

12691

No. _____

Supreme Court of Illinois

Guib^o~~er~~

vs.

Nichols

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David Nichols
vs

A. Guibor

91

1859

Records, Bureau County Circuit Court, October Term 1856

Heard before the Hon. M. E. Hollister Judge
of the Ninth Judicial Circuit of the State of Illinois
at the term of the Circuit Court begun and held at the
Court House in Princeton in the County of Bureau
on the first Monday in October in the year of our Lord
one thousand eight hundred and fifty six

Present M. E. Hollister Judge

E. M. Fisher clerk

Stephen H. Paddock Sheriff

A. Guibor

vs

appeal

David Nichols

Be it remembered that heretofore, to wit,
on the 15th day of May A.D. 1856 transmitted Benjamin
Parks Esquire J. P. to the office of the Clerk of the said
circuit court a certain transcript of proceedings
and appeal bond which said transcript & bond
were upon said 15th day of May filed by said
clerk ^{in his said office} according to law; and which said transcript
and bond are in the words and figures following
to wit:

No (30)

State of Illinois

Bureau County S.S.

A. Guibor

vs

David Nichols

Summons issued to consta-

ble Coleman March 24. 1856

summons 18th to appear the 3^d day of April AD 1856 at 2 o'clock P.M. for a
docketing into 12th Book account - Now the 3^d day of April 1856 Constable
continuing into 12th Constable Coleman returned the summons served by
Issuing subpoenas 18th reding so says Constable Coleman and now the 3^d of
continuing into 12th April 1856 defendant appeared and plaintiff not appearing
Const Coleman fees 50 by request of defendant the case continued until the
Issuing warrant for 25 19th of April 1856 at one o'clock P.M. Now April 19th
qualifying 6 jurors 37th 1856 the parties appeared the defendant and W Linton
qualifying 3 witnesses 18th Agent for plaintiff and the party, agreed to adjourn the
Amos fees 1.50 Case till the 26th of April 1856 Now April 26th 1856 parties
witnesses
N Linton fees 50 appeared and at the request def^t a jury of six were
Luke Laller 50 chosen to try the cause and N Linton Agent agreed to
do. A Brock 50 the request of Plaintiff - then a warrant was issued for
Constable
Liker fees 50 six jurors, Larkins James Connors J. B. Gibson base
continuing judgment 25 Black John Mosure Thomas Smith the jury then Prot B
\$68 1/4 Constable J. A. Sikes and organized and sworn to try the
Manuscript & case the case was then opened and three witnesses
appeal \$0.50 sworn N Linton Luke Laller Andrew I Brock and
after the hearing the proofs and allegations of both parties,
the jury the jury then retired and after consulting the
same day returned their verdict in favor of the
plaintiff for the sum of thirty dollars (\$30.00) and
costs of suit and it is considered by the Court that
the plaintiff have and receive of the defendant the sum
of thirty dollars and costs taxed at the sum of \$6.81
and now the 9th of May 1856 defendant appeals.

J. Benjamin Parke one of the Justices
of the Peace within and for said county do hereby

certify, that the foregoing is a true copy of the proceedings
of and verdict of the jury and judgment in the
case of A. Guibor vs David Nichols is truly copied
from the files of my office and books of my office
Given under my hand and seal this 10th day of May A.D. 1856
Benja. Parks J. P. L.S.

Know all men by these presents that we David
Nichols and A. Rockefeller are held and firmly
bound unto A. Guibor in the penal sum of seventy
three dollars and sixty two cents sufficient to cover
all costs and the debt of thirty dollars and costs
lawful money of the United States for the payment
of which well and truly we made or bind bind
ourselves and heirs and administrators jointly
severally and firmly by these presents. Witness our
hands and seals this 10th day of May 1856 - the condi-
tion of this obligation is such that whereas A. Guibor
did on the 26th day of April 1856 Before Benja. Parks
a Justice of the Peace for the County of Bureau
recover a judgment or verdict of a jury against
the defendant David Nichols in an action of
debt for the above sum of thirty dollars and wherein
the said David Nichols has taken an appeal to the
circuit court of the County of Bureau aforesaid
and State of Illinois now if the said David Nichols
shall prosecute his appeal with effect and pay
whatever judgment may be rendered by the Court
upon dismissal or trial of said appeal and shall

also pay the debt if any from the commencement of this
suite untill the final determination then the above
obligation thereof to be voyd otherwise to remane in
full force and virtue. To the foregoing bond given
under our hands and seals this 10th day of May A.D. 1856

David Nichols

L.S.

Agesilau Rockafellow

L.S.

approved by me at my office

in Westfield this 10th day of May A.D. 1856

Benj^m Parke J. P. L.S.

whereupon, there issued
a summons, to the Sheriff of said Bureau County
directed, to the in the words and figures following
viz:

State of Illinois } ss

Bureau County }

The People of the State of Illinois

To the Sheriff of said County; Greeting: we com-
mand you to summons A. Guibor personally to be and
appear before the judge of the Circuit Court in and for
said county on the first day of the ensuing October
Term thereof to commence on the first Monday of
said month at the Court house in Princeton to
answer unto David Nichols upon an appeal
brought into our circuit court by the said David
Nichols from a judgment lately rendered before
Benjamin Parke Esquire against him in favor
of the said A. Guibor. Hereof fail not and have you
then return this writ. In testimony whereof I have hereto
set my hand and the seal of said Court at Princeton

this 26th day of May AD 1856

L.S.
Clk

Edward M. Fisher Clerk

endorsed upon which summons by the said
sheriff is the following return; viz: Served this
27th day of May 1856 by reading to A. F. Linton of
Arlington as agent for A. Gribor; said Gribor
not found in my county and said Linton
accepting service as such agent

Stephen T. Paddock

Sheriff Br. Co. Ill.

by William Jones Deputy

and afterwards, to wit, upon the third day of the
Term of October AD 1856 of the Circuit Court of
Bureau County, Illinois aforesaid:

A. Gribor

vs

Appeal

David Nichols

Now comes the defendant by Grimes his
attorney and the plaintiff though three times solemnly
called to come into court here and prosecute his suit
herein comes not but makes default. It is therefore
considered by the Court that this suit be dismissed. It
is also further considered by the Court that the said
defendant have and recover of the said plaintiff all
his costs and charges in and about his defence in this
behalf expended and that he have execution therefor.

and afterwards to wit upon the seventh day
of the aforesaid term:

A. Gribor

vs appeal
David Nichols

Now comes the Plaintiff by Taylor & Stipp his attorneys and moved the Court to set aside the default herein before entered - and the defendant comes by Grimes his attorney and the court being fully advised in the premises said motion is sustained and this cause is reinstated on the Docket for trial -

and afterwards, to wit upon the ninth day of the term aforesaid:

Algonbor

vs Appeal
David Nichols

Now comes the Plaintiff by Taylor & Stipp his attorneys and the defendant comes by Grimes his attorney and upon motion and by agreement of the parties it is considered that this cause be continued until the next term ^{by the court} of this court.

Records Bureau County Circuit Court January term 1857

Hear before the Hon. P. M. E. Hollister judge of the ninth judicial circuit of the state of Illinois at the term of the Circuit court begun and held at the Court-Houses in Princeton in the County of Bureau and state of Illinois on the second Monday in the month of January in the year of our Lord one thousand eight hundred and fifty seven

Present M. E. Hollister

Judge.

E. M. Fisher Clerk
J. K. Waldron Sheriff.
W. Bushnell State's attorney.

to wit, upon the fourth day of the term last aforesaid
A. Grigor

vs

appeal

David Nichols

Now comes the defendant by Grimes his
attorney and on motion of said attorney and affidavit
filed herein it is considered by the court that this cause
be continued to the next term of this court and that
said defendant pay the costs of the present term.

Records, Bureau County Circuit Court April Term 1857

Hear before the Honorable Martin Ballou
Judge of the twenty third Judicial Circuit of the state of
Illinois at the term of the Circuit Court begun and
held at the Court-House in Princeton in and for the
County of Bureau on the first Monday in April in
the year of our Lord one thousand eight hundred
and fifty seven.

Present Hon. J. Martin Ballou Judge
Edmund M. Fisher clerk
J. K. Waldron Sheriff
Geo. W. Stipp State's attorney.

to wit, upon the twelfth day of the term of said court
last aforesaid;

A. Grigor

vs. ³ appeal
David Nichols ³

Now comes the plaintiff by Taylor & Stipp his attorneys and the defendant comes by Gurnie & Kendall his Attorneys and the court orders that a jury be impanelled to try this cause and a jury of twelve good and lawful men to wit: David Frankenberges Alfred P. Clark Enoch Lumry William Hoblet Jacob Hunter Alvin Perkins Darius Fisher Noah Long 2^d Wm Charles David H Smith Amos Fisher & Ebenezer White who are duly elected tried and sworn well and truly to try this cause and a true verdict render according to the evidence and said jury upon their oaths say we do find for the plaintiff and assess his damages at the sum of thirty three dollars and defendant by his said attorney moves for a new trial which motion is overruled by the Court. It is therefore considered by the Court that the said plaintiff have and receive of the said defendant the said sum of thirty three dollars together with all his costs and charges in and about his suit in this behalf expended and that he have execution therefor. And on motion said defendant is allowed an appeal by filing bond with security in the sum of three hundred dollars by Saturday of next week

And afterwards, to wit - upon the 18th day of said Term came the aforesaid defendant by his said attorneys and files in the office of the clerk of the said circuit Court his Bill of Exceptions herein in the words and figures following; viz:

State of Illinois

Bureau County

Alguibor

vs

David Nichols

Of the April Term of the

Bureau Circuit Court 1857.

appeal.

Be it remembered that on the trial of this cause the plaintiff produced as a Witness one Linton who on preliminary examination by defendant testified that he was the agent of plaintiff to sell plows and that he contracted the plow sued for in this case to the defendant and that by agreement with the plaintiff was to have a dollar commission for each plow sold by him - whereupon the defendant objects to the witness testifying in chief for the plaintiff - The witness then signed a release of his interests in the words and figures to wit as follows:

In consideration of one dollar I do hereby release to Alguibor all profits or commissions to which I now am or may hereafter be, entitled on account of the sale of a certain breaking plow of said Guibor made by me as his agent to one David Nichols in the months of April or May 1855 - this 18th of April 1857.

N. Linton

whereupon the witness was allowed by the court to testify in chief for the plaintiff - to which ruling of the court defendant then and there excepted and the witness testified as follows - That he was Plaintiff's agent to sell the plow in controversy in this suit that he first sold the plow conditionally to one Billingslea in the spring of 1855 to take and try the plow and if he liked it to keep and pay for it - that said Billingslea took the plow & at the price of \$33.00 kept it for about two weeks or thereabout & returned it saying that it did not work well and he would not keep it - that soon after this about the last of May or first of June 1855 the same year the defendant was at witness' store in Arlington, the plow being there, looked at the plow and said he thought it would work that he wanted a breaking plow the plow in question being a breaking plow witness told defendant he might take the plow and try it and if he liked it keep it and pay for it which defendant agreed he would do - the plow had been a little damaged by Billingslea's moving it; bent down the point of the coulter and the share - it was taken to the Blacksmiths Shop and repaired at Billingslea's expense, and afterwards taken by the defendant on the terms before mentioned - made a sale to him - don't recollect the words used - I heard that Nichols did not like the plow - that he had bought another - he told me the plow was there - I could get it if I wanted it - I never made a demand of the plow, but knew it was there - He afterwards told me that if it would satisfy me he would bring

the plow home or he would take it to Peru - nothing was said at the time about returning the plow or how long the defendant might keep it on trial - the price of the plow was thirty three dollars - but there were two lays accompanying the plow at that price - the defendant had only one lay with the plow - nothing was said at the time of the sale of the plow about an extra lay for the plow - witness said he was quite positive that he stated the price of the plow to defendant at the time to be \$33.00 but did not recollect what was said on the subject - at what time in the conversation the price was stated but it was before defendant took the plow away - The defendant did not agree to pay that price if he concluded to keep the plow - witness did not recollect what defendant did say about the price, further than witness told him the price of the plow and defendant said that if he liked the plow he would keep & pay for it - witness said the plow was an ox-plow and the only one of the kind he had - did not know anything about the general quality of the plow for doing good work - that he did not warrant the plow to the defendant to work well - the purchaser had privilege to return them - had other plows of the same manufacture only different somewhat in make which were horse plows that generally worked well - that he was accustomed to sell plows on trial to be kept if liked - had sold two or three other plows in the same way - witness said he did not recollect having heard

anything more from defendant about the plow or whether
he liked it or not - until he was told by some one of the
neighbors along in the latter part of the summer or the
first part of the fall, or he heard nothing from his
neighbors till the fall about his neighbors about defend-
ant being dissatisfied. He was told by the neighbors
that the defendant did not like the plow and was not
intending to keep the plow that in the fall (in October)
of the same year defendant came into Witness'
store and told him he did not like the plow and
would not keep it - that the defendant had been
in his store several times before then but nothing was
said about the plow that witness recollects - that defendant
lives 3 miles from witness' store in Arlington and was
frequently in said village during the summer.
that at this time there had never been a demand for
the plow or pay for it made of the defendant - that the
witness was in the habit of giving credit on these plows
for six months and did not expect the defendant
to pay for it until the following October and that
he dunned defendant at that time for the first
time for his pay when defendant first objected to
plow - no demand was ever made of defendant
for the plow but in the fall or winter after getting
the plow told the witness he might take the plow
away any time and in the spring following offered to
return the plow but the witness declined receiving
it and soon after this suit was brought before a
justice of the Peace when the plow was in Nicholi

field there was one wheel of the truck split - dont know whether it was season-cracked or not - but one of the wheels was then gone - The plow had been in middling good order when the defendant took it - but had been used - that the plow was badly rusted when returned and weather-beaten - the tire and one wheel gone and would not sell for more than one half what it would when taken away - Defendant told witness he did not like the plow when asked about the plow some five months after he took the plow - Plaintiff then called James Mang as a witness who testified that defendant looked at the plow at the Blacksmiths Shop and said he would take it home, and try it - Witness afterwards saw the defendant plowing with the plow about the middle of June - did not know how long or how much he had used it - the plowing did not look very well - could not state whether the fault was altogether in the plow - the defendant had good teams - think the ground was not very good for breaking - there were a good many red roots in the ground - plaintiff then called William Philips as a witness who testified that defendant broke prairie in June 1855 with the plow - that defendant broke 16 or 17 acres dont know whether defendant broke all with that plow - Had a conversation with defendant in June '55 - defendant said he was not obliged to keep the plow if he did not like it

but was to return the plow if it did not suit him. - witness said the land where defendant used the plow had a great many red roots and was hard plowing - that defendant left the plow standing in the field all summer and winter till he returned it in the spring -

Plaintiff next called one Morrison who testified that defendant used the plow some 5 or 6 days and broke some 5 or 6 acres of land - that the balance of the land he broke with another plow which he got after trying the plow in question - though that the plow did not work well - that he often saw the workmen stop to fix up the plow while at work with it - that the ground had a good many red roots but still the plow did not do as good work as the common horse plows that were used on the adjoining land or farms where there were just as many red roots as there were there - Witness said he frequently crossed the breaking when defendant was at work with the plow and saw the plow work and thought the plow did not do good work - Witness went to defendant's to borrow of defendant the trucks of the plow in question that defendant told him that on one of the wheels was gone or was not on said plow, and witness did not get them.

On cross examination witness was asked by defendant's counsel the following questions.
State whether ^{or not} the defendant was satisfied with the working of the plow at or about the time he was using it; and state

what he said on that subject to you - which questions were objected to by plaintiff & then plaintiff admitted that the plow did not do good work, and the court sustained the objection; and the defendant then & there excepted to the ruling of the Court.

And then the defendant by his Counsel put the following question to the witness to wit:

What was the value of the plow ~~off~~ at the time defendant had it in use? which question was objected to by plaintiff and the Court sustained the objection; and defendant then and there excepted to the ruling of the Court in that behalf: And the defendant then put the following question to the witness: Was the plow useful or good for anything as a breaking plow? which question was objected to by plaintiff and the objection sustained by the Court; and defendant then and there excepted to the ruling of the Court on subject. This was all the evidence offered on the part of the plaintiff - and the plaintiff then rested.

The defendant then called James Billingslea who testified that he tried to use the same plow - that he kept the plow a week or two and returned it - that the point of the share got damaged having been caught under the rail of the railroad while crossing the tract and the point got bent down - that he paid for repairing. Defendant then offered to prove by this witness that the plow did not work well - that it was useless and

good for nothing as a plow to which testimony the plaintiff objected; and the Court sustained the objection - and the defendant then & there excepted to the ruling of the Court in that particular - witness further stated that he had seen the plow back at the shop and the truck wheels were both on them and that he saw nothing amiss

Defendant then called one Luke Lawler who testified that he was the blacksmith who repaired the plow first for Billingslea and then defendant took away the plow about the first of June or thereabouts and kept it a few days perhaps a week - and returned with it got a new lay made for it, heavier & stouter than the one that was on ^{plow} before - that the old lay was cracked - defendant then took the plow away and witness did not recollect that he brought the plow back for any more repairs, but thought he came once or twice afterwards and got some little work done for the plow as for some plow that the price for the new lay was for the iron steel & work making it was worth \$2.75 or \$3.00 - And the defendant finally returned the plow and the trucks that belonged to it in the Spring of 1856 that the plow had two lays to it - that new plows are usually sold with two lays - that defendant had only one lay with this plow - This was all the testimony in the case.

The Plaintiff then asked the Court to instruct the jury as follows - and the Court in behalf of the

plaintiff did so instruct the jury to wit

Gibson vs Nichols 3 Plffs. Instructions

- 1 If the jury believe that the defendant took the plow with a knowledge of the plaintiff's price for the same to keep it & pay for it if it worked well, and if it didn't work well then to take it back, and no time was fixed by the parties when the plow should be tried or returned if it did not work well - then on this state of facts the defendant was bound to try the plow in a reasonable time after he got it and if he didn't like the plow after such trial then he was bound to return the same in a reasonable time; and in determining what is a reasonable time for the trial and return of said plow the jury are to take into account the fact that breaking plows are saleable in the season of breaking and all other circumstances affecting the rights & interests of the parties in the transactions
- 2 If the jury believe that the defendant took the plow with the knowledge that the plaintiff's price for the same was \$33 and was to "try the plow & keep it & pay for it" if it worked well and that he did take the plow under this arrangement and tried it and kept the plow an unreasonable time after trying it without notifying the plaintiff that he did not intend to keep it, or offering to return it to the plaintiff: then on this state of facts the plaintiff is entitled to recover the price of the plow even though the plow did not work well and was

wroughten to the defendant for the purposes of a plow.
3 It makes no difference that no time was agreed
on by the parties when the ~~plow~~^{plow} should be paid for
the purchase money for the plow, in the absence
of any time fixed by the parties when it should be paid
would become due by law, as soon as a reasonable
time had elapsed for the defendant to try and
return the plow (if it did not work well) or to notify
the plaintiff that he, deft, would not keep said
plow - provided that the jury further believe that
the deft bought the plow of the plaintiff or his agent
on trial to return it to plaintiff or his agent if
it did not suit him and that defendant kept
the same an unreasonable time without
returning or notifying plaintiff that the plow did
not suit him.

To the giving of said instructions said
defendants then and there objected - the objections
were overruled by the court and the instructions given.
And defendant then and there excepted to the
giving of said instructions.

And the defendant then asked the court to
instruct the jury as follows

A. Gribor

vs

deft's instructions

D. Nichols

the Court is asked to instruct the jury
on behalf of defendant as follows.

1 Before the plaintiff can recover in this case for the

"Given"

plow sued for the jury must believe from the evidence that there has been a sale by the plaintiff to the defendant of the plow.

2

"Refused"

In order to constitute a sale of the plow there must have been an agreement between the parties whereby the plaintiff passed the title to the property to the defendant and the defendant received the property for a determined price

3

"Given"

If the jury believe from the evidence that by the terms of the trade the defendant did not (either expressly or impliedly) agree or undertake to return the plow if he did not like it - then he was not obliged to return it until notice or demand - but it was in such case the duty of the plaintiff at least to demand the plow of defendant before he could sue and recover in this form of action

4

"Given"

In order to constitute a sale of the plow both parties must have expressly or impliedly agreed at the time of the sale as to the price to be paid - and that the property sold should become the property of the defendant and both parties must have consented to and understood the contract and the terms thereof - and if any of one of these particulars are wanting then there was no sale - unless the jury believe that there was a conditional sale of the plow

5

If the jury believe from the evidence that the plaintiff's agent understood the terms of the contract to be that the defendant should return the plow if he did not

Given as evidence
by plaintiff's
instructions

like it - and the defendant understood the contract to be that he was not to return the plow but that the plaintiff was to take away the plow - then the keeping the plow by the defendant will not make him liable to pay for the same plow.

Given as evidence
by plaintiff's
instructions

6 If the jury believe from the evidence that there was a conditional sale of the plow that defendant was to approve of the plow before the sale was to be complete & that defendant did not approve of the plow - then the special contract was at an end and the plaintiff cannot recover upon such contract

7 If the jury believe from the evidence that at the time of the contract there was a conditional bargain that the defendant should take the plow on trial and if it worked well and defendant liked it he would then purchase - then there was no sale unless the plow worked well & defendant liked it.

Repealed

8 If the jury believe the defendant received the plow on a special contract to try it and if he liked it he would pay for it, and he did try it & did not like it, and notified the plaintiff's agent with whom he contracted, of that fact before this suit was brought then the plaintiff cannot recover on such special contract although defendant did not return the plow until after this suit was brought.

9 If the jury believe that the defendant is not entitled to recover on the special contract then they must find for the defendant - unless the jury believe that

Repealed

21
defendant has converted the property to his own use -
in which case the jury are only authorized to find for
the plaintiff what the proof shows the plaintiff was worth.
10 If the jury believe from the evidence that there was
no time stipulated that defendant was to have
the plow - no agreement by defendant that he
would return the plow - then it was as much the
duty of the plaintiff to demand the plow as it was
for the defendant to return it - and defendant
was not obliged to return the plow until demanded
nor can the plaintiff sue for the price of the plow
until demand made or notice to defendant
either to pay for the plow or return it.

11 If the jury believe there was a conditional bargain
that the defendant should take the plow on trial &
if he liked it should keep it and pay for it - then
before the plaintiff can recover on such special
contract he must have proved to the satisfaction of
the jury that the defendant approved of the plow.

12 If the jury believe there was a special contract
that defendant should take the plow and try it and
if he liked it should keep it and pay for it - and no
time fixed within which he should signify his
approval or disapproval of the plow and no agreement
as to returning the plow - and that defendant signi-
fied his disapproval of the plow to plaintiff's agent
(with whom he contracted) in the last of the summer
or in the fall of the same year, and before plaintiff
ever demanded the plow or the pay for it then the

plaintiff cannot recover on the special contract.
13 If the jury believe from the evidence that the contract
was that defendant should take the plow and if he
liked it should keep it and pay for it, and nothing
was said about his returning it, and the
defendant afterwards notified Pliffs agent that
he did not like the plow and would not keep it -
then after such notice the plaintiff must have
demanded the plow of defendant or requested
him to return the plow before he could sue and
recover for the same on such special contract.

The Court gave the 1st & 3^d instructions
as asked and refused the 2. 8. 9. 10. 11. 12 & 13 instructions
as asked by defendant, and qualified the fourth
instruction by adding at the end of it the following:
"unless the jury believe there was a conditional sale
of the plow" and qualified the 5th instruction by
adding the following: "It was nevertheless the duty
of the defendant to notify the plaintiff after he
had had a reasonable time to try the plow that
he did not intend to keep the plow, and if the
jury believe the defendant was guilty of such
neglect then they are to find for the plaintiff"
and qualified the 6th instruction by adding the
following: "yet the defendant was bound to
notify the plaintiff that he disapproved of the plow
within a reasonable time after he had had
an opportunity of testing the plow."
and qualified the 7th instruction by adding

"Refused"

the following: "If however the defendant kept the floor an unreasonable time after the opportunity of trying it without giving notice to the plaintiff that he did not like the floor then he is liable to pay for it"

To the refusal of the Court to give the 2^d 8. 9. 10. 11 12 & 13 instructions as asked by defendant and to the qualifying of the 4th 5th 6th & 7th Instructions by the court & refusal of the court to give the same as asked, without the qualifications defendant then & there excepted.

The cause was submitted to the jury - who returned a verdict in favor of the plaintiff for \$33. whereupon the defendant moved the court for a new trial - which motion was overruled & and judgment rendered by the court against the defendant for \$33 & costs of suit - and to which order of the court, rendering of the judgment defendant then & there excepted and pray the Court to sign & seal this bill of exceptions which is done

M. Ballou Judge Seal

and afterwards, to wit on the 24th day of April Anno Domini 1857 came the said defendant by his said attorneys & filed in the office of the Clerk of said Circuit Court his appeal bond; which is in the words & figures following, to wit:

Know all men ^{by their parents} that we David Nichols &

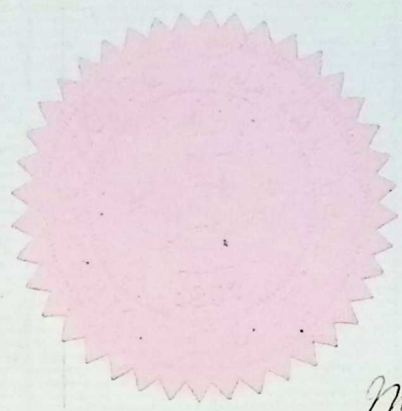
John M Grimes of the County of Bureau and state of Illinois
are held and firmly bound unto A Guibor of the
county of LaSalle and state aforesaid in the
penal sum of three Hundred dollars current money
of the United States for the payment of which well
and truly to be made we bind ourselves our heirs
executors and administrators jointly, severally
and firmly by these presents. Witness our hands
and seals this 24th day of April 1857 - The con-
^{sideration} sideration of the above obligation is such that whereas
the said A Guibor did on the eighteenth day of
April AD 1857 in the Circuit court in and for the
county of Bureau and state aforesaid recover a
judgment against the above bounden David
Nichols for the sum of thirty three dollars damages
and dollars costs of suit out from which
said judgment of the said Circuit court the
said David Nichols has prayed for and obtained
an appeal to the Supreme Court of said state
Now if the said David Nichols shall duly prosecute
his said appeal with effect, and shall moreover
pay the amount of the judgment costs interest and
damages rendered and to be rendered against him
in case the said judgment shall be affirmed
in the said Supreme Court then the above
obligation to be void - otherwise to remain
in full force & virtue.

Given, entered into & approved before me } David Nichols
at my office in Princeton this 24th day of April 1857 } John M Grimes
Edward M Fisher }
Clerk of Circuit Court

State of Illinois }
County of Bureau }

I Edward M Fisher Clerk of the Circuit Court of the State aforesaid in the County aforesaid do certify the foregoing to be a true and correct copy of the record and proceedings of the said Court in the above mentioned cause wherein the said Agribor was Plaintiff and the said David Nichols defendant - In Witness whereof I hereto set my hand and affix my official seal as clerk aforesaid, at Princeton in the County aforesaid this 10th day of August Anno Domini Eighteen Hundred & Fifty Seven.

Edward M Fisher Clk
By Geo L Padlock
Dep. Cler.



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record \$7.60
E.M. Fisher 7.90

91
Record from Bureau
in
St. Ignace
vs
David Nichols

Indt. at Apr. 2/57

Filed March 10, 1880
L. Leland
Clerk



Nichols } Appeal to the Supreme Court
as } from the Bureau Circuit Court Mo.
Gibor } April Term of Supreme Court 1858.

A written argument by Jas. M. Goines attorney
for David Nichols appellant.

The points relied upon in this
case by appellant are mostly of an elementary
nature

1st point. The first is that - The plaintiff below introduced
in evidence. Sinton. Who swears he is the
agent to sell plows - that he contracted the sale
of the plow in question, was to have \$1.00 com^m
on each plow. plaintiff in error objected on
the grounds that witness was interested.
Sinton then - released Gibor. se^{nt} in error.
The Court permitted witness to be examined in
chief. Court erred.

L. Lawler Because the testimony of Luke Lawler 16.
testimony-16 Record. is that the S^{ay} was cracked of the plow.
S^{ay} of plow cracked Ergo. Witness became responsible to Gibor.
for the - Damage the plow had sustained -
unless he could compel the witness to keep the
plow - which would hide his latches as Agent.
And the plaintiff below - and his attorney
failed to give - the Witness a release
But do yet hold the witness responsible for
what damage the maker of these plows (Gibor)

may have sustained by Agents negligence.

That the witness was interested and that interest not released by Plaintiff or his attys below.

2 On Evidence 2-4 There is aside from ^{plaintiff's} ~~Chick's~~ Evidence on that the proper testimony that the flow in question ever belonged was ~~affidavit~~ to Guibor. No testimony that the Plaintiff ever ever - but the flow of Guibor is his atty or agent. or that the property ever was Guibor's.

3 Third. The testimony is not sufficient to make a contract. The strangest Evidence is "that Chickles agreed to take the flow & try it. if he liked it pay for it."

There is no testimony to show that he ever liked the flow. On the contrary Plaintiff's ^{below} own testimony below goes to show that he did not like the flow.

There is no time mentioned when the contract was made. In short - by the testimony the contract never was made - No evidence that Chickles ever agreed to pay for the flow unconditionally - or otherwise - at any time - or to pay any amt. If so - at what time and what amount?

It cannot be construed that he agreed to pay 33. the full amount for flow because aside from the flow's being worthless as a flow. It was proven to have been ~~worthless~~ cracked in the lay (or shaw) (the only lay which accompanied the flow which was contrary to the sales made in every other case.)

and therefore was not a salable article. and
the Manufacturer (Guibor) could not legally
recover the full value of a good plow. But if even
the Hon. Court should be of Opinion that the Agents
testimony is admissible - Then that testimony is
"that the plow was in middling good order" (see Guibor's
testimony) This testimony shows, that the plow in
Question was not a salable article on which
full value could be recovered.

4. In Consideration
eration.

It will be rec'dected - that the papers show on their
face - that this case was commenced & tried
before a justice of the peace - The pleadings
were Oral - That the Defendant below had the
right to offer any evidence on Gen. Issue.
in Circuit Court. that he could have ~~had~~ offered
under a plea in Bar. in in Circuit Court had
the case been originally commenced there.

The Defendant below would certainly have been permitted
to plead in Bar - a failure or want of consideration.

The Court erred in not permitting the Defendant
below to prove the plow - worthless on cross examina-
tion of Plaintiffs witnesses. The Court erred in not
permitting the Plaintiff to produce testimony to
prove the plow in question worthless

That the Defendant below rec'd no Consideration

5. Motion The Court erred in not granting the Motion in
Quarant in arrest of judgment, and a new Hearing,
of Judgment. The Verdict was Contrary to the evidence.
& for a new Trial. It was Contrary to the Construction of the Court.
Hearing.

The Testimony (aside from Sinton's agent) does
not show that Nichols ever contracted with Gibor
or his agent for any plow. 2^d there is no evidence
that the plow in question ever belonged to Gibor-
Plaintiff below. And even Sinton the agent does not
say that the plow in question was the Plaintiff's
below. plow. The evidence is that Sinton had a
store. And that this plow in question was taken
from a Blacksmith shop - & returned there again
Not from Sinton's store. as returned to it.

The presumption in absence of testimony that the
agent Sinton - was also agent for the sale of
other plows belonging to different men, than Gibor.
Ergo, the testimony is not sufficient to warrant him a verdict.
And also as shown in Printed Brief. The Verdict
was too great. It being for the full amount of a
good plow - in good order on six months time.
with two days (or years) a compensating) which were worth
from \$2.75 to 30. Making the verdict being for 33
in place of \$30.25. The highest point at which
the testimony places it. Thus the verdict is
clearly - Contrary to the evidence -

With regard to the Instructions generally
we hold the points as set forth in the Brief.
& Specially with regard to the 1st 2^d.
Instructions. as given by the Court
as very wrong (Page 18. ¹⁷ + 19.) "If the Jury believe
that the plaintiff took the plow to keep it
if it worked well." again - "no time
fixed when the plow should be returned."

Saw this not clearly
mislead the Jury in their verdict?
Would not the Jury get the impression
that - there had been testimony that
the plow worked well? When there is no
such testimony - But on the contrary the
Plaintiffs below admit their plow to be worthless
(see page 13.) Again there is nothing in the
whole testimony either expressed or implied
that - the Parties did understand that
the plow was to be returned. by defendant
below. But the actions of the Defendant
below - show a different state of facts. the
testimony - shows that when it was hinted
to defendant before the commencement of
suit - that Defendant told Plaintiff that he
would take the plow to the shop - to his store
or to his Residence - If the Plaintiff understood
the Contract thus. - The Court has no right to
presume that - the plow was to be returned & thus in some

17
XX 7.79

Plow worthless
Page 13.

It clearly follows - That if the law be such
that judges - may presume - points which are
not in Evidence - Then the Court - can
govern the decision of - every case.

& it opens a wide door to fraud - & stops
the wheels of justice.

And again the Court certainly erred -
in not permitting the ~~Plaintiff~~ Defendant below
to prove ~~that~~ a want of Consideration -
under the general issue - the Pleadings
being oral. - Therefore we believe we safely
conclude - that the testimony was contrary to
Law - & the verdict contrary to evidence.
And that the Court erred in not granting
a new hearing.

Submitted on calm & cool reflection.

One other point we would call the attention
of the Court to. that is with regard to
defendant returning the plow -
Now who was benefited by Nichols trying
the plow?

Not Nichols defendant. It was no benefit
to him. - Because if he took the plow
he would have to pay for it.

SUPREME COURT BRIEF

APRIL TERM, A. D. 1858.

A. GUIBOR vs. D. NICHOLS.

BUREAU CIRCUIT COURT, APRIL TERM, A. D., 1857.

This was an action brought against Defendant by the Plaintiff, before a Justice of the Peace, to recover pay for a Plow, which Plaintiff alleges he sold to defendant, and Defendant denies that there ever was a contract. Judgment for Plaintiff below. Case appealed to Bureau Circuit Court at the above Term. Judgment in Bureau Circuit Court for Plaintiff. To which Judgment, part of testimony, and Instructions given, and refused, and qualified, and to the overruling by the Court of the motion for new hearing, as set forth in Bill of exceptions. The Defendants Except, and for cause the Defendants show the following points in which the Court erred.

1st. In permitting Linton, who was the Agent of Plaintiff, to testify in chief, by his signing his release, as set forth in Bill, which only releases Guibor from recovering damages off of Linton; but did not release Linton from the damages which Guibor could recover off him for his negligence in permitting this plow to become worthless while in his hands as agent, unless said witness could swear hard enough to make Nichols to pay for the Plow in question,

2d. In not permitting the witness on cross examination to state that the defendant was dissatisfied with the plow while he had it as stated in, question in Bill.

3d. In refusing to let witness state what defendant said to him on that occasion.

4th. In not letting the witness testify as to the value of said plow when in Defendant's use as by question in Bill.

5th. In not permitting the witness to testify as to the entire worthlessness of the plow in question.

6th. In prohibiting the defendant from proving that the plow in question was entirely useless.

7th. In refusing the following instructions, numbered 2, 8, 9, 10, 11, 12, and 13, as set forth in Bill of exceptions, which Defendant requested the Court to give the Jury, and in qualifying the 4, 5, 6, and 7 as set forth in Bill of ex-

In refusing to grant a new Trial on motion of Defendant. The verdict being contrary to the evidence, which was, that the price of the plow on six months, time was \$33, with two lays; that there was only one lay with this plow, and that an extra lay costs from \$2,75 to \$3. That the verdict was for a greater amount than a good plow was worth on six months, time; therefore contrary to the evidence, that the highest price that the evidence makes the plow with on e lay in good order was \$30,25, being less than the amount of the verdict. That if there was sale of the plow there was an expressed warranty, and that warranty failed. That the court permitted improper testimony, by allowing Linton, the agent of the plaintiff, to testify when he was interested in having the plaintiff recover in order to hide his own negligence and to keep the agent from becoming responsible to the principal for the value of a plow, which the testimony shows had been returned before plaintiff received it, as worthless.

JOHN M. GRIMES.

Attorney for Defendant.

And the appellee comes and says that in the
Revised proceedings aforesaid in the
condition of the Judgment aforesaid there
is no such error as is alleged and he prays
that said judgment be affirmed.

B. C. Cook
att'y for appellee

1691
Exhibit
vs
Appellee