

No. 14411

# Supreme Court of Illinois

Eastman

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vs.

Brown

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STATE OF ILLINOIS,  
SUPREME COURT,  
Third Grand Division

No. 238

Castman

vs

Brown

"Chicago Post Company," Printers, 82 Dearborn Street.

# IN THE SUPREME COURT

OF THE STATE OF ILLINOIS.

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1863.

GALEN EASTMAN,  
*Appellant,*

vs.

THOMAS BROWN,  
*Appellee.*

*Appeal from the Superior Court  
of Chicago.*

Page of  
Record.

## ABSTRACT OF RECORD

- 2 Declaration in assumpsit, special count on a promissory note made by Eastman to Brown, for \$750 00, dated November 3, 1860, and due 1st July, 1861.
- 3 Common counts.
- 6 and 7 Pleas 1st general issue—2d to 1st count: Note procured by fraud of plaintiff. 3d to 1st count: No consideration for the giving of the note. 4th to whole declaration: Fraud in the making of the promises counted upon.
- 8 Replications. Denial of fraud and of want of consideration.

Cause submitted to court and trial by Judge Van H. Higgins without a jury. Issues found for plaintiff and damages assessed at \$805. Motion by defendant for a new trial overruled, and defendant excepts then and there. Appeal prayed and granted. Bond and bill of exceptions filed.

### BILL OF EXCEPTIONS.

On the trial plaintiff offered in evidence a note, as follows: "Chicago, Nov. 3d, 1860. [\$750.] On or before the first day of July next, I promise to pay to Thomas Brown seven hundred and fifty dollars value received.

GALEN EASTMAN."

Defendant then introduced the following testimony:

Deposition of *Mathias Fetzl*, who testified as follows: In 1860 was owner of one-half of the propeller *J. Barber*. Met defendant Eastman for first time at his office in Chicago, about 1st Oct., 1860. He said he would like to buy one-half of said propeller. I asked him what he would pay for it. He said he was not willing to pay any fancy prices. I told him I would take \$500 in cash and he pay my share of the purchase money due on the boat, and interest. Eastman then said he must see Capt. Brown and see if he was willing. Nothing more said at that time. Some time after that, when Capt. Brown was at St. Joseph, Mich., where I lived. He asked me if I wanted to sell my interest in the boat; said Eastman had been to see him about buying it. I replied that I wanted to sell out; wanted to get out of it. I do not remember whether it was at that time or afterwards that I said to him: "Captain, you had better buy my half of the boat." He said he could not do it. I told him what offer I had made to Mr. Eastman, which is as above stated. He asked me if I would give him all he could make over the \$500. I replied "yes;" I don't care how much you make, if it is \$10,000; all I want is the \$500, and be released from any liability for the purchase money. Capt. Brown then returned to Chicago with the boat. This was before Oct. 19th, 1860; might have been 10 days or less. I authorized Capt. Brown to make sale of my half for me to Eastman, on the terms mentioned in said conversation. I did not direct him to demand as a condition of the sale to Eastman any more for me than the \$500 and my release from liability for purchase money. Capt. Brown, on the 29th Oct., subse-

quent brought me a package of \$500 in currency, together with a letter from Eastman. The money was from Eastman. Capt. Brown said there is the money Eastman sent you. I deposited money in bank, because the trade was not closed up, and I did not know that it would be. I then made out the statement hereto annexed, marked Exhibit "A" and gave it to Capt. Brown. It was put in an envelope and Mr. Eastman's name written on the back of it. I think the document was read over to Capt. Brown in my office. He then went to Chicago with the boat and took the document with him. I think the next trip after that I went with him. He had bought a new sail, which cost about \$100. I told him that I would not pay anything on that; that parties who bought the boat must pay that; the sail was then in use. Don't know whether it was paid for or not. (Defendant's counsel objects to statements regarding sail as irrelevant and immaterial.) When we got to Chicago Eastman had taken up the \$500 note mentioned in

18 "Exhibit A." We met Mr. Merrill (Eastman's agent) at Slater's office, where we closed up a bargain. My propositions for sale were written, and and I supposed Eastman had them. I refer to "Exhibit A." I had read the copy of that to Mr. Slater before there was a controversy arose as to the amount I was getting between me, and Merrill or Eastman. Brown was not there I think. They said I was getting \$750 more than I proposed to take. I said I was not. There was considerable conversation about the matter at the time, and I did not understand what they meant by it. After talking it over they said Brown must be making the \$750 instead of me, to which I either said yes or made no reply. The bond of indemnity required by me was then drawn and the trade closed. The same evening the papers were signed and delivered at Eastman's office. There was the transfer of my interest in the boat to Eastman, the bond of indemnity signed by Brown and Eastman to me to indemnify me against loss on the \$3,000 note, secured by mortgage on the propeller, and on a dock belonging to me, also a chattel mortgage on the boat, signed by Brown and Eastman for the same purpose. Brown was present at the signing, but I think not at the delivery of the papers. The papers, including "Exhibit A," (which was open) were delivered to me at Eastman's office, by Eastman or Merrill, on the same evening. Brown was present very little at Slater's office, or during

the day, as he was busy unloading the boat. I first saw the instrument marked "Exhibit B," last fall, when the \$3000 note matured. Mr. Merrill showed me this instrument, or something like it, in their office. That was the first time I ever saw it, or heard of it.

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### CROSS EXAMINATION.

The same evening about the time we were closing the trade, I think while we were signing the papers, Eastman said to Brown something like this: "Will it make any difference, as we are in a hurry, whether I make that note now or at some other time, or won't it do just as well to make that note some other time when you come in." He said it would make no difference. I suppose they referred to the \$750 note. This transaction was on the first day of November, A. D. 1860. I required Brown to sign the bond of indemnity, chattel mortgage and other papers, which I took for my security as above mentioned. Brown signed them as security for Eastman, in fact, I considered it so. I did not know Eastman's responsibility. (Defendant's counsel objects to statement as to the requiring Brown to sign papers as irrelevant and immaterial, and to statement as to securityship because irrelevant and immaterial, and because the document is the best evidence and statement.)

20 In the controversy at Slater's office, Eastman and Merrill understood, as appeared by their figuring, that they were to pay \$4500 for the purchase, and before we got through with the controversy they understood that \$750 of the amount I was not to have. The trade was closed with understanding. I assented to the mode of closing the trade at the time I closed the arrangement. I did not know Capt. Brown had made a written arrangement with them as per "Exhibit B," when I called upon Merrill last fall at the maturity of the \$3000 note, I complained to him that they had not insured the vessel and assigned the policy to me, as required by the bond of indemnity they had given me. Merrill then showed me "Exhibit B." He looked at "Exhibit B," to see what he was bound to do, as I understood it. I showed him the bond of indemnity. (Defendant's counsel

objects to last mentioned conversation as irrelevant and immaterial.) I would not have sold without cash down without Brown giving security. (Defendant's counsel objects to last statement of witness as irrelevant and immaterial.) Capt. Brown did not make any charge to me as captain or master for services for the year 1860, or against the vessel for said services. (Defendant's counsel objects to this statement as irrelevant and immaterial.)

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RE-EXAMINATION.

21 I never told Brown at any time that I would not sell my interest in said propeller for less than forty-five hundred dollars. (Objected to by plaintiff's counsel as incompetent.)

The proposition contained in "Exhibit A" was substantially the same as originally made by me to Eastman. At the time I handed "Exhibit A" to Brown it was intended for Eastman if he would carry out its provisions, and if he did not, then for any other person that would buy.

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RE-CROSS-EXAMINATION.

Brown was authorized to sell as before stated in our conversation at St. Joseph. Brown was authorized to sell as before stated in our conversation at St. Joseph. Brown was authorized to sell to any person, provided I was secured according to the provisions of "Exhibit A," though I considered Mr. Eastman, if he carried out the conditions, should have it.

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The Deposition of *Barzillia Merrill*, a witness for Defendant :

22 Question 1. What is your age, residence and occupation ?

Answer. My age is forty years ; residence Chicago ; I am agent for  
23 Galen Eastman, defendant, in the vessel and lumber business.

Question 2. How long were you in his employ ?

Answer. Since May, 1857.

Question 3. Are you acquainted with plaintiff, if yea, how long have you known him?

Answer. I am; since fall of 1860.

Question 4. State what, if anything, you know with reference to the purchase by the defendant from the plaintiff of an interest in the propeller J. Barber, and the negotiations between said parties in reference to said purchase.

Answer. About the first of Oct., 1860, Mr. Mathias Teetzel of St. Joseph, Michigan, called at Mr. Eastman's office, Mr. Eastman being there, and proposed to sell him the half interest in the propeller known as the J. Barber. Mr. Eastman. Mr. Teetzel asked Mr. Eastman what he would give for him. Mr. Eastman replied that he would not pay any fancy prices, but might purchase if she was cheap enough. Mr. Teetzel said he was sick of the propeller business, and would sell her, if Mr. Eastman would give him five hundred dollars cash, and pay his liabilities for the purchase money which he said was the half of a note for five hundred dollars, due about the first of December, 1860, and a note for three thousand dollars, and interest, due in the fall of 1861. Mr. Eastman said he would need to see Captain Brown in relation to changing the route, and also what arrangements he could make at Grand Haven for freights and connections with the river boats, when he would advise. Mr. Eastman went to Grand Haven and made his arrangements, and wrote me to close the trade, as stated above.

I saw Captain Brown, the plaintiff, and I spoke to him in relation to the trade. He said that Mr. Teetzel would sell his interest in the boat, his half interest for forty-five hundred dollars, and not a cent less. I wrote to Mr. Eastman stating the fact that Teetzel had changed the amount asked, as stated by Captain Brown. He replied, that he had made arrangements by which he was to lay up his river steamer and furnish a certain amount of freight to another boat on the river, and that it was necessary for him to have the Barber, even if it cost him a thousand dollars more, and directed me to close the trade. I saw Captain Brown (plaintiff) and drew up the

memorandum of agreement marked "Exhibit B," attached to the deposition of Mr. Teetzel (the witness heretofore examined in this cause) retaining one copy, and I think sending by Captain Brown, the plaintiff, another copy to Mr. Teetzel, also sending the five hundred dollars as the cash payment. Mr. Teetzel and Mr. Eastman both came here, or were here, on or about the first day of November. We went to Mr. Slater's office to close the trade and  
25 make the papers. Mr. Teetzel expected his note for three thousand dollars to have been taken up, but were unable to find the man who held it, and we went to Mr. Waughop's office to get a bond of indemnity drawn. Mr. Eastman made bond satisfactory to Mr. Teetzel and the trade was completed, and the papers delivered that evening. Mr. Eastman having paid the note for five hundred dollars, giving his bond and mortgage upon the boat and agreeing to keep her insured to secure Mr. Teetzel against the note for three thousand dollars, and also giving or agreeing to give his note for seven hundred and fifty dollars to Captain Brown, the plaintiff, by direction of Mr. Teetzel.

Question 5. At what time was the instrument referred in your answer to previous question, as "Exhibit B," executed?

Answer. October 23, 1860.

Question 6. By whom was the other half of the propeller J. Barber owned at the time referred?

Answer. By Captain Brown, the plaintiff; he was also at the time Captain of the propeller and running to St. Joseph.

Question 7. What, if anything, did Captain Brown say as to the authority by which he stated that Mr. Teetzel would not take less than forty-five hundred dollars for his interest in the propeller, at the time he so stated to you?

Answer. He said nothing but to make the bare statement, that was Mr.  
26 Teetzel's demand that he would not vary from, he said it in those words: Teetzel would take forty-five hundred dollars and not a cent less.

Question 8. Look at the paper marked "Exhibit A," attached to the deposition of Mathias Teetzel heretofore taken in this cause, and state whether you have seen the same before, if so, when first, and under what circumstances?

Answer. I have seen the paper, first saw it in the hands of Mr. Teetzel in the fall of 1861.

Question 9. When, and how did you first become apprized of its existence?

Answer. At the time stated above. In the fall of 1861 Mr. Teetzel came to Mr. Eastman's office. I was talking with him in relation to this transaction, and he took this paper from his pocket and showed it to me, saying that he sent it over at the date, October 29, 1860, by Captain Brown, the plaintiff. He thought he put it in an envelope and put Mr. Eastman's name on the note, leaving it unsealed, expecting Captain Brown to show it to Mr. Eastman or his agent, but that he purposely put it in form, so that Captain Brown could use it with any other party, if Mr. Eastman did not accept the proposition contained in it.

(Answer objected to so far as it contains conversations of Teetzel in plaintiff's absence.)

27 Question 10. Was this paper "Exhibit A" shown, or its contents stated to you or to Mr. Eastman by any person before the final execution of the papers for the purchase of the said propeller on or about the first of November, as above detailed, or was the said papers delivered to you or to Mr. Eastman?

Answer. The paper was never shown to me. Mr. Eastman not being here could not have seen it. I did not even know of its existence.

Question 11. State whether or not at the time of the execution of the said final papers for the purchase of said vessel, you or Mr. Eastman were informed that the note upon which this suit is brought was not required by Mr. Teetzel as a part of the purchase money of the said propeller, and that Teetzel was, or had been since the time of the interview between you and Captain Brown, above mentioned, willing to sell his interest in the said propeller for thirty-seven hundred and fifty dollars, as originally proposed by him?

(Question objected to by plaintiff's counsel.)

Answer. No sir.

## CROSS EXAMINATION BY MR. BURNHAM.

Question 1. Was one-half of the five hundred dollar note spoken of, which came due in December, 1860, paid by the plaintiff or charged to him by Eastman?

Answer. I think so.

28 Question 2. Was the three thousand dollar note, as between Brown and Teetzel, to be paid to Teetzel?

[Objected to by defendant, as calling for the contents of a written instrument.]

Answer. I don't know. It was a transaction a year before I knew either of the parties.

Question 3. Was it your understanding that the three thousand dollar note was to be paid by Teetzel?

[Objected to by defendant's counsel.]

Answer. I suppose it was.

[Objected to by defendant's counsel.]

Question 4. How many days had Mr. Eastman been here immediately prior to November, 1860?

Answer. I think he came in that morning. He resides in Michigan. I mean the day of the execution of the papers. He came over for that purpose. I wrote a telegram for him to come here.

Question 5. When was the note upon which this suit is brought made and delivered to the plaintiff?

Answer. Probably at its date. I did not make the note.

Question 6. Was you present when it was made and delivered?

Answer. I don't remember.

Question 7. In whose hand-writing is it?

Answer. Galen Eastman's, the defendant.

Question 8. Had the plaintiff acted as master of the propeller previous to defendant's purchase of the interest in 1860?

Answer. He had.

29 Question 9. Do you know, or was you informed, that a new sail was put upon the boat by Captain Brown just prior to the purchase by defendant?

(Objected to by defendant's counsel as irrelevant and immaterial.)

Answer. I was informed so by Captain Brown at some time; when first, I don't remember.

(Answer objected to by defendant's counsel.)

Question 10. Was any payment or allowance made by defendant to plaintiff on account of that sail, to your knowledge?

(Objected to by defendant's counsel as irrelevant.)

Answer. I think there was.

Question 11. What did the sail cost?

Answer. Don't know, sir.

Question 12. At the time you state that plaintiff told you that forty-five hundred dollars was the least that Teetzel would take for his interest in the propeller, when and where was it, and who, if any other persons, were present?

Answer. It was two to five days previous to October 23, 1860; it was outside of Mr. Eastman's office, as my memory is, and near the office; there were no other persons present; he had no other room in the office, and I stepped outside, as there were several in the office.

B. MERRILL.

Subscribed and sworn to this 29th day of  
October, 1862, before me.

JESSE B. THOMAS,  
*Notary Public.*

30 Plaintiff then introduced the deposition of *Samuel S. Slater*, who tes-  
31 tified as follows: In fore part of Nov., 1860—at my office in Chicago, heard

conversation between Mr. Merrill and Mr. Teetzel relative to securing Teetzel in regard to sale of the boat; Teetzel stated that he did not wish to or could not assume any liability with regard to the transaction; that he was only realizing \$500 by it. Merrill replied: yes, you are making \$1250 by it. Teetzel said: no, I am only making \$500, or something to that effect. Merrill then said: Capt. Brown is making \$750. I am not sure whether he said Capt. Brown or somebody else; Mr. Merrill then continued to show Teetzel when and how it was being made.

Question What were the facts in relation to the purchase of the propeller J. Barber, by Teetzel and Brown? I inquire with a view to show which of them, as between themselves, was to pay the \$1200.

Objected to by defendant's counsel as leading, and calling for the contents and construction of a written instrument.

32 Answer. Capt. Brown paid \$3000 at time of purchase. Exhibit No. 1 was executed by Sylvester Lind and myself; Exhibit No. 2 was executed by Thomas Brown and Teetzel. Here plaintiff's counsel produce and offer in evidence—Exhibits Nos. 1 and 2.

Question. How was the consideration paid or arranged with Lind and Slater by Brown and Teetzel, on their purchase of the J. Barber?

Objected to by defendant's counsel, because the contract between the parties mentioned, is shown to have been in writing.

Answer. By the payment of \$3000 by Brown at time of purchase—a note of \$500, payable during the fall of same year, and a note of \$3000, payable in the fall of 1861, secured by a mortgage on vessel, and a mortgage on real estate in Michigan, by Teetzel, individually.

33 Exhibit No. 3, here offered in evidence, admitted by defendant's counsel to be in the hand writing of B. Merrill, and to have been executed by the defendant; that the writing in ink indorsed thereon is the handwriting of defendant.

Shortly after Capt. Brown received Exhibits Nos. 3 and 4, he brought them down for safe keeping; I returned the note on the 11th June, 1861, and retained the bond some months longer; they were on one sheet until I tore off the note, Exhibit No. 5, here offered in evidence, the execution of which by defendant is admitted.

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#### CROSS EXAMINATION BY DEFT'S COUNSEL.

At the interview referred to by me between Merrill and Teetzel, I did not hear Teetzel offer to sell his interest in the propeller for less than \$4500,  
34 nor to relinquish \$750 from amount of purchase price.

Plaintiff then offered and read deposition of *Hiram P. Murphy*, who  
35 testified as follows: I had the note on which this suit was brought in my possession in 1861; got it in May or June; called on defendant for payment some weeks after it was due—from 4 to 6 weeks; he told me he could not pay it then; that he had a large payment to make on the propeller, and that he would pay that before he did this note; that he had some money due him, and when he got it he should be easier. He then handed the note back, and told me it was all right, and I think asked me how I came by the note. I told him.

36 No further testimony being introduced, the judge found the issues for the plaintiff, and assessed his damages at \$805, to which finding the defendant then and there excepted, and entered his motion to set aside the said finding, and for a new trial in said cause, but the court overruled the said motion, and rendered judgment on the said finding for the sum aforesaid—to which the defendant then and there excepted.

THE ERRORS ASSIGNED ARE

- 1st. The court erred in considering the testimony.
- 2d. The finding of the court was against law.
- 3d. The finding of the court was against the evidence.
- 4th. The court erred in not granting a new trial.
- 5th. The court erred in rendering judgment against the defendant.

WALKER & THOMAS,

*Counsel for Appellant.*

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Eastman

vs

Brown

Abstract

Filed Apr. 23-1863

G. Ireland

• Clerk

# IN THE SUPREME COURT

OF THE STATE OF ILLINOIS.

—•••—  
THIRD GRAND DIVISION—APRIL TERM, 1863.

GALEN EASTMAN,  
vs. *Appellant,*  
THOMAS BROWN,  
*Appellee.*

} APPEAL FROM THE SUPERIOR COURT  
OF CHICAGO.

—•—  
POINTS FOR APPELLANT. <sup>EE</sup>

No errors in law are saved by exception in this record; therefore the only question which the appellant can now be permitted to urge is that the verdict was against evidence—and the burthen which he assumes by that proposition has been fully and frequently determined by this Court.

He must show some strong probable grounds to believe that the merits of the case have not been fully and fairly tried, and that injustice has been done.

*Wheeler vs. Shields, 2 S., 350.*

The verdict must strike the mind at first blush as manifestly and palpably contrary to evidence.

*Dawson vs. Robins, 5, G, 72.*

Where a cause is submitted to the Court below for trial, without a jury, the decision of that Court upon the weight and effect of the evidence will not be reversed, unless it palpably appear that the character of the testimony was misconceived.

*Harmon et al. vs. Thornton, 2 S., 354.*

So far from the verdict being unwarranted by the evidence, it is the only result at which an impartial judgment could arrive upon the testimony.

We submit that the proofs all sustain the verdict, and that the appellant utterly fails to make out his case.

He relies upon two questions of defence :

1st. That he was induced to make the note by the fraud and misrepresentation of the appellee.

2d. Want of consideration.

## I.

To support the plea of fraud, the appellant must prove that Capt. Brown's statements were wilfully false, and that he was thereby deluded into giving the note; but the testimony distinctly negatives both branches of this proposition.

1st. Capt. Brown's statement that "Teetzel would take \$4,500, and not a cent less," was not false. Teetzel proves (abstract, p. 2) that he authorized Capt. Brown to sell on the terms mentioned, namely: \$500 cash for Teetzel, and a release from his liability for the purchase money, and as much

more, up to \$10,000, as Brown could get—representing the owner only, and being under no ~~penny~~<sup>fiduciary</sup> obligation to the purchaser, he was authorized to name his own price. He fixed it at \$4,500—not a cent less, and his principal subsequently ratified and consummated the sale at that price.

The usages of trade permit a vendor, and consequently his agent, to do his own trading, and to make his own statements as to value and price, provided that he make no misrepresentations as to quality or quantity.

*Burge on Suretyship, 223.*

2d. Eastman was not induced to give the note by any statements of Brown's.

Even if Brown's statement was false, (which we deny,) yet there is no legal fraud, unless the note was given under a delusion produced by the falsehood. But the proof demonstrates beyond question that before Eastman signed that note he had full and actual knowledge of all the facts.

Teetzel says, (p. 3 and 4), the matter was talked over and explained at Slater's office, in the morning; that Eastman and Merrill then understood that they were to pay \$4,500 for the purchase, of which Teetzel was not to have \$750; that the trade was closed up with that understanding, and that Teetzel assented to it; that on the evening of the same day, when they were closing the trade, the papers, including Exhibit A, which was open, were delivered to Teetzel at Eastman's office, by Eastman or Merrill, and that Eastman then asked Brown to wait on him for that \$750 note.

Merrill's testimony is equally explicit. He says, (p. 7), Teetzel and Eastman were both at Chicago about Nov. 1st; Teetzel expected his \$3,000 note to have been taken up, but it could not be found; "Eastman then made "Bond satisfactory to Teetzel," (that is with Brown as surety), "and the "trade was completed—and papers delivered that evening, Eastman having "paid the \$500 note, giving Bond and mortgage on the boat," (with Brown's

share as security), "and also giving or agreeing to give his note for \$750 to "Brown, by direction of Teetzel."

Before the trade was closed, Eastman had been fully informed by Exhibit A, (then in his possession), and also by conversation with Teetzel, that he could buy at \$3.750 for cash. But if the cash was not forthcoming, he must induce Brown not only to assent to the purchase, but also to guarantee the purchase money, and to risk his half of the boat in pledge for its prompt payment; also, that the boat on credit, and Brown's pledge and guarantee, could not be obtained under \$4.500, and that Brown, with the assent of Teetzel, was getting \$750 of that price. Now if there had been any mistake or misrepresentation Eastman would have had a right to repudiate the trade, and sue on case for the deceit. But instead of that, he confirms the trade at \$4.500—gives Brown, by Teetzel's direction, his \$750 note as part of that price, keeps the property, and enjoys the benefit of Brown's indemnity and risk in his behalf; tells the witness Murphy, at the maturity of the note, that it's all right, and never dreams of fraud or misrepresentation, till he wants an excuse to delay the collection of the note.

## II.

The plea of want of consideration is also negated by the testimony.

The law is clear that if Eastman paid this note to Brown by direction of Teetzel, for value received of Teetzel or Brown, or both, the consideration is sustained.

The price of the boat at the consummation of the trade, was \$4.500, and was so specified in the bill of sale. The \$750 is part of that price, therefore the boat was the value which Eastman received for his note. It is due from him to somebody, and until he pays it he has not paid the agreed price for the boat.

The \$750 being due from Eastman, as part of the stipulated price, Teetzel, the vendor, directs the purchaser to give his note for it to Brown, and he obeys the direction. Teetzel had an undoubted right to make this direction, either upon some consideration between himself and Brown, or as a mere gratuity; at all events it does not lie in Eastman's mouth to question it, because he assented to the arrangement, and the note in his hands will be his complete voucher for the balance of his purchase money.

But there are other considerations which may be fairly assumed for this note. We gather from the proofs that Brown and Teetzel bought the propeller from Lind and Slater for \$6.500. Brown paid \$3.000 on account, and owed only \$250 on his share, whilst his co-partner's purchase money was wholly unpaid, secured however, by a mortgage of the entire vessel, and also on Teetzel's real estate in Michigan. Mr. Teetzel's sale to Eastman on credit, left him and his real estate still liable for \$3.250 of the purchase money. He did not know Eastman's responsibility; so to protect himself on Eastman's default, he required Brown to guarantee the purchase money, as surety for Eastman, and to pledge his half of the boat as security, and he would not have sold except for cash, unless Brown had joined in the securities, and for giving this guaranty and pledge, Brown had a right to make his own terms. This explains why Eastman should agree to give \$4.500 on time, when by Exhibit A, (then in his pocket,) he knew that Teetzel was willing to sell for \$3.750—cash. But cash was not convenient; both parties wanted Brown's assent, guarantee and pledge. For these advantages, Eastman was willing to give \$4.500 for the boat, and Teetzel was willing to let Brown have \$750, if it was for himself.

If any one has any right to complain it is Teetzel, but he expressed himself satisfied at the time, and has ratified that assent by his testimony in this case.

We submit with entire confidence, that there is no good reason in law why the finding of the Court below should be disturbed.

We are compelled to say that the evidence is mis-stated in the points of the appellant.

The first interview between Teetzel and Eastman amounted to nothing. It was a mere proposition, not accepted, and created no obligation. *1st Foster*, 41. Teetzel was at liberty to change his terms, or sell to others the next day. The next act of Teetzel was to authorize Brown to sell, and to have all he could make over the \$500—besides clearing Teetzel from all liabilities on account of the original purchase money. Subject to these conditions, Brown had a general authority to sell, and had a perfect right, as Teetzel's agent, to say: "That Mr. Teetzel would sell his interest for \$4,500, and not a cent less." Merrill treated Brown as the agent of Teetzel—drew up the contract—(Exhibit B), and procured it to be signed by Brown, as agent for Teetzel. He further testifies: "and I *think* sending by Capt. Brown, the plaintiff, another copy to Mr. Teetzel." There is no positive or other proof that "another copy" of Exhibit B was made at all.

The evidence also shows that Eastman had full possession of Exhibit A, for he handed it to Teetzel, open, when they closed the trade. What ground is there then for counsel to say that Capt. Brown "pocketed" these Exhibits—"A" and "B"? None whatever. There was in fact no fraud—nor any unauthorized act or statement done or made by Capt. Brown in the whole matter; and if Mr. Eastman had been under any misapprehensions, he was made fully aware of the facts—of what Teetzel required—and what Capt. Brown was to have—before he closed the transaction. On the day this business was done, Capt. Brown was busy unloading the boat, and was with the other parties but little. His presence was necessary when the papers were to be signed—to pledge his property, and give his bond as security for Mr. Eastman. While they were signing the papers, Eastman said to Brown, will it make any difference whether I make that note now or some other time. Capt. Brown said it would make no difference. Was this like a man practicing a fraud?

This was on the 1st day of November. On the 3d of November, Mr. Eastman gave to Capt. Brown the note, and his bond, Exhibit B, written on the same sheet with the note to Brown. This was the final consummation of the whole arrangement. The obligation in Exhibit B, to pay the \$750 to Teetzel "during the next season of navigation, *as may be agreed*," was now made definite in the shape of this note, given to Brown by Teetzel's direction and consent.

To permit Eastman, after he has accomplished his objects, and availed himself of Capt. Brown's undertakings and risks in his behalf, (as the case discloses), now to defeat this note upon the groundless pretenses set up by him, would be to reward dishonorable repudiation, and tolerate injustice.

BURNHAM & MARTIN,

*Counsel for Appellee.*

238-87

Eastman  
Aspellant

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From

Aspeller

—

Points for Aspeller

May 14 1863

Deland  
etc

Bunker Martin  
to Aspeller

In the Supreme Court of Illinois  
Third Grand Division  
April Term AD 1863

Galen Eastman }  
Appellant } Appeal from the  
vs } Superior Court  
Thomas Brown } of Chicago

In addition to the brief filed herein on the part of the Appellant, we will here notice the leading facts as they appear in the evidence

- (1) About first October 1860 Teetzal offered to sell his undivided half of the Propeller, J. Barber to Appellant for \$500 in cash, and the assumption by ~~Eastman~~<sup>Appellant</sup> of the balance of unpaid purchase money due from Teetzal on the propeller, to wit, one half of a \$500 due about 1. Dec. /60 and the whole of a \$3000<sup>00</sup> note due about 1 October 1861, amounting to the aggregate sum of \$3750<sup>00</sup>; and ~~Eastman replied~~ Appellant replied, <sup>that</sup> "he must see Capt Brown (the ~~appellee~~<sup>who was also</sup> & the owner of the other half <sup>and Captain</sup> of the vessel), in relation to changing the route and also must see what arrangements he (Appellant) could make

at <sup>Harvey</sup> ~~Grand~~ Rapids for freights and connections with River boats - (See Teetzels testimony, pages 15 & 16 of Record, or 2 of Abstract and also Merrill's testimony pages 23 & 24 of Record or page 6 of Abstract) Teetzels proposition was left in the shape till Appellant could see Capt Brown. (The Appellee) about changing the route of the vessel, and also about freights for her (See page 24 & 25 of Record or 6 of Abstract)

(2) Afterwards and perhaps ten <sup>(10)</sup> days before the 19<sup>th</sup> of October 1860, the Appellee visited Teetzels at his home in St Joseph, ~~Michigan~~ and told Teetzels that Appellant had been to see him (Appellee) about buying Teetzels's interest in the Barber; and Teetzels thereupon informed Appellee what offer he had made the Appellant (Eastman), being in substance the same as above stated. Brown then asked Teetzels, if he (Teetzels) would give him (Brown) all he could make over the \$500, and Teetzels said "yes" he "did not care how much he made"; as all he wanted was \$500 and to be released from his liability for the purchase money &c. Capt Brown then returned to Chicago

(3) Eastman, relying upon Teetzels's proposition

to sell him half of the Barber on the terms above stated, went to Grand Haven and made his arrangements for freight, and then wrote to his agent in Chicago, (Merrill) to close the said proposed trade. (See Record page 24 or Abstract page 6) Merrill accordingly saw Capt Brown, and spoke to him about the trade. Brown replied that "Teetzel would sell his interest in the Barber for forty-five hundred dollars and not a cent less" (See Record page 23+25 or Abstract pages 6+7) Merrill thereupon informed Eastman that Teetzel had changed the amount he asked for his interest in the Barber as stated by Capt Brown; and Eastman replied to Merrill that he had made arrangements by which "it was necessary" for him to have the interest of Teetzel in the Barber, "even if it cost him a thousand dollars more than ~~that~~", and directed Merrill to close the trade. (See Record page 24, or Abstract page 6).

(4) Merrill thereupon saw Capt Brown and they drew up a contract of sale marked "Exhibit B". Merrill retaining one copy and sending by Brown to Teetzel the other copy and also \$500 as the cash payment. (See Record page 24 or Abstract page 7 and "Exhibit B" at the end of the Record)

(5) This Contract of Sale for \$4500<sup>00</sup> contained in "Exhibit B," Brown suppressed and never delivered to Teetzel; for Teetzel testifies he never saw it or knew of its existence till <sup>nearly</sup> a year after the sale, to wit when the \$3000<sup>00</sup> note was due, (to wit <sup>1st</sup> Oct<sup>r</sup> 1860, see page 6 of Abstract) when Merrill showed ~~it~~ to him the copy he (M) had kept. (See top page 4 of Abstract or page 19 of Record)

(6) About the 29<sup>th</sup> of October 1860, Brown handed Teetzel at his home in St Joseph \$500 in currency, saying it was sent to him by Eastman. This was probably the money Merrill paid on the purchase of the vessel. Teetzel, not considering the sale consummated, as the amount he owed on the purchase ~~on the purchase of~~ the vessel was not provided for, he deposited the \$500 in Bank, and made out a memorandum in substance the same as his <sup>said</sup> ~~first~~ proposition of sale <sup>of the</sup> ~~of~~ Bailey to Eastman. (See Abstract page 5 or Record page 21), <sup>the terms in detail of the sale</sup> stating what still had to be done to complete the sale, and after reading over said memorandum to Brown, put it in an envelope, with Eastman's name addressed on it and handed it

to Brown to take to Eastman; and Brown then went to Chicago and took said memorandum with him, ~~which~~ (see page 3 of Abstract or 17 of Record) which memorandum, marked "Exhibit A" is attached to the end of the record.

(7) Brown suppressed said memorandum, marked "Exhibit A", and did not show it to Merrill, at all ~~of the making of the contract~~ ~~to Merrill~~, nor to Eastman, ~~at the time of the making of the contract~~ (see page 8 of Abstract or 27 of Record) For Merrill testifies he never saw said memorandum, "Exhibit A", until the fall of 1861, (see top page Abstract 8, or 26 of Record) And besides, ~~the fact that~~ it is altogether unreasonable to suppose Eastman would have agreed, to pay \$4500<sup>00</sup> for the vessel, if he had seen "Exhibit A", which shows that after the contract was made between Merrill and Brown, (as in "Exhibit B", to wit, 23<sup>d</sup> October, see Abstract page 7) and after the \$500 was received by Teetzel on the contract (to wit, 29<sup>th</sup> October; see bottom page 2), Teetzel himself understood he was to receive no more than he first proposed to sell his interest in the vessel for Eastman to wit, \$3750<sup>00</sup>

(8) The next trip Capt Brown made ~~to~~ <sup>from</sup> St Joseph to Chicago, after he handed said \$500 to Teetzel, he (Teetzel) went with Brown to Chicago, to complete the trade by drawing up the papers, i.e. the indemni-

fying bond to (See page 3 of Abstract or 17 of Record); and it is evident from what occurred in Slater's office, that up to that time, <sup>at least,</sup> Teetzel knew nothing of Eastman having been required in his (Teetzel's) name, to pay \$4500.00 for Teetzel's interest in the vessel, and also that Eastman supposed Teetzel himself had demanded the \$4500.00, and consequently it is also evident that Brown had suppressed <sup>and never delivered to Teetzel</sup> the contract under which he made in Teetzel's name with Merrill in "Exhibit B." (See pages 3 & 11 of Abstract or 18 & 31 of Record)

(9) And even on the execution of the final paper for the purchase of Teetzel's half of said vessel, both Merrill and Eastman supposed that Teetzel <sup>had</sup> <sup>re-</sup>quired Eastman to execute the note (for \$750) <sup>on,</sup> to Brown, as a part of the consideration for Teetzel's said half of said vessel (See bottom page of Abstract, 8, or page 27 of Record) In fact Brown had so adroitly managed the whole matter as to make Eastman believe that Teetzel required the execution of the said note, and Teetzel seems to have been really ignorant of the actual state of the case as to said \$750 note, except that he acquiesced in some agreement he supposed <sup>Eastman</sup> understood and understandingly made, he (Teetzel) being satisfied with getting all he asked for his interest in the vessel (See pages 3 & 4 Abstract and pages 18, 19 & 20 of Record) and not caring to inquire further into the said \$750 transaction which he supposed Eastman understood and agreed to understandingly.

(10) Hence from all the circumstances in the case the following conclusions must necessarily be made

(First) That Eastman, relying upon Teetzel's proposal to sell to him the half of the propeller, Barber, made such arrangements for using such vessel, that he was forced to buy the same, even if it cost him \$1000 more than the \$3750<sup>00</sup>, which Teetzel had offered to sell it to him for.

(Second) That Brown, by falsely telling Merrill, as Eastman's agent, that Teetzel had changed the amount he asked for his said interest and would not sell it for "a cent less than \$4500"; and thus by taking advantage of the necessity <sup>(which necessity was induced by Teetzel's said proposition)</sup> of Eastman had induced Eastman to purchase said interest in said vessel, and induced Eastman to agree to pay \$4500 instead of \$3750 therefor.

(Third) That Teetzel neither authorized, nor knew any thing of, Brown's asking Eastman over \$3750<sup>00</sup> for said interest before or at the time said contract was made as in "Exhibit B" to wit 23<sup>rd</sup> October A.D. 1860 ~~see page~~

(Fourth) That when Eastman made the \$750 note sued on, he still supposed Teetzel had demanded of him \$4500<sup>00</sup>, instead of \$3750 for said interest, and that Teetzel never received any benefit for, or advantage from said \$750; <sup>or the note therefor</sup> nor did Brown give any consideration or value therefor to Teetzel or to Eastman.

(Fifth) That Teetzel, at the time he finally closed up the trade, did not claim said \$750, or a note therefor, and did not understand what was meant by the mentioning of the sum of \$750 in connection with said transaction, and when he finally learned that Eastman was to give Brown a \$750 note, he acquiesced in it upon the supposition that Eastman did it understandingly, and not as having been required by him (Teetzel) to give it: for Brown had suppressed and not delivered to Teetzel the Contract made between Menill & Teetzel, which would have exposed him said \$750 part of the transaction, and prevented its consummation.

(Sixth) That Brown's whole conduct in connection with said transaction was an unmitigated and palpable fraud, upon Eastman, and that by his <sup>(Brown's)</sup> false statements, cunning trickery, and fraudulent management he procured the execution of the note issued on in his own favor, without any honest, or reasonable or legal consideration therefor, moving from him or from any other person, and that he is not entitled in law, or reason, or justice or equity to recover judgment for and called the same of the Appellee. The giving of a judgment for the Appellee under the circumstances amounts practically <sup>to nothing less</sup> than the offer of a premium for downright falsehood, skilful trickery and fraudulent practices.

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(11) In this case all the evidence introduced on the trial below is in depositions and is fully before this Court, <sup>in</sup> the same as it was before the Court below, they having been taken by agreement in the form as they appear on the record. Therefore the rule that the verdict of a jury will be sustained by this Court, on the ground that the jury are peculiarly fitted for deciding questions of fact, by observing the manner of the witnesses in testifying &c. unless such verdict appears at first blush, palpably wrong, does not apply in this case. Even where verbal testimony is given in the Court below and its substance is attempted to be incorporated into a bill of exceptions, it is rarely that the evidence is thus preserved just as given, and for this reason there may be legitimately a leaning by this Court to sustain the judgment below, where there was no jury, based upon evidence orally given before the Court. Besides, it is also highly proper to make due allowance for the opportunity of the judge below to observe the manner of the witnesses in testifying and his better opportunity, for that reason than this Court can have from the mere inspection of the record, to judge of the credibility of the witnesses. But where, as in this case, the whole of the evidence is in depositions, this Court has precisely the same opportunity and means of judging

of the truthfulness of the witnesses, and the true meaning of all the testimony in the case, as the judge below had; and therefore no other presumption should be indulged in favor of the judgment below in such case, than is due <sup>(if any be due)</sup> on account of the mere opinion of the judge below upon any other legal proposition: for the questions in this case are simply nothing more nor less than precisely the same legal propositions based upon precisely the same premises, as they were based upon in their presentation to the minds of the judges below.

The case of Hannon et al v Thornton, 2 Scam 354, cited by Appellee's brief, does not militate against the position we here assume, because, in that case it was expressly stated in the opinion of the Court (see page 355) that the bill of exceptions did not state that all the evidence given for the plaintiff was contained therein, and it was therefore entirely proper to make a strong presumption in favor of the judgment below.

(12) We submit that there is no testimony in the case, from which the conclusion can be legitimately drawn (as alleged on pages 4 & 5 of Appellee's brief) that either Teetzal, or Eastman or Merrill, or Brown himself, understood that

that any of the consideration, for the purchase of Feetzyl's half of the vessel J. Barber, moved from Brown, and even "Exhibit B" itself, signed by Brown, as agent for Feetzyl, completely ~~disproves~~ refutes any such a conclusion. Brown became Eastman's security not for a consideration, and he himself never intended to claim any such thing; but he became such security doubtless because he knew, <sup>from</sup> Eastman's circumstances, he would be safe in so doing.

(13) Though the reasons given on the motion for a new trial do not appear on the record, yet "errors may be assigned as to the law and the fact upon the judgment", just the same as if said reasons were on file, except that this Court cannot <sup>of course</sup> pass upon the reasons —  
Metcalfe vs Howls 27, Dec. 114

(14) Although we do not consider that the brief of Appellee presents a correct statement of the evidence, yet as we have already commented upon the evidence sufficiently, we will not say more on that subject, as the record will show which is correct —

(15) If the foregoing positions are sound and correct, as we think they are, then the judgment below ought to be reversed —

Walker & Howles  
Attys for Appellant

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astman  
is } No 238  
Brown }

Argument for Appellant

Filed May 9, 1953  
L. L. Ladd  
MR

"Chicago Post Company," Printers, 82 Dearborn Street.

# IN THE SUPREME COURT

OF THE STATE OF ILLINOIS.

—•••—  
THIRD GRAND DIVISION—APRIL TERM, 1863.

GALEN EASTMAN,  
vs. *Appellant,*  
THOMAS BROWN,  
*Appellee.*

} APPEAL FROM THE SUPERIOR COURT  
OF CHICAGO.

—•••—  
POINTS FOR APPELLANT

No errors in law are saved by exception in this record; therefore the only question which the appellant can now be permitted to urge is that the verdict was against evidence—and the burthen which he assumes by that proposition has been fully and frequently determined by this Court.

He must show some strong probable grounds to believe that the merits of the case have not been fully and fairly tried, and that injustice has been done.

*Wheeler vs. Shields, 2 S., 350.*

The verdict must strike the mind at first blush as manifestly and palpably contrary to evidence.

*Dawson vs. Robins, 5, G, 72.*

Where a cause is submitted to the Court below for trial, without a jury, the decision of that Court upon the weight and effect of the evidence will not be reversed, unless it palpably appear that the character of the testimony was misconceived.

*Harmon et al. vs. Thornton, 2 S., 354.*

So far from the verdict being unwarranted by the evidence, it is the only result at which an impartial judgment could arrive upon the testimony.

We submit that the proofs all sustain the verdict, and that the appellant utterly fails to make out his case.

He relies upon two questions of defence :

1st. That he was induced to make the note by the fraud and misrepresentation of the appellee.

2d. Want of consideration.

## I.

To support the plea of fraud, the appellant must prove that Capt. Brown's statements were wilfully false, and that he was thereby deluded into giving the note; but the testimony distinctly negatives both branches of this proposition.

1st. Capt. Brown's statement that "Teetzel would take \$4,500, and not a cent less," was not false. Teetzel proves (abstract, p. 2) that he authorized Capt. Brown to sell on the terms mentioned, namely: \$500 cash for Teetzel, and a release from his liability for the purchase money, and as much

more, up to \$10,000, as Brown could get—representing the owner only, and being under no <sup>fiduciary</sup> ~~pecuniary~~ obligation to the purchaser, he was authorized to name his own price. He fixed it at \$4,500—not a cent less, and his principal subsequently ratified and consummated the sale at that price.

The usages of trade permit a vendor, and consequently his agent, to do his own trading, and to make his own statements as to value and price, provided that he make no misrepresentations as to quality or quantity.

*Burge on Suretyship, 223.*

2d. Eastman was not induced to give the note by any statements of Brown's.

Even if Brown's statement was false, (which we deny,) yet there is no legal fraud, unless the note was given under a delusion produced by the falsehood. But the proof demonstrates beyond question that before Eastman signed that note he had full and actual knowledge of all the facts.

Teetzel says, (p. 3 and 4), the matter was talked over and explained at Slater's office, in the morning; that Eastman and Merrill then understood that they were to pay \$4,500 for the purchase, of which Teetzel was not to have \$750; that the trade was closed up with that understanding, and that Teetzel assented to it; that on the evening of the same day, when they were closing the trade, the papers, including Exhibit A, which was open, were delivered to Teetzel at Eastman's office, by Eastman or Merrill, and that Eastman then asked Brown to wait on him for that \$750 note.

Merrill's testimony is equally explicit. He says, (p. 7), Teetzel and Eastman were both at Chicago about Nov. 1st; Teetzel expected his \$3,000 note to have been taken up, but it could not be found; "Eastman then made "Bond satisfactory to Teetzel," (that is with Brown as surety), "and the "trade was completed—and papers delivered that evening, Eastman having "paid the \$500 note, giving Bond and mortgage on the boat," (with Brown's

share as security), "and also giving or agreeing to give his note for \$750 to "Brown, by direction of Teetzel."

Before the trade was closed, Eastman had been fully informed by Exhibit A, (then in his possession), and also by conversation with Teetzel, that he could buy at \$3.750 for cash. But if the cash was not forthcoming, he must induce Brown not only to assent to the purchase, but also to guarantee the purchase money, and to risk his half of the boat in pledge for its prompt payment; also, that the boat on credit, and Brown's pledge and guarantee, could not be obtained under \$4.500, and that Brown, with the assent of Teetzel, was getting \$750 of that price. Now if there had been any mistake or misrepresentation Eastman would have had a right to repudiate the trade, and sue on case for the deceit. But instead of that, he confirms the trade at \$4.500—gives Brown, by Teetzel's direction, his \$750 note as part of that price, keeps the property, and enjoys the benefit of Brown's indemnity and risk in his behalf; tells the witness Murphy, at the maturity of the note, that it's all right, and never dreams of fraud or misrepresentation, till he wants an excuse to delay the collection of the note.

## II.

The plea of want of consideration is also negated by the testimony.

The law is clear that if Eastman paid this note to Brown by direction of Teetzel, for value received of Teetzel or Brown, or both, the consideration is sustained.

The price of the boat at the consummation of the trade, was \$4.500, and was so specified in the bill of sale. The \$750 is part of that price, therefore the boat was the value which Eastman received for his note. It is due from him to somebody, and until he pays it he has not paid the agreed price for the boat.

The \$750 being due from Eastman, as part of the stipulated price, Teetzel, the vendor, directs the purchaser to give his note for it to Brown, and he obeys the direction. Teetzel had an undoubted right to make this direction, either upon some consideration between himself and Brown, or as a mere gratuity; at all events it does not lie in Eastman's mouth to question it, because he assented to the arrangement, and the note in his hands will be his complete voucher for the balance of his purchase money.

But there are other considerations which may be fairly assumed for this note. We gather from the proofs that Brown and Teetzel bought the propeller from Lind and Slater for \$6.500. Brown paid \$3.000 on account, and owed only \$250 on his share, whilst his co-partner's purchase money was wholly unpaid, secured however, by a mortgage of the entire vessel, and also on Teetzel's real estate in Michigan. Mr. Teetzel's sale to Eastman on credit, left him and his real estate still liable for \$3.250 of the purchase money. He did not know Eastman's responsibility; so to protect himself on Eastman's default, he required Brown to guarantee the purchase money, as surety for Eastman, and to pledge his half of the boat as security, and he would not have sold except for cash, unless Brown had joined in the securities, and for giving this guaranty and pledge, Brown had a right to make his own terms. This explains why Eastman should agree to give \$4.500 on time, when by Exhibit A, (then in his pocket,) he knew that Teetzel was willing to sell for \$3.750—cash. But cash was not convenient; both parties wanted Brown's assent, guarantee and pledge. For these advantages, Eastman was willing to give \$4.500 for the boat, and Teetzel was willing to let Brown have \$750, if it was for himself.

If any one has any right to complain it is Teetzel, but he expressed himself satisfied at the time, and has ratified that assent by his testimony in this case.

We submit with entire confidence, that there is no good reason in law why the finding of the Court below should be disturbed.

We are compelled to say that the evidence is mis-stated in the points of the appellant.

The first interview between Teetzel and Eastman amounted to nothing. It was a mere proposition, not accepted, and created no obligation. *1st Foster*, 41. Teetzel was at liberty to change his terms, or sell to others the next day. The next act of Teetzel was to authorize Brown to sell, and to have all he could make over the \$500—besides clearing Teetzel from all liabilities on account of the original purchase money. Subject to these conditions, Brown had a general authority to sell, and had a perfect right, as Teetzel's agent, to say: "That Mr. Teetzel would sell his interest for \$4,500, "and not a cent less." Merrill treated Brown as the agent of Teetzel—drew up the contract—(Exhibit B), and procured it to be signed by Brown, as agent for Teetzel. He further testifies: "and I *think* sending by Capt. Brown, the plaintiff, another copy to Mr. Teetzel." There is no positive or other proof that "another copy" of Exhibit B was made at all.

The evidence also shows that Eastman had full possession of Exhibit A, for he handed it to Teetzel, open, when they closed the trade. What ground is there then for counsel to say that Capt. Brown "pocketed" these Exhibits—"A" and "B"? None whatever. There was in fact no fraud—nor any unauthorized act or statement done or made by Capt. Brown in the whole matter; and if Mr. Eastman had been under any misapprehensions, he was made fully aware of the facts—of what Teetzel required—and what Capt. Brown was to have—before he closed the transaction. On the day this business was done, Capt. Brown was busy unloading the boat, and was with the other parties but little. His presence was necessary when the papers were to be signed—to pledge his property, and give his bond as security for Mr. Eastman. While they were signing the papers, Eastman said to Brown, will it make any difference whether I make that note now or some other time. Capt. Brown said it would make no difference. Was this like a man practicing a fraud?

This was on the 1st day of November. On the 3d of November, Mr. Eastman gave to Capt. Brown the note, and his bond, Exhibit B, written on the same sheet with the note to Brown. This was the final consummation of the whole arrangement. The obligation in Exhibit B, to pay the \$750 to Teetzel "during the next season of navigation, *as may be agreed,*" was now made definite in the shape of this note, given to Brown by Teetzel's direction and consent.

To permit Eastman, after he has accomplished his objects, and availed himself of Capt. Brown's undertakings and risks in his behalf, (as the case discloses), now to defeat this note upon the groundless pretenses set up by him, would be to reward dishonorable repudiation, and tolerate injustice.

BURNHAM & MARTIN,

*Counsel for Appellee.*

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~~Carton~~

Asphaltum

is.

Brown

Asphaltum

*W*

Points for asphaltum

Filed May 4. 1863.  
L. L. Leland  
Ch.

Brownish asphaltum  
in Brown

100  
UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

100  
Pleas, 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 Fifth day of March in the year of our Lord One Thousand Eight Hundred and Sixty Two and of the Independence of the United States of America the Eighty Seventh

Present, The Honorable John M. Wilson Chief Justice of the Superior Court of Chicago. }

Van D. Higgins  
Grant Goodrich } Judges.

Joseph Knapp Prosecuting Attorney.

David S. Marshall Sheriff of Cook County.

Attest, Thomas B. Cate Clerk.

Do it Remembered that here before to wit on the Fifth day of March in the Year of Our Lord One Thousand Eight Hundred and Sixty Two Thomas Brown the Plaintiff in the Suit by Parkman & Martin his Attorney filed in the office of the Superior Court of Chicago his certain Declarative in words and figures following to wit

2<sup>nd</sup>

Superior Court of Chicago

11<sup>th</sup> March Term A.D. 1863.

State of Illinois

Cook County Ill.

Thomas Brown of said County & State plaintiff in this suit by Benjamin Sheridan his attorney complains of Helen Eastman Defendant of a plea of trespass on the case on premises.

That whereas the said defendant on the third day of November in the year of our Lord one thousand eight hundred and sixty at Chicago in said County made a certain note in writing commonly called a promissory note bearing date the day and year last aforesaid, and then and there delivered the said note to the said plaintiff. By which said note the said defendant promised to pay to the said plaintiff seven hundred and fifty dollars, on or before the first day of February next after date of said note meaning the day of the month.

By reason whereof and by force of the statute in such case made and provided the said defendant became liable to pay to the said plaintiff the said sum of money on the said date specified, according to the tenor and effect of the said note, and he is liable to the said defendant in consideration thereof, after a call is put on the same day and year, and at the place aforesaid, undertook and faithfully promised the said plaintiff well and lawfully to pay unto the said plaintiff the said sum of money on the said date specified according to the tenor and effect of the said note.

61  
And whereas also the said defendant afterwards to wit  
on the first day of January in the year of our Lord one thou-  
sand eight hundred and sixteen at the place aforesaid  
was indebted to the said plaintiff in the sum of one thousand  
and five hundred dollars, lawful money of the United  
States of America for so much as was before that time  
lent and advanced by the said plaintiff to the said de-  
fendant and at the special instance and request of the  
said defendant. And for other money by the said plain-  
tiff before that time paid laid out, and expended for the  
said defendant at the like request of the said defendant.  
And for other money by the said defendant before that  
time had and received to wit for the use of the said  
plaintiff. And being so indebted the said defendant  
in consideration thereof, afterwards to wit on the same  
day and year last aforesaid, and at the place aforesaid  
undertook and then and there faithfully promised  
the said plaintiff well and truly to pay unto the said  
plaintiff the said sum of money in that or at such  
times when the said defendant should be thereunto  
afterwards requested. And whereas also the said defen-  
dant afterwards to wit on the same day and year last  
aforesaid and at the place aforesaid accounted to-  
gether 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 account the said defendant then and there

4

was found to be indebted to the said plaintiff in the further sum of One Thousand and five hundred dollars of lawful money as aforesaid. And being as found in arrears, and indebted to the said plaintiff, the said defendant, in consideration thereof, afterwards to wit, on the same day and year last aforesaid and at the place aforesaid, undertook and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the said sum of money last mentioned when the said defendant should be thereunto afterwards requested.

Nevertheless, the said defendant (although often requested to do so at the time when the said note became due and payable, according to the tenor and effect thereof, and often times since, to wit, at the place aforesaid) has not yet paid the said 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 plaintiff, the said defendant has hitherto altogether refused, and still does refuse, to the damage of the said plaintiff of One Thousand & Five Hundred dollars, and thereof the said plaintiff brings suit &c.

Burnham Martin.

Att'y Atty.

Copy Instrument in duplicate filed up.

"\$45000 Chicago bonded. 1861.

" On or before the first day of July next, I promise to  
 " pay to Thomas Brown, Seven Hundred & fifty Dollars  
 " value received."

(signed) "Galen Eastman"

Defendant to plaintiff's.

1862. To cash lent \$15,000

Same. To money had & received \$15,000

To money drawn ac  
 count stated \$15,000

To cash laid out

expended for office \$15,000

And on the Same day and Year aforesaid  
 the Defendant in this Suit by P. Morris & Thomas  
 his Attorneys filed herein his Certain Pleas  
 in words and figures following to wit

6 State of Illinois }  
 Cook County } Superior Court of Chicago  
 Of the March Term A.D. 1862

Galen Eastman }  
 vs }  
 Thomas Brown }

And the said defendant by Morris & Thomas his Attorneys Come and defends the wrong and injury when he and says he did not undertake or promise in manner and form as the said Plaintiff hath above complained against him, and of this he puts himself upon the Country of

2 And for a further plea as to the first Count of the said Plaintiff Declaration the said defendant by leave of say Actio Non est because he says the said Plaintiff caused and procured him the said defendant to make the said promising note in said Court mentioned, and that by the said defendant was thus induced to make the same through and by means of the fraud Covert and Misrepresentations of the Plaintiff and that he the said defendant is ready to verify, wherefore

3 And for a further plea as to the first Count of the said Plaintiff Declaration the said defendant by like leave of say Actio Non est because he says that he the said defendant did not at the time of making the promising note in the said Court mentioned

7 nor at any time receive from the said Plaintiff  
nor from any other person any good or valuable Con-  
sideration for the said note and this he, the said  
defendant is ready to verify wherefore  
4 And for a further plea to the whole of the said  
Plaintiff's declaration the said defendant by his  
lawful agent and attorney in law he says that the  
said Plaintiff caused and procured him the said  
defendant to make the said promise in the said  
declaration mentioned and each of them and  
that he the said defendant was then induced to  
make the said promise and each of them thus  
through and by means of the fraud, error and mis-  
representations of the Plaintiff and this he the  
said defendant is ready to verify wherefore he  
McCombs & Thomas  
Dfts Atty

And on the same day and year aforesaid  
the Plaintiff herein by Burnham & Maitre  
his Attorney filed herein his Certain Replication  
in words and figures following to wit

Superior Court of Chicago  
Thomas Brown  
vs  
Galvin Eastman }  
And the said Plff

8 as to the said plea of the said Defendant by  
him first above pleaded to which he hath put  
himself upon the Country doth likewise the same

And the said plff as to the said plea of  
the said defendant by him secondly above pleaded  
& the matters therein contained. says preclude  
him as to said first Count because he says  
that the said defendant was not Counsel procured  
or induced to make the said promissory note by  
means of any fraud or misrepresentation of  
the said plaintiff as in said plea is mutually  
alleged. And this the said plaintiff prays  
may be inquired of by the Country & the said  
dft likewise

And the said plaintiff in the said plea of the  
said Dft by him thirdly above pleaded & the  
matters therein contained. says preclude him  
as to said first Count because he says that  
said promissory note was note made without  
any good & valuable consideration therefor in  
manner & form as in said 3<sup>d</sup> plea is mutually alleged  
and this the said plaintiff prays may be inquired  
of by the Country & the said dft doth the like

And in the said pleas of the said Defendant  
by him fourthly above pleaded, the said plaintiff

9

Says Induce me & because he says that the said  
 Defendant was not caused, induced, or induced  
 to make the said promise or either of them through  
 or by means of the said Corin is representative  
 of the said Plaintiff, as in said 4<sup>th</sup> plea, the  
 said Defendant hath scandalously answered,  
 and this the said Plaintiff says may be injured  
 of by the Country & the said Defendant doth  
 the like

Dunham & Mentrie  
 Plff Attys

And afterwards do sit in the Term the day of  
 July in the Year aforesaid said day being one of  
 the days of the July Term of said Court the  
 following Among other proceedings was had in said  
 Court and in and of record to wit:

Thomas Brown

<sup>21</sup> Galen Cartman Applicant

This Cause being this day  
 called for trial Cause and Plaintiff by Dunham  
 & Mentrie's Attorneys, and said Defendant by  
 White & Tomlin's Attorneys also Cause 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 a  
 jury

And afterwards to wit on the second day of  
December in the year aforesaid. Said day being  
one of the days of the December Term of Said Court  
the following Among the proceedings recorded in  
Said Court and entered of record to wit

Thomas Brown

vs Assumpsit  
Galow Contractors

This Cause being the day  
Called for trial Comes Said Plaintiff by Benjamin  
F. Martin his Attorney. and Said Defendant by  
Jesse B. Thomas his Attorney also Comes and upon  
Agreement of the parties made on here in open Court  
This Cause is humbly submitted to the Court for trial  
upon the issues joined therein without intervention of  
a jury and the Court on here after hearing the  
evidence and Argument of Counsel and being fully  
advised in the premises find issue for Said  
Plaintiff and awards his Damages herein Against  
Said Defendant to the Sum of Eight Hundred and  
five dollars

And therefore Said Defendant Submit  
his Motion herein for a new trial in Said Cause

And afterwards to wit on the tenth day  
of January in the year of our Lord One Thousand

eight hundred and fifty three, said day being  
one of the days of the January Term of said Court  
the following Among other proceedings was had in  
said Court and entered of record to wit

Thomas Brown

vs  
Galen Cartmear

Mo for New trial in apt

And now again comes said  
Plaintiff by Barnham & Martin his Attorneys, and  
said Defendant by Jesse B Thomas his Attorneys  
also comes, and the Cause coming on now to  
be heard upon the motion of the said Defendant  
humbly submitted herein on the second day of  
December A D 1862 for a new trial in said Cause  
and Counsel being heard therein and the Court  
being fully advised in the premises, it is Council  
and by the Court that the motion of said  
Defendant be and is hereby overruled and that  
said Defendant to be referred a new trial in said  
Cause. To which ruling of the Court in overruling  
his said motion for a new trial said Defendant  
then and there assented, and therefore enters his  
waiving

Wherefore said Plaintiff ought to have judgment  
entered for his damages against said Defen-  
dant upon the finding of the Court as aforesaid  
Therefore it is concluded that said Plaintiff

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do have and recover of and from said defendant his Damages of Eight hundred and five dollars in form aforesaid by the Court here found and assessed and also his Costs and Charges, in this behalf expended and here execution therefor

And therefore said defendant prays an Appeal herein to the Supreme Court of this State from the judgment of this Court which is allowed to him on Condition of filing bond in Thirty days in penalty of twelve hundred Dollars with Security to be approved by one of the judges of this Court and that he be allowed the like time of Thirty days in which to file his bill of exceptions

And afterwards to wit on the fifteenth day of February in the year last aforesaid the defendant herein filed his Appeal Bond and Bill of Exceptions in words and figures following to wit

I know all men by these Presents That we Galen Eastman of the County of Ottawa State of Michigan Principal and Parzillad Merrill of the County of Cook and State of Illinois are held and firmly bound unto Thomas Brown also of the County and State last aforesaid in the penal Sum of Twelve hundred dollars lawful money of the United States for the payment of which said and only to be made should and needeth, we here

agents and administrators, jointly, severally and  
jointly, by their agents,

Witness, our hands and seals, this 19<sup>th</sup> day of  
January A D 1863

The Conditions of the Above Obligation  
is such, that whereas the said Thomas Brown  
did, on the seventeenth day of January A D 1863  
in the Superior Court of Chicago in the County  
of Cook, and State of Illinois, and of the fore-  
said Term thereof A D 1863 receive a judgment  
against the above named Galen Eastman  
for the sum of Eight Hundred and five Dollars, besides  
Costs of Suit; from which said judgment of the said Superior  
Court, the said Galen Eastman has prayed for, and  
obtained an appeal to the Supreme Court of said State.  
Now, therefore, if the said Galen Eastman shall  
duly prosecute his said appeal with effect, and moreover  
pay the amount of the judgment, Costs, interest and  
damages rendered, and to be rendered, against him in  
Case the said judgment shall be affirmed in said  
Supreme Court then the above obligation to be void  
otherwise to remain in full force and virtue

Taken and approved by  
me, at my office in Chicago,  
the Eleventh day of February  
A D 1863

Galen Eastman Seal  
Barzillea Merrill Seal

Van H. Higgins Judge

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State of Illinois }  
Cook County } S.S.

In the Superior Court of Chicago

Thomas Brown }  
vs }  
Galen Eastman }

Be it remembered that of the  
trial of the above cause at the January term 1863  
of said Court before the Hon. Can. St. Higgins  
Judge of said Court, without the intervention of a  
jury the Plaintiff offered in evidence a note in the  
words and figures following viz

\$750<sup>00</sup>)

Chicago Mo<sup>o</sup> 3<sup>o</sup> 1860

On or before the first day of July next I  
promise to pay to Thomas Brown Seven hundred  
and fifty Dollars value received -

Galen Eastman

The Defendant then introduced to prove the issue  
on his part the following testimony

The deposition of Matthias Ditzel a witness produced sworn and examined in the presence of the Defendant in the above cause at the office of Bushnell & Martin in Chicago this 23<sup>rd</sup> day of May A.D. 1862 before me Jesse B. Thomas a Notary Public in and for the City of Chicago in the County of Cook and State of Illinois by agreement of parties all exceptions to the form of deposition & party before whom taken being waived, and it being agreed that the said deposition may be read on the trial of the above cause *By either party*

The said Matthias Ditzel being first duly sworn on oath says I am fifty two years of age, reside in St. Joseph in the State of Michigan have no special regular occupation. I am acquainted with both the parties. I have known the Defendant since the fall of 1860 & the Plaintiff longer than that time. I was in 1860 the owner of one half the propeller known as the J. Butler. About the first of October 1860 as I recollect it, I first saw Mr. Eastman at his office in Chicago, he said he would like to buy one half the boat, meaning the said propeller. I think I asked him what he was willing to pay for it he replied that he was not willing to pay any fancy price. He asked me what I would take, I said I would take five hundred dollars in cash

and he pay my share of the purchase money on the Boat with the interest on it. Then Mr Eastman said he must see Captain Brown and see whether he was willing. Nothing further was said at that time. (Plaintiff's Counsel objects in and to the conversations of the Deft. being given in evidence the Plaintiff not being present)

Some time after that, when Capt Brown was at St Joseph with the boat he asked me if I wanted to sell out my interest in the boat said Mr Eastman had been to see him about buying it. I said to Plaintiff I wanted to sell out - wanted to get out of it. I do not remember whether it was at that time or afterwards that I said to him "Captain you had better buy my half of the boat" He said he could not do it. I told him what offer I had made to Mr Eastman, which was as above stated. He asked me if I would give him all he could make on the five hundred Dollars in cash. I replied "yes" I don't care how much you make if it is ten thousand dollars, all I want is the five hundred dollars and to be released from my liability for the purchase money. Then Capt Brown returned to Chicago with the boat. This was some time before October 29<sup>th</sup> 1860, might have been ten days or less. I authorized Capt Brown to make sale of my half for me to Mr Eastman on the terms mentioned in the said conversation. I did not direct him to demand or a completion of the sale

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to Eastman any more for more than the said five hundred dollars in cash and the release of my liability for the purchase money.

Capt Brown. Subsequently on the 29<sup>th</sup> of October brought to me a package of currency of \$ 500 together with a letter from John Eastman - The money was from Eastman. Capt Brown said "there is the money Mr Eastman has sent you meaning the \$ 500 - I took the money and deposited it in Bank, because the thing was not closed up, and I did not know that it would be, I then made out the statement marked "Exhibit A" hereto annexed and gave <sup>it</sup> to Capt Brown. It was put in an open envelope and Mr Eastmans name was written on the back of the envelope I think but am not positive - the document was read over to Capt Brown in my office. Capt Brown then went to Chicago with the boat and took the document with him. I think the next trip after that I went with him Capt Brown had bought a new sail <sup>which</sup> cost in the neighborhood of one hundred dollars. I told him I should not pay any portion of the cost of that sail - that the parties getting the boat would get the benefit of it. The sail was then in use. Don't know whether it had been paid for (Defendants Counsel objects to statements regarding the said sail as irrelevant and immaterial.) When we got to Chicago Mr Eastman had taken up the \$ 500, here mentioned in "Exhibit A" he

met Mr Merritt (Eastman's agent) at Slater's office  
 where he closed up a bargain. My propositions for  
 sale <sup>were</sup> written and I supposed Eastman had them. I  
 refer to "Exhibit A". I had read the copy of that  
 to Mr Slater before there was a controversy arose as to  
 the amount I was getting, between me and Merrill  
 or Eastman - Brown was not there I think - They  
 said I was getting \$750 more than I proposed to  
 take. I said I was not. There was considerable con-  
 versation about the matter at the time, and I did not  
 understand what they meant by it. After talking it  
 over they said Brown must be making the \$750 in-  
 stead of me to which I either said yes or made no  
 reply. The bond of indemnity required by me was  
 then drawn, and the trade closed. The same  
 evening the papers were signed and delivered at  
 Eastman's office. These were the transfer of my  
 interest in the boat to Eastman. The bond of in-  
 demnity signed by Brown & Eastman to me to  
 indemnify me against loss on the \$3000 note se-  
 cured by mortgage on the propeller and on a  
 and dock belonging to me also a chattel mortgage  
 on the boat signed by Brown & Eastman for the  
 same purpose. Brown was present at the signing  
 but I think not at the delivery of the papers. The papers  
 including "Exhibit A" (which was open) were delivered  
 to me at Eastman's office by Eastman & Merrill on the  
 same evening. Brown was present at my little at Slater

office or during the day as he was busy unloading the boat - I first saw the instrument marked "Exhibit B" last fall when the \$3000 note matured. Mr. Merrill showed me this instrument or something like it in their office - That was the first time I ever saw it or heard of it.

### Cross Examination

The same evening about the time we were closing the trade - I think while we were signing the papers Eastman said to Brown something like this, "Will it make any difference as we are in a hurry whether I make that note now or at some other time or not it do just as well to make that note some other time when you come in" He said it would make no difference. I supposed they referred to the \$450. note. This transaction was on the first day of November A.D. 1860. I required Brown to sign the bond of indemnity Chattel mortgage and other papers which I took for my security as above mentioned - Brown signed them as surety for Eastman - in fact - I considered it so. I did not know Eastmans responsibility. (Depts Counsel objects to statement as to requiring Brown to sign papers as irrelevant and immaterial, and to statement as to suretyship because irrelevant immaterial and because the document is the best evidence & statement true to say it by fraud)

In the controversy at Shattuck's office Eastman & Merrill understood, as appears by their figuring that they

me to pay \$4500 for the purchase, and before we got through with the controversy they <sup>understood</sup> that \$750 of that amount I was not to have. The trade was closed with that understanding. I assented to the mode of closing the trade. At the time I closed the arrangement I did not know Capt Brown had made a written arrangement with them as per "Exhibit B." When I called upon Merrill last fall at the maturity of the \$3000 note, I complained to him that they had not insured the vessel and assigned the policy to me as required by the bond of indemnity they had given me. Merrill then showed me "Exhibit B." I looked at "Exhibit B" to see what he was bound to do as I understood it. I showed him the bond of indemnity.

(Deft counsel objects to last mentioned conversation as irrelevant and immaterial.) I would not have sold without bark down without Brown giving security. (Deft counsel objects to last statement of witness as irrelevant and immaterial.)

I did not pay for the sail above referred to (objected to by Deft Counsel as irrelevant and immaterial.)

Capt Brown did not make any charge to me as captain or Master for services for the year 1860, or against the vessel for said services.

(Deft Counsel objects to this statement as irrelevant and immaterial.)

Re Examination

I never told Brown at any time that I would not sell my interest in said propeller for less than forty five hundred dollars.

(Objected to by Pliffs counsel as incompetent)

The proposition contained in "Exhibit A" was substantially the same as originally made by me to Eastman, at the time I handed "Exhibit A" to Brown it was intended for Eastman if he would carry out its provisions, and if he did not then for any other person who would buy.

Re Cross Examination

Brown was authorized to sell as before stated in our conversation at St Joseph, Brown was authorized to sell to any person provided I was so cited according to the provisions of "Exhibit A" though I considered Mr Eastman if he carried out the conditions should have it.

Subscribed & sworn to  
before me this 23<sup>d</sup> day  
of May A.D. 1862

M. Patzel

Jesse B Thomas  
Notary Public

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It is agreed that the above deposition may be read  
upon the trial of the cause mentioned in the en-  
titled thereof and that all objections not specially  
noted as raised except substantial objections to  
the testimony

Morris & Thomas  
Deft attys

Burnham and Martin  
for Plffs

The Deposition of Benjamin Merrill a witness  
produced sworn and examined on the part of the  
defendant in the above cause at the office of  
Burnham and Martin in Chicago on the 2<sup>nd</sup> day  
of October A.D. 1862 before me Jesse B Thomas a  
notary Public in and for the City of Chicago in the  
County of Cook and State of Illinois by agreement  
of parties all exceptions to the form of depositions and  
partly before whom taken being mutually waived

Question: What is your age, residence and occupation?

Answer: My age is forty years, residence Chicago, I am  
agent for Galin Eastman defendant in the above

23.

and Sumner business

Question 2. How long were you in his employ

Ans<sup>r</sup> Since May 1857

Question 3. Are you acquainted with Plaintiff, if you have long have you known him,

Ans<sup>n</sup> I am since fall of 1860

Question 4. State what if any thing you know with reference to the purchase by the Defendant from the Plaintiff of an interest in the Propeller J. Butler and the negotiations between said parties in reference to said purchase,

Ans<sup>r</sup> About the first of October 1860, Mr. Matthew Fetzell of St. Joseph Michigan called at Mr. Eastman's office Mr. Eastman being there and proposed to sell him the half interest in the propeller known as the J. Butler. Mr. Eastman. Mr. Fetzell asked Mr. Eastman what he would give for him. Mr. Eastman replied that he would not pay any fancy prices but might purchase if she was cheap enough. Mr. Fetzell said he was sick of the propeller business and would sell her if Mr. Eastman would give him five hundred dollars cash and pay his liabilities for the purchase money which he said was the half of a note for five hundred dollars due about the first of December 1860 and a note for three thousand dollars and interest due in the fall of 1861. Mr. Eastman said he would need to see Capt. Brown in relation to changing the route and also what arrangements he would

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make at Grand Haven for freights and connections  
with the River Boats, when he would decide, Mr East-  
man went to Grand Haven and made his arrange-  
ments and wrote me to close the trade as stated  
Gm. above, I saw Captain Brown the Plaintiff and  
I spoke to him in relation to the trade, He said  
that Mr Tetzgel would sell his interest in the Boat  
his half interest for forty five hundred dollars and  
not a cent less I wrote to Mr Eastman stating the  
fact that Tetzgel had changed the amount asked  
as stated by Captain Brown. He replied that he had  
made arrangements by which he was to lay up his  
River Steamer and purchase a certain amount of  
Freight to another Boat on the River and that it was  
necessary for him to have the Barber own if it cost  
him a thousand dollars more and directed me to  
close the trade, I saw Capt. Brown (Plaintiff) and  
drew up the memorandum of agreement marked  
"Exhibit B" attached to the deposition of Mr Tetzgel  
(the witness here before examined in this cause) retain-  
ing one copy and I think sending by Captain Brown  
the Plaintiff another copy to Mr Tetzgel also  
sending the five hundred dollars as the cash pay-  
ment, Mr Tetzgel and Mr Eastman both came here  
or were here on or about the first day of November,  
He went to Mr Stutus office to close the trade and  
make the papers, Mr Tetzgel expected me not for  
three thousand dollars to have been + 400 up but

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we were unable to find the man who held it and we went to Mr. Stanghops office to get a bond of indemnity drawn. Mr. Eastman made Bond satisfactory to Mr. Tetzgel and the trade was completed and the papers delivered that evening. Mr. Eastman having paid the note for five hundred dollars, giving his bond and mortgage upon the Boat and agreeing to keep her Insured to secure Mr. Tetzgel against the note for Three thousand dollars and also giving or agreeing to give his note for seven hundred and fifty dollars to Captain Brown the Plaintiff, by direction of Mr. Tetzgel.

Question 5 At what time was the instrument referred in your answer to the previous question as "Exhibit B." executed,

Ans<sup>r</sup> October 23. 1860

Question 6 By whom was the other half of the Propeller of Barber owned at the time referred to,

Ans<sup>r</sup> By Captain Brown the Plaintiff, he was also at the time Captain of the Propeller and running to Saint Josephs.

Question 7 What if any thing did Captain Brown say as to the authority by which he stated that Mr. Tetzgel would not take less than forty five hundred dollars for his interest in the propeller, at the time he so stated to you,

Ans<sup>r</sup> He said nothing but to make the bare statement that was Mr. Tetzgel's demand that he would not say for

26 he said it in those words Fetzal would take fifty  
five hundred dollars and not a cent less.

Question 8<sup>o</sup> Look at the paper marked Exhibit A. attached  
to the deposition of Matthias Fetzal Rec to me taken  
in this cause, and state whether you have seen the  
same before if so when first and under what circum-  
stances

Ans<sup>r</sup> I have seen the paper, first saw it in the hands of  
Mr Fetzal in the fall of 1861

Question 9<sup>th</sup> When and how did you first become apprised  
of its existence?

Ans<sup>r</sup> At the time stated above in the fall of 1861 Mr  
Fetzal came to Mr Eastmans office and I was  
talking with him in relation to this transaction  
and he took this paper from his pocket and show-  
ed it to me saying that he sent it over at the date  
October 29<sup>th</sup> 1860 by Captain Brown the Plaintiff  
he thought he put it in an envelope and put Mr  
Eastmans name on the note, leaving it unsealed ex-  
pecting Capt<sup>m</sup> Brown to show it to Mr Eastman  
or his agent, but that he purposely put it in form  
so that Capt<sup>m</sup> Brown could use it with any other  
party if Mr Eastman did not accept the proposition  
contained in it.

(Answer objected to so far as it contains conversation  
of Fetzal in Plaintiffs absence.)

Question 10 Was this paper Exhibit A shown to its contents  
stated to you or to Mr Eastman by any person before

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the final execution of the papers for the purchase of the said propeller on or about the first of November as a line detailed. or was the said paper delivered to you or to Mr Eastman

Answer.

The paper was never shown to me Mr Eastman not being here could not have seen it I did not even know of its existence.

Question 11

State whether or not at the time of the execution of the said final papers for the purchase of said vessel you or Mr Eastman were informed that the note upon which this said vessel is bought was not acquired by Mr Setzel as a part of the purchase money of the said propeller and that Setzel has or had been since the time of the interview between you and Captain Brouse a line mentioned not being to sell his Interest in the said Propeller for thirty seven hundred and fifty dollars as originally proposed by him.

(Question objected to by Plt's Counsel)

Ans 2

No sir

Cross Examination by Plt's Counsel

Mr Burnham,

Question 1<sup>st</sup>

Was one half of the five hundred dollar note spoken of which came due in December 1860 paid by the Plaintiff or charged to him by Eastman

Ans 2

I think so.

Question 2<sup>d</sup>

Was the three thousand dollar note a between

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Brown and Tetzgel to be paid by Tetzgel  
Objected to by Depts. according to the contents in a  
written Instrument,

Ans<sup>r</sup> I dont know, it was a transaction a year before  
I knew either of the parties

Question 3<sup>o</sup> Was it your understanding that the three thousand  
dollar note was to be paid by Tetzgel  
Objected to by Depts Counsel,

Ans<sup>r</sup> I supposed it was,  
Objected to by Depts Counsel,

Question 4<sup>o</sup> How many days had Mr Eastman been here imme-  
diately prior to November 1860

Ans<sup>r</sup> I think he came in that morning he resides in  
Michigan I mean the day of the execution of the  
papers he came over for that purpose I sent a  
telegraph for him to come here,

Question 5<sup>o</sup> When was the note upon which this suit is brought  
made and delivered to the Plaintiff

Ans<sup>r</sup> Probably at its date I did not make the note.

Question 6<sup>o</sup> Was you present when it was made and delivered  
I dont remember

Question 7<sup>o</sup> In whose hand writing is it

Ans<sup>r</sup> Galen Eastmans the Defendant

Question 8<sup>o</sup> Had the Plaintiff acted as trustee of the property  
previous to Defendants purchase of the interest in  
1860

Ans<sup>r</sup> He had

Question 9<sup>o</sup> Do you know

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was put upon the liability of Captain Beane just prior to the purchase by defendant. I objected to by defendant's counsel as irrelevant & immaterial.

Ans<sup>r</sup> I was informed so by Captain Beane at some time when first I don't remember.

Ans<sup>r</sup> objected to by depts Counsel

Question 10<sup>o</sup> Was any payment or allowance made by defendant to Plaintiff on account of that bill to your knowledge

Objected to by Depts Counsel as irrelevant and immaterial

Answer. I think there is.

Question 11 What did the sail cost

Ans<sup>r</sup> I don't know Sir

Question 12 At the time you state that Plaintiff told you that forty five hundred dollars was the least that Cetzal would take for his interest in the Propeller when and where was it and who if any other party were present

Ans<sup>r</sup> It was two to five days previous to October 23<sup>rd</sup> 1860, it was outside of Mr Eastmans office as my memory is and near the office. I remember no other persons present he had no other Person in the office and I stepped outside as there were several in the office.  
B. Merrill

Subscribed and sworn to

29<sup>th</sup> day of October 1862

before me

James B. Thomas

Adjourned to 30 October 1864 at 3 P.M.  
and unless otherwise ordered

The Plaintiff then introduced the following  
testimony.

The Deposition of Samuel S. Slater a witness pro  
duced sworn and examined on the part of the Plain-  
tiff in the above cause at the office of Burnham &  
Martin in Chicago on the 30<sup>th</sup> day of October A. D. 1864  
before me Jesse B. Thomas a Notary Public in  
and for the City of Chicago in the County of Cook and  
State of Illinois by agreement of parties all except  
to the form of depositions and party before whom  
taken being mutually waived.

Question 1 What is your name, age and occupation and  
where do you reside

Ans<sup>r</sup> Samuel S. Slater. Thirty eight years of age and  
a dealer in wool

Question 2 Do you know the parties to this suit and how  
long have you known them,

Yes. I have known the Plaintiff six years.  
The Defendant for eight

Question 3 State whether you were present at an interview  
between Matthias Fetzl and Mr. Hunt the agent  
of Defendant on the 20<sup>th</sup> day of November the first  
of November 1860 if you were present what was done and

Adjourned to 30 October 1864 at 3 P.M.  
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Yes. I have known the Plaintiff six years.  
The Defendant for eight

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between Matthias Fetzl and Mr. Hunt the agent  
of Defendant on the 20<sup>th</sup> day of November the first  
of November 1860 if you were present what was done and

said by them in your presence  
(Objected to by Defendants Counsel)

I was in the office of Mr. Lord the adjoining room to the office I occupied about that time. Mr. Tetzol and Mr. Merrill came in together they were in conversation with regard to securing Mr. Tetzol in regard to the sale of the Boat. Mr. Tetzol stated that he would not or did not wish to assume any liability with regard to the transaction, that he was only realizing five hundred dollars by it. Mr. Merrill replied yes you are making twelve hundred and fifty. Mr. Tetzol said No I am only making five hundred or something to that effect. Mr. Merrill then said Captain Brown is making seven hundred and fifty. I am not sure whether he said Captain Brown or somebody else. Mr. Merrill then continued to show Mr. Tetzol where or how it was being made at which stage I left the room and went into my own

Question 4

What were the facts in relation to the purchase of the propeller J. Barber by Tetzol and Brown, I inquire with a view to show which of them or between themselves was to pay the three thousand dollar note

Objected to by Defendants Counsel as leading & calling for the contents and construction of a written instrument

Ans: Captain Brown paid three thousand dollars

32

at the date of the purchase.

Question 5<sup>o</sup>

Look at the papers in your hand marked "Exhibit No 1" and "Exhibit No 2" and if you know by whom No 1 was executed.

Ans<sup>r</sup>

By Sylvester Lued and myself.

Question 6

By whom was Exhibit No 2 executed.

Ans<sup>r</sup>

By Thomas Brown and Mr Fetzgel

Now Plaintiff's Counsel produce & offer in evidence Exhibits No 1 and Exhibits No 2 which are received accordingly.

Question 7

How was the consideration paid or arranged with Lued and Slater by Brown and Fetzgel on their purchase of the Propeller S Butler, objected to by Deft's Counsel, because the contract between the parties mentioned is shown to have been in writing.

Ans<sup>r</sup>

By the payment of three thousand dollars by Captain Brown at the date of purchase & by two notes of five hundred dollars payable during the fall of the same year and a note of three thousand dollars payable in the fall of 1861 and secured by a mortgage on the vessel and a mortgage of Real Estate in Saint Joseph Michigan owned by Mr Fetzgel individually.

Now the Plaintiff produces in evidence

Exhibit No 3 which Defendants Counsel admits  
 is <sup>in</sup> the hand writing of Marshall and executed by  
 the defendant Eastman and that the writing en-  
 dorsed thereon in Ink is in the hand writing of  
 Mr Eastman the Defendant

Question 8. Look upon the note now shown to you and upon  
 which this suit is brought marked "Exhibit 4"  
 and state whether the same together with Ex-  
 hibit 3 have been in your custody and when  
 and in what condition

Ans<sup>r</sup> Shortly after Captain Brown received the papers  
 he brought them to me for safe keeping and  
 turned the note on the 11<sup>m</sup> of June 1861 and  
 retained the Bond some months longer and  
 know how long they were in my hand until I  
 tore off the note

Here the Plaintiff produces Exhibit No 5 in  
 evidence, the execution of which is admitted  
 by Defendants Counsel

Cross Examination by Defendants Counsel

Question 1. At the interview referred to by you between  
 Mr Marshall and Mr Tetzels did you hear any offer  
 made by Tetzels to sell his interest in the Propeller  
 for less than forty five thousand dollars or to

Exhibit No 3 which Defendants Counsel admits  
 is <sup>in</sup> the hand writing of Marshall and executed by  
 the defendant Eastman and that the writing en-  
 dorsed thereon in Ink is in the hand writing of  
 Mr Eastman the Defendant

Question 8. Look upon the note now shown to you and upon  
 which this suit is brought marked "Exhibit 4"  
 and state whether the same together with Ex-  
 hibit 3 have been in your custody and when  
 and in what condition

Ans<sup>r</sup> Shortly after Captain Brown received the papers  
 he brought them to me for safe keeping and  
 turned the note on the 11<sup>m</sup> of June 1861 and  
 retained the Bond some months longer and  
 know how long they were in me that until I  
 tore off the note

Here the Plaintiff produces Exhibit No 5 in  
 evidence, the execution of which is admitted  
 by Defendants Counsel

Cross Examination by Defendants Counsel

Question 1. At the interview referred to by you between  
 Mr Marshall and Mr Tetzels did you hear any offer  
 made by Tetzels to sell his interest in the Propeller  
 for less than forty five thousand dollars or to

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relinquish seven hundred and fifty dollars from the purchase money or any reference by said Contract to any such offer as having been made by him or sent by him to Mr Eastman,

Ans<sup>r</sup> I did not

Samuel S Slater

Subscribed and sworn this 30<sup>th</sup> day of October 1862 before me

Jesse B Thomas  
Notary Public

The Deposition of William P. Murphy a witness produced sworn and examined on the part of the Plaintiff in the above cause at the office of Bushnell and Martin in Chicago on the 30<sup>th</sup> day of October A.D. 1862 before me Jesse B. Thomas a Notary Public in and for the City of Chicago in the County of Cook and State of Illinois by agreement of parties all exceptions to the form of deposition and party before whom taken being mutually waived

Question 1 What is your name age and occupation and where do you reside

Ans<sup>r</sup> William P. Murphy aged twenty seven I am a Sumner agent and reside in Chicago

Question 2 Do you know the parties to this contract and which of them and how long have you known them

I know little parties now know the Plaintiff  
12 or 14 years the Defendant & c. 10.

Question 3

State whether you had the note upon which  
this suit is brought (now shown to you)  
in the year 1861 if so state at what time and  
whether you called on defendant for payment  
of the note and if yes what he said on that  
occasion.

Answer 2

I had the note in my possession in 1861 I got it  
I think in May or June I called on defendant  
for payment of the note some weeks after it was  
due from four to six weeks he told me he could  
not pay it then - that he had a large payment  
to make on the propeller and that he would pay  
that before he did this note - He spoke of having  
some money due him from some party or parties  
down on the Illinois River I think - that these  
parties had owed him for Lumber for Building  
Ice Boats - and he had got some intelligence  
that he would get that money before a great while  
and that he would be easier then - he then  
handed the note back to me and told me it  
was all right, and I think he asked me how  
I came by the note, I told him,

Subscribed and sworn this 30<sup>th</sup> day

of October 1862 Before me

William P. Murphy

Jesse B. Thomas

Notary Public

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and thereupon he rested his case - and no further  
or other testimony was introduced by either  
party in said cause.

The Judge thereupon found the issues of the  
Plaintiff and assessed his damage, at the sum  
of Eight Hundred and Five Dollars - to which  
finding the Defendant then and there accepted  
and entered his motion to set aside the said  
finding and for a new trial in said cause as  
signing the following reasons therefor viz.

37

But the Court overruled the said motion, and rendered judgment on the said pleading for the same as aforesaid.

Whereupon the Defendant prayed an appeal to the Supreme Court of this State which was allowed.

And since the matters and things herein before set forth do not appear by the record of said proceedings the defendant prayed the Court to sign and seal this his bill of exceptions which is accordingly done

Signed and sealed at Chicago this 16<sup>th</sup> day of February A.D. 1863

Chas. W. Higgins  
Judge

He saw no objections  
to this bill of exceptions  
Burnham & Martin  
16 July 1863

State of Illinois  
County of Cook } 25

I Thomas D. Castro Clerk of  
the Superior Court of Chicago within and for  
the County and State aforesaid. do hereby Certify  
that the foregoing is a full true & Complete Transcript  
of all the pleadings on file in my office, the orders  
and judgment entered of record in said Court, to-  
gether with the Bill of Exceptions and Appeal Bond  
filed; in a Certain Cause wherein Thomas Brown  
was Plaintiff and Galen Eastman was De-  
fendant.

In Testimony whereof I have  
hereunto set my hand and affix-  
ed the Seal of said Court, at  
the City of Chicago, in the County  
and State aforesaid this 7th  
day of April, A D 1863

Thomas D. Castro  
Clerk



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EXHIBIT B.

CHICAGO, October 23, 1860.

This is to certify that I have this day sold to Galen Eastman, half the Propeller J. Barber, with all her furniture and tackle, for \$500 cash; \$250 to pay half of note, due this fall, and also to assume the note given by Teetzel & Brown to Lind & Slater, \$3000, due in the fall of 1861, and to pay to Mathias Teetzel \$750, during the next season of navigation, as may be agreed, making in all \$4,500, for the one-half of said Propeller, and I, Galen Eastman, agree to pay the money as aforesaid, and to assume the said payments.

THOS. BROWN as Agent for M. Teetzel, :  
GALEN EASTMAN per B. Merrill.

EXHIBIT A.

ST. JOSEPH, MICH., Oct. 29, 1860.

I will sell my half of the propeller J. Barber on the conditions as follows: 1st. That I am entirely released from the payments yet to be made on the boat, viz: a note for \$500 and interest, due in Dec., 1860, signed by Brown & Teetzel; also a note for \$3,000 and interest, due in Oct., 1861, given by Brown & Teetzel; and that the party cause the release of a mortgage given by me as collateral to said notes. Then, after the above conditions are fully complied with, the party is to pay me in hand \$500 in cash. In case the notes and mortgage cannot be released, I will accept the following securities, viz: Payment of the \$500 note and interest, and a bond of indemnity, signed by all parties interested in said boat, and a mortgage on the same, conditioned that if the \$3,000 note and interest is not paid at maturity, all parties whatever having any interest in said boat are to forfeit all right, title and interest in the same, and they are to bind themselves to deliver the boat to me for sale, to meet the \$3,000 note. I am also to have the boat for one more trip to this place.

M. TEETZEL.



Exhibit No. 1.

Bill of Sale of Propeller J. Barber from  
Lind & Slater to Brown & Teetzel for  
\$6500.00

Exhibit 2.

Mortgage from Brown & Teetzel to  
Lind & Slater upon 1/2 propeller for  
\$3000.00 dated April 1860

In the Supreme Court of the  
State of Wisconsin

3<sup>d</sup> Grand Division  
April Term 1863

Galus Eastman  
Appellant

vs

Thomas Brown  
Appellee

It is hereby stipulated  
between the attorneys for the respec-  
tive parties that the above copies  
and substantial statements of exhibits  
the originals of which were used on the  
trial of this cause, as well as the stipula-  
tion - a statement of which is subject to  
Exhibit 5 - be taken read and  
considered as part of the record  
filed in this cause - and also  
as a part of the attachments of  
Dated April 22 1863

Benjamin H. Martin  
Attorney for Appellee  
Walter B. Brown  
Attorney for Appellant

EXHIBIT NO. 5.

Chattel mortgage, dated November 3, 1860, from Eastman and Brown, to Teetzel, of the Propeller Barber, to secure said \$3000 obligation, assumed by Eastman, with power of sale on default.

By stipulation, it is agreed, that the bill of sale of November 3, 1860, from Teetzel to Eastman, of half the Propeller Barber, expressed, as and for the consideration thereof, the sum of \$4,500.

EXHIBIT 3.

Bond dated November 3, 1860, from Galen Eastman to Thomas Brown, reciting the purchase by Eastman, from Teetzel, and that Eastman having assumed Teetzel's \$3000 obligation. Brown had signed the bond to Teetzel, jointly with Eastman. The condition was to pay the note, and indemnify Brown against loss thereon.

And now here the said Galen Eastman comes and says <sup>that</sup> in the record and proceedings aforesaid and also in the <sup>recitation of the</sup> judgment ----- as aforesaid, there is manifest error to the injury of the said Galen Eastman in this:

- 1<sup>st</sup> The court erred in considering the testimony of Teetzel which was objected to
- 2<sup>d</sup> The finding of the court was against law
- 3<sup>d</sup> The finding of the court was against the evidence
- 4<sup>th</sup> The court erred in not granting a new trial
- 5<sup>th</sup> The court erred in rendering judgment against the defendant

Walker Thomas

Atty for Appellant

Thos. Brown  
appellee

and

Galen Eastman  
appellant

In Supreme Court  
3<sup>d</sup> Grand Division  
April Term 1863

Appeal from Superior Court  
of Chicago

And now comes the said Thomas Brown appellee - by Brown and mention his atty, and denies the alleged error alleged by appellant above - and says in nolo est veritate -

Brown & Co

Atty for Appellee

238

name  
to  
more  
known

Armed the bar

Filed April 23<sup>rd</sup> 1863

Leahy

How 49 75 77  
Blair

"Chicago Post Company," Printers, 82 Dearborn Street.

# IN THE SUPREME COURT

OF THE STATE OF ILLINOIS.

—  
THIRD GRAND DIVISION.  
—

—  
APRIL TERM, A. D. 1863.  
—

GALEN EASTMAN,  
*Appellant,*  
vs.  
THOMAS BROWN,  
*Appellee.*

} *Appeal from the Superior Court  
of Chicago.*

—  
ABSTRACT OF RECORD.

Page of  
Record.

- 2 Declaration in assumpsit, special count on a promissory note made by Eastman to Brown, for \$750 00, dated November 3, 1860, and due 1st July, 1861.
- 3 Common counts.
- 6 and 7 Pleas 1st general issue—2d to 1st count: Note procured by fraud of plaintiff. 3d to 1st count: No consideration for the giving of the note. 4th to whole declaration: Fraud in the making of the promises counted upon.
- 8 Replications. Denial of fraud and of want of consideration.

Page of  
Record.

10 Cause submitted to court and trial by Judge Van H. Higgins without a  
11 jury. Issues found for plaintiff and damages assessed at \$805. Motion  
12 by defendant for a new trial overruled, and defendant excepts then and  
there. Appeal prayed and granted. Bond and bill of exceptions filed.

14

### BILL OF EXCEPTIONS.

On the trial plaintiff offered in evidence a note, as follows: "Chicago,  
"Nov. 3d, 1860. [\$750.] On or before the first day of July next, I  
"promise to pay to Thomas Brown seven hundred and fifty dollars value  
received.

-GALEN EASTMAN."

Defendant then introduced the following testimony :

15 Deposition of *Mathias Betzel*, who testified as follows : In 1860 was owner  
of one-half of the propeller J. Barber. Met defendant Eastman for first time  
at his office in Chicago, about 1st Oct., 1860. He said he would like to buy  
one-half of said propeller. I asked him what he would pay for it. He said  
16 he was not willing to pay any fancy prices. I told him I would take \$500  
in cash and he pay my share of the purchase money due on the boat, and  
interest. Eastman then said he must see Capt. Brown and see if he was  
willing. Nothing more said at that time. Some time after that, when Capt.  
Brown was at St. Joseph, Mich., where I lived. He asked me if I wanted to sell  
my interest in the boat; said Eastman had been to see him about buying it.  
I replied that I wanted to sell out; wanted to get out of it. I do not  
remember whether it was at that time or afterwards that I said to him :  
"Captain, you had better buy my half of the boat." He said he could not  
do it. I told him what offer I had made to Mr. Eastman, which is as above  
stated. He asked me if I would give him all he could make over the \$500.  
I replied "yes;" I don't care how much you make, if it is \$10,000; all I  
want is the \$500, and be released from any liability for the purchase  
money. Capt. Brown then returned to Chicago with the boat. This was  
before Oct. 19th, 1860; might have been 10 days or less. I authorized  
Capt. Brown to make sale of my half for me to Eastman, on the terms men-  
tioned in said conversation. I did not direct him to demand as a condition  
of the sale to Eastman any more for me than the \$500 and my release  
17 from liability for purchase money. Capt. Brown, on the 29th Oct., subse-

quent brought me a package of \$500 in currency, together with a letter from Eastman. The money was from Eastman. Capt. Brown said there is the money Eastman sent you. I deposited money in bank, because the trade was not closed up, and I did not know that it would be. I then made out the statement hereto annexed, marked Exhibit "A" and gave it to Capt. Brown. It was put in an envelope and Mr. Eastman's name written on the back of it. I think the document was read over to Capt. Brown in my office. He then went to Chicago with the boat and took the document with him. I think the next trip after that I went with him. He had bought a new sail, which cost about \$100. I told him that I would not pay anything on that; that parties who bought the boat must pay that; the sail was then in use. Don't know whether it was paid for or not. (Defendant's counsel objects to statements regarding sail as irrelevant and immaterial.) When we got to Chicago Eastman had taken up the \$500 note mentioned in  
18 "Exhibit A." We met Mr. Merrill (Eastman's agent) at Slater's office, where we closed up a bargain. My propositions for sale were written, and and I supposed Eastman had them. I refer to "Exhibit A." I had read the copy of that to Mr. Slater before there was a controversy arose as to the amount I was getting between me, and Merrill or Eastman. Brown was not there I think. They said I was getting \$750 more than I proposed to take. I said I was not. There was considerable conversation about the matter at the time, and I did not understand what they meant by it. After talking it over they said Brown must be making the \$750 instead of me, to which I either said yes or made no reply. The bond of indemnity required by me was then drawn and the trade closed. The same evening the papers were signed and delivered at Eastman's office. There was the transfer of my interest in the boat to Eastman, the bond of indemnity signed by Brown and Eastman to me to indemnify me against loss on the \$3,000 note, secured by mortgage on the propeller, and on a dock belonging to me, also a chattel mortgage on the boat, signed by Brown and Eastman for the same purpose. Brown was present at the signing, but I think not at the delivery of the papers. The papers, including "Exhibit A," (which was open) were delivered to me at Eastman's office, by Eastman or Merrill, on the same evening. Brown was present very little at Slater's office, or during

the day, as he was busy unloading the boat. I first saw the instrument marked "Exhibit B," last fall, when the \$3000 note matured. Mr. Merrill showed me this instrument, or something like it, in their office. That was the first time I ever saw it, or heard of it.

---

#### CROSS EXAMINATION.

The same evening about the time we were closing the trade, I think while we were signing the papers, Eastman said to Brown something like this: "Will it make any difference, as we are in a hurry, whether I make that note now or at some other time, or won't it do just as well to make that note some other time when you come in." He said it would make no difference. I suppose they referred to the \$750 note. This transaction was on the first day of November, A. D. 1860. I required Brown to sign the bond of indemnity, chattel mortgage and other papers, which I took for my security as above mentioned. Brown signed them as security for Eastman, in fact, I considered it so. I did not know Eastman's responsibility. (Defendant's counsel objects to statement as to the requiring Brown to sign papers as irrelevant and immaterial, and to statement as to securityship because irrelevant and immaterial, and because the document is the best evidence and statement.)

20 In the controversy at Slater's office, Eastman and Merrill understood, as appeared by their figuring, that they were to pay \$4500 for the purchase, and before we got through with the controversy they understood that \$750 of the amount I was not to have. The trade was closed with <sup>the</sup> understanding. I assented to the mode of closing the trade at the time I closed the arrangement. I did not know Capt. Brown had made a written arrangement with them as per "Exhibit B," when I called upon Merrill last fall at the maturity of the \$3000 note, I complained to him that they had not insured the vessel and assigned the policy to me, as required by the bond of indemnity they had given me. Merrill then showed me "Exhibit B." He looked at "Exhibit B," to see what he was bound to do, as I understood it. I showed him the bond of indemnity. (Defendant's counsel

objects to last mentioned conversation as irrelevant and immaterial.) I would not have sold without cash down without Brown giving security. (Defendant's counsel objects to last statement of witness as irrelevant and immaterial.) Capt. Brown did not make any charge to me as captain or master for services for the year 1860, or against the vessel for said services. (Defendant's counsel objects to this statement as irrelevant and immaterial.)

---

#### RE-EXAMINATION.

21 I never told Brown at any time that I would not sell my interest in said propeller for less than forty-five hundred dollars. (Objected to by plaintiff's counsel as incompetent.)

The proposition contained in "Exhibit A" was substantially the same as originally made by me to Eastman. At the time I handed "Exhibit A" to Brown it was intended for Eastman if he would carry out its provisions, and if he did not, then for any other person that would buy.

---

#### RE-CROSS-EXAMINATION.

Brown was authorized to sell as before stated in our conversation at St. Joseph. Brown was authorized to sell as before stated in our conversation at St. Joseph. Brown was authorized to sell to any person, provided I was secured according to the provisions of "Exhibit A," though I considered Mr. Eastman, if he carried out the conditions, should have it.

---

The Deposition of *Barzillia Merrill*, a witness for Defendant :

22 Question 1. What is your age, residence and occupation ?

Answer. My age is forty years ; residence Chicago ; I am agent for  
23 Galen Eastman, defendant, in the vessel and lumber business.

Question 2. How long were you in his employ ?

Answer. Since May, 1857.

Question 3. Are you acquainted with plaintiff, if yea, how long have you known him?

Answer. I am; since fall of 1860.

Question 4. State what, if anything, you know with reference to the purchase by the defendant from the plaintiff of an interest in the propeller J. Barber, and the negotiations between said parties in reference to said purchase.

Answer. About the first of Oct., 1860, Mr. Mathias Teetzel of St. Joseph, Michigan, called at Mr. Eastman's office, Mr. Eastman being there, and proposed to sell him the half interest in the propeller known as the J. Barber. Mr. Eastman. Mr. Teetzel asked Mr. Eastman what he would give for him. Mr. Eastman replied that he would not pay any fancy prices, but might purchase if she was cheap enough. Mr. Teetzel said he was sick of the propeller business, and would sell her, if Mr. Eastman would give him five hundred dollars cash, and pay his liabilities for the purchase money which he said was the half of a note for five hundred dollars, due about the first of December, 1860, and a note for three thousand dollars, and interest, due in the fall of 1861. Mr. Eastman said he would need to see Captain Brown in relation to changing the route, and also what arrangements he could make at Grand Haven for freights and connections with the river boats, when he would advise. Mr. Eastman went to Grand Haven and made his arrangements, and wrote me to close the trade as stated above.

I saw Captain Brown, the plaintiff, and I spoke to him in relation to the trade. He said that Mr. Teetzel would sell his interest in the boat, his half interest for forty-five hundred dollars, and not a cent less. I wrote to Mr. Eastman stating the fact that Teetzel had changed the amount asked, as stated by Captain Brown. He replied, that he had made arrangements by which he was to lay up his river steamer and furnish a certain amount of freight to another boat on the river, and that it was necessary for him to have the Barber, even if it cost him a thousand dollars more, and directed me to close the trade. I saw Captain Brown (plaintiff) and drew up the

25 memorandum of agreement marked "Exhibit B," attached to the deposition of Mr. Teetzel (the witness heretofore examined in this cause) retaining one copy, and I think sending by Captain Brown, the plaintiff, another copy to Mr. Teetzel, also sending the five hundred dollars as the cash payment. Mr. Teetzel and Mr. Eastman both came here, or were here, on or about the first day of November. We went to Mr. Slater's office to close the trade and make the papers. Mr. Teetzel expected his note for three thousand dollars to have been taken up, but were unable to find the man who held it, and we went to Mr. Waughop's office to get a bond of indemnity drawn. Mr. Eastman made bond satisfactory to Mr. Teetzel and the trade was completed, and the papers delivered that evening. Mr. Eastman having paid the note for five hundred dollars, giving his bond and mortgage upon the boat and agreeing to keep her insured to secure Mr. Teetzel against the note for three thousand dollars, and also giving or agreeing to give his note for seven hundred and fifty dollars to Captain Brown, the plaintiff, by direction of Mr. Teetzel.

Question 5. At what time was the instrument referred in your answer to previous question, as "Exhibit B," executed?

Answer. October 23, 1860.

Question 6. By whom was the other half of the propeller J. Barber owned at the time referred?

Answer. By Captain Brown, the plaintiff; he was also at the time Captain of the propeller and running to St. Joseph.

Question 7. What, if anything, did Captain Brown say as to the authority by which he stated that Mr. Teetzel would not take less than forty-five hundred dollars for his interest in the propeller, at the time he so stated to you?

26 Answer. He said nothing but to make the bare statement, that was Mr. Teetzel's demand that he would not vary from, he said it in those words: Teetzel would take forty-five hundred dollars and not a cent less.

Question 8. Look at the paper marked "Exhibit A," attached to the deposition of Mathias Teetzel heretofore taken in this cause, and state whether you have seen the same before, if so, when first, and under what circumstances?

Answer. I have seen the paper, first saw it in the hands of Mr. Teetzel in the fall of 1861.

Question 9. When, and how did you first become apprized of its existence?

Answer. At the time stated above. In the fall of 1861 Mr. Teetzel came to Mr. Eastman's office. I was talking with him in relation to this transaction, and he took this paper from his pocket and showed it to me, saying that he sent it over at the date, October 29, 1860, by Captain Brown, the plaintiff. He thought he put it in an envelope and put Mr. Eastman's name on the note, leaving it unsealed, expecting Captain Brown to show it to Mr. Eastman or his agent, but that he purposely put it in form, so that Captain Brown could use it with any other party, if Mr. Eastman did not accept the proposition contained in it.

(Answer objected to so far as it contains conversations of Teetzel in plaintiff's absence.)

27 Question 10. Was this paper "Exhibit A" shown, or its contents stated to you or to Mr. Eastman by any person before the final execution of the papers for the purchase of the said propeller on or about the first of November, as above detailed, or was the said papers delivered to you or to Mr. Eastman?

Answer. The paper was never shown to me. Mr. Eastman not being here could not have seen it. I did not even know of its existence.

Question 11. State whether or not at the time of the execution of the said final papers for the purchase of said vessel, you or Mr. Eastman were informed that the note upon which this suit is brought was not required by Mr. Teetzel as a part of the purchase money of the said propeller, and that Teetzel was, or had been since the time of the interview between you and Captain Brown, above mentioned, willing to sell his interest in the said propeller for thirty-seven hundred and fifty dollars, as originally proposed by him?

(Question objected to by plaintiff's counsel.)

Answer. No sir.

CROSS EXAMINATION BY MR. BURNHAM.

Question 1. Was one-half of the five hundred dollar note spoken of, which came due in December, 1860, paid by the plaintiff or charged to him by Eastman?

Answer. I think so.

28 Question 2. Was the three thousand dollar note, as between Brown and Teetzel, to be paid to Teetzel?

[Objected to by defendant, as calling for the contents of a written instrument.]

Answer. I don't know. It was a transaction a year before I knew either of the parties.

Question 3. Was it your understanding that the three thousand dollar note was to be paid by Teetzel?

[Objected to by defendant's counsel.]

Answer. I suppose it was.

[Objected to by defendant's counsel.]

Question 4. How many days had Mr. Eastman been here immediately prior to November, 1860?

Answer. I think he came in that morning. He resides in Michigan. I mean the day of the execution of the papers. He came over for that purpose. I wrote a telegram for him to come here.

Question 5. When was the note upon which this suit is brought made and delivered to the plaintiff?

Answer. Probably at its date. I did not make the note.

Question 6. Was you present when it was made and delivered?

Answer. I don't remember.

Question 7. In whose hand-writing is it?

Answer. Galen Eastman's, the defendant.

Question 8. Had the plaintiff acted as master of the propeller previous to defendant's purchase of the interest in 1860?

Page of  
Record.

Answer. He had.

29 Question 9. Do you know, or was you informed, that a new sail was put upon the boat by Captain Brown just prior to the purchase by defendant?

(Objected to by defendant's counsel as irrelevant and immaterial.)

Answer. I was informed so by Captain Brown at some time; when first, I don't remember.

(Answer objected to by defendant's counsel.)

Question 10. Was any payment or allowance made by defendant to plaintiff on account of that sail, to your knowledge?

(Objected to by defendant's counsel as irrelevant.)

Answer. I think there was.

Question 11. What did the sail cost?

Answer. Don't know, sir.

Question 12. At the time you state that plaintiff told you that forty-five hundred dollars was the least that Teetzel would take for his interest in the propeller, when and where was it, and who, if any other persons, were present?

Answer. It was two to five days previous to October 23, 1860; it was outside of Mr. Eastman's office, as my memory is, and near the office; there were no other persons present; he had no other room in the office, and I stepped outside, as there were several in the office.

B. MERRILL.

Subscribed and sworn to this 29th day of  
October, 1862, before me.

JESSE B. THOMAS,  
*Notary Public.*

30 Plaintiff then introduced the deposition of *Samuel S. Slater*, who tes-  
31 tified as follows: In fore part of Nov., 1860—at my office in Chicago, heard

conversation between Mr. Merrill and Mr. Teetzel relative to securing Teetzel in regard to sale of the boat; Teetzel stated that he did not wish to or could not assume any liability with regard to the transaction; that he was only realizing \$500 by it. Merrill replied: yes, you are making \$1250 by it. Teetzel said: no, I am only making \$500, or something to that effect. Merrill then said: Capt. Brown is making \$750. I am not sure whether he said Capt. Brown or somebody else; Mr. Merrill then continued to show Teetzel when and how it was being made.

Question What were the facts in relation to the purchase of the propeller J. Barber, by Teetzel and Brown? I inquire with a view to show which of them, as between themselves, was to pay the \$1200.

Objected to by defendant's counsel as leading, and calling for the contents and construction of a written instrument.

32 Answer. Capt. Brown paid \$3000 at time of purchase. Exhibit No. 1 was executed by Sylvester Lind and myself; Exhibit No. 2 was executed by Thomas Brown and Teetzel. Here plaintiff's counsel produce and offer in evidence—Exhibits Nos. 1 and 2.

Question. How was the consideration paid or arranged with Lind and Slater by Brown and Teetzel, on their purchase of the J. Barber?

Objected to by defendant's counsel, because the contract between the parties mentioned, is shown to have been in writing.

Answer. By the payment of \$3000 by Brown at time of purchase—a note of \$500, payable during the fall of same year, and a note of \$3000, payable in the fall of 1861, secured by a mortgage on vessel, and a mortgage on real estate in Michigan, by Teetzel, individually.

33 Exhibit No. 3, here offered in evidence, admitted by defendant's counsel to be in the hand writing of B. Merrill, and to have been executed by the defendant; that the writing in ink indorsed thereon is the handwriting of defendant.

Shortly after Capt. Brown received Exhibits Nos. 3 and 4, he brought them down for safe keeping; I returned the note on the 11th June, 1861, and retained the bond some months longer; they were on one sheet until I tore off the note, Exhibit No. 5, here offered in evidence, the execution of which by defendant is admitted.

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#### CROSS EXAMINATION BY DEFT'S COUNSEL.

At the interview referred to by me between Merrill and Teetzel, I did not hear Teetzel offer to sell his interest in the propeller for less than \$4500,  
34 nor to relinquish \$750 from amount of purchase price.

Plaintiff then offered and read deposition of *Hiram P. Murphy*, who  
35 testified as follows: I had the note on which this suit was brought in my possession in 1861; got it in May or June; called on defendant for payment some weeks after it was due—from 4 to 6 weeks; he told me he could not pay it then; that he had a large payment to make on the propeller, and that he would pay that before he did this note; that he had some money due him, and when he got it he should be easier. He then handed the note back, and told me it was all right, and I think asked me how I came by the note. I told him.

36 No further testimony being introduced, the judge found the issues for the plaintiff, and assessed his damages at \$805, to which finding the defendant then and there excepted, and entered his motion to set aside the said finding, and for a new trial in said cause, but the court overruled the said motion, and rendered judgment on the said finding for the sum aforesaid—to which the defendant then and there excepted.

## THE ERRORS ASSIGNED ARE

- 1st. The court erred in considering the testimony of *Fetzal* which  
*was objected to*
- 2d. The finding of the court was against law.
- 3d. The finding of the court was against the evidence.
- 4th. The court erred in not granting a new trial.
- 5th. The court erred in rendering judgment against the defendant.

WALKER &amp; THOMAS,

*Att*  
Counsel for Appellant.

87 238  
Eastman  
5  
Brown  
Abstract

Filed May 9, 1863.  
Leland  
Ch.

IN THE  
Supreme Court of the State of Illinois,  
THIRD GRAND DIVISION,  
APRIL TERM, A. D. 1863.

GALEN EASTMAN,

*Appellant,*

*versus*

THOMAS BROWN,

*Appellee.*

*Appeal from the Superior Court  
of Chicago.*

POINTS FOR APPELLANT.

The witness Teetzel had offered to sell Eastman his half interest in a boat for \$3,750. The offer had not been declined, but Eastman had gone to Michigan to make arrangements for closing the trade, as the conversation between the parties clearly contemplated he might do before answering. The offer of vendor had not been withdrawn, but was still open.

Eastman sent word to Merrill, his agent, to close the trade, when Brown, the owner of the other half and captain of the boat, professing to act by Teetzel's instructions, falsely stated that Teetzel would no longer sell for \$3,750, nor for less than \$4,500. Teetzel, on the contrary, swears that he never so stated, or instructed Brown, but was always willing to sell for \$3,750, and so stated to Brown. Eastman, believing Brown's false statements, and forced, by the arrangements he had made, to have the boat, made a written agreement in duplicate with Brown, or Teetzel's agent, (see Exhibit B in Record), for the purchase at \$4,500, *which agreement Brown pocketed and never gave or disclosed to Teetzel.*

Subsequently Teetzel prepared and gave to Brown for delivery to East-

man a written offer of sale, (see Exhibit A in Record,) *substantially renewing his original offer at \$3,750, which also Brown kept, and Eastman nor his agent never saw.*

Afterwards the parties (Teetzel & Eastman) met in Chicago to close the trade, *each supposing that the other had the paper executed by himself.* Eastman, therefore, supposing Teetzel had Exhibit B, calling for the extra \$750 note, and that that contract had been entered into under Teetzel's instructions, and *not being apprized of the contrary or of Brown's fraud,* made the note accordingly. It is true, Teetzel then stated that he was not "making the \$750," and on Merrill saying, "Then Brown makes it," he said, "yes," or nothing; but it was not then, nor until a year afterwards disclosed to him, that the contract under which he supposed himself to be making the note, and under which he supposed it to be *required* by Teetzel, although by his (Teetzel's) direction *made* to Brown, had in fact never come to Teetzel's possession, nor been made by his direction. The mere changing the direction of the money from Teetzel to Brown, by Teetzel's orders, or the statement that Brown was "making it," not stating how, could not undeceive Eastman of the false impression created by Brown, that the \$750 was required by Teetzel as a part of the purchase money under the contract. The facts and Brown's fraud never came to Eastman's knowledge till the fall of 1851, long after the interview mentioned by plaintiff's witness Murphy.

Upon these facts we claim—

I.

The note was void for fraud of Brown.

I. Fraud accompanied by damage is a good cause of action, and concealment where duty requires disclosure, is fraud.

14 Bart. S. C. 72. 22 do. 654.  
3 Seld. 352.

II. The party committing fraud need not, as here have received benefit, nor colluded with party benefited.

3 T. R. 51. 3 Scam, 171.  
2 Meto. 374. 1 Scam. 344.

III. The false suggestion need not have been *the leading* motive to action; it is enough if it were *a* motive.

22 Pick. 48, 52.

IV. To make the fraud actionable, no relation of trust or confidence need exist.

22 Pick. 48.

V. Where the party guilty of fraud in an executory contract brings an action on it, the fraud may be set up in defense.

18 Pick. 104. 30 Vt. 139.

VI. The contract need not have been rescinded *in toto*.

30 Vt. 139. 1 Hill, 484. 1 Comst. 305.

2 Pars. Cont. 278. 1 Metc. 557.

VII. The loss of an advantageous bargain, or the making a worse one, by reason of willfully false statements, is sufficient damage.

2 Wend. 385. 4 Den. 189.

VIII. Here the vendor was not only in fact always ready to sell on the original terms, but the first negotiations were still open. An offer continues open for a reasonable time, to be determined by the words of the parties and the circumstances of the case.

1 Pars. Cont. 405 (bk. 2, ch. 2, sec. 2).

3 Cush. 224. 1 Foster, 41.

1 Fairf. 185. 21 Eng. L. and Eq. 591.

IX. Where the false representations are as here, such as reasonably to prevent further inquiries, they are a good defense.

18 Pick. 105. 1 Pick. 351.

X. False representations, by a third person, more unfavorably regarded than those of vendor, because he has apparently *no interest to deceive*.

6 Metc. 260.

XI. Courts always require the strictest candor, of a party who professes to act as a mere voluntary *negotiorum gestor*, and will not let him make a profit of either party who reposes confidence in him.

9 Paige, 241. Dunlap's Paley Ag. 33—37.

XII. Here is palpable effort of appellee to reap a reward from his own fraud. He has done nothing for either party, but by deceiving both, without benefiting either, attempts to recover \$750 for himself, as a compensation for inducing them to consummate a sale upon the precise terms of an offer already made and accepted.

#### II.

There was no consideration for the note.

I. It was not given as commissions for Brown. It was not so claimed by him, nor so intended by either party, nor had he earned any. He had neither found buyer or seller; they had found each other, and offered and accepted terms of sale.

II. It was not part of the purchase money of the boat.

It did not in fact go to the owner, nor for his benefit, nor was it, although erroneously supposed by Eastman to be so, required by the owner as a condition precedent to the sale.

III. The supposed consideration, viz.: the obligation on Eastman's part to carry out the contract (Exhibit B.) did not in fact exist, that contract being void for fraud, and never having come to or been acted on by Teetzal. "Where the cause for which the engagement is contracted is false, there is no consideration."

1 Poth. Obl. 123. 2 Taunt. 2.

"To make a valid contract, both parties must assent to the same thing in the same sense."

1 Pars. Cont. 399.

#### III.

To permit a recovery on this note, under the facts disclosed, is not only to tolerate, but sanction and reward a long continued course of premeditated fraud; to permit a third party who has learned of the negotiations of vendor and vendee, and that their minds have in fact met, to take

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Eastman

as

Brown

Appellants Points

Filed Apr 24 1865

L. Leland  
clerk

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W. H. BROWN & SONS



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advantage of his position and knowledge, and of the mutual confidence of the parties in him, to interfere between them, and by false statements and fraudulent concealments, to extort from the vendee a further sum under the guise of higher compensation to the vendor, his principal, but in reality based upon no other consideration than his own treachery and deceit.

Falsehood is too cheap to be purchased at so high a price; and since vendor and vendee have completed and carried out the only contract between themselves required by vendor, and intelligently made by vendee, this excrescence added by fraud of appellee, growing out of no valid mutual agreement between the parties, and based on no real consideration, ought to be rejected and condemned.

WALKER & THOMAS.

*Attorneys for Appellant.*

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Eastman  
As

Brown

Appellants Point

Filed Apr 24. 1863

J. S. L. L. L.  
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