

NOTRE DAME CIRCUIT COURT
Record of Cases.
 (Leo J. Ward)

CAUSE NO. 8.

Charles E. Duff, doing business as
 The Pioneer Stock Powder Co.

vs.

Samuel Koontz.

Leo J. Hassenhauer,
 Francis Walsh,
 Attorneys for the Plaintiff.

Clifford O'Sullivan,
 William J. McGrath,
 Attorneys for the Defendant.

This is an action on a negotiable instrument given by the defendant to the plaintiff, which note is due and unpaid. Demand \$250.00.

The plaintiff files declaration in two paragraphs.

Defendant files general demurrer to plaintiff's declaration. Demurrer sustained and plaintiff takes leave to file amended declaration.

Plaintiff files amended declaration in two paragraphs: (1) on the note and (2) on the contract.

Defendant files plea in five paragraphs: (1) *non est factum*; (2) breach of contract; (3) payment; (4) failure of consideration; (5) partial failure and payment.

Plaintiff now files replication in three paragraphs: (1) similiter to defendants first paragraph of plea; (2) confession and avoidance; (3) general traverse.

Defendant now files traverse to the second and similiter to the third paragraphs of plaintiffs replication.

The cause being at issue the jury

is impanelled and the cause is submitted and the trial had.

The defendant tenders three instructions in writing which are refused. The defendant excepts to the court's ruling in refusing to give the said instructions.

The defendant submits interrogatories numbered one to seven inclusive, which interrogatories are given as submitted.

Francis Walsh opens the argument for the plaintiff, followed by Clifford O'Sullivan for the defense. William J. McGrath closed the defendant's argument and the plaintiff's case was concluded by Leo J. Hassenauer.

The court now instructs the jury in writing and files the instructions and orders that they be made part of the record without bill of exceptions.

The jury retires and returns into open court their general verdict in favor of the defendant and against the plaintiff.

The jury also returns the interrogatories and the answers thereto.

The plaintiff files motion for a new trial which motion the court overrules, to which ruling the plaintiff takes exception.

Judgment is rendered in favor of the defendant and against the plaintiff.

The plaintiff prays an appeal to the Supreme Court of Notre Dame, which is granted and five days are given in which to file a general bill of exceptions. Ten days are given to the said plaintiff in which to file an appeal bond in the sum of \$250.00 which bond and sureties thereon are hereby approved.

CAUSE NO. 9.

James Wilson

vs.

Marion Biddle et al.

Harry P. Nester,
Edwin Hunter,
Attorneys for the Plaintiff.

Joseph Patrick O'Hara,
Francis Clohessey,
Attorneys for the Defendants.

This is an action for damages for alleged fraudulent conduct in failing to convey land to the plaintiffs by the defendants under an agreement. Demand \$1500.00.

The plaintiff files complaint presumably in three paragraphs: (1) fraudulent transfer; (2) breach of contract; (3) defrauding of benefits of contract.

Defendants file motion to separate paragraphs of complaint. Motion sustained and complaint is separated into three paragraphs and numbered.

Defendants file separate and several motion to strike out parts of the plaintiff's complaint as surplusage. Motion sustained and matter stricken out.

Defendants file separate and several general demurrer to the complaint. Demurrer sustained. Defendant takes leave to file an amended complaint.

Plaintiff files amended complaint in one paragraph for fraud in depriving him of benefits of alleged contract.

Defendants file separate and several demurrer alleging, (1) misjoinder

and (2) insufficiency. Demurrer overruled.

Defendants file answer in general denial.

Plaintiff files motion to strike out part of defendants answer. Motion sustained and defendants separately except.

The cause being at issue the jury is impanelled and the cause is submitted to the jury for trial, and the trial is had.

The plaintiff tenders five instructions in writing which are refused. The plaintiff excepts to the ruling of the court in refusing to give his instructions. Defendants tender peremptory instruction.

Harry P. Nester opens argument for the plaintiffs followed by Joseph Patrick O'Hara for the defense. Francis J. Clohessey closed the argument for the defense and the case for the plaintiff was concluded by Edwin W. Hunter.

Court instructs the jury peremptorily to return a verdict for the defendants.

The jury returns into open court their general verdict in favor of the defendants and against the plaintiff.

The plaintiff files motion for new trial which the court overrules, to which ruling the plaintiff excepts.

Judgment is rendered in favor of the defendants and against the plaintiff.

The defendant prays an appeal to the Supreme Court of Notre Dame, which is granted and ten days are given in which to file a general bill of exceptions. Five days are given in which to file an appeal bond in the sum of \$200.00 which bond and sureties thereon are hereby approved.

CAUSE NO. 10.

William Hill

vs.

John Green et al.

Ralph Bergman,

Emmett Rohyans,

Attorneys for the Plaintiff.

Maurice F. Smith,

Leo B. Ward,

Attorneys for the Defendants.

This is an action on a promissory note given by the defendants and negotiated to the plaintiff, which note is due and unpaid; demand \$210.66.

The plaintiff files complaint in one paragraph on the note.

Defendants file separate and several answer in four paragraphs: (1) general denial; (2) Breach of warranty; (3) fraudulent negotiation to avoid defenses; (4) separate defense of no consideration for suretyship of Daniel Walker.

The plaintiff files a general and several demurrer to each of the second, third and fourth paragraphs of answer. Demurrer overruled as to the second and third paragraphs of answer. Demurrer sustained as to the fourth paragraph of answer.

The defendant, Daniel Walker, files cross-complaint in one paragraph against William Hill and John Green to be adjudged a surety on the note.

The plaintiff William Hill and the defendant John Green file general denials to the cross-complaint.

The case being at issue the jury is impanelled and the cause submitted and the trial had.

The plaintiff tenders four instructions in writing which instructions are refused.

The plaintiff takes exception to the ruling of the court in refusing the instructions. The defendant tenders 15 instructions all of which are refused except numbers two, three and six. The defendant takes exception to the court's ruling in refusing to give each and all of his instructions.

The plaintiff submits interrogatories numbered from one to five inclusive, all of which are submitted by the court.

The defendants submit interrogatories numbered from one to nine inclusive, all of which are submitted by the court except number two.

Ralph Bergman opens the argument for the plaintiff and is followed by Maurice Smith for the defendants. The defendants' argument is closed by Leo B. Ward and Emmett Rohyans concludes the argument for the plaintiff.

The court now instructs the jury in writing and files the instructions and orders that they be made a part of the record without bill of exceptions.

The jury retires and returns into open court their general verdict in favor of the plaintiff for \$212.00 against John Green as principal and Daniel Walker as surety.

The jury also returns the interrogatories and answers thereto.

The defendants file motion for new trial which motion is overruled by the court, to which ruling the defendants separately take exception.

Judgment is rendered in favor of the plaintiff and against John Green, principal, and Daniel Walker, surety, in the sum of \$212.00.

The defendant prays an appeal to the Supreme Court of Notre Dame, which appeal is granted and ten days are given in which to file a general

bill of exceptions. Five days are given to the said defendant in which to file an appeal bond in the sum of \$200.00, which bond and the sureties thereon are hereby approved.

CAUSE NO. 11.

The First National Bank of Chicago
vs.
The St. Joseph Loan and Trust Co.

Edward P. Madigan and
Delbert D. Smith,
Attorneys for Plaintiff.
Francis J. Murphy and
Walter R. Miller,
Attorneys for Defendant.

This is an action on two checks each for \$500.00, drawn on the Mishawaka National Bank and transferred to the defendant bank for collection, demand \$1000.00.

Complaint in one paragraph for money had and received on checks.

Defendant files answer in two paragraphs: (1) general denial; (2) confession and avoidance.

Plaintiff files motion to strike out defendant's second paragraph of answer. Motion sustained and defendant excepts.

The cause being at issue, the jury is impanelled, the cause submitted and the trial had.

The plaintiff tenders two instructions in writing which are refused. Defendant tenders four instructions in writing which are refused. Plaintiff excepts to courts ruling in refusing to give his instructions tendered. Defendant excepts to courts ruling in refusing to give his instructions tendered.

The defendant submits interrogatories numbered 1 to 5. The court

refuses all but numbers one and two.

Delbert D. Smith opens the argument for the plaintiff, followed by Francis Murphy for the defendant. Walter Miller closed the argument for the defense and Edward P. Madigan concluded the case for the plaintiff.

The court now instructs the jury in writing and files the instructions and orders that they be made part of the record without bill of exceptions.

The jury retires and returns into open court the general verdict in favor of the plaintiff fixing damages in the sum of \$1000.00.

The jury also return the interrogatories and the answers thereto.

The defendant files motion for new trial which the court overrules, to which ruling the defendant takes exception.

Judgment is rendered in favor of the plaintiff in the sum of \$1000.00

The defendant prays an appeal to the Supreme Court of Notre Dame which is granted and ten days are given in which to file general bill of exceptions. Five days are given to said defendant in which to file an appeal bond in the sum of \$1000.00, which bond and sureties thereon are hereby approved.

CAUSE NO. 12.

(Junior Division)

George D. O'Brien and Clyde Walsh,
partners as O'Brien & Walsh
vs.

Charles M. Dunn

Alden J. Cusick and
Joseph H. Flick,
Attorneys for Plaintiff.

James L. O'Toole and
Frank Francescovich,
Attorneys for Defendant.

Action on account for legal services rendered, demand \$100.00.

Plaintiff files complaint on account, with bill of particulars attached.

Defendant files demurrer to complaint for want of facts. Court overrules demurrer to which ruling defendant excepts.

Defendant files answer in three paragraphs: (1) general denial; (2) Payment; (3) Accord and satisfaction.

Plaintiff files motion to require defendant to elect between alleged inconsistent defences. Motion overruled to which ruling plaintiff excepts.

Plaintiff files reply to the 2nd and 3rd paragraphs of answer.

Defendant filed demurrer to the reply which the court overrules, the defendant excepting.

Jury is waived and the cause is submitted to the court for trial and the trial concluded.

Joseph H. Flick opens the argument for plaintiff, followed by Frank Francesovich for the defendant. James L. O'Toole concludes the argument for defendant and Alden J. Cusick closes for plaintiff.

Court finds for the defendant upon the 3rd paragraph of answer, accord and satisfaction, and against the plaintiff, that plaintiff take nothing by his action and that defendant recover his costs.