

14257

No. _____

Supreme Court of Illinois

Robinson et al

vs.

Hagarty

STATE OF ILLINOIS,

SUPREME COURT,

Third Grand Division.

14257

No. 151.

Robinson

vs

Mays

et al

862

Proffers

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM THEREOF, A. D. 1862.

WM. E. ROBINSON ET AL., Plaintiffs in Error, }
vs. } Error to Woodford.
JOHN HAGARTY, Defendant in Error.

DEFENDANT'S BRIEF.

I. The plaintiffs in error are not the proper parties to this writ. It cannot be brought by them. They are not parties to the record, nor their representative.

II. The judgment will not be reversed; for, if reversed and remanded, no judgment could be entered in the Circuit Court in favor of the plaintiffs there, Robinson, Dunham & Co.

III. The plaintiffs did not make out a *prima facie* case in the Court below, by putting in evidence the note to Robinson, Dunham & Co., it being no where alleged in the pleading or process, nor does it appear in proof that Robinson & Dunham composed the firm of Robinson, Dunham & Co.

IV. If the vendor knowingly misrepresented the quality of the goods sold, and, by such fraudulent misrepresentations, induced the vendee to purchase goods which are worthless, it avoids the contract.

Ludlow vs. Gill, 1 Chit. 63.
Duncan vs. McCollough, 4 S. & R. 483.
—— vs. Robinson, 5 Greenleaf, 127.

V. The fraud of an agent avoids the contract.

Willis vs. Baldwin, 2 Dougl. 450.
 Doggett vs. Emerson, 3 Story C. C. 700.
 — vs. Williams, 8 Howard U. S. 134.

VI. No particular form of words is necessary to constitute a warranty.

Osgood vs. Lewis, 2 Har. & Gill. 495.
 Morrill vs. Wallace, 9 N. Hampshire, 111.
 Roberts vs. Morgan, 2 Cowen, 438.
 Breeman vs. Buck, 3 Vermont, 53.
 — vs. Berry, 5 Gillman, 36.
 30 Maine, 170.
 Hanshaw vs. Robbins, 9 Metcalf, 83, 88.
 Whitney vs. Sutton, 11 Wendell, 141.

VII. When there is evidence to support the verdict; when there is a conflict of testimony; or if justice has been done, the Court will not disturb the verdict.

20 Ill. 95, 175, 170, 343, 499.
 19 Ill. 59, 158, 166, 449.
 1 Greenleaf on Evidence, 461 et seq.

A. E. STEVENSON AND
 T. M. SHAW,
For Defendants in Error.

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○ A. E. Robins et al

John Magarity
Defendants Brief

Dated May 6. 1842

J. L. ...
et al

WM. E. ROBINSON, *et al.* Plaintiffs in Error,
FOR USE, &c.
vs.
JOHN MAGARITY, *Defendant in Error.*

In the Court below this action was upon a promissory note of the Plaintiffs in Error vs. Defendant in Error, which Plaintiffs gave in evidence and rested their case.

The said note was given in purchase of a machine called a "Star Mill."

The defense proceeds upon the theory that at the sale of said machine certain representations or warrantys were made which if not fulfilled Defendant was at liberty to return the machine and receive back his note, and that such warranty failed, and Defendant offered to return the mill.

Plaintiffs position is, 1st. That Defendant never returned the mill.

2d. That the representations and warrantys shown by the evidence were not made with reference to the contract in which the note was given, but another and prior contract proposed but never entered into by the parties.

3d. The said machine was purchased by Defendant and said note given without any warranty or representation and with express repudiation of all proposals to warrant.

4th The Court erred in permitting evidence of agreement at the making of said note that Defendant need not pay the same.

Allen et al. vs. Furbrush, 4th Gray 504 ;

Hunt vs. Adams, 7 Mass. 518 ;

Rose vs. Learned, 14th Mass. 154 ;

Spring vs. Lovett, 11 Pick. 417 ;

St. Louis Perpetual Ins. Co. vs. Homer, 9 Met. 39 ;

Adams vs. Wilson, 12 Met. 138 ;

Underwood vs. Simonds, 12 Met. 275 ;

Wakefield vs. Stedman, 12 Pick. 562 ;

Curtiss vs. Wakefield, 15 Pick. 437 ;

Chitty Con. (8th Am. Ed.) 99 & 100 ;

Hanchett vs Birge, 12 Met. 545.

4th. Court erred in their 6th instruction on part of Defendant.

5th. For all these reasons Court erred in overruling motion for new trial and in rendering judgment for Defendant

When verdict is manifestly against the evidence, or without evidence, or appears at first blush erroneous, or results from the misdirection of the Court, a new trial will be granted.

Lowry vs. Orr et al., 1 Gil. 70 ;

Scott vs. Blumb, 2 Gil. 595 ;

Dawson vs. Robins, 5 Gil. 72 ;

Gorden vs. Crooks, 11 Ill. 142 ;

Schaub vs. Ginwick, 13 Ill. 697.

6th. The Court erred in admitting improper evidence to the jury, the same being objected to, and relying upon expunging the same again by instructions.

H. B. HOPKINS.
Attorney for Plaintiffs.

¹⁷⁴ H. Emerson ¹⁵¹ et al
vs
Margarita
Plffs Brief

Filed April 14, 1862
J. Leland
clerk

STATE OF ILLINOIS,
SUPREME COURT.

} ss. The People of the State of Illinois,

To the Sheriff of Woodford County, GREETING:

Because, In the record and proceedings, and also in the rendition of the judgments of a plea which was in the Circuit Court of Woodford County, before the Judge thereof, between William E. Robinson and Columbus Dunham for use of Jonathan K. Cooper plaintiff, and John Magarity

defendant, it is said that manifest error hath intervened, to the injury of the said plaintiff.

as we are informed by his complaint the record and proceedings of which said judgments we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law: Therefore, We Command You, That by good and lawful men of your County, you give notice to the said John Magarity

that he be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next, to hear the record and proceedings aforesaid, and the errors assigned, if he shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said John Magarity

notice, together with this writ.

Witness, The Hon. John T. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this seventh day of April in the year of our Lord One Thousand Eight Hundred and Sixty-two

L. Leland

Clerk of the Supreme Court.
by Justice Deputy

April 19

John Magarity

No. 151 VS.

John Magarity

SCIRE FACIAS.



Filed April 19th A. D. 1862

Richard Clark
Clerk.

John Magarity

John Magarity

John Magarity

John Magarity

John Magarity

John Magarity

John Magarity

Subscribed in this writ by reading the same to John Magarity April the 10th A. D. 1862

Sheriff's fees \$3.00

R. C. Sedwell
Sheriff



In The
 Supreme Court of the State of Illinois
 In The Third Division So Ottawa April Term A.D. 1866
 Appeal From The Circuit Court of Woodford County Ill

State of Illinois }
 Woodford County } ss

Copy of Justices Transcript

Robinson Dunham & Co
 use of
 Johnathan R Cooper
 vs
 John Magarity }

Justices court before the undersigned
 summons issued to A.E. Sparks
 C. W. C. on note for \$6000 and
 \$1000 interest this 8th day of December A.D. 1860. The said process
 being returned served for trial this 19th day of Dec 1860 at
 12 o'clock M. And now on this 19th day of Dec 1860
 after hearing the testimony in the cause the court finds from
 the testimony in the cause that there is want of consideration
 and it is ordered that the said defendant have judgment
 against the said plaintiff for cost of suit

Wm. G. Hereford J.P.

State of Illinois }
 Woodford Co. } ss

I Wm. G. Hereford one of the justices
 of the peace with in and for said County
 do here by certify that the foregoing transcript and judgment
 of John Magarity vs Robinson & Dunham & Co use of

J. R. Cooper is truly copied from the files & Books of my office

Given under my hand and Seal this 2^d day of Jan AD 1861

Wm. G. Hereford J.P.

Filed January 7th 1861

J. D. Perry Clerk

Copy of Justices Summons

State of Illinois }
Woodford County } ss

The People of the State of Illinois to any constable of said County greeting
You are hereby Commanded to Summon John Magarity to appear before me at my office in El Paso on the 19th day of Dec 1860 at 12 o'clock M to answer the Complaint of Robinson & Durham Co use of J. R. Cooper for a failure to pay him a certain demand not exceeding \$100; and hereof make due return as the law directs - Given under my hand and Seal this 8th day of Dec 1860

Wm. G. Hereford J.P.

Copy of Return on Summons

Robinson & Durham
use of
J. R. Cooper
w
John Magarity }

Demand \$ 70.00
J P fee 75

Personally served the within by

Page 3

reading the same to the within named John Magarity
this 15 day of Dec 1860

My fee 45


A E Sparks C. W. C


"Filed Jan 7" 1861

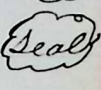
James D Perry Clerk

Know all men by these presents that we William
E. Robinson & Columbus Dunham as principal and
Jonathan S. Cooper as security are held & firmly bound unto
John Magarity in the penal sum of fifty dollars for the
payment of which well & truly to be made we bind our heirs
& personal representatives jointly & severally firmly by these
presents Witness our hands & seals this 4th day of January
A D 1861 But on this that whereas in a certain suit brought
by the said Robinson & Dunham for the use of said Cooper
against the said Magarity before Wm. S. Hoerford Esq a Justice
of the Peace of Woodford County Illinois such proceedings were
had that the said Magarity did on the 19th day of December
A D 1860 by the judgment of said Justice recover final
judgment against the said Plaintiffs for the sum of
\$85⁰⁰/₁₀₀ dollars for costs from which judgment the
said Plaintiffs have prayed an appeal to the Circuit Court
of said Woodford County Now if the said plaintiffs shall
prosecute their said appeal with effect and shall pay whatever
judgment was be rendered by the court upon dismissal or
trial of said appeal then this obligation to be void

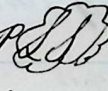
otherwise to remain of force & effect in the Law

Columbus Dunham 

William E. Robinson 

Jonathan H. Cooper 

approved by me this 2^d day of
January A.D. 1861

Wm. J. Hereford 

Filed Jan'y 7th 1861

James D. Perry
Clerk

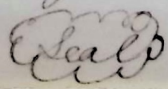
Copy of Circuit Court Summons

State of Illinois } ss
Woodford County }

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

We Command you that you summon John Magarity
if he shall be found in your County personally to be and
appear before the Circuit Court of said Woodford County
on the first day of the next Term thereof to be holden at
the Court House in Metamora in said Woodford County
on the Fourth Monday of May 1861 to answer unto Robinson
Dunham & Co. use of Jonathan H. Cooper on an appeal taken
from the judgment of Wm. J. Hereford a Justice of the Peace
And you have then and there this Writ with an Indorsement
thereon in what manner you shall have executed the
Same

Witness James D. Perry Clerk of our said Court and
the Seal thereof at Metamora aforesaid this Seventh day of
January A.D. 1861



James D. Perry Clerk

Copy of Return on circuit Court Summons

State of Illinois }
Woodford County }

I have duly served the within by reading the same to the within named John Magarity Jan 26th 1861

R. L. Sidruell Sheriff

By N. B. Meek

Filed in Circuit Court Jan 27th 1861

United States of America }
State of Illinois } ss
Woodford County }

James D Perry clerk

at a Regular Term of the Circuit Court held in and for the said County of Woodford on Monday the 8th day of April A D 1861

The judge not being present Court stands adjourned till tomorrow Tuesday April 9th 1861 Court met pursuant to adjournment Present the Honorable Martin Ballou Judge of the twenty third Judicial Circuit Reuben L. Sidruell Sheriff and James D. Perry Clerk Henry Miller States attorney

attest James D Perry clerk

Friday April 19th 1861

Court Met

pursuant to adjournment

Present Same as heretofore

Robinson Dunham & Co }
 use of Jonathan B Cooper }
 vs } appeal No 138
 John Magarity }

On this day ~~the day~~ this cause
 is continued by the adjournment of court

United States of America }
 State of Illinois } ss
 Woodford County } at a Regular Term of the Circuit
 Court of the twenty third Judicial
 Circuit of the State of Illinois began and held at the Town
 of ~~Nottingham~~ within and for the County of Woodford
 on the twelfth day of August in the year of our Lord one
 thousand eight hundred and sixty one

Present the Honorable Samuel L. Richmond ^{judge}
 James D. Perry ^{clerk}
 Reuben L. Sidwell ^{Sheriff}

Mark Bangs State attorney pro tem

attest James D. Perry clerk

Wednesday August 28th 1861

Court met pursuant to adjournment
 Present Same as heretofore

Robinson Dunham & Co use of }
 Jonathan B Cooper }
 vs } appeal No 138
 John Magarity }

Page 7

On this day this cause coming on to be heard come the Plaintiff Robinson Drunkam & Co use of Jonathan B. Cooper by Erone and Cassell their attorneys and the Defendant John Magarity by Williams & Stevenson his attorney and issue being joined comes a jury to try said issue to wit William Reeves John Wilson Sylvanus Newton Joseph M. Clark S. S. Sutton B. S. Clark James A. Doty Reuben Fairchild Cyrus Nesmith Nelson Little J. H. Davidson and Thomas Arrousmith who being first duly sworn to well and truly try said issue and having heard the proofs and allegations of the parties and the argument of Counsel

The Court then give the following instruction on Part of the Plaintiffs to wit

1 *Given* The jury are instructed that this suit is brought to recover the amount of the promissory note offered in evidence

2 *Given* The jury are instructed that the Plaintiff is entitled to recover the amount due on the note according to its tenor unless the defendant has proved to the satisfaction of the jury that the consideration of the note has failed

Filed Aug 29th 1861

James D. Peery Clerk

Refused

The jury are further instructed that if any agreement was made by the Parties before the note was made that the note was not to be paid unless the machine suited the defendant such agreement would not vary or counteract the note

Filed August 28th 1861

James D. Perry clerk

4

Given

Before the defendant can entirely defeat the Plaintiff in this action the defendant must prove a total failure of consideration

5

Given

if the failure of the machine to grind well was owing to the want of Skill of the defendant in running the machine such failure will not defeat the action

Filed August 29th 1861

James D. Perry clerk

6

Given

A Representation as to the capacity of the machine will not amount to a warranty unless it so understood & intended by the parties and unless the warranty was relied on by the defendant at the time

7

Given

The weight to be given to the testimony of a witness depends upon the character of the witness for truth the means the witness has of knowing the matters about which he testified his disinterestedness & Intelligence

8 If the jury believe from the evidence that before the note was ~~executed~~ executed that the defendant said to the agent that he would not rely on any warranty and would not purchase the machine until he tried it and if the jury further believe from the evidence that the machine was set up & tried by the defendant & upon such trial the defendant executed the note for the machine then then this testimony tends to prove that there was no warranty in law of the machine

Given

Filed August 29th 1861

James D Perry Clerk

The Court instructs the jury on part of the defendant as follows to wit

1st If the jury believe from the evidence that the note sued on was given for the price of a certain Star mill and at the time of the sale of said mill and the execution of said note the plaintiffs by their agent represented that said mill would grind well and was a good machine and would answer and grind Rye & Wheat and Corn fit for family use the purpose for which it was designated or words to that effect and that the defendant relied on such representations & was thereby induced to purchase said machine and give said note and further believe that said machine was worthless and would not work as represented then the jury should find for the defendant &

Given

Filed August 29th 1861

James D Perry Clerk

20 The representations as to the good quality of the said machine made by the agent of the Plaintiff if they were made & if untrue, and if relied upon by the defendant in making such purchase were a fraud upon the defendant which avoids the note given upon such purchase at the election of the defendant provided the agent knew such representations to be untrue when made then and made them for the purpose of defrauding and cheating the defendant

Guen

30 If the jury believe the facts stated in the first instruction and further believe that the agent of the plaintiff represented to the defendant that he might take the mill and try it until he called for the payment of the note and if it did not suit him he need not pay for it and if the defendant when the agent of the plaintiff came for the pay upon the note informed said agent that the mill did not suit him then they should find for the defendant provided the mill was then at the defendant's premises ready for the plaintiff's agent if the jury believe from the terms of the contract he was to take it then or if it was tendered or offered to said agent

Guen

Filed August 29th 1861

James D. Perry Clerk

4 A witness may be impeached by showing that he has made contradictory statements & by the direct statement of other witnesses contradicting what he swears to & by showing ~~his~~ his testimony is inconsistent with reason that his reputation for truth & veracity in the neighborhood where he lives among his neighbors is bad and

Guen

by the oath of other witnesses who state that they would not believe him under oath and if the jury believe such witness to be impeached by either of these modes they may disregard his whole testimony.

5

Given

The jury are the sole judges of the credibility of witnesses and if they believe that the witness Seery has knowingly & willfully testified falsely in any one material matter they may disregard his whole testimony.

Filed August 29th 1861
James D Perry Clerk

6

Given

Although the jury may believe that the defendant after he had tried the mill that it did not answer the warranty if there was a warranty or contract and when the agent of the plaintiffs come for the money for the mill said he would pay thirty dollars for the mill to settle the matter this does not waive his right to insist that the contract of the plaintiffs was not complied with and show a failure of consideration of said note.

Filed August 29th 1861
James D Perry Clerk

Retire under the charge of an officer to consider of their verdict

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Thursday August 29th 1867

Court met pursuant to adjournment
Present same as heretofore

Robinson Dunham vs
use of Jonathan N. Cooper

vs
John Magarity

} appeal

No 138

This day the jury empannelled
in this cause failing to agree are discharged by the Court

United States of America
State of Illinois } ss at
Woodford County }

at a Regular Term of the Circuit Court of the twenty third Judicial Circuit of the State of Illinois began and held at the Town of Metamora within and for the County of Woodford on the the Ninth day of December in the year of our Lord one thousand Eight Hundred and Sixty one

Present the Honorable Samuel L. Richmond Judge
James D. Perry Clerk
Reuben L. Sidwell Sheriff

attest James D. Perry Clerk

Saturday December 14th 1861 Court met pursuant to adjournment

Robinson Durham & Co
use of Jonathan B. Cooper

Present same as heretofore

vs

appeal

No 138

John Magarity

This day this cause coming on to be heard comes the parties the Plaintiff Robinson Durham & Co use of Jonathan B. Cooper by H. B. Hopkins & H. Grove their attorneys and the Defendant John Magarity by John Burns his attorney and issue being found between the parties a jury comes to try the same to wit George Means of H. Stitt Francis S. McCord David Keesebeck Elmer J. Patton Benjamin Gounger John Stumbaugh William Bateman William McNeal J. P. Robinson B. E. Page and J. D. Smith who are duly empannelled and sworn to well and truly

try said issue and having heard the proofs and allegations of the parties and the argument of Counsel retire under ^{the} charge of an officer to consider of their verdict

Monday December 16th 1861 - Court met pursuant to adjournment

Present Same as heretofore

Robinson Durham & Co	}	}	Appeal	No 138
vs Jonathan P. Cooper				
John Magarity				

This day the jury empannelled in this cause on Saturday December 14th 1861 come into court and say we the jurors find for the Defendant - And now comes the Plaintiff by Hopkins & Grove their attorneys and moves the Court for a new trial

Friday December 30th 1861 Court met pursuant to adjournment

Present Same as heretofore

Robinson Durham & Co	}	}	Appeal	No 138
vs Jonathan P. Cooper				
John Magarity				

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This day came the parties the Plaintiffs Robinson
Dunham & Co use of Jonathan R. Cooper by Grone & Leafell
their attorneys and the Defendant John Magarity by John
Burns his attorney and this cause came on to be heard on the
Plaintiffs motion for a new trial made on the Seventh
day of the present term of this Court and the Court being fully
advised in the premises doth order that the said motion
for new trial be and the same is hereby overruled It
is therefore ordered by the Court that the Defendant John
Magarity have and recover of the said Plaintiffs Robinson
Dunham & Co use of Jonathan R. Cooper his costs and
charges by him in this behalf expended and that execution
issue therefor

Jonathan R. Cooper }
for use of Robinson & }
Dunham }
vs }
John Magarity }

Circuit Court
Woodford County
December Term
A.D. 1861

And now at the said term of said
Court Be it remembered that this cause coming on
to be heard and ~~and~~ a jury being first sworn to
try the issues according to law The Plaintiffs to
maintain the issues on their part produced from his
possession & offered in evidence a promissory note

which is as follows

Peoria Ill Feb 8th 1859

For Value Received I promise to pay to the order of
Robinson Dunham & Co Sixty Dollars and cents
payable at Peoria on the first day of October next with
Six per cent interest per annum from date if not paid when
due then to draw ten per cent interest per annum from date
until paid

\$ 60 ⁰⁰/₁₀₀

John Magarity

To the introduction of which Defendant then & there objected
& the Court overruled said objection & permitted said note
to be read in evidence

The Plaintiff then rested his case

Defendant then to maintain the issues on his part
introduced as a witness one J. D. Wood who being sworn
according to law stated as follows to wit I know Defendant
& James Seery I know of said James Seery selling a Star
Mill to Defendant I never saw the Note which was given
for the mill until last term of Court The contract for
said mill was made in February AD 1859 at Defendants
house Seery was acting for Robinson & Dunham he
came to Defendants house stayed over night he had
some of the mills with him I heard some talk between
them that

might but it was not about the trade I understood
the trade was made next morning I was not present
when the trade was ^{made} I went away in the morning
and was gone one hour or two & the trade was made
while I was away, before I went back Seery called
me into the barn yard and stated over the contract
to me Plaintiffs counsel then objected & called upon
Defendants counsel to state what he expected to
prove by said witness in relation to said contract
and defendants counsel stated that they expected
to show that at the time said note was given for
said machine said Seery made certain warranties
as to it and also that said Seery agreed that Defendant
might take the machine & use it until the said note
become due & if Defendant was not satisfied with the
machine he might return it and Seery would give up
his (Defendants) said note Plaintiffs counsel objected
to said witness testifying as to said contract ^{or} arrangement
by which said note was to be surrendered up in case
Defendant was not satisfied ^{with} the said mill after trying
it as aforesaid But said Plaintiffs objection was overruled
by the court who stated that any part of his statement
was incompetent it would be regulated by instructions
& said witness stated that Seery said that he had warranted
said mill to grind corn wheat rye chest & make good family
corn meal and that Magarity might try the mill
until his note come due & if the mill did not suit
him he need not pay his said note

but might return the mill & have his note back again
 Seery came back again to Defendants to collect the
 note some time the next winter Margarty said he
 would not pay the note the machine did not meet
 the warranty but he would pay one half of it
 rather than have any trouble & settle the matter

Seery admitted that the machines Seery said he had
 the note & intended to collect it, were sold too high & said
 they were a humbug some time after harvest I heard
 Defendant tell Seery that he was not suited with the
 mill & he might take it away any time I tried the machine
 I ground corn it just cracked it I tried it with
 wheat & it would hardly crack it at all The
 Iron rubbed off into the meal ^{so as to} colour it tried 2 or 3
 bushels of rye & 3 bushels of corn we screwed the mill
 up & down when we used it I did not consider the
 mill worth any thing would not had it on the place

On cross examination said Witness
 said I am brother in law of Defendant Seery called me
 & said he had warranted the mill to grind buck wheat
 chest wheat & rye & all kinds of grain so as to make
 feed & to make meal at the time of the trial after Seery
 stated the contract to me I went away & stayed an
 hour when I got back the machine was set up &
 they had been trying it Defendant said they had been
 trying ^{it} said he had bought not naming Defendant
 told me that they had ~~good~~ ground corn with the mill

he did not then find any fault with the mill
 At the time Seery State the said contract to me in the
 yard magarity said he would not give a cent for any
 mans warranty agents were all a lying set of fellows
 or something to that effect & he would not try the
 machine until he had tried it I never tried to run
 any other machine of this kind If the machine was
 run without any thing in it it would grind the iron
 off The next winter when Seery was there with the mate
 he said Cooper owned the mill & he would collect it
 after I came back in the morning of the trade I saw
 the mill had been running there was meal in it
 I did not look at it magarity said he had tried
 it said he had bought it he may have told Seery
 that he was satisfied with the working of it I
 will not swear that he did not nor that he did
 but he said he had tried it & had bought it

Defendant then produce B P Hereford who being duly
 sworn said I have seen the said Corn mill and ground
 with it two different times Defendant told me that he had
 bought a machine that was a great Corn Saver This was
 the same week or the next week after he bought it It
 ground very well but slow I took up some corn &
 ground it I helped grind some wheat it did not grind it
 well I have had no experience in the use of such mills
 It was worth something to grind Corn but not to
 grind wheat Some of it went through without being crushed
 Defendant

Defendant then called Wm Bloodworth who being sworn said I ground 2 bushels of shelled corn on the mill ground it through 3 times some of it come through whole Magarity acted as miller & served the machine up & down I never ground any other grain in it never saw any other that was ground in it I think the mill was not worth any thing

Defendant Rested

Plaintiffs then produced

James Seery

Who being duly sworn state as follows to wit Magarity did not make the note until he had tried the mill we tried the machine in the morning Magarity & myself we ground one box full of corn several bushels & Magarity said he was satisfied with the mill we then ground some wheat & he expressed himself well satisfied and he then gave his note Magarity said he would not take any body's representation about the mill that he must try it for himself & did try it & said he was satisfied & gave his note. Plaintiffs examined said witness farther on cross examination said witness stated the mills are made & designed for grinding corn on the cob & shelled corn for feed for stock but they will grind wheat & cheat & small grain so as to make feed if properly used I told Magarity so & that

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it would grind corn so as to make meal fit for family use if he would sift it and get out the ~~finest~~ coarse meal and it will do so if properly used and that it will grind from 8 to 12 bushels per hour. The conversation with Magarity in the presence of Wm. Wood & to which I called his attention was had before the trade was made & was had with reference to a contract which was never entered into no trial of the machine had been made at the time of that conversation one of my horses had a sore breast & was not in a condition to be hitched on the mill to work it & I had promised to be at the house of another man in that vicinity at 9 o'clock that morning with another mill which I had with me & I desired to make an agreement with Magarity to have him try the machine himself & let me go along without trying it & I told him if he would do so & give his note that if upon fair trial the mill would not grind corn & wheat buck wheat rye & cheat so as to make feed for stock & meal fit for family use by sifting out the coarse portion that he might return the mill & I would give back the note & I called said Wood & State this to him so that Magarity might have a witness of what the contract was & give his note & let me go away without stopping to try the mill. I was not willing to leave the mill without the note to show for it. But Magarity refused to make this trade & would not give his note for it & try it himself & let me go.

away but said he would take no mans representations about it but must try it himself & he could tell whether it was good for any thing or not & after wood went away we set up the machine & hitched on to it & ground wheat & corn & Magarity said he was satisfied with the machine & purchased the mill & gave his note for it Frequently after said note was given magarity expressed him self to me as satisfied with the mill but the next winter when I wanted him to pay the note he for the first time found fault with it and said he would pay only \$30 for it I did not tell magarity that the mill was a humbug nor a swindle but did tell him that I thought they were sold at too high a price but no higher higher in proportion than other agricultural machinery that I thought it was all sold too high

Plaintiff Rested

The Court then instructed the jury on the part of the plaintiffs which is as follows to wit

1st
The jury are instructed that upon offering the note in controversy in evidence the plaintiff makes out a prima facie case against the defendant

2^d
It is no defence to the action on this note in controversy that the consideration of the note was a machine sold by the plaintiff to the defendant upon the condition that defendant if dissatisfied with the machine might return the machine and take

Page 23
Given

the note up and that the defendant did propose or offer to
give up the machine and demand the note

Gilled December 16 1861

James D Perry Clerk

If the jury believe from the evidence that the note in
particular was given by a certain person it is his duty to

Turn this Down
Belongs to Page 23

Page 23
Given

the note up and that the defendant did propose or offer to
give up the machine and demand the note

Filed December 16 1861

James D. Perry Clerk

If the jury believe from the evidence that the note in
controversy was given for a machine and that before the
time the Defendant purchased the machine the Defendant
said he would not rely on any warranty that before
he purchased he must see for himself and would try the
mill for himself and if the jury further believe from
the evidence that the Defendant did try the mill
and therefore gave his note relying not upon the
warranty but by mutual agreement with Seery upon
such trial of the machine then the Plaintiffs are entitled
to recover whether there was a breach of such warranty
or not.

If the Plaintiffs did warrant the machine
to grind wheat rye corn oats cheat and other grains
and the jury believe from the evidence the machine
did not or would not grind as warranted yet such
warranty and breach will not defeat this action
unless the defendant has proved that at the time the
warranty was made the defendant relied on such
warranty

Filed December 16th 1861

James D. Perry Clerk

Garcia

The jury are instructed that the Defendant is not allowed to impeach the testimony of a witness in any matter in which the said Defendant made such witness his own witness

If the jury believe from the evidence that the consideration for the note in suit was a certain machine & that agent of the Plaintiff offered to warrant the machine to do certain things & to take it back if it did not in case it did not give satisfaction if Defendant would give his note for the machine before trying it & Defendant refused so to purchase or give his note but demanded & had a trial of the machine & by agreement purchased the machine without reference to and not relying upon the warranty & upon the strength of the trial & his judgment repudiating the contract of which the warranty was a part then on this state of facts the Defendant cannot set up said abandoned warranty to in defence to such subsequent contract

Lincoln

Filed December 16th 1861

James D. Perry Clerk

Turn This Down
Belongs to Page 23

The Court instructs the jury on part of the defendant as follows to wit

1st

That if the jury believe from the evidence that the note offered in evidence was given for a Star mill and that said mill was sold to the defendant upon the agreement that the defendant might take the mill and try it and if he did not like it when the money was called for upon the note that the Plaintiff or his agent Seery would take back the mill and give up the note and that the defendant informed the plaintiff or his agent when called on for the money that the mill did not suit him & that he would not pay for it & offered to rescind the contract then the plaintiff cannot collect the note & the jury should find for the defendant

Rescued

Filed December 14th 1861

James D. Perry Clerk

2d or 3d

3d

If the jury believe from the evidence that Sera as the agent of the plaintiffs Robinson & Dunham sold the mill under the false representations that it would perform well & grind wheat Rye corn Cheat Buckwheat &c & grind a certain amount per hour and also believe that said mill did not would not perform as represented & that the defendant was induced by such false representations to buy it then the plaintiffs cannot recover the price of said mill provided the jury further believe from the evidence that the defendant relied upon such representations and

Given

Page 25
Gwen

that said Seery knew such representations to be false when he made them

Filed Dec 16th 1861

James D Perry Clerk

3rd

Gwen

If the jury believe from the evidence that the quality of the mill as to how it would grind corn wheat Rye & oat was misrepresented to the defendant & that he bought believing such representations & was deceived thereby then such sale was fraudulent and the jury are instructed that such fraud voids the contract of sale provided the agent knew the representations to be false when they were made and defendant afterwards offered to return the mill? Filed Dec 16th 1861

James D Perry Clerk

4th

Gwen

The jury are the sole judges of the credibility of witness and if they believe the witness Seery testified knowingly & willfully falsely in any one material thing they may disregard his whole testimony? Filed Dec 16th 1861

James D Perry Clerk

5th

Gwen

The jury in determining the credibility of witness have a right to take into consideration any matter of interest which would tend to influence the mind of the witness his relation to the parties & the case in hearing & all the sundry circumstances which may bias the mind of the witness or influence him

Filed December 16th 1861
James D Perry Clerk

Refused

and if the jury ^{believe} that the witness Seery sold the mill in question as agent of the plaintiff and that he was to have \$10 for the sale thereof and only in case of sale then the jury may consider all such matters in determining the credibility of the witness
Filed Dec 17 1861 James D Perry Clerk

6th

A witness may be impeached by his contradictory statements by his being contradicted by other witnesses by his making inconsistent statements concerning the matters he testified to and if the jury believe from any of these facts that the witness Seery is not credible they may disbelieve his testimony entirely or may give it such weight as they may think it entitled to

Sinner

6 9th

In determining the weight of testimony where witnesses contradict each other the jury should consider the number of witnesses on each side their means of recollection facts the influence bearing on their minds & the reasonableness of their statements and all other matters tending to swerve or bias their minds

Sinner

Filed December 16th 1861

James D. Perry Clerk

8th

If the jury believe from the evidence that Seery as the agent of the plaintiffs Robinson Drumham & Co at the time of the sale of the mill warranted to the defendant M^o Garity that the mill would grind Corn wheat Rye Cheat Buck wheat screenings and make meal Flour & Co and that defendant took the mill relying on such warranty and believe from the evidence that it would not ^{perform as warranted} but was worthless as a mill to perform

Sinner

Such work and believe that the note in evidence was given for the mill then the plaintiffs cannot recover in the action and in this state of case it does not matter whether the agent of the Plaintiff knew that his warranty was false or not

Filed December 16th 1861

James D. Perry Clerk

Belongs to Page 21

9

Given

Raise this up
If the jury believe from the Evidence that the plaintiffs warranted the mill to be of the quality or do certain work as mentioned in the foregoing instructions and that it failed to fulfill the warranty or perform as warranted then the plaintiff cannot recover on ^{the} note given upon the sale for the machine if the note was given for the machine warranted whether there was fraud in the sale or not provided the defendant relied upon such warranty of the plaintiffs or their agent when he gave his note

Filed December 16th 1861

James D. Perry Clerk

Page: 2
given

~~provided the defendant relied upon the testimony of the plaintiff or their agent when he gave his notes~~
~~Filed Dec 16th 1861~~

James D. Perry clerk

8th

Refused

If the jury believe from the evidence that the witness Seery was acting as their agent of the Plaintiffs in selling the mill and that he was to get \$ 10 for the sale part of the proceeds of the sale thereof then the said witness would be interested that his evidence would be incompetent and the jury should disregard his evidence

Filed December 14th 1861

James D. Perry clerk

10

Given

If the jury believe from the evidence that defendant stated to Seery by way of trying to settle or compromise with plaintiff that rather than have any trouble about the sale of the machine he would pay thirty dollars this would not amount in law to an admission that the machine was worth thirty dollars or that he owed plaintiff that sum of money

Filed Dec 16th 1861
James D. Perry clerk

The jury then returned the following verdict to wit

We the jurors find for the Defendant

- | | | |
|-----------------|------------------|----------------|
| Wm Mc Neal | Wm Baleman | J. D. Smith |
| J. J. McCard | Benjamin Younger | J. P. Robinson |
| Elmer J. Patton | G. B. Means | J. H. Stitt |
| D. W. Kelsbeck | John Stumbaugh | B. E. Page |

Filed Dec 16 1861

James D. Perry clerk

Page 29 8th

the jury - - and acted ~~improperly~~ improperly

9 Other reasons

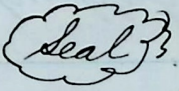
Grove & Hopkins
for Plff

Filed December 16th 1861

James D. Perry Clerk

which was overruled by the Court

to all of which rulings of the said Court Plaintiff
then & there objected & accepted & prays that this his bill
of exceptions may be signed & sealed which is done

S. L. Richmond 
Judge

Filed December 24th 1861

James D. Perry Clerk

State of Illinois }
Woodford County } ss

I James D. Perry Clerk of the Circuit Court in and for said County do hereby certify that the foregoing Pages 29 in Number contain a true correct and complete Transcript of all the records and proceedings in the above Entitled Cause wherein Robinson & Dunham vs of Jonathan B. Cooper are Plaintiffs and John Magarity is defendant as appears from the files and records of the same remaining in my office.

In Testimony whereof I hereunto subscribe my Name & affix the Seal of the said Court at my office in Metamora this twenty Second day of March A D 1862

James D. Perry Clerk
By J. C. Myers Depty



Wm C Robinson et al
vs
John Magarity

And the said Plaintiff alleges
the following errors in this Cause

- 1 The Court erred in admitting im-
proper evidence on part of the defen-
dant below
- 2 The Court erred in giving the jury im-
proper instructions on part of the defendant
below
- 3 The Court erred in refusing to set aside
the said verdict & to grant new trial
- 4 The evidence shows that plaintiffs
below should have recovered
- 5 Because said verdict is contrary to law
& unsupported by the evidence
- 6 The Court erred in rendering judg-
ment upon the said verdict

A. B. Hopkins
Clyde P. in Conn

And now comes the said defendant
in Error the said John Hayart by
A. E. Stevenson and J. M. Shaw his Attys
and says there is no such Errors in
said Record and proceedings as is
alleged by the plaintiffs in Error. nor
are there any errors in said record and
proceedings.

Wherefore ~~they~~ ^{he} pray that the
said judgment of said Circuit
Court may be affirmed &

A. E. Stevenson & J. M. Shaw
Attys for defn in Error.

W. C. ¹⁷⁴⁷ Robinson ¹⁵¹
et al
151 for use &c
18

John Magarity

Reced &
Asy. of Enns

Filed April 7, 1862
Leland
Clerk