

12498

No. _____

Supreme Court of Illinois

Sharp.

vs.

Green.

71641  7

John Sharp vs. William B. Green.

Pleas before the Honourable Circuit Court of Marshall County, in the State of Illinois, at a Term thereof begun and holden at the Court-house, in Lacon, on Tuesday, the Tenth day of April, in the year of our Lord one thousand eight hundred and fifty-five.

Present, the Honourable Edwin S. Leland, Judge of the Ninth Judicial Circuit of the State of Illinois; William H. L. Wallace, State's Attorney for said Circuit; Abram Gardner, Sheriff of said County; and Greenberg L. Fort, Clerk of said Court.

Be it remembered, that heretofore, to wit, on the 29th day of March, A.D. 1855, came the plaintiff, by his attorneys, and filed herein his Praecipe for Summons, which is as follows, to wit:

Praecipe.

John Sharp, } In the Marshall Co. Circuit Court,
vs. William B. Green. } To the April Term, 1855. In Covenant.

Issue a Summons in Covenant in the above-entitled Suit; direct the same to the Sheriff of Marshall County to execute. Put the damages at two thousand dollars.

Yours, &c.,

To G. L. Fort, Clerk.
March 28th, 1855.

Richmond & Burns,
Attys. for plaintiff.

Summons.

And on the said 29th day of March, A.D. 1855, the Clerk of said Court issued the following Summons, to wit:

The People of the State of Illinois, to the Sheriff of Marshall County, Greeting: We command you to summon William B. Green, to appear before our Circuit Court, on the first day of the next term thereof, to be held at Lacon, within and for the said County of Marshall, on the 9th day of April next, then and there, in our said Court, to answer John Sharp in an action of Covenant, to the said Sharp's damage in the sum of two thousand dollars, as he saith. Hereof fail not, and make due return of your doings hereon.

Witness, Greenberry L. Fort, Clerk of our said Court, and the seal thereof, at Lacon, this 29th day of March, in the year of our Lord one thousand eight hundred and fifty-five.



Greenberry L. Fort, Clerk.

On the back of which are the following endorsement and return:

John Sharp vs. Wm. B. Green. - Summons. - Filed, April 9, 1855. G. L. Fort, Clerk. - Sheriff fees, \$1.20 - Richmond & Burns, Attys. for Plff.

I have served this writ by reading the same to the within named William B. Green, on this, the 7th day of April, A.D. 1855, as within commanded. A. Gardner, Sheriff of Marshall Co., Ill. By H. L. Crane, Deft.

Sheriff's fees: Service, 50; miles travel, 60; Return of this writ, 10
\$1.20

And on the 30th day of March, A.D. 1855, came

the plaintiff, by his attorneys, and filed herein his Declaration, which is as follows, to wit:

Declaration.

State of Illinois, Marshall County, and Circuit Court thereof, to the April Term, A.D. 1855.

William B. Green, of said County, was duly summoned to answer unto John Sharp, of a plea of breach of covenant. For that whereas, heretofore, to wit, on the 27th day of October, in the year A.D. 1853, at the County of Marshall, in the State of Illinois, said defendant, by his bond of that date, duly executed, sealed with his seal, and delivered to said plaintiff, and in Court to be produced, in consideration that said plaintiff had then and there agreed and covenanted with the said defendant to pay to said said defendant the sum of nineteen hundred and twenty dollars, when the said defendant should procure and deliver to said plaintiff a good deed to the East half of Section fourteen, in town twenty-nine North, and range one west of the third principal meridian, then and there covenanted and agreed to and with the said plaintiff, under a penalty of one thousand dollars, to be paid to said plaintiff in case he, said, defendant, should make default in his covenants and agreements in said bond named, to procure and deliver a good deed for and to the above-described land to said plaintiff, by the first day of March thence next ensuing, which period has now elapsed.

And the said plaintiff in fact says that neither at the time of the making, executing and delivering to said

plaintiff said bond, nor at any time thereafter, did said defendant have any good and sufficient title to said land.

And said plaintiff avers that afterwards, to wit, on the first day of November, in the year 1854, the said time for the delivery of said deed, according to the said covenants, at the County of Marshall aforesaid, the said plaintiff demanded and requested the said defendant to ^{procure} ~~purchase~~ and deliver to him, said plaintiff, a good deed for and to ~~said land~~ the aforesaid land; and the said defendant then and there neglected and refused, and hath always, before and since that time, neglected and refused to make, execute and deliver to said plaintiff a good deed for the aforesaid land, or to procure the same to be done by any person by him duly authorized, to wit, at the County of Marshall aforesaid.

And said plaintiff further avers that that he has always, ^{since} ~~at~~ the expiration of the time, to wit, the 1st day of March, in the year 1854, when by the terms of the covenants and agreements in said bond mentioned, the said deed ought to have been made, executed and delivered to him, said plaintiff, by said defendant, been ready and willing to receive said deed, to wit, at the County of Marshall aforesaid; and that he, said plaintiff, has always, since the first day of March, in the year 1854, that being the time when by the covenants in said bond the said defendant bound himself, his heirs, administrators and

* then & there having expired

assigns, to and with said plaintiff, to procure and deliver to said plaintiff said deed, to pay the aforesaid sum of nineteen hundred and twenty dollars to said defendant, when he, the said defendant, should procure and deliver to him, said plaintiff, said deed, to wit, at the County of Marshall aforesaid.

And the said plaintiff further avers that he has at all times well and truly kept and performed the said bond and the covenants therein mentioned on his part to be kept and performed, according to the true intent and meaning of said bond and said covenants, to wit, at the County of Marshall aforesaid.

And so the plaintiff in fact saith that said defendant (although often requested so to do) hath not kept the said covenant so by him made as aforesaid, but hath broken the same, and to keep the same with the said plaintiff hath hitherto wholly neglected and refused, and still doth neglect and refuse; whereby, and by means whereof, the said plaintiff saith he has sustained great damage and injury, to wit, at the County of Marshall aforesaid.

And also, for that whereas, on the 27th day of October, in the year 1853, at the County of Marshall aforesaid, the following bond, writing, obligation and other covenants and agreements were made between the said plaintiff and defendant, that is to say:

"Know all men by these presents, that I, William B. Green, of the County of Marshall and State of Illinois, am held and firmly bound unto John Sharp,

of the County and State aforesaid, in the penal sum of one thousand dollars, for the payment of which I bind myself, my heirs, administrators and assigns, firmly by these presents, signed with my hand and sealed with my seal, this 27th day of October, 1853. The condition of the above obligation is such, that if the above-bounden or his legal representatives, shall procure a good deed to the East half of Section fourteen, in town twenty-nine North, and range one west of the third principal meridian, and deliver the same to the said John Sharp, by the first day of March next, and for which the said John Sharp is to pay the above-bounden the full consideration of said purchase, or delivery of said deed, which is agreed to be the sum of nineteen hundred and twenty dollars, then the above obligation will be void; otherwise to be in full force and effect.

William B. Green.  "

And the said plaintiff avers that he has at all times well and truly kept and performed all the covenants and agreements in the said bond mentioned on his part to be kept, ~~and~~ performed and fulfilled, according to the true intent and meaning of said bond, to wit, at the County of Marshall aforesaid; that he has at all times been ready and willing to receive a good deed from the said plaintiff for the land described in said bond, and to pay to said defendant the said sum of nineteen hundred and twenty dollars, in said bond mentioned, when ~~the~~ said

defendant, should procure a good deed for said land, and deliver the same to said plaintiff; that on the 1st day of November, 1854, which was after the expiration of the time when, by the terms, true intent and meaning of the covenants in said bond mentioned, ought to have procured and delivered said deed to said plaintiff, he, said plaintiff, requested and demand of and from said defendant a good deed for the said land in said bond mentioned, to wit, at the County aforesaid; and that said defendant, then and there, as well as at all other times before and since, neglected and refused to procure and deliver the same to said plaintiff, or to cause the same to be done, to wit, at the County of Marshall aforesaid.

And said plaintiff further avers, that neither on the day of the date of said bond, nor at any other time since that time, had said defendant any title to said land.

And the plaintiff further avers, that after the execution and delivery of said bond to said plaintiff by said defendant, he, said plaintiff, made great and valuable improvements on said land in said bond mentioned, to wit, of the value of one thousand dollars; and laid out and expended divers large sums of money, to wit, the sum of one thousand dollars; and also a large amount of valuable time and labor of great value, to wit, of the value of one thousand dollars; to wit, at the County of Marshall aforesaid. And the said plaintiff further avers,

that the said defendant has not kept, performed and fulfilled the covenants and agreements on his part to be kept, performed and fulfilled, but has broken the same; nor has said defendant, although often requested, paid to said plaintiff the penalty of one thousand dollars, in said bond specified, according to the terms and conditions, tenor and effect of said bond; nor has he, said defendant, ever made or procured and delivered to said plaintiff a good deed, or any deed, for said land in said bond specified, according to the force and effect, true intent and meaning of said bond, nor caused the same to be done by any person by him lawfully authorized; nor has he, said defendant, ever paid to said plaintiff any damages for the non-fulfillment of his covenants and agreements in said bond mentioned; but has hitherto wholly neglected and refused, and still neglects and refuses, either to pay the penalty of one thousand in said bond mentioned, or to procure and deliver to said plaintiff a good deed for the land mentioned in said bond, or to pay to said plaintiff any damages for his non-fulfillment of his covenants in said bond; nor has he, said defendant, ever performed and fulfilled any of his covenants in said bond specified, nor any or either of them, nor any part thereof, nor caused the same to be done by any person or persons by him, said defendant, lawfully authorized. By means whereof, the said plaintiff saith he is injured and hath sustained damage

to the amount of two thousand dollars, and therefore he brings suit &c.

Richmond & Burns, Attys. for plaintiff.

The following is a copy of the bond sued and declared on:

Know all men by these presents, that I, William B. Green, of the County of Marshall and State of Illinois, am held and firmly bound unto John Sharp, of the County and State aforesaid, in the penal sum of one thousand dollars, for the payment of which I bind myself, my heirs, administrators and assigns, firmly by these presents, signed with my hand and sealed with my seal, this 27th day of October, 1853.

The condition of the above obligation is such, that if the above-bounden, or his legal representatives shall procure a good deed to the East half of section fourteen, in town twenty-nine north, and range one west of the third principal meridian, and deliver the same to the said John Sharp, by the first day of March next, and for which the said John Sharp is to pay the above-bounden the full consideration of said purchase, on delivery of said deed, which is agreed to be the sum of nineteen hundred and twenty dollars, then the above obligation will be void; otherwise to be in full force and effect.

William B. Green. 

Pleas before the Honourable Circuit Court of the County of Marshall, in the State of Illinois, at a Term thereof begun and holden at the Court-house, in Lacon, on Monday, the fifteenth day of October, in the year of our Lord one thousand eight hundred and fifty-five.

Present, the Honourable Madison C. Hollister, Judge of the Ninth Judicial Circuit of the State of Illinois; Greenberry L. Fort, Clerk of said Court, and by James St. C. Roal, his deputy; and Henry L. Crane, Deputy Sheriff.

Be it remembered, that on the 18th day of October, A. D. 1855, being one of the days of said Term, came the defendant, by his attorneys, and filed herein his Demurrer to the plaintiff's Declaration; which said Demurrer is as follows, to wit:

Demurrer.

John Sharp, } Marshall Circuit Court, Oct. Term,
vs. William B. Green. A.D. 1855. In Covenant.

And the said William B. Green comes and says, that the said John Sharp ought not to have his action aforesaid against him, because, he says, that the declaration aforesaid, and every count therein, and the matters therein contained, are not sufficient in law to maintain the action aforesaid, and that he is not bound by law to answer the same; wherefore he prays judgment, and that the said plaintiff may be barred of his said action against him.
By his attys, Ramsey & Fleming.

And on the 19th day of October, A. D. 1855, being one of the days of said Term, came the defendant, by his attorneys, and filed herein his Pleas, as follows, to wit:

Pleas.

John Sharp, } Covenant.

vs.
Wm. B. Green.

- And now comes the said deft.,
1. by Pratt, his attorney, and defends the wrong and injury when &c., and says that the said Bond or writing obligatory set out in the Plaintiff's Declaration herein, is not his deed, and of this the plaintiff(?) puts himself upon the country, &c.

Pratt, for deft.

And the plaintiff doth the like.

Richmond & Burns, for plff.

2. And for further plea in this behalf, the deft. says actio non, because, he says, he has always hitherto well and truly kept and performed all his said covenants in the plaintiff's declaration mentioned, to be by him kept and performed, and hath not broken the same, and of this the deft. is ready to verify, wherefore he prays judgment, &c.

Pratt, for deft.

3. And for further plea in this behalf, the defendant says actio non, because, he says, that on the first day of March, A. D. 1854, the defendant executed and tendered to the plaintiff a good and sufficient deed for the said land in the said writing obligatory set forth, and the plaintiff then and there refused to receive the same, and pay to the defendant the said sum of nineteen hundred

and twenty dollars, as by the said writing obligatory he was required, and this the def^t. is ready to verify, wherefore he prays judgment, &c.

Pratt, for def^t.

4. And for further plea in this behalf, the def^t. says actio non, because, he says, the said plaintiff, neither before nor on the said first day of March, A. D. 1854, was ready and willing, and did not offer, to pay the defendant the said sum of nineteen hundred and twenty dollars, according to the true intent and meaning of the said writing obligatory in that behalf, and this the def^t. is ready to verify, wherefore he prays judgment, &c.

Pratt, for def^t.

5. And for further plea in this behalf, the def^t. says actio non, because, he says, that after the making of the said writing obligatory, to wit, on the first day of March, A. D. 1854, the plaintiff released the defendant from all obligations and covenants in said writing obligatory contained, and this the def^t. is ready to verify, wherefore he prays judgment, &c.

Pratt, for def^t.

And on the same day last aforesaid, came the defendant, by his attorneys, and filed herein the two following Affidavits, to wit:

Affidavit of	John Sharp,	} Marshall Circuit Court,
C. L. Fleming.	William B. Green.	
	vs.	Oct. Term, A. D. 1855.

Samuel S. Fleming, being first duly sworn, on oath says, that he is the attorney for the defendant, William B. Green; that up to the morning of the ~~first~~^{4th} day of this term, he, the said affiant, was constantly engaged in the preparation and trial of cases, after the calling of the docket, on Monday morning, except when this affiant was necessarily detained at ^{his} home, in consequence of sickness in his family, and that he had not time to devote any attention to said case until Wednesday eve of the 2d day, when τ (?) prepared a demurrer to file in the case on the morning of the 4th day; that this affiant, not being fully satisfied that the demurrer was well taken, concluded to ask for further time to plead in the case, and, if such extension of time was granted, not to file the demurrer; that on the opening of the Court, on Thursday morning, this affiant asked for an extension of the rule to plead beyond the 4th morning, which was not allowed, and then this affiant ^{immediately} filed his demurrer, which was in accordance with the practice of this Court heretofore, as this affiant understood the same, and believed that he had complied with the rule to plead by the 4th morning as fully and completely as he would have done had the application for the extension of the time to plead been made on the morning of the 2d day of said term, as the practice of this Court has been to file the pleas on the morning that the party was ruled to plead. Affiant also further states that he is informed by the defendant, and believes

the same to be true, that the defendant has a good defence to the plaintiffs suit.

Subscribed and sworn to before me, } Saml. L. Fleming,
this 19th Oct., 1855. } G. L. Fort, Clerk.

Affidavit of
L. G. Pratt.

John Sharp,
vs.
William B. Green.

} Marshall Circuit Court,
Oct. Term, A. D. 1855.

L. G. Pratt, being first duly sworn, on oath says, that he was first employed as associate counsel for defendant in this case, on the morning of the 4th day of this term; that immediately thereafter this affiant examined the papers in the case, and found a demurrer on file in the same, and supposed, as a matter of course, that nothing further was requisite in the case until said demurrer was disposed of by the Court. This affiant further states, that by the practice of this Court heretofore, the filing of a plea on the morning of the day the rule for pleading required the same to be filed, was a compliance with the rule, and that such has been the universal practice. Deponent further says he is informed and believes that said defendant has a defence to this action, and believes that great injustice will be done unless the said deft. be allowed to file a plea to the merits of this cause.

Sworn to before me this 19th day } L. G. Pratt.
of Oct., 1855. } G. L. Fort, Clerk.

Pleas before the Honourable Circuit Court of
the County of Marshall, in the State of Illinois,
at a Special Term thereof begun and holden at
the Court-house, in Lacon, on Tuesday, the fifth
day of February, in the year of our Lord one thousand
eight hundred and fifty-six.

Present, the Honourable Madison E. Hollister, Judge of
the Ninth Judicial Circuit of the State of Illinois; William
H. L. Wallace, State's Attorney for said Circuit; Greenberry
S. Fort, Clerk of said Court, and by James St. C. Roal,
his deputy; and Abram Gardner, Sheriff, and by Henry
L. Crane, his deputy.

Be it remembered, that on the 8th day of February,
A. D. 1856, being one of the days of said Term, came
the plaintiff, by his attorneys, and filed herein his de-
murrer to defendant's pleas; which said demurrer is
as follows, to wit:

Demurrer
to Pleas.

John Sharp, } Covenant.
vs. William B. Green. } And now comes the plaintiff,
by Richmond and Burns, his attorneys, and says
that the pleas by said defendant secondly, thirdly,
fourthly and fifthly, above pleaded, as severally in-
sufficient in law, and that the said plaintiff is
not bound by law to answer the same, and that
the plaintiff is ready to verify, wherefore he prays
judgment, &c. Richmond & Burns, attys. for plaintiff.
And said plff. hereby assigns the following

special causes of demurrer to said pleas severally pleaded:

- 1st. Said 2nd plea ought to conclude with a verification, and not to the country.
- 2nd. Said 3rd plea is bad because it does not aver that defendant had a title to the land in the plff's declaration mentioned.
- 3rd. Said 4th plea is bad because it alleges that plff. did not offer to pay def. the ~~con~~ consideration for the conveyance of the land in plff's declaration mentioned, when, by the terms of the bond, said plff. was not bound to make such offer.
- 4th. Said 4th plea is bad for duplicity.
- 5th. Said 5th plea is bad for the reason that it does not allege a consideration for the release.
6. Said pleas above specified are each severally bad for other reasons.
7. Said 4th plea is also bad for the reason that it alleges that plff. was ready and willing, and did not offer, to pay the money in said bond set out in plff's declaration, before, on the 1st day of March, 1854, when by said bond plff. was not bound to do so.

Richmond & Burns, attys. for plff.

And ~~the~~ on the 9th day of February, A.D. 1856, in said term, came the plaintiff, by his attorneys, and filed herein the following Replications to defendant's pleas, to wit:

Replications.

John Sharp, } Marshall County Circuit
vs. William B. Green. } Court, Feb. Term, A. D. 1856.

And now comes the plaintiff, by Richmond & Burns, his attys., and for replication to the plea by the defendant secondly above pleaded, says precludi non, because, he says, that the defendant not well and truly keep and perform the covenants in the said bond or writing obligatory mentioned, in manner and form as alleged in said plea; and of this the defendant puts himself upon the country, &c.

Richmond & Burns, Attys. for plaintiff.

And for a replication to the plea by the defendant thirdly above pleaded, defendant(?) says precludi non, because, he says, that the defendant did not, on the first day of March, A. D. 1854, nor at any other time whatsoever, execute and tender to the plaintiff a good and sufficient deed for the land in said writing obligatory or bond mentioned; and the said plaintiff did not, on the said first day of March, refuse to receive the same, and pay the said sum of nineteen hundred and twenty dollars, in manner and form as is alleged in the said third plea; and of this the plaintiff puts himself upon the country, &c.

Richmond & Burns, attys. for plaintiff.

And for replication to the plea by the defendant fifthly above pleaded, says precludi non, because, he says, that he did not, on the first day of March, A. D. 1854, nor at any other time whatsoever, release

the defendant from all obligations and covenants in the said writing obligatory or bond mentioned and contained, in manner and form as the defendant has in his said plea alleged; and of this the defendant (?) puts himself upon the country, &c.

Richmond & Burns, attys. for plff.

And on the 15th day of February, A.D. 1856, being one of the days of said Term, this cause having come on for trial, the Court, at the request of the plaintiff, instructed the jury as follows, to wit:

Plaintiff's

John Sharp,

vs.
Wm. B. Green.

The plaintiff asks the Court to instruct the jury:

1st. That the measure of damages in this cause is the difference between the contract price, mentioned in the bond, for the land, and the value of the land on the first day of March, 1854.

2. If the jury believe from the evidence, that the defendant contracted in writing, under seal, to convey certain land to the plaintiff; and if the jury further believes that the defendant has broken his said contract, and has not conveyed to plaintiff such land; then the plaintiff is entitled to some damages in this suit; and in estimating such damages, the jury will be governed by the rule laid down in the first instruction given above.

3. In estimating the damages, the jury will be governed by the real, intrinsic value of the land

on the 1st day of March, 1854.

And on the same day aforesaid, the Court, at the request of the Defendant, instructed the jury as follows, to wit:

Defendant's
Instructions.

John Sharp,
vs.
William B. Green. } Instructions for Defendant.

1st. If the jury should believe from the evidence, that the plaintiff is entitled to recover, then the measure or rule of damages would be the difference between the contract price of the land, and the cash value of the land on the first day of March, A.D. 1854.

Given.

2nd. If the jury believe from the evidence, that the contract price for the land was six dollars per acre; and that on the first day of March, 1854, said land was not worth more than six dollars per acre; then the jury should find for the defendant.

Refused.

3rd. In estimating the value of the land on the 1st day of March, 1854, the jury should be governed by the value of the land in cash, on that day.

Given.

4th. Unless the plaintiff has proved, that before the commencement of this suit he was ready and willing to perform his part of the agreement, by paying the money for the land, he is not entitled to recover.

Refused.

5. If the jury should believe from the evidence, that the contract price for the land was six dollars per acre; and that the land, on the first day of March, A.D. 1854, was worth no more than six dollars per acre, as its cash value; then the plaintiff is only entitled

Given.

to recover nominal damages.

And this cause having come on for trial, on the same day last aforesaid, the following verdict was rendered herein, to wit:

Verdict.
John Sharp, } Covenant.
vs. Wm. B. Green. } Be it remembered, that this day this cause coming on to be heard upon the demurrer herein to the 4th plea, which said demurrer is sustained by the Court; and the issue being joined, a jury comes to try the same, to wit: Samuel Maxwell, Francis H. Bond, Samuel Riskey, Robert Henry, M. M. Sherburne, J. D. McVicar, Ephraim Hoyt, Isaac Smith, Levi Holmes, David Verney, Isaac A. Green and Courtland McMurtry, twelve good and lawful men, duly chosen, empannelled and sworn; who, after hearing the evidence adduced, and argument of counsel, retire to consider of their verdict; and, after due deliberation, return into Court, and say: We, the jury, find the issue joined for the plaintiff, and assess his damages at the sum of three hundred and eighty-five dollars.

And on the 16th day of February, A.D. 1856, being one of the days of said Term, the following motions were decided, and judgment rendered, herein, to wit:

Motion for new trial.
John Sharp, } Covenant.
vs. William B. Green. } Be it remembered, that this day comes the defendant, by his attorneys, and moves the

Court for a new trial herein; which motion is overruled by the Court. And again comes the said defendant, Motion for arrest by his attorneys, and moves the Court to arrest the of judgment. judgment herein; which motion is also overruled by the Court. It is therefore considered by the Court, that judgment. the said plaintiff have and recover of the said defendant the aforesaid sum of three hundred and eighty-five dollars, together with his costs and charges by him about his suit in this behalf expended; and it is ordered that execution issue therefor. Whereupon comes the said defendant, and prays an appeal to the Supreme Court; which said appeal is allowed, upon condition that the said defendant enter into bond, in the penal sum of eight hundred dollars, with Silas Ramsey, as security, to be filed with the Clerk of this Court, within thirty days ^{from} of the adjournment of this term of this Court.

And on the aforesaid 16th day of February, A.D. 1856, came the defendant, by his attorney, and filed herein his Bill of Exceptions, which is as follows, to wit:

Bill of
Exceptions.

John Sharp, } Circuit Court, Marshall County.
vs. William B. Green. } February Special Term, A.D. 1856.

Be it remembered, that on the trial of this cause, the plaintiff, to prove the issues on his part, offered the following Bond in evidence:

Bond.

Know all men by these presents, that I, William B. Green, of the County of Marshall and State of

Illinois, am held and firmly bound unto John Sharp, of the County and State aforesaid, in the penal sum of one thousand dollars, for the payment of which I bind myself, my heirs, administrators and assigns, firmly by these presents, signed with my hand, and sealed with my seal, this 27th day of October, 1853. The condition, of the above obligation is such, that if the above-bounden, or his legal representatives, shall procure a good deed to the East half of Section fourteen, in town twenty-nine north, and range one west of the third principal meridian, and deliver the same to the said John Sharp, by the first day of March next, & for which the said John Sharp is to pay the above-bounden the full consideration of said purchase, on delivery of said deed, which is agreed to be the sum of nineteen hundred and twenty dollars, then the above obligation will be void; otherwise to be in full force and effect.

William B. Green. *L.S.*

To the reading of which said Bond the defendant, by his counsel, objected; but said objection was overruled by the Court, and said bond read in evidence; to which ruling of the Court, in overruling said motion, and permitting said bond to be read in evidence, the defendant, by his counsel, then and there excepted.

The plaintiff then produced Lycurgus G. Sherwood, a witness, who testified, that in his opinion, on the first day of March, A.D. 1854, the land in said

land described was worth eight dollars per acre.

The defendant then ~~tended to~~ introduced several witnesses, whose testimony tended to show that said land on that day, March 1st, 1854, was worth from five to eight dollars per acre.

This was all the evidence in the case.

At the request of the plaintiff, the Court gave the following instructions to the jury: (See plaintiff's instructions, ante.)

To the giving of each and all of said instructions the defendant then and there objected; but the Court overruled the objections, and gave the said instructions; to which ruling of the Court, in overruling said objections, and giving said instructions, the defendant then and there excepted.

The defendant then requested the Court to give the following instructions to the jury: (See defendant's instructions, ante.)

Which said instructions numbered 2 and 4 the Court refused to give, and qualified each of said instructions numbered 1, 3 and 5, by striking out from each of said instructions the word "market," as applied to the price of the land, as mentioned in said instructions; to which said rulings of the Court, in refusing said instructions numbered 2 and 4, and in qualifying said instructions numbered 1, 3 and 5, the defendant then and there objected; but his objections were severally overruled by the Court. To which said rulings, severally and respectively, the said defendant,

by his counsel, then and there excepted.

The jury then returned the following verdict: (See verdict, ante.)

The defendant then entered his motions severally for a new trial herein, and in arrest of judgment; each of which said motions were overruled by the Court, and judgment entered upon the verdict of the jury. To which several rulings of the Court, in overruling the said defendant's several motions for a new trial and in arrest of judgment, and in rendering judgment upon the said verdict of the jury, the defendant then and there objected and excepted; and prays that this his Bill of Exceptions may be signed and sealed; which is accordingly done.

M. E. Hollister. 

And afterwards, to wit, on the 11th day of March, A. D. 1856, came the defendant, and filed herein his appeal bond, which is as follows, to wit:

Appeal Bond. Know all men by these presents, that we, William B. Green and Silas Ramsey, of the County of Marshall and State of Illinois, are held and firmly bound unto John Sharp, in the penal sum of Eight Hundred and no Dollars, for the payment of which, well and truly to be made, we, and each of us, bind ourselves, our heirs, executors and administrators, jointly, severally, and firmly by these presents, sealed with our seals, and dated at Lacon, this 11th day of March, Anno

20

Domini one thousand eight hundred and fifty six.

The condition of the above obligation is such, that whereas, at the Special February Term, 1856, John Sharp recovered a judgment against William B. Green, before the Circuit Court within and for the County of Marshall, State of Illinois, in a suit brought by the said John Sharp, against the said William B. Green, for the sum of \$385, Dollars, and costs of suit; from which judgment the said William B. Green has appealed to the Supreme Court of the State of Illinois; now if the said William B. Green shall pay and satisfy whatever judgment may be rendered by the said Supreme Court, upon the dismissal or trial of the appeal, then this obligation to be void; otherwise to remain in full force and effect.

Taken and entered into before } William B. Green. *W.B.G.*
me, at my office, at Lacon, and } Silas Ramsey. *S.R.*
the security approved by me, this
11th day of March, 1856.

G. L. Fort, Clerk.

State of Illinois, } ss. J. L. Fort, Clerk of the Circuit
Marshall County, } Court for said County, do certify,
that the foregoing Record, from page 1 to page 25 inclu-
sive, is a true transcript of the papers on file, and
the proceedings had, in the case of John Sharp vs.
William B. Green, in said Court.



Witness my hand, and the Seal of
said Court, at Lacon, this fourth
day of June, A. D. 1856.

J. L. Fort, Clerk.

By Jas. St. C. Roal, Deputy.

John Sharp }
vs } And now comes William
Wm. B. Green } B Green Plaintiff in Error
and says, that in the Records and proceedings
and in the rendition of the Judgment aforesaid
there is manifest error in this to wit.

1. Said Court erred in giving the instructions asked
by the Plaintiff below.
2. Said Court erred in refusing instructions
asked by Defendant below.
3. Said Court erred in overruling Defendant's
Motions for a new trial and in award
of Judgment.
4. Said Court erred in refusing the 4th in-
struction asked by Defendant

5th In not entering Judgment for the
Defendants,

When you do pray that said
Judgment may be reversed.

June 14th 1856, *A. C. Triple*
' for W. B. Green
Additional Error assigned

6th That the Court erred in rendering
Judgment for the Plaintiff, there being
no issue in the Record upon the
4th Plea of the Defendant

May 16th 1856. *A. C. Triple*

¹²³ 52
Mm. B. Green }
123 m }
James Sharpe }

Record

Filed June 14 1854

L. Selmont
Clerk

Mo Superseeds
Refused ~~Refused~~

~~123~~ 52

William B Green

James Sharpe

52

12498

1857