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No. _____

Supreme Court of Illinois

McKinney

vs.

Peck

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STATE OF ILLINOIS,
SUPREME COURT,

Third Grand Division.

14299

No. ~~100~~

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Peck
vs
McKinney

1862

Appellat

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APRIL TERM, A. D. 1862.

ANDREW MCKINNEY, PLAINTIFF IN ERROR,

VS.

PHILIP F. W. PECK, DEFENDANT IN ERROR.

*Filed May 13, 1862
L. Deland
clh*

ERROR TO SUPERIOR COURT OF CHICAGO.

ARGUMENT FOR PLAINTIFF IN ERROR.

HELM & CLARK, Counsel for Plaintiff in Error.

CHICAGO:

JAMESON & MORSE, PRINTERS.

1862.

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ANDREW McKINNEY }
vs. } *Error to the Superior Court of Chicago.*
PHILLIP F. W. PECK. }

The declaration in this case is against the plaintiff in error and Samuel T. Wentworth, as copartners.

The plea of McKinney, verified by affidavit, puts in issue the joint liability, and unless that issue is supported by the proof, the finding against the defendants below is erroneous, and the judgment must be reversed.

The only evidence to support the joint liability of the defendants below, was the lease offered on the trial; aside from that, all the testimony showed that the owners of the stock of goods and the real parties who occupied the premises was the firm of Chase, McKinney & Co., of Boston, of which firm the plaintiff in error was a partner, and Wentworth, his co-defendant below, the clerk or agent.

Laying aside the obligation of the lease, clearly the action was brought against the wrong parties. The lease was evidence of joint liability as against Wentworth, for he executed it in that man-

ner, if it was also evidence against McKinney, the joint liability was proved; otherwise it was not; for aside from the lease the proof showed that McKinney (if liable in any way) was jointly liable with the other parties, and not with Wentworth; and the agent of Chase, McKinney & Co. had no power to bind one member of that firm jointly with himself. 11 *Grattan*, 281; *Story on Agency*, 49, 50, *notes*. These authorities show that a power to bind the principal alone, does not empower the agent to bind the principal jointly with himself. Every man has a right to choose who shall be his co-debtor or his co-obligor, and the agent cannot make the principal a co-debtor with himself, although authorized to sign for the principal alone. The lease then being the only part of the evidence which tended to show that McKinney was jointly liable with Wentworth, the whole case turns upon the validity of that lease as against McKinney.

The evidence offered and that which was received, showed that the firm of Chase, McKinney & Co. purchased the stock of goods in October, 1857; that they entered the premises in which the stock had previously been kept; that they paid rent from month to month until about the month of July or August, 1859. These facts would raise a presumption of a tenancy from year to year, or from month to month (under the weight of authorities, the latter), but if the former, the tenancy would begin and end in October, the month in which Chase, McKinney & Co. entered. 23 *Wend.* 616; 4 *Scott*, 301; 3 *King, N. C.* 508.

There was no evidence when the term began or when it ended, other than the fact that they entered in October, 1857. If this tenancy was a monthly tenancy it terminated with the month in which they left the premises; if a yearly tenancy, it terminated with the month of October, 1859, as they left the premises in August, 1859, there being no evidence showing when the tenancy began, other than the entry in October, 1857.

Such would undoubtedly be the legal presumption resulting from all the facts of the case, aside from the written lease offered

in evidence, and that connected with the same ; and if McKinney is not bound by that lease, the result of the case must be as above indicated. Hence, under the evidence offered, it only remains for us to inquire whether that lease was the obligation of McKinney, for if it was his lease for one purpose it was for all, and if not binding on him for all purposes, it was not binding for any and was inadmissible against him. It will not be pretended that the proof showed any power in Wentworth to execute such a lease.

What has above been said, with the authorities cited in our separate brief, filed in this case, under the 2d and 3d points, shows conclusively that he had no such power before the fact, and it will not be claimed that he had any such. But it will be claimed that the act of Wentworth, in executing this lease, was subsequently ratified by McKinney. How was that ratification shown? It was an instrument under seal, containing rare and extraordinary covenants and provisions (no ordinary lease), and the authorities cited in our separate brief in support of the 4th point show that there could be no express ratification but by instrument under seal.

But again, it is insisted that there was an implied or presumed ratification of the lease from the entry of McKinney (or his firm), and the payment of rent for fifteen months, thus acquiescing in the act of the agent ; and this is doubtless the ground upon which the defendant in error expects to succeed, it being the only ground of the judgment of the court below.

This having been the ground upon which the court below based their decision, and it being the principal, if not the only question in the case, we propose to consider it somewhat fully.

We submit the proposition that *ratification can only be implied or presumed from acquiescence when there is full knowledge of all the material facts* ; or, as it is said: "it is a principle quite "universal that there can be no binding ratification without full "knowledge." 1 *Am. Leading Case*, 574.

Now, what are the facts? Chase, McKinney & Co., a firm in Boston, engaged in the wholesale boot and shoe trade, had a debt

against a firm in Chicago, which last firm was in the occupancy of the premises of defendant in error, under a lease executed to Claggett & Anderson. What sort of a tenancy they held, whether yearly or monthly, or when the term began or when it would end, we are not informed by the evidence. McKinney was the traveling partner in his firm; he usually came to Chicago once each year, in the fall. In October, 1857, he was in Chicago, and obtained a transfer of the stock of goods in the premises of defendant in error, in payment of his debt against the two Wentworths, and in behalf of his firm employing Rood and young Wentworth as clerks.

It would seem that defendant in error, or his agent, Long, knew of this change soon after, for in December, 1857, Long says rent was paid or entered in his book in the name of Rood & McKinney.

Rent was paid by Wentworth monthly, the same as before, but first entered in Long's book in the name of Rood & McKinney, and afterwards Wentworth & McKinney. At first, Rood was head clerk until May 1, 1858, the only one authorized to draw and sign checks; after that date Wentworth was head clerk, and Hoadly a second clerk. About the first of May, perhaps April 30th, 1858, the lease in question was executed. Long says Wentworth told him that he and McKinney were copartners, and Wentworth signed the lease in behalf of himself and McKinney.

After this no change whatever took place; rent was paid monthly, precisely as before, and the same sum per month, until August, 1859, when the stock was removed, and the premises vacated.

Neither McKinney or any member of his firm was ever notified of the lease; he never was seen by Peck or his agent, and the evidence does not show that he ever knew of the existence of the lease, or any such arrangement between Wentworth and the defendant in error.

It was not shown that he was in Chicago during the year 1858, or the term for which the lease was executed.

How, then, did he ratify the lease? They say that he entered and paid rent under the lease. But his firm was in possession seven months before the lease was thought of, and for three months after it expired, and paid rent monthly all the time precisely alike. And they insist that receipts were given in the name of Wentworth & McKinney. Long states that *so it is entered in his book*, but aside from that he can say nothing about it. But if they were so given, to whom were they given? To Wentworth; and nothing shows that the fact ever came to the knowledge of McKinney or any of his firm, or that either ever knew of the account kept by defendant in error against Wentworth and McKinney jointly.

It was known to Peck that McKinney, or Chase, McKinney & Co., were in possession as early at least as December, 1857, and were paying rent monthly; yet, on the last day of April, 1858, Long goes to the clerk, or agent, of Chase, McKinney & Co., and induces him to sign a lease for the term of one year; a lease with extraordinary covenants and provisions. The clerk says that he is a partner with McKinney, and executed the lease in behalf of both. No change takes place in the business. Rent is paid monthly, and they occupy for fifteen months after the lease is taken, and for twenty-two after the firm first entered the premises.

Hence, there was nothing to suggest to McKinney or his firm the existence of such a lease. These are all the facts which he would be supposed to know, and these facts raise the presumption of a tenancy from month to month, and no more. Where there was an agreement to become tenant at a certain rent per quarter, and to find security for one quarter's rent in advance, it was held to be a quarterly tenancy, and not one from year to year. (*Wilkinson vs. Hall*, 4 *Scott*, 301; 3 *Bing. N. C.*, 508; *Taylor's Landlord and Tenant*, 57.)

23d *Wendel*, 616, *Anderson vs. Prindel*, is an authority for holding that this tenancy upon the above facts, which were all that McKinney could be supposed to know, was a tenancy from month to month.

There is nothing in the case to show that he acquiesced in the lease for a term of one year, or in any written lease; and especially is there nothing to show that he acquiesced in a lease binding himself *jointly* with his clerk. He acquiesced in nothing except in a tenancy from month to month, which was all that was known to him or his firm, from the evidence.

But it is insisted that the lease was shown by Wentworth to Rood, while he was head or chief clerk.

The lease bears date April 30th, 1858, and Long says it was executed about that time. Rood says that his term was to expire at that time, and for that reason he did not inform Chase, McKinney & Co. of the execution of the lease. He left about that time, and was in business elsewhere within a week or ten days. This affords no presumption that McKinney or his firm knew anything of the lease. The facts which we have before adverted to, as all that McKinney could be presumed to have known, would inform him that he was a tenant from month to month. There was nothing to advise him that his tenancy was changed, and in August, 1859, resting in that belief, (and properly so far as the facts inform us,) he vacated the store.

Now, we ask, can he be held from these facts to have known of the existence or ratified the execution of this joint lease, with peculiar, and extraordinary covenants. Not one of the above facts would suggest anything of the kind.

But, let us ask, is the rule reversed? Does the burden rest on the plaintiff in error to show that he had no knowledge of this act of assumed agency? Is the defendant in error relieved from the burden of showing that the act of this agent, under whom he claims was duly authorized by the principal, and was within the pale of his instructions and delegated authority? Far otherwise is the law. It requires of us no industrious effort to wash our skirts of the knowledge of this transaction. The facts must be shown, and a knowledge of them brought home to us, before we are called upon to repel them.

It not being shown that McKinney had any knowledge of this *joint* account against Wentworth and himself, or of this *joint* lease and *joint* liability, it cannot therefore be claimed that he acquiesced in or ratified that of which he had no knowledge whatever. Before he can be held to have ratified the execution of this lease, he must be shown to have known *all the material facts—the lease—the term for which it was executed—the peculiar covenants it contains, and the joint liability with the clerk.* Such will be found to be the purport of all the authorities, and no conflict is anywhere ascertainable.

1 *Greenleaf Ev.* says: “When the agency is to be proved by the subsequent ratification and adoption of the act by the principal, there must be evidence of the previous knowledge on the part of the principal of all the material facts.”

“The act of an unauthorized person in such case is not void, but voidable; but when the principal is once fully informed of what has been done in his behalf, he is bound, if dissatisfied, to express his dissatisfaction in a reasonable time.”

Dunlap’s Paley on Agency, 172, says: “If, with a knowledge of all the circumstances, an employer adopts the act of his agent for a moment, he is bound thereby;” and *in notes*: “The assent or acquiescence by which the principal shall be bound, must be given with knowledge of all the circumstances of the case. A ratification of the unauthorized acts of an attorney in fact, without full knowledge of all the material facts connected with those acts, is not binding on the principal. No doctrine is better settled on principle and authority than this, that the ratification of the act of an agent previously unauthorized, must, in order to bind the principal, be with a full knowledge of all the material facts. If the material facts be either suppressed or unknown, the ratification is invalid, because founded on mistake or fraud.”

Kent’s Comm., 616, says: “When the principal is informed of what has been done, he must dissent, and give notice of it, within a reasonable time.”

“When the principal, upon *full knowledge* of all the circumstances of the case, deliberately ratifies the acts or contracts of an agent who has exceeded his lawful authority, or usurped an unauthorized agency, the principal will be bound thereby,” &c. (*Delafield vs. State of Illinois*, 26 *Wendell*, 226.) In the same case it is observed, “that the principal who, with a full knowledge, receives the goods bought by his factor, who transgresses his limits, or who sells them on his own account; the corporation for which money has been borrowed without authority, but which pays interest, and passes accounts on the debt, have (with others falling under the same rule) been held to have ratified the unauthorized acts of their agents.” Also, in the same case: “Long acquiescence in an assumed or abused agency, or in any of its results, without positive acts of any sort, but with knowledge of the facts brought home to the principal, has also been considered equivalent to an absolute ratification.

Kent says: “An acquiescence in the assumed agency of another, when the acts of the agent are brought to the knowledge of the principal, is equivalent to an express authority.” (2 *Conn.* 614.)

“That it is a very clear and salutary rule in relation to agencies, that when the principal, with knowledge of all the facts, adopts or acquiesces in the acts done under an assumed agency, he cannot be heard afterwards to impeach them,” &c. (*Ib.* 616.)

In the case of *Cairnes et al. vs. Bleecker*, 12 *Johns R.* 305, SPENCER, J., says: “The cases of *Codwise vs. Hacker*, (1 *Cairn's R.* 539), and *Towle and Jackson vs. Stevenson*, (1 *John. Cases*, 110), are authority for saying that when a principal, with a knowledge of all the facts, adopts the acts of his agent, though these acts are contrary to his duty and instructions he shall not afterwards impeach his conduct.”

“Ratification is an act with knowledge, and must be unequivocal in its character.” (*Hays vs. Stone*, 7 *Hill.* 132.)

The case of *Nixon vs. Palmer*, (4 *Selden*, 401,) is an authority

strongly in point, and the Court there say: that "in order to make the ratification of an unauthorized act of an agent binding, it must be made with full knowledge of the facts, affecting the rights of the principal."

Eletcher vs. Dysart et al, 9. *B. Monroe*, 416, says, in case of a note executed by an agent: "that if the note was not executed with the assent of the defendants, then in order to make the note their note, it must have been recognized by them with the intention of thereby making it their note, and with a knowledge of the fact that without such recognition they would not be responsible. But if the recognition were made under a mistaken apprehension as to their liability, either as to the fact or the law, then such recognition would not be obligatory upon them, and the note would not thereby become their note."

And the following authorities are to the same effect:

- 12 *N. H.* 231.
- 5 *Metcalf*, 196.
- 5 *Dana*, 530, 532.
- 1 *Comstock*, 434, 445.
- 14 *Searg. & Rawl.* 27, 30.
- 6 *Leigh*. 47, 60, 61.
- 2 *Blackford*, 119.
- 3 *Greenleaf*, 429, 432.
- 8 *Gill. & Johns.* 250 and 323.
- Liv. Pr. & Ag.*, vol. 1, p. 44.
- 2 *Man. & Gr.* 721.
- 3 *Cowen*, 283.
- 10 *Geo.* 362.
- 4 *Barb. Supreme Court Rep.* 369, 374.
- 2 *Fairfield*, 70.
- 10 *Iredell*, 8.
- 2 *Vermont*, 239 & 351.
- 10 *Ala.* 756, 771.
- 26 *Maine*, 84, 87.

- 2 *Smedes & Marsh*. 193, 199.
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And such will be found the substance of all the authorities, and in the large number of cases cited or which in any wise refer to the rule, it is nowhere expressed differently.

The facts must be proved to have been within the knowledge of the principal, and they cannot be presumed for such purpose from slight circumstances.

The Court is called upon to indulge a presumption of ratification, *from knowledge of the fact*, it cannot also be asked to *presume the facts*, unless circumstances clearly pointing to a knowledge of those facts be proved, facts which would suggest the existence of the lease in this case and the material terms and conditions of the same.

On the contrary, in this case there is a total absence of any such testimony, and we submit the proposition that there is no fact proved from which the Court could infer the existence of such a lease, or that McKinney had knowledge of any such.

Such being the case, then we think we have shown clearly that this lease was received as evidence against McKinney improperly, and such being the fact, it follows that there was no joint liability between plaintiff in error and his co-defendant below.

It need not be said that this argument only shows that the plaintiff in error and some other parties are jointly liable to defendant in error.

That is enough, for if such is the fact, it is all that need be shown; and this Court has only to follow the law, the consequences are with the parties, for this Court cannot know that all the merits

of the case in behalf of Chase, McKinney & Co., were presented in the suit at bar.

These facts will properly come up when these parties are sued, and need not before.

Having, as we think, shown that this lease was not the act of the plaintiff in error, and that consequently there was no *joint liability*, we submit that the judgment of the Court below should be reversed.

HELM & CLARK,
Counsel for Plaintiff in Error.

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It was known to Peek that McKinney, or Chase, McKinney & Co., were in possession as early at least as December, 1857, and were paying rent monthly; yet, on the last day of April, 1858, Long goes to the clerk, or agent, of Chase, McKinney & Co., and induces him to sign a lease for the term of one year; a lease with extraordinary covenants and provisions. The clerk says that he is a partner with McKinney, and executed the lease in behalf of both. No change takes place in the business. Rent is paid monthly, and they occupy for fifteen months after the lease is taken, and for twenty-two after the firm first entered the premises.

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Now, we ask, can he be held from these facts to have known of the existence or ratified the execution of this joint lease, with peculiar, and extraordinary covenants. Not one of the above facts would suggest anything of the kind.

But, let us ask, is the rule reversed? Does the burden rest on the plaintiff in error to show that he had no knowledge of this act of assumed agency? Is the defendant in error relieved from the burden of showing that the act of this agent, under whom he claims was duly authorized by the principal, and was within the pale of his instructions and delegated authority? Far otherwise is the law. It requires of us no industrious effort to wash our skirts of the knowledge of this transaction. The facts must be shown, and a knowledge of them brought home to us, before we are called upon to repel them.

It not being shown that McKinney had any knowledge of this *joint* account against Wentworth and himself, or of this *joint* lease and *joint* liability, it cannot therefore be claimed that he acquiesced in or ratified that of which he had no knowledge whatever. Before he can be held to have ratified the execution of this lease, he must be shown to have known *all the material facts—the lease—the term for which it was executed—the peculiar covenants it contains, and the joint liability with the clerk.* Such will be found to be the purport of all the authorities, and no conflict is anywhere ascertainable.

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"The act of an unauthorized person in such case is not void, but voidable; but when the principal is once fully informed of what has been done in his behalf, he is bound, if dissatisfied, to express his dissatisfaction in a reasonable time."

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And such will be found the substance of all the authorities, and in the large number of cases cited or which in any wise refer to the rule, it is nowhere expressed differently.

The facts must be proved to have been within the knowledge of the principal, and they cannot be presumed for such purpose from slight circumstances.

The Court is called upon to indulge a presumption of ratification, *from knowledge of the fact*, it cannot also be asked to *presume the facts*, unless circumstances clearly pointing to a knowledge of those facts be proved, facts which would suggest the existence of the lease in this case and the material terms and conditions of the same.

On the contrary, in this case there is a total absence of any such testimony, and we submit the proposition that there is no fact proved from which the Court could infer the existence of such a lease, or that McKinney had knowledge of any such.

Such being the case, then we think we have shown clearly that this lease was received as evidence against McKinney improperly, and such being the fact, it follows that there was no joint liability between plaintiff in error and his co-defendant below.

It need not be said that this argument only shows that the plaintiff in error and some other parties are jointly liable to defendant in error.

That is enough, for if such is the fact, it is all that need be shown; and this Court has only to follow the law, the consequences are with the parties, for this Court cannot know that all the merits

of the case in behalf of Chase, McKinney & Co., were presented in the suit at bar.

These facts will properly come up when these parties are sued, and need not before.

Having, as we think, shown that this lease was not the act of the plaintiff in error, and that consequently there was no *joint liability*, we submit that the judgment of the Court below should be reversed.

HELM & CLARK,
Counsel for Plaintiff in Error.

II.

It did not require a ratification of the written lease to entitle us to recover in this case. We sue here simply for use and occupation. We showed the lease to show the terms upon which McKinney & Wentworth held over. There was no plea making it necessary to sue McKinney's partners in the shoe business, jointly with him. There was no issue requiring us to show Wentworth to be a partner, in order to establish his joint liability. He could and did become jointly liable, voluntarily, under the written lease. And when no change was made in the terms of the lease, or occupancy, the law fixes the terms on holding over to be the same as the preceding year.

This suit is for occupancy, and the law has declared the terms to be those of the former year.

McKinney would have been liable for occupancy during the time specified in the lease, because his business was carried on there: and Wentworth agreed to become liable, and could not gainsay it. Rent was paid without a word of question or dispute during the whole period of that lease, taking receipts in the joint name.

III.

Continuing to hold over under these circumstances, makes both parties liable to pay the same as the preceding year. And it would not matter whether the former year was under a parol or written lease.

We do make out the case then by showing that Wentworth and McKinney paid rent upon these terms the preceding year, without showing a lease in writing at all. The plaintiff in error is wholly mistaken, as he supposes in his first point, that a question of partnership between Wentworth & McKinney was in issue, or that the execution of this lease, or Wentworth's authority to execute, was in issue.

The joint occupancy and payment of rent the year preceding by Wentworth & McKinney was shown, and a continuance of the occupancy and payment of rent for several months of the second year was shown, then what occasion to prove who owned

the goods in the store? One man or set of men might own the goods, and another become liable for the rent. What the arrangement between them was we know not. Wentworth had owned these goods, and this was doubtless a part of the agreement on selling out. Be that as it may, it is enough to know that Wentworth agreed to become liable for the rent, and that McKinney continued to pay it through him.

We shall not, then, go into the doctrine of partnership nor agencies, but rely upon the plain, simple facts,—that McKinney has enjoyed our house in doing business, for a year, under a written lease, paying rent and taking receipts in his and Wentworth's names, according to the lease, and then held over, still paying and taking receipts in the same name. And now, when he chooses to abandon the premises, and get rid of them in the middle of the second year, he denies that the premises were ever let to him, and denies the terms of the lease and his joint taking, after holding and paying rent on that identical state of letting near 18 months.

The Court will ask no more proof than this of his original assent and authority, and of his subsequent ratification if need be. Nor will the Court, for the purposes of ratification, require us to go into the private affairs of the store, and show that McKinney had a knowledge of his own business and how it was done.

The payment of rent monthly does not imply a letting from month to month in this case, because it is shown that the letting was by the year on monthly payments of rent of \$208.33 each.

The contract of hiring of Wentworth does not disprove the fact that he became jointly liable for the rent. That contract, as well as the proof offered to show who were partners and who owned the goods, proceeds upon the idea that we were attempting to prove Wentworth a partner. We were not, for it was not necessary to do so to maintain our cause for a mere joint liability. The equity of this case is wholly with defendant, Peck. McKinney is liable as one of the members of the firm. Why does he object that we have fixed liability also upon Wentworth? We hope and believe the Court will give us a judgment for our rent.

SCATES, McALLISTER & JEWETT,
Of Counsel for Defendant.

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Filed May 8, 1862
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Supreme Court Illinois
April Term A.D. 1862 -

Andrew McKinney } P^l in Error
Phillip ^{vs.} H. Peck } D^f in Error

Error to Superior Court
of Chicago -

Allen & Clark
Attys for Plaintiffs in
error -

Writ of error waived and
cause entered by agreement

Allen & Clark for
P^l in error

288
McKinnis's Pick
Prescriptions

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STATES REGISTER & JOURNAL

OF GEORGETOWN, DELAWARE

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Jameson & Morse, Printers, Chicago.

SUPREME COURT OF ILLINOIS.

APRIL TERM, 1862.

ANDREW M. MCKINNEY }
 vs. }
PHILIP F. W. PECK. }

Error to Superior Court of Chicago.

This was an action of assumpsit in the Court below, against the plaintiff in error, jointly with Samuel T. Wentworth, upon a joint hiring of certain premises.

The plaintiff in error makes the following points :

I.

There was no joint liability shown, and the partnership between McKinney and Wentworth being in issue by the plea of McKinney and not proved, the verdict was erroneous.

1 *Chitty's Pleadings*, 44 & 516.

1 *Saunders' Pl. & Ev.*, 180.

3 *Conn. Rep.*, 198.

3 *Blackf.*, 436.

II.

The lease, offered in evidence by the defendant in error, purported to be signed "Andrew McKinney, per S. T. Wentworth, Agent," and was under seal.

It was not shown that the agent had any authority to execute such an instrument.

35 *Maine*, 485.
34 *Maine*, 54.
9 *Wendell*, 54.
8 *Cowen*, 71.
5 *Mass.*, 14.
6 *N. H.*, 250.
Story on Agency, 50.
12 *N. H.*, 230.
2 *Greenleaf's Ev.*, 61, 64 & 65.

III.

Wentworth had no authority to bind McKinney jointly with himself.

11 *Grattan*, 281.
Story on Agency, 59, and notes.
Ib., 49, and notes.

IV.

Nor was it shown that there was ever any ratification by the plaintiff in error of this act of assumed agency. Ratification could only be by an instrument under seal.

Story on Agency, 246-253.
12 *N. H.*, 231.
12 *Wend.*, 68.
20 *Wend.*, 258.
9 *Wend.*, 54.

V.

Ratification can only be implied or presumed from acquiescence where there is full knowledge of all the circumstances.

2 *Greenleaf's Ev.*, 66, 67, and cases cited.
1 *Am. Leading Cases*, 572 & 573 and notes.
26 *Wend.*, 222-226.
12 *N. H.*, 231.
4 *Barb. Supreme Court Rep.*, 369-374.
5 *Metcalf*, 196.
2 *Fairfield*, 70.

5 *Dana*, 530-532.
10 *Iredell*, 8.
1 *Comstock*, 434-445.
2 *Vermont*, 351.
Ib., 239.
14 *Searg. & Rawl.*, 27-30.
10 *Ala.*, 756-771.
6 *Leigh*, 47, 60, 61.
26 *Maine*, 84-87.
2 *Blackf.*, 119.
2 *Smedes & Marsh.*, 193-199.
3 *Greenleaf*, 429-432.
9 *Porter*, 305.
8 *Gill. & Johns.*, 250 & 323.
2 *Bay.*, 269.
Liv. Pr. & Ag., Vol. 1, p. 44. [and notes.
Dunlap's Paley on Agency, 171, 172 & 173
2 *Term Rep.*, 209.
2 *Mann. & Gr.*, 721.
2 *Kent's Com.*, 614-616.
10 *Paige*, 127-130.
12 *Johns. Rep.*, 300.
2 *Johns. Cases*, 424.
3 *Cowen*, 283.
1 *Johns. Cases*, 110.
7 *Hill's Rep.*, 132.
1 *Caines' Cases*, 539.

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The payment of rent monthly would raise the legal presumption that the tenancy was from month to month, and McKinney cannot be presumed from the proof to have known of any other.

23d *Wend.*, 616.

4 *Scott*, 301.

3 *Bing. N. C.*, 508.

HELM & CLARK,

For Plaintiff in Error.

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McKinney
vs

Peck

Puff. Brief

Filed May 1. 1842

J. J. Howard
Clerk

Jameson & Morse, Printers, Chicago.

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HELM & CLARK,

For Plaintiff in Error.

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McKinney
to

Peck

Pltff. Brief

GIVEN May 1. 1842

J. Lane
Clerk

SUPREME COURT, STATE OF ILLINOIS.

ANDREW McKINNEY,
Plaintiff in Error,
vs.
PHILIP F. W. PECK,
Defendant in Error. } *Error to the Superior Court of Chicago.*

This was an action of assumpsit brought by the defendant in error against the plaintiff in error and Samuel T. Wentworth jointly.

3 The declaration contains three counts.

4 The first for use and occupation.

5 The second is upon the letting of certain tenements, &c., by the plaintiff to the defendants.

6 The third alleges that, on the 1st day of May, 1859, the plaintiff, by parol, demised to the defendants certain tenements, &c., for the term of one year then next ensuing, at a yearly rent of \$2500, in equal monthly installments of $\$208.\frac{23}{100}$ each. That the defendants entered upon the premises and were possessed thereof from thenceforth until the first day of January, 1860, when the sum of $1666.\frac{46}{100}$ of the rent for the space of eight months, ending on the day last aforesaid, was due and payable.

10 To this declaration the defendant Wentworth, on the 20th of February, 1860, filed a plea of non-assumpsit.

12 On the 22d day of same month, the plaintiff in error, Andrew McKinney, filed a plea of non-assumpsit, the truth whereof was verified by affidavit.

15 On the 9th day of July, 1861, the cause was tried before the Hon. Grant Goodrich, without a jury, and a verdict was rendered for the plaintiff for \$1250.

16 Motion for new trial made and overruled, and the following bill of
17 exceptions tendered and signed:

BILL OF EXCEPTIONS.

Superior Court of Chicago, July Term, A. D. 1861.

18 PHILIP F. W. PECK
vs.
SAMUEL T. WENTWORTH and } Assumpsit.
ANDREW MCKINNEY.

Be it remembered, that on the day of July, being one of the days of the July term, A. D. 1861, the above cause came on to be heard before the Honorable Grant Goodrich, one of the Judges of the said Court, the intervention of a jury being dispensed with by the agreement of the parties, that on the trial of the said cause the plaintiff, by his counsel, offered in evidence the lease in words and figures which follow, viz:

Lease omitted in full, the following being an abstract thereof:

18, 19, 20, Lease of P. F. W. Peck, of first part, to Andrew McKinney, of
21, 22, 23, Boston, and S. T. Wentworth, of Chicago, of the second part, demises
24 the premises, &c., for a term of one year, commencing on the 1st of May, 1858, and expiring on the 30th day of April, 1859, at a rent of \$2500 for said term, payable \$208. $\frac{7}{8}$ on the first day of every month.

Dated at Chicago, April 30th, 1858, and signed,

P. F. W. PECK, [Seal.]
By James Long.
S. T. WENTWORTH, [Seal.]
A. MCKINNEY, [Seal.]
Per S. T. Wentworth,
Agent for A. McKinney.

25, 26 Which said lease was admitted in evidence, subject to all objections on the part of the defendants or either of them.

27 The plaintiff thereupon called as a witness James Long, who was sworn, and testified that he had acted as agent for the plaintiff; that defendant Wentworth came to office of plaintiff and represented that he was a partner of McKinney, of Boston. I never saw McKinney; know nothing of him except what I heard from Wentworth. The lease offered in evidence was signed by Wentworth in my presence. Wentworth & Co. entered and occupied under the lease. The lease was executed about the time it bears date. They occupied until about the first of August, 1859; paid rent until the first of July, 1859, and took receipts in the same name.

On cross-examination he said: I can't say who executed the lease under which the store was held in 1859. When the lease was made, in 1858, was the first I ever heard of McKinney. The store was rented May 1st, 1857, by Claggett & Anderson, and they occupied it, or rent was paid in their name to Dec. 1st, 1857; don't know who occupied it all of that time. In March, 1858, McKinney & Co. paid rent first. I have no particular recollection of this; get all these from the entries in my book (held and referred to by the witness). McKinney & Rood paid from December, 1857. Store was occupied as a boot and shoe store in the name of Wentworth & McKinney, I suppose; that is the name I got from Wentworth. They did business there, and continued to hold over during 1859, and paid rent up to July 1st, at same rate, but kept actual possession up to August 1st. I did not consent to their leaving, but told him he was bound to pay the rent for a whole year. The store stood empty until March 1st next. Did not tell Wentworth it was proper for him to sign the lease in the way he did it. He said he was a partner with McKinney, of Boston.

And this was all the evidence here offered by the plaintiff.

And the defendants, by their counsel, offered in evidence a bill of sale, as follows, viz :

27 Bill of sale executed by William Wentworth and Samuel T. Wentworth unto Chas. McKinney & Co., dated 22d day of October, 1857, and conveys the stock of boots and shoes in store 161 Lake street, Chicago, with lease of the store and all the fixtures.

And a contract as follows :

30 Contract dated October 22, 1857, between Chase McKinney & Co. of Boston, and Samuel T. Wentworth, of Chicago, which stipulates that Chase, McKinney & Co. have employed Wentworth as a clerk to act in and assist in the management and supervision of store No. 161 Lake Street, Chicago, so long as the same shall be held and owned by Chase, McKinney & Co., and that Wentworth shall be paid a sum for such services, equal to one half of the net profits of the business.

32 Which were, on motion of the counsel for plaintiffs, excluded by the Court, and to which decision of the Court excluding the same, the defendants by their counsel then and there excepted. And the defendants then and there called James M. Hoadley, who was sworn and testified that he knew the two Wentworths, the defendant and William Wentworth, his father, witness was clerk for them in 1857 and 1858, they had two stores, one was No. 161 Lake Street; Chase, McKinney & Co. of Boston, became owners of the one at No. 161 Lake Street, he thinks in

1857; can't now say just when. I did not go there until after Chase, McKinney & Co. became owners. It was after Wentworths made an assignment. After I went to 161, Chase, McKinney & Co. owned the store. Wentworth was not a partner, as I knew. We were all clerks, Rood was head clerk, and after he went away, Wentworth was head clerk. While Rood was there he signed all checks; bank account was kept in the name of McKinney. McKinney was here only once a year; he is the traveling partner in the firm of Chase, McKinney & Co., a wholesale boot and shoe house, in Boston. No names were on the store. It was called the "Boot and Shoe Exchange," and goods were shipped from Boston by Chase, McKinney & Co., all directed B. & S. E, 161 Lake Street. Wentworth was clerk after Rood left, and paid rent and clerk hire. Wentworth was employed as clerk. McKinney usually came here each fall.

Cross-examined. Books were kept in name of Chase, McKinney & Co.; I think they were not kept in name of Wentworth & McKinney, or Wentworth, McKinney & Co. Wentworth had no interest as partner.

Re-examined. Rood was there a month or two after I went there. I continued in the employ of Chase McKinney & Co. until they sold the stock to Robert Bamber. Wentworth did also.

The defendants then called Robert Bamber, and proposed to prove that he is now the owner of the stock of goods referred to; that he bought the same of Chase, McKinney & Co. of Boston, and employed Wentworth and Hoadley as clerks; to all which the plaintiff, by his counsel, then and there objected, and the Court sustained the said objection. And the said defendants then offered and proposed to prove that in the summer of 1857, Wentworth & Co. composed of William Wentworth and his son, one of the defendants entered the premises under the lease of Claggett & Anderson; that in October the firm of Chase, McKinney & Co. having a claim of over \$6,000, obtained a transfer of the store at 161 Lake Street, and employed Rood and Wentworth and other persons as clerks, until they sold the stock to Robert Bamber; to all which the plaintiff by his counsel, then and there objected, and the Court sustained the objection; to all which several decisions and rulings of the court above mentioned, in sustaining the said objections, and excluding the said evidence, the defendants, by their counsel, then and there excepted.

The defendants thereupon called A. W. Rood, who testified, that he was in the boot and shoe trade; was in the employ of Chase, McKinney & Co., in store 161 Lake street in the fall of 1857 and fore part of 1858. I think it was in October, 1857. McKinney was here when we took

possession ; Wentworth was there as clerk ; I do not know that he was ever a partner ; I was head clerk ; was to sign checks ; Wentworth never signed checks, but paid the rent while I was there. Hoadley, I think, came there in December of 1857, while I was there ; I left about the first of May. I saw the lease one day when Wentworth brought it in. I left the store about or within a week after I saw it, at least I know that I was in business at another place on the 10th of May. The reason that the name "Boot and Shoe Exchange" was adopted, was that McKinney told me to put up any sign I pleased ; I adopted Book and Shoe Exchange. Chase, McKinney & Co. would not want their names over the store for obvious reasons. It is very common for eastern houses who own stores West to adopt other names ; one in Chicago now is called "New England Boot and Shoe Store," owned by a Boston house. Chase, McKinney & Co. is a large Boston firm ; one of the most extensive dealers in Boston. I know two or more of the members of the firm. They had another stock in Chicago, kept in name of H. Dewing, on Lake street, where R. Bamber now is. The store at 161 was removed to that before the sale to Bamber. I have seen the bills of sale from Wentworth & Co. to Chase, McKinney & Co. I never informed them of the lease I saw Wentworth have. My time was up there about that time. I do not know that McKinney came to Chicago in 1858 ; he is the traveling partner in that firm, and visited Chicago once a year.

And this was all the evidence here offered by the defendants ; and the plaintiff thereupon recalled James Long, who testified, that he gave the receipts for the rent in the name of Wentworth & McKinney ; so it was entered on his book ; but he could not positively state that such was the fact from recollection aside from his book.

And this was all the evidence offered by either party, and the court after hearing the argument of counsel, and due deliberation thereon had, finds a verdict for the plaintiff, for the sum of twelve hundred and fifty dollars.

And the Defendants thereupon made a motion for a new trial, for the reasons following :

1. That the said verdict is contrary to the law.
2. That said verdict is contrary to the evidence.
3. That the court erred in excluding the evidence of the defendant relating to the ownership of the stock of goods kept in the premises, and the contract between Chase, McKinney & Co. and defendant Wentworth, and other evidence in the case, and afterwards, on the

day of July, A. D. 1861, the said court overruled the said motion, and entered a judgment in favor of the plaintiff; and to all which said rulings and decisions of the court the defendants, by their counsel, excepted; and forasmuch as the said several matters do not otherwise appear in the record of the said cause, the defendants make and file this their Bill of Exceptions, and pray that the same may be signed and sealed, and made a part of this record in this cause, and it is done.

ASSIGNMENT OF ERRORS.

1st. That the court erred in admitting the lease offered in evidence as against the plaintiff in error, without further proof that it was executed by him.

2d. That the court erred in excluding the evidence of the defendants relating to the ownership of the store or stock of goods kept in the premises, and the contract between defendant Wentworth and Chase, McKinney & Co.

3d. That the court erred in finding the said verdict for the defendant in error.

4th. That the court erred in overruling the motion of the defendants below for a new trial of the cause.

5th. That the court erred in rendering judgment against the defendants and in favor of the plaintiff below.

HELM & CLARK,

For Plaintiffs in Error.

SCATES, McALLISTER & JEWETT,

For Defendant in Error.

288

McKinsey

✓
Peele

Abstract

Filed Apr. 25, 1862

L. Seland

Clk

SUPREME COURT, STATE OF ILLINOIS.

ANDREW MCKINNEY,
Plaintiff in Error,
vs.
PHILIP F. W. PECK,
Defendant in Error. } *Error to the Superior Court of Chicago.*

This was an action of assumpsit brought by the defendant in error against the plaintiff in error and Samuel T. Wentworth jointly.

3 The declaration contains three counts.

4 The first for use and occupation.

5 The second is upon the letting of certain tenements, &c., by the plaintiff to the defendants.

6 The third alleges that, on the 1st day of May, 1859, the plaintiff, by parol, demised to the defendants certain tenements, &c., for the term of one year then next ensuing, at a yearly rent of \$2500, in equal monthly installments of \$208. $\frac{3}{4}$ each. That the defendants entered upon the premises and were possessed thereof from thenceforth until the first day of January, 1860, when the sum of 1666. $\frac{6}{10}$ of the rent for the space of eight months, ending on the day last aforesaid, was due and payable.

10 To this declaration the defendant Wentworth, on the 20th of February, 1860, filed a plea of non-assumpsit.

12 On the 22d day of same month, the plaintiff in error, Andrew McKinney, filed a plea of non-assumpsit, the truth whereof was verified by affidavit.

15 On the 9th day of July, 1861, the cause was tried before the Hon. Grant Goodrich, without a jury, and a verdict was rendered for the plaintiff for \$1250.

16 Motion for new trial made and overruled, and the following bill of
17 exceptions tendered and signed:

BILL OF EXCEPTIONS.

Superior Court of Chicago, July Term, A. D. 1861.

18 PHILIP F. W. PECK
vs.
SAMUEL T. WENTWORTH and } Assumpsit.
ANDREW MCKINNEY.

Be it remembered, that on the day of July, being one of the days of the July term, A. D. 1861, the above cause came on to be heard before the Honorable Grant Goodrich, one of the Judges of the said Court, the intervention of a jury being dispensed with by the agreement of the parties, that on the trial of the said cause the plaintiff, by his counsel, offered in evidence the lease in words and figures which follow, viz:

Lease omitted in full, the following being an abstract thereof:

18, 19, 20, Lease of P. F. W. Peck, of first part, to Andrew McKinney, of
21, 22, 23, Boston, and S. T. Wentworth, of Chicago, of the second part, demises
24 the premises, &c., for a term of one year, commencing on the 1st of May, 1858, and expiring on the 30th day of April, 1859, at a rent of \$2500 for said term, payable \$208. $\frac{33}{100}$ on the first day of every month.

Dated at Chicago, April 30th, 1858, and signed,

P. F. W. PECK, [Seal.]
By James Long.
S. T. WENTWORTH, [Seal.]
A. MCKINNEY, [Seal.]
Per S. T. Wentworth,
Agent for A. McKinney.

25, 26 Which said lease was admitted in evidence, subject to all objections on the part of the defendants or either of them.

27 The plaintiff thereupon called as a witness James Long, who was sworn, and testified that he had acted as agent for the plaintiff; that defendant Wentworth came to office of plaintiff and represented that he was a partner of McKinney, of Boston. I never saw McKinney; know nothing of him except what I heard from Wentworth. The lease offered in evidence was signed by Wentworth in my presence. Wentworth & Co. entered and occupied under the lease. The lease was executed about the time it bears date. They occupied until about the first of August, 1859; paid rent until the first of July, 1859, and took receipts in the same name.

On cross-examination he said: I can't say who executed the lease under which the store was held in 1857. When the lease was made, in 1858, was the first I ever heard of McKinney. The store was rented May 1st, 1857, by Claggett & Anderson, and they occupied it, or rent was paid in their name to Dec. 1st, 1857; don't know who occupied it all of that time. In March, 1858, McKinney & Co. paid rent first. I have no particular recollection of this; get all these from the entries in my book (held and referred to by the witness). McKinney & Rood paid from December, 1857. Store was occupied as a boot and shoe store in the name of Wentworth & McKinney, I suppose; that is the name I got from Wentworth. They did business there, and continued to hold over during 1859, and paid rent up to July 1st, at same rate, but kept actual possession up to August 1st. I did not consent to their leaving, but told him he was bound to pay the rent for a whole year. The store stood empty until March 1st next. Did not tell Wentworth it was proper for him to sign the lease in the way he did it. He said he was a partner with McKinney, of Boston.

And this was all the evidence here offered by the plaintiff.

And the defendants, by their counsel, offered in evidence a bill of sale, as follows, viz :

27 Bill of sale executed by William Wentworth and Samuel T. Wentworth unto Chase McKinney & Co., dated 22d day of October, 1857, and conveys the stock of boots and shoes in store 161 Lake street, Chicago, with lease of the store and all the fixtures.

And a contract as follows :

30 Contract dated October 22, 1857, between Chase McKinney & Co. of Boston, and Samuel T. Wentworth, of Chicago, which stipulates that Chase, McKinney & Co. have employed Wentworth as a clerk to act in and assist in the management and supervision of store No. 161 Lake Street, Chicago, so long as the same shall be held and owned by Chase, McKinney & Co., and that Wentworth shall be paid a sum for such services, equal to one half of the net profits of the business.

32 Which were, on motion of the counsel for plaintiffs, excluded by the Court, and to which decision of the Court excluding the same, the defendants by their counsel then and there excepted. And the defendants then and there called James M. Hoadley, who was sworn and testified that he knew the two Wentworths, the defendant and William Wentworth, his father, witness was clerk for them in 1857 and 1858, they had two stores, one was No. 161 Lake Street; Chase, McKinney & Co. of Boston, became owners of the one at No. 161 Lake Street, he thinks in

1857; can't now say just when. I did not go there until after Chase, McKinney & Co. became owners. It was after Wentworths made an assignment. After I went to 161, Chase, McKinney & Co. owned the store. Wentworth was not a partner, as I knew. We were all clerks, Rood was head clerk, and after he went away, Wentworth was head clerk. While Rood was there he signed all checks; bank account was kept in the name of McKinney. McKinney was here only once a year; he is the traveling partner in the firm of Chase, McKinney & Co., a wholesale boot and shoe house, in Boston. No names were on the store. It was called the "Boot and Shoe Exchange," and goods were shipped from Boston by Chase, McKinney & Co., all directed B. & S. E, 161 Lake Street. Wentworth was clerk after Rood left, and paid rent and clerk hire. Wentworth was employed as clerk. McKinney usually came here each fall.

Cross-examined. Books were kept in name of Chase, McKinney & Co.; I think they were not kept in name of Wentworth & McKinney, or Wentworth, McKinney & Co. Wentworth had no interest as partner.

Re-examined. Rood was there a month or two after I went there. I continued in the employ of Chase McKinney & Co. until they sold the stock to Robert Bamber. Wentworth did also.

The defendants then called Robert Bamber, and proposed to prove that he is now the owner of the stock of goods referred to; that he bought the same of Chase, McKinney & Co. of Boston, and employed Wentworth and Hoadley as clerks; to all which the plaintiff, by his counsel, then and there objected, and the Court sustained the said objection. And the said defendants then offered and proposed to prove that in the summer of 1857, Wentworth & Co. composed of William Wentworth and his son, one of the defendants entered the premises under the lease of Claggett & Anderson; that in October the firm of Chase, McKinney & Co. having a claim of over \$6,000, obtained a transfer of the store at 161 Lake Street, and employed Rood and Wentworth and other persons as clerks, until they sold the stock to Robert Bamber; to all which the plaintiff by his counsel, then and there objected, and the Court sustained the objection; to all which several decisions and rulings of the court above mentioned, in sustaining the said objections, and excluding the said evidence, the defendants, by their counsel, then and there excepted.

The defendants thereupon called A. W. Rood, who testified, that he was in the boot and shoe trade; was in the employ of Chase, McKinney & Co., in store 161 Lake street in the fall of 1857 and fore part of 1858. I think it was in October, 1857. McKinney was here when we took

possession ; Wentworth was there as clerk ; I do not know that he was ever a partner ; I was head clerk ; was to sign checks ; Wentworth never signed checks, but paid the rent while I was there. Hoadley, I think, came there in December of 1857, while I was there ; I left about the first of May. I saw the lease one day when Wentworth brought it in. I left the store about or within a week after I saw it, at least I know that I was in business at another place on the 10th of May. The reason that the name "Boot and Shoe Exchange" was adopted, was that McKinney told me to put up any sign I pleased ; I adopted Book and Shoe Exchange. Chase, McKinney & Co. would not want their names over the store for obvious reasons. It is very common for eastern houses who own stores West to adopt other names ; one in Chicago now is called "New England Boot and Shoe Store," owned by a Boston house. Chase, McKinney & Co. is a large Boston firm ; one of the most extensive dealers in Boston. I know two or more of the members of the firm. They had another stock in Chicago, kept in name of H. Dewing, on Lake street, where R. Bamber now is. The store at 161 was removed to that before the sale to Bamber. I have seen the bills of sale from Wentworth & Co. to Chase, McKinney & Co. I never informed them of the lease I saw Wentworth have. My time was up there about that time. I do not know that McKinney came to Chicago in 1858 ; he is the traveling partner in that firm, and visited Chicago once a year.

And this was all the evidence here offered by the defendants ; and the plaintiff thereupon recalled James Long, who testified, that he gave the receipts for the rent in the name of Wentworth & McKinney ; so it was entered on his book ; but he could not positively state that such was the fact from recollection aside from his book.

And this was all the evidence offered by either party, and the court after hearing the argument of counsel, and due deliberation thereon had, finds a verdict for the plaintiff, for the sum of twelve hundred and fifty dollars.

And the Defendants thereupon made a motion for a new trial, for the reasons following :

1. That the said verdict is contrary to the law.
2. That said verdict is contrary to the evidence.
3. That the court erred in excluding the evidence of the defendant relating to the ownership of the stock of goods kept in the premises, and the contract between Chase, McKinney & Co. and defendant Wentworth, and other evidence in the case, and afterwards, on the

day of July, A. D. 1861, the said court overruled the said motion, and entered a judgment in favor of the plaintiff; and to all which said rulings and decisions of the court the defendants, by their counsel, excepted; and forasmuch as the said several matters do not otherwise appear in the record of the said cause, the defendants make and file this their Bill of Exceptions, and pray that the same may be signed and sealed, and made a part of this record in this cause, and it is done.

ASSIGNMENT OF ERRORS.

1st. That the court erred in admitting the lease offered in evidence as against the plaintiff in error, without further proof that it was executed by him.

2d. That the court erred in excluding the evidence of the defendants relating to the ownership of the store or stock of goods kept in the premises, and the contract between defendant Wentworth and Chase, McKinney & Co.

3d. That the court erred in finding the said verdict for the defendant in error.

4th. That the court erred in overruling the motion of the defendants below for a new trial of the cause.

5th. That the court erred in rendering judgment against the defendants and in favor of the plaintiff below.

HELM & CLARK,
For Plaintiffs in Error.

SCATES, McALLISTER & JEWETT,
For Defendant in Error.

288-150

McKinney
vs

P. K.

Abstract

Filed April 26th 1862
L. L. Owen
CLK.

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

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

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

Grant Higgins and Grant Goodrich Judges.

Carlos Haven Prosecuting Attorney.

Anthony Messing Sheriff of Cook County.

Attest, Walter Kimball Clerk.

It is remembered that heretofore to wit: on the tenth day of January in the year of our Lord one thousand eight hundred and sixty. there issued out of and under the seal of said Court a certain Writ of summons. which said summons together with the Sheriffs return thereon endorsed are in the words and figures following to wit:

State of Illinois
County of Cook ss. The People of the State of Illinois To the Sheriff of said County. Greeting:

2
We command you that you summon
Samuel T Wentworth & Andrew McKinney
if they shall be found in your County
personally to be and appear before
the Superior Court of Chicago of said
Cook County, on the first day of the
term thereof, to be holden at the Court
House in the City of Chicago in
said Cook County, on the first
Monday of February next, to answer
unto Phillip F Peck in a plea
of Trespass on the case on promises
to the damage of the said plaintiff
as he says in the sum of Fifteen
Hundred dollars. And have you
then and there this writ, with an
indorsement thereon in what
manner you shall have executed
the same.

seal,

Witness Walter Kimball
Clerk of our said Court
and the seal thereof
at the City of Chicago
in said County this 10th
day of January A.D. 1860
Walter Kimball
Clerk

3
Served by reading to the within
named Defendant Saul T Wentworth
this 25th day of January 1860 the other
Defendant not found in my County
John Gray Sheriff
By A C Heising Deputy

And afterwards on the same day
and year aforesaid there was filed
in the office of the Clerk of the Court
aforesaid a certain declaration
in the words and figures following
to wit:

State of Illinois

Cook County ss

Of the February Term of the
Superior Court of Chicago
AD 1860.

Samuel T Wentworth and Andrew
McKinney trading and doing
business under the name style
and firm of Wentworth & McKinney
were summoned to answer Philip
F. Peck of a plea of trespass

on the case on promises,
And thereupon the said Phillip F.
Mick by Scates McAllister & Sweet
his attorneys complains for that
whereas the said defendants heretofore
to wit: on the first day of January
Eighteen hundred and sixty at Cook
County and State of Illinois were
indebted to the said plaintiff in
the sum of Fifteen hundred dollars
lawful money of the United States
for the use and occupation of a
certain Messuage, buildings
tenements & premises with the
appurtenances of the said plaintiff,
by the said defendants, and at
their special instance and request
and by the permission of the said
plaintiff, for a long time before
then elapsed, had, held, used
occupied, possessed, and enjoyed,
And being so indebted they the said
defendants, in consideration thereof
afterwards to wit on the day and
year last aforesaid at the County
and State aforesaid, undertook
and then and there faithfully
promised the said plaintiff to pay

5
him the said last mentioned sum
of money, when they the said
defendants should be thereunto
afterwards requested.

2^d Count. And whereas also afterwards to
wit: on the day and year last
aforesaid at Cook County and
State of Illinois aforesaid, in
consideration that the said plaintiff,
at the like special instance and
request of the said defendants,
had before that time suffered
and permitted the said defendants
to have, hold, use, occupy, possess,
and enjoy a certain other messuage,
buildings, tenements and premises
with the appurtenances, of the said
plaintiff, and that they the said
defendants had according to the
said last mentioned permission
of the said plaintiff, had holden
used, occupied possessed, and
enjoyed the same for a long
space of time then elapsed, they
the said defendants undertook,
and then and there faithfully
promised the said plaintiff to pay
him the said last mentioned sum

6
of money when they the said
defendants should be thereunto
afterwards requested.

3^d Count.

And whereas also the said plain-
-tiff afterwards to wit; on the first
day of May Eighteen hundred and
fifty nine. at Cook County Illinois,
demised by parol to the said defendants
a certain messuage building and
premises with the appurtenances.
to wit; being the entire west store
of the two brick stores situated on
the south west corner of Lake and
LaSalle streets and numbered
one hundred and sixty one (161)
Lake Street in the City of Chicago.
Excepting and reserving the right
of way in common with & for all
the other tenants of & to the stairs
& passages, extending from Lake
Street into & including a part of
the first, second and third stories
of said store. Said lessor reserves
the right to elevate the walls of
said store in case he builds on
the adjoining property so as to
form the walls of any building
or buildings which he may deem

7
it expedient to erect or alter,
and also to raise remove or
repair the side walks in front
of said premises. To have and to
hold the same to the said defendants
for a certain term to wit, for
and during & until the full end
and term of one year then next
ensuing and fully to be completed
and ended, yielding and paying
therefor during the said term to
the said plaintiff the yearly rent
of Two thousand five hundred
dollars lawful money of the
United States in twelve equal
monthly instalments of two hundred
and eight ³³/₁₀₀ dollars on the
first day of May 1859, and on
the first day of each month
thereafter by even and equal
portions.

By virtue of which said demise
the said defendants entered into
the said demised premises with
the appurtenances, and were
possessed thereof from thenceforth
until the first day of January
Eighteen hundred & sixty, when

8
a large sum of money, to wit:
the sum of sixteen hundred and
sixty six ⁶⁶/₁₀₀ dollars of the rent
aforesaid for the space of eight
months ending on the day and
year last aforesaid, and then
and there last elapsed, became
and was due and payable
from the said defendants to the
said plaintiff, and still is in
arrear & unpaid to the said
plaintiff, to wit: at Cook County,
Illinois aforesaid - In Consideration
whereof the said defendants then &
there undertook and then & there
faithfully the said plaintiff to
pay him the said sum of sixteen
hundred and sixty six ⁶⁶/₁₀₀ dollars
when they should be thereunto
afterwards requested.

Yet the said defendants not
regarding their said several
promises and undertakings but
contriving and fraudulently
intending craftily & subtly to
receive & defraud the said plaintiff
in this behalf hath not as yet
paid the several sums of money

9
or any or either of them or any
part thereof to the said plaintiff,
though often requested so to do -
but the said defendants to pay
him the same or any part thereof
have hitherto wholly neglected
and refused & still do neglect
and refuse. To the damage
of the said plaintiff of Fifteen
hundred dollars and therefore
he brings his suit.

Scates McAllister & Sewell
attorneys for Plaintiff.

Copy of account sued on,
Chicago January 1 1860
Samuel J Wentworth & Co
Andrew McKinney

1859
May 1 To Rent of Store No 161 Lake Street
1860
Jan 1 8 Months from 1 May 1859
to date \$ 1666.66

P. F. Peck

And afterwards to wit on the twentieth day of February in the year aforesaid. there was filed in the office of the Clerk aforesaid a certain plea and affidavit in the words and figures following to wit:

Samuel J Wentworth et al

vs
Phillip F M Seck

And the said defendant Samuel J Wentworth by Helm and Clark his attorneys comes and defends the wrong & injury when he and says that he did not undertake and promise in manner and form, as the said plaintiff has above thereof complained against him, and of this he puts himself upon the Country &c.

Helm & Clark
Attys.

And the plaintiff doth the like
Scate M Alister & Jewett for Resp
State of Illinois
Cook County 3 SS

11

Samuel J Wentworth being duly sworn says that he is one of the defendants in the above suit, and further that said defendants have a good defense to the said suit on the merits & further says not,
S J Wentworth

Subscribed and sworn to
before me February 6, 1860
C. Wolf J.P.

And afterwards to wit, on the twenty second day of the same month and year aforesaid, there was filed in the office of the Clerk aforesaid a certain other plea and affidavit in the words and figures following to wit:

Superior Court of Chicago
February Term AD 1860
Andrew M Kinney impleaded with
Sam J Wentworth ads
Phillip F Beck

12
And the said defendant Andrew
McKinney by Helm & Clark his
attorneys comes and defends
the wrong & injury when &c and
says that he did not undertake
and promise in manner and form
as the said plaintiff has above
thereof complained against him
and of this he puts himself upon
the Country &c

Helm & Clark
And the Plaintiff doth the like. attys.
Scates McAllister & Sweet for off

State of Massachusetts
County of Suffolk 3 ss.

Andrew McKinney
being duly sworn says that he
is one of the above named
defendants, and further that the
above plea is true in substance
and in fact, and that said
defendants have a good defense
to the said action on the merits,
and further says not.

Witness Andrew McKinney
Thomas B. Hawley

Commonwealth
of Massachusetts.

County of Suffolk
City of Boston.

Be it known, That I Otis Gray
Kaudall, a Commissioner for
the State of Illinois residing in
Boston in the County of Suffolk
and State of Massachusetts do
Certify that on the Seventeenth day
of February A D Eighteen hundred
and sixty personally appeared
before me, in the City of Boston
in the County of Suffolk aforesaid
Mr Andrew McKinney of Boston
Massachusetts who is personally
known to me to be the individual
described in and who has executed
the foregoing affidavit instrument,
and he then and there acknowledged
to me that he executed the said
deed or instrument and made
oath to the same.

In Witness whereof I have
hereunto set my hand and
official seal, at Boston in
the County of Suffolk and

14
State aforesaid this seven tenth
day of Feby one thousand eight
hundred and sixty 1860

seal

Otis Gray Randall
a Commissioner for the
State of Illinois duly appoin-
ted by the Governor thereof
for Boston Suffolk Counties
Massachusetts.

And afterwards to wit, on the
Ninth day of July in the year of
our Lord One thousand eight
hundred and sixty one, said
day being one of the days of
the July Term of said Court, the
following among other proceedings
was had and entered of Record
to wit:

~~~~~

~~~~~

~~~~~



16  
And afterwards to wit on the  
twenty fourth day of the same  
month and year last aforesaid  
said day being still one of the  
days of the July Term of said Court  
the following among other proceedings  
was had and entered of Record  
to wit:

Philip F. Peck

Samuel T. Newcomb Assumpsit.

Andrew McKimney

This day again comes  
the said plaintiff by Scater M. Utterby  
and Jewett his attorneys and the  
said defendants by Helm & Clark,  
their attorneys also come and this  
cause coming on now to be heard  
before the Court sitting in Banc,  
upon the motion of the said defendants  
heretofore submitted herein for a new  
trial in said cause was argued

17

by Counsel and the Court being fully advised in the premises overruled the Motion for a new trial to which ruling of the Court the said Defendants, the said Defendants excepted and thereupon enter their Exceptions herein to the ruling of the Court in overruling their said Motion for a new trial. Wherefore the said Plaintiff ought to have judgment entered upon the finding of the Court and for his Damages assessed thereon. Therefore it is considered that the said Plaintiff do have and recover of and from the said Defendants his Damages of one thousand two hundred fifty Dollars in form aforesaid found and assessed by the Court and also his Costs & Charges in this behalf expended and therefor have Execution, and thereupon the said Defendants having entered their Exceptions pray an appeal herein to the Supreme Court of this State from the judgment of this Court which is allowed to them upon filing their appeal bond in the penalty of sixteen hundred Dollars with security to be approved by a judge of this Court. and to be filed within ten days from this date. and that they be allowed two weeks time in which to file their Bill of Exceptions.

And afterwards to wit on the seventeenth day of October in the year aforesaid. there was filed in the office of the Clerk aforesaid a certain Bill of Exceptions in the words and figures following. to wit:

18  
Superior Court of Chicago  
Only Term W.D. 1867.  
Philip F. Beck }  
Samuel T. Neutaarth } Assumpsit  
Andrew M. Kinney }

Be it remembered that on the  
day of July being one of the days  
of the July <sup>Term</sup> W.D. 1867 the above cause  
came on to be heard before the Hon-  
orable Grant Goodrich one of the  
judges of the said Court. The inter-  
vention of a jury having been dis-  
pensed with by the agreement of the  
parties that on the trial of the said  
cause the plaintiff by his counsel  
offered in evidence the lease in  
words and figures which follow  
viz -

This indenture witnesseth that I  
F. M. Beck party of the first part in  
consideration of the admissions,  
promises and agreements of Andrew  
M. Kinney of Boston Mass and S. T.  
Neutaarth of Chicago all party of the  
second part, hereinafter contained,  
hath demised and leased unto said

19  
party of the second part for a term  
of one year commencing on the  
first day of May A D Eighteen  
hundred and fifty eight and  
expiring at noon on the thirtieth  
day of April A D Eighteen hundred  
and fifty nine that certain brick  
store in the City of Chicago Illinois  
to wit: Being the entire West Store  
of the two brick stores situated on  
the South West Corner of Lake and  
LaSalle Streets, and numbered 161  
Lake Street, Excepting and reserving  
the right of way in Common with  
and for all the other tenants of  
and to the stairs and passages  
extending from Lake Street into and  
including a part of the first, second  
and third stories of said store.  
Said lessor reserves the right to  
elevate the walls of said store in  
case he builds on the adjoining  
property so as to form the walls of  
any building or buildings which  
he may deem it Expedient to erect  
or alter, and also to raise, renew  
or repair the side walks in front  
of said premises. Said party of

20  
The second part hereby acknowledge  
that they have received from said  
party of the first part possession of  
the premises aforesaid in good  
tenantable condition and repair and  
agrees to preserve and leave the  
same in like condition and repair  
(ordinary wear excepted) at the end  
of said term, and personally occupy,  
appropriate and use said premises  
during said term, exclusively for  
the usual purposes of a Boot and  
shoe store and also pay said party  
of the first part, at his office in said  
City of Chicago Twenty five hundred  
(\$2500) Dollars, as rent therefor for the  
term aforesaid payable two hundred and  
eight  $\frac{34}{100}$  Dollars on the first day of June  
A.D. 1888 and pay the balance of said rent  
in equal monthly payments, at the end  
of each and every month during  
said term, said party of the second  
part hereby further agrees to pay said  
party of the first part at the rate of  
Four hundred Dollars per month as the  
rent reserved for the use of said  
premises in case he hold over the  
possession of any part thereof after

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said term expires, for all the time thereafter up to the date possession of said premises is fully surrendered to said party of the first part, and also pay as rent at the rate last mentioned, in case they fail to pay any of said monthly rent or any other money herein stipulated to be paid on the day the same becomes due, from the time of such failure until the same shall be fully paid, or in case they fail to comply with any other promise or condition herein contained, also pay the increased rent as aforesaid in case any waste is committed or allowed, or alteration is made or suffered to or upon said premises, besides paying an amount sufficient to restore the same to their former condition. And unless said party of the first part shall expressly otherwise agree in writing, he may elect to and recover possession of said premises at any time after said term expires, or after said party of the second part fail to pay at the time due, any rent

or other money to become payable hereon, or fail to fulfil any stipulation thereof, and said party of the first part may also elect to recover possession of said premises in case waste or alteration is committed or suffered as aforesaid, to or upon any part thereof, and whether he shall so elect or not, in either of the cases aforesaid, said party of the second part agree to pay said party of the first part the increased rent aforesaid, for and during the times provided aforesaid, for the payment of the same they hereby expressly waiving any other or further notice than is herein expressed or implied, of the end or sooner determination of the term hereof, in any of the ways herein provided, also, hereby expressly waiving any demand being made (either verbal or written) for the possession of said premises, whenever the term hereof shall so become determined, and said party of the first part may detain for any rent or other money that may remain unpaid hereon after the same

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becomes due upon any property belonging to said party of the second part, whether the same be exempt from execution and distress by law or not, said party of the second part hereby expressly waiving all legal rights which they may now or hereafter have, to hold or retain any such property under and by virtue of "An Act to exempt Homesteads from sale on execution" which act took effect July 4<sup>th</sup> A.D. 1851, and under and by virtue of any other exemption laws now or hereafter to become in force in this State or in any other way.

Said party of the second part hereby further agree that they will provide and pay to the said party of the first part, a sufficient amount of funds for him to pay any and all taxes, assessments and impositions (both ordinary and extraordinary) for water rents only which may hereafter be ordered, levied, imposed or assessed against or upon said demised premises or any part thereof, immediately

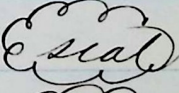
after the amount to be paid for any of such purposes, can be ascertained, during the whole of said term, and so long thereafter as said party of the second part continue to occupy said premises.

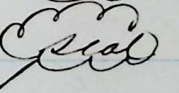
Said party of the second part hereby further agree that all their admissions, promises and agreements herein contained, shall extend to and bind their heirs Executors and Administrators to said party of the first part, and together with themselves to his heirs Executors, Administrators and assigns.

Executed at Chicago, Illinois, this 30 day of April A D 1858.

B F Beck 

By James Long

S J Nuttall 

A M Kinney 

per S J Nuttall  
Agent for A M Kinney

Wentworth & McKinney  
 with  
 J. F. M. Pick  
 Lease.  
 Stone No 161 Lake St.

Commences May 1, 1858.  
 Expires April 30, 1859.

Rent \$218<sup>34</sup> Monthly.

which said lease was admitted in evidence subject to all objections on the part of the defendants or either of them. The Plaintiff thereupon called as a witness James Long who was sworn and testified that he had acted as agent for the plaintiff, that defendant Wentworth came to office of plaintiff and represented that he was a partner of McKinney of Boston, I never saw McKinney, know nothing of him except what I heard from Wentworth - the lease offered in evidence was signed by Wentworth in my presence - Wentworth & Co entered

and occupied under the lease. The lease was executed about the time it bears date. They occupied until about the first of August 1859 - paid rent until the first of July 1859 - and took receipts in the same name -

On Cross examination he said - I cant say who executed the lease under which the store was held in 1859 - When the lease was made in 1858 was the first I ever heard of McKinney - The store was rented May 1<sup>st</sup> 1857 by Claggett & Anderson and they occupied it - or rent was paid in their name to Dec 1<sup>st</sup> 1857.

Dont know who occupied it all of that time - in March 1858 McKinney Ho paid rent first - I have no particular recollection of this - get all these from the entries in my book - (held and refered to by the witness) - McKinney & Rood paid from December 1857. Store was occupied as a Boot & Shoos Store, in the name of Newborth & McKinney I suppose -

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that is the name I got from Wentworth - they did business there, and continued to hold over during 1859 and paid rent up to July 1<sup>st</sup> at same rate, but kept actual possession up to August 1<sup>st</sup>. I did not consent to their leaving, but told him he was bound to pay the rent for a whole year. The store stood empty until March 1<sup>st</sup> next. I did not tell Wentworth it was proper for him to sign the lease in the way he did it - He said he was a partner with McKinney of Boston.

And this was all the evidence here offered by the Plaintiff. And the defendant by their Counsel offered in evidence a bill of sale as follows viz,

Know all men by these presents that we William Wentworth and Samuel J. Wentworth of the firm of W & S J. Wentworth of the City of Chicago State of Illinois in consideration of the premises and of the payment hereinafter mentioned have granted bargained, sold,

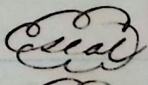
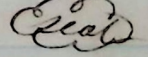
Conveyed, set over and assigned  
 and as by these presents, grant  
 bargain, Sell, Convey, set over and  
 assign unto Messrs, Chase McKimney  
 & Co of the City of Boston and  
 State of Massachusetts, all that  
 certain stock of Boots and Shoes,  
 goods, wares and Merchandise  
 in the store heretofore and lately  
 held by the said parties of the first  
 part at Number (161) One hundred  
 and sixty one, Lake Street in said  
 City of Chicago together with the  
 lease of the said store the term  
 of years held and owned by the  
 said parties of the first part,  
 with all the fixtures furniture and  
 furnishing in the said store and  
 mercantile belonging, or appertaining,  
 to have and to hold the said  
 Conveyed property to the said  
 Chase McKimney & Co the said  
 party of the second part their  
 heirs executors, administrators  
 and assigns forever, and the  
 title to the said property and  
 the peaceable possession thereof  
 in the said party of the second

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part, the said party of the first part will forever warrant and defend us far from all liens and incumbrances whatsoever.

And the said Chase McKinney & Co the party of the second part in consideration of the above mentioned sale agrees to pay the said party of the first part the Cash price of the said stock of Boots and Shoes on the delivery thereof or as soon as the amount of the same can be ascertained, the same to be paid in the notes and the other indebtedness of the said party of the first part to the said party of the second part, now owing and unpaid.

In Witness whereof the said parties of the first part have herewith set their hands and seals and have herewith delivered the said stock to the said party of the second part this twenty second day of October A D 1854

Samuel S Nutworth   
Wm Nutworth 

(and a Contract as follows  
This agreement made this twenty  
second day of October A.D. 1854  
by and between Chase McKinney  
& Co of the City of Boston of the first  
part and Samuel T Wentworth of  
the City of Chicago of the second  
part witnesses, that in consideration  
of the agreements and stipulations  
of the said Chase McKinney & Co  
hereinafter mentioned and contained  
the said Samuel T Wentworth agrees  
to act in and assist in the  
management and supervision of  
the Store, of said Chase McKinney & Co  
at Number One hundred and sixty  
one Lake Street in the City of  
Chicago so long as the same shall  
be held by the said Chase McKinney  
& Co. that he will give his personal  
care attention and skill to the  
business and affairs of the said  
Store, that he will render to  
the said Chase McKinney & Co  
a correct account of all that  
he shall do therein and shall  
account to them for all sales  
of goods and all money

receipts from such sales, while he shall act as their agent or clerk in said store.

And the said Chase McKimney & Co agree that there shall be kept in the said store while the same is kept and held by them as aforesaid a full and well assorted stock of Boots and Shoes of the best and most merchantable quality, and that they will pay to the said Wentworth a sum equal to one half ( $\frac{1}{2}$ ) of the net profits of the business of the said store as a salary for his services as aforesaid, for the time that the said arrangement shall continue. And further that if the said Wentworth shall at any time so desire, he shall be at liberty to purchase a one half interest in the said store upon giving the said Chase McKimney & Co, a satisfactory security for the payment of the purchase money for the same - or that he shall be at liberty to purchase the

whole of the said stock upon the same terms if he shall so desire - And it is further agreed by the parties hereto that the said Wentworth shall not be at liberty to draw out of the said store or the proceeds thereof at the rate of more than ten Dollars (\$10) per week while he shall act as the clerk of the said Chase McKinney & Co

Saul J. Wentworth  
Chase McKinney & Co

which were on motion of the Counsel for Plaintiffs excluded by the Court and to which decision of the Court including the same the Defendants by their Counsel then and there excepted. - And the defendant then and there called James M. Hoadley who was sworn and testified that he knew the two Wentworths, the Defendant and William Wentworth his father, witness was clerk for them in 1857 and 1858 they had two stores one was No 161 Lake Street, Chase McKinney & Co of Boston became owners of

of the one at No 161 Lake Street,  
 he thinks in 1839 - Can't now say  
 just when, I did not go there  
 until after Chase McKinney & Co  
 became owner - It was after  
 Wentworth made an assignment -  
 after I went to "Chase McKinney & Co"  
 owned the store. Wentworth was  
 not a partner, as I knew. We  
 were all clerks, Rood was head  
 clerk and after he went away  
 Wentworth was head clerk -  
 While Rood was there he signed  
 all checks - Bank account was  
 kept in the name of McKinney -  
 McKinney was here only once a  
 year, he is the traveling partner  
 in the firm of Chase McKinney & Co  
 a whole sale Boot & Shoe house  
 in Boston. No names were on  
 the store. It was called the  
 "Boot & Shoe Exchange", and  
 goods were shipped from Boston  
 by Chase McKinney, all directed  
 B & S. E. 161 Lake Street,  
 Wentworth was clerk after Rood  
 left, and paid rent and clerk  
 hire - Wentworth was employed

as clerk - McKinney usually  
 came here each fall.  
 Cross Examined.  
 Books were kept in name of  
 Chase McKinney & Co. I think they  
 were not kept in name of  
 Nuttall & McKinney, or Nuttall  
 McKinney & Co - Nuttall had  
 no interest as partner. -

Re Examined -

Rood was there a month or  
 two after I went there. I continued  
 in the employ of Chase, McKinney <sup>the</sup>  
 until they sold the stock to  
 Robert Bamber. Nuttall did  
 also.

The Defendants then called  
 Robert Bamber and proposed  
 to prove that he is now the owner  
 of the stock of goods referred to,  
 that he bought the same of  
 Chase McKinney & Co of Boston,  
 and employed Nuttall and  
 Bradley as clerks, to all which  
 the Plaintiff by his counsel then  
 and there objected, and the  
 Court sustained the said objection,  
 and the said Defendants then

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offered and proposed to prove  
that in the summer of 1857,  
Wentworth & Co composed of <sup>William</sup> Wentworth  
and his son one of the Defen-  
dants entered the premises under  
the lease of Delaggett & Anderson,  
that in October the firm of Chase  
McKinney & Co having a claim of  
over \$6,000 obtained a transfer of  
the store at 161 Lake Street and  
employed Rood and Wentworth  
and other persons as clerks,  
until they sold the stock to Robert  
Bamber, to all which the plaintiff  
by his Counsel then and there  
objected and the court sustained  
the objection, to all which  
several decisions and rulings  
of the Court above mentioned  
in <sup>my</sup> sustaining the said objections  
and excluding the said evidence  
the Defendants by their Counsel  
then and there Excepted.

The Defendants thereupon called  
A. M. Rood who testified that he  
was in the Boot & Shoe trade,  
was in the employ of Chase  
McKinney & Co in store 161 Lake

Street in fall of 1854 and fore part of 1858, I think it was in October 1854. McKinney was here when we took possession. Wentworth was then as clerk - I do not know that he was ever a partner, I was head clerk - was to sign checks - Wentworth never signed checks, but paid the rent while I was there; Hoadley I think came there in December of 1854, while I was there - I left about the first of May I saw the lease one day when Wentworth brought it in - I left the store about or within a week after I saw it, at least I know that I was in business at another place on the 10<sup>th</sup> of May. The reason that the name "Boot & Shoe Exchange" was adopted was that McKinney told me to put up any sign I pleased, I adopted Boot & Shoe Exchange. Chase McKinney would not want the names over the store for obvious reasons - it is very common for Eastern houses who

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own stores went to adopt other  
names - one in Chicago now  
is called "New England Boot &  
Shoe Store" owned by a Boston  
House, Chase McKinney & Co is  
a large Boston firm - one of  
the most extensive dealers in  
Boston - I know two or more  
of the members of the firm -  
They had another stock in Chicago  
kept in name of H Dewing, on  
Lake Street where R Bauber now  
is - The store at 161 was removed  
to that before the sale to Bauber.  
I have seen the Bills of sale from  
Wentworth & Co to Chase McKinney  
I never informed them of the lease  
I saw Wentworth have - My time  
was up there about that time -  
I do not know that McKinney  
came to Chicago in 1858, he is  
the trading partner in that firm,  
& visited Chicago once a year.  
And this was all the evidence  
here offered by the Defendants.  
And the plaintiff thereupon recalled  
James Long who testified that he  
gave the receipts for the rent

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in the name of Neutworth &  
McKinney, so it was entered  
on his book - but he could  
not positively state that such  
was the fact from recollection  
aside from his book,

And this was all the evidence  
offered by either party, and  
the Court after hearing the  
argument of Counsel and due  
deliberation thereon had, finds  
a verdict for the plaintiff for  
the sum of Twelve hundred  
and fifty Dollars -

And the Defendants thereupon  
made a Motion for a new  
trial for the reasons following  
1 That the said verdict is  
contrary to the law -

2 That said verdict is con-  
trary to the evidence.

3 That the Court erred in Exclu-  
ding the evidence of the Defen-  
dants, relating to the ownership  
of the stock of goods kept in  
the premises, and the Contract  
between Chase McKinney Co. & Deft  
Neutworth & other evidence in the case

and afterwards on the  
 day of July 1856, the said  
 Court overruled the said  
 Motion and entered a judgment  
 in favor of the Plaintiff, and  
 to all which said rulings  
 and decisions of the Court,  
 the Defendants by their Counsel  
 excepted, and forasmuch as the  
 said several matters do not  
 otherwise appear in the Record  
 of the said Cause the Defendants  
 make and file this their Bill  
 of Exceptions and pray that  
 the same may be signed and  
 sealed and made a part  
 of this Record in this Cause  
 and it is done.

Grant Godrich (Seal)

Correct W B Scates.

State of Illinois  
County of Cook ss

I Thomas Baxter  
clerk of the Superior Court of Chicago  
in and for said County and State aforesaid  
do hereby certify the above and foregoing  
to be a true full and complete Transcript  
of all the papers on file in my office  
together with all orders entered of Record  
and the Bill of Exceptions in the  
case wherein Phillip F. McKim  
plaintiff and Samuel T. Wentworth &  
Andrew McKinney defendants.



In testimony whereof I hereunto  
set my hand and affix the  
Seal of said Superior Court of  
Chicago at the City of Chicago  
in said County this 18<sup>th</sup> day  
of April A.D. 1862.

Thomas Baxter clerk  
of the Superior Court of  
Chicago

Supreme Court of Illinois  
April Term A.D. 1863.

Andrew McKinney Plaintiff in error

Phillip F. N. Peck Defendant in error

Error to the Superior Court of Chicago  
And the said Plaintiff in error  
by John & Clark his Attorneys comes  
and says that there is manifest  
error in the above Cause and  
in the record of the proceedings thereof  
before the said Superior Court of Chicago  
and this he is ready to verify & for  
particular errors in the said assignor  
the following - (viz) -

1<sup>st</sup> That the said Superior  
Court erred in admitting the lease  
offered, in evidence as against the  
Plaintiff in error, without further proof  
that it was executed by him -

2<sup>d</sup> That the said Court erred in excluding the  
evidence of the Defendant relating to the ownership  
of the store, or stock of goods kept in the premises,  
and the Contract between Defendant Newtworth and  
Charles McKinney & Co.

3<sup>d</sup> That the Court erred in finding the said  
verdict for the Defendant in error.

4th. That the Court erred in overruling the motion of the Defendants below for a new trial of the Cause.

5th That the Court erred in rendering judgment against the Defendants and in favor of the Plaintiff below -

Adler & Clark

In nullo est matum  
Scates McAllister & Gowat  
Counsel for Dept

Beck

<sup>7</sup>  
Neutavorth et al

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Transcript

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Fest 800

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1800

See if Cortis taxes are paid.

288-157  
Supreme Court

Andrew McKinney

Phillip F. W. Pack

Error to Sup. Ct of Chicago

Transcript of Record

Filed Apr. 24, 1862  
L. Leland  
Clk.