

14701

No. _____

Supreme Court of Illinois

Robinson

vs.

Stow.

71641  7

14701

STATE OF ILLINOIS,
SUPREME COURT,
THIRD GRAND DIVISION.

No. 223

J. W. Middleton & Co., Stationers, 106 Lake St.

Robinson

vs.

Spencer

Ready

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Pleas, before the Honorable George Manierre Judge of the Seventh
Judicial Circuit of the State of Illinois, and sole presiding Judge of the Circuit Court of
Cook County, in the State aforesaid, and at a term thereof begun and held at the Court House
in the City of Chicago, in said County, on the 14th day of July in the year
of our Lord One Thousand Eight Hundred and Eighty and of the
Independence of the said United States the Eighty Sixth

Present, Honorable George Manierre Judge of the 7th Judicial Circuit)
of the State of Illinois. }

Charles Paron States Attorney.

John Gray Sheriff of Cook County.

Attest, Wm L Church Clerk.

Be it remembered that heretofore
to wit: On the fourteenth day of June A.D. 1860,
Jane Storr Administratrix of the Estate of William W. Storr her
husband, by Goudy and Waite their Attorney sued out
of the Office of the Clerk of the Court aforesaid
the Peoples certain writ of summons to Christopher
W. Robinson in the words and figures following
to wit:

State of Illinois)
County of Cook) The people of the State
of Illinois to the Sheriff of Cook County, greeting.
We command you that you summon Christopher W.
Robinson if he shall be found in your County per-
sonally 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

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Chicago in said Cook County on the second Monday
of July next, to answer unto Jane Storr, Administratrix of
the Estate of David Rattray deceased and William
Mc Storr her husband in a plea of Covenant to the
damage of the said Plaintiffs as is said in the sum
of Eight Thousand dollars; And have you there
this writ with an endorsement thereon in what manner
you shall have executed the same.

Witness William L Church Clerk of our said
Court and the seal thereof at Chicago aforesaid
this fourteenth day of June A D 1860

(Seal)

Wm L Church Clerk

And afterwards to wit on the same day and
year last aforesaid said Plaintiffs by their said
Attorneys filed in said Court in said cause
their certain declaration in the words and figures
following to-wit.

State of Illinois
Cook County

July Term A D 1860 of the
Circuit Court of Cook County

Jane Storr Administratrix &c
and William Mc Storr her husband

vs
Christopher E Robinson

William Mc Storr
and Jane Storr his wife, which said Jane Storr
is Administratrix of the goods chattels and

estate of David Rattray deceased by Bondy and Wate
their Attorneys complain of Christopher K Robinson, who
has been summoned to of a plea of breach of Covenant,
For that whereas heretofore to-wit on the fifteenth day
of May A D 1849 at Chicago in the County of Cook
and State of Illinois by certain articles of agreement
then and there made concluded and agreed upon
by and between the said defendant of the one
part and the said David Rattray of the other
part, one part of which said Articles of agreement
sealed with the seal of said defendant the said
Plaintiffs now bring before this Court the date of which
is the day and year last aforesaid: it was
witnessed that the said defendant party of the
first part had purchased Block No Forty three
(43) of the Subdivision of the Trustees of the Illinois
and Michigan Canal of Section No Seven (7)
Township No Thirty Nine (39) Range 14 East of the
third principal meridian, and that said defendant
said party of the first part thereby agreed that
he would in consideration with said Rattray
said party of the second part, go on and get
the said Block subdivided, as they should
mutually think proper and for the interest of
said parties; and that said Rattray was
to dispose of the same either at private or
public sale, as soon thereafter as was
practicable and should be thought proper

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by the said parties for one fourth part of the conveyed
creation down, and the remainder to be secured by
Notes on one two and three years from the first day
of May 1889 in equal annual payments and
bearing interest from date, And that the said
Robinson, said defendant agreed that he would
upon the payment of one fourth in money and the
remaining payments secured by Notes as above
stated execute his bond for a good and suf-
ficient deed of conveyance when such notes should
be paid in full, provided such sale should
not average less than twelve hundred dollars
in the aggregate, And that it was further
stipulated and agreed that the said Robinson
was first to receive the amount of all money paid
out by him for said purchase of said block
or blocks which was nine hundred and sixty
five (965) dollars together with the interest on
the same, then the balance arising from the
sale of said block was to be equally di-
vided between the said parties, And that
in consideration of said division of said
balance of money arising from the said
sale the said Rattray was to plat sur-
vey or subdivide the said lot or block
and advertise and sell the same at his own
expense, To the performance of which agree-
ments the said parties mutually bound them-

selve their heirs executors administrators or assigns
Arby said articles of agreement reference thereto
being had will more fully and at large appear
And although the said David Rattray since
deceased during his life time did well and
truly perform and fulfill all and singular the
Covenants & agreements in said articles of a-
greement mentioned on his part & behalf to
be done & performed. Yet protesting that the
said defendant hath not performed or fulfilled
anything in said articles of agreement men-
tioned on his part to be done, the said
Plaintiffs in fact say that after the said
Rattray had in pursuance of said articles
of agreement subdivided & platted said Block
43 into twenty two lots and advertised the
same for sale the said defendant stopped
the sale of said lots by sd Rattray & refused
to permit them to be sold & refused to make
any bonds for deeds of conveyance or to
make any deeds of conveyance of said lots
if they should be sold by said Rattray whereby
the sale of said lots was prevented contrary
to the tenor and effect of said articles of
agreement and of the covenant of said de-
fendant in that behalf made as aforesaid.
And also for that whereas heretofore to wit
on the day and year last aforesaid at

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Chicago offered the said defendant of the one
 part and the said David Rattray of the other
 part made and entered into certain other articles
 of agreement, one part of which said Articles of
 agreement sealed with the seal of the defendant
 the said Plaintiff brings here into Court the
 date of which is the day and year last a-
 foreaid which said Articles of agreement are
 in the words and figures following to-wit "Article
 of Agreement, Made and entered into between
 C. C. Robinson of the City of Chicago County
 of Cook and State of Illinois party of the first
 part and David Rattray of the same
 place party of the second part; Witness that
 the said party of the first part has purchased
 Block No forty three of the subdivision of the
 Trustees of the Illinois and Michigan Canal
 of Section No seven Township No Thirty one
 Range fourteen East third P.M. and said
 Robinson hereby agree that he will in ^{connection} con-
 sultation with the said Rattray go on and get
 the said Block subdivided as they shall
 mutually think proper and for the interest
 of the parties and said Rattray is to dis-
 pose of the same either at private or public
 sale as soon as practicable and thought
 proper by the parties for one fourth down
 and the remainder to be secured by Note

on
One Two and Three years from the first day of
May 1849 in equal annual payments and draw-
ing interest from date, And the said Robinson
agrees that he will upon the payment of One
fourth in Money and secured by Notes as
stated above execute his bond for a good
and sufficient deed of conveyance when such
Notes are paid in full, provided such sale
shall not average less than Twelve Hundred
Dollars in the aggregate, It is further stip-
ulated and agreed that the said Robinson
is first to receive the amount of all money
paid out for said purchase of said Block
or Blocks which is Nine hundred and
sixty five dollars together with interest on
the same, then the balance to be equally
divided between the parties, For which
privilege the said Rattray is to plat sur-
vey or subdivide the said lot or block
and advertise and sell the same at his
own expense, which conditions met and
truly to be made the said parties hereto
mutually bind themselves their executors ad-
ministrators or assigns, Witness their hands
and seals this fifteenth day of May 1849
In presence of signed W. A. Baldorn
signed W. A. Baldorn
Robinson (Seal)
David Rattray (Seal)
And although the said David Rattray

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since deceased during his life time did sell
 and truly perform and fulfill all and singular
 the covenants and agreements on said Articles
 of agreement mentioned on his part to be done
 and performed, yet protesting that the said
 Defendant has not performed or fulfilled any-
 thing on said Articles of agreement mentioned
 on his part to be done, except as hereinafter
 stated, the said Plaintiffs in fact say that
 after the making and completion of said
 Articles of agreement the said David Rattray
 in pursuance of the terms and tenor of said
 Articles of agreement went on and subdivided
 and platted the said Block No forty three
 (43) into Seventy two (72) lots and by great
 effort and exertion on his part succeeded
 in selling and did sell nineteen (19) of said
 Lots for prices ranging from forty (40)
 to One hundred dollars (100) each for the
 sum and consideration of One Hundred
 and Seventy seven (177) dollars which was
 Twelve (12) dollars more than the price
 paid by said defendant for said Block
 No forty three 43 and that said Rattray
 paid over to said defendant the sum
 of Eight Hundred and sixty six dollars
 (\$866.66) and sixty two cents of the money
 and securities received by said Rattray

in payment for said Nineteen (19) lots so by
him sold, And that after said sale of said
Nineteen lots the said defendant stopped
the sale of the remaining fifty three (53) lots
and refused to permit any of them to be
sold, and refused to make any bonds for
deeds of conveyance or any deeds of con-
veyance to purchasers whereby the sale
of said remaining fifty three (53) lots was
prevented contrary to the tenor and effect
of said Articles of agreement and of the
Covenant of the said defendant in that he
has made as aforesaid, And the said
fifty three lots remaining unsold were and
are of great value, to wit of the value of
Sixteen thousand dollars, And said de-
fendant in so stopping said sale and
in so refusing to permit any more lots to be
sold and in refusing to make deeds and
bonds for deeds acted without any reason-
able cause or excuse whatever, And the
said lots remaining unsold were and are of
great value to wit of the value of Sixteen
thousand dollars, And so the Plaintiffs
in fact say that the said defendant has
not kept the said Covenants so by
him made as aforesaid but has broken
the same, and to keep the same has

(10)

hitherto refused & neglected and still does
neglect and refuse to the damage of the
said William W Storr and Jane Storr as
Administratrix, as aforesaid of Eight thousand
dollars and therefore they bring this suit to
Gould & Warte

Attys. for Plffs

And afterwards to wit, On the 4th day
of September in the year last aforesaid
said writ was returned into the Court
aforesaid by said Sheriff endorsed as
follows viz. Served by reading to the
within named Christopher C Robinson on
the 6th day of July 1860

Where service 50

20 miles 100

1 return 10 \$ 160

Alonzo Leach Sheriff

by O Simmons dep

And afterwards to wit on the 8th day of
October in the year aforesaid said parties
filed in said cause their certain stipulation
in the words and figures following to wit,

Circuit Court of Cook County

William W Storr and
Jane Storr Administratrix
of the Estate of David
Ratray decd

Christopher B Robinson

It is hereby agreed that the default in this case may be set aside and the case stand for trial and that it may be tried at the November Term 1860 or as soon thereafter as it shall be reached on the regular call of the docket unless Plaintiffs shall have legal cause for continuance or unless accident or some ~~unfavorable~~ ^{unseen} event shall require a short delay on the part of the defendant

Oct 4th 1860

Soudy & Waite for Plff
T. Lytle Dickey for Def

And afterwarrdy to wit: on the 1st day of December in the year last aforesaid said defendant by his Attorneys filed in the Court aforesaid his certain demer to said Plaintiffs declaration in the words and figures following to wit:

State of Illinois
County of Cook

November Term 1860
of the Circuit Court
of Cook County

Christopher B Robinson
ats

Jane Storr Administratrix
and William W Storr her
husband

(11)

(12)

And the said defendant by Barker Tuley his Attorneys comes and denies the wrong and injury intended and says that the said first Count of the said declaration and the matters therein contained in manner and form as the same are above stated and set forth are not sufficient in law for the said plaintiff to have or maintain their aforesaid action thereof against the said defendant, and he the said defendant is not bound by law to answer the same. And this he is ready to verify, wherefore by reason of the insufficiency of the said first Count of the said declaration in this behalf the said defendant prays judgment, and that the said plaintiffs may be barred from having or maintaining their aforesaid action thereof against him &c.

Barker Tuley

Attys for Defd

State of Illinois } November Term A.D. 1860
 County of Cook } of the Circuit Court of
 Cook County

Christopher L. Robinson

als

Jane Storr Administratrix and
 William B. Storr her husband }

And the said defendant by Barker & Tuley
his Attorneys comes and defends the wrong
and injury whereof, and says that the
said second Count of the said Plaintiffs
declaration, and the matters therein con-
tained in manner and form as the same are
above stated and set forth are not suf-
ficient in law for the said plaintiffs to have
or maintain their aforesaid action thereof
against the said defendant, and he the
said defendant is not bound by law to answer
the same, And this he is ready to verify
wherefore by reason of the insufficiency of
the ~~said second Count~~ ^{said} declaration in this behalf
the said defendant prays judgment and
that the said plaintiffs may be barred
from having or maintaining the aforesaid
action thereof against him etc

Barker & Tuley

Attys for Deft

And afterwards to wit at the November
Term of said Court to wit on the nine-
teenth day of December in the year last
aforesaid the following proceedings among
others were had and entered of record
therein to wit.

(13)

Jane Storrs Administratrix
of the Estate of David Rathay

14
125
(14)

Deceased and
William W Storr
her husband

Defendant

Christopher W Robinson

This cause
coming on this day to be heard upon the
motion of the Plaintiff to strike from the
files thereof the demurrer of the defendant to
the 2nd count of said Plaintiffs declaration
filed therein upon the ground that said demurrer
was filed contrary to the stipulation of
said parties filed therein, and the Court
being fully advised in the premises doth
sustain said motion and orders that
said demurrer be and the same hereby
is stricken from the files of said cause.
And afterwards to wit at the January Term
of said Court to wit on the eleventh
day of January in the year of our Lord
One thousand eight hundred and sixty
one the following proceedings among
others were had and entered of record
therein to-wit

Jane Storr Administratrix of the Estate
of David Ralphy deceased and William
W Storr her husband
Christopher W Robinson

On motion of J W Barker of counsel for
said defendant; no objection being made
thereto it is ordered that said defendant
have leave to file Additional pleas herein

And afterwards to-wit. At the January Term of
said Court to-wit on the 11th day of January
in the year of Our Lord One thousand eight
hundred and sixty one: said defendant by
his Attorneys filed in said Court in said
cause the certain pleas in the words and
figures following to-wit:

State of Illinois } Circuit Court of Cook
County of Cook } County of the November
Term A.D. 1860

Christopher B Robinson

als

William W Storr & Jane
Storr his wife Administratrix
of the goods chattels and
estate of David Rattray
deceased:

And the said
defendant Christopher B Robinson by
Barker & Tuley his Attorneys comes and
defends the wrong and injury when &c
and says that the said Articles of agree-
ment is not his deed and of this the

the said defendant puts himself upon the Country
 &c Barker & Tuley

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Defts Attys

A. H. Arpington of Counsel

2 And for a further plea in this behalf the said defendant by leave &c says actio non because he says that the said defendant hath not broken the said Covenants in the said declaration mentioned or any or either of them in manner and form as the said plaintiffs have above thereof declared against him and of this he puts himself upon the Country &c

3 And the said defendant by like &c says actio non &c because he says that the said Jane Storr is not nor ever was administratrix of the goods chattels and effects which were of the said David Rattray deceased in manner and form as the said plaintiffs have above in their said declaration in that behalf alleged And this the said defendant is ready to verify &c whereupon &c

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And for a further plea in this behalf the said defendant by like leave &c says actio non &c because he says that if the said David Rattray was or has been in his life time damaged for any reason or means or on account of any matter cause or thing in the Covenants agreements payments articles

or contracts in said articles of agreement mentioned the said David Rattray was and has been in his life time so damaged in his own wrong and by ^{through} his own means and default and this is the said defendant is ready to verify & whereupon

5 And for a further plea in this behalf the said defendant by like leave &c says actio non because he says that always after the sealing and making of the said articles of agreement to the day of the commencement of this action he hath fulfilled performed and kept all and singular the covenants agreements payments articles and contracts on the part of him the said defendant to be fulfilled performed and kept according to the form and effect of the said articles of agreement and this he is ready to verify &c wherefore he prays judgment &c

6 And for a further plea in this behalf the said defendant by like leave &c says actio non because he says that always after the sealing and making of the said articles of agreement up to the time of the decease of the said David Rattray which defendant avers occurred in the month of September in the year Eighteen hundred and forty nine. In the said

(18)

defendant did in conjunction with the said David go on and get the said Block subdivided as they to wit said David and this defendant thought proper and for the interest of the parties to wit said David and this defendant to wit into seventy two lots and that he the said defendant did upon the payment of one fourth in money and the remainder secured by notes on one two and three years from the first day of May in the year Eighteen hundred and forty nine in equal annual payments to him said defendant and the said defendant for all that part or parcel of lot and lots of the said Block forty three (43) in said articles of agreement mentioned which he the said David in his life time did sell to wit on the first day of August A.D. 1849 and did make execute and deliver to the person and persons and to each and every of them to whom said David did so sell his said defendants bond for good and sufficient deeds of conveyance when the said notes in this plea mentioned and which were given by such person and persons respectively upon the sale by said David were paid in full according to the form and effect of said articles of agreement and thus he the said defendant is ready

7

to verify wherefore he prays judgment &c
 And for a further plea on the behalf the said
 defendant by like leave &c says actio non &c
 because he says that he the said defendant
 did to wit on the first day of October A.D.
 1849 did make execute and deliver to the pur-
 chaser or purchasers respectively of all that part
 parcel lot and lots of the said Block forty
 three (13) of the subdivisions of the trustees of
 the Illinois and Michigan Canal of section
 No seven (7) Township number thirty nine (39)
 Range number fourteen (14) East of the
 third (3d) principal meridian which was sold
 by the said David Rattray, good and suf-
 ficient bonds with covenants therein that
 upon the payment by such purchaser or
 purchasers of the notes respectively given to
 secure three fourths of the consideration money
 of the part parcel lot and lots of the said
 Block so purchased by such purchaser and
 purchasers respectively of said David he the
 said defendant would make execute and deliver
 to such purchaser and purchasers respectively
 good and sufficient deed and deeds of
 conveyance of that part parcel lot and
 lots of said Block forty three so pur-
 chased by such purchaser and purchasers
 respectively according to the form and

(19)

(20)
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effect of said articles of agreement and this the said defendant is ready to verify wherefore he prays judgment &c.

And for a further plea in this behalf as to said first count of plaintiffs declaration the said defendant by like leave &c says actio non because he says that after the said Rattray had subdivided said block forty three (43) into twenty two (22) lots and advertised the same for sale as in said first count mentioned he the said defendant did in good faith and not wantonly stop the sale of said lots by said Rattray and refuse to permit them to be sold, and to make any bonds for deeds of conveyance and to make any deeds of conveyance of said lots if they should be sold by said Rattray and this he the said defendant is ready to verify wherefore he prays judgment &c.

9 And for a further plea in this behalf as to the said first count of plaintiffs declaration the said defendant by like leave &c says actio non &c because he says that after the said Rattray had subdivided said Block forty three (43) into twenty two (22) lots and advertised the same for sale as in said first count mentioned, he the said defendant because and for the reason that

that the said defendant did think it proper and necessary so to do did stop the sale of said lots by said Rattray and refused to permit them to be sold and to make any bonds for deeds of conveyance and to make any deeds of conveyance of said lots if they should be sold by said Rattray and this is the said defendant is ready to verify &c therefore he prays judgment &c

- 10 And for a further plea in this behalf as to the said first Count of plaintiffs declaration the said defendant by take leave &c says actio non &c because he says that after the said Rattray had subdivided said Block forty third (43) into twenty two (22) lots and advertised the same for sale as in said first Count mentioned in the said defendant at the time when &c in plaintiffs declaration mentioned, honestly and in good faith believing the said time was not a good and propitious or proper time for the sale of said lots and that it would be for the mutual advantage and interest of both the said defendant and said David not to have a sale of said lots at that time he the said defendant did stop the sale of said lots by said Rattray and refused

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to permit them to be sold and to make any bonds for deeds of conveyance and to make any deeds of conveyance of said lots if they should be sold by said Rattray and this he the said defendant is ready to verify wherefore he prays judgment &c

11 And for a further plea in this behalf as to said declaration said defendant says actio non because he says that he the said defendant did commit the said several supposed breaches of covenant above assigned by the leave and license of the said plaintiff to the said defendant for that purpose first given and granted to wit at the several times in that behalf in the declaration mentioned to wit at the County of onesaid and this the said defendant is ready to verify wherefore he prays judgment &c

12 And for a further plea in that behalf said defendant says actio non because he says that before and at each of the said several times in the declaration in that behalf mentioned when he the said defendant stopped the sale of said lots by said Rattray and refused to make any bonds for deeds of conveyance or to make any deeds of conveyance

of said lots if they should be sold by the said Rattray, and refused to permit any of said 53 lots to be sold to wit at said County of Cook the said defendant did think proper that no more of the lots into which the said block had been subdivided and then unsold should be sold at any or either of said times whereof the said Rattray then and there had notice to wit at the County of Cook aforesaid, And thus the said defendant is ready to verify wherefore he prays judgment &c.

- 13 And for a further plea in this behalf as to the said first Count of the said declaration, the said defendant says actio non because he says that the said defendant did not stop the sale of the said lots by the said Rattray, or refuse to permit them to be sold or refuse to make any bonds for conveyance or to make any deeds of conveyance of said lots if they should be sold by the said Rattray in manner and form as the said Plaintiffs have above thereof in the said first Count complained against him. And of this the said defendant puts himself upon

the Country!

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And for a further plea in this behalf as to the second Count of the said declaration the said defendant says actio non because he says that the said defendant did not stop the sale of the said remaining fifty three lots in the said second Count mentioned or refuse to permit any of them to be sold or refuse to make any bonds for ^{deeds} conveyance or any deeds of conveyance to purchasers as the said plaintiffs have above thereof in the said ~~first~~ ^{second} Count complained against him; And of this the said defendant puts himself upon the Country:

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And for a further plea in this behalf as to the said declaration the said defendant by leave of says actio non because he says that after the seating and making of the said articles of agreement and after the granting of letters of administration to the said Jane of the goods chattels and estate of David Rattray deceased and before the commencement of this suit to-wit on the fourth day of April in the year Eighteen hundred and fifty at to-wit the County of Cook aforesaid the said

Done by the name of Jane Rattray as Adminis-
tratrix as aforesaid she the said Jane being
then and there administratrix did by her certain
writing of release signed with her seal and
now shown to the Court here the date
whereof is a certain day and year therein
mentioned to-wit the day and year last a-
foresaid did remise release and forever
discharge the said defendant his heirs ex-
ecutors and administrators of and from
all and all manner of actions causes of
action suits debts dues sums of money
accounts, bonds bills specialties
covenants contracts controversies agree-
ments variances damages judgments claims
and demands whatsoever in law or equity
which the said Jane Rattray or said
estate of said David Rattray ever had
or then to-wit at the date of said Release
to-wit the date last aforesaid had
or which said estate or the said Jane
Rattray's heirs executors and administrators
thereafter could should or might have
for upon or by reason of any matter
or thing whatsoever from the beginning
of the world to the day of the date of
the said deed or writing of Release
to-wit the date last aforesaid as by

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the said deed or writing of release reference
thereto being had will fully appear. And
tho the said defendant is ready to verify
wherefore he prays judgment &c

Barker Tuley
Defendants Attys
A W Arrington
of Council

And afterwards to wit on the 12th day
of January in the year of our Lord One
thousand eight hundred and sixty one
the said plaintiffs by their Attorneys filed
in said Court in said cause their cer-
tain demurrer and replications in the
words and figures following to wit:

William H Storr and
Jane Storr his wife Ad.
Administratrix of the goods
& Chattels of David
Rattray deceased

Covenant

Christopher C Robinson

And now come
the said plaintiffs by Goudy & Waite
their Attorneys and as to the third plea
of the defendants filed herein the plain-
tiffs say that the said Jane Storr was
Administratrix of the said David Rattray

deceased in manner and form as stated by the
plaintiffs And of this they put themselves upon
the Country &c & the Deft do the like
Barker Tuley

Deft Atty
And as to the fourth plea of the de-
fendant filed herein the plaintiffs say that
Rattray was not damaged in his own wrong
and default as stated in said plea and
of this the plaintiffs put themselves upon the
Country &c

And the deft do the like Barker Tuley
defts Atty

And as to the fifth plea of the defendant
filed herein the plaintiffs say the said de-
fendant has not performed his covenants as
in said plea stated and of this the plaintiff
put themselves upon the Country &c

Deft doth the like Barker Tuley Deft atty

And as to the eleventh plea of the defendant
filed herein plaintiffs say that the said
breaches of covenant on the part of the
said defendant were not committed by
the leave or license of the said plaintiff
as in said plea stated and of this the
plaintiffs put themselves upon the Coun-
try &c & Deft doth the like
Barker Tuley deft Atty

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(28)

And as to the fifteenth plea of defendant filed
 herein plaintiffs say that said Jane Rattray
 as Administratrix did not execute and

X

And afterward to wit, on the 9th day of April
 in the year of our Lord One thousand eight
 hundred and sixty one the following pro-
 ceedings among others were had in said
 Court and entered of record to wit

Jane Storr Administratrix
 of the Estate of David
 Rattray deceased and
 William W Storr her
 husband

Covenant

vs
 Christopher C Robinson

On motion of Goudy &
 Waite of Counsel for said Plaintiff, no objec-
 tion being made thereto it is ordered
 that said plaintiffs have leave to withdraw
 their demurrer filed herein to the defendant's
 pleas by them pleaded in said Cause and to
 amend their declaration filed therein

And as to the fifteenth plea of defendant filed
herein plaintiffs say that said Jane Rathway
as Administrator &c did not execute and
deliver to said defendant a release as stated
in said plea and of this the plaintiffs put
themselves upon the Country &c

Goudy & Waite Attys for

And the Deft do the like Barker Tuley defts Attys
And as to the first thirtieth & fourteenth
pleas of the defendant filed herein wherein
the defendants put themselves upon the
Country, the plaintiffs do the like

Goudy & Waite Attys for Plffs

And as to the Second Sixth Seventh Eighth
Ninth Tenth and Twelfth pleas of defendant
filed herein, Plaintiffs say that the same
or any of them and the matters and things
therein contained are insufficient in law
to bar the plaintiffs right of action herein
and this they are ready to verify wherefore
they ask judgment &c

Goudy & Waite

*

Attys for Plaintiffs

And afterwards to wit on the 31st day
of May in the year of our Lord One thousand
eight hundred and sixty one the said deft
put by his Attorneys filed in said cause
his certain demurrer in the words and

figures following to wit:

Christopher B Robinson

ats

Jane Storr Administratrix
of the Estate of David Ballray
deceased and William H Storr
her husband

State of Illinois
Cook County

Circuit Court
of Cook County
May Term A.D. 1867

And the said
defendant by Barker & Tully & H W Arwing
for his Attorneys comes and defends the
wrong and injury wherein and says that
the said amended declaration and the
matters therein contained in manner and
form as the same are above stated and
set forth are not sufficient in law
for the said plaintiffs to have or maintain
their aforesaid action thereof against him
the said defendant and the said defend
ant is not bound by law to answer the
same. And this he the said defendant
is ready to verify wherefore by reason
of the insufficiency of the said amended
declaration in this behalf the said de-
fendant prays judgment and that the
said plaintiff may be barred from
having or maintaining his aforesaid action
thereof against him &c

Barker Tuley & A W Arrington

Atty for Deft

(30):

And afterwards to wit on the 23th day of September
 in the year of our Lord One thousand
 Eight hundred and sixty one said defendants
 by their Attornies filed in said cause their certain
 Pleas in the words and figures following
 to wit:

State of Illinois } Circuit Court of Cook County
 County of Cook } of the September Term 1861

Christopher C Robinson
 at
 William W Storrs Jane
 Storrs his wife Administratrix
 of the goods chattels
 and estate of David
 Rattray deceased

And the said
 defendant Christopher C Robinson
 by Barker Tuley his Attornies comes
 and defends the wrong and injury when
 &c and says that the said article of
 agreement is not his deed and of this
 he put the said defendant puts himself
 upon the Country &c Barker Tuley Deft Atty
 & the plff do the like Soudy W Waite

A W Arrington of Counsel

And for a further plea in this behalf as to
plaintiffs Amended declaration the said de-
fendants by leave &c says actio non because
he says that the said defendant hath not
broken the said Covenants in the said amend-
ed declaration mentioned or any one either of
them in manner and form as the said plain-
tiffs have above thereof declared against
him And of this he puts himself upon the
Country &c & the plff do the like Roudy & White

3

And the said defendant by like &c
says actio non &c because he says
that the said Jane Storr is not nor
ever was administratrix of the goods
chattels and effects which were of
the said David Rattray deceased
in manner and form as the said plain-
tiffs have above in their said declaration
in that behalf alledged and thus the
said defendant is ready to verify &c
wherefore &c

4

And for a further plea in this behalf
the said defendant as to said Amended
Declaration by like leave &c says
actio non &c because he says that
if the said David Rattray was or has
been in his life time damaged for or
by reason or means or on account of any

(31)

(32)

matter Cause or thing in the covenants agreements payments Articles or contracts in said articles of agreement mentioned the said David Ruttray was and has been in his life time so dammed in his own wrong and by his own and through his own means and default and that he this said defendant is ready to verify &c therefore &c.

5 And for a further plea in this behalf the said defendant as to said amended declaration by like leave &c says actio non because he says that always after the sealing and making of the said articles of agreement to the day of the Commencement of this action he hath fulfilled performed and kept all and singular the Covenants grants agreements, payments articles and contracts on the part of him the said defendant to be fulfilled performed and kept according to the form and effect of the said articles of agreement and this he is ready to verify &c therefore he prays judgment &c.

6 And for a further plea in this behalf the said defendant as to the said amended declaration by like leave &c says actio non because he says that always after the sealing and making of the said

Articles of agreement up to the time of the
decease of the said David Rattray which
defendant avers occurred in the month of
September in the year Eighteen hundred and
forty nine, he the said defendant did
in conjunction with the said David go
on and get the said Block subdivided
as they to wit said David and this
defendant thought proper and for the interest
of the parties to wit said David and this
defendant to wit into Seventy two lots and
that he the said defendant did upon the
payment of one fourth in money, and the
remainder secured by notes on one two
and three years from the first day of May
in the year Eighteen hundred and forty
nine in equal annual payments to him said
defendant he the said defendant for all that
part or parcel of lot and lots of the
said block forty three (43) in said Articles
of agreement mentioned which he the said
David in his lifetime did sell to wit on
the first day of August A 1849 and did
make execute and deliver to the persons and
persons and to each and every one of them
to whom said David did sell, this
said defendants bond for good and
sufficient deeds of conveyance when the

(34)

said notes in this plea mentioned and which were given by such person and persons respectively upon the sale by said David were paid in full according to the form and effect of said articles of agreement and this he the said defendant is ready to verify wherefore he prays judgment &c

7 And for a further plea in this behalf as to the said plaintiffs Amended declaration the said defendant by like leave &c says ~~ad non~~ hec quod he says that after the said Rattray had subdivided said Block forty three (43) into seventy two (72) lots and advertised the same for sale as in said amended declaration mentioned he the said defendant did in good faith and not maliciously stop the sale of said lots by said Rattray and refused to permit them to be sold and to make any bonds for deeds of conveyance and to make any deeds of conveyance of said lots if they should be sold by said Rattray and this he the said defendant is ready to verify &c wherefore he prays judgment &c

8 And for a further plea in this behalf as to the said Plaintiffs amended declaration the said defendants by like leave &c say

actio non &c because he says that after the
said Rattray had subdivided said Block
forty three (43) into seventy two (72) lots
and advertised the same for sale as in said
amended declaration mentioned he the said
defendant because and for the reason
that he the said defendant did think at
said time when &c it proper and necessary
so to do did stop the sale of said
lots by said Rattray and refused to per-
mit them to be sold and to make any
bonds for deeds of ^{and to make any deeds of conveyance} conveyance of said
lots if they should be sold by said
Rattray and tho he the said defendant
is ready to verify &c wherefore he prays
judgment &c

9 And for a further plea in this behalf as
to the plaintiffs amended declaration the
said defendant by like leave &c says
actio non &c because he says that after
said Rattray had subdivided said Block
forty three (43) into seventy two (72) lots
and advertised the same for sale as in
said amended declaration mentioned he the
said defendant at the time when &c in
plaintiffs amended declaration mentioned
honestly and in good faith believing the
said time was not a good and ^{business} pros-

(36)

perous time for the sale of said lots and that it would be for the mutual advantage and interest of both the said defendant and said David not to have a sale of said lots by ~~act at that time~~ the the said defendant did stop the sale of said lots by said Rattray and refused to permit them to be sold and to make any bonds for deeds of conveyance and to make any deeds of conveyance of said lots if they should be sold by said Rattray and this the said defendant is ready to verify &c wherefore he prays judgment &c

- 10 And for a further plea in this behalf as to the said amended declaration said defendant says, actio non &c because he says that the said defendant did commit the said several supposed breaches of covenant above assigned by the leave and license of the said plaintiff to the said defendant for that purpose first given and granted to put at the severall times in that behalf in the amended declaration mentioned to wit at the County aforesaid and thus the said defendant is ready to verify wherefore he prays judgment &c

11 And for a further plea in this behalf as to said amended declaration said defendant says actio non, because he says that before and at the time in the amended declaration in this behalf mentioned when he the said defendant stopped the sale of said lots by said Rattray, and refused to make any bonds for deeds of conveyance or to make any deeds of conveyance of said lots if they should be sold by the said Rattray and refused to permit any of said 153 lots to be sold to wit at said County, he the said defendant did think proper that no more of the lots into which the said block had been subdivided and then unsold should be sold at said times whereof the said Rattray then and there had notice to wit at the County of Cook aforesaid and this he the said defendant is ready to verify wherefore he prays judgment &c

12 And for a further plea in this behalf as to the said amended declaration the said defendant says actio non because he says that he the said defendant did not stop the sale of the said lots by the said Rattray or refuse to permit them to be sold

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or refuse to make any bonds for conveyance
or to make any deeds of conveyance
of said lots if they should be sold by
said Rattray in manner and form as
the said plaintiffs have above thereof
in the said ^{amended} declaration complained
against him and of this the said defend-
ant puts himself upon the Country.

13

And for a further plea in this behalf as
to the said amended declaration the
said defendant says actio non &c because
he says that the said defendant
did not stop the sale of the remaining
fifty three lots in said amended de-
claration mentioned or refuse to permit
any of them to be sold or refuse to
make any bonds for deeds of conveyance
or any deeds of conveyance to pur-
chasers, as the said plaintiffs have
above thereof in the said amended
declaration complained against him
and of this the said defendant puts
himself upon the Country!

14

And for a further plea in this behalf
as to the said amended declaration
the said defendant by leave &c says
actio non because he says that
after the sealing and making of the

said articles of agreements and after the granting
of letters of administration to the said Jane
of the goods chattels and estate of David
Ratray deceased and before the commencement
of this suit to wit on the fourth day of April
in the year Eighteen hundred and fifty at
to wit the County of Cork afore said the
said Jane by the name of Jane Ratray
as administratrix as aforesaid she the said
Jane being then and there administratrix
did by her certain writing of Release sealed
with her seal and now shown to the Court
here the date whereof is a certain day and
year therein mentioned to wit, the day and year
last aforesaid did remise release and forever
discharge the said defendant his heirs exe-
cutors and administrators of and from all
and all manner of actions causes of action
suits debts dues sums, of money accounts
bonds bills specialties covenants contracts
controversies agreements variances damages
judgments claims and demands whatsoever
in law or equity which the said Jane
Ratray in said estate of said David
Ratray ever had or then to wit at the
date of said release to wit, the date last
aforesaid had or which said estate or
the said Jane Ratray's heirs executors

(40)

and administrators thereafter could would or might have for upon or by reason of any matter or thing whatsoever from the beginning of the world to the day of the date of the said deed or writing of release to wit the date last aforesaid as by the said deed or writing of release reference thereto being had will fully appear and thus the said defendant is ready to verify wherefore he prays judgment &c

Barker & Tuley defendants
attorneys A W Arrington of Counsel

- 15- And for a further plea in this behalf the said defendant by like leave of the Court says actionem non &c because he says that he the said defendant did not without any just or reasonable cause for so doing stop the sale of the said lot by the said Rattray or refuse to permit them to be sold or refuse to make any bonds for or deeds of conveyance of said lots if they should be sold by the said Rattray in manner and form as the said plaintiffs have above thereof in their said amended declaration complained against him. And of this the said defendant puts himself upon the Country
- Barker & Tuley defendants Attorneys A W Arrington of Counsel

And afterwards to wit on the 26th day of
September in the year of our Lord One thou-
sand eight hundred and sixty two the said
Plaintiffs by their Attorneys filed in said cause
their certain Amended Declaration in the
words and figures following to-wit
+ State of Illinois } Circuit Court of Cook
Cook County } County July Term 1864
Jane Storr Administratrix
of the Estate of David
Rattray deceased &
William W Storr her
husband }
Christopher C. Robinson

Jane Storr Adminy
of the Estate of David Rattray deceased
& William W Storr husband of said Jane
by Goudy Waite their Atlys Complain of
Christopher C Robinson in a plea of
breach of covenant, For that whereas
heretofore to wit on the 15th day of May
in the year Eighteen hundred and fifty
nine at Chicago in the said County of Cook
and State of Illinois by certain articles
of agreement then and there made con-
cluded and agreed upon by and
between the said defendant of the one part

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and the said David Rattray of the other party
 one part of articles article of agreement sealed
 with the seal of the said defendant the said
 plaintiff now brings here into Court the date
 of ~~Article~~ ^{which} the day and year last aforesaid
 it was witnessed that the said defendant
 party of the first part had purchased
 Block No 43 of the subdivision of the
 Trustees of the Illinois and Michigan Canal
 of Section No. 7 Township No 39 R 4 E
 3 P. M. and that said defendant party of
 the first part thereby agreed that he would
 in consideration with said Rattray (mean-
 ing in connection with said Rattray) said
 party of the second part go on and get
 said block subdivided as they should
 mutually think proper and for the
 interest of the parties and that said
 Rattray was to dispose of the same
 either at private or public sale as
 soon thereafter as was practicable and
 should be thought proper by the said
 parties for one fourth part of the consid-
 eration down and the remainder to be
 secured by notes on one two and three
 years from the first day of May 1849 in equal annual payments and
 bearing interest from date and that

the said Robinson, said defendant agreed that he would upon the payment of one fourth in money and the remaining payments secured by notes as above stated execute his bond for a good and sufficient deed of conveyance when such notes should be paid in full provided such sale should not average less than Twelve hundred dollars in the aggregate. And that it was further stipulated and agreed that said Robinson was first to receive the amount of all money paid out by him for said purchase of said block or blocks which was One hundred and sixty five (\$65) dollars together with interest on the same then the balance accruing from the sale of said block was to be equally divided between the said parties And that in consideration of said division of said balance of money accruing from said sale the said Rattray was to plat survey or subdivide the said lot or block and advertise and sell the same at his own expense, to the performance of which agreement the said parties mutually bound themselves their heirs executors administrators and assigns as by said articles of agreement reference thereto

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(44)

being had will more fully and at large appear
And although the said David Rattray since
deceased during his life time did well and
truly perform and fulfill all and singular
the covenants and agreements in said
Articles of agreement mentioned on his part
and behalf to be done and performed;
Yet protesting that said defendant hath not
performed or fulfilled any thing in said
Articles of agreement mentioned on his
part to be done the said plaintiff in fact
say that after the said Rattray had in
pursuance of said articles of agreement
subdivided and platted said block number
43 in seventy two lots and advertised the
same for sale the said defendant without
any just or reasonable cause for so
doing stopped the sale of said lots by
Rattray and refused to permit them
to be sold, and refused to make any
bonds for deeds or conveyance or to make
any deed of conveyance for said lots
if they should be sold by said Rattray whereby
the sale of said lots was prevented and
without any just or reasonable cause
as aforesaid and contrary to the tenor
and effect of said articles of agreement
and of the covenant of said defendant

on that behalf made as aforesaid, And so the
plaintiffs in fact say that the said defendant
has not kept the said covenants so by him made as
aforesaid but has broken the same and to
keep the same has hitherto refused & neglected
and still does neglect and refuse to the
damage of the said plaintiffs of Eight thou-
sand dollars and therefore they bring this
suit &c

Goudy & Waite
Attys for Plff

X

And afterwards to-wit on the 21st day of February
in the year of our Lord One thousand eight
hundred and sixty three the said plaintiffs
by their Attorneys filed in said Court in
said Cause their certain demurer in the
words and figures following to-wit

State of Illinois }
Cook County }

Jane Ann Adamey of
David Rattray &c }

Covenant

vs
Christopher B. Robinson

Circuit Court February Term 1860

And the said plaintiffs by their Attorneys
come and say that the plea of the
defendant to the plaintiffs amended declaration

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numbered five, six seven, eight, nine, eleven and
each of them are insufficient in law to bar the
plaintiffs from maintaining their aforesaid action
And this they are ready to verify &c
And they make this demurrer several to
each of said pleas

Louisa White
for Plffs

And Afterwards to wit on the same
day and year last aforesaid the said
Plaintiffs by their Attorneys filed in said
Cause their certain replications to amended
pleas in the words and figures following
to wit

State of Illinois }
Cook County }

Jane Storr Adm^{or} of
David Rattray &
Wm H Storr

Covenant

Christopher B Robinson

Circuit Court February Term 1862

And now comes the said plaintiffs by
their Attorneys and says as to the third
plea of the said defendant to the plaintiffs
amended declaration precludi non because
they say that the said Jane Storr at the
^{commencement} beginning of this suit was and still is

Administrators of the goods chattels effects
which more of the said David Rattray de-
ceased as alleged in said declaration
and this they pray may be required of by
the Country &c

Goudy & Waite
Plffs Attys

And the defendant doth the like by

Replication to 4 plea of the Defendant
to the plaintiffs amended declaration
the plaintiffs say preclude non because
they say the said David Rattray de-
ceased was & has not been damaged
of his own wrong & by & through his
own means and default as alleged in
said plea & this they pray may be re-
quired of by the Country &c

Goudy & Waite plff Attys

And the defendant doth the like by

Replikations to 12th, 13th & 15th pleas to amended
narr!

And as to the 12th, 13th & 15th pleas of the
defendant to the plaintiffs amended declar-
ation the plaintiffs doth the like

(47/

Goudy & Waite plff Attys

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(48)

Replem to 10th plea Amended narr;
And as to the 10 plea of the defendant to
the plaintiffs amended declaration the plain-
tiffs say preclude non because they say
that the defendant of his own wrong and
without the leave or license of the said
plaintiff first given and granted did commit
the said several breaches in the said ^{amended} de-
claration & each count thereof mentioned
as therein alleged and this they pray
may be enquired of by the Country &c

Goudy & Waite plff atty

And the defendant doth the like by

And afterwards to wit on the 2nd day of April
in the year of our Lord One thousand eight
hundred and fifty two said parties by
their Attorneys filed in said Court in
said Case their certain stipulation in
the words and figure following to wit

Circuit Court of Cook
County April Term A.D. 1862

William H. Storr
Jane Storr his wife

said Jane being as
Administratrix of
David Ralway
deceased

Covenant

vs
Christopher B Robinson

It is hereby stipulated that
the defendants pleas except the first and
second pleas, be withdrawn together with
the demurrers ~~pleas~~ and replications respect-
ively to the pleas so withdrawn and that
upon the trial of this cause the said
defendant may under said first and second
pleas make the same defence or defences in
law which he could make if such de-
fence or defences were specially pleaded
and it shall not be necessary to let
in any such defence or defences if any
that be the same be interposed by
plea or pleas

Apr 21 1862 W L Goudy for plff
Barker Thayer
for defts

by Dent

And afterwards to wit on the 11th day
of December in the year of our Lord One
thousand eight hundred and sixty three
the following proceedings among other

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were had in said Court in said cause and
entered of record to wit:

Jane Storr Administratrix
of the Estate of David
Rattray deceased
and William H Storr
her husband

Covenant

Christopher Robinson

This day comes the
said defendants by Barker and Tuley
his Attorneys and moves the Court for
a continuation thereof said cause

And afterwards to-wit on the 14th day of
September in the year last aforesaid the
following proceedings among others were
had in said Court and entered of
record to-wit:

Jane Storr Administratrix
of the Estate of David Rattray
deceased and William H
Storr her husband

Covenant

Christopher Robinson

This day again
come ^{as before} the said the said plaintiffs by William
H Gandy their Attorney as the said defend ^{ant}

by Barker Tuley his Attorneys and the Court being now sufficiently advised of and concerning the motion of the said defendant heretofore entered for a continuance of said cause doth order that said motion be and the same thereby is overruled, And issue being joined herein, it is ordered that a jury come whereupon come the jurors of a jury of good and lawful men to-wit: S. W. T. Haugan, A. Cherry, H. McQuinn, William Wopp, Simon Steffen, William Ellis, O. Neulen, Peter Schlund, Ernst Reming, Luther Burley, Jacob Gillen, and John A. Linder who being duly elected, tried and sworn well and truly to try the issue joined aforesaid, and a true verdict render according to law and the evidence and after hearing of a part of the evidence the hour of adjournment having arrived by consent of said parties said jury is allowed to separate to meet the Court at ten o'clock to morrow morning to which time said Court is now adjourned.

(5/1) And afterwards to wit on the 15th day of the Month and year last p^resaid the follow^{ing} proceedings were had in said Court in said Cause and entered of record to wit

(52)

Jane Storr Administratrix
of the Estate of David
Rattray deceased

Covenant

Christopher Robinson

This day again come the said parties by their Attorneys and the jurors of the jury aforesaid also come and having heard further testimony in said cause the same not being closed and the hour of adjournment having arrived, by consent of said parties said jury is again allowed to separate to meet the Court at ten o'clock to which time said cause is now adjourned.

And afterwards to wit on the 16th day of the Month and Year last aforesaid the following proceedings were had in said cause and entered of Record to wit

Jane Storr Administratrix
of the Estate of David
Rattray deceased and
William Mc Storr her
husband

Covenant

Christopher Robinson

This day again come the said parties by their Attorneys and

the jurors of the jury aforesaid also come, and having
now heard all the evidence and arguments of
Counsel adduced by said parties and instruc-
tions from the Court retire to consider of their
verdict - and afterwards return into Court and
say, We the jury find the issues for the
Plaintiff and assess their damages at the
sum of "One thousand three hundred dollars"
Whereupon the said defendants by their
Counsel here demanded the jury be polled
and the jury aforesaid being separately
called and enquired of whether the fore-
going verdict by them returned was
and is now their verdict, severally answer
and say that it was and is now their
verdict, And thereupon the said defendant
moves the Court for a new Trial of said
Cause

And afterwards to wit on the 5th day of Decem-
ber in the year of our Lord One thousand
eight hundred and sixty three the following
proceedings among others were had in said
Court and entered of record to wit:
Jane Storr Administratrix of the
Estate of David Rattray deceased
and William W Storr her husband } Complainant
Christopher T Robinson }

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This day Come the said parties by their Attorneys
 And the defendant now here enters his motion
 in arrest of judgment and counsel having
 been heard as well in support of the motion
 of the Defendant heretofore entered for a new
 trial of said Cause and his said motion
 in arrest of judgment as in opposition thereto
 and the Court having carefully considered
 the premises, and being now fully advised
 thereon, doth order that said motions be
 and they ~~are~~ each are hereby overruled
 to which ruling of the Court in overruling
 said motions and each and every them
 the said Defendant by his Counsel now
 here excepts and on his motion thirty days
 are allowed the defendant in which to
 prepare and file his Bill of Exceptions
 in said cause. There fore it is considered by
 the Court that said Plaintiffs do have
 and recover of the said defendant their
 damages of One thousand and three hundred
 dollars in form aforesaid by the jury aforesaid
 assessed together with their costs
 and charges by them about their suit in
 this behalf expended and have execution
 therefor.

Whereupon the said defendant by his
 Counsel excepts to the rulings and

judgment of this Court in said cause and
brings an appeal therefrom to the Supreme
Court of the State of Illinois which is granted
by the Court upon the condition that the
said defendant shall within thirty days from
this date execute and file with the Clerk of
this Court his appeal bond therein in
the penal sum of One thousand and six
hundred dollars conditioned according
to law with good and sufficient surety
thereto to be approved by the Court

And afterwards to wit on the 13th day
of January in the year of our Lord One
thousand eight hundred and sixty four
said defendant by his Attorneys filed
in said cause in said Court their
certain Bill of exceptions in the words
and figures following to-wit;

Jane Storr Administratrix
of the goods chattels and
Estate of David Ralway
decd and William H
Storr her husband

Circuit Court
of Cook County

Christopher S Robinson

(53) Afterwards to
wit at the day and place within contained

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with said Rattray go on and get the said Block
subdivided as they shall mutually think
proper and for the interest of the parties and
said Rattray is to dispose of the same
either at private or public sale as soon
as practicable and thought proper by the
parties, for one fourth down, and the re-
mainder to be secured by Notes on one two
and three years from the first day of
May 1849 in equal annual payments
and bearing interest from date. And the
said Robinson agree that he will upon
the payment of one fourth in money and
secured by notes as stated above execute
his bond for a good and sufficient deed
of conveyance when such notes are paid
in full, provided such sale shall not
average less than Twelve Hundred dollars
in the aggregate. It is further stipulated
and agreed that the said Robinson is
first to receive the amount of all money
paid out for said purchase of said Block
or blocks which is One hundred and
sixty five dollars together with interest
on the same, then the balance to be
equally divided between the parties
for which privilege the said Rattray
(57) is to plat survey or subdivide the

(58)

58
" said lot or Block and advertise the
" and sell the same at his own expense;
" which conditions well and truly to be made
" the said parties hereto mutually bind
" themselves heirs executors administrators
" and assigns. Witness their hands and seals
" this fifteenth day of May 1849
" In presence of signed Wm Robinson Secy
" W A Baldwin David Rattray Secy

++ The said plaintiffs then offered as a witness
to prove the issues on this part W A Baldwin
who being duly sworn testified as follows:
I know defendant and I know David Rattray
in his life time, I am the subscribing witness
to this contract, (the contract above set out was here shown
the witness) I think I drew up the contract,
It was signed by the parties in my room and was left with me
for the benefit of both parties, I had it
some years - several years - Rattray
died in the year 1849, I know that
subsequent to the execution of contract
Rattray got the ground mentioned there
in, divided into lots, surveyed and a
plat of it made, Rattray sold several
lots, I attended one sale, Rattray
I believe had five or six public sales

Rattray sold altogether somewhere in the neighborhood of twenty lots. Rattray and Robinson had a conversation in my office in regard to stopping the sale of the lots. I was present. Robinson said he thought he had better stop the sale as property was advancing. Rattray objected to stopping the sale. Robinson said he thought it would be for the interest of both parties to stop it. Rattray assigned as a reason why he did not ~~wish~~ the sale of the lots stopped that he had expended considerable of his money and he wanted to use his interest in them. They had several conversations on that point in my office. I heard Robinson say the same as above when Rattray was not present. I don't recollect that Robinson ever assigned any other reason for wishing to stop the sale of the lots. And I don't recollect that Rattray urged any other reason for wishing the sale to go on except that he wanted to use his share and had expended considerable money in the transaction. According to the best of my recollection there was a sale of the lots advertised

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and Rattray took down the notices, I am not sure of this. During the conversations between them, Robinson said to Rattray that if he, Rattray sold, he would not make out the papers, Rattray then replied, then I shall have to take down the notices, I heard Rattray several times request Robinson to let the sales of the lots proceed, Robinson never consented and no more sales were made to my knowledge of those lots. I don't know how much the sales that were made figured up in the aggregate, but I know that they figured up until they very nearly paid Robinson his purchase money I lacked a little. The poorest of the blocks were sold and they averaged from forty to Eighty dollars per lot. I don't recollect of Robinson refusing to make out papers for those lots or any lots that had been sold, or that he refused to make out papers for ^{any} that were sold, after that, I don't know the present value of the lots unsold. If I recollect aright, I first told Mr. Storn ^(plaintiff) that I had this contract - After his marriage with Jane Rattray his present wife, I shorned the contract

to Robinson in 1852 or 1853, The conversation
above occurred about two months before
Rattray died I think Rattray died in
September I was not here at the time
I went East after the conversation occurred
and was gone four or five weeks and
when I returned I learned of Rattray's
death, I don't know whether the cholera
was here or not when the sales were stopped
The plaintiffs further to sustain the issue
on their part called as a Witness Paul
Cornell who being duly sworn testified
I know defendant and knew Rattray
I know the block forty three mentioned in
contract; I was the Attorney of Robinson
in 1849, I owned a lot near the block
and the lots in block forty three and
in that vicinity in 1849 were worth
and were selling at \$125. to \$150 per
lot.

Upon cross examination testified
There was cholera in Chicago which was
considered quite severe, and which
lasted about two months, it commenced
about the 10th or 15th of July, I think
in the month of July and the first
part of August it did in a manner
suspend real estate business and

(62)

62
(62)

speculation. Robinson went to California the last of AD 1850 or beginning of 1851. He talked of going as much as twelve or eighteen months before he left. Defendant then procured the production of the Map of the subdivision of said block 43 and admitted that the map showed a subdivision into seventy two lots varying in depth from 124 to 141 feet and being 33 feet in width. And that said Map was acknowledged on the 5th June 1849. And that letters of Administration of Estate of David Rattray issued to plaintiff Jane in December AD 1849. The plaintiff further to sustain the issue on his part offered as a witness John W. Waughop who being duly sworn testified that he knew Rattray and knew the defendant. In the summer of 1849 I was and am still acquainted with the lots in Block 43 and know and now know the value thereof. In the summer of 1849 the Lake Street lots of said Block were worth from \$100 to \$150 per lot and the other lots from \$40 to \$100. In the Spring of 1850 the Lake Street lots were worth \$10.00 to 12.00 per front foot and the others \$6.00 to \$10.00 per

(63)

front foot, the plaintiff thereupon closed the testimony upon his part, And the defendant to sustain the issues upon his part offered William B Rogers, who being first duly sworn testified In the year 1849 I knew the deceased Rattray and had been in the habit of loaning him money, I had loaned him some money upon the security of a Canal Trustee Certificate of sale and on personal property, The time run out, and I was told by Rattray that he could sell to Mr Robinson and that he could not sell at public auction or otherwise, on account of the cholera as every body had left town, There was cholera then in the City. I went to find Robinson and found Baldwin Robinson and Rattray together, I found to my astonishment that Robinson was trying to induce Rattray to sell his Robinson's property, I then took Rattray one side and told him that I intended leaving for the South as usual and that he had misrepresented to me as to Robinson, that I understood that Robinson did not want to buy of me, but wanted to sell Robinson

(64)

at that time said to Rattray, you know I have been anxious to have this ^{matters} closed up, as I want to have all my matters closed up, Rattray replied he would not sell without there were people there to buy, if I sell it will leave me nothing, I understood that he was to have some interest in the avails of the property, This was not long before Rattray's death, I was to see Rattray again I had personal property of this when he died which he did not redeem, The conversation which I speak of, was from One to Three weeks before Rattray's death, Part of the conversation took place in Dr Pitneys Office, and part in the Stone now 71 or 73 Lake Street Upon Cross Examination testified: I am a banker - the property spoken of between Robinson and Rattray was on the West side, but I dont know what block it was that was talked about, Dont know whether there was more than one block or not, Robinson said you told me you could do so and so, and you have not done it, Rattray said it was not my fault, The

People have left town and there are no buyers,
Robinson said did you not do so and so,
(Something about cutting it up into a particular
shape) You know I want to go away and
want to close my matter up. I don't
recollect Rattray's reply or how he excused
himself. I don't recollect that he made
any such remark as that Robinson
refused to let him sell, in extenuation
of his not selling. I can not remember
what he did say, for so and so of the
substance was why he did not make sales.
The defendant thereupon closed his ev-
idence and Plaintiff in reply called
Witness Waughp who testified, I was
Attorney of Jane Rattray now plaintiff
Jane Storr for four years after letters
of Administration were issued,
Plaintiff Jane was married to plaintiff
William H. Storr in 1850 or 1851.
I had a conversation with Robinson
as to the sale of these lots subsequent
to the death of Rattray. I can't state
the conversation, can only give the
substance of it. I granted Robinson
to give a deed to heirs of Rattray
in regard to some lots in Block
44. He claimed that there was some

66
(66)

\$20 or \$2500, balance due him on the transaction as to Block 47, He Robinson said that Rattray had sold a considerable portion of that block 47 for him and in consideration thereof he was to give him some lots, My impression is that in the fall of 1852 or spring of 1853 I first learned of this contract, I did not have the possession of or know of any written Contract, I saw Robinson as to it, I made a claim of Robinson for for the Estate in that contract, He and I differed about the interest the Estate had in it, He said he differed and so did his counsel with me In his conversation he said that there was something due to Rattray on this contract, I gave him my views of it He claimed about \$1300.00 thirteen hundred dollars, He figured it less than \$400.00 four hundred dollars I don't recollect the particular amount it was between three hundred and four hundred on his basis, I could see what he wanted, but could not consent to his basis, This was in the year 1853, I think he stated to me how much of his contract had been

performed by Rattray I don't recollect what it was but his basis was that he offered to settle for what Rattray had paid, Robinson denied liability on any other basis, This was all the evidence offered in this cause, The plaintiff therefore moved the Court to instruct the jury and the Court thereupon gave to the jury the following instruction in behalf of the plaintiffs.

Story v Robinson Plaintiffs instructions
+ 1 + If the jury believe from the evidence that David Rattray and the defendant made the contract described in the declaration, that, Rattray performed the contract on his part by by platting surveying and subdividing the block described in the contract at his own expense; that he advertised and sold a part of the lots, with the concurrence of defendant & at Rattray's own expense, and was willing and offered to advertise and sell the balance and could have sold the same in his life time but was prevented by the defendant from making further sale thereof without any just and reasonable excuse and the defendant without such excuse

(68)

refused to make bonds for deeds upon payment and security as is provided by the agreement then the jury will find for the plaintiff and assess the damages.

2

If the jury find from the evidence that Rattray had entered upon the performance of the contract on his part and that defendant had assented to the making of sales of lots & said sales had already commenced, that afterwards Rattray was prevented from selling the lots after the said block had been subdivided by the Act of the defendant without just or reasonable cause on his part & defendant without such just & reasonable cause refused to make bonds for deeds for the lots sold upon the payment of one fourth of the purchase money down & the securing of the balance as provided by said agreement then the plaintiff is entitled to recover such damages as Rattray in his life time sustained by reason of such breach

+ 3

If the jury find for the plff they will allow as damages whatever sum they may find from the evidence the said Rattray was deprived of by wrongful act of the defendant and in so doing

they will consider the value of the property described in the contract in 1849 & previous to the death of said Rattray

To the giving of which instructions for plaintiff and to the giving and each of them, defendant by his Counsel then and there accepted, The defendant by his Counsel therefore, asked the Court to instruct the jury as follows

1. Defendants instruction

Refused The jury are instructed that all the breaches in the plaintiffs declaration being faulty they will disregard the plaintiffs declaration and find for the defendant

2 The jury are instructed to disregard the breach of the declaration that defendant stopped the sale of the lots and refused to permit them to be sold

Refused 3 The jury are instructed to disregard the breach of the declaration which alleges that defendant "refused to make any bonds for deeds if the lot should be sold"

Refused 4 The jury are instructed to disregard the first and only count of the plaintiffs declaration and find for the defendant

(69) + 5 If the jury find from the evidence that the sale of the lots in question was suspended

80
 (70) 6 because Robinson did not think proper to
 tell at that time they will find for the defendant
 The jury are instructed that before plaintiff ~~may~~
 can recover the plaintiff must prove that
 Rattray platted & subdivided the lots at his
 own expense & that Rattray & Robinson mu-
 tually agreed upon a proper time to sell the
 lots & that afterwards Robinson without
 any just & reasonable cause for so doing re-
 fused to permit the lots in question to be
 sold or that without any reasonable or
 just cause therefor he Robinson refused
 to make title bonds for lots already sold
 or that he Robinson without any reason-
 able or just cause therefor notified Rattray
 that if he did sell that he Robinson
 would not make such title Bonds
 7 And that if the jury find from the
 evidence that at the time of such re-
 fusals (if they) find from the evidence
 that one or more ^{of such} refusals took place
 he the said defendant Robinson in good
 faith believed that the property was ad-
 vancing in price (or value) & that it would
 be for the interest of both Rattray &
 Robinson that no sale of the property
 should then take place they will find
 for the defendant

Refused & 2 instructions marked given substituted

Refused

9

Refused

If the jury find from the evidence that Robinson after a sale of lots was advertised refused to consent to the sale being made because he Robinson thought that property was advancing in price and that it would be for the interest of Rattray & Robinson to stop the sale then the plaintiff is not entitled to recover and the jury will find for defendant. Unless the jury believe from the evidence that defendant refused to make title bonds for lots which had before been sold and a fourth of the purchase money paid down:

+

To the refusal of said Court to give said instructions for defendant, and each of them Defendant then and there excepted. The Court refused to give such instructions to the jury in behalf of defendant. The Defendant then and there requested the Court to give the following instructions to the jury which the Court gave to the jury as follows:

1

Action

(71)

The jury are instructed that the plaintiff can not recover for this action any balance due (if any) from defendant on account of any sale of lots made by Rattray the proceeds of which may have been received by the

92

defendant -

2

(72)

The jury is instructed that before the plaintiff can recover he must show that Rattray platted & subdivided the lots at his own expense & that Rattray & Robinson had mutually agreed to dispose of said lots & that after so agreeing to dispose of them Robinson without any just & reasonable cause refused to permit the lots in question to be sold & refused to make the ^{title} bonds for the lots which had already been sold and upon which one fourth part of the purchase money had been paid to him down & the balance secured by notes as mentioned in said agreement.

The Defendant by his Counsel then and there asked the Court to give the following instructions to the jury:

3 If the jury find from the evidence that Robinson stopped the sale of the lots and that at that time the cholera was prevailing in the City of Chicago and that real Estate operations in the City were partially suspended at that time in consequence thereof, the jury may take those facts into consideration in determining whether or not Robinson

acted in good faith in stopping the sale
and the jury are further instructed that,
Robinson had the right to stop these sales
provided that Robinson in so doing acted
in good faith.

4 By the contract between Rattray and
Robinson the latter was not bound to
execute bonds for title to the purchasers
of lots until sales of lots were actually
made and one fourth of the purchase
money paid and unless the jury find
from the evidence that Robinson refused
to make such title bonds after such
title bonds had been sold and one
fourth of the purchase money had been
paid for said lots, they will find
for defendant unless the jury also
find that the said Robinson without
any reasonable or just cause stopped
the sale of said lots.

5 If the jury shall believe from the
evidence that Robinson & Rattray both
thought proper to dispose of the
property & Rattray in pursuance of
such agreement proceeded to adver-
tise the property & sold a part
thereof yet the defendant had a right
for just & reasonable cause to suspend

- further sales. If the jury further believe that the defendant did interfere & prevent further sales, but that he had just & reasonable cause for such interference & refusal then they will find a verdict for the defendant.
6. That in determining whether the defendant stopped the sales of the property with or without just and reasonable cause, the jury will consider all the facts & circumstances attending the stoppage of such sale, the change in the real estate business in Chicago produced by the presence of the cholera before the time of such stoppage, if any, such change had taken place before that time, the change in the value of the property, if any, before the stoppage as well as all the declarations & acts of Rattray & Robinson in reference to the stoppage of such sales.
7. In order for the plaintiffs to recover, the jury must find from the evidence the following facts, First that Robinson & Rattray mutually thought proper to sell the lots reserved to them in their agreement. Second; That Rattray performed

the whole of his part of said agreement or was prevented from by Robinson from performing it, And the jury are instructed that the fact of Robinsons paying to Rattray that the Robinson would not make the papers or bonds for title to purchasers, if the said Rattray should sell such lots was not such prevention on the part of Robinson as can be considered equivalent to performance on the part of Rattray, And if the jury do not find the foregoing facts they will return a verdict for the defendant.

which the Court refused to give as asked, but gave said instructions amended as follows

37. If the jury find from the evidence that Robinson stopped the sale of the lots and that at that time ^{the cholera was prevailing in the City of Chicago and that real estate operations in the City were partially suspended at that time,} in consequence thereof the jury may take those facts into consideration in determining whether or not Robinson acted on just & reasonable cause & in good faith in stopping the sale and the jury are further instructed that Robinson had the right to stop these sales upon just & reasonable cause provided that

Robinson in so doing acted in good faith

4 By the Contract between Rattray and Robinson the latter was not bound to Execute bonds for title to the purchasers of lots until sales of lots were actually made and one fourth of the purchase money paid & the balance secured as in the agreement mentioned, and unless the jury find from the evidence that Robinson refused to make such title bonds after such lots had been sold and one fourth of the purchase money had been paid for said lots & the balance secured as aforesaid they will find for the defendant unless the jury also find that the said Robinson without any reasonable or just cause stopped the sale of the said lots.

5 If the jury shall believe from the evidence that Robinson & Rattray thought proper to dispose of the property & Rattray in pursuance of such agreement proceeded to advertise the property & sold a part thereof, yet the defendant had a right for just & reasonable cause to suspend further sales if the jury further believe

believe that the defendant did interfere & prevent further sales and did refuse to execute bonds for deeds, but that he had just & reasonable cause for such interference & refused them they will find a verdict for defendant:

- 6 That in determining whether the defendant stopped the sales of the property with or without just & reasonable cause the jury will consider all the facts and circumstances attending the stoppage of such sale which were then known to the parties among others the change in the real Estate business in Chicago produced by the presence of the Cholera before the time of such stoppage, if any such change had taken place before that time, the change in the value of the property if any before the stoppage, if the parties to the Contract knew of such changes as well as all the declarations & acts of Rattray & Robinson in reference to the stoppage of such sales
- 7 In order for the Plaintiff to recover the jury must find from the evidence the following facts, First that Robinson & Rattray mutually thought

proper to sell the lots referred to in their
 agreement, second that Rattray per-
 formed the whole of his part of said
 agreement or was prevented by Robinson
 from performing it without just & reasonable
 cause, And the jury are instructed
 that the fact of Robinsons paying to
 Rattray that he Robinson would not
 make the papers or bonds for title
 to purchasers if the said Rattray
 should sell such lots and without any
 other act or declaration on defendants
 part was not such prevention on
 the part of Robinson as can be
 considered equivalent to performance
 on the part of Rattray, And if the
 jury do not find the foregoing facts
 they will return a verdict for defendant.
 To the refusal of the Court to give
 said last mentioned instructions and
 each of them of Defendants as asked
 and to the giving of the same and each
 of them as amended the defendant
 by his Counsel then and there excepted
 The jury therefore retired and upon
 returning brought in the following
 verdict;
 We the jury find for the Plaintiff

and assess the damages at \$13 00 00
One thousand and three hundred dollars

A Cherry
Peter Schlund
Jacob Sillen
John O. Finder
Simon Steffen
Gerhard W. Trauzen
William Ellis
Ernst Reming
Luther Bailey
William Wopp
H. H. C. Sine
H. Mullins

The defendant by his Counsel then
and there moved the Court for a new
Trial and filed his reasons for the
same which are as follows:
Same Stor Administration
Retal

Christopher Robinson } Cir Ct
Cook County
Sept 9 1863

And now comes the said defendant
by Barker & Tuley his attorneys and
moves the Court for a new Trial
for the following reasons:
1st. The verdict of the jury is contrary

80 to the Evidence of the Case;

2nd The verdict of the jury is against the
defendant and the evidence of the case

3^d The Court erred in its instructions and
in each of the instructions given to the
jury on the part of the pliffs

4th The Court erred in refusing the instructions
asked for by defendant and in
refusing each and every one of the instructions
asked by defendant;

5 The Court ^{erred} in amending the instructions
asked for by defendant and in giving
the same and each of them as amended
to the jury;

6th The verdict should have been for
the defendant and not for the pliffs.

7th The Court erred in admitting improper
testimony for pliffs & excluding
proper testimony offered by
defendant

Barker Tuley
for defts

And the Court afterwards to wit
on the 5th day of December A.D. 1863
overruled said motion for a new
trial and the defendant then and
there excepted to the decision of
said Court overruling said motion

for a new Trial. The defendant then and there moved the said Court in arrest of judgment which motion the Court overruled and to which decision in overruling said motion in arrest of judgment the Defendant then and there excepted: And because none of said exceptions so offered and made to the opinion and decision of said Circuit Judge do appear upon the record of the said trial on the prayer of the said defendant by his Counsel the said Circuit Judge hath to this bill of Exceptions set his seal according to the Statute in such case made and provided this 13th day of January A.D. 1864
E. S. Williams Judge (Seal)
of the 4th Judicial Circuit

I, WILLIAM L. CHURCH, Clerk of the Circuit Court of Cook County, in the State aforesaid, do hereby certify the above and foregoing, to be a true, perfect and complete copy of all pleadings & proceedings of record in a certain cause lately pending in said Court, on the Common Law side thereof, wherein James Starr Adm'r of Estate vs. Christopher Robinson was Defendant

In Witness Whereof, I have hereunto set my hand, and affixed the Seal of said Court, at Chicago, this twenty sixth day of February A. D. 1864



Wm L Church
Clerk.

And the said Christopher C. Robinson now comes and says, that in the record and proceedings aforesaid there is manifest error, in this, to wit:

- I. The Court erred in overruling the motion for a new trial.
- II. The Court erred in overruling the motion in arrest of judgment.
- III. The Court erred in giving the several instructions given at the request of the Appellees.
- IV. The Court erred in refusing the several instructions requested by the Appellant, and which the Court refused to give.
- V. The Court erred in amending one of the instructions requested by the Appellant, and given by the Court with such erroneous amendment.
- VI. The said judgment was given in favor of the said Appellees, whereas, by the laws of the land, it ought to have been given in favor of the said Appellant: Wherefore, the said Christopher C. Robinson prays that the said judgment may be reversed, &c.

By A.W. Arrington,
his Attorney.

Non est erratum. W.C. Louay Appellee, et c.

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Christopher Robinson

^{as}
Jane Stow

Recd Evs

Filed April 20th 1864
L. Leland
Clerk

Tuesday Feb 7/15.

224
Robinson

as

Stow et al

work

list of

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