No. 12895

Supreme Court of Illinois

Sedgwick

---

vs.

Phillips

71641 

Moline Apr 4th 1857

Leland
Clerk of Supreme Court
at Ottawa

Dr Sir, Find enclosed
Five Dollars. Please issue
a writ of Error and Suire
Facias as in similar cases
in a Case of Sedgwick vs
Phillips decided at the
January (Special) Term A.D. 1857
of the Rock Island Cir. Court
Robert Sedgwick is Plff
in Error & Edward Phillips
Deft. Please direct to the
Sheriff of this Co as I shall be
absent during the week. Please
attend to the matter so as
to return the writs by to-
morrows mail if possible

Sedgwick
vs
Phillips

Receipt

Filed Apr. 5. 1859
L. Leland
Clk

Plaintiff's Brief

Robert Ledgwick Assignee &c
vs
Edward Phillips

1st. The instruction asked by the Plaintiff should have been given as they were good law, and applicable to the case

2nd The instructions asked by the defendant should not have been given as it is not good law, and is not applicable to the testimony

" 1st If the goods were delivered to pay Hartzells debt and it was so understood and agreed from the start, the Plaintiff would have been entitled to recover until the existence and amount of the debt was proved, and the evidences of indebtedness produced as they could be canceled,

" 2nd There was no proof of the existence or amount of said debt, if any existed,

" 3rd Proof of the debt if there was any, was a part of the defence and the burden of proof to defeat this suit, was on the defendant,

3rd It does not matter to the defendant to whom the credit was given by Keator & Steinmetz if it appear that they were paid by the Plaintiff, then he may maintain this suit

4th The verdict is not sustained by the Evidence

5 The Court erred in refusing to grant a new trial

A. Weber, Atty

State of Illinois } of the April term A.D. 1859
Supreme Court } of said Court

Robert Sidgwick Abbigner & Co
Appellant
Edward Phillips
Appellee
} Error to Rock Island

This was an action of Assumpsit commenced in the Rock Island Circuit Court, by the Plaintiff in error against the defendant in error at the September term 1858 of said Court, Summons issued and returned served regularly
Plaintiffs declaration contained a special count for lumber sold and delivered to the defendant. And the common counts for goods sold and delivered &c. Defendant demurred, and demurrer overruled, defendant pleaded the general issue. And filed notice that on trial he would prove and offset of $500. due joined.
Case came on for trial, at the January Special term A.D. 1859
Plaintiff offered as follows the testimony of Porter & Skinner.
I am one of the firm of Keator & Skinner. Lumber dealers at Moline, Illinois. Our firm delivered lumber to Mr. Phillips, defendant on the order of Abraham Hartzell to the Amount of $256.53 It was delivered sometime in or about the month of April 1858

have heard that Mr Hartzell had made an Assignment but cannot tell when Mr Hartzell had held our note. The order was accepted with the understanding that the value of the lumber to delivered to Philips should be endorsed on the note, this has been done. Have been paid for the lumber in this way.

The note was here produced Authenticated and read in evidence

Ivohnie March 2nd 1857

On or before the 22nd day of July A.D. 1858 for value received we promise to pay to the Order of Abraham Hartzell One thousand dollars with interest at Buford's Bank, Rock Island

Signed Keator & Skinner

On this note are several endorsements made by Abraham Hartzell for assignee, made at various times from the 1st of December 1857 to August 12th 1858

Cross Examination, The order for the lumber was in writing, Did not know Robert Ledgwick in the transaction have no lumber charged to Robert Ledgwick

The order was here produced and read in evidence

Ivohnie March 25th. 1858

Mr Keator & Skinner let the bearer Edward Philips have what lumber he wishes and charge the same to me

Signed Abraham Hartzell

The testimony was then offered of Abraham Hartzell
I made an assignment to Robert Sedgwick some
time during the winter previous to the date of the
order. I acted in this transaction as the Agent
of Sedgwick. By his authority I gave the order
referred to by Mr Skinner. Witness identified the
note above referred to. This note was delivered
by one to Mr Sedgwick as a part of the assigned
property. I afterwards obtained the note from him
for the purpose of having some of the endorsements
made thereon. Sedgwick knew that the endorse-
ments were to be made, and they were made and
consented thereto. I have acted as Sedgwick's agent
in other transactions connected with the
assigned business. Nothing has been received
by me or Sedgwick for said lumber.
Cross Examination. I was indebted to
Phillips when the order was given to Keator
& Skinner. It was understood that the lumber
was to apply on my indebtedness to Phillips.
The Plaintiffs asked the following instruct-
ions
1st If the jury believe from the evidence that the
defendant received the lumber in question from
Messrs Keator & Skinner upon the credit of
the Plaintiff, through the acts of his agent
Hartzell then they will find for the Plaintiffs
for the value of the lumber as proven

2nd If the Jury believe from the evidence that Hartzell was authorised by the Plaintiff to give orders for the delivery of the lumber in question, or that the Plaintiff afterwards recognized the actions of the said Hartzell, and paid for the lumber aforesaid, or credited the said Keator & Skinner for its value, by an indorsement upon a note, or otherwise then they will find for the Plaintiff though they should believe that the credit was originally given to the said Hartzell.

3rd If the Jury believe, from the evidence that the lumber in controversey, was delivered upon the credit of a certain note here produced in evidence, signed by the said Keator & Skinner, and that note was in the lawfull possession of the Plaintiff, and the Plaintiff has endorsed or allowed to be endorsed thereon, the value of the lumber in controversey, then the Plaintiff is entitled to recover and the jury will find accordingly

4th An agency may be created by recognition of

5th the acts of a person as well as by express authority An assignor may act as the Agent of his Assignee, the Assignee being liable for the acts of his Agent. All of the above instructions were refused as inapplicable to the testimony, to which refusal Plaintiff excepted.

Defendant then asked the Court to instruct as follows

If the jury are satisfied from the evidence that Abraham Hartzell, sold Phillips, the defendant, the lumber in question to pay a debt he was owing the defendant by and with the consent of the Plaintiff, then they will find for the defendant,

This instruction was given by the Court to which Plaintiff excepted

A verdict was rendered for defendant, Plaintiff moved for a new trial, motion overruled, and Plaintiff excepted, Judgement rendered for defendant, for costs

Case brought to this Court by writ of Error

A Webster
Atty for Plaintiff in Error

149 35

Robert Sedgwick

v

Edward Phillips

No. of Agenda 35

Pltff's argument

Filed April 29, 1834

L. Leland

Cl

PLAINTIFF'S BRIEF.

ROBERT SEDGWICK,
Assignee, &c.
vs.
EDWARD PHILLIPS,

I. The instruction asked by plaintiff should have been given as they were good law, and app icable to the case.

II. The instructions asked by the defendant should not have been given as it is not good law, and is not applicable to the testimony.

1. If the goods were delivered to pay Hartzell's debt, and it was so understood and agreed from the start, the plaintiff would have been entitled to recover until the existence and amount of the debt was proven, and the evidences of indebtedness produced so they could be canceled.

2. There was no proof of the existence or amount of said debt, if any existed.

3. Proof of the debt, if there was any, was a part of the defence, and the burden of proof to defeat this suit was on the defendant.

III. It does not matter to the defendant, to whom the credit was given by Keator & Skinner, if it appear that they were paid by the plaintiff, then he may maintain this suit.

IV. The verdict is not sustained by the evidence

V. The court erred in refusing to grant a new trial.

A. WEBSTER,
Att'y.

Written Argument on file
Case may be submitted on the part of Plff.

149
Sedgwick vs Philips
Brief

Filed Apl. 20, 1859
S. Williams
Clk.

ABSTRACT OF RECORD.

STATE OF ILLINOIS, } ss.
SUPREME COURT, }

Of the April term A. D. 1859, of said court.

ROBERT SEDGWICK,
Assignee, &c.
Appellant,
EDWARD PHILLIPS,
Appellee.

Error to Rock Island,

This was an action of assumpsit commenced in the Rock Island circuit court, by the plaintiff in error, against the defendant in
Jye 1 error at the September term 1858, of said court. Summons issued and returned, served regularly.

2 Plaintiffs declaration contained a special count, for lumber sold
3 and delivered to the defendant, and the common counts for goods
4 sold and delivered. &c Defendant, demurred, and demurrer over-
7 ruled, defendant pleaded the general issue, and filed notice that on trial he would prove an offset of $500. Issued joined.

10 Case came on for trial, at the January, Special term A. D. 1859.

Plaintiff offered as follows the testimony of *Porter S Skinner.*

11 I am one of the firm of Keator & Skinner, Lumber Dealers, at Moline, Illinois. Our firm delivered lumber to Mr. Philips, defen-

Lewis insists that there is no exception taken to the instructions and thing are not under review and nothing before the court but the question whether the evidence sustains the verdict.

If Lewis Sibley 300 top page as to agency - Plaintiff has a right to duct to the person employed as agent was not discharged at time of contract simply agency 539

539

5

dant on the order of Abraham Hartzell, to the amount of $256, 53. It was delivered sometime in or about the month of April, 1858. Have heard that Mr. Hartzell had made an assignment but cannot tell when, Mr. Hartzell had held our note. The order was accepted with the understanding that the value of the lumber so delivered to Phillips, should be endorsed on the note, this has been done. Have been paid for the lumber in this way.

The note was here produced, authenticated and read in evidence.

MOLINE, MARCH, 2d, 1857,

On or before the 22d, day of July A. D. 1858, for value received, we promise to pay to the order of Abraham Hartzell, One thousand dollars, with interest at Bufords Bank, Rock Island.

Signed, KEATOR & SKINNER.

On this note are several endorsements made by Abraham Hartzell for assignee, made at various times from the 1st of December 1857, to August, 12th 1858.

Cross Examination.—The order for the lumber was in writing. Did not know Robert Sedgwick in the transaction, have no lumber charged to Robert Sedgwick.

The order was here produced, and read in evidence.

MOLINE, MARCH, 25th, 1858.

Mr Keator & Skinner, let the bearer Edward Phillips, have what lumber he wishes, and charge the same to me,

Signed ABRAHAM HARTZELL

The testimony was then offered of *Abraham Hartzell.*

I made an assignment, to Robert Sedgwick, some time during the winter previous to the date of the order, I acted in this transaction as the agent of Sedgwick. By his authority. I gave the order refered to by Mr Skinner. (Witness identified the note above refered to.) This note was delivered by me to Mr. Sedgwick, as a part of the assigned property, I afterwards obtained the note from him for the purpose of having some of the endorsements made thereon. Sedgwick, knew that the endorsements were to be made, and they were made and consented thereto. Have acted as Sedgwick's agent in other transactions connected with the assigned business. Nothing has been received by me or Sedgwick, for said lumber.

Cross-examination.—I was indebted to Phillips, when the order was given, to Keator & Skinner. It was understood that the lumber was to apply on my indebtedness to Phillips.

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Cross-examination.—I was indebted to Phillips, when the order was given, to Keator & Skinner. It was understood that the lumber was to apply on my indebtedness to Phillips.

The plaintiffs, asked the following instructions:

1. If the jury believe from the evidence, that the defendant received the lumber in question from Messrs. Keator & Skinner, upon the credit of plaintiff, through the acts of his agent Hartzell, then they will find for the plaintiffs for the value of the lumber as proven. 14

2. If the jury believe from the evidence that Hartzell was authorized by the plaintiff to give orders for the delivery of the lumber in question, or that the plaintiff afterwards recognized the actions of the said Hartzell, and paid for the lumber aforesaid, or credited the said Keator & Skinner, for its value, by an indorsement upon a note, or otherwise then they will find for the plaintiff, though they should believe that the credit was originally given to the said Hartzell.

3. If the jury believe, from the evidence that the lumber in controversy, was delivered upon the credit of a certain note here produced in evidence, signed by the said Keator & Skinner, and that note was in the lawful possession of the plaintiff, and the plaintiff has endorsed or allowed to be endorsed thereon, the value of the lumber in controversy, then the plaintiff is entitled to recover, and the jury will find accordingly.

4th. An agency may be created by recognition of the acts of a person as well as by express authority.

5th. An Assignor may act as the agent of his Assignee, the Assignee being liable for the acts of his agent.

All of the above instructions were refused, as inapplicable to the testimony, to which refusal plaintiff excepted.

Defendant then asked the court to instruct as follows.

If the Jury are satisfied from the evidence that Abraham Hartzell, sold Phillips, the defendant, the lumber in question to pay a debt he was owing the defendant by and with the consent of the plaintiff, then they will find for the defendant. This instruction was given by the court, to which plaintiff excepted. 15

A verdict was rendered for defendant. Plaintiff moved for a new trial, motion overruled, and plaintiff excepted. Judgment rendered for defendant, for costs. 16

Case brought to this court, by writ of Error.

A. WEBSTER,

ATT'Y, FOR PLAINTIFF IN ERROR.

149
Sedgwick vs Philips
abstct.

Exc D
W.

Filed Apl. 20. 1859.
L. Leland Clk.

149. Sedgwick
vs
Phillips } Rock Island

Plaintiff Claim for Lumber sold & delivrd
$300-

The evidence shows that Keator & Skinner deft have Lumber to the Amount of 256.53 upon an order in writing as follows "Moline March 28rd 1858

Messers Keator & Skinner- Let the bearer Edward Phillips have what Lumber Edward Phillips have what Lumber he wishes and charge to me Signed Abraham Hartsel"
The Lumber delivered to Phillips upon the order was by agreement between Keator & Skinner. & Hartsel endorsed upon a note held by Hartsel against Keator & Skinner

Keator & Skinner did not know the plaintiff Sedgwick in the transaction- Hartsel testified that a month before the order was given he had made an assignment to Sedgwick the plaintiff which included the note, that he acted as the agent of Sedgwick in giving the order

H No proof that any agency of Hartsels was disclosed to Phillips but Hartsel testifies that he owed Phillips at the time- And it was understood between him and Phillips that the lumber was to apply upon that indebtedness - That is all the proof

The first and second errors assigned cannot be considered by the Court because the giving or refusing of said instructions was not excepted to -

2nd There is no error in the refusal to give plaintiffs instructions or in giving the instruction asked by deft

3rd There is no evidence to justify a verdict for the plff

1st. because that there is no proof that the legal title to the note given by Keator & Skinner to Hartsel ever passed to Sedgwick - Hartsel says the note was excluded in the assignment - He does not say that it was endorsed -

2nd. If Hartsel acted as Sedgwicks agent in giving the order then he was also Sedgwicks agent in making the agreement or understanding with Philips that the Lumber was to apply on Hartsels indebtedness to Philips - The State of facts contended for by the plff is this - That Hartsel might have gone to Philips and offered to pay him what he owed him in lumber to be obtained from Keator & Skinner and then after Philips had received payment of his debt as he supposed find himself liable to pay for the lumber to Sedgwick under the pretense that Hartsel obtained the consideration which he gave to Keator & Skinner for the lumber from Sedgwick

B. C. Cook
For Appellee

Hartzell was the agent of Sedgwick and contracted with Philips without disclosing

his agency Philips on discovery of the principal elect between them

19 Law Library.

top paging 304
margin paging 227

If Phillips purchased the lumber of Hartzell under the first belief authorized by the facts of the case that he & not the real principal he might avail himself of any set off which he has against Hartzell in any suit brought by Sedgwick

Story on agency p 539
See 404.

and in this case Hartzell swore that the agreement between him & Phillips was that the lumber should be turned on a debt he owed Phillips

149 — 35 — Sedgewick
vs
Phillips.

State of Illinois } of the April term A.D. 1859 of the Supreme
Lasalle County } Court of the State of Illinois for the
Third Division held in Ottawa

Robert Sedgwick Assignee of
Abraham Hartzell
vs
Edward Phillips

Error from Rock Island
County

To L. Leland Clerk of the Supreme Court of the third
Division of the State of Illinois

Dear Sir

Please to enter me as Attorney
for the Defendant in the above cause And as soon
as filed, forward to me, in the enclosed envelope, the
Plaintiffs Abstract and Brief therein

Yours respectfully
Henry L. Shutts
Defts Atty
Rochie. Ill.

149

Sedgwick

vs

Phillips

Filed April 12. 1837

L Leland

Clk

STATE OF ILLINOIS, } ss. The People of the State of Illinois,
SUPREME COURT,

To the Sheriff of the County of Rock Island Greeting:

Because, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the Circuit Court of Rock Island County, before the Judge thereof, between Robert Sedgwick

plaintiff, and Edward Phillips

defendant, it is said that manifest error hath intervened, to the injury of the said Robert Sedgwick

as we are informed by his complaint, the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; **Therefore, We Command You,** That by good and lawful men of your County, you give notice to the said Edward Phillips

that he be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next, to hear the records and proceedings aforesaid, and the errors assigned, if he shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said Edward Phillips notice, together with this writ.

Witness, The Hon. JOHN D. CATON, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 5th day of April — in the Year of Our Lord One Thousand Eight Hundred and Fifty-nine.

L. Leland
Clerk of the Supreme Court.
by J. B. Rice Deputy

I have executed this by reading the same in the presence and hearing of Edward Phillips this 8th Day of April A.D. 1839

M D Merrill Sheriff
Rock Island Co. Ill

Robert Hodgson
Edward Phillips
Sci fac

Sheriff's Fees

Service .50
Mile 20
Post 10
.80

Filed April 13, 1839
L. Gilland Clerk

PLAINTIFF'S BRIEF.

ROBERT SEDGWICK,
Assignee, &c.
vs.
EDWARD PHILLIPS,

I. The instruction asked by plaintiff should have been given as they were good law, and applicable to the case.

II. The instructions asked by the defendant should not have been given as it is not good law, and is not applicable to the testimony.

1. If the goods were delivered to pay Hartzell's debt, and it was so understood and agreed from the start, the plaintiff would have been entitled to recover until the existence and amount of the debt was proven, and the evidences of indebtedness produced so they could be canceled.

2. There was no proof of the existence or amount of said debt, if any existed.

3. Proof of the debt, if there was any, was a part of the defence, and the burden of proof to defeat this suit was on the defendant.

III. It does not matter to the defendant, to whom the credit was given by Keator & Skinner, if it appear that they were paid by the plaintiff, then he may maintain this suit.

IV. The verdict is not sustained by the evidence

V. The court erred in refusing to grant a new trial.

A. WEBSTER,
Att'y.

149

Sedgwick

v.

Phillips

ABSTRACT OF RECORD.

STATE OF ILLINOIS, } ss.
SUPREME COURT, }

Of the April term A. D. 1859, of said court.

ROBERT SEDGWICK,
Assignee, &c.
Appellant,
EDWARD PHILLIPS,
Appellee.

Error to Rock Island,

This was an action of assumpsit commenced in the Rock Island circuit court, by the plaintiff in error, against the defendant in error at the September term 1858, of said court. Summons issued and returned, served regularly.

Plaintiffs declaration contained a special count, for lumber sold and delivered to the defendant, and the common counts for goods sold and delivered. &c Defendant, demurred, and demurrer overruled, defendant pleaded the general issue, and filed notice that on trial he would prove an offset of $500. Issued joined.

Case came on for trial, at the January, Special term A. D. 1859.

Plaintiff offered as follows the testimony of *Porter S Skinner.*

I am one of the firm of Keator & Skinner, Lumber Dealers, at Moline, Illinois. Our firm delivered lumber to Mr. Philips, defen-

dant on the order of Abraham Hartzell, to the amount of $256, 53. It was delivered sometime in or about the month of April, 1858. Have heard that Mr. Hartzell had made an assignment but cannot tell when, Mr. Hartzell had held our note. The order was accepted with the understanding that the value of the lumber so delivered to Phillips, should be endorsed on the note, this has been done. Have been paid for the lumber in this way.

12

The note was here produced, authenticated and read in evidence.

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The plaintiffs, asked the following instructions:

14 1. If the jury believe from the evidence, that the defendant received the lumber in question from Messrs. Keator & Skinner, upon the credit of plaintiff, through the acts of his agent Hartzell, then they will find for the plaintiffs for the value of the lumber as proven.

2. If the jury believe from the evidence that Hartzell was authorized by the plaintiff to give orders for the delivery of the lumber in question, or that the plaintiff afterwards recognized the actions of the said Hartzell, and paid for the lumber aforesaid, or credited the said Keator & Skinner, for its value, by an indorsement upon a note, or otherwise then they will find for the plaintiff, though they should believe that the credit was originally given to the said Hartzell.

3. If the jury believe, from the evidence that the lumber in controversy, was delivered upon the credit of a certain note here produced in evidence, signed by the said Keator & Skinner, and that note was in the lawful possession of the plaintiff, and the plaintiff has endorsed or allowed to be endorsed thereon, the value of the lumber in controversy, then the plaintiff is entitled to recover, and the jury will find accordingly.

4th. An agency may be created by recognition of the acts of a person as well as by express authority.

5th. An Assignor may act as the agent of his Assignee, the Assignee being liable for the acts of his agent.

All of the above instructions were refused, as inapplicable to the testimony, to which refusal plaintiff excepted.

Defendant then asked the court to instruct as follows.

15 If the Jury are satisfied from the evidence that Abraham Hartzell, sold Phillips, the defendant, the lumber in question to pay a debt he was owing the defendant by and with the consent of the plaintiff, then they will find for the defendant. This instruction was given by the court, to which plaintiff excepted.

A verdict was rendered for defendant. Plaintiff moved for
16 a new trial, motion overruled, and plaintiff excepted. Judgment rendered for defendant, for costs.

Case brought to this court, by writ of Error.

A. WEBSTER,

ATT'Y, FOR PLAINTIFF IN ERROR.

149

abzet.

PLAINTIFF'S BRIEF.

ROBERT SEDGWICK,
Assignee, &c.
vs.
EDWARD PHILLIPS,

I. The instruction asked by plaintiff should have been given as they were good law, and applicable to the case.

II. The instructions asked by the defendant should not have been given as it is not good law, and is not applicable to the testimony.

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IV. The verdict is not sustained by the evidence

V. The court erred in refusing to grant a new trial.

A. WEBSTER,
Att'y.

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Sedgwick

v.

Phillips

Page 1

Pleas before the Hon J. Wilson Dunn Judge of the Sixth Judicial circuit of the State of Illinois at a term of the circuit court begun and held at the court house in the city of Rock Island within and for the county of Rock Island and State aforesaid on the first Monday the Sixth day of September 1858

Present Hon. J. Wilson Dunn Jud
Ezra M Bumbry Sheriff
Dunn McNeil clerk

Be it Remembered that heretofore to wit on the 24th day of August 1858 Robert Sedgwick assignee of Abraham Hartzell sued out of the clerks office of the court aforesaid a writ of Summons in assumpsit which is as follows to wit

State of Illinois } The People of the state of Ill
Rock Island County } ss To the Sheriff of Rock Island County gree

We Command you to Summon Edward Phillips if to be found in your County, personally to be and appear before the circuit court of said county on the first day of the next term thereof to be holden at the court house in Rock Island on the first Monday of September next then and there to answer unto Robert Sedgwick assignee of Abraham Hartzell of a plea of trespass on the case upon promises to the damages in the

(2). Sum of three hundred and fifty dollars as he says and have you then there this writ, and make return thereon in what manner you execute the same



Witness Linney McNeil Clerk of the said Court and the Seal thereof affixed this 24th day of August in the year of our Lord one thousand eight hundred and fifty eight

Linney McNeil Clk

And afterwards to wit on the 25th day of August - 1858 the said Robert Sedgwick assignee of Abraham Hartzell by his attorney filed in the Clerks office of the court aforesaid his certain declaration which is as follows to wit:

State of Illinois } Of the September Term A.D. 1858
Rock Island County } of the Rock Island County Circuit court

Robert Sedgwick assignee of Abraham Hartzell by his attorney Alfred Webster complains of Edmund Phillips defendant being in custody of a plea of trespass on the case on promises For that whereas heretofore to wit on the 20th day of August A.D. 1858 at Moline to wit at Rock Island County State of Illinois the said plaintiff bargained and sold to the said defendant a certain large amount of Lumber to wit Logs of the value of $300 and the said plaintiff then and there delivered the said Lumber to the said defendant

(3)

And the said defendant then and there became
the said lastly and became indebted to the
said plaintiff in the sum of $300 whereupon the
said defendant then and there undertook and
promised the said plaintiff to pay him the said
sum of $300, whenever he should be thereunto
requested

And whereas also on the 20th day
of August A. D. 1858 at Moline to wit at the county of
Rock Island aforesaid County State of Illinois the
said defendant was indebted to the said plaintiff in
the sum of $350 for goods sold and delivered to
the said defendant at his request.

And whereas also the said defendant was
indebted to the said plaintiff in the sum of $350
for work and labor done and performed at his request

And whereas also the said defendant was
indebted to the said plaintiff in the sum of $350,
for money had and received at his request.

And whereas also the said defendant was indebted
to the said plaintiff in the sum of $350 upon accounts
stated between them at his request, the said defendant
in consideration thereof undertook and promised to pay
the said plaintiff the said last mentioned sum of
money whenever he should be thereunto requested.

Yet the said defendant has disregarded his
promises and has not paid the said sum of money
or any part thereof to the said plaintiff (although often
requested so to do) but has hitherto and still continues

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to refuse & pay the same to the damage of the plaintiff of $350 and therefore he brings this suit &c

Alfred Webster
Plff atty

August 20th 1858

Edward Phillips & Robert Sedgwick assignee of Abraham Hartzell Dr

August 20th	To 1200 Lumber	$300.00
	Goods Sold and delivered	$350.00
	Work & Labor	$350.00
	Money Paid & Rec'd	$350.00
	Upon account Stated	$350.00

And afterwards Court on the 15th day of September 1858 the defendant by his attorney filed in the clerks office of the court aforesaid his plea to plaintiffs declaration which is as follows Viz:

State of Illinois } In the September term
Rock Island County } A.D. 1858. of the Rock Island
County Circuit Court

Edward Phillips
vs
Robert Sedgwick Assignee
of Abraham Hartzell

And the said Defendant

comes and defends the wrong and injury and says that he did not promise in manner and form as the Plaintiff hath above thereof Complained against him and of this he puts himself upon the Country

by H L Sumner &
James Chapman attys for Defendant

And the Plaintiff doth the like
by A Webster Plaintiffs attorney

The Plaintiff will also take notice that the Defendant on the trial of this cause will give in evidence that the Plaintiff at the commencement of this suit was and still is indebted to the Defendant in the sum of $500 00/100 dollars for the price and value of goods, before that time bargained and sold by the Defendant to the Plaintiff at his request and also in the sum of $500 00/100 dollars for the price and value of work before that time done and materials for for the same provided by the Defendant for the Plaintiff at his request and in the sum of $500 00/100 dollars for money before that time lent by the Defendant to the Plaintiff at his request and also in the sum of $500 00/100 dollars for money

before that time received by the Plaintiff for the use of the Defendant and in the sum of $5 000 dollars, for Money found to be due from the Plaintiff to the defendant on an account before that time stated between them and also that the Defendant will sett off on said trial, so much of the said several sums of money so due and owing from the Plaintiff to the Defendant, against any demand of the Plaintiff to be proved on the said trial as will be sufficient to satisfy such demand; and will also then and there demand a judgment against the Plaintiff for the balance of several sums of of money due to the Defendant, according to the statute in such case made and provided

Henry L Smith &
James Chapman attorneys
for Defendant

Goods bargained & Sold	500.00
Work & Materials	500.00
Money Lent	500.00
Money had & received	500.00
Money due on account stated	500.00

And afterwards to wit on the 15th day of

September 185 8 the defendant by his attorneys filed in the clerks office of the court aforesaid his demurrer to Plaintiffs declaration which is as follows to wit

State of Illinois } of the September term A.D 185 8
Rock Island county } of the Rock Island County Circuit Court

Edward Phillips
vs
Robert Sedgwick
assignee of Abraham Hartzell
} assumpsit

And the said Defendant comes and defends the wrong and injury when &c and says that the said several counts of the said declaration and the matters and things therein contained in the manner and form as the same are before pleaded and set forth are not sufficient in law nor either of the said counts of said declaration sufficient in law for the said Plaintiff to have and maintain his aforesaid action thereof against him the said Defendant and that he the said Defendant is not bound by the law of the land to answer the same and this he is ready to verify wherefore by reason of the insufficiency of the said declaration and several counts

8 in the said declaration mentioned in this behalf the said Defendant prays judgment and that the said Plaintiff may be barred from having or maintaining his aforesaid action thereof against him &c

by D L Smith & James Chapman
Attorneys for Defendant

And the said Defendant according to the form of the Statute in such case made and provided, comes and shows to the Court here the following causes of demurrer to the said declaration and the said several counts therein contained that is to say

1st That to the 1st (special) count in the said declaration mentioned as well as the counts for goods sold and delivered, for work and labor done and performed and for money had and received there is no breach assigned as to such said counts in such said declaration

2nd That in the count purporting to be on an account stated there is no allegation that the sum of money therein mentioned was due or found to be due

3rd That in the count purporting to be for money had and received there is no allegation that the sum of money therein mentioned was had

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and received for the use of the Plaintiff and also that the said declaration and the several Counts of the said declaration are in other respects uncertain informal and insufficient &c

Henry L Smith & James Chapman
Defendants attorneys

And afterwards towit on the 15th day of September 1858 at the September term of the Court aforesaid the following proceedings was had towit:

Robert Sedgwick assignee of Abraham Bartzell
vs
Edward Phillips
} assumpsit

This day came the parties by their attorneys and this cause coming on to be heard on Defendants demurrer to Plaintiffs declaration and the Court having heard the argument of counsel thereon and being sufficiently advised in the premises overrules the said demurrer.

And afterwards towit at a Special Term of the Court aforesaid, commenced and held at the Court House aforesaid on the third Monday the 17th day of January 1859 and on the 9th day of February 1859 at the same term of the court last aforesaid

the following proceedings was had towit

Robert Sedgwick assignee
of Abraham Hartzell
vs
Edward Phillips
} Assumpsit

This day came the parties by their attorneys and issue being joined came a jury of Jurors towit J J Crosby, Joseph Eaton W D Blain James F Sheppard James R Johnson Clark Cathcart Jacob Sailor A Taylor C C Toomer D W Trout Jesse L Coy Jonas Sparks who were each and severally sworn to well and truly try the issue joined and having heard the evidence returned their verdict which is as follows towit We the jury find for the Defendant thereupon Plaintiff entered his motion for a new trial herein and the same being argued by the Court is overruled It is therefore ordered by the court that Defendant have and recover of Plaintiff his costs and that he have execution therefor

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State of Illinois } In the January Special Term
Rock Island County } A.D. 1859 of the Circuit Court
of said County

Robert A Sedgwick Assignee
of Abraham Hartzell

vs.

Edward Phillips

Be it Remembered that at the above named term of said Court the above entitled cause coming on to be heard. the Plaintiff. filed his account for Lumber sold and delivered to the Defendant for the amount of $256.53. And the Plaintiff to sustain the issues on his proof offered in evidence the testimony of one Porter S Skinner who being duly sworn made answer to Plaintiffs interrogatories as follows - I am one of the firm of Keator & Skinner. Lumber Dealers at Moline Illinois. Our firm delivered Lumber to Mr Phillips Defendant on the order of Abraham Hartzell to the amount of $256.53. It was delivered sometime in or about the month of April 1858. Have heard that Mr Hartzell had made an assignment

The order was accepted with the understanding that the value of the Lumber so delivered to Phillips should be endorsed on the note

This has been done. I have been paid for the lumber in this way. The note was here introduced and read in evidence and also the endorsements as follows

Moline March 2nd 1857.

On or before the 22nd day of July A D 1858 for value received we promise to pay to the order of Abraham Hartzell One Thousand Dollars with interest at Bufords Bank Rock Island.

Kinter & Skinner

endorsement as follows

Abraham Hartzell

Rec. Dec 1st 1857 on within $52.66

Abraham Hartzell per assignee

Jan 16, 1858 Rec $57.42 on within

Abraham Hartzell per assignee

Feb 1, 1858 Rec $139.50 on within

Abraham Hartzell per assignee

March 26/58 Rec $264.15 on within

Abraham Hartzell per assignee

May 28/58 Rec $287.77 on within

Abraham Hartzell per assignee

Aug 12/58 Rec $501.79 on within

Abraham Hartzell per assignee

Across the face was endorsed Received in full Nov 29, 1858. On answer to questions by Defendant witness answered

13 The order for the Lumber was in writing. Did not know Robert Sedgwick in the transaction. Have no lumber charged to Robert Sedgwick. The order there mentioned was read in evidence as follows.

Ingline March 23/58

Mr Keator & Skinner let the bearer. Edward Phillips have what lumber he wishes and charge to me

Abraham Hartzell

Abraham Hartzell being duly sworn made answer to Plaintiffs questions as follows. I made an assignment to Robert Sedgwick sometime during the month previous to the date of the order. Acted in this transaction as the agent of Sedgwick. By his authority I gave the order referred to by Mr Skinner.

(Writing identified note above referred to)

This note was delivered by me to Mr Sedgwick as a part of the assigned property I afterwards obtained the note from him for the purpose of having some of the endorsements thereon, Sedgwick knew that the endorsements were to be made. that they were made and consented thereto. Have acted as Sedgwicks agent in other transactions connected with the assigned business. Nothing has been received by me or Sedgwick for said Lumber. In answer to Defts

interrogatories written answered. Dr was indebted to Phillips when the order was given to Keator & Skinner it was understood that the lumber was to apply on my indebtedness to Phillips. The evidence being introduced the Plaintiff asked the Court to instruct the jury as follows.

If the jury believe from the evidence that the Defendant received the lumber in question from Messrs Keator & Skinner upon the credit of the Plaintiff through the acts of his agent Hartzell then they will find for the Plaintiff for the value of the lumber as proven.

If the jury believe from the evidence that Hartzell was authorized by the Plaintiff to give orders for the delivery of the lumber in question or that the Plaintiff afterwards recognized the actions of the said Hartzell & paid for the lumber aforesaid or credited the said Keator & Skinner for its value by an endorsement upon a note or otherwise then they will find for the Plaintiff though they should believe that the credit was originally given to the said Hartzell

If the jury believe from the

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evidence that the lumber in controversy was delivered upon the credit of a certain note here produced in evidence signed by the said Keator & Skinner and that note was in the lawfull possession of the Plaintiff and the Plaintiff has endorsed or allowed to be endorsed thereon the value of the lumber in controversy then the Plaintiff is entitled to recover and the Jury will finid accordingly

An agency may be created by recognition of the acts of a person as well as by person authority

An assignee may act as the agent of his Assignee the Assignee being liable for the acts of his agent.

Which said instructions were refused by the court as inapplicable to the testimony. The Defendant asked the court to instruct the Jury as follows

If the Jury are satisfied from the evidence that Abraham Hartzell sold Phillips the Defendant the lumber in question to pay a debt he was owing the Defendant by and with the consent of the Plaintiff then the Jury must find for the Defendant.

To which said instructions was given

by the Court. the Jury returned a verdict for the Defendant whereupon the Plaintiff made a motion for a new trial. upon the reading of said motion the Court overruled the same to which final order of the court the Plaintiff then and there excepted and asked Leave to file his bill of exceptions.

And for asmuch as the matters aforesaid. the same being all the evidence addressed on the trial of this cause. the said Plaintiff prays that this his Bill of exceptions be allowed approved and Sealed and made a part of the record of said cause all of which is done in Open Court at the time of the trial aforesaid

John V Eustace Seal

Judge of the 2nd Judicial circuit and now presiding pro tem in said Rock Island Circuit Court

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State of Illinois }
Rock Island County } I, Lincoln McNeil clerk
of the circuit court in and for said County
do certify that the foregoing is a true and perfect
Record of the proceedings in the above cause
that I have compared the same with the
originals on file in my office and find
them to be perfect transcripts therefrom

In Testimony whereof I have
hereunto set my hand and affixed
the seal of said court this 18th
day of April 1859

Lincoln McNeil clk

State of Illinois } Of the April Term A.D. 1857
3rd " Judicial District } of the Supreme Court

Robert A. Ledgwick
Appellee &c
vs
Edward Phillips

And now comes Robert A. Ledgwick Plff in Error by his Attorney & assigns for error in the foregoing record as follows—

1st " That the Court erred in refusing to give to the Jury each & all of the instructions asked by the Plff. below.

2nd " That the Court erred in giving the Instruction asked by Defdt. below.

3rd " That the verdict is not sustained by the evidence

4th " That the Court erred in refusing to grant a new trial & in rendering judgment for Defdt for costs.

All of which said Plff in Error prays may be enquired into by this Court.

A. Webster
Atty for Plff in Error

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Robert Sedgwick

v

Edward Philips

Recd & Encs

Filed Apl. 20. 1859.

L. Leland

Clk.