

No. 14574

Supreme Court of Illinois

William Hall

vs.

Lewellyn Marks

Mr. Justice Sheldon delivered the opinion of the Court:

The errors assigned on this record are, the sustaining of demurrers to certain pleas.

It is assigned as a special cause of demurrer to the second plea, that it commences in bar of a part of the plaintiff's cause of action, & prays judgment of the whole declaration or cause of action. The plea concludes with a prayer of judgment generally, & not of any particular judgment. The general rule which prevails in pleading is, that a mere prayer of judgment, without pointing out what judgment, or the appropriate judgment, is sufficient; because, the facts being shown, the Court are bound to pronounce the proper judgment. 1 Chit. Pl. 492.

Such is the rule in the case of a plea in bar, but in the case of a plea in abatement, the defendant must pray a particular & proper judgment. The King v. Shakespeare 10 East, 83.

This being the only objection pointed out to this plea, & none other being perceived, we hold the plea to be good.

The sixth plea makes the averment, that the two hundred dollars of bank bills, for which the note in suit was given, were of the value of only one hundred dollars, & then alleges that the plaintiff

well knowing such statement & allegation by him made as to the value of the bank bills to be false, & that the defendant relying upon the statements of the plaintiff as to the value of the bank bills, received the same as & for two hundred dollars & gave his note therefor; whereas the plea does not set up any statement or representation on the part of the plaintiff, in regard to the value of the bank bills, but the pleader makes his own assumption as to their value, & subsequently refers to it, as a representation of the plaintiff.

The only representation the plea charges the plaintiff to have made is, that the bills were good & current & would pass for the full face thereof; & it does not show the falsity of the representation, by avowing that the bills were not good & current & would not pass for their full face; but only avows in that respect, that the bank bills were of small value, to wit, of one hundred dollars & no more, & that the defendant was defrauded by reason of the bills being only of that value, & not by reason of their being uncurrent. They might have been current, although their actual value in coin, or upon winding up the affairs of the bank might have been found to be much less than their face value.

The plea is defective too, in professing to

Set up a failure of consideration to the extent of one hundred fifty dollars, & only showing one to the extent of one hundred dollars.

The demurrer to this plea was properly sustained.

The seventh plea is of doubtful validity, in that it does not directly negative the terms of the alleged warranty, by averring that the bank bills were not current & would not pass for their full face; but only avers, that the bills were depreciated & of small value, to wit, of one hundred dollars & no more. But as the case is to be remanded, for sustaining the demurrer to the second plea we will grant leave to the defendant to amend the seventh plea, without pronouncing definitely upon its sufficiency.

For not in sustaining the demurrer to the second plea, the judgment will be reversed, & the cause remanded.

Judgment reversed.

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William Hall

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Opinion

Sheldon J.

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