

14190

No. _____

Supreme Court of Illinois

Steel

vs.

Hobbs.

STATE OF ILLINOIS, }
SUPREME COURT. } ss.

THE PEOPLE OF THE STATE OF ILLINOIS,

To the Sheriff of *Hardin* County,

Because in the record and proceedings; and also in the rendition of the judgment, of a plea which was in the Circuit Court of *Hardin* County, before the judge thereof, between *Samuel Steele Pet.* and *William Hobbs*

defendant, it is said that manifest error hath intervened to the injury of said *Samuel Steele*

as we are informed by *his* complaint, the record and proceedings of which said judgment, we have caused to be brought into our Supreme Court of the State of Illinois, at Mt. Vernon, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county; you give notice to the said *William Hobbs*

that *he* be and appear before the Justices of our said Supreme Court, on the first day of the next term of said Court, to be holden at Mount Vernon, in said State, on the Second Monday in November next, to hear the records and proceedings aforesaid, and the errors assigned, if *he* shall think fit; and further to do and receive what the said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said *William Hobbs* notice; together with this writ.

Witness, the Hon. SAMUEL H. TREAT, Chief Justice of our said Court, and the seal thereof, at Mount Vernon, this *19th* day of *October* in the year of our Lord; one thousand eight hundred and fifty-four

Samuel H. Treat
Clerk of Supreme Court.

By *A. Johnston* Deputy
11

Samuel Steele

By

William Hobbs

Subpoena

Presented the within according to Law by reading
+ (within) + summons notice to William Hobbs in the
presence of James W. Garland and Calvin H
Garland on the 25th day of October A D 1854

Lewis Alexander Sheriff
Hardin County

Steele & Hobbs - }

(1)

Treat Chief Justice - This was an action of assumpsit brought by Steele against Hobbs. On the trial the plaintiff introduced the following evidence. Elizabeth Steele testified, that she heard a conversation between the parties in the spring of 1857 concerning a mare; plaintiff said \$70⁰⁰ dollars was too much for the mare, and if he bought her he would have to sell her again, as he was going to California in the fall, and she would not then bring \$70; defendant said that plaintiff might take the mare at \$70⁰⁰, and if she did not bring that amount in the fall, he would pay back the difference; plaintiff said he would take the mare on that condition. James Steele testified to the same conversation; plaintiff intended to go to California in the fall, and wanted to take his money with him; it was finally agreed between the parties that plaintiff would take the mare at \$70⁰⁰, and sell her in the fall for the best price he could obtain, and if she brought less than \$70⁰⁰, defendant should refund the balance. The witnesses discovered in a few days that the mare had the fall-evil, and during the summer she became entirely worthless, and could not have been sold for anything in the fall; plaintiff took proper care of the mare, and used every effort to cure her. Mills testified that the mare had the fall-evil in the summer of 1857, and witnesses would, and was still badly

(2)
afflicted with ~~at~~ that disease; plaintiff
offered to sell the mare to ~~plaintiff~~
witness in the fall of 1857, and witness
would have paid a fair price for her
if she had not been diseased; plaintiff
proposed to let witness have the mare
for twenty-five cents, but he refused to
take her on any terms. Jervis testified
that he wanted to purchase a horse in
the summer of 1857, and was referred to
plaintiff; plaintiff was anxious to sell
the mare, but witness considered her worth-
less, and declined to buy her. Alexander
Steel testified, that the mare would not
have sold for any thing in the fall of
1857, or at any time since; plaintiff
frequently offered to sell the mare; at one
time the mare appeared to be getting better,
and witness proposed to give plaintiff
an old cow for her, but plaintiff
would not have the cow - Barbour
testified that the mare was badly diseased in
the fall of 1857, and could not have been
sold at any price - Walker testified
that the mare could not have been sold
for anything in the fall of 1857; she had
a colt in the spring of 1852, now worth
\$15 or \$20. Ralph testified that plaintiff
returned from California in the spring of 1853,
and in June following tendered the mare
to defendant, and asked him to refund
the amount paid for her; defendant
refused to receive the mare, and repay
the money. Warren testified that in
1857 he paid defendant \$10⁰⁰ for plain-
tiff, and both parties said it was the
balance due on the mare -

The defendant produced the following testimony - Mathews testified that he had proposed to give defendant \$60⁰⁰ for the mare a short time before he sold her to the plaintiff - Critchler testified, that he told plaintiff in the spring of 1857 that he had paid a very big price for the mare, and plaintiff said it made no difference as he had defendant bound to make it all right - the mare was badly diseased in the fall afterwards - Gilbert testified, that early in the summer of 1857, he offered plaintiff \$80⁰⁰ for the mare, if he would write for the money, but plaintiff said he did not wish to sell her at that time in that way - Jackson testified, that he saw the mare in the summer of 1857, and did not notice that anything was the matter with her. Lemars testified, that he saw plaintiff working the mare four or five times in the summer of 1857; she was badly afflicted with the poll-evil in the fall -

The jury returned a verdict for the defendant, and the court refused to grant a new trial -

The contract was Steele should pay Hobbs \$70, and sell her in the fall for the best price he could obtain; and in case she then brought less than that sum, Hobbs should defund the excess - Steele accordingly advanced the money, and received the mare - The ~~proof~~ proof shows that he took reasonable care of the animal, and endeavored in good faith to sell her in the fall - But the mare in the mean time became entirely

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worthless without his fault, and it was therefore not in his power to effect a sale. He then tendered the mare to Hobbs, and demanded repayment of the \$70. Having performed the contract on his part, and offered to restore the property, he was clearly entitled to recover back the amount advanced to Hobbs, as so much money paid upon a consideration that had wholly failed. The verdict of the jury was manifestly against the evidence, and the Court erred in not setting it aside.

The judgment must be reversed, and the cause be remanded.

Judgment Reversed.

Steele & Hobbs

opinion.

Treaty
C. J.

State of Illinois
 Hardin County

Please before the Honorable William A. Deering Judge of the 3^d Judicial Circuit and presiding in the County of Hardin and State of Illinois, at the Courthouse in Elizabethton County and State aforesaid On the 13th day of August in the year 1853. when the following was had, to wit,

Justices
 transcript

vs.
 Samuel Stebbins
 vs.
 William Hobbs

"This is a case wherein suit is commenced by Samuel Stebbins on an account against William Hobbs, the items of said account are as follows, To Cash paid for Our Own Man \$90.00
 for interest on said security dollars
 for finding doctoring and stating case of said man from September 1851. to June 1853.
 Making in all One hundred dollars, whereupon summons was issued on the 20th day of August and sent to Samuel Williams Co, the 25th day of this Inst. 12th was set for trial at 9 Oct. Said Williams appeared on the 22^d day of said Inst. and said he could not find said William Hobbs in time to give him legal notice and proposed that I would set an 11th day for trial, whereupon I issued summons was issued on the 22^d Inst in which the 2^d day of July was set

Demands \$100.00
 Opening Courts .18
 Working Court .12
 Issuing Subpoenas 5 .18
 Do Do 1 .18
 Do Do 4 .18
 Do Do 1 .18
 Serving Courts .25
 Riding 5 miles .25
 Serving Notices .25
 Riding 3 mi .15
 Serving Subps on 5 .50
 Riding Do 10 mi 50
 Serving Sps on 1 12
 Return 1 mi 5
 Serving Sps on 1 12
 Swearing 5 witnesses 31
 Riding Judge 25
 Riding Mill, with Thomas Seim 50
 entering apl. 50
 Transcript 4.75

\$5.45

2. for trial. D.^d Summons was sent into the hands of Samuel Williams Co. A subpoena was issued on the 30th of June and sent to Sam Williams Co. said Summons was returned on this 30th June with the indorsement. Received the within Summons according to law on the within named W^m Hobbs, June the 27th 1853. Samuel Williams" also indorsed. Received on this notice One dollar, and One dollar and twenty cents cost. June 27th 1853. Samuel Williams"

Said Williams informed me that several persons told him that the demand marked on said Summons was One dollar and that he himself thought it One dollar marked and that said Hobbs said he would pay One dollar and the cost rather than attend trial, whereupon I wrote a notice to said W^m Hobbs on this the 30th of June, informing him that the demand of said Summons was One hundred dollars and that said case would be tried on the day and hour specified in in the Summons which he appeared and showed cause why it should be continued, said notice put in the hands of Samuel Williams Co. said notice was returned on this second day of July with the indorsement Received the within notice by reading the same to the within named W^m Hobbs, June 30th 1853. Samuel Williams"

Said Subpoena was returned on the 2^d July indorsed "Received the within subpoena by reading the same to the within named Antropes, June 30th 1853." Samuel Williams"

Second subpoena returned on the 2^d July indorsed Received the within by reading the same to the within J^s. J. Pearson, June 30th 1853. Samuel Williams"

3.

A 3^d Subpoena issued on this 2^d of July for W. Matthews, John Ferrill, Abram Hobbs and John Critchelow, not served, A 4th Subpoena issued on the 2^d of July for Alex Stule and put in the hands of Samuel Williams Co. Said Subpoena returned on this Inst. in doses served the within Subpoena by reading the same to the within named Alex Stule, July the 2^d 1853, Samuel Williams

The parties both appeared on the 2^d day of July at the hour set for trial, and stated that they were ready for trial, whereupon the witnesses were sworn on the side of the plaintiff and were duly examined, after hearing the testimony on the side of the plaintiff, the said defendant said he believed that he would not have his witnesses sworn,

After the testimony was heard on the side of the plaintiff, said defendant said he would not offer any testimony at present, said plaintiff said he submitted the case to the undersigned Justice of the peace for decision, the said defendant also said he also submitted the case to the undersigned J.P. for decision, from the testimony heard it appears to said Justice that said defendant should pay said plaintiff fifty five dollars,

Whereupon the parties both being present, Judgment is rendered in favor of the said plaintiff for fifty five dollars and cost of suit

F. Dimick J.P. N.C.

I the undersigned certify that the foregoing transcript is a true copy from my books and that it contains a full statement of all

4. the proceedings in said case before me and that all the papers pertaining to said suit are transmitted with this transcript to the clerk of the Circuit Court of Hardin County, Given under my hand this 16th day of July A. D. 1853. Franklin Dimick J. P. H. C.

S. P. Seal } State of Illinois }
Hardin County }

The people of the State of Illinois to any Constable of said County Greeting,
You are hereby Commanded to Summon William Hobbs to appear before me at my Office on the second day of July at 10 o'clock to answer the Complaint of Samuel Stule for a failure to pay him a certain demand not exceeding One thousand dollars and hereby make return as the law directs, Given under my hand and seal 20th day of June 1853. J. Dimick J. P. H. C.

Endorsed

"Served the within Summons according to law on the within named W. Hobbs June 27th 1853." Samuel Williams"

Cost of serving \$- 25-00
Distance 5 miles 25-00

The following is the Appeal Bond

Appeal Bond } Know all men by these presents that }
} the William Hobbs and P. P. McFarlane }
} are held and firmly bound unto Samuel }
} Stule in the penal sum of One thousand }
} and fifty dollars lawful money of the }
} United States for the payment of which }
} well and truly to be made we bind ourselves

8, our heirs and administrators jointly and severally
and singly by these presents, Witness our
hands and seals, this 8th day of July A.D.
1853.

The condition of the above obligation is
such that whereas the said Samuel Steele
did on the 2^d day of July A.D. 1853. before
Franklin Deane a Justice of the Peace
for the County of Hardin recover a Judgment
against the above bounden William Hobbs
the sum of fifty five dollars and cost from
which judgment the said William Hobbs has
taken an appeal to the Circuit Court of
Hardin County aforesaid and State of Illinois,
Now if the said William Hobbs shall prosecute
his appeal with effect and shall pay what
ever judgment may be rendered by the Court
upon the dismissal or trial of said appeal
then the above obligation to be void otherwise
to remain in full force and effect,

William Hobbs *Wm Hobbs*
J. P. McFarlan *J. P. McFarlan*

Approved July 8th 1853.

J. P. McFarlan *J. P. McFarlan*

On which is the following endorsement,
"Filed July 8th 1853."

J. P. McFarlan *J. P. McFarlan*

The following is the summons issued upon
said transcript to wit,

Summons } State of Illinois }
} Hardin County } 55.

The People of the State of Illinois
to the Sheriff of said County Greeting:
We command you to Summon Samuel
Steele if he shall be found in your County

6. personally to be and appear before our Circuit Court at the next Term thereof to be holden at the Courthouse in Elizabethton on the 2^d Monday of August next to answer an appeal filed against him in our said Court and further do and receive whatever our said Court may then and then consider in this behalf, and in this you are in power to omit, and have you then and then this writ,

Witness J. M. Farlan Clerk of our said Court at Elizabethton, and the Jurors seal thereof, this the 8th day of July A.D. 1853,
 J. M. Farlan Clk.

Upon which the Sheriff made the following endorsement, to wit,

Sheriff } " Executed the within according to law
 return } by reading the same to Samuel Stute on
 the 2^d day of July 1853.

For driving _____ \$7
 4 Miles and Ret. _____ \$30
 \$37

Levin Savinder Sheriff &c 26th

And afterwards, to wit, on the 13th August 1853 at a circuit Court held in and for said County the following Order was made, to wit,

Order of } Samuel Stute — Plaintiff
 Court } vs. 3 appeals.
 William Hobbs — Defendant

Now on this day came the plaintiff by Warren & Montgomery, his attorneys as well also the defendant by Parrish, his attorney, and the said plaintiff by leave of Court first obtained opened the deposition

7. of Elizabeth State,

Thereupon came the said defendant and filed his exception to said deposition; argument of counsel being heard and the court being now sufficiently advised in the premises, ^{that the issue with the plaintiff is the} It is concluded by the court that the said defendant's exception to the said plaintiff's deposition be and the same is hereby overruled, Upon being joined by a Jury come, thereupon came a Jury, to-wit. W. M. Marshall 1. William W. Lock 2. Riley Litchell 3. Abram Davis 4. P. C. Palmer 5. Thomas J. Hale 6. William Frisley 7. George Vineyard 8. Isaac T. Bassett 9. John Jackson 10. James Lacey 11. Calvin Allard 12, who being chosen, selected and sworn, with power to speak upon the issue joined, upon their oaths do say, that the Jury find for the defendant - Thereupon came the plaintiff by his attorneys, and then and there moved the court for a new trial in this cause, and the same being submitted to the consideration of the court and the court being sufficiently advised in the premises, It is ordered that the said plaintiff move for a new trial in this cause be and the same is hereby overruled, To which opinion of the court the said plaintiff by his attorney then and there assented.

It is further ordered that the said plaintiff's bill of exceptions may be signed by the court in vacation. Thereupon it is concluded by the court that the said defendant recover of the said plaintiff his cost and charges in and about his said suit in that behalf expended, & that he may have

execution therefor &c."

The following is the deposition referred to in the foregoing order to-wit,

"State of Illinois
Hardin County

deposited for
E. State

The deposition of Elizabeth State taken at the House of James State Senr in the County of Hardin and State of Illinois, On the 8th day of August in the year ¹⁸⁵³ between the hours of 12 O'Clock and Six O'Clock of the same day, pursuant to Notice hereto attached, to be read as evidence upon the trial of certain suit at law now pending in the Hardin Circuit Court, wherein Samuel State is plaintiff, and William Hobbs defendant, for and on behalf of the said plaintiff,

The said deponent being first duly sworn according to law, deposes as follows, to-wit,

"Question 1. By plaintiff

Are you or are you not acquainted with the parties plaintiff and defendant in the case mentioned in the foregoing Caption? if so, state how long you have known them respectively?

Answer,

I am acquainted with the parties. I have been acquainted with the plaintiff twenty six years, and with the defendant about four or five years,

Question 2.

Please state what has been the state of your health and what it is now and whether you are or would be able to attend Circuit Court commencing on the day of the date hereof,

9.

Answer,

I have been in ^a very feeble state of health for about six years past and am not able at this time to attend Circuit Court, nor of leaving home even for a short distance

Question 3rd.

State if you know any thing concerning a contract between the said plaintiff and the said defendant relating to a dam mare? if so state all you know concerning the same in detail,

Answer,

I heard the said plaintiff and D^o defendant talking about said mare as follows (viz) that in the Spring of One thousand eight hundred and fifty One said William Hobbs was here and him and said Samuel Stute were talking about said mare, said Stute told D^o W^o Hobbs that seventy dollars was too much for the mare that if he bought the mare he should want to sell her in the fall as he intended going to California in the fall and that he could not get seventy dollars for the mare in the fall, said W^o Hobbs the defendant then said to Stute the plaintiff would take said mare and give him seventy dollars for her, that whatever the mare lacked of bringing seventy dollars in the fall, he would pay him when he saw him said Stute - said Stute replied that he would take the mare on these conditions and pay him seventy dollars, and that if said mare brought more than seventy dollars he would pay back to said Hobbs the surplus when he saw him, said Samuel Stute then paid D^o W^o Hobbs an amount of money in paper

10. bills. I do not know what the amount was that he paid - and further this deponent doubts not.

Elizabeth ^{her} ~~Stute~~ ^{Stute}
_{mark}

"State of Illinois }
Hardin County } p

L. P. }
Circuit Court }

I Franklin Dennis Justice of the peace in and for said County. do hereby certify that the foregoing Deposition of Elizabeth Stute was taken at the house of James Stute Senr. by me on the eighth day of August 1853, between the hours of 12 O'clock P.M. and 6 O'clock P.M. of the same day, that said Deposition was sworn to and signed by the deponent at the time and place above mentioned,

Given under my hand and seal this 8th day of August A.D. 1853,

Franklin Dennis Seal
Justice of the peace of Hardin Co.

Cost - taking Deposition . 50
Certificates 35
80

affr. }
Saml. Stute }

"State of Illinois }
Hardin County } p

This affiant Samuel Stute being of lawful age and first duly sworn states that he has a suit now pending in the Hardin Circuit Court, wherein affiant is plaintiff and William Hobbs defendant, that one Elizabeth Stute is an important witness in behalf of said affiant in said cause and that said witness is not able to attend Court for the purpose of giving her evidence

11. in said Cause, and that said wife is not able to attend Court for the purpose of giving her evidence in said Cause on account of sickness, that she has been confined to her room nearly all this time for several years, and there is no probability of her being able to attend at the evening term of the Hardin Circuit Court or any term of Court thereafter, and desires that her Depositions may be taken,

And further this affiant saith and
Subscribed & sworn to before
me the 25th. July 1853 } Samuel Stute,
J. M. Fairlan clk. }

The following is the endorsement made
by the clerk. "Filed in my office on the day
of July 1853. J. M. Fairlan clk."

The following is the notice

"W. William Habbs,

Take notice that on the 8th day
of August next, at the hour of 12 O'clk Am at
the house of James Stute Senr in the County of
Hardin and State of Illinois. I shall proceed
to take the deposition of Elizabeth Stute who
is confined to her room on account of
sickness, to be used as evidence upon the
trial of a certain suit at law now
pending and undetermined in the Hardin
Circuit Court wherein I am plaintiff and
yourself defendant, when and where you
may attend if you think proper,

25th July 1853.

Yours &c
Samuel Stute"

upon which is the following endorsement,
made by J. Almon Chancy Constable in and
for said County of Hardin and State of Illinois,

Be it remembered that at the August Term of the Hardin Circuit Court, upon the trial of the above entitled cause, the said affeller introduced and read in evidence the Deposition of Elizabeth Stueh, which is in the following words and figures, to-wit,

Deposition
of Elizabeth
Stueh }
" State of Illinois }
Hardin County }
} 3

The deposition of Elizabeth Stueh taken at the house of James Stueh Senr. in the County of Hardin and State of Illinois, on the 8th day of August in the year A.D. 1853 between the hours of 12 O'clk Am and Six O'clk. the same day, pursuant to notice hereto attached, to be read in evidence upon the trial of a certain Suit at Law, now pending in the Hardin Circuit Court, wherein Samuel Stueh is plaintiff and William Hobbs defendant, for and on behalf of the said plaintiff,

The said deponent being first duly sworn according to law, deposed as follows, to-wit,

Question 1. Q. By plaintiff

Are you or are you not acquainted with the parties plaintiff and defendant in the cause mentioned in the foregoing Caption? if so, state how long you have known them respectively?

Answer, I am acquainted with the parties, I have been acquainted with the plaintiff twenty six years, and with the defendant about four or five years.

Question 2. Please state what has been the state of your health and what it is now and whether you are or would be able to attend Court Commencing on the day of the date hereof

14. Answer I have been in a very feeble state of health for about six years past, and am not able at this time to attend Circuit Court nor of leaving home even for a short distance,

Question 3^d. State if you know any thing concerning a contract between the said plaintiff and the said defendant relating to a Free Man, if so, state all you know concerning the same in detail,

Answer, I heard the said plaintiff and said defendant talking about said man as follows. (viz) that in the Spring of One thousand eight hundred and fifty One, said William Hobbs was here, and him and said Samuel Stute were talking about said man, said Stute told said W. Hobbs that seventy dollars was too much for the man, that if he bought the man he should want to sell her in the fall, as he intended going to California in the fall, and that he could not get seventy dollars for the man in the fall, said W. Hobbs the defendant then said if said Stute the plaintiff would take said man and give him seventy dollars for her, that whatever the man lacked of bringing seventy dollars in the fall he would pay him, when he saw him, said Stute then replied that he would take the man on these conditions, and pay him seventy dollars, and that if said man brought more than seventy dollars he would pay back to said Hobbs the overplus when he saw him,

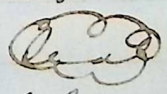
Said Samuel Stute then paid said W. Hobbs an amount of money in paper bills. I do

15. not know what the amount was that he paid,
and further, this deponent saith not,
Elizabeth ^{the} ~~the~~ _{wife} "Stute"

State of Illinois }
Hardin County }
J Franklin Dimick Justice of the

peace in and for said County, do hereby certify
by that the foregoing deposition of Elizabeth
Stute was taken at the house of James Stute
Senr. by me on the eighth day of August
1833 between the hours of 12 O'clk A.M.
and 6 O'clk P.M. of the same day, that
said deposition was sworn to and signed
by the deponent at the time and place above
mentioned,

Given under my hand and seal, this
8th day of August A.D. 1833

Franklin Dimick 
Justice of the peace of Hardin Co.

State of Illinois }
Hardin County }
This affiant Samuel Stute being of

lawful age and just duly sworn, states
that he has a suit now pending in the Hardin
Circuit Court, wherein affiant is plaintiff
and One William Hobbs defendant, that
One Elizabeth Stute is an important
witness in behalf of said affiant in said
cause, and that said witness is not able
to attend Court for the purpose of giving
her evidence in said cause on account
of sickness, that she has been confined
to her room nearly all the time for several
years, and there is no probability of her
being able to attend at the ensuing term of

16. the Hardin Circuit Court, or any term of
Court thereafter, and desires that his deposition
may be taken, and further this affirms with
oath

Subscribed & sworn to before Samuel Stebbins
on the 25th July 1853.

John M. Faulkner clerk

Marked "Filed in my office on the
day of July 1853" John M. Faulkner clerk

Notar.

"W. Williams Hobbs. Take notice that on the
8th day of August next, at the hour of 12
O'clk. A.M. at the House of James Stebbins Senr.
in the County of Hardin and State of Illinois,
I shall proceed to take the deposition of Elizabeth
Stebbins who is confined to her room on account
of sickness, to be used as evidence upon the
trial of a circuit suit at law now pending
and undetermined in the Hardin Circuit
Court, wherein I am plaintiff and yourself
defendant, when and where you may attend
if you think proper, 25th July 1853"

Yours &c

Samuel Stebbins

"I Almon Chancy Constable in and
for said County of Hardin and State of
Illinois, do hereby certify that I delivered to
the within named William Hobbs a true copy
of the within notice on the 26th day of July
1853"

Almon Chancy

Constable Hardin County"

Evidence
of James Stebbins
The said appellee then introduced
and proved by James Stebbins Senr. that in the
Spring of 1851. the appellant came to his
house, and was there some two or three days

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trying to sell to the said appellee his deer man, he thinks that on the morning of the third day, the appellee and appellant came into the House, when the following conversation took place, Appellant told appellee that if he would take his man at \$70.00 and if he wished to sell her in the fall following, that if she failed to bring \$70.00 he would make up to him what she lacked of \$70.00 when he saw him again, the said appellant was then about to start to California, and wanted the money for that purpose = appellee told him, appellant that \$70.00 was too much for the man, that she was not worth it, when witness told appellee that the proposition was so far that he ought to take the man, then the said appellant recanted and the conditions of his proposition, then appellee told him that the man was not worth \$70.00 but he would take him upon the terms he proposed, they both called upon witness, to bear evidence of the contents of the contract, it was then retailed, that appellee was to pay appellant \$70.00 for the man, that appellee was to sell her in the fall following for the best price he could, that what she lacked of bringing the \$70.00 he appellant was to make up to appellee when he saw him again; and this was agreed to by both parties, appellee took the man, witness discovered in a few days after appellee got her, that something was the matter with the man, that she went making about with her head stuck out, as though her neck was stiff, it was soon

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after ascertained that she had "Palewal" mumps further stated that in the course of the summer she was so much affected with the disease that she became entirely worthless, that he did not believe that she could have been sold for any thing, Appeller was living with mumps and kept the man on his farm: that appeller used every effort as mumps believes, to cure the man, that she was well taken care of, mumps thinks that appeller likely worked the man some four or five days during the summer, mumps stated that he looked upon the contract as the time, as the appeller taking the man in pledge for \$70.

Evidence }
 Bunell }
 Mills } The appeller then introduced and proved Bunell Mills, that he had worked for appeller during the summer of 1857. that he frequently saw the diseased man spoken of, that the appeller was doctoring her for the "Palewal". that she was badly afflicted with the disease, he thinks she was well treated by appeller, that the said man is still badly diseased, mumps stated that in the early part of the fall of 1857. appeller offered to sell the man to him, he told appeller that he did not want her, that he would not give one cent for her, appeller then told him (mumps) that he wanted to sell her & that she was for sale, that if he would give him twenty five cents for her, he (mumps) might have her, mumps told him he would not have her upon any terms; mumps stated that he needed a work beast, and would have paid a fair price for said man

19 if she had not been diseased, Witup thinks that Appeller worked the mare some four or five days during the summer.

Evidence by Thomas Sims, that he moved in the neighborhood of Appeller in the latter part of the summer of 1857. that he wanted to purchase a work beast, some person had told him that Samuel Stute (Appeller) had one to sell, he witup, then went to see him, when he got there Appeller had the deer mare hitched up in a shed, he told Stute his business, when he told Witup that the mare was for sale, that he was anxious to sell her; upon examination Witup found that the mare was badly diseased with the "Pale-cowd" he told Stute Appeller that she would not suit him, that he did not want a diseased animal, Witup stated that he did not think, that hardly that any one would have taken her upon any terms, he witup did not consider her worth any thing, that said mare is still diseased.

Evidence by Alexander Stute, that he lived within a short ^{distance} of Appeller, that he frequently saw ^{the} deer mare spoken of, that she had "Pale-cowd" in a very short time after Appeller got her, ^{that in the fall after Appeller got her} she was very badly diseased, he did not think that during the fall or any time after, should have sold for any thing, Appeller had frequently offered to sell to Witup, but Witup told him that he would not have her at any price, at one time when the mare had some appearance

of getting better, he withup, told appeller that he would give him an old cow that he had for the man, but appeller told him he did not want the old cow, that he would not take her, withup stated that the cow was very old - he considered the cow worth about \$7.00, withup thinks that the man was well taken care of, appeller worked the man some four or five days he thinks during the summer.

Evidence of J. J. Portbury

Appeller then introduced and proved James J. Parbours, that in a few days, say seven or eight days after appeller had got the dumb man spoken of, he borrowed her from appeller to ride out to the furnace, a distance of six or eight miles, during the time he rode her, she seemed to be stiff and stumbled very much, when he returned the man he remarked to appeller that she was either diseased or she was a very bad saddle beast, withup stated that he saw the man again in a short time, he saw that she had the Polercol, and has continued to have it ever since, that in the fall of 1857, she was very badly diseased, he thinks that at any time during that fall said man could not have been sold for any price, withup stated that he was frequently about the premises of appeller, saw appeller frequently doctoring said man, he thinks that every reasonable effort was made by appeller to cure the man.

Evidence of D. J. Walker

Appeller then introduced and proved by Daniel J. Walker, that he saw said dumb man in a short time after appeller had got her

21. Appellee called ^{on} him to know if he witness could tell him what was the matter with the mare, witness told him it had at that time the appearance of the "Old horse" distemper, but could not tell exactly, witness saw her a gain in a short time and found she had the "palcoval" very bad, and continued to have it during that summer and fall, and has it to this day, witness thinks that the mare could not have been sold for any price during the fall of 1857. that he frequently saw the mare after appellee got her, he thinks appellee took good care of her, she had a colt in the spring of 1852. and is now a right good looking colt, worth some \$15. or \$20.

Evidence
J.W. Ralph's } Appellee then introduced John W. Ralph and proved by him, that some time after appellant came back from California, say some time in the early part of June last - appellee called on him (witness) to bear witness that he tendered to the said appellee and the said deer mare, that the said appellee in the presence of witness, led up the deer mare and told appellant that he then and there tendered the mare to him, and asked him to take her and refund his money, appellant refused to take the mare or refund the money and said he would not do it.

Evidence
J.W. Ralph's } Appellee then introduced and proved by J.W. Warrum about the time appellant was starting to California he paid appellee \$10. for appellee which they both stated to witness was a ballance on the deer mare. This was all the evidence introduced on

22. The part of the appeal upon the trial of said
Case.

Evidence by
W. Mathews } The said Appellant then introduced
and proved by William Mathews, that a short
time previous to appellant letting appellee
have said deer man, he (Witup) offered
appellant \$60 for said man, that they had
run her two or three times every week during
the winter previous and found that she was
a pretty good race mare - to which evidence
the said appellee objected as being improper
to go to the jury, which objection was overruled
by the court, and the said appellee by his
attorney, then and there excepted,

Evidence by
J. Critchlow } Appellant then introduced and proved
and proved by John Critchlow, that he had seen the
mare but a few times during the summer
and fall of 1857. he saw appellee one
day in a short time after he got her,
Witup told appellee that he thought that
he had paid a very big price for her, where
appellee replied that it did not make any
difference, as he had appellant bound
to him to make it all right, or something
to that effect, Witup saw her in the fall
of 1857. and she was badly diseased with
the "phlegm".

Evidence by
James Gilbert } Appellant then introduced and proved
and proved by James Gilbert, that
he (Witup) in the early part of the summer
of 1857. offered appellee \$80. for the mare
if he (appellee) would wait with him for
the money, - appellee refused and said he
did not wish to sell her at that time in that
way, - to the introduction of which evidence

23. the said appellee by his attorney objected as being improper to go to the Jury, which objection overruled by the court, the said appellee by his attorney excepted.

Evidence
of Jackson
The said appellant then introduced and proved by James M. Jackson, that appellee and witness, some time during the summer of 1857, happened to meet in the road, and road together about a mile, appellee was riding the deer man spoken of, witness said he did not notice anything being the matter with the man at that time, she seemed to be in tolerable good order, but nothing was said about her in any way - though he (witness) did not notice the man much,

Evidence
of Lewis
Appellant then introduced and proved by Elizabeth Lewis, that he saw appellee working said deer man four or five times during the summer of 1857. he does not know whether she was well treated or not, he saw her in the fall of 1857. she was then badly affected with the "polecaval"

This was all the evidence introduced on the part of the appellee and appellant on the trial of said cause,

upon which evidence the Jury found for the appellant, The appellant then and then by his attorney moved the court for a new trial, which motion so made by the appellee as aforesaid, the court then and then overruled, to the overruling of said motion for a new trial as aforesaid, the said appellee by his attorney then and then excepted, and judgment was rendered by the court against

24. Said appellee for cost,

And the said appellee by his attorney prays
that this his bill of exceptions may be sig-
ned and sealed by the Court, which is
accordingly done."

W.A. Denning *Clk*

On which bill of exceptions the following in-
dorsement is made, to wit,

"Filed the 27th. March 1854.

J. M. Garland *Clk*"

State of Illinois,
Wardens County.

I James M. Garland *Clk* of
the Circuit Court within and for the County and
State aforesaid. Do hereby Certify that this on-
going record of Twenty four pages is full and complete
transcripts of ^{the} Case therein specified, as full
and complete as the same remains of record
in my office."

Sworn to and my hand and the Seal
of said Circuit Court at Eliza-
beth town this the 14th day of October
A.D. 1854.

James M. Garland *Clk*
By J. S. Sumner, *Deo.*

To *Clk* for Record. \$8.40
" *Clk* Seal 25
\$8.65

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No 16

Samuel Stebbins.

vs

William Hobbs.

Record.

Filed October 19th

1854 - Prepaid - \$5.00

Samuel D. Preston Clerk

By A. Johnston Deputy

No 16

November 1854

Samuel Steele

W. H. ...

W. H. ...

14190

Opinion by
Sect. C. S.

Judgment reversed
& Cause remanded