

No. **12221**

Supreme Court of Illinois

Low, et al

vs.

Nolte

71641  7

William W Low
John P Chapin }
vs } Appeal from Provia
Henry Nolte }

And the said appellants by E A Powell their atty. coun. and say that in the record and proceedings aforesaid and in the rendition of the judgment aforesaid there is manifest error for that whereas the judgment of said Circuit Court was in favor of the said appellee and against the said appellants whereas by the law of the land the judgment should have been in favor of the said appellants and against the said appellee

And the said appellants assign the following special errors viz
1 The court erred in allowing the costs in the several suits mentioned in said award and declared in the said counts of said declaration

2 The court erred in assessing damages upon the overruling of the demurrer and a jury should have been called to assess the damages

3 The demurrer should have been sustained to said first & second counts of said declaration

Wherefore for the said errors and for other apparent errors in the record and proceedings aforesaid

The said appellants pray that the said
judgment may be reversed set aside and
wholly for nothing esteemed and that the
said appellants may be fully restored to
their rights as before said judgment. &c
E. M. Powell
Atty for Appellants

And the said appellee ~~defendant~~ says that
in the Record and proceedings and in
the rendition of the Judgment aforesaid
there is no error and he prays that
the said Judgment may be affirmed

A. M. Chapple Atty

Be it remembered that heretofore to wit, on the ninth day of August in the year of our Lord one thousand eight hundred and fifty four there was filed in the office of the Clerk of the Circuit Court in and for the County of Peoria in the State of Illinois a precept in the words and figures following, to wit,

Precept - Henry Volte

In the Circuit Court of Peoria County
September Term A. D. 1854,

vs.
William W. Low &
John P. Chapin,

Issue summons in debt to the Sheriff of Peoria County, also to the Sheriff of Cook County against the defendants, returnable to next term,

Debt \$ 10,000
Damages 10,000

Aug. 10, 1854

Purple & Langer
Peoffs Attys

To Jacob Gale, Esq. Clerk &c.

And thereupon on the same day the Clerk of said Court issued under the seal of said Court a summons to the Sheriff of Peoria County which with his return thereon indorsed is as follows, to wit,

Summons
to Peoria -

The People of the State of Illinois

To the Sheriff of Peoria County Greeting,

We command You to summon William W. Low and John P. Chapin if they may be found in your county to appear before our Circuit Court on the first day of the next term thereof to be held at Peoria, within and for the said County of Peoria, on the second Monday of September next then and there in our said Court to answer unto Henry Volte of a plea that they render unto

Pen the sum of ten thousand dollars which they owe to and unjustly detain from him, to his damage ten thousand dollars as he says and make return of this writ, with an endorsement of the time and manner of serving the same on or before the first day of the term of the said court to be held as aforesaid.



Witness Jacob Gale Clerk of our said court and the seal thereof, at Peoria, this ninth day of August in the year of our Lord one thousand eight hundred and fifty four,
Jacob Gale, Clerk

[Endorsed]

Return - Served this summons by reading to the within named W. W. Low, August 9th 1854, but John P. Chapin is not found in my county.

L B. Cornwell
Sheriff P. Co.

And on the same day the said Clerk issued a summons under the seal of said court to the Sheriff of Cook, which with his return thereon endorsed is as follows, to wit:

Summons
to Cook - The People of the State of Illinois.

To the Sheriff of Cook County Greeting:
We Command You to summon William W. Low and John P. Chapin if they may be found in your County, to appear before our Circuit Court on the first day of the next term thereof to be held at Peoria, within and for the said County of Peoria, on the second Monday of September next then and there, in our said Court, to answer unto Henry Nolte of a plea that they render unto him the sum of ten thousand dollars which they owe to and unjustly detain from him, to his damage ten thousand dollars as he says and make return of this writ with an endorsement of the time and manner of serving the same on or before the first day of the term of the said court to be held as

aforsaid. Witness Jacob Gale, clerk of our said court,
and the seal thereof, at Peoria, this ninth day of August
in the year of our Lord one thousand eight
hundred and fifty four.
Jacob Gale, clerk.

[Indorsed]

Return. Served by reading to the within named John P. Chapin,
August 11 to 1854, William W. Low not found,
C. P. Bradley Sheriff
of Cook County
by J. N. Vinton Dpt.

And afterwards on the tenth day of August A.D. 1854 a
Declaration and copy of account were filed in said
clerk's office in said cause, which are in the words & figures
following to wit.

Declaration. In the Circuit Court of Peoria County
September Term. 1854

State of Illinois, ss.
Peoria County, ss.

1 Court

Henry Volter Plaintiff in this suit Com-
plains of William W. Low and John P. Chapin defendants
in this suit of a plea that they the said defendants render to
the said Plaintiff the sum of two thousand dollars which they
owe to and unjustly detain from the said Plaintiff;

For that whereas heretofore to wit: on the
20th day of January A.D. 1854 at the County of Peoria aforesaid
divers disputes and controversies had arisen between
the said Plaintiff and defendants and divers suits were
then pending and undetermined in the Circuit Court of Peoria
County between said parties, the said parties then and there by
a certain contract by them subscribed mutually agreed to
did submit the same to the final arbitrament, award and

determination of William Kellogg, William C. Polvin and
Morace P. Anderson as by reference to the said contract of sub-
mission herewith filed will fully and at large appear, and the
said Plaintiff avers that the said arbitrators after having met
and heard the evidence of the parties pursuant to the said
submission and agreement did on the second day of March
A. D. 1824 at the County aforesaid decide and award as
in substance as follows,

"First, That the costs of the suit of Henry Volter
vs William W. Low & John P. Chapin - Trespas on the
Case on Promises be paid by the said William W. Low &
John P. Chapin, meaning thereby the costs in the
suit aforesaid in said submission mentioned and which the
said Plaintiff avers then and there amounted to the sum of
five dollars and forty cents And the said Arbitrators
did also then and there further decide and award in substance
as follows,

"Second - That the costs of the Chancery suit of William W.
Low & John P. Chapin vs the said Henry Volter be paid
by the said William W. Low & John P. Chapin,"
meaning thereby the costs in the said suit last aforesaid
in said submission mentioned and which the said
Plaintiff avers then and there amounted to the sum of seven
dollars and sixty cents And the said Arbitrators ^{did} then
and there further decide and award,

"Third - That the costs of the replevin suit of William W.
Low & John P. Chapin vs Henry Volter be paid by the said
William W. Low & John P. Chapin," meaning thereby
the costs in the suit last aforesaid in said submission
mentioned and which the said Plaintiff avers then and there
amounted to the sum of one hundred & one dollars and
forty five cents,

And the said Arbitrators did then & there further
decide and award in substance as follows,

"That upon the payment of the said Costs as aforesaid which shall be done at the next term of the Circuit Court of Peoria County each of the said suits shall be dismissed, the residue of the terms and conditions of this award having been first complied with by the parties respectively,

Fourth — We do further decide and award that there is due from and ought to be paid by the said William R. Low & John P. Chapin to the said Henry Volte for and on account of advances and commissions made and accruing to him under the contract attached to said submission & for and on account of damages by him sustained on account of the violation of the said contract on the part of the said Low & Chapin and for damages sustained by reason of the said Low & Chapin, wrongfully suing out the said writ of replevin the sum of five thousand eight hundred and seventy six dollars and forty six cents, and we do award that the same be paid by the said Low & Chapin to the said Henry Volte within ten days after they shall have been awarded served with a copy of this award.

Fifth — We do further decide and award that the said William R. Low & John P. Chapin pay the costs of this Arbitration," which said costs were claimed and taxed by the said Arbitrators at the sum of fifty four dollars and ninety seven cents as by reference to the said award, a copy whereof is herewith filed and referred to will more fully and at large appear.

And the said Plaintiff avers that in consideration of the premises the said defendants then and there become liable to pay the said Plaintiff the said costs in the said several suits mentioned and also the said sum of five thousand eight hundred and seventy six dollars and forty six cents and the costs of the said Arbitration according to the tenor & effect of the said sub-

Mission and Award.

And the said Plaintiff further avers that the said Defendants were duly served with a copy of the said award, to wit: the said William W. Low on the 4th day of March A. D. 1854 and the said John P. Chapin on the 8th day of March A. D. 1854, to wit: at the County of Peoria aforesaid & that more than ten days have elapsed since the service of said copy of said Award on the said Defendants.

And the said Plaintiff further avers that he has in all things complied with the terms and conditions of said award on his part and has been ready & willing and offered to comply with the same. Yet the said Defendants though often requested so to do have failed wholly & refused to comply with the terms and conditions of the said award & have wholly failed and refused to pay the said several sums of money, being the costs in the several suits aforesaid and have wholly failed and refused to pay the said sum of five thousand eight hundred and seventy six dollars and forty six cents, so as aforesaid awarded to the said Plaintiff & have wholly failed and refused to pay the costs of the said Arbitration pursuant to said award and still do wholly neglect and refuse to pay the same or any part of the said several sums of money aforesaid,

By reason whereof an action hath accrued to the said Plaintiff to have and demand of the said Defendants the sum of six thousand and forty six dollars and ^{eight} ~~eighty~~ cents parcel of the said sum of money above demanded.

I. Count And for that whereas also heretofore to wit: on the 22nd day of January A. D. 1854 at the County of Peoria aforesaid divers disputes and controversies had arisen between the said Plaintiff and Defendants and divers suits were then pending and undetermined in the Circuit Court of Peoria County between said parties the said parties for the purpose of settling and adjusting all

such disputes, controversies and suits between them, made and entered into a certain submission & contract in writing which said contract is in substance as follows.

"State of Illinois, ss.

County of Peoria, ss.

Whereas divers disputes and controversies have arisen between Henry Nolte of Chillicothe, Peoria County Illinois of the one part and William W. Low and John P. Chapin of the firm of Low & Chapin of Chicago, Illinois, of the other part, in relation to a certain contract dated Oct. 2nd 1852 a copy whereof marked "It" is heret attached and made part of this agreement, and whereas certain suits and controversies arising out of or connected with alleged violations of said contract or matters and transactions of the parties in relation thereto, to wit: A certain suit of replevin of

William W. Low &
John P. Chapin

vs

Henry Nolte

Commenced June 18th 1853

also a suit in Chancery of

William W. Low &
John P. Chapin

vs

Henry Nolte

Commenced and heard
June 9th 1853

and also a suit in Trespas on
the Case upon Promises of

Henry Nolte

vs

William W. Low &
John P. Chapin

Commenced the 22nd August A.D. 1853.

Have been commenced and are now pending and undetermined in the Circuit Court of Peoria, Illinois. Now there

Now it is agreed between the said parties that the said suits and all and singular the matters and things pending between the parties in said suits and properly and legitimately connected with them or either of them, and also all matters and things in difference between said parties arising out of and connected with the said contract be and the same are hereby by the mutual agreement of the said parties submitted to the final arbitrament Award and determination of William B. Polkin, William Kellogg, Horace G. Anderson, Arbitrators mutually chosen and agreed upon between said parties and whose award and determination shall be final and conclusive between said parties, said Arbitrators shall meet at the Court House in Peoria, on the 28th day of February A.D. 1854 and after being duly sworn shall proceed to hear the parties and their testimony; they the said Arbitrators or a majority of them shall have power to adjourn from time to time for the purpose of obtaining material testimony or for any other cause satisfactory to said arbitrators or a majority of them, and in case it shall so happen that any one of the said Arbitrators above chosen by the parties shall die, refuse or for any reason cannot serve as such Arbitrator, then if the parties cannot agree upon an arbitrator to serve in the place of the one thus dying, refusing or being unable to serve the remaining Arbitrators shall appoint one to fill the vacancy thus occasioned and the decision and determination of the arbitrators herein agreed upon or appointed in cases of a vacancy as before stated or of a majority of them shall be final and conclusive to the parties, and said Arbitrators shall decide who shall pay the costs of each and every the suits before named and their award when made shall at the next term of the Circuit Court of Peoria County, or at any subsequent term thereafter be entered and become a judgment in the circuit court of said county upon which execution may issue as in cases of

judgments at law in said court, the party seeking to enter said award as a judgment giving to the opposite party ten days notice of the time of making his motion for judgment on said award,

The said Arbitrators are to make out their award and give to each party a copy thereof on or before the 1st day of June A.D. 1854 unless the time is extended by agreement of parties. This Agreement shall not operate to discontinue or discontinue any of said suits before mentioned in the circuit court of Peoria County, but the same shall remain on the docket until final judgment shall be entered on the award under this submission, or the award shall have been otherwise paid or complied with by the parties, but neither party shall make any further costs in said suits until the party against whom the said award shall be made shall fail to comply with the same, or the Arbitrators shall fail to make their award within the time before limited. The said Arbitrators shall also determine who shall pay the costs of this arbitration.

It is also further stipulated and agreed by and between the parties that neither of the parties will in any event revoke or annul this agreement of submission and they bind themselves each to the other that they will abide by the said submission and the award made under the same in the penalty of one thousand dollars as stipulated damages to be paid by the party delinquent to the party complying. In witness whereof, the said parties have hereunto set their hands this 20th day of January A.D. 1854.

Wm. H. Low
John P. Chapin
by Wm. H. Low
Henry Wolter.

And the said Plaintiff avers that the said Contract marked A, dated October 2nd A.D. 1852 referred to in the Contract of submission aforesaid, is in substance as follows.

"I hereby agree to purchase and store grain for Wm. W. Low and John T. Chapin and deliver aboard of canal or steam boats as follows: (3) three cents per bushel for oats, (4) four cents per bushel for wheat, beans, flax seed or other kinds of seed or shelled grain; Corn in the ear (3) three cents, if shelled (5) five cents per bushel, ear corn to be accounted to them at 70 lbs to the bushel if taken in the ear and if shelled at 56 lbs, the above rates are to apply on grain stored after this date Oct. 2nd 1852 and held in store if required until the first of August 1853 and ear corn in crib until first of October 1853 if required.

Storage of grain after navigation opens in the spring (say from first of April) till the last of November following. Corn & wheat (3) three cents and oats (2) two cents per bushel.

I hereby agree to let said Low & Chapin have all grain or seeds as mentioned above that I purchase or cause to be purchased by their furnishing me with money from time to time as I may let them know I require it for the above mentioned purpose. I am to purchase according to their instructions and all grain purchased to be held subject to the order of Wm. W. Low. I am to have the privilege of buying at whatever the market price may be here without being further instructed.

This contract to continue in force one year from the 3rd day of October 1852, unless mutually agreed upon by the parties to discontinue the same. If grain sacked and sewed to be paid for extra from above rates.

Chillicothe 2nd Oct, 1852

It

Henry Nolte
Low & Chapin"

I find the said Plaintiff avers that the said Arbitrators took upon themselves the burden of the said submission and proceeded to hear the parties their proofs and allegations and on the second day of March A.D. 1854 at the County of Peoria aforesaid, they the said Arbitrators made their award in writing in substance as follows,

"We the undersigned Arbitrators mentioned and agreed upon in the contract of submission hereto annexed, do certify, that pursuant to the terms and conditions of the said submission we met at the Court House in the City of Peoria on the 28th day of February A. D. 1854 and the Parties and their Attorneys being present after being duly sworn according to law proceeded to hear in fact first the proofs and allegations of the parties and the evidence not having been concluded we adjourned the further hearing of the said cause until the next day at nine o'clock A. M. being the first day of March 1854 at which time we again proceeded further to hear the evidence of the said parties and the evidence having been closed we again adjourned for consideration and deliberation until the second day of March A. D. 1854 at which time we again met and after mature consideration and deliberation have decided and awarded and do decide and award as follows to wit:

First. That the costs of the suit of Henry Wolte vs Mr W. Low & John P. Chapin - Trespas on the case on promises be paid by the said William W. Low & John P. Chapin.

Second. That the costs of the Chancery suit of Mr W. Low & John P. Chapin vs the said Henry Wolte be paid by the said William W. Low and John P. Chapin.

Third. That the costs of the replevin suit of William W. Low & John P. Chapin vs Henry Wolte be paid by the said William W. Low and John P. Chapin and that upon the payment of the said costs as aforesaid which shall be done at the next term of the Circuit Court of Peoria County each of the said suits shall be dismissed the residue of the same. And condition of this Award having been first complied with by the parties respectively.

Fourth. We do further decide and award that there is due from and ought to be paid by the said William W. Low & John P. Chapin to the said Henry Wolte for and on account of advances and commissions made and accruing

to him under the contract attached to said submission and for and on account of damages by him sustained on account of the violation of the said contract on the part of the said Low & Chapin and for damages sustained by reason of the said Low & Chapin wrongfully suing out the said writ of replevin the sum of five thousand eight hundred eight hundred and seventy six dollars and forty six cents and we do award that the same be paid by the said Low & Chapin to the said Henry Volte within ten days after they shall have been served with a copy of this award.

Fifth. We do further decide and award that the said William W. Low and John P. Chapin pay the costs of this arbitration which are claimed and taxed as follows

Arbitrators Fees.

William Kellogg	4 days	\$8.00
Wm C. Boilwin	4 "	8.00
H. S. Anderson	4 "	8.00
Const. T. R. Tidwell serving subpoenas on 14 witnesses and travel		\$14.97

Volte's witnesses

J. C. Philley	2 days	\$1.00
P. J. Matthews	"	1.00
J. H. Temple	" "	1.00
J. H. Brown	2 days	\$1.00
Geo. W. Hoakes	" "	1.00
J. C. Pratt	" "	1.00
A. W. Young	" "	1.00
Wm. Shane	" "	1.00
Thomas Falkner	" "	1.00
J. H. Balchelder	" "	1.00
J. B. Neff	" "	1.00
T. P. Mcarry	" "	1.00

J. A. Gunn

Wm. H. Davenport, Marshall County 3 days

1.00

3.00

In Witness Whereof, we the said Arbitrators have hereunto set our hands and seals this third day of March A.D. 1854.

Wm. Kellogg
H. C. Boilwin
H. S. Anderson

And the said Plaintiff avers that the costs in the said several suits in the said submission and award mentioned therein and there amounted to the sum of one hundred & fifteen dollars and forty five cents, and the said Plaintiff further avers that in consideration of the premises the said Defendants then and there became liable to pay the said Plaintiff the said costs in the said several suits mentioned, and also the said sum of five thousand eight hundred and seventy six dollars and forty six cents and the costs of the said arbitration according to the tenor and effect of the said submission and award.

And the said Plaintiff further avers that the said Defendants were duly served with a copy of the said award to wit: the said William W. Low on the 4th day of March A.D. 1854 and the said John P. Chapin on the 8th day of March ^{A.D. 1854} to wit: at the county of Peoria aforesaid & that more than ten days have elapsed since the service of the said copy of said award on the said Defendants. And the said Plaintiff further avers that he has in all things complied with the terms and conditions of said award on his part and has been always ready and willing and offered to comply with the same, & that the said Defendants though often requested to do have wholly failed and refused to comply with the terms and conditions of the said award & have wholly failed and

refused to pay the said several sums of money in the said Award mentioned and required to be paid by them or any part thereof and still do neglect and refuse to pay the same or any part thereof,

By reason whereof an action hath accrued to the said plaintiff to have and demand of the said defendants the further sum of six thousand and forty six Dollars and eighty eight cents, also parcel of the said sum of money above demanded,

3 Count

And for that whereas also heretofore to wit, on the first day of June A.D. 1854, at the county of Bond aforesaid the said defendants were indebted to the said plaintiff in the sum of ten thousand dollars upon and by virtue of a certain award made by William Kellogg, William C. Boilin and Horace G. Anderson upon and by virtue of a certain submission before that time made by the said plaintiff and the said said defendants to the award, order & determination of the said Kellogg, Boilin & Anderson of and concerning certain matters in difference then depending between the said plaintiff and the said defendants and upon and by virtue of which said reference the said Kellogg, Boilin and Anderson had then and there awarded that the said defendants should pay certain sums of money to wit the said sum of ten thousand dollars, and being so indebted the said defendants then and there became liable to pay the said plaintiff the said sum of ten thousand dollars according to the tenor and effect of the said Award — Yet the said defendants though often requested have not paid the same nor any part thereof but has wholly failed, neglected and refused so to do, & still do neglect and refuse,

By reason whereof an action hath accrued to the said plaintiff to have and demand of the said defendant

the said further sum of ten thousand dollars above demanded,

4 Count.

And for that whereas also heretofore, to wit, on the nineteenth day of March A.D. 1854 at the County of Peoria aforesaid the said Defendants were indebted to the said Plaintiff in the sum of six thousand and forty six dollars and eighty eight cents upon and by virtue of a certain other award made by William Kellogg, William C. Boilwin and Horace L. Anderson upon and by virtue of a certain submission before that time made by the said Plaintiff and the said Defendants, to the award, order and determination of the said Kellogg, Boilwin & Anderson of and concerning certain matters in difference then depending between the said Plaintiff and the said Defendants, and upon and by virtue of which said reference the said Kellogg, Boilwin and Anderson has then and there Awarded that the said Defendants should pay certain sum of money to wit: the said sum of six thousand and forty six dollars and eighty eight cents and being so indebted the said Defendants then and there became liable to pay the said Plaintiff the said sum of six thousand and forty six dollars & eighty eight cents according to the tenor and effect of the said Award.

Yet the said Defendants though often requested have not paid the same nor any part thereof but have wholly neglected and refused & still do neglect and refuse. By reason whereof an action hath accrued to the said Plaintiff to have and demand of the said Defendant the said further sum of six thousand & forty six dollars and eighty eight cents other parcels of the said sum of money above demanded.

Therefore the said Plaintiff saith he is injured and hath sustained damage to the amount of ten thousand dollars and therefore he brings suit &c.

Purple & Langer, Peoffs Attys.

The Award and instrument sued on in this case is
set out at length in the second Count of this decla-
ration, Purple & Sanger, Plffs Attys

Copy of account on award declared on in the third count
Wm W. Low & John P. Chapin

vs Henry Wolte D^f
account - To Money due on award \$10,000.00
" " " " " 6046.88
Purple & Sanger for Plff.

Proceedings at a term of the Circuit court begun and
held at the Court House in the City of Peoria, in and
for the County of Peoria in the State of Illinois, on the
second Monday of September in the year of our Lord
one thousand eight hundred and fifty four, it being
the eleventh day of said month, Present the
Honorable Andrew Peters Judge of the sixteenth Ju-
dicial Circuit in the State of Illinois, Leonard B.
Cornwell, Sheriff, Eldridge G. Johnson, States Attorney
and Jacob Gale, clerk, to wit:

Tuesday September 12th A.D. 1854.
Henry Wolte,

vs Debt
William W. Low,
John P. Chapin.

This day the Plaintiff by Purple &
Sanger his attorneys entered a motion for a rule on the
defendant to plead herein by Thursday morning next.

Wednesday September 13th A.D. 1854.
Henry Wolte

vs Debt,
William W. Low, John P. Chapin.

This day came on to be heard

The motion for a rule on the defendants to plead herein, whereupon it is ordered, that the defendants plead to this action by Monday morning next.

And afterwards on the 18th day of September A.D. 1854 there was filed in said clerk's office in said cause the demurrer of the defendants in the words figures following, to wit,

Demurrer. Henry Wolte,

vs

William W. Low
and John P. Chapin.

In the Circuit Court Peoria County,
September Term A.D. 1854.

And the said defendants by Powell & Hopkins their attorneys come and defend the wrong and injury when &c, and say that the first, second, third and fourth counts in said declaration and each and every of them and the matters and things therein contained in manner and form as the same are above stated and set forth are not sufficient in law for the said plaintiff to have and maintain his aforesaid action thereof against the said defendants and that they the said defendants are not bound by law to answer the same and this they are ready to verify, wherefore by reason of the insufficiency of said first, second, third and fourth counts of said declaration in this behalf, the defendants pray judgment and that the plaintiff may be barred from having and maintaining his aforesaid action thereof against them &c,

And the said defendants according to the statute in such case made and provided, state and show to the Court here the following causes of demurrer,

First

In each of said first and second counts
Because said first and second counts or either of them

do not allege that said arbitrators made out and delivered to each of the parties a copy of said supposed award referred to in each of said counts and fully set in said second count on or before the first day of June A.D. 1854 or that said time was extended by agreement of the parties according to the articles of submission referred to in both of said counts and set out in said second count, or that said supposed award was ever lawfully published by said Arbitrators as required by the terms of said articles of submission.

Secondly

To said third and fourth counts
First.

Because said third and fourth counts in said declaration or either of them do not allege that said defendants were served with a copy of said supposed award ten days before the commencement of this suit according to the terms of said articles of submission as precedent to said plaintiffs right to demand of the defendants the sum of money specified in said supposed award

Second

Because said third and fourth counts in said declaration or either of them do not allege that said arbitrators made out and delivered to each of the parties a copy of said supposed award on or before the first day of June A.D. 1854 or that said time was extended by agreement of parties according to the stipulations of said articles of submission or that said supposed award was ever by said Arbitrators published to said parties according to the requirements of said articles of submission, and that said first second third and fourth Counts are in other respects uncertain, informal and insufficient.

Powell & Hopkins

Attys for Defts.

Proceedings at a term of the Circuit Court begun and held at the Court House in the City of Peoria in and for the County of Peoria in the State of Illinois on the first Monday of March in the year of our Lord one thousand eight hundred and fifty five it being the fifth day of said month - Present the Honorable Benson Peters Judge of the sixteenth Judicial Circuit in the State of Illinois - to wit,

Friday, March 23rd A.D. 1855-

Henry Nolte

vs

debt

William W. Low

John P. Chapin

This day this cause came on to be heard. on the demurrer of the defendants to the plaintiff's declaration, which was argued by counsel, and the Court being fully advised in the premises is of opinion that the said declaration and each count thereof is sufficient in law for the plaintiff to maintain this action -

On motion of the defendants leave is given them to withdraw their demurrer as to the third and fourth counts of the declaration and plead thereto. Whereupon the plaintiff says that he will no further prosecute against the defendants on the third and fourth counts of the declaration: therefore it is considered that the defendants go hence without day as to the said third and fourth counts of the declaration and the matters and things therein set forth and recover of the plaintiff their costs about their defence in that behalf expended -

The defendants abiding by their demurrer to the first and second counts of the declaration, it is considered that the said Henry Nolte ought to recover his debt against the said defendants and his damages

by reason of the detention thereof, and the Court being fully advised in the premises do find that the said William W. Low and John P. Chapin do owe to the said Henry Nolte the sum of Five thousand nine hundred and thirty seven dollars and sixty six cents and do assess his damages by reason of the detention thereof at the sum of three hundred and sixty one dollars and fifty cents. Therefore it is considered that the said Henry Nolte have and recover of the said William W. Low and John P. Chapin the said sum of Five thousand nine hundred and thirty seven dollars and sixty six cents his debt aforesaid and the said sum of Three hundred and sixty seven dollars and fifty cents his damages aforesaid and also his costs and charges ^{about his suit} in this behalf expended and that he have execution therefor.

Saturday, March 24th A.D. 1855-

This day came the plaintiff by his attorney and on his motion supported by affidavit on file, it is ordered that execution on behalf of the said Henry Nolte issue on the judgment herein against the said William W. Low and John P. Chapin forthwith.

And on the same day last aforesaid the plaintiff filed his affidavit in said cause in the words and figures following to wit,

Henry Nolte

vs.

William W. Low &

John P. Chapin

In the Circuit Court of Peoria County

State of Illinois, Peoria County ss.

Henry Nolte being duly sworn says, that there is danger that the plaintiff's judgment recovered in this cause will be lost unless execution shall issue forthwith.

as he is informed and believes.

Sworn to before me this

24th day of March 1855-

N. H. Purple, Notary Public

Peoria City, Ills.

Henry Nolte.

And afterwards at the term of said court last aforesaid the following proceedings were had in said court in said cause to wit.

Friday, March 30th A.D. 1855-

Henry Nolte

vs

debt

William W. Low

John P. Chapin

This day came the said William W. Low and John P. Chapin by their attorney and prayed an appeal from the judgment rendered in this cause to the Supreme Court of this State, which is allowed them on their filing in the office of the Clerk of this Court in thirty days an appeal bond in the penalty of ten thousand dollars signed by themselves with Edward M. Gladduck as surety payable to the plaintiff and conditioned according to law.

And afterwards to wit on the ninth day of April in the year of our Lord one thousand eight hundred and fifty five there was filed in said cause in the office of the clerk of said court an appeal Bond which is in the words and figures following to wit.

Know all men by these presents that we William W. Low, John P. Chapin and Edward M. Gladduck are held and firmly bound unto Henry Nolte in the penal sum of Ten thousand dollars current money of the United States for the payment of which well

and truly to be paid we bind ourselves, our heirs,
executors and administrators jointly and severally firmly
by these presents, witness our hands and seals this fourth
day of April A.D. 1855-

The condition of this obligation is such that whereas
the said Henry Holt did on the twenty third day of
March A.D. 1855 in the Circuit Court of Peoria County
State of Illinois recover a judgment against the above
bounden William W. Low and John P. Chapin for
the sum of Five thousand nine hundred and thirty
seven dollars and sixty six cents debt and Three hundred
and sixty one dollars and fifty cents damages and costs
of suit, from which said judgment of the said Circuit
Court the said William W. Low and John P. Chapin
have prayed for and obtained an appeal to the
Supreme Court of said State. Now if the said William
W. Low and John P. Chapin shall duly prosecute
their said appeal with effect and shall moreover
pay the amount of said judgment, costs, interest
and damages rendered and to be rendered against
them in case the said judgment shall be
affirmed in the said Supreme Court, then the
above obligation to be void else to remain in
full force and virtue -

Wm W. Low (Seal)
John P. Chapin (Seal)
E. H. Haddock (Seal)

State of Illinois
Peoria County I, Jacob Gale clerk of the Circuit
Court within and for the county of Peoria in the
State of Illinois do hereby certify that the foregoing
is a full and correct transcript from the Records of
all the proceedings in said court and pleadings in a
certain cause therein of Henry Nolte plaintiff
against William W. Low and John P. Chapin defendants
as the same remain of record or are on file in
my office.

In witness whereof I hereto set
my hand and affix the seal
of said court at my office
in Peoria this first day of
May A.D. 1858 - -
Jacob Gale, clerk.

Clerk's fees: for certified transcript of Record \$7.00
Receives payment of defendants
Jacob Gale, clerk.

[12.23.1]

Low & Chapin
vs
Henry Kotte
Record

Filed May 8. 1858.
L. Leland Clk.

Low v. Chappin }
vs } Appeal from Proia
Henry Noble }

Point and authorities
presented by Est Powell

An award returned to a justice
by agreement of parties that the justice
shall render judgment for the amount
The judgment so rendered is void and
the award so made is also void
and an action on the award cannot
be sustained

McKellup vs McKellup 2 Serg & Rawls 489
Gleason vs Taylor 8 Serg & Rawls 399

The same is the case of to be uter-
-mined to the Circuit Court for judgment
Dunfield vs Ames 20 Pick 480
Cromwell vs March Breese 230
Benjamin vs Benjamin 5 Wats & Serg 562
Also see 15 Ill case between these
parties

Low & Chapin
vs

Murray v. Holt

Authorities
referred to by
Edw. Powell

William M. Soul }
 John P. Chapin } Appeals from Court
 Henry Rolle }

Points

1st The Replevin Suit is definitely disposed of.

The awards does not provide for any Return of the Property Consequently no return can be had nor any Suit Brought therefor.

An award that a Suit shall be dismissed is a final disposition of a Suit and a bar to any other Suit Concerning the same Subject matter
 Watson on Awards - 132. 123.

The form of the awards, and the manner of the disposition of all the Suits was agreed to by the Attorneys of the Parties.

Suppose the Court had dismissed the Suit without consent of Parties. making no order about property

Would this be Error Even?

2. An Appeal does not lie in this case

It is not a Submission under the Statute, Sec. 1. R.S. 56. Provides for Submitting Controversies not in Suit - and under Seal &c. - Some of these matters now in Suit & Submission not under Seal.

Sec. 2. Provides for Submitting pending Suits - under an Order directing the same.

Sec. 7. Awards may be filed in one year
Judgment is to be entered on this at the next
or any subsequent Term

Sec 8. 4 days notice to be given after filing awards
Of Motion for Judgment.
This Submission requires 10. days before appli-
cation for Judgment.

Sec 16. Requires that in Cases under the Statute on
Entry of Reference shall be made on the
Record &c &c -

It is a Submission and awards at Common
Law. The Court enters the Judgment under the
Power contained in the Submission - and not
in the Exercise of its legal discretion as a Court
adjudicating upon the Subject matter.

No Appeals Lies from a Judgment thus entered.
Chandler vs Lucy Briss Rep - 55
Cromwell vs March n r 230
Huncon vs Fletcher 252.

An Awards made Under Submission (and not made a
rule of Court, or which is the same thing; not coming
under the Statute Can not be set aside on Motion
nor Enforced by Attachment

Watson on awards - 25. 26. 45. 155-6

3. ~~Arbitration cannot be made under the~~
~~statute, at least no in England, nor in~~
~~Canada~~ —

Whether an award be made under a Common
 Law Submission or under a Statute — Neither
 a Court of Law or Equity will permit it to
 be impeached because the Arbitrators decided
 against law or mistook the facts — unless
 such Error or mistake is manifest on the
 face of the award

Evidence dehors the award will
 not be received Watson on awards — 82-3. 22. 34
 { Watson on awards — 163 — 9
 Russell on Arbitration 243 — 251

Pottle vs McMillen — 13. Ills. 445-6.

Brown vs Green End 7 Com. 542.

Jones vs Boston Mill Corp. — 6 Pick. 153-4

Bliss vs Rollins — 6 Com. 531.

Needham vs Needham — 1 Root 197

2 John. 62

Barlow vs Todd 3 2 367

Todd vs Barlow 2 John Chy. 552

Head vs Muir & Sug 3 Bond 129

Kline vs Katoe 2 Gallison 60-71

Shenon vs Wood 5 Halstead 12-19

Crowell vs Owings 6 Harris & May 12.

Ewing vs Beauchamp 3 Pitt 45

Baker vs Crockett Holden 388. 403

Walker vs Sanborn 8 Greenleaf 288-119

13 Eng. 6. L. 200. Boutteller vs Thier 16. Eng. 6. L. 43. Prime vs Mosley 13. E. C. L.

Day vs Boyles 11. Snedden & M. 626. Monell & Monell 11 Ills. 565. 129

4. The Demogues were properly and legally
 assessed—Either as Demoguel for a violation
 of the Contract or for wrongfully setting out
 the assent of Replevin

Same Rule in Replevin as in Malicious Suspicion
 or Trespass Vi et armis to the Person

Davis vs Oswald 32 Eng. Com Law, 746+

Bozoe vs Maybee 21 Wend 145.

McCabe vs Monahan 1 Matts & Scj 516

Lindsley vs Bushnell 15 Comt 225

Huntley vs Bacon " " 268

Cable vs Martin 20 Wend. 172.

* Marquisea vs Ormston 15 Wend - 370

5. Awards is Certain.

as to Certainty - Watson on awards - 112.

Conditional }

Awards not uncertain } " 131

Needs only be Certain to a Common intent " 125

See also others vs Ayres 3 Term - 248.

* Plaintiff broken up in business &c—
 No objection made to the Evidence

Powell

Bringing up in Business only a cause
of action. Court arise out of Contract or Torts.

Judgment may be entered on
C^d Award at Common Law
Harris vs Hays. C^d Pinney 434. State Opinion
Gallup vs Reynolds & Watts 426
Allen vs Belcher 3 Gill 395 } Jurisdiction
Buckmaster vs Collins 3 Scam. 106-7 }

Courts

2 Watts - 471
D. Cushing 547. Foster vs Murcutt.

Loue Chapin
is
Notte

Brief

Purple

[Faint, mostly illegible handwritten text, likely bleed-through from the reverse side of the page. Some words like "Loue", "Chapin", "Notte", "Brief", and "Purple" are visible.]

Henry Stolle

v2

John P Lowe & al D

} Supreme Court June 7, 1855

action on Award in Peoria CC

declaration sets forth the submission. Demurrer to declaration. Demurrer overruled. Appeal by defendants

Briefs

E A Powell & H M Mead for defendants

I The Declaration is insufficient

1st Because it does not show a failure to pay the \$ agreed upon as liquidated damages

2. It does not aver that defendants had notice of the amount of cost in each case

19 Vermont Rep 110. Wright vs Smith

13 NH Rep 139. School Dist vs Aldrich

II No action will lie on the Award

1st Because the submission provides a different mode & it must be enforced in that way or not at all

5 Watts & Sergt Penn Rep 562. Benjamin vs Benjamin

20 Pickering 480 Inhabitants of Deerfield vs Pliny Arms

15th Mass R 368 Low & al v Stolle

Rev Stat 56 Sects 10 11 Arbitrations - Causes to set aside awards

2 Low v Still notes p 1025 Note 695 when award may
be set aside at common law

So p 1031. Same Grand will not set it aside at law collaterally
12 John R 311

2 Greenly v p 67 Sect 78 As to defence to action on award - cor-
ruption no defence at common law

2 The parties evidently contemplated all the advanta-
ges given by sections 10 & 11. P 57. R Laws 1845

3. Because the parties have provided what the
damages shall be in case of a failure to
comply Sedgwick on Damages 449, & 50

18 Johnson Rep 217

6 Blackford " 206

13 N H Rep 275 Brewster v Edgerly

13 do " 351 Mead v Wheeler

5 Sandford " 640. Beal v Hays

1 Carter Ind " 484. Miller v Elliot

to Wood in reply & conclusion

When a covenant is made concerning an existing cause of action - that cause may or may not be merged into that ~~cause~~ covenant - If merged - & covenant be broken the party is liable alone on the breach - & not on original cause - if not merged - then the covenant affords a new & additional cause & remedy - and an additional amount may be recovered - Again in the latter case If the amount fixed in the covenant be fixed and designated damages, and ^{is} intended to be paid in lieu of performance then the party will be confined to that amount - and cannot pursue the original cause of action - but where it does not appear to be so intended so - then it will be treated as a penalty - and the amount recoverable may include the amount due on the original cause of action and additional damages for breach - both within the amount of the penalty - or if the penalty be too small - then the party may recover ^{on} the original cause of action - and the additional damage by suit on the covenant for the penalty & limited by its amount

That the parties in this arbitration bond - did not intend the payment of the \$1000 to be in lieu of performance of the several acts provided for - is evidenced by the provision that the suits should not be dismissed until the complete performance.

The reasoning in 2 Bush & 545 is much more satisfactory than the case in 5 Watts & Serj 562

Henry Stolle

12

Low & Chapin

Deft Brief. Powell & Wend

Judge

Purpose for Debt

Are Causas of action submitted to arbitration - merged in the bond of submission - and where the bond of submission contains a provision for stipulated or liquidated damages - in such case no suit can be maintained upon the award - but those stipulated damages alone can be recovered - it is said. Are these positions law. I show not where there are stipulated damages - and it appears that the intention of the parties is - that those damages are to be paid in lieu of the matters in controversy - then all matters will be merged into that amount - not otherwise

1 Denio R 464. Stipulated damages - held to be a penalty

17 Wend R 447 When the payment of a sum certain is provided - on the non-payment of one or another of smaller sums or the performance of certain acts - then the greater sum will be regarded as a penalty

Ledgwick's Case 413 to 447 - As to damages or penalty

22 Wend 163 Held to be a penalty and not settled damages
Damages are to be treated as stipulated - where the damages for breach are of such a nature that it is difficult or impossible to ascertain them

1 Carter In R 442 Again when the amount is wholly out of proportion to the breach - it will be treated as a penalty

6 Blackf'd R 206 Damages

9 Paige R 101 Held a penalty in this case

19 Ing C.L.R. 34 Held a penalty / Held otherwise in 13 R Bump R 275

22 Wend R 437-8 { Held to be a penalty - and not
4 Dallas R 139 { liquidated damages in lieu of performance

As to notice of the amount of costs - and an award
of the certain amount of the costs.

Nelson on Awards (34 Law Lib 106) An award generally
of the payment of costs is good.

Are there any other than taxable costs known to
our ~~cost~~ Law

This submission is one at Common Law - &
not under our Statute - Refer to his brief - and

4 Blackfrd R 90 { only difference between Statute
5 Llo " 423 { and common law arbitration - is
- that under former - a rule of court may
be obtained thereon

2 Watts R 471 { Submission not good under the Statute
2 Crush R 545 { for want of compliance with the Statute
- No enforcement can be made for an
award under it - under the Statute
but the party must bring his action
Case in Crushing meets objections taken here

Point as to Assessment of Damages by the
Sec Rev Court - without a jury

Stat 1845 - p 415 Sec 15 Where damages rest in compu-
tation clerk may assess - and on defaults

Breese R 58 a jury may be impannelled - Re-enacts the
20 Quesd R 107 Common-law on this subject

Inquiry is to inform the conscience of the court
and if the Court please - they may make it
themselves

3 John R 153 Court ^{might have} assessed the damages for work
& labour

1 Scam R 45 { Same

11 Ills 118 {

12 Do 446 {

Low et al

^{v.}
76 Nolle

Brief

44

H. W. Low et al.

vs

Henry Holte

1855

44

1855

1222