

13236

No. _____

Supreme Court of Illinois

Eastman

vs.

Armstrong

71641  7

STATE OF ILLINOIS,

SUPREME COURT,

13236
Third Grand Division.

No. 49.

Eastman
7/5

Amesbury

1867

Repaired

The Supreme Court of the
State of Illinois
After April Term 1860

John Barton
" Appellant
Thomas R Armstrong
Appellee

And the said Appellant
by Jesse B. Thomas, his attorney comes and
says that that in the record herein and in
the order and proceedings in the Court below
there is manifest error in this,

- 1st The Court erred in admitting improper
evidence -
- 2^d The finding of the Court was against the
law
- 3^d The finding of the Court was against
the evidence
- 4th The judgment should have been for the
defendant for costs and not for the plaintiff
- 5th The Court erred in overruling the motion
for a new trial

Jesse B Thomas
Atty for Appellant

49

Galen Eastman
Thos. R. Huntington
Esq.

Feb. 27. 1861
S. Island
Ch.

Supreme Court of the State of Illinois.

Of the April Term, 1860.

GALEN EASTMAN, *Appellant*,
vs.
THOMAS R. ARMSTRONG, *Appellee*.

APPELLANT'S BRIEF.

1. The submission proved, varied from that alleged in declaration.

1 Caines R. 583.

2. By surrender of lease, appellant's liability for rent was extinguished.

Taylor's Landlord & T. § 648.

Hall vs. Burgess, V. B & C. R. 333.

Zule vs. Zule, XXIV Wend R. 78.

Clunes Case, X Rep. 127.

Perry vs. Aldrich, XIII N. H. R. 344.

Wood vs. Partridge, XI Mass. R. 493.

Submission as to *amount* of a void claim, no bar.

Steers vs. Lashley, 1 Esp. R. 167.

II Greenleaf Ev. § 78.

3. Submission not mutual, being by parol, of matters arising on specialty before breach, and no bar to an action of covenant on specialty.

Suydam vs. Jones X Wend. R. 180.

II. Greenl. Ev. § 28 & 72.

XX Ills. 101.

Caldwell on Arb. 36. n. 1.

Logsden vs. Roberts, III T. B. Monroe 257.

The submission proved was as to "amount due *on the lease*," for which only covenant could have been brought.

Codman vs. Jenkins, XIV Mass. R. 95.

4. The award varied from that alleged in the declaration.

5. It was contrary to law, and the law was not intended to be submitted.

II. Vesey Jr. 15.

6. It was uncertain.

7. It was not final.

Cox vs. Jagger, II Cow. R. 638.
Jackson vs. Ambler, XIV Johns R. 96.
Bussfield vs. Bussfield, Cro. Jac. 577.
VII East R. 81.

8. The award was mutually cancelled by the parties before snit.

JESSE B. THOMAS, *Att'y for Appellant.*

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Eastman & Armstrong

Appts. brief

Filed Apr. 27, 1861.
L. Keland
Clk.

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Of the April Term, 1860.

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vs.
THOMAS R. ARMSTRONG, *Appellee*.

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JESSE B. THOMAS, *Att'y for Appellant.*

49

Eastman
vs

Armstrong

Brief Appls -

Filed Apr. 28th 1861

L. Leland

Clerk

SUPREME COURT,
OF ILLINOIS.
THIRD GRAND DIVISION.

GALEN EASTMAN, }
 vs. } *Appeal from Cook.*
THOS. R. ARMSTRONG, }

POINTS FOR APPELLEE.

The Court will perceive upon examining the record, that there is not sufficient evidence of an abandonment of the award.

1st. No variance.

The first count (see pages 1, 2, 3 and 4 of record,) is general and *broad* enough to cover the submission (page 18) proven.

2nd. There was a *valid* submission.

The submission, as well as the award, may be either by deed or by parol.

Story on Cont's, 983.

Comyn's Digest, D 1, E 20.

A plea of arbitrament by parol with award would be a good plea to an action on a specialty.

Comyn's Digest *accord*.

Haverhill vs. Franconia Iron Co. 8.

1st New Hamp., p. 68, 11th John 189.

3d. Award is sufficiently *certain*.

Certainty to a common intent only necessary.

1st Parsons Con. 206.

Not uncertain when no time of payment is fixed.

1st Parsons Con. 206 & 207.

Where necessary to make a presumption to give force to an award, the Court will incline to the presumption that gives effect to, rather than to one that avoids.

1st Parsons 211., and cases cited.

Also, 11th Ill. 565, 14 Ill. 58.

Breeze 253.

Certainty—Whitmore vs. Mason 14 Ill. 392.

4th. Award valid, sufficient and certain.

Pure question of law may be referred, and award cannot be disturbed for a mistake of arbitrators upon question of law referred.

11th Ill. 565, 6 Vesey, Jr. 281., 13 East 358.

2 Madd 6, 2nd John Chy 339, 2 B. and Ald., 237.

2d Story Equity Juris., Sec. 1455.

In 6th Vesey Jr., 281, Lord Eldon says:—"If a question of law is referred to an arbitrator, he must decide it, and though he decide wrong, you can not help it."

Award is good, although arbitrator neglect to set out his authority, either by reciting submission or otherwise, and any *form* of words that amount to a decision of question referred, is a good award.

Russell Arbitrator (law library,) p. 245.

8 East p. 12

"I am of opinion that A is entitled to claim of B. £145 for non-performance of his contract." Held good award.

Watson vs. Tower Ry. & Moo., p. 17.

5th. In the absence of fraud, misconduct or partiality, the award will be conclusive, even though it is shown that arbitrators erred in judgment, as to the law or the facts.

11 Ill. 565.

BARKER & TULEY, *for Appellees*.

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v

Eastman
vs
Armstrong

Points for Appellee

Supreme Court of the State of Illinois.

Of the April Term, 1860.

GALEN EASTMAN, *Appellant*,
vs.
THOMAS R. ARMSTRONG, *Appellee*.

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VII East R. 81.

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JESSE B. THOMAS, *Att'y for Appellant.*

49

Eastman or Anthony

vs

Armstrong

App'ts Brief

Filed Apr. 27-1861

L. Leland

Clerk

Galen Eastman
vs 3 Supreme Court - 3rd Grand division
Thomas R. Armstrong April Term 1860

It is hereby stipulated and agreed
that the order of reversal for non proinder in
error in this case be set aside - and
the said cause be reinstated on the
docket - and continued until the
next term of this court - at appellers costs

May 3rd 1860 -

James B. Thomas
Atty for Appellant
Barker & Tuley attorneys
for Appeller -

No 21849-

Eastman

vs 3

Armstrong

Stipulation to set
aside order of removal
for Non Joinder within

Filed May 4, 1860
L. Leland
clerk

SUPREME COURT OF THE STATE OF ILLINOIS.

GALEN EASTMAN, APPELLANT,	}	<i>Appeal from the Superior Court of Chicago.</i>
vs.		
THOMAS R. ARMSTRONG, APPELLEE.		

ABSTRACT OF THE RECORD.

- Record
P. 8, 9 This was an action of assumpsit brought by the appellee against the appellant on a parol submission to an award in the Superior Court of Chicago, and tried before the Court without the intervention of a Jury, at the December Term of said Court, A. D. 1859.
- 2-5 The Declaration contained two special counts and a count upon an account stated.
- 2, 3, 4 The first special count sets forth that certain differences existed between the plaintiff and defendant as to the amount of rent due from the defendant to the plaintiff for certain premises held by the defendant under a lease in writing from the plaintiff, and as to what amount should be allowed the defendant for removal of lumber, &c., from the premises: that on the 15th of July, 1859, they especially submitted themselves to the award of T. M. Avery and B. Ackley, as to said differences, and that in consideration that the plaintiff had agreed to be bound by said award, the defendant undertook and promised to perform and fulfil the same; that the said Ackley and Avery undertook the arbitration, and on the 8th of August, A. D. 1859, made their award that the defendant should pay the plaintiff \$150.00, in full satisfaction and discharge of said matters in difference, of which defendant had notice. General request and breach added.
- 4, 5 The second special count sets out that, on August 15th, 1859, defendant was indebted to plaintiff in the sum of \$250, upon an award of T. M. Avery and B. Ackley upon a submission theretofore made to them, concerning all matters in difference between the plaintiff and defendant,

by virtue of which reference the said Avery and Ackley had awarded that defendant should pay said sum to plaintiff, and defendant in consideration thereof promised to pay the same.

12-16 The defendant pleaded the general issue. Upon the trial the plaintiff offered in evidence a lease under seal from himself to the defendant of certain premises described therein, dated May 1st, 1857, for three years next then ensuing, the defendant covenanting therein to pay as rent the sum of \$375.00, at the end every quarter year during the term. The lease contained no provision for apportionment of rent, as to time.

17 The plaintiff then proved that on or about the 10th day of July, A. D. 1859, the defendant was in possession of the leased premises under the lease. That an agreement was then made between the defendant and one T. W. Baxter, who claimed to be the plaintiff's agent, by which defendant was to surrender the possession of the premises forthwith, and receive from Armstrong fifty dollars for expense of removing his property therefrom.

That defendant, in pursuance of the agreement, forthwith gave up possession of the premises to plaintiff, who occupied them immediately.

That about the 1st of August, 1859, the plaintiff called on defendant for rent from May 1st to July 10th, 1859, which defendant refused to pay, claiming that according to his understanding, by the agreement between himself and Baxter, he was to receive fifty dollars for expense of vacating the premises in addition to a release of all rent.

18 The plaintiff further proved, that on the 8th day of August, 1859, he and the defendant mutually submitted, by verbal agreement, to one T. M. Avery and B. Ackley, as arbitrators, to decide how much, if any, rent was due from defendant to plaintiff, on the said lease for rent from May 1st, 1859, to July 10th, 1859, under the agreement of July 10th aforesaid, in accordance with which defendant had surrendered the premises, and what deduction should be made therefrom for the cost of defendant's removal from the premises.

The defendant objected to admission of the evidence offered, of submission to arbitration, because the submission so proved varied materially from that alleged in the declaration, because it was a submission by parol of a claim arising upon an instrument under seal before breach, and was without consideration or mutuality, and void.

The Court overruled the objections and admitted the evidence, and the defendant then and there excepted.

19 The plaintiff then offered in evidence an award in writing of the said arbitrators, as follows, viz:

“We find that Armstrong shall collect of Eastman two hundred dollars for two month’s rent, from May 1st to July 1st, as he has collected during the past year, and that Mr. Armstrong shall deduct fifty dollars, as agreed by Mr. Baxter, for cost of moving, from two hundred dollars allowed for rent.

T. M. AVERY,
BENJ’N ACKLEY.”

To the admission of which award in evidence the defendant objected, because it varied from that alleged in the declaration; because it was founded on a void submission; because it was contrary to law; because it was uncertain; because it was not final, and was otherwise void and insufficient, but the Court overruled the objections and admitted the award in evidence, and the defendant then and there excepted.

20 The plaintiff further proved that during the year 1858, the defendant had paid on the lease only at the rate of one hundred dollars per month.

He also proved that a day or two before the commencement of the suit, he had called on the defendant and demanded that he comply with the award, which the defendant refused to do.

The plaintiff then rested his case.

20 The defendant proved that after the delivery of the award, the plaintiff frequently declared to one of the arbitrators, and to one Merrill, the agent of the defendant, in the absence of the defendant from Chicago, that he would not submit to the award.

That on the defendant’s return, the plaintiff called upon him and demanded a settlement; that the defendant asked him whether he would settle by the award; that he replied, “No, I will have the whole I claim, or none.” That Eastman then replied, “Very well, since you force me to it, we will stand upon our legal rights, which will give me all I claim.”

20 No further evidence was offered by either party, as appears from the bill of exceptions.

9 The Court found the issues for the plaintiff, and assessed the damages at \$150.

The defendant moved for a new trial, which was overruled, and he excepted.

9 The Court rendered judgment for \$150 and costs, and the defendant
10 prayed an appeal, which was allowed, on filing bond to be approved by
 the Court.

10-11 The appeal was perfected within the time allowed.

 The appellant assigns for error:

1st. The Court erred in admitting improper evidence.

2d. The finding of the Court was against the law.

3d. The finding of the Court was against the evidence.

4th. The judgment should have been for the defendant, for costs,
and not for the plaintiff.

5th. The Court erred in overruling the motion for a new trial.

JESSE B. THOMAS,
Att'y for Appellant.

278 49-32
Galen Eastman

or
Thomas R Armstrong

Abstract

Filed Apr 20, 1860

L. Leland
Clerk

United States of America
State of Illinois Cook County Jp.

Pleas before the Honorable Judges
of the Superior Court of Chicago within and for the County of
Cook and State of Illinois at a regular Term of said Su-
perior Court of Chicago, begun and holden at the Court
House in the City of Chicago, in said County and State
on the first Monday being the fifth day of September in
the year of our Lord One thousand eight hundred and
fifty nine and of the Independence of the United States
of America the eighty fourth,

Present the Honorable John W. Wilson Chief Justice
of the Superior Court of Chicago, Van H.
Higgins and Grant Goodrich Judges,
Carlos Haven Prosecuting Attorney, John
Attest May Sheriff of Cook County,
Walker Kimball Clerk.

Be it Remembered that heretofore, to wit,
on the twenty fifth day of August came Thomas R.
Armstrong by Barker V. Tuley his attorney and
filed in the office of the Clerk of the Superior Court
of Chicago his certain declaration in words and
figures as follows, to wit,

State of Illinois
Cook County ss.

Superior Court of Chicago of the
September Term A. D. 1859

Thomas R. Armstrong plaintiff in this suit by Parker and Feltz
his attorneys complains of Helen Eastman defendant who
has been summoned & of a plea of Verdict on the case
upon promises.

For that whereas before the making of the
promise and undertaking of the said defendant
herein after next mentioned certain differences had arisen
and were then depending between said plaintiff and
the said defendant touching and concerning the a-
mount of rent due if any from said defendant to said
plaintiff for the North half of lot one of Block fifty-one
of the original town of Chicago and of the ~~the~~ South
half of Washington Street running from the South
branch of Chicago River to West Water Street leased
by said plaintiff to said defendant by lease in writing
dated May the first A. D. 1857 and touching and
concerning what amount if any should be allowed
to said defendant by the said plaintiff for his (the
said defendant's) removal of his lumber, goods and
chattels from the said premises and touching and
concerning the new occupation, removal from and
the ~~part~~ ^{rent} of said premises - do wit - at the
County of Cook aforesaid.

And thereupon for the putting an end

As the said differences the said plaintiff and the said defendant heretofore to wit on the fifteenth day of July in the year eighteen hundred and fifty nine at to wit the County aforesaid respectively Submitted themselves to the award of Thomas M. Avery and Benjamin Ackley to be made between themth and concerning the said differences; and in consideration thereof and that the said plaintiff at the special instance and request of the said defendant had then and there undertaken and faithfully promised the said defendant to perform and fulfil the award of the said Thomas M. Avery and Benjamin Ackley to be so made between the said plaintiff and the said defendant of and concerning the said differences in all things therein contained on the said plaintiffs part and behalf to be performed and fulfilled, so the said defendant undertook and then and there faithfully promised the said plaintiff to perform and fulfil the said award in all things therein contained on the said defendants part and behalf to be performed and fulfilled -

And the said plaintiff in fact saith that the said Thomas M. Avery and Benjamin Ackley having taken upon themselves the burthen of the said arbitration afterwards to wit on the eighth day of August A.D. 1859 at to wit the County aforesaid made their certain award between the said plaintiff and the said defendant of and concerning the said differences and did thereby award that the said defendant should

pay to the said plaintiff the sum of one hundred and fifty dollars in full satisfaction and discharge of the said matters in difference of which said award the said defendant afterwards to wit on the day and year last aforesaid ^{at} to wit the County of Cook aforesaid had notice, -

And although he the said defendant afterwards to wit on the day and year last aforesaid ^{at} to wit on the County of Cook aforesaid was requested by the said plaintiff to pay him the said sum of one hundred and fifty dollars according to the tenor and effect of the said award and his said promise and undertaking yet the said defendant not regarding his said promise and undertaking aforesaid but contriving and fraudulently intending craftily and subtly to deceive and defraud the said plaintiff in this behalf did not nor would on the day and year last aforesaid or when he was so requested as aforesaid or at any time afterwards pay the said sum of one hundred and fifty dollars or any part thereof to the said plaintiff but hath hitherto wholly neglected and refused and still doth neglect and refuse ~~and~~ so to do to wit at the County of Cook aforesaid.

And whereas also the said defendant afterwards to wit on the fifteenth day of August in the year eighteen hundred and fifty nine at to wit at the County aforesaid was indebted to the said plaintiff in the further sum of two hundred and fifty dollars upon and by virtue of a certain award made by Thomas

Mr. Avey and Benjamin Ackley upon and by virtue of a certain submission before that time made by the said plaintiff and the said defendant to the award, order and determination of the said Thomas M. Avey and Benjamin Ackley of and concerning all matters in difference then depending between the said plaintiff and the defendant and upon and by virtue of which said reference the said Thomas M. Avey and Benjamin Ackley had then and there awarded that the said defendant should pay a certain sum of money to wit the said last mentioned sum of money ~~to~~ the said plaintiff and being so indebted to the said defendant in consideration thereof afterwards to wit on the day and year last aforesaid at the County aforesaid undertook and then and there faithfully promised the said plaintiff to pay him the said last mentioned sum of money when he the said defendant should be thereunto afterwards requested. -

And whereas also the said defendant afterwards to wit on the same day and year last aforesaid, and at the place aforesaid, accounted together with the said plaintiff of and concerning divers other sums of money before that time due and owing from the said defendant to the said plaintiff and then and there being in arrear and unpaid, and upon such accounting, the said defendant then and there was found to be in arrear, and indebted to the said plaintiff in the further sum of two hundred and fifty dollars

of like lawful money, as aforesaid. And being so found
in arrear and indebted to the said plaintiff the said de-
fendant in consideration thereof afterwards to wit on
the same day and year last aforesaid and at the
place aforesaid undertook and then and there
faithfully promised the said plaintiff well and truly
to pay unto the said plaintiff the said sum of money
last mentioned when the said defendant should be
thereunto afterwards requested.

Nevertheless the said defendant (although
often requested to, to wit, on the day when the said
note became due and payable, according to the tenor
and effect thereof, and oftentimes since to wit, at
the place aforesaid) has not yet paid the said several
sums of money above mentioned or any or either of
them or any part thereof to the said plaintiff -
but to pay the same or any part thereof to the said
plaintiff the said defendant has hitherto altogether
refused and still doth refuse to the damage of the
said plaintiff of two hundred and fifty dollars and
therefore the said plaintiff brings suit, &c.

Barker & Tuley.
Plffs. Atty.

And afterward to wit on the seventh day
of September in the year of our Lord one thousand
eight hundred and fifty nine came John Eastman

by Jesse B. Thomas his attorney and filed in the
office of the Clerk aforesaid his certain plea and
affidavit of merits in words and figures as follows
to wit.

Galen Eastman

ads.

Thomas R. Armstrong

In the Superior Court of Chicago.
of the September Term A.D. 1859

And the said Defendant by
Jesse B. Thomas his attorney comes and defends
the wrong and injury when he, and says that
he did not undertake or promise in manner and
form as the said plaintiff hath above thereof com-
plained against him, and of this he puts him-
self upon the country &c.

Jesse B. Thomas
Deft. Atty.

And plaintiff doth the like.

State of Illinois

Cook County

} p.

In the Superior Court of
Chicago.
Of the September Term A. D. 1859

Thomas R. Armstrong

vs

Galen Eastman

Galen Eastman of said County

being first duly sworn, deposes and says that
he is the defendant in the above entitled suit
and that he has a good defence to the said action
on the merits of the case as he verily believes.

Sworn and subscribed
before me this 5th day
of September A.D. 1859 }
Jesse B. Thomas
Notary Public.

Galen Eastman

And afterwards to wit on the seventh day
of December in the year aforesaid, such day being
one of the days of the regular term of said Court
the following among other proceedings was had and
entered of Record as follows to wit:

Thomas R. Armstrong

vs Accusprist,

Galen Eastman

This day comes said plaintiff by
Parker & Tuely his attorneys and said defendant by
Jesse B. Thomas his attorney also comes and issue
being joined herein upon agreement of the parties
made now here in open Court this cause is submitted
to the Court for trial without intervention of a
jury and the Court now here after hearing allegations

and proofs submitted and arguments of Counsel reserves
its decision,

And afterwards to wit on the eighth
day of December in the year of our Lord one thousand
eight hundred and fifty nine, said day being one
of the days of the regular term of the Superior
Court of Chicago, the following among other proceed-
ings was ~~held~~ had and entered of Record as follows
to wit,

Thomas R. Armstrong

vs

Exempt.

Galen Eastman

And now again come said parties
to this cause by their respective Attorneys as aforesaid
and the Court having had the issues joined herein
made adjournment upon Submission to it and being now
fully advised in the premises finds issue for said plain-
tiff and awards his damages herein to the sum of one
hundred and fifty dollars. And thereupon defendant
submits his motion herein for a new trial in this cause
which motion for a new trial is overruled and defendant
thereupon enters his exceptions.

Therefore it is considered said plaintiff do have
and recover of said defendant his costs and charges
and his damages of one hundred and fifty dollars in
form aforesaid by the Court here found and awarded

and also his costs and charges in this behalf expended and have execution therefor.

And thereupon defendant having entered his exceptions prays an appeal herein to the Supreme Court who is allowed upon filing his appeal bond in the penalty ~~sum~~ of three hundred dollars with security to be approved by Court.

And afterwards to wit on the twenty third day of December in the year of our Lord one thousand eight hundred and fifty nine, said day being one of the ^{of the regular term} days of the Superior Court of Chicago the following among other proceedings was had and entered of Record as follows, to wit:

Thomas R. Armstrong

vs
Galen Eastman

Appumpsit.

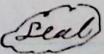
On motion defendant it is ordered that time to file his appeal bond herein be extended thirty days.

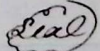
And afterwards to wit on the seventeenth day of January in the year of our Lord one thousand eight hundred and sixty came Galen Eastman and B. Merrill and filed in the office aforesaid their certain appeal Bond in words and figures as follows to wit.

Know all men by these Presents that we Galen Eastman and Bazillai Merrill are held and firmly bound unto Thomas R. Armstrong in the penal sum of Three Hundred Dollars for the payment of which sum well and truly to be made to the said Armstrong his heirs and assigns we bind ourselves our heirs, executors and administrators finally by these presents - Witness our hands and seals this 16th day of January, A. D. 1860. -

The condition of the above obligation is such that whereas the said Thomas R. Armstrong did on the 8th day of December A. D. 1859 in the Superior Court of Chicago recover a judgment against the above holden Galen Eastman for the sum of One Hundred and Fifty Dollars and costs of suit, from which judgment the said Galen Eastman has prayed an appeal to the Supreme Court of the State of Illinois -

Now if the said Galen Eastman shall prosecute his said appeal with effect, and pay the said judgment with costs and interest and such damages as the said Supreme Court may award in ~~the~~ case the said judgment shall be affirmed then the above obligation to be void, otherwise to remain in full force and effect.

Galen Eastman 

B. Merrill 

Approved,

Can. H. Higgins Judge.

✓

as
Galen Baetman

rij.

"This Indenture made this First day of May
in the year of our Lord One Thousand Eight Hun-
dred and Fifty Seven Between Thomas N. Armstrong
in the City of Chicago and State of Illinois of the
first part, and Galen Eastman of the second part,
Witnesseth That the said party of the first part
for and in consideration of the covenants and
agreements hereinafter mentioned, to be kept
and performed by the said party of the second
part, his executors, administrators and assigns
has devised and leased to the said party of the
second part all those premises situated, lying and

being in the City of Chicago, in the County of Cook and in the State of Illinois. Known and described as follows to wit: being the North half of lot 1 (one) of Block 51 (Fifty one) of the City of Chicago, and State aforesaid with the South half of Washington Street running from the South Branch of the Chicago River to West Water Street: nevertheless subject to the conditions of a lease from the City authorities to the said Armstrong, and provided also that if all or any part of the Street so leased shall during the term of this lease, be taken by the said authorities, then such amount to be deducted from said rent, as is the relative proportion to the whole amount of the ground above described.

To Have and To Hold the said above described premises with the appertinances, unto the said party of the second part, his executors, administrators, and assigns from the first day of May in the year of our Lord One Thousand Eight Hundred and fifty seven for and during, and until the first day of May One thousand Eight Hundred and sixty.

And the said party of the second part in consideration of the leasing of the premises aforesaid by the said party of the first part to the said party of the second part, does covenant and agree with the said party of the first part, his heirs, executors, administrators and assigns, to pay to the said party of the first part as rent for said demised premises

The sum of Fifteen Hundred Dollars to ^{be} paid yearly
as follows, viz. Three hundred and Seventy Five
Dollars at the end of each and every quarter during
the full term of three years -

And the said party of the second part further cove-
nants with the said party of the first part that
the said second party has received said demise
premises in good order and condition and that
at the expiration of the time in this lease mentioned
he will yield up the said premises to the said party
of the first part in as good condition as when the
same were entered upon by the said party of the
second part, less by fire or inevitable accident or
ordinary wear excepted; and also will keep said
premises in good repair during this lease at his
own expense - It is further agreed by the said
party of the second part that neither he nor his
legal representatives will underlet said premises or
any part thereof, or assign this lease without the
written assent of said party of the first part first
had and obtained thereto - And the said Galus
Eastman for himself his executors, administrators
and assigns agree further to pay in addition to the
rents above specified, all water rents levied or charged
upon said premises for and during the time for
which this lease is granted, and save said premises
and the party of the first part harmless therefrom
and that he will keep said premises in a clean

and healthy condition in accordance with the ordinance of the City and the directions of the Sewerage Commissioners -

It is expressly understood and agreed by and between the parties aforesaid that if the rent above reserved or any part thereof shall be behind or unpaid on the day of payment whereon the same ought to be paid, as aforesaid or if default shall be made in any of the covenants or agreements herein contained to be kept by the said party of the second part his executors, administrators and assigns, it shall and may be lawful for the said party of the first part, his heirs executors, administrators agent attorney or assigns, at his election to declare said term ended, and into the said premises or any part thereof either with or without process of law to reenter, and the said party of the second part or any other person or persons occupying or upon the same to ~~be~~ expell, remove and put out, using such force as may be necessary in so doing and the said premises again to repossess and enjoy as in his first and former estate, and to distrain for any rent that may be due thereon, upon any property belonging to the said party of the second part whether the same be exempted from execution or distrip by law or not, and the said party of the second part in that case, hereby agree to waive all legal rights which he may have to hold or retain any such

property under any exemption laws ^{now} in force in
this state or in any other way - Meaning and in-
tending hereby to give the said party of the first
part his heirs, executors administrators or assigns
a valid and first lien upon any and all the
goods chattels or other property belonging to the
said party of the second part, as security for the
payment of said rent in manner aforesaid any-
thing hereinbefore contained to the contrary notwith-
standing - And if at any time said term shall be
ended at such election of said party of the first
part his heirs, executors administrators or assigns
as aforesaid or in any other way, the said party of
the second part his executors, administrators and
assigns do hereby covenant and agree to
surrender and deliver up said above described
premises and property peaceably to said party of
the first part his heirs, executors, administrators
and assigns immediately upon the determination
of ~~of~~ said term as aforesaid, and if he shall re-
main in possession of the same ten days after notice
of such default, or after the determination of this
lease in any of the ways above named, he shall
be deemed guilty of a forcible detainer of said
premises under the statute, and shall be subject
to all the conditions and provisions above named, and
to eviction and removal, forcibly or otherwise, with
or without process of law, as above stated. And it

being in the City of Chicago, in the County of Cook and in the State of Illinois. Known and described as follows to wit: being the North half of lot 1 (one) of Block 51 (Fifty one) of the City of Chicago, and State aforesaid with the South half of Washington Street running from the South Branch of the Chicago River, to West Water Street; nevertheless subject to the conditions of a lease from the City authorities to the said Armstrong, and provided also that if all or any part of the Street so leased shall during the term of this lease, be taken by the said authorities, then such amount to be deducted from said rent, as is the relative proportion to the whole amount of the ground above described.

To Have and To Hold the said above described premises with the appurtenances, unto the said party of the second part, his executors, administrators, and assigns from the first day of May in the year of our Lord One Thousand Eight Hundred and fifty seven for and during, and until the first day of May One Thousand Eight Hundred and sixty.

And the said party of the second part in consideration of the leasing of the premises aforesaid by the said party of the first part to the said party of the second part, does covenant and agree with the said party of the first part, his heirs, executors, administrators and assigns, to pay to the said party of the first part as rent for said demised premises

The sum of Fifteen Hundred Dollars to ^{be} paid yearly
as follows, viz. Three hundred and Seventy Five
Dollars at the end of each and every quarter during
the full term of three years -

And the said party of the second part further cove-
nants with the said party of the first part that
the said second party has received said demised
premises in good order and condition and that
at the expiration of the time in this lease mentioned
he will yield up the said premises to the said party
of the first part in as good condition as when the
same were entered upon by the said party of the
second part, less by fire or inevitable accident or
ordinary wear excepted; and also will keep said
premises in good repair during this lease at his
own expense - It is further agreed by the said
party of the second part that neither he nor his
legal representatives will underlet said premises or
any part thereof, or assign this lease without the
written consent of said party of the first part first
had and obtained thereto - And the said Galen
Eastman for himself his executors, administrators
and assigns agree further to pay in addition to the
rents above specified) all water rents levied or charged
upon said premises for and during the time for
which this lease is granted, and save said premises
and the party of the first part harmless therefrom
and that he will keep said premises in a clean

is further covenanted and agreed by and between the parties that the party of the second part shall pay and discharge all costs and attorneys fees and expenses that shall arise from enforcing the covenants of this indenture by the party of the first part.

Witness the hands and seals of the parties aforesaid

Thos. R. Armstrong 

Galen Eastman 

And the said Armstrong further proved that on or about the 10th day of July A.D. 1859 the said Eastman then being in possession of said premises under said lease, an agreement was made between the said Eastman and one J. W. Baxter claiming to act as the agent of the said Armstrong by which the said Eastman was to surrender the possession of said premises under said lease and to receive from the said Armstrong Fifty Dollars as compensation for the removal of his property therefrom; that said Eastman in pursuance of said agreement immediately relinquished the possession of said premises and the same were forthwith reoccupied by the said Armstrong; - that on or about the first day of August A.D. 1859 the said Armstrong called upon the said Eastman for the rent claimed by him to be due on said lease for occupation of the premises described therein from May 1st 1859 to July 10th 1859 which the said Eastman refused to pay claiming that by the agreement between Baxter

and himself as he understood it no rent was to be paid by him for said time but that he, Eastman was to receive Fifty Dollars for expense of vacating premises, in addition to a release of all rent -

The said Armstrong further proved that on the 8th day of August A. D. 1859 by mutual verbal agreement between the said Armstrong and the said Eastman, it was submitted to one ~~Mr.~~ ^{Thos.} W. Avery and one Benjamin Ackley, as arbitrators to decide whether by the agreement between the said Eastman and the said Baxter on the 10th of July A. D. 1859 ^{under} ~~which~~ ^{which} the said Eastman had left the said premises any, and if any how much rent was due from said Eastman on said lease for rent from May 1st 1859 to July 10th 1859 and what if any deduction should be made for the expenses of removal by said Eastman from the said premises - (To the admission of which evidence with reference to the said submission to arbitration under either count of the said Plaintiffs declaration the said Eastman by his counsel then and there excepted. Because the said submission varied materially from that alleged in said Plaintiffs declaration and because the submission proved was by parole of a claim arising upon an instrument under seal, before breach, and was without consideration on the part of the said Eastman and without matricality and void - which objections the Court overruled and decided the said evidence to be admissible and

competent and admitted the same, and the said Eastman then and there by his counsel excepted thereto).

The said Armstrong then further (having proved the execution thereof) offered in evidence an award in writing by said Avery and said Ackley in the words and figures following to ^{viz} "with":

We find that Armstrong shall collect of Eastman Two Hundred Dollars for two months rent from May 1st to July 1st, as he has collected during the past year, and that Mr. Armstrong shall deduct Fifty Dollars, as agreed by Mr. Baxter for cost of moving from Two Hundred Dollars allowed for rent.

T. M. Avery

Benj^m. Ackley "

To the admission of which award under either count of said Plaintiffs declaration the said Eastman by his counsel objected, Because the said award is variant from that alleged in said Plaintiffs declaration, Because said award is founded on a void submission, Because the said award is not final, Because the said award is contrary to law, Because the said award is uncertain, Because the said award is otherwise void and insufficient, which objections the Court overruled and admitted the said award in evidence, and the said Eastman then and there by his counsel excepted

thereto - And the said Armstrong further proved that during the year 1858 the said Eastman had paid upon said lease only at the rate of one hundred dollars per month, and said Armstrong then proved that one or two days before the commencement of this suit he called upon deft, and demanded that he comply with ~~the~~ and carry out the said award, and that defendant refused so to do. - And the said Armstrong offered no other evidence in said cause.

The said Eastman then proved that after the delivery of said award ^{the} the said Armstrong had frequently stated to said Avery one of the said arbitrators that he would not submit to or be bound by the said award and had so stated to one Merrill the agent of ^{the} said Eastman - in the absence of said Eastman from Chicago - that on the return of said Eastman, said Armstrong called upon him and demanded a settlement - that said Eastman asked him whether he would settle by the award - that Armstrong replied "No - I will have the whole & claim, or none" - that Eastman then replied "Very well since you force me to it - we will stand upon our legal rights which will give me all & claim" - And the said Eastman offered no other evidence, nor was any other evidence offered by either party in said cause, then as above set forth.

The Court having heard the evidence found the issues in said cause for the plaintiff, and gave judgment for said Plaintiff for the sum of One Hundred and fifty dollars and costs of suit, whereupon the said Eastman by his counsel moved the Court for a new trial, Because the Court erred in admitting improper evidence, Because the Court erred in admitting the said award in evidence, Because the finding of the Court is against the law, Because the finding of the Court is against the evidence, Because judgment was given for the Plaintiff when it should have been for the Defendant.

Which motion the said Court overruled and the Defendant then and there excepted thereto.

Whereupon the Counsel of Galen Eastman in as much as the matters aforesaid do not appear by the record in said cause prayed that the Judge would set his hand and seal to this Bill of Exceptions containing the several matters so proved and given in evidence as aforesaid according to the statute in such case made and provided; thereupon the said Judge at the request of the said counsel of the said Galen Eastman did sign and seal this Bill of Exceptions pursuant to the aforesaid statute in such case made and approved.

San H. Higgins Esq
Judge.

State of Illinois
County of Cook } S.S.

I. Walter Kimball Clerk of the
Superior Court of Chicago in and for said County,
do hereby certify that the foregoing is a full true
and complete transcript of all the pleadings
on file in my office, and of the proceedings and
judgment entered of record in said Court in the
case wherein Thomas R. Armstrong is plaintiff &
John Eastman defendant.



In testimony whereof I hereunto
subscribe my name, and affix the
Seal of said Court, at the City of
Chicago in said County, this 13th
day of April A.D. 1860
(Walter Kimball Clerk)

The Supreme Court of
the State of Illinois
Of the April Term 1878

Galen Eastman, Appellant

vs
Thomas R. Armstrong, Appellee

And the said Appellant
by Jacob B. Thomas his attorney comes and
says that there is manifest error in the order
and proceedings and in the judgment of the Court
below herein, in this

1st The Court erred in admitting improper
evidence

2^d The finding of the Court was against the
law

3^d The finding of the Court was against the evidence

4th The judgment should have been for the defendants
for costs and not for the Plaintiff

5th The Court erred in overruling the motion
for a new trial

Jacob B. Thomas
Atty for Appellant

And the said appellee by Barker and Daley ^{his attorneys} comes and says
that there is no error in the record and proceedings aforesaid to the injury
of said appellant; and prays that said judgment be in all things
affirmed -

Barker & Daley, attys for
Appellee G. L. Lane

21849
Thomas R. Armstrong

Galen Eastman.

Record & Envs

Filed April 18. 1860
L. Deland
Glen R.

#6

J. B. Thomas