

Case No. 2,708.

{3 McLean, 386.}¹

CHRISTY ET AL. V. CUMMINS.

Circuit Court, D. Illinois.

June Term, 1844.

RESCISSION OF CONTRACT OF SALE—RETURN OF SUBJECT MATTER—ACTION
ON PROMISSORY NOTE—DEFENSES.

1. To rescind a contract for the sale of a chattel, the property must be returned, unless it be valueless to both parties.

[Cited in *Lyon v. Bertram*, 20 How. (61 U. S.) 155.]

2. A plea to an action on a note given for the consideration, which avers that the goods purchased are of no value to defendant, is not good.

Powell & Bryan, for plaintiffs.

Mr. Southwick, for defendant.

OPINION OF THE COURT. This is an action on a note. The defendant pleaded that the note was given for merchandise which was represented to be sound, but was unsound and damaged. To this plea the defendant demurred, on the ground that there was no offer to return the goods. A vendee of a chattel cannot rescind the sale without offering to return it, unless it is worthless to both parties. *Perley v. Balch*, 23 Pick. 283. To render a rescission of a contract valid, the rescinding party must place the other party in statu quo. *Holbrook v. Burt*, 22 Pick. 546; *Conner v. Henderson*, 15 Mass. 319. The plea avers, "that the goods were unsound and damaged, so as to be of no value to defendant." But there is no averment that they are of no value. For the purposes of the defendants they may have been, to them, of no value; but it does not appear that, if returned to the plaintiffs, they would have been of no value to them. The demurrer to the plea is sustained.

¹ [Reported by Hon. John McLean, Circuit Justice.]