

8603

No. _____

Supreme Court of Illinois

Dishan & Provo

vs.

John C. Schon

71641  7

1
Pleas before the Hon^{ble} William T. Parrish
Judge of the Third Judicial Circuit and
presiding Judge of the Circuit Court within
and for the County of Union and State of
Illinois, on the twenty ninth day of December in
the year of our Lord one thousand eight hun-
dred and fifty four,

Be it remembered that
hitherto to wit on the tenth day of August in the
year of our Lord one thousand eight hundred
and fifty two Henry Dishon and James Provo
Merchants negotiating in trade under the
firm of Dishon & Provo deputed in the Clerk
Office of the Circuit Court within and for the said
County of Union, the original papers in a certain
Cause then lately pending before Thomas McClintock
an acting Justice of the Peace within and for
the said County wherein the said Dishon & Provo
were plaintiffs and John C. Schorr was defendant
(and which Cause had been duly Appealed by
the said Dishon & Provo to the Circuit Court afore-
said) together with a certified transcript of
the proceedings in said Cause entered of record
before the said Justice and which original papers
Subpoenas, Return of the officer, Accounts
Appeal Bond and Transcript are in the order
above named, in the words and figures following
to wit:

State of Illinois } The people of the State of Illinois
County of Union } To any Constable of said County
Greeting
You are hereby commanded to summon John C.
Schorr; to appear before me at my office in person

2

Summons

on the 24th day of July A.D. 1852 at one o'clock
 P.M. to answer the complaint of Henry Dishon and
 James P. Provo merchants negotiating in trade
 under the firm of Dishon & Provo for a failure
 to pay them a certain demand not exceeding, one
 hundred dollars. And thereof make due return as
 the law directs. Given under my hand and seal
 this 17th day of July A.D. 1852.

Thomas Helmerman County Judge (Seal)

Dishon & Provo,

John C. Schorr

Endorsement

Summons

Demand \$61.81.

Cost .50

Const Ret.

I executed the within Summons by reading
 the same to John C. Shore Surveyor & Returner 25
 mileage 2 miles 10 this July^{the} 19 day 1852.

B. H. Eaves Const.

Henry Dishon & James P. Provo merchants negoti-
 ating in trade under the firm of
 Dishon & Provo

John C. Shore } Assumpsit
 } Damages \$61.81 balance
 of account as per account filed herein for \$348.11 Cr
 \$286.30 Balance due plff \$61.81. The justice will
 please issue a summons for deft & file this & the
 acct. also subpoena Isaac Heartman Subpoena
 Agains Daniel Cook witness for plff

J. Dougherty atty for
 plff

Mr John C Shore of

with Dishon & Provo

Dec 9-1849	1 Pr Shoes self	1 25-
" " "	ant Paul Daugherty	2 00
" 12 "	" Paid Isaac Hartline	108 67
" " "	" " Cash for Cow	8 00
" 14 "	" " They	3 00
" 15 "	1 Pr Shoes	1 25-
" 16 "	4 1/2 yds Jeans @ 50¢	2 25-
" 17 "	1 Gal melasses	40
" 19 "	2 7/8 flour @ 2¢	54
" 22 "	Paul Barnetts chickens	75-
" 23 "	1 Pr Chickens	1 00
Jan 12-1850	1 Gal melasses	40
Feb 28	12 Chickens Deerhams &c	123 59
March 25	2 Horse collars @	1 75-
	1 Pr Suspenders	40
	12 of Chickens Eggs &c	89 38
May 21	1 pr Shoes son	1 25-
		<u>\$348.11</u>

P/H/1 acch

— Credits —

Dec 9-49	By balance due on Settlement	80 00
" 15	" Green hides & Butter	80
Jan 30 1850	" 22 th Green hides 4¢	1 28
July 20	" 108 " " " "	4 32
March 13	" 43 " " " "	1 72
April 1 st	" Cash paid Freight	25 56
	" " " Morton A. O.	36 40
	" " " Drayage	30
	" 3 Empty sacks @ 10¢	30
	" Trouble buying our goods	1 00
	" Cash paid Morton A O	19 32
April 14-1851	" " " Calum Dishon	12 00
	" " " Henderson & Gains	27 00
	" " " "	11 10
	" By that time loaned Provo	15 00
		<u>\$286 30</u>

Amt of Dr = \$348.11
 " " Cr = \$286.30
 Due D & P = 61.81

Deshou & Pardo Co

John C Schorr Dr

4

	Decr 10 th 1849	Balance due Schorr	\$80.08
	1849	" " " for sundries at N.C.	24.87
	March 16 th 1850	amt paid Steamer auto emb for freight	35.88
	Decr 5 th 1847	" " for Groceries in N.C.	34.10
	"	" " " " " " as per bill	79.57
	" 15 th 1849	Dr to Green hide & Butter	80
	June 30 th 1850	" " 32 lbs Green hide @ 4¢	1.28
	July 20 th "	" " 108 " " " "	4.32
	March 13 th "	" " 43 " " " "	1.72
Receipts acct.	April 1 st "	Cash paid Freight	25.56
	" " "	" Moston N.C.	36.40
	" " "	" amount paid on note & sent by to Moston 108.60	
	" " "	" Drayage	50
	" " "	Empty sacks	.30
	" " "	To Buying goods	10.00
	" " "	Cash paid Moston N.C.	19.32
	" " "	Calvin Deshou amt. paid	12.00
	" " "	amt paid Henderson & Gains	57.00
	" " "	" " " " " " " "	100.00
	1851	To 1 Gun loaned	40.00
		paid Anderson & Co for Crockery	37.00
		" Cash by fake	12.00
		paid in cash	18.00
		mistake made in counting Eggs	9.28
		1 Sack of Salt	2.00
		paid for ferrage on oats & shipping	1.00
		paid Henderson & Gains for Crockery	105.00
	Apr 4 th 1850	paid Sefious of ours for D & P	\$ 10.00
		To 150 lbs of dry hide at 8¢	12.00
			<u>817.69</u>
	By Credits due Deshou & Pardo in goods & money		\$ 502.69
		merchandise money &c -	
		amt due	\$ 75.00

I know all men by these presents that we Henry Dishon James of Provo merchants negotiating in trade under the firm of Dishon & Provo Wesley G. Nimmo & Allen Bambridge are held and firmly bound unto John C. Schorr in the penal sum of one hundred and fifty dollars lawful money of the United States for the payment of which well and truly to be made we bind ourselves our heirs and administrators jointly severally and firmly by these presents Witness our hands and seals this 10th day of August A.D. 1852

Appeal Bond.

The condition of the above obligation is such that whereas the said John C. Schorr did on the 24th day of July A.D. 1852 before Thomas H. Coleman County Judge for the County of Union recover a judgment against the above bounden Henry Dishon & James of Provo merchants negotiating in trade under the firm of Dishon & Provo for the sum of seventy one dollars and eighty six cents and the costs of suit from which judgment the said Dishon & Provo have taken an appeal to the Circuit Court of the County of Union aforesaid and State of Illinois Now if the said Dishon & Provo shall prosecute their appeal with effect and shall pay whatever judgment may be rendered by the Court upon dismissal or trial of said Appeal, then the above obligation to be void otherwise to remain in full force and effect.

Approved by me at my office } Dishon & Provo (seal)
 this 10th day of August A.D. 1852 } W. G. Nimmo (seal)
 Thomas H. Coleman County Judge } Allen Bambridge (seal)

~~And afterwards to wit on the said 13th day of August A.D. 1852 the following sum was paid from the Clerk's office of said Court against the said John C. Schorr to wit, in the words and figures~~

State of Illinois Union County

Justice Court before the undersigned

Henry Dushon &

James P. Puro merchants negotiating in trade under the firm of Dushon & Puro

John C. Schorr

Demand on a cct for \$61.81 same mony repud made returnable on the 24 day of July A.D. 1852. at one o'clock P.M. placed in the hands of B.H. Eaves Const, this 17th day of July 1852 Constable returned mony. executed

And now on this 24th day of July A.D. 1852 came the plaintiffs by Wroughton their attorney, as also the defendand by Schorr his attorney, and upon hearing the proof and being advised in the premises sufficiently, it is thereupon considered by the Court that the defendant ought have and recover a judgment against the said plaintiffs for the sum of seventy one dollars and eighty five cents and also for the costs and charges of this suit.

The Union County Judge

Justice costs - Jpy. mony & entry suit 31 1/2 Jpy. 4 Jpas 75 = 1.06 1/2
Serving plff twice one time 12th serving 10 with one time 62nd = .75
entry judgment 25 entry appl ~~25~~ back 25 = .50
making transcript 25 ~~entry~~ certificate check 25 = .50
B.H. Eaves const. Jery sum 25 mileage 10 = 35

Jery Jpas on 8 Jpas 100 mileage 1.15 = 2.15 2.50
Witnesses fees
Mary Schorr claimd 50 Coble Miller claimd 50
Isaac Hartman " 50 John B Jones " 50
Samuel Heagrad " 50 = 2.50
77.81

State of Illinois

County of Union I hereby certify that the foregoing transcript of the judgment and bill of costs in the above entitled cause and the accompanying papers contain a full and perfect statement of the proceedings before me in the said cause

Given under my hand and seal this 10th day of August A.D. 1852

Thomas Helman Union County Judge

following, to wit,

State of Illinois - The People of the State of Illinois
County of Union - To the Sheriff of said County
Greeting

We Command you that you Summon John C Schorr if he shall be found in your County personally to be and appear before the Circuit Court of said County on the first day of the next term thereof to be holden at the Court House in Jonesboro on the third Monday in the month of September next then and there to answer Henry Dishon and James J Povo merchants negotiating in trade under the firm of Dishon & Povo of an Appeal of the Court taken from the judgment Docket of Thomas Helmum County Judge in and for the County and State aforesaid wherein the said Dishon & Povo partners as aforesaid are plaintiffs and the said John C Schorr is defendant And have you then and there due writ and make return thereon in what manner you may execute the same

Summons
of the Court
Court for
defendants,

ES

Witness Thomas Helmum Clerk of said the
Court of our said Circuit Court here affixed
at office in Jonesboro this 13th day of
August A.D. 1852.

Thomas Helmum Clk

And afterwards, to wit, on the 1st day of September 1852 the said Summons was returned to the Court aforesaid by the Sheriff of said County endorsed as follows, to wit,

Sheriff Ret.

Served the within by reading to the defendant
John C Schorr this 1st day of September 1852
Served 50
Clear of it in no way

miles 1 + 5 = 5
sets 10
65

And after wards, to wit, at the September Term A D 1852, the presiding judge of said Court not being present, and the said Court not held, the said Cause by operation of law was continued until the next Term of said Court.

And after wards, to wit, at the May Term A D 1853 of said Court, no order was made in said Cause by operation of law continued, until the next Term.

And after wards, to wit, at the September Term A D 1853 no order was made in the said Cause as aforesaid continued.

And after wards, to wit, on the seventh day of May A D 1854, the parties filed their accounts which are in the words and figures following, to wit,

Mr John C Schor

	To Debit or Provo	Dr
Dec 9 th 1849	1 pair Shoes for son	\$ 1 25
	paid John Scotty	2 00
12 th	paid Isaac Hartline	108 67
	paid Cook for Cow	8 00
	paid Shy for Cow	5 00
14 th	1 pair Shoes	1 25
15 th	4 1/2 yds James 30	2 25
	Cap stuff for wife	25
	1 Gallon molasses	40
	27 lbs flour for	62
22 nd	paid Barnett for chickens	1 00
Jan 12 th 1850	1 Gallon molasses	40
July 28 th	" Bill of chickens & Deerhams as per bill	123 59
March 25	2 Collars for	1 75
	1 pair suspenders	40
July 22 nd 1851	Bill of chickens Eggs &c	89 38
May 21	1 pair Shoes for son	1 25
		\$ 348 21

Referred to

April 12th	"	Drayage on goods at A & C	50
"	"	"	
"	"	" Empty Sacks	30
"	"	" Trouble and expenses in purchasing goods	10 00
"	"	" Cash paid allstine at A & C	19 32
"	"	" amount of cash paid Colvin Dickson	12 00
"	"	" " paid Henderson & Gaines of A & C	57 00
"	"	" " " " " " " at another time	100 00
April 15 th 1851	"	" 1 Gun purchased	40 00
"	"	" amount paid Henderson & Gaines for ^{buy} Crook	57 00
Dr. to New	"	" Cash paid to D & P Lyon Jacobs	12 00
Account	"	" " " " " " per self	11 00
"	"	" mistake made by D & P in counting Eggs	9 28
"	"	" 1 sack of Salt	2 00
"	"	" paid for ferrage & shipping oats	1 00
"	"	" " Henderson & Gaines for Crookery	100 00
Nov 12 th 1850	"	" " Sepion & Jones for D & P	10 00
"	"	" 150 lbs of Dryhide at 8¢	12 00
"	"	" 6 ^{lbs} Venison Hams given to Morton	123 59
			\$1030 19
Credit by Sundries			930 19
Amount due J & Schorr			\$100 00

The said Defendant John & Schorr on the day last aforesaid also brought into Court the following note and mortgage which are in the words and figures following, to wit,

Due William Henry Eight Dollars
 & 35 cents for value received this 11th of
 March 1854

\$98 35
 J. G. & J. G. (Seal)
 Sub due 11 Decr 1849 \$10.32
 Cont Note & Sub 98.35
 \$108.67

Upon the back of which note is the following

Nota

Assignment

11

encasement, to wit,

For value received we assign the within
note to Isaac Hartline June 17 1848

Witness & Provs

This Indenture made this twenty fourth day of
April in the year of our Lord ~~one thousand~~
Eighteen hundred and forty eight between
John C Shore of the County of Union and State
of Illinois of the one part and Henry Heshon
of the County and State aforesaid of the other
part Witnesseth that the said John C Shore
for and in consideration of the sum of ninety
eight dollars and thirty five cents to him in
hand paid the receipt whereof is hereby
acknowledged hath granted bargained and
sold and by these presents doth grant bargain
sell and convey unto the said Henry Heshon
and to his heirs and assigns forever all that
tracts or parcels of land situate in the County
of Union State aforesaid known and described
as follows, to wit, Being the West half of the
South West quarter of Section number twenty
four in township thirteen South of Range
three West of the third principal meridian
containing eighty acres Also the North West
quarter of the North East quarter of Section
nine township twelve South of Range one
East of the third principal meridian con-
taining forty acres also the following personal
property, to wit, one bay horse one Gray Horse
one Cow and one wagon To have and to
hold the above described premises together
with all and singular the privileges and

Mountguy

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appurtenances thereto belonging or in any
 wise appertaining together with all the afore-
 said personal property to the said Henry
 Heshon and his heirs and assigns forever
 Provided always that these presents are upon
 this express condition, that if the said John
 & Shore his heirs executors or administrators
 shall pay or cause to be paid to the said Henry
 Heshon his heirs executors, administrators or
 assigns the sum of ninety eight dollars and thirty
 five cents with legal interest thereon also the
 expenses attending this transfer within a
 period of twenty four months from the date
 hereof in accordance with a due bill bearing
 date 11 March 1848 executed by the said John
 & Shore to the said Henry Heshon then this
 mortgage deed to be void any thing herein con-
 tained to the contrary notwithstanding In
 Witness whereof the said John & Shore has here-
 unto set his hand and seal this day and
 year first above written

Jesh. R. V. Marshall

Geo A Platt

J. G. Gorn & J. G. Gorn

State of Illinois
 Union County ^{3/3} Personally appeared before me
 the undersigned an acting justice of the Peace in
 and for the County of Union the within named
 John & Shore who is known to me to be the
 identical person who signed and executed the
 within mortgage deed and after being made
 duly acquainted with the contents of the
 same acknowledged that he freely executed
 and signed the same for the purposes therein
 mentioned and that he henceforth freely

Mortgage

and voluntarily relinquishes all his right and title to the same. Given under my hand and seal this 24th day of April 1848

Geo H Platt (P Seal)

State of Illinois
Union County } Recorder's Office

I do hereby certify that the within mortgage is duly Recorded in Deed Book Letter F and figure 10 page 24 Given under my hand at ~~recorder's~~ office in Jonesboro this 24th April 1848

Caleb French Recorder

And afterwards, to wit, on the day last aforesaid the following instruction to the jury and verdict of the jury was filed, to wit,

Henry Dethow and James P. Provo
under the name and style of
Dethow and Provo

John C Schorr } Assumpsit

The defendant asks the court to instruct the jury, that account books are but presumptive evidence of the things charged therein liable to be rebutted by proof

Instruction to jury

Given

We the jury find in favor of the plaintiffs \$51.81 cts. W. Menckemeier foreman.

Verdict

And afterwards to wit on the day last aforesaid to wit on the 17th day of May A.D. 1848 the following order was made and entered of record in said cause to wit,

Henry Dethow James P. Provo
copartners in trade under the
style of Dethow & Provo
John C Schorr

Appraiser

Now on this day came the said plaintiffs by
 J. Dougherty their attorney as also the said defen-
 dant by C. G. Simons his attorney and upon the
 issue joined came a jury, to wit, O. L. Davidson
 J. W. & Stroud Elyah Hartline, W. M. Schumaker
 Leake Hartline Jesse Owens James Cochran J. L.
 Sweeney & H. B. Bear Lewis Howell Geo. W. Pennington
 of Hewitt twelve good and lawful men who being
 elected tried and sworn well and truly to try the
 issue joined between the parties upon their oaths
 say we the jury find for the plaintiffs the sum
 of fifty one dollars and eighty one cents, thereupon
 the said defendant John C. Schorr by his counsel
 moves the court for a new trial.

And afterwards to wit on the day last aforesaid
 the defendant files the following reasons for a new
 trial, to wit,

John C. Schorr,
 ats.

Henry Dishon and James P. Prow
 under the name and style of
 Dishon & Prow

} Assumpsit,
 } In the Union
 } Circuit Court May
 } Term in the year of
 } our Lord one thousand
 } - and fifty four

The defendant makes a motion for a new trial for the
 following causes, to wit,

- 1st That the Verdict is against the law
- 2nd That the Verdict is against the evidence
- 3rd That the Verdict is against the law and the evidence

C. G. Simons Atty for deft

And afterwards, to wit, on the eighteenth day of May
 in the year of our Lord one thousand eight hundred and
 fifty four the following order was made and entered
 of Record in the said cause, to wit,

Henry Deshon & James P. Provo
partners in trade under the
name and style of Deshon & Provo

}
} Appeal

John C. Schorr

Order for
New Trial

This cause came on to be heard upon the motion of the defendant to set aside the Verdict herein on yesterday and was argued by Counsel on consideration whereof I ordered that the said Verdict be and the same is hereby set aside and that a new trial be had between the parties at the next term of this Court and thereupon this cause is continued &c.

At the September Term A.D. 1854 no order was made in the said cause - Cause continued until the next term -

And afterwards, to wit, on the 20th day of December A.D. 1854, at a Special of term of the said Court then being held, the following instructions ~~were filed~~ to the jury were filed, to wit,

Deshon & Provo }
" } Appeal
John C. Schorr }

The plaintiffs ask the Court to instruct the jury 1. That the Books of the plaintiffs having been introduced as evidence with the exception of money charges, yet if the defendant relies upon the books as solely proving his items of Credit or any one of them, the whole account should be allowed as well that which is in favor of the plaintiffs as well as that which is against them

Refused

Appellate motion

of Shore, paid to Hartline the face of the note together with interest due on the same, or if Dishon & Prove paid off said note to Hartline without any previous request from Shore so to do yet if Shore after such payment assented to the same, then Shore would be legally entitled to the possession of the note and the defendant Shore would be liable to pay to the plaintiffs the same sum paid to Hartline and properly chargeable against the defendant notwithstanding his possession of the note and the jury should allow the same. But if on the contrary the jury shall find from the evidence that the note was assigned to Hartline in payment of what and that Dishon & Prove paid off and lifted the note without any request from Shore to do so previous to the payment of the same or without any subsequent assent or ratification of such payment, then Shore would not be liable to pay Dishon & Prove the amount they may have paid Hartline as for money paid for Shore and the jury should not allow the same.

Given

And afterwards, to wit, on the 2nd day of December AD 1854 the following verdict was returned in said cause, to wit,

We the jury find a verdict in favor of the defendant of seventy nine dollars and fifty cents

James S. Campbell

And afterwards, to wit, on the day last aforesaid the following order was made and entered of record in said cause, to wit,

Henry Dishon & James J. Prove partners
in trade under the name & style of
Dishon & Prove

24 } Appeal
John C Schorr }

Now on this day came the plaintiffs by John Dougherty their attorney, as also the said defendant by C S Simmons his attorney, and issue being joined came a jury, to wit, Oliver C Brown James Lee Samuel Bailey Reuben Weaver James Craver William R Terzine John West Samuel Sharp Bronson Wick George W Plim and Adam Knise and James Campbell twelve good and lawful men who being empanelled and sworn will and truly to try the issue between the parties upon their oaths say we the jury find for the defendant the sum of seventy nine dollars and fifty cents and thereupon the said plaintiffs move for a new trial for reasons on file.

And afterwards to wit on the ~~21st~~ 21st day of December A D 1854 the plaintiffs file the following causes for a new trial to wit,

Reason & Proof }

2 } Appeal
John C Schorr }

And the plaintiffs come and move the court, for a new trial on this for the following reasons viz:

- 1 Because the verdict is against the evidence
- 2 Because it is against the instructions of the Court
- 3 Because the Court refused proper instruction asked by the plaintiffs

J Dougherty atty for Plffs

And afterwards, to wit, on the day and year first aforesaid, to wit, on the 29th day of December in the year of our Lord one thousand eight hundred and fifty four the following order was made

and extent of record in the said cause -

Henry Dishon and James J. Provo
 Copartners &c under the name and style
 of Dishon & Provo

John C. Schorn

Appeal

This day the defendant by
 C. G. Simons his attorney appeared in this Court and
 entered a remittitur of seven dollars and ~~sixty~~ ^{sixty} four
 cents of the Verdict in this cause rendered by the jury
 on ~~the~~ Thursday the fourth day of this term of Court
 whereupon this cause came on to be heard upon the
 motion of the plaintiffs to set aside the Verdict sen-
 tenced herein on Thursday the 21st day of December
 1884 and the fourth day of the term of Court, and after
 hearing the arguments of counsel and being fully
 advised in the premises, It is ordered, that the
 said motion be overruled with costs therefore
 it is considered that the said John C. Schorn defe-
 ndant recover of the said plaintiffs the sum of
 seventy one dollars and eighty six cents the balance
 of the verdict after deducting the remittitur of the
 said seven dollars and ~~sixty~~ ^{sixty} four cents as found
 by the jury in this cause and also his costs and charges
 in this suit in his behalf expended and that he
 have execution therefor, Thereupon the said plaintiffs
 prayed an appeal to the Supreme Court which is
 allowed them by entering into bond in the sum of
 two hundred dollars with George Williams
 security in thirty days -

Note - Bill of exceptions may be signed and sealed
 at the next term or in vacation non pro
tempore

State of Illinois
 County of Monroe } I Thomas Heleman Clerk
 of the Circuit Court within and for said County
 hereby certify that the foregoing contains, and is a
 true full and perfect transcript of the records
 and proceedings of my office in the in the
 said entitled cause.

In Witness whereof I do hereunto subscribe
 my name and affix the seal of said
 Court at office in Jonesboro this 9th
 day of November A.D. 1855.

Thomas Heleman Clk

Deshues & Perros
 as
 John C. Show }

The parties in the above styled cause
 hereby agree that the above is a full and true record
 of said cause, and that the original Bill of
 Exceptions shall be taken as a true Record; the
 same as if it were incorporated in the above Record
 without objection by either party.

D. G. Smith
 Atty for Plff.

H. H. Simons
 Atty. for Defendant

Henry Dishon & James J. Trace
Merchants trading under the firm
of Dishon & Trace

vs
John C. Schorr,

Error to
Remain

In the Supreme Court,
at the December Term thereof A.D. 1835.

And the said Henry Dishon & James J. Trace by J. Dougherty their attorney came into Court and say, that on the record and proceedings aforesaid and also in the rendition of the judgment aforesaid there is manifest error in this Court, "u

1st That in the record aforesaid it appears that the judgment in favor aforesaid given was given for the said John C. Schorr, and against the said Henry Dishon & James J. Trace whereas by the law of the land ought to have been given for the said Henry Dishon & James J. Trace parties as aforesaid against the said John C. Schorr and therefore in that there is manifest error.

2^d The Court erred in refusing to grant a new trial to the said Henry Dishon & James J. Trace plaintiffs on error.

3^d The Court erred in refusing proper instructions to the jury asked by the plaintiffs in error.

4th The Court erred in granting improper instructions to the jury asked for by the defendant.

5th The Court erred in permitting the defendant to introduce in evidence and read to the jury a Mortgage executed by ^{Henry Dishon} himself to ~~plaintiff~~ also entries on the records of Sumner County.

- 6 The Court erred in permitting improper evidence to go to the jury introduced by the defendant.
- 7 The Court erred in excluding pertinent items of pliffs account from the jury. John Day, party, also for pliffs interest.

Spinder in error

L. G. Simons

Atty for Deft in error

~~50~~ # 4

Thomas Siskin & James
J. Dravo

vs

John C. Schorr

Filed 16. Nov. 1855

At Johnston Ct

Prepaid by Col. Dougherty,

\$5.00

Prepaid

Henry Disher & James Trow
Merchants negotiating in trade
under the firm of Disher & Trow
as
John C Schorr

Appraiser
Newman
County Court
Clerk
Recorder

April Jun 1854

Be it remembered that on this the day
of December A.D. 1853. before the Hon
Mr R Parish Judge of our New Mexico Circuit Court
and a jury impaneled to try this case
at the Recorder Special Term of said Court,
and on the trial of the above styled Cause
The following evidence was adduced by and on
behalf of the said plaintiffs in said Cause
viz

That I being a witness introduced and sworn on
the part and in behalf of the plaintiffs depose
as follows I know the plaintiffs and defendant,
have known them for several years past. The plaintiffs
Henry Disher & James Trow are merchants
and trade under the firm of Disher & Trow
in produce and Merchandise, I have traded
and dealt with them frequently, settled by their
books and found them correct; I sold a
Cow sometime in the winter of 1849 to Schorr
and was to receive my pay of Disher and
Trow, and they paid me five dollars for
Schorr, for the Cow, Schorr told me to get my
pay of them and I did so, they gave me credit on
my account which I owed the plaintiffs for that
sum as well as I remember

William Lewis a witness ^{deponent} introduced and on the
part and behalf of the plaintiffs depose
and said as follows I know of the

Deponent: John C Schorr, getting of the
 plaintiffs sanction in the year winter of 1850
 a full of produce chickens hams &c
 I hauled of them ten Coops of chickens
 containing about thirty six dozen of
 chickens, five Coops of these chickens when
 I went to haul for Dechant & Trouw men at
 their store the balance was at Schorr's
 own house, I hauled them to the Mississippi
 River and Dechant & Trouw paid me three
 dollars for hauling the chickens then when others
 hauled at the same time but I do not know
 I think they were some runs and hams also hauled at the same time
 Dechant what amount the chickens were
 worth about one dollar & fifty cents per
 dozen delivd at the river

William Trepp a witness on the part and in behalf
 of the plaintiffs introduced and sworn depon
 & as follows I was hauling with a wagon
 from Linneshore to the Mississippi river in
 March or April 1850, and Dechant & Trouw
 sent by me to the river, for Schorr, at ^{Treston} ~~Linneshore~~
 a load of Munson hams about 80 pair then
 worth about fifty cents a pair worth forty
 dollars and Sanitin in the early part of
 1850, a load of eggs & butter to ^{Linneshore} ~~Linneshore~~ for
 Schorr five barrels of eggs I do not know how much
 butter there was ^{worth} ~~worth~~ ^{I think} ~~it was worth something~~
~~the same~~ I have dealt with Dechant and
 Trouw as merchants and settled by their lawers
 and always found them correct Dechant & Trouw
 paid me for hauling the produce ^{to Linneshore} for Schorr \$3.50

23

David Cook a witness introduced by the
 plaintiffs and after being duly sworn deposed
 as follows to wit I am acquainted with
 Leshan & Trower and have known them for
 several years from 1849 up to this time
 Schorr got a cow of my father which
 Schorr said Leshan & Trower would pay
 him for and Leshan & Trower did pay
 my father, eight dollars for the cow

^{by defendant:}
 Crap & ammit he stated that
 I know my father sold the cow to
 Schorr for eight dollars. Schorr got
 our milk was to pay eight dollars for
 us, in the store of Leshan & Trower
 and my father told me that Leshan
 & Trower paid him for her

Franklin M. Bardsaw knows Leshan & Trower
 they are merchants dealing in merchandise
 & produce of the County. Know them in 1849,
 1850 & 1851. They had no clerk during this
 time but themselves. The Books of
 the firm lying show the witness he said. I
 know these Books it is in the handwriting
 of Leshan one of the firm, (and his attention
 being directed to the account of John C. Schorr
 defendant. He stated) this account is in the
 handwriting of Leshan alone. He usually kept
 his own books. I have dealt in their store
 & I have settled in this book & found the
 same correct. (The account is in the words
 & figures following)

28023

John C Schorr

Yo Graham & Francis Sr

Dec 9	1849	Yo 1 Pr shoes per son	1.25-
"	12	" " Paid John Sanbury	2 00
"	"	" " Isaac Hartman	108 67
"	"	" " boots for cows	8.00
"	"	" " shys for cows	5 00
"	14	" " 1 pair shoes	1 25-
"	15	" " 1/2 yds Jeans 50c	2 25-
"	"	" " Cap stuff for wife	25-
"	"	" " 1 gal molasses	40
"	"	" " 27 lbs flour	62
"	20	" " paid Bennett for chickens	75-
"	"	" " 1 day chickens	1.00
January	12 th	1850 " 1 gal molasses	40
July	28	" " Bill of chickens & day hens as pr ^{bill} 123 59	
Mar	25	" " 2 Callars	1.75-
"	"	" " 1 pr suspenders	40
July	22	1857 Bill of chickens & eggs &c	89 38
May	21	" " 1 pr shoes per son	1.25-
			<u>\$ 348.21</u>

Ser

Dec 9	1849	By Callaner down settlement	\$ 80.00
"	"	" " 15 lbs green hide butter &c	80
July	30	1850 " 32 do do	1 28
July	20	" " 108 do do	4 32
May	13	" " 43 do do	1 73
Same	"	" " Cash paid for freight toll	25 56
"	"	" " " " " " " " " "	56 40
"	"	" " " " " " " " " "	50
"	"	" " " " " " " " " "	30
"	"	" " " " " " " " " "	100
"	"	" " " " " " " " " "	19 32
"	"	" " " " " " " " " "	12 00
"	"	" " " " " " " " " "	57 00
"	"	" " " " " " " " " "	11 00
"	"	" " " " " " " " " "	15 00

25
25
Calvin B. Bisham a writing called and
sworn on the part and in behalf of
the Plaintiff deposed as follows
I am acquainted with the Plaintiff he
was there from 1849 to 1852, was sometimes
in their store know their books to be
kept - correctly know that book it is
the Shop Book of the Plaintiff
and the account of those is in the
handwriting of Gley Bisham they having no
Clerk during the years 1849, 1850, 1851 & 1852

Very Crap examined by the defendants
He stated I was in the store part of that
time myself assisting in making sales
of goods we would some times write the
sales, on a slate or piece of brown or
yellow paper for the moment and then
to appear the money and if not soon by
Bisham, any of the partners, then at night
after the days prep of business Gley Bisham
would enter the sales in their Book and
the slate writing would then be rubbed out
or the paper thrown away or destroyed.
I dont think any of the pieces of
paper were ever retained they were all
destroyed or thrown away

George Williams, a witness introduced
 and sworn on the part and in behalf
 of the plaintiffs, deposed as follows
 This is the shop book of the ~~the~~ Plaintiff
 for the years stated in the account,
 against John L. Deharr (the same account
 signed to by (Franklin M. Sanderson)
 it is in the hand writing of Henry
 Leishan one of the ~~plaintiffs~~
 plaintiffs all the original entries are
 made in this book. I have dealt
 with the firm charged in this
 Book settled ~~by~~ account as per
 this book & find correct;

upon my cross or direct he stated
 I believe some of the entries were for
 the mainment to refresh the memory
 of the salesman mentioned as written
 on a slate, and as soon as the partic-
ular sale was over or prep of
 business, over then it was written
 in this book. There might have been
 some scraps of paper also written
 on when the slate was not carried,
 and in the same way copied in this
 Book

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John DeWitt a witness sworn on the part,
of the Plaintiff deposed that a barrel
of eggs contained about 90 dozen of
eggs - that eggs were worth in March 1850
fifteen cents per dozen and were an hour
worth five cents per pair

Being cross examined by the defendant
deposes that eggs were worth less than
fifteen cents the year before and perhaps
after that time later in the Spring but,
about the 25th day of March 1850, eggs & chic
kens were both high eggs was less than fifteen
cents per dozen and chickens one dollar
& 25 cents to \$1.50. per dozen that witness
was himself about that time trading
in chickens ^{and eggs} and ought to know their
price

J J Kemme a witness introduced
and sworn on behalf of the ~~defendants~~
deposed as follows viz
I had dealings with Doshan and
Travo from & in the years of 1847. to
A D 1849 inclusive. The firm is
composed of the plaintiffs Henry
Doshan & James J Travo they are
merchants trading in merchandise
generally & in Country produce. I have
had an account in this book -
in which is the map book of the
plaintiffs settled by us & paid
it correct; they keep correct books

~~Isaac Hartman a witness introduced and
sworn on the part and on behalf of the
plaintiffs deposed as follows viz
I took a note from Doshan & Travo
executed originally by the defendants,
to Henry Doshan, and assigned by
Doshan & Travo, plaintiffs to me
for about \$98. and some cents. &
held this note until payment about
the 9th day of December 1849. when
I went to Doshan the defendant for
the money due on the note. He told me
that Doshan & Travo would bring
and that I should go to them and
they would pay the note to me.~~

Isaac Hamblin a witness sworn and produced
on behalf of the plaintiffs deposed as follows

I proposed to sell Dison & Prows some
wheat and they offered to buy my wheat if
I would take for it a note on Schorr

I agreed them to let them have the wheat
and take in payment for the same said
note on Schorr, ~~provided~~ Schorr would

pay it. They agreed to take my wheat and
give let me have the note and if Schorr

would not pay it they would take it
back and pay me the money for the

wheat. I then let them have my wheat &
they assigned to me the note - The note

was executed by Schorr to Dison for
about the sum of \$98 and some cents. After-

wards about the 5th day of December 1849 I took
the note to Schorr and asked him to pay it

the money due on the note. He (Schorr) said he would
not pay it that Dison & Prows could have and
that I might take it back to them, ^{that they might it themselves} - that Dison

had his property and he ~~could~~ might pay the
note ~~for me~~. I then took the note back to

Dison & Prows, ^{told them what Schorr had said to me &} they took back the note and

paid me for ~~my wheat~~ the wheat I let
them have, I think the amount ~~of~~ of the

principal & interest of the note was about
\$108, which they paid me

~~I immediately went to Leishan & Trouso
and told them what Scherr had
told me and they paid me the money
I think the amount of principal and
interest was about \$108.~~

upon a copy of an invitation by the defendant
he deposed I got this note of Leishan
& Trouso in a wheat trade, they told
me if I would take this note on Scherr,
they would buy my wheat, I agreed to do
so and to take the note as I have before
stated I got the note sometime in the
month of May 1848. Scherr said
to me when I asked him for the
money that Leishan & Trouso and their
money & they might pay the note ~~and they~~
~~did~~ as I have before stated; after I
told them what he had said to me, &
upon being shown a note in the words &
figures following viz:

- " due Leishan ninety eight dollars & 55 cents
- " for value received this the 11 of March 1848
- " \$98 55

John E. Dorr
Seal

Just due 11 Decr 1849 \$1032
98 55
amt paid + int 108 67

endorsed in the back thereof as follows
for value received we assign the within note to
Isaac Thornton Dec 17th 1848
signed Leishan & Trouso
we stated that this is the same note

The Plaintiffs then appeared in evidence
 the ~~book~~^{52nd} book of the plaintiffs when
 the Court permitted part of said account
 against the defendant, ^{but ruled} that all the items
 for money paid to or for the defendant
 should not be read to the jury to which
 opinion of excluding that part of
 the account to wit the following charges
 to wit; paid Isaac Thornton \$108.67, paid
 Leach for Cows \$8 00 paid Sky for Cows
 \$5.00, paid Prumitt for chickens \$75. and
 that the rest of said account might be read to the
 jury. To the opinion of the Court that
 said items ^{of money paid charged on said book} should not be read ~~unless the~~
~~proof~~ to the jury, ^{by the} plaintiffs by their
 attorneys ~~except~~ them at the time of ~~excepted~~
 and with the exception of said items
 herein enumerated the balance of the
 account on the debtor side of said account
 was read to the jury from the ~~book~~^{book}
 of the Plaintiffs and this was all the
 evidence in chief offered by the plaintiffs.

Therefore the defendant introduced the following mortgage -
 This Indenture made this twenty fourth day of
 April in the year of our Lord eighteen hundred
 and forty eight between John C. Shaw of the County
 of Warren and State of Illinois of the one part and
 Henry Kistner of the County and State aforesaid
 of the other part, Witnesseth, that the said John
 C. Shaw for and in consideration of the sum of
 ninety eight dollars and thirty five cents to
 him in hand paid, the receipt whereof is hereby
 acknowledged, hath granted, bargained and sold
 and by these presents doth grant, bargain sell
 and confirm unto the said Henry Kistner and
 to his heirs and assigns forever, all that tracts
 or parcels of land situate in the County of Warren
 State aforesaid known and described as follows
 to wit: Being the West half of the South West quar-
 ter of Section number twenty four in Township
 thirteenth South of Range three West of the third
 principal meridian, containing eighty acres - also
 the North West quarter of the North East quarter
 of Section nine, Township twelfth South of Range
 one East of the third principal meridian contain-
 ing forty acres - also the following personal property
 to wit, One bay horse, one gray horse, one cow
 and one wagon - To have and to hold the same
 above described premises together with all and
 singular the privileges and appurtenances thereto
 belonging or in any wise appertaining, together with
 the aforesaid personal property to the said Henry

Kilmer his heirs executors administrators and assigns forever. Provided always that these presents are upon this express condition that if the said John C. Sherman his heirs, executors administrators shall pay, or cause to be paid to the said Henry Kilmer his heirs executors administrators a sum of money eight dollars and thirty five cents with legal interest thereon, also the expenses attending this transfer within a period of twenty four months from the date hereof in accordance with a due bill bearing date 11 March 1848 executed by the said John C. Sherman to the said Henry Kilmer then this mortgage shall take effect, and they herein to the contrary notwithstanding. In witness whereof the said John C. Sherman has hereunto set his hand and seal this day and year first above written

Test R. V. Marshall

Geo. F. Platter

Jagroms Fry

State of Illinois }
Union County } Personally appeared before me the undersigned, an acting Justice of the Peace in and for the County of Union, the within named John C. Sherman, who is known to me to be the identical person who signed and executed the within Mortgage deed and after being made duly acquainted with the contents of the same acknowledged that he freely executed and signed

the same for the purposes therein mentioned
and that he hereunto freely and voluntarily
relinquished all his right and title to the same

Given under my hand and seal this 24th
day of April 1848 -

(Signed) Geo. S. Platt, J. P. Scott

State of Illinois)

Warrin County } S. H. Reynolds, Clerk

I do hereby certify that the within Mortgage is
 duly recorded, in deed book Lib. No. and page
 10. page 24 - Given under my hand at office
 in Joplin Mo. this 24th April 1848

Leviah Frank Recorder

The Record book in which said Mortgage is
 recorded was introduced ^{by the defendant} in evidence, and
 on the margin of said record was the following
 Entry - "I hereby declare this Mortgage by John C.
 Shaw to me satisfied in full this 21st day of
 February A.D. 1850. Signed H. Dishon"

Upon the introduction of the Record book aforesaid
 Thomas Holliman was called by the Defendant and
 sworn, and testified that he was the proper and
 legally qualified Recording officer of deeds for the County
 of Union at the time such record was made, and
 that the ~~same~~ ^{same} was a true Record, and also that
 the signature to the Entry of Satisfaction on the margin
 of said record was in the hand writing of Henry
 Dishon -

In the introduction of the aforesaid Mortgage
and the Record book containing the same, the
Plaintiffs then and at that time ^{Expected} ~~to~~, which
~~Exception~~ ^{Exception} so made by the Plaintiff was overruled by
the Court, and the same was read in evidence to the
jury.

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And Thompson the defendant introduced
 evidence on his behalf May Johnson, also
 my son-in-law deposed as follows. My May Gattor
 let James J. Trono have the gun credited
 in plaintiffs account, to take it on the
 train to California, and when Trono started
 off my father told him he must bring
 the gun back to him, or pay him forty
 dollars or a lump of gold as big as his
 fist, and Trono laughed and said
 well I will and went on with the gun
 he never brought the gun back to my
 Gattor.

My Crap examined she stated that
 Trono borrowed the gun of her Gattor
 and was to bring it back to her Gattor.
 She did not know what the gun was
 worth when the parties were talking
 about the forty dollars or a lump of
 gold they appeared to be in fun they
 both laughed?

Calista Miller also my son-in-law deposed
 on behalf of the defendant as follows
 I after heard Trono say that if he
 did not take back Johnsons gun he
 would have to pay forty dollars for
 it

My Crap examined by defendant
 he stated that the gun might be
 worth twenty dollars or not more
 than fifty dollars he would not
 be willing to give fifty dollars for it

Samuel Heargraves being introduced
and sworn on the part and in behalf
of the defendants - deposed as follows
I heard Grove state the morning
after the gun was stolen at the
Boalys from him that he would
have to pay forty dollars for the
gun to show the defendants.

Being cross examined he
stated that the gun was in his
opinion worth about fifty dollars
but for what he knew it might
have been worth more money, that
that kind he was not acquainted
with the cost of such a gun it
was a short double barreled old
type gun and had a rifle the
other a shot gun barrel

John E. Deal introduced & sworn on the
behalf of defendant deposed as follows
I struck Eggs in March 1850 was worth from
ten to fifteen cents per dozen and our prices
from 75 cents to one dollar per dozen pair

Walter Willard being introduced and sworn on the
part and in behalf of the defendants deposed
that, as follows to wit, I do not know the
price of Eggs in March 1850 or at any other time
I do not ~~an egg dealer~~ deal in eggs.

What was all the evidence offered by the defendant in this cause and all the evidence on either party offered is included in the bill of exceptions in the foregoing pages and the evidence on both sides closed

The plaintiffs then asked the Court to instruct the jury as follows

"That the Books of the plaintiffs having been introduced as evidence with the exception of many charges yes in the defendant relies upon the Books as solely proving his items of Credit or any one of them the whole account should be allowed as well that which is in favor of the plaintiffs as that which is against them" which instruction the Court then read then refused to give to the jury to which refusal to give said instructions to the jury the said plaintiffs then & there at the time accepted.

The Court then instructed the jury as follows -
The Court instructs the jury that the question as to whether
the evidence in this case proves the items of account
charged by the parties against each other is a question
of fact for them. Given

In relation to the note in question the Court instructs
the jury that if they shall find from the evidence
that the note was assigned by Dishon to Hartman in
payment for wheat, and that after such assignment
of the note, the plaintiffs, Dishon & Provo at the instance
and request of Show paid to Hartman the face
of the note together with interest due on the same,
or if Dishon & Provo paid off said note to Hartman
without any previous request from Show so to do,
yet if Show after such payment assented to the
same, then Show would be legally entitled to the
possession of the note, and the defendant Show would
be liable to pay to the plaintiffs the same sum
paid to Hartman and properly chargeable against
the defendant, notwithstanding his possession of
the note, and the jury should allow the same.
But if on the contrary the jury shall find from the evidence
that the note was assigned to Hartman in payment of wheat,
and that Dishon & Provo paid off and lifted the note
without any request from Show to do so previous to
the payment of the same, or without any subsequent
assent or ratification of such payment, then Show
would not be liable to pay Dishon & Provo the amount

they may have paid Heartless, as for money paid
for Show, and the jury should not allow the same.

Given

The defendant asked the court to give the following
instruction which was given by the court — — —

The defendant asks the court to instruct the jury
that account Books are but presumptive evidence
of the things charged therein — liable to be rebutted by
proof —

Given

So which instructions above set forth the said
Plaintiff then and there at the time accepted to.

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The jury having returned and returned
and rendered a verdict in favor of
the defendants for the sum of \$79.50
The Plaintiffs then and there at the time
entered their motion in said Court for a
new trial, ~~for the following causes~~

- ~~1 Because the verdict is against~~
- ~~2 ^{the evidence} because the verdict is against the~~
- ~~3 ^{weight of the evidence}~~
- 4 The defendant thereupon ~~returned~~ remitted the sum
of \$ ~~79.50~~ found by the jury & thereupon the

Which motion of the said plaintiffs
for a new trial the Court then and
there overruled and gave judgment,
for the sum of ~~\$79.50~~ and costs,
against the plaintiffs. To the
~~admission of said opinion of the Court,~~
in excluding said claims of plaintiffs account,
from being read to the jury with the balance
of the claims of said account. To the refusal
of plaintiffs instruction to the jury by the
Court, and the overruling of plaintiffs
motion for a new trial, and refusal to
grant a new trial to the plaintiff and
the rendition of the judgment in favor
of the defendant, for the said sum of ~~\$79.50~~
and costs the plaintiffs by their attorneys
then then & and at the time aforesaid all now
except and pray that the two bill of exceptions
may be signed sealed and made a part
of the record in this cause all of which is
accordingly done &c

William E. Partridge

1840-1841

Bisland Town
N
J. C. Scharr,

Bell of Exemption

Henry Dishan &
James J. Travis, merchants
trading under the firm of
Dishan & Travis
vs
John C. Schorr

In the Supreme
Court;

1st Grand Jurors
at New York 1853-

Error to New York

This was an action commenced
by the plaintiffs against the defendant
before Thomas Hilman a justice of
the peace of Seneca County Seneca upon
an account of \$348.11 against the defen-
dant credited \$286.30 leaving a balance
of \$61.81.

on 24th day of July 1852 trial before justice
and judgment for defendant for \$71.87

Plaintiffs appealed to Seneca County Cir-
cuits Court-

At May Term of the Seneca County
Circuits Court 1854 trial in said Court;
and a verdict of \$57.81 for the plaintiffs
and an motion of defendant the verdict
set aside and a new trial granted

At December Term of the Seneca
Circuits Court 1854 this cause was again
tried in said Court before the Hon^{ble} Judge
R. Travis judge & a jury and a verdict
in favor of defendant for \$79.50

Motion by plaintiffs for a new
trial thereupon Sept-entis a verdict
of \$7.64 of said verdict and the Court
thereupon, ^{and ruled plaintiffs motion for a new trial} rendered a judgment in favor of
defendant for \$71.86 and costs of suit and

The plaintiff prayed an appeal to the
Supreme Court, granted but no bond being
filed in time; This Cause is brought to this
Court by writ of error The Bill of
exceptions not being on file at the time the
record was made out - a written agreement
is appended making the original bill of
exceptions a part of the record and plea
specify the following errors in this Cause;

- 1 That the judgment was rendered in favor
of the defendant whereas by the law of the
land it should have been rendered in favor
of the plaintiff and against the defendant;
- 2 The Court erred in refusing to grant
a new trial
- 3 The Court erred in ^{refusing} granting ~~improper~~ proper
instructions asked by the plaintiff
- 4 The Court erred in granting improper
instructions to the jury asked for by the defendant
- 5 The Court erred in permitting the
defendant to introduce in evidence & read
to the jury a mortgage executed by Sept
to Guy L. Estlin and intrins showing a record
of Sumner County.
- 6 The Court erred in permitting
improper evidence to go to the jury
by the defendant;
- 7 The Court erred in excluding claims
of plaintiffs account from the jury -
The Evidence in the Cause is
preserved in a bill of exceptions as is
as follows in substance.

Plaintiffs evidence
Levi May. deposed he knew the plaintiffs
and deponent. plaintiffs were merchants
trading under the firm of Leishan & Troun
he traded with them and settled by their
books found them correct. Witness said a
Carroll to Beharr Sept. in the winter of
1849 was to receive his pay of Plaintiffs
deponent told him to get his pay of
deponents they paid him \$5. for depts.
for this claim

William Lewis. Knows plaintiffs and
deponent in the year 1850 he knows
of deponent getting of geese, a bill
of ~~chickens~~ produce, chickens and
turkeys &c witness hauled of them
to Camps of chickens, pair of turkeys
Camps were at plaintiffs store the
balances at Sept. witness hauled them
to the Mississippi river for plaintiffs
who paid him \$3. for hauling. There
were others who hauled at the same time
for Thomas there were same recession hams
also hauled at the same time, The chickens
were worth about one dollar & fifty cents
per dozen at the river

William Tisip I was ~~working~~ hauling with
a waggon from Tansboro to the Missis-
sippi river in March or April 1850 and
Leishan & Troun sent by me to the river for
Beharr at Treator and load of Mexican
hams about 80 pair, their worth about fifty

cents a pair worth forty dollars and
same time in the early part of 1851 a
load of eggs and butter to Newburg - for
Behorr, five barrels of eggs, does not know
how much butter or what it was worth, though
it was worth something; have dealt with Bishop
& Trovo as Merchants settled by their books -
always found them correct; plaintiffs paid
me for hauling this produce \$350.

(Samuel Cook a witness for plaintiffs deposed
Behorr got a can of my Gutter which
he said Bishop & Trovo were to pay for
and they paid Gutter \$8. for the can,
Cook examined says I know Behorr,
got the can of my Gutter he was to pay \$8.
for her in the store of Bishop & Trovo & my
Gutter told me that Bishop & Trovo paid
them for her,

Franklin M. Davidson a witness for plaintiffs says
I know Bishop & Trovo they are merchants,
dealing in produce & merchandise. knew them
in 1849, 1850 & 1851. They had no debt during
this time (The Book of the firm being shown
witness.) I know this book is in the
hand writing of Bishop and of the firm
(and his attention being directed to the account
of John C. Behorr, defendant) he stated this
account is in the hand writing of Bishop
also he usually kept the books I have
dealt in their store and settled my account
in this bank and found them correct.
Witness read the account,

Calvin B. Bishop plaintiffs witness, deposed

I am acquainted with the plaintiffs know them from 1849 to 1852 was sometime in their store know their books it is to be kept correctly know this book it is the shop book of the plaintiffs and the account of Dehorr is in the hand writing of Henry Bishop they having no clerk during the years 1849 1850 1851 & 1852, being crap examined, I was in the store part of the time myself assisting in making sales of goods, we would sometimes write the sale on a slate or yellow paper for the moment, to assist the memory, and if not sooner by Bishop one of the parties, then at night after the days work of business Bishop would enter the days business of sales in the book and the slate writing would be rubbed out and the paper thrown away or destroyed.

George Williams plaintiffs witness, deposed

This is the shop book of the plaintiffs for the years in the account stated of John C. Dehorr and referred to by witness Franklin McDavidson it is in the hand writing of Henry Bishop one of the plaintiffs all the original entries are made in this book, I have dealt with them George Dehorr this book settled my account upon this book and found it correct upon crap examination

I believe that some of the entries were for the moment, to refresh the memory of the salesman written on a slate and as soon as the particular sale was over or work of business over then it was then it was written in this book, there might have been some scraps of paper also written on when the slate was not convenient and in the same way copied in the book

John Dewitt *plffs* *intrep*, deposed.

A barrel of eggs contained about 90 dozen of eggs that eggs were worth in March 1850 fifteen cents per dozen, and Newsum here twenty five cents per ~~pair~~. Upon Crap examination he stated that eggs were worth less than fifteen cents the year before, and perhaps after that time in the spring was about the 24th day of March 1851 eggs and chickens were both high. eggs not less than fifteen cents per dozen and chickens are dollars ~~off~~ ~~each~~ twenty five cents to \$1.50 per dozen. That witness was himself about that time trading in chickens & eggs and ought to know their price.

J J Newsum *plamiffs* *intrep* deposed. I had dealings with D. Dishon & Trovo, from and on the years 1849 to A. D. 1852 inclusive the firm is composed of Plaintiffs Henry Dishon & James J Trovo they are merchants trading in merchandize generally and in country produce. I have had an account in this book which is the shop book of the plaintiffs settled by it and found it correct they keep crossed books.

Isaac Hartline *plamiffs* *intrep* deposed.

I proposed to sell Dishon & Trovo wheat they offered to buy if I would take Schorr's note I agreed to do so if Schorr did not pay the note they were to pay me the money & take the note. I let them have the ~~note~~, they then offered the note to me for about the sum of \$98 & some cents. I took the note to Schorr on or about the 9th day of December 1849 and asked them to pay the money due on the note, he said he would not that Dishon & Trovo would have and that they

might pay it themselves, and that I might take
it back to them for that purpose. That Dishan
had his property and might pay the note I then
took the note back to Dishan I proved told them
what Schorr had said to me, and they took
back the note and paid me the moneys for the
wheat and I let them have the note I think the
amount of the principal and interest of the note
was about \$108, which they paid, ^{to me} upon
Crap of amination stated in substance the same
being shown the note said it was the same note
(Capaid in the bill of exceptions)

The Plaintiffs then offered to read in evidence
their store ^{or shop} book when the Court permitted the same to
be read to the jury, except the following charges being
paid Isaac Heartline \$108.67 paid back for cows
\$8. paid Phy for cows \$5. paid Brummitt for
chickens \$75 To the opinion of the Court including
these items in their account from the jury the
plaintiffs excepted and then read to the jury the
balance of on the debtor side of said account,
from the book of the plaintiffs but was the
credit side this was all the evidence of the plaintiff
given in chief,

Defendants Evidence

Defendant offered in evidence a Mortgage given by
Deft to Henry Dishan (and Capaid in bill of
exceptions) to the reading of which in evidence
plaintiffs objected objection overruled & Deft
permitted to read the same in evidence to the jury
plaintiffs excepted,

Deft then offered to read in evidence a certain
entry made by Henry Dishan in record of lands

in Mendocino County - releasing the Mortgage to
the reading of which to the jury Jeffs objected
objection overruled by Court - and permitted
the same to be read to jury to which Jeffs excepted

Mary Schorr Septs intrusts deposed

My Father let James J. Trouw have the gun
credited an plaintiffs account - to take it with
him to California and when Trouw started
off my Father told him he must bring the
gun back to him or pay him forty dollars
or a lump of gold as big as his fist and
Trouw laughed and said well and went on
with the gun, he never brought back the gun
to my Father, (being Crap examined) she stated
that Trouw borrowed the gun of her Father and
was to bring it back to him, she did not know
what the gun was worth when the parties were
talking about the forty dollars or a lump of
gold thus appeared to be in favor they both lay down

Calish Miller Septs intrusts deposed

I after heard Trouw say that if he did
not take back the gun to Schorr he would have
to pay forty dollars for it being Crap examined
he says that the gun might be worth ^{four} ~~five~~
dollars or not more than fifteen dollars he
would not be willing to give fifteen dollars for the
gun

Samuel Hargrave Septs intrusts, deposed

I heard Trouw state the morning after the gun
was stolen at the Balise from him that he would
have to pay forty dollars to Schorr for it, being

examined says the gun was worth about
fifteen dollars it might have been worth
more than that sum it was ~~worth~~ a double
barrelled old like gun and barrel a right
the other a shot gun barrel barrel

John F Nail Depts witness says I think
eggs in March 1860 were worth from ten to
fifteen cents per dozen and duck-stands from 75
cents to an dollar per pair

Walter Willard Depts witness
depond I do not know the price of eggs in
March 1860 or at any other time I do not deal
in eggs This is all the answer in the case

The court refused to give instruction 1 as asked
by plffs (excepted in bill of exceptions) and refusal
excepted to by plaintiffs and assigned for error

The Court gave instructions 1 2 & 3 of defendants
to the jury to the giving of which instructions each
of them the plaintiffs at the time excepted and assigned
the same for error

No 17

Dishon'd Poova

by

J. C. Shore

Julia Nov. 1855

A. Johnston Clerk

Jiskam & Friend
vs
John C Schorr

In the Supreme Court
Nov Term 1857.

1 The court, should have given instructions
for j^{rs} as in 1 Greenleaf Ev § 201. & 210

2 A new trial should be granted when
the ~~verdict~~ verdict is clearly against the
evidence In this case the j^{rs} found
their account, and the defendant had no
proof to sustain his account, except as to
one of the credits of j^{rs} account, which
was intended to show that a greater sum
than ~~fifty~~ \$15, should have been allowed
And in the absence of evidence to prove
any part of defendant's account except
this a new trial should have been granted
See Loring vs Orr 1 Gilm 6 70, Loring vs
Roberts 5th Gilm 72 Gordon vs Crofts
11th Ills 142

Bushman & Trace }
no } In the Supreme
John C Schorr } Court,

1 The Court should have followed the instructions
for plff.

but given leaf evidence

§ 201 & 212

2

A new trial should be granted
when the verdict is clearly against
the evidence. In this case the plff
proved their account in full, and
the defendants, ~~proved~~ had no
proof except as to one of the credits
of plffs acct, which was intended to
show that a greater sum than \$15.
should have been allowed, and in the
absence of evidence to prove any part,
of ~~plffs~~ ^{except this} account, a new trial should
have been granted. See Lawrence's

Case 1 Gilman 10 70 Dawson vs Perkins -
5th Gilman 72 Gordon vs Brooks 11 110 1/2

142

STATE OF ILLINOIS
SUPREME COURT,

} SS.

THE PEOPLE OF THE STATE OF ILLINOIS;

WRIT OF ERROR.

To the Clerk of the Circuit Court for the county of *Union*

GREETING,

BECAUSE in the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of *Union* county, before the Judge thereof, between *Henry Dishon and James J. Provo - Copartners &c.* *under name & style of Dishon & Provo* plaintiffs, and *John C. Schorr*

defendant it is said manifest error hath intervened, to the injury of the aforesaid

Dishon and Provo

as we are informed by *this*

complaint, and we being willing that error, should be corrected if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly without delay, send to our Justices of the Supreme Court, the record and proceedings of the plaint, aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at

Mount Vernon, in the county of Jefferson, on the *Second Monday of November* next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law:

Witness, the Hon. WALTER B. SCATES Chief Justice of our said court, and the seal thereof, at Mount Vernon this

Sixth day of *November*,

in the year of Our Lord One Thousand Eight Hundred and Fifty- *Six*.

Noah Johnston
Clerk Supreme Court.

Dishon'd Proof

47

John C. Schorr

Writ of error.

Issued & filed

March 6. 1856.

A. Johnston Clk



STATE OF ILLINOIS, }
SUPREME COURT. } ss.

THE PEOPLE OF THE STATE OF ILLINOIS,

To the Sheriff of *Union* County,

Because in the record and proceedings, and also in the rendition of the judgment, of a plea which was in the Circuit Court of *Union* County, before the judge thereof, between *Henry Dishon and James J. Provo* — ~~Capans~~ *Merchants Trading under the firm of Dishon & Provo* — Plaintiffs, and *John C. Schorr* —

defendant, it is said that manifest error hath intervened to the injury of said *Dishon and Provo* — as we are informed by *their* complaint, the record and proceedings of which said judgment, we have caused to be brought into our Supreme Court of the State of Illinois, at Mt. Vernon, 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 C. Schorr*

that *he* be and appear before the Justices of our said Supreme Court, on the first day of the next term of said Court, to be holden at Mount Vernon, in said State, on the Second Monday in November next, to hear the records and proceedings aforesaid, and the errors assigned, if *he* shall think fit; and further to do and receive what the said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said *John C. Schorr* notice, together with this writ.

Walter B. Scates

Witness, the Hon. ~~Samuel H. Treat~~, Chief Justice of our said Court, and the seal thereof, at Mount Vernon, this *6th* day of *March* in the year of our Lord, one thousand eight hundred and fifty-*six*

Noah Johnston
Clerk of Supreme Court.

Henry Doshan & James Trow
Merchants Trading under the firm
of Doshan & Trow
vs
John C Schorr

Writ of
Error to
Reman

The Clerk will issue a writ
of Error directed to Thomas Helman Clerk
of the Circuit Court of Newnan County
bearing date ^{upon issue} the ~~1st~~ day of this Term of this
Court and made returnable on the 3rd ~~Wed-~~
~~nesday~~ day of ~~that~~ Term & file the same with the
record in this Cause

The Clerk will also issue
a ~~sub~~ facias directed to the Sheriff of Newnan
County, bearing the like date with the writ
of Error & made returnable on the 3rd ~~Wed-~~
~~nesday~~ day of ~~that~~ Term of this Court, Commanding
the Deft. John C Schorr, to appear &c

I bear duly attested for
proffer an error,

Henry DeShan & James
 J. Travis, trading
 under the firm of
 DeShan & Travis

to

John C. Schott

Receipt

Filed 17. Apr. 1855

St. Johnston clk

IN THE SUPREME COURT:
DISHON & PROVO,
 vs.
JOHN C. SCHORR. } **FIRST GRAND DIVISION,**
NOVEMBER TERM, 1857.

1 This was an action commenced by the plaintiffs against the
 2 defendant, before Thomas Hileman, a Justice of the Peace of
 3 Union county, on an account for \$348 11, credited \$286 30, leaving a
 4 balance of \$61 81, to recover which balance this suit was brought.
 5 On the 24th day of July, 1852, a trial was had before said justice, and
 6 a judgment rendered in favor of the defendant for \$71 87. Plaintiffs
 7 appealed to the Union County Circuit Court. At the May term of
 8 said court, 1854, this cause came on to be tried, and plaintiffs obtained
 9 a verdict for \$51 81, against defendant; verdict set aside by the court
 10 and a new trial granted. At the December special term of said court,
 11 this cause came on to be tried, when a verdict was rendered in favor
 12 of the defendant for \$79 50. Plaintiffs entered a motion for a new
 13 trial, which was refused by the court, and a judgment rendered against
 14 the plaintiffs, and in favor of the defendant for \$71 86, and costs of
 15 suit, and this cause is brought to this court by writ of error. The
 16 bill of exceptions not being on file at the time the record was made out,
 17 a written agreement is appended, making the same a part of the record.

J. DOUGHERTY, for Pl'ff.

J. DOUGHERTY, for PLE.

4
District Court

J. C. Schorr

JOHN C. SCHORR

vs.

NOVEMBER TERM 1891

DISHMAN & HOWARD

FIRST GRAND DIVISION

IN THE SUPREME COURT

appeared to the Union County Circuit Court. At the May term of a judgment rendered in favor of the defendant for \$71 63. On the 24th day of July, 1892, a trial was had before said court in the absence of \$21 81, to recover which balance the suit was brought in Union County, on an account for \$348 14, credited \$380 00, leaving a defendant before Judge Hilsman, a Justice of the Peace of the County of This was an oral commenced by the plaintiff.

Plaintiff

John H. Howe, 1857
N. Johnston, Clerk

a written agreement is appended, making the same a part of the record. 11
bill of exceptions not being on file at the time the record was made out. 10
suit and the case is brought to this court by writ of error. The 12
the plaintiff, and in favor of the defendant for \$71 63, and costs of 14
trial, which was refused by the court, and a judgment rendered against 13
of the defendant for \$73 50. Plaintiff entered a motion for a new 13
this cause came on to be tried, when a verdict was rendered in favor 11
and a new trial granted. At the December special term of said court, 10
a verdict for \$21 81 against defendant; verdict set aside by the court 9
said court, 1891, this cause came on to be tried, and plaintiff's obtained 9
appealed to the Union County Circuit Court. At the May term of 7

The Plaintiff proved their whole account,
and the defendant made no proof
out of possession and in that only
attempted to show that the are credit-
gave him for a what you borrow
Should have been forty instead of \$15. yes.
The jury gave him a verdict without proof

Dishon & Troos
vs
John C Schorr

In The Supreme Court, Nov
Term 1856

Error to Union

p 2

This was an action commenced before a
justice of the peace on a store account,
for \$348.11 credited \$286.50 leaving a
balance of \$61.81 for which suit was brought,

p 6

~~This was an action commenced before a justice~~
~~of the peace in Union County on the 24th~~
day of July 1852, tried and verdict ~~jud~~
given, for Schorr, of \$71.86 and costs of
suit; ~~it~~ appealed to the Circuit Court of
Union County.

p 13, 14 & 15

At May Term of Union Circuit Court 1854,
a trial was had and verdict for plaintiffs
of \$71.81 ~~for plaintiff~~, and an motion of
defendant the verdict was set aside and
a new trial granted. ~~p 13 14 & 15~~

p 17 + 18

At the December Special Term 1854, this
cause was again tried in said Court and a
verdict for defendant for \$79.50 ~~p 17 18~~
plaintiffs cited a motion for a new trial & then
upon defendant remitted of the verdict \$7.64
and the Court overruled the motion for a new
trial & rendered judgment for debt for \$71.86

p 19

& costs, to which ~~plaintiff~~ excepts. ~~p 19~~

IN THE SUPREME COURT:
DISHON & PROVO, } **FIRST GRAND DIVISION,**
 vs. } **NOVEMBER TERM, 1857.**
JOHN C. SCHORR.

This was an action commenced by the plaintiffs against the
 defendant, before Thomas Hileman, a Justice of the Peace of
 Union county, on an account for \$348 11, credited \$286 30, leaving a
 balance of \$61 81, to recover which balance this suit was brought.
 On the 24th day of July, 1852, a trial was had before said justice, and
 a judgment rendered in favor of the defendant for \$71 87. Plaintiffs
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 of the defendant for \$79 50. Plaintiffs entered a motion for a new
 trial, which was refused by the court, and a judgment rendered against
 the plaintiffs, and in favor of the defendant for \$71 86, and costs of
 suit, and this cause is brought to this court by writ of error. The
 bill of exceptions not being on file at the time the record was made out,
 a written agreement is appended, making the same a part of the record.

J. DOUGHERTY, for Plff.

Handwritten calculations and notes:

$\begin{array}{r} 453 \\ 75 \\ \hline 378 \\ 184 \\ \hline \$5.62 \end{array}$	$\begin{array}{r} 108.60 \\ 61.81 \\ \hline 46.79 \end{array}$	$\begin{array}{r} 46.79 \\ 18 \\ 15 \\ \hline 90 \\ 18 \\ \hline 270 \end{array}$	$\begin{array}{r} 108.60 \\ 300 \\ 70 \\ \hline 210 \\ 50 \end{array}$	$\begin{array}{r} 18 \\ 42 \\ 42 \\ 42 \\ \hline 31 \end{array}$
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173 18 4 1/2

28603-53

No 4

Nov. 1857.

Dishon & Provo
Dishon & Provo

vs

John C. Schorn
Schorn

County Union

8603

Affirmed