

No. **12162**

Supreme Court of Illinois

Lowe, et al

vs.

Nolte

71641  7

Be it remembered, that on the twenty second day of March in the year of our Lord one thousand eight hundred and fifty four, there was filed in the office of the clerk of the Circuit Court in and for Peoria County in the State of Illinois, an agreement of submission to arbitration, award thereon with notices and affidavits attached, which are set out and copied in the Bill of Exceptions in this cause & hereinafter recited & transcribed, and thereafter the following proceedings were had thereon in said court, to wit:

Proceedings in the Circuit Court in and for the County of Peoria in the State of Illinois, as a term thereof, begun and held at the Court House in the City of Peoria, in said County on the first Monday in the month of March in the year of our Lord one thousand eight hundred and fifty four, it being the sixth day of said month. Present the Honorable Andrew Peters, Judge of the Sixteenth Judicial Circuit in the State of Illinois, Eldridge S. Johnson, State Attorney Leonard B. Cornwall, Sheriff and Thos. Hale, clerk, to wit:

Wednesday March 2nd A. D. 1854,

Merry Holt,

vs
William W. Low,

Motion for John P. Chapin.
In aid of award

This day came the said Merry Holt by Purph & Sanger his attorneys and filed an agreement to submit matters in difference between the said Holt and William W. Low and John P. Chapin to the final arbitration, award and determination of William McPoiling, William Kellogg and Horace S. Anderson and also the award of said Arbitrators, and entered a motion for judgment on ^{said} award, whereupon the said William W. Low and John P. Chapin by William Kellogg their attorney entered a counter motion to set aside said award.

Tuesday March 30th 1854

Henry Stolte,

vs

On award

William W. Low,

John P. Chapin.

Judgt
appeal v.

This day came the said Henry Stolte by
Purpler Sanger his attorneys and the said William W. Low and
John P. Chapin by William Kellogg and Elihu W. Powell their
attorneys and this cause came on to be heard on the motion of
the said Henry Stolte entered in this court on Wednesday the 22nd day
this month for judgment on the award of the Arbitrators filed in this cause, and
on the cross-motion of the said William W. Low and John P. Chapin to set
aside said award. On consideration whereof, the court being fully
advised in the premises over-ruled said cross-motion, and the
exceptions of said Low and Chapin to said award and sus-
tained the motion of said Henry Stolte for judgment on said
award, and do consider and adjudge that the said Henry
Stolte do have and recover of the said William W. Low and
John P. Chapin, the sum of five thousand eight hundred
and seventy six dollars and forty six cents for and on
account of advances and commissions made and accruing
to him under the contract attached to the submission under
which said award was made, and for and on account of
damages by him sustained on account of the violation of
the said contract on the part of the said Low and Chapin
and for damages sustained by reason of the said Low and Cha-
pin wrongfully suing out of the said writ of replevin in
the suit mentioned in said submission, together with the
costs of said arbitration and his costs in this behalf expended
and that execution issue therefor, and it is further considered and
adjudged that the said William W. Low and John P. Chapin pay
the costs in the suits in this court of Henry Stolte against them,
for trespass on the case on promises and of the said Low & Chapin
against said Henry Stolte in Chancery and of the replevin suit

of said Low and Chapin against Henry Stolte, and that on the payment by the said William W. Low and John P. Chapin of the said sum of five thousand eight hundred and seventy six dollars and forty six cents and of the costs aforesaid, that the said suits shall be dismissed. The said William W. Low and John P. Chapin prayed and appeal from this judgment to the Supreme Court of this State, which is allowed them upon their filing in the office of the clerk of this court on or before the tenth day of May next an appeal bond payable to the said Henry Stolte in the penal sum of ten thousand dollars with Thomas Dyer or Edward H. Headduck as surety and conditioned according to law.

And thereupon on the said 30th day of March A.D. 1854 there was filed on behalf of the plaintiff Stolte in said cause a Bill of Exceptions, in the words and figures following, to wit:

Bill of
Exceptions

Henry Stolte,

vs

In Circuit Court of Peoria County.

Wm W. Low,

John P. Chapin.

Be it remembered that after the rendition of the judgment upon the award of Arbitrators in this cause in favor of the plaintiff, to wit: on the 31st day of March A.D. 1854, the said defendants Low and Chapin prayed an appeal to the Supreme Court of the State of Illinois, which was allowed by the court upon said defendants entering into bond with Thomas Dyer or Edward H. Headduck as security in the sum of ten thousand dollars conditioned as the law directs, to be filed in said suit in the office of the clerk of this court, by the 10th day of May next. To which order & decision of the court in allowing said appeal the said plaintiff Stolte then and there excepted and requested the court to seal this bill of exceptions which is done.

Enslow Peters. (Seal)

And afterwards at the same term of said Circuit Court on the thirty first day of March A.D. 1854, there was filed in said cause a Bill of Exceptions on behalf of said Low & Chapin in the words and figures following to wit:

Defts Bill
of Exceptions

Henry Stolte,
vs
William Low,
John P. Chapin.

Circuit Court Peoria County,
March Term A.D. 1854.

Motion for judgment on award
of Arbitrators.

Be it remembered that on the twenty second day of March A.D. 1854, at a term of the Circuit Court of Peoria County then in session the said Henry Stolte entered his motion for a judgment upon an award made by the Arbitrators and filed in said Court the agreement of submission, contract between the parties attached and the award of the Arbitrators which are in the words and figures following to wit:

Agmt of
Submission

" State of Illinois, } ss.
County of Peoria, } Whereas divers disputes and controversies have arisen between Henry Stolte of Chelliecho, Peoria County, Illinois of the one part and William W. Low and John P. Chapin of the firm of Low & Chapin of Chicago, Illinois, of the other part in relation to a certain contract dated Oct. 2nd 1852 a copy whereof marked "A" is hereto attached and made part of this agreement, and whereas certain suits and controversies arising out of or connected with alleged violations of said contract or matters and transactions of the parties in relation thereto, to wit: a certain suit of replovin

To William W. Low,
John P. Chapin
vs
Henry Stolte

Commenced June 18th 1853.

also a suit in Chancery of
William W. Low &
John P. Chapin
vs
Henry Stolte
Commenced & filed June 11th 1853.

and also a suit in Trespass on the Case upon
Promises of
Henry Stolte
vs
William W. Low &
John P. Chapin
Commenced the 22 August A.D. 1853.

Have been commenced and are now pending and undetermined in the Circuit Court of Teoria, Illinois; Now therefore it is agreed between the said parties that that the said suits and all and singular the matters and things pending between the parties in said suits and properly and legitimately connected with them or either of them, and also all matters and things in difference between said parties arising out of and connected with the said contract, be and the same are hereby by the mutual agreement of the said parties, submitted to the final arbitrament, award and determination of William C. Boilin, William Kellogg, Horace S. Anderson, Arbitrators mutually chosen and agreed upon between said parties and whose award and determination shall be final and conclusive between said parties.

Said arbitrators shall meet at the Court House in Teoria on the 28th day of February A.D. 1854, and after being duly sworn shall proceed to hear the parties and their testimony; they the said Arbitrators or a majority of them shall have power to adjourn from time to time for the purpose of obtaining material testimony or for any other cause satisfactory to said Arbitrators or a majority of them, and in case it shall so happen that any one of the said Arbitrators above chosen by the parties shall die, refuse, or for any reason can not serve as such Arbitrator then, if the parties cannot agree upon

an Arbitrator to serve in the place of the one thus dying, refusing or being unable to serve, the remaining Arbitrators shall appoint one to fill the vacancy thus occasioned; and the decision and determination of the arbitrators herein agreed upon or appointed in case of a vacancy as before stated, or of a majority of them shall be final and conclusive to the parties, and said Arbitrators shall decide who shall pay the costs of each and every the suits before named, and their award when made shall at the next term of the Circuit Court of Teona County or at any subsequent term thereafter be entered and become a judgment in the Circuit Court of said County upon which execution may issue as in cases of Judgments at law in said Court, The party seeking to enter said award as a judgment giving to the opposite party ten days notice of the time of making his motion for Judgment on said award.

The said Arbitrators are to make out their award and give to each party a copy thereof on or before the 1st day of June A.D. 1854, unless the time is extended by agreement of parties. This agreement shall not operate to dismiss or discontinue any of said suits before mentioned in the Circuit Court of Teona County, but the same shall remain on the docket until final judgment shall be entered on the award under this submission, or the award shall have been otherwise paid or complied with by the parties; but neither party shall make any further costs in said suits until the party against whom the said award shall be made shall fail to comply with the same, or the Arbitrators shall fail to make their award within the time before limited, the said Arbitrators shall also determine who shall pay the costs of this Arbitration.

It is also further stipulated and agreed by and between the parties that neither of the parties will in any event revoke or annul this agreement of submission and they bind themselves each to the other,

that they will abide by the said submission & the award made under the same in the penalty of One thousand dollars, as stipulated damages, to be paid by the party delinquent to the party complying.

In Witness whereof, the said parties have hereunto set their hands at Bona, this 20th day of January A.D. 1854.

Wm W. Low

John P. Chapin,

by Wm W. Low

Henry Stolte.

Contract
attached

I hereby agree to purchase and store grain for Wm W. Low and John P. Chapin and deliver aboard of Canal or Steam Boats as follows, (3) Three cents per bushel for oats; (4) four cents per bushel for Wheat, Beans, Flax Seed or other kinds of seeds or shelled Grain, Corn in the ear (3) Three cents if shelled (5) cents per bushel. Ear Corn to be accounted to them at 70 lbs to the bushel if taken in the ear and if shelled at 56 lbs.

The above rates are to apply on Grain stored after this date Oct. 2^d 1852, and held in store if required until the first of August 1853, and Ear Corn in crib until first of October 1853, if required.

Morage for grain after navigation opens in the spring say from first of April till the last of November following Corn & Wheat (3) three cents and oats (2) two cents per bushel.

I hereby agree to let said Low & Chapin have all Grain or seeds as mentioned above that I purchase or cause to be purchased by their furnishing me with money from time to time as I may let them know I require it for the above mentioned purpose. I am to purchase according to their instructions and all grain purchased to be held subject to the order of Wm W. Low, I am to have the privilege of buying at whatever the market price

may be here without being further instructed.

This contract to continue in force one year from the 2^d day of October 1852, unless mutually agreed upon by the parties to discontinue the same, if grain sacked and saved to be paid for extra from above rates.

Chillicothe 2^d Octo. 1852.

Henry Stolte
(At.) Low & Chapin

Award annexed } We the undersigned Arbitrators mentioned and agreed
to sign of } upon in the contract of submission hereto annexed do certify,
Submission } that pursuant to the terms and conditions of the said sub-
mission, we met at the Court House in the City of Peoria,
on the 28th day of February A. D. 1854, and the parties and
their attorneys being present, after being duly sworn according to
law; proceeded to hear in part the proofs and allegations of
the parties; and the evidence not having been concluded we
adjourned the further hearing of the said cause until the
next day at nine o'clock A. M. being the first day of
March 1854, at which time we again proceeded further
to hear the evidence of the said parties; and the evidence
having been closed we again adjourned for consideration
and deliberation until the second day of March A. D. 1854,
at which time we again met and after mature considera-
tion and deliberation, have decided and awarded and do
decide and award as follows to wit:

First - That the costs of the suit of Henry Stolte vs
Wm. W. Low & John P. Chapin, do pass on the case on promises
No. 1. to be paid by the said [William W. Low and John P. Chapin.]

Second. That the costs of the Chancery suit of William W.
Low & John P. Chapin vs the said Henry Stolte be paid by the
No. 2. said [William W. Low and John P. Chapin]

Third. That the costs of the replevin suit of William W.
Low & John P. Chapin vs Henry Stolte be paid by the said
No. 3. [William W. Low and John P. Chapin.]

And that upon the payment of the said costs as aforesaid, which shall be done at the next term of the Circuit Court of Boone County, each of the said suits shall be dismissed, the residue of the terms and conditions of this award having been first complied with by the parties respectively,

Fourth.

No. 4. We do further decide and award that there is due from and ought to be paid by the said William W. Low & John P. Chapin to the said Henry Holte, for and on account of advances, and commissions, made and accruing to him under the contract attached to said submission, and for and on account of damages by him sustained on account of the violation of the said contract on the part of the said Low & Chapin, and for damages sustained by reason of the said Low & Chapin wrongfully suing out the said writ of replevin the sum of [Five thousand and eight hundred and seventy six dollars and forty six cents] and we do award that the same be paid by the said Low & Chapin to the said Henry Holte within ten days after they shall have been served with a copy of this award.

Fifth.

No. 5. We do further decide and award that the said [William W. Low and John P. Chapin] pay the costs of this arbitration, which are claimed and taxed as follows,

Arbitrators Fees,

William Kellogg	4 days	\$5.00
Wm. C. Boileau	11 "	8.00
H. S. Anderson	11 "	8.00

Coner, A R. Tidwell, serving subpoenas
on 14 witnesses & travel

14 97

Holte's Witnesses

H. C. Philley	2 days	1 00
J. V. Matthews	" "	1 00
J. H. Demple	" "	1 00

W. H. Brown	"	"	1.00
Geo W. Hakes	"	"	1.00
J. C. Pratt	"	"	1.00
O. W. Young	"	"	1.00
Wm. Thane	"	"	1.00
Thomas Falkner	"	"	1.00
A. H. Batchelder	"	"	1.00
J. B. Steff	"	"	1.00
A. D. Murray	"	"	1.00
F. R. Gunn	"	"	1.00
Wm. Mc Davenport, Marshall County 3 days			3.00

In Witness whereof, we the said Arbitrators have hereunto set our hands & seals this third day of March A. D. 1834.

Wm Kellogg Sealed
W. C. Bottwin Sealed
H. V. Anderson Sealed

Notices attached
to Award } William W. Loo & Co
John P. Chapin } Comm

You are notified that on Wednesday the 22nd day of March instant or as soon thereafter as counsel can be heard application will be made to the circuit court of Ploria County for a judgment to be entered upon the foregoing award pursuant to the terms and conditions of the within submission.

March 1st 1834.

Purple & Sanger
Attys & Solicitors for
Henry Wolte.

State of Illinois, ss.
Ploria County, ss. John Bryner being duly sworn says that he gave a copy of the foregoing submission, award and

notice to the above named William W. Low on the 4th day
of March A. D. 1854.

Sworn to before me this

John P. Dyner

4th March 1854.

St. H. Purple, Notary Public
Peoria City, Ill.

Wm W. Low &

John P. Chapin or

C. T. Powell, Esq. their attys.

You are notified that on
Wednesday the 22nd day of March instant or so soon there-
after as counsel can be heard, application will be made to
the circuit court of Peoria County, now in session, for judg-
ment upon a certain award made by William Kellogg,
Wm. C. Boilin and W. L. Anderson, Arbitrators on the
3rd day of March A. D. 1854, pursuant to a submission
made and entered into between William W. Low & John P.
Chapin of the one part & Henry Stolte of the other part,
dated January 20th 1854.

Purple & Sanger

Attys & Solicitors for
Henry Stolte.

March 6th 1854.

State of Illinois, ss.

Peoria County,

St. H. Purple being duly sworn
says that he gave a copy of the above notice to C. T. Powell,
Esq., on the 7th March A. D. 1854.

Sworn to before me this

St. H. Purple

22nd March 1854.

Jacob Hale, clerk.

Messrs W^m W. Low, &
John P. Chapin.

You are notified that on Wednesday the
22nd day of March instant or so soon thereafter as counsel can be
heard application will be made to the Circuit Court of St. Louis
County for a judgment to be entered upon a certain award
made on the 3rd day of March 1854, by William Kellogg,
W^m C. Boivin and Morace S. Anderson, Arbitrators in
certain suits & matters submitted to them between Henry Stolte
of the one part & W^m W. Low & John P. Chapin, of the other
part by a certain submission, dated the 20th January A. D.
1854.

March 21st 1854.

Purple & Sanger

Attys & Solicitors

for Henry Stolte

State of Illinois, 3rd
Cook County.

Geo W. Meeker being duly sworn
says he gave a copy of the above notice to John P. Chapin
on the eighth day of March A. D. 1854.

Subscribed & sworn to before Geo W. Meeker,

me this 8th day of March
A. D. 1854, Witness my hand

and the seal of the

County Court of said county
the day & year aforesaid

W. B. Russell Clerk, "

The said William W. Low and John P. Chapin by William
Kellogg and C. M. Powell their attorneys resisted said motion
and filed the following reasons against the rendition of a
judgment upon the said award

Reasons } 1st Because the said award is not final in relation,
against judgment } to the several suits submitted on either of them,
on award }

2nd The said Arbitrators did not decide upon all the matters submitted to them by said submission and presented to them by the parties for their consideration,

3^d The said award is uncertain in its description of the suits to be dismissed & other acts to be performed is therefore void.

4th The award is dependant upon a condition which is left to option of one party for its performance.

5th The Arbitrators took into consideration and adjudicated upon matters not submitted by said submission, to wit: a claim of said Holts for damages for being injured & broken up in business, of \$1000, which claim was allowed & forms a part of said award.

6th That matters were heard, adjudged upon & allowed by said arbitrators not submitted by the submission bonds herein filed.

7th That said Award is against the law's evidence of the case submitted.

And in order to resist said motion said Low & Chapin filed and read in evidence the following affidavits, to wit:

Anderson, affg } State of Illinois, ss. Circuit Court, Peoria County
for depts } Peoria County, ss. March Term A.D. 1854.

This day personally appeared before me the undersigned clerk of the Circuit Court of Peoria County, Horace V. Anderson, who being duly sworn deposed and says, that he was

one of the Arbitrators mentioned in a certain agreement of submission entered into between William W. Low and John P. Chapin of the one part and Henry Stolte of the other part bearing date January 20th 1854, and one of the arbitrators who tried the matter submitted and who made an award bearing date the third day of March A. D. 1854. This affair further states that said Stolte presented to said Arbitrators a claim of one thousand dollars for damages by reason of being broken up in business by the acts of said Low & Chapin — that the Arbitrators in said submission heard evidence of sundry witnesses as to the amount of damages sustained by the said Henry Stolte by reason of the breaking him up in his business occasioned by the acts of said Low & Chapin, and that in making up the award the arbitrators allowed said Stolte the sum of one thousand dollars, as damages sustained by him the said Stolte for the breaking up his business by said Low & Chapin which sum of one thousand dollars is included in the sum awarded to said Stolte in the said award.

This affair further states that said one thousand dollars damages aforesaid was allowed on the proof submitted to the Arbitrators that by reason of the said Low & Chapin violating their contract and replevying the corn described in the replevin suit, that said Stolte's credit became impaired and he was unable to meet his liabilities and was thereby compelled to close and wind up his commercial business, thereby losing such profits as might otherwise have been realized from a continuance of such commercial business and further affiant saith not.

Subscribed & sworn to
before me this 23rd day
of March A. D. 1854
Jacob Hale, clerk.

H. S. Anderson.

Powell's afft. = State of Illinois,
Ponia County, ss.

This day personally appeared before me the undersigned Clerk of the Circuit Court for said county Elihu T. Powell who being duly sworn deposes and says that he was the Attorney for Low & Chapin in the trial of matters before the Arbitration between said Low & Chapin and Henry Stolte and that on the hearing of matters submitted before said Arbitrators he as the counsel of said Low & Chapin did object to the allowance of any damages to said Stolte as claimed by him for the breaking him up in his business as claimed by him before the arbitrators because the said damages were not proper and further saith not.

Subscribed & sworn to
before me this 23rd day
of March A.D. 1854.

E. T. Powell.

Jacob Hale, c.k.

The said Stolte by St. H. Purple his attorney, objected to the reading in evidence the affidavit of said H. S. Anderson, because he was one of the Arbitrators who made the award and because evidence dehors the award was inadmissible to impeach it, which objection was over-ruled by the court and the affidavit allowed to be read to which opinion of the court in the allowing said affidavit to be read the said Henry Stolte by his said counsel excepted.

The said Low & Chapin in further resistance of said motion for a judgment on said award also read to the court the following accounts presented to the Arbitrators by said Stolte on the hearing of said submission.

(Off)

X Shelled Corn shipped 19951 bush. ^{costs} about 36 cts	\$ 6793.34
X Shelled Corn received 5323 " 29 cts @ 34. cts	
X " " In Car 11713 " "	4940.44
X Wheat shipped 6881 "	
— add shrinkage &c 159 " 69 —	4857.60
X Oats shipped 8877 " 26	2308.02
	18,899.40
X Sundries including Hides, Hens &c	291.95
X Corn & Oats 1040 bush wheat 44 cts	281.60
X " " 19951 " Corn 4 cts shipped	788.04
X " " 17036 Car Corn 3 —	510.08
	\$30,771.07

Car corn taken off in car 1354 bush	
about 1/2 shelled, difference 85 " 27 cts	24.65
Corn wasted by Saw in shelling 500 bush.	145.00
	20,940.72

Damages

For not furnishing money as per contract	
to purchase grain for the year, say 5 months	
Corn for 7 months \$1580.72	
Deduct for handling 3/4 526.90	Profit \$1053.82
5 Months same ratio	Profit 767.01

Loss on 15000 bushels, outstanding contracts	
for corn at 3 cts. — \$450.00 deduct for	300 00
handling 3/4 — 150.00	
	22,007.73

Damage for breaking up Holt in	
his business &c &c	1000.00
	23,007.73

over

23007-73

Interest on \$3,330.92. money advanced
and commissions due 9 months
com^m for advancing \$1726.55

\$250.21

43.16

23,301.10

Cash advanced

17609.80

5691.30

X add com^m on 8877 bush oats $\frac{3}{4}$

266.31

5957.61

B

Another Statement

X 19951 bush. shelled Corn shipped

\$6793.34

com^m

788.04

X 8877 Oats shipped —

2308.02

com^m

266.31

5323 Shelled Corn (replied)

11713 Oar " " 110.00

6814.80

X 7040 Wheat shipped

4857.60

com^m

281.60

22,109.71

Damages breach contract for not

turning money for the year

767.01

Commissions on outstanding contracts —

300.00

Damages — Breaking up business &c.

1000.00

\$24,176.72

Cash rec^d

17609.80

Balance

6566.92

which were read to the court without objection.

5
The said Low & Chapin in further resistance of said motion
for a judgment on said award submitted to the court the record &
proceedings in the suit in Chancery pending in the said court be-
tween said parties, as follows,

Bill in Chancery
filed in Circuit
Court Peoria County
Aug 9th 1853

By the Hon. Onslow Peters, Circuit Judge of the sixteenth
Judicial District & presiding Judge of the Circuit Court
of Peoria County — In Chancery, sitting
Your Orators William W. Lowe and John S.
Chapin — who are trading and doing business under the firm
name of Low & Chapin — who have been and are engaged
in the business (among other things) of buying and shipping
grain — complain of Henry Stolte of Chillicothe in the county
of Peoria — merchant, dealer and ware-house man — and show
unto your Honor that on or about 2nd day of October A.D. 1852,
(said Low being then and now a resident of Ottawa, Illinois
and said Chapin being then & now a resident in the City of
Chicago —) being desirous to buy grain in neighborhood of
Chillicothe in Peoria County where said Stolte then resided and
was then doing business — made and entered into an agreement
with said Stolte — a copy of which is hereto attached and
marked "A" and which your Orators pray may be taken as a
part of this bill of complaint —

That under and in pursuance of said con-
tract — Your Orators have from time to time furnished to said
Stolte large sums of money — amounting at least to the sum of
sixteen thousand, four hundred and thirteen dollars in Cash
and drafts — and paid to him (in lumber, lath and fencing stuff
& freight on same purchased & paid for him by them,) the further
sum of one thousand and twenty five dollars and eighty seven
cents all of which is more particularly set forth in the paper
marked "B" and hereto attached and which your Orators pray
may be taken as part of this bill — which is a statement furn-
ished to an agent of your Orators on the or about the 6th day

Interest on \$3,330.92. money advanced
and commissions due 9 months
com^m for advancing \$1726.55

23007-73

\$250.21

43.16

23,301 10

Cash advanced

17609.80

5691.30

X add com^m on 8877 bush oats

266.31

5957.61

OB

Another Statement

X 19951 bush. Shelled Corn shipped
com^m

\$6793.34

788.04

X 8877 Oats shipped —
com^m

2308.02

266.31

5323 Shelled Corn Replied

11713 Car " " 110.cts

6814.80

X 7040 Wheat shipped
com^m

4857.60

281.60

22,109.71

Damages breach contract for not
furnishing money for the year

767.01

Commissions on outstanding contracts —

300.00

Damages — Breaking up business &c.

1000.00

\$24,176.72

Cash rec^d

17609.80

Balance

6566.92

which were read to the court without objection.

5
The said Low & Chapin in further resistance of said motion for a judgment on said award submitted to the court the second 3 proceedings in the suit in Chancery pending in the said court between said parties, as follows,

" 17

Bill in Chancery
filed in Circuit
Court Peoria County
June 9th 1853
To the Hon. Orselow Peters, Circuit Judge of the sixteenth
Judicial District & Presiding Judge of the Circuit Court
of Peoria County — In Chancery, sitting
Your Orators William W. Lowe and John P.
Chapin — who are trading and doing business under the firm
name of Low & Chapin — who have been and are engaged
in the business (among other things) of buying and shipping
grain — complain of Henry Stolte of Chillicothe in the county
of Peoria — merchant, dealer and ware-house man — and shew
unto your Honor that on or about 2nd day of October A.D. 1852,
(said Low being then and now a resident of Ottawa, Illinois
and said Chapin being then & now a resident in the City of
Chicago —) being desirous to buy grain in neighborhood of
Chillicothe in Peoria County where said Stolte then resided and
was then doing business — made and entered into an agreement
with said Stolte — a copy of which is hereto attached and
marked "A" and which your Orators pray may be taken as a
part of this bill of complaint —

That under and in pursuance of said con-
tract — Your Orators have from time to time furnished to said
Stolte large sums of money — amounting at least to the sum of
sixteen thousand, four hundred and thirteen dollars in cash
and drafts — and paid to him (in lumber, lath and fencing stuff
& freight on same purchased & paid for him by them,) the further
sum of one thousand and twenty five dollars and eighty seven
cents all of which is more particularly set forth in the paper
marked "B" and hereto attached and which your Orators pray
may be taken as part of this bill — which is a statement furn-
ished to an agent of your Orators on the or about the 6th day

of June 1853, by the said Olte -

Your orators further show unto your Honor that said Henry Olte in pursuance of said contract did purchase a large amount of oats, wheat, shelled corn and corn in the ear - on account of and for said Low Chapin - the precise amount of which your Orators do not know - but at least eight thousand nine hundred & eighty (8,980) bushels of oats and seven thousand six hundred and forty seven bushels of wheat and fourteen thousand seven hundred and fifty three bushels of shelled corn and seven thousand six hundred and nine bushels of corn in the ear, as will more fully appear hereinafter -

Your Orators show that instead of storing carefully and safely said ear corn and protecting the same from the weather by a covering that would keep off the rain said Olte has from time to time as said corn was purchased and received, put the same or a large portion of the same in open rail pens and left a large quantity thereof for a long space of time utterly uncovered - and the residue thereof, so illy covered as to leave the same exposed to the water whenever it has rained - and that a large quantity of said corn now lies in said pens in said unprotected condition - Your Orators further charge that by reason of said negligence of said Olte in not sufficiently protecting said corn in the ear as was his duty by said contract - the said corn has been and now is lying in large heaps - partially wet and in such condition that unless cared for sorted and dried a very large amount of it will be rendered utterly worthless if not the whole of it - Your orators further show that a large quantity of said corn in the ear is already by reason of the cause aforesaid damaged and utterly worthless - but how much thereof is now so damaged no man can certainly tell without handling the whole of said corn. -

Your Orators (from the best information they can procure by personal examination and the inspection by an agent believe that said corn is now damaged to the extent of one

thousand dollars.

Your Orators further charge that said grain was purchased from time to time since the date of said contract marked "H" until about the 1st of April and that your Orators had hoped & supposed that said Polte had been and was storing said grain so as to protect the same from damage by the weather - until some time early in the Spring not far from the first of April last - William W. Low one of your Orators visited Chellicothe and to his surprise found that the corn in the ear so bought, was lying in open rain pent - most of it entirely uncovered part of it partially covered but none of it so covered as to protect the same from the weather - said William W. Low then and there expressed his surprise and dissatisfaction to said Polte and told him that the same ought to have been well covered, whereupon said Polte promised your Orator W^m W. Low that he would cause the same to be covered immediately - and stated he said Polte was then getting lumber up from Peoria to be used in covering the same and he would have the same covered immediately, in a very few days thereafter the weather became rainy and immense quantities of rain fell - and your Orator W^m W. Low - being anxious to have said corn protected - wrote from Ottawa to said Polte and again urged upon him the necessity of having said corn taken care of - and your Orators hoped that the same would have been done - but instead thereof the said Polte gave the matter no attention and has left the said corn in said unprotected condition to this day - but has demanded that your Orators should advance him more money - and in the 3rd day of June 1853, a messenger from said Polte delivered to your Orator W^m W. Low in Ottawa the letter hereto attached and marked "C" and which your Orators pray may be taken as part of this bill - when your Orator William W. Low immediately dispatched Mr. Noah R. Smith to enquire into the true condition of this business of Mr. Polte and your Orators and sent by Mr. Smith to Mr. Polte a letter

advising him of the purpose of Mr Smith's Mission to Chillicothe and requesting him Mr. Stolte to furnish Mr. Smith a full statement showing the amount and kind of grain purchased of whom each purchase was made - and at what price each quantity was purchased and a full & detailed statement of the account.

Your Orators further show that said Smith repaired to Chillicothe - presented the letter of your Orator Mr. W. Low last aforesaid - to said Henry Stolte and requested him in a friendly manner to exhibit to him a true and detailed statement as requested in said Low's letter last aforesaid - or that he said Stolte would permit him Mr. Smith to inspect Mr. Stolte's books of account and draw off therefrom such statement - The said Stolte refused to make out any kind of statement other and further than he had made - in his statement marked "C" - but permitted Mr. Smith to copy from his books the account of the oats, wheat and shelled corn respectively, which he did - and the statements so drawn off by Mr. Smith as aforesaid are hereto attached & marked "D", "E" & "F" and your Orators pray that the same may be taken as part of this bill - but said Stolte refused to permit said Smith to inspect or copy the account from his books touching said corn in the ear - but stated to said Smith that he had purchased in all of corn in the ear Seventeen thousand six hundred and nine bushels, and had shelled and shipped thereof about two thousand & one hundred bushels, this is not included in the exhibit F, and that the residue thereof - amounting to fifteen thousand five hundred and nine bushels - was then in said pond in an enclosure in said town of Chillicothe - being the same on which the barn occupied by said Stolte stands - being the same place where Mr. Low had seen said corn in the year in April as aforesaid. -

Your Orators further charge that said Stolte has never rendered any account or statement of his proceedings in that behalf to your Orators, other than that contained in exhibit "C"

and that contained in the paper marked marked "G" and hereto attached and asked to be taken as part of this bill - Your Orators call the attention of your Honor to that part of statement marked L, which shows that on the 12th day of April 1853 said Stolte had purchased for your Orators - 30,606 bushels of corn and and that part of said Stolte's statement marked C - which shows that up to the 1st of June 1853 - he had purchased for your Orators - 32,106 bushels of corn for your Orators, which would appear to show that between the 12th of April aforesaid and the 1st of June aforesaid he had purchased for your Orators the amount of 1500 bushels of corn - whereas said exhibit "G" shows shows only 218 bushels of shell corn bought between those dates, and your Orators charge the fact to be that very little if any ear corn was purchased & recd. after the said 12th of April 1853, so that there must be at least some material inaccuracy in the books and statements of said Stolte aforesaid - Again it will be seen that the shell corn account furnished to Mr. Smith as aforesaid, marked F exhibits 14753 bushels of shell of corn bought before the first of June 1853 - which added to the gross amount of corn in the ear given to Mr. Smith as correct by Mr. Stolte (17,609 bush) makes 32,362 bush of corn in all - exceeding the statement of the first of June, marked C - by 206 bushels. Your Orators charge that in giving said statement of 17,609 bushels as the gross amount of ear corn he had bought - said Stolte referred to and inspected the footing of his book in which the account of corn in the ear was kept, and showed the said footing to said Smith who then and there made a memorandum thereof - but said Stolte utterly refused to allow said Smith further to examine said book on which the ear corn account was entered - or to allow him to take a copy thereof - or to furnish any detailed statement of his operations in ear corn, - alleging that it was bought on

his own account - with his own money and in his own name - and that he would let Low & Chapin have enough thereof at the price of the average cost to reimburse them for what money they had furnished to him ~~above~~ over and above the amount shipped to their order already - and over & above his Stolte's commissions - and the residue thereof he intended to turn to his own account - He claimed to control as his own the whole of said quantity of corn in the car and at the same time that he offered to turn out to Mr. Smith eleven hundred dollars worth of said corn - at the price of the the average cost thereof, he said to Mr. Smith that he would do nothing else or otherwise using the phrase - that "if they would not do that Low & Chapin might crack their 'whip'."

Whereas Your Orators charge the truth to be that if your Orators should waive all claim for protection and compensation on account of the damages done as aforesaid to their car corn, and accept the whole thereof as good - & all the other grain which they have received the amount of the cost thereof, would exceed very little if any the advances all ready made to said Stolte by your Orators - certainly not more than five hundred dollars.

Your Orators further show that most of said car corn was purchased at a low price when grain was low - that the price thereof has greatly advanced - that they have reason to believe that said Stolte - has made in pursuance of said contract - a large number of purchases from the farmers at low figures - of grain in his own name - and which has not yet been paid for except a small advance thereon from funds furnished by your Orators to him - and that the same has not yet been received by said Stolte - and that he is now receiving such corn on his own account & refuses to give any account thereof - but proposes to refund to your Orators such money so advanced by turning out to them, (at the present high prices) a part of this same grain -

otherwise to sell the same on his own account - I pray over to your Orators their money so advanced, and your Orators believe the last allegation to be true -

Inasmuch therefore as said Stolte is no responsible person nearly by reason of the inadequacy of his property subject to execution - to answer in damages for all these violations of duty, and inasmuch as he is now in possession of a large amount of your Orators grain, which he threatens to use to his own account and to prevent your Orators from taking and shipping the same -

Inasmuch as a large amount of said corn in the ear is now spoiling, Inasmuch as he has refused to render an account to your Orators of his doings under said contract, and inasmuch as your Orators cannot ascertain to a certainty the full state of such affairs & your Orators have no adequate relief except in a court of chancery -

Your Orators pray that said Stolte be made party defendant to this bill and summoned into court and required to answer this bill fully and particularly upon his corporal oath and therein to state particularly and fully an account - showing every parcel of grain purchased by him since the said 22nd of October 1850 - the kind of grain - the contract price thereof in whose name purchased, of whom purchased, how much he has paid and in what funds if paid in money thereon, and at what time, the amount of grain shipped and on whose order and the amount on hand & its condition - And your Orators pray that upon a final hearing said Stolte shall be required to surrender to your Orators all unexecuted contracts for grain - and all grain on hand and to account to your Orators for all such damages as your Orators shall have suffered by reason of his various derelictions of duty under said contract and that he be enjoined from using and appropriating any portion of the grain purchased for your Orators to his own account - and

that in the mean-time your Orators pray that a writ of injunction shall be issued from the office of the clerk of said court - enjoining and forbidding said Stolte, from appropriating to his own account, any of the grain which he has on hand and was purchased by him since the 2nd of October 1852, and from in any way interfering or preventing said Low and Chapin from controlling said grain - and more especially that he shall not either directly or indirectly hinder, prevent or embarrass said Low and Chapin from taking charge of and possession of said corn in the ear in the said pens & enclosure in Chilliwothe on which the barn now occupied by said Stolte now stands - and forbidding him from throwing any obstruction in their way tending to prevent or embarrass them in taking care of - sorting - drying or shipping said corn now in the ear as aforesaid or in any other way turning the same to their own account - and further forbidding him from receiving on his own account - or shipping except to the order of William W. Low, any grain by him said Stolte bought since said second of October 1852 - whether in his own name or the name of Low and Chapin - and that before a final hearing said Stolte shall be required to produce his original books of account for examination and that upon a final hearing your Orators may have such other and further relief as may seem just & right and as your Orators shall ever pray.

E. W. Powell, Sol. for Compt^s Low & Chapin
Subscribed & sworn to this 9th day
of June 1853. Before me
Orslop Peters
Judge of 10th Judicial Circuit, Ill.

The clerk of the Circuit Court of Peoria County will issue a writ of injunction as prayed for in the foregoing bill, upon the said William W. Low entering into bond to the defendant Henry Stolte in the sum of two thousand dollars, with Ashbel Hurlbut, George Remington &

William Smith as sureties, conditioned to pay all damages resulting from the wrongful suing out of the injunction herein.
Anslow Peters Judge &c.

Exhibit "D"

Exhibits attached
to Bill above said

I hereby agree to purchase and store grain for W^m W. Low and John S. Chapin and deliver aboard of Canal or Steamboats as follows (3) three cents per bushel for Oats, (4) four cents per bushel for Wheat Beans Flax Seed or other kinds of seeds or shelled grain, Corn in the ear (3) three cents if shelled (5) five cents per bushel - Ear corn to be accounted to them at 70 lbs to the bushel if taken in the ear and if shelled at 56 lbs - the above rates are to apply on grain stored after this date Oct^r 2nd 1852, and held in store if required until the first of August 1853, Ear corn in cribs until first of October 1853, if required.

Storage for grain after navigation opens in the Spring say from first of April till the last of November following. Corn and wheat (3) three cents and oats (2) cents per bushel.

I hereby agree to let said Low and Chapin have all grain or seeds as mentioned above that I purchase or cause to be purchased by their furnishing me with money from times to times as I may let them know I require it for the above mentioned purpose. I am to purchase according to their instructions and all grain purchased to be held subject to the order of W^m W. Low - I am to have the privilege of buying at whatever the market price may be here without being further instructed.

This contract to continue in force one year from the 2^d day of October 1852, unless mutually agreed upon by the parties to discontinue the same, if grain packed & stored to be paid for extra from above rates, dated & filed the 2nd October, 1852, (Signed) Henry Holt, Low & Chapin.

Exhibit "B."

1852			
Oct. 2 nd	Cash advanced to purchase grain		200 " "
9 th	" " " "		800 " "
21 st	" " " "		300 " "
Nov. 14 th	" " " "		800 " "
25 th	" " " "		700 " "
Dec. 15	" " " "		500 " "
	" Amt Recd at Thos		50 00
25	" " " "		800 " "
	Gift on Watchkips Acc.		500 " "
1853			
Jan. 13	"		700 " "
27			500 " "
Feb. 5	By express		1,000 " "
18	"		1,000 " "
	Gift on Phelps, Bondans & Co		1,000 " "
	Amt recd of Jno P. Chapin		800 " "
March 20	Recd by express		1,000 " "
26	Amt Recd by Capt Blanchard		400 " "
	" " at Chicago of Low		13 " "
April 16	" " by Express		500 " "
April 8	" " " "		1,000 " "
16	" " " "		500 " "
22	" " W W Low		500 " "
May 3	Express		1500 " "
	Gift on J. P. Chapin		850 " "
9	Invoice Lumber & Lath		675 42
18	" Fencing May 14 th		206 05
21	Gift on 21467 ft Lumber Fencing		604 40
24	Cash by Express		500 " "
			\$17,438.87

Exhibit "C."

Chillicothe 1st June 1853
Messrs Wm. W. Low & Jns. T. Chapin,
Gents,

I have shipped and on hand eight thousand nine hundred and eighty (8,980) bus. Oats, Seven thousand six hundred and forty seven (7,647) bus Wheat and thirty two thousand one hundred and six (32,106) bus. Corn purchased by me under contract between us dated Oct. 2nd 1852, upon which purchase there is now due me the sum of \$6,215 - six thousand two hundred and fifteen dollars which sum I herewith demanded to be paid to the bearer of this notice J. W. Philly and in default of the payment of which I shall consider the said contract as forfeited on your part and as terminated and void

Henry Stolte,

Exhibit "D."

Lat account with H. Stolte

1852

Nov 30

30 25	Wm. Veely	41 00	10 25
" 22	Lucas Hicks	51 18	11 33
" "	" "	40 08	8 85
Dec 1 22	V. D. Walsted	1 03 25	22 81
" 25	Wm. Veely	90 23	22 66
" 22	Lucas Hicks	55 21	12 15
2 22	Mrs. Swigert	11 15	1 70
" 25	Wm. Veely	76 16	19 10
8 25	" "	1 19 33	30 00
10 23	Karlbut	24 00	5 52
" 23	Sturm	40 11	9 25
14 25	Wm. Veely	95 12	23 83
15 23	Stranger	4 00	92
18 25	Veely	46 27	11 70

22	25	Hurlbut	43 24	10 90
5	25	"	41 25	10 45
"	25	Stranger	184 12	45 18
30	26	Wm. Morrow	42 07	10 90
"	26	Turnes	39 10	10 20
31	26	J. Veely	59 00	15 34
Jan 3	27	"	144 07	11 95
11	27	Turnes	45 25	12 35
"	27	R. Robinson	29 14	7 70
"	28	D. Kelsey	73 14	20 55
"	28	A. J. Turnes	52 25	14 81
5	25	W. W. Young	499 33	124 99
4	27	J. S. Turnes	16 00	14 35
"	27	Nicholas Turnes	23 05	6 25
"	27	Robinson	33 20	1 00
"	28	Kelsey	94 00	26 80
8	30	Kuee	22 27	6 85
10	30	Robinson	36 08	10 85
"	30	Mrs. Clifton	11 25	3 55
"	30	Colwell	17 31	14 35
13	30	Robison	87 09	11 15
"	30	"	31 00	9 30
14	30	Ruthborn	29 22	8 90
15	30	"	29 22	8 90
17	30	Robinson	39 09	11 57
20	30	"	38 07	11 75
"	30	J. P. Steal	255 00	76 50
21	30	Colwell	44 21	13 40
"	30	Stranger	58 00	17 40
24	30	Robinson	38 07	11 45
"	30	E. Wallard	42 25	12 85
29	30	Mrs. S. Hicks	32 05	9 60
"	30	Kelsey	30 17	9 15
			2916	1179 16

Wats

Amount brought up		2918 06	1179 16
Feb 9 30	St. Matthews	41 09	12 38
9 30	William	67 17	20 25
" 30	"	67 21	20 30
10 30	Sanford Road	63 00	18 70
" 30	Stranger	6 18	1 95
" 30	William	61 11	15 35
14 30	W. Bailson	15 13	4 60
" 30	Joel Hicks	130 00	39 00
" 30	An. Mary	65 22	19 70
17 30	Chapman	97 23	29 70
24 30	St. Matthews	41 29	12 50
26 30	Joel Hicks	195 13	58 60
" 25	Thos. Mooney Jr.	290 10	72 55
March 2 30	Newton Matthews	153 19	46 00
21 25	W. St. Mead	37 28	9 40
28 30	M. Starn	201 16	60 45
27 30	St. Thomas	405 00	121 50
" 25	W. St. Mead	47 00	12 25
April 27 30	Henry Trevis	343 00	102 90
27 30	C. W. Young	1176 00	322 80
May 2 30	Elijah Hilde	95 03	28 50
1852 30 202	W. Toller	2528 00	510 24
		8747 22	2730 18

Wheat in act with Henry Volter.

1852, 1853	of whom brought	bu. lbs	cost
Jan 21 62	Lucius Hicks	34 39	\$ 21 65
23 62	"	36 38	22 90
29 62	Stranger	25 23	15 87
" 62	Lucius Hicks	37 03	23 18
" 62	Stone	32 31	20 31
" 60	J. Harf	28 40	17 20

"	62 ²	Levi Hicks	26 49	16 75
Dec 1	62 ²	Lucas Hicks	33 55	21 21
"	62 ²	" "	24 47	15 50
2	62 ²	Levi Hicks	32 26	20 30
21	65	Elijah Hider	22 25	14 55
6	65	" "	22 09	14 40
"	62 ²	Levi Hicks	16 47	10 50
10	58	P. Hollingsworth	22 25	13 00
14	65	Stewart	22 09	14 40
15	62 ²	Levi Hicks	27 00	16 88
"	66	Stranger	28 07	18 58
18	62 ²	Levi Hicks	30 14	18 90
20	70	D. P. Marsh	24 27	17 15
"	55	Barto Holsted	28 00	15 40
21	62 ²	Levi Hicks	35 00	21 88
"	70	D. P. Marsh	27 06	19 00
"	55	P. Hollingsworth	30 22	16 65
"	55	Barto Holsted	16 48	9 18
"	62 ²	Levi Hicks	38 59	24 15
22	70	D. P. Marsh	26 10	15 30
23	71	J. W. Smith	26 52	19 00
24	62 ²	Levi Hicks	42 21	26 50
"	70	D. P. Marsh	24 22	17 05
"	70	Nicholls	18 29	12 95
25	71	J. W. Smith	25 44	18 25
"	55	P. Hollingsworth	30 00	16 50
28	70	Chas Stone	47 17	33 10
"	70	Hepenson	31 57	22 25
29	70	D. P. Marsh	25 34	17 85
"	55	Stranger	5 00	2 70
30	65	A. Hund	39 57	25 90
30	60	Holwell	28 49	17 30
31	70	D. P. Marsh	15 00	10 00
Jan 1	70	Kull	27 49	20 85
"	70	Chas Stone	41 58	29 30

"	68	"	"	8	16	5 60
3	70	D. P. March		14	31	10 15
	71	F. W. Smith		24	42	17 50
21	70	Chas. Stone		43	47	30 60
"	68	"	"	45	11	30 75
"	71	Hollingsworth		22	34	16 02
"	62	And. Dawson		16	49	11 50
5	71	F. W. Smith		30	30	21 65
"	70	Hura		23	36	16 50
"	68	Chas. Stone		40	40	27 70
"	72	Andrew Dawson		18	07	12 06
6	62	Gilman		41	47	26 00
"	72	A. J. Hurns		66	41	48 00
7	60	R. C. Colwell		29	14	17 54
10	65	Rufus Hicks		25	48	16 75
17	70	Jacob Booth		189	00	132 50
21	75	Joe Hicks		33	50	25 50
24	75	"	"	31	28	23 60
25	78	Simpson		20	03	15 65
26	78	"	"	34	26	26 72
27	75	Joe Hicks		36	08	27 10
"	75	R. Hill Jr		66	00	48 15
"	78	Simpson		41	10	31 98
28	75	S. B. Chase		31	32	23 62
"	75	Ase Miller		97	00	72 75
"	78	John Simpson		46	00	35 88
29	80	P. Bayler		275	49	220 60
31	75	Stranger		33	26	25 05
"	75	S. B. Chase		25	42	21 50
"	80	Anderson		26	20	21 05
Feb 1	75	Wm. Howell		20	11	15 25
"	78	Simpson		33	22	26 05
3	78	Anthony Hakes		141	00	109 98
"	80	Anderson		28	04	22 45
4	65	Rufus Hicks		15	43	10 20

"	75	Joel Hicks	30 38	22 75
8	75	O. M. Young	107 17	305 45
9	75	Job Brown	54 15	40 70
"	75	Jacob Booth	16 01	12 00
"	75	J. Jenkins	24 36	18 40
"	75	Hollingsworth	35 22	26 50
15	75	Matthews	31 85	23 95
18	75	"	32 34	24 40
"	75	Hull	18 43	14 05
"	75	Joseph Silliman	313 52	235 40
22	76	Musket Reed	699 20	531 49
"	75	Thomas Mooney Jr.	142 42	107 00
March 72	72	Pro. Dickinson	27 04	19 50
9	75	Job Brown	79 47	59 75
"	78	Wm Smith	386 46	300 67
"	55	Jacob Dady	46 47	25 70
"	55	Stanford Reed	71 43	39 45
April 60	60	John Hume	16 36	9 95
"	50	Levi Hicks	32 50	16 40
25	70	Henry Smith	127 00	88 90
26	60	Hill	10 00	6 00
May 23	75	Thos Stepinwell	1 40	1 25
"	70	Elizah Heide	8 50	6 18
"	65	Elizah Heide	30 17	19 68
1852 Nov 30	60	H. Polley	1223 34	84 14
"	55	" " " "	932 11	512 68
			7647 14	5194 71

Exhibit "F"
Corney Shelled with Me

Feb 30	30	L. Smith	26 33	7 95
"	33 1/3	Vanders	27 58	8 95
"	33 1/3	F. Finch	30 00	10 00
"	33 1/3	W. W. Webster	38 15	12 75
15	33 1/3	" "	39 41	13 20

"	30	O'Manley	32 33	9 90
16	30	John Woolfett	33 44	10 10
"	30	Vn Woolf	39 34	11 85
17	30	John Miller	36 22	10 95
"	30	Geo Watfield	30 22	9 10
18	30	Landro	28 00	8 40
"	33 1/2	W. W. Webster	43 11	14 41
"	30	Allen Hurd	100 00	30 00
"	33 1/2	Levi Sprague	297 09	99 54
21	35	Walter Mooney	674 00	225 70
22	30	Thomas Choell	66 00	19 80
"	33 1/2	Webster	141 40	13 86
"	30	Woolf	37 00	11 10
"	30	Finch	26 50	8 05
24	30	John Moffitt	34 00	10 20
25	33 1/2	W. W. Webster	102 00	134 00
"	35	Thomas Mooney Jr	595 33	209 50
26	33 1/2	George Hill	300 42	100 20
"	35	Geo. R. Clifton	365 50	127 05
"	35	John Dixon	241 00	84 35
27	35	James Brinkley	278 10	97 36
28	30	Geo Booth	676 48	203 10
"	33	Allen Hurd	668 33	220 60
"	33 1/2	Saml. Pami'houte	167 23	55 95
29	33 1/2	Geo. F. Hick	306 15	169 51
"	35	Thomas Hornes	245 14	190 83
March	35	Mc. B. Kiliman	59 00	216 50
"	35	J. V. Vatterson	291 38	102 05
"	35	A. Blaskley	480 35	168 20
28	35	Th. Lumsden	1992 14	697 28
"	35	Samuel Gates	3240 44	1134 27
April	20 35	Villiman	118 00	41 30
25	30	L. W. Morse	100 11	30 06
1852 Nov 30	32 1/2	W. Stolte	1506 41	489 69
			14753 53	42037 31

Chillicothe 12th April 1853,
 Mr. W. W. Lowe,
 Dr Sir,

I rec^d Your Fav. of the 5th it is impossible for me to buy any thing more until I get something shipped my house is breaking down and I do hope that you will send me boats at once and also funds I wish to know when you can let me have money I am owing debts here to farmers for grain that unless I can get it from you I shall have to ship something to pay them and I am owing other debts I must be paid soon I suppose you will allow me to charge you for what I have advanced already - I have made up a statement of grain on hand as near as I can at present as below

30,606	Bush. Corn	10,085.00
5,265	" Wheat	3,775.00
5,500	" Oats	1,518.00
		0

Yours Truly
 Henry Stolte

Answer to
 said Bill
 filed June 14th
 1853

Wm W. Lowe,
 John V. Chapin,

vs
 Henry Stolte,

In the Circuit Court of Peoria County,
 In Chancery.

The answer of the defendant Henry Stolte, to the
 Complainant's bill of complaint in the above cause.

This respondent having and reserving to himself
 all exceptions on account of the many errors and imperfections in, and
 the entire want of equity apparent on the face of the said bill, for
 answer thereto says,

That he admits the allegations of the occupation
 and business of the parties as charged in the bill.

He also admits also the execution of the contract of the date of 2nd October O.T. 1852 as charged in said bill. He admits that said plaintiffs furnished him the amount of cash & lumber as charged in their said bill and exhibit marked "B", and also the further sum of \$176.73 cents more as appears by respondents account here with filed marked "C".

He further admits that with the money advanced by the complainants and in part with his own money and credit; believing that said complainants would be prompt and punctual to reimburse him such moneys as he should expend in purchases, he did purchase after said contract was made and before the filing of complainants bill in this cause and received in store as near as he now can ascertain the same of

Shelled Corn about 19950 bushels 47 lbs as cost of	\$6793.11
Wheat 7647 bush. 25 lbs "	3149.58
Oats 1787 " 12 " "	2278.31
Corn in the ear 17351 " 16 " "	3012.41
Making the cost of purchase price of said grain	\$19253.41

as per statement at the end of the itemized account of grain purchased herewith filed, which said statement is marked "D". Will fully appear.

Respondent further unswornly denies the allegations and all of them in said bill that a large portion of said corn has been left in an uncovered and unprotected state against the weather, that it is true the said ear corn was stored in rail pens which is the usual and customary method of storing corn in the ear in this country. Respondent further states that all said cribs except two were covered with boards sufficiently to keep out the rain as soon as the same could be procured from Peoria from which place Respondent was obliged to procure said boards.

a small portion of said corn may have been injured and damaged by the wet and rains - and some of said corn was sorting and drying, but no considerable portion of it is damaged so as to be worthless; and to the best of respondents belief all the injury done to said corn by the weather or rain will not exceed the sum of fifty dollars.

He admits said ear corn was purchased from time to time after the date of the contract until about April 53.

This respondent further answering admits that the said Low did visit Chillicothe sometime in April 1853 and that he did express some surprise that all the cribs of corn were not covered - but he denies that most of it was entirely uncovered or that none of it was so covered as to protect the same from the weather and states that said cribs were all properly covered except two, which Respondent could not cover because he could get no suitable lumber at Teoria or elsewhere for covering the same, which fact this Respondent explained to the said Low at the time and Respondent said to said Low that he would attend to the matter & cover the same as soon as he could get lumber for that purpose.

He admits that shortly after this the weather became rainy and that large quantities of rain fell and that said Low did write to him to have the said corn covered and taken care of, and he admits that said two cribs of corn have never been covered and that Respondent has demanded that complainants should and ought to advance him more money.

Respondent further answering admits that he sent a messenger to said Low with the letter marked "C" referred to in Complainants list and he supposes that the said Low sent the said Otho R. Smith to inquire into the condition of the business between complainants & Respondent and admits that he sent a letter by said Smith advising him

of the object of said Smith's visit and promising to pay Respondent the amount due him upon Mr. Smith's return. Said Respondent admits that in said letter said Low requested him to furnish said Smith with a full detailed statement of the amount and kind of grain purchased of whom purchased and at what price each quantity was purchased & a full and detailed statement of the account.

He admits that said Smith came to Phillips to present Low's letter to Respondent and requested him to make the statements above mentioned - or that Respondent would permit said Smith to inspect his books and draw off the statement aforesaid - said Respondent having heard that said Low was a litigious man and believing that his intention was to prepare for himself facts and evidence for some kind of suit which would deprive Respondent of the possession of the grain which he had purchased, without paying Respondent his advances and commissions, did at that time refuse to make out any detailed statement as requested by said Low; but did permit said Smith to take the account of the oats (wheat & shelled corn as stated in Complainant's bill) -

Respondent further answering says that for the reasons above stated he did refuse to let said Smith copy a detailed statement of the corn in the ear; that he did state to said Smith that he had purchased said corn in the ear about Seventeen thousand bushels that he had shelled and shipped to Complainant about two thousand & one hundred bushels of said corn & that the residue thereof was then in the rail pen in an enclosure wherein Respondent's barn stands and where Mr. Low had before seen them.

He admits that he has rendered no account to Complainant except the accounts marked "C" & "S" nor had

Respondent except at the time he was called on by said Smith ever been requested to make any detailed statement of his purchases & accounts as aforesaid.

As to any alleged discrepancies in the accounts rendered, if any such exist - this may be owing to the different dates at which the two statements were made or to some mistake in hastily adding up the amounts at the time the several statements were prepared. However this may be the detailed statement recently filed of the purchase of the grain will exhibit the true condition of the various purchases made by the Respondent.

Respondent further answering admits that in giving said statement of 17,609 bushels as the gross amount of corn in the car he did refer to and inspect the footing of his book in which the account was kept & showed the same to the said Smith who made a memorandum thereof, and that he did refuse for the reasons aforesaid to allow said Smith further to examine said books relative to said car corn or to furnish a detailed statement of the same - and did say that it was bought on his own account, with his own money and in his own name & that he would let complainants have enough thereof at the price of the average cost to reimburse them for what money they had furnished to him over and above the amount shipped to their order and Respondent's Commission, and that he intended to sell the residue on his own account.

Respondent claimed to control as his own the whole of the said corn in the car, until his advances and commissions were paid - supposing at the time that \$1100.00 was about the balance due complainants, he did offer to turn out that amount in value of said corn to said Smith for said Low & Chapin at the price of the average cost thereof, and that he would do nothing else; thinks he did not say Low & Chapin might crack their whip.

Respondent further answering says it is not true as stated in Complainant's bill, that if said Complainant should waive all claims to damages - or if they should insist upon such claims, to the ear corn and accept the same as good & all the other grain which they have received - that the amount of the cost thereof would exceed but little, the advances made by said Complainants to Respondent - and that the amount of such cost as will hereafter be shown would far exceed the sum of five hundred dollars.

The account of the purchase of the ear corn will show at what price the same was purchased Respondent admits that the price has since advanced.

He admits that he has purchased from farmers at as low figures as he could procure the same grain in his own name all of which has not yet been paid for, nor received by him, and he is now receiving the same or some parts thereof, but whether on his own account or not will depend upon whether the Complainants comply with their contract in advancing money and paying Respondent his commissions - He denies that he refuses or that he is unwilling to give any account thereof - but he is willing to refund Complainants the money advanced by them or, to give them all the grain purchased or contracted for at the contract purchase price - provided they will pay him his commissions and the money advanced by him in the purchase of said grain.

He denies that he is not responsible pecuniarily for any and all violations of the said contract or neglect of duty or duties of which he may have been guilty in the premises and avers that on his part he has not broken the said contract nor as he believed been guilty of any violation of duty relative to the same.

And the said Defendant further answering says that when he entered into the said contract with the said Low & Chapin he was doing business in Whillimeth as a Merchant in which business he had invested a capital of about \$3000.00; That he had hoped and expected when he commenced making purchases under said contract that said complainants would advance money from time to time as required by him and by the terms of the said contract.

Yet this respondent avers that although he has repeatedly from time to time called on the said Low & Chapin for money with which to purchase said grain and to pay for advances made and grain purchased by said Respondent, he has as often been disappointed wholly or turned off with small sums wholly insufficient to carry on the business in a profitable manner; and under the expectation of a speedy reimbursement of the same this defendant has advanced his own money until his entire mercantile capital has been exhausted and including his commissions on purchases, storage &c the said complainants are now indebted to him as near as he can at present ascertain the amount in the sum of \$483.31 and under these circumstances the said complainants insist against the letter and spirit of their contract that they have a right to take and appropriate to their own use all the grain so purchased by Respondent without paying him his commissions & advances aforesaid - whereas as Respondent is advised and believes he has a right both in law & equity to retain the possession of said grain until his said commissions and advances are paid or to declare the contract at an end in case of their refusal to pay the same.

And this Respondent further answering says that the statement hereto attached or filed herewith marked "B" is a full complete and perfect detailed statement of all the grain purchased by him; (except the outstanding contracts

Hereinafter mentioned,) Since the 2nd day of October 1853 -
containing the kind of grain, the contract price thereof and
the amounts and dates of payments &c of whom purchased,
The whole was purchased in the name of Respondent and complain-
ants are not liable to the persons from whom the same was pur-
chased for any portion of the same, a part of said grain was
purchased with respondents own funds and part with the funds
of complainants; Respondent cannot distinguish which par-
ticular bushels or lots were purchased with his or complain-
ants funds.

And this Respondent further answering says that
that the account herewith filed marked "C," contains a
correct and true account of all the grain shipped by
Respondent upon said contract which was shipped by
Respondent upon the order of Complainants or one of them.

The said account is also a correct and true account
current showing the amount due complainants as the ac-
counts now stand - not including the purchase of the ear corn
nor the outstanding contracts for corn herein after stated showing
a balance due said Low & Chapin of \$1573.80.

And this Respondent further answering says that
the paper herewith filed marked "E," contains a correct ac-
count & statement of all the outstanding and unexecuted
contracts made by respondent for the purchase of grain since
the 2nd October A.D. 1853, upon which said contracts
as near as Respondent can at this time ascertain.
He has advanced about the sum of one thousand dol-
lars \$1000.00. Said Exhibits "B," "C," & "E," are
made part of defendants answer in this cause.

And this Respondent further answering states that exhibit "B," shows the
cost of all the grain purchased by Respondent to be \$18,253.44
Except amount paid on outstanding contracts

That he has paid on the outstanding contracts
about

1000.00

His Commissions on Grain Shipped	1573. 05
" " on Ear Corn	520. 53
Percentage for advancing \$2643, 64. 2 1/2 per cent	66. 00
Total advances & commissions	22413. 11
From which deduct amount advanced by complainants	17609. 80
Leaves a balance in favor Respondent's favor	4803. 31

Which this Respondent verily believes is the just and true balance of the accounts between the parties provided Complainants take the grain purchased by said Respondent,

There may be a slight error either one way or the other in the estimate of the advances on outstanding contracts, but whatever the same may be he is willing to have the same properly adjusted and arranged so soon as he can ascertain the precise sum so advanced.

And this Respondent further answering says that he has always been ready and willing and still is ready and willing either to pay the said complainants the balance due them for advances as per account current marked "C" in grain at cost price, adding to the price thereof Respondent's commissions as per contract - or in cash, or to deliver to the said complainants all the grain purchased by him as aforesaid and all outstanding contracts upon the said complainants paying to him the amount by him advanced and his commissions on purchases &c and in indemnifying him against all liability upon said outstanding contracts - but he most earnestly protests that there is no principle or rule either of law or equity that will permit complainants to take possession of said grain and convert the same to their own use until they have first paid him the amount so due and owing to him as aforesaid, that such a proceeding would not only be unjust and inequitable but utterly ruinous to this Respondent by depriving

him of his whole capital invested in the Mercantile business & by leaving him embarrassed and encumbered with a large amount of debts to pay upon outstanding contracts for grain - which he has no present means of discharging.

This Respondent therefore prays that this his answer may be taken & considered as a demurrer to the complainant's bill; that he may have the same benefit therefrom as if he had specially demurred to the said bill - He also prays that said injunction herein issued may be dissolved & complainant's bill dismissed and that he this Respondent having fully answered the said bill may be dismissed with his costs.

Henry Stolte

Purple & Hanger
for defendant.

State of Illinois, ss.

Peoria County, ss. Henry Stolte being duly sworn according to law says that the foregoing answer by him subscribed is true to the best of his knowledge, information and belief and further saith not.

Henry Stolte

Sworn to before me this
13th June A.D. 1853,

W H. Purple

Notary Public

Peoria City Ill.

The following are the Exhibits referred to in said Answer and were filed therewith.

Low & Chapin
In ^{apc} with Henry Stolle
" 6 "

1852					
Nov.	4	paid Express		1	" "
Dec.	25	do		1	" "
1853					
Jan	10	paid Watchkiss discount on Dft		13	05
	13	Cash paid Express		1	" "
	27	do		1	75
Feb	3	p ^d for taken wagon down to R. Smith		1	" "
	5	Cash paid Express		1	" "
	18	do		1	50
	19	Cash p ^d Phelps & B. discount on Dft		21	33
Mar	20	Cash paid Express		1	" "
April	16	Cash paid East Blanchard interest on \$500		2	50
	29	Cash paid Capt. Parks, charges as pr BpB		27	32
		Cash paid Keith, Ray & Co discount on dft		6	33
May	7	Cash paid for assorting Corn		9	50
		" " Express		1	50
	30	" " "			50
		19,950 bu. Shelled Corn	cost	6,793	11
		8,989 " Oats	"	2,298	31
		7,647 " Wheat	"	5,149	58
	94	Dry Hides	1793 lbs	c 9	161 37
	28	Deer Skins	80 lbs	c 15	12 " "
	33	Loon "		40	13 20
	5	Fox "		30	1 50
	18	Musk rat "		10	1 80
	27	Mink "		40	10 80
		Commissions on 19,950 bu. corn	c 5	997	50
		" " 7,647 " wheat	4	305	88
		" " 8,989 " oats	3	269	67
					716,106 00

Credits

Oct.	2	By Cash		200	"
	9	" "		800	"
	21	" "		300	"
Nov.	11	" "		800	"
	25	" "		700	"
Dec.	15	" "		500	"
		" " Recd at Teoria		50	"
	25	" "		800	"
1853		Left on "Hotchkiss" etc		500	"
January	13	By Cash		700	"
	27	" "		500	"
Feb	1	" "		800	"
	5	" "		1,000	"
	18	" "		1,000	"
		Left on "Thelps & B. Co."		1,000	"
March	20	By Cash		1,000	"
	26	" "		400	"
		" " Recd at Chicago		13	"
April	8	" Cash		1,000	"
	16	" "		500	"
	22	" "		500	"
May	2	" "		1,500	"
		" Left on J. P. Chapin in fav. N. May & Co. St. Louis		850	"
	24	" Cash		500	"
		" Invoice lumber 9 th May		596	55
		" " Shingles & Lath 6 th May		78	87
		" " Fencing 14 May		286	05
		" Freight on 21467 ft Lumber	3¢	64	40
		" " " 53,227 " "	3¢	159	68
		" " " 30 M Shingles	30¢	11	25
		" Left in fav. Jas Blanchard		500	"
		Am't W ^t over		117,609	80
		Due L & Chapin		16,106	00
				\$1,503	80

List of Contracts out				Bushels
D. Healey	" <u>E.</u> "	Price	@ 35	1000 "
Wm. Dawson	all paid		33	300 "
Wm. S. Mass	" "	delv ^d 100 Bus.	30	400 "
Dehus Dixon	" "	" 241 "	35	400 "
Wm. Brown	" "		35	3,000 "
A. Kirkpatrick			35	500 "
R. Kohrell	all paid		35	600 "
D. Hays	" "		35	100 "
D. Mc. Stillman	" "	delv ^d 100 Bus.	30	200 "
M ^r Davidson			35	400 "
Mc. Mc. Blanchard			35	400 "
A. Sturm			35	200 "
Joel Hicks		all delv ^d in store	35	600 "
J. Martin			30	500 "
M ^r Sturm		150¢ advanced	35	1,500 "
R. A. Colwell			33	500 "
Osa Miller			31	500 "
Joseph Stillman			33½	1,000 "
R. Olvidson			33½	600 "
J. J. Miller			33½	150 "
R. Mc. Donald			35	150 "
H. Brunson			35	500 "
J. Sloan			35	400 "
H. Sutterlee			35	500 "
E. Devin			35	200 "
M ^r Simpson			35	300 "
D. S. Powell			35	1,000 "
				15,900

B

In Wet Corn in Car

Date	Name	Price	Bushels	Lbs	\$	cts
1852 Dec 2	Mr. Swigert	25	9	..	3	25
	Wm. Boyd	25	17	..	4	25
6	Wm. Boyd	25	22	60	5	65
11	Monroe	25	12	20	3	08
13	Wm. Boyd	25	14	35	5	10
18	Sprague	25	20	20	5	05
20	Wm. Boyd	25	21	15	5	30
21	Barto Kaledet	25	14	50	3	66
	Ho. Foxwell	25	17	20	4	32
	Owston	25	16	..	4	..
22	Boyd	25	25	..	6	25
23	S. Carlton	25	22	40	5	64
	Ho. Foxwell	25	18	60	4	71
24	M. Boyce	25	17	40	4	36
	Eckley	25	29	10	7	30
25	Ho. Foxwell	25	19	15	4	80
27	Wm. Boyd	25	26	35	6	62
	Sprague	26	22	30	5	82
	H. Plin	26	16	30	4	06
30	Sturm	27	18	55	5	05
	Foxwell	25	19	..	4	75
31	E. Eckley	27	28	65	7	81
	Swigert	27	16	10	4	35
	Boyd	27	26	20	7	05
1853 Jan 1	Stranger	27	34	40	9	33
	Wm. V. McDonald	28	166	..	46	48
	Kulbert	27	29	35	7	96
	Sturm	27	21	15	5	67
	Jud	27	37	15	10	05
4	Green	27	32	50	8	85
	Rendall	27	23	25	6	31
	Wm. Mooney	28	28	45	9	..

Date	Names	Price	Quot's	lbs	\$	cts
1853						
Jan'y 5	W. McCooney	28	109	"	30	52
Jan'y 5	Wendall		23	"	6	20
	G. S. Patterson		40	"	12	05
	Wm. Boyd		20	35	5	75
6	Walter McCooney		99	35	29	85
	Swigart		23	15	6	90
	Wendall		26	05	7	15
	Wm. Briggs		155	"	43	40
	Wm. Briggs	30	150	"	45	"
	Richard Ratliff	30	300	"	90	"
	Richard Ratliff	"	14	"	4	20
	Levi Hicks	"	15	"	4	50
	Wendall	"	27	35	8	20
	Swigart	"	21	35		75
	Richard McCooney	"	156	50	47	"
8	Wendall	"	26	50	8	"
	Eckley	"	25	35	7	65
	L. Wesley	"	14	"	4	20
	Chas. McCalister	"	25	65	7	80
	Ho. Frossell	"	18	25	5	45
	Wm. Calvin	"	57	35	17	05
10	Wm. McCooney	"	28	20	8	45
	G. H. Berner	"	21	35	6	40
	Levi Sprague	"	21	10	6	30
11	Eliflor	"	15	60	4	75
	Calvin	"	23	50	7	10
	Calvin	"	27	45	8	25
12	Wm. McCooney	"	27	55	8	30
	McMison	"	17	30	5	20
	Hence	"	27	"	8	10
13	Wm. Brown	"	35	35	7	65
	Geo. A. Hoyt	"	121	28	36	46
	Tracy	"	15	15	4	55
14	Rathbone	"	18	15	5	45

Date
1853
Jan'y 14

	Corn in ear	Price	Bushels	lbs	\$	cts
	Wm. Higgins	3	15	35	4	65
	Rendall	"	45	"	13	50
	Geo. A. Hoyt	"	21	40	6	45
	Wm. Donald	"	10	40	3	15
	R. J. Davis	"	21	20	6	37
	Merrie	"	35	"	7	50
15	J. M. Lawrence	34	110	"	33	"
	Easton	"	27	25	8	20
	B. W. Kaleska	"	26	15	7	85
	Blakesley	"	19	10	5	75
	Teely	"	14	65	5	45
	Ridgway	"	21	30	6	40
	Kuets	"	43	55	13	15
	Wm. Lawrence	"	44	50	13	40
	Chas. H. Pierce	"	29	35	9	05
17	A. Maxwell	"	74	50	22	40
	Rendall	"	26	40	7	95
	Saml. Hicks	"	27	35	8	10
18	A. Miller	"	26	55	8	"
19	Wm. B. Atkinson	"	30	10	3	"
	Johnston	"	24	55	7	45
	Giles	"	17	"	5	10
	Lilliman	"	28	"	8	40
	One Marks	"	43	35	13	05
	J. Garby	"	14	15	4	25
20	D. J. Patterson	"	29	45	8	85
	W. Miller	"	29	40	8	85
	Saml. Kaleska	"	99	55	29	89
	W. Boyd	"	64	28	19	30
	Henry Chapin	"	21	"	6	30
21	Allen Briggs	"	49	40	14	85
	R. J. Davis	"	18	55	5	60
	A. D. Graham	"	23	50	7	10

Date	Corn in ear (Cont ^d)	Price	Bushels	lbs	\$	cts
1853	That brot forward		3694	86	1566	49
Jan'y 21	Stranger	30	15	15	4	50
	Mulbert	"	29	20	8	75
24	Wm Eckley	"	27	30	8	25
	Kendall	"	24	20	7	25
	Sprague	"	22	15	6	60
	Geo A. Hoyt	"	50	65	15	25
	Mc ^r Donald	"	15	40	4	65
	Barton	"	15	35	4	65
25	A. Briggs	"	24	10	7	20
	E. Eckley	"	28	13	8	45
	O. Keef	"	21	15	6	30
26	Thos Yates	"	23	"	6	90
27	Thos Yates	"	78	60	23	65
	Kendall	"	27	10	8	70
	R. Mc ^r Donald	"	36	05	10	80
	Swiger	"	163	30	49	"
	Wm Colwell	"	17	"	5	10
28	B. Mulbert	"	30	20	9	05
	Geo A. Hoyt	"	15	45	4	65
	Rathbone	"	14	30	4	35
	Mc ^r Donald	"	21	"	6	30
	Rathbone	"	13	35	4	05
	Levi Carter	"	73	35	22	05
	Wm Ratcliff	"	345	20	86	30
29	Allen Briggs	"	25	"	7	50
	A. Kirkpatrick	"	202	35	60	75
	A. Kirkpatrick	"	7	"	2	10
	Wm Baggs	"	24	"	7	20
	Dane	"	13	15	4	10
	Mc ^r Donald	"	21	05	6	30
	Amos Reed	"	104	55	31	45
	Boyd	"	22	60	6	80
31	Wm Mooney	"	29	35	8	85
		"	29	49	1524	29

1853		Corn in ear (Cont'd.)	Price	Bushels	lbs.	¢	cts
		Wm. Forward		52.79	47	1.24	29
Jan 31		Mrs. Hammitt	30	22	45	6	75
		W. W. Webster	"	31	"	9	30
		Boyd	"	23	40	7	05
		Mrs. Hammitt	"	23	12	6	95
		Dixon	"	27	"	8	10
		A. Nood	"	89	20	26	78
Feb 1		Sabin	"	29	"	8	70
2		Geo. A. Hoyt	"	68	35	20	55
		J. Byers	"	22	"	6	60
		E. Hulse	"	37	50	11	35
		Saml. M. Roy	"	112	35	33	75
		Nelson	"	25	10	7	05
		Wm. Buttrick	"	10	30	2	90
		Reamer	"	17	35	4	90
		A. Matthews	"	29	"	8	12
3		Saml. Byers	"	25	45	7	15
		A. C. Tillotson	"	149	15	44	75
		Levi Carter	"	25	"	7	50
		J. Stratton	"	26	30	7	95
		Wm. Canterbury	"	100	20	30	10
		Nelson	"	28	20	7	90
4		A. Merrideth	"	216	65	65	05
		C. Blakeley	"	24	45	7	35
5		David Baggs	"	59	55	17	95
7		Mrs. Davidson	28	15	"	4	20
		Deane Ray	30	130	20	39	05
		Stone	"	19	"	5	70
8		Byers	29	30	15	8	75
		Thos. Yates	30	108	"	32	40
		W. W. Webster	28	30	65	8	65
		Loiger	30	26	35	7	95
		Nelson	28	27	"	7	56
				68.77	12	20.5	10

Date	Corn in the ear Mont ^{ly}	Price	Bushels	lbs	¢	cts
1853	Amt brot forward		6877	19	2063	10
Feb 8	Sounders	28	220	10	6	21
	Joel Atwood	30	510	"	153	"
	James C. Pratt	"	199	"	57	70
9	Hotchkiss	28	8	30	2	35
	Brown	"	21	10	5	87
	Silliman	30	30	35	9	15
	Saml M ^r Coy	"	46	30	13	90
10	Thos Niles	28	28	30	8	"
	G. W. Beamer	30	124	35	37	35
	A. W. Kallstad	28	25	"	7	"
	J Davidson	"	18	"	5	04
11	Blakesley	30	25	"	7	50
	Kellar	28	30	40	8	54
	Jas Silliman	"	28	25	7	94
	A. Hume	30	766	50	230	"
12	M ^r Donald	"	197	55	59	35
	M ^{rs} M ^r Laughlin	28	15	40	4	35
	Jer. Crook	"	6	35	1	85
14	Benj Kullbert	30	100	18	30	"
	James Colwell	"	102	10	30	65
	J Brown	28	31	10	8	72
	W. G. M ^r Donald	"	100	"	28	"
	do	30	90	35	27	15
	Lewis Temple	28	18	05	5	05
15	L. B. Pierre	30	51	"	15	30
	Wm. G. M ^r Donald	"	39	40	11	85
16	Mrs. Kordale	"	141	65	60	70
	Veely	"	30	"	8	40
	Peak	28	51	"	14	42
	Ala Evans	"	47	"	13	16
	Wm. G. M ^r Donald	"	29	"	8	12
17	Flora Keller	"	100	"	28	"
	A. Boyce	"	17	35	4	90
			9949	32	2,922	64

Date	Corn in ear (Continued)	"Price"	Bushels	Lbs	\$	cts
1853	Wm't brot for #		99 1/4	32	29	64
Feb 17	A. Boyce	28	17	25	4	80
19	E. R. Eckley	30	100	" "	30	" "
	E. R. Eckley	28	18	" "	5	04
	E. R. Eckley	25	30	30	7	50
	E. Denson	25	33	" "	8	25
	Boyd	28	112	" "	31	36
	Boyd	25	22	20	5	55
	E. J. Erskine	"	39	25	9	85
	Stephen Willard	27	234	" "	63	18
21	Nathaniel Chapin	30	191	30	57	40
	Springer	"	703	43	211	10
	Ware	25	28	45	7	15
	Wm. Willin	"	23	55	5	95
	Springer	28	43	20	12	07
	Springer	26	66	50	17	26
	D. Springer	26	20	05	5	60
	Holmes	25	24	60	6	35
	Thos. Yates	30	130	65	39	25
	Thos. Yates	25	52	15	13	05
	Danl. Bryant	28	52	10	14	56
	Flora Keller	"	75	" "	21	10
	Flora Keller	25	76	30	19	10
	John Dixon	"	28	40	7	15
22	Counts	"	10	" "	2	50
	Van Alstine	"	17	60	4	45
	J. Kindell	28	25	50	7	20
	D. Stillman	25	26	25	6	65
	Nuton	"	83	35	20	87
23	Wm. Eckley	"	27	" "	6	75
	Houston	"	15	60	3	95
	Van Alstine	"	17	15	4	30
24	R. C. Carson		42	30	10	60
			12384	35	3592	55

Corn in Ear Cont ^d		Price	Bushels	lbs	\$	cts
1853	Amt brod fort		12,334	35	3592	55
Feb 24	Swigert	30	70	10	21	"
	Casswell	25	20	45	5	15
25	Stephen Martin	"	19	45	4	90
	Gad Jelter	"	22	40	5	60
26	Cheesman	"	21	55	5	45
	A. J. Sturm	30	132	60	39	85
Mar 1	A Briggs	28	21	05	5	88
3	A Briggs	"	22	25	6	26
5	W. W. Webster	30	60	15	18	05
	Thos. Vales	25	47	40	11	90
	Geo Mc Huff	29	12	65	3	73
8	Buckhannan	25	90	10	22	50
	R. Jordan	"	19	20	4	80
	Houston	"	13	55	3	45
	W. W. Webster	30	28	60	8	65
9	Job Brown	28	87	45	24	51
11	Wm Bryden	30	398	35	119	55
12	Mo Donald	26	124	30	32	34
15	G. W. Huff	29	230	55	66	90
	W. W. Webster	30	30	45	9	20
21	Levi Hicks	30	258	25	77	50
26	Mo. Lilliman	28	31	30	8	80
	J. S. Sturm	27	490	"	132	30
	Chas. S. Pierce	30	22	35	6	75
	Francis Thomas	"	231	25	69	40
29	Saml Luley	28	392	25	109	86
30	Groom	25	22	50	5	65
31	W. Colburn	25	15	65	3	95
	W. Swiger	"	15	50	3	95
Apr 2	J. V. Cutright	30	246	45	74	"
	Langer	25	121	40	30	40
	Groom	"	21	"	5	25
			15679	67	4540	03

Date	Corn in Ear (Continued)	"Price"	Bushels	lbs	¢	cts
1853	Wm. Lee Jact		15679	69	4540	03
Apr 2	W. St. Mead	25	244	65	61	21
5	Stranger	"	76	45	19	12
	Stranger	20	62	45	12	50
	Lee Hollister	30	157	05	47	10
	Sam. Robinson	25	54	05	13	50
	J. W. Berman	"	19	"	4	75
	Sam. Bates	28	155	"	127	40
	Levi Hicks	30	415	60	121	70
	A. H. Wice	"	79	60	23	95
	Mrs. Wilson	"	11	55	3	50
May 27	J. T. March	"	98	41	29	56
	J. Donath	25	22	35	6	12
			17367	65	5010	44

Date	Cats	Price	Bushels	lbs	¢	cts
1852						
Nov 30	Sundry persons	20 1/2	2528	"	518	24
"	Wm. Seely	25	41	"	10	25
"	Lucas Hicks	22	51	18	11	33
"	Lucas Hicks	21 1/2	40	08	8	85
Dec 1	T. D. Heald	22	103	25	22	81
	Wm. Seely	25	90	23	22	66
	Lucas Hicks	22	55	21	12	15
2	Mr. Swigart	22	11	15	1	70
	Wm. Seely	25	76	16	19	16
8	Wm. Seely	25	119	33	30	"
10	Heulbert	23	24	"	5	52
	Sturm	23	40	11	9	25
14	Wm. Seely	25	95	12	23	83
15	Stranger	23	4	"		92
18	Seely	25	46	27	11	70
20	Thos. Mooney Jr.		"	"	0	"

Date		Price	Bushels	Lbs	#	cts
22	McLubert	25	43	24	10	90
25	McLubert	25	41	28	11	45
	Stranger	25	184	12	4.5	08
30	W ^o Marrow	26	42	07	10	90
	Sturm	26	39	10	10	20
31	J. Vealey	26	59	"	15	34
Jan ^y 3	J. Vealey	27	44	07	11	95
4	Sturm	27	45	28	12	35
	Robinson	27	29	14	7	90
	G. Kelso	28	73	14	20	58
	H. J. Sturm	28	52	25	14	81
5	O. W. Young	25	499	33	124	99
6	J. J. Sturm	27	16	"	4	35
	A. Sturm	27	23	15	6	25
	Robinson	27	33	20	9	"
	G. Kelso	28	14	"	26	32
8	Kell	30	22	27	6	85
10	Robinson	30	36	08	10	85
"	Mc Clifton	30	11	25	3	55
1	Temple & Co.	30	47	31	14	35
13	Robinson	30	37	09	11	15
	Robinson	30	31	"	9	30
14	Rathbone	30	29	22	8	90
15	Rathbone	30	29	22	8	90
17	Robinson	30	39	09	11	75
20	Robinson	30	38	07	11	75
	J. P. Neal	30	255	"	76	50
21	Temple & Co.	30	44	21	13	40
	Stranger	30	58	"	17	40
24	Robinson	30	38	07	11	45
	E. Willard	30	42	25	12	85
29	M ^o Parks	30	32	05	9	60
	Kelso	30	30	17	9	15

Date		Price	Bushels	lbs	\$	cts
Feb 2	W. Matthews	30	44	09	12	38
9	Silliman	30	67	17	20	25
	Silliman	30	67	31	20	30
	S. Reed	30	63	"	18	70
	Stranger	30	6	18	1	75
	Silliman	30	61	11	18	35
14	P. Boylen	30	15	13	4	60
	Joel Hicks	30	130	"	39	"
	J. Marney	30	65	22	19	70
17	Chrysta	30	97	23	29	70
24	W. Matthews	30	44	29	12	30
26	Joel Hicks	30	195	13	58	60
	Thos. Mooney Jr	21	290	10	60	95
Mar 2	W. Matthews	30	153	19	46	"
21	H. A. Mead	25	37	22	9	40
28	Mr. Sturm	30	201	16	60	45
29	Fr. Thomas	25	405	"	101	25
	H. A. Mead	25	49	"	12	25
Apr 27	Henry Smith	30	343	"	102	70
	O. W. Young	30	1076	"	322	80
May 2	Elijah Heyde	30	95	03	28	50
			8,989	42	2,298	31

Date	Wheat	Price	Bushels	lbs	\$	cts
1852	Sundry Persons	55 1/2	2,155	145	1,246	82
Nov 20	Lucas Hicks	62 1/2	34	39	21	65
23	Lucas Hicks	62 1/2	36	38	22	70
29	Stranger	62 1/2	25	23	15	87
"	Lucas Hicks	62 1/2	37	03	23	18
"	Theodore Stone	62 1/2	32	31	20	31
"	J. Kura	60	28	40	17	20
"	Levi Hicks	62 1/2	26	49	16	75

Date	Wheat					
Dec. 1	Lucas Hicks	62½	33	55	21	21
"	Lucas Hicks	62½	24	47	15	50
2	Levi Hicks	62½	32	26	20	30
4	Elijah Hyde	65	22	25	14	55
6	Elijah Hyde	65	22	09	14	40
"	Levi Hicks	62½	16	47	10	50
11	P. Hollingsworth	58	22	25	13	01
14	Howard	65	22	09	14	40
15	Levi Hicks	62½	27	"	16	88
"	Stranger	66	28	07	18	58
18	Levi Hicks	62½	30	14	18	70
20	D. P. Marsh	70	24	27	17	15
"	Barto Healdsted	55	28	"	15	40
21	Levi Hicks	62½	35	"	21	88
"	D. P. Marsh	70	27	06	19	"
"	P. Hollingsworth	55	30	22	16	65
"	Barto Healdsted	55	16	48	9	18
"	Levi Hicks	62½	38	39	24	15
22	D. P. Marsh	70	26	10	18	30
23	F. W. Smith	71	26	53	19	"
24	Levi Hicks	62½	42	21	26	50
"	D. P. Marsh	70	24	22	17	05
"	Nicholas	70	18	29	12	95
25	F. W. Smith	71	25	44	18	25
"	P. Hollingsworth	55	30	"	16	50
28	Chas. Stone	70	47	17	33	10
28	Stephenson	70	31	51	22	25
29	D. P. Marsh	70	25	34	17	85
"	Stranger	55	5	"	2	70
30	A. Hurd	65	39	51	25	90
"	Colwell	60	28	49	17	30
31	D. P. Marsh	70	15	"	10	50
1853 June 1	Huer	70	29	47	20	85

Date	Wheat	Price	Bushels	Lbs	¢	cts
	Chas Stone	70	111	58	29	30
	Chas Stone	68	8	16	5	60
3	D. P. Marsh	70	14	31	10	15
	H. W. Smith	71	24	42	17	50
11	Chas Stone	70	43	117	30	60
	Chas Stone	68	45	11	30	75
	Hollingsworth	71	22	34	16	00
	Ans Dawson	62½	16	49	10	50
5	F. W. Smith	71	30	30	21	65
	Heard	70	23	36	16	50
	Chas Stone	68	110	410	27	70
	Andrew Dawson	72	18	07	13	06
6	Gilman	62½	41	47	26	00
	A. J. Sturms	72½	66	41	48	00
7	R. U. Colwell	60	27	14	17	54
10	Rufus Hicks	65	25	48	16	75
17	Jacob Booth	62½	189	00	118	10
21	Joel Hicks	75	33	50	25	50
24	Joel Hicks	75	31	28	23	60
25	Mrs Simpson	78	20	03	15	65
26	do	78	34	26	26	92
27	Joel Hicks	75	36	08	27	10
	R. Will Sr	75	66	00	48	15
	Mrs Simpson	78	41	10	31	98
28	J. B. Chase	75	31	32	23	62
	Asa Miller	75	97	00	77	75
	Mrs Simpson	78	46	00	35	88
29	P. Boylen	80	275	49	185	13
31	Aranger	75	33	26	25	15
	J. B. Chase	75	28	42	21	51
	Anderson	80	26	20	21	05
	Ebenezer Howell	75	20	11	15	25
Febry 1	Mrs Simpson	78	33	22	26	05

Date	Wheat	Price	Bushels	ll.	¢	¢
Feb 3	Anthony. Hakes	75	1411	...	109	98
	Anderson	80	28	04	22	45
4	Rufus Hicks	65	15	43	10	20
	Isel Hicks	75	30	38	22	75
8	C. N. Young	75	1107	17	305	115
9	Job Brown	75	34	15	14	70
	Jacob Booth	75	16	01	12	..
11	J. Jenkins	75	24	36	15	40
	Hollingsworth	75	35	22	26	50
15	Mathews	75	31	55	23	73
18	do	75	32	34	24	40
	Huell	75	18	43	14	65
	Joseph Tillman	75	313	52	235	140
22	Meritt Reed	76	699	20	531	119
	Thos. Mooney Jr	75	142	42	107	..
Mar. 3	Mrs Dickinson	72	27	04	19	50
	Job Brown	75	79	47	59	75
	Wm. Smith	75	386	44	300	67
	Jacob Darby	55	46	47	25	70
	Sanford Reed	55	71	43	39	115
Apr 14	John Sturm	60	16	36	9	75
	Leri Hicks	50	32	50	16	40
25	Henry Pruitt	70	127	..	88	90
26	Trill	60	10	..	6	..
May 23	Thos. Wapinall	75	1	41	1	25
	Elijah Hyde	70	8	50	6	18
	do	65	30	17	19	68
			7.647	25	5.149	58

Date	Corn Shelled "	Price	Bushel	Lbs.	\$	cts
1853	Gardner's	32 1/2	1506	41	1489	69
Feb 5	L. Finch	30	26	33	7	95
11	Launders	33 1/2	27	28	8	95
	J. Finch	33 1/2	30	"	10	"
	W. W. Webster	33 1/2	35	15	12	75
15	W. W. Webster	33 1/2	39	41	13	20
	Manly	30	32	33	9	90
16	John McOffitt	30	33	44	10	10
	Jno. Wolf	30	39	34	11	85
17	Jno. Miller	30	36	22	10	95
	Geo. Blotfester	30	30	22	9	10
18	Launders	30	28	"	8	40
	W. W. Webster	33 1/2	43	14	14	41
	Allen Heard	30	100	"	30	"
	Levi Sprague	33 1/2	297	09	99	54
21	Walter Mooney	35	674	"	225	90
22	Thos. Colwell	30	66	"	19	80
	Webster	33 1/2	41	40	13	86
	Wolf	30	37	"	10	10
	Finch	30	26	50	8	05
24	John McOffitt	30	34	"	10	20
25	W. W. Webster	33 1/2	402	"	134	"
	Thos. Mooney Jr	35	598	33	209	50
26	Geo. Will	33 1/2	300	42	100	20
	Jno R. Clifton	35	365	50	127	05
	John Dixon	"	241	"	84	35
27	James Brinkley	"	279	10	97	36
	Jacob Barth	30	676	48	203	10
	Allen Heard	33	668	33	220	60
	Jame. Princehouse	33 1/2	167	23	55	95
29	Jno Marks	33 1/2	506	15	169	51
	Thos. Mooney Sr	35	545	14	190	83
March 2	McB. Lilliman	35	590	"	216	50
	G. S. Patterson	35	291	38	102	05
	A. Blakely	35	1480	35	185	20
			9303	39	3133	90

Date		Corn Shelled	Price	Bushels	lbs	¢	cts
1853	Wm. Ford			9303	90	3133	90
28	Wm. Paulsoner		35	1992	144	697	28
	Saml. Gates		35	3240	444	1134	27
Apr 20	Wm. B. Gilliman		35	118	" "	111	30
25	L. W. Moss		30	100	11	30	06
	Sundry persons		34	5195	44	1756	30
"A"		Corn Shelled		19950	44	\$6793	11
		Wheat		7647	25	5149	58
		Oats		8989	42	2298	31
		Corn in the ear		17351	16	5112	44
						\$19253	44

Replikation } William W. Low,
 filed in said } John P. Chapin,
 chancery suit } as
 Sept. 21st 1853 } Henry Holte.

Circuit Court Florida County,
 Sept. Term W. T. 1853

And the said complainants by E. W. Powell their Solicitors come and say that the several allegations made in their said bill are true in substance and matter of fact, and that the answer of the said respondent so far as the same is inconsistent with the said bill are untrue and this they are ready to make appear to the Court as the Court shall direct.

E. W. Powell

Sol. for Compl.

Also the Record and Proceeding in the Suit of
Replevin in said court pending wherein said Low &
Chapin were plaintiffs and said Holte was defendant
in the words and figures following to wit:

Alft. plaint
& Declaration
in Replevin
Filed in said court
June 18th 1853

State of Illinois, } Circuit Court Ponia County,
Ponia County, sp. } September Term A. D. 1853

This day personally appeared before
me the undersigned clerk of the Circuit Court within and
for said county William W. Low in his own behalf and on
behalf of his partner John P. Chapin who being duly sworn
deposes and says that he the said William W. Low and
the said John P. Chapin are the owners of the following
described personal property, to wit: about fifteen thousand
two hundred and fifty seven bushels (15257) of corn in
the ear and of the value of four thousand five hundred
and seventy seven dollars (\$4577) and about six thousand
bushels of shelled corn of the value of nineteen hundred
and eighty dollars (\$1900) and that said affiant and the
said John P. Chapin are lawfully entitled to the posses-
sion thereof and that said corn is wrongfully detained from
them by Henry Holte, and that said corn has not been
taken for any tax, assessment or fine levied by virtue of
any law of this state, nor seized under any execution or
attachment against the goods and chattels of affiant or his
said partner John P. Chapin liable to execution or at-
tachment and further saith not.

Wm W. Low.

Subscribed & sworn to before me
this 18th day of June A. D. 1853.
Jacob Gale, clerk,

State of Illinois Peoria County, ss.
William W. Low,
John T. Chapin,
vs
Henry Stolte.

Circuit Court Peoria County
September Term A.D. 1853

William W. Low and John T. Chapin file this their plaint and complain of Henry Stolte and give the Sheriff of said county to be informed that said Henry Stolte on the fifth day of June in the year of our Lord one thousand eight hundred and fifty three at Peoria County unlawfully took and now detains from the possession of the said William W. Low & John T. Chapin the following personal property, to wit: fifteen thousand two hundred and fifty seven bushels of corn in the ear and six thousand bushels of shelled corn of great value to wit: of the value of six thousand five hundred and fifty seven dollars; wherefore the said plaintiffs pray that the said corn may be replevied from the possession of the said Henry Stolte.

E. N. Powell

Atty for Plaintiffs

State of Illinois, ss.
Peoria County, ss.

Circuit Court, Peoria County
September A.D. 1853.

William W. Low and John T. Chapin
Complain of Henry Stolte of a ple wherefore he took the goods and chattels of the said plaintiffs and unjustly detains the same against sureties and pledges until &c and thereupon the said William W. Low & John T. Chapin by E. N. Powell their attorney complain for that the said defendant on the fifth day of June A.D. 1853, at the county of Peoria aforesaid, took from the possession of the said plaintiffs fifteen thousand two hundred and fifty seven (15257) bushels of corn in the ear of the value of four thousand five

hundred and seventy seven dollars, and six thousand bushels of shelled corn of the value of nineteen hundred and eighty dollars and unjustly detained the same against sureties & pledges until we wherefore the said plaintiffs say that they are injured and have sustained damages to the amount of five hundred dollars,

And also for that the said defendant on the fifth day of June in the year of our Lord one thousand eight hundred and fifty three at Ponia County afore said wrongfully detained against sureties and pledges until we, certain other personal property of the said plaintiffs, to wit; fifteen thousand two hundred and fifty seven bushels of corn in the ear of said great value, to wit, of the value of four thousand five hundred and seventy seven dollars ~~dollars~~ and six thousand bushels of shelled corn of great value, to wit, of the value of nineteen hundred and eighty dollars against sureties & pledges, wherefore the plaintiffs say that they are injured & have sustained damages to the amount of five hundred dollars and therefore they bring their suit vs.
C. St. Powell

Atty for Plffs.

William W. Loo, }
John P. Chapin, }
vs }
Henry Holte. }

Circuit Court Ponia County.
September Term A.D. 1853.

The clerk will issue a writ of Replevin in pursuance to the affidavit.
To Jacob Gale, Esq. Clerk
C. St. Powell
Atty for Plffs

Pleas in said
Replevin suit
filed Sept. 13th
1853

William H. Low &
John T. Chapin
vs
Henry Stolte

In the Circuit Court of Bond County,
September Term 1853.

1. And the said defendant comes and defends the wrong and injury when &c., and says that he did not take the said corn in the first count of the said plaintiffs declaration mentioned in manner and form as therein stated and of this he puts himself upon the country &c.
Purple & Stanger Defts. Vly.
And the plffs do the like
E. T. Powell for Plffs.

2. And for further plea in this behalf the said defendant as to the second count in said plaintiffs declaration says actio non because he says that he did not wrongfully detain the said corn in the said count of said declaration mentioned in manner & form as stated in said count of said declaration and of this he puts himself upon the country &c.
Purple & Stanger for Defts.
And the plffs do the like
E. T. Powell for Plffs.

3. And for further plea in this behalf the said defendant says actio non because he says that the said corn in said plaintiffs declaration mentioned was at the time when &c., the property of the said defendant and not the property of the said plaintiffs as stated in the said plaintiffs declaration, this he is ready to verify, wherefore he prays judgment and a return of said corn &c.
Purple & Stanger
for defts.

Replication
in said Replevin suit
filed Sept 21st 1853

William W. Low,
John P. Chapin,

vs
Henry Stolte,

Circuit Court Peoria County,
September Term A. D. 1853.

And the said plaintiffs as to the said
plea of the said defendant by him thirdly above pleaded
say preclude now because they say that the said cor. in the
declaration of the said plaintiffs mentioned was at the time
when &c the property of the said plaintiffs and not the prop-
erty of the said defendants in manner and form as stated
in said plea and this they pray may be enquired of by
the country &c.

E. H. Powell
Atty for Plffs."

Also the record & proceedings in the suit pending in said
court wherein said Stolte was plaintiff and said Low &
Chapin were defendants in the words & figures following,
to wit:

"In the Peoria Circuit Court
of the November Term A. D. 1853.

State of Illinois, ss.

County of Peoria, ss.

Henry Stolte complains of William W.
Low and John P. Chapin of a plea of trespass on the
case on promised,

For that whereas heretofore to wit, on the twen-
tish day of August A. D. 1853, at the County of Peoria aforesaid,

Declaration
filed in said court
November 11th
1853

defendants were indebted unto plaintiff in the sum of twenty thousand dollars for goods, wares & merchandize, also, for the work and labour, cares, diligence and attendance of the said plaintiff by him the said plaintiff before that time done, performed and bestowed as the agent of and for the said defendants and on his retainer and for certain commission and reward due and of right payable from the said defendants to the said plaintiff in respect thereof and for so much money lent & advanced ^{to} & laid out & expended for defendants at their request by plaintiff, also for so much money before then had & received by defendants to and for the use of plaintiff, also for interest money for the loan & forbearance of divers large sums of money for long spaces of time before then elapsed, lent & forborne by plaintiff to defendants at their request, also for so much money found to be due & owing from defendants to plaintiff upon an accounting before then had between them, and being so indebted they the said defendants afterwards, to wit; on the day & year aforesaid at the county aforesaid faithfully undertook and promised to pay said money to plaintiff upon request.

Yet to pay said money or any part thereof to plaintiff although often requested so to do, defendants have hitherto wholly neglected & refused & still do refuse to the damage of plaintiff of twenty thousand dollars, therefore he brings suit &c.

H. D. & A. L. Merriman
Plffs Attys,"

Which said several suits were the same suits alluded to in the said agreement of submission and in said award
This was all the evidence given by the said Geo. & Chapin in the resistance of the said judgment.

The said Henry Holte then read to the Court (at the same time protesting that Arbitrators could not be used as witnesses) and that evidence shows the award could not be received to impeach it - the affidavits of William Kellogg & William W. Boilvin and of H. S. Anderson, as follows, viz,

Affts of
Kellogg &
Boilvin

In the Matter of the award
between Wm W. Lowe &
John S. Chapin &
Henry Holte

Motion for judgment
on the award

William Kellogg, Horace S. Anderson & Wm W. Boilvin being duly sworn say, that as Arbitrators in this cause, they did in making their final estimate of the amount which they found due from the said Lowe & Chapin to Henry Holte, allow damages of one thousand dollars for the violation of the contract between the parties by said Lowe & Chapin and the consequent damage that said Holte sustained on account of the same and his being injured and broken up in his business & employment thereby, that upon the trial, evidence was offered and given without objection in relation to such damages; and the same were assessed by us as Arbitrators at a less sum, than they were estimated by any of the witnesses who testified in the case; Affiants further state that the form of the award in this case was made up and agreed upon by the counsel for the parties in this suit J. H. Purple & Co. St. Powell Esqrs, and that the whole which was done by the Arbitrators in making out their award was, to fill the blanks left in the form prepared, which they did by inserting the following where the blanks were left, and which in said award are included in brackets & marked on the margin of said award Nos 1, 2, 3, 4, 5

- No. 1. "William W. Low and John P. Chapin,"
 No. 2. "William W. Low and John P. Chapin,"
 No. 3. "William W. Low and John P. Chapin,"
 No. 4. "Five," (thousand) "Eight," (hundred) (and)
 "Seventy Six," (dollars and "forty six," (cents)
 No. 5. "William W. Low & John P. Chapin,"

And then having so filled up the said award or form thereof they severally affixed their signatures to the same and further say not

Wm Kellogg
 W. C. Bolvin

Subscribed & sworn to
 before me this 23 March
 1854. St. H. Purple
 Notary Public.

2nd afft of } In the matter of the award
 Anderson } between Wm W. Low &
 John P. Chapin &
 Henry Stolte } Motion for judgment
 on the award

Horace G. Anderson being
 duly sworn says that the Arbitrators in this cause
 in making their estimate of the amount found due
 from Low & Chapin to Henry Stolte did allow dama-
 ges of one thousand dollars for the violation of the
 contract between the parties by said Low & Chapin & for
 and on account of damages sustained by said Stolte,
 on account of the grain having been wrongfully taken
 from his possession thereby breaking him up in his business,

That upon the trial evidence was offered and
 given without objection in relation to such damages,
 and the same were assessed by us as Arbitrators at a less
 sum than they were estimated by any of the witnesses

who testified in the case, according to affiant's best recollection & belief.

Affiant further states that the form of the Award in this case was made up and agreed upon by the Counsel for the parties in this suit St. H. Purple & E. St. Powell Esqrs. and that the whole which was done by the Arbitrators in making out their Award, was to fill the blanks left in the form prepared which they did, by inserting the following where the blanks were left, And which in said award are included in brackets & marked on the margins of said Award Arts. 1, 2, 3, 4, 5.

Art. 1, "William W. Low and John P. Chapin,"

Art. 2, "William W. Low and John P. Chapin."

Art. 3, "William W. Low and John P. Chapin"

Art. 4, "Five,, (thousand) "Eight,, (hundred) (and)
"Seventy six,, (dollars and) "forty six,,
(cents),

Art. 5, "William W. Low & John P. Chapin,"

And then having so filled up the said award or form thereof, they severally affixed their signatures to the same and further said not

H. S. Anderson.

Subscribed & sworn to before
me this 23rd March 1854.

St. H. Purple

Notary Public.

After the argument the said Stolle by his counsel presented and read to the court the affidavit of St. H. Purple, which is as follows,

11 State of Illinois, ss.
Apt of } Peoria County.
N. H. Purple }

In the matter of Henry Stolte, vs. H.
Low & John P. Chapin, Arbitration.

Of H. Purple being sworn says that on the trial of this cause before the Arbitrators said Stolte introduced witnesses to prove that in consequence of the service of the writ of Replevin & the taking the corn from him on said writ he was injured and entirely broken up in his business, his entire Capital having been invested in the purchase of said corn, his impression and belief is that no objection whatever was made to said evidence at the time it was offered; and he is certain that Low & Chapin called one witness themselves O. N. Young to testify in relation to the same subject matter, with a view of reducing the amount of damages so claimed by Low & Chapin. Affiant understood afterwards, that Mr. Powell in his written argument submitted to the Arbitrators contended that such damages could not be legally and properly allowed & further saith not.
O. H. Purple.

Sworn to before me
this 27th March 1854.
Jacob Dale, clerk."

the defendants objected to the reception of said affidavit & excepted to the opinion of the court in admitting the same.

This was all the evidence introduced by either party the court after hearing the evidence and allegations of the parties granted said motion and rendered a judgment on said award in favor of said Stolte and against said

Low & Chapin which judgment is in the words and figures following, to wit:

This day came the said Henry Stolte by Puffer & Sanger his attorneys and the said William W. Low and John P. Chapin by William Kellogg and Elisha St. Powell their attorneys, and this cause came on to be heard on the motion of the said Henry Stolte entered in this court on Wednesday the 22nd day of this month for judgment on the award of the arbitrators filed in this cause, and on the cross-motion of the said William W. Low and John P. Chapin to set aside said award, On Consideration whereof the court being fully advised in the premises over-ruled said cross-motion and the exceptions of said Low and Chapin to said award, and sustained the motion of said Henry Stolte for judgment on said award, and do consider and adjudge that that the said Henry Stolte do have and recover of the said William W. Low and John P. Chapin the sum of five thousand ^{eight hundred} and seventy six dollars and forty six cents for and on account of advances and commissions made and coming to him under the contract attached to the submission under which said award was made, and for and on account of damages by him sustained on account of the violation of the said contract on the part of the said Low and Chapin and for damages sustained by reason of the said Low and Chapin wrongfully suing out of the said writ of replevin in the suit mentioned in said submission, together with the costs of said arbitration and his costs in this behalf expended and that execution issue therefor, and it is further considered and adjudged that the said William W. Low and John P. Chapin pay the costs in the suits in this court of Henry Stolte against them, for trespass on the case on promises and of the said Low & Chapin against Henry Stolte in Chancery and of the Replevin suit of said Low and Chapin against Henry Stolte and that on the payment by the said William W. Low and John P. Chapin of the

said sum of five thousand eight hundred and seventy six dollars and forty six cents and of the costs aforesaid, that the said suits shall be dismissed,

To the granting of which motion and the rendering of said judgment the said Low & Chapin by Kellogg & Howell their counsel excepted and prayed that this their bill of exceptions might be allowed which is accordingly done.

Unsloro Peters (Sgd)

And afterwards on the eighth day of May A.D. 1854 the said Low and Chapin filed an appeal bond in said cause in the office of the clerk of said court in the words & figures following to wit,

Appeal
Bond

"Know all Men by these presents that we William W. Low, John P. Chapin and Thomas Dyer are held and firmly bound unto Henry Stolte in the penal sum of ten thousand dollars, current money of the United States for the payment of which well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally firmly by these presents, Witness our hands and seals this first day of May A.D. 1854.

The condition of the above obligation is such, that whereas the said Henry Stolte did on the thirtieth day of March A.D. 1854, in the Circuit Court of Peoria County, State of Illinois, recover a judgment against the above bounden William W. Low and John P. Chapin for the sum of five thousand eight hundred and seventy six dollars and forty six cents and costs of suit from which said judgment of the said Circuit Court the said William W. Low and John P. Chapin have prayed for and obtained an appeal to the Supreme Court of said State, Now if the said William W. Low and John P. Chapin shall duly prosecute their said appeal with effect and

shall moreover pay the amount of the said judgment, costs, interest and damages rendered and to be rendered against them in case the said judgment shall be affirmed in the said Supreme Court, then the above obligation to be void, else to remain in full force and virtue,

Wm W. Low Esq
John P. Chapin Esq
Moses Dyer Esq

State of Illinois
Peoria County I Jacob Gale clerk of the Circuit Court within and for the county of Peoria in the State of Illinois do hereby certify, that the foregoing is a full and correct transcript from the Record of all the proceedings in said Court of Henry Nolte against William W. Low and John P. Chapin on motion for judgment on award, as the same are of Record and on file in my office - Only the Bill, answer, replications, declarations, affidavits in Replevin, pleas and all Exhibits on file in the Chancery suit, Replevin suit and suit in assumpsit between the same parties, were in said suits transcribed into the Bill of Exceptions of said Low & Chapin under direction of their attorney.

In witness whereof, I have set my hand and affix the seal of said Court at my office in Peoria this seventh day of June in the year of our Lord one thousand eight hundred and fifty four.

Jacob Gale. clerk.

Clerk's fees: for transcript and certificate \$23.00.

Received payment of defendants Low & Chapin.
Jacob Gale, clerk.

57. 36.

William W. Low et al.
vs.

Henry Nolte
Record.

Filed June 12th 1854.
L. Leland Clk.
By P. K. Leland Depy.

Lawe & Chapin v. S. Volts.

At common law - the courts never rendered judgment upon awards - except in actions regularly brought as upon other causes of action - No mention is made of such a thing among the modes of redress for non-performance of awards - See Bacon's Abridg^t Vol 1 - pages 300, 311 -

Comyn's Digest, Vol. 1, pages 680, 681 -

At common law, the parties to a suit might, by consent, have a rule of court entered of record - referring the matters in suit to arbitrators and in such case the court would enforce performance of the award by attachment. - -

But no case has been found, or rule laid down by any elementary writer showing that at common law the court ever usurped the powers of a court of Chancery - to enforce the specific performance of agreements of parties - either by attachment or judgment, touching awards or any other matter about which an agreement was made in pais.

By Statute 9 & 10, W^m. 3^d Chap. 15 - Submissions by agreement were put upon the same footing with submissions made in court & by rule thereof - 1st Comyn's Dig. 657, 658 - 2 Term Reports 643. 1 Burrows 232

This Statute never was the law of Illinois, being later than those adopted - and if it had been embraced in the adoption of English Statutes by Illinois, - it would have been repealed by our Statute, legislating on the same subject

The Statute of Illinois of 1819 - did not provide for

judgment being rendered on an award, but authorised the Circuit Court in certain cases to enforce by attachment.

In such a case the Circuit Court in pursuance of the bond of the parties rendered a judgment upon the award. — The Supreme Court reversed the judgment — but leave the award to be enforced otherwise. — Breese R. page 57.

The Statute of 1827 — like the present Statute, authorised a judgment to be entered on motion upon the award, where the bonds of submission were such as prescribed in that Statute. — Under that Statute in case of Cromwell vs. Marsh, Breese R. 230, where the submission was by bond, in which it was agreed that the award should be entered of record and when entered on motion should have the effect of a judgment — and where the Circuit Court on motion rendered a judgment upon the award, — the Supreme Court reversed the judgment — Upon the ground that the bond was not such as provided for in the Statute.

If the Circuit Court by the common law had power to render such a judgment, why was not that judgment of the Circuit Court affirmed? — It may be suggested that the authority relied on by the Supreme Court in that case has been overruled by the English Courts. — That does not affect the question — I present. — The point I make is that the Circuit Court can not render judgment upon an award in a summary proceeding by motion — except in the cases expressly provided for by the Statute and when the Statute has been strictly pursued.

The case of Duncan vs Fletcher, Breese R. 252

has no application to the question — That was a reference
by order of the Court — made by consent — and a pro=
ceeding on coming in of report of referees, and in such
case the Courts at common law did enforce the award,
therefore it was not very material in that case whether it
was under the statute or not — but the court held that
case within the then statute.

Lowe & Chapin
vs
Walter —

Brief of J. L. Kip
for appellant

a copy of this
has been handed
to Judge Purdie

William W Low } Supreme Court of Illinois
John P Chapin } June Term 1854
vs } Appeal from Peoria
Henry Nolle }

And the said William W Low and John P Chapin appellants by Dickrey & Powell their attorneys come and say that that in the record and proceedings aforesaid and in the rendition of the judgment aforesaid there is manifest error; because the Court below rendered a judgment on said award in favor of the said Henry Nolle and against the said William W Low and John P Chapin when by law the said Circuit Court should have sustained the motion of the appellants and set aside the said award and rendered judgment in their favor and against the said Nolle.

And the said appellants also assign the following special causes of error to wit

1. Because the award made by the arbitrators is not final in relation to the several suits submitted to the arbitrators by the said Submission
- 2nd Because the said arbitrators did not decide upon all the matters submitted to them by said Submission and presented to them by the parties for their consideration
- 3rd Because said award is uncertain in its description of the suits to be dismissed and other acts to be performed

And said award is therefore void

4th Because the award is dependent upon a condition which is left to the option of one party for its performance

5th Because the Arbitrators took into consideration and adjudicated upon matters not submitted by the said Submission to wit a claim of said Henry Nottle for damages for being injured and broken up in his business of \$1000. which claim was allowed by the Arbitrators and formed a part of the sum total of the said award

6th Because matters were heard and adjudged upon and allowed by said Arbitrators not submitted to them by the agreement of Submission

7. Because the said award is against the law and evidence of the case submitted

8th Because the Court erred in overruling the exceptions of Leow & Chapin to said award

9th Because the Court erred in rendering judgment in the form and manner in which the same is rendered, being uncertain as to amount and a part of it ^{is} conditional

10th Because the Court erred in adjudging

that Lord & Chapin should pay the costs of
the several suits mentioned in the said
judgment.

11th Because the court erred in adjudging
that said Chancery suit and Replevin suit
should be dismissed.

Wherefore for the errors aforesaid
in the rendition of the judgment aforesaid and
in the overruling of the motion of said Appellants,
to set aside said award the said Appellants
pray that the said judgment may be reversed
annulled and wholly for nothing returned and
that they may be restored to all their rights as
before the rendition of said judgment &c

Dickey & Powell
Attys for Appellants

And the said appellee by Purple & Blackwell
his attorneys come and say that in the
record of the proceedings and in the
rendition of the judgments aforesaid there
is not any error in manner and form
as above alleged, and that he is
ready to comply with the record &c
Wherefore he prays judgment of
affirmance &c

Purple & Blackwell pd

Low Chapin }
as }
Notte }

Judge Dickey says "a common law Court never renders Judgment upon an award."

No Authority is shown upon this question

When he shows a case of Submission at Common law, so intended and understood by the Parties where there has been a positive agreement that Judgment should be entered upon the awards after notice of the application for such Judgment; when the Courts have held that no such Judgment could be entered — He will have shown a case in point — However unreasonable or absurd such a case may seem.

What is the objection to the rendition of such a Judgment, the Subject Matter is within the Jurisdiction of the Court; the parties agreed to submit their persons to the same jurisdiction; 10 days notice of the application is to be, and in this case is given.

The Parties appear pursuant to the notice, they submit themselves to the Jurisdiction of the Court.

They submit to the Court the question of the validity of the awards — No Objection is made or interposed to the Jurisdiction of the Court, but only to the validity of the awards

They are in Court by their own act and
consent " They are a law unto themselves,"
The defendants file numerous objections
to the awards for Matters dehors and
Matters appearing on its face; But do not
intimate that they are not properly in
Court, or that the Subject matter is
not within its Jurisdiction

If they had any right to object
there, that right is waived. Having submitted
their persons to the Jurisdiction of the Circuit
Court, they can Raise no objection
on that account in this Court.

Hornis vs Hayes 6 Binney 424. Leaves opinion
Gallep vs Reynolds 8 Watts 424. In point
Allen vs Belcher 3 Gill 395. Jurisdiction
Buckmaster v Collins 3 Scam. 106-7

Puple.

Loue o Chapin }
my }
Notte - }

Suggestions
Triple

Wm. W. Lowe }
John P. Chapin } Appeals from Peria
Henry Rolte }

The Defendant enters a motion
to dismiss the appeal in this case
for the following reasons.

1. Because the Judgment from which the appeal
is taken is ~~made~~^{entered} pursuant to the agreement
of Parties upon and under a common
Law Submission to Arbitrators and
~~not~~ an award made thereon - and
not under the Statutes of the State of Illinois
2. Because no appeal lies in the case

Propter Blackwell
for Plaintiff

June 15th 1854.

³⁶
Loue Chopin
my

Wolfe

Mo, to dis miss appd

Filed June 15. 1854.
L. Ireland Clk.

Love & Chapin }
vs
Wolfe }

Judge Sicker says "the ^{at} Common
Law Courts never render a Judgment
upon an award."

No authority is shown upon
this question

When he shows a case of
Submission at Common Law, so intended
and understood by the parties ~~at such~~,
when there had been a positive agreement
that Judgment should be entered upon
the award, after notice of the application
for such judgment — Where the Courts
have held that no such Judgment
could be entered — He will then have
shown a case in point — However unrea-
sonable or absurd the case may seem.

What is the Objection to the ren-
dition of such a Judgment?

The Subject Matter is within
the Jurisdiction of the Courts; The Parties
agree to Submit their persons to the same
Jurisdiction — 10 days notice of the
Application is to be, and is in this
Case given.

The Parties appear pursuant
to the notice, they Submit themselves
to the Jurisdiction of the Courts

They submit to the Court the question
of the validity of the awards — No
objection is made or interposed to
the Jurisdiction of the Court; but
only to the validity of the awards.

They are in Court by their
own act & consent — "They are a law
unto themselves,". The Defendants file
Numerous objections to the awards for
matters dehors & matters appearing on
its face; But do not intimate that they
are not properly in Court, or that the
Subject Matter is not within its Jurisdiction.

If they had any right to object
there — that right is waived. Having submitted
their persons to the Jurisdiction of the Circuit
Court, they can ~~not~~ raise any objection on
an that account in this Court.

I refer the Court to

Hearns vs Hayes. 6 Binney 424. Seates opinion
Gallup vs Reynolds 8 Watts 424. In Point
Allen vs Belcher 3 Gil. 545. Jurisdiction by consent
Buchanan vs Corbin 3 Seam. 106-7
Triple

I do not say - That the Court has not jurisdiction of the subject and of the persons
I only say the case made by the
plaintiffs does not by the rules of law
authorise a judgment -

The case in *Bruce* - is directly
in point - The parties were before the
Court & the Court had jurisdiction -
yet the judgment was held erroneous -

There is no waiver - what
objections were urged before the
Circuit Court against a judgment
for plaintiff doth not appear
nor need they by the record -

The grounds of defendants motion
to set aside the award alone are
given - and the judgment for
the plaintiff was excepted to at
the time
Dickey

Louis Chapin

24

Motte -

Suggestions

Pupils

William W Low }
John P Chapin }
vs
Henry Nolte }

1. An award must be confined to the subject matter of the submission
Solomon vs McHenry 13 John 27.
Sipions vs Burfield 2 Bay 94
Bear vs Hamam 6 Pick 269

2. Where arbitrators transcend their authority their award will be void pro tanto but if that which is void does not effect the merits of the submission the residue will be valid 1 N S Dig. page 209 and authorities there cited

But if that part of the award which is void be so connected with the rest as to effect the justice of the case between the parties the whole is void

Lytle Et al vs Rodgers 5 Cond. U.S. 702
Note at the end 2 Cond " " 464

3. An award to be good must determine the whole matter submitted And the arbitrators must not exceed the authority conferred upon them by the agreement of submission by taking into consideration and awarding upon matters not submitted unless the specs can be separated and rejected.

1. N. S. Dig. page 209 § 282 and the authorities there cited.

Watson on Arbitrations 34 Law Lib 112 top page

Russell on Power & Duty of Arbitrator

38 Law Libr 247. top page

34 Do do 113 top page

McDonald vs Bacon 3 Sam 428

4 The proper way to take advantage of a defective award for matters de hors the record is to move the court to set it aside by affidavits showing wherein the arbitrators exceeded their authority. *Cromwell et al vs Owings & Horner Johnson* Page 10.

Morgan vs Meather 2 Ves Jr 15

Dick vs Mulligan 2 Ves Jr 23

Rigden vs Martin & Horner John 403

38 Law Lib 447. top

Williams et al vs Goodrich et al 4 Denio 195

Butler vs The Mayor N.Y. 7 Hill 329

34 Law Lib 146 top

34 Do do 163. do

5 Arbitrators can be examined as witnesses and their affidavits may be taken to show that matters were considered not included in submission.

1 *Greenleaf* Eve § 249

2 Do do § 28.

Zeigler vs Zeigler 2 ~~Howe~~ Serg. W. 286

Hoop vs Prohaker 1 ~~Howe~~ 304

38. Law Lib	247. Top page
31. Do Do	79. Do Do
Mayor & N.Y. vs Butler & Barb	328

6. The submission in this case does not allow or give authority to the arbitrators to award damages for breaking up or in his business. The agreement of submission is: "after writing that divers suits and controversies have arisen between the parties then states" "Now therefore it is agreed between the parties that the said suits and all and singular the matters & things pending between the parties in said suits and properly and legitimately connected with them or either of them and also all matters and things in difference between said parties arising out of and connected with the said contract be submitted."

Now the language of this submission expressly precludes the idea of going in to the hearing of evidence of damages as there was nothing in the suits pending or in the contract that the damages allowed could legitimately grow out of

It was a new cause of action and the arbitrators had no power to award on such matter.

Watson on Arb. 34 Law Lib 15. Side page
ib 179. Side page

~~I am told~~ I have been furnished
by the opposing counsel with the
following authorities which I will
briefly notice

Trove & Co. } Authorities referred to by
us } the defendants counsel
Nolle }

1. 8 Greenleaf 119.

This case simply decides the question that where parties submit questions of law and fact to arbitrators that error of judgment as to law or fact cannot be reexamined.

2. 8 Greenleaf 288. decides the same thing in substance

3. 32 Eng Com Lawer 744

This case decides that in an action of Trover special damages may be recovered if laid in the declaration.

21 Wend 2145 is cited on the same point. This case decides that it is possible that in an action of replevin has been commenced without the color of right and wilfully that the jury may perhaps award smart money.

20 Wend 172 is cited on the same point and decides that where a plaintiff in replevin commences a suit without the least color or show of right the jury may award smart money.

These authorities may all be good law but they do not apply in this case

The proof is that that the arbitrators allowed \$1000 damages for the breaking up of Ayles' business and there is nothing in the record and in the agreement of submission to warrant any such allowance

The counsel for appellee has also cited on the same point

1 Wall & Eng. 516. 15 Conn 225 & 268

4 I have also been referred to the following authorities

16 Eng Conn Lc 43

7 Conn A. G. 542

11 Smiles & Merrill 626.

The case in the 16 Eng Conn Lc acc simply decides that where matters of law and of fact are referred to an arbitrator his award is final and conclusive. This is no doubt good law. But it does not apply to the facts in this case. Here we contend the arbitrators transcended their powers and awarded on matters not submitted. In that case no such thing was pretended.

The case cited in the 7 Conn 542 simply decides that where an award is within a submission a court of Chancery will not set it aside except

for partiality and corruption in the arbitrators mistake on their own principles or fraud or misbehavior in the parties

The case in 11 Smedes & Marshall 626 decides that where a declaration where neither the Submission nor award set out the cause of action submitted the Court could not say in demurrer that the arbitrators went beyond the authority delegated.

~~But this case decides more it decides that if it had~~

I am also cited to the following authorities in Breese. pages 55, 239 & 251

The cases reported in Breese arose under the act of January 6th 1827. which was repealed by the Revised Stat. 1845 page 455 § 2. The act of 1827 is entirely different from the Revised Statutes.

By the act of 1827. The award could not be set aside unless certain things were made to appear in both. But by the 11§ of the act concerning arbitrations in the Revised Stat page 57 ~~an~~ entire different rule is established.

All the other decisions in Breese stand upon the same grounds.

William W Low
John P Chapin
vs
Henry Nottle

2 Points & an Answer
made by Est Powell
for Appellants

36.

William H. Low
& John P. Chapin
vs.

Henry Nolte

36

1854

12162