

No. **12138**

Supreme Court of Illinois

Crosby

vs.

Loop, et al

In the Supreme court

Henry L Crosby

vs

Loop et al

} Appeal from Boone

On motion for a rehearing

William J. Burges attorney for the appellant Crosby respectfully represents unto this court that he apprehends this honorable Court to have misconceived the facts in this cause as they appear from the Record and the law as applicable to the facts ~~stated~~ as stated by the court in the opinion and decision given in this cause June Term 1852

The facts by the record are that the rent is \$300- and Crosby sold the Loops one half of the premises out of which this rent accrued. Then without any reservation and by an ordinary conveyance the Loops would have been entitled to one half or \$150. and not \$200 as stated by the court. - This misapprehension of the facts may have led to this conclusion in the mind of the court. That as the order is drawn for just two thirds of the rent. and as the court holds that without any further act than an ordinary conveyance the Loops would have been entitled to two thirds of the rent. and as the Parties have stepped out of the usual course of doing business. they must have intended something more than doing that which would have been accomplished by doing it in the ordinary way, and so that

Crosby intended to assume the payment of the rent

Again the court says that the "Loops
having demanded payment of Robinson Ho. and
notified the defendants of their refusal to pay"

This does not appear from the record and is
not a state of facts which the parties making that
stipulation intended to admit - The stipula-
tion of the parties on this part of the case means if
it means any thing, that the order was presented
for acceptance and acceptance refused - But
the stipulation amounts to nothing for no time
is given when the order was presented, for ~~notice~~
payment, ^{or acceptance} and notice of non payment or non accep-
tance given, whether before or after suit brought
The Plaintiff asks us to concede ~~or~~ certain acts
being done for the purpose of that trial - without
giving the time and manner in which they were
done. The Defendant does so - does he thereby admit the
time and manner - Stipulations of this sort are the
acts of both parties, It is competent for them to state
or admit more or less of the facts necessary for the Pff or
Def. what they did not it is not competent for
the court to insert for if that had been asked it
would probably have been refused - and the parties not
have agreed at all - Suppose a witness swears to just
the same facts that are contained in that stipulation
~~would it~~ that is that the Parties admitted so & so - would
it prove what this court has stated as appearing
by this record? what is the difference between
the writing & the witness none unless it be that the Pff
having it in his power to include in the stipulation if

true all the facts which he claims, neglecting to do so shall take nothing by construction -

It is laid down by this court as law.. that rent is transferable by the lessor in portions or the whole, and in either case the legal title passes to the transferee, and the tenant is bound to pay according to such transfers. Then again in this case it is said by the court. "The whole of the debt was not transferred, & Robinson & Co were not bound to discharge it in fractions," what is this debt - It is rent nothing that Crosby did alter the character of it - It was just as much rent after as before the conveyance to the Loops. The reason the court gives for this doctrine "The principle that an entire contract cannot be apportioned. &c" is the very rule to which this court before says cases of rent are an exception. "In all cases of apportionment of rent it is the duty of the tenant to pay each party the proportion of the rent to which he is entitled. This liability of the tenant forms an exception to the"

Again this court says "If the order had included the whole of the rent reserved by the lease, it might have amounted to an equitable assignment of the fund." Now here with all due deference this court has lost sight of the distinctions between assignments of rent and of other debts, laid down by this court as also those between legal and equitable assignments of choses in action - well recognized. In assignments of rent where there is no question as to the fact, that the instrument in law effects such

assignment. the legal title passes quite as much
as in assignments of Notes & bills of exchange
There is in such cases a full complete legal transfer
and it is a misapplication of terms to call them
equitable assignments - In the case of an or-
^{an assignment in terms of}inary debt, an order by the creditor for that
debt in favour of a third person. accompanied by
circumstances which show an intent to transfer it
is an equitable transfer. only; and is such & is
so called because the legal interest cannot be
transferred, but it is a distinction of form alone
of action alone. as courts of law invariably protect
the assignee - and allow him to sue in name of the
assignor. But rent is just like negotiable instru-
ments, capable of legal or equitable transfers -
and when the acts connected with the attempted
transfer. do not of themselves for the want of
some technicality amount in law to a trans-
fer of the legal interest. and yet show that the
third person is entitled equitably to receive the
proceeds of the same - then in cases of negotia-
ble instruments if of the whole he is equitable
assignee. if of rent, whether of the whole or of
part he is equally equitable assignee, for it
is absurd to say that the distinction which is
not recognised in legal assignments should be
applied to equitable and so if the Loope would have
been equitable assignee of the whole had the order
included the whole so they equally are of a ~~part~~
such part as it ^{does} ~~may~~ include -

Again in the construction of the ~~and~~
instruments made by the parties this court first
constitutes the ~~and~~ by itself aside from and leaving
out of view all the other papers - made before
and at the same time - and comes to the con-
clusion, that it amounts to a grant of the
reversion only - and then proceeds to construe
the order - saying "the drawing of the order in con-
nection with ~~the~~ a grant of the reversion did
not amount to an assignment of two thirds
of the rent to the Plaintiffs" Nothing is here
said about the agreement contained in the reser-
vation itself to draw the order, This fact seems to
have been laid out of view entirely - The reser-
vation is spoken of as being an absolute one - with
no qualifications whatever - and the order as
not being drawn in pursuance of any thing
contained in the ~~and~~. It is true that the ~~and~~ does
not specify the fund, but the order drawn at the
same time & the contract for sale of Property most
unquivocally does - Apply to this case these
well known principles That all papers made
at the same time, & growing out of one transaction
are to be construed together that is read as if one
instrument -; That the evident intent of the parties
is to govern unless some positive rule of Law is
infringed - and That all grants are to be taken
most strongly against the grantor - ~~then~~ the
~~and~~ and the order made as one instrument, infringing
no rule of Law (for as I shall hereafter show, an assign-
ment of Rent need not necessarily be under seal.) ~~then~~ most

governed by the plain and evident intent of the parties - and taken most strongly against the grantor. amount to a grant of the reversion and two thirds of the rent & a reservation of one third only - If not if the Loops are not entitled to two thirds of the rent. why did this court give them a judgment for just that amount - It must be that they considered it the intention of the parties that they should have it and if so why not carry that intent into effect directly and not indirectly - If the writings are construed as claimed by us then the Loops have the direct legal title to the two thirds of the rent and if not it is difficult to see upon what ground they recover at all.

But from the opinion in this case this court holds that rent is severable from the reversion and capable of being assigned in part or in the whole. ^{as same time} ~~but~~ strongly intimate that an order would not operate in law as assignment of the rent either of the whole or part vesting the legal title in the drawer - Why not -

When rent is severed from the reversion it becomes a debt issuing out of Realty & for the collection of which the lessor has certain modes of proceeding peculiar to the relation of Landlord & tenant. And inasmuch as it is an interest in real estate no assignment of it can be made except in writing [1 Campb. 318. 3 M. & S. 17 - R. S. of this State - Well so far this is in writing, and if any thing more than that is required to create an assignment of rent I have not been able to find it - Any words that

Show an intent to transfer to another a debt
operate as such. transfer 10 Johns. Rep. 47. 1 Russ.
Myt 602 608-

It has been held by the highest authorities
that an order for a particular fund is an equitable
assignment of that fund. 1 Pick 462, 6 ver. 666—
5 Wheat 285. 3 Greenleaf 346. 1 Wash. C. C. 424—

The words "pay A.B." enclosed on the back of
a note ~~under~~ with the signature of the payee have
been held from time immemorial to be an assignment
of that note—

It is not necessary that a bond should be assigned
under seal: at common law that as any other chose
in action may be assigned by Parol. 1 Ast. & McCord
249. Howell vs Buckley - ~~also Burtin vs Gibson & Hill~~
S. Car. Rep. 56—

~~This order is not expressed to be~~

The order is not a bill of exchange; the construction of it by this court, and the fact that it is partly payable in goods, put that beyond controversy ^{and it does not expressly say to be for value received}. Then the contracts implied between the drawer & drawee of a bill of exchange do not apply to this order. It is of course evidence for some purposes, and undoubtedly cases might arise when orders payable out of a particular fund, or for goods, connected with other facts outside of the order & more than mere presentation for & refusal of acceptance or payment might give a good cause of action. But such orders alone and unsupported never would, and particularly when the facts accompanying the giving of the order afford a reasonable presumption that the party receiving it intended to rely on it alone.

If selling a ^{part of a} piece of land for a specific sum and agreeing to divide the rent ~~different~~ ^{from what} accruing from the whole diff in a greater or less proportion than the part sold bears to the whole, shows a state of facts outside of the order, that the party selling intended to pay the rent if the tenant would not. All that I can say is that it behooves men to let rent take the apportionment that the land out of which it accrues does on the sale; because no contract is implied by law from the order but only from facts connected with it & outside of it and no substantial distinction can be drawn between this case and any other case of apportionment of rent save in the amount. There has nothing been ~~said~~ done but an ordinary conveyance, and the Loops taking half the rent Crosby would not have been liable but because he agrees that they shall have two thirds

he guarantees the payment of it. The whole doctrine of implied contracts in law is founded upon the maxim ex arguo et bono. How is it that Crosby received any thing on account of this rent not a shilling - has he any when agreed to pay the rent if the Lessors did not. not expressly and where the implied promise is to be raised from of that tenor cannot be gathered from the opinion of the court.

For in this case this court has laid down as law certain propositions; That Rent may be severed from the reversion and assigned in part or in whole and the legal title passes to the assignee - That Crosby by the clause reserved by the court from the deed, reserved the rent to himself, and if no such reservation had been contained in the deed then that an apportionment of the rent would have taken place; That the order in connection with the deed did not operate as such apportionment. That demand of payment of the rent having been made by the Lessors not paid Crosby notified them of he is charily liable.

Now why

Is it because he reserved the rent? - This court has said that he has the right to do it -

Is it because he drew the order? This court do not construe it or call it a bill of exchange.

Is it because the Lessors were to have more than of the rent than their share of the land - That is simply preposterous.

Taking any view of this case that presents itself to the humble comprehension of your petitioners and the conclusion of the court from the premises laid down is a non sequitur—

I have already alluded to the construction put upon the deed and order by the court and stated that ~~that~~^{it} was under that construction difficult to see upon what grounds the Loops recover at all— for the court says that the deed is merely a grant of the reversion; ^{there} the order being in direct conflict with it one or the other must give way— ~~then~~ which is it, the court say the order must. ~~then~~ the order must become a nullity it either gives the Loops two hundred dollars out of the rent or nothing. the court cannot make warranties & contracts for the parties, and say it is true the order does not with the deed give them the rent. but we will give them two hundred dollars a year anyway. They sue for so much rent styling it so in their Bill of particulars, and introduce to prove their claim a deed & order ~~& lease~~, to them and the original lease of the premises, & nothing more to prove their right to the subject matter of the suit, the court holds that the deed and order "did not amount to an assignment of two thirds of the ^{rent} to the Plaintiffs." ~~then~~ they are not entitled to it, if not entitled to it how do they recover \$68. ~~a balance of two instalments of it—~~ as a part of it, the consideration paid for ~~an~~ or damages for breach of a contract might be recovered but to give the party the very thing which the court

says he is not entitled to do so seem to me to be
an anomaly in administering justice,

I call the attention of the court particularly to the fact, that Crosby has done every thing in this case that he agreed to do - made just such papers as the original contract called for. and as are contemplated by the lease (see clause where Lessees agree to pay such orders as may be drawn on them for the rent) - And if those papers are insufficient to carry out the evident design of the parties, is a court of common law the forum to administer justice. or shall a court of common law mulct a man in damages & costs & make him pay the debt of a third person for that reason -

There are left to my mind but two reasons to suggest why Crosby is liable if at all on each of them untenable - one is that the common law implies a contract when a man assigns a debt that it shall be paid when demanded & when due - That that is not law I need but say that the common law does not allow of assignment of debts, and it is absurd to say that it implies contracts about a thing that it forbids - & although courts now allow & protect assignment of debts yet positive law is necessary to introduce a rule of this character especially when upon one branch of the case they promissory notes

they have laid down a rule for the guidance of
courts, and a rule not as stringent upon
the assignee as the one adopted by the court
in this case. See 1 Bay S. Car. Rep. 398. 2 A. & M. Ford 286 -
1 Hill S. Car. Rep. 56 -

The other is that when part of a debt
is assigned but not the whole the act being
inoperative in law. The assignor is liable to
pay the debt himself - which seems to me
less tenable ^{in this case} than the other proposition. It may
be that the party might never back the
consideration paid but that is extremely
doubtful - for there is not an entire failure
of consideration - Whenever the assignor
collects the debt the assignee has undoubt-
edly the right to recover from him the
part assigned to him - The most courts
have laid down is that the debtor cannot
be compelled to pay in fractions, but they
have never said that ~~when the~~ I can find
that when the fund is collected the assignor
is not liable to the assignee for such part
as he may have ~~collected~~ assigned to him
~~And~~ a recovery back of the consideration involves
a rescission of the contract. ~~And~~ that cannot
be done in this case; ^{Crosby} the parties, to put the
strongest case for the plaintiffs agreed to sell
to the Leaps the mill & \$200 of the rent -
accruing thereafter for \$3000 - with the
intention of carrying that agreement
into effect. They make papers which
are insufficient, ^{to do that with} the party cannot
call the one portion inoperative in law

and hold to the other - and ask for a return
of part of the consideration, (in chitting
on contracts. Co. cons^{us} void in part)

and about every thing else his damages in
such case would be entire & not recoverable
by ~~portions~~ - Installments

In view of the above statements I have
deemed it my duty to my client to
ask this court to review the facts &
the law of this case and grant him
a rehearing

Respectfully submitted

W. J. Purdy

off. Atty

Superior Court

H. L. Crosby

^{vs}
H. Loop & Co.

Pt. for Rehearing

Filed June 10. 1850.
d. Leland C.R.

In the Supreme court

Henry L. Crosby
Appellant

vs
Henry Loop John Loop
& George W. Loop Appellees

Appeal from
Broom
upon motion for
Rehearing -

State of Illinois
county of LaSalle Sp.

William Y. Burgess
of said county of Broom being duly
sworn doth depose and say that
he did more than three months
before this 15th day of June 1853
notify the said Plaintiffs John Loop
& George W. Loop - ~~also~~ also the
counsel in this cause Stephen
A. Hurlbut that he ^{this deponent} would at
the present term of this court file
a petition and move this court
for a rehearing of this cause.

And this deponent further
states that said Hurlbut has read
over the said petition or the substan-
tial parts of it at least

W. Y. Burgess

Subscribed & sworn to
before me this 15th day of
June A.D. 1853 -

L. Leland Clerk
By P. K. Leland depy. Clk.

Crosby vs Loper et al.

Affidavit-

Filed June 15th 1853
S. Leland Clk.
By P. K. Leland Depy.

Index of title

In the Supreme court of the State of Illinois
Henry L. Crosby Appellant

vs
Henry, George & John Loop Appellus

We do hereby enter ourselves
security for costs in this cause acknow-
ledge ourselves bound to pay or cause to be
paid all costs that may accrue therein
either to the opposite party or any of
the officers of this ~~State~~ - court within
the laws of this State -

dated

April A.D. 1852

Fuller & Strong

Boone

Henry L. Crosby
or

Henry Cooper et al.

Bond for costs

Filed Apr. 17. 1852
Leland Clerk

Pleas before the Hon. Isaac C. Wilson
Judge of the Thirteenth Judicial Circuit of the State
of Illinois and Judge of the Boone County Circuit
Court at a Circuit Court began and held at the
Court House in Belvidere on the First day of
December in the year of our Lord one thousand
eight hundred and fifty one

Presents Hon. Isaac C. Wilson
Judge

A. B. Coon

States Attorney

Attest

D. J. Olney

Clerk

2 Be it remembered that on the Twenty fifth
day of February in the year of our Lord one thousand
eight hundred and fifty one the following papers were
filed in the office of the Clerk of the Circuit Court in
words and figures following to wit:

State of Illinois }

Boone County }

ss. The People of the State of Illinois to
my Constable of said County Greeting:

3 You are hereby commanded to summon Henry L
Crosby to appear before me at my office in Belvidere
on the 10th day of Jan'y. 1851 at one o'clock P.M. to answer
the complaint of Henry Loop George Loop & John Loop
for a failure to pay him a certain sum not exceeding
one hundred Dollars and hereof make due return
as the law directs

Given under my hand this 4th
day of Jan'y A.D. 1851—

D. B. Hamlin Seal

Justice of the Peace

Which said Summons has endorsed thereon the words
and figures following to wit:

"Demand \$ 65.00 Justice Costs 56 1/2
Served on Defendant by reading Jan'y 4th 1831 fees 30 cts
S. Pearssoll Const

Henry Loop
George Loop &
John Loop
vs
Henry S. Crosby

Demand \$ 65.00

Summons issued to Const Pearssoll
Jan'y 4th 1831 and returnable on the
10th inst at 10 o'clock P.M.

Justice Costs 1.44
Appeal .75
2.19

Summons returned served on the Def^t by
reading Jan'y 4th 1831 fees \$0.30

Const Pearssoll 30
- Blake 30
2.79

Jan'y 10th 1831 Cause called and continued
by agreement to 18th inst at 10 o'clock P.M.

Jan'y 18. 1831 Cause continued by agreement
to the 25th inst at 10 o'clock P.M.

Jan'y 25. 1831 - Cause called parties present -
Plff. declares for the sum of \$68.00 + int from August 7. 1830
+ c due on an order for rent - Defendant demurs Def^t
withdraws his demurrer pleads Gen^l issue and gives notice
of special matter

James B. Crosby, Wm T. Burges, and
H. S. Crosby sworn for Plff. after hearing proofs
and allegations cause taken under advisement
till Feby 3. 1831 - Feby 3. 1831 Judgment rendered
against the Defendant and in favor of the Plain-
tiff for the sum of Sixty five Dollars + costs of Suit -

Debt \$ 65.00

State of Illinois

Boone County

I Gayetto B. Hamlin a Justice of
the Peace in and for said County
Do hereby Certify the foregoing to be a full and perfect
copy of the proceedings and judgments from my Docket
in the above entitled case

Dated this 15th day of Feby 1851-

G. B. Hamlin J.P. Seal

7 Know all men by these presents that We Henry L. Crosby
and William T. Burgees of the County of Boone in the
State of Illinois are held and firmly bound unto
Henry Loop George Loop & John Loop in the penal
sum of One Hundred and forty five (\$145.00) lawful
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

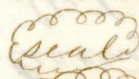
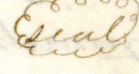
Witness our hands and seals this 15th day
of February A.D. 1851-

8 The condition of the above obligation is
such that- Whereas the said Henry L. Loop George
Loop & John Loop did on the Third day of February A.D.
1851- before G. B. Hamlin a Justice of the Peace for the said
County of Boone recover a judgment against the
above bounden Henry L. Crosby for the sum of Sixty-
five Dollars and costs of suit- from which judgment
the said Henry L. Crosby has taken appeal to the Circuit
Court of the County of Boone aforesaid and State
of Illinois Now if the said Henry L. Crosby shall
prosecute his appeal with effect and shall pay
whenever judgment ^{may} be rendered by the Court

9
[12138-11]

upon dismissal or trial of said appeal then the above obligation to be void - otherwise to remain in full force and effect

approved by me at my office
this 15th day of March 1831

Henry L. Crosby 
W. T. Burgess 

J. B. Hamlin

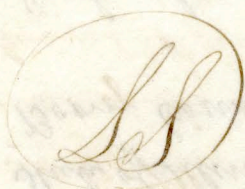
Justice of the Peace

10 And afterward to wit: on the Twenty sixth day of February in the year of our Lord one thousand eight hundred and fifty one the following writ was issued out of the Clerk's office of the Boone County Circuit Court to wit: in words and figures following to wit:

State of Illinois }

Boone County } ss. The People of the State of Illinois
To the Sheriff of said County. Greeting:

11 We Command You that you summon Henry Loop, George Loop & John Loop if they shall be found in your County personally to be and appear before the Circuit Court of said County on the first day of the next term thereof to be holden at the Court house in Belvidere in said County to answer unto an appeal obtained by Henry L. Crosby from a judgment rendered against him by Fayette B. Hamlin a Justice of the Peace in and for said County - And haue you then and there this writ with an endorsement thereon in what manner you execute the same



Witness Daniel T. Olney Clerk of our said Court and the seal thereof at Belvidere this 26th day of February

Anno Domini 1851

Daniel F. Olney Clerk

12

And afterward to wit: on the Fifth day of December in the year of our Lord one thousand eight hundred and fifty one and during said Term of said Court the following action was had to wit:

33480

Henry George & John Loop

vs

Henry L. Crosby

Appeal

This day comes the parties to this cause and to No. 80 of this Term and by agreement these two causes are consolidated and waive a jury and submit this cause to the Court for trial after hearing the evidence

And afterward to wit:

On the Tenth day of December in the year of our Lord one thousand eight hundred and fifty one and said Court during said Term of said Court the following action was had to wit:

13

Henry Loop George W.
Loop & John Loop

vs

Henry L. Crosby

Appeal

This day comes the party to this suit and waive a jury and submit this cause to the Court for trial - after hearing the evidence the Court finds the issue joined in favor of the Plaintiff and assesses their damages at the sum of sixty eight

2500 Dollars - Thereupon comes the Defendant by
Fuller & Burgess his Attorneys, and moves for a new
Trial - The Court being fully advised overrules the same

14 It is therefore considered by the Court that
the Plaintiff have and recover from the Defendant,
the sum of sixty eight 2500 Dollars and their costs in
this suit expended and have execution therefor -

And afterwards to wit: On the day and
year last aforesaid the following action was had and
taken to wit:

33 Henry Loop George W.
Loop & John Loop
vs
Henry L. Crosby }

Appeal

15 This day comes the Def-
endant and prays an appeal to the Supreme Court
of the State of Illinois which is allowed by the Court
on condition that the Defendant enter ~~one hundred~~
~~and fifty Dollars~~ into bond to the Plaintiffs in the
penal sum of One hundred and fifty Dollars con-
ditioned as the Law directs - with William J. Burgess
as security to be filed in thirty days -

And afterwards by
Consent of Parties by their stipulation in writing
therein endorsed there was filed as of said Dec-
ember Term A.D. 1831 - a bill of exceptions in said
cause, which with said stipulation is in the words
and figures following viz:

In Boone Circuit Court

Henry Loop George Loop
& John Loop

vs
Henry L. Crosby

Appeal

State of Illinois

County of Boone

16

Be it remembered that on the terms of
the Plaintiffs Demand filed in the Court below are
as follows to wit

" Henry L. Crosby in a/c with
H. Loop & Sons Dr.

1830 Aug 1 st	To Amt due on order	
	On Robinson & Co. to date	50.00
Nov 7 th	To Amt due on above order	50.00
		<u>100.00</u>

cr

1830 Nov 30 th	By cash on above order	32.00
	Balance due	\$ 68.00
	add interest - H. Loop & Sons	"

17

And that on the trial of this cause in
this Court the Plff offered in evidence an instrument
of writing in the words and figures following to wit:

Belviden Feby 25. 1830

Messrs Robinson & Co

Gents

You will please pay
Henry Loop George John Loop & George Loop on
order Two Hundred Dollars (\$200) yearly from the
date of this order out of moneys accruing due
under the lease of the property known as the Crosby-
Mills near Belviden made by me to you
to be paid in quarter yearly payments of Fifty Dollars

and payable one half in cash and the other in
 Flour for the Term of time that the said lease runs
 and fractions of year & quarter to be paid in
 the same proportion Commencing Feb'y 7. 1830
 Henry S. Crosby"

And also offered another instrument
 in the words and figures following—

"This Indenture made this Seventh
 day of November A.D. 1847— Between Henry S. Crosby
 of Belvidere Boone County & State of Illinois of the
 first part and Lauren S. Robinson, John Sax-
 ton & Nathaniel Crosby— composing the firm of
 Robinson & Co. of the same place of the second part

Witnesseth that the said party of the
 first part for and in consideration of the covenants
 and agreements hereinafter contained to be kept
 and performed by the said parties of the second part
 their heirs and assigns has demised and leased
 and by these presents does demise and lease unto
 the said parties of the second part— the undivided
 one half part of all that certain lot of Real Estate—
 known as the "Crosby Mills & Mill property" and for
 particular description & boundaries of said property
 reference is hereby made to a Deed of Conveyance
 made by James B. Crosby to John Saxton & L. S. Rob-
 inson bearing date the fifteenth day of January
 A.D. 1847 & Recorded in Records Office of Boone
 County in Book D. of Deeds pages 44, 45 & 46

To Have and to hold the same
 unto the said parties of the second part for and

21

during the full end and term of Five years & nine months from the date of these presents yielding and paying the annual rent of Three hundred Dollars per year payable quarterly. On the Seventh day of February May August & November payable on third of the Amount in Cash and two thirds in trade -

And the said parties of the second part in consideration of the premises agree with the said party of the first part to pay him the said annual rent of Three hundred Dollars at the times and manner aforesaid

22

It is further agreed by the parties of the second part that they shall & will assume and well and truly pay or cause to be paid all the debts now existing against and owing by the firm of 'Crosby & Co.'

And it is further agreed by the said parties of the second part that they shall keep the new Grist Mill on said premises insured against fire and damage by fire to the amount of Four Thousand Dollars in some good and responsible Insurance or other Company or individual -

23

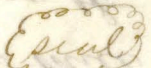
The said parties of the second part are at liberty to put into & add to said new Mill such Machinery as they shall see fit leaving the same in the said Mill at the expiration of said term and to have the use of the same until the expiration of said term without charge

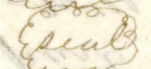
And the said parties of the second part agree to keep the said Mill in good running condition and at the expiration of the aforesaid term to deliver up to the aforesaid demised

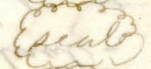
premises unto the said party of the first part in
as good order and condition as the same now are
reasonable wear tear & casualties which may hap-
pen by fire or otherwise only excepted.

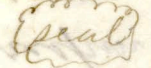
24

In Witness Whereof we have hereunto
set our hands and seals the day
and year first above written

L. S. Robinson 

Nathl Crosby 

John Saxton 

Henry S. Crosby 

It is hereby understood by the parties to the foregoing
lease that the Annual sum of Two Hundred
Dollars mentioned in the said foregoing lease
to be paid in trade is to be paid in such
articles of Merchandise as the said Crosby may
want from the store of said Robinson & Co
& flour meal &c from said Mills & that the
said Robinson & Co. shall accept & pay orders
drawn by said Crosby on their store or mill for
goods & apply the amount on said amount to be
paid in trade.

25

Robinson & Co.

Henry S. Crosby "

On which is endorsed the following to wit:

" Recd May 6th 1830 Forty six Dollars $\frac{3}{4}$ in
the within. Also Twenty four Dollars $\frac{4}{5}$
\$ 70⁷⁴ Henry S. Crosby "

And also offered an Instrument -

the material parts of which for the purposes of this trial by consent of parties is as follows to wit:

" This Indenture made this Twenty-fifth day of February in the year one thousand eight hundred and fifty -

Between Henry S. Crosby of the Town of ~~Belvidere~~^{Belvidere} Boone County Illinois - and Mary his wife parties of the first part and Henry Loop John Loop & George Loop of the same place parties of the second part

Witnesseth that the said parties of the first part for and in consideration of the sum of Three Thousand Dollars to them in hand paid by the said parties of the second part the receipt whereof is hereby acknowledged do by these presents grant bargain sell remise release alien and convey unto the said parties of the second part their heirs and assigns all those certain pieces parcels or lots of land situate lying and being in the County of Boone and State of Illinois and known and described and bounded as follows to wit:

The equal and undivided one fourth part of (omitting description) & intending to convey hereby one undivided fourth of the property known as the Crosby Mills.

Together with all and singular the tenements hereditaments and appurtenances to the lands and premises aforesaid in any wise belonging or appertaining.

To have and to hold the same unto the said parties of the second part their heirs and assigns forever - subject yet nevertheless to a lease

29 of land and premises made by said party of the first part to Robinson & Co. rents and profits of which the said party of the first part reserve to himself hereby agreeing to and with said parties of the second part to draw orders on the said Robinson & Co for the sum of Two hundred Dollars payable annually during the continuance of said Lease payable to said parties of the second part in quarter yearly instalments one half in Flour and one half in cash And the said Henry S. Crosby always subject as aforesaid doth covenant with said parties of the second part (usual covenants of Warranty & seizin omitted)

In Testimony Whereof &c

Henry S. Crosby (Seal)

Mary E. Crosby (Seal)

To the reading of all of which the Defendant excepted & his exception is noted & which were then read in evidence

And the Plaintiff likewise offered the following stipulation which was read

H. Loop & Sons }
vs } 2 Cases
H. S. Crosby }

30 It is admitted in each case that the order was presented to N. Crosby one of the firm of Robinson & Co and refused by him and that the drawers had notice for the purpose of this trial Decr T. 1831

Guller & Burgeffs

Which is all the evidence on the part of the Plaintiffs who here close their case

The Defendants then offered in evidence the following Instruments in writing which were read, to wit:

31 An Agreement made this 16th day of February A.D. 1850 between H. Loop & Sons of the one part and Henry S. Crosby of the other

H. Loop & Sons agree with Henry S. Crosby to sell him their entire stock of Goods & Merchandise in their Store in Belvidere at New York Invoice prices damaged Goods to be rejected and taken at what they are worth -

32 Said Crosby agrees to sell them the one undivided one fourth part of the Flouring & Saw Mills & lands situate near Belvidere on the Rishwankie River with the appurtenances as described in a Deed from James B. Crosby to L. L. Robinson & J. Saxton for the sum of Three Thousand Dollars subject to a lease of the same made by Henry S. Crosby to Robinson & Co

And the said Henry S. Crosby is to give H. Loop & Sons orders on Robinson & Co for the payment of the yearly sum of Two hundred Dollars to H. Loop & Sons out of the rents accruing under said Lease payable quarter yearly - one half in Flour & one half in cash -

33 Said Goods and Merchandise to be taken in exchange for said Mills & if the same amount when valued as aforesaid to more than Three Thousand Dollars then H. S. Crosby is to give H. Loop & Sons his note at one year for the surplus & if they amount to less than the said H. Loop & Sons are to give

him their note at one year for the deficiency
Invoices to be made immediately & goods delivered
when invoiced and good Warranted Deed for
said $\frac{1}{4}$ of said Mills to be executed by said
H. L. Crosby upon delivery of goods

Witness signed Henry L. Crosby
B. F. Lawrence " Henry Loop & Sons

34 And also the following instrument
in writing to wit:

" Received Belviden Dec
20, 1830 of Nathaniel Crosby five Dollars on
rent of our share of the Crosby Mill property
Henry Loop & Sons "

(The whole of which is admitted to be
in the hand writing of Henry Loop & Sons -)

\$50.00 " Received of Nathaniel Crosby fifty
Dollars for Mill rent Belviden Feb 22, 1831
Henry Loop & Sons "

(And which is admitted to be except
the signature in the hand writing of Nathaniel
Crosby)

35 Which is all the evidence offered
on the part of the Defendant &

And the Court
upon hearing the arguments of Counsel
find for the Plaintiffs herein to which
finding of the Court the Defendant excepts

which exception is noted

And thereupon the Defendant moves for a new trial herein for the reason that the finding of the Court herein is contrary to law & the evidence in the cause which motion is overruled and denied by the Court and to which the Defendant by his counsel Huller & Burges takes exception and prays that this bill of exceptions in the premises may be signed and sealed according to the Statute, and it is done accordingly—

Witness Hon Isaac C. Wilson
Judge of said Court and his
seal this 24th day of March
A.D. 1852

Isaac C. Wilson (Seal)
Judge &c

It is stipulated between the parties that the above bill of exceptions may be signed and filed as of the time when judgment was rendered in this cause

Loop & Sturbut for
Plff.
Huller & Burges for
Def^s

And afterwards to wit: on the seventh day of January in the year of our Lord one thousand eight hundred and fifty two was filed in the office of the Clerk of the Court the following Bond in words and figures following to wit:

Know all men by

these presents that we Henry L. Crosby and
William T. Burgeffs are held and firmly bound
unto Henry Loop George Loop & John Loop in
the penal sum of One hundred and fifty Dollars
for the payment of which well and truly to be made
unto the said Henry George & John Loop their
heirs executors administrators or assigns - we do bind
ourselves our heirs executors administrators & each
of them jointly severally & firmly by these presents
Signed sealed & dated ^{this} 7th day of
January. A. D. 1852

The Condition of this
obligation is such that Whereas the said Henry
George & John Loop did on the Tenth day of Decem-
ber last past at a special Term of the Circuit Court
then being held in and for the County of Boone &
State of Illinois recover by the judgment & consider-
ation of said Court against the said Henry L.
Crosby the sum of Sixty Eight ²⁵/₁₀₀ Dollars and
costs of suit from which judgment the said Henry
L. Crosby then & there prayed an Appeal to the
Supreme Court of this State

Now Therefore if
said Henry L. Crosby shall duly prosecute his
said Appeal and pay the judgments costs
interest and damages in case said judgment
shall be affirmed then the above bond to be
void - otherwise to remain in full force

Henry L. Crosby Esq
W. T. Burgeffs Esq

State of Illinois
County of Boone

40 I Daniel T. Olney Clerk of
the Circuit Court, in and for
said County do hereby certify the within trans-
cripts to be a full perfect & complete copy of the
records & proceedings in a cause lately pend-
ing in the said Court wherein Henry Loop
George W. Loop & John Loop were Plaintiffs and
Henry L. Crosby - Defendant - and of the whole
thereof as appears from the Books files of papers
and Records now remaining in my office.

In Testimony Whereof I have here-
unto affixed the seal of said Court
and subscribed my name this
thirty first day of March in the
year of our Lord one Thousand
eight hundred and fifty two -

Daniel T. Olney
Clerk

Of June Term A.D. 1852
In the Supreme Court
of the State of Illinois

Henry E. Crosby Appellant	}	Appeal from Below
vs		
Henry Loop, George Loop & John Loop Appellees		

Afterwards that is to say on the
first Monday of June A.D. 1852 in said
Term came the said Henry E. Crosby by
Fuller H. Burges his Attorneys and says
that in the record and proceedings aforesaid
and in the giving the judgment aforesaid
there is manifest error in this

1st That the court below on the trial of
this cause allowed the several papers offered
on the part of the appellees to be read in evidence
on the trial of the cause -

2^d That the evidence was insufficient
for the finding of the court below.

3^d That the evidence on the part of the
appellees in the court below was insuffi-
cient both in law & in fact upon which
to find a verdict in their favor -

4th That the court below refused to
grant a new trial in the cause

And also in this that the judgment aforesaid
by the verdict aforesaid, appears to have been
given for the said Henry George & John Loos
appellants against the said Henry E. Crosby
Whereas by the law of the land the said judg-
ment ought to have been given for the said
Henry E. Crosby against the said Henry George
& John.

And the said Henry E. Crosby prays a
writ of certiorari &c.

And the said Henry E. Crosby also
prays that the judgment aforesaid for the
errors aforesaid, and for other errors in the
said verdict and proceedings being may be
reversed annulled, and altogether holden
for nought, and that he may be restored to
all things which he hath lost by
occasion of the said judgment &c.

Frederick H. Thompson
for Appellant

Boone

Mary L. Crosby

Henry George & John Loop

— — —

Transcript
on appeal

12138

Filed April 10. 1852
Circuit Ct.

18

Fuller & Bangs

81

18

12138-18

⁴⁸
Henry L. Crosby
us
Henry Looperals.

48

12/28

1853