

11953

No. _____

Supreme Court of Illinois

Gage, et al

vs.

Jennings

State of Illinois }
County of Cook }

It was before the Honorable Hugh S. Wiskey Judge of the Seventh judicial Circuit of the State of Illinois and presiding Judge of the Circuit Court of Cook County at a term thereof begun and held at the Court House in the City of Chicago in said County on the first Monday (being the second day) of December in the year of our Lord one thousand eight hundred and fifty and of the Independence of the United States the twenty fifth.

Present Honble Hugh S. Wiskey Judge said Court
Daniel M. Hoag States Atty pro tem.
William L. Church Sheriff said County
Attest Louis A. Hoard Clerk.

Be it remembered that on the twenty second day of November A.D. eighteen hundred and fifty there issued out of the Office of the Clerk of said Circuit Court, the proper writ of summons directed to the Sheriff of said County which is in the words and figures following to wit:

State of Illinois }
Cook County }

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

We command you that you summon John S. Hanning if he shall be found in your County personally to be and appear before the Circuit Court 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 day of December

December next to answer unto Schabod L.
Gage, Viriam H. Bates and Marcellus Mapey
in a plea of answer to the damage of the said
plaintiffs as they say in the sum of two thousand
five hundred dollars, And have you then and
there this writ with an endorsement there-
on in what manner you shall have
executed the same.

Witness L. A. Hoard Clerk of our said Court
and the seal thereof at Chicago in said
County this 22nd day of Aug^r 1850.
L. A. Hoard Clerk

And on the back of said Writ was the following
endorsement to wit:

Executed by reading the within
to John S. Jennings this 22nd day of Aug^r 1850
J. Cook Shy Cook Co.

1 service 50, 1 rule 5, Return 10, 65 of 26.

And afterwards to wit on the same day
and year last aforesaid came the said plaintiffs by
Morris and Goodrich their attorneys and file their
certain bond for costs which is in the words and
figures following to wit:

Schabod L. Gage	}	Cook Circuit Court
Viriam H. Bates		
Marcellus Mapey		
John S. Jennings		

We do hereby enter ourselves
security for costs in this cause and acknowledge ourselves
bound to pay or cause to be paid all costs which may ac-
cure in this action either to the opposite party or any of
the officers of this Court in pursuance of the laws of this State

Morris & Goodrich.

And afterwards to wit on the same day and year last aforesaid there was filed in the Office of the Clerk of said Circuit Court the said plaintiff declaration which is in the words and figures following to wit.

State of Illinois
Cook County

Cook County Circuit Court

Isabod L. Gage, Verano & Walter and Marcelus Mapey complain of John S. Jennings in a plea of Trespas on the case. For that whereas the said Plaintiffs heretofore to wit of the first day of November 4th 1850 at Chicago Cook County aforesaid were lawfully possessed as of their own property of certain goods wares merchandise and Chattels to wit

541	3	p	print	Wet	99 ³ / ₄	10	9	98
542	5	"	Chancy		18 ³ / ₄	6 ³ / ₄	11	74
586	2	"	"		74 ¹ / ₂	7	5	21
587	5	"	"		160	9	14	40
588	3	"	"		102 ³ / ₄	9 ³ / ₄	9	76
608	3	"	"		104 ¹ / ₂	10	10	45
609	5	"	"		167 ³ / ₄	10	16	72
610	3	"	"		104	10	10	40
611	3	"	"		90	10 ¹ / ₂	9	45
603	1	"	"		35 ³ / ₄	10 ³ / ₄	3	75
590	2	"	"		68 ³ / ₄	10 ³ / ₄	7	16
591	4	"	"		140	9 ³ / ₄	13	30
582	3	"	"		95 ³ / ₄	9	8	60
596	2	"	"		71 ³ / ₄	9	6	46
600	1	"	"		33	10 ³ / ₄	3	46
573	1	"	"		78 ³ / ₄	9 ³ / ₄	7	19
606	4	"	"		16 ³ / ₄	7	13	73
526	3	"	"		112 ³ / ₄	10	14	25
527	3	"	"					
528	3	"	"					
552	4	"	"					
664	3	"	"					

613	2	print	See	83 $\frac{3}{4}$	11 $\frac{1}{2}$	9	75
7	"	Brown	Shirting	29 $\frac{5}{8}$	6 $\frac{3}{4}$	19	22
2	"	Cold	Blankets	60		1	20
		1	Box 12 $\frac{1}{2}$ Shapping 2 $\frac{1}{2}$				1 75
Box 2	43	4 ft	staid lining	160 $\frac{1}{2}$	11 $\frac{1}{2}$	18	59
43 $\frac{1}{2}$	4	"	"	158	12 $\frac{1}{2}$	19	75
42	2	"	"	80	21	16	80
49	1	"	"	40 $\frac{1}{2}$	18	7	29
		1	Blk & Wht	40	17	6	80
		1	" Satin	2	200	4	00
		1	pt "	3	251	7	50
78	3 $\frac{1}{2}$	Alberine	Vesting	4 $\frac{1}{2}$	65	2	92
453	1	pt	"	1 $\frac{1}{2}$	150	2	25
413	2	"	"	3	225	6	75
80412	1	"	Blk Cloth	16 $\frac{1}{4}$	23 $\frac{3}{4}$	39	18
5075	1	"	"	9	200	18	00
12838	1	"	" (French)	11 $\frac{1}{2}$	375	31	62
8030	1	"	"	8	350	28	00
12726	1	Olive	"	14 $\frac{3}{4}$	200	29	50
3017	1	Brown	"	14	200	28	00
98	1	Mixed	Cafimuro	11	75	8	45
118	5	Orange	"	27 $\frac{1}{2}$	95	26	12
13	1	"	"	5	100	5	50
18	1	"	"	5 $\frac{1}{2}$	112 $\frac{1}{2}$	6	18
13	1	BLD	"	5 $\frac{1}{2}$	135	6	88
27	1	"	"	8 $\frac{1}{2}$	125	6	88
28	1	Rockin	"	46 $\frac{1}{4}$	10 $\frac{1}{2}$	4	85
		1	Blue Canton Flannel	46 $\frac{3}{4}$	10	4	63
		1	Brown	26	28	7	28
		1	Yellow	54 $\frac{3}{4}$	29	15	88
		1	Red Swillo	25 $\frac{1}{4}$	28	7	07
		1	Printed	20	25	5	00
		1	White Cornet	25	9	2	25
		1	Canvas	65	12 $\frac{1}{2}$	8	13
		2	2 Gingham	42 $\frac{3}{4}$	10	4	28

	3	Crash	33 $\frac{3}{4}$	9 $\frac{1}{2}$	3 16
	1	Brs Shuting	42	6 $\frac{3}{4}$	2 85
	2	Colo Blankets		60	1 20
	1	Box 12/ Strapping 2/			1 75
Box	3	1 ps Loco Sean	43 $\frac{1}{2}$	9	3 89
	1	" Dennis	46	8	3 68
	3	ps Marina Stripes	44 $\frac{1}{2}$	8 $\frac{1}{2}$	12 26
	1	" Bellefont Dick	46	10	4 60
	2	" Otis	81 $\frac{3}{4}$	10	8 17
	1	" Haw	45 $\frac{3}{4}$	12	5 47
	1	" Old Lousey	46	15 $\frac{1}{2}$	7 13
	2	"	7 $\frac{1}{2}$	18 $\frac{1}{2}$	13 22
	1	" Table Diaper	48 $\frac{3}{4}$	15	7 51
	3	" Cott Bagging	96 $\frac{3}{4}$	11 $\frac{1}{2}$	11 13
	1	" Blk Wigan	33 $\frac{1}{2}$	9	3 01
	1	" Menins Maid	36	25	9 00
	6	" Maid Long Shavels		500	30 00
575	4	ps Blk Alpaca (505 ps)	29	42 $\frac{1}{2}$	12 32
174	1	"	31 $\frac{1}{2}$	30	21 17
	3	" Cord	99	35	34 65
	1	" Changeable	29	37 $\frac{1}{2}$	10 88
	2	" Colo Merino	64 $\frac{1}{4}$	45	28 91
	1	" Brs Shuting	42	6 $\frac{3}{4}$	2 85
	1	Box 12 Strapping 2/			1 75
Box	4	1 ps Worsted Serge	29 $\frac{1}{2}$	18 $\frac{3}{4}$	5 53
	5	" W de Saine	134 $\frac{1}{2}$	19	25 55
	1	" Red	37 $\frac{1}{2}$	23	8 63
	1	" Hair	34 $\frac{3}{4}$	26	8 43
	1	" Frigo	34 $\frac{1}{2}$	18 $\frac{1}{2}$	6 38
	1	" Faded Frink	29	21	6 09
	1	" Colb Caustic	34 $\frac{1}{2}$	7 $\frac{1}{2}$	2 58
	1	" Siberia	33 $\frac{1}{2}$	12 $\frac{1}{2}$	4 19
57	1	" Brs Holland	36	11	2 86
27	1	"	26	16	4 16
	1	" Merino	32 $\frac{3}{4}$	45	14 73
1834	1	" Ken Sean	29	31 $\frac{1}{2}$	9 07

18	ps	Spread	27 ¹ / ₂	50	13	63
798	1	"	16	65	10	40
154	1	ps	27 ¹ / ₂	45	12	38
	2	Stone	63	50	31	50
682	1	"	26	65	16	25
19	1	Blue	26	75	19	50
353	1	Olive	10	75	7	69
	2	Fulls Cloth	52 ¹ / ₄	55	28	74
	10	Bro Shuting	308 ³ / ₄	8	24	70
	1	"	45	6 ³ / ₄	3	13
	1	Brof 12 f Shapping 3 f				1 75
Brof	5	2 ps	72	5 ³ / ₄	4	14
	2	"	68	62	4	42
	4	"	139	8	11	12
	2	"	73	9	6	57
	2	"	69	9	6	21
	2	"	69	11	7	62
	2	"	82	13	10	50
	1	"	34	8	2	89
	1	"	35	11	5	88
	3	"		125	3	75
	3	"		137	4	12
	2	1	12	11	1	32
	10	1	16	15	2	40
	11	1	16	18	2	88
	13	1	16	25	4	00
	5	1	12	11	1	32
	8	1	12	20	2	40
	10	1	16	25	4	00
	20	1	16	32	5	20
	22	1	16	50	8	00
		1	30	25	5	10
	1426	1	48 ¹ / ₂	10		40
	238	1	3	14		42
	2299	1	2	30		60

1803	1	ps	Green Edging	2	45	90
297	1	"	"	2	37 $\frac{1}{2}$	75
1511	1	"	"	2	47 $\frac{1}{2}$	95
1412	1	"	"	2	75	150
1457	1	"	"	2	85	170
2196	1	"	BLK	3	30	90
2197	1	"	"	3	50	150
1698	1	"	Law	10	25	250
1665	1	"	Wht	12	25	300
1698	1	"	"	12	25	300
1371	1	"	"	10	35	350
775	1	"	Irish Linen	13	31	403
777	1	"	"	13 $\frac{1}{2}$	35	472
84	1	"	"	13 $\frac{1}{2}$	44	593
121	1	"	"	14	50	700
	6	ps	Green Linen S. Cloth	75		450
	2	Qty	Cott Towels	135		250
865	1	"	Linen Chin Hand	137 $\frac{1}{2}$		138
5	1	"	"	175		175
18	1	"	Imper	225		225
15	2	"	"	275		550
	4	"	Cap Ribbon	100		400
	2	"	Bonnells	135		540
	3	"	"	135		525
	4	"	"	175		700
	2	"	"	225		450
	5	ps	Cold Soft	20		100
2	6	"	"	30		180
4	4	"	"	50		200
3	2	"	BLD	37 $\frac{1}{2}$		75
6	1	"	"	75		75
9	1	"	"	112 $\frac{1}{2}$		112
12	1	"	"	150		150
244			Cold Table Cover	80		160
884			"	95		760
3	ps		Jump	90		338

	1 pr Gimp	3/4	65	1 95
2	1 doz Childs Womans Hosi	1 3/4		1 37
3	1 " " " "	1 60		1 60
343	1 " Menno's Gloves	2 25		2 25
	1 " Childs			1 60
	1 " Lile Thread			2 25
	1 " Cold Spun			2 00
6	1 " Blk "			2 25
	1/2 " Ital Cream	5 50		2 75
	1/4 lb Ball Sweet	9 00		2 25
2	24 Sewing Lils	5 50		11 00
1	1 Blk Ital	20 115		33 00
5	1 Brown Shetling	300	7 1/2	15 00
2	2 Cold Horse Blankets	60		1 20
20 lb	20 lb Blk & Wht. Wadding	2 7/2		5 50
1 Box	1 Box 12 pr Strapping 2 pr			1 75
Box 6	4 pr Shetle Br Shetling	3 00	8 1/2	32 34
5	5 India " "	200	7 1/2	15 00
	Strapping 2 pr 2 Carboys 2/6			88
	Insurance from Buffalo to Chicago			11 70
				\$ 1,456 11
	Interest			8 42
	Insurance			12 23
	Acceding Mortgage			5 00
				\$ 1,481 76

of great value to wit of the value of two thousand five hundred dollars, and being so exposed the said plaintiffs afterwards to wit on the day and year first above mentioned at Chicago Cook County aforesaid casually lost the said goods wares merchandise and Chattels out of their possession and the same afterwards to wit on the day and year aforesaid to wit at Chicago Cook County aforesaid came to the possession of the said defendant by finding

Yet the said defendant well knowing the said goods wares merchandise and chattels to be the property of the said plaintiffs and of right to belong and appertain to them but contriving and fraudulently intending so to deceive and defraud the said plaintiffs in this behalf hath not as yet delivered the said goods wares merchandise and chattels or any or either of them or any part thereof to the said plaintiffs although often requested so to do and hath hitherto wholly refused so to do. And afterwards to wit on the day and year aforesaid to wit at Chicago Cook County aforesaid converted and disposed of the said goods wares merchandise and chattels to his own use. To the damage of the said plaintiffs of Ten thousand four hundred dollars and therefore they bring suit &c

Morris ^{and} Goodrich,
Plffs Attys.

And afterwards to wit on the seventh day of December A.D. 1850 came the said Defendant and filed in the Office of the Clerk of said Circuit Court his certain plea which is in the words and figures following to wit:

John S. Seawright
and
Gage Bates & Company } Cook Circuit Court
Dec^r Term 1850

And the said defendant by &c to
E. V. Wolf his attorneys comes and defends the
wrong and injury when he does say that
he is not guilty of the said supposed grievances

laid to his charge many portions of them or
any or either of them in manner and form
as the said Plaintiffs have above complained
against him and that the said defendant
puts himself upon the Country &c

C. H. Wolf

Def. Atty.

And annexed to the said plea was the fol-
lowing to wit:

And the said Plaintiffs doth the
like by.

Mearis and Gordon their attys.

And afterwards to wit on the 29th day of April
AD 1857, there issued out of the Clerks Office aforesaid
the Peoples writ of Subpoena Potestatem or Commission
directed to Charles McKinstry of the City of New
York Etals. which is in the words and figures fol-
lowing to wit:

State of Illinois
County of Cook

The People of the State of Illinois
do Charles McKinstry of the City of New York
and John Henry Neely & J. Wapson Et in said
City. Whereas, it has been represented to us that
Philip S. Mearis is a material witness in a
certain cause now depending in our Circuit
Court in and for the County of Cook aforesaid
between Schabed L. Gage, Meriam C. Gage and
Marcellus Wapen, Plaintiffs and John S. Ju-
rrijs Defendant, and that the said witness resides
at the City of New York aforesaid, without the
said State of Illinois, and that his personal at-
tendance cannot be procured at the trial of the

Said Cause: Now know ye that We, in Confidence of
your prudence and fidelity, have appointed you com-
missioners to examine the said Witness, and do there-
fore authorize and require you to cause the said
Witness to come before you at such time and place
as you may therefor designate and appoint, and
diligently to examine the said Witness, on the oath
or affirmation of the said Witness by you first
duly in that behalf administered and faithfully
to take the deposition of the said witness upon all
interrogatories enclosed with or attached to these
present, both on the part of the said plaintiffs
and of the said defendant and none others: and
the same when thus taken, together with this
commission and the said interrogatories, to en-
close into our said Circuit Court with the least
possible delay. Witness Louis V. Hoard, Clerk of
our said Court, and seal thereof at
Chicago in said County this 29th day
of April A.D. 1851.

L. V. Hoard, Clerk

And attached to the said Commission and
accompanying the same were the following in-
terrogatories and notes in the words and figures
following to wit:

Isaac S. Gage
Nathan B. Gater
Marcellus Mapey

Cook Circuit Court
At May Term 1851.

John C. Jennings

Of the above named defendant
his Attorney C. S. C. Wolf.

That you will take
notice that on the 29th day of April next at 11 o'clock
A.M. we shall apply to the Clerk of the Cook Circuit
Court for a commission to be issued in the above

case to be directed to Charles McHenry as commissioner of the City of New York to take the testimony of Philip S. McCarty a non resident witness and residing in the City of New York to be used on the part of said Plaintiff.

Interrogatories to be propounded to and answered by said witness on the part of said plaintiff.

Interrogatory 1st

Are you acquainted with all or either of the parties to the above suit, if so which and how long and what is their occupations.

Interrogatory 2nd

Are you acquainted with Henry C. Van Valin in his life time, if so when and where.

Interrogatory 3rd

State whether you were in the employ of the plaintiff during the last fall and summer and if so in what capacity?

Interrogatory 4th

State whether at any time and what time said Van Valin applied to said Plaintiff to purchase any goods and what representations he made if any of his pecuniary responsibility; and of the amount of property owned by him and its value, and of his indebtedness and the amount he was worth over and above his debts.

State particularly all that was said by him upon that subject.

And whether any goods were agreed to be sold him by said plaintiff on credit and when and what was the inducement of such credit?

Interrogatory 5th If you say any goods were at the time stated in your answer to the last interrogatory sold by said plaintiffs to said Van Valin state what goods, please annex a copy of the invoice of the same and the price please also state what arrangement was made between said plaintiff and Van Valin as to security to be given for the payment of the same; and whether the possession of said goods was or was not delivered to said Van Valin; and if not on what conditions the same were to be delivered to him and when?

Interrogatory 6th

State whether any written memorandum of the conditions upon which said Van Valin was to have said goods delivered to him was made in writing and the invoice delivered to him of said goods and if so give a copy of the same?

Interrogatory 7th

State whether the name of the Agent of the plaintiffs in Chicago who was to approve the security to be then given if any such was there to be given, was left blank or omitted and if so why in said memorandum?

Interrogatory 8th

State whether there were any verbal directions given or agreement made between said plaintiffs and Van Valin after said written memorandum was made as to the person at Chicago who should approve such security for said plaintiff; if so state the same?

Interrogatory 9th

State whether the possession of said goods was ever delivered to said Van Valin by said plaintiffs or not if not why not and the conditions upon which the same were to be de-

delivered to said Van Valin and when the delivery
was to be made if any such were agreed upon?
Interrogatory 10th

State whether you have ever seen said
Van Valin write or had or seen correspondence
with him and whether you know his hand
writing. If so look upon the paper now shown
you marked "4" and hereto attached and
say whether you have ever seen a letter in his
hand writing and signed by him of which
said exhibit is a copy if so to whom was it
directed and by whom was the same re-
ceived. State when and where you last saw
the original if you have seen it?

Interrogatory 11th

State whether the price affixed
to said goods were the fair market value of them
in New York at the time such arrange-
ment was made?

Interrogatory 12th

If you know of any thing not
above inquired of you of benefit to said plain-
tiff please state the same as particularly as if
specially interrogated?

April 18th 1857.

Wm Morris & Goodrich

Of

Chicago Oct 20/50

Wesley Sage & Peter & Waples

Sirs.

I learn from Mr S.
Burch that I cannot take the goods bought of you
from the Ware House unless I obtain a good and res-
ponsible name with my own notwithstanding the
security left with you by way of Mortgage and

assignment of my Policy of Insurance. Now
for the facts are that the person named Henry Gul-
ler had engaged in business that called him
East and in his absence I am unable to get the
signature instead of the Mortgage as was talked
the mortgage is full and sufficient security for the
goods purchased of you. I understood that in the
event of not getting the name that the Mortgage would
be satisfactory. As it is part of my goods have arrived
that is the sum of them, and I cannot commence
to realize until I can be put in possession of the bill from
you.

I therefore wish you to consider your security as
good and place me in possession through Mr.
S. Burch that I may begin to realize and remit
as fast as possible for without I can of course sell
nothing as my apartment will not warrant
to commence business by giving Mr. Burch
the necessary instructions that I may be en-
abled to get them in the least possible time you
will greatly oblige your friend & obedient servant
H. C. Van Valen

PS I Enclose the Policy of Insurance to you by
Mail the which I suppose you have ere this
received.

H. C. V.

I have secured the services of a competent man
who has been in the trade for the last thirteen years
to assist me in the disposal of my stock. I have
also my stock in readiness only waiting your instructions
for the delivery of goods.

And accompanying the same were
the following crop interrogatories and ~~etc~~,

John A. Scumpp

as

Schabot L. Gage Etals

Cook Circuit Court

May 1. 1857.

Depos Interrogatories to be administered to and
answered by Philip S. Mc Carthy before Charles
Mc Kinstry and John Henry Wells Esqrs Com-
missioners as per declaration herunto annexed
on behalf of Defendant. The defendant hereby
objects to 1st Interrogatory of Plaintiff and also
2nd Interrogatory

C. S. E. V. Wolf
Chicago April 29/87. 2nd atty

1st If in answer to plffs 4th direct interrogatory
you state that any representations were made
re state also who was present at that time, whether
Van Valin Brother was present, and whether any
one and who requested you to witness such re-
presentations, and whether any goods were sold
to said H. E. Van Valin at the time of such repre-
sentations.

2nd If you state in answer to the plffs 5th Indij
that any goods were at any time sold by plff to
Van Valin please state whether the arrange-
ment that was then made was not in writing
and attached to the invoice of goods and
signed by you as subscribing witness and
state also how goods sold by New York
Merchants are usually delivered to Western
Merchants, whether by delivering them with
the invoice to the Cartman, as forwarders and
marking to the person purchasing or otherwise
and how?

3rd

State whether at the time of the delivery and
Shipment of the goods to Van Valin the plaintiff
took any security by mortgage or otherwise on
property in Wisconsin and whether plaintiff

did not insert in the Bill of goods a charge
preceding the Mortgage and whether they
still hold the mortgage.

11th If you state that any arrangement was
made by Van Valin to give an endorser, state
when such arrangement was made, who were
present and whether it was not understood by
Van Valin, that in Jan he gave an endorser
at Chicago that the property mortgaged was to
be released or whether there was any understand-
ing upon that subject.

5th Have you seen Van Valin Write? when &
where? Have you corresponded with him? how
long and how often? Do you know that any
correspondence you may have seen is his except
from information or belief?

6th If you state in answer to any of plaintiff's
interrogatories that after the arrangement for the
goods was made, Van Valin agreed to give an
endorser at Chicago, state who that endorser
was to have been, and whether the arrangement
was or was in writing and what consideration if any
was paid to Van Valin at that time: and who
were present, and whether you were present at all
the conversations between plaintiff and Van Valin
on the subject of the purchase, and whether the
defendant Jennings was present at any of the con-
versations.

7th State how the goods shipped to Van Valin
were sent from the Store if any were shipped and
to whom sent at Chicago and send the bill of
lading or a copy thereof if you have it.

8th How many different conversations did
Van Valin have with the Plaintiff about the
goods and was you present at the whole of
every conversation and did you have hear

* Said depositions are embodied in the following bill of Recaption of the said depositions duly signed by the Judge of said Court of the overruling of the motion for a new trial in this cause and filed in the said Clerk's office on the 6th day of January A.D. 1852, in term time of the second term A.D. 1851.

In Cook Circuit Court May 5, 1851.
Be it remembered that on the 24th day of May A.D. 1851, the plaintiff Philip S. McCarthy introduced the following evidence, (facts)

the whole of each and did you see Van Valin talking with them at any time when you could not hear?

A. If you state that you know Van Valin's hand writing and have seen him write state whether you have compared exhibit A with the original and whether Plaintiffs ever received the policy of Insurance and Mortgage therein referred to, and also when property included therein is situated, what is its reputed value and what insurances Van Valin represented were on it if any at the time he gave it whether it was not represented as a Farm and Tavern Stand in Rochester Racine Co. Wisconsin and said to have been worth some \$2500.

C. L. E. Wolf
Supt. atty.

And afterwards to wit on the thirtieth day of May A.D. 1851, the said ^{Commissions and} interrogatories were returned on with the following depositions ^{of said witnesses} attached thereto which are in the words and figures as follows to wit

State of Illinois
Circuit Court of Cook County

Charles S. Gage
Nathan A. Vator and
Marcellus Mapes
vs
John D. Jennings

The depositions of Philip S. McCarthy of the City County and State of New York a Witness of lawful age produced sworn and examined upon his personal oath on the sixth day of May in the year

of Illinois, Cook County, in
John D. Jennings et al vs
Gage et al & Mapes

of our Lord one thousand eight hundred and fifty one at the Office of Charles McKinstrey one of the Commissioners therein named, at 404. New St in the said City of New York by us Charles McKinstrey, and John Henry Hooley Commissioners duly appointed by a Verdict of the Court of the Circuit Court of Cook County in the State of Illinois, bearing test in the name of L. V. Hoard Esq. Clerk of the said Circuit Court with the seal of the said Court affixed thereto and to be directed as such commissioners for the examination of the said Philip V. McCarthy a Witness in a certain suit and matter in controversy now pending and undetermined in the said Circuit Court wherein Schabed L. Gago, Henry A. Hater and Marcellus Hapney are plaintiffs and John S. Jennings defendant on behalf of the said Plaintiffs as well upon the Cross interrogatories of the defendant as on the interrogatories of the plaintiffs which were attached to or enclosed with the said Commission and upon none others, the said Philip V. McCarthy first being duly sworn by us as a witness in the said cause previous to the commencement of his examination to testify the truth as well on the part of the plaintiffs as the defendant in relation to the matters in controversy between the said plaintiffs and defendant, so far as he should be interrogated, testified and deposed as follows:

1st Interrogatory. Are you acquainted with all or either of the parties to this suit, if so which and how long and what is their occupations
Answer to 1st Interrogatory. I am acquainted with

the Plaintiffs in this suit and have known all of them over one year. They are dry goods sellers in the City of New York. I am not acquainted with the defendant.

2nd Interrogatory. Were you acquainted with Henry C. Van Valin in his life time if so when & where?

Answer to 2nd Interrogatory. Yes I made his acquaintance in the City of New York in the month of September 1850.

3rd Interrogatory. State whether you were in the employ of the Plaintiffs during the last fall and Summer and if so in what capacity.

Answer to 3rd Interrogatory. I was in the employ of the Plaintiffs in the capacity of Bookkeeper during the whole of the year 1850.

4th Interrogatory. State whether at any time and what time said Van Valin applied to said Plaintiff to purchase any goods and what representations he made of any of his pecuniary responsibility and of the amount of property owned by him and its value, of his indebtedness and the amount he was worth over and above his debts State particularly all that was said by him on that subject and whether any goods were agreed to be sold him by said plaintiff on credit and when and what was the inducement of such credit.

Answer to 4th Interrogatory. In the month of September 1850. said Van Valin applied to Plaintiffs at their Store in New York City to purchase goods - He represented himself as having a Tavern stand and grounds adjoining in Wisconsin. I do not remember what he said about its value except that he said there was an incumbrance upon his property of about five hundred dollars which amount he had invested in Bank and Stock I do not remember

what he said his property was worth over the amount of his indebtedness. He said he would give a mortgage upon his said property to plaintiff to secure the payment for the goods and in addition thereto that he would give his note with an endorsement who should be satisfactory to S. N. Burch, Chicago. It was then agreed between the Plaintiff and said Van Valin that Plaintiff would sell said Van Valin a certain quantity of dry goods. Said Van Valin then agreed to give a mortgage covering his Wisconsin property and to get his property insured and assign the policy of insurance to Plaintiff and was also to give his notes with an endorsement satisfactory to the said S. N. Burch. The credit was given upon his representations as to his Wisconsin property and the endorsement of his note as above stated.

5th Interrogatory. If you say any goods were at the time stated in your answer to the last interrogatory sold by said Plaintiff to said Van Valin state what goods please annex a copy of the invoice of the same and the prices - please also state what arrangement was made between said plaintiff and Van Valin as to security to be given for the payment of the same and whether the possession of the said goods was or was not delivered to said Van Valin and if not on what conditions the same were to be delivered to him and when.

Answer to 5th Interrogatory.

The Paper writing marked "B" and hereto annexed is a true copy of the invoice of the goods sold to Van Valin by Plaintiff as stated in last answer and of the prices thereof. It was agreed between plaintiff and said Van Valin that possession of the goods was to be delivered to him upon his obtaining the endorsement satisfactory to S. N. Burch.

after he arrived at Chicago.

6th Interrogatory.

State whether any written memorandum of the conditions upon which said Van Valin was to have said goods delivered to him was made in writing on the invoice delivered to him of said goods and if so give a copy of the same.

Answer to 6th Interrogatory.

There was a written memorandum attached to the said Invoice neither the Plaintiff nor myself kept a copy of said Memorandum and I cannot therefore give an exact copy of the same.

7th Interrogatory.

State whether the name of the agent of the Plaintiff in Chicago who was to approve the security to be then given if any such was then to be given was left blank or omitted. And if so why in said Memorandum.

Answer to 7th Interrogatory.

There was no agent's name put in the memorandum or receipt affixed to his invoice but it was understood and agreed upon between the parties that it should be J. H. Burch of Chicago whose name was omitted by me in filling out the receipt. I did not at the moment of filling out the receipt think of the name but I heard his name mentioned by Plaintiff and Van Valin while making the arrangement.

8th Interrogatory.

State whether there were any verbal directions given or agreement made between said Plaintiff and Van Valin after said written memorandum was made as to the person at Chicago who should approve such security for said Plaintiff if so state the same.

Answer to 8th Interrogatory.

There were no verbal directions given or agreement made between the plaintiffs and Van Valin after the memorandum was made as to the persons in Chicago who should approve such security for said plaintiffs.

9th Interrogatory

State whether the possession of said goods was ever delivered to said Van Valin by said plaintiffs or not, if not why not, And the conditions upon which the same were to be delivered to said Van Valin and whether the delivery was to be made if any such were agreed upon.

Answer to 9th Interrogatory

No! the goods were not delivered by the plaintiffs to said Van Valin the reason why, was because he was not to have them until he gave the endorsement upon his paper satisfactory to J. N. Burch, which he said could be done in time to reach New York again before the goods should reach Chicago.

10th Interrogatory. State whether you have seen said Van Valin write or had or seen correspondence with him, And whether you know his hand writing. If so look upon the paper now shown you marked "4" and herunto attached and say whether you have ever seen a letter in his hand writing and signed by him of which said exhibit is a copy if so to whom was it directed and by whom was the same received. State when and where you last saw the Original if you have seen it.

Answer to 10th Interrogatory.

I have seen Van Valin write I saw him sign the note for his goods in September 1850. I have also seen the letter purporting to have come from Henry C. Van Valin and the paper herunto annexed

(4)

marked "C" I believe to be his handwriting and the original of the paper writing herunto annexed marked "C". She said letter "C" was directed to "Gage Vator & Wapley" and dated Oct 28/50. I saw it at the Plaintiffs Office in the month of November 1850.

11th Interrogatory.
State whether the prices affixed to said goods were the fair Market value of them in New York or not at the time such arrangement was made.

Answer to 11th Interrogatory.
They were the fair market value in New York at that time.

12th Interrogatory. If you know of anything not above inquired of you of benefit to said plaintiffs please state the same as particularly as if interrogated.

Answer to 12th Interrogatory.

I do not know further than I have stated of benefit to the plaintiffs or the contrary.

"B"
M^{rs} Mary E. Van Valui
Daughter of Gage Vator & Wapley
Importers and Wholesale Dealers in
Staple and Fancy Dry Goods. 151 & 153
Broadway
"Exhibit B"

541					
585	3	ps	Black Prints	99 ⁰ 10	998
586					
587	5		Doz	180 ³ 6 ³	1174
588	2		"	74 ² 7	521
618.9	5		"	160 9	1440
619.11	3		"	102 ³ 9 ²	976
603	3		"	104 ² 10	1045
590.1	5		"	167 10	1672
580	3		"	104 10	1040
596	3		"	90 10	900
600	1		"	35 ³ 10 ²	375

573	2	ps	Blk Smits	68'	10 ²	7 16
606	4	"	"	140	9 ²	13 30
326	3	"	Blue rlb	95 ²	9	8 60
	2	"	Blk rwh	71 ³	9	6 46
612	1	"	" + Lav	33	10 ²	3 46
328	2	"	Green	75 ³	9 ²	7 19
552	4	"	Turnis	167 ²	7	13 73
664	3	"	"	112 ²	10	11 25
613	2	"	Red	83 ³	11 ²	9 73
	7	"	Br Shating	295 ³	6 ³	19 22
	2	"	Cord Blanket	60		1 20
			Box 12 of Strapping			1 75
2443	4	ps	Nail Gingham	161 ²	112	18 57
43 ²	4	"	"	188	12 ²	19 75
42	2	"	"	80	21	16 80
49	1	"	"	40 ³	18	7 29
	1	"	Blk rwh	44	17	6 80
	1	"	Blk rwh	2	210	4 00
	1	"	Latex	3	250	7 50
	78	3ps	Merino vesting	4 1/2	65	2 92
453	1	ps	"	1/2	150	2 25
413	2	"	"	3	225	6 75
8002	1	Blk	cloth	16'	237	39 10
5078	1	"	"	9	200	18 -
12838	1	"	Br	11 ²	175	31 62
8130	1	"	"	8	350	28 -
12726	1	"	Olive	14 ³	200	29 50
3017	1	Br	"	14	200	28 -
98	1	Must	Cassimere	11	75	8 45
1118	5	Grey	"	27 ²	95	26 12
13	1	"	"	5 ²	100	5 50
18	1	"	"	5 ²	100	5 50
13	1	Blk	"	5 ²	112	6 18
27	1	"	"	5 ²	125	6 88
38	1	Doestine	"	5 ²	125	6 88
	1	Blue	Castro Flannel	46'	10 1/2	4 85

	1	ps Brown	46 ³	10	4 63
	1	Yellow	26	28	7 28
	1	Red & white	34 ³	29	15 88
	1	Printed	25 ¹	28	7 17
	1	White Vases	20	25	5 -
	1	Canvas	25	9	2 25
2	2	Quignam	65	12 ²	8 18
	1	Br. Sewelling	42 ³	10	4 28
	3	Crash	33 ¹	9 ²	3 16
	1	Br. Shuting	42 ¹	6 ³	2 85
	2	Colored Blankets		60	1 20
		Box 12/ Straps 2/			1 75
83	1	ps Colored Seam	48 ¹	9	3 89
	1	Venice	46	8	3 68
	3	Mariners Straps	144	8 ²	12 26
	1	Reliefed Tick	46	10	4 60
	2	Olts	81 ³	10	8 17
	1	Ngow	45 ³	12	5 49
	1	Hard Lining	46	18 ²	7 18
	2	"	71	18 ²	13 22
	1	Sable Diaper	48 ³	15	7 31
	3	Cotton Bagging	96 ²	11 ²	11 13
	1	Black Skizam	33 ²	9	3 01
	1	Older Flaid	36 ²	25	9 -
	6	Hard L. Shawls		500	30 -
575	1	Black Alpaca	29	42 ²	12 32
174	1	"	30 ¹	70	21 17
	3	Colored	99	35	34 65
	1	Changeable	29	37 ²	10 88
	2	Colored Merino	64 ¹	45	28 91
	1	Br. Shuting	42	63	2 85
		Box 12/ Straps 2/			1 75
84	1	ps Waxed Serge	29 ²	18 ³	5 53
	5	Celaine	134 ²	19	25 50
	1	Red	317 ²	23	8 63

	1	Ys plain	34 ³	26	8 48
	1	" Frgd	34 ²	18 ²	6 38
	1	" Sky Red Pant	29	21	6 09
	1	" Colord Cambr	34 ²	7 ²	2 58
	1	" Silisian	33 ²	12 ²	4 19
57	1	" Bro Holland	26	11	2 0
127	1	" Brown Holland	26	16	4 16
	1	" Merino	32 ³	45	14 73
1830	1	" Ky Swan	29	31	9 19
18	1	" Broad	29	58	13 63
798	1	" "	16	65	10 40
1521	1	" Blk Euro Satin	27 ²	45	12 38
	2	" "	63	50	31 50
182	1	" Muso	25	65	16 25
19	1	" Blue	26	75	19 50
353	1	" Olive	14	75	7 69
	2	" Gullied Cloth	52	55	28 74
	10	" Bro Shirting	308 ³	8	24 70
	1	" "	45	63	3 03
		Box 12 Shapping 2/			1 75
85	2	Ys Seneca Bl Shirting	72	5 ³	4 14
	2	" Fine	68	62	4 42
	4	" Crypio	139	8	11 12
	2	" Cotomao	73	9	6 37
	2	" Mapachusett	69	9	6 21
	2	" Hopi	69	11	7 62
	2	" Super	83	13 ²	10 50
	1	" Clear Drill	34	8 ²	2 89
	1	" Super	35	11	5 88
	3	" Linen Vaper		125	3 75
	3	" " "		137 ²	4 12
2	1	" Cambrio	12	11	1 32
10	1	" "	16	15	2 40
11	1	" "	16	18	2 88
13	1	" "	16	25	4
5	1	" Hard Cambrio	12	11	1 32

8	1	ps Maid Cambric	12	20	2 40
14	1	"	16	25	4 -
20	1	Swiss Muslin	16	32 ²	5 20
22	1	"	16	50	8 -
	1	Victoria Lawn	20	25	5 -
1026	1	Lace Edging	4	10	40
238	1	"	3	14	42
2299	1	"	2	30	60
1813	1	"	2	45	90
297	1	"	2	37 ²	75
1571	1	"	2	47 ²	95
1412	1	"	2	75	1 50
1451	1	"	2	85	1 70
2196	1	Blk	3	30	90
2197	1	"	3	50	1 50
1693	1	" Lace	10	25	2 50
1665	1	Wht	12	25	3 -
1698	1	"	12	25	3 -
1371	1	"	10	35	3 50
775	1	Irish Linen	13	31	4 03
777	1	"	13 ²	35	4 72
34	1	"	13	44	5 93
121	1	"	14	50	7 -
	6	Bm Linen Shavers		75	2 50
	2	Veg Cotton Straps		1 25	3 50
85	1	Le MCKES		1 38	1 38
5	1	"			1 75
18	1	ps Pique Hdkys			2 25
15	2	"		2 75	5 50
	4	Cap Ribbon		1	4 -
	2	Hat		1 35	5 40
	3	"		1 75	5 25
	4	"		1 75	7 -
	2	"		2 25	4 50
	5	Cold Taffeta		20	1 -

	1	Y ^e plain	34 ²	26	8 43
	1	" Fryd	34 ²	18 ²	6 38
	1	" Sky Red Pant	29	21	6 09
	1	" Colord Cambr	34 ²	7 ²	2 58
	1	" Silisian	33 ²	12 ²	4 19
57	1	" Brn Holland	26	11	2 0
127	1	" Brown Holland	26	16	4 10
	1	" Merino	32 ³	45	14 73
1830	1	" Ky Swan	29	31	9 17
18	1	" Thread	29	50	13 63
798	1	" "	16	65	10 40
1521	1	" Blk Euro Satin	27 ²	45	12 38
	2	" "	63	50	31 50
182	1	" Muso	25	65	16 25
19	1	" Blue	26	75	19 50
353	1	" Olive	14	75	7 69
	2	" Gullid Cloth	52	55	28 74
	10	" Brn Shirting	308 ⁰	8	24 70
	1	" "	45	63	3 03
		Box 12 Strapping 2 ¹ / ₂			1 75
\$5	2	Y ^e Seneca Bl Shirting	72	5 ³	4 14
	2	" Fine	68	62	4 42
	4	" Crypero	139	8	11 12
	2	" Cotomac	73	9	6 57
	2	" Mlapachusett	69	9	6 21
	2	" Hope	69	11	7 62
	2	" Super	83	13 ²	10 50
	1	" Sea Drill	34	8 ²	2 89
	1	" Super	35	11	5 88
	3	" Linen Craper		125	3 75
	3	" " "		137 ²	4 12
2	1	" Cambric	12	11	1 32
10	1	" "	16	15	2 40
11	1	" "	16	18	2 88
13	1	" "	16	25	4
5	1	" Hard Cambric	12	11	1 32

Recd. payment of the above in Notes
at 4, 6 & 9 mos. ready mortgage -
the goods to be ~~delivered~~ sent to Chi-
cago & delivered to Van Valin, upon
his giving an indorsement satisfactory
to

Signe Wm Dett & Mary
per M. C. C. C.

6	6	ps Cold Saffron	\$	1 80
4	4		50	2
3	2	BLK	392	75
6	1			75
9	1			112
12	1			150
2	7/4	Cold Table Covers	80	1 60
8	8/8		95	7 60
3	Yump		9 1/2	3 38
1	"		3	65 1 95
2	1	Qy Childs Montio Rose		1 37
3	1	"		1 60
343	1	" Merino Gloves		3 25
1	"	Childs		1 60
1	"	Little Shoe		2 25
1	"	Colored Spun		2
1	1	" BLK		2 25
72	"	Ph Station Cravats	5.50	2 75
74	64	Ball Surt	9	2 25
2	"	Swing Silk	5.50	11
1	ps	Station Silk	20.115	23
5	"	Bro Shetty	200.7	15 00
2		Colored Wince Blaukts	60	1 20
50	Qy	BLK & Wtd Madding	272	5 50
		Buy 12 ps straps 2 ps		1 75
6	9	ps Shetty Bro Shetty	3802	82 32 30
5	"	India "	200	72 15 00
		Shapping 2. Ctp 2/6.		88
		Insurance Buffalo to Chicago		11 70
				1456 11
		Interest	8.42	
		Insurance	12.23	20 65
				1476 76
		Expenses drawing Mortgage		5
				1481 79

C
Chicago Oct 28, 1850
Messrs. Gage Bates & Mapes
Sirs,

I learn from
Mr J. Burch that I cannot take the goods bought
of you from the warehouse unless I obtain a good
and responsible name with my own notwithstanding
the security left with you by way of Mortgage
and Assignment of my Policy of Insurance.
Now Sirs the facts are these the person named
Henry Fuller had engaged in Business that called
him East and in his absence I am unable to get the
signature in the mortgage as was talked
the Mortgage is full and sufficient security for
the goods purchased of you & I understand that in the
event of not getting the name this the Mortgage
would be satisfactory, as it is a part of my goods
have arrived that is the most of them & I cannot
commence to realize until I can be put in posses-
sion of the Bill from you.

I therefore wish you to consider
your security good and place me in possession
through Mr J. Burch that I may begin to realize
and remit as fast as possible, for without I can
of course do nothing as my apartment will not
warrant to commence business, by giving Mr
Burch the necessary instructions that I may be
enabled to get them in the least possible time
you will greatly oblige your friend and obdt
Servt.

N. E. Van Valin.

X I enclosed the Policy of Insurance to you
by mail the which I suppose you have now
received.
N. E. V.

I have engaged the service of a com-
petent man who has been in the trade for

Exhibit C.

the last 13 years to assist me in the disposal
of my stock. I have also my store in readiness
only waiting your instructions for the delivery of
J. S. S. goods.

1st Cross Interrogatory.

If in answer to plaintiff's 1st Interrogatory you
state that any representations were made re
state also who was present at that time, whe-
ther Van Valin's brother was present and whether
any one, and who requested you to witness such
representations and whether any goods were sold
to said Henry E. Van Valin at the time of such
representations.

Answer to 1st Cross Interrogatory

James Van Valin was present
part of the time said James Van Valin is reputed
to be the cousin of Van Valin, the purchaser of the
goods. He requested me to be witness of such
representation we sold the goods to him at the time
he made his representations.

2nd Cross Interrogatory

If you state in answer to the Plaintiff's 2nd Inter-
rogatory that any goods were at any time sold by
plaintiff to Van Valin please state whether the
arrangement that was then made was set in
writing and attached to the inventory of goods
and signed by you as subscribing witness.
And state also how goods sold by New York
Merchants are usually delivered to Western Mer-
chants, whether by delivering them with the in-
voice to the cartman, or forwarders, and
marking to the person purchasing or otherwise
and how?

Answer to the second cross Interrogatory.

A part of the agreement was written

upon the invoice that part of the agreement which had reference to endorsements to be satisfactory to S. W. Burch was embodied in the receipt subjoined to the invoice. Mr. Burch's name was not inserted. It was left blank through omission. I wrote the receipt embodying that part of the agreement as aforesaid. Goods are usually delivered by giving an invoice of the goods to the Customer and shipping them by some forwarding line if no more specific arrangement is made.

3rd Cross Interrogatory

State whether at the time of the delivery and shipment of the goods to Van Valin the Plaintiffs took any security by Mortgage or otherwise on property in Wisconsin and whether Plaintiffs did not insert in the Bill of goods a charge for recording the Mortgage. And whether they still hold the mortgage.

Answer to 3rd Cross Interrogatory.

They did they took a Mortgage on his property in Rochester, Racine County Wisconsin. They might through me as Bookkeeper have made a charge in Bill of goods for recording mortgage but if it was so it was wrong the charge was for attorney and Conual fees for drawing the mortgage whether they now hold the Mortgage I do not know.

4th Cross Interrogatory

If you state that any arrangement was made by Van Valin to give an indorser state when such arrangement was made, who were present and whether it was not understood by Van Valin that in case he gave an indorser at Chicago that the property mortgaged was to be released or whether there was any understanding upon that subject.

was paid to Van Valin at that time, and
who was present, and whether you were present
at all the conversations between plaintiffs and
Van Valin on the subject of the purchase.

And whether the defendant Jennings was pre-
sent at any of the conversations.

Answer to the 6th Cross Interrogatory

A W^r Fuller of Chicago & thereabouts was named
by Van Valin to be the endorser and he said
that he was a responsible man. W^r Page said
that he would take him if he was approved by
S. N. Burch of Chicago. No writing nor any voucher
is instant to show that W^r Fuller was the man
W^r Fuller was so suggested by Van Valin at
the time he purchased the goods. The only
consideration for his agreement as to the en-
dorsements was the sale of the goods themselves.
James Van Valin was present part of the time
I think I was present at every conversation touch-
ing the agreement for the delivery of the goods
between plaintiffs and Van Valin. W^r Jennings
was not present at any of the conversations.

7th Cross Interrogatory

State how the goods shipped to Van Valin
were sent from the Store if any were shipped and
to whose care at Chicago and send the bill
of lading or a copy thereof if you have it.

Answer to 7th Cross Interrogatory

I did not ship the goods and I do not know
how they were sent nor to whose care. I have not
in my possession or control the Bill of lading.

8th Cross Interrogatory. How many different con-
versations did Van Valin have with plaintiffs
about the goods and were you present at the whole
or every conversation and did you hear the whole
or each. And did you see Van Valin talking

with them at any time when you could not hear.

Answer to the 8th Interrogatory

I do not know how many conversations they had. I never saw them talking together except in the counting rooms, when I was present and overheard all that was said.

9th Corp Interrogatory.

If you state that you know Van Valin hand writing and have seen him write, state whether you have compared Exhibit A' with the Original, and whether plaintiff ever received the policy of Insurance and Mortgage therein referred to, and also where property included therein is situated, what is its reputed value and what incumbrances Van Valin represents were on it if any at the time he gave it whether it was not represented as a farm and Saverus stand in Rochester Racine County Wisconsin and said to have been worth some \$25000.

Answer to 9th Corp Interrogatory. I have compared Exhibit A' with the original. the plaintiff did receive the policy of Insurance and mortgage upon the property situated in Rochester Racine County Wisconsin. I do not know its value. He represented it was incumbered to the amount of \$500. He did not represent it as a farm and Saverus stand but said it was a lot and Saverus stand. I don't know what he said it was worth.

J. C. M. Carthy

And Annexed to the foregoing interrogatories and Corp interrogatories was the following certificate which is as follows, to wit:

W^o Charles McKinstry and John Henry Hedley,
of the City of New York aforesaid Commissioners duly
appointed to take the depositions of the said Philip
S. McCarthy a witness whose name is subscribed
to the foregoing deposition do hereby certify that
previous to the commencement of the examination
of the said Philip S. McCarthy as a Witness in the
said suit between the said Schabod L. Gage,
Hiram E. Sales and Marcellus Mapey plaintiffs
and the said John S. Jennings defendant, he was
duly sworn by me the said Charles McKinstry one
of said Commissioners to testify the truth in relation
to the matter in Controversy between the said
Schabod L. Gage Hiram E. Sales and Marcellus
Mapey plaintiffs, and the said John S. Jen-
nings defendant, so far as he should be inter-
rogated concerning the same. That the said
deposition was taken at the office of the said Charles
McKinstry at No 41 New Street in the said City of
New York on the sixth day of May AD 1851, and that
after said deposition was taken by us as aforesaid
it was on the seventh day of May AD 1851, the
interrogatories and cross interrogatories and
answers thereto, as written down, were read over
to the said Witness and that thereupon the
same was signed and sworn to by the said
deponent Philip S. McCarthy, before us,
the oaths being administered by the said
Charles McKinstry one of said Commissioners
as such Commissioners at the place and on the
day and year last aforesaid.

Ch^s McKinstry.
John Henry Hedley.
Commissioners

J. M. C. C. C.

W. A. Rogers as a witness, who being duly sworn said that he knew the defendant and also James Evan Valin in his lifetime that he was employed as a clerk by Van Valin, opened the goods in question, had a conversation with Jennings, before Jennings bought the goods of Van Valin, The invoice now shown me is the invoice of said goods & the memorandum at the bottom, & I told Jennings that this invoice showed that Van Valin was not to have the goods until he furnished other security, That J. H. Burch had refused to let Van Valin have the goods until he furnished the security, That Van Valin had got the goods by telling Peck & Co. by whom said goods were received, that these goods were not the goods on which he was to give such further security, that such goods were yet behind, That Jennings replied he knew all about it, That he knew all about it, That he had no sympathy with the New Yorkers, that he had been through the mill, and as Van Valin had got possession of the goods he could hold them.

Cross Examined

Jennings first introduced the conversation, Witness went to see Jennings about an offer of Jennings to furnish witness with a store of goods, to take to Peru, Can't say how the Van Valin matter was introduced or what was the first words first spoken about this matter, Cannot tell the day Jennings went out to Aurora where the goods had been taken I think this conversation took place before Jennings went to Aurora for the goods, It is possible it may have been after, but I think it was before I tried to buy the goods of Van Valin, I examined the goods at Aurora they were worth \$70, \$75 to \$80, - I saw the boxes in the ware house, they had not been opened But when I opened them at Aurora they had been opened before, who took the goods I do not know, The goods were charged

20 per cent higher than the price of goods in New York, the goods were in VanValin's possession about one week before Jennings bought them.

Re Examined

I have been acquainted with price of goods for some years. I was not in New York last year to price goods, but I know the price of goods, from the Examination of ^{the} bills and goods purchased by other persons.

J. A. Purch, sworn for Plaintiff, says, last fall I rec'd instructions from plff, that they had shipped goods to Chicago which I was to deliver to VanValin on his giving security on his notes to them, satisfactory to me. That I directed J. C. Co not to deliver the goods without my directions. VanValin came to me to get liberty to take the goods, I told him he could not have them until he gave a signer upon the notes which should be satisfactory to me. He never gave the security, nor did I ever give him any authority to take the goods.

Cross Examined

I rec'd from plff my authority at first by telegraph to act in the matter & my instructions. I was directed not to let the goods go until the security was given, afterwards had letters from plff with such instructions, when VanValin applied to me for the goods he insisted the agreement with plff was, that he might change the security from the Wisconsin property by giving personal security, but if he chose he was to have the goods on the Mortgage security alone and that he was entitled to the goods. I told him he could not have the goods without the security, I employed Mr Goodrich, was instructed by Plff to Employ Counsel if I deemed it necessary. I directed him to go and make demand of the goods.

Grant Goodrich, sworn says, that last fall he went as the agent & atty, of Plff to depts store & asked him

if he had bought some goods of VanValin, Dyf said he had. I told him he had no right to sell them, they had never been delivered to VanValin. He shewed me the original invoice which has been referred to as evidence in this case, on which the memorandum appears. I told him it shewed VanValin was to give further security, before he was to have the goods. I demanded the goods as the goods of the plff. He said he had bought them & should hold them. The same night or next morning Mr Sloan agent for the plff. came on from N.Y. & I went with Mr. Sloan to dyf's store and again demanded the goods. He told me to go ahead that every dollar I got would cost me \$1000.

Evidence for the defence
J N Tiffany sworn. I was Clerk of J A Peck & Co, warehousemen in Chicago in the fall of 1850. A quantity of goods came to their warehouse in fall of 1850 from N.Y. Some directed to Henry E VanValin, Aurora, & some I think directed to Henry E VanValin Care of C. D. Wolf & some Care of Mark Skinner. The goods sent by plff. were marked "Henry E VanValin Aurora" VanValin came and paid the charges upon them & took them away, and which was all the evidence in said Cause.

That after the argument of the cause the plff. atty asked for the following instructions which were given by the Court, (to wit),

~~about their suit in this behalf expended and
have execution therefor.~~

~~On the trial of this cause
before the Jury ~~retired~~ the plaintiff asked the
Court to give the Jury the following instructions.
1st~~

2nd If the Jury shall believe from the evidence that
the goods were never delivered to Van Valin by
the Plaintiffs or anyone authorized by them to deliver
them, then he had no authority to sell them
and a sale to Jennings vests no title in him.

3rd If the Jury shall believe from the evidence that
the goods were not to be delivered to Van Valin until
further security was given by Van Valin, then Van
Valin has no title and Jennings derived no title
by purchase from Van Valin, whether he had
notice of the facts or not.

4th If the Jury shall believe from the evidence that the
goods were sent to Chicago by the Plaintiffs to
be delivered to Van Valin only upon his giving
security satisfactory to S.H. Busch, and he did
not give such security and got the possession
of them without the agent of Busch or the
Plaintiffs and sold them to Jennings, Jennings
derived no title to said goods, and the law
in that respect is for the plaintiffs.

5th If the Jury believe from the evidence that Van Valin
under the contract with the plaintiffs, was not
entitled to the possession of the goods until
he gave additional security, and Jennings
had any knowledge from the invoice or other
thing, sufficient to put him upon inquiry as to

~~about their suit in the behalf expended and
have executed thereof.~~

~~On the trial of this cause
before the Jury, the plaintiff asked the
Court to give the Jury the following instructions,
to wit:~~

Given
1st
If the Jury shall believe from the evidence that
the goods were never delivered to Van Valin by
the Plaintiffs or anyone authorized by them to deliver
them, then he had no authority to sell them
and a sale to Jennings vested no title in him.

Given
2nd
If the Jury shall believe from the evidence that
the goods were not to be delivered to Van Valin until
further security was given by Van Valin, then Van
Valin had no title and Jennings derived no title
by purchase from Van Valin, whether he had
notice of the facts or not.

Given
3rd
If the Jury shall believe from the evidence that the
goods were sent to Chicago by the Plaintiffs to
be delivered to Van Valin only upon his giving
security satisfactory to A. H. Bunch, and he did
not give such security and got the possession
of them without the assent of Bunch or the
Plaintiffs and sold them to Jennings, Jennings
derived no title to said goods, and the law
in that respect is for the plaintiffs.

Given
4th
If the Jury believe from the evidence that Van Valin
under the contract with the plaintiffs, was not
entitled to the possession of the goods until
he gave additional security, and Jennings
had any knowledge from the invoice or other
thing sufficient to put him upon inquiry as to

the fact that further security was to be given
than the law is for the plaintiffs and they
are entitled to recover the value of the goods
at the time of the demand made upon Jennings
and interest from the time of demand of
Jennings and refusal to deliver.
5th

Given
The memorandum on the Survoir is evidence
from which the Jury may infer notice to
Jennings that further security was to be given
by Van Valin before he was entitled to the pos-
session of the goods and the right to sell them.
To the giving of Each of which instructions the defendant then & there at the time of the giving of the same excepted.

And also on the trial of this cause be-
fore the Jury retired the defendant asked the Court
to give the Jury the following instructions. 1st.

1. If the Jury believe that Plaintiff in this case
contracted to sell the bill of goods sued for in this
case to Henry Van Valin Defendants Vendor
and received the notes of Van Valin as part
secured by a Mortgage on property in Wisconsin
and the balance to be secured by a good endorser
or that an endorser in addition to the security
given by mortgage was to be given for the whole
amount of the goods still if the Mortgage was
given by Van Valin before the Plaintiff would
be entitled to recover of the defendant, the
Plaintiff must show that he has redeemed the
Mortgage or cancelled the same or offered
to cancel the same and if he has not done so
either the Law is with the Defendant,
2nd

If the Jury believe from the evidence that the goods
were contracted to Van Valin by Plaintiff and
that Plaintiff was to receive in part security there-
for a mortgage on property in Wisconsin and that

Defendant excepted.

Defendant excepted to

deposited and deposited to

in pursuance of the contract such mortgage
was executed and delivered, then the plaintiffs
could not rescind the contract, without cancelling
or surrendering such Mortgage or offering to do so
3rd

If the Jury believe from the evidence the goods
were contracted to Van Valin by Plaintiffs and
that plaintiffs was to receive in part security
therefor, a Mortgage from Van Valin to plaintiffs
on property in Wisconsin and that said Mortgage
was executed and delivered and that Plaintiffs
still hold said Mortgage and have never
cancelled nor surrendered it, & Van Valin nor
offered - to do, then Plaintiffs cannot rescind
the contract and the law is for defendant.
4th

Given -

If the Jury believe from the evidence that Jennings
purchased the goods in good faith of Van Valin
and that at the time of such purchase Van
Valin had actual possession of such goods and
that they were marked in two parts by Plaintiffs
with Van Valin's name, and transmitted to him
at Chicago, and there actually delivered to him
by the Plaintiffs agent and consignee, there as
against Jennings, the plaintiff cannot recover
5

Given to the Court

If however the agreement between the plaintiffs
and Van Valin was that the goods were only to
be delivered to Van Valin, upon the condition
of his giving security for the price, then, if the
possession was obtained by Van Valin without
giving the security agreed upon and in violation
of the agreement, then he derived no title to the
goods which he could sell to Jennings, even
if Jennings was a purchaser in good faith
and for a valuable consideration

5
If the Jury believe from the evidence that the
Plaintiffs contracted the goods to Van Valin
in New York and that that they were trans-
mitted to Van Valin at Chicago by Plaintiffs
marked in his own name to the care of
Peck & Co and that they were then delivered
to Van Valin who took them into his actual
possession and retained them for several
days if they further believe that Summings
purchased them in good faith, then the
law is for the defendant -
(see the addition marked 4 to instruction 10th)
6th

Given
If the Jury believe from the evidence that the
Plaintiffs contracted the goods in question to
Van Valin in New York City and that the
Plaintiffs marked the boxes containing them
to Van Valin at Chicago & if the Consignee on
their arrival here delivered the goods to Van
Valin and allowed him to take them to Aurora
and if the Jury further believe that Summings
purchased them in good faith, for a valuable
consideration then as between Plaintiffs and
Summings the law is for the Defendant. (see the
addition marked 4 to instruction 10th)

And that the Court refused to give the 1st 2^d & 3^d instructions &
altered and modified the 4th 5th & 6th instructions
without the consent of the defendant by adding the following words
to each (omit) If however the agreement between the plain-
tiffs & Van Valin was that the goods were only to be
delivered to Van Valin upon the condition of his giving
security for the price then if the possession was obtained by
Van Valin without giving the security agreed upon & in violation
of the agreement then he derived no title to the goods

which he could sell to Jennings crew if Jennings was a purchaser in good faith for a valuable consideration. to the refusal of the Court to give the said first 2^d & third instructions and to the modifications and giving of the 4th 5th & 6th instructions as modified the said defendant then and there excepted and prays that this his bill of Exceptions may be entered of record and it is done
John O. Jennings

ad. } Cook Circuit Court May 7. 1831.
Gage Hutton & Maser, } Verdict for plffs for \$.

And now comes the said defendant by Newell and Arnold his attorneys and moves for a new trial herein & specifies the following grounds of motion

- 1st The verdict of the Jury is against the law
- 2^d The verdict of the Jury is against the evidence
- 3^d The Court erred in giving each of the instructions asked for by the plaintiffs viz Nos 1, 2, 3, 4 & 5,
- 4th The Court erred in refusing each of the following instructions asked for by defendant
- 1st If the Jury believe that plaintiffs in this case contracted to sell the goods sued for to Henry VanValin, defendants vendor, & received the notes of VanValin in part secured by Mortgage on property in Wisconsin and the balance to be secured by a good endorser, or that an endorser in addition to the security given by mortgage was to be given for the whole amount of the goods, still if the Mortgage was given by VanValin, before plaintiffs would be entitled to receive of the defendant they must shew that they have restored the Mortgage or cancelled the same or offered to cancel the same & if they have not done either the law is with the defendant
- 2^d If the Jury believe from the evidence that the goods were contracted to VanValin by plaintiffs & that plaintiffs were to receive in part security, therefore a Mortgage on property in Wisconsin & that in pursuance of the Contract such Mortgage was executed & delivered, then the plaintiffs could not rescind the Contract without cancelling or surrendering such Mortgage or offering to do so.

3^d If the Jury believe from the evidence that the goods ~~sent for~~ were
Contracted to Van Valin by plaintiff, & that plaintiff were to receive in
part security therefor a Mortgage from Van Valin to plaintiff
on property in Wisconsin & that such Mortgage was Executed &
delivered, & that plaintiff still hold said Mortgage & have never
Cancelled nor ~~rescinded~~ ^{surrendered} it, to Van Valin nor offered to do so,
then plaintiff cannot rescind the Contract and the law is
for the defendant,

Fifth The Court erred in not giving or refusing all and each of the other
instructions asked for by defendant viz Nos 14, 5 & 6,

Sixth The Court erred in orally modifying the instructions of some
of those asked for by defendant by telling the Jury that they
must consider the same modification as attached to the 5th
& 6th instructions of defendant which the Court had appended
to the 4th instruction asked for by defendant

And After the argument the Court overruled the said motion
and the defendant moved there and there excepted
to the same and asked the Court to sign usual this
Bill of Exceptions which is done

Wm J Dickey CJB
Judge R

~~And afterwards to wit~~ on the twenty fourth day of May AD 1851, it being one of the days of the May Term of said Circuit Court the following among other proceedings were had to wit:

Schabod L. Gage Norain
vs. Walter & Marcellus Mayes

John A. Cummings

} Grover

This day came the parties by their Attorneys and issue being joined. It is ordered that a Jury come, whereupon come the Jurors of a Jury of good and lawful men to wit
Wm. Higgins Zenas Cobb Jr L. P. Warner
Josh Smith N. B. Lugo S. S. Conillo
John McCowan Thomas Cory Alex. Crawford
J. H. Pindry Josh Kelso Michl. Doyle
who being duly elected tried and sworn well and truly to try the issue joined according to law and the evidence, after hearing the testimony and part of the evidence adduced the further hearing of this cause is suspended until Monday Morning and until which time it is agreed that the Jury may separate.

And afterwards to wit on the twenty sixth day of May in the year last aforesaid it being one of the days of said May Term the following among other proceedings were had.

Schabod L. Gage Norain
vs. Walter & Marcellus
Mayes.

John A. Cummings

} Grover.

This day again came the said parties by their Attorneys and the Jurors aforesaid also come into Court and say one of the Jury find

the issues for the said plaintiffs, and after their damages at the sum of thirteen hundred and thirty nine dollars and seventy four cents, Whereupon the said defendant moves the Court for a new trial and the Court having heard the arguments of Counsel thereon takes the same under advisement.

And afterwards to wit on the sixth day of December in the year last aforesaid it being one of the days of the December Term of said Court the following among other proceedings were had to wit.

This day again came the parties by their attorneys, and the Court having heard the arguments of Counsel on the said defendant's motion for a new trial heretofore entered in this Cause and not being fully advised thereon takes the matter under advisement.

And afterwards to wit on the fifteenth day of December in the year last aforesaid it being also one of the days of said Term, the following among other proceedings were had to wit.

Schaub, L. Gay Nimin
vs. Bates & Manellus Mayes

John V. Jennings

} Proven

This day came the parties by their attorneys and the Court being now fully advised as to the motion for a new trial herein orders that the same be overruled.

Therefore it is considered that the said plaintiffs do have and recover of the said defendant their damages of thirteen hundred and thirty nine dollars and seventy four cents in form aforesaid by the jury aforesaid assessed together with their costs and charges by them about this matter this behalf expended & have Execution therefor.

State of Illinois
County of Cook Sec.

I Louis D Hoard Clerk of the Circuit
Court of the County of Cook in the State of Illinois
do hereby Certify that I have compared the afore
going with the original records and files in the
above entitled cause now remaining in my office
and that the same is a full true and perfect
transcript of the said Records and files.



In testimony whereof I have
hereunto set my hand and
affixed the seal of said Court
at Chicago in said County
this 24th day of February
A.D. 1852.

L. D. Hoard
Clerk

Fees for this transcript 130. folio 15.00
Certificate & Seal 35 \$15.35

Supreme Court

John A. Jennings, Plaintiff in Error,
vs.
Isaac L. Lacy
Hiram W. Slater &
Marcellus Mapey } Defendants in Error }

And the said Plaintiff in Error
by Arnold & Detrol, his Counsel, comes and says
that in the record and proceedings in said cause
there is manifest error, in this, to wit;

1. The judgement is for the Plaintiff below, whereas it
should have been for the Defendant.
2. The Court erred in refusing to grant a new trial.
3. The Court erred in giving each and every of the
instructions asked for by the Plaintiff below.
4. The Court erred in refusing the first, second, third,
fourth, fifth, and sixth instructions asked for by
the Defendant below.
5. The Court erred in modifying and giving as
modified the fourth, fifth and sixth instructions
asked for by the Defendant below. They should have
been given without modification.
6. The Court received improper evidence, and rejected
legal testimony in said cause.

For these and other errors the Plaintiff
in error prays that said judgement and proceedings
may be reversed and set aside, &c.

Arnold & Detrol
Attorneys for Plaintiff in Error

Let a Supremas issue in the above
 Cause upon the Plaintiff in error
 entering into bond as the law directs
 in the penal sum of three thousand dollars
 with H. Newhall & A. Hayward as sureties
 Dated March 17th AD 1852

J. D. Caton
 And the said defendants by Wm. Woodruff
 their attorneys come & say that there are no such errors
 in said Record, nor are there any errors
 in the Cause & pray that said judgment
 may be affirmed
 In witness
 Wm. Woodruff
 Deft's attys

Good
 Supreme Court
 John D. Fenning
 1852
 46
 Charles Gipe & this
 Deft's attys

Manuscript &
 assignment of
 error -
 1852

Filed March 17. 1852,
 L. Leland Clk.

11953

State of Illinois, set.

WRIT OF ERROR—FREE TRADER PRINT.

The People of the State of Illinois,
To the Clerk of the Circuit Court for the County of *Cook* — GREETING :

BECAUSE in the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of *Cook* — county, before the Judge thereof, between *Ichabod L. Gage, Miriam R. Dater & Marcellus Dapay*

plaintiffs and *John D. Jennings* —

defendant it is said manifest error hath intervened, to the injury of the aforesaid *Jennings*

as we are informed by *his* complaint, and we being willing that error, if any there be, should be corrected in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our justices aforesaid at Ottawa, in the county of La Salle, on the *2^d Monday in June* — next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

WITNESS, the Hon. SAMUEL H. TREAT, Chief Justice of our said Court, and the seal thereof, at Ottawa, this *17th* — day of *March* — in the year of our Lord one thousand eight hundred and fifty *two*. —

L. Seland Clerk of the Supreme Court.

Cook
John D. Jennings
as
Deborah L. Cagell
Mit of Enor

June Term 1852

Filed March 17, 1852.
L. Leland Clerk.

11953

20

18

State of Illinois, }
 Supreme Court, } SS.

The People of the State of Illinois

TO THE SHERIFF OF Cook County.

Because in the record and proceedings, and also in the rendition of the judgment, of a plea which was in the circuit court of Cook county, before the Judge thereof, between Lehabod L. Gage, Hiram R. Dater & Charcellus Chapsey, plaintiffs & John D. Jennings

defendant it is said that manifest error hath intervened to the injury of the said Jennings

as we are informed by his complaint, the record and proceedings of which said judgment, we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the justices thereof, to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county, you give notice to the said Lehabod L. Gage, Hiram R. Dater & Charcellus Chapsey

that they be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the Second Monday in June next, to hear the records and proceedings aforesaid, and the errors assigned, if they shall think fit; and further to do and receive what the said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said Gage, Dater & Chapsey notice, together with this writ.

WITNESS, the Hon. Samuel D. Treat
 Chief Justice of our said Court, and the seal thereof,
 at Ottawa, this 17th day of March
 in the year of our Lord, one thousand eight hundred
 and seventy two. —

L. Iceland Clerk of the Supreme Court.

1771 Cook

John D. Jennings
vs
Serafod L. Gage et als.
Sci. fa. to Cash Co.

The within named Gage
Dater & Massey being non
residents of this State I
have Executed this writ by
Reading to Grant Goodrich
& B. J. Morris as Attorneys
of Record for the said Plaintiff
this 26th day of March 1852.

Thus 2 Services 1.00
2 Miles 10
1 Return 10

\$1.20

Wm S Church Sheriff
of Cook County

Filed April 28th 1852

L. Leland Clerk
By J. N. Leland Deputy

Know all men by these presents that we John D Jennings and H Verhall
and A J Hayward of the County of Cook and State of Illinois
are held and firmly bound unto School L Pope Miron R Doten & Marcellus Massey
of the State of New York in the penal sum of Nine thousand Dollars lawful
money of the United States for the payment of which full and truly to be
made we bind ourselves our heirs executors and administrators jointly
severally and firmly by these presents. Witness our hands and seals this
21st day of January AD 1852

The condition of the above obligation is such
that whereas the said School L Pope Miron R Doten & Marcellus Mas-
sey did on the fifteenth day of December AD 1851 before the Judge
of the Circuit Court of Cook County in and for the said county of
Cook recover a Judgment against the above bounden John D Jennings
in a certain action of Trover wherein School L Pope Miron R
Doten & Marcellus Massey were Plaintiffs and John D Jennings
Defendant for the sum of Thirteen hundred & thirty nine Dollars
and seventy four cents. Judgment for damages and twenty eight
dollars and seventy five cents costs from which said
Judgments of the said Judge of the said Circuit Court the said John
D Jennings ^{and sent a writ of error from} ~~has taken an appeal to the Supreme Court of the State~~
^{which writ of error has been removed to the Supreme Court of the State}
~~of Illinois. Two of the said John D Jennings shall prosecute~~
^{said writ of error}
his appeal with effect and shall pay whatever Judgments
may be rendered against him and all costs interest & dam-
ages by the Supreme Court ^{in said writ of error} ~~and said writ of error~~
to be said otherwise to remain in full force & virtue

Approved by me at my office
this 21st day of January AD 1852.

J. D. Jennings {Seal}
H. Verhall {Seal}
Andrew J. Hayward {Seal}

* Hayward as his secretary

State of Illinois }
 Cook County ss } Ed Wray of said County being
 duly sworn says that he is acquainted
 with the circumstances and pecuniary
 ability of H Newhall & A D Hayward
 of Chicago and verily believes that they
 are worth at least the sum of three
 thousand dollars above all their liabilities
 & that John D Jennings is worth at
 least that sum. & that he is acquainted
 with their signatures to the within Bond
 and believes them genuine
 Ed Wray

Sworn to & subscribed before
 me this 4th day of March A.D.
 1852

L D Hoard
 Clerk Cook Co. Court

Cook
 Jennings & Hayward
 Bond
 107

Filed Feb. 17. 1852
 Ireland & Co.

1852