

14110

No. _____

Supreme Court of Illinois

Jackson

vs.

J. C. Henderson et al

Michael Jackson

J. C. Henderson et al.

93

14110

To be sent Octave

Supreme Court

Obadiah Jackson

vs

Henderson Hamittore

It is hereby stipulated & agreed
that the above cause may be transferred
to the next term of this Court to be held at
Springfield in the State of Illinois

July 14, 1854,

E. S. Williams

for the late firm of Collins & Williams

Judd & Frink
for Peppin & Erwin

78
Sup. Court

Obadiah Jackson
vs
Henderson & Hamilton

"Stipulation"

Filed July 15, 1854,
S. C. Clerk

United States of America
State of Illinois } 53
County of Cook }

Shew before the Honorable John
M. Nelson Judge of the Cook County Court of Common Pleas within
and for the County of Cook and State of Illinois. At a Regular
Term of said Cook County Court of Common Pleas began
and held in at the Court House in the City of Chicago in said
County and State on the second Monday being the Twelfth
day of September in the year of our Lord one thousand
Eight hundred and Fifty Three. And of the Independence of
the United States the Seventy Eighth

Subscribed The Honorable John M. Nelson Judge
Daniel M. Leary Prosecuting Attorney
Cyrus B. Bradley Sheriff
Walter Kimball Clerk

Attest.

Be it Remembered that heretofore
To Wit!! On the Twenty ninth day of November in
the Year of our Lord one thousand Eight hundred and
Fifty Two Came Obadiah Jackson and files in the office
of the Clerk of the Cook County Court of Common Pleas his
Affidavit which said Affidavit is in words and Figures
as follows To Wit

State of Illinois
Cook County 533

Obadiah Jackson being duly sworn
deposes & saith that John B. Henderson and Henry L. Hamilton

are jointly indebted to this deponent in a sum exceeding Twenty Dollars To wit. in the sum of seven hundred & Dollars Damages for a Breach of Contract in the nondelivery of about three hundred Barrels of Fish to this deponent in Chicago according to Contract within Forty days from the tenth day of October A.D. 1852. This deponent further saith that John L. Henderson & Henry C. Hamilton are both non residents of this State, but have Property & effects as this deponent is informed within said County of Cook subject to Attachment.

Sworn & subscribed to before me
this 29th Nov 1852 W. Kimball Clk } Abadiak Jackson

And afterwards ^{To wit} on the same day came the said Abadiak Jackson and files his with the said Clerk of said Court his Attachment Bond which said Attachment Bond is in words and figures following (To wit)

Know all men by these Presents That M. Abadiak - Jackson & C. B. Hosmer are held and firmly Bound unto John L. Henderson & Henry C. Hamilton in the Penal sum of fourteen hundred dollars lawful money of the United States. for the payment of which said sum - well and truly to be made we bind ourselves our heirs Executors and Administrators jointly and severally - by these Presents - Sealed with our seals and dated this 29th day of November A.D. 1852

The Condition of the above obligation is such, that whereas the above bounden Abadiak Jackson has on the day of the date hereof, Traised an Attachment out of the Cook County Court of Common Pleas of Cook County, at the suit of Abadiak Jackson Against the

Estate of the above named John C. Henderson + Henry C. Hamilton for the Sum of Seven hundred dollars and the same being about to be laid out of said Court. Returnable on the first Monday of February next to the Term of the said Court, then to be holden, Now if the said Obadiah Jackson shall prosecute his said Suit with Effect or in Case of Failure therein shall well and Truly pay and Satisfy the said John C. Henderson + Henry C. Hamilton all such costs in said suit. And such Damages as shall be awarded against the said Obadiah Jackson his heirs Executors or Administrators in any Suit or Suits which may hereafter be brought for wrongfully laying out the said Attachment, then the above Obligation to be Void otherwise to remain in full force and Effect

Signed Sealed & Delivered

In Presence of

Obadiah Jackson

C. B. Steamer

And afterwards to wit on the same day an Attachment Writ. issued thereupon issued out of the Clerk Office aforesaid in said Cause. which said Writ of Attachment is in words and figures as follows To wit,

State of Illinois,
Cook County

ISS The People of the State of Illinois
To the Sheriff of said County Greeting =

Whereas Obadiah Jackson hath Complain'd on oath to Walter Kimball Clerk of the Cook County Court of Common Pleas of Cook County, that John C. Henderson + Henry C. Hamilton are Justly indebted to the said Obadiah Jackson to the Amount of Seven hundred dollars, and oath having been also made that the said John C. Henderson + Henry C.

Hamilton reside out of this State so that the ordinary process of Law can not be served upon him. And the said Abediah Jackson having given Bond and Security according to the directions of the act in such Case made and provided

We therefore Command you that you Attach so much of the Estate Real or Personal of the said John L. Henderson & Henry L. Hamilton to be found in your County. As shall be of value sufficient to satisfy said debt and Costs, according to the said Complaint. And such Estate so Attached in your hands to secure or so to provide that the same may be liable to further Proceedings thereupon. according to Law. At a Term of said Cook County Court of Common Pleas to be holden at Chicago within and for the County of Cook on the first Monday of February next; So as to Compell the said John L. Henderson & Henry L. Hamilton to Appear and Answer the Complaint of the said Abediah Jackson. When and where you shall make known to the said Court, how you have Executed this Writ.



Witness Walter Kimball Clerk of our said Court. And the seal thereof at Chicago in said County this Twenty ninth day of November in the Year of our Lord one Thousand eight hundred and Fifty two

Walter Kimball Clerk

And afterwards said Writ was returned into the Clerks Office with the following Endorsed Thereon

Served by levying on 7 Barrels of white fish & Trout & 122 half Barrels of white fish & Trout And the defendant Henderson giving Bond as Attached hereto. left the same in his Custody = Also Read this Writ to said Henderson, Hamilton not found 29 November 1852

Wm E. Church Sheriff By W. Regan Deputy

United States of America
State of Illinois } 58
County of Cook }

Sheweth before the Honorable John
M. Nelson Judge of the Cook County Court of Common Pleas within
and for the County of Cook and State of Illinois. At a Regular
Term of said Cook County Court of Common Pleas began
and helden at the Court House in the City of Chicago in said
County and State on the second Monday being the Twelfth
day of September in the year of our Lord one thousand
Eight hundred and Fifty Three. And of the Independence of
the United States the Seventy Eighth

Present The Honorable John M. Nelson Judge
Daniel M. Gray Prosecuting Attorney
Cyrus P. Bradley Sheriff
Walter Kimball Clerk

Attest.

Be it Remembered that heretofore
to wit!! On the Twenty ninth day of November in
the Year of our Lord one thousand Eight hundred and
Fifty Two Came Obadiah Jackson and files in the office
of the Clerk of the Cook County Court of Common Pleas his
Affidavit which said Affidavit is in words and Figures
as follows To wit,

State of Illinois
Cook County } 58

Obadiah Jackson being duly sworn
deposes saith that John C. Henderson and Henry C. Hamilton

are jointly indebted to this deponent in a sum exceeding
Twenty Dollars To wit. in the sum of Seven hundred &
Dollars Damages for a Breach of Contract in the nondelivery
of about three hundred Barrels of Fish to this deponent in
Chicago according to Contract within Forty days from
the tenth day of October A.D. 1852. This deponent further
saith that John L. Henderson & Henry C. Hamilton are both
non residents of this State, but have Property & effects as
this deponent is informed within said County of Cook
subject to Attachment.

Sworn & subscribed to before me
this 29th Nov 1852 W. Kimball Clk } Abadiak Jackson

And afterwards ^{To wit} on the same day
Came the said Abadiak Jackson and files his with
the said Clerk of said Court his Attachment Bond
which said Attachment Bond is in words and figures
Following (To wit)

Know all men by These Presents That we Abadiak -
Jackson & C. B. Hosmer are held and firmly Bound
unto John L. Henderson & Henry C. Hamilton in the Penal
Sum of Fourteen hundred dollars lawful Money of the
United States. for the payment of which said Sum -
well and Truly to be made we bind ourselves our Heirs
Executors and Administrators jointly and severally -
by these Presents - Sealed with our Seals and dated
this 29th day of November A.D. 1852

The Condition of the above obligation is
such, that whereas the above bounden Abadiak Jackson
has on the day of the date hereof, Traised an Attachment
out of the Cook County Court of Common Pleas of Cook
County, at the Suit of Abadiak Jackson Against the

And afterwards (To wit) On the —
Twentieth day of January in the Year eighteen hundred and
Fifty Three Came the said Plaintiff, by Cook and Hosmer his
Attorneys And files in the said Cause in Office of the Clerk of
said Court his Declaration which said declaration is in
words and Figures as follows (To wit)

Cook County Court of Common Pleas
February Term Ad 1853

State of Illinois,
Cook County

vs Obadiah Jackson Plaintiff, in this
Suit by Cook and Hosmer his Attorneys
Complain of John C. Henderson and Henry C. Hamilton
Defendants in this suit who are summoned to in a
plea of Trespass on the Case on Promises. For that whereas
heretofore To wit on the ninth day of October Ad 1852 at
Chicago in the said County, the said Plaintiff at the
request & special instance of the said defendants barg-
=ained with the said defendants to buy of the said defen-
=dants, and the said defendants then & there sold to the
said Plaintiff a large quantity of Goods To wit!! Four
hundred Barrels of Fish in prime order at the rate or —
price of Five dollars & sixty two and a half cents per Barrel
for the half Barrel Packages, and at the rate or price
of Five dollars & thirty seven and a half cents per Barrel for
the whole Barrel Packages to be delivered by the said
defendants to the said Plaintiff within forty days —
from the tenth day of October Ad 1852, & to be paid
for by the said Plaintiff to the said defendants on the
delivery thereof as follows viz!! Two hundred & fifty —
dollars in Cash & the balance in four equal payments
by the acceptances of the said Plaintiff at Ten, Twenty,
Thirty & Sixty days sight. And in consideration thereof

+ that the said Plaintiff at the like Special instance
+ request of the said defendants had then + there undertaken
faithfully promised the said defendants to accept + receive
the said Goods + to pay them for the same at the rate + price
aforesaid, they the said defendants understood + then + there
faithfully promised the said Plaintiff to deliver the said
Goods to the said Plaintiff as aforesaid, + although the
said time for the delivery of the said Goods as aforesaid
hath long since elapsed + the said Plaintiff hath always
been ready + willing to accept + receive the said Goods + to
pay for the same at the rate or price aforesaid So Wit at
Chicago aforesaid, whereof the said defendants have always
had notice, Yet the said defendants not regarding their
said Promise + undertaking, but contriving + intending
to deceive and defraud the said Plaintiff in this behalf
did not nor would within the time aforesaid or at any
time afterwards deliver the said Goods or any part thereof
for the said Plaintiff at Chicago aforesaid or elsewhere but
wholly neglected + refused so to do, whereby the said Plaintiff
hath lost and been deprived of divers Great gains + profits
which might + otherwise would have arisen + occurred
to him from the delivery of the said Goods to the said Plaintiff
as aforesaid So Wit at Chicago in Cook County aforesaid
And whereas also the said defendants afterwards So Wit
on the Twentieth day of November A.D. 1852 So Wit at
Chicago in the said County of Cook became indebted to the
said Plaintiff in a large Sum of money So Wit the Sum of
Seven hundred Dollars for money before that time lent advanced
to, laid out + expended for said defendants by said Plaintiff
at said defendants request + for money before that time
had and received by said defendants to + for the use of the
said Plaintiff, + also in the like Sum for money found

due & owing from the said defendants to the said Plaintiff on an account then and there stated between them & being so indebted said defendants in consideration thereof then & there undertook & promised to pay said Plaintiff said last mentioned sums of money when thereunto afterwards requested yet the said defendants not regarding their said promises & undertakings, but contriving &c although after requested so to do, have not paid said Plaintiff either of said sums of money, or any part thereof but so to do, have hitherto wholly neglected and refused & still do neglect & refuse to the damage of the said Plaintiff of eight hundred dollars & therefore he brings suit &c

Leck & Hasmer Esqrs Attys

Copy of Account Above declared on
 Henderson & Hamilton vs O. Jackson Dr

So Damages for breach of contract in nondelivery of Fish	\$ 800,
So Money paid laid out & expended	= 800,
So " had & received for use of Esqrs	800,
So Balance due on Settlement	800,

And afterwards to wit on the Seventh day of July in the year of our Lord = Eighteen hundred and fifty three Came the said defendants by Callins and Williams their Attorneys and file their Plea in this Cause in the Clerks Office aforesaid - which said Plea is in words and figures as follows to wit

John B. Henderson and
 Henry B. Hamilton
 v
 Obadiah Jackson

Rock County Court of
 Common Pleas

And now come the said defendants by Callins & Williams their

Attorneys defend the wrong & injury when &c And
Say that they did not undertake & promise in manner
& form as the Plaintiff hath above thereof complained
Against them And of this they put themselves upon the
Country &c

Callins & Williams depts Attys
And the said Plff does the like by Beck & Hasmer his Attys

And afterwards To Wit on the Twenty-
sixth day of September in the Year of our Lord one
thousand eight hundred and Fifty three, said day
being one of the days of the September Term aforesaid
at the County Court of Common Pleas, the following
proceedings were had and entered of Record in said
Cause To Wit,

Abadiak Jackson

vs
John B. Henderson & Henry B. Hamilton

Attachment

And now comes
the said Plaintiff by Beck &
Hasmer his Attorneys. And the said defendants by Callins
& Williams their Attorneys. And issue being joined
herein. It is ordered that a Jury come. And thereupon
come the Jurors of a Jury of good and lawful men to wit
P. A. Baker E. A. Benson E. B. Winbush W. K. Hasbuck
Geo McLaughlin William Justice John Casey Thomas Hill
William Church Peter Finkler Orson Felt Ed R. H. Counties
Who being duly elected tried and sworn well and truly to
try the issue joined as aforesaid. After hearing the evidence
adduced. Arguments of counsel and instructions of
the Court, retire to consider of their verdict. Under charge
of an Officer of the Court. And afterwards come into

Court And say^{ing} that the Jury find the issues for the Defendants

And thereupon the said Plaintiff enters his motion herein for a new Trial in this Cause

And afterwards To Wit On the Seventeenth day of October in the Year aforesaid the following Proceedings were had and entered of record in said Cause. To Wit, Obadiah Jackson

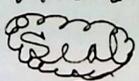
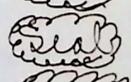
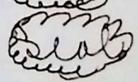
vs Attachment
John B. Henderson & Henry K. Hamilton
And now again come the parties aforesaid by their said Attorneys. And after Argument of Counsel heard on the said Plaintiffs motion for a new Trial in this Cause, the Court being now fully advised in the premises Overrules said motion

Therefore it is considered that the said defendants do have and recover of the said Plaintiff their Costs by them about their defence in this behalf expended and have Execution therefor. And thereupon the said Plaintiff enters his exceptions herein to the opinion of the Court in overruling his said motion for a new Trial & Prays an Appeal to the Supreme Court of the State of Illinois, which is allowed, and appeal to be perfected, and Bond to be approved by the Court within Thirty days after the day of Adjournment of this Term of Court

And afterwards To Wit On the Eighteenth day of November in the Year above said one Thousand Eight hundred and fifty three the said Plaintiff filed in said Cause his Appeal Bond, which said Bond is in words and figures following To Wit,

Know all men by Order Presents That We!!
Obadiah Jackson Henry Trink & C. B. Keasner of the County
of Cook and State of Illinois. Are held and firmly
bound unto John C. Henderson & Henry C. Hamilton 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 15th day of November AD 1853

The Condition of the above obligation is such
that whereas the said John C. Henderson and Henry C.
Hamilton did on the 17th day of October AD 1853 it being
one of the days of the September Term recover a Judgment
against the above bounden Obadiah Jackson before
the Cook County Court of Common Pleas of said
County for Costs of Suit in a certain Action of Attach-
ment from which Judgment the said Obadiah Jackson
has taken an Appeal to the Supreme Court of the State
of Illinois. Now if the said Obadiah Jackson
shall prosecute his Appeal with Effect and pay
the Costs in Case the Judgment aforesaid shall be
Affirmed, and duly prosecute the said Appeal, then
this obligation shall be void otherwise to remain in
full force and virtue.

Witness Our hands and seals
At Chicago this 15th day of November AD 1853
Approved this 18th day of Obadiah Jackson 
Nov 1853 by me John M. Wilson Henry Trink 
Judge of the Cook County of C. B. Keasner 
C. Pleas

And afterwards To Wit on the

Eighteenth day of November in the Year aforesaid —
Came the said Plaintiff by his Attorneys and file
his Bill of Exceptions. Which said Bill is in words
and figures as follows To Wit

Obadiak Jackson }
vs } Cook County Court of
Henderson & Hamilton } Common Pleas

And now at this day come
the said Parties. And being ready for trial and a
jury having been empaneled, the said Plaintiff to
maintain the issue on his part proved by Obadiak
Jackson Jr. A witness introduced and sworn on the
part of the Plaintiff upon the trial of said Cause, that
he was a Clerk in the Plaintiffs store. that the defendants
Henderson & Hamilton on the tenth day of October 1852
made the following proposition to the said Plaintiff to wit
We propose to deliver to Obadiak Jackson of Chicago within
forty days from the tenth day of instant Four Hundred
Barrels of Fish in prime order for the following Prices
viz!! For H. Bbl Packages 56 25 per bbl
" Whole " 53 7 1/2 " "

payable as follows viz in Cash \$25000 the balance in
Acceptances on 10, 20, 40 & 60 days sight provided Fish
are in receipt at that time. Witness Obadiak Jackson Jr
And that the said Plaintiff accepted said Proposition
And the defendants Agreed to deliver Four hundred
Barrels of white Fish to the Plaintiff at Chicago on the
conditions and at the time above specified. And that
the defendants within a few days delivered 155 barrels
of Fish and the Plaintiff advanced & paid them down
\$250 And that the defendants applied to the Plaintiff

on the 14th day of October to accept drafts drawn =
by the defendants to the Amount of \$1500⁰⁰ which
the Plaintiff refused to accept on the ground or for the
reason as he alleged that the defendants had not deliv-
ered. And he was not in receipt of Fish to that Amount
that the defendants were at the time of making said
Contract indebted to the Plaintiff in the Sum of about
\$900 on a Book Account which was to Apply on said
Fish. And that the defendant declared & stated that
they would not deliver any more fish unless the Plaintiff
accepted said drafts and the Plaintiff stated
he would live up to his Contract with the defendants
& should hold them to the fulfillment of the Contract
And the Plaintiff further proved by said witness
that the defendants did not deliver any more fish
that Fish were worth in the Chicago Market on the 20th
day of November and thereafter \$8⁵⁰/₁₀₀ per Barrel for whole Barrels
& \$8²⁵/₁₀₀ per Barrel for half Barrels. Half Barrels were worth
about twenty five cents per Barrel more than whole Barrels

And the said Plaintiff proved by =
Andrew D. Downing that he the witness was present when =
the Contract was made between the Plaintiff & defendants
for the delivery of four hundred Barrels of Fish by the defendants
to the Plaintiff that the defendants made their proposition
in writing as hereinbefore set forth. And the Plaintiff accep-
ted said proposition and paid the defendants \$250⁰⁰ that
the defendants delivered 155 Barrels of Fish on the Contract
and refused to deliver any more. That White Fish in prime
order were worth eight dollars and fifty cents per Barrel for half
Barrels & \$8²⁵ for whole Barrels and about the 20th of
November 1852 & thereafter while fish were scarce. Am Clerk
for the Plaintiff and was in 1853. The defendant refused to

delivered more fish about the 14th of October 1852 because the Plaintiff refused to accept their Drafts for about fifteen hundred dollars. And the Plaintiff told the defendant Henderson that he should hold them to the performance of their Contract and require them to deliver the Fish. The Plaintiff then reced

And the defendant proved by F. W. & you that he was Clerk & Bookkeeper for the Plaintiff at the time the Contract for the delivery of the fish mentioned in the defendants proposition was made, the defendant Henderson came to the Plaintiffs Store about the 12th or 14th of October 1852 and they had a dispute about the payments, Henderson wanted the Plaintiff to accept drafts at Ten days from sight and the Plaintiff claimed that he was not bound to accept for the defendant beyond the amount of fish received, & refused to accept the drafts & claimed that the \$250 payment was the acceptance or draft provided for by the Contract at Ten days, Henderson then stated if they could not agree, they had better settle. And the Plaintiff told me to make out a Statement of the defendants Account from the Books and I did so, the paper shown me is the Statement of defendants Account made out by me at that time. (Which said Account is as follows to wit)

Henderson & Hamilton
 1852 In ape with Otobish Jackson

July 6 th	To Bal of Ape to date	998.75
Sept 16 th	Freight on Fish	16.75
Oct 7 th	Rs Draft Alie	26.71
" 12	Rs Freight on Fish	15.00
" "	Leash	250.00
" "	Rs Freight Golden Gate	36.26
" "	9 ³ / ₄ Bbs deduction on Freight	57.00
" "	Cash to bal	726.5
	Cash To Bal	\$ 1394.79
		236.5
		\$ 1468.45

1852 lcr

July 12 th	By draft on Williams & Berry	200.00
Sept 16	" Fish	349.89
Oct 11 th	" 42 1/2 Bbls W Fish in half 5 3/8	339.06
" "	" 5 " " whole 5 3/8	26.88
" 13	" 95 " " half 5 3/8	334.38
" "	" 22 " " whole 5 3/8	188.25
		1468.44

Settled as Above

Obadiah Jackson By Jyon

This Statement was taken from the Plaintiff ¹³⁰⁹¹⁶ and was then settled between the parties by me for Mr Jackson and by Mr Henderson I gave to the defendants the receipt produced and shown me (which said receipt is as follows to wit)

Recd Chicago Oct 14 1852 of Henderson & Hamilton One dollar in full of all demands same nature to date

O. Jackson By Jyon

I paid Mr Henderson the balance due the defendants over and above the account as stated for the 150 Barrels of Fish that had been delivered by them and upon his Cross Examination said Witness stated that he made & signed & delivered the receipt himself to the defendant, that Mr Jackson was about the store at the time, Henderson refused to or said he would not deliver any more Fish on the Contract unless the Plaintiff would accept the drafts drawn by the defendants, thinks the drafts amounted to about \$10000 or \$15000 the Plaintiff said he would perform his part of the Contract and should hold the defendants the performance of the Contract on their part, the Plaintiff looked for the defendants written proposition at the time but did not find it, I did not show the receipt given by me to the defendants to the Plaintiff & he did not direct me to give said receipt in the settlement made by me with the defendants, nothing was said about

damages for not delivering the fish

And said defendants proved by J. S. Douglass a witness sworn on their behalf that he was Book-keeper for Melians and Avery Grocers of Chicago in October & November 1852, and that they were large dealers in white fish and from an examination of their Books he finds that fish sold for \$6.50 per barrel about the first of November 1852. No sales are entered between that time & the 20th of November and by Bailey a witness sworn on behalf of the defendants, that he was buying and selling fish at Chicago in the fall of 1852 that from the 10th to the 15th of October half barrels of white fish were selling at \$28 1/2 or at five dollars & seventy five cents per barrel, on the 30th of October at six dollars and twenty five cents per barrel November fifteenth at six dollars & fifty cents and on the 20th of November at seven dollars per barrel

And the said defendants then gave in evidence the Statement of the defendants Account with the Plaintiff and the receipt hereinbefore set forth and then rested their defense.

And the said Plaintiff gave the following rebutting Evidence by Obadiah Jackson Sr who was recalled that he was present in the Plaintiffs Store at the time the defendant Account upon the Plaintiffs Books was made out and stated the Book-keeper J. S. Douglass on the 14th day of October 1852 and that when the Plaintiff refused to accept drafts drawn by the defendants Henderson said he would not deliver any more fish & said he wanted to settle or they had better settle, the Plaintiff told the Book-keeper to make out a Statement of the defendants Account from the Books & it was done, There was a balance of about nine hundred,

Dollars upon the Books due from the defendants to the Plaintiff upon an Account for the prior Year which was to Apply on the Fish. The Plaintiff told Henderson before the Statement was made out, and afterwards as he was leaving the Store, that he should hold them to the Contract & demanded of him the delivery of the balance of the fish within the time mentioned in their Agreement. The drafts that Henderson asked the Plaintiff to accept ~~was~~ amounted to fifteen Hundred dollars. That after the Attachment was issued & served in this Case the defendant Hamilton requested the Plaintiff to release them from the Contract. Offered to pay the Costs if he would do so and the Plaintiff here rested and the said Cause was submitted to the Jury, the Plaintiff insisting that he was entitled to recover from the defendants the increase in value in said fish that was not delivered on the 20th November 1852 or the difference between the Contract price and the Market value of the fish, at the Expiration of the time of the delivery of the fish not delivered under the Contract. And the defendants that under the Evidence in said Cause the parties had settled concerning said Contract and that the defendants were released therefrom. And the Court instructed the Jury as follows at the request of the Plaintiff

First

If the Jury believe from the Evidence that the defendants Contracted to deliver to the Plaintiff 400 Barrels of Fish between the 10th of October and the twentieth of November 1852 and that the defendants neglected and refused to deliver a portion of the fish according to the Terms of the Contract then the Plaintiff is entitled to recover the difference between the Contract price and the Market value of the fish at Chicago on the 20th day of November 1852. Unless the defendants were

released from the performance of their Contract by the Plaintiff

Second

The proof of a Settlement of the account mentioned in the Written Statement and Receipt proved by the Defendants is not evidence that the Defendants were released from their Contract by the Plaintiff. Unless the Jury shall believe from the Evidence in this Cause that the damages for a breach of said Contract were specially mentioned and included in the Statement

Third

If the Jury believe from the Evidence that the Plaintiff informed the Defendant Hamilton in the Conversation Connected with the Settlement that he should hold the Defendants to their Contract then the Receipt and Settlement will not release the Defendants from this Contract

Also the Court instructed the Jury as follows at the request of the Defendants

If the Jury believe from the Evidence that there was on or about the 14th day of October 1852 a Settlement between the Plaintiff and Defendants of all demands including the Contract upon which this Suit is Brought & the Balance there found due the Defendants was paid to them by Jackson then the Plaintiff can not recover upon this Contract & the law is for the Defendants

If the Jury believe from the Evidence that there was on or about the 14th of October 1852 a Settlement of the demand on which this Suit is Brought and the balance found due the Defendants was paid to them by Jackson then no Statement made by Jackson after such Settlement could make the Defendants liable

And the Jury retired under the instructions of the Court, and returned into Court a verdict in favor of the defendants and against the Plaintiff, that the defendants did not undertake and promise in manner & form as alleged in the Plaintiff's declaration. And thereupon the Plaintiff moved the Court that said verdict be set aside and a new trial be granted for reasons

First that said verdict was against the evidence in the case

Second Because the said verdict was against the law

Third Because the verdict was against the instructions of the Court in the case. And the Court overruled said motion, and enter judgment upon said verdict against the Plaintiff & in favor of the defendants. To which decision of the Court overruling said motion for a new trial the Plaintiff did then & there except and the Plaintiff prays that the said exceptions may be signed and made of record

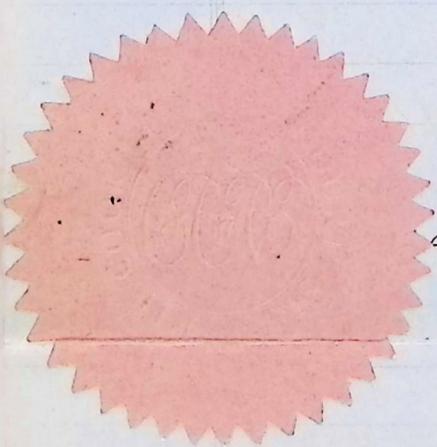
John M. Wilson *JMS*
Judge of the Cook County Court of
Common Pleas

State of Illinois
Cook County S.S.

I Walter Kimball Clerk of
the Cook County Court of Common Pleas
within & for the County and State aforesaid do
hereby certify that the foregoing is a full
true and correct copy and Transcript
of all the papers and of the proceedings
had and entered of Record in said Court
in the case of Obddiah Jackson plaintiff
and John Henderson and Henry C. Hamilton
Defendants in attachment as appears from
the original papers filed in said cause and
from the Records of said Court now in my
office.

In testimony whereof I have
hereunto subscribed my name
and affixed the Seal of said Court
at Chicago in said County this
26th day of May A.D. 1854.

Walter Kimball, Clerk



Supreme Court
Obadiah Jackson

vs
John C. Henderson &
Henry C. Hamilton

And now comes the said
Obadiah Jackson plaintiff in error by
Judd & Frantz his attorneys & says that in the
record and proceedings and in the giving of judgment
aforesaid there is manifest error in this to wit
First. That the verdict and judgment in said
cause ought to have been in favour of said
plaintiff & against the defendants for the amount
of damages claimed by said plaintiff
Second That the court erred in refusing to set
aside the verdict of the Jury & to grant a new trial on
the motion of said plaintiff
3. That the said record is in other respects erroneous

Wherefore for the errors aforesaid said plaintiff prays
that said judgment may be reversed & altogether
held for naught.

Judd & Frantz
atty for Plffs in Error

78 93

Obadiah Jackson

of
John C. Wendon
Henry C. Hamilton

"
Transcript"

Filed June 14, 1854.
L. Leland Clk.

Filed Jan 16th 55
Ch. Atkinson
Clk.

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