

No. 12802

Supreme Court of Illinois

Champman, et al.

vs.

Gilbert, et al.

1828

George D. Gilbert

Foster M. Chapman

1859

28

1280

1859

Circuit Court of Cook Co

28

Geo. S. Gilbert Etal

vs.
102

John M. Chapman Etal

Complete Record

Passytopia Dec 28 60

Filed March 17 1858

L. L. Linn
Clerk

United States of
North America }
State of Illinois }
County of Cook } s.s.

Pleas before the Honorable George
Manierre Judge of the Seventh Judicial Circuit of the State
of Illinois, and presiding Judge of the Circuit Court of Cook
County in said State at a trial term thereof begun and
held at the Court House in Chicago in said County on
the third Monday (being the seventeenth day) of November
in the year of our Lord one thousand Eight hundred
and fifty six and of the Independence of the United
States the Eighty first

Present

Honorable George Manierre Judge of the Seventh Judicial Circuit
James S. Beach Coroner & Ex officio acting
Sheriff of said County

Attest

Louis D. Hoard Clerk

Court opened by proclamation

Be it remembered that heretofore to wit, on the twenty
fourth day of March in the year of our Lord one thousand
and Eight hundred and fifty six there issued out of the
office of the Clerk of the Circuit Court of Cook County in
the State aforesaid and under the seal of said Court
the People's writ commonly called a "Summons" directed

to the Sheriff of said County to execute and clothed in
the words and figures following to wit,

State of Illinois }
County of Cook } ss

The People of the State of Illinois, to the
Sheriff of said County. Greeting

We command you that you summon Foster M. Chap-
man and James F. Draper if they shall be found in
your County, personally to be and appear before the
Circuit Court of Cook County, on the first day of the next
term thereof, to be holden at the Court House, in Chica-
go, in said County, on the first Monday of May
next, to answer unto George S. Gilbert and Benjamin
French in a plea of debt for Five thousand dollars
to the damage of the said Plaintiffs as is said in
the sum of one thousand Dollars. And have
you then and there this writ, with an endorsement
thereon, in what manner you shall have executed
the same.



Witness Louis D. Hoard Clerk
of our said Court, and the seal
thereof, at Chicago aforesaid, this
twenty fourth day of March
A. D. 1856.

L. D. Hoard Clerk

Which said writ of summons has not been
returned into the office of the Clerk aforesaid, or

if so, the same has been mislaid or lost.

And afterwards to wit, on the 14th day of April in the year last aforesaid the said plaintiffs filed in the office of the Clerk of the Court aforesaid their certain Declaration in this cause which is in the words and figures following to wit.

Circuit Court of Cook County
May Term 1856

State of Illinois
Cook County ss.

George S. Gilbert and Benjamin French, late partners in trade under the name, firm and style of Gilbert & French, Plaintiffs in this suit by F. W. Young, their Attorney complain of Foster M. Chapman and James F. Draper Defendants who were summoned of a plea that they render to the said George S. Gilbert and Benjamin French, late partners as aforesaid, the sum of Five thousand dollars which they owe to, and unjustly detain from the said George S. Gilbert and Benjamin French, late partners as aforesaid.

For that whereas the said Defendants, heretofore to wit on the sixth day of February in the year of our Lord one thousand eight hundred and fifty six at Chicago in the County and State aforesaid by their certain

writing obligatory sealed with their seals and now shown to this Honorable Court, the date whereof is a certain day and year above named, to wit, the day and year aforesaid acknowledged themselves to be held and firmly bound unto the said Plaintiffs in the sum of Five thousand Dollars above demanded to be paid to the said Plaintiffs

And the said Plaintiffs according to the form of the Statute in such case made and provided say that the said writing obligatory was made with a condition thereunto written that if the above bounden Defendant, Foster W. Chapman should in all things faithfully perform, fulfil and keep the award and determination and orders of Daniel O'Hara, Charles Douglas & Theodorus Doty or any two of them chosen by the said Defendant Foster W. Chapman and the said Plaintiffs George S. Gilbert and Benjamin French to arbitrate, award and determine all controversies and demands whatsoever in any manner existing or depending between said parties in pursuance of certain articles of submission entered into by and between said Plaintiffs George S. Gilbert and Benjamin French and the said Defendant Foster W. Chapman, of even date with the said writing obligatory and well and truly pay all monies that might be adjudged against

the said Defendant, Foster M. Chapman by the above arbitrators or any two of them which they might make under said submission, then the said obligation was to be void otherwise to be and remain in full force and effect.

And the said Plaintiffs according to the form ^{of the Statute} in such case made and provided say: That afterwards, to wit, on the twentieth day of February in the year Eighteen hundred and fifty six, two of the said Arbitrators to wit, Charles Douglas & Theodorius Poly did make their award in pursuance of said Articles of submission whereby they did award, determine and adjudge that the said Defendant Foster M. Chapman was justly indebted unto the firm of Gilbert & French composed of the said Plaintiffs George S. Gilbert and Benjamin French in the sum of Two thousand nine hundred and thirty four dollars; which said sum of Two thousand nine hundred and thirty four Dollars, they, the said Arbitrators did ~~Foster M. Chapman~~ award and adjudge that the said Defendant, Foster M. Chapman should pay to the said Plaintiffs within thirty days from the making of said award.

And for assigning a breach of the said condition of the said writing obligatory, the Plaintiffs according to the form of the Statute in such ^{case} made and provided further say

that the Defendants Foster Mr. Chapin and did not nor would well and truly pay or cause to be paid unto the said Plaintiffs the said sum of Two thousand nine hundred and thirty four dollars awarded to them as aforesaid under said Articles of submission mentioned and referred to in and by the said condition of the said writing obligatory and according to the form and effect of the same condition but wholly neglected and refused so to do, and therein failed and made default, to wit, at Chicago aforesaid, where by the said writing obligatory became forfeited and thereby an action hath accrued to the Plaintiffs to demand and have of and from the Defendants the said sum of Five thousand Dollars herein first above demanded.

2nd Count

And for that whereas the said Defendants heretofore to wit, on the ^{said} sixth day of February in the year of our Lord Eighteen hundred and fifty six at Chicago in the County and State aforesaid by their certain other writing obligatory sealed with their seals and now shown to this Honorable Court, the date whereof is a certain day and year above named, to wit, the day and year aforesaid acknowledged themselves to be held and firmly bound unto the said Plaintiff in the sum of Five thousand dollars above

demanded to be paid to the said Plaintiffs

And the said Plaintiffs according to the form of the Statute in such case made and provided say that the said writing obligatory last above mentioned was made with a condition there under written that if the above bounden defendant Foster Mr. Chapman should in all things faithfully perform, fulfil and keep the award and determination and orders of Daniel O'Hara, Charles Douglas and Theodorus Doty or any two of them chosen by the said Defendant Foster Mr. Chapman and the said Plaintiffs George S. Gilbert and Benjamin French to arbitrate, award and determine all controversies and demands whatsoever in any manner existing or depending between said parties in pursuance of certain other Articles of submission entered into by and between said Plaintiffs George S. Gilbert and Benjamin French and the said Defendant Foster Mr. Chapman of even date with the said last mentioned writing obligatory ~~and~~ and well and truly pay all moneys that might be adjudged against the said Defendant Foster Mr. Chapman by the above Arbitrators or any two of them which they might make under said submission last above mentioned then

the said last mentioned obligation was to be void otherwise to be and remain in full force and effect.

And the said Plaintiffs according to the form of the Statute in such case made and provided say that afterwards, to wit, on the twentieth day of February in the year Eighteen hundred and fifty six two of the said Arbitrators last mentioned to wit, Charles Douglas and Theodorius Doty did make their other award in pursuance of said last mentioned Articles of submission which said last mentioned award is in the words and figures following, to wit,

"To All to whom these
 "Presents shall come or may concern Send
 "Greeting Charles Douglas, Theodorius Doty &
 "Daniel O'Hara." To whom were submitted
 "as arbitrators the matters in dispute and contro-
 "versy between Gilbert & French as partners and
 "Foster M. Chapman, and also between George
 "S. Gilbert & Benjamin French in their indivi-
 "dual capacity and the said Foster M. Chap-
 "man as by their submission in writing bear-
 "ing date the sixth day of February in the year
 "Eighteen hundred and fifty six more fully
 "appears. Now therefore know ye that we the
 "Arbitrators mentioned in the said submission

"having been first duly sworn according to Law
"and having examined the parties upon oath
"and heard such proofs and allegations and
"examined the Books and papers submitted to
"us by said parties in relation to the matters in
"controversy mentioned in said written submis-
"sion do make this our award in writing. That
"is to say, First, We do award and determine
"that the said George S. Gilbert & Benjamin French
"as to all disputes, matters in controversy and
"dealings by them and each of them had in their
"individual capacity with the said Foster M.
"Chapman up to the date of said submission in
"writing and the said Foster M. Chapman as to
"all such disputes, controversies and dealings to
"the date aforesaid shall mutually execute and
"deliver good and sufficient receipts releases
"and discharges of and from all claims de-
"mands and damages and claim of damages
"founded in Law or Equity and that as be-
"tween the said George S. Gilbert and Benjamin
"French in their individual capacity and the
"said Foster M. Chapman all controversies
"and disputes shall cease and that all demands
"damages and claim of damages up to the date
"of said submission shall be and are cancelled
"and discharged. Second, We do award
"adjudge and determine as between the

First
Shall execute
On receipt
Release &
Discharges

Second

"firm of Gilbert & French composed of the said George
 "S. Gilbert & Benjamin French and the said Foster
 "Mr. Chapman, that the said Foster Mr. Chapman
 "is justly indebted unto the said firm of Gilbert
 "& French in the sum of Two thousand nine hundred
 "and thirty four Dollars, which said sum we
 "do award and adjudge that the said Foster
 "Mr. Chapman shall pay to the said firm of
 "Gilbert & French within thirty days, and we
 "do further adjudge, award and determine
 "that a certain lease bearing date on the first
 "day of November in the year Eighteen hun-
 "dred and fifty four executed by the said Foster
 "Mr. Chapman as Lessor and George S. Gilbert
 "& Benjamin French as Lessees and also that
 "a certain contract in writing executed by
 "the said Benjamin French & George S. Gilbert
 "as parties of the second part and Foster Mr.
 "Chapman as party of the first part and bear-
 "ing date the sixth day of November A.D. 1854
 "be delivered up and cancelled and that
 "the said Gilbert & French shall deliver up
 "possession of the premises and building
 "described in said Lease immediately upon
 "the payment by the Foster Mr. Chapman to
 "them or either of them of the said sum of
 "Two thousand one hundred and ten Dollars
 "And that the said firm of Gilbert and

to pay
 \$2934

and
 give pos-
 session of
 the photo,
 minus

and
 that lease
 & contract
 shall be
 cancelled

on payment
 of said sum
 of \$2110

possession to be given of leasehold
 Lastly Each party to pay Arbitrators \$75.00

"French and the said Foster Mr. Chapman shall each mutually execute to the other receipts, releases and discharges of all claims, demands and claims of Damages founded in Law or Equity up to the date of said submission in writing. Lastly. We do award, adjudge and determine that the said firm of Gilbert & French shall pay the sum of Seventy five Dollars and the said Foster Mr. Chapman the like sum of Seventy five Dollars fees for services of said Arbitrators in hearing the proofs and making an award under the said Submission which is hereto annexed.

Readiness to perform by plffs

And the said Plaintiffs aver that they have at all times been ready and willing and still hold themselves in readiness to perform all the conditions and obligations imposed upon them by the said last mentioned award.

Breach did not pay \$2934 nor \$2110.

And for assigning a breach of the said condition of the said writing obligatory the plaintiffs according to the form of the Statute in such case made and provided further say that the Defendant Foster Mr. Chapman did not nor would well and truly pay or cause to be paid unto the said plaintiffs the said sum of Two thousand nine hundred and thirty four Dollars nor the said sum of Two thousand one hundred and ten Dollars awarded as aforesaid when he said

[12002-2]

Chapman required ~~or~~ premises aforesaid, nor faithfully perform, fulfil or keep the said last mentioned award and determination made as aforesaid under and by said Articles of Submission mentioned and referred to in and by the said condition of the said last mentioned writing obligatory and according to the form and effect of the same condition but wholly neglected and refused so to do, and therein failed and made default to wit, at Chicago aforesaid whereby the said writing obligatory last mentioned became forfeited and thereby an action hath accrued to the plaintiffs to demand and have of and from the defendants the said sum of Five thousand Dollars herein first above demanded

Yet the said Defendants (although often requested so to do) have not as yet paid the said sum of Five thousand Dollars above demanded or any part thereof to the said plaintiffs but hath hitherto wholly neglected and refused and still neglect and refuse so to do to the damage of the said Plaintiffs of One thousand Dollars and therefore they bring suit. &c

J. W. Young
Plffs. Atty.

And afterwards to wit, on the 28th. day of April in the year aforesaid, it being one of

the days of the April Special Term of said Circuit Court for the year aforesaid, the following among other proceedings in said Court, was had and entered of record in this cause to wit,

942 George S. Gilbert &
Benjamin French
vs
Foster M. Chapman
& James F. Draper } Debt

On motion it is ordered by the Court that the general rule to plead, be extended ^{as} to this cause to Saturday next.

And afterwards to wit, on the 9th. day of May in the year last aforesaid, the said Defendants filed in said Court, their certain pleas in said cause, which are in the words and figures following to wit,

In Cook County Circuit Court.
Of the May Term of said Court
A. D. 1856

Foster M. Chapman
& James F. Draper.

1st Plea to
1st Count

ads
George S. Gilbert and
Benjamin French }

And the said defendant

by Harvie & Tuley their Attorneys come and defend
 the wrong and injury when re. and crave oyer of
 the said supposed writing obligatory in the first
 count of the said declaration mentioned and it is
 read to them & they also crave oyer of the condition
 of the said supposed writing obligatory in the
 said first count mentioned and it is read to them
 in these words. "The condition of the above obli-
 gation is such that if the above bounden Foster
 "Mr. Chapman, his Executors, administrators
 "and assigns shall in all things faithfully per-
 "form fulfil and keep the award and de-
 "termination and orders of Daniel O'Hara,
 "Charles Douglas and Theodoros Doty or any
 "two of them chosen by the said Foster Mr. Chapman
 "George S. Gilbert and Benjamin French to arbi-
 "trate award and determine all controversies and
 "demands whatsoever in any manner existing
 "or depending between said parties in pursuance
 "of certain articles of submission entered into
 "by and between said George S. Gilbert, Benja-
 "min French and Foster Mr. Chapman of even
 "date herewith and well and truly pay all monies
 "that may be adjudged against him by the above
 "arbitrators or any two of them which they may
 "make under said submission then this obliga-
 "tion to be void otherwise to be and remain
 "in full force and effect" which being heard

Non est factum and read the said defendants say that the said supposed writing obligatory is not their deed and of this they put themselves upon the Country.

2nd Plea
to 1st Count

Once for a further plea in this behalf as to the said first count of the said declaration the said defendants by leave &c. crave over of the said condition of the said supposed writing obligatory in the said first count mentioned and it is read to them in these words.

"The condition of the above obligation is such that if the above bounden Foster M. Chapman, his Executors, administrators and assigns shall in all things faithfully perform, fulfil and keep the award and determination ^{and} orders of Daniel O'Hara Charles Douglas and Theodorus Pety or any two of them chosen by the said Foster M. Chapman, George I. Gilbert and Benjamin French to arbitrate award and determine all controversies and demands whatsoever in any manner existing or depending between said parties in pursuance of certain articles of Submission entered into by and between said George I. Gilbert, Benjamin French and Foster M. Chapman of even date here with and well and truly pay all monies that may be adjudged against him by the

Recital
Condition
of Bond

To pay all
monies awarded

Adm C.

"above arbitrators or any two of them which they may
 "make under said submission then this obligation
 "to be void otherwise to be and remain in full force
 "and effect" which being read and heard the
 said defendants aver that the articles of submis-
 sion in said condition to said supposed writ-
 ting obligatory mentioned, recited and referred
 to are in the words following to wit, "Know
 "all men by these presents that whereas a contro-
 "versy is now existing between George S. Gilbert
 "and Benjamin French Copartners doing busi-
 "ness under the name, firm and style of Gilbert
 "and French of the City of Chicago County of
 "Cook and State of Illinois and Foster M. Chap-
 "man of the same place concerning the servi-
 "ces heretofore rendered by the said Gilbert &
 "French to said Foster M. Chapman as Copart-
 "ners and their servants and as well for services
 "rendered to said Chapman by said George S.
 "Gilbert and Benjamin French individually
 "and also concerning a certain contract made
 "and entered into by and between said parties
 "and dated on the sixth day of November A.
 "D. 1854 relating to the sale of Agricultural
 "implements and tools of all descriptions
 "and also a certain lease made, executed and
 "entered into by and between the said Foster
 "M. Chapman as Lessor and the said Gilbert

Recital of
 articles of
 Submission

Controversies
 abt services

Also a con-
 tract

Also a Lease

+ All other
contracts &
agreements

"and French as Lessors and bearing date on the first day of
"November A.D. 1854 as well as all other contracts and agreements
"now existing or having existed subsequent to the first day
"of November. A.D. 1854, as well verbal as written and
"all dealings of whatever name or nature now exist-
"ing and undetermined and unsettled between said
"parties.

Condition
of Submission

To fulfil
award of
any 2 under
their hands

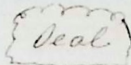
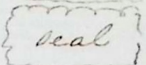
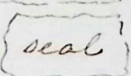
Seals by 20
Joh 1856
to be delivered

"Now therefore we the said George S. Gilbert and
"Benjamin French as well copartners as individually
"and the said Foster M. Chapman do hereby sub-
"mit the said controversies to the decision and ar-
"bitration of Daniel C. Hara, Charles Douglas
"and Theodore Poley all of the City of Chicago of
"said and do ^{herby} covenant each with the other that we
"will in all things faithfully submit, keep, observe
"and abide by the decision and award that they
"or any two of them may make in writing in
"the premises under their hands and seals to be
"delivered on or before the 20th. day of February
"A. D. 1856. And it is further agreed between the
"said parties that each and all of the parties
"hereto shall be examined and make their state-
"ments on oath if they desire it and produce any
"other testimony and it is hereby expressly understood
"and the said parties do hereby agree that they
"will produce before and submit to said arbitra-
"tors all books, papers, writings ^{and} all other memo-
"randa relating to or in any wise connected with

said controversies so submitted to said arbitrators as
 "aforesaid. And it is hereby agreed that said arbitrators
 "are to meet at the office of Gilbert Cameron & Gilbert in
 "the City of Chicago on the 6th day of February A.D. 1856 at
 "10. O'clock A.M. & have power to adjourn from day to
 "day until the testimony is all submitted, And it is
 "further hereby expressly stipulated and agreed to
 "by and between said parties that the said arbitra-
 "tors shall have full power and authority in ma-
 "king up the said award to adjudge, fix, assess
 "and determine the costs which may have ac-
 "crued by reason of articles of submission hereto-
 "fore made by and between said parties bearing
 "date the 3rd day of November 1855 and to fix settle
 "and determine who shall pay the same and that
 "they shall also have power and authority to fix,
 "settle and determine all costs which may accrue
 "and adjudge who shall pay the same in the
 "further prosecution of their controversies. And
 "it is further agreed between the said parties that
 "judgment may be rendered upon the awards
 "made in pursuance of this submission in the
 "Cook County Circuit Court at the March Term
 "thereof A.D. 1856. And it is further agreed by and
 "between said parties that the party who shall
 "fail to keep, perform, fulfil, abide by and ob-
 "serve the decision and award and all orders
 "that may be made by the said arbitrators ac-

To fix Costs
 of former
 Arbitration
 3 Nov 1855
 and
 costs of
 further pro-
 secution of
 controversy

"according to and in pursuance of these articles of sub-
"mission will pay to the other party the sum of one
"thousand dollars as liquidated and settled dama-
"ges. Witness our hands and seals this sixth day of
"February A. D. 1856

"Geo S. Gilbert 
"Benjn French 
"J. M. Chapman 

And the said defendants say actio non &c. Because
That arbitra- they say that the said arbitrators named in the
Tons did not said condition and the said articles of submission
make award therein recited & referred to did not nor did any
on 20 Feb two of them on the twentieth day of February in the
1856. And year Eighteen hundred and fifty six make their
to be delivered award in pursuance of said articles of submission
of and concerning the premises in the said con-
dition and said articles of submission therein rec-
ited, mentioned and referred to, in writing under
the hands and seals of the said arbitrators or any
two of them to be delivered to the said parties
in difference. And this they, the said defendants
are ready to verify wherefore they pray judgment
of the said &c.

Harvie & Tuley
Attys. for Defts

And afterwards to wit, on the day and year last
aforesaid (to wit May 9th. 1856) the said defendants filed
in said Court their certain demurrer in said cause
which is in the words and figures following to wit,

In the Cook County Circuit Court
Of the May term A. D. 1856

Foster M. Chapman
& James F. Draper

vs

George S. Gilbert and
Benjamin French

And the said defendants by
Harvie & Tuley their Attorneys come & defend the
wrong and injury where &c. and say that the said
second count of the said declaration and the matters
therein contained as the same are therein stated and
set forth are not sufficient in law, and they the said
defendants are not bound in law to answer the
same, and this they are ready to verify, wherefore by
reason of the insufficiency of said second count of
the said declaration they pray judgment &c. & that
the said plaintiffs may be bound &c.

Harvie & Tuley
Ctfs. Atty.

Demurrer
to 2^d Count

Points filed with foregoing demurrer

Toster Mr. Chapman et al

ads

Gilbert & French

Special
Grounds
of Demurrer

The second count of the declaration is bad, among other reasons in that it purports to set forth the award in haec verba by two of the arbitrators & by the said award as set forth it is made by the three who are alleged to have been appointed.

2nd It alleges that the said Chapman did not pay the said sum of \$2934 nor the said sum of \$2110 awarded as aforesaid, whereas it does not appear from the award that any such two amounts were awarded, and assigns this as a breach of the condition and the foundation of the action said sums being in the alternative & it not appearing which is sought to be claimed

3rd It alleges that Chapman did not pay &c "when he said Chapman afterwards required said premises aforesaid" whereas it does not appear nor is it alleged that he required any premises nor does it appear that it was incumbent on him, by any thing in the award to require any premises.

4th The allegations in the said second count do not follow the requirements of the pretended award purported to be given in haec verba

but are vague, uncertain & repugnant, nor do they present a state of facts on which a legal issue can be made.

5th The assignment of breaches is insufficient, contradictory & repugnant & is so uncertain & equivocal that it cannot be either answered, traversed or confessed & avoided.

6th Said second count ought also to have set forth the Articles of Submission mentioned or the substance of the same as by the terms of the supposed writing obligatory they are referred to & made part of the condition thereof, And the said Articles are also referred to & made part of and annexed to the pretended award, and when an instrument is alleged to be set forth in the words & figures thereof, it is necessary to set forth as well what is contained in the body of the same as the papers professed on its face to be annexed to it.

And afterwards to wit, on the 13th day of May in the year last aforesaid the said plaintiffs filed in said Court their certain Replikation and Joinder in demurrer in said cause which are in the words & figures following to wit,

Circuit Court of Cook County

George S. Gilbert &
Benjamin French

vs.

Foster M. Chapman &
James F. Draper

In Debt

And the said plaintiffs as

to the said plea of the said defendants by them

Repleaders above pleaded say that the said plaintiffs by

to 2nd plea reason of any thing by the said defendant in

that plea alleged, ought not to be barred from

having and maintaining his aforesaid action

thereof against the said defendant, because they

say that the said Theodore Doty & Charles Dou-

glas two of the said Arbitrators in the said con-

dition of the said writing obligatory mentioned

after the making of the said writing obligatory

and within the time limited and appointed

by the Articles of Submission in the said con-

dition referred to, for the making of their award

of and concerning the premises that is to say on

the 20th day of February A. D. 1886 at Chicago afore-

said, having taken upon themselves the burden

of the said Arbitrament did in due manner

make their award in writing under their

hands of and concerning the premises in the said

condition mentioned, and thereby referred to

them by the said plaintiffs and the Defendants

Repleaders above pleaded say that the said plaintiffs by to 2nd plea

Arbitrators on 20 Feb 1886 did make award

Ready to
be delivered

Foster M. Chapman ready to be delivered to said parties in difference and delivered to said parties in difference, which said award is as follows to wit,

Award

"To all to whom these Presents shall come or
"may concern: Send Greeting Charles Douglas,
"Theodorus Doty and Daniel O'Hara, to whom
"were submitted as Arbitrators the matters in dis-
"pute and controversy existing between Gilbert &
"French as partners and Foster M. Chapman and
"also between George S. Gilbert & Benjamin French
"in their individual capacity and the said Foster
"M. Chapman as by their submission in writing
"bearing date the Sixth day of February in the year
"Eighteen hundred and fifty six more fully
"appears.

"Now therefore Know ye that we the
"Arbitrators mentioned in the said submission
"having been first duly sworn according to Law
"and having examined the parties upon oath
"and heard such proofs and allegations and
"examined the books and papers submitted
"to us by said parties in relation to the matters
"in controversy mentioned in said written sub-
"mission do make this our award in writing,
"that is to say, First, we do award and deter-
"mine that the said George S. Gilbert & Benjamin
"French as to all disputes, matters in controversy
"and dealings by them and each of them had

"in their individual capacity with the said Foster Mr.
"Chapman up to the date of said submission in writing
"and the said Foster Mr. Chapman as to all such disputes
"controversies and dealings to the date aforesaid shall
"mutually execute and deliver good and sufficient
"receipts, releases and discharges of and from all claims
"demands and damages and claim of damages
"founded in law or equity and that as between
"the said George S. Gilbert & Benjamin French in
"their individual capacity and the said Foster
"Mr. Chapman all controversies ~~with~~ and disputes
"shall cease and that all demands and damages
"and claim of damages up to the date of said sub-
"mission shall be and are cancelled and discharged
"Second: We do award, adjudge and determine
"as between the firm of Gilbert & French composed
"of the said George S. Gilbert and Benjamin French
"and the said Foster Mr. Chapman, That the
"said Foster Mr. Chapman is justly indebted
"unto the said firm of Gilbert & French in the
"sum of Two thousand, nine hundred and
"thirty four dollars which said sum we do
"award and adjudge that the said Foster Mr.
"Chapman shall pay to the said firm of Gil-
"bert & French within thirty days, and we do
"further adjudge, award and determine that
"a certain lease bearing date on the first day of
"November in the year Eighteen hundred and

First
Execute
Receipts—
Releases &
Discharges

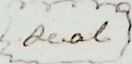
2nd
to pay
\$2934
within 30 days

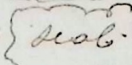
"fifty four executed by the said Foster M. Chapman
 "as Lessor and George S. Gilbert and Benjamin French
 "as Lessees and also that a certain contract in writing
 "executed by the said Benjamin French and George
 "S. Gilbert as parties of the second part and Foster
 "M. Chapman as party of the first part and bearing
 "date the sixth day of November A. D. 1854 be deliv-
 "ered up and cancelled and that the said Gilbert &
 "French shall deliver up possession of the prem-
 "ises and building described in said Lease imme-
 "diately upon payment by said Foster M. Chap-
 "man to them or either of them of the said sum
 "of Two thousand one hundred & ten dollars.
 "And that the said firm of Gilbert & French
 "and the said Foster M. Chapman shall each
 "mutually execute to the other receipts, releases
 "and discharges of all claims, demands, and
 "claim of damages founded in law or equity
 "up to the date of said submission in writing.
 "Lastly, We do award, adjudge and deter-
 "mine that the said firm of Gilbert & French
 "shall pay the sum of Seventy five dollars and
 "the said Foster M. Chapman the like sum
 "of Seventy five dollars fees for services of said
 "Arbitrators in hearing the proofs and making
 "an award under the said submission which
 "is hereto annexed.

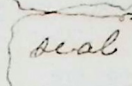
"Given under our hands and seals

and
 Council
 Secy
 &
 Contract
 and
 Deliver
 possession
 of leased
 premises
 with an
 payment
 of \$2110
 &
 execute
 Receipts
 Releases
 & Discharges
 Lastly
 Each party
 pay arbi-
 trators
 \$75-

"This 20th. day of February in the year 1856

(Sgd) Theodorus Doty 

(Sgd) Charles Douglas 



Of which said award the said Defendants afterwards to wit, on the day and year afore-
said to wit, the Twentieth day of February A.D.
1856 at Chicago aforesaid had notice. Never-
theless the said plaintiffs in fact saith that they
the said defendants did not nor would will
and truly pay or caused to be paid unto the
said plaintiffs the said sum of Two thousand
nine hundred and thirty four dollars award-
ed to them as aforesaid under said Articles
of submission mentioned and referred to
in and by the said condition of the said writ-
ing obligatory and according to the form
and effect of the same condition, but wholly
neglected and refused so to do and therein
failed and made default, to wit, at Chicago
aforesaid, whereby the said writing obliga-
tory became forfeited.

Breach

Did not

pay \$2934

Concluded
with verification

And this the said plaintiffs are ready
to verify, wherefore they pray judgment and
their debt aforesaid together with their dama-
ges by reason of the detention thereof, to be ad-
judged to them &c.

(12002-4)

F. W. Young
Plffs. Atty.

County Court of Cook County
 George S. Gilbert v
 Benjamin French

vs.

Foster M. Chapman
 & James F. Draper

And the said plaintiffs say
 that the second Count of the said Declaration and
 the matters therein contained in manner and
 form as the same are above stated and set forth
 are sufficient in law for them the said plain-
 tiffs to have and maintain their aforesaid action
 thereof against the said defendants and the
 said plaintiffs are ready to verify and prove the
 same as the Court here shall direct and award.

Indor
 indennum
 to 2^d Count

Wherefore inasmuch as the said defendants
 have not answered the said second Count of
 the said Declaration nor hitherto in any
 manner denied the same the said plaintiffs
 pray judgment and his Debt and damages
 in said declaration mentioned to be adjudged
 to him

F. W. Young
 Atty. for Plffs

And afterwards to wit on the 19th. day of
 May in the year last aforesaid the said defend-
 ants filed in said Court their certain answer

to the Replication of said plaintiffs which is in
the words & figures following to wit,

In Cook County Circuit Court
Foster M. Chapman
and James F. Draper

vs

George S. Gilbert and
Benjamin French

May Term. A. D. 1856

Demurrer
to Replication

And the said defendants say
that the replication of said plaintiffs to said plea
and the matters therein contained in manner
& form &c. are not sufficient in law, and that
the said defendants are not bound ^{in law} to answer
the same and this they are ready to verify.

Wherefore by reason of the insufficiency of the
said replication, the said defendants pray
judgment, if the said plaintiffs ought to have
and maintain their action thereof &c.

And the said defendants according
to the form of the Statute &c. states and shows
to the Court here the following causes of demur-
rer. For that said replication does not allege
a tender by said plaintiffs of release and dis-
charge of individual claims, demands and
damages as by said supposed award is pro-
vided; — it does not allege a tender by said
plaintiffs of performance of such acts by them

to be performed as copartners as is provided in said supposed award; that said supposed award in said replication set forth is void in that it is not consonant with the said articles of submission, in that it is uncertain & repugnant, and in that it is not final; and that the said replication is in other respects informal, insufficient and uncertain

Harvie & Tuley
Defts. Attys.

And afterwards to wit, on the 22nd day of May in the year last aforesaid, the said plaintiffs filed in said Court their certain Rejoinder to the said defendant's answer to the said plaintiffs' Replication to the said defendants' Pleas which is in the words and figures following viz,

Circuit Court of Cook County

George S. Gilbert &
Benjamin French

6408

vs.

Foster M. Chapman
& James F. Draper

And the plaintiffs say that the said Replication and the matters therein contained in manner and form as the same

Indemnity

are above stated and set forth are sufficient in law for
their the said plaintiffs to have and maintain their
aforesaid action thereof against the said defendants
and the said plaintiffs are ready to verify and prove
the same as the Court here shall direct and award,
Wherefore inasmuch as the said defendants have not
answered the said Replication nor hitherto in any
manner denied the same, the plaintiffs pray
judgment and his debt and damages in said
declaration mentioned to be adjudged to him &c.

F. W. Young
Atty. for Plff.

And afterward to wit on the 29th. day of October
in the year last aforesaid the same being one of the
days of the October vacation term of said Court for
the year last aforesaid, the following among other
proceedings in said Court was had and entered
of record in this cause to wit,

George S. Gilbert and
Benjamin French

393

vs.

Foster M. Chapman
& James F. Draper

Debt

On motion it is ordered
that the above cause be, and it hereby is, dis-
missed at the cost of the said plaintiffs.

And afterwards to wit, on the 6th. day of November in the year last aforesaid, it being as yet of the term of said Court last aforesaid, the following further proceedings among others, in said Court, were had and entered of record in said cause viz.

393 George S. Gilbert &
Benjamin French
vs.
Foster M. Chapman
& James F. Draper } Debt.

And now again come the said plaintiffs by F. W. Young their Attorney and on their motion it is

Ordered, that the order dismissing this suit heretofore entered be, and it is, hereby vacated and set aside and this cause reinstated on the Docket.

And afterwards to wit, on the 24th. day of November in the year last aforesaid, the same being one of the days of the regular November term of said Court for the year last aforesaid the following among other proceedings in said Court, were had and entered of record in said cause viz.

393 George S. Gilbert &
Benjamin French
vs.
Foster M. Chapman
& James F. Draper } Debt.

This day come the said plaintiffs and defendants by their respective attorneys and the Court being fully advised as to the demurrer of the said defendants to the replication of the said plaintiffs to the pleas of the said defendants it is

Ordered and considered that the said demurrer be sustained to the said replication, and there^{upon} the said plaintiffs electing to abide by their said replication it is

Ordered and considered that the said defendants have and recover of the said plaintiffs their costs and charges in and about their defence herein expended and that they have execution therefor.

Whereupon the said plaintiffs pray an appeal to the Supreme Court of the State of Illinois which is granted upon condition that the said plaintiffs execute a bond to the said defendants within twenty five days from this date in the penal sum of Three hundred Dollars conditioned according to law with

18.60

State of Illinois
County of Cook

I William L. Church Clerk
of the Circuit Court of Cook County in the
State of Illinois do hereby certify the foregoing
transcript to be a full true perfect and

Complete Copy of all the records & proceedings
of a certain cause lately pending in said
Court wherein George S. Gilbert & Benjamin
French were plaintiffs and Foster M. Chapman
& James D. Draper were defendants & of the
whole thereof as the same now appears
in my office

Witness my hand and the
seal of our said Circuit Court
at Chicago in said County
this 14th day of July, A.D. 1859

Wm. L. Church, Clerk

Circuit Court of

Cook Co.,

Clerk's fee for Record \$ 8.⁰⁰

Supreme Court of Illinois, Northern District.
Error to Cook County Circuit Court

George F. Gilbert &
Benjamin French
vs
Foster W. Chapman &
James F. Draper } In Error

And now comes the said George
F. Gilbert and Benjamin French and assigns
for Error to the prejudice in the foregoing
and annexed record as follows (to wit)

First That the Circuit Court erred in sustaining
the defendants demurrers to the plaintiffs
Replication

Second That the judgment of the Circuit Court
for the defendants on the demurrers to the
plaintiffs Replication is not warranted by
the law and is therefore erroneous and
should have been for the plaintiffs.

Third That the Circuit Court erred in rendering
a general judgment in said cause in favor
of the said defendants. Because by the said
record and proceedings the said plaintiffs
were entitled to judgment

Fourth That the said Circuit Court in rendering

a judgment in favor of the said defendants
without first disposing of the demurrers
of the said defendants to the said Second
Count of the said plaintiffs declaration

Fifth

That the said Circuit Court erred in rendering
a judgment for said defendant in said cause
without first disposing of the issue made
by the demurrers filed by the said defendants
to the Second Count of the said plaintiffs dec-
laration.

Wherefore the plaintiffs pray that a
writ of Error may issue to the said Com-
mons Pleas Circuit Court and that said judg-
ment may be reversed &c.

Gilbert Cameron

Atty of Pliffs

R. B. MacIntosh for

~~In nullo est erratum~~

~~h. i. in error~~

~~Scates for Defendants~~

In nullo est erratum

W. B. Scates for Defendants

STATE OF ILLINOIS, }
SUPREME COURT, } ss.

The People of the State of Illinois,
TO THE CLERK OF THE CIRCUIT COURT FOR THE COUNTY OF Cook 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 Cook County, before the Judge thereof, between George S. Gilbert & Benjamin French

plaintiff, and Foster M. Chapman and James F. Draper

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

plaintiffs as we are informed by their complaint, 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 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 first Tuesday after the third Monday 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. ~~WALTER B. SCATES~~ John D. Catton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 17th day of March in the Year of Our Lord One Thousand Eight Hundred and Fifty-eight

Leclerc
Clerk of the Supreme Court.

by J. B. Kirk Deputy

George L. Gilbert
vs
Foster M. Chapman
vs
Foster M. Chapman
vs
Foster M. Chapman

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Writ of Error

Filed March 1st 1858

L. Leland
Clk

STATE OF ILLINOIS, } ss. The People of the State of Illinois,
SUPREME COURT,

To the Sheriff of the County of

Cook

Greeting :

Because, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the *Circuit* Court of *Cook* County, before the Judge thereof, between *George S. Gilbert and Benjamin French*

plaintiff, and *Foster M. Chapman & James F. Draper*

defendants, it is said that manifest error hath intervened, to the injury of the said *plaintiffs*

as we are informed by *their* complaint, _____ the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; Therefore, We Command You, That by good and lawful men of your County, you give notice to the said *Foster M. Chapman & James F. Draper*

that *they* be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April ^{*1859*} next, to hear the records and proceedings aforesaid, and the errors assigned, if *they* shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said *Foster M. Chapman & James F. Draper* notice, together with this writ.

Witness, The Hon. JOHN D. CATON, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this *seventh* day of *April* in the Year of Our Lord One Thousand Eight Hundred and Fifty-*nine*

L. Leland
Clerk of the Supreme Court.
J. B. Rice Deputy

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George S. Gilbert et al

vs
Foster M. Chapman
et al. —

Sei fec

Filed April 14, 1859

L. Leland
Clerk

Served by sending
to the return named
Foster M. Chapman
& James F. Draper
this 9th day of April
1859

John Gragg
By A. B. Herms
Deputy

L. Leland 100
24 miles 20
1 P. M. 10
11 130

Gilbert v. Tal
~
Chapman v. Tal

Declaration Contained 2 Counts

Defts ~~demurred~~ Pleaded non est factum
to 1st Count - and 2nd No Award was made.
Plffs made special replication to the
2nd plea to the first Count

Defts Demurred to the 2nd Count
and to the Replication to 2nd Plea to
1st Count

This was the state of the Pleadings
and issues in fact & law - for a
demurrer to 1st Count was waived by
the pleas filed thereto

The Court heard the demurrer
to the Replication - and sustained
the same, & Plffs vouching to abide the
demurrer on that issue - The
Court rendered a judgement for
costs. Now the defendants were
entitled to costs on demurrer
for making their defence. This
is all that was done - all that
has yet been heard of the
issues - and Plffs have
thought proper to treat it

as a final judgement in the case
and sued out a writ of error
upon it

The authorities cited have
no application to a case, as
here, where no final judge-
ment has been rendered.

It would be begging the
question to assume - that a
final judgement has been
rendered - the very point in
dispute - and then apply
the authorities

If Defts are wrong in sup-
posing that no final judgement
has been rendered - then they
will answer these authorities
and meet plffs upon the record
as a final one - if they can

Leave for Defts

Bell & Co. v. Sheldon 12 Ill 372

Final Judgment for Plaintiff rendered on
demurrer to ~~Plea~~ Special Pleas - without disposing
of the Pleas of non assumpsit - The Court say,
that Pleas had to be tried and found against
Defendant before judgment could be rendered
against him -

Dow v. Rattle Id. 373

Establishes the same point

Covell v. Marks 1 Scammon 391

It is error to take judgment for Plaintiff
where demurrer to declaration is undisposed of

Weatherford v. Fishback 3 S. 175

Defendant will be considered to have elected
to abide by his demurrer unless he gets
leave to withdraw it

Blackwell for Plffs

No 28.

J. M. Chapman et al

vs

G. S. Gilbert et al

Motion to dismiss
with of error.

Geo S. Gilbert et al }
vs } Error to Circuit Court Cook County
J. M. Chapman et al }

The Defendants Come & move the Court by
Scates their Counsel and moved the Court
to dismiss the writ of error in this cause
~~because~~ a final disposition and
judgment has never been made
and rendered in this cause in
the Court below

Scates for Defendants

For judgment See Record page 33.

There were 2 Seminars? & jail issue to St. Louis
one reaching each Court 2

Gilbert et al
vs

Chapman et al

Moto to dismiss
writ of Error