

12483

No. _____

Supreme Court of Illinois

Caswell

vs.

Cooper

71641  7

James A. Caswell Appellant }
vs } Appeal from Iowa
Robert Cooper Appellee }

Now comes the said Plaintiff and says that in the record and proceedings are in the rendition of Judgment in this cause manifest error has intervened to the Plaintiff's injury of Plaintiff. And for assignment of error upon the record he shows to the Court the following,

1. The Court erred in refusing to arrest the Judgment
2. The Court erred in refusing to grant a new trial
3. The Court erred in rendering Judgment against the Plaintiff upon the verdict
4. The Court erredⁱⁿ overruling the motion for a new trial
5. Because the Court erred in giving the instructions asked by the Defendant (Plaintiff below)
6. Because the Court erred in refusing to give the instructions asked by the Plaintiff (Defendant below)

7. The Court erred in modifying the instructions as asked by the Plaintiff
8. The verdict is against the weight of evidence
9. The verdict is against the law given by the Court.
10. The verdict is informal and insufficient
11. The Jury allowed interest on the account as shown by their verdict for which and other errors appearing in the record of proceedings in this cause the Appellant prays the Court to set aside and reverse the judgment in this cause that the same may be wholly for naught esteemed

Howe McCoy
for Plaintiff (Appellant)

And now comes the said Robert Cooper & says that there is not any error in the record, proceedings & judgment herein in manner & form as is above stated. And this he is ready to verify by the said record - Whereupon he prays &c.

Robert Cooper
by J. H. Cooper
his atty.

Be it remembered, that heretofore to wit on the twenty second day of April in the year of our Lord one thousand eight hundred and fifty four, there was filed in the office of the clerk of the circuit court in and for the County of Peoria in the State of Illinois a Transcript of proceedings before a Justice of the Peace of said County, together with an account - summons - Bill of particulars - and appeal bond accompanying the same, in the words and figures following, to wit.

J. P. Transcript =

Robert Cooper } April 6th 1854. This action is commenced on an account for \$61.50 by Special
vs }
James A. Caswell } Summons to Kidwell returnable 21st inst.
at 10 o'clock P.M.

Summons returned served by Kidwell const. Subpoena issued to & returned served by Kidwell const. Venira issued defendant to Kidwell const. Defendant paid jury fees \$1.50 Parties appeared J. H. Cooper for plaintiff & Grove for defendant. Subpoena issued to & returned, served by Kidwell const. Venira returned served by Kidwell with D. Scoley, S. Keyon, J. Johnson, W. Chambers, H. N. Flagler & M. M. Hikin, who were sworn as Jurors. proceeded to trial. upon hearing the testimony and the arguments of the attorneys the case was submitted to the Jury who returned a verdict of no cause of action and judgment is entered against Plaintiff for costs \$4.99.

By D. Blakeley J. P.

Plaintiff took an appeal & filed his bond with J. H. Cooper security

State of Illinois } J. D. Blakeley a justice of the peace in &
Peoria County } for said County do hereby certify that the
above is a transcript of a judgment & proceeding had thereon
as appears of record on my docket & the papers herewith trans-
mitted are all that come to my hand in said suit. Given
under my hand & seal at Peoria this 21st day of April 1854

D. Blakeley J. P. E. P.

account = James A. Caswell

To Robert Cooper Dr.
 1851 Oct. 30 To Bill of Glass furnished \$ 61.05
 " " " To 3rd castile soap 45
 To into from date =

J. P. Summons

State of Illinois }
 Peoria County } The People of the State of Illinois
 To any Constable of said County Greeting:
 You are hereby commanded to Summon James A. Caswell
 to appear before me at my office in Peoria on the 21st day of
 April inst. at 1 o'clock P. M. to answer the complaint of
 Robert Cooper for a failure to pay him a certain demand not
 exceeding \$100; and hereof make due return as the law directs.
 The said defendant is also hereby notified that the said plaintiff
 says he has no witness by whom to prove his demand except it be
 by his own oath or the oath of the said defendant, and unless
 the said defendant appear at the trial of said Complaint, the
 plaintiff will be permitted to prove his demand by his own oath,
 as by law is directed in such cases. Given under my hand and
 seal this 6 day of April 1854. D. Blakeley J.P.
 Justice of the Peace

[Endorsed]

return: Served the within summons by reading the same to James
 A. Caswell this 4th day of April 1854.
 A. R. Kidwell Const.

Bill of
 particulars

James A. Caswell
 Bot of Robt Cooper
 Oct. 30, 1851 200 ft. 8x10 Glass \$ 2.00 — 6.00
 150 " 9x12 " 3.50 5.25
 200 " 10x12 " 3.50 7.00
 150 " 10x14 " 3.75 5.62½

3.

150	"	10 x 15	"	4.00	6.00
100	"	10 x 16	"	4.00	4.00
100	"	11 x 16	"	8.50	33.87 1/2
100	"	12 x 16	"	8.50	
100	"	12 x 18	"	9.00	
50	"	12 x 20	" 12.00	5.00	
50	"	14 x 20	" 11.00	5.50	
50	"	16 x 22	" 12.00	6.00	42.50

Deduct $4\frac{1}{2}\%$ per ct. 19.12

23.38

\$ 57.25

Add transportation $3\frac{1}{2}\%$ per ct. 2.86

Add also $\frac{1}{4}$ of a broken box 10 x 14. 37 1/2 .94

\$ 61.05

Acknowledged.

James A. Caswell

Appeal Bond
from J. P. Judge

Know all men by these presents that we Robert Cooper & Son & Son & Son are held and firmly bound unto James A. Caswell in the penal sum of one hundred dollars, lawful money of the United States, for the payment of which well and truly to be made, we bind ourselves, our heirs and administrators, jointly and severally, firmly by these presents. Witness our hands and seals this 21st day of April A.D. 1854. The condition of the obligation is such, that whereas the said James A. Caswell did on the 21st day of April 1854 before D. Blakeley, Justice of the peace for the County of Peoria recover a judgment against the above bounden Robert Cooper for the sum of four & $2\frac{1}{2}\%$ dollars, from which judgment the said Cooper has taken an appeal to the Circuit Court of the County of Peoria aforesaid and State of Illinois. Now if the said R. Cooper shall prosecute his appeal 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. Robert Cooper &

Jonathan H. Cooper &

Approved before me at my office this 21st day of April 1854

D. Blakeley J. P.

Whereupon said clerk issued a summons under the seal of said court as follows.

Summons
in civ. ct.

The People of the State of Illinois

To the Sheriff of Peoria County Greeting:

We command you to summon James A. Caswell if he may be found in your County to appear before our Circuit Court on the first day of the next term thereof, to be held at Peoria, within and for the said County of Peoria on the second Monday of May next, then and there, in our said Court to answer unto Robert Cooper, in a certain cause lately pending before Dennis Blakeley a Justice of the Peace of said County, from whose judgment the said Robert Cooper has taken an appeal to the said Circuit Court, and make return of this writ, with an endorsement of the time and manner of serving the same, on or before the first day of the term of the said Court, to be held as aforesaid. Witness, Jacob Gale, clerk of our said Court, and (Seal) the seal thereof, at Peoria, this twenty second day of April in the year of our Lord, one thousand eight hundred and fifty four.

Jacob Gale, Clerk

Which summons was returned endorsed by said sheriff as follows, to wit:
Served by reading, to the within named James A. Caswell
April 22nd 1854.

L. B. Cornwell

Sheriff. P. C. Ills.

Proceedings at a term of the Circuit Court begun and held at the Court-House in the City of Peoria in and for the County of Peoria on the second Monday of May A.D. 1855. it being the fourteenth

5.

day of said month Present the Honorable Orsbon Peters, Judge
of the sixteenth Judicial Circuit in said State, to wit:
Monday, May 21st A.D. 1855-
Robert Cooper

vs
James A. Caswell
appeal from J. P.

trial -

This day came the plaintiff by Jonathan R. Cooper his attorney & the defendant by Grove & Mc Coy his attorneys, and it is ordered by the court, that a jury be empanelled to try this cause. Whereupon came a jury of twelve good and lawful men, to wit, John L. Dickinson, Benoni P. Pratt, Thompson Garbise, Amos Reed, Isaac Moore, Cyrus A. Gillett, Reuben B. Beebe, Jacob Fickling, Andrew Lindsay, Lyrid Wood, A. M. Bradley, and Alphens Richardson, who being duly chosen, tried and sworn well and truly to try the issues in this cause & a true verdict give according to evidence, retired to consider of their verdict, it having been agreed by the parties that the jury may separate after they have agreed upon a verdict & meet the court again to-morrow morning, and that the verdict may be put in form by the court.

Tuesday, May 22nd A.D. 1855-

verdict -

This day came the jury empanelled in this cause on yesterday & on their oaths do say, we of the jury do find the issues for the plaintiff & do assess his damages at the sum of sixty one dollars and fifty cents; whereupon the defendant entered a motion for a new trial and in arrest of judgment.

Saturday, May 26th A.D. 1855-

This day came on to be heard the motion for a new trial and in arrest of judgment in this cause, on consideration whereof, the court being fully advised in the premises overruled the motion for a new trial, and also overruled the motion in arrest of judgment.

Judgment -

Therefore it is considered that the said Robert Cooper have and recover of the said James A. Caswell the sum of Sixty one dollars & fifty cents his damages aforesaid by the jury aforesaid assessed & also his costs & charges by him about his suit in this behalf expended & that he have execution therefor. The defendant prays an appeal to the Supreme Court from this judgment, which is allowed upon his filing in forty days in the office of the clerk of this court an appeal bond in the penal sum of 100 dollars with security to be approved of by the clerk of this court, payable to the plaintiff & conditions according to law. Ordered that the Bill of exceptions in this cause may be settled & filed in vacation.

Appeal bond -

On the 14th day of June A.D. 1855, the defendant filed an appeal bond as follows, to wit:
Know all men by these presents, that we James A. Caswell as principal and Edgar J. Humphreys as security are held and firmly bound unto Robert Cooper in the penal sum of one hundred and fifty dollars for the payment of which well and truly to be made we hereby bind ourselves our heirs executors administrators and assigns, jointly severally and firmly by these presents. Witness our hands and seals this 8th day of June A.D. 1855.

Whereas in a certain action pending and determined in the Circuit Court (on an appeal from a justice of the Peace) in and for the County of Peoria and State of Illinois, wherein the said Robert Cooper was plaintiff and the said Caswell defendant, the said Cooper recovered judgment at the May term of said Court A.D. 1855 against the said Caswell for the sum of sixty one dollars & fifty cents and the costs of said suit, from which said judgment the said Caswell then and there in said Court prayed and obtained an appeal to the Supreme Court of the State of Illinois upon condition that said Caswell should enter into an appeal bond before the clerk of said Court in the penalty of one hundred and fifty dollars with security, to be approved, by the clerk of said Court, court within forty days after the granting of said appeal. Now therefore the condition of the above obligation is such that if the said Caswell shall pay and satisfy all judgments costs interest and damages to said Cooper in case the said judgment shall be affirmed, and shall also pay, whatever judgment shall be rendered against him in the Supreme Court of Illinois on the trial of said appeal and shall duly prosecute his said appeal, then the above obligation shall be void, otherwise to be and remain in full force and virtue. James A. Caswell *Seal*
by his attorney in fact Alex. McCloy
Edgar J. Humphreys *Seal*
Entered into before me and approved as to the above

named security - this 14th day of June A. D. 1855

Jacob Gale clerk

7.

And afterwards on the sixteenth day of June A.D. 1855 the defendant filed his Bill of Exceptions in said cause, which is in the words and figures following, to wit:

Bill of exceptions =

Robert Cooper

vs

James A Caswell

} Appeal from Justice of the Peace.

Be it remembered, that this cause being cancelled it was suggested by the counsel for the plff. that the papers in the case had been lost from the files, or had become mislaid & could not be found; that among the papers was the original bill of particulars filed before the justice of the Peace & this being admitted by the defts. counsel by the agreement of the parties leave was granted by the Court to the plaintiff to file a new bill of particulars in the place of the one that was lost; and the plaintiff thereupon filed a new bill of particulars in the words & figures following to wit:

James A. Caswell

Part of Robert Cooper

1851 Oct. 30th Bill of Glass \$ 61.05 1/2

Castile Soap 3lb at 15 ds .45

\$ 61.50 1/2

Acknowledged

James A. Cooper

The case thereupon coming on for trial the Plff. to maintain the issue on his part, called John Johnston as a witness who testified that he was present at the trial of this case before the magistrate, that the plaintiff then produced an account or bill of particulars, which was principally for glass, there were some other small items, not much, purporting to have been paid brought by defendant & plaintiff, and amounting to not less than fifty &

not exceeding one hundred dollars; witness thought the amount was between \$60 & \$80 - An enquiry was then made of the witness, as to the writing under the account, purporting to be signed by the defendant - to this enquiry & the evidence sought to be elicited thereby the defendant objected.

Thereupon the plaintiff then called Jacob Gale, clerk of this court, as a witness, who testified to the court, that the papers in this cause were among the files of the last March term of this court, that he has made search for them in his office & among the papers of his office & they are not there to be found - that he has made diligent search for them in every place where they would be likely to be found & cannot find them & thinks they are not in or about his office; he stated also that he did not know whether the account was amongst the papers or not. Plff then called Henry Grove, who testified to the court that he was counsel for the defendant below and in this court that he did not know where said papers were - that he had not had them since the last March term of this court to his knowledge; that he had searched his office for them & could not find them & believed they were not in or about his office. He stated also that his office had been searched by Mr. Gale, the clerk, for said papers, but without success. - Plff then called Jonathan R. Cooper who stated he was counsel for plff. on the trial below & in this court, that the said papers were amongst the files at the last March term of this court & that the said original account was amongst them, that he had then particularly examined the papers & said account, that he had no recollection of having taken said papers or the account from the files of this court, & felt quite confident he had not, that he had carefully searched his office & wherever said papers would be likely to be & could not find them & did not know what had become of said papers or of said account. And thereupon the court overruled the objection of the defendant.

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& permitted the enquiry to be made & admitted the evidence & the debt excepted to the decision. The witness Johnston, then further testified as follows to wit.

X

No question was made at the trial before the Justice as to the signature of the defendant to the acknowledgement at the bottom of the bill that he had received the articles. This witness further testified. I was one of the Jurors on the trial before the justice; the plaintiff was sworn on the trial as a witness. Plff. then testified that when they (the Plff & Deft) were dividing the property of the partnership, the Deft said he would like to get that lot of glass, that he plff said he might have it & if there was any thing going to him, this might go to him, if not, then Deft. should pay plff. for it. that the account was made & signed then, - that the plff also stated when so testifying that there was nothing going to the deft. but that deft. was owing plff largely. Do not know as he stated how deft. happened to owe him, whether it was on the settlement or adjustment, or how he expressed it. I am not certain of this. I got the impression that the plff. furnished the capital - the getting of the glass was at the time of the dissolution of the partnership. That the plff in giving his testimony as aforesaid stated, that he and the deft had been in partnership and the goods were partnership property - that he the witness as one of the jurors before the Justice asked the plff. when testifying if deft was indebted to him & he answered yes largely - Witness stated that at the bottom of the account or bill used on that trial was written "acknowledged" or "received, James Laswell" - was not certain what the words were, but words shewing that Laswell had received the goods in the bill.

This, with the bill of particulars filed in substitution of the one lost as before stated was all the evidence in the case.

- 1 At the request of the plff. the Court gave the following instructions to the jury to wit: The Court is asked to instruct the jury that it is immaterial whether the property was partnership property or not, if the jury believe from the evidence that the bill of glass was got by Caswell from Cooper upon the condition, that Caswell should pay for it in case it turned out that Cooper did not owe Caswell, and if they also believe from the evidence that Cooper did not owe Caswell, but on the contrary that Caswell owed Cooper, they should find for Cooper the amount of his bill - so far as proved.
 - 2 That as this case stands, if Cooper owed Caswell it was incumbent on Caswell to prove it.
 - 3 That the evidence of Cooper that Caswell owed him, Cooper upon settlement, having been elicited by the defendant himself on cross-examination, is proper evidence to be considered against the defendant, without other evidence that Caswell did owe Cooper on settlement.
 - 4 That whether the goods were partnership property or not, if they were received by Caswell upon an agreement to pay for them in case Cooper did not owe Caswell, the jury must find for the plaintiff, unless they believe from the evidence, that Cooper did owe Caswell, to the amount of the Bill of glass proved.
 - 5 If the jury believe from the evidence that such an arrangement or agreement as referred to in the foregoing instruction was made, and that Caswell was so indebted to the plaintiff, the plaintiff is entitled to recover.
2. the giving of which instructions the def^t excepted

The defendant asked the Court to give certain instructions to the jury, some of which the jury Court refused to give as asked, but gave them as modified, what was added thereto by the Court being included in brackets. The instructions as thus modified are as follows to wit:

1. One partner cannot sue another at law on a matter growing out of a partnership transaction unless there has been a settlement of the partnership transaction, a balance struck and an agreement to pay.
2. If the jury believe from the evidence that the bill of glass received by the defendant was partnership property, then the plaintiff cannot recover, unless the plaintiff ^{has} shown that there was a settlement of the whole partnership business that there has been a balance struck and so much found to be due to the plaintiff from the defendant, and an agreement to pay such balance (or that there was an agreement to pay upon a contingency which has happened).
3. The plaintiff must show, before he can recover that the partnership matters had been settled & if the jury believe from the evidence that the partnership matters and dealings are yet unsettled & if they further believe that the account in controversy grew out of a partnership matter the jury should find for the defendant (unless the jury should also find that the defendant agreed to pay for the property on a contingency which has happened).

If the jury believe from the evidence that the plaintiff & defendant had been in partnership before the defendant took possession of the goods in controversy & if they further believe that the said goods were partnership goods at the time defendant took them, and that there had not been a final settlement of the partnership concern and that the glass was handed over as a part of said partnership property to defendant & not as a balance due from the defendant to the

Plaintiff (and without any agreement to pay for them) they should find for the defendant.

- 5- If the jury believe from the evidence that the goods in controversy were partnership goods at the time they were received by the defendant, and if they further believe from the evidence that the partnership of Cooper & Caswell is still unsettled and the firm is largely indebted, the plaintiff cannot maintain his action and they should find for the defendant, (unless the jury should further find that the defendant promised to pay for the glass on a contingency that has happened.) To the modifying of said instructions & adding thereto the defendant objected & excepted thereto. By agreement of the parties the jury were permitted to separate after they should agree upon a verdict, and upon the further agreement, that the verdict should be afterwards reduced to form if it were informal. The jury returned a verdict as follows, to wit:

"Robert Cooper against Jas A. Caswell & we as Jurymen in the above entitled cause bring in our verdict in favor of plaintiff for the amt. Bill as rendered, amounting to Sixty one ⁵⁰/₁₀₀ dollars with Interest. Provia, May 21st 1855. B. P. Pratt, foreman."

The Court directed the verdict to be entered as follows to wit: We of the jury do find the issues for the plaintiff and do assess his damages at the sum of sixty one dollars and fifty cents.

The defendant then entered a motion in arrest of judgment & for a new trial for the following reasons.

1. The verdict is against the law given by the Court
2. The verdict is against the weight of evidence.
3. The Court gave improper instructions on the part of the plaintiff
4. The Court refused proper instructions asked by the defendant.
5. The Court altered & modified instructions asked by defendant.

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6. The verdict is informal and insufficient & other reasons
The Court overruled the motion & rendered judgment upon
the verdict as amended & the deft. excepted to the decision &
prayed that this his bill of exceptions may be allowed signed
& sealed by the judge & made part of the record in this cause
which by the agreement of the parties is done in vacation after
the close of the term. Ouslow Peters 

State of Illinois
Peoria County I, Jacob Gale clerk of the Circuit
Court in and for the County of Peoria in the State of
Illinois do hereby certify that the foregoing is a correct
transcript from the Records of the proceedings in said Court
in a certain cause therein of Robert Cooper against
James A. Caswell on appeal from a Justice of the
Peace as the same remain of record and on file
in my office. In witness whereof I hereto set my
hand and affix the seal of said
Court at my office in Peoria this
twenty third day of June in the
year of our Lord one thousand eight
hundred and fifty five.
Jacob Gale, Clerk.

Clerk's fees: for transcript, certificate & seal - \$5.00
Remains payment of defendants attorneys -
Jacob Gale, Clerk.

15 105-32
James H. Caswell
vs
Robert Cooper

Receivd

Filed June 26, 1855.
Leland Ch.

James A Caswell Appellant }
 vs } Abstract of record
 Robert Cooper Appellee }

1854 Apr 6th Cooper sued Caswell before a Justice of
 the Peace on an account for \$15.00

" " 21 Trial by Jury verdict no Cause of action
 & Cooper appealed to the Circuit Court of
 Peoria

1855 May Term The ^{Cause} ~~Trial~~ Came on for trial in the
 Circuit Court before proceeding with the case
 it was suggested that the files were lost or mis-
 laid and by consent Cooper was allowed
 to file a new bill of exceptions particulars
 which was done in the words & figures
 following

James A Caswell
 Part of Robert Cooper

1851 Oct. 30th Bill of glass 61.05 1/2

Castile Soap 3^{lb} at 15 cts 45

Acknowledged James A Cooper 61.50 1/2

On trial before the Jury

The Plaintiff Called
 John Johnson as a witness who testified that
 he was present on the trial before the Magistrate
 that the plaintiff there produced an account

or bill of particulars which was principally for glass there were some other small items not much purporting to have been bought by defendant of plaintiff and amounting to not less than fifty and not exceeding 100 \$ thought between 60 & 80 \$. An enquiry was then made as to the writing under the account to which Caswell & his Counsel objected.

The Plaintiff Called Mr Gale Mr Gann and Mr Cooper who proved that the files were lost or mislaid & that search had been made & they could not be found. The Court then overruled the ~~defendant~~ objection admitted the evidence & the defendant excepted to the decision. Johnson then further testified that no question was made at the trial before the Justice as to the signature of the defendant to the acknowledgement, at the bottom of the bill that he had received the articles.

Witness further stated that he was one of ~~jurors~~ on the trial before the Justice. The plaintiff was sworn as a witness & that plaintiff Cooper there testified that when they Cooper & Caswell were dividing the Partnership property of the Partnership Caswell said he would like to get that lot of glass, that Cooper said he might have it and if

There was anything going to him that might
go to him if not then Caswell should ^{pay} pay
for it that the account was made and
signed then

That the plaintiff also stated
when so testifying that there was nothing going
to Caswell but that Caswell owed him Cooper
largely. Do not know as he stated how Cas-
well happened to owe him. Whether it was on
the settlement or adjustment or how where-
pressed it. I am not certain of this. I
get the impression that Cooper furnished
the ~~money~~ Capital. The getting of the glass
was at the time of the dissolution of the
partnership. That the plaintiff in giving his
testimony as aforesaid stated that he and
Caswell had been in partnership. That he the
witness as one of the jurors before the Justice
asked the Plaintiff when testifying if defendant
was indebted to him and he answered yes
largely. Witness stated that at the bottom of the
of the account or bill used in that trial was written
"Acknowledgment" or "received" James Caswell.
Was not certain what the words were but words
showing that Caswell had received the goods in the
Bill

This with the bill of particulars filed in sub-
stitution of the one lost as before stated was all

the evidence in the case.

At the request of the Plaintiff below the Court gave the following instructions to the Jury to wit:

The Court is asked to instruct the Jury that it is immaterial whether the property was partnership property or not if the Jury believe from the evidence that the bill of glass got by Coswell from Cooper upon condition that Coswell should pay for it in case it turned ^{out} that Cooper did not owe Coswell and if they also believe from the evidence that Cooper did not owe Coswell but on the contrary that Coswell owed Cooper they should they should find for Cooper the amount of his bill so far as proved.

That as the case stands if Cooper owed Coswell it was incumbent on Coswell to prove it.

That the evidence of Cooper that Coswell owed him a Cooper upon settlement having been elicited by the defendant himself in cross examination is proper evidence to be considered against the defendant without other evidence that Coswell did owe Cooper on settlement.

That whether the goods were partnership property or not if they were received by Coswell upon an agreement to pay for them in case Cooper did not owe Coswell the Jury must find for the Plaintiff.

Unless they believe from the evidence that Cooper did not owe Coswell to the amount of the bill of glass proved

If the jury believe from the evidence that such an arrangement or agreement as referred to in the foregoing instruction, was made, and that Coswell was so indebted to the plaintiff, the plaintiff is entitled to recover.

To the giving of which instructions the defendant objected and excepted

The defendant asked the Court to give certain instructions to the jury some of which the Court refused to give as asked but gave them as modified what was added thereto by the Court being included in Brackets. The instructions as thus modified are as follows to wit.

1 One partner cannot sue another at law on a matter growing out of a Partnership transaction ~~a balance~~ unless there has been a settlement of the partnership transaction a balance struck and an agreement to pay

2 If the jury believe from the evidence that the bill of the glass received by the defendant

was partnership property then the ^{plaintiff} cannot
recover. Unless the plaintiff has shown that
there was a settlement of the whole partnership
business, that there has been a balance struck
and so much found to be due and an agree-
ment to pay such balance (or that there was
an agreement to pay upon a contingency which
has happened)

3 The plaintiff must show before he can re-
cover that the partnership matters had been
settled & if the jury believe from the evidence that
the partnership matters and dealings are yet
unsettled and if they further believe that the ac-
count in controversy grew out of a partnership
matter the jury should find for the defendant
(Unless the jury should ~~should~~ also find that
the defendant agreed to pay for the property on
a contingency which has happened)

If the jury believe from the evidence that the
plaintiff and defendant had been in part-
nership before the defendant took possession of
the goods in controversy and if they further
believe that the said goods were partnership
goods at the time defendant took them
and there had not been a final settlement
of the Partnership concern and that the glass

was handed over as a part of said partnership property to defendant and not as a balance due from the defendant to the Plaintiff

(And without any agreement to pay for them)

They

should find for defendant.

If the Jury believe from the evidence that the goods in controversy were partnership goods at the time they were received by the defendant and if they further believe from the evidence that the partnership of Cooper and Corwell is still unsettled and the firm is largely indebted the plaintiff cannot maintain his action and they should find for the defendant.

(Unless the Jury should further find that the defendant promised to pay for the glass on a contingency that has happened)

To the modifying of said instructions and adding thereto the defendant objected and excepted thereto

By agreement of parties the Jury were permitted to separate after they should agree upon a verdict & that the verdict should be reduced to form if informal

The Jury returned a verdict as follows

Robert Cooper } We as Jurymen in the above
vs } entitled Cause bring in our verdict
Jas C Coswell } in favor of Plaintiff for the amount
rents as rendered amounting to sixty one $5\frac{1}{2}$ / 100 dollars
with interest
B. P. Pratt foreman
Peoria May 21st 1855

The Defendant then entered a motion
in arrest of Judgment and for a new
trial for the following reasons

- 1 The verdict is against the law given by the Court
- 2 The verdict is against the weight of evidence
- 3 The Court gave improper instructions on the part of the plaintiff
- 4 The Court refused proper instructions asked by defendant
- 5 The Court altered & modified instructions asked by the defendant
- 6 The ~~verdict~~ ^{verdict} is informal and insufficient & other reasons

The Court overruled the motion and the defendant
excepted. The Court directed the Clerk to render the
verdict as follows which was done

We of the Jury do find the issues for the plaintiff
and do assess his damage at the sum of sixty one dol-
lars of fifty cents. To which defendant objected &
excepted. Defendant appealed and assigns
the following errors upon the record

- 1 The Court erred in ^{refusing} ~~refusing~~ to arrest the Judgment
- 2 The Court erred in refusing to grant a new trial
- 3 The Court erred in rendering Judgment upon the verdict
- 4 The Court erred in overruling the motion for a new trial

- 5 Because the Court erred in giving the instructions
asked by the defendant (Plff. below)
- 6 Because the Court erred in refusing to give the in-
structions asked by the Plff. (defendant below)
- 7 The Court erred in modifying the instructions as asked
by Plff.
- 8 Because the verdict is against the weight of evidence
- 9 " The verdict is against the law given by the Court
- 10 " The verdict is informal and insufficient
- 11 " The Jury allowed Interest on the account, other errors
& the appellant prays the Judgment may be reversed &
set aside & wholly for naught esteemed

Thos P McCoy
for the Plff. in Error

~~105~~

32 32

James A. Cozwell
vs

Robert Cooper

Abstract of record

Filed June 29 1855

L. Seand Clk.

[12483-10]

James A Caswell Appellant }
 vs } Abstract of record.
 Robert Cooper Appellee }

1854 April 6. Cooper sued Caswell before a Justice of the Peace on an account for 61.50

" " 21. Trial by Jury result no cause of action & Cooper appealed to the Circuit Court of Peoria County

1855 May Term the cause came on for trial in the Circuit Court before proceeding with the case it was suggested that the file was lost or misplaced and by consent Cooper was allowed to file a new bill of particulars which was done in the words of figures following

James A Caswell

Part of Robert Cooper

1851 Oct 30 th	Bill of glass	61.55 1/2
	Castle Rock 3 " at 15c	<u>45</u>
		61.50 1/2

Acknowledged

James A. Cooper,

on trial before the Jury.

The plaintiff called John John son as a witness who testified that he was present on the trial before the magistrate that the plaintiff then produced an account or bill of particulars which was principally for glass, there were some other small items not much purporting to have been bought by defendant of Plaintiff and amounting

to not less than fifty and not exceeding 100\$ thought
between 60 & 80\$. An enquiry was then made as to
the entry under the account to which Caswell & his common
objection

The Plaintiffs called Mr Gale Mr Horn Mr Allen Mr Cooper
who proved that the files were lost or misplaced & that
search had been made they could not be found.
The Court then overruled the objection admitted the
evidence of the defendant & referred to the decision
Johnson then further testified

That no question was made
at the trial before the Justice as to the signature of the
defendant to the acknowledgment, at the bottom of
the bill that he had received the articles.

Witness further states that he was one of the Jurors on
the trial before the Justice. The plaintiff was sworn
as a witness, & that Plaintiff (Cooper) there testified
that when they Cooper & Caswell were dividing the
Partnership property of the Partnership the ~~Caswell~~ Caswell
said he would like to get that lot of glass that Co-
oper said might have it and if there was anything
going to him this might go to him if not then Cas-
well should pay 100\$ for it that the account was
made & signed then.

That the plaintiff also states
when so testifying that there was nothing going
to Caswell but that Caswell owed him Cooper
largely. Do not know as he states how Caswell
happened to owe him. Whether it was on the settlement
or adjustment or how he appropriated it I am not certain
of this. I got the impression that Cooper furnished the Cash
that the getting of the glass was at the time of the dissolution

of the Partnership. That the Plaintiff in giving his testimony as aforesaid states that he & Caswell have been in Partnership and the goods were partnership property. That he the witness as one of the Jurors before the Justice asked the Plaintiff when testifying if Defendant was indebted to him and he answered yes largely. Witness states that at the bottom of the ~~bill~~ account or bill used on that trial was written "Acknowledged" or "received" James Caswell was not certain what the ~~goods~~ ^{words} were but words shewing that Caswell had received the goods in the bill.

This with the bill of particulars filed in substitution of the one lost as before stated was all the evidence in the case.

At the request of Plaintiff before the Court gave the following instructions to the Jury to wit.

The Court is asked to instruct the Jury that it is immaterial whether the property was partnership property or not if the Jury believe from the evidence that the bill of lading was got by Caswell from Cooper upon the Condition that Caswell should pay for it in case it turned out that Cooper did not owe Caswell and if they also believe from the evidence that Cooper did not owe Caswell but on the contrary that Caswell owed Cooper they should find for the Cooper the amount of his bill so far as proven.

That as this case stands if Cooper owed Caswell it was incumbent on Caswell to prove it.

That the evidence of Cooper that Caswell owed him Cooper upon settlement having been elicited by the Defendant's hiring on cross examination is proper evidence to be considered against the Defendant without other evidence that Caswell did owe Cooper on settlement.

That whether the goods were partnership ^{property} or not ~~owned~~ by Caswell if they were received by Caswell upon an agreement to pay for them in case Cooper did not owe Caswell the jury must find for the Plaintiff unless they believe from the evidence that Cooper did not owe Caswell to the amount of the bill of goods proved;

If the jury believe from the evidence that such an arrangement or agreement as referred to in the foregoing instruction was made and that Caswell was so indebted to the Plaintiff the Plaintiff is entitled to recover

To the giving of which instructions the Defendant objects & exceptions

The Defendant asked the Court to give certain instructions to the jury some of which the Court refused to give as asked but gave them as modified what was added thereto by the Court being included in brackets. The instructions as thus modified are as follows to wit

1. One Partner cannot sue another at law on a matter growing out of a Partnership transaction unless there has been a Settlement of the partnership transaction, a balance struck and an agreement to pay.
2. If the Jury believe from the evidence that the bill of lading received by the Defendant was partnership property then the plaintiff cannot recover unless the plaintiff has shown that there was a settlement of the whole partnership business, that there has been a balance struck and so much found to be due and an agreement to pay such balance (or that there was an agreement to pay upon a contingency which has happened)
3. The Plaintiff must show before he can recover that the partnership matters had been settled & if the Jury believe from the evidence that the partnership matters and dealings are yet unsettled and if they further believe that the account in controversy grew out of a partnership matter the Jury should find for the Defendant (Unless the Jury should also find that the Defendant agreed to pay for the property on a contingency which has happened)

If the Jury believe from the evidence that the plaintiff and defendant had been in Partnership before the defendant took possession of the goods in controversy and if they further believe that the said goods were partnership goods at the time defendant took them

and then had not been a final settlement of the Partnership concern and that the glass was handed over as a part of said partnership property to defendant and not as a balance due from the defendant to the Plaintiff

(And without any agreement to pay for them) They should find for the defendant

If the jury believe from the evidence that the goods in controversy were partnership goods at the time they were received by the defendant and if they further believe from the evidence that the Partnership of Cooper & Caswell is still unsettled and the firm is largely indebted the plaintiff cannot maintain his action and they should find for the defendant

(Unless the jury should further find that the defendant promised to pay for the glass on a contingency that had happened)

If the modifying of said instructions and adding thereto the defendant's objections excepted thereto

By agreement of parties the jury were permitted to separate after they should agree upon a verdict & that the verdict should be returned to form of in formal.

The jury returned a verdict as follows.

Robert Cooper { We as Jurymen in the above entitled
vs cause being in our verdict in favor of
Jas A Caswell Plaintiff for the amt bts as rendered a-
mounting to \$475 and 50/100 dollars with

interest

Born May 21 1833

B P Pratt Jurymen

The defendant then enters a motion in arrest of Judgment & for a new trial for the following reasons

1. The verdict is against the law given by the Court
2. The verdict is against the weight of evidence
3. The Court gave improper instructions on the part of the Plaintiff
4. The Court refused proper instructions asked by the defendant
5. The Court altered improper instructions asked by the defendant
6. The verdict is informal and insufficient for the reasons

The Court overruled the motion and the defendant excepted. The Court directed the Clerk to read the verdict as follows, which was done

We of the Jury do find the claim for the Plaintiff Arch A. Spess his damages at the sum of fifty one dollars fifty five cents. To which the defendant objected and excepted. Defendant apprehended Arch assigns here the following errors upon the record

1. The Court erred in refusing to arrest the Judgment
2. The Court erred in refusing to grant a new trial
3. The Court erred in rendering Judgment upon the verdict
4. The Court erred in overruling the motion for a new trial
5. Because the Court erred in giving the instructions asked by the defendant (off below)
6. Because the Court erred in refusing to give the instructions asked by the Plaintiff (defendant below)
7. The Court erred in modifying the instructions as asked by Plaintiff
8. Because the verdict is against the weight of evidence
9. " The verdict is against the law given by the Court
10. " The verdict is informal and insufficient
11. " The Court Jury allowed interest on the acct. other errors

the applicant says the Just may be removed out as far
wholly for night estimation

Thos McCay
for P. J. in error

45-92 32
James A. Cassin
Robert Cassin
District of Columbia
8 points
1857

Filed June 27. 1857.
L. Deland Clerk.

James A. Carnell appellants

Robert Cooper

Appellants brief

1. The record shows that Cooper and Carnell were partners. That Carnell wanted a bill of lading ware belonging to the partnership, that Cooper said he might have the goods if there was anything coming to him that if there was not Carnell should pay him for them. It does not appear that Carnell made any reply, or that the partnership business was settled;

It ~~is~~ is not shown that Carnell received the goods ~~except~~

It is submitted that Cooper had no right to maintain his action at law for the recovery of the bill.

Davenport vs. Hear 2 Scam 498. In cases collected
Smith vs. Ryan 3 " 323 2. Freeman's digest
Knacker vs. Kennedy 3 " 564 Page 1216 & 1217

2. The suit was brought by Cooper against Carnell before a Justice of the Peace and the cause was tried by a jury. Cooper was examined as a witness and testified as above. One of the jurors who the test was ~~pending~~ propounding asked Cooper while on the stand if Carnell owed him & Cooper said "yes largely." Carnell was not responsible for what the juror said & was not bound by Cooper's answer.

On the trial in the Circuit Court Cooper called the Juror (who asked Cooper during the trial upon the Justice of Caswell over him) as a witness and said that he testified that he witness asked Cooper if Caswell over him & Cooper replied "yes largely."

The Court instructed the Jury that if Cooper over Caswell it was incumbent on Caswell to prove it.

That the evidence of Cooper that Caswell over him Cooper upon Settlement having been elicited by the Defendant himself on Cross examination is proper evidence to be considered against the Defendant without other evidence that Caswell did over Cooper on Settlement.

This instruction implies that Caswell elicited the evidence from Cooper on Cross examination, when Caswell asked no questions & the witness himself means that he asked the question.

The instruction goes further and says that it is proper evidence to be considered against Caswell without any further evidence that Caswell did over Cooper on Settlement.

This actually directs the Jury to find for Cooper, and is clearly erroneous.

The suit was brought to recover the amt of a bill of goods that Caswell took out of the partnership property (conceding for the purpose of presenting the point fairly that Caswell received the goods) and conceding that Cooper at the time said that Caswell might have them if there was anything coming to him & if not he should pay Cooper for them. It made no difference whether Caswell owed Cooper or not as to their private accounts as Caswell was not sued for such indebtedness, but was sued for the partnership property.

It is claimed that the instructions asked by Cooper are erroneous & the attention of the Court is particularly called to the fifth instruction. It is submitted that that instruction is erroneous because it

- 1st Is calculated to confuse and mislead the jury.
2. It directs the jury that they must pay for Cooper unless they believe Cooper owes Caswell to the amount of the bill.

The appellant claims in its brief that the Court erred in modifying & adding to his instructions,

22 15

Caswell

Cooper

Appellants
Brief

Filed June 9, 1854

L. Leland
Clk.

James F. Cassell = Appellant } Supreme Court =
vs. } April Term 1857 =
Robert Wagner = Appellee }

Defts. Brief =

1. The Motion in arrest was properly overruled =
The verdict of the jury was substantially good =
Who mightly informed the finding of the jury that the whole
issue and was clear & explicit =

Matter of form may be corrected by the court
and under the agreement in this case, this could
be done after the jury separated = 2 Greenl. R. 37 =
N. S. Dig. for 1848, page 365. Secs. 4. 9. 10. 11. title Verdict =

2. Nor was there ground for setting aside the verdict = It con-
formed strictly to the evidence & the law as given by the
court = With one exception (that not relied on in this
court) the evidence all came in without objection =
was, in fact, mainly called out from the witness John-
ston, by appellant himself on cross examination.
and as it stood, fully justified the verdict =

No interest was allowed on the account.
as the assignment of errors assumes = What is said as
about interest in the verdict is surplusage, and was
as treated by the court = And if improper to allow in-
terest the appellant has sustained no injury in that way

3. There is no error in the instructions given for self helpe
nor in the modifications of those asked by defendant =
Upon the proof, the ~~to~~ instructions asked by deft

were inapplicable: The case, at most, was simply one of a sale by self to self of what had been partnership property, but which, at the time of sale was the separate property of the plaintiff, and it was for the jury to say, upon the evidence, whether the contingency existed in which the defendant was exempt from paying the price.

By the very act & terms of purchase the defendant admitted the property to belong to the plaintiff, and prima facie was bound to pay for it. If a state of case existed exempting him from liability, it belonged to him to show it. And this it was competent for the plaintiff to try & the jury to pass upon in an action for the price: The defendant accepted this issue when he took the goods; and in such cases courts of law will not send a party into chancery or remit him to his action of account for relief.

Where there was a settlement on dissolution of partnership & a note given for the balance due, with a stipulation that errors & omissions in the settlement might be engineered into & set up against the note, in an action at law on the note the Court allowed the partnership accounts to be overhauled for the purpose of setting in any set off of the kind against the note. — see *Trink v. Ryan* 3 Scam. 322.

This was allowed because by the stipulation the parties had waived their right to have the partnership accounts settled in chancery or in the action of account.

So here, the transaction amounts to a stipulation by Caswell that all matters necessary to determine his liability may be settled in a suit for the price of the goods.

So if the amount in controversy is small, & embraces but one transaction, the courts will not send parties into chancery; but one party may sue the other at law. — 5 Wend. 274.

An express promise to pay ~~the~~ a balance due on acct from one partner to another is not requisite to authorize a suit at law for the amount, if the nature of the transaction necessarily implies a promise to pay. *Gov on Partn.*, Appendix 19: *Mee. & Welch*, 5:21.

An action lies by one partner against another on a note for the use of the partnership. - 8 Cranch 30: - So if given for a supply and balance attos' no balance is struck. 4 Metcalf 556: -

Be the law however as it may, it is submitted that the question of the right of one partner to sue another at law is not now before this Court:

No error is assigned on the record which raises it, and the Court will act only on such errors as are assigned:

The question ^{can} only arise upon the evidence, which, if not adduced by defendant himself, was let in without objection; and on that evidence, as it stood, both parties rested the case.

If proper for the consideration of the jury, it was conclusive for the plaintiff below: - And whether on the motion for a new trial or on the assignment of errors here is it avowed that improper evidence was admitted: - Nor does the assignment that the verdict was against the law as given by the Court, raise the question. - For on that evidence the verdict could not have been otherwise under the instructions. - And, upon the proof, the instructions were right: - If Caswell was to pay for the goods upon a contingency which had happened, it and of the existence of which contingency the proof was admitted without objection on the part of defendant, neither the instructions nor verdict were erroneous: -

Again, application to instruct as in case of a non-suit might have been made on the trial; and the

omission to do so, is to be taken as a waiver =
Johns. Rep. 18. 244 =

But tho' some error may have intervened this Court will not reverse the judgment, if from the whole case it can see that no injustice has been done:

"The Supreme Court will uphold the judgment below, if the jury were warranted in inferring a state of facts that would sustain the action":
12 Ill. 240 = 13. 642 =

"If there is any evidence to sustain a verdict it will not be set aside": U. S. Dig. 1848
p. 365 = sec. 4. tit. Verdict =

Now the proof is that the partnership was dissolved. That plaintiff below owned the stock - at least, that the goods sued for had become his - that the debt got them - And that they have not been paid for in any way. It does not appear that there were any partnership debts outstanding; nor any partnership accounts or business remaining unsettled. If this were so and was material, it is submitted that, as the case stood, it devolved on the debt below to show it. If there is any inference to be drawn from the testimony on this head, it is, that the business was closed, and a balance found due from the debt to the plaintiff below = Add to this that the glass was ~~given~~^{sold} to Caswell by Cooper as a mere matter of accommodation - Caswell claiming no right to it, but wishing to own it, and Cooper not only acceding to this wish, but liberally proposing to turn it in account, if he should happen to have anything coming to him. And now, the contingency existing, as shown by the proof, in which he was to pay, shall he be permitted successfully to resist payment? For if the action of account or Chancery must be resorted to for redress, it is clear that

all relief is virtually gone, the amount be-
ing too insignificant to justify either proceeding.
J. K. Cooper
for appellee

Caswell
vs.
Cooper

Defendant's
Brief

Filed April 28, 1887

G. Ireland
Clerk

James A. Carner appellant } Appeals
 by Robert Cooper appellee } from Peoria

This was an action of assumpsit
 brought by one partner against another
 for goods belonging to the partnership
 The appellant relies
 on the following authorities

Laurenport vs. Gear	2 Sam	498
Frank vs. Ryan	3 "	323
Bracken vs. Kennedy	3 "	364

Cases referred to

2 Co. Freeman's Digest 1216 & 1217
 17 Ill 119

82 15
Caswell
Cooper

Appelkunt's brief

[Faint, mirrored handwriting from the reverse side of the page, likely bleed-through. The text is mostly illegible but appears to contain names and possibly dates or numbers.]

James A. Barnes appellant } both
 Robert Cooper appellee } Appeal
 from Bench

This was an ~~action~~ ^{action of assumpsit} brought by one partner
 against another for goods belonging
 to the partnership.

The appellant relies on the follow-
 ing authorities

Doane v. A. in Case 2 Term 498

Hunt & Ryan 3 Scan 323

Bracken & Kennedy 3 " 566

Cases refer to in Second Freeman's as-
 sess 1216 1217

Soft's authorities

N. S. Dec 1848 p 365. Sects 4. 9. 10. 11

5 Wend R 274

Gow on Part 19

19 Mees & Walsb 5. 25. or 521.

8 Branch R 30

4 Metc. R 556

18 John R 244

12 Ills R 240

13 Ills R 642.

Appellant's Brief

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James A. Caswell
vs
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