

JUNIOR MOOT COURT

CAUSE NO. 1.

John Hamilton

vs.

Charles Simpson

Alden J. Cusick and

Joseph H. Flick,

Attorneys for Defendant.

PLAINTIFF'S POINTS AND
AUTHORITIES.

Action for Breach of Contract.
Damages \$100.

Charles Simpson, riding in company with a friend, passed the farm residence of John Hamilton and, seeing a sow and five sucking pigs on the Hamilton farm, stopped, examined them, then drove to the barn yard of Hamilton where he opened negotiations with Hamilton for the purchase of the pigs. As a result of the talk it was agreed by and between them that Simpson was to buy the sow and pigs for the stipulated price of \$83.50 and Hamilton was to sell and deliver them to Simpson the next day at his residence in South Bend, Indiana, and receive payment.

Next day Hamilton brought the sow and pigs to the residence of Simpson in South Bend as agreed, but Simpson refused to accept or receive them or permit Hamilton to deliver them, giving as his reason that he feared the pigs might have the cholera; that he would not consent to accepting delivery of the sow and pigs unless Hamilton would submit them to examination for the purpose of determining whether or not they had cholera, and for the further reason, as Simpson stated, that he did not think he could be forced to take the pigs and sow. Who should recover and why?

George D. O'Brien and,
Donnelly C. Langston,
Attorneys for Plaintiff.

The fact in this case that the hogs are not goods, but are chattels will take the oral contract out of the operation of the Statute of Frauds.

Burrills Law Dictionary: Goods-strictly seems applicable only to inanimate movables, being in this respect less comprehensive than CHATTELS, which include animals. 19 Ill. 584; 133 Ind. 472.

The word CHATTELS is of more than general signification than GOODS. 56 Mo. 58, 20 Mich. 357.

CHATTELS is more comprehensive than GOODS and includes animate as well as inanimate property. 159 Pa. St. 220.

2. Since the oral contract has been taken out of the operation of the Statute of Frauds it is possible to make a constructive delivery of the CHATTEL. Since this is the case title has already passed to the purchaser in this case and the vendor was in the position of bailee after the passing of the title.

Where, by the contract itself, the seller appropriates to the purchaser a specific chattel, and the latter thereby agrees to take that chattel and pay the stipulated price, the parties are then in the same situation as they would be after a delivery of the goods in pursuance of the general contract; the appropriation is equivalent to a delivery and the assent of the purchaser to take the specific chattel and pay the price is equivalent to acceptance. The effect of the contract

therefore is to vest the property in the purchaser. 6 W. Va. 255; 17 L. R. A. (N. S.) 807; 61 S. E. 235 (Rule Stated); Cited in 50 L. R. A. (N. S.) 124.

3. If the purchaser inspects for himself the specific goods sold and there is no express warranty, and the seller is guilty of no fraud, and is not himself the manufacturer of the goods sold and there is no express warranty, and the seller is guilty of no fraud, and is not himself the manufacturer of the goods sold, the doctrine of *CAVEAT EMPTOR* applies even though the seller presumes the purpose for which the goods were required. 30 Am. Rep. 639; 64 N. Y. 411; 22 Fed. Rep. 52.

Where the means of knowledge are at hand, and equally available to both parties, and the subject is open to the inspection of both parties alike, there is no implied warranty. 33 La. Ann. 1364.

4. There was no implied warranty that the hogs were sound and the vendee cannot set up the fact that the vendor warranted the hogs.

DEFENDANT'S POINTS AND AUTHORITIES.

I The Contract of Sale in this case is governed by the Statute of Frauds.

Burns Annotated Statutes of Indiana 1908 Vol. III, Sec. 7469: "No contract for the sale of any goods for the price of \$50 or more shall be valid unless the purchaser shall receive part of such property or shall give something in earnest to bind the bargain or in part payment or unless some note or memorandum in writing of the bargain be made, and signed by the party to be charged thereby

or by some person thereunto by him lawfully authorized."

The contract in this case is parol and for the sale of goods of more than \$50 in value.

Hogs are "goods" within the meaning of the Statute of Frauds I) *Vawter v. Griffin et al*, 40 Ind. 600—"Webster says: 'Goods, n. p.; movables, household furniture, horses, cattle, utensils'. Raleigh says: 'Syn.: goods comprehend furniture or other moveables or movable estates, as cattle, implements, utensils.'"

2 Words & Phrases Vol. IV, Page 3131: "The words 'goods, wares and merchandise' are equivalent to the term 'personal property' and are intended to include whatever is not embraced by the words 'lands, tenements and hereditaments.'"

3 Cyclopedia of Law & Procedure Vol. XX, Page 1267.

4 *Tigany on Sales*, Page 72.

No acceptance; no part payment; no memorandum in writing to the contract of sale in this case.

1 Mere delivery of goods by the purchaser is not sufficient; he must receive and accept the same. In *Frankie v. Trulove*, 54 N. E. 461 Ind Appellate, it is said: "The receipt of property contemplated by the Statute which will take the contract of sale out of the operation of the Statute the seller cannot by this act of delivery render the contract enforceable against the purchaser without receiving the goods or some part thereof by the purchaser as his property under the contract."

2) *Dehority v. Paxton*, 97 Ind. 253, "The seller must part with his control for the purpose of vesting the right of property in the buyer who must receive with such intent on his

part." See also *Shindler vs. Houston*, 1 N. Y. 261; *Hooker v. Knab*, 26 Wis. 61; *Stone v. Browning*, 51 N. Y. 211; *Johnson v. Cuttle*, 105 Mass. 447.

II. The Damages sought in this case are improperly measured and excessive.

The measure of damages for the breach of an executory contract of sale by the purchaser is the difference between the contract price and the market price of such goods at the time the contract was broken.

In *Singer v. Chaney*, 51 S. W. 813, the Kentucky Court holds: "that where the buyer of logs had a right to inspect them and to reject such as did not meet the requirements of the contract that the title did not pass until the logs were accepted and therefore the measure of damages for the buyers refusal to take and pay for the logs was not the contract price but the difference between the price agreed to be paid for the logs at the time and place of delivery and the sum for which the seller could, by reasonable effort, have sold them after the buyer had refused to accept them." See also: *Acme Food Co. v. Older*, 17 L. S. A. (N. E.) 808; *Dollman v. Studebaker*, 52 Ind. 286.

Judgment for Defendant.

CAUSE NO. 2.

John Kent, by William
Jones, next friend

vs.

The Michigan Central
Railroad Company.

Action for Damages,—\$10,000.

The defendant, in operating its road, carries on its trains, to be used by its servants, certain signal torpedoes, which were apparently harmless, but which in fact were dangerous explosives. That a train of the defendant, carrying such torpedoes was stopped by its servants at a water tank and station in South Bend; that said servants took some of the torpedoes and placed them on the track in an exposed place without any cause or necessity for doing so, but merely for the fun of seeing them explode; that the defendant's train negligently failed to explode all these torpedoes and left them exposed in a public place where people generally were accustomed to pass as well known to the defendant and without objection by the defendant, a place on its right-of-way.

That the plaintiff, John Kent, a boy of ten years, was standing near the station with other boys when this train stopped; that just after the train moved on, another boy of ten years who had been walking along just along behind the train to the knowledge of the servants of the train, saw the unexploded torpedo and picked it up and carried it to where the plaintiff and other boys were standing and showed it to them, not knowing what it was or its dangerous character, some 150 feet from where he picked it up to where he carried it. That this boy handed the torpedo to the plaintiff who also did not know its dangerous character, that plaintiff inspected it and while so doing it exploded and occasioned considerable damages to the plaintiff by reason of personal injuries, for which he now brings this action through his next friend. Should plaintiff recover or not and why?

Walter A. Rice and
George C. Witteried,
Atty's for Plaintiff
Charles P. J. Mooney and
Peter Lish,
Atty's for Defendant

PLAINTIFF'S POINTS AND AUTHORITIES.

I. The case of *Harrimann vs. Pittsburgh, C. & St. L. R. Co.*, 12 N. E. 451, is on all four with the case at bar, the facts are identical with those in this case.

In that case a child of ten years of age was injured by reason of the explosion of a railway torpedo which the servants of the company had placed upon the track at a place near the station and where the public were wont to gather, a playmate of the child picked up the torpedo and while handling it, it exploded, injuring the plaintiff. The court held: That the railway company was liable for the injury caused by the negligence of their employees, who placed the torpedo upon the track at where children were wont to play.

This case is the leading case along this line and the holding of the court in that case has been sustained in the following cases: 78 S. E. 816; 38 S. E. 356; 47 Ohio St. 387; 24 N. E. 658-8 L. R. A. 464; 11 R. C. L. 664-20 R. C. L. 87.

II. Attractive Nuisances — The following case held that anything in the nature of explosives is attractive to children and persons using them must exercise the utmost care in using and handling them, especially if they are liable to be accessible to children. *Mattison vs. Minn. & N. W. R. R. Co.*, 95 Minn. 477; 104 N. W. 443; 70 L. R. A. 503, given in the notes in L. R. A. (N. S.) 19-1128.

III. For a definition of Proximate cause see *Intervening or concurrent causes*, 22, R. C. L. 199.

A railroad company is not relieved from liability to a child injured by an improperly fastened turntable, by the fact that it was put in motion by the playmates of the injured child. 22 R. C. L. 167.

A person is generally held liable for any injury resulting for leaving explosives in a place accessible to children, especially if it is a public place or a place where children are wont to congregate under circumstances which do not make them wilful trespassers.

Wells vs. Gallagher, 144 Ala. 363. 3 L. R. A. (N. S.) 759.

St. Louis R. R. Co. vs. Gaggner, 116 S. W. 948. 52 L. R. A. (N. S.) and notes in 24 L. R. A. (N. S.) 586.

IV. The act of the child causing the explosion is generally held not to be such an intervening cause as will relieve the defendant of liability. See 22 L. R. A. 167.

DEFENDANT'S POINTS AND AUTHORITIES.

I. The act of the trainmen in placing the torpedoes on the track cannot be deemed the act of their master, i. e., the railroad company. See *Sullivan vs. L. & N. R. R. Co.*, 74 S. W. 171; *Morier vs. St. Paul Ry.*, 17 N. W. 952; *Smith vs. N. Y. R. R. Co.*, 78 Hun. 524; *Young vs. South Boston Ice Co.*, 150 Mass. 527; *Birnbaum vs. Philadelphia R. R. Co.*, 94 Atlantic 925; *John vs. Birmingham Realty Co.*, 55 South 801; *Bowley vs. O'Connell*, 27 L. R. A. 173; *Snyder vs. Hannibal, etc., R. R.*, 60 Mo. 413; *Davis vs. Houghtelin*, 14 L. R. A. 737.

II. The act of the child in handling the torpedo to the plaintiff was

such an intervening cause as broke the casual connection between the alleged negligence of the trainmen and the injury to the plaintiff. See *Kinkbeiner vs. Solomon*, 24 L. R. A. (N. S.) 1257.

III. The torpedo is not a dangerous agency. See *Mize vs. L. & N. R. R.*, 16 L. R. A. 1084; *Kleebauer vs. Western Fuse Co.*, 60 L. R. A. 377.

The fact that the person responsible for the intervening act is a child does not affect the case, but, if the act itself is an intervening effective cause, it will break the casual connection. See *Finebeiner vs. Solomon*, 24 L. R. A. (N. S.) 1257; *Otter vs. Cohen*, 1 N. Y. Supp. 430; *Loftus vs. Dehair*, 65 Pac. 379.

The plaintiff is not conclusively presumed to be incapable of contributory negligence. In fact, there is no presumption either way regarding his capacity. See *Terre Haute R. R. Co. vs. Tupperbach*, 9 Ind. App. 422, 36 N. E. 915; *Riderbaur vs. Kansas City R. R.*, 13 S. W. 889; *Elwood vs. Addison*, 26 Ind. App. 23, 59 N. E. 47; *Citizens Street Ry. vs. Stoddard*, 10 Ind. App. 278, 27 N. E. 723.

The defendant is not an insurer of the safety of children because he is the owner of appliances that may appeal to their youthful fancies. See *Lewis vs. C. C. C. & St. L. R. R. Co.*, 84 N. E. 23; *Galveston Ry. vs. Cunie*, 10 L. R. A. 307; *Ballard vs. L. & N.*, 16 L. R. A. 1052; *Fitzmaurice vs. Conn. R. Co.*, 3 L. R. A. 149; *Clark vs. Richmond*, 8 Am. St. Rep. 281; *Daniels vs. N. Y. & N. E. Ry. Co.*, 28 N. E. 283; *Frest vs. Eastern R. R.*, 9 Atl. 190; *Union Stock Yard & Transit Co. vs. Butler*, 92 Ill. App.—; *Ryan vs. Tomar*, 87 N. W. 644.

Judgment for Plaintiff.

CAUSE NO. 3.

John Jones
vs.
Samuel Smith

Action on Note. Demand \$100.

Samuel Smith, defendant, signed and delivered his promissory note payable in Bank for \$100 to Richard Roe. Jones purchased the note from Roe before its maturity, paying valuable consideration therefore.

The facts are that Smith did not think he was signing a note; that he was merely signing an order for medicine and treatment; that Roe so represented and stated to him that the paper he, Smith, signed was an order for medicine; that he could neither read nor write and so stated to Roe at the time of the transaction; that he stated to Roe that he would sign the paper if it was an order for medicine; and that Roe thereupon gave the paper to a stranger who happened to be present at the time who read it and stated that it was an order for medicine; that he was thus misled into signing the paper and except for these facts would never have signed it; that he intended to sign only an order for the medicine he was purchasing at the time. The defendant's wife and son were within the building where this transaction occurred, but were not called and consulted by the defendant at the time. Should the plaintiff recover or not and why?

James L. O'Toole and
Frank M. Franciscovich,
Attorneys for Plaintiff.

Henry W. Fritz and
Hugh Gibbons,
Attorneys for Defendant.

PLAINTIFF'S POINTS AND AUTHORITIES.

1. Where a person is induced by fraud to sign a bill or note under the belief that he is signing a different instrument, his signature is null and void and he is not liable there or even ad against a bonafide purchaser for value provided that in so doing or signing he acted without negligence.

However this rule does not apply because defendant was negligent—the degree of care is clearly stated in 13 N. W. R. 132.

2. When one of two innocent parties must suffer for the fraud of another the loss shall fall upon the one who enabled the third party to commit the fraud.

This point is brought forward in 29 Iowa 498.

3. The defendant is estopped from maintaining the defense of fraud against the Bonafide holder because of negligence.

This point is illustrated in 77 Cal. 572; 73 Pas. 286. Also 79 Ind. 80, and 29 Ohio 473.

4. The definition of negligence: (Ruling case Law Vol. 10, page 1) Negligence is the lack of diligence, omission of due care, failure to use the efforts or like precaution which an ordinary prudent person would employ in like circumstances.

The degree of diligence required: 13 N. W. R. 892.

5. Fraud in obtaining a note does not affect a bonafide holder—13 Ala. 106.

DEFENDANT'S POINTS AND AUTHORITIES.

I. An illiterate maker of a note and mortgage for \$1,000, who is fraudulently induced to sign them supposing that he is signing a lease and a note for \$100 to a different payee, is not liable on the note even if it is in the hands of an innocent purchaser, unless he was guilty of negligence in making it, since he was

never a party to such a contract. *Green v. Willie*, 36 L. R. A. 435; *Gibbs vs. Linabury*, 22 Mich. 479 Am. Rep. 675; *First Natl. Bank vs. Deal*, 55 Mich. 592; *Webb vs. Carlin*, 78 Ind. 403-51 Mich. 563; 35 Neb. 651; 29 Ohio St. 467-9 Am. Rep. 548.

II. No one can be made a party to a contract without his own consent. *Briggs v. Ewart*, 51 Missouri 245 (11 Am. Rep. 445); *Martin v. Smylee*, 55 Miss. 577; *Corby v. Weddle*, 57 Miss. 452.

III. Although a maker is not liable to read or write, yet if he signs a paper without any attempt to learn the contents he will be guilty of negligence which will preclude his defense of fraud. *Fisher v. VonBehren*, 70 Ind. 19.

IV. Where a party to an instrument undertakes to read it over in the presence of the other party in order that the latter may understand its contents before signing it, the party reading it is morally bound to read it correctly, and the other party has a right to rely upon its being so read and need not examine it himself. *Anderson v. Walker*, 34 Mich. 113. See *Baldwin v. Bucher*, 86 Ind. 221; *William et al. v. Stall*, 79 Ind. 80; *Webb v. Corbin*, 78 Ind. 403.

St. Joseph Loan & Trust Co.
of South Bend, Indiana

vs.

First National Bank of
Chicago, Illinois.

Action for \$1000 Note Collection.

CAUSE NO. 4.

Plaintiff sues to recover the amount of certain checks which it claimed to own and which came into the defend-

ant's hands and which it claims to own, under the following facts:

Plaintiff sent the checks to the Peoria National Bank of Peoria, Illinois, endorsed as follows: "For collection pay to the order of F. G. Bryan, Cashier," Bryan being the cashier of the Peoria National Bank.

The Peoria Bank then sent the checks to the defendant. The defendant and the Peoria Bank at that time and for a long time prior thereto had an agreement by which the two Banks collected all the commercial paper for one another thus sent to them, and instead of remitting the proceeds of the collections just credited the amounts of such collections to their accounts between them.

After sending these checks to the defendant the Peoria Bank became insolvent, heavily indebted to the defendant. Defendant collected these checks and gave credit to the Peoria Bank on its account as usual under their agreement.

Plaintiff sues defendant to recover the amount of the checks. Defendant of contract between itself and the ant insists that there is no privity plaintiff; that plaintiff is a third party and can have no rights under the agreement between the Peoria Bank and itself.

Who should recover and why?

Frank E. Coughlin and
Joseph E. Sanford,
Attorneys for Plaintiff.

Gerald Craugh and
William S. Allen,
Attorneys for Defendant.

PLAINTIFF'S POINTS AND AUTHORITIES.

1. A legal title to commercial paper restrictively endorsed for collection only cannot be acquired from a bank to which it is sent for collection. *Lyons vs. Wisconsin National Bank*, 26 Atl. 520. Title remains in the endorser. *National Butchers and Drovers Bank vs. Hubbell*, 117 N. Y. 384.

2. An endorsement for collection of negotiable paper by the owner is notice to every bank and person into whose custody it may come that the owner has not parted with his title, but merely with possession for the purpose of collection. *National Bank vs. Johnson*, 69 N. W. 49.

3. Title remains with the first owner who restrictively endorses the paper. 3 Fed. 257; 33 Fed. 408; 26 Atl. 520; 19 Fed. 302; 22 N. E. 1031.

DEFENDANT'S POINTS AND AUTHORITIES.

Defendant contends that it is not liable because title to paper passes to the Peoria Bank when sent to it by plaintiff and the Peoria Bank must be looked to for relief. *Plumes County Bank vs. Bank of Rideout S. & Co.*, 47 L. R. A. 552; 131 Pac. 360. Also *Davis vs. Elmira Savings Bank*, 161 U. S. 275; 16 Sup. Ct. Rep. 502.

Judgment for Plaintiff.