

No. 14551

Supreme Court of Illinois

Whitman

vs.

Robinson

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division

No. 163

1551

1863

Whitman
vs
Robinson

State of Illinois } Pleas before the
Safalle County } ss Honorable Madison
E. Hollister, the
Judge of the Ninth Judicial District
of the State of Illinois, and the Presiding
Judge of the Safalle County Circuit Court
in said State, at a term of said Court
commenced and held at the Court House
in Ottawa in said County and State
on the Second Monday in the month
of June, The Same being the tenth day
of June, in the year of Our Lord One
Thousand Eight Hundred and Sixty
One, and of the Independence of the United
States of America the Eighty fourth,
Present: The Honorable
Madison E. Hollister, Presiding Judge
Absalom B. Moore Clerk
David P. Jones States attorney
Eric L. Waterman Sheriff

Be it remembered, That
heretofore To Wit: on the 23^d day of
April AD 1861, a "Transcript" was
filed in the office of the Clerk of
said Court, which said Trans-
cript, is in the words and figures
following

State of Illinois }
Safall County }

William H. Robinson
& David A. Town

^{vs}
Dumie H. Whitman

In Justice Court before Mr. H. Signor
J. P. 1861. March 16th. Change of venue from
H. A. Chase Esq. Transcript and papers
delivered by A. J. Spower Plaintiff's attorney
Cost from Esq Chase Docket.

Justice fees \$1.62. Const fees \$.95 Witness
fees \$2.00. Parties appear and Subpoena
issued for Defendant, and given to
him (defendant) to serve.

S. I. Stilson, A Bennett, Harrison
Bennett, W. R. Haight, and James A.
Miller were sworn on the case, all
claim fees. Time taken by the Court
untill the 21st inst at 10. O'clock A. M.
to give a decision

W. H. Signor J. P.

March 21st 10. O'clock A. M. after hearing
all the evidence offered in the case and
consulting all the law at hand applica-
ble to the case. It is considered by
the Court that the plaintiffs, cannot recov-
er under the Law and evidence and that
the defendant have and Recover of the
plaintiffs the sum of four ^{73 1/2}/₁₀₀ Dollars as costs

of Suit.

No. H. Signor J. P.

1861. April 6th The Plaintiff filed their bond for an appeal to the Circuit Court with S. J. Stilson as security which Bond is approved and appeal granted.

No. H. Signor J. P.

(over) 1861. April 20th Bond, Transcript & all the papers in the case this day Sent by Mail to A. B. Moore Clerk of the Circuit Court

No. H. Signor J. P.

Be it remembered that heretofore to wit: On the 23rd day of April 1861 "A note of Hand" was filed ~~among~~ in the office of the Clerk of the ^{Said} Circuit Court which is in the words & figures following To Wit:

\$ 55 ⁰⁰/₁₀₀ Carlville Oct 15th 1858.

On the first day of Sept, after date, I promise to pay, to the order of Robinson & Down, Fifty Five Dollars at their office in Carlville Ills. Value received with ten per cent per annum

Wm Bleakly.

No — Due —

Be it remembered that heretofore so
It is: On the 23^d day of April an Appeal
Bond was filed in the office of the
Clerk of Said Court, which is in
the words & figures following To Wit:

"Know all men by these presents
that we William H. Robinson, David A
Town and — of the County of
Safalle, in the State of Illinois, are held
and firmly bound unto Daniel H. Whitman
in the penal Sum of One Hundred dollars
lawful money of the United States, for
the payment of which, well and truly
to be made, we bind ourselves, our
heirs, executors and administrators jointly
Severally and firmly by these presents.

Witness our hands and seals this 6th
day of April AD 1861.

The Condition of the above obliga-
-tion is such, that whereas the Said
Daniel H. Whitman, did on the 21st
day of March AD 1861, before N. H. Signor
a Justice of the Peace for the Said County
of Safalle recover a Judgment against
the above bounden Robinson & Town
for the Sum of four $\frac{93}{100}$ Dollars, costs
(4.93 $\frac{3}{4}$) from which Judgment the Said
Robinson & Town has taken appeal to the

Circuit Court of the County of LaSalle
aforesaid and State of Illinois, now
if the Said Robinson & Toran shall
prosecute their appeal with effect
and shall pay whatever judgment
may be rendered by the Court upon
dismissal or trial of said appeal
then the above obligation to be void
otherwise to remain in full force and
effect.

approved by me } William H. Robinson (Seal)
at my office this 6 day of April } D. A. Toran (Seal)
1861. } M. H. Signor } S. D. Stinson (Seal)
Justice of the Peace }

Be it remembered that here-
tofore To Wit: On the 23^d day of April
AD 1861. A Summons was issued out
of, and under the Seal of Said Court
which Said Summons, and the en-
dorsements thereon, are in the words and
figures following To Wit:

State of Illinois } The People of the
LaSalle County } ss State of Illinois
To the Sheriff of Said
County, Greeting: We command you
to Summon Daniel H. Whitman

if to be found in your County, personally
to be and appear before the Circuit Court
of Said County, on the first day of the
next term thereof, to be holden at the
Court House in Ottawa on the 10th
day of June next to defend a certain suit
which William H. Robinson & David A
Town, instigated against him before
M. H. Signor Esq a Justice of the Peace
of Said County on the 16th day of March
1861, a judgment having been rendered
against the Said plaintiffs for costs
of Suit and the Said plaintiffs has
taken an appeal to the Circuit Court of
Said County, and further to do and per-
form whatever the Said Court may
then and there consider in the premises
And have you then and there this
Writ.

Witness Abalom B Moore
Clerk of Said Court, and the seal
of Said Court, at Ottawa, this
23rd day of April AD 1861.
A B Moore Clerk

150 ~~William H. Robinson~~ }
David A. Town } Summons to
Daniel H. Whitman } June Term 1861
Served the within

by reading to the within named, Daniel
H. Whitman May 28th 1861,

Er & at 60, 24 miles 1.20, 1.80.

E. L. Waterman Shff

(appeal from Mr. H. S. Signor Esq.)

Filed June 8, 1861. A. B. Moore Clerk

Be it remembered that heretofore
to wit: On Tuesday June 11th 1861, the
same being one of the days of the
June Term of Said Court for said
year an order was entered of record
in Said Cause in the words and figures
following to wit:

William H. Robinson }
David A. Town } Appear
vs }

Daniel H. Whitman } This day the
defendant comes

by J. M. Browne his attorney, and moves
the court to dismiss the appeal herein
for want of jurisdiction of the person
of said defendant.

Be it remembered that heretofore
to wit: On Wednesday December 4th

1861, the same being one of the days of the November Term of said Court, for said year. an order was entered of record in said cause, which is in the words & figures following To Wit:

~~William~~ ^{Wm.} H. Robinson

David A Town

^{vs}
Daniel H. Whitman

Appeal

By agreement of parties it is ordered by the Court that this cause be continued.

Be it remembered that heretofore To Wit: On the 19th day of February AD 1862. an "affidavit" was filed in the office of the Clerk of the Circuit Court of said County, which is in the words & figures following To Wit:

Rob & Town

~~Rob~~
Whitman

William H. Robinson
being just duly sworn
on oath says that
the three loads of wheat spoken of
by Mr. Haight, as having been
delivered into his Warehouse by

Mr Whitman, to the credit of Robinson & Owen ~~was~~ applied in payment of an indebtedness of Whitman to them (Robinson & Owen) other than that of Blakely which Whitman agreed to pay and that he knows of no witnesses by whom he could prove said fact except by the testimony of the defendant Whitman or that of the Plaintiffs.

Subscribed & Sworn
to this 19th day of February
AD 1862, before me,
A B Moore

Wm. H. Robinson

Clerk C. H. Hook Deputy

Be it remembered that heretofore to wit: On Wednesday February 19th 1862, The Same being one of the days of the February Term of Said Court for said year an order was entered of record in said cause in the words & figures following To wit:

William H. Robinson }
& David A. Owen }
vs }
Daniel H. Whitman }

Appeal

This day come the Plaintiffs by
Hylgrouver their attorney and the de-
fendant by Browne, Glover Cook &
Campbell his attorneys, and thereupon
come the following Jurors of a Jury
Do Dit; John Bogle, E. H. Raymond
George B. Macy, W. B. Titus, James
Spencer, L. B. Delano, George H.
Hunter, Richard Harden, J. W.
Drake, Lyman Waterman, Sherman
Couch & Eli Barnes, who are duly
elected, tried and sworn to well
and truly try the issues herein, and
a true verdict render according to
the evidence, and after hearing the
evidence and arguments of Coun-
sel, the Jury retire to consider of
their verdict.

Be it remembered that
heretofore Do Dit; On the 19th day
of February AD 1862, The instructions
on the part of Plaintiff, was filed in
the office of the Clerk of Said Court
and is in the words and figures
following Do Dit;

"Instructions in behalf of the Plaintiff"

Given

If the Jury believe from the evidence that the defendant Daniel H. Whitman agreed with one William Blakely in consideration of about Five Hundred Bushels of Oats, and about Thirteen Hundred Bushels of Wheat rec^d from Blakely to pay the plaintiffs the store debt of Blakely although the plaintiffs were not present and may have had no knowledge at the time that such contract was made they have a right to recover of the defendant the amount if proven of such indebtedness so agreed to be paid.

If the Jury believe from the evidence that the defendant received the wheat oats & Corn from Blakely for that purpose, and entered upon the performance of such agreement and that Blakely was indebted at the time to the plaintiffs,

Be it remembered that Verdict to wit, On the 19th day of February 1861. The Instructions asked for on the part of Defendant, was filed in the Office of the Clerk of said Court and are in the words and figures following To Wit;

1

Given

If the jury believe from the evidence that the defendant delivered to Robinson & Down three loads of Wheat on the 17th day of October 1857, they should allow the defendant the value of the wheat as against the Plaintiffs claim, and if the value of the wheat was equal to Plaintiffs claim they should find for the defendant, unless they believe from the evidence that Robinson & Down paid defendant for said wheat in some other way.

2

Given

And if defendant delivered to Robinson & Down three loads of wheat the jury should allow him for the value of the wheat unless he has been paid therefore and Robinson & Down cannot claim, that said wheat should be applied, on some other account, unless it is proven that Whitman was owing plaintiffs on some other account, and then the amount of the account so owing must be in some way, be proven before it can be set off against the wheat! -

3

If defendants in Oct 1857 did agree

Refused

to pay to plffs the amount of a debt which was owing to plaintiffs by the witness Blakeley - and the same had not been paid - and that on the 15th day of Oct 1838 plaintiffs took the note of Blakeley for the same debt payable Sept 1st 1839. in such case the release made in evidence released the debt

Be it remembered that heretofore Do Wit: On Thursday February 20th 1862, the same being one of the days of the February Term of said Court: An order was entered of record, which is as follows Do Wit:

William H. Robinson }
& David A. Town } Appeal
vs
Daniel H. Whitman }

This day again came the parties to this Suit by their attorneys and thereupon came the jury in this cause, who after due deliberation in the matters at issue return into Court the following verdict

To Wit: "We the Jury find the issues joined in favour of the plaintiffs, and assess their damages at the sum of Fifty five Dollars

The Defendants Attorneys now move the court for a new trial

Be it remembered that heretofore To Wit: On Thursday March 6th 1862, the same being one of the days of said February Term of said Court for said year the following further proceedings were had and entered of record in the words and figures following To Wit:

William H. Robinson	}	Appeal
& David A. Down		
^{vs} Daniel H. Whitman		

It is ordered by the Court, that the motion for a new trial herein be overruled.

It is therefore considered by the Court that the plaintiffs have and recover of the defendant fifty five Dollars for their damages and their costs herein & in the Court below expended

& that execution issue therefore. The defendant by his attorneys now prays an appeal to the Supreme Court of this State which is allowed upon condition that said defendant do within ten days file an appeal bond herein payable to the plaintiffs in the penal sum of Two Hundred Dollars with Joseph Heart as his security. It is further ordered that said defendant have ten days, from and after the adjournment of the present term of this Court to prepare, tender and file a bill of exceptions herein.

Be it remembered that heretofore Do Wit: on the 8th day of March 1862 An "Appeal Bond" was filed in the office of the Clerk of said Court in said Cause, which is in the words & figures following Do Wit:

"Know all men by these presents that we Daniel H. Whitman as principal and Joseph Heart as Security are held and firmly bound unto William H. Robinson and David A. Town in the penal sum of Two

Hundred Dollars, good and lawful money of the United States for the payment of which well and truly to be made we bind ourselves our heirs, executors and administrators, jointly severally and firmly by these presents,

Witness our hands and seals this 8th day of March A.D. 1862,

The condition of the above obligation is such, that whereas the above named William H. Robinson and David A. Town did at the February Term of the Circuit Court held in and for the County of Sea-Salle, in the State of Illinois A.D. 1862 recover a judgment against the above bounden Daniel H. Whitman for the sum of fifty five dollars and costs, to reverse which said judgment the said Whitman has prayed for and obtained an appeal to the Supreme Court within and for the Third Grand Division of said State. Now, if the said Whitman shall duly prosecute said appeal, and pay or cause to be paid the amount of said judgment and all judgments costs, interest and damages, which the said Supreme Court shall adjudge against him, and abide the order and judgment of said Supreme Court in this behalf, then this obligation is to be void, otherwise to remain in full force and effect.

D. H. Whitman *(Seal)* Joseph Hart *(Seal)*

Be it remembered that heretofore to wit: on the 15th day of March 1862: a "Bill of exceptions" was filed in said cause which are in the words & figures following to wit:

Robinson Etal

vs.

Whitman

In the Circuit-Court-
of Cassale County
February Term A.D. 1862

Be it remembered that on
the trial of the above entitled cause
the said Plaintiffs to maintain the issues
on their part called the following witnesses
who testified as here in after stated
immediately after the name of of each
of the several witnesses.

M^r. Bennett: I know the parties to this suit.
— Mr Blakely came to see me one day on Whitmans
place, and wanted me to haul wheat to
Earl for him. Whitman the Defendant was
present. I asked Blakely who the wheat was for.
He said take it to Knight & Stilsons
warehouse — I asked whose name to store
it in, and he said Robinson & Torne —
Whitman then asked Blakely what difference
it made if it was put in his (Whitmans)
name as he Whitman was holder for
Blakelys debt to Robinson & Torne &
Blakely then said it might be put in
Whitmans name. I hauled 8 loads, and
gave two tickets to Whitman. My Brother

drew one load and I went up there & Blakely said to Whitman "That makes 4 loads & will more than pay my debt to Robinson & Towne. Whitman ^{said} will make no difference I am owing a bill there also.

On the first conversation Whitman said it didnt make any difference whose name the grain was stored in, as he Whitman was holder for Blakelys debt to Robinson & Towne. I gave the tickets for two loads to Whitman, and for two loads to Blakely dont know whose name was on the tickets

Cross Examined

This was in 1857 my Brother was present at the conversation and others were about; ~~It~~ It was about the first of October. They were thrashing at the time the ^{The wheat was raised on Whitmans farm.} was all done in one job, one stack was not yet thrashed. I do not know in whose name the wheat was deposited. The four loads of grain were deposited in the name of Robinson & Towne

thrashing

Specie was thrashing then can not remember who else was there. did not think of this conversation till the suit was brought

three years after. Didnt you swear before Esquire
Miller that you gave all the receipts to Blakely.

I did not and have not so sworn any-
where

Harrison Bennett

I hauled one load of the wheat. heard
Whitman ask Blakely what he was going to
do with the wheat. Blakely said that he
was going to store it in Robinson & Townes
name. and Whitman said that would
be all right as it would over pay Blakely's
debt and the balance could apply on his
Whitmans account. when we hauled the last
time it was late in the evening and -
Whitman told us to empty the wheat in the
hoppers if there was no one there and Abram
could bring the receipts up in the morning
Whitman lives in De Kalb County four or
five miles from Carlsville. we put the
wheat in Haights warehouse in Carlsville
our orders were to put the wheat in in
Robinson & Townes name. the orders came
from Whitman & Blakely both. and they
both said that would make four loads
for Robinson and Towne and it would overpay
Blakely's debt and the balance would apply on

his Whitman's debt. Some two days after Whitman and Blakely came up to me and Blakely said he had given Whitman all ~~the~~ ^{his} small grain and Whitman was to pay certain debts of Blakely. — Among these sums were \$125 to me a debt to Robinson & Downe and one other. This was near the last of October 1857.

Whitman told me that he was to have the crops and I saw him use some of them, but not after that to my knowledge. Blakely left then in November and I never know him to exercise any ownership over the crops after that. — Whitman came to me when I was husking corn and told me "if I would go down to the trial at Earleville and testify to the facts just as I knew them and then cross myself in the cross examination so as to throw my testimony out of Court - he would give me five dollars. There were two men working with me four or five rods off

Cross Examined

He did not say "not cross myself &c" the facts are as I have testified to them here. Whitman ^{and} Blakely both told me to deposit

the wheat in Robinson^{and} Lowne's name. I did so. They both said that would make four loads that had gone to Robinson^{and} Lowne's. Whitman and Blakely when they told me about the bargain to pay Blakely's debts said they made the bargain the evening before this conversation occurred.

Direct Resumed.

It was Blakely's wheat three loads were hauled in one day I know and I don't know but all of it - if this one was not hauled the ~~the~~ same day it was before the three.

Cross Examined.

Blakely hired me to ~~plant~~ in this grain in the spring. Hart sowed it and I dragged it in. Whitman and Blakely told me Blakely hired the land and was to pay cash for it. it was as much as three dollars per acre. there was about one hundred and fifteen acres I think there was about one thousand bushels of wheat turned out to — Whitman by Blakely. it was worth from fifty to sixty five cents per bushel

Mr. Blakely Examined by ~~Defendant~~ - said

I am the man whose note to Robinson & Irvine is the one making the indebtedness sued on

The Plaintiffs in order to render said Blakely a competent witness then & there executed and delivered to him a release of which the following is a copy

" In consideration of a certain contract
" made by & between Daniel F. Whitman &
" William Blakely, by which Whitman was
" to pay us what said Blakely owed us
" we hereby release the said Blakely from
" all claim which we may have against
" said Blakely for said indebtedness and
" this shall be his receipt in full of said
" claim

" Ottawa 19th February } Robinson & Irvine
" 1862 } per Robinson

And immediately after the Execution and delivery of said ~~order~~ Release to the said witness the Defendant by his Counsel entered his motion in said cause to dismiss the said suit. The Court then and there over-ruled the said motion & refused to —

dismiss said suit. The Defendant then & there accepted the said ruling of — said Court.

& Said Blakely testified as follows. The bargain between Whitman and me was in October 1857 — I gave Whitman 1325 bushels of wheat and he agreed to pay all of my debts in Earlville — Among them was the debt to Robinson & Towne of \$55 — upon which this Suit ^{is} ~~was~~ brought. A debt to Harrison Bennett of \$125.00 one to Oliver Specie a little over \$100 one to James Miller of \$20 —

I believe that was all.

Wheat was worth 60¢ per bushel. The 4 loads sent to Knight's warehouse were to pay Robinson & Towne. Harrison & Abram — Bennett hauled it. They hauled 2 loads one day and the rest a day or 2 days after. I didn't see the receipts —

X Examined

Witness was here shown the release executed & delivered to him by the plaintiffs a copy of which is above set forth. & stated that it was given to him by the plaintiffs. Said witness further stated. That 4 loads of wheat were to pay my debt to Robinson

& Towne. I include the 4 Loads in the
132½ bushels. I know that was the amount
of wheat - by the thrashers bill, I took
Eight bushels to pay Bennetts for hauling
- part of the wheat was not measured till
after the sale. The four Loads would average
thirty six bushels to the Load. this was all
the debt that I owed Robinson & Towne
and I gave Robinson & Towne a note for
this debt October 15th 1858, this is the note
(referring to note shown him) I owed
Whitman \$200 besides the rent of \$600 -
I gave Whitman a note for \$332 ~~50~~ -
against Ashton - the \$200 - was for a horse
there was \$132 - that Whitman paid Ashton
besides this and this was to be paid by
the wheat.

Direct Resumed

I let him have some oats before
this and he was to allow me thirty cents
- there was \$500

The Ashton note was paid in wheat. I
sent it to Ashton before the bargain between
Whitman and me

X Examined

There was only thirteen hundred and twenty five bushels of wheat in all and the ash-ton wheat came out of it. I sued Whitman on this debt before Esquire Miller. Don't know whether I sent the wheat down to Haights-warehouse.

William Haight

I know there was wheat delivered by Bennetts in fall of "57 at our warehouse. I remember the two Bennetts brought two loads one evening the 13th of October. I came up as they were unloading and first made out the checks in Bennetts name. He came in and told me to make the checks to Whitman. S. B. Warren & Co received the wheat out of the warehouse. Robinson & Towne did not receive any of it. Wheat was ruling at from 50 to 55 cents at that time. I testified before that this was in November. I judge now from my books that I was mistaken. Whitman delivered I should think Eight hundred to a thousand bushels of wheat that fall. I think he sent it by ~~teams~~ ^{teams}.

The Plaintiffs here rested their case and the Defendants to maintain the issues on his part called the following witnesses who testified as is hereinafter set forth after names of each.

Charles Preston.

I heard the close of this conversation between Whitman and Blakely. Specie — refused to thrash unless he had some security for it and Whitman agreed to pay the thrashing bill and Blakely agreed to turn out the wheat and some notes amounting to raising of \$300 — this was in the last of September or 1st of October. I heard the bargain stated over. Whitman Blakely & Specie were there. It was when the thrashing commenced. This was immediately after my thrashing and I finished the 5th of October. I heard of no other debts that Whitman was to pay.

Joseph Hart.

Thrashing was done at two different times first was done in the fore end of — September by Specie and the next the last of September & the first of October. I saw the Bennetts drawing wheat from —

Whitman. I knew the parties had a settlement. Blakely told me they had a full settlement of their matter of the 30th of October about eleven o'clock at night— I don't remember the sum he said he owed Whitman after the settlement but it was a considerable sum of money.

X Examined

Think that during the summer previous I heard Whitman say that he was responsible for a debt to Robinson & Lorne from Blakely

Direct Resumed

I am not very confident of this fact because I know that in 1858 Whitman did go security for Johnson who was a tenant of his and I may have got the idea from this

James A. Miller

Heard Bennetts testimony before Esquire Miller he testified that the four loads were stored in Bennetts name. I heard Robinson swear also at that time and he swore that he had no interest in this matter

at all in any shape or manner. the suit
was brought by Blakely for use of Highthall
vs. Whitman

William Haught

There was three loads of wheat ~~xxx~~ —
deposited in the warehouse in Whitmans
name for Robinson and Lown that fall it was
the 17th day of October that they were stored
the amount was 97½ bushels

The Defendant here rested his case and
the Plaintiff to further maintain the —
issues on his part called the following
witnesses who testified as hereinafter
set forth after their respective names

William Haught

Knew the firm of Robinson & Lown
that fall — is shown book and says
he recognizes it as one of their books. thinks
they never have kept a book before the
entries are in Mr Lown's hand writing
I should say, a 2nd Book the same
I have settled by their books and found
them to be correct

Charles Preston

I recognize No 1 as Robinson & Torone's Book and have settled by them and have always found them correct—

Joseph Hart

No 1 is Robinson & Torone's Book. I have settled by them and found them correct.—

Plaintiffs offer the Books in evidence but the Court refused to permit them to be read ~~in~~ in evidence.—

William Knight, Says they have generally kept a clerk who helped sell goods &c but did not help keep the Books.—

Robinson one of Plaintiffs files —
Affidavit that he has no other witness but Defendant &c.—

D. H. Whitman Defendant sworn.

I never looked at their Books when I settled with Robinson and Torone only to see whether they were balanced I recollect of settling with Robinson and Torone before harvest of that year—

and I remember of letting them have
three loads of wheat. I did not owe them in
October of that year and did not let them
have wheat to balance any account then
I ~~sure~~ had no account of my own
with them that fall. I may have settled
an account of Blackelys in the fall but
not a private account of my own. —
I had settled up with them the winter
before and paid them the money. I paid
them the money when I settled with them
just before harvest. think I paid them
\$10 — and that balanced the account —
I had paid them up but a short time
before. Harvost traded with them since —
except some little thing and paid cash
and once this summer twenty cents pur-
chase that run a few days. I don't remember
of letting Robinson & Trone have any wheat
that fall. I never saw the receipts for the
four loads of wheat. did not sell them
to Warren. —

X Examined

I have the impression that Bennett
took wheat there for Blackely that fall, but
I never knew anything about it. —

The Plaintiffs then rested their case and the Defendant to further maintain the issues on his part read in evidence the note above referred to by the witness Blakely as his note to Robinson & Towne. said note was and is as follows

\$55⁰⁰/₁₀₀ Earlville Oct-15th/1858

On the first day of Sept after day. I promise to pay to the order of Robinson & Towne — fifty five dollars at their Office in Earlville Ills value received with ten per cent — per annum

W^m Blakely

This was all the evidence in this case

The court then and there at the request of the Plaintiffs instructed the jury as follows

If the jury believe from the evidence that the Defendant — Daniel H. Whitman agreed with one William Blakely in consideration of about five hundred bushels of oats and about thirteen hundred bushels of wheat —

received from Blakely to pay the Plaintiffs
the store debt of Blakely. Although the
Plaintiffs were not present and may have
had no knowledge at the time that such
contract was made they have a right to
recover of the Defendant the amount if
proven of ^{such} ~~the~~ indebtedness so agreed to be
paid. If the jury believe from the Evidence
that the Defendant received the wheat, oats
& corn from Blakely for that purpose, and
entered upon the performing of such
agreement; and that Blakely was
indebted at the time to the plaintiffs

To the giving of the said instructions the
Defendant then & there objected the Court
over ruled the said objection & the Defendant
then & there excepted

The said Defendant then & there requested
the Court to give the jury the following
instructions. ~~~~~

1. If the Jury believe from the evidence that the Defendant delivered to Robinson & Towne three loads of wheat on the 17th day of October 1857, they should allow the Defendant the value of the wheat as against the Plaintiffs Claim, and if the value of the wheat was equal to the Plaintiffs claim they should find for the Defendant unless they believe from the evidence that Robinson & Towne paid Defendant for said wheat in some ~~other~~ other way
2. And if defendant delivered to Robinson & Towne three loads of wheat the jury should allow him for the value of the wheat. Unless he has been paid therefor and Robinson & Towne can not claim that said wheat should be applied on some ^{unless it is proven that Whitman was owing Plaintiffs on some other account} other account, and then the amount of the account so owing must be in some way be proven before it can be set off against the wheat
3. If Defendant in October 1857 did agree to pay to plaintiffs the amount of a debt which was owing to Plaintiffs by the witness Blackely - and the same had not been paid and that on the 16th day of Oct 1858 -

plaintiffs took the note of Blakely for
the same debt payable Sept 1st 1859 —
in such case the release read in evidence
released the debt:—

The Court then & there refused to give to
the jury the said 3rd instruction & the Defend-
-ant then & there excepted to the said ruling
of the Court

The jury found a verdict for the Plaintiff
and assessed their damages dollars

The Defendant then & there entered his —
motion for a new trial in said cause
the Court overruled said motion and the
Defendant then & there excepted

I pray that this his Bill of
Exceptions be signed sealed and made
a part of the records of this Court

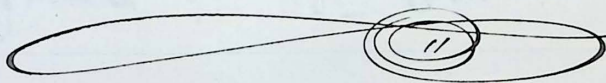
Which is done

M. E. Hollister (Seal)
Judge

State of Illinois }
Safalle County } 88

I, Absalom B. Moore, Clerk of the Circuit Court in and for Said County do hereby Certify that the foregoing is a true, full and perfect copy of the records of Said Court in the foregoing entitled Cause, also of the papers now on file in my office, in Said Cause.

Witness my Hand and
the Seal of Said Court this
28th day of March AD 1862
A B Moore Clerk



Now Comes the Said Daniel A White-
man Appellant & Shows to the Court
that in the record of proceedings aforesaid
and in the rendering of judgment aforesaid there ~~was~~ ~~man~~ is
manifest error in this to wit

- 1 The Court erred in admitting
improper evidence in said Cause offered
by the Plaintiffs below

- 2 The Court Erred in Excluding proper Evidence offered by the Deft below
- 3 The Court Erred in overruling the said motion of Deft below to dismiss said Cause
- 4 The Court Erred in giving to the Jury the said instruction asked on the part of said plaintiffs
- 5 The Court Erred in not giving to the Jury the said 3^d instruction asked by the Defendant below
- 6 The Court Erred in overruling the motion of said Defendant for a new trial in said Cause
- 7 The Court Erred in rendering Judgment aforesaid in manner form and force said

Allover Cook Campbell
Atty for Appellants

And now comes the said appellee
by A. Glover their attorney and
say there are no such errors in
said record & proceedings as is
alleged by said appellant nor
are there ^{any} errors in such record
& proceedings Wherefore said
appellee prays judgement that
the judgement of said Court
be affirmed

A. Glover
for Appellee

³⁰⁹
Daniel H. Whitman

163 rs

Wm H Robinson

David A Town

appear from
La Salle

Filed Apr. 24. 1868
L. Veland
Clk.