

12116

No. _____

Supreme Court of Illinois

Lowe.

vs.

Forbes.

71641  7

500000

Please before the Honorable William
Holladay Judge of the 10th Judicial
Circuit of the State of Missouri, at a Cir-
cuit Court Session and held at the Court
House in the Town of London, in the
County of Stoddard, in said State on the
28th day of April being of the April
Term of said Court for the said County
of Stoddard, A.D. 1852

Be it remembered that pursuant to writ.
in the 3^d day of September A.D. 1849
William Low filed in the office of the
Clerk of the Circuit Court of the County of
Marshall a precept in the words and
figures following to wit:

"William Low" "Marshall Circuit Court"
vs. "October Term A.D. 1849"
"Peter Forks" "Upfront"
"Damages \$300"

Precept

"Issue summons in the above re-
turnable to next Term"

"John Brown Esq. Clerk" "Dated Term"
"Lucas Sept. 1, 1849" "Atty for Off."

And afterwards to wit on the
said 3^d day of September in the year
aforesaid the Clerk of the said Marshall
County Circuit Court issued a writ
of summons in the words and

200000

figures following to wit:

"State of Illinois"
"Marshall County" p: "The People of the"
"of the State of Illinois;" "To the Sheriff of said"
"County Greeting:"

Summons

We command you to
"summon Peter Forbes to be found in
"your County personally to be and appear
"before the Circuit Court of said County on the
"first day of the next Term thereof to be holden
"at the Court House in Salem on the fifth
"Monday in the month of October next to
"answer William W. Loo in a plea of assumpsit
"for Damages three hundred dollars as
"he sueth. And have you then there
"this writ and make return thereon in
"what manner you see unto the same



"Witness your Honour's clerk of
"our said Court at Salem
"this 3^d day of September 1849.
"John Brown, Clerk"

And afterwards to wit. on the 5th day
of September in the year last aforesaid
the said Sheriff made return of said writ
enclosed in the words and figures fol-
lowing to wit:

Return

"Served the within writ by reading the
"same to the within named Peter Forbes
"on the 5th day of September 1849"

"Henry L. Crane"

"Sheriff of M. Co."

And afterwards to wit in the day
of A.D. 1849 the said plaintiff
filed in the office of the clerk of the said
court his declaration in said cause in
the words and figures following to wit:

"State of Illinois Marshall
County Circuit Court October

"Term A.D. 1849"

"Marshall County vs: William W. Long

"Complainant Peter F. Long a plea of nonrep-

"sit for that cause has to wit: in the see-

"ond day of June in the year of our Lord one

"thousand eight hundred and forty nine at the

"County of Marshall presented the said plain-

"tiff at the special instance and request of

"the said defendant ^{supposed and he might do so} to buy of him the said

"defendant and the said defendant thousand

"three rods to the said plaintiff a large quantity

"of corn to wit: seven hundred bushels (more

"or less) at the rate and price of twenty seven cents

"per bushel to be delivered by the said defend-

"ant to the said plaintiff at the mouth of Sandy

"opposite of Quincy or at William F. Long's warehouse

"in each in said county if anything

"should happen that said Lawrence not

"get a boat to take it from opposite of Quincy by

"the first of August then and to be paid

"for by the said plaintiff to the said defendant

"in the delivery thereof as a freight and in

"consideration thereof and that the said

"plaintiff at the said special instance and

"request of the said defendant had then and

"there undertaken and faithfully promised

"the said defendant to accept and receive

(Narr.)

First-Count

"the said corn used to pay him for the same
"at the rate or price aforesaid, & the said
"defendant undertook and then and there
"fully promised the said plaintiff
"to deliver the said corn to him the said plaintiff
"as aforesaid, and the plaintiff avers that it
"did so happen that he could not get a boat
"to take said corn from the mouth of Sandy
"opposite Fortney, and although the time for the
"delivery of the corn as aforesaid hath long
"since elapsed, and the said plaintiff hath
"always been ready and willing to accept
"and receive the said corn and to pay for the
"same at the rate or price aforesaid to wit. at
"the county aforesaid at the house of
"William Fern in Lacon aforesaid, and
"hath paid to the said defendant at the time
"the said corn was sold to him the said plaintiff
"by the said defendant as part of the price
"thereof the sum of ten dollars, yet the said de-
"fendant not according to his said promise
"and undertaking did not nor would with-
"in the time aforesaid or at any time afterwards
"deliver said corn or any part thereof to the said
"plaintiff at the house of William Fern
"of Lacon aforesaid or elsewhere but wholly neg-
"lected and refused so to do, whereby the said
"plaintiff hath lost and been deprived of di-
"verse great gains and profits which might
"and otherwise would have arisen and
"accrued to him from the delivery of said
"corn to him the said plaintiff as aforesaid
"to wit. at the county aforesaid according
"to his said promise and undertaking

"and whereas also to wit afterwards to wit
second count "on the tenth day of June in the year of our
Lord one thousand eight hundred and
fifty nine to wit at the County of Wm.
shall aforesaid the said defendant made
his certain other contract or agreement in wi-
ting with the said plaintiff for the sale and
delivery of the said defendant to the said plain-
tiff of certain other corn in the words and
figures following to wit: "I Peter Forbs has
this day sold to Wm N. Low (700) seven hun-
dred bushels of corn (some or less) for (27)
twenty seven cents per bushel to be de-
livered at the mouth of Sandy opposite Thom-
by or at Wm. Frings Warehouse in Lacon if
anything should happen that said Low could
not get a boat to take it from opposite of Quincy
to be delivered by the first of August next in
one merchantable good order at the customa-
ry weights per bushel"
"Received in this contract (\$10.00) ten dollars
and the balance of the money to be paid
upon call of the corn is delivered"
"From 2. 1849" "Peter Forbs"

and in consideration thereof the said defendant
undertook and then and there faithfully prom-
ise the plaintiff to deliver the said last men-
tioned corn to him the said plaintiff as aforesaid
and the plaintiff swears that it did so happen
that he could not get a boat to take said corn from
the mouth of Sandy opposite Quincy.

and although the said time for the delivery
of the said last mentioned corn hath long
since elapsed the said plaintiff has always
been ready and willing to accept and

receive and pay for the same at the rate or price
stipulated in the agreement in writing aforesaid
to wit: at the County of Marshall aforesaid at the
Warehouse of William Fenn in Locom aforesaid
according to the terms and stipulations of the agree-
ment in writing aforesaid and hath paid thereon
the sum of two dollars to the defendant. yet the
said defendant notwithstanding his said promise
and undertaking entered in said agreement
in writing not entering to deliver and
defraud the plaintiff in this behalf obligated
would within the time in said agreement in
writing mentioned or at any time afterwards
deliver the said last mentioned corn or any
part thereof to the said plaintiff at the Warehouse
of said William Fenn in Locom aforesaid
or elsewhere but wholly neglected and refused
so to do. whereby the said plaintiff hath
lost and been deprived of divers great gains
and profits which might and otherwise
would have arisen and accrued to him
from the delivery of said corn to him the said
plaintiff as aforesaid according to the stipu-
lations in said writing entered

Third Count And whereas also afterwards to wit: on the
second day of June in the year of our Lord
one thousand eight hundred and forty nine
at the County of Marshall aforesaid the said
plaintiff at the special instance and request
of the said defendant bargained with the said
defendant to buy of him the said defendant, and
the said defendant then and there sold to the
said plaintiff a large quantity of corn to wit:

now named Bushells more or less at the rate
and price of twenty seven cents per bushel to be
delivered by the said defendant to the said plain-
tiff at the mouth of Sandy opposite Torrey or at
William Fenns warehouse in Salem in said
county if anything should happen that said
Sore could not get a Boat to take it from opposite
Torrey by the first of August then next and to
be paid for by the said plaintiff to the said defend-
ant in the delivery thereof as aforesaid and in
consideration thereof and that the said plain-
tiff at the time special judgment and request of
the said defendant had then said their verdict
taken and faithfully promised the said
defendant to accept and receive the said
corn and to pay him for the same at the
rate or price aforesaid. He the said defend-
ant undertook and then said and then faith-
fully promised the said plaintiff to de-
liver the said corn to him the said plaintiff
as aforesaid, and although the said time
for the delivery of the corn as aforesaid hath
long since elapsed and the said plaintiff
hath always been ready and willing to
accept and receive the said corn and to
pay for the same at the rate and price
aforesaid to wit: at the county aforesaid
at the residence of William Fenns in
Salem aforesaid or at the mouth of Sandy
aforesaid and hath paid to the defendant
at the time the said corn was sold to him
by the defendant, as part of the price thereof
the sum of ten dollars yet the said defendant
not regarding his said promise and

undertaking did not nor would within
the time aforesaid, or at any time afterwards
deliver said corn or any part thereof to the
said plaintiff at the Warehouse of William
Fenn in London aforesaid or at the mouth of
Sandy aforesaid or elsewhere but wholly
neglected and refused so to do whereby the said
plaintiff hath lost and been deprived of divers and
great gains and profits which might and otherwise
have been arisen and accrued, to him from
the delivery of said corn to him the said plaintiff as
aforesaid to wit. at the county aforesaid to wit. at the
~~county aforesaid~~ according to his said promise and
undertaking.

Fourth
Count } Whereas also afterwards to wit. on
the first day of August in the year of our lord eighten
hundred and fifty nine at the county of Marshall
aforesaid the said defendant was indebted to
the plaintiff in the sum of three hundred dollars
for so much money by the said defendant had
and received to and for the use of the said plain-
tiff. and in the sum of three hundred dollars for
so much money by the plaintiff before that time
paid said plaintiff expended to and for the use
of the said defendant at his special instance
and request.

Fifth
Count } And in the like sum of three hundred
dollars for money found to be due from the
defendant to the plaintiff on account then
and there stated between them. and whereas the
said defendant afterwards in the day and
year last aforesaid in consideration of the
promises then and there promised the said
last mentioned sum of money to the plaintiff

"on request, yet the said defendant hath disregarded
his promises and has not paid the same nor any
part thereof to the damage of the plaintiff Three
hundred dollars and therefore he brings suit.
"Jm J. Ferns"
"Wthly. for. Offy"

And afterwards to wit: on the twenty ninth day
of October ^{term of the October term} A.D. 1849 before the Circuit Court within
and for the County of Marshall appeared the Hon.
T. L. Dickey presiding and the court judiciously
sitting ~~concluded the parties by their attorneys an order~~
was made in the words and figures following
to wit:

"William N. Low

vs } "apropos"

"Peter Fox"

"This day comes the parties and the defend-
ant is ruled to plead by opening of court to-morrow
"morning"

And afterwards to wit: on the first
day of November A.D. 1849 at the October Term
last aforesaid of the Marshall County Circuit Court
aforesaid was made the following order in said
cause, were made by the said court sitting as
last of aforesaid, respectively in the words and
figures following to wit:

Thursday morning November 1st 1849 Present
as above, This day comes the parties by their attorneys
and defendant moves the court for a rule upon
the plaintiff to file herein a security for costs, which
is sustained and plaintiff is ruled to give said
security"

And the defendant files herein his disclaimer
to first and second counts of plaintiff's declara-
tion which disclaimer is in the words

and figures following to wit: And as to the first
and second counts and each of them in said
declaration deft. says that there is no necessity
nor is he required by law of this land to answer
or plead thereto wherefore for the insufficiency of
said counts and each of them he prays judgment
Lth

By his attys

Peters & Bannay

which demurrer is sustained, and leave
is given to plaintiff to amend said declaration
"at his costs to be taxed from time of filing orig-
inal declaration till time of filing amended
declaration"

And afterwards to wit on the day and year
last aforesaid the said defendant filed in
the office of the clerk of the court last aforesaid
his plea to the third count in the plaintiffs
declaration in the words and figures
following to wit:

William B. Low

vs
Peter Forks

"Marshall Circuit Ct. Oct. 7/49

And the said deft. as to the third
count in the said declaration says he never
promised in manuscript form as the deft.
alleged against him and of this
he puts himself in the country

"By Peters & Bannay

"Dft. doth the like

People and Fenn for Dft.

And afterwards to wit on the day and year
last aforesaid the circuit court last aforesaid
caused the parties by their attorneys and

the said plaintiff moved the court to change
the venue &c. whereupon the said court
made this order in the words and figures
following to wit:

"William N. Low"

"Peter Forks"

} affirmat

"The venue is changed to
Stark County"

And afterwards to wit: on the 20th day of May
A.D. 1850. before the Circuit Court within and
for the County of Stark, being of the May Term
of said court, the Hon. William N. Low &
presiding, an order was made in said case
in the words and figures following to wit:

"Wm. N. Low"

"Peter Forks"

} affirmat

"This day came the plaintiff
and his attorney and his attorney and
the said defendant by Peter and his attorney
his attorney and in motion of plaintiff
"Attorneys have is given to amend case"

And afterwards to wit: on the 21st day
of May aforesaid and in the year last aforesaid
before the Circuit Court aforesaid an
order was made in the words and figures
following to wit:

"Wm. N. Low"

"Peter Forks"

} affirmat

"This day again came
the parties by their attorneys and the said
plaintiff on his motion, they have to with-
draw original case. filed Oct. 19th. 1849

and now files his amended declaration
which is in the words and figures following
to wit:

William W. Low

"Affidavit"

2nd Amended
Verdict

"Peter Forb"

"Shank County Court"

Second Amended Declaration

"Sixth
"Verdict"

And for that whereas also in the second day
of June A.D. 1849 at the County of Marshall
I signed the said defendant and do his
certain contract or agreement in writing
by him subscribed in witnesses as follows to
wit: I, Peter Forb has this day sold to
Wm. W. Low (you) seven hundred bushels of
corn (more or less) at twenty five cents per
bushel to be delivered at the mouth of Sandy
opposite of Tenny or at William Fenn's
Millstone in Louisa if anything should
happen that said Low could not get a boat
to take or from opposite of Tenny to be delivered
by the first of August next in merchantable
good order at the customary weight per
bushel. Received in this contract Ten dol.
said used the balance of the money to be paid
when all the corn is delivered.

June 2nd. 1849

Peter Forb

And the said plaintiff avers that the said
Wm. W. Low in the said contract mentioned
is the plaintiff in this suit and the said
Peter Forb who signed the said contract
is the defendant in this suit.

In consideration of the premises the said
defendant then and there undertook and
promised the plaintiff to deliver to the said
plaintiff the said corn in the said contract.

" mentioned according to the terms and con-
 " ditions of the said contract. And the said plain-
 " tiff further avers that although he was at all times
 " ready and willing to pay for said corn ac-
 " cording to the terms and conditions of said contract yet
 " the said defendant did not and would deliver the same ac-
 " cording to the terms and conditions of said contract within
 " at the mouth of January opposite to the day or at Williamstown
 " Massachusetts or elsewhere, but has refused to do so and is now
 " and still refusing. By reason whereof the said plaintiff hath
 " lost and been deprived of the said sum of ten dollars which was
 " by him advanced and paid to said defendant on said contract
 " and has lost and been deprived of a large sum of money which
 " he might and could have made by the advance in price in
 " said contract if the same had been delivered in said contract
 " according to the terms and conditions of said contract and
 " the promise and agreement of the said defendant (to wit)
 " the sum of three hundred dollars to wit. at the society of Man-
 " shall aforesaid"

" Term and People"

" For Plaintiff"

And afterwards to wit on the same day and year last
 aforesaid the said defendant filed his Answer to
 the first second third and sixth counts of
 the plaintiff's declaration in the office of the clerk
 of the said last mentioned court in the words and
 figures following to wit:

Ann. W. Low Clerk to the Court. May 7. A.D. 1850

Peter Foster } And the said defendant comes and
 avers as to the first second third and sixth counts of the plaintiff's
 declaration and each of them says there is no necessity
 nor is he required by the law of the land to plead or to an-
 swer the said several counts or either of them wherefore for
 the insufficiency of said counts and each of them the deft.

Defendant
 1. 2. 3. 6 counts

"wasp judgment &c

By Peter & Bannsey his atty.
And afterwards to wit. on the same day and year
last aforesaid from the said last mentioned court judi-
cially sitting, the cause coming on to be heard upon
the declaration and ^{the said} demurrer an order was made
in the said cause in the words and figures fol-
lowing to wit:

"Wm. W. Low

is } "aforesaid"
"Peter Fors } "Which demurrer is sustained as
demurrer" to the 1st 2^d & 3^d counts and overruled as to 4th
sustained } count, plaintiff abides by demurrer as to 1st
2^d & 3^d counts and by leave of court plaintiff
amends 3 counts."

6th ct. } And afterwards to wit. on the day and year last
aforesaid, the defendant filed with the clerk of
said last mentioned court his plea to the 4th
and 5th counts of the plaintiffs declaration
in the words and figures following to wit:

"Wm. W. Low

is }
"P. Fors } "And the said defendant comes
and defends the wrong imputing when &c &
un. infm } "say that he did not promise in manner and
form as the plaintiff in the fourth and fifth
counts of his declaration hath alleged & of this
he puts himself upon the country"

"By Peter & Bannsey"

"his attys."

And afterwards to wit. on the 22^d day of May
last aforesaid the defendant filed in the office of
the clerk of the said court his pleas to
the 3^d and 6th counts of the plaintiffs declaration
in the words and figures following to wit:

* "Low

Gen. Issue

as
Forks

"country"

"Pl. with the like"

"From & Sample. in self."

"And the defendant comes and defends
when he says that he never promised in manner
& form as the plaintiff in his declaration alleged
against him & of this he puts himself in the
By Peter & Remey. his attys."

* and is bad for amplity.

2nd. That it is not shown by said Plea that the subsequent contracts therein set up were made upon any good consideration sufficient or other consideration, and said alleged contracts are therefore void.

3rd That said plea is otherwise informal and insufficient

Special
causes of
demurrer

To the said ^{4th} Plea
1st That it is not shown by said plea in what manner the said alleged release from said contract in plaintiffs declaration mentioned was made. Whether in writing verbally, or by seal under seal

2nd It is not shown that there was any consideration in return for the said alleged release and the same is therefore void.

3rd That said plea is otherwise informal and insufficient

To the said defts. 4th Plea

1st That it is not alleged in said plea that said defendants offered to perform said contract

2nd. That said plea is manifestly because it only avers a reading & writing up to deliver up the corn at the month of January &c

3rd That the said Plea is otherwise informal and insufficient

Form & Pleading

And afterwards to wit. on the 23^d day of May last a precept before the learned lord chief justice the said cause came on to be heard upon the demurrers ^{as they were} returned to the 2^d 3^d & 4th pleas of the defts. an order was made by the said lord chief justice in the words and figures following to wit:

2000

And for further plea in this behalf the said
is } defendant says Actio non de causis he says
Phas to third Peter Forts (that the causes of action in the 30 & 6th counts
& 6th. Count of Plaintiff's declaration mentioned are one and the same
"and not other ones different and the said defendant further
"says that after making and executing the contract or
"agreement in said counts mentioned the said Lord
"in consideration of the undertaking of deft. to deliver said
"corn agreed with the said defendant that he the said de-
"fendant need not send corn but be required to de-
"liver the said corn in said supposed agreement men-
"tioned and it be the said plaintiff should furnish to
"the said defendant such for aching said corn and that
"he would furnish to the said defendant such for that
"purpose and give to defendant notice when and where
"to deliver said corn and that said notice should be
"given to said defendant in season to enable him the
"said deft. to deliver said corn on or before the first day
"of August then next ensuing the date of said contract
"and the deft. avers that he was ever ready and willing
"to deliver said corn to said plff. whenever by the said
"plaintiff should or would have furnished such a-
"ccording to the agreement last aforesaid and upon
"reasonable notice from the said plaintiff to the deft.
"in season to enable him said defendant to deliver
"said corn on or before the first day of August next en-
"suing the date of the first mentioned contract,
"and the defendant further avers that the said
"plaintiff after the making of the said last men-
"tioned agreement did not furnish to deft. any
"such for the purpose of aching said corn nor did
"he give the said deft. any such or give him any no-
"tice on or before the first day of August when and
"where to deliver said corn or any part thereof. And
"the said deft. is ready to receive the same from the

"defendant's prayer judgment &c

"3." And for further plea as to said 3^d and both counts
"said def. says actor non because he says that the
"causes of action in the said third and both counts of
"the said plaintiffs declaration are one and the same
"and not other and different and def. further says, that
"after the making of the said supposed contract or
"agreement in said counts mentioned the said
"W. verbally agreed with the said def. in con-
"sideration of his agreement to deliver said corn
"that the said def. had not and should not and
"would not be required by the said def. to perform
"the said contract or agreement according to the terms
"and conditions thereof but released and discharged
"him the said def. from the performance thereof and
"that the said def. is ready to verify wherefore he
"prays judgment &c.

"4." And for further plea as to the 3 & 6th counts
"of said declaration said def. says actor non be-
"cause he says. That the said supposed causes of
"action are one and the same and not other and
"different and defendant further says that
"he was ready and willing to perform and ful-
"fill the contract and agreement in said counts
"mentioned according to the terms thereof to wit: at
"the month of Sandy opposite Bury by the 1st
"of August 1849 but the said plaintiff was not
"ready and willing to receive the same and would be
"receive the same and the said plaintiff was absent
"from said county of Merseburg so that def. could
"not offer to deliver said corn according to said
"contract and this he is ready to verify wherefore
"def. prays judgment &c.

"By Peter J. Bormann his atty.

"Application filed to this place
"Filed by leave of court"

Plea to 3 & 6th
counts

"William N. Low"

is

"Sponsor"

"Peter Fors"

"This day again came

summons
sustained

the parties by their attorneys and the said plaintiff
sustained his demurrer 2d, 3d & 4th. Pleas which
was sustained by the court and leave given to defendant
to amend pleas by the first day of Sept. next and
"continued"

And afterwards to wit: on the 13th day of Novem-
ber A.D. 1855 of term of the November Term, before
the Stark County Circuit Court judicially sitting
an order was made in the records and figures
following to wit:

"William N. Low"

is

"Sponsor"

"Peter Fors"

"This day came the parties by

summons
to amend
pleas same
as above.

their attorneys and the plaintiff votes his de-
murrer to second third and fourth amended
pleas to third and sixth counts [The said demurrer
being the same as that entered at the May Term 1850 of the Stark County
Court, re-filed at this term, as given above] and the court after hearing
the arguments and being fully advised overrules the
demurrer as to the second and sustains the
demurrer as to third and fourth pleas and the de-
fendant abides by the decision of the court as to the
third and fourth pleas"

And afterwards to wit: on the day next upon
an affidavit the plaintiff filed with the clerk of the said
last mentioned court his replication to the de-
fendant's plea in the records and figures following to
wit:

"William N. Low"

is

"In the Circuit Court of Stark
County"

"Peter Fors"

And the said plaintiff made

Ref. to
2d. Plea

"return to the said defendants, given by him recently
"above pleaded says preterit more because he
"says that he did not make the contract in the
"said plea mentioned in answer and from as
"stated in said plea and of this he puts himself upon
"the country &c"

"Fenn & Pample"

for Plaintiff

And the Def. answers

By Peter & Brunay

And afterwards to wit on the 14th day of
November last appeared in the Court County
Barren Court appeared sitting as a justice
the following order was made by Mend. in
the words and figures following to wit:

"William H. Low"

"Peter Forks"

"Assessment"

"This day came the parties

Continued by their attorneys and in motion of plain-
"tiff for York cause shown in cap. de wit
"it is ordered by the court that this cause
"be continued until the next term of this
"court at the plaintiffs cost of this term"

And afterwards to wit on the 20th day of
April A.D. 1851 being of the April Term of
the Court County Barren Court before the said
court. The Hon. William F. Hodge presiding,
the following proceedings were had in said
cause as appears of Mend. which are in the
words and figures following. To wit:
William H. Low

"Peter Forks"

"Assessment"

"This day came the plain-
tiff and Pample & Fenn his attorneys and

1st Trial:

"the said defendant and Q. Peter's was attorney
 "and the issues being now joined, It is ordered
 "by the Court that a jury come to try this cause
 "whereupon came twelve good and lawful men
 "viz: John Calther, Royal Arnold, Solomon
 "Williamson, George Springer, John Warrum
 "Luther Ward, John Cinger, Saml. Smith, Daniel
 "Winter, Henry Whell, William Mason and
 "others the names who being duly sworn tried
 "and sworn well and truly to try the issues joined
 "and to give verdict and decree according to evidence
 "after hearing the evidence of the parties and
 "the arguments of counsel, as they thought proper
 "of their verdict, and by agreement of parties
 "It is ordered by the Court that when they shall
 "have agreed upon a verdict that they seal the
 "same with their seal to the clerk of this Court

And afterwards to wit on the 30th
 day of April last aforesaid, before the said
 Court further proceedings were had in
 said cause, which are in the words and
 figures following to wit:

William W. Linn;

"Peter Fork
 "and now again comes
 "the jury in this cause sworn and
 "yesterday and upon their oath say, that
 "the jury find for the defendant, and upon the
 "said plaintiff enters his motion for a new trial
 "and the Court having heard the arguments of
 "counsel and being fully advised in the
 "premises orders that a new trial be granted
 "upon the payment of costs by the said plain-
 "tiff.

2nd Trial granted

And afterwards to wit: on the 23d day of September 1857 being of the September Term of the Court before the Court. The Hon. William Wallace presiding an order was made in this cause in the words and figures following to wit:

"Wm. Wallace"

" } 'A firmist'"

"Peter Fries"

Order to re-institute on condition

"This day came the plaintiff by F. Manning his attorney and enters motion to place this suit upon the docket on condition a new trial having been granted at last term which said motion is allowed by the court on condition that the said plaintiff pay the costs hereof made in this cause, by the first day of December next."

April Term

And afterwards to wit: on the 28th day of April 1858 being of the April Term of the Court before the Court. The Hon. William Wallace presiding presiding and had in this cause in the words and figures following to wit:

"Wm. Wallace" is Peter Fries } 'A firmist'"

Leave to reply to 30. Plea

This day came the plaintiff & his attorney the defendant & Peter Fries & Manning his attorney & the plaintiff moved the court for leave to reply to third amended plea, which is granted by the court and the said plaintiff moves the court for leave to file his replication to the third amended plea, which is in the words and figures following to wit:

"Wm. Wallace"

Reply to 3 amended Plea

"And for replication to the said defendants amended plea third as above pleaded the said plaintiff says preclude non because the ship be at last agree with no release and discharge the said defendant as in said third plea alleged: and this the said plaintiff prays may be granted"

of by the country &c"

"Finn & Phipps"

'and defendant doth

the like: "Peters & Flemming" }
his attys")

for Plaintiff"

Trial of
cause

motion for
new trial
granted

and the jury being joined it is
ordered by the court that a jury come to
try this cause, whereupon came a jury
of twelve good and lawful men viz. Dexter
Hall, H. K. Birds, James H. Weston, William
Hewell, David McBance, Edward W. Nelson,
James H. Bennett, Wm. S. Blanchard,
Eschiroth & Co. Samuel Leigh, B. L.
William & Thomas Sagon who were duly
called and sworn well and truly
to try the issues joined and a true ver-
dict give according to evidence, who after
hearing the testimony of the respective parties
and the arguments of counsel, retired to
consider of their verdict and soon again
came and upon their oaths say me of the jury
find for the defendant, whereupon the plain-
tiff enters his motion for a new trial, and
the court after hearing the arguments of
counsel and being lawfully advised
in the premises overruled said motion.
It is therefore considered by the court
that the said defendant have made request
of the said plaintiff his costs and
charges of him about his defence in this
behalf expended, and that execution
issue there for

William W. Low

Bill of
Exceptions

as
Peter Forbes } Be it remembered that upon
the trial of this cause the plaintiff to main-
tain the issue in his favor and in evidence there-
of moved in in this case dated June 2. 1849

"I Peter Forbes this day sold to Wm. W. Low
"700) Seven hundred Bushels of corn (more or less)
"for (27) Twenty seven cents per Bushel, to be delivered
in the month of January opposite of Quincy or on Wm.
"Fenn's Ware House in Lacon if anything should
"happen that said Low could not get a boat to take it
"from opposite of Quincy to be delivered by the first boat
"after next in accordance to the good order of the cus-
"toms, weight per Bushel." Received in this com-
"modity \$0.00) Ten dollars and the balance of the money
"to be paid when all of the corn is delivered."
"Made 2d 1849" "Peter Forbes"

"Sub. William Fenn's Statement dated Lacon May
20. 1850

Fenn's
Statement

"Lacon May 20. 1850
"In May or June 1849 W. W. Low and I made an arrange-
ment with me to store corn for him in my own
"House in Lacon Wm. Fenn
"There was then no corn in the vicinity
"Ma. Fenn"

3d. Stipulation of Silas Ramsey dated February
24th 1852.

William W. Low

as
Samuel Freeman
Edigar Freeman

In Stark Circuit Court
for a deposit

did not in corn contract

Same as Peter Forbes & same court

{ Same Form of Action
on term contract

Same as. Wm. J. Gatty { For same term
Same Form of Action
Prot also on term contract

Ramsey all transferred from Marshall in charge of
Stipulation

It is admitted by the parties to the above
suits, that the principal market for even for
deals on the Illinois River in the summer
of 1849 was at Chicago

Given Feb. 24th. 1852 S. Ramsey for depts

4th. The Depositions of John P. Chapin and Eustace
Rocuron

Depositions of John P. Chapin and Eustace Rocuron
of the City of Chicago, County of Cook and State
of Illinois, Witnesses of lawful age produced sworn
Chapin and examined on their oaths in the Court of the
County of Cook, Ill. A.D. 1851 before me, a Justice of
the Peace in and for the County of Cook and City of
Chicago at the Office of said Justice No. 67 Clark St. in the
City of Chicago said depositions taken as aforesaid do be
made by agreement in the Court of said Court in a
suit wherein William M. Brown is Plaintiff and Sam-
uel Foreman and Elijah Foreman Defendants
The said Witnesses being first duly sworn by me
as witness in said Court previous to their examina-
tion, to testify and the truth to speak so far as they
should be interrogated testified and depose as
follows.

Deposition of John P. Chapin
Interrogatory. For what business was you engaged
in in the first day of August A.D. 1849.

Answer. In Produce and Lumbering Business.

Interrogatory 2nd. What was the price of corn in Chicago on or about the first day of August 1849?
Answer. On the second day of August 1849 I sold a quantity of corn at Fifty five cents per Bushel of Fifty six pounds to the Bushel and during that month corn was sold for forty seven cents per Bushel.

Interrogatory 3rd. What was the cost of Transportation or what was the freight on corn from Salem to Chicago on or about that time?

Answer. It was seven cents per Bushel, that was the current.

Subscribed & sworn to before me this 22nd day of April 1857. S. J. Love

John P. Chapin

Just Peace
Deposition of Eustace Beaman
Interrogatory 1st. What business was you engaged in on the first of August 1849?

Answer. In the produce business.

Interrogatory 2nd. What was the price of corn in Chicago on or about the first of August 1849?

Answer. Forty three cents per Bushel. Fifty six pounds to the Bushel and in the twenty fourth day of the same month it was sold at forty eight cents per Bushel.

Interrogatory 3rd. What was the cost of Transportation or what was the freight on corn from Salem to Chicago on or about that time?

The price was seven cents per Bushel.
Subscribed & sworn to before me this 22nd day of April 1857. } Eustace Beaman
S. J. Love Just. Peace }

"State of Illinois
"County of Cook } p. J. Samuel J. Lane, a Justice of the
"Peace in and for said County in the State of said County
"certify that the above and foregoing Depositions of John P.
"Latham and Augustus Beckwith were taken by and before
"me in my Office No. 67. Clark Street in the City of Chicago
"between the hours of six o'clock A. M. and four o'clock P. M.
"on the 23rd day of April 1851 as per agreement of parties
"The said witnesses were by me duly sworn as required
"by law, and subscribed their depositions after hearing
"the same read over to them by me."

"Given under my hand and seal this 22nd
"day of April A.D. 1851"

"S. J. Lane" [SS]
"Jmt. Peace"

"State of Illinois
"County of Cook } p. J. Edmund S. Thompson, Clerk
"of the County Court in and for said County, do hereby
"certify that J. J. Lane, who is indebted to the
"undersigned certificate was at the time of making
"the same, an acting Justice of the Peace in and for
"said County, duly commissioned, sworn and author-
"ized to take the same and full faith and credit is
"due to all his official acts."

"In testimony whereof, I have here-
"unto set my hand and affixed the
"official seal of said County Court this
"23rd day of April A.D. 1851"

"E. S. Thompson"

"Clerk of the County Court"

~~which were read by consent of parties. The
plaintiffs then asked~~

~~The defendant then called Luke Brown a
witness who testified that he was present when~~

"William H. Linn"

"Abolitionist Linn"

"¹⁸ Daniel Freeman &

"E. Freeman"

"A. Freeman"

"It is agreed that the depositions of John
P. Chapman and E. Freeman of Chicago may be
taken before Samuel S. Linn a Justice of the Peace
or other competent authority at the office of said
Justice Linn in the City of Chicago in the State
of Illinois on the 22nd day of April 1851 between
the hours of six o'clock A. M. and ten o'clock
A. M. of each day the taking to be continued from
day to day between the same hours of the day till
it is completed to be read in evidence in the trial of
the case in the Court of the plaintiff
Done March 25th. 1851"

"Jas. Ramsey, Atty. for deft.
Jas L. Freeman & Samuel
J. Freeman"

which were read by consent of parties. The plaintiff
then rested

Testimony
of Luke
Benson

The defendant then called Luke Benson a witness
who testified that he was present when the contract was
in evidence by the plaintiff was signed. That after
Foster signed the contract with Mr. Linn had not
into his bag of corn and said he would have the corn
taken in two weeks and would then let him, Foster, know
whether to deliver the corn at the premises of Linn or
at Foster's place. That Foster said that could
give him time to get his corn out before harvest.

Testimony
of Benson

The defendant then called George Benson who
testified that on the 4th day of April A.D. 1849 he
had a conversation between plaintiff and de-
fendant, that plaintiff said "I will not put
corn" & defendant replied "I will not put corn"

cannot leave him ducks. He, defendant, cannot let
him have this even any time before the 1st of August
next. Plaintiff said he did not want the corn then
that he did not want to pay a cargo, that he was
then going to Ottawa or other place with persons
in two or three weeks with ducks for them all and
would have the corn delivered at the mouth of Sandy
and that if he had not let that that he would
stack up the corn in the tank and run it with
an oil cloth and get a man to watch it. defend-
ant said that would do. That he had bought a
waggon and calculated to pay for it when he
got the money for the corn. That Low had
bought with him in the waggon at that time
of this emservation.

This was all the evidence in the case. The
plaintiff's counsel then requested the court to
instruct the jury as follows:

Low

is } Plaintiff requests the court to instruct
Fryer } the jury.

1st. That although they may know from the evidence
that after Fryer signed the contract Mr. Low the
plaintiff said he would have the ducks there in two or
three weeks and then let him defendant know whether
to deliver the corn at Sandy or at Frank's place from
that this time would not dispute with the defendants
complying with the contract and delivering the
corn according to the terms of his written contract.

2nd. That the statement of Low that he would
have ducks is testified to by Henry Brown does not
exonerate the defendant from performing his em-
tract and in evidence in this case.

3rd. That if the jury know from the evidence that
the defendant rescinded the contract and refused

Plffs-
Instance

to deliver the even under the contract the Plaintiff
under the contract is entitled to recover the ten dollars advanced by him for
the even

4th. That the Pleas pleaded in this case by the de-
fendant are not joined in proving that after Forks
signed the contract Mr. Lott got into his buggy
and said he would leave the even at the store in two weeks
and would then let him know whether to deliver the even
at Sandy or at Fenn's New House, and that Fries
replied "that would give him time to get his even out
before he goes" and that said Plaintiff on the 4th
day of July 1849 asked the defendant "if you want
this even?" that Fries said "if he would leave
him such he would let him leave the even then.
that he did not want to pay storage: that he was
going to Ghana or Penn. and would be some two
or three weeks with such for them all and would
leave the even delivered at the store of Sandy and
if he had not a boat that he would stack up the even
in the bank with cover it with an oil cloth and get
someone to watch it. That Fries replied that
"that would do. that he had bought a drag gun and
intended to pay for it with the money he got for the
even, and that said Fries or Mr. Lott there is not
materially joined the Plaintiff is entitled to
recover

5th. That by the contract procured by the Plaintiff
the defendant was bound to deliver the even at the store
of Sandy or at Fenn's New House by the 1st of
August 1849, and a delivery at either place would
have been a compliance with their contract

6th That this written contract for the sale of said even
cannot be changed by any oral conversation

between the parties or other persons, but may be a subsequent contract upon a valuable consideration, or for the mutual benefit of both parties

7th That the plaintiff was not bound to pay or offer to pay anything further for the corn until the same corn was delivered

8th That any gratuitous offer on the part of the plaintiff if any such was made to furnish sacks for the corn is not in any manner binding upon the plaintiff nor does it amount to a legal contract to do so

9th That a proposition made by one party, unless the same is at the time accepted by the other: and unless so accepted would not be binding upon the party making the proposition

10th That unless the Jury believe from the evidence that there was a good & valuable consideration for any new contract to furnish more the said emtrah if any was made, was not binding upon the plaintiff and the plaintiff is entitled to recover

11th That unless the contract set out in the plea on motion as stated in said plea is proved the plaintiff is entitled to recover on the issue made on said plea, and that the measure of damages is the difference between the price the plaintiff contracted to pay for the corn and its market value at the time it was to be delivered and the court find by law on such contract. Parceled by find by law.

12. That the contract set out in the plea is not proved by proving that Lewis agreed to deliver sacks

to such the corn. But the defendant must further show to the satisfaction of the jury that a part of the contract was that Lord the plaintiff would give the defendant notice when and where to deliver the corn, and that such notice should be given to said defendant in season to enable them to or before the Sunday of August then next ensuing the date of said contract."

The court gave all the instructions except the instructions numbered Two (2) and Four (4) were numbered Two (2) and Four (4) were repeated and the plaintiff counsel then and there excepted to the opinion of the court in referring said instructions.

The counsel for the defendant then requested the court to give the jury the following instructions. "The defendant requests the court to instruct the jury as follows to wit:

1. If the jury believe from the evidence that there was an agreement made between Lord and Forbes after the signing of the written agreement that Forbes should not be required to deliver the corn until the plaintiff Lord should furnish the said Forbes with grain for the corn, or the agreement was binding on Lord and it would exempt the defendant Forbes from opening and delivering the corn until Lord should furnish the trucks

2. If the jury believe from the evidence that after the signing of the written contract the said Lord and Forbes made another agreement such as is set up in the second plea of the defendant and that the plaintiff Lord has not fulfilled that agreement in his part, but has neglected so to do, and that the defendant has not violated

and can mention all agreement on his part
the jury will find a verdict for the defendant

2. An injury to one party and a benefit to the other
party is a sufficient consideration for a contract
or for an agreement to vary the written contract

4. If the jury believe from the evidence that an agree-
ment was made between Leno and Ficks after the
making of the written agreement that Ficks
need not deliver the corn mentioned in said
contract till he had furnished him with for
raising the corn and that Leno agreed to furnish
said seeds by a fixed time and the defendant acts
upon such subsequent contract and further that
Leno has failed to fulfil such subsequent agreement
on his part without any violation thereof on the
part of the defendant the jury will find for the
defendant. That if such agreement was
made at the request and for the benefit of Leno or
to enable him to save expense of storing the corn
or for any benefit to result to him that was a sufficient
consideration for the agreement to make it binding
on both of the parties

5. In order to make the verbal contract binding
on the parties it is not necessary that there be an
express or direct terms, but when a proposition for an agree-
ment is made the agent through which it is implied from
the whole conversation between the parties and their acts
and conduct at the time, that there must be an agent
to such subsequent contract

It is not necessary that the defendants should
propose such a contract as set up in their second plea
to entitle them to a verdict. But if the jury should

"believe from the evidence that the verbal contract
"was that the defendants were not to deliver the com-
"mit such were furnished, they may under the plead-
"ings in this case find a general verdict for the de-
"fendant, nor is it necessary that the defendants
"should have joined the contract as set up in the
"verbal plea provided they believe the same were not furn-
"ished by the said plaintiff and provided further they
"believe that such verbal contract was agreed to by
"both parties as a binding agreement.

"That if the plaintiff failed to fulfil the contract
"on his part, and by such failure in his part, preven-
"ted the defendant from performing the contract as
"finally agreed upon between them, the plaintiff
"will not be entitled to recover the ten dollars paid
"by him to Torres."

which were given by the court, and the plaintiff
consented thereto and there accepted to the findings
of the court in giving said instructions.

The jury found a verdict for the defendant
and the plaintiff entered a motion for a new
trial for the following reasons

1st. Because the verdict is against law and
evidence

2. Because the court gave the instructions asked
by the defendant.

3. Because the court refused instructions
submitted No (2) & Form (4) asked by the plaintiff
the court would not motion for a new trial
and the plaintiff then and there accepted and
requested the court to sign this bill of exceptions
which is done

Wm. Hollogg [20]

State of Illinois, Circuit Court
County of Lincoln

I, Oliver Whitaker, Clerk of the
Circuit Court, in and for the County and
State aforesaid, do hereby certify that the
above and foregoing is a full, correct and
perfect transcript of the records and pro-
ceedings in and ~~and~~ ⁱⁿ the case of Nathaniel
W. Lord vs. Peter Forbes, as appears of record
in my office.

Witness my hand and official
seal of office at Lincoln in
said County, this 8th day
of July A.D. 1852
Oliver Whitaker, Clerk,
— " —

Books fees 105 fol. \$10.50

but - 25

storage 25

\$11.00

William W. Lord } Supreme Court
 Peter Forbes } Term Year A.D. 1852

And now comes the said Plaintiff in Error and says that in the Records and proceedings aforesaid and in the rendition of the Judgment aforesaid there is manifest Error in this (to wit); That said ^{Circuit} Court Erred

1st. In Refusing instructions (2) and (4) asked by said Plaintiff in Error -

2. In giving the several instructions asked by the Defendant in Error

3 In Overruling the Motion for a new trial

4th In Rendering Judgment for the Plaintiff. For these & other manifest Errors the said Plaintiff in Error prays that said Judgment may be set aside & voided wholly for nothing

Estimated
 July 20th 1852

J. H. Phipps
 Phipps atty

Mr Lord
Peter^{my} Forbes

Filed July 20. 1852.
L. Kelam Clk.

State of Illinois
County - of Stark } ss.

William Low } Error from Stark Co. Charge
vs. } of value from Marshall -
Peter Forbes - } Assumpsit - damages \$300.

Narr. Abstract.

2 June 1849 at Marshall Co. Plff. at-
request of deft. bargained with deft. to
buy of deft. & deft. then & there sold to Plff.
700 bush. corn (more or less) 27^c per bush.
to be delivered at Mouth Sandy opposite
to Henry or at Mrs. Ferris warehouse at
Lacore in said Co. if anything happened so
I could not get boat to take it from
Opp. Henry by 1st Aug. then next to be
paid for by Plff. to D. on delivery as
afore said & in consideration thereof & in
consideration Plff. had undertaken &
promised to accept & receive & pay
for corn as afore said Plff. avers
did not happen - (D) he could not get
boat to take corn from Opp. Henry &
although time has elapsed & Plff. has
always been ready to receive corn &
pay as afore said at the County - afore said
at warehouse in Lacore & P. paid D. at
time of purchase of corn \$10. as part-
pay. Deft. did not moved with the time
or at any time deliver corn or any part at
Lacore or elsewhere, whereby P. deprived of
great gain, which otherwise he re-

2. Afterwards 2 June 1849 setting out contract - in writing showing sale of 700 bush. corn at 27¢ same as first Count - except - corn to be in merchantable good order at the customary weight - per bushel \$10 acknowledged & bal. to be paid on delivery of the whole of the corn I did so hoping (mistake likely)

3. Same as first - except - corn to be delivered at - mouth Sandy or at - warehouse if no boat - & P always ready to receive at either place -

4. 1 Aug. 1849 Deft. indebted to Plff. at same place for \$300 had & recd. & \$300 paid, laid out - & expended -

5. Like sum for so much money found to be due on acct. stated, in consideration Deft. promised &c -

Demurrer to 1st & 2^d Counts -

Sustained & leave to amend declaration at - P's costs.

Plea of general issue to 3^d Count.
Similar by Plff.

6 Count - Amended declaration sets out the written agreement - with readiness of P to perform & breaches by Deft.

Demurrer to 1st - 2nd 3^d & 6th Counts -
Demurrer sustained as to 1. 2. & 3^d Counts

& sustained as to 6 Count - overruled -

P. Stands or abides by demurrer as to 1st & 2^d C.
& has leave to amend 3.

Deft. pleads to 4 & 5 Gen. issue -
to 3 & 6 acts non because same cause
of action in both counts & after making
contract - agreement - made not to deliver
corn until P furnished sacks for packing said
corn & that P would furnish sacks & give
notice when & where to deliver corn &
notice should be given in time for delivery
of corn before 1 Aug. Then next - & Deft. avers
he was ready & willing &c - whenever P
furnished sacks. P did not furnish sacks
or give notice or any notice before 1 Aug. when
& where to deliver corn & is ready to verify

3. Plea to 3 & sixth counts same cause
of action & that after making said agree-
ment - in consideration of agreements of
D. P released D from performance of
contract - & is ready to verify &c -

4. Plea to 3 & 6. same & same cause of
action & that D. was ready & willing to
perform said agreement - on his part - but
P was not ready & willing to receive the
same nor would he & P was absent from
the Co. So Deft. could not offer to fulfill
according to contract - ready to verify &c.

General issue to whole declaration.

General & special demurrer by plff.
to the 2-3-4- pleas of Def: & shows
same causes of special causes of demurrer
as are stated 1st, down in the case of
Wm W Low v. William J Kelly, to wit:
That the same attempts & separate &
distinct- defenses to P. claim, to wit,
a condition precedent- to furnish sacks
by P. & want of notice of place of
delivery & 2d- is not- shown that
Subsequent contract- was made upon
any good sufficient- or any consideration
3 otherwise informal & insufficient.

To the 3 plea-

1st- It- does not- appear in what- manner
said release was made whether verbally
in writing or under seal-

2 does not- appear there was any
consideration for release & otherwise
insufficient- & informal-

To the 4. Plea-

1st- It- does not- appear that D offered
to perform-

2 Because it- only avers a readiness &
willingness to perform deliver at the
mouth of Sandy &c-

3 Otherwise informal & insufficient
Demurrer sustained as to 2, 3, & 4
pleas with leave to amend-

Cause continued - parties come & P.
files his demurrer to Defts 2, 3 & 4
amended pleas to 3 & 6 Counts being
same as that entered May Term cts
1853.

Court overrules demurrer as to 2 &
sustains it as to 3 & 4 pleas & depts;
abides demurrer as to the 3 & 4 pleas.

P. Replication to Defts' second plea -
precludi non because he did not
make the contract in said plea men-
tioned in manner & form &c -
& the Defts likewise.

Jury find for the depts. - & Plff.
Verdict for a new trial -
New trial granted on payment
of costs by the plff.

By leave of Court - P. replies to 3 amended
pleas precludi non because he did
not agree with or release or discharge
Defts. as in said plea mentioned & prays
may be enquired of by the country
& Defts doth the like -
Verdict - for Defts.

Evidence -

Agreement mentioned in the pleadings
introduced -

Statement in May or June P. made an
arrangement with Hume at Lacon to

store corn for him he was buying in
the vicinity -

Deposition of Silas Ramsey Feb. 24. 1852.

Wm. How — } Stark Cir. Ct. - Court
v } In assumpsit.
Samuel Freeman & } Suit was on corn contract.
Elijah Freeman }

Same v Peter Forbes } Same Court - same
} form of action on corn
Contract -

All transpired from Marshall to
Stark - It is admitted principal market
for corn for dealers on Ill. river in summer
of 1849 was Chicago - S Ramsey for depts.
Lacon Feb. 24, 1852.

Deposition of John Chapin v Erastus
Ransom, ~~John Chapin~~

John Chapin - My business 1 Aug. 1849
was produce & commission business -
Corn I sold at that time in Chicago
for 44¢ & during the month it was
sold for 47¢.

Freight at that time from Lacon to
Chicago was 7¢ per bushel -

Dep. Erastus Ransom - I was
engaged in produce business 1 Aug. 1849.
At that time corn worth 43¢ 56 lbs.
per bushel on the 24 of the month

Sold for 48[¢] Freight - from Lacon to
Chicago was 7[¢] per bushel -

These depositions ready agreement -

Plff. rested -

Def. introduced -

Luke Benson as witness - He
was present when the written contract
read in evidence was signed by Forbes
after signing contract - Low said he
would have the sacks there in 2 weeks
& would then let Forbes know whether
to deliver the corn at the mouth of
Sandy or at - Jan's warehouse & def. said
that would give him time to get his corn
out - before harvest -

Henry Benson - Heard a conversation
between the parties 4 July 1849 - Plff. said
how about the corn - def. said if P would
have him sacks I would let him have
the corn any time before the 1st - Aug.
next - P. said he did not want the corn
then that he did not want to pay storage
that he was then going to Ottawa on
Perrin & would come around in 2 or 3
weeks with sacks for them all & would
have the corn delivered at the mouth
of Sandy & if he had not a boat there
he would stock up the corn on the
bank & cover it with oil cloth & get
a man to watch it - I said that would
do - he had bought a wagon & calculated
to pay for it when he got the money for the
corn - That Low had sacks with him

4211-23

in the wagon at the time of this conversation - This is all of the evidence.

Plff. then asked the Court to instruct the Jury -

1st That the statement of Low that he would leave sacks &c. as testified to by Henry Benson does not ^{ex}clude the deft. from performing his contract read in evidence in this case -

3.

4. That the pleas pleaded in this case by the deft. are not proved by proving that after Forbes signed the contract Mr. Low got into his buggy & said he would have the sacks there in two weeks & would then let him know whether to deliver the corn at Sandy or at Ferris Ware house & that Forbes replied that would give him time to get his corn out before harvest & that said Plaintiff on the 4 day of July 1849 asked the deft. how about this corn?

5. That Forbes said that if Low would leave him sacks he would let him have the corn then - That he did not want to pay storage, that he was going to Ottawa or Peru & would be round in 2 or three weeks with sacks for them all & would have the corn delivered at the mouth of Sandy & if he had not a boat there he would stack up the corn on the bank & cover

it - with oil cloth & get a man to watch it - that Forbes replied that would do - that he had brought a wagon & intended to pay for it - with the money he got - for the corn & that if said pleas or one of them is not sustained standing proved the p.pff. is entitled to recover -

Counsel for p.pff. excepted to the opinion of the Court - in refusing to give his instructions marked 2 & 4.

Instructions on the part of Drft.

1st - If the jury believe from the evidence that there was an agreement made between Low & Forbes after the making of the written agreement - that Forbes should not be required to deliver the corn until the P. Low should furnish the said Forbes with sacks for sacking the corn such agreement was binding on Low & it - would exonerate the Drft. Forbes from sacking & delivering the corn until Low should furnish the sacks -

2. If the jury believe from the evidence that after the making of the written contract - the said Low & Forbes made another agreement such as is set up in the second plea of the Drft. & that the P. Low has not fulfilled that agreement on his part - but has neglected so to do

& that the defendant has not violated said last mentioned agreement on his part - the jury will find a verdict for the defendant -

3. An injury to one party - & a benefit to the other party - is a sufficient consideration for a contract or an agreement to vary a written contract.

4. If the jury believe from the evidence that an agreement was made between Low & Forbes after the making of the written agreement - that Forbes need not deliver the corn mentioned in said contract - until he had furnished him sacks for sacking the corn & that Low agreed to furnish said sacks by a fixed time & the defendant & the defendant acted upon such subsequent contract, & further that Low has failed to fulfil such subsequent agreement on his part - without any violation thereof on the part of the deft. - the jury will find for the deft. - That if such agreement was made at the request & for the benefit of Low or to enable him to save expense of storing the corn or for any benefit to result to him that was a sufficient consideration for the agreement to make it binding on both of the parties.

5. In order to make the verbal contract binding on the parties it is not necessary that there be an assent in express terms, but when a proposition for an agreement is made the assent thereto may be implied from the whole conversation between the parties & their acts & conduct at the time. But there must be an assent to such subject contract. It is not necessary that the defendants should prove such a contract as is set forth up in their second plea to entitle them to a verdict, but if the jury should believe from the evidence that the second contract was that the defendants were not to deliver the corn till sacks were furnished they may under the pleadings in this case find a general verdict for the defendant. Nor is it necessary that the defendant should have proved the contract as set up in the second plea, provided they believe the sacks were not furnished by the said plaintiff & provided further they believe that such second contract was agreed to by both parties so as to be binding upon both - That if the plaintiff failed to fulfill the contract on his part and by such failure on his part prevented the defendant from performing the contract as finally agreed upon

between the parties the plaintiff
will not be entitled to recover the
ten dollars paid by him to Forbes.

Which were given by the Court
& the plff's counsel then & there
excepted to the opinion of the Court
in giving said instructions -

The jury found a verdict for the
Def. & the plff. entered a motion
for a new trial for the following
reasons -

1st - Because the verdict is against
law & evidence -

2 Because the Court gave the
instructions asked by the defendant.

3. Because the Court refused instructions
marked 2 & 4 asked by the plaintiff -
The Court overruled said motion for
a new trial & the plaintiff then &
there excepted & requested the Court
to sign this bill of exceptions which
is done

W. Kellogg

(S.B.)

Low v. Forbes

Abstract.

Filed June 17th 1853.

State of Illinois, set.

WRIT OF ERROR—FREE TRADER PRINT.

The People of the State of Illinois,
To the Clerk of the Circuit Court for the County of *Stark* — GREETING :

BECAUSE in the record and proceedings, as also in the rendition of the judgment of a plea which
was in the Circuit Court of *Stark* county, before the Judge thereof, between

William H. Lowe

plaintiff and *Peter Herbes*—

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

as we are informed by *his* complaint, and we being willing that error, if any there be, should be
corrected in due form and manner, and that justice be done to the parties aforesaid, command you that
if judgment 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 *2^d Monday in June* — next, that the record and proceedings,
being inspected, we may cause to be done therein, to correct the error, what of right ought to be done
according to law.

WITNESS, the Hon. SAMUEL H. TREAT, Chief Justice of our said
Court, and the seal thereof, at Ottawa, this *31st*
day of *July* — in the year of our Lord one thousand eight

hundred & fifty-two.

A. Leland Clerk.

Love as Herbs

Mit of error

Filed July 31st 1852
L. Heland Clerk

This Mit of error is
made a supersedeas &
is to be obeyed accordingly
L. Heland Clerk

Know all men by these presents, that we William
N. Lowe & Henry Hurlbut are held & firmly bound
unto Peter Forbes in the penal sum of two hun-
dred dollars lawful money of the United States
to which payment well & truly to be made we
bind ourselves, our heirs, executors & administrators
jointly & severally by these presents -

Witness our hands & seals this 30th day of
July A.D. 1852.

The condition of this obligation is
this, that whereas the above named William
N. Lowe lately sued out of the Supreme Court of
the State of Illinois a Writ of Error & a Ceire
Facias to here errors to the Circuit Court of
Stark County in said State for the purpose of
revising & reversing in said Supreme Court
a certain judgment rendered in said Circuit
Court against him wherein he the said William
N. Lowe was plaintiff & the said Peter Forbes was
defendant; Now in case the said William N. Lowe
shall duly prosecute his said Writ of error in said
Supreme Court, & shall pay the said judgment, costs
interest & damages in case the said judgment
shall be affirmed in the said Supreme Court, then
this bond shall be void, otherwise in force.

Wm. N. Lowe
Henry Hurlbut



William W. Lowe
Peter Forbes
Supds. Bond

Filed July 31st 1852.
H. Deland Clerk

Plat No. 20
William W. Lowe
1853 vs
Peter Forbes

20

12116

Expend
Repaired

1853