No. 14742

Supreme Court of Illinois

Tarble

---

vs.

Underwood

71641 

14742

STATE OF ILLINOIS,

SUPREME COURT,

THIRD GRAND DIVISION.

No. 146

J. W. Middleton & Co., Stationers, 196 Lake St.

Durbet

vs

Underwood

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM THEREOF, A. D. 1864.

JOHN M. TARBLE
vs.
LESTER UNDERWOOD. } *Appeal from La Salle.*

ABSTRACT OF THE RECORD.

2-18 This part of the record, from page 2 to 18, contains the proceedings of the justice of the peace Court and of the County Court, and change of venue to the Circuit Court, and has nothing whavever to do with the question of law on which appellant relies, and the clerk ought not to have inserted it.

18 Trial.

19 Trial continued—verdict for plaintiff, below, for $90. Motion for new trial.

20 Motion overruled.

Judgment.

21 Evidence for plaintiff.

An order as follows:

OTTAWA, April 24, 1862.

H. C. King & Co.,

Please deliver Lester Underwood one of your best four hole shellers, price ninety dollars, and charge to my account.

J. M. TARBLE.

22 Deposition of George Heath.

Underwood had an order given by Tarble on H. C. King & Co., and when he presented the order, Henry King, one of the partners, offered to let him have an old corn sheller, and said they should turn out no

other. He examined old and new machine, and thought $25 difference in value. Heath and Underwood then went to Tarble's store.

23 Underwood offered Tarble the order, and demanded the money. This was all on the 6th May, 1862. Witness tolerably well acquainted with machinery.

Deposition of Geo. Matteson.

Went withUn derwood to factory of King & Co., and heard Underwood enquire who was the man of the firm, and was directed to Hervey King. He then demanded of him one of their best four hole shellers. King refused to let him have such an one as the order called for, but offered him an old one. Underwood refused to take it, and we went

25 back to Tarble's, and he demanded the money, and told Tarble what King said. Tarble replied that he should have such a sheller as the order called for. King said Tarble paid him in old horses, and that the ma-

26 chine was as good as the pay.

There was $25 difference in the old and new machine.

28 W. B. Field testified that he was present when Underwood at one time went to King's and wanted a corn sheller. King offered an old one. Underwood wanted new one. King said he had no new one for him that day; that the only one that was finished was sold. Did not hear all the conversation. Lived in Morris. Came to Ottawa and stopped with Underwood. Business—daguerrean artist.

Charles McNeal.—Know old machine—difference between old and new one was $20. There were 2 new ones nearly finished. The old one was not put together. Witness afterwards sold one to Underwood. The boxes of new one better than old one.

29 O. Levans proved demand on Tarble for money.

Sidney Bates.—Was present when Underwood at one time made demand for machine. There were two machines besides the old one. One of them was finished, and one not put together.

Bradford Fields.—Machinist in iron work. Present at the time demand made. Uuderwood was at King & Co's. several times.

Hervey King said the old fool did not know what he wanted, and that he would have to wait for a new one a few days unless he would take the old one. The old machine was of the make of the year before, and had threshed about six hundred bushels. It had been repaired and the improvements of the new ones put in. Without new improve-

ments the old one was worth $50 less than new one; but with the improvements, which were put in, it was worth $10 to $15 less.

Plaintiff rests case.

The defendant, to maintain the issues on his part, introduced Hervey King, who testified that he was one of the firm of H. C. King & Co., upon whom said order was drawn. Thereupon the plaintiff, by his counsel, objected to his testifying. The defendant offered to prove by King, that H. C. King & Co. never refused to deliver one of their best four hole corn shellers, worth $90. That at the time of the conversation mentioned by the plaintiff's witness, they had but the old last year machine repaired, and one new one ready to be delivered, that the new one was sold to third party before ever Underwood called on them for a sheller. Said third person afterwards took said new machine. That King & Co. were manufacturers of machines, and did not at all times keep a stock of finished machines on hand, which fact was known by Underwood; that said old machine was of the make of the year before, and had not been used at all except for trial; that it was of better material; that the new ones were being made of hard wood, and it had been remodeled, and all the improvements of the new ones put into it; and that it was one of King & Co's best, and was worth $90, and was actually sold for that sum. Also, that King & Co. always told Underwood that if he would wait a few days, they would give him any kind of a machine he wanted; also, that a few days after all the conversation mentioned by said witness, and after said suit that was commenced on the 8th day of May was dismissed, Unnderwood came to the shop of H. C. King & Co., and made another demand, and it was then and there agreed by Underwood that he would wait four or five days, till King & Co. could put up a machine such as the order called for, and to Underwood's satisfaction, and that King & Co. agreed to have such machine ready in that time, and Underwood agreed to come and get the same at the end of four or five days. That King & Co. did prepare such machine within three days, and kept the same on hand for upwards of two weeks after, for Underwood, and Underwood never came for such machine, and never said any thing more about the order or machine, and defendant's council stated that the defendant did not intend to insist on the old machine, but relied exclusively on the new arrangement which was intended to be proved by King.

The Court sustained the objection of the plaintiff, to which ruling the defendant then and there excepted.

Defendant rested his case.

This was all the evidence in the case. The jury found for plaintiff, and defendant moved for a new trial, which motion was overruled by the Court, and the defendant then and there excepted. The defendant prays the Court to sign and seal this bill of exceptions, which is accordingly done.

Appeal bond.

ERRORS ASSIGNED.

1. The Court erred in refusing to allow Hervey King to testify.

2. In overruling motion for new trial. And other errors.

GRAY, AVERY & BUSHNELL,
Att'ys for Appellant.

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SUPREME COURT,

Third Grand Division,

APRIL TERM THREEOT, A. D. 1864.

JOHN M. TARBLE
vs.
LESTER UNDERWOOD. } *Appeal from La Salle.*

ABSTRACT.

GRAY, AVERY & BUSHNELL,

Attorneys for Appellant.

Filed Apr 26 1864
L Leland Clk

SUPREME COURT OF ILLINOIS:

THIRD GRAND DIVISION.

April Term, A. D. 1864.

JOHN M. TARBLE
vs.
LSTEER UNDERWOOD. } APPEAL FROM LASALLE.

POINTS AND AUTHORITIES FOR APPELLEE.

The witness, King, was not equally liable to both parties to the suit as is claimed. What transpired between King and the appellee was in effect an acceptance of the order of the appellant. King did not refuse to fill the order, but offered to turn out a machine which he claimed did fill it, but which did not in fact as was shown by the evidence.

Having thus accepted the order, King would have been liable over to the appellant not only for the amount of the order but for the costs of this suit, also in case judgment had been rendered against the appellant. This rendered him incompetent.

3 Stark's Ev., p. 68 to 73.
Chitty on Bills, 671,
1 Green Ev. sec. 401.
Edwards v. *Lowe*, 8 B. & C. 407.
Larbalistier v. *Clark*, 1 Barn. & Ad. 899.

The evidence shows that King refused to turn out any but an old machine worth from twenty to twenty-five dollars less than the kind called for by the order. His acceptance then was a conditional one, and under it he was only liable to the appellee for the value of the old machine. On the other hand, King having received the consideration from the appellant for one of the new and best machines, would have been liable to him for the value of the same had judgment been rendered against the appellant, and was therefore interested in defeating the appellee's suit to the extent of the difference in value between the two machines.

Emerton v. *Andrews*, 4 Mass. 653.
Marquand v. *Webb*, 16 John. 92.
Mott v. *Hicks*, 1 Cow. 513.

King could have been compelled to refund the consideration for the machine after judgment had been rendered against Tarble. This rendered King an incompetent witness.

1 Green. Ev., sec. 395.

If King's evidence had been admitted and the appellant had proved by him what he proposed to it ought not to have changed the verdict.

The appellant's counsel offered to prove that a few days after the consideration mentioned in the evidence, the appellee agreed with King to wait four or five days till King could put up such a machine as the order called for, and that King agreed to have such machine ready in time, and appellee agreed to come and get the same at the end of four or five days, and that King did prepare such machine in time, but did not keep it for the appellee longer than about two weeks. The appellant's counsel also stated at the same time that he did not intend to insist on the old machine, but relied exclusively on the new arrangement which was intended to be proved by King.

If this arrangement was made, King was bound to keep the machine for appellee a reasonable time, which by his own declaration he did not do, and the appellee was at liberty, after King had disposed of the machine, to resort to the appellant for the value of such a machine as the order called for.

D. P. JONES,
For Appellee.

admit consideration for the order

Jno. Joy Bushnell
for appellant

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J. M. Tarbell

vs

L. Underwood

Appeal from Probate Court

Filed May 23. 1864

L. Leland Clk

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION

APRIL TERM THEREOF, A. D. 1864.

JOHN M. TARBLE
vs.
LESTER UNDERWOOD. } *Appeal from La Salle.*

BRIEF OF APPELLANT.

There is but one question in this cas, viz:

Was Hervey King a competent witness?

The action is based on the order, viz:

Ottawa, April 24, 1862.

H. C. King & Co.,

Please deliver Lester Underwood one of your best four hole corn shellers—price ninety dollars—and charge to my account.

J. M. TARBLE.

He was one of the drawees.

His interest was equally balanced. If Tarble was beat, then King was liable to him for his indebtedness. If Underwood was defeated in the suit, then he was liable to him.

We rely entirely upon this one question, and refer to the following authorities:

1 Greenleaf, secs. 386–87, 393

And refer in particular to secs. 399, 400, 401.

Chity on Bills, side page 654, 655, 656, 658 and 659.
5 Gil. 469.
4 " 576.
4 " 167.
1st Freeman's Digest, 793–94–95.

The authorities to which we refer express and describe cases so applicable to this one, that we do not deem it necessary to make any comments upon them.

Most all the evidence is contained in the abstract, and pages 3 and 4 state what appellant expected to prove by King, and also that appellant did not rely on any quibble about the old machine, but on the new arrangement.

GRAY, AVERY & BUSHNELL,
For Appellant.

1469

John Tarble
vs
Lester Underwood

Appellants Brief

Filed June 29, 1864
L Leland Clk

G. A. 1 B

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION

APRIL TERM THEREOF, A. D. 1864.

JOHN M. TARBLE
vs.
LESTER UNDERWOOD. } *Appeal from La Salle.*

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The authorities to which we refer express and describe cases so applicable to this one, that we do not deem it necessary to make any comments upon them.

Most all the evidence is contained in the abstract, and pages 3 and 4 state what appellant expected to prove by King, and also that appellant did not rely on any quibble about the old machine, but on the new arrangement.

GRAY, AVERY & BUSHNELL,
For Appellant.

95

146

John A Tarbl

vs

Lester Mclerrovid

Brief

of Pltff Counsel

Filed April 29 1864

J Schenck Clk

SUPREME COURT OF ILLINOIS:

THIRD GRAND DIVISION.

April Term, A. D. 1864.

JOHN M. TARBLE
vs.
LSTEER UNDERWOOD. } APPEAL FROM LASALLE.

POINTS AND AUTHORITIES FOR APPELLEE.

The witness, King, was not equally liable to both parties to the suit as is claimed. What transpired between King and the appellee was in effect an acceptance of the order of the appellant. King did not refuse to fill the order, but offered to turn out a machine which he claimed did fill it, but which did not in fact as was shown by the evidence.

Having thus accepted the order, King would have been liable over to the appellant not only for the amount of the order but for the costs of this suit, also in case judgment had been rendered against the appellant. This rendered him incompetent.

3 Stark's Ev., p. 68 to 73.
Chitty on Bills, 671,
1 Green Ev. sec. 401.
Edwards v. *Lowe*, 8 B. & C. 407.
Larbalistier v. *Clark*, 1 Barn. & Ad. 899.

The evidence shows that King refused to turn out any but an old machine worth from twenty to twenty-five dollars less than the kind called for by the order. His acceptance then was a conditional one, and under it he was only liable to the appellee for the value of the old machine. On the other hand, King having received the consideration from the appellant for one of the new and best machines, would have been liable to him for the value of the same had judgment been rendered against the appellant, and was therefore interested in defeating the appellee's suit to the extent of the difference in value between the two machines.

Emerton v. *Andrews*, 4 Mass. 653.
Marquand v. *Webb*, 16 John. 92.
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King could have been compelled to refund the consideration for the machine after judgment had been rendered against Tarble. This rendered King an incompetent witness.

1 Green. Ev., sec. 395.

If King's evidence had been admitted and the appellant had proved by him what he proposed to it ought not to have changed the verdict.

The appellant's counsel offered to prove that a few days after the consideration mentioned in the evidence, the appellee agreed with King to wait four or five days till King could put up such a machine as the order called for, and that King agreed to have such machine ready in time, and appellee agreed to come and get the same at the end of four or five days, and that King did prepare such machine in time, but did not keep it for the appellee longer than about two weeks. The appellant's counsel also stated at the same time that he did not intend to insist on the old machine, but relied exclusively on the new arrangement which was intended to be proved by King.

If this arrangement was made, King was bound to keep the machine for appellee a reasonable time, which by his own declaration he did not do, and the appellee was at liberty, after King had disposed of the machine, to resort to the appellant for the value of such a machine as the order called for.

D. P. JONES,
For Appellee.

Admit consideration for the order — think it imports one to

146 95

J M Tarbell
as
Woodenwood

Affidavit Points & Authorities

Filed May 23, 1864
L Leland Clk

1

State of Illinois } ss. Clear before the Honorable Madison
La Salle County } E. Wallister the Judge of the ninth judicial
Circuit of the state of Illinois, and the
presiding Judge of the La Salle county circuit court at a
term of said court commenced and held at the court house
in Ottawa in said county on Monday the second day
of November. A.D. 1863. the same being the first Monday in
said Month of November. and of the year of the Independence
of the United States of America. the eighty eighth.
Present the Honorable Madison E. Wallister. Presiding Judge
Absalom B. Moore Clerk.
David P. Bowen. State attorney.
William R. Mellyain Sheriff.

Be it remembered that heretofore to wit. on the 2nd. day of
September. 1863. there was filed in the office of the clerk of said
court a transcript of the proceedings in a certain cause wherein
one Lester Underwood was plaintiff and John M. Sarble
defendant. lately pending in Justice court. before O. Leaven
a Justice of the peace in & for said county. which said cause
was removed by appeal to the county court of said County
& from said county court to said Circuit court by change
of venue, which said Transcript is in the words & figures
following. to wit.

State of Illinois } In Justice Court.
La Salle county } Before O. Leaven. Justice.

Lester Underwood.
vs. } Demand $100.00
John M. Sarble.

1862. May 26. Summons issued

2 returnable the 31 May inst. at 9 o clock Am. & delivered to J. B. Blust. Constable to serve. on subpoena on the part of the plaintiff issued

Fees.
Justice Fees.
Sum. .25
2 sub. 50
Doc. .20
Sec'ng Wt. .25
Ent. Judg. .25
1.45

May 29. summons returned by Constable Blust. personally served by reading to the Defendant May 29th. 1862 fee 30 cts

May 29. sub. issued on the part of the defendant. May 31. sub of Defendant returned by Blust served on the persons therein named fee 53 cts

Court. fee. .30
sub. .53
.83
2 witnesses pl. 1.00

May 31st 1862. at 9 o clock Am. parties appeared and by consent cause continued to 1 o clock P.M. same day. May 31st 1862 at 1 o clock P.M. parties appeared Plaintiff claims & Defendant $90.00 being amount of an order drawn by the defendant on H. L. King Nov. in favor of Plaintiff & not paid by said H. L. King Nov. Defendant denies plaintiffs claim. Charles McNeal. Gideon Marcus — Mattison and Henry King. sworn as witnesses on the part of Plaintiff. Henry King and Henry L. King. sworn as witnesses on the part of the Defendant H. King & H. L King claimed fee. Upon hearing the evidence in the case it is considered by the court that the said plaintiff fails to make out his case & judgment is rendered against said plaintiff for the costs herein taxed at three dollars and twenty eight cents.

State of Illinois } D. O. Leasure a Justice of
La Salle County } the Peace in & for said county

do hereby certify that the foregoing transcript and the papers herewith contain a full and perfect statement of all the proceedings before me in said cause.

In witness whereof I have hereunto set my hand this 19th day of June. 1862.

O. Leaven. J.P.

And be it further remembered that the said summons issued by said Justice, is in the words & figures following to wit.

State of Illinois } ss. The People of the state of Illinois. To any Constable of said
La Salle County } county, Greeting. You are hereby commanded to summon John M. Farbe to appear before me at my office in Ottawa on the 31st day of May 1862 at 9 o clock A M. to answer the complaint of Lester Underwood for a failure to pay him a certain demand not exceeding one hundred dollars, and hereof make due return as the law directs.

Given under my hand and seal this 26th day of May. AD 1862.

O. Leaven. J.P.
Justice of the Peace

Endorsed as follows. to wit.
Summons. Lester Underwood vs. John M. Farbe. Demand. $100.00. costs. $5 — Served by reading the within to the within named John M. Farbe. this 28th day of May AD. 1862.

J. B. Blunt.
Const.

fees. 50

4

And be it further remembered that heretofore to wit on the 2d day of September 1862 a certain appeal bond was filed in said cause in the office of the clerk of said court which said bond is in the words and figures following to wit.

"Know all men by these presents that we Lester Underwood and - of the county of La Salle and state of Illinois are held and firmly bound unto John M. Farble of the same county and state in the penal sum of Ten dollars current 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 3d day of June. 1862

The condition of the above obligation is such that whereas the said John M. Farble did on the 31st day of May AD. 1862 before O. Leavens, a justice of the peace in and for the county of La Salle recover a judgment against the above bounden Lester Underwood for the sum of Three 28/100 dollars costs from which judgment of the said justice the said Lester Underwood has taken an appeal to the county court of the said county and state. Now if the said Lester Underwood shall prosecute his appeal with effect, and shall pay whatsoever judgment may be rendered by the court on the trial or dismissal of the said appeal, then the above obligation to be void, otherwise to remain in full force and effect.

Taken and entered into & approved before me at my office this 9th day of June. AD. 1862.

Lester Underwood. (Seal)
Lucien B. Delano (Seal)

O. Leavens J.P.

2

5

And be it further remembered that heretofore to wit, on the 2d. day of September. 1863. a certain summons was in said cause filed in the office of the clerk of said court. which said summons is in the words & figures following. towit.

State of Illinois } ss. The people of the state of Il-
La Salle County } linois. To the Sheriff of said county
Greeting. We command you to sum-
mon John W. Sarble if to be found in your county personally to be and appear before the County Court of said County on the first day of the next term thereof to be holden at the court house in Ottawa on the First day of September next to defend the suit which Lester Underwood instituted against him and in which he and recovered judgment before O. Leavens. a justice of the peace of said county. on the 31st day of May. 1862 for the sum of three dollar and twenty eight cents costs from which said judgment Lester Underwood has taken an appeal to the county court of said county and further to do and perform whatever said Court may then and there consider in the premises. And have you then and there this writ.

Witness. S. W. Raymond. Clerk of said court and the seal of said Court. at Ottawa this 2d day of July A.D. 1862

S. W. Raymond. Clerk
W. S. Easton Deputy

And be it further remembered that heretofore to wit on the 2d day of September. 1863. a certain alias summons was filed in the office of the clerk of said court. which said

Endorsed as follows.
No. 5. Lester Underwood vs. John W. Sarble and Garnishee. Summons issued Sept. 1, 1862 Ret. 1st. Sept. Term.
S. W. Raymond Clerk
W. S. Easton Dep.

6

alias summons is in the words & figures following to wit.

State of Illinois } ss The people of the state of Illinois
La Salle County } To the sheriff of said county. Greeting.

We command you as we have before commanded you to summon John M. Sarle if to be found in your county personally to be and appear before the county court of said county on the first day of the next term thereof to be holden at the Court House in Ottawa on the first Monday of December next to defend the suit which Lester Underwood instituted against him and in which he and recovered a judgment before O. Leavens a justice of the peace of said county on the 31st day of May 1862. for the sum of Three dollars and ~~twenty~~ eight cents. besides costs from which said judgment Lester Underwood has taken an appeal to the county court of said county and further to do and perform whatever said court may then and there consider in the premises. and have you then and there this writ. Witness Samuel M. Raymond. Clerk of said court. and the seal of said court at Ottawa this 27th day of October A.D. 1862.

S. M. Raymond Clerk

Indorsed as follows.

Served by reading this writ to John M. Sarle the 1st day of November. 1862.

serv writ.	.65
1 mile.	.05
	.65

E. L. Waterman. Sheff.
P. S. Ellsworth. Deputy

And be it further remembered that heretofore to wit

on the 2d. day of September 1863. was filed in the office of the clerk of said court. one other alias summons. which was and is in the words and figures following to wit.

7

State of Illinois } ss. The people of the state of Illinois To the sheriff of said county.
La Salle County }

Greeting. We command you as we have before commanded you to summon John M. Farble. if to be found in your county. personally to be and appear before the county court of said county on the first day of the next term thereof to be holden at the court house in Ottawa on the first day of — next to defend the suit which Lester Underwood instituted against him and in which he. and recovered judgment before O. Leavens a justice of the Peace of said county on the 31st day of May 1862. for the sum of three and twenty eight cents. besides costs from which said judgment the said Lester Underwood has taken an appeal to the county court of said county and further to do and perform whatever said court may then and there consider in the premises. and have you then and there this writ. Witness Sam M Raymond clerk of said court and the seal of said court at Ottawa this 18 day of November. AD, 1862.

Seal

S. M Raymond clerk

Endorsed as follows. To wit.

Served the within by reading to the within named J. M Farble this 18th day of November. 1862.

per. writ. .60
1 mile. .05
.65

E. L. Waterman Sheff

8

And be it further remembered that heretofore to wit on the 2d day of September. 1863. a certain notice of a change of venue was filed in said cause in the office of the clerk of said court, which said notice was in the words & figures following. to wit,

State of Illinois } ss.
La Salle County } County Court thereof. June Term. A.D. 1863

Lester Underwood.

vs. } Appeal.

John M. Sarle. } To said Underwood & D.P. Dows. his atty. Take notice that at the ensuing Term of said court the said defendant will move for a change of venue in said cause on account of the prejudice of the Judge.

Ottawa. May 4. 1863. John M. Sarle.

by Gray. Byers. & Bushnell his atty.

State of Illinois } ss.
La Salle County }

John M. Sarle. on oath says he gave D. P. Dows. a notice of which the within is a copy. on the 8th day of May. 1863,

Subscribed & sworn to before me this 9th day of May 1863. J M. Sarle.

O. Learned. J.P.

And be it further remembered that heretofore to wit. on the 2d. day of September 1863. an affidavit for a change of venue in said cause was filed in the office of the clerk of said court which said affidavit is in the words & figures following. to wit,

State of Illinois } ss.
La Salle County } County Court thereof to June term A.D. 1863

Lester Underwood.

vs. } Appeal.

John M. Sarle. }

3

9

The said John M. Sarble. first being duly sworn on oath says that he fears he cannot receive a fair trial in said cause in the said La Salle county court on account that the judge of said court is prejudiced against him in said cause and his defence therein. He therefore prays a change of venue.

Subscribed & sworn to before me this 9th day of May 1863.

J. M. Sarble.

O. Seavens. J.P.

And be it further remembered that heretofore to wit on the 2d of September 1863. a certain other petition for a change of venue. was filed in the office of the clerk of the said court said petition being in the words & figures following to wit.

State of Illinois } ss. County Court thereof.
La Salle County. }

June Term. AD, 1863.

Lester Underwood.

vs.

John M. Sarble

Appeal.

To the Hon P. K. Leland.

Judge of said court.

Your petitioner John M. Sarble represents that he is the defendant in the above entitled cause. your petitioner further represents that he fears he cannot obtain a fair trial in said court on account. that the Judge is prejudiced against him in said suit. and his defence therein.

That he did not know and was not aware of the above state of facts. before the last term of the above county court and he has learned the same since the last term of said court. He therefore prays for a change of venue in above cause in due course of Law.

10

John M. Sable.

Gray Avery and Bushnell. his attys

State of Illinois } ss.
La Salle county }

John M. Sable, on oath says, that the facts set forth in above petition are true accurate to the best of his knowledge information & belief.

J. M. Sable.

Subscribed and sworn before me this. 1st day of June. 1863

O Leavens J.P.

And be it further remembered that heretofore, to wit, on the 2d day of September 1863, a transcript of the proceedings in said cause in the said county court was filed in the office of the clerk of said circuit court, said transcript being in the words & figures following to wit, to

La Salle County Court. June Term. 1863.

State of Illinois } ss. Record of the Proceedings orders
La Salle County } judgments and decrees held and taken in and before the county court in and for the county of La Salle, and State of Illinois at a regular term thereof, commenced and held at the court house in Ottawa on Monday the first day of June in the year of our Lord one thousand eight hundred and sixty three and of the Independence of the United States the eighty seventh.

Court met pursuant to adjournment. Present.

Present &c Hon P. Kimball Leland. Judge.
Samuel M. Raymond. Clerk
William R. Milligan Sheriff.

Be it remembered that on the first day of said term of said court. the following order was made and entered of record in said court. to wit

~~12~~ 11

Lester Underwood. }
vs. } Appeal.
John M. Farble. }

This day comes the plaintiff by D. P. Bowes his attorney and the defendant by Gray Avery & Bushnell. his attorneys and on motion of said defendant by his attorneys and affidavit of defendant filed herein. It is ordered that the venue herein be changed to the circuit court of this county.

State of Illinois } ss. I. Samuel M. Raymond.
La Salle county. } clerk of the county court in and for said county do hereby certify that the above is a true and correct copy of the order entered in the case of Lester Underwood vs. John M. Farble at the June term A.D. 1863. of said court.

Witness my hand and the seal of said court. at Ottawa this 12th. day of September 1863.

Seal U.S. 5 Cents

S. M. Raymond. clerk.

And be it further remembered that heretofore to wit. on the 4th day of November. 1863. the notice & deposition of George Meeks. a witness in said cause. was filed in the office of the clerk of said court. in the words & figures following to wit.

State of Illinois } In the June term A.D. 1863 of
La Salle County } the county court of said La Salle County.

Lester Underwood. }
vs. } Appeal.
John Farble } To said John Farble

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You are hereby notified that I shall take the deposition of George Keeath & [illegible]ge Matteson before Eli B. Gilbert Esq. a justice of the Peace of the county of De Kalb in the State of Illinois at his office in De Kalb Center in said De Kalb county on the 30th day of May A.D. 1863. commencing at the hour of ten o clock in the forenoon and continuing from day to day if necessary, when and where you may appear and cross examine said witnesses. said depositions are to be read in evidence on the trial of the above entitled cause.

Lester Underwood.

By. D.P. Jones. his attorney.

Deposition of George Keath of De Kalb county in the state of Illinois. a witness aged three years. produced and sworn and examined before Eli B. Gilbert Esq. a justice of the peace in and for the county of De Kalb and state of Illinois. on the thirtieth day of May A.D. 1863 at the office of the said Eli B. Gilbert Esq in the town of De Kalb center in said county by virtue of a notice issued by Lester Underwood of the county of La Salle in the state of Illinois to me directed for the examination of the said George Keath a witness in a suit depending before the county court of La Salle co. Illinois between Lester. Underwood plaintiff and John Sable. Defendant.

1. Do you know the parties Plaintiff and defendant in the above entitled suit.

I know Mr. Lester Underwood. not much acquainted with. Mr. John Sable.

Do you know any thing about a conversation with Henry King about a com shuller with Lester Underwood plaintiff

* Witness a full and correct copy of the written notice this 15th day of May A.D. 1863.
Geo. Keath
D. Underwood atty

1 Q. do.

13 3 What was that conversation.

Ans. Mr Lester Underwood had an order for one of the best corn shellers given by John M. Sarble on H. L. King & Co. and when Mr. Underwood presented the order to Leroy King they offered to let him have an old corn sheller and said they should turn out no other on that order.

4 Did you examine the old and new shellers at the time the order was presented.

Ans A. did.

5. What should you think was the difference between them. —

Twenty five or thirty dollars.

What was said or done by Mr. Underwood at that time.

Ans. Mr. Underwood refused to take the sheller because it was not such sheller as the order called for.

Where did you and Mr. Underwood then go.

Ans. We went up to Mr. Sarbles store.

6 What was said and done by Mr. Underwood after you arrived at the store.

Ans. Mr. Underwood offered Mr. Sarble the order and demanded the money on it.

7th Why.

For what reason.

Ans Except Because he could not get the sheller that it called for.

8. When did all this transpire

Ans. On or about the 6th day of May 1862.

9 Was or was not the conversation with Mr. King and with Mr. Sarble the same day.

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Ans. The conversation that I heard was all had in the course of

10. Are you acquainted with such kind of machinery?

Ans. I am tolerable well acquainted with machinery such as farmers use.

11. Do you know any thing or other matter touching the matter in question that will tend to the benefit of either one of the parties. If so state fully and at length.

Ans. Do not recollect any thing more than I have stated

George Heath.

Deposition of George Mattison of De Kalb county in the state of Illinois, a witness aged thirty four years, produced and sworn and examined before Eli B Gilbert, a Justice of the Peace in and for the county of De Kalb and state of Illinois, on the thirtieth day of May AD. 1863. at the office of Eli B. Gilbert Esq. in the town of De Kalb center in said county and state by virtue of a notice issued by Lester Underwood of the county of La Salle in the state of Illinois to me directed for the examination of the said George Mattison a witness in a suit depending before the county court of La Salle Co. Illinois between Lester Underwood plaintiff and John Sable defendant

1 Are you acquainted with Lester Underwood plaintiff and John Sable Defendant the parties to this suit.

Ans. I am acquainted with Lester Underwood and partially acquainted with John Sable.

2) State if you know any thing about a conversation had between the plaintiff and Henry Heiny in regard to an order ~~in regard to an order~~ given by John Sable the defendant to

Sister Underwood on Mr. C. King Jrs.

15 I went with Mr. Underwood to the establishment of Mr. C. King Jrs from Mr. Sarbles store, and heard him enquire who was the man of the firm and was directed to Henry King. He then demanded of him one of the best four hole corn shellers and Mr Henry refused to let him have such a sheller as his order called for, but offered him an old one which Mr. Underwood refused to take and we went back to Mr. Sarbles store Mr. Underwood demanded of Sarble the money for the order for the reason that he could not get the sheller that it called for

3. Did you or did you not hear any conversation between the parties at the store of Defendant before you went the first time the factory of Mr. C. King Jrs If so what was it I did, Underwood wanted Sarble to go with him to Kings factory to see if he could get one of their best shellers because Underwood said he had been there and they would not let him have one on the order. Sarble said I do not want you to take any other, your order calls for one of their best shellers and he had not time to go with him.

4 What reasons did Henry King give for not letting Underwood have one of their best shellers.

Because Sarble paid them in old horses and they thought that the shellers they offered was as good as old horses.

5 What reply did Underwood make to that.

Ans. He said that there was no reason why he should not have his money because they had got cheated in old horses

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What time and place did this, and this conversation happen.

It happened on the 6.th day of May. 1862. at Ottawa Illinois.

6. What makes you so positive of the time that this conversation transpired

Ans Because I moved to Ottawa at that time into Mr Underwoods house and have a day book that I set down the time I moved therein.

Do you know of anything touching the matter in controversy between the parties that will tend to the benefit of the plaintiff or defendant if so state.

I do not recpt that the machine that Mr. King offered to him out was not worth so much as the machine that the order called for into twenty five or thirty dollars, and King said the one he offered had not thrashed over six or seven bushels of corn

Are you acquainted with such kind of machine

I have run corn sheller considerable besides thrashing my machine, and other machinery and repaired them when out of order.

Do you recollect of any thing more that would benefit either party I do not know that I know anything more.

George B. Matteson.

State of Illinois } ss. George Heath & George B.
DeKalb. County } Matteson being duly deposed and says that they attend as witnesses in the case of Lester Underwood plaintiff and John

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Table at the request of the plaintiff before E. B. Gilbert to have their depositions taken in said case one day each and traveled eighteen miles.

Subscribed and sworn before me this 30. day of May. 1863. George B. Matteson
George Heath.

E. B. Gilbert. Esq J.P.

State of Illinois } ss. I. Eli B. Gilbert a justice
DeKalb. County } of the peace of said county do hereby certify that the foregoing deposition was taken by me at the time and place mentioned in the above notice hereunto annexed, to wit on the 30th day of May 1863. That the said George Heath and George Matteson the witnesses were first duly sworn and that after said deposition was written it was carefully read to each of said witnesses respectively and they then signed each their respective depositions and that they were taken between the hours of 10 o clock A.M. and 6 o clock P.M. of the same day.

Witness my hand and seal at my office this 30. day of May A.D. 1863.

E. B. Gilbert Esq
J.P.

State of Illinois } ss. I. Orson K. Stiles, clerk of
DeKalb. County } the county court in and for said county and state aforesaid do hereby certify that. Eli B. Gilbert. Esq. whose name is subscribed to the annexed Depositions was at the time of executing the same an acting Justice of the Peace in and for said county, duly commissioned sworn and authorized to take

and certify the same, and full faith and credit is due to all his official acts, that I am well acquainted with his hand writing, and that his signature thereto is genuine and that the annexed instrument is executed and acknowledged in conformity with the laws of the State of Illinois.

In testimony whereof I have hereunto set my hand and affixed the seal of the said county court this 30th day of May A.D. 1863.

Aaron K. Stiles. clerk
of the County court.

Seal

U.S. 10¢ Stamp

costs for taking depositions $24,00

E. B. Gilbert.
J.P.

And be it further remembered that heretofore to wit on the 9th day of November 1863. the same being one of the days of the November Term of said court. 1863, certain other proceedings were had in said cause. which said proceedings were entered on the record of said court in the words figures following to wit:

Lester Underwood.
vs
John M. Sable } Appeal.

This day come the plaintiff by Jones & Glover his attorneys and the defendant by Gray Avery & Bushnell his attorneys whereupon came the following jurors of a jury to wit. Jacob Kenty. Isaac Golden. J. R. Shaver. Richard Harding. Walter Counts. Robert Wade. Le B. Palmer. John Baltenfield. David Nesmith. O.B. Bigelow. E. H. Hagerty and E. Le Baltes. who are

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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 a portion of the testimony the further hearing of this cause is postponed until the coming in of the Court to morrow morning.

And be it further remembered that heretofore to wit on the 10 of November. 1863 a certain order was in said cause filed in the Office of the Clerk of said court. said order being in the words and figures following to wit.

Ottawa April 24. /62

Hl. le. Kerry Esq. Please Deliver to Lester Underwood one of your best four hoss phillers price ninety dollars & charge to my a/c.

D. M. Sable.

And be it further remembered that heretofore to wit on the 10th of November. 1863. the same being one of the days of the November Term. 1863 of said court. certain other proceedings were entered in said cause on the records of said court in the words and figures following to wit.

Lester Underwood.

144 vs. } Appeal

John M. Sable } This day again come the parties hereto as well as the jury sworn herein and after hearing the balance of the testimony and the arguments of counsel. the jury retire to consider of their verdict. and after due deliberation thereon had return into Court. with the following verdict to wit. We the jury find the issues in favor of the plaintiff and assess his damages at ninety dollars. The defendant by his

counsel now moves the court for a new trial herein.

And be it further remembered that heretofore to wit on the 8th day of December. 1863 the same being one of the days of the November term 1863 of said court. certain other proceedings were had in said cause. which said proceedings were entered on the records of said court in the words and figures following to wit.

Lester Underwood
144 vs
John M. Sable } Appeal

This day come again the parties to this suit by their attorneys and after hearing the arguments of counsel. the court overrule the Defendants motion for a new trial herein,

It is therefore considered by the court that Judgment be entered herein against said defendant and in favor of the plaintiff for the said sum of ninety dollars for his damages. and that the plaintiff have and recover of the defendant the said sum of ninety dollars for his damages also his costs and charges by him herein expended as well as in the court below and that he have execution therefor,

And be it further remembered that heretofore to wit on the 9th day of December. 1863. the same being one of the days of the November Term. 1863 of said court. certain other proceedings were had in said cause which said proceedings were entered on the records of said court in the words and figures following to wit.

Lester Underwood
144 vs
John M. Sable. } Appeal

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On motion of the defendant by his attorney. It is ordered by the court that an appeal be allowed herein to the Supreme Court of this State, upon condition that the defendant enter into bonds in the penal sum of Three Hundred Dollars payable to the Plaintiff with Albert Wolfson or S. C. Gibson as his security. Bond and Bill of exceptions to be filed in thirty days from this date.

And be it further remembered that heretofore to wit on the 11 day of December. 1863. said Bill of exceptions was filed in the office of the clerk of said court. Which said Bill of exceptions is in the words & figures following to wit

State of Illinois } In Circuit Court thereof to November
La Salle County } Term A.D 1863

Lester Underwood.

vs

John Sarble. } Be it remembered that on the trial of the above entitled cause the plaintiff to maintain the issues on his part. gave in evidence an order in words & figures as follows,

"Ottawa April 24. /62

Mr. C. Kemp Sir. Please deliver to Lester Underwood one of your best four hole shellers price ninety dollars charge to my a/c.

J. W. Sarble. and

the depositions of George Heath and George B. Mattison as follows. (~~Copy. depositions except the Interrogatories Heath sworn to Sa. Interrogatories and Direct Cross and answers~~) " Deposition of George Heath of DeKalb county in the state of Illinois a witness aged thirty five

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year produced and sworn and examined before Eli B. Gilbert. Esq. a justice of the Peace in and for the county of De Kalb. and State of Illinois on the 30th day of may. A.D. 1868 at the office of the said Eli B. Gilbert Esq. in the town of De Kalb. Center in said county by virtue of a notice issued by Lester Underwood of the county of La Salle in the state of Illinois to me directed for the examination of the said George Heath a witness in a suit depending before the county court of La Salle co. Illinois. between Lester Underwood plaintiff and John Sarble defendant.

1 Do you know the parties plaintiff and defendant. in the above entitled suit.

I know Mr Lester Underwood. not much acquainted with Mr. John Sarble.

2d. Do you know any thing about a conversation with Henry Henry about a corn sheller. with Lester Underwood plaintiff.

I do.

3d. What was that conversation.

Ans. Mr Lester Underwood had an order for one of the ~~last~~ corn shellers given by John M. Sarble on Mr. Henry Henry. and when Mr Underwood presented the order to Henry Henry they offered to let him have an old corn sheller and said they should have nut an other on that order.

4. did you examine the old and new shellers at the time the order was presented.

Ans. I did.

5. What should you think was the difference between them

Twenty five or thirty Dollars.

28 What was said or done by Mr Underwood at that time

Ans. Mr Underwood refused to take the sheller because it was not such sheller as the order called for.

What did you and Mr Underwood then go.

Ans We went to Mr Sarbles store.

6 What was said and done by Mr. Underwood after you arrived at the store.

Ans Mr. Underwood offered Mr. Sarble the order and demanded the money on it.

7 For what reason.

Ans Because he could not get the sheller that it called for.

8. When did all that transpire.

Ans On or about the eighth day of May. 1862.

9 Was or was not the conversation with Mr. King and with Mr. Sarble the same day

Ans The conversation that I heard was all had on the same day.

10. Are you acquainted with such kind of machinery.

Ans I am tolerable well acquainted with machinery such as farmers use.

11 Do you know anything or other matter touching the matter in question that will tend to the benefit of either one of the parties. If so state ~~that~~ fully and at length

Ans I do not recollect any thing more than I have stated

George Heath.

Deposition of George Mattison of DeKalb county in the State of Illinois, a witness aged thirty four years produced and sworn and examined before Eli B. Gilbert

24 a justice of the peace in and for the county of DeKalb and state of Illinois on the thirtieth day of May A.D. 1863 at the office of Eli B. Gilbert Esq in the Town of DeKalb county in said county and state by vertue of a notice issued by Lester Underwood of the county of La Salle in the state of Illinois to me directed for the examination of the said Geo Mattison a witness in a suit depending before the county court of La Salle county Illinois between Lester Underwood plaintiff and John Sarbill defendant.

1 Are you acquainted with Lester Underwood plaintiff and John Sarble defendant the parties to this suit.

Ans I am acquainted with Lester Underwood and partially acquainted with John Sarble.

2. State if you know any thing about a conversation had between the Plaintiff and Henry King in regard to an order. in regard to an order. given by John Sarble the defendant to Lester Underwood on H. L. King. Ills.

Ans I went with Mr. Underwood to the establishment of H. L. King Ills. from Mr. Sarbles store and heard him enquire who was the man of the firm and was directed to Henry King. He then demanded of him one of the best 4 four hole corn shellers and Mr. King refused to let him have such a sheller as his order called for. but offered him an old one which Mr. Underwood refused to take and we went back to Mr Sarbles store. Mr Underwood demanded of Sarble the money for the order for the reason that he could not get the sheller that it called for.

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Did you or did you not hear any conversation between the
2 Q parties at the store of Defendant before you went the first
time to the Factory of H-C-K any Yes. if so what was it.

I did. Underwood wanted Sable to go with him to
Kings factory to see if he could get one of their best shellers
because Underwood said he had been there and they
would not let him have one, on the order. Sable said.
I do not want you to take any other your order calls
for one of their best shellers. said he had not time to go
with him

4 What reasons did Henry King give for not letting
Underwood have one of their best shellers,

Ans Because Sable paid them ni old horses and
they thought that the sheller ~~that~~ they offered was as
good as old horses.

5. What reply did Underwood make to that,

Ans. He said that that was no reason why he should
not have his money because they had got cheated
ni old horses.

What time and place did this ~~did~~ this conversation
happen.

It happened on the 6" day of May 1862 at Ottawa Illinois

6 What makes you so positive of the time that
this conversation transpired

Ans. Because I moved to Ottawa at that time into
Mr. Underwoods house and have a day book, that
I set down the time I moved therein.

Do you know of any thing touching the matter in
controversy between the parties that will tend to the

benefit of the plaintiff ~~of~~ defendant if so state.

I do not, except that the machine ~~that~~ Mr. King offered to turn out was not worth so much as the machine that the order called for into twenty five ~~or thirty~~ dollars and King said the one he offered had not thrashed over six or seven bushells of corn.

Are you acquainted with such kind of machines.

I have run corn shellers considerable besides threshing machines and other machinery and repaired them when out of order.

Do you recollect of anything more that would benefit either party.

I do not know that I know anything more.

George B. Mattison.

State of Illinois } ss. George Heath & George B. Mattison
DeKalb County } being duly sworn deposeth and says that they attended as witness in the case of Lester Underwood plaintiff and Robert Sarbe ~~deft~~. at the request of the plaintiff before E. B. Gilbert to have their depositions taken in said case ~~on~~ one day each and travelled sixteen miles.

Subscribed and sworn before George B. Mattison
me this 30th day of May. 1863. George Heath.

E. B. Gilbert. J. P.

State of Illinois } ss.
DeKalb. county }

I. Eli B. Gilbert, a justice of the peace of said county do hereby certify that the foregoing depositions were taken by me at the time and place mentioned in the above notice

hereunto annexed to wit on the 30" day of May. 1863. that the said Geoge Heath and George Mattison the witnesses were first duly sworn. and that after said deposition was written it was carefully read to each of said witnesses respectively and they then signed each their respective depositions and that they were taken between the hours of 10 o clock Am & 6 o clock pm of the same day. Witness my hand and seal at my office this 30" day of May. AD. 1863.

E. B. Gilbert. (Seal)

State of Illinois } ss. J.P.
De Kalb county }

I. Aaron K. Stiles clerk of the county court in and for said county and state aforesaid do hereby certify that Eli B. Gilbert Esq. whose name is subscribed to the annexed Deposition. was at the time of executing the same an acting Justice of the Peace in and for said county duly commissioned sworn and authorized to take and certify the same. and full faith and credit is due to all his official acts. that I am well acquainted with his hand writing and that his signature thereto is genuine. and that the annexed instrument is executed and acknowledged in conformity with the laws of the State of Illinois. In testimony whereof I have hereunto set my hand and affixed the seal of the said county court this 30" day of May. AD. 1863.

(Seal) (U.S. 5.00 100 Cts)

Aaron. K. Stiles. Clerk of the county court.

Costs for taking depositions. $4,00.

E. B. Gilbert. J.P.

And William B. Field who testified that he never saw the said order. that he was in Ottawa on the 6th of May. 1862. and went with plaintiff to the factory of N. B. Henry Asst. King offered a machine that had been some. Plaintiff wanted a new one. and wanted to know why he would not let him have a new one if the old one was as good. Henry Henry said he had no new one for him that day. the one that was finished was already sold. There was a new one there and also one with no cylinder in and so not finished. Underwood took one up for a criterion. but I did not know it at the time. and as soon as I saw that there was to be a dispute I left and did not hear all the conversation Henry Henry and his brother and another person was there. —— Cross Examination.

I am a Designer artist and live in Montreal. when I come to Ottawa I stopped with plaintiff. He did not say to me he wanted me to go with him. to be a witness of the conversation. I don't think Mccarthy & Matheson were present

Charles McNab. testified.

I knew the old machine. the difference between the old and new was twenty dollars. There were two machines nearly finished. It would take an hour to put in the cylinder. I don't know if old machine all put together or not. These machines were there sometime in May. I don't think the old machine was put together. I sold plaintiff a machine about 10 or 15 May. 1862. It was one of King's best. The tools in the new machines were made of

Babbits metal. which is better than the old one.

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Cross Examination.

The machine I sold was worth $90.00 I sold it less than Kenig the one I sold it and a new horse power for $133.00. I took this machine of Kenig for pay of my work. I was at work for Kenigs when the demand was made. Pfff and I had a conversation about 10 of May about his buying my machine. I sold it for less than Kenig the. owes theirs.

O. Leavens. testified.

That he had seen said order, heard a conversation between Sarble & Underwood about 6 or 7 of May 1862. There was a suit brought on this order 8" May 1862. Underwood showed the order and wanted the money as he could not get such a machine as it called for Sarble said he would go with him and see that he got such a one. Underwood dismissed that suit commenced on the 8" and began this suit on the 26. May. 1862.

Selmy Bates. testified

I am a foreman. It is worth $2,50 to print a machine. Kelsey & Clever Kenig were there one day when Underwood came. There were two machines beside the old one. one finished and one ready to be put up. Kenig said the one that was finished had been sold.

Bradford Fields. testified.

That he was a machinist in iron work. was present at one time when Plaintiff and Kenigs had a conversation about a cow shelter. Plaintiff was at Kenigs. moved

time. Henry King said the old feed did not know what he said he wanted. that he would have to take the old machine unless he would wait for a new one a few days. The new machine that was there about a week after this conversation

The old machine was of the make of the year before and King said had threshed about 600 bushels of It had been repaired and the new improvements of the new ones put it. The old machine without the new improvements was worth $50. less than the one. But. the new improvements put it would be worth about $10, or $75. less.

Plff. rested his case.

The defendant to maintain the issue on his part introduced Henry King. who testified.

That he was one of the firm of H. C. King this upon said order was drawn. Thereupon the plaintiff by his counsel objected to his testifying

The defendant offered to prove by King that H. C. King Bro. never refused to deliver one of their best 4 hole corn sheller worth $90. that at the time of the conversations mentioned by the plaintiffs witness, they had but the last year machine repaired, and one new one ready to be delivered, that the new one was sold to a third party before ever Underwood called on them for a sheller said third person afterwards took said new machine, that King Bro. were manufacturers of machine and did not at all times keep a stock of finished machines on, which fact was known by Underwood. that said old machine was of the make of the year before and had not been used at

all except for trial. that it was of better material, that the new one being made of hard wood, and it had been remodelled, and all the improvements of the new ones put into it. and that it was one of King the best. and worth $90. and was actually sold for that sum.

Also that. King the always told Underwood. that if he would wait a few days they would give him any kind of machine he wanted. Also That a few days after all the conversation mentioned by said witness and after said suit that was commenced on the 8th of May. was dismissed Underwood came to the shops of the E. King the and made another demand and it was then and there agreed by Underwood that he would wait 4 or 5 days till King the could put a machine such as the order called for. and to Underwoods satisfaction. and that King the agreed to have such machine ready in that time, and Underwood agreed to come and get the same at the end of 4 or 5 days. That King the did prepare such machine within three days and kept the same on hand for upwards of two weeks after. for Underwood and Underwood never came for such machine. and never said any thing more about the order or machine. and defendants counsel stated that the defendant did not intend to insist on the old machine but relied exclusively on the new arrangements which was intended to be proved by King. The court sustained the objection of the Plaintiff to which ruling the defendant then and there excepted, Deft. rested his case.

This was all the evidence in the case. The Jury

found for plff and dft. moved for a new trial, which motion was overruled by the court and defendant. there and there excepted. The defendant prays the court to sign and seal this Bill of exceptions which is accordingly done.

W. E. Wallister (SEAL)

Judge &c.

and be it further remembered that heretofore to wit on the 6th day of January 1864. an appeal bond was in said cause filed in the office of the clerk of said court which said appeal bond is in the words & figures following to wit.

Know all men by these presents that we John W. Sable and Albert. Wolford are held and firmly bound unto Lester Underwood in the penal sum of Three hundred dollars for the payment of which well and truly to be made we bind ourselves our heirs executors and administrators jointly and severally.

The condition of the above ~~obligation~~ bond is such that whereas the said Underwood did at the November Term AD 1863 of the circuit court of La Salle county and state of Illinois recover a judgment of ninety dollars and costs of suit against said Sable from said judgment said Sable has ~~taken~~ prayed an appeal to the Supreme court of said state. and 3d. Grand Division thereof. Now if said Sable shall prosecute said appeal with effect. and pay whatever judgment and costs may be rendered on the affirmance of said circuit court judgment and shall also pay said circuit court judgment & costs thereof if said judgment is affirmed by

the said Supreme court then this obligation to be void
55 otherwise to remain in full force and effect.

Witness our hands and seals this 5th day of January. AD 1864.



D. M. Darbe. [seal]
A. Holford [seal]

State of Illinois }
LaSalle County } Ss I. Absalom B. Moore, Clerk of the Circuit Court, and Ex Officio Recorder in & for said County, in said State do hereby Certify that the foregoing is a true, full & perfect copy of the Records & of the papers on file in the foregoing mentioned Cause, as now appear of Record, in my office.

Witness my hand & the Seal of said Court at Ottawa this 6th day of April A.D. 1864.



A. B. Moore
Clerk

Trans Record $10.00
Certificate seal & stamp 1.40
$10.40

And now comes said Appellant and says there is manifest error in above record and for cause shows

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1st. The court erred in not allowing Harvey Young to testify

2d 2nd not admitting legal testimony

3d 3rd overruling motion for new trial & others Errors

Gray Avery & Bushnell
Atty for Appellant.

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Reeves
vs
Lester Curtis & wife

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Appeal

Filed April 15th 1874
L. Lockwood
Clerk

11 A. Ct.