

12238

No. \_\_\_\_\_

# Supreme Court of Illinois

Hurd

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vs.

Denney

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71641  7



1. Process for Summons—
2. Summons—
3. Return of Baker Sheriff of Ogle County— and Declaration—
9. Copy of account sent on— Remuner to Declaration—
10. Causes of Remuner— Amended Narr—
17. Remuner— and Plea—
18. Bill of Exceptions. Agreement read in evidence
19. Testimony of R. N. Matthews— Six receipts offered in evidence
20. Copy of receipts
21. Testimony of Daniel Hurd— and Mr Stephenson—
22. Defendants instructions—
23. Instruction by the Court
26. Judgment of Court sustaining Remuner and granting leave to plead— overrule, & Remuner
27. Agreement of Parties as to issue— Motion to Continue—
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29. Judgment— Prayer for appeal— Appeal bond—
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Parky, P. M. -

nd

Major Denny

Index To Record



United States of America  
State of Illinois

Pleas before the Hon.

Isaac G. Wilson Judge of the Thirteenth  
Judicial Circuit for the State of Illinois  
at a Term of the Kane County Circuit  
Court began and held at the Court House  
in General in said County on the 8<sup>th</sup> Day  
of May in the year of Our Lord one thousand

Eight Hundred and fifty four

Present the Hon

Buckner S. Morris Judge

W. W. Boyce State Attorney

Wm. B. Spalding Sheriff

Attest J. Dearborn

Clerk

Be it remembered that whereas  
heretofore and on the 17<sup>th</sup> Day of October AD  
1853 a process was filed in the Office of the  
Clerk of said Court which is in the words of the  
following writ

Kane Co. Cir. Court

Major Denny

Parley Return

The November Term 1853

The clerk will please issue  
a summons in the above cause returnable at  
the said Term of the Court directed to the Sheriff



of Agle les in an action on the case upon  
promises " Say the Plaintiff's Damages at One  
Thousand Dollars

J. H. Maybom  
Atty for Plff

Whereupon a summons was  
issued from said Office on the day last aforesaid  
which is in the words or figures following to wit

State of Illinois,

Kane County & The People of the State of Illinois  
& the Sheriff of Agle County County

We command you to Summons Parley A. Stand  
if he shall be found in your County personally  
to be and appear before the Circuit Court of Said  
County on the first day of the next term thereof  
to be holden at the Court House in Seneca  
in said County on the first day of the next  
term thereof to be holden at the Court House  
in Seneca in said County Monday of  
November next to answer unto Major Deming  
in a plea of Trespass on the Case on promises  
to the Damages of the said Plaintiff as he says  
in the Sum of One Thousand Dollars and  
have you then and there this writ with an  
endorsement thereon in what manner  
you shall have executed the same  
Jethro Luther Dearborn





Clerk of our said Court and the Seal  
thereof at General in said County this  
17 day of October AD 1853.  
Guthrie Dearborn

Clerk

And upon the back of said Summons  
was the endorsement of the Sheriff in the words  
of figures following to wit:

Served thereon on Parley  
& Hiram Defendants this 24.<sup>th</sup> day of Oct. 1853. by  
reading the same in his presence & hearing

Eli Barker Sheriff  
Cyle C. Ill. Jr.  
Exhibits & Right Deputy

And afterwards to wit on the 25.<sup>th</sup>  
day of October AD 1853. the following return  
was filed in said Court which is in the words  
of figures following to wit:

State of Illinois vs.  
Kane County vs. Kane County Circuit  
Court November Term for AD 1853

Major Denny Plaintiff in this  
Suit by J. H. Mayborn his Attorney complains  
of Parley & Hiram Defendants who has  
been Summoned &c of a plea of Verdict



on the case upon promises

For that whereas heretofore  
to wit on the seventeenth day of February in the year  
of our Lord Eight Hundred and forty six in  
the County of Kane and State of Illinois, the  
said Defendant in consideration that said  
Plaintiff had then & there bargained with said  
defendant at his special instance and request  
for good and sufficient consideration then &  
there agreed upon & given for certain pieces and  
parcels of timber Land & real Estate lying & being  
situate in the County of Kane & State of Illinois  
where the said plaintiff then did and still does  
reside at the time of the commencement  
of this suit & when this cause of action accrued  
and the said defendant agreed then and there to  
make and execute a good & sufficient deed  
for the said Land & real Estate according to the  
tenor & effect of a certain article of agreement  
then & there made & executed by the said defendant  
& delivered to this plaintiff which said agreement  
was in the words & figures following to wit:

Article of Agreement made  
February 17<sup>th</sup> 1846 Between J. S. Ward of Kane  
County Blacksmith "P. C." of the first part and Major  
Senney of the second part. the party of the first  
part does agree to give a good & sufficient deed  
of a parcel of Land timber Land. it is bounded



5.  
as follows Pt 38 Rump & Section 3 containing  
nine acres bounded West by Snyder South by Stephens  
East by Whaley North by miles and other piece of  
Land containing three acres as a tract described  
Bounded South by Baker West by Hinds and North  
by Hinds East by Holmes the said Hinds is to  
give the deed when Denny pays the first note  
Pachy Hinds

Attest

Nathan R. Gosper

which said piece of Land  
& real Estate so bargained for by the said Plaintiff  
as aforesaid at the time that he made such bargain  
was worth a large sum of money to wit Two  
Hundred Dollars: And that after the buying  
of the said Land & real Estate as aforesaid  
by the said Plaintiff and the making of the  
said agreement as aforesaid and the said  
note therein mentioning the said Plaintiff did  
in the County & State aforesaid take up pay &  
discharge the said note at the time that it did  
become due according to the tenor and effect  
of the same to wit in A.D. 1849. And that he  
then & there requested the said defendant to make  
execute and deliver to him a good & sufficient  
deed of the said piece of Land & real Estate  
mentioned & described in said agreement accor-  
ding to the tenor & effect thereof  
Yet the said defendant did not



would not comply & perform his said agreement and make & give a good & sufficient deed therefor to the said plaintiff according to the effect of the said agreement for the said land & real Estate although often requested so to do and still does neglect & refuse so to do the the damages of the Plaintiff of two Hundred Dollars

And also for that whereas the said defendant heretofore to wit on the first day of October A.D. 1853. at Geneva in the County of Kane and State of Illinois was indebted to the said plaintiff in the sum of two hundred dollars. The price and value of certain timber land and real Estate laying and being in the said County and State and for goods & wares &c before that time sold by the said defendant belonging to the said Plaintiff and the said defendant being so indebted to the said Plaintiff as aforesaid did in consideration thereof after wards to wit on the day year last aforesaid at the place aforesaid bring the said County of Kane and where the said Plaintiff then did and still does reside at the time of the Commencement of this suit and where the said cause of action accrued promised then & there to wit at Geneva in the said County & State at the said time above mentioned to pay to him the said Plaintiff the said sum of two hundred dollars above mentioned on request



7.  
yet the said defendants although often requested  
to do so has neglected & refused to pay to the  
said plaintiff the said last mentioned sum of  
money or any part thereof but has wholly neglected  
& refused & still does neglect & refuse to do so  
and whereas also the said defendant afterwards to wit  
on the first day of October in the year of One thousand  
Eight Hundred and fifty three at General Kane County  
State of Illinois was indebted to the said plaintiff  
where they did & still does reside in the said county of  
Kane where this cause of action accrued in the sum  
of four Hundred Dollars lawful money of the United  
States of America for money before that time lent  
and advanced by the said plaintiff to the said  
defendant and at the special instance and request  
of the said defendant And for five hundred dollars  
other money by the said plaintiff before that time  
paid laid out and expended for the said defendant  
and at the like request of the said defendant  
and at the like request of the said defendant and  
at the like request of the said defendant and for  
five Hundred Dollars other money by the said defendant  
before that time had and received to and for the use  
of the said plaintiff And being so indebted  
the said defendant in consideration thereof appeared  
to wit on the same day and year last aforesaid  
and at the place aforesaid undertook and then  
and there and then faithfully promised the said



8  
plaintiff well and truly to pay unto the said  
plaintiff the said sum of money in this count  
mentioned when the said defendant should be  
thereunto afterwards requested. And whereas also the  
said defendant afterwards to wit on the same day  
and year last aforesaid and at the place aforesaid  
accrued together with the said plaintiff of and  
concerning divers other sums of money before that time  
due and owing from the said defendant to the said  
plaintiff and then being in arrear and unpaid and  
upon such accounting the said defendant then  
and there was found to be in arrear and indebted  
to the said plaintiff in the further sum of five  
Hundred Dollars of like lawful money as aforesaid  
and being so found arrear and indebted to the said  
plaintiff and said defendant in consideration  
thereof afterwards to wit on the same day and  
year last aforesaid and at the place aforesaid  
and unto and then and there faithfully promised  
the said plaintiff well and truly to pay unto the  
said plaintiff the said sum of money last  
mentioned when the said defendant should be  
thereunto afterwards requested. Nevertheless the  
said defendant although often requested &c  
has not yet paid the said 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



9. plaintiff the defendants has hitherto altogether  
refused and still do refuse to the demands of the  
said Plaintiff of ~~one thousand~~ <sup>one thousand</sup> Dollars and therefore the  
said Plaintiff brings suit &c

J H Maybom

Atty for self

Copy of upc

|                  |            |
|------------------|------------|
| Sands Sold       | \$ 500.    |
| Goods Staves     | 500        |
| Money Lent       | 500        |
| Money borrowed   | 500        |
| Accounts Settled | <u>500</u> |

And thereupon comes the  
defendant and files his Answer to said  
Declaration above mentioned which is in  
the words and figures following to wit

Harris County Circuit Court

Barly R Hard (November Term)  
at  
Mayor Denney } AD 1858

And now comes the said  
deft by Armstrong his atty and demands  
to the plaintiffs declaration filed herein



and to each count severally and that the same and the matters therein contained are not in law sufficient for the said plaintiff to have and maintain his aforesaid action and that the said deft is not bound to answer the same wherefore the said deft prays judgment &c

Kemington P. S. atty

Causes

- 1<sup>st</sup> Special Counts are partly in debt & partly in assumpsit
- 2<sup>nd</sup> Said counts are ~~double~~ Double

And thereupon the said plaintiff files his amended name to the 1 & 2 Special Counts on the 31<sup>th</sup> January A.D. 1854 which is in the words and figures following to wit

State of Illinois  
Kane County vs Kane County ex levit  
Court of the February Term  
of said Court for A.D. 1854

Major Denney plaintiff in this suit  
by J. H. Maybom his attorney complains of  
Paddy P. Hurd defendant of a plea of trespass  
on the case upon promises  
for that whereas the said



11.  
defendant heretofore tried on the seventeenth  
day of February AD 1846 in the County of Kane  
and State of Illinois was seized & possessed in  
fee simple of <sup>his</sup> certain pieces or parcels of timber  
land or Real Estate situated in the said County  
and State and being so seized & possessed as aforesaid  
~~and~~ a discourse and conversation then & there took  
place and arose between them respecting the sale  
and purchase of the said piece of timber land or  
Real Estate and the said defendant then and there  
requested the said Plaintiff to purchase the said  
pieces of timber land of him. And that afterwards  
tried on the day and year aforesaid at the place  
aforesaid he did buy & purchase of the said defendant  
the said pieces of timber land at his special request  
and paid or was to pay him a large sum of money  
therefor to wit the sum of Three Hundred Dollars  
according to the Tenor and condition of <sup>his</sup> certain  
promissory notes then & there made & executed by  
said Plaintiff & delivered to said defendant  
to wit one for the sum of Two Hundred Dollars  
& the other for the sum of One Hundred Dollars  
and said notes were due in one & three years after  
date with interest and were made payable to said Defen-  
-dant or order. And the said defendant then & there  
made executed and delivered to said Plaintiff  
in consideration of his purchasing <sup>of him</sup> as aforesaid  
the said pieces of timber land above mentioned



& hereinafter described the following article of agreement to wit

Article of Agreement  
Made February 17. 1846 Between P<sup>r</sup> Stum  
of Howe County Blackberry T.P. (P<sup>r</sup> Standing  
in the place of, for and meaning & intending to  
represent & be used for Township as the Plaintiff  
acres) of the first part and major Denney of the  
second part. The party of the first part does agree to  
give a good & sufficient deed of a parcel of timber  
land it is bounded as follows. (The word is bounded  
is used in place of described & was intended to  
mean & to be used in the same sense and have  
same meaning as the word described) T. P. 38  
(P<sup>r</sup> 38 Standing for & intending to be used & to  
represent Township 38) Range 8 Section three  
(meaning north of Range Eight & on Section No three)  
"Containing" nine acres (of said meaning) Bounded  
(Bounded meaning that by Snyder (by land owned  
by said Snyder meaning) South by Stephens (meaning  
by land owned by said Stephens) East by Whaley  
(meaning by land owned by said Whaley) <sup>North</sup> South  
by Mills. (meaning by land owned by said Mills)

An other piece of Land containing three  
acres (of said meaning) as above described (meaning  
as the said Plaintiff acres in the same Township  
& in Township No 38 Section No Three North  
Range No 8 bounded South by Baker (meaning



land owned by said Baker) Met by Hund  
 (meaning by land owned by said Hund) And North  
 by Hurd. (meaning by land owned by said Hund)  
 East by Holmes (Land owned by said Holmes  
 meaning) The said Hund is to give a deed  
 meaning the said defendant is make execute &  
 deliver to said plaintiff a good & sufficient deed  
 for said pieces of Land) When Henry said  
 plaintiff (meaning) pays the first note. (meaning  
 the said note of Two Hundred Dollars payable as  
 above described, stated to wit"

February 17. 1847

Barley & Hund

Attest

Nathan Gorham

Which pieces of Land bar-  
 = gained for and purchased as aforesaid by said  
 Plaintiff and described in said article of agree-  
 = ment was worth at the time he purchased & bought  
 the same of said Defendant to wit on the day &  
 year aforesaid a large sum of money to wit  
 the sum of three Hundred dollars And the  
 plaintiff avers that at the time of Commencement  
 of this Cause of action that he was a resident  
 of the county Kane ~~State~~ of Illinois & that said  
 Cause of action accrued in the said County & State  
 And the said plaintiff avers that he  
 satisfied discharged took up & paid the said note  
 mentioned in the said article of agreement when



the same became due according to the tenor  
 and conditions thereof to wit on the 17 day of  
 February 1847. to said defendant to wit in  
 Kure County in said State. And that he afterwards  
 requested the said defendant then & there to make  
 execute & deliver to him a good & sufficient deed  
 for the said pieces of Land according to the con-  
 ditions of the said article of agreement. but that  
 he neglected to do so. but he said defendant  
 afterwards promised & agreed with said Plaintiff  
 at divers times & places in the said County of Kure  
 & said State last at Geneva in County of Kure  
 & State aforesaid to wit on the tenth day of April  
 A.D. 1850 that he would make & execute & deliver  
 to him a good & sufficient deed of & for  
 the said pieces of Land according to the said  
 article of agreement but that he neglected to do so  
 & afterwards to wit. At the County of Cagle in said  
 State to wit on the first day October 1853 in  
 consideration of said Plaintiff having paid to him  
 the sum of money mentioned in the said ~~executed~~  
 promissory notes according to the tenor & effect thereof  
 he agreed & promised the said Plaintiff that he  
 would immediately make execute & deliver to him  
 a good & sufficient deed for the said <sup>pieces of</sup> land  
 above described but he has neglected to do so  
 Yet the said Defendant  
 well knowing the premises did not & would not



15.  
although often requested so to do give Execut  
& deliver to said Plaintiff a good & sufficient  
deed for said pieces of timber land or real Estate  
mentioned & described in said article of Agreement  
But on the contrary neglected & refused so to do  
& still does refuse to the said plaintiffs Damages  
of Two Hundred Dollars?

And also for that whereas  
the said defendant heretofore & is on the first day  
of ~~October~~ 1853, at Kane County in the State of  
Illinois where the said plaintiff resided at the  
time of the commencement of this suit & where  
this cause of action accrued was indebted to  
said plaintiff in the sum of Two Hundred  
Dollars lawful money of the United States  
for the price and value of two certain pieces of  
or parcels of timber Land or real Estate & the  
appurtenances thereunto belonging situated in  
the said County of Kane & State of Illinois  
& described as ~~pieces of timber~~ Nine acres  
of timber land on section No Three in Township  
No Thirty Eight Range 8 & bounded as follows  
West by Land owned by <sup>Mr</sup> Snyder South by Land  
owned by Stephens East by Land owned by Whaley  
& North by Land owned by Miles the other piece  
of containing Three acres of Land undivided on said  
Section No Three in Township No Thirty Eight  
Range No 8 and bounded as follows South by



16.  
Land owned by Baker that by land owned by  
said Defendant East by Land owned by said  
defendants & North by Land owned by Holmes  
which said pieces of timber Land the said Defen-  
-dant before that time had bargained & sold for &  
received the said "Sum" of five Hundred  
Dollars therefor which said pieces of timber  
Land belong to the said Plaintiff & he was the owner  
thereof, in fee as the defendant well knew  
And the said Defendant being so indebted as aforesaid  
to said Plaintiff did in consideration thereof after-  
wards to wit on the day & year aforesaid at the place  
aforesaid then & there promise & to pay to him the  
said Plaintiff the said sum of five Hundred Dollars  
above mentioned on request

Yet the said Defendant  
well knowing the premises & although often requested  
so to do has neglected & refused to pay to the said  
Plaintiff the said last mentioned sum of  
money or any part thereof But has wholly neg-  
-lected & refused so to do & still does so neglect  
& refuse to the Plaintiff Damages of One  
Thousand Dollars

J H Mayton  
Plff Affy

And afterwards to wit at the  
February Term of said Court AD 1854 the  
following Demur was filed in said cause



which is in the words of figures following  
to wit

Kane County Circuit Court

Major Denney {  
vs { Sety. Term  
Parley R. Hunt } A.D. 1854.

And the said defendant  
by Hermonston his Attorney says that the declaration  
is not sufficient in Law for the said Plaintiff  
to have or maintain his aforesaid action thereupon  
on account of said insufficiency. The said  
defendant prays Judgment &c  
Harry M. Hermonston

And afterward to wit on the 9<sup>th</sup>  
Day of March A.D. 1854 the following  
plea was filed in said Court which is in  
the words of figures following to wit

Kane County Circuit Court

Major Denney {  
vs { May Term  
Parley R. Hunt } A.D. 1854.

The said  
Defendant by Hermonston his Attorney  
says he did not promise in manner



found as the said Plaintiff hath above  
thereof complained against him and of this  
he puts himself upon the country &c

And the Plaintiff }  
doth the like by }  
Mayborn & his atty }  
A M Hermyton  
attly for deft

And afterwards to wit  
on the 30<sup>th</sup> of May A D 54. The following  
bill of Exceptions was filed in said Court  
which is in the words of figures following to wit

Hume County Circuit Court  
Major Denney }  
Parley A Hunt }  
May Term 1854

Be it remembered That  
on the trial of the above Entitled Cause the  
Plaintiff offered in evidence an agreement of  
which was objected to by the Defendant and the  
objection by the Court overruled and said agreement  
was read in evidence to the jury And is in the words  
of figures following to wit

Article of Agreement  
made bet the 17 1846. Between Pt Hunt of Hume  
County Blackberry. T. I. of the first part and



Major Denney of the second part. The party of the first part does agree to give a good, sufficient deed of a parcel of timber land. it is bounded as follows. T. P. 38 Range 8. Section 3. Containing nine acres. Bounded West by Snyder South by Stephens East by Whaley North by Miles. Another piece of land containing three acres as above described Bounded South by Barker West by Hurd and North by Hurd East by Holmes the said Hurd is to give the deed when Denney pays the first note.

Attest

Nathan Gosper

Paul J. Hurd

To which ruling of the court the Defendants by his counsel excepted.

The Plaintiff then called R. A. Mathews who was duly sworn as a Witness in said cause and who testified in substance as follows to wit. That he had seen the agreement in question was made had it in his possession & heard a conversation between Denney and Hurd about two years ago. In which Hurd said he had received his pay for the land mentioned in said agreement and that he the Defendants would give a deed for the same.

The Plaintiff then on proving the signature offered six receipts in evidence to which the Defendant by his counsel objected which objection was by the court overruled.



to which ruling the defendant excepted. The Court then directed the receipts to be read in evidence which which were in the words & figures following to wit

Feb 17. 1847 Rec<sup>d</sup> of Major Denney by note  
7 28 etc R<sup>d</sup> Hurd

Feb 18 1847. Rec of Major Denney  
9 87 to apply on note R<sup>d</sup> Hurd

Mill Creek Nov the 16. 1846  
Rec<sup>d</sup> of Major Denney Eighteen  
Dollars to apply on notes R<sup>d</sup> Hurd

December the 16. 1846  
Rec<sup>d</sup> of Major Denney  
14 35 <sup>etc</sup> to apply on note R<sup>d</sup> Hurd

Rec<sup>d</sup> of Mr Denney Twenty two Dollars  
to apply on note held by R<sup>d</sup> Hurd  
General Oct 16. 1846 R<sup>d</sup> Hurd

Rec<sup>d</sup> of William Eliot Nine <sup>"Dollars"</sup> of fifty  
etc to apply on Major Denney's note  
held by Hurd Oct 16. 1846 R<sup>d</sup> Hurd  
General



Daniel Hunt was next called  
 by Plaintiff duly sworn & testified in substance  
 as follows that with Denny the Plaintiff to see  
 Hunt last fall in September or October last heard  
 a part of a conversation between said Hunt and  
 Denny about land. ~~Hunt and Denny asked~~  
 Denny asked Hunt for a deed to which he  
 replied that he had sold and conveyed said land  
 to Stephens according to Denny order. Denny  
 denied having given any such order Denny  
 said that he would make him a deed of 4  
 acres of land in the Big woods when he come  
 into General at the first they had some talk  
 first that witness did not hear but they parted  
 with the agreement that Hunt was to look for  
 a certain Plat & papers and to meet Denny  
 at General at the agricultural Fair the  
 7 or 8 Oct. Hunt at the time of the conversation  
 above mentioned offered to Denny Mr Stephens  
 note or obligation for mason work to the  
 amount of One Hundred and fifty or Sixty  
 Dollars Denny said he would not take without  
 Hunt's guarantee of its payment

Plaintiff then called a  
 Mr Stephenson who was duly sworn & testified  
 that he was present once when Denny and  
 Hunt met at General and that he Stephenson



asked Denney whether he owned a certain  
 piece of timber land in the Big Woods. That he  
 wanted to purchase. Before Denney made an  
 reply Hunt said to witness "I sold to you his"  
 land. Witness then left Hunt and Denney in  
 conversation. That this conversation occ-  
 urred. One year ago last fall. Which was  
 all the evidence offered by the Plaintiff.

The Court was then requested  
 by the defendant to give the following instructions  
 all of which the Court gave except <sup>the first</sup> which he  
 refused. to which the defendant excepted. Which  
 said instructions are in the words following &c.

If the jury believe from the  
 evidence that Hunt sold Denney a piece of land  
 and that Hunt gave Denney a written agreement  
 for the conveyance of said land and that  
 there was a condition precedent mentioned in  
 said contract as to the payments of said land  
 then it is necessary for the Plaintiff before he  
 can recover <sup>in this</sup> action to prove he has com-  
 plied with said condition.

~~And the Court gave  
 the following instructions.~~

~~If the jury believe from the  
 evidence that the Defendant agreed to sell & convey to the Plaintiff  
 certain lands on which the Plaintiff afterwards paid  
 the purchase money therefor to the Defendant and that~~

Refused

1.



2  
That the receipt given in Evidence  
in this cause does not of themselves Establish  
that Deane has paid the purchase Money mentioned  
in said agreement (by the court) but it with  
other Evidence tending to prove such payment which  
the jury is to judge of the sufficiency thereof

3  
That the receipt given in Evidence  
in this case does not of themselves Establish a  
cause of action in this case (By the court) but  
they with other & Circumstances of facts given in Evidence  
Establish a good cause of action. if the jury  
believe the Evidence true & sufficient

And the court gave the  
following instruction to wit

Given by the court  
If the jury believe from the Evidence  
that the Deft agreed to sell & convey to the Plaintiff  
certain lands on which the Plaintiff afterwards  
paid the purchase money therefor to the Deft and  
that the Deft on demand refused to execute  
the deed (as he had agreed to do) And that this  
suit is brought by the Plaintiff to recover the purchase  
Money back with interest which in such case  
he ought to recover accordingly

to which the Deft also  
excepted and now the said Defendant prays



prays this his bill of Exceptions May be  
signed and sealed and made part of the  
records and proceedings in said cause  
which is done

B S Morris Esq  
Judge



Be it Known that whereas  
heretofore doint on the 12<sup>th</sup> day of November AD  
1853 the same being one of the days of the said  
Kane County Circuit Court at the November Term  
thereof AD 1853 the following among other  
proceedings were had and entered of Record to wit

Major Denney }  
v } Trespass on the case upon promise  
Parley P Hunt }

This day comes the Plaintiff  
by Hermonston his Attorney and on his motion  
the defendant is ruled to Read by Tuesday  
morning next

And afterwards doint on the 17  
day of February AD 1854 the same being one  
of the days of said court the following among other  
proceedings were had and entered of Record to wit

Major Denney }  
v } Trespass on the case upon promise  
Parley P Hunt }

This day comes the defendant  
by Hermonston his attorney and files his Demand  
to the Declaration in this cause Thereupon comes  
the Plaintiff by Maybourn and joins after  
Argument of counsel the Court being fully



advised Sustains said Demurr and gives Plaintiff leave to amend

And afterwards do it on the 3<sup>d</sup> day of March AD 1854 the same being one of the days of said Court of the February Term thereof AD 1854 the following among other proceedings were had and entered of record do it

Major Lemmy ( { In support of the case upon  
Parley R. Hunt } Promises

The Court being fully advised according to the 3<sup>d</sup> Demurr to the declaration in this cause It is considered by the Court that the Plaintiff recover of and from the Defendant his costs about this Demurr expended and have Execution thereof

And afterwards do it on the 4<sup>th</sup> day of March AD 1854 the same being one of the days of said Court the following among other proceedings were had do it

Major Lemmy ( { In support of the case upon promises  
Parley R. Hunt } Promises

By Agreement of parties



partis. pleas as to be filed in this cause by  
Wednesday next and issues to be made during vacation

And afterwards do it on the  
10<sup>th</sup> day of May A.D. 1852, the same being one  
of the days of the May term of said Court the  
following among other proceedings were had to wit

Major Denney (Plaintiff)  
v  
Parley P. Bond (Defendant) } Respects the case upon premises

This day comes the parties  
to this suit by their Attorney and the said defend-  
ant by A. M. Armstrong his Attorney enters his motion  
herein to continue this cause for want of a copy  
of the account in the second count of the said Plaintiff's  
Declaration set forth the Court after hearing the  
argument of Counsel on the said motion being  
now fully advised in the premises overrules said motion

And afterwards do it on the 19. Day  
of May A.D. 1852, the same being one of the days  
of said May term of said Court the following among  
other proceedings were had to wit

Major Denney (Plaintiff)  
v  
Parley P. Bond (Defendant) } Respects the case upon premises  
This day comes



the parties to this suit by their attorneys and on  
 Motion of C. H. Mayson's Attorney for the said plaintiff  
 it is ordered by the Court that a jury come thereupon consist  
 the jurors of a Jury of good and Lawful men to wit  
 W. A. Morris Rodney McDale William Atwood  
 William A. Moore William Hamilton A. Horgan  
 Bewell Shattuck C. J. Randall Ephraim Smith  
 Ferdinand Seffen Abel Holton Harvey Gayes  
 who being duly elected tried and sworn after  
 hearing the evidence argument of counsel and  
 instructions of the Court retire under charge of  
 an Officer of the Court to consider of their verdict  
 subsequently return into Court and for a verdict  
 say whether they find the defendants guilty and  
 assess the Plaintiff's damages at the sum of Two  
 Hundred and forty three dollars and seven cents  
 thereupon comes the said defendants and enters  
 his Motion herein for a new trial

And afterwards writ on the  
 20<sup>th</sup> day of May A.D. 1854, the same being one of  
 the days of said May Term of said Court the following  
 Among other proceedings were had to wit

Major Lemmy

Sally R. Mum

Treasure to the cause of justice

This day comes on to be heard



the defendants Motion heretofore entered herein for a new trial the Court being fully advised overrules the same. It is therefore considered by the Court that the plaintiff have and recover from the defendants the sum of Two Hundred and forty three  $7/100$  Dollars and thereupon comes the Defendant by his attorney and prays an appeal to the Supreme Court of the State of Illinois which is granted on condition that the Defendant enter into Bond with Solomon C. Trimble as Security in the penal sum of Four Hundred Dollars within ten days from this date.

And thereupon upon the 29 day of May A.D. 1854. the following Bond was filed in the Clerk's Office of said Court which is in the words of figures following to wit

Know all men by these presents that we Parley Hunt as principal and Solomon C. Trimble as surety are held and firmly bound unto Major Dorney in the penal sum of Four Hundred Dollars Lawful money of the United States for the payment of which well and truly to be made we bind ourselves our heirs and administrators jointly severally and firmly by these presents Unten our hands and seals this Twenty ninth day of May A.D. 1854. The Condition of this



above Obligation is such that whereas the said  
Major Denney did on the nineteenth day of May  
A.D. 1854. in the Circuit Court of the Kane County  
recover a Judgment against the Defendants above  
named Parley P. Hunt for the sum of Two Hundred  
forty Three dollars and Seven cents \$243.07 from  
which judgment the said Parley P. Hunt has taken  
an appeal to the Supreme Court of the State  
of Illinois Now if the said Parley P. Hunt  
shall prosecute his appeal with effect and shall  
pay whatever Judgment costs interest and damages  
in case said Judgment shall be affirmed  
either upon the trial or dismissal of said appeal  
then the above Obligation to be void otherwise  
to be and remain in full force and effect

Approved by me this 29  
day of May A.D. 1854  
S. Dearborn  
and

Parley P. Hunt Seal  
S. C. Trimble Seal



State of Illinois  
Kane County

I, Luther Dearborn Clerk  
of the Kane County Circuit Court in  
the State aforesaid do hereby certify that the above  
and foregoing is a full perfect and complete copy  
of the Process. Summons. Narr. Demurs. to Narr.  
Amended Narr. Demurir to Amended Narr. Plea  
Bond. Bill of Exceptions and Transcript from the  
Records from said Court in the case of Major  
Demney v Parley & Ward

Witness my hand and the Seal of said  
Court at General in said County this  
9<sup>th</sup> day of April A.D. 1855  
Luther Dearborn  
Clerk

12238-12



<sup>64</sup>  
Parley P. Hard  
vs }  
Major Denney

---

Appeal from  
Kane

---

Filed June 8. 1858.  
L. Ireland CLK.





State of Illinois

In the Supreme Court - June term 1855.

Parley P. Heard appellant

vs

appeal from Kane.

Major Blumy appellee

And now comes the said

appellant by Wallace his counsel and says that in the record of the proceedings aforesaid there is manifest error in the

1<sup>st</sup> The court erred in admitting the writings offered in evidence to be given in evidence to the jury -

2<sup>nd</sup> The court erred in refusing the instructions asked by the appellant and which were refused by the court

3<sup>rd</sup> The court erred in refusing to give the instructions asked for by appellant as they were, and without altering or modifying them as was done by the court -

4<sup>th</sup> The court erred in giving the instruction marked "Given by the court"

5<sup>th</sup> The court erred in overruling appellants motion for a new trial

6<sup>th</sup> The court erred in rendering judgment upon the verdict

7 The verdict is against the evidence

8<sup>th</sup> The verdict is against the law -

9<sup>th</sup> The verdict is against the law & the evidence



10.<sup>th</sup> The verdict is excessive

11.<sup>th</sup> The court erred in rendering the judgment  
aforesaid in manner and form aforesaid.  
Wherefore ~~for~~ these errors and others  
apparent upon the face of the  
record the said appellant prays that  
said judgment may be wholly  
reversed & set aside —

W H Alllatta  
of counsel for appellant



Recd of Mr Denny Twenty One  
Dollars to apply on Note held by P. P.  
Hurd.

Gaveva Oct 16. 1846

P. P. Hurd

21  
116 872 875  
116 872 875

Recd of William Eliot Twenty  
Five Dollars to apply on Major Denny's  
Note Held by Hurd Oct 16/1846  
P. P. Hurd

Article of agreement made Feb<sup>y</sup> the 17<sup>th</sup> 1846 between P. P.  
Hurd of Rain County Blackberry T. P. of the first part and  
Major Denny of the second part the party of the first  
part does agree to Give a good and sufficient deed of a parcel  
of timber land it is Bounded as follows T. P. 38 Range  
& Section 3 containing nine acres Bound west by Snyder  
South by Stephens East by Whaley North by Miles  
another piece of land containing three acres as above described bounded  
South by Baker west by Hurd and North by Hurd East  
by Holmes the said Hurd is to Give the Deed when  
Denny pays the first Note  
P. P. Hurd

Attest Nathan P. Gosper

21238-18

3500/18

I take and third of the whole amount  
sold for well

If the Plaintiff purchased  
brought into the Shop for  
not included in the mortgage  
acquired thereafter, and that



Copied

Filed May 20 1854  
Learner  
AR

Agreement up  
to 1854 &  
Learner

Filed May 20 1854

Learner

Copied



Filed May 20 1874  
L. Seaborn  
att.

March 3 1845

dear children i now take my pen in  
hand to inform you that we are  
all well hoping these few lines  
may find you enjoying the same  
we received your letter January the 18  
and was glad to hear from you  
that you were all well and that

Mill creek Nov the 18 1846  
Recd of Major Denney Eighteen  
Dollars To apply on estate  
held by Rev J. P. Hunt

$$\begin{array}{r} 18 \\ 6 \\ \hline 108 \\ 7 \\ \hline 756 \end{array}$$

$$\begin{array}{r} 18 \\ 77 \ 86 \\ 50 \\ \hline 20,10 \end{array}$$

December the 18 1846  
recd of Major Denney 14.35  
to apply on estate J. P. Hunt

Int 14 35  
$$\begin{array}{r} 86 \ 10 \\ 7 \\ \hline 602 \\ 40 \\ \hline 642 \end{array}$$
  
$$\begin{array}{r} 14 \ 35 \\ 642 \\ \hline 20,77 \end{array}$$



only 1 hour when in  
 then wash in soap suds color  
 in rain water

Filed May 20 1887  
 148111 746

Filed 18 16 47  
 Mc ...  
 trap by on note

98.17  
 4 888.42  
 7  
 21.16  
 147

98.07  
 2263  
 140.70

987

P. O. ...  
 receipt

Filed May 20 1887  
 148111 746

Mr Stevens Green Co please to  
 Let the ... have

Filed May 20 1887  
 148111 746

Mr Stevens Green Co please to  
 Let the ...



Kanab County Circuit Court

Major Denney

Parley P. Hunt

May Term AD 1854

Be it remembered that on the trial of the above entitled cause the Plaintiff offered in evidence an agreement of which was objected to by the Defendant and the objection by the court overruled and said agreement was read in evidence to the jury and is in the words & figures following to wit (Here insert agmt) to which ruling of the court the Defendant by his counsel excepted. The Plaintiff then called R. St. Matthews who was duly sworn as a witness in said cause and who testified in substance as follows, to wit, that he had seen the agreement in question was made had it in his possession & heard a conversation between Denney and Hunt about two years ago, in which Hunt said he had received his pay for the land mentioned in said agreement and that he the defendant would give a deed for the same. The Plaintiff then producing the signatures offered six receipts in evidence to which the defendant by his counsel objected which objection was by the court overruled and to which ruling the Defendant excepted the court then directed the receipts to be read in evidence which ~~which were in evidence~~ which were in the words & figures following to wit [Here insert said receipts] Daniel Hunt was next called by Plaintiff duly sworn <sup>in substance</sup> testified as follows! Went with Denney the Plaintiff



to see Hurd last fall in September or October last,  
Heard a part of a conversation between said Hurd  
and Denney about land. Denney asked Hurd for a  
deed to which he replied that he had sold and conveyed  
said land to Stephens according to Denneys order. Denney  
denied having given any such order, Denney said that  
he would make him a deed of 4. acres of land in the  
big woods when he came into Geneva at the fair, they  
had some talk forth that witness did not hear but they  
parted with the agreement that Hurd was to look for a  
certain plat papers and to meet Denney at Geneva at  
the agricultural fair the 7 or 8 Oct. Hurd at the time  
of the conversation above mentioned offered to Denney or  
Stephens work or obligation for mason work to the  
amount of one hundred & fifty or sixty dollars Denney  
said he would not take without Hurd's guarantee of its  
payment. Plaintiff then called a Mr Stephenson  
who was duly sworn & testified that he was present  
once when Denney and Hurd met at Geneva and  
that he Stephenson asked Denney whether he owned  
a certain piece of timber land in the Big Woods that  
he wanted to purchase it, before Denney made a  
reply, Hurd said to witness I sold you his land.  
Witness then left Hurd and Denney in conversation  
that this conversation occurred one year ago last fall  
which was all the evidence offered by the Plaintiff  
The court was then requested by the defendant to give  
the following instructions all of which the court gave



Except the first which he refused; to which the Defendant excepted. Which said Instructions are in the words & figures following (Here the clerk will insert them) And the Court gave the following instructions to wit (Here clerk insert it) to which <sup>the</sup> Deft - also excepted.

And now the said Defendant prays this his bill of exceptions may be signed and sealed and made part of the records and proceedings in said case which is done.

Res Morns *End*  
Sic dya

State of Illinois,  
Hancock County ss

I, Luther Dearborn clerk of the Circuit Court in & for said County & State of aforesaid do hereby certify that the above foregoing is a full perfect and complete copy (as near as can be made) of the original bill of exceptions as filed in the above entitled cause and being the same from which I made the record in said cause for the Supreme Court of this State.

Witness my hand & seal of said court at General in said county this 30 day of June  
1855

Luther Dearborn



64

Major. Denney

Partey P. Hurd

Copy Bill of Exch<sup>t</sup>

Filed July 10, 1855.  
S. Ireland Clk.

Filed May 20 1854  
S. Dearborn  
clk



Supreme Court

P. P. Hurd

vs  
Major Lenny

Appeal from the said  
Court for A. S. 1855.

First The Bill of Exceptions in this cause is not such an one as (under the decisions of the Court made in like cases) to allow them to go back and review the proceedings had in the Circuit Court for the purpose of correcting the same if any error exist as it fails to show that it contains all the evidence given on the trial of the said cause and this it must do in order to have it received here *Vide Webster vs. Enfield 5 Gil. Rep. Pg. 311. also Bates et al. vs. Burdick 2 Gil. Rep. Pg. 394 also Mangin vs. Warrington 3 Gil. Rep. Page 310 also 13 Ill. Rep. Pg. 16.* Nor does the Bill show that it was made & taken at the time the cause was tried as this Court has repeatedly held it must affirmatively show. *Vide Dickhaut vs. Currell 11 Ill. Rep. Pg. 848* cases there cited also 5 Gil. Rep. Pg. 456. And this must appear from the face of the Bill of Exceptions.

Second; The Bill of Exceptions does not show that any motion was made in the Circuit Court for a new trial & that that motion was overruled & that the appellant in this Court excepted to the ruling of the Court in refusing to grant a new trial and it is now too late for him to do so here *Vide Dickhaut vs. Currell 11 Ill. Rep. Pg. 83.*

Third; The Appellant cannot now question the propriety of the Court in refusing to give the first instruction asked by defendant and in giving the instruction by the Court as the Bill of Exceptions.



does not show that the exceptions were taken at the time of giving the instruction. Vide *Dufield vs. Loring*. 13 *Ill. Rep.* pp. 697 & 88 also 11 *Ill. Rep.* pp. 72 & 84 also 3 *Seamans Rep.* pp. 63 & 17 also 1 *Seam. Rep.* pp. 352, also 12 *Ill. Rep.* pp. 76 also 1 *Ill. Rep.* 572.

Fourth: It will not cure or aid the appellants' Bill of Exceptions by the Clerk copying into it the records and other papers not referred to by the Bill of Exceptions. Vide *Ill. Rep.* pp. 587, 83, & 84. 5 *Hilman's Rep.* pp. 126.

Fifthly: There was no error committed by the Court in refusing to give the first instruction as it was not applicable to the evidence given in the case for R. M. Mathews testified that Hurd admitted that he had received all of his pay of the plaintiff for the pieces of land mentioned in the agreement and therefore the Court properly excluded it also several counts in Declaration. Vide *Hilman* 202. 1 *Seam.* 47 - 2 *Ill.* 293. The other instruction given embraced in substance same principles as far as applicable.

Sixthly: The instruction given by the Court was correct & there is no error as it was applicable to the evidence given.

Seventhly: The Verdict was in accordance with the evidence in the case so far as the Bill of Exceptions shows what that evidence was, but in case it was not this least will not disturb the verdict when the trial was before a Jury & it was a question of fact for them to settle from all the evidence in the case as to the amount of the Verdict. Vide 3 *Seam.* 18 also 1 *Seam.* pp. 533. The verdict must be manifestly against the evidence. Vide 13 *Ill. Rep.* 697. 5 *Ill.* 72.



Eighth: There was no error in the Court below refusing to grant a new trial.

Ninth: The receipts & contracts were properly received in evidence on the trial of this cause in the Court below.

J. H. Mayhew  
~~Attorney General~~

Tenth

The Bill of Exceptions so far as it shows the evidence in this case shows, that, there was no dispute in the court below as to what the amount was, which was mentioned in the receipts (as was the fact). The amount - that the plaintiff should recover was not made a point in the court below. The appellant only insisted there, that he was not entitled to recover any judgment whatever.

Eleventh

It is utterly impossible for the clerk to give in Bill of Exceptions a correct fact summary of the Receipts & agreements in this case, this can only be done by inspection of them, and, the mind is then in doubt as to the amount mentioned there & the receipts on in the hand-writing of the appellant, and as the appellant did not contest



that fact in the court below  
 he cannot here question the  
 correctness of the finding of the  
 jury, unless they grossly mistook  
 the evidence, this was not the  
 case or misperception of the receipts  
 themselves will show

J. H. Maybourn  
 Atty for Appellee

64  
 Supreme Court

P. P. Howard

vs.  
 Hap. Denny

Copy of Brief

Filed July 10. 1855.  
 T. H. and Ch.

|       |
|-------|
| 34    |
| 34    |
| 102   |
| 17    |
| 11900 |



<sup>64</sup>  
P. P. Hurd  
y  
M. Denney

64

1855

12238