

12019

No.

Supreme Court of Illinois

Green, Admr.

vs.

Mann

71641 7

43
David Green, Admr.
vs
George Mann

1850

12019

Repaired

State of Illinois
La Salle County

Shas before the Hon. Theophilus L. Dickey, presiding Judge of the 7th. Judicial Circuit Court of the State of Illinois at a Circuit Court Commencement and held in and for the said County of La Salle at the Court house in Ottawa on the 30th. day of March A.D. 1849, the same being the seventy third year of the Independence of the United States of America.

Be it remembered that hereupon to wit: on the 13th. day of March A.D. 1849 George Mann sued out of the Clerk's office of said Circuit Court a summons in the words and figures following to wit:

State of Illinois
La Salle County

The People of the State of Illinois to the Sheriff of said County-Greeting: We command you to summon David Green admr. of the estate of William Statton Decd. if to be found in your county, personally to be and appear before the Circuit Court of said county, on the first day of the next term thereof, to be holden at the court house in Ottawa, on Friday the 30th. day of March next, to answer George Mann of a Plea of Trespass on the case upon promises to his damage fifteen hundred dollars, as he says come hear you then and there this writ, and make return thereon in what manner you execute the same.



Witness Philo Lindley, Clerk of said Court, once the seal of said Court, at Ottawa, this 13 day of March A.D. 1849
P. Lindley Clerk

Return of Sheriff.

Green

Served Mech. 16th. 1849 by reading to David
H. Hulbur, Sheriff
Tr. J. Wash Dep.

And afterwards to wit: on the 19th. day of March A.D. 1849 the plaintiff filed his declaration in words and figures following to wit:

State of Illinois Circuit Court of said County March Term 1849
La Salle County

Daniel Green administrator of all and singular the
goods Chattels & credits which were of William Stadden deceased
at the time of his death, who died intestate was summoned
to answer unto George Mann of a plea of trespass on the case upon
promises, and thereupon the said George Mann by his Counsel
his Attorneys complains for that whereas heretofore to wit on the
twenty second day of August in the year of our Lord one thousand
eight hundred and forty four at said County of La Salle the plain-
tiff and William Stadden during his lifetime made and
entered into an agreement in writing which is in the words
& figures following. viz.

Dayton Aug. 22nd. 1844

" This agreement made and entered into this 22nd day of August
in the year of our Lord one thousand eight hundred & forty four.

" Between William Stadden of Dayton La Salle County in the State of
Illinois of the first part & George Mann of the same place of the
second part Witnesseth

" That William Stadden of the first part
Rents to Geo. Mann of the second part his following Mill in the
above place in the County and State aforesaid for the term of three
years from the date of this instrument on the following conditions
to wit.

" The said party of the second part is to have all the use and
profits of said mill, and pay the party of the first part for the
first year twelve hundred dollars and for the second and third
years one thousand seven hundred dollars each - The above rent to
be paid in quarterly installments & a failure to pay said instal-
ments as they become due shall prove a forfeiture of Contract,
and the party of the first part shall on such failure have right
to take possession of his Mill and this Contract become void

" The party of the second part agrees to return the Mill at
the expiration of this contract in as good order as he receives it,
except the natural wear & tear of the same & to be at all expense
of running and keeping said Mill in repairs, except that the

Party of the first part hereby agrees to re-coy the pris wheel &
"Open once in the said three years if necessary - the party of the
"first part also agrees to put into operation two more runs of stones
"with the necessary Machinery for manufacturing flour, with a
"boll for Country work or Millings within the first year, the work
"to be done as substantial & with sufficient power to grind as fast as
"those already at work. The necessary time the Mill will have to stand
"still in putting in the water wheel & floom, the party of the second
"part shall not be subject to rent nor at any time when the mill
"shall be stopped by floods or any accident to the race, or the water,
"otherwise obstructed so as to prevent the use of the same

Wm. Madden

Geo. Mann

And the said plaintiff avers that on said twenty second
day of August, he took possession of said Mill once & once occu-
-pied the same during the said three years, & at the expiration of said
term he returned the said Mill to the said William Madden.
said plaintiff further avers that said Madden departed this
life on or about the thirteenth day, November A.D. 1848 and after
the expiration of said three years & after the breach of said agreement
hereinafter complained of, and that the defendant was appointed
administrator of his estate on the seventeenth day of said November.
said plaintiff further avers that at & prior to the said time when
he took possession of said Mill three runs & had been at work in said
Mill two runs of stones & the machinery connected & used therewith.

said plaintiff further avers that the said William
Madden by said agreement among other things in consideration
of the undertaking & promise of the plaintiff in said agreement
mentioned undertook & faithfully promised the said plaintiff that
he would within one year next after the date of said instruments
put into operation two more runs of stones with the necessary
machinery for manufacturing flour and that the work necessary
& proper therefor should be done as substantial & with sufficient

power to grince as fast as those already at work

Yes the said William Stadden not regarding his said promise and undertaking, although requested to do did not, nor would within said one year nor within said three years put into operation said two more runs of Stones with the necessary machinery for manufacturing flour nor did he nor would he though requested do or cause the said work to be done as said Stadden & with sufficient power to grince as fast as those already at work

By means of all which the said plaintiff during the said last two years of the said term of three years hath lost and been deprived of all the profits benefits & advantages which he might & would have derived if the said William Stadden had fulfilled his said undertaking & promise, and which amounts to the sum of one thousand five hundred dollars and which said sum the said William Stadden during his lifetime and the said administrators since his death have neglected & refused to pay to plaintiff though requested to do.

Also for that whereas heretofore to wit, on the twenty second day of August in the year of our Lord one thousand eight hundred and forty four at said County of La Salle the said William Stadden then being alive and the plaintiff made & entered into an agreement in writing duly executed & delivered and which is in the words & figures following viz:

Dayton Aug^r 22ⁿ. 1844

" This agreement made and entered into this 22ⁿ. day of August in the year of our Lord one thousand eight hundred & forty four between William Stadden of Dayton La Salle County in the State of Illinois of the first part & George Mann of the same place of the second part Witnesseth

" That William Stadden of the first part Rents to Geo. Mann of the second part his flouring mill in the above place in the County and State aforesaid for the Term of three years from the date of this instrument on the following conditions to wit:

" The said party of the second is to have all the use and profits of said Mill, and pay the party of the first part for the

first year Ten hundred dollars; and for the second and third years One thousand seven hundred dollars each the above sums to be paid in quarterly installments & a failure to pay said installments as they become due shall prove a forfeiture of Contract and the party of the first part shall on such failure have right to take possession of his Mill and this Contract become void

The party of the second part agrees to retain the Mill at the expiration of this Contract in as good order as he receives it except the natural wear & tear of the same, & to bear all expense of running and keeping said Mill in repair. Except that the party of the first part hereby agrees to re-coat the pit wheel & spur once in the said three years if necessary. The party of the first part also agrees to put into operation two more runs of stones with the necessary machinery for manufacturing flour with a Roll for cutting work or Middlings, within the first year, the work to be done as substantial & with sufficient power to grind as fast as those already at work. The necessary time the Mill will have to stand still in putting in the water wheel & floor, the party of the second part shall not be subject to rent nor at any time when the Mill shall be stopped by floods or any accident to the dam, or the water otherwise obstructed so as to prevent the use of the same.

And since plaintiff avers that under and by virtue of said agreement he did on or about said twenty second day of August take possession of said Mill & use & occupy the same during said term of three years. Plaintiff further avers that said William Stadden departed this life after the expiration of said term of three years to wit on the thirteenth day of November A.D. 1848 and that the defendant was appointed administrator of the estate of said Stadden on the seventeenth day of said last mentioned November. Plaintiff further avers that prior & at the time he took possession of said Mill as aforesaid there had been once run in use in said Mill two runs of stones and the Machinery used & connected therewith. And since plaintiff further avers that said William Stadden in consideration of the

undertakings & promises of the said plaintiff in said agreement specified thereby undertaken & promised on his part among other things, that he would put into operation two more sums of stones with the necessary machinery of manufacturing flour, within the first year of said three years, the work to be done as substantial & with sufficient power to grince as fast as those already at work

Yet the said William Stadden nor regarding his said promises & undertakings did nor nor would though requested put into operation said two more sums of stones with the necessary machinery for manufacturing flour at any time during said term of three years, nor did he during said three years do or cause to be done said work as substantial & with sufficient power to grince as fast as said two sums of stones which were in said Mill at & prior to the said date of said agreement, but the plaintiff avers that although said two more sums of stones were put into said Mill, said work was so unsubstantial & of power so insufficient that the said plaintiff did not & could not during said last two years of said term use but one sum of said last mentioned two sums of stones at a time - Plaintiff also avers that the other machinery connected with said last mentioned sums of stones was not such as was necessary for manufacturing flour,

By means of all which said plaintiff during the said last two years of the said term of three years hath lost & been deprived of all the profits, benefits & advantages which he might & would have derived if the said William Stadden had faithfully fulfilled his said undertakings & promises & which said plaintiff avers would have amounted to the sum of one thousand five hundred dollars

And plaintiff avers that said William Stadden during his lifetime & his said administrator since his death have not paid him said sum or any part thereof though requested to do

All which is to the damage of the plaintiff as he

says One Thousand Five hundred Dollars and therefor he
brings his suit &c

And & Ireland

And at March term of said Court to wit: on the 21st day of April the following proceedings were had in said Court to wit:

George Mann
124 vs

Daniel Green admr. of the
Estate of Wm. Stadden dec^d

I trespass on the case upon promises

It is agreed that this cause shall not be tried before Monday next - the time to plead herein is extended till Friday next.

And afterwards to wit: on the 6th day of April A.D. 1849 the defendant filed his plea in words and figures following to wit:

Daniel Green admr.
of the Estate of William
Stadden deceased

acc^t

George Mann

La Salle County Circuit Court
March term A.D. 1849

1 And now comes the said defendant by Ghor & Cook his Atty. and defends &c where &c and says actio non &c because he says that the said William Stadden did not undertake and promise in manner and form as the said plaintiff hath above thereof declared against him and of this he puts himself upon the country [And the plff. with the like ~~And & Ireland~~]

2 And for a further plea in this behalf defendant says actio non because he says that the said William Stadden died during the first year of the tenancy of said flowing mill by said

plaintiff as alleged in said declaration two more runs of stone than were in operation in said Mill on said 22^d day of August A.D. 1844, with the necessary machinery for manufacturing flour with a bolt for country work or Middlings and the work on the same was as substantial with sufficient power to grind as fast as those already then at work, and of this he puts himself upon the Country

3 Since for a further plea in this behalf defendants says actio non because he says that on the 22^d day of August A.D. 1844 said William Stadden lease to said plaintiff by an agreement in writing his the said Stadden's flouring mill in Sayton in said County for the term of three years from that date and that the said plaintiff by the terms of the same agreement promised to pay to said Stadden as rent for said mill for the first year the sum of twelve hundred dollars and for the second and third years the sum of one thousand seven hundred dollars each making in all the sum of four thousand six hundred dollars and plaintiff avers that said plaintiff did occupy said mill under the agreement aforesaid for the term of three years and that he also occupied said mill & ran the same one month after the expiration of said three years & in consideration thereof promised the said William Stadden to pay him for said one months use of said mill as much as the same should be reasonably worth which aye avers to be the sum of one hundred and seventy five dollars. And the defendant offers to set off to much of the said sum of four thousand six hundred dollars and one hundred & seventy five dollars as may be necessary against the plaintiffs demand in this suit and claims judgment for the remainder of the same and this he is ready to verify wherefore he prays judgment &c

4 Since for a further plea in this behalf defendants says actio non because he says that after the expiration of the three years mentioned in the agreement set forth in plaintiffs declaration to wit on the 22^d day of August A.D. 1847 it was agreed by and between the said plaintiff and the said William Stadden that the said

Stadden should permit the said plaintiff to use once occupy the mill mentioned in said agreement for the space of one month longer than was stipulated by said agreement mentioned in plaintiffs declaration and that said one months use of said mill was to be in full satisfaction to the said plaintiff for all damages by him sustained by reason of the breach of any of the undertakings and promises of the said Stadden contained in said agreement in plaintiffs declaration mentioned. And plaintiff avers that said plaintiff did in pursuance of said arrangement and agreement occupy said mill & serve the term for the said one month and this he is ready to verify wherefore he prays Judgment &c

Glenn & Cook

defts Attys

And afterwards to wit: on the 7th day of April A.D. 1849 the plaintiff filed his replications to defts 3^d & 4th pleas in the words & figures following to wit:

George Mann &c

v

Le Salle Circuit Court March Term 1849

David Green admr &c

And the said plaintiff in replication to so much of defendants third plea as relates to the letting off said term of four thousand and six hundred dollars for said three years rent says precludi non because he says that during the life time of said Stadden he fully paid the term to said Stadden and this he is ready to verify whereupon &c and as to so much of said plea as relates to said one months rent said plaintiff says precludi non because he says that he did not undertake & promise in manner and form as the said defendant hath in said plea avowed. And of this he puts himself upon the country

Hors & Silence

for plff

And in replication to defendants fourth plea plaintiff says precludi non because he says that it was well agreed by and between the said Stadden & the plaintiff that Stadden should permit the said

plaintiff to use & occupy said mill for said space of one month &
that said one months use of said mill was to be in full satisfaction
to the plaintiff for all damages by him sustained by reason of the
breach of said undertakings & promises of the said Stadden and
that he did not occupy said mill for the purpose aforesaid, and
of this he puts himself upon the country
And the defendant does the like

Hos & Seland
for plff.

Glover Cook & Purple
for def.

And afterances to wit: on the 11th day of April A.D. 1849 in said
Circuit Court the order was made in words & figures following viz:

George Mann

124 vs

Said Green admr. of the Estate
of William Stadden deceased

Inpass on the case upon

promises

This day came the plaintiff by
Seland & Hos his attorneys and the defendant by Glover & Cook
his attorneys and the following Jurors of a jury (to wit) George
Kollister, Richard E. Osgood, J. T. Howland, J. T. Almstead, Philip
Watt, Russel Brown, J. E. Doren, C. W. Wells, John Hogaborn,
Anthony Lintsey, Daniel Lyon, & James Dickens, who were
electd. twice and sworn to rule and truly try the issues herein accor-
ding to the evidence, and after hearing a part of the testimony
further hearing herein is adjourned till nine o'clock tomorrow
morning.

And afterances to wit: on the 12th day of April A.D. 1849 in said
Circuit Court the following order was made &c.

George Mann

124 vs

Said Green admr. of the

Estate of William Stadden

This day again came the parties
here to and after a further hearing of the testimony Richard E.

Each comb one of the jurors by agreement of the parties is
excused until 10 o'clock to-morrow morning & the cause
postponed for further hearing until to-morrow morning.

Also on the 13th day of April A.D. 1849 in said Circuit Court the
order was made in figures & words following to wit:

George Mann	vs	Assumpsit
124		
Daniel Green admr. of the Estate		
of William Stadden		

This day again came the
parties hereto & the jury heretofore empanelled in this cause
& one of the jurors being excused by the Court & the parties not
consenting to try the cause the jury are discharged from
rendering their verdict & the cause continues.

At the November Term A.D. 1849, Thompson, Gills Spring, Judge of
Cork County Court, presiding by exchange
And afterwards to wit: on the 16th day of November A.D. 1849
the order was made in words & figures following viz:

George Mann	vs	Assumpsit
62		
Daniel Green admr. of		
William Stadden dec ^d .		

This day came the defendant by
Thompson his attorney and on his motion
it is ordered that he have leave to file additional Pleas therein

Thompson the Def. by Thompson his atty. files his add. pleas on
the above named 16th of November, in words & figures following
to wit:

J. W. P. H.

George Mann

In the Circuit Court of LaSalle
County March Term 1849

Daniel Green admr. of the Estate of
William Stadden deceased

And for further plea in this

I shall by leave of the Court &c the said Defendant says that on the 25th day of August A.D. 1847 at the County aforesaid the said plaintiff was indebted to the said William Stadden in his life time and still is indebted to this defendant as Administrator of the said William Stadden in the sum of about seven hundred and Eleven dollars and forty three cents as follows to wit:
For about 1 month's rent of mill after the expiration of the contract in Plaintiff's declaration set forth 175.00

For balance due on Settlement May 27. 1847 75.20

For reclamation on flour received as rent - sold in March 1847 not included in above Settlement 86.23

For part of one quarter rent on Mill ending Aug. 21. 1847 375.00
\$ 711.43

And the said defendant avers that the said several sums of money and each of them are still due and unpaid from the said plaintiff to the said defendant as administrator of the said William Stadden deceased and have been and remained so due to him as such administrator from the time of the death of the said William Stadden and now so due to him as aforesaid prior to the commencement of this suit to wit at the County aforesaid. Which said several sums of money the said defendant avers exceeds the amount of any and all damages which the said plaintiff has sustained by reason of any breach or breaches of the contract stated and set forth in said plaintiff's declaration in manner and form therein stated and set forth and which said several sums of money and each of them the said defendant offers to set off (or so much thereof as shall be necessary to defeat said Plaintiff's claim for damages aforesaid) against any claim which said plaintiff shall prove upon the trial of this cause and gives notice that he will claiming a judgment in his favor for the residue
Gloria Cook & Threlk
for deft

State of Illinois
La Salle County

35

David Green the defendant in this suit
being duly sworn doth say that the facts
alleged by said plea are substantially true, and that it was his
belief that the pleadings in this cause were so framed that the facts
therein stated might be given in evidence under the said plea
heretofore filed: until to day he was advised by counsel that it was
doubtful whether the said plea was so framed and that in this
opinion it would be the more prudent and safe course to file the
within plea & further saith not
Subscribed & sworn to before me
this 16. Nov. A.D. 1849

David Green

P. Sinclley Clk.

And then afterwards to wit: on the 17th Nov. 1849 the Deft.
filed the following ~~Rejoinder~~ in the words & figures viz:

George Madden

vs

La Salle Circuit Court March Term 1849

David Green

Ad^r. Wm. Madden And the said defendant for answer to so
much of the said Plaintiffs replication to the defendants third plea
as alleges the payment to the said Madden during his life term
of the said sum of Four thousand one six hundred dollars for said
ther years sent by the said Plaintiff the said Defendant says
that the said plaintiff did not pay the same in manner and
form as is stated in said Replication and of this he puts
himself upon the country &c.

And plff. doth the like

And & Seland

And as to the residue of the said Replication "that he did
not undertake & promise in manner & form &c" and whereof the
said plaintiff hath put himself upon the country the said defendant
doth the like

John Cook & Purple
for Deft.

And afterwards to wit: on said 19th day of November A.D. 1849
the proceedings were had in words & figures following viz:

George Mann

62 vs

Assumpsit

Daniel Green admr. of the
Estate of William Stadden dec.

This day came the plaintiff by
Seland & Peters his Attorneys and
the defendant by Glasscock & Tupper his Attorneys and the
issues herein having been made up, thereupon came the
following Jurors of a Jury to wit: William H. Wiswall, Josiah Pope,
Leuel Cunnam, Gabriel Ruger, Eli Little, Silas A. Weston, J. H.
Hosford, Garrett Arnold, John Palmer, Moses Little, Samuel
H. Lewis & Amasa Watson who were elected twice and sworn twice
and truly try the issues herein according to the Evidence and
after hearing a part of the Evidence this Cause is postponed for
further hearing until to morrow morning.

And afterwards on the 20th. Nov. 1849 the following proceedings
were had viz:

George Mann

62 vs

Assumpsit

Daniel Green Admr
of the Est. of Wm. Stadden

This day again came the parties hither
by their respective Attorneys together with the
Jury sworn herein and after hearing the remainders of the Evidence
and part of the arguments of Counsel this Cause is postponed for
further hearing until to morrow morning.

And on the 21st. Nov. 1849 the following order was made viz:

George Mann

62 vs

Assumpsit

Daniel Green admr
of Est. of Wm. Stadden

This day again came the parties hither

by their Counsel together with the Jury sworn herein and after
hearing the Arguments of Counsel the Jury retired to consider
of their verdict. And by agreement of parties it is ordered that they
have leave to seal their verdict (when they shall have formed it) and
return the same into Court to morrow morning.

And again on the 22^d November 1849 the following order was
entered on said Circuit Court records viz:

George Mann

vs

Assumpsit.

Daniel Green adm^t
of Est. of William Stadden

This day again came the parties hither
by their respective Attorneys together with
the Jury sworn herein who returned into Court the following verdict
to wit: We the Jury find for the Plaintiff and assess his damages
at two hundred and fifty dollars & Judgments was rendered for that
amount. It is therefore considered that the Plaintiff has and
recovers from the Defendant the said sum of Two hundred and fifty
dollars for his damages & also his costs and charges by him herein
expended and that the said Daniel Green as Administrator of the
Estate of William Stadden Dec^d. pay the same in the due Course of
administration. Whereupon the Defendant entered a motion
for a new trial.

And again on the 23^d Nov. 1849 the following
final order was made in said Court to wit:

George Mann

vs

Assumpsit.

Daniel Green adm^t of Est.
of William Stadden Dec^d.

This day again came the parties hither
by their respective Attorneys & after hearing
the arguments of Counsel and due consideration thereon had
It is ordered that the motion pending herein for a new trial be

orwarded and thereupon the Defendants prayed an appeal to the Supreme Court which is granted upon condition that within forty days he shall file a bond herein payable to the plaintiff in the penal sum of one thousand dollars with William Steadick as security.

On the 23^d Nov. 1849 the defendants filed the following Bill of Exceptions in the words & figures to wit:

George Mcann

vs

State of Illinois La Salle County &
David Green Administrator Circuit Court thereof vs. John
of the Estate of William Steadick A.D. 1849
deceased

Be it remembered that on the trial of this cause the plaintiff read in Evidence an agreement in the words and figures following to wit:

Dayton Aug. 22^d 1844

This agreement made and entered into this 22^d day of August in the year of our Lord one thousand, eight hundred & forty four, between William Steadick of Dayton La Salle County in the State of Illinois of the first part & George Mcann of the same place of the second part Witnesseth,

That William Steadick of the first part rents to Geo. Mcann of the second part, his Floating Mill in the above place in the county and State aforesaid for the term of three years from the date of this Instrument on the following conditions to wit.

The said party of the second is to have all the use and profits of said Mill, and pay the party of the first part for the first year Seven hundred dollars, and for the second and third years one thousand, seven hundred dollars each. — The above rent to be paid in quarterly installments & a failure to pay said installments as they become due shall prove a forfeiture of Contract, and the party of the first part shall on such failure have right to take possession

of his Mill and this Contract become void.

The party of the second part agrees to return the Mill at the expiration of this Contract in as good order as he receives it, except the natural wear & tear of the same, & to be at all expense of running and keeping said Mill in repair, except that the party of the first part thereby agrees to re-erect the pit wheel & spin over in the same three years if necessary. — The party of the first part also agrees to put into operation two more sets of stones with the necessary machinery for manufacturing flour, with a Bolt for country work or middlings, within the first year, the work to be done as substantial & with sufficient power to grind as fast as those already at work, the necessary time the mill will have to stand still in putting in the water wheel wheel & flour the party of the second part shall not be subject to rent, nor at any time when the mill shall be stopp'd by floods or any accident to the race, or the water, or other obstruction so as to prevent the use of the same."

Wm. Stadden

Geo. Mann

Plaintiff then introduced testimony tending to prove that said Stadden in during the first year of the term of said plaintiff of the mill mentioned in said agreement placed two additional sets of mill stones in said mill with the machinery to run the same and a bolt for country work or middlings. Plaintiff then introduced proof tending to show that the master wheel placed to drive said two sets of stone was deficient in this that said wheel was not strong enough to drive more than one of said new set of stone at a time and that the plaintiff could use only one of said new set of stone at a time, plaintiff also introduced proof tending to show that the bolt for country work above mentioned was not a good bolt, and offered evidence also to show what was the value of the use of one of the two new sets of stones and the decrease in the value of the use said mill by reason of the insufficient wheel and bolt, tending to

prove damages from \$850. to \$1350 the plaintiff admitted a set of of three hundred & fifty two dollars

The defendants then introduced testimony tending to show that the bolt was a sufficient and good bolt, also tending to show that the deficiency in the wheel could have been repaired at an expense of from twenty five to thirty dollars and a delay of one week. There was also evidence tending to prove that the deficiency both in the wheel and bolt could have been repaired at an expense not exceeding one hundred and twenty dollars. The defendant's evidence tending to prove an additional set of of \$150

The Court at the request of Plaintiff instructed the Jury as follows

1 Will the Court instruct the Jury that if the said William Stadden did not put into operation the two sets of stones in the declaration mentioned, with the necessary machinery for manufacturing flour, with a Bolt for country work or middlings, during the time plaintiff occupied the mill & if the work necessary to put said two sets of stones in operation was not done as substantial & with sufficient power to grind as fast as the two sets of stones in the mill at the date of the Contract declared upon. They should allow the plaintiff such an amount of damages as are the immediate consequence of non performance on the part of the said Stadden & such as would probably have been contemplated by them as the consequence of said non performance.

2 Will the Court instruct the Jury that if the work necessary to put said two more sets of stones mentioned in said Contract into operation was not done by said Stadden during the time the mill was occupied by plaintiff as substantially, nor with sufficient power to grind as fast as the two other sets of stones they will allow the plaintiff such damages as ^{were} the direct consequence of the said neglect of S. Stadden & such as would probably have been contemplated by the parties as a consequence of said neglect.

Gives

3 Will the Court instruct the jury that if the said Wilson Macdonald did not during the time 2^d mill was occupied by plaintiff put into operation ^{the} two more runs of stones in said contract mentioned. They will allow the Plff such damages as were the immediate consequence of the neglect of said Macdonald in this particular & which would probably have been contemplated by the parties to said Contract as a consequence of such neglect.

Gives with Qualifications

4 Will the Court instruct the jury that if the said Wilson Macdonald did not put into operation said two more runs of stones with sufficient machinery to manufacture as much flour with said two runs of stones as with the two run which were in the mill previously they will allow the plff such damages as are the immediate consequence of the neglect of said Macdonald so to do & which would probably have been contemplated by the parties to the Contract declared on as the consequence of neglect.

Gives with Qualifications

5. Will the Court instruct the jury that if the said Macdonald did not during the time said plaintiff occupied said mill under the Contract declared on, furnish & put up for the plaintiff the necessary machinery for manufacturing flour with said two more runs of stones in said Contract mentioned They will allow the plaintiff such damages as were the direct consequence of said neglect & which would probably have been contemplated by the parties to the Contract as the consequence of said neglect.

Gives

8th. That evidence of the declarations or admissions of parties should be received by a jury with caution

Gives

Under the question in relation to the sufficiency of the machinery for manufacturing flour as mentioned in the Contract. the jury will include only one bolt

The above is given as a qualification to the 4th & 5. above instructions

The defendant excepted to the giving of each of the five first instructions asked for by plaintiff.

The defendants asked the Court to instruct the Jury as follows
George Mann

vs
Daniel Green actor

William Stadden &

The Counsel for the defendants requests
the Court to instruct the Jury

1st. That if the Jury believe from the Evidence that the main
wheel spoken of by the Witnesses, on account of the manner in
which the same was constructed was insufficient to drive
the two sets of stones which Stadden have under the contract
put into the mill: Then and in that case the plaintiffs
damages would only be, the necessary expense of repairing said
wheel, the value of the use of the machinery, which would be
suspension by the process of repairing, the necessary inconve-
nience and trouble attending the same and the interest upon
such necessary expenditures, value of the use of the suspended
machinery, and the estimated damages for inconvenience and
trouble in making such repairs.

2^d. That any Speculation or imaginary profits which
the mill might have made in case the work of said wheel had
been precisely according to the Contract are not to be considered
in the Estimate of the Plaintiffs damages in this case

3^d. That if the Jury believe from the Evidence that the
plaintiff was present during the time the work under the
contract was progressing and fully understood the extent
and character of the same, and that after the same was
completed by Stadden, he continued to occupy the same prem-
ises and use the machinery for the period of two years or more
without complaints and without requiring Stadden to repair
or improve the same: The Jury may from these facts infer
that the plaintiff had accepted the work as a fulfillment of
the contract on the part of Stadden.

4th. If the set off of the defendants exceeds the plaintiffs
damages (under the rules before laid down) the defendants

Reference

Green

Green

Green

is entitled to a verdict for such excess.

5th. If the jury believe from the evidence that the Plaintiff by agreement with Stadden occupied the mill for about one month; and that such occupation was to be in lieu of all damages for any imperfection in the machinery mentioned in the contract: the Plaintiff can not recover.

6th. That the contract read in evidence by the plaintiff taken in connection with the evidence that plaintiff occupied the mill under the same, forms an inducement on the part of the plaintiff to the defendants, to extent of the rent, in said contract mentioned: and the jury are bound to allow the same in their verdict or so much thereof as shall have been shown by the evidence to remain unpaid.

7th. If the jury believe from the evidence that the plaintiff occupied the mill under the contract, the plaintiff must show that he has paid the rent; otherwise the defendant is entitled to recover the same in this action - deducting his damages for the imperfect machinery under the rule before laid down.

8- That if the jury believe from the evidence that the main wheel spoken of by the witnesses or the bolt for the manufacture of country work or miscellings on account of the manner in which the same were constructed were insufficient for the purposes contemplated by the contract, then and in that case the plaintiff's damages would only be the necessary expense of repairing said wheel and bolt, the value of the use of the machinery which would be suspended by the process of repairing, the necessary inconvenience and trouble attending the same, and the interest upon such necessary expenditure the value of the use of the suspended machinery and the estimated damages for inconvenience and trouble in making such repairs: provided the jury shall also believe from the evidence that such repairs could have been made at a small expense compared to the cost of the whole machinery, or by the exercise

of reasonable action on the part of the plaintiff.

Which first & last instructions the Court refused to give the defendant excepted to the decision of the Court in refusing to give the said instructions. The jury found the issues for the plaintiff and assessed his damages at \$250. The defendant moved for a new trial which motion the Court overruled, and the defendant excepted & prays this his bill of Exceptions may be signed sealed and made part of the record.

Giles Spring *Edw. B. 3*
1849

And afterwards to wit: on the 19th day of December A.D. 1849 the defendant files the following bond to wit:

"Know all men by these presents that we David Green administrator of the estate of William Madden deceased as principal and William Reddick as security are held and firmly bound unto George Mann in the special sum of one thousand dollars lawful money of these United States for the payment of which well & truly to be made we bind ourselves our heirs & personal representatives jointly and firmly by these presents

Witness our hands and seals this nineteenth day of December A.D. 1849

The condition of this obligation is such that whereas the above obligor at the November term of the La Salle Circuit Court A.D. 1849 in a certain action of trespass upon promises secured a judgment in said Court against the said David Green administrator &c for the sum of two hundred and fifty dollars, besides costs from which judgment said Green administrator &c has prayed an appeal to the Supreme Court of Illinois which was allowed by the Court. Now the condition of the above obligation is such that if the said Green shall pay the said judgment, costs, interest & damages in case the said judgment shall be affirmed in the Supreme Court, and shall also prosecute his said appeal only then the above obligation to be void

otherwise to remain in full force.

Executed before me this
19th day of December 1849
P. Lindley Clk.

Daniel Green 
William Readick 

State of Illinois
La Salle County
P. Philo Lindley Clerk of the Circuit Court
within & for said County do hereby
Certify that the foregoing is
true full and complete copy of the Summons
Declaration. Objections bill of exceptions & all the
orders of court in the above cause as the same
appear on file and of record in my office
In Testimony Whereof I have hereunto
set my hand and affixed the Seal of
said Court at my office in Ottawa
this 6th day of June A.D. 1850
P. Lindley, Clerk



43

manuscript

from

Sadalla Ter. Wier's Ward

Daniel Green address

advt

George Mann Esq.

Filed June 11. 1850.
S. Leland Clk.

Pres. \$8.00

Green vs. Mann

350
150
250

750

17. Picn. 284. 1 -
21. News 342 3 -
7. Sun. 51-4 - - 55=
12. Met. 615 2 -

The Plaintiffs instructions are naught.

They fix no measure of Damages for
the Particulars case.

They permit the Jury to construe the
Contract and to determine what the par-
ties contemplated at the time of its
Execution -

It thus necessarily takes the construction
of the Contract from the Court and leaves
it to the Jury.

The Jury under these instructions are left wholly
at their own discretion in fixing the measure
of Damages.

It is equal to saying -
The measure of Damages is the measure
of Damages.

Appellants. Points

$$\begin{array}{r}
 47\frac{1}{2} \\
 \hline
 924 \\
 \hline
 111 \\
 \hline
 826 \\
 \hline
 21060
 \end{array}$$

21-10
 21-10
 21-10
 21-10

$$\begin{array}{r}
 220 \\
 \hline
 220 \\
 170 \\
 220
 \end{array}$$

or The law is the measure of damages

ex - The measure of damages is just what
the law allows.

or - The measure of damages is the im-
mediate injury sustained as the parties
contemplated in the contract.

The Jury did give Speculative damages
allowed \$750. damages. when the whole
costs and expense of Repairs could not have
Exceeded in any Event \$120.00

Term 1st 3^d division 1850
David Green adm^r &c
v
George Manis sen^r &c
Appeal

And now comes the said appellant
& assigns the following errors which
appear in the record & proceedings
aforesaid

- 1st The court erred in giving each of
five first instructions asked for by
the plaintiff
- 2^d The court erred in refusing the first
instruction asked for by defendant
- 3^d The court erred in refusing the
5th instruction asked by defendant
- 4th The court erred in overruling the motion
for a new trial
- 5th The court erred in rendering the
judgment aforesaid in manner
& form aforesaid

For which errors
& thus manifest in said Record the
said appellant prays that the Judgment
aforesaid be reversed & set aside

Glover & Cook
Pltfs attys

And the said Appellee by E. S. Seland his attorney

comes & says that there are no such errors as above specified
& prays that the Judgment may be affirmed

E. S. Seland for Appellee

Green and
George Mason
Carrington of
Carrington & Jones
in cases -

Fido June 17. 1850.
L. of Lane & Co.

Tenant has no authority to make permanent repairs & charge to landlord without his consent of landlord & charge landlord.

1 Watts, 530
6 Cow 476

Depts instructions limit the measure of damages too much

Seagwick on Measure of dam	112
8 Pick	356
J Raym	77
17 Pick	78
17 Wend	71
8 Taunt	535
2 Denis	625
1858ij 1 Supp p 39 See	122

The instructions of Jeph lay down the correct rule. Seagwick on Measure of dam Chap III

The instructions are the same as set by the plaintiff in the case cited by Jeph 7 Green 51
~~the defendant the position of Jeph in Green 51~~
 See 11th instruction in Green v Stone III Gil 202

Wm. W. Mearns

Autographs