

No. 13661

# Supreme Court of Illinois

Hubbard

---

vs.

Firman

---

71641  7

STATE OF ILLINOIS,  
SUPREME COURT,  
Third Grand Division.

No. 232

*Hutland*  
*75*

*Sumner*

*1862*

*3561*

*Prepared*

# SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM THEREOF, A. D. 1862.

FERDINAND B. HUBBARD, }  
vs. } *Appeal from Whiteside County.*  
RENSELEAR M. FIRMAN. }

## ABSTRACT OF RECORD.

- 7 This suit is brought to recover the amount upon an award made by Solomon Hubbard, against the defendant below, in accordance with the following contract of submission :
- “This is to certify, that I promise to pay Renselear M. Firman, in addition to what I have already paid him, for the lot one (1) of the southwest quarter ( $\frac{1}{4}$ ) of section eighteen, (18) town twenty, (20) range five, (5) whatever Solomon Hubbard decides is due from me to him.
- “ (Signed) F. B. HUBBARD.”
- 12 Plea.—General issue.
- 13 1st. Special Plea.—The arbitrator did not notify the defendant below, when and where he would act upon the matter, and the defendant was thereby deprived of the privilege of presenting his claim of offsets.
- 14 2d Special Plea—Avers that the arbitrator did not allow the defendant below, anything he had previously paid on said premises.
- 15 3d Special Plea—Avers that he did not know where or when the arbitrator did make his award.
- 16 4th Special Plea—Avers that the said Solomon Hubbard did not make his award in writing.
- 5th Special Plea—Avers a general offset.
- 19 6th Special Plea—Avers that he did not notify the defendant below, prior to the 25th day of March, 1858, of the time and place he would act upon the matter.
- 20 Replications were issued to said pleas.
- 25 Trial had; verdict of jury for sixteen hundred dollars.
- 27 Defendant below filed his motion in arrest of judgment, and for new trial, which motions were overruled by the Court, to which holdings and finding of the Court, the defendant below excepted. The defendant below prayed an appeal, which was allowed, and the requisite bond given.
- 28 Defendant below filed his bill of exceptions, which states, that Solomon Hubbard, the arbitrator, was, by the plaintiff below, introduced as a witness, who testified that the parties came to him and showed him the contract of submission in the spring of 1858, and the parties requested him to decide the matter therein submitted; that they each then and there presented their claims, and he refused to decide it at that time, but afterwards did decide it, and let the parties know what his decision was; he said that he decided that there was due sixteen
- 30 hundred dollars from Hubbard to Firman. *Cross Etc.* When asked
- 31

what his decision was, he said that the defendant below should pay sixteen hundred dollars for the land. Same question being again asked him, (one of the attorneys not hearing distinctly,) said he decided that the defendant below should pay plaintiff below sixteen hundred dollars, for the eighty acres of land. Hubbard's counsel further asked the witness, if there was any unfriendly feelings between the defendant below and the witness; he answered and said there might be; I have a little *good natured grudge* against him. Plaintiff's attorney recalled the witness; asked him if he was acquainted with the land mentioned in the contract; witness answered and said he was; that he had seen a deed executed from Firman to Hubbard, about the time they came to me with the contract; It was a warranty deed; I saw the defendant have it at the time they came to me with the contract; said he thought the consideration mentioned in the deed was sixteen hundred dollars. No other testimony being given, Hubbard's attorneys requested the Court to instruct the jury that a deed without consideration is void, and if it is admitted in this case, no consideration was expressed in the deed, Firman could not recover in his action; and also requested further instruction "that the consideration expressed in a deed, is presumed to be the actual price agreed to be paid for the land, and is to be taken as a conclusive admission, on the part of the plaintiff below, that he received the amount of such consideration, unless it be proved that such an amount was not paid," which instructions were refused.

But the Court instructed the jury that the testimony of all the witnesses should be taken together, and if they believed, from the evidence, that the plaintiff below did sell and convey to the defendant below, said premises, and the parties submitted to Solomon Hubbard what should be paid by said defendant below to the plaintiff below, in addition to what had been before paid thereon, and the parties submitted their claims therein to said Solomon Hubbard, and that said Solomon Hubbard did pass upon the same, and determine the amount to be paid, and gave the defendant below notice, then the plaintiff below is entitled to recover the amount so fixed by the said Solomon Hubbard, and if the defendant below, in consideration of the conveyance of said land, gave the contract of submission, and the said Solomon Hubbard, after giving the defendant below notice, received his account or claim to be passed, and afterward made his award, and notified the parties thereof, said award is binding upon said parties, and the defendant below cannot in this suit litigate over again the matters submitted and awarded upon; and it is immaterial, and could not in this case be inquired into, as to what Solomon Hubbard allowed or did not allow as to the amount which had been paid on the land. The Court further instructed the jury, that there was no evidence before the jury of any acknowledgment by deed of, or payment by the defendant below to the plaintiff below of, sixteen hundred dollars or any other amount, as the consideration of the land in question.

The Court further instructed the jury, that before the plaintiff below can recover, it must be proved that Solomon Hubbard made his award as to how much should be paid over and above what had been paid on the premises. He should prove that the defendant below should have notice of the time and place that Solomon Hubbard would hear the

parties before making his award, and that the defendant below presented his claim; and unless it appears, from the evidence, that Firman made a deed of the premises, he cannot recover. An award, to be binding, must correspond with and follow the agreement of submission in respect to the matter awarded upon, and unless Solomon Hubbard awarded upon the matter submitted, and none other, his award does not bind the parties. The jury returned their verdict of sixteen hundred dollars.

The defendant below filed his motion in arrest of judgment, and for a new trial. Court overruled said motion, to which the defendant below excepted.

38 Motion for a new trial.

39 Affidavit of incompetency of juror.

---

#### POINTS.

This is an agreement between the parties, to submit the question to Solomon Hubbard how much more the defendant below should pay for the land mentioned in said agreement than he has already paid him. It is governed by the rules and laws of arbitration; it is, in fact, an agreement to arbitrate the matter, *Van Courtland vs. Underhill*, 17 Johnson R. p. 405. The award must strictly pursue the contract of submission, 1st vol. Stephens Nisi prius, p. 80.

The award in the case did not do so, as appears most clearly by a reference to the contract of submission and the award as proved. The contract is as follows, to wit: "This is to certify that I promise to pay Renseler M. Firman, in addition to what I have already paid him for lot one, (1) of the SW quarter of section (18,) Town twenty, Range 5, whatever Solomon Hubbard concludes is due from me to him.

Signed,

F. B. HUBBARD."

The real question submitted, was how much more the defendant below should pay the plaintiff below, than he had already paid him for the land. Thus necessity required the said Solomon Hubbard to decide how much had been paid on the land, for the contract of submission admitted that a part of the purchase money had been paid, and the arbitrator was bound by the laws of the land to take notice of it; and it became his duty, as one of the questions submitted to him to ascertain and decide how much had been paid; he could not decide how much more should be paid without deciding how much had been paid; and if he failed to decide all the questions submitted to him, the award is void. 1 Stephens Nisi Prius, 80, 81, and 22, Watson on Arbitrations, p. 121; *McDonald vs. Bacon*, 3 Seam. R. 429; 14 Johnson R., *Jackson ex dem. Van Allen vs. Ambler*, p. 96. Same case see p. 105. The award must comprehend everything submitted.

Suppose A. owned a yoke of oxen, and B. owned a horse, and A. desired to purchase the horse and turn out the oxen in part payment, and the parties agreed to exchange, but no price was fixed on either horse or oxen, the law in that case would raise an implied contract that each should pay what each of the articles were worth at the time of the exchange. The parties afterwards not agreeing as to the value of the respective articles, agreed to submit the question to C. how

much more A. should pay to B. than he had already paid him for the horse, and C. should decide that A. should pay B. one hundred and fifty dollars for the horse, the award would be void ; because it did not decide the question submitted. The question submitted was, how much more should A. pay than he had paid. Therefore, the amount that had been paid was one of the questions submitted, and the questions are so connected together that it is impossible to decide the one without deciding the other ; therefore an omission to decide what the oxen were worth renders the award void. Solomon Hubbard, the arbitrator, when asked if he did make a decision under the contract, said he did. He decided that there was due from the defendant to the plaintiff below sixteen hundred dollars. On cross examination when asked what his decision was, no leading question was put to him by which he might have been misled, but was asked what his decision was, and he answered and said his decision was that the said F. B. Hubbard should pay Firman sixteen hundred dollars for the land. And again the witness was asked what his decision was, one of Hubbard's Attorney's did not hear the last answer, the witness said I decided that Hubbard should pay Firman sixteen hundred dollars for the eighty acres of land. There can be no mistake as to what that award was. He decided that Hubbard should pay Firman sixteen hundred dollars for the eighty acres of land, that being twenty dollars per acre, without any reference as to what had been paid ; which rendered the award void.

Take the case I have put, if the witness when asked what his decision was, should say he decided that there was due from A. to B. one hundred and fifty dollars, and on cross examination, when fully interrogated should be asked what his decision was, and he should say that he decided that A. should pay B. one hundred and fifty dollars for the horse ; and when asked again what his decision was, should answer that he decided that A. should pay B. one hundred and fifty dollars for the black horse, no one could doubt but that he decided that the horse was worth one hundred and fifty dollars, and nothing more, leaving the value of oxen undetermined. So in this case the arbitrator decided the eighty acres of land was worth sixteen hundred dollars, and that is all he did decide. And if there could be a doubt on this point, the witness himself puts it at rest, for he said when interrogated on the point as to what the consideration expressed in the deed for the land was, that he could hardly say, it was so long ago ; but said it was his impression that it was sixteen hundred dollars. No one doubts that that was the amount expressed in the deed, so that he had only decided that the land was worth what the parties had called it worth in the deed. He certainly would not have valued it more than the parties did. It appears to me there can be no mistake in this case ; that the only question decided by the arbitrator was, that the eighty acres of land was worth sixteen hundred dollars. Therefore, if the award is held good, the defendant below is defrauded out of all he has paid on the land. If we believe the witness, the claim for the amount paid was presented to the arbitrator. A fair construction of the contract shows that the greater portion of the purchase money had been paid. It says Hubbard will pay in addition to what has already been paid, whatever Solomon Hubbard decides is due from him on the land, showing that Hubbard thought he had paid

him up, or nearly so; he claims he has fully. It was not a general submission of all matters and differences between the parties, but the submission was confined to the simple question how much more Hubbard should pay than he had paid for the land. That little *good natured grudge* had a great deal to do in deciding this case, I fear.

In the case *Robinson and Raulson*, 1 B. and Ad. 723, in a case of reference, a claim was presented by one party and admitted by the other. The arbitrator made his award, but did not allow the admitted claim. The Court said the award was void, as the arbitrator ought to have taken notice of it, 1 vol. Stephens, *Nisi prius*, p. 82, and note Watson on Arbitrations, p. 122, marginal page 198.

The receipt of the considerations expressed in the deed unexplained, is conclusive evidence of the payment.

It may be said that the contract of submission was made a few days after the deed. If so, take the two together, and it clearly shows that Hubbard supposed he had paid Firman for the land, or nearly so. It was but a very few days after the date of the deed before the contract was made, and the real question submitted was, how much had been paid and not the value of the land. The parties themselves had fixed the value of the land in the deed, but the real issue was, how much had been paid; therefore, the peculiar expression in the contract, "How much more shall Hubbard pay than he has already paid." Yet the award is the precise sum fixed by the parties in the deed as the value of the land. There was no testimony given or offered to be given that the amount fixed in the deed by the parties was not the price agreed upon for the lands, therefore it is conclusive, and the award being for the same amount, viz.: 1600 dollars, shows as conclusively that the arbitrator did not decide the real question submitted to him.

The Court instructed the jury that there was no evidence before them of any acknowledgment by deed of, or payment by the defendant to the plaintiff of 1600 dollars, or any other amount, as the consideration of the land in question. P. 34 of Record.

This instruction is erroneous. The contract of submission acknowledges part pay for the land at least, and Firman having received it and acted under it, thereby admits the facts stated in said contract; and the only question of difference, how much more shall be paid than has already been paid, admitting that a part had been paid. The verdict was for \$1600, the amount of the award. This last instruction misled the jury. They supposed that they had no right to take into consideration what Solomon Hubbard said about the consideration in the deed being \$1600, or that Firman admitted payment of a part of the purchase money, as stated in the contract. If the last instruction had not been given, unquestionably the verdict would have been the other way.

The Court should have given the instructions as requested by the defendants below. The receipt in the deed acknowledging the payment of the purchase money unexplained, is conclusive evidence of the payment.

A deed must have a consideration to support it; 2 Hilliard on Real P. 276, 277; *Bowen v. Bell*, 20 Johnson R. 338.

The declaration avers that the said Solomon Hubbard did decide that the defendant below should pay, in addition to what he had already paid on the land, \$1600. The proof does not sustain the averment. The proof shows that the decision of the arbitrator had no reference to what had been paid, but decided that defendant below should pay sixteen hundred dollars for eighty acres of land.

SAMUEL STRAWDER,  
Attorney for F. B. HUBBARD.

ERRORS ASSIGNED.

1. The Court erred in refusing to give the instructions as requested by the defendant below.
2. The Court erred in giving instructions to the jury.
3. The verdict is against the evidence.
4. The verdict is against the law.
5. The award is void.
6. The Court erred in overruling the motion for a new trial.

Hubbard  
as  
Firmans

Printed abstracts

- 1. The Court called in examining the witnesses in a new trial.
- 2. The Court called in examining the witnesses in a new trial.
- 3. The Court called in examining the witnesses in a new trial.
- 4. The Court called in examining the witnesses in a new trial.
- 5. The Court called in examining the witnesses in a new trial.
- 6. The Court called in examining the witnesses in a new trial.
- 7. The Court called in examining the witnesses in a new trial.
- 8. The Court called in examining the witnesses in a new trial.
- 9. The Court called in examining the witnesses in a new trial.
- 10. The Court called in examining the witnesses in a new trial.

DEBORS REASSIGNED

Filed April 25, 1862  
L. Leland  
Clerk

136 232 - 47

Josephus Carrot  
Amman Rogers  
Casspell  
ads

Isaacson Benjamin  
Casspell

---

Joachim Erno

---

G. W. Manning  
City of Casspell

---

Filed April 25, 1861  
L. Leland  
Clk.

State of Illinois }  
Whiteside County } In the Whiteside County Circuit  
Court October Term A.D. 1859

At a regular Term of the Circuit Court in and for  
the County of Whiteside and State of Illinois begun and  
holden at the Court House in the Town of Morrison  
in said County and State on the second Monday of Octo-  
ber A.D. 1859

Present John V Eustace Judge of the Twenty Second  
Judicial Circuit in the State of Illinois

Present R L Wilson Clerk of the Circuit Court in and  
for said County and State

Present John Dippell Sheriff of said County & State

Present B C Birchell States Attorney for the  
Twenty Second Judicial Circuit in the State  
of Illinois

Be it remembered that heretofore to wit on the ninth  
day of September in the year of our Lord one thousand  
eight hundred and fifty nine. There was filed in the  
Office of the Clerk of the Circuit Court of Whiteside County  
in the State of Iowa, a certain process in the  
words and figures following to wit:

State of Illinois }  
Whiteside County }  
Of the October Term of the  
Circuit Court of Whiteside  
County A.D. 1859

2 Benjamin M. Gorman

vs

Ferdinand B. Hubbard

Plea of trespass on the case  
for promises  
damages \$10,000

Will the Clerk of said Court please issue a summons  
in the above entitled cause for the above named defen-  
dant in a plea of trespass on the case upon promises  
damages ten thousand dollars \$10,000

Henry Price & Sackett plaintiffs attys  
Under which precept and on the same piece  
of paper appears the following to-wit

I Do hereby  
enter my self security for cost in the above entitled  
cause and acknowledge myself bound to pay or  
cause to be paid all costs that may accrue either to the oppo-  
site party or to any of the officers of this Court in pursuance  
of the law of this State

Dated Sept 5<sup>th</sup> 1859

John B. Price

And afterwards to-wit on the same day and year last afo-  
resaid there was issued out of the office of the Clerk of  
said Court and under the seal thereof the Peoples  
Writ of summons directed to the Sheriff of Whiteside Coun-  
ty to execute. Clothed in the words and figures follo-  
wing to-wit

State of Illinois }  
Whiteside County } ss

3

The People of the State of Illinois

to the Sheriff of Said County, Greeting;

We Command you that you summon Ferdinand B Hubbard if he shall be found in your County, personally to be and appear before the Circuit Court of Said Whiteside County, on the first day of the next term thereof to be holden at the Court House in Morrison in Said Whiteside County, on the second Monday of October 1859 to answer unto Benselear M Firman in a plea of Trespass on the Case, & promises to the damage of the said plaintiff as he lays in the sum of Ten thousand dollars. And have you then and there this writ with an endorsement thereon, in what manner you shall have executed the same

Seal

Witness R L Wilson Clerk of our said Court, and the seal thereof at Morrison aforesaid this 9<sup>th</sup> day of September A.D. 1859

R L Wilson Clerk

per R L Wilson dep<sup>t</sup>

And afterwards to wit on the 26<sup>th</sup> day of September 1859 in the year last aforesaid. Said plaintiff filed in the Court aforesaid his certain declaration in said cause in the words and figures following to-wit:

State of Illinois }

Whiteside County }

Of the October term of the Whiteside County Circuit Court A.D. 1859

Benselear M Firman }

vs

Ferdinand B Hubbard }

Benselear M Firman

4

Plaintiff in this suit by Henry Price & Sackett his  
Attorneys. Complain of Ferdinand B Hubbard defen-  
dant in this suit who has been summoned to answer  
the said plaintiff in a plea of trespass on the case  
upon promises. For that whereas heretofore to wit on the  
25<sup>th</sup> day of March A.D. 1838 at the County of Whiteside  
and State of Illinois in consideration that the said  
plaintiff at the special instance and request of the  
said defendants had then and there sold & conveyed  
under his hand and seal to the said defendant certain  
real estate known and described as lot one (1) of the  
South west quarter of Section Eighteen (18) Township two-  
enty (20) North range No five (5) east in the said County  
of Whiteside and State aforesaid the said defendant  
then and there undertook and faithfully promised the  
said plaintiff to pay him as and for the price of said la-  
nd above mentioned in addition to what he the said  
defendants had then already paid the said plaintiff  
so much as Solomon Hubbard should decide to be  
due from the said defendants to the said plaintiff  
therefor when after such decision he should be thereunto  
required. And the said plaintiff avers that afterwar-  
ds to wit on the First day of September A.D. 1839  
at the County aforesaid the said Solomon Hubbard  
took upon himself the burden of deciding the amount  
to be paid by the said defendant to the said plaintiff  
in addition to the amount already paid as aforesaid  
as and for the price of the said real estate! And

5  
The said Solomon Hubbard did then and there decide that the amount to be paid by the said defendant to the said plaintiff in addition to the sum already paid as aforesaid as and for the price of the said real estate should be Sixteen hundred dollars of all of which the said defendant then and there had notice And yet the said defendant not regarding his said promise and undertakings but combining &c. although often requested so to do since the making of the said decision by the said Solomon Hubbard as aforesaid hath not as yet paid the said sum of money so decided to be due to the said plaintiff as aforesaid. nor any part thereof, but the said defendant to pay the same or any part thereof hath hitherto neglected and refused

And also for that herebefore to-wit on the 25<sup>th</sup> day of March A.D. 1858 at the County aforesaid in consideration that the said plaintiff had then and there at the special instance and request of the said defendant bargained sold and conveyed to the said defendant by an instrument in writing under the hand & seal of the said plaintiff certain other real estate known and described as lot one of the South west quarter of Section Eighteen (18) Township Twenty (20) North Range No five (5) East in said County of Whiteside and State of Illinois the said defendant then and there understood and faithfully promised the said plaintiff to pay him the said plaintiff in addition to the amount then already paid by the said defendant to the said plaintiff

6  
Therefore so much as Solomon Hubbard should  
decide ought to be paid by the said defendant to  
the said plaintiff as and for the price of the said  
real estate real estate so sold as aforesaid when  
he should thereunto be afterwards requested. And the  
said Solomon Hubbard afterwards to wit on the first  
first day of September A.D. 1839 did decide that  
the said defendant ought to pay to the said plain-  
tiff as and for the price of the said real estate so  
sold as aforesaid a large sum of money to wit; the  
sum of Sixteen hundred dollars in addition to the  
sum then already paid thereon to the said plaintiff  
by the said defendant as aforesaid of all of which  
the said defendant then and there had notice

Yet the said defendant notwithstanding his said prom-  
ises and undertakings but Contrary and although  
often requested since the making of the said decision  
hath not as yet paid the sum of money so decided to  
be due in any part thereof but the said defendant  
to pay the same or any part thereof hath hitherto neg-  
lected and refused & still doth neglect and refuse

And also for that whereas heretofore to wit on the  
25<sup>th</sup> day of March A.D. 1838 at the county aforesaid in  
consideration that the said plaintiff had then and  
there at the special instance and request of the said  
defendant bargained sold and conveyed to the said  
defendant by an instrument in writing under the hand  
and seal of the said plaintiff. Certain other real estate

7  
Known and described as lot one (1) of the South west  
quarter of section eighteen (18) Township Twenty (20)  
Range No five (5) East in said County - The said defe-  
ndant then and there made executed and delivered  
to said plaintiff an instrument in writing in the words  
& figures following. "This is to certify that I promise to pay  
" Newaler M. Torman in addition to what I have already  
" paid him for the lot one (1) of the S.W. quarter of sec-  
" tion 18. Town Twenty range, 5 whatever Solomon  
" Hubbard decides is due from me to him, Sterling March  
23<sup>rd</sup> 1838  
J. B. Hubbard"

And the said plaintiff avers that the said Solomon  
Hubbard did afterwards to-wit on the first day of  
September A. D. 1839 decide that there was due to the  
said plaintiff from the said defendant upon the pur-  
chase price of said real estate a large sum of money  
to-wit the sum of sixteen hundred dollars all of which  
the said defendant then and there had notice yet the  
said defendant not regarding his said promises and  
undertakings but contriving &c although often  
requested since the making of the said decision hath  
not as yet paid the said sum of money so described to  
be due nor any part thereof but the said defendant to  
pay the same or any part thereof hath hitherto neglected  
& refused & still does neglect and refuse -

And whereas also the said defendant to-wit on the first  
day of September A. D. 1839 to-wit at Sterling in said  
County of Whiteside <sup>became</sup> and is indebted unto the plaintiff  
in a large sum of money to-wit the sum of sixteen

\* And also in the like sum for the price of real estate known and described as lot one, of the South west quarter of Section Eighteen Town Twenty & Range five in said County of Whitman and State of Illinois before then sold and conveyed by said plaintiff to said defendant

hundred dollars for money before that time lent and advanced & paid & laid out & expended for said defendant by said plaintiff at said defendants request; And for money before that time had and received by said defendant to and for the use of said plaintiff; And also in the like sum for goods wares and merchandise before that time sold and delivered by said plaintiff to said defendant at like special instance and request; And also in like sum for the labor care and diligence of said plaintiff before that time done and performed by said plaintiff for said defendant and at the like instance and request of said defendant. \* And also in like sum then and there found due and owing said plaintiff on an account stated between them, and being so indebted said defendant in consideration thereof then & there understood and faithfully promised to pay the said plaintiff said last mentioned sums of money, whenever there afterwards requested Yet the said defendant not regarding his said several promises & undertakings but contriving &c although often requested so to do has not paid said plaintiff either of said sums of money above mentioned or any part thereof but so to do has hitherto failed & wholly neglected and refused & still does neglect and refuse to the damage of said plaintiff of Ten thousand dollars & therefore he brings this suit

Henry Price & Sackett  
plff atty

9

Copy of Account sued on  
Ferdinand B Hubbard To

Kensalar M Terrien Dr

To money lent and advanced	\$ 16 00, 00
" Money expended laid out &c	\$ 16 00, 00
" Money paid for use of	\$ 16 00, 00
" Goods ware & mch sold	
To labor and services	16 00, 00
" Balance of ap stated	16 00, 00
" Due on real estate sold	16 00, 00

And afterwards to wit on the tenth day of October  
in the year last aforesaid said writ of Summons was  
returned into said Court by said Sheriff endorsed as  
follows to-wit- State of Illinois }  
Whiteside County }

I have duly served the  
within by reading the same to the within named Ferdinand  
B Hubbard this 20<sup>th</sup> day of September A.D. 1859 as  
I am therein Commanded

John Dippell Sheriff  
By E Bush depty shf

Fees served	50
Mileage	80
Return	10
	<u>140</u>
	\$ 140

10  
And afterwards to wit on twenty eighth day of May  
in the year of our Lord one thousand eight hundred and  
sixty there was filed in the Court aforesaid the said  
defendants demurrer to the plaintiffs declaration  
clothed in the words and figures following to wit -

State of Illinois }

Whiteside County } In Circuit Court of Whiteside County

May Term A.D. 1860

Rensselaer M. Firmen }

vs

Ferdinand B. Hubbard }

And the said defendant by  
McCoy & Strawder & Bristol his attorneys comes and de-  
fends the wrong and injury when &c. and says that the  
said first second and third Special Counts of the said  
declaration. and the matters therein contained in manner  
and form as the same are above stated and set forth  
are not sufficient in law for the said plaintiff to  
have or maintain his aforesaid action there against  
the said defendant. and he the said defendant is  
not bound by law to answer the same - and this  
he is ready to verify &c &c

McCoy Strawder & Bristol  
Deft attys

And the said defendant by McCoy & Strawder &  
Bristol his attorneys comes and defends the wrong  
and injury when &c and says that he did not under-  
take and promises in manner and form as the said  
plaintiff hath above complained in the fourth and

1) and all of the several Common Counts of his said  
Declaration against him and of this he puts himself  
upon the Country &c

Mc Coy Strawles & Bristol  
Defendants. Atty



13

To-wit on the twenty fifth day of March in the year of our Lord one thousand eight hundred and fifty eight he did execute a certain writing whereby he promised to pay to the plaintiff in addition to what he had paid him for certain premises described in said writing what Solomon Hubbard would decide or award was due from the defendant to the plaintiff on said premises, and this defendant avers and says that the plaintiff did not notify him of the time when nor the place where the said Solomon Hubbard would take upon himself the burden and responsibility of deciding the amount that the defendant should pay to the plaintiff over and above what the defendant had paid the plaintiff on said premises nor did the said Solomon Hubbard notify the defendant where or when he would decide the said sum that the defendant should pay to the plaintiff over and above the amount that the defendant had and has paid to the plaintiff on said premises and this the defendant is ready to verify, whereupon he prays judgement, if the plaintiff ought to have or further maintain his aforesaid action against him

Strawder & Bristol &  
Jas M. Coyle  
defends atty

B And for a further plea in this behalf by leave of court first had and obtained the defendant says actio non

14  
Because he says that heretofore to-wit on the twenty  
fifth day of March in the year of our Lord one thousand  
and eight hundred and fifty eight he did execute  
a certain writing whereby he promised to pay to the pl-  
aintiff in addition to what he had already paid him  
for the premises mentioned in said writing what Sol-  
omon Hubbard would decide or award he the defen-  
dant owes the plaintiff on said premises and this  
defendant avers and says that he not having had  
notice of the time when nor the place where the said  
Solomon Hubbard would assume the burden and  
responsibility of deciding the amount that the defend-  
ant should pay to the plaintiff over and above what  
he had already paid him (the plaintiff) on and for  
said premises mentioned in the plaintiffs declaration  
he this defendant did not present to or before the said  
Solomon Hubbard his claim of the amount that he  
had paid to the plaintiff on said premises, and that  
as the said Solomon Hubbard did not allow nor did  
he deduct the amount that the defendant had paid to  
the plaintiff on said premises out of and from the value  
of said premises in his the said Solomon Hubbards de-  
cision or award requiring or awarding that the de-  
fendant should pay to the plaintiff the sum of sixteen  
hundred dollars for said premises and this the defend-  
ant is ready to verify, whereupon he prays judgement  
if the Plaintiff ought further to have or maintain his  
action aforesaid against him

Shawmut Bond & Jas. McCoy atty

15

And for further plea in this behalf by leave of Court first had and obtained the defendant says Actio non Because he says that heretofore to-wit on the twenty-fifth day of March A. D. 1858 he did execute a certain writing whereby he promised to pay to the plaintiff in addition to what he had already paid him the plaintiff for certain premises mentioned in said writing - g. what Solomon Hubbard should decide or award was due from the defendant to the plaintiff on or for said premises and this defendant avers and says that he did not know when the said Solomon Hubbard would or did make the said decision or award in the premises and this the defendant is ready to verify whereupon he prays judgement if the plaintiff ought to have or further maintain his aforesaid action against him.   
 Shaver & Bristol & Jas. McCoy  
 Def Atty.

5

And for further plea in that behalf by leave of the Court first had and obtained the defendant says Actio non Because he says that he did to-wit on the 25 day of March A. D. 1858 execute a writing whereby he promised to pay the plaintiff in addition to what he had already paid him for lot one (1) of the S. W. quarter of Section (18) Town of Liberty range 3 whatever Solomon Hubbard decides is due from the defendant to the plaintiff on said premises, and this defendant avers and says that the said Solomon Hubbard

did not make any decisions or any award in writing under his hand of and concerning the amount that the defendant should pay to the plaintiff of and for said premises over and above what the defendant had paid the plaintiff on said premises and this the defendant is ready to verify wherefore he prays judgement if the plaintiff ought to further maintain his action aforesaid against him

Strawder & Bristol v. J. M. Coy defatty

6 And for a further plea in that behalf by leave of Court first had and obtained the defendant says action nuda Because he says that the plaintiff before and at the time of the Commencement of this suit to wit at the County of Whiteside aforesaid was and still is indebted to the said defendant in a large sum of money to wit the sum of twelve thousand dollars for work and labor, care, diligence and attendance of said defendant by the said defendant and his servants, before that time done and performed and bestowed in and about the business of the plaintiff and for the plaintiff and at his request, and for divers materials and other necessary things by the said defendant before that time found and provided and used in and about the work and labor for the plaintiff and at his request and for divers goods, wares, and merchandise sold and delivered by the defendant to the plaintiff and at his request, and for money of the said defendant before that time lent and advanced to and paid and laid out and expended for the plaintiff at his

request, Arise for money by the said plaintiff before that time had and received to and for the use of the said defendant - and for money due and owing from the said plaintiff to the said defendant, for interest upon large sums of money due and owing from the said plaintiff to the said defendant. and for money due and owing from the said plaintiff to the defendant upon an account stated between them which sum of money so due and owing to the said defendant as aforesaid exceeds the damages sustained by the said plaintiff by reason of the non performance by the defendant of the said several supposed promises & undertakings in the said declaration mentioned, and out 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 against the said plaintiffs claim if he has any so much thereof as will be sufficient to pay the same and the defendant asks a judgement against the plaintiff for the balance that may appear to be due him according to the Statute in such case made and provided.

Spawles & Bristol & Jas. McCoy def atty

17

And afterwards to wit on the thirtieth day of October in the year of our Lord one thousand eight hundred and sixty one it being one of the judicial days of the October term of the said Whiteside County Circuit Court the said plaintiff by Henry Price & Sackett his attorneys filed in said Court his certain replication and demurrer in the words and figures following to wit:

Rensselaer M Firmen }  
vs } Whiteside County Circuit  
Heroldman B Hubbard } Court

And the said plaintiff by Henry Price and Sackett his attorneys comes and as to the plea of the said defendant by him sheweth above pleaded he says Precludi non because he says that after the making of the said instrument of writing in said plea mentioned the said defendant did present to and before the said Solomon Hubbard, his the said defendants claim of the amount that he had paid to the plaintiff on said premises and this he the said plaintiff prays may be enquired of by the County &

The Defendant doth the like  
Mc Coy & Strawn of atty

Henry Price & Sackett  
Plffs attys.

And on the said plea of the said defendant by him sheweth above pleaded the said plaintiff says precludi non because he says that he was not and is not indebted to the said defendant in manner and form in said plea alleged and

18 This he prays may be enquired of by the Country  
And the defendant with the name Henry Price & Sackett  
McCoy & Howman attys Pltff attys

And the said plaintiff as to the said second, fourth,  
and fifth pleas of said defendant by him above ple-  
aded and each of them, says precisely, now because  
he says that the said several pleas, and the said  
several matters therein stated and averred are  
not sufficient in law to bar the said plaintiffs  
said action, and this they are ready to verify wherefore  
he prays judgement &c

Henry Price & Sackett pltff attys

And afterwards to wit on the eighteenth day of October  
in the year of our Lord one thousand eight hundred  
and sixty one and yet of said October Term of  
said Court the said defendant by his attorneys files  
in said Court his certain second amended plea  
in the words and figures following to wit:

And for  
a further plea in this behalf said defendant by  
leave of Court he says: Obediently now because he says  
that no notice was given him by Solomon Dabbs  
to whom the same was submitted to decide what  
was due from said defendant to said plaintiff  
on said lot of land in the said plaintiffs declaration  
or mentioned over and above what the said defendant

had already paid said plaintiff therefor nor by any other person, nor had the said defendant any notice whatever upon or after the 25<sup>th</sup> day of March A.D. 1858 and prior to or upon the day alleged in said plaintiffs declaration, that he, said arbitrator made his alleged decision to wit the first day of September A.D. 1859 of the time and place he would hear the parties and make his decision whereby the said defendant was prevented from presenting, and did not present before said arbitrator the amount, he, said defendant had paid said plaintiff on said premises prior to the said 25<sup>th</sup> day of March A.D. 1858, and the same was not acted upon nor allowed by said Solomon Hubbard arbitrator as aforesaid nor was the same deducted from the value of said land, and this he is ready to verify and prays judgement &c

Strawder & McCoy attys for def.

And afterwards to wit on the same day and year last aforesaid the said plaintiff by his attorneys files his certain replication to the amended second plea of said defendant in the words and figures following

To-wit

Russell M. Forman

vs

Ferdinand B. Hubbard

} Whiteside County Circuit

} Court October term A.D. 1861

And the said plaintiff as to the amended second plea of the said defendant above pleaded says precludi non because he says that the said defendant did have

notice

20

of the time and place when the said Solomon Hubbard would hear the said parties and make his decision in said declaration mentioned subsequent to the making of the said instrument and prior to the making of said award and determination And this the said defendant prays may be inquired of by the County

Henry Price & Secret

And for a further replication in this behalf as to the said amended second plea of the said defendant above pleaded he says preclusion because he says that the said defendant did present before said Solomon Hubbard the amounts which he the said defendant had paid to the said plaintiff on said premises prior to the said 25<sup>th</sup> day of March 1858 and the same was acted upon by said Solomon Hubbard And this the said plaintiff prays may be inquired of by the County

Henry Price & Secret

Defelt atty

Orders of Court  
January Term of the Whiteside  
County Circuit Court A.D. 1860

At a regular term of the circuit court in and for  
the County of Whiteside and State of Illinois begun  
and holden at the Court House in the Town of Morris-  
son in said County and State on the third Monday  
of January A.D. 1860. and the Judge not arriving  
on this day the Court convened and organized  
on Tuesday Morning January 17<sup>th</sup> 1860

Present John Plustace Judge of the twenty second Judicial  
Circuit in the State of Illinois

Present Robert L Wilson clerk of the circuit court in and for  
the County of Whiteside and State of Illinois

Present John Dippell Sheriff of Whiteside County  
in the and State of Illinois

Present Robert C Burchell States Attorney for the  
twenty second Judicial Circuit in the State of Illinois

And afterwards to wit on the twenty eighth day of January in the year last aforesaid is being one of the judicial days of the said January term of said Court. The following among other proceedings were had and entered of record to wit

108

Rensaler M Triman	}	Trespass on the case
as		
Ferdinand B Hubbard	}	on promises

This day came said Plaintiff by Henry Price and Sackett his attorneys. and the said Defendant by M<sup>c</sup> Coy Strawder and Bristol his attorney After the demurrer to the declaration herein is Confessed, and leave given said Plaintiff to amend And by agreement this Cause is Continued generally to the next term of this Court

## Orders of Court

May Term A. D. 1861

At a regular term of the Circuit Court in and for the County of Whiteside and State of Illinois begun and holden at the court house in the town of Morrison in said County and State on the third Monday of May in the year of our Lord one thousand eight hundred and sixty one it being the twentieth day of said month and the judge not arriving on this day the Court convened and organized on Tuesday morning May twenty first A. D. eighteen hundred and sixty one (1861)

Present Hon John W. Eustace Judge of the twenty second judicial circuit in the State of Illinois

Present Addison Farrington Clerk of the Circuit Court in and for the County of Whiteside in the State of Illinois

Present David M. Cartney States attorney for the twenty second judicial circuit in the State of Illinois

Present Robert S. Blendenin Sheriff in and for the County of Whiteside in the State of Illinois

attest A. Farrington Clerk,

And afterwards to wit on the thirty first day of May in the year of our Lord one thousand eight hundred and sixty one it being one of the judicial days of the of the said May term of said Court for the year one thousand eight hundred and sixty one the following among other proceedings were had and entered of record to wit:

22

Rensselaer M. Stroman  
vs  
Fernand B. Hubbard

Chapman on the case on promises

This day came the said plaintiff by Henry Price and Sachse his attorneys and the said defendant by McCoy & Strawles & Bristol his attorneys. And the demurrer to the declaration herein, entered at a former term of this Court is this day overruled by the Court. And on motion of said Plaintiff the said defendant is ruled to plead herein in ninety days from the last day of this term of this Court.

October Term A.D. 1861

At a regular term of the Circuit Court in and for the County of Whiteside and State of Illinois begun and holden at the Court House in the Town of Morrison in said County and State on the second Monday of October A.D. in the year of our Lord one thousand eight hundred and sixty one it being the fourteenth day of said month

Present Hon. Ira C. Wilkinson Judge of the Sixth Judicial Circuit in the State of Illinois

Present Addison Farrington Clerk of the Circuit Court in and for the County of Whiteside and State of Illinois

Present David McCartney State Attorney for the Twenty Second Judicial Circuit in the State of Illinois

Present Robert G. Cleverlin Sheriff in and for the County of Whiteside in the State of Illinois

Attest <sup>Cap</sup> A Harrington Clerk

And afterwards to wit on the sixteenth day of October in the year of our Lord one thousand eight hundred and sixty one it being one of the regular days of the said October term of said Court the following among other proceedings were had and entered of record to wit

18

Revsaler M Firman }  
vs }  
Hermand B Hubbard }

Therpass on the case on promises

This day came the said plaintiff by Henry Price & Sackett his attorneys and the said defendant by McCoy Browder & Bristol and Eustack his attorneys. And the defendants demurrer to the plaintiffs Replication herein is overruled by the Court. And the demurrer by the Plaintiff to the second, fourth, and fifth pleas of the said defendant herein is this day sustained by the Court

And afterwards to wit on the eighteenth day of said month in the year last aforesaid and yet of said October Term of said Court the following among other proceedings were had and entered of record to wit

18

Revsaler M Firman }  
vs }  
Hermand B Hubbard }

Therpass on the case on promises

This day came the said plaintiff by Henry Price & Sackett <sup>his attorneys</sup> and the said defendant by

20

by McCoy, Strawder & Bristol and Judge Eustace his attorneys. And on motion of said plaintiff leave is given him to reply double to the amended second plea of said defendant

And afterwards to wit on the twenty third day of October in the year last aforesaid and year of said October term of said Court the following among other proceedings were had and entered of record to wit:

Revsaler M Firman

vs

Firman and B Hubbard

} Trespas on the case on promises

18

This day came the said plaintiff by Henry Price & Sackett his attorneys and the said defendant by McCoy Strawder & Bristol & Judge Eustace his attorneys and issues being joined the said defendant by his attorneys enters his motion herein for a continuance of this cause to the next term of this Court, which said motion is overruled by the Court to which ruling the said defendant by his attorneys excepts. And it is ordered by the Court that a Jury come to try this cause whereupon came Lyman Johnson, A C Denning, Wm Loren, George O Odlin, Edward Jamison, D C Brittenden, Lyman D Chase C. D. Sanford Sylvanus Wells James Collins, D. B. Young, & J. A. Hagg who were duly elected tried and sworn, And the said defendant enters his motion herein to dismiss this suit for want of the security for cost which said motion is overruled by the Court to which ruling the said defendant

27

by his attorneys excepts. And the said jury herein after hearing ~~the~~ evidence and arguments of Counsel return to consider of their verdict. And afterwards to wit on the same day return into Court and say, ~~we~~ the jury find the issues for the plaintiff and assess the damages at sixteen hundred dollars <sup>signed</sup> Lyman Johnson Edward Garrison Sylvanus Wells L.D. Chase C.D. Sanford J.A. Flagg James Collins D. B. Gony William Green D.C. Crittenden George O. Odlin. And the said defendant by his attorneys enters his motion herein in arrest of judgement and for a new trial

And afterwards to wit: on the twenty sixth day of October in the year last aforesaid and yet of the said October Term of said Court the following among other ~~things~~ proceedings were had and entered of record to wit

18

Reusaler M. Firman }  
 as }  
 Ferdinand B. Hubbard }  
 Trespas on the case on promises

This day came the said Plaintiff by Henry Price & Sackett his attorneys and the said defendant by McCoy Strawder & Bristol, and J.V. Eustace his attorneys. And the motion entered herein on a former day of this term of this Court in arrest of judgement and for a new trial in this cause is this day overruled by the Court, to which ruling the said defendant by his attorneys excepts. Whereupon it is ordered by the Court that the said plaintiff have and recover of the said defendant

in accordance with the verdict of the jury entered herein on a former day of this term of this Court. The said sum of sixteen hundred dollars for his damages herein. Together with all the costs and charges in and about this suit expended and that he have execution therefor. And on motion of said defendant by his attorneys the said defendant is allowed until the first day of January next to prepare and file a bill of exceptions herein, which said bill is to be as of this term. And the said defendant prays an appeal herein from the judgement of this Court to the Supreme Court of this State, which said appeal is allowed on the said defendants filing in the Clerks office of this Court a Bond with James Pratt as security in the sum of two thousand dollars. Said bond to be filed by the fifteenth day of December next.

State of Illinois }  
 Whiteside County } In the Circuit Court of said County  
 Reuben M. Firman } Plaintiff

v. s } In case on promises  
 Ferdinand B. Hubbard } Defendant.

Be it remembered that on the trial of this cause at the October term A.D. 1861 of said Circuit Court, the said plaintiff to maintain and prove the issues on his part introduced in evidence to the jury the Contract of submission between the aforesaid parties which is in the words and figures following viz

"This is to certify

that I Promise to pay Reuben M. Firman in addition to what I have already paid him for the lot one (1) of the S W quarter of section 18 Town twenty range five whatever Solomon Hubbard decides is due from me to him Sterling March 25<sup>th</sup> 1858

F. B. Hubbard

The plaintiff also introduced Solomon Hubbard as a witness who being sworn testified as follows in answer to interrogatories propounded to him by Plaintiff's attorneys. "I am acquainted with the parties to this suit. The plaintiff is my Brother in law and the defendant is my brother." The Contract above Copied and introduced in evidence in this case being shown to the witness he testified in relation thereto "I have seen this Contract now shown me and introduced in evidence in this case. I first saw it at Sterling during the first week

of Court there in the Spring of 1858. The parties came to me with it and showed it to me and said they had agreed to leave it to me to decide the matter. I told them I did not want any thing to do with it they said they had agreed to leave it to me and I must decide it. They then showed me their accounts of what was claimed to have been paid. They wanted that I should decide it then I told them I was not prepared then to say what the amount should be, that I must have a little time to figure on it, and that I would let Firman know what it was before he left for Ohio, as he lived there and I would let the defendant know the first time I came to Sterling to which the parties agreed. All this occurred at Sterling the first week of Court in the Spring of 1858. Plaintiff's Counsel then asked the witness the question "Did you ever make a decision under that paper" referring to the contract of submption above introduced in evidence. To which witness in answer said, yes, I did, I decided that there was due Sixteen Hundred dollars from Hubbard to Firman witness being further enquired of said I let Firman know my decision before he left for Home. and I told the defendant of it the first time I went to Sterling. This was some little time afterwards - can't know exactly how long perhaps a week or two.

On Cross examination by defendant's attorney witness further testified. It was at Sterling that the parties requested me to decide this matter. Both parties and myself were present no one else. They came to me and showed me the contract and said they had agreed to leave it to me how they should

Settle. Defendants Counsel then asked the question what was your decision. The witness answered "I decided that the defendant should pay the plaintiff fifteen hundred dollars. The witness was again asked the question what was your decision to which he answered I decided that the defendant should pay sixteen hundred dollars for the land. One of defendants attorneys then remarking that he did not understand what the witness said. The question was again asked witness "what did you say your decision was in the premises to which the witness answered I decided that the defendant should pay the Plaintiff sixteen hundred dollars for the eighty acres of land. Witness being asked by defendants attorney if there was unfriendly feeling between him & the defendant. Witness said there may be - well I have a little good natured grudge against him. Plaintiffs atty then offered to read a copy of notice served on Defs. to produce a deed executed by plaintiff & wife to defendant of the premises mentioned in the pleadings to wit: Lot one (1) of the south west fractional quarter of section (18) in Town (20) North of Range five (5) in the County of Whiteside. bearing date March 13 A.D. 1858. Due service & sufficiency of the notice was admitted by defendants attorneys but they failed to produce the deed giving as a reason that it was not present. Defs attys offered to read a copy of the record of a deed from the records of Whiteside County, corresponding with the one described in said notice. The defendants atty objected to the introduction of such copy on the ground that the proof of acknowledgement which purporting to have been taken in Ohio, was defective

The objection was sustained by the Court. Plaintiffs atty then recalled the said Solomon Hubbard who in answer to questions asked by plaintiffs attorney testified that he was acquainted with the land mentioned in the Contract introduced in evidence - that he lived on land adjoining it that he had seen a deed of the Land executed by plaintiffs to defendant. A short time before the time when the parties came to me at Sterling with the agreement. Firman came from Ohio. he came to my house and showed me a deed of this Land to defendant. He showed it to me and asked me if it was a good deed. I examined it. It was a warranty Deed I saw defendant have the same deed at Sterling, at the same time they said they had agreed to leave it to me how they should settle it. Defts attorney on Cross examination asked the witness if he had ever read the deed - Witness said that he did read it - but it was so long ago he could not tell exactly when it read. but it was a warranty deed for the land. Defendants attorney asked the following question, "do you know what the consideration mentioned in said deed was, I do not know exactly I said I know but have forgotten I think it was about sixteen hundred dollars I cannot tell precisely. This was all the evidence introduced in the case. And no further testimony being offered by either party the said Ferdinand Hubbard asked the Court to instruct the jury that, "A Deed without consideration is void, and if it is admitted in this case that no consideration was expressed in the deed from Plff to deft

33  
Then the plaintiff cannot recover in this action  
And that the consideration expressed in a deed is  
presumed as the actual price agreed to be paid for  
the land and it is to be taken as a conclusive admission  
admission on the part of the Plaintiff that he received the  
Amount of such consideration unless it be proved that  
Such amount was not paid.

Which instruction the said Court refused to give  
to the said jury. But on the contrary the Court in-  
structed the jury "That the testimony of all the witnesses  
Should all be taken together by them & if they believe from  
the evidence that the plaintiff did sell & convey to the def-  
endants the premises mentioned as lot one in the south  
west quarter of section eighteen in Township twenty Range  
five - and that the parties submitted to Solomon Hubbard  
what should be paid by said defendant to said plaintiff  
in addition to what had <sup>before</sup> been paid thereon, and that the  
parties submitted their claims in reference thereto to said Solomon  
and that Solomon Hubbard did pass upon the same and  
determined the amount to be so paid and gave the defendant  
notice thereof within a reasonable time. Then the plaintiff is  
entitled to recover the amount so fixed by said Solomon Hub-  
bard, and if the defendant in consideration of the sale and  
conveyance to him by the plaintiff of the land in question  
executed the writing introduced in evidence, and Solomon  
Hubbard after giving the defendant notice received from him  
his account his account or claim to be passed upon, and  
afterwards made his award upon the matter submitted,  
and within a reasonable time notified the parties thereof,

The award of said Solomon Hubbard is binding upon the parties, and the defendant cannot in this suit litigate over again the matter submitted and awarded upon. And it is not material in this case, and could not be enquired into on this trial, what Solomon Hubbard allowed or did not allow as the amount which had been paid on the land, if the jury believe from the evidence that the parties were heard before him in reference thereto, and that he did decide after having heard the parties, how much should still be paid on the land, and notified the parties as agreed, or within reasonable time. There is no evidence before the jury of any acknowledgement by deed or payment by the defendant to the plaintiff of sixteen hundred dollars or any other amount as the consideration of the land in question.

Defendant asked the said Court to instruct the jury as follows, which instructions were given in the words following: "Before the jury can find for the plaintiff it must be proved that Solomon Hubbard made his award of what the defendant should pay the plaintiff over and above what the defendant had paid him in said premises previous to the date of the agreement of submission."

Before the plaintiff can recover in this case he must prove that after the making of the agreement of submission the defendant had notice of the time and place that Solomon Hubbard would hear the parties before making his award, and that the defendant presented the amount he claimed to have paid on said premises prior to the date of said submission, or had an opportunity to do so before said award.

was made, or if presented that said amount was acted  
 on by the said arbitrator. That unless it appears from the  
 evidence that Ferriman has conveyed the land to the defe-  
 ndant & has made him a deed therefor he cannot recover in  
 this action, and if he has made such a deed then the ac-  
 knowledgement of any in the deed, of any consideration is  
 Conclusive as an admission by the plaintiff that he has received  
 such sum named as the Consideration until such receipt  
 is by him explained or contradicted; if there is no evidence ex-  
 plaining or contradicting such admission it is Conclusive pro-  
 of, that the plaintiff received from the defendant the Con-  
 sideration so named and the Jury are Judges whether there  
 is any such acknowledgement of payment, and if any  
 whether there is any evidence explaining or contradicting  
 thereof unless the plaintiff has proved that the Consideration  
 for the execution of the writing was the Sale & Conveying to  
 the defendant by the plaintiff of the land described therein  
 the plaintiff cannot recover. An Award to be binding  
 upon the parties must correspond with and follow the  
 agreement of Submission in respect to the matter awarded  
 upon, and in this case unless Solomon Hubbard awarded  
 upon the matter submitted and more over his award does  
 not bind the parties, and thereupon the said Jury  
 gave their verdict against the said Ferriman and B Hubbard  
 upon the issues made in the case aforesaid. Whereupon the  
 Counsel for the said Ferriman and B Hubbard moved the said  
 Court for a new trial in this case by reason of the refusing  
 of the said Court to give the instructions to the said Jury  
 as asked by the defendants Attorneys as aforesaid, and

36

By reason of the said verdict being against the evidence  
but the said Court overruled the said motion and gave  
judgement upon said verdict of jury against said Ferd-  
inand B Hubbard. Whereupon the attorneys of the said  
Ferdinand B Hubbard then and there to all of the  
rulings & Holdings of the said Court excepted, and the  
attorneys of the said Ferdinand B Hubbard did then and  
there make their exceptions to all the said several holdings  
and rulings of said Court and then and there prayed that  
the said Court would sign and seal this bill of exceptions  
which is accordingly done

Ira O Wilkinson 

Judge &c

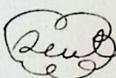
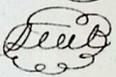
Bond

37

Know all men by these presents that Ferdinand B Hubbard as principal and James M Pratt as security are held and firmly bound to Rezsaler M Firman in the penal sum of two thousand dollars lawful money for the payment of which well and truly to be made we hereby bind ourselves our heirs executors administrators and assigns firmly by these presents  
Witness our hands and seals this 25<sup>th</sup> day of November A.D. 1861

The condition of this obligation is such that whereas at the October term A.D. 1861 of the Circuit Court of the County of Whiteside and State of Illinois the said Rezsaler M Firman received a judgement against the said Ferdinand B Hubbard for the sum of sixteen hundred dollars and costs, from which judgement said Hubbard has taken an appeal to the Supreme Court of said State

Now if the said Hubbard shall pay the said judgement interest and costs and damages in case the said judgement shall be affirmed and shall also duly prosecute said appeal this obligation is to be void otherwise to be and remain in full force and effect

F B Hubbard   
James M Pratt 

The State of Illinois } In the Circuit Court  
Whiteside County } Trespas on the case on promises

Rensales M Firman }  
vs } Motion for a new trial  
Ferdinand B Hubbard }

The said Ferdinand B Hubbard  
now comes and moves the Court to set aside the verdict  
and grant a new trial in this cause for the following to wit:

1<sup>st</sup>  
2<sup>nd</sup>  
3<sup>rd</sup>

That the Court refused to instruct the jury as requested  
by the defendant as to the law of the case

That the <sup>verdict</sup> is against the law

That the instructions given to the jury by the Court is  
not the Law but contrary to the law

- 4 That the verdict is against the evidence and the law
- 5 That the award is void and of no force and not binding  
on the parties
- 6 The verdict ought to have been in favor of the defendant  
& against the plaintiff

A If Flagg was not a competent juror in this case  
McCoy Eustace & Strawser Def. Atty

affidavit on me for new trial

34

State of Illinois }  
Whiteside County } In the Whiteside County Circuit  
Court October Term A.D. 1861

Russell M. Fisman }

vs

Germaine B. Hubbard } Germaine B. Hubbard the

Said defendant on his oath saith  
that Mr. Flagg one of the jurors who tried the case was at  
the time of said trial and has been for some weeks last  
past and now is a student at law in the office of Messrs  
Henry Price & Sackett who were attorneys for said plaintiff  
on the trial of this cause. Affiant further saith that the  
fact that said juror was so a student was unknown to him  
this affiant at the time said juror was sworn; and that this  
affiant is informed by his attorneys who tried this case and verily  
believes that said fact was unknown to them at said time

Subscribed and sworn to

G. B. Hubbard

this 26<sup>th</sup> day of October A.D.  
1861 in open court

A. Harrington Clerk

State of Illinois }  
Whiteside County }

I Addison Farrington Clerk of  
the Circuit Court within and for said County hereby  
certify the above and foregoing to be a true full &  
Complete Copy of all the original papers and pro-  
ceedings entered of record <sup>and of the Record</sup> in a certain Cause lately  
pending in said Court on the Common Law side  
thereof wherein Renewal M. Gorman was plaintiff  
and Ferdinand B. Hubbard Defendant

In witness whereof I have hereunto set my hand  
and affixed the Seal of said Court at Morrison  
in said County this fourteenth day of April  
A.D. 1862

A. Farrington Clerk

State of Illinois Supreme Court at  
Ottawa April Term 1862  
Appeal from Whiteside County

Ferdinand B Hubbard } appellant

vs  
Reusaler M Firman } appellee

and the said Ferdinand

B Hubbard now comes and says that in the record and proceedings aforesaid there is manifest error in this to wit

First The Court erred in not giving the instruction as requested by the appellant to the jury

Second The Court erred in giving the instructions that it did to the jury

Third The verdict is manifestly against the evidence in the case

Fourth The verdict is against the law of the case

Fifth The award of Solomon Hubbard is void it does not conform to the contract of submission

Sixth The Court erred in overruling the motion of the said Ferdinand B Hubbard for a new trial and in not granting a new trial in the case

Seventh The Court erred in rendering a judgement in favor of the said Reusaler M Firman whereas by the laws of the land it ought to have been rendered in favor of Ferdinand B Hubbard wherefore the said

Defendant B Hubbard prays that said  
judgement may be reversed annulled and held  
for nothing and he be restored to all things he  
has lost by reason thereof.

Samuel Strawder atty  
for said Hubbard

The appellee joins in error

C Brekwith

atty for appellee

136 # 232

Russell M. Gorman

vs

Ferdinand B. Hubbard

Transcript

Filed Apr. 23. 1862  
L. Ueland  
Clk.

Fee \$8.00 Paid by  
Dependant

Superior Court  
Anson Rogers  
Appellee  
vs  
Franklin Hemmel  
Appellant

And now comes  
the said Appellee in the  
above Cause and says  
there is no error in the  
record & proceedings nor  
in the giving the judgment  
appealed in this Cause.  
And the said Appellee  
therefore prays that the  
said judgment may be  
in all things affirmed.

G. W. Manning  
Atty for appellee