No. 12902

Supreme Court of Illinois

Swanzy

vs.

Moore

Supreme Court 3d Brandi Division.
April Term A.D. 1858.

James Swanzey, appellant.
vs.
John Moore, appellee.
} Appeal from Bureau.

Argument for appellee.

The 1st Section of our Statute of Frauds provides that no action shall be brought "upon any agreement, that is not to be performed within the space of one year from the making thereof," unless the promise or agreement is in writing.

In the case at bar, a special contract was proved, that Moore was to work for Swanzey for one year from the 5th. March 1856, at specified wages, but it was also proved that this contract was made about one weeks before the 5th. March 1856.

We insist that this special contract was void, not being in writing, and therefore that the 2d. 3d. 4th. 5th. & 6th. errors are badly assigned.

This special contract could not be performed within one year from the making thereof, and was therefore void.

The authorities upon this point are numerous, and all one way, and some of them perfectly parallell cases with the one at bar.

We will cite only a few.

Bracegirdle vs. Heald. 1 Barn. & Ald. 722.
Snelling vs. Lord Huntingfield.
1 Compton's Meeson & Roscoe 20.
Boydell vs Drummond. 11 East 142
Cremmain vs. Legge 10 Eng. C. Law R. 326
1 Vermont 69.
7 Cowen 263.
13 Wend. 307.

A verbal agreement void under the Statute of Frauds, is not taken out of the operation of the Statute, by labor or service for a few months under it, or any part performance.

Squire vs. Whipple 1 Vermont 69
3 Pickering 83
13 Wend. 307
5 Wend. 204
2 Johns. 223
20 Maine 119
1 Barn. & Ald. 722

An infant, whose contract is only voidable, may avoid his special agreement for work & labor, even when partially executed, and may recover under the quantum meruit, as if no special agreement had existed.

Whitmarsh vs. Hall 3. Denio 375
2. Pick. 332
19. " 572
23. " 492
17 Maine 38.

had existed.

Whitmarsh vs. Hall 3. Denio 375
2. Pick. 332
19. " 572
23. " 492
17 Maine 38.

For
By a stronger reason, may the work and labor performed be recovered under a quantum meruit, where the contract is absolutely void.

1 Fairfield 31 (10 Maine 31)
1 Pick. 328
5 Mass. 133
2 Car. & Payne 91
5 Johns 85
13 " 365
1 Greenleaf R. 187, 120.
3 " " 340
7 Conn. 342.

Applying these principles to the case at bar, it is apparent that there are no substantial errors in it.
But it may be said, that it does not appear from this record, but that the contract proved was in writing. and that this court will presume that such may be case.
It is very evident, that there was no proof in the case, shewing that the contract was in writing, and because the appellant has artfully omitted this important fact in making out his Bill of exceptions,

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Applying these principles to the case at bar, it is apparent that there are no substantial errors in it.
But it may be said, that it does not appear from this record, but that the contract proved was in writing. and that this court will presume that such was the case.
It is very evident, that there was no proof in the case, shewing that the contract was in writing, and because the appellant has artfully omitted this important fact in making out his Bill of exceptions, we submit it, that this court will not stretch a point in order to stultify the court below, as it is obvious that all his instructions are upon the hypothesis that the contract was void by the Statute of Frauds, not being in writing—

We are aware of the rule of law, that in cases where proof had to be offered to show that the contract was in writing, and this was not done, courts have held that, after verdict, it will be presumed that there was proof that the contract was in writing. But mark, this is done only to sustain the verdict, and no such rule has ever obtained, where the object of the party is to defeat or disaffirm the verdict - and to all the cases will show -

4 Johns 237
16 Georgia 154.

The appellees 1st instruction was correct for the reasons assigned -

The appellants 2d & 4th instructions were properly refused, not being law -

See authorities hereinbefore cited

The appellants 5th. Instruction was properly refused, for if the contract was void by reason of not being in writing, it was void in toto, and twas[sic] could leave when he wished, whether there was a dispute or not.

The defendants qualification to pltffs. 3d & 4th. Instructions was properly refused for the reason last above given -

As to the 1st error assigned. we have only to say, that the proof shows

that Moore was employed as a common farm hand, and the court will take notice that stacking grain is not the work ordinarily done by a common farm hand, but on the contrary, that is a regular business of itself, requiring more skill perhaps than any other one thing in farming. It is true that the record shows that Moore professed to be a good stacker, but not at the time the contract for his employment was made evidently, for there was no stacking to be done in March: but the profession was made probably just before he was set at the job. We think therefore that the court below was right in refusing to permit the witness to answer the question set forth in the 1st Error assigned. The record shows that Moore prosecuted this suit for his labor, of which Kearney voluntarily availed himself, as a poor person under the Statute, and inasmuch as substantial justice appears to have been done, we think the judgment below should be affirmed.

Oliver C. Gray.
Atty. for Appellee

No. ~~25~~ 26

Supreme Court.

James Swanzey
appellant
vs.
John Moore.
appellee

Argument and
Brief Authorities
for appellee.

Filed April 29. 1858
L. Leland
Clk

A. C. Gray
Atty for Appellee

The appellee was employed to work for one Year as a common farm hand. Surely stacking of grain would come within his employment; and any how whether it would or not, is a question to be submitted to the Jury, and is not to be decided by the Court as a question of law —

Milton T. Peters

$5

James Swinzey
vs appellee
John Moore

Points & authorities
of Milton T. Peters
for appellant

Filed May 21. 1858
L. Leland Clk

STATE OF ILLINOIS, Supreme Court April Term, 1858.

James Swanzey, appellant,
vs.
John Moore, appellee,
} Appeal from Bureau.

Bill of Exceptions
9th page of record
do
10th page of record
do
11th page of record
do
12th page of record
13th page of record
14th page of record

Suit brought by appellee against appellant for work and labor.

Appellee proved that he had worked for the appellant from the 5th March, 1856, until the 25th August, 1856, as a common farm laborer, and that his services were worth from $17 to $18 per month.

The appellant then introduced evidence, tending to prove, that said work was done under a special contract, made between the parties, about one week before said 5th March, that the appellee should work for the appellant for one year from said 5th March, for $200. The appellee introduced evidence tending to prove, that said service was performed under a special contract between said parties, that the said appellee should work for the appellant one year, if the said parties could agree. Appellant further introduced evidence tending to show, that the appellee professed to be a good stacker of grain, and that while in appellant's employ as aforesaid, that the appellee stacked a quantity of wheat for appellant imperfectly, and that in consequence thereof a portion of said Wheat became wet and spoiled, the appellant proposed to ask a witness, how much wheat appellant had lost by such bad stacking, and the value of the wheat so lost, but the court refused to permit the witness to answer, and the appellant excepted. The appellant further introduced testimony tending to show that the appellee left appellant's service without good cause, and that there had been no disagreement between said parties before then, but that on the day appellee quit work, that appellant's son who partially took charge of appellant's farming business in his absence, expressed dissatisfaction that the appellee and another hired hand of appellant had not hauled more than two loads of hay, that the appellee then left appellant's service, and worked no more for the appellant.—The Court at the instance of appellee instructed the Jury (1st instruction) that the appellee was entitled to recover, notwithstanding that the said services had been rendered under the special contract to work for one year from the 1st March 1856, if the contract was made before that time, and rejected appellant's 2d and 4th instructions, that if the appellee had voluntarily rendered said services under such contract, that he could not in this suit insist that the contract was void, to which the appellant excepted.

The appellant asked the court to instruct the Jury, (5th instruction,) that if the contract was, that the appellee should work for the appellant one year, if they could agree, that then one single dispute with, or reproof from Swanzey's boy to appellee, without appellant's knowledge or participation, would not authorize the appellee to leave the appellant's service before the expiration of his, appellee's, term of service, but the court declined to give the instruction and the appellant excepted: the appellant asked as a qualification to appellee's 3d and 4th instructions, that the appellee could not manufacture a pretence to disagree with Swanzey or his agents, but that he must have had good reason to disagree with, and become dissatisfied with appellant or his agents, in order to entitle the appellee to quit appellant's service before the expiration of his time. But the court declined to give such qualification, and the appellant excepted: the Jury found for the appellee, the appellant moved for a new trial, which the court overruled and the appellant excepted.

Errors Assigned, are

1st. That the court erred in refusing to permit the witness to answer as to the loss of the wheat caused by appellee's bad stacking, and the value thereof.

2d. In giving appnllee's 1st instruction and rejecting appellant's 2 d and 4th instructions.

3d. In refusing appellant's qualification to appellee's3d and4th instructions.

4th. In refusing appellant's 5th instruction.

5th. In overruling appellant's motion for new trial.

6th. The Court erred in every decision he made against appellant for said reasons: the appellant prays the Supreme Court to set aside and reverse the said Judgement rendered against the appellant and restore to him his legal rights which he lost as aforesaid

PETERS & FARWELL
Att'ys for Appellant.

~~D~~ 26 — 4

SUPREME COURT OF ILLINOIS.

JAMES SWANZY, Appeal,

vs.

JOHN MOORE.

Abstract and Assignments of Errors.

Filed Feb 25, 1858
D. Lockwood
Clerk

Tale

John Moore
vs
James Swanzey

Be it remembered that on the third day of October A.D. Eighteen hundred and fifty six came into the Office of the clerk of the circuit court within and for the County of Bureau and State of Illinois came James Swanzey and filed his appeal Bond in the words and figures following to wit:

Know all men by these presents that we James Swanzey and Soloman Sapp are held and firmly bound unto John Moore in the penal sum of one hundred and sixty five Dollars lawful money of the United State, for the payment of which well and truly to be made we bind ourselves, our heirs and administrators jointly severally and firmly by these presents Witness our hands and seals this third day of October A.D. 1856. The condition of the above obligation is such that whereas the said John Moore did on the 18th day of September A.D. 1856 before Isaac Wilson Esq a Justice of the peace for the County of Bureau recover a Judgement against the above bounden James Swanzey for the sum of seventy four dollars and twenty cents debt and and Six dollars and twelve cents costs from which judgement the said James Swanzey has taken an appeal to the Circuit Court of the County of Bureau aforesaid and State of Illinois. Now if the said James Swanzey shall prosecute his said appeal with effect and shall pay whatever judgement may be rendered by the Court upon dismissal &

a trial of said appeal then the above obligations to be void otherwise to remain in full force and effect

Approved by me at } James Swaney (Seal)
my Office in Princeton } Solomon Sapp (Seal)
in said County this third }
day of October A.D. 1856

Edward M. Fisher clerk
by W. A. Fisher deputy

Whereupon Supersedeas and Summons were issued as follows to wit:

State of Illinois }
Bureau County } ss The People of the State of Illinois to Isaac Wilson a Justice of the Peace in and for said County — Greeting Whereas in a certain suit lately depending before you the said Justice of the Peace wherein John Moore is plaintiff and James Swaney is Defendant judgement has been rendered in favor of the said John Moore for the sum of seventy four dollars debt and six & 12/100 dollars cost as by the transcript of said judgement from the docket of the said Justice filed in the clerks office of our Circuit Court in and for the said County by the said James Swaney in this behalf appears and whereas the said James Swaney has taken an appeal from the said Judgement and has given bond and security to the said John Moore for the due prosecution thereof according to law; which said bond is filed as of record in the said clerks office We therefore command and enjoin you the said Isaac Wilson as being Justice as aforesaid that you do entirely supersede

3 and desist from proceeding any further in said suit and that you do forthwith suspend all proceedings in relation thereto and cease from molesting the said James Swanzy in any wise on that account until the said Circuit Court shall make other order to the contrary—and this you are in no wise to omit at your peril

Witness Edward M Fisher clerk of our said Court and the seal of said Court at Princeton this 22nd day of November in the year of our Lord 1856

Seal Edward M. Fisher clerk

To the Sheriff of Bureau County to execute & Served by reading to the within named Isaac Wilson this 22nd day of November 1856 Z K Waldron Sheriff

State of Illinois } ss
Bureau County }

The People of the State of Illinois To the Sheriff of Bureau County Greeting we command you to summon John Moore personally to be and appear before the Judge of the Circuit Court in and for said County on the first day of the ensuing January Term thereof to commence on the second monday of said months at the Court House in Princeton to answer unto James Swanzy upon an appeal brought into our said Circuit Court by the said James Swanzy from a Judgement lately rendered before Isaac Wilson Esquire— against him in favor of the said John Moore Herein fail not and have you then and there this writ In testimony whereof I hereunto set my hand and seal of said Court at Princeton this 22nd day of November a d 1856

Seal Edward M. Fisher clerk

5

at the rate of Two hundred pr year making nine
one dollars and 70 cents with an offset of seventeen
dollars & 50 cents leaving balance due Plaintiff
seventy four dollars & 20 cents and it not appearing
satisfactory to the Court that there was an entire
contract it is therefore adjudged that the plain-
tiff have and recover of the defendant the
sum of Seventy four Dollars and 20 cents
for his demand against the defendant and cost
of suit taxed at six dollars and 12 cts per
se deas served on me by the Sheriff of Bureau
County January 10 1857. Transcript and all
the papers in the case filed this day in the Office of
the Clerk of the Circuit Court

Isaac Wilson J. P.

I do hereby certify that the above Transcript
with the accompaning papers contain a full
and perfect Statement of all the proceedings
before me Given under my hand and seal this
12th day January 1857

Isaac Wilson J. P. (Seal)

Pleas before The Hon'l M E Wollister Judge
of the ninth judicial circuit of the State of Illi-
nois at the Term of the Circuit court begun and
held at the court House in Princeton in the
County of Bureau and State of Illinois on
the second Monday in the months of January
in the year of our Lord one Thousand Eight
hundred and fifty Seven

Present M E Wollister Judge
E M Fisher Clerk
L K Waldron Sheriff
W Bushnell State atty

6

John Moore vs James Swanzey } appeal. To wit: upon the seventh day of said Term.

Now comes the defendant by Peters his attorney and on his motions and affidavit filed herein a rule is taken on said plaintiff to file his security for costs herein by Wednesday morning next

John Moore vs James Swanzey } appeals To wit: upon the Tenth day of said Term

Now comes the Plaintiff by Taylor and also the defendant comes by Porter & Peters his attorneys & Stipp his Attorney and on motions of said Plaintiff attorneys the rule for security for costs herein is set aside and said Plaintiff is allowed to prosecute his suit herein as a poor person and by agreement of said parties this cause is continued to the next Term of this court

Pleas before the Hon^b Martin Ballou Judge of the Twenty third Judicial circuit of the State of Illinois at the term of the Circuit Court begun and held at the Court House in Princeton in and for the County of Bureau on the first Monday in April in the year of our Lord One thousand Eight hundred and fifty seven

Present Hon^b Martin Ballou Judge
Edward M Fisher Clerk
Z K Waldron Sheriff
Geo W Stipp State atty

John Moore vs James Swanzey } appeals

7

To wit on the Eighth day of said Term.
Now come the Defendant by Porter & Peters his attorneys and files an affidavit pereing and thereupon move the Court for a continuance of this cause which motions is sustained by the court and this cause is continued at the cost of the said defendant

Pleas before the Honorable Martin Ballou Judge of the Twenty third Judicial Circuit of the State of Illinois at a Term of the said Circuit Court begun and held at the Court House in Princeton in the County of Bureau one the first Monday in September in the year of our Lord one Thousand Eight hundred and fifty seven

Present Hon^d Martin Ballou Judge
Edward M Fisher Clerk
Z K Haldron Sheriff
Geo H Stipp State attorney

John Moore
vs
Jonny Swanzey
appeal

To wit on the second day of said Term. Now comes the Defendant by Peters & Harned his Attorneys and file an affidavit pereing and thereupon move the court for a continuance of this cause which motions is sustained and this cause is continued to the next term of this Court and from the said defendant pay all the costs accruing at the present term

Pleas before the Hon^b Martin Ballou Judge of the twenty third Judicial circuit of the State of Illinois at the January terme of the Circuit Court ine and for the County of Bureau begun and holde at the Court House in Princeton in said County on the first Monday in the month of January in the year of our Lord one thousand Eight hundred and fifty Eight

Present Hon^d Martin Ballou Judge
Edward M Fisher clerk
Z K Waldron Sheriff
Geo N Stipp State attorney

John Moore
vs
James Swanzey } appeal

Do wit on the fifthe day of said terme. Now comes the plaintiff by Taylor & Stipp his Attorneys and the defendant comes by Peters & Farwell his attorneys and the Court orders that a Jury be empannelled to try this cause and a Jury comes of twelve good and lawful men to wit C C Olney Joel Doolittle Amos Nerals Rupp F Gibons Aaron S Brokaw Peletiah Rackley Truman Culver D A Morgan Alanzo P. Edick E H S Power Chas Ingalls and Sidney Smith, who are duly elected tried and known sell and bidy to try this cause, and a true verdict render according to the Evidence and said Jury upon their oath say we of the Jury do find for the said plaintiff and assess his damages at the sum of one hundred Dollars whereupon the said defendant moves the Court for a new trial herein and the plaintiff

he have ac cordingly therefor

by his attorney remit the sum of three dollars and agree to accept of a Judgement for ninety seven dollars herein. And by the consideration of the Court the said motion for a new trial is overruled * and the said Defendant prays an appeal herein to the Supreme Court which is allowed on condition that said defendant enter into bonds in the sum of Two hundred dollars with security to be approved by the clerk of this Court and file the same herein by the first day of March next

And afterwards, to wit: upon the 18th day of said Term came the aforesaid defendant by his said attorneys and file in the office of the clerk of the said Circuit court his bill of Exceptions herein in the words and figures following to wit:

John Moore
vs
James Swanzey

Be it remembered that upon the trial of this cause the Plaintiff proved that he had worked for the Defendant as a common farm laborer from the 5th day of March A.D. 1856 until the 25th day of August of the same year & that in that time he might have lost a few days not over a week and that said work was worth 17 or 18$ a month and rested his cause The defendant then gave evidence tending to prove that the said work was done under a contract between plf & dft by which Plf was to work for dft one year from 5th March 1856 for 200$ and proved that said contract was made about one week before the said 5th March 1856 and

* It is thereupon considered by the court that the said plaintiff have and recover of the said Defendant the said sum of ninety seven dollars his debt aforesaid damages by the said Jury assessed & his costs by him about his suit in this behalf expended and that the said Defendant in mercy &c

that by the contract the plf was to commence on the
paide 5th March 1856 the plf then gave evidence
tending to prove that the work was done under a
contract between the plf & Dft by which plf was
to work for Dft one year for $200 if both parties
could agree The plaintiff and deft both in-
troduced evidence as to the cause of the Plffs
quitting work before the end of the year from
the 5th of March 1856 Defts Evidence tended to
show that the plaintiffs left defts service with-
out good cause ine Aug of the year for which
Plff was to work & that there was no disagreement
between Plff & deft before Plff left defts service
But that upone the day Plff left service and
befor he left the defts done who partially took
charge of defts farming business ine defts ab-
sence expressed dissatisfaction that Plff &
another hands had not hauled more than two
loads of Hay & that the plff then left defts
service & worked no more for deft The deft
also introduced evidence tending to show that
the plff professed to be a good stacker of grain
and that while in defts employ plff stacked a
quantity of wheat for deft imperfectly & that
some of the wheat ine consequence became wet and
spoiled & the defendant then asked the witness
how much wheat deft lost by paide bad stacking
& what was the value of the wheat so lost.
but the court upon motion of the plaintiff
ruled that paide witness should not answer
paide question to which paide ruling of the
court the defendant then and there excepted
The court then gave the following instructions
for the Plaintiff

11

John Moore vs James Swanzey } The court instructs the Jury on the part of the plaintiff

1 If the Jury believe from the Evidence that the Plaintiff worked for the Defendant from the fifth of March 1856 until the 25th August AD 1856 then they will find for the plaintiff the value of the said work although the Jury should believe from the Evidence that the defendant did the work under a contract to work a year from the fifth day of March 1856 if the jury further believe that said contract was made about a week befor the said 5th March

Given

2 If the Jury think that the testimony is conflicting upon any point in the case that side is to prevail upon which the testimony preponderates

Given

3 If the Jury believe from the Evidence that Moore was to work for Swanzey a year at the rate of 200$ a year provided the parties could agree then Moore had the right to leave Swanzey whenever he & Swanzey or Swanzey's agents could not agree

Given

4 If the Jury believe that the Plaintiff contracted with the Defendants to work for him for the period of one year if they could agree and the Jury further believe that plaintiff commenced to work under such contract but quit befor the expiration of the said year on account of a disagreement with the defendant or with defendants Son if the Jury believe that said son was authorized by the defendant to superintend Plaintiffs work then they will find for the Plaintiff

Given

Instructions referred to in which appellants grand position are refused

12

John Moore
vs
James Swanzey

Plaintiffs Instructions

5 If the Jury believe from the Evidence that the contract was that Moore was to work for Swanzey one year if they could agree that Humphry Swanzey managed the farm, ine the absence of of James Swanzey for him, and that Moore and Humphry Swanzey could not agree while said Humphry managed the farm then the said Moore was at liberty to quit and is entitled to the value of the labor proved to be performed by him under the contract.

Given

To the giving of which Instruction the defendant then and there objected but his objections were overruled & the court gave them to the Jury & the deft then & there excepted The deft asked the Court to give the following instructions to the Jury~

John Moore
vs
James Swanzey

The court instructs the Jury For Defendant

1 That if the services which were rendered by the plaintiff for the defendant were performed under a contract to work one year that then the Plaintiff is not entitled to recover unless he has proved that he worked the entire year, or that the contract was put an end to by the consent of the parties or the Plaintiff had good cause to leave the service of the defendant

Refused

2 That although the contract for the year was to commence at a future day yet if the —

13

Refused

Plaintiff afterwards went one and did the work under said contract he cant now say that he would not be bound by said contract for he has by going on under said contract confirmed said contract so far as this action is concerned.

Given

3. That if the plaintiff did not perform the work of the defendant about which he was employed with reasonable skill and care and thereby defendant sustained loss and damage, the Jury should even if the plaintiff was entitled to recover, deduct what is right and proper from plaintiffs wages provided the defendant did not. Set the plaintiff to work at different work than what plaintiff had been hired to do.

4 That if the son of the defendant with the authority of his Father made a contract with the the plaintiff for said plaintiff to work for one year from the fifth March A D 1856 for the defendant and if the said plaintiff came one at said time and went on and worked for said Defendant under the said contract without objection and did not elect to disaffirm said contract and made no objection to said contract and left without good cause shown or without the consent of the defendant that then the law is with the Defendant, and the plaintiff is not entitled to recover

Refused

5 That if the contract was that the Plaintiff was to work for one year for defendant if they could agree one single dispute with or reproof from Franzup son to plaintiff

Refused

14 Refused

without any participation ing the same by the defendant himself and without the Defendants Knowledge would not authorize the plaintiff to quit the defendants service before the expiration of his terms of service

6 Given

That the Plaintiff by placing the Defendants son upon the stands as his (plaintiffs) witness to prove a portion of his (plaintiffs) case thereby affirmed the credibility of said witness and is bound thereby and has to take the entire testimony given by said witness and cant say that he will use the testimony given by said witness to prove the amount of labor done by the plaintiff and that the witness other testimony so far as it establishes a contract or that the plaintiff left without good cause shall not be taken for the law is that the whole testimony of the witness is to be taken together.

—

Refused

The Defendants qualification to 3rd & 4th Instruction of Pltffs

That the Plaintiff could not manufacture a mere pretence to disagree with Swanzey or his agents so as to abandon his contract but he must have proved that he had good reason to disagree with and be dissatisfied with the defendant or his authorized agents, ing order to entitle him to quit the service of the defendant

But the Court refused to give said qualification to Pltffs 3 & 4th instruction and refused to give defendants 1st 2nd 4th & 5th instruction to which said refusal of the court the defendant then and there excepted. The

Jury having found for the plaintiff the deft moved for a new trial which the court overruled to which the defendant then & there excepted & the deft prayed the court to sign and seal this his bill of exceptions and make the same a part of this record which is accordingly done

M Ballou Seal
Judge of the 23rd Judicial Circuit
of the State of Ills

Copy of appeal Bond

Know all men by these presents that we James Franzen as principal and De Wraf Salisbury as security of the County of Bureau in the State of Illinois are held and firmly bound unto John Moore also of the same County and State in the penal sum of Two hundred Dollars current money of the United States for the payment of which well and truly to be made we bind ourselves, our heirs, Executors and administrators Jointly severally and firmly by these presents Witness our hands and seals this 8th day of February A D 1858

The condition of the above obligation is such that whereas the said John Moore did on the 11th day of January A D 1858 in the circuit court in and for the County and State aforesaid recover a Judgement against the above bounden James Franzen for the sum of ninety seven dollars Damages and cost of suit from which said Judgement of the said circuit court the said James Franzen has

16 prayed for and obtained an appeal to the Supreme court of said State Now if the said James Swanzy shall prosecute his said appeal with effect and shall moreover pay the amount of the Judgement costs interest and damages rendered and to be rendered against him in case the said Judgement shall be affirmed in the said Supreme Court then the above obligation to be void otherwise to remain in full force and virtue

James Swanzy (seal)
D G Salisbury (seal)

Taken and approved by me this 8th day of February 1858 E M Fisher clk

State of Illinois }
County of Bureau } ss

I Edward M Fisher clerk of the Circuit Court of the State aforesaid in the County aforesaid do certify the foregoing to be a true and correct copy of the record and proceedings of the said Court in the above mentioned cause wherein the said John Moore was plaintiff and the said James Swanzy defendant In witness whereof I hereto set my hand and affix my official seal as clerk aforesaid at Princeton in the County aforesaid this 12th day of February Anno Domini Eighteen hundred and fifty Eight

Edward M. Fisher
clerk

Clerks fees on Transcript $5,00
Copy & seal 35
$5,35

SUPREME COURT OF ILLINOIS.

JAMES SWANZY, Appeal,

vs.

JOHN MOORE.

Abstract and Assignments of Errors.

STATE OF ILLINOIS, Supreme Court April Term, 1858.

James Swanzey, appellant,
vs.
John Moore, appellee,
} Appeal from Bureau.

Suit brought by appellee against appellant for work and labor.

Bill of Exceptions
9th page of record

Appellee proved that he had worked for the appellant from the 5th March, 1856, until the 25th August, 1856, as a common farm laborer, and that his services were worth from $17 to $18 per month.

The appellant then introduced evidence, tending to prove, that said work was done under a special contract, made between the parties, about one week before said 5th March, that the appellee should work for the appellant for one year from said 5th March, for $200. The appellee introduced evidence tending to prove, that said service was performed under a special contract between said parties, that the said appellee should work for the appellant one year, if the said parties could agree. Appellant further introduced evidence tending to show, that the appellee professed to be a good stacker of grain, and that while in appellant's employ as aforesaid, that the appellee stacked a quantity of wheat for appellant imperfectly, and that in consequence thereof a portion of said Wheat became wet and spoiled, the appellant proposed to ask a witness, how much wheat appellant had lost by such bad stacking, and the value of the wheat so lost, but the court refused to permit the witness to answer, and the appellant excepted.

do
10th page of record

The appellant further introduced testimony tending to show that the appellee left appellant's service without good cause, and that there had been no disagreement between said parties before then, but that on the day appellee quit work, that appellant's son who partially took charge of appellant's farming business in his absence, expressed dissatisfaction that the appellee and another hired hand of appellant had not hauled more than two loads of hay, that the appellee then left appellant's service, and worked no more for the appellant.—

do
11th page of record

The Court at the instance of appellee instructed the Jury (1st instruction) that the appellee was entitled to recover, notwithstanding that the said services had been rendered under the special contract to work for one year from the 1st March 1856, if the contract was made before that time, and rejected appellant's 2d and 4th instructions, that if the appellee had voluntarily rendered said services under such contract, that he could not in this suit insist that the contract was void, to which the appellant excepted.

do
12th " Record

The appellant asked the court to instruct the Jury, (5th instruction,) that

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13th page of record

if the contract was, that the appellee should work for the appellant one year, if they could agree, that then one single dispute with, or reproof from Swanzey's boy to appellee, without appellant's knowledge or participation, would not authorize the appellee to leave the appellant's service before the expiration of his, appellee's, term of service, but the court declined to give the instruction and the appellant excepted: the appellant asked as a qualification to appellee's 3d and 4th instructions, that the appellee could not manufacture a pretence to disagree with Swanzey or his agents, but that he must have had good reason to disagree with, and become dissatisfied with appellant or his agents, in order to entitle the appellee to quit appellant's service before the expiration of his time. But the court declined to give such qualification, and the appellant excepted: the Jury found for the appellee, the appellant moved for a new trial, which the court overruled and the appellant excepted.

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14th page of record

Errors Assigned, are

1st. That the court erred in refusing to permit the witness to answer as to the loss of the wheat caused by appellee's bad stacking, and the value thereof.

2d. In giving appnllee's 1st instruction and rejecting appellant's 2 d and 4th instructions.

3d. In refusing appellant's qualification to appellee's 3d and 4th instructions.

4th. In refusing appellant's 5th instruction.

5th. In overruling appellant's motion for new trial.

6th. The Court erred in every decision he made against appellant for said reasons: the appellant prays the Supreme Court to set aside and reverse the said Judgement rendered against the appellant and restore to him his legal rights which he lost as aforesaid

PETERS & FARWELL
Att'ys for Appellant.

Supreme Court.

3d Grand Division

April Term 1885.

James Swanzey
vs.
John Moore
} Appeal from Bureau.

And now comes the said John Moore appellee, and says, that, in the Record and proceedings aforesaid, there is no error, and he therefore prays, that the judgment aforesaid be affirmed.

Oliver C. Gray,
Atty. for Appellee

No. 85.

Supreme Court

James Sivanzey
vs.
John Moore.

Joinder in Error.

Filed apr 23, 1858
D. L. Edmond
Clerk

Olivier C. Gray,
Atty. pro Appellee.

John Moore
vs
James Swanzy
Certified copy of the
Record

Filed Feb. 25. 1858
L. Leland
Clerk