

13557

No. \_\_\_\_\_

# Supreme Court of Illinois


Hossack.

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vs.

Caton.

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71641  7

STATE OF ILLINOIS,  
SUPREME COURT,  
Third Grand Division.

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No. 297.

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1860

Hosack  
75  
Cuban

1859



# STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION.

APRIL TERM, 1860.

297. JOHN HOSSACK }  
vs. JOHN D. CATON. } *Appeal.*

## POINTS AND AUTHORITIES FOR APPELLEE.

The demurrer to the declaration was properly overruled.

1. There was a specific averment of performance on the part of plaintiff below, of all the covenants by him to be performed *antecedent* to the breach by defendant below. These were all the *dependent* covenants entered into by plaintiff below, and specific averments of performance are only necessary as to dependent covenants.

2 Gilm. 427.  
3 Scam. 234.  
4 Wend. 549.  
1 Chitty Pl. 356.  
1 Salk. 171.  
1 Peters, 455.  
*Harrison vs. Taylor*, 3 A. K. Marshall, 168.  
1 Bay, 237 and 162.  
13 Georgia, 210.  
6 Bin. 24.  
4 Wash. C. C. R. 714.  
4 Day, 313.  
1 Chitty Pl. 325 and 368.

2. Appellants, in their first point, urge that the declaration did not allege that plaintiff below had conveyed the trust property to whomsoever the owners should direct, &c. The Court will observe that these were not conditions precedent upon which the payment of the money by defendants below depended; and, therefore, needed not to be averred especially.

The general averment of performance contained in the declaration was sufficient. See cases above cited. Also,

25 Vermont, 707.  
15 Ala. 824.

3. The 2d point made in appellant's brief is, that the declaration was bad for uncertainty, and numerous cases are cited which only show that certainty is required in pleadings, which I am perfectly willing to admit, but insist that *this* declaration is not liable to that objection. It sets out the contract in full, and states specifically the breaches upon which a recovery is brought.

Abstract pages 1, 2 and 3.

4. The third point made by appellants is, that defendant below had forfeited, and was a stranger to the contract, and sets out the clause of forfeiture.

The Court will observe that by this clause he only forfeits *his interest in the trust property*, but he is not thereby released from the payments as they accrued. For ought that appears, he may have realized a large amount of profits from this property while his interest lasted and before he had paid anything, and this clause was evidently inserted to guard against the withdrawal of any of the covenantees just when the payments became due.

He is only declared to be a stranger to the contract so far as an interest in the property is concerned, while he is still held for the payments to be made by the plaintiff below.

This was necessary to protect the plaintiff below, who was about to and did assume a heavy responsibility for the benefit of defendant and others, and needed to be protected by forfeitures on the part of plaintiff and the others, that should be strong enough to insure their compliance with their covenants. The defendant below could not take advantage of his own forfeiture in any case, but is bound by the original covenants. The forfeiture was inserted for the benefit of plaintiff, and he alone could take advantage of it.

Lapse of the time and non-performance would not avoid the contract until Caton should have declared the forfeiture.

*Mason vs. Caldwell*, 5 Gilm. 196.  
*Chrisman vs. Miller*, 21 Ill. 227.

5. There is no bill of exceptions to show that the finding of the jury was wrong.

No exception was taken to the finding, and no motion for a new trial was made.

Therefore, the 4th point of appellant is not well taken.

6. The amount of damages assessed by the jury was proper. The declaration averred that certain amounts of money had been paid by plaintiff for defendant, which defendant had contracted to refund and had failed to do. The judgment was for the amounts with interest.

7. In next case there is no bill of exceptions preserving any instruction or exception.

GLOVER, COOK & CAMPBELL.

*For Appellee.*



Horrocks

<sup>U</sup>  
Caton

Points for app<sup>r</sup>

296 + 297



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GLOVER, COOK & CAMPBELL,  
For Appellee.



Hossack

Caton

Points for apples

296 & 297



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GLOVER, COOK & CAMPBELL,  
For Appellee.



179-180  
Horsack

v

Craton  
Points for App<sup>22</sup>  
296 + 297-



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GLOVER, COOK & CAMPBELL,  
For Appellee.



Horsack

5

Caton

296 + 297

Points for app 22



STATE OF ILLINOIS, SUPREME COURT,  
THIRD GRAND DIVISION.  
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GLOVER, COOK & CAMPBELL,  
For Appellee.



Horsack }  
Catron } 297.

Points for app<sup>ts</sup>

296 + 297.



STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION.

APRIL TERM, 1860.

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vs. JOHN D. CATON. } Appeal.

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GLOVER, COOK & CAMPBELL,  
For Appellee.



Horsack  
Caton  
Points for appn

296 & 297



STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION,

APRIL TERM, 1860.

JOHN HOSSACK,

*vs.*

JOHN D. CATON.

} *Appeal.*

POINTS AND AUTHORITIES OF APPELLANT.

THE demurrer to declaration ought to have been sustained, because :

1st. The general averment of performance on part of plaintiff is not sufficient, under the covenant, to make a conveyance of the trust property to whomsoever the owners should direct, and the covenant to make calls for assessments, there being no specific averments of performance of the above on the part of Caton.

*Byrne vs. McNulty*, 2 Gil. 427,

2d. The declaration is bad for uncertainty.

1 Chitty Pl. 233, 234.

Stephens Pl. 152.

*Murphy vs. Summervell*, 2 Gil. 360

Gould Pl. 175, Sec. 12, 13.

Gould Pl. 181, Sec. 25-6.

3d. Raymond having forfeited, he was a stranger to the contract, as per the clause, reading :

"And in case any of the parties of the second part shall fail to make said payments promptly at the time or times appointed, he shall forfeit, and does hereby abandon, relinquish, all right and interest both legal and equitable of, in, and to said property, and shall be *as much a stranger thereto as if he had not been a party hereto*," and no cause of action existed against him.

4th. The finding of the jury was not warranted by, but was clearly against the evidence.

5th. The appellee was only entitled to nominal damages.

O. C. GRAY,

*For Appellant.*



297-180  
John Nassae R  
vs  
J. L. Catons

Points of  
Appellants

Filed May 1, 1860  
L. Deland  
Clerk



STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION,

APRIL TERM, 1860.

JOHN HOSSACK,  
vs.  
JOHN D. CATON.

} Appeal.

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297-180  
John Hosack

vs

J. D. Catron

Points of  
Appellant

Filed May 1, 1860

A. Deland

clerk



STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION,

APRIL TERM, 1860.

JOHN HOSSACK,

*vs.*

JOHN D. CATON.

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THE demurrer to declaration ought to have been sustained, because :

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*For Appellant.*



297-180  
John Hossack  
vs

J. L. Catow  
Points of  
Appellaut-

Filed May 1, 1860  
L. L. Catow  
clerk



STATE OF ILLINOIS, SUPREME COURT,  
THIRD GRAND DIVISION,  
APRIL TERM, 1860.

JOHN HOSSACK,  
vs.  
JOHN D. CATON. } *Appeal.*

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*For Appellant.*



297  
John Hossack

vs

J. D. Catron

Points of  
Appelland

Filed May 1, 1860

L. Selmon  
Clerk



STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION.

APRIL TERM, 1860.

JOHN HOSSACK Appellant,  
*vs.*  
JOHN D. CATON, Appellee.

} *Appeal from La Salle Co.*  
Circuit Court.

ABSTRACT OF RECORD.

*Page of Rec.*  
2 SUMMONS issued on the 30th day of May, A. D. 1859, in usual form, and regularly returned.

2 to 13 Declaration in substance as follows :

John D. Caton, plaintiff in this suit, by Glover & Cook, his attorneys, complains of John Hossack, defendant, summoned, &c., of a plea of covenant broken, for that whereas heretofore, to wit, on the 20th day of October, A. D. 1857, at Ottawa, to wit, in the county of La Salle, a certain Articles of Agreement were then and there made and entered into by and between the said plaintiff, of the one part, and the said defendant, of the other part, under their hands and seals, which said articles of agreement were and are in substance as follows :

ARTICLES OF AGREEMENT, made and entered into this 20th day of October, 1858, by and between John D. Caton, party of the first part, and J. Dean Caton, John Hossack and others, parties of the second part,

WITNESSETH : That the said party of the first part shall purchase, at the assignees' sale, the Ottawa Starch Factory and its fixtures and appurtenances, in trust for himself and the said parties of the second part, in the proportion that the stock in the Ottawa Starch Company which each now holds and owns bears to the whole amount of paid up stock, which is held and owned by all of the parties hereto specified, as follows ; that is to say, the said John D. Caton hold one hundred shares of said stock, and said John Hossack twelve and one-half shares, (and other persons hold shares of said stock ; ) and such trust is hereby expressly declared in the proportion and in favor of the parties aforesaid, and the said parties of the second part do severally and respectively, each for himself, hereby agree to and with the the said party of the first part, to pay upon the execution of these presents, ten (10) per cent. on the amount of said stock held by him towards his proportion of the purchase money of said property, and afterwards to pay his proportion of the purchase money according to his proportion of interest in said trust estate, at the times respectively when, by the terms of said sale, said trustee shall be required to pay for said purchase ; and in case any of said parties of the second part shall fail to make said payments promptly, at the time or times appointed, he shall forfeit, and does hereby abandon, relinquish all right and interest, both legal and equitable, of, in, and to said property, and shall be as much a stranger thereto as if he had not been party hereto, and the interest thus forfeited and abandoned shall go to the other parties hereto in the proportion of the interest which each one hold in the remainder of said property ; and each one shall immediately, on the call of the party of the first part, pay to the said party of the first part his proportion as



aforesaid of the payment which the defaulting party had agreed to but failed to pay. A failure to meet this last named call shall forfeit only the interest on which this call is made, and the interest thus forfeited shall go to the other parties hereto in the same, who will pay all the calls made upon them under this agreement in the same ratio and upon the same principle as before stated. Said party of the first part shall, in the first instance bid for said property the sum of forty-five thousand dollars, and if there shall be any higher bids for said property, he shall run the same up to such sum as he shall be instructed to do by a committee to be appointed by the parties hereto for that purpose, if need be to secure the purchase. After said property shall be purchased as aforesaid, the owners thereof shall, if such a charter shall be procured, be incorporated by an act of the legislature of Illinois; said charter to be approved and adopted by a majority in interest of the equitable owners of said property, and the said trustee shall execute said trust by conveying said property to said corporation, or said party of the first part shall execute said trust by conveying said property to such party or parties as shall be appointed and directed by a majority in interest of the equitable owners of said property. Until said corporation shall be created and said conveyance made to it, or until said property shall be conveyed to other party or parties in pursuance of the appointment of a majority in interest of said owners as above provided, the affairs of this concern shall be managed by three managers, who shall be chosen by a majority in interest of the parties hereto or their assigns, who shall appoint one of their number as the acting manager of the affairs of the said concern. And whatever funds the said managers shall require to carry on the business of said concern shall be contributed by each of the parties hereto or their assigns, in the proportions of interest held by each. A call for said funds shall be made by said managers at a meeting of said owners called by them by leaving a written or printed notice thereof at the Post Office in Ottawa, addressed to each party at his usual place of residence if known, and if not, addressed to him at Ottawa, at least twenty days before said call shall be payable, and in case any party shall fail to make payment of said call or calls at the time or times thus appointed, then the interest of the party thus in default shall be forfeited and the same is hereby abandoned to the other parties who will pay these calls, the same and upon the principle as is hereinbefore provided in case of non-payment of instalments for the purchase money of said property. Subscriptions to this contract shall be closed at five of the clock the afternoon of the twentieth (20th) day of October, 1858.

In witness whereof the parties have hereunto in duplicate, interchangeably set their hands and seals, the day and year aforesaid.

Signed,      One Hundred      J. D. CATON,      [SEAL.]  
                  Twelve and one-half Shares      JOHN HOSSACK, [SEAL.]  
                  and thirty others,

As by said articles of agreement now here brought into Court, and reference being thereto had, will more fully and at large appear, and the said plaintiff avers that he did, in pursuance of said articles of agreement, on the 20th day of October, A. D. 1858, purchase at the assignee's sale at the Ottawa Starch Factory and its fixtures and appurtenances, for Forty five Thousand Dollars upon the terms hereinafter expressed, in trust for himself and the said parties of the second part in said articles of agreement mentioned. And the plaintiff further avers that he hath well and truly kept, performed and fulfilled all and singular the covenants



*Page of Rec.* and agreements in the said articles of agreement mentioned on his part and behalf to be done and performed. And the plaintiff further avers that by the terms of said purchase the said plaintiff was to and did pay for said Ottawa Starch Factory and its fixtures and and appurtenances, the sum of Eleven Thousand Two Hundred and Fifty Dollars upon the said day of said purchase, and the sum of Sixteen Thousand Eight Hundred and Seventy-five Dollars three months after the day of said purchase, and the sum of Sixteen Thousand Eight Hundred and Seventy-five dollars six months after said day of purchase, which said times have long since elapsed; and the plaintiff further avers that the proportion which said defendant was by the terms of said agreement, and by said sale required to pay to said plaintiff was and is the sum of Five Hundred and Fifty-nine dollars and thirty-seven cents, of which said sum, the sum of One Hundred and Twenty-five dollars was due and payable on the day of the execution of said agreement. Nine dollars and thirty-seven cents was due and payable on the 20th day of October, A. D. 1858; the sum of Two Hundred dollars became and was due and payable on the 25th day of January, A. D. 1859; and the sum of Two Hundred and Twenty-five dollars became and was due and payable on the 25th day of April, A. D. 1859; and the plaintiff avers that said defendant has never paid to said plaintiff the said sum of Nine dollars and thirty seven cents aforesaid, nor the said sum of Two Hundred dollars, nor the said said sum of Two Hundred and Twenty-five dollars, the same then and there being said defendant's proportion of the purchase money, and that defendant, though requested, refused and neglected to pay, and still refuses, &c.

Rules to plead.

Defendant files a general demurrer.

Court overrules demurrer.

Defendant abides by his demurrer, and judgment entered on same.

Assessment of damages by jury.

Motion by defendant to set aside inquest and motion overruled.

Judgment on inquest and appeal taken.

Instruction asked for by defendant and refused by the Court.

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*Assignment of Errors.*

The said appellant by O. C. Gray his Attorney, assigns for error in said Record, the following:

- 1st. The Court erred in overruling defendant's demurrer to plaintiff's declaration.
- 2d. Also in refusing defendant's instruction.
- 3d. In overruling motion of defendant below to set aside the inquest.

O. C. GRAY,  
Attorney's for Appellant.



297 - 180

John Hossack

vs

J. D. Eaton

Abstract & Assignment  
of Error

Filed Apr 30. 1860

L. Delano

Clerk



STATE OF ILLINOIS, SUPREME COURT,  
THIRD GRAND DIVISION,  
APRIL TERM, 1860.

JOHN HOSSACK Appellant,  
vs.  
JOHN D. CATON, Appellee.      } *Appeal from La Salle Co.  
Circuit Court.*

ABSTRACT OF RECORD.

*Page of Rec.* SUMMONS issued on the 30th day of May, A. D. 1859, in usual form, and  
2 regularly returned.

2 to 13 Declaration in substance as follows :

John D. Caton, plaintiff in this suit, by Glover & Cook, his attorneys, complains of John Hossack, defendant, summoned, &c., of a plea of covenant broken, for that whereas heretofore, to wit, on the 20th day of October, A. D. 1857, at Ottawa, to wit, in the county of La Salle, a certain Articles of Agreement were then and there made and entered into by and between the said plaintiff, of the one part, and the said defendant, of the other part, under their hands and seals, which said articles of agreement were and are in substance as follows :

ARTICLES OF AGREEMENT, made and entered into this 20th day of October, 1858, by and between John D. Caton, party of the first part, and J. Dean Caton, John Hossack and others, parties of the second part,

WITNESSETH : That the said party of the first part shall purchase, at the assignees' sale, the Ottawa Starch Factory and its fixtures and appurtenances, in trust for himself and the said parties of the second part, in the proportion that the stock in the Ottawa Starch Company which each now holds and owns bears to the whole amount of paid up stock, which is held and owned by all of the parties hereto specified, as follows ; that is to say, the said John D. Caton hold one hundred shares of said stock, and said John Hossack twelve and one-half shares, (and other persons hold shares of said stock ;) and such trust is hereby expressly declared in the proportion and in favor of the parties aforesaid, and the said parties of the second part do severally and respectively, each for himself, hereby agree to and with the the said party of the first part, to pay upon the execution of these presents, ten (10) per cent. on the amount of said stock held by him towards his proportion of the purchase money of said property, and afterwards to pay his proportion of the purchase money according to his proportion of interest in said trust estate, at the times respectively when, by the terms of said sale, said trustee shall be required to pay for said purchase ; and in case any of said parties of the second part shall fail to make said payments promptly, at the time or times appointed, he shall forfeit, and does hereby abandon, relinquish all right and interest, both legal and equitable, of, in, and to said property, and shall be as much a stranger thereto as if he had not been party hereto, and the interest thus forfeited and abandoned shall go to the other parties hereto in the proportion of the interest which each one hold in the remainder of said property ; and each one shall immediately, on the call of the party of the first part, pay to the said party of the first part his proportion as



aforesaid of the payment which the defaulting party had agreed to but failed to pay. A failure to meet this last named call shall forfeit only the interest on which this call is made, and the interest thus forfeited shall go to the other parties hereto in the same, who will pay all the calls made upon them under this agreement in the same ratio and upon the same principle as before stated. Said party of the first part shall, in the first instance bid for said property the sum of forty-five thousand dollars, and if there shall be any higher bids for said property, he shall run the same up to such sum as he shall be instructed to do by a committee to be appointed by the parties hereto for that purpose, if need be to secure the purchase. After said property shall be purchased as aforesaid, the owners thereof shall, if such a charter shall be procured, be incorporated by an act of the legislature of Illinois; said charter to be approved and adopted by a majority in interest of the equitable owners of said property, and the said trustee shall execute said trust by conveying said property to said corporation, or said party of the first part shall execute said trust by conveying said property to such party or parties as shall be appointed and directed by a majority in interest of the equitable owners of said property. Until said corporation shall be created and said conveyance made to it, or until said property shall be conveyed to other party or parties in pursuance of the appointment of a majority in interest of said owners as above provided, the affairs of this concern shall be managed by three managers, who shall be chosen by a majority in interest of the parties hereto or their assigns, who shall appoint one of their number as the acting manager of the affairs of the said concern. And whatever funds the said managers shall require to carry on the business of said concern shall be contributed by each of the parties hereto, or their assigns, in the proportions of interest held by each. A call for said funds shall be made by said managers at a meeting of said owners called by them by leaving a written or printed notice thereof at the Post Office in Ottawa, addressed to each party at his usual place of residence if known, and if not, addressed to him at Ottawa, at least twenty days before said call shall be payable, and in case any party shall fail to make payment of said call or calls at the time or times thus appointed, then the interest of the party thus in default shall be forfeited and the same is hereby abandoned to the other parties who will pay these calls, the same and upon the principle as is hereinbefore provided in case of non-payment of instalments for the purchase money of said property. Subscriptions to this contract shall be closed at five of the clock the afternoon of the twentieth (20th) day of October, 1858.

In witness whereof the parties have hereunto in duplicate, interchangeably set their hands and seals, the day and year aforesaid.

Signed, One Hundred J. D. CATON, [SEAL.]  
Twelve and one-half Shares JOHN HOSSACK, [SEAL.]  
and thirty others,

As by said articles of agreement now here brought into Court, and reference being thereto had, will more fully and at large appear, and the said plaintiff avers that he did, in pursuance of said articles of agreement, on the 20th day of October, A. D. 1858, purchase at the assignee's sale at the Ottawa Starch Factory and its fixtures and appurtenances, for Forty-five Thousand Dollars upon the terms hereinafter expressed, in trust for himself and the said parties of the second part in said articles of agreement mentioned. And the plaintiff further avers that he hath well and truly kept, performed and fulfilled all and singular the covenants



*Page of Rec.* and agreements in the said articles of agreement mentioned on his part and behalf to be done and performed. And the plaintiff further avers that by the terms of said purchase the said plaintiff was to and did pay for said Ottawa Starch Factory and its fixtures and and appurtenances, the sum of Eleven Thousand Two Hundred and Fifty Dollars upon the said day of said purchase, and the sum of Sixteen Thousand Eight Hundred and Seventy-five Dollars three months after the day of said purchase, and the sum of Sixteen Thousand Eight Hundred and Seventy-five dollars six months after said day of purchase, which said times have long since elapsed ; and the plaintiff further avers that the proportion which said defendant was by the terms of said agreement, and by said sale required to pay to said plaintiff was and is the sum of Five Hundred and Fifty-nine dollars and thirty-seven cents, of which said sum, the sum of One Hundred and Twenty-five dollars was due and payable on the day of the execution of said agreement. Nine dollars and thirty-seven cents was due and payable on the 20th day of October, A. D. 1858; the sum of Two Hundred dollars became and was due and payable on the 25th day of January, A. D. 1859; and the sum of Two Hundred and Twenty-five dollars became and was due and payable on the 25th day of April, A. D. 1859; and the plaintiff avers that said defendant has never paid to said plaintiff the said sum of Nine dollars and thirty seven cents aforesaid, nor the said sum of Two Hundred dollars, nor the said said sum of Two Hundred and Twenty-five dollars, the same then and there being said defendant's proportion of the purchase money, and that defendant, though requested, refused and neglected to pay, and still refuses, &c.

Rules to plead.

Defendant files a general demurrer.

Court overrules demurrer.

Defendant abides by his demurrer, and judgment entered on same.

Assessment of damages by jury.

Motion by defendant to set aside inquest and motion overruled.

Judgment on inquest and appeal taken.

Instruction asked for by defendant and refused by the Court.

---

*Assignment of Errors.*

The said appellant by O. C. Gray his Attorney, assigns for error in said Record, the following :

1st. The Court erred in overruling defendant's demurrer to plaintiff's declaration.

2d. Also in refusing defendant's instruction.

3d. In overruling motion of defendant below to set aside the inquest.

O. C. GRAY,  
Attorney's for Appellant.



297-180  
John Rossack

vs

J. D. Caton

Abstract & Assignment  
of Error

Filed Apr 27. 1860

L. Leland  
Clerk



State of Illinois } Pleas before the Honorable  
La Salle County } ss. Madison E. Hollister Judge  
of the ninth Judicial District  
of the State of Illinois and the presiding Judge of  
the La Salle County Circuit Court, at a term of said  
Court commenced and held at the Court house in  
Ottawa in said County and state on the second Monday  
in the month of June, the same being the thirteenth  
day of June, in the year of our Lord one thousand  
eight hundred and fifty nine, and of the Inde-  
pendence of the United States of America, the  
Eighty Third,

Present, viz

The Honorable Madison E. Hollister Presiding Judge  
John F. Nash Clerk  
Washington Bushnell States attorney  
Francis Warner Sheriff.

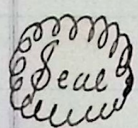
Be it remembered that on 30<sup>th</sup> day of May A.D. 1859  
a writ of Summons issued out of the office of the clerk  
of the Circuit Court and under the Seal of said Court,  
in the words and figures following, to wit;

State of Illinois } The People of the State of  
La Salle County } Illinois to the Sheriff of said  
County, — Greeting;

We command you that you Summon John  
Hosack if he shall be found in your County per-



-sonally to be and appear before the Circuit  
Court of Said County, on the first day of the  
next term thereof, to be held at the Court house  
in Ottawa, in Said County, on the Second Monday  
in the month of June next to answer unto  
John D. Caton in a plea of Covenant to the  
damages of Said Plaintiff as he says, in the sum  
of Three Thousand Dollars. And have you  
then and there this writ, with an endorsement there-  
on, in what manner you execute the same.

 Witness John F. Nash, Clerk of our Said  
Court, and the Seal thereof, at Ottawa, this  
30<sup>th</sup> day of May A.D. 1859.

John F. Nash Clerk  
for G. Harrington Jr. Deputy.

which Summons was returned by the Sheriff of La Salle  
County with an endorsement thereon as follows, to wit;  
"executed this writ by reading the same to John  
Horsack May 31<sup>st</sup> 1859.

F. Warner Shff. "

Be it further remembered that on the 3<sup>rd</sup> day of  
June 1859, a declaration was filed with the Clerk  
of Said Court, in the words and figures following  
to wit: "

State of Illinois } and Circuit Court thereof  
La Salle County } do June Term A.D. 1859.



John D. Caton plaintiff in this suit by Glover & Cook his atty's complains of John Hoosack defend-  
-ant summoned &c of a plea of Covenant, broken, for  
that whereas heretofore to wit, on the 20<sup>th</sup> day of  
October A.D. 1857, at Ottawa, to wit; in the County  
aforesaid a certain article of agreement were then  
and there made and entered into by and between  
the Said Plaintiff of the one part, and the Said  
defendant of the other part under their hands and  
Seals, which Said article of agreement was and  
are in substance as follows -

Article of agreement  
made and entered into this 20<sup>th</sup> day of October 1858  
by and between John D. Caton party of the first part  
and J. Deau. Caton, R. Thorne, H. Green J.C. Van-  
doren, Geo H. Norris, H. E. Sedney, Philo Lindley,  
N. B. Bristol, C. M. Vandrew, L. Leland, S. W.  
Cheever, J. Dickey, Gilbert Goff, J. S. Smith, Thos  
W. Osborne, E. L. Henrich, Geo Stout, Jno. Hoosack,  
D. F. Cameron, J. W. Mills, E. Peck, W. M. W.  
Cushman, D. Buel, O. M. Buel, S. W. Raymond, E. R.  
Fay, N. W. Rathbun, E. M. Raymond, L. P. Sanger  
parties of the second part, Witnesseth, that the  
Said party of the first part shall purchase at the  
assignees sale, the Ottawa Starch Factory and  
its fixtures & appurtenances in trust for himself  
and the Said parties of the second part, in the  
proportion that the Stock in the Ottawa Starch



Company which each now holds and owns, bears  
to the whole amount of paid up Stock which is  
held and owned by all the parties hereto Specified  
as follows, that is to say, the said John D. Catron  
holds one hundred shares of said Stock  
and the said Richard Thorne fifteen Shares, Henry  
Green eighteen and three quarter Shares, J. B. Van  
Doren five Shares, George H. Norris two hundred  
and fifty Shares, H. E. Seamy fourteen Shares, Philo  
Lindley twenty two Shares, N. B. Bristol twenty Shares  
C. M. Van Doren ten Shares, Lorenzo Leland twenty  
five Shares, S. W. Cheever twenty five Shares, J. Dickey  
fourteen Shares, Gilbert Goff twelve Shares, J. S.  
Smith eighteen Shares, Thomas W. Osborne seventeen  
and one half Shares, D. F. Cameron five Shares,  
John Hossack twelve and one half Shares, E. L.  
Herrick six Shares, Jas Strat fifteen Shares,  
J. W. Mills, six and one quarter Shares E. Peck fifty  
Shares, W. H. W. Bushman, two hundred and thirty  
four Shares, Paul Buel six Shares, O. H. Ball thirty  
seven Shares, S. W. Raymond thirty five Shares, E. R.  
Fay seven and one half Shares, N. W. Rathbun one  
Share, E. H. Raymonds fifty Shares, Lorenzo P.  
Sanger twenty seven Shares, - and such trust  
is hereby expressly declared in the proportions &  
in favor of the parties aforesaid, and the said  
party of the second part do severally & respectively  
each for himself, hereby agree to and with the



said party of the first part, to pay upon the execution of these presents ten (10) per cent on the amount of said stock held by him towards his proportion of the purchase money, of said property and afterwards to pay his proportion of the purchase money according to his proportion of interest in said trust estate, at the times respectively, when by the terms of said Sale said Trustee<sup>shall</sup> be requested to pay for said purchase. And in case any of said parties of the second part shall fail to make said payments promptly at the time or times appointed he shall forfeit and does hereby abandon and relinquish all right and interest both legal and equitable, of in and to said property and shall be as much a stranger thereto as if he had not been a party hereto, And the interest thus forfeited and abandoned shall go to the other parties hereto, in the proportion of the interest which each one holds in the remainder of said property, and each one shall immediately on the call of the party of the first part pay to the said party of the first part his proportion as aforesaid of the payment which the defaulting party had agreed to, but failed to pay, A failure to meet this last named call, shall forfeit only, the interest, in which the call is made and the interest thus forfeited shall go to the other parties hereto, in the same



who will pay all the calls made upon them under this agreement in the same ratio, and upon the same principal as before stated.

Said party of the first part shall in the first instance bid for said property the sum of Fifty five Thousand (\$55,000) Dollars and if there shall be any higher bids for said property he shall run the same up to such sum as he shall be instructed to do, by a committee to be appointed by the parties hereto for that purpose if needs be to secure the purchase,

After said property shall be purchased as aforesaid the owners thereof shall if such a charter shall be procured, be incorporated, by an act of the Legislature of Illinois, said Charter to be approved and adopted by a majority in interest of the equitable owners of said property and the said Trustee shall execute said Trust by conveying said property to said corporation. or said party of the first part shall execute said Trust by conveying said property to such party or parties as shall be appointed and directed by a majority in interest of the equitable owners of said property. Until said corporation shall be created & said conveyance made to it or until said property shall be conveyed to other party or parties in pursuance of the appointment of

























a majority in interest of said owners as above  
Provided, the affairs of this concern, shall be man-  
-aged by three managers who shall be chosen  
by a majority in interest of the parties hereto or  
their assigns, who shall appoint one of their  
number as the acting manager of the affairs of  
said concern. And whatever funds the said  
managers shall require to carry on the business  
of said concern shall be contributed by each of  
the parties hereto, or their assigns, in the propor-  
-tion of interest held by each. A call for said  
funds shall be made by said managers, at a  
meeting of said owners called by them by  
leaving a written or printed notice thereof at  
the post office in Ottawa addressed to each  
party at his usual place of residence if  
known and if not, addressed to him at Ottawa  
at least twenty days before said call shall be  
payable. And in case any party shall  
fail to make payment of said call or calls,  
at the time or times thus appointed, then the  
interest of the party thus in default shall  
be forfeited, and the same is hereby abandoned  
to the other parties who will pay these calls  
the same, and upon the same principles  
as is heretofore provided, in case of non-  
-payment of instalments, for the purchase  
money of said property.













Subscriptions to this contract shall be closed  
at five of the clock the afternoon of this twentieth  
(20<sup>th</sup>) day of October 1858.

In witness whereof the parties have hereunto  
in duplicate interchangeably set their hands  
and seals the day and year aforesaid.

One hundred	J. D. Caton	
fifteen Shares	R. Thorne	
Eighteen $\frac{3}{4}$ Shares	W. Green	
five Shares	J. B. Van Doren	
Two hundred Shares	Geo W. Norris	
forty five Shares	Geo W. Norris	
Eleven Shares	W. E. Sedney	
Twenty two Shares	Philo Lindley	
Twenty Shares	N. B. Bristol	
Five Shares	C. W. Van Doren	
Three Shares	W. E. Sedney	
Twenty five Shares	L. Leland	
Twenty five Shares	S. W. Cheever	
Twinteen Shares	J. Dickey	
Twelve Shares	Elbert Goff	
Eighteen Shares	J. Smith	
Five Shares	Geo W. Norris	
Seventeen $\frac{1}{2}$ Shares	Thos W. Osborn	
Five Shares	D. F. Cameron	
Twelve $\frac{1}{2}$ Shares	John Mossack	
Six Shares	E. L. Morris	
Fifteen Shares	Geo Stout	



Six and $\frac{1}{4}$ Shares	J. W. Mills	
Fifty Shares	E. Peck, by A. D. Catron	
Two hundred thirty four Shares	W. W. W. Cushman	
Six Shares	Daniel Buell	
Thirty Seven Shares	O. W. Buell	
Twenty Seven Shares,	Lorenzo P. Sanges by Lucien P. Sanges	
Thirty five Shares	J. W. Raymond	
Seven and $\frac{1}{2}$ Shares	Edwin R. Fay,	
One Share	N. W. Rathbun	
Fifty Shares	E. W. Raymond	

As by the said article of Agreement now here brought into Court and reference being thereto had will more fully and at large appear, and the said Plaintiff avers that he did in pursuance of said article of agreement on the 20<sup>th</sup> day of October A.D. 1858, purchase at the assignees Sale, the Ottawa Starch Factory and its fixtures and appurtenances for the Sum of Forty five thousand dollars upon the terms hereinafter expressed in trust for himself and the said party of the second part in said articles of agreement mentioned, and the plaintiff further avers that he hath well and truly kept, performed and fulfilled all and singular the Covenants and Agreements in the said article of agreement ~~mentioned~~ mentioned on his part and behalf to be done and performed - And the plaintiff further avers that by the terms of purchase the said Plaintiff



was to and did pay for said Ottawa Starch  
factory and its fixtures and appurtenances the  
sum of Eleven thousand Two hundred and fifty  
Dollars upon the said day of said purchase and  
the sum of Sixteen thousand Eight hundred and  
Seventy five dollars, three months after the day  
of said purchase, and the sum of Sixteen thousand  
Eight hundred and seventy five Dollars, six months  
after said day of purchase, which said times have  
long since elapsed -

And the plaintiff further avers that the propor-  
tion of the purchase money which said defend-  
ant was by the terms of said agreement and of said  
Sale required to pay to said plaintiff was and is  
the sum of five hundred fifty nine dollars and  
thirty seven cents, of which said sum, the sum  
of one hundred and twenty five dollars was  
due and payable on the day of the execution  
of said agreement - nine dollars and thirty  
seven cents was due and payable on the 25<sup>th</sup> day  
of October A.D. 1858. -

The sum of two hundred Dollars became  
and was due and payable on the 25<sup>th</sup> day of  
January A.D. 1859, and the sum of two hundred  
and twenty five dollars became and was due  
and payable on the 25<sup>th</sup> day of April A.D. 1859.

And the plaintiff avers that said defendant  
has never paid to said plaintiff the said sum



of Nine dollars and thirty seven cents aforesaid,  
nor the said Sum of two hundred Dollars, nor  
the said Sum of two hundred and twenty five  
Dollars the same thus and thus being to his  
said defendants proportion of the purchase money  
according to his proportion of interest in said  
estate, required to be paid <sup>by</sup> him at the times <sup>respectively</sup> here  
before mentioned the same being the times whereby  
the terms of said Sale, the said trustee was requested  
to and did pay for said purchase, but hitherto  
hath wholly neglected and refused and still  
doth neglect & refuse so to do contrary to said  
article of agreement and the said covenant of  
the said defendant by him in that behalf made  
as aforesaid, to wit, at the County aforesaid,  
and so the said Plaintiff saith that the said  
defendant has not kept with him the covenant  
so made by and between them as aforesaid  
but hath broken the same and to keep the  
same hath hitherto wholly refused and still doth  
refuse, to the damage of the said Plaintiff  
in the Sum of Three thousand Dollars wherefore  
he brings his suit

Glover Cook Atty for Plaintiff,

And afterwards, to wit on Monday June 13<sup>th</sup> 1859  
the same being one of the days of the June term  
of said Court for said year, the following order



was entered of records in said cause, in the words  
and figures following, to wit;

John D. Caton }  
vs } Covenant  
John Mossack }  
On motion of the plaintiff  
by Oliver Booth his attorney,  
the defendant is ruled to plead herein on or  
before Saturday morning next. "

And afterwards, to wit on the 15<sup>th</sup> day of June  
1859 the defendant by his attorney filed his  
demurrer to Plaintiffs declaration, in the words  
and figures following, to wit;

State of Illinois } In the Circuit Court thereof,  
La Salle County } June Term A.D. 1859.

John D. Caton }  
vs } Covenant.  
John Mossack }  
And now comes the said  
defendant, by Oliver C. Gray  
his attorney, and says, that the declaration of the  
said plaintiff herein, and the several matters and  
things therein contained, are not sufficient in  
law to enable the plaintiff to have or maintain  
his aforesaid action against this defendant, and that  
this defendant is not bound <sup>by law</sup> to answer the same, where



for he prays judgment &c

Oliver C. Gray  
atty pro deft. "

And afterwards to wit: on Tuesday, June 21<sup>st</sup> 1859,  
the same being one of the days of the session of said court for 1859,  
an order was entered of records in said cause in  
in the words & figures following, to wit;

"John D. Catron

vs

Covenant.

John Wossack } This day the plaintiff  
comes by Glover Hook his attorneys, and the de-  
fendant by his attorneys, and after hearing the  
the arguments of counsel the Court overrule  
the defendants demurrer to plaintiffs decla-  
-ration "

And afterwards, to wit: on Monday the 27<sup>th</sup> day  
of June, the same being one of the days of the  
June term <sup>of said court</sup> for the year 1859, a further order was  
entered of record in said cause, in the words and  
figures following, to wit;

"John D. Catron

vs

Covenant.

John Wossack } This day the defendant  
again comes by O. C. Gray  
his attorney and says he will abide by the de-  
-cision of the Court in overruling his demurrer to



plaintiffs declaration. It is therefore ordered  
by the Court that judgment be entered herein  
against the defendant and in favor of the plain-  
tiff on said demurrer "

And afterwards, to wit, on Saturday July 31<sup>st</sup> 1859,  
the same being one of the days of the same term  
of said Court for said year, the further and final  
order was entered of record in said cause in the  
words and figures following, to wit;

John D. Eaton

vs

John Wossack

Covenant

This day the plaintiff again  
comes by Glover & Coon his  
attorneys, and inasmuch as it is uncertain what amount  
of damages the plaintiff has sustained by reason of  
the breach of the Covenant set out in his declaration,  
on motion of plaintiff attorneys it is ordered that  
that a jury come to assess the plaintiffs damages;  
thereupon came the following jurors of a jury, to wit  
V. A. Tambling, L. D. White, James Stout, H. F.  
Clark, Joseph Leonard, A. G. Coon, James  
Prescott, Allen Fisher, J. L. Fisk, George W.  
Hunters, and S. A. Fish good and lawful  
men who are duly elected, tried and sworn,  
to well and truly assess the plaintiffs damages  
and a true verdict render according to the  
testimony; And after hearing the evidence, the



jury render this verdict, to wit; "We the jury assess the plaintiffs damages at Four hundred and thirty four dollars, and thirty eight Cents." The defendant by O. C. Gray, now moves the Court to set aside the foregoing inquest, which motion is overruled by the Court. It is therefore considered by the Court that the plaintiff have and recover of the defendant the said sum of Four hundred and thirty four dollars and thirty eight cents, for his damages, also his costs and charges by him herein expended, and that he have execution therefor.

Defendants Counsel now pray an appeal to the Supreme Court, which is granted upon condition that the defendant within twenty days from this date, file an appeal bond payable to the plaintiff in the penal sum of Six hundred dollars, with William C. Richardson as his Security. "

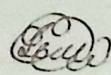
And afterwards, to wit, on 15<sup>th</sup> day of August 1859. the defendant filed with the Clerk of said Court, his appeal bonds, which is in the word and figures following, to wit;

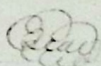
"Know all men by these presents we John Kosack as principal and W. C. Richardson as security are held



and firmly binds unto John D. Caton in the  
final sum of Five hundred thirty four dollars  
and thirty Eight Cents, for the payment of which  
well and truly to be made we find ourselves, our  
heirs, executors, and administrators jointly severally  
and firmly by these presents, Sealed with our  
Seals and dated this fifteenth day of August  
A.D. 1859. The condition of the above obli-  
gation is such that whereas the above named  
John D. Caton died on the 25<sup>th</sup> day of July 1859,  
at the June term of the Circuit Court of La Salle  
County Illinois recover a judgment in Said Court  
against the above bounden John Hossack for the  
Sum of Five hundred and thirty four dollars  
and thirty Eight Cents, from which said judg-  
ment, of the Said Circuit Court, the Said  
John Hossack, has prayed for and obtained  
an appeal to the Supreme Court of said State.

Now if the said John Hossack shall prose-  
cute his said appeal with effect and without  
delay, and shall pay the said judgment and  
interest and costs and all such damages as  
shall be adjudged against him, in case the said  
judgment shall be affirmed, upon the trial of said  
Cause in said Supreme Court, then this obligation  
to be void, otherwise to remain in full force and  
effect.

John Hossack 

W. C. Richardson 



State of Illinois }  
La Salle County }  
I John F. Nash Clerk  
of the Circuit Court in and  
for said County, in said State do hereby Certify  
that the above and foregoing is a true, full  
and complete copy of the records of proceedings  
in a certain cause wherein John D. Baton  
was plaintiff and John Hossack was defend-  
-ant, as appears from the Books and files of  
my office.

Witness my hand and the Seal  
of said Court at Ottawa this 6<sup>th</sup> day  
of April A.D. 1860

John F. Nash Clerk  
C. H. Hoots Deputy



State of Illinois Supreme Court Third  
Grand Division

John Hossack

vs

John D. Caton

} Appeal

The said appellant by  
O. C. Gray ~~and J. Avery~~ his attorney's  
assigns for error in said record the  
following

1<sup>st</sup> The court erred in overruling defendants  
demurrer to Plaintiffs declaration.

2<sup>nd</sup> The Court erred in refusing defendants  
instructions.

3<sup>rd</sup> The court erred in overruling motion of  
Defendant below to set aside the inquest.

O. C. Gray

~~J. Avery~~

Attys for Appellant



And now comes the appellee's reply  
that in the record & proceedings of the  
case, is no error & he prays leave  
to be in all things affirmed  
Honor Cook & Campbell  
for appellee

297-180  
John D. Catron  
vs

John Hancock  
Certified Copy of Record.

Filed April 19, 1860  
L. Deland  
Clerk

Gray atty.