

12459

No. _____

Supreme Court of Illinois

Aylworth

vs.

Longhead
~~Soughead~~

71641  7

213

James Douglass

by

Benjamin Sylvester

215

Sylvester

Douglass

1858

12459

Case Special Term 1857

State of Illinois vs
Gundry County

Pleas before the
Honorable Justice O. Gordon Judge
of the Eleventh Judicial Circuit
of the State of Illinois and presiding
Judge of said Circuit Court of said
County at a Special Term
of said Circuit Court (begun and
held at the Court House in Morris
in said County on Monday the 1st
Day of June in the year of our Lord
One Thousand Eight Hundred and
Fifty Seven and of the Independence
of the United States the
Eighty First.

Present - O. Gordon, Judge, B. F. Coarles,
State Attorney, A. C. D. Mann,
Sheriff.

With John Gallows, Clerk

Robert Aylerworth vs June 2nd 1857

vs Assumpsit.
(James Longhead) vs from Gundry
County Court.

On this day came the parties hereto
by their respective Attorneys
Harris for the Plaintiff and
Sully & Baughen for the Defendant
and upon motion of the said
Defendant it is ordered by the
Court that this cause be continued

until the next term and that he have
leave to file additional Pleas by the
first day of August next and a Bill of
Particulars &c &c &c and
that this continuance be at said
Defendants cost.

United States of North America and
State of Illinois
Circuit Court of Gundy County, Kansas, Term
Held, 1857.

Now before the Honorable Charles
R. Starr Circuit Judge presiding
present the Hon. Charles R. Starr
Judge - J. C. D. Munn - Sheriff,
James M. Reading, Clerk and
Bartleson, State Attorney.

Robert Sylwath & George of Monroe
vs. James Longroad & Gundy County
Sherriff

Be it remembered that before
Court on the 16th day of February, 1857 the said Plaintiff and out of the
Office of the Clerk of said County Court
a Writ was directed to the Sheriff
of Gundy County which Writ was
was in the words and figures following
to wit: The People of the State of Illinois
to the Sheriff of Gundy County Greeting
We command you that you summon
James Longroad if he shall be found
in your County personally, to be and
appear in the next Term of said Court
Gundy County Court before the Judge
thereof on the first day of the next
Term of said Court, to be held at the
Court House in Marion on the first
Monday in March next at Ten o'clock
in the forenoon then and there to
answer unto Robert Sylwath in a

Rea assumpsit to the plaintiffs damages as
he owes \$100. And have you them
there this writ and the shames in
which you shall have executed the
same.

In witness whereof we have caused
the Seal of Said Court to be here to affixed
and attested. P. A. Armstrong Clerk
County of Morris this 14th Day of February
1857.

Perry A. Armstrong Clerk
Which Said Summons was
on the 20th day of ^{February} 1857 returned
into the office of the Clerk of Said
County Court (Said Sheriff) with the
return thereon endorsed which re-
turn is in the words and fig-
ures following to wit: I served
the within Summons by reading the
same to the within named James
Highland on the 20th day of February
A.D. 1857 Service 30 miles 50th
return 10 & 1/2c. Mined Feb. 21st 1857

J. D. Wallace Sheriff
Clerk James Parker Sept.
And he it further recommended that
on the 19th day of February, 1857 the
Said Plaintiff filed in the office of
Said County Court his Declaration
which Declaration is in the words
and figures following to wit:

The State of Missouri
Grundy County La}

Reuben Sylwirth } County Court within
vs } and for said County.
James Lutzhead } March Term 1857

James Lutzhead (The Defendant in
this suit) was summoned to answer
unto Reuben Sylwirth (The Plaintiff
in this suit) in & plea of trespass in the
Case upon promises and thereupon
the said Plaintiff complains of the
said Defendant in & plea of trespass
in the Case upon promises. For that
whereas the said Defendant on the
10th Day of February A.D. 1857 at said
County of Grundy was indebted to
the said Plaintiff in the sum of Three
Hundred Dollars for the use and oc-
cupation of certain Rooms and
apartments of the said Plaintiff
before that time used and enjoyed
by the said Defendant and other persons
at his request and by the permission of
the said Plaintiff and for meals,
drink, Stewards and other ne-
cessaries and goods by the said Plai-
ntiff found and provided for the
said Defendant and other persons
at his request.

And in Three Hundred Dollars
for the price & value of goods
and chattels then and there bar-
gained and sold by the said
Plaintiff to the said Defendant

At his request.

And in the sum of Three Hundred Dollars for the price of value of goods, produce & chattels then and there sold and delivered by the said Plaintiff to the said Defendant at his request.

And in the sum of Three Hundred Dollars for the price and value of work then and there done and materials for the same provided by the said Plaintiff for the said Defendant at his request.

And in Three Hundred Dollars for money then & there lent by the said Plaintiff to the said Defendant at his request.

And in Three Hundred Dollars for money then & there paid by the said Plaintiff for the use of the said Defendant at his request. And in Three Hundred Dollars for money then & there received by the said Defendant for the use of the said Plaintiff.

And in Three Hundred Dollars for money found to be due from the said Defendant to the said Plaintiff in account then & there stated between them.

And the said Defendant appeared on the day and year above said at the County aforesaid

in consideration of the promises
respectively promised the said
Plaintiff to pay him the said
several monies on request

Y^t the said defendant hath
disregarded his said promises and
hath not paid any of the said mo-
nies or any part thereof: though
after requested to do so the Dam-
age of the said Plaintiff of Three
Hundred Dollars & therefore he brings
his suit & by Wells Harris
his Atty.

and that on the 22nd day of May
1867 the said Plaintiff filed in
the Office of the Clerk of this Court
his Bill of Particulars in the words
& figures following to wit:

Reuben Aylworth

vs } Circuit Court
James Greaves

Plffs Bill of Particulars
James Greaves

1866		Reuben Aylworth	
Feb 13	6	Days work drawing wood to Morris	1.00
15 th	" 1/2 "	" " " " " May	.30
26	" 1 "	" " " " " Coal	1.00
29	" " "	" " " " " Cutting Posticks	1.00
March 7	" "	" Cash (for Coal)	1.22
12-17	" "	" Making water bench	1.50
	" "	" Work by Ole making Ben chaping wood &c	4.25
	" "	" " from 13 to 25	4.00
27	" 3	Days Work by self clearing wood	1.50
31	" 1	Day by self to day by Ole	1.50
April 1	" "	" work by self	1.00

" 13	"	Cash for Coal	1 00
March 29	"	31 ¹ / ₂ Butter ¹ / ₂	3 72
"	"	1 Day Eggs ¹ / ₂	80
April 12	"	41 ¹ / ₂ Butter ¹ / ₂	7 85
"	"	3 Day Eggs ¹ / ₂	30
"	"	Bal on Butter	2 57
"	"	10 Day Eggs ¹ / ₂	80
"	"	2 Days work for Coal	3 00
"	"	7 ¹ / ₂ " " fitting ground for Hedge	7 50
"	"	2 Days work for Ole	1 00
May 9-10	"	1 ¹ / ₂ " " " " self	1 50
"	"	31 ¹ / ₂ Butter ¹ / ₂	9 56
"	"	11 Day Eggs ¹ / ₂	80
"	"	20 Bush Oats ¹ / ₂	5 00
"	"	7 ¹ / ₂ Butter ¹ / ₂	12 20
June 7	"	62 ¹ / ₂ Butter ¹ / ₂	9 00
"	"	30 Bush Oats ¹ / ₂	7 50
13	"	34 ¹ / ₂ Day Eggs ¹ / ₂	3 45
July	"	40 Bush Oats ¹ / ₂	10 00
"	"	14 ¹ / ₂ Cheese ¹ / ₂	1 45
"	"	2 Days work for Ole	1 50
"	"	1 " " " " " " " " " " " "	2 00
"	"	4 Loads of Lard	6 00
"	"	1 Day's work Mining wood	1 35
"	"	Cash for Young	2 00
"	"	14 Bush Oats	4 50
Sept	"	2 Days work for Ole	1 50
"	"	2 Days work in Pen for self	5 00
"	"	Repairing Grain Cade	1 00
"	"	Cash	7 55
"	"	6 Days work	7 50
"	"	Boarding Hounds	1 50
"	"	" " " " " " " " " " " "	22 00
"	"	Boarding whole family	

to father 22 of week	43.71
" Drawing Lead & Marked	1.00
" 6 Boxes of Lead	1.20
" 34 days work with team	
" Selling Lead	2.00
House & House Barn & premises	
from Post 4 th till 1 st March	
" Fall feed of Horses	
" Boarding Horses with board	
Boarding Horses with	
collected	
to by Post 1/4	
to by House 1/4	

The Debt will also from a balance
found to be due from Debt which
Debt agreed to pay.

Made it further pronounced
that on the 17th Day of April 1857
The said Defendant filed in the
Office of the Clerk of this Court
his plea therein in the words and
figures following to wit:
James Simpson & Circuit Court of
ad. } County Court &
Reuben Ayres } Acting Illinois
Notary Term 1857

And the said Defendant by
Jesse Baugh his attorneys comes
and defends the wrong & injury when
a Co. and says that he did not
imburse or promise in manner
and from as the said Plaintiff
thath above thereof complained
against him and of this he puts

Himself upon the Country &c.

Healey & Laughlin
Attys for Def't.

And for a further plea in this
behalf the said Defendant says
Who now because he says that
the said Plaintiff, before and at
the time of this suit, to wit: at &c
aforesaid was and still is indebted
to the said Defendant in a large
sum of money, to wit: the sum
of one thousand dollars for the
work & labor of the said defendant
and his teams and servants
done, performed and bestowed
in and about the business of the
said Plaintiff and at his special
instance and request, and in
the further sum of One Thousand
Dollars for goods by the said Def-
endant before this time sold and
delivered to the said Plaintiff at
his like special instance and
request and in the further
sum of one thousand dollars for
money by the said Defendant
paid, laid out and expended for
the said Plaintiff and at his like
request; and in the further sum
of one thousand dollars for money
by the said Plaintiff before this time
paid and received and for the use
of the said Defendant, and in the
further sum of one thousand

dollars for money due to the
said Defendant from the said Def-
endant Plaintiff before that time for
the rent of land and in the further
sum of one thousand dollars due
to the said Defendant from the
said Plaintiff for the use of wag-
gons, horses, harness, ploughs, har-
rows & chains the property of the said
plaintiff which the said defendant
at the special instance and re-
quest of the said plaintiff per-
mitted said Plaintiff to use, and
in the further sum of one thousand
dollars for money due and owing
from the said Plaintiff to the
said defendant upon an account
stated between them. Which said
sums of money so due and owing
to the said Defendant as afore-
said exceed the damages sustain-
ed by the said plaintiff by reason
of the non-performance by
the said defendant of the
said several supposed promise
& undertakings in the said
declaration mentioned and
one of which said sums of
money so due and owing from
the said plaintiff to the said
defendant the said defendant is
ready and willing and hereby offers
to set off and allow to the said
Plaintiff the full amount of the
said damages according to

The form of the Statute in such
case made and provided and this
the said Defendant is ready to
verify &c.

Seal & Sign

Wm. J. D. W.

And that on the 25th Day of July
1857 the said Defendant by
leave of the Court first had and
obtained filed in the office of the
Clerk of this Court his further
pleas herein in the words and
figures following to-wit:
Reuben Ayerwood

As } Grand & Circuit Court
James Longhead } Term Term.

And for further plea in
this behalf by leave of the Court def-
endant saith actio. mov. &c. became
de saith that heretofore to-wit on
the 14th Day of October AD 1856 before
the Commencement of the suit and
after the said several causes of
action in the plaintiffs declaration
mentioned had occurred to-wit.

At the Court aforesaid the said
Plaintiff and this defendant by their
agreements in writing sealed with
their seals now to the Court here
shown agreed with each other
as follows after reciting that a
misunderstanding or controver-
sy had existed and was then
existing between this Defendant

and the said Plaintiff arising from
and in consequence of a Contract en-
tered into and dated the 4th day of
March 1861 made by said Tughead
& Sylvester. It was mutually agreed
between said parties - that said
Plaintiff should leave the premises
of the said Defendant peacefully & quietly
on or before the 1st day of November
then next instead of March 1st as
anticipated in said Contract & that
the amount of losses & damages
to be paid said Sylvester in con-
sequence of his thus leaving
together with all damages
alleged or charged by the said
Tughead against said Sylvester
and by said Sylvester against said
Tughead also all claims, charges
or accounts of each party against
the other growing out of or in conse-
quence of said Contract and the per-
formance or non performance
thereof by either party also all actions
or causes of action then existing
should be and were by said agreement
submitted to the decision of and final
determination of Heiber Weeks,
Isaac Brown and William Mathews
and said Plaintiff and said Def-
endant did mutually covenant
and agree to and with each other
that they would abide by the said
fairly & fully perform in all things
the award to be made by the said

Arbitrators and afterwards Court on the
first day of November 1856 the
said Arbitrators named in the afore-
said Agreement never having acted
in the matter nor made any award
therein the matters agreed to be
submitted to them it was agreed
by and between this defendant and
the said Plaintiff that the same
matters which by the Agreement should
the said parties had agreed to submit
to the award & final determination
of the said Herbert Weeks, Isaac Brown
and Wm McFarlane should be submitted
to the Arbitrators and final determina-
tion & award of William McFarlane
E. B. French and James Thompson
And defendants agree that af-
wards Court on the 8th day of Novem-
ber 1856 at the County aforesaid
the said William McFarlane, James
Thompson took upon themselves
the burden of said Arbitrators
and award and the said Plaintiff
and the said Defendants came before
said Arbitrators and after hearing
the statements and allegations of
the parties the said last named
Arbitrators on the day & year
aforesaid made their award in
writing which was in substance
as follows

That the said refused undersigned
refused mutually chosen by

Jamies Loughhead and Robert Aylworth for the purpose of investigating and deciding upon the matters in difference existing between said Loughhead and Aylworth having heard the claims and allegations of the respective parties & examined the accounts presented against the other by the parties respectively do hereby decide award and determine as follows That the said Jamies Loughhead pay to the said Aylworth the sum of One Hundred and thirty four dollars & 3/4 in consideration of which the said Aylworth shall deliver to said Loughhead the one half of the wheat & oats & corn raised on the premises of the said Loughhead the present year - the oats and wheat to be divided immediately and the corn when husked or in the row at the option of said Loughhead also to divide the fowls equally & if either party has used or disposed of them this number to be deducted from his share also That the said Aylworth return to said Loughhead all pails and dairy utensils household furniture bag, hammer, shovel of beetle, iron wedges, whiffle trees & Clevis used by said Aylworth and belonging to said Loughhead also harness & all farming utensils to

He returned as good as when first
taken by said Sylworth the natural
mean expected in the 8th of Butter & Eggs
 dozen of Eggs & the 41st of Butter & the
doz of Eggs in the first & second Charges
of said Sylworth in this account
all included in the same awarded
to him and the remaining Charges
of Butter & Eggs we decide that the
said Sylworth shall arrange with
Hulburd & Son when they were delivered
We also decide that the said Sylworth
shall arrange with Hulburd & Son
when they were delivered, We also decide
that said Sylworth shall vacate the
House & premises with his stock &
hogs immediately and said Syl-
worth shall have the privilege of
retreating quietly and without
molestation to receive and hand
away his share of the corn on said
premises. We also determine that
each party shall deliver forthwith
to the other the two Bonds Executed
by them respectively on the 14th day of
October last past, Dated North Creek
Nov. 3rd 1856. — (W. H. Hulburd
E. P. Turner
James C. Thompson

and the said Sylworth to render
a strict account of the wheat & buck
wheat raised last year by the said
Sylworth and also divide his
share crop of Buckwheat & potatoes

equally which would so made Pass
not been in any comparison, reversed
it aside, But presented in full force.
All of which defendant is ready to
verify - whereupon he prays
judgment.

And for a further plea in this behalf
defendant says that now because he
says that after the several causes of
action in the plaintiffs declaration
mentioned have occurred and before
the commencement of this suit but
on the 14th Day of October. D 1856 At the
County aforesaid an agreement
in writing was entered into between
the said Plaintiff and this Def-
endant sealed with the seals
of the said parties respectively
and now to the Court here shown
which Agreement in writing is
in substance as follows.

I now aver by these presents
that whereas a misunderstanding or
controversy has existed and is now
existing between James Hughes
and Reuben Aylsworth of the County
of Nettle Creek County of Grundy
State of Illinois arising from and
in consequence of a contract entered
into and dated the 4th Day of March
1856 made by said Hughes and Aylsworth
It is now mutually agreed between said
parties that the said Aylsworth shall
leave said premises of said

Longhead peacefully and quietly ^{on} before
the first day of November next instead
of March 1856 as stipulated in said
Contract. It is also agreed by and between
said parties that the amount of bonus or
damages to be paid said Aylsworth in
consequence of this ~~the~~ ^{the} ~~being~~ ^{being} together
with all damages alleged or charged by
the said Longhead against said
Aylsworth and by said Aylsworth to
against said Longhead also all claims
charges or accounts of each party
against the other growing out of or
in consequence of said contract
and the performance or non per-
formance thereof by said either
party also all actions or causes of
action now existing. Now therefore
we the foresaid James Longhead
& Arthur Aylsworth do hereby sub-
mit the said controversy to the de-
cision of and final determination of
Arthur Mott, Isaac Brown, & William
McPherson of the County and State
foresaid to make, determine, ar-
range and settle for and with each
other that we will abide by their &
faithfully perform in all things
the award to be made by the said
arbitrators, Witness our hands and
seals this 14th Day of October 1856.

James Longhead Seal
A. Aylsworth Seal

Copy of Claim in case of
Reuben Sylvester

Mr James Lowyhead

For damages in not working consequence of not working land according to agreement	360.00
For 42 Bushels New Wheat	42.00
" 8 1/2 " Oats	25.00
" 19 " Buckwheat	19.00
For loss of Timothy seed by neglect	51.00
For 39 Bushels of Old Wheat	40.00

For 37 Bushels of corn taken by Aylworth from Doughland Crib	6.40
New Corn destroyed in the field by neglect & carelessness	38.00
Much lost by & carelessness	11.00
For Flour	9.52
75 lbs of Butter @ 12¢	9.00
One Yearling Calf	10.00
Oats & Hay. 3 1/2 Bush oats & 2 tons of Hay	87.00
Damage done by hogs	75.00
Damage to Hams, Mazon & Tanning Soda	30.00
Damage to Shade Trees	65.00
" " Reaper	10.00
To Lumber, posts & boards	30.00
To Wheat and Timothy lost by hauling it unbound to Machine	50.00
	<u>\$909.42</u>
	20
	<u>1029.42</u>
30 Boarding Horses	16.00

And be it further remembered that
on the 6th Day of October 1857 the
said Plaintiff filed his Rejoinder
& Demurrer in words and figures
following to wit:

The State of Illinois
Grand Jurors
Benjamin Aylworth
James Doughland } Circuit Court

And now comes the said
Plaintiff and for replication to
the second plea of the said Defendant

and above pleaded that "pro
cludi non" because he says that
at the time in said Plea mentioned
he was not nor ever hath been
indebted to the said Defendant
in manner and form as the
said Defendant hath in his said
Plea alleged & of this he puts
himself upon the country

L. W. Harris

Att'y for Plaff.

And the said Reuben Sybworth
further saith that the said third
and fourth additional Pleas
in manner & form pleaded
and thereunto in the same
contained are not sufficient
in Law to bar the said Reuben
Sybworth of his aforesaid action
against him and that he is not
bound by law to answer the
same & that he is ready to
verify wherefore he prays judg-
ment &c.

L. W. Harris

Att'y for Plaff.

October the 7th 1857

And now at this day come the said pa-
ties by their respective attorneys (Harris &
Tellers for Plaintiff and Messrs
Kelley & Baughre and Cook for the Defendant
and the said Plaintiff by his said
attorney files his Verdict & the
Pleas of the said Defendant by him

3^d 4th above pleaded and the said
Defendant having joined in Demurrer
and the Court having heard the Argument
of Counsel thereon and considered
the same it is ordered by the Court
that said Demurrer be sustained
and that the said Pleas be admitted
to which opinion of the Court the said
Defendant by his said counsel ex-
cepts - and stands by his said
3^d Plea above Plead and asks for
leave to amend his said Fourth Plea
and such leave is granted by said
Court upon the payment of the
Costs of the present Term of this
Court up to the present time.

October 13th 1857

And now at this day come the said
parties by their respective attorneys
aforesaid and issue being joined
and said Cause ready for trial and
the Jurors of the Jury being called
come to wit: Elijah Whitmarsh,
John Woodward, Lemuel Myers,
Henry Mystop, Rufus Henry, James
C. Collins, James E. Quinn, Eugene
Starbuck, Wells F. Stevens, Matthew
Johnson, Lewis F. Casselyn, and
Thomas R. Henry who being duly
chosen, sworn and sworn the issue
herein well and truly to try and
a true verdict to render according
to the evidence after hearing

The evidence adduced, the arguments of counsel and the Charge of the Court retired under the Charge of a sworn officer of this Court to consider of their verdict.

October 14th 1857

And now again at this Day come the said Parties by their respective attorneys and the Jurors of the Jury being called also come and by their Foreman deliver to the Court the following verdict to wit: "We the Jury find for the Plaintiff and assess his damages at the sum of One Hundred and Fifty Seven dollars and Eighty Seven cents and so they say all" which said verdict is ordered of record, Whereupon the said Plaintiff by his said attorneys moves the Court for Judgment upon said Verdict which is granted and the Court do consider and order that Judgment be rendered against the said Defendant and in favor of the said Plaintiff for the said amount of damages so assessed by said Jury herein and that the said Plaintiff do have & recover of the said Defendant the said sum of One Hundred and Fifty Seven dollars and Eighty Seven cents for his damages from said together with his costs and

charges by him about his suit in
this behalf expended and that he
have execution therefor -

Whereupon the said Defendant by
his said attorneys moved the Court
to grant him a New Trial in said
Cause which said motion is overruled
by said Court and a new trial refused.
Whereupon the said Defendant by his
said attorneys prayed an appeal to the
Supreme Court which was granted and
the Bail fixed by this Court at the sum
of Five Hundred dollars and the Of-
ficial Bond directed to be filed with
the Clerk of this Court within 30
Days from this date, and Joseph
A. Dyke accepted by said Court
as security on said appeal Bond.

And thereupon the said Defend-
ant by his attorneys
Lacey and Glover
presented to this
Court his "Bill
of Exceptions"
in words and fig-
ures following
to-wit:

Robert Aykworth & Circuit Court of
 James Longhead } County Court
 State of Illinois
 October Term 1867

Bill of Exceptions

Be it remembered that at this
 Term to wit: October 1867 this
 cause came on for trial be-
 fore the Hon. Charles Starr the
 Judge presiding at the trial and
 a Jury thereupon the Plaintiff
 called James McFarland as a
 witness — The Plaintiffs coun-
 sel here handed to the witness
 an account which was in the
 words and figures following
 to wit:

Jas. Longhead Dr.
 To R. Aykworth

Feb. 13/1866	To 1 Days work drawing	
	wood from Morris	1.00
" "	" 1/2 " " Pray	.50
" 26	" 1 " " Coal	1.00
" 29	" 1 " " Cornstables	1.00
Mar 7	" Cash for Coal	1.22
" 12 & 13	" 1 1/2 Days work making water trough	1.50
From 15 th	Oley worked for Longhead	
To 27 th	8 1/2 Muskin Corn chopping wood	4.25
" 28 th	I worked for Longhead 4 Days	
	picking & drawing Corn	
	fixing fence, going to Mill	2.00
27, 28 & 29 th	3 Days work for self	3.00
" " "	" " " Old drawing seed wheat	1.50

Date	Description	Amount
31 st	Self & family went to Mill	.50
April 1 st 2 nd 3 rd 4 th	" " " " Drawing fence	1.50
" 13	Cash for Coal	1.00
Mar 29 th	21 lbs butter $\frac{1}{4}$	5.72
" "	8 Day Eggs @ $\frac{1}{10}$	.80
April 12	41 $\frac{1}{4}$ lbs Butter " $\frac{1}{4}$	7.85
" "	3 Day Eggs $\frac{1}{10}$	.30
" "	Balance of Butter	2.57
" "	10 Day Eggs $\frac{1}{8}$	.80
" "	2 Days work on Pouch	3.00
" "	$7\frac{1}{2}$ " " drawing manure piling grubbed	7.50
" "	2 " " " for Ole	1.00
May 9 th 10	$1\frac{1}{2}$ " " " " Self	1.50
" "	51 lbs Butter	9.50
" "	10 Day Eggs $\frac{1}{8}$	.80
" "	20 Bush Oats $\frac{1}{4}$	5.00
" "	$7\frac{1}{4}$ lbs Butter $\frac{1}{4}$	12.20
Jun 7 th	62 $\frac{1}{4}$ " " " " $\frac{1}{4}$	9.06
" "	30 Bush Oats $\frac{1}{4}$	7.50
" 13	34 $\frac{1}{2}$ Day Eggs $\frac{1}{10}$	3.45
July	40 Bush Oats $\frac{1}{4}$	10.00
" "	14 $\frac{1}{4}$ lbs Cheese $\frac{1}{4}$	1.45
" "	2 Days work for Ole setting Pouch	1.00
" "	1 " " " Self $\frac{1}{4}$ (on mill)	2.00
" "	4 Loads Stump	6.00
" "	1 Day work (storing rice)	1.25
" "	Cash for Grum	2.50
" "	18 Bush Oats $\frac{1}{4}$	4.50
Sept 12. 13	2 Days work for Ole drawing	1.50
" 16. 15	" " " " self & wife	5.00
" "	Repairing grain Cradle	1.00
" "	Cash for P. of Washing Bill	7.55
" "	6 Days " " " " " "	7.50
" "	Board (rounds) $\frac{1}{4}$ Day (Mushy)	1.50

" Stores 16 1/2 weeks @ 2 1/2 p week 33.00
 " The whole family 5 1/2 weeks which
 makes in all 22 1/2 weeks 45.71
 Drowing seed to market 1.00
 6 Benches sent to crop land 1.20
 54 Days work with team
 Letting this 2.00

and propounded the following questions to wit:

1st State if you have ever seen that % before? to which the witness answered that he had, that it was before the Arbitration.

2nd State what you have heard the Defendant and say concerning the account in your hand? to which question the Defendant then and there by his counsel objected, but the objection was overruled by the Court and the Defendant by his counsel then and there excepted and the witness testified as follows. To wit:

Longhead permitted Aylworth to read the account to us — He objected to one item, the item of board, I think, I was one of the arbitrators, we were trying to settle the matter amicably — Longhead's family (four in number, boarded with Aylworth) Longhead went East the latter part of May — I don't know when he returned, the boy only remained with Aylworth.

Songheads family went to board with Aylworth in the Spring of 1856, both families lived in the same house, but do not know that they are at the same place - Songhead was gone East about 2 or 3 months - Aylworth left Songhead's house on the day of the fall election. I think it was not the November election, because it was not such a stormy day as the election day was - Songhead furnished the house, furniture, bedding &c: under the agreement between the parties, the board was worth about 1.75 each per week - If Aylworth had furnished any thing it would have been worth \$2.50 a week.

Cross Examined by Defts Counsel. I said Mr Songhead did not object to any of the items until Aylworth came to the item of board - He Songhead acknowledged that some of the butter and eggs were right & said some were not right. something was said about oats Songhead objected to them because they were thought them by Aylworth to feed his own horses. He also objected to the butter and eggs delivered to Hubbard.

and L.A. — He spoke of a lease
between himself and Aylworth.
The lease was presented to us as
arbitrators by both parties and
I afterwards gave the lease to
the Plaintiff and he has it now:—
The boarding was provided for in
the written lease — Longhead was
to furnish the provisions and
Aylworth to do the work and
cooking — I cannot say whether
Longhead did or not make any
objection to the 54 Days work of
teams — I cannot state whether
all the items in this account
were contained in the written a-
greement — Longhead boarded
with Aylworth on the contract
some time before he went East
When he came back he said he sup-
posed he was going to board as
before on the contract but Aylworth
claimed before the Arbitrators that
Longhead did not furnish provisions
except flour and therefore he
Aylworth charged him with
board from the time he came
back and credited him with
the flour. — Know that
Longhead furnished the flour
for the use of the house after
he came back — The written
contract provided for boarding,
work and grain to feed the
teams — The Lease was

furnished to us by both parties
there were two copies, one signed
the other not - The one which
was not signed was given to
the Plaintiff -

Here the Plaintiff produced
the Lease and which the Defendant
was permitted then to give in evi-
dence for the purpose of showing
what items of account were cov-
ered by the lease and which
should be excluded from the con-
sideration of the Jury - and
which is in the words and
figures following to wit:

This Indenture Article
of Agreement made & entered
into this 4th Day of March 1856
between James Longhead of
the Town ofettle Creek, County
of Grundy & State of Illinois
of the first part & Reuben Aylworth
of the same place of the second
part, Witnesses - That the
party of the first part purchased
to let on lease to the Party of the
Second Part his Farm on which
he now resides for one year on
the following named conditions
& considerations ss

The party of the first part on his
part agreed to furnish all the
seed of all kinds necessary to
be sown or planted on said

premises & one span of horses &
harness & keeping for the same
also his farming tools & imple-
ments including Wagon & Reap-
The Leaper Part of the Second Part
First Part also agrees to draw out
the manure or pay for drawing
the same to be done this present
Spring. It is also optional with
the party of the first part to find
all the provisions and groceries
for the families of both parties
also the fuel & toads & board with
the party of the second part or
occupy the West ~~corner~~ room
& North Wing of the house & each
one cook & provide for themselves.

The party of second part agrees
to perform all the labor in putting
in & harvesting the crops on said
premises & the whole to be done in
a workmanlike manner,
The party of the Second part is
to have the control of the team
& tools to work them when &
where he pleases so far as the
work on the farm or paying
for team work on the farm
requires, with the restriction
not to overwork them & the
said party agrees to take
good and proper care of the
same - The said party is
also to haul the fuel both par-
ties shall use while they board

Together. The party of the second part is to sow and plant such portions as he may think for the advantage of the parties & is to occupy for small grain, corn & potatoes fifty acres of land.

The corn is to be put in the crib, the party of the first part furnishing the crib - The Timothy seed to be divided in the half bushel. The other grain to be divided in the half bushel but the party of the first part is to pay for threshing his share - The Crops are to be divided equally between the parties - It is further agreed that the party of the first part shall keep the fences in repair.

It is further agreed that the party of the second part is to have pasture for two cows & a team -

It is further agreed that the party of the second part is to take care of the cows belonging to the party of the first part, make the butter and divide the butter & also the calves of said cows equally between the parties; the party of the first part is to find the keeping of said cows & also what dishes & apparatus the said party has for making butter, the party of the second part is to see that the other cattle

& Stock belonging to the party of
the first-part are fed & taken
care of. The parties are to own
an equal number of hens
Both families are to use what
eggs they need & the balance
to be equally divided between
the parties also the chickens
to be equally divided.

In witness whereof we have
set our hands & seals.

Jas. Longhead Senr
Levin Aylworth Senr

Witness examined by Plaintiff -
Longhead objected to the item of
oats, on account that he was
to furnish feed for his own team
only and that the oats were got
by Aylworth to feed his own horses.

The contract would cover the
item of oats, I presume - the
whole of the board of Longhead
with Aylworth was covered by
the contract.

Cross examination resumed.
I learned by conversation between
the parties that they were to live
at a common table and Long
head was to furnish the provisions
- know the farm described
in the lease - the oats were
used in the cultivation of the
farm - Longhead said that

He would let the item of Butter of
3 1/4 lbs amounting to \$5.72 and 8 Doz
of eggs amounting to .80 stand and
the item of 3 Doz of Eggs amounting
to .30 and the item of 11 3/4 lbs Butter
amounting to \$7.85 — The work
mentioned in this account was
done on the Longhead farm this
same year of 1856.

Ex. in Chief resumed.
The threshing was of the grain raised
on the farm. Aythworth claimed
that Longhead had furnished
nothing but flour and charged
him for board by the week after
he came from the East. — The
oats were fed to both teams.

Cross Ex - resumed
Do not know for what the Cal went -
Aythworth used the teams first on
Longhead's farm then on his own -
It was admitted by both parties
at the time of the exhibition that
all the grain fed to both teams
was furnished by Longhead.

Aythworth was to cultivate 50
acres of upland — He did not
cultivate the whole, only thirty
(30) acres

Lewis P. Lott sworn - said -

That he was one of the firm of
Hulburd & Co of Morris. - Longhead
stated to me that Agnewth would
factor in Butter & Eggs & Cheese
- that we might credit it to him
(Longhead) - Agnewth did
bring in Butter, Cheese & Eggs
- the amount credited to Long-
head on our books for Butter,
Cheese & Eggs brought in by Ag-
newth was \$35.05 - the entries
are not all in my hand writing,
some are in Mr. Hulburd's - do
not know from my own knowl-
edge that all the Butter, eggs and
Cheese credited on our books
to Longhead were brought in by
Agnewth - some may have
been brought in by Longhead.

E. T. French called & sworn
said - Longhead left
for the East on the 12th day of
May and came back the 1st day
of September - The boy
boarded with Agnewth most
of the time whilst Longhead
was away - his board was
worth from 14 to 20 per week -
The family boarded with Ag-
newth most of the time from
September 1st to November 1st or
3rd when Agnewth left.

Cross examined

I understood from the parties that Longhead claimed that he was boarding after he returned from the East the same as before he went — Longhead was to furnish provisions and Aylworth was to cook them and both families were to eat at one table — he did do so — the boy boarded there as a member of the family — they did eat at one table, I saw them — Longhead's family used their own beds — Longhead's cow was used by Aylworth during the absence — Aylworth took away over 200 lbs of flour belonging to Longhead — There was considerable poultry on the farm when Aylworth went there — There were some apples in the orchard on the farm that year — Aylworth used some of them for the use of the table — Aylworth had a hired boy who lived with him — he boarded at the common table — Longhead claimed that the boy board should be a fact against the board of his (Longhead's) son — Aylworth's hired boy was not at work for him when Aylworth leased the farm.

from Longhead - do not
think the boy was a mem-
ber of Sylworts family
before he rented Longfields
farm.

James Thompson sworn - said
that the Plaintiffs man
worked preparing ground for
Longhead's hedge - The hedge
was 60 rods long, the work with
man and team was worth \$2 per
day - Do not know how many
days he was at it, or how much
work was done - Heard nothing
said about Posts - There were
some Posts set - do not know who
set them - Longhead said that
Sylworts had set them too
close together.

My Cousin sworn - said
that he dug a well on the Long-
head farm in the summer
of 1856 - It was about 14 feet
deep - I was to have 75¢ a foot
for digging it - got my
pay in Buckwheat, Cheese &
flour Sylworts -

Cross examined

Had no order from Longhead on
Sylworts - Had a Shovel of
Sylworts at \$1.25 - Took the
Buckwheat, Shovel, Cheese &

such things in pay for digging
the well without the knowledge
of Longhead — The Buckwheat
was grown on Longhead's farm
the year before — Agnew told
me that the Buckwheat was Long-
head's — There were four bush-
els of it worth one dollar for
Auburn — There the Plaintiff
rested his case.

The Defendant then
called John Longhead who tes-
tified that James Longhead left
some Buckwheat on his farm
when he went East — cannot tell
how much — Agnew moved
onto farm about 1st of March 1856.

James Longhead went to New
York the last of May — The Buck-
wheat was grown on Defendant's
farm — I carried some of it
to Mr. Gurney and returned some
because Agnew was displeased
at my taking it away — He want-
ed it for seed — There were
10 Bushels of wheat in the farm
after my brother went East, I got
6 Bushels of it, and Jas. Thompson
told me he got some —

Here the defendant offered to
prove that Agnew neglected to
cultivate the land in the farm
mentioned in the lease in a

good husband like manner —
That 30 acres of said land
were not cultivated at all in 1856
— That a good deal of the grain
which was raised on the farm
during that year went to waste by
the negligence of the Plaintiff
and that the Defendant was dam-
aged thereby over \$300.

To which testimony the Plaintiff
by his counsel then & there objected
and the objection was sustained
by the Court and the Defendant
was prevented from giving
said proof in evidence, to which
decision of the Court the Defend-
ant by his counsel then and
there excepted. —

Gas. Thompson called & testified
That he got 12 Bushels of wheat
of Aylworth — Soughhead had
cows on the farm at the time
Aylworth took possession (think
7 or 8).

Gas. McFarlane called & testified
That with the exception of some
oats procured there by Aylworth
all the oats fed to both teams were
furnished by Soughhead — The
oats were worth 30 per bushel
Soughhead had several cows
on the farm when Aylworth
went there — Cows generally

came in March or April -
some of my neighbors have let
their reapers be used for 25 cts
an acre but I would not let
mine go into the hands of other
men for 50 cts an acre -

The Defendant now offered to
prove that the farm by this wit-
ness that the farm Longhead
farm occupied by M. Plaintiff
in 1856 was not farmed by him in
a good husbandlike manner. to
the damage of the Defendant
\$300. and which was objected
to by Plaintiffs counsel and
the objection sustained by the
Court and the Defendant by
his counsel then and there excep-
ted.

E. J. French called -

Did not know of any means
which Sylvester had of making butter
or Cheese except from the cows on
the Longhead farm while he was
in possession. - Sylvester used
the reaper of Longhead off of the
Longhead farm. He cut for me
6 acres of oats and for 5 acres
of wheat. Longheads horses
were then with the reaper.

He had called testified.

Aylworth left the farm on the day of the November election. There were oats in the barn on the Longhead place. — He said that some had been taken away by Aylworth. — He noticed that some had been taken — was in the barn and saw that about 20 bushels had been taken away. — This was after Aylworth had left the place. — Some buckwheat was also taken about 5 or 6 bushels. — saw Aylworth load up a load of corn out of Longhead's crib and take it away. — He thinks he took about 20 bushels of corn. — He also took about 70 bushels of wheat. — Longhead was in possession of the farm at the time the wheat, corn, oats &c were taken. —

Cross examined by Plaintiff's Counsel. Aylworth measured the grain and set off what he said was Longhead's share and took away the rest. — was in the employ of Longhead. — Pushed the corn and put it up in the crib for Longhead when Aylworth took away. — Longhead claimed that corn to be his. — The corn was his. — I know it was his share of the corn that I pushed

and put in the crib and Sylworn
took it — do not know that the
wheat he took was half of that
that was threshed. There that season —
there was not 70 Bushels left
in the Barn — it looked $2\frac{1}{2}$
or $3\frac{1}{2}$ Bushels of being half of
what was threshed — There were
some 40 or 50 Bushels of oats left.

Es. in Chief resumed —
When I went to husking corn I
found some corn husked and
some not — Sylworn had
husked some and not husked
what was left, which I put in
the crib and the Plaintiff took
away — There were side boards
on the Plaintiff's wagon when
he took the corn away — The
Norwegian (the Plaintiff's boy) took
away the corn he husked.

James Knoff sworn testified for
Plaintiff — That Plymouth
divided the oats in the Barn —
it was in March — do not
know anything about the oats
which had been taken before —
There were not over 40 or 50 Bags
of buckwheat — Sylworn
carried his part home.

John England recalls.

England with out acres of
Mead for me — & out about
5 acres of grass with Defendant
Leah in 1856 — he took broke
the reaper at that time —

Here the testimony was closed
on both sides and the following
instructions were given by the
Court to the Jury on the part of
the Defense:

1st That if the Jury believe from the ev-
idence that the charges proved by
the Plaintiff against the Defendant
for boarding were covered were cov-
ered by the written agreement
they will not take into consid-
eration such items in ma-
king up their verdict.

2^d That all the items of charge
proved by the Plaintiff against
the Defendant and which the
Jury may believe from the
evidence were within the
scope of said agreement
and repeated and author-
ized by it, the Jury will not
take into account in ma-
king up the verdict.

The Jury then retired to consider
of their verdict and after-wards
returned into Court the following
Verdict: "We the Jury find for
the Plaintiff \$167.87"

Whereupon the Defendant by
his counsel moved the Court for
a new trial for the following rea-
sons to-wit:

1st Because the verdict is against
the evidence instructions of the Court

2nd Because the verdict is against
the evidence.

Which motion for
a new trial and to set aside
the verdict was overruled
by the Court and the Defendant
by his counsel then and there
accepted and prayed that his
Bill of Exceptions might
be sealed by the Honorable
at this Court presiding -

I Charles Warr the Judge
presiding in the County of
Lundy and State of Illinois
at the October Term of the Cir-
cuit Court of said County &
1857 whereby certify that the
above Bill of Exceptions and
the several exceptions therein
contained, contains the
proceedings had upon the

trial of said case and that the
above and foregoing are all
the testimony given by either
party in this trial -
Witness my hand and seal
this 15 Day of October 1857

Chas R. Allen Seal
Attorney at Law of the Grand
County Circuit Court

And be it further remembered
that on the 20 Day of November
1857 the said Defendant
filed his Appeal Bond herein
in the Office of the Clerk of
this Court & which Appeal
Bond was in the words
and figures following to wit:

Know all men by this present that we
James Forehead as Principal and
Joseph Dyke as security of the Coun-
ty of Grundy & State of Illinois are
held and firmly bound unto Reuben
Hylworth in the sum of Five
Hundred Dollars to be paid to the
said Reuben Hylworth his heirs
executors and administrators
when payment shall and lawfully be
made we bind ourselves our heirs
executors and administrators
jointly severally and firmly by
these presents -
Witness our hand and seals this

2nd Day of November, 1837.

The condition of the above obligation is such that whereas the said Leuben Sylvester did at the October Term 1837 of the Circuit Court in and for the County of Grundj and State of Illinois recover a Judgment in said Court against the said James Sughruff for One Hundred and Fifty Seven (\$157.87) Dollars and Eighty seven cents and costs of suit from which Judgment the said James Sughruff prayed in Appeal to the Supreme Court of the State of Illinois. Now therefore the above obligation is such that if the said James Sughruff shall well and truly pay said Judgment and costs and the interest thereon together with the Damages in case said Judgment shall be affirmed and shall duly prosecute and appear then the above obligation to be said otherwise to remain in full force and effect.

James Sughruff
J. Sughruff

State of Illinois
Greene County } ss.

I William O. Kinsted
Clerk of the Circuit Court in
and for said County of Greene
do hereby certify that the
above reproduction of
Record is truly copied from
the Records & files in my
Office in the matters for
Removal to said Court.

In Testimony whereof I have
hereunto set my hand & affixed
the Seal of said Court. This
23rd Day of April A.D. 1858

Wm O. Kinsted
Ck

And now comes the said appellant by book his
atty and says that in the record and proceeding
aforesaid there is the rendition of the
Judgt aforesaid there is manifest error in
this to wit

The Court erred in sustaining the demurrer of
the plaintiff below to the third plea of the
defendant

The Court erred in sustaining the demurrer
of the plaintiff below to the 4th plea of defendant

3^d The Court erred in admitting improper evidence offered by plaintiff

4th The Court erred in refusing to admit proper evidence offered by Defendant in the Court below

5th The Court erred in overruling motion for a new trial

6th The Court erred in rendering the Judgment of said in manner of said & for same for which errors & others in said record manifestly appellant may said Judgment may be reversed

R. C. Cook

for Appellant

Assignment of Errors filed April 30, 1858

D. Sedgwick, Clerk

12-50-25

215

Reuben Aylworth
vs
Jas. Loughhead

Exemplification
of Record

Filed April 21. 1858
at Albany

Emas filed April 30. 1858
at Albany
B. S. J. C. W.