No. 12696

Supreme Court of Illinois

Cameron

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vs.

Handyside

71641 7

226 - 107

John Cameron

vs

John Handyside

1865

Be it remembered, that on the 18th day of February A.D 1858, in the County Court of Peoria County, State of Illinois There was filed in the Clerks Office at Peoria: a Declaration which, in words and figures, is as follows.

To Wit,

" State of Illinois }
" County of Peoria } In the County Court of the March Term A.D 1858.

" John Handyside }
vs. }
John Cameron } Declaration in Assumpsit

John Handyside Plaintiff in this Suit — complains of John Cameron defendant in this Suit of a Plea of Trespass on the Case upon Promises

For That Whereas the Said defendant on the 31st day of October A.D 1857 at Peoria Town at Peoria County aforesaid was indebted unto Plaintiff in the Sum of Four Hundred Dollars, in the price and value of Four Yoke of Work Oxen then and there sold and delivered to said defendant at his request

And in the Sum of four Hundred Dollars for money lent then and there by Plaintiff to defendant, at his request.

And in the Sum of Four Hundred Dollars, for money then and there paid by Plaintiff, for the use of defendant at his request.

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And in the Sum of Four Hundred Dollars for money then and there found to be due on Settlement and account then and there stated between the Plaintiff and defendant from the said defendant to said Plaintiff

And Whereas the said defendant being so indebted to Plaintiff on the day and year last aforesaid, To Wit in the County of Peoria aforesaid, in consideration of the premises, then and there promised to pay unto Plaintiff the said Several Sums of money respectively, on request,

Yet the said defendant not regarding his said promises in said declaration mentioned has not paid any of said Several Sum of Money or any part thereof to the damage of Plaintiff of Four Hundred Dollars and therefore he brings Suit.

Lindsay & Lander
for Plff

John Cameron

In a/c Dr

To John Handyside

To 4 Yoke Work oxen	$ 400.00
Money lent	$ 400.00
Money laid out for his use	$ 400.00
Money found due on Settlement	400.00

John Handyside
vs
John Cameron
Assumpsit

County Court
March Term 1858.
Damages $ 500.00

The Clerk will please issue Summons returnable to next Term of said Court.

Lindsay & Lander.

John Handyside
vs.
John Cameron

Declaration Assumpsit

Filed February 18. 1858
Charles Kettelle Clerk
per Geo H. Kettelle
Dep. Clk.

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Und afterwards Tollett on the 7th day of June AD 1858 there was filed in the Clerks office aforesaid a Plea of said Defendant, which is as follows

Toppss.

Cameron } June Term Record
als } County Court 1858
Van Dyside }

And the said deft comes & defends &c And for plea saith that he did not undertake & promise as the said plaintiff hath therein alleged against him in said dec filed & of this he the said deft puts himself upon the country &c

Ingersoll Bros attys for deft

And Plaintiff doth likewise &c.

And for a further plea in this behalf he the said defendant says actio non because he says that on &c at &c aforesaid & before the Commencement of this suit he the said deft delivered to the said plaintiff Three Notes viz: One Note for $ 65 ₵. bearing date the 12 day of Oct. AD 1857 Signed by John Sowards & Jonathan Sowards and one note for $ 280 ₵. bearing date on the 12th day of Oct AD 1857 Signed by John Sowards & Jonatha Sowards And due on the 12th day of Oct AD 1858. And one Note for $ 26.70/100 with 6% Interest amounting to 30 $ bearing date the first day of January AD 1854 due on the 1st Day of June. AD. 1854 and Signed by the said Plaintiff

And also the Sum of 300 $ -₵ in Money to the said plaintiff in full discharge and Satisfaction of the said undertakings & promises in said declaration mentioned And the said Notes & money aforesaid were then & there of said received by the Plaintiff aforesaid in full discharge and Satisfaction of the said promises and undertakings in the said declaration mentioned

And this he the said Defendant is ready to verify.

Wherefore &c

Ingersoll Bros.
Atty for Deft.

Travers and Lindsay & Lander for Pltff.

[12696-2]

And for further plea in this behalf the said Deft says actio non because he says that at &c on &c afd & before the commencement of this suit he fully paid & satisfied the said plaintiff for the price of the said Oxen in said declaration mentioned by delivering to the said plaintiff Three certain notes viz one signed by John Swords & Jonathan Swords for $ 65 Dated 12th day of Oct AD 1857 due one year after date & one signed by John & Jonathan Swords for $ 260 dated 12 day of Dec AD 1857 due One year after date & one for $ 26.70 signed by said plaintiff [illegible] Due on the 1st day of June AD. 1854! together with 500 dollars in sundry notes &c and the same were ~~due & delivered~~ [then & there rec'd] in full payment & satisfaction of promises & undertakings in said declaration mentioned

& this he is ready to verify. Wherefore &c.

Ingersoll Bros
for Defdt.

Traverses and
Issue
Lindsay & Lander for Pltff.

Cameron
vs
Handyside
Pleas

Filed June 7 1858
Killen Clk
per
Geo Killen Dpty

Ingersoll

And afterwards. To Wit on the Sixth day of August AD 1858 There was filed in the Clerks office of the County Court of said County, the Verdict of the Jury, in said cause empannelled and which is as follows

To Wit.

"WE the Jury find for the Plaintiff and assess the damages "at Five Hundred and fifty dollars.

Isaac Moore	C. S. Clarke
Lindsey Canon	James Elson
William Triplett	John Hanna
Jas. F. Murden	S. P. Maclean
Joseph Elder	J. M. Johnson
C. A. Mounts	S. W. Burnett.

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Proceedings of the County Court of Peoria County State of Illinois began and held at the Court House in the City of Peoria on Monday August 2d 1858 for Judicial and other business

Present Hon Wellington Loucks. Judge
" Charles Kellett Clerk and
" Francis W. Smith Sheriff

Thursday August 5th 1858.

John Handyside
vs
John Cameron

Assumpsit

This day came the said Plaintiff by Lindsay and Lander his Attorney and the said defendant by Ingersoll and Bro. his Attorney and the issues being joined it is ordered by the Court that a jury be Empannelled to try said cause, Whereupon came a jury of twelve good and lawful men to wit. John Hanna, Joseph Elder, William Triplett, Charles S. Clark, S. H. Burnett, James Elston, James F. Munden, John M. Johnson, Lyndsay Cameron, Isaac Moore, C. A. Mounts and Samuel P. McLean, who were duly Chosen, tried and Sworn, well and truly to try said cause and having heard the Evidence in the case retired to consider of their Verdict.

Friday August 6th 1858.

John Handyside
vs
John Cameron.

Assumpsit.

This day came again both parties to this suit and also the jury Empannelled in this cause Yesterday and returned into Court the following Verdict "We the jury find for the Plaintiff and assess the damages at Two Hundred and Fifty dollars" Thereupon the said defendant by his attorney Entered his Motion for arrest of judgment and for new trial in this cause.

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John Handyside
vs.
John Cameron

Assumpsit.

This day came again both Parties to this suit by their respective Attorneys and this cause came on to be heard on the Motion of the said defendant for a new trial in this cause The Court having heard the Arguments of Counsel and being sufficiently Advised in the premises do overrule this said Motion Therefor it is considered by the Court that the said John Handyside do have and recover of and from the said John Cameron the Sum of ($250.00) Two Hundred and Fifty Dollars his damages in form aforesaid Assessed and also his Costs and charges by him about this Suit in his behalf Expended and that he have Execution therefor Thereupon the Defendant prayed an appeal of this Cause to the Supreme Court of this State which is allowed on his Entering into Bond with Penal Sum of Four Hundred Dollars Conditional according to Law with William Cameron as Security within Twenty days.

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And afterwards. To Wit on the 27th day of August A.D. 1858 There was filed in the Office of the Clerk of the County Court of said County, a Bill of Exceptions, which, in Words and Figures is as follows.

To Wit,

John Handysides
vs.
John Cameron

of the August Term of the County Court of Peoria County A.D. 1858.

Be it Remembered that on this day this above Cause came on to be tried, and before the Honorable Wellington Doucks Judge of the Court aforesaid. And a Jury having been empanneled the said Plaintiff introduced one Chas Denton as a Witness in said cause who after being duly Sworn upon his oath said. That about Christmas A.D. 1857 the Plaintiff sold to the said Defendant four Yoke of Oxen, and that he saw the defendant come and take away said oxen. That he did not know what said defendant agreed to give for said cattle, but that said cattle were worth about One Hundred dollars per Yoke and further said not. The said Plaintiff then rested.

Whereupon the said Defendant introduced one William Cameron as a Witness in his behalf. Who after having been duly Sworn upon his oath, said, That he was present When the defendant purchased said Oxen from plaintiff that he bought four Yoke of cattle from plaintiff and that defendant gave to the Plaintiff a Note which said Deft. held against said Plaintiff Amounting to about thirty dollars. And also two Notes supposing to have been signed by John Swords and Jonathan Swords One note for 65 $ payable to the said defendant John Cameron or Order one year after the date thereof, And the other for 260 $ payable to the said defendant John Cameron or Order. One year after date. Both of said Notes bearing date the 12th day of October A.D. 1857. Which said notes the said defendant gave to the said Plaintiff for said Oxen, which together with Seven dollars in money the said Plaintiff agreed to receive in full for said oxen, And that said Plaintiff agreed to take said Notes for better or for worse, without any recourse whatever on the said defendant.

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That said plaintiff asked defendant how it was that both the names of John & Jonathan Swords on said Notes were written in the same handwriting and that the defendant told plaintiff that John Swords who is the Son of Jonathan Swords told his brother in law Geo Schalenberger to sign his name and also the old man's that the old Man Jonathan Swords was in the Room at the time, And that the said Schalenberger handed said notes after he had signed the Names of John & Jonathan Swords to said notes to John Swords and that John Swords read the Notes & said that they were all right. And that the old man Jonathan Swords was there.

The plaintiff also said that he did not care whether Defendant guaranteed the payment of said notes or not but said that he wanted to trade the notes off to a Mr Mervin whom he owed, and that he did not care whether said notes were worth anything or not that he wanted to get out of Mervin's Clutches and that was all he cared for, And that said plaintiff also said that he knew all about John Swords and Jonathan Swords and that he wanted no information from the defendant with regard to their responsibility That he the said plaintiff lived near the Swords and knew all about them and just what they were worth. And the said William Cameron further testified that the Yokes and Chains on the Oxen were included in the bargain that said cattle were worth about 60 or 65 dollars per Yoke The defendant then introduced Sanford Moon who being duly Sworn upon his Oath Stated that he was acquainted with the Parties. And that in the Month of January. or February A.D. 1858. The defendant requested him Moon to give the said Plaintiff Seven dollars and that he did give the Plaintiff Seven dollars for the defendant and at that time the plaintiff said to the defendant that that made the oxen trade all right & square.

The Defendant then introduced One George Schallenberger who after having been duly Sworn upon his oath said, That he was well acquainted with the Parties and that he was a Son-in-Law of the said Jonathan Swords whose name appeared upon the said notes, That he was at the house of his father-in-Law Sometime in the Month of October A.D. 1857. And that the defendant came there with the Notes, the same described by William Cameron And that the

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Consideration of the Notes was a Span of Mules
That John Swords and Cameron were talking the Matter over in
the house and that Jonathan Swords was present, And that after
they had talked the Matter over that John Swords said to the
Witnesses to Come in that he wanted him to write for them.
That said Swords handed Witness the Notes & told him
to write his John Swords' Name to them And then to write his
fathers Name Jonathan Swords name to them And that Witness
did so, That John Swords then took the Notes and read them
aloud And that Jonathan Swords was present. And that he
Supposed that he heard them & knew all about the transaction
that Swords, John, then said that they were all right & handed
them to the defendant. That he supposed the old Man Jonathan
Swords heard all that was going on because he Sat. where he
could have heard
Upon Cross Examination he said that he did not know positively
that Jonathan Swords did hear the transaction but thought likely
that he did. That the old Man was rather hard of hearing.

The Defendant then introduced George Hall who
after being duly Sworn upon his Oath Said, That he was present
when the plaintiff went to Subpoena the said Jonathan Swords.
as a Witness in this Case, that it was about the first of March
A. D. 1858, And that said Handyside the plaintiff asked
Jonathan Swords What he would swear about Signing the
Notes that they gave to Cameron And that Jonathan Swords
replied That he did not write his name himself because he
could not write but that he was present at the time the Notes
were Signed & that he made no objection and that before his son
John Swords got the Mules from Cameron he had agreed
to go Security to Cameron for his son

The Defendant then rested.

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The plaintiff then introduced Jonathan Swords who after being duly Sworn Said. That he never signed the said Notes nor either of them. Nor did he authorize any one to sign them for him.

Upon Cross examination the said Jonathan Swords stated that a few days before the execution of said notes, John Swords, Son of Witness, asked him if he would go his Security - for a Span of Mules, to Cameron, And that he replied that he recond he would, And that afterwards his Son brought home a Span of mules that he got of Cameron the Defr. And next morning defr came over as he supposed to get the notes signed, That he was in the room at the time he supposed they were signed And that he supposed he knew what they were doing but that he was not consulted. And that had he been asked at that time his Son asked him he would have gone the Security And that he would have made no objection whatever But that afterwards One of the Mules bought of Defr. by John Swords died, And that he believed that the Mule had the Glanders, at the time his Son John Swords bought him from Cameron. And that had the Mule been sound he would pay the Notes & was perfectly willing that defr should be paid for the good one, And that he would not have said a word had not One of the Mules died

This was all the Evidence introduced by the Plaintiff And defendant in Said Case

The plaintiff then asked of the Court the following instructions which were given

To Wit.

The Jury are instructed on the part of the Plaintiff

1st "That if the defendant gave the plaintiff notes on John & Jonathan Swords in payment for the Cattle sued for & the Plaintiff took the notes upon the faith & belief that said Notes were genuine, Then if they believe from the Evidence that Jonathan Swords never signed his name to the said notes nor directed Schallen Keepi to sign them for him. Then such notes are now not genuine & the taking of said Notes was no payment of said Cattle

2nd " The Jury are instructed that to make a Note genuine & valid the signature must be in the handwriting of " the party executing it. or be executed by his mark

To both of which said instructions & the giving thereof the said defts then & there excepted.

And the said defendant asked the Court to give the following Instructions

1 " The Court instructs the Jury that when a person makes his mark it is good even if there is no attesting witnesses"

2 "And if a person who cannot write consents that another person shall sign his name for him and authorizes him to do so. and he does sign his name in presence of the person authorizing it. Then it is good

Both of Which the Court refused to give to which holding of the Court the said defendant then & there excepted.

The deft also asked the following instructions to be given to the Jury:

[illegible]

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3 The Court further instructs the Jury that if they believe from the Evidence that said Jonathan Swords had consented to go Security for his Son and that at the time the Notes were Signed he stood by and made no objection to having his name on said Notes & in fact was willing that his name should be put on said Notes & consented that his name should be signed to them Then the Court instructs the Jury that the Notes were properly Signed

Which said Instruction the said Court then & there refused to give to which the said defendant then & there excepted

Defendant also asked the said Court to give the following Instruction To Wit

4 "The Court instructs the Jury that if
" they believe from the Evidence that Jonathan Swords authorized or gave his Consent to John Swords to place his
" Jonathan Swords' name upon the Notes given by the
" Swords to Cameron for the Mules & that John Swords
" did do or had it done in accordance with such permission
" Then it was a legal transaction & binding on Jonathan
" Swords"

Which the Court refused to give to which said holding said Defendant then & there excepted

The Court gave the following instructions for defendant. to wit

The Court instructs the Jury that unless they believe that the Name of Jonathan Swords is actually a forgery the Notes are good as against the maker.

Also the Following.

The Court instructs the Jury that if they believe from the Evidence that the Defendant bought the Ocen in Question from Randyside the Plaintiff And that the Defendant paid Mr Randyside two legal & genuine Notes on the Swords Amounting to 325 00 & And a Note on said Randyside for about 50 & And seven Dollars in money and that that was all the said defendant

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ders to pay the said Sandyside for said ocean there the jury should find for the defendant.

These are all the Instructions either asked given or refused on the behalf of the defendant and the plaintiff

Whereupon the Jury retired & returned into Court the following Verdict to Wit.

We the Jury find for the plaintiff & asses the damages at two hundred and fifty dollars.

(Signed by the Jury)

Whereupon the Defendant then and there moved the Court for a new trial of said Cause and in arrest of Judgment for the following Reasons to Wit.

1st The Verdict of the Jury is contrary to Law.
2nd The Verdict of the Jury is against the evidence
3rd The Verdict of the Jury is against the law & evidence
4th The Court gave improper Instructions on behalf of the plaintiff which were calculated to mislead & did mislead the Jury.
5th The Court gave instruction on behalf of said plaintiff which were contrary to the law of said Cause
6th The Court refused to give proper instructions on behalf of the defendant.

Which said Motion by the said Court was overruled & the said Court refused to grant a new trial in said cause & caused said Judgment to be entered in accordance with the said Verdict

To which said holding of the Court & refusal to grant new trial the said defendant then & there excepted.

[12496-7]

14 This contains all the evidence in said case all instructions exceptions made in said Case & taken &c

And said defendant asks the Court to Sign & Seal the foregoing bill of Exceptions which is done &.

Wellington Louches
County Judge.

And Afterwards To Wit on the 25th day of August A.D. 1858. there was filed in the Clerks office of the County Court an Appeal Bond in the following words and figures To Wit.

"Know all Men by these Presents That we John Cameron and William Cameron are held and firmly bound unto John Vandyside in the penal sum of Five Hundred Dollars. Lawful money of the United States. for the payment of which well and truly to be made, we bind ourselves, our heirs and administrators, jointly severally and firmly by these presents. Witness our hands and seals this Twenty fifth day of August A.D. 1858.

The condition of the above obligation is such, Whereas the said John Vandyside did on the 6th day of August A.D. 1858. at the August term of the Peoria County Court the Hon Wellington Louches presiding recover a judgment against the above bounden for the Sum of Two Hundred & Fifty Dollars from which said judgment the above bounden John Cameron has taken an appeal to the Supreme Court of the State of Illinois Now if the above bounden John Cameron shall prosecute his said appeal without delay and with effect, and shall pay or cause to be paid all costs and damages that may be assessed against him in case said appeal may be dismissed or said judgment affirmed then this Bond to be void and of no effect. Otherwise to remain in full force and effect

John Cameron
William Cameron

Endorsed "Approved Aug 25/58."
"W Louches C.J."

Taken [illegible] by me this 25 day of August A.D. 1858 Chas [illegible]

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State of Illinois } ss.
County of Peoria }

Clerk's Office

I Charles Kettells Clerk of the County Court of said County Do Hereby Certify That the foregoing is a full true complete and perfect Transcript from the files and Records of my office in a certain Cause in said Court wherein John Vandyside et al Plaintiffs And John Cameron et al Defendants

Witness my Hand and the Seal of the said Court this 26th day of February A.D. 1859.

Charles Kettells
Clerk

[12491-B]

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Specification of Errors.

John Handy } State of Illinois Supreme Court
v. } Third Grand Division,
John Cameron, } April term AD 1879.

And now comes the said Appellant John Cameron by Ingersall Brothers his attorneys, and says that in the records & proceedings of the said County Court there is manifest and manifold error and assigns for error,

1st, The said Court Erred in giving the first instruction asked for by plff

2nd Said Court Erred in giving the second instruction asked for by Plaintiff

3rd Said Court erred in refusing the 1st 2nd 3rd & 4th instructions asked for by deft & in refusal of each

4th, The Court erred by giving improper instructions on the part of the plaintiff which were calculated to mislead and did mislead the Jury

5th The Court Erred in refusing to give proper instructions on behalf of the Defendant

6th, Said Court Erred by giving instructions on behalf of said Plaintiff Contrary to the law of said Cause

7th. The verdict of the Jury is against the evidence

8th The verdict of the Jury is against the law

9th The verdict of the Jury is against the law & evidence

10th There is no law or evidence in said cause to support the verdict of the Jury,

11th, The said Court Erred in not granting the defendant a new trial of said Cause

12th, The said Court Erred in not granting and by overruling the Motion of defendant for a new trial for the reasons stated in said Motion

Wherefore for the errors aforesaid the said John Cameron prays that the said judgment of the said court may be reversed, set aside, and for nought had, held, and esteemed

Ingersall Brothers
Attys for Appellant

Whereupon comes the said John Handyside By Lindsay & Fowler his attorneys and says that there is no Error either in the Record and proceedings aforesaid or in the rendition of the Judgment aforesaid and prays that the said Supreme Court may here may proceed to examine as well the Record and proceedings aforesaid as the matters aforesaid above assigned for Error. and that the Judgment aforesaid in form aforesaid given may be in all things affirmed &c

Lindsay & Fowler
Attorneys for defendant
in Error

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Transcript of the
record in the case

Handyside
vs
Cameron

Handyside

vs

Cameron.

Brief of Exceptions

Cam. cam.

Supreme Ct

Filed April 20. 1839

L. Leland
Clerk

12696

5840

In The Supreme Court at Ottawa. April Term 1879.

John Cameron } Appellant
vs.
John Bandyside } Appellee

Appeal from Simcoe County Court

The Defendant in Error, John Bandyside, by Lindsay & Fowler his Attorneys, submits to your Honors the following Arguments, facts & authorities in his behalf.

In this Case, aside from the hackneyed & common-place Specifications of error, the Plaintiff in Error confines himself to such rulings of the Court below as touch the one question of the genuineness of Jonathan Sabard's Signature to the notes given to Cameron, and by him transferred to Bandyside: And on this ground alone has he - with what shadow of plausibility

12496-111

it will be for this Honorable Court to determine — succeeded in bringing this Case for Your Honors to adjudicate.

The evidence in the Case shows that the notes so transferred by Cameron to Bandyside, in part consideration for the cattle sold to Cameron, bore what purported to be the signatures of John Sawards and his father Jonathan Sawards.

That such alleged signatures were never made by either of the Sawards, but that one Jorge Schalenburger attached their names to said notes.

Nothing appears in the evidence to show Schalenburger's authority for so affixing said signatures.

True, Schalenburger has the express authority of John Sawards to sign his name: but the testimony both of Schalenburger and Jonathan Sawards elicits the fact that the name of Jonathan

Sawards was put to said notes without the slightest authority, express or implied.

Mr. Jonathan Sawards, did not request his name to be signed, - his assent was not obtained - the notes were not read to him - his pleasure was not consulted, and in no manner whatever was the signature his, and consequently in no manner whatever was he responsible for the acts of those who falsely assumed to be his Agents, particularly as Defendant below was present and cognizant of the fact that in his eagerness to sell the notes to Sawards and obtain the Sawards' notes, the consent of Jonathan Sawards to become responsible to him was entirely overlooked.

Jonathan Sawards is hard of hearing, and the evidence does not establish that he ever positively knew his name was being used; even supposing that he was aware of it, yet Bowman was present, and he was

his duty to obtain Jonathan Sawards' own individual signature: which presence of Cameron make an entirely different case from what it would have been had the notes been executed while Cameron was absent, and they subsequently handed to him.

Nor does it appear on the paper, what it should in such case, appear, that the signatures were obtained by procuration.

Nor is it in evidence that Schaelburger was in the habit, as Sawards' Clerk or Agent, of affixing their signatures.

Nor does the mark of Jonathan Sawards appear to have been made as a signature.

As to what is necessary to make one a party to a promissory note, and the liability or exemption from liability of one whose name is used without his consent or authority, Appellee refers you to Chitty on Bills, Pages 28 & 32.

The only legal conclusion

that can be arrived at on this point is, that as to Jonathan Sawards the notes were fraudulently obtained by Cameron, and virtually amount to a forgery; so that not even Cameron, the Payee, could prevail in an action against Jonathan Sawards: and in how much stronger a light will this pseudo-signature, - this fraudulent transaction & consequently utter irresponsibility of Jonathan Sawards appear when these notes have passed into the hands of an innocent indorsee, who was not present to observe the execution of the notes, and who knew nothing of the manner of their execution

Lulled into a feeling of security and a belief of the genuineness of the notes, from the representations of Cameron that they were genuine, and that Jonathan Sawards had previously expressed his willingness to go on a note for his son, this indorsee takes the paper in part payment of his debt: but the expressed willingness of Jonathan Sawards to go on a note

simply expressed at one time, and the actual and positive execution of this note at another time are also very different matters. And I am all the principles of law applying to this case, and cannot dissent therein the Court below erred in giving Plaintiff's instructions and refusing Defendant's instructions, all which tend to the same point, that a promissory note to be valid & genuine must be signed in the handwriting of the maker, or by his agent duly authorized, or by ~~this~~ mark.

The position of Appellant that a contract cannot be rescinded by one of the parties, is not contradicted.

It is true that the said notes were not returned to Cameron by Landyside, before suit brought on the contract of sale. But what was the necessity or obligation.

There was no contract between Landyside & Cameron so far

as the notes are concerned, because the notes were fraudulent - virtually a forgery - consequently entirely worthless. For if the signature of Jonathan Sawards is not genuine, and he irresponsible, then the alleged contract between Bowman and Bandyside that the latter was to take said notes in payment of indebtedness is entirely without consideration, and is no contract; and John Sawards the same, being party to alleged contract, he, John Sawards is no longer answerable to Bandyside.

Which being the case, the notes were worth nothing; and Bandyside might as well have given to Bowman a blank piece of paper, as he have returned said notes!

The fact that Bandyside has not returned said notes to Bowman, in nowise affects any remedy Bowman might, under the circumstances, have at law against John Sawards.

From all which reasons and rules of the law, Appellee is of the opinion that the course of the Court below was legal, just & proper; and prays that this Honorable Court may affirm the judgment of the inferior Court.

Lindsay & Fowler
Attys for Appellee

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Bannan

vs.

Bandyside

Argument

of

Appellee

Filed May 10. 1883

L. Lelièvre

Clerk

In The

Supreme Court

At Ottawa

IN THE SUPREME COURT AT OTTAWA . . . APRIL TERM, 1859.

JOHN CAMERON, APPELLANT,
vs.
JOHN HANDYSIDE, APPELLEE.
} APPEAL FROM PEORIA COUNTY COURT.

ARGUMENT FOR APPELLANT.

This was an action of assumpsit, brought by John Handyside against John Cameron, to recover the value of four yoke of oxen.

The evidence shows that Cameron, in the fall of 1858, sold a span of mules to one John Sowards, upon the condition that John Sowards would give his note for $260, and one for $60, with Jonathan Sowards, his father, for security; that John Sowards did execute the notes, and that his father agreed to go his son's security to Cameron; and that neither John Sowards or his father could write, and that they authorized one George Schalenburger to sign their names for them, and that he did so with their knowledge and consent. The evidence further shows that Cameron traded the notes thus obtained to Handyside, together with a note on Handyside and seven dollars in money, for the oxen, and that Handyside received said notes and money in full for said oxen, and that at the time of the trade Cameron told Handyside how the notes were signed, and Handyside took them without recourse, remarking at the time that he knew the Sowards well, and wanted no information concerning them.

The evinence does not show that Handyside ever attempted in any way to collect said notes from the Sowards; that he never at any time tendered back the notes to Cameron, but he commenced suit against Cameron for the price of the oxen, still having the notes in his possession, and which he still retains.

There can be no doubt as to the genuineness of the notes. The old man Jonathan Sowards himself swears that he had agreed to go security for his son to Cameron, and that he was in the room at the time the notes were signed, and knew what they were doing; but that afterwards one of the mules died, and had the mule lived he should never have said a word, and that he as it was was willing that Cameron should be paid for the other mule.

If after the trade between Handyside and Cameron, Handyside found as he supposed that the notes were not genuine, instead of commencing suit against Cameron for the price of said oxen, he should have placed Cameron in the same position he occupied before the trade. He should have given back to Cameron all that he had received from him, or at least made a tender thereof. In the case

of Hunt vs. Silk, 5 East. 449, it was holden, "In order to sustain an action in this form it is necessary that the parties should by the plaintiff's recovering the verdict be placed in the same situation in which they originally were before the contract was entered into."

In this case the verdict has not left the parties in the original condition. Handyside has a verdict and judgment against Cameron for the amount of the notes, and Handyside still retains in his possession the notes given by the Sowards.

In 2nd Parsons on Contracts, page 191, the law is laid down to be that "generally no contract can be rescinded by one of the parties, unless both can be restored to the condition in which they were before the contract was made."

Yet in this case, supposing that Handyside had a right to rescind the contract, the question would then arise whether he had a right to sue for the value of the cattle without first at least tendering back the consideration, whatever it was, to Cameron.

And in the case of Norton vs. Young, 3 Greenleaf, 30, it was holden, "Where one party elects to rescind a contract for fraud, he must return the consideration received before any right of action accrues, and it is not enough to notify the party defrauding, and call upon him to come and receive the goods."

This seems to be the law, even when the party is guilty of fraud; and there seems to be no exception to the rule that the party rescinding must place the other in his former position, unless rendered impossible by the acts of the party who insists on the right. The parties must have been placed in their original condition before even the right to sue could possibly have accrued to Handyside.

Therefore, if the Sowards' notes were not genuine, and were in fact a forgery, as regards the old man, and were entirely worthless, still Handyside had no right whatever to bring suit for the value of the oxen, because he never gave back to Cameron the consideration which he had received, and did not even attempt to place Cameron in his former position, and never did rescind the contract, unless the commencement of this suit was a rescision.

And upon the other hand, if the notes upon the Sowards were good and genuine, then Handyside could not rescind the contract in any manner, much less sue for the value of the cattle, without returning or attempting to return the consideration which he had received.

And even if the notes as regarded the old man were a forgery, (as they contend) and therefore that the notes were worthless, and consequently that there was no consideration to return, yet the name of the young man John Sowards was not a forgery, but proven to have been genuine, and therefore there was a

consideration to be returned. And Cameron had also given to Handyside a note on himself (Handyside) for $30, and seven dollars in money, and Handyside previous to commencing the suit never returned or offered to return any part of what he had received.

The court also erred in giving the 1st instruction asked for by the plaintiff.

Notes certainly can be made by an agent so as to bind the principal even if the fact that it was made by an agent does not appear upon the note; and yet the court instructed the jury that in order for a note to be genuine the payor must either make his mark, attested by a witness, or actually write his own name.

In this case the evidence shows that Jonathan Sowards could not write, and according to this instruction it would have been impossible for Jonathan Sowards to have made genuine a promissory note unless he actually put his mark to the note and had the same attested by a witness. And if he authorized and requested his name to be signed to the note in question, still that the note was entirely worthless, and no liability could thus be created.

The court also erred in refusing to give the instruction asked for by the defendant Cameron, because if Jonathan Sowards had agreed to go security to Cameron for his son, and when Schalenburger was called in to sign the names of the old man and his son to the notes in question, and the old man was in the room, knowing at the time what they were doing, and also knowing that he had agreed to go security, or at least that that was the understanding of his son, and knowing that his son was acting with and under that impression, and made no objection to his name being signed to the notes, and then heard the notes read, and heard his son remark that they were all right, the notes certainly were legally signed, and any other holding would sanction a fraud upon Cameron.

Aud the instructions given on the part of the plaintiff, Handyside, were manifestly erroneous and calculated to and did mislead the jury.

And the fact that the court instructed the jury that a party who could not write could not make a legal and genuine note unless he actually made his mark and had the same attested, really withdrew the notes in question from the consideration of the jury, together with all the evidence tending to show that the old man consented to having his name upon the notes, or the young man either, as the evidence was that neither of them could write, and that their names instead of marks appeared upon the notes. And if the instructions given on the part of the plaintiff are law, they at least cannot claim the most distant relationship to anything bearing the remotest resemblance to sense.

The court also refused to instruct the jury that a note would be legal and genuine when the payor requested another person to sign his name for him, and the

person so requested having signed the name of the payor, and the payor having recoguized the same as his own act.

Argument, it seems, would be wholly out of place to refute a position so clearly and palpably erroneous, for the reason that the maxim that "What one does by another he does himself," is as old as the law.

It is true that the court also instructed for the defendant, Cameron, that unless the jury believed that the signing the name of Jonathan Sowards was actually a forgery, they should find for the defendant.

Yet by also giving an instruction that although the note was signed by the consent of the old man, still it was not legal and genuine, the court rendered the former instruction meaningless, and took from it what little effect it was calculated to produce. And thus the instructions given by the court were not only erroneous, but contradictory, and not only calculated to mislead the jury, but to befog also.

Finally there is nothing in the case to show that Cameron acted in bad faith in any particular; but, on the contrary, that he acted in perfectly good faith in every particular. He gave a valuable consideration to the Sowards for the notes, and that when he traded the notes to Handyside for the cattle, he told him every circumstance connected with the transaction, and told him how it happened that their names instead of their marks appeared; and, also, that he knew nothing of their solvency, and if he took the notes he must do so upon his own risk, and without recourse.

The only reason that can possibly be assigned for the old man Sowards endeavoring to defeat the notes is that unfortunately one of the mules died.

And from all the circumstances it seems clear the verdict of the jury is wrong, and that substantiial justice has not been done. And therefore the appellant asks for a reversion of the judgment.

E. C. & R. G. INGERSOLL,
Attorneys for Appellant.

226—107

Cauldren

vs

Handyside

Filed May 5, 1859

L. Leland

Clerk

Argument

of

Appellant

In the Supreme Court
at Ottawa, April Term 1859

John Cameron } Appellant
vs
John Bandyside } Appellee

Appeal from
Leeds County Court

The Defendant in Error,
John Bandyside, by Lindsay &
Bowlby his Attorneys, submits
to your Honors the following
arguments, facts & authorities
in his behalf.

In this case, aside
from the hackneyed and common-
place specifications of error, the
Plaintiff in Error confines him-
self to such rulings of the Court
below as touch the one question
of the genuineness of Donaldson
Sawards' signature to the note
given to Cameron, and by him
transferred to Bandyside: And
on this ground alone, has he —

52496-22

with what shadow of plausibility it will be for this Honorable Court to determine — succeeded in bringing this Case for your Honors to adjudicate.

The evidence in the Case shows that the note so transferred by Bowman to Bandyside, in part consideration for the cattle sold to Bowman, bore what purported to be the signatures of John Sawards and his father Jonathan Sawards

That such alleged signatures were never made by either of the Sawards, but that one George Schaelenberger attached their names to said notes.

Nothing appears in the evidence to show Schaelenberger's authority for so affixing said signatures.

True, Schaelenberger has the express authority of John Sawards to sign his name: but the testimony both of Schaelenberger & Jonathan Sawards elicits the fact that the name of Jonathan

Sawards was put to said notes without the slightest authority, express or implied.

No. Jonathan Sawards did not request his name to be signed — his assent was not obtained — the notes were not read to him — his pleasure was not consulted, and in no manner whatever was the signature his, and consequently in no manner whatever was he responsible for the acts of those who falsely assumed to be his Agents, particularly as Defendant below was present & cognizant of the fact that in his sickness he sent the notes to John Sawards and obtain the Sawards notes, the consent of Jonathan Sawards to become responsible to him was entirely overlooked.

Jonathan Sawards is hard of hearing, and the evidence does not establish that he ever positively knew his name was being used, even supposing that he was aware of it, yet Bowman was present

and it was his duty to obtain Jonathan Saunders' individual signature; which presence of Cameron makes an entirely different case from what it would have been had the notes been executed while Cameron was absent, and they subsequently handed to him.

Nor does it appear on the paper, what it should in such case appear, that the signatures were obtained by procuration.

Nor is it in evidence that Schaberburger was in the habit, as Saunders Clerk or Agent, of affixing their signatures.

Nor does the mark of Jonathan Saunders appear to have been made as a signature.

As to what is necessary to make one a party to a Promissory note, and the liability or exemption from liability of one whose name is used without his consent or authority, Apellee refers your Honors to Chitty on Bills, Sages 28 & 32.

[illegible]

The only legal conclusion that can be arrived at on this point is, that as to Jonathan Sawards the notes were fraudulently obtained by Cameron, & virtually amount to a forgery; & that not even Cameron, the payee, could prevail in an action against Jonathan Sawards: and in how much stronger a light will this pseudo-signature — this fraudulent transaction & consequently utter irresponsibility of Jonathan Sawards appear when these notes have passed into the hands of an innocent indorsee, who was not present to observe the execution of the notes, and who knew nothing of the manner of their execution.

Lulled into a feeling of security and a belief of the genuineness of the notes, from the representations of Cameron that they were genuine, and that Jonathan Sawards had previously expressed his willingness to go on a note for his Son, this indorsee takes the paper in part payment of his debt; but the expressed willingness of

Jonathan Sowards to go on a note simply expressed at one time, and the actual, and positive execution of this note at another time are two very different matters, and from all the principles of law applying to this case, we cannot divine wherein the Court below erred in giving Plaintiffs instructions and refusing Defendants instructions all which tend to the same point, that a promissory note to be valid & genuine must be signed in the handwriting of the maker, or by his Agent duly authorized, or by his mark.

The position of Appellant that a contract cannot be rescinded by one of the parties is not controverted

It is true that the said notes were not returned to Cameron by Handyside, before suit brought on the contract of sale. But wherefor the necessity or obligation?

There was no contract between Handyside & Cameron so far as the notes are concerned, because the notes were fraudulent — virtually a forgery — consequently

entirely worthless: For if the signature of Jonathan Sowards is not genuine, and he irresponsible, then the alleged contract between Cameron & Handyside that the latter was to take said notes in payment of indebtedness is entirely without consideration, and is no contract, and John Sowards, the Son, being party to the alleged contract, he, John Sowards is no longer answerable to Handysides.

Which being the case, the notes were worth nothing; and Handyside might as well have given to Cameron a blank piece of paper, as to have returned said notes.

The fact that Handyside has not returned said notes to Cameron, in nowise affects any remedy Cameron might, under the circumstances, have at law against John Sowards.

From all which reasons and rules of the law, Appelle is of the opinion that the course of the Court below was legal, just, and proper; and prays that this Honorable Court may affirm the judgment of the inferior court.

Lindsay & Fowler
Attys for Appelle

5126-48

226—109

Cameron

vs.

Landyside

In The

Supreme Court

at Ottawa

Filed May 10. 1883

L. Leland

Clerk

Argument of

Appellee

In the Supreme
Court,
April Term
A D 1859

John Cameron, Appellant
vs
John Handyside, Appellee

The undersigned attorneys of the parties to the above suit agree that said cause shall be submitted to the Court upon written arguments. —

Ingersoll & Britton
for Appellant

Lindsay & Fowler
for Appellee

2/12/96-3D

226–109

Lawson
to
Vandyke

Agreement

Filed April 30, 1859
L. Leland
Clk

JOHN CAMERON, } Appellee,
ats.
JOHN HANDYSIDE, } Appellant.

ASSUMPSIT,

In the Supreme Court to be held at Ottawa, on the third Monday of April, A. D. 1859.

ABSTRACT.

Page 1. This was an action of assumpsit brought by the plaintiff, John Handyside, to the March term of the Peoria County Court, A. D. 1858, against John Cameron, the defendant, to recover the price of four yoke of work oxen, alleged to be the value of $400.

1 and 2 The declaration contained one special count, and usual common counts. The first count states, in substance, that the defendant, on the 31st day of October, A. D. 1857, at Peoria, bought of the plaintiff four yoke of oxen, at one hundred dollars per yoke.

3 8 No action was taken in this case until the June term of said Court, A. D. 1858, at which term the defendant, by Ingersoll Brothers, waived service of process, and entered defendant's appearance.

3 Defendant plead general issue, upon which plaintiff took issue to the country.

The defendant also filed the following pleas upon which issue was duly joined by the said plaintiff's Attorneys, Lindsay & Lander.

3 "And for a further plea in this behalf, he, the said defendant says *actio non*, because he says that on, &c., at, &c., and before the commencement of this suit, he, the said defendant, delivered to the said plaintiff, three notes. viz :—One note for sixty-five dollars, bearing date the 12th day of October, A. D. 1857, signed by John Sowards and Jonathan Sowards, and one note for two hundred and sixty dollars, bearing date on the 12th day of October, A. D. 1857, signed by John Sowards and Jonathan Sowards, and due on the 12th day of October, A. D. 1858 ; and one note for twenty-six dollars and seventy cents, with six per cent. interest, amounting to thirty dollars, bearing date the 1st day of January, A. D. 1854, and due the 1st day of June A. D. 1854, and signed by the said plaintiff. And also the sum of $500 in money to the said plaintiff, in full discharge and satisfaction of the said undertakings and promises in said declaration mentioned; and the said notes and money of defendant were then and there aforesaid received by the said plaintiff in full discharge and satisfaction of the said promises and undertakings in the said declaration mentioned. And this the said defendant is ready to verify. Wherefore, &c.

Traverse and issue. INGERSOLL BROS., for the Deft.

LINDSAY & LANDER, for Plaintiff."

4 "And for a further plea in this behalf the said defendant says *actio non*, because he says, That at, &c., on, &c., aforesaid, and before the commencement of this suit, he fully paid and satisfied the said plaintiff for the price of the said oxen in the said declaration mentioned by delivering to the said plaintiff three certain notes, viz :—One note signed by John Sowards and Jonathan Sowards for the sum of $65, dated the 12th day of October, A. D. 1857, and due one year after date. And one signed by John and Jonathan Sowards bearing date the 12th day of October, A. D. 1857, for the sum of $260, and due one year after date. And one for $26,70, signed by the said plaintiff, and due on the 1st day of June, A. D. 1854, amounting with the interest to $30, together with five hundred dollars in sundry notes, &c., and the same were then and there received in full payment and satisfaction of the promises and undertakings in said declaration mentioned. And this he is ready to verify.

Traverse and issue. Wherefore, &c. INGERSOLL BROS., for Deft.

LINDSAY & LANDER, for Pl'ff.

And no further action was taken in said cause until the August term of said Court A. D. 1858.

At the August term, A. D. 1858, of said Court, a trial of said cause was had by a jury, and verdict rendered against the defendant for the sum of two hundred and fifty dollars. From which this appeal is taken.

Upon the trial of the said cause, the said defendant, John Cameron, filed his bill of exceptions, in substance as follows :

6 "Be it remembered that on the trial of the said cause, before Wellington Loucks and a jury, at the August term of the Peoria County Court, A. D. 1858,

The plaintiff introduced Charles D. Eaton, who testified that in the month of December, A. D. 1857, the plaintiff sold to defendant four yoke of work oxen, and that he saw defendant take away said oxen, and that he did not know what defendant agreed to give for said cattle ; but that they were worth about one hundred dollars per yoke.

And the plaintiff then rested.

Whereupon the defendant introduced one William Cameron, as a witness, who testified that he was present when the defendant purchased said oxen from plaintiff. That the defendant bought four yoke of cattle from plaintiff, and gave plaintiff two notes on John and Jonathan Sowards, one for $65, the other for $260, both bearing date 12th October, 1857, due one year after date; and one note on the plaintiff for $26, amounting, interest and all, to $30, which, together with seven dollars in money, the plaintiff then and there recieved in
6 full for all of said oxen. And that the plaintiff did take said notes without recourse on said defendant.

That said plaintiff at that time asked said defendant how it was that both the names of John and Jonathan Sowards, were in the same handwriting, and defendant told the plaintiff that John Sowards, who is the son of Jonathan Sowards, told his brother-in-law, George Schalenberger to sign his name and also the old man's, Jonathan Sowards, and that Jonathan Sowards was in the room at the time, and that the said Schalenberger handed said notes after he had signed them according to request, to John Sowards, and that John Sowards read the notes aloud, and said that they were all right, and that the old man, Jonathan Sowards, was present.

Plaintiff said that he did not care whether defendant guaranteed the payment of said notes or not, but said that he wanted to trade the notes off to Mr. Merwin, whom he owed, and that he did not care whether they were worth anything or not. That he wanted to get out of Merwin's clutches, and that was all he cared for.

That said plaintiff also said that he knew all about the Sowards. That he wanted no information from the defendant with regard to their responsibility. That he, the plaintiff, lived near the Sowards, and knew all about them, and just what they were worth.

Cameron, the witness, further testified that the yokes and chains on the oxen were included in the bargain, and that the oxen were worth about $60 or $65 per yoke.

On the part of the defendant, Sandford Moon testified that he was acquainted with the parties to the suit, and that in January, 1858, the defendant requested him to pay the plaintiff seven dollars, and that he did so, and at that time the plaintiff said to the defendant that that made the oxen trade all right and square.

George Schalenberger, testified that he was acquainted with all the parties. That he was the son-in-law of the said Jonathan Sowards, whose name appeared upon the said notes, and that he was at the house of his father-in-law sometime in October, A. D. 1857, and that the defendant came there with two notes, the same described by William Cameron. and that the consideration of the said notes was a span of mules. And that John Sowards and John Cameron, the defendant, were talking the matter over, in the house. That John Sowards said to witness, to come in, that he wanted him to write for them, and that said John Sowards handed witness the notes, and told him to write his, John Sowards' name, and that of his father, Jonathan Sowards, to the notes. And afterwards witness read them aloud, and John Sowards said they were all right; and that Jonathan Sowards was present; and witness supposed that Jonathan Sewards heard them and knew all about the transaction. John Sowards said that they were all right, and handed them to the said defendant, and that Schalenberger supposes that Jonathan Sowards knew all about it, and heard all that was going on, because he sat where he could have heard; but that he did not know positively that the said Jonathan Sowards heard all, but thought likely he did, and that the old man was rather hard of hearing.

George Hall, on the part of the defendant, testified, that he was present when the plaintiff went to subpœna the said Jonathan Sowards as a witness in this case. That it was about the first of March, A. D. 1858. And that said plaintiff asked Jonathan Sowards what he would swear about signing the notes they gave to John Cameron, and that Jonathan Sowards replied, that he did not write his name himself, because he could not write; but that he was present at the time the notes were signed, and that he made no objection. And that before his son, John Sowards, bought the mules from said defendant, he had agreed to go security to Cameron for his son. The defendant then rested.

Jonathan Sowards, on the part of the said plaintiff, then testified,

That he never signed the said notes, nor authorized any one to sign them for him.

Upon cross-examination, the said Soward stated,

That a few days before the execution of said notes, John Sowards, his son, asked him if he would go his security to Cameron for a span of mules, and that he replied that he reckoned that he would, and that afterwards his son brought home a span of mules that he purchased of the defendant, and that on the next morning the defendant came over to his house, as he supposed, to get the notes signed. That he was in the room, when he supposed they were signed, and that he supposed that he knew what they were doing, but that he was not consulted, and had he been asked at that time he would have gone his son's security, and that at that time he made no objection, whatever; but that afterwards one of the mules that his son got of the defendant died, and that he believes that the mule had the glanders, at the time his son got him of Cameron; and that had the mule been sound, he would pay the notes, and was perfectly willing that the defendant should be paid for the good one; and that he would not have said a word had not one of the mules died.

This is all the evidence introduced by the plaintiff and defendant in this case.

The Court then gave the following instructions on behalf of the plaintiff.

1st. That if the defendant gave the plaintiff notes on John and Jonathan Sowards, in payment for the cattle, and that plaintiff took the notes on the faith and belief that said notes were genuine, then if they believed from the evidence that Jonathan Sowards never signed his name to the said notes, nor directed Schalenberger to sign them for him, then such are and were not genuine, and the taking of said notes was no payment of said cattle.

To the giving of which instruction, the defendant then and there excepted.

To which said instruction and the giving thereof, the said defendant then and there excepted and objected.

And the said defendant asked the Court to give on his behalf, the following instructions, to-wit:

Both of which instructions the Court refused to give, to which and the refusal of each the said defendant then and there excepted.

The defendant also asked the following instructions to the jury.

3d. The Court further instructs the jury that if they believe from the evidence, that
Page 12 said Jonathan Sowards had consented to go security for his son, and that at the time the notes were signed he stood by and made no objection to having his name to said notes, and in fact, was willing his name should be put on said notes, and consented that his name should be signed to them, then the Court instructs the jury that the notes were properly signed.

Which said instruction the Court then and there refused to give, to which said holding and refusal of the said Court, the said defendant then and there excepted.

The defendant also asked the Court to give the following instruction, to wit:

4th. The Court instructs the jury that if they believe from the evidence that Jonathan Sowards authorized or gave his consent to John Sowards to place his, (Jonathan Sowards') name upon the notes given by the Sowards to Cameron for the mules, and that John Sowards did so, or had it done, in accordance with such permission, then it was a legal transaction, and binding upon Sowards.

Which said instruction the Court then and there refused to give. To which holding and refusal, the said defendant then and there excepted.

2 On the part of the defendant, the Court gave the following instructions:

5th. The Court instructs the jury that unless they believe that the name of Jonathan Sowards is actually a forgery, the notes are good against the maker.

12 6th. The Court instructs the jury, that if they believe that the defendant bought the oxen in question, from Handyside, the plaintiff, and that the defendant paid Handyside two legal and genuine notes on the Sowards, amounting to $325, and a note on said Handyside for about $30, and seven dollars in money, and that was all the said defendant was to pay the said Handyside for said oxen, then the jury should find for the defendant.

13 These are all the instructions given, refused, or asked on the part of both the defendant and plaintiff.

The jury returned into court, the following verdict, to-wit:

13 "We, the jury, find for the plaintiff, and assess the damages at Two Hundred and Fifty Dollars, $250." [Signed by the Jury]

13 Whereupon the defendant then and there moved the court for a new trial of said cause, after verdict and before judgement, for the following reasons, to-wit:

13 1st. The verdict of the jury, is contrary to law.

2d. The verdict of the jury is against the evidence.

3d. The verdict of the jury is against the law and evidence.

4th. The Court gave improper instructions on behalf of the plaintiff, which were calculated to mislead, and did mislead the jury.

5th. The Court gave instructions on behalf of said plaintiff, which were contrary to the law of said case.

6th. The Court refused to give proper instructions on behalf of said defendant.

13 Which said motion was by the Court overruled, and the said Court refused to grant a new trail in said cause, and caused judgement to be entered in accordance with the said verdict.

To which, (and all of which,) and the refusal to grant a new trial, and the overruling of said motion by said Court, the said defendant then and there objected and excepted.

14 This contains all the evidence in said cause, either upon the part of the plaintiff or defendant, and all instructions asked, given and refused, and all the exceptions made and taken in said case.

And the said defendant asked the court to sign and seal this bill of exceptions, which is done, &c. [Signed,] WELLINGTON LOUCKS, [L. S.]
County Judge.

14 Afterwards, on the 25th day of August, A. D. 1858, the said defendant, with William Cameron as security, filed his appeal bond in this cause in accordance with the order of the Court, and according to law, which said bond was then and there duly signed and sealed, and approved by the Court, and which said bond is set out in full in the transcript of the record of this cause.

JOHN HANDYSIDE, *vs.* JOHN CAMERON.

State of Illinois, Supreme Court,
THIRD GRAND DIVISION.
APRIL TERM, A. D. 1859.

And now comes the said appellant, John Cameron, by Ingersoll Brothers. his Attorneys, and says, that in the records and proceedings of said County Court, there is manifest and manifold error. And assigns for error,

1st. Said Court erred in giving the first instruction asked by plaintiff.

2d. Said Court erred in giving the second instruction asked for by the plaintiff.

3d. Said Court erred in refusing the 1st, 2d, 3d and 4th instructions asked for by the defendant, and erred in the refusal of each.

4th. The Court erred by giving improper instructions on behalf of the plaintiff which were calculated to mislead, and did mislead the jury.

5th. The Court erred by refusing to give proper instructions on behalf of the said defendant.

6th. Said Court erred by giving instructions on behalf of said plaintiff which were contrary to the law of said cause.

7th. The verdict of the jury is against the evidence.

8th. The verdict of the jury is against the law.

9th. The verdict of the jury is against law and evidence.

10th. There is no law or evidence in said cause to support the verdict of the jury.

11th. The said Court erred in not granting the defendant a new trial.

12th. The said Court erred in not granting, and by overruling the motion of defendant for a new trial, for the reasons stated in said motion.

13th. The Court erred in rendering judgment upon said verdict.

Wherefore, for the errors aforesaid, the said John Cameron prays that the said judgment of the said Court may be reversed, set aside, and for naught had, held and esteemed.

INGERSOLL BROTHERS, *For Appellant,*

2.26-109

Handyside
et
Cameron

Abstract,

Filed April 20. 1859
E. Leland
Clerk