

NOTRE DAME CIRCUIT COURT

CAUSE NO. 20.

John Reilly
vs.
Gerald Davenport

Vincent B. Peter and
Aaron H. Huguenard,
Attorneys for Plaintiff.
Franklyn E. Miller and
John J. Buckley,
Attorneys for Defendant.

(Continued)

TRIAL RECORD

Defendant files motion for judgment *non obstante veredicto*, which is overruled by the court, to which ruling defendant excepts.

Defendant files motion and causes for new trial. Motion overruled and defendant excepts. Defendant also files motion in arrest of judgment which the court overrules, and to which ruling defendant takes exception.

Plaintiff moves for judgment on the verdict, which motion is sustained. Judgment that plaintiff have and recover of and from defendant the sum of Six Hundred and Fifty Dollars (\$50) together with the costs of the action, taxed at \$——, all collectible without relief from valuation and appraisalment laws.

Defendant takes exception to the judgment and prays an appeal to the Supreme Court of Notre Dame. Appeal granted upon the filing of appeal bond within ten days, in the sum of \$800 with William Miner and Sherman McCabe as sureties thereon, which bond is hereby approved. Thirty days given to file general bill of exceptions.

CAUSE NO. 21.

Earnest M. Blanchett
vs.

Albert B. Taylor
William B. Allen,
Frank Francesovich and
George Wittried,
Attorneys for Plaintiff.
Frank E. Coughlin,
Edmund J. Meagher and
Henry W. Fritz,
Attorneys for Defendant.

TRIAL RECORD

(Continued)

Trial resumes and concluded. Arguments of counsel heard.

Court, being fully advised, finds for the plaintiff that his cause of action is sustained, that he should have and recover of and from the defendant the sum of Two Hundred Dollars (\$200), together with the costs of the action, all taxed at \$——, and all collectible with relief from valuation and appraisalment laws.

Defendant files motion and causes for new trial, which motion the court overrules with exception to defendant. Motion in arrest of judgment also files which the court overrules, granting exception to defendant.

Plaintiff's motion for judgment on the finding is sustained. Judgment according to the finding.

Defendant takes exception to the judgment and prays appeal to the Supreme Court, which is granted. Appeal bond is to be filed within ten days, and is fixed in the sum of \$400 with William Fitzgerald and Charles M. Dunn as sureties, which bond is hereby approved by the court. Thirty days are given in which to file general bill of exceptions.

CAUSE NO. 22.

James Whitcomb, by his next
Friend, Thomas Rees,

vs.

Marshall Carper.

Arthur C. Kenney and
Harry E. Denney,
Attorneys for Plaintiff.

John J. Heffernan and
James C. Shaw,
Attorneys for Defendant.

STATEMENT OF FACTS.

Plaintiff brings action to recover \$200 paid to defendant as purchase price for a horse, harness and buggy. Plaintiff was a minor at the time of purchase, a married man with wife and child, worked as a day laborer for the support of himself and family, and did not use the purchased property except for pleasure purposes. Plaintiff, at the time of bringing the action, had sold the harness and buggy. and the horse had been condemned by the Society For the Prevention of Cruelty to Animals as unfit for use. Notwithstanding plaintiff offered no return of the property purchased, he seeks to recover the money paid by him as stated.

TRIAL RECORD.

Plaintiff shows that on May 8th, 1921, he filed complaint and praecipe for summons. Defendant appears by counsel and files several demurrer to the 1st and 2nd paragraphs of complaint. Court sustains demurrer to the 1st paragraph of complaint, to which ruling the plaintiff excepts. Court overrules demurrer to the 2nd paragraph of complaint, to which ruling the defendant excepts.

Defendant files answer in four paragraphs. Plaintiff files motion to require defendant to separate each of the 2nd, 3rd and 4th paragraphs of answer and number them as separate paragraphs of defense. Court overrules the motion to separate as to each of the paragraphs, to which rulings the plaintiff severally excepts.

Plaintiff files motion to strike out certain parts of the 4th paragraph of answer, which motion is overruled by the court, to which ruling the plaintiff excepts.

Plaintiff files several demurrer to the 2nd, 3rd and 4th paragraphs of answer. The court sustains the demurrer to the 2nd paragraph. Defendant files amended 2nd paragraph of answer, to which plaintiff files demurrer, which demurrer the court overrules, and to which ruling plaintiff excepts. Defendant confesses demurrer to the 3rd paragraph of answer and files amended 3rd paragraph. Plaintiff files demurrer to the amended 3rd paragraph of answer. Plaintiff asks and is granted leave to withdraw demurrer to amended 3rd paragraph of answer. Plaintiff withdraws demurrer and files motion to strike out certain parts thereof, on the ground that they are merely argumentative general denial. Court sustains this motion. and strikes out the parts indicated in the motion. The court now sustains the demurrer to the amended 2nd paragraph of answer which the court heretofore overruled, to which ruling the defendant excepts. The Court now overrules the demurrer to the 4th paragraph of answer, to which ruling plaintiff excepts.

Defendants file additional or 5th paragraph of answer in set-off. Plaintiff files motion to strike out the 5th paragraph of answer in set-off,

which is sustained and to which ruling the defendant excepts.

Plaintiff files reply in general denial to each of the 1st, 3rd and 4th paragraphs of answer.

The case now stands on plaintiff's 2nd paragraph of complaint, defendant's 1st, 3rd and 4th paragraphs of answer, pleading as defense, general denial, that the articles purchased were necessities for plaintiff and his family, and that defendant defrauded plaintiff to secure the purchase of the property and has, notwithstanding such fraud, never offered to return or make restitution therefor, plaintiff's denial of these facts.

Jury is now empanelled, sworn, and the cause is submitted for trial.

Trial begun and plaintiff's case in chief concluded. Defendant moves for non suit, which motion is overruled and exception granted. Trial concluded.

Both plaintiff and defendant tender certain instructions, some of which are given with exception to the other party, and some are refused with exception properly taken. The court indicates before the argument what instructions will be given.

Arguments are made by all of counsel for parties.

The court now reads to the jury the instructions, numbered from 1 to 9 inclusive, which the court then files and orders to be made part of the record without bill of exceptions. Parties taken exceptions to certain instructions as indicated thereon and attested by the court.

The jury then retire to their jury room to deliberate on the case, and are in charge of a sworn jury bailiff. Come the jury into open court and return their verdict, which is as follows: "We, the jury, find for the

plaintiff and assess his damages in the sum of \$200.00. J. G. Welsh, Foreman."

CAUSE NO. 23.

John D. Carson, as Administrator
of Estate of Ray Stephens, decd.

vs.

Charles D. Simpson and
Edward Williams.

Patrick E. Granfield and
Edward M. Dundon,
Attorneys for Plaintiff.

Clarence R. Smith and
William A. Miner,
Attorneys for Defendant.

STATEMENT OF FACTS.

Ray Stephens entered into an areement with Charles D. Simpson to sell him a horse on approval. The understanding was that Simpson was to take the horse and try him, and if the horse should suit him, give Stephens his note with approved security; but if the horse should not suit him, he was to return him to Stephens. A few days after the agreement and the taking of the horse by Simpson, Stephens was killed. Simpson did not return the horse and did not execute or offer to execute his note, but later traded the horse to the other defendant, Edward Williams. Plaintiff brings action in replevin to recover the horse or its value.

TRIAL RECORD.

Plaintiff shows to the court that on May 23rd, 1921, he filed his complaint and praecipe for summons. Return of sheriff filed. Defendants appear by their counsel and file motion to require plaintiff to make his