

8657

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

# Supreme Court of Illinois

John Maxcy & Philip K. Howard,  
Partners

---

vs.

Henry Hecker~~thorn~~<sup>an</sup>

*Heckerthorn*

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71641  7



To the Clerk of the said Court please  
 issue Summons as above in a plea  
 of Tricass on the Case upon promises  
 directed to the Sheriff of Alexander County  
 to execute say Damages as \$2000.

May 7<sup>th</sup> 1865

Vandorstow. Plff Atty

Afterwards on the day and Year last aforesaid  
 a Summons was issued, which Summons  
 is in the words and figures following to wit,

"State of Illinois }  
 Fayette County }

The People of the State of  
 Illinois to the Sheriff of Alexander County  
 greeting. We Command You that you  
 summon John Macey and Phillip K  
 Howard Copartners in the firm name  
 of Macey and Howard if they shall  
 be found in your County personally  
 to be and appear before the Circuit Court  
 of said County of Fayette on the first day  
 of the next term thereof to be holden  
 at the Court House in Vandavia in  
 said Fayette County on the first Tuesday  
 of June 1866 to answer unto Henry  
 Heckethorn in a plea of Tricass on  
 the Case on promises to the Damage of

said plaintiff as he says in the sum of Two thousand Dollars and you have then and there this writ with an endorsement thereon in what manner you shall have executed the same

Witness Myr Hankins Clerk of our Seal said Court and the Seal thereof at Vandalia aforesaid this 7<sup>th</sup> day of May A.D. 1866  
Myr Hankins Clerk

Stamp  
50 cents

On the back of which summons is the following endorsement to wit

"Served the within summons by reading the same to the within named John Maxey and Phillip K Howard Co Partners in the firm name of Maxey & Howard this 18<sup>th</sup> day of May 1866

C S Arter  
Shff

Shff fees \$1.50,  
paid by Plaintiff atty  
C S Arter  
Shff

Afterwards on the 25<sup>th</sup> day of May A 1866 a Declaration was filed, which Declaration is in the words and figures following to wit

4<sup>th</sup> State of Illinois } Fayette County Circuit Court  
Fayette County } of the June Term A.D. 1866

Henry Heckerhorn plaintiff in this  
suit by J. P. Vandorston his Attorney complains  
of John Macey and Phillip K. Howard  
Co-partners in the firm name of Macey and  
Howard defendants in this suit, who are  
Summoned &c) to answer the plaintiff  
of a plea of Tricopass on the Case on promises

For That Whereas, the said defendants  
heretofore to wit, on the first day of April  
in the year of our Lord one thousand  
Eight hundred and sixty six at said  
County of Fayette became and were  
indebted to the said plaintiff in the  
sum of Two thousand Dollars of lawful  
money of the United States of America  
for divers goods and chattels by the said  
plaintiff before that time sold and delivered  
to the said defendants and at the special  
instance and request of the said defendants  
and being so indebted to the said plaintiff  
the said defendants in Consideration thereof  
afterwards to wit, on the same day and year  
and at the place aforesaid undertook  
and then and there faithfully promised  
the said plaintiff well and truly to pay

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into the said plaintiff the sum of money  
last mentioned when the said defendants  
should be thereunto afterwards requested

And whereas also the said defendants  
afterwards to wit on the same day and  
year and at the place aforesaid in  
consideration that the said plaintiff had  
before that time at the like special instance  
and request of the said defendants sold  
and delivered to the said defendants divers  
other goods and Chattels of the said plaintiff  
the said defendants then and there undertook  
and faithfully promised the said plaintiff  
that the said defendants would well and  
truly pay to the said plaintiff so much  
money as the last aforesaid goods and  
Chattels at the time of the sale and delivery  
thereof were reasonably worth when the  
said defendants should be thereunto  
afterwards requested and the said plaintiff  
aver that the said goods and Chattels  
last mentioned at the time of the sale  
and delivery thereof were reasonably  
worth the <sup>sum</sup> sum of Two thousand Dollars  
of like lawful money as aforesaid to wit  
at the place aforesaid the said defendants  
afterwards on the same day and year  
and at the place aforesaid had notice

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And whereas also the said defendants  
afterwards to wit, on the same day and year  
and at the place aforesaid became and were  
indebted to said plaintiff in the further  
sum of Two thousand Dollars of like  
lawful money as aforesaid for money  
before that time lent and advanced by  
the said plaintiff to the said defendants  
and at the like request of the said defend-  
ants and in the like sum for other money  
by the said plaintiff before that time paid  
laid out and expended for the said defendants  
and at the request of the said defendants  
and in the like sum for other money by  
the said defendants before that time had  
and received to and for the use of the  
said plaintiff, and in the like sum for  
other money before that time and then due  
and owing the said plaintiff for interest  
upon and for the forbearance of divers  
other sums of money before that time and  
then due and owing from said defendants  
to said plaintiff, and in the like  
sum for price and value of work  
then done and material for the same  
provided by the plaintiff for the defen-  
dants and at the like special request  
of the defendants and being so indebted

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the said defendants in Consideration thereof afterwards to wit on the same day and Year and at the place aforesaid undertook and then and there faithfully promised the <sup>said</sup> plaintiff well and truly to pay unto the said plaintiff the several Sums of Money in this Count mentioned when the said defendants should be thereunto afterwards requested, And whereas also the said defendants afterwards to wit on the same day and Year and at the place aforesaid accounted together with the said plaintiff of and Concerning divers other Sums of Money before that time due and owing from the said defendants to the said plaintiff and then and there being in arrear and unpaid and upon such accounting the said defendants then and there found to be in arrear and indebted to the said plaintiff in the further Sum of Two Thousand Dollars of the like lawful Money as aforesaid and being so <sup>found</sup> in arrear and indebted to the said plaintiff And the said defendants in Consideration thereof afterwards to wit on the same day and Year and at the place aforesaid undertook and then and there faithfully promised the said plaintiff well and truly



to pay unto the said plaintiff the said sum of money last mentioned when the said defendant should be thereunto afterwards requested. Nevertheless the said defendants (although often requested etc) have not yet paid the several sums of money above mentioned or any or either of them or any part thereof to the said plaintiff, but to pay the same or any part thereof to the said plaintiff the said defendants have hitherto altogether refused and still do refuse to the damage of the said plaintiff two thousand Dollars and therefore the said plaintiff brings suit etc

J. P. Vandorston  
Plaintiff's Attorney

Copy of the Account said on

Marey and Howard

To Henry Beckethorn Dr

Nov. 7. 1865 To 18 head of Cattle at \$33 1/6 per head \$600.00  
 Nov 16 1865 To 7 head of Cattle at \$28 per head \$196.00  
 " " " To 60 head of Sheep at \$4 per head \$240.00

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To Money lent and advanced	\$2000,
To Money paid, laid out and expended	\$2000,
To Money had and received to & for the use of self	\$2000,
To Goods & Chattels sold & delivered	\$2000,
To Labor Services and Material	\$2000,
To balance due on account stated	\$2000,

Afterwards to wit on the fifth day of June AD 1866 at the June Term of said Court a plea was filed, which plea is in the words and figures following, to wit:

State of Illinois of the June Term 1866  
 Fayette County 3 of the Fayette County Circuit Court

Henry Heckethorn }  
 vs } Assumpsit  
 John Marcy & }  
 Philip K Howard }

And the said defendants by J. Guethouse their Atty Come and defend the wrong & Injury where & say they did not undertake & promise in manner & form as the said plaintiff hath above thereof complained against them and of this they put themselves on the Country &c  
 and Plaintiff doth } J. Guethouse  
 the like } for Deftes  
 Vandorston }

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Afterwards to wit, on the sixth day of  
June A.D. 1866 at the June Term of said  
Court aforesaid an affidavit was  
filed which is in the words and  
figures following to wit,

State of Illinois of the June Term 1866  
Maysville County J<sup>ss</sup> of the Maysville County Circuit Court

Peter Marcy the Authorized Agent  
of the debts in above named Cause being  
duly sworn says that said defendants cannot  
safely proceed trial in the above Cause  
at the Term of the Court on account of the  
absence James Hunt and Henry J Gillam  
who are material witnesses for said debts

That said James Hunt lives in Missouri  
& has since long before the Commencement  
of this suit service being had on said defend-  
ants about twenty days ago and that said  
Henry J Gillam lives in Minnesota &  
has since January last that the defendants  
had no subpoena issued for said  
witnesses as they were beyond the  
Jurisdiction of this Court ever since and  
long before the Commencement of this suit  
& that they had not sufficient time to  
procure said witnesses or their evidence and

the said Subpoenas would have been of no avail. That they expect to prove by the said Hunt that this suit is brought against said defendants to recover the price of certain Cattle and Sheep which plaintiff alleges were bought by said Hunt as agent for defendants and that said Cattle were not so bought by him & that Hunt was not the agent of said Maxey & Howard & that said Maxey & Howard never authorized the said Hunt to purchase Cattle for them & that they never received or had anything to do with said Cattle & they expect to prove by said Gillam that said Hunt Consigned to one Peter Maxey and Gillam a portion of the said Cattle, to be sold on Commission which was done, & the money paid over to said Hunt & that the residue of the Cattle & the Sheep, were sold by Hunt himself & the money for the same received by him Hunt.

That they further expect to prove by said witnesses that said Hunt purchased said Stock on his own responsibility & disposed of the same & received the pay therefor & that John

Maxey & Phillip K Howard had nothing  
 whatever to do with his said purchase  
 & Sale and that Hunt was not & never  
 had been the agent of or authorized to  
 use the name of said Maxey & Howard  
 That said defendants have not had  
 time since the commencement of this suit  
 to procure the evidence of said Hunt  
 & Gillam but that they expect by the next  
 term of this Court to be able to procure  
 the evidence of said witnesses either  
 by their presence or by their deposition as  
 one of them Henry Gillam lives at St Paul  
 Minnesota and that the other James  
 Hunt in some part of Missouri the  
 exact point being unknown to affiant  
 or defendants, That this affidavit is not  
 made for delay but that Justice may be  
 done & that said defendants have no  
 other witnesses by whom they can prove  
 said facts

Sworn } Peter Maxey  
 J. M. Hawkins clerk }

Afterwards to wit on the day and  
 year last aforesaid at the term of Court  
 aforesaid, the following order was made  
 by said Court to wit,

" Henry Hekethom }  
 vs } Trespass on the Case  
 John Masey and } on promise  
 Phillip K Howard }

On this day come the  
 said parties by their Attorneys and on  
 motion of defendants and upon their  
 affidavit herein filed it is ordered  
 that this Cause be continued to the  
 next term of this Court"

Afterwards to wit on the 30<sup>th</sup> day of  
 November AD 1866 at the November Term of  
 said Court the following order was made  
 and Judgment rendered by said Court  
 to wit

" Henry Hekethom }  
 vs } Trespass on the Case  
 John Masey & } on promise  
 Phillip K Howard }

On this day come the  
 said parties in their proper persons also  
 by their Attorneys and issue being joined  
 wherefore let a Jury come and thereupon  
 came the following Verdict of a Jury to  
 wit. Robert T Young, Geo W Mabey, Daniel  
 Rush, Edward St Pierre, Edward Robinson  
 Wallace Browning, Henry Sudhorst, William

Neely Lewis & Bluxton, James Carroll  
 C. M. Mattinee and C. S. Bolt, who being  
 duly elected tried and sworn well and  
 truly to try the issue joined on  
 their oaths do say we the Jury find  
 for the plaintiff the Sum of Six hundred  
 and Eighty Six Dollars, whereupon the  
 defendants by their Counsel entered their  
 motion for a new trial which is overruled  
 by the Court defendants then entered their  
 motion in arrest of Judgment which  
 motion was also overruled. It is  
 therefore Considered by the Court that  
 the said plaintiff recover of and  
 from the said defendants the Sum  
 of Six hundred and Eighty Six Dollars  
 for his Damages in form aforesaid by  
 the Jury found also his Costs and  
 Charges by him about his Suit in this  
 behalf expended, to which ruling  
 of the Court in refusing to grant a new  
 trial in arrest of Judgment the  
 defendants by their Counsel then and there  
 excepted and asked leave to file Bill  
 of Exceptions and appeal Bond which  
 is allowed, appeal Bond to be filed  
 in 30 days and approved by the Clerk.

Afterwards to wit on the 4<sup>th</sup> day of  
December A D 1866 at the Term of  
Court last aforesaid a Bill of Exceptions  
was filed by Defendants Counsel, which  
Bill of Exceptions is in the words and  
figures following to wit.

State of Illinois In the Circuit Court of  
Rayette County 3<sup>rd</sup> Jud Co. D the Term 1866

Henry Hetherington }  
vs } Bill of  
John Macey & Philip } Exceptions  
K Howard partners as }  
Macey & Howard }

Be it remembered  
that when this cause came on to be tried  
at the term aforesaid, the issues were  
submitted to a Jury and the plaintiff  
to maintain the issues on his part  
introduced and examined as a witness  
William H Sec. who testified as follows  
to wit. know plaintiff and defendant  
Macey saw Macey in September last in  
the County in Company with one Hewett?  
Hewett was stock buyer. dont know  
who he was buying stock for, he said  
he was buying for Macey, he bought



from me two or three Cows, saying he bought them for Maxey (The defendants by their Counsel then and there objected to the statements of Hewett which objection was overruled by the Court and the defendants by their Counsel then and there at the time excepted to the ruling of the Court in overruling said objection)

Maxey paid for the Cows, they were delivered to him at the Cars at Shobonier in this County - know of no other purchases at that time by Hewett. Had seen Maxey before that time. Hewett called Maxey John. Don't know to whom those Cattle were shipped, Maxey & Hewett were both present. Mr Sprinkles Cattle were shipped at the same time. know of no subsequent purchases by Hewett. Saw Hewett afterwards, don't recollect time

Hackett's Cattle, the first Car was shipped early in November. Think I saw Maxey before I sold the Cows to Hewett & Maxey paid for them. Don't know his business, saw him on Prairie. Did not tell me his business. Don't recollect of <sup>any</sup> other Cattle being shipped when Sprinkles & Mine were. Heard Maxey say nothing about going to see Hackett's

Cattle.

On Cross examination he says  
 Neither Hewitt or Maxey owe me anything  
 for Cattle. It was 27<sup>th</sup> of September 1865 I saw  
 Hewitt & Maxey together at Shobonier. I only  
 know Maxey was called John by Hewitt  
 The Cows were dry & fat - The others were  
 Steers sold by Sprinkler. Saw Hewitt after  
 that he was after me for Cattle, dont  
 remember how long after, Maxey paid  
 Hewitt the money he gave it to me or  
 Maxey paid me direct at the station at  
 Shobonier. I dont recollect which, I think  
 Mr Wetmore was close by

The Plffs then introduced & examined  
 Sprinkler who testified as follows to wit  
 knows Jeff and John Maxey. Know  
 Hewitt dont know his first name. Saw  
 Hewitt at my house in September 1865 - said  
 he was buying for Maxey didnt say  
 which one. (The depts by their Counsel  
 then and there objected to the statements of  
 Hewitt, which objection was overruled  
 by the Court to the overriding of which  
 objection the depts. by their Counsel then  
 and there at the time excepted) Bought  
 Cattle from Wetmore at my house, Cattle  
 taken to Shobonier, Peter Maxey paid for

first lot & John Maxey for last lot of Cattle, twenty six head in first lot all bought at once but delivered at two different times and to different persons Ten in second lot. Peter paid part of first lot & John the residue & amount of second lot

Dont remember who was present it was at the fair the same day spoken of by witness See, I never saw Maxey after that saw Huett a month or more afterwards, Huett had a Car load of Sheep which he got in Decatur or up the road above Shobonier, It was in December I think, The Sheep were not bought of Heckethorn, never heard Maxey or Huett speak of buying Heckethorn's Cattle, saw Huett at Jeffs but never saw Maxey there. John Maxey bought one heifer himself in addition to the ten before spoken of from me, Dont recollect of hearing Maxey Huett was his agent, Huett started to see See Cows, Maxey said Huett always paid too much for Cattle

On Cross examination he says, saw Maxey at same time See refers to, It was in September 1865, that is the time I speak of in relation to the Cattle, Huett seemed to be employed by the Maxeys, I know

two Maxeys, Peter & John, know no other  
 - sold than Steen. The Sheep I refer to  
 came from above. The peffs then  
 introduced and examined as a witness

Morton who testified as  
 follows to wit, Dont know Maxey or Howard  
 have seen Hunt several times. Saw him  
 at Hekethoms about 17th November 1868.  
 Hunt came there & got 60 head of Sheep  
 & seven Cattle. He got 18 Cows before that  
 Cattle sold for \$33<sup>1</sup>/<sub>2</sub> per head for the  
 18. He paid \$500 down when he got the Sheep  
 Sheep were valued at \$4<sup>1</sup>/<sub>2</sub> per head.  
 Dont know the price of the 7 head of Cattle,  
 Dont remember the time between the  
 purchase, Hunt, myself & Hekethoms boys  
 assorted the stock & drove it to road  
 at Shobonier. It was about the middle  
 of November when we drove Sheep &  
 seven head of Cattle there, Hekethome  
 was sick. Dont remember the day of  
 the week, Hunt said he or John Maxey  
 would be back on Monday or Tuesday  
 & pay for stock, nobody was with Hunt  
 when he purchased Peffs stock, Hunt  
 said he was buying for Mr Maxey  
 (To the statement of the witness as to  
 the statement of Hunt as for whom he

was buying the depts by the Council then and there at the time objected - which objection was overruled by the Court & the depts then and there at the time excepted)

On Cross examination he says Maxey - Huett said had gone to St Louis at the time of the second purchase. Huett stated that he was buying for John Maxey - The cows were dry. They were sent to Station by Peff

Dont remember when first lot was bought from Peff. The second lot was bought about middle of November 1865 -

The peff then introduced as a witness Dunn who testified as follows. Know Peff. Dont know depts. Have seen Huett but once & that was when he bought 7 cattle from Peff. Dont remember date. Peff was sick with Ague before noon, saw Peff & Huett at pasture. Huett said were run short of money but paid Peff \$350. & said Maxey or he would come up the next Monday or Tuesday & pay balance

There was seven head of Cattle valued at \$28. per head & the sheep at \$4. per head. Huett left house first and went with sheep & cattle

The Peff then introduced as a witness Wetmore who testified as follows - saw John Maxey once. Saw Huett

once, & that was when Lee sold his cattle  
 Saw Sprinkler & Lee receive money from  
 Maxey. The Plffs then introduced as a  
 witness John Revis who testified as follows  
 - was to wit. Saw a man they called Stuart  
 he borrowed a horse from me, He said  
 he would go to Spangler & Keebethons  
 to buy cattle, was going to Ship to Maxey.  
 Saw Maxey & he paid me for use of the horse

The Plffs then introduced as a witness Miles  
 Stuart, who testified as follows to wit,  
 James Stuart is my son. He said he  
 was engaged in buying stock for Maxey or  
 the Maxeys. I sold Stuart some hogs for  
 Maxey to be delivered in Centralia. They  
 were sold in October 1865 & were to be  
 delivered between Christmas & New years  
 following, I did deliver them to Peter  
 Howie who said he was sent by Maxey  
 for the hogs. delivered them the day before  
 Christmas, said Maxey would send up  
 the money. Howie said he had the money  
 for me that Maxey had sent it up. I saw  
 my son and Maxey riding in a Buggy together

On Cross examination he says  
 James Stuart is in Seaside Mo or was the  
 last I heard of him. I went to Plffs  
 house from Marion Co to see him. I had

heard a Considerable about the affair  
 and I went to see him, I dont know  
 whether I attempted to settle with Heekethorn  
 for these Cattle or not, Heekethorn said  
 that Hunt was buying Stock for Macey  
 or Macey, that he was satisfied of that  
 The plff here closed his case

The depts to maintain the issues on their  
 part introduced and examined as a  
 witness Henry J Gillam who testified as  
 follows, I know Macey & Howard the  
 depts, Dont know Plff. (witness was  
 here shown two receipted freight bills)  
 I know the handwriting of Mr Wild the  
 Cashier of the Ill c & R Co at Cairo, the signature  
 is genuine to these bills, I have seen him  
 write often. Before anyone can get  
 Freight at the Ill c & R Co depot at Cairo  
 they must pay the freight to the cashier and  
 he gives them a recd like these. (The depts  
 then offered in evidence the receipts above  
 spoken of of which the following are true  
 Copies)

" Illinois Central Rail Road Company "  
 Macey & Co                      Cairo Nov 8<sup>th</sup> 1865 "  
 " To Illinois Central Rail Road Co                      Dr "

" From	For charges on Car No 1840 weight	Amount
" Shobonier	18 Cattle	20000 40-
" To 134-7	Tax	1-
		<hr/> 41.00 "

Pro No 241 Received Charges  
Wild Cashier "

Allinois Central Rail Road Company "  
Macey & Co Cairo Nov 18 1865 "  
To Allinois Central Rail Road Co Dr "

" From	For charges on Car No 2980 weight	Amount
" Shobonier	7 hd Cattle	20000 40-
"	60 Sheep	1-
	Tax	<hr/> 41.00 "

Pro No 721 Received Charges  
Wild Cashier "

(To the introduction of said receipts the Plff by his Counsel objected. which objection was sustained by the Court. To the sustaining of which objection the depts by their Counsel then & there by their Counsel excepted) I know the Cattle & Sheep in question were shipped to Macey & Co. There is no such firm, they came to Cairo, the 18 Cows about 7th November 1866 and the the 7 head & the Sheep came about the



17<sup>th</sup> or 18<sup>th</sup> November 1865. When they came, Strett came to the upper market where Peter Maxey & I kept & asked me if we wanted to buy the stock, I told him we had got all we wanted. He then got Peter Maxey to advance the money to pay the charges & sell the stock for him on Commission. Peter Maxey did receive them & sold them at Stewards Stock Yards - He sold the seven head to Staniel & part of the 18 head to a man in the market & the balance to some other man in the market.

He sold 50 of the Sheep to Maxey and Howard & they paid Peter Maxey for them. I saw Peter Maxey settle with Strett & pay over to him all the money due him on the stock. I dont think Maxey was in St. Louis that fall. I was in employ of Maxey & Howard up to Nov. 15<sup>th</sup> 1865 during Sept & Oct. I then went in with Peter Maxey. I was frequently about Maxey & Howards after I left their employ - They never did receive any stock from Strett while I was with them in Sept or Oct. If Strett had been the agent of Maxey & Howard during the months of Sept. Oct & November 1865 I think I would have known it.

I do not know he was their agent  
 I never knew he was their agent, the  
 hogs spoken of by Mr. Stucutt were bought  
 by Peter Macey or for him. I saw the  
 recd. given by Stucutt the man from  
 whom the hogs were bought & it was to  
 Peter Macey. Peter Macey sent Howie  
 after the hogs as Howie wanted to make  
 out a load to send South. Macey & Howard  
 had nothing to do with the Cattle & Sheep  
 before referred to. They were not consigned  
 to them.

On cross examination he says. I saw  
 the money paid for freight & saw Peter  
 Macey settle with Stucutt. I do not state  
 what others told me, I state what I know.  
 I state that John Macey was not in St  
 Louis because I know where he was, when  
 I was in the employ of Macey & Howard &  
 was frequently in there when Peter & I had  
 gone in business & if Macey was away  
 generally asked where he was. He was in  
 Louisville that fall.

The Defts then introduced  
 Tankersly as a witness who testified as  
 follows to wit. There was no stock  
 shipped from Shobonier in Nov. 1865  
 to Macey & Co or Macey & anyone else

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except Heckettoms, I was agent and would have known it.

The Defts. then introduced Wetmore as a witness who testified (witness shown a letter) I wrote this letter at the request of H. Heckettoms the peff. He authorized me to sign his name to it. - The following letter was then introduced to wit

" Sho bonier Ills Dec 19 1865 - "

" John Maxey Esq "

" Dear Sir "

" Mr Stuart was here and bought eighteen  
" (18) on 7<sup>th</sup> Nov. and also on the 16<sup>th</sup> "  
" he got 7 head of Cattle and sixty (60) "  
" head of Sheep and paid on the whole "  
" three hundred & fifty dollars leaving a "  
" balance in my favor six hundred & eighty "  
" six dollars, which said you would "  
" send to me on the next Monday after "  
" he took the last lot of Cattle away "  
" I have not received the money yet "  
" and am needing it very much, please "  
" forward it at once "

" I have some fat cattle if yours "  
" are buying now. I would like to see "  
" to you. if you want them come up "  
" Please answer at once "

" the evidence that he held himself out as the  
 " agent of Macey in the purchase of Cattle  
 " and if Macey and Howard were partners  
 " that the same Cattle were received and  
 " paid for by Macey - that he hired a  
 " Horse in hunting up said Cattle & that  
 " the hire of said Horse was paid for  
 " by Macey - that Macey directed where  
 " where the first lot of Cattle were  
 " to be shipped & to whom shipped &  
 " that Hunt directed the two lots  
 " bought from Plff to be sent to the  
 " same persons

4. That if Hewitt was the agent of  
 " defendants in buying said Cattle &  
 " Sheep, the delivering of the same to him  
 " must be regarded as a delivery to  
 " the defendants and an appropriation of  
 " them afterwards by said Hewitt if he did  
 " so appropriate them would not affect the  
 " right of the Plff to recover their value  
 " from the defendants

To the giving of Each of said instructions  
 the depts. by the Counsel then and there  
 at the time excepted.

The Court at the instance of the depts  
 gave to the Jury the following instructions

Numbered one two three four & five  
to wit,

11 " Before you can find for the plaintiff  
" in this case you must believe from the  
" evidence that the firm of Macey & Howard  
" the defendants by themselves or one of them  
" or by an authorized agent purchased  
" the Cattle & Sheep in question from the  
" plaintiff

12 " The Court instructs the Jury that Agency  
" cannot be presumed and that you must  
" be satisfied from the evidence that  
" Huett was in fact either the general or  
" Special agent of both the defendants  
" as partners at the time of the purchase  
" of the Stock in question and  
" authorized to purchase the Stock in  
" question

13 " The Court instructs the Jury that the mere  
" fact of James Huett stating that he was the  
" agent of Macey or the Maceys is no evidence  
" that he was <sup>the</sup> authorized agent, unless you  
" believe from the evidence that Macey or  
" the Maceys were present when such  
" statements were made by Huett and  
" expressly or impliedly assented thereto  
" or subsequently ratified his acts.

Given

That although Stuetto may have been  
 the authorized agent of Maxey or the  
 Maxeys, you must believe from the  
 evidence before you can find a  
 verdict for the plaintiff that he was  
 the agent of Maxey & Howard and  
 authorized to purchase the Cattle and sheep  
 in question on and for their joint account

1105

Given

That the pleadings in this case only admit  
 that John Maxey & Phillip R Howard were  
 partners under the firm name of Maxey &  
 Howard at the time the cause of action  
 accrued and any admissions acts or  
 declarations made or done by John Maxey  
 prior to that time are not admissible  
 as against defendant Howard unless  
 you believe from the evidence they  
 were partners at the time such admissions  
 or declarations were made and such acts  
 done

The Defts then asked the Court  
 to give to the Jury the following  
 instructions to wit

Unless you believe from the evidence  
 that the transactions proven to have taken  
 place between the witnesses, See & Sprinkler  
 & Maxey & Stuetto were in some way brought

Refused 38

" to the knowledge of the plaintiff  
" he cannot claim that he sold the  
" stock to Huettt as the agent of Macey  
" because of said transactions

Which said instruction the Court refused  
to give to the refusing of which instruction  
the Defts by their Counsel then and there  
at the time excepted

These were all the instructions given  
or offered,

Whereupon the Jury retired and  
afterwards came into Court and delivered  
their Verdict in the following words

We the Jury find for the plaintiff the  
sum of Six thousand and Eighty Six dollars

Whereupon the defts entered a motion  
in writing with Causes for a new trial in  
the following words

H. Hackett }  
" }  
Macey & Howard }

Now Comes the defendant  
and enters a motion for a new trial  
for the following Causes  
First because the verdict of the Jury is contrary  
to the evidence

Second. Because the verdict of the Jury is  
" Contrary to the instructions of the Court

Third . Because improper evidence was admitted  
before the Jury on behalf of the plaintiff

Fourth . Because proper Evidence offered by  
" the defendants was refused admission  
" before the Jury

Fifth . Because improper instructions were given  
" by the Court at instance of plaintiff

Sixth . Because proper instructions were  
refused by the Court on behalf of the  
" defendants

" O' Greathouse & Mulkey Wall &  
" Wheeler Attys for defts

Which motion was overruled by the Court  
So the overruling of which motion the  
defts by their Counsel then and there at  
the time excepted

Whereupon the defendants entered  
their motion in arrest of Judgment, which  
motion was overruled by the Court

So the overruling of said motion the  
defts then & there by their Attys at the time



excepted and prayed an appeal to the  
 Supreme Court, which is allowed  
 upon debts entering into bond payable  
 to the plff with Securities to be approved  
 by the Clerk in the penalty and Conditions  
 according to law within thirty days,  
 and filing then Bill of exceptions in  
 term time which is accordingly done

Chas. Emerson Judge

Afterwards to wit on the 25<sup>th</sup> day of  
 December AD 1866 an appeal bond  
 was filed which bond is in the  
 words and figures following to wit

Know all men by these presents  
 that we John Macey, Philip K Howard,  
 John Lee and John S Harmon of the County  
 of Alexander and State of Illinois are  
 held and firmly bound unto Henry H. Ketchum  
 in the penal sum of Fourteen hundred &  
 Seventy two & 00/100 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 25<sup>th</sup>


" 10th day of December A D 1866

" The Condition of the above obligation  
 " is such that whereas the said Henry  
 " Heckethorn plaintiff did on the 30th  
 " day of November A D 1866 in the Circuit  
 " Court of the County of Fayette and State  
 " of Illinois at the November Term A D 1866  
 " thereof recover a Judgment against the  
 " above John Macey and Philip K Howard  
 " Copartners as Macey & Howard Defendants  
 " in an action of Assumpsit for the Sum  
 " of Six hundred and Eighty Six Dollars  
 " Damages and Fifty Dollars and thirty cents  
 " Costs of suit, from which Judgment the  
 " said John Macey and Philip K Howard  
 " have taken an appeal to the Supreme  
 " Court of the State of Illinois,

" Now if the above bounden John  
 " Macey and Philip K Howard shall  
 " prosecute their appeal with effect  
 " and shall pay said Judgment Costs  
 " interest and Damages in Case the said  
 " Judgment shall be affirmed, then the  
 " above obligation shall be void, otherwise  
 " to remain in full force and effect in law

Witness

S P Wheeler

John Macey 

Philip K Howard 

John S Lee 

John G Harmon 

Ch. Ct. Ill. 4/14/46

State of Illinois 2<sup>nd</sup>

Rayette County 3 I William Hawkins Clerk  
of the Circuit Court in and

for said County hereby Certify that the within  
and foregoing is a true and complete Record of  
the files and proceedings <sup>in case</sup> of Henry Beckstrom  
vs John Macey & Philip H Howard as the  
same appears of Record in my office

Witness my hand and official  
Seal at Vandalia this 4<sup>th</sup> day  
of January A.D. 1867

Wm Hawkins Clerk



And the said Macey & Howard assign the following  
causes of error

- 1<sup>st</sup> The court erred in permitting the statements  
of James Beck to go to the jury as evidence.
- 2<sup>nd</sup> The court erred in refusing the plea of coding  
admission to the jury
- 3<sup>rd</sup> The court erred in giving the 1<sup>st</sup> 2<sup>nd</sup> 3<sup>rd</sup> & 4<sup>th</sup> instruc-  
tions of the plaintiff
- 4<sup>th</sup> The court erred in refusing the 6<sup>th</sup> instruction  
asked by def<sup>t</sup>
- 5<sup>th</sup> The court erred in overruling the motion for  
a new trial
- 6<sup>th</sup> The court erred in overruling the motion in  
arrest of judgment - Macey, Wall & Macey  
attys for def<sup>t</sup> in error

And the said Defendant in Error by Wm W. Elledge  
his atty says that in no error was in the Record  
& proceedings in the Cause Macey vs Beckstrom  
per Paper

49  
In Sup Ct. Ill. 2<sup>nd</sup>  
Session 1867  
Division

Macey & Howard  
Henry W  
Beckstrom

Record

8657

Filed, Jan 5, 1867  
N. Robertson Clk  
Paid by Wall. \$5.00

The Plaintiff introduced as a witness  
 Tankersly who testified as follows  
 An Station Agent I C R R Co at Shoshone  
 - Knew plaintiff and have seen John  
 Maxey, saw him at Station when Lee &  
 Sprinkles Cattle were shipped. Maxey and  
 Hewett were together - They had the Cattle  
 shipped to Maxey & Howard Cairo.

I remember 18 head of Cattle coming from  
 plaintiff. Hewett was at the Station and  
 told me to send them the same as the  
 first lot had been sent by John Maxey

I had but little room and I don't  
 recollect whether I sent to Maxey and H  
 or Maxey & Co, I think to Maxey & Co.

I remember the second lot of Cattle and  
 Sheep coming from plaintiff. Hewett told  
 me to send them the same as the first lot

I don't recollect whether I sent them  
 to Maxey & H or Maxey & Co but I think  
 to Maxey & Co. I am certain I sent one  
 lot to Maxey & Co and think probably both  
 lots sent by Hewett were sent to Maxey  
 & Co

On cross examination he says some  
 of Steckethorn's Cattle were shipped to  
 Maxey & Co and perhaps all. The Specimen  
 which I had to write consignees names wa

Small. Could write it in as small a space as Co. but I thought it would make no difference. I thought he was sending Cattle to Macey & Howard. It was my deduction only

State of Illinois 308

Wayne County 3 I William Hankins Clerk  
of the Circuit Court in and for  
said County hereby Certify that the  
foregoing is a true <sup>copy</sup> of the evidence of  
Tankersly as appears from the Bill of Exceptions  
now on file in my office in Case of  
Henry Heckethorn vs John Macey and  
Phillip K Howard That in making out  
the Record in said Case, by mistake I  
omitted to copy in the foregoing evidence  
of said Tankersly

Witness my hand and official  
seal at Vandalia this 14<sup>th</sup> day  
of May a D 1867

Wm Hankins Clerk



In the Supreme Court, State of Illinois First  
Grand Division, June Term 1864.

Joseph Maxcy & Philip K. Howard }  
Friends of Maxcy & Howard } Appeal from  
Appellants } Fayette

vs.  
Henry Eckelthorn }  
Appellee }

Page of Record      Action of Assumpsit

243 May 17/66 Summons issued and served on  
def't May 18/66.

4.5.6.7.78. May 20/66 Declaration filed, containing 1<sup>st</sup> indebitatus  
assumpsit for goods & chattels sold and delivered  
2<sup>d</sup> Quantum meruit for goods and chattels  
sold and delivered. 3<sup>d</sup> money lent and  
advanced, money paid, laid out and ex-  
pended, money had and received, money due  
for interest, for work done and material furnished  
4<sup>th</sup> Account stated.

9. Account for cattle and sheep sold attached to  
declaration

" June 7/66 Plea filed - general issue.

13 Nov 3/66 of November Term issue joined and  
trial before the Judge and a jury, when the  
following evidence, preserved in bill of ex-  
ception, was introduced.

15 By the Plff's William H. See sworn & dep. shon.  
Plff & def't Maxcy - saw Maxcy in September

last in this county in company with one  
Ault. Ault was stock buyer. dont know  
who he was buying stock for. He said he was  
16. buying for Macey. He bought from one two or  
three cows saying he bought them for Macey. (The  
defts by their counsel objected to the statements  
of Ault, which objection was overruled by the  
Court & the defts by their counsel there and there  
at the time excepted) Macey paid for the  
cows. They were delivered to him at the cars  
at Shobouier in this county. Know of no other  
purchases at that time by Ault, Had seen  
Macey before that time. Ault called him  
John dont know to whom these cattle were  
shipped - Macey & Ault were both present -

Sprinkles cattle were shipped at same time  
Know of no subsequent purchases by Ault  
Saw Ault afterwards - dont recollect time  
First car of Heckerthorns cattle shipped early in  
November. Think I saw Macey before I  
sold the cows to Ault & Macey paid for them  
dont know his business. Saw him on prairie  
did not tell me his business. dont recollect of  
any other cattle being shipped when Sprinkles  
and mine were. Heard Macey say nothing  
about going to see Heckerthorns cattle.

17 On cross-examination he says:-  
Neither Ault or Macey owe me any thing for

cattle. It was 24<sup>th</sup> Sept 1865 I saw Airt  
and Macey together at Shotniver. I only know  
Macey was called John by Airt. Cows were  
dry and fat. The others were steers sold by  
Sprinkler. Saw Airt after that. He was  
after me for cattle. Don't remember how long  
after Macey paid Airt the money and he  
gave it to me or Macey paid me direct  
at the Station at Shotniver. I don't recollect  
which. I think Mr. Whitmore was done by.

The plff then introduced Sprinkler who  
testified as follows:—

Know plff and John Macey, know Airt. Don't  
know his first name. Saw Airt at my house  
in Sept 65. Said he was buying for Macey.  
Didn't say which one (The depts atty objected to  
the statements of Airt which objection was  
overruled by the Court & depts at the time  
excepted). Bought cattle from Whitmore at  
my house. Cattle taken to Shotniver. Peter  
Macey paid for first lot & John Macey for  
last lot of cattle. Twenty-six head in first  
lot all bought at once, but delivered at two  
different times and to different persons, five  
in second lot. Peter paid part of first lot  
and John the residue, and amount of  
second lot. Don't remember who was present  
Was at per same day spoken of by witness



See, never saw Macey after that Saw  
Airt a month or more afterwards, Airt  
had car load of sheep he got at Decatur  
or up the road above Shotouar. It was in  
December I think They were not the Beckethorn  
sheep Never heard Macey or Airt speak of  
buying Beckethorn cattle. Saw Airt at pliff  
but never saw Macey there. John Macey bought  
one heifer in addition to the two spotted of found  
me, dont recollect of hearing Macey say that  
Airt was his agent Airt started to see See  
cows Macey said Airt always paid too  
much for cattle

Our cross examination he says: - Saw Macey  
at same time See refers to in Sept 185 - That  
is time I speak of in relation to cattle Airt  
seemed to be employed by the Maceys. I  
know two Maceys, Peter & John - know no  
other Sold them steers, sheep & refer to cause found  
above.

Pliff thus introduced Morton, who testified: - Dont  
know Macey or Airt. Have seen Airt several  
times Saw him at Beckethorn about 17th Nov 185  
Airt came there and got 60 head of sheep  
and seven cattle. He got 18 cows before  
that - the 18 sold for \$33 1/3 for head. He paid  
\$350 down when he got the sheep They were  
valued at \$4 1/2 for head - Dont know price of head

of cattle. Dont remember the time between  
the purchases. Ait myself & Beckethorns boys assorted  
stock & drove it to Shotover, About middle  
of Nov. when we drove sheep and 17 head of  
cattle thro. Plff was sick Ait said he or  
John Maxey would be back Monday or Tuesday  
and pay for stock. Nobody was with Ait  
Ait said he was buying for Mr Maxey (To this  
statement deft objected which was overruled &  
deft at the time excepted)

20

On cross Examination he says: Ait said  
Maxey had gone to St Louis at the time  
of second purchase. Ait stated that he  
was buying for John Maxey. Cows  
were dry, were sent to station by Plff  
Dont remember when first lot was bought.

Second lot bought middle of Nov.  
Plff then introduced Drum as a witness who  
testified as follows:

Knew Plff, Dont know deft. Saw Ait once  
only & that when he got of cattle from  
Plff. Plff was sick with ague. Dont remember  
date Plff & Ait were together at pasture  
before noon Ait said were short of money  
but paid Plff \$300. & said he or Maxey  
would come up the next Monday or Tuesday  
& pay balance. Seven head of cattle valued  
at \$28 pr head & sheep at \$4<sup>00</sup> pr head. Ait

left home first & went with sheep & cattle.  
Plff then introduced Wetmore who testified  
as follows:-

21 Saw John Macey once. Saw Alet once and  
that was when he sold his cattle. Saw  
Sprinkler & he received money from Macey.

Plff then introduced as a witness John Davis  
who said:-

Saw a man they called Alet. He borrowed  
a horse from me, He said he would go to  
Sprinkler & Aletthorn to buy cattle, was  
going to ship to Macey. Saw Macey &  
he paid me for use of horse.

Plff then introduced Miles Alet who said:-  
James Alet is my son He said he was en-  
gaged in buying stock for Macey or the  
Macey. I sold Alet some logs for  
Macey to be delivered in Centralia - they  
were sold in Oct /65 and were to be  
delivered between Christmas & New Year following  
I did deliver them to Peter Aowie who said  
he was sent by Macey for the logs. Delivered  
them the day before Christmas. Said  
Macey would send up the money. Aowie  
said he had the money - that Macey had  
sent it up - I said my son and Macey  
riding together.

On cross examination he says:-

James A. Hiet is in Jeddalia, Mo. or was the last I heard of him. I went to plffs house  
22 from Marion Co. to see him I had heard a considerable about the affair and I went to see him I dont know whether I attempted to settle with plff for those cattle or not. Plff said that Hiet was buying stock for Macey or Maceys. That he was satisfied of that.

23 The plff then introduced Laukensly who said: Am Station Agent S.C.R.R. at Shobonier. Know plff have seen John Macey - saw him at Station when Sw & Sprinklers cattle were shipped. Macey & Hiet were together. They had the cattle shipped to Macey & Howard Cairns. Remember 18 head of cattle coming from Plff - Hiet was at Station and told me to send them the same as first lot had been sent by John Macey. I had but little power and I dont recollect whether I sent to Macey & H. or Macey & Co. Remember second lot of cattle & sheep coming from Plff. Hiet told me to send them same as first lot. Dont recollect whether I sent them to Macey & H. or Macey & Co. but think to Macey & Co. I am certain I sent one lot to Macey & Co. & think probably both lots sent by Hiet were sent to Macey & Co.

On cross Examination he says:-

Some of plff's cattle were shipped to Macey & Co perhaps all - The space in which I had to write Consignees names was small. I could write H. in as small a space as Co. but that it would make no difference I thought he was sending cattle to Macey & Howard. It was my deduction only. The Plff here rested his case.

The Defts then introduced as a witness Henry J. Gillam who said:-

I know Macey & Howard the defts - don't know plff (witness was here shown two receipted freight bills) I know the handwriting of Mr Wild the Cashier of the Ill. C. & N. Co at Cairo. The signature is genuine to these bills I have seen him write often. Before anyone can get freight at Ill. C. & N. Co depot at Cairo they must pay the freight to the Cashier and he gives them a receipt like these, (The defts then offered in evidence the receipts above spoken of - of which the following are true copies)-

" Illinois Central Rail Road Company "

" Cairo Nov 8<sup>th</sup> 1865 "

" Macey & Co. "

" To Illinois Central Rail Road Co. W. J. Gillam "

" 24	For charges on car No 1840	weight	amount
" From Johnston	{ 18 Cattle	2000	\$0.00
" To B. H. 7	{ Tax		1.00
" For No. 241	Received Charges		\$1.00
"	Wild Cashier		"

" Illinois Central Rail Road Company "

" Cairo Nov 18 1865 "

" Macey & Co "

"	To Illinois Central Rail Road Co	weight	amount
"	For charges on Car No 2980		

" From Johnston	{ 17 head Cattle		
"	to Sheep	2000	\$1.00

" To B. H. 7	{ Tax		1.00
--------------	-------	--	------

"	Received Charges		\$1.00
"	Wild Cashier		"

(To the introduction of said receipts the plff by his counsel objected, which, objection was sustained by the Court & the defts at the time excepted)

I know the cattle & sheep in question were shipped to Macey & Co. There is no such firm. They came to Cairo. The 18 Cows about 14th Nov'r & the 17 head & the sheep about 14th or 18th Nov'r/65. When they came Hiet came to the Upper Market where Peter Macey & I kept and asked me if we wanted to buy the stock. I told him we had got all we wanted. He then got Peter Macey to advance the money to pay

the charges & sell the stock for him on  
Commissions - Peter Massey did receive them  
and sold them at Stewarts stock yards. He  
sold the 14 head to Powell & part of the 18 head  
to a man in the market & the balance  
to some other man in the market, He  
sold 50 of the sheep to Massey & Howard &  
they paid Peter Massey for them, I saw  
Peter Massey settle with Auet & pay over to him  
all the money due on the stock - I dont  
think Massey was in St Louis that fall,  
I was in employ of Massey & Howard up to Nov 12  
/65 during Sept & Oct. I then went in with  
Peter Massey, & was frequently about Massey  
& Howards after I left their employ, They  
never did receive any stock from Auet  
while I was with them in Sept or Oct.  
If Auet had been the agent of Massey  
& Howard during the months of Sept. Oct &  
26 Nov. /65 I think I would have known  
it. I do not know he was their agent  
I never knew he was their agent. The  
Hogs spoken of by Mr Auet were bought  
by Peter Massey or for him. I saw the  
receipt given by Auet the man from whom  
the hogs were bought and it was to Peter  
Massey. Peter Massey sent Howie after the  
Hogs as Howie wanted to make out a

load to said fourth. Macey & Howard had nothing to do with the cattle & sheep before referred to. They were not consigned to them.

Our cross examination he says:-

I saw the money paid for freight & saw Peter Macey settle with Huet. I do not state what others told me. I state what I know. I state that John Macey was not in St Louis because I know where he was. When I was in the employ of Macey & Howard & was frequently in there when Peter & I had gone into business & if Macey was away generally asked where he was. He was in Louisville that fall.

The depts then introduced Tankersly who said:- There was no stock shipped from St Louis in Nov 1865 to Macey & Co or Macey & any one else except Hackett Horns. I was agent and would have known it.

The depts then introduced Wetmore who said:- (Witness shown a letter) I wrote this letter at the request of H. Hackett Horns, the plff. He authorized me to sign his name to it. The following letter was then introduced:-

St Louis Mo. Dec 19. 1865

John Macey Esq

Dear Sir

Mr Huet was here and bought eighteen (18) on the 15th Nov and also on the 16th he got



4 head of cattle, and sixty (60) head of  
sheep and paid on the whole three hundred  
and fifty dollars, leaving a balance in  
my favor six hundred & eighty six dollars  
which said you would send to me on next  
Monday after he took the last lot of cattle  
away. I have not received the money yet  
& am needing it very much please forward  
it at once.

x x x x x x

signed - A. Ackethorn.

This was all the evidence.

28 The Court at instance of plff gave to the jury  
the following instructions 1. 2. 3. & 4.

1st The Court instructs the jury that if they believe  
from the evidence that Auct was the agent  
of defendants, and that as such agent  
he bought the cattle & sheep from the plaintiff for  
the defendants and received them from the  
plaintiff, that then they should find a  
verdict for the plaintiff for the balance due  
on the same.

2d The Court instructs the jury that the  
suit being against defendants as partners  
the fact of their being partners is admitted  
by the pleadings.

3d That in determining whether Auct was the

29 agent of the defendants they may take  
into consideration the evidence that he  
held himself out as the agent of Macey  
in the purchase of cattle and if Macey &  
Howard were partners that the same cattle  
were received and paid for by Macey that  
he hired a horse in hunting up said  
cattle & that the hire of said horse was paid  
for by Macey. That Macey directed where  
the first lot of cattle were to be shipped &  
that Hunt directed the two lots bought from  
Plff to be sent to the same persons.

4<sup>th</sup> That if Hunt was the agent of defendants  
in buying said cattle & sheep the delivering  
of the same to him must be regarded  
as a delivery to the defendants and  
an appropriation of them afterward by  
said Hunt if he did so appropriate them  
would not affect the right of the plff to  
recover their value from defendants.

Do the giving of the aforesaid instructions  
defts by their counsel at the time excepted.

30 The Court at instance of defts gave the fol-  
lowing instructions, numbered 1, 2, 3, 4 & 5.

1<sup>st</sup> Before you can find for the plaintiff in  
this case you must believe from the

evidence that the firm of Macey & Howard  
the defendants by themselves or one of them  
or by an authorized agent purchased the  
cattle & sheep in question from the plaintiff.

2<sup>d</sup> The Court instructs the jury that agency cannot  
be presumed, and that you must be satisfied  
from the evidence that Hiet was in fact  
either the general or special agent of both  
defendants as partners at the time of the  
purchase of the stock in question, and  
authorized to purchase the stock in question.

3<sup>d</sup> The Court instructs the jury that the mere  
fact of James Hiet stating that he was the  
agent of Macey or the Maceys is no evidence  
that he was the authorized agent unless you  
believe from the evidence that Macey or the  
Maceys were present when such statements  
were made by Hiet & expressly or impliedly  
assented thereto or subsequently ratified his acts.

31. 4<sup>th</sup> That although Hiet may have been the  
agent - authorized - of Macey or the Maceys  
you must believe from the evidence before  
you can find a verdict for the plaintiff  
that he was the agent of Macey & Howard,  
authorized to purchase the cattle & sheep  
in question and for their joint account.

5<sup>th</sup> That the pleadings in this case only  
admit that John Macey & Philip K. Howard

were partners under the firm name of Macey & Howard at the time the cause of action accrued and any admissions, acts, or declarations made or done by John Macey prior to that time are not admissible against defendant Howard unless you believe from the evidence they were partners at the time such admissions or declarations were made and such acts done.

The depts counsel then asked the Court to give to the jury the following instruction to-wit:—

32. Unless you believe from the evidence that the transactions proven to have taken place between the witnesses Lee & Sprinkler and Macey & Hunt, were in some way brought to the knowledge of the plaintiff he cannot claim that he sold the stock to Hunt as the agent of Macey because of said transactions.

Which instruction the Court refused to give & the depts by their counsel then & there excepted.

Jury retired & brought in the following verdict to-wit:—

"We the jury find for the plaintiff the sum of six hundred & eighty six dollars"

Defts enter motion for new trial for the following causes.

1st Because the verdict of the jury is contrary to the Evidence

33. 2<sup>d</sup> Because the verdict of the jury is contrary to the instructions of the Court.

3<sup>d</sup> Because improper evidence was admitted before the jury on behalf of the plaintiff.

4<sup>th</sup> Because proper evidence offered by the defendants was refused admission before the jury.

5<sup>th</sup> Because improper instructions were given by the Court at instance of Plaintiff.

6<sup>th</sup> Because proper instructions were refused by the Court on behalf of the Defendants.

Which motion was overruled by the Court. To the overruling said motion the defts by their counsel then & there at the time excepted

Whereupon the defendants entered a motion in arrest of judgement, which was overruled by the Court, To the overruling of which said motion the defendants by their counsel then & there at the time

eracted, & prayed an appeal &c  
Mueky Ball & Wheeler  
Attys for App. in Error  
Appellants

49

Mary Howard

vs

Hackelhorn

Abstract

Mulkey, Wall & Wheeler  
attys for appeal.  
Laut.

Filed, June 5, 1867

A. Johnston Clk

Worcester Ct. J. This was an action of  
assumpsit in the Fayette Circuit Court brought  
by Henry Hackettson against John Macey and  
Philip K. Howard trading and doing business  
under the firm name of Macey and Howard.  
The plaintiff obtained a verdict which the  
Court refused to set aside on motion and reason  
given and rendered a judgment thereon, to  
witness which the defendants bring the case  
here by ~~interposition~~ appeal.

It appears from the bill of exceptions  
that the property purchased of the plaintiff,  
some cattle and sheep, were purchased by one  
James Hewitt representing himself as the  
agent of Macey, Howard's name not being  
used by ~~any of the witnesses~~ to make the  
purchase, and he stated paying three hundred  
and fifty dollars on the purchase he stated  
that Macey would pay the balance, and gave  
directions to ship the cattle to Cairo ~~to the~~ as  
far as he had done previously with another  
lot - It was proved John Macey was in  
company on one or more occasions  
when Hewitt purchased cattle, and that Macey  
paid for them, and that he paid for the ~~price~~<sup>use</sup>  
of a horse hired by Hewitt to go to plaintiff  
to buy cattle - The first lot of cattle bought  
by Hewitt of plaintiff had been shipped to



John Macey. ~~The testimony~~ It was proved  
He Witt said he was the agent of Macey.  
The testimony depends upon Macey by certain  
Gilliam, that He Witt was not the agent  
of Macey as well as at the time of this  
purchase.

*Macey*  
We ~~cannot~~ think the evidence  
was very slight indeed to establish the  
agency, and that He Witt could not prove  
it by his own uncorroborated testimony. <sup>Pl. Macey vs. He Witt 19 Dec. 1858</sup> The  
fact that John Macey had recognized acts of  
purchase by He Witt, is not sufficient to  
charge Macey and Howard ~~and~~ in the ab-  
sence of any evidence <sup>going to show that the</sup>  
plaintiff before he sold to He Witt, was cognizant  
~~of the facts~~ <sup>of the facts</sup> ~~of the facts~~  
of a partnership transaction.

<sup>Abundant in error.</sup>  
The ~~opinion~~ <sup>opinion</sup> relies upon the  
testimony of Lee, Sprinkler, Revis and  
Pankersley who speak of purchases ~~made~~ by  
He Witt which Macey ~~has~~ <sup>has</sup> recognized  
and for which he paid, and they  
insist, that such recognition can be avoided  
of by the defendants in error, and of that  
opinion was the Court in refusing to give  
this instruction asked for by the defendants  
below: "Walt, you believe from the evidence  
that the transactions proved to have taken  
place between the witness Lee, and Sprinkler  
and Macey and He Witt, were in some way

brought to the knowledge of the plaintiff  
he cannot claim that he does the  
work to Hewitt, as the agent of Pease  
because of said transactions.

On the Authority of Rowson or  
Curtis et al. 19 M. <sup>above cited</sup> ~~475~~ 11, this instruction  
should have been given. In that case,  
it was said, the principle is well settled  
that an authority to draw, accept or endorse  
bills may be presumed from acts of  
recognition in former instances, but  
those acts must be known to the party  
bringing them up. In all such cases it must  
appear that the bill or note was taken  
and discounted on the faith of prior trans-  
actions, and therefore, the holder  
of a bill purporting to be, but not in fact  
accepted by the person to whom it was  
addressed cannot recover against  
the apparent acceptor by proving a  
fact discrepantly discounted, that on  
a former occasion the defendant had  
given a general authority to the person  
who accepted in his name to accept  
bills for him; to make such authority  
available, the holder must show, either  
that the authority remained unrevoked  
at the time of the acceptance, or that he took  
the bill on the faith of such authority. Chitt

on Bill, 31

It was said in that case, ~~and~~  
~~that the property then prior to the~~  
now being unknown to plaintiff  
below when he sold the cattle to Asst  
cannot avail him to charge the  
dependents.

For refusing to give this  
instruction the judgment of the  
Circuit Court is reversed and  
the cause remanded for further  
proceedings consistent with this opinion.

49 — 18

Marcy et al.

vs

Beckethorn

opinion by

Pres. Ch. J.

C. K.

June 1, 1867

8657

P. 742, 25-

BE & ME

In The Supreme Court of Illinois,

First Grand Division, June Term, 1867.

JOHN MAXCY & PHILIP K. HOWARD, Partners, &c.,  
vs.  
HENRY HECKETHOME.

APPEAL FROM FAYETTE.

DEFENDANT'S BRIEF.

POINTS.

1st. The admissions of Hewett, that he was buying cattle for Maxcy & Howard, were properly admitted in evidence—his declarations were made at the time of the transactions.

1 Green Ev. Sect. 113-4.

Story on Agency, 134-5.

2nd. The receipts of the cashier of the I. C. R. R. were properly <sup>rejected</sup> ~~registered~~—they were mere hearsay evidence and not pertinent.

3d. The instructions given for plaintiff below were proper.  
Story on Agency.

4th. The 6th instruction asked for by defendants below, was properly refused.  
Story on agency, 266-466.

J. P. VAN DORSTON & A. J. GALLAGHER, for Appellee.

49-18  
Maxcy & Howard  
vs

Henry Hester Thorne

Appellee vs Plaintiff

IN THE SUPREME COURT OF ILLINOIS

First Grand Division, June 1867

Filed June 5, 1867  
N. Johnston clk

DEPOSITED IN THE OFFICE OF THE CLERK OF THE SUPREME COURT OF ILLINOIS

COPIES

Book on Agency, 194-5  
I Green Ev. Sect. 113-4  
1st. The admissions of Howell, that he was acting as the for Maxcy & Howard, were properly admitted in evidence—his qualifications were made at the time of the transactions.

2nd. The receipts of the cashier of the I. C. B. E. were properly received in evidence and were properly admitted in evidence and not pertinent.

3d. The instructions given for physical value were proper.

Book on Agency, 386-108  
4th. The 6th instruction set out for the defendant's benefit was properly refused.

J. B. VAN DORSTON & A. J. GALLAGHER, for Appellee.

In the Supreme Court of Illinois  
First Grand Division June Term 1867

John Macey &  
Philip H Howard partners &c  
vs } Appeal from Fayette -  
Henry H Eckelthorpe }

### Argument for Appellee -

This suit was brought to recover the price and value of certain cattle and sheep claimed to have been sold by Appellee to appellants, through the agency of one Hewitt, who acted, as the appellee claims, for the appellants -

The appellants deny that Hewitt was their agent, and say that they are not responsible for his purchases -

The proof shows that two sales were made - the first being made early in November 1865, of 18 head of cattle for \$33.33 per head, and the second about the 17<sup>th</sup> or 18<sup>th</sup> November of 7 head of cattle for \$28 per head & 60 sheep for \$4.50 each - That when the second purchase was made, there was paid by Hewitt the sum of \$350, and stating at the time that either Macey or himself would pay the balance on the following Monday or Tuesday - It is proved by all and

Sprinkler that in September 1865, John Macey  
one of appellants, and Hewitt were in Fayette  
County together - that cattle were then  
purchased by Hewitt and paid for by Macey  
- It is also proved by Davis that Hewitt  
borrowed a horse from him to go to Sprinkler  
& Heekethornes to buy cattle - that he  
said he was going to ship to Macey &  
that Macey paid him for the use of  
the horse -

It is  
further proved by Fairbairn that these cattle  
bought by Hewitt - and paid for by Macey  
, were shipped by the directions of both of  
them, to the appellants -

He further proves that when the lot of  
18 cattle, bought by him <sup>(Hewitt)</sup> from appellee,  
were brought to the station, he was directed  
to ship them the same as the first lot  
had been sent by John Macey, and the  
same directions were given as to the ship-  
ment of the second lot -

The  
agent thinks he sent them to Macey & Co  
- thought it would make no difference -

(The witness's billers - introduced by appell-  
ants, says there was no such firm in  
Cairo -)

Hewitt stated to the different witnesses that  
he was buying for Macey -

The appellee insists that the proof shows



that Hewitt, in purchasing these cattle, did act as the agent of the appellants - He certainly acted as their agent when he bought cattle from Lee and Spunkler, and Macey paid for them, and gave directions as to their shipment - and when he bought the <sup>two</sup> lots from appellee and directed them to be shipped as Macey had directed the other cattle to be shipped, his actions would indicate that he was still their agent - If he was not purchasing for appellants, why direct the cattle & sheep to be shipped to them? - It was not the fault of the appellee that the R. R. agents shipped them to the wrong person, and that Hewitt afterwards appropriated them, if he did do so -

The testimony of Gillham, witness for the appellants, that Hewitt was not the agent of the appellants in September 1865, is disproved by the testimony of Lee, Spunkler, Nevins & Tansersly, who show that he was the agent & recognized as such -

If the question of his agency is established, then the objection of the appellant to his admissions, made while transacting their business, is not tenable -

The receipts of the cashier of the

Ill. Cen. R.R. offered by the appellants & rejected by the Court, could not be properly used against the appellee -

They were papers executed by a third person in no way connected with appellee, and were rejected as hearsay.

The instructions given for appellee enunciate well known principles of law in relation to agents, and if the fact of Hemelt being the agent of appellant, is sustained by the proof, then the instructions were properly given -

The 6<sup>th</sup> instruction asked for by appellants was properly refused. If Hemelt was the agent of appellant, it is not material, in order to charge them for this property, that the fact was known to appellee - No matter what influence may have operated upon appellee to make the sale, the liability of appellants to him is not changed - ~~But if the claimant~~  
~~to have sued the estate of Hemelt~~  
~~because of the transactions~~ The question

of the liability of appellants does not depend upon the knowledge of appellee as to the agency of Bennett, nor the motives that prompted him to make the sale -

The verdict of the jury in this case was made upon the question of agency and their determination of it should not be disturbed unless manifestly wrong - It was a prima facie case of agency, to say the least of it, as made out by the witnesses for the appellee, and is not weakened by the witnesses for appellants -

I Plean Dorston,  
Attorney for ~~appellants~~  
appellee

When the evidence is conflicting the Court will submit to the jury should not be disturbed  
H. H. Eltuff  
att. for appellee

49 — 18

Maxey & Rowan

vs

Hickthorpe

Argument for  
appellee

Filed, June 6, 1867,  
N. Johnston cly

In The Supreme Court of Illinois,

First Grand Division, June Term, 1867.

JOHN MAXCY & PHILIP K. HOWARD, Partners, &c., }  
vs. *in*  
HENRY HECKETHOMER }

APPEAL FROM FAYETTE.

DEFENDANT'S BRIEF.

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Story on agency, 266-466.

J. P. VAN DORSTON & A. J. GALLAGHER, for Appellee.

49-18

Maxcy Howard

vs  
Henry Beckwith

appellus brief

U.S. District Court at Illinois

First Grand Division, June 1867

Filed June 5, 1867  
N. Johnston City

1st. The admissions of Howell that he was buying cattle for Maxcy & Howard, were property admitted in evidence—his declarations were made at the time of the transactions.

**FOINTE.**

2d. The instructions given for printing paper was proper.

3d. The old instruction asked for by defendant below, was properly refused.

J. P. VAN DORSTON & V. J. GALLAGHER, for Appellee.