

13957


No. _____

Supreme Court of Illinois

Thornton

vs.

Wenner

71641  7

3 Rep

The same answer may be made to the objections to this Rep: the time and manner of pay^{ing} being material the allegation, ^{in the plea} that the Court ordered the money to be paid to the Plffs & Defts in ~~ever~~ (except ~~the~~ ~~plaintiff's~~ (Plaintiff's) should be controverted: for if it is shown that the money was not so ordered to be paid, the plea fails. It will not do to allow a departure in the proof ~~from~~ as to the manner of payment alleged in the Plea, else the parties may be taken by surprise that ^{the} avowment in the plea is untrue, and the fact that this is shown by the record, does not militate against the materiality of the traverse. For the purposes of this question, Wren is stopped from alleging that it is an immaterial issue, that he has truly stated what is in the record, and therefore the Defts should be forced to admit it.

5 Rep The argument in their
plea is that since the condition
of the deed ~~the~~ Honty paid to
the Montreal his \$8410, ²⁶/₁₀₀ dolls
& ^{that they} received the money and in consideration
executed a release of all errors &c.
The Rep simply says that they
did not execute a release as
stated in said plea. In other words
they did not in consideration of
the money execute a release or as
alleged - involving a denial
of the payment of the money &
the circumstances attending its
payment as alleged -

If this allegation even not
travoured - then the Dept in error
would ^{be held to have admitted} ~~admit~~ that they executed
a release of errors. If they
did in fact execute a release of
errors & by the record admit
that they did. I apprehend that
admission would bind them, and
the Court would not go beyond
the record to enquire as to the
consideration upon which it was founded
hence the materiality of the traverse

6 Rep

This Rep is good if the first is good (& that is conceded to be good)

The 1st Rep denies the purp of any portion of the \$4585, was derived from the sale of the land to Wynn. In other words denies the payment of its ^{allegation in the} in toto. The plea of the payment of \$8000, upwards by Hontz is another distinct account & is accompanied with the further avowment that \$4585, after this sum of \$8000 upwards was ~~the~~ proceeds of the sale of the land by Hontz to Wynn. The 6th Rep simply avows this avowment,

7. Rep The 4th Rep denies the pay ment by Hontz of \$8410, The 7th Rep denies the accep tance by the Thornton of this sum of \$4585 of this sum with knowledge & in satisfaction &c In other words the acceptance of the money by the Thornton was

alleged to have been realized
from the sale of the land,
to Wrenn is denied - It is
denied that the ^{alleged} proceeds of this
Wrenn land constituted
any portion of the \$8410, and
that the ~~offer~~ ^{parties} mentioned
Payment to Gilbert, as
Trustee, of any money, under
the Deed, by Monty, is the same
as the pay of the like sum by
Monty as admr. to another admr.
upon his removal, who is appointed
to succeed him - The pay by
Monty to Gilbert was merely
a payment to the latter as his
Receiver in trust, and who
thereupon became the legal
custodian of the fund - and
if Thornton ^{has} refused to
receive this ^{over the \$45.00} money from
Gilbert, it simply remains
in enclosed legis - and such
payment, cannot of course
~~stop~~ the heirs from insisting
upon a removal of the Deedee - and
the putres made (in fact) that
such payment amounts to a
satisfaction and release of execs in the
rights of absents - ~~not~~ ^{not} ~~of~~ ^{of} ~~the~~ ^{the} ~~estate~~ ^{estate}

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Monmouth
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Honty
Reply to
objections to
Repus.

FILED

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1877

S. D. Simble
clerk

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