

No. 14587

Supreme Court of Illinois

Harvey

vs.

Parsons

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
THIRD GRAND DIVISION.

No. 241

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

Harney
25

Parson

2 City

1860

1858

IN THE

* SUPREME COURT OF THE STATE OF ILLINOIS.

FOR THE THIRD GRAND DIVISION.

April Term, 1864.

CHARLES T. HARVEY,

Plaintiff in Error.

v s.

JOHN R. PARSONS,

Defendant in Error.

JAS. L. STARK, Jr.,

Counsel for Plaintiff.

CHICAGO:

BEACH & BARNARD, PRINTERS, 14 SOUTH CLARK STREET.

1864.

ARGUMENT.

There are but two questions presented for the consideration of the court in this case.

I. Whether the plaintiff below had a title to the machine he sold the defendant, and for which this suit is brought, at the time he sold the same.

II. Whether by the terms of the contract made by the parties, the plaintiff below had any complete cause of action at the time the suit was commenced.

I. AS TO THE FIRST QUESTION—

The machine, which is the subject matter of the controversy, was at first owned by one R. F. Vaughn; the plaintiff introduced him as a witness; he testified that he sold it to one John A. McCulloch, and took his notes, and that there was a condition that unless the notes were paid it was to be no sale; that McCulloch took possession of the machine, but that there was no bill of sale made out, and that when he found the machine in Harvey's possession he forbid his paying for it. McCulloch sold the machine to Parsons, the plaintiff below, and the plaintiff sold it to the defendant below, the plaintiff in error here.

The plaintiff in error insists, that at the time of the purchase made by him the title to the machine was in Vaughn, and that consequently the plaintiff below is not entitled to recover for the same. I suppose that no authority need be cited to show that unless Parsons conveyed a title to the machine, he is not entitled to recover in this action. The question here then turns on the point

whether Vaughn conveyed such a title to McCulloch as would enable him to convey the same away; for as a general rule, no man can acquire title to chattels from a person who has himself no title to them.

Broom's Legal Maxims, 628;
 1 Johns. 274;
 3 Cowan, 272;
 Broom's Legal Maxims, 629;
 2 Ad. & E., 495;
 3 B. & C., 42;
 10 M. & W., 603:

The second vendee of a chattel cannot stand in a better situation than his vendor.

Broom's Legal Maxims, 629, 351;
 5 B. & Ad., 339.

No bill of sale was executed, no delivery of the same, but a mere contract that if he paid certain notes he should have the machine, and there can be no question that, as between the parties, the title remained in Vaughn; and the rule of *caveat emptor* should apply to Parsons. It is true that if "the real owner of goods suffer another to have possession of his property, *and of those documents which are the indicia of property*, and thus enable him to hold himself out to the world as having, not the possession only, but the property, then, perhaps, a sale by such a person would bind the true owner."

Legal Maxims, 629;
 3 B. & C., 542;
 6 M. & S., 23;
 3 Bingham, 145.

The machine in question was operated by a steam engine, and was a heavy, cumbersome article, a kind of property that is usually transferred by a bill of sale; it is, in this respect, unlike articles of personal property, of trifling value, and that are more usually transferred without a bill of sale.

The case is unlike those where there is a *conditional sale* and an *unconditional* delivery. Here was not even a bill or delivery; the machine was in Indiana, and McCulloch was authorized to take possession of the same.

21 Ills., 332;

Brundage v. Camp, 4 Washington's C. C. Rep.

It is also unlike those where there is a "contract of sale and a "delivery obtained by fraud;" then the title passes, if a *bona fide* purchaser gets it; but here, by the contract of the parties, the title does not pass, and we believe that the only way the title to property can pass is by "alienation or forfeiture" of the real owner.

13 Ills., 614, *Jennings Gage et al.*;

Legal Maxims, 351.

II. AS TO THE SECOND QUESTION—

It is claimed that if the court should hold that Parsons conveyed a valid title to this property, yet that there was not a complete cause of action at the time this suit was commenced.

The contract for the machine was made the 13th day of July, 1861, the payment of the same, except the cash payment, was to be made in Lake Superior pig iron, delivered at Chicago during the season, and if not paid by that time, *at the option of the seller*, the purchase money to be on interest from December 1, until the iron was delivered the next Spring.

By the terms of this agreement, the seller (the plaintiff below) had the option of demanding the iron before December 1st, the time fixed for the termination of the season of navigation, as that was the means used for the transportation of the iron. It was held in the court below that these words, "*at the option of the seller*," were surplusage. But we think that "every part of a contract is "to be taken into consideration in giving construction to the "same."

2 Parsons on Contracts, 13;

11 Vermont, 583;

8 Metcalf, 96.

The defendant in error, as the seller of this machine, had the option of demanding the iron "a reasonable time" before the termination of the season of 1861, and by his non-action in making the demand, he elected to have his pay in iron the next Spring, with interest from December 1, 1861. The contract was in the alternative until the time first fixed had passed; neglect to exercise it, on his part, was election to have payment the next Spring. The option being on the part of the plaintiff, the defendant had not the right, nor could he have tendered the iron during the season of 1861. He had no option; he could not pay it unless demanded.

2 Parsons on Contracts, 163, note b.

"Whenever it is essential to the cause of action that the plaintiff should have actually formally requested the defendant to perform his contract, such request must be stated in the declaration and proved."

Chitty Pl., 329 ;

7 Barn. & Cress., 468.

"When, by the express or implied terms of the contract, it was incumbent on the plaintiff before the commencement of his action, to request the defendant to perform his contract, such request being, as it were, a condition, precedent must be averred."

Chitty Pl., 330 ;

1 Lauder, 32, 33 ;

1 Johnson's Cases, 327 ;

13 Wend., 285-7.

The contract was made the 15th day of July, 1861. December 1st passed, and before the next Spring, January 3, 1862, the suit was commenced; and in order to sustain the suit, it should be averred that a demand was made prior to December 1st, 1861. No demand having been averred, the suit cannot be sustained. The general counts are not sufficient.

But if a demand had been averred, none is proven to have been made. McCulloch, the only witness interrogated on the subject,

7
testified, that he never heard Parsons demand the iron personally, nor does he testify to the contents of any letter. He testifies that Parsons mailed the letter. He does not state the contents of it, nor does he state when it was. The demand should be proved to have been made a reasonable time before December, 1861, and to have been distinct and clearly understood. This not having been done, the judgment of the court below should be reversed.

N^o 241
Chas. T. Harvey

5
John R. Parsons.

Brief of
P.H.

Filed April 27. 1864.
L. Deland
Clerk.

241

IN THE

SUPREME COURT OF THE STATE OF ILLINOIS.

FOR THE THIRD GRAND DIVISION.

April Term, 1864.

CHARLES T. HARVEY,

Plaintiff in Error.

vs.

JOHN R. PARSONS,

Defendant in Error.

JAS. L. STARK, Jr.,

Counsel for Plaintiff.

Filed April 27, 1864

J. L. Stark *CM*

CHICAGO:

BEACH & BARNARD, PRINTERS, 14 SOUTH CLARK STREET.

1864.

ARGUMENT.

There are but two questions presented for the consideration of the court in this case.

I. Whether the plaintiff below had a title to the machine he sold the defendant, and for which this suit is brought, at the time he sold the same.

II. Whether by the terms of the contract made by the parties, the plaintiff below had any complete cause of action at the time the suit was commenced.

I. AS TO THE FIRST QUESTION—

The machine, which is the subject matter of the controversy, was at first owned by one R. F. Vaughn; the plaintiff introduced him as a witness; he testified that he sold it to one John A. McCulloch, and took his notes, and that there was a condition that unless the notes were paid it was to be no sale; that McCulloch took possession of the machine, but that there was no bill of sale made out, and that when he found the machine in Harvey's possession he forbid his paying for it. McCulloch sold the machine to Parsons, the plaintiff below, and the plaintiff sold it to the defendant below, the plaintiff in error here.

The plaintiff in error insists, that at the time of the purchase made by him the title to the machine was in Vaughn, and that consequently the plaintiff below is not entitled to recover for the same. I suppose that no authority need be cited to show that unless Parsons conveyed a title to the machine, he is not entitled to recover in this action. The question here then turns on the point

whether Vaughn conveyed such a title to McCulloch as would enable him to convey the same away; for as a general rule, no man can acquire title to chattels from a person who has himself no title to them.

Broom's Legal Maxims, 628;

1 Johns. 274;

3 Cowan, 272;

Broom's Legal Maxims, 629;

2 Ad. & E., 495;

3 B. & C., 42;

10 M. & W., 603:

The second vendee of a chattel cannot stand in a better situation than his vendor.

Broom's Legal Maxims, 629, 351;

5 B. & Ad., 339.

No bill of sale was executed, no delivery of the same, but a mere contract that if he paid certain notes he should have the machine, and there can be no question that, as between the parties, the title remained in Vaughn; and the rule of *caveat emptor* should apply to Parsons. It is true that if "the real owner of goods suffer another to have possession of his property, *and of those documents which are the indicia of property*, and thus enable him to hold himself out to the world as having, not the possession only, but the property, then, perhaps, a sale by such a person would bind the true owner."

Legal Maxims, 629;

3 B. & C., 542;

6 M. & S., 23;

3 Bingham, 145.

The machine in question was operated by a steam engine, and was a heavy, cumbrous article, a kind of property that is usually transferred by a bill of sale; it is, in this respect, unlike articles of personal property, of trifling value, and that are more usually transferred without a bill of sale.

The case is unlike those where there is a *conditional sale* and an *unconditional* delivery. Here was not even a bill or delivery; the machine was in Indiana, and McCulloch was authorized to take possession of the same.

21 Ills., 332;

Brundage v. Camp, 4 Washington's C. C. Rep.

It is also unlike those where there is a "contract of sale and a "delivery obtained by fraud;" then the title passes, if a *bona fide* purchaser gets it; but here, by the contract of the parties, the title does not pass, and we believe that the only way the title to property can pass is by "alienation or forfeiture" of the real owner.

13 Ills., 614, *Jennings Gage et al.*;

Legal Maxims, 351.

II. AS TO THE SECOND QUESTION—

It is claimed that if the court should hold that Parsons conveyed a valid title to this property, yet that there was not a complete cause of action at the time this suit was commenced.

The contract for the machine was made the 13th day of July, 1861, the payment of the same, except the cash payment, was to be made in Lake Superior pig iron, delivered at Chicago during the season, and if not paid by that time, *at the option of the seller*, the purchase money to be on interest from December 1, until the iron was delivered the next Spring.

By the terms of this agreement, the seller (the plaintiff below) had the option of demanding the iron before December 1st, the time fixed for the termination of the season of navigation, as that was the means used for the transportation of the iron. It was held in the court below that these words, "*at the option of the seller*," were surplusage. But we think that "every part of a contract is "to be taken into consideration in giving construction to the "same."

2 Parsons on Contracts, 13;

11 Vermont, 583;

8 Metcalf, 96.

The defendant in error, as the seller of this machine, had the option of demanding the iron "a reasonable time" before the termination of the season of 1861, and by his non-action in making the demand, he elected to have his pay in iron the next Spring, with interest from December 1, 1861. The contract was in the alternative until the time first fixed had passed; neglect to exercise it, on his part, was election to have payment the next Spring. The option being on the part of the plaintiff, the defendant had not the right, nor could he have tendered the iron during the season of 1861. He had no option; he could not pay it unless demanded.

2 Parsons on Contracts, 163, note b.

"Whenever it is essential to the cause of action that the plaintiff should have actually formally requested the defendant to perform his contract, such request must be stated in the declaration and proved."

Chitty Pl., 329;

7 Barn. & Cress., 468.

"When, by the express or implied terms of the contract, it was incumbent on the plaintiff before the commencement of his action, to request the defendant to perform his contract, such request being, as it were, a condition, precedent must be averred."

Chitty Pl., 330;

1 Lauder, 32, 33;

1 Johnson's Cases, 327;

13 Wend., 285-7.

The contract was made the 15th day of July, 1861. December 1st passed, and before the next Spring, January 3, 1862, the suit was commenced; and in order to sustain the suit, it should be averred that a demand was made prior to December 1st, 1861. No demand having been averred, the suit cannot be sustained. The general counts are not sufficient.

But if a demand had been averred, none is proven to have been made. McCulloch, the only witness interrogated on the subject,

testified, that he never heard Parsons demand the iron personally, nor does he testify to the contents of any letter. He testifies that Parsons mailed the letter. He does not state the contents of it, nor does he state when it was. The demand should be proved to have been made a reasonable time before December, 1861, and to have been distinct and clearly understood. This not having been done, the judgment of the court below should be reversed.

241

241

IN THE
SUPREME COURT OF THE STATE OF ILLINOIS.

FOR THE THIRD GRAND DIVISION,

April Term, 1864.

JOHN R. PARSONS,

Defendant in Error,

ads.

CHARLES T. HARVEY,

Plaintiff in Error.

STATEMENT OF CASE FOR DEFENDANT IN ERROR.

This was an action of assumpsit, brought by the defendant in error, in the court below, against the plaintiff in error, to recover the contract price of a Fairbank & Wilmarth sawing machine, sold July 15th, 1861, for \$975.

The declaration was in the usual form, with copy of contract, or bill of sale, annexed, claiming damages \$1,500.

The plea, simply general issue.

Filed May 12. 1864
L. L. Smith Clk

The cause was tried before the court, HIGGINS Judge, without a jury, April 22d, 1863, and judgment for the plaintiff—damages \$819.

The plaintiff in error has assigned six grounds of error, all of which counsel present in two points. The first of which is, whether the plaintiff below had title to the property sold; and second, whether the plaintiff below had, by the terms of the contract, a cause of action at the time the suit was commenced. In answer to which we say:

I.

The defendant in error did have title to the property in question at the time of the sale.

II.

The defendant in error did have, at the time suit was brought, by the terms of the contract, a cause of action.

It seems, from the argument of counsel for plaintiff in error, that the points made in the case are of great importance, and, upon the proof, considered very doubtful. But for the large number of authorities cited we should be inclined to treat the case as one simply for time, on the part of the plaintiff in error.

We do not dispute a single case cited, nor the legal maxims of Mr. Brown, when a case is presented to which the authorities apply.

We submit, if the court please, that counsel has mistaken the case presented by the record in the case.

The deposition of McColluck proves that Parsons had title, and that he sold the machine to Harvey, as claimed in the declaration.

This witness proves that the machine was sold as per bill of sale, and in good repair when shipped.

The deposition of Vaughn proves the machine in Harvey's possession in Michigan in September, 1861, and in use by him.

There was no question raised as to price or the delivery of the property.

The letter of Harvey September 26th, 1861, shows he had the machine and that it would cost to repair it \$100, and that sum should come out of the first payment. Mr. Vaughn fixes the repairs at \$50 to put the machine in running order, and \$100 to make it as good as new.

The testimony of Mr. Hill was not to the issue, but it proves nothing for the defendant below.

As to the second point made, we say that it seems to be clear that there was a cause of action. The deferred payment was to be made in pig iron, delivered at Chicago prior to the first day December, 1861. The iron was not delivered—Mr. Harvey makes no pretence of any delivery—therefore, the amount was then due in money. Mr. Parsons was not obliged to make any demand for the iron, on the first day of December, nor at any time prior to that date. It was the duty of Mr. Harvey to have the iron in Chicago, by the first of December, 1861. If the iron was not delivered by that time, then Mr. Parsons, the party meant by the seller, had the right to let the matter run till the following season and then to demand the iron, and Harvey would be bound to pay interest. Mr. Parsons did not so elect, and brought the suit in January, 1862, which we think was regular.

Counsel says that the words, "at the option of the seller," were treated as surplusage. We can see no evidence in the record to show this, and besides, if it was so, it could not make for the plaintiff in error. The words are all right and very plain, and have re-

ference to Mr. Parsons, as he was the party to have the interest, and he was the seller of the machine, which is the construction of the contract.

We submit, if the court please, that the points are fully and conclusively answered by the proof, and to cite authorities on our part, to sustain our position, would be using time of the court unnecessarily; we, therefore, submit the case on the part of the defendant in error.

E. S. SMITH,
Atty. for Def't in Error.

241

IN THE

SUPREME COURT OF THE STATE OF ILLINOIS.

FOR THE THIRD GRAND DIVISION.

April Term, 1864.

CHARLES T. HARVEY,

Plaintiff in Error.

vs.

JOHN R. PARSONS,

Defendant in Error.

JAS. L. STARK, Jr.,

Counsel for Plaintiff.

Filed Apr 27. 1864
J. L. Clark

CHICAGO:

BEACH & BARNARD, PRINTERS, 14 SOUTH CLARK STREET.

1864.

ARGUMENT.

There are but two questions presented for the consideration of the court in this case.

I. Whether the plaintiff below had a title to the machine he sold the defendant, and for which this suit is brought, at the time he sold the same.

II. Whether by the terms of the contract made by the parties, the plaintiff below had any complete cause of action at the time the suit was commenced.

I. AS TO THE FIRST QUESTION—

The machine, which is the subject matter of the controversy, was at first owned by one R. F. Vaughn; the plaintiff introduced him as a witness; he testified that he sold it to one John A. McCulloch, and took his notes, and that there was a condition that unless the notes were paid it was to be no sale; that McCulloch took possession of the machine, but that there was no bill of sale made out, and that when he found the machine in Harvey's possession he forbid his paying for it. McCulloch sold the machine to Parsons, the plaintiff below, and the plaintiff sold it to the defendant below, the plaintiff in error here.

The plaintiff in error insists, that at the time of the purchase made by him the title to the machine was in Vaughn, and that consequently the plaintiff below is not entitled to recover for the same. I suppose that no authority need be cited to show that unless Parsons conveyed a title to the machine, he is not entitled to recover in this action. The question here then turns on the point

whether Vaughn conveyed such a title to McCulloch as would enable him to convey the same away; for as a general rule, no man can acquire title to chattels from a person who has himself no title to them.

Broom's Legal Maxims, 628;

1 Johns. 274;

3 Cowan, 272;

Broom's Legal Maxims, 629;

2 Ad. & E., 495;

3 B. & C., 42;

10 M. & W., 603:

The second vendee of a chattel cannot stand in a better situation than his vendor.

Broom's Legal Maxims, 629, 351;

5 B. & Ad., 339.

No bill of sale was executed, no delivery of the same, but a mere contract that if he paid certain notes he should have the machine, and there can be no question that, as between the parties, the title remained in Vaughn; and the rule of *caveat emptor* should apply to Parsons. It is true that if "the real owner of goods suffer another to have possession of his property, and of those documents which are the indicia of property, and thus enable him to hold himself out to the world as having, not the possession only, but the property, then, perhaps, a sale by such a person would bind the true owner."

Legal Maxims, 629;

3 B. & C., 542;

6 M. & S., 23;

3 Bingham, 145.

The machine in question was operated by a steam engine, and was a heavy, cumbersome article, a kind of property that is usually transferred by a bill of sale; it is, in this respect, unlike articles of personal property, of trifling value, and that are more usually transferred without a bill of sale.

The case is unlike those where there is a *conditional sale* and an *unconditional* delivery. Here was not even a bill or delivery; the machine was in Indiana, and McCulloch was authorized to take possession of the same.

21 Ills., 332;

Brundage v. Camp, 4 Washington's C. C. Rep.

It is also unlike those where there is a "contract of sale and a "delivery obtained by fraud;" then the title passes, if a *bona fide* purchaser gets it; but here, by the contract of the parties, the title does not pass, and we believe that the only way the title to property can pass is by "alienation or forfeiture" of the real owner.

13 Ills., 614, *Jennings Gage et al.*;

Legal Maxims, 351.

II. AS TO THE SECOND QUESTION—

It is claimed that if the court should hold that Parsons conveyed a valid title to this property, yet that there was not a complete cause of action at the time this suit was commenced.

The contract for the machine was made the 13th day of July, 1861, the payment of the same, except the cash payment, was to be made in Lake Superior pig iron, delivered at Chicago during the season, and if not paid by that time, *at the option of the seller*, the purchase money to be on interest from December 1, until the iron was delivered the next Spring.

By the terms of this agreement, the seller (the plaintiff below) had the option of demanding the iron before December 1st, the time fixed for the termination of the season of navigation, as that was the means used for the transportation of the iron. It was held in the court below that these words, "*at the option of the seller*," were surplusage. But we think that "every part of a contract is "to be taken into consideration in giving construction to the "same."

2 Parsons on Contracts, 13;

11 Vermont, 583;

8 Metcalf, 96.

The defendant in error, as the seller of this machine, had the option of demanding the iron "a reasonable time" before the termination of the season of 1861, and by his non-action in making the demand, he elected to have his pay in iron the next Spring, with interest from December 1, 1861. The contract was in the alternative until the time first fixed had passed; neglect to exercise it, on his part, was election to have payment the next Spring. The option being on the part of the plaintiff, the defendant had not the right, nor could he have tendered the iron during the season of 1861. He had no option; he could not pay it unless demanded.

2 Parsons on Contracts, 163, note b.

"Whenever it is essential to the cause of action that the plaintiff should have actually formally requested the defendant to perform his contract, such request must be stated in the declaration and proved."

Chitty Pl., 329;

7 Barn. & Cress., 468.

"When, by the express or implied terms of the contract, it was incumbent on the plaintiff before the commencement of his action, to request the defendant to perform his contract, such request being, as it were, a condition, precedent must be averred."

Chitty Pl., 330;

1 Lauder, 32, 33;

1 Johnson's Cases, 327;

13 Wend., 285-7.

The contract was made the 15th day of July, 1861. December 1st passed, and before the next Spring, January 3, 1862, the suit was commenced; and in order to sustain the suit, it should be averred that a demand was made prior to December 1st, 1861. No demand having been averred, the suit cannot be sustained. The general counts are not sufficient.

But if a demand had been averred, none is proven to have been made. McCulloch, the only witness interrogated on the subject,

testified, that he never heard Parsons demand the iron personally, nor does he testify to the contents of any letter. He testifies that Parsons mailed the letter. He does not state the contents of it, nor does he state when it was. The demand should be proved to have been made a reasonable time before December, 1861, and to have been distinct and clearly understood. This not having been done, the judgment of the court below should be reversed.

Chicago Post Company, Printers, 93 Washington St.

IN THE SUPERIOR COURT

CITY OF CHICAGO.

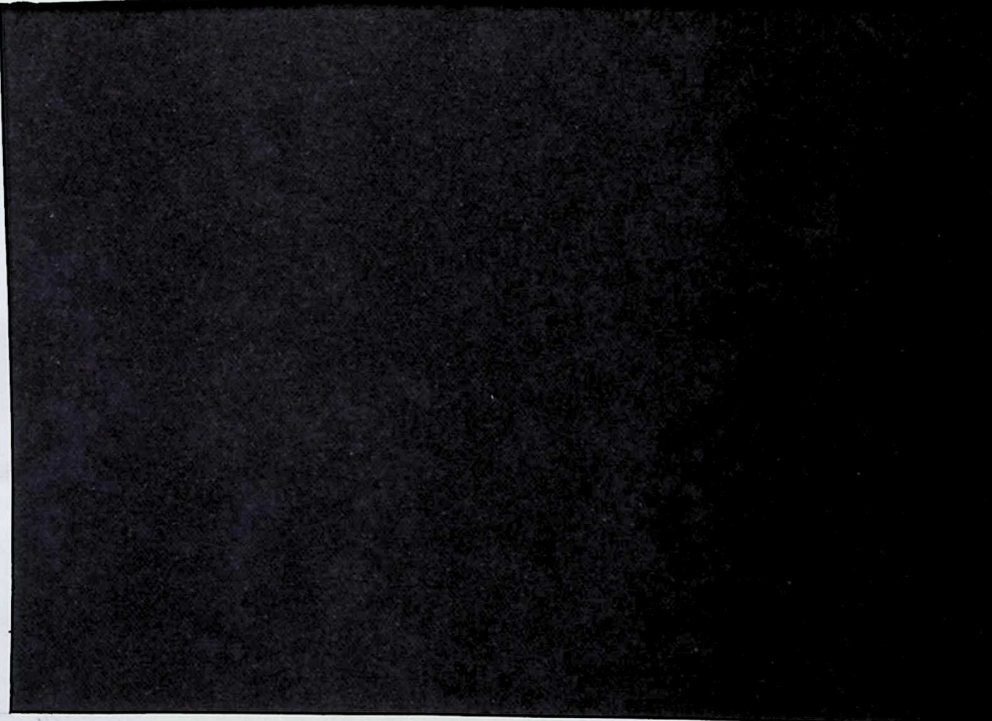
JOHN R. PARSONS,

VS.

CHARLES T. HARVEY.

PAGE
OF
RECORD.

- 1 Praecipe filed January 3rd, 1862, and summons issued returnable at the February Term, 1863, of said Court.
- 4, 5, 6 Jany. 6th, 1862, declaration filed of the general counts in assumpsit.
1. For Goods, Wares and Merchandise sold.
 2. For money lent and advanced.
 3. For money laid out and expended.
 4. For money had and received.

5. For an account stated.
- 9 Service of process, March 17th, 1862.
- 10 Bill of particulars filed April 3rd, 1863, which is the words and figures following:
- 

- 11 Plea, general issue.
- 13 Submitted to the Court and finding for the Plaintiff.
- 14 Motion for new trial overruled. Exception entered by Defendant.
- 15 Bill of exceptions, Plaintiff's case.

PAGE
OF
RECORD.

John A. McCulloch testifies:

16 That he knows the parties, and that exhibit "A" annexed to
his deposition contains the contract made between Plaintiff and
Defendant for the Sawing Machine in question, with the excep-
17 tion of the words therein, "as good as new"; that the contract
was modified as to these words; that the price specified in ex-
hibit "A" was the price-agreed to be paid; that he does not know
whether Mr. Harvey paid the \$150, cash payment to be made;
18 that the Machine was shipped to Mr. Harvey; that the witness
sold the Machine to Mr. Parsons, and that he owned it when he
sold it to him, and that the Machine was in good repair when it
was shipped; that the witness bought the Machine of one Mr.
21 Vaughn, for \$850, and had used it about eight weeks; that the
modification to the written contract was made before it was sign-
22 ed; that the Machine was in good running order; that all he
knew about a demand for the Iron, that Parsons wrote him and
23 he mailed the letter; that the purchase of the Machine was un-
conditional; that he never heard Mr. Parsons personally demand
the Iron during the year 1861.

25 *R. F. Vaughn* testified:

That he knew the parties; that he has seen the Sawing Ma-
chine in question in Mr. Harvey's possession; that it was not in
26 good running order; that it might have been put in running order
for \$50; that he sold the Machine to John McCulloch and took
his notes; and there was a condition that it was to be no sale
unless the notes were paid; that the witness authorized McCul-

PAGE
OF
RECORD.

loch to take possession of the Machine, and that there was no bill of sale made out; that the condition was a verbal one; Mr. McCulloch has paid \$60 on the note and gave an order for \$120; 27 that he told Mr. Harvey, the Defendant, that he would have trouble about the Machine and must not pay for it; that he must not pay Parsons; that Mr. Harvey sent him to his lawyer; that he sold the notes and gave a power of attorney to collect them, and that in the event Mr. McCulloch did not pay the notes he 28 was to return the Machine. It would have cost \$100 to make it as good as new; that he intended to replevy the Machine at Lake Superior.

31 The Defendant introduced as a witness *Edwin L. Hall*, who testified:

That he was present at the time of the contract between R. F. Vaughn and John A. McCulloch in relation to said Machine; that 32 it was at the office of Sanford & Hall; that McCulloch was to pay down \$250, and give his notes for the balance; no bill of sale was given for security except that should McCulloch be unable to meet the payment of said notes he was to deliver said Machine to Vaughn in as good condition as it was at the time; there was no formal delivery of the Machine, it was then in possession of McCulloch.

34 The Plaintiff then introduced a letter written by the Defendant to John A. McCulloch, Sept. 26, 1861, in which the Defendant wrote, that Mr. Vaughn had been there and forbid the

PAGE
OF
RECORD.

Defendant paying anything on the Machine until further notice, and claimed that he (Vaughn) held a first lien on it; that it would take \$100 to fix it. The one hundred dollars to be paid for repairs, the latter claims, should come out of the first payment.

This was all of the testimony in the case.

40 Certificate of Record.

ERRORS ASSIGNED.

1. The Court erred in ordering a verdict for the Plaintiff, when by law the Defendant was entitled to it.

2. The Court erred in directing a verdict for the Plaintiff, when the evidence disclosed the fact that he was not the owner of the Machine sued for in this case, and consequently could not convey a title.

3. The Court erred in directing a verdict for the Plaintiff for the reason that the suit was commenced on the 3rd day of January, 1862, at which time the evidence shows the Plaintiff had no complete course of action.

4. The Court erred in directing a verdict for the Plaintiff for the reason that no special demand or request to deliver the Iron with which it was agreed the debt should be paid, during the season of 1861, was averred in the declaration.

5. For the reason that do demand to deliver the Iron was proven to have been made before the suit was brought, and that in order to recover the Plaintiff should have proven such demand during the season of 1861.

6. That in the absence of such proof the law will hold that he elected to wait for the Iron until the next spring, before which time no suit could be commenced.

SUPREME COURT OF THE STATE OF ILLINOIS.

CHARLES J. HARVEY,	}
<i>Plaintiff in Error,</i>	
vs.	
JOHN R. PARSONS,	}
<i>Defendant in Error.</i>	

And now comes the said Plaintiff in Error by Jas. L. Stark, Jr., his Attorney, and says that there is manifest error in the Record and Proceedings aforesaid.

1. The Court erred in directing a verdict for the Plaintiff below.

2. The Court erred in directing a verdict for the Plaintiff, when the evidence disclosed the fact that he was not the owner of the Machine sued for in this case, and consequently could not convey a title.

3. The Court erred in directing a verdict for the Plaintiff for the reason that the suit was commenced on that the 3rd day of

January, 1862, at which time the evidence proves the Plaintiff had no complete course of action.

4. The Court erred in directing a verdict for the Plaintiff for the reason that no special demand or request to deliver the Iron with which it was agreed the debt should be paid, during the season of 1861, was averred in the declaration.

5. For the reason that no demand to deliver the Iron was proven to have been made before the suit was brought, and that in order to recover, the Plaintiff should have proven such demand during the season of 1861.

6. That in the absence of such proof the law will hold that he elected to wait for the Iron until the next spring, before which time no suit could have been commenced.

7. The Court erred in rendering Judgment for the Plaintiff, wherefore said Plaintiff in Error prays that the Judgment rendered by said Court may be reversed, &c.

JAS. L. STARK, JR.,

For Plaintiff in Error.

Charles J. Harvey
Plaintiff in error
vs

John B. Parsons
defendant-in error

Abstract of Record &
Assignment of error

Filed April 21. 1864
J. C. L. and W.

Gas L. Stark Jr
Counsel at law
for plff in error

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Plas, before the Honorable, the Judges of the Superior Court of Chicago, within and for the County of Cook and State of Illinois, at a regular Term of said Superior Court of Chicago, begun and holden at the Court House, in the City of Chicago, in said County and State, on the first Monday, being the _____ day of _____ in the year of our Lord One Thousand Eight Hundred and Sixty _____ and of the Independence of the United States of America the Eighty _____

Present, The Honorable _____ Chief Justice of the }
Superior Court of Chicago. }

_____ }
_____ } Judges.

_____ Prosecuting Attorney.

_____ Sheriff of Cook County.

Attest, _____ Clerk.

Be it remembered that hereupon to wit on the
Third day of January in the year of our Lord one
Thousand Eight Hundred and Sixty Mrs. John B. Parsons
by E. F. Smith his attorney filed in the Office of the
Clerk of the Superior Court of Chicago in and for
the County of Cook, Illinois, a Petition for Summons, which was the substance
as following to wit:

State of Illinois } Superior Court of Chicago
Cook County } of the February Term A.D. 1866.
John B. Parsons Plaintiff.

Charles J. Harvey Defendant }
You will please give a summons in the above
entitled cause directed to the Sheriff of Cook County
for import: }
Damages \$1500.

and make the same returnable to said Court on
the first day of the next Term thereof
against &c

Given 3^d day January A.D. 1882 E. J. Smith
in the Clerk of said Court, Pepp attys.

And thereupon afterwards writ in the day and year
aforesaid, was issued out of the office of the Clerk of
the said Superior Court of Chicago. The People that
of Summons, which together with the return of the
Sheriff indorsed thereon, is in the words and figures
following to wit

State of Illinois }
County of Cook }

The People of the State of Illinois
To the Sheriff of said County Greeting
We command you that you summon Charles D.
Harvey if he shall be found in your County, per-
sonally to be and appear before the Superior Court of
Chicago of said Cook County on the first day
of the next term thereof to be holden at the Court House
in the City of Chicago in said Cook County, on the
first Monday of February next to answer unto John
A. Carson in a plea of his part on the case on
promises to the damage of said Plaintiff as he
says in the sum of Dollars hundred. Dollars

And have your clerk and clerk that with
an endorsement thereon in what manner you
shall have executed the same

Witness Thomas B. Carter Clerk of

3,

now said Court. and the place thereof at the City
of Chicago in said County this
3^d day of Jan'y A.D. 1862

L. P.

Thomas B. Carter Clerk

(Return of Sheriff)

Defendant not found in my County. this 3^d
day of February 1862

A. C. Keeling Sheriff
By J. Lumbard Deputy.

And Afterwards to wit on the sixth day of January
in the year aforesaid, the said John R. Parsons
by E. J. Smith his attorney filed in the office
of the said Clerk of said Court his certain
Declaration which is in the words and figures
following to wit

State of Illinois
Cook County.

Superior Court of Chicago
February Term A.D. 1862

John R. Parsons plaintiff in the suit by E. J.
Smith his attorney complains of Charles J. Barry
Defendant herein who has been summoned to
a plea of response on the case upon promises

Not that whereas the said Defendant on the first
day of January in the year of our Lord one thousand
Eight Hundred and Sixty two at Chicago in said
County of Cook indebted to the said plaintiff

in the sum of two hundred & seventy five Dollars
 of lawful money of the United States of America
 for divers goods wares and merchandise by the
 said plaintiff before that time sold and delivered
 to the said defendant: and at the special instance and
 request of the said defendant: and being so indebted
 to the said Plaintiff the said defendant in
 consideration thereof afterwards met on the same day
 and year and at the place aforesaid understood and
 then and there faithfully promised to said plaintiff
 well and truly to pay unto the said plaintiff
 the said sum of money last mentioned when the
 said defendant should be therunto afterwards request-
 ed. And whereas also the said defendant afterwards
 to wit on the same day and year and at the
 place aforesaid in consideration that the said
 Plaintiff had before that time at the like special
 instance and request of the said defendant sold and
 delivered to the said defendant divers other goods
 wares and merchandise of the said Plaintiff the
 said defendant then and there understood and
^{that the said defendant would well and truly pay unto the said plaintiff}
 faithfully promised the said plaintiff so much
 money as the last aforesaid goods wares and mer-
 chandise at the time of the sale and delivery thereof
 were reasonably worth when the said defendant should
 be therunto afterwards requested and the said
 plaintiff avers that the said goods wares and
 merchandise last mentioned at the time of the

sale and delivery thereof more reasonably worth the
 further sum of nine hundred and seventy five
 Dollars of like lawful money of said. To wit
 at the place aforesaid whereof the said defend-
 ant. afterwards on the same day and year and
 at the place aforesaid had notice And whereas
 also the said defendant afterwards to wit on the
 same day and year. and at the place aforesaid
 was indebted to the said plaintiff in the further
 sum of fifteen hundred. dollars of like lawful money
 as aforesaid for money before that time lent and
 advanced by the said plaintiff to the said de-
 fendant. and at the like request of said defend-
 ant. And for other money by the said plaintiff
 before that time paid laid out. and expend-
 ed. for the said defendant and at the like request
 of said defendant And for other money by the
 said defendant before that time had and received
 to and for the use of the said Plaintiff And
 being so indebted the said defendant in consid-
 eration whereof afterwards to wit on the same day
 and year. and at the place aforesaid undertook
 and then and there faithfully promised the
 said Plaintiff well and truly to pay unto the
 said plaintiff the said several sums of money
 in him before mentioned when the said defend-
 ant should be thereunto afterwards requested,
 And whereas also the said defendant afterwards
 to wit on the same day and year and at the place

6
aforsaid accounts together with the said &
plaintiff of, and concerning divers other sums of
money before that time due, and owing from
the said defendant, to the said plaintiff, and then
and there being in arrears, and unpaid, and upon
such accounting, the said Defendant then and
there was found to be in arrears and unpaid and
~~upon such accounting~~ indebted to the said plain-
tiff, in the further sum of Fifteen hundred
Dollars of like lawful money as aforesaid, and
being so found in arrears, and indebted to the said
plaintiff the said defendant in consideration &
thereof, afterwards to wit, on the same day, and
year, and at the place aforesaid undertook and
then and there faithfully promised the said plain-
tiff well, and truly to pay unto the said plain-
tiff the said sum of money last mentioned
when the said defendant should be thereto spe-
cially requested.

Even though the said Defendant (although
often requested &c. has not yet paid the several
sums of money, above mentioned or any or either
of them, or any part thereof to the said plaintiff but
to pay the same, or any part thereof, to the said plain-
tiff the said defendant has hitherto altogether refused
and still does refuse to do damage of the said plain-
tiff of Fifteen hundred Dollars and therefore the
said plaintiff brings suit &c.

E. F. Smith Peffs atty.

And afterwards to wit on the fourth day of
February in the year aforesaid, there issued
out of the office of the Clerk of the said Superior
Court of Chicago, The Proper Copy of the sum-
mons, which together with the return of the
Sheriff endorsed thereon is in the words and
figures following to wit

State of Illinois }
County of Cook. } ss

The People of the
State of Illinois
To the Sheriff of said County greeting

We command you, as we have before commanded
you, that you summon Charles D. Starnes if
he shall be found in your County personally to
be and appear before the Superior Court of
Chicago of said County on the first day of
the next Term thereof, to be holden at the Court
House in the City of Chicago in said County
on the first Monday of March next to answer
unto John R. Parsons in a plea of trespass on
the case on promise, to the damage of said
Plaintiff as he says in the sum of Fifteen
hundred Dollars. And have you then and
there do put into an endorsement thereon
in what manner you shall have executed
the same

Witness Thomas B. Carter, Clerk of
our said Court and the seal here
of at the City of Chicago, this 7th
in said County

day of February A.D. 1862
 (Thomas B Carter Clerk,
 L.S.) (Return of Sheriff.)

I hereby certify and appoint A.E. Austin
 Special Deputy to serve the within summons
 February 20. 1862

Anthony C. Fleming
 Sheriff

The within named Defendant, Chas. J. Hanry
 not found in my County. do 1st March. 1862
 A.C. Fleming Sheriff
 By A.E. Austin Special Deputy.

And afterwards to wit on the 25th day of
 March in the year aforesaid, there issued out
 of the office of the Clerk of the said Court a
 certain other Writ of such summons, which to-
 gether with the return of the Sheriff endorsed there-
 on is in the words and figures following to wit:
 State of Illinois }
 County of Cook. } ss

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

We command you as we have before commanded
 you that you summon Charles J. Hanry

9.

if he shall be found in your County, per-
sonally to be and appear before the Superior
Court of Chicago of said Cook County on
the first day of the Term thereof to be holden at
the Court House in Chicago in said Cook
County on the first Monday of April next to
answer unto John R. Pearson in a plea of
his pass on the case upon promises to do damage
of the said Plaintiff and said in the sum of
Eight hundred Dollars And have you then
the Out make an endorsement thereon in what
manner you shall have executed the same.

(L. P.)

Witness Thomas B. Carter Clerk
of the said Court and do seal
thereof at Chicago of and said
the Fifth day of March A.D.
1862

(Thos B. Carter Clerk)

(Return and endorsement of Sheriff)
I hereby depose and appoint A. E. Austin
special deputy to serve the within Writ
March 5th 1862 Anthony C. Keating
Sheriff

Served this writ by reading the same to the within
named Charles J. Henry, he accepted same
of the Out the 17th March 1862

A. C. Keating Sheriff
By A. E. Austin special deputy

And afterwards writⁿ on the Thrid day of
 June in the year aforesaid, the said John R
 Parsons, by E. P. Courtt his attorney filed in
 the office of the Clerk of said Court his
 certain Bill of particulars which is in the
 words and figures following writⁿ

Chicago July 15th 1861

Mr Charles D. Harvey

Bought of John R. Parsons,
 one (1) Hunt & Thelmer's Sowing Machine
 delivered on Board at Chicago for (Nine)
 hundred and seventy five Dollars (\$975) and
 guaranteed to be in all respects as good
 as a New Machine in perfect order.

Terms of payment: one hundred and fifty
 (\$150) Dollars in Cash and balance in "Lake
 Superior Pig Iron" delivered in Chicago du-
 ring the season at Twenty six (\$26) dollars per
 Ton. or if not paid in the season at option
 of seller the purchase money to be on interest
 from December First (1st) until the Iron is
 delivered next Spring. The Machine to be
 paid before the 1st of September, and can
 be returned at the seller's option that time
 by forfeiture of the cash payment and no
 further claim will exist if machine proves
 unsatisfactory.

11 And afterwards to wit on the Eighth day
of the month, and year aforesaid the
said Charles D. Harry by ~~Stark~~ ~~Stark~~ ~~Stark~~
his attorney filed in the office of the Clerk of said Court
his certain affidavit of defence and plea
which are in words and figures following to
wit.

John R. Parsons } Superior Ct. City of
Charles D. Harry } Chicago
March Term 1862

Charles D. Harry being duly sworn deposes
and says that he has a good defence
on the merits of said cause as he truly
believes

Charles D. Harry
Chicago March 20th 1862

Subscribed and sworn to
Before me Seth W. Dunning
Notary Public.

State of Illinois }
Cook County } Superior Court of the
City of Chicago.
Charles D. Harry }
vs }
John R. Parsons } assumed.

12

And do said Defendant, Clark & Isham his
attorneys come, and defend the wrong &
injury when &c and saith that he did
not undertake or promise in manner
and form as do said Plaintiff hath done
thereof complained against him, and of
this he puts himself upon the country &c

By Clark & Isham
Defendants attorneys

And do s^d p^t doth the like &c

E. F. Smith p^t ally;

And afterwards to wit on the twenty second
day of the month of April in the year of
our Lord one Thousand Eight Hundred
and forty three the same being one of the
days of the April Term of said Court the
following proceedings were had in said cause
and among others entered of record in said
Court to wit

John R. Parsons

vs

Charles T. Harvey

} Accused

This cause being this
day called for trial between said Plaintiff
by E. F. Smith his attorney and said
Defendant by Clark & Isham his attorney.

436
8743

also comes and upon agreement of the parties made now here in open court this cause is hereby submitted to the court for trial upon the issues joined therein without intervention of jury and the court now here after hearing the evidence and arguments of counsel, and being fully advised in the premises finds issues for said plaintiff and awards his damages & herein against said defendant to the sum of Eight Hundred and sixteen Dollars and five cents

Therefore it is ordered that said Plaintiff do have and recover his damages And that upon said defendant submit his motion herein for a new trial in said Cause.

And afterwards to wit on the Twenty fourth day of June in the year aforesaid, the same being one of the days of the June Term of said Court the following proceedings were had in said Cause and amongst others entered of record in said Court to wit

John R. Parsons

Charles D. Henry

} motion for new trial in
assumpsit

And now at this day again come the parties to this cause by their attorneys as aforesaid

and this cause coming on now to be heard upon the motion of the said defendant: heretofore submitted herein that on the (Dorothy) second day of April 1883 for a new trial in said cause, and counsel being heard & thereon and the Court being fully advised in the premises, it is ordered by the Court that the motion of said defendant, to and the same is hereby overruled, and that a new trial be refused to said defendant, in said cause.

Therefore it is considered that said plaintiff do have and recover of and from said defendant his damages of Eight hundred and nineteen dollars, and four cents in form of award, by the Court found, and adjudged, and also his costs and charges in & the behalf expended and have execution therefor.

And thereupon said defendant prays an appeal herein to the Supreme Court of the State of Illinois from the judgment of this Court which is allowed to him on filing his appeal bond in the penalty of twelve hundred dollars, with security to be approved by one of the Judges of this Court, with James L. Smith as security within thirty days and that he be allowed the like period of thirty days in

which to file his Bill of Exceptions,

And afterwards to wit on the Twenty Fourth day of July in the year last aforesaid, the said Charles D. Haney by James L. Plank Jr. his attorney filed in the office of the Clerk of said Court his certain Bill of Exceptions and appeal Bond, which are in Words and figures following to wit

State of Illinois }
Cook County } ss

John R. Parsons

vs
Charles D. Haney

In the Superior Court of Chicago
June 1863.

Be it remembered that heretofore to wit on the 27th day of June A.D. 1863 the same being one of the days of the June Term A.D. 1863 of said Court this cause coming on for trial upon the issues joined and a jury being named by agreement of counsel and the cause by like agreement of counsel submitted to the Court for trial both as to questions of fact as well as of law in said cause the plaintiff to maintain and prove do here on his part introduced and read as evidence the following depositions and exhibit.

16

Deposition of John A. McCullough and R. J. Vaughan witnesses of lamp sale produced sworn and examined before me John J. McPherson in pursuance of the stipulation hereto annexed and to be used and read as therein agreed.

Inter. What is your name, age, and place of residence also your occupation?

Answer. My name is John A. McCullough 31 years old Chicago I am doing housework for Mr. Boyer

Inter. Do you know the parties to this suit and if so how long have you known them respectively?

Answer. Yes. I have known Mr. Parsons about five years & Mr. Hawley about from two to three years

Inter. Do you know any thing about the selling of a sawing machine engine and boiler by

Parsons to Hawley in 1861?

Answer. I do.

Inter. Do you know what were the terms and conditions of said sale from Mr. Parsons to Mr. Hawley

(This question objected to by Deft's Counsel because the contract referred to was in writing)

Ans. Well I heard them made, yes sir

Inter. Look at the paper writing now shown you marked Exhibit 'a' and attached to this deposition, and state whether or not it contains an agreement between Mr. Parsons

17

and Mr Harry for said machine;

Ans. It does. with the exception of the words therein
"as good as new" the contract was modified
afterwards leaving those words out.

(Answer objected to by Left Counsel)

Int⁶ Was there any thing said by Mr Parsons to Mr
Harry at the time of the selling of the machine
in reference to the fact as to whether the ma-
chine was new or had been used;

Ans. Well Mr Parsons objected to that clause
in it as the machine had been used and
Mr. Harry says yes. or words to that
effect that the material was was to be
excepted that as the substance of what he
said he knew it had been used.

(Obj. by Left Counsel)

7th Had Mr Harry seen this Machine before he purchased it?

Ans. Yes sir

8th Was the price specified in Exhibit "a" the
price agreed upon by Parsons & Harry for
said Machine?

Ans. It was yes sir

9th Do you know whether or not Mr Harry
paid Mr Parsons the cash item of \$150. &
mentioned in Exhibit "A"?

Ans. I don't know.

10th Do you know whether or not the machine was
shipped by Mr Parsons & received by Mr. Harry?

Ans. Yes sir it was.

18

11th Do you know how Parsons came by this machine?

Ans. Yes Sir I sold it to him

12th Did you own the machine at the time you sold it to Mr Parsons?

Ans. I did

13th State whether or not the machine was in good repair at the time it was shipped?

Ans. Yes Sir I considered it so

Chief Examination

Ex Int 1st Of whom where and when did you purchase this machine? How much did you agree to pay for it and have you paid for it?

Ans. I bought it of Mr Vaughan at Chicago some two years ago. I think it was in the fall of 1880. I agreed to pay \$850 for it. I paid \$250. at the time and gave notes for the balance. I have since paid about \$175 to \$200 on the notes.

Ex 2nd Did you sell the machine to Mr Harry? by this I mean did you make the sale? and how long had you used it?

Ans. I had a talk with Mr Harry. I did not make the sale with him. I took Mr Harry up to Mr Parsons at his request as he did not know him. I had used the machine

Q Int 3^d Did you not fix the terms of sale before Mr Kearney saw Mr Parsons?

Ans. As far as we did not.

Q Int 4th What did you say to him the machine cost?
Ans. I told him the price of the machine was from \$950. to \$1000.

Q Int 5th Where was the machine when you sold it to Mr Parsons, and where was Mr Parsons?
Ans. The machine was up to a lumber yard on West side of the river in Chicago, near 12th St. Mr Parsons was here in Chicago and I took him to see it.

Q Int 6th What did Mr Parsons pay you for the machine when, and how did he pay you for it?

Ans. He paid me \$500. He paid me. I had the money from him along the winter & fall previous at different times. He paid me in money.

Q Int 7th How much were you owing him when you sold him the machine, and how much has he paid you since?

Ans. I don't know as I could tell exactly. I have had money from him along for the last year.

Q Int 8th According to the list of your remittances how much did you owe him at the time you sold him the machine?

Ans. I could not tell. It is my impression

Ex. Int 9th

however. that it was between \$600. & \$700.
Did you give him a bill of sale of the
machine at the time you sold it to him or
have you since?

Ans

I gave him one at the time we settled which
was at the time of sale or soon after.

Ex. Int 10th

When did you settle with Mr Parsons as
referred to in your last answer?

Answer

Well I don't remember when it was so far as
the machine is concerned the price and
amount; I was to receive for the machine was
fixed at the time. The price of the machine
was placed to my credit.

Ex. Int 11th

Were you both in the shop at the time you
sold the machine?

Ans.

Well I could not say as to that my im-
pression is that we were in front of his office or
coming down town.

Ex. Int 12th

Is it correct that Mr Parsons does not receive
in that case. are you not to refund to him
what you have received?

Ans

No sir not a cent.

Ex. Int 13th

For whom were you acting in showing the
machine at the time on the day the trade
was made. between Parsons and Harry?
Ans I was acting at Mr Harry's request. He
came around and asked me to take him up
there which I did.

21
Q. Did Mr Parsons request you to show the machine
or know you were were going to do so. until you
introduced Mr Starny to him at the time &
that paper writing "a" was made?

A. Yes sir I don't he did

Q. When in showing the machine to Mr Starny,
you were acting for Mr Parsons in what you did

A. Whatever I done in selling that machine
to Mr Starny after I sold it I done for Mr.
Parsons benefit and not mine?

Q. How long prior to July 13-1881. was it that
you sold the machine to Mr Starny?

A. Well sir I could not state definitely as
to that I did not pay any attention to it

Q. Was the modification of the contract which you
testify to in your direct examination and in
answer to 5th Interrogatory made before or
after the bill or paper writing "a" was signed
and delivered?

A. It was made before he signed it.

Direct Resumed.

Q. Do you know whether or not, this machine
was shipped by Parsons to Starny as agreed
between them?

(Obj. to by Direct Counsel)

A. Yes sir I was.

22
Int 13th

What was the condition of this machine + when Parsons shipped it?

Ans. In good running order.

Int 16th

State this Machine been used, between the time when Harry saw it and the time it was shipped?

Ans.

Well not much. It might but I don't remember it not much if any.

Int 17th

State whether or not this machine was in as good order when it was shipped as when Harry saw it?

(Obj. to by Deft's Counsel)

Ans.

I have stated it was better than would be saying a good deal that I had overhauled it, and fixed it; wherever defect was I made some couplings and fixed the hose by cutting out where places were bad and putting in new couplings.

Int 18th

Do you know whether or not Parsons demanded or requested of Harry that he Harry should furnish the iron mentioned in Exhibit 'a' during the course of 1901. State what you know about it.

(Objected to by Deft's Counsel)

Ans.

Yes Sir he did all I know about it is that he made a demand for the iron.

Int 19th

Now do you know that fact?

Ans.

Well I know that he wrote him and I

23

Jan 20

mailed the letter for him

you have stated in answer to the first copy
inquired that you bought the machine
of R. J. Vaughan. Was your purchase
from him conditional or unconditional?

Ans.

Unconditional

Jan 21

Where were you and Mr. Vaughan at the
time you made the purchase from him?

Ans.

Mr. Vaughan & I went to Indiana together to
buy the machine. I agreeing to pay the transport-
ation there, and return in case I did not pur-
chase. We were there a day or two trying it
and returned by the Michigan Central train
at night. There was nothing said about the
purchase of the machine until after we left
the depot at Chicago. That I remember of
on our way down town he told me that
he would sell the machine for \$50. which
was less than the usual price but he wanted
some working near the City that he could refer
other parties to. and before we reached Lake,
it was agreed on the terms of payment which
was \$25 down in notes of \$30 each pay-
able in five and seven months I think from
date I think that is my recollection. The next
morning I went to Banker's Trust Co. drew the
notes and got the money & went down to Sanford
& Hall & paid Mr. Vaughan. It was about nine
or ten in the morning and there was no talk of

Mr Vaughan holding any lien on the machine
 either directly or indirectly
 Ant. 22? State whether or not the terms & conditions of
 this sale and purchase between Vaughan & your
 self were fully agreed upon the evening you
 returned from Indiana and before you went
 to Sandford & Hall's next day to pay him the
 money & notes.

(Objected to by Dist. Counsel)
 Ans. Yes so they were.

Crop Examination resumed.

Cr. Ant 18th Did you hear Mr. Parsons personally demand
 the iron of Mr. Starry during the year 1861.

Ans. I ain't clear about that. I heard them talking
 of Barnett, King & Co. in the fall of 1861. I think
 it was along in Sept. or October what time
 was said about the iron I don't remember dis-
 tinctly, they were talking about the iron

"John A. McCullough"

- Question 1st What is your name, age, place of residence and occupation in life
- Ans. My name is R. D. Vaughan I am 52 years old. reside at Rochester New York. I am a machinist by trade.
- Ques 2^d Do you know the parties plaintiff and defendant to this suit or either and which of them & how long have you known them respectively?
- Ans. Yes Sir I know both Mr. Harry about 18 months. and Mr. Parsons about a year
- Ques 3^d Do you know anything about a sewing machine sold by Plaintiff Mr. Parsons to the defendant Mr. Harry
- Ans. I do
- Ques 4th Did you ever see it in possession of defendant?
- Ans. Yes. when & where?
- Ans. Yes. some time in September 1881 at Lake Superior at Mr. Harry's place near Marquette
- Ques 5th Did you see this machine running. If yes state whether or not it was in good running order?
- Ans. I saw it running I put to work, it was not in good running order.
- Ques 6th Did you put the machine in good running order?
- Ans. I did not I did not have the materials & time to do so I sent materials afterwards to Mr. Harry to do so
- Ques 7th At the time you saw this machine what in

26

your opinion would. It have best to put it in good running order

Ans.

It might have been put in running order for \$30.

Int 8

Did you use on the Machine Mr Vaughan?

Ans

yes sir

Int 9

Ans

Did you sell the Machine to John McCullough?
yes sir I sold. I took his notes but there was a condition that it was to be no sale unless the notes were paid

Int 10

Did you deliver the Machine to Mr McCullough at the time you took his notes?

Ans

The Machine was taken down from here some 50 miles and tested and when we came back we made the contract.

Int 11

Did you deliver the Machine to Mr McCulloch or authorize him to take possession of it?

Ans

I authorized him to take possession of it. there was no bill of sale made out.

Int 12

Was the condition of which you have spoken, verbal or in writing?

Ans

Verbal

Int 13

Has Mr McCullough paid any portion of the notes given you?

Ans

He has paid about \$60. and gave me an order on Mr C. D. Harry of Lake Superior for \$120. which Mr Harry refused to accept.

Int 14

Are you the owner of the notes given you by Mr McCullough for the Machine or have you

27

Q. disposed of them?
Ans I am not. I have disposed of them

Ex examined

Q. Int 1 Did you not dispose of the notes with the
Lun on the Machine to the attorney of Mr.
Harry at Mr. Harry's request, for the reason
that you claimed the Machine and was
going to sue Harry for it?

(Question objected to by Jeff's Counsel)

Ans Mr. Harry never requested me to sell them so
I told Mr. Harry that he would have trouble
about the Machine and he must not pay the
notes. He told me to call on his Lawyer
and see him

Q. Int 2 What do you mean by notes in your answer
to last Interrogatory?

Ans I mean by notes that I told him he would
have trouble if he paid Parsons

Q. Int 3 Did you not also give a power of attorney to
Purvis M. Cullock for selling the Machine
and collect the notes in your name

(Objected to by Jeff's Counsel)

Ans I did

Q. Int 4 Have the notes given you by M. Cullock
and above refused to in your direct examination,
was not paid what was M. Cullock to
do with the Machine

28
Ans.
Q. Int. 5.

He was to return it to me to this city.
What if any thing did Mr. Parsons the plaintiff
pay to you about having run this Machine?
(Objected to by Peffs Counsel)

Ans.
Q. Int. 6.

He told me he never saw it.
Has the \$120. order to which you refer in your
duet examination been since accepted and
delivered to Mr. Harvey?

Ans.
Q. Int. 7.

I don't know. It was accepted by Mr. Platts
He told me he would take it.

For whom was Mr. Platts acting?
(Objected to by Peffs Counsel)

Ans.
Q. Int. 8.

I suppose he was acting for himself. I don't
know. He paid me for them.

What in your judgment would it have cost
to have made the Machine as good as
new, & put it in perfect order?

(Objected to by Peffs Counsel)

Ans.

There are a good many considerations about
that. I made up my mind then that
it would cost \$100. to put in perfect order
as good as new.

Duet resumed.

Int. 11.

Do you know whether or not a suit has been
instituted in your name against John McCull-
och and John R. Parsons for the purpose of
recovering the Value of this Machine?

29

Ans.
Int 17

I don't know that there has
been any suit commenced?

(objec'd to by Dft's counsel)

Ans.
Int 18

yes I have heard him say so.

Was any such suit commenced while you
owned, or had any interest in these notes.

Ans

There was not

Cross Examination Cont?

Int 9

Did you direct Mr Plunk to bring such suit before
you sold the notes?

Ans.

No I don't know that I directed him to
bring the suit for I was looking another way

Int 10

What was that other way to which you were
looking

(obj to)

Ans

I intended to replenish the Machine at Lake
Superior

(signed) "R. J. Vaughan"

Chicago July 13 1861.

Charles D. Hanry

Bot. of J. R. Parsons

1. Grain bank & Mmains
 sowing Machine del'd on Board
 at Chicago for 975 \$
 & guaranteed to be in all respects
 as good as a New Machine and
 in perfect order.

Sum of payment cash 150.

Balance payable in Lake Superior

Pig Iron del'd in Chicago during
 this season at 26 \$ per ton or if not paid
 in iron this season at option of Seller the
 purchase money to be on interest from
 Dec. 1st until iron is del'd next Spring

The Machine to be used before 1st of
 September & can be returned to Seller within that
 time by forfurno of the cash payment &
 no further claim will exist if Machine proves
 unsatisfactory

J. R. Parsons

Copy of Exhibit "A" referred to in Deposition

And the said Defendant to maintain and prove the issue on his part introduced and read as evidence the following deposition of Edwin L. Hall.

1st Int

What is your name, age, occupation and where do you reside?

Ans

Edwin L. Hall. am. 32 years of age occupation, transportation agent and reside in Chicago

2^d Int

Do you know the parties to this suit or did you ever see or know anything about the Grain Bank & Sherman's Sowing Machine the price of which is here in controversy?

Ans

I do know them I have seen it.

3^d Int

Was you present in September 1866 when a contract was made, between R. C. Varley and John A. McCulloch in relation to said Machine of so state where it was at what time and state the contract.

(Objected to by Defs. attorney on the ground that the question is leading &c. because it inquires of transactions between parties other than the parties to this suit and which took place before the sale by the plaintiff in this suit)

I was. It was at one office (the office of Sanford & Hall) in Chicago in the Fall of 1866. I cannot recollect the month. The contract was about a Sowing Machine.

which was then in Indiana, Mr McCullough had been using the Machine Mr. McCullough was to pay me hundred and fifty Dollars in cash which said sum was then paid, and he also gave me notes the amount of which I do not remember nor do I know any more. No Bill of Sale was given at that time. No security was given for the payment of these notes except that in case he (McCullough) should be unable to meet the payment of said notes he was to deliver said Machine to Mr Vaughan in as good condition as it was at that time no allowances were excepted.

Cross Examination by Peff ally:

1st Q. Int.

Was this Contract in writing?

Ans

It was not

2nd Q. Int

Was there any thing said between McCullough and Vaughan in regard to Vaughan repaying to McCullough any of the \$250 which McCullough paid in cash, or any part of the money that he might pay on the notes in case the Machine should be delivered to Vaughan.

Ans

I heard nothing said about that between McCullough & Vaughan.

3rd Q. Int

Do you know whether any thing was ever paid on these notes?

Ans

I have seen this morning an endorsement of

33

\$150. on do note in. m. sums one of \$120 oct.
2^d. 1861. and \$30 in July 1861.

Do you know whether under this contract, the
Machine was ever delivered to McCallough
by Vaughan

It was then in McCallough's possession. No
formal delivery was ever made to my mortgagee

Edwin L. Hall

The abov. deposition is taken by the agreement
of parties and may be read on the ^{trial} of the cause
subject to all legal objections to its competency.

April 17. 1863.

J. A. Clark Jr. Deft. atty.
E. P. Smith Plff. atty.

By B. P. Magruder

And the said plaintiff then read in evidence
the following letter:

" Lake Superior Pioneer Iron
Company Office
Marquette L. I. Mich. Sept 26. 1861

J. A. McCallough Esq
Chicago

Dear Sir

We endeavor to ship you
174 bbls of iron for baggy for next trip of Pao
Backs. We enclose it directly to you to

be landed at Hubbard. or Harrys dock and
you may prefer

Mr Vaughan has been here
and forbade my paying anything on the
Sawing Machine until further notice as
he held a first lien on it for purchase money
as per agreement with you. I also find that
it will take about 100⁰⁰ expenditure to put
the Machine in as good order as new. as per.

My agreement with Mr Parsons, There must
be some grate a new door, & water run hose &
new connections hoses, & me. a few other articles
which I do not remember at this moment I
gave \$70. to Mr Vaughan to buy part of the ar-
ticles, and will have to get the rest. here.

He can inform you of the fairness of this
deduction viz the 100⁰⁰ your Machine
then is not as good as a new one. as the cel-
lender is worn by some ignorant persons.

summing it up as to have the justice be on me.

side Mr Vaughan said he should return
at once to Chicago to see you and I accord-
ingly want to hear what an arrangement you
himself make regarding the payments the
\$100. I have to pay for repairs. I shall consider
of course as coming out of the first payment
to Mr Parsons

Please show this letter to him
as I have not time to write more now. Yours truly

C. D. Harry

The foregoing is all the testimony offered on this
 duces in said cause and thereupon the Court
 having heard the arguments of counsel on
 the 22^d day of April A.D. 1863. the same
 being one of the days of the April Term A.D.
 1863 of said Court. found the issues for the
 plaintiff. On which decision and ruling
 of the Court the defendant by his counsel then
 and there excepted and filed his motion for a
 re hearing and new trial of said cause in
 words and figures following to wit:

John R. Parsons	{	Superior Court of Chicago
Charles ^{vs} D. Harry		April Term 1863,

- And Now comes the Defendant by his attorney and
 moves for a new trial on the following grounds
1. The Court erred in ordering a verdict for the
 plaintiff where by the law the Defendant was
 entitled to it.
 2. The Court erred in directing a verdict for the
 plaintiff when the evidence disclosed the fact
 that the plaintiff was not owner of machine
 sued for in this case and consequently, could
 not carry a title.
 3. The Court erred in directing a verdict for the
 plaintiff for the reason that the suit was
 commenced on the third day of January 1862

at which time the evidence shows the plaintiff had no complete cause of action,

- 4 The Court erred in directing a verdict for the plaintiff for the reason that no special demand or request to deliver the iron mine which it was agreed that the debt should be paid during the season of 1861 was arrived in the declaration.
5. For the reason that no demand to deliver the iron was proven to have been made before the suit was brought and that in order to recover the plaintiff should have proven such demand during the season of 1861.

6. That in the absence of such proof the law will hold that he elected to wait for the iron until the next spring before which time no suit could be commenced.

James L. Smith Jr. Deft's atty.

which said motion the Court afterwards on the 27th day of June A.D. 1863, the same being one of the days of the June Term A.D. 1863, overruled and entered judgment on the finding in favor of said Plaintiff and against said Defendant for the sum of eight hundred and nineteen dollars and six cents and costs of suit. On which decision and ruling of the Court in overruling said motion and entering said judgment upon the finding the de-
 quid

37

dant by his counsel then, and thus duly. Ex-
cepted.

And for as much as the matters and things
herin before stated, and set forth, do not other-
wise appear, the plaintiff by his counsel prays
that this his Bill of Exceptions may be signed
and sealed, and made a part of the records
of this cause. which is done this 24th day
of July A.D. 1863.

Wm H Higgins
Judge

Know all men by these presents that we Charles
 D. Harry as principal and Jas. L. Pluck Jr. as
 surety of the City of Chicago are held and
 firmly bound unto John R. Parsons of the
 City of Chicago in the County of Cook
 and State of Illinois in the penal sum of
 One hundred Dollars, lawful money of
 the United States for the payment of which
 we and duly to be made we bind ourselves
 our heirs executors and administrators jointly
 severally, and firmly by these presents.

Witness our hands and seals this day
 of July A.D. 1863.

The condition of the above
 obligation is such that whereas the said
 John R. Parsons did on the day of June
 A.D. 1863 in the Superior Court of Chicago
 in and for the County of Cook and State
 aforesaid and of the same Term thereof render
 judgment against the said above bounden
 Charles D. Harry for the sum of Eight hun-
 dred and 19 dollars & five cents besides costs
 of suit from which said judgment of the
 said Superior Court of Chicago the said
 Charles D. Harry has prayed for and obtained
 an appeal to the Supreme Court of said State.
 Now therefore of the said Charles D.
 Harry shall duly prosecute his said appeal
 with effect and moreover pay the amount,

of the Judgmentⁿ cost^s. interest, and ~~on~~ dam-
 ages rendered againstⁿ him in case the said
 Judgmentⁿ shall be affirmed in said Supreme
 Court then the above obligation to be void &
 otherwise of full force.

In presence of
 J. M. Dunning

Charles B. Starnes (L.D.)
 La. L. Clerk for
 Dec.

Witness

Wm H. Higgins Judge

State of Illinois }
County of Cook }

I Thomas B. Carter
Clerk of the Supreme Court of Chicago, do hereby cer-
tify that the abov. and foregoing is a true per-
fect and complete transcript of all the papers
on file in my office together with all the orders and
judgment made, and entered of record in said Court
in a certain cause lately pending in said Court
on the Common law side thereof wherein John
R. Carson was Plaintiff and Charles B. Haney
was Defendant.

An Witness Whereof I have here-
unto set my hand and affixed the seal of said
Court at the City of Chicago
in the County aforesaid
this Twelfth day of April
A.D. 1864.

Thomas B. Carter

Clerk



Supreme Court of the State of Illinois

Charles J. Harvey
Plaintiff in error
vs

John R. Parsons
Defendant in error

And now comes the said Plaintiff in error by Jas. L. Stark, Jr. his attorney, and says that there is manifest error in the Record and Proceedings aforesaid.

1. The Court erred in directing a verdict for the Plaintiff below.
2. The Court erred in directing a verdict for the Plaintiff, when the evidence disclosed the fact that he was not the owner of the machine sued for in this case, and consequently could not convey a title.
3. The Court erred in directing a verdict for the Plaintiff for the reason that the suit was commenced on that the third day of January, 1862, at which time the evidence proves the Plaintiff had no complete course of action.
4. The Court erred in directing a verdict for the Plaintiff for the reason that no special demand or request to deliver the iron with which it was agreed the debt should be paid, during the season of 1861, was averred in the declaration.

5. For the reason that no demand to deliver the iron was proven to have been made before the suit was brought, and that in order to recover, the Plaintiff should have proven such demand during the season of 1861.
6. That in the absence of such proof the law will hold that he elected to wait for the iron until the next spring, before which time no suit could have been commenced.
7. The Court erred in rendering judgment for the Plaintiff, wherefore said Plaintiff in error prays that the judgment rendered by said Court may be reversed &c

Jas. L. Stark Jr
For Plaintiff in error.

Supreme Court of the State of Illinois.

John R. Parsons,

Defendant in error

vs.

Charles T. Harvey

Plaintiff in error.

And the said John R. Parsons, the defendant in error by E. S. Smith his attorney comes and defends, the wrong and injury then to and says that in the record and proceedings aforesaid there is not ~~any~~ error as said plaintiff hath in his assignments alleged and said defendant thereof prays judgment in this court.

April 27th 1864

E. S. Smith

attorney for defendant in error.

241
Grand County Illinois
Grand Canyon

Charles T. H. H. H.
Pittsburg

27

Mr. H. P. H.
Sept 27 1884

Mr. H. P. H.

April 27 1884
L. H. H.
H. H. H.

H. H. H.
Sept 27 1884

241 120
Charles T. Harvey
Pltff in Error
vs

John R. Parsons
defendant
in Error

Copy of full record

Filed Apr. 21. 1864.
Leland
Clk.
J. L. Starks
atty for Pltff in Error

Fees. \$10.00

Paid to Martin