

No. 12630

Supreme Court of Illinois

Ryerson.

vs.

Morgan.

71641  7

20689

Pat. No. 20689

20689

George A. Thompson

206

Register

1858

12630



Register

United States of America }

STATE OF ILLINOIS, COUNTY OF COOK, S. S. }

Pleas, before the Honorable

George M. Munroe

Judge of the Seventh Judicial Circuit of the State of Illinois, and Solo' Presiding'
Judge of the Circuit Court of Cook County, in the State aforesaid, and at a ^{Special} term thereof
begun and held at the Court House in the City of Chicago, in said County, on the
Tenth Monday, (being the *twenty second* day) of
January in the year of our Lord one thousand eight hundred and
fifty seven and of the Independence of the said United States the
eighty fifth, pursuant to the order of the Judge of this
Court,

Present, Honorable

George M. Munroe

Judge of the 7th Judicial

Circuit of the State of Illinois. }

Charles Haven

States Attorney.

John S. Wilson

Sheriff of Cook County.

Attest;

Wm L Church

Clerk.

Be it remembered that on the first day
of April, in the year of our Lord, one thousand
Eight hundred and fifty seven, Joseph B. Ryerson,
son, Plaintiff, by Davis and Baldwin, his attor-
neys, filed in the office of the Clerk of the
Circuit Court, his in and for the County of Cook,
in the State aforesaid, his certain Process,
which is in the words and figures following-
to wit-

Cook County Circuit Court

Joseph B. Ryerson

vs

Patrick H. Tracy

} assumed Damages per. 70

The Clerk will please issue a writ
of summons in the above entitled cause,
returnable to the April Term of said Court,
and directed to the Sheriff of Cook County
and oblige

Davis & Baldwin

To Wm. L. Church Esq.

Atty for Plff

Chicago April 1st 1857

And afterwards to wit- on the day
and year last aforesaid, there was issued
from the office of the clerk of the Court,
aforesaid, and under the seal thereof, the
Peoples writ of summons, directed to the

Sheriff of said County, and clothed in the
words and figures following, to wit—

State of Illinois }
County of Cook } ss.

The people of the State of Illinois
to the Sheriff of said county—greeting—

We command that you summon Pat-
rick R. Morgan, if he 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 Court
House, in Chicago, in said county, on the second
Monday of April Inst. to answer unto Joseph
F. Ryerson, in a plea of Trespass on the Case on
promises, to the damage of the said Plaintiff,
as is said, in the sum of Six hundred 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 first day of April A.D. 1857.

Wm L. Church
Clerk—

And afterwards to wit on the first day of April, in the year last aforesaid, the said writ was returned to the Court aforesaid, by said Sheriff, endorsed as follows, to wit - I served by reading to the within-named Patrick Morgan, the 1st day of April, 1857. Fees; Service, \$1.00, mile, \$3.00 Returns, 10, # 65. John L. Wilson, Sheriff, by Isa Snow, Deputy.

And afterwards, to wit on the second day of April, in the year last aforesaid, the said Plaintiff, by his said Attorneys, filed in said Court, his certain declaration, which is in the words and figures following, to wit -

State of Illinois

Cook County

Circuit Court of Cook County,
April Term, 1857.

Joseph T. Ransom

vs

Patrick R. Morgan.

Joseph T. Ransom, plaintiff in this suit, by Davis and Baldwin, his Attorneys, complains of Patrick R. Morgan, Defendant, being duly summoned of a plea of *Respone*, on the case on promises - And that whereas, hereofore to wit, on the Eleventh day of April, A.D. One thousand, Eight hundred and Fifty six, at Chicago in Cook County aforesaid, in consideration

that the said plaintiff at the special instance
 and request of the said defendant, would buy
 of him, the said defendant, a certain horse, at
 and for a certain price or sum of money, to wit,
 the sum of Two Hundred and Twenty five Dollars
 (\$225) to be therefore paid by him, the said plain-
 tiff, to the said defendant undertook and then
 and there faithfully promised the said plain-
 tiff, that the said horse was sound and kind
 for a family horse. And the said plaintiff
 avers, that he, confiding in the said promise and
 undertaking of the said defendant, did after-
 wards, to wit—on the day and year aforesaid, at
 Chicago aforesaid, buy the said horse of the said
 defendant, and then and there paid him for
 the same, the said sum of Two Hundred and
 Twenty five Dollars, notwithstanding the said defen-
 dant did not regard or perform his said promise
 and undertaking, so by him made as aforesaid,
 but deceived and defrauded the said plaintiff
 in this, to wit, that the said horse, at the time
 of the making of the said promise, and under-
 taking of the said defendant, was not sound,
 but on the contrary thereof, was at that time
 unsound—whereof the said horse became, and
 was of no use or value to the said plaintiff, and
 he, the said plaintiff, hath been put to great
 charge and expense of his moneys in and
 about the feeding, keeping, and taking care of

the said horse, in the whole amounting to a large sum of money, to wit, the sum of three hundred dollars—

And whereas also, afterwards, to wit, on the Eleventh day of April, A.D. 1836. aforesaid, at Chicago aforesaid, in consideration that the said plaintiff, at the like special instance and request of the said defendant, had then and there bought of him, the said defendant, a certain other horse, at and for a certain other price, a sum of money, then ^{and} there agreed upon between him, the said plaintiff, and the said defendant, he, the said defendant, undertook, and then and there promised the said plaintiff that the said last mentioned horse, at the time of the said sale thereof, was sound—Nevertheless, the said defendant did not regard his said ~~defendant~~ ~~did~~ ~~not~~ ~~say~~ promise and undertaking, so by him made as aforesaid, but deceived and defrauded the said plaintiff in this to wit, that the said horse at the time of the making of the said promise and undertaking, of the said defendant, was not sound, but on the contrary thereof, was at that time unsound—whereby the said horse became and was, and was of no use or value to the said plaintiff, and he, the said plaintiff, hath been put to great charges and expense of his moneys in and about the feeding, keeping, and taking

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case of the said horse, in the whole amounting to a large sum of money, to wit, the sum of Three Hundred Dollars, to wit, at Chicago aforesaid—

And whereas also the said defendant afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, was indebted to the plaintiff in the further sum of Six Hundred Dollars, of lawful money of the United States, for so much money before that time had and received by the said defendant to and for the use of the said plaintiff, and being so indebted, the said defendant, in consideration thereof, afterwards to wit, on the same day and year aforesaid, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiff, well and truly to pay unto the said plaintiff, well and truly to pay unto the said plaintiff the said sum of money last above mentioned, when the said defendant should be thereto afterwards requested—

And whereas also the said defendant afterwards, to wit—on the same day and year last aforesaid, and at the place aforesaid, accounted together with the said plaintiff, of and concerning divers other sums of money before that time due, and owing from the said defendant to the said plaintiff, and then and there being in arrear and unpaid— and upon such

accounting, the said defendant then and there
was found to be in arrears, and indebted to the
said plaintiff, in the further sum of Six hun-
dred Dollars, of like lawful money as aforesaid.
And being so found in arrears, and indebted
to the said plaintiff, the said defendant in
consideration thereof, afterwards, to wit, on the same
day and year aforesaid, and at the place aforesaid,
undertook and faithfully promised the
said plaintiff, well and truly to pay unto the
said plaintiff, the said sum of money last
above mentioned, when he, the said defendant,
should be thereunto afterwards requested.

Nevertheless, the said defendant,
(although often afterwards requested so to
do, hath not as yet paid the said several
sums of money above mentioned, or any, or
either of them, or any part thereof, to the said
plaintiff - but to pay the same, or any part
thereof, to the said plaintiff, the said defend-
ant hath hitherto wholly refused, and still
doth refuse - To the damage of the said
plaintiff, of six hundred dollars, and therefore
the said plaintiff brings suit -

Davis & Baldwin

Attys for Pltff -

Copy of account sued on -
Patrick R. Morgan.

	To Joseph T. Ryerson	Dr.
To money had and received		\$600 00
To " due on account stated		\$600 00

And afterwards, to wit, on the 13th day of April, in the year last aforesaid, the said defendant, by Samuel Ashton Esq. his Attorney, filed in the Court aforesaid, his certain Plea and set-off, which is in the words and figures following, to wit -

Cook Circuit Court	}	
"		
Patrick R. Morgan		} April Term A.D. 1887.
vs		
Joseph T. Ryerson	}	

And for a further plea in this behalf, the said defendant says Actio "Non-Beccause he says, that the said plaintiff before and at the time of the commencement of this suit, to wit, at the County and State aforesaid, was and still is Indebted to the said defendant, in a large sum of money, to wit, the sum of six hundred dollars, lawful money, for the work and labor, care and diligence, and attendance of the said defendant by the said defendant and his servants before

that time done and performed and bestowed
for the said plaintiff, and at his special
instance and request, in and about the heal-
ing and curing of the said Horses of the said
plaintiff, in the said first and second Counts
of said plaintiff's declaration, mentioned,
of divers diseases, disorders and maladies, ~~under~~
under which the said Horses had before then
Respectively labored, and languished, in and
about the endeavoring to heal and cure the
said Horses of the said plaintiff, of divers other
diseases, disorders and maladies, under which,
they the said Horses, had then Respectively la-
bored and languished etc.

And for divers medicines, chattels
and other necessary things before that time
found and provided, administered, delivered
and applied by the said defendant, on those
occasions for the said plaintiff, and at his like
special Instance and Request—

And for horsemeat, stabling, care
and attendance, by the said defendant, before
that time found, provided and bestowed for,
in and about the feeding and keeping of the
said horses, of and for the said plaintiff, and
at his like special instance and Request—
And for divers goods, wares and merchandizes,
before that time used in and about the keep-
ing, feeding, stabling and doctoring of said

Horses, and at the said plaintiff's like special instance and Request—

And for money by the said Defendant before that time lent and advanced to, paid, laid out and expended in and about the keeping, feeding, stabling, Docturing and and taking care of said Horses for the said plaintiff, and at his special instance and Request, which said sums of money so due, and owing to the said defendant as aforesaid, exceeds the damages sustained by the said plaintiff, by reason of the non-performance by the said defendant of the said several supposed promises and undertakings in the said first and second Counts of said declaration, and out of which said sums of money so due and owing from the said plaintiff to the said defendant, the said defendant is ready and willing, and hereby offers to set off, and allow to the said plaintiff, the full amount of said damages, according ~~according~~ to the statute in such case made and provided and this, the said defendant is ready to verify wherefore he prays judgment &c.

L. Ashton

Depts Atty.

And afterwards to wit, on the same, 13th day of April, in the year last aforesaid, the said defendant, by his said attorney, filed in

said Court, his certain other Pleas, and an
affidavit of merits, which are in the words and
figures following, to wit—

Cook Circuit Court

Patrick R. Morgan

vs

Joseph T. Ryerson

April Term A.D. 1857.

And now comes the said
Defendant, by S. Ashton, his Attorney, and de-
pends the wrong and injury when &c. and says
that he did not undertake or promise in
Manner and form, as the said plaintiff
hath thereof above complained against he, the
said Defendant, in his, the said plaintiff's
declaration mentioned, and of this, the said
Defendant puts himself upon the coun-
try &c.

S. Ashton

Defts Atty-

State of Illinois)

Cook County ss.

Patrick R. Morgan, Defend-
ant in this suit, being duly sworn, doth
depose, and say that he believes he has a
good and defense in the above entitled suit
upon the merits—

P. R. Morgan

Subscribed and sworn to
before me, this 4th day of
April 1837.

Wm L. Church

Clerk—

And afterwards, to wit, on the 6th day
of May, in the year last aforesaid, the said
Plaintiff, by his said Attorney, filed in the
Court aforesaid, his certain Replication, which
is in the words and figures following, to
wit—

State of Illinois } Circuit Court of Cook
County of Cook } ss. County, of the April
Term, 1837.

Joseph T. Ryerson

vs

Patrick Magan—

And the said Joseph
T. Ryerson, as to the plea of the said Patrick
Magan, by him first above pleaded, and
whereof he hath put himself upon the
country, doth the like—

And the said plaintiff, as to the
said plea of the said defendant, by him
secondly above pleaded, saith, that he, the
said plaintiff, by ^{reason} ~~reason~~ of anything the said
defendant in that plea alleged, ought not
to be barred from having and maintaining

his aforesaid action thereof against him
the said defendant, because he saith that
he, the said plaintiff, before and at the
time of the commencement of this suit,
was not, and is not indebted the defend-
ant, in manner and form as the said
defendant hath above, in his last said plea
in that behalf alleged, and that ^{that} he, the said
plaintiff prays may be enquired of by the
country &c.

Davis and Baldwin

Plffs Atty -

And the Deft does the same -

And afterwards, to wit, at the June
Special term of said Court, to wit, on the 8th
day of July, in the year last aforesaid, the
following proceedings, among others, in said
Court, were had and entered of record there
in, to wit -

Joseph T. Benson, 3

vs

Patrick Magan. 3

Atty -

This day come the
said parties, by their attorneys, and issue being
joined, herein, it is ordered that a jury come,
Whereupon come the jurors of a jury of
good and lawful men, to wit

J. Maine

A. Watson

Charles Lane

P. Aston

G. House

H. Buckner

Wm Goodwin

J. Robinson

A. Stetson

G. W. Cobb

E. H. Haddock

H. Case

Who being duly elected, tried and sworn, well and truly to try the issue joined aforesaid - after hearing the evidences adduced, arguments of counsel, and instructions of the Court, retire to consider of their verdict, and afterwards come into Court, and say, We, the jury, find for the Plaintiff, and assess his damages herein, to the sum of Two Hundred and twenty five dollars -

Whereupon said defendant moves the court for a new trial of this Cause - and the Court having heard counsel on said Motion, and being fully advised in the premises, overrules said motion, which ruling is excepted to by said defendant -

Therefore it is considered that said Plaintiff do have and recover of said defendant, his damages of Two Hundred and twenty five dollars, in form as aforesaid, assessed, together with his costs and charges by him in this behalf expended, and have execution therefore -

Whereupon defendant prays an appeal to the Supreme Court, of the State of Illinois, which is granted, and ten days

\$225. ¹²/₁₀₀

to file the bond in Five hundred Dollars,
with William Cook as surety, and fifteen
days to file his bill of exceptions herein—

And afterwards to wit, on the 9th day
of July, in the year last aforesaid, the said
defendant, by his said attorney, filed in said
Court, the points of his motion for a new
trial, which are in the words and figures
following, to wit—

<u>Cook Circuit Court</u>	}	
Patrick B. Morgan		June Special
ads		Term. A.D. 1837.
Joseph T. Ransom		

And now comes the said
defendant, by S. Ashton, his attorney, and
moves the Court, for a new trial, in the
above entitled cause, for the following rea-
sons, to wit—

First Because the verdict is against the Evi-
dence, and should have been for the defend-
ant, and the verdict is not borne out by
the testimony—

Second Because the verdict is against the
law, and the evidence, and is not warrant-
ed by the preponderance of the testimony—

- Third. Because the Instructions given by the Court, on the part of the Plaintiff, were calculated to mislead the jury, and their verdict was the Result of their misapprehensions of the law, and the facts under the Instructions given by the Court, on the part of the Plaintiff.
- Fourth. Because the Instructions given by the Court, on the part of the Plaintiff, ~~were~~ in relation to an acceptance of the Horse back from the Plaintiff, by the Defendant, were calculated to mislead the jury, so that they would infer that ~~that~~ the Defendant had consented to a Rescission of the sale on his part—
- Fifth. Because there was no evidence showing that the Horse was accepted back by the Defendant from the Plaintiff, so as to show a Rescinding of the contract on the part of the Defendant, upon which the Court was warranted in giving the Instructions upon that subject, on the part of the Plaintiff—
- Sixth. Because the Court altered and qualified the Instructions asked for on the part of the Defendant, and didn't give them or Refuse them as asked for ~~on~~ by the Defendant's Counsel—
- Seventh. Because the verdict is manifestly wrong, and not authorized by the facts, and the

law as application to the case.

Sam. Ashton

Depts Atty.

And afterwards, to wit, on the 13th day
of July, in the year last aforesaid, the said Joseph
unto filed in said Court, his certain appeal bond,
which is in the words and figures following,
to wit—

In the Supreme Court of the
State of Illinois.

Patrick R. Morgan

vs

An Appeal

Joseph T. Ryerson

Know all men by these
presents, that we, Patrick R. Morgan and William
Luck, of the City of Chicago, and State of Illinois,
are held and firmly bound unto Joseph T. Ryerson,
of Chicago, and State aforesaid, in the sum
of five hundred dollars, lawful money of the
United States, to be paid to the said Joseph T.
Ryerson, his heirs, executors, administrators or as-
signs, for which payment well and truly to be
made, we bind ourselves, our heirs, executors, admin-
istrators and assignees, firmly by these presents,
sealed with our seals, this 13th day of July, 1837.
1837.

Whereas the above named Patrick R. Morgan
hath paid and hath obtained an appeal

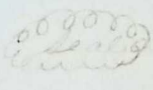
to the Supreme Court of the State of Illinois,
to review the judgment rendered in the above
entitled suit by the Circuit Court of Cook
County, and State aforesaid.

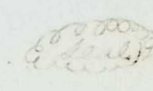
Now therefore the consideration of the
obligation is such, that if the said Patrick B.
Morgan shall diligently prosecute his said
appeal, and shall pay any judgment, and
all costs, interest and damages which may be
adjudged by the Justice of the Supreme Court,
of the State of Illinois, against the said Patrick
B. Morgan, on such appeal, then this obligation
to be void, otherwise to be and remains in full
force and virtue - }

Signed and sealed }

In the presence of }

W. P. Ingersoll }

P. B. Morgan 

William Lock 

This within bond is approved this day
of April A. D. July, A. D. 1837.

And afterwards to wit, on the same 15th
day of July, in the year last aforesaid, the said
defendant, by his said Attorney, filed in the
Court aforesaid, his certain Bill of Exceptions, which
is in the words and figures following, to wit -

In Prob. Court, of
the same Special Term 1857.

Joseph E. Ryerson }
as } Bill of Exemption
Patrick R. Morgan }

Be it remembered that on the trial of this
cause, that the Plaintiff offered in evidence, the
Bill of sale given by Defendant, with warranty
of soundness of the Horse, in the words and figures
following, to wit:-

Mr. Ryerson

Bought of P. R. Morgan,
one (1) Bay Horse 13 years old, warranted sound
and kind for a Family Horse. \$225.00. Received
payment Chicago, April 11th 1856. (Signed) "P. R.
Morgan" - also the following testimony was given
in evidence by the said Plaintiff, and the De-
fendant in the trial of said cause -

Plaintiff's Witness - Richard M. O. Dermott -
I know the Plaintiff and the Defendant, know
the Horse in question, I took at this time for the
Plaintiff - Before I worked for the Defendant,
this Horse was under my care about one and one
half months, while I worked for the Defendant,
during that time I took care of the Horse steadily,
before I knew about the Plaintiff's buying him,
on the second day after I commenced to take
care of him, I remarked that the H^o was

leg a foot - that he could not stand on it, in
 the stable, he seemed to stand on one side,
 favouring that leg, he was well enough on his
 hind legs - when I cleaned him with cold
 water in the morning, and led him down, he
 would lie down in the stable, he continued to
 lie, to rest, and then get up and lie down again,
 as if he had ached - while with Defendant, I
 harnessed him twice, and twice I went with him
 to be shod, I took him to the "Blacksmith
 Shop, where Morgan had his horses shod, when
 I brought him in the Shop, the "Black Smith
 could not shoe him until he got him twitched,
 the trouble was when he came to rest on that
 leg, he could not stand on it, he would lie down,
 the Blacksmith had to hold him up in fast,
 and the Horse seemed to suffer a good deal,
 while being shod - about two weeks after that,
 he was taken to Plaintiffs - while there I drove
 him all the time, and I drove him slow and
 steady - I used him for a family horse, drove
 him out with "Mrs. Ryerson, and the Children -
 drove him about two miles an hour, never drove
 him fast - more than enough to sweat him -
 I have been sixteen years in the business of
 taking care of horses - he was cared for as well
 as I knew how - nothing I discovered happened
 to him while I had him in charge, I noticed his
 lameness before he came to Plaintiffs' barn, but

said nothing about it. Plaintiff noticed it one day while riding out with me, he asked me what the matter was. Lameness continued to increase, and it became so bad, that I was ashamed to drive him on the streets, he was not fit to be used, he appeared to suffer - he was taken again to be shod, while with the plaintiff, and acted in the same way - and we had to put the twitch on him - the lameness was not in the foot, but near the Knee, up to the arm or shoulder - it was the left leg, when shooing other legs, that was the most trouble - in two or three weeks after the sale, he became very bad. Plaintiff directed me to take him back to defendant, I took him back and delivered him to the defendant, and he took him, and gave me another horse to use, had this one about two weeks - after that, Defendant sent a span of Horses, and the single one was taken back - I brought the Span over to Plaintiff, had them about two or three weeks - the Span did not suit, and Plaintiff kept them only about two weeks, not quite, and I took them back, - had no more horses from the Defendant - after that, in a few days, Plaintiff got another Span - Defendant saw me with them on Lake St. shortly after Plaintiff got them -

Before Plaintiff bought the Hase, I Appraised the horse for Plaintiff, and Mr.

garned— it was in the Spring, and before the sale to Plaintiff— it was quite soft and muddy on his return from that drive, I noticed he was lame in one in the same foot, this was his conduct in the stable, except when he laid down at nights— when he would groan, and seemed to feel miserable, — I have took care of a good many horses, he acted like a horse that was sore, and in pain, and could not rest himself—

For about three weeks after the sale, he was pricked and doctored, and during that time, Defendant had him, and he was not used by anyone— while with the Defendant, I stuffed his feet with Cow-dung, saw some medicine give to him, before and after the sale, his feet were stuffed, he had no sickness then that I could discover— I am a fudge of horses— I consider myself a fudge of horses, and their diseases, and to best of my knowledge, he was not sound in that leg, before Plaintiff bought the horse, I worked three weeks for Defendant, lived with Price before that, have been in the City three years— I was ^{with} another Morgan on the North side of the river six weeks, I was sick the rest of the time, before I came here, I had been in the horse business, lived with the Plaintiff since I left Defendant— I brought the horse to the Plaintiff's stable— the horse was

at the Defendant's Stable. when I went there—
Natural thing for some horses to lay down during
the day time—a good Sound horse will very
seldom lie down in day time, while standing
in the Stable, never led horses down till after-
noon—we had to urge him to get him up, I never
saw him out of the Stable. before he was sold
to the Plaintiff—never saw him but once when
Plaintiff drove him out, never saw a Sound horse
change his fore leg, in standing—it was not ~~for~~
general for Defendant to stuff horse's feet, may
have seen others, don't know any but this one,
no one ever drove him but once—Plaintiff drove
him out one noon to Herisdale Street, he was out
once after Plaintiff bought him, with one of the
boys to the Race Course—Plaintiff had the horse
about two weeks, he got so lame he could not use
him—I did not tell the Plaintiff he was lame,
he rode out with me one day, and then he
asked me what was the matter, he noticed the
horse was lame, this was a short time after
the horse came—I told Plaintiff horse was
lame, about a week after he came to Plaintiff's—
before this, Plaintiff spoke of his being lame—I
did not tell Plaintiff what I thought, I told him
he was lame, but did not like to tell him all
about it, although I knew all about it—I never
told Defendant the horse was lame, but I knew
it all the time I was with him—I said nothing

about it to any body - Plaintiff's wife noticed the horse was lame two or three days after he came there - she asked me if he was lame, and I was ashamed to tell her - Plaintiff did not know he was lame, until he rode out with me, and noticed it -

About two weeks after he was sold to Plaintiff, a boy rode him to the Race-track - I rode alongside of him, and I noticed that he was stiff and sore, in that right leg, he always favored that leg - never saw a horse favor that his forward feet, unless he had fever or was lame. think Defendant gave him a purging ball before the Plaintiff took him - the Span of horses Plaintiff bought after the horse was taken back - one of them became lame, soon after he bought them, only a little, not much - I drove them all the time -

Patrick Kempf - I worked about two weeks for Defendant - had been in other stables, and have taken care of horses since I could handle them - I do not think the horse was sound in his fore feet - Knew of Defendant's offering the horse for sale, before Plaintiff bought him, don't know what he asked for him, I took care of the horse part of the time while I was in the employ of Defendant - did not examine the horse, he would lay down in the day-time, and

would be until made to get up— have worked
at Parnell's Stable three months— Knew about
horses— the horse was not used, never considered
him sound in his fore legs— I was working for
Defendants, when Michael McDermott went
to Plaintiffs— I took care of the horse, I noticed
he could not stand on his fore leg, on the right
or left leg— Examined it, and washed it with
Soap and water— did not find any sore— I led
him to Blacksmith's, to be shod— This was about
two weeks after Plaintiff bought him— only used
him twice during the time— he seemed to favor
the right fore leg all the time— Plaintiff kept
him three or four weeks, I told him about his
lameness, the horse was laying down at the
time, I said he favored one of his fore legs, or
his right fore leg—

Samuel James— I knew the horse in question
I saw him in Defendants stable, and told
Plaintiff— then went back, and asked to take
him out— a day or two after that, Plaintiff and
myself drove him out— drove him about two and
a half miles and hours, I told Defendant if
he would give Plaintiff a written guarantee, that
he would take him— Defendant said he would

I saw the horse afterwards at Plaintiff's,
after he had been sent to him, and after he had
used him a short time, and he was completely

brought up - this was about three weeks after
 he bought him - some days after, Defendant
 drove a span of horses up to the Plaintiff's door -
 and said he was bound to suit Plaintiff - and
 he agreed to take them, if they suited him -
 Defendant said he would allow the amount
 that had been paid upon the other horse - the
 difficulty with the horse seemed to be from the
 shoulder down to the knee - when I was out with
 the horse, I did not discover any lameness - we did
 not drive him on the plank - I did not exam-
 ine him particularly, was at Plaintiff's store,
 when Defendant brought in a bic - this was after
 the horse was bought - I don't know that horse
 was taken away, before that bic was paid - Def-
 endant asked me if Plaintiff would lease it out,
 I told Plaintiff, and he said he would not,
 because Defendant had imposed upon him,
 this conversation was some eight or ten months
 after the horse had gone back to Defendant's,
 and after Ryerson had sued Morgan -

Defendant's Witnesses -

Peter Rau - I knew the horse eleven months
 before Defendant got him - I drove him about
 eight months in all - the horse was what I call-
 ed a good sound horse - I saw the horse after
 the Defendant had him, saw him twice within
 three weeks, saw him going on Wells st. while
 Plaintiff owned him, he was not lame as I

could see. I never saw the horse lame. saw him
once on Lake st. he was not lame as far as I
could discover. he was a very gentle horse. have
worked horses twenty-five years, have been with them
all the time. it is not unusual for horses when
in the stable, to lie down in the day time, when
standing in the stable on Sundays, and when
bedden down. I drove a grain wagon. had the
horse until April of last year, drove him when
he was bought by Defendant, and before that
all summer. I drove him prior to the sale,
could not say whether a well horse will want
to lie down the first thing in the morning,
should think it would be unusual. I saw
the horse standing once in Lake st. he did not
seem lame, he was a good deal sweated, he was
not lame as I could see, when he stood on
Lake st. did not see the horse lame when I
drove him. the price paid for him by Defend-
ant, was One hundred and seventy-five Dol-
lars, cash. he bought him from W. E. Merritt,
he was a produce-dealer, he was going away, never
used or bought horses.

Charles C. Wilcox I know the Defendant. have
seen the Plaintiff. Know the horse in question.
have kept a Sizing Stable for the last four or
five years, have driven the horse twice or three
times, wanted to buy the horse, and examined him,

am a competent Judge of horses— the horse was
 sound— just before the plaintiff bought him,
 saw the horse afterwards, about two weeks after
 the sale to Plaintiff— he looked very well— never
 saw him again after Plaintiff took him into
 his possessions— saw the horse after he was
 returned, believe his lameness to be from a Spavin.
 I should judge so— I had a horse that matched
 him, and wanted to buy him, and offered the
 Defendant, two hundred and twenty-five dol-
 lars for him, it was some time in the fore
 part of April, that I wanted to buy him— the
 Defendant and some of his men told me
 that Plaintiff had bought him, and that
 Plaintiff had the refusal of him, that is all
 I know about it— after Plaintiff bought him, the
 only knowledge I had of him, was from seeing him
 stand in the stable, an unsound horse is more
 likely to stand up in the stable, than a sound
 one, because it hurts them more to get up and
 down, than it does to stand still— Sound horses do
 lie down sometimes in the day times— if you have
 to put a twitch on a horse when you shoe him, it
 is no evidence that anything is the matter with
 him in the foot in which he cannot be shod—
 I stuff the feet of the best Horses I have, very seldom
 stuff the feet of an unsound horse, heard a con-
 versation between Plaintiff and Defendant—
 Plaintiff wanted Morgan to give him so much

for the horse. — Defendant refused to give him more than one hundred and fifty dollars. I think it was — This was a year or so after after the sale to Plaintiff. Defendant said the horse was sound when he sold him, don't remember what Plaintiff replied. — I did not pay much attention to the conversation, don't recollect just the time this conversation took place. — it was the Spring, very sloppy sun, about March. — I stood in the alley near Hoffman's Bank, they were part of the time within four feet of me, did not pay much attention to them, would not swear positively as to the nature of the conversation. Plaintiff might have offered to throw off one hundred and fifty dollars from his claim, rather than go to law, can't swear that he did —

Charles C. Pifer. I am in the Livery Stable business, ten years engaged in the use, and buying and selling horses. — Know the horse in question — went with Mr. Wilcox to look at him, Examined him, am a fudge of a sound or unsound horse. — the horse was sound. — I rode with Mr. Wilcox, when he drove him, did not see any lameness. — never rode after him again — saw him after he was pitched, after he had been sold to Plaintiff — he seemed well and sound — had he been lame, presume I should have observed it. — I often stuff the feet of sound horses standing in the Stable, and don't

recollect having seen the horse since Plaintiff
 took him, until he came back to Defendant's
 stable — Saw him then, and have seen him since.
 the horse then was lame in his Right forward
 leg, it seemed to be a sprain — it was in the off
 fore leg, about the knee — I am in a livery stable
 with Mr. Wilcox — am often in Mogan's stable —
 never talked with him about the horse — I saw
 "Wilcox drive the horse once or twice besides the time
 I rode with him, this was about the time Wilcox
 thought of buying him, when I rode with him, we
 rode about half an hour, not very fast, around
 the City — this was the only time I ever rode after
 him — consider myself a judge of a sound horse,
 don't think I should notice whether a horse
 not used for weeks, would lay down in his stable
 every day, most of the time, or not —

George W. Bidwell Preliminary by Plff's Atty

Have had business arrangements with
 Defendant — I am handling horses belonging to him.
 I make out his bills — he pays me for it — we
 never agreed upon any price for my services — Keep
 his books for him — I have an interest in the
 fast stock that he owns — but not in his general
 business — I am a horse trainer, have no interest
 in this suit — I only have an interest in the
 fast stock, I attend to them at the Garden City
 course — I handle all the fast horses (Court de

cides witness competent) I knew the horse in question - Mr. James asked me if there was a good family horse in the stable - the horse was taken down to the Plaintiff's stable, an arrangement was made for picking and docking him - the horse was a sound horse at the time he was sold to the Plaintiff - I am a judge of horses, examined the horse, he was a sound horse then, heard Michael Mc Dermott's testimony - am a boot Defendant's stable, morning and evenings it is not uncommon for a sound horse to lie down in the stable, in the day time - he stuffed the feet of all his horses, especially all good horses, or horses that are sound - the horse came back from the Plaintiff's very lame, in his Right fore leg, after he was gone about four weeks - when he was sold, he was a sound horse - he was sound when he was taken away by Plaintiff's man - I examined him on the day he was taken away to the Plaintiff - Defendant bought the horse about the 7th of April, and sold him to Plaintiff, on the 11th same month - I recollect both dates - I examined the horse when he was returned, think he had caught his foot somehow, and sprained it - it appeared to have been just done, when he came back, he was lame in the "off fore leg, the Right leg was perfect, and is so now -

Bill for keeping the horse presented to witness, in the words and figures following - to wit.

G. P. B. Morgan

Dr.

Boarding Bay Horse from 24 th	
" of June 1856. up to 17 th day of	
" June 1857. 31 weeks - @ \$3.30.	\$178. 50
" use of Pair of Horses	" 23. 00
" " " Single Horse	" 15. 00
	218. 50

I made out the bill, took it to Plaintiff's store - left and with Mr. James to come and take the horse away, a pay for his keeping - That he want ed. to fill his place with some horse, who would pay in the usual way every month - Know that the bill is correct - Know that Plaintiff had the use of a Span of horses - also a single horse - can't state exact time he had them - I called once at the Plaintiff's store, but he was not in - saw Mr. James - I frequently examined the horse after his return - the horse was unable to go, it was the off fore leg - the near leg being sound and perfect - Defendant has kept the horse since that time, about the 26th or 23rd of June 1856, he was returned - he left the Stable of Defendant in May - Defendant has kept him since his return by Plaintiff - I am in the horse business - I got his horses in good condition to sell, and am in connection with him in his fast stock, not in his general business - when Morgan makes a good trade in fast stock, I have half the profits - I never furnished a dollar of the capital - I keep stock

at Defendant's stable in winter — in spring and summer, keep them at the Garden City Course. I generally get back from the Course about 6 o'clock — began races last year about the first of May — was there during the rest of the season — never rode after the horse but once, went from stable to Depot, on the North side of the river, and back — saw him before sale to Morgan — never went to Riggs' but once — never presented the bill before suit was brought, to my knowledge stated that Defendant wanted him to pay the bill, or take the horse away — stated that he could fill his stable with horses, that would pay in the usual way, every month — know that Defendant was trying the Span to see whether he would like them — have every reason to believe that was the case — the trial of a horse is made in a day or two, it is a very good mark of a sound horse to lie down in the day time, — if he always stood on three legs, and flinched one, should think that leg lame — if a horse is kept more than a day or two while being tried, the person who has him, is charged for it — If it was necessary to put a twitch on him while being shod, I should not think him lame — I was at Defendant's stable, most of the month of March and April, 1856. have fifty five or fifty horses there, saw the horse in question about as much as any other horse, saw the

have more or less, every day, while he was at the stable.

Philip Carlson Have seen the horse frequently. I shoe horses - he was brought to my shop, to be shod - I did not personally shoe him myself, I did not examine him at that time, he acted kind of ticklish while shoeing him behind - had no trouble in shoeing him before in his fore legs - he was kind of ugly, and was twitched on that account - he was not lame, no lameness was exhibited - I did not do the work myself - I shoe the greater part of Defendant's horses, the bills are made out every month. Keep ten or twelve men shoeing - did not shoe myself - do Morgan's work - can't tell the exact number shod a day - there or four a day were brought to the shop, during the early part of last spring and summer, remember him from the fact that he was a little ugly about his hind feet or legs - had no trouble with his fore legs - have seen the horse since, saw him this morning, the lameness is in his Right fore leg, he is sound in his left fore leg.

Peter Curran Worked in the Defendant's stable while the horse was there, before he was sold to Plaintiff - took care of the horse for Defendant - he was not lame when sold to Plaintiff.

Plaintiff had the span of horses four or five days— He had a single horse— While I worked for Morgan, he kept forty or fifty horses, and five men— Pat. Kemp and Michael Mc Dermott was there at the time— While I was there, I took care of about nine horses, the others had their horses to take care of too— "Mike" took the horse to the Blacksmith's Shop— I took him to the shop once— At the time the horse was sold to Plaintiff, he was sound as far as I could see—

Mr. Grainer I am a horse shoe, worked for Mr. Carlin, and have shod the horse— did not examine his legs— examined his feet— He acted a little ugly while ^{he was} being shod behind— had no trouble with his fore legs— all the difficulty was in shoeing him behind— had to put the twitch on him— he did not lay down— The horse was a little frightened in the shop— he acted as if he felt uneasy— shoeing the hind feet might make him sore on the fore feet— some horses will not act ugly when being shod— If a horse is hurt in shoeing, then we have to twitch him—

Peter Quinn I am a horse shoe, work for Mr. Carlin— shod the horse in question— He was brought to the shop at the time by Defendant— I could see nothing the matter with his

legs—Morgan bought him the first time—the latter part of April, 1856—saw nobody bring the horse but Morgan—had no trouble in shoeing before—He was a little scared when shoeing him behind—he acted as if he was frightened at the sparks in the shop—he stood well enough when he was outside—had to put the twitch on him in the shop while shoeing him behind—have seen the horse this morning—his nigh fore leg is sound—he has a knot on the off fore leg at the knee—

Thomas Becker worked on horses six or seven years—Had charge of this horse at Defendant's stable—he was a sound horse at the time of the sale—I had charge of the stable in Mr. Morgan's absence—was there when the horse came back—he was very lame in the off forward leg—nothing was the matter with his nigh fore leg—The horse was not under my care more than other horses in the Defendant's stable—I examined him before Reason took him—the horse was in good condition, and sound—He was very lame in the off fore leg when he came back—Plaintiff had a pair of horses afterwards from the Defendant—also a single horse—do not remember how long—

John C. Kelly I am a Sundry Stable Keeper—and

dealer in horses - have seen the horse in question -
am a judge of the diseases and hurts of horses -
his right fore leg is sound and in good condition -
there is a callous place around the knee of the
off fore leg - I should think it was caused by a
sprain - I have known horses to favour their feet
by standing first on ^{one} foot, and then on the other -
I should think from the appearance of the
place, it had been there some eight or ten months -
if a horse should get sprained in his legs, it will
show itself in a very short time, and will become
very bad right off - it is a common thing for
a sound horse to lay down in the day time, or
change his feet while standing - I know
two instances within the last three months -
a horse in a healthy condition, will lay down
in the day time - it is not unusual -

Mr. Blaney I know the horse in dispute -
Knew him two years, drove him eleven months
in a grain wagon, he was used by Mr. Merritt -
he sold him to Defendant for one hundred
and seventy five dollars cash - he was going
away - ^{the} ~~the~~ was a good gentle horse - I consid-
ered him sound - I knew him when he was
sold to Wigan, he was perfectly sound then,
he was a little restive in being shod, saw the
horse about ten weeks ago, he was lame in the
off fore leg - have been engaged in using and

during hoes, a good many years, have drawn some heavy loads of grain with him, and another Duce, as much as four tons—

Doct^r Bullwinker—am a horse Doctor, have been for twenty years—have seen the horse in question—there is an enlargement of the sinews on the off fore knee—I should think it was not an old sore, but of more recent date—the same can be produced by a sprain, the horse is sound otherwise—I cannot tell if it is an old standing complaint—a sprain may be slight at first, but will get bad in a short time—I think the horse is sound, except the off fore leg, a sprain of that kind would sh^o it off in a short time—

Charles C. Wiley Recaled—I keep Livery Stable—it was worth four dollars per week last summer, to keep a horse, and five dollars during last winter and in this spring—don't know that it is customary to make out bills every month, I do not—some bills have run at my stable for a year—Mr. Rose, for four months—Gray six months—A. D. Sawyer one year—I have got some things out of his store during the time—never presented him any bill—I cannot name any instance in which I have let the bill run one year, and not received anything on it—

The Defendant then Introduced the all
mentioned in Mr. Bidwell's evidence to the
Jury
"Objected to by Plaintiff"

The foregoing is the whole Evidence
given in the case—

"Charges to the Jury"

The Counsel for the Plaintiff Re-
quested the Court to Charge as follows—

1st— If the Jury believe from the evidence
that the horse sold by the Defendant to the
Plaintiff, had any Spains, Stains, or other Injury
amounting to unsoundness in one of his legs, at
the time of the sale to the Plaintiff, and the
Plaintiff after discovering such unsoundness,
and without reasonable delay returned the horse
to the Defendant, as unsound, then the Plaintiff
is entitled to Recover the amount paid for
the horse—

2nd— If the Jury believe from the evidence that
the horse was returned by the Plaintiff to the
Defendant, as unsound, and accepted by the
Defendant—then the Plaintiff is entitled to
Recover back the amount paid the Defendant
for the horse—

3rd— If the Jury believe from the evidence that

the horse was Returned to the Defendant in June 1836. as unsound, and was accepted back by the Defendant. Then the Plaintiff is entitled to Recover the price paid for the horse, whether he was sound or not at the time of the sale—

And the Court did give the Charges to the jury, Numbered 1. 2. 3. for the said Plaintiff to the giving of which said Instructions by the Court, the Defendant Excepted—

Counsel for the Defendant then Requested the Court to charge, and the Court did give the charges to the jury. Number

If the jury shall believe from the evidence, that at the time of the sale of the horse in question, by the Defendant to the Plaintiff, that the said horse had no permanent or incurable Injury about him, and that if any unsoundness existed, it was only a temporary and curable Injury, and did not injure the horse for services—then it was no breach of the warranty, and the Defendant is entitled to a verdict—

Which said Instruction the court then and there gave to the jury, with the following qualification after the word Services—(and present use while suffering under it) also with the following addition, after the word verdict (unless the contract of sale was afterwards by agreement

rescinded by the parties, and the horse returned to Defendant.)

To the giving of said Instruction (1) with the qualification and addition, the Defendant Excepted.

The Counsel for the Defendant then and there further Requested the Court to give to the jury, the following Instruction Number (2).

No 2. If the jury shall believe from the evidence that the horse in question at the time of the sale to the Plaintiff, by the Defendant, was a sound horse, then the law is for the Defendant and the only question for the jury to try, in relation to the soundness or unsoundness of the horse, is the question as to whether the horse was unsound at the time of the sale—

Which said above Instruction, the Court then and there gave to the jury, with the following qualification after the word Horse (and that the Contract of sale was not rescinded at the time of his Return, to Defendant, or at any other time.)

To the giving of said qualification to said Instruction, Number (2) Defendant Excepted.

The Counsel for the Defendant then and there further Requested the court to give to the jury, the following Instruction Number (3)

3rd If the jury shall believe from the evidence, that the Defendant kept the horse in question for the Plaintiff, after he was hurt and brought back to the stable, of the Defendant—then the Defendant is entitled to Recover the value of his Keeping, and attendance, if the same commenced before this suit was brought, by way of set-off, and the Defendant is entitled to such judgment, as the keeping and attendance was reasonably worth—

Which said above Instruction, the Court then and there gave to the jury, with the following qualification after the word "that" (the horse was returned to Defendant, and contract of sale rescinded between the parties and that)

To the giving of said qualification, to said Instruction (3), Defendant "Excepted—

The Counsel for the Defendant then and there further requested the Court, to give to the jury, the following Instruction numbered (4)

4th If the jury shall believe from the evidence, that the horse was sound at the time of the sale to the Plaintiff, then they should find for the Defendant—

Which said above Instruction, the Court then and there gave to the jury, with the

'addition, however, after the word "Defendant of the following - (unless they shall also find that the house was returned to the Defendant and the contract of sale rescinded between the parties, by mutual arrangement.)'

So the giving of said addition to said Instruction, Number (4) Defendant Excepted.

The foregoing were all the Instructions given by the Court to the jury -

The jury having found a verdict for the Plaintiff, and assessed the damages at two hundred and twenty-five dollars, the Defendant moved the Court to have the jury polled, whereupon the same was done by the Clerk -

The Defendant also then and there moved the Court for a new trial, because

1st The verdict is against the evidence, and should have been for the Defendant - and the verdict is not borne out by the testimony -

2nd The verdict is against the law, and the Evidence, and is not warranted by the preponderance of the testimony -

3rd The Instructions given by the Court on the part of the Plaintiff, were calculated to mislead the jury, and their verdict was the result of their misapprehension of the law, and the facts under the Instructions given by the Court, on the part of the Plaintiff -

4th The Instructions given by the Court on the part of the Plaintiff, in relation to an acceptance of the Horse back from the Plaintiff, by the Defendant, were calculated to mislead the Jury, so that they would infer that the Defendant had consented to a rescission of the sale on his part—

5th There was no evidence showing that the Horse was accepted back by the Defendant from the Plaintiff, so as to show a rescinding of the Contract on the part of the Defendant—upon which the Court was warranted in giving the Instructions upon that subject on the part of the Plaintiff—

6th The Court altered and qualified the Instructions asked for on the part of the Defendant, and did not give them, or refuse them, as asked for by the Defendant's Counsel—

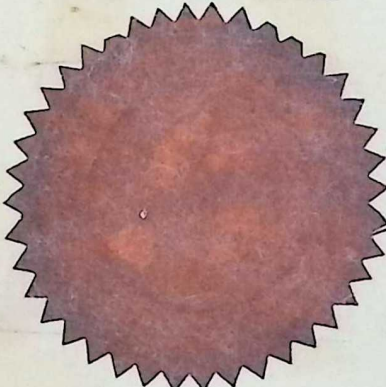
7th The verdict is manifestly wrong, and not authorized by the facts, and the law is applicable to said case—

The Court overruled said motion, and rendered judgment on the verdict—and to the decision of the Court, overruling said motion for new trial, and rendering judgment, Defendant Excepted, and prays the Court here to sign and seal this, his bill of

Exemptions, which is done on this 15th day of July,
A. D. 1857.

George Manierre *Seal*
Judge of 7th Judicial
Circuit, Ills.

State of Illinois, }
COUNTY OF COOK. } s. s.



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 the papers and proceedings had & entered of record
in a certain cause do pending in said Court on the
Law side thereof, wherein Joseph J.
Ryerson was Plaintiff and
Patience L. M. Ryerson was defendant

IN WITNESS WHEREOF, I have hereunto set my hand, and affixed the seal of our
said Court at Chicago, this 26th day of March A. D. 1858

Due for Recd \$11.35

Wm L Church
Clerk.

The Appellant in the above entitled
case says there is manifest error in
the Record, and assigns the following
1st The court erred in giving each
of the instructions as asked by the
Pltff.
2^d The court erred in refusing to
give the instructions as asked on the
part of the Def.
3^d The court erred in qualifying

and adding to the instructions on the part of the Deft.

4th = The court erred in the instructions on the part of the Pltff by assuming a state of facts that were not in evidence.

5th = The court erred in overruling the Deft's motion for a new trial.

6th = The court erred in rendering the judgment aforesaid, in manner and form aforesaid.

7th = The Court erred by assuming the contract of sale to be rescinded between the Pltff & Deft.

S. Ashton,
for appellant,

There is no error
in the appeal by Joseph
J. Myers, and
an affirmation of
the first &c

Arnold & Garne
for appellee.

Joseph J. Ryerson

~~207~~ — 206

Patrick Morgan

Record

Filed April 21, 1858

L. Leland,
Clerk.

ppd

Recd

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[H-00001]