

No. **12220**

Supreme Court of Illinois

Chapin

vs.

Martin

Illinois, et.

{ In Supreme Court }
3^d Grand Division }

William W. Love, &

John P. Chapin, Plaintiffs in Error.

Replevin

vs.
William Martin, Defendant in Error. } Assignment of
Errors.

and now come the said Plaintiffs in Error, by
J. C. Chapman & W. H. Wallace their attorneys
and say that in the Record and proceedings
aforesaid, there is manifest Error, in this:

1. That the said Circuit Court Erred in not
granting a New Trial in said Cause, upon the
merits. Because:

1. The evidence showed, that the defendant
had of the Plaintiffs corn in his possession
the whole quantity replevied, and was
then deficient on his receipts to over
more than 3000 bushels, and the
evidence clearly showed that whether
the corn replevied, was the same
specific corn put into the crib by
the Plaintiffs, or by the defendant
for them, ^{or not} No other person had any
corn in the said crib at the time
of the Replevin.

2. Because the evidence showed a sufficient
demand made.

3^d Because a demand was unnecessary,
the evidence clearly showing that
the deft. had converted a part of
the Plaintiffs corn, and otherwise
misconducted himself as a warehouse
man.

4. Because the defendant had no lien
on the said corn, the same

having been waived by
making a special Contract
in regard to the storage, -
and,
2^d Paid for, and
3^d Forfeited by the defendants
Misconduct as a warehouse
man as above stated.

- 2 That the said Circuit Court Erred in sustain-
ing the defendants demurrer to Plaintiffs 1st
~~2^d~~ 2^d Replications to defendants 3^d Plea.
- 3 That the said Court erred in sustaining
the said defendants demurrer to the Plaintiffs
2^d Amended Replication to defendants
3^d Plea.

4 Because the said Circuit Court Erred in refusing
to give the instructions asked for by the Plaintiff,
and which are marked on the margin, opposite each
instruction so refused, with the word "Refused"

5 Because the said Circuit Court Erred in the
giving of the 2^d Instruction given by the Court,
being the 2^d Instruction next following the
words, "Given by the Court,"

6 That the said Circuit Court also Erred in
the giving of each of the Instructions asked
for by the defendant, being the Instructions
in said Record, next following the words
therein "The defendant also asked the Court
to instruct the Jury as follows," on the
margin of which the word "given" is written, and
being from No 1 to No. 18, inclusive, & including
between Ins. no + Ins no the Instructions

marked (A) & (B).

- 7 The said Court Erred in not granting a new trial in ^od cause
and for other Errors apparent on the
face of said Record.

J. C. Champion &
W. H. Wallace.

Attys. for ~~the~~ in Error

And since deft Martin

joins in error J. L. Dickey for deft

U. S. Sup. Court.

Wm. W. Lacey &

John P. Chapin

Plffs in Error

vs.

William Martin,

Def't in Error

Assignment of Errors

J. C. Champion &

W. H. L. Wallace

attys for Plffs in Error

State of Illinois } Pleas before the Honorable
LaSalle County } Edwin S. Leland Presiding Judge
of the ninth Judicial District
of the State of Illinois at a Circuit Court Commenced
and held in and for the County of LaSalle at the
Court House in Ottumwa in said County on Monday
the first day of November, in the year of our Lord
one thousand eight hundred and fifty two.

Present

The Honorable Edwin S. Leland Presiding Judge

Be it remembered that hereupon to wit on the
7th day of October 1882 the following affidavit was
filed in the office of the Clerk of said Court to wit;

State of Illinois } William M. Lusk being duly sworn
LaSalle County } on oath deposes and says that he
and John P. Chapin are the owners of
about six thousand bushels of corn part in the
ear & part shelled now in a warehouse and car
sit in the town of LaSalle in said County that said
corn is worth about twenty four hundred dollars
that the same is unlawfully detained by William
Morton of said County and that the said corn has
not been taken for any tax assessments or fine
levied by virtue of any law of this State nor seized
under any execution or attachment against the
goods and chattels of this affiant and said Chapin
or either of them liable to execution or attachment
Subscribed & sworn to before me
this 7th day of October 1882 W. M. Lusk
Presiding Clerk

"State of Illinois LaSalle County & Circuit Court,
County to November Term 1832.

William Martin
Defendant in this suit was summoned to answer
unto William W. Low and John P. Chapin of a plea
wherefore he detains the goods and chattels and
corn of the said plaintiffs and thereupon the
said William W. Low and John P. Chapin
Complain

For that the said defendant heretofore
to wit on the 7th day of October A.D. 1832 at this
County aforesaid unlawfully detained the
goods and chattels of the said plaintiffs to wit,
Six thousand bushels of corn of great value to wit
of the value of twenty four hundred dollars
and still detains the same against wages
and pledges unto &c to the damage of said
plaintiffs of twenty four hundred dollars
Wherefore they bring their suit &c
W. W. Low
John P. Chapin

The above plaint was filed on said 7th day of
October 1832; and afterwards to wit on the same
day the following writ issued to wit,

State of Illinois } The People of the State of Illinois
County of LaSalle } To the Sheriff of said County
Greeting
Whereas William W. Low
and John P. Chapin plaintiffs Complain that
William Martin defendant unlawfully and wrongfully
does detain the following described goods and chattels

to wit; about Six thousand bushels of corn part in the
ear and part shelled, in a ware house and Corn
crib in the town of LaSalle in said County of the
value of Twenty four hundred dollars.

Therefore We Command you, that if the
said plaintiff shall give you bond with good and
sufficient security in double the value of said goods
and chattels, as required by law, to prosecute his suit
in this behalf to effect and without delay and to
make return of the said goods and chattels, if
return thereof shall be awarded, and to save and
keep you harmless in restoring said goods and
chattels you cause the said goods and chattels to be
replevied and delivered to the said plaintiff without
delay; And also that you summon the said defendants
to be and appear before the Circuit Court for said
County on the first day of the next term thereof to be
held at Ottawa in said County on the first day of
September next to answer said plaintiff in the
premises, And you save them and them this writ
with an endorsement thereon in what manner you
have executed the same, together with the bond
which you shall have taken from the said plaintiff
as before commanded, before executing this writ.

Witness This Sundry Clerk of our said
Court and the Seal thereof at Ottawa
in said County the 7th day of October 1832
D. Sundry Clerk

On the back of said writ the Sheriff made the
following return to wit; " Executed this writ by
taking two thousand and one bushels & 1/2 of Corn
and delivering the same to William W. Low and of

reading to defendants October 8th 1852

R. E. Girdell Siff
W. H. Valentine Depy

Serv + return 60

Bond 50

Exp with 50

30 miles 1.50
3.10 "

"Filed Nov. 8th 1852"
"Girdell & Co"

Defendants demur to plaintiffs declaration as
filed on the 3^d day of November 1852 in the words and
signing following viz:

"LaSalle les Citoyens Cont. & Cor. Term 1852
William Martin }

ad

William W. Larr & John P. Chapin } And the said defendants by Hoes
& Hollister his attorney comes and
defends the same and ^{shows} and
says that the said declaration and the matters ~~therein~~ ^{containing}
contained in manner and form as the same are
above stated and set forth are not sufficient in law
for the said plaintiffs to have or maintain their
aforesaid action ~~there~~ against him the said
defendant, and he the said defendant is not bound
by law to answer the same, and this he is ready
to verify wherefore by reason of the insufficiency of
the said declaration in this behalf the said defendant
prays judgment and that the said plaintiff may be
barred from having or maintaining their aforesaid
said action ~~there~~ against him.

And the said defendants according to the form of the Statute in said case made and provided States & Shews to the Court here the following causes of damages to the said declaration, that is to say

- 1st - The said declaration does not allege or show that the said defendants at any time before the commencement of the Suit, or at any other time ever received into his possession the goods and chattels that is to say the Corn mentioned in said declaration as the Corn of the said plaintiffs
- 2nd - The said declaration does not allege or show that the said defendant at any time received the said Corn of and from the said plaintiffs or of and from any other person or persons for the said plaintiffs
- 3rd - The said declaration does not allege or show that the said defendant received or took the said Corn from the said plaintiffs or from any other person or persons to be delivered to the said plaintiffs
- 4th - The said declaration does not allege or show that any demand or request was ever made for said Corn
- 5th - The said declaration does not allege or show any refusal on the part of the said defendants to deliver on a demand made for said Corn
- 6th - The declaration does not allege or show that the Corn mentioned therein was ever in the possession of the defendants
- 7th - The declaration does not show in what capacity the defendants took the Corn, whether as sailors or firemen or by delivery
- 8th - The declaration alleges that on the 7th day of October AD 1833 the said defendants unlawfully detained

the said Com and still detains the same against
jurers & pledges until &c
And also that the said
declaration is in other respects uncertain, informal
and insufficient &c

Wm Coss & Collectors
Depts Atty

On the 8th day of November 1852 the said, which
Sheriff took from plaintiffs; was filed, and is in the
words and figures following viz;

"From all men by their parents that we William W.
Low and John P. Chapin of the County of LaSalle & State
of Illinois are held and firmly bound unto R. E.
Goodell Sheriff of said County in the penal sum of
four thousand eight hundred dollars for the payment
of which well and truly to be made we do hereby
bind ourselves our heirs & executors & Administrators
jointly & severally firmly by their parents. Sealed with
our Pleads and dated this 8th day of October A.D. 1852

The condition of the above obligation is such
that whereas the above bounden William W. Low
and John P. Chapin have and out of the office of
the Clerk of the Circuit Court in and for the County
and State aforesaid a writ of replevin against
William Martin directed to the Sheriff of said
County directing him to reply the following
described goods and chattels to wit; about 24
thousand bushels of corn part in the ear and
part shelled in a ware house and corn crib in
the town of LaSalle in said County unlawfully
& wrongfully detained by said William Martin

of the value of twenty four hundred dollars which
said writ is writ to be executed by said Sheriff
of said County. And if the said William W.
Loy & John P. Chapin shall prosecute the aforesaid
writ to effect and without delay and make
return of the aforesaid goods and chattels if return
thereof shall be made and said writ and
damages the said Sheriff in enforcing the aforesaid
goods and chattels then the above obligation to be
void, otherwise to be and remain in full force
and effect.

In Testimony Whereof the said William
W. Loy and John P. Chapin have hereunto
set their hands and seals the day and year
above written

Wm. Loy	Seal
John P. Chapin	Seal
C. J. Chapman	Seal
C. L. Martin	Seal
Isaac S. Hanson	Seal

And afterwards to wit, on the 16th day of November 1832
the same being one of the days of the month term
of said Court, the following proceedings appear
of record viz:

William W. Loy & 2
John P. Chapin 2
" 1
William Martin 1

On motion of plaintiffs
Chapman & Hall & their
attorneys it is ordered that an attachment issue
for Isaac R. Webb, James Fenner, Quinn Mc Cormick
William C. Valentine, Herman Baldwin, Francis R.

Down. Petrus Remond and George M. Moore to
bring them forth before the Court to testify & the
truth to speak on behalf of the plaintiffs in this
cause. Also to appear for their Country if we
not appearing before this Court when lawfully
summoned to do so

And again on Friday November 19th 1832 the same
being one of the days of said term the following
further order appears of record in said cause
that is to say

William M. Low	2	Replier	On motion of plaintiffs by Champlin & Haller their attorneys the defendant is ruled to plead herein by to morrow morning
John P. Chapin	2		
William Martin	3		

And afterwards to wit on the 20th day of November
the same being one of the days of said term of Court
the following further order was entered of record

William M. Low	2	Replier	This day again came the plaintiffs of Champlin & Haller their attorneys & the defendant by Ross & Hollister his attorneys enter a motion to quash the writ herein for want of a sufficient affidavit & send. thereupon
John P. Chapin	2		
William Martin	3		

motion of plaintiffs attorneys it is ordered that they
have leave to file an amended bond herein by the
first of January next and that the defendant be
ruled to plead by the fifteenth of January next.

On the 3^d day of January 1853 the defendant by
his counsel filed his pleas in words and figures
following to wit;

"In the LaSalle Co Circuit
Court to Nov Term A.D. 1852

Williams Martin

vs
The said defendant by Messrs
William W. Low & Hollister his attorneys says
John P. Chapin } that he did not nor does he
detain the goods and chattels
in the said declaration mentioned or any or
either of them or any part thereof in manner and
form as the plaintiffs have upon complaint
against him and of this the defendant puts
himself upon the Country &c
And the plaintiff doth the like
Chapin & Hollister for plaintiffs

And for a further plea in this behalf the defendant
says act &c &c because he saith that the said
goods and chattels in the said declaration men-
tioned at the said time when &c were the
property of him the said defendant and not of the
said plaintiffs as by the said declaration is
above supposed, and thus the said defendant is
ready to verify wherefore he prays judgment of the
said plaintiffs ought to have or maintain this

aforsaid action thing against him, And he also
prays a return of the said goods and chattels
together with Costs in this behalf according to
the form of the Statute in such case made
and provided to be adjudged to him &c
Does & Collates

15th Atty
And for a further plea the said defendant says
acted in because he says that the said
defendants before and at the time when &c
in the said declaration mentioned was a
warehouseman & Store of produce for him
according to the Customs of merchants in
that behalf and that as such warehouseman
& Store of produce for him according to the
Customs of merchants he the said defendant
was possessed of said Corn in plaintiffs declaration
mentioned in Store as the property of the plaintiffs
and that said Corn at the said time when &c
according to the said Customs of merchants
was then and then subject to a hire or charge
in favor of the defts for Storage and warehouse
charges due from the plaintiffs to this defendant
amounting to a large sum of money to wit: the
Sum of Seven thousand Dollars. Wherefore the
defendant so being such warehouseman as
aforsaid detained the said Corn in order to
secure of such hire as aforsaid & to receive the
payment of the same as by lawfully might
for the cause aforsaid wherefore defendant
prays judgment &c & a return of the property
&c
Does & Collates
Atty

Saturday May 14th 1833

William W. Lunt &
John T. Chapin

vs
William Martin

} Poplin

This day came the
plaintiffs of Chapman &
Wallace their attorneys & made a motion for
leave to reply docket to defendants third plea
which motion is granted by the Court

And afterwards to wit: on Thursday the 12th day
of May 1833 the same being one of the days
of said the May term of said Court for the
year 1833 the following petition and appears
of record in said Court viz:

William J. Low & 3
John F. Chapin 3
vs
William Martin 3

This day being the
defendants by Dickey his
attorney enters a motion to quash the writ herein
on account of the insufficiency of the the land
taken by the Sheriff - And on application of plaintiffs
by Champlin & Wallace their attorneys it is ordered
that they have leave to file an amended writ
in this cause by Tuesday morning next

On the 14th day of May 1833 the plaintiffs attorney
files the following Affidavit viz:

"May T. LaSalle Cin Court 1833
Low & Chapin 3
vs
Martin 3

J. C. Champlin being
duly sworn on oath saith that he
is of counsel for plaintiffs in this cause & that he
believes the facts stated in the special replication to
defts 3rd plea which he proposes to file, to be true
in substance and effect and that he also believes
that it is necessary to a fair trial of this cause
that the said plaintiffs should have leave to
traverse the said 3rd plea

Subscribed & sworn to before me
this 14th day of May A.D. 1833
Rundle Clerk

J. C. Champlin

+

Now comes the replication of plaintiffs filed on
the said 14th day of May 1833, and is in the
words and figures following to wit:

"Lons & Chapin & Mary T. LaSalle vs. Court & D
1833 - Replein

Now comes the said
plaintiffs of Champlin & Wallace
their attorneys and as to the said second plea of the
said defendants say precludi' me because they
say that the said Corn at the time when it was
the property of them the said plaintiffs and not of
the said defendants and of this they put themselves
on the Country - And the said Dickey

And the said plaintiffs as to the third plea of the
said defendants by him were pleaded say
precludi' me because they say that the said
defendant before the time when it had issued
to the plaintiffs for value received to wit: the
value of the Corn specified in the receipts hereinafter
mentioned by the name of Lons & Chapin and by the
name of W. W. Lons and by the name of J. H. Lons
and by the name of W. W. Lons, receipts

Commonly called warehouse receipts for a large
quantity of Corn to wit: two thousand five hundred
bushels of Corn more than the said defendants had
in store for the plaintiffs or under his control
for them or had delivered to them or their order, as

which was then and there of great value
to wit of the value of two thousand dollars

the time of the execution of the writ of replevin in
this cause ~~which was then and there of great value~~
~~to wit of the value of ten thousand dollars~~ the
said two thousand five hundred bushels of corn
deficient as aforesaid being over and above the
whole quantity replevied in this suit - and the
said 2500 bushels of corn deficient as aforesaid
being then and there to wit at LaSalle aforesaid
on the 7th day of October AD 1832 of the value of
twenty hundred dollars, and the said plaintiffs
in fact say that there was not at the time of the
execution of said writ of replevin to wit at LaSalle
aforesaid on the day and year aforesaid a sum due
to the defendants for storage as supposed in said
plea equal to the value of said twenty five hundred
bushels of corn, so deficient as aforesaid and to
the said plaintiffs in fact say that there was not
due to the said defendants at the time when
is the said sum of ten thousand dollars for
storage as is in said plea supposed nor in
fact any sum whatever and this they are ready
to verify wherefore they pray judgment &c

And for answer and further replication to the said
defendants third plea aforesaid by special leave
of the Court &c. the said plaintiffs say precludi-
non because they say that there was not at the
time when is the said supposed said corn in
said plea mentioned existing in favor of said defendants
for storage and ware house charges on said corn
to the said sum of ten thousand dollars or any
part thereof nor for any sum whatever and of this
they the said defendants put themselves on the Country
Champlin & Wallace
Attys for Pltts

On Wednesday November 23, 1834 the same
being one of the days of the November term of said
Court the following matters appeared of record in
said Cause viz:

William N. Lom &
John P. Chapin

vs
William Martin

} Replevin

This day came the
plaintiffs & Champly
their attorney & the defendants & Dickey his
attorney and after hearing the arguments of
Counsel on defendants demurr to plaintiffs
replication the Court do sustain said demurr.

The plaintiffs amended replications were filed in
the records and signs following, on the 9th day of
December 1833 to wit:

Lom & Chapin } Ser T. LaSalle Cin Court AD 1833
" } [Replication to 2^d plea, is the 1st replication
Martin } filed May 14th 1833]

1st Amended
replication to 3^d plea

And the said plaintiffs as to the
third plea of the said defendants which alone pleaded
such preclusion, because he says, that the said
defendants, to him such were housemen as is
mentioned in said plea, before the time where
to wit, on the 23^d day of March AD 1833 at LaSalle
in the County of LaSalle & State of Illinois issued
to the plaintiffs in this suit by the name & style of

Low & Chapin a certain warehouse receipt or vouchers
in substance & effect following, that is to say; No.
1300 LaSalle March 23^d 1832 received in Store of
B. A. & L for tickets taken up. Twenty three hundred
and forty eight ⁷⁰/₁₀₀ bushels ear corn for account of
Low & Chapin at their risk of fire W^m Martin by
D. P. Bell 7348 ⁷⁰/₁₀₀ bushels & and that said
plaintiffs in fact further say that the said
defendants to wit, such warehouseman afterwards
to wit on the 23^d day of March AD 1832 at LaSalle
aforesaid issued to the plaintiffs a certain other
receipt or vouchers in substance & effect as follows
to wit, No 1301 LaSalle March 23^d 1832
received in Store of B. A. & L for tickets taken up
eight thousand hundred and twenty seven ⁵⁰/₁₀₀ bushels
W^m Can for account of Low & Chapin at their
risk of fire W^m Martin by D. P. Bell 8377
bushels & and the said plaintiffs in fact further
say that the said defendants afterwards to wit on the
16th day of June AD 1832 at LaSalle aforesaid
issued to the plaintiffs by the name of N. W. Lee
a certain other receipt or vouchers in substance
and effect as follows that is to say No. 57 LaSalle
June 16th 1832 Received in Store of Baldwin
& Adams Lake tickets up two hundred & twenty
six ⁷⁰/₁₀₀ bushels of ear corn for account of
N. W. Lee at his risk of fire W^m Martin by
D. P. Bell 1096 ⁷⁰/₁₀₀ bushels & and the said plaintiffs
in fact further say that the said defendants to
wit, such warehouseman afterwards to wit on
the 16th day of June AD 1832 at LaSalle aforesaid
issued to the said plaintiffs by the name & style
of N. W. Lee a certain other receipt or vouchers
in substance and effect as follows No 59 LaSalle

June 16th 1832 Received in Store of B. A. & L
Sawntons hundred & eighteen 36 bushels of Shell Corn
for account of W. W. Low at his risk of Jere Wm
Martin by D. P. Bell 1118 36 bush &

and also for that whereas the said defendant do
bring such merchandise afterwards to wit on the
1st day of July AD 1832 at LaSalle aforesaid
issued to the plaintiffs by the name of W. W. Low
a certain other receipt or vouchers in substance
and effect as follows to wit: do 6th LaSalle July
1st 1832 Received in Store of B. A. & L for
tickets up one hundred & thirty nine 36 bushels
Shell Corn for account of W. W. Low at his risk
Wm Martin by D. P. Bell 131 36

and the said plaintiffs in fact further say that the
said defendant do bring such merchandise
afterwards to wit on the 1st day of July AD 1832
at LaSalle aforesaid issued to the said plaintiffs
by the name of W. W. Low a certain other
receipt or vouchers in substance and effect as
follows that is to say do 6th LaSalle July 1st 1832
Received in Store of B. A. & L for tickets up forty
four bushels of ear corn for account of W. W. Low
at his risk Wm Martin by D. P. Bell 44 bush. &

and the said plaintiffs in fact further say that
before from the said 23rd day of March AD 1832
and from thence to the commencement of this
suit they were and still are largely engaged in
the business of grain factors that is to say in
buying, storing and selling grain and especially
corn at various points from Chicago in the
State of Illinois along the Illinois & Michigan
Canal & Illinois river to Peoria in the same State

all of which the defendants then and there will
know: and the said plaintiffs in fact further say
that they the said plaintiffs on the faith of the
aforesaid receipts so issued to them by the defendants
and of his bona fide having in store for their
accounts all the Corn mentioned in the aforesaid
several receipts paid to and settled with the firm
of Baldwin Adams & Lake of LaSalle aforesaid
for the full market value of all the Corn men-
tioned in the aforesaid receipts and each of them
to wit: to the amount of ten thousand dollars
to wit at LaSalle aforesaid on the first day of July
A.D. 1882 as the defendant then and there well knew
and the said plaintiffs in fact further say that
all the Corn mentioned in the said several receipts
or so much thereof as the said defendants were
received in store was purchased with the money
of the said plaintiffs and the said sum of ten
thousand dollars so paid to and settled with the
said Baldwin Adams & Lake for & on account of
so much corn as is mentioned in all of said
receipts was then and there the money of said plaintiffs
all of which the said defendants then and there
will know - and the plaintiffs had before the
said 23^d day of March A.D. 1882 contracted with
the said defendants to store a large quantity of
Corn for them and the said W. W. Lowmeyer
made any contract whatever with the defendants
to store corn on the separate accounts of him the
said Low as he the said defendants then and
there will know. And the said plaintiffs in
fact further say that the said defendants never
had in store for their accounts or for the
account of either of them all the Corn mentioned

in the said several receipts but only a part, changed
and a part thereof to wit five thousand bushels of corn
part of the corn mentioned in the said several
receipts the said defendants never did have in
store for the said plaintiffs or for their account
or the account of either of them. as for the said
defendants then and there well knew. and the
said plaintiffs in fact further say that the said
defendants spent the said receipts and each of
them falsely & fraudulently and with an intention
then and there to deceive and defraud the
said plaintiffs. And they in fact further say
that they were deceived and defrauded thereby in
the sum of two thousand one hundred dollars
and the said plaintiffs further say that afterwards
to wit on the 6th day of October A.D. 1832 at LaSalle
aforesaid they demanded of the said defendants
all the residue of the corn mentioned in said
several receipts which had not theretofore been
delivered to them & which remained in store
with & defendants which residue so remaining
in store was to wit the quantity of two thousand
~~four~~ one & 50 bushels of corn. and although demanded
the said defendant did not nor would deliver
the same or any part thereof to the said plaintiffs
although the defendants then and there had in
store a part to wit 2000 50 bushels of corn of the
said plaintiffs & bringing to them & of great
value to wit of the value of \$2000.00. but
utterly neglected and refused so to do to the
damages of the said plaintiffs of the said
sum of two thousand one hundred dollars
and so the said plaintiffs in fact say that

By reason of the fraudulent and unfaithful conduct
of the defendants aforesaid he was not entitled to
reclaim the possession of the said Corn in the said
third plea mentioned for the cause in said
plea alleged: and this they the said plaintiffs
are ready to verify wherefore they pray judgment
&c
J. C. Champlin
Atty for Plffs

And the said defendant Wm. Meath by Dickey
his attorney says that the plaintiffs sent
unavailing replication to defendants third plea
& the matters contained in said replication
are not in law a sufficient answer to said
3^d plea and that plaintiff ought not by reason
thereof to have and maintain his action
aforesaid all which he is ready to verify &c
T. L. Dickey
for Df

And plaintiff joins in demurrer
J. C. Champlin
for plffs

2^d replication to the third plea.
And for another and further replication to the
said defendants third plea, the said plaintiffs
by special leave of the Court say preclude now
because they say that there was not at the time
when &c due to the said defendants from the
said plaintiffs the said sum of ten thousand
dollars or any part thereof for and on account of
storage of the Corn mentioned in said plea
nor was there any in fact any sum
whatever to be from the plaintiffs to the

defendant on account of such Storage, and of
this they the said plaintiffs put themselves upon
the Country

Chapman & Wallace
Plffs Atty
And defendant doth the like
Dickey

And afterwards to wit: on the last day aforesaid
the same being one of the days of the summer
term of said Court for the year 1853 the following
order was entered of record in said cause viz

William W. Lons 3
John P. Chapin 3
" 3 Replines
William Martin 3

This day again came
the plaintiffs of Chapman
their attorney & of each of the Court filed their first &
second amended replications. Whereupon defend-
ant by Dickey his attorney comes and files a
demurrer to plaintiffs said first amended
replication, and after hearing the arguments
of counsel the Court sustains said demurrer.

Monday December 26th 1853

William W. Lons 3
John P. Chapin 3
" 3 Replines
William Martin 3

This day the plaintiffs
of Chapman their attorney
make an application to have the trial of this cause

postponed, which motion is overruled by the Court.
And on motion of plaintiffs Counsel it is ordered
by the Court that the witnesses attached in this cause
be discharged and that the plaintiffs pay the
costs of said attachment.

December 27th 1833

William W. Low & 2
John P. Chapin 3
" 3
William Martin 3

Replein
And now on this day
came the following jury of
a jury to wit: Miles Rouse, John T. Blake, J. H.
Pudington, Josiah Keale, George Meunier, J. C. Shaw
Amos Thorne, J. T. Conland, Mrs. Carter, Platt
Thorn, G. B. Meay and Wright Knapp who are
duly elected tried and sworn to well and truly try
the issues herein according to the evidence
And the further hearing of this cause is
postponed until to morrow morning

December 28th 1833

William W. Low & 2
John P. Chapin 3
" 3
William Martin 3

Replein
This day again came
the parties hereto by their
attorneys together with the jury sworn herein
and after hearing a part of the evidence the
further hearing of this cause is postponed
until to morrow morning

December 29th 1853

William M. Linn
John P. Chapin

Replein

William Martin

This day again come the parties hereto by their attorneys together with the jury sworn herein and after hearing the evidence further in this cause, the hearing of this cause is postponed until to morrow morning.

December 30th

William M. Linn
John P. Chapin

Replein

William Martin

This day again come the parties hereto, together with the jury sworn herein, and after hearing a part of the evidence the further hearing of this cause is postponed until to morrow morning.

December 31st 1853

William M. Linn
John P. Chapin

Replein

William Martin

This day again come the parties hereto by their attorneys together with the jury sworn herein and after hearing the balance of the evidence & a part of the arguments of counsel the further hearing of this cause is postponed until one & a half o'clock, P.M.

on Monday next

Monday January 2^d 1834

William M. Lons 3
John P. Chapin 3
as 3
William Martin 3

Replein

This day again come the parties hereto by their attorneys together with the jury some herein and after hearing the balance of the arguments of counsel the jury retire to consider of their verdict

January 3^d 1834

William M. Lons 3
John P. Chapin 3
as 3
William Martin 3

Replein

This day again come the jury who return the following verdict to wit: That the jury find the issue in favor of the defendant and assess his damages at one cent. Thereupon the plaintiffs by their attorneys enter a motion for a new trial, which motion is overruled by the Court. It is therefore considered by the Court that the defendant pay and receive of the plaintiffs one cent for his damages and his costs and charges of his herein & provided that he have execution therefor; and that a writ of Habeas Corpus return issue

Saturday January 7th 1834

William W. Loring &
John P. Chapin }
v. } Replein
William Martin }

This day again comes
the plaintiffs by Champolin
their attorney and tender to the Court a bill of
exceptions hereto, which is objected to by defendants
attorney as being incorrect, and therefore the
Court takes time to examine the same in
vacation.

And here comes the bill of exceptions in words
and figures following, that is to say:

William N. Loom & Son v. Simon Lussall
John P. Chapin & Cyrus Cook AD 1833
" " & Replevin
William Martin }

Be it remembered that
on the trial of the issues in this
cause, the plaintiffs to maintain the said issues on
their part, read in evidence to the jury the writ of
replevin in this cause and the Sheriff's return to
the same, from which it appeared the said writ
was dated the 7th day of October AD 1832 and the
Sheriff's return to the same stated the said writ
to have been executed on the 8th day of October
AD 1832 by replevying, from deft. and delivering to
plaintiffs 200 bushels of Corn

Valentine - The Plaintiffs then called William N.
Valentine as a witness, who upon being sworn
testified that he was the deputy Sheriff who executed
the said writ, that the same was delivered to
him by return on the 8th day of October, 1832 but
that he could not be certain as to the day and
that on the morning of the day on which he
executed the writ he called on Simon Crepinges
to assist him in executing the writ by taking
charge of the Corn and assisting to weigh it on
board of a canal boat for shipment to the
plaintiffs at Chicago

Valentine further testified that he told Crepinges
that Loom one of the plaintiffs would pay him for
his services, and that Crepinges assisted him
accordingly

Valentine further testified that the Corn replevied
in this suit was replevied from a crib belonging

to defendant situated in the town of LaSalle & County
of LaSalle, on the Steam Boat basin and that
Valentine was present when the scales were got, and
the weighing commenced, and at the time the
nitrip took the corn and Martin insisted he
had a right to keep the corn till the charges
were paid. Martin insisted he had a right
to keep the corn until the charges were paid
and he ^{and} Lee had a row about it

Crapinger = The said Simon Crapinger was called as a nitrip by
Plffs & sworn & testified that the weighing of the said corn
was completed upon the 13th day of October AD 1832 and
that it was on that day shipped on board a canal
boat of which one Parkhurst was Captain to the
plaintiffs at Chicago and that the quantity was
609 ³/₅ bushels of shelled corn and 1489 ⁵/₈ bushels
of ear corn. He further testified that they were
engaged only three days in loading the corn and that
the corn was replenished from the crib spoken of by
Valentine. The weights were 70 pounds of ear corn
and 56 pounds of shelled corn per bushel. He procured
the scales for weighing of Kern & Cott. There were also
bins about the crib which looked as though they had
recently been thrown out of the crib. All the corn was
taken from the crib, and all the corn in the crib was
replenished. When we left the crib we fastened it up
and there was no appearance of any corn having
been taken from the crib except what we weighed
out.

Dean = F. A. Dean was called and sworn as a nitrip for
plaintiffs and testified that he was a clerk for the
firm of Baldwin Adams & Lake of LaSalle from
the 13th of December AD 1831 to the 16th of June AD

1832. and that the plaintiffs agents at LaSalle for
buying grain during that time were the said firm
of Baldwin Adams & Lake and that he the said
Martin kept the books of Baldwin Adams & Lake
which contained a record of all the grain bought by
Baldwin Adams & Lake for the plaintiffs which was
stored with defendant between those dates. And that all
the corn that was bought by Baldwin Adams & Lake
for plaintiffs was stored with Martin. He further
testified that the plaintiffs commenced buying
the corn stored with Martin of the said 13th day of
December A.D. 1831 and ended on the said 16th day of
June A.D. 1832.

He further testified that the corn bought for
plaintiffs & stored with Martin was generally bought
by some of Baldwin Adams & Lakes Clerks of the
farmers on the street that however it was sometimes
bought by Adams, and sometimes by Martin himself
that when bought, the price was agreed on, and the
farmer buying gave the farmer a ticket stating the price
per bushel agreed on. That the corn was for the
plaintiffs and the farmers name, and the farmer
was then directed to go to Martins and have his corn
weighed and received in store of Martin, that
upon the farmers doing this he received from Martin
or his Clerk a ticket or warehouse receipt specifying
the number of bushels of corn, and on whose account
it was received, and which warehouse receipt was in
form like the warehouse receipts hereafter set out in this
bill of exceptions. They also expressed the fractions of a
bushel in the same way as the receipts hereafter set
out. After the farmer had received this receipt he
came with it to the store of Baldwin Adams &
Lake and received the money from them for the number

of bushels of Corn mentioned in the receipt at the price that had been agreed on

Dean Johnston testified that he had personal knowledge of several loads of Corn so brought for plaintiffs having been at various times delivered into the crib of Meentun that has been spoken of by Palentine & Sleepingers but he could not tell how many loads he had personal knowledge of having been so delivered in. He further testified that he was very frequently during the time this Corn was purchasing down to Meentun's ware house & crib as often he should think as once a day, and although he could not say how many loads he had seen delivered into the ware house & crib for plaintiffs he knew he had seen more than a hundred bushels so delivered in. Dean Johnston testified that only ear corn was stored in the crib and he thought that only ear corn was stored in the Sisson factory adjoining the crib hereafter spoken of and that all the Shelled Corn which & oats were stored in a large stone ware house occupied by the defendants hereafter spoken of. The weighing was done by Meentun or his men and Baldwin Adams & Lake had nothing to do with the weighing.

Sisson - Edward Sisson was called and sworn as a witness for the plaintiffs and testified that about the 1st of October A.D. 1832 the witness called on Meentun and inquired of him where he could get the building called the "Sisson factory" which is a one story white building standing side and adjoining the Crib before spoken of and is about 60 feet deep running back from the basin parallel with the crib, and about 40 feet wide fronting on the basin but is divided in two lengths so as to make in effect two buildings each 20 feet

four, and about 5 ft deep and which building the witness stated he had hired for the purpose of establishing a salaratus factory in it, and to that inquiry Martin replied that he could have the building, as soon as Lou gave him orders to ship his corn. He also testified that there was a hole cut through the walls from the crib into the Sifon factory and that he inferred corn had been pulled out of the crib into the Sifon factory, that there was about 200 bushels pulled out when he saw it. The Sifon house was then in the possession of Martin, the witness saw them pulling corn at the crib. He visited the Sifon house of Henry and said he presumed the Shell Corn was Louis. He said when he applied to Martin for the house Martin replied he was waiting for Lou to give him orders to ship the corn. He saw the ear corn in the factory before he saw the Shell Corn there and before he applied to Martin for possession of the factory.

Walter Briggs a witness for the plaintiffs also testified that he had at various times in the fall of 1882 seen Martins men pulling corn out of the crib and Sifon factory, sometimes by horse power and sometimes with hand power.

Baldwin - Herman Baldwin of the firm of Baldwin Adams & Lake before spoken of was also called & sworn as a witness for the plaintiffs and testified that the said firm of Baldwin Adams & Lake were the plaintiffs agents at LaSalle for the purchase of all grain purchased by them there, that he was well acquainted with Martins business who was a merchantman and that all the grain purchased by plaintiffs at

Lafayette was shown with Martin, that he had seen ear-
corn of the plaintiffs stored in the crib of Martin
that has already been spoken of and that Martin's
main large business was for the plaintiffs that he
learned from his acquaintance with Martin being
that he could not have stored any considerable quantity
of grain for other parties without his (the witness)

knowing it and that he thought Martin did not
store any considerable quantity of grain between
1st Dec 54, and June 52 except for plaintiffs.

He had seen stored about 500 bushels of corn
in the crib, by Baldwin Adams & Lake of Dan-
bury which they had sold Low & Chapin before the
replevin, and he had also stored some oats for
George, who provided oats for teams engaged in trans-
portation in the canal, also that Martin stored some
300 or 400 bushels of corn lot of Wallace & stored on
acre of Baldwin Adams & Lake [which Wallace com-
Adams, a member of the firm of Baldwin Adams
& Lake testified was sold by that firm to R. G. Parks
Co in the Spring or in the month of June 1852]
Baldwin further testified that the Dan-
bury corn was included in the receipts given by Martin hereafter set
out including the last receipts. My impression is
that 2 or 3 farmers stored their crop there, could
not give an idea of the quantity.

Baldwin further testified that about the time plaintiffs
commenced buying corn and storing it with
Martin, Martin was indebted to John S. Newbome
of Chicago in the sum of \$1000, and that the then
firm of Baldwin Chapman and David S. Knapp
of LaSalle were securities for the payment of the
\$1000 to Newbome, that for the purpose of providing
for the payment of the \$1000 to Newbome witness made

an arrangement with Meakin by which all the winter storage that should accrue ^{on} the grain stored by plaintiffs with Meakin should be secured to the witness Baldwin to enable him to take up the unknown indebtedness of Meakin, and that the arrangement was as follows, that Meakin gave witness an order or draft on Sam Chapin for the amount of said winter storage, which was produced by the witness and read in evidence to the jury as follows

"LaSalle, Dec 13, 1851

Wm Sam & Chapin will please settle the amt of the storage that ~~will~~ accrue on grain storage for their account during the winter of 1851 & 1852 with Wm Baldwin Adams & Lake

Wm Meakin"

After having found the signature of the defendant Charles Baldwin further testified that some time after the said draft was executed and delivered to him he presented it to the plaintiff Sam for acceptance who accepted it in the ^{mannor} ~~maner~~ that the copy above set out purports. We also further testified that sometime during the month of June AD 1852, Meakin rendered him an account in full of all the winter storage and warehouse charges, on all the grain that had been bought through Baldwin Adams & Lake for the plaintiffs and including all the grain covered by said receipts hereafter set out and the last receipts hereafter spoken of and up to the 1st of June AD 1852 and that the said account amounted to the sum of \$886.29 and that he afterwards stated the amount of said account to the plaintiff Sam who ascribed to its correctness. Baldwin further testified that of the indebtedness

to Newhouse \$500 had been paid by the proceeds of a draft for that amount drawn on the plaintiff Chapin on account of said Martin's Storage and \$500 had been paid by Martin himself. He further testified that Martin at the time of giving the order was indebted to Baldwin Adams & Lake in the sum of \$178 and that upon the order being accepted by Saw as before stated he credited Martin with that amount in full on their books and considered it paid so far as Martin was concerned and that he was under obligations to pay the residue of the draft for Martin's benefit when received (to Newhouse on account of a further indebtedness of Martin to Newhouse) but did not consider himself under obligations to Martin to pay such residue to Newhouse until it was received of plaintiff. He further stated that he had applied to Saw for the payment of the residue of the draft and Saw had declined to pay it and had never yet paid it, and said he would not pay the balance until the grain was shipped, and that he still looked to the plaintiff for the payment of the balance of said draft.

Baldwin further testified that he did not receive the draft as cash, but received it the same as any other draft in the course of business and never supposed they had any account in Martin for the balance of the draft until they had exhausted their remedy against Saw & Chapin, and that after the acceptance of the draft by Saw he credited Martin with the balance of \$386.29 on their books & squared the books.

He further testified that the account of \$386.29 rendered by Martin embraced about 30,000 bushels of grain consisting of Shell & ear corn, rye, all the ears, corn mentioned in the receipts also wheat and oats

Mr Baldwin testified that D. P. Bell was the Surveyor
and Agent of Martin in his warehouse business from
December 1831 to August 1832 and that he was acquainted
with the hand writing of said Bell, and that the signatures
to the receipts appear true, being the same receipts, copies
of which are hereafter set out more in the hand writing
of said Bell as the witness believed. He also further
testified that the plaintiff William W. Low was the
active man of the firm of Low & Chapin in doing
the ^{business} at LaSalle. The plaintiffs then offered to
read the said receipts in evidence to the jury, to which
the defendant objected, but the objection was over-
ruled by the Court and the said receipts read in evidence
to the jury as follows that is to say

No 1300 LaSalle March 28th 1832 received in Store
of B. A. S. for tickets taken up twenty three hundred
and forty eight 80 bushels ear corn for account of Low &
Chapin at their risk of fire 1548 80 bushels &
Wm. Martin by D. P. Bell

No. 1301 - LaSalle March 28th 1832 received in Store
of B. A. S. for tickets taken up eighty three hundred and
twenty seven 56 bushels all corn for account of
Low & Chapin at their risk of fire
8317 56 bush. & Wm. Martin by D. P. Bell

No. 57 LaSalle June 16th 1832 Received in Store of
Baldwin Adams, Lake tickets up two hundred and
ninety six 80 bushels of ear corn for account of
W. W. Low at his risk of fire
1096 80 bush & Wm. Martin by D. P. Bell

No. 59 LaSalle June 16th 1832 Received in Store of
B. A. S. for tickets up twenty hundred and eighteen

56 bushels of Shelled Corn for account of W. W. Low at his
risk of gain Wm. Martin by D. P. Bell
1795 56 bush &

No. 67 - LaSalle July 1st 1832 Received in Store of B. A.
& S for tickets up forty four bushels ear corn for account
of W. W. Low at his risk 44 bush &
Wm. Martin by D. P. Bell

No. 68 LaSalle July 1st 1832 received in Store of B.
& S for tickets up one hundred and thirty nine 56
bushels of Shelled Corn for account of W. W. Low at his
risk Wm. Martin by D. P. Bell
\$ 139 ¹⁴/₅₆ bush &

The plaintiff Low was then sworn as to the top of two
receipts from Martin for corn stored by plaintiff's
with him. Besides the aforesaid 2 receipts some set
out and testified that he had had two additional
receipts for corn to Liquid which he had lost and
could not find after having made diligent and
repeated search for the same and that he believed
the same to be innocently lost and that he
received the said lost receipts of the said witness
Baldwin.

Baldwin further testified that he had
after the 1st of July 1832 and before the ^{receipts} ~~receipts~~ handed
the said plaintiff Low two receipts signed by Martin
similar in form and mode of signing to the
foregoing receipts and that one of them was for 106
bushels of ear corn and the other was for 386 ⁴²/₅₆
bushels of Shelled Corn stored by plaintiff's with Martin
& apt that he could not recollect whether said lost
receipts came to W. W. Low or to Low & Chapin

He further testified that the said 14 receipts above set out and the said two lost receipts were all given by Meardon in lieu of the smaller receipts given by Meardon to the farmers when the corn was received in store from them. It was already stated and which smaller receipts were received of the farmers by Baldwin, Adams & Lake when they paid them off, and which smaller receipts were given up to Meardon at the time he executed the larger receipts and that the larger receipts set out and the lost receipts were for all the grain called for by the smaller receipts which were given up and corresponded in amount with them. He also testified that the fractions of a bushel were expressed in the same way in the smaller receipts which were given up as in the larger receipts set out, and the lost receipts.

H Baldwin further testified that for a short time during the month of February 1832 as near as the witness could recollect the time, the plaintiff Sen, on account of some misunderstanding with his partner Chapin as witness understood purchased corn for a few days, about fifteen days as near as witness could recollect in his own name but he further stated that he had known long before the witness and before the settlement hereafter spoken of from both Sen & Chapin, that the whole corn that was bought by both or either at LaSalle was regarded by both as their joint property, and he further testified that the accounts of Baldwin, Adams & Lake with Sen, or Sen & Chapin for all the corn purchased for both or either, including all the corn mentioned in the receipts set out and in the lost receipts was settled as the joint accounts of Sen & Chapin and for the purchase of all of which he stated that Baldwin, Adams & Lake were the agents.

Baldwin further testified that of the usual course of trade all corn in LaSalle for a market in the summer of 1832 was sent to Chicago and that the price of corn

in Chicago during that season was higher than in the markets since the river. He further testified that Low was done to Martin's more than ever few days during the season of 1832 and that grain was frequently shipped by Martin during the season to the plaintiffs.

Adams - O. A. Adams was sworn as a witness for the plaintiffs and testified that he was one of the firms of Baldwin Adams & Lake before spoken of and that they were the agents of the plaintiffs for buying corn & wheat from Dec 1831 to July 1832 at LaSalle and that all the grain bought by the said firms for the plaintiffs was stored with Martin, that the ear corn so bought was stored in the crib and in the Sifon Factory before spoken of and that the shell corn was stored in the Stone warehouse of the defendants.

He testified that the purchasing was mostly done by the Clerks of Baldwin Adams & Lake but sometimes by himself and sometimes by Martin and that he had personal knowledge of as many as a dozen loads of plaintiffs corn having been delivered into the crib at Sifon Factory. The crib that has been spoken of was about 6 feet deep 20 wide and pretty high, higher than the Sifon factory which was a one story building.

He further stated that the weighing was wholly done by Martin or his servants and that the mode was as follows: That Martin had a box which was calculated to hold a certain number of bushels of ear corn at 75 pounds to the bushel, the weight of which box was marked on the box, and that for the purpose of satisfying all parties he weighed the box and found the weight truly marked on the same and he thus marked it "Weighed by Adams" & that any person disputing the

wright might refer to him and the quantity of corn
the box would hold was then ascertained by weighing
the box full of corn, deducting the weight of the box and
dividing the residue of the weight by 75 or whatever the
corn was intended to be weighed as per bushel and
the number of bushels the box would hold being thus
ascertained the box was afterwards used as a measure
for ascertaining the number of bushels of corn delivered
into store.

He further testified that from his acquaintance
with Martin Loring he thought Martin could not
have stood any considerable amount of grain for
parties other than the plaintiffs without his being
likely to have heard of it - and that he never did hear
of any considerable quantity being stored by Martin
for other parties.

He knew some corn which was bought
by Baldwin Adams & Lake of Dana being stored with
Martin in the crib but it was sold to the plaintiffs
in the Spring of 1852. He also knew of 400 or 500
bushels of corn sold by Baldwin Adams & Lake of
Wallace being stored with Martin in the fall of 1851
but it was poor corn and was sold to C. G. Parks
Esq of Sadalla in June or July 1852 and the money was
received for it on the 24th of July 1852. He did not
personally know of its having been delivered to
Parks Esq. It was ear corn and Loring had refused
to buy it because it was poor corn. He also testified
that some corn bought for Meigs by Baldwin
Adams & Lake in the fall of 1851 before they commenced
buying for plaintiffs was stored in the crib before
spoken of and that he had heard of a farmer of the
name of Jones and another, farmer of the name
of Jones having and some other ^{farmers} whose names

He could not recollect having done business with Martin but how much he did not know (Mr Baldwin testified that Long & Coopers were farmers living about fifteen miles North of LaSalle - neither of them were produced as witnesses)

He further testified that Martin from time to time in the Spring & Summer of 1852 shipped quantities of Corn to Long & Chapin - other farmers might have done so with the defendants and I not have heard of it

The order (spoken of by Baldwin) was not taken to bind us to pay Martins debt to Kenhouse, we own held it except as security to direct the payment of this money on Martins debt

Reuben - The plaintiff also introduced as a witness F. J. Reuben who being duly sworn testified that from December 1851 to the present time he had been the Clerk of John P. Chapin at Chicago. That as such Clerk it was his duty to receive the bills of lading of all corn shipped to Chapin and to record the amounts thereof in Chapins Books. That he was acquainted with Long & Chapins business in 1851 & 1852 and that by the course of their business during that time all corn purchased at LaSalle during the season of 1851-1852 was shipped to Chapin at Chicago and that he knew that the total amount of ear and shelled corn shipped by Martin, or that was received from Martin during the said season including 2099 bushels shipped or received in Chicago on the 13th of October, A.D. 1852 and which was shipped by the Canal boat "Burlington" of which Reuben was Master and the bill of lading of which last

mentioned load was shipped by Sheriff of LaSalle County
by Wm. Lee as witness thought but could not distin-
guish numbers, as appeared by entries in Chapin's
books which were made by the witness from bills of
lading signed by McCutcheon together with and
including the last mentioned bill of lading was
9495 ⁴⁸/₁₀₀ bushels of shell corn only and 7144 ¹⁸/₁₀₀
bushels of ear corn only and the total was 16639 ⁶⁶/₁₀₀
+ ¹⁸/₁₀₀ bushels only, and that the witness' business and
employment was such that if more corn had been
received he would probably have known it.

He stated said he could not have stated the quantity
of corn kept from the entries thereof in Chapin's
books made by him as aforesaid and from an abstract
made by him from those books, but he believed the
entries in the books, all of which were made by
himself to be true and correct, as shown by the bills
of lading, and he also believed the abstract to be true
and correct. He further stated that the last shipment
of the 13th of October 1852 was 609 ³⁶/₁₀₀ bushels of shell
corn and 1489 ⁵⁷/₁₀₀ bushels of ear corn.

He further stated that he never heard of any dis-
agreements between Lee & Chapin in regard to the
corn at LaSalle and always supposed it was the
joint property of both.

All of which testimony was objected to by the
defendants at the time the same was offered, but
the objection was overruled, and the testimony
admitted, and to the admission of which the
defendants excepted.

The said witness also testified that by the custom of
trade any deficit on the bill of lading is the responsibility
to the giving of which last testimony the defendants

also objected and the objection was sustained and the testimony excluded by the Court, and to which ruling of the Court the plaintiffs excepted

Meagill - Alexander W. Meagill was sworn for the plaintiff and testified that Baldwin Adams & Lake bought corn for him which was stored with Meantun in November 1831 and that he received it of Meantun in the Spring of 1832. He also stated that he bought a receipt for 175 or 250 bushels of ear corn of Meantun in the Winter of 1831, & which was not for corn he had stored with Meantun but he just got the receipt and paid Meantun the money for it and he paid he believed \$75 for it and he received the corn on the receipt of Meantun in the Spring, on the opening of navigation ⁱⁿ 1832

He also testified that the corn crop of 1831 was not an average crop as to quality and there was more than usual shrinkage on it. That in a lot of 2300 or 2400 bushels which he sent to Chicago of that crop, which was weighed in at LaSalle at 70 lbs ear corn to the bushel, there was a falling short of about 80 bushels when it was shelled and weighed as shelled corn at Chicago at 56 pounds to the bushel - but he also said that it was a poor lot of corn and not well shelled, that it was in bad order & was brought in from the 1st of November to the 1st of December & that there was considerable rotten corn in the lot and that on such corn there was more wastage and shrinkage than on corn taken in store after the middle of December.

He further stated that generally corn weighed in, in the fall and winter in the ear at 70 pounds

to the bushel, would not, he thought generally weigh
out over 56 pounds of shelled corn to the bushel.
He also stated that he had been engaged in business
as a merchantman and as a purchaser and storer of
grain, that he had let and stored in some 9 or 10 or
12 different places and that it was a universal rule
so far as he knew, that a merchantman was under
obligation to deliver as many bushels of grain as his
receipts called for, without any allowance for shrinkage
or wastage and that merchantmen in receiving
grain generally calculated as far as he knew to
get weight enough to enable them to weigh out the
quantity called for by their receipts.

Damon - Mr Damon a witness for the plaintiff after being
duly sworn also testified that in the winter of 1831-32
he bought a merchantman receipt of Martin for 381
bushels of ear corn, which he had not stored with
Martin, but paid him the money for the receipt and
that the 381 bushels of corn was delivered to him in
the fall of 1832 and of the Crib or Sifter factory that
has before him spoken of and just before the Replevin
in this case was presented. He further said that
the receipt which he got of Martin purported to the
best of his recollection to have been issued to some
third person, but he could not tell who Martin
might have been the owner, and although he
could not recollect that the receipt was endorsed
by the party to whom it purported to be issued yet he
thought it probable from his habits of doing business
that it was so endorsed. He further said that
Martin told him at the time he sold him the
receipt that it was for corn on which he had made
advances and which he was authorized to sell

Mer Danner further testified (in answer to a question by the Court) that it was the usual custom among warehousemen to mix some stored with them of different parties, together, in the same crib or bin unless the owner called for a separate crib or bin and to give him on his receipts an equivalent amount of grain to that called for by the receipts and not the same identical grain that was stored. There was evidence tending to show that Son knew of this custom. Danner testified that he was a warehouseman.

Brigg - Mer Brigg a witness for the plaintiffs also testified that he occupied an office in the Sison Factory in the Spring of 1882 about 12 feet square and that he saw Martins men shelling corn out of the crib into the Sison factory from 2 to 6 weeks before the reprieve, on several days with horse power and by hand power and that there was a hole cut through from the crib into the Sison factory so that corn could run through from the crib into the Sison factory. I supposed there was not a great deal shelled into the factory but thought they shelled enough to make room to shell in the crib. There was corn in the office. Martins shipped the corn in the office don't know to whom. Had seen Son around there when they were shipping from other places can't tell how many boat loads there were some was shipped shelled and some in the ear.

Hamm - Isaac D. Hamm was also sworn as a witness for the plaintiffs and testified that about the 8th of October 1882 and before the reprieve Mer Son apprehending difficulty about the corn requested the witness

to demand the Corn of Martin, Martin accordingly called on Martin, and asked him if he would ship Sons Corn, and he declined to do so but said he wanted to write to Son, or had written to Son as there was some difficulty between him and Son in reference to the charges on the Corn, that he wanted to see him (Son) or hear from him just Martin made no objection of course of the request not being in writing nor any objection about my authority as agent at the time above stated I had not with me the receipts which Martin had issued for the Corn and there was not then any book ready to receive the Corn, and I had not then any immediate means of receiving the Corn

Exams - Henry T. Camus was summoned as a witness for the plaintiffs and testified that in 1831 & 1832 he was engaged in business as a merchantman in Ottawa and that among merchantmen it was considered obligatory to deliver in the Spring the number of bushels called for by the receipts they had issued without any deduction for shrinkage or wastage of any kind, and that merchantmen generally, he thought, and he knew he did calculate to get measure or weight enough when grain was received in store to enable them to deliver the amount called for by their receipts without loss. That he never made any disguise that such was his practice and from time to time explained it to the farmers

He stated that on one lot of Corn that he once bought consisting of 1000 or 800 bushels there was a shortage of one 100 bushels, but he also said that it was a poor lot of Corn and that that case was an exception to the general rule, but that the shrinkage & wastage on the

Crop of 1831 was greater than usual & was from 7 to 10 per bush. He further testified that on good merchantable corn purchased and stored from the middle of December to the middle of June the next year shrinkage would not be over from two to three per cent and that it is a general custom among warehousemen to take 4 or 5 pounds & tra to cover shrinkage & storage

Martin testified for Pliffs that he was a warehouseman at LaSalle & that the Corn Crop of 1831 was not an average crop as to quality and that in one lot of 5000 bushels of Corn that he bought of that years crop there was a shortage or deficiency of 800 bushels as weighed at Chicago. But he said that case was not a fair illustration of the shrinkage and storage of that year for that the above was a poor lot of Corn and he thought there was storage at Chicago in Shelling and that the weights at Chicago he believed to be wrong and his opinion was that the real shortage was not over 400 bushels

Witt - Isaac R. Witt was sworn as a witness for the plaintiffs and testified that Martin was a warehouseman and that from Dec 1831 to June 1832 there was a large quantity of ear corn in the crib of Martin already spoken of and that while the Corn was there he asked Martin if he could sell him some ear Corn and Martin replied he had no ear corn to spare. Witness further testified that he was a warehouseman in the Spring of 1832 and while the Corn was in the crib witness went into the crib and judged there were 5000 bushels of Corn in it this was sometime in summer of 1832, was afterwards in the crib 2 or 3 weeks before the Corn was taken away

that there was 5000 bushels there then, but could not judge exactly, was present when Talbot put Lee in possession but did not then examine the crib nor even cast my eyes over the corn, but I have a notion of the corn was gone that was there when I first saw it. I thought there was 5000 bushels. I don't think there could have been more than 400 or 500 bushels taken out. I have no doubt there was 4000 bushels in the crib at that time. I mean however that this time was 2 or 3 weeks before the Replum, at the time of the replum I thought 400 or 500 bushels had been taken out of the middle. Winter Storage is Storage to 1st of June. Ordinary usage among merchants after 1st of June 1 cent per bushel & 1/2 cent for subsequent months is charged on the grain.

Summer Storage is when the grain is put in after the 1st of June.

~~Summer Storage is when the grain is put in after the 1st of June.~~

At that time Winter Storage was 4¢ per bushel on corn, 3¢ on wheat & 2 1/2 or 3¢ for oats. Summer Storage 2 to 3¢ per bushel on corn, oats &c. I have known any extra charge for storing grain. The custom is to stir the grain when necessary and charge the expense to those who corn is stored in consequence of heating. I consider the cost of stirring as a charge on the grain.

Deference

Henry - David S. Henry was called as a witness for the defendants and testified that he owned the large Stone warehouse occupied by the defendants and

that its capacity for storage was from 50,000 to 75,000 bushels. He states he was present at the time the corn was repleined and thought there was 3000 bushels of it. he made a rough estimate but thought he could not be mistaken more than 400 or 500 bushels. Thought it was two or three days from the time he heard of the repleining until the grain was weighed. Never discovered any deficiency before the weighing commenced from the amount I estimated. I think I should have known if any considerable amount had been taken away. I made no measurement and do not know how much the crib would hold. Do not know whether the corn in the crib was handled. The corn in the warehouse was handled and it was worth 1 1/2 or 2 1/4 per bushel to handle it. It was handled 2 or 3 times & several days intervened between the times of handling. the handling was after the 1st of June. Do not know how much was handled. Think over 500 bushels.

I am a brother in law of Masters and do not exactly know what you mean by being on suspicious terms with a man - if watching a man is being on suspicious terms with him, then I am on suspicious terms with Sam for I watch the man. It is the custom of warehousemen to mix the corn of their customers together so that the identity is lost unless there is a special contract to the contrary. It is considered a part of the usage of trade that warehousemen have a lien on the grain stored with them for their storage charges on the same.

Kennedy - Pat Kennedy was sworn as a witness for defendants and testified that he was in the defendants employ assisting in his warehouse business from

November 1831 to August 1832. He collected
Meagill's Spring Corn with Martin in the fall of
1831 it was first stored in the Stone warehouse and
afterwards removed into the Crib that has been spoken
of. It was put in first and then Low & Chapin's Corn
afterwards. I left Martin's employment in August
1832 the Meagill's Corn remained in the Crib till
October 1832. Can't tell whether it was there at the time
of the explosion or not. The Crib has never been empty
for I should have used the Crib to make room to
store it. The Shelled Corn was taken over to the ware-
house in June 1832. Meagill had Corn in the ware-
house during the Summer of 1832 and I think in
a separate bin - Low's Corn was mostly shipped from
the warehouse before I left in August. it was shipped
in canal boats to Chicago & Low & Chapin's name
was on the sacks. I cannot tell who else stored
Corn. I think Martin & Bell had some Corn in the
crib. Bell got 200 bushels of Shelled & it was put into
the crib with Low & Chapin's Corn. Boyle put some
Corn into the crib some time in the fall or winter in
September or December. I don't know how much
I think he sold it to Martin. he told me afterwards
he left it there & afterwards in the Spring sold it
to Martin. I don't know of Dennis getting any
Corn there. Only ear Corn was put into the Crib
Baldwin Adams & Lake had some Corn there. I
heard that Parks had got it. I know that Martin
got 7 or 8 loads of Corn. Town put in some Corn
but know on whom account it was stored. The
Corn in the Crib was handled over Meagill's ear
Corn was delivered to him out of the crib in the Spring
of 1832 - The Corn in warehouse was stored two or
three times several days apart. this was after the 1st

of June there was 2000 or 3000 bushels turned I should think, but am not at all confident as to the quantity I should think that the whole work of turning was equal to a months work of one man. We commenced receiving corn in the fall and early part of winter at 75 ^{cts} pounds to the bushel and afterwards took 70 pounds to the bushel. We used the same box to measure the corn when we took 70 pounds as when we took 75 pounds to the bushel only when we took 75 pounds to the bushel we heaped it a little more I put in 500 or 600 bushels of corn for Meentow into the crib. The others by just some into the crib I don't know how much or who brought it. There was a little corn in the crib but not much when the platts corn was put in there. This platts corn was all shipped from the warehouse except a very little. It was loaded out into boats and plain platts name was on the sacks.

Chammond - F. E. Chammond was called on as a witness by the defendants and testified that he had been a warehouseman. that the corn crop of 1831 was not of average quality, and that in a lot of corn which he stored in the winter of 1831. So there was a shortage or deficiency of 1000 or 1200 or 1500 bushels in a total quantity of 35000 bushels. but he also testified that he commenced storing this corn in November and that the crib in which it was stored fell down in the winter and there was some wastage on that account. and that at the time the crib fell down there was some rotten corn thrown out & that the wastage & rotten corn thrown out formed part of the shortage of 1000 or 1200 or 1500

Reynolds affirmed. He further testified that the said
lot of corn was weighed into warehouse at 75 to
80 pounds to the bushel and weighed out at 70 to
75 pounds to the bushel, and he further testified that
the shrinkage on corn taken in in November was
greater than on that taken in later.

which was all the evidence in the cause

The Plaintiff then proposed that the Court to instruct
the jury as follows

Instructions for the Plaintiff

- 1 - If the jury believe from the evidence that the corn
replied in this suit at the time the same was
replied was the property of the plaintiff the jury will
find the issue found in this case on the plea of
property in the defendant, in favor of the plaintiff, whether
there was a demand and refusal or not, or whether
there was or was not a lien on the same in favor
of the defendant for storage and warehouse charges
- 2 - And on the subject whether the corn at the time the
same was replied was the plaintiff's property, the
jury are instructed that if they believe from the evidence
that at the time the plaintiff's corn was replied from
the crib as spoken of by the witnesses, that all other parties
who ever had any corn in said crib except the plaintiff
had removed the same from the said crib previous to
the execution of the writ of replevin in this cause - And
if the jury further believe from the evidence that previous
to that time the plaintiff had stored in said crib
a quantity of corn equal to the quantity replevied

and which at the time of the replein remained
there, such evidence is ^{now} sufficient to authorize
the jury to say by their verdict that the Corn repleined
in this suit was the plaintiffs property

3 - And further, if the jury are satisfied from the
testimony that any portion of the Corn repleined or of
the whole body of Corn purchased through Baldwin
Adams and Lake was at any time purchased by Lee
alone; yet if they are further satisfied from the
testimony that both Lee and Chapin afterwards and
before the replein treated the said Corn as their joint
property - settled their accounts for the purchase thereof
as a joint account, and that Newton in rendering
his account for storage rendered it for all his storage
accounts upon all the Corn purchased through Baldwin
Adams & Lake and against the plaintiffs jointly -
this is evidence from which the jury may infer that
at the time this suit was commenced the Corn
purchased by Lee in his own name may have
become the property of the plaintiff

4 - If the jury believe from the evidence that at the time
the Corn in this suit was repleined the same was
the property of the plaintiffs and that they were then and
there entitled to the possession of the same on demand
except as to any lien the said defendant may have
had on the same for storage and warehouse
charges and that the same was demanded by the
plaintiffs or by or under their authority for them
and the delivery thereof was refused by the defendant
before this suit was brought they will find the first
issue joined in this case on the plea of non detinet

in favor of the plaintiffs, whether the said corn was
or was not then and then subject to a lien in favor
of the defendants for storage and warehouse charges

5 - If the jury believe from the evidence that of the whole
quantity of grain stored by plaintiffs with defendants
spoken of by the witnesses in this case there was a
shortage or deficiency of 2575 bushels of corn or
any other quantity, and that the account of storage
on the plaintiffs grain rendered by the defendants to
Baldwin of \$886.29 for winter storage as spoken of
by Baldwin, included storage and warehouse
charges, on the corn so deficient or short, the jury
may infer it was the understanding of the parties that
the storage and warehouse charges on the corn so
deficient or short, should apply on the storage and
warehouse charges which accrued on the plaintiffs
grain after the 1st of June 1832 or after the expiration
of the winter storage as spoken of by the witnesses

6 - In regard to the demand being made in writing
this does not apply in the case of a demand
made by the store, for a delivery to be made to
himself

If the jury believe from the evidence that by the usual
course of business between the plaintiffs and defendants
the plaintiffs were accustomed to request the defen-
dants to ship their grain for their own accounts to
Chicago and the defendants to ship accordingly, and
that Hays was the authorized agent of the
plaintiffs to demand of the defendants the corn
replied in this libel, and as such agent called on
the defendants and requested him to ship the

plaintiffs Corn, and the defendants refused to ship
the Corn, claiming no reason except one based
upon a claim of a lien upon the Corn for charges
such demand would be sufficient and such refusal
would be evidence from which the jury might infer
a conversion of the Corn by defendants unless he
actually had such lien, if the Corn actually
belonged to the plaintiffs

which instructions were given by the Court and to the
giving of the same and each of them the defendants
at the time of giving the same accepted

The plaintiffs also asked the Court to instruct the
jury as follows

(18)

Refused

If the jury believe from the evidence that at and
before the time of the commencement of this suit the
defendant was indebted to the plaintiffs for corn
that fell short on the storage and warehouse account
of the plaintiffs with ^{the} defendants for storing & the
whole quantity of corn ^{of which the corn} comprised in this case is a
part, then the plaintiffs had a right to set off
such indebtedness against the defendants demand
for storage and warehouse charges

(19)

Refused

If the defendant was indebted to the plaintiffs for
Corn, the plaintiffs had a right to treat the indet-
tedness as a payment on the defendants charges
and if the defendant had wrongfully converted
the plaintiffs Corn to his own use the plaintiffs
had a right to treat such conversion as a sale of
the Corn to defendants and to hold the defendants as

their debt for its value

10

Refused

If the defendants appropriated plaintiffs corn, to make up shortages to other parties who had stored with him, such act would be a conversion of Pliffs Corn to the defendants use, and the plaintiffs would have a right to raise the tort and treat the defendants as their debtors for the value of such corn

(11)

3

= The burden of proof to maintain the issue on the third plea (that is the plea of a lien for storage & warehouse charges) in this case is upon the defendants, and in order to maintain it the defendants must show that the custom between stores and warehousemen in that respect is so general that they can presume that it was known to the plaintiffs in this case and that they contracted with the defendants in reference to it and unless they so find they will also find the said last mentioned issue in favor of the plaintiffs if they find that the said corn at the time the same was replevied was the property of the plaintiffs & had been demanded & refused as stated in the preceding instruction

Refused

(12)

4

= And in respect to the lien mentioned in the preceding instruction if the jury should find the custom herein mentioned in favor of the defendants then
1- If the jury find there was a special agreement in regard to the storage between the parties as to the time or mode of payment, such special agreement destroys the lien as to all the storage and warehouse charges to which the same applies
2 If the jury find that such special agreement

Referred

exists as is specified in the last preceding paragraph as to the Storage of the plaintiffs Corn up to the 1st of June 1832 or any other time it is evidence from which they may infer, that it was understood between the parties that the plaintiffs Storage was done by the defendants without a claim for a lien on the Corn for Storage and warehouse charges accruing on the plaintiffs Corn after that time

(14) 6 - If the jury believe from the evidence that the defendants fraudulently committed or disposed of to his own use any part of the whole quantity of corn stored with him by the plaintiffs of which the Corn repleined forms part. Such Commission or disposition would relieve the plaintiffs from any necessity of proving a demand and refusal in this case and makes it immaterial whether such demand and refusal is proved or not

Referred

(15) 7 - If the jury believe from the evidence that the defendants has misbehaved and miscondacted himself as a warehouseman in respect to the grain stored by plaintiffs of which the grain repleined forms part, to the plaintiffs damage the defendants shall forfeit all his lien upon the plaintiffs grain which was repleined

Referred

Referred

8 - The relation between a warehouseman and those who do business with him in that character is a fiduciary relation and the law gives to the warehouseman a lien upon the property committed to his charge as a reward for the good faith it acts of him in that business and he therefore

forgets that he is by bad faith in respect to the property committed to his charge in that character

(17) 9 - If the jury believe from the evidence that the plaintiff misbehaved and miscondacted himself as a warehouseman in respect to the plaintiff's grain stored with him of which the grain referred forms part of fraudulently selling a portion of the same for his own benefit, or otherwise fraudulently converted or disposed of any portion thereof to his own use such fraudulent conduct on his part besides forfeiting his lien as aforesaid would also make it unnecessary for the plaintiff to prove any demand of the grain referred from the defendants or refusal of them to deliver it.

"For Plaintiffs"

(18) (B) If the jury believe from the evidence that the plaintiff's stored corn with the defendants as a warehouseman, and that other parties stored corn with the defendants, and that the defendants mixed together the corn of the plaintiffs and the corn of such other parties, and that the whole quantity of corn so stored and mixed together fell short to the amount of 2575 bushels or any other considerable quantity from shrinkage and other causes and that the defendants without the consent of the plaintiffs weighed out and delivered to such other parties the full amount of corn so stored by them without deducting for shrinkage and so as to leave the quantity of plaintiffs corn on hands, short, not only to the amount of shrinkage and other deficiencies on their own proportion of the corn so mixed together, but also short to the amount of

the shrinkage and other deficiencies on the corn of such other parties such state of facts would constitute a ~~concession~~ ^{concession} of plaintiffs corn by the defendants and so that he would not be entitled to set up a lien upon the plaintiffs corn for storage and charges

19/ 12 - In regard to the demand and refusal the law requires no particular form of words and if the jury are satisfied in this case 1- that the demand made was understood by the party making the demand, and of whom it was made to apply to the plaintiffs corn the demand in that respect is sufficient

2 - In regard to the refusal - If the defendants set up his refusal on the ground that he had a lien and the jury are satisfied from the evidence that the defendants had no valid lien upon the corn at the time of the demand made or had forfeited the same in any of the ways specified in the preceding instructions this evidence in connection with that contained in the preceding paragraph is sufficient evidence of a demand and refusal

which last mentioned instructions and each of them the Court refused to give, and to which refusal at the time thereof the plaintiffs accepted

But the Court in view of the instructions asked for by the plaintiff, and refused by the Court above set out and marked (C) and (D) instructed the jury as follows

"Given by the Court"

(C)

If the jury believe from the evidence that the defendants either by appropriating a part of the plaintiffs corn, to make up the shortage on the corn of other parties, or otherwise converted any of the plaintiffs corn to his own use, the plaintiffs had a right to regard such corn as sold to the defendants and to treat the value as a set off or payment upon the defendants charges

(D)

(D)

If the jury believe from the evidence that prior to the commencement of this suit the plaintiffs had upwards of 19000 bushels of corn stored with the defendants as a warehouseman; and that the defendants by selling a part of the plaintiffs corn, or by delivering it to other parties who had stored corn with the defendants, part of the plaintiffs corn to make up shortage on the corn of such other parties or by any other wilful act the defendant so reduced the quantity of plffs corn in store with him that the deficiency amounted in value to as much as the defendants ^{Storage} shortage, and warehouse charges the plaintiffs had a right to treat such deficiency as a payment of defendants Storage and warehouse charges

Given

If the jury believe from the evidence that the Defendant Kinga marikoman and having in store for the plaintiffs a lot of grain including the Corn replined, appropriated to his own use before the Corn was replined a portion of said grain, the plaintiffs may in this action treat such appropriation as an appropriation by the defendant towards the satisfaction & discharge of any lien or charge he may have had for storage & warehouse charges on said lot of grain and if the value of said grain so appropriated together with the amount paid by plaintiffs to defendant for storage & warehouse charges upon said lot of grain is equal to or exceeds the amounts due for all storage or warehouse charges on all said lot of grain the jury should find the issue on the replication to the third plea for plaintiffs.

Given

If the jury believe from the evidence that the Corn replined was at the time thereof in store with the defendant having been deposited with him as a warehouseman of the plaintiffs, the plaintiffs cannot succeed in this action on the issue on the first plea without proving a demand upon the defendant to deliver said Corn, and a refusal by the defendant to deliver it on demand, and if the only evidence on this point is that Hammon as the agent of the plaintiffs requested the defendant to ship the plaintiffs grain and the defendant replied that he had nothing or would write to soon about it & that there was some misunderstanding about the charges and Hammon at this time did not have the receipts given by defendant for plaintiffs grain & had no other means at the time to take the grain & was not then ready & willing to take it

23 I accept for it as the pliffs agree, this would not
constitute a demand, refused and the jury should
find the issue on the first plea for the defendants

And to the giving of which last mentioned instruc-
tion at the time of giving the same the defendants
accepted

The defendants also asked the Court to instruct
the jury as follows

24 On the question under the 1st plea of a
demand and refused the jury are instructed that
1st The request (by Harmon in behalf of plaintiffs)
to Martin to ship the corn, spoken of by Harmon
and the reply of Martin that he had written to
Mrs Lane (or would write to Mrs Lane) that he wanted
to see or hear from Mrs Lane about charges, does
not prove a refusal on the part of defendants to
deliver on demand - a request to ship without
having any transport ready to receive and without
being ready to receive or remove corn is not a
demand to deliver

25 2^d - That if plaintiffs stored corn with defendants as a
warehouseman and the same was put in the crib
with other corn or other corn was put in the crib
with plaintiffs corn so that the same was so
mixed that the same identical corn could not
be distinguished from the other corn in the crib
and if such mixing was done with the assent of
plaintiffs & prep or implied and the corn still

remained in store with Meekins (and had not
been separated from the other corn with which it had
been mixed) then the plaintiffs cannot maintain
replevin in such case for the corn to stand, and if
there was no special agreement to keep the corn
separate and it was the general custom (known to
plaintiffs at the time of such storing) of warehousemen
in such cases to mix corn thus stored, this would
thwart an implied assent on the part of plaintiffs
that it might be so mixed

3^d - That plaintiffs cannot recover in this action unless
they show that the identical corn taken in the suit
was at that time the property of plaintiffs and that
they had an unconditional right to take the
same

4th - That as to the corn bought and stored in the name
and on account of W. W. Lane it must not be
regarded as the property of the plaintiffs unless it
has been proved by plaintiffs that Lane had actually
sold or given an undivided interest therein to
Chapin

5th - That if defendant had three or more places of storing
corn, the stone warehouse, the big crib and the little
warehouses in which he stored corn indiscriminately,
separating it only as to kind or quality and
not keeping each mass corn separate and occa-
sionally removing portions from one store room
to another as occasion required and plaintiffs
had a quantity of corn stored in one or more
of such store rooms which was put in indiscriminately
with defendant's corn and the corn of other persons

and if the jury believe that plaintiffs corn in store
was so mixed with the corn of the store thing either
express or implied, then plaintiffs had no such separate
property in any part of said corn as would enable them
to take that corn in an action of replevin nor would
any portion of all the corn so mixed whether in one
of said store rooms or another become the separate
property of plaintiffs until it was set apart to them as
such by the defendants, or until the several parties inter-
ested in all said corn so mixed in all said different
store rooms had divided the same among them-
selves or until all the corn in store had so mixed
in all of said store rooms which was stored by
Mearns himself or for others than the plaintiffs
had been by defendants or the parties interested in the
same removed - remaining in one & separate
to that plaintiffs alone remained - and if such
mixing so done has been shown by defendants
then the burden rests upon the plaintiffs to show
that every part of whose corn was so mixed with
plaintiffs (including defendants) has had his
share in full removed. So as to leave none other
than plaintiffs in any of the cribs or ware houses
in which such mixed corn was distributed.
or that plaintiffs have been in some way set
apart to them and made the corn stand for R. W.
Lew is prone to have been sold or given to plain-
tiffs - this instruction applies as well to that as to
the Wallace corn or defendants corn or indeed
any corn shown to have been so mixed with
plaintiffs corn unless the same has been shown
to have been removed

Wm

6th - If plaintiffs owned an interest in a large quantity of corn stored and mingled as supposed in the last instruction, and of course of shrinkage, rotting, rotting or scattering, was or any other such cause the whole quantity was left at the time for shipping, than at the time of storing - then in the division of said whole quantity each owner would not be entitled to have set apart to him as much as he put in, but each would be entitled to have set apart to him a quantity proportionate to the quantity he put in so that each would have his due proportion of shrinkage &c. and the plaintiffs would not have property in another man's corn & could plaintiffs had from lighters not even in the case of the warehouseman himself

7th - A warehouseman, who receives grain in store and exercises due care and diligence is not accountable for shrinkage, rotting, and necessary wastage in handling, he is only to have forth-coming so much grain at the time of shipping as the amount of grain actually put in store will and does yield after deducting the wastage incident to the same, which from the nature of the case must depend in a great measure upon the nature, quality & condition of the grain stored at the time of storage.

8th - A warehouseman who undertakes to receive corn in store for a dealer, from producers of whom the dealer has bought is not bound to take more weight than the grain is bought at - nor is he answerable for wastage arising from his failure to do so

10th - It is proper that the jury in determining this time when the corn stored as the property of W. W. Low was actually put in store, should with the other evidence on that subject consider the dates of the several receipts given in evidence

11th - If it is proved by competent evidence, that the corn brought on account of W. W. Low was sent to Martins Store rooms, as the property of W. W. Low to be stored for him and if on the 16th of June 1832 and again on the 1st of July 1832 Martins issued to Baldwin Adams & Lake or to W. W. Low - warehouse receipts for such grain (so bought for W. W. Low) stating that said grain was stored on account of W. W. Low and said receipts were accepted by W. W. Low or his agents or both in that form there are circumstances tending to prove that up to that time such grain remained the property of W. W. Low and that Martins so regarded it and tending to prove that the account for winter storage rendered to Baldwin as his account against the plaintiffs did not induce the storage of the corn so stored in the name of W. W. Low and this presumption is strong and if it is proved that this account was delivered to Mrs Low by Mrs Baldwin

A - If the jury believe from the examination of the amount of receipts given in the name of Low & Chapin and of the amount of the lost receipts and from the evidence of Baldwin as to the time that the lost receipts were given and to the other evidence in the case that the amount of corn stored in the name of Low & Chapin was 14,218 bushels and if the jury should believe the total

85
View
Amount of corn received in Chicago from Martin's new
house from Low and Chapin was 16,642 bushels (and
that this embraced the corn replined, and that the amounts
of that was 2098 bushels) and that the amount shipped
by Martin for Low and Chapin before the replining, amount-
ed to 14,544 and by deducting this amount from
the amount stood as the property of Low and Chapin
originally (16,642 less ^{210 from corn for the year} 14,544) ^{many} would leave a balance
of such grain unshipped only 424 bushels. This would
be a matter proper for them to consider in connection with
the other evidence in determining the question whether
the corn stood in the name of Low alone was or was
not probably embraced in the amounts sent to Chapin
for Low & Chapin and on the question whether Martin
ever treated the Low corn as the property of plaintiffs

35
View
(B) If the jury believe that Martin did not testify from
memory but merely from an abstract which he had
prepared of copies of bills which had been copied into
John P. Chapin's books of wheat shipped to Chapin on
the account of Low and Chapin the jury have a right
to judge from his testimony and the sources of it whether
he did not probably in preparing said abstract look
in the books for bills of lading in the name of Low &
Chapin alone and to judge whether in those volumes
books there may not be copies of bills of lading in the
name of W. W. Low & whether if his purpose in the
examination of the books was solely to collect the ship-
ments to Low & Chapin - whether he would not have been
likely to overlook bills of lading shipped to Low alone in
judging of this matter juries are at liberty to consider
what is the usual manner of keeping books from their
own knowledge on such subjects

37
12th - Even if the jury should believe that all the com-
tation upon the writ of replevin was the sole property of
plaintiffs, yet if they believe that at the time the
defendant was a warehouseman and store of goods
for him and that said property was lawfully in his
possession as the property of plaintiffs and in moments
prior to such warehouseman and that by the custom
of merchants and warehousemen in that behalf
he had a lien upon said corn for storage and
warehouse charges to any amount which was
due to him from plaintiffs for such storage ware-
house charges and unpaid and that debt by
virtue of liens rights in that behalf held possession of
the same at the time of serving out the writ of
replevin that they will find this issue in the third plea
for defendant.

38
13th - That the arrangements spoken of by the witnesses
Baldwin and Adams of the giving to Baldwin Adams
of the order for the winter storage for the purposes and
in the manner stated by said witnesses and the
accepting of the same did not constitute a
payment of the winter storage unless the amount
was actually paid nor did the accepting of said
order and the payment of five hundred dollars
discharge the balance of \$389.29 nor does the
defendant lie upon the property stored for that
balance

14 - That if plaintiffs are indebted to defendant for
storage & warehouse charges for a part of which
he has a lien and for a part of which he has no
lien and a payment or payments are shown

39
40
And no agreement or direction of either of the parties
as to what part of the claim for storage and charges
such payment should be applied - then it is the
duty of the jury to apply the payment or payments as
to have that part of such claims (if any) unpaid
for which the defendant has his lien - In other
words if such a lien is shown as is set forth in
the 12th instruction and the jury shows other part
charges of defendant against plaintiffs then the
jury in this case supposed in the last instruc-
tion will to apply the payment or payments as to
have the subsisting lien to the last

41
15th That under the issue on the third plea in forfeiture
or waiver of the lien is permitted to be set up by
plaintiffs - To set up such matter it should have
been specially replied that the defendant might
have been advised as to what he had to try. For
the same reason no set-off of any other claims
can be set up in lieu of payment - Set-off affects
the remedy of suit for a debt - but does not
affect the remedy of the party having a lien in
enforcing payment by virtue of holding possession
of the property until the lien is discharged

42
16th That if on the 1st of June 1852 there was a grain
ammount due from plaintiffs to defendant for
storage up to that time of grain then in store
with defendant as a warehouseman and if by the
understanding of the parties under the usage
of warehousemen it was the duty of plaintiffs
to take the same away or pay extra storage
for the time plaintiffs left the same in store
after that, and if a claim of such grain lien
left in store through them and help the same heated

mitted on behalf without the fault of defendants And
became his in quantity such that you could not
deduct from the grain amounts which had
fallen due on said 1st June 1852

42
17th - That unless it is shown by the proof that
defendant charged in his account for Winter Storage
for storing grain which he did not in fact have
in store then no deduction should be made
from that account on account of shortage for
which defendant is not shown to be at fault

43
18 - Fraud - Dishonesty - negligence misconducts
any near presumed And any party charged with
the same or either of them is to be held
innocent until it is satisfactorily shown by
proof that he is guilty

which instructions were given by the Court And to the
giving of which last mentioned instructions and each
of them at the time the same were given the plaintiffs
accepted

The defendant also asked the Court to instruct the
jury as follows

44
9 - That if the jury believe from the evidence that pla-
intiffs should have come wheat and oats with defendants
under an arrangement, that the winter Storage
therefor should be paid to Baldwin Adams & Co
to be applied by them to pay certain indebtedness of
Martin and that said Winter Storage was to
emburse all Storage done by defendants for plaintiffs

up to the 1st of June 1832. And if the Jury further
believe from the evidence that about the first of July
1832 defendant rendered an account as his account
for storage against plaintiffs for storage of corn
wheat and oats up to the 1st day of June 1832 that
the amount of said account was \$886.27 that said
account had items for storage of corn wheat and oats
for plaintiffs if it is also proven that plaintiffs had been
storing oats wheat and corn and if the evidence
affords no means of judging how much of said
account was on account of wheat & oats nor how
much was on account of corn then the whole amount
of said account cannot by comparison or otherwise
shed any light upon the amount of corn Martin
claimed to have stored for plaintiffs and conse-
quently no light on the question whether the storage on corn
stored in Sins name was included in said
account or not or whether Martin regarded said
corn as plaintiffs property

which both mentioned instructions And each of them
the Court refused to give And to which refusal of the
Court the defendant at the time of such refusal
excepted

The Court also instructed the Jury as follows

(No further instructions appear on file in my
office - Kindley Leland for J. F. Nash Deft.)

And to the giving of the ^{said} both mentioned instruction the
plaintiffs at the time the same was given excepted

The Jury found a verdict for the defendant upon all the

thus in the cause. Whereupon the plaintiffs moved the
Court for a new trial of this Cause, which motion was
granted by the Court and to which decision of the Court in
granting the said motion for a new trial the plaintiffs
accepted, at the time said decision was made and
prays the Court here to seal this his Bill of exceptions
which is done

The foregoing Bill of Exceptions was presented to
me for Signature on Wednesday the 1st day of the
February Special Term Sadler's Circuit Court AD 1854
at two o'clock p.m. Upon to the prep of business I
did not examine the same fully for the purpose of
papers upon the same nor point out any particular
objection to the same to the defendants Counsel until
this day - Upon careful examination this day some
corrections were made and this Bill was signed
Feb. 2^d 1854

E. S. Selcraig Esq

State of Illinois

LaSalle County } I, Thos Lindsay Clerk of the
Circuit Court of LaSalle County
do hereby Certify that the above and foregoing
is a true and complete copy of all the proceedings
in the foregoing Cause and the Judgment of the
Court thereon as the same appear of record
and on file in my office

Do. Testimony whereof I have
written to my hand and the
Seal of said Court this 17th day of
July AD 1854

H. M. Clark

State of Illinois

Let a supersedeas issue
in the above cause upon the plaintiffs in
error paying a bond in the usual form in the
penal sum of fifteen hundred dollars
executed by themselves as principals and
took R Smith security

J. D. Carver

29
Wm W. Lovett
John B. Chapin

Wm Martin

Transcript
Replevin

Record & errors.

Filed December 11th 1854.

L. Seland Clerk.

By P. K. Seland Depy.

original deposited
20.85

Know all men by these presents that we
William W. Low & John P. Chapin as principals
& Noah R. Smith as security are held & firmly
bound unto William Martin in the sum
of fifteen hundred dollars lawful money of the
United States, to the payment of which well
& truly to be made, we bind ourselves, our heirs
executors & administrators ~~jointly~~ by these
presents - Witness our hands & seals this
11th day of December A.D. 1854.

The condition of this obligation is such
that whereas on the third day of January
A.D. 1854, at a term of the Circuit Court
in & for La Salle County in the State of
Illinois a certain judgment was rendered
by said Court in a certain action of Replevin,
then pending in said Court, wherein
William W. Low & John P. Chapin were plaintiffs,
& William Martin was defendant, in
favor of said defendant & against said
plaintiffs for the sum of one cent damages
& costs of suit - from which judgment
said Low & Chapin have sued out a writ of error
to said Circuit Court to remove the record
in said Cause to the Supreme Court of said
State - Now, if the said Low & Chapin shall
duly prosecute their said writ - & shall pay the
amount of said judgment with costs, interest
& damages in case the same shall be
affirmed, then this obligation shall be void,
otherwise in force.

Wm W. Low

John P. Chapin
by Wm W. Low his attorney
Noah R. Smith

Low²⁹ & Chapin
vs
Wm Martin

Bond -
Replevin
Replevin -

Filed Dec. 11. 1854.
L. Selam Ck.

24

K. 6

Law & Chapman
s

Mrs. Martin

Replum
27

Clear of

1855

✓ 1520

X

Supreme Court
Johnston