

14718

No. _____

Supreme Court of Illinois

Osborn et al

vs.

Stanley.

14718

Stanley
STATE OF ILLINOIS,
April 1866
SUPREME COURT,
THIRD GRAND DIVISION.

No. 181 *10*

J. W. Middleton & Co., Stationers, 190 Lake St.

Osborn
vs
Stanley

1866

Realty

181

IN THE

Supreme Court of the State of Illinois,

THIRD GRAND DIVISION.

April Term, A. D. 1864.

David M. Osborn, Cyrus C. Dennis and Charles P. Wood,

PLAINTIFFS IN ERROR.

VS.

MICAJAH STANLEY, DEFENDANT IN ERROR.

ARGUMENT AND BRIEF OF DEFENDANT.

~~~~~

WATSEKA, ILL.

PRINTED AT THE IROQUOIS REPUBLICAN OFFICE.

1864.

*Filed April 22-1864*  
*J. H. C. and C. H. R.*



## BRIEF AND ARGUMENT.

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This suit was commenced before a Justice of the Peace upon a promissory note, which reads as follows, to wit:

"\$67.00.

MIDDLEPORT, August 1st, 1861.

"On the first day of January, Eighteen Hundred and Sixty-Two, for value received, I, the subscriber, of Middleport, County of Iroquois, State of Illinois, promise to pay D. M. Osborn & Co. sixty-seven dollars, with interest at 10 per cent. per annum. M. STANLEY."

Which suit was by the Justice of the Peace decided in favor of said plaintiffs, and a judgment rendered against said defendant for the amount of money specified in said note, and for the interest thereon, to wit, for the sum of \$82.30. From the decision of said Justice of the Peace the said defendant took an appeal to the Circuit Court of Iroquois County, where the matter was twice tried by the Circuit Court of Iroquois County and a Jury; the first trial the Jury disagreed and were discharged by the Court, and at the last trial, to wit, at the November Term, A. D. 1863, of the Circuit Court of Iroquois County, said cause was the second time tried by a jury, when the jury found a verdict for the defendant, upon which verdict a judgment was rendered against the said plaintiffs for cost of suit.

The plaintiffs read to the jury the note of which the above recited note is a copy, and then rested their cause.



The defendant, for defence to said note, set up a failure of consideration and warranty by the said plaintiffs of the Reaping and Mowing Machine, for which said note was given to secure part of the purchase money, that said note and one or two other notes which were given for said machine, amounted to one hundred and thirty-five dollars in all. That said machine proved to be worthless, and of no value, and that the consideration of said note in consequence thereof had wholly failed, and that said defendant had paid the other notes, and that he should not be compelled to pay anything more upon said machine than he had already paid. The defendant, in order to support the issues on his part, offered as witnesses Isaac McCourtney, William R. Hueston, John Johnson, and Joseph Stanley.

McCourtney testifies that he was the agent of the said plaintiffs when the said note was given ; that it was given in part payment for a Reaper ; that one or two other notes were given by the defendant for the same Reaper, which, with the above note, amounted to \$135,00 ; that the said note was given by defendant in part payment for the Kirby Combined Reaper and Mower.

William R. Hueston, testifies substantially among other things that the defendant bought said machine in the fore part of July, 1860 ; that he heard a conversation between said McCourtney and said defendant ; that said Stanley was to try the Reaper, and if it worked satisfactorily to keep it, if not he was to return it, *or McCourtney was to make it right* ; that McCourtney said the machine was a *good ma-*



chine, and that the machines were *warranted* to do good work ; that witness helped to put up the said machine, and started it to work ; there was a piece of the seat they could not find ; they had to put it on as when they mowed with it ; they used the Reaper in a wheat field ; the sickle choked up ; the bar bent or twisted ; witness had worked with other machines of the same kind ; they worked better ; said machine choked up, and pulled down one-fifth of the grain ; the crook of the bolt was two-thirds broken, and soon broke off ; witness worked with said machine two days and a half ; witness considered the machine worthless ; witness hitched on to the machine two or three days after said conversation which he heard between the defendant and McCourtney ; witness was present when said conversation took place, and said machine and other machines were three or four rods off.

John Johnson testified substantially among other things, that he saw the machine in question in June 1861 ; that the casting was broken that held the seat up ; that sometimes the machine would go around the field without stopping, and at other times it would stop two or three times ; it dragged down the grain from two to seven inches ; witness worked with the machine during the harvest ; the sickle broke every day during the harvest ; witness got it mended and then it bent first one way and then the other ; witness said the machine was worth nothing ; the machine choked in Hungarian grass ; the driver had to walk ; the



shaft broke once or twice in 1861.

Joseph Stanley testified among other things, that he helped Hueston put up and work said machine ; it did not do very good work in wheat ; it mashed down from three to twelve inches ; the machine cut grass better than grain. The guards broke the first season, sometimes two or three a day, at other times none ; the machine would not work in Hungarian grass ; defendant had to hire another machine for flax.

William Hueston was recalled by the defendant, and stated that William Fruit helped the greater part of the time to put up the machine.

From the testimony as given by the said witnesses for the defendant it will be perceived that the *agent* of the said plaintiffs, McCourtney, sold to the said defendant a Reaping and Mowing Machine, for which the note in question, together with one or two other notes were given by said defendant to said plaintiffs, and that the other notes had been paid. It will also be perceived that when said defendant and said agent were making their bargain in relation to said sale and purchase of said machine, McCourtney said "the machine was a *good machine*," and that, "the machines were *warranted* to do *good work* ;" and McCourtney told defendant to take the machine and try it, and if it worked well to keep it, if not to return it, or he *would make it right*. It will be further perceived from the testi-



mony of said witnesses that said machine proved to be worthless, and Stanley had paid all said machine was worth, and more than it was worth, because it was worth nothing.

The main question in the case is, Was there a warranty either express or implied? And if there was, has such warranty been broken? We contend that there was both an express and an implied warranty; that the machine was a good one and would work well. In all cases of warranty there is always an apparent, and sometimes a real contradiction in the testimony given. But as it is a matter of fact to be tried by the jury, who hear the evidence *pro* and *con*, and also observe the actions of the several witnesses on the stand, and see their prejudices—if any they have—for either party, they necessarily must be the judges of the preference to be given to one witness over another, where it is conflicting, and courts will scarcely ever disturb their verdicts unless flagrant injustice has been done. And if substantial justice has been done between the parties, will not disturb the judgment, although *incorrect* instructions have been given or *refused*, or evidence that was not competent has been received. And to support the last proposition will cite

Schwarz v. Schwarz, 26 Ill, 81.

Dishon. v. Schorr, 19 Ill. 59.

Warren v. Dickson, 27 Ill. 115.

Elam v. Badger, 23 Ill. 498.

Newkirk v. Cone, 18 Ill. 449,

and cases there cited.

From the testimony of Hueston, we conclude there was



a warranty, for he says that McCourtney, the *agent* of the plaintiffs said to Stanley that "*the machine was a good machine*, and Stanley might take it and try it, and if it worked well keep it, if not return it, or he (McCourtney) *would make it all right*; and that the machines were *warranted* to do good work," thereby giving Stanley to understand that the machine would be *made right*, or a discount allowed if it failed to perform well the work for which it was designed. We conceive from the authorities, that in a warranty of a personal chattel the word "warrant," nor any other precise form of expression need not be used. It is sufficient that the vendor at the time of the sale makes such representations of the quality of the thing sold, for the purpose of assuring the *buyer* of the fact so affirmed, and to induce him to make the purchase, and such representations, if relied on by the *vendee*, will constitute an express warranty.

1 Parsons on Cont, p. 463, note O.  
 Osgood v. Lewis 2 Har. & Gill, 495.  
 Roberts v. Morgan, 2 Cow. 438.  
 Hawkins v. Perry, 5 Gilm. 36.  
 Hillman v. Wilcox, 30 Me. 170.  
 Whitney v. Sutton, 11 Wend. 441.  
 Chapman v. March, 19 Johns. 290.  
 Cook v Mosely, 13 Wend. 277.  
 Towell v Gatewood, 2 Scam. 24.

Which authorities fully support the third instruction given by the Court on the part of defendant.

We also contend that said machine was *impliedly* warranted, by the plaintiffs, that it was made of good material and workmanship, and well adapted for the purposes for



which it was made, as they were the manufacturers of said machine, and McCourtney sold it to defendant as the agent of the plaintiffs. And for this position and the giving of our fourth instruction cite

1 Parsons, Cont., p. 469, note V.  
 Beals v. Olmstead, 24 Verm. 114.  
 Jones v. Bright, 5 Bing. 533.  
 Brenton v. Davis, 18 Blackf. 37.  
 Laing v. Fidgeon, 6 Taunt. 108.  
 Misner v. Granger, 4 Gilm. 69.  
 Beer v. Williams, 16 Ill. 69.  
 Archdale v. Moore et al. 19 Ill. 565.

The question whether the words used amount to a warranty is a question for the jury.

Duffee v. Mason, 8 Cowen, 25.  
 Whitney v. Sutton, 10 Wend, 411.  
 Morrill v. Wallace, 9 N. Hamp, 111.

- From the above authorities, and the decision of the jury, we must conclude that said machine was both expressly and impliedly warranted to be a good machine, and to cut grass and grain in a workmanlike manner.

And as regards the question, Was said warranty broken? we must look to the witnesses for an answer. Messrs. Hueston, Johnson and Stanley all testify in substance to the same; and each say that the machine would choke up and pull down and not cut from one-fifth to one-fourth of the grain; and the sickle-bar and sickle were continually breaking and bending so that they would not work, and had to be repaired almost every day from the time they first tried to use it till the present season. This we think shows conclusively a breach of said warranty, and as said plaintiff



had paid *two* of the three notes given by him, which was more than said machine was worth, the defense set up was a valid one to prevent a recovery on the third note, as it had never been assigned.

Crabtree v. Kile, 21 Ill., 80, and authorities then cited.

And as to the error committed by the Court in giving the first and second instructions of the defendant, we think is fully answered by the authorities above cited, and that said instructions were correctly given, and were fully sustained by the evidence in the case.

Concerning the instruction asked for by the plaintiffs and refused by the Court, where the plaintiffs ask that the jury be instructed "That mere statements as to the general character of the machines do not constitute a warranty unless the other facts of the case show that the plaintiffs so intended to bind himself."

This, as expressed in said instruction, is not the law, and also has a tendency to mislead the jury, for we cannot tell what a man's intentions are only by his words and acts, and McCourtney swears that he never intended to *warrant* that machine, and if we were to judge only from the *intentions* of the vendor as expressed by him *after* the sale and delivery of the property, we would have but few verbal warranties. We think the authorities cited to support the express warranty clearly shows that it is sufficient if the vendee depended upon the representations made by the vendor, and such representations entered into and framed



part of the consideration. This is sufficient without it being the intention of the vendor to bind himself; he may intend to defraud the vendee out of the purchase money, still the warranty would be good.

Nor is said instruction founded on the evidence in the case, because said evidence shows an express warranty, and not only mere statements, and that the defendant relied upon said warranty and representations. An instruction should be refused by the Court if not founded upon and supported by the evidence, and more especially where it is calculated to mislead and deceive the jury.

And as regards the qualification of the second instruction of the plaintiffs, we think it entirely conforms with the evidence, according to our view of the case, that is, that there was a warranty; and then said qualification would be in conformity with the authorities we have cited to support it. We are aware that the plaintiffs founded their instruction on the case of *Nichols v. Guibor*, 20 Ill. 285, but that case was not a case of warranty, and the common law doctrine of *caveat-emptor* applies in such cases. But this case is entirely different; for *this* was a case of warranty, and then the qualification would be *correct*, as it conforms to the evidence. If the instruction had been given as asked, it would have tended to mislead the jury, for it excluded all idea of a warranty; also a very material part of the evidence, viz: "That McCourtney was to take it back, *or make it all right*" if it failed to work well.



A party can judge of the intention of the vendor of personal property in regard to whether he intends to warrant the property which he sells as to the quantity, quality, goodness, or soundness of the workmanship, only from the language of the vendor of the property, at the time of the sale, and if he by his language induces the purchaser to take the property on the faith of his representations, it will constitute a warranty. Therefore in this case what was the defendant to understand, when he was about to buy said machine, and when he was negotiating with said McCourtney as the agent of said plaintiffs, when he said the "machine was a good machine, and that "the machines were warranted to do good work?" Of course the defendant was to understand that the machine which he was bargaining for, and which he afterwards received, was to be a *good machine*, and was to do *good work*, and by virtue of the language used by said McCourtney, the said defendant took said machine, and under the contract he was to take it, and try it, and if it suited him he was to keep it, if it did not suit him he had the privilege of either returning it, or keep it and the plaintiffs were to *make it right*; that is, the plaintiffs were to allow the defendant so much money as would make said machine such a machine as they had warranted the same to be, if the said defendant should keep it and not return it. Then by the evidence it is fully shown that said machine was worthless, and that the de-



fendant had paid all and *more* than said machine was worth, aside from the note in question. The jury have passed upon this whole question presented in this case, and by the instructions both on the part of the plaintiffs and the defendant as allowed by the Court, everything that could be legally presented by any instructions which were asked or could be asked by either party were presented; and that the instruction of the plaintiffs, which was refused by the Court, was properly refused, because it presents a mere proposition of law without any evidence to support it, and because the fourth instruction asked for by said plaintiffs which was given by the Court, presented to the jury all the law that the plaintiffs could legally ask under the evidence.

But it is said that McCourtney, who was afterwards called by the plaintiffs as a witness, *contradicted* William R. Hueston, in relation to the warranty, and what was said by McCourtney to Stanley. But suppose he did; then the evidence of one witness was and is placed against the other; and McCourtney was the agent of the plaintiffs, and it was to the interest of him to keep his standing good with his employers, and the jury had this whole matter before them and gave the proper weight to the testimony, and they having found upon it, the verdict will not be disturbed unless manifest injustice has been done, and the Court will perceive from all the evidence given that *no* injustice has been done, neither on the part of the Circuit Court nor the jury, but on the contrary, complete and substantial justice has been done to all parties.

ROFF & DOYLE and  
JAMES FLETCHER.  
Attorneys for the Defendant.



## In the Supreme Court of Illinois.

D. M. OSBORN & CO. }  
vs. } *Error to Iroquois.*  
MICAIAH STANLEY. }

### POINTS FOR PLAINTIFFS IN ERROR.

1. The verdict is clearly against evidence. Stanley took the reaper and used it thirteen months, and then gave notes for it without objecting to the machine. He used it two years, and all the objection made was that one or two little things were lacking, which were supplied. He even supposed he had paid the note. He never offered to return it, and never notified the agents of any defects that were not remedied. The evidence clearly shows that the bad working of the machine was owing to its being improperly put together, and bad management, and if it were not so, he should not be permitted to use it two years and six months without complaint, and then, after he is sued, come in and claim it to be of no value.

The first instruction for the plaintiff should have been given.

A bare affirmation or simple commendation does not amount to a warranty. *unless it was so intended by both parties -*

1 *Parsons on Contracts*, page 464.

*Davis vs. Meeker*, 5 *Johnson*, 354.

*House vs. Fort*, 4 *Blackf.*, 296.

The affirmation must be made, to assure the buyer of the truth of the fact asserted, and induce him to make the purchase, and must be so received and relied upon by him.

*Ender vs. Scott*, 11 *Illinois*, 35.

*Humphreys vs. Cowline*, 8 *Blackf.*, 566.

*Swett v. Colgate* 20 *Johnson* 196  
*Hawkins v. Berry* 5 *Gilman* 36



The evidence shows that the machines were not present, had not even been shipped to Middleport at the time of the alleged conversation between Stanley and McCourtie, and hence that conversation could not have referred to any particular machine.

The second instruction should not have been modified by the Court. It embodies the law as declared by this Court in *Nichols vs. Guibor*, 20 *Ills. Rep.*, 285, where the facts resemble this case. The court by the ~~what it is actually worth, but no more;~~ that is, he may show it to be addition, if he chooses, however, to keep it, he will be compelled to pay worthless, if he can, which we submit renders nugatory the law as held by this court in the above case.

what it is worth but  
no more" in effect holds  
that he may show it to be

The law we understand this court to hold is, that where the agreement was to return the reaper if it did not suit, the purchaser must return it, and if he does not do so, he cannot show it to be worthless.

The first instruction for defendant should have been refused. It assumes that the words proven amount to a warranty, which should have been left to the jury. It assumes that no notice was to be given to the agent of the plaintiffs of the defect, and we submit that before the plaintiffs could be called on to make the matter right, they should be notified of the defect.

WOOD & LONG,

For Plffs in Error.

Where a party was to return the property purchased if it did not suit him, but does not do so in a reasonable time, he can neither rescind the sale, nor defeat an action for the purchase money —

1 Parsons on contracts page 475

Milner v Tucker 1 Carr. & Payne 15 (12 Eng. Com. Law 21)

Cash v Giles 3 Carr & Payne 407 (14 Eng. Com. 372)

Percival v Blake 2 Carr & Payne 514 (12 Eng. Com. Law 706)

Grooming Hall v Mendham 1 Stark cases 257 (2 Eng. Com. Law 104)



<sup>1871</sup>  
J. M. Osborne & Co  
no  
Micajah Stanley  

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Points  

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Filed April 19, 1864  
J. H. [unclear] [unclear]



# In the Supreme Court of Illinois.

APRIL TERM, A. D. 1864.

DAVID M. OSBORN,  
CYRUS C. DENNIS, AND  
CHARLES P. WOOD,  
vs.  
MICAHAH STANLEY.

*Writ of Error to Iroquois.*

## ABSTRACT OF RECORD.

Record page

- 2 Justices' summons and return.
- 4 Justices' judgment by default against defendant, for amount of the note, Feb. 7th, 1863. Feb. 27th, 1863, appeal bond filed and appeal allowed.
- 5 Summons to Appellee, March 10th, 1863.
- 8, 9 Jury called and trial of the case. Verdict of the jury for defendant.
- 10 Motion for a new trial overruled.

11

## BILL OF EXCEPTIONS.

The following note was read to the jury :

Isaac McCourtie testified, that the above note was given in part payment for a reaper—that there were one or two other notes given for the same reaper, amounting in all to \$135.00. That he was agent for the plaintiffs, and the machine was the Kirby combined reaper and mower.

12 Win. R. Heuston, testified that Stanley bought this machine in the fore part of July, 1860. Heard a conversation between McCourtie and Stanley; that Stanley was to try the reaper, and if it worked satisfactorily, to keep it, if not he was to return it, or McCourtie make it right. That McCourtie said the machine was a good machine, and witness believes he said the machines were warranted to do good work. That witness helped put up the machine, that the sickle choked up, that the bar bent or twisted. Had worked with other machines of the same kind that worked better. This choked up and pulled down one-fifth of the grain. That he worked with the machine two and a half days and considered it worthless. That the conversation he heard between McCourtie and Stanley, occurred at the new town, South Middleport that there were other machines there, and that they were talking about no particular reaper.

14 One Johnson testified that he saw this machine in June, 1861. The casting was broken that held the seat up. Put in a wooden block, didn't help it much—sometimes the machine would go around the field without stopping, and then it would stop two or three times. It dragged down the grain from two to seven inches. Worked with it through that harvest. The sickle broke every day, had it mended and made different and then it bent one way and then another. The machine was worth nothing. He had mowed with it; that it mowed very well, but choked in Hungarian grass. The shaft broke once or twice in 1861.

Joseph Stanley also testified that he helped Heuston put up the machine—that it didn't do very good work in wheat, that it mashed down from three to twelve acres. That the machine cut grass better than grain. The guards broke the first season. We had no other machine the first or the second season. We worked this machine this year.

15 McCourtie recalled for plaintiffs, said that this machine was sold to Stanley by Fruit; that he McCourtie had three machines shipped to Fruit at South Middleport, but never saw them himself. That the season being partly over, this machine was sold to Stanley on the next year's time. That he never had any conversation with Stanley in the new town about the machine; it was all at the old town. The next time he saw Stanley was when he came over to settle with Fruit. Stanley had the machine then, and thinks he said he should want a false shoe for the next season. The next spring Stanley wrote for the shoe and some other things, and McCourtie had them sent. That Stanley made no complaint about the machine, but complained that they had charged him for the extra articles sent on; this charge was afterwards canceled. Stanley then made no complaint about the machine. He paid all the notes but this one, and when called on to pay this note, said

16



that he had paid the note and so informed the Company, but when witness called on Stanley, he said that he was mistaken and had not paid it; afterwards he refused to pay it on the ground that the machine was worthless. That the machines are all of the same pattern. Their accurate working depends on how the machines are put together. If not put together properly, the bar and sickle will necessarily break. That this is the best machine made. That he made no special warranty to Stanley. He spoke of the machines in general, and that the machine was a good machine.

J. D. BENNETT testified that the Kirby machine had the reputation of being a good machine.

17

SAMUEL T. FOSDICK testified that he was acquainted with the Kirby reaper of the pattern of 1860. That it worked well, that the working of the machine depended on its being put together properly, that if the nuts were a little loose, the machine would clog, and the bar would break of course.

WM. R. HEUSTON recalled, testified that William Fruit was helping put up the machine a part of the time.

Which was all the testimony in the case.

The plaintiffs thereupon asked the Court to instruct the jury,

20

Motion for new trial overruled.

Stipulation to receive above bill of exceptions.

21

ASSIGNMENT OF ERRORS.

1st. The verdict is contrary to evidence.

2d. The Court erred in refusing instructions which should have been given.

3d. The Court erred in giving instructions for the defendant, which should have been refused.

22

Stipulation to enter appearance and waive service of *scire facias* to hear errors.



<sup>181</sup>  
D. M. Osborne  
7 Co. <sup>10</sup>  
Michigan Stanley

Abstracts

el April 19, 1864  
el Selawell

D. M. Osborne & Co.  
vs. ~~James~~ Supreme Court  
Micajah Stanley / April Term N. D. 1864 -

Argument for Plaintiffs in  
Error -

These facts are undisputed in this record: to wit that the machine was purchased the fore part of July 1860, that the note was given therefor without objection thirteen months afterwards to wit August 1<sup>st</sup> 1861 - That the several notes were paid except this one, and the defendant even supposed he had paid this - No fault for over two years was found with the machine, and never any objection, except that a false shoe and one or two other little matters were wanting, which were furnished by the plaintiffs - The defendant never offered to return the machine and never notified the plaintiffs or their agent that the machine did not work satisfactorily - Now, suppose the machine was warranted, ought the ~~plaintiff~~ <sup>defendant</sup> to ~~reverse~~ - defeat a recovery upon this evidence?

In Cash v Giles 3 Carr. & Payne  
reported in 14 ~~Com. Law~~ Com. Law Rep 372



which was ~~comp~~ <sup>comp</sup> to recover  
the price of a threshing machine,  
it appeared that the defendant  
proved that the machine was of  
no value, because it did not thresh  
out the corn properly -

The court held that "if the  
defendant meant to insist that this  
threshing machine was not a good  
one, and suitable to its intended  
purpose, it was his duty either  
to have immediately returned it, or  
to have given immediate notice to  
the plaintiff to fetch it away as  
it was of no use; now, instead of  
that, he keeps it for several years.  
I am clearly of opinion that,  
as he has done so, he has waived  
all objections to its goodness, and  
is bound to pay for it" -

If a person purchases an  
article, and suffers it to remain  
on his premises for two months  
without examination, and then finds  
it to be unfit for use, he cannot  
after that length of time, avail  
himself of the objection in answer  
to an action for the price, unless  
some deceit has been practiced



with regard to the article -

Percival vs Blake 2 Carr. & Payne  
674 also reported in 12 Eng. Com. Law 206

In an action for the price  
of clover seed sold by sample, the  
defendant ~~contended~~ that the seed  
delivered did not accord with the  
sample; before he can go into such  
a defence he must prove that he gave  
notice of his objection to the plaintiff -  
Groning et al v Mendham 1 Starkie 257  
reported also in 2 Eng. Com. Law 104 -

In justice too, a party ought  
to be stopped from taking a  
machine and wearing it out  
and then proposing to prove it  
worthless -

The instruction "That mere state-  
ments as to the general character of the  
machines do not constitute a warranty,  
unless the other facts of the case  
show that the plaintiff so intended  
to bind himself" should have been  
given -

1 The statements of Mc Courtie were  
not made as he swears with regard  
to any particular machine, but with  
reference to the general character of the  
Kirby reaper, no machines were



present and the one finally bought by defendant was not then in the county so that the instruction was proper under the evidence.

That the instruction is sound law under a proper state of facts can hardly be questioned -

The mere affirmation of the soundness of a horse is not per se a warranty; to give it that effect there must be evidence to show that the parties intended it to be a warranty -

House v Fort 4 Blackf 294.  
¶ 1 to the same purport are all treaties -

In order to constitute a warranty, there must be not only an affirmation respecting the quality or condition of the thing sold, but the affirmation must be made with the view of assuring the buyer of the truth of the fact asserted, received and relied upon by him, inducing him to make the purchase -

Ender v Scott 11 Illinois 35-  
Hawkins v Berry 5 Gilman 36-



1 2  
The second instruction fairly embodies the law as laid down by this court in Nichols vs Gairbor 20 Illinois 285-

The evidence is of Houston one of defendant's witnesses "that Stanley was to try the reaper, and if it worked satisfactorily, to keep it, if not he was to return it, or Mc Courtie make it right."

This was proper evidence on which to base such an instruction. An implied warranty being excluded by the express agreement he should have returned the machine or at least have given notice to Mc Courtie of the defects in order that he "might have made them right". Having done neither this court has adjudged in such a case that it is incompetent for the vendor to show the article to be worthless. - But the Judge below told the ~~court~~ jury that he might keep it and only be compelled, if sued, to pay what it was worth; in other words if it was worth nothing he might show



it is worthless and thereby wholly defeat a recovery -

This we do not understand to be the law as settled by this Court -

As remarked by Judge Breese in the Nicols' Case, so in this case under the proof "the seller was under no necessity of demanding a return of the article. It was the business of the purchaser to return it so soon as he discovered it did not suit his purposes" -

Again, the proof shows that the ~~machine~~ <sup>reaper</sup> which was the ~~machine~~ sold, ~~was~~ has the reputation, and really is one of the best machines sold -

It is also in evidence that if the machine is not properly put together it will not run well and will probably break, which might be an inference of common sense without any proof - The defendant did not have his machine properly put together and he ought not now to be



heard to allege his own  
fault, as a reason why  
the plaintiffs should not  
recover - All of which is  
respectfully submitted -

Wood & Long  
for Appellants.



151  
10  
J. M. Osborne  
& Co. vs

Micajah Stanley

Argument

Filed April 20, 1864  
L. Leland M

Wood & Long  
for Plaintiffs in error



To all to whom these Presents shall come,  
Greeting;

Know Ye, that we having caused to be  
inspected the Records and proceedings -  
remaining in the office of the clerk of the Circuit  
Court in and for the County of Joquins and State  
of Illinois, do find therein certain Records and  
proceedings in the words and figures following  
to-wit:

United States of America  
State of Illinois ss -  
Joquins County

Pleas before the Honorable Charles R.  
Starr Judge of the Twentieth Judicial Circuit and  
Presiding Judge of the Joquins County Circuit Court  
in the State of Illinois, at a term of the said Joquins  
County Circuit Court begun and held at the Court  
House in the town of Middleport in said Joquins -  
County, on the second Tuesday, the same being the  
ninth day in the month of June in the year of  
our Lord one thousand eight hundred <sup>and</sup> sixty three

Present Hon Charles R. Starr, Presiding Judge Twentieth Judicial <sup>Circuit</sup>  
Charles H. Wood, States Attorney Twentieth Judicial Circuit  
Harrison O. Henry, Sheriff of Joquins County.  
Thomas Bennett, Clerk of the Joquins County -  
Circuit Court -



2

and on the Eleventh day of March A.D. one thousand Eight hundred and Sixty three there was filed in the office of the Clerk of said Court - a Justices Summons, a Bond, for costs - and Transcript - said Summons reads in words and figures following, to wit:

State of Illinois,  
 Hopkins County, }<sup>es</sup> The People of the State of Illinois, to  
 any Constable of said County, Greeting;  
 You are hereby commanded to summon Micajah Stanley to appear before me, at my office, in Onarga on the 17<sup>th</sup> day of January A.D. 1863, at 1 o'clock, P.M. to answer the complaint David M. Osborn, Cyrus L. Dennis and Charles P. Wood for a failure to pay them a certain sum not exceeding one hundred dollars, and hereof make due return as the law directs.  
 Given under my hand and seal, this 2<sup>d</sup> day of January A.D. 1863.

Moses H. Messer



Justice of the Peace

and the endorsement on said Summons reads as follows:

D. M. Osborn vs.

vs.

M. Stanley

Demand \$82.30 Costs 1.05

Personally served the within by reading the same to the within named defendant this fifth day of January A.D. 1862. Fees Milage. 80 Service 25 - \$1.05

Jos. Williams const



3.

and said Bond for Costs reads as follows, to wit:

State of Illinois }  
 Joqueim County } 3

In Justice Court before  
 Moses H. Meuser J.P. —

David M. Osborn  
 Cyrus B. Dennis  
 Charles P. Wood

vs

Micajah Stanley

I do hereby enter myself security  
 for costs, <sup>in this cause</sup> 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 <sup>to</sup> any of the officers of this Court or the Court  
 above in case said suit is appealed in pursuance  
 of the Laws of this State.

Dated this second day of }  
 January A.D. 1863. } 3

Wood & Long

And said Transcript reads as follows, to wit:

State of Illinois }  
 Joqueim County } vs.

David M. Osborn, Cyrus B.  
 Dennis & Charles P. Wood

vs

Micajah Stanley

} Note 82.30

1863. January 2<sup>d</sup> Summons issued, returnable on the  
 17<sup>th</sup> day of January 1863. at 1 o'clock P.M. and



4

Costs

Sumon 25  
 Docketing 20  
 E. J. 25  
 S. J. 10  
 continuing 15  
 95

Entering appeal 25

Bond 25

Transcript 25

Certificate 25

105

Lo William Fee

S of S. 25

Milage 80

105

delivered to J. D. Long. The Plaintiffs filed a Bond for costs. Jan 17<sup>th</sup> 1863. Summon returned, Served by reading to the defendant, this 5<sup>th</sup> day of January 1863. Milage 80 c. Service 25<sup>cts</sup> Lo. William constable Jan 17<sup>th</sup> 1863. - Parties appeared and they agree that the case be continued till the 7<sup>th</sup> day of February 1863. at 1 o'clock P.M. Defendant pleads payment and no value received Feb 7<sup>th</sup> 1863. 1 o'clock P.M. Suit called, the defendant not appearing, and the demand being on a note, the Court, considers that the Plaintiffs have and recover of the said defendant as their demand the sum of Eighty two dollars and Thirty cents and costs of this process Taxed at \$2.00

M. H. Messer

Feb 27<sup>th</sup> 1863 The defendant appears and files - a appeal bond which was accepted, and the Papers in the Case sent to Circuit Clerk March 5<sup>th</sup> 1863

M. H. Messer

State of Illinois }  
 Proprietary County } ss.

Moses H. Messer a Justice of the Peace in and for the County aforesaid do hereby certify that the within Transcript is a true Copy of the record of the proceedings had in the said case and that the accompanying papers are all the in my hands pertaining to the case

Given under my hand and seal this 5<sup>th</sup> day of -  
 March 1863.

Moses H. Messer Jr. (Seal)



5-

And on said Eleventh day of March A.D. 1863. there was issued from the office of the Clerk of said Iroquois County Circuit Court - a summons which reads as follows, to wit:

The State of Illinois,  
Iroquois County }<sup>vs.</sup> The People of the State of Illinois,  
to the Sheriff of said County,  
Greeting! - - - - -

We Command you to Summon David M. Osborn, legms  
b. Dennis & Charles P. Hood if they may be found in  
your County, personally to be and appear before the Circuit  
Court of said County, on the first day of the Term, to  
be holden at Middleport on the second Tuesday of  
June next, then and there to prosecute a certain  
suit brought into our said Court, by appeal from the  
Judgment of Moses H. Messer a Justice of the Peace  
of said County, wherein said Osborn, Dennis and  
Hood are Plaintiffs and Micajah Stanley is  
Defendant; in which suit Judgment was rendered  
in favor of the Plaintiffs for Eighty two Dollars and  
thirty cents, debt, besides costs of suit. And have you  
there this writ, with an endorsement in what  
manner you shall have executed the same,



Witness Thomas Bennett Clerk of said Court, and  
the seal thereof, at Middleport in said  
County. this 11<sup>th</sup> day of March A.D. 1863.

And the Sheriff's return reads - as follows.  
Thomas Bennett Clerk  
Parties not found in my County H.O. Henry Shff  
Fees Return 10 ct



6

And afterwards, to-wit: on the seventeenth day of June in the year of our Lord one thousand eight hundred <sup>and</sup> sixty three, the same being one of the regular days of the June term of the Joquins County Circuit Court in the State of Illinois for said year last aforesaid, and said Court being then duly organized and sitting in open Court for the transaction of business, the following proceedings were had, and entered of Record by said Court, to-wit:

David M. Osborn, Cyrus

C. Dennis <sup>and</sup> Charles P. Wood

635.

vs

Nicajah Stanley

} Appeal,

This day came the Plaintiffs by Wood and Long their attorneys <sup>and</sup> the Defendant by Roff <sup>and</sup> Fletcher his attorney and thereupon by order of Court came the jurors of a jury to-wit: John Wagner, James Egbert, James Brown, Andrew Rush, John Aldridge, John Stream, B. F. Brady, John Scoon, James W. Lawrence, I. C. Noble and John Williamson twelve good and lawful men who were then and there duly empaneled and sworn to well and truly try this cause upon the issue joined according to the evidence and after hearing the evidence adduced, the arguments of counsel and the instructions of the Court retired in charge of an officer to consider of a verdict.

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7.

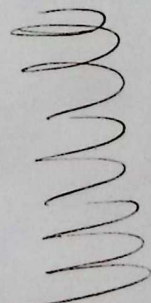
And afterwards, on the 18<sup>th</sup> day of June A.D. 1863, the same being one of the regular days of the June Term of said Court for the year aforesaid - <sup>and said Court being</sup> duly organized and sitting <sup>in open Court</sup> as aforesaid, the following proceedings were had and entered of Record by said Court, to wit:

David M. Osborn, by and for  
Dennis <sup>and</sup> Charles P. Wood }  
vs } Appeal  
Micajah Stanley.

.635.

The jury heretofore empaneled in this cause this day came into Court and report to the Court their inability to agree upon a verdict, and thereupon the Court ordered that they be discharged from any further consideration of this cause.

And afterwards, to wit, on the Nineteenth day of November A.D. one thousand eight hundred and sixty three the same being one of the regular days of the November Term of said Court for the year last aforesaid and said Court being then duly organized and sitting in open Court for the transaction of judicial business, the following proceedings were had and entered of Record by said Court, to wit:



8. David M. Osborn, Cyrus L.

Dennis <sup>and</sup> Charles P. Wood

.635.

vs

Micajah Stanley

} Appeal

On motion of Plaintiffs Attorneys  
it is ordered that this cause be passed until  
tomorrow -

And afterwards on the 20<sup>th</sup> day of November AD 1863,  
said Court being <sup>duly</sup> organized and sitting in open  
Court as aforesaid - the following business was had  
and entered of Record by said Court. To wit:

David M. Osborn, Cyrus L.

Dennis <sup>and</sup> Charles P. Wood

.635.

vs

Micajah Stanley

} Appeal

This day came the Plaintiffs by  
Wood <sup>and</sup> Long their Attorneys and the Defendant by Raff  
<sup>and</sup> Fletcher his attorneys and thereupon by order of Court  
came the Jurors of a Jury to wit: Joseph Myers,  
Hiram Bennett, A. J. Stephens, A. R. Frogge, John  
Williamson, Alexander Fleming, S. P. Hunter, B. F. Masters  
David Strain, Amos O. Whitman, Moses Barrow and  
John L. Bailey twelve good and lawful men who  
were then and there duly sworn and sworn  
to well <sup>and</sup> truly try this cause according to the evidence  
and after hearing the evidence adduced upon the  
trial, upon the adjournment of Court in the



9.

Evening are by the Court permitted to separate with orders to be present at the organization of Court on tomorrow morning for the further hearing of this cause.

And following on the 21<sup>st</sup> day of November A.D. 1863. the same being one of the regular days of said Court for said Term - and the same being duly organized and sitting in open Court as aforesaid - the following proceedings were had and entered of Record by said Court, to wit:

David M. Osborn, Cyrus L.  
Dennis, <sup>and</sup> Charles P. Wood

.635.

vs

Michigan Stanley

} Appeal

The Jury in this cause after hearing the arguments of Counsel for the parties to this cause and the instructions of the Court retire from the Court room in charge of an officer, to consider of a verdict. And afterward return into Court, and for verdict say they find for Defendant. And now come the Plaintiffs by their attorneys and enter their motion for a new trial herein

And following on the 25<sup>th</sup> day of November A.D. 1863 The same being one of the regular days of said Court for said November Term aforesaid - and said Court being then duly organized and sitting in open Court as <sup>aforesaid</sup>



10.

the following business was had and entered of Record  
by said Court, to-wit:

David M. Osborn, Cyns.

C. Dennis & Charles P. Wood

635

vs

Micajah Stanley

appeal

The motion for a new trial  
coming up for argument it is ordered that the  
same be overruled -

It is therefore considered and ordered by  
the Court that the defendant do have and recover  
of and from the Plaintiffs his costs expended in  
the defense of this cause and that he have  
Execution therefor against the said Plaintiffs.

On motion of Plaintiffs attorneys it is ordered  
that the Plaintiffs be allowed sixty days in  
which to prepare and file with the clerk of this  
Court a Bill of Exceptions in this cause -

And afterwards, to-wit on the 31<sup>st</sup> day of  
December A.D. 1863. There was filed in the office  
of the Clerk of said Court a Bill of Exceptions  
which reads in words and figures, following, to-wit

David M. Osborn, Cyns C.  
Dennis & Charles P. Wood

vs

Micajah Stanley

In the Circuit Court of Troquais County

Be it remembered that on  
the trial of this cause at the November Term



11.

of the said Circuit Court of Troquon County Ad. 1863. the said David M. Osborn, Cyrus L. Dennis <sup>and</sup> Charles P. Wood to maintain the issue on their part, gave in evidence to the jury, a note of the tenor and effect following, to wit:

"67.<sup>00</sup> Middleport, August 1<sup>st</sup> 1861.  
on the first day of January Eighteen hundred & sixty two for value Recd I the subscriber of Middleport County of Troquon State of Illinois promise to pay D. M. Osborn & Co Sixty seven dollars with int at 10 pr ct pr annum

M. Stanley "

The said Micajah Stanley to maintain the said issue on his part gave in evidence to the jury the testimony of Isaac McCourtie that he was the agent of the said plaintiffs when the said note was given, that it was given in part payment for a reaper - that one or two other notes were also given by Stanley for the same reaper which with this note amounted in all to one hundred and thirty five dollars - that Stanley had paid all but this note that this note was given by Stanley in part payment for the Kirby combined reaper and mowin -

William R. Huxton then testified on the part of Stanley that Stanley bought the machine in the fore part of July 1860 - that he heard a conversation between McCourtie <sup>and</sup> Stanley - that Stanley was to try the reaper and if it worked



12.

satisfactorily to keep it if not he was to return it, or McCurtie make it right - that McCurtie said the Machine was a good machine - (Heuston also testifies) "I believe McCurtie said the machines were warranted to do good work", that Stanley could take the machine and try it and if it worked well to keep it, if not to return it or McCurtie would make it all right - that he, Heuston helped put the machine up, in Middleport that he started it to work - that there was a piece of a seat that they never could find - that they had to put it on as when they mowed with it - that they used the reaper in a wheat field, and found that the sickle choked up, that the bar bent or twisted, that he had worked with other machines of the same kind - that they worked better - that this one, choked up and pulled down one fifth of the grain that the crook of the bolt was two thirds broken and soon broke off - that he worked with the machine two and one half days, that he considered it worthless - that the conversation which he heard between McCurtie and Stanley was at the new town - at South Middleport, that there were two or three other machines there - that he hitched on to the machine two or three days after the conversation - that this machine was the only one left at that time - that the other machines were of a different make -



13.

that he was there with McCourtie and Stanley - the reapers were three or four rods off that he remembers there was a difference in color and make - that they were talking about no particular reaper. -

One Johnson then testified for Stanley as follows - that he saw the machine in June 1881 in Stanley's field - that the casting was broken that held the seat up - that it looked as if there ought to be something there - but don't know as there ought to have been anything - that he put in a wooden block - that it didn't help it much. Sometimes the machine would go around the field without stopping and then it would stop two or three times - that it dragged down the grain from two to seven inches - that the sickle was a four foot one - that he worked with the machine during that harvest - that he got through the harvest with that machine - that he don't know that Stanley tried to get another machine - that they cut only one half a day in the wheat - that the reason why they cut no more was that the wheat was of no account - that the sickle broke every day during the harvest - that when he had it mended he had it made different and when he again tried it <sup>in</sup> bent first one way and then bent another - that he wouldn't have such a machine that it was worth nothing -



That he had mowed with it - that it mowed very well - that he mowed with it this Season - that it choked in Hungarian grass - that the ground was too soft for the wheel to turn and hence the sickle choked - that he again fixed up the casting under the seat that the driver had to walk - that the shaft broke once or twice in 1861 -

Joseph Stanley then testified for Micajah Stanley as follows, that he helped Hueston put up and work the machine - that it didn't do very good work in wheat - it mowed down from three to twelve inches - <sup>that</sup> they never got any other machine to finish the work - that the machine cut grass better than grain - that the guards broke the first season - that sometimes two or three a day broke and at other times none broke - we had no other machine the first year nor the second year - we worked this machine this year - we cut grass - cut the meadow not quite as clean - it wouldn't work in Hungarian grass - we hired a machine this year for flax - twelve acres of flax - that he never put up this pattern of a machine before that Hueston and he put it up together - that he asked a man who lived there about putting up the machine who helped him

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15.

McLaurie (called by Plaintiffs to rebut) testified that the sale of the machine to Stanley was made by Fruit to whom McLaurie had machines sent from Chicago - That Fruit wrote to him that Stanley wanted a machine - that he had three machines shipped to South Middleport - that he never saw those machines while there on the track - that the season being party over, the machine was sold to Stanley on the next years time - that he had two machines in the town of Old Middleport - that he never had any conversation with Stanley in the new town about the machine - that he did have a conversation with Stanley in the old town when putting up machines there - Stanley said he thought he should want one - The next time he saw Stanley was when he came over to settle with Fruit - Stanley had the machine <sup>at that time, he never saw the Stanley machine</sup> thinks Stanley at that time said he should want a false shoe for the next season - that the next spring Stanley wrote him for the shoe and some other things - that he wrote to the general office of the reaper company and they sent the articles - that Stanley made no complaint about the machine, but complained that they had charged him for the extra articles sent on - that he wrote the company and the charge was cancelled - that Stanley made no complaint about the machine -



16.

that he paid all the notes but this one, and when called on to pay this note Stanley thought he had paid it and so informed the Company - But that he McCurtie called on Stanley and Stanley said that he was mistaken and that he had not paid it - That when the note was next presented to Stanley for payment he refused to pay it on the ground that the machine was worthless -

That there was but one size to the machine - that most of the parts are cast in the same mould that the accurate working of the machine depends upon how the machine is put together - that if it is not put together properly, the bar and sickle would necessarily break - that he is well acquainted with the Kirby machine - that it is a capital machine - the best - that he made no special Warranty to Stanley - that at the old town when conversing with Stanley - he spoke of the machines in general and that that the machine was a good machine - Wm Fruit was agent at Middleport. That the Company that manufactured said machines warranted all their machines that was ordered.

J. D. Bennett - testified that the Kirby machine had the reputation of being a good machine -

Samuel F. Fosdick then testified for plaintiffs that he was acquainted with the Kirby reaper of the pattern of 1860. That he



17.

worked with one and it worked well, that the working of the machine depended upon its being put together properly - that if the nuts were a little loose the machine would clog and the bar would break of course - That he had never seen but one used & that he used himself - William Houston by the Defendant, and stated that William Fruit helped put up the machine He helped the greater part of the time -

Which was all the testimony in the Case - where upon the said plaintiffs moved the said Court upon the evidence aforesaid, to instruct the jury -

" 1. That mere statements as to the general character of the machines do not constitute a warranty, unless the other facts of the case show that the plaintiff so intended to bind himself -" which the Court refused to give and the plaintiff then and there excepted

2 " The purchaser of an article, not warranted as to quality must take the hazard of his bargain, If he was not to keep the article purchased unless it pleased him, he should return it if it displeased him at the earliest practicable moment and if he does not do so it is not competent for him to prove the article to be worthless " To which the Court of its own motion added, " If he chooses however to keep it he will be compelled to pay what it is actually worth, but no more "



18.

To which modification of said instruction the said plaintiffs then and there excepted -

And thereupon the said Court at the request, and on the part, of said defendant gave the following instructions to the Jury -

1 "If the Jury believe from the evidence that when Isaac McCurtie as the agent of the said plaintiffs said at the time he sold said machine to said defendant that said machine should be a good machine and if it were not he would take it back or make it all right - and if the Jury further believe from the evidence that said machine was worthless and of no value then the law is for the defendant unless the plaintiffs have proved that Isaac McCurtie or the said plaintiffs have made it all right with the said defendant, or have satisfied him for the damage which said defendant has sustained by the reason of the failure of said machine to perform as well as the said McCurtie represented it would - perform".

To the giving of which instruction the plaintiffs then and there excepted -

2" The Court further instructs the jury that it does not require any particular words to constitute a warranty of personal property in law - therefore if the jury believe from the



19.

evidence that the agent of said plaintiffs told said defendant that said machine should be a good machine or that he would take it back or make it all right then in order for the said plaintiffs to recover in this action they must prove that they have complied with their agreement"

To the giving of which instruction the said plaintiffs then and there excepted

3" The Court instruct the Jury on the part of defendant that the manufacturer of an article impliedly warrants it (if sold by himself or agent) that it is made of sound material and good workmanship, and in this case if the jury believe from the evidence the plaintiffs - manufactured and sold by his agents or agent the reaper in controversy to the defendant and if they further believe from the evidence that the reaper so sold was unsound or the workmanship deficient, in that case the defendant can ~~be~~ only be required to pay the value of the reaper so purchased by him at the time of purchase and if the Jury find from the evidence that said reaper was not worth more than the amount already paid by said defendant for the same, then they will find for defendant"

To the giving of which instructions the said



20. <sup>Pages</sup>

Plaintiffs then and there excepted.

And thereupon the said jury gave their verdict against the said plaintiffs upon the issue aforesaid. Whereupon the counsel for said plaintiffs move the said Court for a new trial upon the issue aforesaid. But the said Court overruled the said motion and gave judgment upon the said verdict of the said jury against said plaintiffs, whereupon the counsel for said plaintiffs made their exceptions to the opinion of the said Court in that behalf; in as much as the matters aforesaid do not appear upon the record of the said Cause the counsel on the behalf of the said plaintiffs pray that the said Judge of the said Court would sign and seal this bill of Exceptions -

We hereby agree that the above Bill of Exceptions shall stand and be received as the Bill of Exceptions in said Cause the same to all intents and purposes in the Supreme Court as though it was signed by the Judge of the Court who tried the Cause.

Dated at Middletown Dec 31<sup>st</sup> 1863.

Wood & Long  
Atty. for Plffs,  
Roff & Fletcher  
attys for Defendant



State of Illinois

Jackson County ss

I Thomas Beunum Clerk of the Circuit Court in and for the said County in said State do hereby certify that the foregoing is a true, complete and perfect transcript of the proceedings of the Jackson County Circuit Court had in said Cause wherein David M Osborne et al are Plaintiffs and Micajah Stanley is Defendant, and that the same also contains a true and literal copy of all the papers filed in said Cause which pertain to or form any part of the Record of said Court in said Cause.

Witness Thomas Beunum clerk and the seal thereof at Middleport this 10<sup>th</sup> day of March A.D. 1864.

Thomas Beunum Clerk.



And now come the said Plaintiffs and say there is manifest error in the foregoing record in this, to wit:

- 1<sup>st</sup> The verdict is contrary to evidence.
- 2<sup>nd</sup> The court erred in refusing instructions which should have been given.
- 3<sup>rd</sup> The court erred in giving instructions <sup>for defendant</sup> which should have been refused.

Wood & Long  
for Pltffs. in Error



We the undersigned Attorneys  
of the respective parties herein  
humbly agree to enter our appearance  
in this cause at the April Term  
N. D. 1864 of the Supreme Court of the  
State of Illinois and consent to a  
hearing, and waiving the issuing and  
service of process upon the defendant in  
error herein

Wood & Long

for Pltffs in Error  
Roff & Doyle & James Fletcher  
Attys for Deft in error

State of Illinois      In Supreme Court  
Third Grand Division      To April Term 1864  
Micajah Stanley  
Att.

David M. Osborn, Cyrus C. Brown } Solicitor in Error  
& Charles P. Wood }

And the said Micajah  
Stanley Defendant in Error, now comes and says  
that there is no error, either in the record & proceedings  
aforesaid, or in giving judgment aforesaid in manner  
and form as above recited; and therefore he prays  
that the said judgment may stand, and that  
his costs may be adjudged to him &c

Roff & Doyle &  
James Fletcher  
Attys for Deft in error



181  
David M. Osborne  
Cyrus C. Dennis <sup>and</sup>  
Charles P. Wood

vs  
Micajah Stanley

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Transcript of Record

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Filed April 19. 1864  
L. Leland  
Clerk

Wood & Long atty.  
Clerks fees \$5.00