

No. 14534 $\frac{1}{2}$

Supreme Court of Illinois

Schofield

vs.

Setley et al

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STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division

No. 67

Schofield vs

1863

Solley
14534

14534 1/2

Mr. Justice Breese delivered the opinion of the Court.

~~That~~ & No abstract has been furnished, of the record in this cause. Briefs by both parties have been submitted, and the case will be disposed of, on them as they ^{may} make the case to appear.

The action was debt on an agreement ^{made and} to build a house according to certain plans and specifications referred to in the contract. The breach is non-payment according to the contract. The defendant pleaded the general issue and several special pleas, to ~~which~~ some of which, the fifth and sixth, demurrers were interposed.

It is claimed by the defendant that the pleas were as good as the declaration, and as that was bad in not setting out what the plans and specifications were, the demurrers should have been sustained to the declaration. No motion was made to carry the demurrers back upon the declaration, and if it had been, it would not have been allowed ^{against} ~~under~~ the authority of the cases of Wear ⁴⁷, The Jackson ¹¹⁷ v. Havannah R.R. Co., 24 M. 593, and Wilton et al. ¹¹⁷ v. Meyrick, 26 id. 35, by which the doctrine is established for this court, ~~and~~ that, when a plea of the general issue is put in to the whole declaration, a demurrer to a plea cannot

be carried back to the declaration, upon the well settled ground, that you cannot plead and demur to the same pleading at the same time. If the declaration be so defective that it will not sustain the verdict, that may be taken advantage of on a motion in arrest of judgment or on error. The same rule is found in Maurer vs. Long et al., 23 id. 490

Another objection is taken by the plaintiff in error that the Court ought to have ruled the plaintiff in the Court below to file a more definite bill of particulars. In answer to this it is to be said, the record furnishes no bill of particulars which we can notice. There is no bill of exceptions preserved it on the record. There should have been if the defendant intended to raise a question upon it here. Francy vs. True, 20 id. 184.

The remaining objection is, that after the jury was empanelled, the Court at the instance of the plaintiff, gave leave to withdraw a juror, ~~and the case went over to the next term~~ without consulting the plaintiff. The practical effect of withdrawing a juror in our practice, is not that it shall operate as a nonint, but mainly to carry the cause over to another term.

This practice has crept in gradually, and involving the more rigid reading provisions by the rules of the Common Law. It is considered necessary for the due administration of justice that courts should possess this power. to be used in their discussion. Miller vs.

Metzger, 10 id. 393; The People vs. The Judges of the Court of Common Pleas of the City of N. York, 8 Cowen 127; People vs. Ellis et al., 15 Brad. 371.

Acting in the discussion of the Court, such terms may ^{be} imposed, as may ^{be} deemed just, and unless the discussion is greatly abused ^{and} ^{conceded} ^{to} ^{the} ^{court}, in ordinary cases, be assigned as error. Heslop vs. Peters, 3 S. Com. 45. We would have been better satisfied with the course of this discussion in this case, if ^{all} the costs had been charged against the plaintiff. As it is, we cannot reverse because they were ~~imposed~~ not. The judgment is affirmed.

Judgment affirmed.

67-44

Schofield
in

Letley et al

opinion by
Pence Jr.

Recorded
Page 720.

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM THEREOF, A. D. 1869.

HIRAM SCHOFIELD }
 vs }
HENRY SEDLEY AND } *Error to Stephenson.*
AMOS HEMMING. }
}

ABSTRACT AND BRIEF.

3 The declaration is in debt, on an agreement, by which defendants in error agreed by writing, under seal, to build a house according to certain plans and specifications, which are referred to in the contract.— Plaintiff in error agreed to pay \$800 at one time, \$490 at another, and to deliver a span of horses, double harness and wagon, at \$310. Breach; that the \$490 was not paid, and horses, wagon and harness were not delivered.

22 The specifications are not made part of the declaration, nor is it stated in the narr. what the specifications were. The defendant below pleaded, among other things, that plaintiff's below did not erect the house in a workmanlike manner, &c., but did it so badly that it was worth nothing. There was a demurrer sustained to this plea. We claim that if this plea was not a good answer, that the declaration was bad, and that the demurrer should have related back to and been sustained to it. The specifications should have been set forth so that it might appear what the contract really was; and because a necessary part of the contract was omitted, the narr. is bad.

In order to enable the plaintiff to recover for building the house, it must have been built in compliance with the contract or accepted in lieu of it. (Chitty on Contracts, 493, and notes.) We cannot tell by the contract, without the specifications, whether the house in this case was to be of wood, brick, stone or other material, whether slated, shingled or composition roof, &c. The declaration should state what the contract is, and when it appears by the contract mentioned in the narr. that there is another contract or writing referred to, what that is should be alleged.

If the plaintiff had contracted to build a house just like the one described in another contract between other parties, the latter one must necessarily be stated; so when the contract is to build in accordance with certain specifications, what the latter are should be alleged.

All that is alleged in the 5th plea could perhaps have been proved under the plea of *nil debit*, and consequently we have nothing to say on the question raised by the demurrer, except that the first fault was in the declaration. The copy of the contract and specifications are not made part of the declaration in any way.

17 The Court below ought to have ruled the plaintiff to file a more definite bill of particulars. \$500 for extra work on the house is too general, and the intended benefit of a bill of particulars is lost to the defendants. These \$500 items are mere repetitions of the narr. A right to have a bill of items or amount is one given by the statute, and the refusal to give the party asking it his rights under the statute ought not to be a matter of discretion not to be reviewed on error. After the jury was empaneled the Court, on motion of the plaintiff, gave leave to withdraw a juror, and the juror was withdrawn, and defendant excepted. At common law this could not be done, except by consent, in civil cases. (5 Bacon's Abr. 335, 3 Hill S. C. 262, Ry. & Wood, 402.) Our statute has conferred upon the Court the power, in case of sickness, death or non-attendance, or discharge for reasonable cause of a juror, after he is sworn, to supply his place on the panel. (Purple's Stat. 256, sec. 12.) But there is no power by statute to withdraw one of the jury at the request of the plaintiff or defendant, when he is surprised on the trial by a defect in his pleading requiring amendment in order to admit evidence. At common law the juror was discharged by consent, and each party paid his own costs. (2 Tidd's Pr. 862.) The power of the Court to discharge a jury or withdraw a juror in case of surprise, is perhaps now established in the United States, (8 Cow. 127,) by a gradual relaxation of the old common law strictures. We claim, however, that it should have had the effect of a non-suit as to the costs. (Lee 5, Cowen 30, Purple's Stat. 276, sec. 5.) There does not seem to be any discretion as to dividing costs in the case of a withdrawal of a juror. Like a non-suit or *nol. pros.*, a judgment against plaintiff for all previous costs should follow.

29

MEACHAM & GOODHUE,
LELAND & BLANCHARD,
For Plaintiff in Error.

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM THEREOF, A. D. 1863.

HIRAM SCHOFIELD }
 ^{vs.} }
HENRY SETTLEY and } *Error to Stephenson.*
AMOS HEMING. }

BRIEF FOR DEFENDANTS IN ERROR.

I.

It is claimed the demurrer to 5th and 6th pleas should have been carried back to declaration.

Defendant below had already pleaded general issue (record, p. 20.)—*Wilson vs. Myrick*, 26 Ill. 35.

When the demurrer was sustained in the court below, defendant did not move to carry it back, (record p. 31.)

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The amended declaration is not copied in the record.

The Clerk certifies it contains the *original* declaration, &c.

It does not purport to be a full and complete transcript.

The fact being that the amended declaration was an entire new declaration, and was not demurred to at all.

II.

It is contended that plaintiffs below should have been ruled to file a more specific bill of particulars.

This objection was to the bill filed with the *original* declaration. But there is no bill of particulars in the record, that this court can notice. Defendant should have preserved it by bill of exceptions if he desired to raise points on it here, *Franey vs. True*, 26 Ill. 184, and he should be at the expense of the improper matters inserted in this record, whatever be the decision of the case.

III.

It is insisted that the court erred in permitting a juror to be withdrawn, and continuing the cause at plaintiff's costs of term.

This court will presume the court below had good reason to withdraw the juror, unless the contrary is shown. *Cornelius vs. Boucher*, Breese, 32. The practical effect was to continue the cause one term, and the court imposed the usual terms. Plaintiffs were obliged to amend their declaration—all defendant can complain of is the allowance of the amendment. But the court has a discretion in this respect necessary to the administration of justice, and the power to withdraw a juror must of necessity reside in the court. *Miller vs. Metzger*, 16 Ill. 393. And where an amendment is in the discretion of the court, it may impose whatever terms it pleases, and its discretion cannot be assigned for error. *Heslep vs. Peters*, 3 Scam. 45.

In the case in Cowen, cited by plaintiff in error, a rule for judgment in case of non-suit was entered, but that practice does not obtain here.

4 Scam. 447; 3 Gilm. 88; 22 Ill. 142.

F. C. Ingalls,

~~F. C. INGALLS,~~
For Defendants in Error.

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM THEREOF, A. D. 1863.

HIRAM SCHOFIELD }
 ^{vs t} }
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MEACHAM & GOODHUE,
LELAND & BLANCHARD,
For Plaintiff in Error.

67

Schofield

vs

Sedley et al

Abstract &
Brief -

Filed Apr. 22 - 1863

L. Island

Clerk

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION.

APRIL TERM THEREOF, A. D. 1863.

HIRAM SCHOFIELD
 ^{vs T}
HENRY SEWLEY AND } *Error to Stephenson.*
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MEACHAM & GOODHUE,
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For Plaintiff in Error.

67

Schofield
vs
Sedley et al

Abstract &
Brief

Filed Apr. 22-1863
L. L. Leland
Clark

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM THEREOF, A. D. 1863.

HIRAM SCHOFIELD }
 ^{vs.} }
HENRY SETTLEY and } *Error to Stephenson.*
AMOS HEMING. }

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F. C. Ingalls

~~F. C. INGALLS,~~
For Defendants in Error.

Hiram Schofield
v
Henry Settley

Brief for Defendants
in Error

Filed Apr 25, 1863

L. Delaup
cm

... the bill of particulars.

... the bill of particulars presented in this record, which
to which I refer on 11th page, Xmas, 1857, and the quantity
... the bill of particulars in the record, that this court can neither
... the bill filed with the evidence submitted.

III

... the court will present the case as it stands, and the court
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L. Delaup

... the court will present the case as it stands, and the court

For Defendants in Error
L. Delaup

✓

Know all Men by these Presents That The said Hiram Schofield Amos and Charles Buller & William Stone of the County of Stephenson and State of Illinois are held and firmly bound unto Henry Settle and Amos Hemming in the penal sum of One Thousand Dollars lawful money of the United States to be paid to the said Henry Settle and Amos Hemming their heirs Executors Administrators and assigns and for the payment of which sum well and truly to be made. We bind ourselves our heirs Executors Administrators and assigns jointly and severally and firmly by these Presents. Sealed with our seals and dated this 8th day of May AD 1862

Whereas the above named Henry Settle and Amos Hemming at the December Term of the Stephenson County Circuit Court AD 1861 recovered a judgment in an action of Debt against the above named Hiram Schofield for the sum of Two Hundred Dollars Debt and twenty three Dollars and thirty three cents Damages and Plaintiff's costs of suit amounting to the sum of Two Hundred thirty Dollars and eighty cents. And whereas the said Hiram Schofield has applied to the Supreme Court of the State of Illinois for a Writ of Error to appeal and a Supersedeas to reverse the judgment aforesaid. And the same having been ordered by the said Supreme Court from the forfeiture of his obligation is this that if the said Hiram Schofield shall prosecute said Writ of Error with effect and shall moreover pay the amount

of the said Judgment for debt, damages, costs and
also interest rendered and to be rendered against him
in case the said Judgment shall be affirmed in the said
Supreme Court. Hence the above obligations to be void
otherwise to remain in full force and virtue

In Presence of Hiram Schofield
J. P. Goodhue Charles Butler
Wm Stone

355
Hiram Schofield's
New Secretary
Rend

Given May 15, 1862
J. Ireland
clerk

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM THEREOF, A. D. 1863.

HIRAM SCHOFIELD }
vs t
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MEACHAM & GOODHUE,
LELAND & BLANCHARD,
For Plaintiff in Error.

67

Schofield
vs
Sedley et al

Abstract

Filed Apr. 22-1863.
L. Leland
Clerk

STATE OF ILLINOIS, }
SUPREME COURT, } ss.

The People of the State of Illinois,

To the Clerk of the Circuit Court for the County of Stephenson Greeting:

Because, In the record and proceedings, as also in the rendition of the judgments of a plea which was in the Circuit Courts of Stephenson County, before the Judge thereof, between Henry Settle and Amos Humm

plaintiffs and Hiram Schofield

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

Defendant

as we are informed by ~~his~~ his complainant and we being willing that error should be corrected, if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgments thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the County of La Salle, on the first Tuesday after the third Monday in April next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of rights ought to be done according to law.

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 21st day of May in the Year of Our Lord One Thousand Eight Hundred and Sixty one

L. Liland

Clerk of the Supreme Court.

J. B. Rice Deputy

William Schofield

No. 155

vs.

Henry Settle

WRIT OF ERROR

This Writ of Error is made a
Supersedeas, and as such is to be
obeyed by all concerned.

L. Leland

J. D. Rice ^{Clerk} Secy

FILED

May 21st

A. D. 1862

L. Leland

Clerk



Handwritten mark or signature on the right side of the page.

511

Handwritten notes or signatures at the bottom right of the page.

Vertical handwritten notes on the left margin, including the word 'Schofield' and other illegible text.

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION.

APRIL TERM THEREOF, A. D. 1883.

HIRAM SCHOFIELD }
 ^{vs} }
HENRY SEALEY AND } *Error to Stephenson.*
AMOS HEMMING. }

ABSTRACT AND BRIEF.

8 The declaration is in debt, on an agreement, by which defendants in error agreed by writing, under seal, to build a house according to certain plans and specifications, which are referred to in the contract.— Plaintiff in error agreed to pay \$800 at one time, \$490 at another, and to deliver a span of horses, double harness and wagon, at \$310. Breach; that the \$490 was not paid, and horses, wagon and harness were not delivered.

22 The specifications are not made part of the declaration, nor is it stated in the narr. what the specifications were. The defendant below pleaded, among other things, that plaintiffs below did not erect the house in a workmanlike manner, &c., but did it so badly that it was worth nothing. There was a demurrer sustained to this plea. We claim that if this plea was not a good answer, that the declaration was bad, and that the demurrer should have related back to and been sustained to it. The specifications should have been set forth so that it might appear what the contract really was; and because a necessary part of the contract was omitted, the narr. is bad.

In order to enable the plaintiff to recover for building the house, it must have been built in compliance with the contract or accepted in lieu of it. (*Chitty on Contracts*, 493, and notes.) We cannot tell by the contract, without the specifications, whether the house in this case was to be of wood, brick, stone or other material, whether slated, shingled or composition roof, &c. The declaration should state what the contract is, and when it appears by the contract mentioned in the narr. that there is another contract or writing referred to, what that is should be alleged.

If the plaintiff had contracted to build a house just like the one described in another contract between other parties, the latter one must necessarily be stated; so when the contract is to build in accordance with certain specifications, what the latter are should be alleged.

All that is alleged in the 5th plea could perhaps have been proved under the plea of *nil debet*, and consequently we have nothing to say on the question raised by the demurrer, except that the first fault was in the declaration. The copy of the contract and specifications are not made part of the declaration in any way.

17 The Court below ought to have ruled the plaintiff to file a more definite bill of particulars. \$500 for extra work on the house is too general, and the intended benefit of a bill of particulars is lost to the defendants. These \$500 items are mere repetitions of the narr. A right to have a bill of items or amount is one given by the statute, and the refusal to give the party asking it his rights under the statute ought not to be a matter of discretion not to be reviewed on error. After the jury was empaneled the Court, on motion of the plaintiff, gave leave to withdraw a juror, and the juror was withdrawn, and defendant excepted. At common law this 29 could not be done, except by consent, in civil cases. (5 Bacon's Abr. 335, 3 Hill S. C. 262, Ry. & Wood, 402.) Our statute has conferred upon the Court the power, in case of sickness, death or non-attendance, or discharge for reasonable cause of a juror, after he is sworn, to supply his place on the panel. (Purple's Stat. 256, sec. 12.) But there is no power by statute to withdraw one of the jury at the request of the plaintiff or defendant, when he is surprised on the trial by a defect in his pleading requiring amendment in order to admit evidence. At common law the juror was discharged by consent, and each party paid his own costs. (2 Tidd's Pr. 862.) The power of the Court to discharge a jury or withdraw a juror in case of surprise, is perhaps now established in the United States, (8 Cow. 127,) by a gradual relaxation of the old common law strictures. We claim, however, that it should have had the effect of a non-suit as to the costs. (Lee 5, Cowen 30, Purple's Stat. 276, sec. 5.) There does not seem to be any discretion as to dividing costs in the case of a withdrawal of a juror. Like a non-suit or *vol. pros.*, a judgment against plaintiff for all previous costs should follow.

MEACHAM & GOODHUE,
LELAND & BLANCHARD,
For Plaintiff in Error.

67
Schiffel
vs
Sedley

Abstract

Filed Apr. 22, 1863

L. Selam
clerk

71

made him of the defendant in the
the defendant. The case of the master and the defendant is
the question raised by the plaintiff is whether the defendant is
the law of the state and the defendant is not bound to pay
All that is left to be done is to pay the plaintiff the amount

The Court before us has held the plaintiff to be a creditor
of the defendant. The case of the master and the defendant is
the question raised by the plaintiff is whether the defendant is
the law of the state and the defendant is not bound to pay
All that is left to be done is to pay the plaintiff the amount

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could not be done unless it was in the
the law of the state and the defendant is not bound to pay
All that is left to be done is to pay the plaintiff the amount

FRANK & BROTHERS
NEW YORK & BOSTON

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM THEREOF, A. D. 1863.

HIRAM SCHOFIELD }
 ^{vs.} }
HENRY SETTLEY and } *Error to Stephenson.*
AMOS HEMING. }

BRIEF FOR DEFENDANTS IN ERROR.

I.

It is claimed the demurrer to 5th and 6th pleas should have been carried back to declaration.

Defendant below had already pleaded general issue (record, p. 20.)—*Wilson vs. Myrick*, 26 Ill. 35.

When the demurrer was sustained in the court below, defendant did not move to carry it back, (record p. 31.)

Six pleas were filed to the original declaration. The demurrer was to the 5th and sixth. Afterwards, when the juror was withdrawn, plaintiffs obtained leave to file amended declaration (record p. 36,) and defendant afterwards took leave to file *his pleas used on the former trial*, as pleas to amended declaration, and plaintiffs took leave to file their replications before used (record p. 38.) The demurrer is therefore not in the case.

The amended declaration is not copied in the record.

The Clerk certifies it contains the *original* declaration, &c.

It does not purport to be a full and complete transcript.

The fact being that the amended declaration was an entire new declaration, and was not demurred to at all.

II.

It is contended that plaintiffs below should have been ruled to file a more specific bill of particulars.

This objection was to the bill filed with the *original* declaration. But there is no bill of particulars in the record, that this court can notice. Defendant should have preserved it by bill of exceptions if he desired to raise points on it here, *Franey vs. True*, 26 Ill. 184, and he should be at the expense of the improper matters inserted in this record, whatever be the decision of the case.

III.

It is insisted that the court erred in permitting a juror to be withdrawn, and continuing the cause at plaintiff's costs of term.

This court will presume the court below had good reason to withdraw the juror, unless the contrary is shown. *Cornelius vs. Boucher*, Breese, 32. The practical effect was to continue the cause one term, and the court imposed the usual terms. Plaintiffs were obliged to amend their declaration—all defendant can complain of is the allowance of the amendment. But the court has a discretion in this respect necessary to the administration of justice, and the power to withdraw a juror must of necessity reside in the court. *Miller vs. Metzger*, 16 Ill. 393. And where an amendment is in the discretion of the court, it may impose whatever terms it pleases, and its discretion cannot be assigned for error. *Heslep vs. Peters*, 3 Scam. 45.

In the case in Cowen, cited by plaintiff in error, a rule for judgment in case of non-suit was entered, but that practice does not obtain here.

4 Scam. 447; 3 Gilma. 88; 22 Ill. 142.

F. C. Ingalls

~~F. C. INGALLS,~~
For Defendants in Error.

67

Hiram Schofield

by
Henry Settle

Brief for Defendants
in Error

Filed Apr 25. 1863

L Sealed
M

THE COURT HAS THE HONOR TO REFER TO THE RECORDS OF THE COURT IN THE CASE OF HIRAM SCHOFIELD vs. HENRY SETTLE.

THE RECORDS ARE TO THE EFFECT THAT THE COURT HAS THE HONOR TO REFER TO THE RECORDS OF THE COURT IN THE CASE OF HIRAM SCHOFIELD vs. HENRY SETTLE.

IT IS THE OPINION OF THE COURT THAT THE RECORDS OF THE COURT IN THE CASE OF HIRAM SCHOFIELD vs. HENRY SETTLE.

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4 Scam. 447; 3 Gilman. 88; 22 Ill. 142.

F. C. Ingalls ~~F. C. INGALLS,~~
For Defendants in Error.

United States of America
State of Illinois
Stephenson County

Plus in the Circuit Court
of Stephenson County, in the Fourteenth Judicial
Circuit of the State of Illinois, at the regular
April term of said Court, began and held (in pur-
suance of law) at the Court House in the City of
Freeport in said County and State on the First
Monday in the month of April in the year of

Our Lord One thousand Eight hundred and sixty
Present, Hon' Benj^r N. Sheldon, Judge
U. D. Meacham, States Attorney
Chas F. Taggart, Sheriff
Luther W. Guitman, Clerk.

Be it remembered that heretofore, to wit: on
the 13th day of March A. D. 1860, the following
summons was sued out of said Court in a
certain cause wherein Henry Settle & Amos
Kemming for the use of Henry Settle are plain-
tiffs and Wيران Schofield is defendant.

" State of Illinois } set
" Stephenson County }

" The People of the State of
Illinois to the Sheriff of said County, Greeting:
We command you to summon Wيران

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Schofield if he be found in your County, personally
 to be and appear before the Circuit Court of said
 County of Stephenson on the first day of the
 next Term thereof, to be holden at the Court House
 in the City of Freeport in said County, on the
 First Monday in the month of April next
 to answer unto Henry Settley & Amos Hemming
 for the use of Henry Settley in a plea of debt
 to the damage of the said Plaintiff as he say
 in the sum of _____ Dollars, and have
 upon them and their this writ, with an endorsement
 thereon in what manner you shall have executed
 the same - Witness Luther W. Guitau, Clerk of



our said Circuit Court and the seal
 of said Court at Freeport in said County
 this 13th day of March A. D. 1860.

" Attest: L. W. Guitau, Clerk. "

" By Tho^s North, Dep. "

on the back of which summons the following
 endorsement appears, to wit:

" Served the within by reading the same to the
 within named William Schofield this 17 day of
 March 1860." " C. F. Faggart, Shff. "

" Service 50^c Mileage 20^c return 10^c = 80^c "

And afterwards, to wit: on the 22nd day of
 March A. D. 1860 the following, decla-
 ration was filed in said cause -

In the Circuit Court of Stephenson
County, Illinois, of the April Term
A.D. 1860.

Henry Settley and Amos Benjamin
who sue for the use of Henry Settley, Plaintiffs
in this suit by Turner & Engalls their Attorneys
complain of William Schofield, defendant
who was summoned &c of a plea that he
render to the said Plaintiffs the sum of One Thou-
sand Dollars lawful money of the United
States which he owes to and unjustly detains
from said Plaintiffs -

For that whereas heretofore, to wit: on the
twenty ninth day of March in the year of our
Lord One Thousand Eight hundred and fifty
nine, at said County of Stephenson by a
certain indenture then and there made, by and
between the said Plaintiffs and the said defend-
ant, and sealed with their seals and now shown
to the Court here, it was agreed by the said
Plaintiff that the said Plaintiffs, for the con-
sideration therein expressed, and hereinafter
mentioned, should erect, build set up and finish
well and substantially, in a good and work-
manlike manner one dwelling house on the
farm of said defendant in said County accor-
ding to the plan and specifications attached to

Said agreement- Said house was to be thirty feet wide by thirty six feet in length with a cellar wall eight feet deep underneath the whole, and the said house was to be two stories, each nine feet between joists in height. the joists for the first floor were to be nine inches in width, the joists for the second floor, eight inches in width and those for the ceiling were to be six inches in width. Said house was to be finished with three coat plastering, and with three coats of good white paint on Wood work outside & inside. And the said defendant in and by ^{the} said indenture in consideration of the said agreements before mentioned by the said Plaintiffs, agreed on his part, well and truly to pay or cause to be paid to the said Plaintiffs the sum of Sixteen Hundred Dollars, in the manner following, to wit: Eight Hundred Dollars in money during the progress of the work as it might be needed for the purchase of materials. One Span of good Horses, double Harness & Wagon at Three Hundred and ten Dollars (meaning that said defendant was to deliver to said Plaintiffs said horses, harness and wagon as a payment of three hundred and ten Dollars) Said horses, harness and wagon were to be delivered to said plaintiffs when they should commence said work, and said horses were

5-

to be in as good condition when delivered to said plaintiffs by said defendant, as they were at the time of ^{the} making of said agreement & indenture.

And the said defendant by said agreement and indenture agreed to pay the balance of said sum of fifteen hundred dollars, which balance amounted to the sum of Four hundred & ninety dollars on or before the first day of January A.D. 1860.

And the said defendant in & by said indenture further agreed at his own cost charge and expense to make the excavation for the cellar, and for the walls under the whole of said house, and also to board and lodge the said plaintiffs and their workmen while they should be engaged at work upon said house.

And it was in and by said indenture further agreed on the part of said plaintiffs, that they would, in case the said payments should be punctually made as aforesaid, furnish at their own charge and expense, all the necessary building material to be used in and about said dwelling house: and that the floors & finishing of said house should be done with good seasoned pine lumber, and that the whole should be completed on or before the first day of September then next following. And although the said plaintiffs have well and truly performed and fulfilled all and singular the covenants

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and agreements in the said indenture mentioned on their part and behalf to be done and performed and duly commenced said work, & prosecuted and finished ~~and finished~~ the same according to their said agreement. Yet the said plaintiffs in fact say that the said defendant, contriving &c. did not nor would perform the said agreement on his part, in this, to wit: that the said defendant did not nor would furnish to ^{the} said plaintiffs, one span of good horses, double harness and wagon according to the tenor and effect true intent and meaning of said agreement. And the said defendant did not nor would pay the said plaintiffs the said sum of Four hundred and ninety dollars nor any part thereof, on the said first day of January A.D. 1860, nor at any time before or since, although often requested so to do, but hath hitherto wholly neglected and refused, and still doth neglect and refuse so to do, to wit: at said County of Stephenson, whereby an action hath accrued to the said plaintiffs to demand and have of and from the said defendant the said sum of Three hundred & ten dollars, and four hundred and ninety dollars amounting, to wit: to the sum of Eight hundred dollars, parcel of the said sum above demanded &c. And whereas also the said defendant

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afterwards, to wit, on the first day of March
A.D. 1860, at said Stephenson County was
indebted to the said plaintiffs in the further sum
of Five hundred Dollars of like lawful money
for the work, labor, care and diligence & attendance
of the said plaintiffs; by them the said plaintiff
and their workmen and servants before that
time done performed and bestowed for the said
defendant, in and about erecting, building
setting up and finishing a certain other
dwelling house for said defendant, and
at the special instance and request of the
said defendant, and for divers doors, windows
window blinds, Iron grates, lumber, plaster
nails, paint, and divers other necessary mate-
rials and things, before that time found and
provided, for the said defendant, by the said
plaintiffs, and used in and about the said
last mentioned work and labor; And at the
like special instance and request of the
said defendant, and to be paid by the said
defendant to the said plaintiffs, when he
the said defendant should be therunto after-
wards requested, whereby and by reason of
the said last mentioned sum of money being
and remaining wholly unpaid, an action
hath accrued to the said plaintiff to demand
and have of and from the said defendant

the sum of Five hundred Dollars, parcel of the said sum above demanded.

And whereas also afterwards, to wit, on the first day of March A.D. 1860, at said County of Stephenson was indebted to the said plaintiffs in the further sum of Five hundred dollars of like lawful money, for the extra work, labor, care, diligence and attendance of the said plaintiffs by them the said plaintiffs and their workmen and servants before that time done, performed and bestowed for the said defendant in and about erecting, building, setting up and finishing the said dwelling house in the first count of this declaration mentioned, over and above and in addition to the work, labor, care, diligence & attendance which the plaintiffs were bound to bestow and perform in and about said work by their contract for building and erecting said dwelling house, in the said first count mentioned; and at the special instance & request of the said defendant, and for divers extra doors, windows, window blinds, Iron Grates Lumber, plaster, nails, paint, and divers other extra materials and things over and above and in addition to the materials and things which the said plaintiffs were bound to provide and furnish for said work, in &

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by their said contract in the said first count mentioned, before that time found and provided for the said defendant by the said plaintiffs & used in and about the said last mentioned extra work and labor, and at the special instance and request of said defendant and to be paid by the said defendant to the said plaintiffs when he the said defendant should be thereunto afterwards requested, whereby and reason of the said last mentioned sum of money being and remaining wholly unpaid an action hath accrued to the said plaintiffs to demand and have of and from the said defendant the sum of Five Hundred dollar parcel of the said sum above demanded. And whereas also afterwards, to wit: on the first day of March A.D. 1860, at said County of Stephenson, in consideration that the said plaintiffs at the like special instance and request of the said defendant has before that time, by them the said plaintiffs and their workmen and servants done performed and bestowed certain other extra work, labor, care, diligence and attendance in and about erecting, building, setting up & finishing the said dwelling house for the said defendant, in the said first count of this declaration mentioned over and above and in addition to the work, labor care diligence and attendance which said plaintiffs were bound to bestow & perform

in and about said work by their contract with said defendant for building and erecting said dwelling house in said first count mentioned - And in further consideration that the said plaintiffs at the like special instance and request of said defendant had before that time provided and furnished for said defendant and used by said plaintiffs in and about the last mentioned extra work and labor, divers extra doors, windows window blinds, Iron Grates, Lumber, Plaster, Nails Paint, and divers other extra materials & things over and above and in addition to the materials and things which said plaintiffs were bound to provide and furnish for said work, in and by their said contract with said defendant in said first count mentioned.

And the said defendant undertook & then and there agreed to pay ^{to} the said plaintiffs so much money as they therefor reasonably deserved to have of the said defendant, when he the said defendant, should be thereunto afterwards requested. And the said plaintiffs aver that they therefor reasonably deserved to have of the said defendant the further sum of Five hundred Dollars of like lawful money, to wit: at Stephenson County aforesaid, whereof the said defendant afterwards to wit, on the day and year aforesaid, at the place aforesaid had

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notice whereby an action hath accrued to the said plaintiffs to demand and have of and from the said defendant the said last mentioned sum of Five Hundred Dollars, other parcel of the said sum above demanded - To the damage of the said plaintiffs of One thousand Dollars and therefore they bring this suit -

Turner & Ingalls
Plffs. Atty^s


(Copy of Instrument sued on)


" This Indenture made this twenty ninth day of March A.D. 1859, by and between Henry Settle & Amos Fleming of the County of Stephenson in the State of Illinois of the first part and Hiram Schofield of the same County of the second part, Witnesseth: That the said Henry Settle & Amos Fleming on their part hereby covenant and agree with the said Hiram Schofield for the consideration hereinafter expressed, that they will in a good & Workman like manner well and substantially erect build set up and finish one dwelling house on the farm of the said Schofield in said County according to the plan and specifications here attached and made a part hereof: Said house to be thirty (30) feet wide by thirty six (36) feet in length, with a cellar wall eight feet

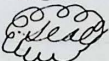
deep, underneath the whole, the House to be two stories, each nine feet between joice in height, joice for the first floor to be nine inches, for the second floor to be eight inches & for the cieling to be six inches in width; the House to be finished with three coat plastering, and with three coats of good white paint outside and inside on Wood work. And the said Heiam Schofield on his part hereby covenants and agrees with the said Henry Settley & Amos Heenig for and in consideration of the agreements on their part above mentioned, that he will well and truly, pay or cause to be paid to the said Settley & Heenig the sum of Sixteen hundred Dollars in manner following, to wit: Eight hundred dollar (\$800) in money during the progress of the work, as it may be needed for the purchase of materials, One Span of good Horses, double Harness & Wagon at Three hundred and ten Dollars (\$310) and said Horses, Harness and Wagon to be delivered on said Settley and Heenig commencing the work, said Horses to be in as good condition when delivered as they are in now; and the remaining Four Hundred and ninety Dollars (\$490) to be paid on or before the first day of January A.D. 1860. And the said Schofield also agrees at his own cost charge and expense to make the excavations for the cellar and the wall under the whole house, and also to board and lodge said Settley

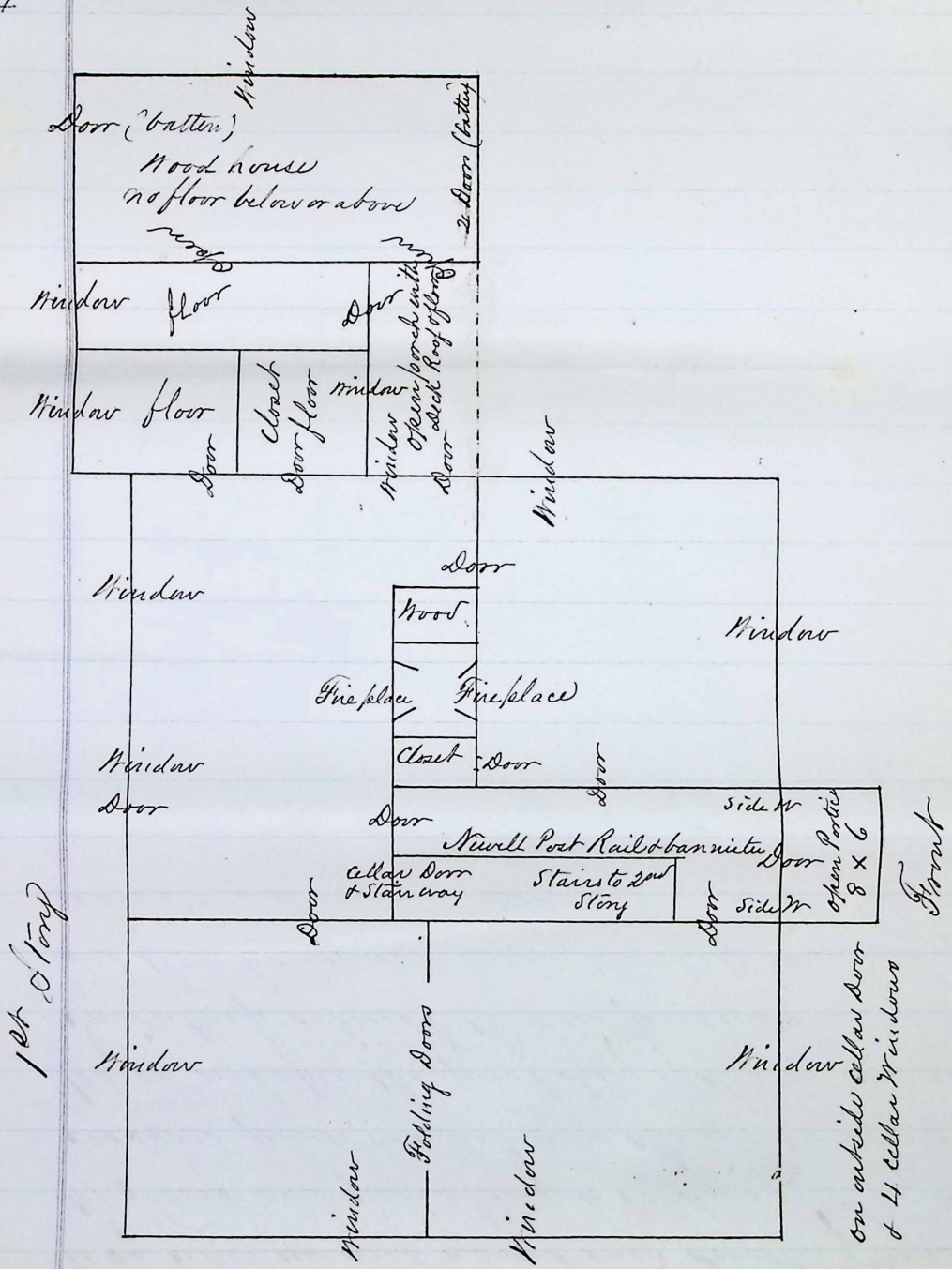
13

and Heming and their workmen, while they shall be engaged at work upon said house - And the said Settlely & Heming further agree that they will, in case said payments are punctually made as aforesaid, furnish at their own charge and expense all the necessary building materials to be used in and about said dwelling house, the floors and finishing to be done with good seasoned pine lumber and the whole to be completed on or before the first day of September next In witness whereof the said parties have hereunto set their hands and seals, the day and year first above written -

Amos Hemming 

Benny Settlely 

Winnifred Schofield 

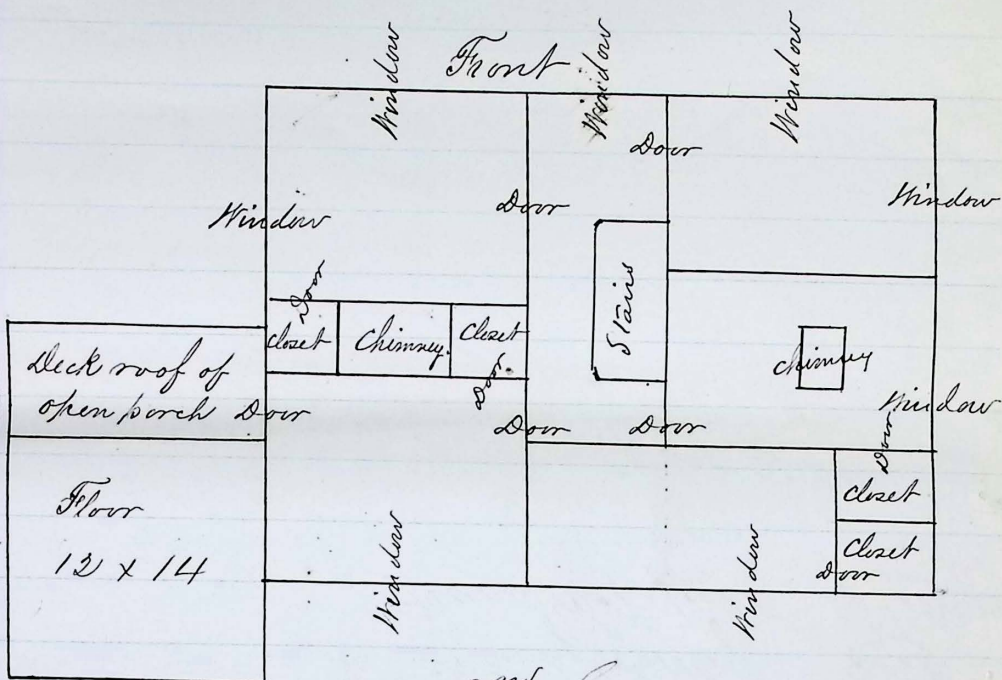


1. Outside studding to be 2 by 6 inches by 20 feet in length, ciled on the outside with inch boards plowed and grooved, to be covered with clear pine siding one half inch thick.
2. Cornice brackets and proportioned to size of building

15-

3. Shingles best quality 4 to 5 inches to weather for roof
4. Rolling blinds outside of Windows painted green
5. Eaves troughing & spouting (tin) leading to Cistern
6. Under main building Cellar Wall to be eight feet in height Eighteen inches in thickness, to be hammer doped and pointed up on the inside & also above ground on the outside foundation wall about 2 1/2 feet high under the string-
7. Cistern cement laid on brick work to hold about 80 barrels.
8. Besides the house which is 30 by 36 feet, there is to be a wing one story high 21 by 24 in size 14 by 24 feet thereof to be covered with shingles and 7 by 24 feet thereof to be covered with a deck roof - plan and specifications agreed upon March 29. 1859.

Amos Keeney Seal
Henry Suttley Seal
William Schofield Seal



2nd Story

Bill of ParticularsFreeport March 1st 1860.

Miriam Schofield

To Henry Settlely & Amos Hemming
 for the use of Henry Settlely Dr

For work labor & services of plaintiff &
 their Workmen on dwelling house for Defendant
 and for doors, Windows, Blinds, Plaster,
 Paints, Nails, Gutes, Lumber & other materials } \$500.00

For Extra work, labor & services of same }
 on said dwelling house for 1st left } \$500.00

For Extra Materials, Doors, Windows & Blinds }
 Lumber furnished to said Defendant by said }
 Plffs for said dwelling house } \$500.00

For 7 Extra doors & painting same for dwelling house \$35.00

" putting up stairway in Hall on 2nd floor of " \$15.00

" putting up stairway from back room to 2nd floor " \$15.00

" One Window & 1/2 pair Blinds in main building " \$12.00

" painting on Extra work " \$25.00

" putting on 2 feet extra height on Wing " \$25.00

" Extra plastering in Stairways and in 3rd }
 extra clothes presses or cupboards } " \$20.00

" 4 sets extra Blinds for windows on Wing " \$20.00

" 4 Iron Gutes in cellar Windows " \$20.00

" Carpenters Work & Lumber on Extra }
 Closets & cupboards } " \$30.00

" Extra work on Putting or meal room " \$15.00

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For Extra work for altering Wing Extension of Stoop \$15.00
 " Change & Alteration in Rafters of Main building " \$15.00
 " Rough Sheeting on Wing " \$16.00

On the back of which said declaration the following endorsement appears-

" Filed March 22nd 1860, L. M. Guiteau, Clerk."

And afterwards, to wit: on the 9th day of April A.D. 1860, the same being one of the days of said term of said Court the following among other entries appears of record in the said cause-

144 Henry Lettley & Amos Downing }
 for the use of Henry Lettley }
 vs } debt
 Brian Schofield }

Now on this day comes the said Defendant by Purchas & Barton his Attorney and files his affidavit and motion for a rule upon Plaintiffs to file security for costs. And the motion having come on to be heard, it is ordered that Plaintiffs file security for costs by Wednesday morning next or show cause to the contrary. And the Defendants motion for the plaintiffs to file a more specific ^{bill} as to the first three items of his account having come on to be heard after arguments of counsel the motion is overruled, and the defendant

19 except to the ruling of the court.

And afterwards on the 11th day of April, as yet one of the days of said April term of said Court, the following entry also appears of record in said cause.

147 Henry Settley & Amos Hemming
for the use of Henry Settley
vs
William Schofield
debt

And now come the plaintiffs by their attorney and file security for costs.

And afterwards on the 16th day of April, as yet one of the days of said April term of said Court the following entry appears of Record in said cause.

147 Henry Settley & Amos Hemming
for the use of Henry Settley
vs
William Schofield
debt

And now on this day comes the said defendant by Purchas & Barton his atty- and files his pleas.

Wiram Schofield

vs

Henry Settley & Amos Hemming

Stephenson County

Circuit Court, April

Term A.D. 1868-

1.

And the said defendant by Goodhue Purchase & Barton his Attorneys, comes and defends the wrong and injury when &c, and says that he does not owe the said sum of money above demanded or any part thereof, in manner and form as the said plaintiffs have above thereof complained against him and of this the said defendant, puts himself upon the Country &c.

2. And for a further plea as to the first count in said declaration mentioned said defendant says actio non &c because he says that the supposed articles of agreement in said count mentioned are not his deed, and of this he puts himself upon the Country &c.

3. And for a further plea in this behalf the said defendant says actio non &c, because he says that at the time of the commencement of this suit the said plaintiffs were and still are indebted to him in a much larger sum of money, than the money due and owing said plaintiffs from him mentioned in said declaration, that is to say in the sum of One thousand dollars, for the work, labor and diligence and attention of said defendant by the said defendant and his

21

Servants before that time done performed & bestowed
in and about the business of the said plaintiffs
and for the said plaintiffs and at their request;
and for divers materials and other necessary things
by the said defendant before that time found and
provided, and used and applied in and about the
said work and labor of said plaintiffs, and at
their like request, and for divers, goods, wares and
Merchandise, grain, Butter, provisions & Lumber
sold and delivered by the said defendant to the said
plaintiffs, and at their like request, and for meat,
drink, bread, washing, lodging, goods & chattels
and other necessities by the said defendant found
and provided at the like request of said plaintiffs
for said plaintiffs and their workmen, and for
money by the said defendant before that lent and
advanced to, and paid laid out and expended
for the said plaintiffs and at their like request
which said sum of money so due and owing
from the said plaintiffs to said defendant, is
wholly unpaid and exceeds the money due &
owing from said defendant to said plaintiffs
referred to in said declaration, and which sum
so due and owing from said plaintiffs to said
defendant as aforesaid, or so much thereof as
shall be necessary in this behalf be the said
defendant is ready and willing and offers to
set off and allow against the sum ^{of money} due and

owing, said plaintiffs by said defendant in said declaration mentioned according to the form of the Statute in such case made and provided, and this the said defendant is ready to verify wherefore he prays judgment &c.

4. And for a further plea said defendant says actio non because he says that before the commencement of this suit, to wit: on the 20th day of November A.D. 1859, at Stephenson County Illinois, he paid to said plaintiffs the said sum of One thousand dollars in said declaration allged to be due and owing said plaintiffs from said defendant, together with ^{all} interest there due thereon, and this the said defendant is ready to verify, wherefore he prays judgment &c.

5. And for a further plea to the said first count in said declaration mentioned, said defendant says actio non and because he says that said plaintiff did not erect and build, well and substantially in a good and workman-like manner said dwelling house, but on the contrary the said plaintiff erected & built said dwelling house in so bad and unworkman-like manner and of such poor materials that the said house was and is of no value, and this the said defendant is ready to verify; wherefore he prays judgment &c.

6. And for a further plea in this

behalf the said defendant as to said first count in said declaration says actio non, because he says that by said articles of agreement, said plaintiff agrees to erect and build, said dwelling house by the first day of September A.D. 1859, and said defendant in fact saith that said plaintiff did not erect and build said dwelling house until a long time thereafter, to wit: until the 1st day of December A.D. 1859, by reason of which delay in erecting and building said dwelling house said defendant was deprived of the use of the same for a long space of time to wit, for the space of three months, and said defendant in fact saith that the use of said dwelling house for said space of three months was reasonably worth a large sum of money, to wit: the sum of One Hundred Dollars, and by being deprived of the use of said dwelling house for said space of three months, the said defendant has been damaged in a large sum of money, to wit: the sum of One Hundred Dollars, and said defendant in fact further says that said plaintiff by the terms of said agreement agreed to cover said dwelling house with clear pine siding one half inch thick, and said defendant saith that said plaintiff did not cover said dwelling house with clear pine siding one half inch thick, but covered the same with siding not more than one quarter inch thick, and said defendant

said that by reason of said dwelling house being covered with said quarter inch thick siding, said building was and is of much less value than it would have been had said siding been one half inch thick, to wit: to the amount of One Hundred dollars less value. And said defendant further says that plaintiffs by said articles of agreement agreed to erect and build said dwelling house in a good and workmanlike manner, and said defendant says that said plaintiffs did not erect and build said dwelling house in a good and workmanlike manner, in this that they built the chimney of said house in so bad and unworkmanlike a manner that they are of no use or value, that said defendant will be obliged to have the same entirely rebuilt and said rebuilding will be reasonably worth a large sum of money, to wit: the sum of Two hundred dollars. and said defendant says that said dwelling house was not erected and built in a good and workmanlike manner in this that the plastering on said house was done in so bad and unworkmanlike manner, that said house is of less value, to wit: to the amount of One Hundred dollars than it would have been had said plastering been done in a good and workmanlike manner; and said defendant says that said house was not erected in a good & workman-

like manner, in this that a portion of the lumber used by said plaintiffs in building said house was not properly seasoned, and by reason thereof said house was and is of less value, to wit: to the amount of One Hundred Dollars, than it would have been, had said Lumber been properly seasoned.

And said defendant says that said building was not erected in a good and workmanlike manner in this that the kitchen floor was made of such poor materials, that said house is not worth so much by a large amount, to wit: by the amount of One Hundred dollars, as it would have been had said kitchen floor been made in a good and workmanlike manner. And said defendant says that said house is not built in a good and workmanlike manner, in this that the roof of said house is made in so bad and unworkmanlike a manner, that the same leaks and does not protect the interior of said house from the rain, and by reason of such defect in said roof, said house was and is worth less by a large amount, to wit: by the sum of One Hundred dollars, than it would have been had the same been built in a good & workmanlike manner. And said defendant that the wing of said house is built in so bad and unworkmanlike a manner, that said house is worth less by a large sum, to wit:

by the sum of Two Hundred Dollars than it would have been had said Milling been built in a good and workmanlike manner, and this the said defendant is ready to verify, wherefore as to said 1st count said defendant prays judgment &c.

Gordhue, Burchard & Barton
Defts Atty-

Copy of Defts Account & setoff -
Henry Gately & Amos Wessuming
To Oliver Schofield

		Dr
April 20 th 1859	To money paid them	\$200.00
May 10 th "	" Butter	" 20
" 14 th "	" Money paid them	100.00
" 23 rd "	" " " "	30.00
" " "	" " " "	310.00
" 28 th "	" " " "	30.00
" " "	" 10 bushels Oats at 50 ^{cts} per bush	5.00
June 4 th "	" Money paid them	20.00
" 18 th "	" " " "	20.00
" 25 th "	" " " "	40.00
" " "	" 16 ^{lb} Butter at 15 ^{cts} per lb	2.40
July 10 th "	" hauling 5 loads Water	1.25
" 20 th "	" 240ft clear Lumber	4.80
" " "	" 36 ft Siding	" 72
" 28 th "	" 1 1/2 bushels Oats	" 75
Aug 1 st "	" Money paid them	20.00

27

Aug 20 th	"	" Money paid them	80.00
Sept 24 th	"	" " "	65.00
Oct 18 th	"	" " "	50.00
" 14 th	"	" 24 bushels Oats	6.00
" " "	"	" 75 ft Clear boards	1.14
" " "	"	" Plank for Door Sill	.75
" 15 th	"	" Money paid them	30.00
" 19 th	"	" 8 ft clear boards	.16
" 24 th	"	" Money paid them	118.00
" 25 th	"	" 10 ft flooring	.22
" 29 th	"	" Money paid them	45.00
Nov 5 th	"	" 20 ft clear boards	.40
" 7 th	"	" 48 " " "	.96
" " "	"	" 10 bushels Oats	2.80
" " "	"	" 24 ft clear boards	.48
" 10 th	"	" Work, labor & services	30.00
" 19 th	"	" Money paid them	19.94
" 21 st	"	" " " "	96.78
			<hr/>
			1407.25
" 10 th	"	" Boarding nine Workmen of said Settle & Hemming from Sept 1 st 1859 to Nov 10 th 1859. 10 meals at 48. per meal for each	270.00

On the back of which said pleas the following
indorsements appear,

" filed April 16/60. S. M. Guitman, Clerk "

also " Pleas & amended declaration being first

"four pleas herein"

filed Dec 9. 1861. J. W. Shaffer, clk
for S. W. Buitman, Dep.

And afterwards on the 18th day of April A. D. 1860
the same being one of the days of said April term
of said Court the following entry appears of record
in said cause.

D. 261

147 Henry Settley & Amos Bemmig
for the use of Henry Settley
vs
Hiram Schofield Debt

Now come the said plaintiff
by Turner & Ingalls their attorneys and file their
demurrer to 5th & 6th pleas and Replications to
first, second, third & fourth pleas.

In the Circuit Court of Stephenson
County of the April term A. D. 1860.

Henry Settley & Amos Bemmig
for use of Henry Settley
vs
Hiram Schofield

And the said Plaintiff, as to
the said pleas of the said defendant by him
firstly and secondly above pleaded, and whereof
he hath put himself upon the country, do the like.

And the said Plaintiffs as to the said Plea of the said defendant by him thirdly above pleaded say precludi non, because they say that the said Plaintiffs were not nor are indebted to the said defendant in manner and form as the said defendant hath above in his said plea alledged. And of this they the said defendants put themselves upon the country &c

Turner & Ingalls

Atty for Plffs

And said defendant doth the like

Goodhue, Burchard & Barton

Defts Atty

And the said Plaintiff as to the said plea of the said defendant by him fourthly above pleaded say precludi non, because they say that the said defendant, did not pay to the said plaintiffs the said sum of One Thousand Dollars together with interest thereon, as the said defendant hath in his said fourth plea alledged; and of this the said plaintiffs put themselves upon the country &c

Turner & Ingalls

Atty for Plffs

And the said defendant doth the like

Goodhue, Burchard & Barton

Defts Atty

On the back of which Replikation the following

Endorsement appears

" filed April 18. 1860, L. M. Guitauw, Clerk "

In the Circuit Court of Stephenson
County of the April Term A. D. 1860,
Henry Settle & Amos Hennig
for use of Henry Settle

vs
Miriam Schofield

And the said Plaintiffs
as to the said Pleas of the said Defendant, by him
fifthly and sixthly above pleaded, saith that
the said fifth and sixth pleas, and each of them and
the matters therein contained, in manner and form
as the same are above pleaded & set forth are not
sufficient in law to preclude said Plaintiffs from
having or maintaining their aforesaid action
thereof against said Defendant and that they
said Plaintiffs are not bound by law to answer
the same. And this said Plaintiffs are ready to
verify whereof they pray judgment &c.

And the said Plaintiffs according to the
form of the Statute show to the Court here the
following causes of Demurrer

1. Said fifth and sixth pleas and
each of them amount to the general issue -
2. Said fifth and sixth pleas & each
of them conclude with a verification & should

conclude to the contrary.

3. Said sixth plea contains matters which may be given in evidence under the general issue.

4. Said sixth plea prays judgment of said first count of said declaration, but said plea does not deny that said defendant is indebted to said plaintiffs as in said first count alleged, nor deny that the said agreement mentioned was the deed of said defendant, and said plea does not pray judgment of any damages, nor avow any damages to said defendant.

5. Said defendant has not by said 6th plea confessed and avoided, or traversed or denied that he owes said plaintiffs said sum of \$800. above in said first count demanded nor denied that the indenture mentioned in said first count is his deed.

6. Said sixth plea is in some parts insensible and there are divers omissions in said plea, by reason of which the sense thereof is rendered uncertain, obscure &c.

7. Said sixth plea is double in this that it pleads divers and several breaches of said agreement in bar of said first count and said sixth plea is argumentative, multifarious, informal &c.

8. Said fifth plea commences as a

plea to the first count of said declaration and concludes with a general prayer of judgment—

Furner & Magally

Atty for Plffs

On the back of which the following endorsement appears " filed April 18. 1860.

L. W. Guittan, clk

And afterwards on the 19th day of April 1860 as yet of said April term of said Court the following entry appears of record in said cause—

137. Henry Settle & Amos Humming
for use of Henry Settle
vs
Wiram Schofield Debt

Now came on to be heard the Plaintiffs demurer to 5th & 6th pleas, and after arguments of counsel the demurer is sustained. It is thereupon considered and ordered that said Plaintiffs have out record of said defendant their costs by them about their demurer in this behalf expended and that they have execution for the same.

And afterwards on the 24th day of April 1860 as yet of said April term of said Court the following entry appears of record in said cause—

32-144

291

Henry Settley & Amos Hemming }
 for the use of Henry Settley }
 vs } Debt
 vs }
 William Schofield }

Now on this day come the said parties with their attorney, and upon the issues joined for trial put themselves upon the country, thereupon also come a jury of twelve good and lawful men to wit: Tobias Engle and eleven others who were severally duly elected tried and sworn, and after hearing a portion of the evidence the hour of adjournment having arrived the further hearing is postponed until to morrow morning at the incoming of court.

Thus afterwards on the 25th day of April 1860, as yet of said April term of said Court the following entry appears of record in said cause.

294

144 Henry Settley & Amos Hemming }
 for the use of Henry Settley }
 vs } Debt
 vs }
 William Schofield }

Now on this day again come the parties with their attorney, and also the jury empaneled in this cause, and the evidence having been concluded, and a part of the arguments of counsel, the hour of adjournment being arrived

the further hearing is postponed until tomorrow morning at nine o'clock.

And afterwards on the 26th day of April 1860, as yet of said April term of said Court, the following entry appears of record in said cause-

297
 147 Henry Settley & Amos Humming }
 for the use of Henry Settley }
 vs } Debt
 William Schofield }

Now on this day again come the parties by their attorneys, and also come the jury empaneled in this cause, and the arguments of counsel having been concluded, the jury retire in charge of an officer to consider of their verdict and after a short absence, they return into court with their verdict as follows, to wit: that they find the issues for the plaintiff and allow Five hundred and twenty five Dollars and Eighteen cents, thereupon the defendant by his attorney enters his motion for a new trial and in arrest-

And afterwards on the 27th day of April 1860, as yet of said April term of said Court the following entry appears of record in said cause-

34

³⁰⁰
 Henry Settle & Amos Hemming
 for the use of Henry Settle
 vs
 Hiram Schofield
 Debt

Now comes said Defendant
 by Burchard Barton his attorney, and files his
 motion for a new trial and in arrest of judgment

And afterwards on the 1st day of May 1860, as yet
 of said April term of said Court, the following entry
 appears of record in said cause -

³¹⁰
 177 Henry Settle & Amos Hemming
 for the use of Henry Settle
 vs
 Hiram Schofield
 Debt

Now came on to be heard the
 Defendants motion for a new trial and arrest of judg-
 ment, and after arguments of counsel and the Court
 being advised in the premises. It is considered and
 ordered that the motion for a new trial be overruled
 and that the motion for arrest of judgment be sus-
 tained, it is thereupon further ordered that a new
 trial be granted.

And afterwards at the regular September term
 A.D. 1860, ^{of said Court} began and held (in pursuance of
 law) ⁱⁿ at the County and State aforesaid, at the

Court House in the City of Freeport in said County on the first Monday of September A.D. 1860, to wit: on the 5th day of September 1860, the same being one of the days of said September term of said Court, the following entry appears of record in said cause

355

82 Henry Settley & Amos Hemming }
for the use of Henry Settley }
vs } Debt
Wiram Schofield }

By consent of parties as per stipulation on file, it is ordered that this suit be continued to the next April term of this court

And afterwards at the regular April term A.D. 1861, of said Court begun and held (in pursuance of law) at and in the County and State aforesaid, at the Court House in the City of Freeport in said County on the first Monday of April A.D. 1861, to wit: on the 8th day of April 1861, the same being one of the days of said April term of said Court the following entry appears of record in said cause

49

89 Henry Settley, Et al }
vs } Debt
Wiram Schofield }

On motion of the defendant

36

by Pouchard & Barton & Goodhue his Attornies, leave is given him to file notice to the opposite party -

And afterwards on the 9th day of April 1861, as yet of said April term of said Court, the following entry appears of record in said cause -

29 Henry Settle & Amos Berning
 for the use of Henry Settle
 vs
 William Schofield Debt

Now on this day come the said parties by their Attorneys, and upon the issues joined for trial put themselves upon the country, thereupon come also a jury of twelve good and lawful men, to wit: Aaron Gould and Ezeron others, who were severally duly elected tried and sworn. On motion of Plaintiffs leave is given to withdraw a juror, and the juror accordingly withdrawn, it is thereupon considered and ordered by the court that the jury be discharged, and the cause be continued at Plaintiffs costs of term to which the defendant excepts, he having entered his motion for judgment for all the costs of suit previous to the continuance. And on motion of the Plaintiffs leave is given them to amend their Declaration; thereupon it is considered & ordered by the court, that the said defendant have & recover

of the said plaintiffs their costs of term, by them
about their suit in this behalf expended, and that
they have Execution for the same ~

And afterwards at the regular December term
A.D. 1861, of said Court began and held (in pursu-
ance of law) at and in the County and State
aforesaid, at the Court-house in the City of Freeport
in said County on Tuesday the 3rd day of December
A.D. 1861, to wit: on the 4th day of December 1861,
the same being one of the days of said December
term of said Court, the following among other entries
appears of record in said cause ~

¹⁶³
13 Henry Settle, et al }
for use of Henry Settle }
vs } debt
Hiram Schofield }

Now on this day comes said
Defendant by his Attorney and files his affidavit
and motion for further and better security for costs

And afterwards on the 5th day of December 1861,
as yet of said December term of said Court the fol-
lowing entry appears of record in said cause ~

¹⁶⁹
13 Henry Settle et al }
for use of Henry Settle }

vs

Debt

Hiram Schofield

On hearing of Defendants Motion for a rule on Plaintiffs to file further and better security for costs - It is ordered that they give further and better security for costs by Monday morning next -

And afterwards on the 9th day of December 1861, as yet of said December term of said Court the following entry appears of record in said cause -

129
13 Henry Settle, et. al }
for use of Henry Settle }
vs } Debt
Hiram Schofield }

Now on this day come said Plaintiffs by their attorney and file the bond of Jacob Oylev for costs -

182
13 Henry Settle, et. al }
vs } Debt
Hiram Schofield }

On motion of said Defendant by his attorney leave is given him to file his pleas used on the former trial as pleas to the amended declaration, and on motion of said Plaintiff by their attorney, leave is given them to file their Replications to said pleas and replications to pleas

40

The following entry appears of record in said cause-

185

13 Henry Settley, et. al }
 vs }
 William Schofield }

And now again come the said parties with their attorneys, and also come the jury empaneled in this cause, and after hearing further evidence and part of the arguments of counsel, the hour of adjournment having arrived, the further hearing is postponed until to morrow morning at the incoming of court-

And afterwards on the 12th day of December 1861, at yet of said December term of said court, the following entry appears of record in said cause -

186

13 Henry Settley, et. al }
 vs }
 William Schofield }

Now again come the said parties with their attorneys, and also come the jury empaneled in this cause, and after hearing further arguments of counsel, the jury retire to consider of their verdict, and the hour of adjournment having arrived by consent of parties, it is ordered that when they agree, they may seal their verdict, and bring the same

41 into court to morrow morning-

And afterwards on the 13th day of December 1861, as yet of said December term of said court, the following entry appears of record in said cause-

189
13 Henry Settle & Amos Homing }
for use of Henry Settle }
vs }
William Schofield } debt

It was again come the said parties with their attorneys, and also come the jury empaneled in this cause, with their sealed verdict, to wit: that they find the issues for the Plaintiff and that they owe the debt at Two Hundred Dollars and the damages at Twenty three Dollars and thirty three cents ($\$233\frac{3}{100}$) thereupon the said defendant enters his motion for a new trial and in arrest of judgment-

And afterwards on the 28th day of December 1861, as yet of said December term of said court, the following entry appears of record in said cause-

216
13 Henry Settle & Amos Homing }
for the use of Henry Settle }
vs }
William Schofield } debt

Now on this day come on to be heard the Defendant's motion for a new trial and in arrest of judgment, and after arguments of counsel the court being advised in the premises, the motion is overruled. It is thereupon considered & ordered that said Plaintiff have and recover of said defendant their debt in the sum of Five Hundred Dollars and their damages in the sum of Twenty three Dollars and thirty three cents, as by the jury aforesaid together with their costs by them about their suit in this behalf expended and that they have Execution for the same. On motion of said Plaintiff by their attorney it is ordered that all witnesses examined on part of Plffs on both trials are necessary. And now comes the said defendant by his attorney and prays an appeal, and it is ordered that the same be allowed on condition of filing his appeal bond within thirty days with the clerk of this court properly conditioned to said Plaintiff in the penal sum of Six hundred Dollars with Robert L. Schofield & William Stromer as sureties. and by consent of parties it is ordered that ten days be allowed to settle the bill of exceptions.

State of Illinois }
 Stephenson County }
 J. J. Wilson, Sheriff, clerk

of the Circuit Court within and for the County of
Stephenson in the State aforesaid, do certify that
the foregoing is a true and correct transcript of
the Summons, Original Declaration, Pleas and
Replications, and all the record entries made in
said cause wherein Henry Settley & Amos Hem-
mig are plaintiffs for the use of Henry Settley and
William Schofield is defendant, as the same
appears of the records and files in my office



In witness whereof I have hereunto
set my hand and affixed the seal
of said Court at Freeport in said
County this 22nd day of February
A. D. 1862

Attest: J. Wilson Shaffer, clerk
for S. W. Guiteau Dep.

State of Illinois, Supreme Court
3d division April Term 1862

Airam Schofield }
vs } Error to Stephen
Henry Settle & al } son.

And now comes the plaintiff
in error & says that on the record
& proceedings on this case there is man-
ifest error in this

1st The court erred in not de-
termining the demurrer to the fifth
& sixth pleas, to the 1st count to of
the declaration instead of to the
said pleas

2^d In not requiring the plaintiff
to file a more particular answer
containing times & dates

3^d In allowing a jury to be
withdrawn without rendering a
judgment against plaintiff for
previous costs.

Meacham & Co. atty
for defd in error

353 67

~~Henry Settle, et al~~

~~vs~~

~~Hiram Schofield~~

Record

Hiram Schofield

vs

Henry Settle et al

Filed May 15, 1862

Leland
clerk

\$8.00 Paid