

13132

No. _____

Supreme Court of Illinois

Snydacker et al

vs.

Magill et al

STATE OF II

SUPREME COURT

Third Grand Division.

No. 253.

1860

*Spencer
vs
Magill*

SUPREME COURT OF ILLINOIS.

Third Grand Division, }
APRIL TERM, A. D. 1860. }

LEWIS SNYDACKER,
GODFREY SNYDACKER,
MOSES SNYDACKER and
DANIEL MOORE,

Appellants.

vs.

CHARLES J. MAGILL and
THOMAS PICKERING,

APPEAL FROM COOK
CIRCUIT COURT.

ABSTRACT OF RECORD.

- Rec. p. 1 Magill & Pickering commenced suit by summons, on the 27th March, 1858,
in an action of assumpsit, served on all the defendants except Moore. And on
2 same day filed Narr. containing a special and common counts. This special count
was withdrawn from the jury on the trial (see page 31 of record.) The common
counts are for money lent and advanced, money paid out and expended, money
had and received, and for interest upon money due—and on account stated—dam-
age, \$1000.
- 7 Lewis and Moses Snyderacker, on the 13th April, 1858, filed a demurrer to the
first count, and the general issue as to the other counts of Narr.—and Godfrey
8 Snyderacker pleaded the general issue to the whole Narr.
- 9 On 21st April, 1858, demurrer to first count overruled. Lewis Snyderacker files
the general issue, and Moses Snyderacker stands by his demurrer.

10, 11 June 5, 1858, leave given to plaintiffs to file *additional special counts* which on same day were filed, and on the trial of the cause, withdrawn from the jury. (See bill of exceptions, page 31 of record.)

13 On the 18th June, 1858, Lewis Snyderacker filed a general answer to the additional counts.

14 Moses Snyderacker, Godfrey Snyderacker and Daniel Moore pleaded the general issue to the additional count last pleaded.

16 October 13, 1859, leave given to plaintiff to file additional count.

17 And, whereas, also, said plaintiffsheretofore, to-wit: on the 3d day of November 1857, at Chicago, to-wit: at the county of Cook aforesaid, being indebted to the defendants, Louis Snyderacker, Godfrey Snyderacker and Moses Snyderacker, in a large sum of money, to-wit: the sum of one thousand and fifty dollars, and to the defendant Daniel Moore in a large sum of money, to-wit: the sum of one thousand and sixty-eight dollars and thirty-six cents; and one George A. Shufeldt, Jr. being indebted to the said plaintiffs in a large sum of money, to-wit: the sum of two thousand dollars, and he, said George A. Shufeldt, Jr. being then and there the owner and entitled to the possession of a certain steam engine, two boilers and certain apparatus thereunto belonging, in all of great value, to-wit: of the value of the sum of twenty-seven hundred dollars; at the request of the said plaintiffs, and as well, also, at the request of the said defendants, then and there at the time and place aforesaid, sold and conveyed the said steam engine, boilers and apparatus to the said defendants, in cancellation and satisfaction of the said indebtedness of the said Shufeldt to the said plaintiffs, and in cancellation and satisfaction of the said indebtedness of the said plaintiffs to the said defendants upon the understanding and promise of the said defendants, then and there made by the said defendants to the said plaintiffs, that on the re-sale of the said steam engine, boilers and apparatus, before the Spring of the year 1858, through the instrumentality of the said plaintiffs they, the said defendants, would pay to the said plaintiffs on such re-sale out of the sum for which the same should be re-sold; the amount remaining after deducting therefrom the amount of the aforesaid indebtedness of the plaintiffs to them the said defendants respectively with interest and the reasonable sum which should be due at the time of such re-sale for the storage of said steam engine, boilers and apparatus.

18

And the said plaintiffs aver that afterwards and before the spring of the year, 1858, to-wit: on the third day of February, 1858, at the county aforesaid, through

the instrumentality and procurement of the plaintiffs the said defendants sold the said steam engine, boilers and apparatus for the sum of twenty-seven hundred dollars, which sum was on the said last mentioned day and still is a large sum, to-wit: the sum of five hundred and two dollars and ninety-one cents more than the amount of the aforesaid indebtedness of the said plaintiffs to the defendants with interest and reasonable charges for storage of said engine, boilers and apparatus, to-wit: thirty dollars, of all which premises the said defendants then and there, to-wit: on the day and year last aforesaid, and at the place aforesaid had notice, by means whereof the said defendants then and there became liable to pay to the said plaintiffs the said sum of five hundred and two dollars and ninety-one cents, the same being the balance of the sum or price for which the said engine, boilers and apparatus were sold as last aforesaid, after deducting the amount of the aforesaid indebtedness of the said plaintiffs to the said defendants with interest and charges for storage.

19 Yet the said defendants, disregarding their duty in the premises, have not, although often requested so to do, paid to the said plaintiffs the said last mentioned sum of money, or any part thereof, but have hitherto refused and continue to refuse to pay the sum to the plaintiffs damage one thousand dollars.

21 November 10th, 1859, defendants plead the general issue, to the last special count filed, and on 1st February, 1860, cause is tried by a Jury and verdict for the plaintiffs for \$502.91 and motion for new trial by defendants.

23 March 9th, 1860, motion for new trial denied and judgment. Appeal prayed
24 time to file bill of exceptions extended to first day of the next term; and afterwards, on the 17th March, 1860, extended one week from that day and appeal bond filed.

BILL OF EXCEPTIONS.

IN THE COOK COUNTY CIRCUIT COURT, }
OF FEBRUARY TERM, 1860. }

CHARLES J. MAGILL, ET AL,
vs.
LEWIS SNYDACKER, ET AL,

} ASSUMPSIT.

Be it remembered, That on the trial of this cause before the jury, sworn to try the issues therein, the plaintiff, to support the same on their behalf, introduced as a witness,

GEORGE A. SHUFELDT, Jr ,

Who was duly sworn, and testified as follows :

26

I owed plaintiffs about eighteen hundred dollars in October or November, 1857. They owed Snyder & Brother and Daniel Moore two notes, one to Moore and the other to the Snydackers, amounting to about two thousand dollars or two thousand one hundred dollars in all. I also owned a steam engine and two boilers, I brought from New York, worth about five thousand dollars. I could not pay what I owed ; I wanted to pay Magill and Pickering, and they wanted to pay these defendants. I agreed to convey to plaintiffs this engine and boilers, and these defendants agreed to take it ; about 3d of November, 1857, we all met at plaintiff's office to consummate the whole thing, Snyder, Daniel Moore, plaintiffs and myself were there.

It was stated by one of the parties, I think by Magill, that the engine cost a good deal more than the debt, and if sold it ought to go to them after paying their debt, if it brought more than their debt. Defendants said all they wanted was their money and that if Magill and Pickering would sell the engine before spring the surplus monies should go to them after paying their debt and interest.

The sale was consummated. A bill of sale of the engine was then made by me to these defendants, and the ware-house receipt given up to them.

Magill and Pickering found a purchaser for the engine, &c. some time in February following, to whom it was sold for \$2,700. There was an agreement with Newhouse that engine should remain in the store-house after Magill and Pickering abandoned store-house till spring at some thirty dollars ; the defendants were to be made whole for their debt.

I don't recollect that anything was said about interest at this time.

27

The witness is shewn by plaintiffs' counsel two notes, which he says are the notes given up at that time of making this agreement.

I computed the amount at time of sale, February 3d, 1858, as appears by the paper presented to me. This paper is in the words and figures following, to-wit:

Amount of note due October 18th	\$,1063.60.
At ten per cent. interest, February 3d, date of sale	31.39.
Amount of note due November 18th, 1857	1,050.00.
Interest to February 3d, at ten per cent.	22.10.
	2,167.09.
 We allow for storage 30.00	 30.00.
	\$2,197.09.

And the same was afterwards read to the Jury as a part of the statements of the witness.

Cross-Examination.

28 I am a distiller. I owed plaintiffs about eighteen hundred dollars; they owed defendants about \$2,100. To pay my debt to plaintiffs and plaintiffs' debt to defendants, I transferred engine, &c. to defendants. The bill of sale was drawn up at Magill and Pickering's office, 194 South Water street. The agreement was that if Magill and Pickering would sell the engine or find a purchaser for it before the next spring the surplus was to be paid to Magill and Pickering. Snyderacker said all he wanted was his money; I think Snyderacker said he ought to have the same interest had before. Magill said they had been paying too much interest; I did not know what the interest was.

My brother made the preliminary arrangement with plaintiffs for the sale of the engine, and I consummated it. Mr. Pickering brought a man to my office who bought the engine—Snyderacker and the man were looking up its parts; talked about it—Snyderacker said this was the man. This man, Pickering first brought to my office; I saw this man take it off—Pickering brought this man to me in January or February. The notes of defendants were delivered to plaintiffs, I think at the time of the agreement; I think we only met for the purpose of making the arrangement but once. I don't think Henry Moore was there; Daniel was when the bill of sale was made.

The conversation as to the sale to be made of the engine, &c. was before the bill of sale was made. Saw Snyderacker getting away the engine two or three times

a day. There was something said by Pickering of this man's purchasing. Snyder said the engine was sold for \$2,700; said he had not got all the money.

After this understanding, that Magill and Pickering were to have the overplus, Snyder said we want to have our money back; Snyder said we ought to have the interest we had before. I did not understand that the condition was they should have same interest as before; that was left unsettled, that was after agreement was made, that after the amount of defendants' debt was paid surplus should go to plaintiffs.

29

It was said by Magill or Pickering that as this engine had cost more than the amount of their debt, that on the sale of the engine the surplus should be paid over by them to Magill and Pickering; then Snyder said all we want is the amount of our debt, or all we want is to be made good and if you can sell or find a purchaser before spring we will give you the surplus, that constituted the origin of agreement. I went to writing the bill of sale upon the basis of that conversation; while writing they kept talking—Snyder said they ought to have the same interest as before; Magill shook his head and laughed. I don't recollect stating before that interest was two per cent. a month; after the transaction I heard two per cent. a month mentioned as the rate of interest plaintiffs had been paying.

The plaintiffs then offered to read to the Jury the notes shown to the witness, to each of which defendants objected, which objection the Court overruled and the defendants excepted, which was noted, and the notes read to the Jury, as follows:

\$1,063.60.

Chicago, July 17th, 1857.

Ninety days after date, for value received we promise to pay to Greenebaum Brothers, or order, the sum of one thousand and sixty-three dollars and sixty cents with interest, after due, at ten per cent. per annum for money borrowed, payable at the office of Greenebaum Brothers, Chicago.
Due October 15th, 1857.

30

\$1,050.

Chicago, August 15th, 1857.

Ninety days after date, for value received, we promise to pay to Greenebaum Brothers, or order, the sum of one thousand and fifty dollars with interest, after due, at ten per cent. per annum for money borrowed, payable at the office of Greenebaum Brothers, Chicago, having left with them as collateral

(7)

security, (with authority, on the non-performance of this promise, to sell the same at auction or private sale, either with or without notice at their option, and to apply the proceeds of such sale towards payment of the above sum, interest and cost of sale,) a receipt of R. Prindeville for 733 pkgs. of course salt.
Dated May 7th, 1857. Endorsed by us.

B.

The defendants here admitted that the defendants, Snydackers, composed the firm of Snydacker Brothers, and the plaintiffs closed their case.

The defendants then offered

HENRY MOORE,

As a witness, who was duly sworn and testified :

31 I know the parties—know Shufeldt—have seen the engine—was not present at the time of sale—do not know what it was sold for. The proposition of the last sale was \$2,400 cash or \$2,700 on time. I think the money on that contract had fallen due when this suit was commenced; I know \$1,700 is still due and unpaid. I acted as agent for Daniel Moore; have had management of this business with Snydacker—Snydacker has done most of the business; we were instructed to sell for \$1,800, if we could get no more—were not offered any more; sale was made in my office. Party introduced to me by Pickering. Party paid down \$900 and paid \$100 afterwards.

Being shown notes, before referred to in testimony of witness Shufeldt, said—had seen these notes before; I loaned the money on them. Plaintiffs were paying on these notes 24 per cent.; this 24 per cent. included in the notes. When Pickering introduced purchaser to me, he said, Mr. Moore, here is a man who will purchase the engine, if you can make a bargain. I introduced purchaser to Snydacker; he made the sale, and not Magill & Pickering.

The account filed with the declaration, is as follows :

CLAIM.

Balance of proceeds of sale of steam engine, apparatus and fixtures, after deduct-

ing indebtedness of plaintiffs to the defendants respectively, and thirty dollars storage, \$502.91.

Interest from February 3d, 1858.

Which was all the evidence in the cause—and thereupon the said plaintiffs stated, that the only special count, upon which they sought a recovery, was the additional special count, filed October 22d, 1858.

32 The defendants requested the Court to exclude the evidence of Shufeldt from the Jury, as to the terms of the sale of the engine, which the Court refused, and the defendants then and there excepted.

And the Court, at the request of the plaintiffs, gave the Jury the instructions following, and marked them so, viz :

1. If the Jury find from the evidence that the engine, &c., in question, were conveyed by Shufeldt, at the instance of plaintiffs, upon the consideration in part that on the re-sale of the same before the spring of 1858, through the instrumentality and procurement of the plaintiffs that they, the said defendants, would pay to the plaintiffs on such re-sale, out of the sum for which the same should be re-sold, the amount remaining after deducting therefrom the amount of the indebtedness of the plaintiffs to the defendants with interest, together with the reasonable sum which should be due at the time of such re-sale for storage ; and if the Jury further find that the said engine, &c., were sold for an amount exceeding the amount due to plaintiffs, including storage, and the amount of interest agreed upon through the instrumentality and procurement of the plaintiffs, then the plaintiffs are entitled to recover such surplus.

Given.

33 2. If the Jury shall find that an agreement was made, as alleged in the declaration, then the same was not void, because it was not reduced to writing, and it is, therefore, competent to prove such an agreement by parol evidence.

Given.

3. If the Jury shall find from the evidence, the agreement, as alleged in the

declaration, and that the defendants were to pay the excess upon the re-sale, then it is immaterial, whether or not the defendants have received the sum for which engine, &c., were sold.

Given.

To the giving of which instructions, the defendants then and there *excepted*; and the defendants then requested the Court to give the following instructions :—

1. If the Jury believe, from the evidence, that the witness, Shufeldt, sold the engine, &c., to the defendants; and that there was no agreement concluded between the plaintiffs and defendants, relative to the re-sale of the same, for more than the defendants gave, by which the surplus was to be given to the plaintiffs, then the law is for the defendants.

2. If the jury believe, from the evidence, that the defendant, Snyderacker, promised to give the plaintiffs all the engine, &c., sold for more than defendants gave witness, Shufeldt, for the same, on condition that plaintiffs would pay Snyderacker 24 per cent., as a consideration for such agreement, and that said plaintiffs refused to accept said condition, then the law is for the defendants.

Given.

34

3. If the Jury find that the engine, &c., were not sold through the instrumentality and procurement of the plaintiffs, then the Jury will find for the defendants.

Given.

4. If the jury find that witness, Shufeldt, was acting as agent of plaintiffs, in the sale of said engine to defendants, and that the sole consideration of such sale was the amount of the defendants claim against the plaintiffs, and no more, and that there was no new or independent agreement made between the parties, in reference to a re-sale, then the Jury will find for the defendants.

Given.

5. That the contracts set up in the plaintiffs' declaration, must be fully proven, as therein stated, without material variance between that alleged, and the

one in evidence, and if the Jury believe, from the evidence, that there is a material difference between the agreement alleged and the one in proof, then the Jury should find for defendants.

Given.

35

6. That, although the Jury may believe, from the evidence, that the defendants promised to give the plaintiffs all the money for which they sold the engine, &c., above the amount due to the said defendants, at the time of making the bill of sale of the engine boiler, &c., by the witness, Shufeldt, to the said defendants, they will find a verdict for the defendants, unless they further believe, from the evidence, that the plaintiffs paid a valuable consideration to the said defendants, as an inducement to such promises, or shall find that, by the terms of the agreement, the plaintiffs were to effect a re-sale through their own instrumentality and procurement; and that such a re-sale was so effected through the instrumentality and procurement of the plaintiffs.

Given.

7. If the Jury shall find, from the evidence, that an agreement was made, as alleged in the declaration, and that the engine, &c., was re-sold through the instrumentality of the plaintiffs; and, if they further find, that defendants were only to pay the surplus, over and above the debts, to them with interest, and storage thereon at the rate of 2 per cent. per month to the time of sale, upon the amount of such indebtedness, then such stipulation is binding upon the plaintiffs, and is not to be regarded as usurious.

Given.

8. If the Jury believe, from the evidence, that there was an agreement between the said plaintiffs and defendants, by which the defendants were to pay to the plaintiffs whatever they sold the engine, &c., for more than they paid for the same, but that such surplus was not to be paid until the purchase money was received by the defendants; and that said defendants have not received the consideration they sold the engine, &c., for, and have not received sufficient to reimburse themselves for the original price paid for the same, then the law is for the defendants.

Given.

36

9. That, on declaring upon a special contract, it is necessary to specify the consideration upon which the promise is based with precision—and, in this case, if the consideration is not described as proved, then the plaintiff is not entitled to recover—which the Court gave and so marked them.

Given.

The Court was requested by the defendants to give the following :—

10. If the Jury believe, from the evidence, that there was an agreement concluded, between the said plaintiffs and said defendants, by which the said defendants were to pay plaintiffs whatever sum they should sell the same for more than they gave, and that there was no consideration paid to said defendants, or said agreement by the plaintiffs, then the agreement is void, and the law is for the Defendants.

Refused.

Which the Court refused, and so marked, to the refusal of which the defendants then and there accepted.

And also the following :—

11. If the Jury believe, from the evidence, that the witness, Shufeldt, sold to defendants, the engine, two boilers, &c., for the notes of plaintiffs, and that there was no other agreement concluded between plaintiffs and defendants relative to the re-sale of the same for more than defendants gave, by which the overplus was to be given to plaintiffs, then the law is for the defendants.

In lieu of which, the Court gave the following :—

37

12. If the Jury find that an agreement was made to pay the surplus to the plaintiffs, on a re-sale of the engine, as alleged in the declaration ; yet, if the Jury further find, that such surplus was not to be paid to the plaintiffs until the defendants had reimbursed themselves their debt, and that the defendants have not, as yet, reimbursed themselves, then the law is for the defendants.

Given.

To the giving of which, and refusal of the other, defendants *excepted*.

The defendants then requested the following :—

13. That the allegation that a part of the consideration was an indebtedness, due to Daniel Moore, while the proof shows a note, payable to Greenbaum Brothers, not endorsed over by them to him, then the indebtedness is not properly described, and the Jury must find for the defendants.

Refused.

Which the Court refused, and so marked, and the defendants then and there excepted.

And the Jury having returned a verdict for the plaintiff, the defendants moved for a new trial and filed the following reasons :—

IN THE COOK COUNTY CIRCUIT COURT,

CHARLES J. MAGILL, ET AL,
vs.
SNYDACKER, ET AL,

}

The defendants move for a new trial in this cause.

38

1st. Because the verdict of the Jury is against the evidence in the cause, and the instructions of the Court, and the weight of evidence.

2d. Because the Court refused to exclude the testimony of George Shufeldt.

3d. Because the claim made and filed with the Narr., is for the balance of proceeds of the sale, and the proof showed that the defendants had not received from said sale more than their debt, and consequently had no balance of proceeds.

W. T. BURGESS & DRUMMOND,

FOR DEFENDANTS.

(13)

The Court overruled the motion and defendants excepted; and tenders this, his bill of exceptions in the premises, to be signed and sealed by the Court; and it is accordingly now here done, in open Court, this 23d day of March, 1860, and time having been given to the parties to this day to prepare the same.

GEORGE MANIERRE, [SEAL],

JUDGE OF THE 7TH JUDICIAL CIRCUIT, ILL.

ERRORS ASSIGNED.

1. That the Court below, on the trial of the cause, allowed the notes of July 17, 1857, and August 15, 1857, to be read to the Jury.
2. Refused to exclude the testimony of Shufeldt.
3. Gave the [plaintiffs] Appellees' instructions to the Jury.
4. Refused the [defendants] Appellants' instructions, Nos. 10 and 13.
5. Refused the Appellants' 11th instruction, and gave in lieu thereof the 12th.
6. In overruling the motion for a new trial.
7. In giving judgment for the Appellees.

W. T. BURGESS,

Attorney for Appellants.

APPELLANTS' POINTS.

The proof in this case shows an arrangement between Shufeldt, the witness, the Snydackers and Moore, the defendants below, and Magill and Pickering, the plaintiffs below, under which an indebtedness from Shufeldt to Magill and Pickering and from Magill and Pickering to the Snydackers and Moore, were cancelled by the sale by Shufeldt to the Snydackers and Moore of a steam engine, boilers, &c.

The plaintiffs below claim that at the same time an arrangement was made between the parties that on a sale of the engine by the Snydackers and Moore before the then next spring, if procured by the agency of said Magill and Pickering, or if they found a purchaser, all that the engine, &c. sold for above the payment of the debt due from Magill and Pickering to Snydackers and Moore, should be paid over to them; one party claiming to have interest at the same rate as before and the other refusing to pay it, and that question left unsettled. A bill of sale was executed after the verbal propositions, but that was not produced though the defendants moved to exclude the testimony about the sale for the want of it.

The proof further shows that a sale of the engine, &c. on credit was made before the then next spring to a person introduced by Magill and Pickering to the Snydackers and Moore; an attempt having been made to sell it for cash which failed for want of buyers. That at the commencement of this suit no money was due on the notes taken on that sale of the engine, &c. and that at the time of the trial Snydackers and Moore had not received money sufficient thereout to pay their claims.

I.

There could be no recovery on the counts for money had and

received, as no money was in fact received or anything which the parties treated as money, or which they had converted into money. The sale was made, by the proof, with their consent, to a person they introduced as purchaser.

Beardsley vs. Root, 11 Johns. 464, and cases there cited.

Corlies vs. Cumming, 6 Cow. 183, in point, for here the Snydackers and Moore by this arrangement had advanced the amount of their debts upon this property and had it in their hands with power to sell and realize their claim and account for the balance: the precise position of a factor; and there is nothing to show that they had been guilty of breach of orders, negligence or fraud, or that they had not acted with reasonable care and prudence.

II.

The special count is upon a sale made through the procurement of the appellees of the property for money, while the proof shows it was on time not due when suit brought; this is a variance and they cannot recover. It is evidently unjust for them when a sale is made by their consent on credit to sue for money paid.

III.

The account filed with the declaration is for the proceeds of a sale. The proof does not show that any proceeds were ever received by the defendants below.

IV.

The proof does not show that any agreement was in fact consummated for a re-sale of the engine, &c. as the question of the rate of interest was by the testimony of the witness left unsettled.

V.

The evidence of parol negotiations about the sale should have been excluded, there having been a written bill of sale in which the law presumes all the negotiations of the parties were finally included.

W. T. BURGESS,

Attorney for Appellants.

25-3

Snyder

no

Magree

Abstract & Points
by papers

Filed May 1, 1860
L. Selmer
clerk

IN THE SUPREME COURT,

April Term, A. D. 1860.

LEWIS SNYDACKER, et al,	}	A P P E A L FROM COOK CIRCUIT COURT.
<i>Appellants.</i>		
VS.		
CHARLES J. MAGILL, et al,		
<i>Appellees.</i>		

APPELLEES' POINTS.

I

The verdict on the Special Count, filed October 22, 1858, is right.

The Appellants' mis-state that Count as being upon a sale for money. In the first part of the Count the sale is spoken of as a re-sale to take place in the future, without mention of any terms.

In the latter part, describing the sale which had been made, it said Appellants sold it for twenty-seven hundred dollars, but whether cash or barter, in hand or on credit, is not said, so there is no variance in that respect.

(2)

I I

There is no variance between the proof and the particulars. Proceeds may be money, goods and chattles or choses in action. "Proceeds—In Commerce, the sum, amount or value of goods sold or converted into money."—*Webster's Dictionary*.

"A return Cargo, purchased on the credit of that exported," is the "proceeds" of the exported Cargo, so that a policy upon "proceeds" covers it.—1, *Phillip's Ins*, 177—8. "The term 'proceeds' imports a sale, barter or other disposition, etc."—1, *Phillip's Ins*, 179. The Appellants could not have been misled by the word.

I I I

The evidence justified the verdict.

The first exception by appellants was after that witness had left the stand, to the introduction of the notes.

I V

There was no writing between the parties to this suit. The only bill of sale, or writing in the case, was from the witness to the Appellants; not containing the bargain between these parties. No objection was made at the time to the testimony by parole as to the transfer from Shufeldt to the Appellants, and only then could the objection be made. He testified to that matter without objection.—*Abstract, page 4*.

After the evidence was through, indeed, the Appellants moved to strike out the evidence of Shufeldt as to the terms of the sale, but it was then too late, even if there had been anything in the point at first. They had taken their chances of making a case before the jury without objecting to the testimony. Besides they did not specify any grounds for the motion. It may be that notice had been given to Appellants to produce the bill of sale, which must have been in their own possession, and that they refused to do it.

P. & O. R. R. Co., vs. Neill, 16 Ill., 271.
Sargeant, vs. Kellogg, 5 Gil., 280.
Smith vs. Kahill, 17 Ill., 69.
Conway, vs. Case, 22 Ill., 139.
Clay, vs. Boyer, 5 Gil., 506.

V

The instructions on the part of the Plaintiffs, Appellees, were correct. They did not make the sale, and could not have done so. The engine, etc, belonged to Defendants. All that the Plaintiffs could do, or by the agreement were required to do, was to procure a purchaser. The language of the Count is "instrumentality or procurement." Of the witness (Abstract, p. 6,) "sell or find a purchaser." The terms of the sale must necessarily be left to the defendants who owned the engine. The parties are bound by the terms of their agreement, which was to pay on a re-sale, not when the money was received upon re-sale. The third instruction on the part of the plaintiffs, which was drafted by the Court, expresses the law correctly upon the main point in the case. The 12th instruction places the whole law of that point fairly before the Jury.

V I

The 10th instruction for defendants was properly refused. It tended to mislead the Jury. The payment of a consideration would have been understood by them as something given by plaintiffs to defendants,

(4)

besides the engine, etc. Besides, critically, that instruction points only at a sale of an *agreement*. The words are "sell the same"—nothing can be the antecedent of the word "same" in that instruction but the word "agreement." The property sold had not been mentioned since the 8th instruction.

V I I

The 11th instruction asked, had already been given, substantially, in the 1st for defendants.

V I I I

The 13th instruction asked by defendants is not law. One may be the owner of a note in his possession, as these were in the possession of the ^{defendants,} plaintiffs, and entitled to the money due upon it, and be the creditor of the payor, without being payee or endorsee. He is entitled to sue in the name of the payee, and can control the proceedings and the Court will protect him against the acts of the nominal plaintiff.

This instruction may not have been founded in fact. The notes may have been endorsed.

VAN BUREN & GARY,

Counsel for Appellees.

WM. HOPKINS,

Attorney for Appellees.

23-3
In Supreme Court,
Lewis Snyder
et al

vs.
Charles J. Mayall.
et al
Appellees Plaints

Filed May 8. 1860
L. Deane
Clerk

Van Buren & Gary
Counsel
Wm. Hopkins
Atty.

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Pleas, before the Honorable George Manierre Judge of the Seventh Judicial Circuit of the State of Illinois, and Sole Presiding Judge of the Circuit Court of Cook County, in the State aforesaid, and at a term thereof begun and held at the Court House in the City of Chicago, in said County, on the third Monday, (being the thirtieth day) of February in the year of our Lord one thousand eight hundred and sixty and of the Independence of the said United States the eighty-fourth

Present, Honorable George Manierre Judge of the 7th Judicial Circuit of the State of Illinois.

Charles Mason States Attorney.

John Gray Sheriff of Cook County.

Attest, Wm L Church Clerk.

Be it remembered that heretofore, to wit, on the 27th day of March A.D. 1866 Charles J. Magill & Thomas Pickering Plaintiffs, by Hopkins & Guthrie their Attorneys sued out of the office of the Clerk of the Court aforesaid & under the seal of said Court the People's certain writ of Summons directed to the Sheriff of said County to execute & clothed in the words & figures following, to wit,

Summons.

State of Illinois }
County of Cook }

The People of the State of Illinois,
to the Sheriff of said County, Greeting:

We command you that you summon Louis Snyder, Gaptiel Snyder, Moses Snyder, Daniel Moore if they shall be found in your County, personally to be and appear before the Circuit Court of Cook County, on the first day of the next term thereof, to be holden at the

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Pleas, before the Honorable George Manierre Judge of the Seventh Judicial Circuit of the State of Illinois, and Sole Presiding Judge of the Circuit Court of Cook County, in the State aforesaid, and at a term thereof begun and held at the Court House in the City of Chicago, in said County, on the third Monday, (being the thirtieth day) of February in the year of our Lord one thousand eight hundred and sixty and of the Independence of the said United States the eighty-fourth

Present, Honorable George Manierre Judge of the 7th Judicial Circuit of the State of Illinois.

Charles Mason States Attorney.

John Gray Sheriff of Cook County.

Attest, Wm L Church Clerk.

Be it remembered that heretofore, to wit, on the 27th day of March A.D. 1868 Charles J. Magill & Thomas Pickering Plaintiffs, by Hopkins & Guthrie their Attorneys sued out of the office of the Clerk of the Court aforesaid & under the seal of said Court the People's certain writ of Summons directed to the Sheriff of said County to execute & clothed in the words & figures following, to wit,

Summons.

State of Illinois }
County of Cook }

The People of the State of Illinois,
to the Sheriff of said County, Greeting:

We command you that you summon Louis Snyder, Gaptiel Snyder, Moses Snyder, Daniel Moore if they shall be found in your County, personally to be and appear before the Circuit Court of Cook County, on the first day of the next term thereof, to be holden at the

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Court House, in Chicago, in said County, on the Second Monday of April next, to answer unto Charles J. Magill & Thomas Pickering in a plea of Trespass on the case upon promises, to the damage of the said Plaintiffs as is said, in the sum of One thousand Dollars.

And have you then and there this writ, with an endorsement thereon, in what manner you shall have executed the same.

Witness, William L. Church, Clerk of our said Court and the seal thereof, at Chicago aforesaid, this
27th day of March A. D. 1858
W^m L. Church Clerk



And afterwards, to wit, same day & year last aforesaid said ^{Plaintiffs filed} ~~said said~~ ~~next said~~ ~~return~~ in the Court aforesaid in said Cause their certain declaration in the words & figures, to wit,

Declaration.

State of Illinois } In the Cook County Circuit Court
Cook County }^{ss.} of the April Term 1858
Charles J. Magill and Thomas Pickering
Plaintiffs herein, by Hopkins & Guthrie their Attorneys,
Complain of Louis Snyderker, Gustil Snyderker,
Moses Snyderker and Daniel Moore, defendants
who have been summoned of a plea of Trespass on
the case upon promises - For that whereas the said
Plaintiffs heretofore, to wit, on the 3rd day of February
1858 at Chicago, to wit, at the County of Cook aforesaid

being indebted to the defendants Louis Snyder, Gephel
Snyder & Moses Snyder in a large sum of money, to wit,
the sum of One thousand and 77 dollars & 10 cents, and to the
defendant Daniel Moore in a large sum of money, to wit, the
sum of One thousand and 94 dollars and 99 cents - and being
then and there the owners and entitled to the possession of a
certain Steam Engine, apparatus and fixtures thereto of
great value, to wit, of the value of 2700 dollars, at the request
of the said defendants caused the said Steam Engine & the
apparatus & fixtures thereto to be sold and conveyed by one
George A. Shufelbott in whom the legal title to said Engine
apparatus & fixtures then was, to the party to whom the said
defendants then and there, at the place & at the time aforesaid
requested such sale & conveyance to be made upon the un-
derstanding and promise of the said defendants then and
there made to pay to the said plaintiffs on the sale and
conveyance of the said Steam Engine apparatus and
fixtures out of the amount or price for which the same
should be sold, the balance or sum remaining after
deducting therefrom the amount of the aforesaid in-
debtedness of the plaintiffs ^{to} them the said defendants
respectively and the reasonable sum then due on said
Engine apparatus & fixtures for the storage thereof, that
the said defendants on the day and year aforesaid re-
ceived on the sale of the said Engine apparatus and
fixtures in consideration therefor the price or sum of
2700 dollars, being and amounting to a large sum,
to wit, the sum of 502 dollars & 91 cents more than the

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amount of the aforesaid indebtedness of the plaintiffs to the said defendants, and the reasonable charges for storage on said Engine apparatus & fixtures, to wit, thirty dollars. of all which premises the said defendants then and there, to wit, on the day and year last aforesaid and at the place aforesaid had due notice, by means whereof the said defendants then and there became liable to pay to the said plaintiffs the balance of the sum or price for which the said Engine apparatus & fixtures were sold as aforesaid after deducting the amount of the aforesaid indebtedness of the said defendants, to wit, the sum of 502 dollars and 91 cents.

Yet the said defendants disregarding their duty in the premises have not although often requested so to do paid to the said plaintiffs the said last mentioned sum of money or any part thereof, but have hitherto refused and continue to refuse to pay the same, to the plaintiffs' damage one thousand dollars.

And whereas, also, the said Defendants afterwards, to wit, on the same day and year and at the place aforesaid, were indebted to the said Plaintiffs in the further large sum of money, to wit, the sum of One thousand Dollars, of like lawful money as aforesaid, for money before that time lent and advanced by the said Plaintiffs to the said Defendants and at the like request of the said Defendants. And for other money by the said Plaintiffs, before that time, paid, laid out and expended for the said Defendants, and at the like request of the said Defendants, And for other money

by the said Defendants before that time had and received to and for the use of the said Plaintiffs. And for other money before that time and then due and owing the said Plaintiffs for interest upon and for the forbearance of divers other sums of money before that time and then due and owing from said Defendants to said Plaintiffs. And being so indebted the said Defendants, in consideration thereof, afterwards, to wit, on the same day and year, and at the place aforesaid undertook, and then and there faithfully promised the said Plaintiffs well and truly to pay unto the said Plaintiffs the said several sums of money in this count mentioned, when the said Defendants should be thereunto afterwards requested.

And whereas, also, the said Defendants, afterwards, to wit, on the same day and year, and at the place aforesaid accounted with the said Plaintiffs of and concerning divers other sums of money, before that time due and owing from the said Defendants to the said Plaintiffs, and then and there being in arrear and unpaid, and upon such accounting the said Defendants then and there were found to be in arrear, and indebted to the said Plaintiffs in the further large sum of money, to wit, the sum of One thousand Dollars, of like lawful money as aforesaid. And being so found in arrear and indebted to the said Plaintiffs the said Defendants in consideration thereof, afterwards, to wit, on the same day and year, and at the place aforesaid,

undertook, and then and there faithfully promised the said Plaintiffs well and truly to pay unto the said Plaintiffs the said sum of money last mentioned, when the said Defendants should be thereunto afterwards requested,

Nevertheless, the said Defendants (although often requested, &c.) have not yet paid the said several sums of money above mentioned, or any or either of them, or any part thereof, to the said Plaintiffs but to pay the same, or any part thereof, to the said Plaintiffs, the said Defendants have hitherto altogether refused, and still do refuse, to the damage of the said Plaintiffs of One thousand Dollars, and therefore the said Plaintiffs bring suit, &c.

Hopkins & Guthrie

Plaintiffs Attorneys

Claim

Balance of proceeds of sale of Steam Engine apparatus and fixtures, after deducting indebtedness of Plaintiffs to the Defendants, respectively and thirty dollars storage \$502.91. Interest from February 3^d 1858.

And afterwards, to wit, on the 13th day of April in the year last aforesaid, said writ was returned in the Court aforesaid, by said Sheriff, endorsed as follows, to wit,

Sheriff's Return

The within named Daniel Moore not found in my County. Served by reading to the within named

Godfrey Snyderaker and Moses Snyderaker the 29th day of March 1858 and by reading to the within named Louis Snyderaker the 30th day of March 1858. Fees: 3 service 1,50 - 3 mile, 15 - 1 return 10 - \$1,75 Rec. by Offs. Atty. John L. Wilson Sheriff,

by John H. Dart Deputy,

And afterwards, to wit, on the 13th day of April in the year last aforesaid, said Defendants, by their Attorney, filed in said Court their certain demurrer & Pleas in the words & figures following, to wit,

In the Cook Circuit Court
Levi's Executor et al } April Term 1858
 advs } Asset
Charles J. Magill et al }

And the said Defts. Lewis Snyderacker & Moses Snyderacker impleaded &c. come & defende the wrong & injury when &c. & say that the said first count of said Declaration is insufficient in law & they demur thereto, wherefore they pray judgment,

And as to the other counts of said Declaration
said Defendants impleaded &c. say action non because
they say they did not undertake & promise in manner
& form as the said Plaintiffs have above thereof com-
plained against them & of this they put themselves upon
the Country &c.

and the Pffs. do the like &c.
Hopkins & Guthrie
Pffs. Atty.

W. J. Burgess
for Defts.

Plea of Godfrey Snyderaker.

In the Cook Circuit Court

Lewis Snyderaker et al

April Term 1858

vs.

} asst

Charles J. Magill et al

And the said Deft. Godfrey Snyderaker, impleaded &c. comes & defends the wrong and injury when &c. & says that he did not undertake & promise in manner & form as the said Plaintiffs have above thereof declared against him & of this he puts himself upon the Country &c.

W. J. Burgess

And the Plffs. do the like &c.

for Deft.

Hopkins & Guthrie

Plffs. Attys.

And afterwards, to wit, at the April Term of said Court to wit, on the 21st day of April in the year last aforesaid the following proceedings, among others, were had and entered of record therein, to wit,

Charles J. Magill and
Thomas Pickering

vs.

} asst

Lewis Snyderaker et al

This cause coming on this day to be heard upon the demurrer of Defendants Snyderaker to the 1st Count in the Plaintiffs' declaration filed in said cause, and Counsel having been heard

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and the Court being well advised in the premises, doth find that the plaintiffs' said declaration is sufficient in law for them to have and maintain their aforesaid action against the said defendants impleaded &c. as to the first count thereof notwithstanding said demurrer, said demurrer is therefore overruled and defendants ruled to plead to the said 1st count of said declaration within ten days.

And afterwards, to wit, on the 24th day of April in the year last aforesaid, the said defendants Snyderker filed in said Court their certain Plea in the words & figures following, to wit,

Plea of Lewis Snyderker.

Cook Cir. Court

April Term 1858

Snyderker et al }
 advs } asst
Magill et al }

And the said Lewis Snyderker implead^d &c. says that as to the first count he did not undertake & promise in manner & form as the said plaintiffs have above thereof declared against the said Dfts. & of this he puts himself upon the Country, And the plffs. do the like &c.

W. J. Burgess

I Moses Snyderker stand by his demurrer.
W. J. Burgess

And afterwards, to wit, at the said term of said

Court last aforesaid, to wit, on the 5th day of June in the year aforesaid, the following proceedings, among others, were had and entered of record, to wit,

Charles J. Magill &
Thomas Pickering

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vs

Louis Snyderker, Godfrey
Snyderker, Moses Snyderker
& Daniel Moore

Assumpsit

On motion it is ordered, that said plaintiffs have leave to file additional special Counts herein, and it is further ordered that said defendants be, and they hereby are ruled to plead thereto by the first day of the next term of this Court.

And afterwards and on the day and year last aforesaid, the said plaintiffs filed in the Court aforesaid their certain additional Counts to their declaration in said cause in words & figures following, to wit,

Additional Counts.

Circuit Court of Cook County

Charles J. Magill
& Thomas Pickering

vs.

Louis Snyderker et al

additional
Special Counts

And whereas also the said plaintiffs heretofore to wit, on the third day of February

1858 at Chicago, to wit, at the County of Cook aforesaid, being indebted to the defendants Louis Snyderker, Gustiel Snyderker & Moses Snyderker in a large sum of money to wit, the sum of One thousand and seventy seven dollars and ten cents, and to the defendant Daniel Moore in a large sum of money, to wit, the sum of One thousand and ninety four dollars and ninety nine cents; and being then and there the owners and entitled to the possession of a certain Steam engine apparatus and fixtures there to of great value, to wit, of the value of 2700 dollars at the request of the said defendants caused the said Steam Engine and the apparatus & fixtures thereto to be sold and conveyed by one George D. Shufeldt in whom the legal title to said Engine apparatus & fixtures then was, to the defendants herein

upon the understanding and promise of the said defendants then and there made to pay to the said plaintiffs on the sale and conveyance of the said Steam Engine apparatus and fixtures out of the amount or price for which the same should be sold, by the Defendants, the balance or sum remaining after deducting therefrom the amount of the aforesaid indebtedness of the plaintiffs to them the said defendants respectively, and the reasonable sum then due on said Engine apparatus & fixtures for the storage thereof, that the said defendants on the day and year aforesaid, sold the said Engine apparatus &

fixtures and received on the sale of the said Engine apparatus and fixtures & in consideration therefor the price or sum of seventy seven hundred dollars being and amounting to a large sum, to wit, the sum of five hundred and two dollars and ninety one cents more than the amount of the aforesaid indebtedness of the plaintiffs to the said defendants & the reasonable charges for storage on said Engine apparatus & fixtures, to wit thirty dollars, of all which premises the said defendant then and there to wit, on the day and year last aforesaid and at the place aforesaid had due notice, by means whereof the said defendant then and there became liable to pay to the said plaintiffs the balance of the sum or price for which the said Engine apparatus & fixtures were sold as aforesaid after deducting the amount of the aforesaid indebtedness of the said defendants, to wit, the sum of five hundred and two dollars & 91 cents. Yet the said defendants disregarding their duty in the premises have not, although often requested so to do, paid to the said plaintiffs the said last mentioned sum of money or any part thereof, but have hitherto refused and continue to refuse to pay the same, to the plaintiffs' damage One thousand dollars.

Hopkins & Guthrie
 Plffs. Atty.

And afterwards, to wit, on the 18th day of June
 in the year last aforesaid the said defendant

Lewis Snyderaker by his said Attorney, filed in said Court
 his certain Demurrer, & the other defendants
 their certain Plea to additional Counts filed by
 said plaintiffs, in the words & figures following
 to wit,

Demurrer to Additional Counts.

In the Cook Circuit Court

Lewis Snyderaker et al
 vs
 Charles J. Magill et al }

And the said defendant Lewis
 Snyderaker by W. J. Burgess his Attorney, comes and
 defends the wrong and injury ^{when} &c. and says that the
 said additional Counts lastly above pleaded and
 the matters therein contained in manner and form
 as the same are above stated and set forth, are not
 sufficient in law for the said plaintiffs to have or
 maintain their aforesaid action thereof against the
 said Defendant, and that he the said Defendant is
 not bound by law to answer the same. And this
 he the said Defendant Lewis Snyderaker is ready
 to verify, wherefore by reason of the insufficiency of
 the said Count lastly above pleaded in this behalf
 the said Defendant prays judgment, and that the
 said plaintiffs may be barred from having or
 maintaining their aforesaid action thereof against
 him &c.

W. J. Burgess
 for Def. Lewis Snyderaker

Plea to additional Counts.

In the Cook Circuit Court

Lewis Snyderaker et al
 and
 Charles J. Magill et al }

And the said Defendants
 Moses Snyderaker and Godfrey Snyderaker and Daniel
 Moore by W. T. Burgess their Attorney come and defend
 the wrong and injury when &c. and say that they did
 not undertake or promise in manner and form as
 the said plaintiffs have above thereof in the said addi-
 tional as well as to the said special & common Counts
 above pleaded, complained against them and of
 this they put themselves upon the Country &c.

W. T. Burgess
 Deft. Atty.

And thereupon, afterwards, to wit, at the June special
 term of said Court, to wit, on the 3rd day of July in
 the year last aforesaid, the following proceedings,
 among others, were had and entered of record
 in said Court, to wit,

Charles J. Magill & Thomas Pickering
 vs
 Louis Snyderaker, Godfrey Snyderaker
 Moses Snyderaker and Daniel Moore } Assumpsit

This day come the
 said plaintiffs by Hopkins & Guthrie their attorneys

and the said defendant Lewis Snyder, by W. T. Burgess, his attorney also comes, and the Court having heard arguments of counsel on the demurrer of the said defendant Lewis Snyder to additional Counts in said plaintiffs' declaration herein and being fully advised in the premises now orders that said demurrer be & the same hereby is overruled. And therefore, on motion, it is ordered that said defendant be and he hereby is ruled to plead to said additional Count by Tuesday morning next.

And thereupon, on the 6th day of July in the year last aforesaid, the said defendant, by his said Attorney, filed in said Court his certain Plea in the words and figures following, to wit,

In the Cook Circuit Court

Lewis Snyder et al
 ads
 Charles J. Magill et al

And the said Defendant Lewis Snyder, by W. T. Burgess, his Attorney, comes and defends the wrong and injury when &c. and says that he did not undertake or promise in manner and form as the said Plaintiffs have above thereof in said additional Count lastly above pleaded, complained against him and of this he puts himself upon the Country &c.

W. T. Burgess
 Defts. Atty.

And afterwards, to wit, at the October term of said Court, to wit, on the 13th day of October in the year last aforesaid, the following proceedings, among others in said Cause, were had and entered of record in said Court, to wit,

Charles J. Magill and
Thomas Pickering }
vs
Lewis Snyderaker et al } asst

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And thereupon, on motion, leave is given plaintiffs to file an additional Count herein to their declaration.

And afterwards, to wit, on the 22nd day of October in the year last aforesaid, the said plaintiffs, by their said Attorneys, filed in the Court aforesaid in said cause an additional special Count to their said declaration in words & figures following, to wit,

Additional Special Count.

State of Illinois }
County of Cook } ss

Circuit Court of Cook County

Charles J. Magill & Thomas Pickering

vs

Lewis Snyderaker et al

} Additional Special Count

And whereas also the said plaintiffs heretofore to wit, on the 3rd day of November 1857, at Chicago, to wit, at the County of Cook aforesaid, being indebted to the defendants Lewis Snyderaker, Godfrey Snyderaker and Moses Snyderaker, in a large sum of

money, to wit, the sum of One thousand and fifty dollars, and to
 the defendant Daniel Moore in a large sum of money, to wit, the
 sum of One thousand and sixty eight dollars and thirty six
 cents, and one George A. Shufeldt Jr. being indebted to the said
 plaintiffs in a large sum of money, to wit, the sum of two
 thousand dollars, and he ^{said} George A. Shufeldt Jr. being then
 and there the owner and entitled to the possession of a certain
 Steam Engine, two boilers and certain apparatus thereunto
 belonging in all of great value, to wit, of the value of the sum
 of twenty seven hundred dollars, at the request of the said plain-
 tiffs, and as well also at the request of the said defendants
 then and there at the time and place aforesaid sold
 and conveyed the said Steam Engine, Boilers and appara-
 tus to the said defendants, in cancellation and satisfaction
 of the said indebtedness of the said Shufeldt to the said
 plaintiffs, and in cancellation and satisfaction of the said
 indebtedness of the said plaintiffs to the said defendants upon
 the understanding and promise of the said defendants
 then and there made by the said defendants to the said
 plaintiffs, that on the resale of the said Steam Engine,
 Boilers and apparatus, before the Spring of the year 1878
 through the instrumentality of the said plaintiffs,
 they the said defendants would pay to the said plaintiffs
 on such resale, out of the sum for which the same
 should be resold, the amount remaining after deduct-
 ing therefrom the amount of the aforesaid indebtedness of
 the plaintiffs to them the said defendants respectively,
 with interest and the reasonable sum which should be

due at the time of such resale for the storage of said Steam Engine, Boilers and apparatus.

And the said plaintiffs aver that afterwards and before the Spring of the year 1858, to wit, on the third day of February 1858, at the County aforesaid, through the instrumentality and procurement of the plaintiffs the said defendants sold the said Steam Engine, Boilers and apparatus for the sum of twenty seven hundred dollars, which sum was on the said last mentioned day and still is a large sum, to wit, the sum of five hundred and two dollars and ninety one cents more than the amount of the aforesaid indebtedness of the said plaintiffs to the defendants with interest and reasonable charges for storage of said Engine, Boilers & apparatus, to wit, thirty dollars, of all which premises the said defendants then and there, to wit, on the day and year last aforesaid, and at the place aforesaid had notice, by means whereof the said defendants then and there became liable to pay to the said plaintiffs the said sum of five hundred and two dollars and ninety one cents, the same being the balance of the sum or price for which the said Engine, Boilers and apparatus were sold as last aforesaid, after deducting the amount of the aforesaid indebtedness of the said plaintiffs to the said defendants with interest and charges for storage.

Yet the said defendants disregarding their duty in the premises have not, although often requested so to do, paid to the said plaintiffs the said last

mentioned sum of money or any part thereof, but have hitherto refused and continue to refuse to pay the same to the plaintiffs' damage one thousand dollars.

Hopkins & Guthrie
Plffs. Atty.

And afterwards, to wit, on the 10th day of November in the year last aforesaid, said defendants, by their said Attorney, filed in the Court aforesaid, their certain Plea to said additional Count in the words & figures following, to wit,

Plea.

In the Cook County Circuit Court

Charles J. Magill &
Thomas Pickering

vs

Louis Snyderacker
Guthiel Snyderacker
Moses Snyderacker &
Daniel Moore

And the said defendants Louis Snyderacker, Guthiel Snyderacker, Moses Snyderacker and Daniel Moore by Burgess & Hawley, come and defend the wrong and injury when &c. Complained of in the said plaintiffs' said additional Special Count filed in said Cause, and say that they did not undertake or promise in manner and form as the said plaintiffs have above thereof declared against them, and of this

they put themselves upon the Country &c.

Burgess & Hawley
Defendants, Atty's.

And afterwards, to wit, at the January Term of said Court, to wit, on the 1st day of February A.D. 1860 the following proceedings, among others, were had and entered of record therein in said Cause, to wit,

Charles J. Magill and
Thomas Pickering

assumpsit

Louis Snyderker, Godfrey
Snyderker, Moses Snyderker
and Daniel Moore

This day come the said plain-
tiffs, by Hopkins & Guthrie their Attorneys, and the
said defendants, by Burgess and Drummond their
Attorneys also come. Whereupon come the Jurors of a
jury of good and lawful men, to wit, J. E. Goodrich,
H. Howland, C. A. Colby, Martin Winch, William
Johnson, Charles Arcey, Nicholas Hampiers, J. D. W.
Whitall, H. K. Wilcox, N. Dickinson, N. Berdel, J.
A. M. Allen, who being duly elected, tried and sworn
well and truly to try the issue joined aforesaid and
a true verdict render according to law and the evidence
and after hearing all the evidence adduced by the parties
the arguments of counsel as well on the part of the
plaintiffs as of the defendants, and the instructions from

the Court, retire to consider of their verdict under the charge of a sworn officer of the Court, with directions from the Court that when they shall have agreed upon a verdict they thereupon sign and seal the same and afterwards separate to meet the Court at the coming in thereof to-morrow morning at nine o'clock.

And afterwards, to wit, at the same term of said Court last aforesaid, to wit, on the 2^d day of February in the year last aforesaid, the following proceedings among others, were had and entered of record, to wit,

Charles J. Magill and
Thomas Pickering

13116

vs

Louis Snyderaker, Godfrey Snyderaker,
Moses Snyderaker & Daniel Moore

Assumpsit

This day again come as well the said plaintiffs, by Hopkins & Guthrie their Attorneys, as the said defendants by Burgess & Drummond their Attorneys, and the Jury aforesaid having agreed upon and sealed their verdict, return into Court and say, "We the Jury find the issues for the plaintiffs and assess their damages to the sum of Five hundred and two Dollars and ninety one cents."

Whereupon the defendants, by their Counsel, move the Court for a new trial of said Cause.

And afterwards, to wit, at the February term of said Court ~~last aforesaid~~, to wit, on the 9th day of March

in the year last aforesaid, the following proceedings,
among others, were had and entered of record therein,
in said Cause, to wit,

Charles, J. Magill &
Thomas Pickering

18116

vs

Louis Snyderker, Godfrey Snyderker,
Moses Snyderker & Daniel Moore

} assumpsit

This day again come as
well the said plaintiffs by Hopkins & Guthrie their Attor-
neys, as the said defendants by Burgess & Drummond
their Attorneys, and Counsel having been heard upon
the motion of the defendants heretofore entered for a
new trial of said Cause, as well in support thereof, as in
opposition thereto, and the Court now being fully advised
of and concerning the premises, doth order that said mo-
tion be overruled, and the same hereby is overruled
accordingly. To which ruling of the Court in overruling
said motion for a new trial, the defendants, by their
Counsel, now here except.

Therefore it is considered by the Court that the
said plaintiffs do have and recover of the said defend-
ants their damages of Five hundred and two Dollars
and ninety one cents, in form as aforesaid, by the jury
aforesaid assessed together with the costs and charges
by them about their suit in that behalf expended and
have execution therefor.

Whereupon the said defendants, by their Counsel

except and pray an appeal to the Supreme Court of the State of Illinois which is granted by the Court upon condition that the defendants on or before the first day of the next term of this Court, execute and file their appeal bond herein in the penal sum of one thousand dollars conditioned according to law with Nathan Eisendrath or Henry Moore as surety thereto.

And on motion no objection being made thereto it is ordered that the time for defendants to file their bill of Exceptions in said cause be extended to the first day of the next term of this Court, and the same hereby is extended accordingly.

And afterwards, to wit, at the March Term of said Court, to wit, on the seventeenth day of March in the year last aforesaid, the following further proceedings, among others, in said Court were had and entered of record, to wit,

Charles J. Magill and
Thomas Pickering

13116

vs

Louis Snyderker, Godfrey Snyderker,
Moses Snyderker & Daniel Moore

} Assumpsit

On Motion of Burgess and Drummond of Counsel for said Defendants no objection being made thereto, it is ordered that the time for defendants to file their Bill of Exceptions in said Cause, be further extended one week and the

same is extended accordingly.

And afterwards, to wit, on the day and year last aforesaid, the said defendants filed in said Court their certain Appeal Bond in the words & figures following, to wit,

Appeal Bond.

Know all men by these presents that we Godfrey Snyderaker & Henry Moore are held and firmly bound unto Charles J. Magill & Thomas Pickering in the penal sum of one thousand dollars, for the payment of which well and truly to be made we do bind ourselves, our heirs, executors & administrators jointly, severally & firmly by these presents.

Signed, sealed and dated this 17th day of March A. D. 1860.

The condition of the above obligation is such that whereas in the Circuit Court of the County of Cook & State of Illinois, at the February Term thereof A. D. 1860, the said Charles J. Magill and Thomas Pickering recovered a judgment against Lewis Snyderaker, Moses Snyderaker & Godfrey Snyderaker & Daniel Moore for five hundred and two dollars & ninety one cents damages & costs of suit, from which the said Godfrey Snyderaker hath prayed an appeal to the Supreme Court of said State.

Now therefore if the said Godfrey Snyderaker

dollars in all. I also owned a Steam Engine and two boilers, I brought from New York worth about five thousand dollars. I could not pay what I owed. I wanted to pay Magill & Pickering and they wanted to pay these defendants. I agreed to convey to plaintiffs this Engine & Boilers, and these defendants agreed to take it, about 3^d of November 1857 we all met at Plaintiffs' office to consummate the whole thing. Snyder, Daniel Moore, plaintiffs and myself were there.

It was stated by one of the parties, I think by Magill - that the Engine cost a good deal more than the debt and if sold it ought to go to them, after paying their debt, if it brought more than their debt. (Defts. said all they wanted was their money & that if Magill & Pickering would sell the Engine before Spring the surplus moneys should go to them, after paying their debt and interest.

The sale was consummated. A Bill of sale of the Engine was then made by me to these defendants & the ware-house receipt given up to them.

Magill and Pickering found a purchaser for the Engine &c. some time in February following, to whom it was sold for \$2700.

There was an agreement with Newhouse, that Engine should remain in the store house after Magill & Pickering abandoned store house till Spring at some thirty dollars, the defendants were to be made whole for their debt.

I don't recollect that any thing was said about interest at this time.

The witness is shown by plaintiffs' counsel two notes which he says are the notes given up at time of making this agreement.

I computed the amount at time of sale Feb. 3. 1858 as appears by the paper presented to me. This paper is in the words and figures following, to wit,

Amt. of Note due Oct. 18	\$ 1063, 60
at 10 per ct Int Feby. 3 ^d date of sale	31, 39

Amt. of Note due Nov. 18, 57.	1050 — —
Int. to Feby. 3 ^d at 10 per ct	22, 10
	\$ 2167, 09

We allow for Storage 30,00	30, 00
	\$ 2197, 09

And the same was afterwards read to the Jury as a part of the statements of the witness.

Cross Examination.

I am a distiller. I owed Plaintiffs about Eighteen hundred dollars. They owed defendants about \$ 2100. To pay my debt to plaintiffs and plaintiffs' debt to defendants, I transferred Engine &c. to defendants. The Bill of sale was drawn up at Magill & Pickering's office 194 South Water Street. The agreement was that if Magill & Pickering would sell the engine or find a purchaser for it before the next Spring the surplus was to be paid to Magill & Pickering. Snyderaker said all he wanted was his money. I think Snyderaker said he ought to have

the same interest had before. Magill said they had been paying too much interest. I did not know what the interest was.

My Brother made the preliminary arrangement with plaintiffs for the sale of the Engine and I consummated it.

Mr. Pickering brought a man to my office who bought the Engine. Snyderaker and the man were looking up its parts, talked about it, Snyderaker said this was the man. This man Pickering first brought to my office. I saw this man take it off. Pickering brought this man to me in January or February.

The notes of defendants were delivered to plaintiffs, I think at the time of the agreement. I think we only met for the purpose of making the arrangement but once. I don't think Henry Moore was there, Daniel was when the Bill of sale was made.

The conversation as to the sale to be made of the Engine &c. was before the Bill of sale was made. Saw Snyderaker getting away the engine two or three times a day. There was something said by Pickering of this man's purchasing. Snyderaker said the Engine was sold for \$2700, said he had not got all the money. After this understanding that Magill & Pickering were to have the overplus, Snyderaker said we want to have our money back. Snyderaker said we ought to have the interest we had before. I did not understand that the condition was they should have same interest as before. That was left unsettled, that was after agreement was made that after the amount of debts debt was paid surplus should go to plaintiffs.

It was said by Magill or Pickering that as this Engine had cost more than the amount of

Their debt, that on the sale of the engine the surplus should be paid over by them to Magill and Pickering, then Snyder said all we want is the amount of our debt, or all we want is to be made good & if you can sell or find a purchaser before Spring we will give you the surplus, that constituted the original agreement. I went to writing the Bill of sale upon the basis of that conversation, while writing they kept talking. Snyder said they ought to have the same interest as before. Magill shook his head and laughed. I don't recollect stating before that interest was 2 per cent a month after the transaction, I heard 2 per cent a month mentioned as the rate of interest plffs. had been paying.

The plaintiffs then offered to read to the Jury the notes shown to the witness, to each of which defts. objected which objection the Court overruled and the defendants excepted which was noted, and the notes read to the Jury, as follows

\$1063⁶⁰/₁₀₀

Chicago July 17th 1857

Ninety days after date, for value received
We promise to pay to Greenbaum Brothers or Order,
the sum of One thousand and sixty three ⁶⁰/₁₀₀ Dollars
with interest after due at ten per cent. per annum
for money borrowed, payable at the office of
Greenbaum Brothers, Chicago.

(Due October 15/1857)

\$1050

Chicago August 15th 1857

Ninety days after date, for value received

We promise to pay to Greenbaum Brothers or order, the sum of One thousand and fifty Dollars, with interest after due at ten per cent. per annum for money borrowed, payable at the office of Greenbaum Brothers, Chicago, having left with them as collateral security (with authority on the non performance of this promise to sell the same at auction or private sale either with or without notice at their option & to apply the proceeds of such sale towards payment of the above sum, interest and cost of sale) a Receipt of R. Prindle for 732 Pkgs of coarse salt.

(Dated May 7. 1857. Endorsed by us

B

The defendants here admitted that the defendants Snyderackers composed the firm of Snyderacker Brothers
And the plaintiffs closed their case.

The defendants then offered Henry Moore as a witness who was duly sworn and testified —

I know the parties, know Sheffield, have seen the Engine, was not present at the time of sale. Do not know what it was sold for, the proposition of the last sale was \$2400 cash or \$2700 on time. I think the money on that contract had fallen due when this suit was commenced. I know \$1700 is still due & unpaid. I acted as agent for Daniel Moore. Have

had management of this business with Snyder. Snyder has done most of the business, we were instructed to sell for \$1800 if we could get no more were not offered any more. Sale was made in my office, Party introduced to me by Pickering, Party paid down \$900 + paid \$100 afterwards. Being shown notes before referred to in testimony of witness Shufeldt, said had seen these notes before. I loaned the money on them. Plaintiffs were paying on these notes 24 per cent, this 24 per cent included in the notes. When Pickering introduced purchaser to me he said Mr. Moore here is a man who will purchase the engine if you can make a bargain. I introduced purchaser to Snyder, he made the sale, and not Magill & Pickering.

The account filed with the declaration is as follows —

Claim —

Balance of proceeds of sale of Steam Engine, apparatus and fixtures, after deducting indebtedness of Plaintiffs to the Defendants, respectively, and thirty dollars storage \$502.91

Interest from February 3^d 1858

Which was all the evidence in the cause and thereupon the said Plaintiff stated that the only special Count upon which they sought a recovery was the additional Special Count filed Oct. 22 1858.

The defendants requested the Court to exclude the

evidence of Shufeldt from the jury as to the terms of the sale of the engine which the Court refused & the debts then & there excepted.

And the Court, at the request of the Plaintiffs gave the jury the instructions following and marked them so viz.

Given
1 If the jury find from the evidence that the engine &c in question were conveyed by Shufeldt, at the instance of Plaintiffs, upon the consideration in part that on the resale of the same before the spring of 1888 through the instrumentality and procurement of the plaintiffs, that they the said defendants would pay to the plaintiffs on such resale, out of the sum for which the same should be resold, the amount remaining after deducting therefrom the amount of the indebtedness of the plaintiffs to the defendants with interest, together with the reasonable sum which should be due at the time of such resale for storage - And if the jury further find that the said Engine &c. were sold for an amount exceeding the amt due to plaintiffs including storage, and the amt of interest agreed upon through the instrumentality and procurement of the plaintiffs, then the plaintiffs are entitled to recover such surplus -

Given

2 If the jury shall find that an agreement was made as alleged in the declaration - then the same was not void, because it was not reduced to

writing - and it is therefore competent to prove such an agreement by parol evidence -

3 If the jury shall find from the evidence the agree^t. as alleged in the declaration, and that the defendants were to pay the excess upon the resale, then it is immaterial whether or not the defendants have received the sum for which Engine &c. were sold -

To the giving of which instructions, the defendants then and there excepted - And the defendants then requested the Court to give the following instructions

1 If the jury believe from the evidence that the witness Shufeldt sold the Engine &c. to the Defts, and that there was no agreement concluded between Plffs and Defts, relative to the resale of the same for more than the Defts gave, by which the surplus was to be given to the Plffs, then the law is for the Defts -

2 If the jury believe from the evidence, that the Dft Snyderker promised to give the plffs all the Engine &c. sold for more than Defts gave. Witness Shufeldt for the same on condition that Plffs would pay Snyderker 24 per cent as a consideration for such agreement, and that said Plffs refused ^{to accept} said condition, then the law is for the defts -

3 If the jury find that the Engine &c. were not

Given

sold through the instrumentality and procurement of the Plfts then the Jury will find for the Defts.

Given

4. If the Jury find that witness Shufeldt was acting as agent of Plfts in the sale of said engine to Dfts, and that the sole consideration of such sale was the amount of the Dfts claim against the Plfts, and no more, and that there was no new or independent agreement made between the parties in reference to a re-sale, then the Jury will find for the Dfts.

Given

5. That the contract set up in the Plfts declaration, must be fully proven as therein stated without material variance between that alleged, and the one in evidence, and if the Jury believe from the Evidence that there is a material difference between the agreement alleged and the one in proof, then the Jury should find for Dfts.

Given

6. That although the Jury may believe from the evidence that the Dfts promised to give the Plfts, all the money for which they sold the Engine &c above the amount due to the said Dfts at the time of making the bill of sale of the Engine boiler &c. by the Witness Shufeldt to the said Dfts, they will find a verdict for the Dfts unless they further believe from the evidence that the Plfts paid a valuable consideration to the said Dfts, as an inducement to such promise, or shall find that

by the terms of the agreement, the Plfts were to effect a resale through their own instrumentality and procurement - and that such resale was so effected through the instrumentality and procurement of the Plfts -

Given

7. If the Jury shall find from the evidence that an agreement was made as alleged in the declaration - and that the Engine &c was re-sold through the instrumentality of the Plfts, and if they further find that Dfts were only to pay the surplus over and above the debts due to them with interest, and storage thereon at the rate of 2 per cent per month to the time of sale, upon the amount of such indebtedness, then such stipulation is binding upon the Plfts - and is not to be regarded as usurious -

Given

8. If the Jury believe from the evidence that there was an agreement between the said Plfts and Dfts by which the Dfts were to pay to the Plfts, whatever they sold the engine &c for more than they paid for the same, but that such surplus was not to be paid until the purchase money was received by the defendants, and that said defendants have not received the consideration they sold the Engine &c. for, and have not received sufficient to reimburse themselves for the original price paid for the same, then the law is for the Dfts.

9- That in declaring upon a special contract, it is necessary ^{to} ~~the~~ specify the consideration upon which the promise is based, with precision - and in this case, if the consideration is not described as proved, then the Plft is not entitled to recover -

Which the Court gave and so marked them -

The Court was requested by Dfts to give the following

10 If the Jury believe from the evidence that there was an agreement concluded between the said Plfts and said Dfts, by which the said Dfts were to pay Plfts whatever sum they should sell the same for, more than they gave, and that there was no consideration paid to said Dfts on said agreement by the Plfts, then the agreement is void and the law is for the Dfts.

Which the Court refused and so marked to the refusal of which, the Dfts then and there excepted. And also the following -

"If the Jury believe from the evidence that the Witness Shufeldt sold to Dfts the Engine, two boilers &c. for the notes of Plfts, and that there was no other agreement concluded between Plfts and Dfts, relative to the resale of the same for more than Dfts gave, by which the over-plus was to be given to Plfts, then the law is for the Dfts.

In lieu of which, the Court gave the following -

11 If the Jury find that an agreement was made to pay the surplus to the plaintiffs, on a resale of the

Given

Refused

Engine, as alleged in the declaration. Yet if the
 jury further find that such surplus was not to be
 paid to the Plaintiffs, until the Defendants had
 reimbursed themselves, their debt, and that the
 defendants have not as yet reimbursed themselves,
 then the law is for the defendant.

To the giving of which, and refusal of the other, ~~the~~
 Defts excepted.

The Deft then requested the following. 13

That the allegation that a part of the consideration
 was an indebtedness due to Daniel Moore, while
 the proof shows a note payable to Greenbaum,
 Brothers, not endorsed over by them to him, then
 the indebtedness is not properly described, and
 the jury must find for the Defts.

Which the Court refused and so marked and
 the Defts then and there excepted.

And the jury having returned a verdict for the
 Plaintiff, the Defendant moved for a new trial,
 and filed the following reasons.

Book Six Court

Charles J. Magill et al

vs

Lyndacker Et al

Continued

The Defts move for a new
 trial in this cause.

1st Because the verdict of the jury is against
 the evidence in the cause and the instructions of

the court, and the weight of evidence

2nd Because the Court refused instructions asked for by the Dfts, and granted those given for the Plfts.

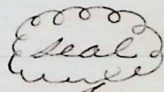
3rd Because the Court refused to exclude the testimony of George Shufeldt.

4th Because the claim made and filed with the Narr. is for the balance of proceeds of the sale and the proof showed that the Dfts had not received from said sale more than their debt, and consequently had no balance of proceeds.

W. F. Burgess &

Drummond for Dfts.

The Court overruled the motion and Dft excepted. And tenders this, his Bill of Exceptions in the premises, to be signed and sealed by the Court, and it is accordingly now here done in open Court, this 23^d day of March 1860 time having been given to the parties to this day to prepare the same.

George Manierre 
Judge of 7th Judicial Circuit, Ill.

I, WILLIAM L. CHURCH, Clerk of the Circuit Court of Cook County, in the State aforesaid, do hereby certify the above and foregoing, to be a true, perfect and complete copy of original writ of Habeas Corpus of record Bill of Exception and appeal bond in a certain cause late pending in said Court on the Common Law side thereof, wherein Charles J. Mayall Et al were plaintiffs and Levi's Snyder et al were Defendants.

In Witness Whereof, I have hereunto set my hand, and affixed the Seal of said Court at Chicago, this Twentieth day of April A. D. 1860.

Wm L. Church Clerk.

For \$22⁰⁰ paid by Sept atty

In the Supreme Court of the
State of Illinois.

Of April Term 1860

Lewis Snyder, Godfrey Snyder, Moses Snyder & Daniel Moon appellants	}	Appel from Cook Circuit Court.
vs Charles J. Magill and Thomas Pickering appellees		

And now
come the said appellants by W. G.
Pruep their Attorney and say
that in the proceedings judgment
and verdict aforesaid there is manifest
and material error appearing of
record in this 1st That the Court below
on the trial of the cause erred in this
1st In allowing the notes of July 17
1857. & August. 15. 1857 to be read to the
jury -

2 In refusing to exclude the testimony
of the Witness Shufeldt -

3 In giving each of the instructions
asked for by the Plaintiffs to the jury

4 In refusing to give the 10th ^{4/3} instruction
asked by the Defendants -

5 In refusing to give the 11th and in

struction asking the depts below & giving
the 12th in lieu thereof—

6 in overruling the motion for a
new trial—

7 In giving judgment for the depts
appellus Plaintiffs below against
the appellants Defendants below—
Whereas it should have been for the
appellants against the appellus—

Wherefore and for aires other
reasons apparent of record in said
cause the said appellants pray
that the said judgment may be
reversed annulled & altogether held
for naught & things restored ~~as~~

W. J. Pringle
for Pff

And now comes the defend
ant in error & says there is no error
in the record & proceedings aforesaid

E. Van Buren
Atty for Def in error

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Guyana

Filed April 19, 1860
L. Leland
Clerk