

No. 14089

Supreme Court of Illinois

Richardson et al

vs.

Chrisman

Chrisman & Co
vs
Richardson
Assignment of Error

Filed Dec. 2. 1834

J. M. Duncan

No. 62

Filed Dec. 2^d 1834

Black

No. 62

Affirmed. Brown
to write opinion
D. 220

In the Supreme Court -

Vincent Richardson
for the use of John Richardson

Appellee -

vs -

Charles and Jacob Brisman
and Samuel L. Crane } Appellants -

It will be perceived by a reference to the facts that there was most evidently a "trick" cunningly devised and artfully executed - And that said "trick" was played off upon John Richardson by the said Charles and Jacob Brisman -

Charles was solvent & Jacob was insolvent - the object was to pay the Richardson debt and also some other debt with the mare and colt -

Charles turned them over to Jacob to sell to Richardson and then denied having any thing to do with the sale thereof &c - the constable sold them and Richardson had no remedy against either for one was insolvent and the other had so certified it

that he could not be reached. If the mare and colt did belong to Charles and he did sell them to Richardson yet if he did also other things that worked a fraud upon Richardson the whole was void. The Court then did not err in overruling the instructions asked for by the Atto - for Brisman -

The Court told the jury if they believed the Brisman - to wit - Charles & Jacob had played a "trick" upon the said Richardson they should find for the plaintiff.

The jury understood the meaning of the Court ~~and it was~~ and it was peculiarly under their cognizance. They had to judge of the facts, circumstances, credibility of witnesses & infer from the whole case whether there was fraud or not.

If the Court had instructed the jury thus - "If you believe the Brisman committed a fraud on Richardson you will find for the plaintiff." how could such an instruction be objected to?

Depts Argument

Richardson
adsw.
Crismanis

No 62

Abstract

Filed Decr. 19th 1834.

Christman &c vs Richardson

This is an action brought upon a note said to be in the possession of the defendants below. The p^{rs} admit the note to be in their possession and produce the note with the names torn off and insert that the same was paid by the sale and delivery of a mare and colt by one of the defendants (Charles) to the said Richardson. The testimony as set out in the bill of Exceptions show that Charles Christman was the proper owner of the mare and colt and that he sold them to Richardson to pay said note and that Richardson took the mare and colt for the note and gave the same up as paid to one of the plaintiffs. The defendant then proved that the mare and colt had been taken from ~~them~~^{him} by an execution against Jacob Christman and one Hobson and sold to satisfy the same and therefore the note was not paid. The plaintiffs moved the court to instruct the Jury as ~~per~~ shown by the bill of Exceptions. The plaintiffs will now contend that the Court erred in refusing said instructions and altho' that the Court erred in giving the instructions that were given they will contend that said mare and colt was not liable to said execution and that the note was paid and that the Court should have instructed the Jury as prayed by the p^{rs}. That the Court erred in instructing the Jury as to the intentions of Charles Christman there being no testimony to justify said instructions and no evidence that said intentions ever had been carried into effect.

McConnell atty for p^{rs} 48

~~Abstract~~

Crisman

v)

Richardson

~~Abstract~~

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No 62

Filed Dec. 9 1834



Crisman (
 Richardson } It is contended by Crisman in this case that
the evidence was clear that Charles Crisman owned the
mare & colt, and that he sold them to Richardson and that
the note sent on was paid, and that clearly the Court
should have instructed the Jury ~~to~~ as prayed for by Crisman
that is if they believed that Chas Crisman owned the mare
and colt and sold them to Richardson that the note was
paid, and that the mare could not be legally taken upon
the execution against Jacob Crisman and Habron
neither of them having any right to said mare and colt

It is apprehended that this is a clear case for the ~~pts~~ Crisman
that the Judgment must be reversed, because the instructions
asked were refused, and that it is only necessary to read
the bill of exceptions to come to this conclusion

It is further contended that the instructions given to
the Jury was not justified by the evidence, as the only
evidence about a trick was a voluntary expression of a
witness, as to his thoughts which testimony was inadmissi-
ble at best, and at most it prove nothing. This Judgment as
against Charles Crisman is certainly erroneous, as all the interest
he had in it was to pay the note, he owned the mare and colt
and did pay $\$$ note after which payment the testimony
does not show that he ever had any thing more to do with
the matter, and certainly the expressions of Jacob Crisman
and the trespasses of the Constable and Habron is improperly
visited upon him there being no evidence whatever that
he was privy to or had any thing to do with this ^{after} matter

It's argument.

Crimm &
Richardson

No 62.

Pleas at Jacksonville within and for the County of Morgan and State of Illinois Before the Hon Samuel D Lockwood Judge of the first Judicial Circuit in the State aforesaid; at a Court begun and held on the last Monday of May in the year eighteen hundred and thirty four

Vincent Richardson for
the use of John Richardson

Deb't

Jacob Chrisman Charles
Chrisman & Samuel & Crane

It is Remembered that
on the fifteenth day of May in the year 1834 came
the Plaintiff by Josiah Lamborn Esq. his Attorney
and filed his Declaration closed in the following
words "to wit"

State of Illinois, Morgan County, Sct,
In Circuit Court, May term 1834

Vincent Richardson for the use of John Richardson
Complains of Jacob Chrisman, Charles Chrisman and Sam-
-uel L Crane in custody & of a plea that they render
unto the said Vincent Richardson, for the use of John
Richardson the sum of sixty dollars with interest there-
-on at the rate of twenty five per Centum per annum
from the - day of June or July 1832 until paid,
which to the said Vincent Richardson for the use of John
Richardson, they owe, and from him unjustly detain.

For that whereas heretofore, to wit, on the - day of June
or July in the year 1832 at the County and Circuit afo-
-resaid, the said defendants by their certain promissory
note, signed with their proper hands, the date whereof
is the same day and year aforesaid, and which said

writing obligatory, being in the possession of Said defendant
the Said plaintiff cannot produce the same to the Court
here, promised to pay the Said plaintiff, six months after
the date, the Said sum of sixty dollars, with interest thereon
at twenty five per Centum per Annum, from the — day
of June or July 1852 until paid. Yet the Said defendant,
though often requested, has not paid the Said sum of
money, with interest, as aforesaid, to the Said plaintiff
but has hitherto wholly neglected, and refused, and
still neglect, and refuse so to do. — To the damage of the
Said plaintiff, sixty dollars, therefore the Said plaintiff
for the use of John Richardson, brings his suit &c.

Lamborn
for Plaintiff

The note being in the possession of the defendant, it
is impossible to give a precise copy of it, but the sub-
-stance of it is a promissory note for sixty dollars,
believed to be dated in July 1852, and payable six months
- after date, drawing 25 per Cent. interest until paid,
from the date, and signed by Charles Crisman, Jacob
- Crisman, and Samuel L. Crane

To Charles Crisman, Jacob Crisman, and Sam^l L. Crane
You are hereby notified to produce on the trial in
the Action of debt, which I have instituted against you
in the Morgan County Circuit Court, and which is now pending,
a certain promissory note, made and executed by you to
me Vincent Richardson, and which note is believed to be
dated in July 1852, and which is for the sum of sixty
dollars, with interest thereon at twenty five per Centum per
Annum, from its date until paid, and which you or one
of you procured from John Richardson sometime in the
fall of the year 1853, and which is still in your possession.
May 15th 1854
Vincent Richardson
by his attorney
I Lamborn

And afterwards, on the 9th day of June of the year last
aforesaid, Came the defendants by Murray McConnell
their attorney, and filed their plea to the foregoing dec-
-laration, closed in the following words, to wit,

Jacob Chrisman
Charles Chrisman
Samuel L Crane
Adm

Morgan County
Circuit Court
May Term 1834

Vincent Richardson

And the said Jacob Chrisman, Charles Chrisman &
Samuel L Crane come and defend the wrong and inj-
-ury when &c and say that they do not owe the said
- sum above demanded, or any part thereof, in man-
- ner and form as the said Richardson hath above
- complained against them, and of this they put them-
- selves on the Country for trial

M. McConnell
for
defendants

And the said plaintiff doth the like

Lamborne for
Plaintiff

And afterwards to wit, in the term of May aforesaid, Came the parties by their attorneys, and the
Sheriff is commanded to cause to come before the Court
now here, Twelve good and lawful men to try the
issue joined between the parties, Who forthwith return
Garrison W Broy, Benjamin Humphreys, Isaac Wiley,
James Anderson, Samuel Broy, Abraham Johnston,
Rt Lrr, Wm Asher, Zachariah Sticks, Wm W. Heappy
Robert Reagh, and George W Meanfield, who were em-
-panelled, tried and sworn, well and truly to try the
issue joined between the parties, and hearing the
testimony adduced, and the arguments of Council

theron retired in Charge of George O'Rear deputy Sheriff, and after being absent sometime, come into Court and say, Nor the jury find that the defendants do owe to the plaintiff the sum of sixty dollars, the debt in the declaration mentioned, and afees the damages sustained by reason of the detentions thereof to the sum of twenty nine dollars, and fifty cents,

Therefore it is considered and adjudged by the Court that the plaintiff recover of the defendants, the debt and damages aforesaid, in manner and form aforesaid found and afeesd, together with his costs herein expended.

And afterwards in the term last aforesaid, came the defendants by Murray McCounell their attorney, and on motion Court grant an appeal to the Supreme Court of this State, Bond to be given in the sum of one hundred and eighty dollars with George and Peter Chrisman security Appeal to be perfected in twenty days

Whereupon the defendants entered into the following bond, to prosecute the appeal to effect,

Know all men by these presents, that we Jacob Chrisman Charles Chrisman, Samuel L Crane, George Chrisman & Peter Chrisman, are held and firmly bound unto Vincent Richardson, for the use of John Richardson, in the penal sum of one hundred and eighty dollars, for the payment of which will and truly to be made, we bind ourselves, our heirs executors, jointly, severally, and firmly by these presents, Witness our hands and seals this third day of July AD 1854

The Condition of the above obligation is such, that whereas the said Vincent Richardson, for the use of John Richardson, did, on the twelfth day of June 1854 in the Circuit Court within and for the County of Morgan, and State of Illinois, recover a

judgment against the above bounden, Jacob Chrisman, Charles Chrisman, and Samuel L. Crane, for the sum of sixty dollars, Dcts. and twenty nine dollars and fifty Cents for his damages sustained by reason of the detention of said debt, and costs of suit, from which judgment of said Circuit Court, the said Jacob Chrisman, Charles Chrisman, and Samuel L. Crane has prayed for, and obtained an appeal to the Supreme Court of this State. Now if the said Jacob Chrisman, Charles Chrisman, and Samuel L. Crane, shall duly prosecute their said appeal with effect, and shall moreover pay the amount of judgment, cost, interest, and damages rendered, and to be rendered against them in case the said judgment shall be affirmed in said Supreme Court, then the above obligation to be null and void, otherwise to remain in full force and virtue

Attest

Thomas Dungan

Jacob Chrisman *JS*

Charles Chrisman *CS*

Samuel L. Crane *LS*

George Chrisman *GS*

Peter Chrisman *PS*

Afterwards to wit, on the 19th day of June 1834 the defendants by their attorney M. McConnell filed their bill of exceptions, enclosed in the following words, to wit:

This action was brought upon a promissory note, which the plaintiff alleged was in the hands of the defendants. At the trial in pursuance of a notice to produce the note, the defendants did produce it. The note was dated the 25th of June 1832, and originally signed by all the defendants. Said note is here referred to and made a part of this bill of exceptions. The plaintiff then proved that some time in October, 1833, Jacob Chrisman one of the defendants took up said note from John Richardson the owner of the note in consideration of

Bill of exceptions

delivering to said John Richardson a mare and
colt, and at the time of taking up said note by said
Jacob Chrisman there was an execution in the hands
of a constable, against said Jacob Chrisman, and
one John Hobson, which execution and endorsement
thereon are here referred to and made a part of this
bill of exceptions, which execution was levied by the
constable on said mare and colt while in the posses-
-sion of the said Richardson, and a few days after
he purchased them, and the said Richardson was
immediately notified by the constable of such lev-
-y. That said constable levied upon said mare and colt
by the directions of the said John Hobson one of the defen-
-dants in the execution, and sold them as the property
of Jacob Chrisman to satisfy said execution. The
plaintiff further proved that Jacob Chrisman was
insolvent, but that Charles Chrisman was solvent, &
that Charles Chrisman had owned the mare and colt, but
that they had been occasionally in the ^{use &} possession of
Jacob Chrisman. After the time said note was taken
up, and the mare and colt was delivered to John
Richardson, said Charles Chrisman denied having
sold the mare and colt to Richardson, and said he
had given them up to Jacob Chrisman to pay said
note, and that it was Jacob Chrisman, who sold them
to Richardson, and that he Charles had nothing to do
with it. It was further proven by the plaintiff that
when Jacob Chrisman was going to Richardson's to deli-
-ver the mare and colt, one of the witnesses met him
and proposed to buy the mare and colt, and offered
seventy five dollars for them the same amount that Rich-
-ardson was to give for them, but Chrisman replied that
some other person had offered him more and that
Richardson had prevailed upon him from selling them to that
person, and that said Chrisman was unwilling to sell
them to witness, as he was going to deliver them to

Richardson; said Jacob stated to the witness that said mare was a favorite of his and he intended to ride her until she died, the said witness then stated that he thought there was some trick about it, and asked no more about buying said mare and colt. After said Jacob had delivered said mare and colt to Richardson and taken up said note, and on his return home he was in company with another witness, and in the conversation with the last named witness, said Jacob remarked that he had just been selling the mare and colt to Richardson and got up his note from Richardson, and that said Richardson was a hard person to deal with, but that he Jacob Chrisman would match him in legs than ten days and the witness would hear of it. It was then proven by the plaintiff, that when the Constable sold the mare and colt, they were bought by George Chrisman father of Jacob, and that Jacob, and ~~that Jacob~~ has since had the use and possession of them concurrently with his father.

The plaintiff also proved that after the mare and colt was levied on and sold by the Constable, Jacob Chrisman in giving testimony in another case about the same property, stated that some other person ^{had} first told Hobson that the mare and colt were liable to execution above referred to, and that said Jacob then told Hobson the same, and that he Jacob Chrisman had sold and delivered said mare and colt to Richardson, but this witness said upon Cross-examination, that he did not recollect precisely what Jacob Chrisman said on ^{Dep't} that occasion, It was then proven by the defendant's testimony that said Richardson had repeatedly said, that he bought said mare and colt from Charles Chrisman and not of Jacob Chrisman, and that at a time when John Richardson was giving evidence before a justice of the peace, said Richardson then said under oath, that he had purchased said mare and colt of Charles Chrisman and not of Jacob

Chrisman, and that Charles Chrisman had only sent them to him said Richardson, by Jacob Chrisman. The defendants then proved that one Joseph Wapson had purchased said mare and colt and paid for them sometime before Richardson had got them, and that said Wapson had sold said mare and colt to Charles Chrisman. Some of the witnesses then proved that they had heard John Richardson say that he had bought said mare and colt from Charles Chrisman and not of Jacob Chrisman, but that the said Jno Richardson in all said conversations, stated that he could not prove it, and that he could not prove any contract of purchase, with Charles Chrisman, as there was no person present, when it was made.

After the testimony was closed, the plaintiffs attorney moved the Court to instruct the jury, that fraud violated all contracts, and that if a note was made or discharged in consideration of a fraudulent transaction, that the signing or discharge thereof was void. The defendants attorney then moved the Court for the following instructions to the jury which instructions were presented to the Court in writing. 1st If the mare and colt were the property of Charles Chrisman, and the contract was made with Charles, the delivery of the property to Richardson by Jacob Chrisman, did not render the property subject to the execution then out against Jacob Chrisman. 2nd If the property belonged to Charles Chrisman, and Richardson purchased of him, by the delivery of the property became Richardsons, and this note was paid. The Court refused to give the instructions asked for by the defendants attorney, but instructed the jury that if they believed the Chrismans intended a trick upon Jno Richardson, the note is not paid and they should find for the plaintiff the debt & interest.

In all which instructions and opinions of the Court
the defendant by his attorney excepts, and now prays
the Court to sign and seal this bill of exceptions
and that the same may be made a part of the
record in this cause, to which prayer of the defen-
dant is now granted.

Signed Samuel D Lockwood

Here follows a copy of the papers referred to in the bill
of exceptions, to wit

Six months after date we or either
of us promises to pay Vincent S Richardson or order
sixty dollars, at the rate of twenty five per cent. until paid

June 25th 1832

Test: Jesse Barker

Charles Chrisman

Jacob Chrisman

Samuel S Crane

The following is a copy of the
execution referred to in the bill of exceptions, to
wit

State of Illinois Morgan County ss.

The People of

the State of Illinois to any Constable of said coun-
ty "Greeting"

We Command you that of the
goods and chattles of Jacob Chrisman and John
Hobsons in your County you make the sum
of Forty dollars sixty two cents debt and two
dollars thirty one cents costs which Joseph
Coddington and William G. Abrams for the use
of Charles F. Randolph lately recovered before
me in a plea against the said Jacob
Chrisman and John Hobsons and hereof make
return to me within seventy days from this
date — Given under my hand and seal

this 23^d day of August 1833 —

Geo. Rearick

Indorsement to wit

This Executions came to hand Sep
13th 1833 Signed J Westrope Const.

Octo^r. 10th 1833 Levied this Executions on one Grey
mare and Colt as the property of J. Brisman

Octo^r. 21st 1833 Sold the above property for fifty six
dollars - I return this Executions satisfied and paid
the money to George Rearch
J Westrope const.

State of Illinois }
Morgan County } Ss

I Drunis Rockwell Clerk of the
Circuit Court within and for said County do hereby
certify that the above and annexed pages contain
a correct transcript of the proceedings had in the
case wherein Vincent Richardson for the use of John
Richardson against Jacob Christian, Charles Christian
and Samuel L. Grane are defendants as appears
of record and from the files in my office

In Testimony Whereof I have here
unto set my hand and affixed
the Seal of said Court at East
Sewville this 22nd day of Nov^r
1834 -

Drunis Rockwell
Clerk



Vincent Richardson
for the use of John
Richardson

vs

Jacob Chrisman
Charles Chrisman &
Samuel Crane

— " —
Appeal
Filed Dec^r 2, 1834

J. M. Duman
—

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