

No. 11874

Supreme Court of Illinois

^H
BucXanan.

vs.

Horney

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John Buchanan
vs.
Patrick Horney

La Salle

109

11874
Prepared

1851

La Salle County Circuit Court March Term 1847
 State of Illinois }
 La Salle County } Sec. of
 P. Heard before the Hon. John D. Eaton
 one of the Justices of the Supreme Court
 of said State & presiding Judge of the ninth Judicial Circuit
 of said State at a Circuit Court commenced & held in & for
 the County of LaSalle aforesaid on Friday the twenty sixth day
 of March A.D. 1847 - The same being the seventy first year of the
 Independence of the United States of America -
 Present

The Hon. John D. Eaton Presiding Judge
 Lorenzo Selous Clerk
 Barton C. Cook States Attorney
 Henry Hurlbut Sheriff

Be it remembered that heretofore to wit: on the 8th
 day of March A.D. 1847 John Buchanan send out of the
 Clerk's office of said Circuit Court a summons in
 words & figures following viz:

State of Illinois }
 LaSalle County } Sec. of
 P. The People of the State of Illinois to the
 Sheriff of said County - Greeting -

We command you to summon Patrick Korney if to 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 Ottawa, on Friday
 the 26th day of March inst. to answer John Buchanan of a
 plea of trespass on the case upon promises to his damage two
 hundred dollars, as he says and have you then and there
 this writ, and make return thereon in what manner you
 execute the same. Witness Lorenzo Selous Clerk of said Court

and the Seal of said Court at Ottawa, this 8th
 day of March A.D. 1847
 Retainie thus
 L. Selous Clerk

As found in season H. Hurlbut Sheriff March 26, 1847 - Retn 1847

And afterwards to wit: on the 12th day of March A.D. 1847
the plaintiff by Glover Cook his Atty. filed the declaration
in words & figures following viz:

State of Illinois }
Se. Gall County } 2d Circuit Court thereof March Term A.D. 1847

1st. - John Buchanan Plaintiff in this suit by Glover Cook
his attorney complains of Patrick Conroy deft. summoned
&c. of a plea of trespass on the case upon promises &c. that the
said defendant at the County aforesaid on the 18th day of
January A.D. 1847 by his certain note of that date by him
subscribed for value received promised the plaintiff to pay
him one hundred and twenty dollars to be paid in manner
following thirty barrels of flour at three dollars and fifty
cents per barrel by the 18th day of February and the remainder
by the first day of September next in cash and the plaintiff
avows that the said 18th day of February in said note mentioned
has long since elapsed and that heretofore to wit on the 25th day
of February A.D. 1847 at the County aforesaid he demanded
from the said defendant the said thirty barrels of flour and
that the said defendant though often requested had never
paid that portion of said note which became due on said 18th
day of February in said note mentioned or any part thereof
to plaintiffs damage two hundred dollars.

2. And for that the said defendant heretofore to wit on
the 25th day of February A.D. 1847 the said defendant being
justly indebted to the said plaintiff in the sum of two hundred
dollars for so much money before that time had and received
by said defendant to plaintiffs use and for two horses and car-
riage of harness before that time sold and delivered by the said
plaintiff to said defendant and being so indebted in con-
sideration thereof then and then promised the said plaintiff
to pay him that sum on demand &c. though often requested
he hath never paid the same or any part thereof to plaintiffs

* A Plea on some that with Defendants first Plea
The following
Not replication to the several Pleas the p^lff
says precludi non because he says that
the matters alleged in said Pleas & all of
them are untrue & that since if true would
not constitute any sufficient Defence to the
action. Especially the matters alleged in the
first & second Pleas

Glover & How
p^lffs Attorneys

damage two hundred dollars and therefore he sues
Giles & Cook

plffs. Atty^{ys}

And afterwards to wit: on the 30th day of March A.D. 1847
the following further proceedings were held. viz:

vs John Buchanan

Patrick Horney

Assumpsit

This day came the plaintiff by Giles & Cook his attorneys and on their motion it is ordered that this cause be continued and that an alias summons issue herein returnable to the next term of this Court.

The following is a copy of said alias summons which was issued from said Ct. office May 7th. 1847 & is in words & figures as follows viz:

State of Illinois
La Salle County

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

We commend you as we have before commended you to summon Patrick Horney if to 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 Court House in Ottawa, on Friday the 3th day of November next to answer John Buchanan of a plea of trespass on the case in promising to his damage two hundred dollars, as he says and have you then and then this writ, and make return thereon in what manner you execute the same.

Witness my hand and Seal of said Court at Ottawa this 7th. day of May A.D. 1847.



By W. C. McNeil Esq.

Return of Sheriff
Presented Oct. 24, 1847 by reading to Patrick Horney
Giles & Cook, Attys
90 miles
And afterwards on the 9th of Nov. 1847 the defendant by Dickhaut

Selance his Atty. filed his pleas which are in words & figures following to wit:

John Buchanan
vs
Patrick Kearney
of the No. Term of the So. Side Circuit
Court 1847

And the said Patrick Kearney by Dickey & Selance his Atty. comes &c. & defends &c. & says the plaintiff ought not to hear & maintain his action by reason of any thing in the first count in his declaration because he says that the consideration for which the promissory note declared upon in this case was given was the sale & delivery by the plaintiff to the defendant of the following described span of horses, double wagon & double harness or or about the day of the date of said note viz; a full faced chestnut horse & a bay horse and wagon & harness being the same owned by Conrad Dash at the time of his death and that said note was given for no other consideration - that said Conrad Dash died intestate in the said County of So. Side that being the county where said Dash resided immediately before & at the time of his death, or or about the first day of August 1846, that immediately before & at the time of his death he the said Dash was the owner of said horses wagon & harness that letters of administration have never been taken out on the Estate of said deceased & that the plff. did not convey to defendant any title to said property & shortly after said sale defendant returned said property to plaintiff & offered to give the same up to plaintiff & that thus the consideration of said note has wholly failed, & this the def. is ready to verify. whereupon &c. Dickey & Selance for Df.

For another plea the defendant says action non by reason of any thing in the first count of the declaration, that on or about the day of the date of the note declared upon the Plff. sold him the following described property viz; a span of horses one a full faced chestnut horse & a bay horse and wagon

harness, the same property on Conrad Dask owned at the time of his death, and that the sale of this property was the consideration for which said note was given & the only consideration, that the plff. at the time of the sale had no title to said property, nor was he authorized to sell & convey the same & def. received no title from him the said plff. and shortly afterwards defendant returned said property to said plaintiff & thus he says the consideration of said note has wholly failed & this he is ready to verify whereof &c
Dickey & Selena for def.

For another plea def. says actio non de by reason of anything in the 1st count in declaration because he says that on or about the date of the note declared upon the plaintiff told to him the following described property viz; a span of horses on a full face Chestnut & the other day an old wagon & harness, the same property on Conrad Dask owned at the time of his death, that this sale was the consideration & the only consideration for which said note was given, that def. after the sale was made discovering that he had acquired no title to said property returned said property to the plaintiff, and the same was accepted by him plaintiff, and that the contract was rescinded & the consideration of said note has wholly failed, and this he is ready to verify whereof &c.
Dickey & Selena for def.

And for another plea to 1st count of declaration def. says actio non because he says that the note in the declaration mentioned was given by def. to plff. without any good or valuable consideration & of this he puts himself upon the Country.
Dickey & Selena for def.

And for another plea the defendant says actio non because he says that he did not undertake & promise to pay Plff. in manner & form as plff. has in his declaration avowed & of this he puts himself upon the Country.
Dickey & Selena for def.

The following is a copy of the note declared on & which was omitted in copying the above declaration viz

Copy of note ~~declared~~ ^{paid} on

Ottawa January 18th. 1847

For value received I promise to pay John Buchanan one hundred and seventy dollars to be paid in the following manner thirty barrels of flour at three dollars and fifty cents per barrel by the 15th day of February and the remainder by the first day of September next in cash

John Hall

Patrick Morney

ap. sued on
Patrick Morney

To John Buchanan Esr.	\$ 200.	00
To money hand & received		
To two horses & 1 set of harness	200	00

And also afterences on the 13th of Nov. 1847 the following further proceedings were had in said Court viz

John Buchanan

v

Assumpsit

Patrick Morney

Order that this suit be continued until the next term of this Court at the defendants costs to be taxed

And afterences on the 5th day of April 1848 the following further order was made in this cause to wit:

John Buchanan

v

Assumpsit

Patrick Morney

His day over the practice books of this attorney & the depositions were examined & the first depositions were given in favour of the plaintiff & therefore the cause was continued at the defendants costs to be taxed.

And on the 4th day of April 1848 the Defendant
by Dickey & Ireland his Attys filed his Demurrer
to Dicks Replication in words & figures following

John Buckenman }
 } Assumpsit
 }
Patrick Cornay }
 }

And said defendant for
answer to the replication of plaintiff to
Dicks several Pleas says that said replication
is not sufficient in law for plaintiff to maintain
said action & that Defendant is not bound
to answer the same Dickey & Ireland
for Dicks

and for special cause of demurrer
defendant shows the following viz

Said replication is Double

Said replication does not traverse

or answer specifically any one of the
distinct allegations in each of said Pleas

Said replication professes to
answer several Pleas. it should answer
each

Dickey & Ireland
for Dicks

And afterwards to wit on the 5th day of April
1848. The following further proceedings appear
of record

John Buckenman }
 } Assumpsit
 }
Patrick Cornay }
 }

 } This day came the Parties
 } by their Attorneys & the Demurrer
 } was sustained to the first & second & third

Plead & Leave given to amend the first plea
& thereupon the cause was continued at the
Defendants costs to be taxed

And also on the same day the defendant by his
Atty. filed the following further plea & is in process of filing
following viz:

State of Illinois Salubra County & Circuit
Court thereof

John Buckenham

vs
Patrick Kearney

Assumpsit

And for an amendment of the
first plea in this behalf to the
first count in plaintiffs declaration - defendant says, that
the only consideration for which said note (in said count stated)
was given, was the sale by plaintiff to defendant of a span of
horses, a wagon and harness for said horses, that at the
time of said sale said plaintiff knowingly & wilfully &
fraudulently made the following false representation to
defendant viz: that said property belonged to his plaintiffs
sister - and that said plaintiff had authority and
good right to sell the same when in truth & in fact said
property did not belong to said sister of plaintiff and
plaintiff had no good authority & right to sell the same

Since afterwards viz: on the 20th day of January
A.D. 1847 at the County aforesaid - defendant having discov-
-ered the truth as above alleged returned said property to
plaintiff, and offered to deliver the same to him & rescind
said contract - and left said property before the door of plaintiffs
place of business in Ottawa in said County to be taken by him
at will, and gave plaintiff notice thereof, since which transac-
-tion defendant has not had said property in his possession
or control or meddled with the same in any way what-
-ever, all which he is ready to verify, wherefore he prays
judgment as to said first count &c. Dickey & Leland
for clerk.

Nov. 14th 1848 pliffs Atty. filed the following affidavit

66
State of Illinois } B. C. Cook being duly sworn saith
Sasalle County } that he is of counsel for John Buchanan
in the suit of John Buchanan vs Patrick
Morney - that from the facts of this cause of which he
is advised by his client he believes that it will be necessary
to a full & fair adjudication of the rights of the plaintiff
herein and for the purposes of Justice that said plaintiff
should be allowed to file double replications to the first &
third pleas of defendant, pleaded in said cause.
Subscribed & sworn to before B. C. Cook
on Nov. 14. 1848. S. Leland Clk. 22

Also on the same day the following order was made
in said Court viz:
"John Buchanan }
vs } Assumpsit
Patrick Morney } This day the defendant obtained
leave to amend his third plea & the
plaintiff leave to reply double to the 1st & 3rd pleas 22

And also on the said 14th of Nov. the plaintiff by his
Atty. filed his replication as follows to wit:

"John Buchanan } Sasalle Co Circuit Court Nov.
vs } Term A.D. 1848
Patrick Morney }

And for replication to the first & third
pleas of deft. above pleaded plff. says precludi non e
because he says he did not at the time mentioned in
said plea make any false and fraudulent representations
to said defendant, as in said plea is alleged and of this
he puts himself upon the country.
And the deft. doth the like
Sickey & Leland 22

And for a further replication to said first & third pleas
by leave of the Court & plaintiff says precludi non e beam
he says that said defendants never returned and
offered to deliver to said plaintiff the property to, one
span of horses one waggon and harness & in said
pleas is alleged & of this he puts himself upon the
Country "Gloria & Leon"

"And the def. with the like" "Atty for pliff"
"Dickey & Selme"

Then came on the same day the defendant ^{who} filed
the following further plea that is to say

"State of Illinois Circuit Court of said County
Sullivan County November Term A.D. 1848

"John Buchenau & as
Patrick Murray & as
Says for an amendment to the
third plea of the defendant to
the first count in plaintiff's
declaration, says that the plaintiff
ought not to have & maintain his aforesaid action
against him because he says that the only consideration
for which said note in the said Court described was
given was the sale by plaintiff to defendant of a span of
horses a waggon & harness. that at the time of said sale &
during the negotiation therefor said plaintiff knowing
by wilfully & fraudulently represented to the defendant
that he the said plaintiff was the owner of said property
when in truth & in fact said property was ^{not} owned by
the said plaintiff and the defendant avers that
having discovered that said plaintiff was not the
owner he returned said property to the plaintiff and
offered to deliver the same to him & seised said sale
and left said property before the day of said plaintiff's

place of business in Ottawa in said County & gave plain-
-tiff notice thereof & has never since taken possession of the
-land or exercised any acts of ownership over the same
which he is ready to verify. Wherefore he prays judgment
so as to save first costs.

Dickey & Seland

And afterwards to wit: on the 18th of Nov. 1848 the
following demurrer was filed by defendants Atty.

State of Illinois vs. Circuit Court of said County No.
Sasalle County Nov. 1848

John Buchanan vs. Patrick Horney
And the said defendant saith
that the said first replication to
the said defendants first and
third pleas and the matters therein
contained in memorandum form as the same are above
pleaded and set forth are not sufficient in law for the said
plaintiff to have or maintain his aforesaid action thereof
against the said defendants & that said defendant is not
bound by law to answer the same. Wherefore

And the said defendant states & shows to the Court
the following cause of demurrer, that the said replication
presents two issues of fact to wit: "the making of title to
said property in said pleas described - and also that
said replication is in other respects informal uncertain
& insufficient."

Dickey & Seland for def^s

Also on same day the following further proceedings were
had viz:

John Buchanan vs. Patrick Horney
This day came the plaintiff
by Cook & Wood his attorneys &
the defendant by Dickey & Seland

The replications in said 1st & 3rd pleas are that

his Attorneys & thereupon came the following Jurors
of a Jury to wit: Joseph Arny, E. S. Watman, J. B. Woodland
W. C. Cenk, J. G. Sattinizer, E. S. Beensley, Joseph Stout
A. Hibbard, J. W. Don, W. S. Demarest, Jas. Parks & A.
Brundage who were elected twice and sworn the issues herein
will I truly to try according to the evidence & after hearing
the evidence, the Jury retire to consider of their verdict,
with leave when found, by agreement of parties, to seal & hand
the same to the Clerk to dispense.

November 20th 1848 the following further proceeding
was had in said cause to wit:

John Beckenau }
vs } Assumpsit
Patrick Kearney } The said verdict of the Jury was
this day opened & is as follows to wit:
are the Jury find the issues for the defendant. It is
therefore considered that the defendant recover from the plain-
tiff his costs & charges by him herein expended & that he
have execution therefor.

Attendances to wit: on the 22^d
day of Nov. 1848 the following order was made in said cause.

John Beckenau }
vs } Assumpsit
Patrick Kearney } This day again came the parties here to
by their said Attorneys & the plain-
tiff entered a motion for a new trial, which is sustained
& a new trial awarded at the plaintiffs costs for this term
& leave is given him to amend his declaration by the 10th
day of January next & to the defendant to file new pleas
within a month after he shall have notice of the amend-
ment of the declaration - It is therefore considered that the

defendant recovers from the Plaintiff the costs by him
incurred at this term matter that he has execution
therefor.

On the 28th day of Dec. 1848 the pl^{ff}.
filed an additional count to his declaration which is
in words & figures following viz;

And for that the said
defendants at the County aforesaid on the 18th day of January
A.D. 1847 by his certain other promissory note of that date
by him subscribed promised the plaintiff to pay him
one hundred and twenty dollars to be paid in the following
manner, thirty barrels of flour at three dollars and fifty
cents per barrel by the 18th day of February and the remain-
-der by the first day of September next in cash and the
plaintiff avers that the said 18th day of February has long
since elapsed and that said defendants through often
requests has never paid that portion the thirty barrels of
flour in said note mentioned or the amount of the
same at three dollars and fifty cents a barrel or any part
thereof to plaintiffs damage Two hundred dollars therefore
he sues

Glous & Cook

Per

Afterwards on the 13th day of March the def^s. filed
the following new pleas viz;

State of Illinois Circuit Court of said County
LaSalle County

John Buchanan & And the said defendants as to the
Petrick Horney & additional count to plaintiffs declaration
by leave of court filed December 28, 1848
Verus & c and says acts non because he
says that the only consideration for which said note in said
court described was given was the sale by the plaintiff to

his security in the sum of _____ within forty days from
this date.

Finally on the 23rd day of Nov. 1849 the
Plaintiff filed this bill of Exceptions in words & figures
as follows to wit:

John Bucherum vs Patrick Hoomey
State of Illinois, Saline County
2nd Circuit Court thereof Nov
Term A.D. 1849.

Be it remembered that on the
trial of this cause the plaintiff offered in evidence a note
in the words & figures following.

Ottawa January 18th 1849
For value received I promise to pay John Bucherum our
hundred and seventy dollars to be paid in the following
manner thirty barrels of flour at three dollars and fifty
cents per barrel by the eighteenth day of February and the
remainder by the first day of September in cash.

Patrick Hoomey
and set on his case. The defendant then called as a
witness Edward Ganning who testified that about the
date of the note above mentioned, in plaintiffs bakery
defendant asked where he could buy a team, witness
answered that plaintiff had one to sell, plaintiff was
then present, that then plaintiff and defendant made
a bargain for the sale of a team wagon and harness
that defendant then requested witness to draw a note,
witness drew one which defendant refused to sign, that
then witness drew another, which defendant refused to
sign & then witness left, the witness further stated that
at the time of the negotiation nothing was said in
relation to the ownership of the property, that the horses were
horses that have been used by Conrad Fark in his life
time, and that said Fark had been in possession of said
horses & wagon up to the time of his death claiming ownership

upon cross examination witness stated that the widow of Conrad Dask was the sister of plaintiff that she was insane that plaintiff had acted in selling the property and paying the debts & funeral expenses of said Dask. Defendants then called Henry Deuchens as a witness who testified that he was present at the giving of the note above mentioned that the note was given for a span of horses wagon harness sold by plaintiff to defendant that during the negotiation for the sale nothing was said as to the ownership of the property. This was in the evening the next day at 3 or 4 o'clock in the afternoon defendant came to the bakery of plaintiff with the team and told witness that he had brought back the team. witness asked what team defendant said the team you sold me. witness replied I sold you no team I have nothing to do with it. the plaintiff was not present at that time. defendant then hitched the team to a post in front of the residence of Mrs. Tyler, a neighbor of plaintiff. the place where the team was hitched was a convenient place to hitch a team as any in the vicinity of plaintiff's bakery and that on the evening of that day witness communicated the fact that said team had been brought back to plaintiff that day. Knows that Conrad Dask had those horses and wagon in his possession claiming ownership prior and up to the time of his death. On cross examination witness stated that at the time of the conversation between him and defendant, last above mentioned when defendant came back with the team. he was casually in the bakery of plaintiff and was not employed by or authorized to do business for plaintiff and that at the time the team was brought back by defendant, one of the horses was entirely spoiled and ruined by having one of his legs cooked upon the coal & badly cut.

It was admitted that no letters testamentary ~~to~~

defendants of a span of horses a wagon & harness, that at the time of said sale & during the negotiation thereof said plaintiff knowingly willfully & fraudulently represented to the defendants that he the said plaintiff was the owner of said property when in truth in fact said property was not owned by the said plaintiff, and the defendant avers that having discovered this fact he returned said property to said plaintiff & offered to rescind said sale & left said wagon harness & horses the said horses being hitched near the door of said plaintiff's place of business in Ottawa in said County & that plaintiff was notified thereof while they were so hitched. Defendant further avers that he has never since he so left said property taken possession thereof or any part thereof or exercised any acts of ownership over the same all which he is ready to verify. Wherefore he prays Judgment &c. as to said additional count.

And for another plea to the first & last counts of plaintiff's declaration by leave of Court &c. defendant says acts now because he says that the notes in the 1st & 2^d additional counts to Plaintiff's declaration are ~~not~~^{one &} the same that the only consideration for which said notes was given was the sale by the plaintiff to the defendant of a span of horses a wagon & harness, that at the time of said sale the said property was not the property of the plaintiff nor had he any legal authority to sell the same to the defendants, and the defendant claims no title through said sale that said property was owned by one Cornac Dash at the time of his death who died prior to said sale intestate & upon whose estate no administration had been had then nor since. Defendant further avers that at the time of said sale & during the negotiation thereof the said plaintiff well knowing that he was not the owner of said property & that the same was owned by said Dash at the time of his death as aforesaid & that he the plaintiff had no authority to sell the same

that he could not convey a good title thereof, fraudulently suppressed the truth & fraudulently permitted the defendant to purchase the same as property which since plaintiff there & there owned & had authority to sell.

And the defendant avers that after said sale discovering that he had obtained no title to said property, he returned the same to the plaintiff and tied the said horses harnessed with the harness aforesaid & attached to said wagon near the door of the plaintiff's place of business in Ottumwa & ^{left} there, & the said plaintiff ^{thereof} had notice, while the same were tied as aforesaid. And the defendant avers that he offered to rescind said contract & that he has not since said wagon harness & horses were so returned & tied as aforesaid ever taken possession of the same or exercised any acts of ownership over the same. And this he is ready to verify wherefore he prays Judgment &c. "Sedena for Dft."

Also on the 2^d day of April 1849 the following further proceedings were had in this cause to wit: Present the Hon^{ble} Rufus S. Lacey presiding Judge John Buckenau
vs Assumpsit
Patrick Honey } This day by agreement of ^{the} parties
herein it is ordered that this cause be continued until the next term of this court.

November 13th 1859 the plaintiff by his Atty. filed his replications in words & figures following to wit: Present the Hon^{ble} Giles Spring Judge of Cook County Court presiding by exchange, John Buckenau
vs Saballe les Vicent Court No. Term 1849
Patrick Honey } An affidavit to ^{the} first plea of defendant to the additional Court in plaintiff's declaration

plaintiff saith precludi non &c. because he says that he did not at the time of the sale of said property fraudulently represent to the defendants that he the said plaintiff was the owner of the property mentioned in said plea and of this he puts himself upon the Country

And for replication to the 2^d plea of defendants to the additional Count of plaintiff plaintiff says precludi non because he says that he did not at the time of the giving of the note aforesaid fraudulently suppress the truth in relation to the ownership of said property as mentioned in said plea and of this he puts himself upon the Country
2^d Rep. doeth the like

And for further replication by leave of the Court to the first and second pleas of defendant above pleaded to the amended declaration of plaintiff plaintiff says precludi non &c because he says that said defendant never did return the property mentioned in said pleas to said plaintiff and offer to rescind said contract and of this he puts himself upon the Country.
And 2^d Rep doeth the like
Gloves & Cook pty.

Also on same day the following further proceedings were had in said Court in this Cause.

John Buchanan
Patrick Horney
Assumpsit
This day came the pty. by Gloves & Cook his Atty. and the defendants by Selane his Atty. & the issues therein having been made up thereupon Came the following Jurors of a Jury to wit: Sylvester Cook, Samuel R. Selin, Reuben Bronson, William M. Jacob, Fullerton, S. Cook, E. W. Curtis, James Pickins, Henry Wood, W. J. Brimhall, George T. Walker, & N. M. Sisco. who were elected tried & sworn to well & truly try the issues

herein according to the evidence, & after hearing the evidence
& arguments of counsel retired to consider of their verdict
& after due deliberation thereon had - returned into Court
with the following verdict to wit: We the Jury find for the
defendant - And thereupon the Plff. entered a motion
for a new trial.

And afterwards on said 13th Nov. the
plaintiffs Counsel filed the following statements for
a new trial viz;

John Buchanan

v

Patrick Honey

The plaintiff asks for a new trial
for the following reasons

1st The verdict is against Law & Evidence

2nd The Court erred in giving the instruction asked by Plff.

3rd The Court erred in ruling that a sale of the effects of a
deceased person by an executor de son tort does not vest the
title to the property sold to the vendor.

And on the 19th of November 1849 the following further
proceedings were had to wit:

John Buchanan

v

Patrick Honey

Assumpsit

This day again the parties met by their
respective attorneys and the motion for
a new trial entered herein by plaintiff having been under
consideration by the Court, & ordered to be overruled. It is therefore
considered that the defendant has and recovers from the
plaintiff his costs and charges by him herein expended and
that he have execution therefor and thereupon the plaintiff
prays an appeal to the Supreme Court which is granted
upon condition of his filing his bond with Ebenezer Tyler, as

or of administration were ever issued upon the estate of said
Cornel Dashi this was all the testimony in the case.

The Plaintiff asked the Court to instruct the Jury as
follows

1st That unless they believe from the evidence first that
at the time of the giving of the note in question John Buchanan
represented to the defendants that he Buchanan was the owner
of the property sold or suppressed the truth in relationship
with the intention to cheat, and defraud the defendants,
they must find the issues on the first replications for the
Plaintiff;

2nd That unless defendants returned the horses, wagon &
harness in question to John Buchanan and offered to
rescind the contract the Jury must find for the Plaintiff
upon the last count in the declaration.

3rd That if the Jury believe from the evidence that the only
offer to return said property to John Buchanan and to
rescind the contract was an offer so to do made to a person
not the agent of Buchanan or authorized by him to
transact said business they will find the issue on the
first replication for the Plaintiff.


4th That if the Jury believe from the evidence that
John Buchanan sold the team in question to defen-
dants believing that he had a right to sell the same as
agent of his sister and did not intend to cheat or
defraud Morrey they will find the issues on the first
replication for Plaintiff.

5th That to entitle himself to rescind the contract
defendants must have returned the team in as good
condition as he received it unless the same was injured
without the fault or negligence of the defendant.

which instructions the Court gave & except the three instructions which the Court refused to give, to which refusal to give said instruction the plaintiff & exceptor. The defendants the following instructions

"Will the Court instruct the Jury that if they believe from the evidence that Buchanan as the driver of the sale of the horses wagons harness knew that they were the property of Cornelia Dash at the time of his death & that there was no administration upon his estate & permitted the defendants to purchase under the impression that Buchanan was the owner that is a fraudulent suppression of the truth which would authorize the defendants to return the property & rescind the contract & if he did return the property to the plaintiff they should find for the def^d"

which instruction was given to the Jury by the Court, to the giving of which instruction plaintiff excepted. The Jury found a verdict for the defendants. The plaintiff then moved the Court for a new trial which motion was overruled by the Court to which decision of the Court, in overruling said motion the plaintiff & exceptor and prays that his bill of Exceptions may be signed sealed and made part of the record which is done

Giles Spring 

State of Illinois }
LaSalle County } 10

I Philo Lindley Clerk of the Circuit Court of said County do hereby certify that the foregoing is a full true and perfect copy of the record in the above entitled cause now remaining in my office. In Testimony whereof I have hereunto set my hand & affixed the seal of said Court at my Office in Ottumwa this 27th day of July A.D. 1837
P. Lindley Clerk

State of Missouri
Laclede County
This Undersigned Clerk of the Circuit Court
in and for said County do hereby certify that the
Pleadings ^{is} truly copied from ^{all} the pleadings on file
with the replication ^{in this case} & all of the orders of Court in the foregoing cause
as the same appear on file and of record in my
Office

In Testimony Whereof I have hereunto
set my hand and affixed the seal
of said Court at my office in
Ottawa this 8th day of June 1850
O. Lindsay, Clerk

State of Missouri
Supreme Court

And now comes the said John Buchanan
and says that in the record & proceedings aforesaid
there is manifest error in this Court.

The Court erred in overruling the motion for a new
trial
& The Court erred in refusing the third instruction
asked for by the plaintiffs

& The Court erred in giving the first instruction
asked for by the defendant

John Sloan
att'y for ptty in error

And the said defendant in Error Patrick Henry comes
& says there is no such error in said record & proceedings
& prays that said judgment be affirmed & Shewed for aff- in error

17

Transcript

from Isabelle Co. Inc. Cont

John Buckman

v

Patrick Hornoy

Filed February 22, 1851
L. Leland Clerk.

Revised as amended
Filed July 7, 1854.
L. Leland Clk.

State of Illinois, Ect.

WRIT OF ERROR. — FREE TRADER, OTTAWA.

The people of the State of Illinois,

To the Clerk of the circuit court for the county of *La Salle* 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 *La Salle* county, before the Judge thereof, between *John Buchanan*

plaintiff and *Patrick Honecy*

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

John Buchanan
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 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 Ottawa, in the county of La Salle, on the *second Monday in June* 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. *Samuel H. Treat*
Chief Justice of our said Court, and the seal thereof at Ottawa, this *22nd* day of *February* in the year of our Lord one thousand eight hundred and *forty one*

L. Keland

Clerk of the Supreme Court.

{11874-15}

Supreme Court
John Buchanan
Patrick Hanney
Mit of Error



Clerk of the Supreme Court.
P. Keenan
one thousand eight hundred and thirty one
in the Year of our Lord
Chief Justice of our said Court, and the
WITNESSES, the Hon. James Macdougall
James Macdougall

Filed Feb. 22, 1857.
Beland Clerk.

Patrick Hanney

the Judge thereof, between
Judgment of a plea which was in the Circuit Court of the County of
BECAUSE in the record and proceedings as also in the rendition of the
The Clerk of the Circuit Court for the County of La Salle, Illinois:
The people of the State of Illinois, etc.
State of Illinois, etc.