

No. 13240

Supreme Court of Illinois

Evans

vs.

Chicago & Rock Island
R. R. Co.

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 19.

EA

1861

Evans

75

Ex R. L. P.

Prepared

SUPREME COURT OF THE STATE OF ILLINOIS.

THIRD GRAND DIVISION.

WILLIAM EVANS, Plaintiff in error,

VS.

The CHICAGO & R. I. R. R. Co. Defendants in error.

APRIL TERM, A. D. 1860.

POINTS AND AUTHORITIES MADE AND CITED BY PLAINTIFF IN ERROR.

The first instruction asked for by Plaintiff contains a correct statement of the law applicable to this case, and should have been given by the Court.

Chitty on Contracts, (4 ed.) 569-352-451. Roberts vs. Beatty 2d Penn. State R. 63. 1 Camp. 53.

The retention of twenty per cent of the estimates until the completion of the contract, is not in the nature of damages stipulated, or as a precedent condition requiring performance of the contract in every particular before suit; it is merely to answer any damage suffered.

15 Penn. State R. 151, (3 Harris.)

The performance of the contract by Plaintiff was the substance of the transaction, and not the forfeiture or payment of the twenty per cent.

Broadwell vs. Broadwell, 1 Gilman, 600.

CHARLES BLANCHARD, Att'y for Plffs.

19 - 123
Evans
as
C. & R. S. R. A
Brief

Filed Apr. 16th 1861

L. Zealand
Clerk

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM, 1861, AT OTTAWA.

WILLIAM EVANS
vs.
THE CHICAGO & ROCK
ISLAND R. R. CO. } *Error to La Salle.*

BREIF OF DEFENDENT IN ERROR.

I ask the Court to look at the 3d plea of defendant, which is printed in full in the abstract, and then at the replication thereto, which is not set out in the abstract; but is as follows, Record, p. 7:

And as to the said third plea of the said defendant, by it above pleaded, says *precludi non*; because he says that said defendant and plaintiff never entered into a contract for the sale and delivery of said wood in manner and form as in said plea is alleged, and this the plaintiff prays may be enquired of by the country.

The evidence of Conlogue and the written contract shows that the issue thus formed must necessarily be found for defendant. If that plea is good after verdict that is an end of the case.

2d. By the very terms of this contract plaintiff had agreed that the 20 per cent. should not be payable until thirty days after he had completed his contract. This Court will not make a new contract for the parties.

Eldrige vs. Row, 2 Gilm. 96.
Taylor vs. Beck, 13 Ills. 386.
Child vs. Bassett, 11 Ill., 571.
Baird vs. Evans 20 Ill. 29.
Bishop vs. Newton, 20 Ill. 175.

3d. This is not a case where plaintiff had a right to recover, even though he had not completed his contract, upon the ground that defendant had accepted the wood delivered. The R. R. Co. had paid 80 per cent of the price before failure. Plaintiff should have offered back that money, so as to give defendant a chance to abandon the contract if it chose, and then if it had kept the wood it might have been liable on a *quantum meruit*.

Crooker vs. Goodsell, 1 Scam. 107.
Greenup vs. Stoker, 3 Gilm. 213.
McKee vs. Retter, 5 Gilm. 318.
Low vs. Forbes, 14 Ill. 423.

3d. The 20 per cent. was damages agreed upon between the parties to secure the performance of the contract.

Steele vs. Biggs, 22 Ill. 643.
Smith vs. Whittaker, 23 Ill. 367.

If the 20 per cent. was a penalty, a court of law would not relieve against it.

B. C. COOK,
For Defendant in Error.

19

Evans
vs

C. & R. S. R. R. Co

Filed Apr. 30 - 1861

L. Leland
clerk

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

To the Sheriff of the County of La Salle 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 La Salle County, before the Judge thereof, between William Evans

plaintiff, and The Chicago and Rock Island Rail Road Company

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

plaintiff

as we are informed by his complaint, the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the State of Illinois, at 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

The Chicago and Rock Island Rail Road Company

Rail Road Company that ~~the said~~ be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next, to hear the records and proceedings aforesaid, and the errors assigned, if ~~said~~ Rail Road Company 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 The Chicago and Rock Island Rail Road Company notice, together with this writ.

Witness, The Hon. JOHN D. CATON, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 3 day of January in the Year of Our Lord One Thousand Eight Hundred and ~~Fifty~~ sixty

Leland
Clerk of the Supreme Court.

J. B. Kirk

48 69
Williams Evans.

The Chicago & Rock Island
Rail Road Company

Sci. Soc.

Filed April 24, 1860
L. Leland Com

Examined this proof by
Reading the same to
Simmons W. Morse the
Agent of the Chicago
& Rock Island Rail
Road Company and
Delivered to him a True
Copy thereof on the
27th day of March
1860 The President of
said Rail Road Company
Not found in my custody
J. W. Wells Sheriff
Levell County

SPT 60
copy 50
115-

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM, 1861, AT OTTAWA.

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vs.
THE CHICAGO & ROCK
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Evans
vs

Chicago & Rock Island
Rail Road Company

Filed Apr. 30 - 1861

L. Leland
clerk

SUPREME COURT OF THE STATE OF ILLINOIS.

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CHARLES BLANCHARD, Att'y for Plffs.

19
Evans
as
Capt J. R. R.
Brief

Filed Apr. 16th 1861

L. Leland
clerk

SUPREME COURT OF THE STATE OF ILLINOIS.

THIRD GRAND DIVISION.

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The CHICAGO & R. I. R. R. Co. Defendants in error.

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19-123

Cowan

vs

Co R R R R

Appellant Brief

Filed Apr. 16th 1861

L. Ireland

Clerk

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM, 1861, AT OTTAWA.

WILLIAM EVANS
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If the 20 per cent. was a penalty, a court of law would not relieve against it.

B. C. COOK,
For Defendant in Error.

19 - 123

Evans

as

C. J. R. G. R. R. Co

Sept. 1861

Filed Apr. 30 - 1861

L. Leland
clerk

State of Illinois }
Sasalle County }
E. Hollister, Circuit Judge for the
Northern judicial district for said
State and the presiding judge of the Sasalle County
Circuit Court, at a term of said Court commenced
and held at the Court House in Ottawa on the second
Monday in the month of June, the same being the
fourteenth day of June in the year of our Lord one
thousand eight hundred and fifty eight and of the
Independence of the United States of America the
eighty second
Present

The Honorable Reader E. Hollister Presiding judge
John F. Nash Clerk
Washington Buchanan State Attorney
Erie L. Watman Sheriff

Be it remembered that on the 7th day of May 1858
there was filed in the office of the Clerk of said Court
a paper in the words and figures following to-wit:

"State of Illinois Sasalle County & Circuit Court
Wm. Evans
vs
The Chicago & Rock Island Rail Road Company
Assumpsit
Damages \$1000.00
Clerk of said Court will
serve summons in above entitled cause to Sheriff
of said County to execute. Chas. Blanchard
Attorney
Per May 6th 1858

Upon filing said process a summons was issued in the words and figures following to wit:

"State of Illinois LaSalle County ss.
The People of the State of Illinois to the Sheriff of said County
Greeting. We command you that you summon the
Chicago & Rock Island Rail Road Company if it
shall 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 Ottawa in said County on the 14th day of June
next to answer unto William Evans in a plea of
Tortious in the case upon promises to the damage of
said plaintiff in the sum of One thousand dollars
And hear you then and then this writ with an
endorsement thereon in what manner you execute the
same. Witness John H. Nash Clerk of our said County
and the seal thereof at Ottawa this 7th day of
May A.D. 1858 J. H. Nash Clerk"

Which said summons was returned office in said
Circuit Office on the 5th day of June 1858 with the
following endorsement thereon to wit:

"Served the within by mailing to S. F. Wright
their agent and delivering a copy thereof May 24th
1858 E. L. Waterman Sheriff."

And afterwards, to wit: on the 27th day of May and after
the issuing of said summons, the plaintiff filed his
declaration in the words and figures following to wit:

"State of Illinois } Circuit Court thereof,
LaSalle County ss. } June Term A.D. 1858.

William Evans, Plaintiff in this Suit, by Charles Blanchard his attorney, complains of "the Chicago and Rock Island Rail Road Company" defendant in this Suit, in a Plea of Assumpsit;

For that whereas, the said defendant heretofore, to wit: on the first day of April Eighteen hundred and fifty eight, at, to wit: the County of LaSalle aforesaid, was indebted to the said Plaintiff in the Sum of One Thousand dollars for goods, wares, merchandize and wood before that time bargained, sold and delivered by Plaintiff to Defendant at its Special instance and request; and being so indebted, the said defendant, in consideration thereof, afterwards, to wit: on the day and year aforesaid, at, to wit: the County aforesaid, undertook and there and then faithfully promised the said Plaintiff to pay him the said Sum of money above mentioned, when the said defendant should be therunto afterwards requested -

Yet the said defendant hath disregarded its said promises, and hath not paid said Sum of money above mentioned, or any part thereof, though often requested so to do.

And whereas also, afterwards, to wit: on the day and year aforesaid, at the County aforesaid, in consideration that the said Plaintiff, at the like Special instance and request of the said defendant, had before that time bargained sold and delivered to said defendant a large quantity of wood, to wit: Four hundred and ninety four and one half cords of wood, the said defendant, undertook

4 and then and there faithfully promised the said Plaintiff to pay him so much money, as he therefor reasonably deserved to have of the said defendant, when the said defendant should thereafter afterwards requested.

And the said Plaintiff avers, that he therefor reasonably deserved to have of the said defendant the further sum of One Thousand dollars to wit, at the county of LaSalle aforesaid whereof the said defendant afterwards, to wit, on the day and year last aforesaid had notice.

Yet the said defendant hath disregarded its said promises last above mentioned and hath not paid the said last mentioned sum of money although often requested so to do, but the said defendant to pay him either of said sums of money above mentioned or any part thereof hath hitherto wholly neglected and refused and still doth neglect and refuse, to the damage of the Plaintiff of One Thousand dollars, and therefore he brings his suit

Charles Blanchard
Attorney for Plaintiff

(Copy of Bill of Particulars)

The Chicago & Rock Island R. R. Co
To William Evans Dr

To 494 1/2 cords of wood at \$2.50 per cord \$1236 ²⁵/₁₀₀

And afterwards, on Wednesday November 3^d, 1858 the same being one of the days of the November term of said Court, an order was entered of record in said cause in the name and figures following to wit:

1859

January

5th
 "William Evans
 vs
 The Chicago & Rock
 Island Rail Road Company
 Assumpsit

This day the plaintiff comes & declares
 Blanchard his attorney and on his motion the defendant
 is ordered to plead herein on or before the coming in of
 the Court, next Tuesday morning;

And afterwards to wit on the 11th day of November
 1858 the defendant files a plea in the words and
 figures following to wit;

"William Evans }
 vs }
 The Chicago & Rock }
 Island Rail Road Company }
 Assumpsit
 In Circuit Court of
 La Salle County Novem-
 ber Term A.D. 1858.

"And now comes
 the said defendant by Glover & Cook its attys
 and defends ^{where} &c, and says action run because
 it says it never undertook & promised in
 manner & form as is in plaintiff's declaration
 above alleged against it, and of this it
 puts itself upon the Country

Glover & Cook
 And Plaintiff doth the like } West's attys - "
 C. Blanchard Plff atty

And afterwards, to wit; on the 11th day of November
 A.D. 1858, the defendants filed further pleas in
 the words & figures, following, to wit;

"William Evans vs The Chicago &
 Rock Island Rail Road Company.

6 And for a further plea in this behalf defendant saith actis non, because it says that after the delivery of the wood mentioned in said declaration and before the bringing of this suit, to wit on the 2^d day of April A.D. 1857 at said County it fully paid the said plaintiff for said wood, and this it is ready to verify wherefore it prays judgment &c.

And for a further plea in this behalf defendant saith actis non &c because it saith that the wood mentioned in the declaration aforesaid was sold and delivered upon a contract entered into between said plaintiff and said defendant on the 5th day of January A.D. 1857 by the terms of which agreement said plaintiff agreed to deliver the plaintiff one thousand five hundred cords of wood on the line of the Chicago and Rock Island Rail Road one mile west of Clinton Station by the 1st day of May A.D. 1857, and by which contract the defendant agreed to pay to said plaintiff two dollars & ⁵⁰/₁₀₀ per cord Eighty per cent to be paid monthly as the wood should be delivered, and the remaining Twenty per cent should be paid within thirty days after the completion of the contract, And defendant avers that it has paid to said plaintiff Eighty per cent of the price of all the wood which has been delivered by said plaintiff to the defendant and that the said plaintiff has never completed said contract and has not delivered to said de-

7 - defendant said one thousand five hundred cords
of wood, and this the said defendant is ready
to verify, wherefore it prays Judgment re
Glover & Cook
Defts Attys "

And afterwards, to wit, on the 19th day of November
1858 the plaintiff filed his replication to de-
fendants plea, in the words and figures follow-
ing, to wit: "

State of Illinois, LaSalle County
Circuit Court thereof, November term AD 1858.
William Evans

vs

Chicago & N. W. R. R. Co

} And the said Plain-
-tiff as to the third

plea of the said defendant by him alone pleaded
says precludi non because he says that
said defendant and Plaintiff never entered
into a contract for the sale and delivery of
said wood in manner and form as in said
plea is alleged and this Plaintiff prays may
be inquired of by the Country

C. Blanchard

plff doth the like

For Plaintiff "

And also on the same, said 19th day of November
1858, the Plaintiff filed a second replication
and demurrer, in the words and figures follow-
ing, to wit: "

State of Illinois, LaSalle County.
Circuit Court thereof, November term AD 1858.

8 William Evans

vs
Chicago & R. A. R.R. Co

And the Said Plaintiff as to the second plea of Said defendant by it alone pleaded Says that Plaintiff by reason of anything in said plea alleged ought not to be barred from having and maintaining his aforesaid action thereof against said defendant, because he says that said defendant did not fully pay said Plaintiff for said wood in manner and form as in said plea is alleged, and this the Plaintiff prays may be inquired of by the Country,

- 5
And as ^{to} the Said third plea of the Said defendant by it alone pleaded, Plaintiff comes and craves oyer of said Contract in said plea mentioned and it is read to him in the words and figures following;

And Plaintiff says that said Contract and the matters contained in said plea are not sufficient in law to bar or preclude the Plaintiff from his action thereof against said defendant, and that he is not bound by Law to answer the same,

And for ~~a~~ Special cause of Demurrer defendant Shows, 1st that said Contract does not appear upon its face to be a contract executed by Plaintiff & defendant,

2 That defendant does not aver a full performance on his part -

3 Plea does not aver how much wood was delivered, nor how much money was paid thereon,

And afterwards to wit: on Friday November 19, 1858
 the same being one of the days of the said November
 term of said Court for said term, an order was made
 and entered of record in said cause in the words
 and figures following to wit:

William Evans
 vs
 The Chicago & Rock
 Island Rail Road Company

Assumpsit

This day the defendant
 comes by Glover & Coost &
 Chumason & Eldridge its attorneys and by leave
 of the Court they file additional pleas herein.
 And now the plaintiff comes by C. Blanchard
 his attorney, and after hearing the arguments
 of counsel the Court over rule the plaintiffs de-
 murrer to the defendants third plea. The
 plaintiff by his attorney now moves the Court
 for leave to file double replications to defend-
 ants third plea which motion is sustained by
 the Court. Thereupon come the following names
 of a Jury to wit: M. C. Clark, James Smith,
 John Morrill, C. B. Dey, Bradford Field, James
 Kelly, Amasa G. Cook, Rickel Rickelrow, J. S. Syr-
 rel James Wisner, John Sweet and Abram Court-
 right who are duly elected, tried and sworn to
 well and truly try the issues herein according
 to the evidence, and after hearing the testimony
 and arguments of counsel, the Jury retire to
 consider of their verdict, and after due deliber-
 -eration thereon had, return into Court the follow-
 -ing verdict, to wit: "We the Jury find the
 issues herein for the defendant"

Plaintiffs attorney moves the Court for a new trial.

And afterwards, to wit, On Tuesday the 23^d day of November 1858, the same being one of the days of the said November Term of said Court, for said year, the following and final order was made and entered of record in this cause in the words and figures following to wit:

William Evans }
 vs } Assumpsit.
 The Chicago & Rock Island }
 Rail Road Company }

It is ordered by the Court that the plaintiff's motion for a new trial herein be overruled.

It is therefore considered by the Court that the defendant have and recover of the plaintiff its costs and charges by it herein expended, and that execution issue therefor."

And afterwards, to wit, on the 7th day of December 1858, the same being one of the days of the November Term of said Court for said year, the Plaintiff filed his Bill of Exceptions, in the words and figures, following, to wit:

William Evans } State of Illinois, LaSalle
 vs } County Circuit Court thereof
 Chicago & Rock I. R. R. Co } November Term A.D. 1858

Be it remembered that on this 19 day of November, A.D. 1858, the same being one of the days of said term of Court the above entitled cause coming on to be heard before

11
Mr. E. Hollister Presiding Judge of said Court
and a Jury - the Plaintiff to maintain the
issues on his part produced as a witness John
W. Conlogue who being first duly sworn testified
as follows, viz: I am acquainted with
Plaintiff and defendant - I was in the employ
of defendant in the Spring of 1857 - Plaintiff
delivered to defendant in the month of January
and February A.D 1857, four hundred ^{Ninety} four
& one half or $495\frac{1}{2}$ cords of wood worth two
dollars and fifty cents per cord, said wood
was received and used by defendant.
Here Plaintiff rested

Cross Examination

I (witness) made a contract with Plaintiff
to deliver to defendant within a mile of Trenton
on the line of Delts Rail Road one thousand
or fifteen hundred cords of wood for which
Plaintiff was to have two dollars and fifty
cents per cord, Eighty per cent to be paid
monthly as the wood was delivered, the remain-
ing twenty per cent was to be paid within
thirty days after the completion of said Contract
- said wood was to be delivered by the first
day of May A.D 1857, the whole of said one
thousand cords of wood was never delivered
to my knowledge, at least up to the time
fixed for the completion of the contract, two
receipts of money paid by defendant to
Plaintiff for wood, the execution of which
by Plaintiff was proven by said John W. Conlogue
were read in evidence

(Receipts read in evidence - over)

Chicago and Rock Island R. R. Co

Peru Station

1857

To Wm Evans

Dr

Feb -

For 468 cords wood 20¢ Less 20
per cent delivered one mile West of Trenton

936.00

Dated LaSalle April 2 1857.

Received of the Chicago and
Rock Island Railroad Company the sum
of Nine hundred thirty six Dollars
(\$ 936 -) in full for the above account
Wm EvansExamined and correct
J. H. Conlogue
approved
J. F. Tracy
suplt

Signed in duplicate

Chicago and Rock Island R. R. Co

Peru Station

1857

To Wm Evans

Dr

Jan -

For 26 1/2 cords wood 20¢ Less 20 per cent 53.00
delivered at Barlow's crossing

Dated LaSalle April 2 1857

Received of the Chicago &
Rock Island Railroad Company fifty
three dollars (\$ 53 -) in full for the above
account
Wm EvansExamined and correct
J. H. Conlogue
approved
J. F. Tracy
suplt

Signed in duplicate

Examination in chief resumed

I don't know that the whole of said wood
was delivered; I know it has not at that
point. I know it because I was over that part
of the road frequently - the 494 1/2 cords of wood
that was delivered by Plaintiff to defendant was
delivered in January and February 1857 the
wood was to be estimated monthly as delivered
and the Eighty per cent to be paid monthly as
wood was delivered. The wood delivered in

13

January was not paid for in January - would not be if delivered in January - that wood that was delivered in January and February was not paid for until April following - none of the wood delivered was paid for, the months it was delivered -

Here defendants Council read in Evidence a written Memorandum of the Contract referred to by said witness.

(Contract)

" /
Memorandum of an Agreement, Made this Fifth day of Jan'y, 1857, Between W^{ms} Evens of the first ^{part} and the Chicago and Rock Island Railroad Company, by J. W. Conlogue Wood agent, of the second part.

The said W^{ms} Evens agrees to furnish and deliver to the said Company, on the line of the Chicago and Rock Island Railroad, one mile West of Trenton Station, by the first day of May, 1857, One Thousand five hundred Cords of wood (128 ft cu) said Wood to be of Sound, thrifty, timber and cut four feet long - measuring half the calf, well Split and Corded, and no round wood to be delivered of less size, than three inches in diameter, or larger than 6 inches in diameter. All Sound Timber as above to be received by the party of the second part, with the following exceptions: Basswood, Willow and Buckeye. The wood to be piled within six feet of the Railroad track in ranks from six to eight feet high and not more than two ranks together until inspected by wood agent. All of the wood to be subject to the inspection and measurement of the above named Wood agent, or any other authorized Agent he may

appoint, of the party of the second part.

And the Said Railroad Company agree to pay to Said Wm Evans Two ⁵/₁₀₀ Dollars per cord, eighty per cent, to be paid monthly, as the Wood shall be delivered, and the remaining twenty per cent, together with all moneys due on this contract, shall be paid within thirty days after the completion of this contract.

The monthly payments shall be made in current funds on the fifteenth day of each month, at the office in Chicago (or as soon thereafter as the same can be conveniently done by the Wood agent, on the line of the Road), on the estimate of the wood agent, which shall include all the wood delivered by the last day of the preceding month.

In witness whereof, Said Parties have hereunto set their hands and seals the day and year first written.

Wm Evans
J. W. Conlogue "

The above is all the evidence introduced on the trial of the above cause —

The Plaintiff asked the Court to instruct the Jury as follows

No 1

If the Jury believe from the Evidence that the wood in controversy was delivered upon a Contract between Plaintiff & defendant by which Plaintiff agreed to deliver one thousand cords of wood by the first day of May 1857 and that Plaintiff failed to deliver the full amount of said wood to said defendant by the first day of ^{May} 1857 but that Plaintiff delivered a portion of said ^{wood}, and the defendant

15
Refused

Kept the wood so delivered after the time mentioned in the contract for the delivery of the whole amount of the wood and used the same then defendant is bound to pay Plaintiff for the wood so delivered, so much as he has proved said wood to be worth

Given

2 If the Jury believe from the Evidence that the wood in controversy was delivered upon a Contract as claimed by defendant, then defendant must prove that it have fully performed the contract on its part, before the jury can find for the defendant, and if the Jury believe from the Evidence, that defendant failed to make its payments as agreed upon, then the Plaintiff had a right to treat said Contract as rescinded, and is entitled to recover from defendant for the wood delivered so much as it was worth. "

Instruction marked

No 1 the Court Refused to give, and gave instruction No 2 - to the Courts refusing to give said instruction No 1 Plaintiff there and there excepted.

And to the giving of Plaintiff's second instruction defendant by its counsel there and there excepted.

Defendant asked Court to instruct the Jury as follows: "

1st "If by the contract 80 per cent of the price of the wood sold and delivered by plaintiff to defendant was to be paid at the office of defendant in Chicago monthly

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on the 15th of each month or as soon thereafter as the payments could be conveniently made by the wood agent, and if the amount of 80 per cent on the wood delivered has been paid by defendant and received by plaintiff, ~~before the plaintiff~~, before the plaintiff can insist that the defendant has violated its contract by not paying the 80 per cent in proper time, he must show that defendant has failed to make such payment after proper demand at its office in Chicago or that the wood agent did not pay the same as soon after the 15th of each month as he could conveniently do so on the line of the road.

given

2^a

If the wood in question was delivered under the contract read in evidence & the plaintiff on the 2^d of April 1857 accepted 80 per cent. of the price of the wood delivered by him, he cannot rescind the contract because the 80 per cent was not sooner paid.

given

3^a

If the wood sold and delivered by the plaintiff was under a contract by which the plaintiff agreed to deliver to the plaintiff 1500 cords of wood on the line of the Chicago and Rock Island Rail Road Company, one mile west of Tremont Station by the 1st day of May 1857, and if by said contract, the defendant agreed to pay the plaintiff \$2.50 per cord, eighty per cent to be paid monthly as the wood should be delivered and the remaining 20 per cent

given

17 within 30 days after the completion of the contract and if the defendant has paid to the Plaintiff 80 per cent of the price of all the wood delivered under the contract, Plaintiff is not entitled to recover the 20 per cent until he has fulfilled his part of the contract.

which instructions were given by the Court, to the giving of defendants said instruction Plaintiff then and there excepted.

The Jury by their verdict found for the defendant, whereupon the Plaintiff by his Counsel enters his motion for a new trial = which motion the Court overrules, and enters Judgment against the Plaintiff, to which decision of the Court in overruling said motion Plaintiff by his counsel then and there excepts and prays the Court to Sign and Seal this his Bill of Exceptions & that the same may be made a part of the records in this cause," which is done.

M. E. Hollister 
Judge of said Court

State of Illinois of John H. Nash Clerk of the Circuit
Has all County Court in and for said County and
State solemnly certify that the above
and foregoing comprises a true full perfect & complete
record of the orders of Court and the papers on file in the
said cause of William Evans vs Chicago & Rock
Island Road & Road Company as the same appear of
record in my office,

In Testimony Whereof I have hereunto set my
hand & the Seal of said Court at Chicago
this 31st day of March A.D. 1839
J. H. Nash Clerk

State of Illinois - Supreme Court -

William Evans

Plaintiff in Error

vs.

Assignments -

The Chicago & Rock Island R.R. Co. of Errors.

Defendant in Error

And now comes the
said William Evans (Plaintiff in Error)
by Abner Blanchard his attorney, &c.
says that in the record and proceedings
aforesaid and in giving the judgment
aforesaid in favor aforesaid there is
manifest error, and assigns the following
grounds of Error, viz:

1st The Court erred in refusing to give
the first instruction asked for by plaintiff

(vide records page 14)

2nd The court erred in giving defendants instructions as asked for (vide records page 15)

3rd That the Court erred in overruling plaintiffs motion for a new trial

4th That the judgment is against law and evidence

5th That the verdict is wholly unsupported by evidence.

And the said William Egan prays that the judgment aforesaid, for the error aforesaid, and all the error in said records and proceedings, may be reversed.

Charles Blanchard, atty.
for Plaintiff Egan

19, ~~229~~ 123
William Evans

to

Chicago & Rock Island
Rail Road Co

Recd

Filed April 20, 1839
L. Leland

Blanchard
pd Recd \$5. -

Fees \$5. 50
paid