

14274


No. _____

Supreme Court of Illinois

Seery

vs.

Socks et al

71641  7

125

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 150

14274

Serry
vs
Peck

362

Peck

4

The order offered in evidence contents show that the order was directed to Robinson & Dunham and said order tends to show upon its face that Robinson & Dunham were directed to furnish one of their machines ^{it} tends to prove a warranty that the machine should be well made of good material and not liable to break or get out of order with careful usage it also tends to show that 115 \$ was the price 57 \$ cash & a note for 58 \$

Filed December 17th 1861
James D. Perry Clerk

The order offered in evidence tends to show ~~that~~ that Robinson & Dunham were the parties to whom the Plaintiffs and Mahon applied for the machine and if the defendant acted as the agent of Robinson & Dunham in selling the machine in controversy & that as such agent the defendant received money and notes in payment for the machine the money notes were the money note & property of Robinson & Dunham and the defendant was bound in law to deliver said notes money to Robinson & Dunham

over

received and proceeds used as per

Further if the defendant as agent of Robinson & Dunham sold the machine & received pay in notes money & handed the same over to Robinson & Dunham before the commencement of this suit the defendant is not liable to the plaintiff for such money and in such event the Plaintiffs cannot recover provided Plff Keen when they bought the Sheller the defd sold as agent of Robinson & Dunham if the defendant was authorized to sell the machine by Robinson & Dunham & no express limitation was put on him to have the right to bind them by a warranty of the power capacity or good work of the machine

Filed December 17th 1861
James D. Perry Clerk

And further if the defendant has ~~promised~~ by the admissions of Soaks that before the plaintiffs should rescind the contract and be entitled to a return of the money & notes Seery was to have the right to send for a machinist and have the machine put in order and if the jury further believe from the evidence that when a trial of the machine it did not work well and thereupon Seery did within a reasonable time send for a machinist & that said machinist put the machine in good running order according to the contract the Plaintiffs cannot recover in this suit

Filed December 17th 1861
James D. Perry Clerk

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Filed December 17th 1861
James D. Perry Clerk

Given

If the jury believe from the evidence that the amount claimed and proved by the plaintiffs before the justice and the amount claimed & proved by them now exceeds one hundred dollars this court has no jurisdiction & the jury should find for the defendant

Filed December 17th 1861

James D. Perry Clerk

Deft

Given

If the jury believe from the evidence that at the time of the sale of the machine in question it was a part of the contract of sale that the Defendant should send for a machinist to put it in running or that said contract of sale was afterwards ^{by} mutual agreement so modified as to give defendant the right of sending for such machinist for that purpose then Defendant was entitled to a reasonable time to send for such machinist & Plaintiff had no right to return or discard said machine until such time for getting said machinist had ^{been} ~~been~~ or said ~~machine~~ machine had failed to perform according to contract on a fair trial after so put in running order

Filed December 17th 1861

James D. Perry Clerk

Defts

The jury are instructed that in determining whether the Plaintiffs had knowledge that Defendant was acting as agent for Robinson & Dunham in the contract in regard to the machine in question the jury are at liberty to take into consideration the fact that Plaintiffs brought their suit against Defendant as such agent & the fact that Plaintiff made their order upon Robinson & Dunham for such machine if the jury believe from the evidence that such facts are proved also the testimony of witness Willis upon this point & the Plaintiffs knowledge of the general character in which Defendant did business so far as that knowledge is proven to exist

Filed December 17th 1861

James D. Perry Clerk

Deft

If the jury believe from the evidence that Defendant sold to Plaintiffs a machine & agreed to take it back if it did not perform in a certain way as represented and that Defendant was to have the privilege of sending to Peoria for a machinist to put said machine in perfect working order in case the same did not work satisfactorily without, then defendant had a right to send for such machinist & have such machine put in order in a reasonable time & there was no breach of said representation or warranty unless said machin-

failed to perform as represented after being so put in order & it was Plaintiff's duty to make a fair trial of said machine after so put in order & until he does so can have no claim for his purchase money or damage upon the ground that said machine does not work according to representations

Filed December 17th 1861.

James D. Perry Clerk

Deft

If the jury believe from the evidence that witness Goudy ^{was} called into the presence of Plaintiff & Defendant & it was then stated by them or either of them & assented to by the other that the Defendant should have the privilege of sending for a machinist to set up the machine in question this is evidence for the consideration of the jury as to the Defendant's right to procure such machinist

And if the jury believe that Plaintiff socks admitted to witness Gouler that by the terms of said contract for said machine Defendant had a right to procure such mechanic to set it running this is evidence to be considered relative to Defendant's right ^{to} do before the machine should be rejected or contract rescinded

And if the jury believe from the evidence that said provisions of said contract in regard to procuring such

and procedure as is alleged

belongs to Page 4 &

Given

Rais this up

If the jury believe from the Evidence that the machine in question was not furnished within the ^{time} specified in the contract yet if it was afterwards furnished & Plaintiffs took it upon the said Contract that is a waiver of all objections on account of its not being delivered in time

Filed December 17th 1861
James D. Perry Clerk

Given

Mechanic was repeated by the parties or either of them in the presence of witness Blackmore this is also Evidence to be considered as to the Existence of Defendants right to procure said mechanic to set up the machine

Filed December 17th 1861

James D. Perry Clerk

Deft

An agent is not personally liable for contracts made on behalf of his principals if such agency is known to the party with whom he contracts and if the jury believe from the evidence that in the sale of the machine in question the Defendant was acting as agent of Robinson & Durham & Plffs either by Statement of said agent or by knowledge of the general character of said agents Evidence or from any other source the Defendant is not liable on account of such contract or any warranty within the Scope of such agency

Given

Filed December 17th 1861

James D. Perry Clerk

The Jury then retired and afterwards returned into Court the following verdict

We the jury find for the plaintiff the Sum
of Sixty Dollars and $\frac{60}{100}$

Ezra Seatt
J. R. Stitt
A. J. Genaway
Wm Bateman
Benjamin Younger
J. L. Kirby
St. M. C. Gadden
Elmer J. Patton
Wm A Parks
B. E. Page
J. D. Garner
H. N. Ferrin

Filed December 17th 1861

James D. Perry Clerk

Defendants then move the Court to set aside
the verdict and for a new trial for the following
reasons that improper evidence was admitted by
the Court on part of Plaintiff The Court refused
proper evidence on part of Defendant - Verdict is
contrary to the evidence Verdict is contrary to Law
Court gave improper instructions on part of Plaintiff
Court refused proper instructions on part of Defendant
The Court overruled the said motion & entered

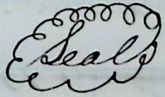
record and proceedings as so alleged

Judgement on the said verdict as follows to wit

Melcher Soets and William Mulvania }
 vs } appeal No 169
 James Seery agent for Robinson & Dunham }

This day came the parties the Plaintiffs Melchar Soets & William Mulvania by J. H. Richardson their attorney and the Defendant by G. B. Hopkins his attorney and this cause came on to be heard on the Defendants motion entered on the seventh day of the present term of this Court to set aside the verdict and for a new trial and the Court being fully advised in the premises doth order and adjudge that said motion to set aside the verdict and for a new trial be and the same is hereby overruled. It is therefore ordered and adjudged by the Court that the Plaintiffs have and recover of and from the said Defendant James Seery agent of Robinson & Dunham the said Sum of (\$ 60.60) sixty dollars and sixty cents being the damages assessed by said jury also their cost and charges by them in this behalf expended and that they have execution therefor. Whereupon the Defendant by his attorney prays for an appeal to the Supreme Court of this State which is allowed on his entering into Bond in the penal Sum of three hundred dollars conditioned according to law with Surety to be approved by the Clerk of this Court by agreement said Bond to be filed in thirty days Leave given to file Bill of exceptions in sixty days

So which Defendant then & their excepted
 and it was then & there agreed, ^{that} this bill of Exception
 of Exception should be signed & Sealed within
 Sixty days from the 24th day of of December 1861
 and Defendants then & their prayer appear to the
 Supreme Court which is allowed upon Defendant
 entering into bond in the sum of three hundred dollars
 with Security to be approved by the Clerk of this Court
 & the Plaintiffs & Defendants both agreed that the
 said Security should be approved by the said Clerk
 and Defendant prays that this his bill of Exceptions
 may be signed which is done

S. L. Richmond 
 Judge

February the 22^d 1862

We agree that the foregoing Bill of Exceptions
 is correct

A. E. Stevenson
 per Plaintiffs
 W. B. Hopkins
 for Defendant

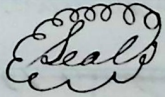
Filed February 27th 1862

James D. Perry Clk
 By J. C. Myers Depty

over

received and proceeding as is required

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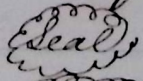
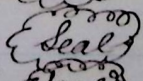
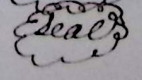
over

received and proceeding as is required

Know all men by these presents that we James Seery Elijah Brown and A Stockwell of the County of Woodford and State of Illinois are held and firmly bound unto Melcher Soeks and William Mulvanica also of the same County and State in the penal Sum of Three hundred dollars lawful money of the United State for the payment of which well and truly to be made we bind ourselves our heirs executors and administrators jointly severally and firmly by these presents

Witness our hands and seals this Eighteenth day of January A D 1862

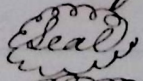
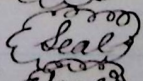
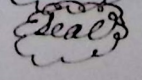
The Condition of the above obligation is such that whereas the said Melcher Soeks and William Mulvanica did on the twenty first day of December A D 1861 in the Circuit Court in and for the County and State of aforesaid recover a judgment against the above bounden James Seery Agent ^{and} ~~Sixty dollars and sixty cents damages~~ for Robinson & Dunham for the sum of ^{and} ~~sixty~~ ^{sixty} five dollars and ^{costs} ~~eighty three~~ ^{eighty three} cents, from which said judgment of the said Circuit Court the said James Seery has prayed for and obtained an appeal to the Supreme Court Court of said State Now if the said James Seery shall duly prosecute his said appeal with effect and shall moreover pay the amount of the judgment less interests and damages rendered and to be rendered against him in case the said judgement shall be affirmed in the said Supreme Court then the above obligation to be void otherwise to remain in full force and virtue }

James Seery 
Elijah Brown 
A Stockwell 

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James Seery 
Elijah Brown 
A Stockwell 

Filed and approved by me this 20th
day of January A D 1862

James D. Perry
Clerk

State of Illinois }
Woodford County } 88

I James D. Perry Clerk of the Circuit Court in and for said County do hereby certify that the foregoing Pages Fifty one in Number contain a true correct and complete Transcript of all the Records & proceedings in the above entitled cause wherein Melcher Socks and William Mulvaney are Plaintiffs and James Seery agent for Robinson & Dunham is Defendant as appears from the Files and Records of the same remaining in my office

In Testimony whereof I hereunto subscribe my name and affix the Seal of said Court at my office in Metamora this Twenty Second day of March A D 1862



James D. Perry Clerk
By J. S. Myers Depty

Seery
vs
Dicks et al.

And the appelle assigns the following errors to wit,

- 1 The Court erred in admitting the testimony of said witness Richard Mayne
- 2 The Court erred in giving the jury wrong instructions on behalf of the plaintiffs below
- 3 The Court erred in refusing to set aside the verdict of the jury & grant a new trial
- 4 The Court erred in rendering judgment for the plaintiffs below
- 5 Because the evidence shows that Plaintiffs below were not entitled to recover against Defendants below
- 6 Because the verdict is contrary to law & unsupported by the evidence

H B Hopkins
Ctly of Appelles

And now comes the said Appelles by A. E. Stevenson and D. M. Shaw and say there are no such errors in said record and proceedings as is alleged

Seery
vs
Dicks et al.

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by said appellants are are there any
errors in such record and proceedings
Wherefore said appellees pray judgment
that the judgment of the said Circuit
Court be affirmed, &c.

A. C. Stevenson & J. M. Shaw
for appellees.

Filed and approved by me this 20th
day of January A D 1862

James D. Perry
Clerk

State of Illinois }
Woodford County } 28

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James D. Perry Clerk
By J. H. Myers Deputy

Yucca's Diary
- 150 -
Melcher's Dock
at

Record &
Copy of Errors

file April 7th 1862

L. Leland

Bluff

In the
Supreme Court of the State of Illinois
In the Third Division Co Ottawa April Term AD 1862
Appeal from the Circuit Court of Woodford County Ill.

Michael Locks & Wm Mulvaney }

v
James Seery }

Transcript
Filed March 13th 1861

James D. Perry clerk
No 169

State of Illinois }
Woodford County }

In Justice Court Before W.W. Sears

Michael Locks

William Mulvaney

v

James Seery agent for
Robison & Drumham }

1861 Jan 26th Summons

Served to J. G. Peyp Const returnable the 2^d of February at
10 O'clock A.M. Summons returned duly served by Const Peyp
Jan 26th February 2^d 10 O'clock A.M. Parties appear and
are ready for trial defendant asked for venire venire issued
and delivered J. G. Peyp Const venire returned by J. G. Peyp
with the following named persons N. B. Gasset H. Mulford
J. Sumner Wm Arbuckle S. Mey Wm Sampkins the

following named Witnesses were sworn for the plaintiffs
B. Reynolds M Brooks R Maine E King J Lory P Roberts
W. Knight W Socks of Blackmore the following witnesses for
defendant J. H. Keys George Campbell George Campbell
claiming his attendance jury went out in the case of Const
Keys jury returned in case of Const Keys and find in favor
of the plaintiffs sixty five dollars it is therefore ordered by
the Court that the plaintiffs have judgment for sixty
five dollars and costs of Suit herein taxed

W W Sears J P

February 21st 1861 The above named defendant with
William E. Robinson Wm J. Herford as his security
filed his bond for an appeal to the circuit Court which
was approved by me and appeal granted

State of Illinois }
Madison County }

I hereby certify that the above is
a true copy of the proceedings in the
above named cause as entered on my Docket

W W Sears J P

No 169
Socks & Mulvaney

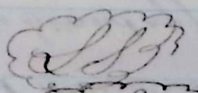

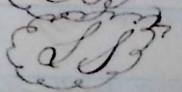
vs
James Secoy

Filed March 13th 1861

James D Perry clk

Know all men by these presents that we James Seery
and William E Robinson and Wm. J. Hereford are
held and firmly bound unto Melcher Socks and Wm
Mulvaney in the penal sum of one hundred forty two
and $\frac{36}{100}$ 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 18th day of February 1861 The Condition
of the above obligation is Such that whereas the Said
Melcher Socks and Wm Mulvaney did on the 2^d day
of February A D 1861 before W. W. Sears a Justice of
the Peace for the County of Woodford recovered a judg-
ment against the above bounden James Seery for the
sum of Seventy one and $\frac{18}{100}$ Dollars from which judgment
the said James Seery has taken an appeal to the Circuit
Court of Woodford County and State of Illinois. Now
if the said James Seery shall prosecute his suit with
effect and shall pay whatever judgment may be rendered
by the Court upon dismissal or trial of said appeal
then the above obligation to be void otherwise to remain
in full force and Effect

James Seery 
W. E. Robinson 
Wm. J. Hereford 

Approved by me at my office this day of February
1861

State of Illinois } ss
 County of Woodford } The People of the State of Illinois to the Sheriff
 of said County Greeting We Command
 You that you summon Melcher Socks and William Mulvaney
 if they shall be found in your County personally to be and appear before
 the Circuit Court of said ^{Woodford} County on the first day of the ^{next} term thereof
 to be holden at the Court house in Metamora in said Woodford
 County on the fourth Monday of May A D 1861 To answer unto James
 Seery agent for Robinson & Dunham on an appeal taken from
 the judgment of W W Sears Esqr. And have you then and there
 this writ with an endorsement hereon in what manner you ^{shall} have
 executed the same Witness James D. Perry Clerk of our said
 Court and the Seal thereof at Metamora ^{at witness} this 13th day of March
 A D 1861

Seal

James D. Perry Clerk

Endorsment on Back of Summons
 Woodford Circuit Court
 Docket No 169 Page

Melcher Socks & William Mulvaney

James Seery Agent

State of Illinois }
 Woodford County } the within named Melcher Socks & William
 does serve } Mulvaney not found in my County
 Milage 10 } April 8th 1861 } R. L. Sidwell Sheriff
 Return } Filed in Circuit Court this 13th day of March 1861
 } James D. Perry Clerk
 } Attorney

Woodford County Circuit Court April Term 1861

United State of America }
State of Illinois } ss
Woodford County }

at a Regular Term of the Circuit Court held in and for ^{the} said County of Woodford on Monday the 8th day of April A D 1861. The judge not being present Court stands adjourned till tomorrow. Tuesday April 9th 1861 Court met pursuant to adjournment Present the Honorable Martin Ballou Judge of the twenty third judicial Circuit Rember L Sidwell Sheriff and James D. Perry Clerk Henry Miller States attorney attest James D. Perry Clerk

Friday

April 19th 1861 Court met pursuant to adjournment Present Same as heretofore

Melcher Soeko & William Mulvaney

vs

James Seery agt for Robinson & Dunham

appeal

No 169

on this day this cause is continued by the adjournment of Court

United States of America }
State of Illinois } 88
Woodford County }

At a Regular Term of the Circuit Court of the twenty third Judicial Circuit of the State of Illinois began and held at the town of Metamora within and for the County of Woodford on the twelfth day of August in the year of our Lord one thousand eight hundred and Sixty one

Present Honorable Samuel L. Richman Judge
James D. Perry Clerk
Remben L. Sidwell Sheriff
Mark Bangs State attorney pro tem

Attor James D. Perry Clerk

Munday August 26th 1861 Court met pursuant to adjournment
Present Same as heretofore

Melcher Socks and Tom Mulvaney

vs

Appeal

No 169

James Seery agt for Robinson & Dunkan

On this day came the Plaintiff by Richardson their attorney and moves the Court for continuance. It is therefore ordered by the Court that this cause be continued at the cost of the Plaintiff

United States of America }
State of Illinois }
Woodford County }

At a Regular Term of the Circuit Court of the twenty third judicial Circuit of the State of Illinois began and held at the Town of Metamora within and for the County of Woodford on the ninth day of December in the year of our Lord one thousand eight hundred and sixty one

Present the Honorable Samuel L. Richardson Judge
James D. Perry Clerk
Benben L. Sidwell Sheriff
James M. Boal States attorney

Monday December 16th 1861 Court met pursuant to adjournment
Present Same as heretofore

Melcher Soeks & William Mulvaney

vs

James Seery agent for Robinson & Dunham

Appeal No 169

This day this cause came

on for hearing come the parties the Plaintiffs Melcher Soeks & William Mulvaney by J. H. Richardson their attorney and the Defendant James Seery agent for Robinson & Dunham by Hopkins his attorney and issue being joined between the parties a jury came to try said issue to wit Samuel Kirby William A Parks B. C. Page Samuel McGadden William Bateman A. J. Genoways G. D. Larnard J. H. Stitt Extra Scott Benjamin Garinger W. H. Ferrin and Elmore J. Patton who are duly sworn to well and truly try said issue and having heard the proofs

whereupon the Defendant by his attorney prays for an appeal to the Supreme Court of this State which is allowed on his entering into Bond in the penal sum of three hundred dollars conditioned according to law with Surety to be approved by the Clerk of this Court by agreement said Bond to be filed in thirty days. Leave given to file Bill of Exceptions in sixty days

M Socks et al

v

James Seery } Bill of Exceptions

No 169

Filed February 27th 1862

James D. Perry clk

By J. C. Myers Deputy

Melcher Socks

William Mulvaney

v

James Seery agent
for Robinson & Dunham }

Circuit Court

Woodford County

December Term

A D 1861

Be it remembered that this day this cause coming on to be heard the Plaintiffs to maintain the issues on their part produced Richard Mayne who after being duly sworn was objected to by Defendants attorneys on the ground of interest and being examined by Defendants attorney on voir dire testified as follows I have no

interest in the result of this suit. The order for a Corn
 Sheller hereinafter mentioned was then shown to
 Witness who said this is the order given for the
 Machine that this suit is about. It has my signature
 to it and the signatures of both the Plaintiffs & was
 signed in my presence but after said order was written
 & signed I became desirous of being released from becoming
 one of the purchasers of said Machine and it was agreed by said
 Plaintiffs and Defendant that I should be released from the
 said contract. Thereupon the Court ruled that said Mayne
 was a competent witness. To which ruling Defendant then
 & their excepted & objected which said exception was overruled
 by the Court & said witness testified as follows on or about
 the 24th day of November A D 1860 in the evening said
 Plaintiffs Secko & Mulvaney & myself met at the hotel
 kept by William R. Mills at El Paso and they said they
 had been talking with the Defendant Seery who was
 also present about buying a Corn Sheller & wanted to
 know if I did not want to go shares with them in the
 purchase after thinking of it a little while I told them
 I would. Seery said the machine would shell from
 twelve to fifteen ^{hundred} bushels of grain per day we were to
 pay part money & give notes for the balance and
 were to take the machine & try it and if it was not
 a good machine & did ^{not} work well and do as recommended
 we were to return it and Seery was to return the
 Notes & money notes & money was to be paid when
 the machine arrived our order was drawn for the

Page 11

Machine and was ~~sent~~^{read} over by Seery or some other person dont remember which and was signed by each of the Plaintiffs & by my self I saw all sign it and it was the same order shown me by the Defendants attorney I afterwards wanted to be discharged from the contract and they agreed to discharge me & Socks & Mulvaney agreed to take machine themselves this was before the machine arrived at El Paso the machine was to be sent to El Paso from Peoria I was not present when the Machine came to El Paso

On Crop Examination

Said Witness said

I do not know how much money was paid by Plaintiffs to Defendant nor what notes they gave him Machine did not come as soon as they expected it Plaintiffs took it to try William R. Willis was present at the time of making the order & the conversation above alluded to The Machine was to be set running Dont remember whether it was agreed that Seery should send to Peoria ^{for a} mechanic to set up the machine & put it running or whether he was to put it running himself The Plaintiffs & Defendant had been talking about the note before I met them at Wellises Dont know what was said about Seery acting for Robinson & Dunham in the sale of the machine he might have said he was the agent dont remember any thing about that except what the order says Seerys business is dealing in agricultural machinery at El Paso I have understood that he was agent for Robinson & Dunham

Plaintiffs then produced William R. Willis who being duly sworn testified as follows. The Plaintiffs & Defendants & the witness Mayne were at my house or hotel at El Paso in fall of 1860 a trade was going on between them about a corn sheller which Plaintiffs were purchasing Seery said the machine would shell twelve or fifteen hundred bushels of corn per day and Plaintiffs said they would be satisfied if it would shell a thousand bushels per day. Seery said it would do it and more to a writing was drawn between them & read & signed by the plaintiffs & Mayne. Mayne seemed to get tired of the arrangement and withdrew from the contract. I understood Seery to be acting as agent for Robinson & Dunham. I did not give any particular attention to the matter at the time but remember what I have stated and that if the machine was not a good one or did not do as recommended it was to be returned and something was said about a man coming from the shop when the machine was made if it did not go right. Finally Robinson & Dunham's names were mentioned.

Crop examination

Seery has done business a number of years some two or three at El Paso. I have always understood that he was the agent of Robinson & Dunham. I think it is generally understood in the vicinity that Seery does business as agent for Robinson & Dunham.

Socks & Mulvaney live in that vicinity Socks
Lives some two or three miles from Seerys place of
business. Corn Shellers & threshing machines are
articles almost always sold in this section of country
by agents of manufactures so is most other kinds
of agricultural machinery I saw the writing signed
by the Plaintiffs but took no particular notice of it
I think the paper shown me is the one I know the
Signature of Socks Plaintiffs then produced one
Frank Gough who being sworn said I was present
when the plaintiffs were trying the machine a corn
sheller they took it from the R R Depot at El Paso
they had put the machine running it did not work
well it did not shell the corn off the cobs it did
not clean it well and did not separate the corn
from the cobs well we could not make it run
successfully I do not think the machine was worth
much if it would not run any better than it did
when I saw it Valentine Socks was also present we
worked at it several hours & then quit.

On cross examination witness said I was called on by Socks to help try the Sheller I am not a mechanic have never run a corn Sheller Socks & Mulvaney are neither of them mechanics. I don't know who set up the machine Seery was not present I don't know when the horse power come from it did not appear to belong with the machine the Machine was new & the horse power was not it was set on the ground when I got there I don't know anything about the trade between the parties in relation to the Sheller

Plaintiffs then introduced Valentine Socks who being sworn said I saw the machine tried twice once at the time witness Staught has mentioned & again the next day ^{but one} on the next ~~try~~ and the machine did not work well it broke up the cobs & they come out with the corn it did not shell clean did not separate well Don't consider the machine good for anything unless it will do better than it did then the Sheller looked well looked fine but would not work Socks sent for Seery & he come & tried to make the machine run but it did not go any better he attempted to fix it It run hard we

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tried it with four horses & then put on two more
Socks told Seery that he ~~threw~~ the machine would not
work & he would not have it Seery admitted that
it did not work well Socks demanded his money
back and his notes & told Seery to take away the machine
Seery said he had not the notes & money with him
But said if the machine did not do any better
he would give them back Socks said he would not
try it any more that he would not bother with it
any more he should hold Seery for the notes & money
Socks that evening or next day took the machine
back to the depot

On Cross Examination ^{witness} said

I am Brother of
Plaintiff Socks was called on to help try the machine
The horse power was a borrowed one borrowed to try
the machine with there was no horse power bought
with the machine the power was intended to run
a threshing machine & was intended for eight horses
The Sheller is intended to run with four horses It
went to hard & we put on six horses Seery said
The machine did ^{not} work satisfactorily ~~and~~ that if it
did not do any better he would give up the notes

& money said he would send to Pearia to Robinson & Dunham for a smackerest to set it all right Socks said he would not bother with it any longer Piff soon bought another Sheller of a different make I don't know whether they contracted for it before they tried the one bought of Seery or not they got it very soon

Plaintiffs then introduced James Blackmore who being sworn said I was present at the trial of the Sheller on the occasion mentioned by witness & Socks at the time ~~was~~ when Seery was present the Sheller did not work satisfactorily it shelled badly did not shell clean scattered & did not separate well Seery attempted to fix ^{it} it would run right some part of the connecting rod between the power & Sheller broke & run hard four horses were put on & then six Seery gave up the attempt & Socks demanded his notes & money back which Seery said he had not with him Seery said if Robinson & Dunham did not make it run satisfactorily & work according to representations then he would give up the notes & money Socks refused to try the machine any further said

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he was satisfied it would not work said he would not bother with it the machine was returned to El Paso that day or the next

Cross Examination witness said I was present when Seery came he said he had not got the notes and money with him but did not say whether he had transmitted them to Robinson & Dunham or not Seery said the Sheller did not work & if it did not do better when Robinson & Dunham's man had put it in proper order he would give up the notes & money. Socks refused to give it any further trial but insisted on having his money & notes Seery claimed that it was the contract that if they were not able to set up the Sheller themselves and make it run satisfactorily that Seery should have the privilege of sending to the shop of Robinson & Dunham at Peoria & procure a mechanic who understood the machine to come out & set it up & put it running before the Sheller should be condemned & said if it did not then work well he would give up the notes & cash

Socho did not deny that such was the contract but replied that he would not bother with it any longer that it would not work & he must have his notes & money back Seery refused to give them up until the man had come ^{from} Peoria & put the smachine in order & it had been tried

Plaintiffs then Rested their case

Defendant to maintain the issues on his part then introduces & gave in evidence an affidavit of James S. Fowler taken by agreement of parties on account of sickness in said witness family to be used in this cause which is as follows

Melcher Socks et al
 vs
 James Seery agent of
 Robinson & Dunham } State of Illinois
 Woodford County

This day personally appeared before me James S. Gault who being duly sworn deposes and says I am a machinist by trade some time about the middle of January A D 1861 I was employed by Robinson & Dunham of Peoria Illinois and sent to El Paso in the County of Woodford for the purpose of putting up & setting to running a certain Corn Sheller It was what is known as the Denton Sheller & manufactured by said Robinson & Dunham & was marked "Manufactured by Robinson & Dunham Peoria Illinois I helped ship the said machine from the Shop of said Robinson & Dunham at Peoria It was shipped by Rail Road & marked upon Cards attached to it Marked Melcher Socks El Paso When I went there as above stated to set the machine running I took along with me two fender blocks & a drop board parts of the machine which had not been shipped with it the machine would not do so good work without these parts as with them I found the machine at El Paso It had been set up & some one had attempted to run it It was improperly set running & would not do good work as it was the Sylinder & Cones were not properly adjusted It was adjusted at the Shop in the usual manner but needed altering to suit the sized Corn which they

were using it for: & this was not done I adjusted it and put in the parts which I brought with me & put it in working order It was then a complete & perfect machine & would do good work Socks was then within fifty yards of me when I was repairing the said machine & when it was done I notified him that it was all right & desired him to hitch horses on to it & try it and he refused to do so his horses were near by It could have been hitched into & started in thirty minutes the power was already set I offered on behalf of Robinson & Dunham to pay him for his time & that of his teams if he would hitch on & if the machine did not work satisfactorily but he refused to hitch on & said he had bothered with it as much as he would I have worked over seven years at the manufacture of the same kind of shellers and have set a great many of them running probably more than fifty (This machine was as good as any previously made of the kind) & just the same as Sheller soon afterwards purchased Isaac Underhill & shipped to Secor except it had no elevator Socks Socks said he would not have the machine because it would not clean The reason it would ^{not} clean was that the tail of the machine was set toward the wind & there was a current nearly as strong in to the machine as that created in the other direction by the fans James Seery was acting as the agent of Robinson & Dunham at said El Paso for the sale of machinery said Socks also complained that the machine scatered and this is the effect of

Page 21

using it without the drop board & was reminded by me in putting it in socks told me that when he made the contract with Seery for the machine he agreed that in case he could not start the machine properly he was to wait for Seery to send to Robinson & Drumham for a man to start it but said Seery was not fast enough for him; I know nothing about Seery being agent for Robinson & Drumham except what I know from correspondence between them

I went in January 1861 to make the repairs on the machine at El Paso Socks had at that time taken it to the depot at El Paso from where he ^{had} been using it. There were many other persons present at El Paso when Socks made the statement, as to the contract between him and Seery Socks did not state how long he was to wait for Seery to send to Peoria as stated by me above I think the machine had been sent to Socks four or five days before I went to make the repairs

James S. Carter

Subscribed and Sworn to before
me this 12th day of December 1861

James D. Perry Clerk

It is agreed by the parties to this suit that the foregoing affidavit may be used in evidence in the above entitled cause subject to all such objections as might be urged to the ^{oral} testimony of said witness if given in the same language

Burns atty of Plaintiff
W B Hopkins Defendts atty

M Socks

v

James Seery
off of Hunter

No 169

Filed December 12th 1861

James D. Perry Clerk

Defendants offered & gave in evidence the order in writing being the same mentioned by witnesses Richard Mayne & Wm R Millis and which is as follows to wit

" El Paso Nov 24th All Messrs Robinson & Dunham

" Please forward me one of your improved Corn Shellers

" ready for delivery at El Paso by the 20th day of December

" next which I agree to receive in ten days from that date

" and pay \$115⁰⁰ for the same as follows fifty seven dollars

" dollars cash and execute our two notes for the further sum

" of fifty eight Dollars to come due first of May next

" warranted to be well made & of good material and not liable

" to break or get out of order with careful usage

" State of Illinois } Melchar Socks

" Woodford County } William McManey

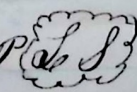
" Town of El Paso } Richard Mayne

Defendants then given in evidence or from the files of the said cause being in Court the original summons in favor of the Plaintiffs against the defendants issued by Justice W W Sears which is as follows to wit

State of Illinois }
 Woodford County } ss The People of the State of Illinois

To any Constable of said County
 Greeting - You are hereby commanded to summon James Seery agent for Robinson & Dunham to appear before me at my office in El Paso on the 2nd day of February 1861 at 10 o'clock A M to answer the complaint of Melcher Socks and William Melvonia for thirty five dollars paid him on corn sheller and for forty five dollars damages for said sheller not working as warranted for a failure to pay him a certain demand not exceeding one Hundred Dollars and hereof make due return as the Law directs

Given under my hand and Seal this
 26th day of January 1861

W. W. Sears J.P. 

Return on said summons is as follows to wit.
 M Socks and

William Melvonia
 vs
 James Seery agent for
 Robinson & Dunham

Demand \$ 80 00
 1 00
 J P's Fee \$ 57

Served by Reading to the within
named defendant

James Seery

This 26 day of Jan 1861
My Fees 30 cents
James H. Keys
Constable

Defendants also offered & gave in evidence the said
justices Transcript on file in said cause which
is as follows to wit

State of Illinois
Woodford County

In Justice Court Before W W Sears

Melcher Soek
William Mulmonia
vs

James Seery agent for
Robinson & Dimsham

1861 Jan 26th Summons
issued to J. H. Keys Const &
Returnable the 2^d of February at 10 O'clock A.M.
Summons returned duly served by Const Keys
Jan 26th February 2^d 10 O'clock ^{or} A.M. Parties appear
and are ready for trial Defendant asked for venire
venire issued and delivered J. H. Keys Const venire
returned by J. H. Keys with the following named
persons N. B. Hassett G. Mulford P. Bowers

Wm Arbuckle L Key Wm Tompkins the following
 named witnesses sworn for the plaintiffs B Reynolds
 M Brooks B Maine & King of Lowry P Roberts
 of Haught & Socks of Blackmore the following
 witnesses for defendant of H Key George Campbell
 George Campbell claims his attendance jury went
 out in the care of Const Key jury returned in care
 of Const Key and find in favour of the plaintiffs
 sixty five dollars it is therefore ordered by the court
 that the plaintiffs have judgment for sixty five dollars
 and costs of suit herein taxed

W. W. Sears J. P.

February 21st 1861

The above named defendant with
 William E Robinson and W. J. Hereford as his
 security filed his bond for an appeal to the circuit court
 which was approved by me and appeal granted

State of Illinois
 Woodford County

I hereby certify that the above is
 a true copy of the proceedings in the above named cause
 as entered on my docket

W. W. Sears J. P.

Melcher Socks & W. Mulvaney

James Seery Transcript

Filed March 13th 1861

James D. Perry Clerk

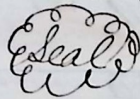
Defendant then gave in evidence the summonses issued & served on the appellee which is as follows to wit

State of Illinois }
Woodford County } ss The People of the State of Illinois
To the Sheriff of said County

Greeting

We Command you that you summon Melcher Soeks and William Mulvaney if they shall be found in your County personally to be and appear before the Circuit Court of said Woodford County on the first day of the next term thereof to be holden at the Court house in Metamora in said Woodford County on the fourth Monday of May A D 1861 to answer unto James Seery Agent for Robinson & Dunham on an appeal taken from the judgment of W. W. Sears Esqr And you have then and there this writ with an endorsement thereon in what manner you shall have executed the same

Witness James D. Perry Clerk
of our said Court and the Seal thereof at Metamora
aforesaid this 13th day of March A D 1861



James D. Perry Clerk

The Return is as follow to wit
Circuit Court Summons
G Docket No 149 Page

Woodford Circuit Court
Melcher Socks &
William Mulvaney
vs
James Seery Agent

State of Illinois
Woodford County }
the within

Named Melcher Socks & Wm Mulvaney not found in
my County 1861 April 8th

R. L. Sidwell Sheriff
Dees Service

Mileage 10
Return

Filed in Circuit Court thro 13th
day of March 1861

James D. Perry Clerk
Attorney

Defendant then introduced John M Gordy who being
duly sworn said I have been about seven years engaged
in the manufacture of Corn Sheller of the same character
as that in question in this suit have been foreman in
the manufactory of Robinson & Dunham at Peoria Ill
I helped make the Sheller sold by Seery to the Plaintiff
I assisted in shipping it to the Plaintiff at El Paso
It was marked to their address & shipped by rail road
I know the character & quality of the machine It

was the improved Denton Sheller It was a thoroly
made & perfect machine in every perticular and would
perform good work when properly set up & properly ^{run} ~~run~~
This machine would shell from 1200 to 1500 bushels
per day when properly used all shellers of this kind are
advertised in printed bills by the Manufactures to shell
that amount and will all do that or more the machine
would have to be properly set up & adjusted in order to work
well & if it was not it would not work well perhaps
not at all depending upon what error was made in
setting it running It is run by a four horse power which
is sufficient for it It requires some skill to first set
the machine running It is a cylinder machine and the
Concave & convex surfaces must be properly & equally
set with referance to each other if set too tight it will
not feed well but beaks the cobs which prevents
its cleaning well if set too loose the corn comes through
only partly shelled if unevenly set it will then both to
crush the cobs a part will come through unshelled Seery was
the agent of Robinson & Dunham Sold their machines
for them at El Paso It is a universal custom in
^{setting} shellers & threshers & mowers & other complicated
agricultural machinery to have ~~to have~~ the machine
put in order & set running by a man from the shop
sent by the manufacture in case the purchaser
is not able to make it run without Mr
Gauler a workman from Robinson & Dunham's
Shop was sent by them to El Paso to put

Page 29

the machine in order he is an entirely capable mechanic for that purpose he went about four days after the machine was sent

This is all the testimony given on either side on the trial of this cause

Defendent then introduced Columbus Dunham who being duly sworn Plaintiff objected to his testifying on the ground that he was interested and having been examined on voir dier the Court ruled that said witness was in competent Defendent then executed sealed and delivered to said witness a release whereupon the Court ruled that said Dunham was a competent witness and he then testified as follows to wit I am a member of the firm of Robinson & Dunham manufacturers of agricultural machinery at Peoria Ill we manufactured the machine in question It was a perfect machine well made of good material & not liable to get out of repair with careful usage the machine is capable of shelling more than 1500 bushels per day the machine

is advertised to do that & and notices to that effect
& ~~were~~ ^{were} in the hands of Mr Seery Hee was authorized
to recommend the machine to do that & to run well
with a four horse power The machine sent Plaintiff
will do that any time with proper usage we received
from Mr Seery this order (being the one referred to
by other witnesses & given in evidence) and we shipped the
machine to Puffs at El Paso about four days after
the machine was sent we sent at the request of Seery
Mr Gouler a first rate workman to El Paso
to set the machine properly running we never sell
our selves & never authorized Seery to sell any
shellers without reserving the right of setting the
machine & putting it properly running before it
should be condemned & returned Seery the
Defendant was our agent in the sale of the
said machines & had no other interest in the
transaction Hee remitted the cash received for
the machine & the notes to us at Peoria as soon
as the sheller arrived at El Paso we received
them a day or two before Gouler was sent to
El Paso Seery was authorized to agree to take
back the sheller & return the notes & more if it
did not work according to representations after
being put running by our machienest the machine
then having a fair trial & we were ready to
return them upon such trial if the machine
did not work well only twenty five Dollars

in cash was paid by the Plaintiffs on account of said Sheller & their note given for the balance This was all the evidence given on either side at the time of said cause.

The Court then gave the jury the following instructions on part of the Plaintiffs

M Socks }
Seery }

The court instructs the jury on ~~part~~ part of the Plaintiffs

1st That If the jury believe from the evidence that the ^{defendant} sold to the Plaintiff a Corn thresher and that at the time of such sale or afterwards the plaintiff paid the defendant fifty seven Dollars or any sum part of the price of said machine and warranted the thresher to perform certain work as mentioned in the next instruction that at the time of the sale the defendant agreed with the plaintiff that if the machine did not perform as represented by the defendant at the time of sale that plaintiff might return the machine and believe said machine did not perform as recommended and the plaintiff and defendant after giving the machine a fair trial agreed that the defendant should pay back to the Plaintiffs the money advanced by him to defendant & that the plaintiffs did return or offer to return the machine and the defendant refused to

Given

to pay back the money then the jury should find for the plaintiffs the amount of said money with six per cent interest thereon from the time said machine was returned or tendered together with any damages they find the Plaintiffs has sustained as the direct consequence of the failure to perform aforesaid unless defendant sold and warranted the Skeller as agent of Robinson & Dunham and that fact was known to plffs when they purchased it.

D^d 11

If the jury believe from the evidence that the Plaintiffs bought of the defendant a machine as mentioned in the foregoing instruction and that at the time the parties bargained the plaintiff warranted the machine to perform well & thresh 1200 or 1500 Bushels per day or otherwise assured the Plaintiff that said machine would so perform as stated in this instruction and the Plaintiff bought said machine relying on such warranty or assurance and paid part of the money as mentioned in the foregoing ^{part.} instruction and that after giving said machine a fair trial it did not perform as warranted that the plaintiffs returned or offered to return said machine & demanded the money money paid then the jury should find for the Plaintiffs the money paid interest &

Given

Damages if damages have been proved as stated in the foregoing first instruction unless the jury believe from the Evidence that defendant sold and warranted the Machine as agent of Robinson & Dunham and that fact was known to plaintiff when they purchased the Same

Filed December 17th 1861

James D Perry Clerk

3^d

If the jury believe the defendant Seery contracted to deliver a corn thresher as mentioned in the foregoing Instruction ^{and} warranted ^{it} the Same to thresh 1200 or 1500 Bushels per day & to deliver the Same at a certain time and allow the plaintiffs to try the Same and if it did not perform as represented and that plaintiffs should by the terms of the contract have a right to try said machine & if it as delivered failed to perform as represented and also believe the defendant was to have the opportunity to send to Peoria to Robinson & Dunham to get a machinest to repair the machine and the defendant refused within a reasonable time to send to Peoria to get said machinest but undertook to repair the machine himself then the Plaintiff would not be bound to wait beyond a reasonable time for him to get a machinest but might return said machine if it did not accomplish answer the Contract

Given

4th

if the jury believe from the evidence that the defendant

Given

Sold to the Plaintiffs a Threshing machine as mentioned in the third instruction above to be delivered & tried by the Plaintiffs & returned as mentioned in the foregoing 3^d instruction if not according to the contract of sale and that the defendant delivered said machine in part but only in part having left some portions of said Machine not delivered which was necessary to make it perform as per contract then the Plaintiffs were not bound to retain said machine in its imperfect state lacking some of its parts & wait for defendant to deliver the other parts necessary to make it perfect

5th

Given

if the jury believe from the evidence that the defendant agreed to deliver a perfect machine and deliver it in good only then the Plaintiffs would not be bound to receive & retain it in its imperfect state but the defendant would be bound to deliver a perfect machine at the time of delivery agreed upon & not deliver it in parts

6th

Given

If an agent personally & not as agent warrants a machine sold by him in his own name he is personally liable on the contract if it does not answer the warranty.

7th

if the jury believe from the Evidence that the defendant sold the machine to plffe and warranted he same to perform in a certain manner and that it did not answer the warrantee or misrepresented the quality of the machine and he received a portion a portion

Page 35

Given

of the purchase money on the contract was ~~rescinded~~ received by the parties on account of the failure of the machine to perform as warranted and that Seery refused to return the money received then the Jury should find for the Plaintiffs the amount of money paid interest & damages if damages have been proved as mentioned in the foregoing first ~~first~~ instruction

8th

Given

If the Jury believe the defendant made any of the contracts mentioned in the foregoing instructions then to excuse himself from liability on account that he was an agent then burden of proof is on him to show that he contracted for his principals or to show that the Plaintiffs knew that he was contracting for his principals

Dated December 17th 1861

James D. Perry Clerk

9th

Given

If the Jury believe from the Evidence that the defendant made a contract of warranty as to the quality of the corn sheller or made a contract agreeing that the machine would thresh a certain amount of corn in a certain time that if it did not so perform that the defendant might return the machine and believe the warranty was false that the contract was rescinded on account of the failure of consideration according to the terms of said contract then the defendant is liable personally to make good the contract if it be such as if made in the names of his principals they would be liable thereon unless he has proven to the satisfaction

of the jury that he contracted in the names of his principals or that the Plaintiffs knew the defendant was contracting for his principals in making such contract

Filed December 17th 1861

James D. Perry Clerk

10

It is for the jury to determine whether the defendant contracted with the plaintiffs in his own name or whether he warranted or assured the quality & condition of the thresher in his own name or whether he used the names of his principals and it is proper for the jury to observe the language used by the defendant in making the contract of sale if any sale were made the warranty, the representations as to quality and the agreements to rescind the contract if they believe such facts to exist as well as all other facts and circumstances surrounding the transaction

11

If the jury believe from the evidence that the defendant in making the contract of sale or making the warranty or representations of quality & condition of the machine (if such were made) said "I will warrant the Corn thresher to thresh 1200 to 1500 Bushels per day," or words of like import which in the minds of the jury is evidence of an intent to so assure the Plaintiff that the machine would so perform it is proper evidence for the jury to consider in determining whether the defendant contracted in his own name or used that of his principals

Filed December 17th 1861

James D. Perry Clerk

If the jury believe from the evidence that the defendant
~~was making contract of sale or making the warranty~~
~~or representation of quality or condition of the ma-~~
~~chine or if such were made said warranty~~
~~the same~~ ~~thresher to thresh 1200 to 1500 Bushels per~~
~~day, and was of other import~~ ~~which is the~~ ^{for the sale}
~~machine was received by the parties after it was determined~~
~~the thresher would not perform as recommended if it was so~~
~~determined and that the defendant Seery had the money of~~
~~the plaintiffs which he had received upon the contract of~~
~~sale then the Plaintiffs would be entitled to recover of him~~
~~such money if they believe he refused to refund the same~~
~~on demand and in such case they should allow interest~~
~~at 6 per cent thereon from the time of the reception of the con-~~
~~tract~~

Given

Filed December 17th 1861

James D. Perry Clerk

13th

If the jury believe the machine was warranted to the Plaintiffs
 and that the warranty was broken by the defendant by
 reason of thresher not performing as warranted by him then
 the Plaintiffs would have a right to rescind the contract of
 sale on account of the breach of warranty and return the
 thresher & recover any monies paid by them with interest &
 damages for any expense they were put to as the necessary con-
 -sequence of the breach of contract

Refused

Filed December 17th 1861

James D. Perry Clerk

Given

If the jury believe from the Evidence the Thresher was warranted or assured to the Plaintiffs and that after it was tried by the Plaintiffs and defendant for four days they concluded that the machine did not perform as warranted or assured and the defendant said to the Plaintiffs that he was satisfied the Thresher would not perform as recommended and that he would give plaintiffs back their money & notes this is proper Evidence for the jury to consider in determining the facts whether the defendant had the money of the Plaintiffs in his hands and whether he considered himself liable to make good the warranty

15th

Given

If the jury believe from the Evidence that the Contract of sale of the Thresher was received as mentioned in the foregoing instructions and that the defendant had the money of the Plaintiffs received by him as part of the purchase money for said machine which he refused to pay over to the Plaintiffs on demand then a cause of action accrued to the Plaintiffs against the defendant for such money as the jury believe was in defendant's hands belonging to the Plaintiffs and interest thereon from the time of demand

16

Given

If the jury believe that the order for the Thresher was given by Locke Melvaria & Main and that a machine was shipped to Locke & Melvaria & then notes & money given on delivery of the machine at El Paso this is Evidence from which the jury may infer that the first contract was waived & a new one made between Plaintiffs & defendant

Damon

where a person makes a contract and uses his own name therein in the presumption of Law as he intends to bind himself in dividually and to ^{ex}empt himself personally on account of his agency he must prove to the satisfaction of the jury that he divulged the fact that he was contracting for his principals or that that fact was known to the other party and that he & the persons with whom he contracted intended to bind the principals & not himself

Filed December 17th 1861

James D. Perry Clerk

To the giving of which Defendant then & there excepted & objected

The Court then gave the followin instructions on part of the Defendant

If the jury believe from the evidence that the contract for sale of the machine in question was made with the Plaintiffs by the Defendant acting as the agent of Robinson and Dinham & authorized for that purpose & that Plaintiffs knew of such agency at time of such sale then the Plaintiffs action for Breach of such contract or any warranty or representations being a part of said contract &

Damon

Given

within the scope of such agency is against said
Robinson & Dunham & they cannot recover therefore of
said agent Seery

Filed December 17th 1861

James D. Perry Clerk

The jury are instructed that if they believe from the
evidence that the Defendant sold the machine in question
as agent for Robinson & Dunham & Plaintiff were aware
of such agency & it makes no difference how they became
aware of it that then Defendant is not personally liable
on said contract or for any thing done as such agent
unless he acted
~~as~~ ^{the} actual fraudulently & overstepped his authority
as agent & thereby intended to defraud the Plaintiffs

Filed December 17th 1861

James D. Perry Clerk

3. If the contract was made between the plaintiffs and the defendant
as agent of Robinson & Dunham and if the jury further
believe from the evidence that at the time the contract
was made that plaintiffs knew that Robinson & Dunham
were the principals and that the defendant was the
agent of Robinson & Dunham and if the jury
further believe from the evidence that the defendant
was authorized by Robinson & Dunham to make the
contract the Plaintiffs cannot recover in this action
against the defendant

Filed December 17th 1862

James D. Perry Clerk

SUPREME COURT OF ILLINOIS.

Third Grand Division at Ottawa—April Term, 1862.

JAMES SEERY, *Appellant,*

vs.

MELCHER SOCKS,

AND

WILLIAM MULVANIA, } *Appellees.*

APPEAL FROM CIRCUIT COURT
OF WOODFORD COUNTY.

ABSTRACT OF RECORD.

1 This suit was originally brought on the 26th day of January, 1861, before
W. W. Seers, a Justice of the Peace, of said Woodford County, by Appellees, against
2 Appellant as Agent of Robinson & Dunham in which Appellees recovered judgment
for \$65, and the same was appealed to the Circuit Court, in, and for said County, in
3 which Court the transcript and Justice's papers were filed March 13th, 1861. Trial
7 was had of the said cause in the said Circuit Court at the December Term thereof,
1861., and jury found a verdict for Appellees for \$60⁰⁰/₁₀₀. Whereupon Appellant entered
a motion to set aside the said verdict and for a new trial for the reason herin-
after stated. Which motion was overruled and judgment rendered as follows: "It
" is therefore ordered and adjudged by the Court, that the Plaintiffs have and re-
" cover of and from the said James Seery, Agent of Robinson & Dunham, the sum
of \$60⁰⁰/₁₀₀, damages, &c.

All the evidence given on trial of said cause, as preserved in the Bill of Excep-
tions is without abridgement or alteration as follows:

9 Be it remembered that this day, this cause coming on to be heard the Plaintiffs
to maintain the issues on their part, produced Richard Mayne, who after being duly
sworn was objected to by Defendant's Attorney, on the ground of interest, and
being examined by Defendant's Attorney on *voe Dier*, testified as follows:

10 I have no interest in the result of this suit. The order for a corn sheller, herein
after mentioned, was then shown to witness, who said: This is the order given for
the machine that this suit is about. It has my signature to it, and the signature of
both the Plaintiffs, and was signed in my presence. But after said order was
written and signed, I became desirous of being released from becoming *one of the*
purchasers of said machine, and it was agreed by said Plaintiffs and Defendant that
I should be released from the said contract. Thereupon the Court ruled that said
Mayne was a competent witness. To which ruling, Defendant then and there ex-
cepted and objected, which said exception was overruled by the Court, and said
witness testified as follows: On or about the 24th day of November, A.D., 1860, in
the evening, said Plaintiffs, Socks, Mulvany and myself met at the hotel, kept by
William R. Willis at El Paso, and they said they had been talking with the Defend-
ant Seery, who was also present about buying a corn sheller and wanted to know if I
did not want to go shares with them in the purchase. After thinking of it a little while

I told them I would. Seery said the machine would shell from twelve to fifteen hundred bushels of grain per day. We were to pay part money and give notes for the balance, and were to take the machine and try it, and if it was not a good one, and did not work well and do as recommended we were to return it, and Seery was to return the notes and money. Notes and money was to be paid when the machine arrived. Our order was drawn for the machine and was read over by Seery or some other person. Don't remember which, and was signed by each of the Plaintiffs and myself. I saw all sign it, and it was the same order shown me by the Defendant's Attorney. I afterwards wanted to be discharged from the contract, and they agreed to discharge me. Socks and Mulvany agreed to take machine themselves. This was before the machine arrived at El Paso. The machine was to be sent to El Paso from Peoria. I was not present when the machine came to El Paso.

On Cross-examination, said witness said: I do not know how much money was paid by Plaintiffs to Defendant, nor what notes they gave him. Machine did not come as soon as they expected it. Plaintiffs took it to try. William R. Willis was present at the time of making the order and the conversation above alluded to. The machine was to be set running. Don't remember whether it was agreed that Seery should send to Peoria for a mechanic to set up the machine and put it running, or whether he was to put it running himself. The Plaintiffs and Defendant had been talking about the trade before I met them at Willis'. Don't know what was said about Seery acting for Robinson & Dunham in the sale of the machine. He might have said he was the agent. Don't remember anything about that except what the order says. Seery's business is dealing in agricultural machinery at El Paso. I have understood that he was agent for Robinson & Dunham. Plaintiffs then produced William R. Willis, who being duly sworn testified as follows: The Plaintiffs and Defendant, and the witness Mayne were at my house or hotel at El Paso in fall of 1860. A trade was going on between them about a corn sheller which Plaintiffs were purchasing. Seery said the machine would shell twelve or fifteen hundred bushels of corn per day, and Plaintiff said they would be satisfied if it would shell a thousand bushels per day. Seery said it would do it, and more to. A writing was drawn between them, read and signed by the Plaintiffs and Mayne. Mayne seemed to get tired of the arrangement, and withdrew from the contract. I understood Seery to be acting as agent for Robinson & Dunham. I did not give any particular attention to the matter at the time, but remember what I have stated. And that if the machine was not a good one, or did not do as recommended it was to be returned, and something was said about a man coming from the shop where the machine was made if it did not go right. Think Robinson & Dunham's name was mentioned.

Cross Examination.

Seery has done business a number of years, some two or three at El Paso, and I have always understood that he was the agent of Robinson and Dunham. I think it is generally understood in the vicinity, that Seery does business as agent for Robinson and Dunham. Socks and Mulvana live in that vicinity. Socks lives some two or three miles from Seery's place of business. Corn-shellers and thrashing machines are articles almost always sold in this section of country, by agents of manufacturers, so is most other kinds of agricultural machinery. I saw the writing signed by the plaintiffs, but took no particular notice of it, think the paper shown me is the one. I know the signature of Socks.

Plaintiffs then produced one Frank Faught, who being sworn, said, "I was present when Plaintiffs were trying the machine, (a corn-sheller,) they took it from the railroad depot at El Paso. They had put the machine running, it did not work well, it did not

shell the corn all off the cob, it did not clean it well, and did not separate the corn from the cobs well, we could not make it run successfully. I do not think the machine was worth much if it would not run any better than it did when I saw it. Valentine Socks was also present, we worked at it several hours and then quit.

On cross-examination witness said "I was called on by Socks to help try the sheller. I am not a mechanic, have never run a corn-sheller. Socks and Mulvany are neither of them mechanics. I don't know who set up the machine. Seery was not present. I don't know where the horse-power came from; it did not appear to belong with the machine. The machine was new and the horse-power was not. It was set on the ground when I got there. I don't know anything about the trade between the parties in relation to the sheller.

Plaintiff's then introduced Valentine Socks, who being sworn, said: "I saw the machine tried twice, once at the time witness Faught has mentioned and again the next day or the next day but one, and the machine did not work well—it broke up the cobs and they came out with the corn, it did not shell clean, did not separate well, don't consider the machine good for anything, unless it will do better than it did then. The sheller looked well, looked fine, but would not work. Socks sent for Seery, and he came and tried to make the machine run but it did not go any better. He attempted to fix it, it run hard—we tried it with four horses, and then put on two more.

Socks told Seery that he knew the machine would not work, and he would not have it. Seery admitted that it did not work well. Socks demanded his money back and his notes and told Seery to take away the machine. Seery said that he had not the notes and money with him, but said that if the machine did not do any better he would give them back. Socks said he would not try it any more, that he would not be bothered with it any more, he should hold Seery for the notes and money. Socks that evening or next day took the machine back to the depot.

On Cross-examination, witness said, "I am brother of Plaintiff Socks. Was called on to help try the machine. The horse-power was a borrowed one, borrowed to try the machine with. There was no horse-power bought with the machine—the power was intended to run a thrashing machine and was intended for eight horses. The sheller is intended to run with four horses. It went too hard and we put on six horses. Seery said the machine did not work satisfactorily and that if it did not do any better he would give up the notes and money—said he would send to Peoria to Robinson and Dunham for a machinist to set it all right. Socks said he would not bother with it any longer. Plaintiff's soon bought another sheller of a different make. I do not know whether they contracted for it before they tried the one bought of Seery or not, they got it very soon.

Plaintiff's then introduced James Blackmore, who being sworn, said, "I was present at the trial of the sheller on the occasion mentioned by witness V. Stocks, at the time when Seery was present. The sheller did not work satisfactorily—it shelled badly, did not shell clean—scattered and did not separate well. Seery attempted to fix it so it would run right, some part of the connecting rod between the power and sheller broke, it run hard, four horses were put on and then six. Seery gave up the attempt, and Socks demanded his notes and money back, which Seery said he had not with him. Seery said if Robinson and Dunham did not make it run satisfactorily and work according to representation, then he would give up the notes and money. Socks refused to try the machine any further, said he was satisfied it would not work, said he would not bother with it. The machine was returned to El Paso that day or the next.

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Cross-examination. Witness said "I was present when Seery came. He said he had not got the notes and money with him, but did not say whether he had transmitted them to Robinson and Dunham or not. Seery said the sheller did not work, and if it did not do better when Robinson and Dunham's man had put it in proper order he would give up the notes and money. Socks refused to give it any further trial but insisted on having his money and notes. Seery claimed that it was the contract, that if they were not able to set up the sheller themselves and make it run satisfactorily, that Seery should have the privilege of sending to the shop of Robinson and Dunham at Peoria and procure a mechanic who understood the machine, to come and set it up and put it running before the sheller should be condemned, and said if it did not then work well, he would give up the notes and cash. Socks did not deny that such was the contract, but replied that he would not bother with it any longer, that it would not work and he must have his notes and money back. Seery refused to give them up until the man had come from Peoria and put the machine in order and it had been tried.

Plaintiffs then rest their case.

Defendant, to maintain the issues on his part, then introduce and gave in evidence an affidavit of James S. Fowler, taken by agreement of parties on account of sickness in said witness family, to be used in this cause, which is as follows:

19 MELCHER SOCKS, *et als.*
vs.
 JAMES SEERY,
 AGENT OF
 ROBINSON & DUNHAM,

STATE OF ILLINOIS,
 WOODFORD COUNTY.

This day personally appeared before me, James S. Fowler, who being duly sworn, deposes and says, "I am a machinist by trade. Sometime about the middle of January A. D. 1861, I was employed by Robinson and Dunham of Peoria, Illinois, and sent to El Paso, in the County of Woodford, for the purpose of putting up and setting to running a certain corn-sheller. It was what is known as the Denton sheller, and manufactured by said Robinson & Dunham, and was marked "manufactured by Robinson & Dunham, Peoria Illinois." I helped ship the said machine from the shop of said Robinson and Dunham, at Peoria. It was shipped by railroad and marked upon cards attached to it—marked Melcher Socks, El Paso. When I went there, as above stated, to set the machine running, I took along with me two fender blocks and a drop board—parts of the machine which had not been shipped with it, the machine would not do as good work without these parts as with them. I found the machine at El Paso, it had been set up and some one had attempted to run it. It was improperly set running and would not do good work as it was—the cylinder and concave were not properly adjusted—it was adjusted at the shop in the usual manner, but needed altering to suit the sized corn they were using it for, and this was not done. I adjusted it and put in the parts which I brought with me, and put it in working order. It was then a complete and perfect machine and would do good work. Socks was then within fifty yards of me when I was repairing said machine, and when it was done, I notified him that it was all right, and desired him to hitch horses onto it and try it, and he refused to do so, his horses were near by, it could have been hitched onto and started in thirty minutes. The power was already set. I offered on behalf of Robinson and Dunham, to pay him for his time and that of his team if he would hitch on, and if the machine did not work satisfactorily, but he refused to hitch on and said he had bothered with it as much as he would. I have worked over seven years at the manufacturing of the same kind of shellers, and have set a great many

of them running; probably more than fifty. This machine was good as any previously made of the kind and just the same as sheller soon afterward purchased by Isaac Underhill and shipped to Secor, except it had no elevator. Socks said he would not have the machine because it would not clean. The reason it would not clean was that the tail of the machine was set toward the wind, and there was a current nearly as strong into the machine as that created in the other direction by the fans. James Seery was acting as the agent of Robinson and Dunham at said El Paso, for the sale of machinery. Said Socks also complained that the machine scattered and this is the effect of using it without the drop board, and was remedied by me in putting it in. Socks told me that when he made the contract with Seery for the machine, he agreed that in case he could not start the machine properly he was to wait for Seery to send to Robinson and Dunham for a man to start it, but said Seery was not fast enough for him. I know nothing about Seery being agent for Robinson and Dunham except what I knew from correspondence between them. I went in January 1861 to make the repairs on the machine at El Paso. Socks had at that time taken it to the depot at El Paso from where he had been using it. There were many other persons present at El Poso when Socks made the statement as to the contract between him and Seery. Socks did not state how long he was to wait for Seery to send to Peoria, as stated by me above. I think the machine had been sent to Socks four or five days before I went to make the repairs.

JAMES S. FOWLER.

Subscribed and sworn to before me this 12th day of December, 1861.

JAMES D. PERRY, Clerk.

It is agreed by the parties to this suit that the foregoing affidavit may be used in evidence in the above entitled cause, subject to all such objections as might be urged to the oral testimony of said witness, if given in the same language.

BURNES, Attorney of Plaintiffs.

H. B. HOPKINS, Defendants Attorney.

Filed, December 12th, 1861.

JAMES D. PERRY, Clerk.

Defendants offered and gave in evidence the order in writing, being the same mentioned by witnesses Richard Mayne and Wm. R. Willis, and which is as follows, to wit:

EL PASO, ILL, November 24th.

MESSRS. ROBINSON & DUNHAM: Please forward me one of your improved corn shellers, ready for delivery at El Paso by the 20th day of December next, which I agree to receive in ten days from that date, and pay \$115⁰⁰/₁₀₀ for the same as follows: fifty-seven dollars cash and execute our two notes for the further sum of fifty-eight dollars to come due first of May. Said mill warranted to be well made, of good material, and not liable to break or get out of order with careful usage.

MELCHER SOCKS.
WILLIAM MULVANY.
RICHARD MAYNE.

State of Illinois Woodford Co., Town of El Paso.

Defendants then gave in evidence from the files of said cause being in Court the original summons in favor of the Plaintiffs against the Defendants, issued by Justice W. W. Shears, which is as follows, to wit:

STATE OF ILLINOIS. }
 WOODFORD COUNTY. } SS. THE PEOPLE OF THE STATE OF ILLINOIS TO ANY
 CONSTABLE OF SAID COUNTY, GREETING:

You are hereby commanded to summons James Seery agent for Robinson & Dunham to appear before me at my office in El Paso on the 22d day of Feb., 1861, at 10 o'clock, A.M., to answer the complaint of Melcher, Socks and William Mulvania, for thirty-five dollars paid him on corn-sheller, and for forty-five dollars damages for said sneller not working as warranted, for a failure to pay him a certain demand not exceeding one hundred dollars and hereof make due return as the law directs.

Given under my hand and seal this 26th day of January, 1861.

W. W. SEARS, J.P. [L. S.]

Return on said summons is as follows, to wit:

M. SOCKS AND WILLIAM MULVANIA,	}	DEMAND \$80 ⁰⁰ / ₁₀₀ .
<i>vs.</i>		J. P. Fee, 1,57.
JAMES SEERY,		
AGENT FOR ROBINSON & DUNHAM.		

24 Served by reading to the within named Defendant, James Seery, this 26th day of Jan., 1861.

My Fees 30 cents.

JAMES F. KEYS, Constable.

Defendants also offered, and gave in evidence the said Justices Transcript on file in said cause, which is as follows, to wit:

19 MELCHER SOCKS, WILLIAM MULVANIA,	}	STATE OF ILLINOIS,
<i>vs.</i>		WOODFORD COUNTY.
JAMES SEERY, AGENT OF ROBINSON & DUNHAM,		In Justice Court before W. W. Sears.

25 January 26, 1861, summons issued to J. F. Keys, Constable, &c., returnable the 2d day of Feb., at 10 o'clock, A.M. Summons returned duly served by Constable Keys, January 26th. February 2d, 10 o'clock, A. M., parties appear and are ready for trial. Defendant asked for venire. Issued and delivered to J. K. Keys, Constable. Venire returned by J. F. Keys, with the following named persons: N. B. Fasstt, H. Melford, P. Bowers, Wm. Arbucker, L. Ney, Wm. Tompkins.

The following named witnesses sworn for the Plaintiff's: B. Reynolds, M. Brooks, B. Maine, E. King, J. Lowry, P. Roberts, F. Faught, V. Socks, J. Blackmore.

The following witnesses for Defendant: J. F. Keys, George Campbell. George Campbell claims his attendance. Jury went out in care of Constable. Jury returned in care of Constable Keys, and find in favor of the Plaintiffs, sixty-five dollars. It is therefore ordered by the Court that the Paintiffs have judgment for sixty-five dollars and costs of suit herein taxed.

February 21st, 1861.

W. W. SEARS, J. P.

The above Defendant with William E. Robinson and W. F. Hereford, as his security filed his bond, for an appeal to the Cicuit Court which was approved by me and appeal granted.

STATE OF ILLINOIS,	}	I hereby certfy that the above is a true copy of the proceedings in the above named cause as entered on my docket.
WOODFORD COUNTY,		
		W. W. SEARS, J. P.

Filed March 13th, 1861.

JAMES D. PERRY, Clerk.

27-29 Defendant then introduced John M. Goudy who being duly sworn, said: I have been about seven years engaged in the manufacture of corn-shellers of the same character as that in question in this suit. Have been Foreman in the manufactory of Robinson & Dunham at Peoria Ill., I helped to make the sheller sold by Seery to the Plaintiffs. I assisted in shipping it to the Plaintiffs at El Paso. It was marked to their address and shipped by Railroad. I know the character and
 28 quality of the machine. It was the improved Denton sheller. It was thoroughly made and a perfect machine in every particular. And would perform good work when properly set up and properly run. This machine would shell from 1200 to 1500 bushels per day when properly used. All shellers of this kind are advertised in printed bills by the manufacturers to shell that amount, and will do that or more. The machine would have to be properly set up and adjusted in order to work well, and if it was not, it would not work well. Perhaps not at all, depending upon what error was made in setting it running. It is run by a four horse power, which is sufficient for it. It requires some skill to first set the machine running. It is a cylinder machine, and the concave and convex surfaces must be properly and equally set with reference to each other. If set too tight it will not feed well, but breaks the cobs which prevents its cleaning well. If set too loose the corn comes through only partly shelled. If unevenly set, it will then both crush the cobs and part will come through unshelled. Seery was the agent of Robinson & Dunham. Sold their machines for them at El Paso. It is a universal custom in selling Shellers, Threshers, Mowers and other complicated agricultural machinery to have the machine put in order and set running by a man from the shop sent by the manufacturer, in case the purchaser is not able to make it run without. Mr. Fowler, a workman from Robinson & Dunham's shop was sent by them to El Paso to put the machine in order. He is an entirely capable mechanic for that purpose. He went about four days after the machine was sent.

29 Defendant then introduced Cobumbus Dunham, who being duly sworn, Plaintiff objected to his testimony on the ground that he was interested, and having been examined on *voir dire*, the Court ruled that said witness was incompetent. Defendant then executed, sealed and delivered the said witness a release, whereupon said Court ruled that said Dunham was a competent witness, and he then testified as follows, to wit: "I am a member of the firm of Robinson and Dunham, manufacturers of agricultural machinery at Peoria, Ill. We manufactured the machines in question. It was a perfect machine, well made, of good material and not liable to get out of repair with careful usage, the machine is capable of shelling more than
 30 1500 bushels per day, the machine is advertised to do that and notices to that effect were in the hands of Mr. Seery. He was authorized to recommend the machine to do that and to run well with a four horse power. The machine sent Plaintiffs will do that any time with proper usage. We received from Mr. Seery this order (being the one referred to by other witnesses and given in evidence) and we shipped the same machine to Plaintiffs at El Paso. About four days after the machine was sent we sent, at the request of Seery, Mr. Fowler, a first rate workman, to El Paso, to set the machine properly running. We never sell ourselves, and never authorized Seery to sell any shellers without reserving the right of setting the machine and putting it properly running, before it should be condemned and returned. Seery, the defendant, was our agent in the sale of the said machine and had no other interest in the transaction. He remitted the cash received for the machine and the notes to us at Peoria, as soon as the sheller arrived at El Paso. We received them a day or two before Fowler was sent to El Paso. Seery was authorized to agree to take back the sheller and return the notes and money if it did not work according to representations after being put running by our machinist,

the machine then having a fair trial, and we were ready to return them upon such trial if the machine did not work well. Only twenty-five dollars in cash was paid by the Plaintiffs on account of said sheller and their note given for the balance.

This was all the evidence given on either side at the trial of said case.

The seventh instruction given on part of appellees was as follows :

34 7th. If the jury believe from the evidence that the Defendant sold the machine to Plaintiffs, and warranted the same to perform in a certain manner, and that it did not answer the warranty or misrepresented the quality of the machine, and he received a portion of the purchase money, or the contract was rescinded by the parties on account of the failure of the machine to perform as warranted, and that Seery refused to return the money received, then the jury should find for the Plaintiffs the amount of money paid, interest and damages, if damage have been proved as mentioned in the foregoing first instruction.

The twelfth instruction given for appellees is as follows :

37 12th. If the jury believe from the evidence that the sale of the machine was by the parties rescinded, after it was determined the thrasher would not perform as recommended, if it was so determined, and that the Defendant Seery had the money of the Plaintiffs which he had received upon the contract of sale, then the Plaintiffs would be entitled to recover of him such money, if they believed he refused to refund the same on demand, and in such case they should allow interest at 6 per cent. thereon from the time of rescinding the contract.

47 Defendant then moved the court to set aside the verdict and for a new trial, for the following reasons :

1. That improper evidence was admitted by the Court on part Plaintiffs.
2. The Court refused proper evidence on part of Defendant.
3. Verdict is contrary to law.
4. Verdict is contrary to evidence.
5. Court gave improper instructions on part of Plaintiffs.
6. Court refused proper instructions on part of Defendant.

48 The Court overruled the said motion and entered judgement. To which Defen-
49 dant then and there excepted, and it was then and there agreed that this bill of exception should be signed and sealed within sixty days from the 24th day of December, 1861, and Defendant then and there prays and appeals to the Supreme Court, which is allowed upon Defendant entering into bond in the sum of three hundred dollars with security to be approved by the clerk of this court, and the Plaintiffs and Defendant both agreed that the said security should be approved by the said clerk, and Defendant prays that this bill of exceptions may be signed, which is done.

S. L. RICHMOND, Judge.

50 On the 20th day of January, A. D. 1862, an Appeal Bond was filed in due form and approved by the said Clerk.

H. B. HOPKINS,
Attorney for Appellees.

James Teery
vs
Melcher Socks
et al
Abstracts

Filed May 1, 1842
J. Leland
Clerk

James Seery
Appellant

vs
Melcher Docks
et al
Appellees

Supreme Court of
Illinois Third Division

I hereby enter the
appearance of the
Appellees in the
above entitled cause
and waive issuing &

service of process

A. Q. Stevenson - Atty for
Appellees

William C. Robinson et al
Plaintiffs in error

vs
John Magarchy

Defendant in error

Supreme Court of Illinois
Third Division

I hereby enter the
appearance of defendants in
this cause and waive the
issuing & service of process

A. Q. Stevenson
Atty for Appellees

125
James Seery
1840 vs
Welcher Locks and

William E. Robinson
1841 vs
John Maguire,

Appearance of Defts
Entered in above named
Cases

Filed April 7th 1862
L. Leland
Clerk

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

To the Sheriff of Woodford County, GREETING:

Because, In the record and proceedings, and also in the rendition of
the judgments of a plea which was in the Circuit
Court of Woodford County, before the Judge thereof, between
Melcher Socks and William Mulvaney

plaintiff, and James Seery
Dunkard

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

as we are informed by his
complainant the record and proceedings of
which said judgments 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 Melcher Socks and
William Mulvaney

that they be and appear before the Justices of our said
Supreme Court, at the next term of said Court, to be holden at Ottawa,
in said State, on the first Tuesday after the third Monday in April
next, to hear the record and proceedings aforesaid, and the errors assigned, if
they 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 Melcher Socks and William
Mulvaney

notice, together with this writ.

Witness, The Hon. John D. Caton, Chief Justice of our
said Court, and the Seal thereof, at Ottawa, this seventh
day of April in the year of our Lord One
Thousand Eight Hundred and Sixty-two.

L. Leland

Clerk of the Supreme Court.
by J. D. Hill Deputy

James Deary

No. 150 vs.

Melcher for his debt

SCIRE FACIAS.

Filed... *April 19th* A. D. 1862

Richard Clerk.

W. S. ...

I have served this writ by reading the same to the Within named Melcher Locke April 10th A.D. 1862
Sheriffs fees \$3.00
R. C. Sedwell Sheriff

I cannot find William Mulvaney in my County
April 15th 1862
R. C. Sedwell Sheriff
W. C.

