

13220

No. _____

Supreme Court of Illinois

Forman

vs.

Reeves

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STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 231.

Forman

vs

Reeves

1861

13220

Repealed

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Pleas, before the Honorable George Manierre Judge of the Seventh Judicial Circuit of the State of Illinois, and Sole Presiding Judge of the Circuit Court of Cook County, in the State aforesaid, and at a term thereof begun and held at the Court House in the City of Chicago, in said County, on the second Monday, (being the Ninth day) of April in the year of our Lord one thousand eight hundred and eighty and of the Independence of the said United States the eighty-fourth.

Present, Honorable George Manierre Judge of the 7th Judicial Circuit of the State of Illinois.

Charles Haven States Attorney.

John Gray Sheriff of Cook County.

Attest, William L. Church Clerk.

Be it remembered that heretofore, to wit: on the Eighteenth day of October A D 1858. John S. Forman Plaintiff, by Messrs Waller and Caulfield his attorneys, filed in the office of the court aforesaid. his certain bond for costs, in the words and figures, following, to wit:

Bond for Costs.
John S. Forman

Abner Reeves } Circuit Court of Cook County.
In Covenant,

I do hereby enter myself security for costs in this cause, and acknowledge myself bound to pay or cause to be paid, all costs which may accrue in this action, either to the opposite party or to any of the officers of this court in pursuance with the laws of this State. - Dated this Eighteenth day of October A D 1858. W. Waller

And afterwards, to wit: on the fifth day of November, in the year last aforesaid, said plaintiff, by his aforesaid Attorney, filed his certain Declaration in said Court, in the words and figures following, to wit:

Declaration,

State of Illinois, Circuit Court of Cook County,
Cook County }³⁵ November Term 1858,

John S. Forman the plaintiff complains of Abner Reeves the Defendant of a plea of breach of contract. For that whereas on the eighth day of August A D 1856 by Deed of that date the said Defendant sold to the plaintiff Lot sixteen (16) in the subdivision of B. E. Morris and others of the South West quarter of section Eighteen, Township thirty nine (39), Range (14) East of the third P.M. situate in said City and County for the sum of six thousand Dollars cash, and by a certain article of agreement made and entered into at the same time, and between the plaintiff and defendant bearing date the day and year aforesaid, signed with their hands, and sealed with their seals, one part of which is here shown to the Court, it was agreed and covenanted and guaranteed by said Reeves, that said Forman should be fully reimbursed out of the sale of said land in the amount of six thousand dollars to be paid by him as aforesaid. To said Reeves in purchase of said lands, with twelve per cent interest per annum advance in value on said land, after payment of and exclusion of all expenses, taxes

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and assessments within two years from the date of said agreement. The consideration of which obligation and guarantee on the part of said Reeves was the purchase of said land, said six thousand Dollars so paid by said plaintiff for said land and other consideration stated in said contract and hereafter shown herein, and in consideration of said guarantee and covenant by the defendant the said plaintiff agreed and bound himself to divide and share equally with said Defendant, any and all profits that might be made on the sale of said land over and above twenty per cent advance per annum after payment of all expenses incident to the sale thereof including taxes and necessary improvements. It was further stipulated and agreed by said articles that said Defendant should have the power to sell said land at any time within said two years and if not sold within twelve months from the date of said articles then said Forman should have the privilege of selling and said Reeves of purchasing at said Forman's price, and the said plaintiff in fact saith that he has not been fully reimbursed out of the sale of said land in the said amount of six thousand Dollars with twelve per cent interest per annum advance in the value of said land after payment of and exclusion of all expenses, taxes and assessments within two years from said date or

That during said two years plaintiff
has paid taxes assessments &c on said
land to the amount of \$500.

at any other time and that said land has not been
sold since the date of said sale and of said Deed
and articles of agreement, but the title thereof ^{remains}
yet in said Plaintiff upon the record that
he the said plaintiff on the day 1858 and
after said two years had fully expired made executed
acknowledged and tendered to said Revere a good
and proper Deed for said land and demanded
of him said Revere that he reimburse him
pursuant to the aforesaid agreement, but the
said Revere wholly neglected and refused so to
do and therein failed and made default, and
the aforesaid sum of money with said 12 per
cent per annum, the money so paid to him for
taxes &c assessment &c in said land and every
part thereof still remains due and unpaid to
the said plaintiff contrary to the tenor and effect
of said articles of agreement and of the said
Covenant & of ~~by him~~ made the said defendant
in that behalf made as aforesaid. And so the
said plaintiff in fact saith, that the said
Defendant (although often requested so to do) hath
not kept the said Covenant so by him made
as aforesaid, but hath broken the same, and to
keep the said Covenant so by him made with
said plaintiff hath hitherto wholly neglected
and refused, and still doth neglect and refuse
to the damage of the said plaintiff of \$10,000 therefore
he sues. Mallett & Caulfield Plaintiffs Attorneys.

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And afterwards, to wit: on the sixteenth day of November A D 1858, said Defendant by Sherman and Hoales his Attorney, filed his certain Demurres to the said plaintiffs Declaration, in the words and figures, following, to wit:

Demurres

Abner Reeves Circuit Court of Cook County,
advs } Of the November term A D 1858
John S. Forman }

And the said Defendant by Sherman and Hoales his Attorney comes and defends the wrong and injury when he, and says the said Declaration and the matters therein contained in manner and form as the same are above stated and set forth, are not sufficient in law for the said plaintiff to have or maintain his aforesaid action thereof against the said Defendant, and he the said Defendant is not bound by law to answer the same. And this he is ready to verify, wherefore by reason of the insufficiency of the said Declaration in this behalf, the said Defendant prays judgment, and that the said plaintiff may be barred from having or maintaining his aforesaid action thereof against him &c.

Sherman & Hoales

Deft. Attys

And afterwards, to wit: at the October term of said Court, to wit: on the twenty sixth day of October ^{A D 1858} the following among other proceedings

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in said Court, were had and entered of record in
said cause, to wit:

John S. Foreman

Abner Reeves

(A)

} Covenant

This day come the parties by
their counsel, and the Court having heard counsel on
the Demurrer of the Defendant to the plaintiffs
Declaration in said cause, as well in support
thereof, as in opposition thereto, and being fully ad-
vised of and concerning the premises, doth find
that said plaintiffs Declaration is sufficient in
law for him to have and maintain his aforesaid
action against the said Defendant. Therefore it
is ordered that said demurrer be and the same is
hereby overruled. Whereupon on motion it is ordered
that Defendant have leave to plead specially
herein within ten days.

And afterwards, to wit: on the fourth day of
April, A.D. 1860, the said Defendant by his
aforesaid Attorneys, filed his certain Pleas to
the plaintiffs Declaration, which are in the
words and figures, following, to wit:

Pleas.

Abner Reeves

ads

John S. Foreman

} Circuit Court Cook County
Of the February Term A.D. 1860.

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1 And the said Defendant by Sherman and Hales his Attorneys. comes and defends the wrong and injury when &c. and say that the supposed instrument of writing is not his Deed. and of this the said Defendant put himself upon the country &c.

2 And for a further plea in this behalf the said Defendant saith that the said plaintiff ought not have or maintain his aforesaid action thereof against him. because he says, that he the said Defendant in and by the supposed instrument bound himself, and guaranteed that the said plaintiff should be fully reimbursed out of a sale of the said premises in said writing and in said Declaration described. in the amount of six thousand Dollars so paid by him said plaintiff to said Defendant for said premises and with twelve per cent per annum advance in value thereon after payment and exclusive of all expenses taxes and assessments thereon within two years from the date of the said articles of agreement that is to say within two years from the said Eighth day of August A D 1856. And the said Defendant alleges that on the day and year last aforesaid he conveyed the said premises to the said plaintiff by a good and sufficient Deed of Conveyance bearing date the day and year last aforesaid. and that the title to said premises then and there became

vested in said plaintiff and so continued to remain and be in him for and during the whole of the said two years from and after the said Eighth day of August A D 1856. And the said Defendant alleges that he was during the said two years, and at the times when reading and willing to keep his said guaranty, that said plaintiff should out of a sale of said premises be reimbursed within said two years in manner and form and to the sum of money in said instrument of writing specified. But the said Defendant in fact says that said Forman did not sell the said premises or cause the same to be sold within the said two years, nor were the same sold by this Defendant after said sale to said plaintiff and within said two years or at any time afterwards. by reason whereof no right to hold the said Defendant on his said covenant of guaranty hath accrued to the said plaintiff, and thus the said Defendant is ready to verify &c.

3 And the said Defendant for further plea in this behalf saith actio non. because he says that if said plaintiff has been damaged for or by reason or means on account of any matter cause or thing in the said Declaration or in said articles of agreement mentioned. he

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said plaintiff has been so damaged of his own wrong, and by and through his own means and default, and this the said Defendant is ready to verify &c.

4 And the said Defendant for further plea in this behalf saith actio non, because he says that the said plaintiff hath not, at any time since the making of the said supposed articles of agreement and the said covenant of guaranty therein contained hitherto in anywise been damaged by reason or means of any matter cause or thing in the said covenant in the said articles of agreement mentioned, And this the said Defendant is ready to verify &c.

5 And the said Defendant for further plea in this behalf saith actio non because he says that at the expiration of the said two years within which he the said Defendant guaranteed that said plaintiff should be reimbursed in manner and form as is alleged in said Declaration and as is specified in said articles of agreement, he the said plaintiff had no interest or right of in ~~and~~ to the said premises in said articles of agreement described, whereof the said Defendant then and there, to wit at the County

aforesaid had notice, nor had he the said plain-
 tiff any right or interest in said premises long
 prior to the expiration of said two years, to wit:
 on the 6th day of July 1858, but had parted
 with the same, and so the said Defendant alleg-
 es he was prevented by said plaintiff from
 making sale of said premises after the said
 plaintiff ceased to have any right or interest there-
 in as aforesaid, and within said two years,
 And thus the said Defendant is ready to
 verify

Sherman and Keales
 Defts Attys.

And afterwards, to wit: on the fourth day of
 April A D 1860, the said plaintiff by his afore-
 said Attorney, filed his certain Demurrer and
 Replication to the Defendants Pleas, which are
 in the words and figures following, to wit:
Demurrer and Replication

John S. Forman } Circuit Court of Cook County
 March term 1860.

1 And the said plaintiff by
 Challer and Caulfield his attys. as to the first plea
 of the said defendant above pleaded whereby he
 puts himself upon the country, doth the like.

2 And the said plaintiff as to the third plea
 of the said Defendant says that he should not

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be precluded by anything in said plea set forth because he says that he has not been damaged as in said plea set forth by his own wrong or by and through any means or default of his but solely through the wrong means and default of said Defendant and of this he puts himself upon the country. And deft doth the like.

3 And the said plaintiff as to the fourth plea of the said Defendant says he ought not to be barred by anything in said plea set forth because he says that he has been damaged by the failure of said Defendant to keep and perform the guaranty and agreement in said covenant contained and in the manner set forth in plaintiffs Declaration. and of this he puts himself upon the country.

And Deft doth the like.

Sherman & Hoales Deft attys.

4 And the said plaintiff as to the fifth plea of said Defendant says he ought not to be barred or precluded by anything therein set forth because he says that from the making of said Covenant and article of agreement with the Defendant to the present time no change whatever has taken place

by which to diminish or extinguish his rights under said article of agreement and that from that time to present, he has not parted with the interest he acquired in said land or with the rights he acquired under said Covenant and articles of agreement, that he now has and possesses all the rights in and to said land and by and under said articles of agreement which he originally had and obtained from said Defendant, and the said plaintiff denies that said Defendant was prevented by the plaintiff from making sale of said premises by means of the plaintiff having ceased to have any right or interest therein as in said plea set forth and of this the plaintiff puts himself upon the Country, & the said Defendant doth the like.

5th And the said plaintiff as to the said plea of the said Defendant by him secondly above pleaded, saith that the same and the matters therein contained in manner and form as above pleaded are not sufficient in law to bar or preclude him from having and maintaining his said action thereof against said Defendant, and that he the said plaintiff is not bound by law to answer the same, and this the said plaintiff is ready

to verify. wherefore by reason of the insufficiency of the said plea in this behalf the said Plaintiff prays Judgment and his damages by reason of the not performing of the said several promises and undertakings in said Declaration mentioned to be adjudged to him &c

Waller Ed Caulfield
Atty for Plaintiff

And afterwards, to wit: on the twenty third day of May A D 1860. said Defendant, by his said Attorney his additional plea, in the words and figures, following, to wit:

Plea!

6th Plea

And for a further plea in this behalf the said Deft says that the said plaintiff ought not to have or maintain his aforesaid action thereof against him because he says, that while it is true as alleged in said Declaration that the said plaintiff did after the expiration of the said two years make out and tender to said Defendant a Deed in form of the said premises. Yet prior to such tender the said peff had neglected to pay certain taxes legally assessed against the said premises, and the same had been prior to the time aforesaid, in due form of law sold for such taxes, and at the time the said tender of said Deed to said Defendant, had not been redeemed from the said tax sale, and said Defendant avers

that said premises have not as yet been redeemed from said sale. And so the said Defendant avers that he then was and ever since has been excused from taking or receiving the said Deed of Conveyance of the said Premises of and from said plaintiff, and from performing and keeping the said Covenant for the supposed breach whereof the said plaintiff hath above complained against him. And thus the said Defendant is ready to verify &c.

And afterwards, to wit: on the same day and year last aforesaid, said Defendant, by his aforesaid Attorney, filed his certain Demurrer and Rejoinder which are in the words and figures, following, to wit:

Abner Reeves	}	Circuit Court of Cook County
advs		Of the Term a D 1866
John S. Forman		

And the said Defendant saith that his said plea by him secondly above pleaded, and the matters therein contained in manner and form &c. are sufficient in the law to bar and preclude the said plaintiff from having or maintaining his aforesaid action thereof against him &c.

Wherefore the said plaintiff prays judgment and that &c.

And the said Defendant ^{verdict} that the Replication of the said plaintiff to said fifth plea of the said Defendant, and the matters therein contained, in manner and form as the same are above pleaded and set forth are not sufficient in law for said plaintiff to have or maintain his aforesaid action thereof against said Defendant and that said Defendant is not barred bound to answer &c. Whereupon by reason of the insufficiency of the said Replication in this behalf said Defendant prays Judgment &c.

Sherman & Hales

Defts Attys

And afterwards, to wit: on the twenty fifth day of May in the year last aforesaid, said parties by their respective counsel, filed their certain Stipulation in the words and figures following, to wit:

Stipulation

John S. Forman

Abner Reeves

@

In Circuit Court of Cook Co.

Plaintiff joins in Deft. demr.

to the replication to the fifth plea, and demurres to the sixth plea in which Deft joins.

Waller & Caulfield for Plff
Sherman & Hales for Deft

And afterwards, to wit: at the April term of the said Court, to wit: on the twenty fifth

day of May of in the year last aforesaid. the following proceedings, among others in said court, were had and entered of record in said cause, to wit;

John S. Forman

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Abner Reeves } Covenant.

This day come as well the said plaintiff by Waller & Caulfield his Attorney as the said Defendant by Sherman and Hales his Attorney. and Counsel having been heard as well in support of the Demurrer of the plaintiff to the 2^d & 6th pleas of the Defendant herein pleaded, as in opposition thereto and also the Demurrer of the Defendant to the plaintiffs Replication to Defendants 5th plea herein. and the court having carefully considered the premises, and being now fully advised therein, doth order that the plaintiffs said Demurrer to the Defendants 2^d & 6th Pleas be and the same hereby is sustained, and that the Defendants said Demurrer to the plaintiffs replication to said 5th plea be overruled and the same hereby is overruled accordingly.

Whereupon by oral consent of said parties given in open court, said cause is submitted to the court for trial upon the issues joined therein and the intervention of a jury waived and the

court after hearing all the evidence adduced by the parties, the arguments of counsel as well on the part of the plaintiff as of the Defendant, and not being sufficiently advised in the premises takes said cause under advisement,

And afterwards, to wit: at the February term of said court, to wit: on the twenty fifth day of February A D 1861, the proceedings among others in said court, were had and entered of record in said cause, to wit:

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John S. Forman

Abner ^{Ree} Reeve } Covenant.

This day again come the said parties by their attorneys, and the court having had said cause under advisement and being now fully advised of and concerning the premises, doth find the issues for the plaintiff and assess his damages herein by reason of the premises to the sum of Nine Thousand Three Hundred and Forty Six Dollars and ^{at peremption said Defendant by his counsel prays the court for a new trial, which} ^{of consideration thereof is referred by the court} forty six Cents, to which the said Defendant by his counsel now here excepts,

Therefore it is considered by the court that said plaintiff do have and recover of the said Defendant his damages of Nine Thousand Three Hundred and Forty Six Dollars and Forty

Six cents in form as aforesaid assessed together with his costs and charges by him about his suit in this behalf expended, and have Execution ^{placed into the hands of the clerk of this court subject to the order of the said Defendant as directed conveying to the Defendant the premises mentioned and described in said Declaration} therefor. And it is further ordered that said plaintiff be and he hereby is required to

Whereupon the said Defendant by his counsel excepts, and prays an appeal to the Supreme Court of the State of Illinois, which is granted by the court upon condition that said Defendant shall within twenty days from this date execute and file with the Clerk of this Court his appeal bond herein in the penal sum of Eighteen Thousand Six Hundred and Ninety two Dollars and Ninety two cents, conditioned according to law with surety thereto to be approved by said Clerk, by agreement of parties,

And it is further ordered that said Defendant have twenty days to prepare and file his bill of exceptions in said cause.

And afterwards, to wit: at the term last aforesaid, to wit: on the fifteenth day of March of said year, the following among other proceedings in said Court were had and entered of record, to wit:

John S. Forman

Abner Reers

} Covenant

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This day again comes the said Defendant by his Attorney and files his appeal bond herein, which by consent of plaintiffs Attorney is now here approved.

And afterwards, to wit: on the fifteenth day of March A D 1861, said Defendant, by his aforesaid Attorney, filed in said Court, his certain Bill of exceptions in the words and figures following, to wit:

Bill of Exceptions

John B. Forman } Circuit Court of Cook County
 Abner Reeves } Of the March Term 1861.

Be it remembered that heretofore, to wit: on the 25th day of May A D 1860 this cause coming on to be heard, and a jury having been returned, and the same having been submitted to the Court for trial by the consent of the parties: the plaintiff in order to maintain the issues of fact on his part introduced in evidence a certain contract bearing date the 8th day of August 1856, in the words and figures following.

This article of agreement made and entered into, this Eighth 8th day of August 1856 between Abner Reeves and J. B. Forman, witnesses that said Reeves has this day sold Lot sixteen (16) in the subdivision of B. S. Morris

and others of the South West quarter of Section Eight-
 een (18) Township thirty nine (39) Range fourteen (14)
 East of the third p.m. to said Forman for the
 sum of six thousand (\$6000) Dollars cash, as
 evidenced by the Deed thereof of even date here-
 with, by said Reeves to said Forman, said land
 being in the City of Chicago and State of Illinois,
 and that also in consideration of said six thou-
 sand Dollars, and as an inducement to said
 purchase, said Reeves hereby binds himself and
 guarantees that said Forman shall be fully reim-
 bursed out of the sale of said land, in the
 amt so paid and with twelve (12) per cent per
 annum advance, in value thereon after payment
 of and exclusive of all expenses, taxes and assess-
 ments thereon within two years from the date
 thereof, and said Forman in consideration of
 the premises hereby agrees and binds himself to
 divide and share equally with said Reeves any
 and all profits there^{may} be made on the sale of
 said land over and above twenty per cent ad-
 vance per annum after payment of all expenses
 interest incident to the sale thereof, including taxes
 and necessary improvements. said Reeves shall
 have the power to sell said land at any time
 within said two years, and if not sold within
 twelve months from the date hereof then said
 Forman shall have the privilege of selling and

said Reers of purchasing at said Formans price,
 In testimony whereof we have hereunto set our
 hands and Seals, at the City of Chicago the
 day and year first above written

Witness

Abner Reers Seal

B. G. Caulfield.

J. S. Forman Seal

To the introduction of which in evidence the
 said Defendant then and there objected, which
 objection was then overruled by the Court and
 the defendant then and there excepted.

The plaintiff then introduced in evidence a
 Deed from the Defendant to the plaintiff
 bearing date August 8th 1856, which is in the
 words and figures following.

This Indenture made
 this Eighth 8th day of August in the year of
 our Lord one thousand Eight Hundred and
 fifty six, between Abner Reers of Louisville Ken-
 tucky, bachelor, of the first part and John
 S. Forman of said City and State of the second
 part, Witnesseth, That the said party of the first
 part, for and in consideration of the sum of six
 thousand Dollars, in hand paid by the said
 party of the second part, (the receipt whereof is
 hereby acknowledged, and the said party of the
 second part forever released and discharged therefrom)
 has, granted, bargained, sold, remised, released, con-
 veyed, aliened and confirmed, and by these pres-
 ents does grant, bargain, sell, remise, release, convey

alien, and confirm unto the said party of the second
 part, and to his heirs and assigns forever, all the
 following described Lot, piece or parcel of land, sit-
 -uated in the County of Cook and State of Illinois,
 and known and described as follows, to wit: Lot
 numbered sixteen (16) of B. S. Morris ^{Section} Subdivision
 of the West half of the South West quarter of
 Section Eighteen (18) Township Thirty nine (39) Range
 fourteen (14) East of the 3^d principal meridian
 the same being in the City of Chicago Illinois.
 Together with all and singular the hereditaments
 and appurtenances therunto belonging, or in any
 wise appertaining; and the reversions, and reversiones,
 remainder, and remainders, rents, issues and profits
 thereof; and all the estate, right, title, interest,
 claim or demand whatsoever of the said party
 of the first part, either in law or equity, of, in
 and to the above bargained premises, with the
 hereditaments and appurtenances, To have and
 to hold the said premises above bargained and
 described, with the appurtenances, unto the said
 party of the second part his heirs and assigns
 forever, And the said Abner Reeves party of the
 first part, for himself his heirs, executors and ad-
 -ministrators, does covenant, grant, bargain and
 agree, to and with the said party of the second part
 his heirs and assigns, that at the time of the
 enuealing and delivery of these presents, he is well

seized of the premises above conveyed, as of a
 good, sure, perfect, absolute and indefeasible estate
 of inheritance in law, in fee simple, and has
 good right, full power, and lawful authority to
 grant, bargain, sell and convey the same, in
 manner and form aforesaid, and that the same
 are free and clear from all former and other grants,
 bargains, sales, liens, taxes, assessments and incum-
 -brances, of what kind or nature soever; and
 the above bargained premises, in the quiet peace-
 -ble possession of the said party of the second part
 his heirs and assigns, against all and every person
 or persons lawfully claiming or to claim the whole
 or any part thereof, the said party of the first
 part shall and will warrant and forever defend.
 In witness whereof the said party of the first
 part hereunto set his hand and seal the day and
 year last above written.

Ebner Reeves Seal

State of Illinois
 County of Cook

J. Patrick Lamb a Justice of the
 Peace in and for said County, in the State afore-
 -said, do hereby certify that Ebner Reeves who is
 personally known to me as the same person
 whose name is subscribed to the within deed,
 appeared before me this day, in person, and
 acknowledged that he executed and delivered the
 said instrument of writing as his free and

voluntary act for the uses and purposes therein set forth.

Given under my hand and seal this ninth day of August A D 1856.

Patrick Lamb J. P. *and*

To the introduction of which the said defendant then and there objected, which objection was thereupon overruled by the Court, and the defendant then and there excepted.

The plaintiff then offered in evidence a certain Deed made by the plaintiff, bearing date the 12th day of October A D 1858 in the words and figures following:

"This Indenture made this twelfth day of October in the year of our Lord one thousand Eight hundred and fifty Eight. Between John S. Forman of the County of Mason State of Kentucky party of the first part, and Abner Reeves of the City of Chicago and State of Illinois of the second part, Witnesseth, that the said party of the first part for and in consideration of seven thousand five hundred and sixty Dollars in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, and the said party of the second part forever released and discharged therefrom, hath remised, released, sold conveyed and quit claimed, and by these presents

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doth remise, release, sell, Convey and quit Claim
unto the said party of the second part his heirs
and assigns forever, all the right, title, interest, claim
and demand, which the said party of the first
part hath in and to the following described Lot
piece or parcel of land, to wit: Lot sixteen (16) in the
subdivision of B. S. Morris and others of the
West half of the South West quarter of Section
Eighteen (18) Township thirty nine (39) Range
fourteen (14) East of the third P.M. being in
the City of Chicago and State of Illinois. being
the same property Deeded by said Reeve
to said Forman on the 8th day of August
1856.

To have and to hold the same together with
all and singular the appurtenances and privileges
thereunto belonging, or in anywise thereunto apper-
taining, and all the estate, right, title, interest
and Claim whatever, of the said party of the
first part, either in Law or equity, to the only
proper use, benefit and behoof of the said
party of the second part his heirs and assigns
forever.

In witness whereof, the said party of the first
part hereunto set his hand and seal the day
first above written,

J. S. Forman 
State of Illinois, City of
Chicago Cook County E. J. Robert C. Wright, Notary

Public in and for the said City of Chicago in the County and State aforesaid do hereby Certify that John S. Forman who is personally known to me as the same person whose name is subscribed to the within instrument of writing appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument of writing as his free and voluntary act, for the use and purposes therein set forth.

Given under my hand and Notarial Seal, this twelfth day of October A D 1858.



Robert C. Wright
Notary Public

And also offered to prove that the same was on the 13th day of October 1858 tendered to the Defendant: to the introduction of which said parcels of evidence and offers thereof the said Defendant then and there objected, which objection was thereupon overruled by the Court and said evidence and proof allowed to be introduced and the same was there introduced in evidence by the said plaintiff, to which rulings and decision of the Court and the introduction of which evidence the Defendant by his counsel then and there excepted.

The plaintiff then proved the payment by him of the following taxes and assessments upon the property contained in the contract sued on viz City and county taxes for the year 1857

\$26.52, city and county taxes for the year 1858 \$32.76 and city assessment in 1858 \$17.18.

The plaintiff here rested his case and the Defendant thereupon in order to sustain the issues on his part, and also in reduction of plaintiff's damages in said suit offered to prove the following facts, to wit:

1st That on the 31st day of March 1858 the said lands in plaintiff's Declaration mentioned had been duly sold for the amount of a special assessment laid thereon by the City of Chicago after the 8th day of August 1856 for constructing certain bridges in said City at the crossing of Hamilton Avenue and the South Western Plank Road, that said assessment and sale were in due form of law, and all the proceedings relative thereto regular and in pursuance of the Charter and ordinances of said City, and that the said premises had not on the 13th day of October 1858 nor at any time subsequently been redeemed from the said sale either by said plaintiff or by any other person.

To the making of which said proof by said Defendant or any part thereof the said plaintiff then and there objected, and the court then and there sustained said objection, to which ruling and decision of the court the said Defendant then and there excepted. The said Defendant then offered to prove

2^d That during and at the expiration of said two years mentioned in said plaintiff's Declaration and in said Contract for the sale of said premises, to wit: from the 8th day of August 1856 to the 8th day of August 1858 that the said premises were worth six thousand Dollars together with twelve per cent per annum advance in value thereon from said 8th day of August A D 1856 after payment of, and exclusive of all expenses, taxes and assessments accruing or chargeable thereon within the said two years in the plaintiff's Declaration and in the said Contract mentioned.

To the making of which said proof or any part thereof by said Defendant the said plaintiff then and there objected; which said objection was sustained by the Court, to which ruling and decision of the Court the said Defendant then and there excepted,

The foregoing is all the testimony introduced or offered in the case.

And thereupon said Court found a verdict against the said Defendant and in favor of said plaintiff and assessed his damages at \$6000 - Whereupon at said term the said Defendant moved the Court for a new trial; which said motion was afterwards overruled by the Court, to which ruling and

decision the said Defendant then and there excepted. And the Defendant prayed an appeal to the Supreme Court &c - which was allowed.

And the said Defendant prays that this his bill of Exceptions may be signed and sealed and made a part of the record in this cause, which is done.

Witness the hand and seal of the Judge of said Court this day of March A D 1861
 George Manierre Seal
 Judge of 7th Judicial Circuit Ills

And afterwards, to wit: on the fifteenth day of March A D 1861, said Defendant filed in said Court, his Appeal Bond in said cause, in the words and figures following, to wit:
Bond.

Know all men by these presents: that we Abner Reeves of Louisville in the State of Kentucky as principal and Charles A Reno of the City of Chicago County of Cook and State of Illinois as surety, are held and firmly bound unto John S Forman of Warren County, Kentucky in the penal sum of Eighteen thousand six hundred ninety two 92/100 Dollars lawful money of the United States to be paid to the said John S Forman his executors administrators or assigns, for which payment well and truly to be made we bind

ourselves our and each our heirs executor and administrators jointly and severally, firmly by these presents. Sealed with our seals. Dated this twelfth day of March one thousand eight hundred and sixty one.

The condition of the above obligation is such that whereas on the twenty fifth day of February A D 1861 a Judgment was rendered in the Circuit Court of Cook County in the State of Illinois in a suit wherein the said Forman was plaintiff and the said Reeves was Defendant against the said Reeves for the sum of Nine thousand three hundred forty six Dollars and forty six Cents from which said Judgment the said Reeves has ~~prayed~~ prayed an appeal to the Supreme Court of the said State of Illinois.

Now therefore if the said Reeves shall duly prosecute his said appeal and shall pay the said Judgment costs interest and damages in case the said Judgment shall be affirmed by said Supreme Court, then this obligation to be void, otherwise to remain in full force and virtue.

Witness

John Rankin

Abner Reeves

L. A. Reno

Seal

Seal

Approved by consent of parties,

W. L. Church Clerk

I, WILLIAM L. CHURCH, Clerk of the Circuit Court of Cook County, in the State aforesaid, do hereby certify the above and foregoing, to be a true, perfect and complete copy of Bond for Costs, Pleadings, proceedings of record, Bill of Exceptions & Appeal Bond in a certain cause latity pending in said Court on the Common Law side thereof, wherein John D. Norman was Plaintiff and Abner Reeves was Defendant.

In Witness Whereof, I have hereunto set my hand, and affixed the Seal of said Court at Chicago, this Fourth day of April A. D. 1861,

W. L. Church Clerk.

Fees for Record \$8.00

Supreme Court of Ill.

Abner Reever Appellant

John Foreman Appellee

Appellant vs. the

Circuit Court of

Cook County

And now comes

the said appellant says that in the Record of the trial below there appears manifest error in this - to wit:

1st the Court erred in finding the said issues for the plaintiff below without proof that a sale of the land in question, had been first made, so as to arrive at any measure of damages under the contract - i.e. the difference between the proceeds which were to be realized by the plaintiff below, out of a sale of said premises, and the \$6000 consideration & interest money which he had paid together with 12 percent per annum added thereon as advanced in value of the land, with carrying taxes & assessments & the sale being a condition precedent to any recovery under the contract.

2nd The Court erred in overruling the motion for a new trial, because the plaintiff's declaration failed to show any breach of the covenants or cause of action which accrued to plaintiff, there being no allegation that any sale of the land had taken place within 2 years from the date of said contract, or that within said 2 years the said Foreman was not fully reimbursed out of the sale of said land - nor any cause alleged why the sale to reimburse him had not been made, or any reason alleged for his non reimbursement.

3rd There is no cause of action or breach made to appear on the Record or plaintiff's pleadings in the cause.

4th No damages or breach of covenant were proven on the trial of the cause & the Court erred in finding his assessment of damages -

5th The Court came in finding a verdict against the defendant, there being no breach of the contract shown. No sale of the land having taken place, the defendant below has no difference to pay between the amount realized at a sale of the land & the original consideration money \$6000 and interest & expenses & costs.

6th The Court came in admitting proof of Plff under the declaration that a deed of premises, conveyed by defendant below, was tendered back to plaintiff after two years elapsed, without proof also that the Plff below had tendered said deed within two years upon an offer to defendant to purchase at said Plff price - or that a sale had been prevented by defendant below.

7th The Court came in excluding the proof offered by the defendant showing that Plff below had parted with the title to the land by a tax sale of premises.

8th The Court excluded testimony showing that the land itself was worth the amount guaranteed by defendant below by \$6000. with 12 per cent per annum as advised & added & payment of taxes, expenses, & repairs during all of said two years.

9th To rescind the contract it was ^{not only} necessary that the Plff below should have tendered back a conveyance of the premises within the two years, but that he should have shown himself to be a condition to restore the land on the same condition in which he had received it - put him in status quo - the Court therefore came in refusing evidence that he was not in such condition.

10th The Court said a salary the defendant
to be defended 2nd & 6th plea, but should have
sustained by to Plffs declaration.

11th The necessary against party
Entered.

John Miller & Son
the appellant
in error.

Thomas Kaly
attys

Rever & Norman - in error -

And now comes the Defendant in error
and joins in error, and says there is no error
in said record & proceedings, and now asks
that the judgment in D^s case be affirmed with
his costs or

Waller & Caulfield
atts for Defendant
in error

Circuit Court Cook County

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John S. Norman

vs

Abner Reeves

Complete Record

Filed Apr. 17, 1861
L. Deland
Ch.

7800
Kaler