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**COMMUNICATED FOR THE ADVERTISER.**

**Decision of the Court of Appeals.**

James French & Hasten Wells, plaintiffs, AGAINST William Orear, defendant.

[Upon a Writ of Error to reverse a Decree of the Clarke Circuit Court.]

The Court now being sufficiently advised of and concerning the premises, delivered the following opinion: French having entered into a written contract with John Edwards, for one half of an entry of two hundred acres of land, lying in Madison county—sold the benefit of the contract to Orear, for \$60 payable in a horse, for which, Orear executed his note to French, and the latter gave up to Orear the contract with Edwards, and a letter requesting Edwards to let Orear into the contract in his place. This was accordingly done on the first application by Orear; and Orear having surrendered to Edwards the contract with French, and executed his note for the payment of the price French was to have given: Edwards assigned the pat and certificate of survey to Orear, in whose name the patent afterwards issued. But, Orear having failed to pay the \$60 in a horse, suit was brought upon the note therefor, and judgement recovered in the name of French; but for the benefit of another to whom it had been sold. To be relieved from the judgment, Orear pled his bill alleging, that the entry in the name of Edwards had been withdrawn; and charging French with a knowledge of its withdrawal previous to the contract with him.—French, in his answer, denies the charge of knowing that the entry had been withdrawn, and retorts it upon Orear. The fact of the withdrawal of the entry was not contested, and the Court below being of opinion, that both parties were equally ignorant, decreed relief to Orear on the ground that the consideration of the note given by him to French had failed. To reverse that decree, French has prosecuted this writ of Error.—There is certainly no evidence in the cause, which will authorize a conclusion, that French was apprized at the time of the contract between him and Orear, of the withdrawal of the Entry in the name of Edwards; nor is there sufficient evidence to justify us in saying, that Orear had a knowledge of that fact. For though French has taken some testimony for that purpose—yet when taken in connexion with the opposing evidence, it does not satisfactorily establish the fact. We shall therefore assume, as the Court below did, that both parties were equally ignorant of the withdrawal from the Entry; but assuming this to be the state of fact, we cannot accord with the Court, in supposing that Orear is entitled to relief, on the ground of the failure of consideration. Had the Entry been the immediate subject of the contract between French and Orear, as that had been withdrawn, and was therefore a mere nullity, it might have been said with propriety, that there was a failure of consideration—but the Entry was not the immediate subject of their contract. It was the contract between French and Edwards which formed the subject of the contract, between French and Orear; and the relinquishment by French of his place in the former contract to Orear, served to induce Orear to enter into the latter. The subject matter then of the latter contract, was not a mere fiction, or nonentity—but a subsisting reality. And it is not pretended, that what was stipulated to be done on the part of French, as the inducement to Orear to enter into the contract, was not performed. There cannot, therefore, in any sense of the expression, be said to be a failure of consideration. Suppose in the contract between French and Edwards, the latter had undertaken to guarantee the validity of the Entry of 200 acres; it can hardly be imagined, that any one in that case would have supposed, that the contract between French and Orear would have been without consideration, because the entry had been withdrawn—and most

assuredly, the want of such a stipulation, in the contract between French and Edwards, cannot change the nature of the thing—it may diminish its value, but it does not render it less the legitimate subject of a contract.—Therefore it is decreed, and ordered, that the decree of the Circuit Court be reversed and set aside, the cause remanded, that a decree may be entered dismissing the bill, and dissolving the injunction, with costs and damages, which is ordered to be certified to said court.

**From the Lansinburg Gazette.**

The following letter from an officer of the U. States' army, stationed on the Mississippi, has been obligingly communicated to us by \_\_\_\_\_, the gentleman to whom it was addressed, and contains information, which will we think render it interesting to our readers:

Cantonment, Davis, Illinois Ter. ? November 20, 1815.

DEAR SIR—I have delayed writing to you, until our station for the winter was designated. It is now determined and we are cantoned on the east bank of the Mississippi, directly opposite the De Muir river, which is two hundred and fifty miles above the St. Louis, and two hundred above any white inhabitants.

"I am assured by general Smith, (the commanding officer of this district,) that this spot, or some other equally eligible near it, will be selected for a permanent fortified post; and that in the spring, the remainder of the regiment will move on to Prairie du Chien, (four hundred miles) and will form a chain of fortified posts with Michilimackinack and Detroit; which will completely secure this extensive country from any further depredations from the Indians. Thence it will result and particularly from this post, that all the south will be perfectly safe; no Indians residing below except in the hunting season, and none south of our fortified posts on the Mississippi and Illinois. The first of these is intrusted to that excellent officer, major Dorman; the latter to major Baker, who I presume you will recollect for his gallant conduct at Brownstown.

"When these arrangements shall have been completed, this country will offer to the settler as well as to the proprietor, every advantage. The cantonment is built on the lands designated by congress as bounty lands to the soldiers; and a beautiful country it most certainly is. The river banks are high, and gradually descend into the most fertile campaign; that can be pictured by the most luxuriant imagination. It is interspersed with the thrifty growth of the timber, viz, cherry, white and red oak, soft and sugar maple, &c. &c. &c. and contains very extensive prairies. With the superior advantages which this country possesses, and a moderate capital, I would not hesitate to say that in two years, a village of one hundred houses might be established and in less than ten, the enterprising adventurer might add to his capital an hundred fold. Nothing indeed, seems to be wanting but capital and industry; for it is here that nature has been most lavish of her gifts, and the favorable scites for villages and towns surpass any that I have ever seen. The Indian trade might be made profitable.—Traders from Canada are now here. They say that with 1 thousand dollars they clear for their employers five thousand in one season: and this you may think incredible when I inform you that one beaver skin may be purchased for 20 musket balls, and other furs in proportion.

"You may perhaps think it strange that I should give this remote part of the country the preference.—My reasons are—1st.—That the country is fine and temperate, the water pure and wholesome, and the soil rich and productive.—2dly.—Because all the villages and towns on the Mississippi, and the rivers tributary to it, within the civilized settlements are already located. True it is that there are millions of good lands below the mouth of Ohio, and some good situations; yet no one would think of settling on them, except some nabob with his thousand negroes.—3dly.—Because from this point you have a communication to New-Orleans a distance of thirteen hundred miles, and of sixteen hundred to Pittsburgh, of uninterrupted water navigation through which you may, with ease and expedition, convey your products to any part of the United States; and up the Mississippi, connected with the lakes, you have but thirty miles portage to Montreal & Quebec.—4thly.—Because this situation affords spontaneously, subsistence for cattle: the extensive prairies yielding an abundant supply of grass in the summer, and of hay for the winter. Besides your stock

will subsist on the bottoms in the winter, without any feeding; I mean the low grounds, that are commonly inundated in the spring and fall, on which the grass is to be found green during the year.

"The boat which conveys this allows me barely to add, that the troops of this regiment have performed a journey to this place, a distance of sixteen hundred miles, in the astonishing short period of thirty-two days; and with equal celerity we have built a cantonment with four hundred and sixty men, in twelve days, sufficiently capacious for their comfort, and for the reception of the necessary stores, &c. &c. In addition to which, at this moment we have not ten upon the sick list in camp, (notwithstanding all the excessive fatigue.) We therefore must attribute this remarkable instance of health, in part at least, to the salubrity of the climate.

**Mr. PHILLIPS**

**AND THE EDINBURG REVIEW.**

By the Post Von Riga, 64 days from Belfast, we have received our file of the "Commercial Chronicle," up to the 10th January. Their contents, of course, are unimportant. For the amusement of our readers, however, we have made an interesting extract; it is the reply of Mr. Phillips to the verbal criticism of the Edinburg Review upon his speech (it seems to us) in the case of Guthrie vs. Sterne. The number of the Edinburg Review that contains the criticism, we have not yet received, Mr. Phillips' reply has evidently been elicited by the national reflection thrown by the writer in that work, upon the Irish character. A morsel of the "Chronicle" in which this answer is published, has been unfortunately torn off—but the deficiency does not injure materially the completeness of a defence, as remarkable for its elegance and force, as for its modesty and candour.—*Southern Patriot.*

From the Belfast Commercial Chronicle. TO THE EDITOR OF THE EDINBURG REVIEW.

Sir—The notice which you have been pleased to take of a speech, purporting to have been delivered by me in the court of common pleas, Dublin, will, I hope, shield me from the charge of obtrusion in thus publicly addressing you.—To be noticed by a work so valuable in every respect as the Edinburg Review, is a distinction which I sufficiently appreciate—a distinction however, which I regret was not reserved for the effort of more matured years, and for an effort authorized by my sanction.—The first effort of a young barrister in a court of justice is scarcely a legitimate subject for criticism—when unauthenticated, it is not so at all. Against such an interference I enter my protest; and I do so the more seriously, in the first instance in consequence of your avowed intention to watch those future professional exertions which my pursuits in life may render necessary, and which the speculations of a foreign printer may, without my authority induce him to promulgate. The English pamphlet on which you found your criticism, I never saw until it had gone through several editions; and though very kindly, it is in some respects very incorrectly edited. For your indulgence in many instances, I have a right to be grateful, and among others for what you denigrate, "my independent & honorable conduct in the political contests of my country."—This is indeed high praise; far above the undoubted talents and even genius" you concede to me—it is the praise of principle. Little, however, should I deserve such an encomium, if I did not denounce with grief and with indignation, the unworthy sneers flung upon that country in your very commencement—a country but too historically said to be

—ever hardly used. At random censured and abused."

Such prejudices, vulgarized by the bigot's cant, and polluted by the parasite's adoption, should not have disgraced a page rendered valuable alike by its ability and its patriotism.—There is, however, a novelty even in the vices of genius, and you have contrived, I believe, for the first time, to cast upon the proverbially ardent generosity of the Irish character the imputation of craft." The imputation has all the merit of invention, and were I disposed to imitate this national illiberality, I would say that the charge of craft, coming

from a Scotchman, has an air of awkward simplicity about it which must more than counteract its virulence.

**[Hiatus in the original.]**

You next observe the expression to "detail the story of my client's misfortunes" is not happy—scarcely accurate—and the amendment you propose is to "detail the particulars."—Your alteration, in my opinion, is any thing but an amendment. To "detail the particulars," if it be sense at all, you must admit is, to say the best of it, downright tautology. The next expression at which you cavil, is "my friendship for my client being cemented by our mutual attachment?"—(it is by a manifest error of the press, printed "attachment.") The meaning of the expression requires no second sight; the *idem velle* and the *idem nolle* are classical authorities for the growth of friendship, & if I have erred at all, which I deny, I have erred with Sallust.—Really sir, when you failed in proving an "inaccuracy of diction" in me, I must admit the generosity with which you have exemplified it in yourself. Such is the extent and such the value of the verbal criticism to which you have descended. The quotations which you have selected I leave entirely to their intrinsic merit, remarking, however, that it is not quite fair in a critic to cull out some high-wrought passage for his comment, totally omitting the previous dry data which it was intended to relieve, to enliven, or to illustrate.

Pursuing your remarks in the spirit in which you commenced them, it suits a purpose to assert, that I claimed for Ireland a "monopoly of chastity." I claimed no such thing; but I did say, and I repeat the assertion with pleasure and with pride, that an inviolable observance of the marriage vow is the national characteristic of the Irish female. How do you repel my position? By asserting, forsooth, that the highest damages ever given in cases of this nature have been in Ireland, as if the very act did not establish my argument. If our Irish juries were more accustomed to the vice no doubt they would view it with much less abhorrence. But, it seems, "the courts upon your side of the water often exhibit Irish names."—Look again at the records—you will find them almost uniformly the names of MEN, and these men scarcely ever *Plaintiffs*. Our lovers on "this side of the water" are, I am afraid, too like the lovers of every other nation, and indeed the amais of your very last term but too fatally demonstrate that our fawn minstrel blended the accuracy of the historian with the inspiration of the poet, when, for once ungallant, he described your fair ones as wanting.

—"the wild, sweet briery fence. Which round the flowers of Erin dwells, Which warns the touch while winning the sense, Nor charms us least when it most repels."

You have, I am aware, your answer ready. It is all to be ascribed to our "imperfect civilization." Oh my loved country! denounced by the bigot—defamed by the foreigner—deserted by thy own apostate patriots; but still, my loved country, my native Ireland, long may the highest human virtues, the chivalry of spirit, the grand uncalculating generosity of character—the modesty of thy maids—the chastity of thy matrons—the innate hereditary heroism of thy sons, denote and dignify thy "imperfect civilization!" Alas, alas! why should the enlightened page of Scotland pollute the fountain of its fine philosophy with the poison of an impure and impious prejudice! Sir was this fair? was this candid? was it from a consciousness of this illiberality, that you decried the well earned panegyric on lord Erskine, and in doing so, attributed to me language which I never uttered? For instance I never called his mind "legitimate." The phrase I used was his "legislative mind;" and even your sagacity will not incline to "hint that the expression is unintelligible." But indeed, it seems as if you are determined to be intolerant of that liberality in others of which you were predetermined to divest yourself!

Why should you insinuate that I introduced that great and noble character in comparison with myself? why should you say I wanted to remind the jury of his similar exertions? You knew he had endeavored to render the offence which I was

denouncing a criminal offence; and surely, when such a man thought so heinously of its perpetration, it was, at least as far as high authority could go, an argument for adjudging the highest possible civil compensation. Such was my expressed motive for mentioning lord Erskine, & it was not the duty of a critic either to conceal or misrepresent it. Far, far be it from me to institute the vain and egotistical comparison.—If, after all that experience and industry can produce—if, after the studies of the lamp and the labors of the morning in the close of my life, I can come within the penumbra of his immortal name, it will be a triumph beyond the dream of my hope, or the vanity of my ambition. You, sir, who have adopted the office of commentator yourself, will know how to excuse the freedom of these not voluntary observations. Acknowledging as I do, in many respects, the just severity of your criticism, I shall endeavor to correct the vices which have fallen within its censure, tho' perhaps many may think that in the unfortunate case, in which you condemn the coloring, was one, of all others, the consideration of which it was the policy of the advocate to lull the judgment, and call the passions into operation.

I have the honor to subscribe myself, sir, &c.

CHARLES PHILLIPS.

Dublin, Jan. 2, 1816.

**GENERAL LAMARQUE.**

LETTER FROM GEN. LAMARQUE TO HIS MAJESTY LOUIS XVIII.

SIR—Always a stranger to civil dissensions, after passing twenty-three years of an honorable and sometimes glorious military life, I now see my name placed in a list of men who have incurred the displeasure of your majesty, and whom you banish from your capital.

Had my career been run in the midst of intrigues, or had I sought to derive support from the different parties, who have in their turn ruled my unfortunate country, I might have been expected to be the victim of such conduct; but I have always resided in camps, have often been persecuted, and the rank to which I have arisen, has been acquired by long and difficult services. Convinced that it never came within the province of a soldier to deliberate on the sources of power, I followed my colors, braved death, & considered myself as fulfilling my duty.

Under your majesty's government, I was removed from every employment. Had the ministers entrusted a part to me, it would have been faithfully maintained, for I never failed in my duties.

If, sir, I have been represented as one of those men whom the favor of another man created, your majesty has been deceived; I have always belonged to the country.

When your majesty was absent from your kingdom, the command of a division of the army of the north was given to me, and it was on the farthest frontier I received the order to repair to La Vendee—to that La Vendee which so many recollections rendered awful. The danger appeared great, but I did not consider it above my courage. Hitherto I had the good fortune not to be engaged in civil wars. I knew that the events of battle were the least dangers to be incurred in such contests, and that the hatred of which a commander becomes the object, poisons the remainder of this life, but I was a soldier, and it was my duty to obey.

I flattered myself that my moderation would disarm those I was summoned to combat, or that the blood which I might spare, would expiate that which I might be condemned to shed.—Less than six thousand men, decorated with the title of an army, were consigned to me, to reduce and keep down an immense population.—In such a situation if moderation had not been my wish, it would have been my policy. I thought it proper to use general menaces, to avoid making particular victims; invested with great powers, I made no use of them, and I never reverted to them except to apply to be relieved from them.

My first object was to endeavor to avoid shedding French blood. On the 3d of June, before passing the Loire, I wrote to the Vendean general, "I do not blush to ask peace of you for in civil wars here is no glory except in terminating them." After the only battle which was fought, I wrote to the minister of war—"My heart is torn by the aspect of a field of battle, where only Frenchmen are seen,