

No. 13989

Supreme Court of Illinois

People ex rel.

vs.

~~People ex rel.~~ *HOSLEN*

State of Illinois Supreme Court
Second Grand Division
January Term 1859

The people of the State of Illinois
by relation of John Crabtree would
respectfully represent to your Honor
that at the September term of the
Edgar Circuit Court 1857, held at
the Town of Paris in the County of
Edgar and State of Illinois, his Honor
Justin Hasler presiding as judge
thereof, a suit was called wherein
your relation was plaintiff and
one William Augenbaugh, was
defendant, and that during the
trial of said cause various excep-
-tions were taken by the attorney of
your relation to the rulings and
decisions of the court at the time
they were made, and that the
instructions given by the court for
defendant were also excepted to at
the time, and that after the
court had instructed the jury
and the case was submitted to them
and they had retired to their room
and been there ^{one night and} part of our day,

~~at a night~~ ~~with~~ ~~the~~ ~~agreed~~
upon a verdict ^{on Monday} the said judge
at the request of the jury ^{without the knowledge or consent of the attorney} went to
their Room, and explained some
of the instructions and portions
of the evidence to said jury, and
upon and after said explanation
by the said judge they returned
a verdict for the Defendant,
and your relator filed his affi-
davit, setting forth reasons for a
new trial, to wit the discovery of
new evidence, and the Court
going before the jury and making
the explanations aforesaid, and
also filed the affidavit of
John Beverly one of the jurors,
and thereupon by his attorney
moved the Court for a new
trial, which motion was over-
ruled by the Court as a judge-
ment entered upon the said
verdict against the Defendant
for costs of suit, to which ruling
of the Court and rendition of
judgment your relator by
his attorneys at the time

40 p. a. And it being near
the close of the term Your
relator moved the Court to
grant him - time to prepare
and tender a Bill of Exceptions
and sixty days was allowed
and granted by the Court to
enable Your relator to have
a Bill of Exceptions prepared
and, Your relator alleges that
the Court announced to the parties
that the sixty days asked for to prepare
said Bill of Exceptions was granted
and Your relator and his
attornies thought and understood
at the time that it was entered
of Record, by the judge upon his
Docket and the order also
made and entered by the Clerk
of said Court, but upon
examination Your relator
finds that the judge neglected to
make any entry upon his Docket
and that the Clerk has also
neglected to make an entry of said
order, as it was his duty and he should
have done, and Your relator
further represents and states that

within the sixty days granted by
the Court as aforesaid he caused
to be embodied in a Bill of
Exceptions and set out correctly
the evidence in said Cause
together with the instructions of
the Court given for the Defendant,
and the affidavit of James
relator and also the affidavit
of John Beverly upon which
his aforesaid Motion for a new
trial was based, and his Exceptions
to the rulings of the Court, and
tendered the same to the said
judge before the expiration of the
Sixty days granted as aforesaid and
requested him to sign and seal
the same in conformity with
Law, and the said Justice Butler
judge as aforesaid took said Bill of
Exceptions promising to examine and
sign the same if found to be correct
and after examining the same
suggested some changes which he
thought ought to be made in the
testimony of a witness named
Albin and objected to no other
portions of said Bill of Exceptions

and such change was made in
Abies evidence as was suggested
by said judge so as to make it conform
to what he suggested was the
true statement of the evidence given
by said Abey on the trial of
said case. Yet the said Hasler
judge as aforesaid has neglected and
failed to sign and seal said Bill
of Exceptions in conformity with
Law as he is in duty and Law
bound to do although often
requested and still fails and
neglects to sign the same or to give
up to your relator or his attorney
said Bill of Exceptions, but retains
the same so that your relator
is unable to file said Bill of
Exceptions or a copy thereof herewith
a copy of all the proceedings in said
Case before as they appear of record
is herewith filed together with
Copies of the affidavit of your
relator and that of the juror
John Beverly. Mashed A-

Wherefore your relation being without
any other adequate remedy and
in order that the Law may be
vindicated, and justice done,
prays for a writ of Mandamus
against the said Justice Austin
Commanding him to sign and
seal said Bill of Exemption, (Have
prayers in conformity with
Law and to surrender up the
same as he is in duty and Law
bound to do, or to show cause
if any he can why he should not
sign and seal said Bill of
Exemption, and your relation
prays for all other proper orders
which may be required and
proper to carry out vindicate
and render effectual the provis-
ions of the Law, and as in duty
bound will ever pray

John C. ...
Subscribed & sworn to before me. In testimony
whereof I have hereunto set my hand and af-
fixed my notorial seal this 29th day of
January A.D. 1859

J. W. Blackburn M.P.

The People of the State of Illinois
on the relation of John Crabtree
vs 3 Pet. for Mandamus,
Justin Warburton

I, Sheridan P. Read, being duly sworn, upon my oath state, that I was one of the Counsel of John Crabtree in the trial of a suit in the Edge Circuit Court, at the September Term 1857 thereof, referred to in the foregoing petition for Mandamus, in which said Crabtree was plaintiff and William Warburton was defendant, and that during the trial thereof I took full notes of the testimony of all the witnesses examined in the case, that from said notes of testimony, I prepared a Bill of Exceptions, which contained, as I then thought and now believe, a correct statement of the testimony given, and of the rulings and decisions of the Court upon the rejection and admission of evidence to which the plaintiff at the time excepted, and also a copy of the charge of the Court to the jury and the plaintiff's exceptions thereto, and of the motion for a new trial and reasons for the same, and exceptions of Plaintiff's Counsel to the decision of

The Court overruling the same, which Bill of Exceptions was prepared within the time which sixty days which I understood was allowed by the Court to prepare the same in, and handed by me to other Counsel, to be given to Hon, Austin Harlan, ^{Judge of the Edgar Circuit Court} to examine and sign, that afterwards, sometime, as deponent recollects, during the Term of the Edgar Circuit Court in September 1858, this deponent, in company with Amos Green Esq, called on Judge Harlan to learn from him whether he would sign said Bill of Exceptions, and that Judge Harlan said to us, that he could not sign the same as then prepared, because it did not state the testimony of one witness Albans, as he understood it, and he told deponent wherein he thought said Albans testimony was incorrectly stated, and deponent took said Bill of Exceptions and made alterations in that portion of it which gave Albans testimony, in conformity with the suggestions of Judge Harlan, so that the same would read as the said ^{Judge} Harlan thought it should, and the said ^{Judge} Harlan made no objections to any other portion of the Bill of Exceptions, and after said

alterations in Albans Testimony was
made deponent gave said Bill
of Exceptions into the hands of
Amos Green Esq, who was of counsel
in the case to present to Judge
Sturman for his signature,

Sheidan P. Read

Subscribed ~~and~~ sworn to before me. In tes-
timony whereof I have hereunto set my hand
and affixed my Notarial Seal this ~~30~~ 31st day
of January A.D. 1859.

J. W. Blackburn Not. P.

State of Illinois }
Edgar County } ss

Personally appeared before
the undersigned Clerk of the Edges Circuit
Court J. W. Blackburn who having been
first duly sworn as his oath says that
he is an attorney of said Court - and was at-
torney for Coaklee in the case of John Coaklee
vs William Hagenbaugh - and may as well
along with his partner S. P. Reed - said case
at the trial thereof at the Sept. Term of said
Court in the year 1857, - that said ^{Reed} took notes
of the evidence at said Trial - and that after
said Trial - he sent said notes to this affiant
and this affiant says that he thinks the
notes of said evidence as sent to him by said
Reed were correct, and expressed very fairly
the evidence given at said Trial - said case was
tried by a jury and verdict for defendant - and
motion was made for a new trial - which mo-
tion was overruled - Plaintiffs excepted -
and prayer for ^{an} appeal then sixty days were
given for to file bond and ~~to~~ tender bills of
exceptions - and said affiant thought
at the time that said order was entered of
record - J. W. Blackburn

Personally appeared before me

Clerk of the Circuit Court, in and for
said County, John M. Blackburn,
who being first duly sworn upon
his oath, says that the matters and
things set forth in the foregoing
affidavit are true so far as made
from his own statements & that
as stated from the information
of others he believes them to be true.

In testimony whereof I
have hereunto subscribed my
name and affixed the seal of
said Court at my office in
Paris this 21st day of July 1857.
W. J. Greig Clerk

The People of the of Illinois
on the relation of John Crabtree
v
Don Justin Austin } Petition for Mandamus

I Amos Green being duly sworn upon my oath state that I was retained as Counsel in the suit of John Crabtree v William Hagenbaugh in the Edge Circuit Court, after the jury had returned a verdict for the Defendant and assisted in preparing the affidavits upon which the motion for a new trial was predicated and was in Court when the motion for a new trial was made and overruled by the Court, and asked the Court to grant time to prepare and tender a Bill of exceptions, as the evidence was very voluminous and it would require considerable time to prepare it, and the Court granted six days, and I was under the impression that the Order was entered of record and I notified the Counsel for Hagenbaugh that we would have the Bill of exceptions prepared and ready for

presentation at the face thereof of
The Clark Circuit Court, Sheridan
I read prepared the Bill of Exceptions
and handed it to me and I
took it with me to Washburn
Clark County, the Circuit Court
of said County was in session
at the time and it was before
the expiration of the Sixty days
allowed by the Court, and
submitted it to Charles Constable
Esq. one of the Attorneys for Defendant
Rosenbarg, for examination and
after examining it he thought some
alterations should be made
in the evidence of a witness
named Albin and he and
I agreed to submit it to Judge
Harden, and let him make
such change in Albin's evidence
as he thought proper to make it
conform to what he testified on
the trial, and in conformity
with said agreement, I handed
it to Judge Harden with the request
that he would sign it, and
stating to him at the time that Mr
Constable and myself had agreed

to submit the testimony of Albin
to him for correction if he thought
any should be made, Constable
was present at the time, and a judge
Hurler took the piece of 4 captions
and kept it until the September
term 1858 of the Edge Circuit Court
although I had written several
times to Hurler requesting him
to sign it, and requested him
once or twice in person to do so
and he stated once that he had lost
or mislaid it, but at the term of
Court when named Mr Reed
and myself went to his room
to see him in reference to the
matter and to get him to sign
it, he gave us the piece of 4 captions
and suggested some alterations in
Albin's evidence which he thought
should be made and Mr
Reed made the alterations suggested,
and I again tendered it to him and
he requested him to sign it, he took it
and has kept it ever since, I have
written to him several times
either to sign it or to hand it to
Mr Schofield, if he would not

Since it to send to me I also put Mr
Scholfield to call upon and request
him to sign it or hand it to him,
and about one week ago I received
a letter from Judge Husler in response
to one written by me requesting him
either to sign it, or hand it to John
Scholfield to send to me in which
he states that he cannot sign it and
that his recollection of the facts is some-
what impaired by the time that
has elapsed, and proposing that he
will aid in preparing another
Bill of Exceptions at the next term
of the Edge Circuit Court.

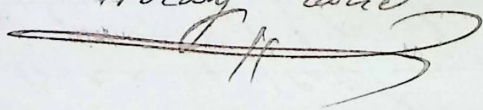
Agree

Sworn to and subscribed

before me this 31st day of January A. D. 1859

In testimony whereof I have hereunto
set my hand and affixed my
Notarial Seal

Liberty Waite
Notary Public



John Grubbs

William Hagenbaugh } notice
To Henry Jounneyq Attorney and
Counsel for William Hagenbaugh,
Sir - Please take notice, that on
the second day of February 1855, and at
the January Term of the Supreme
Court for the second Grand
Division of Illinois, holden at
Springfield in said State, I shall
move the Court for a writ
of Mandamus to be directed
to the Honorable Justice Horler
Judge of the Circuit Court for
Edgar County in said State
Commanding him to sign and
seal in conformity with Law,
the Bill of Exceptions now in
his possession and which was
tendered and delivered to him
~~in~~ ^{the} within the time granted
and allowed for preparing the
same, on the trial of the suit
in the Circuit Court for Edgar
County, wherein I was Plaintiff
and William Hagenbaugh
was Defendant at the September

Term 1857 of said Court held
at Paris in the County and
State aforesaid,

John Crabtree
per A Green his atty

I acknowledge service of the
within notice January 19th 1859
H. P. Paine Atty for deft.

John Crabtree

William Hagenbaugh } notice

To the Honorable Justice Gordon
Sir - Please take notice that
on the second day of February 1857 at
the January Term of the Supreme
Court for the second year and
Division ~~held~~ of the State of
Illinois holden at Springfield,
I shall move the Court for a
writ of Mandamus ~~to~~ ^{directed}
you as judge of the Edgar Circuit
Court, Commanding you to
sign and seal in conformity
with Law the Bill of Exceptions
in your possession in the suit
of myself vs William Hagenbaugh
tried at the September Term 1857
of the Edgar Circuit Court held
at Paris in said County on the second
Monday of said month,

John Crabtree
for Hagenbaugh his atty

covered by leaving
a copy with the
W. H. Hauling
the 2nd end of
May 1899

price	50
miles	2
return	$\frac{10}{50}$

John B. Biscoe Sheriff

(Clend = (C))

State of Illinois, —
Edgar County, 3 Be it Remembered, that, here-
tofore, to wit on the twelfth day of Sep-
tember, in the year our Lord one
thousand eight hundred and fifty six,
John Crabtree, by Read & Blackburn
his attorneys filed in the office of the
Clerk of the Circuit Court in the County
and state aforesaid, a preceipe in
the words and figures following, to wit:

John Crabtree

vs Edgar Circuit Court
William Hagenbaugh. Assumpsit
Damages \$3000.


The Clerk of the Edgar Circuit
Court will please issue a writ of Sum-
mons in the above case, against the said
defendant, returnable to the first day
of the next term, and lay the damages
at three thousand Dollars.

Read & Blackburn
plaintiff's Atty's.

Upon which said preceipe there
was a summons issued on the
day and year aforesaid in the words
and figures following, to wit:

"State of Illinois,
Edgar County, 2^d Sect.

The People of the State of Illinois,
to the Sheriff of said County, Greeting:
We Command you to summon
William Hagenbaugh, if he shall be
found in your County, personally to be
and appear before our Edgar Circuit
Court on the first day of the next term
thereof, to be holden at the Courthouse
in Paris, to answer John Kerabtree, of a
plea of "Assumpsit," to the Damages
of the said plaintiff, to the sum of three
thousand dollars (\$3000.) And have
you there and there this writ, and make
return thereon, in what manner you
executed the same.

 Witness, William J. Gregg Clerk of our
said Circuit Court, and the seal
thereof, at Paris, this 12th day of Sep-
tember A.D. 1856.

Test: W. J. Gregg Clerk."

~~And afterwards, to wit: on the third~~
day of which said writ was afterwards
returned into the office of the Clerk of the
Circuit Court, with an endorsement
thereon in the words and figures following

to wit: Regularly presented by reading to Mr. Wm. Hagenbaugh, this 15th Sept. 1856, serving 50 Miles 30 Return 10 = 90 J. G. Means Sheriff

And afterwards, to wit: on the third day of October in the year of our Lord, one thousand eight hundred and fifty six, again came John Crabtree by Read & Blackburn his attorneys, and filed in the office of the Clerk of the Circuit Court aforesaid, a declaration in the words and figures following, to wit:

State of Illinois, Edgar Circuit Court
Edgar County, 3rd Oct. October Term 1856.

John Crabtree plaintiff, by Read & Blackburn his attorneys, complains of William Hagenbaugh defendant in a plea of Assumpsit. For that, whereas the said defendant on the first day of March in the year of our Lord, one thousand eight hundred and fifty six, at the County aforesaid, in consideration that the plaintiff at the request of the defendant had then and there agreed with and promised the plaintiff to pay him there for, in advance, the sum of five hundred dollars, undertook and faithfully promised the plaintiff to rent to him for the use of plaintiff's cattle, from about the middle of May until about the first of February thereafter

a certain pasture, belonging to him, the said defendant, and to provide water for and to water said cattle, and to allow no other cattle or stock, excepting his own to run in said pasture, and, ~~to~~ inasmuch as said pasture was not then entirely enclosed by fence, to have the same completely enclosed by the first day of June, then next following, and until that time to herd and take care of said cattle, and the plaintiff avers that he paid defendant said five hundred dollars in advance, to wit: on the day and year aforesaid at the county aforesaid.

Yet the said defendant has disregarded his said promise and undertakings, and although often requested, ~~requested~~ so to do, has not performed the same or any part thereof.

And, also, for that whereas, the defendant heretofore, to wit: on the day and year first aforesaid at the county aforesaid, in consideration that the plaintiff at the defendant's request had then and there agreed with and promised the plaintiff to rent of him a certain pasture for the use of his cattle from about the middle of May then next following, until about the first day of February thereafter, for the sum of five hundred dollars, to be paid defendant in advance, undertook and faithfully promised the

plaintiff to rent to him for the use of his, plaintiff's cattle the pasture as aforesaid, from about the middle of May then next following to about the first of February thereafter, and to provide water for and to water said cattle, and to allow no other cattle or stock, excepting his own to run in said pasture, and inasmuch as said pasture was not then entirely ~~plowed~~ enclosed by a fence to enclose the same by fences by the 1st day of June thereafter, and until that time to herd and take care of said cattle. And the plaintiff avers that he then and there rented said pasture of said defendant for the purpose aforesaid, and then and there paid to him in advance the said five hundred dollars. Yet the said defendant has disregarded his said promises and has not performed the same or any part thereof.

And for that whereas also the said defendant on the day and year first aforesaid at the county office in consideration that the plaintiff at the request of the defendant had then and there agreed to pay him thereof in advance the sum of Five Hundred Dollars. undertook and faithfully promised the plaintiff to rent to him for the pasturing of plaintiff's cattle from the middle of May ^{then} next following until the first of February thereafter a certain pasture belonging to him the said

Defendant, and to provide water for and to water said cattle
and to allow no other cattle or stock excepting his own to
run in said Pasture and in as much as said Pasture was
not then entirely enclosed by the first day fence
to have the same enclosed by fence by the first day of
June then next following and until that time to herd and
take care of said cattle, and the Plaintiff avers that
he paid the said Defendant the said Five Hundred Dollars
in advance to wit, on the Day and Year aforesaid Yet
the said Defendant did not provide water for and water said
Cattle whereby the became poor and moribund in value to the
Amount of One thousand Dollars, and allowed other Stock
beside his Own run in said Pasture and did not enclose
the said Pasture by the first of June, and take care of and
herd the said cattle whereby a large number of the same
to wit One thousand of said cattle to wit on the 10th day
of June 1856, at the county aforesaid escaped and were
lost and by reason of the escaping of said cattle from
the said Pasture the Plaintiff paid and expended
large Sums of Money to wit one thousand Dollars, and
spent a large amount of time to wit Six weeks in seeking
to recover the same and also for that whereas the said
Defendant on the Day and Year first aforesaid at the
County aforesaid in consideration that the Plaintiff at
the Defendants request had bargained with the Defendant
for a certain Pasture for his cattle on the Terms herein
after mentioned and the Payment to him in advance
of Five Hundred Dollars undertook and faithfully

Promised the Plaintiff to rent to him a certain Pasture
from the middle of May then next following to the first
Day of February thereafter for the Pasturage of cattle of the
Plaintiff and to provide water for and to water said
cattle and to allow no other cattle Stock besides his
own to run in said Pasture and inasmuch as said
Pasture was not then entirely enclosed by fence to
enclose the same by the first of June 1856 and until
that time to feed and take care of said cattle and the
Defendant avers that he took said Pasture on said Terms
and Paid said five Hundred Dollars in advance
to wit on the Day and year aforesaid at the county
aforesaid yet the said Defendant not regarding
his said promise to wit on the 30th Day of May 1856
at the county aforesaid allowed a large number of
said cattle to wit one Hundred of great value to
wit of the Value of \$3,000. to escape from said pasture
and become lost and did not provide water for the
same whereby they became greatly impoverished and
lessened in might and value to wit the value
of one thousand dollars by reason of which
promise the plaintiff had to lay out and expend
large Sums of Money to wit one thousand dollars.
towards searching for said cattle and procuring
water for them and other safe pastures. And whereas
also the said defendant on the day and year aforesaid
at the county aforesaid in consideration that the plaintiff

had at the Defendants request then and then agreed
to pay him therefore in advance the sum of five
hundred dollars on du took and faithfully promised
the plaintiff to let to him for the pasturing and
feeding of plaintiffs cattle from the middle of
May 1856, until the first of February 1857, a
certain pasture belonging to said defendant
and to provide sufficient water for and to
water said cattle and keep out all other
stock from said pasture but his own, and
inasmuch as said pasture was not entirely
enclosed ~~by~~ ^{with} a fence, at the time to enclose
the same by the first of June 1856 and until then
to herd ^{under} take care of safely said cattle and the
plaintiff - avers that he paid said defendant said
five hundred dollars, in advance to wit on the
day and year aforesaid and in the middle of
May placed his cattle in said pasture. Yet the
defendant did not provide sufficient water for
said cattle by reason of which they greatly suffered
and lost in value to wit the value of one thousand
dollars, and did not take care of safely and herd
said cattle or enclose said pasture by the first
of June 1856. Whereby a large number of said
cattle to wit two hundred on the 30th day of May
1856 in the county aforesaid strayed from said
pasture and a large number to wit one hundred of
said cattle of the value of said cattle Two thousand

dollars. was lost and said defendant did not
keep all stock beside his own out of said pasture
by reason of which premises said plaintiff was put
to divers expenses to wit, the expense of two thousand
dollars, in and about procuring water for said
cattle and in about searching for said cattle
that strayed and in and about procuring other
and safe pasture for the same.

To the plaintiffs damages of three
thousand dollars. and therefore he prays;

Read + Blackman
Plaintiff's attys."

And, afterwards, to wit: on the tenth
day of April in the year of our Lord one
thousand eight hundred and fifty seven,
at a Circuit Court begun and held
within said county and state, before
the Honorable Justin Darlan sole
judge of the fourth Judicial Circuit
of said state, composed of the counties
of Edgar &c. There appears of record
on the records of said Court and
order in the words and figures follow-
ing, to wit:

68 "John Crabtree
vs In Assumpsit.
William Hagenbaugh

This day came the plaintiff herein by his attorneys, and on their motion the defendant is ruled to plead herein by nine o'clock tomorrow morning."

And afterwards, to wit on the eighteenth day of April in the year last aforesaid, I at the Circuit Court aforesaid and before the judge aforesaid, there appears of record on the records of said Court another order in the words and figures following, to wit:

68 "John Crabtree
vs In Assumpsit.
William Hagenbaugh

On motion of the plaintiff herein by his attorneys, leave is granted to amend the declaration herein, and this cause is continued until the next term of this Court."

And afterwards, to wit on the fourteenth day of August in the year of our Lord, one thousand eight hundred and fifty-

seen, again came John Crabtree by
Read & Blackburn his attorneys and
filed in the office of the Clerk of the
Circuit Court aforesaid, his amended
declaration in the words and figures
following, to wit

"State of Illinois, Edgar Circuit Court,
Edgar County, 3 September Term 1857. -
John Crabtree, plaintiff,
by Read & Blackburn his attorneys, com-
plains of William Hagenbaugh, defendant,
in a plea of assumpsit.

For that whereas the Defendant here to
for to wit on the first day of March in the year of our Lord one
thousand eight hundred and fifty six at the county afores
aid in consideration that the plaintiff at the request of the
defendant had then and there agreed with and promised
the plaintiff to pay him therefor in advance the sum
of five hundred dollars. and do look and faithfully promi-
sed the plaintiff to rent to him for the use his the plan-
tiff cattle from about the middle of May, until about
the first of February thereafter a certain pasture situate
in said county belonging to him the defendant and to
provide water for and to water said cattle and to
allow no other cattle or stock excepting his own
to run in said pasture and inasmuch

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as said pasture was not then entirely enclosed
by fence to have the same completely enclosed
by the first day of June then next following and until
that time to tend and take care of said cattle, and
the plaintiff avers that he paid the defendant said five
hundred dollars in advance to wit on the day and
year first aforesaid, at the County aforesaid, yet
the said defendant has disregarded his said prom-
-ises and undertakings and although often ex-
-pected so to do has not performed the same or any
part thereof.

And also for that whereas the said defendant
in consideration that the said plaintiff would pay
to him therefore in advance the sum of five hundred
dollars to wit on the day and year first aforesaid
at the County aforesaid undertook and faithfully
promised the plaintiff to rent to him for the use of
his plaintiff cattle, from about the middle of May
then next following until about the first of February
thereafter a certain pasture belonging to him the said
defendant situate in the County aforesaid and to
provide sufficient water for and to water said cattle
and to allow no other stock or cattle excepting
his own to run in said pasture and in as much
as said pasture was not then entirely enclosed
by fence to have the same completely enclosed
by the first day of June then next following and

until that time to herd and take care of
said cattle, and the plaintiff avers that
he paid defendant said five hundred
dollars in advance, to wit; on the day and
year aforesaid, at the county of me said.

And the plaintiff further avers that he placed
in said pasture a large number of cattle, to wit;
one thousand head of cattle, at or about the
time he was to have the same. Yet the said
defendant did not provide water for and
water said cattle, whereby they became poor
and were greatly lessened in value, to wit: to the
amount of one thousand dollars, and allowed
other stock besides his own to run in said
pasture, whereby it was greatly diminished
in value for the plaintiff's use, to wit: to the
amount of five hundred dollars, and did
not enclose the said pasture by the first day
of June, and take care ^{of} and herd the said cattle,
whereby a large number of the same, to wit; one
hundred head of said cattle, to wit; on the tenth
day of June A. D. 1857 at the county of me said, es-
caped and went stray, and a large number
of the same, to wit; fifty head of the value of
two thousand dollars, were lost, and by
reason of the escaping of said cattle from
the said pasture the plaintiff paid out

and expended large sums of money, to wit; one thousand Dollars, and spent a large amount of time, to wit; six weeks, in seeking to recover the same, and in procuring other and safe pasturage for his said cattle.

And, also, for that whereas, the said defendant, to wit; on the day and year aforesaid, at the County of aforesaid, in consideration of the plaintiff; then and there agreeing to pay him therefor the sum of five hundred dollars in advance, undertook and faithfully promised the plaintiff to rent to him, for the use of his plaintiff cattle, from the middle of May A. D. 1856 to the first February 1857, a certain pasture, belonging to him, the said defendant, situated in the County aforesaid, and to provide sufficient water for and to water said cattle, and to allow no other stock or cattle, excepting his own to run in said pasture, and inasmuch as said pasture was not then entirely enclosed by fence, to have the same completely enclosed by the first of June then next following, and until then to herd and take care of said cattle. And the plaintiff avers that he paid said defendant said five hundred dollars in advance, to wit; on the day and year aforesaid, at the County of aforesaid,

and the plaintiff further avers that he placed
in said pasture at the time he was to have
the same, a large number of cattle, to wit; one
thousand head of cattle; Yet the said
defendant did not provide water for
and water said cattle, whereby they became
poor and were greatly lessened in value,
to wit; to the amount of two thousand
dollars, and allowed other stock besides his
own to run in said pasture, whereby it was
greatly diminished in value, for the use and
pasturage of plaintiff's cattle, to wit; to the
amount of five hundred dollars, and did
not enclose completely the said pasture, by
the first of June, and take care of and herd
the said cattle, whereby a large number of
the same, to wit; one hundred head of the
value of two thousand dollars, escaped
and went stray and were lost, and ~~by~~
by reason of the escaping of said cattle from
the said pasture the plaintiff paid out and
expended large sums of money, to wit; one
thousand dollars, and spent a large amount
of time, to wit; six weeks in searching to recover
the same, and in procuring other and safe
pasture for said cattle.

And, also, for that whereas, the said
defendant, at the day and year aforesaid,

At the county aforesaid, in consideration of the plaintiffs then and there paying him the sum of five hundred dollars, undertook and then and there faithfully promised the plaintiff to send to him for the use of his plaintiff's cattle, from the middle of May 1856, to the first of February 1857, a certain pasture belonging to him the said defendant, situated in said county, and to provide water for and to water said cattle, and to allow no other stock or cattle, excepting his own, to run in said pasture, and, inasmuch, as said pasture was not entirely enclosed by fence, to have the same entirely enclosed by the first of June then next following (1856) and, until that was done to herd and take care of said cattle;

And, the plaintiff avers, that he placed in said pasture a large number of cattle, to wit: one thousand head of cattle, at the time he was to place the same there; Yet, the said defendant failed to provide sufficient water for and to water said cattle, whereby they became poor and were greatly lessened in value, to wit: to the amount of one thousand dollars, and allowed other stock besides his own to run in said pasture, whereby it was greatly ~~reduced~~ ^{diminished} in value for the use of and pasturage of plaintiff's cattle, to wit: to the

amount of five hundred dollars, and did not entirely enclose the said pasture by the time he had agreed to do, and did not take care of and herd said cattle, but allowed a large number, to wit; one hundred head, to escape, and get stray, by reason of which, a large number, to wit; fifty head, of great value, to wit, of the value of fifteen hundred dollars, were lost, and the plaintiff had to pay out and expend large sums of money, to wit: One thousand Dollars, and a large amount of time and labor, to wit, six weeks, in searching to recover the cattle so escaped and estrayed, and in procuring other and safe pasturage for ^{his} said cattle;

And also, for that whereas, the said defendant, at the day and year aforesaid at the county aforesaid, in consideration that the plaintiff would then and there pay to him the sum of five hundred dollars, undertook and faithfully promised the plaintiff to rent to him for the use of his plaintiff's cattle from the middle of May 1856 to the first of February 1857, a certain pasture belonging to him the said defendant, situated in said county, and to provide water for and to water said cattle, and to allow

no other stock or cattle, except his own to run
in said pasture, and inasmuch as said
pasture was not then entirely enclosed &
by fence, to enclose the same by the first of
June then next following, and until that
was done to take care of and herd said
cattle, and the plaintiff avers that he then and
thru paid to said defendant five hundred dollars
and he further avers that he placed in said
pasture a large number of cattle to wit one thousand
head at the time he was entitled to do so yet the said
defendant failed to provide water for said cattle and
to water the same as he was bound to do. Whereby they
became poor and greatly decreased in value to wit
to the amount of one thousand dollars. and allowed
other stock besides his own to run in said pasture
whereby it was greatly diminished in value to wit
to the amount of five hundred dollars. and did not
entirely enclose said pasture by the time he had
agreed to do and did not ^{herd} take care of said
cattle but allowed a large number to wit one
hundred head to escape and run stray by
reason of which a large number to wit fifty
head of great value to wit the value of fifteen
hundred dollars were lost and the plaintiff had
to lay out and expend large sums of money to
wit one thousand dollars. and a large amount of
time and labour to wit six weeks in exerting to

he could said cattle so escaped and strayed
and in procuring other and safe pasture for his
said cattle.

And also for that whereas the said defendant on
the day ~~on the day~~ and year first aforesaid at the
county aforesaid in consideration of the plaintiff
then and there paying him therefor the sum of five
hundred dollars, undertook and faithfully promised
the plaintiff to rent to him for the use of his plaintiff's
cattle from the middle of May then next following
during and until the end of the pasture season
of that year a certain tract of pasture land
belonging to him the said defendant situate in said
county and to provide water for and to water
said cattle as they might require and to ~~and~~
to allow no other stock except his own to run
in said pasture and inasmuch as said
pasture (and was not entirely enclosed by fence
to have the same enclosed by the first of June then
next following and until then to take care of and
herd said cattle. And the plaintiff avers that
he placed in said pasture at the time he was entitled
to do so a large number of cattle to wit one
thousand head yet the said defendant failed
to provide water for and to water ~~for~~ said
cattle whereby they became very poor and greatly
lessed in value to wit two thousand dollars

and did not entirely enclose said pasture by the first of June and did not herd and take care of said cattle but allowed the same to escape and run stray by reason of which a large number to wit fifty head of great value to wit of the value of fifteen hundred dollars were lost and the plaintiff had to pay lay out and expend large sums of money to wit one thousand dollars and a large amount of time and labour to wit six weeks in trying to recover the cattle so estrayed and had to lay out and expend a large sum of money to wit \$1000 in procuring other and safer pasturage

And for that whereas also the said defendant on the day and year first aforesaid at the county aforesaid in consideration of the plaintiff then and there agreeing to pay him therefor the sum of five hundred dollars, he do took and promised the plaintiff to rent to him the plaintiff for the use and pasturage of his the plaintiff cattle a certain tract of pasture land belonging to him said defendant situate in said county, from about the middle of May then next following and until the close of the pasture season and to provide sufficient water for and and to water said cattle, and inasmuch as said pasture land was not enclosed entirely by fences, to have the same enclosed by the first of June then next following

and until then, to take care of and herd said cattle on said pasture land; And the plaintiff avers that he paid to said defendant said \$500., and he also avers that he placed in said pasture land a large number of cattle, to wit; 1000 head. Yet the said def^t. failed to provide the same with sufficient water, whereby they became poor and greatly lessened in value, to wit; \$1000., and did not enclose sd. pasture by the first of June and did not take care of & herd said cattle, until then, whereby they escaped & strayed, and a large number, to wit; fifty head were lost, of great value, to wit; of the value of \$1000., and the plaintiff was put to great trouble, loss and expense in and about recovering the same, to wit; \$2000., and lost the use of said pasture of great value, to wit; of the value of \$2000.

And also, for that whereas the said defendant, on the first day of August A.D. 1856, at the county aforesaid, was indebted to the plaintiff in the sum of one thousand dollars for money then and there paid by the plaintiff for the use of the def^t. at his request, and in the sum of one thousand, \$1000., for money then & there received by the defendant, for the use of the plaintiff, and the defendant

afterwards, on the day & year last aforesaid at
the county aforesaid, in consideration of
the premises respectively, promised the plaintiff
to pay him the several moneys herein above men-
tioned on request; Yet the defts has not paid the
same or any part thereof;—

To the damage of the plaintiff of three
thousand dollars, and therefore he sues vs.
Read & Blackburn
for plaintiff."

And afterwards, to wit: on the twenty-fifth
day of August in the year of our Lord, one
thousand eight hundred and fifty-seven,
at a special term of said Court, before the
Judge aforesaid, there appears of record
on the records of said Court another order
in the words and figures following, to wit:

33 105
"J. M. Crabtree In Assumpsit.
William Hagenbaugh

On motion of the plaintiff
herein by his attorneys, the defendant is
ruled to plead herein by nine o'clock
tomorrow morning."

And, afterwards, to wit: on the day

and year last aforesaid, the defendant
by his attorneys came into open Court
and filed with the Clerk, his plea
in the words and figures following, to wit:

"State of Illinois, Edgar County, ss.

Edgar Circuit Court

Special August Term A.D. 1857.

John Kerabtree

vs

William Haginbaugh

Assumpsit

And the said defendant by Usher
Usher his attorney, comes and defends the
wrong and injury where &c. where &c. and
says that he did not undertake and promise
in manner and form as the said plaintiff
hath in his said amended declaration
above complained against him; and of
this he, the said defendant, puts himself
upon the country &c.

Usher, Tamer & Constable
Attornies &c."

"And the plaintiff doth the like &c."

And afterwards, to wit: on the tenth
day of September in the year of our Lord,
one thousand eight hundred and fifty-seven

motion, was overruled by the Court.

To which overruling of the Court, the plaintiff by his attorney, excepts, (here insert)

It is therefore considered and adjudged by the Court that the defendant herein recover of and from the said plaintiff the costs and charges in this behalf expended, and that execution issue therefore.

And afterwards, to wit on the 19th day of September in the year of our Lord eighteen hundred and fifty seven, at the Circuit Court, ^{last} aforesaid, came the said plaintiff by his attorney, and filed with the Clerk of said Court in open Court two several affidavits in the words and figures following, to wit:

"Cerberus

vs

Hagenbaugh

John Cerberus being duly sworn upon his oath ~~say~~ states that since the trial of this cause William Alban, a witness who testified in his behalf, tells him that, upon reflection, he is satisfied that he made a

mistake in giving in his testimony in the
cause, and that, instead of the conversation
which he heard between the parties, taking
place after the money was paid, it was had
before the payment of the \$500, by this affiant
to defendant Hagenbaugh, which this affiant
states to be the truth of the case. Affiant further
states that, he has been informed by members of
the jury who tried this cause that, after the
jury had retired to consult upon their verdict,
and after they had been out over night & part of a
day without agreeing, and before they had
agreed, the Court, in the absence of, and
without the consent of counsel, went to
the jury room and gave to the jury verbal
explanations in reference to ~~the~~ part of the evidence
and in regard to the instructions given in the
case. Upon which grounds the plaintiff
asks for a new trial.

John Cratree

Subscribed & sworn to this 19th day of Sept. 1857.

W. J. Gregg Clerk

John Cratree

vs

William Hagenbaugh

John P. Beverly being first duly
sworn, upon his oath states that, he was
one of the jurors that was sworn and that

set upon the trial of the above cause, and that after the jury had retired and consulted upon their verdict, and after they had been out one night and a part of a day, without agreeing and before they had agreed, the court, upon the request of the jury, went to the jury room, and had the following conversation with them, to wit: The Court said 'Well gentleman, what the difficulty. I took one of the instructions and asked him what it meant; he remarked it meant just what it said. I then asked him what we would do with the Mr. Wagenbaugh's acts after the five hundred dollars was paid. He remarked that he may have thought that he was bound to do that from the what Mr. Crabtree said at the time he paid the money.'

John R. Beverly

Subscribed & sworn to this 17th day of Sept. 1857.

W. J. Greg Clerk.

State of Illinois,
Edgar County, ss.

William J. Greg Clerk of
the Circuit Court in and for said County,
do hereby certify that the foregoing is a
true and correct copy and transcript
of the orders, judgment of record and
papers on file in my office in the case

of John Crattree vs William Hagenbaugh
as appears to me of record in my office
and on file in my office.

In testimony whereof I have
hereunto set my hand and
the seal of said Court at
my office in Paris this this
1st day of January A.D. 1859.

W. H. Gregg Clerk



The court instruct the jury, at the instance of defendant,

1st.

That if the jury believe, from the testimony, that the plaintiff paid the defendant \$500.- for the pasture, and that the defendant acknowledged that he received said \$500.- in full for the pasture, and that afterwards the defendant promised the plaintiff to fence the pasture by the 1st of June afterwards - keep out all other stock, to herd and water the plaintiff's cattle, all such last-mentioned promises are void for want of consideration to support such promises

2nd

That if the jury find from the evidence, that the alleged promises of the defendant to herd and water the plaintiff's cattle & to make the fence by the 1st of June 1856, were not made by the defendant, till after the contract had been made by the parties for the pasture at \$500.- and till after the money had been paid, such promises are void, and nothing can be recovered on account thereof.

3rd.

Sum

The contract must be proved as alleged, in the declaration, if the proof is that the contract for the pasture was from the 3rd of May to the 1st of February thereafter, and was that the Defendant should keep off from the pasture, all other stock but horses, trees, the declaration, is not proved, and the jury should find for the defendant.

4th.

Sum

So if the jury believe from the testimony, that the contract for the pasture was in fact made between the parties in March as set up by the defendant, and that the terms of the contract were as alleged by the defendant and his proofs, then the plaintiff cannot recover, on account of variance in proofs + declaration.

5th.

Sum

Even though the jury should find that the contract was proved as alleged by the plaintiff, yet the Defendant is not liable for the cattle of plaintiff alleged to have been lost, without a demand of the cattle before suit brought.

3rd.

The contract must be proved as alleged, in
the declaration, if the proof is that the con-

John Lovelace
205 B. Hancock St
New York

JP



Dec 8 5.75

The People of Illinois
by relation of
John Crabtree
vs } Petitions for
} Mandamus
Justin Hosler

13989