permit the defendant to take possession of the cord wood in the declaration mentioned and release his lien therefrom, or in consideration that the plaintiffs would release Williams from said liability to the plaintiffs as stated in the declaration."

which were given except the third and fourth which were qualified as follows:

Qualification to instruction No 3 "unless they believe also from the evidence that Williams was released from the debt and the defendant taken as debtor in his stead."

Qualification to instruction No 4 "unless it is also proved that he assumed the debts of another who was released therefrom, on his assumption of the debt."

To which said qualifications the defendant then and there excepted.

The Plaintiffs asked the following instructions which were given

1st "If the jury believe from the evidence that Williams was indebted to the plaintiffs as alledged in the declaration, and the defendant by himself or his agent agreed to pay such indebtedness if the plaintiff would give him further advances of goods for his hands as well as to pay for such

advances, and that upon such agreement the plaintiffs made such advances then the defendant is liable to pay the plaintiffs whatever remains unpaid of such indebtedness notwithstanding there was no writing showing such agreement if they believe also from the evidence that defendant was by the agreement taken as the debtor instead of Williams."

"If a person gives an agent general authority to act in a certain business and permits the agent to act generally in such business he will be bound by the contract of such agent in the general scope of such business although he might privately have restricted such agents power unless the person contracting had notice of such restriction"

To which said instructions the said defendant then and there excepted

The defendant after the return of the verdict entered a motion for a new trial for the following reasons

1st. Because the verdict is against law and evidence

2, Because the verdict is against the instructions of the court.

3, Because the court misdirected the jury in giving the instructions asked by the ~~defendant~~ plaintiff

4 Because the court refused to give the instructions as asked by the defendant

5 Because the court qualified the instructions asked by the defendant

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On the hearing of which motion the following affidavit was read in evidence

"State of Illinois, }
County of Peoria, } Peoria Circuit Court
May Term A. D. 1856.

Eddy & Eddy
vs
Porter B. Roberts

Matthew Brown Milton Hasbrouck all being duly sworn say severally that we and each of us were jurors on the trial of said cause, and that the conduct and appearance of John L. Parsons a witness for the defendant in said cause was such while on the witness stand as to discredit his testimony in our opinion and that on that account his evidence was entirely disregarded by the jury in said cause so far as such evidence was in favor of the defendant.

The above affidavit was subscribed and sworn to by said Matthew Brown and Milton Hasbrouck this 30th day of May A.D. 1856, before me.
James S Parkman, Clerk"

Matthew Brown
Milton Hasbrouck

to the reading of which the defendant objected and then and there excepted to the ruling of the court overruling said objection.

The Court overruled the said motion and the defendant Counsel then and there excepted to the opinion of the Court and requested the Court to seal this bill of exceptions which is done

Jacob Gale, Seal

And afterwards to wit: on the fourth day of June in the year of our Lord one thousand eight hundred and fifty six there was filed in said cause by the defendant his appeal bond which said appeal bond is in the words and figures following to wit:

"Know all Men by these presents that we Porter B Roberts and George F. Harding are held and firmly bound unto Joseph A. Eddy and Jabish P. Eddy in the penal sum of three hundred and fifty dollars lawful money of the United States to which payment well and truly to be made and done, we bind ourselves our heirs, executors and administrators jointly and severally by these presents, Witness our hands and seals this 31 day of May A.D. 1856,

The condition of this obligation is such that whereas on the 24 day of May A.D. 1856 in the Circuit Court of Peoria County the above named Joseph A. Eddy and Jabish P. Eddy recovered a judgment in said Court against the above named Porter B. Roberts in the sum of one hundred and ninety seven dollars from which said judgment the said Porter B. Robert has prayed an appeal to the Supreme Court of the State of Illinois, Now if the said Porter B Robert shall duly prosecute his appeal and shall pay the debt, interest and costs and ~~charges~~ damages aforesaid in case said judgment shall be affirmed in the Supreme Court, then this bond shall be void otherwise in force.

Porter B. Roberts (SEAL)
George F. Harding (SEAL)

May 31. 1856,

State of Illinois } ss.
County of Peoria, }

I James S. Bartman, Clerk of the Circuit Court in and for Peoria County in the State of Illinois do hereby certify that the foregoing is a correct transcript from the Record of the proceedings in a certain Cause wherein Joseph A. Eddy and Jabish P. Eddy are Plaintiffs and Polen B. Robert is defendant as the same remains of record and on file in my office. In witness whereof I have hereunto set my hand and affixed the seal of said Court at my office this seventh day of May in the year of our Lord One thousand eight hundred and fifty six.

James S. Bartman, Clerk.

Joseph A. Eddy
Jabish P. Eddy
vs
Portens B Roberts

Appeal from Preble.

Comes now the said Appellant and says that in the Record and proceedings and in the Rendition of the Judgment aforesaid there is Error in this to wit

1st. Said court Erred in refusing to grant a new trial upon the Reasons filed

2 The Court Misdirected the Jury in giving the instructions asked by Plaintiff

3 The court Erred in Refusing to give instructions 3 & 4 as asked by Defendant and in qualifying said instructions

4th The court Erred in Rendering Judgment for the Plaintiff

For these and other Error

[12408-19]

in said Record said appellant prays that said Judgment may be reversed.

W. H. Pringle
Atty for Appellant

Sept 4 in error in Error
Manning & Brunner
for Sept in Error

Filed June 12 1856.
Jos. Cunningham Clk

To
Portens B. Robert
Joseph H. Coldy

10.

15 Peik 159 (155)

18 Peik 46

3 Mut 396

3 Cush 488

2 Denio 45

60

Dofmoe

4 Sidgwick

3 Burrows 1886

1 Ark 330

8 Wh

4 Cow 434

7 Wh 463

2 Denio 58

STATE OF ILLINOIS, SUPREME COURT.

To June Term, 1856.

Appeal from Peoria.

Joseph A. Eddy and Jobish P. Eddy *vs.* Porteus B. Roberts.

Declaration.

First Count states that, on the 1st January, 1851, one Williams was engaged in cutting cord wood, and had men in his employ, and agreed with plaintiffs to furnish hands with store goods upon his or his agent's directions, and agreed that the wood cut should be the plaintiffs' property until the goods were paid for: Williams agreed to pay for the goods in a reasonable time. Relying on the agreement, the plaintiffs furnished Williams and his hands goods to the amount of $1000. On the 10th of May, 1855, the defendant, in consideration that plaintiffs would release Williams from his liability to plaintiffs, promised to pay the amount due from Williams and his hands. Plaintiffs did release Williams—defendant refused to pay.

Second Count. On the 1st Jan., 1855, plaintiffs made with Williams same agreement set forth in first count, and he promised to pay for goods furnished under same within a reasonable time, and plaintiff should have a lien upon the cord wood until the debt was paid. Williams cut 1000 cords of wood, upon which plaintiffs hads a lien by said promise and undertaking for amount due from Williams and hands. Plaintiffs, relying upon the promise and *lien*, did furnish to Williams and his hands $1000 worth of goods, which remained due and unpaid, and for which he had a lien on the wood. On the 1st May, 1855, defendant, in consideration that plaintiffs would permit the defendant to take possession of the wood, released from his lien, promised to pay the debt contracted by Williams and his hands. Plaintiffs permitted him to take possession of the wood, discharged from the lien. Yet defendant refused to pay.

Third Count. That, on the 1st Jan., 1855, Williams was indebted to plaintiffs in $1000 for goods, &c., and defendant having a large number of workmen, and desiring that plaintiffs should advance them goods, &c., in consideration that they would do so, promised to pay Williams' debt, and also, for the goods, &c., advanced to defendant's hands in a reasonable time. Relying on the promise, plaintiff advanced defendant's hands in goods $1000. Defendent refused to pay either.

Fourth Count. Goods, &c., sold and delivered to defendant.

Pleas.

1. General issue. Issue to the country.
2. Statute of Frauds: That all the counts were for the same cause of action and that promise was a promise to pay the debt of Williams, &c.

General replication. Issue to the country.

[12408-14]

17 Mass 404
10 do 288
2 Dall 242
11 John 464
6 Binn 409
5 Serg & R 81 — Dorsey vs Porter
4 Rep. 203
1 Chitty Pl 340 n
6 Watts 182
1 Chitty Pl 5-6 Portis
2 Phillips Ev 108 "Com Comm"
Saunders PL & Ev 547

Tried by Jury. Verdict and judgment for the plaintiffs $197. Motion for new trial overruled.

Bill of exceptions contains all the evidence.

The following is the substance of all the testimony:

For Plaintiffs.

Samuel Hutchinson stated: That about the last of September, A. D. 1854, Williams commenced cutting cord wood, plaintiffs were doing business as merchants at Kingston; he was their agent; Williams wanted goods for his hands, and promised to pay at the end of the month; "*said it would be all good, for the wood would be mine till I got my pay;*" I let him have goods on his orders from 6th Sept., 1854, to 1st Dec., about $344.00; he paid some in logs; don't know how much; I saw Williams, and he said he would get away some wood and settle it up; next heard defendant had bought the land and wood from Williams; I never saw Roberts, the defendant; John L. Parsons came down soon after and managed the wood; professed to act as agent of defendant; saw hands, or part of them, continued on with the work after Williams quit; they goods at plaintiffs' store.

On cross examination, he stated that Roberts paid for all the goods got after Williams left the work, and about $150.00 more, leaving a balance against Williams of $197.00.

Mathew L. Wilson. Knew Hutchinson in 1854; knew defendant; heard him say he had bought the land on which Williams was cutting wood, and had purchased the wood as it stood from Williams; I was at work for Williams—got goods at the plaintiffs' store; several hands got goods there; Roberts said this about the middle of November, at time Williams quit; Williams and Roberts came down together; Roberts said he had bought the wood as it stood, and was to pay all that was back on the work; don't know whether Williams was present or not; Roberts said he was to pay the store debt, and would be down in a week or ten days and arrange it; thought he should make no change in the work; asked if the hands were getting goods at the store; said they might go on and get goods until he came down again; sent no word by me to Hutchinson; Roberts afterwards told me in Peoria that Parsons was his agent; he came down five or six days after Roberts came down; Roberts paid me some money; Parsons employed people to cut and haul wood as the agent of Roberts.

Cross Examination. I continued in Roberts' employ; he paid me all I worked for him, and all the rest of the hands, so far as I know—I heard no complaint; he paid Williams so far as I know; said he wanted to make the same arrangement at the store that Williams had; I know of no contract between, between Roberts and Eddy in regard to Williams' debt; that Roberts said he was to pay Williams' store debt, and Parsons came down and managed the business in regard to the wood, and made contracts in regard to the business. This was some time after Roberts had bought out Williams.

B. F. Ames stated: I was agent for Williams; gave orders to hands for goods in his name; knew the hands got goods at plaintiffs' store; defendant left Parsons to transact business for him; suppose Parsons made contracts for defendant relative to wood; think about 400 cords cut when

defendant purchased of Williams; I continued work under Roberts—got my pay for all my work; never heard any complaint that the hands did not get their pay.

John H. Hutchinson stated: I know plaintiffs; have seen Roberts; I was clerk in plaintiffs' store; Parsons came to me about the 25th Nov., 1854, said he was Roberts' agent; said he wished all the accounts made out and charged to Roberts, as he assumed them as agent; said he wanted to go on as Williams had done; I told him the old accounts must be settled; he said if I would let them go on another month, he would pay the whole amount at the end of the month; we paid orders afterwards to hands; don't know of any payment being made; never saw Roberts at Kingston but once; Roberts paid for all that was sold after he came there; that Parsons came to witness and wanted further credit for goods and provisions for the hands on defendant; I refused, unless the Williams' debt was settled; Parsons then agreed that if I would let them have such credit for goods and provisions for the hands on defendant's orders, the defendant would pay up both the new debt and the Williams' debt; to this I consented, and did let him have the credit for another month and let the hands have goods and provisions accordingly; I was clerk in the plaintiffs' store, and acting for the plaintiffs.

Emsly Henderson stated: Roberts said he had bought Williams out, and would have to assue the debts; that the defendant said he had bought Williams out, and was to pay his store debt to the plaintiffs.

Mathew L. Wilson recalled, stated: I got goods on Williams' account, and when I settled with Roberts, he brought that against me.

Samuel Hutchinson recalled, stated: About the first of December Parsons told me the Williams account would be paid about the last of December.

For Defendant.

John L. Parsons stated: That he was employed by the defendant to superintend the cutting of wood, and see to the payment of the hands; he drew orders on the plaintiffs' store; that all the money for goods got by Roberts' hands, after he took possession of the work, was paid to plaintiffs; that he never agreed as agent to pay the debts contracted by Williams or his hands, and never had any authority to make any such agreement from Roberts; that Roberts told him to get from plaintiffs the accounts against said Williams and his hands which remained due, and to save out of the wages of the hands all that could be saved to pay said claims against them or said Williams, and that he did do so, from time to time, on settlement made with the hands, and accounted for the amount to the plaintiffs.

Edwin W. Morris stated: That on the 28th March, 1855, and after defendant and his hands had quit work on the job referred to by the other witnesses, and after Roberts had sold out the land to him, the witness, he settled with the plaintiffs' agent, Samuel Hutchinson, for the amount of the goods got by the defendant and his hands, and took a receipt for the balance then paid, as follows:

"$117.66. KINGSTON, March 28, 1855.

Received of Mr. Roberts, of Morris, one hundred and seventeen 66-100 on orders of wood choppers, up to date. J. P. EDDY & Co."

1 Jr

That, at the time of the payment of the said sum, nothing was said by said Hutchinson about the liability of the defendant to pay the balance of the accounts contracted by Williams or his hands; and that said Hutchinson said he expected the plaintiffs would have to lose the balance of their account against said Williams and his hands.

The 3d instruction asked by the defendant, was as follows:

"That if the Jury believe, from the evidence, that Parsons, as agent of Roberts, did assume or agree to pay the debt of Williams, if plaintiffs would continue to advance goods to the hands of defendant, such promise is void under the statute of frauds, and is not binding on the defendant."

To this the Court added the following qualification:

"Unless they believe also from the evidence that Williams was released from the debt, and the defendant taken as debtor in his stead."

The 4th instruction asked by defendant was:

"That the plaintiffs in this suit are not entitled to recover upon any of the common counts for any goods sold to any persons except the defendant, or to those in his employment."

To which the Court added the following qualification:

"Unless it is also proved that he assumed the debts of another, who was released therefrom on his assumption of the debt."

These qualifications were excepted to by defendant.

The plaintiffs asked the following instructions:

1st. "If the Jury believe from the evidence that Williams was indebted to the plaintiffs, as alleged in the declaration, and the defendant, by himself or his agent, agreed to pay such indebtedness if the plaintiffs would give him further advances of goods for his hands, as well as to pay for such advances, and that upon such agreement the plaintiffs made such advances, then the defendant is liable to pay the plaintiffs whatever remains unpaid of such indebtedness, notwithstanding there was no writing showing such agreement; if they believe, also, from the evidence, that the defendant was by the agreement taken as the debtor instead of Williams."

2d. "If a person give an agent general authority to act in a certain business, and permit the agent to act generally in such business, he will be bound by the contract of such agent in the general scope of such business, although he might privately have restricted such agent's power, unless the person contracting had notice of such restriction."

The defendant excepted to these instructions.

The defendant moved for a new trial on the following grounds:

1. The verdict was against law and evidence.

2. The verdict was against the instructions of the Court.

3. The Court misdirected the Jury in giving the instructions asked by the plaintiffs.

4. The Court refused to give the instructions as asked by the defendant.

5. The Court qualified the instructions asked by the defendant.

The plaintiffs on this motion read the affidavits of two jurors, stating that they discredited the evidence of defendant's witness Parsons.

Defendant excepted to this evidence.

Motion for new trial overruled.

Errors Assigned.

1. Refusing new trial.
2. Giving plaintiffs' instructions.
3. Refusing instructions 3 and 4 as asked by defendant and qualifying them.
4. Rendering judgment for plaintiffs.

N. H. PURPLE,
Attorney for Appellant.

Eddy v. Roberts

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Rec'd

Recorded

Common

Pleas

Court

Portene B. Roberts
vs
Joseph A. Eddy & Co

Points and Brief of Appellant.

1st.

There is no sufficient evidence of any contract or agreement on the Part of Roberts to pay the debt of Williams to the Plaintiff
(See Evidence)

The contract if there was any was between Parsons as agent of Roberts and Hutchinson Clerk of Eddys

Parsons had no authority to make any such contract. His agency only extended to the superintendance of the hands & their payment.

He Swore that he never made any such contract two of the Jurors Swore that they did not believe him — This kind of Evidence can not be received on a Motion for a new trial.

2nd.

If any such Contract or agreement was made, it was a promise to pay the debt of a third person, and not being in writing was void by the Statute of Frauds —

The Statute — Its object.

Confusion of decisions

Promise upon a new Consideration
Contradiction of terms — Evasion of the Statute.

3rd The true rule is — That when a promise is made to a creditor by a third person to pay the debt of another, it cannot be upheld though founded upon a new Consideration from the creditor unless the agreement be in writing — This is the Statute.

Loomis V. Newhall	15. Pick.	159.
Stow V. Symmes	18 "	469
Nelson V. Boynton	3 Met.	396
Centis V Brown	5 Cush.	488.
Barker V. Bucklin	2 Denio	45.

4. Such promise is never binding though made upon a new consideration unless the original debtor is released

See authorities before cited

There is no pretence that such was the case here

5. The Instructions given at Plaintiffs request were improper

The first instruction is not law.

The 2nd is inapplicable and calculated to mislead the jury

[12408-30]

Defendants instructions

The 3rd instruction should have been given as asked without the qualification

So also of the 4. instruction

The Plaintiff cannot recover in this action for goods sold to Defendant. The Declaration and Proof do not correspond

The Cause of action should have been specially stated and set forth

The Court does not advise the defendant at all of the Cause of action

Patrick B. Rowe
v
Joseph A. Eddy &c

Brief
Filed to Court