

8604

No. \_\_\_\_\_

# Supreme Court of Illinois

Charles Duffield

---

vs.

Wm. J. A. DeLacy

---

71641  7

Charles Duffield } Over to lean in  
27 } Co. Supreme Court  
William J. Delaney } State of Illinois  
Nov. 7. 1864

Argument for Deft in Error "

In this case the plaintiff in error  
assigns for error "

1<sup>st</sup> That improper evidence was admitted  
upon trial in the Circuit Court "

But it is a sufficient answer to  
such alleged error that the Bill of  
Exceptions, shows no evidence ~~that~~  
admitted that was objected to by the  
plaintiff, nor did the plaintiff in error  
~~except~~ to any decision of the Circuit  
Court in admitting any evidence pro-  
-ceed upon the trial in the Circuit Court.  
~~Wagoner v. Ruffell 11 Ill. 586, Clay v. Boyer 5 Ill. 508,~~  
~~Manum v. Ruffell 11 Ill. 586, Clay v. Boyer 5 Ill. 508.~~

2<sup>d</sup> The Plaintiff in error assigns for error  
that the giving of depts instructions,  
But no objection was taken in the Circuit  
Court to the giving of such instructions  
at the time they were so given.  
The trial occurred and the instructions  
were given on the 30<sup>th</sup> March 1864  
while the bill of Exceptions was  
prepared and filed on the 6<sup>th</sup> April  
1864 in which it is stated, "The Clerk  
will here insert defendants instructions,  
(to which the plaintiff excepts) - This  
shows that the exception was not

taken until after the verdict and judgment had been rendered, and indeed the exception was not taken until after the Court had adjourned — as the bill of Exception, shows, so that the objection to the giving of such instructions, can not now be assigned for error or entertained by this Court  
~~the error is not assigned for error~~ 11 Ill, 586 Lloyd vs. Bays 5 Gil 508,

Dickhut vs. Durill 11 Ill, 84, Suffered vs. Cross 13 Ill, 700, Martin vs. Peeples 13 Ill, 341, Evans vs. Fisher 5 Gil 569, Gibbons vs. Johnson 3 Scam 61, <sup>1 Scam 166 + 252</sup> and numerous other authorities "

3 The Plaintiff in error assigns <sup>for error</sup> the overruling of ~~the~~ motion for new trial, but no exception was taken to such decision of the <sup>Court</sup> Court, the motion is not named or ~~referred~~ <sup>referred</sup> to in any way in the bill of Exception, so that such alleged error can not be taken advantage of in the Supreme Court "

Dickhut vs. Durill 11 Ill, 72 — Practice Act of Statutes, Sec 23 — Miller vs. Dobson 1 Gil 573 — Potter vs. McWorter 13 Ill, 455 "

4<sup>m</sup> — The Plaintiff in error assigns for error that the verdict was contrary to evidence but this can not be assigned for error, It is the decision of the Court only that can be assigned for error —

If the party is dissatisfied with the  
verdict of a jury, he should move  
for a new trial, and if his motion  
is overruled except to the decision  
of the Court overruling such motion,  
Weatherford v Wilson 2 Scam 256

5 That the Court erred in the judgment  
as rendered on the verdict is specified  
for error -

The verdict was general,  
for the defendant upon all the issues,  
and consequently the judgment is not  
broader than the verdict.

Even if the instructions had been excepted  
to they are not erroneous, but substantially  
right, and present the law fairly to the jury.  
Besides, substantial justice has been done  
in the case and even if erroneous, the  
Court will not grant a new trial.  
Gillett et al v Sweet <sup>1 Gilman</sup> 475.

All the testimony is set out in the  
bill of exceptions, to which the  
Court is asked to refer. The abstract  
does not give a full history of the  
case. The bill of exceptions <sup>from the trial</sup> which  
comprizes the bill of sale <sup>for the property</sup> which are  
embraced all of the property of Amos  
Duffield without a single reservation.  
This property was never taken into the  
possession of Charles Duffield the  
claimant, but always remained

in the possession of James Duffield the  
 execution defendant, James Duffield  
 swore it was an absolute sale, and  
 then when it appeared that he had  
 never received any credit on his  
 indebtedness, to his brother Charles  
 Duffield, he then stated that  
 it was posed to his brother as  
~~only~~ security. The whole case  
 manifestly shows a clear case  
 of unenforced fraud on the  
 part of the Duffields to shield  
 the property of James Duffield  
 from his creditors.

Milton S. Peters  
 & B. B. Smith  
 Attys for Deft in this

The Court is asked to  
 refer to the portions of  
 the record omitted in  
 plaintiffs abstract to which  
 attention has been called  
 by Deft in encl in a separate paper

14

Charles Duffield  
 Mayor to  
 Wm. H. J. Delaney  
 Argument for  
 Deft in encl

Filed Nov. 16. 1844  
 A. Johnston City

State of Illinois,  
SUPREME COURT,  
First Grand Division.

} SS

The People of the State of Illinois,  
To the Clerk of the Circuit Court for the County of Marion 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 Marion county, before the Judge thereof between

Charles Suffice plaintiff and

William J. A. Draney

defendants it is said manifest error hath intervened to the injury of the aforesaid Charles Suffice as we are informed by his complaint, and we being willing that error, if any there be, should be corrected 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 our 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 1<sup>st</sup> Sunday after the 2<sup>d</sup> Monday in 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. P. H. Walker Chief Justice of the Supreme Court and the seal thereof, at MOUNT VERNON, this Sixteenth day of June in the year of our Lord one thousand eight hundred and Sixty-four.

Noah Johnston  
Clerk of the Supreme Court.

State of Illinois,  
SUPREME COURT,  
First Grand Division,

To the Clerk of the Circuit Court for the County of [unclear]

Because, by the record and proceedings on file in the said

Charles Duffield

Plaintiff in Error,

vs.

W. J. A. DeLaney

Defendant in Error.

WRIT OF ERROR.

Issue made a  
Superior, Stamped

and FILED. June  
16-1864.

A. Johnston Clk

SUPREME COURT.  
First Grand Division.

This writ of error is made a Superior, and is to  
be stayed accordingly. June 16. 1864.  
A. Johnston Clk



Witness the seal of the Supreme Court and the seal  
of the Clerk of the Circuit Court for the County of [unclear]  
this 16th day of June 1864.  
A. Johnston Clk

State of Illinois,  
SUPREME COURT,  
First Grand Division. } SS

The People of the State of Illinois,  
To the Sheriff of Marion 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 Marion county, before the Judge thereof between

Charles Suffield plaintiff and

William J. A. DrSaucy defendants it is said that manifests error hath intervened to the injury of said Charles Suffield as we are informed by his 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 Mount 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 William J. A. DrSaucy

that he be and appear before the justices of our said Supreme Court; at the next term of said Court, to be holden at **Mount Vernon**, in said State, on the first Tuesday after 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 William J. A. DrSaucy notice together with this writ.

WITNESS, the Hon. P. H. Walker Chief Justice of the Supreme Court and the seal thereof, at MOUNT VERNON, this Sixteenth day of June in the year of our Lord one thousand eight hundred and Sixty-four.

Noah Johnston  
Clerk of the Supreme Court.



SUPREME COURT.  
First Grand Division.

Charles Duffield

Plaintiff in Error,

VS.

W. J. A. DeLaney

Defendant in Error.

SCIRE FACIAS.

FILED.

The writ of error, issued under filio in this cause,  
is made a supersedeas, and as such, is to be  
obeyed by all concerned. June 16-1864.  
Wash. Johnston, Clk.

have duly  
I serve the within process of J. J. DeLaney  
this 20 day of June 1864  
By Wm. McCallister Clerk

Serving 20  
mileage 10  
Returning 120

In the Supreme Court.

First Grand Division

State of Illinois

November Term 1864

Marion County }  
vs

Charles Duffield

vs

William J. DeLancy

Mr clerk

} Error in

Marion

Sir Please issue

the the proper writ in the above entitled  
cause and make the same a supersedeas,  
directed to the Sheriff of Marion County  
by Illinois returnable to the November  
Term A.D. 1864 of the Supreme Court -  
First Grand Division

Willard & Goodnow

Ormeluy & Merrill

Attys for P'ty

We herewith

Chas Duffield  
ms  
W. J. A. De Laney

Error to Marion  
bounty

Precept

Filed June 16-1864.  
St. Johnstown, N.Y.

Willard Goodnow  
Att'y at Law

Know all men by these presents, that we Charles Duffield and Alexander Anderson are held and firmly bound <sup>unto</sup> William J. A. DeLaney in the penal sum of Five hundred dollars lawful money of the United States for the payment of which well and truly to be made we bind ourselves, our heirs executors and administrators jointly severally and firmly by these presents: Witness our hands and seals this twenty first day of May AD 1854

The condition of the above obligation is such that whereas the above bounden Charles Duffield has sued out of the Supreme Court of the State of Illinois his certain writ of Error in the case of said Charles Duffield vs William J. A. DeLaney Error to Marion County Illinois

Now if the said Charles Duffield shall well and truly prosecute his said writ of Error with effect, and pay all costs that may accrue <sup>upon trial or default</sup> in said cause, and abide the judgments and decrees of said Court made in said cause then these presents to be void otherwise to remain in full force and effect

Charles Duffield  
Alexander Anderson

<sup>14</sup>  
Chas. Duffield  
vs  
Wm. A. Doherty

Bond

Julia June 16. 1864

A. Johnston Clk

Wm. A. Doherty

State of Illinois }  
Marion County } ss Henry C Goodnow comes  
and being duly sworn deposes and  
says that Alexander Anderson is worth  
the sum of five hundred dollars inclu-  
sive of Homestead and property liable to  
execution as he is informed and be-  
lieves, and that said Alexander An-  
derson resides in the county of  
Marion and State of Illinois and  
further says not-

Henry C Goodnow  
Subscribed and sworn to }  
before me this 17<sup>th</sup> day of }  
May A D 1864 }  
Dwyer Tra of clth }

✓  
 Affidavit of  
 sufficiency of  
 security

To be filed with  
 Clerk Sup. Court

Filed June 16-1864.  
A. Schuster Ck

# IN THE SUPREME COURT.

## FIRST GRAND DIVISION.

State of Illinois,

MARION COUNTY, } SS.

November Term, 1864.

CHARLES DUFFIELD

vs.

ERROR TO MARION.

WILLIAM J. A. DeLACY.

PAGE 1 & 2

3 & 4

5

6 & 7

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9

9

This suit is replevin.

Declaration and caption of Records.

Pleas.

Pleas and Replication.

Orders of Court.

Verdict. Motion for new trial overruled, and plaintiff accepts.

Heading of Bill of Exceptions.

George Castleman introduced as witness. Testified: I reside with Amos Duffield, and did reside with him from the year 1860 to the present time. I know the property mentioned in Declaration. They were on the farm formerly belonging to Amos Duffield.

The Deft came there and asked me if Amos Duffield had any property. I told him I did not know. He then went out on the prairie and drove up the mares and colts, and said he would levy upon them, and told me he would hold me responsible for them. I told him I would not be responsible. The property was afterwards sold by the Deft.

*Cross-examined.*—I never knew any change in the possessions of the property in controversy, that it had always remained in the possession of Amos Duffield so far as he knew.

10

By agreement the deposition of A. D. Niles was read: I am book-keeper, over forty years old, and reside in Louisville, Ky. I know Charles Duffield, have known him from boyhood. I have been in the employ of Charles Duffield as book-keeper since 1855. According to the books of C. Duffield & Co., Amos Duffield owed Nov. 1st, 1861, notes to the amount of \$6,631 45, with interest on same, payable to C. Duffield & Co., and were given in settlement of an account for sundry articles of provisions. Articles ordered, partly written and some verbal, and for money advanced him, and all assumed and charged to Charles Duffield on the book of C. Duffield & Co. Amos Duffield also owed Charles Duffield an account which I kept made up Nov. 1st, 1861, amounting to \$6,572 44, the average due, which I found to be Oct. 1st, 1860, which is almost all for money loaned him, the only credit up to this is \$274 45. The amount of indebtedness of Amos Duffield to Charles is \$13,205 89, without the interest. Charles Duffield is liable for Amos as security on the sum of \$4,080. Charles has done many favors for Amos, to my knowledge, during the five years past, without any compensation whatever. The business I was conducting for Charles Duffield & Co., was in Louisville, Ky., since 1855 till Nov. 1861.

11

The means of my knowledge of said indebtedness was from the books, and performing most of the transactions myself. The indebtedness was mostly for money loaned him; a small part for provisions and goods purchased for him. The provisions sold, and goods purchased, I most generally attended to myself, being book-keeper, salesman and shipping clerk. I put the money up in packages and sent it by Express, and made the changes in the book against Amos. I know of liquidation of the amount of indebtedness stated.

12

Amos Duffield testified: I know the horses described by the witness Castleman. I once owned the horses and wagon. I sold these horses and wagon to the Plaintiff about the 8th November 1861 with other articles.

13

14

Bill of Sale.



15 I was indebted to Charles Duffield for all the money invested in the land and property, and to live upon he furnished me the money to improve the farm. The Plaintiff demanded the property of the Defendant after the levy.

*Cross-examined:*—The witness was shown a paper which he identified, and pointed out the articles, embracing those levied upon.

16 He said the articles were valued separately, and afterwards set down in lots together, and a total price set opposite. The Plaintiff furnished me a large amount of money, and I am still indebted to him over and above this sale, to between three and four thousand dollars. That Pltf was out once or twice a year from 1858 to the date of sale, giving directions about the improvements on the land. Witness bought one thousand acres of land, that he put between three and four hundred acres in cultivation. That from 1858 to 1860 he sold these lands to Pltf.

17 The farm on which the property was, is the land of the Pltf, that he had sold it to him before that time. That when the war broke out, and trade stopped with the South, he had two hundred tons of hay, and a wheat crop of four hundred acres, and was in debt, that he wanted to secure Pltf. Mr. Frew was pressing on his claim about \$225, and Merton about \$700. That he owed some other debts, but the other creditors were not pressing. That to secure Frew and Merton, he gave a chattle mortgage on 221 acres of wheat before the sale to Pltf, which he thought was more than worth the amount owed them.

18 That when his brother Charles, the Plaintiff, came, he told him his situation, and sold him all the property named in the bill of sale as an absolute sale. The sale was completed here in the Court House, and Martin & Marshall called as witnesses. I was to remain on the farm at \$25 per month, and to have the use of the furniture. The property was not removed from the farm, but Pltf appointed Wardell, who lives in Sandoval, two miles distant, his agent, and witness was to account to him for any property marketable that was sold. That he has reported to Wardell since that time all sales. That he had been paid, since this contract, his wages from time to time. The last payment was made about a month ago. Witness and Pltf came to Salem and had Martin and Marshall witness the sale, because they were considered responsible and reliable men. Has not paid Pltf anything for the use of the property sold to Pltf.

Wardell testified: I was appointed agent of Charles Duffield, by him, about the 8th of November, 1861, and had the care of the farm and property alluded to. I was to make settlements with Amos for the proceeds of the farm, and account for the same to Pltf. The farm, with all the property upon it, was turned over to me, and Amos was employed by Charles as a laborer, upon the farm at \$25 per month.

19 *Cross-examined:*—I never made a settlement with Charles since I was appointed his agent. That he had not exercised any control over the property. The same had remained with Amos as before the sale. That he had not rented the farm on which Amos lived, except a few acres; but that the farm had been under the control of Amos. That Amos had not paid over to him any of the proceeds of the sales of grain on the land sold to Pltf. It was admitted that Deft was a constable, had an execution against Amos Duffield, and levied it upon the property in controversy, which was in favor of Merton. The indebtedness to Merton was \$180 00.

20 Deposition of Clark: I was present at a conversation between Pltf and Deft, with regard to property levied upon by Deft. It was a horse or horses. It was in March 1862, in Salem, Illinois. I heard Pltf make a demand of Deft for a horse which had been levied upon by Deft.

This was all the testimony.

The Court permitted the following instructions for Deft. Pltf excepts.

21 1 The Court instructs the Jury for Deft, that the Pltf in this suit must prove to the satisfaction of the Jury, by affirmative evidence, that the title to the property mentioned in the declaration in the cause, is the property of Charles Duffield, purchased in good faith, and without fraud; and unless they so believe, must find for the Defendant.

2 That even though it may be shown that a contract of absolute sale of property in question, not tinctured with fraud, may have been proven by the

Pltf; yet, unless, the Pltf has proven by sufficient testimony, that the property in question was openly, actually and exclusively taken into the possession of Charles Duffield, or by some one for him as agent at the time of the sale, and passed out of the possession of Amos Duffield, that such sale was, and is null and void, and a fraud upon the rights of the creditors of Amos Duffield, and that the Jury must find for Defendant.

3 That in making up their minds as to a question of fraud in this case between Charles Duffield and Amos, the Jury are entitled to consider the fact of the relationship of the parties, the failing circumstances of Amos, and unusual particularity of the parties in making the contract of sale, and if they believe from the evidence, that the sale was pretended to be made to defraud the creditors of Amos Duffield, they must find for the Deft.

22

4 The Court on behalf of Deft in the above cause instructs the Jury that in coming to a conclusion as to the rights of the parties in this suit they ought first to be satisfied from the evidence that the property in controversy was actually delivered in an open and visible manner at the time of sale by Amos Duffield to the Pltf, or his lawfully authorized agent, and unless they are satisfied from the proof that such delivery did take place at the time of sale, their verdict ought to be for the Deft.

6. Instruction.

23

7 That in deciding upon the question as to whether the sale from Amos to Charles Duffield was made in good faith, the Jury have a right to take into consideration any circumstances which if proved tend to show a fraudulent intent in said Amos and Charles, such as their relationship, and the said Amos being the seller and agent to receive the property for his brother Charles. The indebtedness of the said Amos at the time of sale, and any unusual particularity used in making the contract of sale; also, the sale being a transfer of every article of property in possession of said Amos, without any remuneration whatever, together with all the circumstances surrounding the transactions in proof before them, having a tendency to show bad faith in the transaction, or a fraudulent intent on the part of Amos and Pltf, in making said contract of sale.

8. Instruction.

24

Plaintiff's instructions.

No. 1 & 2.

25

No. 3, 4, 5, 6.

ERRORS ASSIGNED.

And the said Pltf for the assignment of errors in this behalf does here say and set forth that the said Court erred.

- 1st. In admitting improper evidence before the Jury.
- 2d. In giving Defts instructions severally, 1, 2, 3, 4 5, 6, 7 and 8.
- 3d. In overruling motion for new trial, and entering judgment on verdict.
- 4th. Because on the evidence the verdict should in law have been for the Plaintiff.
- 5th. Because the Court erred in the judgment as rendered on the verdict of the Jury. Wherefore the said Pltf for these and other errors in this cause, the same ought to be reversed.

WILLARD & GOODNOW.  
OMELVENY & MERRITT.  
Attorneys for Plaintiff.



CHARLES DUFFIELD,  
vs.  
WILLIAM J. A. DeLANCY. }

BRIEF.

An actual delivery of goods is not always required, but a virtual constructive delivery is sufficient. Bailey vs. Ogden, J. R. 399.

On the sale of land, and possessions taken, articles sold on the premises to the purchaser of the land pass with it, and that is a sufficient delivery of the personal property. DeRidder vs. McKnight, 13, J. R. 294.

A change in the relationship of the parties to property, such as acting as the head of a family, and resigning that position and selling out the household goods to another, and still remaining in family with the vendee is sufficient delivery: Ludlow vs. Hurd, 19, J. R. 218.

The law will sanction a *bona fide* transaction in the sale of goods, and not deem, in every case, a re-delivery of the goods to the vendor fraudulent, when made for fair and honorable purposes. Powers vs. Green, 14 Ills R. 391.

The question of delivery is a question of fact for a Jury, to be determined by reference to all the surrounding circumstances, which must be looked at in order to see if there has been a virtual change of possessions, as well as a change of ownership. Addison on Contracts. Second American, from the fourth English edition, page 242.

It must be the intent of both parties to a conveyance, to practice a fraud, in order to render the contract void. 20 Ills 448.

WILLARD & GOODNOW, Attys for Plff.



Defendant

relies

on

the

The Defendant in her answer and  
says that there is no error in  
the record or judgment of the  
Court below wherefore he prays  
that said judgment may be  
in all things affirmed.

14 - m

Buffell

DeLaney

Emm to Marin -

Revised & Remanded.

7. B. 602 -

In this case, cost bill is made out - and  
found on Page 602 - Execution for Plffs costs -  
# 56-56 - issued to J. J. Marin April 28. 65.

Memorandum



# IN THE SUPREME COURT.

## FIRST GRAND DIVISION.

*State of Illinois,* }  
MARION COUNTY, } SS.

November Term, 1864.

CHARLES DUFFIELD

vs.

WILLIAM J. A. DELACY.

ERROR TO MARION.

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The Deft came there and asked me if Amos Duffield had any property. I told him I did not know. He then went out on the prairie and drove up the mares and colts, and said he would levy upon them, and told me he would hold me responsible for them. I told him I would not be responsible. The property was afterwards sold by the Deft.

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Amos Duffield testified: I know the horses described by the witness Castleman. I once owned the horses and wagon. I sold these horses and wagon to the Plaintiff about the 8th November 1861, with other articles.

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*Cross-examined:*—I never made a settlement with Charles since I was appointed his agent. That he had not exercised any control over the property. The same had remained with Amos as before the sale. That he had not rented the farm on which Amos lived, except a few acres; but that the farm had been under the control of Amos. That Amos had not paid over to him any of the proceeds of the sales of grain on the land sold to Pltf. It was admitted that Deft was a constable, had an execution against Amos Duffield, and levied it upon the property in controversy, which was in favor of Merton. The indebtedness to Merton was \$180 00.

20

Deposition of Clark: I was present at a conversation between Pltf and Deft, with regard to property levied upon by Deft. It was a horse or horses. It was in March 1862, in Salem, Illinois. I heard Pltf make a demand of Deft for a horse which had been levied upon by Deft.

This was all the testimony.

The Court permitted the following instructions for Deft. Pltf excepts.

1 The Court instructs the Jury for Deft, that the Pltf in this suit must prove to the satisfaction of the Jury, by affirmative evidence, that the title to the property mentioned in the declaration in the cause, is the property of Charles Duffield, purchased in good faith, and without fraud; and unless they so believe, must find for the Defendant.

2 That even though it may be shown that a contract of absolute sale of property in question, not tainted with fraud, may have been proven by the

no defence  
in kind of  
proof - whether  
affirmative  
or negative

Pltf; yet, unless, the Pltf has proven by sufficient testimony, that the property in question was openly, actually and exclusively taken into the possession of Charles Duffield, or by some one for him as agent at the time of the sale, and passed out of the possession of Amos Duffield, that such sale was, and is null and void, and a fraud upon the rights of the creditors of Amos Duffield, and that the Jury must find for Defendant.

3 That in making up their minds as to a question of fraud in this case between Charles Duffield and Amos, the Jury are entitled to consider the fact of the relationship of the parties, the failing circumstances of Amos, and unusual particularity of the parties in making the contract of sale, and if they believe from the evidence, that the sale was pretended to be made to defraud the creditors of Amos Duffield, they must find for the Deft.

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4 The Court on behalf of Deft in the above cause instructs the Jury that in coming to a conclusion as to the rights of the parties in this suit they ought first to be satisfied from the evidence that the property in controversy was actually delivered in an open and visible manner at the time of sale by Amos Duffield to the Pltf, or his lawfully authorized agent, and unless they are satisfied from the proof that such delivery did take place at the time of sale, their verdict ought to be for the Deft.

6. Instruction.

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7 That in deciding upon the question as to whether the sale from Amos to Charles Duffield was made in good faith, the Jury have a right to take into consideration any circumstances which if proved tend to show a fraudulent intent in said Amos and Charles, such as their relationship, and the said Amos being the seller and agent to receive the property for his brother Charles. The indebtedness of the said Amos at the time of sale, and any unusual particularity used in making the contract of sale; also, the sale being a transfer of every article of property in possession of said Amos, without any remuneration whatever, together with all the circumstances surrounding the transactions in proof before them, having a tendency to show bad faith in the transaction, or a fraudulent intent on the part of Amos and Pltf, in making said contract of sale.

8. Instruction.

Plaintiff's instructions.

No. 1 & 2.

No. 3, 4, 5, 6.

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25

*This is wrong  
It assumes  
the truth of  
facts that sh  
ould have  
been left to  
the jury*

ERRORS ASSIGNED.

And the said Pltf for the assignment of errors in this behalf does here say and set forth that the said Court erred.

- 1st. In admitting improper evidence before the Jury.
- 2d. In giving Defts instructions severally, 1, 2, 3, 4 5, 6, 7 and 8.
- 3d. In overruling motion for new trial, and entering judgment on verdict.
- 4th. Because on the evidence the verdict should in law have been for the Plaintiff.
- 5th. Because the Court erred in the judgment as rendered on the verdict of the Jury. Wherefore the said Pltf for these and other errors in this cause, the same ought to be reversed.

WILLARD & GOODNOW,  
OMELVENY & MERRITT,  
Attorneys for Plaintiff.

CHARLES DUFFIELD,  
vs.  
WILLIAM J. A. DELANCY. }

**B R I E F**

An actual delivery of goods is not always required, but a virtual constructive delivery is sufficient. *Bailey vs. Ogden*, J. R. 399.

On the sale of land, and possessions taken, articles sold on the premises to the purchaser of the land pass with it, and that is a sufficient delivery of the personal property. *DeRidder vs. M'Knight*, 13, J. R. 294.

A change in the relationship of the parties to property, such as acting as the head of a family, and resigning that position and selling out the household goods to another, and still remaining in family with the vendee is sufficient delivery. *Ludlow vs. Hurd*, 19, J. R. 218.

The law will sanction a *bona fide* transaction in the sale of goods, and not deem, in every case, a re-delivery of the goods to the vendor fraudulent, when made for fair and honorable purposes. *Powers vs. Green*, 14 Ills R. 391.

The question of delivery is a question of fact for a Jury, to be determined by reference to all the surrounding circumstances, which must be looked at in order to see if there has been a virtual change of possessions, as well as a change of ownership. *Addison on Contracts*. Second American, from the fourth English edition, page 242.

It must be the intent of both parties to a conveyance, to practice a fraud, in order to render the contract void. 20 Ills 448.

WILLARD & GOODNOW, Attys for Pltf.

Charles Duffield

vs  
W & J Delaney

Abstract

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WILLIARD & GOODNOW

in order to register the contract vol. 30 pp 478.

to see if there has been a verbal change of possession

by reference to the surrounding circumstances which may be

The direction of delivery is a question of fact for a jury

in every case a re-delivery of the goods to the venditor

The law will sanction a bona fide transaction in the sale

of household goods by the wife and children in family

A change in the relationship of the parties to property such as occurs in

the personal property. DeWitt v. McKnight, 10 T. R. 387.

On the sale of land and possessions taken articles sold on the prem-

is not always retained, but a verbal con-

Filed Nov 14. 1864.  
N. Johnston City

J. C. Gardner  
Attorney at Law

WILLIAM J. W. DELANEY  
vs  
CHARLES DUFFIELD  
} B R I E F

Sandoval July 21<sup>st</sup> 1865  
Mr Noah Johnson  
Dear Sir

My attorney  
Mr Nelson informs me  
that there is still a fee  
of Four Dollars to pay  
in the case of Duffield  
vs De Lancey, which  
please find enclosed  
and return papers to  
Salem at your earliest  
convenience

Please send me a receipt  
for this, to enable me  
to collect the same back  
again of Mr Duffield,  
and would like to be  
informed of the price  
of a copy of the opinion

of the court in this case  
as I would like to get  
one and oblige

Very Respectfully yours  
H. Merten

July 22. 1865  
Copy of Dues  
July 21 - Dues



Charles Duffield

Portions of the record which  
are omitted in plaintiff's abstract  
material to the merits of the case.

Anos Duffield stated that the sale  
was made by the bill of sale hereunto  
annexed and made a part of the bill  
of exceptions. The bill of sale is set  
out in full in the record, by which  
it appears that he sold every  
article of personal property he had,  
including family bible school books  
&c and receipted the bill in full.  
Yet he admitted that he had  
never received one cent for the article  
sold, and it is further stated  
that he had received no credit  
therefor on his indebtedness to the  
plaintiff. He first stated that it  
was an absolute sale and then  
afterwards <sup>said upon examination</sup> that it was only a  
~~sale~~ transfer for mere security &  
this was the manner his account  
had never been credited.

Anos Duffield stated that he and the  
plaintiff came to Salem, nine miles  
from where the property was, and from where  
he lived, to get Marshall and Martin  
to witness the sale, because Marshall  
and Martin was considered to be  
reliable and respectable men. Witness  
drew the bill of sale that he executed  
to the plaintiff for the property, witness has  
never paid plaintiff anything for the use  
of the property sold to the plaintiff.

Amos Duffield further stated, "That when  
" his brother Charles the plaintiff came  
" he told him his situation and sold  
" him all the property named in the bill  
" of Sale as an absolute Sale."

" Witness was enquired of on Cross Examination  
" why he had not received Credits of  
" his brother Charles, for the lands and  
" property he had sold him, why his  
" account with his brother had not  
" been credited with the amounts of  
" such Sales. The witness there stated  
" that such Sales were made to  
" his brother, for the purpose of Security  
" only that is to secure his brother

" W. W. Wardell " Stated on Cross Examination  
" that he had never exercised any charge  
" or control over the property ~~and~~ <sup>and</sup>  
" to Charles. That the same had always  
" remained with Amos as before the Sale.  
" Wardell also stated that he had  
" never ever rented the farm on  
" which Amos lived and where the  
" personal property sold was kept,  
" except a few acres one season, at  
" the request and direction of Amos,  
" but that such farm had always  
" been under the control of Amos.  
" That Amos never paid over to him  
" any of the proceeds of the Sales of  
" grass or produce raised on the  
" lands Amos sold to Charles."

" It was admitted that the defendant  
" was a Constable, and had an execution  
" in his hands against Amos Duffield  
" and levied said execution on the prop  
" erty in Controversy, and had the same  
" in his possession under such execution  
" when the property was replevied from  
" him by the plaintiff. Which execution  
" was in favor of Herman Merton,  
" and that said Merton was a judgment  
" Creditor of said Amos Duffield  
" upon a writ judgment said execution  
" issued. Also that Herman Merton  
" was a Creditor of said Amos Duffield  
" before and on the 8<sup>th</sup> November  
" AD 1861 the date of the alleged sale  
" from Amos Duffield to Charles. The  
" Indebtedness was \$183 "

Charles Duffield  
vs  
Wm. N. J. Delaney

Particulars of record  
omitted in the  
petty abstract  
to which Dept. Call,  
the attention of the Court

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Filed Nov. 16 - 1864.  
N. Johnston Clk

No 14 - 19 -

Truffield

or

DeLauncy

Error to Marine

1864

Ab. sent to Judge  
May 1864  
page on file

8604

5 Abs. filed

Recor'd & opinions  
sent to Reporter  
Oct. 5. 1867