

No. 14545

Supreme Court of Illinois

Amsbaugh

vs.

Britten

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
THIRD GRAND DIVISION.

No. 128

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

1864
Amshangh
B.
Guthrie

14545

ABSTRACT OF RECORD.

STATE OF ILLINOIS, THIRD DIVISION,
OF THE APRIL TERM, A. D. 1864, of the SUPREME COURT AT OTTAWA.

JOHN AMSBAUGH,
Plaintiff in Error,
vs.
SOPANUS J. BRETTIN
Error to Rock Island County
Circuit Court

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The Bill of Exceptions shows that on the trial the Plaintiff offered in evidence a note of which the following is a copy :

"HAMPTON, Ill., Dec. 21st, 1859.

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For value received, I promise to pay Soranus L. Brettun, or bearer, Eight Hundred and Thirty Dollars, on or before the first day of May, A. D. 1861, with ten per cent. annual interest until paid.

JOHN AMSBAUGH."

And thereupon rested his case.

31

Thereupon the said Defendant called as a witness one

L. F. BAKER, who testified as follows: I reside in Hampton, in this county, and know the parties to this suit. (Witness was here shown the bond mentioned in Defendant's pleas.) I saw this bond in Hampton; it is in my hand writing and was signed by the Plaintiff in this suit. (Witness was here shown the note offered in evidence by Plaintiff.) I have seen this note and suppose it is the note mentioned in the bond just shown me; have often heard the parties to this suit talk the matter over; have no doubt this is the note mentioned in said bond; I know the property described in this bond. Lot fifteen is the one on which the Hampton House stood, and the Hampton House barn stood on the west-half of lots sixteen and seventeen.

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Defendant then offered and read in evidence, without objection by the Plaintiff, the bond shown to said witness and mentioned in said Defendant's pleas. (Said bond is correctly copied in said Defendant's fifth plea.

Defendant then called

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SAMUEL SOWERS, who testified—I live in Hampton in this county, and know the parties to this suit, and have known them for the last seven years. Defendant has not lived at Hampton all that time, but Plaintiff has. Defendant left Hampton in November, 1860; he lived in the Hampton House—a tavern in Hampton until it burned down—he occupied the hotel and barn; occupied half of lot seventeen as a garden; barn was on half of lot sixteen. I occupied part of the barn, and Nov. 17th, 1860, settled with Defendant for the use of it; that was when Defendant was going away. I had been occupying the barn before that time; can not say how many months; I continued to occupy it until November, 1862; I occupied barn after I settled with Defendant under Plaintiff, that is, I went to Plaintiff at the time I settled with Defendant to get the privilege of remaining; I told him I wanted to keep the same place I had been using. He said, "very well." I told him I would

give him the same I had been giving Mr. Amsbaugh. He said, "very well." I have never settled with Plaintiff yet; I occupied two stalls of the barn, and occasionally some of the others; Reuben Sykes kept his horse in one stall on same side with me; Henry Wilcher occupied the other side of the barn; there is an entry way through the barn for wagons; Plff. occupied during the time I did; at the time I went to the Plaintiff to rent the barn of him, I told him that Defendant, Amsbaugh, had told me he had nothing more to do with it and that I must go to him, and Plaintiff said, "very well;" I don't know that Plaintiff ever had anything more to do with the premises after that; Defendant was then living in another house in Hampton. Mr. Sayers occupied a part of one of those lots to stack hay in—I think in winter or fall of 1861—and occupied part of one of the lots as a garden—one-half of lot seventeen—in 1862, I think—am not certain whether 1861 or 1862; one-half of barn was shingled in summer of 1861 or 1862, and after Defendant left the premises. I saw Plaintiff about the premises one day after the fire and after the Defendant left; he was gathering up the loose lumber that was left and piling it inside the barn lot; he gather up the reel of a pump and put it away—I think in the barn—stuck it in an end of the corn-crib.

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ON CROSS-EX.—Witness testified: I don't know when Defendant went into the Hampton House property; he was there when I came to the country; I think I came there in Noevmber, 1856; I think the fire occurred in June or July, 1860; I was at work in Camden then; Defendant moved from there to a Swede's house in Hampton, and thence to Moline in said county, I think in November, 1860, with his family; I didn't occupy the barn till after the fire, in August I think; I think, I settled with him Nov. 17, 1860; he came to me to settle and in a few days after left the town; I rented by the month; I don't remember that Plaintiff said "very well" more than once, nor to which of my remarks he made that reply; I know that is the reply he made; I told him I wanted to occupy the same stalls and at the same price as I had formerly done, and he said "very well;" I understood him to say "very well" to the whole thing; I told him I wanted to pay him so much a month, and he said "very well." I never paid Plaintiff direct for the use of the barn; I proposed to but he didn't receive it; we never have settled; I don't know under whose direction the shingling was done, nor for whom; sometime after the fire I saw Plaintiff picking up things on the premises; saw him picking up several boards and things—wide boards, six or eight feet long—in the alley; he just picked them up and threw them over the fence; I think the boards were from the wood-house that was on the premises; I judged so from their length; I am not certain that it was the same time that I saw Plff. pick up the reel of the pump; reel of pump was on the lot where the house had stood before the fire; the boards and reel were exposed where they laid; I don't know whether this was before or after the 1st of May, 1861; I lived right across the street from the burnt district, and have ever since; I don't know that I saw Plff. do anything else there; the only time I heard Plff. say anything about the premises was in the conversation in November, 1860; Plff. lived on the lower corner of the next block on River street, and lives there yet; Plff. had no regular business and no place of business at that time; I saw Defendant in Hampton frequently off and on after he moved away from there; Plaintiff never came around to say anything to me about the stable; he never claimed to be my landlord as to the stable.

ON RE-EX. WITNESS TESTIFIED:—Plaintiff and I have an unsettled account and had before I went to him about the stable.

37

Defendant then called

FRANCIS WARD, WHO TESTIFIED:—I lived in Hampton in 1860 and 1861, and have known the parties in this suit six or seven years; know the barn last witness testified of, the one formerly occupied by Defendant; I helped shingle the barn in 1862; Plaintiff was there once while the shingling was going on—five minutes or more; he asked me if that was the way I shingled; I told him it was, and he said that the shingling did not suit him, and he wanted me to shingle to suit him; he found fault because I did not drive the nails in the right place, and wanted me to drive them nearer the line; he gave no reason for it more than that it would make better shingling—that's all he said; the shingles that were put on came from the Plaintiff's place, about a mile above Hampton; they were pine shingles; I don't know as to quality.

38

ON CROSS-EX., witness testified:—I did not help bring the shingles from Plff's place and don't know of my own knowledge where they came from; I was not

working for the Plaintiff in putting on the shingles; he did not hire me; I worked for Mr. Wilcher a day and a quarter on the barn; don't know whether Plaintiff was about there except when I saw him or not; Plff. came up on the roof; I don't know what his business there was, but I suppose to see about the shingling; don't know of anything else he came for; he directed me to shingle to suit him, and I followed his suggestion; he wanted me to shingle as I have stated; I don't pretend to state his words; I knew he had no right to order me about, because I was not hired by him; I suppose Plff. saw me shingle as directed by him before he left I followed his directions because I saw on reflection they were good; Wilcher did not direct me how to nail them; Plff. is a positive talking man; don't know that he had any particular place of business at the time; this was in the fall of the year or latter part of summer.

Defendant then called

39 HENRY WILCHER, who testified:—I reside in Hampton; have known Plaintiff twelve years and Defendant four or five years; Defendant lived in Hampton in 1860, in tavern that was burned down; I know the barn on the premises; had the barn two or three years; commenced using it from Defendant; I occupied under Def't one or two months, and Def't came to my house and we settled for the use of it; I think Mr. Sowers had two stalls on the other side; I occupied the barn a year or more after I settled with Defendant; it was common stock; there was no arrangement with anybody about my continuing there; I spoke to Plaintiff after Amsbaugh left and told him I claimed the use of the barn, and I think he said nothing one way or the other, if he did, I don't recollect it, or it was that he had nothing to do with it; I put the roof on the east side of the barn, I think in the fall of 1862, after hay harvest; used about 4,000 shingles to cover the barn with; got them of Brettun; he had some left that he did not use on his new barn; I told Plaintiff that I wanted the shingles to cover the barn with and he told me to go up to his place and get some and use them; myself and Ward and one of my boys put them on; I went one day and got the shingles and we commenced putting them on the next day; Plaintiff was about there while we were putting them on.

40 ON CROSS-EX. SAID WITNESS TESTIFIED:—I put the shingles on myself with my hired man; Plff. did not hire me; I knew he had shingles before I went to him; I had some nice hay there that I wanted to protect; I went to him because it saved me the trouble of going to Moline; I supposed I would get the shingles by paying for them; I did not calculate he gave them to me; I don't know what Plff. said to Ward on the roof; I employed Ward myself; Plff. has never claimed or collected rent of me for the premises.

Defendant then called

41 MARTIN SAYERS, who TESTIFIED:—I lived in Hampton in 1860, and occupied the barn spoken of by preceding witnesses some, also part of lots sixteen and seventeen as a garden; I did not get permission from any one to occupy it; think I spoke to Plaintiff, Wilcher and others about it to find out who had control of it, but didn't find out who had.

42 It was then agreed by Plff. that he had paid the taxes upon the premises mentioned in said bond for the year 1860, after they had been advertised for sale for taxes, and also for the years 1861, 1862 and 1863, and it was admitted by the Def't that he did not pay them for said years. The above is all of the evidence in the case.

On the part of the Plaintiff the Court instructed the Jury as follows:

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And said Defendant excepted to the refusal of the Court to give the instructions as asked and in substituting as aforesaid.

After the verdict of the Jury, the said Defendant entered his motion for a *new* trial; and for causes of said motion, assigned :

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That the Court gave improper instructions on the part of the Plaintiff on said trial.

That the Court refused proper instructions on the part of the Defendant in said suit.

Because of the insufficiency of the verdict of the Jury.

Because the verdict is contrary to the law and the evidence.

But the said Court overruled said motion, and said Defendant excepted.

46

And, thereupon, said Defendant moved the said Court in arrest of judgment, and for cause thereof, assigned :

That the note for which this suit is brought was given solely in consideration of the covenant and agreement in a certain bond for a deed here in evidence, and that no deed has been executed and delivered to this Defendant as is required by said bond, all of which fully appears by the files and evidence in this case; nor has any such deed been brought into Court for the use and subject to the order of this Defendant.

Because of the informality of the verdict of the Jury.

But said Court overruled said motion and defendant excepted.

46

And, thereupon, the said Court rendered judgment upon the verdict of the jury, and Defendant excepted.

ERRORS ASSIGNED.

128 6 20

John Amstrong

vs

G. Britton

Abstract

Filed Apr

L. C.

491
Pleas in the circuit Court of the
County of Rock Island and State of
Illinois before the Hon. Ira C. Williamson
Judge of the Sixth Judicial Circuit of
said State of Illinois at a term there
begun & holden at the Court House
in the city of Rock Island County
& State aforesaid on the Second
Monday of January A.D. 1874 -

Present Hon. Ira C. Williamson Judge
He has at the Lehigh's Sheriff
Edmund H. Bowman - clerk

Saratus Le Breton }
vs } Attorney
John Amburgey }

Be it remembered that here-
tofore to wit on the 26th day of
July A.D. 1872 the Plaintiff in the
above entitled cause caused to be
issued from the Office of the Clerk
the Circuit Court in the County & State
aforesaid a summons against said
above named Defendant directed to
the Sheriff of said County to execute
which said summons was in the words
and figures following to wit -

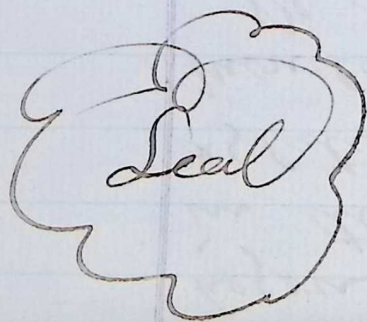
State of Illinois }
 Rock Island County }¹⁴ The People of the State of Illinois
 to the Sheriff of Rock Island County

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Greeting:

We command you to summon
 John Ambush if to be found in your county
 personally to be and appear before the Circuit Court
 of said County of Rock Island on the first
 day of the next term thereof to be holden
 at the Court House in Rock Island on
 the second Monday of September next
 then there to answer unto Soranus Le
 Breton of a plea of trespass on the case
 upon promises to his damages in the sum
 of One thousand five hundred Dollars as
 he says and have your return thereon in
 writ and make due return thereon in
 what manner you see cause the same.

Witness Edmund H. Brownson Clerk of
 the Circuit Court and the Seal thereof
 affixed at Rock Island this 26th day
 of July in the year of our Lord
 one thousand eight hundred and
 Sixty Two



Edmund H. Brownson Clerk

And after made to writ on the 4th day of September
 A.D. 1862 the said Sheriff returned said
 writ to said Clerk Office with an

and return thereof which was is in the
under copies following to wit -

"I have served the within writ by reading
of the same to the within named defendant
of John Amos Saylor this 11th day of August
1862 - & David Haines Sheriff of
& Rock Island County
By M D Merrill Dep -

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And afterwards to wit on said 26th
day of July AD 1862 the said plaintiff
caused to be filed in the Clerk's office
of said Circuit Court his certain
Declaration which was is in the
under copies following to wit -

State of Illinois } To the September Term AD 1862 of the
Rock Island County } 1st Rock Island County Circuit Court -
Saronus Le Breton Plaintiff }

Declaration -

vs
John Amos Saylor Defendant }

Saronus Le Breton of the
County of Rock Island State of Illinois
plaintiff in this suit by E H Saylor
his attorney complains of John Amos Saylor
of the County & State aforesaid Defendant
in this suit. Some months ago a plea
of Surplus on the case on promises -
for that whereas the said Defendant had

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to wit on the 21st day of December A.D. 1859
at Hampton Ills. to wit at the County
of Rock Island aforesaid made a certain
note in writing, commonly called a
promissory note bearing date the day and
year last aforesaid and there & there
delivered said note to said plaintiff
by which note the said defendant then
& there promised to pay to ^{the} said plaintiff
or bearer or to before the first day of May
A.D. 1861, which period of time has
long since elapsed, the sum of eight
hundred thirty-dollars with ten per
cent annual interest until paid for
value received. By reason whereof and by
force of the Statute in such cases made
& provided the said defendant then & there
became liable to pay the said plaintiff
the said sum of money in said note
mentioned according to the tenor & effect
of said note. And being so liable the
said defendant in consideration thereof
afterwards to wit on the same day aforesaid
aforesaid to wit at the County of Rock
Island aforesaid undertook & there & there
faithfully promised the said plaintiff and
struck to pay said plaintiff the said sum
of money in said note specified and

ing to the true debt & duty -

And for that where also the said Defendant afterwards to wit on the 11th day of July A.D. 1862 at Hampton to wit at the County of Richd Island aforesaid was indebted to the said Plaintiff in the sum of Fifteen Hundred Dollars for the price & value of goods wares & merchandize then & there bargained & sold by said Plaintiff to said Defendant at his request -

And in the sum of Fifteen Hundred Dollars for the price & value of goods wares & merchandize then & there sold & delivered by said Plaintiff to said Defendant at his request

And in the sum of Fifteen Hundred Dollars for the price & value of work & labor then & there done & materials for the same provided by said Plaintiff for said Defendant at his request.

And in the sum of Fifteen Hundred Dollars ~~then~~ for money then & there lent by said Plaintiff to said Defendant at his request

And in the sum of Fifteen Hundred Dollars for money then & there paid by said Plaintiff for the use of said Defendant at his request

And in the sum of Fifteen Hundred Dollars for money then & there received by said Defendant for the use of said Plaintiff.

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And in the sum of Fifteen Hundred Dollars
for money found to be due from said Defen-
dant to said Plaintiff upon account then
stated between them, and in the
further sum of Fifteen Hundred Dollars for so
much money before that time then there
due & payable from said Defendant to said
Plaintiff for interest upon and for perfor-
mance of chains large sums of money before
then due & payable from said Defendant
to said Plaintiff and by said Plaintiff
perform to said Defendant for chains
long space of time before then elapsed
at the request of said Defendant -
And being so indebted the said Defendant
in consideration thereof afterwards to wit
on the day & year last aforesaid at
Hampshire to wit at the County of Rock
Island aforesaid undertook and stand
there faithfully promised the said Plaintiff
well truly to pay ^{the} said Plaintiff the said
several sums of money last mentioned
when he the said Defendant should
be thereunto afterwards requested -

Nevertheless the said Defendant although
after requested to wit at the time said
promissory note became due & payable
according to the tenor & effect thereof as

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well as at sundry times since to wit
at the place aforesaid, but not find
the said several some of many above
mentioned as any or either of them or
any part thereof to the said Plaintiff but
to pay the same as any part thereof to the
said Plaintiff the said Defendants both
hitherto altogether neglected & refused & still
doth neglect & refuse to the damage of
said Plaintiff of Fifteen Hundred Dollars
and therefore said Plaintiff brings his suit
&c

Edmund H. Johnson

Atty for Plff

And with said declaration the said
Plaintiff by his attorney filed his

Copy of note sued on in said suit
in manner & figures following to wit -

"Hampden Feb 21st 1859

"For Value Received I promise to pay Sara-
hanna Le Breton or Bearer Eight Hundred
or Thirty Dollars on or before the first
day of May A.D. 1861 with ten per cent
annual interest until paid -

"Signed Amosbury"

And also with said declaration said
Plff filed his copy of a cert sued on
in the manner & figures following to wit -

John Amosbury in acct with Sarah Le Breton

July 16/1862 To price & value of goods & services bought & sold in 4/15/60

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To print a notice of said order & hold & deliver it 4-15-11-
To money loaned from the year at your request 4-15-11-
To money paid by me to you for you use at your request 4-15-11-
To money received by you to any use — 4-15-11-
To money due from you to me on account stated 4-15-11-
To interest due from you to me on money loaned — 4-15-11-
" " " " " " paid 4-15-11-
" " " " " " had & received 4-15-11-

And be it further remembered that afterwards
and on the 24th day of December AD 1862
the said Defendant by his attorney filed in
the office of the Clerk of said Circuit Court
his certain pleas in said cause and
upon said pleas issue was joined by
the filing of Replications and Replies
by both of said parties to said suits

And be it further remembered that after-
wards and on the 24th day of September AD
1863 the same being one of the days of
the September Term AD 1863 of said Circuit
Court the following proceeding was had
Saranus L. Weston }

vs } Assumpsit
John Amburge }

And now on this day came

the parties to this suit by their attorneys
and leave is granted by said court to
both parties to withdraw all of their pleadings
in this cause subsequent to said plaintiff's
Declaration and a Respicere from said
Declaration is awarded both parties -

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shall afterwards and on the 2nd day of Jan-
uary AD 1864 the said Defendant by his
attorneys filed in the said Clerk's Office of
said Circuit Court his certain Pleas
repleaded under said leave of Court which
said Pleas were in the words and figures
following to wit -

State of Illinois } Of the former term AD 1864 of the
Rock Island County } 1st Circuit Court of said County
John Amburge }
vs } 2^d Assumpsit - Pleas filed

Soranus Le Breton } and leave to replead

And now comes the Defendant
in the above entitled cause by J B Hawley
& Webster his attorneys and defends the
wrong & injury whereof and says that he
did not undertake & promise in manner
& form as the said plaintiff in his said
Declaration has above thereof complained
and alleged And of this he petitions

Copy 111-

upon the country &c

And the said Plaintiff of H. H. County &
the like Geo. W. Pleasant City in Ill.

- 2 And for a further plea in this behalf as to
the said promissory note in said Plaintiff's
declaration mentioned the said Defendant
says admit over he cannot say that the
consideration of said note has wholly
failed in this that at the time of the
execution & delivery of said note by said
Defendant the only consideration thereof
was certain covenants & agreements
whereby it was mutually covenanted and
agreed by & between said Plaintiff and
Defendant that the said Plaintiff
should make receipt & deliver to said
Defendant a good & sufficient bill
for the following described tract of
land in Cook Island County State of
Illinois known as Lots No. Fifteen (15)
and the West half of Lots No. Sixteen
(16) and Seventeen (17) in Block No. Seven
(7) in the Town of Hampton as appears
on the Recorded map of said Town -
on or before the 1st day of May A.D. 1881 -
and that the said Defendant should
pay to said Plaintiff the sum of Eight

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Hundred & Thirty - Dollars on or before said
first day of May with interest at ten
per cent from the date of said vote
according to its tenor & effect and
that said Defendant should pay all
taxes upon the above described premises
from the date of said vote to said 1st
day of May aforesaid - and said Defen-
dant expressly avers that the vote last
above mentioned is the same vote
mentioned in said Plaintiff's Decla-
ration - and further avers that said
covenants and agreements between said
Plaintiff & Defendant to make receipt
& deliver a good & sufficient deed
as aforesaid and to pay said vote taxes
as aforesaid were mutual & Defendant
covenants & agreements and that said
Plaintiff did not on or before said
1st day of May A.D. 1861 make receipt
& deliver a good & sufficient deed of the
above described premises to said De-
fendant. Wherefore said Defendant says
that the consideration of said vote has
totally failed & that he is ready to verify
wherefore he prays judgment &c

J B Hawley &

Attorney at Law

And for a further plea in this behalf, as to
 said promissory note in said Plaintiff's
 declaration mentioned the said Defen-
 dant says adto vor because he says
 that the consideration of said note
 has vitally failed in this that at the
 time of the execution and delivery
 of said note by said Defendant the
 sole & only consideration thereof was
 certain covenants & agreements contained
 in a certain Instrument a copy whereof
 is contained in the Fifth Plea herewith
 filed to which reference is hereby had
 whereby it was mutually covenanted &
 agreed by & between the said Plaintiff
 & Defendant that the said Plaintiff
 should make search & labor or
 cause to be made search & labor
 to said Defendant agreed & support
 deed for the following described property
 Situate in the County of Cook Illinois
 and State of Illinois to wit Lot No
 Fifteen (15) and the West half of Lot
 No Sixteen (16) & Seventeen (17) in Block
 No Seven (7) in the Town of Hampton
 as appears on the recorded map of said
 Town - or as before the 1st day of May
 A.D. 1861 - and that said Defendant should

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pay to said plaintiff the sum of Eight Hundred
 & Thirty Dollars on or before the 1st day of
 May AD 1881 with interest at ten per
 cent from the date of said note ac-
 cording to the tenor & effect of said note and
 should pay all taxes on said above de-
 scribed premises from the date of said
 note to the said 1st day of May of said
 and said Defendant expressly says that
 the said note in said plaintiff's de-
 claration mentioned is the same note
 in said covenants & agreement mentioned
 and that said covenants & agreement
 between said plaintiff & defendant
 to execute & deliver said good & suffi-
 cient deed & to pay said sum of money
 & all taxes as aforesaid were mutual
 & dependent covenants & agreement -
 That by virtue of said covenants &
 agreement the said Defendant entered
 upon & took possession of said above
 described property at or about the time
 of the making of said covenants & agree-
 ments & of the date of said note - and
 said Defendant further says that it was
 at the time & place aforesaid for the con-
 currence & agreed by & between said plain-
 tiff and defendant that in the event of

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the non payment of said some of money above mentioned in any part thereof at the time limited by said covenants & agreements to wit the 1st day of May AD 1861 that then the said Plaintiff might elect to consider said contract at an end and that said Defendant should be considered the tenant of the Plaintiff holding over the termination of lease - that after the time limited by said agreement for the payment of the money aforesaid (the same not having been paid) the said Plaintiff in pursuance of said covenants and agreements did to wit on or about the 10th day of May AD 1861 elect to consider said contract covenants & agreements at an end and entered upon & took possession of the above described premises. Wherefore said Defendant says that the consideration of the said note has totally failed - and that he is ready to verify Wherefore said Defendant prays judgment &c
of B Hamby &
Attorney at Law

4 And for a further Plea in this behalf as to the said plaintiff's note in said

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Plaintiff's declaration maintained that said
Defendant says ~~that~~ was because he says
that the consideration of said promissory
note has totally failed in this that at
the time of the execution and delivery
of said note by said Defendant the
only consideration thereby was certain
covenants & agreements contained in
a certain instrument a copy whereof
is set forth in the Fifth Plea herewith
filed to which reference is hereby
made whereby it was mutually conven-
ient & agreed by and between said
Plaintiff & Defendant that the said
Plaintiff should make & execute &
deliver to said Defendant a good &
sufficient deed for the following
described property situate in the County
of Rock Island & State of Illinois &
described as follows to wit
Lots No Fifteen (15) and the West
half of Lots No Sixteen (16) & Seventeen
(17) in Block No seven (7) in the Town
of Hampton as appears on the recorded
map of said Town - on or before the 1st
day of May A.D. 1861 - and that said
Defendant should pay to said Plaintiff
the sum of Eight Hundred & Thirty Dollars

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on or before said next named day with
interest at ten per cent from the date
of said note & should pay all taxes
on said above described premises from
the date of said note to the 1st day
of May A.D. 1871 - and said
defendant expressly owns that said note
in the said plaintiff's declaration men-
tioned is the same note in the said
covenant & agreement mentioned - and
that said covenant & agreement between
said Plaintiff & Defendant to execute
& deliver said good & sufficient deed
to pay said sum of money & all taxes
as aforesaid were mutual & defendant
covenant & agreement - and that said
Plaintiff did not on or before said
1st day of May A.D. 1871 make receipt &
deliver to said Defendant a good &
sufficient deed for the above described
premises and that afterwards on the
1st day of May A.D. 1872 before the
said Plaintiff executed & delivered to
said Defendant any deed in pursuance
of said covenant & agreement the said
Defendant elected to consider and did
consider & declare said covenant con-
tract & agreement at an end -

49-17-

Wherefore said Defendant says that the con-
sideration of said note being substantially paid
and this he is ready to verify wherefore
he prays judgment &c

J B Hanley &
Attorney at Law

5- And for a further plea in this behalf the
said Defendant by leave of court first
had submitted says ad hoc now because he
says that the only cause of action in the
above entitled suit is the promissory
note in said Pleas declaration mentioned
& described and that the consideration
thereof has not been paid in this, that
at the time of the execution & delivery of
said note from the Defendant to the
Plaintiff, the said Plaintiff acknowledged
received & delivered to the Defendant his
certain Instrument in writing which
said Instrument & the covenants and
agreements therein contained were the
sole & only consideration of said note &
which said Instrument was in the
words & figures following to wit:

"Know all men by these presents that I Darous
" Le Butler of Rock Island County & State of
" Illinois am held & firmly bound unto

19th 11 John Amburge of the same place in the
a Genal sum of Twenty Hundred Dollars for
u which payment well & truly to be made
u I bind myself, heirs & assigns and all
u ministrants jointly & severally & singly by these
u presents -

u Witness my hand & seal this 21st day
u of December AD 1859 -

u Whereas the said Sarcenus Le Bection has
u this day agreed to sell to the said John
u Amburge the following described
u tract of land in Wick Island and
u State of Illinois known as Lot No
u Fifteen (15) and the West half of Lots
u No Sixteen and Seventeen (16 & 17) in
u Block No Seven (7) in the Town of Houghton
u as appear on the recorded map of said
u Town - on condition that the said John
u Amburge shall pay the said Sarcenus
u Le Bection the sum of Eight Hundred &
u Thirty Dollars in the manner following
u to wit Eight Hundred & Thirty Dollars
u on or before the first day of May AD
u Eighteen Hundred and Sixty One with
u interest at ten percent from date for which
u the said John Amburge has given his
u promissory note -

u Now the condition of this obligation is

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" such that if the said John Amburge his
" heirs or assigns shall pay said note at
" or before maturity and shall in the
" meantime pay all taxes on ^{the} said land
" and the said Sarous Le Beeton shall
" upon the completion of said payment
" make receipt & deliver or cause to be made
" receipt & delivered a good & sufficient
" deed to the said John Amburge for
" the said lot or tract of land then
" this obligation to be void otherwise
" to remain in full force & virtue
" And it is expressly agreed by and be-
" tween the said parties that in the
" event of the non payment of said sum of
" money or any part thereof at the time
" herein limited that then the said Sa-
" rous Le Beeton may elect to consider
" the above contract at an end and
" that the said John Amburge shall be
" considered the tenant of the said Sarous
" Le Beeton holding over the termination
" of lease -
" Witnesses
" Le F. Baker

Sarous Le Beeton

That by virtue of said instrument & said
note it was mutually covenanted and
agreed by & between said Plaintiff and

defendant that the said Plaintiff should
 make receipt & deliver as cause to be
 made receipt & delivered to said
 Defendant a good & sufficient seed for
 the premises in said Instrument described
 on or before the 1st day of May A.D. 1881 and
 that the said Defendant should pay said
 Plaintiff the amount mentioned in said
~~note~~ promissory note in said Declaration
 mentioned & that he should pay the taxes
 upon, ^{said} above described premises from
 the date of said Instrument to the matu-
 rity of said note to wit on or before
 said 1st day of May and that said agree-
 ment so entered into by said Plaintiff
 & Defendant were mutual & defendant
 covenants & agreements and that said
 Plaintiff did not on or before said
 1st day of May A.D. 1881 make receipt &
 deliver to said Defendant as cause to
 be made receipt & delivered to him
 a good & sufficient seed to said above
 described premises nor did said Plaintiff
 make receipt & deliver any such seed
 to said Defendant at any time previous
 to the commencement of this suit. Wherefore
 said Defendant says that the consid-
 eration of said note has not been fully paid

And that he is ready to verify what he
says judgment &c

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J B Howley &
Attorney Sept 21st

And he is further remembered that after noon
and on the 12th day of January A.D. 1864
the said plaintiff by his attorney filed
in the office of the Clerk of said Circuit
Court his certain Replications to said
defendant's said several pleas
to the point of said Pleas adding
the similar as appears attached to
said Pleas and also the following
to wit

State of Illinois } In the January Term A.D. 1864 of the
Rock Island County } 24 Circuit Court for said County
Saranus Le Veleux

vs

John Amburge

2

And the said Plaintiff
for further Replication to the said Pleas
of the said defendant by him specially
thirdly fourthly & fifthly above pleaded by
special leave of the Court here for that
purpose first had submitted says production
now because he says that the considera-
tion of the said promising note in

1722

said several pleas respectively mentioned
was not as therein respectively alleged
And this the said plaintiff says may
be enquired of by the country &c

And the said depts & the like } Geo W Pleasant
Honkly & Webster } atty for Plff
attys for depts }

3 And for further replication to said
second third fourth & fifth pleas respec-
tively the said plaintiff by hims special
leave says precludi vore because he
says that the consideration of the said
promissory note therein respectively
mentioned was not actually paid
as in said pleas respectively is alleged
and this the said plaintiff says may
be enquired of by the country &c

And the said depts & the like } Geo W Pleasant
Honkly & Webster } atty for Plff
attys for depts }

4 And for further replication &c

5 And for further replication to the said pleas of
the said defendant by hims thirdly above
repleaded the said plaintiff by hims special
leave says precludi vore because he says

7p 28- that at the time a place in that behalf
respectively in said third plea mentioned
be the said plaintiff did not elect to
consider said contracts covenants and
agreements at on end as in said
third plea is alleged and this
the said plaintiff prays may be enjoined
of by the court

And the said depts date the 2 Geo W Pleasant
like - Henry Alchick the 2 Atty for Plff
Atty for Deft

6 And for further replication to said
third plea by like special leave the
said plaintiff says precludit now because
he says that he the said plaintiff
did not enter upon and take posses-
sion of said premises in said third
plea described as in said plea is
alleged and this the said plaintiff
prays may be enjoined of by the court

And the said depts date the 2 Geo W Pleasant
the like. Henry Alchick the 2 Atty for Plff
Atty for Deft

And the 10 further Remembrance that after-
noon the 13th day of January 1864
the said defendant by his attorney

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joined issue upon the second, third
Fifth & Sixth of said Plaintiff's Repre-
sentations by adding the Similitude as appears
attached to said several Representations
a filed his Denial to said Plaintiff's
Fourth Representation which thing heard
was sustained by the Court and leave
granted to amend said Fourth Repre-
sentation - and afterwards and on the
28th day of January A.D. 1864 the said
Plaintiff by his attorney filed in the
said Clerk's office of said Circuit
Court his Amended Fourth Representation
which was in the words and figures
following to wit:

Amended 4th Representation

And for a further Representation to the
said Pleas of the said Defendant of him
secondly, fourthly & fifthly ^{respectively} above pleaded
the said Plaintiff by like Special Ver-
dict precludi non because he says
that at the time of the making & delivery of
the note & of the execution of the Bond
in said second, fourth & fifth Pleas re-
spectively mentioned the said Defendant
resided on the premises in said third
described & the said Plaintiff also resi-
ded & has ever resided in said Town

7
of Hampton and the said plaintiff further
avers that on the said first day of May
AD 1861 the said plaintiff was ready able
willing to make execute & deliver to the
said defendant a good & sufficient
deed of conveyance of said premises in
said second fourth & fifth pleas respectively
described to wit upon the said premises
but that the said defendant then
was and for a long space of time was
thereafter continued to be and remains
beyond the limits of the said Town of
Hampton wherefore the said plaintiff
did not then tender to the said defendant
the said deed, and the said plaintiff
further avers that afterwards before the
commencement of this suit and upon
the first reasonable opportunity to him
thereafter presented to wit on the 4th day
of July AD 1862 at the County of
said be the said plaintiff did tender
to the said defendant a good & sufficient
deed of conveyance of the said premises
and ever since hath been & still is
ready able willing to deliver the same to the
said defendant upon the payment to said
plaintiff of the said sum of money in the
said promissory note specified with

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intend thereon as therein provided to
sub at the County of Rock Island affirmed
and this the said Plaintiff is ready to
verify. Wherefore he prays judgment &c
Geo W Pleasants
Atty for Plff

And Be it further Remembered that afterwards
to wit upon said 28th day of January
AD 1864 the said Defendant by his attorney
filed in said Clerk's Office of said Circuit
Court his certain Demurrer to said Plff's
Amended Fourth Replication which said
Demurrer was & is in the words & figures
following to wit -

Plating Allin's } of the January Term AD 1864
Rock Island County } the Circuit Court of said County
John Ambrough }
vs }
Saranus Le Breton }

And now comes the Depen-
dant in this cause by J B Hamby &
Alkester his attorneys and as to said
Plaintiff's Amended Fourth Replication
says that the same is insufficient in
law to be replied unto - Wherefore said
Defendant prays judgment &c
J B Hamby &
Alkester
Supt Atty

And be it further Reminded that after-
wards to wit on the 30th day of January
AD 1864 the same being one of the days of
the January Term AD 1864 the following
proceeding was had -

Saramus Le Beckett

vs

John Amburge

Champion

vs

This day came the parties
to this suit by their attorneys and
the Court having heard the arguments of
counsel upon said Defendants Demurrer
to said plaintiffs amended fourth Rep-
lication heretofore filed overrules the
same to which said order of the
Court the said Defendant by his counsel
obeys and abides by his Demurrer -
And issue being joined in this cause
the same coming on for trial a jury
was duly selected & sworn to try the
same, and said jury having heard
the evidence in the case. The arguments
of counsel and the instructions of the
Court retire to consider of their
verdict - And afterwards and on the
same day the said jury returned into
Court with their verdict which is in
the words & figures following to wit -

4928- Saramus Le Beeton
as
John Ambaugh }

the the undersigned
jurors of North Island county the find
issue for the plaintiff for the face of
the state with interest thereon as
stated in the same amounting to
\$1170.24

Perles Skinner

January 30th 1864

Foreman

And the it further Reminded that
afterwards and on the 1st day of
February AD 1864 the same being one
of the days of said January term
AD 1864 the said defendant by
his counsel filed his motion in
said cause for a new trial & though
the following proceeding was had
Saramus Le Beeton }

as
John Ambaugh }

And the it further Reminded that
this day again come the
parties to this suit by their attorneys
and the court having heard the agent
of counsel upon said defendant
motion for a new trial in this
cause answering the same to which

8
said order of said Court the said de-
fendant except -
And the it further Remanded that
afterwards and on the same day the
said Defendant filed in said
cause his certain motion in
arrest of judgment therein - and
afterwards on the 6th day of February
AD 1864 the same being the day of
the days of said spring term AD
1864 of said Court the following
preceeding were heard to wit
Saronius Le Beestun
vs
John Amburge

This day again came the
parties to this suit by their attorneys
and the said Court having heard the
arguments of counsel upon said Defendant's
motion in arrest of judgment
overrules the same to which said
order of the Court said Defendant by
his counsel except - And it is
thereupon ordered by the Court that the
said plaintiff have a return of said
Defendant the said sum of Eleven
Hundred Seventy-Nine Dollars and no part
found by the jury agreed together

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with his certificate that he have inspection
therefor -

And be it further Reminded that
afterwards and on the same day
the said Defendant by his counsel,
brought to said Court his certain
Bill of Exceptions in said cause which
was duly signed & sealed by said
Court & filed with the papers in
said cause which said Bill of
Exceptions was in the words
figures following to wit -

Bill of Exs

State of Illinois } of the January Term 1814 of the
Rock Island County } 3^d Circuit Court of said County -

Soranus Le Beeton }

vs

J. Thompson }

John Ambrough }

Be it Remembered that on
this thirteenth day of January A.D. 1814
said day being one of the days of the January
Term of said Court in the year aforesaid
the above entitled cause coming on
for trial before a jury duly selected
& sworn to try said cause the said
Plaintiff to maintain the issues

on his part offered & read in evidence
a certain promissory note which was
as in the words & figures following to-
wit - "Hampshire Dec 21st 1859

- 4 For value received I promise to pay -
 - 4 Samuel Leighton or order bearer Eight
 - 4 Hundred & thirty-Dollars on or before the
 - 4 1st day of May 1861 with ten per
 - 4 cent annual interest until paid -
- John A. Amburge

And therefore the said plaintiff rested
his case -

Whereupon the said Defendant to
maintain the issues upon his part
called as a witness one:

He F. Baker who being first duly
sworn testified as follows -
I reside in Hampshire in this county
and know the parties to this suit
(Witness was here & saw the bond
mentioned in Defendants plea)

I saw this bond in Hampshire it is
in my hand writing, it is signed
by the plaintiff in this suit -
(Witness was here & saw the note
offered in evidence by Plaintiff)

I have seen this note, suppose it is

the note mentioned in the Bond just shown me, Hereafter have the parties to this suit taken the matter over, Here no doubt this is the note mentioned in said Bond -

I know the property described in this Bond - Lot No Fifteen (15) in Block No Seven (7) is the one on which the Hampton House stood - and the Hampton House Barn stood on the West half (1/2) of Lot Sixteen (16) Seventeen (17) in said Block Seven (7) -

The said Defendant then offered ~~read~~ in evidence without objection by said Plaintiff the Bond mentioned in said Defendant's Pleas & shows to said Witness Baker which said Bond is in the words & figures following to wit -

(Said Bond is correctly copied in said Defendant's Fifth Plea herein copied)

The said Defendant forth to maintain the issues on his part then called Samuel Somers as a witness who being first duly sworn testified as follows -
I live in Hampton in this county & know the parties to this suit and have known them for the last seven

years - Defendant has not lived at Houghton all that time but Plaintiff has and more - Defendant left Houghton in November A.D. 1810. He lived in what was known as the Houghton House a tavern in Houghton until it burned down. He occupied the Hotel Barre - occupied half of lot Seventeen (17) as a garden - Born was on half of lot 5 & 6 (18) - I occupied part of Born and on 17th day of November A.D. 1810 settled with Defendant for the use of it - that was when last was going away - I had been occupying the Born before that time, about any how many months. I continued to occupy it until November A.D. 1812. I occupied the Born after I settled with the Defendant under Mr. Breton the Plaintiff that is I went to Plaintiff at the time I settled with Defendant to get the privilege of remaining - I told him I wanted to keep the same part I had been using. He said "Very well" I told him I would give him the same I had been giving Mr. Amstrong - He said "Very well" I have never settled with Plaintiff yet - I occupied two stalls of the Born and occasionally some of the other stalls - He has

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Sykes kept his horse in one of the stalls on same side of the Barn with and Henry Wilcher occupied the other side of the Barn. There is an entry way through the Barn for wagons. They occupied during the time I did. At the time I went to the plaintiff to rent the Barn of him I told him that Defendant Ambsbaugh had told me he had nothing more to do with it and that I must go to him and plaintiff said "Very Well" I don't know what Plaintiff ever had anything more to do with the premises after that - Defendant was then living in another house in Hampton - Mr Sykes occupied a part of one of those lots to stock hay in - I think in winter or fall of 1861 - and occupied a part of one of the lots as a garden - One half of Feat Seventeen - in 1862 I think - One out section whether 1861 or 1862 - One half of Barn was shingled in summer of 1861 or 1862 and after Defendant left the premises - I saw plaintiff one day about the premises after the fire and after Defendant left - He was gathering up the loose boards that were left spiling it up inside the Barn but he gathered up the keel of a pump & put it

any I think in the Barn, I took it in
on end of the corner etc

On Cross Examination by said Plaintiff's
counsel said witness testified as follows
I don't know when Defendant went into
the Hampton House property - He was there
when I came to the County - I think I
came there in November AD 1856 - I
think the fire occurred in September
1860. I was at work in Concord then -
Defendant moved from there to a Swells
House in Hampton & then to Walbr
in said County - I think in November
1860 with his family - I did not occupy
the Barn till after the fire in August
I think - I think I settled with him
~~in~~ November 17th 1860 - He came to me
to settle & in a few days left the
town - I rented by the month, I don't
remember that Plaintiff said "very well"
~~but once~~ more than once or to
which of my remarks he made that
reply - I know that is the reply he makes
I told him I wanted to occupy the same
place and at the same price as I had
previously done and he said "Very Well"
I understood him to say "Very Well"
to the whole thing - I told him I wanted

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to pay him so much a month & he said
"Very Well" I never paid Plaintiff's bill
for the use of the Board, I proposed to but
he didn't receive it - We never have
settled - I don't know under what condition
the shipping was done or for whom -
Sometime after the fire I saw Plaintiff
picking up things on the premises - Saw
him picking up several Boards & things
- wide boards six or eight feet long in
the alley - He just picked them up &
threw them over the fence - I think the
Boards were from the wood house that was
on the premises. I judged so from their
length - I am not certain that it was
the same time that I saw Plaintiff pick
up the Reel of the pump - Reel of Pump was
on the lot where the boate had stood
before the fire - The board reel were
reposed where they lay - I don't know
whether this was before or after the
1st of May 1861 - I lived right across
the street from the burnt premises &
have ever since - I don't know that I
saw Plaintiff do any thing else there -
The only time I heard Plaintiff say anything
about the premises was in the conversa-
tion in November 1860 - Plaintiff lived

on the lower corner of the west Blochman
River street shives there yet - Plaintiff
had no regular business nor place of busi-
ness at that time - I ran Dependant
in Houghton frequently off from oft he
moved away from there - Plaintiff never
come around to say anything to me about
the stable - He never claimed to be my
landlord as to the stable -

On Re Examination the said witness
stated - Plaintiff & I have on an-
settled account about before I went
to him about the stable -

The said Dependant further to maintain
the issues upon his part then called
as a witness -

Francis Ward who being first duly sworn
testified as follows -

I lived in Houghton in 1860 & 1861 & have
known the parties to this suit six or
seven years - Thru the Barn the Landowners
testified of - the one formerly occupied by the
Dependant - I helped Shingle the Barn in
1862 - Plaintiff was there once while the
shingling was going on - five minutes or
more - He asked me if that was the
way I shingled - I told him it was and
he said that the shingling did not suit

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him & he wanted me to shingle to suit him - He found fault because I did not drive the nails in the right place & wanted me to drive them nearer the line - He gave no reason for it more than that it would make better shingling that's all he said - The shingles that were put on came from the Plaintiff's place about a mile above Hampton They were pine shingles - I don't know as to quality -

On Cross Examination the said witness testified as follows

I did not help bring the shingles from Plaintiff's place & don't know of your knowledge where they came from - I was not working for the Plaintiff in putting on the shingles - He did not hire me I worked for Mr. Wheeler a day & 1/4 on the Barn - I don't know whether Plaintiff was about there except when I saw him as put - Plaintiff came up on the roof - I don't know what his business there was - but I supposed to see about the shingling & don't know of any other else he came for - He wanted me to shingle to suit him & I followed his suggestion - He wanted me to

Single as I have stated - I don't pre-
tend to state his words - I knew he had
no right to order me about because I
was not hired by him - It was a sug-
gestion - I suppose Flaniff came me
single as directed by him before he left -
I followed his direction because I saw no
reflection they were proper - Wilcher
did not think me bound to mail them -
Flaniff is a private talking man -
Don't know that he had any particular
planning business at the time - This was
in the fall of the year or latter part of
summer -

The said Defendant the furtherest position
the issues upon his part then called
Henry Wilcher as a witness who being
first duly sworn testified as follows
I reside in Hampton - have known
Flaniff twelve years & Defendant for
or five years - Defendant lived in
Hampton in 1860 - in Town that was
burned down - I know the Barn on the
premises - Had the Barn two or three
years - commenced seeing it from Defendant -
I occupied under Defendant one or
two months & Defendant came to my house
& we settled for the use of it - I think

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Mr Sours had two stalls on the other side. I occupied the Barn a year or more after I settled with Dependent. It was common stock - there was no charge met with any body about occupying there. I spoke to Plaintiff after which left stated him I claimed the use of the Barn & I think he said nothing on one way or the other, if he did I don't recollect it as it was that he had nothing to do with it. I put the Roof on the East side of the Barn I think in the fall of 1842, after hay harvest he used about 40000 Shingles - put them of Brethorne. He had some left that he did not use on his new barn - I told Plaintiff that I wanted the shingles to cover the Barn with & he told me to go up to his place & get some & use them. Myself & Ward & one of my boys put them on - I went one day & put the shingles & we commenced putting them on the next day & Plaintiff was about there while we were putting them on. On Cross Examination since which testified as follows -

I put the shingles on myself with my hired man. Plaintiff did not hire me

11
I knew he had shingles before I went to him - I had some wire bay there that I wanted to protect - I went to him because it saved me the trouble of going to Maine - I supposed I could get the shingles by paying for them - I did not calculate he gave them to me - I don't know what Flaniff said to Ward on the Roof - I employed Ward myself - Flaniff has never claimed or collected Rent of me for the Barn I don't know of Flaniff's collecting rent of any one for the premises.

The said Defendant then produced as a witness

Martin Sappes who being first duly sworn testified as follows -

I lived in Houghton in 1860 and occupied the Barn spoken of by the preceding witnesses some - also part of South Sixteen & Seventeen Block Seven as a garden - I did not get permission from any one to occupy it I think I spoke to Flaniff - Which & others about it to find out who had control of it but did not find out who had -

It was then admitted by the Plaintiff that he had paid the taxes upon the premises in the Bond hereinbefore mentioned for the year 1810 after they had been advertised for sale for taxes & also for the years 1811-1812 & 1813 and it was admitted by the Defendant that he did not pay them for said years -

The above is all of the evidence offered by either party to this suit upon said trial - And the said Court upon the application of said Plaintiff instructed the jury as follows "Unless the jury believe from the evidence
 " That the Plaintiff on or after the first day of
 " May A.D. 1811 elected to consider the contents
 " (embodied in the vote & bond read in ev-
 " idence) at an end they will find for the
 " Plaintiff and assess his damages at the
 " amount of the vote & interest thereon at the
 " rate of ten per cent per annum -

To the giving of which said instruction the said Defendant then ~~objected~~ objected but the said Court overruled said objection and read said instruction to the jury as the law to which said order & ruling of the said Court the said Defendant then & there accepted -

And thereupon the said Defendant & requested

the Court to instruct the jury as follows -
1st " If the jury believe from the evidence that
" the plaintiff at any time before the Commence-
" ment of this suit, elected to consider the Con-
" tract contained in the evidence in this
" case at an end then the jury will find
" for the defendant -

2nd " If the jury believe from the evidence that
" the plaintiff on the 1st day of May A.D. 1871
" was at any time thereafter assumed and
" exercised control of the premises described
" in the Plead offered in evidence by taking charge
" of the property - renting the same or any
" part thereof - supplying the same as pre-
" vious materials therefor payment of taxes there-
" on - or in any other manner - then they
" will find for the defendant as to the
" issue respecting the possession of said
" premises -

3rd " If the jury believe from the evidence in
" this suit that the plaintiff in this
" suit assumed and exercised control
" of the premises described in said Plead
" previous to the 1st day of May A.D. 1871 the
" Court will presume that such control
" continued after said last mentioned
" date if there is no evidence to the contrary.

8944- But the said Court refused to give said Instructions but substituted therefor and instructed the jury as follows:-

"If the jury believe from the evidence that the
" Plaintiff on or after the 1st day of May A.D.
" 1811 and before the commencement of this
" suit entered upon & took possession
" of the premises described in the Contract
" or bond for a deed introduced in evidence
" or elected to consider said contract at
" all then the jury will find for the
" Defendant."

And the said Defendant objected to said refusal of said Court to give said Instructions as they were asked and to the substitution by said Court of said last named Instructions - but the said Court overruled said objection and substituted said last named Instructions in place of the preceding Instructions asked by said Defendant to which said order of the Court the said Defendant then assented.

And the jury having heard the Instructions of said Court and the arguments of counsel retired to consider of their verdict and after made do on the same day returned into Court with their verdict which was as in the verdicts following to wit:

"We the undersigned jurors of Rock Island
 " do all find issue for the plaintiff for
 " the sum of the rate with interest thereon as
 " stated in the same amounting to \$1177.00

And afterwards on the next day of said
 term the same being the 1st day of February came
 the said defendant and entered his mo-
 tion for a new trial which was as is
 in the proceedings following to wit:

" And now comes the defendant in the
 " above entitled cause by his attorneys and
 " moved the court for a new trial of this cause
 " and for reasons thereof assigns

" That the court gave improper instructions on
 " the part of the plaintiff on the trial of this cause -
 " That the court refused proper instructions on
 " the part of the defendant on the trial thereof
 " Because of the insufficiency of the verdict
 " of the jury -

" Because the verdict is contrary to the law and the
 " evidence -

J B Howley &

Attorneys respectively

But the said court overruled the said motion
 to which order of the court the said defendant
 then assented.

Whereupon the said defendant on the same
 day entered his motion in arrest of judgment
 which said motion was in the proceedings

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following to wit:

- 11 And now comes the Defendant in the above
4 subject Cause by his attorneys and
4 moves the Court for an arrest of judgment in said
4 cause and for cause thereof assigns:
4th That the note upon which this suit is brought
4 was given solely in consideration of the
4 covenants & agreements in a certain Bond
4 for a deed (herein evidence) that or deed
4 has been received & delivered to this Defendant
11 as is required by said Bond: all of which
11 fully appears by the files and evidence in this
11 case - nor has any such deed been brought
11 into Court for the use & subject to the case
11 of this Defendant -

2nd ca. Because of the informality of the verdict of the
4 jury -

1 of B. H. O'Connell &

11 All other Sept. attys

But the said Court overruled the said motion
& rendered judgment upon the verdict of the
jury to which said order of the Court over-
ruling said motion & rendering judgment the
said Defendant then & there accepted -

And forasmuch as the several matters & things
herein before stated do not ^{attorney} appear of the said
Defendant hereby says that this his Bill of Exceptions
may be duly signed & sealed and made part
of the record of said cause which is done
J. H. Wilkerson Seal
Judge

State of Illinois
Rock Island County 324

I Edward H Bowman Clerk of
the Circuit Court within and for the
county & state aforesaid do hereby
certify that the foregoing is a true
and correct transcript of all the
files and records of said Court
therein purporting to be given -

Witness my hand and the
seal of said Court affixed at
Rock Island this 30th day of
March - AD 1864 -

Edward H Bowman Clerk



Fees \$10.00

Paid by Deto Amstrong



State of Illinois of the April Term, 1864 of the
Third Division ^{2d} ~~County~~ ^{Supreme} Court of said State -

John A. Amburge
Plff in Error

vs
Saranus L. Brettan
Def in Error

And now comes the Plaintiff
in Error in this case by W. Lester his atty
& says that there is manifest error in
the foregoing Record & for Error there assigns
1st That the Court below erred in overruling
the demurrer to the amended 4th Declaration.

2nd That the Court below erred in
instructing the jury -

3rd That the Court below erred in over-
ruling the motion pro action Trial -

4th That the Court below erred in overruling
the motion in arrest of judgment

5th That the Court below erred in
rendering judgment upon the merits of
the case in the way it was rendered

Attest

Atty for Plff in Error

And now on this day comes the Deft in Error
by G. W. Pleasant his atty -
and says that in the foregoing Record there is
no Error -

G. W. Pleasant
Atty for Deft in Error

128
John Amburge 20
Mff in Error
as

Soramus de Brcttan
Mff in Error

Record

Filed Apr. 4. 1864.
Seland
Ck.