

No. 13471

# Supreme Court of Illinois


Topper

---

vs.

Snow.

---

71641  7

STATE OF ILLINOIS—SUPREME COURT.  
APRIL TERM, 1858.

ANDREW J. TOPPER, *Appellant*, }  
vs. } *Appeal from Knox.*  
SAMUEL P. SNOW, *Appellee*.

ABSTRACT.

Assumpsit on two notes given by Topper to Snow, dated April 3d, 1854, one for \$219.00, due Oct. 1, 1855, and one for \$231.00, due Oct. 1, 1856.

1st. Plea, general issue.

2nd. Plea that notes were given for purchase of land, and sets out contract from Snow to Topper, bearing date April 3, 1854, reciting the said notes; also the sale of land; also, that whereas, Topper purchased the lands for taxes of 1852, in case he should obtain a tax deed on the premises on the 28th June, 1855, or as soon thereafter as could be, the land remaining unredeemed, and he having advertised the same according to law, then Snow was bound to make to Topper a warrantee deed of the land; which plea further averred that the time for the redemption of said land had expired; that the same had been advertised according to law, and Topper had obtained his deed upon said tax sale, but that plaintiff had not, before the commencement of said suit, made and tendered to the defendant any warrantee deed of said land, according to the terms of said contract. The replication denies that the said sale of said land was the consideration of said notes; admits that the tax sale had passed redemption; that the same had been properly advertised; that the land had not been redeemed; that the deed had been properly made on said sale, and that plaintiff did make and tender to defendant a warrantee deed of said land before the commencement of this suit.

The cause was tried before the court without jury. On trial the notes and contract were read in evidence, and Robert L. Hanneman testified to a tender of a warrantee deed for the land described in the contract, before suit, to L. Douglass, one of defendant's attorneys, and that Douglass admitted the tender was made.

L. Douglass testified that he had acted as attorney for defendant, in a previous case between the same parties, and was his attorney in this suit; that before the commencement of this suit, Hanneman tendered to witness the deed referred to; that witness inspected it and handed it back to him; that afterwards he saw defendant, and supposed he told defendant of the

# The contract was not offered or read in evidence  
the only statement in the record is "It was admitted on  
the trial that the Plaintiff executed the deed or contract  
set out in defendant's second plea" abstract p. 11

10-11

10-11



tender, but could not say; that defendant told witness to let them go on and collect the note if they could; that he was never authorized by defendant to get the deed, or receive it; that he never intended, in conversation with Hanneman, to say that the tender was a good tender to defendant, but only intended not to dispute the offer of the deed to witness.

Judgment was rendered for plaintiff below; defendant moved for a new trial, and motion overruled, and appeal to this court.

MANNING & MERRIMAN,  
*Att'ys for Appellant.*

Andrew J. Topper

<sup>24</sup>  
Samuel R. Snow

Abstract.

91 91

13471

91

trial, and motion overruled, and appeal to this court.  
Judgment was rendered for plaintiff below; defendant moved for a new  
trial, but only intended not to admit the plea of payment to the  
action with Plaintiff, to say that the tender was a good tender, to ob-  
tain to get the deed or receive it; that he never intended, in contract,  
and collect the note if they could; that he was never authorized to do  
tender, but could not say; that defendant told witness to let them go on

WYMAN & WYMAN

WYMAN & WYMAN