Morrison, Matt v Edgar, James M to use of Brent, Robert 1852 1st COOPER CO 186/5

26

THE STATE OF MISSOURI, ss.

The State of Missouri, To the Judge of the first Judicial Circuit in said State, GREETING:

WHEREAS, In the Record and Proceedings in a certain cause lately pending in the Circuit Court of Cooper County, in the Judicial Circuit aforesaid wherein James M Edgar, who sues to the use of Robert Brent was plaintiff and Mott Morrison was defendant

in an action of manifest error hath intervened, to the great damage of the said defendant as by his complaint, we are informed.

NOW, we being willing that the error, if any there be, should be corrected, and full and speedy justice done to the parties aforesaid, in that behalf, COMMAND YOU, that you send to us, certified under your seal, the record and proceedings in the cause aforesaid, as fully as the same remain of record before you in said Court, so that we may have them before us at our Supreme Court, to be begun and held at the City of Jefferson, in the county of Cole, in said State, on the second Monday in January next, so that our Judges of our Supreme Court, on inspecting the record and proceedings aforesaid, may cause to be further done therein, for correcting the error, what of right and according to law ought to be done.

Witness, WILLIAM E. DUNSCOMB, Clerk of our said Supreme Court, at office, in the City of Jefferson, the twenty sixth day of November in the year of our Lord one thousand eight hundred and fifty

SEAL OF THE SUPREME COURT OF MISSOURI

Wm E Dunscomb

Cooper County to wit. [2]

I. Bennett C. Clark clerk of the Circuit Court within and for the County aforesaid do hereby certify that in obedience to the Command of the within writ I have made out a full true and perfect copy of the record and proceedings had in said Circuit court in the cause mentioned in the within writ. and which said copy is here attached to this writ.

Given under my hand and seal of said Court at office this twenty fourth day of December Eighteen hundred and fifty

Bennett C. Clark clk

Matt Morison
vs. Ex Writ of Error
James M. Edgar, to the use of Paul

Plea had in the Circuit Court of Cooper County in the State of Missouri before the Hon. James W. Morrow, Judge of said Court

Be it remembered that heretofore to wit on the twenty sixth day of January in the Year of our Lord Eighteen hundred and forty nine, Allen Porter Esqr a Justice of the peace within and for said County filed in the Clerks office of the said Circuit Court the appeal papers in the case of "James M. Edgar to the use of Robert Brent plaintiff against Mott Morrison Defendant, which said appeal papers read as follows to wit.

"October Term 1848.

Justices Transcript.

James M. Edgar to the use of Robert Brent vs. Mott Morrison	Summons Issued Sept. 28th 1848.	Returned Oct. 14th 1848	Demand note	$100.00
			Int. 6 pr ct.	1.50
				$101.50

This is an action of debt on a Note of hand the Parties not being ready for trial agreed that the cause should be continued until the 3d Saturday of October 1848. This cause is therefore continued until the 3rd Saturday of October 1848. Oct 14th 1848.

Allen Porter J. P.

And now on the 3d Saturday of October 1848 This cause came up for trial. the Defendant required a Jury. Whereupon a Precept was Issued and the following men were summoned received and sworn to try the Cause — Thomas Rankin, Horace Windsor, Marcus Williams Sen. George Nelson, Charles Shoemaker, and George Ellor. The Jury being ready the Plaintiff examined 7 Witnesses, and the Defendant three Witnesses, and the Cause was submitted to the Jury, who returned the following Verdict. We the Jury find for the Plaintiff one hundred Dollars principle and one Dollar and fifty Cents for his damages. Marcus Williams foreman. The Court therefore awards to the Plaintiff Judgment against the Defendant for one hundred Dollars for his debt and one Dollar and fifty Cents for his damages together with Costs of Suit

Oct 21st 1848. Appeal applied for Oct 21st 1848. Affidavit made, Bond filed and approved and appeal granted.

2

Debt & Dam	$101.58
Just. fees	3.55
Const. Smith	1.25
" Maddox	.50
" Talbott	1.00
Witness Summers	.50
Haley	.50
Wm C. Coleman	.50
Jury	1.50

Allen Porter J. P.

I hereby certify that the above is a true copy of a judgment rendered wherein James M. Edgar to the use of Robert Brent is Plaintiff and Mott Morrison is Defendant. Given under my hand this 23d of January 1849.

Allen Porter J. P."

Original Summons. "The State of Missouri

So the Constable of Boonville Township Cooper County, Greeting: We command you to summon Mott Morrison to appear before the undersigned, one of the Justices of the Peace of Boonville township, in Cooper County, on the 2d Saturday of October 1848, at ten o'clock in the forenoon, at my office, in the same township, to answer the complaint of James M. Edgar for the use of Robt. Brent. Given under my hand, this 28th day of Septr. 1848

Allen Porter J. P."

Const. return. "I served the within summons by reading the same to M. Morrison in Boonville Septr. 28th 1848.

Jo. G. Smith C.C.B."

Note sued on. "$100 St. Louis March 25th 1848.

Four months after date I promise to pay Robert Brent or order One hundred dollars for value rec'd. negotiable & payable without discount or defalcation at the Bank of the State of Missouri in St. Louis.

Mott Morrison"

Endorse. "Pay the contents to James M. Edgar. Robert Brent."

Affidavit for an appeal. "In the Court of Allen Porter a Justice of the peace, within & for Boonville Township in the County of Cooper & State of Missouri — October Term 1848.

Mott Morrison — Defendant
adj. } In an action of Debt
James M. Edgar, pltff. who sues
to and for the use of Robert Brent =

And now on this day the said Mott Morrison, the Defendant in the above entitled Cause, moves the Justice of the Peace to Grant him an Appeal from the Judgment rendered in said Cause against him to the Circuit Court of Cooper County, and now being duly sworn on his oath states, that he doth not apply as above for an appeal to the Circuit Court from said Judgment of the Justice of the Peace for vexation or delay, but because he, this affiant, believes that he this appellant is injured by the said Judgment of the Justice of the Peace = And further he this affiant saith not

Signed by me this 3d day of November 1848.

Subscribed & sworn to before me } Mott Morrison."
at office in Romville Township }
in Cooper County this 3d day of }
November 1848. }

Allen Porter J. P.

Appeal Bond

"State of Missouri } SS.
County of Cooper } We the under signed Mott Morrison as Principal and David Ballentine his security acknowledge ourselves indebted to James M. Edgar to the use of Robert Brent in the sum of Two Hundred Dollars to be void on this Condition. Whereas Mott Morrison has appealed from the Judgement of Allen Porter a Justice of the Peace in an action between James M. Edgar to the use of Robert Brent is Plaintiff and Mott Morrison is Defendant, now if on such Appeal the Judgement of the Justice be affirmed or if on the trial a new in the Circuit Court Judgement be given against the Appellant and he shall satisfy such Judgement or if his appeal be dismissed and he shall pay the Judgement of the Justice together with the Costs of the Appeal the recognisance sall be void. Oct — 1848

Mott Morrison
David Ballentine

Taken and acknowledged before me Nov 3d 1848.

Allen Porter Justice of the Peace."

And afterwards to wit on the fourth day of September A.D. 1850, said Cause having been continued from term to term, the following proceedings were had in said Cause in said Circuit Court to wit:

"Now at this day come hen into Court the parties aforesaid by their respective Attorneys and thereupon comes a jury to wit, Alexander Roe, William Allison, William Howard, Jesse Ogden, Benj. Kuden, William C. Ewing, William Howard, S. E. Johnston, H. M. Myers, John B. Smith, John C. Shackleford and John G. Wallace, who are elected, tried and sworn well and truly to try the issue joined in this Cause and the jurors aforesaid are permitted to seperate until to morrow morning."

Jury sworn

And afterwards on the next day of said term, it being the 5th day September A. D. 1850, the following was entered of record in said Cause to wit:

"The jury empannelled and sworn in this cause now hear appear in Court and upon their oaths do find the said issue for the said Plaintiff and doth further find that the said defendant is indebted to the said plaintiff in the sum of one hundred dollars debt and the sum of twelve dollars and sixty three cents damages. Therefore it is considered by the Court that the said plaintiff recover against the said defendant and David Ballentine his security in the Appeal Bond the said sum of one hundred dollars for his debt and the said sum of twelve dollars and sixty three cents for his damages also his costs and charges in this behalf laid out and expended as well in the Justices Court as in this Court, and that he have execution therefor."

verdict

Judgment

And afterwards to wit on the 7th day of September A. D. 1850 "The said defendant by his attorney files his motion for a new trial."

Motion for a new trial filed

Which said Motion is in the following words and figures to wit,

Motion

"And the said Morrison appellant in the above entitled cause, comes and moves the Court hen to set aside the verdict & Grant him a new trial of the cause for the following reasons.—

1st The Court rejected legal, proper, relevant and competent Evidence offered upon the trial of the Cause by the appellant Morrison —

2d The Court suffered & permitted the said Edgar upon the trial of the Cause to Give to the jury, illegal, irrelevant, incompetent and hear say Evidence, though objected to by said Morrison —

3d. The Court misinstructed, & gave to the Jury illegal and improper Instructions upon the motion of Edgar as to the law of the case, though objected to by the said Morrison =

4th. The Court rejected & refused to give each, all & every of the Instructions, as to the Law of the Case, to the Jury as prayed for by said Morrison =

5th. The Court before the Jury retired from the Bar to consider of their verdict, gave them erroneous & illegal instruction as to the Law of the Case, & Refused to give them legal & proper instructions in that regard =

6th. The Jury found their verdict against Law, and against the Evidence in the Cause =

Richardson & Hayden,
Attys for Morrison."

And afterwards to wit on the 12th day of September A.D. 1850 at said term of said Court, the following was entered of record in said cause to wit,

Bill of Exceptions filed

"The said defendants motion for a new trial in this cause being argued and fully understood, the same is overruled by the Court. And the said defendant now here files his exceptions which he prays may be signed sealed and made a part of the record in this Cause, which is now done accordingly."

Which said Bill of exceptions reads as follows to wit,

Bill of Exceptions

"Be it remembered that upon the trial of the above Cause the Plaintiff read in evidence to the Jury the note sued on, with the assignment thereof to the said Edgar, by said Brent, & which read in the following words and figures

Note sued on

$100 St. Louis March 25th 1848.

Four months after date I promise to pay Robert Brent or order one hundred dollars for valued received, negotiable & payable without discount or defalcation at the Bank of the State of Missouri in St. Louis.

Mott Morrison."

Assignment

"Pay the contents to James M. Edgar. Robert Brent."

"It was admitted that the note had been duly assigned to the plff before the commencement of the suit and that the money had been demanded of the Deft before suit brought & payment was refused, and

his Pltff rested. Thereupon it was admitted that the said note was made for the payment of the balance of the purchase money of the three Slaves, John, Jimmy, and their Slave child, sold by said Robert Brent, by his agents, Leuke & Garnett to the Defendant, Morrison as specified in the Instrument of writing hereafter set out in this bill purporting to be made by said Brent to Morrison by said Leuke & Garnett. The Defendant then read in evidence the following parts of the Deposition of John Garnett viz.t.

Deposition of Garnett

"Depositions of Witnesses, produced, sworn and examined, at the Law Office of Philip C. Morehead in the City & County of St. Louis in the State of Missouri before me Mann Butler a Justice of the Peace within & for the City, County & State aforesaid in a certain cause now pending in the Circuit Court for the County of Cooper in the State of Missouri between James M. Edgar Plaintiff and Mott Morrison Defendant, on the part of the Defendant.

John Garnett of lawful age, being produced sworn and examined on the part of the Defendant, deposeth & saith,

That on or about the 25th day of March 1848 this deponent as agent for one Robert Brent of Cooper County Missouri sold a family of negroes to the defendant, for the sum of Nine hundred and fifty dollars, eight hundred and fifty dollars of the price being paid to this deponent upon the delivery of the negroes to the Defendant.

The Defendant on the day of the purchase executed a Note to said Brent for the sum of one hundred dollars payable 4 months after date for the balance of the price agreed on for said negroes, in the City of St. Louis & State aforesaid the body of said Note being in my handwriting, and it being the only Note I ever drew for the Defendant to sign to said Brent.

This Deponent further states that the paper herewith produced marked (A), and hereto attached, was the authority under which he acted as the Agent of said Robt. Brent.

That the name of H. G. Brent on said paper was written by himself in my presence, and he also authorized me verbally to sell said

negroes; that I did sell the negroes named in said paper or Power of Attorney for the said Sum of Nine hundred & fifty dollars of which the Note aforesaid was a part, as aforesaid,

And the Bill of Sale herewith produced and marked No (2), and hereto attached was executed by me in pursuance of that authority and delivered together with the Slaves therein named to the Defendant on the day of the date thereof and is in my hand writing, Richmond I. Leisle & myself then being partners in business and doing business under the style of Leisle & Garnett, as General Agents.—

This deponent further states that when the Sale was made by him to the Defendant, of the negroes in said Bill of Sale mentioned, he this deponent believed the negroes to be sound & healthy and so represented to Defendant that in some short time after the sale and delivery of the negroes to Defendant, he said Defendant returned said negroes to Deponent, Alledging that said negroes John and Jinny had been concerned and were charged by said Robert Brent with an attempt to poison said Brents family in the County of Cooper aforesaid and that fact not having been made known to the Defendant previous to his purchase of them he the said Defendant demanded that the contract should be set aside This deponent advised said Brent by letter of the demand of the defendant & said Brent declined rescinding the Contract.

The Defendant upon Brents refusal to rescind the contract took possession of the negroes again."

Exhibit marked (A) as follows to wit,

Exhibit (A.) "Know all men by these presents that I Robert Brent of Cooper County & State of Missouri do hereby authorize and empower Henry G. Brent of Bonville in the same State, or any one he may authorize & empower to sell and convey a certain negro man named John, which negro man is about thirty four years of age also a negro woman named Jinny about forty years old the Wife of said John and a female Child of said woman named Letty about — — old

Given under my hand and seal this —
day of — 184[illegible]

Robert Brent Seal

Carle & Garnett are hereby authorized to make Sale of the above negroes and convey them as above directed with full guarantees.
Mch 23rd 1848. H. G. Brent."

Exhibit (2) Exhibit marked (2) as follows to wit,
"Received from Mott Morrison Nine hundred & fifty dollars in full for the following negroes to wit. – John a man aged about thirty four, Jinny his wife aged about forty years & their Child a girl aged about three and a half years and named Letty –

And I hereby warrant the said negroes to be sound in body and mind and to be Slaves for life –

And I further warrant the title to said negroes to be good in him the said Morrison his heirs and assigns forever free from all legal Claim or Claims whatever

Given under my hand and Seal this 25th day of March 1848
Robert Brent by (Seal)
his Agents Carle & Garnett."

"As also the following paper writing or Bill of Sale which reads in these words,
The paper writing here referred to is the same which is copied above as a part of the deposition of John Garnett, marked No. (2.)
"The Defendants then Read in evidence the following deposition of Dr. Perry"

Perry Deposition "Lilburn P. Perry of lawful age being produced and sworn on the part of the defendant, deposeth & saith, I reside in St. Louis & am a practising physician in said City – I have been practising medicine for the last eighteen years & for the last five years in St. Louis – I studied my profession and graduated, at the University of Virginia – and spent two years at Philadelphia Medical College, Some time in the month of April or May 1848 I was called to visit a negro man named John – then in the possession of the defendant Morrison – & the same negro sold by Carle & Garnett general agents. Said negro John was at that time suffering under a disease called Piles – which were very bad and appeared to be of some two or three years standing and could not walk without

great pain and effort. The disease appeared to be chronic and rendered him in my opinion unsound and unfit for labor -- In my opinion he was thus unsound for several months previous to that time - I found said negro at that time laboring also under the disease of Dropsy in the Abdomen - his feet and legs were very much swollen - In my opinion this disease had been progressing for some time and was of not very recent origin - it must have had its inception several months before that time - In my judgment said negro John - had been - from the symptoms and developments of this disease (dropsy) an unsound man and laboring under said disease for months previous - at least as far back as the 1st of January 1848 -. That kind of dropsy which said negro had, does not develop itself suddenly - but is of gradual progress and is seldom if ever cured - As he was - I should not consider him of any value -

L. P. Perry."

"And then read in Evidence to the jury the following deposition of Dr Martin

Dr. Martin's Deposition

"That he was a practising physician in the City of St. Louis State of Miss- out in May 1848. That sometime in the month of May 1848, he believes about the 8th or 9th of May 1848, he was called upon by Mr Molt Morison the defendant in this Case to examine some negroes which he said he had purchased of Mr. Bunt, and the same negroes mentioned in the Bill of Sale attached & marked No 2. to wit John & Jinny.

This deponent examined the two negroes and pronounced them both unsound The man was laboring under a disease of the liver. The woman was laboring under the disease of the liver & also of Dropsy.

I would not myself have given one hundred dollars a piece for the negroes and I would say that their value was not over two hundred ($200.) and the value of the Child about $200. two hundred dollars. - It was in this City I examined said negroes.

Elijah Martin."

"The Defendant then proposed to prove that the said Robert Bunt at the time of the Sale of the negroes to Morrison by him as aforesaid, had no right or title to them, or either of them, but that the same then belonged to Mrs. Elizabeth Bunt for and during her life free from the Debts, Control or disposition of her Husband, & for her sole, seperate and exclusive use & that after her death they belonged to her Children -

And for that purpose the Defendant then offered to read to the Jury the following Copy of the Will of Mary Palmer the mother of the said Elizabeth Brent, with the Certificates thereon, as also to prove by Mr Pope a witness, that the said negroes John & Jimmy sold to the Defendant, were & are negroes which are mentioned in said Will, & therein bequeathed by the said Mary to the said Elizabeth Brent. And which Will with the said Certificates thereon are in the following Words & Figures

M. Palmer's Will. "In the name of God Amen, I Mary Palmer of Warrenton Fauquier County, being of sound and disposing mind do make and publish this my last will.

First I commit my Soul to God and my body to the Earth, to be decently buried at the discretion of my Executor.

Item. – I bequeath a debt of five hundred dollars with the exception of the interest thereon from the fourth day of October 1821 up to the time of my death due to me from Robert Brent to John Walden in trust for the sole and seperate use of my daughter Betsy Brent, with power to her to give, assign or to bequeath the same under her hand and Seal. –

Item. Having passed a large portion of my life in the house of Robert Brent. And he having made no Charge against me therefor. And having as I conceive in consideration of the Services and benefits received from me, not designed to make any Charge against me on any account. I bequeath to him in full satisfaction of all accounts and demands against me the residuem of the debts due from him to me including in this residuem the portion of interest excepted in the next Clause above.

Item. I bequeath one half of the portion now due to me from the Estate of my brother Septimius Norris decd. to John Walden in trust, for the sole and seperate use of my daughter Betsy Brent, with power to her to give, assign or bequeath the same under her hand and Seal.

Item. I bequeath Slaves Lizzy, her Children Ellen and Laura, Jenny and her Children Pamor, George, Charlotte and William and their increase to John Walden, to be held by him, in trust for the sole and seperate use of my daughter Betsy Brent during her natural life, without power to her to alienate them or to dispose of the use the services hires and

profits of them by way of anticipation. except for the temporary purpose during her life time of aiding or advancing any of her Children or their descendants and after her death the said Slaves and their increase at any time henceforth born I bequeath to her Children then living and the descendants of such of them as may then be dead, to be divided among them per stirpes.

Item - I bequeath a debt of four hundred and seventy two dollars with the exception of the interest thereon from the sixth day of October 1817 up to the time of my death due to me from Henry L. L. Pope to John Walden, in trust for the sole and seperate of my daughter Sarah T. Pope, with power to her to give, assign or bequeath the said debt under her hand and Seal.

Item. Having passed a large portion of my time in the house of Henry L. L. Pope and he having made no Charge against me therefor, and having as I conceive, in Consideration of the services and benefits received from me, not designed to make any Charge against me on any account I bequeath to him in full satisfaction of all accounts and demands against me, the residuum of the debts due from him to me, including in this residuum, the interest excepted in the clause next above.

Item. I bequeath one half of the portion now due to me from the Estate of my brother Septimus Norris decd. to John Walden in trust for the sole and seperate use of my daughter Sarah T. Pope, with power to her to give, assign or bequeath the same under her hand and Seal.

Item. I bequeath Slaves, Shadrach, Aley, Beccy, her Child Harriett and their increase to John Walden, to be held by him in trust for the sole and seperate use of my daughter Sarah T. Pope, with power to her at all times, without hindrance from her husband to dispose of the same by deed or by will, and to assign their hires and profits as fully as if she were a feme Sole.

Item. My Pursean, Bed, Bedstead, and the furniture thereto belonging I bequeath to my Grand daughter Mary Ann Brush

Item. The residuum of my property of every kind, I bequeath to my two daughters to be equally divided between them.

Item. If from any good cause it may be deemed expedient by the trustee of my daughter Betsy to dispose of any of the Slaves bequeathed to her use, he is empowered so to do, and to invest the proceeds of Sale in other Slaves, or in real estate to be held in trust in the same manner, terms, conditions, and limitations as the Slave disposed of.

Item. If John Walden shall deem it expedient to loan the Sums of money bequeathed to him in trust, to my Sons in Law, Robert Brent and Henry L. L. Pope or either of them, or to permit them to retain in their hands, the debts due from them respectively and devised to him in trust. And the said Sums, debts or any portion of them, shall be lost by the inability of the said Robert or Henry to pay, the said trustee is to be exempted from any liability to the legatee named in this Will for such loss. But this exemption and the permission which may be by him granted to the said Robert and Henry, to use or retain the said Sum or debts are not intended to restrain his discretion in adopting such measures as may seem to him to be necessary and proper to control and to preserve the bequests, for the uses and purposes for which they are intended.

Item – If the trustee named shall die or refuse to act my daughters are authorized to appoint one or more, by writing under their hands and Seals to act in his place.

Item. I bequeath to my daughters, my Sons in Law and my grand Children, each a parents blessing.

Lastly – I nominate and appoint my friend John Walden my Executor, and exempt him from giving Security as such.

In testimony whereof I have subscribed my name annexed my Seal and declared this to be my last Will in the presence of the witnesses whose names are subscribed on this 14th day of February 1831.

Subscribed Sealed and published in our presence

Jno. Smith
Baldwin Day
Walker M. Leatman.

Mary Palmer (Seal.)

Codicil "Codicil to my Will.

I revoke and annul the third and seventh clauses in my Will, in which I have bequeathed the halves of the portion due to me from the Estate of my brother Septimus Norris, and I bequeath the whole of my interest (being the one sixth part thereof in the houses and lot in the town of Warrenton Va. lately held and possessed by John Murrey being the same lot purchased by said Murrey from the heirs of Septimus Norris decd. under a decree of the County Court of Fauquier County to John Walden in trust for the sole and seperate use of my daughter Sarah T. Pope with power to her to give, assign or to bequeath the same under her hand and seal - Should either of my Sons in Law raise an account of any character whatever against me prior to the date of this Codicil the same is to be discharged out of the money heretofore advanced to them for which I hold their bonds. In testimony whereof I have subscribed my name annexed my seal and declared this to be a Codicil to my Will in the presence of the witnesses, whose names are subscribed on this 12th day of April 1833.

Subscribed sealed & published in our presence
Henry L. Yeatman
Jno. Smith
Richard Norris.

Mary Palmer (Seal) "

Certificate "At a Court held for Fauquier County, on the 26th March 1834. This last will and testament of Mary Palmer decd. was proved in Court by the oaths of John Smith and Baldwin Day two of the subscribing witnesses thereto. And a Codicil thereto annexed was proved by the oaths of John Smith and Richard Norris two of the subscribing witnesses thereto. And on the motion of Robert Brent and Henry L. L. Pope the said Will and Codicil are ordered to be recorded - John Walden the Executor therein named appeared in Court and refused to take upon himself the burthen of the execution thereof.

And at a Court held for said County on the 28th day of March 1834 Administration with the will annexed on the Estate of Mary Palmer deceased, is granted to Robert Brent who thereupon

qualified and gave bond according to Law – The Court dispensing with security. [16]

teste A. J. Marshall C.C.

Virginia Fauquier County to wit:

I Alexander J. Marshall Clerk of the County Court for the said County of Fauquier in the State of Virginia, do hereby certify that the foregoing will and Codicil of Mary Palmer deceased and the order of Court admitting the same to record are truly copied from the records of the said Court.

In testimony whereof I hereto subscribe my name and affix the Seal of the said Court, this 2nd day of May 1839, and in the 63rd Year of the Commonwealth.

A. J. Marshall C.C.

Virginia Fauquier County, to wit:

I Thomas Fitzhugh eldest and presiding Magistrate of the County Court for the said County of Fauquier in the State of Virginia, do certify that Alexander J. Marshall who hath given the preceding certificate is Clerk of the said Court, and that his said attestation is in due form.

Given under my hand and Seal this 7th day of May 1839.

Thos. Fitzhugh (Seal)

State of Missouri } ss.
County of Cooper }

I Benjn Emmons Ferry Clerk of the County Court within & for the County of Cooper aforesaid do hereby certify that the foregoing Will & the Codicil & Certificates thereto attached, was filed for record in my office on the 24th day of January A.D. 1842 & that on the same day I recorded the same.

In testimony whereof, I the Clerk aforesaid, have hereto subscribed my name, & affixed my Seal of office, at the City of Boonville this the Day and Year above written.

Benjn Emmons Ferry "

In the Cooper Circuit Court,
Septr Term 1850.

Mott Morrison – Deft
ads } Judgment for plff –
James M. Edgar, to the
use of Robert Brent } plff

To Washington Adams, attorney of Record in the above entitled Cause – Take notice, that the said Morrison hath taken said Cause to the Supreme Court of this State by virtue of a writ of Error issued for that purpose, & that the Judgment, &c, of the Circuit Court therein, will be revised, reversed, & Corrected by the Supreme Court at the ensuing January Term thereof to be holden at Jefferson City in this State =

Mott Morrison by
P. R. Hayden his
atty –

December 24th 1850.

Received a Copy of the above notice this 24th day of Decr 1850.

Adams & Miller

Mott Morrison

agt } Notice of the
Writ of Error =

James M. Edgar — to the
use of Robert Brent =

"And the plaintiff made no objection to the reading of said will on account of the probate or Authentication thereof; but objected to the reading the same unless the defendant would prove or undertake to prove that he, said Defendant had been evicted of said negroes after his said purchase of them. And upon the Defendant then declaring to the Court, that he would offer no evidence of an Eviction, the Court upon this Ground rejected the said Will upon the motion of said plaintiff — and to which opinion of the Court the Defendant by his Counsel excepted =

And thereupon the plaintiff Gave evidence conducing to show that the negroes at the time of the Sale, and before & after the Sale to Morrison, were sound & healthy, & not unsound or unhealthy =

And the foregoing was all the evidence given or offered by the parties upon the trial of the Cause =

Whereupon the Court at the instance of the Plaintiff gave to the Jury before they retired from the Bar to consider of their verdict the following Instructions as to the Law of the Case — which read in these words & figures."

Plaintiffs Instructions Objected to. Given

"1. That the criterion of the Amt, of recovery in this Case is the principal and interest of the Note sued upon and the Defendant is not entitled to any abatement unless the Slaves or some one of them was unsound at the time of the Sale

Given

2. That to entitle the Defendant to any abatement from the amount of recovery in this Case it devolves on him to prove to the satisfaction of the Jury that the Slaves or one of them was unsound at the time of the Sale.

Given

3. If the Slaves were sound at the time of the Sale no prior or subsequent unsoundness can effect the plaintiffs right of recovery in this Case."

"And thereupon the Defendant moved the Court to give to the Jury the following instructions."

Defts. Inst. Obj. Given

"No 1. That although the negroes may have appeared to be sound, at the time of the Sale and before that time, yet if the said Slaves or either of them were at the time of the sale diseased or unsound, though such disease or unsoundness was invisible and unknown, and that such disease or unsoundness rendered the Slaves less valuable than the Sum of $ 950. for such difference the Plaintiff is not entitled to recover, and if the Jury believe that such unsoundness in the Slaves or either of them rendered the Slaves

worth less the sum of $ 950. to the amount of the note sued on, then the Jury ought to find their Verdict for the defendant. (18)

Obj. No. 2. That to entitle the defendant ~~and~~ to a verdict it is not necessary
Given to prove that Mr. Brent or any other person knew that the negroes or either
" of them were unsound at the time of the Sale.

Obj. No 3. That if the Jury find from the Evidence that the negroes or any one of
Refused them sold by the plaintiff were unsound at the time of the Sale to Defendant
" & that the Defendant in a reasonable time after his purchase of them offered to return them to the plaintiff & to rescind the Contract & the plaintiff refused to rescind the Contract with Defendant, then the plaintiff has no right to recover in this action the money sued for.

Given 4. That if the Jury find that the negroes at the time of the Sale to Morrison,
" (or either of them) were unsound, and that by reason of such unsoundness they or either of them were rendered less valuable than if sound then if such diminution of value equalled the amount of the Note sued on they ought to find their verdict for Defendant. But if the diminution of the value were less in amount than the amount of the note & interest then the Jury ought to deduct from the note such diminished value, & find for the plaintiff the remainder of the sum specified in the note, from the time the same became due with interest at six per cent. "

" And the Court gave the 1st " 2d " and 4th " and refused to give them the 3d. And to which opinion of the Court in refusing to give said 3rd " Instruction the Defendant excepted —

Whereupon the Jury retired from the Bar & found their Verdict for the plaintiff — And thereupon the Deft. moved the Court for a new trial &c in the Cause which motion was in these words & figures. (Said motion is copied in the forepart of this record)

" And the Court overruled the motion for a new trial, & the defendant Excepted also, to this Opinion of the Court, & now him prayed the Court to allow him his said several Exceptions & to Sign, Seal & make the same a part of the Record in the Cause, & the same is accordingly done —

J. H. Morro. " Seal

Page 1. Transcript of proceedings before J.P.
2 Original writ & note sued on
- affidavit for appeal
- Bond for appeal
3 Judgment Circuit court
- motion for new trial & overruled
- Exceptions -
note sued on & assignment thereof
4 Deposition of John Garnett
- Brent's authority to Curl & Garnett
5 Bill of sale to Morrison by Curl & Garnett agst
- Perry & Martin's Depositions
6. Will of Mary Parmer.
7 Codicil & certificates
8 Instructions

For Copying 5184 words @ 10 $5.18
Certificate & Seal 50
$5.68

Bennett A. Clark Clerk

37. 4 4a.

p. e.

Matt Morrison — pltff

agt { In Error — / Copy of Record —

James M. Edgar, who sues to ... for the use of Robert Brent — Dept in Error —

filed Dec. 30 1850

Wm E Dunscomb

Clerk

Cooper

37 to 44.

Edgar to the use of
Brent
v
Morrison

Edgar suing for the use of Brent commenced his ~~suit~~ action before a justice of the peace against Morrison upon a promissory note for $100 which was payable to Brent

Brent by his agents sold certain slaves to Morrison for $950 of which $850 was paid in cash and the present note was given for the balance of the purchase money. At the time of the sale a bill of sale for the slaves was made in which a warranty was inserted by which Brent warranted the "title to said "negroes to be good in the said Morrison his heirs and "assigns forever free from all legal claims whatever"

The justice having given judgment for the plaintiff ~~and~~ the case was brought by appeal to the Circuit Court and upon the trial there the defence was set up by Morrison that at the time of the sale the title to the slaves was not in Brent. ~~and that same time~~ It was admitted by Morrison that even since the sale he had had the undisturbed possession of the slaves. The Circuit Court decided against this defence and the question now to be considered is whether it is a valid defence to the suit upon the present note.

Although this note had been assigned by Brent to Edgar yet it was admitted that at the commencement of the suit Edgar was holding it for Brent. Consequently the question is one between Brent the payee and Morrison the maker.

There have been many decisions made in the Courts of the different States upon questions

similar to that arising in the present case and these decisions are by no means in harmony with each other. In ~~Hoofnagle~~ Frisbie vs Hoofnagle 11 John R 50 it was held that the maker of a promissory note given for the consideration money of land he had purchased, might defend himself against an action upon the note, by shewing that the payee who conveyed ~~him~~ the land to him had not the title although he had never been disturbed in the possession. In Vibbard vs Johnson 19 John R 77 the case of Frisbie vs Hoofnagle was not cited in the argument ~~nor~~ referred to in the opinion of the Court but Chief Justice Spencer stated the law to be "that "it was not competent for the purchaser to "dispute the title of the vendor unless he had "been charged at the suit of another person "who had after contestation shewn a better title." The action in this last case was to recover the value of a chest of tea sold by the plaintiff to the defendant, and for which the defendant alleged that he had paid a third person who was the real owner of the tea, thus bringing up the question whether the plaintiff had any title to the thing sold.

The case of Frisbie vs Hoofnagle has been questioned in Lloyd vs Sewell 1 Green R 355 and is understood to be overruled in New York in several subsequent decisions, as well as by Vibbard vs Johnson; Whitney vs Lewis 21 Wend 131, Lamerson vs Marvin & Barb Sup C R 9.

Although the decisions in other States are not uniform yet the weight of authority is opposed to the defence attempted in this case where the purchaser

holds the undisturbed and undisputed possession of the property under the sale. The defence is essentially a denial of the consideration of the contract upon which the action is brought, and it but reasonable that a person who holds the possession of chattels under a purchase, shall not be allowed to deny the consideration of his promise to pay for them while his possession is not disturbed.

But it is said that the statute regulating the proceedings in justices courts in the 14 Sec of Articles declares a rule by which this defence is admissable. That section authorises a defendant who is sued as the obligor in a bond or as the maker of a note to impeach its consideration and show a partial or total failure of the consideration thereof. It is obvious that the present is not a case properly of a "failure of consideration". It is not alleged that any thing has occurred since the sale, by which the relations of the parties to the property sold have been changed or affected. If there was a consideration at the moment of the sale and ~~the~~ transfer of the possession, it still exists. The section referred to, authorises a defendant to show, not only, that a note was made without consideration, but that a bond upon which he has been sued, was made without consideration, and it authorises the defence of a partial or total failure of the consideration either in case of a bond or note. Whether the fact relied upon by the defendant, that Brents title to the slaves was not good, constitutes a defence to the present note while the defendant still continues in the possession of the slaves depends upon the question, whether it establishes

a want of consideration for the note. The authorities all agree that between the original parties to a note the want of consideration is an available defence ~~because without the contract is a mere nudum pactum without a~~ but if under this admitted law a purchaser of property who holds the undisturbed possession cannot defend himself against his note for the purchase money on the ground of a want of consideration because of a defect of title, it is not perceived how the statute has changed the law in this respect. It allows the consideration to be impeached but it does not ~~extend~~ change the cases in which ~~it can be alleged there was no consideration~~ the defence there is or is not a sufficient consideration. If the purchase of the property and the continuance of the possession was a sufficient consideration under the general law previously existing, the statute has not changed the ~~principle~~ law in such case. This section of the statute then does not apply to the present case nor authorise the defence here attempted.

But it is insisted that the peculiar language of the warranty in the bill of sale ~~makes~~ binds Brent not merely to defend the title to the slaves against all opposing claims but amounts to a covenant of present right and title to the slaves similar to the covenant of seizin in the conveyance of a tract of land and that consequently if he had not title there was no consideration for the note. If the construction of the instrument contended for, was admitted to be correct, the consequence derived from it would not necessarily result. Whatever may be the meaning of the lan

guage used in this covenant the note will still rest upon sufficient consideration while the maker continues in undisturbed possession of the property sold. But it is not thought necessary to dwell upon this view of the case. The particular language of this covenant does not vary its effect from that produced by the ordinary form of ~~the~~ covenants of warranty. The seller warrants "the title to the negroes;" "free from all legal claims" and the use of the words "to be good in the said Norris &c" does not change the mode in which the seller ~~stands~~ is to be held responsible for the existence of a better claim to the property or in which the superiority of the adverse claim is to be ascertained.

The judgment of the Circuit Court is with the concurrence of the other judges affirmed

W R Gamble

Jan. 7. 4

Morrison

v

Edgar use of Brent.

Opinion of the Court

by Gamble judge.

filed July 15 1852

Wm E Dunscomb

Clerk

67

In the Supreme Court,
January Term 1851

Mott Morrison – plff In Error –
agt } Error to Cooper Circuit Court –
James M. Edgar – Deft In Error –

And now on this day the Plaintiff In Error comes and says that from the Record & proceedings of the said Circuit Court, that Judgment was there rendered against him said Morrison whereas by the Law of the Land, the Judgment ought to have been rendered against said Edgar in favour of him said Morrison – In this therefore the Circuit Court manifestly Erred –

2d – The said Circuit Court also Erred in this, to wit; for that the said Circuit Court upon the trial of the Cause refused to permit the said Morrison to prove to the Jury that the said Brent at the time he sold the negros to Morrison, (& for the payment of which the note sued on was made) had no right title or interest in said negros, & that the Consideration of the note had failed – And also refused to permit the said Morrison to Give to the Jury, Legal, Relevant & Competent Evidence, &c –

3d – The Circuit Court also Erred in ~~permitting the said~~ Giving to the Jury, illegal instructions as to the Law of the Case at the instance of said Edgar; as also in Overruling & refuseing to Give to the Jury legal & proper Instructions as to the Law of the Case, as moved for by the Defendant – Morrison –

4th. The Court misinstructed the Jury as to the Law of the Case, & therefore Erred = (2)

5th. The Court also Erred in overruling the motion for a new trial of the Causes ~~upon the~~ as made by ~~motion of~~ Morrison — And for which said several Errors, & other Errors apparent in the Record & proceedings aforesaid, the plff now here prays that the Judgment aforesaid be reversed, annulled & wholly held for nought, & that he restored to all things by him lost on Occasioned thereby, &c. P. R. Hayden atty for plff in Error —

Joinder in Error.
And the defendant ~~joins~~ in error says that in the said Record & proceedings and in giving the said Judgment there is no error — and prays that the Judgment aforesaid may be in all things affirmed.
Adams for Dft in Error.

Mott Morrison
agt Judgment of Error =
James M. Edgar

Filed Jan. 17 1851
Wm E Drummond
Clerk

In the Supreme Court,
January Term 1857.

Mott Morrison — Plaintiff in Error —
agt — } Error to the Cooper Circuit Court —
James M. Edgar — Defendant in Error —

Robert Brent in the Spring of the year 1848 by a power of attorney under his hand & seal authorised his son Henry G. Brent, or any one whom Henry might appoint, to sell & convey three negro slaves, viz, John & Jinny & their Infant Child — Henry G. under this power then authorised Messrs. Earle & Garnett of St. Louis, under his hand in writing to sell and convey the same negros with "full Guarantee" —

Afterwards, on the 25th day of March 1848 said agents Earle and Garnett, sold said negros to Mott Morrison, the plaintiff in Error, for the price of $950, and Morrison pd in hand $850, and gave his note to Brent for the sum of $100, payable 4 months after date, being the remainder of the purchase money — And the said Robert Brent by his said agents, Earle & Garnett, made sealed & delivered to Morrison, his Bill of Sale of the negros, in which he Warranted the negros to be sound & healthy in Body & in Mind, and also did thereby "warrant the Title to said negros to be good in Him the said Morrison, his heirs & assigns, forever, Free from all Legal Claims or Claims whatever."

After the said note became due, the said Robert Brent assigned it for the pur-

-pose of Collection, ~~and~~ to Edgar, who brought his Suit thereon to the use of said Brent, the Payee, and recovered a Judgment for the amount thereof, with interest, against Morrison before a Justice of the peace of Cooper County, & from which Morrison appealed to the Cooper Circuit Court, where Edgar again recovered Judgment, & to which Morrison now here prosecutes his Writ of Error =

Upon the Trial of the Cause in the Circuit Court, after the plaintiff had read the note with the assignment ~~thereof~~ thereof to the Jury, he rested his Evidence in chief - And then the Defendant, Morrison, read in evidence the said Power of attorney from said Robert Brent to his son Henry G. Brent, & from ~~Brent~~ H. G. Brent to Garrett Hurle, & the said Conveyance to him of said negros - He then gave Evidence Conducing to shew that the negros ~~were~~ John & Jinny were unsound at and before, & after the Sale, and of little Value = He then proposed to prove to the Jury that at the time of the ~~Sale~~ & Conveyance of the Negros to him, as aforesaid, said Robert Brent had no right or title to them, or any of them - And to that End offered to read in Evidence to the Jury a duly authenticated Copy of the Will of Mary Palmer, the Original proprietor of the negros, shewing the title & right to the negros to be in ~~Mrs Elizabeth Brent for and during her life~~ John Walden, as Trustee, holding the same in trust for the sole and separate use of One Elizabeth Brent, during her life, & after her death to belong to her children absolutely - but to the giving of this Evidence the plaintiff, Edgar,

objected, & the proof was rejected by the Court upon the Ground that Morrison declared that he would not introduce any Evidence to shew that he had been Evicted of the negros or any of them by the true Owner; & to this Opinion of the Court he Excepted =

He then proved that in a short time after the Sale of the negros to him, he offered to return the negros to said Robert Brent & to rescind the Contract of Sale with him, upon the Ground that the negros had been Concerned & charged by said Robert Brent with an attempt to Poison said Brent & family in the County of Cooper, & that this fact had not been made Known to him said Morrison prior to his purchase of the negros - And further proved that said Robert Brent refused to Rescind the Contract - [See the Evidence of John Garrett in the Bill of Exceptions] This was all the evidence given by Morrison =

The plaintiff Edgar then Gave Evidence Conducing to shew that the negros were not diseased at the time of the Sale = And this being all the Evidence given in the Cause - The pltff & ~~Defendt~~ and Defendant respectively, moved the Court, ~~to give~~ to the Jury Instructions as to the Law of the Case; And the Court Gave all asked for by the pltff & refused to Give the Jury the 3d Instruction asked for by Defendant - And the Defendant Excepted to the Opinion of the Court in Giving the plaintiff's Instructions, & in refusing to Give the 3d asked by Defendant = A Verdict

Was found by the Jury for the plaintiff — A new trial moved for by Deft, upon grounds assigned, calling in question the Opinions of the Court, & the finding of the Jury; & which motion was overruled, & the Opinion of the Court Excepted to =

The plaintiff in Error has assigned in this Court for Error the several Opinions of the Circuit Court Excepted to; & to sustain his position here, will rely upon the following points & Authorities —

#82 ~~That the Circuit Court Erred in Rejecting the proof which he offered to give to the jury to Establish that Robert Brent, the Vendor of the Negroes had no Right or Title to those Negroes or any of them, at the time of the Sale by him to Morrison, but on the Contrary that they belonged to others = That the Morrisons had a right to show that the note sued on was Given without any Consideration therefor on the part of Brent, for whose use the Suit was brought, by proving that the fact which that the Evidence rejected would have Established if it had been received by the Court =~

First — That it was Competent & legal for Morrison, in his defence to the action, to shew that the Note sued on was obtained from him without Consideration, or that the consideration of the note (if any) had failed; — And that, consequently, the Court Erred in rejecting the Evidence offered by him to the Jury to prove that Robert Brent had no right or Title to the negroes for which he had given the note = See Digest 1845, Title Justices Courts = Article 5. Sect 14 ~~Justices Courts~~

This section of our Statute was evidently made with a view

to obviate the embarrasing question about which so much difference of opinion has been entertained by different Courts & Jurists in regard to the right of the maker of a note or Bond, to make this Defence under the Rules of the Common Law, as well as to enable parties in a single action to settle fully & finally the matter of difference between them = This is most obviously shewn by the latter words of the Section which declares "Nor shall such Defence be precluded by reason of the Existance of any Contract, verbal or otherwise, made with the Obligee or payee which would give a right of action to the obligor or maker, in the event of a partial or total failure of the Consideration of the Bond or note" = The only objection relied upon or urged by those who maintain, that by the Common Law the maker of a note or Bond cannot impeach the Consideration of ~~a note~~ ~~its~~ it, ~~when~~ given for property conveyed with warranty of title (the vendor having no Title to the property) is, that the warranty is an agreement or Covenant to secure the Vendee in the possession and Enjoyment of the property purchased, and that therefore, the Vendee must wait & sue upon that agreement ~~when that agreement~~ after he shall have been dispossessed of that which the Vendor may have stolen, or otherwise fortiously gotten the possession of, & then sold to the Vendee without right or title =

As in the Case at Bar - Bent, for whose use this action is brought, sold Captain Negus to Morison for the price of $950 - & received $850 of the purchase money, with Morison's note, now sued on, for the payment of an $100, & upon the trial

of the Cause the Circuit Court in the Teeth & face of the Statute, Erects the Common Law Rule against the Defendant (as understood by the Court) and declares that, although it is true, as you propose to prove, that Brent sold you negroes to which he had no right or Title, & obtained from you the note sued on, ~~[illegible]~~ yet, as he made you a Bill of Sale of the negros and Falsely warranted therein ~~that~~ "the Title to said negros to be good in you, your, heirs, & assigns, free from all Claim, or claims whatever": yet, you cannot & shall not make the Defence you propose, unless you will first declare to the Court, that you will prove that the True owner of the property has taken from you that to which you have acquired neither right or Title! = This is the Analysis of the Decision of the Circuit Court in excluding ~~the test~~ the proof offered by Morrison to establish the fact, that Brent had neither right or title to the negros; as also to shew, that his Covenant was false & fraudulent, whereby he warrants the title to said negroes to be good (viz then Good) in him, Morrison, his ~~heirs~~ Heirs & assigns Forever, Free from all Legal Claims, &c — When in truth & in fact, he had invested in Morison, neither good right or title to the negros, ~~viz — neither a good title or a Bad Title~~ but on the contrary, no Title atall = And instead of the negroes being free from all claims whatever, there was no other Claim to them ~~it~~, except that Claim to which the Covenantor never had any pretence of right = The Court will observe, that the note sued on in this case is a negotiable

2d

note, and although assigned to Edgar, the suit is prosecuted for the use and benefit of the Payee, Brent, and therefore the protection in favour of the rights of the Holder of a negotiable note, contemplated by the 15th Section of the above mentioned Statute, does not apply in this case = 10th John. 19. 8: Story on Promissory notes Section 190:

See also the 13th Section of the same Article, And the First Section of the 1st Article of the Act, prescribing the Rule of trial & Decision to be observed by ~~the~~ Justice of the peace in suits in their Courts = See 6 Mo Rep 642. 3. Jones vs Shaw: 10th Mo Rep: 267-8: 7th Cowen 332: 11th John 50: 8th Cowen 31: 7th John R. 26: 17th John 303: 7th T. Rep: 350 =

2d — I insist that it was Competent for ~~the plaintiff~~ Morrison under the Rules of the Common Law, (Independent of the Statute) to make the proof upon the trial which was rejected by the Court = That the Covenant in the Bill of Sale of the negroe made to Morrison by Brent "Warranting the Tittle to said negroes to be good in ~~Brent~~ Morrison, his Heirs, &c, & that the same was Free from all claim, or Claims whatever, is Equivalent to the Covenant of Seisin, & that the Title to the negros was then Free from incumbrance, and that Brent had good title which was thereby conveyed to M, & that therefore, the Covenant so made ~~made~~ by Brent was False & Fraudulent (For he Well Knew he had no title) and was Broken at the very time it was made = See 4 Kent Lec. 67. p 471- 4th Bibb 304-5. 2d Marshl 217. 218-219 = The Covenant in this case by no sound ~~of~~ Rule of Construction, can be interpreted to mean any thing else than that Brent had then, at the time of making the Bill of Sale,

invested Morrison with a Good Title in Fee, to the negroes, & that there was no claim or claims whatever incumbering it, and cannot be construed to be a Covenant of Warranty, prospective in its nature, designed & intended to secure the purchaser in the possession & enjoyment of the property as against Legal claims outstanding in the hands of others, which might or might not be asserted or enforced by the Owners thereof = In the Case at Bar, the Covenant of Brent Contemplates the existance of no other Title or Claim to the negros than the one he conveyed to Morrison, and for its then perfection & Goodness, he Gives the Solemn Assurance; whereas, the Covenant of Warranty, prospective in its natures, Contemplates the existance of a better title which may be Outstanding, & if successfully asserted against the property conveyed, the Covenantor will then & not till then, compensate the purchaser for the Loss = ~~This~~ This Contract is to be interpreted by the same rational Rules of interpretation prescribed by Law for the Interpretation of all other Contracts, and by which the intention and meaning of the parties to it are to be ascertained and carried into effect, if from the words or the Context of the instrument, it be practicable — And it seems to me, that there is nothing either in the words or the Context of the instrument, obscure or unintelligible — It shews clearly, that Brent thereby intended to sell & then invest Morrison with an absolute property, & with a good present Title thereto, Free from an existing claim or Title thereto, at that time, either in the hands of John Walden & his Cestue que Trust, Mrs Brent, or in the hands of any other

claimant whatever; & that in full faith & confidence of his becoming thus the owner of the property & ~~of~~ the Good and unincumbered title thereto, Morrison parted with his $850, & Gave his note for the money sued for, "& for no other Cause or Consideration whatever = But to give the ~~contract~~ Contract the meaning contended for in the Circuit Court, & which will, perhaps, be ~~[illegible]~~ insisted on here by the ~~same~~ Counsel for Brent, that is, that Brent only intended to sell & Morrison intended to buy, ~~the~~ & expected to get, the mere possession of the property (regardless of the validity of the title then) with a Covenant of Warranty, prospective in its nature, would be to disregard both the words & the Context of the Instrument — It would be ~~[illegible]~~ Construing the instrument most favourably in behalf of the Covenantor, Brent, ~~(in violation of one established rule of Construction) by disregarding its words~~ And would virtually be making Morrison Declare to Brent, in making the Contract, Sir, put me in possession of the negros, I care nothing about the title to them, And Give me your warranty ~~[illegible]~~ that you will Defend the Law-Suits that may be brought against me by the holder of the title, or pay me back my money & interest paid for them, if we shall not ~~[illegible]~~ not succeed in our Defence, or ~~otherwise~~ shall not by some fraud or Trick, or other means deprive the real owner of them, & I will be satisfied = For you must understand, that I am not buying the title to the negros — it is your warranty & the mere possession that I am paying my money for =

Now surely no rational & just man, placeing himself in the shoes of Morrison in the Contract with Brent, if asked the Question, whether the inducement, or Consideration which prompted him to make the purchase was not merely to obtain the possession of the negros (regardless of the Title, good or bad) with Brent's Warranty, by which, in after time, he might obtain (if Brent should be solvent) his purchase money, with the interest thereon, in the Event of an Eviction or dispossession of the negros, but would promptly Respond to the Interrogatory, & say, no Sir, The only inducement which moved me to the purchase was the expectation & full belief that I would & did thereby acquire a good & perfect title then invested in me, Free from any claim of Title ~~adverse~~, or Incumbrance whatever, in any person whomsoever — And that I would not thence be subjected to the vexation and Expense of a Law-suit, nor to the peril of inability of Brent to indemnify me in the event of being dispossessed of the negroes by the person having the Title to them — In Truth Sir, I expected by my purchase to become absolute Owner of the negros, and the idea never entered my Brain that I could be such Owner of them, without a Good Title — If such would be the Response of ~~a person~~ the person assuming Morrison's place in the Contract, what must be the Response of this Court to the question put by the Case for its Decision? — Is it possible that this Court can, by its Decision, declare to Mr. Brent, that his covenant was not False, but that it was True, because he thereby, then put in Morri-

-son a good Title to the negroes, Free from all claim or claims whatever, and that therefore he is entitled to & ought to have the remainder of the purchase money; & in the same Decision, by way of Moral Lecture to Morrison, Enunciate & admonish him, that ~~for his False Clamor he~~ he had received & Gotten the very thing he purchased, that is, a Good Title in the Safe Keeping of a Stranger, who has never agreed to part with it, or to let him have it, & that therefore, as an honest man, he ought at once to deliver to Brent the money unjustly detained from him, & for his False Clamor pay the Costs occasioned by his Un-Holy Defence = See 2d Wheaton 13: 3d Pick 452 Knapp v. Lee: 6th Mignoni Rep. 642. 643. Frisbie v. Hoffnagle 11 John 50: 2d Kent 473, &c, Lecture 39: 10th Mo. Rep. 267-8: 7th J.R. 26: 17th J.R. 303: 8th Cowen 31: 7th Cowen 332 = 7th Term Rep. 350. note

3d That if the Warranty were one, prospective in its nature, that in this suit the Court will not compel the Defendant to part with his money ~~for a~~ thing which the plaintiff had no right to sell, or interest in, nor any power to convey to Morrison; because, the Court being bound to observe the Rule in Equity, will not ~~require~~ specifically enforce a Contract upon the application of a party who has given no Consideration for the thing he seeks; nor do a thing which will lead to Litigation or Circuity of action between the parties = That although it may be conceded for Argument (but not otherwise) that if Morrison had paid all the purchase money for the negros, instead of a part of it, He could not recover it back until dispossessed of the negros, yet, the recognition of this, as the true principle In Equity, is only an affirmance of an other, much more clear, That Equity will not, as a matter of Course,

rescind an Executed Contract, which it would ~~[illegible]~~ not enforce, if Executory =

4th – That the Court Erred in refusing to give to the Jury the Third Instruction asked for by the plff in Error, & in refusing to grant him a new trial of the Cause upon the Grounds assumed in his motion therefor =

Matt Morrison, Plff in Error

vs. Hayden's Brief for Plff in Error

James M. Edgar, Deft in Error

Authorities 1st Point — Digest 1845. Justice's Courts Sect. 14. + 13 — 15. Article 5 = See Article 1st Same act 1st Sectn 6 Mo. Rep 642-3. 10th Mo Rep: 267. 8. 11th John 50: ~~7th J. R. 26~~ 17th J. R. 303: ~~7 [illegible]~~: 8th Cowen 31: 7th T. R. 350: 10th J. R. 198: Story on Promissory notes, See 190: 7 Cowen 322:

Do 2d Point = 6 Mo. R. 642-3: 10th Do 267-8 = 2d Wheaton 13: 2d Kent 473-4-5 = 11 John 50: 3d Peck 452 = 4th Cond U. S. Rep. p 8-9 = 7 J. R. 26-28. & see the authorities referred to under the First point =

Eagar v Morrison
{ additional Brief -
by Dpt in Error.

The certificates on the will shew that Walden who was appointed trustee for Mrs Brent refused to act - and consequently Robert Brent became the trustee for his wife and might under the will sell the slaves - see 2d Rent com 162 ~~170~~

and these certificates also shew that Robt. Berent was appointed administrator with the will annexed and of course he had the power as administrator to sell any of the slaves - The legatees might sue him for a devastavit but the title of the purchaser could not be affected -

The legal title to the slaves vested in Robert Brent on his appointment as admr in Virginia - as the slaves were there - Pope says or they offered to prove by Pope that these were the slaves mentioned in the will - then of course they were vested in Brent as they were in Va - at the time he was appointed administrator and their removal to Missouri could not divest his title under the letters - and although he could not have brought suit here for them as admr under the letters granted in Va. yet as the title to the slaves became vested in him in Va - he could sue here in his own name - & pass the legal title by a sale in his own name

I apprehend there can be no doubt that when personal property has once (2) come to the hands of an administrator as assets and the title is once vested in him it cannot be divested by running it out of the State where he is appointed - He can surely pursue the property and recover it in his own name from the wrong doer no matter where he may have taken it - If a purchasers title from an adm^r would be good after the removal of the property out of the State where the letters were granted & the sale made a fortiori the adm^rs own title to personal property rec^d into his possession in the State where his letters were granted could not be divested by its removal out of the State! ☞

I dont recollect that the evidence shows where the sale was made - and consequently we have a right to presume that it was made in Va - But ~~I don't think~~ this can make no difference as to the purchasers title - it would be good - wherever it may have been made -

Allen
for Dft - in
Error -

☞ See Story's Conflict of Laws - page 432 - section 516 - Commonwealth v Griffith 2 Pick 11 Bollard v Spencer 7 Term Rep 354 - Shipman vs Thompson Willes Rep 103 - Hack vs Walcot 3 Mason's R. 508-518

Mr Miller -

The enclosed ~~paper~~ is an additional brief to meet what I suppose will be Hayden's argument - I believe it to be sound doctrine - and although I am clear beyond all doubt that there must be an eviction - these suggestions are made to meet any possible view of the case - and you can use it or not as you think best -

Yr. Adams

P.S. Look into Storys Conflict of Laws and the authorities cited in my note about the matters in the additional Brief — W Adams

(4)

Edgar S. Morrison

memo for Miller

In the Supreme Court in
the State of Missouri.

James M Edgar to the use of Robert Brent
vs } Error to Cooper Cir. Court.
Mott Morrison

This suit was initiated by James M. Edgar the defendant in error against the Plaintiff in Error before a justice of the Peace, where judgment was given in favor of the defendant in Error from which the Plaintiff in error appealed to the Circuit Court of Cooper County where judgment was again given in favor of the defendant in Error from the Plaintiff in Error has brought the case here by writ of Error.

The facts of this case are these - Robert Brent, had three slaves to wit John - Jenny and their child Letty. and he authorized Henry G. Brent or any one he might authorize to sell the said slaves - This authority was in the shape of a Power of attorney under the hand and seal of the said Robert Brent - and Henry G. Brent, endorsed on the said Power of attorney the following authority to Cole & Garnett -

"Cole & Garnett are hereby authorized to make sale of the above Negroes and convey them as above directed with full guarantee"
H. G. Brent."

and Cuerk & Garnett by virtue of the said authority sold the slaves to the plaintiff in Error - for nine hundred and fifty dollars - and executed to the plaintiff in error in the name of Robert Brent, a bill of sale under seal - with the following covenants -

"I hereby warrant the said negroes to be sound in body and mind and to be slaves for life"

"and I further warrant the title to said negroes to be good in him the said Morrison his heirs and assigns forever free from all legal claim or claims whatever" -

at the time of the sale Eight hundred and fifty dollars of the purchase money was paid - and for the balance a negotiable note at four months was taken which reads as follows"

"St Louis March 25th 1848.

Four months after date I promise to pay Robert Brent or order one hundred dollars for value received negotiable & payable without discount or defalcation at the Bank of the State of Missouri in St Louis,

Mott Morrison"

This note was assigned by Robert Brent to the defendant in Error James M. Eagor by endorsement thereon as follows"

"Pay the contents to James M. Eagor

Robert Brent" -

and this suit was instituted upon this note.

upon the trial in the circuit court

the note with the assignment thereon to James M. Edgar the Plaintiff below was read in evidence to the jury - and it was admitted that the assignment had been duly made to the plaintiff below and that the money had been demanded of the defendant below & payment was refused - On this evidence the Plaintiff below rested his case in chief -

and thereupon the defendant below read the depositions of Garnett - and two Doctors. and as usual the Doctors differ - but the Doctors depositions conduced to shew that some short time after the sale of the slaves - some of them were unsound -

The defendant below then proposed to prove that at the time of the sale of the slaves Robert Brent had no right or title to them, but that they belonged to Mrs Brent his wife during her life and at her death to her children. and for this purpose offered to read in evidence a will with the certificates endorsed thereon which was made by Mary Palmer. and which among other things bequeathed the slaves to John Walden in trust for Betsey Brent for life and for her children after her death - with power to sell any of the slaves if deemed expedient by the trustee of Mrs Brent -

The certificates endorsed on the will shew that Walden the trustee refused to take upon himself the burthen of the

execution of the will and that Robert Brent was appointed administrator with the will annexed —

The plaintiff below objected to this evidence unless the defendant would also prove or ~~offer~~ undertake to prove that he had been evicted of the slaves and upon the defendant's declaring to the court that he would offer no evidence of an eviction the court refused to permit the evidence offered to be given — and the defendant excepted —

And thereupon the plaintiff below gave evidence conducing to shew that the negroes at the time of the sale and before and after the sale to Morrison were sound and healthy ~~and~~

And at the instance of the plaintiff below the court gave the following instructions which were objected to by the defendant and an exception saved —

Plff's Instructions given

1st. That the criterion of recovery in this case is the principal and interest of the note sued upon and the defendant is not entitled to any abatement unless the slaves or some one of them was unsound at the time of the sale.

given

2d. That to entitle the defendant to any abatement from the amt. of recovery in this case it devolves on ~~the defendant~~ him to prove to the satisfaction of the jury that the slaves or some one of them was unsound at the time of the sale.

given } 4th If the slaves were sound at the time of sale no prior or subsequent unsoundness can affect the plaintiffs right of recovery in this case -

and the defendant then asked the following instructions, all of which were given except the 3d and an exception was saved to its refusal -

Def's Instructions 1st That although the negroes may have appeared to be sound at the time of the sale given } and before that time, yet if the said slaves or either of them were at the time of the sale diseased or unsound though such disease or unsoundness was ~~visible~~ invisible and unknown and that said disease or unsoundness rendered the slaves less valuable than the sum of $950 00 for such difference the plaintiff is not entitled to recover and if the jury believe such unsoundness in the slaves or either of them rendered the slaves worth less the sum of $950 to the amount of the note sued on then jury must find ~~HH~~ their verdict for the defendant

given } 2d That to entitle the defendant to a verdict it is not necessary to prove that Mr Brent or any other person knew that the negroes or either of them were unsound at the time of the sale -

Refused } 3d That if the jury find from the evidence that the negroes or any one of them sold by the plaintiff were unsound at the time of the sale to the defendant and that the defendant in a reasonable time after his purchase of them offered to return

them ~~than~~ to the plaintiff and to rescind the contract ~~with~~ and the plaintiff refused to rescind the contract with the defendant then the plaintiff has no right to recover in this ~~case~~ action the money sued for.

4th. That if the jury find that the negroes at the time of the sale to Morrison (or either of them) were unsound and that by reason of such unsoundness they or either of them were rendered less valuable than if sound then if such diminution of value equal the amount of the note sued on they ought to find their verdict for defendant - But if the diminution of the value were less in amount than the amount of the note and interest then the jury ought to deduct from the note such diminished value & find for the plaintiff the remainder of the sum specified in the note from the time the same became due with interest at six per cent!

given

Verdict

The jury found their verdict for the plaintiff - and the defendant filed a motion for a new trial - alleging the following reasons -

mo. for new trial

1st. The court rejected legal, proper relevant and competent evidence offered upon the trial of the cause by the appellant Morrison -

2d. The court suffered and permitted the said Sagor Tompson the trial of the cause to give to the jury illegal, irrelevant, incompetent and hearsay evidence though objected to by said Morrison

3 The court misinstructed the jury and gave illegal and improper instructions upon the

motion of the said Edgar as to the law of the case, though objected to by the said Morrison.

4th. The court rejected and refused to give each, all and every of the instructions as to the law of the case to the jury as prayed for by said Morrison.

5th. The court before the jury retired from the Bar to consider of their verdict gave them erroneous & illegal instructions as to the law of the case and refused to give them legal & proper instructions in that regard.

6th. The jury found their verdict against law and the evidence.

The motion for a new trial was overruled by the court - and the defendant excepted - and as heretofore stated has brought the case here by writ of error.

In support of the judgment of the Circuit Court - the defendant in error will rely upon the following points and authorities.

1st. To constitute a breach of warranty of title in the sale of chattels it is necessary that the vendee should be evicted - that he should be actually dispossessed of the property under the judgment of some court having jurisdiction of the case - and therefore the court very properly rejected the evidence about the title to the slaves. 1 Smith's Leading cases 181-2. Vibbard vs Johnson 19 Johns. Rep 79. 10 Wendle 384 - 12 Wendle 450 - 2d Kents Com. 472-3 - 1 Johns Rep. 517

13 J Rep 225. 4 Dallas 436 note) 7 John Rep 258
2d Marshall's Rep 218.
11 J.R. 122 - 2 Caines Rep 192 - ~~4 Wend 389~~
2 U.S Digest supplement No 310 page 725

2d There was no error in any of the instructions given to the jury. They embrace the whole law of the case as it was before the jury. They were told that the criterion of recovery was the note & interest. That there could be no abatement unless the slaves or one of them was unsound at the time of the sale. and if there was an unsoundness at that time whether known or unknown they were to take this into consideration & find accordingly.

3d The court very properly refused the 3d instruction asked by the defendant below. not only because it falsely assumes that the sale was made by the plaintiff below in this suit when the sale was in fact made by Robert Brent. but because it affirms the doctrine that upon an offer to rescind a sale. the vendee may refuse to pay the whole amount of the purchase money and also retain the property. and that he may do this notwithstanding the injury if any from unsoundness does not amount to the ten thousandth part of the purchase money - 1st Dana 273
12 Wheaton 184

4th. The 3d instruction asked by the defendant below, was not only palpably erroneous as a legal proposition, but there was no evidence whatever of any offer to rescind. Carle & Garnett were only authorized to make sale of the slaves and with this their authority ceased. And Brent could not be affected by any thing ~~they~~ afterwards ~~said or did~~ done or said by them.

5th. The verdict was sustained by the evidence. But this question does not arise upon this record as the bill of exceptions does not pretend to give all the evidence. Though it clearly shows that the weight of evidence greatly preponderated in favor of the plaintiff below.

~~In regard to the first point it is to the [illegible] that the warranty in this case, was an express [illegible] contained~~

6th. The note sued upon was a negotiable note in the hands of an indorsee and its consideration could not be inquired into

In regard to the first point it will be observed that the warranty is in the shape of an express covenant contained in the bill of sale, whereby Brent covenanted that he would warrant the title to the slaves in the defendant Morrison his heirs and assigns (against (or which is the same thing, "free from") all legal claim or claims whatever". Now this is an express warranty of title. and it is the same as the warranty usually inserted in conveyances of real Estate. And to constitute a breach of the warranty we have only to look at its language to see that there must be an eviction. until some one claims the property and such claim is sustained by the judgment of a competent court, and the vendee is evicted there can be no breach of this warranty. And I never have heard of an authority in the books to the contrary.

It is a well settled rule that all implied covenants are done away by express ones. Vanderkarr vs Vanderkarr 11 Johns. Rep. 122. 2 Cains Rep 192. But even supposing that there was an implied warranty of title, as there usually is in the sale of chattles where there is no express warranty still the rule is the same, that there must be an eviction to constitute a breach of such warranty. See the authorities referred to on the 1st Point. any other doctrine

would lead to the greatest frauds upon the rights of the vendor. It is deemed unnecessary to make any further remarks upon a proposition which is so well sustained by reason as well as authority.

The other points are considered too plain to need illustration or reference to authorities.

Adams & Miller
for Dft in Error

Edgar - Dft in Error
vs
Morrison

Briefly
Adams &
Miller for
Dft in Error

1 Smith leading cases 181-2
19 Johns R 79 - 10 Wend 384
12 Wend. 450 - 2 Kent 472-3
1 Johns. R. 517 - 13 Johns R. 225
4 Dallas 236 note - 7 Johns. 258
2 Mark. 218. 11 John R. 122
2 U.S. Digest (supplement) 725
No 210.

In the Cooper Circuit Court,

Mott Morrison - Deft
a ds } Indgment against Morrison -
James M. Edgar, who
Sues to the use of } Pltff
Robert Brent

The Clerk of the Supreme Court will please send a writ of Error for Morrison in the above Cause =

Haydn for Morrison =

Abraham Hathaway &
Jacob Ingraham - Complts -
vs. } In Chancery = Indgment agt Pltffs -
Benjamin Tompkins &
Others - Defendants -

Please send me a writ of Error for Ingraham & Hathaway in this Cause =

Hayden for
Ingraham & Hatha-
-way

Hathaway & Ingaham

v

Benjn. Tompkins et al

Jas. M. Edgar use of

Robt. Brents

v

Mott Morrison

Precipe

filed Nov. 26 1830

Wm E Dunscomb

Clerk

Cooper

Wm E. Dunscomb, Esqr,

Clerk Supreme Court,

Jefferson City

Mo —

Jno Chenault, Esqr.

THE STATE OF MISSOURI, SCT.

THE STATE OF MISSOURI TO THE SHERIFF OF THE COUNTY OF Cooper IN SAID STATE, **Greeting,**

WHEREAS, James M Edgar, use of Robert Brent on the thirteenth day of February in the year eighteen hundred and fifty two at our Supreme Court for the State of Missouri aforesaid, before our Judges of said Court, recovered against Mott Morrison the sum of thirteen 63/100 dollars for his costs and charges by him expended in a certain suit wherein the said Mott Morrison was plaintiff in error and the said Jas M Edgar use of Robert Brent was defendant in error which to the said defendant were adjudged, as appears to us of record: **Therefore,** We command you, that of the goods and chattels, lands and tenements of the said Mott Morrison in your bailiwick, you cause to be made the aforesaid costs, and that you have the same before the Judges of our said Supreme Court, on the second Monday in January next, to render unto the said James M Edgar use of Robert Brent the costs aforesaid, and that you certify to our said Judges how you execute this writ, and have you then there this writ.

SEAL OF THE SUPREME COURT OF MISSOURI

Witness, William E. Dunscomb, Clerk of said Supreme Court, at Office, in the City of Jefferson, the thirteenth day of October in the year of our Lord one thousand eight hundred and fifty two

Wm E Dunscomb

28

January Term 1853.

Edgar use of Brent

vs } Exeon

Mott Morrison

Costs

B C Clark	5.68
R B Jackson	60
Wm E Dunscomb	7.35
this writ	1.00
	$14.63

Rec. myfees of deft in Ex
B. C Clark

Shff fee 50.00

Cooper

I do hereby Certify that there was no property found in Cooper County Belonging to the defendant whereon to levy therefore I return this Execution not satisfied for want of property whereon to levy this 7th day of January A.D. 1853

H. Burke Shff of Cooper Co Mo