

No. 13620

# Supreme Court of Illinois

Doggett

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vs.

Brown

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STATE OF ILLINOIS,  
SUPREME COURT,  
Third Grand Division.

No. 254

*Doggett*

*vs*  
*Brady*

1862

13620

*Prepared*

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State of Illinois <sup>County</sup>  
Cook County <sup>of</sup> Superior Court of Chicago  
of the December Term 1881

John E. Brown Plaintiff in the suit by D. C. Sand & Nichols his Attorneys Complainers of William E. Dwyer and J. Robert Hill Defendants in this suit who have been summoned &c to answer the said Plaintiff in a plea of trespass on the Case upon Promises

To that whereas the said Defendants herefor to wit on the first day of November in the Year of our Lord One thousand Eight hundred and Eighty one, at Chicago to wit at the County of Cook and State of Illinois aforesaid became and was indebted to the said Plaintiff in the sum of Two Hundred Dollars of lawful Money of the United States of America for the work and labor, care and diligence of the said Plaintiff by the said Plaintiff before that time done performed and bestowed in and about the business of the said Defendants and for the said Defendants, and at their special instance and request, and also for divers materials and other necessary things by the said Plaintiff before that time found and provided used and applied in and about that work and labor for the said Defendants and at their like special instance and request, and being so indebted they the said Defendants in consideration thereof afterwards to wit on the day and Year aforesaid at Chicago aforesaid undertook and then and there faithfully promised the said Plaintiff well and truly to pay him the said Plaintiff the said last mentioned sum of Money when they the said Defendants

Should be thereunto afterwards requested  
 And Whereas also afterwards to wit on the  
 day and Year last aforesaid, at Chicago aforesaid  
 in Consideration that the said Plaintiff at the like  
 Special instance and request of the said Defendants  
 had before that time done, performed, and bestowed  
 other his work and labor, care and diligence in  
 and about other the business of and for the said Defen-  
 dants and also at this like Special instance and request  
 before that time found and provided divers other materials  
 and necessary things and used and applied the same in  
 and about the last mentioned work and labor, they  
 the said Defendants undertook and then and there  
 faithfully promised the said Plaintiff to pay him so  
 much money as he therefor reasonably deserved to have  
 of the said Defendants, when they the said Defendants  
 should be thereunto afterwards requested, And the said  
 Plaintiff avers that he therefor reasonably deserved to  
 have of the said Defendants the sum of Five  
 Hundred Dollars of like lawful money as aforesaid  
 to wit at Chicago aforesaid when the said Defendants  
 afterwards to wit on the day and Year last aforesaid there  
 had notice

And Whereas also, the said defendant on the  
 first day of November in the Year of our Lord one thousand  
 eight hundred and fifty one at Chicago in said  
 County of Cook, became and was indebted to the  
 said Plaintiff in the sum of Five hundred dollars  
 of lawful money of the United States of America, for  
 divers goods, wares and Merchandise, by the said  
 Plaintiff before that time sold and delivered to the said  
 defendants, and at the Special instance and request  
 of the said defendants and being so indebted to the

Said Plaintiff, the said defendants, in Consideration thereof, afterwards, to wit, on the same day and Year, and at the place aforesaid, Undertook, and there and there faithfully promised the said Plaintiff well and truly to pay unto the said Plaintiff the sum of money last mentioned, when the said defendants should be therunto afterwards requested

And Whereas, also, the said defendants, afterwards, to wit, on the same day and Year, and at the place aforesaid, in Consideration that the said Plaintiff had before that time, at the like special instance and request of the said defendants, sold, and delivered to the said defendants divers other goods, wares and Merchandise of the said Plaintiff, the said defendants then and there Undertook and faithfully promised the said Plaintiff, that the said defendant would well and truly pay to the said Plaintiff so much money as the last aforesaid goods, wares, and Merchandise, at the time of the sale and delivery thereof were reasonably worth, when the said defendants should be therunto afterwards, requested; and the said Plaintiff avers that the said goods, wares and Merchandise last mentioned, at the time of the sale and delivery thereof were reasonably worth the further sum of five hundred dollars of like lawful money as aforesaid, to wit, at the place aforesaid whereas the said defendants, afterwards, on the same day and Year, and at the place aforesaid had notice

And Whereas, also, the said defendants afterwards, to wit, on the same day and Year, and at the place aforesaid, were indebted to the said Plaintiff in the further sum of Five Hundred dollars of like

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lawful money as aforesaid, for money before that time lent and advanced by the said Plaintiff to the said defendants, and at the like request of the said defendants, And in the like sum for other money by the said Plaintiff, before that time paid, lent out and appropiated for the said defendants, and at the like request of the said defendants, And in the like sum for other money by the said defendants before that time had and received to and for the use of the said Plaintiff, And in the like sum for other money before that time and then due and owing the said Plaintiff for interest upon and for the first carriage for divers other sums of money before that time and then due and owing from said defendants to said Plaintiff, And in the like sum for the price and value of work then done, and material for the same provided by the Plaintiff, for the defendants and at the like request of the defendants, And being so indebted, the said defendants, in consideration thereof afterwards, to wit, on the same day and Year and at the place aforesaid, Undertook, and then and there faithfully promised the said Plaintiff well and truly to pay unto the said Plaintiff the several Sums of Money in this Count mentioned, when the said defendants should be therunto afterwards requested,

And Whereas also, the said defendants, afterwards, to wit, on the same day and Year, and at the place aforesaid, accounted together with the said Plaintiff of and concerning divers other sums of money before that time due and owing from the said defendants to the said Plaintiff and then, and there being in Arrear and unpaid, and upon such accounting

the <sup>said</sup> defendants then and there were found to be in  
 arrears and indebted to the said Plaintiff in the  
 further sum of Five Hundred dollars of like lawful  
 money as aforesaid, And being so found in  
 arrears and indebted to the said Plaintiff, the said  
 defendants, in Consideration thereof, afterwards to wit,  
 on the same day and year, and at the place aforesaid  
 undertook, and then and there faithfully promised  
 the said Plaintiff full and truly to pay unto the  
 said Plaintiff the said sum of money last mentioned,  
 when the said defendants should be thereunto afterwards  
 requested

Nevertheless the said defendants (although  
 often requested, etc) have not <sup>yet</sup> paid the several sums  
 of money above mentioned, or any or either of them  
 or any part thereof, to the said Plaintiff, but to pay  
 the same, or any part thereof, to the said Plaintiff, the  
 said defendants have hitherto altogether refused,  
 and still do refuse, to the damage of the said Plaintiff  
 of Five Hundred dollars and therefore the said  
 Plaintiff brings suit etc

D. C. and J. P. Nicholas  
 Plaintiff Attorneys

Copy of Account Sent on

Doggett and Hills

1858	To John C Brown Dr	
Oct 2 3	To labor and materials	\$54.37
1859	To labor and materials	16.00
July 18	To labor and materials	24.68
1860	To labor and materials	3.65
Aug 6	To labor and materials	6.45

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To Money lent and advanced	\$500.00
To Money paid lent out and expended	\$500.00
To Money had and paid to and for the use of the Plaintiff	\$500.00
To Goods Wares and Merchandise sold and delivered	\$500.00
To Labor and Services	\$500.00
To balance due on Account stated	\$500.00

And afterwards to wit, on the fourth day of December in the Year aforesaid William E Doggett and D. Hobart Hills by Gallup & Hitchcock their Attorneys filed herein their said Petition and affidavit of assets in words and figures following to wit

Superior Court of Chicago  
December Term A.D. 1868

William E Doggett }  
D. Hobart Hills }  
John E Brown }  
ads }

And the said defendants by Gallup & Hitchcock their Attorneys, Come and defend the Wrong and injury when & say that they did not undertake, or promise in manner and form as the said Plaintiff hath above them complained against them and of this they put themselves upon the Country &c

Gallup & Hitchcock  
Deft's Atty's

In the Superior Court of Chicago  
of December Term A.D. 1868

Petition  
John E Brown. Plaintiff  
against  
William E Doggett &  
D Hobart Hills Defendants

State of Illinois  
Cook County ss

Wm E Doggett being duly  
sworn, on oath and says that he is one of the  
Defendants in the above entitled Cause, and that  
he verily believes that they have a good defence <sup>therein</sup> upon  
the merits

William E Doggett

Subscribed & sworn to before me  
this 4th ~~day~~ of Dec<sup>r</sup> A.D. 1868  
Thomas B. Carter Cln

And afterwards to wit on the fifteenth day of  
January in the Year One Thousand Eight hundred  
and fifty two, said day being one of the days  
of the January term of said Court, the following  
Among the proceedings were had in said Court and  
saluted of record to wit:

John E Brown }  
vs } Attempt  
William E Doggett }  
and D Hobart Hills }

This Cause being this day called  
for trial, comes said Plaintiff by DC & J Nicholas his attorney  
and said defendants by Gallup & Hitchcock their attorneys

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also comes and issues being joined herein it is ordered  
that a jury come. Whereupon comes the jury of good and lawful  
men to wit: Edward Langley, William Spindler, A Judd  
Herman, Heminorth, D G Mason, Leonard Vibe, Henry  
Kuster, Joseph Slade Gerrit Elfrink, William Potts,  
Joseph McCluskey and C Bushnell, who being duly selected  
sworn and sworn. to try the issues joined as aforesaid after  
hearing evidence Argument of Counsel and instructions of  
the Court. retires to Consider of their Verdict, and afterwards  
returns into Court submit this Verdict and Find.

Do the jury find issues for said Plaintiff and assess  
his Damages herein against both of said Defendants  
to the Sum of One Hundred and eight Dollars and  
eighteen Cents. And thereupon said Defendants enter  
and submit this Motion herein for a New trial in said Cause  
which is overruled by the Court, to which ruling of the Court  
said Defendants assents and thereupon enter this exception  
herein to the ruling of the Court in overruling this said  
Motion for a New trial

Therefore it is Considered that the said Plaintiff do have  
and recover of and from said Defendants his Damages of  
One hundred and eight Dollars and eighteen Cents in full  
assessed by the jury here found and assessed and also  
his Costs and Charges in this behalf expended and have  
execution therefor

And thereupon said Defendant having entered this  
exception from an appeal herein to the Supreme Court of  
this State from the judgment of this Court which is  
allowed to give a per filing bond in penalty of three  
hundred dollars with Security to be approved by a  
Judge of this Court and to be filed with this bill of  
exceptions within twenty days from this day

And afterwards to wit on the fourth day of March  
in the Year last aforesaid, William E Duggitt  
and D. Hobart Hill by Gallup & Hitchcock  
filed herein a Certain Stipulation and Bill  
of Exceptions in words and figures following

Superior Court of Cherokee  
Of the January Term A.D. 1862

John E Brown  
vs  
William E Duggitt and  
D. Hobart Hill

It is hereby stipulated  
that the defendants in the above entitled Cause  
may have until March 5<sup>th</sup> 1862 in which to  
file their Appeal Bond & Bill of Exceptions in  
said Cause  
D.C. & J.P. Nicholas  
Attop for Piff

Superior Court of Appeals  
of the January Term A.D. 1862

State of Illinois  
County of Cook ss

John E Brown  
vs  
William E Doggett and  
D Herbert Hill

It is remembered that on the 16th day of January, A.D. 1862, this cause came on for trial before the Hon. Grant Goodrich, and a jury duly empanelled to try the same, and the plaintiff, to sustain the issue, on his part offered the following evidence:

John D. Thompson, being duly sworn, deposed as follows:  
"I am acquainted with plaintiffs and defendants. I know of work having been done for the latter by said Brown. On the second floor of the building at 28 Lake St. he built an office for them, he moved a partition and built a desk with twenty or thirty drawers. I am, and always have been in the Boot and Shoe business, but have hired carpenters, and know what is usually paid for carpenters work of that kind. I know the value of such work. The work done at that time was worth about \$70. He also built for them an office 12 ft. by 7 ft. and a stationary desk, at 28 Lake St. Brown furnished lumber. Brown furnishing lumber, it would be worth \$18 or \$20. He also built a step-ladder for defendants worth \$1<sup>50</sup>. He also built sides for them in two or three places. They have a block near Erie St. They have a block near the cemetery. I do know of his having done work at the houses of the defendants.

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Don't know how much there was. (I know that Brown has been at defendant's office to inquire for work, after the contract for the lot was made. He wanted the contract for the house built by defendants, or to work on the house built by defendants. He has been there a great many times for work). If they had work or more <sup>work</sup> really for him to do it they furnished it. He was a friend of Doggett's and from the same town with him. They had not the work for him to do, and did not furnish it. He was always ready to do work for the defendants so far as I know, and never to my knowledge refused to do work. He came twice to get the contract for the Barns.")

Cross- Examination.

"I know that Brown furnished the lumber for the offices. I know that he built a sidewalk for Defendants, or one of them told me so. Doggett and Hills were building a barn together. I never was in the barn. I was discharged from the employ of the defendants. I have no feeling toward them."

And then and there the said defendants by their counsel, in open court, admitted the performance of the labor by the Plaintiff for the Defendants as set forth in the Bill of Items attached to the said declaration, and that the services were of the value charged in said bill, to wit, of the value of \$108<sup>15</sup>.

And thereupon it was by the said plaintiff admitted that said work and labor was done and performed under the special contract hereinafter set forth.

the said plaintiff at the same time claiming that he had a right to rescind said contract, and to bring this suit for the work and labor done under and in pursuance

of said contract for the failure of said defendants to furnish the said Carpenter work within the three years mentioned in said contract, or to perform the said contract on their part, and to show that the said plaintiff had paid the said taxes, and assessments mentioned in said contract, the said plaintiff introduced a receipt, the signature to which was then and there admitted by the said defendants, which said receipt was in words, and figures following, to wit. "Received

of John E. Brown Two and 1/100 Dollars	
being for City Tax 1859	.65
" " " 1860	45
State and County Tax 1859	46
" " " 1861.	45
	<u>\$2.01</u>

Also special tax for culvert assessed 1859. 91  
\$2.92

on lot fifty-nine in the subdivision of Block forty in the canal-trustees subdivision of the North half, and the North half of the South-East quarter, and the east half of the South-West quarter of section thirty-three, Township forty, North range fourteen East of the third principal meridian in the City of Chicago, County of Cook and State of Illinois. Chicago. September 13<sup>th</sup> 1861.

*"Doggert and Kelly"*

And the above was all the testimony introduced by the plaintiff to sustain the issue on his part.

And thereupon the Defendants, to sustain the issue on their part, offered and read on evidence the following contract, to wit,

"Articles of agreement made this twenty-fifth day of September in the year of our Lord one thousand eight hundred and fifty-eight between William E.

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Doggett and D. Hobart Hills of Chicago, Illinois  
of the first part, and John E. Brown of Chicago, Ill.  
of the second part, Witnesseth, that if the party of  
the second part shall first make the payments and  
perform the covenants hereinafter mentioned on his  
part to be made and performed, the said party of  
the first part duly covenants and agrees to convey  
and assure to the party of the second part, in fee  
simple, clear of all incumbrances whatever, by a  
good and sufficient Warranty Deed, the following  
lot, piece or parcel of ground, viz; Lot Fifty Nine  
(59) in the Subdivision of Block Forty in the Canal  
Trustees Subdivision of the North half and the North  
half of the South East quarter, and the East half  
of the South West quarter of Section Thirty - Three (33)  
in Township number Forty (40) in North Range  
Fourteen (14) East of the principal meridian. And the  
said party of the second part hereby covenants and  
agrees to pay the said party of the first part the  
sum of Three Hundred and Fifty Dollars to be paid  
in Carpenter's Work at Cash prices within Three Years  
and to pay all taxes, assessments or impositions that  
may be legally levied or imposed upon said lot; and,  
in case of failure of said party of the second part  
to make either of the payments, or perform any of the  
covenants on part, this contract shall be forfeited and  
determined at the election of the said party of the first  
part, and the party of the second part shall forfeit all  
payments made by on this contract and such  
payments shall be retained by the said party of the  
first part in full satisfaction and liquidation of all  
damages by sustained, and shall have the right to  
re-enter and take possession.

It is mutually agreed that the time of payment shall

be an essential part of this contract, and that all covenants, and agreements herein contained shall extend to, and be obligatory upon the heirs, executors, administrators, and assigns of the respective parties.

In witness whereof the parties to these presents have hereunto set their hands and seals the day and year first above written.

Wm. E. Doggett for Heils (Seal)  
D. Hobart Heils (Seal)  
John E. Brown (Seal)

x upon which said contract there were indorsements in words and figures following, to wit;

"Oct. 28. Received of Brown in Labor Doggett and Heils	\$ 54.37
Feb'y 28. " " " " do. Doggett and Heils	16.00
July 18 " " " " do. Doggett and Heils	27.68
Jan'y 23. 1860 " " " do. Doggett and Heils,	3.65
	<hr/>
	101.70
Aug 6 <sup>th</sup> " " " " "	6.48
	<hr/>
	108.18

And thereupon the defendants moved to exclude the plaintiff's testimony from the jury, and said motion was overruled, and the defendants thereupon then and there excepted.

The defendants thereupon requested the Court to give to the jury the following instruction, to wit:

"The jury are instructed that if they shall believe from the evidence that the work was performed under the special contract in question, and the defendants only failed to furnish work from time to time, then the plaintiff had no right to rescind the contract for such failure, and he cannot recover in this action." which was refused, and so such refusal. the defendants then and there excepted.

Whereupon the jury found a verdict for the plaintiff for the sum of \$108<sup>18</sup>/<sub>100</sub> and the defendants

moved for a new trial, which motion was overruled, and  
to this the defendants then and there excepted, and  
pray the Court to sign and seal this bill of exceptions,  
which is done in open court.

Grant Goodrich



And afterwards to wit on the fifth day of March  
in the Year past aforesaid the said William E  
Doggott and D Hobart Hills filed herein their  
appeal bond in words and figures following to wit

Know all men by these Presents that we  
William E Doggett D Hobart Hills and  
Henry R Pullman & Marshall Field of the  
City of Chicago, County of Cook and State of  
Illinois are held and firmly bound unto John E  
Brown, in the penal sum of Three hundred Dollars  
lawful Money of the United States for the payment  
of which will and truly to be made, we bind  
ourselves, our heirs, executors and administrators  
jointly, severally and firmly by these presents  
The Condition of the above obligation is such  
that Ordinas at the January Term A D 1862 of  
the Superior Court of Chicago, to wit, on the 10<sup>th</sup>  
day of January A D 1862 in a certain suit at  
Common Law pending in said Court wherein the said  
John E Brown was Plaintiff and the above bounden  
William E Doggett and D Hobart Hills were  
defendants, by the Consideration of said Court recovered  
a judgment against the said William E Doggett and  
D Hobart Hills for the sum of One hundred and  
Eight Dollars and eighteen Cents damages and Cost

of Suit, from which judgment the said Williams & Duggitt and D Hobart Hill have prayed an appeal to the Supreme Court of the State of Illinois. Now if the said Williams & Duggitt and D Hobart Hill shall duly prosecute this said appeal, and shall well and truly pay the judgments costs interests and damages in and by said Supreme Court then this obligation to be void, otherwise to remain in full force and effect

Williams & Duggitt  
 D Hobart Hill  
 Henry F Pullman  
 Marshall Field

Seal  
 Seal  
 Seal  
 Seal

State of Illinois }  
 County of Cook } S.S.

I Thomas P. Carter Clerk of the Superior Court of Chicago in and for the County and State aforesaid, do hereby certify that the above and foregoing is a full, true and complete transcript of all the pleadings on file in my office, and of all orders and judgment entered of record in said Court, in a certain case wherein John E Brown is plaintiff Williams & Duggitt and D Hobart Hill defendants.

In testimony whereof, I subscribe my name, and affix the Seal of said Court, at the City of Chicago, in said County, this 20<sup>th</sup> day of March 1862  
 Thomas P Carter, Clerk



Supreme Court of Illinois.

Third Grand Division.

William E. Doggett and  
D. Hobart Hills, Appellants }  
vs }  
John E. Brown, Appellee. } April Term Ad 1862.  
} Appeal from Superior Court  
} of Chicago.

And now come the said William E. Doggett and D. Hobart Hills by Gallup Hitchcock, their attorneys, and say that the said record from the said Superior Court of Chicago, contains manifest error in this;

First: The Court erred in refusing to exclude the testimony of the plaintiff from the jury.

Second: The Court erred in overruling the motion for a new trial.

And the said William E. Doggett and D. Hobart Hills, pray that said record may be inspected by this Court, and the judgment rendered in the said Superior Court of Chicago, may by this Court be reversed, annulled and held for naught.

Gallup & Hitchcock  
Attorneys for Appellants.

Supreme court  
Of the April Term 1862  
John E. Brown  
advs  
William E. Saggett  
& D. Hobart Hills

And hereupon afterwards  
to wit on the first Tuesday after the  
third Monday ~~Monday~~ of April in the  
year of our Lord one thousand eight  
hundred and sixty two the said John  
E. Brown by D.C. & J.J. Nicholas his attorney  
freely comes here into court and says  
that there is no error either in the  
record and proceedings aforesaid or in  
giving the judgment aforesaid and  
he prays that the <sup>said</sup> Supreme court now  
here may proceed to examine as  
well the record and proceedings  
aforesaid as the matter aforesaid  
above assigned for error and that  
the judgment aforesaid in form  
aforesaid given may be in all  
things affirmed &c.

D.C. & J.J. Nicholas  
Attys for Appellee

Supreme Court

John E. Brown

adg

William E. Dasher et al

Joinder in error

Filed  
Apr 24 1882  
W.A.

Joinder in error

W.E. Dasher  
vs  
John E. Brown  
Appellee

35. 254

Wm E. Jozzett  
vs

John E. Brown  
Receiv & Exp

Filed April 23, 1862

L. Selana  
Clerk

Filed

9500

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Pleas, before the Honorable, the Judges of the Superior Court of Chicago, within and for the County of Cook and State of Illinois, at a regular Term of said Superior Court of Chicago, begun and holden at the Court House, in the City of Chicago, in said County and State, on the first Monday, being the fifth day of January in the year of our Lord One Thousand Eight Hundred and Sixty seven and of the Independence of the United States of America the Eighty fifth

Present, The Honorable John M. Wilson Chief Justice of the Superior Court of Chicago. }

Van H. Higgins and Grant Goodrich Judges. }

Carlos Warren Prosecuting Attorney.

Anthony C. Hering Sheriff of Cook County.

Attest, Thomas D. Carter Clerk.

So it remembered that sent for to wit on the fifth day of November in the Year of our Lord One thousand eight hundred and Sixty seven, there issued out of the Office of the Clerk of the Superior Court of Chicago the Peoples writ of Summons which said writ with the Sheriff returns thereto enclosed is in words and figures as follows to wit

State of Illinois }  
County of Cook } SS

The People of the State of Illinois, To the Sheriff of said County. Greeting:

Be Commanded that You Summon William E. Duggett & D. Hobart Wells if they shall be found in your County, personally to be and

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Appear before the Superior Court of Chicago  
of said Cook County on the first day of the  
next term thereof, to be holden at the Court Room  
in the City of Chicago, in said Cook County on  
the first Monday of December next, to answer  
unto John E Brown in a plea of trespass on  
the Case on promises, to the damage of said Plaintiff  
as he says in the Sum of Five hundred dollars,  
And, Can You then and there this writ, with an  
enforcement thereof in what manner You shall  
have executed the same

Seal

Witness, Walter Kimball, Clerk  
of said Court, and the seal thereof  
at the City of Chicago in said County  
this 6<sup>th</sup> day of Nov A D 1861  
Walter Kimball Clerk

Served by making this writ to the within named defendant  
this 12<sup>th</sup> day of November 1861 Anthony C Keisinger  
by John A Nelson Deputy Sheriff

And afterwards to wit, on the day and Year  
aforesaid John E Brown by D Lewis & Nicholas  
his attorneys filed in the office of the Clerk of  
said Court his Certain declaration in words  
and figures following, to wit:

### POINT III.

On the 13th day of September, A. D. 1861, and seven days before the time for performing expired under the contract, the plaintiff paid a part of the taxes, and thereby recognized and admitted the contract to be in full force. For no default existing before that time can he rescind. "If he do any act which amounts to an admission of the contract, he can not afterwards elect to treat it as void."

*Brinley vs. Tibbitts*, 7 *Greenl.*, 75.

*Chitty on Contracts*, 741.

It is not in proof that any default on the part of the defendants accrued subsequent to this recognition of the contract by a payment of a part of the taxes.

### POINT IV.

The defendants cannot be placed in *statu quo*, and it is a rule that no rescission shall be permitted in such a case.

The contract is for the conveyance of land, and under the statute of frauds must be, as it is, in writing. The interest cannot be revested in the defendants, under the statute, except by writing.

No case in which the right of rescission has been sustained in this State related to the conveyance of land.

GALLUP & HITCHCOCK,  
Of Counsel for Appellants.

2521  
Supreme Court

Doggett & Mills  
Appellants  
vs

Brown  
Appellee

Argument for  
Appellant

Filed Apr 23, 1862

L. Leland  
Clerk

The rule is stated in substantially the same terms in

*Fillett vs. Armstrong*, 34 *Eng. Com. Law*, 160.

*Freeman vs. Taylor*, 21 *Eng. Com. Law*, 250.

Now, as readiness and willingness on the part of the plaintiff to perform the contract, is in all things equivalent to performance, he can secure every object intended by the contract without rescinding it, and he has a complete remedy under the contract by suit upon it at law, or for its specific performance. He can obtain the land, or its full value, as he may choose.

By failure to furnish the plaintiff with work, the defendants became liable to convey the land without performance on his part, and this is the limit of their liability.

## POINT II.

The plaintiff did not prove performance on his own part, and was, therefore, in no condition to take advantage of the default of the defendants.

“The right to abandon a contract vests only in the party who has been guilty of no default.”

*Chitty on Contracts*, 741.

By law, taxes are annually imposed on all real estate in the city of Chicago, and by the contract the plaintiff was bound to pay them.

His proof on this point does not show that he paid the State and County taxes for 1860, or the City taxes for 1861.

The plaintiff certainly should be held to a strict compliance on his part, before he is permitted to entrap the defendants by a rescission.

