

No. 11973

Supreme Court of Illinois

Green.

vs.

Lewis.

71641  7

McHenry Co.
Robert Green
^{vs.}
Richard Lewis

82✓

11973

1852

Prepared

United States of America

State of Illinois } of & before the Honorable
McHenry County } Isaac G. Wilson Judge

of the Thirtieth Judicial
Circuit of the State of Illinois and Presiding Judge
of the McHenry County Circuit Court at a
Circuit Court began and held at the Court house
in Woodstock in said County on Tuesday the
Twentieth day of January in the Year of our
Lord One Thousand Eight Hundred and
fifty two and of the Independence of the United
States the Seventy fifth

Present the Hon Isaac G. Wilson
Judge

Attest
J. H. Johnson
Clerk

State Attorney
John Brink
Sherriff

Be it remembered that heretofore to wit: on the
Second day of January in the Year of our Lord
One thousand Eight Hundred and fifty ^{one} ~~two~~ ~~the~~
a certain writ of Summons was issued out
of the office of the Clerk of the Circuit Court
of said County, which said writ is in the words
and figures following, that is to say:

State of Illinois } of & The People of the State
McHenry County } of Illinois to the Sherriff
of said County Greeting

We command you that you summon Robert Green
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 Woodstock
in said County to answer unto Richard Lewis

in a plea of Trespass, on the Case on promises,
to the damage of the said plaintiff as he says in the
sum of Five Hundred Dollars, And have you
then and there this writ with, an indorsement thereon
in what manner you shall have executed the same.



Witness, Seal N. Johnson, Clerk of our
said Court, and the Seal thereof at Washington
aforesaid this Second day of January 1851

N. Johnson

Clerk of the Circuit Court

Which said writ has Endorsed thereon

Personally served by reading the within, to the within
named Robert Green Jan 2^d 1851

John Brink

Sheriff

Filed Jan 4th 1851

N. Johnson

And there after to wit on the Second day of April
in the Year of our Lord One Thousand Eight
hundred and fifty two the said defendant filed
in the office of the Clerk of the Circuit Court of said
County his certain bill of Exceptions which
said bill is in the words and figures following
to wit:

Richard Lewis

Robert Green

Bill of Exceptions

Be it

remembered that on

this day of January A.D. 1853 being one of
the days of the January Term of the Mth Mary Circuit
Court this Cause came on to be heard before his Honor
Isaac G. Wilson Presiding Judge of the said and a jury
upon the following pleadings.

State of Illinois } of McHenry Circuit Court
McHenry County } March Term 1885

Richard Lewis plaintiff by
C. McClure his Attorney complains of Robert Green
summoned &c of a plea of Trespass on the case
on promises.

For that, whereas the said defendant
heretofore to wit: on the fourteenth day of November
in the Year of our Lord One thousand Eight hundred
and fifty at the County of McHenry was justly indebted
to the said plaintiff in the sum of Two Hundred dollars
for the work and labor care and diligence of the said
plaintiff before that time done and performed and
bestowed in and about the business of the said
defendant and for the said defendant and at his special
instance and request and being so indebted he the
said defendant undertook & then & there faithfully promised
the said plaintiff to pay him the said sum of money
aforesaid when he should be thereunto afterwards
requested.

And whereas afterwards, to wit on the day
and Year last aforesaid and at the County aforesaid
the said defendant was justly indebted to the said
plaintiff in the further sum of Five Hundred Dollars
of like lawful money to be paid to the said plaintiff
for his care and diligence his work and labor in and
about his the defendants business and being so indebted
he the said defendant promised and undertook to pay
to the said plaintiff the last mentioned sum of money when
he the said defendant should be thereunto afterwards requested
to wit at the County aforesaid.

And whereas also afterwards to wit on the fourteenth day
of November in the Year One thousand Eight hundred and
fifty at the County of McHenry in consideration that the
said plaintiff at the like special instance and

request of the said defendant 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 defendant, he the said defendant undertook and then there faithfully promised the said plaintiff to pay him so much money as he therefore reasonably deserved to have of and from the said defendant when he the said defendant should be thereunto afterwards requested, And the said plaintiff avers that he therefore reasonably deserved to have of the said defendant, the further sum of Two Hundred Dollars of lawful money to wit: at the County of McHenry aforesaid whereof the said defendant afterwards to wit on the day and Year last aforesaid had notice.

And whereas also afterwards to wit on the day and year last aforesaid at the County aforesaid, the said defendant was indebted to the said plaintiff in the further sum of Two Hundred Dollars, lawful money ~~also~~ ~~so~~ much money by the said plaintiff before that time lent and advanced to the said for oxen by the said plaintiff before that time sold and delivered to the said defendant, and at his special instance and request to wit: at the County of McHenry aforesaid.

And whereas also on the fourteenth day of November in the Year of our Lord One thousand Eight hundred and fifty at the County of McHenry aforesaid the said defendant was indebted to the said plaintiff in the further sum of five hundred dollars lawful money for so much money by the said plaintiff before that time lent and advanced to the said defendant at his special instance and request and being so indebted to the said defendant in consideration thereof afterwards to wit on the day and Year last aforesaid at the County aforesaid undertook and then and there faithfully promised the said plaintiff to pay him the last mentioned sum of money when he the said defendant should be

thereunto afterwards requested,

Yet the said defendant not regarding his said several promises and undertakings in this behalf hath not as yet paid the said several sums of money or any part thereof to the said plaintiff although often requested so to do but to pay the same hath wholly neglected and refused and still neglected and refuses to wit at the County aforesaid,

To the damage of the said plaintiff of five hundred Dollars and therefore he sues
C. McClure atty for Plaintiff

The following is the copy of the account declared upon
1816, 1817 & 1818.

Robert Green

To Richard Lewis R^r

To Work and labor Twenty Seven months
at \$12. per month \$324.00

To Six and one half days work at 50 cts per day 3.25

1817 To Borrowed money 37.00

1836 To Borrowed money 5.00

1831 To Balance on Note of Green 10.00
\$379.25

Which said Note has endorsed thereon

Dated Feb 21st 1851

W. Johnson C^{ll}

And thereafter to wit on the 16th day of Sept in the Year of our Lord One thousand Eight hundred and fifty One the said defendant filed in the office of the Clerk of the Circuit Court of said County his certain plea in abatement in the words and figures following that is to say:

And the said Robert Green by Bush & Wurlbut his attorneys comes & defends the wrong & injury when & & prays judgement of the said writ & declaration because he says that the said several ^{supposed} promises and undertakings in the said declaration mentioned if any such were made were & each of them was made by the said defendant jointly with one Joseph Green who is still living to wit at Montgomery County aforesaid and not by the said defendant alone and this he is ready to verify wherefore inasmuch as the said Joseph Green is not named in the said declaration & writ together with the said defendant by the said defendant prays judgement of the said writ & declaration & that the same may be quashed

Bush & Wurlbut
Robert Green defendant being duly sworn deposes that the matters & things ~~therein~~ in said plea set forth are true in fact as the same are therein set forth

Sworn & Subscribed } Robert Green
this 16th Sept 1851 }

J. H. Johnson Clerk

Which said plea has endorsed thereon

Filed Sept 16th 1851

J. H. Johnson Clerk

And thereafter to wit on the 16th day of Sept in the year last aforesaid the said plaintiff filed in the office of the Clerk of the Circuit Court his certain Replication which said replication is in the words and figures following that is to say:

Richard Lewis & McKim vs. Ch.
Sept Term 1851
Robert Green &

And the said plaintiff saith
that his said writ & declaration, by reason of
anything by the said defendant in his said plea
above alleged ought not to be quashed because
he saith that the said several promises and
undertakings were not made by the said defendant
jointly & together with the said Joseph Green
in manner and form as the said defendant
hath above in his said plea in that behalf
alleged and this he the said defendant prays
may be inquired of by the Country &c

C. M. Clure atty for
Plaintiff

Richard Lewis, Plaintiff, being duly sworn
deposes that the matters and things in said
replication set forth are true in fact as the same
are therein set forth.

Subscribed and sworn to
this day of Sept 1851

Which said Replication has endorsed thereon
Dated Sept 16th 1851

J. M. Johnson Clk

This Cause having been previously tried at the
September Term of the McKim Circuit Court
The defendant then had the following bill
of Exceptions settled & allowed & made a part
of the Record which was done in words & figures
following

Richard Lewis & McKim vs. Ch.
Robert Green & Be it remembered
that on this 18th

day of September A.D. 1851 one of the days of the
September Term of the McHenry Circuit Court this
cause came on to be heard before his Honor Judge
J. Wilson, and a Jury upon the following state
of pleadings.

State of Illinois) of McHenry Circuit Court
McHenry County) March Term A.D. 1851

Richard Lewis plaintiff by C. McLure his
attorney complains of Robert Green, summoned &c.
of a plea of Trespass, on the case on promises.

For that whereas the said defendant heretofore
to wit on the fourteenth day of November in the Year
of our Lord one thousand Eight hundred and
fifty at the County of McHenry was justly indebted
to the said plaintiff in the sum of Five hundred
dollars for the work and labor care and diligence
of the said plaintiff before that time done and
performed and bestowed in and about the business
of the said defendant and for the said defendant
and at his special instance and request and being
so indebted he the said defendant undertook and
then & there faithfully promised the said plaintiff to
pay him the said sum of money aforesaid when he
should be thereunto afterwards requested

And whereas afterwards to wit on the day and
Year last aforesaid and at the County aforesaid the
said defendant was justly indebted to the said
plaintiff in the further sum of Five hundred
Dollars of like lawful money to be paid to the
said plaintiff for his care and diligence his
work and labor in and about his the defendants
business, and being so indebted he the said
defendant promised and undertook to pay
to the said plaintiff the last mentioned sum

of money when he the said defendant should be thereunto afterwards requested to wit at the County aforesaid.

And whereas also afterwards to wit on the fourteenth day of November in the Year one thousand Eight hundred and fifty at the County of McKim 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 the business of and for the said defendant he the said defendant undertook and then there faithfully promised the said Plaintiff to pay him so much money as he therefore reasonably deserved to have of and from the said defendant when he the said defendant should be thereunto afterwards requested And the said Plaintiff avers that he therefore reasonably deserved to have of the said defendant the further sum of One Hundred dollars of lawful money to wit at the County aforesaid whereof the said defendant afterwards to wit on the day and Year last aforesaid had notice.

And whereas also afterwards to wit on the day and Year last aforesaid at the County aforesaid the said defendant was indebted to the said Plaintiff in the further sum of Five Hundred dollars for oxen by the said Plaintiff before that time sold and delivered to the said defendant and at his special instance and request to wit at the County of McKim aforesaid.

And Whereas also on the fourteenth day of November in the Year of our Lord one thousand Eight hundred and fifty at the County of McKim aforesaid the said defendant was indebted to the said Plaintiff in the further sum of Five

hundred dollars, lawful money for so much money by the said plaintiff before that time lent and advanced to the said defendant at his special instance and request and being so indebted he the said defendant in consideration thereof afterwards to wit on the day and Year last aforesaid at the County aforesaid undertook and then and there faithfully promised the said plaintiff to pay him the last mentioned sum of money when he the said defendant should be thereunto afterwards requested.

Yet the said defendant not regarding his said several promises and undertakings in this behalf hath not as yet paid the said several sums of money or any part thereof to the said plaintiff although often requested so to do but to pay the same to him hath wholly neglected and refused and still neglects and refuses to wit at the County aforesaid.

To the damage of the said plaintiff of Five Hundred Dollars and therefore he sues

C McClure Atty for
Plaintiff

The following is the copy of the account declared upon

1846, 1847 & 1848

Robert Green

To Richard Lewis Ad

To Work and labor twenty seven months at \$12 per month	\$324.00
To Six and one half days work at 50 cts per day	3.25
1847 To Borrowed money	37.00
1836 To borrowed money	5.00
1831 To balance on Note of oxen	10.00
	<u>\$379.25</u>

Which said declaration has Endorsed thereon

Dated Feb 21st 1851

J. H. Johnson
Att

And thereafter to wit on the Sixteenth day of September
in the Year last aforesaid the said defendant filed with
the office of the Clerk of the Circuit Court his certain plea
in the words and figures following to wit:

And the said Robert Green by Bush & Hurlbut
his attorneys comes & defends the same & injury when
&c & prays that Judgement of the said writ &
Declaration, because that the said several promises
and undertakings in the said Declaration mentioned
if any such were mentioned & each of them was
made by the said defendant jointly with one
Joseph Green who is still living to wit at the
County of McMurray County aforesaid and not by
the said Defendant alone and this he is ready to verify
wherefore inasmuch as the said Joseph Green is
not named in the said Declaration & writ together
with the said defendant he the said defendant
prays Judgement of the said writ and declaration
& that the same may be quashed.

Bush & Hurlbut

Robert Green Defendant being duly sworn deposes
that the matters & things in said plea set forth
are true in fact as the same are therein set
forth

Sworn & Subscribed } Robert Green
this 16th Sept 1851 }

W. Johnson Clerk

Which said plea has endorsed thereon

Filed Sept 16th 1851

W. Johnson Clerk

And thereafter to wit on the 16th day of Sept 1851 the said
plaintiff filed in the office of the Clerk of the Circuit
Court of said County his certain replication which
is in the words and figures following that is to
say:

Richard Lewis } McKinnay Co Cir Ct
vs } Sept Term A.D. 1851
Robert Green }

And the said plaintiff saith that his said writ & declaration by reason of any thing by the said defendant in his said plea above alleged ought not to be ~~questioned~~ quashed because he saith that the said several promises were not made and undertakings were not made by the said defendant jointly & together with the said Joseph Green in manner and form as the said defendant hath above in his said plea in their behalf ~~appears~~ alleged. And thus he the said defendant prays may be inquired of by the Country &c

C. McClure atty
for Plaintiff

which said duplications has Endorsed thereon
Filed Sept 16 1851

J. W. Johnson

On
And thereupon his Honor the Presiding Judge ruled that the affirmative of the issue joined lay upon the defendant and directed the said defendant to open the cause & introduce proof in support of his plea to which ruling the Defendant by Wurlbut his attorney then & there Excepted.

That thereupon the Defendant proceeded to introduce testimony in support of his plea & witnesses were produced & examined on both sides upon the issue raised by the Pleadings to wit whether the contracts & promises in said declaration mentioned were joint promises of the defendant & Joseph Green, or of the defendant individually. And before said cause was submitted to the

And thereafter to wit on the Sixteenth day of September
in the Year last aforesaid the said defendant filed with
the office of the Clerk of the Circuit Court his certain plea
in the words and figures following to wit:

And the said Robert Green by Bush & Hurlbut
his attorneys comes & defends the wrong & injury when
&c & prays that Judgement of the said writ &
Declarations because that the said several promises
and undertakings in the said Declarations mentioned
if any such were mentioned & each of them was
made by the said defendant jointly with one
Joseph Green who is still living to wit at the
County of McHenry County aforesaid and not by
the said Defendant alone and this he is ready to verify
wherefore inasmuch as the said Joseph Green is
not named in the said Declarations & writ together
with the said defendant he the said defendant
prays Judgement of the said writ and declaration
& that the same may be quashed.

Bush & Hurlbut

Robert Green Defendant being duly sworn deposes
that the matters & things in said plea set forth
are true in fact as the same are therein set
forth.

Sworn & Subscribed } Robert Green
this 16th Sept 1851 }

W. Johnson Clerk

Which said plea has endorsed thereon

Filed Sept 16th 1851

W. Johnson Clerk

And thereafter to wit on the 16th day of Sept 1851 the said
plaintiff filed in the office of the Clerk of the Circuit
Court of said County his certain replication which
is in the words and figures following that is to
say:

said Jury the said Plaintiff by McLure, his attorney asked the following among other instructions,

8. The Plaintiff asks the Court to instruct the jury that all they have to try under the issue now submitted to them is whether the work and labor for which this suit is brought was performed for Robert Green and Joseph Green jointly or for Robert Green the deft.

Which said instruction has endorsed thereon
Filed Sept 19th 1851

J. H. Johnson cc

Which ^{said} instruction was by the said Court given to the jury and excepted to by the defendants. And afterwards the said jury return into Court & deliver the following verdict "We the jury find the issue joined for the Plaintiff" & thereupon the said Plaintiff moved the Court to permit him then to go into evidence, before the jury to assess and establish damages which motion was objected to by defendants and overruled by the Court.

That the said Defendants by his said Attorney then moved the Court to remand the cause to the Jury (who were still in Court & had not dispersed) upon the Evidence already before them to complete their verdict by returning for plff such damages as were proved by the Evidence or that the Court should assess nominal damages which motions were resisted by defendants Counsel the Plaintiff & overruled by the Court, to which the Defendant excepted.

That his Honor then discharged the said Jury from further consideration of the cause, and awarded a veniee De Novis to which rulings and orders of the Court the Defendant by his Counsel ^{thru} excepted. And now prays the Court here to sign seal and allow this his Bill of

Exceptions as a part of the Record in this case which is done

Isaac G. Wilson
Judge &c.

Which said Bill of Exceptions has endorsed thereon
Filed Oct 3^d 1851

J. H. Johnson &c.

Upon the Cause being called for trial at the January Term 1852, the Defendant by his counsel moved to vacate the order allowing a "Venire facias de novo" which the Court after arguments overruled to which overruling the Defendant by his counsel excepted

The Cause then came on for hearing and the following testimony was offered

Lewis

vs

Green

} Issue on plea in Abatement

Plffs Testimony

George Bunker

Knows the parties to this Suit, has known them since 1846. Saw them both at the house of Jos Green, on 3^d July 1846 - Lewis came on the 4th - Witness was working for Jos Green. Lewis went to work on the farm on Monday after he arrived, in company with witness and other hands. Lewis labored on the place. Understood that Joseph Green had bought the land from Hines & had made a contract to let Robt have half the farm. Witness was working for Joseph Green. Heard Robert speak of the division. All lived in the same house until winter. Lewis remained at Robert Green's - Witness was occasionally at Robert Green's. Has never heard Robert say anything about Lewis being at work for him. Can't say how long Lewis worked there as he left the neighborhood soon after saw Lewis. Two years after worked

in harvest for Joseph Green. Sewis worked there and lived with Robert Green. Sewis & Witness worked for Joseph Green labored on the same land. Witness worked for Joseph Green. Knows that Sewis lived afterwards at Joseph Green. Said Joseph Green one Year ago last Spring.

Sewis labour was worth \$10 or 12 a month. Witness was working for Joseph Green when pliff came to this Country with Robert Green, & had been for one Year previous. There was about 100 acres in cultivation Joseph & Robert each had a Horse Team working on the place. Joseph also had an ox team which worked on the place. There was no division fence between the supposed portions of land. The cultivated land was on both. Witness & Sewis worked on both pieces. Knows nothing about any divisions. Crops of 1846 were all stacked together. Division witness spoke of he does not know when Sewis was working for Joseph Green in 1847 as witness believes. Neither party took much charge of the farm. Witness worked all over the farm and ^{looked} to Joseph for instructions & pay. Plaintiff lived with Robert Green.

Witness worked with Sewis in 1846 & in harvest in 1848. Directions for the work were given some by Joseph & some by Robert Green in 1846.

In reply. Fehulon Green, a Dutchman, & various others worked during 1846.

= Heard Robert talk about his hired man Sewis. Said was a smart fellow.

Albert Schryver. Knows nothing about Sewis in 1846. Witness went to work for either Robert or Joseph in 1847. Sewis was then at work for on the farm of Robert & Joseph - lived with Robert.

Witness worked off & on through that season. Sewis was there - Same in 1848 - Witness was frequently at the house of Rob. Green. Sewis left there in Sept or Oct, 1848.

Knew the parties before they came to this Country. Lewis wages were worth \$12. per month, year round.

Joseph Green sent for him Witness. he worked for both some times for one and some times for another & charged them severally. Was present at a trial before Walkup between Joseph Green & Thomas Farrall, Robert Green was asked the question if he & Joseph were not in partnership, "He said them were not, there was no partnership existing between them" — Farrall's demand it was for ploughing threshing & drawing grain, in 1857 or 8 Mr. McClure tried the suit with Athreum Taylor. Joseph Green introduced Robert Green as a witness. Robert Green was asked if he was interested in the event of suit, said not. There was ^{then} no partnership existing between them & he answered then the division was made after Lewis quit Robert Green's.

To Walkup. Suit before him in April 1858 between Joseph & Farrall. Farrall's act was for work done in seeding, working & threshing, Rob was sworn, Robert said he was not interested in the event of the suit. Farrall's act was proved back to 18 mos before the suit.

John Frank
Says he is a Blacksmith. Lives neighborhood of Robert Green, told me to keep the accounts for blacksmithing separate. Account of Joseph run to 1854. Roberts to 1851. Work was done on Horses ploughs &c. He said keep the account separate. R Lewis brought a Plough over for Robert Green, to have work done. Horses to be shod once or more

Athreum Taylor.

Was present at a trial of Farrall

& Joseph Green in April 1850 before Walckup. Robert Green said that they farmed it together and divided the grains, that they were in partnership, as far as threshing went - Each one furnished his own part of the help & kept an account of it. Parrells account against Joseph Greens was for work & labor about 9 years before the first season Robert Green came into the country. - Question if they were not in partnership during the time the accounts run. He said there was a partnership in carrying on the business of farming but each furnished their own help.

For Defts

John Brink, Defts Witness.

Division was made in March 1850. It is the same land on which Robert Green lived in 1847 & Joseph lived on the other part of it. There was no division fence. Cultivated land was about equally divided. Has seen Robert work on the farm. Does not remember to have seen Joseph. Thinks there were over 170 acres or 70 acres in each piece. Joseph Green called on him to make the divisions. It was the same land said to have been bought of him.

George Barker Recalled by Defts

About September 1846 left Joseph Green. in Jan'y 1847 received \$50 and money & various articles - and a note for \$53. from Joseph Green & Robert Green. Went from witness to Titus Brown. Robert Green signed the note because the person he was to let have the note would not take Joseph and the witness also signed the note himself.

John Brinker lived in half a mile from the farm of the Greens. Joseph & Robert labored together - Can make no distinction in the control of the place. In 1847 & 1848 they put in the crops & stacked them together & does not recollect that there was

separate bins for either. All hived together. Have no particular recollection, as to the crops.

Both had teams in 1846 - in 1847 Robt. had horse teams ever since. Cannot say when Joseph got his old teams. Witness boarded with Joseph Green. Wards thrashing boarded with either.

X^{ed}. Witness cropped part of this land in 1847. oats. Crop probably part on one & part on the other.

Wired land for oats from ~~the~~ one or the other probably & put the share into the general stack.

Robert Schryver,

Know the parties in 1846, 7 & 8.

The Greens occupied the farm they now hold. Neither one seemed to control. Both put in the crops. Both harvested. Grain stacked together. After thrashing grain was kept in bins no one any more than. Hogs kept altogether. Both one hog from both & accounted to both for it.

Talked with Lewis about his buying Joseph's undivided half & he said he was at work for them & did not know which one he would get his pay of. Says that Joseph Green now lives in the State of New York and has lived there since 1851.

The Court then gave the following instruction on the part of the plaintiff & upon his own motion to the giving of which the Defendant by his Counsel Excepted.

By the Court.

This action is brought by the plaintiff against the Defendant by Robt Green, for work and labor done by the plaintiff at the request of the defendant. The defendant has pleaded as a defence that the agreement to pay for the labor

if any was made by the defendant & one Joseph Green jointly and not by the defendant individually. On this plea issue is joined and under this issue these two questions for you to decide.

- 1st Whether the plaintiff performed the work of labor and
 - 2d If he did so labor whether the defendant is liable individually to pay for such labor, or whether the liability to pay is a joint liability on the part of Robt Green & Jos Green. ~~as the~~
- Under the issues it is not necessary for the plaintiff to prove an express request of the defendant to do the work for which the suit is brought.

If you believe from the evidence that the plaintiff labored for and on account of the defendant with his knowledge ^{and assent} the law implies a request ~~and assent~~. If you believe that the labor was done for and on account of Robt Green the deft and Joseph Green jointly & there is no evidence tending to prove that the labor was procured by the defendant Robt Green, then the action is wrongly brought and your verdict should be for the defendant. If you believe that the labor was done for the joint benefit of the Greens, still if you believe from the evidence that the labor was performed by the procurement of the deft Robt Green individually, then the action is well brought and the plaintiff is entitled to recover provided that he has proven that he performed the labor and that the same is of value.

Which instruction has endorsed thereon.

Filed Jan 29 1852

A. H. Johnson c

And the Court was asked to give the following instructions for defendant which were refused. to the refusal of which the defendant by his counsel excepted.

Defts Instructions

1. *Replead (except)* The Court is requested to instruct the jury that unless they believe from the evidence that the plaintiff did the work and labor declared on for the benefit & advantage of Robert Green alone, they must find for the defendant.
2. *Replead (except)* That if the jury believe from the evidence that the work & labor declared on was done by the Plaintiff for the joint benefit & advantage of Robert & Joseph Green then they must find for the Defendant.
3. *Replead (except)* That this action being brought on an implied contract arising from work & labor done the jury must ascertain from the evidence for whose benefit such work & labor was done & that, ^{in fact} of joint occupation of the land on which the work was done, and joint ownership of the crops raised on the same during the period for which the work was done is evidence to show a joint liability in Joseph & Robert Green, & unless contradicted or explained will authorize the jury to find for the defendant.

Which said instructions have endorsed thereon
Filed Feb 9 1852

J. M. Johnson c

That the jury then retired & returned a verdict for the Plaintiff in the sum of Two Hundred & Seventy Dollars damages. The defendant then moved for a new trial which motion was overruled by the Court to which the defendant by his Counsel Excepted. The Court then rendered judgment upon the verdict to which the defendant Excepted & prays this bill of

Exceptions to be signed sealed and allowed of
Record which is done

Isaac G. Wilson Esq

Judge &c

Which bill of Exceptions has endorsed thereon

Dated April 27 1852

J. H. Johnson

Clk

Be it remembered that heretofore to-wit on the
18th day of September in the Year of our Lord
one thousand Eight hundred and fifty one it
being one of the days of the late September Term
of said Court then in session at Woodstock
aforesaid the following among other proceedings
was had, that is to say:

Richard Lewis &

vs
Robert Green &

Assumpsit

And now come

the Plaintiff by McCallum

his and Murphy his attorneys and the defendant by
Warburton his counsel also come and issue being
joined it is therefore ordered that a jury come and
thereupon come a jury of good and lawful men to-wit:

Dexter O. May

Stewart Cummings

James Tyrrell

John Payer

Chris Spontable

Senas Pierce

Benj Easton

Edward Murphy

Wm Jackson

King Henry

A. H. Parker

J. M. Grink

and

being duly empannelled and sworn well and
truly to try the issue joined, and having heard
the evidence of the and instructions of the Court
they retired to consider upon their verdict and
thereupon it is agreed by the parties that when they
shall have agreed upon their verdict that they may
sign ^{and seal} the same and meet the Court tomorrow morning.

And thereafter to wit: on the 19th day of Sept,
in the Year last aforesaid ^{said Court being then in session as aforesaid} the following order
was entered of record to wit:

Richard Lewis }
vs } Assumpsit
Robert Greens }

And now come
the parties by their respective
attornies and the Jurors formerly empannelled
herein also come and for verdict say "the the
Jury find the issue joined for the plaintiff
and thereupon the said plaintiff by his attorney
moves the Court proceed to the further trial of
this case which motion is resisted by Hurlbut
and Bush for the defendant and the Court
having heard the parties thereon takes the
same under advisement

And thereafter on the day and Year last aforesaid said
Circuit Court being then in session as aforesaid
the following among other proceedings was had
to wit:

Richard Lewis }
vs } Assumpsit
Robert Greens }

And the Court being
fully advised on the motion
formerly entered herein sustains the same and doth
order and adjudge ^{that} the said Jury to be discharged
and that a Venuerio De Novo be awarded in this
cause, to the opinion of the Court in sustaining
the said motions of the plaintiff and discharging
the Jury in this cause and in awarding a Venuerio
de Novo, the defendant by his counsel excepts
And thereupon on motion of the plaintiff's
attorney it is ordered by the Court that he

have leave to amend his replication herein.
It is therefore ordered that this cause be continued
and that the said defendant recover of the plaintiff
his costs & charges in & about this term expended
and that he have Execution therefor.

And thereafter to wit: on the 22^d day of January
in the Year of our Lord One thousand eight hun-
dred and fifty two said day being one of the days
of the January Term of said Court and said Court
being then in session as aforesaid the following
among other proceedings were had that is to say:

Richard Lewis

vs
Robert Green

} Assumpsit.

And now come the
defendant by

Hurlbut his attorney and moves the Court to set aside
the order of the last term of this Court discharging
the jury and granting a trial De Novo which
motion is resisted by Plaintiffs attorney, and the
Court having heard the parties thereon and being
fully advised in the premises overrules the same
to the opinion of the Court in overruling said
motion the defendant by his attorney excepts. And
issue being joined it is therefore ordered that a
jury come and thereupon come a jury of good
and lawful men to wit:

Calvin H. Shapley

David Downs

Elias A. Thomas

John Cating

Charles Ditch

Charles W. Foster

Morris E. Barnes

George Weller

William Newman

S. H. Falls

S. L. Mose

& Thomas W. Cook

who

being severally empannelled tried and sworn
well and truly to try the issue joined and
having heard the evidence and arguments
of counsel and instructions of the Court to

they retired to consider on their verdict. And
thereupon it is agreed that when they shall have
agreed that they may sign and seal the same
and meet the Court tomorrow morning at 9 o'clock.

And thereafter on the 23^d day of ~~September~~^{January} in the
Year last aforesaid said Court being then in
session as aforesaid the following among other
proceedings were had to wit:

Richard Lewis }
vs } Assumpsit
Robert Green }

And now come
the parties
by their respective attorneys and the jurors formerly
empannelled herein ^{also come} and for verdict say we the
jury find the issue joined for the plaintiff and
assess his damages at the sum of Two Hundred
and seventy Dollars, And thereupon the said defendant
moves the Court for a new trial.

And thereafter to wit on the 1st day of February
in the Year last aforesaid, said Court being then
in session as aforesaid the following among other
proceedings were had to wit:

Richard Lewis }
vs } Assumpsit
Robert Green }

And now come
the parties by their respective
attorneys and the Court being fully advised on the
motion formerly entered herein for a new
trial overrules the same to the opinion of
the Court in overruling said motion, the
defendant by his Counsel excepts It is therefore
ordered and considered by the Court that the

plaintiff have and recover of the defendant
the sum of Two Hundred and seventy
Dollars his damages so assessed as also his
costs and charges herein expended and that he
have execution therefor And thereupon the
defendant prays an appeal herein which
is granted on condition that he enter into a
bond in the sum of Six Hundred Dollars conditional
according to law within thirty days from this date
with Enos W Smith and Jesse Slaven his security
and thereupon by the agreement of the parties the bill
of exceptions in this cause is to be settled at the March
Term of this Court on the first Week thereof.

And thereafter to-wit on the 4th day of March
in the year last aforesaid the said defendant
filed in the office of the Clerk of the Circuit
Court of said County his certain appeal bond
which bond is in the words and figures following
that is to say:

Know all men by these presents that we Robert
Green Principal and Enos W Smith, and Jesse
Slavens as securities of the County of McHenry
and State of Illinois are held and firmly bound
unto Richard Lewis of the same County and
State in the penal sum of Six Hundred dollars
which payment well and truly to be made me
and each of us bind ourselves our heirs Executors
administrators and assigns firmly jointly and
severally by these presents. Witness our hands
and seals at Woodstock this Second day of March
A.D. 1853.

The condition of the above obligation is such
that whereas the above named Richard Lewis did on
the Sixth day of February A.D. 1853 in the Circuit
Court of said County receive a judgement

against the above bounden Robert Green, in an
action of Assumpsit for the sum of two Hundred
and Seventy Dollars damages and cost of suit
from which said judgement of the said Circuit Court
the said Robert Green, has taken an appeal to the
Supreme Court of the State of Illinois.

Now if the said Robert Green shall prosecute his
appeal with Effect and shall pay and satisfy the
judgements costs interest and damages in case the
judgements of the said Circuit Court shall be affirmed
in the said Supreme Court then the above obligation
to be void else to remain in full force and vigour
Taken and Entered } Robert Green Seal
into before me at my } Engs M. Smith Seal
office this 14th day of } Jesse Slaven Seal
March A.D. 1852 }

J. H. Johnson Clerk

Which said bond has endorsed thereon
Filed March 24 1852

J. H. Johnson At

State of Illinois } of the undersigned Clerk
McHenry County } of the Circuit Court
in and for the said County.
in the State aforesaid do hereby certify that the foregoing
is a true and perfect copy of the Record and
proceedings on record and proceedings in
this office in the above entitled cause Witness
Joel H. Johnson Clerk of our said
Court and the Seal thereof at New Stock,
in said County this 24th day of May
A.D. 1852.

Joel H. Johnson
Clerk

Wm. Hoenery Co.
Robert Green
Richard Lewis

Debit
for Applicant

Filed June 15th 1852.
L. Leland Clerk.
By J. H. Leland Esq.

Fee \$1.00

Clerk

$\begin{array}{r} 36 \\ 10 \\ \hline 360 \end{array}$ Sur page
 $\begin{array}{r} 720 \\ 257.1 \\ \hline 257.1 \end{array}$
 $\begin{array}{r} 360 \\ 103 \\ \hline 1080 \\ 2160 \\ \hline 22,680 \\ 16,000 \\ \hline 24,380 \end{array}$
 24,20

~~2440~~

140 Clerk
 $\begin{array}{r} 10 \\ \hline 1400 \end{array}$

Clerk

2300

215

100

560

100

47.35

Clerk

Clerk

2181³/₄

106³/₄

581¹/₂

2.50
 $\begin{array}{r} .50 \\ \hline 1600 \end{array}$

Clerks Jul 25, minus 2^d Rice Exceptions

116 116 116

David Hancock & Leester Boston

Woodstock June 10th 1852

Clerk of the Supreme Court I send enclosed
the bill of Exceptions in the Case of Lewis
vs Green you will please enter it on the
docket likewise five Dollars enclosed with the
papers will you please acknowledge the receipt
of the same by writing me a line this will
be some one to attend to it

Robert Green

Robert Green
vs
Richard Lewis

Receipt -

Filed June 15th 1852.
By the Clerk of the Court
Wm. H. H. H. H. H.

Robert Green }
 as }
 Richard Lewis } Supreme Court
 June Term 1852

The said Plaintiff by Shulbut
 his Attorney now comes and says that in
 the Record & proceedings in this cause there
 is manifest error & for cause of error
 sets forth and assigns the following.

1. That the Court below erred in directing
 the Defendant below to commence the
 evidence in support of his plea in abate-
 ment.
2. That the Instruction given by the Court at
 the request of the Plaintiff below upon the
 first trial of this cause & embodied in the
 Bill of Exceptions was, Contrary to Law.
3. That the Court below erred in refusing
 the motion of the Defendant below,
 upon the coming in of the jury with the
 first verdict, to demand the cause to the
 same jury upon the same evidence, with
 direction to complete their verdict upon
 by assessing damages.
4. That the Court below erred in refusing
 to complete the verdict by assessing nominal
 damages.
5. That the Court below erred in granting
 a Venue facias de Novo & continuing the
 suit.
6. That the verdict in the second trial was
 Contrary to the weight of evidence, & unsup-
 ported by the evidence.

7. That the Court below erred in giving of his own motion the instruction embodied in the Bill of Exceptions upon the second trial ^{that the instruction is with the Law} & also in refusing the several instructions asked for by the Defendants below.

8th That the Court below erred in refusing the motion made by Defendant below for a New Trial.

July 2^d 1852

S. A. Hulbert

Supreme Court
June Term 1852

Robert Green

assignment
of
Errors

Richard Lewis

H. Hulbert

Filed July 2^d 1852.
G. Howard Clerk
By J. H. Ireland
Deputy

Richard Lewis }
 ads } Appar
Robert G. Ward }

And next comes the
abundant in error and says that
there is not any error remaining
in the record in manner & form
as the said plaintiff in error hath
shown in his argument of error
set forth

C. F. Phelps for
def in error

R Lewis

ads

R Green

Loudon in Green

Filed July 2^d 1852.
V. deland Clk.
By P. H. deland Depy.