

12016

No. _____

Supreme Court of Illinois

Strawbridge, et al

vs.

Robinson

71641  7

N^o 43

*William Strawbridge
et al.*

*vs
Samuel Robinson pro.*

1849

12016

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/

State of Illinois Supreme Court
of the Jan. 9. 1849 —

William Strawbridge
& Charles Brown Apprs

vs
appends

Samuel Robinson
vs of Robt C Buzan Apprs

And now comes
the said appellants by John Mc Wilson
their attorney & say that in the Records
proceedings of said court there is manifest
error & also in giving the judgment afore-
said. in this that the judgment
was rendered in favor of the plaintiff
below, whereas the should have been
given for defendants below —

2^d That the Court erred in instructing
the Jury that if they believed from
the evidence that the Bill was an inland
one, that it belonged to Buzan & that
afterwards within a reasonable time after
it was drawn it was presented by Buzan
or his agents to Smith & Carter for
payment & they refused the same &
that the defendants had due notice
of such refusal & had also notice that
it belonged to Buzan before payment
of it to Robinson so that they should
give for the plaintiff

3^d — That the Court erred in refusing to give
the 8th instruction asked for by the defend-
ants below in this word, "That if the
Jury believe from the evidence that
the holder of the Bill sued on in this
case was guilty of larceny, then the plain-
tiff can not on the common counts
in the declaration, that absence of a
protest on the non payment of a for-
eign bill of exchange payable on presen-
tation or the want due presentment for
payment is each such larceny" J. Mc Wilson

Transcript for Supreme Court in case
of Samuel Robinson for use
of Robert C. Dugan
William ^{as} Strawbridge
Charles Power

An assignment

State of Illinois
Sixth Judicial Circuit }
Jd Camp County }

Pleas in the Circuit Court
of said Jd Camp County begun and held on the
fourth Monday in the month of October in the
year AD 1846 before the Hon Thomas C Browne
one of the Associate Justices of the Supreme Court
and Presiding Judge of the said Sixth Judicial
Circuit within said Circuit within said Jd Camp County.

Samuel Robinson for use
of Robert C Burren

Plaintiff

vs
William Strawbridge
Charles Bower

Defendants

Be it remembered that
heretofore to wit on the 12th day of October AD 1846
the said Samuel Robinson for use of Robert C Burren
the above entitled Plaintiff filed in the Clerk's
Office of the Circuit Court for said Jd Camp County
a Bond for Costs within said bond for costs is in
the words and figures following to wit.

{ { { {

Bond for costs
State of Illinois }
McDonough County } 1st

In the McDonough County Circuit Court
Oct Term A.D. 1846

Samuel Robinson for the use
of Robert C. Buzan

Plaintiff

vs
William Strawbridge & Charles Brown, defendants

} In Assumpsit

I do hereby Enter myself security for costs in this case, and acknowledge myself bound to pay, or cause to be paid, all costs which may accrue in this action, either to the opposite party, or to any of the Officers of this Court, in pursuance of the laws of this State

Dated Salina, this 12th day of October A.D. 1846

Geo J. King [Signature]

Approved:

Wm H. Bradley

Clerk of McDonough County Court

(Endorsed)
Samuel Robinson, for the use of
Robert C. Buzan

vs
William Strawbridge &
Charles Brown

Cost Bond

And afterwards Dunt. on the same day Dunt. the
14th day of October A.D. 1846. the said Plaintiff by
W. V. Johnson his Attorney Sec'd out of the Office of the
Clerk of said Circuit Court a writ of Summons to
the said defendants which said writ is in
the words and figures following Dunt.

{ { { {

State of Illinois
In said County of

The People of the State of Illinois

To the Sheriff of the County of Jo Daviess - Greeting -
We Command You, to Summon William Strawbridge and Charles
Bower to appear, before the Circuit Court of Jo Daviess County at the
next term, to be holden, at Salina, on the 4th Monday of October next to
answer, Samuel Robinson for the use of Robert C. Buzan in a plea of
Trespas on the case, upon promises, Damages Two hundred dollars
and have you then there this writ,



Witness, My Hand and Seal of the
Circuit Court of Jo Daviess County at Salina
Illinois, this 14th day of October AD 1846
attest, Wm. H. Bradley, Clerk

(Endorsed)

No. 24

Samuel Robinson for
use of Robt C Buzan

vs. Summons, 2,00.

William Strawbridge
Charles Bower

Comed the within summons, on Charles Bower this
17th day of October, 1846, on Wm Strawbridge, this 24th day of Oct 1846 by
reading the same to them

W. P. Millard Sheriff
Whinson, atty for Plff.

and afterwards writ on the 14th day of May
AD 1847 the said Plaintiff by his attorney, by leave
of the Court, files his amended declaration in
said entitled cause which said amended
declaration is in the words and figures following
to wit,

"Amended Verdict" by leave of Court
In the Circuit Court
of Howard County 1847.

Samuel Robinson who lends for the use of Robert C. Buzan, by his atty M V Johnson, complains of William Strawbridge, and Charles Bower, summoned &c. in an action of assumpsit
For that whereas the said William Strawbridge and Charles Bower, doing business under the name and style of Strawbridge & Bower, according to the usage and practice of Merchants, made, executed, and delivered, on the fourth day of February A.D. 1845, unto the said ^{Samuel} Robinson, their certain order in writing for the payment of one hundred and ten dollars, and directed the same to Messrs Smith & Carter to pay to him the said sum of one hundred and ten dollars and charge ^{to} ~~the~~ the said defendants, - And the said plaintiff avers that after the making and delivering of ^{the} order in writing unto the said Samuel Robinson, who then and then sold & delivered the same, unto the said Robert C. Buzan as aforesaid for a valuable consideration, to wit, the consideration of one hundred and ten dollars, to all of which the said Defendant, then and then had notice, the said order was duly presented at the counter of Messrs Smith & Carter, in the City of Calumet, and payment demanded according to the tenor and effect thereof, on the 9th day of February A.D. 1845, by the said ^{Robert C.} Buzan, but the said Smith ^{did not}, nor moved out at any time since pay the said sum of one hundred and ten dollars, or any part thereof, as requested, but so to do hath wholly failed neglected, and refused, and still neglects & refuses, to all of which the defendants then and then had notice, by means whereof the said Defendants then and then became, liable, to pay unto the said Plaintiff for use ^{as aforesaid} the sum of money in the order specified, when the said defendants should ^{be} thereunto afterwards requested, and being so liable, "to wit," on the day and Year aforesaid at the County and Circuit aforesaid undertook, and then and then faithfully promised to pay the said plaintiff ^{as aforesaid} for such use, the said sum of one hundred and ten dollars, when they the said defendants should be afterwards thereunto requested

But the said defendants not regarding, their several promises and undertakings, hath not as yet paid the said sum of money in said order specified or any part thereof unto the said plaintiff for use aforesaid, although often,

requested to do, but hath wholly failed and refused and still doth fail and
refuse, to the damage of said Plaintiff of Ten Hundred dollars and therefor
he sues &c

W. G. Johnson Pff atty

"Copy or Adu Sund on"

Messrs. Smith & Carter please pay Mr. James Robinson one hundred and
ten dollars and charge the same to

Strawbridge & Brown

East Fort the 4th feby 1845

\$ 100

And whereas also, the said defendants, heretofore to wit, on the first
day of October A.D. 1846, at the County aforesaid were indebted to the said plaintiff
in the further sum of Ten hundred dollars, as well for money, then & then lent
by the plaintiff to the defendant, at their request, as for money, then and then
paid by the plaintiff for the use of the Defendant, at their request, as also for
money, then & then received by the defendants for the use of the plaintiff & as
also for money found to be due from the defendants, to the plaintiff on an ac-
count then and then stated between them.

And being so indebted, the defendants, in consideration thereof, afterwards
to wit, on the day and Year last aforesaid, at the County aforesaid, undertook
& then & then promised the plaintiff to pay him the said last mentioned sum
of money on request. Yet though often requested, the defendants, have not paid
the last mentioned sum of money, or any part thereof, to the plaintiff & the
damage of Ten hundred dollars, & therefor he sues &c

Johnson & Sheldon

Endorsed. Dated May 14th 1847
Messrs. Hadley & Clark atty for Pff

And afterwards, to wit, on the 17th day of March A.D. 1848
the defendants filed their plea, ^{& protest} which is in the words and begins following
to wit,

Robinson & Co

March 1848

Strawbridge & Brown

and the said defendants, as to said
declaration, say that they did not understand
take

& promise in manner of form as the said Pff has alleged & of this they
put themselves on the country

And pff doth the like

Sheldon & Johnson

Attys for Pff

Drummond

for ~~Pff~~ Deft

The Pff will take notice that under the above plea of General Issue the
def't will give evidence that the demand sued on in this case was paid
before said Post 16

Drummond

for Deft

And afterwards tried on the fifth day of October
AD 1848 in the October Term AD 1848 said Court
sitting in the record of the proceedings there in said
Court is the following entry to wit

Samuel Robinson for
use of Robert C Ouzan

William ^{vs} Strawbridge &
Charles Bower

Now at this day
came the parties

by their Attorneys and upon issue joined thereon
from came a jury of good and lawful men
to wit E. Isaac, Obadiah Reed, C Taylor, Thomas
Crummer, Francis Bze, Edward Keagh, J J Wonderly
D W Schwalke, John Marshall, R L Daniels, Peter
Hartman and George Rice who were duly elected
tried and sworn and after hearing the evidence
It is ordered by the Court that the further consideration
of this case be postponed until tomorrow morning

And afterwards tried on the next day to wit on
the sixth day of October AD 1848 in the record of the

Proceedings of said Court in said cause is the following entry, to wit.

Samuel Robinson for
use of Robert C Buzan

^{vs}
William Strawbridge
and Charles Bower

} Now at this day came
the jury yesterday empaneled in this case and after hearing the arguments of counsel they retired to consider of their verdict, and after a short absence they returned into Court with the following verdict to wit. We the jury find for the plaintiffs and assess their damages at the sum of one hundred and thirty four dollars and twenty cents, and the defendants by their Attorney move the Court for a new trial herein.

And afterwards went on the 12th day of October 1848 in said October Term AD 1848 of said Court Court in the record of the proceedings thereof in said cause is the following entry, to wit.

Samuel Robinson to
use of Robert C Buzan

^{vs}
William Strawbridge
Charles Bower

Case

} Now at this day came on to be heard the motion of the defendants heretofore filed for a new trial of this cause, which motion is overruled by the Court to which ruling and decision of the Court the defendants by their Attorney except. And on

Motion of the Plaintiff by his Attorney for judgment
upon the verdict of the jury, heretofore found and
returned. It is ordered by the Court that the Plaintiff
have and recover of the defendants the sum of
One hundred and thirty four dollars and
twenty cents as aforesaid found and reported
by the jury together with his costs by him about
his suit in this behalf expended and that he
have execution therefor. And the defendants
by their Attorney pray an appeal to the Supreme Court
which is granted them by the Court conditioned that
the defendants enter into bond in the sum of Two
hundred and sixty dollars with any person
as security within thirty days from this date.

On the trial of said entitled cause the
following exceptions were made and allowed
to stand.

~~~~~

~~~~~

~~~~~



Sam. Robinson to the  
use of Robt. Buzan

as,  
Strawbridge & Power

Account Court  
Oct. 9, 1848

Be it remembered that on the trial of this  
Cause, the plaintiff offered in evidence the following instrument in writing  
"Miss Smith Carter. Please pay Mr. Sam<sup>r</sup> Robinson one hundred  
and ten dollars and "Charge the same to"  
East Fork the 4th Feb, 1845  
Strawbridge & Power

\$110

which instrument was endorsed "R. B. Buzan"  
The plaintiff then offered in evidence <sup>the deposition</sup> of Thomas D. Andrews taken & filed as  
evidence in this Cause by consent of parties, which Deposition is in the words  
and figures following, to wit, Thomas D. Andrews being duly sworn,  
says that he is acquainted with Buzan and with the defendants, he also  
knows Robeson the P<sup>l</sup>ff. has seen the order, dated East Fork 4th Feb 1845  
given by drafts to Saml Robeson for \$110 on Smith Carter, and saw  
it given by Power to Robeson, at the white oak Springs Mesquite, the  
order was written then by Power at the time it bears date, or about ~~at~~ that  
time, I saw Buzan pay Robeson \$110 in cash for the order, and Robeson  
handed over the order to Buzan, in a few hours after it was given by Power  
to Robeson, this was at the white oak Springs, in Mesquite, this was a sale of  
the order, and Robeson required Buzan to cash the order, as it would be good  
to Buzan in town, the negotiation and sale, between Robeson & Buzan, and  
payment of the money took place at the old ten pin alley at the Springs, it was  
in the afternoon. Robeson received all the money at once, I don't know what he  
became of the money, that Robeson received of Buzan, I never heard Buzan  
say any thing about it, I know that previous to the order being given, on  
the same day in the ten pin alley, Robeson, Buzan, and others were betting <sup>at</sup>  
Gore, don't know any thing about the result of the game, Dunbar was dealing the  
game, don't know that Buzan was any of the money from Robeson at this or  
any other time, never heard Buzan say any thing about it, Wetump was be-  
-spring the bar in the alley, it was my alley and bar, at the particular time of  
the sale, they were not playing at any game, and don't know of their playing  
afterwards (Buzan & Robeson) I think Robeson was sober to the best of my know-  
-ledge can't say ~~anything~~ but think he was competent to do business  
I know to & subscribed

T. J. Andrews



Deposited at Galena  
10th April A.D. 1848  
Charles G. Thomas  
P. 21

Taken by Consent of parties. Waiving notice of  
time &c.

Drummond for dft  
Sheldon & Johnson  
Plffs atty

The plaintiff then called Mr. G. Johnson as a witness who testified as follows:

Bryan came to town the 9th of Feb 1845, and placed the order in my hands for collection. I went down to Smith & Carter in business hours and presented the order on that day to Mr. Lemick's bank there for payment. Mr. Lemick's bank declined paying it saying that the order had been there before and gave as a reason. Why it was not paid, that it had not been <sup>presented</sup> paid by the payee - as was it endorsed by the payee. I then stated that Bryan <sup>carried the order with</sup> would indorse it, but Mr. Lemick's bank declined paying it saying that Bryan had left orders for it not to be paid. I then, immediately, came home, and on that same day wrote a notice informing the Defendants that the order was not paid, and addressed to them at Galena, and on same day put it into the Galena Post office. a few days afterwards, it may have been, a day, or two, or three or four, but a short time, after, I saw Bryan, and he declined doing any thing. I told him not to pay the order to Roberson, and I understood him to say that he would not. I saw him afterwards & spoke to him about paying it, but he shook his head when I spoke to him about paying it, he did not understand me or did not wish to understand me. I saw Strawbridge afterwards, and proposed to him to submit a written statement of the facts to Lemick to which he agreed. Strawbridge said that he knew nothing about it as Bryan did all the business. I mentioned to Strawbridge that Bryan ought not to pay the order to Roberson. Strawbridge said that Bryan would be a fool to pay it while the order was out. in the various conversations, I had with Bryan. I then asked him directly whether he had paid the order to Roberson. I think Bryan told me that he presented the order to Smith & Carter, on the 8th Feb. the day before I presented it. the white oak Springs <sup>the state of</sup> Wisconsin, twelve or thirteen miles from Galena. Smith & Carter did business in Galena, Illinois, and resided in Illinois.



and it was at their place of business, that the order was presented.

Strawbridge & Baur own at that time smelters, and had their furnace in the East fork of River near Ill. Baur resided at the furnace, and Strawbridge a short distance from it, both in LaSalle County, they sold their lead in Galena. When I first saw Baur I told him that Buzan owned the order and insisted on its payment. Baur did not say or pretend that he had paid Robison. When Baur said Robison told him he lost the order gambling I told him Buzan denied it, and said he paid the money for it. East Fork is in LaSalle County Ill. in the communication I had with Baur, he gave as a reason why he would not pay the order that they (Buzan and others) had won it of Robison at gaming, that Robison had told him that was the way Buzan got the order. Baur stated that Robison had to give him money for the order, the notice, that William Moten stated to Strawbridge & Baur that the order had been <sup>presented</sup> ~~presented~~ for Buzan that Buzan would look to them for payment. Moten declines Galena P. Office was the nearest to defendants when draft did this P.O. business. I offered Baur to submit on my first or second interview with him a statement of the case in writing to Mr. Drummond, and if he decided they were legally to pay it, then they should pay & if he decided they were not bound, then Buzan would not sue.

Then the Plaintiff closed his case;

The defendants then, introduced as a witness Robert Shaw, who testified as follows.

The plaintiff was named, as not Samuel Robison, but Thomas Robison. I was tolerably well acquainted with him, he went by the nickname of Sam among the miners, and most people <sup>perhaps</sup> ~~probably~~ thought that Samuel was his <sup>true</sup> name. ~~probably~~ Baur did when he gave him the order, but he always signed his name Thomas Robison. I have seen him write & sign his name often. Robison was a Minn. and worked at the diggings and had a pretty good lead [lead]. Early in morning, about the 5th or 6th of February 1845 Robison came to my house and told me that he had got high and had been gambling all night at the White Oak Springs, and Buzan had won the order of him at gaming, no one was present at this time but Robison, and myself. Robison was pretty high then when he came to my house, looked as though he had been drinking. I saw Robison the day after that communication with me, he came and waited till Baur, arrived. Robison told Baur, that Buzan had won the order, gaming at White Oak Springs. Baur paid him the \$110. The reason that Baur paid him, was because they deposited as the order was payable to no one but Robison, no one else could draw the money.



Baum paid him the money in my presence. I saw him count it and Robeson receive it. Robeson gave him a receipt for the money (receipt shown) that is the receipt, that is Robeson's signature. The defendants then introduced the following receipt to the Jury -

"\$110. Received of Strawbridge & Baum one hundred and ten dollars' worth of a order given to Thomas (or Samuel) Robeson of one hundred and ten Dollars, to Smith & Carter. Dated the 4 Feb 1845. Signed by Strawbridge & Baum and the said order shall be null and void  
Galena the 5th Feb 1845." Thomas Robeson

The witness continued  
at the <sup>same</sup> time Robeson gave an order on Drost his partner to Baum for Mineral. [Order shown witness]

That is the order with Robeson's signature, the defendants then introduced to the Jury the order  
"Mr. Saml. Drost please let Charles Baum, have my part of mineral what will be raised on the Thomas Est. and oblige Yours  
Galena the 5th Feb 1845. Thomas Robeson

The witness continued  
The receipt was given at East Fork, it was given, it might be on the 5th of Feb. but I think that it was on the 6th. I am certain it was the day after Robeson told me Buzan had won the order from him,

#### Cross Examination of Witness by Plaintiff

Baum's furnace was on East Fork. Galena was not the nearest Post office to him or Strawbridge. but Baum got his papers at the Galena Post office. they sold them lead in Galena. Strawbridge lived on East Fork not far from the furnace, but Baum did all the business. I cannot say certainly but the receipt might have been given on the 9th Feb but know it was the day after Robeson told me Buzan had won the order of him. according to the best of my recollection it was on the 6th Feb. on the day that Robeson told me that he lost the order gambling, and Buzan had it, he said Buzan had won it. \$10. or \$15 at a time till it was all gone. at the time the order was drawn, Strawbridge, Baum & Robeson lived in do Jumps County, Illinois. at the time he paid it. <sup>Baum</sup> know that Buzan held the order, Robeson having told him of the man on in which Buzan had got the order,

Baum notified Smith & Carter not to pay the order before he paid Robeson  
The defendants then called Alexander Leuckshank



who testified as follows —

I am the Clerk of Smith & Carter [Order shown to Whitcup]  
I think I have seen that order before. I know that an order for \$110  
of Strawbridge & Barn was presented at Smith & Carter in Galena in Feb  
1843, and we declined paying it on the ground that the order was not presented  
by the payee. I don't know who presented it, according to my recollection I  
was on the point of paying the order, supposing the payee presented it, but as-  
certaining that his name was not Robeson & that it was not endorsed I declined  
paying it. Mr. G. Johnson, called with the order afterwards and I declined  
paying it then, for the reason already stated and for the further reason that  
Barn had in the mean time declined us not to pay the order.

When the order was first presented we had not been requested to decline  
paying it, the only cause of its not being paid was that we did not  
think it presented in due form.

I think Mr. Johnson called with it the day after its first  
presentation, and Johnson offered to indemnify Smith & Carter for any  
if they would pay, but they declined.

The Defendants then offered in evidence the following  
provisions in the Statute of Wisconsin, to wit, "Sections 8, 9 & 10, of an act to  
provide for the punishment of offences against Public Policy," which was  
followed: Sect. 8, "Every person who shall deal, or <sup>Page 363</sup> cards at the Games  
"called faro, and every person who shall keep, to be used, in gaming, any  
"gambling device commonly [called] E. O. Roulette, Equality, or any other  
"gambling device, designed to be used in gaming, shall be punished  
"by imprisonment in the County Jail, not more than six months, nor  
"less than one month."

Sect. 9, "Every person who shall, bet any money or other property  
"at or upon any gaming table, game, or device prohibited by this act,  
"shall be punished by fine, not exceeding twenty dollars, nor less than  
"five dollars for every offence."

Sect. 10 "Every person, who shall suffer any gaming table, game  
"or device prohibited in this act, to be set up or used for the purpose of  
"gaming, in any house, building, shed lot, yard or garden, to him belong-  
"ing, or by him occupied, or of which he has the control, shall be  
"punished by imprisonment in the County Jail, not more than six  
"months, nor less than one month."



The plaintiffs counsel, objected to the declarations of Robeson testified to by Shaw, — This was all the testimony, offered on the trial of the cause. Either for plaintiff or defendant

After the whole evidence, on both sides was offered, as above the counsel for the plaintiff, asked the court to give the eight following instructions to the Jury, to wit

1.<sup>st</sup> If the Jury believe from the Evidence, that the order, given in evidence was one inland one — that it belonged to Buzan, & that afterwards, within a reasonable time, after it was drawn, it was presented by Buzan or his agent to Smith & Co., for payment, & they refused the same & that the defendants had <sup>due</sup> notice of such refusal & had also notice that the order belonged to Buzan, before payment of it to Robeson, then they should find for the Plaintiff —

2<sup>nd</sup>, Payment of the order to Robeson, by the Defendants, after they had notice the order was transferred to Buzan will not avail the defendants. Such payment is no defence.

3<sup>rd</sup> The declarations, receipt or release of Robeson, made after the transfer of the order to Buzan & notice of it to the defendant or either of them, are not evidence.

4. Even if the defendants had proved that the order was issued by ~~me~~ by Buzan from Robeson, in the State of Wisconsin, on a gaming Contract made there, that would be no defence, unless the defendants had also proved that the transfer of the order for such a consideration was null and void, by the laws of Wisconsin. No such proof has been made.

5. If the Jury believe from the Evidence, that Strawbridge & Brown & Robeson, resided in & transacted their business in this County, at the time the order was given, that the same was dated at East Fork in this County, the defendants usual place of business, & the parties to the order intended to have it considered & treated as if made at East Fork in this County, then it is inland & no proof of it was necessary.

Q. But, if the order was a foreign bill of Exchange, then a direction by Baw, to Smith & Co., not to pay the order when presented for payment



would dispense with a protest & render the same unnecessary

7. If at the time, the order was presented for payment it belonged to Buzan, then Buzan or his agent, was the proper person to present it for payment.

Given

8. The order might be transferred, by delivery, so as to vest the transference, interest, in it to Buzan, & enable him to receive it in the name of Robison, for his use. Though Buzan could not sue in his own name, & this is meant by saying the order is not negotiable, by delivery—

Given

Filed Oct 1848.

W. D. Bradley Clerk

To the giving of which, by the Court, the counsel for the defendants objected. Collecting, and to each distinctly, which objections were overruled by the Court, and all of the foregoing Instructions given by the Court to the Jury, to the giving of each of which, the counsel for the defendants at the time excepted,—

after the foregoing Instructions were given by the Court, the counsel of the defendants <sup>requested</sup> the Court to give the eight following Instructions to the Jury, to wit, Instructions asked by the defendants counsel

1st,

Replew

1. That the instrument offered in evidence, in this case, by the plaintiff is in law, a bill of exchange, and if the Jury believe from the testimony, that it was made in Wisconsin, and drawn on persons who transacted business and resided in Galena, Illinois, and that the bill was payable in Illinois, that then it is a foreign bill of exchange, and before the plaintiff can recover on the bill, it must have been duly protested for non payment.

Replew

2. If the Jury believe from the testimony, that the bill issued on in this case, was made on the 14th day of February 1845, at the White Oak Spring, Wisconsin, twelve or thirteen miles from Galena, and that the drawers Smith & Carter lived, and transacted business in Galena, and that the bill was then payable, and that these facts were known to the holder, and that he did not present the bill & that



Center for payment till the 10th or 11th of February 1825. then, there is not a  
dispresentment of the bill, and the plaintiff cannot recover, the holder not hav-  
ing used due diligence

3<sup>d</sup> That the Instrument offered in Evidence, in this Case was not under the  
law Merchant, Negotiable, or Transferable by Men delving

4<sup>th</sup> That if the Jury believe from the Evidence, that the Bill was not pre-  
sented to Smith & Carter, for payment, by the plaintiff, or person to whom it  
was made payable, that, that Circumstance, Excused the payee of it by  
Smith & Carter, and was a sufficient reason for their refusal to pay it. Unless the  
person presenting it, gave to them Evidence of his right to receive payment other  
than the <sup>mere</sup> production of the bill

5<sup>th</sup> That, when a bill of Exchange is made payable, to a particular person  
alone, without being made negotiable, on its face, then the mere presentation  
of the bill to the drawee, by a person other, than the payee, is out of itself a  
sufficient authority, to the Drawee to pay the bill, unless that person is a known

6<sup>th</sup> If the Jury believe from the testimony, that the defendants paid the  
plaintiff, the bill sund on, before they knew of its being transferred to bona  
fide holder, then the plaintiff cannot recover,

7<sup>th</sup> If the Jury believe, <sup>from the testimony</sup> that the defendants paid the bill sund on to the  
plaintiff on the 5<sup>th</sup> or 6<sup>th</sup> of February 1825, believing that Bryan was not a  
bona fide holder, of the bill, then the Jury must find for the defendants

8<sup>th</sup> That If the Jury believe from the Evidence, that the holder of the bill  
sund on, in this Case was guilty of any Laches, then the plaintiff cannot  
recover, in the Common Courts in the declaration, that absence of a protest on the  
non payment, of a foreign bill of Exchange, payable on presentation or the  
want of dispresentment for payment, is each such laches

Filed, 25<sup>th</sup> Oct. 1825

Wm W Bradley

Clark



The Court gave the 3<sup>d</sup> and 6<sup>th</sup> Instructions, but refused to give the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 7<sup>th</sup>, and 8<sup>th</sup> and to the opinion, and decision of the Court in refusing to give each and all of the said Instructions, to the Jury so, acted for by the defendants, the course of the defendant at the time expected.

after they had brought in a verdict for the plaintiff, the defendants moved for a new trial, for the reasons that the Court Erred, in giving the instructions asked for by the plaintiffs Counsel and in refusing to give the Instructions asked for by the defendants Counsel, and because the verdict was contrary to law, & the evidence, which Motion the Court overruled, and entered Judgment on the verdict, to which opinion, and decision of the Court, in overruling the Motion for a new trial, and entering Judgment on the verdict, the Council for the defendants at the time excepted, & prays this bill of Exceptions according to the Statute R.

agreed to by the Council

Liquid Sealed And  
Exceptions allowed by

Thomas, C. Brown & Co.

And afterwards went on the 23<sup>d</sup> day of October  
AD 1848 the said defendant filed in the Office of  
the Clerk of the Circuit Court for said Indiana County,  
a certain writing obligatory commonly called  
an appeal Bond which is in the words and  
figures following to-wit.

This image shows a blank, aged, cream-colored page, likely an endpaper or flyleaf from an old book. The paper has a slightly textured appearance with some minor discoloration and faint smudges. On the left side, there are three vertical wavy lines, possibly indicating where the page was bound or a decorative element. The lines are drawn in a light brown or tan color. The overall tone of the page is a warm, off-white or light cream.



From all men by these presents, that Mr William Strawbridge  
Charles Power and \_\_\_\_\_ of the County of  
McCamp and State of Illinois, are held and firmly bound unto  
Samuel Robinson for the use of Robert C. Pagan in the several  
sum of one hundred & fifty dollars current money of the United States  
for the payment of which bill and treaty to be made the said several  
in heirs, executors, and administrators. Truly, severally, and firmly  
by these presents, Witness our hands and seals this 23<sup>rd</sup> day of Oct  
A.D. 1848

The Condition of the above obligation is such, that whereas  
the said Samuel Robinson, to the use of Robert C. Pagan did on  
the 12<sup>th</sup> day of October A.D. 1848, in the Circuit Court of McCamp  
County and State aforesaid recover, a Judgment against the above  
bondsmen, William Strawbridge, and Charles Power for the sum  
of one hundred & thirty four dollars and twenty cents damages and  
seventeen dollars and eighty one cents costs from which said Judg-  
ment of the said Circuit Court, the said William Strawbridge and  
Charles Power, have prayed, for and obtained an appeal to the  
Supreme Court of said State. Now if the said William Strawbridge  
and Charles Power, shall duly prosecute, their said said appeal  
with effect, and shall moreover pay the amount of the judgment,  
costs, interest and damages undid, and to be undid, against  
them 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 and virtue

Taken and returned into before me  
at my Office in Galena this 23<sup>rd</sup>  
day of October, A.D. 1848

W. H. Bradley, Clerk

Wm Strawbridge  
Charles Power  
Robert Shaw

Seal

State of Illinois  
McCamp County

Wm Strawbridge  
Charles Power  
Robert Shaw

Clerk of the Circuit Court in and for said  
County, do hereby certify the foregoing transcript  
to be a full true and correct copy from the files  
record of all the proceedings which have



been had in said Court in said case  
of Samuel Robinson friend of Robert Buzan  
against William Shawbridge & Charles Power  
with exception of the original declaration filed  
by the Plaintiff, the depositions of the defendants  
to the original and also to the amended declar-  
ation & the orders of said Court on said de-  
positions.



In testimony whereof I have  
hereunto set my hand and affixed  
the seal of said Court at my Office  
in Larchmont in said Westchester County  
this 5 day of June A.D. 1849  
Attest William H. Bradley Clerk

Costs of Transcript 5256 words — 9.126  
Court's Seal — 50  
\$9.62



43  
J. J. Robinson &  
Wm. R. C. Swan  
v. 3  
Wm. Strawbridge  
Chas. D. Bond  
Francis  
J. J. C. C. C.

Fitch June 13. 1844.  
Leland Oth.

\$5. per. Leland Oth.



Robertson for the  
use of Burdett  
is  
Strawbridge & Bower

Points & authorities of paper.

1. Burdett or his agent the proper person to present the order for payment.

"Presentment for payment must be made by the holder of the bill or note, or an agent competent to give a legal receipt for the money."

"Any person who happens, whether by accident or otherwise, to be the holder, at the time a bill or note becomes due, & although he has no right to require payment for his own benefit, may be sought to demand payment." Chitty on Bills 8<sup>th</sup> Edition 397<sup>a</sup>.

Demand must be accompanied with the note to be deliver<sup>d</sup> up upon payment. 7 Mass. Rep. 483 Freeman & Boynton. 2 Grimes Ex. 5156.

"The possession of the note or bond is prima facie evidence of the legal title to the instrument & of a right to use the name of the person to whom it is payable." 1 Scam. R. 293. Nimsen & Jones. 2 Gilman. Rep. 647 McCune & Houson ex al.

The authority of an agent to receive payment on bills, bonds, or other securities is usually evidenced by the agent's possession of the instruments. 3 Stark Ex. 1086. 2 Do. 57.

When the holder in possession is not the payee or special indorsee, the mere production of the note by the holder is not ordinarily deemed a sufficient title or authority to demand payment because his possession is no proof of his title or authority



to hold the same. & if it is refused on that account, it may be doubted, if any recourse can be had against the indorser on account of the dishonor, at least unless a positive authority or title is clearly made out by positive & unexceptionable evidence. Story on Prom. Notes Sec. 247.

Here a title is clearly so made out in Buran. Buran was the holder of the order. Johnson was an agent empowered to give a legal receipt. They had the order with them to deliver up.

Robertson was not the holder. was not an agent who could give a legal rec<sup>t</sup>. for the money, & had not the order to deliver up. So he was not the proper person to demand payment. Had no title to the ~~order~~ money no authority to receive it. Smith & Carter's clerk when informed by Johnson that Buran owned the order, & he would give them an indemnity, they did not refuse to pay because presented by him & not Robertson, but because Buran had directed them not to pay it.

It is conceived that the proper question is, was it in fact presented by the proper person, Not whether drawers believed, or had reason to believe it was.

The holder is not required to produce to the drawee proofs of his title to the bill, of his identity, of the hand writing of parties to the instrument or of his agency, in case of an agent, if the drawee should happen to have doubts on those subjects.

2. The notice was a due one.

The time of giving notice of the non-payment of a foreign bill to a person residing in this State to be governed by the rules applicable to inland bills.



Whit. Bills 509. 8<sup>th</sup> Ed.

Sufficient to forward the notice on the day after the dishonor of the bill No. 514.

Notice sent to any post-office to which the party usually resorts for letters sufficient 2 Greenleaf Ev. in note to Sec. 187. cites 3 Wend. 328. 4 Do. 398.

Checks or notes payable on demand must be demanded within a reasonable time. No particular time for demand is fixed. But if the drawer of the check suffers no injury by the delay, as where the bank has remained in good credit, & the drawer has defeated the payment of the check by withdrawing his funds from the bank, he cannot object to a delay in presenting it. 6 Cowen 484 Murray v. Fisher  
Whit. Bills 410 (n. 1.)

This order dated 4<sup>th</sup> Feb. Burren presented it the 8<sup>th</sup> & Johnson the 9<sup>th</sup> & same day put the proper notice to the drawee in the Galena Post Office where Bower, who did all the business of the firm, usually resorts for his letters.

3. No protest necessary, because this not a foreign bill.



Chit. bills. 488<sup>th</sup>

Protest is the legal notice in case of a foreign bill. Vo. 490 (in note)

"If notice to the drawer of non-acceptance be not necessary, neither is that special mode of notifying the dishonor called a protest necessary". 12 East Rep. 175 Legge vs Thorpe 2 Term Rep 713. Chit. Bills 355 & c.

"And an order by the drawer to the drawee not to pay the bill, if presented, dispenses with notice of dishonor". Chit. Bills 8<sup>th</sup> Ed. 484. 390-592.

The reason of the rule requiring notice of non-payment to be given, (see Chit. Bill 467) don't apply where drawer commands payment. The drawer had no right or reason to expect the drawee to accept or pay - it's like the case of drawer having no funds in drawee's hands or having withdrawn them, for as to this particular bill they had no funds in drawee's hands, or had withdrawn them.

A party who draws a check on a bank without funds in the bank to meet it, is not entitled to notice of non-payment nor is he discharged by the holder's not presenting it in due time  
Richardson vs Finley & Hart & Johns 38 (cited in Chit. Bills 468 note).



bankrupt testified that the drawers had directed the drawers not to pay the bill (& that is the reason it was not paid after Johnson notified the drawers that Bower owned it & offered an indemnity) & Shaw testified that Bower notified the drawers not to pay it before he paid the order to Robertson.

5.

Payment of the bill to Robertson after notice of the assignment no defence.

Littlefield v. Storey 3 Johns Rep. 426.  
See release - 11 Johns Rep. 411. Anderson v. Bunker - 11 Johns. 47 Ray -  
Mead v. Squires - 3 Wilm. Rep. 52 Chapman v. Shattuck

It must depend upon the fact, & not the mere belief of Bower, whether Bower was the bona fide holder of the bill when it was paid to Robertson. After the notice he had, Bower should have ascertained the fact of who was the rightful holder of the bill - he paid as his paid.

6.

There is no evidence in regard to the giving consideration of the assignment of the bill, except the declarations of Robertson after he had parted with his interest in the bill. Against all such declarations & facts, Bower is protected. See Ray v. Mills for use Pinkham & Main v. Stone Leg. Observer, No. 3, p. 77. decision of our Supreme Court Dec. Term 1848 in W. Vernon. 10 W. Rep. 677 Timball v. Huntington.

But those declarations are proved to be false, by the testimony of Anderson. And were they all true & legally proved it would constitute no defence in this suit in our courts, the transaction taking place in Wisconsin.

The bill was not negotiable nor being payable to order, & the want of due indorsement on it, nor such a suspicious circumstance as to justify the drawers



in not paying it.

Should the objection be taken that  
the facts in excuse of the want of pro-  
test or due notice cannot be shown  
under the counts upon the bill. They  
can at least be shown under the money  
counts. 2 Greenleaf Ev. Sec. 197.

= A notice of Protest was waived, by Bower directing Smith  
& Carter not to pay the Bill, to Buzan the holder, and  
was also, an acknowledgement of notice to him, that  
Buzan was the holder, before he had settled with  
Robinson

All the parties are residents of Jo Danef County  
The order is drawn at East fork in Jo Danef Co as appears  
by the order, where all the parties resided and done business  
If it was delivered by Bower to Robinson at White Oak Springs  
in Wisconsin, Still it will be considered an Inland  
Bill what the parties designed it at the time of making

Benj R Sheldon &  
M Y Johnson attys  
for Buzan

Sheldon & Johnson  
attys for Buzan

Sheldon & Johnson

Benj R Sheldon &  
M Y Johnson  
attys for Buzan

Robinson for the  
use of Buzan  
Stoughton & Son



The general rule undoubtedly is, that when  
is a reasonable notice of non-payment is a mixed  
question of law & fact: and perhaps it may  
be also said that when the facts are settled, it  
then becomes a question of law, for the court  
to determine. But be that as it may, the  
proofs in this case (and there seems to be but  
little ~~doubt~~ ~~at~~ controversy about the facts)  
show that every thing was done, that the law  
requires, to charge the drawers.

Were the case to be sent back for a new trial  
the facts proved would be the same as pre-  
sented in this record. This court will look into  
the whole record - and if some of the instructions  
asked & refused, <sup>were</sup> ~~had~~ been given, & the court can  
see that the verdict is right, it will not dis-  
turb the verdict. The giving a wrong instruc-  
tion, or refusing to give a right one, will, not  
of itself entitle the party to a reversal of the verdict.  
The decisions of this court have so fully established  
the rule, that it is not now necessary to cite  
authorities on this point.

*Boston vs. Nathan et al.* 4 Pick. 3 -  
is in point.

The true rule, it is suggested, is this; that if the wi-  
dener be such, that a verdict must be for the  
plaintiff, then, though wrong instructions be given, or  
proper instructions ~~are~~ refused, still the verdict  
shall stand. - The case at bar clearly comes  
within this rule, so that we are, in any event, entitled  
to an affirmance of the judgment.

But we think the decision the court on all the  
points was correct. - C. Peters for the Dft. in error



Sturbridge et al

vs.

Robinson, for the case,

Point & authorities of

Peter & Johnson for

defence in error -



Stratford } T. Court Jan P. 1849  
Robinson }  
Bryden }

What is reasonable notice of  
non payment of a Bill or order is a question  
of law. *North v B & B* 10 Den 304

*Bryden v Bryden* 11 John 187  
John then is no dispute about the facts  
it is a question of law

*Baker v B.* 21 Den 643-  
Present of a bill - Notice of non payment  
is a condition precedent to the right of ac-  
tion against ~~indorser~~

*Springfield v Astor & Als*  
2 Gil 247-



Sturtevant  
v  
Robinson B.