

No. 14224

# Supreme Court of Illinois

George

---

vs.

<sup>.</sup>  
*IN*  
Beld~~...~~

Be it Remembered, That Heretofore to wit, on the  
6th day of January A.D. 1866, a Proccipio was filed  
in the Office of the Clerk of the County Court of  
Warren County in the State of Illinois, which is  
in the Words and figures following to wit:

William J. Bridge	} Warren County Court
March 1865	
Marion Beldin &	} January Term 1866
Benjamin J. O. Hubbard	
Partners trading under the	} In Assumpsit
name & style of M. Beldin	

The Clerk will please  
give Summons in the above case for Hubbard  
Shiff of Warren Co & for Beldin to Sheriff of  
Co.

A. G. & J. M. Kirkpatrick

Filed Jan'y 6th 1866

Plffs Attys.

W. G. Bone CLK. By J. P. Haley Deft.

"Copy of Summons"

State of Illinois vs. The People of the State of Illinois  
Warren County

Warren

We Command you to

Benjamin J. O. Hubbard

The name & style

Warren County

County Court of

Warren County

Warren County

of William  
one hundred  
that and the  
in what

In Witness  
scribed my name and  
County Court at the City of  
day of January A.D. 1866

By J. P. Haley

(See Stamp & cts)

(Copy Sheriffs Return)

State of Illinois }  
Warren County } Jan 9th 1866. I have duly  
served the within by reading  
the same to the within named Benjamin J. O.  
Hubbard, as I am herein commanded,  
David Turnbull, Sheriff.

I cannot in my County find the within named  
Marcus Belden, Jan 12th 1866.

David Turnbull,

Filed Jan 20th 1866.

} Sheriff

} W. & Bond Clerk

(Copy of Summons to King Co)

State of Illinois } ss. The People of the State of  
Warren County } Illinois, To the Sheriff of  
King County. Greeting,  
We Command you to Summon Marcus Belden

Benjamin J. O. Hubbard, Partners trading under  
the Name & style of M. Belden, if to be found  
in your County, personally to be and appear  
before the County Court of the County of Warren  
on the first day of the next term thereof to be  
held at the Court House in Mount Vernon on the  
fourth Monday in the Month of January next,  
to answer the Complaint of William J. ...

... agreement, and in consideration  
and the said plaintiff at the like  
Instance request of the said defendants they  
and there faithfully promised the said defendants  
to deliver the said wheat to the said defendants  
in the time and at the place aforesaid, they  
the said defendants undertook & thereupon  
promised the said plaintiff to accept the said  
wheat of and from him the said plaintiff, and

Be it Remembered, That Heretofore to wit, on the  
6th day of January A.D. 1866, a Procipe was filed  
in the Office of the Clerk of the County Court of  
Warrick County in the State of Illinois, which is  
in the words and figures following to wit:

William J. Briggs	} Warrick County Court January 5th 1866
Warren Beldin & Benjamin J. O. Hubbard Partners trading under the Name & style of M. Beldin	
	} In Assumpsit Damages \$500

The Clerk will please  
issue Summons in the above case for Hubbard  
Shiff of Warrick Co & for Beldin to Sheriff of  
Co.

A. G. & J. M. Kirkpatrick  
Attys  
Dated Jan'y 6th 1866  
W. J. Bone clk. By J. P. Haley Deft.

Copy of Summons

State of Illinois vs. The People of the  
County of Warrick  
Harrick  
We Command you to  
Benjamin J. O. Hubbard  
The Name & st  
County of  
County Court of  
Jan'y 6th 1866  
Warrick

2.

to pay him for the same on delivery thereof, then  
the said defendants as aforesaid, and although  
the said plaintiff had 300 bushels of wheat out  
of his crop for said year 1864, and although said  
plaintiff afterwards & on & before the 20th day of  
October A.D. 1864, land on the 12th day of October  
A.D. 1864 at Mannertho in said County aforesaid,  
was there & there ready & willing and there  
there offered to deliver the said 300 bushels of  
wheat to the said defendants and there & there  
requested the said defendants to accept the  
same and to pay him for the same as aforesaid,  
yet the said defendants not regarding their  
said promises & undertaking did not move  
warrant at the said time when they were so  
requested as aforesaid or at any time before  
or afterwards accept the said 300 bushels of  
wheat or any part thereof of or from the said  
plaintiff or pay him for the same as aforesaid,  
but there & there wholly neglected and refused  
so to do.

2<sup>d</sup> Count,

And for that whereas also afterwards to wit  
the 1<sup>st</sup> day of September A.D. 1864 at and within  
said County of Warren the said defendants bargain  
ed for and bought of the said plaintiff and the  
said plaintiff at the Special Instance request  
of the said defendants there & there sold to the  
said defendants a large quantity of wheat to  
wit three hundred bushels, provided that said  
plaintiff had that amount, and if not then  
any amount from two to three hundred bushels  
at the rate or price of One & 75/100 Dollars per

bushel for each & every bushel thereof to be delivered by the said plaintiff to the said defendants at Mammouth in said County & State, on or before the 15th day of October A.D. 1864, and to be paid for by the said defendants to the said plaintiff on the delivery thereof as aforesaid, and the said plaintiff avers that he had at some time of making said Contract three hundred bushels of wheat and in consideration thereof and that the said plaintiff at the like special instance & request of the said defendants had then & there undertaken and faithfully performed the said defendants to deliver the said wheat to the said defendants at the time & place aforesaid they the said defendants undertook and then & there promised the said plaintiff to accept the said wheat of and from him the said plaintiff and to pay him for the same on the delivery thereof to them the said defendants as aforesaid, and although the said plaintiff had 300 bushels of wheat at said time as aforesaid and although he afterwards and before the 15th day of October A.D. 1864, went on the 13th day of October A.D. 1864 at Mammouth within said County, and was ready and willing and then and there tendered and offered to deliver the said 300 bushels of wheat to the said defendants and then and there requested the said defendants to accept the same and pay him for the same as aforesaid. Yet the said defendants disregarding their said promises and

undertakings did not nor would at said time  
Nor at any other time before or afterwards  
accept the said wheat or any part thereof of  
or from the said plaintiff or pay him for the  
same as aforesaid, but then & there wholly  
neglected and refused so to do.

3<sup>rd</sup> Count

And for that Whereas, Also Afterwards to wit  
the 15<sup>th</sup> day of September A D 1864 at the County of  
Hamon aforesaid the said defendants bargained  
for and bought of the said plaintiff and the said  
plaintiff at the request of the said defendants  
did then and there sold to the said defendants a large quantity  
of goods & chattels to wit 300 Bushels of wheat provided  
said plaintiff had that much, and if said Plaintiff  
did not have 300 bushels, then the amount was  
not to be less than 200 bushels, and from 200 to 300  
bushels of wheat, at the rate or price of \$1.75 per bushel  
for such and every bushel of the amount delivered,  
and to be delivered by the said plaintiff to the  
said defendants at Monmouth in said County  
& during the second week in October 1864 to wit  
during the 10<sup>th</sup> 11<sup>th</sup> 12<sup>th</sup> 13<sup>th</sup> 14<sup>th</sup> & 15<sup>th</sup> days of  
October 1864, and to be paid for, the by the said defen-  
dants to the said plaintiff on delivery thereof as  
aforesaid, and in consideration thereof, and that  
the said plaintiff at the request of the said defen-  
dants had then & there undertaken and promised  
the said defendants to deliver the said wheat to the  
said defendants at the time & place aforesaid, that  
the said defendants undertook & then & there prom-  
ised the said plaintiff to accept the said wheat of  
& from him the said plaintiff and to pay him for

the same on delivery thereof to them the said defen-  
dants as aforesaid. And the said plaintiff in fact  
says that he the said plaintiff at the time of the  
making of said Contract had 300 bushels of wheat,  
and although he afterwards and during the said  
week of October a d 1864, took on the 12th day of  
October a d 1864 at Mornmouth in said County was  
ready & willing & then & there tendered and offered  
to deliver the said 300 bushels of wheat to the said  
defendant & then & there requested the said defen-  
dant to accept the same and to pay him for the same  
as aforesaid. Yet the said defendant, disregarding  
their said promises did not nor would at said time  
when they were so requested as aforesaid or at  
any time before or afterwards accept the said wheat  
or any part thereof of or from the said plaintiff  
or pay him for the same as aforesaid, but then  
& there wholly neglected and refused so to do.

4th Count

<sup>for that</sup>  
And whereas also afterwards took on the 14th day  
of September a d 1864 at said County of Warren aforesaid  
the said defendant bargained for and pur-  
chased of the said plaintiff and the said plaintiff  
at the request of the said defendant then & there  
sold to the said defendant a large quantity of  
wheat & Chaffs to wit from two to three hundred  
bushels of wheat the plaintiff to have the privilege  
of delivering 300 bushels provided he had that  
much, and if not it should be ascertained that  
said plaintiff did not have 300 bushels, then the  
Amount was to be from two to three hundred bush-  
els, at the rate or price of One & 7/10 Dollars per

Bushels for each and every bushel delivered, to be del-  
 ivered by the said plaintiff to the said defendants  
 from the 10th to the 15th days of October A.D. 1864  
 inclusive at Mornmorth in said County of Warren  
 and to be paid for by the said defendants to the  
 said plaintiff on the delivery thereof as aforesaid.  
 And in consideration thereof, and that the said  
 plaintiff at the request of the said defendants  
 had then & there promised the said defendants to  
 deliver the said wheat at the time & place aforesaid  
 they the said defendants undertook & then & there  
 promised the said plaintiff to accept the said  
 wheat of & from the said plaintiff and to pay him  
 for the same on delivery thereof to them the said  
 defendants as aforesaid, And the said plaintiff  
 in fact saith that he had at the time of the  
 making of said Contract 300 Bushels of Wheat and  
 although he afterwards and during said days  
 last aforesaid took it on the 12th day of October  
 A.D. 1864 at Mornmorth in said Warren County was  
 ready & willing and then & there tendered and  
 offered to deliver the said 300 bushels of wheat  
 to the said defendants & then & there requested  
 the said defendants to accept the same and pay  
 him for the same as aforesaid, Yet the said defen-  
 -dants disregarding their said promises & con-  
 -takings did not nor would at said time when  
 they were so requested as aforesaid or at any  
 other time before or afterwards accept the said  
 wheat, or any part thereof of & from the said  
 plaintiff or pay him for the same as aforesaid  
 but then and there wholly neglected and  
 refused so to do.

Bushels for each and every bushel delivered, to be del-  
 ivered by the said plaintiff to the said defendants  
 from the 10th to the 15th days of October A.D. 1864  
 inclusive at Mornmorth in said County of Warren  
 and to be paid for by the said defendants to the  
 said plaintiff on the delivery thereof as aforesaid.  
 And in consideration thereof, and that the said  
 plaintiff at the request of the said defendants  
 had then & there promised the said defendants to  
 deliver the said wheat at the time & place aforesaid  
 they the said defendants undertook & then & there  
 promised the said plaintiff to accept the said  
 wheat of & from the said plaintiff and to pay him  
 for the same on delivery thereof to them the said  
 defendants as aforesaid, And the said plaintiff  
 in fact saith that he had at the time of the  
 making of said Contract 300 Bushels of Wheat and  
 although he afterwards and during said days  
 last aforesaid took it on the 12th day of October  
 A.D. 1864 at Mornmorth in said Warren County was  
 ready & willing and then & there tendered and  
 offered to deliver the said 300 bushels of wheat  
 to the said defendants & then & there requested  
 the said defendants to accept the same and pay  
 him for the same as aforesaid, Yet the said defen-  
 -dants disregarding their said promises & con-  
 -takings did not nor would at said time when  
 they were so requested as aforesaid or at any  
 other time before or afterwards accept the said  
 wheat, or any part thereof of & from the said  
 plaintiff or pay him for the same as aforesaid  
 but then and there wholly neglected and  
 refused so to do.

5th Count,

And for that whereas also afterwards to wit on the 10th day of September A.D. 1864 at and within the County of Warren aforesaid the said defendants hereinafter named gained for and bought of the said plaintiff and the said plaintiffs at the request of the said defendants then & there sold to the said defendants a large quantity of goods & Chittles to wit 300 bushels of wheat provided said plaintiff had that much or if not then the amount to be from 200 to 300 Bushels, in any event the amount was not to be less than 200 nor more than 300 bushels at the rate or price of One & 75/100 Dollars per bushel for each & every bushel of the amount delivered, and to be delivered by the said plaintiff to the said defendants at Mornmonth in said County on or before the 1st day of October A.D. 1864, and to be paid for by the said defendants to the said plaintiff on delivery thereof as aforesaid, and in consideration thereof and that the said plaintiff at their request had then & there promised the said defendants to deliver the said wheat to the said defendants at the time & place aforesaid, that the said defendants undertook and thereupon promised the said plaintiff to accept the said wheat of & from him the said plaintiff and to pay him for the same on delivery thereof to the said defendants as aforesaid, and the said plaintiff said that he had 300 bushels of wheat at said time, and although the said plaintiff afterwards and prior to the 1st day of October A.D. 1864 to wit on the 27th day of September A.D. 1864 at Mornmonth in said County

Aforesaid was ready & willing & then & there offered and offered to deliver the said Wheat to the said defendants & then & there requested the said defendants to accept the same and to pay him for the same as aforesaid. Yet the said defendants not regarding their said promises & undertakings did not nor would at said time when they were so requested as aforesaid or at any other time before or afterwards accept the said Wheat or any part thereof of & from the said Plaintiff or pay him for the same as aforesaid, but then & there wholly neglected & refused so to do.

6th Count And for that whereas also afterwards to wit on the 10th day of September a.d. 1864 at & within said County of Warren the said defendants bargained for and bought of the said Plaintiff and the said Plaintiff at the request of the said defendants then & there sold to the said defendants a large quantity of goods & Chatter, to wit 300 Bushels of Wheat provided said Plaintiff had that much which was to be ascertained when the said Plaintiff threshed the same, and if it should be ascertained upon the threshing of said Wheat that said Plaintiff did not have 300 bushels thereof, then said Plaintiff was to deliver and said defendants promised to accept & pay for 200 bushels or more, but not to exceed 300 bushels of Wheat, for which said defendants were to pay at the rate or price of One & 75/100 Dollars per bushel for such and every bushel thereof, said Wheat to be delivered by the said Plaintiff to the said defendants on or before the 10th day of October a.d. 1864, at Mansonths in said County, and to be

paid for by the said defendants to the said plaintiff  
on delivery thereof as aforesaid, and in consideration  
thereof and that the said plaintiff at the request of  
the said defendants had then & there promised the said  
defendants to deliver the said wheat at the time &  
place aforesaid they the said defendants undertook  
then & there promised the said plaintiff to accept the  
said wheat of & from the said plaintiff & to pay him  
for the same on delivery thereof to them the said defend-  
ant as aforesaid, and the said plaintiff in fact owns  
that he had at the time of the making of said Contract  
300 bushels of wheat as ascertained upon threshing the  
same, and although he afterwards and before the 10th  
day of October A.D. 1864, took on the 6th day of October  
A.D. 1864 at Marmouth in said County was ready & willing  
and then & there tendered and offered to deliver the  
said 300 bushels of wheat to the said defendants & then  
& there requested the said defendants to accept & pay  
him for the same as aforesaid. Yet the said defend-  
ants disregarding their said promises & undertakings  
did not nor would at said time when they were so  
requested as aforesaid or at any other time before or  
afterwards accept the said wheat or any part thereof  
or pay the said plaintiff or pay him for the same  
as aforesaid, but then & there wholly neglected & refused  
so to do.

7th Count.

And for that whereas also afterwards to wit on the 10th  
day of September A.D. 1864 at said Marmouth County the  
said defendants bargained for & bought of the said  
plaintiff, and the said plaintiff at the request of  
the said defendants then & there sold to the said

Defendants a large quantity of goods & Chattels to wit  
 300 Bushels of wheat provided the plaintiff had that  
 much which was to be ascertained when the said plain-  
 tiff threshed the same, and if upon threshing the same  
 it should be ascertained that said plaintiff did not  
 have 300 bushels thereof then the amount was to be  
 from two to three hundred bushels in any event not  
 to be less than 300 Bushels, nor more than 300 bushels,  
 for which said defendants were to pay at the rate or  
 price of One & 75/100 Dollars per bushel for each & every  
 bushel to be delivered by the said plaintiff to the said  
 defendants on and during the week ending on the  
 15th day of October A.D. 1864 at Mammouth in said  
 County & to be paid for by the said defendants to the  
 said plaintiff on delivery thereof as aforesaid, and  
 in consideration thereof and that the said plain-  
 tiff at the request of the said defendants had then  
 & there promised the said defendants to deliver the  
 said wheat at the time & place aforesaid they the  
 said defendants promised the said plaintiff to receive  
 the said wheat of & from the said plaintiff and to  
 pay him for the same on delivery thereof to them as  
 aforesaid, and the said plaintiff in fact said that  
 although he ascertained at the time of threshing the  
 same that he had 300 bushels of wheat at the time  
 of making said Contract and although he afterwards  
 took in the said week ending the said 15th day of  
 October to wit on the 12th day of October A.D. 1864 del-  
 ivered the said wheat to the said defendants at  
 Mammouth in said County, and although the said  
 defendants accepted the same of & from the said  
 plaintiff, yet the said defendants diverging from their  
 promise did not pay or move at said time when said

Wheat was delivered & accepted as aforesaid or at any other time pay time for the same or any part thereof as aforesaid but then & there wholly neglected & refused so to do.

8th County

And for that Whereas also afterwards to wit on the 1st day of September A.D. 1864 at Warren County aforesaid the said defendants bargained with & bought of the said plaintiff and the plaintiff at the request of the defendants then & there sold to the defendants a large quantity of goods & chattels to wit 300 bushels of wheat provided said plaintiff had that much wheat which was to be ascertained when the plaintiff thrashed the same, and if it should be ascertained upon thrashing said wheat that said plaintiff did not have 300 bushels thereof then the amount was to be from two to three hundred bushels in any event not to be more than 300 bushels and not less than 200, for which said defendants were to pay the plaintiff at the rate or price of One & 75 cents per bushel for any bushel thereof and to be delivered by the said plaintiff to defendants on or before the 1st day of October A.D. 1864 at Morrisville in said Warren County and to be paid for by the defendants to the plaintiff on delivery thereof as aforesaid, and that afterwards to wit on the 27th day of September A.D. 1864 the said plaintiff offered to deliver said wheat and said defendants requested said plaintiff not to deliver the same until the week ending on the 15th day of October A.D. 1864. and it was then & there agreed between said defendants & said plaintiff that said wheat should not be delivered until

said last mentioned time, and in consideration thereof that the plaintiff at the request of the defendants had then & there promised to deliver the said wheat at the time & place last aforesaid they the said defendants understood & thereupon promised the said plaintiff to accept the said wheat of & from the said plaintiff and to pay him for the same on delivery thereof to them the said defendants as aforesaid, and the said plaintiff on that oath that he ascertained at the time of shipping said wheat that there were 300 bushels thereof and although he afterwards torid on the said wheat on the said 15th day of October torid on the 13th day of October A.D. 1864 at Marmouth in said County was ready and willing and then and there tendered and offered to deliver the said 300 bushels of wheat to the said defendants and then & there requested the defendants to accept the same and pay him for the same as aforesaid. Yet the said defendants not regarding their said promises & understandings did not nor would at said time nor at any other time before or afterwards accept the said wheat or any part thereof of or from the said plaintiff or pay him for the same as aforesaid but then & there wholly neglected and refused so to do;

9th Count

And for that whereas also afterwards torid on the 10th day of September A.D. 1864 at said Marmouth County the said defendants bargained for and bought of the said plaintiff and the plaintiff at the request of the said defendants then & there sold to the said defendants a large quantity of goods &

Charles took 300 bushels of wheat provided the plaintiff had that much which was to be ascertained when the said plaintiff threshed the same and if upon threshing the same it should be ascertained that said plaintiff did not have 300 bushels then of them the amount was to be from two to three hundred bushels in any event not to be less than 200. Nor more than 300 bushels, for which said defendants were to pay at the rate or price of One & 75/100 Dollars per bushel for such and every bushel to be delivered by the said plaintiff to the said defendants in a reasonable time there after at Mornmouth in said County and to be paid for by the said defendants to the said plaintiff on delivery thereof, and in consideration thereof and that the said plaintiff at the request of the said defendants had then & there promised the said defendants to deliver the said wheat within a reasonable time at the place aforesaid, they the said defendants promised the said plaintiff to accept the said wheat of & from the said plaintiff and to pay him for the same on delivery thereof to them as aforesaid and the said plaintiff in fact said that he ascertained at the time of threshing the same that he had at the time of making said Contract 300 bushels of wheat and although he afterwards and within a reasonable time after the making of said Contract tried on the 13th day of October A.D. 1864 at Mornmouth in said County was ready & willing & then & there to deliver and offered to deliver the said 300 bushels of wheat to the said defendants & then & there

requested the said defendants to accept & pay for the same as aforesaid. Yet the said defendants not regarding their said promises & undertakings did not move or moved at said time when they were requested as aforesaid or at any other time before or afterwards except the said wheat or any part thereof of or from the said plaintiff pay him for the same as aforesaid but then & there wholly neglected & refused so to do.

10th Count

And for that whereas also afterwards to wit on the 10th day of September A.D. 1864 at said County of Warren the said defendants bargained for & bought of the said plaintiff. And the said plaintiff at the request of the said defendants then & there sold to the said defendants a large quantity of goods & Chattles to wit 300 bushels of wheat provided the said plaintiff had that much, which was to be ascertained when the said plaintiff thrashed the same, and if it should be ascertained upon thrashing the same that said plaintiff did not have 300 bushels thereof then the amount was to be promised to three hundred bushels for which said defendants were to pay <sup>at</sup> the rate or price of One & 75/100 dollars per bushel for each & every bushel thereof, to be delivered by the said plaintiff to the said defendants at Monmouth in said County on or before the 15th day of October A.D. 1864, and to be paid for by the said defendants to said plaintiff on delivery thereof as aforesaid, And in consideration thereof and that the said plaintiff at the request of the said defendants had then & there promised the said defendants to deliver the said wheat at the time

& place aforesaid they the said defendants promised the said plaintiff to accept the said wheat of & from the said plaintiff and to pay him for the same on delivery thereof to them as aforesaid, and the said plaintiff in fact with that he ascertained at the time of threshing the same that he had 300 Bushels of wheat and although he afterwards testified on the 12th day of October A D 1864 at Moxmuth in said County was ready & willing & then & there tendered & offered to deliver the said wheat to said defendants and then & there requested the said defendants to pay for the same as aforesaid, and although the said defendants then & there accepted the said wheat of & from the said plaintiff, yet the said defendants disregarding their promises and undertakings in this behalf did not nor would at said time when so requested as aforesaid or at any <sup>other</sup> time pay him for the same or any part thereof as aforesaid, but then & there wholly neglected & refused so to do,

11th Count

And for that whereas also afterwards testified on the 10th day of September A D 1864 at & within the said County of Warren the said defendants bargained with & bought of the said plaintiff & the said plaintiff then & there sold to the said defendants a large quantity of goods & chattels to wit 300 Bushels of wheat provided the said plaintiff be not that much, and if not then the amount to be paid from 200 to 300 bushels in any event not to be less than 200 nor more than 300 bushels, at

the rate or price of One & 75/100 Dollars per bushel  
for each & every bushel delivered, said wheat to  
be delivered by the said plaintiff to the said  
defendants at Morrmouth in said Warren  
County during the week ending the 15<sup>th</sup> day  
of October A.D. 1864, and to be paid for by the said  
defendants to the said plaintiff on delivery  
thereof as aforesaid, In Consideration thereof,  
and that the said plaintiff at the request of  
the defendants had then & there promised the  
said defendants to deliver the said wheat to  
the said defendants at the time & place aforesaid  
said they the defendants then & there promised  
the plaintiff to accept the said wheat of & from  
him the plaintiff & to pay him for the same on  
delivery thereof to the defendants as aforesaid.  
And the said plaintiff in fact said that at  
the time of the making of said Contract he had  
300 bushels of wheat and although he afterwards  
took said week ending the said 15<sup>th</sup> day of  
October took on the 11<sup>th</sup> day of October at Morrmouth  
in said County was ready & willing and there  
& there tendered and offered to deliver a large  
portion of said 300 bushels of wheat to wit  
150 bushels thereof to the said defendants &  
there & there requested the defendants to accept  
the same & pay him for the same as aforesaid.  
And although said plaintiff at said time last  
mentioned was ready & willing & there & there  
offered to deliver the remainder of said 300  
bushels of wheat to wit 150 bushels thereof, to  
said defendant in Morrmouth in said County  
during said week ending said 15<sup>th</sup> day of

October. Yet the defendants disregarding their said promises did not nor would at said time when they were so requested as aforesaid nor at any other time accept the said wheat or any portion thereof of or from the said plaintiff or pay him for the same as aforesaid, but thereof they wholly neglected & refused so to do, And whereas also the said defendants on the 1<sup>st</sup> day of December A.D. 1865 at & within said County was indebted to the plaintiff in the sum of five hundred dollars for the price and value of goods then bargained & sold by the plaintiff to the defendants at their request, And in the sum of \$500.<sup>00</sup> for money lent by the plaintiff to the defendants at their request, And in the sum of \$500.<sup>00</sup> for money paid by the plaintiff for the use of the defendants at the request, And also in the sum of \$500.<sup>00</sup> for money received by the defendants for the use of the plaintiff, And in the sum of \$500.<sup>00</sup> for money found to be due from the defendants to the plaintiff on an account stated between them, and being so indebted said defendants in Consideration thereof then & there undertook & promised to pay the said plaintiff said last mentioned sums of money when thereunto afterwards requested. Yet the said defendants both disregarded their promises and hath not paid any of the said moneys or any part thereof, To the damage of the said plaintiff of the sum of five hundred dollars & therefore he brings suit &c.

Filed Jan'y 12<sup>th</sup> 1866

W. G. Bone c. &c.

A. S. & J. M. Kirkpatrick atty for Defs.

(Copy of Account due on)

Marcus Belden & Benjamin F. O. Hubbard,  
Partners trading by the name & style of  
"M Belden & William F. George Dr.

To loss sustained by refusal to comply with	
Wheat Contract	\$500.00
To Money due for goods sold	\$500.00
" " " " on account	\$500.00
" " Lent	\$500.00
" " Paid	\$500.00
" " Received	\$500.00

Filed Jan'y 12<sup>th</sup> 1866, W & Bore clk.

(Copy of Pleas 1, 2 + 3.)

State of Illinois } ss. Warren County County Clerk.  
Warren County } July Term A.D. 1866.

Marcus Belden et al } And the said defendants  
advs } by Stewart & Skinner  
Wm F. George } Attornies, Comes & defends  
the wrong and injury where  
re and say that they did not intend take or prom-  
ise in manner and form as the said plaintiff  
 hath above thereof Complained against him, and  
of this they put themselves upon the Country, &c,  
Stewart & Skinner for Clks.

And for further plea in this behalf defendants  
say Actio Non, because they, that said plaintiff

did not on the 12<sup>th</sup> day of October A.D. 1864  
or on the 15<sup>th</sup> day of October A.D. 1864 or at any other  
time deliver or offer to deliver the wheat in Peffs  
Declarations mentioned or any part thereof  
of this they put themselves upon the Country.

Stewart & Skinner for Defts.

And for further plea in this behalf defendants declare  
said declaration of Peffs and all the Comital thereof  
say Actis Non, because they say that at the time  
of the making of the said supposed Contract  
made on by said Peff, He the said Plaintiff exhibited  
to defendants as a sample of the wheat  
after to be delivered to Defendants by said Plaintiff  
on a Contract then & there to be made by and  
between Peff & Defts about One pint of good fair  
Number One Wheat, well worth \$1.75 per bushel,  
And Defendants in fact say that Plaintiff then  
and there agreed with Defendants to deliver to  
them as much as 200 Bushels and 300 bushels if  
he had the same, of the quality and value and  
in accordance with said sample, which is the  
the same Contract above by Peff declared on  
this writ, and defendants in fact say that Plaintiff  
did not on the 15<sup>th</sup> day of October or at any  
other time deliver or offer to deliver to  
defendants either 200 or 300 bushels or any quantity  
of wheat of the quality & value of said sample  
so as above shown to defts or in any way in accor-  
dance with said sample, but wholly failed to do  
so, and this defendants are ready to verify.  
Wherefore they pray Judgment &c.

Stewart & Skinner for Defts  
Filed Apr 23, 1866.  
W G Bone CLK of Court,

(Demures to 2<sup>d</sup> Plea)

M<sup>r</sup> J George } Warren County Court  
vs }  
January Term 1867.  
Marens Belden et al }

And said Plaintiff says to  
said 2<sup>d</sup> Plea of said defendants that the  
same is not sufficient in law.

A G & I M Kirkpatrick for Deff.  
And for Special Cause of Demures said Deff  
assigns the following.

1 The Plea amounts to the general issue.

Filed Jan'y 29, 1867. W G Bone CLK.

(Demures to 3<sup>d</sup> Plea)

State of Illinois } Warren County Court  
Warren County }  
January Term 1867.

M<sup>r</sup> J George }  
vs }  
Marens Belden et al }  
And the said plaintiff says  
to the Plea of the said  
Defendants by them that the  
above pleaded says procludi non, because he  
says that said plaintiff did not Exhibit to said  
Defendants a sample of the wheat to be deliver-  
ed by said plaintiff to said defendants under  
said Contract declared on as set forth and alleged  
in said plea, that the said plaintiff puts

himself upon the Country &c.

A G + J M Kirkpatrick  
Deft

And the Defendants doth the like

J H Stewart for Deft.

And for a further replication to said 3<sup>d</sup> Plea  
said defendants, the said plaintiff says  
precludi non because he says that said  
plaintiff did not agree with defendants to deliver  
to them the said Wheat as mentioned in said  
plea of the quality and value and in accordance  
with said sample as set forth and called  
out in said plea & of this the said plaintiff  
puts himself upon the Country,

Kirkpatrick for Deft.

And for further replication to said Plea the said  
plaintiff says precludi non because he says that  
he did deliver to said Defendants the said  
Wheat mentioned of the same quality & value  
and in accordance with said sample mention-  
ed in said Plea, and this said Plaintiff  
may be inquired of by the Country &c.

A G + J M Kirkpatrick

And the Deft doth the  
like. J H Stewart Deft's atty

} for Deft  
}

And for further replication to said Plea, said  
plaintiff says precludi non because he says that  
he did offer to deliver to said defendant  
the said Wheat mentioned of the same quality  
and value and in accordance with said

Example mentioned in said plea, and of the  
said plea puts himself upon the Country &c

A G & D M Kirkpatrick  
for Peff.

And the Deft doth the like

J H Stewart Defts attys

Filed Jan'y 29, 1867.

W. G. Bone, Clerk.

(Copy of Transcript from County Court)

Wanen County, County Court. January Term A.D. 1866.  
Jan'y 22.

Pleas before Honorable Joseph K Ripley Judge of  
the County Court of Wanen County and State of Ill.  
at a Term begun and held at the Court House in  
the City of Monmouth on the 22<sup>d</sup> day of January  
A.D. 1866.

Present. Jos K Ripley Judge.  
W G Bone Clerk  
D Turnbull Sheriff

Tuesday Jan'y 23, 1866.

William F. George }  
vs }  
Marcus Belden & }  
B F C Hubbard }

Assumpsit.

This day comes the Parties  
by their attorneys and by  
Agreement made in open Court the said suit is  
to be continued, the Costs being paid by the de-  
fendants, and the defendants to plead to the  
merits of the action within thirty days from this  
date and to plead and to plead to merits of action  
and not in abatement. Therefore it is ordered by

the Court that this suit be continued until the next term thereof:

Warren County, County Court, July Term A.D. 1866.

The Pleas before the County Court, began and held on the Twenty third day of July A.D. 1866.

Present.

Jos K Ripley, Judge.

W G Bone Clerk

D Turnbull Sheriff.

Wm P George

vs

Marcus Belden &

B J Q Hubbard

Assumpsit.

And on this day comes the parties by their attorneys and by their agreement it is ordered by the Court that this cause be continued until the next term of this Court.

Warren County, County Court,

January Term A.D. 1867.

Tuesday Jan'y 29. 1867.

Pleas before the said Court at said

Term,

Present Jos K Ripley Judge.

W G Bone Clerk.

Shiff Wm M Armstrong.

Wm P George

vs

Marcus Belden &

B J Q Hubbard.

Assumpsit.

And now on this day comes the parties by their attorneys and on motion of defendant by their attorney for a change of venue and

affidavit being filed it is allowed, that a  
change of venue be granted to said parties  
to the Circuit Court of said County.

( Copy of Affidavit for Change of Venue )

State of Illinois } Warren County, County Court  
Warren County } Jan Term A.D. 1867.

William F. George, } B J Q Hubbard affia  
vs } being duly sworn deposes  
B J Q Hubbard & } and says that he perceives  
Marcus Belden } that he will not receive  
a fair trial in this Court  
on account that Joseph B Ripley the Judge  
thereof is prejudiced against him in this cause  
That the cause for which Change of Venue is  
asked came to the Knowledge of Affiant after  
the first term of this Court in which this cause  
was pending, that before the next term of this  
Court Peffe attys asked for a Continuance by  
agreement which affiant instructed his attorney  
to agree to on the Express Condition that the  
Venue should be changed to the Circuit Court of  
said County. That affiant approved the venue  
was changed by Consent until a short time  
before the Oct Term of the Circuit Court, when  
he was informed by his atty that the cause was  
still pending in the County Court,  
Signed and Subscribed B J Q Hubbard  
before me this 29 day of  
Jan'y A.D. 1867. W G Bone Co clk

Seal

Filed Jan'y 29. 1867. W G Bone clk.

(Certificate to Transcript)

State of Illinois }  
Warren County }

I Warren County } I Warren by Bone Clerk of the  
County Court in and for the  
County and State aforesaid, Do hereby Certify  
that the foregoing is a true copy of all of the  
Orders of Court in the foregoing Entitled suit  
and that the Enclosed Papers Numbered 1, 2, 3, 4,  
5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 & 18 are all the  
papers belonging to said suit in my Office.

In Testimony Whereof I have hereunto  
set my Hand and Official Seal this 5th day  
of February A.D. 1867.

(Seal)

W J Bone Clerk, C. Ct.

Filed Feby 5/1867.

Thos M Luster Clerk Circuit Court,

1 Copy of Orders in Circuit Court,

State of Illinois } Set.

Warren County } Pleas before the Honorable  
Arthur A Smith Judge of the  
Tenth Judicial Circuit of the State of Illinois  
At a Circuit Court begun and held at the County  
House in the City of Mornmouth in said County  
and State on the second Tuesday in the month of  
May in the year of our Lord, One Thousand Eight  
Hundred and Sixty Seven, It being the fourteenth  
day of said month,

Present the Honorable Arthur A Smith Judge,  
James A McKenzie States attorney,  
Thomas M Luster, Clerk,  
Wm M Armstrong, Sheriff,

And Afterwards, to wit on the 25<sup>th</sup> day of May AD 1867 An Order was Entered upon the Records of one said Court, which is in the Words & figures following to wit,

William F. George	}	Charge Venue from Co Court.	Plaintiff
Marcus Belden et al			

On Motion, and by agreement of Parties it is ordered that this Cause should be Continued, until the next term of this Court.

State of Illinois vs. Pleas before the Honorable Warren County } Arthur A. Smith Judge of the South Judicial Circuit of the State of Illinois. At a Circuit Court began and held at the Court House in the City of Mornmouth Warren County Illinois on the 3<sup>rd</sup> Tuesday in the Month of October in the year of our Lord, One Thousand Eight Hundred and Sixty Seven, It being the 15<sup>th</sup> day of said Month

Present the Honorable Arthur A. Smith, Judge  
 James A. McKenzie, States attorney.  
 Thomas M. Luster Clerk  
 Wm M. Armstrong, Sheriff.

And Afternoon to wit on the 16<sup>th</sup> day of October AD 1867. An Order was Entered upon the Records of said Court which is in the Words and figures following that is to say.

William F. George	}	Charge Venue from County Court.	Third day come the Parties
Marcus Belden et al			

76 75



heretofore suspended herein and return into open  
Court the following verdict to wit, "We the Jury find  
for the Plaintiff and assess his damages at Eighty  
Dollars" Whereupon came the Defendants by  
Attorneys and moves the Court for a New trial  
herein.

And afterwards on the 31st day of October  
A.D. 1867, an Order was Entered upon the Records of  
said Court, which is in the Words and figures  
following to wit:

William D. George. }  
vs } Change of Venue from County Court.  
Marcus Baldwin et al }

This day came the Parties by  
their Attorneys and again this Cause coming on to  
be heard upon the Defendants Motion for a New  
trial herein, and the Court being fully advised in  
the premises overrules said Motion. And the verdict  
of the Jury being the Judgment of the Court, It is  
Ordered by the Court that the Plaintiff have and  
recover of and from the said Defendants the  
sum of Eighty Dollars the amount of his damages  
as found by the Jury aforesaid together with his  
Costs in this behalf Expended and that he may  
have Execution therefor, and Now again comes the  
said Defendants and Excepts to the ruling of  
the Court and prays an Appeal to the Supreme  
Court which is allowed on the Defendants Enter-  
ing into Bond to the Plaintiff in the penal sum  
of five hundred Dollars, Conditioned according  
to law, said Bond to be filed within forty days

from this date, and the security to be approved by  
the Clerk of this Court, and Bill of Exceptions to  
be filed within forty days from this date by  
Agreement of parties,

(Copy of Bill of Exceptions)

State of Illinois 3<sup>rd</sup> ss. Waver Circuit Court  
Waver County } In Oct Term AD 1867

Wm J. George }  
vs } Bill of Exceptions.  
Marcus Belden et al }

Be it Remembered that on  
the Trial of this said Cause at said term of  
said Court the said Plaintiff to maintain the  
issue on his part, gave in evidence to the Jury  
on his own Oath, that in the latter part of  
August AD 1864 he made a Contract with  
B. D. Hubbard for Hubbard & Belden to deliver  
them a certain quantity of wheat, not less than  
two hundred bushels and not Exceeding three  
hundred bushels, three hundred if he had it,  
at One dollar and 75<sup>cts</sup> of a Dollar per bushel,  
said wheat to be delivered by October first AD  
1864, that at some time he contracted to deliver  
from 1000 to 1300 bushels of Oats, that on the  
27<sup>th</sup> of September, Hubbard asked him whether  
bring the wheat until the second week from  
that time, to which Plaintiff agreed, that on  
the 11<sup>th</sup> day of October 1864, he delivered six

Wagon loads of wheat containing a little over 380 bushels, and that he still had more wheat at home, that he drove up with the wagon, Hubbard looked at the wheat on the first wagon, that the wheat was loose in the Wagon Box, that Hubbard said he believed it was as good as the sample, at any rate it would fill the bill & led me to drive on to the scales and he would weigh it, He weighed five loads, One team was behind, that one of his hands asked where he should unload it, and that Hubbard said he would go to the Depot, and see if he could get a Car, and if he could not he could have it unload in the Ware House, that Mr Belden returned with Hubbard from the Depot, and that Hubbard then told him he could not take the wheat, said it was not as good as the sample, that Hubbard did not re-examine the wheat, that he told Hubbard that wheat was as good as the sample, and that he Hubbard had said so, that Hubbard put his hands down in the wheat and re-examined it, that by that time the sixth wagon had come up and was standing on the scales, that he told Hubbard to weigh it and show them where to unload, that Hubbard said he would not, and took the team by the head and led it off of the scales, that this was on the 11th of October 1864, that the wheat was all of the same kind and quality and was ~~examined~~ part fall and part spring wheat, that it was all grown on the same piece of ground and was stacked and threshed together, that it was all cleaned on the

Barn floor, thrown into a bin and brought to  
Dorn. Plaintiff further testified that he brought a  
sample of the wheat when he made the Contract,  
that he pulled a bundle out of the stack and  
threshed it by rubbing it out with his hands, that  
he told Hubbard how he got it and told him he was  
not guaranteed it to be exactly like that but was  
near the same, and that Mr. Hubbard told him  
it was near like it that it would answer that  
wheat was worth One Dollar per bushel that day,  
that he got \$1.<sup>25</sup>.

On Cross Examination plaintiff testified that he  
did show sample to Hubbard in Rag, that he did  
not take the rag home with him, that he did not  
show the sample to any one else, that the sample  
showed hard fall and Spring wheat in it, that it  
contained more Spring wheat than fall wheat, that  
he came down and saw an attorney and went back  
and showed Hubbard the wheat, that he did not  
tell Hubbard to say what wheat was true, that he  
did not tell Hubbard that he, plaintiff, did not  
want to have any trouble about it, and wanted to  
sell him the wheat, that he did not tell Hubbard  
to state what the difference was and he would  
pay it, that he did not ask for any Extension of  
time on account of Machine breaking, or on account  
of rainy weather.

The Deposition of Peter Nantz, was then introduced  
in evidence for the Plaintiff, which was as follows.  
My Name is Peter Nantz, my age fifty one years.

my place of residence is in the town of Greenbush,  
the County of Warren and State of Illinois, During  
Months of September & October A.D. 1864, I resided on  
the farm of William F. George in Rossville Township  
in the County of Warren and State of Illinois. I  
have been acquainted with Plaintiff for seven or eight  
years, I have been acquainted with one of the  
Defendants, to wit Benjamin F. Q. Hubbard for  
or five years, I assisted the Plaintiff to haul  
wheat to Mornmonth on or about the Eleventh day  
of October A.D. 1864. The Plaintiff hauled  
in loads of wheat that day to Mornmonth, I think  
there was from two hundred and sixty bushels of  
wheat to Two Hundred and Eighty Bushels hauled  
that day by Plaintiff, Plaintiff hauled the wheat  
for the defendants, I hauled one load of the wheat  
for Plaintiff. The loads of wheat were drove up  
near the defendants place of weighing, On that  
day my team was in front, then one of the defendants,  
to wit Benjamin F. Q. Hubbard, came out, plaintiff  
told defendant he had brought him that wheat,  
Defendant Hubbard said I will look at the wheat,  
he did get up on the wagon and examined the  
wheat, Hubbard said after examining the wheat,  
that it will do, Hubbard said drive on and  
I will weigh the wheat, I did drive on the scales,  
and he Hubbard weighed my load, he told me  
then to drive off, I asked him where to unload  
at, He told me to drive out of the way until he  
weighed the other loads, he did weigh four other  
loads of the wheat, the defendant said that he  
would go up to the depot, and see if he could  
get a car to unload the wheat in, if not he

would have to find a place in his warehouse,  
to unload the wheat in, the defendant Hubbard  
did go up to the depot. A train come in while  
Hubbard was gone to the depot. When he returned  
from the depot there was a man with him, said  
to be Belden, he then told plaintiff he would not  
take the wheat. Hubbard assigned as a reason  
why he did not take the wheat, he did not  
think the wheat was as good as the sample.  
Plaintiff told Hubbard that he had received  
the wheat and weighed it all but one load  
and that was then on the scales ready to be  
weighed. Plaintiff told defendant to weigh that  
load and furnish a place to unload the wheat,  
defendant refused to weigh that load or furnish  
any place to unload the wheat, prior to the time  
of refusing to furnish a place to unload the  
wheat Hubbard Exhibited no sample of the  
wheat to compare with the wheat, prior to the  
time of Hubbard going up to the depot, and ret-  
urning therefrom, had made no objection to the  
quality of the wheat; the reason why the load  
that was not weighed when the rest was, was  
because it had not yet arrived to be weighed  
with the other loads and did come while Hubbard  
was gone to the depot. Said wheat was obtain-  
ed from the owner of the plaintiff on his farm.  
The wheat was raised upon plaintiff's land &  
belonged to Wm P George plaintiff, the quality of  
the wheat was good wheat, part fall wheat &  
part spring wheat, mixed, the reason why it was  
mixed wheat the land was sown to fall wheat  
in the fall of 1863 and during the following

Winter partly froze out, in the Spring of 1864 the  
 Plaintiff sowed on the same land Spring wheat  
 it grew together, part fall wheat and part Spring  
 wheat, I assisted Plaintiff to thresh and clean  
 said wheat for market, the wheat was well clean-  
 ed, the portion of the wheat was kept distinct  
 from the rest when the wheat was threshed it  
 was put in one bin in Plaintiff's  
 barn and when cleaned it was taken out of  
 the bin and put in one pile on the barn floor,  
 the wheat was then shoveled up and thrown into  
 the Wagon Boxes, it was then hauled immediately  
 to Mammouth on or about the Eleventh day of Oct-  
 ober 1864, there was but one piece of wheat,  
 when growing it grew on about 20 acres of land,  
 I was present when Hubbard Examined the wheat  
 prior to the weighing, the defendant Hubbard  
 said the wheat will do, drive on and I will  
 weigh it. Hubbard then made no objection to  
 the quality of the wheat, he then weighed five  
 loads of the wheat, afterwards defendant Hub-  
 bard refused to furnish any place to unload  
 the wheat, when requested to by Plaintiff, the  
 only reason defendant Hubbard gave after-  
 wards for not furnishing a place to unload was that  
 the wheat was not as good a quality as the  
 sample defendant, — — Defendant Belden  
 said nothing in reference to the wheat, that the  
 load of wheat defendant Hubbard Examined  
 prior to the weighing of the wheat was the for-  
 ward load, the load which I drove, that day  
 for Plaintiff, the load of wheat, which defendant  
 Hubbard Examined on that day was the same kind

and quality of wheat of the remaining five loads. The reason why I know it to be the same quality of wheat is that I helped to thrash the wheat and all put in the barn in one bin, then taken out of the bin and cleaned on the barn floor, all thrown into one pile on plaintiff's barn floor, then shoveled up out of the pile into the wagon boxes, then taken immediately to Monmouth. I assisted the plaintiff in thrashing, cleaning and hauling to Monmouth, and know each load to be of the same kind and quality. On the Eleven<sup>th</sup> day of October wheat was worth one dollar per bushel in Monmouth.

The Plaintiff

Then called William H George, who testified that he was the son of the plaintiff, that he knew of plaintiffs Contract to deliver one thousand bushels of Oats and from two to three hundred bushels of wheat, this was the last of August or the first of September A D 1864, that the Contract was made between Hubbard & William F George, that Plaintiff had a load of grain, that Hubbard said he would like the refusal of his grain, that plaintiff looked about town before he sold it, that plaintiff had a sample of his grain which he gave to the defendant at the time they made the Contract, the wheat was to be delivered by the first of October A D 1864, he thought for \$1.75 per bushel, and the Oats for 56 cts, that plaintiff told defendant Hubbard that

The way he got the sample was that he pulled out a bundle of the wheat and rubbed it out in his hands. That about the 27<sup>th</sup> of September Plaintiff hauled the last of the Oats and told Hubbard that he was ready to deliver the wheat. That Hubbard told Plaintiff that he would rather be paid for bringing wheat in a week or ten days than Plaintiff consented to hold on that length of time. Although he told him he had rather haul it then while the Roads were good, that the wheat was all raised on one piece, stacked and threshed at one time, that he helped Plaintiff get the sample, that they pulled some wheat out of the stacks and rubbed it out in their hands, that he thought the wheat after cleaning was as good as sample.

On Cross Examination Witness testified that the Contract was made in Hubbards Office, that there was no one present but his father and Hubbard and himself, that his father left the sample of wheat there at the Office, that he did not recollect who left the Office first, that Peff told Hubbard if he could not get more he would give them the refusal of it, that he was in the Office with his father at the time that he & Hubbard made the Contract, and was not in the Office with him at any other time.

The Plaintiff next called Sanford Carmer, who testified that he was acquainted with George

the plaintiff, but that he was not personally acquainted with Hubbard, that he did not know any thing about the Contract between George & Hubbard for wheat, that on the 11th of October 1864 he hauled one load of wheat, that he heard the Conversation between George and Hubbard on the 27th of September when they hauled the Oats, that day George told Hubbard he was ready to haul the wheat, that Hubbard told him to wait a few days, that he thought Hubbard said that it would be an accommodation to him not to have the wheat hauled till the week after the next, that on the 11th of October six loads of the wheat were hauled, that five of them were together, and one behind, that he heard the Conversation between George and Hubbard until after the wheat was weighed, that his was the third team, that he saw Hubbard looking at the wheat on Hantz team, that Hantz team was the front team, that Hubbard told him what the load, he had, weighed, that Hubbard told him to drive off and he would get a Car, if he could, and if not he would have to put it in the Horse House, that he went toward the depot and was gone for some thing more a half hour, that the depot is distant 50 to 75 or more yards, that he did not know whether Bolden came back with him or not, that the wheat was raised on George's place, that he helped cut it, helped haul & stack wheat, did not help thresh, helped clean it, that Peter Hantz

and himself cleaned the wheat before it was brought to town, that it was in a pile on the barn floor, that five loads were loaded up the night before it was hauled, that the wheat was mixed fall and spring wheat, that he valued it an average quality that year, thought it as good or better than any I saw that year, that George sold the wheat that day they brought it to town after Hubbard refused to take it, that he thought the greater part of it was spring wheat.

On Cross Examination Witness testified that after coming from the Depot Hubbard told George he could not receive the wheat, that George sold the wheat the day it was offered <sup>to Hubbard</sup>, after it was offered to Hubbard; ~~to Hubbard~~, that he did not see the sample, that he saw Mr Hubbard and others looking at some wheat which Hubbard claimed was the sample.

Plaintiff then called George McCormick, who testified that he was a grain buyer, that he had been buying grain ever since July A.D. 1865, that he did not know what the custom was about delivery, The Custom is when a Contract is made to deliver grain in any week, the party has the whole of the week to deliver in & can deliver part at one time & part at another in same week.

Here the Plaintiff Rested his Case,

When one of the defendants, Hubbard, to

Maintain the issue on the part of the defense.  
Gave in evidence on his own oath that, the  
Contract alleged to was made in Mr Belden's  
Office near the depot, that Wm F George, J H Patten  
& himself were the only persons present, that he  
made a memorandum of the Contract which he  
read to George, that the Contract was made on  
the 1st of September A.D. 1864 for 1000 bushels of  
Oats at 56 cts and two or three hundred bushels  
of wheat like the sample which George had  
with him, at \$1.75 that the sample was pure  
ly Spring wheat, that the wheat which the plain-  
tiff George tendered on the Contract was a mix-  
ture of Spring wheat, fall wheat, Oats and Shun-  
ken wheat, and not well cleaned from dirt that  
there was a difference of from twenty five to  
fifty cents per bushel between the sample the  
plaintiff Exhibited at the time the Contract  
was made and the wheat tendered, that  
fall wheat when it is mixed with Spring wheat  
has usually been winter killed and is not of so  
good quality, that on the 11th day of October  
the plaintiff brought up some wheat and that  
he went and looked at the first load, that while  
he was looking at it the train whistled, that  
he always goes to the depot to see Mr Belden,  
as the train passed through, that he told them  
to drive the loads on to the scales and he went  
to weigh it & then we went see, that he measured  
the wheat and took a sample of it with  
him. Went to the depot and showed it to  
Mr Belden, and he said it would not do  
Bill, that Mr Belden came back with him from

the Depot, Examined the wheat and refused to receive it, that he did the weighing, that he made the sample on the day he made the Contract, that he took George the Plaintiff into the office and showed him the sample, that on Oct 11 1861 about 4.00 the sample would have brought very many more than that he should have taken it at that time it was like the sample, that the best grade of wheat at that time was worth 80 or 90 cts, that George went away after looking at the sample, and after a while came back and asked who he was buying for, that he told him he was buying for Mr Belden, that the plaintiff then said he wanted no fees and for Witness to state differences between the sample and the wheat offered and he would make deduction, such deduction as I would say, that he told him it was not like the sample, and that he did not want it, that Wm H George was not in the office at the time the Contract was made between him and plaintiff, that he saw the plaintiff trying to sell this wheat to others the same day that he made the Contract with him, that \$1.75 was the price for Extra Quality wheat, that Mr Belden was purchasing wheat for Mills, that the day the plaintiff offered to deliver the wheat there was but very little difference in the price of first rate milling wheat from the price on the day that the Contract was made, Witness further testified that he did not tell Plaintiff that the wheat would

do, that he had not Examined the sample  
and wanted to Examine it, that after Mr  
Balden came back with him that he Mr  
Balden Examined all the wheat, and that  
after that he took the plaintiff in to look  
at the sample, that he did not buy any  
grain of the plaintiff the day he made the  
Contract, that he bought no single load of  
grain of the plaintiff for a week either side  
of that day, that Mr George was not in the  
office the day that he made the Contract with  
Mr George the plaintiff, that the plaintiff  
I think was troubled to get wheat threshed,  
and asked for an Extension of time for the  
delivery, and that he gave it, that a man  
on a load standing on the scales cannot  
hear any ordinary Conversation in the office,  
that the Window was always shut except one  
sliding light left open in order to call out  
the weights, that he weighed the wheat and  
did not say it would do or that it was better  
than he Expected, that he said drive on &  
I will weigh it and then we will see, that  
wheat like the sample on the market was the  
the 11th of Oct he bought very much, that  
that would have bought it, for he should  
have taken it, that on the 1st of Sept 1864 or  
the 11th of Oct 1864 wheat varied according to  
its quality 75 cts per bushels, that the loads  
of wheat were not all alike, the first wagon  
was the best wheat, that he did not tell the  
Plaintiff that he had no room, that he had

plenty of room, that he did not tell them that he would go and get a Car, that the Rail Road Co would not allow them to unload into a Car, but required them to pass the grain through the Ware Houses, that his books showed that the highest price he paid the 1<sup>st</sup> of Sept was \$1.<sup>00</sup>, that he found from his books a variation of 50 cts per bushel paid the same day for different grades of wheat, that the sample that the Plaintiff Exhibited the day they made the Contract was of the first grade, that the wheat tendered was not, Witness also produced a sample of wheat, done up in a bag which bag was tied with a rag string and testified that that was the sample of wheat that plaintiff gave him at the time the Contract was made, that he had kept it locked up in the desk in the office, where no one could have gotten to it, and that it remained in his exclusive care until he stopped buying for Mr Belden, when he turned it over to Mr George McCormick for safe keeping, Witness also produced a sample of the wheat which he testified he had taken from the wagon as he first examined and which he had put up in an envelope and marked, and which had been in that condition and kept in his exclusive possession until placed also in the keeping of Mr George McCormick

The Defense then calling George McCormick he testified that the two envelopes of wheat were the same that Hubbard had left in his

possession when he stopped buying wheat for  
Mr Belden, and he further testified that they  
had remained there under lock and key,  
had never been opened from the time they  
came into his possession until they opened  
in Court.

Marcus Belden, then gave in evidence on  
his own oath that he was one of the defend-  
ants, that Mr Hubbard was buying grain  
under his instructions in 1864, that he  
Belden had been buying grain for thirteen  
years, during which time it had been his  
principal business, that Hubbard consulted  
with him concerning the purchases he made,  
that he Belden bought from 50 to 100 thousand  
bushels of grain per year, that he saw the sample  
Hubbard had about the month of Sept 1864 before  
the middle of Sept and that he saw the sample  
the day plaintiff offered the wheat, that this,  
referring to sample first produced by Hubbard, was  
the sample, that he had seen two lots of wheat  
very much alike, that the sample was even better,  
that he knew the sample from the appearance of  
the wheat, from the straw and from the string, that  
there was a good deal of difference in the differ-  
ent loads of wheat, that Mr Hubbard showed  
him a sample of the wheat tendered, while he  
was in the car, when I looked at the wheat I  
said it was not up to the sample, that it  
would not fill the bill, that the wheat did

not come up to the sample, that he would say there was fully 25 cts. difference between the sample and the loads. Next Witness being directed to pick out the fall wheat that was in the two samples and test the proportions of Spring & fall wheat, took two small buckets and after carefully separating the same testified that in the two Buckets he took from the sample, he found 50 grains of Spring wheat and 50 of fall wheat, that in the buckets he took from the loads of the loads tendered, he found 43 grains of Spring wheat and 8 grains of fall wheat, and one of the Checks, that he first saw the sample in his Office in November, that Spring wheat mixed with Winter, hurts the sale of it, that Winter wheat mixed with Spring does not hurt so much, that he thought there were five loads of wheat tendered & that he thought he Examined all of them, that he Examined all the wagons there but could not say positively how many wagons were there, that he did not know how long he stood there, that he was acquainted with the value of wheat about the 1st of September, but would have to refer to his Memorandums, that almost all of the Contracts were made on samples, that he remembered this sample because there was trouble about it, that he thought there was one defect at that time that no Car should be loaded from the Wagon.

On Cross Examination Witness testified that he saw sample some day wheat was tendered, that he could not swear to the men whom he

saw there, that he could not tell who was there, but that he recollected about the wheat, for his attention was called to it, that he did not pay so much attention to the Number of Wagons as to the quality of the wheat, that to the best of his recollection he went away before the Wagon did, that he was a great many samples, and that he should not have recollected this had there not been trouble about it.

Defendants then called One J. H. Peffles, who testified that in the fall of 1864, he was working for B. F. O. Hubbard, that he recollected when the Plaintiff made the Contract with Hubbard, that it was made in Defendants Office, that no One else was in there save himself, Mr Hubbard and the Plaintiff, that Peff had a sample of his wheat with him, which he left on the desk, that Mr Hubbard tied it up & put it away, that the cloth looked like the One that Hubbard had produced and testified concerning, that Peff Contracted to deliver from 2 to 3 Hundred bushels of wheat like the sample he exhibited, that he was there and saw the Plaintiff's Wagon come in, that he thought Hubbard wanted some of the wheat, that Mr Hubbard then went away and Mr Bolton came back with him, that after Mr Hubbard refused to accept of the wheat the Plaintiff went away and after a while came back, and wanted Mr Hubbard to say what difference he would make, and then take the wheat,

said he did not want a fuss,

On Cross Examination Witness, said he had frequently seen Hubbard town away without refusing to buy it, that he heard Plaintiff ask Hubbard why he was buying for, and Hubbard said for Balderson,

In further support of the defence, the defendants introduced Wm O South, who testified that in the fall of 1864, he saw the Plaintiff offering his wheat for sale by sample, that the sample was done up in a white cloth, could not say whether it was a sack or cloth, that the Plaintiff offered to sell him the wheat, that he showed him the sample, that he wished to sell, that he saw the loads of wheat, that he did not recollect the number of Wagons, but thought there was four or five, saw George & his son there, that he thought the wheat in the Wagons was nearly the same but that some loads were dister than others, that the loads were not as good as the sample,

Being further Examined Witness testified that he would not be right positive that he saw young George with the wagons, that he would not testify that he saw him there that day, that he had seen him there often, that he knew the Plaintiff George was there for he heard him talking,

Defendant's introducer Daniel P Stone who testified that he lived in Mowments, that he was buying wheat there in the fall of 1864.

that he recollected seeing plaintiff with a  
sample of wheat tied up in a little sack, that  
he offered it to him in his office, that he  
saw the same sack afterwards in Hubbard's  
Office, that he thought the sample in evidence  
was the same, that he had seen in Plaintiff's  
papers and in Hubbard's Office; that he  
recollected the Circumstances of plaintiff bring-  
ing in the wheat; that he Examined the wheat  
in the loads; that it was not the same value  
and quality as the samples, that the quality of  
the loads was different; that the head loads  
were the best, that one could get most any price  
at the Mills for wheat as good as the samples,  
that the highest price he paid for wheat on the  
11th of Oct 1864 was \$1.25/100 per bushel, that he  
thought there would be a difference of 10, 50 or  
perhaps 60 cts per bushel, between wheat like samples  
and like loads, that he went into Hubbard's office  
where the plaintiff & Hubbard had just finished  
as Hubbard said, that he looked at sample  
there and took a specimen of it to his office,  
where he kept it for a long while, that sample  
was a mixed lot of wheat, that he thought  
the Rail Road when at that time was unable  
to run all the grain through the machinery;  
that he heard Hubbard say the wheat did not  
fill the bill, that plaintiff asked Hubbard  
what he would give for the wheat, and that  
Hubbard said that he did not want the wheat  
at all; that it would not suit him, that he

Examined three or four of the loads, that the  
Wagons were standing there a long time, that  
there was a crowd about them, that they stood  
in a row near his office which was the  
East of Beldens & Hubbards, that he should  
not think there was much difference in the  
price of wheat like the sample, the first of  
September and the first of October 1864.

On Cross Examination Witness testified that the  
highest price he paid for wheat the first of  
September was was \$1.<sup>65</sup> & the highest price  
he paid the 11<sup>th</sup> of October was \$1.<sup>35</sup>

David Hall being called on the defence testi-  
fied that he saw the Wagons loads of wheat  
brought by plaintiff, that there were four or five  
of them he thought, that they differed in quality  
and value, that he saw several persons there,  
that Peff asked Hubbard if he was buying  
wheat for Belden and asked to compromise the  
matter, that he asked Hubbard what he would  
give for the wheat and take it

George H Fay, on part of defence testified to  
seeing the grain offered by the plaintiff, that  
the loads in front were the best, that he saw  
sample of wheat in Hubbards Warehouse which  
looked like sample in Court, and that Hubbard  
at same time showed him memorandum of  
his Contract with plaintiff that he was work-  
ing for Hubbard at the time, that he was his  
brother in law, & that there was 20 per cent

Differences between sample loads:

Now the Defendants rested their case,

And the Plaintiff in rebuttal on his own call testified that he did not ask Hubbard whom he was buying from, nor ask him to make any deductions, that he took two witnesses and went to Hubbard and told him to fix a place to put the wheat, that there was no difference in the loads offered, that he never tried to sell the wheat to any one else, and never showed sample to any one else, that he never delivered such a sample as that (meaning one offered in evidence by Hubbard) for he never raised any such now on his farm, I won't swear it is not the same wheat, but if ever it has been picked, that there was no one else by, when he came back from town, but Corrier and Henty, that wheat was threshed before the oats; Further in Rebuttal Plaintiff recalled his son, Mr H George, who testified that he was present at the time the Contract was made, that Plaintiff told Hubbard the wheat was part fall and part Spring wheat, and that he was in a quarrel, that it be as good as two samples, that the sample his father showed Hubbard could not have been as clean as that, (meaning sample in evidence) Witness further testified that the wheat offered by Sanford Corrier, as that taken for a sample from the loads looked like the same.

Plaintiff still further in Rebuttal recalled Sanford Coroner, who testified that he saw the cleaning of the wheat, that he loaded the wheat, that plaintiff took him and Peter and went back and asked Hubbard to find a place to put the wheat, that Wm H. George was not along with them that day. Witness also testified that he had a paper containing wheat which he testified was a sample from the wheat taken by himself.

This was all the Evidence offered in the Case,

The Court then upon the Application of the Plaintiff gave the following Instructions,

- 1<sup>st</sup> The Jury are Instructed, that if they believe from the Evidence that the plaintiff and defendants Entered into a Contract as described in the declaration and that by the terms of said Contract it was agreed between the plaintiff and defendants that the wheat was to be delivered during the week ending the 15<sup>th</sup> day of October A.D. 1864. and that the said plaintiff on Tuesday or Wednesday of said week tendered to the said defendants a portion of the wheat purchased of said plaintiff by the said defendants. And that the said defendants refused to accept and pay for the same, then they will find for the plaintiff provided they further find that it was the general custom in relation to the delivery of grain under such a Contract, that a portion of the same should be delivered at

One time, and a part at another, of the time  
agreed upon.

3.

The Jury are instructed that the general cus-  
toms of trade enter into and form a part of  
every Contract to which they are applicable,  
although not mentioned or alluded to in the  
Contract. Therefore if they believe from the evidence  
that a Contract was Entered into between the  
Plaintiff & Defendants as mentioned in the de-  
claration, and that by the terms of such Contract  
said Plaintiff was to deliver said wheat as  
described "during the week Ending the 15<sup>th</sup> day  
of October A.D. 1864" or "during the 10<sup>th</sup> 11<sup>th</sup> 12<sup>th</sup>  
13<sup>th</sup> 14<sup>th</sup> or 15<sup>th</sup> days of October 1864" and that on  
the 11<sup>th</sup> or 12<sup>th</sup> days of said Month the said plain-  
tiff tendered to said defendants at the place  
agreed upon, a portion of the wheat mentioned in  
said Contract, and that the said defendants re-  
fused to accept and pay for the same, then the  
Jury are instructed that the Plaintiff was not  
bound to tender the remainder of the wheat to  
said Defendants, but might sue upon and recover  
damages upon the whole Contract, provided the  
jury find the evidence to be such that it was  
the general custom of the grain trade, that when  
a Contract was made for the delivery of grain  
during a certain week or month that a portion  
might be delivered at One time and a part at  
Another, during such week or month.

7<sup>th</sup> If the Jury believe from the evidence that the Contract was made between the plaintiff and defendants as alleged in the declaration, then the plaintiff is entitled to a verdict for the difference between the Contract price and the market price or value of the wheat on the day and at the time and place the defendants were bound to receive and pay for the wheat provided the Jury find evidence from the evidence that the plaintiff was ready and willing and offered to perform his part of the Contract, and that the defendants failed and refused to perform their part of the Contract,

8<sup>th</sup> If the Jury believe from the evidence that a Contract was Entered into as alleged in the declaration between the plaintiff and defendants, & that the plaintiff was prevented from fulfilling his portion of the Contract by the act of the defendants, or either of them, either by their ordering the plaintiff not to deliver the wheat, or by their refusal to accept the same, or any portion thereof when tendered them by the plaintiff, then they will find for the plaintiff, provided they further find that the plaintiff was ready and willing, and offered to perform his part of the Contract,

9<sup>th</sup> If the Jury believe from the evidence that the plaintiff entered into a Contract with the defendants as alleged in the declaration, & that the said plaintiff at the time of the

Making of said Contract, had three hundred  
bushels of wheat, and that he was ready and  
willing and offered to deliver the same to the  
said defendants, at Morris with Warren County  
Illinois at the time mentioned in said declara-  
tions and that the defendants refused to pay  
for their part of the contract, then the  
instructions that they must find for the plaintiff  
the difference on the whole three hundred bushels  
between the contract price and the market value  
thereof on the day the plaintiff offered to deliver  
the same.

10. The Jury are instructed that when a Contract  
has been made between parties and by a sub-  
sequent Consent and Agreement of the parties  
the terms of the former Contract have been modi-  
fied and altered, the plaintiff may declare  
upon the Contract as it stands altered by the  
subsequent arrangement, without noticing the  
Original terms of the Contract which have been  
dispensed with.

11. If the Jury believe from the evidence that a  
Contract was made and entered into as alle-  
ged in the declarations between the plaintiff  
and defendants that within the time and  
at the place agreed upon the said plaintiff  
was ready and willing and then and there  
tendered to the said defendants a quantity  
of wheat and that defendants Hubbs after  
an Examination of said wheat, said

would do, (or words to that effect) and accepted the same, and afterwards refused to pay for the same, or to furnish a place for plaintiff to unload, then the Jury will find for the plaintiff although they should find that the wheat was not as good in quality as the sample by which it was sold,

12)

The jury are instructed that although they may believe from the evidence that the wheat in Contract was sold by sample, and that the wheat delivered or tendered by plaintiff was not as good as sample shown, they must still find for the plaintiff provided they further find from the evidence that the defendants or one of them after an examination of the wheat tendered or delivered accepted the same and said it would do, or used words to that effect.

In the giving of which Instructions, and to each and every one of them the defendants then and there in Open Court Excepted and still Excepted.

The Defendants then asked for the following Instructions which were given by the Court,

1)

That if the Jury believe from the evidence that by the terms of a Contract between plaintiff and defendants, plaintiff was to deliver to defendants wheat of a particular kind, or quality, in accordance with a sample produced by plaintiff at the time of the making of the Contract, and left with the defendants, as

a future time, and at the time of the making  
ing of the Contract, plaintiff offered to deliver  
to defendants wheat not in accordance with  
said sample, and inferior to the same in qual-  
ity and value, and did not deliver or offer  
to deliver, performance of said Contract wheat  
in accordance with the said sample. The jury  
found the issues for defendants.

2 The Court instructs the jury that if they believe  
from the Evidence that a Contract was Entered  
into by and between the plaintiff and defend-  
ants by the terms of which plaintiff covenants  
defendants, between two and three hundred  
bushels of wheat by sample, the wheat to be del-  
ivered at a future time, of the same quality  
of the sample, that plaintiff offered to deliver  
to defendants wheat not according to sample  
and of a very inferior quality, they will find  
for defendants.

3 That a delivery of wheat in this case, Con-  
sidered a performance of the proposition which  
plaintiff made to defendants, and that  
said wheat was not delivered from the plaintiff  
to defendants, and that until delivery  
of the wheat, the said wheat, to defendants,  
they had a right to require a delivery of  
wheat equal in quality and value, to the  
sample shown, and agreed by Contract to be  
delivered to defendants.

The defendants then asked the following Instructions, which the Court refused to give.

4. That if the Jury believe from the evidence that after the weighing of said wheat by the plaintiff retained and disposed of said wheat he cannot now claim that there was a delivery of said wheat to Hubbard, because the plaintiff had already taken under the receipt of said Hubbard the wheat, and said he would take it.

To which refusal of the Court to give said 4th Instruction the defendants, then and there in open Court Excepted, and still Except.

Whereupon, immediately after the giving and refusal of said Instructions, the Jury retired to consider of their verdict, and being returned into Court, gave a verdict for the plaintiff of Eighty Dollars.

Whereupon the defendants by their Counsel moved the Court for a new trial as follows.

State of Illinois vs. Cal. v. 1877  
Haven County } Circuit Ct. v.

Wm. F. George } And now comes the def-  
vs. } -endants, and move this  
Morgan's Petition } Court for a new trial  
for the following reasons:



Sheweth,

Marcus Baldwin

B & O Hubbard

Subscribed & sworn to before

me this 24th day of October A.D. 1867.

Delos P. Phelps, Master

Filed Oct 24, 1867

Chancery, New York County, N.Y.

Thos M Luster ckr

That I, George

of the County of

Circuit Court in and for

Baldwin & Hubbard

Henry Nelson being first duly

sworn depose and say that

On the 11th day of October A.D. 1864, said affiant followed the occupation of grain dealer, that about that time he saw plaintiff with about five wagons loaded with wheat, which he said plaintiff was offering to deliver to Defendant Hubbard, that Plaintiff was wanting defendant Hubbard to receive said wheat, and that Hubbard looked at the wheat in the first wagons, and in answer to what plaintiff said Hubbard said he would weigh it and then see about it, and immediately went away, where, affiant don't know, after weighing the wheat, leaving the wagons standing there.

Sworn and Subscribed

Henry Nelson

before me this 19th day

of October 1867. Samuel Hovey J.P. (S. H.)

Filed Oct 24th 1867. Thos M Luster ckr.

But the Court overruled the Motion for a New trial on each and every ground upon

which motion was made for the same.

Whereupon, to each and every of the rulings of the Court with regard to the motion for a new trial, the defendants, then and there, in Open Court Excepted, and still Excepted.

And in as much as the foregoing does not appear of Record, at the request of the Court the same is signed and so made accordingly.  
Signed Dec 9. 1867.

A A Smith,

Filed December 9th 1867.

Judge etc.

Thos M Lister Clerk.

(Copy of Bond)

Know all Men by these presents, that Wm B D Hubbard & Marcus Baldwin, Principals and Charles M Clark and F H Petter, Security, are held and firmly bound unto William F Singer, in the full sum of five hundred dollars, for the payment of which well and truly to be made, the bond consisting in these, Executed and solemnly sworn to and signed and finally by the principals and the undersigned and sent at the 10th day of December Anno Domini One Thousand Eight Hundred and sixty seven,

The Condition of the above obligation is such, that whereas William F Singer did on the 18th day of October 1867 in the Circuit Court, within and for the County of Hancock

and State of Illinois, recover a judgment against  
the above named B. J. Q. Hubbard and Marions  
Belden for the sum of - Eighty Dollars and Cents  
of which said judgment of said Circuit Court  
the said B. J. Q. Hubbard and Marions Belden  
have prayed and obtained an appeal to the  
Supreme Court of said State.

Now in the said B. J. Q. Hubbard  
and Marions Belden, and they have made their  
said appeal with effect, and shall therefore pay  
the amount of the judgment with interest and  
charges, and do not want to be rendered against  
them in case the said judgment should be affir-  
med in the said Supreme Court, than the above  
obligation to be null and void, otherwise  
to remain in full force and virtue.

B. J. Q. Hubbard (20)  
Marions Belden (20)  
Charles M. Clark (20)  
J. H. Pables.



Filed and Appointed Dec 10th 1867.

Thos M Luster Clerk

State of Illinois vs. I Thomas M Luster, Clerk  
 Hannan County of the Circuit Court, in  
 and for the County & State  
 aforesaid. Do Herely Certify, that the within  
 and foregoing is a true, perfect and complete  
 Copy of the Records in the foregoing  
 suit as shown by the Records in my Office  
 Also a true perfect & complete Copy of the Papers  
 therein, as far as called for by the Bill of  
 Exceptions filed in said Cases



In Testimony Whereof have  
 hereunto signed my name affixed  
 my seal of Office, at the City of  
 Monmouth, this 14th day of August  
 A.D. 1868.  
 Tho M Luster  
 Clerk

State of Illinois vs. John Simpson Bond  
 Third Grand Division - 20 Sept. term A.D. 1868

Knew Well -  
 J. D. Kallard Puffinbarger - Representative of  
 William F. George - Defendant

And now come the said Belden & Hubbard  
Plffs in Error and say that in the record and  
proceedings aforesaid there is manifest error  
in this to wit:

Errors Assigned

- 1<sup>st</sup> The Court refused to permit Deft's to introduce evidence  
proper to be introduced.
- 2<sup>nd</sup> The Court gave instructions to the jury on the part of Plffs not proper  
to be given.
- 3<sup>rd</sup> The Court refused to give instructions to the jury on the  
part of the Defts proper to be given.
- 4<sup>th</sup> The Court erred in overruling Defendant's motion for a  
New trial.
- 5<sup>th</sup> The Court erred in entering judgment on the ver-  
dict against the Defendants.
- 6<sup>th</sup> The Verdict is against the instructions of the court  
as applied to the evidence.
- 7<sup>th</sup> The Judgment was contrary to the law and the evi-  
dence.
- 8<sup>th</sup> Judgment should have been for the Defendants  
Stewart & Phelps, or  
George Deft in Error.

Belden & Hubbard & said Plaintiff in Error  
George Deft in Error now demand say that there  
is no error either in the record and proceedings aforesaid  
or in giving judgment as aforesaid, and  
they say and demand above assigned: and that there  
can be no error that the said judgment may be  
affirmed, and that the costs may be adjudged  
to them.

A. G. & J. M. Keble, Attorneys  
for Deft in Error

1867  
William F. George. 256  
Att. & Appeal. Co Court.  
Mans. Balden &  
Ben. J. O. Hubbard.

Received for  
Supreme Court.

14224

Given Sept. 8. 1868  
W. M. Taylor  
etk

Trans. 25. Paid by  
Richardson  
Hubbard