

No. 14681

Supreme Court of Illinois

Pulsifer

vs.

Shepard.

STATE OF ILLINOIS,
SUPREME COURT,
THIRD GRAND DIVISION.

No. 221

A. W. Middleton & Co., Stationers, 196 Lake St.

Palmer
25
Shupard

IN THE SUPREME COURT,

THIRD GRAND DIVISION, APRIL TERM, A. D. 1864.

EDWARD F. PULSIFER,

Appellant.

vs.

THOMAS W. SHEPARD,

Appellee.

Appeal from Putnam Circuit Court.

Assumpsit, by the appellee against the appellant.

3 The first count of the declaration set forth an undertaking of appellant to take due and proper care of 2,559 2-56 bushels of corn of appellee, and alleged a failure to do so, and that by reason thereof the corn was greatly damaged and injured, and wholly lost to appellee.

4 The 2d count, after alleging an undertaking of appellant to sell the corn for reward, and to render a true and just account of the sale thereof, averred a breach of this undertaking, in not rendering a just and true or other account of the sale which appellant made.

5 The 3d count averred a similar undertaking, to sell and account in a reasonable time, and a breach of it in not accounting for or paying over the proceeds of sale.

7 The 4th count charged appellant with the like default.

8 The 5th count charged appellant with failing and neglecting to use ordinary care and diligence in selling and disposing of the corn, and in taking care of the same, and with negligence and carelessness in making the sale for \$685.14, when by using ordinary care and diligence, he ought to have sold the same for \$1,000, and with negligence in suffering the corn to be damaged, and with carelessness and negligence in incurring unnecessary expense in shipping, transporting and selling the corn, to wit: \$437.43, unnecessary expense. This count alleged a breach in not rendering a just and reasonable account of the sales, or paying over the proceeds thereof.

Ship the corn from Hennepin to Chicago & sell the same

10 The 6th count alleged that defendant undertook to sell the corn for plaintiff, when instructed so to do, and that the plaintiff, on June 2, 1862, directed him to make the sale, but that he neglected to do so, and kept the corn in store until Sept. 27, 1862. That with reasonable diligence, the defendant might have sold the corn on June 2, 1862, for \$1,000, out of which there ought to have been paid to plaintiff \$850. That by keeping the corn so long after June 2d, \$400 additional expense was incurred, unnecessarily, and that in the meantime the corn was damaged in \$200. That on Sept. 27, 1862, defendant sold the corn for \$680.14, and has ever since neglected, &c., to pay any of the proceeds thereof to plaintiff, and has also neglected, &c., to render to plaintiff a true and just account of said sales.

13 A common count was added, for work and materials, money lent, money paid, money had and received, and money due on an account stated.

15 The defendant pleaded the general issue, as to \$100 of the plaintiff's demand, and a tender of said \$100. He also pleaded a set-off in \$1000, for money paid and advanced, work and labor done, storage, freight, transportation, commissions and insurance paid by defendant, at plaintiff's request, &c.; also for money due on an account stated, and money lent.

17 The plaintiff replied to the special pleas, denying the tender and indebtedness therein averred. The cause was tried at the Oct. term of the Putnam Circuit Court, A. D. 1863, before Hon. S. L. Richmond and a jury.

The testimony adduced by the plaintiff was as follows:

22 H. C. Thomas testified that in September, 1861, plaintiff delivered to defendant a lot of corn, at Hennepin, Illinois, to be shipped to Chicago, to be there sold. That the corn was mixed on the canal boat with corn of the witness, having the same destination. That the corn was sold in
23 October, 1862, and defendant settled with witness on the basis of the sale. That the witness understood the corn became heated in the summer of 1862. That some time after the sale, defendant offered to settle with plaintiff on the same basis, but plaintiff refused to settle thus.

24 Augustus Pulsifer stated the contract between plaintiff and defendant as follows: plaintiff having delivered the corn to defendant, it was to

be shipped with the other corn sent with it, to defendant's commission merchants in Chicago, to be there sold on arrival, if the market price there at the time should be twenty-five cents per bushel, as to which price the witness, who made the contract in behalf of the defendant, was to learn by telegraph. If the price should be less, the corn was to be stored with other corn shipped by defendant on the same boat, the whole to be sold together. This contract was made in September, 1861 (and the boat was loaded first September 12, 1861, and again October 12, 1861).

25 The price being less than this, the corn was stored on reaching Chicago, and remained in store until October 12, 1862, when defendant's commission merchants sold the whole so shipped, and rendered account of sales, which was shown to plaintiff, and on making up therefrom defendant's account with plaintiff, there was due thereon to the plaintiff, \$97.71.

26 The latter account dated October 24, 1862, plaintiff at first refused to take, but did afterwards take.

27 It was made very soon after defendant received the account from Chicago, and both accounts were produced in court and identified by the witness. The correctness of the account so rendered by defendant to plaintiff was also fully shown.

26 He testified that defendant by the contract, was to settle for the corn on the basis of the account of sales from his commission merchants.
30 That on being told that the corn would not sell for twenty-five cents per bushel when it reached Chicago, plaintiff said defendant should hold it,
31 and do with it as with his own, which was done; the whole sent at the time, being about 7,500 bushels, having been sold together, and for the same price.

On March 11, 1863, when plaintiff paid defendant some money due the latter, defendant said to him, the plaintiff, "I want to settle with you and pay you what is due you for that corn," defendant at the same time holding in his hand a \$100 treasury note, in sight of the plaintiff, but the plaintiff left without replying.

32 William Lucas testified that plaintiff on the 2d of June, 1862, said to defendant, he believed he could afford to sell his corn, and told defendant to send up and have it sold, and defendant said he would.

The cross-examination of this witness tended to show that he heard only the above named direction, though there might have been much

else said. Also that he was in the employment of plaintiff, and that Augustus Pulsifer or Sumner Sanderson was present when the conversation above stated occurred.

33 E. H. Aiken testified that the market price in Chicago from June 2d to June 15th, 1862, for such corn as that of the plaintiff, was thirty cents per bushel, that is twenty-eight cents per bushel and two cents per bushel storage.

34 The defendant's testimony was as follows:

Augustus Pulsifer testified that he was present at the interview of which Lucas had deposed, and heard no such order as Lucas stated. That he heard all the conversation; that it was held for perhaps a half hour, and plaintiff did not order the corn to be sold. That plaintiff several times afterwards asked about the corn, and witness made an account for him of the storage on it, to the day it was asked for; and in July, 1862, witness told plaintiff the corn was heated and could not be sold until cooled.

35 Sumner Sanderson testified that he was present at the time mentioned by Lucas, and in a position to hear the order stated by the latter to have been given by the plaintiff to the defendant to sell the corn, and did not hear it.

38 Jas. W. McGee, of the Commission House to which defendant sent the corn, testified that on receiving the corn, the price being less than 25c. per bushel, for which defendant directed them to sell it, they stored
39 it, where it remained until sold in Oct. 1862. That in July and Aug. 1862, the price advanced beyond the limits defendant had fixed; and the corn would have been sold in July, but that it was discovered to be heated, and it was deemed best to let it cool off, after which it was sold. That in consequence of the heating, a loss of 8 or 10c per bushel on the
40 corn occurred; as it was sold as rejected corn. That if the corn had not heated, a profit of 5 to 6c per bushel, net, over and above the ruling price when it was received, would have been realized; but that he thought it could not previously to such heating, have been sold so as to net more than it would have netted when received.

41 That the price June 4, 1862, was about 28c. per bushel, as also July 7, 1862; and 2,500 bushels taken from the whole lot would not have brought the market price unless just so much was needed to fill out a cargo.

43 That the corn was sold for 27c. per bushel.

46, 47 Samuel A. Ford, warehouseman, with whom the corn was stored in
Chicago, testified that the usual care was taken of the corn in the ware-
48 house; that when it was received the price was low in Chicago, but good
in New York, and freights were expected to decline so that those hold-
ing in Chicago would find a profit in holding; but that freights con-
tinued to be high in the spring and summer of 1862, though they finally
declined from 15c. to 4c. per bushel. That corn commenced advancing
about the latter part of July, 1862, and continued advancing until about
the 1st to the 15th of September, when it reached 40c. per bushel.

52 Defendant produced the receipt of the clerk of said court for \$100,
deposited with him as such clerk, October 27, 1863, as the amount ten-
dered by defendant to plaintiff; this deposit being on the day of trial.

The court, on prayer of the plaintiff, instructed the jury,

On behalf of the defendant, the court instructed the jury,

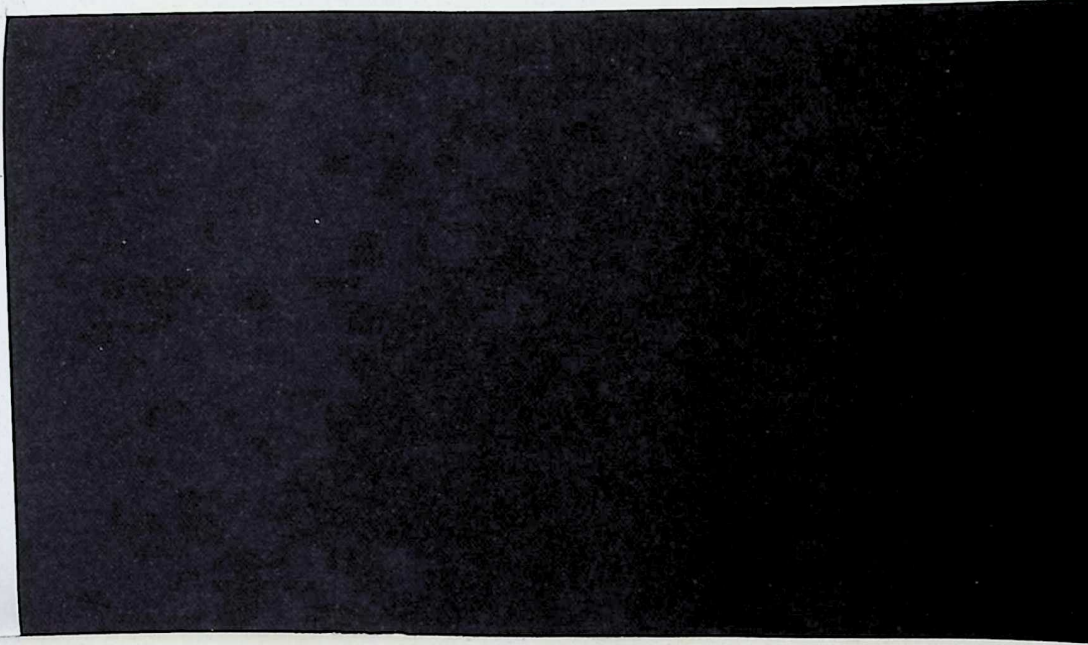
First. That, if they believed from the evidence, that the contract was that defendant was to sell plaintiff's corn with his own, and to settle by the account rendered by his commission merchants in Chicago, to whom it was shipped, and that he did so sell it, and render such account, and offer to settle with the plaintiff according to such account, and before the commencement of the suit, tendered to the plaintiff the amount appearing to be due according to such account, and had kept his tender good, the jury should find for the defendant, unless defendant did not take due and proper care of the corn.

Second. That if they believed from the evidence that the defendant's plea of tender had been sustained, they should find for the defendant specially on such plea.

Third. That if they believed from the evidence, that the contract was not that defendant should sell the plaintiff's corn when requested or directed, or within a reasonable time, but that the defendant should sell it when he sold his own, then the plaintiff had not sustained either the 2d, 3d, 4th, 5th, or 6th counts of his declaration, even though the jury should believe from the evidence, that the plaintiff did in June 1862, request the defendant to sell his corn, and that the defendant told him he would do so, but failed to do so.

Fourth. That if the plaintiff could insist upon such request made in June 1862, yet if he afterwards assented to defendant's neglect to sell on such request, and afterwards assented to defendant keeping such corn in store for him, then he could not recover for such neglect or refusal.

Fifth. That if the defendant actually offered the \$100 to the plaintiff for his acceptance, and produced the money to the plaintiff, such tender would be good, even though at the same time the defendant stated to the plaintiff that he wanted to settle, and to pay him for the corn.



221. 129

Pulsifer.

Shepard

Abstract & Points
of Appellant

Filed April 23, 1864
J. C. Leland & Co.

Arrington & Dent,
Attys. for Appellee

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION

APRIL TERM THEREOF, A. D. 1864.

EDWARD F. PULSIFER,	}	<i>Appellant,</i>	}	<i>Appeal from Putnam.</i>
<i>vs.</i>				
THOMAS W. SHEPARD,	}	<i>Appellee.</i>		

POINTS FOR APPELLANT.

The appellant was about to ship corn of his own to Chicago, for sale by commission merchants there. The appellee, plaintiff below, added 2559 2-56 bushels to the lot, and still more was added from the same neighborhood. The whole was to be sold on arrival in Chicago, if the price should then be 25 cts. per bushel, as to which the son of the appellant, who was called by the plaintiff as a witness, and who transacted most of the business for the defendant, was to learn by telegraph. If the price should be less, the corn was to be stored, to await an advance in the market; and the price being found to be less than this, the plaintiff directed his corn to be stored with the rest, and that the defendant should do with it as with his own sent at the same time.

Thus far there is no dispute, and no conflict in the testimony, nor is there any as to the fact that the defendant actually car-

ried out the arrangement thus made. He caused the corn to be stored, because it would not bring the price thus fixed; and freights between Chicago and Buffalo continuing so high in the fall of 1861 and spring of 1862, that the market in Chicago remained thus depressed, the corn was kept in store, awaiting an advance, and was found to be heated before it could be sold for as much as would have been realized for it when it first arrived in Chicago. Being thus heated, it had to be kept still longer, and then at the most favorable time was all sold together.

Here arises the dispute between the parties. The defendant proposes to account to the plaintiff, according to the original contract and understanding between them, and for the amount actually realized. But the plaintiff insists on charging more than double that amount.

I.

Now, the contract laid in the various special counts is, that the defendant was, for reward, to sell the corn; and, according to the 6th count, specially relied on by the plaintiff's counsel, that he was to sell it when instructed to do so by the plaintiff. But the proof does not support these allegations. The defendant did not undertake the duty of selling. He, with the others concerned in the adventure, was, as to his own corn, as well as with respect to theirs, to depend upon commission merchants in Chicago. And what if they were commission merchants with whom he was in correspondence, and therefore regarded as more especially his commission merchants? yet the fact remains that they were to sell the corn, and to receive the reward, whatever it should be, and not that the defendant was to sell it, nor to receive any reward for so doing. And it will be seen from the accounts, (pp. 26, 28, of the Record,) that the defendant made no charges for commissions, or for selling, as in fact he was not entitled to have any thing for this, because the commission merchants only were thus to be paid. Upon both points therefore, as to the arrangement that the defendant was to sell the corn, and the allegation that he was to have a reward for so doing, there is a failure in the proofs, and the case made by the declaration is unsustained.

And as to the other allegation, that he was to sell when instructed, there is a want of proof.

As to the testimony of Lucas, upon which in respect to any duty on the part of the defendant to have the corn sold at an earlier date than the time the sale was actually made, it will be seen (Record, p. 32,) that it was consistent with the contract which the parties really made, that is, that the commission merchants, and not Pulsifer, should sell, and that they, and not he, should have the reward for selling. And this testimony does not show any contract on his part to sell the corn himself, nor yet that he was to have any reward for selling it.

II.

Lucas, it will be observed, was contradicted by the testimony of two witnesses, C. A. Pulsifer and Sumner Sanderson; and if his version of the conversation he related was true, the plaintiff does not seem to have objected to the holding of the corn until a later date.

III.

Under the common counts, the plaintiff, of course, could recover nothing more than the amount actually received by the defendant, and this, as before suggested, was less than half the amount of the verdict of the jury, which therefore was excessive.

ARRINGTON & DENT,
Att'ys for Appellant.

Pulsifer v. Shepard.

Appellants' Bents.

Filed May 5, 1864
J. L. C. & M.

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION.

APRIL TERM THEREOF, A. D. 1864.

EDWARD F. PULSIFER, }
Appellant, }
vs. } Appeal from Putnam.
THOMAS W. SHEPARD, }
Appellee. }

ADDITIONAL ABSTRACT FURNISHED BY APPELLEE.

- 30 Witness, C. A. Pulsifer, on re-examination—testified: that he first spoke to plaintiff about shipping his corn, and told him that defendant was loading a boat with corn to ship to Chicago, and asked him if he did not want to ship his. Plaintiff said he would see, and went out, as witness supposed, to see about shelling his corn, and returned in a short time, and said defendant might ship and store, and sell it for him, which was all that was said at that time. When corn reached Chicago it could not be sold for more than 22 cents, and he so informed plaintiff; and plaintiff asked what defendant was going to do with his corn. Witness replied he was going to hold it. Plaintiff then said that defendant should hold his, and do with it as defendant did with his own.
- 31 The testimony in full, touching the tender, was as follows:



32 It appeared, on cross-examination, of the witness Lucas, that he had not talked with any one about the conversation testified to between plaintiff and defendant, except that on one occasion, the plaintiff objected, in witness' presence, to buying a buggy on the ground that he could not afford it on account of having received nothing for his corn shipped to Chicago by Pulsifer. Witness thereupon asked plaintiff if Pulsifer had not obey orders to sell the corn. Plaintiff said he had not.

221 629
C. F. Pulisier
vs.
Thomas Shepard
Additional
Exhib. by Appellee

M. F. W.

Filed April 26. 1864
J. L. Linnard Clerk

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION

APRIL TERM THEREOF, A. D. 1864.

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Here arises the dispute between the parties. The defendant proposes to account to the plaintiff, according to the original contract and understanding between them, and for the amount actually realized. But the plaintiff insists on charging more than double that amount.

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III.

Under the common counts, the plaintiff, of course, could recover nothing more than the amount actually received by the defendant, and this, as before suggested, was less than half the amount of the verdict of the jury, which therefore was excessive.

ARRINGTON & DENT,
Att'ys for Appellant.

Pulsifer v. Shepard.

Appellant's Plea.

Filed May 3, 1864
L. L. Loomis Clerk

(11)
State of Illinois
County of Putnam } ss.

Pleas before the Honorable Samuel
L. Richmond, Judge (of the Circuit Court) of the
23^d Judicial District of the State of Illinois, in
and for said County of Putnam, at a Term of said
Court, begun and held at the Court-House, in Ben-
nepin, in said County of Putnam, on the Fourth
Monday of October, (26th day of October A.D. 1863) in
the year of our Lord one thousand eight hundred
and Sixty-three, and of the Independence of the
United States the 88th year—

Present, Hon. Samuel L. Richmond, Judge of said District,
James H. C. Coal, Esq., States atty.,
Asa Cunningham, Esq., Sheriff, and
John P. Gerberich, Clerk—

Be it remembered that heretofore, to wit:
July 31st A.D. 1863, the following Recipe was filed
in said Court, viz:

State of Illinois In the Circuit Court of said County.
Putnam County } ss. To the October Term A.D. 1863.

Thomas W. Shepherd

vs. Edward F. Pulsifer } Assumpsit—
Damages \$1000.⁰⁰/₁₀₀

The Clerk of said Court will please
issue a Summons in the above entitled cause,
directed to the Sheriff of Putnam County, Ill., to
execute— To J. P. Gerberich, Clerk of said Court—
Lacon, July 27 A.D. 1863.

Lang^{rs} Shaw, atty for Plaintiff—

Afterwards, to wit: August 1st A.D. 1863, a
Summons was issued out of said Court, which
is in the words and figures as follows, viz:

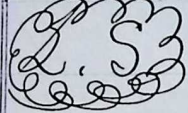
State of Illinois,
Putnam County

vs. The People of the State of Illinois.
To the Sheriff of said County, Greeting:

We command you that you Summon Edward
F. Pulfifer, if he shall be found in your County, per-
sonally, to be and appear before the Circuit Court of
said Putnam County, on the first day of the next
Term thereof, to be holden at the Court-House in Ben-
nepin in said Putnam County, on the Fourth Mon-
day of October 1863, to answer unto Thomas W. Shepard
in a plea of Assumpsit, to the Damage of said Plain-
tiff as he says in the sum of one Thousand (\$1000.)
Dollars.

And you have then and there this Writ, with an in-
dorsement thereon, in what manner you shall have
executed the same.

Witness John P. Gerberich, Clerk of our said
Court, and the seal thereof, at Bennepin aforesaid,
this First (1st) day of August A.D. 1863 -



John P. Gerberich, Clerk -

Per A. T. Purviance, Deputy Clk.

Which said Summons has an endorse-
ment on the back of the same, in the words and
figures as follows, to wit:

State of Illinois,
Putnam County

vs. I have duly served the

Rev. Stamp
50¢.
J.P.C.
Aug. 1 -
50¢.
1863

(3)

within, by reading the same to the within named Edward F. Pulsifer, August 10th 1863, as I am therein commanded.

Asa Cunningham, Sheriff—

Afterwards, to wit: October 14th A.D. 1863, a Declaration was filed in said Court, which is in the words and figures as follows, viz:

"State of Illinois, In Circuit Court of said County—
Putnam County Ill. October Term A.D. 1863—

Edward F. Pulsifer, the Defendant in this suit was summoned to answer unto Thomas W. Shepard, the Plaintiff in the same in a plea of Assumpsit, and thereupon the Plaintiff, by Bangs & Shaw, his Attorneys, complains—

(1st Count)
For that whereas heretofore, to wit: on the First day of October A.D. 1861 at the said County of Putnam in consideration that the said Defendant at his special instance and request then had the care and custody of divers goods and chattels of the said Plaintiff, to wit: two thousand five hundred and fifty-nine ⁹²/₁₀₀ bushels of shelled corn, of great value, to wit: of the value of one thousand Dollars, he the Defendant, undertook and then and there faithfully promised the Plaintiff to take due and proper care thereof, whilst the Defendant so had the care and custody of the same, yet the Defendant not regarding his said promise and undertaking, but contriving and intending to injure the Plaintiff in this behalf, whilst the Defendant so had the care and custody of the said goods

(4)

and chattels, took so little, and such bad and improper care thereof that the same afterwards, to wit: on the day and year aforesaid at the County aforesaid, became and were greatly damaged and injured, and wholly lost to the Plaintiff —

(2^d Count)

And whereas also heretofore, to wit: on the First day of October A.D. 1861, at the said County of Putnam in consideration that the Plaintiff at the request of the Defendant would deliver to the Defendant certain other goods and chattels of the said Plaintiff of the like number, quantity, quality, description and value as those in the first Count mentioned to be sold and disposed of by the Defendant, for and on account of the Plaintiff, for a reasonable reward to the said Defendant in that behalf, he the Defendant undertook and then and there promised to endeavor to sell and dispose of the said goods and Chattels therein mentioned, for the Plaintiff, and to render a true and just account of the sale thereof to the Plaintiff, and of the monies arising from such sale whenever after the sale thereof, he the Defendant should be thereunto requested — And although the Plaintiff confiding in said promise and undertaking of the Defendant did afterwards, to wit: on the day and year aforesaid at the County aforesaid deliver the said goods and Chattels, to the Defendant for the purpose aforesaid and although the Defendant did afterwards, to wit: on the day and year aforesaid at Chicago, to wit: at the County aforesaid sell and dispose of the said goods and Chattels for

(57)

and on account of the Plaintiff for divers sums of money in the whole amounting to a large sum of money, to wit: to the sum of one thousand Dollars and although the Plaintiff afterwards, to wit: on the day and year aforesaid at the County aforesaid requested the Defendant so to do —

Yet the said Defendant not regarding his said promise and undertaking, but contriving and intending to deceive and injure the Plaintiff in this behalf hath not rendered to the Plaintiff a just and true, or other account of the sale of the said goods and Chattels or any part thereof, or the monies arising from such sale, or any part thereof, but the Defendant hath hitherto and still doth neglect and refuse so to do —

(3^d. Count)

And also for that whereas heretofore, to wit: on the First day of October A.D. 1861, at said County in consideration that the Plaintiff at the request of the Defendant had sent and Consigned to the Defendant divers other goods and Chattels of like number quantity, quality, description and value, as those in the first Count herein mentioned in order that the Defendant might sell and dispose of the same, for the Plaintiff for Commission and reward to the Defendant in that behalf, ~~he~~ the Defendant undertook and then and there promised the Plaintiff to endeavor to sell and dispose of the said goods and Chattels for and on account of the Plaintiff, and to render a just and reasonable account of the said sales thereof to the Plaintiff in a reasonable time, then next following and to pay over the proceeds of such

(6)

sales to the Plaintiff, when he should be thereunto reasonably requested by the Plaintiff - and although the Defendant then and there had and received the said goods and chattels from the Plaintiff for the purpose aforesaid, and afterwards, to wit: on the day and year aforesaid, and on divers other days and times afterwards and before the commencement of this suit, sold the same, for and on account of the Plaintiff for a large sum of money, to wit: the sum of one thousand Dollars, to wit, at &c. on &c. and though a reasonable time for the said Defendant to render such account as aforesaid and paying over the proceeds of said sales to the Plaintiff hath long since elapsed —

Yet the Defendant not regarding his said promise and undertaking hath not (though he was afterwards, to wit: on the First day of March A.D. 1863 at &c. requested by the Plaintiff so to do) as yet rendered to the Plaintiff a just and reasonable account of the said sale, or paid over the proceeds thereof to the Plaintiff, but hath hitherto and still doth neglect and refuse so to do — to wit: on &c. at &c. —

(4 Count.)

And whereas heretofore, to wit: on the 28th day of September A.D. 1861 at the said County of Putnam in Consideration that the Plaintiff at the request of the Defendant had delivered and consigned to the Defendant certain other goods and Chattels of the Plaintiff, to wit: a large amount of Shelled Corn, to wit: two thousand five

(7)

hundred and fifty-nine and $\frac{2}{5}$ bushels of shelled corn of great value, to wit: of the value of one thousand Dollars, in order that the Defendant might ship the same, from Vermilion, Putnam County, State of Illinois (the place where the same was delivered to him) to the city of Chicago in said State, and there sell and dispose of the same for the Plaintiff for a commission and reward to the Defendant in that behalf he the Defendant undertook and then and there promised the Plaintiff to ship the same from said Vermilion to said city of Chicago, and there to endeavor to sell and dispose of the said goods and Chattels, for and on account of Plaintiff and to render a just and reasonable account of the said sales thereof to the Plaintiff in a reasonable time, then next following and to pay over the proceeds of said sale less the reasonable and necessary expenses & Commissions in and about the shipping, and making sale of said goods and Chattels, when he, the Defendant should be thereunto reasonably afterwards requested by the Plaintiff, and though the said Defendant then and there had & received the said goods and Chattels of and from the Plaintiff, for the purpose aforesaid, and afterwards, to wit: on the day and year aforesaid, and on divers other days and times afterwards, and before the commencement of this suit sold the same for and on account of the Plaintiff for a large sum of money, to wit: — the sum of one thousand Dollars, to wit: on &c. at &c., and although a reasonable

(8)

time for the Defendant to render such account as aforesaid and paying over the proceeds of said sale which then and there amounted to the sum of Nine hundred Dollars over and above all just and necessary expenses and commissions to the Plaintiff hath long since elapsed - Yet the Defendant not regarding his said promise and undertaking hath not (although he was afterwards requested so to do, to wit: on the 15th day of March A.D. 1863, at the said County, by the Plaintiff) as yet rendered to the Plaintiff a just and reasonable account of the said sale or paid over the proceeds thereof, less the said expenses & commissions to the Plaintiff nor any part thereof but hath hitherto and still doth neglect and refuse so to do -

(5th County)

And also for that whereas heretofore, to wit: on the 28th day of September A.D. 1861 at the said County of Putnam in consideration that the Plaintiff at the request of the Defendant had delivered and consigned to the Defendant divers goods and chattels of the Plaintiff, to wit: two thousand five hundred and fifty-nine + $\frac{2}{56}$ bushels of shelled corn, of great value, to wit: of the value of one thousand Dollars, in order that the Defendant might ship the same from Vennepin in said County the place where the same was so delivered and consigned to him to the City of Chicago in said State and there sell and dispose of the same for the Plaintiff for a commission and reward to the Defendant in that behalf, he the Defendant undertook and then and there promised the Plaintiff to sell and dispose of the said

(9)

goods and Chattels for and on account of the Plaintiff, and to render a just and true account of the said sales and the expenses of shipping, transporting and selling the same to the Plaintiff in a reasonable time then next following, and to pay over the proceeds of such sales less the said necessary expenses of shipping, transportation, selling and Commissions, to the Plaintiff, when he the Defendant should be thereunto afterwards reasonably requested by the Plaintiff, and although the Defendant then and there received the said goods and Chattels for the purposes aforesaid, he the Defendant afterwards, at &c. and on divers days and times afterwards and before the Commencement of this suit failed and neglected to use ordinary Care and diligence in selling and disposing of said Corn and taking the proper reasonable and necessary care thereof, and negligently and Carelessly sold said Corn for the sum of six hundred and eighty-five & $\frac{5}{100}$ Dollars, when by using ordinary Care and diligence he might and reasonably ought to have sold said Corn for one thousand Dollars and negligently and Carelessly and for the want of proper and ordinary Care suffered and permitted said Corn to be lost, injured and damaged to the amount of five hundred Dollars, and negligently and Carelessly and without any reasonable or necessary cause therefor incurred and expended a large amount of money in and about the shipping, transporting selling and disposing of said Corn, to wit: Five hundred and eighty-seven & $\frac{43}{100}$ Dollars was so incurred and expended by him when in fact Plaintiff saith that the sum of one hundred fifty Dol-

law was sufficient to pay all necessary, reasonable and proper charges and expenses in and about the shipping, transporting, selling and disposing of said corn in that behalf properly and reasonably incurred —

And though a reasonable time for the Defendant to render such account as aforesaid and paying over the proceeds of such sale to the Plaintiff hath long since elapsed — yet the said Defendant not regarding his said promises and undertaking hath not (although he was afterwards, to wit: on the 15th day of March A.D. 1863 at said County requested by the Plaintiff so to do) as yet rendered to the Plaintiff a just and reasonable account of such sales or paid over the proceeds thereof to the Plaintiff, but hath hitherto wholly neglected and refused so to do, to wit: an &c. at &c —

(6 Count)

And also for that whereas heretofore, to wit: on the 28th day of September A.D. 1861 at said County of Putnam in consideration that the Plaintiff at the special instance and request of the Defendant had sent and consigned to the Defendant other divers goods and Chattels of Plaintiff, to wit: two thousand five hundred and fifty-nine $\frac{2}{50}$ bushels of shelled Corn of great value, to wit: of the value of one thousand Dollars in order that the Defendant might ship the same from Bernepin in said County, the place where the same was so delivered to him to the City of Chicago in said State, and there sell and dispose of the same, when he said Defendant should be so instructed and directed

(11)

to do by the Plaintiff, for a commission and reward to the Defendant in that behalf, he the Defendant undertook and then and there promised the Plaintiff to ship said goods and chattels from said Vennepin to said Chicago, and sell and dispose of the said goods and chattels, for and on account of Plaintiff when he should be so instructed and directed to do, and render a just and true account of the said sales, and the expenses of shipping, transporting and selling the same to the Plaintiff in a reasonable time after such sales should have been made, and to pay over the proceeds of such sale less the said reasonable and necessary expenses of shipping, transporting and selling said goods & commissions to be deducted therefrom to the Plaintiff when he the Defendant should be thereunto afterwards reasonably requested by the Plaintiff, and although the Defendant then and there received said goods and chattels for the purposes aforesaid, he the Defendant afterwards, to wit: on the 2nd day of June A.D. 1862 at &c. when directed and instructed by Plaintiff to sell and dispose of said goods and chattels (and Plaintiff avers that he did then and there direct and instruct said Defendant immediately to sell and dispose of said goods and chattels) neglected, failed and refused so to do, but kept said Corn in store until and upon the 27th day of September A.D. 1862 and neglected and refused to sell the same or any part thereof until said last mentioned day and year, and Plaintiff avers that Defendant

(12)

might and ought with reasonable diligence and care have sold said goods and chattels for Plaintiff on said Second day of June A.D. 1862 at said Chicago or in any reasonable time thereafter for a large sum of money, to wit: one thousand Dollars, out of which he might and ought to have paid Plaintiff upon a just and reasonable account for said corn, and after deducting therefrom all the necessary, reasonable and proper charges then incurred of transporting, shipping, selling and disposing of said corn and commissions the just and full sum of Eight hundred and fifty Dollars - and the Plaintiff in fact saith that the Defendant neglected and refused to sell said goods and chattels when so instructed and directed to do by Plaintiff, and negligently, carelessly and wrongfully kept said corn in store from said 2^d day of June A.D. 1862 until and upon the 27th day of September A.D. 1862 at great expense, to wit: at an expense of four hundred dollars wrongfully and unnecessarily incurred and permitted said corn by reason of reasonable care and diligence to be greatly damaged and injured to the amount of two hundred dollars and on said 27th day of September A.D. 1862 sold said corn for six hundred, eighty-five & $\frac{14}{100}$ Dollars and has ever since neglected, failed and refused to pay any of the proceeds of said corn to Plaintiff, though often requested so to do, to wit: on the 15th day of March 1863, at &c., and at divers other times and places before

(13)

the commencement of this suit — and has ever since failed, neglected and refused to render to Plaintiff a just and true account of said sales, though often requested so to do, to wit: on the 15th day of March A.D. 1863 and at divers other times and places before the Commencement of this suit — But said Defendant to pay over to Plaintiff such monies and to render said account has always hitherto and still doth neglect and refuse —

And also ^{for} that whereas heretofore, to wit: on the 15th day of March A.D. 1863 at said County Defendant was indebted to Plaintiff in the sum of one thousand Dollars for the price and value of work then and there done and materials for the same provided by the Plaintiff for the Defendant at his request —

And in the sum of one thousand Dollars for money then and there lent by the Plaintiff to the Defendant at his request —

And in the sum of one thousand Dollars for money then and there paid by Plaintiff for the use of Defendant at his request —

And in the sum of one thousand Dollars for money then and there received by the Defendant for use of Plaintiff —

Dollars And in the further sum of one thousand for money found to be due from the Defendant to the Plaintiff on an account then and there stated between them —

And the Defendant being so indebted and in Consideration thereof and of the premises respectively afterwards, to wit: on the day and

(14)

year aforesaid at the County aforesaid, undertook and then and there promised the Plaintiff to pay him the said several sums of money respectively on request - Yet the Defendant hath disregarded all his said promises and has not paid the Plaintiff, the said several sums of money nor any nor either of them, nor any part thereof, though often requested so to do - To the Damage of the Plaintiff one thousand Dollars and therefore he brings suit &c -

Pangs & Shaw for Plaintiff -

Copy of a/c sued on

Edward F. Pulsifer

1863	To Thomas W. Shepard Dr.	
Mar. 15.	To work, labor & material	\$1000 -
" "	" Money loaned	\$1000 -
" "	" " paid to his use	\$1000 -
" "	" " had & rec'd	\$1000 -
" "	" " due on a/c.	\$1000 -
" "	" Bal. due on a/c. of corn sold by him for Shepard & Damages	\$685 -

Afterwards, to wit: on the 27th day of October A.D. 1863, pleas were filed in said Court, in said Cause, which are in the words and figures as follows, viz:

Thomas W. Shepard } Circuit Court of Putnam Co.
vs }
appt. } Ills. Oct. T. 1863 -
Edward F. Pulsifer }

1 (15)

And Plaintiff doth the like
Beaupo & Shaw
pro Deftt

And the said Defendant Comes & defends,
when &c. and says as to all the monies claimed
in the Plaintiff's Declaration except the sum of
one hundred Dollars that he did not undertake
and promise in manner and form as in said
Declaration alleged, and of this he the said Defend-
ant puts himself upon the Country -

2.

And for a further plea as to said one hundred
Dollars, residue of the monies in the said Dec-
laration mentioned, the said Defendant says, that
the Plaintiff ought not to recover his Damages, by
reason of the non-payment of said one hundred
Dollars, because he says that the said Defendant
after the making of the said promise in the said
Declaration mentioned, and before the commence-
ment of this action, to wit: on the 11th March
A.D. 1863, at said County tendered the said sum
of one hundred Dollars to the said Plaintiff, who
then and there refused to receive the same and
the said Defendant further says that he from
the time of making said promise in said Dec-
laration mentioned as to the said one hundred
Dollars, hitherto always has been and still is
ready to pay to said Plaintiff the said sum of
one hundred Dollars and now brings the same
into Court here ready to pay to the said Plaintiff
if he will accept the same and this he is ready
to verify, wherefore he prays Judgment &c -

3.

And for a further plea in this behalf as to
all the monies in Plaintiff's Declaration men-

tioned, except the said sum of one hundred Dollars, referred to in the above plea of tender the said Defendant says actio non, because he says, that said Plaintiff at the Commencement of this suit was and still is indebted to the said Defendant in the sum of one thousand Dollars for money before then & there paid and advanced by the Defendant to the Plaintiff at his request -

And in a like sum for work and labor before then and there done and for services before then and there rendered by the Defendant for the Plaintiff at his request -

And in a like sum for storage, freight, transportation, Commissions and insurance paid by the said Defendant for the Plaintiff before then & there at the instance and request of the said Plaintiff, and in a like sum for money due from the Plaintiff to Defendant on an account before then and there stated between them, and in a like sum for money before then and there lent by the Defendant to the Plaintiff at his request - and the said Defendant will set off on said trial, so much of said several sums of money, so due and owing from the said Plaintiff to the said Defendant against any demand of the said Plaintiff to be proved on the said trial, as will be sufficient to satisfy and discharge such demand, except the said one hundred Dollars, and this

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the said Defendant is ready to verify, wherefore he prays Judgment &c —

Peters & Eccles, attys for Deft —

1863.

Plaintiff Dr. To. Deft —

To Cash paid & advanced	\$1000.00
" Work labor & services	\$1000.00
" Storage freight, transportation, Commission	\$1000.00
" Cash due on account ^{Insurance} stated	\$1000.00
" Cash lent —	\$1000.00

Peters for Deft — "
Eccles

On the same day, to wit: October 27th A.D. 1863, Replications were filed in said Court, in said Cause, which are in the words and figures as follows, viz:

" Thomas H. Shepard, In Putnam County
vs. } Circuit Court —
Edward F. Pulsifer } October Term A.D. 1863 —

And the Plaintiff comes and for Replication to Defendants second plea by him pleaded saith precludi non, because he says that said Defendant at the time when &c. did not tender to Plaintiff the said sum of one hundred Dollars in manner and form as therein alleged —

And this Plaintiff prays may be inquired of by the Country —

And for Replication to Defendants third

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plea by him pleaded Plaintiff saith actis non-
because he says at the time when &c. the Plain-
tiff was not indebted to the Defendant in the
said several sums of money therein mentioned,
nor any nor either of them nor any part thereof.
And this Plaintiff prays may be inquired of
by the country &c -

Bangs & Shaw
pro Plaintiff

On the same day, to wit: October 27th
A.D. 1863, an order was entered of Record in
said Court, in said Cause, being one of the
days of said Term of said Court, which is
in the words and figures as follows, viz:

(Second day of said Term, Oct. 27, 1863
Court met pursuant to adjournment
Present same as yesterday)

Thomas W. Shepard,
vs. Edward F. Pulsifer } Assumpsit -

Now comes the Plaintiff, by
Bangs & Shaw, his attorneys, and the Defendant
comes by M. T. Peters, his attorney, and also here
come a Jury of twelve good and lawful men, to-
wit: James Moore, Jacob Bremmen, David Frid-
ley, W. B. Haynes, Joseph Cassel, Joseph W. Williams,
Henry Mills, Thomas Filson, A. W. Bowman, John
Bear, Samuel W. Smith, and John Allen, who are
duly selected and sworn to well and truly try

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the issue joined &c."

Afterwards, to wit: October 28th A.D. 1863
a verdict was filed in said Court in
said Cause, which is as follows, viz -

"We the Jury find all the issues joined
for the Plaintiff and assess his Damages
at \$265.⁷⁴/₁₀₀"

On the same day, to wit: October 28th
A.D. 1863, an order was entered of Record in
said Court in said Cause, which is as
follows, viz:

(Third day of said Term, Oct. 28, 1863
Court met pursuant to adjournment
Present same as yesterday)

Thomas W. Shepard
vs.
Edward F. Pulsifer } Assumpsit -

Now again comes the Plaintiff,
by Bangs & Shaw, his attorneys, and the Defendant
comes, by M. J. Peters, his attorney, and here also
come the Jury heretofore selected and sworn herein,
who do upon their oaths say, "We the Jury find
all the issues joined for the Plaintiff, and assess
his Damages at \$265.⁷⁴/₁₀₀"

Whereupon the said Defendant, by his said
attorney, makes a motion for a new trial herein.

Afterwards, to wit: October 31st A.D. 1863,
an order was entered of Record in said Court,
in said Cause, being one of the days of said
Term of said Court, which is as follows,
viz:

(Sixth day of said Term, Oct. 31, 1863 -
Court met pursuant to adjournment
Present same as yesterday)

^{vs.}
Thomas W. Shepard } Assumpsit -
Edward F. Pulsifer }

And the Court now having duly
considered the motion heretofore entered therein,
by the Defendants' attorney, for a new trial herein,
overrules said motion -

Whereupon comes the Defendant, by his
attorney, and makes a motion in arrest of judg-
ment, and the Court being fully advised in
the premises, overrules said motion -

Therefore it is considered by the Court that
the said Plaintiff have and recover of the
said Defendant the said sum of Two hundred
and Sixty-five Dollars and seventy-four cents,
his Damages, assessed as aforesaid, together
with his Costs herein expended, to be taxed, and
that said Plaintiff have execution therefor -

And now again comes the Defendant,
by his said attorney, and prays an appeal to
the Supreme Court of this State - which is

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granted upon said Defendant entering into Bond in the penal sum of Five hundred Dollars, to be filed in thirty days, Conditioned according to Law, with surety to be approved by the clerk of this Court, by agreement of the parties herein; and also that said Defendant file his Bill of Exceptions herein, in ten days from the last day of the present Term of this Court by agreement of the parties herein" —

(Court adjourned for the Term, Nov. 2^d. 1863)

Afterwards, to wit: November 11th A.D. 1863, a Bill of Exceptions was filed in said Court, in said Cause, which is in the words and figures, as follows, viz:

"State of Illinois
Putnam County } Is.

In the Circuit Court of
said County —
Of the October Term A.D. 1863 —

Thomas W. Shepard,
vs.
Edward F. Pulsifer }

Be it remembered that on the trial of this cause, a jury having been sworn therein —

W. C. Thomas, a witness called and sworn on the part of the Plaintiff, testified,

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that he was a farmer, residing in Putnam
County and knew both of the parties to this suit.
Witness knew of Plaintiff's delivering a lot of
corn to the defendant to be shipped to, and sold
at, Chicago. Said corn was delivered in the
month of September A.D. 1861 - Witness saw this
corn and knew the kind and quality thereof;
it was old yellow corn of good quality; the
quantity delivered witness did not know -

Witness was at the same time delivering
corn to defendant on board of a Canal boat at
Bennepin, and Plaintiff and witness were both
hauling their corn and loading it in the Canal
boat at the same time; their corn was loaded
at same time and was thus mixed. The corn
thus delivered by witness was old yellow corn
of good quality - perhaps some of the corn of this
witness might have been mixed, white + yellow -

Witness did not know the terms Contract
between Plaintiff and defendant.

The defendant was to ship the corn of
witness to Chicago and there sell it for account
of witness. No time was named when the same
was to be sold, it being left to Mr. Pulsifer to sell
when in his judgment it should seem best, but
witness always supposed that he could have his
corn sold whenever he should so direct Mr.
Pulsifer -

This corn with Plaintiff's was shipped
to Chicago soon after its delivery; there it re-
mained in Store for a long time: it was sold
with corn belonging to defendant, to Plaintiff

(23)

and to other parties, in October A.D. 1862. All the corn shipped by the parties in this speculation, that is plaintiff, defendant, witness and other parties, became heated in the summer of 1862, as witness was informed, and on this account they did not realize as large profits as was expected.

The defendant settled with witness for his corn on the basis of the sales made at Chicago.

Witness was once called on by one of the parties to this suit to witness a tender, but did not remember which of the parties called on him, who made the tender or what was the amount tendered — Witness was in the store of defendant at Vermepin on a day subsequent to the shipment and sale of plaintiff's corn before suit was brought and then heard plaintiff say to the defendant, that he wanted him, defendant, to settle for that corn; defendant told plaintiff in reply that he was willing to settle on the basis of the account or statement rendered by defendant to plaintiff and asked plaintiff if he would settle by that account: plaintiff answered that he would not so settle but would sue the defendant, and the defendant then said to plaintiff "Crack your whip."

Augustus Pulifer, plaintiff's witness, testified, that he was Clerk for Defendant, at Vermepin in the month of September A.D. 1861 and has continued to act as such Clerk ever since: that he knew of a certain contract by and

between the plaintiff and defendant in relation to a certain quantity of corn belonging to the plaintiff. Said Contract was entered in the month of September A.D. 1861, by the plaintiff in person and by this witness on the behalf of the defendant, and its terms were as follows, to wit: The plaintiff had delivered a certain quantity of corn to the defendant on a Canal boat at Keenequin which was then being loaded with corn belonging to defendant, and to other parties who had delivered the same to defendant for shipment to Chicago: plaintiff's corn, after having been so delivered, was to be shipped by the defendant with his corn to defendant's commission merchants at Chicago and there to be sold if the market price at Chicago of such corn as this was, should be twenty-five (25) cents per bushel on its arrival at Chicago - and whether or not the market price should be twenty-five (25) cents per bushel as above mentioned, was to be ascertained by this witness by telegraph; if the market price of such corn as this at Chicago should not be twenty-five (25) cents per bushel on its arrival at Chicago, then this corn was to go in store with defendant's corn at Chicago and be sold when the defendant's corn was sold. The proceeds of the sale of plaintiff's corn were to be accounted for by defendant to plaintiff.

The Corn above mentioned, of plaintiff amounting to Twenty-five hundred and fifty-nine $\frac{25}{56}$ ($2559\frac{25}{56}$) Bushels was delivered and loaded on the Canal Boat "Caroline" at Keene-

(25)

prin by the plaintiff on or about the 27th Sep-
 tember A.D. 1861 ^{and October 12th 1861.} Plaintiff's corn did not amount
 to a full boat load - At the same time there was
 being loaded in the same Canal-boat corn belong-
 ing to defendant and corn belonging to other par-
 ties - Immediately after its delivery, this
 corn was shipped to Chicago to Messrs. McGee &
 Wing, defendant's commission merchants. At the
 time of its arrival at Chicago the market price of
 such corn as this, was some two or three cents lower
 than twenty-five (25) cents per bushel at Chicago,
 which fact was ascertained by this witness by Tele-
 graph and of which he notified the plaintiff. There-
 upon this corn was stored with defendant's corn at
 Chicago and remained in store until the 13th
 day of October A.D. 1862 on which day the defendant's
 corn was sold and the plaintiff's was sold with
 defendant's. After the sale of this corn, defendant
 received account of sales from the Chicago Mer-
 chants, Mess. McGee & Wing, who at date of said ac-
 count were under firm name of McGee, Wing & Smith,
 showing proceeds of the sale of plaintiff's corn, of de-
 fendant's corn and the corn of the other parties shipped,
 stored and sold with plaintiff's corn. This account
 of sales was shown by witness to plaintiff. Witness
 afterwards drew up an account of proceeds of sale of
 plaintiff's corn, in which was embraced plaintiff's
 proportion of the credits and charges appearing in
 the account of sales of McGee, Wing & Smith and the
 individual charges of defendant against plaintiff
 on account of this corn. The balance appearing to
 be due plaintiff by said account, amounting to
 \$97.⁷¹/₁₀₀, was credited to plaintiff on defendant's

books.

On Cross Examination this witness stated, that by the Contract, the Charges of the Chicago Commission Merchants and the expenses attending the storing, selling &c. at Chicago were to be settled on the basis of the account of sales rendered to defendant by said Merchants and that the said account of said Charges and expenses. The account of Mess. McGee, Wing & Smith, the Chicago Merchants was rendered to defendant on or about the 20th day of October A.D. 1862. The account of McGee, Wing & Smith dated, October 13th 1862 now shown to witness, was the account of sales rendered of plaintiff's corn and of the corn of defendant and other parties.

Here the defendant read in evidence the account of McGee, Wing & Smith, dated October 13, 1862, which account is in the words & figures following, to wit:

"Sales Corn Rec'd pr. Coats Bay State and
Caroline for ac of E. F. Pulsifer Esq., Minneapolis -
McGee, Wing & Smith -

4500 Bush. Corn @ 32¢	1440.00
10929 ²⁷ " " " 27	2950.97
218 " Screenings	34.00
	<u>\$14424.97</u>

Charges

Storage on 5666 ²⁷ Bush pr. Bay State @ 15½¢	878.31
Do. " 6120 ²⁶ " " Caroline @ 15¢	903.07
Do. Do. 3961 " " Do. " 14½¢	574.35
Cleaning & Labor	25.00

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Fire Ins. from time to time (continued) 75.44.

Our Corn. @ $\frac{1}{2}$

78.23

2534.40

Bal -

\$1890.57

E. O. E.

McGee, Wing & Smith
Chicago Oct. 13, 1862. pr. Ledden -

Said witness, resuming, testified, that all the items named in said account of McGee, Wing and Smith, excepting the first item of sales, to wit: "4500 Bush. Corn @ $32^{\frac{1}{2}}$ 1440.00" and the first item of charges, to-wit: "Storage on 5666 $^{\frac{1}{2}}$ Bush pr. Bay State @ $15\frac{1}{2}^{\frac{1}{2}}$ 878.31" refer to said corn of plaintiff and corn of the other parties shipped and sold with it -

Very soon after the above account was rendered, the defendant made out a statement or account of sales of plaintiff's corn in which was embraced plaintiff's proportion of credits and charges contained in the account of McGee, Wing & Smith, and defendant's individual charges on said corn, said account was made out on or about the 24th day of October A.D. 1862 and was presented to plaintiff by witness - Said plaintiff refused at first to receive said account, but afterwards came to defendant's store and took it - Said account is dated October 24th 1862 and is the same now shown to witness -

Here defendant read said account in evidence, and said account is in the words and figures, following, to-wit:

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Thomas W. Shepherd

To Edward F. Pulsifer Br.

Statement of Corn Shipped by E. F. Pulsifer
to Chicago to sell for acct of T. W. Shepherd, Vermepin

1861

Sep. 27.	2518. ²²	Bush. Shelled corn @ 27 [¢]	677.16
57.	"	Screenings @ 15. ⁶⁰	7.98
			<u>685.14</u>

Charges

Oct. 3.	Cash pr. Freight	5 ²⁰	140.73
"	" Inspection		...25
"	" Weighing 24 loads		2.40
Sep. 27.	" Marine Insurance from Ver. to C. on 665. ³⁴ / ₁₀₀		3.32
"	" Interest on Freight		14.07
"	" Storage on 2227 Bush. @ 15 [¢] 332 ¹⁴ / ₁₀₀		382.19
"	" Comiss @ 12 [¢]		12.79
Nov. 15.	" Fire Insu. Co. 100. 5 ² / ₁₀₀ pr. Bush.		13.30
"	" Int. " " " 10 [¢] / ₁₀₀		1.00
"	" Marine " H to C.		.33
Oct. 13	" Cleaning & Labor in Chicago		4.26
"	" Fire Ins. to date @ 12 [¢] .		12.79
			<u>587.43</u>
	Net proceeds subject to his order		<u>97.71</u>

Vermepin 3

Oct. 24, 1862 } E. F. Pulsifer

My (Defts) Commissions, Expenses, 3 Trips to Chicago & at other times	2 [¢] per Bush.	51.20
		<u>\$ 46.51</u>

Witness, resuming, testified, that the first two
items of sales mentioned in the last named account

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refer to Plaintiff's proportion of said corn shipped to Chicago and there sold, and the screenings and show the amounts he is entitled to therefrom as credits: that the first item of charges, to wit: "Oct. 3. Cash p.d. Freight 5²/₁₀₀ \$140.73" is just and correct and the amount \$140.73 was paid for freight on Plaintiff's corn by witness for defendant. The same is true for the second item of charges, to wit: "Inspection 25" which represents amount paid, to wit: \$²⁵/₁₀₀ for inspection of said corn by witness for defendant; that the third item of charges, to wit: "weighing 24 loads 2.40" is correct, said loads were loads of Plaintiff's said corn weighed by witness on defendant's scales and the charge of ten (10) Cents per load for weighing or \$2.40 for weighing 24 loads is the usual and customary charge for such service, at Hennepin. The fourth item of charges, to wit: "Cash p.d. Marine Ins. U. to C. \$665.³⁴/₁₀₀ 3.32" is correct and represents the amount \$3.³²/₁₀₀ paid by witness for Marine Insurance on Plaintiff's corn from Hennepin to Chicago. The next item, to wit: "Int. on Freight 14.07" represents \$14.07 for interest on the amount of freight, to wit: \$140.⁷³/₁₀₀ paid on said corn and noted above, and is interest at the rate of ten per cent. per annum which is the usual and customary charge for money advanced by Commission Merchants on Consignments. The item "Nov. 15 Fire. Ins. in C. ⁵²/₁₀₀ per Bush. 13.30" is just and correct and refers to amount, to wit: \$13.³⁰/₁₀₀, paid by defendant for Fire Insurance on Plaintiff's said corn at Chicago up to November 15th 1861 and the item next following, to wit: "Int. on Fire Ins. in C. @ 10 % 1.00" represents amount of interest, to wit: one Dollar, at the rate of ten per cent. per annum on the

amount paid for Fire Insurance, and is the usual and customary charge on money advanced by Commission Merchants on Consignments. The item next following, to wit: Int. on Marine Ins. $\frac{1}{2}\%$ "33" represents amount of interest at ten per centum per annum, to wit: 33 cents on amount advanced by defendant for Marine Insurance on plaintiff's corn from Hennepin to Chicago, and is a usual and customary charge. The remaining charges in said account are plaintiff's proportion of the charges noted in the account rendered by McGee, King & Smith under date of Oct. 13th 1862 —

On re-examination witness testified that he first spoke to plff. about shipping his corn & told him that deft. was loading a boat with corn to ship to Chicago and asked him if he did not want to ship his — Plff. said he would see and went out as witness supposed to see about shelling his corn & returned in a short time and said deft. might ship and store and sell it for him, which was all that was said at that time — When the corn reached Chicago, the corn could not be sold for more than 22 cents and he so informed plff. & plff. asked what deft. was going to do with his own — witness replied he was going to hold it — Plff. then said that deft. should hold his and do with it as defendant did with his own —

This witness further testified that the defendant had shipped to McGee & King, of Chicago at

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the same time that he shipped plaintiff's said corn a large quantity of his own corn, to wit: about 7500 bushels which was loaded and mixed with plaintiff's, together with the corn of other parties; that defendant's and plaintiff's corn was stored at the same house in Chicago and defendant caused plaintiff's said corn to be sold at the same time that his, defendant's corn, was sold and it was sold at the same price -

At the same time that plaintiff's corn was received on the Canal Boat, other parties were delivering corn on same boat, W. L. Thomas and D. B. Moore were two parties who were so delivering corn which was loaded and mixed with plaintiff's corn. ^{The corn of Moore was old white corn} Plaintiff must have known the fact that Moore was loading his white corn on same boat with plaintiff because plaintiff was hauling and loading his corn into the boat at the same time that Moore was hauling and loading his ^{old white} - Plaintiff made no objection to Moore's corn being loaded with his -

Witness further testified that on March 11th 1863, plaintiff came into defendant's store and paid the defendant some money owing to defendant from plaintiff - The Plaintiff then turned about and was leaving the store by way of the front door. Def. stood by the safe about eight feet from him and said to plff. "I want to settle with you & pay you what is due you for that corn" - Def. had at the time a \$100. U. S. Treasury Note in his hand. Plff. turned around facing Def. and saw the money: Def. had the note in his hand in plain sight & Plff. might have seen it, if he wished -

Plff. made no reply but turned & left the store —

William Lucas, a witness called and sworn on the part of the plaintiff, testified that he was in the store of defendant on the 2^d day of June A.D. 1862, and then and there the plaintiff said he believed he could afford to sell his corn & told defendant to send up and have it sold & defendant said he would do so —

On Cross-Examination, this witness testified, that on the day he heard plaintiff order defendant to sell his corn, witness had been up in the second story of defendant's store and happened to come down stairs just as this order was given by the plaintiff and thus heard; that he heard nothing before that nor any further conversation between the parties — Witness left the store immediately after he heard this order given. The parties might have been talking about the corn before he heard the order given and they might have conversed further on the subject. Witness had no talk with any one about this conversation since that time, except that upon one occasion the plaintiff objected in witness's presence to buying a buggy on the ground that he could not afford it on account of his having received nothing for his corn shipped to Chicago by Pulsifer: witness thereupon asked plaintiff if Pulsifer had not obeyed orders to sell and plaintiff said he had not. Witness did not remember time of day when he heard this order —

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Augustus Pulsifer or Sumner Sanderson were present when witness heard plaintiff tell Pulsifer to sell his corn immediately. At the time when witness heard this order given, witness was working for the plaintiff and has been so working ever since —

E. H. Aiken, plaintiff's witness, testified that he lived in Hennepin, was a commission merchant, doing business at Hennepin: Knew both the parties to this suit. The market price of Old Yellow Corn at Chicago from the 2^d day of June till the 15th day of June 1862 was about thirty (30) cents per bushel, as far as witness recollected.

Witness would have received corn, paid charges, shipped and sold same for one-half a cent per bushel — This would be a fair charge, though some Commission Merchants make a less charge for such services. Witness has had Corn sold at Chicago by Commission Merchants at a charge of one fourth of one cent a bushel —

On Cross-Examination this witness stated, after having looked at copies of the Chicago Market Reports for June 1862, that he was about correct in giving the market value of Old Yellow corn in the first half of June 1862 at Chicago at 30 cents per bushel. The Market Reports show sales of such Corn at 28 cents per bushel, but to this must be added two cents per bushel additional paid by the buyer for storage, which would make the Market price 30 cents per bushel as stated — Buyers always have to pay storage of two (2) cents per

bushel in addition to the price offered,

The Plaintiff here rested —

Augustus Pulsifer, a witness called on the part of the defendant, testified, that he was in defendant's store on the 2^d day of June A.D. 1862, when plaintiff and defendant were talking about the plaintiff's corn. William Lucas was in said store on the same day for a short time. Witness did not hear plaintiff order defendant to sell plaintiff's corn immediately. Witness was near the parties, heard the conversation and would have heard plaintiff make such order had he made it — that they were talking perhaps a half hour + perhaps less —

Plaintiff said nothing about defendant's selling the corn, as an order for him so to do, but was talking about the charges, storage &c. on said corn and the prospects of the market improving. Plaintiff was in the store several times after that conversation and asked about the corn and witness at plaintiff's request made an account of the charges for storage up to the day it was asked for —

Witness, in the month of July A.D. 1862, informed the plaintiff at defendant's request that plaintiff's corn and the other corn shipped with it had "heated" in store and could not be sold until it had been cooled. The defendant's corn was "heated" with Plaintiff's.

Sumner Sanderson, defendant's witness testified that he was present at defendant's store on the 2^d day of June A.D. 1862, the same day that William Lucas was there - Witness sold, as clerk of defendant's, some goods to said Lucas on that day - Witness heard on that day plaintiff and defendant talking about plaintiff's corn. Witness did not hear plaintiff order the defendant to sell said corn and witness was in a position where he would have heard such order given had the plaintiff made it -

The defendant here read in evidence the depositions of Joseph W. McGehee and Samuel A. Ford which are in the words and figures following, to wit:

Thomas W. Shepard } Circuit Court of Putnam
 vs. } County.
 Edward F. Tulliver } October Term A.D. 1863 -

The plaintiff in the above entitled cause will take notice that the Defendant therein, having filed affidavit according to the Statute in such case made and provided, showing that the testimony of Samuel A. Ford, Edward Wing, Arthur Halifax and Joseph W. McGehee is material and necessary for said defendant on the trial of the above cause and that the said Samuel A. Ford, Edward Wing, Arthur Halifax and Joseph W. McGehee reside in the State of Illinois and in a County different from that in

which said Circuit Court of Putnam County is to be held, to wit: in the County of Cook in said State, will take the depositions of the said Samuel A. Ford, Edward Wing, Arthur Halifax and Joseph W. McGee at ten (10) o'clock in the forenoon of the Twentieth day of October A.D. 1863 before Allen C. Story, Esq., a Notary Public within and for the City of Chicago in the County of Cook aforesaid at his office at No. 86 Dearborn Street in said City of Chicago, and the taking of said depositions will be continued from day to day until the same shall be completed. And the said depositions when so taken will be read as evidence on the trial of the above Cause —

E. F. Pulsifer, Deft —

Dated Keenebin, October 3^d, 1863 —

State of Illinois,
Putnam County ss.

C. A. Pulsifer, being first duly sworn, saith, he served the within notice on the within named Thomas W. Shepard by leaving with him a true copy thereof, this 3^d day of October A.D. 1863.

Sworn subscribed to before
me this 5th day of Oct. 1863.

C. A. Pulsifer —

25¢
Rev. Stamp
J.P.S.
Oct. 5-
1863.
25¢

John P. Gerberick, Clk. —

Service accepted Oct. 3, 1863
Thomas W. Shepard —

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The Depositions of Joseph W. Magee of the City of Chicago, County of Cook & State of Illinois a witness produced sworn and examined upon his Corporal oath on the 20th day of October A.D. 1863 at the office of the undersigned in said City by me, Allen C. Story a Notary Public in and for said City of Chicago duly appointed, and having authority to administer oaths and take the testimony of witnesses: pursuant to the annexed Notice in a certain suit or matter in Controversy now pending and undetermined, in the Circuit Court, of the County of Putnam, in said State of Illinois, wherein Thomas W. Shepherd is the Plaintiff and Edward F. Pulsifer, is defendant, in behalf of the said defendant —

The said Plaintiff being represented before me by S. Dale, Jr. Esq., who appears for him and the said Defendant being represented in like manner by C. S. Forsyth, Esq., who appears for him, which deposition of said Magee is by consent of said attorneys for said parties respectively taken in narrative form, and without recording the interrogatories or questions asked by either party, all objection for that cause, if any, being by them expressly waived in my presence —

The said Joseph W. Magee being first duly sworn by me as a witness in the said cause, previous to the commencement of his examination, to testify the truth as well on the part of the plaintiff as the defendant in relation to the matters in controversy between the said plaintiff and defendant as far as he should be interrogated

testified and deposed as follows, viz:

My name is Joseph W. Magee, my age is fifty years, my occupation is that of a Commission Merchant, my place of business is the City of Chicago. I know Edward F. Pulsifer, defendant in this Suit - I do not know the plaintiff. - In 1861 I was one of the firm of Magee and Wing Commission Merchants in Chicago. In the fall of that year said firm received a quantity of corn by the canal boat "Caroline", we received corn at two different times by some boat - on the third of October 1861, we received six thousand and twenty bushels and twenty-six pounds - On or about October 19, 1861 we received Three thousand nine hundred and sixty-one bushels. The corn was received from Vermilion, Illinois, as appears by the bills of lading of the same. It was sent to us for account of Edward F. Pulsifer for sale or storage subject to his directions. My recollections of his instructions are that we were to sell at a certain price if possible and if not, to store it. When the corn arrived the market for corn was some one or two cents per bushel less than we had orders to sell for and we therefore stored it. To the best of my recollections - I cannot remember positively the price limited by Mr. Pulsifer in his instructions was about twenty-five cents per bushel - The corn was placed in Ford & Norton's Elevator, where it remained until about October 1862. The corn was what is called "Inspected mixed corn" - It was "old corn" and appeared in good condition - It was "River corn" -

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The corn was held by us to obtain an advance price, corn was considered good property to hold particularly "old corn" - at that time -

The price of corn advanced very much beyond the limits of Mr. Pulsifer before this lot was actually sold - This advance took place during July and August 1862 - The reason this corn was not then sold is, we found it had become heated -

This was first discovered sometime in July 1862. After Consultation with old corn dealers I think we concluded it best to let it remain in the Warehouse and work itself clear -

After the corn had reached the height ^{& fit} ~~fit~~ ^{of} ~~the~~ heating, we removed the top of it, the blackest part, drew off the rest upon the floor and cooled it off - We then sold it -

This treatment of the corn occupied six or eight weeks or perhaps longer -

In consequence of this heating a loss accrued upon this corn of about eight or ten cents per bushel; this includes of course the crusting of black badly damaged corn which formed upon the top -

The corn was sold as "rejected" corn, I have dealt in corn about fifteen years in this state and in Chicago about eight years -

The poorest quality of corn is the most liable to heat - We call the "River corn", the best quality of corn brought to this market - It always commands the highest price - New corn is most liable to heat - We consider that corn, that has passed the first season, without heating, safe to hold over the next. It is less liable to heat

than newer corn. The corn received by us & referred to by me, had passed through one season at least, when we received it. We got no new corn that time of the year. New corn is not harvested as soon as October for market - We frequently advised with Mr. Pulsifer about this corn, during the time it was held by us, both in regard to its condition and sale. We advised him that we thought it would keep - Mr. Pulsifer manifested considerable anxiety about the corn, & was frequently up here and examined it -

It was our opinion that it would be profitable to hold the corn and we so advised Mr. Pulsifer. We knew good sound "old" corn was profitable to hold. Our conclusions were verified as the result showed - Had this corn kept well, without heating, a profit would have been realized, of some five or six cents, over and above the price of corn when this was received, I mean five or six cents nett per bushel -

I don't think this corn could have been sold for any profit, before it heated, I mean it would not have paid the expenses of Insurance and storage &c. over and above the price of corn when we received it and all necessary charges -

Corn usually begins to heat, in May or June, we generally consider June as hard a month for corn as any. This corn had passed the month of June, before we discovered it had heated -

I can't tell whether this corn might have heated before we discovered it, or not - we made

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it a point to examine it once or twice a week at the bottom of the bin.

The market price of such corn, as this, situated as it was: on the 4th day of June 1862 I should say was somewhere about 28 cents, it might vary a fraction under or over that figure —

On July 7th 1862, I think the price was about the same — not much change —

I was usually "on change" in person every day, and was conversant with the market price on both of those days I have mentioned — My memory is refreshed by reports of actual sales now shown me, which were issued by us, or in our name, "The Merchants' Report."

On those days 2500 bushels of corn taken from the lot in question, would not bring as much as the market price — If a person wanted just that amount to fill out a cargo he would probably have paid the market price, but if not it would not bring as much as a full cargo —

When this lot of corn was sold it brought the market price for "Rejected Corn" for that day —

I refer to the whole amount of Pulsifer Corn —

Upon being cross Examined by the attorney for the plaintiff, the witness testified —

The memorandum I held in my hand during a part of my direct examination was taken from our firm books, as to time of the reception of the corn. I have no doubt the memorandum was correct.

The corn was received a part of it Oct. 3^d and a part October nineteenth or twenty-first

1861, about those dates -

I suppose the corn belonged to Mr. Pulsifer, he was the only party we knew in the transaction - Can't say whether we received corn from Mr. Pulsifer in September 1862 or not - We did receive some in August 1862 - I think, Can't say without examining our books whether any corn was received in September 1862 or not from him. Ford & Norton's Elevator is on Market Street between Lake & Randolph Streets, Chicago - One of our firm examined the corn once or twice a week + Mr. Pulsifer occasionally. We examined from the bottom - Had the examination been made from the top we might have discovered its heating sooner - We consider that the Elevator people are in duty bound to examine from the top + ascertain the Condition of grain stored with them, look after it. We examined it because we wished to see the corn ourselves. The proprietors of the Elevator are not perhaps bound to watch the grain + inform owners or agents, but it is customary for them to do so.

We supposed we did examine the corn thoroughly, we considered we had done our duty in regard to it. I am informed that corn shows heat at the top of the bin, first. This is my understanding of the matter. This is not always the case, however. I have known a case the opposite of this, but think the other the usual course -

We examined at the bottom instead of the top because we had no idea of its heating -

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we had no suspicion of its heating —

I can't say how long time will be require, after corn has commenced heating, to develop the fact at the surface in a deep bin —

It is usual either to use a long "triev" running it down six or eight feet, which brings up a sample of corn at the depth it is put down, or by running out two or three hundred bushels — both means are resorted to, to determine whether the corn is heating —

When I examined it, I did not resort to either of these modes, personally —

In giving the market price of corn on June 4th & July 7th 1862 on my direct examination I rely mainly upon the market reports of actual sales for those days —

I did not rely at all upon my memory, without referring to that report —

I cannot change my statement as to 2500 bushels of that lot of corn on those days, the value to be realized, would depend upon circumstances —

I would not have sold the corn, for less than the market price unless directed specially by the Consignor — I would not have sold 2500 bushels for less — I would have kept it until I found some person, who wanted that amount to make out his Carg, as frequently occurs —

The Corn was sold as "rejected corn" for twenty seven cents per bushel —

All the corn received from Mr. Pulsifer by boat "Caroline" was placed in the same Elevator, at the date received —

It was stored in bins by itself I think two

or three, as many as two. I can recollect -
 We received no peremptory orders for sale
 of this corn at any time from Mr. Pulsifer
 or for any part of it -

We sold the corn altogether in one entire
 lot, we did not sell 2500 bushels by itself -

Inspected mixed" corn was worth June 2^d
 1863, as appears by the Circular shown me
 (Griffen Brothers) from 47[¢] to 51[¢] from "low
 mixed" to "high mixed" on the 6th June 1863
 from 47[¢] to 53[¢] same grades, I think the latter
 ("white mixed") about two or three cents above the
 market - it always does bring that - on the 5th
 June 1863 about the same - On the 4th June
 1863 - 48[¢] to 51[¢] on June 3^d 1863, 47[¢] to 49½[¢] -

These are all taken from the circulars July 13th
 1863 about the same August 11th 1863 about the
 same, September 3^d 1863 = 57½[¢] to 58½[¢] - September
 26th 1863 from 71[¢] to 74[¢], on the 28th 1863 = 71[¢] to 72½[¢]

On examination of our books I find that on
 September 17th 1862, we received one car load
 of corn containing 277 bushels + 8 pounds from
 Mr. Pulsifer I suppose it belonged to him, this
 is all I have any knowledge of ^{our} receiving from
 him during that month - Can't tell how long
 we retained it whether one or ten days. It did
 not come from Hennepin -

The direct Examination of the witness
 having been resumed he testified -

We had no suspicion that the corn

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was heating for the reasons, first, it was old corn, and because from my own and other's examination, I was satisfied it was all right—

Had it been new corn, I should not have dared to hold it. It is better for corn to have it placed in separate bins, as in this case, besides these bins will not — 10,000 bushels, each—

We had standing instructions from Pulisifer to use our judgment about the corn & whenever we thought best, to sell it. To a certain extent, the matter was left to our judgment— We held it because in our judgment it was better to hold it—

Subscribed & sworn to before me } J. W. Mc'Gee
this 20th day of October }
A.D. 1863 by J. W. Mc'Gee }

Allen C. Story, Notary Public in & for
city of Chicago, Illinois —

And thereupon the said defendant, by his said attorney, produced Samuel A. Ford, a witness of lawful age, who being first by me duly sworn in like manner at the time and place last aforesaid in the presence of the same attorneys, appearing for the said parties respectively, as heretofore stated by me, and the same stipulation being made by said attorneys in my presence as to taking said testimony in narrative form and objections therefor being expressly waived by each party in all respects as stated by me in regard to the witness Mc'Gee, the said witness upon his direct examination testified —

My name is Samuel A. Ford, my accu-

pation is Storage and Commission business my place of business No 18 Market Street, Chicago, my age is forty-six years. The name of the firm, of which I was a member in the fall (October) of 1861 was Ford and Norton —

We received at our Warehouse in stone two lots of Corn from Magee and Wing. By the boat "Caroline" October third 1861 six thousand and twenty bushels and twenty-six pounds, October nineteenth Four thousand & thirty-one bushels and twenty-nine pounds, this also come by boat "Caroline" — The corn was "Inspected mixed" corn, and coming ⁱⁿ at that time of the year we judged it to be grown the year previous — It was what we call old corn — If it had been raised the same year we should call it "New Corn"

All grain which bears inspection we consider good merchantable grain —

This corn was placed in bins in the Warehouse and kept there, we changed the bins I think as we were repairing the house and changed all our grain from one bin to another — We do not mix grain but place it in separate empty bins —

The corn remained there until about Sept 12th 1862 I cannot give precise date — It may have been a little later & may have been earlier — We took the usual care that we take of any corn — Examined into its condition from time to time — The corn heated I think about July 10th 1862 I know we

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found about 70,000 bushels of hot grain one morning before we knew that we had a kernel - part of it we owned ourselves -

I have been in the Warehouse business nine years and dealt in corn more or less - all the time - I can't tell what corn is liable to heat more than others - It depends upon the year it was grown and the weather - I have known corn apparently sound to heat in two days - Old corn is less liable to heat than new -

The season that this corn heated, we had a long spell of about a month, of damp weather, the atmosphere was very heavy and affected grain considerably - A large portion of the corn that came in during that time was in a bad condition, Corn which arrived in May was in better condition than that arriving in June when ordinarily the latter should be the best - We took the usual care of it - placed it in separate bins & examined occasionally - There is no other care that could have been taken, that I know of - It might have been kiln dried at an expense of five to six cents per bushel - all the care was taken that it is customary to take with any corn in store -

The Warehouse was a brick building dry - and has been used as a Warehouse for fifteen years - We have a watchman there during working time - no watchman nights - unless we work nights - we frequently do this - I had no fears of this corn heating

when it was received - Never had any Corn stored in the fall of the year before, which heated after lying in the Warehouse through the winter -

Corn was low when this was received but was ruling at good rates in New York and the prospect was that freights would go down and the price of corn come up in proportion - I think every one here expected that freights would decline in the spring from what they were that fall -

In the spring of 1862 the freights continued high with prospects of their going down in the summer, when corn would rise - I think they did finally decline from fifteen to four cents per bushel - That was the inducement for holding grain, Corn advanced last year (1862) as high as forty cents per bushel - I think about the first to the fifth of September, can't say whether corn had advanced much when this corn was discovered to be heated - My present recollection is that corn commenced advancing about the latter part of July and continued gradually until it reached forty cents -

When this corn was discovered to be heated, it was changed from one bin to another & part placed in another building, shoveled over, everything that could be done was done, the usual course was taken with it -

Upon being Cross Examined by the

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Plaintiff's Counsel the witness further testified.

The corn was examined occasionally. In the spring of the year we generally examine grain once a week - I have frequently sent our foreman expressly to examine this, and other grain while it was there in store - He usually dig down into the grain, and examine into its condition, with the hands - We examine grain in that way, we may draw it from the bottom but usually adopt this method - We generally find hot corn on top if it exists in the bin - The way I have mentioned (with the hands) is the way usually followed by Warehousemen - We never draw it out to satisfy ourselves, but when any one else wishes to examine it we draw out from the bottom for them -

The corn was from twenty to twenty-two feet deep in the bins -

We usually find hot corn, at the top first, corn gets damp before it heats & the dampness rises to the top - If there was any hot corn in the bin, it would have shown itself at the top & would have been detected by working about on the corn & trying it with the hands as I have referred to -

I can't tell the length of time between the last examination of the corn, and the time it was discovered to be heated - It may have been a week, and may not have exceeded three days -

When it commences to heat it does not

take long to include the whole bin. I once took in a boat load of "Inspected mixed" apparently good & it all heated in two days, I remember it distinctly as I had some trouble about it in this particular instance.

This was the identical corn received from Magee & King by us - The top of this could not have been taken off, so as to save the remainder, in my judgment -

It was here admitted on the part of the defendant that the price of corn in 1863 was as is stated by Mr. Magee in his Cross-examination at the times therein stated by him -

Samuel A. Ford

Subscribed & sworn to
before me by Samuel 3
A. Ford, this 20th day of 3
October A.D. 1863. 3

Allen C. Story, Notary Public
in and for City of Chicago, Illinois -

State of Illinois,
Cook County 3
City of Chicago 3 p. I, Allen C. Story,
of the City of Chicago in the County and State
aforesaid: duly appointed, Commissioned
and sworn, a Notary Public in and for
said City, and by law authorized to admin-
ister oaths, and take and certify deposi-
tions, do hereby certify that previous to the
commencement of the examination of the

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said Joseph W. Magee and the said Samuel A. Ford - as heretofore certified by me - as witnesses in the suit between the said Thomas W. Shepherd, plaintiff, and the said Edward F. Pulsifer, defendant, the said witnesses were severally and respectively sworn according to Law by me as such Notary Public to testify the truth in relation to the matter in Controversy between the said Thomas W. Shepherd plaintiff and the said Edward F. Pulsifer, Defendant, so far as each should be interrogated concerning the same. That the said depositions were taken at my office No. 8 Dearborn Street in said City of Chicago on the 20th day of September A.D. 1863 in the presence of the attorneys for the respective parties and under the stipulation that the said depositions should be taken in Narrative form and that the questions need not be reduced to writing by the officer taking the same and that all objections by either party for that cause should be - and were thereby by said attorneys declared to be expressly waived: and that after the said depositions of the said Joseph W. Magee and the said Samuel A. Ford were so separately taken by me as aforesaid and reduced to writing by me, the said depositions of each of said witnesses were by me read over to the person making the same respectively who was clearly informed of the same, and that thereupon the same were signed by the said witnesses in the order heretofore

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appearing and sworn ^{by} to them as hereinbefore
stated, the oath being administered to each
by me as such Notary Public at the place
and on the day and in the year last afore-
said -

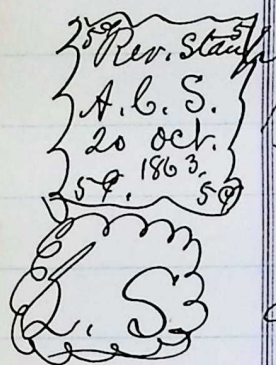
In Witness Whereof, I the said Notary
have hereunto set my hand and affixed
thereto my seal of office, this Twentieth
day of October A.D. one thousand eight
hundred and sixty-three -
Allen C. Story

The Defendant now produced and read in
evidence the Receipt of Mrs. P. Gerberich, Clerk
of the Circuit Court of Putnam County, for one
hundred Dollars deposited with said Clerk by
Defendant for the Plaintiff, which receipt is
in the words and figures following, to wit:

"\$100- Rec'd of E. F. Pulsifer, one hundred
Dollars, United States Legal Tender currency,
as amount tendered Thomas W. Shep-
herd by said Pulsifer on the sale of
corn in Chicago for account of said
Shepherd.

Witness my Oct. 27, 1863

John P. Gerberich, Clerk



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The Defendant now rested, and the above was all the testimony in the case -

The plaintiff by his counsel asked the court to give the following instructions, to the giving of each and every of which the defendant by his Counsel thereupon then and there objected, but the court gave the same as follows:

"Thomas W. Shepherd, In the Circuit Court of
 no. Putnam Co. Ills.
 Edward F. Pulsifer } Oct. Term A.D. 1863 -

Plaintiff's Instructions

Given
 If the Jury believe from the evidence that Plaintiff delivered to defendant 2559 $\frac{02}{32}$ Bushels of corn, to be shipped by Pulsifer from Hennepin to Chicago and there to be sold by Pulsifer, and render an account of such sale, to Plaintiff, as set forth in Declaration, and the defendant failed and neglected to comply with said Contract on his part, then the plaintiff is entitled to recover all damages which the proof may show he has sustained by reason of the neglect or failure of defendant to comply with his Contract.

Given
 That unless Shepherd was restrained by some stipulation in the Contract from determining the time when said corn should be sold, then Shepherd would have the right to order said corn sold at any time after it arrived in Chicago -

Given

That the burden of proof, as to the tender is on the defendant —

X

Given

That a tender to be good in Law, must be of a specific sum, and the money must be actually tendered, and it is not enough, that a party should produce ^{an amount of money and request,} a settlement, and tell the party to whom the tender is to be made, that he wanted to pay him, such transaction would not amount to a tender, unless the person making the tender offers to pay the money produced —

Given

Under the contract sued on in this suit defendant is bound by Law to account to Plaintiff for the amount for which the corn was sold after deducting therefrom the proper expenses and charges and also any damages, accruing to Plff. (if there were any) in consequence of defendant wrongfully refusing or neglecting to sell the corn (if there was any wrongful refusal or neglect) —

Given

(Qualification to Plff's last instruction)
Unless the Plaintiff afterwards assented to such refusal or neglect to sell and assented to receiving whatever might be realized by the defendant from such grain after giving such assent, if the Plaintiff did give such assent, he could not go back and claim damages of the defendant for such alleged neglect or refusal, if any —

And the defendant, by his counsel then and there in apt time excepted to the giving of said instructions, and each and every of them —

The defendant by his Counsel asked the Court to give the following instructions on the part of the defendant, which the Court gave as follows:

Thomas W. Shepherd }
 Edward F. Pulsifer }
 v.

The Court instructs the Jury in behalf of the defendant —

1st.

That if the Jury believe from the evidence that the contract was, that the defendant was to sell the plaintiff's corn, when the defendant sold his own, and that the corn was to be shipped to certain Commission Merchants in Chicago to be sold and that the Plaintiff was to settle by the account current, rendered by such Commission Merchants, of the sale and expenses, and if the Jury further believe from the evidence, that the defendant did sell the Plaintiff's corn when he sold his own and that said Commission Merchants did render such account current and that the defendant offered to settle with the plaintiff according to such account current and before the commencement of this suit, tended to the

Given

plaintiff the amount of money which appeared to be due from such account current and has kept his tender good, then the Jury should find for the defendant, upon the aforesaid statement of facts - if the Jury believe from the Evidence such statement to be true, unless the defendant did not take due and proper care of the plaintiff's grain -

2nd

Given

If the Jury believe from the evidence that the defendant's plea of tender has been sustained by the testimony, the Jury should find for the defendant specially upon such plea -

3^d

Given

That if the Jury believe from the Evidence that the Contract was not, that the defendant should sell the plaintiff's corn when requested, or directed or within a reasonable time, but that the defendant refused sell the plaintiff's corn when he sold his own, then the plaintiff has not sustained, either the 2^d, 3^d, 4th, 5th, or 6th Counts of his Declaration, even though the Jury should believe from the evidence that afterwards the plaintiff did in June 1862 request the defendant to sell his corn and that the defendant did tell him he would then sell the plaintiff's corn, and that the defendant did not do so -

4th

And even if the Plaintiff could insist upon such request made in June 1862, yet if af-

(57)
Given.

terwards, the plaintiff assented to such neglect of the defendant to sell upon such request of the plaintiff and afterwards assented to defendant's keeping such corn in store for the plaintiff, then the plaintiff could not insist, that he is entitled to recover of the defendant for such neglect or refusal.

5th.

Given.

That if the defendant actually offered the one hundred Dollars to the plaintiff for his acceptance, and produced the money to the plaintiff, such tender would be good, even though at the same time, the defendant stated to the plaintiff, that he wanted to settle and pay him for the corn —

The verdict of the Jury having come in, the defendant by his Counsel entered a motion for a new trial, but the Court overruled the same and the defendant thereupon then and there excepted to the decision of the Court in overruling said motion.

And the defendant entered a motion in arrest of Judgment which motion the Court overruled, and the defendant by his Counsel thereupon then and there excepted to the decision of the Court overruling said motion —

After which the Court rendered judgment on the Verdict —

And because the matters aforesaid do not otherwise fully appear of record, the

defendant by his counsel then and there prayed
 the Court to sign and seal a Bill of Exceptions
 in this behalf, and it is done accordingly,
 and this Bill is made part of the record,
 On this the 11th day of Nov. A.D. 1863. } Judge 23^d Judicial Dist.
 3

And afterwards, to wit: November 20th
 A.D. 1863, a Bond was filed in said Court
 in said Cause, which is in the words and fig-
 ures, following, viz:

Know all men by these
 presents, That we Edward F. Pulsifer, of the
 County of Cook and State of Illinois, as princi-
 pal, and Charles A. Pulsifer, of the County of
 Putnam and State of Illinois, as surety, are
 held and firmly bound unto Thomas W. Shep-
 ard of the said County of Putnam, in the penal
 sum of Five hundred (500) Dollars, lawful
 money of the United States, for the payment
 of which, well and truly to be made, we bind
 ourselves, our heirs, executors and administra-
 tors, jointly, severally and firmly, by these pres-
 ents.

Witness our hands and seals, this Twentieth
 day of November A.D. 1863.

The Condition of the above abli-
 gation is such, That whereas, the said
 Thomas W. Shephard, did, on the Thirty-first

(59)

day of October A.D. 1863, in the Circuit Court of Putnam County, State aforesaid, and of the October Term thereof A.D. 1863, recover a judgment against the above bounden Edward F. Pulsifer for the sum of Two hundred and sixty-five (265) Dollars and seventy-four (74) Cents, besides costs of suit; from which said judgment of the said Circuit Court of Putnam County, the said Edward F. Pulsifer hath prayed for, and obtained an appeal to the Supreme Court of said State—

Now, Therefore, if the said Edward F. Pulsifer shall duly prosecute his said appeal with effect, and moreover, pay the amount of the judgment, costs, interest and damages rendered, and to be rendered, against him in case the said judgment shall be affirmed in said Supreme Court, then the above obligations to be void, otherwise to remain in full force and virtue—

Taken and entered into before } Edward F. Pulsifer *Seal*
me, at my office, in Vermilion, } L. A. Pulsifer *Seal*
this Twentieth day of November } *Seal*
ber A.D. 1863— } *Seal*
John P. Gerberich, Clerk }

Which said Bond has the following endorsement thereon, to wit:
"Filed and approved by me, this
20th day of November A.D. 1863
John P. Gerberich, Clerk—"

State of Illinois,
 Putnam County Iss. I, John P. Gerberich,
 Clerk of the Circuit Court, in and for said
 County and State aforesaid, do hereby Certify,
 that the foregoing is a true, full and
 Complete Transcript of the Record and
 proceedings in the suit of Thomas W.
 Shepard, Plaintiff and Edward F. Pul-
 sifer, Defendant and of the matters and
 things therein contained, as appears of
 Record in my office —

Witness my hand and the seal of our
 said Court, at Keokuk, in said County
 and State, this Fourth day of December
 A.D. 1863 —



John P. Gerberich, Clerk.

Making Transcript \$18.00 —

Paid by Deft. J. P. S.

And now comes the said Edward J. Pulsifer, by Arrington & Dent his attorneys, and says that in the record and proceedings aforesaid there ^{is} manifest error, in this, to wit:

That said Circuit Court erred in giving the instructions severally & respectively given for the plaintiff.

That the Court erred in overruling the motion for a new trial.

That the Court erred in overruling the motion in arrest of judgment.

That the verdict and judgment respectively were excessive, and unsupported by proof.

That the judgment ought to have been for the defendant, instead of for the plaintiff.

Wherefore the said Edward J. Pulsifer prays that said judgment be reversed, and that he be restored to all things which he has lost thereby, &c. —

Arrington & Dent,
attys. for Plf. —

And appellee comes by Bangs & Shaw his attorneys and says that there is no error in said Record and proceedings and joins in error and prays that the judgment be affirmed.

By Bangs & Shaw his attys

221 129

Edward F. Pulsifer

vs

Thomas W. Shepard

Record & Errors

Filed April 20, 1864

L. Leland

clerk