

No. 14689

# Supreme Court of Illinois

Reed

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vs.

Wheeler.

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71641  7

STATE OF ILLINOIS,

SUPREME COURT,

THIRD GRAND DIVISION.

No.

263

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

*Reed*

*vs*

*Wheeler*

1864



Gen No 7258

# UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Plas, before the Honorable, the Judges of the Superior Court of Chicago, within and for the County of Cook and State of Illinois, at a regular Term of said Superior Court of Chicago, begun and holden at the Court House, in the City of Chicago, in said County and State, on the first Monday, being the First day of February in the year of our Lord One Thousand Eight Hundred and Sixty Four and of the Independence of the United States of America the Eighty Eight

Present, The Honorable John M. Wilson Chief Justice of the }  
Superior Court of Chicago. }

Van H. Higgins }  
Joseph W. Gary } Judges.

Joseph Knox Prosecuting Attorney.

David S. Hammond Sheriff of Cook County.

Attest, Thomas B. Carter Clerk.

Be it remembered that heretofore to wit, on the Twenty fifth day of June in the year of our Lord one thousand eight hundred and sixty one, there issued out of the office of the Clerk of the Superior Court of Chicago, the People's Writ of Summons, which, with the Sheriffs Return thereon is in the words and figures as follows to wit: —



State of Illinois }  
County of Cook }

The People of the State of Illinois  
to the Sheriff of said County - Greeting:—

We Command  
You that you summon Charles T. Wheeler, if he  
shall be found in your county, personally to be and ap-  
pear before the Superior Court of Chicago, of said  
Cook County, on the first day of the term thereof  
to be holden at the Court house in Chicago, in said  
Cook County, on the first Monday of August next  
to Answer unto Josiah H. Reed, Horace A. Hurl-  
but and Sylvester S. Bliss in a plea of trespass  
on the case upon promises, to the damage of the  
said plaintiffs as is said, in the sum of Five thou-  
sand dollars.

And have you there this writ  
with an endorsement thereon in what manner you  
shall have executed the same.

Witness Walter  
Kimball Clerk of our said Court, and the seal  
thereof, at Chicago aforesaid this 25<sup>th</sup> day of June

A.D. 1861.

(seal)

Walter Kimball, Clerk.

(Sheriff's Return)

Served by reading the within writ, to the within  
named defendant, the 3<sup>rd</sup> day of July 1861.

Anthony C. Hering Sheriff,  
by John A. Nelson Deputy.



And afterwards to wit, on the seventh day of August in the year aforesaid, that day being one of the days of the August term of said Court, the following among other proceedings was had and entered of record in said Court to wit:

Josiah H. Reed

Horace A. Hurlbut &

Sylvester S. Bliss

Assumpsit

1513

v<sup>s</sup>

7258

Charles J. Wheeler

This day comes the said plaintiffs by Gallup & Hitchcock their attorneys, and the said defendant by McCagg & Fuller his attorneys also comes And on Motion plaintiffs to amend Declaration, and Summons issued in said Cause, and on filing stipulation by which defendant consents to the application for leave, it is ordered that plaintiffs have leave to amend their Declaration and Summons issued in said Cause as shown by stipulation filed.

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And afterwards, to wit, on the Second day of September in the year aforesaid, the defendant Calvin J. Wheeler filed in the office of the clerk of said Court his certain affidavit of merits, which is in the words and figures as follows to wit: —



In the Superior Court of Chicago  
of August Term A.D. 1861.

Between Josiah H. Reed —

Horace A. Hurlbut & —

Sylvester S. Bliss, <sup>partners &c</sup> Plaintiff

against

Calvin T. Wheeler —  
Defendant

State of Illinois } ss  
Cook County - }

Calvin T. Wheeler being duly sworn, maketh oath and saith that he is the defendant in the above entitled cause, and that he verily believes that he has a good defence thereto upon the merits.

Calvin T. Wheeler.

Subscribed and sworn to before me,  
this second day of August A.D. 1861.

John Forsythe,  
Notary Public.

And afterwards, to wit, on the Thirtieth day of March in the year of our Lord one thousand eight hundred and sixty three, said day being one of the days of the March Term of said Court, the following among other proceedings was had and entered of record in said Court to wit: —



Joseph H. Reed  
 Horace A. Hurlbut  
 Sylvester S. Bliss

Assumpsit

298

vs

7258

Charles T. Wheeler

This cause being this day called for trial comes said plaintiffs by Gallup and Hitchcock their attorneys and said defendant by his attorneys also, comes, and issues being joined herein it is ordered that a jury come, where-upon comes the jury of good and lawful men to wit: John Baldwin, F. D. Bristol, George Mitchell, M. Weidmyer, Wm Waite, John T. Conoran, John Garrick, O. H. Willis M Thomas, W. H. Elliott, J. L. Smith & H. A. Foster, who being duly elected tried & sworn to try the issues joined herein as aforesaid, where-upon for causes moving the Court as well said plaintiffs and said defendant, a juror is withdrawn from the panel thereof, and thereupon it is ordered that the remainder of the jurors be discharged, and that the cause be continued on payment by said plaintiffs of all costs except for depositions and original process, with leave to plaintiffs to amend their declaration in said cause.

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And afterwards, to wit, on the day and year afore-  
-said, there was filed in the office of the clerk of  
said Court, a certain Stipulation, which is in the  
words and figures as follows to wit:

Superior Court of Chicago  
August Term A.D. 1861.

Sosiah H. Reed, et al.

v.

Chas. T. Wheeler — }

It is stipulated in the  
above entitled cause that the writ & declaration  
and Sheriff's return may be amended by substitut-  
-ing the name of Calvin in stead of Charles, where-  
-ever the same occurs in said writ declaration  
and return.

Sammon M. Cagg & Fuller

Aug. 14<sup>th</sup> 1861

Defts Attys

It is also stipulated that said Calvin T.  
Wheeler shall be allowed until the third day of  
the September Term A.D. 1861, to plead or demur  
to said declaration.

Gallup & Hitchcock



And afterwards to wit, on the Twentieth day of March in the Year aforesaid, the plaintiffs by their Attorneys Gallup & Hitchcock filed in the office of the Clerk of said Court their certain Amended Declaration, which is in the words and figures to wit,



State of Illinois  
County of Cook - } ss

Superior Court of Chicago  
March Term A.D. 1863

Josiah H. Reed

Horace A. Hurlbut

Sylvester S. Bliss

vs

Calvin T. Wheeler

For that whereas also, afterwards, to wit, on the twentieth day of April in the year of our Lord one thousand eight hundred and sixty one, at said County of Cook, in consideration that the plaintiffs, at the special instance and request of the defendant, would buy of the defendant a large quantity, to wit, fifteen hundred barrels of Albion Mills flour at and for a certain price or sum of money, to wit, the sum of seventy two hundred dollars to be therefor paid by the plaintiffs, he the defendant undertook and then and there faithfully promised the plaintiffs that the said flour then was of a quality equal to flour known as "Albion Mills flour" in the New York Market in the fall of the year four Lord one thousand eight hundred and sixty. And the plaintiffs aver that they, confiding in the said promise and undertaking of the defendant, did afterwards, to wit, on the day and year aforesaid, at the County aforesaid, buy the said flour of the said defendant, and then and there paid him for the same, said



sum of money, nevertheless the defendant, contriving and fraudulently intending to injure the said plaintiffs did not perform or regard his said promise and undertaking, so by him made as aforesaid, but thereby craftily and subtly deceived and defrauded the plaintiffs, in this, to wit; that the said flour at the time of the making of the said promise and undertaking of the defendant, was not of a quality equal to flour known as Albion Mills flour in the New York Market in the fall of the year of our Lord one thousand eight hundred and sixty, but on the contrary thereof was at that time of a quality inferior to flour known as Albion Mills flour in the New York Market in the fall of the year last aforesaid: whereby the said flour became and was of no use or value to the said plaintiffs, to wit, at said County.

10 For that whereas, also, afterwards, to wit, on the twenty sixth day of April in the year of our Lord one thousand eight hundred and sixty one, at said County, in consideration that the plaintiffs at the special instance and request of the said defendant, would buy of the defendant a large quantity, to wit, one thousand barrels of Albion Mills flour, at and for a certain price or sum of money, to wit, the sum of fifty one hundred dollars, to be therefor paid by the said plaintiffs, he, the defendant undertook and then and there faithfully promised the plaintiffs that the said flour <sup>then</sup> was of a quality equal to flour known as

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Albion Mills flour in the New York Market, in the fall of the year of our Lord one thousand eight hundred and sixty. And the plaintiffs aver that they confiding in the said promise and undertaking of the defendant, did, afterwards, to wit, on the day and year aforesaid, at the County aforesaid, buy the said flour of the defendant, and then and there paid him for the same said sum of money, nevertheless, the defendant, contriving and fraudulently intending to injure the plaintiffs, did not perform or regard his said promise and undertaking so by him made as aforesaid, but thereby craftily and subtly deceived and defrauded the plaintiffs in this, to wit: that the said flour at the time of the making of the said promise and undertaking of the defendant, was not of a quality equal to flour known as Albion Mills flour in the New York Market in the fall of the year of our Lord one thousand eight hundred and sixty, but on the contrary thereof, was at that time of a quality inferior thereto, whereby the said flour became and was of no use or value to the said plaintiffs, to wit, at said County.

For that whereas also afterwards, to wit on the twentieth day of April in the year of our Lord one thousand eight hundred and sixty one, to wit, at the County of Cook, in consideration that the plaintiffs, at the special instance and request



of the defendant, would pay the defendant a large sum of money, to wit, the sum of seventy two hundred dollars, he, the defendant, undertook and then and there faithfully promised the plaintiffs to deliver to the plaintiffs, a large quantity, to wit, fifteen hundred barrels of Albion Mills flour of a quality equal to flour known as Albion Mills flour in the New York Market in the fall of the year of our Lord, one thousand eight hundred and sixty. And the plaintiffs in fact say that they, Confiding in the said promise and undertaking of the defendant, did afterwards, to wit, on the day and year aforesaid, pay the defendant, the said sum of money last mentioned, of which the defendant afterwards, to wit, on the day and year aforesaid had notice. Yet the defendant not regarding his said promise and undertaking, but contriving and fraudulently intending craftily and subtly to deceive and defraud the plaintiffs in this behalf, did not nor would ~~not~~ deliver to the plaintiffs the said Albion Mills flour of a quality equal to flour known as Albion Mills flour in the New York market in the fall of the year of our Lord one thousand eight hundred and sixty, although often requested so to do; but the defendant to do the same hath hitherto wholly neglected and refused and still does neglect and refuse, but on the contrary thereof, did deliver Albion



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Mills flour of a quality much inferior to the flour known as Albion Mills flour in the New York Market in the fall of the year of our Lord one thousand eight hundred and sixty.

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For that whereas also, afterwards, to wit on the twenty sixth day of April in the year of our Lord one thousand eight hundred and sixty one, to wit, at the County of Cook in consideration that the plaintiffs at the special instance and request of the defendant, would pay the defendant a large sum of money, to wit, the sum of fifty one hundred dollars, he, the defendant undertook and then and there faithfully promised the plaintiffs to deliver to them a large quantity to wit, one thousand barrels of Albion Mills flour of a quality equal to flour known as Albion Mills flour in the New York Market in the fall of the year of our Lord one thousand eight hundred and sixty. And the plaintiffs in fact say, that they confiding in the said promise and undertaking of the defendant, did afterwards, to wit, on the day and year aforesaid, pay the defendant the said sum of money last mentioned of which the defendant afterwards, to wit, on the day and year aforesaid, had notice. Yet the said defendant not regarding his said promise and undertaking, but contriving and fraudulently intending craftily and subtly to deceive and



defraud the plaintiffs in this behalf, did not nor would ~~WANT~~ to the plaintiffs the said Albion Mills flour of a quality equal to flour known as Albion Mills flour in the New York Market in the fall of the year of our Lord one thousand eight hundred and sixty, although often requested so to do: and the defendant to do the same hath hitherto wholly neglected and refused, and still doth neglect and refuse, but on the contrary thereof did deliver Albion Mills flour of a quality much inferior to that known as Albion Mills flour in the New York Market in the fall of the year of our Lord one thousand eight hundred and sixty.

For that whereas also, afterwards, to wit, on the sixteenth day of April in the year of our Lord one thousand eight hundred and sixty one at said County, in Consideration that the plaintiffs, at the special instance and request of the defendant, would buy of the defendant, a large quantity, to wit, fifteen hundred barrels of Albion Mills flour, at and for a certain price or sum of money, to wit, the sum of six thousand nine hundred dollars, to be therefor paid by the plaintiffs, he the said defendant undertook and then and there faithfully promised the plaintiffs that said flour was then equal to the best Albion flour, And the plaintiffs aver that they, Confiding in said promise and undertaking of the defendant



did afterwards, to wit, on the day and Year aforesaid, at the County aforesaid, buy the said flour of the defendant, and then and there paid him for the same said sum of money, nevertheless the defendant, contriving and fraudulently intending to injure the plaintiffs, did not perform or regard his said promise and undertaking, so by him made as aforesaid, but thereby craftily and subtly deceived and defrauded the plaintiffs in this, to wit: that the said flour at the time of the making of said promise and undertaking of the defendant was not equal to the best Albion flour, but on the contrary thereof, was at that time inferior to the best Albion flour, whereby the said flour became and was of no use or value to the plaintiffs, to wit, at said County

For that whereas also, afterwards, to wit, on the twentieth day of April in the year four Lord one thousand eight hundred and sixty one at said County in consideration that the plaintiffs, at the special instance and request of the said defendant, would buy of the defendant a large quantity, to wit, fifteen hundred barrels of Albion Mills flour, at and for a certain price or sum of money to wit, the sum of six thousand four hundred and <sup>sight</sup> dollars, to be therefor paid by the plaintiffs, he, the defendant undertook and then and there faithfully



promised the plaintiffs that the said flour was then equal to the best Albion flour. And the plaintiffs aver that they, Confiding in the said promise and undertaking of the defendant, did afterwards, to wit on the day and year aforesaid, at the County aforesaid, buy the said flour of the defendant, and then and there paid him for the same said sum of money, nevertheless the defendant, contriving and fraudulently intending to injure the plaintiffs did not perform or regard his said promise and undertaking, so by him made as aforesaid, but thereby craftily and subtly deceived and defrauded the plaintiffs, in this to wit; that the said flour at the time of the making of said promise & undertaking of the defendant, was not equal to the best Albion flour, but on the contrary, thereof <sup>was</sup> at that time inferior to the best Albion flour, whereby, the said flour became and was of no use or value to the plaintiffs, to wit: at said County.

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For that whereas also, afterwards to wit; on the twentieth day of April in the year of our Lord one thousand eight hundred and sixty one, at said County, in consideration that the plaintiffs, at the special instance and request of the defendant, would buy of the defendant, a large quantity, to wit, fifteen hundred barrels of Albion Mills flour, at and for a certain price or sum of money,

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to wit, the sum of seventy two hundred dollars, to be therefor paid by the plaintiffs, he, the defendant undertook, and then and there faithfully promised the plaintiffs that the said flour was then equal to the best Albion flour. And the plaintiffs aver that they, confiding in the said promise and undertaking of the defendant, did afterwards, to wit, on the day and year aforesaid, at the County aforesaid buy the said flour of the defendant, and then & there paid him for the same said sum of money. nevertheless, the defendant contriving & fraudulently intending to injure the plaintiffs did not perform or regard his said promise & undertaking so by him made as aforesaid, but thereby craftily and subtly deceived and defrauded the plaintiffs, in this, to wit: that the said flour at the time of the making of said promise and undertaking of the defendant, was not equal to the best Albion flour, but on the contrary thereof was at that time inferior to the best Albion flour, whereby the said flour became and was of no use or value to the plaintiffs, to wit, at said County.

16 For that whereas also, afterwards, to wit on the twenty sixth day of April in the year of our Lord one thousand eight hundred and Sixty one, at said County, in consideration



that the plaintiffs at the Special instance and request of the defendant, would buy of the defendant, a large quantity, to wit, one thousand barrels of Albion Mills flour, at and for a certain price or sum of money, to wit, the sum of fiftyone hundred dollars, to be therefor paid by the plaintiffs, he, the defendant, undertook and then and there faithfully promised the plaintiffs that the said flour was then equal to the best Albion flour. And the plaintiffs aver that they, Confiding in the said promise and undertaking of the defendant, did, afterwards, to wit, on the day & year aforesaid, at the County aforesaid, buy the said flour of the defendant, and then and there paid him for the same said sum of money, nevertheless, the defendant, contriving and fraudulently intending to injure the plaintiffs, did not perform or regard his said promise and undertaking so by him made as aforesaid, but thereby craftily and subtly deceived and defrauded the plaintiffs in this, to wit: that the said flour at the time of the making of said promise and undertaking of the defendant, was not equal to the best Albion flour, but on the contrary thereof, was at that time inferior thereto, whereby the said flour became and was of no use or value to the plaintiffs, to wit, at said County.



For that whereas, also, afterwards to wit, on the twenty seventh day of April, in the Year of our Lord 1861 at said County, in consideration that the plaintiffs, at the special instance and request of the defendant would buy of the defendant, a large quantity, to wit: eight hundred barrels of Albion Mills flour at and for a certain price or sum of money, to wit, the sum of four thousand and eighty dollars, to be therefor paid by the plaintiffs, he the defendant undertook and then and there faithfully promised the plaintiffs, that the said flour was then equal to the best Albion flour. And the plaintiffs aver that they, confiding in the said promise and undertaking of the defendant, so by him made as aforesaid, did afterwards, to wit, on the day and year aforesaid at the County aforesaid, by the said flour of the defendant, and then and there paid him for the same said sum of money, nevertheless, the defendant, contriving and fraudulently intending to injure the plaintiffs, did not perform or regard his said promise and undertaking so by him made as aforesaid, but thereby craftily and subtly deceived and defrauded the plaintiffs in, this, to wit, that the said flour at the time of the making of the said promise and undertaking of the said defendant was not equal to the best Albion flour, but on the contrary thereof was



at that time much inferior thereto, whereby the said flour became and was of no use or value to the plaintiffs, to wit, at said County.

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For that whereas, also, afterwards, to wit on the sixteenth day of April in the Year of our Lord 1861, to wit, at said County, in consideration that the plaintiffs at the special instance and request of the defendant, would pay the defendant a large sum of money, to wit, the sum of sixty nine hundred dollars, he, the defendant undertook and then and there faithfully promised the plaintiffs to deliver to them a large quantity, to wit, fifteen hundred barrels of Albion Mills flour, equal to the best Albion flour. And the plaintiffs in fact say, that they, confiding in said promise and undertaking of the defendant, did afterwards, to wit, on the day and Year aforesaid, pay the defendant the said sum of money last mentioned, of which the defendant afterwards, to wit, on the day and Year aforesaid had notice. Yet the defendant, not regarding his said promise and undertaking, but contriving and fraudulently intending, craftily and subtly to deceive and defraud the plaintiffs in this behalf, did not nor would deliver to the plaintiffs the said Albion Mills flour equal to the best Albion flour, although often requested so to do; but the defendant, to do the same hath hitherto wholly neglected and refused, and still doth neglect and



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refuse, but on the contrary thereof did deliver Albion Mills flour much inferior to the best Albion flour.

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18 For that whereas, also, afterwards, to wit,  
18 on the twentieth day of April in the year of our Lord 1861, to wit, at said County, in consideration that the plaintiffs, at the special instance and request of the defendant, would pay the defendant a large sum of money, to wit, the sum of sixty four hundred and eight dollars, he the defendant undertook and then and there faithfully promised the plaintiffs to deliver to the plaintiffs a large quantity, to wit, fifteen hundred barrels of Albion Mills flour, equal to the best Albion flour. And the plaintiffs in fact say that they, confiding in said promise and undertaking of the defendant, did afterwards, to wit, on the day and year aforesaid, pay the defendant the said sum of money, of which, the defendant afterwards, to wit, on the day and year aforesaid had notice. Yet the defendant, not regarding his said promise & undertaking, but contriving and fraudulently intending craftily and subtly to deceive and defraud the plaintiffs in this behalf, did not nor would deliver to the plaintiffs the said Albion Mills flour equal to the best Albion flour, although often requested so to do; but the defendant to do the same hath hitherto wholly neglected and refused, and still doth neglect and refuse, but on the contrary thereof, did deliver Albion Mills flour much inferior to the



best Albion flour.

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For that whereas, also, afterwards, to wit,  
on the twentieth day of April in the year of our  
Lord 1861. to wit, at the County of Cook, in Consideration  
that the plaintiffs, at the special instance & request  
of the defendant, would pay the defendant a large  
sum of money, to wit, the sum of seventy two hundred  
dollars, he, the defendant undertook and then and  
there faithfully promised the plaintiffs to deliver to  
them, a large quantity, to wit: fifteen hundred barrels  
of Albion Mills flour equal to the best Albion flour.  
And the plaintiffs in fact say that they, confiding  
in said promise and undertaking of the defendant,  
did afterwards, to wit, on the day and year aforesaid,  
pay the defendant the sum of money aforesaid,  
of which the defendant, afterwards, to wit, on  
the day and year aforesaid, had notice. Yet the  
defendant not regarding his said promise and under-  
taking, but contriving, and fraudulently intending,  
craftily and subtly, to deceive and defraud the  
plaintiffs in this behalf; did not nor would deliver  
to the plaintiffs the said Albion Mills flour equal  
to the best Albion flour, although often requested  
so to do; but the defendant to do the same hath hitherto  
wholly neglected and refused, and still does neglect &  
refuse, but on the contrary thereof did deliver Albion  
Mills flour much inferior to the best Albion flour.



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For that whereas, also, afterwards, to wit, on the twenty sixth day of April in the year of our Lord 1861 to wit at the County of Cook, in Consideration that the plaintiffs, at the Special instance and request of the defendant, would pay the defendant a large sum of money, to wit, the sum of fifty one hundred dollars, he the defendant undertook and then and there faithfully promised the plaintiffs to deliver to them, a large quantity, to wit, one thousand barrels of Albion Mills flour equal to the best Albion flour. And the plaintiffs in fact say, that they, confiding in the said promise and undertaking of the defendant did afterwards, to wit, on the day and year aforesaid pay the defendant the said sum of money, of which the defendant, afterwards, to wit, on the day and year aforesaid had notice. Yet the defendant not regarding his said promise and undertaking, but contriving and fraudulently, intending, craftily and subtly to deceive and defraud the plaintiffs in this behalf, did not nor would deliver to the plaintiffs the said Albion Mills flour equal to the best Albion flour, although often requested so to do; and the defendant to do the same has hitherto wholly neglected and refused and still doth neglect and refuse, but on the contrary thereof, did deliver Albion Mills flour much inferior to the best Albion flour.

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For that whereas, also, afterwards, to wit, on the twenty seventh day of April in the year of our



Lord 1861, to wit, at the County of Cook, in, Consideration that the plaintiffs at the Special instance & request of the defendant, would pay to the defendant a large sum of money, to wit, the sum of four thousand and eighty dollars, he, the defendant undertook and then and there faithfully promised the plaintiffs to deliver to them a large quantity, to wit: eight hundred barrels of Albion Mills flour equal to the best Albion flour. And the plaintiffs in fact say that they, confiding in the said promise and undertaking of the defendant, did afterwards, to wit, on the day & year aforesaid, pay the defendant the said sum of money, of which the defendant afterwards, to wit, on the day and year aforesaid had notice. Yet the defendant not regarding his said promise and undertaking, but contriving and fraudulently intending craftily and subtly, to deceive and defraud the plaintiffs in this behalf did not nor would deliver to the plaintiffs the said Albion Mills flour equal to the best Albion flour, although often requested so to do; but the defendant to do the same hath hitherto wholly neglected and refused and still doth neglect and refuse, but on the contrary thereof did deliver Albion Mills flour much inferior to the best Albion flour.

23 For that whereas, also, afterwards, to wit, on the sixteenth day of April in the year of our Lord, 1861, at said County of Cook, in consideration that the plaintiffs



at the special instance and request of the defendant, would buy of the defendant a large quantity, to wit. fifteen hundred barrels of Albion Mills flour, at and for a certain price or sum of money, to wit, the sum of sixty nine hundred dollars, to be therefor paid by the said plaintiffs, he, the defendant undertook and then and there faithfully promised the plaintiffs that said flour was then in every respect equal to the Albion flour shipped from the same mill the previous fall. And the plaintiffs aver that they, confiding in said promise and undertaking of the defendant, did afterwards, to wit, on the day and year aforesaid, at the County aforesaid buy the said flour of the defendant, and then and there paid him for the same said sum of money. Nevertheless, the defendant, contriving and fraudulently intending to injure the plaintiffs, did not perform or regard his said promise and undertaking so by him made as aforesaid, but thereby craftily and subtly deceived and defrauded the plaintiffs in this, to wit; that the said flour at the time of the making of said promise and undertaking of the defendant was not in every respect equal to the Albion flour shipped from the same mill the previous fall but on the contrary thereof, was at that time, much inferior thereto, whereby the said flour became and was of no use or value to the plaintiffs, to wit, at said County.

For that whereas also, afterwards, to wit, on the



twentieth day of April in the year of our Lord 1861. at  
said County, in consideration that the plaintiffs at the  
Special instance and request of the defendant, would buy  
of the defendant, a large quantity, to wit, fifteen hundred  
barrels of Albion Mills flour, at and for a certain price  
or sum of money, to wit: the sum of sixty four hundred  
and eight dollars, to be therefor paid by the plaintiffs,  
he, the defendant then and there undertook and faith-  
fully promised the plaintiffs that the said flour was  
then in every respect equal to the Albion flour shipped  
from the same mill the previous fall, And the plaintiffs  
aver that they, confiding in the said promise and  
undertaking of the defendant, did afterwards, to wit,  
on the day and year aforesaid, at the County afore-  
said, buy said flour of the defendant and then and  
there paid him for the same said sum of money,  
nevertheless, the defendant, contriving and fraudulent-  
ly intending to injure the plaintiffs, did not perform  
or regard his said promise and undertaking, so by  
him made as aforesaid, but thereby craftily & subtly  
deceived and defrauded the plaintiffs in this, to wit:  
that the said flour at the time of the making of said  
promise and undertaking of the defendant, was not  
in every respect equal to the Albion flour shipped  
from the same mill the previous fall, but on the  
contrary thereof, was at that time much inferior in  
quality thereto, whereby the said flour became and  
was of no use or value to the plaintiffs, to wit at  
said County.



For that whereas also, afterwards, to wit: on the twentieth day of April in the year of our Lord 1861, at said County, in consideration that the plaintiffs at the special instance and request of the defendant, would buy of the defendant, a large quantity to wit, fifteen hundred barrels of Albion Mills flour at and for a certain price or sum of money, to wit: the sum of seventy two hundred dollars, to be therefor paid by the plaintiffs, he, the defendant undertook and then and there faithfully promised the plaintiffs that the said flour was then in every respect equal to the Albion flour shipped from the same mill the previous fall. And the plaintiffs aver that they, confiding in said promise and undertaking of the defendant, did afterwards, to wit, on the day and year aforesaid, at the County aforesaid buy the said flour of the defendant, and then and there paid him for the same said sum of money, nevertheless, the defendant, contriving and fraudulently intending to injure the plaintiffs did not perform or regard his said promise and undertaking, so by him made as aforesaid, but thereby craftily and subtly deceived and defrauded the plaintiffs in this, to wit: that the said flour at the time of the making of said promise and undertaking of the defendant, was not in every respect equal to the Albion flour shipped from the same mill the previous fall, but on the contrary thereof was



at that time inferior thereto in quality, whereby the said flour became and was of no use or value to the plaintiffs, to wit, at said County.

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For that whereas also, afterwards, to wit, on the twenty sixth day of April in the Year of our Lord 1861, at said County, in, consideration that the plaintiffs at the special instance and request of the defendant, would buy of the defendant, a large quantity, to wit: one thousand barrels of Albion Mills flour, at and for a certain price or sum of money, to wit, the sum of fifty one hundred dollars to be therefor paid by the plaintiffs, he the defendant undertook and then and there faithfully promised the plaintiffs that the said flour was then in every respect equal to the Albion flour shipped from the same mill the previous fall. And the plaintiffs aver that they, confiding in the said promise and undertaking of the defendant, did afterwards, to wit, on the day and year aforesaid, at the County aforesaid, buy the said flour of the defendant, and then and there paid him for the same said sum of money. Nevertheless, the defendant, contriving and fraudulently intending to injure the plaintiffs did not perform or regard his said promise and undertaking so by him made as aforesaid, but thereby craftily and subtly deceived and defrauded the plaintiffs in this, to wit: that the said flour at the time of the making of said promise

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and undertaking, of the defendant, was not in every respect, equal to the Albion flour shipped from the same Mill the previous fall, but on the contrary thereof, was at that time much inferior thereto in quality, whereby the said flour became and was of no use or value to the plaintiffs, to wit, at said County.

27 For that whereas, also, afterwards, to wit, on the  
 19 twenty seventh day of April in the year of our Lord 1861, at said County in consideration that the plaintiffs, at the special instance and request of the defendant, would buy of the defendant a large quantity, to wit: eight hundred barrels of Albion Mills flour, at and for a certain price or sum of money, to wit, the sum of four thousand and eighty dollars to be there for paid by the plaintiffs, he, the defendant undertook and then and there faithfully promised the plaintiffs, that the said flour was then in every respect, equal to the Albion flour shipped from the same Mill the previous fall. And the plaintiffs aver that they, confiding in the said promise and undertaking of the defendant so by him made as aforesaid, did afterwards to wit, on the day and year aforesaid, at the County aforesaid, buy the said flour of the defendant, and then and there paid him for the same said sum of money, nevertheless, the defendant, contriving and fraudulently intending to injure the plaintiffs, did not perform



or regard his said promise and undertaking, so by him made as aforesaid, but thereby craftily and subtly deceived and defrauded the plaintiffs in this, to wit: that the said flour, at the time of the making of the said promise and undertaking, of the defendant was not in every respect equal to the Albion flour shipped from the same mill the previous fall but on the contrary thereof, was at that time much inferior thereto in quality, whereby the said flour became and was of no use or value to the plaintiffs to wit, at said County.

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20 For that whereas, also, afterwards, to wit, on the sixteenth day of April in the year of our Lord 1861, to wit, at said County, in consideration that the plaintiffs at the special instance and request of the defendant, would pay the defendant a large sum of money to wit, the sum of sixty nine hundred dollars, he, the defendant undertook and then and there faithfully promised the plaintiffs to deliver to them a large quantity, to wit, fifteen hundred barrels of Albion Mills flour in every respect equal to the Albion flour shipped from the same mill the previous fall. And the plaintiffs in fact say that they, confiding in said promise and undertaking of the defendant, did afterwards, to wit on the day and year aforesaid, pay the defendant the said sum of money of which the defendant afterwards, to wit, on the day and year aforesaid had



notice. Yet the defendant not regarding his said promise and undertaking, but contriving and fraudulently, intending craftily and subtly to deceive and defraud the plaintiffs in this behalf, did not nor would deliver to them the said Albion Mills flour in every respect equal to the Albion flour shipped from the same mill the previous fall, although often requested so to do but the defendant to do the same hath hitherto wholly neglected and refused, and still doth neglect and refuse, but on the contrary thereof did deliver Albion Mills flour much inferior in quality to the Albion flour shipped from the same mill the previous fall.

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For that whereas also, afterwards, to wit, on the twentieth day of April in the year of our Lord 1861, to wit, at said County, in consideration that the plaintiffs at the special instance and request of the defendant would pay the defendant a large sum of money, to wit, the sum of sixty four hundred and eight dollars, he, the defendant, undertook and then and there faithfully promised the plaintiffs to deliver to the plaintiffs a large quantity, to wit, fifteen hundred barrels of Albion Mills flour in every respect equal to the Albion flour shipped from the same mill the previous fall. And the plaintiffs in fact say that they, confiding in said promise and undertaking of the defendant, did afterwards, to wit, on the day and year aforesaid, pay

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the defendant the said sum of money, of which the defendant, afterwards, to wit, on the day and year aforesaid, had notice. Yet the defendant, not regarding his said promise and undertaking, but contriving and fraudulently intending craftily and subtly to deceive and defraud the plaintiffs in this behalf did not nor would deliver to them the said Albion Mills flour in every respect equal to the Albion flour shipped from the same Mill the previous fall, although often requested so to do; but the defendant to do the same hath hitherto wholly neglected and refused and still doth neglect and refuse but on the contrary thereof, did deliver Albion Mills flour much inferior in quality to the Albion flour shipped from the same Mill the previous fall.

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For that whereas also, afterwards, to wit, on the twentieth day of April in the year of our Lord 1861, to wit at the County of Cook, in consideration that the plaintiffs, at the special instance and request of the defendant, would pay the defendant, a large sum of money, to wit, the sum of seventy two hundred dollars, he, the defendant, undertook and then and there faithfully promised the plaintiffs to deliver to them a large quantity to wit, fifteen hundred barrels of Albion Mills flour in every respect equal to the Albion flour shipped from the same Mill the previous fall.

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And the plaintiffs in fact say that they, confiding in said promise and undertaking of the defendant, did afterwards, to wit, on the day and year aforesaid, pay the defendant the sum of money aforesaid, of which the defendant afterwards, to wit, on the day and year aforesaid had notice. Yet the defendant not regarding his said promise and undertaking, but contriving and fraudulently intending, craftily and subtly to deceive and defraud the plaintiffs in this behalf did not nor would deliver to the plaintiffs the said Albion Mills flour in every respect equal to the Albion flour shipped from the same mill the previous fall although often requested so to do; but the defendant to do the same hath hitherto wholly neglected and refused and still does neglect and refuse, but on the contrary thereof did deliver Albion Mills flour much inferior in quality to the Albion flour shipped from the same mill in the previous fall.

31 For that whereas also, afterwards, to wit on the  
23 twenty sixth day of April in the year of our Lord 1861, to wit  
to wit, at said County, in consideration that the plaintiffs  
at the special instance and request of the defendant,  
would pay the defendant a large sum of money, to wit,  
the sum of fifty one hundred dollars, he the defendant  
undertook and there and there faithfully promised  
the plaintiffs to deliver to them a large quantity, to wit  
one thousand barrels of Albion Mills flour in every



respect equal to the Albion flour shipped from the same Mill the previous fall. And the plaintiffs in fact say, that they, confiding in said promise and undertaking of the defendant <sup>did</sup> afterwards, to wit, on the day and year aforesaid, pay the defendant the said sum of money, of which the defendant afterwards, to wit, on the day and year aforesaid had notice. Yet the defendant, not regarding his said promise and undertaking, but contriving and fraudulently intending, craftily and subtly to deceive and defraud the plaintiffs in this behalf, did not nor would deliver to the plaintiffs the said Albion Mills flour in every respect equal to the Albion flour shipped from the same mill the previous fall, although often requested, so to do; and the defendant to do the same has hitherto wholly neglected and refused, and still doth neglect and refuse, but on the contrary thereof, did deliver Albion Mills flour much inferior in quality to the Albion flour shipped from the same mill the previous fall.

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24 For that whereas, also, afterwards, to wit, on the twenty seventh day of April in the year of our Lord 1861, to wit, at the County of Cook, in consideration that the plaintiffs at the special instance & request of the defendant, would pay the defendant a large sum of money, to wit, the sum of four thousand and eighty dollars, he, the defendant, undertook and then and there faithfully promised the plaintiffs



to deliver to them, a large quantity, to wit; eight hundred barrels of Albion Mills flour in every respect equal to the Albion flour shipped from the same Mill the previous fall. And the plaintiffs in fact say that they, Confiding in the said promise and undertaking of the defendant, did afterwards, to wit, on the day and year aforesaid, pay the defendant the said sum of money of which the defendant afterwards, to wit, on the day and year aforesaid had notice. Yet the defendant not regarding his said promise and undertaking, but contriving & fraudulently intending craftily and subtly to deceive and defraud the plaintiffs in this behalf, did not nor would deliver to the plaintiffs the said Albion Mills flour in every respect equal to the Albion flour shipped from the same Mill the previous fall although often requested so to do; but the defendant to do the same hath hitherto wholly neglected & refused, and still doth neglect and refuse, but on the contrary thereof, did deliver Albion Mills flour much inferior in quantity to the Albion flour shipped from the same Mill the previous fall.

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For that whereas, also, afterwards, to wit, on the sixteenth day of April in the year of our Lord one thousand eight hundred and sixtyone at said County, in consideration that the plaintiffs at the special instance and request of the defendant, would buy of the defendant, a large quantity, to wit; fifteen



hundred barrels of Albion Mills flour, at and for a certain price or sum of money, to wit: the sum of sixty nine hundred dollars, to be therefor paid by the plaintiffs, he, the defendant, undertook & then and there faithfully promised the plaintiffs that said flour was then of the same quality as the Albion Mills flour previously known in the market. And the plaintiffs aver that they, Confiding in said promise and undertaking of the defendant, did afterwards, to wit on the day and year aforesaid, at the County aforesaid, buy the said flour of the defendant, and then and there paid him for the same said sum of money, nevertheless, the defendant, Contriving and fraudulently intending to injure the plaintiffs, did not perform or regard his said promise and undertaking, so by him made as aforesaid, but thereby craftily and subtly deceived and defrauded the plaintiffs in this, to wit, that the said flour at the time of the making of said promise and undertaking of the defendant, was not of the same quality as the Albion Mills flour previously known in the market, but on the contrary thereof was at that time much inferior thereto, whereby the said flour became and was of no use or value to the plaintiffs, to wit: at said County.

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For that whereas, also, afterwards, to wit: on the twentieth day of April in the year of our Lord 1861, at said County, in consideration that the



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plaintiffs at the special instance and request of the defendant, would buy of the defendant a large quantity, to wit: fifteen hundred barrels of Albion Mills flour, at and for a certain price or sum of money to wit, the sum of sixty four hundred and eight dollars, to be therefor paid by the plaintiffs, he, the defendant, undertook and then and there faithfully promised the plaintiffs that the said flour was then of the same quality as the Albion Mills flour previously known in the market. And the plaintiffs aver that they, confiding in said promise and undertaking of the defendant, did afterwards, to wit, on the day and year aforesaid, at the County aforesaid, buy the said flour of the defendant, and then and there paid him for the same said sum of money, nevertheless, the defendant, conspiring and fraudulently intending to injure the plaintiffs, did not perform or regard his said promise and undertaking so by him made as aforesaid, but thereby craftily and subtly deceived and defrauded the plaintiffs, in this, to wit: that the said flour, at the time of the making of said promise and undertaking of the defendant, was not of the same quality as the Albion Mills flour previously known in the market, but on the contrary thereof, was at that time much inferior thereto, whereby the said flour became and was of no use or value to the plaintiffs, to wit, at said County.



For that whereas, also, afterwards, to wit, on the twentieth day of April in the year of our Lord 1861, at said County, in consideration that the plaintiffs, at the special instance and request of the defendant, would buy of the defendant, a large quantity, to wit: fifteen hundred barrels of Albion Mills flour, at and for a certain price or sum of money, to wit: the sum of seventy two hundred dollars, to be therefor paid by the plaintiffs, he, the defendant, undertook and then and there faithfully promised the plaintiffs that the said flour was then of the same quality as the Albion Mills previously known in the market. And the plaintiffs aver that they, Confiding in said promise and undertaking of the defendant did afterwards, to wit, on the day and year aforesaid, at the County aforesaid, buy the said flour of the defendant, and then and there paid him for the same said sum of money, nevertheless, the defendant contriving and fraudulently intending to injure the plaintiffs, did not perform or regard his said promise and undertaking, so by him made as aforesaid, but thereby craftily and subtly deceived and defrauded the plaintiffs, in this, to wit: that the said flour at the time of the making of said promise and undertaking of the defendant, was not of the same quality as the Albion Mills flour previously known in the market, but on the contrary thereof. was



at that time, much inferior thereto, whereby the said flour became and was of no use or value to the plaintiffs, to wit, at said County.

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7 For that whereas also, afterwards, to wit, on the twenty sixth day of April in the year of our Lord 1861, at said County, in consideration that the plaintiffs at the special instance and request of the defendant, would buy of the defendant a large quantity, to wit, one thousand barrels of Albion Mills flour, at and for a certain price or sum of money, to wit: the sum of fifty one hundred dollars to be therefor paid by the plaintiffs, he, the defendant, undertook and then and there faithfully promised the plaintiffs that the said flour was then of the same quality as the Albion Mills flour previously known in the market. And the plaintiffs aver that they, Confiding in the said promise and undertaking of the defendant, did, afterwards, to wit, on the day and year aforesaid at the County aforesaid, buy the said flour of the defendant, and then and there paid him for the same said sum of money, Nevertheless, the defendant, contriving and fraudulently intending to injure the plaintiffs, did not perform or regard his said promise and undertaking so by him made as aforesaid, but thereby craftily and subtly deceived and defrauded the plaintiffs in this, to wit, that the said flour at the time of the making of said promise and under-



-taking of the defendant, was not of the same quality as the Albion Mills flour previously known in the market, but on the contrary thereof, was at that time much inferior thereto, whereby the said flour became and was of no use or value to the plaintiffs, to wit. at said County.

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For that whereas, also, afterwards, to wit: on the twenty seventh day of April in the year of our Lord 1861 at said County, in consideration that the plaintiffs, at the special instance and request of the defendant, would buy of the said defendant a large quantity, to wit: eight hundred barrels of Albion Mills flour, at and for a certain price or sum of money, to wit: the sum of four thousand and eighty dollars, to be therefor paid by the plaintiffs, he, the defendant undertook and then and there faithfully promised the plaintiffs, that the said flour was then of the same quality as the Albion Mills flour previously known in the market. And the plaintiffs aver that they confiding in said promise and undertaking of the defendant, did afterwards, to wit, on the day and year aforesaid, at the County aforesaid buy the said flour of the defendant, and then and there paid him for the same said sum of money, nevertheless, the defendant, contriving and fraudulently, intending to injure the plaintiffs, did not perform or regard his said promise and



undertaking so by him made as aforesaid, but thereby craftily and subtly deceived and defrauded the plaintiffs in this, to wit: that the said flour at the time of the making of the said promise and undertaking of the defendant, was not of the same quality as the Albion Mills flour previously known in the market, but on the contrary thereof, was at that time much inferior thereto, whereby the said flour became and was of no use or value to the plaintiffs, to wit, at said County.

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For that whereas, also, afterwards, to wit on the sixteenth day of April in the year of our Lord 1861, to wit, at said County, in consideration that the plaintiffs at the special instance and request of the defendant, would pay the defendant a large sum of money, to wit, the sum of sixty nine hundred dollars, he, the defendant undertook, and then and there faithfully promised the plaintiffs to deliver to them a large quantity, to wit, fifteen hundred dollars of Albion Mills flour of the same quality as the Albion Mills previously known in the market. And the plaintiffs in fact say, that they, confiding in said promise and undertaking of the defendant, did afterwards, to wit, on the day & year aforesaid, pay the defendant, the said sum of money of which the defendant afterwards, to wit, on the day and year aforesaid, had notice, yet



the defendant not regarding his said promise and undertaking, but contriving and fraudulently intending, craftily and subtly to deceive and defraud the plaintiffs in this behalf, did not nor would deliver to the plaintiffs the said Albion Mills flour of the same quality as the Albion Mills flour previously known in the market, although often requested so to do; but the defendant to do the same hath hitherto wholly neglected and refused, and still doth neglect and refuse, but on the contrary thereof, did deliver Albion Mills flour of a quality much inferior to the Albion Mills flour previously known in the market.

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For that whereas, also, afterwards, to wit, on the twentieth day of April in the year of our Lord 1861, to wit, at said County, in consideration that the plaintiffs, at the special instance and request of the defendant, would pay the defendant a large sum of money, to wit, the sum of sixty four hundred and eight dollars, he, the defendant undertook and then and there faithfully promised the plaintiffs to deliver to them, a large quantity, to wit, fifteen hundred barrels of Albion Mills flour of the same quality as the Albion Mills flour previously known in the market, And the plaintiffs in fact say that they, confiding in said promise and undertaking of the defendant, did afterwards, to wit, on the day



and year aforesaid pay the defendant the said sum of money, of which the defendant, afterwards, to wit, on the day and year aforesaid, had notice. Yet the defendant not regarding his said promise and undertaking, but contriving and fraudulently intending craftily and subtly to deceive and defraud the plaintiffs in this behalf, did not, nor would deliver to the plaintiffs the said Albion Mills flour of the same quality as the Albion Mills flour previously known in the market, although often requested so to do, but the defendant to do the same hath hitherto wholly neglected and refused and still does neglect and refuse, but on the contrary thereof, did deliver Albion Mills flour of a much inferior quality to the Albion Mills flour previously known in the market.

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32 For that whereas also, afterwards, to wit, on the twentieth day of April in the year of our Lord 1861, to wit, at the County of Cook, in consideration that the plaintiffs at the special instance and request of the defendant, would pay the defendant, a large sum of money, to wit, the sum of seventy two hundred dollars, he, the defendant undertook and then and there faithfully promised the plaintiffs to deliver to them a large quantity, to wit, fifteen hundred barrels of Albion Mills flour of the same qual-



ity as the Albion Mills flour previously known in the market. And the plaintiffs in fact say that they, confiding in said promise and undertaking of the defendant, did afterwards, to wit, on the day and year aforesaid, pay the defendant the said sum of money, of which the defendant afterwards, to wit, on the day and year aforesaid, had notice. Yet the defendant, not regarding his said promise and undertaking, but contriving and fraudulently intending, craftily and subtly, to deceive and defraud the plaintiffs in this behalf, did not nor would deliver to the plaintiffs the said Albion Mills flour of the same quality as the Albion Mills flour previously known in the market, although often requested so to do; but the defendant to do the same hath hitherto wholly neglected and refused, and still does neglect and refuse but on the contrary thereof, did deliver Albion Mills flour of a much inferior quality, to the Albion Mills flour previously known in the market.

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For that whereas <sup>also</sup> afterwards, to wit, on the twenty sixth, day of April in the year four Lord One thousand eight hundred and sixty one at said County. in consideration that the plaintiffs at the special instance and re-  
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-quest of the defendant, would pay the defendant a large sum of money, to wit, the sum of fifty one hundred dollars, he the defendant undertook and then and there faithfully promised the plaintiffs to deliver to them a large quantity, to wit, one thousand barrels of Albion Mills flour of the same quality as the Albion Mills flour previously known in the market. And the plaintiffs in fact say, that they, confiding in the said promise and undertaking of the defendant, did afterwards, to wit, on the day and year aforesaid pay the defendant the said sum of money, of which the defendant afterwards, to wit, on the day and year aforesaid had notice. Yet the defendant not regarding his said promise and undertaking, but contriving and fraudulently intending craftily and subtly to deceive and defraud the plaintiffs in this behalf, did not nor would deliver to the plaintiffs the said Albion Mills flour of the same quality as the Albion Mills flour previously known in the market, although often requested so to do; and the defendant to do the same has hitherto wholly neglected and refused and still doth neglect and refuse, but on the contrary thereof, did deliver Albion Mills flour of a much inferior quality to the Albion Mills flour previously known in the market—



For that whereas also, afterwards, to wit, on the twentyseventh day of April in the year of our Lord 1861, to wit, at said County, in consideration that the plaintiffs at the special instance and request of the defendant, would pay the defendant a large sum of money, to wit, the sum of four thousand eight hundred dollars, he, the defendant, undertook and then and there faithfully promised the plaintiffs to deliver to them a large quantity, to wit, eight hundred barrels of Albion Mills flour of the same quality as the Albion Mills flour previously known in the market. And the plaintiffs in fact say that they confiding in the said promise and undertaking of the defendant, did afterwards, to wit, on the day and year aforesaid, pay the defendant the said sum of money, of which the defendant afterwards, to wit, on the day and year aforesaid had notice. Yet the defendant not regarding his said promise and undertaking, but contriving and fraudulently intending craftily and subtly to deceive and defraud the plaintiffs, in this behalf, did not nor would deliver to the plaintiffs the said Albion Mills flour of the same quality as the Albion Mills flour previously known in the market, although often requested so to do: but the defendant to do the same hath hitherto wholly neglected and refused, and still doth neglect and refuse, but on the contrary thereof did deliver



Albion Mills flour of a much inferior quality  
to the Albion Mills flour previously known in  
the market.

Gallup & Hitchcock.  
Plffs. Attys.

And afterwards, to wit, on the Twenty fifth day of March  
in the year aforesaid, Scammon, M. Cagg & Fuller  
attorneys for defendant, filed in the office of the  
Clerk of said Court Defendant's plea in general issue  
to additional Counts in plffs declaration, which  
plea is in the words and figures as follows to wit

|                      |                                    |
|----------------------|------------------------------------|
| State of Illinois,   | } In the Superior Court of Chicago |
| Cook County -        |                                    |
| Calvin T. Wheeler -  | } of the March Term A.D. 1863      |
| Ads                  |                                    |
| Josiah H. Reed et al | } General issue in Assumpsit       |

And the said defendant  
by Scammon M. Cagg & Fuller his attorneys comes  
and defends the wrong and injury &c and says  
that he did not undertake or promise in, manner  
and form as the plaintiffs have above thereof  
in the additional counts of his amended declaration  
complained against him, and of this he puts  
himself upon the country &c

Scammon M. Cagg & Fuller  
Defendants Attorneys



And afterwards to wit, on the Seventh day of January in the year of our Lord one thousand eight hundred and Sixty four, said day being one of the days of the January Term of said Court, the following among other proceedings was had and entered of record in said Court to wit

Josiah H. Reed  
 Horace A. Hurlbut  
 & Sylvester S. Bliss

Assumpsit

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v.

7258

Calvin T. Wheeler

This cause being this day called for trial come said plaintiffs by Gallup and Hitchcock their Attorneys and the said defendant by McCagg & Fuller his Attorneys also comes and issues being joined herein it is ordered that a jury come, whereupon comes the jury of good and lawful men to wit, D. P. Peck, W. A. Baldwin, G. W. Pittkins, S. P. Harrington, H. W. Hinsdale, W. D. Harris, G. D. B. Bogardus, G. B. Shaw, S. A. Downes, Thomas Munton, Samuel Howe and A. A. Stone, who being duly elected, tried and sworn to try the issues joined herein as aforesaid, after hearing part of the testimony, and the hour of adjournment having arrived, it is ordered, upon agreement of the parties that the jury separate and meet the Court

Records 14 page 97



tomorrow morning) on coming in and opening thereof.

And afterwards, to wit, on the Eighth day of January in the Year aforesaid, said day being of the same Term of said Court, the following among other proceedings was had and entered of record in said Court to wit: -

|                    |   |           |
|--------------------|---|-----------|
| Josiah H. Reed     | } | Assumpsit |
| Horace A. Hurlbert |   |           |
| & Egbert S. Bliss  |   |           |
| vs                 |   |           |
| Calvin T. Wheeler  |   |           |

Record 14 page 106

And now at this day again comes said parties to this cause by their attorneys as aforesaid and the jury empanelled herein on yesterday for the trial of said cause also come as on yesterday and having heard all the evidence, and the hour of adjournment having arrived it is ordered upon agreement of the parties that the jury separate and meet the Court on coming in and opening thereof on Monday morning next.



And afterwards, to wit, on the Eleventh day of January  
in the year aforesaid, said day being also of same  
Term of said Court, the following among other pro-  
ceedings, was had and entered of record in said Court  
to wit:

Josiah H. Reed  
Horace A. Hurlbert  
& Sylvester S. Bliss

vs

Calvin T. Wheeler

Assumpsit

174

7258

Record 14 page 108

And now again comes the  
parties to this cause by their attorneys, and the  
jury heretofore empanelled herein for the trial of said  
cause also come as on Friday last and having  
heard the arguments of Counsel and instructions  
of the Court retire to consider of their Verdict, and  
the hour of adjournment having arrived, it is  
ordered upon agreement of the parties, that when  
the jury shall have agreed upon a Verdict they  
shall reduce the same to writing, sign & seal  
the same and afterwards separate and be discharged.

And afterwards, to wit, on the Twelfth day of January  
in the year aforesaid, said day being still of same  
Term of said Court, the following among other proceedings  
was had and entered of record in said Court to wit:



Josiah H. Reed

Horace A. Hurlbert

& Sylvester S. Bliss

v.s

Assumpsit

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7258 Calvin T. Wheeler

Record 14 page 116  
And now at this day again  
Come the parties to this cause, and the jury heretofore  
empanelled herein for the trial of said cause, having  
agreed upon a verdict say we the jury find  
issues for the said plaintiffs, and we assess  
plaintiffs damages herein against the said defen-  
dant to the sum of Two thousand four hundred  
dollars.

And thereupon said defendant submits his  
motion herein for a new trial in said cause.

And afterwards, to wit, on the day and Year  
aforesaid, said Defendant, by his attorneys  
Scammon, McCagg and Fuller filed in the office  
of the Clerk of said Court his Motion and reasons for  
New trial, which is in the words and figures  
as follows to wit.



State of Illinois }  
County of Cook }

In the Superior Court of Chicago  
January Term A.D. 1864.

Josiah H. Reed

Horace A. Hurlbut

& Sylvester S. Bliss  
partners etc.

Calvin T. Wheeler

Motion for New Trial

And now comes the said  
Defendant and moves for a new trial in the above  
entitled cause:— because

1. — The evidence does not support the allegations in the declaration.
2. — Because the Court admitted improper evidence to go to the jury for the plaintiffs.
3. — Because the Court refused to admit proper evidence offered by the defendant.
4. — Because the Court gave improper instructions to the jury for the plaintiffs.
5. — Because the Court refused to give the jury proper instructions asked for by the defendant.
6. — Because the Verdict is against the law and the evidence.

Scammon, M. Cagg & Fuller,  
Attys for Defendant.

Jan<sup>y</sup> 12<sup>th</sup> 1864.



And afterwards, to wit, on the Tenth day of February in the year of our Lord one thousand eight hundred and sixty four, said day being one of the days of the February Term of said Court the following, among other proceeding was had and entered of record in said Court to wit:

176  
7258 Josiah H. Reed —  
Horace A. Hurlbut  
& Sylvester S. Bliss } Motion for New Trial in  
vs. Assumpsit  
Calvin T. Wheeler }

Record 14 page 176

And now at this day again comes the parties to this cause by their attorneys as aforesaid, and this cause coming on now to be heard upon the motion of the said defendant heretofore submitted herein, to wit, on the twelfth day of January, 1864, for a New trial in said cause, and Counsel being heard thereon and the Court being fully advised in the premises, it is considered by the Court, that the motion of said defendant be, and the same is hereby overruled, and that the said defendant be refused a new trial in said cause; to which ruling of the Court said defendant then and there excepted. Therefore it is considered by the Court that the said plaintiffs do have and recover of and from



\$2400- said defendant their damages of Two thousand four hundred dollars in form aforesaid, by the jury aforesaid assessed, and also their costs and charges in this behalf expended, and have execution therefor.

And thereupon said defendant prays an appeal herein to the Supreme Court of this State from the judgment of this Court which is allowed, on filing his Appeal Bond in the penalty of three thousand dollars with Thompson J. S. Flint as security, Conditioned according to law. And thereupon said defendant presents his appeal bond herein with Thompson J. S. Flint as security conditioned as required, which bond is approved by the Court, and ordered to be filed in said Cause which is accordingly done.

And thereupon it is ordered by agreement of the parties now here in open Court that the said Defendant be allowed three weeks time from this day in which to file and prepare his bill of exceptions in said Cause.

And afterwards, to wit, on the day and year aforesaid, said Defendant filed in the Office of the Clerk of said Court his certain Appeal Bond which Bond is in the words and figures as follows

54 to wit



Know all men by these presents That We Calvin T. Wheeler of Chicago, Cook County and State of Illinois, as principal, and T. J. S. Flint (as Surety) also of said City of Chicago of the County of Cook and State of Illinois are held and firmly bound unto Josiah H. Reed, Horace A. Hurlbut and Sylvester S. Bliss also of the same County and State, in the penal sum of Three thousand 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 administrators, jointly, severally and firmly, by these presents.

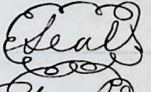
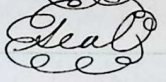
Witness our hands and seals, this tenth day of February A.D. 1864.

The Condition of the above obligation is such, that whereas the said Josiah H. Reed, Horace A. Hurlbut and Sylvester S. Bliss, did, on the tenth day of February A.D. 1864 in the Superior Court of Chicago, in and for the County of Cook, and State aforesaid and of the February term thereof A.D. 1864, recover a judgment against the above bounden Calvin T. Wheeler for the sum of Two thousand four hundred dollars, besides costs of suit; from which said judgment of the said Superior Court of Chicago, the said Calvin T. Wheeler has prayed for, and obtained an appeal to the Supreme Court



of this State.

Now therefore if the said Calvin T. Wheeler 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.

Calvin T. Wheeler   
T. J. S. Flint 

Taken and entered  
into before me at my  
Office in Chicago this  
day of      A.D. 1864  
Clerk

U S Ind Res Stamp  
\$1.50

And afterwards, to wit, on the Twentysecond day of February in the year aforesaid, said defendant filed in the office of the Clerk of said Court his Bill of Exceptions, which is in the words and figures as follows to wit:



## Bill of Exceptions

State of Illinois } In Superior Court of Chicago  
Cook County } February Term A.D. 1864

Josiah H. Reed et al }  
v. } Bill of Exceptions  
Calvin T. Wheeler - }

Be it remembered that on the trial of this cause, the plaintiffs to maintain the issue on their part, called one George F. Rumsey, who being sworn testified as follows:

Int. You are a commission merchant, and a member of the firm of Rumsey, Brother & Co

Ans. I am.

Int. Were you so in the Spring of 1861.

Ans. I was.

Int. Are you acquainted with the plaintiffs and the defendant in this suit

Ans. I am.

Int. State fully the history of the purchase of flour made by you on behalf of the plaintiffs in this suit, of Calvin T. Wheeler in the Spring of 1861. State the time of that purchase: the interviews leading to it, with Mr. Wheeler, and the final consummation of it.

Ans. Mr. Hurlbut requested me to purchase some flour for them, After looking through the market, I said to him that there was a quantity of Albion Mills flour in the market, that I was well acquainted with the



brand: it had a high reputation here and New York: and I recommended him (if it could be bought at suitable figures) to buy it, Mr. Wheeler had the flour for sale - I had an interview with him, in which he named a price. I questioned him as to the quality and condition of the flour. He assured me it was the same quality of the Albion Mills flour with which we were all acquainted, and which stood so high in this market and in New York. On his assurance of that fact, and without examining any sample of the flour. I purchased 1000 barrels at \$4  $\frac{60}{100}$  per barrel. I afterwards on the same day, bought 500 barrels more at the same price. Some days after, Mr. Hurlbut informed me that he had a report from his partner in New York.

Mr. Fuller here said that the witness, could state what Mr. Hurlbut said, but not what was reported from New York.

Witness Cont<sup>d</sup> He said to me that the purchase of that brand was satisfactory, and directed further purchases to be made. On the 20<sup>th</sup> April I bought -

By Mr. Fuller.

Int. How long was it after you made the first purchase, that he directed you to make further purchases.

Ans. About five days

By Mr. Hitchcock

Int. The first purchase was on, what day

Ans. The 16<sup>th</sup> of April. I have to refer to some 58 memorandums I have, for the dates: I could not pretend



to remember them but I have memorandums on my books which enable me to give the dates, (Witness here referred to his memoranda) On the 20<sup>th</sup> of April I made a further purchase of 1500 barrels at  $\$4\frac{50}{100}$ , on the 26<sup>th</sup> of April I bought 1000 barrels.

Int. I will ask you here, whether there were any statements or assurances made by Mr. Wheeler as to the quality of this second purchase, on the 20<sup>th</sup> of April.

Ans. There was.

Int. What were they?

Ans. It would be impossible for me to remember or to give the exact words that passed between us.

Int. Well as near as you can.

Ans. I remember the fact that I was particularly careful to know from him that it was the same grade of flour, and with this assurance, I made the further purchase, and in none of the purchases did I examine, or have any one examine the flour relying entirely upon his assurance, I bought on the 26<sup>th</sup> of April 1000 barrels at  $\$5\frac{10}{100}$ , and on the 27<sup>th</sup> of April 800 barrels at  $\$5\frac{10}{100}$ .

Int. Were statements made at the time of this last purchase, on the 26<sup>th</sup> + 27<sup>th</sup> of April: if so, what were they?

Ans. That I was buying the same flour: that it was all one lot of flour.

59 Int. You say that several statements were



made to you in regard to the quality of the flour, but that it is impossible for you to remember the precise language of them. State as fully as you can what these statements were - these different statements, if he used different forms of expression in order to produce the same impression on your mind.

Ans. It is so long ago that it would be impossible for me to give the precise language, but the general tenor was to the effect that the flour was of the same quality as that which stood so high in the New York market, as well as in this market, and with which the flour dealers were so well well acquainted.

Int. What was the quality of this flour which stood so high in the market, and with which flour dealers were well acquainted: what was the character of it; what was its quality.

Ans. It was a very superior quality.

M<sup>r</sup> Fuller said the proper inquiry was whether the flour sold was equal to what it was represented to be.

The Court thought it proper to show what this Albion Mills flour was in order that the jury might be able to assess damages.

M<sup>r</sup> Hitchcock thereupon repeated the last question.

Ans. There being no standard of inspection  
60 of flour here, it would be very difficult to explain



to you what the quality of this flour was: it would be like telling how cold it was without a thermometer: it was a high standard of superior flour.

Int. How did the price you paid compare with the usual price of flour in the market.

Objected to  
Question withdrawn.

Int. Was this flour paid for by you?

Ans. It was Sir.

Int. How was it paid for.

Ans. It was paid by checks on the bank, most of it. One purchase was paid by exchange on New York, drawn by J. H. Reed & Co.

Int. And the rest by checks, you say.

Ans. Yes Sir, or currency.

By Mr. Fuller.

Int. Let him state (in order to keep up the connection, the particular purchase, and how much was paid for in exchange: When that exchange was given, and how much.

Ans. The purchase of 1500 barrels at  $\$4 \frac{80}{100}$  it was bought on the 20<sup>th</sup> of April, and paid for on the 22<sup>nd</sup> — 11 per cent off from the face of the bill.

Int. Eleven per cent from the nominal price of the flour, deducted from the bill, on exchange.

Ans. Yes Sir — premium on exchange.

By Mr. Hitchcock

61 Int. Did you have an interview with Mr. Maher



in regard to this purchase, after report had been made to you of its quality, from New York.

Ans. I did

Int. State the conversation at that interview, in substance, as near as you can recollect.

Ans. M<sup>r</sup> Wheeler expressed great surprise at the report and claimed that it could not be possible that the flour was so inferior as reported; he did not believe it. He said also that he had sold flour out of that same pile to other parties and had heard no bad report from it. He refused to pay anything towards settling the matter. It is very difficult to tell the exact conversation that took place so long ago, but the upshot of it was that he did not believe the report, and he would not pay any thing of the damages that was claimed.

Int. In these interviews with Wheeler, did you put to him any direct questions as to the quality of the flour, and take his replies.

Ans. I undoubtedly did.

Int. What were those questions?

Ans. It would be impossible for me to say positively, what were the exact questions.

Int. As near as you can, from your impression and recollection of the transaction.

Ans. I cannot say any nearer than I have  
62 already said, that he assured me the flour was



of the same quality and grade<sup>v</sup> with which we were all familiar as Albion Mills flour, and which stood so high in New York and in this market, it was on that assurance, and on that only that I bought all this flour without examination.

Int. You may state what, if any difference there is in the value, between a high quality of flour, and an inferior article, in this market, and in the New York market.

Objected to  
Objection sustained

Int. Now ask you whether there would be any difference, and if so what, between a high standard of this Albion Mills flour, as it was known in the market here, in Chicago, and in New York; and an inferior quality of the same flour - as compared, the Chicago prices with the New York prices.

Objected to

Int. Are you acquainted with the subject to which this interrogatory points.

Ans. I have a general knowledge of both markets.

Int. You may answer the question then.  
By Mr. Fuller

Int. Do you mean with respect to the different values of the different grades of this flour.

63 Ans. Generally, in regard to this flour.



By M<sup>r</sup> Hitchcock

Int. How would the difference in value between a superior and high quality of Albion Mills flour, as known in the market, and an inferior article of that flour, compare in price in the New York and Chicago markets? Would it be about the same, or greater, or less?

To which defendant objected on the ground that it was not the proper mode of proving the damages in this case, but the Court over-ruled the objection, to which decision the defendant then and there excepted.

Ans. In my opinion the relative difference between a high and a low grade of flour in New York is the same as it is in Chicago, or nearly so.

By the Court

Int. The price or the grade?

Ans. The relative difference in price between high and low grade in New York is the same as it is here or nearly so. Local demand in any market for a particular grade will affect the price of that particular grade relatively.

By M<sup>r</sup> Fuller.

Int. That is, I suppose, that there might be a particular article.

Ans. There is another element which alters the relative value somewhat, which is the fact that it costs as much to freight a barrel of poor flour



to New York as it does to freight a barrel of good flour.

By M<sup>r</sup> Hitchcock

Int. That would make the difference greater, would it not, if it costs as much to freight a poor barrel as a good one.

Ans. Figure that out yourself.

M<sup>r</sup> Hitchcock. I guess every juror can figure that out.

Int. You may state the difference, if any, in quality between the grade of Albion Mills flour which stood, as you have said, so high in the market and which was the standard by which you purchased, and which you have spoken of as a superior quality, and the best Albion Mills flour.

Objected to.

Int. You may state the difference, if any, in quality between the grade of flour which you speak of as having stood so high in the market and which was the standard by which you purchased, and the best Albion Mills flour.

To which question the defendant then and there objected on the ground that it was not proper for the plaintiffs to prove the contract in that way, by a comparison of description, but that the contract could only be proved by showing the words used by the defendant, but



the Court over-ruled the objection, to which ruling the defendant then and there excepted.

Ans. There was no difference, as I bought the best

Int. You may state the difference if any, in quality between the ~~grade~~ of Albion Mills flour which formed the standard in your contract with Wheeler, and the Albion Mills flour known in the market in the fall of 1860.

To which question the defendant then and there objected upon the ground that it was not proper for plaintiffs to prove the contract in that way by a comparison of description, but that the contract could only be proved by showing the words used by the defendant, but the Court over-ruled the objection, to which ruling the defendant then and there excepted.

Int. State the difference in quality between the ~~grade~~ of Albion Mills flour, which, as you have said furnished the ground in your contract with Wheeler, and the flour known in the market as Albion Mills flour the previous fall.

Ans. The flour I bought was to be the same quality, the same character, the same ~~grade~~.

Int. As that known the previous fall

Ans. Yes Sir. Immediately after I learned that the flour turned out badly in New York, Mr



Hurlbut and myself called upon M<sup>r</sup> Wheeler and I made a memorandum at that time which I have found since the other trial, in a memorandum book, I have it now.

Qnt. If <sup>it</sup> refreshes your recollection any, you can refer to it.

Ans. After looking at this memorandum, which I made at that time, I feel willing to testify a little more positively than I did before in regard to a guarantee. M<sup>r</sup> Wheeler said to me that this flour was up to the grade of Albion Mills flour, selling in New York in the fall previous, and was of the same grade as the Albion Mills flour which stood so high, and with which we were all well acquainted. In the interview with him, after the report came back that it was not so good as expected, he did not deny these representations, but still claimed that the flour was as good. He said in effect, that he did not believe the report as to the bad quality of the flour in New York to be correct.

Qnt. Did any one at that time offer to furnish him with samples of the flour.

Ans. Yes Sir: we had a sample with us which came from New York. He declined looking at it, as he said he had no evidence that that was the same flour.

Qnt. Was there any effort made with a



view of satisfying him on that point - any proposition made with a view of satisfying him that it was the same.

Ans. I presume there was from what I remember of the conversation, but I am not positive about that. My impression is that we offered to satisfy him, fully satisfy him, as to the fact that the flour was not what he had represented it to be.

Int. Was there any effort made to satisfy him as to the sample.

Ans. I cannot say there was, as to the sample; but there was in general terms. We offered to satisfy him, by sufficient evidence of the fact.

Int. What reply, if any, did he make to such proposition?

Ans. He declined having any thing to do with it.

Cross Examination by M<sup>r</sup> Fuller

Int. How long had you known Albion Mills flour at that time, in the Spring of 1861; or how long is it now since you can remember having any knowledge of it?

Ans. Well I cannot say, but for some time, certainly over a year.

Int. Over a year before April 1861?

Ans. Yes sir, I should think so.

Int. Had you bought or sold that flour?



Ans. I had bought it before.

Int. Of whom?

Ans. Of M<sup>r</sup> Wheeler, I think.

Int. Do you remember what quantity you had bought before?

Ans. I do not.

Int. About how much?

Ans. I could not tell, without reference to my books.

Int. Do you know whether there were two brands of Albion Mills flour in this market or had there not been before this time? Was there not another Mill which used that brand?

Ans. Not to my knowledge.

Int. You knew of no other Albion Mills flour than what was made at Davenport, Iowa?

Ans. No Sir.

Int. Was M<sup>r</sup> Wheeler the only agent of that mill here?

Ans. He was.

Int. Did you know that he was selling that flour on Commission for the owners of that mill?

Ans. I supposed so.

Int. The first purchase seems to have been of 1500 barrels on the 16<sup>th</sup> of April; did you have any interviews with M<sup>r</sup> Wheeler about that flour before the day you bought it?



Ans. It was bought on the 15<sup>th</sup>

Int. The day before?

Ans. Yes sir, 1000 barrels, and \$500 barrels; there were two separate purchases made.

Int. Delivered and paid for the 16<sup>th</sup>

Ans. Paid for on the 16<sup>th</sup>

Int. Did you have more than one interview with M<sup>r</sup> Wheeler, before you made the purchase?

Ans. I think I did.

Int. Did you see him before the 15<sup>th</sup> in regard to it.

Ans. Probably not before the 15<sup>th</sup> but I saw him before I closed the trade with him. I cannot say exactly, but I presume it was on 'change.

Int. Was there any written memorandum made at the time of the purchase?

Ans. I think not, any further than that when I went to the office, I made a memorandum.

Int. There was no memorandum signed by him and you.

Ans. I think not.

Int. The next purchase seems to have been on the 20<sup>th</sup> 1500 barrels, I think you said this morning that 5 days after you made the first purchase, you were directed by M<sup>r</sup> Hurlbut here  
70. having heard from his partner in New York to



make further purchases, did you have all the conversation which you have related on making the first purchase?

Ans. Not all of it - a good deal of it was on the purchase of the second lot - 1500 barrels.

Int. Can you remember what was said at the time of the second purchase, that was not said at the time of the first purchase.

Ans. I cannot, but I know that the conversation between Mr. Wheeler and myself at the second purchase fully assured me.

Int. Can you tell what was said at either one of those conversations, that was not said at the other?

Ans. Both conversations in regard ~~in regard~~ to both purchases, were of the same general character.

Int. There are two bills, one for 1000 barrels and one for 800 barrels of flour: there seems to be two bills of purchases on the 27<sup>th</sup> amounting to 1800 barrels. Was any thing said between you and him with regard to the quality, when you bought those 1800 barrels?

Ans. No further than that it was part of the same lot as the previous purchase.

Int. Did you go and see him personally about the last two lots, or did you send an order to him directing him to deliver them.



Ans. I think I bought them of him in his office in the afternoon,

Int. After Change hours

Ans. Yes sir, I know I did one of the lots, and I think it was one of the last lots, probably both of them.

Int. Was any thing said in regard to the quality of the flour, on the occasion of the purchase of the last two lots, which was not said on one or other of the two prior occasions?

Ans. I do not remember that there was

Int. Did you see the flour?

Ans. I did not.

Int. Did you understand where it was? Did you not know that it was at J. Wheeler's warehouse by the Rock Island Depot.

Ans. I did, I understood it to be there.

Int. Did you see the delivery of the flour?

Ans. I did not.

Int. Were the delivery orders given to you or to Reed & Co.?

Ans. I think that for a portion there was no delivery orders given at all, I paid for it on evidence that it had been delivered.

Int. Did you know that they had a large amount on hand, of this flour, at the time.

72 Ans. I did.



Int. Did you know that this was delivered out of the general mass.?

Ans. I bought it understanding that they had quite a large quantity of it on hand, they sold it to me to be delivered on the Cars: I could not say where they took it from.

Int. What railroad were they shipped by?

Ans. I think a portion by the Michigan Central, and a portion by the Michigan Southern.

Int. Had you been buying that flour during the winter of 1865-1? Had you dealt in this flour at all during the winter?

Ans. I may or I may not have bought any of that particular brand, but I was familiar with its general reputation.

Int. Give us your best recollection of your having bought or sold any of this flour within 6 months of the time of these purchases.

Ans. I did not sell any of it, certainly.

Int. Did you buy any of it?

Ans. I cannot remember any particular purchase, but I think it is very probable I did buy.

Int. Had you within 6 months of the time of buying this seen any of it examined or inspected?

Ans. I had seen it a great many times

Int. Where?



Ans. In the sample-boxes on 'Change.

Int. How long before, or how near to these purchases had you seen it?

Ans. That I cannot tell.

Int. That Spring?

Ans. I presume I did, but not to give it any particular examination.

Int. I understood you to say that Mr. Wheeler had not furnished you with any sample.

Ans. I did not say so, I said that I bought it without any examination, I did not look at a sample.

Int. Did you not send up for a sample of the flour which was kept there on his desk, and which was sent down to you?

Ans. I did not, I took a sample myself from the desk.

Int. At what time was that.

Ans. The afternoon when I bought one of the lots from him in his office - I think it was the last lot, Mr. Wheeler said to me "there is a sample of the flour" I took it in a box and set it on my own sample table. That would be about the time that I bought the 1000 or the 800 barrels.

Int. Do you recollect seeing a sample about the time you made the first purchase?

74 Ans. I did not.



Int. Is it your impression that you did not see one?

Ans. It is my impression that I did not.

Int. What have been your means of knowledge of the quality and reputation of this flour in New York Market during that winter? Had you or your firm sent any there for sale?

Ans. We had not.

Int. How then do you know what was the quality of the flour sold in the New York Market from these Mills.

Ans. From general conversations with Merchants on 'Change

Int. In Chicago?

Ans. Yes Sir.

Int. Had you any means of knowledge of its reputation for quality in New York?

Ans. I had not.

Int. Did you see this flour yourself in New York?

Ans. I did not.

Int. You never saw any of it

Ans. No Sir.

Int. Either before or since.

Ans. No Sir, I bought it wholly on its reputation,

Int. You had the same general knowledge of this flour, as you have of any other commodity



bought and sold on Change.

Ans. Yes sir.

Int. Do you remember ever seeing any of it in barrels? Did you ever see the mass of flour which Mr Wheeler had?

Ans. I never saw that pile of flour.

Int. Did you ever see any flour which you knew was that, except this?

Ans. I did.

Int. Where?

Ans. Piled on the docks for shipment.

Int. You had no occasion to examine it?

Ans. No sir.

Int. And did not.

Ans. No sir.

Int. At the time you bought this 1800 barrels, you took a sample away, Do you remember what Mr Wheeler said in regard to that sample?

Ans. I do not further than that there was a sample of the flour, and I had better take it along with me. It was after I had closed the trade and was going out, and he said that there was a sample, and I had better take it along with me.

Int. How long after the last purchase was made was it, that you and Mr <sup>Wheeler</sup> ~~Wheeler~~ had this interview with Mr Wheeler, of which



you have spoken?

Ans. Well I do not remember sir.

Int. Is your Memorandum there dated?

Ans. No sir, it is not.

Int. The Memorandum which you said you had discovered since the previous trial of this case.

Ans. No sir it is not, It was made immediately after the transaction, I remember distinctly that fact because I remember Mr. Hurlbut asking me to make a Memorandum.

Int. Are you able to fix any time within a week? Was it within the month of May or June that this interview was had?

Ans. I should think it was perhaps the last of May.

Int. Mr. Wheeler seemed to doubt at that time, that the quality of that flour was as Mr. Hurlbut represented it.

Ans. Yes sir, he seemed to doubt it.

Int. Who carried the sample to him which you and Mr. Hurlbut had there at that time?

Ans. Mr. Hurlbut.

Int. Did he receive from New York, or did you?

Ans. He did.

Int. What further did Mr. Wheeler say at that time, with regard to the quality of the



flour which he had sold from the same pile from which this was taken?

Ans. He said that he had sold some to another party; I think he said the Rock Island Railroad Company, and that he had heard no complaint from them.

Int. Did he say anything about the large amount he had sold, and how much.

Ans. My impression is that the amount he named was pretty large, but I could not say how much.

Int. I see that one of these purchases was made, and paid for in exchange, on the 20th of April, the price of the flour called \$4.80 in our currency; then there was 11 per cent. discount for exchange at that time which appears here to have been the price which the flour brought, or was paid for. It is put down here and carried out \$6408. Was that what you call the price of the flour?

Ans. \$7200 was the price of the flour.

Int. And a payment of so much for something better than currency?

Ans. The premium was so much for exchange on New York.

Int. Was that the time of our financial troubles here?

78 Ans. We called it stump tail.



Int. Did M<sup>r</sup> Wheeler say at any time, that he would warrant this flour?

Ans. I don't think that expression was used.

Int. You had known the flour for a long time, and it was known in the market. In your judgment it was a desirable quality of flour, was it not?

Ans. The flour, before my purchase, known as Albion Mills flour was always considered a desirable brand, a very nice superior article.

Int. Did you deal in the flour that was manufactured at the Albion Mills in the fall of 1860, that you know of?

Ans. I do know that I did. I only deal in flour or grain on commission, buying of orders or selling of orders, I bought a good deal of flour and I might or might not have bought that flour.

Int. What means have you of knowing the quality of the best Albion Mills flour here or in New York?

Ans. No more than as it was reputed among dealers.

Int. I mean of your own personal knowledge.

Ans. Yes sir, I had, because I had examined the flour myself.



Int. How many times?

Ans. I cannot say.

Int. Where had you examined it?

Ans. On 'Change in the boxes, but most of my knowledge was from dealers.

Int. Had you any knowledge of <sup>the quality of</sup> that flour shipped from that Mill in the fall of 1860?

Ans. Not except my own general knowledge.

Int. Do you recollect Mr. Wheeler saying that so far as he knew this flour was made by the same men, at the same Mill, and in the same way, as the other flour which he had been selling in the market?

Ans. I think he did.

Int. Was not that at the time of the first purchase, or about that time?

Ans. It was very likely to have been when we had our first conversation about it.

Int. Is it not your own recollection that he did say that so far as he knew it was made by the same men, at the same Mill and of the same quality of wheat as that which he had been selling in the market.

Ans. I think he said that, or words to that effect.

Int. Do you recollect his saying to you at that interview, or at any other, that it was the same  
80 quality of flour that he had sent to the New York



6  
market the fall before?

Ans. I asked him if the flour was of the same quality as the flour that stood so high in the New York market. He replied it was.

Int. That inquiry was then directed as to the identity of the flour: as to whether it was the same mill.

Ans. Yes sir, and to the brand, and the grade: it covered it all.

Int. Well to that inquiry did he make the reply that so far as he knew it was made by the same men, at the same mill, and of the same quality of wheat, as that which he had been selling in the market?

Ans. I think very likely he did, but I think he went a little further.

Int. Exactly, what further did he say?

Ans. What he said made me think positively that it was so. I cannot remember the exact conversation I had with Mr. Wheeler, it is a good while ago, and I can only give you my impressions, and the meaning of what he said.

Int. Did he repeat that remark to you at the time you made your second purchase?

Ans. I cannot say whether he did or not.

Int. Can you remember anything that he said at that interview with regard to the quality of the flour that was not said at the first interview



Ans. I cannot, I do not know that he did.

Int. Can you recollect now, whether he repeated to you at that time what he said at the first?

Ans. He did, and he said more when I made the second purchase in regard to the quality of the flour than he did at the time of the first purchase. I know that to be so, from the fact that Mr. Sturbut when he directed me to make a second purchase wanted me to be certain that it was right.

Int. Can you now tell what was said at the second conversation which was not said at the first?

Ans. I cannot in words.

Int. Now to go to the last purchase of 1800 barrels; was the same inquiry made by you at that time. or any inquiry which had been made before with regard to the quality of the flour?

Ans. Probably not, except that I bought the same brand and grade of flour.

Int. You then fixed the price and closed the trade without anything more being said.

Ans. I do not think there was any special conversation in regard to the quality of the last purchase, further than that I was to have the same grade of flour that I had previously bought.

82 Int. That was all that was said except



what was necessary in order to make the trade to make the bargain.

Ans. Yes sir.

Int. Then it would appear that the principal and leading conversation was had at the first and second interviews, and first and second purchases, and you are unable now to state what was said at the first conversation and not said at the second.

Ans. I know we had the same character of talk over on the second, only that we had at the same time, such an assurance as made us come to the conclusion that the flour was entirely such as it had been represented to me. I cannot state the exact questions I put to him, or the exact answers he gave, but I know they were of such a character as to satisfy me entirely.

Int. Do you recollect what was the first inquiry you made of M<sup>r</sup> Wheeler when you first proposed to buy this flour: what you asked for?

Ans. I do not, I probably asked him what flour he had on the market.

Int. Do you recollect asking him particularly if he had any of the Albion Mills flour on hand?

23 Ans. I do not.



Int. You did not go to him to ask for the Albion Mills flour particulary.

Ans. I may or I may not, I may have asked him for Albion Mills flour, or I may have asked him what flour he had in the market.

Int. Did you close the trade with him at the first interview, or did you first learn what flour he had on hand and then tell Mr Hurlbut that that was good flour to buy, before you closed any bargain?

Ans. I did

Int. You then went and purchased 1000 barrels and afterwards 500 barrels

Ans. Yes Sir.

Int. Do you recollect whether you made that trade during 'Change hours or after 'Change hours?

Ans. I think I bought 1000 barrels on 'Change, and the 500 barrels after 'Change, I think I bought 1000 on 'Change and reported the purchase to Mr Hurlbut, and by his instructions by 500 more in the afternoon.

Int. Are you aware that you made any further inquiry from Mr Wheeler in regard to this flour, to which he answered you anything different to that it was flour made at the same Mill in the same way and by the same men



as that which he had sold as albion Mills flour.

Ans. I am unable to state that I did.

Int. You remember that he said that.

Ans. I think he did.

Int. Did he not say that on the first trade.

Ans. Very likely, - I think he did.

Int. Were there several grades of this flour or was it all of one grade?

Ans. It was all of one.

Int. There was no first and second grade.

Ans. Not of that brand.

Int. Could you tell to the best of your recollection, what additional statements were made?

Ans. I asked him questions in regard to it, and asked if it was the same flour as was selling in New York readily. He said it was.

Int. Did he not say it was so far as he knew?

Ans. No sir

Int. What time did you fix the sales in New York which were so readily made?

Ans. It was general; that brand of flour had a general reputation here and in New York, and it commanded an extra price; a higher price than other Spring  
25 wheat flour did. And my inquiry was if it



was the same flour as sold so readily in New York, he replied it was, I referred to the sales of it in New York, it was the same flour made at the same mill.

Int. Did he not say so far as he knew?

Ans. I did not so understand it. I understood it to be explicitly that this flour was of the same grade as that which we knew was selling so readily.

Int. Did you or he say any thing about that flour being the same flour as was sold in New York in the fall of 1860

Ans. I asked him particularly if this was the same grade of flour as was selling so readily in New York.

Int. Did you not inquire as to the same brand?

Ans. I should that I was hardly competent to buy flour if I could use the two terms indiscriminately. If you will remember the explanation I gave, you will see the pertinence of my inquiries.

Int. You say made inquiry if that was the same flour as was selling so readily in New York, What other inquiry did you make?

Ans. I a good many particular questions in regard to the flour, in order to be satisfied



that it was the same. He knew that it was to go to New York, from the fact that he had to ship it. I bought it for that market.

Int. You are not able to state any thing more explicitly than you have already done.

Ans. I think I have stated all. The result was entirely satisfactory to me.

Int. Do you remember any more of the words he used than you have already stated?

Ans. I do not think I do.

Int. Well then, the fact was that here was a brand of flour which you knew had a high reputation: Mr. Wheeler was the agent for the Mills, and you wanted to buy that brand of flour, and that kind of flour which had such a reputation in these markets, and you made that inquiry for the purpose of ascertaining if this was that kind of flour.

Ans. Yes, sir.

Int. Did you buy any of that flour after that?

Ans. I did not.

Int. You cannot recollect now any trade or dealing which you had in that flour the winter before. Do you recollect seeing any samples of flour made at that mill, or ever seeing this flour which had such a high reputation, during the 6 months previous?



Ans. I have seen it a great many times, but I have no particular recollection of any particular day on which I saw it.

Certain orders for the delivery of flour were here shown the witness, only one of which he recognized as having been given for this flour because it had passed through the hands of witness' firm. These orders will be hereafter shown.

By M<sup>r</sup> Hitchcock

Int. The Railroad Company went to the warehouse to get the flour, on your endorsement of the order.

Ans. Yes sir.

M<sup>r</sup> Fuller here showed to the witness certain receipts (which are as follows)

Mess<sup>rs</sup> Rumsey Bro<sup>th</sup> Co

To C. J. Wheeler D.<sup>r</sup>

1500 Bbls. Albion Mills Flour

deliv<sup>d</sup> on cars @ 4<sup>60</sup> — \$6900.00

Chicago April 16/61

Rec<sup>d</sup> Payment  
C. J. Wheeler



No 7 Board of Trade Building

Chicago April 25<sup>th</sup> 1861.

Messrs Rumsey Bros & Co

Bought of C. F. Wheeler

1500 Bbls Albion Mills flour

deliv'd at M. & C. R. R. @ 48<sup>c</sup>

7,200.00

Less 11 ps<sup>t</sup> ct on \$7205 N. Y. Exch<sup>s</sup>

792.

\$6,408.00

Received payment

C. F. Wheeler

per H. C. Munch

Chicago April 27 - 1861

Mess Rumsey Bros & Co

Bought of C. F. Wheeler

800 Bbls "Albion" Mills Flour @ 5<sup>10</sup> \$4080. -

Rec'd payment

C. F. Wheeler

per Wm Bro Jr

Chicago April 27<sup>th</sup> 1861

Mess Rumsey Bros & Co

Bought of C. F. Wheeler

1000 Bbls Albion Mills Flour

Round Hoop delivered @ 5<sup>10</sup> \$5100 -

Received Payment

C. F. Wheeler

per H. C. Munch



Int. These are the bills of the flour.

Ans. They are the bills which we have paid; that (showing the following paper) is our statement of the whole transaction.

"U" Chicago April 1861  
Mess<sup>rs</sup> J. H. Reed & Co  
To Rumsey, Bros & Co D<sup>r</sup>  
1861  
April 16 paid C. T. Wheeler for 1500 Bbls Albion  
Mills flour @ 4<sup>60</sup> on cars } 6900.00  
" 22 " " 1500 Bbls Albion Mills  
Flour @ 4<sup>80</sup> 7200  
Less 11% Off for N.Y. Exch 792 6408.00  
" 27 " " 1000 Bbls Albion Flour in R.F. @ 5<sup>10</sup> 5100.00  
" 29 " " 800 " " " @ 5<sup>10</sup> 4080.00  
Brokerage @ 5<sup>c</sup> Bbl 240.00  
\$22728.00  
Charged in acf  
Rumsey Bros & Co

Int. You have been here some time as a commission dealer.

Ans. Yes sir

Int. And you know the course of trade here.

Ans. I am somewhat familiar with it.

Int. You have bought and sold yourself a large amount of grain.

90 Ans. That is the only way we trade sir.



Int. Where a transaction is made by you in business here of this kind, and bills are made out and delivered, if there is any particular warranty made or required is it not expressed particularly in notes or memoranda.

(This was objected to by Counsel for the plaintiff, and the objection was over-ruled, after the answer to the succeeding question, the objection was waived.)

Int. State if you know, and state what you do know about the course and usage of trade on that point.

Ans. I think there is no settled usage in regard to its being in writing.

Int. Sometimes it is, done and sometimes it is not.

Ans. The fact that the commodity sold has a particular mark upon it or brand, is a warranty itself without being put upon the bill.

Int. You are giving that as the law are you?

Ans. No sir, I am giving that as the custom of the trade.

Int. That is one custom.

Ans. Yes sir

Re examined by Mr. Hitchcock

Int. These bills are made out "Rumsey Bro & Co paid to C. V. Wheeler & Co" that is the customary



way in which Commission Merchants have bills made out when they buy from other parties.

Ans. I believe so, It has always been the custom with us, Our bill attached shows that we were acting for them.

By M<sup>r</sup> Fuller

Int. I think I inquired of you this forenoon whether you did not know that he was selling this flour on commission for the manufacturers at Davenport.

Ans. I did not know it as a matter of fact but I supposed that it was so.

Int. Did you know the names of the Millers there?

Ans. I knew the name was Burrows, but I knew nothing further than that.

Int. About the prices paid for this flour, the prices were reckoned at our currency rates at that time.

Ans. Yes sir.

Int. Stump tail times.  
(not answered)

By M<sup>r</sup> Hitchcock

Int. I think you stated that this sample given you by Wheeler, was after the last purchase was made.

Ans. No sir, I did not state so.

92 Int. When was that sample handed to you?



Ans. My impression was that the 1000 or the 800 I bought in his office in the afternoon, and he said that there was a sample on the table which I had better take, and I took it with me and put it on our sample table.

Int. Did you make any other purchase after that?

Ans. That depends whether it was when I purchased the 1000 or the 800, I do not know.

Int. Did you make the last purchase by the sample?

Ans. I never examined the sample.

Int. He did not give you any information as to whether he was selling on Commission,

Ans. He did not.

The defendant here moved to exclude so much of Rumsey's testimony as related to the alleged contract of warranty on the ground of Variance from the allegations in the declaration. Which motion after argument, the Court over-ruled as to the 9, 10, 11, 12, 33, 34, 35, 36, 37, 38, 39, 40, 41 and 42 Counts of the declaration, and sustained as to all the other Counts. So much of which decision of the Court as held the testimony of Rumsey competent under any of the Counts in the 93 Declaration, the defendant then and there



excepted.

The plaintiffs then offered in evidence on their part, the deposition of Isaac Cotterman, which was received with the exception of direct interrogatories Nos 6 & 7 and cross interrogatory No 4 and the answers thereto, which were excluded.

(Deposition of Isaac Cotterman)

Interrogatory 1<sup>st</sup>. What is your name, age, occupation and place of residence

Answer My name is Isaac Cotterman, I am about 33 years of age, my occupation is that of miller, I reside in Tazewell County Illinois, about 2 miles from Peoria

Interrogatory 2<sup>nd</sup> Do you know the parties, plaintiff and defendant in the Caption to these interrogatories mentioned, or either and which of them, and how long have you known them respectively?

Answer I do not know the parties personally I have no acquaintance with them or either of them

Int. 3<sup>rd</sup> Have you ever been employed in the Albion Mills in Davenport, Iowa, if yes, when, and by whom, and in what capacity?

Answer I have been employed in said Mills I was employed in said Mills in the month of November 1860, I was employed by M<sup>r</sup> Wilson the head Miller in the establishment, in the capacity of Second Miller, I worked there till May 1861.



Int. 4<sup>th</sup> State fully the condition of the machinery of the Mills, if you know, in the early part of the Spring of 1861.

Answer. I was at work in said Mills in the Spring of 1861, and know the condition the machinery in said Mills was in, in the year 1861. The machinery was in rather bad condition. The bolting apparatus was wore out. The smut mills were wore out. There were no separators to clean the wheat. The stone was in good enough condition.

Int. 5. What was the quality of the flour which the Mills were at that time manufacturing as compared with the flour manufactured and branded "Albion Mills" in the fall of 1860.

Answer. The quality of the flour did not compare at all. The flour manufactured at the Albion Mills in the Spring of 1861 was not as good as the flour made there in the fall of 1860.  
(Interrogatories and Answers Nos 6 & 7, left out)

Int. 8<sup>th</sup> Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yes, set forth the same fully and at large in your answer.

Answer No.

Isaac Cotterman



Cross Interrogatories on the part of Defendant  
Int. 1<sup>st</sup> State when (if ever) you was first  
employed in the Albion Mills at Davenport, Iowa.  
how long you worked in them, what was your  
business in them, and when did you leave them.

Answer I was first employed in said Mills  
in the month of November 1860, and worked in said  
Mills as 2<sup>nd</sup> Miller, untill about the middle  
of May 1861, when I left.

Int. 2<sup>nd</sup> State your means of knowledge  
of the condition of the Machinery in those Mills  
in the early part of 1861. and whether you are  
a Mill-wright, or a Miller, and how long have  
you worked in either Capacity, if at all?

Answer. I am a Miller by trade & know  
in what condition a mill ought to be in to do  
good work - I worked in said Mills in the  
early part of 1861. and up to that time I had  
followed the Milling business for about 15 years.

Int. 3<sup>rd</sup> State your means of knowledge  
of the quality of the flour manufactured in said  
mills in the fall of 1860. Was you then employ-  
ed in the said mills, if yea, in what capacity,  
and did you know any thing of the quality of the flour  
made there then by examining it after it was made?

Answer My Knowledge is based upon my  
experience as a Miller, and my Capacity to judge  
96 between the different qualities of flour. I was em-



- ployed in said Mills in the fall of 1860, and in the Spring of 1861, as 2<sup>nd</sup> Miller - I did know the quality of the flour made then by examination of the flour after it was made.

(Int<sup>r</sup> 4<sup>th</sup> and answer thereto are left out)

Int 5<sup>th</sup> State who first spoke to you about giving your testimony in this case, and when and where, and what was said to you about it.

Answer. M<sup>r</sup> J. M. D. Burrows once spoke to me about giving my evidence in some case about flour - and I have since been spoken to by a gentleman whose name I do not know, M<sup>r</sup> Burrows spoke to me before harvest of this year, in Davenport - he asked me if I would give in my evidence about some flour - he asked where Wilson the head miller was and I told him - The gentleman whose name I don't know first spoke to me on the subject in East Davenport some time after M<sup>r</sup> Burrows had spoken to me. He asked me about the flour - the mill, and the works in it, I told him the flour wasn't very good - He asked me if I would be willing to give my evidence - I told him I did not care, it made no difference to me, I was willing to give my evidence  
Isaac Colterman.

The plaintiffs then offered in evidence on their  
97 part the deposition of William Daniels which was



received, with the exception of direct interrogatories Nos 6, 7 & 8, and answers thereto, which were excluded. (The Deposition of William Daniels is as follows)

Interrogatory 1<sup>st</sup> What is your name, age, occupation and place of residence?

Answer to first Interrogatory

My name is William Daniels, My age is thirty eight, My occupation is that of a Miller, I reside in the City of Davenport in the State of Iowa

Interrogatory 2<sup>nd</sup> Do you know the parties plaintiffs and defendant in the Caption to these interrogatories mentioned or either and which of them and how long have you known them respectively?

Answer to 2<sup>nd</sup> Interrogatory - I know none of the parties, plaintiffs or defendant.

Interrogatory 3<sup>rd</sup> Have you ever been employed in the Albion Mills in Davenport Iowa. If yes, when, and by whom, and in what capacity?

Answer to Interrogatory third. I was employed there as Miller from May 16<sup>th</sup> 1861 to some time in September of the same year. I was employed by J. M. D. Burrows, the business was then carried on in the name of E. G. Burrows

Interrogatory 4<sup>th</sup> State fully the condition of the machinery of the Mills, if you know in the



early part of the Spring of 1861?

Answer to Interrogatory, Four.

Well the machinery was in a very bad condition generally. - the bolting cloths were worn out in the early part of the Spring, at which time, I first examined the Mills - the bolting cloths are used for separating the flour from the bran - the cleaning apparatus, the smut machines and separators were then worn out, were thrown away while I was in the mill, and new ones put in. - the mill-stones were in a very bad condition when I first went into the mill - the machinery that drives the mill stones was also in a very bad condition at that time - the main driving belt was in bad condition.

Interrogatory 5<sup>th</sup> What was the quality of the flour which the Mills were at that time manufacturing, as compared with the flour manufactured and branded Albion Mills in the fall of 1860?

Answer to Interrogatory fifth. I did not see any of the flour of that mill until April 4<sup>th</sup> 1861, I do not know anything about the quality of the flour in 1860.

(Interrogatories Nos 6, 7 & 8 with the answers, left out)  
(Signed)

Wm Daniels

The defendant then offered in evidence on



his part the testimony of William Daniels as contained in the Cross Interrogatories and answers in his deposition, which was received, with the exception of cross interrogatories Nos 4 & 5 and the answers thereto which were excluded.

(The Cross Interrogatories are as follows)  
Cross Interrogatory 1<sup>st</sup> State when (if ever) you was employed in the Albion Mills at Davenport Iowa. How long did you worked in them - what was your business in them, and when did you leave them?

Answer to cross interrogatory first. I was employed in the Albion Mills, Davenport, Iowa, from May to September 1861, I was Miller - the first month D<sup>o</sup> Miller, Robinson being first after that time till September first Miller.

Cross Interrogatory 2<sup>nd</sup> State your means of knowledge of the condition of the machinery in these mills in the early part of 1861. and whether you are a millwright or a miller, and how long have you worked in either capacity, if at all?

Answer to interrogatory second. I worked in the mill as Miller, and had charge of the machinery about three months, my business was such as required me to know the condition of the mill at all times. I am a miller  
100 I have been a miller nineteen years.



Cross Interrogatory 3. State your means of knowledge of the quality of <sup>the</sup> flour manufactured in said mills in the fall of 1860. Was you then employed in said mills, if yes, in what capacity, and did you know any thing of the quality of the flour made there then by examining it after it was made?

Answer to cross interrogatory three. I only know from reputation of the brand generally, as to the quality of the flour manufactured there in the fall of 1860, I was not then employed in said mills. I did not examine the flour after it was made.

(signed) William Daniels

The plaintiffs then offered in evidence on their part, the whole deposition of Jonathan Nyce, which was received with the exception of direct interrogatories 6 & 7 and Cross interrogatory 4 and the answers thereto, which were excluded.

(Deposition of Jonathan Nyce)

Interrogatory 1<sup>st</sup> What is your name, age, occupation, and place of residence?

Answer to first interrogatory. My name is Jonathan Nyce, my age forty years, my present occupation is grain dealer, I am a miller by trade, I reside in Davenport, Scott County, Iowa.

101 Interrogatory 2<sup>nd</sup> Do you know the



parties plaintiffs and and defendant in the caption to these interrogatories mentioned or either of them and which of them and how long have you known them respectively?

Answer to interrogatory second. I know none of the parties.

Interrogatory 3<sup>rd</sup> Have you ever been employed in the Albion Mills in Davenport Iowa? If yes, when, and by whom and in what capacity?

Answer to interrogatory third. I have been employed in the albion mills at Davenport Iowa. I was employed by J. M. D. Burrows. I was employed as second Miller in the fall of 1859 and continued there in that capacity about two years and a half from that time, I was next employed by J. M. D. Burrows in the Albion Mills in June 1861, as second Miller and continued there about three months.

Interrogatory 4<sup>th</sup> State fully the condition of the Machinery of the Mills, if you know in the early part of the Spring of 1861.

Answer to interrogatory fourth. It was all in rather a bad condition - the bolting cloths were all worn out - the cleaning apparatus was in a poor condition and was worn out - I discovered when I came back from Chicago in the Spring of 1861, two months



before I went there that the grinding was very badly done - every thing was in a very bad condition - the grinding was not done well - the stones were in very bad order. I went through the Mills at that time frequently.

Interrogatory 5<sup>th</sup> What was the quality of the flour which the Mills were at that time manufacturing as compared with the flour manufactured and branded Albion Mills in the fall of 1860?

Answer to interrogatory fifth. The Mill was in a better <sup>&</sup> condition in the fall of 1860, and the flour manufactured there was better than the flour manufactured at those Mills in the Spring of 1861. The grinding was done better and the mill was in a better state of repair in the fall of 1860, than in the following Spring

(Interrogatories Nos 6 & 7 with their answers left out)

Interrogatory 8<sup>th</sup> Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

Answer to interrogatory eighth. In the Spring of 1861 Mr Burrows ran the mills too



short of hands to do the work right. The flour ran down so about that time, the Spring of 1861, that the "Albion Brand" had to be changed, and was changed, and I think that we branded no flour while I was there in the Summer of 1861. Albion Mills, we put on the brand "Magnolia Mills" in consequence of the Albion Brand being run down.

Cross Interrogatories -

Cross Int. 1<sup>st</sup> State when (if ever) you was first employed in the Albion Mills at Devanport Iowa, how long you worked in them, what was your business in them, and when did you leave them?

Answer to cross Int. first. I was first employed in them as second Miller in the fall of 1857, I left about Christmas 1859 returned there in June 1861, and remained about three months in the same capacity -

Cross Int 2. State your means of knowledge of the condition of the machinery in the Mills in the early part of 1861, and whether you are a millwright or a miller, and how long you have worked in either capacity, if at all?

Ans. to cross Int 2. I was in the mill as second Miller in the Summer of 1861, I was frequently in the Mills in the Spring of 1861, And I had been in the mill as I have as I have before stated for some years - and was familiar with the premises, I have been a miller for twenty years



Cross Int 3. State your means of knowledge of the quality of the flour manufactured in said Mills in the fall of 1860. Was you then employed in the said mills, if yea, in what capacity, and did you know any thing of the quality of the flour made there then by examining it after it was made?

Ans. to cross int. 3. I was not employed there in the fall of 1860. I went through the Mills frequently, and from what I saw there I am of the opinion that the flour was not made so good in the Spring of 1861 as in the fall of 1860. The Mill was in better condition, and the grinding done better in the fall of 1860 than in the Spring of 1861. And this I know from personal examination. I saw the flour after it was manufactured in the fall of 1860, but did not make a close examination of it. I noticed by the grinding, the brand, ship stuff and middlings that the flour was made better in the fall of 1860 than in the Spring of 1861, and also from a casual examination of the flour itself.

(Cross Int. No. 4 and Answer left out)

Cross Int. 5. State who first spoke to you about giving your testimony in this case, and when and where, and what was said to you, if any thing, about it?

Ans. to cross int. five. Some one who was a stranger to me, I do not know his name.



I saw him at my place of business in Davenport a week or two ago - He spoke to me in reference to the mill - Asked me what condition the mill was in when I went into it in the Summer of 1861, and in the Spring previous - That was the substance of what he asked me.

Jonathan Nye

The plaintiffs then offered in evidence on their part the deposition of Joseph B. Phillips, taken in New York.

The Counsel for the defendant objected to the introduction of the New York depositions, but on the suggestion of the Court consented that the ruling upon this, as well as upon preceding objections should be waived until the testimony had all been heard.

Counsel for the defendant then stated that as to direct interrogatories 5, 6, & 7, and the answers thereto, he should object until plaintiffs showed the identity of the flour therein spoken of, with that purchased for the plaintiffs from the defendant.

Counsel for Plaintiffs stated that he expected to satisfy any fair mind that they were the same.

Defendants Counsel then objected to the reading of the 11<sup>th</sup> and 13<sup>th</sup> direct interrogatories, as irrelevant to the issue; the Court reserved a decision thereon.



The deposition was then read, including the cross Interrogatories, and the answers thereto, which the Defendant's Counsel having declined to offer, were offered and read on the part of the plaintiffs - Defendant's Counsel noting an objection to the answer to the 5<sup>th</sup> Cross Interrogatory and to all that part of the cross examination which claims to make any comparison between the flour manufactured by the Albion Mills in the Spring of 1861, and that manufactured the fall before.

(The following is the deposition of Joseph C Phillips)  
Interrogatory 1<sup>st</sup> What is your name, age, occupation, and place of residence.

Answer to the first interrogatory. Joseph C. Phillips - 39 years of age, Commission~~er~~ and produce Brokerage, and reside at 172 Daffield Street Brooklyn.

Interrogatory 2<sup>nd</sup> Do you know the parties plaintiffs and defendant in the caption to these interrogatories mentioned, or either of them, and which of them, and how long have you known them respectively.

Answer to the 2<sup>nd</sup> Interrogatory I have known Josiah A. Reed since April 1861 and Horace A. Hurlbut since June or July 1861, and know none of the other parties mentioned.

Interrogatory 3<sup>rd</sup> What was your business in the Spring of 1861, and at what place



did you carry it on.

Answer to the 3<sup>rd</sup> Interrogatory. Commission  
and produce Brokerage business at No. 47 Pearl  
St. New York.

Interrogatory 4<sup>th</sup> Were you in the Spring of that  
year employed by Josiah H. Reed of the firm of  
J. H. Reed and Co of Chicago to sell flour for and on  
account of that firm.

Answer to the 4<sup>th</sup> Interrogatory. I was.

Interrogatory 5<sup>th</sup> If in answer to the fourth  
interrogatory you say that you were so employed  
state if you received flour on their account,  
and if so, when and from what person or  
transportation Company or Corporation did  
you receive it, and how many barrels and how  
was it branded.

Answer to the fifth Interrogatory. From  
April 29<sup>th</sup> 1861 when J. H. Reed & Co flour Com-  
-menced arriving to May 16<sup>th</sup> 1861 when their last  
lot was received; The flour was received from  
the New York and Erie Railroad, Hudson River  
Railroad; Albany and Canal line of Freight  
Barges, Swifts Sure line of Freight Barges  
and Vose and Wimmer's New York Central  
Railroad line of Barges. - I received in all  
five thousand eight hundred barrels flour, of  
which forty eight hundred barrels were branded  
108 "Albion Mills" Iowa, Five hundred barrels



"Birges Mills" and Five hundred barrels "Beloit City Mills"

Interrogatory 5<sup>th</sup> If in answer to the 5<sup>th</sup> interrogatory you say that you received flour to be sold on their account, state from what part or place it came to you and by what routes, if you know?

Answer to the 5<sup>th</sup> interrogatory. From Chicago Illinois, It came to me by the New York and Erie Railroad Company, and by the New York Central Railroad Company, and lines connected with those routes.

Interrogatory 6<sup>th</sup> State whether the flour received by you on their account and branded "Albion Mills" was inspected in New York, and if so when and by whom?

Answer to the 6<sup>th</sup> interrogatory. It was inspected in New York, in April and May 1861 by members of the "Association of Flour Inspectors". It was inspected by Thomas Daugherty, William S. Reed and Christopher P. Tappan within whose district as inspectors it was landed.

Interrogatory 7<sup>th</sup> Are you acquainted with the quality of flour branded and known as the "Albion Mills" of "Iowa" and if so how long have you been acquainted with it.

Answer to the 7<sup>th</sup> interrogatory. I am acquainted with the flour branded "Albion Mills"



Iowa' and have been so for about three years.

Interrogatory 9<sup>th</sup> Do you know the quality of flour branded and known in the New York market as "Albion Mills" in the fall of 1860.

Answer to the 9<sup>th</sup> Interrogatory. I do.

Interrogatory 10<sup>th</sup> Do you know the quality of the flour received by you in the Spring of 1861 for and on account of J. H. Reed & Co and branded "Albion Mills" as set forth in answer to previous interrogatories.

Answer to the 10<sup>th</sup> interrogatory. I do.

Interrogatory 11<sup>th</sup> How did the flour received by you in the Spring of 1861 for and on account of J. H. Reed & Co compare in quality with that known in the New York Market as "Albion Mills" in the fall of 1860.

Answer to the 11<sup>th</sup> interrogatory. It was decidedly inferior in every essential respect.

Interrogatory 12<sup>th</sup> Did you know the value of flour in the New York Market in the Spring of 1861 at the time you received the flour on account of J. H. Reed & Co.

Answer to the 12<sup>th</sup> interrogatory. I did.

Interrogatory 13<sup>th</sup> If the flour known as "Albion Mills" Iowa, received and sold by you for account of J. H. Reed & Co in the Spring of 1861 was inferior to that of the same brand in the New York Market in the fall of 1860, how



much did that inferiority affect the value per barrel of that you sold for account of J. H. Reed & Co.

Answer to 13<sup>th</sup> interrogatory. The flour branded "Albion Mills Iowa" received by me from J. H. Reed & Co in the Spring (April & May) of 1861, was poor in quality, in uniform - many barrels of it were inferior by one dollar per barrel to that of the same brand arriving here in the fall of 1860. Some barrels of the Albion that I received would only inspect as "No. 2" other barrels "Superfine" and that which inspected "Extra" was of the lowest grade of "extra" known in this market. Its average inferiority as shown by sales amounted to sixty five cents per barrel. It was unfit for the purpose for which the brand had been sold viz: Bakers use, and those in the habit of buying the brand for Bakers use would not purchase that received by me. It was classed with the lowest grade of extra received in the New York market. The grade of Extra covers a wide range in price, and quality. Some Extra Westerns bring from two dollars to two dollars and fifty cents more than others.

Interrogatory 14<sup>th</sup> Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this



cause? If yea. set forth the same fully and at large  
Answer to the 14<sup>th</sup> interrogatory. I would state  
that each lot of Albion Mills flour arriving for plaintiffs  
account was examined by me in person and samples  
drawn from five, or ten or more barrels in each lot, the  
barrels are selected at random, the sample thus  
drawn is therefore an average one, and exhibits  
the true quality of that particular lot. The samples  
are then exhibited on the produce Exchange and  
the trade examine the flour by examining the sample.  
Where there is a decided ununiformity in the  
quality of different barrels in the same lot, that  
fact is mentioned at the time of examination or sale.

Attending to sampling personally, my samples  
are always correct, <sup>and fair</sup> and I have never had a lot of  
flour rejected by purchaser for differing with the  
sample it was sold by. - After purchaser <sup>the</sup> buyers  
usually compare the flour with sample and  
also see if the order of the barrels agrees with  
the sellers representations.

All of the  
Albion Mills flour that I exhibited in the Pro-  
duce Exchange, or that was sold by me in the  
Spring of 1861 (that is from April to June) was  
the Albion received by me from plaintiffs.

Cross Interrogatories and Answers  
thereto by the witness on the part of the defendant.

Cross Interrogatory 1<sup>st</sup> Have you any  
interest in the result of this suit?



Answer to 1<sup>st</sup> Cross Interrogatory. I have no interest.

Cross Interrogatory 2<sup>nd</sup> If you state that at any time plaintiffs employed you to sell flour for them, state on what terms you were so employed.

Answer to 2<sup>nd</sup> Cross interrogatory. I was employed by plaintiffs as a Broker, and sold their "Albion Mills" flour for three cents per barrel.

Cross Interrogatory 3<sup>rd</sup> What personal knowledge have you, if any, of the inspection of any flour for plaintiffs called "Albion Mills" flour, and at whose request was such inspection made, and was it before or after sale for account of plaintiffs.

Answer to the 3<sup>rd</sup> Cross interrogatory. I saw every lot of "Albion Mills" flour received from plaintiffs on its arrival at this port. I ordered it to be inspected, saw that it was inspected, and did not sell it until after it had been inspected. It being a matter of great doubt, how the flour would inspect it was not safe to sell it until its grade was determined.

Cross Interrogatory 4<sup>th</sup> State fully your means of knowledge of the quality of "Albion Mills" flour in the New York City Market in the fall of 1860, and the Spring of 1861.

Answer to the 4<sup>th</sup> Cross interrogatory. I buy a good deal of flour for export, and for the New England trade, such flour I usually



buy on a brokerage, and therefore keeps myself well informed of the grade, quality, and price of the regularly received brands in the New York Market. In the fall of 1860 I examined many lots of "Albion Mills" flour, both in the dock, and by samples exhibited on the Produce Exchange. In the Spring of 1861 from the last day of April until the 8<sup>th</sup> day of June I examined lots of Albion Mills flour every day, save Sundays.

Cross Interrogatory, 5<sup>th</sup> If you state that the flour sold by you (if any) for plaintiffs was in any degree inferior to the quality of the same brands of flour in the fall of 1860. State how many brands you personally examined or inspected of the same kind in the fall of 1860, and how many you personally examined and inspected of those sold by you for the plaintiffs.

Answer, this fully giving the dates of examination, the number of barrels at each time examined, whether done by you in person or by some one in your employ, at whose request the several examinations were made, and if any difference existed in the quality of the flour examined at different times, State that difference was, and the cause of it so far as known to you).

Answer to the 5<sup>th</sup> Cross interrogatory. I do state that the "Albion Mills" flour received in  
114 the Spring of 1861 was inferior to that received



the preceding fall. In the fall of 1860 I personally examined many samples and barrels of the Albion Mills flour, representing at least a thousand barrels probably much more. — Of the Albion Mills sold by me for plaintiffs I examined and sampled every lot as it arrived. If upon examining five or six barrels of a particular lot, the flour was found <sup>to</sup> be uniform in quality, I considered that examination sufficient and sold by the sample thus obtained. If the flour was not uniform I would look at ten or twenty barrels or until I was satisfied that my sample was correct. I examined every lot of the forty eight hundred barrels that arrived for account of plaintiffs, and should think that I personally sampled over three hundred barrels. The first lot of Albion Mills for plaintiffs account arrived here April 29<sup>th</sup> 1861. It continued to arrive in lots of from twenty to five hundred barrels until May 16<sup>th</sup>. I examined it in person because it was my business so to do, and also, that my representations to buyers regarding the order of the barrels and uniformity of quality should be correct. A difference did exist in the quality of Albion Mills received from plaintiffs at different times, and also variations of quality in same lots. The inspectors would mark some 115 barrels "Number 2" others "Superfine", but



the bulk was branded "Extra". The whole of the Albion Mills received from plaintiffs was decidedly inferior in quality to the lots of the same brand which I saw received here in the fall of 1860. In May 1861 at the time that Albion Mills received in the fall was bringing five dollars ninety cents per barrel the plaintiffs lots were selling at from five dollars fifteen cents to five dollars forty cents per barrel, averaging about five dollars twenty five cents. I should think that the flour received in the Spring of 1861, viz. Albion Mills - containing less wheat to the barrel and that wheat of a poorer quality than the flour of the same brand received in the fall of 1860. The lots received in the Spring were badly manufactured; they contained too much of the "middlings" which destroying the color rendered them unsuitable for bakers use.

Cross Interrogatory 6<sup>th</sup> State whether or not the price of flour declined, in the New York City market at, or about the time you sold the flour for plaintiffs (if you sold any) If yes, state when that decline occurred giving the prices for a few weeks prior to making sales for plaintiffs (if any) and a week or two after such sales, if any.

Answer to the 6<sup>th</sup> Cross interrogatory. The price of flour in this market in May 1861 under-



-went but little change. On the 1<sup>st</sup> of May when my sales for plaintiffs commenced "Common Western Extras" sold at from \$5.20 to \$6.45 per barrel. On the 8<sup>th</sup> of May at from \$5.20 to 6.50 per barrel. On the 15<sup>th</sup> of May at from \$5.20 to 6.50. On May 22<sup>nd</sup> at from \$5.20 to 6.45. On the 31<sup>st</sup> of May at from \$5.15 to \$6.35. Showing a decline in the month at from five to ten cents per barrel. Of the Forty eight hundred barrels of Albion Mills that I sold for plaintiffs. Forty five hundred and thirty barrels were sold in the month of May and the balance of the lot viz two hundred and seventy barrels was sold June 5<sup>th</sup>, 7<sup>th</sup> & 8<sup>th</sup>. As regards price of flour before, at the time, and after sales for plaintiffs were made. I quote for Common Western Extras, as follows. Viz:—

April 16 from \$5.25 to \$6.50 per barrel

|      |    |   |      |      |   |   |
|------|----|---|------|------|---|---|
| "    | 19 | " | 5.20 | 6.40 | " | " |
| "    | 24 | " | 5.15 | 6.40 | " | " |
| May  | 1  | " | 5.20 | 6.45 | " | " |
| "    | 8  | " | 5.20 | 6.50 | " | " |
| "    | 15 | " | 5.20 | 6.50 | " | " |
| "    | 22 | " | 5.20 | 6.45 | " | " |
| "    | 31 | " | 5.15 | 6.35 | " | " |
| June | 5  | " | 5.00 | 6.20 | " | " |
| "    | 8  | " | 4.90 | 6.20 | " | " |
| "    | 19 | " | 4.75 | 6.10 | " | " |
| "    | 26 | " | 4.40 | 5.90 | " | " |



Cross Interrogatory 7<sup>th</sup> Have you ever been or are you now a dealer in flour, and have you ever been a miller or engaged in the manufacture of flour.

Answer to the 7<sup>th</sup> Cross interrogatory. I have been for eight years and am now a dealer in flour. I have never been a miller or engaged in the manufacture of flour.

Joseph B. Phillips

The plaintiffs then offered in evidence the deposition of William T. Reed.

Defendants' Counsel objected to the 5<sup>th</sup> 6<sup>th</sup> and 7<sup>th</sup> direct interrogatories as irrelevant to any issue yet proven and shown to be on trial. The Court reserved its decision on the objection.

Defendants' Counsel having declined to offer the Cross examination. The 3<sup>rd</sup> Cross Interrogatory and Answer thereto and all the direct examination were offered and read in evidence by the plaintiff. Defendants' Counsel also noting an objection to the reading of the 3<sup>rd</sup> Cross Interrogatory & answer.  
(Deposition of William T. Reed)

Interrogatory 1<sup>st</sup>. What is your name, age, occupation and place of residence.

Answer to 1<sup>st</sup> interrogatory. William T. Reed, 31 years of age, am a flour inspector, and reside at 130 East Houston Street in New York City.



Interrogatory 2<sup>nd</sup> Do you know the parties plaintiffs and defend ant in the Caption to the interrogatories mentioned, or either and which of them and how long have you known them respectively.

Answer to the 2<sup>nd</sup> interrogatory. I don't know any of the parties to this suit.

Interrogatory 3<sup>rd</sup> What was your business in the Spring of 1851.

Answer to the 3<sup>rd</sup> interrogatory. Flour Inspector.

Interrogatory 4<sup>th</sup> Do you know the quality of flour in the New York Market in the fall of 1860, known as "Albion Mills"

Answer to the 4<sup>th</sup> interrogatory. I remember such a brand at that time.

Interrogatory 5<sup>th</sup> Did you inspect and examine lots of flour branded "Albion Mills" in the Spring of 1861 for the plaintiffs in this suit and if yea, state how many barrels you examined and inspected and whether you noticed any difference in the quality of the flour known in the New York Market in the fall of 1860 as "Albion Mills" and that inspected by you for the plaintiffs, if any such was inspected by you.

Answer to the 5<sup>th</sup> interrogatory. I did.

I cannot state how many barrels I examined, and inspected, I should think about three ~~hundred~~ <sup>hundred</sup>



I did notice a difference in the quality of the flour known in the New York Market in the fall of 1860 as "Albion Mills" and that inspected by me for the plaintiffs in the Spring of 1861, branded "Albion Mills".

Interrogatory 6<sup>th</sup> If you say that you noticed a difference in the quality, state in what that difference consisted and how it would affect the grade and brand in the Market.

Answer to 6<sup>th</sup> interrogatory. All I can state about it is, that it was not so good in quality as that I inspected in the fall of 1860.

Interrogatory 7<sup>th</sup> Do you know the value of flour in the New York Market in May 1861 and if yes, state the difference in value per barrel at that time between flour of the grade and quality of that known in the New York Market as "Albion Mills" in the fall of 1860, and that examined and inspected by you for the plaintiffs in the Spring of 1861.

Answer to the 7<sup>th</sup> interrogatory. No. I do not know the value of flour in the New York Market in May 1861, and consequently cannot answer this question.

Interrogatory 8<sup>th</sup> Do you know, or can you set forth any other matter, or thing which may be a benefit or advantage to the



parties at issue in this cause or either of them or that may be material to the subject of this your examination or the matters in question in this cause. If you, set forth the same fully, and at large in your answer.

Answer to the 8<sup>th</sup> interrogatory. I know nothing. (Cross Interrogatories left out with the exception of the following.)

Cross interrogatory 3<sup>rd</sup> If you state you inspected or examined any flour for pliffs in the Spring of 1861, and that there was a difference in the quality of it from the same brand of flour in the fall of 1860, state what that difference was, the cause of it, and in how many barrels of those thus inspected you observed such difference in quality?

Answer to the 3<sup>rd</sup> Cross interrogatory. I observed a difference in the quality of all I inspected for pliffs in the Spring of 1861 from what I inspected in 1860. It was all of an inferior quality, from that of 1860.

(Signed Jm. S. Read)

Plaintiffs then offered in evidence the deposition of Thomas Dougherty, which was read to the jury. Defendants Counsel noting an objection to the reading of the 5<sup>th</sup> direct interrogatory, and the answer thereto; the decision on such objection being reserved by the



court. Defendant having declined to offer the Cross examination, Plaintiffs Counsel offered the 3<sup>rd</sup> and 4<sup>th</sup> Cross interrogatories and answers thereto, and read them to the jury. Defendant's Counsel objecting to the reading of the answer to the 3<sup>rd</sup> Cross interrogatory.

Interrogatories propounded to the said Thomas Dougherty, a witness produced and sworn as aforesaid on the part of the said plaintiffs and his answers thereto as follows

Interrogatory 1<sup>st</sup> What is your name, age, occupation, and place of residence.

Answer to the 1<sup>st</sup> interrogatory. Thomas Dougherty, about 40 years of age. Am a Flour Inspector, and reside at 110 5<sup>th</sup> Street New York.

Interrogatory 2<sup>nd</sup> Do you know the parties plaintiffs and defendant in the Caption to the interrogatories mentioned, or either and which of them, and how long have you known them respectively.

Answer to the 2<sup>nd</sup> interrogatory. I am not personally acquainted with them.

Interrogatory 3<sup>rd</sup> What was your business in the Spring of 1861?

Answer to the 3<sup>rd</sup> interrogatory. Flour Inspector.

Interrogatory 4<sup>th</sup> Do you know the quality of flour in the New York Market in the



fall of 1860 known as "Albion Mills"

Answer to the 4<sup>th</sup> Interrogatory. I do.

Interrogatory 5<sup>th</sup> Did you inspect and examine lots of flour branded "Albion Mills" in the Spring of 1861 for the plaintiffs in this suit, and if yea, state how many barrels you examined and inspected, and whether you noticed any difference in the quality of the flour known in the New York Market in the fall of 1860 as "Albion Mills" and that inspected by you for the plaintiffs, if any such was inspected by you.

Answer to the 5<sup>th</sup> Interrogatory. I did inspect some of the Albion Mills brand for the plaintiffs in the Spring of 1861, can't say how many barrels exactly, About 2718, I did notice a difference.

Interrogatory 6<sup>th</sup> If you say that you noticed a difference in the quality, state in what that difference consisted, and how it would affect the grade and brand in the market.

Answer to the 6<sup>th</sup> Interrogatory. The flour did not run uniform, and it was of an inferior quality from that of the same brand in 1860.

Interrogatory 7<sup>th</sup> Do you know the value of flour in the New York Market in May 1861, and if yea, state the difference in value



per barrel at that time between flour of the grade and quality of that known in the New York market as "Albion Mills" in the fall of 1860 and that examined and inspected by you for the plaintiffs in the Spring of 1861.

Answer to the 4<sup>th</sup> interrogatory. I did not know any thing about the price and value of flour.

Interrogatory 8<sup>th</sup> Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause or either of them, or that may be material to the subject of this your examination or the matters in question in this cause. If yes, set forth the same fully and at large in your answer.

Answer to the 8<sup>th</sup> interrogatory. I do not

Cross Interrogatories (left out except 3<sup>rd</sup> & 4<sup>th</sup>)

Cross Interrogatory 3<sup>rd</sup> If you state you inspected or examined any flour for plaintiffs in the Spring of 1861, and that there was a difference in the quality of it from the same brand of flour in the fall of 1860, state what that difference was, the cause of it, and in how many barrels of those thus inspected you observed such difference in quality.

Answer to the 3<sup>rd</sup> Cross interrogatory. We  
124 Considered it all an inferior extra from what



17  
it was in 1860, It may have been inferior from  
an inferior wheat or negligence in milling  
Cross Interrogatory 4<sup>th</sup> Were or not  
plaintiffs the owners of the flour you inspected  
in 1861, if not who did own it, and who paid  
you for it.

Answer to the 4<sup>th</sup> Cross Interrogatory. The  
flour was consigned to J. H. Reed & Co, and I  
presume they paid for the inspection of it.  
(Signed) J. H. Dougherty.

Plaintiff then offered in evidence the deposi-  
tion of Charles L. Weeks, which was read to the  
jury, Defendants Counsel noting an objection  
to the reading of the 5<sup>th</sup> 6<sup>th</sup> and 7<sup>th</sup> direct interroga-  
tories and the answers thereto - the decision  
on such objection being reserved by the Court.

Defendant declining to offer the Cross exam-  
ination, plaintiffs offered the 3<sup>rd</sup> and 5<sup>th</sup>  
Cross interrogatories, and the answers thereto  
and read them to the jury, Defendants Counsel  
noting an objection to their being read.

(Deposition of Charles L. Weeks)

Interrogatory 1<sup>st</sup> What is your name, age,  
occupation, and place of residence.

Answer to the 1<sup>st</sup> interrogatory, Charles  
Lander Weeks, age 22 years, flour dealer,  
115 ~~45~~ Broad Street New York, and reside at  
125 31 Union Square.



Interrogatory 2<sup>nd</sup> Do you know the parties plaintiffs and defendant in the Caption in the Caption to these interrogatories mentioned or either and which of them, and how long have you known them respectively.

Answer to the 2<sup>nd</sup> interrogatory. I do not know any of the parties to this suit

Interrogatory 3<sup>rd</sup> What was your business in May 1861, and where was it carried on.

Answer to the 3<sup>rd</sup> interrogatory. Flour-dealer at 115 Broad Street.

Interrogatory 4<sup>th</sup> Do you know the quality of the flour known as "Albion Mills" in the New York Market in the fall of 1860.

Answer to the 4<sup>th</sup> interrogatory. I do.

Interrogatory 5<sup>th</sup> State if you examined any lots of flour branded "Albion Mills" and belonging to J. H. Reed & Co in the Spring of 1861, and if yes, state how such flour compared in quality with that in the market in the fall of 1860 of the same brand.

Answer to the 5<sup>th</sup> interrogatory. I examined flour exhibited to me by J. C. Phillips as I believe broker for J. H. Reed & Co in the Spring of 1861, branded "Albion Mills", I should think the quality of the flour exhibited by J. C. Phillips examined by me in 1861, branded "Albion Mills" was inferior in



quality, about 50 cents a barrel on an average from the same brand in 1860.

Interrogatory 6<sup>th</sup> Do you know the value of flour in the New York Market in May 1861, and if yes, state the difference, if any, in value per barrel, at that time between the flour examined by you for the plaintiffs, and the flour of the same Mills known in the Market in the fall of 1860.

Answer to 6<sup>th</sup> interrogatory. I did - should think the difference was about 50 cents per barrel.

Interrogatory 7<sup>th</sup> State in what the difference in quality, if any consisted.

Answer to the 7<sup>th</sup> interrogatory. The quality of the flour in 1860 was a good extra bakers flour. The flour I examined in 1861 exhibited by J. C. Phillips was inferior, and as a general thing unfit for soft bread bakers use.

Interrogatory 8<sup>th</sup> Do you know or can you set forth any other matter which may be a benefit or advantage to the parties at issue in this cause or either of them, or that may be material to this the subject of this your examination, or the matters in question in this cause? If yes set forth the same fully and at large.

127 Answer to the 8<sup>th</sup> interrogatory. I know nothing.



Cross Interrogatories of Weeks (left out except 3<sup>rd</sup> & 5<sup>th</sup>)  
Cross Interrogatory, 3<sup>rd</sup> State fully your means of knowledge of the quality of "Albion Mills" flour in the fall of 1860. Did you buy and sell it, or inspect it or both, and how much did you buy, or inspect, if any.

Answer to the 3<sup>rd</sup> Cross interrogatory. The exact quantity, I could not state, we bought and sold large quantities of Albion Mills in the fall of 1860, and January and February 1861. The flour we turned off during the time specified gave general satisfaction to our baker customers in New York and vicinity. The samples of flour exhibited by J. C. Philips in the Spring of 1861 we judged unfit to offer for sale to our customers.

Cross Interrogatory 5<sup>th</sup> If you state there was any difference in the quality of the flour inspected by you for plaintiffs in 1861 from that inspected in the fall of 1860, state precisely what that difference was, and the cause of it, if known to you.

Answer to the 5<sup>th</sup> Cross interrogatory. The difference I should think was about 50 cents a barrel. The cause I should think either an inferior quality of wheat, or negligence in grinding.  
Chas. L. Weeks

The plaintiffs then offered and read in evidence  
128 the deposition of Christopher B. Tappan, to the



reading of the 5<sup>th</sup> 6<sup>th</sup> 7<sup>th</sup> & 8<sup>th</sup> direct interrogatories & the answers thereto, in the same, the defendant's Counsel objected, as being irrelevant to the issue.

Defendant declined to offer the Cross examination, and plaintiffs offered and read Cross interrogatory No 3 and answer thereto. - Defendant's Counsel noted an objection to it, and the Court reserved its decision on the objections generally.

(The Deposition of Christopher B. Tappan.)

Interrogatory 1<sup>st</sup> What is your name, age, occupation, and place of residence?

Answer to 1<sup>st</sup> Interrogatory. Christopher P. Tappan, 70 years of age, Inspector of Flour, and reside at 404 Henry Street, South Brooklyn.

Interrogatory 2<sup>nd</sup> Do you know the parties plaintiffs, and defendant in the Caption to the interrogatories mentioned, or either, and which of them, and how long have you known them respectively.

Answer to the 2<sup>nd</sup> Interrogatory. I do not know either of the parties.

Interrogatory 3<sup>rd</sup> What was your business in the Spring of 1861.

Answer to the 3<sup>rd</sup> Interrogatory. Flour Inspector.

Interrogatory 4<sup>th</sup> Do you know the quality of flour in the New York Market in the fall of 1860 known as "Albion Mills"



Answer to the 4<sup>th</sup> interrogatory. I do.

Interrogatory 5<sup>th</sup> Did you inspect and examine lots of flour branded "Albion Mills" in the Spring of 1861, for the plaintiffs in this suit, and if yes, state how many barrels you examined and inspected, and whether you noticed any difference in the quality of flour known in the New York Market in the fall of 1860 as "Albion Mills" and that inspected by you for the plaintiffs if any such was inspected by you.

Answer to the 5<sup>th</sup> interrogatory. I did. According to our book there was 1662 barrels examined and inspected by me. I did notice a difference.

Interrogatory 6<sup>th</sup> If you say that you noticed a difference in the quality state in what that difference consisted, and how it would affect the grade and brand in the Market.

Answer to the 6<sup>th</sup> interrogatory. The flour of 1860 we considered a very good article of extra. That we inspected in May 1861 was inferior in color, and dress, I mean it was not so well bolted, It may have been owing to two causes, <sup>one</sup> the wheat may have been of an inferior quality, and the other from grinding too close, and running in too much middlings.

130 Interrogatory 7<sup>th</sup> Do you know the value



of flour in the New York market in May 1861, and if you state the difference in value per barrel at that time between flour of the grade and quality of that known in the New York Market as "Albion Mills" in the fall of 1860, and that examined and inspected by you for the plaintiffs in the Spring of 1861.

Answer to the 7<sup>th</sup> interrogatory. I am not a dealer of flour, and can't answer as to its value.

Interrogatory 8<sup>th</sup> Do you know or can you set forth, any other matter or thing, which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination or the matters in question in this cause. If you set forth the same fully and at large.

Answer to the 8<sup>th</sup> interrogatory. All I can say is that "Albion Mills" flour was considered a good article in the fall of 1860, and passed readily as extra. the flour inspected in May 1861, we had some doubts as to its being extra flour, and we came to the conclusion to pass it as an inferior extra.

Cross Interrogatories (left out except 3<sup>rd</sup>)

Cross Interrogatory 3<sup>rd</sup> If you state you inspected or examined any flour for plaintiffs in the Spring of 1861, and that there was a difference in the qual-



-ity of it, from the same brand of flour in the fall of 1860, state what that difference was, the cause of it, and in how many barrels of those thus inspected you observed such difference in quality.

Answer to the 3<sup>rd</sup> Cross Interrogatory. The entire lot was not as it had been the previous fall according to the best of my recollection, I have stated that it was of an inferior quality, made from inferior wheat, or owing to the manufacture of it in grinding it too close.

The Plaintiffs here rested. E. P. Tappan.

The Defendant then called one Chas Woodman who being sworn testified as follows:

I was working for Flint and Thompson in the fall of 1860, and the winter and spring of 1861, in their elevator, in the grain business, they stored flour also. I received from the cars all the flour which was shipped to them by the Rock Island Railroad. We stored it in <sup>three</sup> different houses. I have knowledge of flour coming in the fall of 1860, or the winter of 1860-1 from Davenport, Iowa, it was branded "The Albion Mills flour" some of it. About the latter part of October or first of November, I think they had none of that flour in store. After that the flour

132 began to arrive. Some time in November, I can-



not exactly remember the exact date. I have a memorandum made by me at that time, by which I could refresh my recollection. The witness was then requested to look at his memorandum, and having examined it, say then, if he was able to state from his own knowledge when it commenced to come in. Having done so he answered, November 19<sup>th</sup> was the first that came, they were sold out before. I could tell by counting it up about how much came in the fall and winter. I do not know now how much it was. In November alone about 500 barrels were received. The receipts during the months of November and December together were about 3600 barrels. When first received about 2500 barrels were stored in the Rock Island Elevator. The rest was stored in Flint and Thompsons Elevator, and in the packing house. I could not tell what quantity in each. I know of a change being made of that in the Rock Island Elevator. It was transferred to the packing house. I transferred it myself.

This transfer was made on January 24<sup>th</sup> 1861 300 barrels, January 25<sup>th</sup> 300; January 29<sup>th</sup> 100; January 30<sup>th</sup> 400; February 1<sup>st</sup> 200; Feb'y 7<sup>th</sup> 154; Feb'y 11<sup>th</sup> 400 Feb'y 12<sup>th</sup> 292; Feb'y 13<sup>th</sup> 378; making a total of 2524 barrels - That was of the flour received in November and December. Of the same lot of which we have been speaking.



This flour was shipped away from there in April, a portion of it on the 16<sup>th</sup> and another portion on the 22<sup>nd</sup>

[Delivery orders were shown to witness, and in answer to a question asked by Counsel he replied]

I know nothing about these: I delivered the flour on orders from the office; they put the order on a book, and I delivered it, April 16<sup>th</sup> and April 22<sup>nd</sup> 1500 barrels each date.

On the first <sup>order</sup> 1500 barrels were delivered on account of Rumsey Bros & Co, on the 16<sup>th</sup> April, to the Michigan Southern Railroad Co, I am speaking, now, of the flour that was placed in the pork house.

The next I delivered from that pork house was on the 22<sup>nd</sup> April. I delivered it to the same parties, I have a memorandum of it, made at the time. The balance of that lot was then delivered and enough from another place to make up another 1500 barrels. I delivered what remained there after delivering the first 1500 barrels; and enough from another place to make up another 1500 barrels, from some other place. That, I got off the second floor of the packing house, and I do not know when it came in. I could not tell that it was a portion of the flour received in November and 134 December, or if it was received afterwards:



it is so long since, I do not remember.

About 9800 barrels Albion Mills flour was received from the Railroad after December and up to same time in March - somewhere nearly that making in all about 14500 barrels. The date of the last receipt over that road, of that brand of flour - of the last of the 9800 barrels, as near as I have it here, was March 23<sup>rd</sup> 1861. I was there to receive all the flour that came over that road from these Mills. I did not know to whom it belonged, or to whom it was consigned. Flour came over that road from Mills, which was delivered to Flint & Thompson, other than what I have spoken of. I had the means of knowing of the flour that came over that road for them, and I received it. I remained there in March, April and May 1861, and acted in the same capacity, as receiving and delivering clerk from the Railroads. Besides the delivery of 1500 barrels on the 16<sup>th</sup> & 1500 barrels on the 22<sup>nd</sup> of April. I delivered 500 Barrels to Clark the date is not on this; the order sent from the office was not dated. April 26<sup>th</sup> 64 barrels to E. Hendrie, April 27<sup>th</sup> 1000 barrels on ap of John T. Tracey; delivered to the Michigan Southern Railroad; 1000 barrels April 29<sup>th</sup> on ap of M. G. Leonard & Co delivered to the propeller "Ontonagon".  
135 April 29<sup>th</sup> delivered to the Michigan Southern



Cars on a/c of (John T. Tracey) 2000 barrels.  
April 29<sup>th</sup> delivered to the Michigan Southern  
on a/c of Rumsey Bros & Co. 1800 barrels. I took  
this flour for the several deliveries as it came -  
from the pile - I do not know as I can tell  
at what time I made the last delivery or when  
the last of it was disposed of.

I cannot tell when the 1800 barrels which  
I delivered on the 29<sup>th</sup> April to Rumsey Bros & Co.  
came in. They were taken from the pork house.  
We received the flour, which we received in  
January, February and March in the two  
elevators, and then transferred it from there to  
the pork house. The flour from which this  
delivery was made, was received between the  
19<sup>th</sup> of November and the 23<sup>rd</sup> of March.

(On Cross Examination the witness stated)

That there were about 3000 barrels received in  
November and December. It was put when  
first taken from the cars in the Rock Island  
Elevator. There was no other flour there of  
that brand at that time. As near as I can  
get at it there were about 9800 barrels received  
from the 1<sup>st</sup> of January to the 23<sup>rd</sup> of March,  
and the receipts of this brand ceased on the  
23<sup>rd</sup> of March. I could not tell exactly where  
these 9800 barrels were put, I received them -  
136 they were transferred, a portion of them was



put in Flint and Thompsons Elevator, and then when they wanted to fill that up they put them into the packing house. In the first instance they did not go into the Rock Island Elevator - a portion of them were put in Flint and Thompsons Elevator, the rest were put in the packing house. They were received at intervals of about every day in January and February and almost every day in March. The packing house was full of flour towards the Spring. This flour received in November, and December, January and February was not all of it of the same brand; there might be a few barrels of other brands. I included in my 9800 barrels some few barrels of other brands. I could by referring to my book tell what it was - but the bulk was of this brand; within 200 barrels I think, any way. The pork-house and the packing house are one and the same building. These lots were piled up together in a mass.

I began on the 24<sup>th</sup> January to transfer these 2524 barrels from the Elevator to the packing house, and did it almost every day. At that time I had received some of the 9800 barrels, and taken to the packing house. I do not think I had transferred any to the packing house previous to the 24<sup>th</sup> of January. Some of this received in January, of the 9800 barrels, went into Flint and Thompsons Elevator, and some went into the packing house but I cannot tell how much. There may have



been several hundred barrels put into the packing house for aught I know to the contrary, much of that received in February did go there, I made the next transfer January 25<sup>th</sup>, then January 29<sup>th</sup>, and the last on the 13<sup>th</sup> of February, by that time I had it all transferred, in the mean time there had been coming in by the Rock Island Railroad, much that I had been putting in there, but it was not stored with this lot of 2524 barrels: the 2524 barrels were stored in the basement of the packing house, by itself. I delivered it to the Railroad Company myself. I transferred that 2524 barrels myself. I could not tell where the balance was stored: it is so long since that I cannot remember. I have a distinct recollection that this order in favor of Rumsey Bros. & Co. was delivered out of that lot. I can give you a reason why I remember it if you wish.

I cannot remember how many thousand barrels of flour I handled in the course of a year, without looking at my books. I cannot remember out of what lot I delivered the 1000 barrels to the propeller "Ontonagon". It did not come from the Rock Island Elevator: it might have come from the old elevator. I cannot tell where the 64 barrels came from. The 1000 barrels for M<sup>r</sup>. Tracey, delivered to the Michigan Southern, came from the second floor of the

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packing house. The other 1000 came, part of it from the second floor and part from some other place, I cannot remember where. I speak from my recollection as to the fact that these 2524 barrels were delivered in pursuance of an order from Rumsey Bros. I made no note of it at the time. I have not had my attention called to the fact that this delivery was made upon an order from Rumsey Bros. before now. I have not had my attention called to it before. There were no deliveries of other brands to any amount. There were small lots of others, such as "Prairie Mills" "Fountain Mills" "Eagle Mills" &c I do not exactly know how many barrels were there. I do not recollect to whom it was delivered. All the brands were piled separate. I remember where some of them were piled but not all.

Of this 9000 barrels 1200 came in in March about 2800 in February. This packing house is situated on the Chicago River south of 15<sup>th</sup> street. Its basement below the ground is about two feet deep. All that flour was taken out of the packing house about the 23<sup>rd</sup> of March. It was all shipped off from the 2<sup>nd</sup> and 3<sup>rd</sup> stories as early as March. The last delivery I think is the 23<sup>rd</sup> March.

Witness was then asked to look at deliveries to Tracey and others in April.



And answered: Oh Yes! I was mistaken there; I was looking at the wrong book. I am now speaking from my memorandums - Not from my recollection. I have no memorandum which enables me to state my knowledge or recollection, when it was all delivered from the packing house. The last I delivered was on the first of May 1861. There is other flour delivered from there by other men - that I do not know about except from what I see on the books. I stated that I could not tell positively where the 1800 barrels delivered on account of Rumsey Bros & Co on the 29<sup>th</sup> April, was delivered from, whether from the 2<sup>nd</sup> or 3<sup>rd</sup> floor. It was in the 2<sup>nd</sup> or 3<sup>rd</sup> floor of the pork house.

#### Direct Ex<sup>ca</sup> resumed

Flour would come from Davenport to Chicago by rail, in probably a day or a day and a half, or perhaps two days, if it came straight through. The reason, I said I could give why I remember the 2524 barrels delivered to Rumsey Bros & Co, is that the flour, where it was stored in the elevator, was covered with dust from the grain, it was dry dust, merely stood on the tops of the barrels, and I had men to brush it off when it was delivered. I recollect that circumstances occurring in connection with the delivery of this flour to these orders (orders from Rumsey Bros & Co shown 140 to witness) I have no knowledge of these orders.



Cross Ex I spoke of the orders of Rumsey Bros. Rumsey Bros. sent their orders to Flint & Thompson's office, and Flint & Thompson gave one order to deliver the flour. I had no orders from Rumsey Bros. the order to me was from Flint & Thompson to deliver to the Michigan Southern Railroad Co for account of Rumsey Bros. 1500 barrels. I never saw the order from Rumsey Bros, and I know nothing about it. I do not know that any order was ever given.

Direct Exam I did not, myself, make that memorandum (Memorandum on orders shown to witness) One of them the first 1500 is made by M<sup>r</sup> Odell, Flint & Thompson's Book keeper, and the other one was made by M<sup>r</sup> Ward. James Ward who is sitting here. I delivered this flour myself. I have been in their employ ever since.

A. L. Munch, was then called on behalf of the defendant and being sworn testified as follows: —

I was Book-keeper for M<sup>r</sup> Wheeler in the fall of 1860 and the year 1861. He was then engaged in the Commission business. He received during that winter and spring the Albion Mills flour at the Rock Island Depot and stored it with Flint & Thompson. Usually it was delivered from there to the purchasers.



It was all delivered either from the depot, the cars in which it came, or from Flint and Thompsons. He did not receive flour from these mills, at any other place than there.

(Papers handed to witness - Delivery order produced) It is my handwriting, made by me at the time so far as I know.

(Two delivery orders produced) They are written by William Stea Junr; he was a Clerk in the office having charge of the sales book.

That one was written by myself.

As to the manner of delivery of flour which had been sold by M<sup>r</sup> Wheeler, stored at the depot, in connection with these receipts - my impression is, though I don't remember particularly, that they were written and handed to Rumsey Bros.

When the flour was not stored at the depot, these orders would be delivered at Flint & Thompsons Office, and they would deliver the flour on presentation of these orders. They were drawn for the purpose that Flint & Thompson would deliver them on presentation.

Witness was here asked the question by defendants Counsel, if he knew on whose account M<sup>r</sup> Wheeler was selling Albion Mills flour.

Which question was objected to on the ground that the witness Rumsey had testified that Wheeler had not disclosed to him



who was his principal, nor did he disclose any agency in the transaction: Consequently Wheeler was himself responsible.

This objection was overruled, on the ground that it was proper to have the whole of the facts come in, and the question might be presented in instructions.

Witness then testified that M<sup>r</sup> Wheeler was selling Albion Mills flour for E. S. Burrows of Davenport, Iowa. He received a Commission of  $3\frac{1}{2}$  per cent, I believe for selling).

On Cross Examination witness stated that he was the bookkeeper for M<sup>r</sup> Wheeler. M<sup>r</sup> Wheeler had advanced to Burrows about \$3 per barrel upon the large quantity of flour received during the fall and spring, as it came in. It might have been \$3 including the freight, or \$3 and the freight. It did not include any storage during the winter. When I spoke of these orders as having been handed to the purchaser and by them presented to Flint & Thompson, and the flour being delivered, I was speaking about these particularly: not about the common way of business. I did say I did not know whether these had been given into the hands of Rumsey Bro & Co.

The delivery orders were here read in evidence, and it was agreed by the counsel for



the respective parties that the flour bought by the plaintiffs of the defendant was delivered upon those orders, as testified by the witness Woodman.

The defendant then offered in evidence and read the whole of the deposition of John M. D. Burrows and Richard B. Wilson, and the testimony of C. C. Miller as contained in the direct examination in his deposition.

(The deposition of John M. D. Burrows is as follows)  
Interrogatory First. What is your name, age, occupation, and place of residence?

Answer to First interrogatory. My name is John M. D. Burrows, age 48 years, occupation Milling and produce business, place of residence Davenport, Scott County, Iowa.

Interrogatory Second. Do you know the parties plaintiffs and defendant, in the Caption to these interrogatories mentioned, or either and which of them, and how long have you known them respectively?

Answer to second interrogatory. I know the defendant - have known him eight or nine years - was introduced to one of the plaintiffs, I think it was Mr. Josiah H. Reed about a year ago - don't know either of the others -

Interrogatory Third. State whether you have ever been employed in any capacity, about



the "Albion Mills" in Davenport, Iowa. If yea, state when you were first employed in them, how long and in what capacity?

Answer to Third Interrogatory. I have been engaged in conducting and superintending the "Albion Mills" for the last thirteen years.

Interrogatory Fourth. State whether or not you were employed in the "Albion Mills" at Davenport, Iowa, in the summer and fall of 1860, and winter of 1860 & 1861? If yea, state fully what was your occupation in these Mills during that time?

Answer to Fourth Interrogatory. I was the superintendent and had charge of the "Albion Mills" at Davenport, Iowa in the summer & fall of 1860, and winter of 1860 & 61.

Interrogatory Fifth. State if you, or either of you knew whether any of the flour made at these Mills in the time referred to, in the last interrogatory was sent or consigned to Flint & Wheeler or C. T. Wheeler, for sale at Chicago Illinois, and your means of knowledge?

Answer to Fifth Interrogatory. I shipped large amounts of the flour made at these Mills during the time referred to in the last interrogatory to Flint & Wheeler, before they dissolved and to C. T. Wheeler after their dissolution thousands 145 of barrels of it, for sale at Chicago Illinois.



Interrogatory Sixth. If you know that any flour made at these Mills and branded "Albion Mills" during that time was sent to either Flint & Wheeler or C. F. Wheeler at Chicago Illinois State whether it was sold or consigned to him or them, and if it was consigned to them or to Wheeler - for whose account was the Consignment made - and if you know, state for what purpose?

Answer to Sixth Interrogatory. The flour made at these Mills and branded "Albion Mills" during the time referred to & sent to Flint & Wheeler and C. F. Wheeler was consigned to them for account of E. G. Burrows, to be sold for the benefit of E. G. Burrows.

Interrogatory Seventh. State fully what was the quality of the flour branded "Albion Mills" which (if any) was consigned to said Wheeler or Flint & Wheeler, and whether it was or not made of good wheat and well manufactured?

Answer to Seventh Interrogatory. The quality of the flour branded "Albion Mills" and consigned to said Wheeler and Flint & Wheeler was what is called extra - the wheat was of good quality, and well manufactured.

Interrogatory Eighth. State whether or not the flour consigned to Wheeler or Flint & Wheeler at the time aforesaid, and branded "Albion Mills"



(if any) differed either in mode of manufacture or quality of wheat from which it was made from that made at the same mills the year before in the fall and winter season of 1859 & 1860.

Answer to Eighth Interrogatory. The flour consigned to Wheeler & Flint & Wheeler at the time aforesaid, and branded "Albion Mills" did not differ either in mode of manufacture or quality of wheat, from which it was made from that made at the same mills the year before in the fall and winter season of 1859 & 60.

Interrogatory Ninth. State whether the flour "Albion Mills" (if any) consigned to Wheeler or Flint & Wheeler during the fall and winter of 1860 & 1861, was or was not sent to them or him as fast as it was made at the mills?

Answer to ninth interrogatory. The flour "Albion Mills" consigned to Wheeler & Flint and Wheeler during the fall and winter of 1860 and 1861, was sent to them or him as fast as it was manufactured.

Interrogatory Tenth. State whether you or either of you know the quality of the flour made at the "Albion Mills" and sold in the New York Market in the fall of 1860, and if yes, your means of knowledge?

147. Answer to tenth interrogatory. The



quality of the flour made at the "Albion Mills" and sold in the New York Market in the fall of 1860, was called Extra - My means of knowledge, are that I saw the account of sale of the flour, and saw also the flour, before it went.

Interrogatory Eleventh.

State if you know how the flour, made at said Mills and consigned to said Wheeler or Flint & Wheeler in the fall and winter of 1860 & 1861 and branded "Albion Mills" (if any) compared in quality with the flour made in said Mills which was sold in the New York Market in the fall of 1860?

Answer to Eleventh Interrogatory.

I don't.

know of any difference - nor any reason why there should be, between the flour made at said Mills and consigned to said Wheeler and Flint & Wheeler in the fall and winter of 1860 & 1861 and branded "Albion Mills" - and the flour made in said Mills which was sold in the New York Market in the fall of 1860.

Interrogatory Twelfth.

(Do you know any other matter or things relative to the matters about which you are above interrogated, of importance, to the parties, if so state fully).

Answer to Twelfth Interrogatory.

I do not know of any thing further than I have already testified would be of importance to the parties.



by the witness on the part of the plaintiffs.

Cross Interrogatory First. What improvements were made in the Mills in the Spring of 1861? Describe them fully, and the time when they were made.?

Answer to first Cross interrogatory. There were no improvements made in the mills in the Spring of 1861.

Cross Interrogatory Second. Were new <sup>put</sup> smut machines ~~put~~ in, about that time, and how many and when?

Answer to second Cross interrogatory. There were no new smut machines put in during the Spring, there were new ones put in the Summer following - one I think in July & another in August.

Cross Interrogatory Third. Were new separators put in about that time, and how many and when?

Answer to the third Cross Interrogatory. There were no new separators put in during the Spring.

Cross Interrogatory Fourth. Were new bolting cloths and apparatus put in about that time, and if so when?

Answer to fourth Cross interrogatory. There were no new bolting cloths and apparatus put in about that time - Some of the bolting cloths were changed the following Summer, just be-



-fore harvest, which is something we do every year.

Cross Interrogatory Fifth. How many) Smut machines were used in the mill in the winter of 1860 & 61?

Answer to fifth cross interrogatory. Two Smut Machines were used in the mill in the winter of 1860 & 61.

Cross Interrogatory Sixth. Was the bolting apparatus in good order, during the winter of 1860 & 61 and the early part of the spring of 1861.

Answer to sixth cross interrogatory. The bolting apparatus was in good order during the winter of 1860 & 61 and the early part of the spring of 1861.

Cross Interrogatory Seventh. Were there any holes in it, and when was it thrown aside

Answer to Seventh cross interrogatory. There were no holes in it. It was replaced just before harvest that year, about the time, about the time that we are in the habit of renewing our bolting cloths.

Cross Interrogatory Eighth. How long had it been in use, and was it not nearly worn out?

Answer to Eighth cross interrogatory. It had been in use about a year. It was not so far worn out but that it could have been used



Several months longer, but we generally renew our cloths in the summer, while the mill is idle before the busy season commences.

Cross Interrogatory Ninth. Were new cleaners procured in the Spring of 1861?

Answer to ninth Cross interrogatory. New cleaners were not procured in the Spring of 1861.

Cross Interrogatory Tenth. Was the smut mill in use in the winter of 1860 & 61 at that time in good order?

Answer to tenth Cross interrogatory. The smut mill in use in the winter of 1860 & 61 was at that time in good order.

Cross Interrogatory Eleventh. How many bushels of wheat would it clean in a day?

Answer to eleventh <sup>Cross</sup> interrogatory. It would clean in a day about twelve hundred bushels a piece.

Cross Interrogatory Twelfth. How many bushels of wheat did you grind on an average at that time in a day?

Answer to twelfth Cross interrogatory. We ground on an average at that time about fifteen hundred bushels of wheat in a day.

Cross Interrogatory Thirteenth. How many bushels did you grind on the days that you ground the most?

151 Answer to Thirteenth Cross interrogatory



We ground about Seventeen hundred bushels on the days that we ground the most.

Cross Interrogatory Fourteenth. Were you not embarrassed at that time pecuniarily?

Answer to fourteenth cross interrogatory. Yes I was embarrassed at that time pecuniarily.

Cross Interrogatory Fifteenth. Did you not say to J. Ferguson in the City of Davenport in May 1861 "that the brand of Albion Mills had run down from improper attention, and that you wanted to raise it up again to its original standard"?

Answer to fifteenth cross interrogatory. I don't remember stating to J. Ferguson in the City of Davenport in May 1861, that the brand of Albion Mills had run down from improper attention, and that I wanted to raise it up again to its original standard. I bought a separator from him and may have stated that I wished to improve the quality of my flour, but do not now remember it.

Cross Interrogatory Sixteenth. Do you not know that your Mills were very much out of order in the Spring of 1861, and doing bad work?

Answer to sixteenth cross interrogatory. I do not know, that the Mills were very much out of order in the Spring of 1861, nor that it was doing bad work, we are in the habit of keep-



- ing our Mill in good order.

Cross Interrogatory Seventeenth "Do you not know of Complaints about the quality of the flour being made, in the winter of 1860 & 61, or in the spring following?"

Answer to Seventeenth Cross interrogatory. I do not know of there being more complaints than usual about the quality of the flour made in the winter of 1860 & 61, or the spring following, I never saw a mill in year in my life, without having some persons complain.

Cross Interrogatory Eighteenth. Did not home customers return the flour, as unsatisfactory in some instances?

Answer to Eighteenth Cross interrogatory. Home customers did not return the flour, as unsatisfactory, any more than is customary.

Cross Interrogatory Nineteenth. Was the name of the brand changed in the Spring of 1861 about the time the new machinery was put in, and if so, to what name was it changed?

Answer to nineteenth Cross interrogatory. The name of the brand was not changed in the spring of 1861, we changed a brand of a portion of it in the summer following to Magnolia Mills, and the brand of Albion Mills we still use for a portion, the Albion Mills we consider the best.

153 Cross Interrogatory Twentieth. Did not the brand



of Albion Mills have a high reputation in the Summer and fall of 1860?

Answer to twentieth Interrogatory. The brand of Albion Mills had a high reputation in the Summer and fall of 1860.

Cross Interrogatory Twenty first. Did not that reputation sink in the winter of 1860 & 61 and the Spring following?

Answer to twentyfirst Cross interrogatory. The plaintiffs to this suit found fault with the flour; but with that exception, we have had no trouble with the flour.

Cross Interrogatory Twenty second. Do you not know that middlings to some extent were run into the flour in the winter of 1860 & 61, and the following Spring?

Answer to twenty second Cross interrogatory. No more middlings were run into the flour in the winter of 1860 & 61 and Spring following, than have been before and have been since the flour was manufactured in our usual manner.

Cross Interrogatory Twenty third. Was not the wheat with which the flour was, at that time made inferior to that manufactured in the fall of 1860?

Answer to twentythird Cross interrogatory. The wheat with which the flour was at that time made was not inferior to that manufactured in



the fall of 1860?

Cross Interrogatory Twenty fourth. Was not the flour manufactured in the winter of 1860 & 61 and the following Spring inferior in quality to that manufactured in the fall of 1860?

Answer to twenty fourth Cross interrogatory.

I don't know that the flour manufactured in the winter of 1860 & 61 and the following Spring was inferior in quality to that manufactured in the fall of 1860, Nor do I know any reason why it should have been.

J. M. J. Burrows

(The Deposition of Richard B. Wilson is as follows)

Interrogatory First.

What is your name, age, occupation and place of residence,

Answer to first interrogatory. My name is Richard B. Wilson, 35 years <sup>old</sup> of age, occupation Miller, place of residence Davenport Scott County Iowa.

Interrogatory Second.

Do you know the parties plaintiffs and defendant in the Caption to these interrogatories mentioned or either <sup>or which</sup> of them, and how long have you known them respectively?

Answer to second interrogatory. I do not know the plaintiffs in the Caption to these interrogatories mentioned, I know the defendant C. T. Wheeler, have known him about eight or nine years.

155 Interrogatory Third.



State whether you have ever been employed in any capacity, about the Albion Mills in Davenport, Iowa. If yes, State when you were first employed in them how long and in what capacity?

Answer to third interrogatory I have been employed about the Albion Mills in Davenport, Iowa. I was first employed in them six years ago next July, at that time I was second miller, I was there then one year and a little over, left then to go to St. Louis & I went to the <sup>Fulton</sup> ~~Fulton~~ Mills two years ago next August and I think it was some time in November I came back to the Albion Mills - remained there until about the first of May a year ago, a part of the time I was head miller.

Interrogatory Fourth. State whether or not you were employed in the Albion Mills at Davenport, Iowa in the summer & fall of 1860 and winter of 1860 & 1861. If yes, State fully, what was your occupation in these mills during that time?

Answer to fourth interrogatory. I was employed in the "Albion Mills" at Davenport, Iowa, in the summer and fall of 1860 and winter of 1860 & 1861 as miller.

Interrogatory Fifth. State if you or either of you know, whether any of the flour made at these mills in the time referred to in the last interrogatory was sent or consigned to Flint & Wheeler or C. F. Wheeler for sale at Chicago, Illinois



and your means of knowledge.

Answer to fifth interrogatory. I don't know of my own knowledge that any of the flour made at these mills in the time last referred to was sent or consigned to Flint & Wheeler or C. J. Wheeler, for sale at Chicago, Illinois, altho. I had been told so by M<sup>r</sup> Burrows.

Interrogatory Sixth. If you know that any flour made at these mills and branded Albion Mills during that time, was sent to either Flint & Wheeler or C. J. Wheeler at Chicago, Illinois, state whether it was sold or consigned to him or them, and if it was consigned to them or to Wheeler for whose account was the consignment made, and if you know state for what purpose?

Answer to Sixth interrogatory. I don't know any thing about the matter concerning which I am interrogated in the last question, It was not a part of my business to sell or consign flour I only acted as miller.

Interrogatory Seventh. State fully what was the quality of the flour branded "Albion Mills" which (if any) was consigned to said Wheeler or Flint & Wheeler, and whether it was or not made of good wheat and well manufactured?

Answer to seventh interrogatory. The quality of the flour branded "Albion Mills" which was made at the time of the consignments to Wheeler or



Flint and Wheeler was as good as any lot made ever at the Mills, and the wheat was good and the flour was well manufactured

Interrogatory Eighth. State whether or not the flour consigned to Wheeler or Flint & Wheeler at the time aforesaid, and branded Albion Mills (if any) differed either in mode of manufacture or quality of wheat from which it was made from that made at the same Mills the year before in the fall and winter season of 1859 & 1860?

Answer to eighth interrogatory. To my knowledge there was no difference whatever between the flour consigned to Wheeler or Flint & Wheeler at the time aforesaid, either in the mode of manufacture or quality of wheat from which it was made from that made at the same Mills the year before, in the fall and winter season of 1859 & 1860, for there was no difference in the Mill or rather no change.

Interrogatory Ninth. State whether the flour "Albion Mills" (if any) consigned to Wheeler or Flint & Wheeler during the fall and winter of 1860 & 1861 was or was not sent to them or him as fast as it was made at the Mill?

Answer to ninth interrogatory. The flour branded "Albion Mills" during the fall and winter of 1860 & 1861 was sent away somewhere as fast as manufactured at the Mills, but I don't know



where or to whom it was consigned, as that was not a part of my business.

Interrogatory Tenth. State whether you or either of you knew the quality of the flour made at the "Albion Mills" and sold in the New York Market in the fall of 1860, and if yes, your means of knowledge?

Answer to Tenth interrogatory. I don't know anything about the quality of the flour made at the "Albion Mills" and sold in the New York Market in the fall of 1860, because I don't know what particular flour was sent to New York from these Mills.

Interrogatory Eleventh. State if you know how the flour made at said Mills and consigned to said Wheeler or Flint & Wheeler in the fall <sup>or winter</sup> of 1860 & 1861 and branded "Albion Mills" (if any) compared in quality with the flour made at said Mills which was sold in the New York Market in the fall of 1860?

Answer to eleventh interrogatory. So far as I know, the quality of the flour made at said Mills and consigned to said Wheeler or Flint & Wheeler in the fall and winter of 1860 & 1861 and branded "Albion Mills" was of the same quality as that made at the same Mills and sold in the New York Market in the fall of 1860.

Interrogatory Twelfth.

Do you know



any other matter or thing, relative to the matters about which you are above interrogated of importance to the parties: If so state it fully).

Answer to twelfth interrogatory. I don't know of anything else, further than I have already testified in regard to the matters concerning which I have been interrogated above of any importance to the parties.

Cross Interrogatories and answers thereto by the witness on the part of the plaintiffs.

Cross Interrogatory First. What improvements were made in the Mills in the Spring of 1861? Describe them fully and the time when they were made?

Answer to first Cross interrogatory. There were no improvements made in the Mills in the Spring of 1861 while I was there, that is before I left in the month of May 1861.

Cross Interrogatory Second. Were new Smut machines put in about that time, and how many and when?

Answer to second cross interrogatory. There were no new smut machines put in before I left.

Cross Interrogatory Third. Were new Separators put in about that time and how many and when?

Answer to third cross interrogatory. There were no new separators put in before I came



away).

Cross Interrogatory Fourth. Were new bolting cloths and apparatus put in about that time and if so when?

Answer to fourth cross interrogatory. No new bolting cloths and apparatus were put in until after I left the mills.

Cross Interrogatory Fifth. How many smut machines were used in the mill, in the winter of 1860 and 1861?

Answer to fifth cross interrogatory. Two smut machines were used in the mill in the winter of 1860 & 1861.

Cross Interrogatory Sixth. Was the bolting apparatus in good order during the winter of 1860 and 61, and the early part of the spring of 1861?

Answer to sixth cross interrogatory. Yes the bolting apparatus was in as good order in the winter of 1860 and 61, and the early part of the spring of 1861 as it generally is.

Cross Interrogatory Seventh. Were there any holes in it, and when was it thrown aside?

Answer to seventh cross interrogatory. Bolting cloths are very apt to have holes in them from the time they are first put on, I have often patched bolting cloths when they are first put on, I don't know when it was thrown aside, it was not done

161 until after I left. I will say further that we



kept the cloths always mended up. If we had not we could not make flour at all.

Cross Interrogatory Eighth. How long had it been in use, and was it not nearly worn out?

Answer to eighth cross interrogatory. I don't know how long it had been in use, when Mills run steadily day and night as M<sup>r</sup> Burrows did, the rule is to change about once a year. The bolting cloth by proper attention would have lasted some time longer.

Cross Interrogatory Ninth. Were new cleaners procured in the Spring of 1861?

Answer to the ninth cross interrogatory.

No new cleaners were procured in the Spring of 1861.

Cross Interrogatory Tenth. Was the Smut Mill in use in the winter of 1860 and 1861 at that time in good order?

Answer to tenth cross interrogatory. Yes the Smut Mill in use in the winter of 1860 and 1861, was at that time in good order.

Cross Interrogatory Eleventh. How many bushels of wheat would it clean well in a day?

Answer to Eleventh Cross interrogatory. one Smut Mill would clean about a thousand to twelve hundred bushels of wheat well, every twenty four hours.

Cross Interrogatory Twelfth. How many bushels of wheat did you grind on an average at that time



in a day?

Answer to twelfth Cross interrogatory. I presume we ground ~~we ground~~ at that time on an average from fifteen to seventeen hundred bushels of wheat in a day.

Cross Interrogatory Thirteenth. How many bushels did you grind on the days that you ground the most?

Answer to thirteenth Cross interrogatory. We did not grind over twenty hundred bushels, on the days that we ground the most, that's the outside limit of what we ever did.

Cross Interrogatory Fourteenth. Was not Burrows at that time embarrassed pecuniarily?

Answer to fourteenth Cross interrogatory. That's something that is impossible for me to know.

Cross Interrogatory Fifteenth. Do you not know of complaints about the quality of the flour being made in the winter of 1860 & 61 or the Spring following?

Answer to fifteenth Cross interrogatory. I have heard of complaints about the quality of the flour being made in the winter of 1860 & 61 and the Spring following, just the same as at other times and at other mills but no more than is customary.

Cross Interrogatory Sixteenth. Did not Burrows complain to you of the quality of the flour you was manufacturing?



Answer to Sixteenth cross interrogatory.

Yes, Burrows complained to me of the flour I was manufacturing, but no more than is usual among employers.

Cross Interrogatory Seventeenth. Did not have customers return the flour as unsatisfactory, in some instances?

Answer to Seventeenth cross interrogatory.

Sometimes home customers did return the flour as unsatisfactory, they always do so in all Mills, - there is not a Mill in the County, but they do the same thing.

Cross Interrogatory Eighteenth. Was the name of the brand changed in the Spring of 1861, about the time the new machinery was put in, and if so, to what names was it changed?

Answer to eighteenth cross interrogatory. I don't know any thing about the name of the brand being changed in the Spring of 1861. It was not changed while I was there - brands are often changed, and it would be nothing unusual if it was changed.

Cross Interrogatory Nineteenth. Did not the brand of Albion Mills have a high reputation in the Summer and fall of 1860?

Answer to nineteenth cross interrogatory.

164 I don't know any thing about the brand of



"Albion Mills" having a high reputation in the Summer and fall of 1860. I was not at the Mills in the Summer of 1860.

Cross Interrogatory Twentieth. Did not that reputation sink in the winter of 1860 & 61 and the Spring following?

Answer to twentieth cross interrogatory. I don't know any thing about that reputation sinking in the winter of 1860 & 61 and the Spring following.

Cross Interrogatory Twenty first. When did you leave the employ of Burrows?

Answer to twenty first cross interrogatory. I left the employ of Burrows about the first of May 1861.

Cross Interrogatory Twenty second.

Did you not hear Burrows complain of the quality of the flour manufactured in the winter of 1860 & 61 and the Spring following?

Answer to twenty second cross interrogatory.

Yes Sir, I did hear Burrows complain of the quality of the flour manufactured in the winter 1860 & 61 and the Spring following, but no more than is usual among millers.

Cross Interrogatory Twenty third. Did you not hear him complain of the quality of a shipment of flour to New Orleans at that time?



Answer to twenty third Cross interrogatory.

I heard him complain of a shipment of flour to New Orleans at that time.

Cross Interrogatory Twenty fourth. Do You not know that middlings, to some extent were run into the flour in the winter of 1860 & 61 and the following Spring?

Answer to twenty fourth Cross interrogatory.

Yes Sir. Middlings were run to some extent into the flour in the winter of 1860 & 1861, and the following Spring, just the same as usual, but no more than is customary.

Cross Interrogatory Twenty fifth. Was not the wheat with which the flour was at that time made, inferior to that manufactured in the fall of 1860?

Answer to twenty fifth Cross interrogatory.

The wheat so far as I know was not at all inferior to that manufactured in the fall of 1860.

Cross Interrogatory Twenty sixth. Was not the flour manufactured in the winter of 1860 & 61 and the following Spring inferior in quality to that manufactured in the fall of 1860?

Answer to Twenty sixth Cross interrogatory.

The flour manufactured at the Mills while I was there so far as I know was all the same quality, and that manufactured in the winter 166 of 1860 & 61 and the Spring following was not at



all inferior to that made in the fall of 1860  
(signed) R. B. Wilson

(The Deposition of C. C. Miller is as follows)  
Interrogatory First. What is your name,  
age, occupation and place of residence?

Answer to first interrogatory. My name  
is Charles C. Miller, age 25 years, occupation  
a miller by trade and place of residence Daven-  
port, Scott County, Iowa.

Interrogatory Second. Do you know  
the parties plaintiffs and defendant, in the  
Caption to these interrogatories mentioned, or  
either and which of them and how long have you  
known them respectively?

Answer to Second interrogatory. I do not  
know either of the parties in the Caption to these  
interrogatories mentioned.

Interrogatory Third. State whether you  
have ever been employed in any capacity  
about the "Albion Mills" in Davenport, Iowa.  
If yes, state when you were first employed in  
them, how long and in what capacity?

Answer to third interrogatory. Three years  
ago, the first of next August, I was employed  
in the "Albion Mills" in Davenport Iowa as second  
miller, at first I was there only about two months  
then I was absent until the next March, I was  
167 then employed again in the same mills as second



Miller for about thirteen (13) months, & afterwards returned to the same Mills again in June 1861, and have remained there ever since in the same capacity,

Interrogatory Fourth. State whether or not you were employed in the Albion Mills at Davenport, Iowa, in the Summer and fall of 1860, and winter of 1860 and 1861? If yes, State fully what was your occupation in these Mills during that time?

Answer to Fourth Interrogatory. I was employed in the "Albion Mills" at Davenport Iowa, in the Summer of 1860 and winter of 1860 and 1861. During all this time my occupation was that of Second Miller in said Mills.

Interrogatory Fifth. State if you or either of you know whether any of the flour made at these Mills in the time referred to in the last interrogatory was sent or consigned to Flint & Wheeler or C. J. Wheeler for sale at Chicago Illinois, and your means of knowledge?

Answer to Sixth Interrogatory. I could not say for certain that any of the flour made at these Mills in the time referred to in the last interrogatory was sent or consigned to Flint & Wheeler or C. J. Wheeler for sale at Chicago Illinois. but I think that it was, I could not say for certain, because I had nothing to do with



the shipping part  
Interrogatory Sixth. If you know that any flour made at these mills and branded "Albion Mills" during that time, was sent to either Flint & Wheeler or C. T. Wheeler at Chicago, Illinois. State whether it was sold or consigned to him or them and if it was consigned to them or to Wheeler - for whose account was the consignment made, and, if you know, state for what purpose?

Answer Sixth interrogatory. That not being a part of my business, I cannot answer the question.

Interrogatory Seventh. State fully what was the quality of the flour branded "Albion Mills" which (if any) was consigned to said Wheeler or Flint & Wheeler and whether it was or not made of good wheat, and well manufactured?

Answer to Seventh interrogatory. All the flour made at the "Albion Mills" and branded "Albion Mills" was made of good wheat and well manufactured - What particular portion was consigned to said Wheeler or Flint & Wheeler I do not know, as my part of the business was only to manufacture the flour and not to ship or consign it.

Interrogatory Eighth.

State whether



or not the flour consigned to Wheeler or Flint & Wheeler at the time aforesaid, and branded "Albion Mills" (if any) differed either in mode of manufacture or quality of wheat from which it was made - from that made at the same Mills the year before in the fall and winter season of 1859 & 1860?

Answer to eighth interrogatory. The flour consigned to Wheeler or Flint & Wheeler at the time aforesaid and branded "Albion Mills" did not differ either in mode of manufacture or quality of wheat from which it was made, from that made at the same Mills the year before in the fall and winter of 1859 and 1860.

Interrogatory Ninth. State whether the flour "Albion Mills" (if any) consigned to Wheeler or Flint & Wheeler during the fall and winter of 1860 & 1861 was or was not sent to them or him, as fast as it was made at the Mills?

Answer to ninth interrogatory. As some of the flour so branded had been previously stored I cannot say whether or not the flour consigned to Wheeler or Flint & Wheeler, branded "Albion Mills" during the fall & winter of 1860 & 1861 was sent to them as fast as it was made at the Mills.

170 Interrogatory Tenth. State whether



You or either of you know the quality of the flour made at the "Albion Mills" and sold in the New York Market in the fall of 1860, and if yes, your means of knowledge?

Answer to tenth interrogatory. The quality of the flour made at the "Albion Mills" and sold in the New York Market in the fall of 1860 was good. I know that it was good, because I manufactured the flour.

Interrogatory Eleventh. State if you know how the flour made at said Mills and consigned to said Wheeler or Flint & Wheeler in the fall and winter of 1860 & 1861 and branded "Albion Mills" (if any) compared in quality with the flour made at said Mills which was sold in the New York Market in the fall of 1860?

Answer to Eleventh interrogatory. The flour made at said Mills and consigned to said Wheeler or Flint & Wheeler in the fall of 1860 & 1861, and branded "Albion Mills" was the same in quality as the flour made at said Mills which was sold in the New York Market in the fall of 1860. We aimed at making the flour so branded of the same quality - so far as I had anything to do with it there was no difference.

175 Interrogatory Twelfth. Do you know



any other matter or things relative to the matters about which you are above interrogated of importance to the parties? If so, state it fully.

Answer to twelfth interrogatory. I know nothing further relative to the matter about which I have been above interrogated of importance to the parties.

(Cross Interrogatories (all left out))

Charles C. Miller

The witness George F. Rumsey was then called on behalf of the defendant, having been previously sworn and testified as follows:— I think I was in New York in the fall of 1860. I think I got home from there about the middle of October— I should think I was there about two weeks. I stopped there on my journey home from my trip east with my family. I do not recollect hearing any thing said about Albion Mills flour while I was there. I was not in New York at any other time in that fall. If we shipped any Albion Mills flour to New York in that fall, it was for other parties; bought on commission, as I bought for Mess<sup>rs</sup> Reed & Co. I would not be apt to remember particularly about it but I could tell by looking at my books. I think I was there in January during the winter of 1860-1, on my way to Washington; I think I was there for 3 or 4 days  
173 there. I think I did not have any thing to do



with the flour business at that time. After that I was not there till in June 1861. I was engaged during the Spring and winter of 1860-1 in shipping flour to New York, only as I bought for other parties; we only act as Commission Merchants. The general rule is that the difference in value between the different grades of flour in the different flour markets is the same. I think Montreal would be an exception. I was saying yesterday that there was a difference caused by the freight, and if you think proper, I will now explain what I mean. Suppose a barrel of <sup>good</sup> flour to cost \$2. and that you were to pay \$3 for a barrel of good flour: and that you paid \$1. for the freight of each of them; that would cause a disparity, and the difference in percentage would be only  $33\frac{1}{3}$  per cent.

As a general rule I think there is in the American Markets the same relative difference between the different grades of flour; but a local demand for a special grade of flour will make a difference. A special demand for a low grade of flour for the army might make a low grade of flour comparatively higher in price than a better grade.

I have not any means of knowing the difference between the value of that flour which was sold in New York market in the fall of 1860 as Albion Mills flour, and that which I bought of Wheeler for Reed in the Spring of 1861.



The Defendant's Counsel here said to witness, I want to call your attention, now to the interview which you and Hurlbut had with Mr. Wheeler.

Did you say anything to Mr. Wheeler at that time, about keeping back funds from Burrows, to meet any damages which might be due upon this flour. To which witness answered: I don't know that I said any thing about it, I think there was some conversation held in regard to that fact however: there was some mention made of it. I think Mr. Wheeler said if there was a difference in the flour, that Mr. Burrows was the man to go to and not him. Did not know of my own knowledge at that time and when I bought it that Burrows was the proprietor of it. I had supposed that to be the fact, that Mr. Wheeler had advanced upon it, and that Mr. Burrows was running the mill.

Defendants Counsel then asked witness the following question: - Now do you recollect any thing of this kind being said: that you asked Wheeler, if he could not keep back the funds in his hands, due to Burrows, so as to enable Reed & Co. to secure themselves, if they needed it in any way.

This question was objected to by the plaintiff on the ground that they sought to make the contract invalid, by Rumsey's own declarations and those of Wheeler, a month afterwards.



But the Court over-ruled this objection on the ground that the conversation was introduced in evidence by the Plaintiff yesterday and the defendant was entitled to call for the whole of it.

The witness then answered: There was something to that effect said; but whether by myself, or by M<sup>r</sup>. Hurlbut, or by M<sup>r</sup>. Reed, or by M<sup>r</sup>. Wheeler himself, I cannot say. I remember that M<sup>r</sup>. Hurlbut said to me that he was very desirous of settling this matter up at once.

I am now speaking of what passed then, when we were all together. I do not know that I can relate it at all, but it was to the effect that M<sup>r</sup>. Hurlbut was very desirous of settling up the claim, and was willing to take much less than the actual loss due to him on the transaction. I was also very desirous of having it settled, and I may have suggested that if he had any funds of Burrows in his hands, he had better keep them in his own hands for safety. I believe that in my testimony, I have given to you, as far as that conversation is concerned, all there was of it, or about so. It may have been repeated in various ways, but that is the gist of it. I cannot tell, because I never saw it, what was the difference in April 1861 in value, in the Chicago Market, between the flour which I bought of Wheeler and that which was sold in New York, the fall before.



As a general rule, I think the same difference is made in each market between the same grades of flour. but there are exceptional cases as I stated before. I should think that the general rule held at that time with regard to this flour.  
Cross exam.

Under the general rule which I have made the same relative difference in value also holds good from month to month, and from day to day, or about the same in the same market.

I stated that these receipts were given upon payment of the purchase money, after I was satisfied by Mr. Wheeler that the delivery had been made in each instance.

Re - Direct Exam.

I now remember that I bought it all to be delivered on board.

This was all the evidence in the case.

The Court then gave to the jury the following instructions for the plaintiffs:

1. If the jury shall believe from the evidence that Wheeler made an absolute statement or affirmation respecting the quality of the flour substantially as alleged in the declaration with the view of assuring Rumsey of the truth of the fact asserted, and inducing him to make the purchase and which was



so received, and relied on by him, acting, as agent of the plaintiffs, then such statements or affirmations establish the contract of warranty.

2 If the jury shall believe from the evidence that there was a contract of warranty between the parties and that it was broken, then the measure of damages is the difference between the actual value of the flour and the value that it would have possessed if it had conformed to the warranty at the time and place of the sale.

3 If the jury shall believe from the evidence that a contract of warranty was made substantially as alleged in the declaration, by Wheeler with Rumsey, and that Wheeler did not disclose that he was acting for another and not for himself, and that Rumsey did not know that Wheeler was acting as an agent in that transaction and deal with him as such, then Wheeler is personally liable on such contract, if broken, notwithstanding the fact that he was a Commission merchant, and known as such to Rumsey.

5 It is not enough to relieve Wheeler from personal liability on his contract of warranty (if such was made) that Rumsey knew that he was usually employed, in buying and selling for others as a Commission merchant.

To the giving of which the defendant then  
177 and there excepted.



The Court then and there gave to the jury  
the following instructions for the defendant: —

Superior Court of Chicago

J. H. Reed & Co.

v.

C. T. Wheeler

Defendants Instructions

The jury are instructed, that unless they believe from the evidence, that the defendant, with the intention of thereby warranting the quality of the flour sold by him to the plaintiffs, represented it to be in quality equal to flour known as Albion Mills flour in the New York Market in the fall of "1860." or "that it was of the same quality as the Albion Mills flour previously known in the "Market" — and that plaintiffs purchased it, relying upon said representations as a warranty of the quality of the flour, they will find for the defendant.

The jury are further instructed that if they believe from the evidence that defendant did not warrant the 1800 barrels of flour sold by him to plaintiffs on the 27<sup>th</sup> of April 1861, and if they further believe from the evidence that the flour inspected by Phillips and the other persons whose depositions have been read in evidence, was the flour bought by plaintiffs of the defendant, then the plaintiffs are bound to prove that some of the flour inspected was not part of the 1800 barrels above spoken of. and



unless they have proved this, the jury will find for the defendant.

If the jury believe from the evidence that defendant was acting as the agent or Commissioner Merchant of the proprietors of the Albion Mills, in selling the flour to the plaintiffs, and that this fact was, at the time of the purchases known to the plaintiffs, or their agent, Rumsey, they will find for the defendant, unless they further believe from the evidence, that the defendant intended to bind himself personally, instead of his principal, and this was then known to the plaintiffs or their agent.

The jury <sup>are</sup> instructed, that while it is not necessary the word "Warranty" shall be used in order to make a warranty of the quality of the article sold, yet to make any affirmation or representation of the quality of the article sold, amount to a warranty on the part of the seller it must appear to have been <sup>made</sup> at the time of the sale, with the intention of thereby warranting the quality of the article, and not a mere expression of the sellers opinion of its quality.

The Court then refused to give the jury the following instructions asked by the defendant:-

The jury are instructed that the evidence offered by the plaintiffs fails to support any of the Special Counts in the declaration, and they will



find for the defendant because of the variance between the proof and the plaintiffs allegations.

The jury are instructed that there is no proof of any warranty of the 1800 barrels of flour sold by defendant to plaintiffs on the 27<sup>th</sup> of April 1861, and as to those the jury will find for the defendant.

Unless the Plaintiffs have proved that the flour inspected in New York by the persons whose depositions have been read in evidence was the flour bought by them of the defendant on the 16<sup>th</sup> and 23<sup>rd</sup> of April 1861, they will find for the defendant on that ground.

To which refusal of the Court the defendant then and there excepted.

The jury then returned a verdict for the plaintiffs for the sum of Twentyfour hundred dollars.

The defendant then moved for a new trial, which motion the Court over-ruled, and rendered judgment on the verdict for the plaintiffs. - to which decision of the Court the defendant then and there excepted.

Inasmuch as the said several exceptions to the said rulings and decisions of the Court do not appear of record, the defendant prays that this his bill of exceptions, may be signed and sealed, which is done.

Joseph E. Barry Seal  
Judge of Superior Court of Chicago



State of Illinois }  
County of Cook } ss.

I Thomas B. Carter Clerk  
of the Superior Court of Chicago, within and for  
the County and State of aforesaid, do hereby  
Certify, the above and foregoing to be a true  
perfect and complete manuscript of all the  
papers on file in my office, together with all  
the orders and judgments made, and entered of  
record in said Court. (except the original  
declaration), in a certain cause lately pending  
in said Court, on the Common Law side thereof  
wherein Josiah H. Reed, Horace R. Sturtevant  
and Sylvester J. Bliss were plaintiffs and  
Calvin B. Wheeler was defendant.

In Witness Whereof I have hereunto  
set my hand, and affixed the seal  
of said Court at the City of Chicago  
in said County, this second day  
of April A.D. 1864.  
Thos. B. Carter

clerk





## Errors Assigned.

- 1 The Court erred in overruling defendants' motion to exclude the testimony of Rumsey from the consideration of the jury, on the ground of variance between it, and the allegations in the declaration.
- 2 The Court erred in admitting improper evidence to be given to the jury for the plaintiffs, against objection and exception by defendant.
- 3 The Court erred in giving improper instructions to the jury for the plaintiffs.
- 4 The Court erred in refusing proper instructions to the jury asked by the defendant.
- 5 The Court erred in overruling defendants' motion for a new trial.
- 6 The verdict was against the evidence.
- 7 The Court erred in rendering judgment for the plaintiffs when by law it should have been for the defendant.

Samuel M. Case & Fuller  
For appellants

April 16<sup>th</sup> 1864

Filed in case  
Gallup & Hitchcock  
For appellees



Calum<sup>3</sup> Thomas  
J. Redchal  
Recd.

Feb. 21, 1864.  
Hiland  
Clerk.

Recd. \$40.55.

Per J. B. Carleton  
Clerk



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# SUPREME COURT OF ILLINOIS.

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

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JOSIAH H. REED,  
HORACE A. HURLBUT, AND  
SYLVESTER S. BLISS,

v.

CALVIN T. WHEELER.

---

}  
Appeal from the Superior Court of  
Chicago.

## ABSTRACT OF RECORD.

This was an action of assumpsit, for breach of an alleged warranty of a lot of flour, sold by defendant to the plaintiff, at Chicago, in April, 1860.

The amended **Declaration**, on which the suit was tried, contained many counts.

9        **Ninth Count** sets out a sale, April 20, 1861, of 1,500 barrels Albion Mills flour, for \$7,200, represented to be "of a quality equal to flour  
" known as Albion Mills flour in the New York market in the Fall of  
" the year 1860."

10-11    **Tenth Count** sets out a sale, April 26, 1861, of 1,000 barrels Albion Mills flour, for \$5,100, represented to be then "of a quality equal  
" to flour known as Albion Mills flour in the New York market, in the  
" Fall of the year 1860."



11-12 **Eleventh Count** sets out a promise, April 20, 1861, by defendant, in consideration of \$7,200, to deliver to plaintiffs 1,500 barrels of Albion Mills flour, "of a quality equal to flour known as Albion Mills flour, in the New York market in the Fall of 1860," and payment by plaintiffs to defendant.

13 **Twelfth Count** sets out a promise, April 26, 1861, by defendant, in consideration of \$5,100, to deliver to plaintiffs 1000 barrels of Albion Mills flour, "of a quality equal to flour known as Albion Mills flour, in the New York market, in the Fall of the year 1860," and payment by plaintiffs to defendant.

14 **Thirteenth Count** sets out agreement, April 16th, 1861, that in consideration that plaintiffs would buy of defendant 1,500 barrels Albion Mills flour, for \$6,900, to be paid by plaintiffs, defendant promised plaintiffs that "said flour was then equal to the best Albion flour," and payment by plaintiffs to defendant.

15 **Fourteenth Count** sets out agreement, April 20, 1861, that in consideration that plaintiffs would buy of defendant 1,500 barrels of Albion Mills flour, for \$6,408, to be paid by the plaintiffs, defendant promised plaintiffs that "said flour was then equal to the best Albion flour," and payment by plaintiffs to defendant.

16 **Fifteenth Count** sets out agreement, April 20, 1861, that in consideration that plaintiffs would buy of defendant 1,500 barrels of Albion Mills flour, for the sum of \$7,200, defendant promised plaintiffs that the said flour was "then equal to the best Albion flour," and avers purchase and payment for same by plaintiffs to defendant.

17 **Sixteenth Count** sets out agreement, April 26, 1861, that in consideration that plaintiffs would buy of defendant 1,000 barrels of Albion Mills flour, for \$5,100, to be paid by plaintiffs, defendant promised plaintiffs "that the said flour was then equal to the best Albion flour," and payment by plaintiffs to defendant.

19 **Seventeenth Count** sets out agreement, April 27, 1861, that in

*Flour "up to the  
grade" is equal  
to saying, of a quality  
equal to that  
known as the  
"best" in the  
N. Y. market  
instead of "known"*



consideration that plaintiffs would buy of defendant 800 barrels of Albion Mills flour, for \$4,080, to be paid by plaintiffs, defendant promised plaintiffs that the said flour was "then equal to the best Albion flour," and payment by plaintiffs to defendant.

20       **Eighteenth Count** sets out agreement, April 16, 1861, that in consideration that plaintiffs would pay defendant \$6,900, defendant promised plaintiffs to deliver to them 1,500 barrels of Albion Mills flour, "equal to the best Albion flour," and payment by plaintiffs to defendant.

21       **Nineteenth Count** sets out agreement, April 20, 1861, that in consideration that plaintiffs would pay defendant \$6,408, defendant promised plaintiffs to deliver to plaintiffs 1,500 barrels of Albion Mills flour, "equal to the best Albion flour," and payment by plaintiffs to defendant.

22       **Twentieth Count** sets out agreement, April 20, 1861, that in consideration that plaintiffs would pay defendant \$7,200, the defendant promised plaintiffs to deliver to them 1,500 barrels of Albion Mills flour, "equal to the best Albion flour," and payment by plaintiffs to defendant.

23       **Twenty-first Count** sets out agreement, April 26th, 1861, that in consideration that plaintiffs would pay defendant \$5,100, defendant promised plaintiffs to deliver them 1,000 bbls. Albion Mills flour, "equal to the best Albion flour," and payment by plaintiffs to defendant.

**Twenty-second Count** sets out agreement, April 27th, 1861, that in consideration that plaintiffs would pay to defendant \$4,080, defendant promised plaintiffs to deliver to them 800 barrels of Albion Mills flour, "equal to the best Albion flour," and payment by plaintiffs to defendant.

24       **Twenty-third Count** sets out agreement, April 16th, 1861, that in consideration that plaintiffs would buy of defendant 1,500 barrels of Albion Mills flour, for \$6,900, to be therefor paid by plaintiffs, "that said flour was then in every respect equal to the Albion flour shipped



"from the same mill the previous Fall," and payment by plaintiffs to defendant.

25       **Twenty-fourth Count** sets out agreement, April 20th, 1861, that in consideration that plaintiffs would buy of defendant 1,500 barrels of Albion Mills flour, for \$6,408, to be therefor paid by plaintiffs, defendant promised plaintiffs "that the said flour was then in every respect equal to the Albion flour shipped from the same mill the previous Fall," and payment by plaintiffs to defendant.

27       **Twenty-fifth Count** sets out agreement, April 20th, 1861, that in consideration that plaintiffs would buy of defendant, 1,500 barrels of Albion Mills flour, for \$7,200, to be therefor paid by plaintiffs, defendant promised plaintiffs "that the said flour was then in every respect equal to the Albion flour shipped from the same mill the previous Fall," and payment by plaintiffs to defendant.

28       **Twenty-sixth Count** sets out agreement, April 26, 1861, that in consideration that plaintiffs would buy of defendant, 1,000 barrels of Albion Mills flour, for \$5,100, to be paid by plaintiffs, defendant promised plaintiffs that "said flour was then in every respect equal to the Albion flour shipped from the same mill the previous Fall"; and avers purchase of "and payment for same" by plaintiffs to defendant.

29       **Twenty-seventh Count** sets out agreement, April 27, 1861, that in consideration that plaintiffs would buy of defendant, 800 barrels Albion Mills flour, for \$4,080, to be paid by plaintiffs, defendant promised plaintiffs, "that the said flour was then in every respect equal to the Albion flour shipped from the same mill the previous Fall"; and avers purchase of "and payment for same" by plaintiffs to defendant.

30       **Twenty-eighth Count** sets out agreement, April 16th, 1861, that in consideration that plaintiffs would pay defendant \$6,900, defendant promised plaintiffs to deliver to them 1,500 bbls. Albion Mills flour, "in every respect equal to the Albion flour shipped from the same mill the previous Fall"; and avers payment by plaintiffs to defendant.



- 31        **Twenty-ninth Count** sets out agreement, April 20th, 1861, that in consideration that plaintiffs would pay defendant \$6,408, defendant promised plaintiffs to deliver to them 1,500 bbls. Albion Mills flour, "in every respect equal to the Albion flour shipped from the same mill the previous Fall"; and avers payment by plaintiffs to defendant.
- 32        **Thirtieth Count** sets out agreement, April 20, 1861, that in consideration that plaintiffs would pay defendant \$7,200, defendant promised plaintiffs to deliver to them 1,500 bbls. Albion Mills flour, "in every respect equal to the Albion flour shipped from the same mill the previous Fall"; and avers payment by plaintiffs to defendant.
- 33        **Thirty-First Count** sets out agreement, April 26, 1861, that in consideration that plaintiffs would pay defendant \$5,100, defendant promised plaintiffs to deliver to them 1,000 bbls. Albion Mills flour, "in every respect equal to the Albion flour shipped from the same mill the previous Fall"; and avers payment by plaintiffs to defendant.
- 34        **Thirty-second Count** sets out agreement, April 27, 1861, that in consideration that plaintiffs would pay defendant \$4,080, defendant promised plaintiffs to deliver to them 800 bbls. Albion Mills flour, "in every respect equal to the Albion flour shipped from the same mill the previous Fall"; and avers payment by plaintiffs to defendant.
- 35        **Thirty-third Count** sets out agreement, April 16, 1861, that in consideration that the plaintiffs would buy of defendant 1,500 bbls. Albion Mills flour, for \$6,900, defendant promised plaintiffs that said flour "was then of the same quality as the Albion Mills flour previously known in the market"; and avers purchase of, and payment for same, by plaintiffs to defendant.
- 36        **Thirty-fourth Count** sets out agreement April 20, 1861, that in consideration that plaintiffs would buy of defendant 1500 bbls. Albion Mills flour, for \$6,408, defendant promised plaintiffs that said flour "was then of the same quality as the Albion Mills flour previously known in the market," and avers purchase of, and payment for same, by plaintiffs to defendant.



- 38        **Thirty-fifth Count** sets out agreement, April 20, 1861, that in consideration that plaintiffs would buy of defendant 1500 bbls. Albion Mills flour, for \$7,200, defendant promised plaintiffs that said flour " was " then of the same quality as the Albion Mills flour previously known in " the market," and avers purchase of, and payment for same, by plaintiffs to defendant.
- 39        **Thirty-Sixth Count** sets out agreement, April 26, 1861, that in consideration that plaintiffs would buy of defendant 1000 bbls. Albion Mills flour, for \$5,100, defendant promised plaintiffs that said flour " was " then of the same quality as the Albion Mills flour previously known in " the market," and avers purchase of, and payment for same, by plaintiffs to defendant.
- 40        **Thirty-seventh Count** sets out agreement, April 27, 1861, that in consideration that plaintiffs would buy of defendant 800 bbls. Albion Mills flour, for \$4,080, defendant promised plaintiffs that said flour " was " then of the same quality as the Albion Mills flour previously known in " the market," and avers purchase of, and payment for same, by plaintiffs to defendant.
- 41        **Thirty-Eighth Count** sets out agreement, April 16, 1861, that in consideration that plaintiffs would pay defendant \$6,900, defendant promised plaintiffs to deliver to them 1500 bbls. of Albion Mills flour " of " the same quality as the Albion Mills flour previously known in the " market," and avers payment by plaintiffs to defendant.
- 42        **Thirty-ninth Count** sets out agreement, April 20, 1861, that in consideration that plaintiffs would pay defendant \$6,408, defendant would deliver to them 1500 bbls. Albion Mills flour " of the same quality " as the Albion Mills flour previously known in the market," and avers payment by plaintiffs to defendant.
- 43        **Fortieth Count** sets out agreement, April 20, 1861, that in consideration that plaintiffs would pay defendants \$7,200, defendant promised plaintiffs to deliver to them 1,500 barrels Albion Mills flour, " of " the same quality as the Albion Mills flour previously known in the " market," and avers payment by plaintiffs to defendant.



45        **Forty-first Count** sets out agreement, April 26, 1861, that in consideration that plaintiffs would pay defendant \$5,100, defendant promised plaintiffs to deliver to them 1,000 barrels Albion Mills flour, "of the same quality as the Albion Mills flour previously known in the market," and avers payment by plaintiffs to defendant.

46        **Forty-second Count** sets out agreement, April 27, 1861, that in consideration that plaintiffs would pay defendant \$4,080, defendant promised plaintiffs to deliver to them 800 barrels Albion Mills flour, "of the same quality as the Albion Mills flour previously known in the market," and avers payment by plaintiffs to defendant.

**Breach :** That the flour delivered by defendant to plaintiffs was not such as it was represented to be.

**Plea :** General issue.

51        **Trial** by jury ; verdict for the plaintiffs—\$2,400.

52        Motion for new trial by defendant, for reasons set out on page 52 of Record.

53        Motion overruled and judgment for plaintiffs, and appeal prayed and  
54        allowed.

55        **Appeal Bond.**

57        **Bill of Exceptions.**

      On the trial, plaintiffs called—

**George F. Rumsey,**

      Who testified: That he was a commission merchant, a member of firm of Rumsey, Brother & Co., in Spring of 1861, and was acquainted with plaintiffs and defendant in this suit. That Mr. Hurlbut (one of the plaintiffs) requested him to purchase some flour for them. Witness told