

12619

No.

Supreme Court of Illinois

Schoonover.

vs.

Christy.

71641  7

*Peter Schoonover
vs
Thomas Christy*

31

[Signature]

1858

LaSalle County Court

March Term Ad. 1856

State of Illinois }
LaSalle County } p.

} Decas. Proceedings and
Judgments held and taken in and before
the LaSalle County Court in the state of
Illinois at the Court House in Ottawa in
the County of LaSalle, of March Term thereof
to wit. of the third day of March in the year of
our Lord One thousand eight hundred and
fifty six and of the Independence of the
United States of America the Eightieth

Present Hon. Henry E. Cotton Judge

Wm. W. Raymond Clerk

Francis W. Corwin Sheriff

Be it remembered that hereafter to wit
on the 19th day of December Ad. 1855 a copy
Vermons and transcripts were filed in
the office of the clerk of the said Court and
are in the words and figures following to wit:

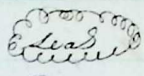
{ Copy Vermons }

State of Illinois } The People of the State of Illinois
LaSalle County } p. To any Constable of said County
Greeting

You are hereby commanded to summon Peter
Schroeder to appear before me at my office
in Vermillion on the 30th day of October 1855
at 1 o'clock P.M. to answer the complaint of
Thomas Christy for a failure to pay him a
certain demand. not exceeding One
hundred dollars - and hereby make due return

as the law directs

Given under my hand and seal this 23rd day of
October A.D. 1855

Charles Dyer 
Justice of the Peace

Thomas Christy

Peter Schrammer

Action on assumpsit

Summons issued October

23rd 1855 returnable Oct. 30th 1855 at one o'clock
P.M. put into the hands of Const. Foster
sums demanded \$100.00 - two subpoenas, summons
returned served by mailing to defendant Octo-
ber 25th 1855. parties appearance on the day of
trial. defendant took charge of venue - made
necessary oath - papers sent to S. S. Wall Esqr.
damages claimed \$100.00

Justice fees.

Const. fees

Sub. 18³/₄

for serving mileage \$1.40

doctating sink 18³/₄

Transcript & oaths \$1.15

two sub fees 37¹/₂

\$1.46

\$5.75

Charles Dyer J.P.

Thomas Christy

Peter Schrammer

1855. Action on assumpsit

The above entitled suit was
commenced before Charles Dyer Esqr. and charge
of venue taken by the defendant and the papers
belonging to the suit transmitted to the subscri-
ber on the 30th day of October as will appear by
reference to the transcript from the docket of
C. Dyer Esqr. Oct. 30th the parties to the

Entered on back - "Served the notices & mailing to
Peter Schrammer October 25th 1855"
for summons 15⁰⁰ "
mailing & returning 40⁰⁰ "
Fletcher & son
Conestoga

above suit appeared before me and agreed
to continue the suit to the 8 day of November
at ten o'clock A.M. Verdict issued at the plaintiff's
request returnable on the 8th day of November
at 10 o'clock A.M. 1855 November 8th parties appear
and proceed to try the cause the venire returned
by H. Fowler constable with the following panel of
jurors viz. Levi Green, J. F. Wall, James Kimball
J. W. Wood, W. D. Whitcomb and E. Burgess who
appeared and were sworn to try the cause, the
counsel for the defendant made a motion and
filed an affidavit asking for a bond for
security for costs in case the cause should be
decided against said plaintiff the motion
was overruled by the court. John Christy, Silas
Morey, Peter Wren, W. H. Cargill and Benjamin
Washburn sworn as witnesses for the plaintiff
and Jacob Miller sworn as witness on the
part of the defendant John Christy, Silas Morey,
Peter Wren and Jacob Miller claim fees.
After hearing the testimony the jury deliberate
and consider of their verdict without retiring
from the room and say that they find a
verdict for the plaintiff for the sum of Ninety
Nine Dollars and costs of suit. It is therefore
considered that the plaintiff have and re-
cover of the defendant said sum of Ninety Nine
Dollars for his damages, and also the sum of six Dollars
and seventy three cents for costs and charges by him
about his suit expended

Damages
Costs

\$99.00
6.73

Justice fee.		Justice fee after change of venue	
Summons	18 1/2	Docketing writ	12 1/2
Docketing writ	18 1/2	Continuance	12 1/2
2 Subpoenas	37 1/2	Venue	25
Oath and Transcript	51 1/2	Assess. Jry	37 1/2
	1.06	Smoking 5 witnesses	31 1/2
		Entering Judgment	25

Constable fee.			1.43
Serving Summons	.25	Jury fee	1.50
Mileage on same	15		
Serving Venue	50	Defendants Costs	
Attending trial	25	Smoking in witnesses	6 1/2
	1.15	Witnesses fee	50
Witnesses fee	1.50		56

Samuel C. Wall J.P.

Appeal Bond filed Nov. 28th

I, the subscriber a Justice of
 the Peace in and for said county
 do certify the above to be a full and
 complete copy of the proceedings and judgments
 from my docket in the above entitled cause
 Dated this 15th day of December 1855

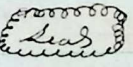
Samuel C. Wall
 Justice of the Peace

(appeal bond)

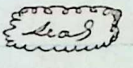
Know all men by these presents, that we,
 Peter Schomser and Perkins Allen an held and
 firmly bound unto Thomas Christy, in the
 penal sum of Two Hundred five and 25/100 dollars
 lawful money of the United States, for the pay-
 ment of which well and truly to be made
 in kind ourselves, our heirs, and Administration
 jointly, severally and firmly by these presents

Witness, our hands and seals this 24th day of
November A.D. 1855.

The condition of this above obligation is such
that, whereas the said Thomas Christy did on
the 8th day of November 1855 before Samuel S.
Wall, a justice of the peace for the county of La-
salle recover a judgment against the above
bonded Peter Schooner for the sum of thirty
nine dollars. from which judgment the said
Peter Schooner has taken an appeal to the
Circuit Court of the County of LaSalle and State
of Illinois. Now, if the said Peter Schooner
shall prosecute his appeal with effect and
shall pay whatever judgment may be ren-
dered by the court upon dismissal or trial of
said appeal, then the above obligation shall
otherwise remain in full force and virtue &
effect

Peter Schooner 

Witnessed by me A. J. Ay

Perkins Allen 

officer this 28th day of Nov. A.D. 1855

Witnessed Dec. 19-1855

J. W. Raymond Clerk
Vernick

Afterwards to wit on the same day a summons
was issued out of the clerk's office of said
Court which summons is in the words
and figures following to wit -

The people of the State of Illinois - To our sheriff
of our county of LaSalle Greeting
Whereas, in a certain cause, lately
pending in our court, held before
Samuel S. Wall Esquire one of the justices

of the peace of in and for our county of LaSalle
wherein Thomas Christy is plaintiff and
Peter Schommer is defendant, judgment
has been rendered by said justice, against
the said defendant from which the said
defendant has appealed to our LaSalle County
Court - We therefore command you that
you summon the said Thomas Christy
that he personally be and appear in our
said LaSalle County Court, before our Judge
therein, on the first day of the next term of
said court, to be held at the Court House
in Ottawa, on the first Monday in March
next at ten o'clock in the forenoon, and
abide by and perform the judgment of our
said court in the premises.

Witness our hand and seal of our said court to be hereunto affixed and
attested by Samuel W. Raymond, our clerk
this 19th day of December 1855
Sam. W. Raymond Clerk
Jas. C. Smith Depy

Endorsed on the back. "Served the within by reading
to Thomas Christy February 22nd 1856 -

For Service & Ret. 60 - Mileage 16 - 80 - \$1.40

Francis Warner Sheriff

by Fletcher Porter Depy.

Filed March 3rd 1856

S. W. Raymond clrk.

1856

Afterswards to wit, on the third day of March,
being one of the days of said Term of said
court the following order was made
and entered of record to wit

Thomas Christy }
37 m } Appeals
Peter Schoonover }

This day comes the plaintiff
of A. W. Coward by his attorney - and defendant by
Bushnell & Gray his attorneys - Whereupon the
plaintiff by his said attorneys enters his
motion to dismiss the appeal herein, which
motion, after hearing the arguments of counsel
is overruled by the Court

Afterswards to wit, on the fifth day of March 1856
being one of the days of said Term of said court
the following order was made and entered
of record to wit.

Thomas Christy }
37 m } Appeals
Peter Schoonover }

This day again comes the
defendant by Bushnell & Gray his attorneys
and enters his motion that the plaintiff be
required to file security for the costs herein

Afterswards to wit, on the sixth day of March 1856
the same being one of the days of said Term
of said court the following proceedings were
had and entered of record to wit.

Thomas Christy

9

vs
Peter Schoonover

} Appeal

This day comes the plaintiff by Coward his attorney, and defendant by Bushnell & Gray his attorneys whereupon come the following jurors of a jury to wit - William L. Dummer, Arch Ford, John Shephard, Benjamin Miller, L. M. Perkins, Thomas M. Mason, William H. Gay, William Battin, George Miller, James Read, Lewis Goodenough and Joseph Mills who are duly elected tried and sworn to well and truly try the issues herein according to the evidence - And after hearing part of the evidence the jurors allowed to separate and come into court tomorrow morning

Afterwards to wit on the seventh day of March 1856 the same being one of the days of said term of said court the following proceedings were had and entered of record to wit -

Thomas Christy

37

vs
Peter Schoonover

} Appeal

This day again come the parties herein by their said attorneys, together with the jury sworn herein - And after hearing the balance of the evidence and arguments of counsel the jury retired to consider of their verdict and after due deliberation

ation thereon had returned into court the following verdict to wit - "We the jury find for the plaintiff and assess his damages at the sum of Eighty one dollars and thirty six cents"

Afterwards to wit. on the 8th day of March 1856 being one of the days of said term of said court the following order was made and entered of record to wit.

Thomas Christy

87 Petis W. Choorman } Appeals

X This day comes the defendant by Bushnell & Gray his attorneys - who enter their motion herein for a new trial which motion is overruled by the Court. to which ruling of the Court the defendant then and there excepted

It is therefore considered by the Court that the plaintiff have and recover of the said defendant the said sum of Eighty one dollars and thirty six cents for his damages and also his cost and charges by him herein expended as well as in the Court below and that he have execution therefor

Thereupon the defendant prays and appeals herein which is allowed on his entering into a bond in the sum of Three Thousand dollars with Jacob Willis as security. And by agreement of parties it is ordered that a bill of exceptions be filed herein within thirty days from the last day of this present term of this Court

Afterwards to wit. on the 7th day of April 1856
An appeal bond was filed with the clerk of
this court which is in the words and
figures following to wit:-

Know all men by these presents. That we,
Peter Schorner and Jacob Miller of the
county of LaSalle and state of Illinois are
held and firmly bound unto Thomas
Christy of the same county and state
in the penal sum of Three Hundred
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
severally, and firmly, by these presents
Witness our hands and seals, this twenty eighth day
of March A.D. 1856

The condition of the above obligation is such, that
whereas the said Thomas Christy did, on the
Eighth day of March A.D. 1856 in the County Court
in and for the county of LaSalle aforesaid receive a
Judgment against the above bounden Peter
Schorner for the sum of Eighty one dollars and
thirty six cents and costs of suit from which judgment
the said Peter Schorner, shall prosecute his appeal
with effect, and shall pay the said judgment
costs interest and damages in case the said judgment
shall be affirmed in the said supreme court, then
the above obligation to be void, otherwise to remain in
full force and effect

Given and entered into before me Peter Schorner

At my Office this 7th day of April A.D. 1856 Jacob Miller

W. W. Raymond Clerk

Forayed and has taken an appeal to the Supreme Court
of the said state - Now if the said Peter Schorner

Afterwards to wit - on the 14th day of April 1856
a bill of exceptions was filed with the clerk
of said court in the following words and
figures to wit -

State of Illinois } County Court thereof
LaSalle County sp. of the March Term A.D. 1856

~~John~~
Thomas Christy

vs
Peter Schorner } Appeals from Justice of the peace

* Be it remembered, that
during the March Term of the said Court
and on a day before the trial of the said cause
the defendant, by his attorneys Bushnell &
Gray, moved the court to enter a rule of
record, requiring the plaintiff to give
security for costs or show cause why the same
should not be required which said motion
was based upon an affidavit, made and
sworn to by the defendant, which affidavit
is in the words and figures following to wit:

*
State of Illinois

LaSalle County } p. Justice Court before Saml. S. Hall

Thomas Christy

vs
Peter Schorner } And now comes the defen-
dant Peter Schorner and
being sworn, says that the plaintiff is this
sint. so far he is informed and verily believes
that he the said plaintiff, has not properly
sufficient to pay the costs of this suit, in case
judgment for costs is rendered by the court

against and that this affiant, as defendant will be compelled to pay, such judgment unless the plaintiff be ruled to file security for costs and this affiant therefore prays the court to compel the plaintiff to file security for costs, as by law required

Subscribed and sworn to before me this 8th day of Nov. 1853

Samuel S. Wall J. P.

And it also appearing to the Court then and there, that a motion was made by the defendant, before the said Justice of the Peace based upon the affidavit above set forth, to compel the plaintiff to give security for costs, before an appearance was made by the parties upon the merits of said cause before the ^{said} Justice of the Peace, as will more fully appear from the transcript of the docket of said Justice in the words and figures following to wit:

Thomas Christy

Peter Schoorman } 1855
Action Assumpsit

The above entitled suit was commenced before Chester Dwyer Esq. and change of venue taken by the defendant and the papers belonging to the suit transmitted to the subscriber on the 30th day of October, as will appear by reference to the transcript from the docket of C. Dwyer Esq.

Oct. 30th the parties to the above suit appeared before me and agreed to continue the suit to

12619-2

Damages
Costs

\$99.00
6.73

Appeal bond filed Nov. 28

Samuel S. Hall, J. P. R.

State of Illinois }
Ladalle County ss.

I, the undersigned a justice of the peace in and for the said county, do certify the above to be a full and complete copy of the proceedings and judgment from my docket in the above entitled cause Dated this 15th day of December 1855

Samuel S. Hall

Justice of the Peace

X And be it further remembered that after the affidavit and transcript above set forth was made to the court by defendant through his counsel, and before the trial of the said cause, the court then and there overruled the said motion for security for cost by plaintiff, to which ruling of the court, the defend by his counsel then and there accepted

And be it further remembered that on the trial of the said cause, the plaintiff to maintain the issues on his part produced as witnesses one John Christy who testified, that the plaintiff worked for defendant that plaintiff commenced work for defendant about the 9th day of March 1855 and worked until about the 9th day of April 1855 at \$15. per month - that on or about the

9th day of April 1855 the plaintiff hired out
to the defendant to work on his farm until
the 1st day of October then next following
that defendant was to give plaintiff for
such labor one some one year old horse
colt - on cross examination witness testified
that about a week or ten days after the con-
tract, that was made on the 9th day
of April the plaintiff and defendant made
another agreement, about the 15th or 17th April
and that after the 1st day of October, the
defendant agreed to immediately com-
mence and haul out and spread the
manure in the yard and under and
around the barn, of defendant, and to haul
out and spread the unstacked straw of
defendant upon defendant's farm and
for all the work that defendant was to
give plaintiff one some colt or horse and
one cow. The cow was to be the pay for hauling
and spreading the manure and straw.

That plaintiff worked for defendant, from
about the 9th day of April 1855 to the 1st day of
October 1855 with the exception of about twenty
seven days in August and September during
which the plaintiff was ill and unable
to labor. I heard some conversation by
plaintiff about his being sick. I think
defendant replied that it would be all
right, this conversation I think was either
at the breakfast or dinner table I do not
remember which. It might have been in the
company - after the plaintiff got well he
worked a number of days to the first of

October and continued to work some days after the first of October on the farm of the defendant and with the knowledge and approbation of the defendant - the plaintiff sometime after the 1st day of October 1855, { I think about the 10th or 15th of the month } offered to go on and work out and finish the number of days which he had lost on account of his sickness - defendant replied, that if the plaintiff would go on and haul out the manure and straw as he had agreed to do he would then allow him, the plaintiff to go on and work out the twenty seven lost days - the plaintiff refused to do so - that the contract between the plaintiff and defendant of which I have spoken was in writing, and was dated on or about the 9th day of April 1855. the day on which it was made by the parties - that a week or ten days after the said contract was made on the 9th day of April the plaintiff and defendant made another contract in writing, that the contract was made jointly by the mother of Silas Mory but she not being able to read it so that it could be understood very well - Schorrer took it and finished the reading of it. Silas Mory was present when the last was made. My best recollection is that nothing was said in first written contract about hauling manure, or the defendant's letting plaintiff have a cow the manure and cow was mentioned in the last contract that the last contract was made a week

X or ten days after the one dated on the 9th day
of April and that plaintiff and defendant
both signed the last contract after it was
read to plaintiff as stated above, I do
not know whether the plaintiff understood
the last contract or not - Plaintiff can not
sign his name, he can barely sign his name
We can read some writing with some diffi-
culty - The last contract was written by Schooner
but was read by the plaintiff - The witnesses and
the plaintiff who is his brother are strangers
here they come from Ohio last spring - and the
plaintiff immediately bind to defendant
they came from Ireland directly to Ohio and
lived in Ohio about one year before coming
here

And be it further remembered, that the
plaintiff then and there produced as a
witness on his part one Wm. B. Angel, who
testified that plaintiff commenced work
for defendant about the 1st of March 1855
and worked until about the 1st day of October
except 27 he lost in sickness in Aug & Sept. of
the same year I was present when Christy
told Schooner that he was willing to
make up the lost time, in work Schooner
said that the days which he Christy had
lost were harvest days and that labor in
harvest when the days were long and business
during them it was then when the days were
short and but little to do - this conversation
from my best recollection was about the 16th day
of October 1855 Christy then said I will
pay you, speaking to Schooner the usual

a man with a great deal more in harvest

as found

1
wages for the time I lost. Schumann said
to Christy you must pay me something
extra, as labor was worth more there than
now Christy replied that he would not pay
anything extra - the labor which plaintiff
performed for defendant was worth from
sixteen to eighteen dollars per month

I was at defendant's house sometime
between the 6th and the middle of October 1855
plaintiff was there also plaintiff asked
defendant for the cult Schumann said
I will not give up the cult - I heard nothing
at this time said by either plaintiff or
defendant, about Christy being allowed
to go on and work out his time in case
he was sick. During the summer my
impression is that I heard something of
this kind during the summer, but can not
tell the time or place, but think it was in
July, and in the corn field cannot be
positive when or where it was. Schumann
offered to arbitrate the difficulty between himself
and Christy - Christy said he would not do
it, or something to that effect

Something was said about the last con-
tract being dated back to the 1st day of
April 1855. My impression now is that
Christy said that he did agree to have
the last contract dated back and to
have the one made first destroyed, this
is my best recollection

The defendant then introduced a wit-
ness on his part Wilson Mung who testi-
fied that he was present at the house of

defendant when the plaintiff and defendant
made a certain written contract

The defendant here showed the witness a
contract in writing, which agreement
was in the words and figures following to wit

April the 1st 1855

An article of an agreement, made and
entered into this day between Peter Schorner
and Thomas Christy and the said Christy
doth agree to work for the said Schorner
faithfully from the day of this date until
the first day of October next, and the
said Christy ~~agrees~~ then agrees to commence
hauling manure by the job as described
the said Schorner agrees to furnish team
and wagon and find feed for the team, the
said Christy agrees to take good care of the
team and board himself and horse
and spread all the manure on Schorner's
farm including that which is under
the barn together with all the old straw
piles on said farm also to help haul all
the last years straw unstacked, all to be
neatly spread and drawn according to
Schorner's direction for which the said
Schorner agrees to give the said Christy
one large sound horse colt, 1 year old in
June next, and one red cow bought
of Silas Mory, with her increase the said
Schorner is to take good care of the same
without further responsibility. it is further
understood the said Schorner is to retain
said stock until said labor is done
Silas Mory

Peter Schorner
Thomas Christy

My testimony Continued

This is the contract which was produced by the parties at the house of defendant, this is my sworn on the contract. I signed the contract at the request of the parties - this contract was made on or about the 17th day of April 1855 the contract was made to plaintiff partly by my mother and finished by the defendant in presence of defendant and his wife this is the identical contract which was made to plaintiff as above - and signed by plaintiff and defendant and by myself as witness - my best judgment is that I have fully understood the contents of the contract - {the contract above set forth was read to the jury}

The defendant then showed another contract to witness Mary - who testified as follows - I saw this contract on the trial before the justice, it was introduced before the justice by the plaintiff. I first saw this contract at the house of defendant it is signed by myself as a witness I first saw the contract on the 9th day of April 1855 the day on which it was made it was signed by both plaintiff and defendant

The contract last spoken of by witness Mary, is in the words and figures following to wit.

April the 9th 1855

Memorandum of an agreement made and entered into this day, between Peter

Schorrner and Thomas Christy, the said
Christy agrees to work for the said Schorrner
from the day of this date faithfully until the
first day of October next for which the
said Schorrner agrees to give the said
Christy this some colt being a horse colt
one year old in the month of June next
the said Schorrner agrees to take good
care of the colt until said labor is per-
formed

in presence of
Silas Mory

Peter Schorrner
Thomas Christy

April 17-1855

Mory's testimony continues:

This contract was
shown at the time the last contract was
made by the parties on the 17th day of April
Schorrner said to Christy "here is the old contract
it is of no use now, take it, do what you
please with it." I believe that Christy under-
stood the contract and knew that it was
dated back to 1st of April - The contract
was made to Christy as being made on the
1st day of April 1855 - I think Christy might
have known how much manure there was
to be hauled for I had dug some holes into
it and showed him the holes I had dug
and the depth of the manure in two or three
places. It was spread over the yard which is
large and was deep in many places where
I did not dig holes - whether plaintiff knew
the quantity of manure there was in the yard
and under and around the barn I do not
know but suppose he did - It was deep

in every place where I did not dig holes
I had contracted with Schooner to haul
out the manure for the same cow. that
chief was to haul for hauling out the manure
chief wanted me to give up the job to him
I at last did give up hauling out the manure
because I had ~~some~~ much work of my
own to do, if I had not been pressed with
business I should have hauled out the
straw and manure

The defendant then examined as a witness
being properly sworn, one Jacob Miller, who
testified as follows

I was at the house of defendant sometime
about the middle of October 1855 the plaintiff
and defendant were then talking together
plaintiff asked defendant to let him
have the calf - defendant said he would
not give up the calf for you agreed to
work for me from the 1st of April to the 1st
of October and then to haul out my
manure & straw and you have not
done either; plaintiff said that he would
never haul out the manure and straw
but would work out the last time or pay the
usual wages for the same if Schooner would
give him the calf - Schooner said he would
not do that but said "if you will haul out
the manure & straw now, before the frost
set in you may then work out your last
time in the short days of winter and I
will give you the calf and cow - Chief
said he would do no such thing - Schooner
then said I will submit our difficulty

to arbitration. Then and two men to whom
we can submit it. Christy said he would
not allow Schmouner decide his matters
Schmouner offend Christy as a team to
haul out the mares - either two yoke of
cattle or four horses and wagon, I am
a preacher or minister of the Gospel
then was another minister present at the
time of this conversation don't know whether
Christy knew or new minister or not

The plaintiff then offered in evidence and pro-
posed to read to the jury the following written
contract which is the same contract
above lastly set forth, in the words and figures
following to wit:

April the 9th 1855

Memorandum of our agreement made and
entered into this day between Peter Schmouner
and Thomas Christy the said Christy agreed
to work for the said Schmouner from the
day of this date faithfully until the first day
of October next for which the said Schmouner
agrees to give the said Christy this sum of
\$100.00 being a horse colt one year old in the
month of June next, the said Schmouner
agrees to take good care of the colt until
said labor is performed

in presence of {
Silas May {

Peter Schmouner
Thomas Christy

And be it further remembered, that the
defendant then and there objected to the
reading of the said last contract in

evidenced to the jury and that the court overruled the objection and allowed the said contract to be read to the jury in evidence to which ruling of the court the said defendant then and there accepted.

The plaintiff then asked the court to give the following instructions.

Instructions asked by plaintiff

1st If the jury believe from the testimony that the contract made on the 9th April 1855 - was the contract under which the work was done from 9th April to the 1st October 1855 and Schooner refused to let the plff. make up his last term by work he had a right to abandon the contract and sue defendant in an action of assumpsit for his work, and recover what his work was worth.

Qualification to plff. 1st instruction asked by deft.

But Schooner was not bound to accept of an offer on the part of Christy in this behalf which would not in fact make Schooner whole for ~~that~~ the last term.

The plaintiff asked the following qualification to be given with the defendants.

"Unless Schooner had waived the breach by accepting his work after he got well it amounted to a waiver of the breach."

2nd If the jury believe from the evidence and the two contracts taken together that the 2nd contract was obtained by Schooner by deception false representations, or such other means

as voided and decided the plaintiff such contract is void and the plaintiff had a right to ~~recover~~ recover the value of his labor in an action of Assumpsit

3^d If the jury believe from the evidence that Schorner employed the plaintiff on his farm to work, after he got up from his sickness and before the 1st of October 1855 it was a waiver of his claim to rescind the contract in consequence of the sickness of plaintiff, and by refusing to receive his work after the 1st of October to make good his lost time and refusing also twenty seven dollars and fifty cents, in view thereof was such an act as would authorize the jury to consider the contract as broken on the part of Schorner for which the plaintiff had a right to recover the value of his services

4th If the jury believe from the testimony that plaintiff was prevented from fulfilling the contract by Schorner they have a right to find for the plaintiff what his work was reasonably worth

5th If the jury believe from the testimony and the two contracts that both Schorner and plaintiff understood the contract that the work done between the 1st of April and 1st of October was for the cut - and that the mowing and spreading the manure and straw was to be done after the first day of October

1855 that the refusal of Schorner to receive the labor when tendered to him by Christy to make good his lost time or its equivalent in money was such a violation of the contract on the part of Schorner as entitles the plaintiff to receive what his labor was worth

Refused
6th The jury have a right to give such a construction to the two written contracts in connection with the testimony in the case as will best carry out the intentions of the parties as they understood them. And if from such construction they believe that Christy complied with his contract by his labor and on offer to make up his lost time, and that afterwards refused the jury have a right to consider the contract as violated on the part of Schorner and to find for Christy what his work was worth

Refused
7th The jury have a right to consider whether any lost time by sickness under the contract, between the parties is a breach of the contract, when taken in connection with the testimony in the case and if they believe that the witness of plaintiff was not considered by Schorner or treated by him after the 1st of October as a violation of the contract they have a right to give the same construction to the contract as the parties did, and thus carry out the real intentions of the parties

8th If the jury believe from the evidence, that Schorner fraudulently & deceitfully procured

J.
M.
W.

on Christy to execute the contract dated April 1st then the said contract would be void and if the jury believe that the contract for the cult dated April 9th was not rescinded by the parties and Schorran allowed Christy to go on and work under the same after he got well and did not treat the contract as forfeited and refuse to allow him to work under the same, but allowed him to work for a considerable time, then Schorran could not afterwards treat the said contract as forfeited.

J.
M.
W.

8th If the jury believe from the evidence that Schorran waived the non performance of the contract by reason of sickness of Christy and allowed him to work under the same after he got well, and did not notify Christy that he should consider and treat the contract as forfeited, then Christy had a right to go on and complete the said contract - if the jury find that said contract was good and binding on the parties.

Qualification to Plff.'s 9th instruction offered by defendant
But Schorran had a right to insist upon the performance of the entire contract, and even although Schorran did permit Christy to work on the farming part of the contract if the jury find the contract of April 1st to be ~~valid~~ valid - After Christy got well for several days yet this would not be a waiver on the part of Schorran if the jury believe from the evidence that Christy afterwards

refused to go on and carry out the mow and straw according to the contract if the jury find that second contract was a substitute for the first contract.

This last qualification by oversight was not marked in the margin either "Given" or "Refused" it was however read to the jury by the Court and by the Court it was stated, to the jury, that it was given in connection with the plaintiffs ninth instruction.

The defendant offered the following instructions

1st If the Jury believe from the evidence that Christy contracted to work for Schremon from the 1st April to the 1st October and then to haul out and spread the mow and straw for which labor Schremon was to give Christy a seed colt and a red cow - this is in law an entire contract and cannot be apportioned, and if the jury believe from the evidence that Christy quit work and left without having spread the mow and straw according to agreement and without the fault of Schremon, then Christy in law is not entitled to recover anything for the work which he had done under the contract.

2^d The sickness of Christy is no excuse in law for the non performance of the labor on his part he was bound by the contract to perform the work himself or have it done by others

in the absence of an agreement in contract itself that sickness was to be an excuse for nonperformance - Any tender by Christy to perform after the time elapsed was unavailable as Schoonover was not bound to accept

3rd If the jury believe from the evidence that the written contract offered in evidence called by counsel the previous contract was intended by this party to be a substitute for the prior contract called by counsel the old contract then this contract could be merged in the other

4th If the jury believe that the witness John Christy wilfully and knowingly testified falsely in regard to one material fact in issue then the jury may disregard his evidence entirely

5th If the jury believe from the evidence that the contract offered in evidence by the defendant Schoonover was made to Christy and that Christy signed the same knowing its contents then Christy is by law bound to comply with the terms of the contract, however severe and onerous the contract may be unless the jury also believe that Schoonover was guilty of fraud and wilful misrepresentation in the premises and an expression of opinion or judgment as to the subject matter of the contract by Schoonover to Christy would amount to such fraud

6th If the jury believe that Christy consented to revive the first contract and signed the

Christy

second contract running its course, then Christy is bound in law by the last contract though it was dated back to the 1st day of April if the jury believe that Christy consented to its being ante dated if the jury believe that said contract was not fraudulent

Plaintiff

x

7th If the jury believe from the evidence that the plaintiff Christy agreed to draw out and spend upon the land of Schromm for a certain amount of money or property, a certain amount of masonry, Christy is bound by law to haul out and spend such masonry in the manner he contracted to do, though the value of hauling said masonry may in fact be worth three or five times the amount, which Christy contracted to do the same for unless the jury believe that Schromm deceived & defrauded said Christy in the making of such contract

The court gave the first, second, third fourth, fifth and sixth instructions asked for by the defendant but refused to give the seventh instruction asked by defendant - to the refusing of which said seventh instruction by the court the defendant then and then by his counsel excepted

Primes to this course being submitted to the jury the above instructions on the part of the plaintiff and also on the part of the defendant were handed to the court - the plaintiff's instructions were examined by the

defendants counsel who submitted a qualification to the plaintiffs first instruction also a qualification to the plaintiffs ninth instruction - The plaintiff then submitted a qualification to the ~~plaintiffs~~^{defendants} qualification to the first instruction - The counsel for the defendant then said that they had no objections to the plaintiffs instruction with the qualification which was then given - being the first - second - fourth - eighth & ninth After the instructions both on the part of the plaintiff and defendant had been read by the court to the jury and "Given" or "Refused" as above stated and as the jury was about to retire the plaintiff by his counsel excepted to the giving of all the instructions and qualifications given on the part of the defendant (except the seventh instruction which was refused) which exception was overruled by the court - to the moving for which the plaintiff by his counsel excepted - The defendant then by his counsel excepted to the giving of all the instructions and qualifications which were given as above stated on the part of the plaintiff which exception was overruled by the court - To the overruling for which the counsel for the defendant then excepted

The jury found a verdict in favor of the plaintiff and thereupon the defendant moved for a new trial, the court then and there overruled the said motion of defendant for a new trial and to the decision of the court in overruling said motion the defendant then and there excepted and prayed the Court to sign

and seal this his bill of exceptions which
is shown as of the said March Term in open
Court

W. S. Cotton *lllllll*
lllllll
lllllll

State of Illinois
Kasalle County
I, J. Samuel W. Raymond
Clerk of the Court of said county,
do hereby certify the above and foregoing
to be a true, correct, full and complete
~~and~~ copy of the record and proceedings
in the cause wherein Thomas Christy
is plaintiff and Peter Schommer is defen-
dant in said County

I as witness whereof I have here-
unto set my hand and affixed
the seal of said Court at Ottawa
this 28th day of May A.D. 1856

J. Samuel W. Raymond Clerk
J. M. McKibbin

Let a supersedeas issue upon the writs
being bond as usual in the penal sum
of three hundred dollars with St Bushnell
Surety

July 22. 1856

J. S. Cotton

State of Illinois Supreme Court 3rd J
LaSalle County } April Term AD 1857

Peter Schoonover }
as } Assignment of Error
Thomas Christy }

1st The Court erred in in
not requiring P^lff to file security for costs

2nd The Court erred in giving P^lff instructions

3rd The Court erred in refusing V^lff instructions
- as asked -

4th The Court erred in allowing the jury
to separate during the trial without
the consent of the parties, -

5th The Court erred in permitting Plaintiff
to read the contract in evidence
to the jury dated on the 9th day
April 1853, - and called the second contract
6th

The Court erred in overruling motion for
a New Trial -

7th

The action of Assumpsit was improperly
instituted - The action commenced should
have been in Deceit or Replevin, and
the Court erred in rendering judgment
in Assumpsit.

8 The verdict is manifestly against the
evidence in the case, and the Court Erred
in not setting the verdict aside -

9^d

Supreme Court

~~John Behan~~

vs
Thomas Christy

23-

Case of Error?

Filed Apr 30, 1857

Loisland
Clerk

Bushnell & Sons

For App'g Error

Reversed
for Error

Peter Schoonover { Supreme Court
vs Error { 3d Grand Division
Thomas Christie { April Term 1858

The Defendant in Error comes and
says that there is no error in the
judgment and proceedings of the Court
below in this case as complained of by
Plaintiff in Error.

A W. Caworth atty
for Defendant
in Error

Peter Schoonover
by {
Thomas Christie
~~Allegan~~ toftory
+ finder

Filed May 21 1888
Leland
Clark

STATE OF ILLINOIS,
Supreme Court,

ss.

The People of the State of Illinois,

To the Sheriff of the County of La Salle — Greeting:

BECAUSE in the record and proceedings, and also in the rendition of the judgment of a plea which was in the ~~court~~ ^{County} of La Salle — county, before the Judge thereof, between *Thomas Christy* Plaintiff and *Peter Schoonover*

defendant, it is said that manifest error hath intervened, to the injury of the said *Peter Schoonover*

as we are informed by *his* complaint, the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the state of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county, you give notice to the said *Thomas Christy*

that *he* be and appear before the Justices of our said Supreme Court, at the next term of said court, to be holden at Ottawa, in said state, on the *Second* Monday in *June* next, to hear the records and proceedings aforesaid, and the errors assigned, if *he* shall see fit; and further to do and receive what said court shall order in this behalf; and have you then there the names of those by whom you shall give the said *Thomas Christy*

notice, together with this writ.

WITNESS, the Hon. *Walter B. Scates*
Samuel H. Treat, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this *11th* day of *August* in the Year of Our Lord One Thousand Eight Hundred and Fifty *six*

L. Leland
Clerk of the Supreme Court.
By *J. B. Rice* Deputy

(Faint handwritten notes, possibly bleed-through from the reverse side)

Peter Schoonover
31 vs
Thomas Christy
Scire Ricard

Executed this writ by
Reading the same to
Merrill B. Carter & George
Christy September 6th
1856 & warned him
by Ed. Burdette
juror at \$60
15 miles — 75
\$18.50
Filed Nov 25 - 1856
J. Leland

[illegible]

1. The first condition is that the system must be in a state of equilibrium. This is a necessary condition for the system to be in a state of equilibrium.

1870

Peter Schouvoer
31 vs
Thomas Christy

Transcript of Record

Filed August 11, 1856,
L. Leland
Clerk

Know all men by these presents, that we Peter Schoonover and W Bushnell of La Salle County and State of Illinois are held and firmly bound unto Thomas Christy of the same place in the penal sum of three hundred dollars, to the payment of which well and truly to be made we do by these presents jointly and severally bind ourselves our heirs Executors and Administrators -
Sealed with our seals and dated this 21st day of July AD 1856

The condition of the above obligation is such that whereas the said Peter Schoonover has obtained, an allowance of a writ of error upon a certain judgment rendered in the County Court, held in and for said County of La Salle at the March term thereof AD 1856 in favor of Thomas Christy and against Peter Schoonover for the sum eighty one dollars and thirty six cents damages and costs of writ in that behalf.

Now if the said Schoonover shall pay the condemnation money and costs, in case the said judgment of said Court shall be affirmed by the Supreme Court in whole or in part, then the above obligation shall be void otherwise to be in full force & effect -

Peter Schoonover ^{Seal}
W Bushnell ^{Seal}

Christy
vs
Schoonau

Bond —

Filed August 11, 1858
L. Seland
Clerk

STATE OF ILLINOIS,

Supreme Court,

ss.

The People of the State of Illinois,

To the Clerk of the ^{Circuit} Court for the county of *LaSalle* Greeting:

BECAUSE in the record and proceedings, as also in the rendition of the judgment of a plea which was in the ^{Circuit} court of *LaSalle* county, before the Judge thereof, between *Thomas Christy*

plaintiff, and *Peter Schoonover*

defendant it is said manifest error hath intervened, to the injury of the aforesaid *Schoonover*

as we are informed by *his* complaint, and we being willing that error, should be corrected if any there be in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint, aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the county of *La Salle*, on the *second Monday* in *June* next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law;

WITNESS, the Hon. ~~Walter B. Treat~~ **SAMUEL H. TREAT**, Chief Justice

of our said Court, and the Seal thereof, at Ottawa, this *11th* day of *August* in the Year of Our Lord One Thousand Eight Hundred and Fifty-Six

[12-19-23]

L. Leland
Clerk of the Supreme Court.

By *J. B. Rice* Deputy

Peter Schoonover

vs
Thomas Christy
Writ of Error

This Writ of Error
is to operate as a
Superseas and
as such is to be
obeyed by all
concerned.

L. Leland
Clerk

By J. B. Rice
Deputy

Filed August 11.
1858

L. Leland
Clerk



State of Illinois---Supreme Court, 3d G. D.

PETER SCHOONOVER, }
vs. } ERROR TO LA SALLE.
THOMAS CHRISTY, }

ABSTRACT.

This is an action of assumpsit, commenced before a justice of the peace, and appealed to the La Salle County Court, and tried before Cotton, Judge. On the trial before the magistrate, the defendant Schoonover moved that plaintiff be ordered to give security for costs, which motion was based upon the affidavit in usual form, which the magistrate refused to grant.

In the county court, pending the appeal, the defendant renewed his motion for security for costs, based upon affidavit, which the court overruled. To which ruling of the court the defendant Schoonover then and there excepted. The jury were allowed to separate during the trial, without the consent of parties. The plaintiff on the trial, introduced testimony tending to show, that plaintiff commenced to work on defendant's farm about the 9th day of March, 1855, and so continued to work until about the 9th day of April, 1855; that on or about the 9th day of April, 1855, plaintiff agreed to work for defendant until the 1st day of October, 1855. That defendant was to give plaintiff for such labor, one sorrel horse or mare. That after the contract made on the 9th day of April, the plaintiff and defendant made a written contract or agreement, in which plaintiff agreed to work for defendant from the 1st day of April, to the 1st day of October, 1855, and immediately after said 1st day of October, to commence hauling straw and manure for defendant, and to spread the same upon defendant's farm. That plaintiff was to haul and spread all the straw and manure around defendant's barn, and continue to haul and spread the same until it was finished. That for said work and labor, the defendant was to give plaintiff one sorrel horse and one red cow. That plaintiff continued to work for defendant until about the 15th, day of July, when plaintiff was taken ill and remained idle for about twenty seven days. That after plaintiff recovered his health, he again commenced work for defendant, with the approbation of the defendant, and worked until about the 1st of October. That on or about the 10th day of October, the plaintiff offered to go on and work the number of days he had lost during his sickness. The defendant replied, that if the plaintiff would go on and haul out the manure and straw, that he then might work the number of days he had lost by sickness; this the plaintiff absolutely refused to do. One Morey was present, when the agreement was made by the parties.— It was partly read by Morey to plaintiff, and on account of its being badly written, the defendant who first wrote the agreement, finished reading it to plaintiff. Nothing was said in first contract about hauling manure, or straw, or defendant letting the plaintiff have a cow. The last agreement was made eight or ten days after first contract. That plaintiff and defendant both signed the agreement, after it was read to the plaintiff. Plaintiff can read writing with difficulty. That Christy the plaintiff, said to Schoonover the defendant, that he would pay the usual wages to Schoonover for the time which he, Christy had lost.— That defendant told plaintiff, he must pay him something extra, as labor was worth more then, it being harvest, than now, the days being short.. That

plaintiff Christy, said he would not pay any anything extra. That the work of plaintiff was worth sixteen or eighteen dollars per month. That nothing was said about Christy being allowed to work out his time, in case he was taken sick; heard something of this nature, but cannot tell where; think it was in July. That something was said about dating the last agreement back to April 1st; That Christy agreed to the same, and that the first contract was to be destroyed.

The defendant then offered in testimony a written agreement, signed by plaintiff, and defendant, and proved the execution of the same, by one Silas Morey, who testified that he was present, when the agreement was executed, by the parties; that both plaintiff and defendant signed the same, which agreement is in the words and figures following, to wit:

April the 1st 1855.

An article of agreement, made and entered into this day, between Peter Schoonover, and Thomas Christy. The said Christy doth agree to work for the said Schoonover, faithfully, from the day of this date, until the first day of October next, and the said Christy then agrees, to commence hauling manure by the job, as described. The said Schoonover agrees to furnish team and wagon, and find feed for the team; the said Christy agrees to take good care of the team, and board himself and haul, and spread all the manure on Schoonover's farm including that which is under the barn, together with all the old straw piles on said farm, also to help haul all the last years straw unstacked, all to be neatly spread, and drawn according to Schoonover's direction, for which the said Schoonover agrees to give the said Christy, one large sorrel horse colt, 1 year old in June next, and one red cow, bought of Silas Morey, with her increase. The said Schoonover, is to take good care of the same, without further responsibility. It is further understood the said Schoonover is to retain said stock, until said labor is done.

SILAS MOREY.

PETER SCHOONOVER,
THOMAS CHRISTY.

That said Morey signed the contract at the request of the parties, as a witness; That said contract was made on or about the 17th day of April, 1855.— The said agreement was read to plaintiff, and I think was fully understood by him. The said contract was then read to the jury.

The defendant then showed another contract to witness Morey, who testified that he had seen the agreement before. Saw it on the 9th day of April, 1855, the day on which it was made. It was signed by plaintiff and defendant. Said agreement is in the words and figures as follows, to wit:

April the 9th, 1855.

Memorandum of an agreement made and entered into this day, between Peter Schoonover, and Thomas Christy. The said Christy agrees to work for the said Schoonover, from this date, faithfully until the first day of October next, for which the said Schoonover agrees to give the said Christy, the sorrel colt, being a horse colt one year old in the month of June next, the said Schoonover agrees to take good care of of the colt until said labor is performed.

In presence of
SILAS MOREY.

PETER SCHOONOVER,
THOMAS CHRISTY.

That the parties had this contract on the 17th day of April, when the first contract above mentioned was made. That Schoonover said here is the old contract, it is of no use now, take it, do what you please with it; that Christy knew that the first contract was dated back to April, it was read to Christy as being made on the 1st day of April. That Christy must have known how much manure there was on defendant's farm, to be removed. I pointed out to

plaintiff, places where I had dug through the manure and showed him the depth of manure. It was deep in many places. I had agreed with defendant to haul out the manure for the same cow, Christy wanted me to give up the job to him. I at last done so. I should have hauled out the manure and straw, had I not been pressed with business.

The defendant then offered further proof tending to show, that plaintiff requested defendant to give up the colt to him, but that defendant refused to surrender the colt, saying to the plaintiff, that he agreed to work for him until 1st, of October, and then to haul out straw and manure, and that neither had been done by plaintiff; that plaintiff said he would never haul out the manure and straw, but would work out the lost time or pay the usual wages; defendant said he would not do that, but if plaintiff would haul out manure before the frost came, he would then let plaintiff work out lost time, and give him colt and cow, and offered plaintiff two yoke of oxen, or two span of horses to haul out the manure.

The above is the substance of the evidence introduced on the trial.

The plaintiff then offered in evidence the agreement last above set forth.— To which the defendant then and there objected; which objection was then and there by the court overruled, and plaintiff allowed to read the same to the jury. To which ruling of the court the defendant then and there excepted.

The court then instructed the jury on the part of the plaintiff as follows :

1. If the jury believe from the testimony, that the contract made on the 9th day of April, 1855; was the contract under which the work was done from the 9th day of April, to the 1st day of October 1855, and Schoonover refused to let plaintiff make up his lost time by work, he had a right to abandon the contract and sue the defendant in an action of assumpsit for his work, and recover what his work was worth.

Qualification to Plaintiff's 1st Instruction.

But Schoonover was not bound to accept of an offer on the part of Christy, in this behalf, which would not in fact, make Schoonover whole for the lost time.

Qualification to defendant's qualification to plaintiff's 1st instruction, asked by plaintiff.

Unless Schoonover had waived the breach by accepting his work after he got well, it amounts to a waiver of the breach.

2. If the jury believe from the evidence and the two contracts, taken together that the 2nd contract was obtained by Schoonover, by deception, false representation, or such other means as misled and deceived the plaintiff, such contract is void, and the plaintiff had a right to recover the value of his labor in an action of assumpsit.

4. If the jury believe from the testimony, that Christy was prevented from fulfilling the contract by Schoonover, they have a right to find for the plaintiff, what his work was reasonably worth.

9. If the jury believe from the evidence that Schoonover fraudulently and deceitfully prevailed on Christy to execute the contract, dated April 1st, then the said contract would be void; and if the jury believe that the contract for the colt, dated April 9th, was not rescinded by the parties, and Schoonover allowed Christy to go on and work under the same, after he got well, and did not treat the contract as forfeited, and refused to allow him to work under the same, but allowed him to work for a considerable time; then Schoonover could not afterwards treat the said contract as forfeited.

10. If the jury believe from the evidence that Schoonover, waived the non performance of the contract by reason of sickness of Christy, and allowed him to work under the same, after he got well, and did not notify Christy that he

should consider and treat the contract as forfeited, then Christy had a right to go on and complete the said contract; if the jury find that said contract was good and binding on the parties.

Qualification to plaintiff's 10th instruction offered by defendant.

But Schoonover had a right to insist upon the performance of the entire contract, and even although Schoonover did permit Christy to work on the farming part of the contract; if the jury find the contract of April 1st, to be valid after Christy got well, for several days; yet this would not be a waiver on the part of Schoonover; if the jury believe from the evidence that Christy afterwards refused to go on and carry out the manure and straw, according to the contract; if the jury find that second contract was a substitute for the first contract.

Instructions for defendant.

1. If the jury believe from the evidence that Christy contracted to work for Schoonover from the 1st day of April, to the 1st day of October, and then to haul out and spread the manure and straw, for which labor Schoonover was to give Christy a sorrel colt, and a red cow; this is in law, an entire contract, and cannot be apportioned, and if the jury believe from the evidence; that Christy quit work and left without having spread the manure and straw according to agreement, and without the fault of Schoonover; then Christy in law, is not entitled to recover anything for the work which he had done under the contract.

2. The sickness of Christy is no excuse in law for the non performance of the labor on his part; he was bound by the contract, to perform the work himself or have it done by others, in the absence of an agreement in the contract itself; that sickness was to be an excuse for performance; any tender by Christy to perform after the time elapsed, was unavailing, as Schoonover was not bound to accept.

7. If the jury believe from the evidence that the plaintiff Christy, agreed to draw out and spread upon the land of Schoonover, for a certain amount of money or property a certain amount of manure; Christy is bound by law to haul and spread such manure in the manner he contracted to do, though the value of hauling said manure may in fact be worth three or five times the amount which Christy contracted to do the same for, unless the jury believe that Schoonover deceived and defrauded said Christy in the making of such contract.

The defendant objected to all of plaintiff's instructions. The Court overruled the objection. To which ruling the defendant then and there excepted.

The court gave the defendant's instructions save the seventh, which was refused; to which refusal the defendant then and there excepted.

The jury found a verdict for plaintiff, and thereupon defendant moved for a new trial. The court overruled the motion; to which ruling of the court, the defendant then and there excepted.

BUSHNELL & GRAY, for Pl'ff in Error.

A. W. CAVARLY, for Df't in Error.

⁶⁵
Supreme Court
Abstract 31-124

Peter Schronover
vs

Thomas Christy

1267

Filed April 20, 1837

Leahland

Clout

✓

Bushnell & Co
Plffs in
Error