

12361

No. _____

Supreme Court of Illinois

Lowe

vs.

Forbes

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86
William W. Low
vs
Peter Forbes

86

1857

12361



William W. Low vs. Peter Forbes.

Pleas before the Honourable Circuit Court of Marshall County, in the State of Illinois, at a Term thereof begun and holden at the Court-house, in Lacon, on Tuesday, the fifth day of February, in the year of our Lord one thousand eight hundred and fifty-six, being a Special Term of said Court.

Present, the Honourable Madison E. Hollister, Judge of the Ninth Judicial Circuit of the State of Illinois; W. H. L. Wallace, State's Attorney; Greenberry L. Fort, Clerk, and by James H. C. Boal, his deputy; Abram Gardner, Sheriff, and by H. L. Crane, his deputy.

Be it remembered, that heretofore, to wit, on the 20th day of January, A.D. 1854, came the plaintiff, by his attorney, and filed herein his ^{Amended} Declaration, which is as follows, to wit:

Amended
Declaration.

State of Illinois, Marshall County Circuit Court,
October Term, A.D. 1849. Marshall County, ss.

William W. Low complains of Peter Forbes, in a plea of assumpsit, for that whereas, heretofore, to wit, on the second day of June, in the year of our Lord one thousand eight hundred and forty nine, at the County Court of Marshall aforesaid, the said plaintiff, at the special instance and request of the said defendant,

First Count.
[12361-1]

bargained with the said defendant to buy of him, the said defendant, and the said ~~plaintiff~~ defendant then and there sold to the said plaintiff, a large quantity of corn, to wit, seven hundred bushels, (more or less) at the rate and price of twenty-seven cents per bushel, "to be delivered" by the said defendant to the said plaintiff "at the mouth of Sandy, opposite of Henry, or at William Tenn's warehouse, in Lacon, in said County, if anything should happen that said Low could not get a boat to take it from opposite of Henry," by the first of August then next, and to be paid for by the said plaintiff to the said defendant on the delivery thereof as aforesaid; and in consideration thereof, and that the said plaintiff, at the like special instance and request of the said defendant, had then and there undertaken and faithfully promised the said defendant to accept and receive the said corn, and to pay him for the same at the rate or price aforesaid, he, the said defendant, then and there undertook and faithfully promised the said plaintiff to deliver the said corn to him, the said plaintiff, as aforesaid. And the plaintiff avers that it did so happen that he could not get a boat to take said corn from the mouth of Sandy, opposite Henry. And although the time for the delivery of the corn as aforesaid hath long since elapsed, and the said plaintiff hath always been ready and willing to accept and receive the said corn, and to pay for the same at the rate or price aforesaid, to wit, at the County aforesaid, at the warehouse of

William Tenn, in Lacon aforesaid, and hath paid to the said defendant, at the time the said corn was sold, to him, the said plaintiff, by the said defendant, as part of the price thereof, the sum of ten dollars, yet the said defendant, not regarding his said promise and undertaking, did not nor would, within the time aforesaid, or at any time afterwards, deliver said corn, or any part thereof, to the said plaintiff, at the warehouse of William Tenn, of Lacon aforesaid, or elsewhere, but wholly neglected and refused so to do; whereby the said plaintiff hath lost and been deprived of divers great gains and profits which might and otherwise would have arisen and accrued to him from the delivery of said corn to him, the said plaintiff, as aforesaid, to wit, at the County aforesaid, according to his said promise and undertaking.

Second Count.

And whereas, also, afterwards, to wit, on the second day of June, in the year of our Lord one thousand eight hundred and forty-nine, to wit, at the County of Marshall aforesaid, the said defendant made his certain other contract or agreement in writing with the said plaintiff, for the sale and delivery by the said defendant to the said plaintiff of certain other corn, in the words and figures following, to wit: "I, Peter Forbs, has this day sold to Wm. W. Low (700) seven hundred bushells of corn (more or less), for (27) twenty-seven cents per bushel, to be delivered at the mouth of Sandy, opposite of Henry, or at Wm. Tenn's warehouse, in Lacon, if anything should happen that said Low could not get a boat

to take it from opposite of Henry, to be delivered by the first of August next, in merchantable good order, at the customary weights per bushell.

Received on this contract (\$10.00) ten dollars, & the balance of the money to be paid when all of the corn is delivered. June 2^d, 1849. Peter Forb.

And in consideration thereof, the said defendant undertook and then and there faithfully promised the plaintiff to deliver the said last-mentioned corn to him, the said plaintiff, as aforesaid. And the plaintiff avers that it did so happen that he could not get a boat to take said corn from the mouth of Sandy, opposite Henry. And although the said time for the delivery of the said last-mentioned corn hath long since elapsed, the said plaintiff has always been ready and willing to accept and receive and pay for the same, at the rate or price stipulated in the agreement in writing aforesaid, to wit, at the County of Marshall aforesaid, at the warehouse of William Tenn, in Lacon aforesaid, according to the terms and stipulations of the agreement in writing aforesaid, and hath paid thereon the sum of ten dollars to the defendant, yet the said defendant, not regarding his said promise and undertaking contained in said agreement in writing, but contriving to deceive and defraud the plaintiff in this behalf, did not nor would, within the time in said agreement in writing mentioned, or at any time afterwards, deliver the said last-mentioned corn, or any part thereof, to the said plaintiff, at the warehouse

of said William Tenn, in Lacon aforesaid, or elsewhere, but wholly neglected and refused so to do; whereby the said plaintiff hath lost and been deprived of divers great gains and profits which might and otherwise would have arisen and accrued to him from the delivery of said corn to him, the said plaintiff, as aforesaid, according to the stipulations in said writing contained.

Third Count. }

And whereas, also, afterward, to wit, on the second day of June, in the year of our Lord one thousand eight hundred and forty-nine, at the County of Marshall aforesaid, the said plaintiff, at the special instance and request of the said defendant, bargained with the said defendant to buy of him, the said defendant, and the said defendant then and there sold to the said ~~defendant~~ plaintiff a large quantity of corn, to wit, seven hundred bushells, more or less, at the rate and price of twenty-seven cents per bushell, to be delivered by the said defendant to the said plaintiff at the mouth of Sandy, opposite Henry, or at William Tenn's warehouse in Lacon, in said County, if anything should happen that said Low could not get a boat to take it from opposite Henry, by the first of August then next, and to be paid for by the said plaintiff to the said defendant on the delivery thereof as aforesaid; and in consideration thereof, and that the said plaintiff, at the like special instance and request of the said defendant, had then and there undertaken and faithfully promised the said defendant to accept and

receive the said corn, and to pay him for the same at the rate or price aforesaid, he, the said defendant, undertook and then and there faithfully promised the said plaintiff to deliver the said corn to him, the said plaintiff, as aforesaid; and although the said time for the delivery of the corn as aforesaid hath long since elapsed, and the said plaintiff hath always been ready and willing to accept and receive the said corn, and to pay for the same at the rate and price aforesaid, to wit, at the county aforesaid, at the warehouse of William Tenn, in Sacon aforesaid, or at the mouth of Sandy aforesaid, and hath paid to the defendant, at the time said corn was sold to him by the defendant, as part of the price thereof, the sum of ten dollars, yet the said defendant, not regarding his said promise and undertaking, did not nor would, within the time aforesaid, or at any time afterwards, deliver said corn, or any part thereof, to the said plaintiff, at the warehouse of William Tenn, in Sacon aforesaid, or at the mouth of Sandy aforesaid, or elsewhere, but wholly neglected and refused so to do; whereby the said plaintiff hath lost and been deprived of divers & great gains and profits which might and otherwise would have arisen and accrued to him from the delivery of said corn to him, the said plaintiff, as aforesaid, to wit, at the county aforesaid, according to his said promise and undertaking.

Fourth Count.)

Whereas, also, afterward, to wit, on the first day of August, in the year of our Lord eighteen hundred and forty-nine, at the County of Marshall aforesaid, the said

defendant was indebted to the plaintiff in the sum of three hundred dollars, for so much money by the said defendant had and received to and for the use of the said plaintiff, and in the sum of three hundred dollars, for so much money by the plaintiff before that time paid, laid out and expended to and for the use of the said defendant, at his special instance and request.

Fifth Count.)

And in the like sum of three hundred dollars, for money found to be due from the defendant to the plaintiff on account then and there stated between them; and whereas the said defendant afterward, on the day and year last aforesaid, in consideration of the premises, then and there promised the last-mentioned sum of money to the plaintiff on request, yet the said defendant hath disregarded his promises, and has not paid the same, nor any part thereof, to the damage of the plaintiff three hundred dollars, and therefore he brings suit.

Ira S. Fenn, Atty. for plff.

2nd Amended Declaration.

William W. Lowe,	} Assumpsit. Stark County Court. Second Amended Declaration.
vs.	
Peter Forbes.	

Sixth Count.)

And for that whereas, also, on the second day of June, A.D. 1849, at the County of Marshall aforesaid, the said defendant made his certain contract or agreement in writing, by him subscribed, in substance as follows, to wit:

"I, Peter Forbes, has this day sold to Wm. W. Low

(700) seven hundred bushels of corn (more or less), at twenty-seven cents per bushel, to be delivered at the mouth of Sandy, opposite of Henry, (or at William Lenn's warehouse, in Lacon, if anything should happen that said Low could not get a boat to take it from opposite of Henry,) to be delivered by the first of August next, in merchantable, good order, at the customary weights per bushel. Received on this contract, ten dollars, and the ballance of the money to be paid when all the corn is delivered.

June 2nd, 1849.

Peter Forbes."

And the said plaintiff avers that the said Wm. M. Low in the said contract mentioned is the plaintiff in this suit, and the said Peter Forbes, who signed the said contract, is the defendant in this suit.

In consideration of the premises, the said defendant then and there undertook and promised the plaintiff to deliver to the said plaintiff the said corn in the said contract mentioned, according to the terms and conditions of the said contract; and the said plaintiff further avers that although he was at all times ready, able and willing to pay for said corn, according to the terms and conditions of said contract, yet the said defendant did not nor would deliver the same, according to the terms and conditions of said contract, either at the mouth of Sandy, opposite Henry, or at William Lenn's warehouse, or elsewhere, but the same to do wholly refused, and still refuses; by

reason whereof, the said plaintiff hath lost and been deprived of the said sum of ten dollars which was by him advanced and paid to said defendant on said contract, and has lost and been deprived of a large sum of money which he might and could have made by the advance in price on said corn, if the same had been delivered on said contract, according to the terms and conditions of said contract, and the promise and agreement of the said defendant, (to-wit) the sum of three hundred dollars - to-wit, at the County of Marshall aforesaid.

Lenn & Purple, for plaintiff

And on the same day last aforesaid, the defendant filed herein the following Pleas, to-wit:

Pleas.

1.

Low	}	And the said deft. comes and defends <i>vs.</i>
<i>vs.</i> Forbes.		

 when *vs.* and says that he never promised in manner and form as the plff. in his declaration hath alleged against him; and of this he puts himself on the country.

By Peter & Ramsey, his attys.

Plff doth the like.

Lenn & Purple, for plff.

2 Plea.

Wm. W. Low,	}	And for further plea in this behalf,
Peter <i>vs.</i> Forbes.		

 the said defendant says *actio non*, because he says, that the causes of action in the 3d and 6th counts of plaintiff's declaration mentioned are one and the same, and not different. And the said deft.

further says, that after the making and executing the contract or agreement in said counts mentioned, the said Low, in consideration of the undertaking of deft. to deliver said corn, agreed with the said defendant that he, the said defendant, need not and should not be required to deliver the said corn in said supposed agreement mentioned, until he, the said plff., should furnish to the said defendant sacks for sacking said corn; and that he would furnish to the said deft. sacks for that purpose, and give to defendant notice when and where to deliver said corn; and that said notice should be given to said deft. in season to enable him, the said deft., to deliver said corn on or before the first day of August then next ensuing the date of said contract. And the deft. avers that he was ever ready and willing to deliver said corn to said plff., whenever he, the said plff., should or would have furnished sacks, according to the agreement last aforesaid, and upon reasonable notice from the said plaintiff to the deft., in season to enable said deft. to deliver said corn on or before the first day of August next ensuing the date of the first-mentioned contract. And the deft. further avers that the said plff., after the making of the said last-mentioned agreement, did not furnish to deft. any sacks for the purpose of sacking said corn, nor did he give to said deft. any sacks, or give him any notice, on or before the first day of August, when and where to deliver said corn, or any part thereof.

And this the said deft. is ready to verify, wherefore the said deft. prays judgment, &c.

3. And for further plea as to said 3d and 6th counts, said deft. says actio non, because, he says, that the causes of action in the said 3d and 6th counts of the said plaintiff's declaration are one and the same, and not other and different. And deft. further avers, that after the making the said supposed contract or agreement in said counts mentioned, the said plff. verbally agreed with the said deft., in consideration of his agreement to deliver said corn, that he, the said deft., need not and should not and would not be required by the said plff. to perform the said contract or agreement, according to the terms and conditions thereof, but released and discharged him, the said deft., from the performance thereof. And this the said deft. is ready to verify, wherefore he prays judgment, &c.

4. And for further plea as to the 3d and 6th counts of said declaration, said deft. says actio non, because, he says, that the supposed causes of action are one and the same, and not other and different. And deft. further avers, that he was ready and willing to perform and fulfill the contract and agreement in said counts mentioned, according to the terms thereof, to wit, at the mouth of Sandy, opposite Henry, by the first of August, 1849, but the said plaintiff was not ready and willing to receive the same, nor would he receive the same; and the said plff.

was absent from said County of Marshall, so that def^t. could not offer to deliver said corn, according to said contract; and that he is ready to verify, wherefore def^t. prays judgment, &c.

By Peter & Ramsey, his attys.

And on the same day last aforesaid, the plaintiff filed herein the following Demurrer, to wit:

Demurrer.

William W. Low, } In the Circuit Court of Stark
Peter ^{vs.} Forbet. } County.

And the said plaintiff comes, for answer to said defendant's pleas by him secondly, thirdly and fourthly above pleaded, says precludi non, because, he says, that the said pleas severally, and the matters and things in either or each of them contained, in manner and form as the same are therein stated and set forth, are not sufficient in law to preclude the said plaintiff from having or maintaining his said action against the said defendant, and that he is not bound in law to answer the same; and that the said plaintiff is ready to verify, wherefore he prays judgment, &c.

And the said plaintiff comes and shows to the Court here the same special causes of demurrer as are stated and set down in the case of William W. Low vs. William J. Getty.

Lenn & Purple, plff's attys.

And on the same day last aforesaid, the plaintiff filed herein the two following Replications, to wit:

Replication.

William W. Lowe, } In the Circuit Court of Stark County.
Peter^{vs.} Forbes. } And the said plaintiff, for replication to the said defendants plea by him secondly above pleaded, says precludi non, because, he says, that he did not make the contract in the said plea mentioned, in manner and form as stated in said plea; and of this he puts himself upon the country, &c.

Lenn & Purple, for plaintiff.

And the deft. likewise. By Peters & Ramsey.

Replication.

Lowe, } And for replication to the said defendants
Forbes. } amended plea thirdly above pleaded, the said plaintiff says precludi non, because, he says, he did not agree with, nor release and discharge, the said defendant, as in said third plea alleged; and this the said plaintiff prays may be inquired of by the country, &c.

Lenn & Purple, for plaintiff.

And defendant doth the like.

Peters & Fleming, his attys.

And this cause having come on for Trial on the 15th day of February, 1856, being one of the days of said Term, the Court, at the request of the plaintiff, instructed the jury as follows, to wit:

Plaintiff's

Instructions.

Lowe,
vs.
Forbes.

Plaintiff requests the Court to instruct the jury:

1st. That if the jury believe from the evidence, that after Forbes signed the contract, Mr. Low, the plaintiff, said "he would have the sacks there in two or three weeks, and then let him, the defendant, know whether to deliver the corn at Sandy or at Tenn's warehouse," that this alone would not dispense with the necessity of the defendant complying with his contract, and delivering the corn, according to the terms of the written contract.

Given.

2nd. That if the jury believe from the evidence, that the defendant rescinded the contract, and refused to deliver the corn under the contract, the plaintiff, under the common counts in his declaration, is entitled to recover the ten dollars advanced by him for the corn.

Given.

3rd. That the statement of Low that he would leave sacks in two or three weeks, does not excuse the defendant from his performing his contract read in evidence in the case.

Given.

5th. That by the contract produced by the plaintiff, the defendant was bound to deliver the corn at the mouth of Sandy, or at Lacon, at Tenn's warehouse, by the 1st of August, 1849; and a delivery at either place would have been a compliance with the contract.

Given.

6. That this written contract for the sale of said corn cannot be changed by any loose, casual conversations between the parties, or other persons, but only by ~~upon~~ a subsequent contract upon a valuable consideration, or for mutual benefit of both parties.

Given.

Given. 7. That the plaintiff was not bound to pay, or offer to pay, anything for the corn, until the whole corn was delivered.

Given. 8. That any gratuitous offer on the part of the plaintiff, if any such was made, to furnish sacks for the corn, is not in any manner binding upon the plaintiff; nor does it amount to a legal contract to do so.

Given. 9. That a proposition made by one party, unless the same is at the time accepted by the other, would not be binding upon the party making the proposition.

Given. 10. That unless the jury believe from the evidence, that there was a good or valuable consideration for any new contract to furnish sacks, the said contract, if any was made, was not binding upon the plaintiff, and the plaintiff is entitled to recover.

Given. 11. That unless the contract as set out in the plea, in substance as stated in said plea, is proved, the plaintiff is entitled to recover on the issue made on said plea; and that the measure of damages is the difference between the price the plaintiff contracted to pay for the corn and its market value at the time it was to be delivered, and the amount paid by said plaintiff on such contract, provided they find for the plaintiff.

Given. 12. That the contract set out in the plea is not proved by proving that Low agreed to deliver sacks to sack the corn, but the defendant must further show to the satisfaction of the jury that a part of the contract was that Low, the plaintiff, would give the defendant notice when and where to deliver the corn,

and that said notice should be given to said defendant in season to enable him, the said defendant, to deliver said corn on or before the first day of August then next ensuing the date of said contract.

13. That the pleas pleaded in this cause by the defendant are not proved by proving that after Forbes signed the contract, & Mr. Low had gone to his horses, he said he would be there in two or three weeks with sacks; and that the plaintiff, on the 4th of July, 1849, asked the defendant, "how about this corn?" that Forbes said, "if he would leave sacks, he would let him have the corn at any time;" that Low replied "that he did not want it till he returned from Peru or Saralle;" "that he need not thresh it yet, and he would have it delivered at the mouth of Sandy; that he did not want to pay storage;" "that Forbes replied that he wanted to get his money to pay for a wagon about that time."

That if the said pleas, or one of them, is not substantially proved, the plaintiff is entitled to recover.

And the following are the Instructions of the Court, on the part of the defendant, to wit:

Defendant's The defendant requests the Court to instruct the Instructions. jury as follows, to wit:

1. If the jury believe from the evidence that there was an agreement made between Low and Forbes, after the making of the written agreement, that

Given.

Forbes should not be required to deliver the corn until the plaintiff Low should furnish the said Forbes sacks for racking the corn, such agreement was binding on Low, and it would exonerate the defendant Forbes from racking and delivering the corn until Low should so furnish the sacks, if the jury further believe that the original contract was rescinded by the parties.

Given.

2. If the jury believe from the evidence that after the making of the written contract, the said Low and Forbes made another agreement, such as is set up in the second plea of the defendant, and that the plaintiff Low has not has not fulfilled that agreement on his part, but has neglected to do, and that the defendant has not violated said last-mentioned agreement on his part, the jury will find a verdict for the defendant.

Given.

3. An injury to one party and a benefit to the other party is a sufficient consideration for a contract, or for an agreement to vary the written contract.

4. If the jury believe from the evidence that an agreement was made between Low and Forbes, after the making of the written agreement, that Forbes need not deliver the corn mentioned in said contract till he had furnished him sacks for racking the corn; and that Low agreed to furnish said sacks by a fixed time; and the defendant acted upon such subsequent contract; and further, that Low has failed to fulfill such subsequent agreement on his

part, without any violation thereof on the part of the defendant; the jury will find for the defendant.

Given. That if such agreement was made at the request and for the benefit of Low, and to enable him to save expense of storing the corn, or for any benefit to result to him, that was a sufficient consideration for the agreement to make it binding on both of the parties.

5. *Given.* In order to make the verbal contract binding on the parties, it is not necessary that there be an assent in express terms; but when a proposition for an agreement is made, the assent thereto may be implied from the whole conversation between the parties, and their acts and conduct at the time; but there must be an assent to such subsequent contract.

Given. That if the plaintiff failed to fulfill the contract on his part, and by such failure on his part prevented the defendant Forbes from performing the contract as finally agreed upon between parties, the plaintiff will not be entitled to recover the ten dollars paid by him to Forbes.

And on the day last aforesaid, the following Verdict was rendered in said cause, to wit:

Verdict.

William W. Low, } Debt.

Peter Forbes. ^{vs.}

Be it remembered, that this day this cause coming on to be heard and tried, and the issue being joined, a jury comes to try the same, to wit: G. P. Sneyce, Sam. Hains, Geo. H. Shaw, John Wier, John D. McVicar, Sam. Riskey, Wm. Stratton, M. W. Sherburne, Porter Organ, Robert Henry, Lyman P. Bates, and James Winters, twelve good and lawful men, duly chosen, empannelled and sworn, who, after hearing the argument of counsel, and evidence adduced, retire to consider of their verdict; and, after due deliberation, return into court, and say: We, the jury, find the issue joined for the defendant. Whereupon comes the plff., by Tenn, his attorney, and moves the Court for a new trial herein.

Motion for new trial.

And on the 16th day of February, A. D. 1856, ~~in~~ said Term, the following judgment was rendered herein, to wit:

Judgment.

William W. Low, } Debt.

Peter Forbes. ^{vs.}

Be it remembered, that this day this cause coming on to be heard on motion for a new trial; and the Court, after hearing the argument of counsel, and being now fully advised in the premises, doth order and adjudge that said motion be overruled. It is therefore considered by the Court that the said defendant have and recover of the said

Order for Bill to be
filed in vacation.

plaintiff his costs and charges by him about his defence in this behalf expended; and it is ordered that execution issue therefor. Whereupon comes the said plaintiff, and prays an appeal to the Supreme Court of this State; which said appeal is allowed, and it is ordered by the Court that the bill of exceptions may be settled and signed in vacation, and filed as of this day.

And on the 25th day of April, A.D. 1856, the plaintiff filed herein his Bill of Exceptions, which is as follows, to wit:

Bill of
Exception

William W. Lowe, } Marshall Circuit Court,
Peter^{vs.} Forbes. } Feb. Special Term, A.D. 1856.

Be it remembered that the plaintiff, to prove the issue, on the trial of this cause, introduced first and read to the jury a contract in writing, in the words and figures following, to wit:

"I, Peter Forbes, has this day sold to Wm. W. Low (700) seven hundred bushels of corn (more or less), for (27) twenty-seven cents per bushel, to be delivered at the mouth of Sandy, opposite of Henry, or at Wm. Lenn's warehouse, in Lacon, if anything should happen that said Low could not get a boat to take it from opposite of Henry, to be delivered by the first of August next, in merchantable, good order, at the customary weights per bushel. Received on this contract (\$12.00) Ten dollars, and the balance of the money to be paid when

all of the corn is delivered.

"June 20, 1849.

Peter Forbes."

He also introduced as a witness A. S. Fishburn, who testified, that on the first of August, 1849, corn was worth at Lacon twenty-five cents a bushel; it had gone down a little before that time, it then began to rise; he bought for Mr. Jenn at 28 cents, a day or two afterwards, and soon afterwards it went up to 33 cents a bushel.

William Jenn was next introduced, who testified, that about the first of August, 1849, the price of corn at Lacon was 28 cents a bushel; that it advanced about that time considerably, and soon after that time was sold for 33 cents a bushel. That Mr. Low made an arrangement with him to store corn in his warehouse at Lacon; the arrangement was made some time in June, 1849.

On cross-examination, he testified that no money was left with him by Mr. Low to pay for corn; that he did not remember to have seen the plaintiff after the 4th of July, until about the time, or shortly before the time, he commenced suit. He further testified that Low, the plaintiff, never deposited any money with the witness to pay for corn. That he had no recollection of seeing Low here on or about the first day of August.

Clayton M. Bonham, on the same side, testified, that on or about the first of August, 1849, corn was worth 28 cents a bushel, and advancing.

Hall S. Gregory was also called by the plaintiff, and testified, that on the last of July, 1849, corn was sold at Lacon at 27 cents. He did not know of any sale on the 1st of August, but it was advancing, "continued firm, with an upward tendency."

The defendant then called Luke Benson, who testified, that he was present when the written contract was made. That after it was made, and before he, Low, got to his horses, he, Low, told Forbes that he would be back in two or three weeks, and then he would fetch sacks, and tell him where to deliver it. Forbes said, that will do.

Henry Benson was also introduced by the defendant, who testified, that on the 4th of July, 1849, while he, in company with several others, was on the road returning home from Lacon, Mr. Low overtook them. That Low had a load of sacks in his buggy. Low asked Forbes, how about that corn? Forbes said, it was a busy time, but if Low would leave him sacks then, he would deliver it any time that Low said between that and the first of August. Low said he did not want the corn delivered then; that he did not want to pay storage on it; that he did not want the corn shelled until he brought sacks to put it in; that it would keep better in the ear; he also said he would be back in two weeks, if life lasted, and would bring the sacks to put the corn in; that he then wanted it delivered at the mouth of Sandy,

and not at Fenn's warehouse. Forbes replied, that would do; that he had bought a wagon which was to be paid for on the first of August, and he wanted the money for that purpose.

This was all the evidence given in the case.

The Court then, at the request of the plaintiff, entered the following order of record: (See order directing Bill of Exceptions to be settled and signed in vacation, ante.) To the entering and making of which said order the defendant, by his counsel, then and there objected; which objection was overruled by the Court, and said order made and entered of record in this cause; to which order of the Court, in overruling the defendant's objection, and in entering said order, the defendant, by his counsel, then and there excepted.

The Court then, at the request of ~~the~~ plaintiff, gave the following instructions to the jury: (See plaintiff's instructions, ante.) To the giving of which the defendant, by his counsel, then and there objected; which objection was ~~overruled~~ by the Court overruled, and said instructions given to the jury; to which said decision of the Court, in overruling said objection, and in giving said instructions, ~~to~~ the defendant, by his counsel, then and there excepted.

The defendant then asked the Court to instruct the jury as follows: (See defendant's instructions, ante.) To the giving of which the plaintiff, by his counsel, then and there objected; which objection was by the Court overruled, and said instructions given to the

jury; to which said decision of the Court, in overruling said objection, and in giving said instructions to the jury, the plaintiff, by his counsel, then and there excepted.

The jury then returned the following verdict:
(See verdict, ante.)

The plaintiff then entered his motion for a new trial of said cause; which motion, on consideration of the Court, was overruled, and judgment entered upon said verdict as follows: (See judgment, ante.) To which decision of the Court, in overruling said motion for a new trial, and rendering judgment upon the verdict of the jury, the plaintiff, by his counsel, then and there excepted; and prays that this his Bill of Exceptions may be signed and sealed, which is accordingly done.

M. E. Hollister. 

State of Illinois, } ss. J. G. L. Fort, Clerk of the
Marshall County, } Circuit Court for said County,
do certify, that the foregoing Record, from page
1 to page 24 inclusive, is a true transcript of
the papers on file, and the proceedings had, in
the case of William W. Low vs. Peter Forbes, in
said Court.



Witness my hand, and the Seal
of said Court, at Lacon, this
10th day of June, A.D. 1856.

J. G. L. Fort, Clerk.
By Jas. St. C. Boal, Deputy.

Transcript &c 10-95-

Mr. W. Lawrence }
vs } Error to Marshall
John Forbes }

And now comes the
Said Plaintiff in Error and says
that in the Record & proceedings and
in the rendition of the Judgment
aforesaid there is Error in this
(to wit)

1. At the Court Error in giving Judgment
for the Defendant.
2. In Giving the instructions asked
by the defendant
3. In Overruling Plaintiff's Motion
for a new trial

Plaintiff therefore prays that the
Said Judgment may be reversed

A. J. Triple

Atty for Plff in Error

117.00

William W. Low
vs
Peter Forbes
Transcript

Filed March 24. 1859
S. Leland
Clerk.

117.00

STATE OF ILLINOIS, }
SUPREME COURT, ss.

The People of the State of Illinois,
TO THE SHERIFF OF THE COUNTY OF *Marshall*

GREETING:

BECAUSE, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the Circuit Court of *Marshall* county, before the Judge thereof, between *William W. Low* plaintiff
and *Peter Forbes*

defendant, it is said that manifest error hath intervened, to the injury of the said
plaintiff

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

that *he* be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the *first Tuesday after the third* Monday in *April* next, to hear the records and proceedings aforesaid, and the errors assigned, if *he* shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said *Peter Forbes*

notice, together with this writ.

WITNESS, The Hon. WALTER B. SCATES, Chief Justice of our said Court, and the Seal thereof at Ottawa, this *24th* day of *March* in the Year of Our Lord One Thousand Eight Hundred and Fifty- *seven*.

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

William M. Down

Peter Forbes

Seire facies

Filed April 1st 1857

A. Deland

Clerk

Shuffles

190

I have served this writ by reading the same to the within named Peter Forbes on the 28th day of March AD 1857

H. L. Crane Sheriff of
Marshall County
Illinois

Service — 50
6 miles travel 30
Return 10
90

WITNESSE, The Hon. WALTER B. SCATES, Chief Justice of our said Court, and the Seal thereof at Ottawa, this 28th day of March, 1857.

Clerk of the Supreme Court

STATE OF ILLINOIS, }
SUPREME COURT, } ss.

The People of the State of Illinois,
TO THE CLERK OF THE CIRCUIT COURT FOR THE COUNTY OF *Marshall* GREETING:

BECAUSE, In the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of *Marshall* County, before the Judge thereof, between *William W. Low*

plaintiff, and *Peter Forbes*

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

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

WITNESS, The Hon. WALTER B. SCATES, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this *24th* day of *March* in the Year of Our Lord One Thousand Eight Hundred and Fifty-*seven*.

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

Wm. W. Low
Clerk of the Supreme Court

of One Thousand Eight Hundred and Eighty-
four, this 20th day of March, in the Year
Justice of our said Court, and the Seal thereof at Or-
dained, The Hon' WALTER B. SCOTLER, Chief

be done according to law.

spected, we may cause to be done therein to correct the error, what of right ought to
next, that the record and proceedings, being in-
the same before our Justice, who said at Ottawa, in the County of La Salle, on the
stated, with all things touching the same, under your seal, so that we may have
sent to our Justice of the Supreme Court the record and proceedings of the brian
and you that if judgment thereof be given you distinctly and openly, without delay.

William W. Low
vs
Peter Forbes
Writ of Error

Filed March 24/89
L. Leland
Clk

Wm. W. Low

has

the Judge thereof, between *William W. Low* and *Peter Forbes*, County, before
of a plea which was in the Circuit Court of *La Salle* County, before
REDAVINE. In the record and proceedings, as also in the rendition of the judgment
TO THE CLERK OF THE CIRCUIT COURT FOR THE COUNTY OF *La Salle*,
SUPREME COURT. }
STATE OF ILLINOIS, } The Judge of the State of Illinois,