

well broke. If they were found so, Mrs. Egan agreed to give \$500 for them, but a completed sale was *not* in September. It was *not* Egan's man who drove, but Larin's. This man has been examined, and swears that he was not in the employ of Egan at the time. He says that Larin led him to believe himself in his (Larin's) service, though he was offering to enter defendant's. Egan proves that the sale had not been completed when the accident occurred, and that plaintiff proposed the drive, by way of showing the horses. Larin himself drove part of the time, and Wake was driving at the time of the accident. Egan did not drive at all. The horses having acted badly, Mrs. Egan resolved not to take them. Larin went to see her, and pressed and begged her to buy them; she would not conclude anything, but said she would consider. On the 2nd of October the veterinary surgeon, McEachern, reported that one horse was nearly well, and the other progressing favourably, but of diminished value from thickening of legs. Upon the next day an agreement was made, and sale finally completed at \$450, for the pair of horses. Larin's receipt is filed by the defendant, and shows (contrarily to what Renaud says) that up to this day, 3rd October, the horses were Larin's. And indeed, if they had been sold in September, before the day of the accident, why would not Larin have looked for beg Mrs. Egan in October to go driving the horses as he did? And why needed he his money, and why needed he buy? The circumstances under which the sale, the only sale, took place, are stated by the witness Egan, and, as I have said already, there is the handwriting of plaintiff corroborating Egan's statements. This receipt was signed in plaintiff's own house. It must control; no qualification of it appears, except exactly as Egan makes one. He says that if the enlargement, or lump, on the horse's leg went off, he was to pay Larin \$50 more; but he refuses to pay it, because the enlargement still continues, and it is proved to be a blemish, diminishing the market value of the horse. The receipt referred to controls the whole case, for if, at the time of the accident, the horses were Larin's, how can he pretend to fix the consequences of that accident (himself and his man driving at the time) upon the defendant? The attempt to do so I think unfair and unwarranted. The damages, result of the accident, were and are to be borne by Larin and by him alone; he owning the horses at the time. Action dismissed.