

No. 13954

# Supreme Court of Illinois

Dickenson

vs.

Whitney

Supreme Court

Daniel O. Dickinson, Decr. Term 1847

<sup>vs</sup>  
Eli Whitney

Affirmant of errors -

- 1<sup>st</sup> The Court erred in giving the instructions asked for by the plaintiff in the Court below
- 2<sup>d</sup> The Court erred in refusing to give the first & third instruction asked for by the defendant
- 3<sup>d</sup> The Court erred in refusing to grant a new trial

Logan Goodrich

And said appellee by the attorney coming  
& joins in Error

A. S. Blosser

From Court

Daniel O. Robinson

vs

li Whitney

Apmt. Error

Filed May 1<sup>st</sup> 1848

R. B. Stewart C. S. C.

By A. Divellins & C

John Prodict  
vs vs. et al

United States of America  
State of Illinois Lake County

Pleas before the Honorable Jesse B. Thomas one of the Justices of the Supreme Court of the State of Illinois and presiding Judge of the seventh Judicial Circuit of said State

At a Circuit Court began and held at Little Fort in said County on the sixth day of September in the year of our Lord One thousand Eight hundred and Forty seven, and of the independence of the United States of America the seventy second

Present the Honorable Jesse B. Thomas Judge. William A. Boardman State attorney James McWay Sheriff of Lake County.

Attest George Thomson, Clerk

Be it remembered that on the fifth day of August One thousand Eight hundred and Forty seven, came the Boardman and Plodgett attorneys of said Court and file their precipe, which precipe is in the words and figures following to wit.

" Lake County Circuit Court  
" do the Special August Term 1847

" Eli Whitney  
" vs  
" Daniel O. Dickenson

" The Clerk will please to issue a summons in the above  
" entitled cause. Yours &c

Boardman & Plodgett, attys for Plff

And afterwards to wit on the 5<sup>th</sup> day of August One thousand eight hundred and forty seven. The Clerk of said Court in obedience to said letter of Precept, issued the Peoples Writ of summons which writ of summons is in the words and figures following to wit

" State of Illinois  
" Lake County

" The People of the State of Illinois  
" to the Sheriff of said County Greeting.

" We command you that you summon Daniel C  
" Pickenson if he shall be found in your County, per=  
" sonally to be and appear before the Circuit Court of  
" said County, on the first day of the next term thereof  
" to be holden at the Court house in said County on the  
" fourth Monday of August Instant to answer unto  
" Eli Whitney in a plea of assumpsit to the damage  
" of the said Plaintiff as he says in the sum of One  
" Thousand Dollars and have you then and there this writ  
" with an indorsement thereon, in what manner you executed  
" the same:

" Witness George Thomson Clerk of said  
" Court and the Seal thereof at Little  
" Fort in said County this 5<sup>th</sup> day of  
" August A.D. 1847

" George Thomson Clerk "


Which said writ of summons was afterwards returned  
by the Sheriff of said county with his return indorsed  
thereon, which said return is in the words and figures  
following to wit

" Executed by reading in the hearing of D C  
" Pickenson Aug<sup>t</sup> 6 1847. Fees 1-50 1 mile 6<sup>3</sup>/<sub>4</sub>  
" Ret 12<sup>1</sup>/<sub>2</sub> \$0. 68<sup>3</sup>/<sub>4</sub> James McKay Sheriff "

And afterwards to wit on the thirteenth day of

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August One thousand and eight hundred and forty seven  
came the said Plaintiff by Boardman and Blodgett  
his attorneys and files with said Clerk his declaration  
in said Cause, which said declaration is in the words  
and figures following to wit

“ Of the August Special Term of the  
“ Circuit Court of Lake County in  
“ the year of our Lord One thousand eight  
“ hundred and forty seven

“ State of Illinois  
“ Lake County  vs

“ Eli Whitney Plaintiff in this suit  
“ by Boardman and Blodgett his attorneys, complains  
“ of Daniel O. Dickerson defendant who has been summoned  
“ to in a plea of Trespass on the case on promises.

“ For that whereas heretofore to wit on  
“ the sixth day of November in the year of our Lord  
“ One thousand eight hundred and forty six at Lake  
“ County aforesaid, in consideration that the said Plff  
“ at the special instance and request of the said defendant  
“ would deliver to the said defendant divers goods and  
“ chattels, to wit, seven hundred and twenty six bushels  
“ and fifty four pounds of good quality winter wheat  
“ of great value to wit of the value of one thousand  
“ Dollars lawful money to be sold and disposed of  
“ by the said defendant for and on account of the  
“ said Plaintiff for reasonable reward to the said  
“ defendant, in that behalf he the said defendant  
“ undertook and then and there faithfully promised  
“ the said Plaintiff to endeavour to sell and dispose  
“ of the said goods and chattels for the said Plaintiff  
“ and to render a just and true account of the sale  
“ thereof to the said Plaintiff and of the moneys arising

“ from said sale, whenever after the said sale the said  
“ defendant, should be thereunto requested. And altho’  
“ the said Plaintiff confiding in the said promise and  
“ undertaking of the said defendant did on the day and  
“ year aforesaid, at the place aforesaid deliver the said  
“ Goods and chattels to the said defendants for the  
“ purpose aforesaid, and altho’ the said defendant did  
“ afterwards, to wit, on the ninth day of June, in the  
“ year of our Lord One thousand eight hundred and  
“ forty seven, at Lake County aforesaid sell and dispose  
“ of the said Goods and chattels for and on account of  
“ said Plaintiff for divers sums of money amounting  
“ in all to a large sum to wit - to the sum of One  
“ thousand dollars of like lawful money, and altho’  
“ the said Plaintiff afterwards to wit, on the twelfth  
“ day of June in the year of our Lord One thousand  
“ eight hundred and forty seven, and on divers other days  
“ between that day and the commencement of this Suit  
“ at Lake County aforesaid requested the said defendant  
“ so to do yet the said defendant not regarding his  
“ said promise and undertaking but continuing and  
“ intending to deceive and defraud the said Plaintiff  
“ in this behalf hath not rendered to the said plff  
“ a just and true or other account of the sale of said  
“ Goods and chattels, or any part thereof, or of the  
“ moneys arising from such sale, or any part thereof  
“ but the said defendant hath hitherto wholly neglect-  
“ ed and refused and still refuses so to do.

“ And for that whereas also heretofore to wit, on  
“ the ninth day of June in the year of our Lord One  
“ thousand eight hundred and forty seven at Lake County  
“ aforesaid, in consideration that the said Plaintiff  
“ at the like special instance and request of the said  
“ defendant had before that time delivered to the said

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“ defendant divers other goods and chattels to wit seven  
“ hundred and twenty six bushels and fifty four pounds  
“ of good quality winter wheat of great value to wit  
“ of the value of One thousand dollars to be sold and  
“ disposed of by the said defendant for the said  
“ plaintiff he the said defendant undertook and then  
“ and there faithfully promised the said plaintiff to  
“ render a just and reasonable account of said goods  
“ and chattels to the said Plaintiff, whenever he the said  
“ defendant should be thereunto afterwards requested, yet  
“ the said defendant not regarding his said last mentioned  
“ promise, and undertaking and contriving and intending  
“ to injure and defraud the said plaintiff in this respect  
“ hath not rendered to the said Plaintiff a just and  
“ reasonable or other account of the said last mentioned  
“ goods and chattels, or any part thereof, altho' the said  
“ defendant hath been after, to wit on the twelfth day  
“ of June and on divers other days between that day  
“ and the commencement of this suit been requested so  
“ to do but to render said account, the said defendants  
“ hath hitherto wholly refused, and still does refuse.


“ And for that whereas also the said defendant  
“ heretofore to wit on the last day of July in the  
“ year of our Lord One thousand eight hundred and  
“ forty seven, at Lake County aforesaid, was indebted  
“ to the said plaintiff in the full sum of One thousand  
“ dollars lawful money for so much money by the  
“ said defendant before that time had and received  
“ to and for the use of the said plaintiff, and being  
“ so indebted, he the said defendant in consideration  
“ thereof afterwards to wit on the day and year  
“ aforesaid at the place aforesaid, undertook and then  
“ and there faithfully promised the said plaintiff to  
“ pay him the said last mentioned sum of money

when he the said defendant- should be thereunto  
afterwards requested.  
Never the less the said defendants not regarding  
his said several promises, and undertakings, but contriving  
and fraudulently intending, to defraud and deceive  
the said Plaintiff in this behalf, hath not as yet  
paid the said several sums of money or any part  
thereof to the said Plaintiff altho' often requested so  
to do, but to pay the same or any part thereof, the said  
defendants hath hitherto wholly neglected and refused  
and still does neglect and refuse to the damage of  
the said Plaintiff of One thousand dollars and  
therefore he brings suit

Boardman & Plodgett  
Atty's for Plff.

Copy of Account  
Daniel C. Dickinson  
To Eli Whitney D.  
For money had and received \$1000.

And afterwards to wit on the twenty fourth day  
of August One thousand Eight hundred and forty seven  
came the said defendant by Hoyt and Cates his  
attorneys and filed with said clerk ~~and filed~~ his Plea  
and notice of sett of, which said plea and notice  
of sett of is in the words and figures following to  
wit

Salt River County Circuit Court  
Daniel C. Dickinson  
vs  
Eli Whitney  assumpsit

And the said defendants by Hoyt  
and Cates his attorneys, comes and defends the wrong  
and injury when he and says that he did not undertake

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or promise in manner and form as the said Plaintiff  
hath above thereof complained against the said defendants,  
and of this the said defendant puts himself upon the  
country Jo.

Lake County Circuit Court

Between Eli Whitney Plaintiff  
and

Daniel C. Dickerson Defendant

Messrs Boardman & Hodggett

Atty's for Plff

Take notice, that the above  
named defendant on the trial of this cause will give  
in evidence, and insist that the above named Plaintiff  
before and at the time of the commencement of this suit  
was and still is indebted to the said defendant in the  
sum of One thousand Dollars of lawful money of the  
United States, for divers Goods, wares and merchandize by  
the said defendant before that time sold and delivered to  
the said Plaintiff, and at his special instance, and request,  
and also in the further sum of one thousand Dollars  
of like lawful money, for money by the said defendant  
before that time lent and advanced to the said Plaintiff  
at his like special instance and request and also  
in the further sum of one thousand Dollars of like lawful  
money, for money by the said defendant before that time  
paid, laid out and expended, to and for the use of the  
said Plaintiff, at his like special instance and request;  
and also in the further sum of One thousand Dollars of  
like lawful money, for other money by the Plaintiff  
before that time had and received, to and for the use  
of the said defendant; And also in the further sum  
of One thousand Dollars of like lawful money, for the  
work and labor, care and diligence and attendance of  
the said defendant and his servants before that time done

performed, and bestowed, in and about the business of the  
said plaintiff, and for the said plaintiff and at his  
request; and also in the further sum of one thousand  
dollars of like lawful money, for money due and owing  
from the said plaintiff, to the said defendant, upon  
an account stated between them, and that the said  
defendant will sett off and allow to the said plaintiff  
on the said trial, so much of the said several sums  
of money, so due and owing from the said plaintiff  
to the said defendant, against any demand of the  
said plaintiff to be proved on the said trial, as will be  
sufficient to satisfy and discharge such demand, ac-  
cording to the Statute in such case made and provided  
Dated this 23<sup>d</sup> day of August A D 1847.

Yours &c

Woyt & Cates  
Pl's attys

And afterwards to wit on the said sixth day  
of September One thousand Eight hundred and forty seven  
the same being one of the days of said term of court  
the following among other proceedings were had

Oli Whitney  
vs  
Daniel O Dickenson



Assumpsit

And now comes the plaintiff by Boardman  
and Blodgett his attorneys, and the defendant by Woyt  
and Cates his attorneys, and issue being joined it is ordered  
that a Jury come, and thereupon came a Jury to wit  
James W Wood, Paul Kingston, James McNamara, F  
H Munson, Gideon Martin, Samuel Morrison, F H Porter  
Wallis Sunderlin, Wiram Butrick, E S Ingalls, A S  
Waterman & William Fulkerson, who were duly empannelled

5  
" and sworn, well and truly to try said issue, and having  
" heard the evidence, arguments of counsel and instructions of  
" the court, retired to consider of their verdict.

" And afterwards the said Jury came into court  
" and delivered the following verdict - " We the Jury find  
" the issue for the Plaintiff and assess his damages at the  
" sum of seven hundred and thirteen dollars and thirty  
" cents, whereupon the defendant by Hoyt his attorney moves  
" the Court for a new trial.

And the said defendant by Hoyt and Cates  
his attorneys, ~~only~~ filed with the said Clerk to wit  
on the seventh day of September One thousand eight  
hundred and forty seven, his motion for a new trial.  
Which motion is in the words and figures following to wit-

" Lake Co Ct Court  
" Daniel C Dickerson  
"                    adv  
"                    Oli Whitney      Mo for new trial.


" The said defendant moves the Court for  
" a new trial in this cause, and for the following reasons  
" First. No evidence whatever to sustain the first  
" and second counts.

" Second. The evidence does not support the verdict  
" on the 3<sup>d</sup> count - The proof showing that there was  
" more than wheat enough to fill Whitney's receipt, down  
" to July 25<sup>th</sup> and that the highest price from July 10<sup>th</sup>  
" to this time was 66<sup>cts</sup>. There is therefore no evidence to  
" sustain the verdict for \$1. per Bushel.

" Third.

" Verdict generally against law and evidence  
" Hoyt & Cates for \$fts

And afterwards to wit on the said seventh day of September One thousand Eight hundred and Forty seven, the same being one of the days of said term of Court the following among other proceedings were had to wit.

“ Eli Whitney  
“ vs  
“ Daniel O Dickenson  Assumpsit

“ And now come the parties by their  
“ respective attorneys and the Court being fully advised as  
“ to the motion of the said defendant for a new trial  
“ heretofore entered herein overrules the same.

“ It is therefore ordered and considered  
“ by the Court that the said Plaintiff have and recover  
\$713. 30¢ of the said defendant the said sum of seven hundred  
“ and thirteen dollars and thirty cents for his said damages  
“ and also his costs and charges in this behalf expended and  
“ that he have execution therefor. Whereupon the said  
“ defendant by Hoyt & Coker his attorneys prays an appeal  
“ to the Supreme Court of this State which is granted  
“ on condition that he enter into bond before the Clerk  
“ of this Court within fifteen days from this date  
“ with George Wood and David Cory as sureties in  
“ the penal sum of nine hundred Dollars.

And afterwards to wit on the Twenty second day of September One thousand Eight hundred and forty seven, came the said defendant and filed with said Clerk his appeal bond with George Wood and David Cory sureties for the sum of nine hundred Dollars. And afterwards to wit on the ninth day of December AD 1847, came the said defendant by Hoyt and Coker his attorneys and files his Bill of exceptions, which Bill of exceptions is in the words and

figures, following to-wit

<sup>cc</sup>  
Lake County Circuit Court - August Special  
Daniel G. Dickinson } Term A.D. 1847  
                                  ads  
Eli Whitney } Assumpsit -

Be it remembered that on the trial of this suit, the plaintiff offered in evidence a copy of an original receipt signed by the said defendant of which the following is a copy, to-wit:

"Received in store, Little Fort Nov 6 1846, 726 <sup>54</sup>/<sub>100</sub>  
" Bushels of Wheat, subject to the order of Eli Whitney  
" on return of this receipt, and payment of charges and  
" advances"

"D G Dickinson"

which copy by consent of the defendant was admitted to be read as evidence in the case & to have the same force and effect as the original - The plaintiff then called the following witnesses; viz;

Havelia Whitney - who being duly sworn testified, that on the tenth day of June A.D. 1847, he saw the defendant Daniel G. Dickinson on his pier in Little Fort - That the defendant then requested the witness to tell the plaintiff that he had sold or contracted his wheat to meet him one dollar per bushel - Def. told the witness that the plaintiff had told him to sell it; if it would meet him one dollar per bushel - The defendant said the money would be ready the next Tuesday or Wednesday - This conversation occurred between Wednesday and

Friday - Dependant said the Contract was that the wheat should be paid for before it was delivered - Witness told the plaintiff what Mr. Dickinson said -

D. L. F. Clark, being duly sworn testified that in a conversation with Mr. Dickinson and speaking of Whitney's wheat, dependant told witness he had bought it. Witness either asked dependant, if he had paid a dollar, or a dollar and five cents a bushel, don't recollect which. Witness inferred from what dependant said, that he bought it for less - Witness knew of Mr. Sunderland buying a load of wheat - after this at a dollar and six cent per bushel in the street - This was the highest price paid after the conversation between witness and the dependant -

Cross - Examined

Buyers in the market generally pay cash - This is the ordinary course of business -

Locenzo Hinkston - Sworn says, he had a conversation with the dependant - don't remember when it occurred - Witness asked the dependant if he had bought Whitney's wheat, and he said, yes - This was when wheat was rising - It must have been before the tenth of June -

Cross - Examined - Dependant did not say whether he had paid Whitney for his wheat - or not -

Darling, sworn testified, that wheat was worth one dollar per bushel about the tenth of June last - The dependant told witness that he had sold all the

wheat in his warehouse. This conversation was sometime between the tenth and fifteenth of June last.

Cross-Examined - Defendant said that he had sold all his wheat. I think that was the remark.

Direct resumed -

Plaintiff took down his receipt and witness offered him one dollar and four cents per bushel for it, Plaintiff said Mr. Dickinson had the preference.

The plaintiff then rested his case, and the defendant called

Levi Lovridge as a witness, who being sworn testified, that plaintiff came into the defendant's store in Littleport about the latter part of June last and had a conversation with defendant about his wheat. Mr. Dickinson said he had contracted to sell it to Captain Randall of the Steamboat Empire to net him one dollar per bushel. Mr. Whitney said he thought it was a good sale, and asked "Do you think it will stay sold, if wheat should fall? Would he back out?" Mr. Dickinson said that he had promised to take it the next trip, that he was not responsible, but if wheat should continue up, he had no doubt he would take it. If it should fall, he thought it was doubtful. Mr. Whitney said he came down to see if it was good, and if so, to receive the pay for it. Mr. Dickinson told him, that he (Randall) had not taken it, but promised to the next trip.

Cross-Examined - It was the last trip of the Empire to Chicago previous to the "Harbor Convention"

on the fifth of July, which was referred to -  
Mr. Darling's name was not mentioned to witness  
recollection - Witness was present all the time - There  
may have been half a dozen others in the store  
but witness did not recollect - Mr Whitney  
came in and wanted to see previous -

William H. Wright, sworn testified that he is in the  
Employ of the defendant - Has Charge of the pier  
and warehouse, and has had the past year -  
Captain Randall did not call the next trip in  
July - The first trip made in June after the  
tenth was the twenty third - The twenty third  
was Wednesday - He promised to call the next  
trip, but did not - Did not take any wheat the  
twenty third - The last shipment of wheat from  
Mr. Dickinson's warehouse was made the twenty  
third of July - one thousand bushels - It  
was old wheat which had been on hand  
all winter - The wheat of seasons storing is  
always mixed together - not kept separate -  
It is the customary mode with forwarders doing  
this kind of business - There was over one hun-  
dred bushels of wheat left in the warehouse  
after the last shipment was made in July  
There was a waste on the receipts of that  
season of six hundred forty three '760 bushels  
It weighed out so much less than it was taken  
in at - The highest price for wheat in Little Rock  
after the tenth day of July last to the twenty third  
of July was sixty six cents per bushel -  
Cross - Examined - There was thirty five thousand  
bushels of wheat in store in Mr. Dickinson's ware

house last winter. Can't tell who owned it all. The accounts with persons storing were kept at the store and we have nothing to do with keeping them at the warehouse. It is booked at the warehouse to Mr. Dickinson. Does not know on whose account the shipment in July was made. Could tell by reference to the books - don't now recollect. The usual charge for storage and shipping is four cents per bushel.

Levi Loveridge - recalled by the defendant, testified that fifty to sixty six cents per bushel was the highest price in the market for wheat from the tenth to the twenty fifth day of July last. Witness heard a conversation between plaintiff and defendant the latter part of July last. Plaintiff asked Mr. Dickinson what was to be done about the wheat as Randall had not taken it. Defendant replied that he would deliver him as good wheat on his receipt or he would pay him the market price. Whitney said he would see about it. The conversation was in the store. When sales of wheat are made, they are not entered as sales till the wheat is shipped. There was some wheat shipped before the first of June, but the greater portion was shipped after that time.

The defendant here rested his case, and the plaintiff called Elmsley Sunderland, who being sworn, testified that he sold wheat on the sixth of last June for one dollar and six cents per bushel - which is the whole evidence in the cause.

The plaintiff asked the Court to instruct the jury

1<sup>st</sup> That if they shall believe from the evidence that the defendant has sold the wheat stored with him by the plaintiff, and received the money for it, then an action for "money had and received" will lie.

2<sup>d</sup> That if the defendant has sold the wheat as his own and received the money this action will lie. Which instructions were given by the Court as asked, and excepted to by the defendant.

The defendant's Counsel then asked the Court to instruct the jury

1<sup>st</sup> That if they believe from the evidence that the defendant offered to deliver to the plaintiff before the commencement of this suit, the quantity of wheat called for by his receipt and of as good quality as that stored with the defendant, then the law is for the defendant, unless the jury shall also find from the evidence, that the defendant had sold the plaintiff's wheat for him at one dollar per bushel nett, as he had been authorized to do.

2<sup>d</sup> That the defendant was not bound to deliver to the plaintiff the said wheat received in store on his receipt, but only wheat of as good quality.

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That if the jury believe from the evidence that there was an insufficiency of wheat on hand in the warehouse, to fill the plaintiff's receipt at any time during the season and before the commencement of this suit, and that such deficit was occasioned by waste; then the law is for the defendant, unless the jury shall also find from the evidence that the plaintiff's wheat was sold in pursuance of the authority given to the defendant by the plaintiff.

The first and third of which instructions the Court declined giving, but gave the second instruction as asked by the defendant.

To which refusal to give the first and third instruction as asked the Counsel for the defendant excepted.

The case was then left with the jury who retired and returned with a verdict for the plaintiff for seven hundred and thirteen dollars and thirty cents damages.

Whereupon the defendant's Counsel moved the Court for a new trial, which motion was filed & the following causes assigned.

1<sup>st</sup> There was no evidence to sustain the first and second Counts of the plaintiff's declaration.

2<sup>nd</sup> The evidence does not sustain the third Count. The proof showed that there was more than wheat enough in store to fill the plaintiff's receipt down to the twenty fifth of July. That the highest price from July tenth to July twenty fifth was sixty six cents per bushel and the evidence does not therefore support

3<sup>d</sup> the verdict for one dollar per bushel -  
The verdict is against Law and evidence -

Which motion for a new trial was over-  
ruled by the Court, and the decision of the  
Court in overruling was thereupon Excepted to  
by the defendant who prays the Court to  
Sign and Seal this his bill of exceptions,  
which is done" - "J B Thomas Seal"

State of Illinois  
Salem County

I George Thomson Clerk of the  
Circuit Court in and for said County. hereby certify  
that the foregoing is a true copy of the Records of  
Judgment in said cause, and of the proceedings therein, as  
well as of the papers on file in my Office

In testimony whereof I have hereunto set  
set my hand and seal of said Court  
at Little Star in said County this 10<sup>th</sup>  
day of December A D 1847  
George Thomson

Salem County Circuit Court  
Ch. Whitney  
Abels  
Daniel Dickerson

Transcript

It is hereby stipulated  
that a further to file the  
written transcript with the  
Clerk of the Supreme Court by  
the 30<sup>th</sup> day of the Dec. Term 1847  
shall forthwith to deposit  
the Appeal - But that the  
same shall be filed with  
all documents thereto  
Dec. 10, 1847  
Bardman & Blyden  
attys for Ch. Whitney

Filed 15<sup>th</sup> Dec. 1847  
R B Adams  
C. H.

Supreme Court

Daniel C. Dickenson  
vs

Eli Whitney

Record

13957

Affirmed

1817  
Reinstated