

14719

No. _____

Supreme Court of Illinois

Oliver

vs.

Hart.

14719

STATE OF ILLINOIS,
April Term, 1864
SUPREME COURT,

THIRD GRAND DIVISION.

Reported

No. 80 *9*

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

Oliver
Hart

Realty

1864
~~1868~~

In the Supreme Court of Illinois.

FRANKLIN OLIVER, PLAINTIFF IN ERROR, vs. JOHN P. HART, DEFENDANT IN ERROR.	}	<i>Writ of Error to Iroquois Co. Circuit Court.</i>
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ABSTRACT OF RECORD.

Record page

- | | |
|----|---|
| 2 | Summons and transcript from Justice of Peace in Livingston county, filed August 13, 1861. |
| | Copy of summons and return thereon. |
| 3 | Copy of transcript of Justice. |
| 4 | Order of Judge Starr, calling special term of court in Livingston county. |
| 5 | General proceedings at said special term. |
| 7 | Case of Hart vs. Oliver continued at May special term of said court A. D. 1860. |
| 8 | September Term, A. D. 1860—said appeal case of Hart appellee, vs. Oliver appellant, was continued to next term. |
| 9 | March Term, 1861—Appeal dismissed. |
| 10 | Motion to reinstate said appeal case. |
| 11 | Said appeal case reinstated. |
| 12 | Change of venue from Livingston to Iroquois county. |

- 14 November Term, 1861—Case continued.
- 15 New appeal bond filed by Oliver, appellant.
- 17 Certiorari to clerk of Livingston Circuit Court, to send up perfect copy of record.
- 19 Appeal dismissed—February Term, 1862.
- 20 Motion to reinstate denied, June Term, 1862.
- 20 Bill of Exceptions filed July 31st, 1862, sets forth that there was an agreement between Charles J. Beattie, attorney for Oliver, and Woodford G. McDowell, attorney for John P. Hart, to take depositions in this cause at Pontiac, Livingston county, on the 20th day of February 1862, (which was during the first week of the February term of the Iroquois Circuit Court,) and that the causes should be tried the second week. That McDowell appeared and cross-examined the witnesses at the taking of the depositions. That while these depositions were being taken at Pontiac, Hart, by another attorney, appears in court, in violation of the understanding and agreement, and procures a dismissal of the cases. Sets forth that Oliver has a good cause of action, and was ready for trial at the time agreed upon, but was deceived by the confidence he placed in the attorney of Hart, in this, that he violated the agreement, and thereby the appeal was dismissed.
- 23 Agreement that the foregoing shall stand as the Bill of Exceptions in the case.

24 ASSIGNMENT OF ERRORS.

1st. The court erred in dismissing the case without a trial upon the merits.

2d. The court erred in refusing to enforce the fair and uncontradicted agreement between the parties.

3d. The court erred in overruling the motion to reinstate the cause, and in rendering final judgment for the plaintiff.

- 25 Order granting supersedeas.

POINTS OF PLAINTIFF IN ERROR.

1st. The stipulation of Hart's attorney that this case should not be pressed to trial before the second week of the term of the Iroquois Circuit Court, was binding upon Hart.

2d. The court erred in dismissing this case during the first week of said Iroquois Circuit Court, upon the motion of Hart, through the agency of other counsel employed by him for that purpose, while the principal attorneys of both Hart and Oliver, were engaged in taking depositions in this case, to be used in the trial thereof, at or after the second week of the said term, upon an express agreement by them to that effect.

3d. For the above reasons, the plaintiff in error should not be debarred from a trial of this case on its merits.

WOOD & LONG,
Atty's For Plaintiff in Error.

80 9

Franklin Oliver

^{us}
John P. Hart

Abstract & Points

Filed Nov. 7, 1869.

L. L. Randall

State of Illinois
Third Grand Division } ss April Term AD 1864
Supreme Court -

John P Hart
vs
Franklin Olson } Error to Troquois

The said John P Hart, says that the Circuit Court of Troquois County decided correctly in the above entitled case, 1st in the dismissing of said case for the want of prosecution - 2nd in refusing to reinstate said case after the same had been dismissed - This case originated before a justice of the peace in Livingston County, and was appealed to the Circuit Court of that County, was taken to Troquois County by change of Venue on application of said plaintiff in error, when the matter was finally disposed of by dismissing said suit for want of prosecution -

There can be but one question in this case, and that is did the Court err in refusing to reinstate said case after it had been dismissed for want of prosecution - There is nothing in the affidavit of the plaintiff to warrant or justify the Circuit Court in reinstating said case, 1st because the plaintiff by his affidavit does not show that he has any

good or legal cause of action against said
defendant, and I^{ndy} he does not show what
he had proved or could prove by his witnesses,
whose depositions he had taken; nor does he
show that the said defendant and plaintiff
or their attorneys ever made an agreement to
take depositions or to lay said cause over until
the second week of said circuit court. That
I state it was understood by the plaintiff and
his attorney and one McDowell that the
depositions were to be taken &c, but does not
show what said understanding was founded
upon, whether upon an agreement, and if upon
an agreement what that agreement was, by
whom it was made or any other matter or thing
by which the defendant Hart was bound-
and in order to procure said cause to be
reinstated the plaintiff should have shown
a legal cause for being absent from court
when said cause was dismissed, and should have
shown by his affidavit a good, legal and
necessitous cause of action against the said
defendant, which is not done. For these ^{and other good} reasons
I insist that said cause should be affirmed
all of which is respectfully submitted

James H. Fletcher & O. Harding
Attys for Defendant

Franklin Oliver

by

John P. Hunt

Argument to

Filed Apr. 21st 1864,
L.eland
Clk.

STATE OF ILLINOIS,
SUPREME COURT.

} ss. The People of the State of Illinois,

To the Sheriff of Livingston County, GREETING:

Because, In the record and proceedings, and also in the rendition of the judgments of a plea which was in the Circuit Court of Iroquois County, before the Judge thereof, between

John P. Hart

plaintiff....., and

Franklin Oliver

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

as we are informed by his —
complainant..... the record and proceedings of which said judgments we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law: Therefore, We Command You, That by good and lawful men of your County, you give notice to the said

John P. Hart

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

John P. Hart

notice, together with this writ.

Prudence H. Walker
Witness, The Hon. John A. Eaton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 14th day of January in the year of our Lord One Thousand Eight Hundred and Sixty-four.

L. Island

Clerk of the Supreme Court.

State of Illinois S.S.
Livingston County

I have executed
This writ by Reading the same
to the within named John P. Hart
by and in the ~~present~~ presence of
Robert Elmore and James Greenwood
Good and Lawful men of Livingston
County this 25th day of February
A.D. 1864

J. E. Dyer Sheriff
Livingston County
Illinois
per Albion Jones Deputy

Sheriff fee
Service 50
Mileage 125
Return 10
\$1.85

80 9

Franklin Oliver

vs.

John P. Hart

SCIRE FACIAS.

FILED. April 22, A.D. 1864

L. Deland Clerk.

STATE OF ILLINOIS,
SUPREME COURT.

} ss. The People of the State of Illinois,

To the Sheriff of Livingston County, GREETING:

BECAUSE, In the record and proceedings, and also in the rendition of the judgments of a plea which was in the Circuit Court of Loyolis County, before the Judge thereof, between

Franklin Oliver

plaintiff, and

John P. Hart

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

as we are informed by his complainant, the record and proceedings of which said judgments we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law: Therefore, We Command You, That by good and lawful men of your County, you give notice to the said

John P. Hart

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

John P. Hart

notice, together with this writ.

Witness, The Hon. Pinckney H. Mason Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 14th day of January in the year of our Lord One Thousand Eight Hundred and Sixty-four.

S. Seland

Clerk of the Supreme Court.

State of Illinois &c &c
Livingston County) I have executed
this writ by reading the same
to the within named John P. Hart
by and in the presence of Robert
Elmore and James Greenwood
Just and Lawful men of Livingston
County this 25th day of February A.D.
1864

Sheriff fee
Service 50
Mileage 125
Return 10
\$1.85

J. C. Dyer Sheriff
Livingston County
Illinois
per Albion Jones Deputy

80 9
Franklin Oliver
vs.
John P. Hart

SCIRE FACIAS.

FILED... A.P.L. 222... A.D. 1864.

Deland Clerk.

1
To all to whom these Presents shall come
Greeting: Know Ye that we having caused
to be inspected the Records and proceedings
remaining in the office of the Clerk of the
Circuit Court of Ingham County Illinois
do find therein certain Records and proceedings
in the words and figures following to-wit:

"United States of America
"State of Illinois 23"
"Ingham County

"Now before the Honorable
"Charles R. Starr Judge of the Twentieth Judicial
"Circuit and Presiding Judge of the Ingham County
"Circuit Court in the State of Illinois at a term
"of the said Ingham County Circuit Court begun
"and held at the Court House in the Town of
"Middleport in said Ingham County on the third
"Tuesday (the same being the thirteenth day) in the
"Month of November in the year of our Lord one Thou
"sand Eight hundred and Sixty one

Present: "Hon. Charles R. Starr Judge of the Twentieth Judicial Circuit
"Charles F. Hood State attorney of the Twentieth Judicial Circuit
"Luther D. Clark Sheriff of Ingham County Illinois
"Thomas Dammann clerk of the Ingham County Circuit Court

Be it remembered that on the 13th day of
August A. D. 1861 there was filed in the office

of the Clerk of the Sangamon County Circuit Court a certain writ of Summons ^{and} Transcript from the Docket of ^{the} J. Jones a Justice of the Peace in and for Livingston County, Illinois which read in the words and figures following to-wit:

State of Illinois
Livingston County, Ill.

The People of the State of Illinois: To any Constable of Said County Greeting: You are hereby Commanded to Summon Franklin Oliver Junior to appear before me at my office in Livingston County on the 11th day of February 1860 at 1 o'clock P.M. to answer the Complaint of John P. Hart 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 6th day of February 1860

J. H. Jones J. P.



And which said Summons was endorsed as follows to-wit:

"I have served the within by reading to the within named F. Oliver this 7th day of Feb. 1860"

L. R. Miller
"Const."

"Constable paid \$15"

3

Said Transcript aforesaid reads in the words and figures following to-wit:

" John P. Hunt }
 " " } State of Illinois
 " Franklin Oliver } Livingston County "

Judgment \$55.50
 Justice fees 5.33
 Constable costs 7.00
 Return fees 5.00

In Justice Court before the undersigned
 " H. H. Jones J. Peace - 1860 February 6th 1860
 " Summons issued and delivered to Constable
 " to serve returnable 11th day of February 1860
 " at 1 o'clock P.M. Plaintiffs Demand \$55.50
 " On account & left for Collection.

" Summons returned by Constable
 " February 11th 1860 Endorsed Served by reading
 " the same to Defendant.

" Case Continued by Defendant from
 " the 11th to the 14th Feb

" Then on this 14th day of February
 " 1860 Defendant not appearing and no defense
 " being made it is ordered by the Court that
 " Said Plaintiff have and receive of the Defen-
 " dant the sum of \$55.50 dollars and also
 " the sum of \$21.33 cent for his costs herein

" State of Illinois }
 " Livingston County }
 " H. H. Jones one of the
 " Justices of the Peace within and for the

"said County Do hereby Certify that the foregoing
 "Transcript and Judgment of John P. Hart vs
 "Franklin Oliver is truly Copied from the files
 "and Books of my office

"Given under my Hand and Seal this
 "24th day of Sept. A. D. 1860
 "Wm. B. Jones J. Peace 

And afterwards, to-wit on the 28th day
 of January A. D. 1862 there was filed
 with the Clerk of the said Sangamon County
 Circuit Court a certain transcript from
 the Livingston County Circuit Court, Illinois,
 which reads in the words and figures
 following to-wit

"The People of the State of Illinois to all to
 "whom these Present shall come Greeting:

"State of Illinois

"Livingston County, Ds"

"Whereas the regular March
 "term of the Circuit Court of Livingston County
 "was not held by reason of the Court House
 "being in a condition unsuitable to hold court
 "in And Whereas it is deemed necessary for the
 "prompt and efficient administration of justice
 "that a Special term of said Court should
 "be held, Therefore Be it Remembered that

4-

Charles R. Starr Judge of the 20th Judicial
Circuit by virtue of the power vested in me
by the Laws of the State of Illinois do hereby
order and appoint a Special term of the
Circuit Court to be holden in and for
the County of Livingston in the State of
Illinois at Pontiac in said County on Tuesday
the first day of May next

In Testimony Whereof I have hereunto set
my Hand at Chambers in Pocation this 26th
day of March 1860

Charles R. Starr
Judge of the 20th Judicial Circuit of the State of Illinois
Filed March 28th A.D. 1860

Know Ye that we having caused to
be inspected the Records and proceedings
of our Circuit Court in and for the County
of Livingston do find there certain Records
and proceedings in the words and figures
following to wit

At a Special term of
the Circuit Court begun and held at the
Court House in the Town of Pontiac within
and for the County of Livingston in the State
of Illinois on the first day of May Anno
Domini One Thousand Eight Hundred and
Sixty - Present The Hon. Charles R. Starr
Judge of the twentieth Judicial Circuit of

the State of Missouri Jefferson H. Gray
 Clerk of the Said Circuit Court
 William T. Russell Sheriff of the Said
 County of Livingston and Charles J. Peattie
 State Attorney for the Said Judicial Circuit
 " This Day ^{also} comes the Sheriff
 of Said Livingston and presents the Certificate
 to the Court in the Words and figures following
 State of Missouri
 Livingston County, Mo I William T. Russell Sheriff
 of Said Livingston County do hereby
 Certify that by virtue of an order of the
 Clerk of the Circuit Court I have posted up
 for Notice of the time of holding the
 Special May term a D 1860 of the Circuit
 Court in Said County as required by the Statute
 in such case made and provided
 Done under my Hand this 26th day of April A.D. 1860
 William T. Russell Sheriff of
 Livingston County Missouri
 for E. R. Maples Deputy

That afterwards to wit on the 2nd day of
 May A.D. 1860 it being one of the Regular days
 of the May Special Term of Said Livingston County
 Circuit Court for said year a D 1860 the Said
 Court being then duly organized and sitting in open
 Court Certain Proceedings were had and entered of Record by
 Said Court in Words and figures following to wit

7
 "John D. Hart
 "678
 "Franklin Oliver
 "Appellant
 "In Appeal

"This day comes J. P. Garner and
 "enters his appearance for the Plaintiff herein
 "and serves Service of Process on the Said
 "Plaintiff. And thereupon comes the Defendant
 "by C. J. Peattie and by the mutual agreement
 "of the parties It is ordered by the Court that
 "this cause be continued to the next term
 "of this Court.

"And afterwards twice on the 22nd day
 "of September A D 1860 it being one of the
 "regular days of the September Term of Said
 "Livingston County Circuit Court for Said
 "year, A D 1860 the said Court being then duly
 "organized and sitting in open Court for the
 "transaction of judicial business certain other
 "proceedings were had and entered of Record
 "in said Court in words and figures following
 "to wit

"John D. Hart
 "679
 "Franklin Oliver
 "Appellant
 "In Appeal

"This day came the said

and other proceedings therein had before him
 It is therefore ordered by the Court that
 the Clerk of this Court issue a Writ of
 Certiorari to William H. Jones Justice
 of the Court below returnable forthwith
 requiring him to certify to this Court
 a Transcript of the Judgment and other
 proceedings in this cause had before him
 And afterwards on this same day the said
 Justice having in all things obeyed the orders
 of the Court therein It is further ordered by
 the Court that this cause be continued to
 the next term hereof.

And afterwards to-wit on this
 19th day of March A D 1861 being one of
 the regular days of the March Term of the
 Livingston County Circuit Court A D 1861
 the said Court then being duly organized
 as aforesaid certain other proceedings
 were had and entered of Record by said Court
 in the words and figures following to-wit

John R. Hart }
 679 } In appeal
 Franklin Oliver }
 Appellant

This Day came the Plaintiff
 in this cause by his attorneys James M. Farrell

" And the Defendant Appellant, not appearing
 " nor any one for him On Motion of the Plaintiff
 " by his attorneys that the appeal taken in
 " this cause be dismissed for want of prosecution
 " of the same And that a Proceudo issue
 " herein requiring the Court below to Proceed to
 " make the amount of the Judgment rendered
 " in that Court It is therefore ordered by
 " the Court that the appeal taken in this cause
 " be dismissed and that a writ of Proceudo
 " issue herein to the Justice of the Court below
 " according to the force and form of the
 " Statute in such case made and provided

" And afterwards to-wit on this 20th
 " day of March A.D. 1864 it also being one of the regular
 " days of the March term of the Livingston County
 " Circuit Court A.D. 1864 the said Court being then
 " duly organized as aforesaid Certain other pro-
 " ceedings were had and entered of Record
 " by said Court in words and figures following
 " to-wit

" John P. Hart
 " 679 Franklin Oliver } In Appeal
 " Appellant

" And afterwards on this
 " day came the Defendant Appellant in this

11 " Cause by C. J. Peattie his attorney and
" enters his Motion to reinstate the appeal
" heretofore dismissed

" And afterwards to-wit on the
" 26th day of March A.D. 1861 it also being one of
" the regular days of the March term A.D. 1861
" of the Livingston County Circuit Court the said
" Court being then duly organized as aforesaid
" Certain other Proceedings w^h were had and
" entered of Record by said Court in the Hody
" and figures following to-wit

" John P. Hart }
" 679 Franklin Oliver } In appeal
" appellants

" This day came the parties
" herein by their respective Attorneys And the
" Court being sufficiently advised as to the
" Defendant's Motion Made herein at a former
" day of this Court to reinstate this Cause
" It is thereupon ordered by the Court that
" this Cause be reinstated.

" And afterwards to-wit on this
" 30th day of March A.D. 1861 it also being one
" of the regular days of the March term of the
" Livingston County Circuit Court for said

12th year A.D. 1861 the said Court being then duly
organized as aforesaid certain other pro-
ceedings were had and entered of Record
by said Court in words and figures following
to-wit:

John P. Hart }
Franklin Oliver & In appeal
Appellants

" This day came the Parties
" herein by their respective Attorneys and the
" said Defendant Franklin Oliver, by his attorney
" file his affidavit herein and enter his
" Motion for a Change of Venue in this cause
" which motion being heard it is ordered by
" the Court that the Venue in this cause be
" changed to the County of Drogueid and that
" the Clerk of this Court transmit the papers
" filed herein and a certified transcript of the
" record in this cause forthwith to the
" Clerk of the Circuit Court of said County of
" Drogueid:

" State of Illinois
" Livingston County 29th

" I James M. Remick
" Clerk of the Circuit Court in and for said
" County in the State aforesaid Do hereby

Certify that the above and foregoing is
 a full true complete and exact transcript
 of the Record of the Proceedings of the Livingston
 Circuit Court in a certain cause wherein
 John P. Hart is Plaintiff and Franklin Oliver
 is Defendant as appears to us of Record

Given under my Hand and the
 Judicial Seal of Said Court at
 Pontiac this 28th day of January
 A.D. 1861
 J. W. Bunnick Clerk
 for J. R. Holcombatt Deputy.

Just Remembered that on the 27th
 Day of November A.D. 1861 the same being
 one of the regular days of the November Term
 of Said Court for Livingston County Circuit
 Court for said year 1861 the said court being
 then duly organized and sitting as a court for
 the transaction of Judicial Business certain
 Proceedings were had and entered of Record
 by order of said Court in the words and
 figures following to wit:

351 John P. Hart }
 Franklin Oliver } Appeal
 And now comes the defendant

" into Court by Reath^{and} Whitman his Attorneys
 " and enters his Motion to continue this cause
 " till Next term. And soon comes the
 " Plaintiff by Hatcher and Kay his Solicitors
 " on whose Motion it is ordered that the dep-
 " ositions on file in this cause be published;

And afterwards to-wit on the 25th
 day of November 1861 the same being one of the
 regular days of said Court for said year 1861
 the said ^{court} being then duly organized as aforesaid
 certain other proceedings were had and
 entered of Record in the words and figures
 following to-wit

" 331 John P. Hart }
 " Franklin Oliver } Appeal

" And soon comes the Plaintiff
 " into Court by McDermott Roff, Hatcher^{and} Kay
 " his attorneys and enters his Motion to the
 " Court to dismiss the appeal in this cause
 " for the want of a Sufficient Appeal Bond
 " And comes also the Defendant and enters
 " a Cross Motion for leave to file an
 " amended appeal Bond in this cause by Tuesday
 " morning of the fourth day week of this
 " term of this Court.

And afterwards, to-wit, on the 30th
 Day of November 1861 it also being one of the
 regular Days of the November Term of said Court,
 for said year 1861. The said Court, being then
 duly organized as aforesaid. Certain
 other Proceedings were had and entered
 of Record by order of said Court, in the
 words and figures following to-wit,

" John P. Hunt }
 " " " } Appeal "
 " Franklin Oliver }

" And record comes the Plaintiff
 " by his attorneys on whose motion leave is
 " given to the Plaintiff to file an Amended
 " and additional Bill of Particulars in this
 " Cause "

And afterwards To-wit, on the
 10th day of December 1861 it also being one
 of the regular days of the November Term
 of said Court for said year 1861. The said Court
 being then duly organized as aforesaid. Certain
 other Proceedings were had and entered of Record
 by order of said Court, in the words in the
 words and figures following to-wit,

John P. Hart }
 14 } Appeal
 Franklin Oliver }

" And now comes the Plaintiff
 " into Court by his attorneys and renounces
 " the motion heretofore entered in this cause
 " to dismiss the Appeal for the want of
 " an appeal Bond And on Motion leave is
 " given to the defendant to file a new Bond
 " at this time And it is further ordered
 " that the motion to dismiss the appeal be overruled

And afterwards to-wit, on the
 11th day of December a D 1861 it also being
 one of the regular days of the November Term
 of said Court for said year 1861 The said
 Court being then duly organized as aforesaid
 certain other Proceedings were had and
 entered of Record by order of said Court
 in the words and figures following to-wit

John P. Hart }
 13 } Appeal
 Franklin Oliver }

" And now comes the defendant
 " by C. P. Hart his attorney and enters his motion
 " to the Court to Suppress the Depositions of
 " William H. West and Rachel Kinsman which
 " are on file in this cause, And the Court having

17

" heard the arguments of Counsel upon said Motion
 " ordered that the Motion be Sustained and
 " that said Definitions be and they are
 " Suppressed."

And afterwards to wit On
 the 12th day of December 1861 it also being
 one of the regular days of the November term
 of said Court for said year 1861 the said
 Court being then duly organized as aforesaid
 certain other proceedings were had and con-
 tained of Record by order of said Court in the
 words and figures following to wit,

" John P. Hart }
 " 13 } Appeal
 " Franklin Oliver }

" And now comes the
 " Defendant into Court by C. J. Peattie his
 " attorney and suggests to the Court a
 " diminution of the Record in this cause in
 " that it does not contain the order of the
 " Livingston County Circuit Court reinstating
 " the appeal in this cause upon the Docket.
 " And that the original papers in this cause
 " in the trial before the Justice have not been
 " sent up to the Circuit Court.

" Whereupon it is ordered by the Court
 " that the Clerk of this Court do issue a writ

of Certiorari to the Clerk of the Livingston
County Circuit Court requiring him to for-
ward to this Court a true and perfect
Copy of the Record of the Proceedings of Said
Livingston Circuit Court in this Cause,
And that said Clerk also issue a writ of
Certiorari to the Justice from whom
this Cause was appealed requiring him to
forward to this Court the Original Papers
in this Cause And on Motion it is ordered
that this Cause be Continued.

And afterwards to wit on the
21st day of February 1862 the same being one
of the regular days of said Court for said
year 1862 the said Court being duly organized
as aforesaid Certain other proceedings
were had and entered of Record by order of
said Court in the words and figures
following to wit.

John P. Hart }
" " } Appeal
Franklin Oliver }

And now comes the
Plaintiff into Court by James J. McDermott
Roff, Fletcher and Kay his attorneys and enters
his Motion to dismiss the appeal in this
Cause for the want of prosecution.

" And the Court having heard the Arguments
 " of the Counsel for the respective parties
 " upon said Motion ordered that the appeal
 " be dismissed. ^{And} on Motion it is ordered
 " that the Clerk issue a Writ of Proce^{du}nda
 " to the Justice from whom this cause was appealed
 " It is therefore considered ^{and}
 " ordered by the Court that the Plaintiff do
 " have and recover of and from the defendant
 " his costs made in the prosecution of this
 " cause in the Livingston ^{and} Ingham County
 " Circuit Courts and that he have Execution
 " therefor against the said Defendant.

" And now comes the Defendant
 " by Reathie ^{and} Whitman his attorneys and
 " enters his Motion to reinstate the appeal
 " in this cause upon the docket.

And afterwards to wit on the
 19th day of June 1862 the same being one of the
 regular days of the June Term of said Court for
 said year 1862 the said Court being then
 duly organized as aforesaid certain other
 proceedings were had and entered of Record
 by order of said Court in the words and
 figures following to wit

John P. Hart }
 Franklin Oliver } Appeal

Entered at
 " the last term of this Court to restate the appeal
 " in this cause coming up for argument it is
 " ordered that said motion be and it is denied
 " And now comes the Defendant by his att-
 " orneys and enters his exception to the overruling
 " of said motion "

And afterwards to-wit on
 the 31st day of July 1862 there was filed in
 the office of the Clerk of the said Sangamon
 County Circuit Court a certain "Bill of
 Exceptions" which reads in the words and
 figures following to-wit

" State of Illinois } In Sangamon Cir. Court of
 " Sangamon County } the June Term A.D. 1862

" Be it Remembered that
 " on the hearing of the motions to restate upon
 " the docket the case of John P. Hart against
 " Franklin Oliver an appeal case and the
 " Original case of Franklin Oliver against
 " John P. Hart the following affidavit was read
 " to-wit

State of Illinois } In the Joplin County Circuit
Joplin County } Court February Term A.D. 1862

Franklin Oliver }
John P. Hart } Appeal

Franklin Oliver the Plaintiff
in this cause being duly sworn according
to Law deposes and says that he has a
good cause of complaint in the above enti-
tled cause and that this cause came to the
County of Joplin by a change of venue from
Linn County, Illinois and was continuing
at the last term of this Court; that he did
expect to be ready to try this cause at this
present term and is ready now to try this cause
and that he has taken depositions for that
purpose and have them now in Court, That
said depositions were taken on Thursday of last
week the twentieth day of this present month
and that it was positively understood by this
affiant and one of his attorneys Charles Reattie
and Woodford G. McDowell one of the attorneys
in this cause that the depositions in this cause
should be taken on the day aforesaid and this
cause should be tried some day in the second
week of this term of this Court and that this
affiant did in good faith then believe that
the said McDowell would act in good faith

in that agreement and has been misled by his
Confidence in the Said McDowell and that the
Said McDowell was present at the taking of
the Depositions and cross examined the witnesses
on the opposite side with that understanding that
the cause would be past until the Second
Term of this term for which purpose this
affiant is now in attendance upon this Court
and that there will be injustice done to this
affiant unless this Suit is reinstated a trial
had in this cause and that he acting in good
faith has come here in feeble health on the
aforesaid agreement And that his acting and
doing has not been for delay but that justice
might be done and to stand by to and abide
by the agreement by the attorneys Charles J.
Reattie on his part and Woodford McDowell
on the part of John P. Hart and this affiant
further Saith that it was the understanding
that the appeal cause of Hart against this
affiant should be tried likewise this present
term of this term and that the depositions
taken as aforesaid were to apply to both
causes and if he had not been misled by
the Said agreement that he would have been
in attendance upon this Court on the first
Term of this term to try the two causes
and that this affiant therefore prays
that the orders to dismiss the aforesaid

" Suits be vacated and that the Suits aforesaid
 " be reinstated and that this affair may have
 " a trial of the said Causes

Subscribed and Sworn to before } Franklin Oliver"
 Me this 25th day of February 1862 }
 " Thomas Vannum Clerk

" It is agreed that the foregoing
 " Shall be taken and considered as the Bill
 " of Exceptions in the cases between Hart and
 " Oliver the same as though it was duly signed
 " and sealed by the Judge of the Oregon Circuit
 " Court

" Charles H. Hood
 " Atty. for F. Oliver"
 " James Fletcher
 " Atty. for Hart."

State of Illinois
 Oregon County 23rd

I Thomas Vannum Clerk
 of the Circuit Court of &c in and for said
 County in the State aforesaid Do hereby certify
 that the above and foregoing is a true and
 complete transcript of the Record of the
 proceedings had in the above entitled
 cause wherein John P. Hart is Plaintiff and
 Franklin Oliver is Defendant in the Oregon

County Circuit Court And further that said
 Manuscript contains a true and complete
 copy of the original Summons issued in
 said cause before by the Court below and also
 of the Justice Manuscript and of the Manuscript
 from the Livingston County Circuit Court And
 of the Bill of Exceptions filed in said cause
 In attestation of which I have
 subscribed set my hand and affixed
 the Seal of said Circuit Court
 at Middletown in said County
 this 13th day of August A D 1862
 Thomas Winnum Clerk



And now comes the Plaintiff in Error
 by Wood & Long his Attorneys and
 says there is manifest error in the
 within record, in this to wit:

1st The court erred in dismissing the
 case without a trial upon the
 merits —

2nd The Court erred in refusing to
 enforce the fair and uncontradicted
 agreement between the parties —

3^d The court erred in overruling the
 motion to reinstate the cause and in ren-
 dering final judgment for the plaintiffs
 Wood & Long
 Attys. for Plffs in Error

Let a supersedeas issue
bond two hundred dollars
Jacob Streamer surety
J B Weston

State of Illinois
Third Grand Division } In Supreme Court
To April Term AD 1861

John P. Hunt
vs
Franklin Oliver } Defendants in Error

And the said John P Hunt
defendant in error, now comes and says
that there is no error, either in the Record
and proceedings aforesaid or in giving
judgment aforesaid in manner and form or
above assigned; and therefore he prays
that the said judgment may be affirmed
and that his costs may be adjudged in
his favor

James Fletcher
Atty for Defendant in error

80 9
John S. Bart
18.
Franklin Oliver

Record

Filed Nov. 7th 1863
L. Leland
Clerk

\$5.00 paid Clerk

To all to whom these presents shall come Greeting
Know ye that we having caused to be inspected
the Records and proceedings remaining in the Office
of the clerk of the Circuit Court of Ingham's County
Illinois do find therein certain Records and
proceedings in the words and figures following to wit

United States of America
State of Illinois }
Ingham's County

Pleas before the Honorable Charles
R Starr Judge of the Twentieth Judicial Circuit and
Presiding Judge of the Ingham's County Circuit Court
in the State of Illinois, at a term of the said Ingham's
County Circuit Court begun and held at the Court
House in the town of Middleport in said Ingham's
County on the third Tuesday the same being the
nineteenth day 1 in the month of November in the
year of our Lord one thousand Eight Hundred and
Sixty one.

Present Hon Charles R Starr Presiding Judge of the Twentieth Judicial Circuit
Charles H Wood States Attorney of the Twentieth Judicial Circuit
Luther D Clark Sheriff of Ingham's County Illinois,
Thomas Bennett Clerk of the Ingham's County Circuit Court,

It is remembered that on the 13th day of August in
the year 1861 there was filed in the Office of the

Clerk of the Ingham County Circuit Court a writ of Summons
which reads in the words and figures following to wit:

" State of Illinois
" Livingston County ss

" The People of the State of Illinois to the Sheriff of
" said County Greeting: We command you that you
" summon John P Hart if to be found in your County to
" appear before the Circuit Court of Livingston County on
" the first day of the next term thereof to be holden at the
" Court House in Pontiac in said County, on the third
" Monday in the month of March next, to answer
" Franklin Oliver in a plea of Assumpsit to the
" damage of him the said Plaintiff five hundred
" Dollars as he saith and hereof make ^{due} return ^{our} to said
" Court as the law directs,

Witness Jas H Remick Clerk of said Court
and the Judicial Seal thereof at Pontiac this
Sixth day of February AD 1861.



Jas H Remick

Clerk

Which Summons is endorsed as follows:

" I have served this writ by reading the same
" to the within named John P Hart defendant this
" 33rd day of February AD 1861

E. R. Maples Sheriff
per Albion Jones deputy

§ And afterward to wit on the 13th day of August in the year 1861 there was filed in the office of the clerk of the Sangamon County Circuit Court a Transcript of the Record of said Cause in the Livingston County Circuit Court which reads in the words and figures following to wit:

" The People of the State of Illinois to all to whom these presents
 " shall come Greeting: Know ye that we having caused
 " to be inspected the Records and proceedings now remaining
 " in the office of the Clerk of the Circuit Court in and for the
 " County of Livingston in the State of Illinois do find therein
 " certain Records and proceedings in words and figures
 " following to wit:

" United States of America
 " State of Illinois }
 " Sangamon County }

" At a regular term of the
 " Circuit Court of said County of Livingston began and held
 " at the Court House in the Town of Pontiac in said County
 " of Livingston on Monday the Eighteenth day of March in
 " the year of our Lord one thousand Eight hundred and
 " sixty one being the third Monday of said month.
 " Present the Hon Charles R Stan Judge of the 20th Judicial District
 " District of the State of Illinois and of said Circuit Court
 " James W Remick Clerk of said Circuit Court
 " Edwin R Maples Sheriff of Livingston County.
 " And Charles H Wood States attorney for said 20th Judicial District

" Be it remembered that on the 26th day in the month

4 " of March in the year of our Lord one thousand Eight Hundred
" and sixty one, the same being one of the regular days of the
" March Term of the said Livingston County Circuit Court for
" the year last aforesaid, the said Court being then duly
" organized and sitting as a court for the transaction of judicial
" business certain proceedings were had and entered of Record
" by said Court in words and figures following to wit:

" Franklin Oliver }
" 836 vs } In Assumpsit
" John P. Hart }

" This day came the said Plaintiff by
" his attorney and the said defendant by his attorneys and
" the said defendant by his attorneys prays the Court to grant
" him longer time to plead, And thereupon it is ordered
" by the Court that the general rule to plead be extended in
" this cause to tomorrow at two o'clock, and it is further
" ordered by the Court that this cause be set for trial on
" Wednesday of the third week being April 3rd A.D. 1861.

" And afterwards to wit on the 30th day of March in the
" year A.D. 1861 the same also being one of the regular days of the
" March Term of the said Livingston County Circuit Court
" for said year last aforesaid, the said Court being then ^{and there}
" duly organized and sitting in open Court for the trans-
" action of judicial business certain other proceedings
" were had and entered of Record by said Court in the
" words and figures following to wit:

5-

Franklin Oliver
 vs
 John P Hart } In assumpsit

This day came the parties herein by
 their respective attorneys and the Plaintiff files his
 affidavit herein and enters his motion for a change
 of venue, and after hearing the motion it is ordered
 by the Court that the venue in this cause be changed to the
 County of Ingham, and that the Clerk of this Court
 transmit the papers filed herein and a certified transcript
 of the Records of the proceedings of this Court in this cause
 forthwith to the Clerk of the Circuit Court of said County
 of Ingham.

State of Illinois
 Livingston County ss

I James W Rerrick Clerk of the Circuit
 Court in and for said County in the State of said, do hereby
 certify that the above and foregoing is a true, complete and
 perfect transcript of the Records of the proceedings of the
 Livingston County Circuit Court in the said entitled cause
 wherein Franklin Oliver is Plaintiff and John P Hart
 is defendant, and I further certify the papers herewith
 transmitted marked from Letter A to Letter J inclusive
 are the Original papers and are all the papers on file in
 this Court pertaining to or forming any part of the Records
 of this Court in this cause.

In attestation of which I hereunto set my name,

and the seal of the said Livingston County Circuit Court at my office in Pontiac in said ^{Livingston} County this 28th day of May A.D. 1861.



James W. Remick Clerk
per J. R. Wolgamott Deputy.

And afterward to wit on the 28th day of November in the year 1861 the same being one of the regular days of the November Term of the Livingston County Circuit Court for the year 1861 the Court being then duly organized and sitting as a Court for the transaction of business certain proceedings were had and entered of Record by said Court in the words and figures following to wit:

" Franklin Oliver
" or
" John P. Hart } asumpsit

" On motion of Plaintiffs attorneys it is
" ordered by the Court that the depositions on file in this cause
" be published.

And afterward to wit on the 29th day of November in the year 1861 the same also being one of the regular days of the November Term of said Court for the year last aforesaid the said Court being then duly organized and sitting as a Court for the transaction of judicial business certain other proceedings were had and entered of Record by said Court in the words and figures following to wit:

7 "Franklin Oliver
 "308 vs } a pumpsit
 "John P. Hart }

And now comes the defendant by
 Garner & McDowell his attorneys and enters his motion
 to suppress the depositions on file in this cause.

And afterward to wit on the 11th day of December in the
 year 1861 aforesaid the same also being one of the regular days
 of the November Term of said Court for the year 1861 the
 said Court being then duly organized and sitting as a
 Court for the transaction of judicial business certain
 other proceedings were had and entered of Record by said Court
 in the words and figures following to wit:

"Franklin Oliver
 "308 vs } a pumpsit
 "John P. Hart }

The motion to suppress the depositions in this
 cause coming up for argument it is ordered by the Court
 that the same be and it is overruled

And afterwards to wit on the 13th day of December in the year
 1861 aforesaid the same being one of the regular days of the
 November Term of said Court for the year 1861 aforesaid the
 said Court being then duly organized and sitting as a
 Court for the transaction of judicial business certain other
 proceedings were had by said Court and entered of Record
 in the words and figures following to wit:

8
" Franklin Oliver
" 308 vs
" John P Hart } Assumpsit

" And now comes the Plaintiff into Court and files
" herein demurrers to defendants second and third pleas, and the
" Court after hearing the arguments of counsel ordered that said
" demurrers be and they are sustained to said second and
" third pleas.

And now comes afterward to wit on the 13th day of December in
the year 1861 aforesaid the same also being one of the regular
days of the November Term of said Court for the year 1861
aforesaid the said Court being then duly organized and
sitting as a court for the transaction of judicial business
certain other proceedings were had and entered of Record
in the words and figures following to wit:

" Franklin Oliver
" 308 vs
" John P Hart } Assumpsit

" And now comes the parties to this cause by
" their attorneys and by agreement thereof it is ordered
" that the parties have leave to amend the pleadings in this
" cause, the declaration to be amended by February first
" and it is further ordered that this cause be continued.

9 And afterward to wit on the 30th day of January in the year 1862 there was filed in the office of the Clerk of said Court an amended declaration which reads in the words and figures following to wit:

" State of Illinois

" Inguois County. In the Circuit Court thereof of the
" February Term A.D. 1862,

" Franklin Oliver the Plaintiff in this suit by C. H. Woodrd

" Charles J. Beattie his attorneys complains of John P. Hart

" the defendant in this suit who has been summoned to answer

" the Plaintiff in a plea of assumpsit. For that whereas the said

" defendant heretofore to wit on the 24th day of May A.D. 1856 at Oliver

" Grove Livingston County Illinois to wit at the County of

" Inguois aforesaid, made his certain promissory note in

" writing and then and there delivered the same to the said

" Plaintiff, and thereby then and there promised to pay to the

" said Plaintiff or order the sum of fifty Dollars (with ten

" percent interest from date until paid) thereby meaning with

" interest at the rate of ten percent per annum, ten days after

" the date of said note which period has now elapsed, and

" the said defendant then and there in consideration of the

" premises promised to pay the amount of the said note to

" the Plaintiff according to the tenor and effect of the said

" note.

" And whereas also the said defendant on the first

" day of May A.D. 1859 at the County aforesaid in consideration

" that the said Plaintiff at the request of the said defendant

" had before that time found for provided and supplied

10
" horse feed, stabling and attendance for divers horses, mares
" geldings and mules of the said defendant, he the said
" defendant then and there promised to pay the Plaintiff on
" demand so much money as he reasonably deserved to have
" therefor, and the said Plaintiff avers that he reasonably dese
" rves to have the sum of fifty dollars therefor, And whereas also
" the said defendant on the day and year last aforesaid
" at the place aforesaid, in consideration that the said Plaintiff
" at the request of the said defendant had suffered and permitted
" the said defendant to use, occupy and enjoy a certain
" dwelling House, building and lands with the appurtenances
" &c which the said defendant had accordingly used occupied
" and enjoyed for a long space of time then elapsed, he the said
" defendant promised the said Plaintiff to pay him on demand
" so much money as he reasonably deserved to have therefor.
" And the said Plaintiff avers that he reasonably deserved to
" have the sum of fifty dollars therefor. And whereas
" also the said defendant on the day and year last aforesaid
" at the place aforesaid in consideration that the said Plaintiff
" at the request of the said defendant had before that time
" found provided and supplied feed, pasture and attendance
" for divers Bulls, Cows and Oxen, of the said defendant he
" the said defendant then and there promised to pay the said
" Plaintiff on demand so much money as he reasonably deserved
" to have therefor and the said Plaintiff avers that he reasonably
" deserved to have the sum of fifty dollars therefor.

" And whereas also the said defendant on the day
" and year last aforesaid at the place aforesaid was indebted
" to the Plaintiff in the sum of five hundred dollars for the

1/ " price and value of goods, wares and merchandize then and
" there bargained and sold by the Plaintiff to the defendant
" at his request.

" And in five Hundred dollars for the price and value
" of goods wares and merchandize sold and delivered by the
" Plaintiff to the defendant at his request, and in five Hundred
" Dollars for the price and value of work and labor then and there
" done and performed, and for material for the same provided
" by the Plaintiff for the defendant at his request, and in
" five Hundred dollars for divers journeys before that time
" undertaken and performed by the Plaintiff for the defend-
" ant at his request, and in five Hundred dollars for
" money then and there lent and advanced by the Plaintiff
" to the defendant at his request.

And in five
" Hundred dollars for money paid laid out and expended
" by the Plaintiff for the use of the defendant at his request.

" And in five Hundred dollars for money then and
" there had and received by the defendant for the use of
" the Plaintiff,

And in the sum of five
" Hundred dollars for money ~~laid out~~ found to be due from
" the defendant to the Plaintiff on an account then and
" there stated between them.

" And whereas also the said defendant afterwards the day
" and year last aforesaid at the place aforesaid in consid-
" eration of the premises, then and there promised the
" Plaintiff to pay to the said Plaintiff the said several sums of
" money on request, yet the said defendant hath dis-
" regarded his promises and hath not paid the said several
" sums of money, or either of them, or any part thereof to the

to the damage of the Plaintiff of five Hundred dollars, and therefore he brings this suit &c.

Wood & Beattie

Plaintiffs Attorneys,

(Copy of Note sued on)

\$50.00 Oliver's Grove Livingston County Illinois May 24th 1856

Sundays after date I promise to pay Franklin Oliver or order the sum of of fifty dollars with ten per cent interest from date until paid for money loaned to me by him,

John P. Hart

John P. Hart

To Franklin Oliver Dr

May 1856

To my time and expenses in going to Chicago to settle a difference between him and Solomon Sturges in relation to the land he bought of Sturges

25.00

To my time and expenses in going to Bloomington to pay Beum for the plows and send them to Pontiac and to buy ox yokes and chains for him

7.00

To my time and expenses in going to Chicago to obtain of Mr Sturges the South East quarter of the South East quarter of section 20 in township 26 North of Range 8 East instead of the North East quarter of the South East quarter of the same section for him.

25.00

To hay and use of Stable for 5 head of horses for 2 months

10.00

To blue grass pasture for 70 head of Oxen for 2 months

70.00

To Sand for plastering houses

5.00

To 3 large Maple trees

4.50

13 To house rent and use of Garden from the 1st of May
1856 to the 7th of September next 12,00

March 1857 To 12 pounds of powder and fuse 6,75

To blue Brass Paster for 66 head of Oxen for 2 months 166 00

To my time and expenses in going to Bloomington
to engage Bunn and Ellsworth to make 6 breaking
plows for him 6 75
238,00

To the amount of the note and interest paid
to Bunn and Ellsworth in part payment
for 6 breaking plows ———

To the amount principal and interest due on
a note for 50\$ dollars for money loaned dated
May 24th 1856 as per note herewith \$85.00

May 1 1858 To the amount of one note paid Bunn & Ellsworth
of Bloomington for John P Hart at his request \$100,00

John P Hart

To Franklin Oliver Dr

To work labor & materials 500,00

To Goods wares & merchandize sold & delivered 500,00

" " " " bargained & sold 500,00

" Money lent & advanced 500,00

" " paid laid out & expended 500,00

" " had and received 500,00

" " due on account stated 500,00

And afterward to wit on the 20th day of February in the year 1862 there was filed with the Clerk of the Morgan's County Circuit Court certain pleas which read in words and figures following to wit:

" State of Illinois

Morgan's County }
 John P. Hart
 ad
 Franklin Oliver }

Morgan's County Circuit Court
 Of the February Term AD 1862.

And the said defendant by Fletcher and Kay his attorneys comes and defends the wrong and injury when &c and saith that he did not undertake or promise in manner and form as the said Plaintiff hath above thereof in his amended declaration complained against him and of this he puts himself upon the Country &c

Fletcher & Kay. Atty's for Deft.

And for a further plea in this behalf by leave of the Court for this purpose first had and obtained the said defendant says Actio now because he says that the said Plaintiff before and at the time of the commencement of this suit to wit on the fifth day of February AD 1861 to wit at the County of Morgan's Livingston aforesaid was and still is indebted to the said defendant in a large sum of money to wit the sum of Five Hundred dollars of lawful money of the United States, for work and

15-

labor care and diligence and attendance of the said defendant before that time done, performed and bestowed in and about the business of the said Plaintiff, and for the said Plaintiff and at his request, and for divers materials and other necessary things by the defendant before that time found and provided and used and applied in and about the said work and labor for the said Plaintiff and at his ^{special instance and} request, and for diverse goods wares and merchandize sold and delivered by the said defendant to the said Plaintiff and at his like request, and for money by the said defendant before that time lent and advanced to and paid laid out and expended for the said Plaintiff, and at his like request and for money by the said Plaintiff before that time had and received to and for the use of the said defendant, and for money due and owing from the said Plaintiff to the said defendant and for hire of mules, horses and oxen, and for services in carrying the Plaintiff to Bloomington and back again on diverse & sundry times and occasions at the like special instance and request of the said Plaintiff. Which said several sums of money so due and owing by the said Plaintiff to the said defendant as aforesaid exceeds the damages sustained by the said Plaintiff by reason of the non-performance by the said defendant of the said several supposed promises and undertakings in the said declaration mentioned, and out of the said several sums of money so due and owing from the said Plaintiff to the said defendant the said

defendant is ready and willing and hereby offers to set off
and allow to the said Plaintiff the full amount of the ^{paid} damages
according to the form of the Statute in such case made
and provided, and this the said defendant is ready
to verify or

Fletcher & Kay Attys for Def.

Franklin Oliver Dr

To John P Hart,

To Plowing around Oliver's Grov	10. 00
To Money paid to Plaintiff	40 00
To " " " " "	30 00
To hire of one span of mews 2 weeks	25. 00
To services in carrying Plaintiff to Bloomington and back again 2 trips	20. 00
To Cash paid Thomas W Pope	20 00
To 2000 feet Lumber	50. 00
To 110 flour	8. 30
To one Sledge hammer	2. 00
To amt due on hogs	85
To one bushel Corn	50
To Cash loaned	10. 00
To int on same	3 00
To one piece Corn 200 bush	80. 00
To one Croker	1. 50
To ten lbs Sugar	1. 00
To int on above a/c	27 30
To Cash	300. 00

18 year 1862 aforesaid the same being one of the regular days
of the June Term AD 1862 of the said Court the said
Court being then duly organized and sitting as a
Court for the transaction of business the following
proceedings were had and entered of Record by said
Court in words and figures & to wit,

" Franklin Oliver
" 308 vs } a pump suit
" John D Hart }

" The motion by the Plaintiff to
" reinstate this cause upon the docket coming up for
" argument it is ordered by the Court that the said
" motion be overruled,

" And now comes the Plaintiff by his attorneys and
" enters his exception to the decision of the Court in overruling
" said motion.

And afterwards to wit on the 31st day of July 1862
there was filed in the office of the Clerk of said
Circuit Court a Bill of Exceptions which reads
in the words and figures following to wit,

State of Illinois
Inrogue County

In Inrogue Cir Court
Of the June Term AD 1862,

Be it remembered that on the hearing
of the motions to reinstate upon the docket the case of

John P Hart against Franklin Oliver an appeal
case and the original case of Franklin Oliver against
John P Hart the following affidavit was read to wit

State of Illinois
Jroquois County

In the Jroquois County
Circuit Court February Term A.D. 1862

Franklin Oliver

vs

John P Hart

} appeal

Franklin Oliver the Plaintiff in
this cause being duly sworn according to law deposes
and says that he has a good cause of complaint in
the above entitled cause and that this cause came
to the County of Jroquois by a change of venue from
Livingston County Illinois and was continued at
the last term of this Court; that he did expect to be
ready to try this cause at this present term, and is ready
now to try this cause, and that he has taken depositions
for that purpose and have them now in Court, that said
depositions were taken on Thursday of last week the twentieth
day of this present month, and that it was positively
understood by this affiant and one of his attorneys
Charles J Beattie and Woodford G McDowell one of
the attorneys in this cause that the depositions in
this cause should be taken on the day aforesaid and
this cause should be tried someday in the second
week of this term of this Court and that this affiant
did at good faith then believe that the said McDowell

would act in good faith in that agreement, and has been misled by his confidence in the said McDowell and that the said McDowell was present at the taking of the depositions and Cross Examined the witnesses on the opposite side with that understanding that the cause would be passed until the second week of this term for which purpose this affiant is now in attendance upon this Court, and that there will be injustice done to this affair unless this suit is reinstated a trial had in this cause, and that he acting in good faith has come here in feeble health on the aforesaid agreement,

And that his actings and doings has not been for delay but that justice might be done and to stand to and abide by the agreement by the Attornies Charles J Beattie on his part and Woodford G McDowell on the part of John P Hart and that this affiant further saith that it was the understanding that the appeal cause of Hart against this affiant should be tried likewise this present week of this term, and that the depositions taken as aforesaid were to apply to both causes and that if he had not been misled by the said agreement, that he would have been in attendance upon this Court on the first week of this term to try the two causes, and that this affiant prays that the orders to dismiss the aforesaid suits be vacated and that the suits

2^v aforesaid be reinstated and that this affair may
have a trial of said causes

Subscribed and sworn to before } Franklin Oliver
me this 25th day of February 1862
Thomas Bennett Clerk }

It is agreed that the foregoing shall be taken
and considered as the Bill of Exceptions in
the cases between Hart and Oliver the same
as though it was duly signed and sealed
by the Judge of the Inguois Circuit Court,

Charles A Wood

Atty for F. Oliver

James Fletcher

Atty for Hart.

State of Illinois

Joguois County ss

I Thomas Bennett Clerk of the Circuit Court in and for the said County in the State aforesaid do hereby certify that the within and foregoing is a true complete and perfect transcript of the Record of the proceedings ~~now~~ of the Joguois County Circuit Court in the said cause wherein John B. Franklin Oliver is Plaintiff and John P. Hart is defendant and also a true copy of all the papers filed in said cause forming any part of the Record of said cause.

In attestation of which I hereunto set my name and the seal of the said Circuit Court at office in Middleport this 13th day of August 1862

Thomas Bennett
Clerk

And now comes the Plaintiff in Error by Wood & Long his Attorneys and says there is manifest Error in the within record, in this to wit:

1st The Court erred in dismissing the case without a trial upon the merits -

2nd The Court erred in refusing to enforce the fair and uncontradicted agreement between the parties.

3^d The Court erred in overruling the motion to reinstate the cause and in rendering final judgment for the defendant -

Wood & Long
Attorneys for
Pltff. in Error

Let a supersedeas issue
bond of \$2000 cash streamer
surety
J. D. Cotton

State of Illinois
Circuit Court Division 3rd In Supreme Court
To Appear Term 1864

John P Hart
vs
Franklin Oliver } Souther in Error

And the said John P Hart defendant
in error, now comes, and says, that there is no
error, either in the Record and proceedings aforesaid
or in giving judgment aforesaid in manner and
form as above argued; and therefore he prays
that the said judgment may be affirmed, and
that his costs may be adjudged in his favor
James Fletcher
Att'y for Deft in Error

8
Franklin Oliver
vs
John P Hart

Record

Filed Nov. 27 1863
Leland
Clerk.

per son paid Collect.