

No. 12569

Supreme Court of Illinois

Moore

vs.

Morris

71641  7

187-70

John B. H. H. H.

13

William H. H.

187

11569

1858

X

used

Plas before the Circuit Court within and for the County of Peoria
in the State of Illinois on the 15th day of March in the year of our
Lord one thousand eight hundred and fifty eight.

Be it Remembered that heretofore to wit on the first
day of June in the year of our Lord one thousand eight hundred
and fifty seven there were filed in the Clerks office of the Circuit
Court within and for the County of Peoria in the State of
Illinois the following papers in the words & figures following
to wit:

(Declaration)

" State of Illinois. of the March Term.
Rock Island County of the Circuit Court
within and for the County aforesaid AD 1856

John S Moor Plaintiff in this Suit of the County of Mercer
in the State aforesaid complains of William Morris of the
County of Rock Island aforesaid Defendant in this suit, in
a plea of the case. Whereupon the Plaintiff declares and says
that heretofore to wit on the 1st day of Feb. AD 1856 to wit
at the County of Rock Island aforesaid the said defendant
was indebted to said Plf in the sum of seven thousand
dollars for goods wares and merchandize. before that time
sold and delivered by said Plf to to said Defendant at his
the said defendants special instance and request. And
being so indebted he the defendant in consideration thereof
afterwards to wit on the day, year aforesaid at the County

of Rock Island aforesaid undertook & faithfully prom-
ised the said Plf to pay him said sum of money when
he the Defendant should be there to afterwards demanded,
yet the said Defendant not regarding his said promise
undertaking so by him made as aforesaid hitherto has
refused & still does refuse to pay said Plf said sum of
money or any part thereof tho often thereto demanded,
to wit on the day & year last afd at Rock Island County
aforesaid, and the whole sum aforesaid still remains
due & unpaid to the Plaintiff - all of which is to the dam-
age of the said Plf as he says seven thousand dollars,
for the recovery of which and just costs this suit is brought
By

J. S. Beardsley
Atty for Plf

Specification of Plf claim in this this suit

William Morris

To John S Moore Dr

May 1855

In ninety six (96) head beef cattle
averaging in weight 1329 lbs. per head, at
4 1/2 cents per pound

\$5741-28

(Endorsed)

Filed February 12th 1856

Frazier Wilson Clerk

Pleas

(Pleas)

"

William Morris
and
John S Moore

State of Illinois, County of Rock Island
Circuit Court
June Term A. D. 1856
Assumpsit

1 And the said Defendant William Morris,
comes by his Attorneys, and defends the wrong and injury
to and says that he did not undertake and promise in
manner and form as the said Plaintiff hath in his
said Declaration alleged, and of this he puts himself

on the country &c

Knorr & Goudy

Defendants Attorneys

And the Plaintiff doth the like

J. H. Beardsley

Plaintiffs Attorney

2 And for further plea in this behalf by leave of the Court &c the said Defendant says actio non because he says that heretofore to wit, on the 27th day of June A.D. 1854, at and within the County of Rock Island and State of Illinois, the said Plaintiff entered into a written agreement with the said Defendant, signed by each of the said parties and sealed with their several seals, and now to the Court here shown, and then and there, and thereby the said Plaintiff sold to the said Defendant from eighty to one hundred head of cattle from three years old upwards, including the Oxen of the Plaintiff, and to be the same cattle that the said Plaintiff then had on hand and all of said cattle were to be steers, and were to graze till the feeding time next thereafter and then to be stall fed through the general feeding time and the said cattle were to be delivered by the said Plaintiff to the said Defendant, on the first day of May next thereafter, at Samuel Corvohans Scales in Township fourteen North of Range four West in Mercer County, State of Illinois, and the said cattle at the time for such delivery were to be fed at the usual feeding time and not to be watered after they should be turned out of the lot to drive to the Scales aforesaid, and at the time & place aforesaid, the said Defendant paid to the said Plaintiff part of the purchase money for said cattle, to-wit, the sum of five hundred dollars, the receipt of which was acknowledged by said written agreement, and thereby the said Defendant agreed to pay to the said Plaintiff three dollars and a quarter per hundred pounds live weight for the above named cattle to be paid in good current money of the State aforesaid on the delivery of said cattle, and it was

thereby further agreed by and between the Plaintiff and Defendant aforesaid that the said cattle should be weighed as soon as possible after arriving at said Scales, and further that if the said Plaintiff should for the purpose of raising the number of cattle from the number then on hand to the number of one hundred head as aforesaid, that the cattle so added should not be inferior to the cattle then on hand.

And the said Defendant avers that the cattle specified in Plaintiffs account and for the price of which this suit is brought are the same cattle mentioned in the said written agreement and not any other or different cattle, and that the said cattle for the price of which this suit is brought were delivered by the said Plaintiff to the Defendant under the said written agreement aforesaid. # And the Defendant also avers that the said written agreement hereinbefore described was and is in full force between the parties thereto and not cancelled, abandoned, or rescinded. And this he is ready to verify &c, wherefore the Defendant prays judgment if the said Plaintiff ought to have and maintain his aforesaid action &c

Knorr & Goudy
Defendants Attorneys

3. And for further plea in this behalf by leave &c, the said Defendant says actio non because he says that a written agreement under the several seals of the said Plaintiff and Defendant, which is now to the Court shown as in and by the last plea is described, and that the said Plaintiff drove a certain lot of cattle, to wit, ninety six head, on the said first day of May A.D. 1855 to the Scales at Samuel Carnahan's when and where the same were weighed as agreed by said contract, and thereupon before the said cattle were delivered the said Defendant offered to pay to the Plaintiff the full sum of money due for said cattle according to said written contract and thereupon tendered the same

And the said Defendant avers that the said Plaintiff has not at any time performed and executed the said agreement on his part, but before time for the delivery of the said cattle to him, the said Plaintiff sold & disposed of said cattle or to some other person, than the Plaintiff and did not & could not deliver the said cattle to the Defendant as provided in the said agreement.

amendment made
Nov 17/56 by leave
of the Court. by
introduction

to the Plaintiff, but the Plaintiff claimed that by the terms of the Contract he was entitled to receive the payment in other and different money, and thereupon a dispute and difference arose between the parties as to the true construction of said contract and also as to whether the said parties had complied with the written contract aforesaid, and they then & there not being able to settle the same, they, the said Plaintiff and Defendant entered into another agreement in writing signed & sealed by each of the parties and to the Court here shown, and by the terms thereof the said Plaintiff was to and did deliver at the time of entering into said last named agreement, that is to say, on the 3^d day of May A.D. 1855, to the Defendant under the agreement first aforesaid named, ninety six head of cattle averaging about thirteen hundred & twenty nine pounds gross weight, and the said Defendant was to and did then & there pay to the said Plaintiff the full price fixed on by the terms of the agreement first aforesaid described and by the weights aforesaid, with the express stipulation that the said delivery and payment were not to affect the questions that might arise between the parties aforesaid in reference to the performance or non performance of the conditions and terms of the contract or agreement first aforesaid named, but that such questions were by the agreement then and there made referred to the Honorable Ira O. Wilkinson of the City and County of Rock Island and State of Illinois for his decision, or if the said Wilkinson thought proper to any person or persons that he might call to his assistance for their decision and determination, and it was by said agreement then & there further agreed that if it was determined by the said Wilkinson or by said Wilkinson & any other person or persons called to his assistance in that event, that the said Defendant had not upon a full fair and legal examination of all the arguments, testimony and law having reference to the case, complied with his part of the Contract first aforesaid named then the said Defendant should abide by and pay any award

that might be made by the said Wilkinson or by him & such persons as he might call to his assistance, and that if it was determined that the said Plaintiff on his part had not complied with the said contract first aforesaid named, then that the said Plaintiff should abide by and pay any award which might be made by the said Wilkinson or by him & others he might call to his assistance, with the further stipulation that the said decision be made within three months from the date of the said agreement of submission, or if not within that time, then at any other time to be agreed upon between the parties thereto, and to the faithful performance of the said agreement of submission the said Plaintiff and Defendant bound themselves respectively to each other in the penal sum of Three Thousand Dollars.

And the said Defendant avers that the said decision was not made by the said Ira O Wilkinson or by him & any other persons as provided in the said agreement of submission within three months of the making & date of the same, and afterwards, to wit, on the 21st day of June A.D. 1855, and within the said period of three months at & within the County of Rock Island aforesaid, the said Plaintiff and Defendant by their written agreement under their respective seals, and now to the Court here shown, agreed that the time for holding the said reference mentioned in the said agreement of submission, should be extended to the 20th day of November next thereafter, namely, 20th November A.D. 1855.

And the said Defendant avers that the said Ira O Wilkinson took upon himself the burden of the reference and arbitration alone and without calling to himself the assistance of any other person and afterwards to wit, on the day of November A.D. 1855, and before the 20th day of November A.D. 1855 aforesaid at & within the County of Rock Island aforesaid, both parties in person by their attorneys appeared before the said Ira O Wilkinson and produced their evidence before him and thereupon submitted the matters mentioned in said agreement of submission to the said Ira O Wilkinson for his decision and

amendment made Nov. 17/56
by leave of the Court by
in line 14

determination, and then and there the said Plaintiff and Defendant by their attorneys consented and agreed that the determination and award might be reduced to writing by the said Ira O Wilkinson at his convenience; and the Defendant avers that in pursuance of said agreement of submission & the further & subsequent agreement with and before the expiration of the said extended time on the 20th day of November 1855 in pursuance thereto as herein alleged, the said Ira O Wilkinson decided and determined that said Plaintiff had not complied with the contract on his part first aforesaid mentioned, and that the said Defendant had not complied with the said contract on his part and that the said Defendant should pay to the Plaintiff @ small amount, being nominal, and afterwards notified the said parties thereof, but that the said Ira O Wilkinson is now living and has not yet reduced his said decision to writing. Wherefore the said Defendant avers that the subject matter of this suit has been settled and adjusted by the agreement of the Plaintiff and Defendant and by the decision and determination of the said Ira O Wilkinson then and there and that the said Wilkinson has and ought to exercise the right in him vested to reduce his said decision to writing according to last agreement of the parties aforesaid. And thus the Defendant is ready to verify wherefore he prays judgment &c.

Know & Cordy
Defendants Attorneys.

4 And the said Defendant for further plea in this behalf says actio non, because he says that before the commencement of this suit, to wit, on the 3^d day of May A.D. 1853. at & within the County of Rock Island and State of Illinois, the matters & things in controversy in this suit were by the said Plaintiff and Defendant by their agreement in writing under their several seals, which is now to the Court here shown submitted to the arbitrament and determination of Ira O Wilkinson, who took upon himself the burden thereof, and that the said matters and things were at the commencement of this suit, since, and now pending before the said Ira O

Wilkinson as such arbitrator and undetermined
and that the said Geo O Wilkinson has the lawful right
to determine such matters by virtue of said agreement
of submission and the subsequent agreements of the
said parties with reference thereto extending the time
for such hearing, determination and reducing the
same to writing.

Which the Defendant is ready to verify &c.
wherefore he prays judgment &c.

Know & Goudy
(Defendants Attorneys)

(Endorsed)
Filed June 17th 1854 Frazee Wilson Clerk.

Demurrer

(Demurrer)

State of Illinois
Rock Island County ss

In the Circuit Court of
said County Nov Term A.D. 1856.

John S Moore }
vs }
William Morris }

And now the said John S Moore
by J. S. Beardsley his Atty comes and defends the wrong
and injury when &c and craves oyer of the said supposed
written agreement under the hand and seal of said
parties mentioned in said pleas, which being read to him,
the said Plf says that the said second amended plea of
the said defendant by him secondly above pleaded in
manner and form pleaded and the matter in the same
contained is not sufficient in law to bar the said Plf of
his said action against the said Deft and that he is
not bound by law to answer the same, and this he is
ready to verify; wherefore he prays judg^t, and his damages
aforesaid to be adjudged to him by

J S Beardsley his atty-

And now the said John S Moore by J S Beardsley
his Atty comes & defends the wrong and injury when &c
and craves oyer of the said supposed written agreement

and the several agreements of said parties under their hands & seals
mentioned in said plea by binding the time of reference a submission
to said J O Wilkinson to the 20th Nov 1856.

under the hands & seals of said parties alleged to be
dated on the 27th June 1854 and referred to by Def^t
in his amended plea thirdly above pleaded. And it is
read to him as follows, he also craves oyer of said supposed
agreement in writing under the hands & seals of said parties
mentioned in said defts amended plea by him thirdly
above pleaded and alleged to have been executed on
the third day of May 1855 and it is read to him as follows;
He also craves oyer of said supposed written agreement
or submission referred to in said plea and under the
hands & seals of said parties by which the said matters
& things mentioned in said plea were referred to the
decision of the Hon Jra O Wilkinson & others whom he
might call to his assistance & it is read to him as
follows; and says that the said third plea by him said
Def^t thirdly above pleaded in manner & form as the
same is pleaded, and the matters in the same contained,
are not sufficient in law to bar the said Plf of his afd
action against said Def^t and that he is not bound by
law to answer the same, and this he is ready to verify.
wherefore he prays judgt & his damages afd to be ad-
judged him &c by

J B Beardsley his Atty

And the said Defendant comes by his Attorney & joins
in demurrer to to the Plaintiffs demurrer to the second
amended plea & third amended plea & each of them &c

Know & Goudy

Defts Attorneys

And as to the fourth plea of the Defendant the said Plaintiff says
that the same and the matters & things therein contained and alleged
are not sufficient to bar the Plaintiff from having and maintaining
his aforesaid action. Wherefore he prays judgment &c.

J B Beardsley Plfs Attorney.

And the said Defendant comes by his Attorney & joins in the demurrer
of the Plaintiff to the fourth plea of the Defendant, &c.

Know & Goudy Defts Attorneys

(Enclosed)

Filed Nov 18, 1856.

Frazer Wilson Clk.

(Transcript)

Transcript Pleas before the Hon Benjamin R Sheldon Judge of the
from Rock Island fourteenth Judicial Circuit of the State of Illinois sitting
in exchange with the Hon J. Wilson Drury Judge of the
Sixth Judicial Circuit of the State aforesaid at a term
of the circuit court last aforesaid begun and held at the
Court House in and for the County of Rock Island and
State aforesaid on the Wednesday after the first Monday
(it being the fifth day of said month) in November A.D. 1856

Present Hon Benj R Sheldon Judge &

Thomas B Gorton Sheriff

Jno B Hawley State Atty Pro tem

Frazer Wilson Clerk

And afterwards to wit on the ninth of said term and the
14th day of said month the following proceeding was had to wit

John S Moore

vs

William Morris

Assumpsit

This day came the parties by their attorneys and plaintiff
files his demurrer to defendant's second plea which being con-
fessed by defendant leave is granted him on his motion to
amend the said plea, Thereupon plaintiff files his demurrer
to defendant's third and fourth plea which being argued to the
court is sustained, and thereupon on motion of defendant
leave is given to amend his third plea

And afterwards to wit on the twelfth day of said
term and the 18th day of said month the following pro-
ceeding was had to wit

John S Moore

vs

William Morris

Assumpsit

This day came again the parties herein by their Attorneys and

plaintiff files his demurres to defendants second and third pleas; which being considered by the court it is ordered that the demurres to the demurres to the third plea be overruled and the demurres to the second plea be sustained.

And afterwards the following pleas were had
Pleas before the Hon J Wilson Drury Judge of the sixth Judicial Circuit of the State of Illinois at a term of the Circuit Court begun and held at the Court House within and for the County of Rock Island in said State on the third Monday the 16th day of March A.D. 1857

Present Hon J Wilson Drury Judge &
John B Hawley States Atty
Ezra M Beardsley Sheriff
Quincy McNeill Clerk

And afterwards on the nineteenth day of said term and the seventh day of April in said year the following proceeding was had

John S Moore

vs

Assumpsit.

William Morris

This day came the parties herein by their Attorneys and the court having been counsel in this cause and refusing to sit in the hearing and trial of the same by agreement of the parties hereto it is ordered by the Court that the venue hereof be and the same is hereby changed to the County of Peoria in the Sixteenth Judicial Circuit of the State of Illinois.

~~State of Illinois~~ I, Quincy McNeill, Clerk of the Circuit Court of said County do hereby certify that the foregoing ~~Rock Island County~~ is a true copy of the Record in the above entitled cause. Given under my hand and seal of said Court this 21st day of April 1857

Quincy McNeill, Clerk.

Proceedings in the Circuit Court at a term thereof began and held in the Court house in the City and County of Peoria, in and for said County, and State of Illinois, on the third Monday of November in the year of our Lord one thousand eight hundred and fifty seven, it being the sixteenth day of said month. Present the Honorable Elisha W Porcell, Judge of the 16th Judicial Circuit in the State of Illinois. Francis W Smith, Sheriff, and Enoch P Sloan, Clerk to wit;

Thursday, November 19th A.D. 1857.

John S Moore

vs
William Morris

Assumpsit - venue from Rock Island

By agreement of parties this cause is continued to the next term of this court.

Proceedings at @ terms of the Circuit Court began and held in the court house in the City of Peoria, in and for the County of Peoria, and State of Illinois, on the first Monday of March in the year of our Lord one thousand eight hundred and fifty eight, it being the first day of said month -

Present - Honorable Elihu W Powell, Judge of the Sixteenth Judicial Circuit in said State, Francis W Smith Sheriff, and Enoch P Sloan, Clerk. Viz;

Monday, March 8th AD 1858.

John S Moore

vs
William Morris

Assumpsit - venue from Rock Island

This day came the Plaintiff by Manning his attorney, and on motion to the court, he has leave to amend his declaration filed herein.

And thereupon to wit on the 9th day of March AD 1858 the plaintiff filed in the Clerks office of said Court his amended declaration, which is in the words and figures following to wit:

State of Illinois
Rock Island County

Of the March Term of the Circuit Court
within and for the County aforesaid AD 1856

John S Moore Plaintiff in this suit of the County of Mercer in the State aforesaid complains of William Morris of the County of Rock Island aforesaid Defendant in this suit in @ plea of the case whereupon the Plaintiff declares and says that here tofore to wit on the 1st day of Feb AD 1856 to wit at the County of Rock Island aforesaid the said

defendant was indebted to said Plf in the sum of seven thousand dollars for goods wares and merchandises before that time sold and delivered by said Plf to to said defendant at his the said defendants special instance and request. And being so indebted he the defendant in consideration thereof afterwards to wit on the day & year aforesaid at the County of Rock Island aforesaid undertook & faithfully promised the said Plf to pay him said sum of money when he the defendant should be thereto afterwards demanded. And whereas also afterwards to wit; on the day and year aforesaid, at the County aforesaid the said defendant was indebted to the said plaintiff in the further sum of two thousand dollars for goods chattles cattle oven steers cows and heifers before that time sold and delivered to the said defendant by the said plaintiff at the special instance and request of said defendant; and being so indebted he the said defendant in consideration thereof afterwards to wit; on the day and year last aforesaid at the County aforesaid undertook and then and there faithfully promised the said plaintiff to pay him the said last mentioned sum of money whenever he should be thereunto afterwards requested. Yet the said defendant not regarding his said promise undertaking so by him made as aforesaid hitherto has refused & still does refuse to pay said Plf said sum of money or any part thereof tho often thereto demanded, to wit on the day & year last afd at Rock Island County aforesaid, and the whole sum aforesaid still remains due & unpaid to the Plaintiff - all of which is to the damage of the said Plf as he says seven thousand dollars, for the recovery of which and just costs this suit is brought By

J. J. Beardsley Atty for Plf -

Specification of Plf claim in this this suit -

William Morris

To John I Moore Dr

May 1855

To ninety six (96) head beef cattle averaging in weight

1329 lbs per head, at 4 1/2 cents per pound

\$5741.28

And on the 8th day of March A D 1858 there were opened under General order of the Court and filed in the clerks office of said Court the depositions in the above entitled cause in the words and figures following to wit:

Depositions To William Morris Esq

Sir You will take notice that on the 4th day of March A D 1858 at the office of the Circuit Court Clerk of the County of Mercer in the State of Illinois at 10 o'clock AM of said said day the depositions of Martin A Cook, Henry Cice, David Braucht, John W Miles John S Thompson Joseph Gillmore Samuel Carraham Sen James Haverfield & Bennet Menebau will be taken before John L Condon Esq @ Justice of the Peace in & for said County of Mercer to be used in @ suit now pending in the Circuit Court in the County of Peoria in said State of Illinois in which John S Moore is Ply & you are Deft, in behalf of said Ply, and that the taking of said Depositions will be continued from day to day until completed.

At the time & place aforesaid you will attend & file cross questions to said witnesses if you see cause,
Feb 17th 1858

J. S. Beardsley Atty
for J. S. Moore

(endorsement)

Served the within notice as I am within commanded by reading the same & leaving @ true copy of it with the within named Wm Morris this the 19th day of February A D 1858

J Kirlin Court

The foregoing return sworn to ~~xxx~~ by the said J Kirlin this 4th day of March A D 1858 before me

J. P. 

Depositions of witnesses produced, sworn and examined before John L Condon Esq, @ Justice of the Peace in and for the County of Mercer in the State of Illinois, on the 4th day

of March A.D. 1858, at the office of the Clerk of the Circuit Court in and for said County of Mercer; which depositions are taken to be used in @ certain cause now pending in the Circuit Court of the County of Peoria in said State of Illinois wherein John S Moore is Plaintiff and William Morris is Defendant, the said parties Plaintiff and Defendant both appearing & being present at the taking of the following Depositions- Bennett Menefee @ witness produced by said Plaintiff being first duly sworn according to Law, in answer to the following Interrogatories depose and says as follows:

Direct

Int 1 What is your name & where do you reside

Ans Bennett Menefee; I reside in Mercer County & State of Illinois,

" 2 Do you know the parties Plf & Dft in this case or either & which of them, and how long have you known them or either of them?

Ans I know both parties; I have been acquainted with Moore, the Plaintiff about four years; - with Morris, the dft, about four years next June,

" 3 Were you present upon @ certain occasion when the Plf delivered @ drove of cattle to the Dft? If so, state what occurred between the parties at that time in relation to said cattle

Ans I was present when the Plf was ready to deliver to the Dft ninety six head of cattle; the plf & dft weighed the cattle; I heard the Plf tell the Dft that he would take nothing but the gold in payment for said cattle, at the time the cattle were being weighed.

Int 4 State at what times the cattle referred to in your last answer, were weighed, and where

Ans The cattle referred to in my last answer were weighed on the first day of May. A.D. 1855, at Samuel Carnahans scales in Township 14 North 4 West, near the town of Millersburg in said County of Mercer,

" 5 What was the weight of said Cattle?

Ans I do not recollect what the weight of said cattle was,

Int 6 State as near as you can the entire weight of said cattle
Ans I cannot state,

Int 7 How long did said Plff keep said cattle at or near said
Hay scales ready to deliver to said Deft?

Ans The Plff kept said cattle there till the next morning, - the
2^d day of May. witness, on reflection, says he cannot state
how long the Plff kept said cattle at or near said Hay scales
as he, (witness) left on the evening of May first

Int 8 Did said Deft take the delivery or possession of said cattle
at any time after said second day of May, and if so, when?

Ans I cannot state any thing about the delivery of said cattle
from my own knowledge,

Int 9 State the quality of said cattle, as being fat or otherwise,

Ans They were all fat cattle, and had been stall fed through the winter,

Cross Int 1 State by what means you know that the Plff was ready to
deliver said cattle as mentioned by you in answer to the
3^d Interrogatory as above answered,

Ans All I know of the readiness to deliver said cattle by the
Plff to the Deft, is that I helped drive said cattle there and
assisted in weighing them, I supposed that said cattle
were ready for delivery to said Deft by said Plff.

X 2 Do you know of Plff selling @ pair of oxen that he had
contracted to sell to said Deft to any other person prior to
the weighing of said cattle? if yea, state what you know
of such selling and how much said Plff got for said
oxen and how they compared in quality with the rest
of said cattle,

Question objected to as not being in the nature of @ cross
examination of said witness.

Ans. The Plff sold @ pair of oxen in the fall after the contract
was made, which oxen he, the Plff, had on hand at the
time the contract was made; said oxen I suppose
weighed fourteen hundred apiece; I should think said

own to have been twelve or fourteen years of age; I heard the Plff say that he got one hundred dollars for said own. I also heard the Plff say that the Dft objected to taking said own.

That part of the above answer which relates to what the said Plff said about the said Dft objecting to taking said own, is objected to on the grounds of not being in answer to the question, objection by Dft.

Bennet Menebau

David Braucht, @ witness produced by the Plaintiff being first duly sworn according to Law, in answer to the following Interrogatories deposes & says:

Direct

Int 1 What is your name, and where do you reside?

Ans My name is David Braucht; I reside in the County of Mercer & State of Illinois.

" 2 Do you know the parties, Plff and Dft in this case, or either of them, and which of them, and how long have you known them or either of them?

Ans I know both parties in this case, the Plff I have known about seven years, and the Dft I have known about four years.

" 3 Were you present when @ certain drove of cattle belonging to the Plff in this suit, were weighed, and if so, state when and where, the number weighed, and the average weight of the drove, and whether both Plff and Dft were present at that time?

Ans I was not present when the cattle were weighed, but was there immediately after and saw the cattle; it was on the first day of May, 1855, at W Carnahans scales in Millersburgh Township, in the County of Mercer, being Township 14 North 4 West in said Mercer County; I do not know exactly the number of cattle weighed; from my own knowledge I cannot state the average weight of the drove; both Plff & Dft were present when I arrived there.

Int 4 Did you upon the occasion referred to in your last answer hear the Deft state the number of Plffs cattle then weighed? State as nearly as you can the number -

Ans I did not hear the Deft say how many of the Plffs cattle were weighed. I think there were between ninety and @ hundred weighed - I think ninety seven -

" 5 Did you hear the Deft say anything about his having agreed to purchase said cattle of Plff?

Ans I did not hear the Deft say that he had agreed to purchase said Cattle of Plff. I heard him say that he had purchased said cattle of the Plff -

" 6 At what time did you hear Deft say he had purchased said cattle of Plff. as stated by you in your last answer?

Ans On the last of June, or first days of July 1854, I heard the Deft say that he had purchased said cattle of said Plff -

" 7 What did the Deft, on that occasion, say in regard to his having purchased said cattle of Plff?

Ans Deft said he had purchased Eighty head of cattle of the Plff, that Plff was to feed them when feeding time commenced until the first day of May then next; and the Deft was to pay Plff Three dollars and @ quarter @ hundred, gross or live weight; and the Plff had the privilege of increasing that number to one hundred, if he saw fit; and what Cattle the Plff added was to be of an average quality with the number Plff then had on hand; the Plff was to deliver said cattle at Mr Carnahans Scales in Millersburgh Township, in the County of Mercer, on the first day of May then next; on the delivery of said cattle by said Plff to said Deft, on said first day of May, the Deft was to pay the Plff therefor in Illinois Currency or good current money of Illinois, cant say which -

Int 8 What do you know of Defts taking said Cattle into his possession, and what did you hear him say on that subject, and when?

Ans On the third day of May, 1855, I saw the Plf and Deft together, and one of them in the presence thearing of the other, made the remark that they were going out on the Prairie to get the said cattle, distant between a quarter and half @ mile, and they went in the direction of the cattle after them.

" 9 Did you see the Deft make @ tender to Plff in payment for said cattle? and if so, when and where? and what kind of money?

Ans I did not see Deft make @ tender to Plff in payment for said cattle.

Int 10 Did you make @ contract with the Deft, in regard to the sale of cattle to him? and if so, what kind of money were you to receive, and what kind did Deft pay you under such contract and when was such contract made?

Ans On the last of June or first of July 1854 I made @ contract with the Deft for the sale of cattle to him: Deft was to pay me the same kind of money which he had agreed to pay the Plff, which was Illinois Currency or good current money of Illinois. I do not remember which, on the delivery of the cattle by me to said Deft, said Deft paid me gold, except some little change in silver.

" 11 at what time and where did you deliver your cattle to Deft?

Ans I delivered my cattle to Deft, at Carnahans Scales in Millersburgh Township, in the county of Mercer, on the first day of May, 1855.

" 12 After the time said Deft contracted to buy 80 head of cattle of Plf, as stated by you, do you know that Plff added to that number? and if so, were those added of an average quality (or more or less) with the others?

Ans I know that the plff, added to the number after the Deft contracted to buy 80 head of cattle of Plff, and those added would average better than the 80 head spoken of by me.

Int 13 What was the quality of the cattle brought by Plf to the said Scales of Carnahan on the 1st May 1855 in regard to their condition for beef?

Ans I call^d them very well fattened cattle; I have seen fatter and

I have seen poorer.

Cross Int 1 State whether the Plf had, prior to the weighing of said cattle, received any money, from Deft, in payment of said cattle; when he received it; how much and what kind of money.

Ans In March, 1855, the Deft payed the Plf some paper money Deft payd Plff several hundred dollars; between three hundred and five hundred dollars; a part of the money paid by Dft to Plff was on the Clinton Bank, Columbus, Ohio; Plff afterwards, as Deft informed me, returned to said Deft, Seventy dollars of said money; it being depreciated from 5 to 15 per cent, as quoted by Detecters. I think the balance was Eastern money - I think Ohio and Pennsylvania money - the most of it, and some other Eastern States.

X 2 State whether you received any money on your contract prior to delivery of your cattle to Deft, and how much, and what kind of money.

Ans I received Fifty Dollars of Deft @ month or two after I made the contract with him; it was paper money. think Indiana State Bank of Indiana

X 3 State whether your contract with Deft, as above named by you, was @ written or verbal contract,

Ans My contract with the Deft was @ verbal contract; it was to have been @ written contract, but was never entered into, and to be similar to one entered into between the Plff and Deft.

X 4 Do you know of @ second agreement between Deft and Plff. in regard to the 20 head of cattle in addition to the 80 mentioned by you? if yes, state what that agreement was when it was entered into.

This Interrogatory objected to by Plff, because it assumes that the witness has already sworn to some second agreement.

Ans There was a difficulty arose between the parties concerning the number of cattle above the 80 head; the Deft came to the Plff, as Plff told me, and Deft asked Plff, whether he in-

tended for him to have the whole of these cattle, and he (Plff) said "yes". Deft never made any reply, whether he would take them or not, and Deft went off that way.

Deft & Plff. came together to my house, and they agreed, at my house, for the Deft to have the cattle at the same price of the 811 head, with the exception of one yoke that Plff had bought to feed with, and for this yoke Deft paid Plff one hundred and fifty Dollars, this yoke not to be weighed in the lot; there was another yoke which Plff had bought in the winter, which Plff was to reserve. This agreement was made in March, 1855.

Int 5 Did you at any time prior to the weighing of said cattle by Plff & Deft, on the 1st of May, 1855, hear Plff say that it was his intention to have the gold or not deliver said cattle? if yea, state all you heard him say in relation thereto.

Ans I heard the Plff say that he would not receive from Deft such money as had been paid; that he would not give up the cattle unless the Deft paid such money as the contract called for, it was in reference to the depreciated money before mentioned by me in this deposition.

David Braucht

Joseph C Gilmore, a witness produced by the Plaintiff being first duly sworn according to Law, in answer to the following interrogations doth depose and say:

Direct

Int 1 What is your name, and where do you reside?

Ans My name is Joseph C Gilmore; I reside in the County of Mercer and State of Illinois.

" 2 Do you know the parties, Plff & Deft, in this case or either of them, and which? and how long have you known them or either of them?

Ans I know both of the parties in this suit; I have known the plff about ten years, and I have known the Deft about four years -

" 3 were you acquainted with @ certain lot of cattle delivered by the Plf to Deft on or about the 3^d day of May, 1855?

Ans I was.

" 4 What were such cattle worth per hundred pounds live weight at that time, according to the market or going price in said Mercer County?

Ans Four dollars and fifty cents per hundred pounds, live weight.

Crop Int 1 were such cattle worth the price as stated in your answer to Plff in cash down?

Ans Yes. they were.

X 2 State your means of knowing the Price of cattle

Ans I sold @ lot of cattle within @ few days of that time for that price -

Joseph C Gilmore

The further taking of Depositions in this case was postponed until tomorrow (Friday March 5, 1858) at 9 o'clock A.M.
J. L. Condon Justice Peace
Friday March 5th 1858

The taking of depositions in this cause resumed. Present, the Plf and Defendant and their respective counsel

J. L. Condon Justice Peace

Martin A Cook, @ witness produced by said Plaintiff - being first duly sworn according to law in answer to the following Interrogations doth depose and say:

Direct

Int 1 What is your name and where do you reside?

Ans My name is Martin A Cook; I reside in the County of Mercer and State of Illinois.

" 2 Do you know the parties, Plff and Deft, in this suit. or either of them, and how long have you known them or either of them?

Ans I know both parties in this cause; have known the Plff for fifteen years, and the Deft about four years.

" 3 Do you know any thing about the Plf in this suit having @ drove of beef cattle present at the Scales of Samuel Carnahan in the Town of Millersburgh, in the County of Mercer, sometime in the spring of 1855? if so, state what time in said spring this was.

Ans I was at Sam^l Carnahans Scales in the town of Millersburgh county of Mercer, when @ drove of the Plfs cattle were weighed - this was on the first day of May 1855

" 4 Did you upon that occasion learn from the conversation of the Plf and Deft together for what purpose Plf brought the cattle there to be weighed?

Ans I gathered from the conversation of Plf and Deft that the cattle had previously been bargained for by Deft, and that said cattle were brought there to be weighed & delivered to the Deft by the Plff.

Int 5 were you present when said cattle were weighed? Please state the number of head weighed, if you know, and the average weight of the drove.

Ans I was present the most of the time when said cattle were weighed; I think there were one hundred head of cattle weighed; I do not know the average weight of the drove.

" 6 After said cattle were weighed what occurred between the parties in regard to the delivery of said cattle to the Deft and the payment therefor?

Ans Just before they got through weighing said cattle the Deft told some of his men to turn the cattle into some other lot, or take care of the cattle in some shape, and the Plf said that he had men to take care of said cattle; Deft spoke and said he "Mr Moore I dont consider the cattle mine until you get your money" or "until I pay you for them". They finished weighing the cattle. Deft said he was ready to pay over the money, and said they (the Plf & Deft) had better go to the house. Plf spoke and said "we can

count it as well here on the board as any where" Deft said that it was too windy there, and that the parties had better go to the house, and they finally went to the house. After Plf & Deft got to the house, Deft took out his pocket book and commenced operations to count the money. Plf told Deft that that kind of money did not suit him. that he did not consider that that kind of money filled the contract, Deft contended that that kind of money did fill the contract, and demanded the cattle. Deft asked Plf if he was not going to deliver the cattle on that kind of money, and Plf said he was not. Deft then asked me to count the money. I told him that there were men present better acquainted with money than I was, and who could count more correct and quicker than I could. Deft then got McCuningham I believe it was to count the money. The money was counted and the Deft made @ tender of it to the Plf and demanded his cattle. Plff said he would not deliver the cattle on that money, but said he "I will give you @ reasonable time, Mr Morris, to get other money" Deft refused to take the time, and said "I'll make it @ dear lot of cattle to you" Plf spoke and said "you have made me @ tender, I'll make you one". Plff pulled out @ little sack of gold and laid it down on the table. John Miles and I counted out Five Hundred and Eighty dollars in gold; and the Plff tendered to the Deft Five Hundred & Seventy Eight dollars, less @ few cents, for what had been advanced by the Deft on the contract for the cattle, as I understood it. Deft refused to accept the Plf's tender. Plf & Deft then went from the house to the scales again and Deft got on to his horse. Deft said to Plff "Mr Moore I forbid you moving those cattle" Plf replied "I expect to do as I please with my own property" Deft then rode off.

Int^y on what day did the occurrences and conversations related by you in your last answer, happen?

Ans on the first day of May, 1855, same day that the cattle were weighed.

" 8 Please state, if you can, what kind of money Deft tendered to Plf, upon the occasion referred to by you, whether paper money, and if so, upon what Bank or Banks, and of what State or States.

Ans I do not know what kind of money Dft tendered to Plf. Some Illinois, some Indiana, am sure I cant tell. only it was paper money.

" 9 Can you state positively that there was @ single dollar, or any amount of money, so tendered by Deft, on any Illinois Banks?

Ans I think there was. I dont know. I did not run the money over, I cant tell, it was @ mixture of money, it was not all on one Bank, I think there were some Illinois money, but cant say.

Prop Int 1 When Plff wished to have the money paid over at the Board, as stated in your answer to Int 7th and Deft suggested it was too windy, did not Plff say that the wind would not blow away the kind of money he Plff wanted?

Ans I do not recollect of that being said by the Plff.

X 2 When Plff refused to receive the money tendered at the house, please state what was said by the parties or either of them about getting the gold.

Int No 2 objected to by Plf because it calls for declarations of Deft. under circumstances where he can make testimony for himself. and where what he said might not be admissible in evidence.

Ans Plff said that that kind of money did not suit him. he said he wanted other money; Plf said something about some money which Deft had paid him (Plff) sometime before, and Plf said "how do I know but what this is the same kind of money"

X 3 Did you hear Plf say to Deft that he wanted the gold in payment of the cattle at any time mentioned in your answer to Int 7th - if so, state what he said.

Ans I do not know that he said he wanted the gold; he

said he wanted other kind of money - that that money did not suit him -

X 4 Did Plff say what kind of money he wanted?

Ans The nearest that I heard the Plff say any thing about gold was, when he pulled out the gold from his pocket to tender to the Deft said he "this is what I call money" He (Plff) said the other money did not suit him -

That portion of witness' answer not responsive to Int 4, objected to by Plff -

X 5 Did Plff say to Deft, that he (Plff) would give Deft @ reasonable time to get the gold?

Ans I think not -

X 6 You say that when Plff offered to give Deft time to get other money, the Deft refused; state in what way he refused -

Ans Deft demanded his cattle; did not accept the time; forbid Plff moving the cattle, and went out of the lane and got on to his horse -

X 7 Have you at any time since the said 1st day of May heard Plff say that he had received the gold for said cattle? if yea, state at what time he received it -

Ans I think that I have heard Plf say something to that effect, but can't tell the particulars

M. A. Cook

John W Miles, @ witness produced by the Plaintiff, being first duly sworn according to Law, in answer to the following Interrogatories, doth depose and say:

Direct

Int 1 What is your name & where do you reside?

Ans My name is John W Miles; I reside in the County of Mercer and State of Illinois -

" 2 Do you know the parties, Plff and Deft. in this suit, or either of them, and which, and how long have you known them or either of them -

Ans I know both parties in this suit; have known Plff for ten or twelve years, and have known the Deft for two or three years

" 3 were you present upon a certain occasion at the Town of Millersburgh in said County of Mercer when the Deft in this suit pretended to make a tender of money to the Plff? If so - State the time when, and all the circumstances relating to such tender, and the kind of money so tendered -

Ans I was present at the time when the Deft in this suit tendered money to the Plff, in the said Town of Millersburgh; I think it was on the first day of May, 1855, that said money was so tendered, After weighing the cattle Plff & Deft, with others went to the house of Mr Carnahan, and spoke of the settlement of the contract and payment of the money. Deft drew out some money, counted it over, and handed it to another gentleman to count whose name was Cunningham I think, after counting the money either Mr Cunningham or Deft offered the money to Mr Moore (Plff) - my impression is that I did not count the money but looked it over, The money so tendered by Deft to Plff was Ohio, Indiana and Kentucky bills.

Int 4 Did you make an examination of said money with special reference to know on the Banks of what States it was?

Ans I think I did.

" 5 was there any of said money on the Banks of the State of Illinois?

Ans There was not.

" 6 Did you examine every bill of the money so tendered?

Ans Not as particularly as I would were I hunting for a counterfeit. I ran over all the bills. The money was done up in different parcels each State by itself -

" 7 was any of said money on the free or Stock Banks of the State of Indiana

Ans I do not recollect -

" 8 when Deft so made a tender to Plff upon the occasion referred to, what reply did Plff make?

Ans I think Plff said that that was not the money that the contract called for, and he wanted other money. Plff said that Deft had previously paid him some bad money or some money that he (Plff) had to get off at @ discount, and he did not want any more such money.

Cross Interrogatories waived -

John 10 miles -

James Haverfield, @ witness produced by the Plaintiff, being first duly sworn according to law in answer to the following Interrogatories, depose & say:

Direct

Int 1 What is your name and where do you reside?

Ans My name is James Haverfield; I reside in Millersburgh Township, Mercer County, State of Illinois -

" 2 Do you know the parties, Plff & deft. in this suit, or either of them, and which of them, and how long have you known them or either of them?

Ans I know both parties in this suit; I have known the Plff upwards of four years, and have known the Deft three years.

" 3 Were you present at the house of Saml Carnahan in the Township of Millersburgh in Mercer County Ills on the first day of May, A.D. 1855?

Ans I was

Int 4 While at the house of said Carnahan on that day, did you witness @ pretended tender of money from Deft to Plf, as @ payment for cattle present there on that day?

Ans I do not know that I did; don't know that I was present when the tender was made.

" 5 Did you see the money that Deft alleged to have tendered to Plff, on that day, for the purpose mentioned in the next preceding interrogatory?

Ans I saw money counted that day; it was paper money, on different Banks, what I saw of it @ considerable part was on Banks of Indiana, I saw @ part of the money which

Deft alleged he had tendered to Plff. that day and such as I saw is the money I refer to in this answer.

" 6 What was being done with the money when you first saw it?

Ans The Deft was laying the bills down one after another and Mr Cunningham was counting them.

" 7 On the occasion above referred to for what purpose did Deft say he made @ tender to Plff?

Ans I heard nothing said by Deft.

Int 8 Was the Plff at the house of Cunningham when you so saw the Deft and Cunningham counting the money?

Ans I believe he was

" 9 Did you see John W Miles examine the money?

Ans I do not recollect.

" 10 Was John W Miles present?

Ans I believe he was there.

" 11 State on what Indiana Banks the money you so said was on.

Ans I cannot state.

" 12 Was any of said money on the Stock or Free Banks of Indiana?

Ans I can state that there was @ part of the money on Indiana Banks which were below par, but can't mention the Banks.

" 13 How much below par?

Ans Five and ten per cent.

Cross Int 1 You say that some of the money above mentioned was under par state by what means you know such money was under par.

Ans From the fact of such money passing in our neighbourhood at that time, and not being at par.

X 2 Did not such money as tendered by the Deft to Plff. pass at its face in your neighbourhood at and after the time of said tender?

Ans It did not at that time, I believe it did afterwards.

X 3 Did you have the money in your hands, and did you examine said money well enough to know what kind of money it was?

Ans I had not the money in my hands, and did not examine it. I saw the bills sufficiently plain to distinguish the Banks.

X 4 you say you were near enough to distinguish the Banks. state what Banks they were.

Ans I cannot state what Banks they were; do not recollect.

X 5 was not all the Indiana money on the State Bank of Indiana or Branches of the State Bank of Indiana?

Ans I think not.

X 6 Can you mention any one Bank?

Ans I cannot; I do not recollect; a good deal of it was on the State Bank of Indiana, I do not mean that the money which was below par was on the State Bank of Indiana.

X 7 Do you know what kind of money, besides Indiana money was tendered? if so, state what kind it was.

Ans In the money which I saw counted there was some Kentucky money, I believe; am certain there was Kentucky money among it, can't name any other though it strikes me that there was other money.

X 8 Did you see the money which you say was under par tendered by Deft to the Plf in payment for said Cattle?

Ans I did not.

X 9 Did you hear the Plf say, in the presence of the Deft, any thing about gold? if so, state all he said.

Ans I did hear the Plf, in the presence of Deft say something about gold; he said that if he could not get the kind he wanted for he must get the gold.

X 10 Did you hear Plf tell Deft that he would take the gold

if he would get it in @ reasonable time?

Ans I did not.

X 11 Did Plff say at the said time for what kind of money he had agreed? if so state what kind.

Ans He did. He said he had agreed for lawful money of the State of Illinois, or something like that, or some such expression.

Cap. Haverfield

John T Thompson, @ witness produced by the Plaintiff being first duly sworn according to Law in answer to the following Interrogatories, doth depose and say:

Deict

Int 1 What is your name and where do you reside?

My name is John T Thompson and I reside in the County of Mercer, and State of Illinois.

" 2 Do you know the parties, Plff and Deft, in this suit, or either of them and which? and how long have you known them, or either of them?

Ans I know both parties in this suit; I have known the Plff fifteen years, and Deft two or three years.

" 3 Were you present sometime in the Spring of 1855, at an interview between the Plff & Deft? if so, state the time when & where, and what conversation passed between the parties on that occasion.

Ans On the 3^d of May, 1855, at Keithsburg in Mercer County, I was present at an interview between the parties & heard @ conversation pass between the Plf and Deft, in relation to a contract for the sale & purchase of cattle by the Plf to Deft

" 4 State what was said by Plf to Deft on that occasion in relation to his, Plfs having done all that the contract required of him, and what he said to Deft in relation to his not being obliged to deliver Deft the cattle, on the original contract, and what the Deft replied thereto;

Ans Plf stated that the cattle had been delivered by him, at

Carnahan's hay scales on the first day of May 1855 according to the contract, That the cattle were weighed, and were ready to be delivered to him on the payment of the balance of the money, five hundred dollars I think had been paid Plf stated that Deft. at the time the cattle were weighed that he offered him currency in payment of the balance. Indiana, Ohio and Kentucky money - bills on Indiana, Ohio and Kentucky Banks, it was not such money as he thought he was entitled to under the contract, and he (Plf) refused to take it; and that he was not bound to deliver the cattle, and did not deliver them to Deft. The weight of the cattle was stated by both parties, to be thirteen hundred and some pounds @ head live weight. I think the number of cattle was stated by them to be ninety six. Deft replied substantially that he was entitled to the cattle under the contract; that he had tendered such money as the contract required; think he stated that there was no money tendered on any Illinois Banks. Some conversation was had between the parties relative to the value of the cattle on the 1st of May 1855; I think that they agreed that the value was Four dollars and fifty cents @ hundred, live weight, at which price Deft said he had contracted to sell said cattle to some person whose name I do not now remember. The parties finally agreed to submit their differences to arbitration.

Int 5 Please examine @ paper writing marked "Plaintiffs Exhibit A" attached to this deposition, and state whether the same is in your hand writing, and whether the same was drafted at the mutual request of Plf & Deft, ^{whether the same was executed by both Plf & Deft} in your presence.

Ans I have examined the paper marked "Plaintiffs exhibit A"; it is in my hand writing; it was drawn up at the request of both parties, and I think both parties signed the same in my presence; my recollection is not very distinct in relation to the signing.

" 6 at the time of the interview aforesaid, did the Plf & Deft

agree upon the delivery of the cattle to Deft? And if so, state whether such delivery was to be considered by them as under the original contract for the sale of the cattle, or under the writing marked "Plaintiffs Exhibit A"

Ans They agreed upon the delivery of the cattle on that day; and that delivery was not to be under the old contract for the sale of the cattle, but under the writing marked "Plaintiffs Exhibit A." They stated that the cattle were then running at large on the Prairie, and Plf + Deft left them for the purpose of getting them.

Int 7 State whether the six lines erased on the second page of the paper marked "Plaintiffs Exhibit A" and the word "shall" next preceding said erasure, were erased before said writing was executed by Plf + Deft and whether said paper writing now appears in all respects as when signed by the parties.

Ans All the erasures on the paper now were made before the paper was signed; and the paper is in all respects, the same as when signed by the parties. The six lines on the second page of said paper including the word "shall" next preceding said six lines, were erased before the said paper was signed by the parties.

Cross Int 1 were you at the time spoken of by you in relation to the interview between the parties at Keithsburg acting as counsel for either of said parties? if so state for which party you were so acting as counsel.

Ans I was acting as counsel for the Plff.

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X Int 2 Have you at any time since said interview at

Keithsburg heard the Plf say that he had received the gold for said cattle? if so state what amount he said he had received.

Ans I have heard him say since that time that he had received money for said cattle at the rate of Three dollars and @ quarter per hundred pounds; my impression of what he said is, that the money paid upon the delivery of the cattle was in gold, but my recollection is not distinct.

Re-examination by Plff.

Int 8 At the time Plf stated to you, as related in your answer to the last cross Interrogatory, what did he say in reference to the balance due him for the cattle over and above three & $\frac{1}{4}$ cents per pound live weight?

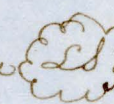
Ans The plff told me that there was @ controversy in relation to the balance due.

" 9 Was it agreed between Plf & Deft at the time of the interview at Keithsburg referred to by you in this deposition that the Deft upon the delivery of the cattle to him, should pay towards them at the rate of three & quarter cents per pound for them, and the question whether Plff should have more for the cattle to be determined by the arbitrator as set forth in said Exhibit?

Ans It was so agreed by the parties. John S Thompson

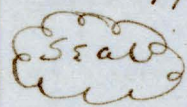
State of Illinois
Mercer County *J* I the subscriber Justice of the Peace in & for said County of Mercer do certify that the parties plaintiff and Defendant in the suit

mentioned in the caption to the foregoing depositions were present by their respective attorneys and in person at the taking of the same; that the foregoing Depositions of Bennett Menefa Lafayette Evans David Brought and Joseph C Gilmore were taken by me at the time & place mentioned in the caption thereof; and that on the 5th day of March AD 1858 the foregoing Depositions of Martin A Cook, John 10 miles James Haverfield and John S Thompson were taken by me at the place mentioned in the caption to these Depositions; that the said Deponents were first severally and duly sworn, and that the said Deposition of each Deponent was carefully read to him and then by him signed in my presence by each Deponent respectively, and that each Deponent after signing his aforesaid respective deposition was severally sworn to the truth thereof. Given under my hand and seal at said County of Mercer this fifth day of March AD 1858

John L Condon } Justice Peace 

State of Illinois } ss.
County of Mercer } I, John Ramsey Clerk of the County Court of said County do hereby certify that John L Condon before whom the annexed Depositions were taken was, at the date thereof, a Justice of the Peace in and for said County, that his signature thereto is genuine.

In witness whereof, I have hereunto set my hand and affixed my official seal at Alton, this 5th day of March A. D. 1858



John Ramsey County Clerk

"Plaintiffs
Exhibit A"

This agreement witnesseth that whereas on the 27th day of June A.D. 1854 an article of agreement was made and entered into in writing bearing date the day & year aforesaid, between John S. Moore of Mercer County Illinois of the one part and William Morris of Rock Island County Illinois, of the second part, by which said agreement (reference being thereunto had will more fully and at large appear) the said Moore agreed to sell to said Morris from Eighty to one hundred head of cattle from three years old and upwards as therein specified, the said Moore to keep said cattle until the first day of May 1855 and then deliver the same to the said Morris all of which is particularly specified in said agreement, the said Morris having paid at the time of the making of said contract, to the said Moore, the sum of Five Hundred Dollars on said contract of purchase, And the said Morris to pay upon delivery of said cattle on the 1st day of May 1855, to said Moore the balance of the money that might be due thereon, upon weighing the same as set out in said contract (the contract price being according to the terms of said agreement, three and one fourth cents per pound gross weight) in "good current money of this State"

And whereas @ difficulty having arisen between the parties to said agreement in reference to the true construction thereof and also in reference to the performance of the terms and conditions thereof by both parties - It is therefore hereby understood and agreed between the parties that the said Moore shall & has this day delivered to the said Morris ninety six head (96) of cattle under said agreement, averaging about thirteen hundred & twenty nine (1329) pounds Gross weight and the said Morris has this day paid the said Moore for the same

the price agreed under the contract or agreement above referred to. Now it is expressly agreed & understood between the parties, that the said delivery was made upon the above & also in part consideration of the terms & conditions of this contract, that the delivery & payment as above specified are not to effect the questions that may arise between the parties hereto, in reference to the performance or non-performance of the conditions and terms of the contract or agreement of sale above referred to; But it is agreed and intended by this contract to refer such questions to the decision of the Honorable Ira O. Wilkinson, of the City & County of Rock Island - State of Illinois or, if he sees proper, to call any person or persons to his assistance in the decision of the same, then and in that case, to their decision and determination, which said decision shall be final between the parties. If it is determined by said Ira O. Wilkinson and any other person or persons called by him to his assistance as aforesaid that the said Morris has not, upon a full, fair and legal examination of all the agreements & testimony stated, having reference to the case, has not complied with his part of the contract or agreement of purchase & sale before referred to, then the said Morris hereby agrees and binds himself to abide by & pay any award which may be made by the said Ira O. Wilkinson or by him & such persons as he may call to his assistance, in the premises.

And it is further understood & agreed by the parties that if the said John S. Moore has not upon his part performed his part of the said contract as he was bound to, then he does on his part agree & thereby binds himself to abide by and pay any award which may be made by said Ira O. Wilkinson or by himself

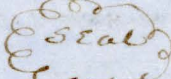
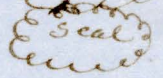
to others if he may call them, as aforesaid

Provided the said decision is made within three months from this date or if not within that time then at any other time to be agreed upon between the parties.

And for the faithful performance of each & every stipulation herein contained, the said parties here to bind themselves to each other in the penal sum of Three Thousand Dollars to be recovered whenever either party may fail to comply with the terms & conditions herein contained.

Witness our hands & seals this 3^d day of May A.D. 1855

Witness
B. C. Caliaferro

John S. Morre 
William Morris 

And thereupon on the 9th day of March A.D. 1858 the plaintiff filed in the clerk's office of said Court his 1st 2nd & 3rd replication to the defendants 3rd plea in words and figures following to wit:

State of Illinois }
County of Peoria }

Peoria Circuit Court
March Term A.D. 1858

1st John S. Morre }
vs }
William Morris }

And as to the said plea of the said defendants thirdly above pleaded the said plaintiff says preclusion because he says that the said plaintiff and defendant by their attorneys did not at the time of the said arbitration before the said Ira O. Wilkenson nor at any other time consent

Replication 1.2.3

to plea 3.

and agree that the said arbitrators determination
and award might be reduced to writing by the said
Ira O'Neilkinson at his convenience, and this he
prays may be inquired of by the country &c.

Manning Meriman

Deft doth the like

for self-

Purple & Pratt

2nd And for further replication to said third plea
said plaintiff says preclusion because he says
that the said Ira O'Neilkinson did not before the
expiration of the said extended time on the 20th day
of November 1855 decide and determine as in said
third plea alleged - and this he prays may be in-
quired of by the country &c

Manning Meriman

Plff doth the like

for self-

Purple & Pratt

3 And for further replication to the said third plea
the said plaintiff says preclusion because he
says that after the time of the hearing of the said
matter before the said Ira O'Neilkinson, and after
the said 20th day of November A.D. 1855 at the
County of Rock Island aforesaid to wit: on the 10th
day of January A.D. 1856 had not made his decision
in the said matter and then and there proposed
to make such decision and award if the said
plaintiff and defendant would both consent that
he might make such award notwithstanding the
time as extended by the said parties had then ex-
pired of which the said defendant then and there
had notice: And the said plaintiff afterwards

to wit on the 15th day of January 1856 at the
County of Rock Island aforesaid proposed and
offered to said defendant to consent that said
Ira O Wilkinson might then make his said
decision if the said defendant would also con-
sent thereto: But the said defendant refused to
give such consent, whereby the said defendant
prevented the said arbitrator from making his
said decision and award: and this the said
plaintiff is ready to verify, wherefore he prays
judgment &c

Manning Merriam
for pef.

And for rejoinder to said Plaintiffs 3rd Repli-
cation to Defendants third plea says that defen-
dant did not prevent the said Ira O Wilkinson
from making his award as stated in said Repli-
cation & of this he puts himself upon the country &c

Purple & Pratt

And the plaintiff doth the like

for Deft.

Manning Merriam
for pef.

And thereupon on the 9th day of March A D 1858 the defendant
filed in the Clerk of said Court his further pleas in the above
cause in words and figures following to wit:

Pleas 5.6.7.8

40

5th

John S Moore }
vs
William Morris }

In the Circuit Court
of Peoria County
March Term 1858

And for further plea in this behalf

the said defendant says actio non because he says,
that on the first day of May A D 1855 at the County
aforesaid and before the commencement of this suit
he paid the said Plaintiff the said several sums of
money in the said Plaintiff Declaration claimed to be
due owing for said goods wares merchandizes cattle
Oxen Steers Cows and heifers, and this he the said
defendant is ready to verify wherefore he prays
Judgment &c
Purple & Pratt
for Deft.

¶ And for further plea in this behalf the said defen-
dant says actio non because he says, that before the
commencement of this suit to wit on the 3rd day
of May A.D. 1855 at the County of Rock Island to
wit at the County of Peoria aforesaid. The said
Plaintiff and the said defendant then, and there by
their agreement in writing under their hands and
seals submitted all their matters in controversy aris-
ing out of the contract, in this defendant's third plea
mentioned (which said contract, and agreement of
submission are now to the Court here shown and made
part of this plea;) and all matters in controversy in
this suit to the arbitrament, decision & final
award of Ira O Wilkinson as arbitrator, and
that said Ira O Wilkinson then and there under
the submission and agreement aforesaid took upon
himself the burden of the said arbitration. And the
said defendant avers that since that time and
at the time of the commencement of this suit and
thence hitherto the said matters and things afore-
said in controversy in this suit, have been and
still are rightfully and lawfully under the agree-

ment & submission aforesaid, pending and undetermined before the said Arbitrator, who has full power and lawful authority under the agreement and submission aforesaid to settle decide and determine the same and this the defendant is ready to verify wherefore he prays Judgt &c.

Purple & Pratt
Defts Attys

^{nyth} And for further plea in this behalf the said defendant says actio non because he says, that the first and second counts in the said Plaintiffs declaration mentioned are for one and the same cause of action and not other or different, and the said Defendant avers that on the 27th day of June A.D 1854 the said Plaintiff and defendant under their hands and seals, made, executed, and entered into an agreement which is as follows. II

II Articles of agreement made and entered into this Twenty seventh day of June A.D. 1854 between John S. Moore of Mercer County and State of Illinois of the first part and William Morris of Rock Island County and State of Illinois of the second part the conditions of the above agreement are such that the above named John S. Moore has this day sold to the above named William Morris from Eighty to one hundred head of cattle from three years old upwards including his own and to be the same cattle that the said John S. Moore has on hand at this time all of the above cattle are to be steers the said cattle are to graze till feeding time and then to be stall fed through the General feeding time and are to be delivered by the said John S.

moore to the said William Morris on the first day of May next at Samuel Carnahans Scales in Township 14 north 4 West in Mercer County Illinois the said cattle to be fed the usual feed and not watered after they are turned out of the lot to drive to the scales and the said John S Moore hereby acknowledges the Receipt of five Hundred Dollars on the above agreement and the said William Morris hereby agrees to pay to the said John S Moore three Dollars and @ quarter per hundred pounds live weight for the above named cattle to be paid in good current money of this State on the delivery of said cattle on the day the cattle are delivered at the Scales the said cattle shall be weighed as soon after arriving at the Scales as possible if the said John S Moore shall add any more cattle to his present stock to raise the number to one hundred head the cattle added shall not be inferior to the cattle on hand whereunto the said John S Moore and the said William Morris have the day and year first above written set their hands and seals

in presence of
E. G. Horne

John S Moore (seal)
William Morris (seal)

and this defendant avers, that on the first day of May A.D. 1855 at the County of Mercer Illinois and at the place in said contract mentioned for the delivery of the said cattle, he was ready, willing and offered to pay to the said Plaintiff the sum of Three dollars and twenty five cents per hundred pounds live weight for all the cattle in said contract mentioned, in manner and form

as stated in said contract, Yet the said Plaintiff did not and would not deliver to this defendant the said cattle according to the terms and conditions of said contract, but neglected and refused so to do. Which said supposed promises to pay said several sums of money in the said Plaintiffs declaration mentioned; are the same promises or agreement to pay for said cattle in said contract or agreement mentioned, and not other or different and this the said defendant is ready to verify wherefore he prays Judgment &c.

Purple & Pratt
for Deft.

8th And for further plea in this behalf the said defendant says actio non because he says That the first and second counts in the said Plaintiffs declaration mentioned are for one and the same cause of action not other or different. And the said defendant avers that on the 2nd day of June A.D. 1854, the said Plaintiff and defendant under their hands and seals, made executed and entered into the same written agreement in the seventh plea described;

And this defendant avers, that on the first day of May A.D. 1855 at the County of Mercer Illinois and at the place in said contract mentioned for the delivery of the said cattle he was ready and willing and offered to pay to the said Plaintiff the sum of three dollars and twenty five cents per hundred pounds live weight for all the cattle in said contract mentioned in notes of specie paying Banks in good credit issued by the State Bank of Indiana and Branches, by solvent Banks in the States of

Ohio and Kentucky all of which were specie paying Banks in good credit, and were good current money of and in the State of Illinois, and more valuable than any Bank notes issued by any of the Banks of the State of Illinois - Yet the said defendant then and there refused to accept and receive the same and to deliver said cattle according to said contract, and said that he wanted other money - Whereupon it was then and there agreed by the said Plaintiff with the said defendant, that in consideration of the premises, and in consideration that the defendant had agreed to pay for said cattle in gold instead of paper money, that he would give the said defendant @ reasonable time, to get said gold, and pay in gold for the said cattle, stating at the same time that he did not wish to take any advantage of the said defendant, And this defendant avers that as soon thereafter as he could possibly do so and within three days from the said first day of May A.D. 1855 and within @ reasonable time he procured the said gold and then and there offered to pay the same to the said Plaintiff the same being the full amount of money due for the residue of the purchase money of said cattle; which said money the said Plaintiff then and there accepted and received. But refused to receive the same in full satisfaction of said contract; but took and received the same under protest, and against his contract aforesaid, imposing conditions and terms upon the Defendant, not in any manner warranted by said contract of the said Plaintiff; And the said defendant avers that

in law justice and equity said Plaintiff was bound to take and receive the said gold money in full satisfaction of said contract and that notwithstanding his said Plaintiffs terms, conditions & Protest aforesaid, said payment was and is @ full satisfaction of said contract for the sale of said cattle as aforesaid and for all damages arising from any supposed failure to perform the same; And the said Plaintiff avers that the sale of the said cattle in said contract mentioned by the Plaintiff to the defendant, is the same cause or supposed cause and causes of action in the several counts of said Plaintiffs declaration mentioned, and not other or different & this he is ready to verify wherefore he prays Judgment &c

Purple & Pratt

Defts Atty

And thereupon the plaintiff on the 9th day of March A D 1858 filed in the clerks office of said Court his Replication to plea 5; demurrer to plea 6, replications 1 & 2 to plea 7 & demurrer to plea 8 which are in the words & figures following to wit:

Replication

John S Moore	}	Circuit Court Peoria
vs		County Illinois.
William Morris		March Term A D 1858

And the said Plaintiff comes and as to the said fifth plea precludi non because, he says that the said defendant did not on the said first day of May A D 1855 nor at any other time before the commencement of this suit pay the said plaintiff the said several sums of money in the said plaintiffs declaration mentioned nor any nor

either of them nor any part thereof, and this he prays may be enquired of by the country.

Deft doth the like

Purple & Pratt

Manning Merriman
for plaintiff

Moore }
vs }
Morris }

And as to the said sixth plea of the said defendant the said plaintiff says that the same and the matters and things therein alleged in manner and form as the same are therein pleaded and set forth are not good and sufficient in law to bar the said plaintiff from having and maintaining his said action thereof against the said defendant. And this he is ready to verify. Wherefore he prays judgment &c

Manning Merriman
for plf

Moore }
vs }
Morris }

And for replication to the said defendants plea seventhly above pleaded the said plaintiff say preclusion because he says that the said defendant on the said first day of May A.D. 1855 or at any other time did not offer to pay the said plaintiff the sum of three dollars and twenty five cents per hundred pounds live weight for all the cattle in said contract mentioned in manner and form as stated in said contract, and this he prays may be enquired of by the country &c

Deft doth the like

Purple & Pratt

Manning Merriman

And for further replication to said seventh
plea mentioned the said plaintiff says that
he did deliver to the said defendant the said
cattle in said contract mentioned according
to the terms and conditions of the said contract
and this he prays may be inquired of by the country &c
Plff doth the like
Purple & Pratt
Manning & Merriam

Moore
vs
Morris }

And for replication to the said plea of
said defendant Eightly above pleaded the said
plaintiff says that the same and the matters and
things therein alleged in manner and form as the
same are therein pleaded and set forth are not
good and sufficient in law to bar the said plain-
tiff from having and maintaining his said ac-
tion thereof against the said defendant; and
this he is ready to verify, wherefore he prays judgment &c.
Manning & Merriam
Atty for plf.

Proceedings at @ term of the Circuit Court began and
held in the court house in the City of Peoria, in and
for the County of Peoria, and State of Illinois, on the
first Monday of March in the year of our Lord one
thousand eight hundred and fifty eight, it being
the first day of said month, Present Honorable Elisha
W. Powell, Judge of the Sixteenth Judicial Circuit in said
State, Francis W. Smith Sheriff. and Enoch P. Floun, Clerk, viz:-

Wednesday March 10th AD 1858

John S Moore

vs

assumpsit - venue from Rock Island.

William Morris

This day came the defendant by Purple his attorney and entered @ motion to suppress the deposition of Lafayette Evans filed in this cause.

Friday March 12th AD 1858

John S Moore

vs

assumpsit - venue from Rock Island

William Morris

This day this cause came on to be heard on plaintiffs demurrer to defendants 6th & 8th pleas to plaintiffs declaration, and the court being fully advised in the premises is of opinion that defendants said 6th plea is insufficient in law, and it is considered that the plaintiff be not barred from maintaining this action by any thing in said plea contained and set forth, and the court is of opinion that said 8th plea is sufficient in law to bar the plaintiffs action.

And afterwards to wit on the 13th day of March AD 1858. the plaintiff filed in said cause his replication to defendants 8th plea which is in the words & figures following to wit:

Replication
to plea 8

Moore }
vs }
Morris }

And for replication to the said defendants eighth plea the said plaintiff says precludi non because he says that the said matters and things in the said plea set forth are not true in substance or in fact nor any nor either of them nor any part thereof and this he prays may be inquired of by the country &c

Manning & Merriman
Attys for deft

Deft doth the like
Purple & Pratt
for Deft

Proceedings at @ term of the circuit court began and held in the court house in the City of Peoria, in and for the county of Peoria, and State of Illinois, on the first Monday of March in the year of our Lord one thousand eight hundred and fifty eight, it being the first day of said month.
Present: Honorable Elisha W. Poor, Judge of the sixteenth judicial circuit in said state. Francis W. Smith Sheriff, and Enoch P. Sloan. Clerk, viz:-

Saturday, March 13th A D 1858.

John S. Moore

vs

Assumpsit - venue from Rock Island

William Morris

This day this cause came on to be heard on the motion of defendant to suppress the deposition of Lafayette Evans, Manning Meriman for plaintiff and Purplet & Pratt for defendant. And the court being fully advised in the premises does sustain said motion and orders that said deposition be suppressed. The parties being ready for trial, it is ordered by the court that @ jury be empannelled to try the issues in this cause, whereupon came @ jury of twelve good and lawful men to wit: James Elston, James F. Murden, Webster Huy, Jacob Lawrence, James Hinman, Mat Taggart, Thomas Cullen. David Maxwell, Nathan Giles, Albino Jenkins, Henry Aldridge, and Luther Card, who being duly chosen tried and sworn to well and truly try the issues joined in this cause and @ true verdict give according to the evidence, and not having heard all the evidence in the case were adjourned to meet the court at nine o'clock on Monday morning next.

Monday, March 15th A D 1858.

John S. Moore

vs

Assumpsit - venue from Rock Island

William Morris

This day again came the parties to this suit,

by their respective attorneys, and also came the jury Empannelled on Saturday last, to try the issues in this cause, and the said jury having heard the evidence in the case, the arguments of counsel, and the instructions of the court, upon their oaths do say. We the jury do find the issues for the defendant, Therefore it is considered by the court that the said William Morris have and recover of the said John S Moore his costs and charges by him about his defense in this behalf expended and that he have execution therefor.

And afterwards to wit on the 20th day of March A.D. 1858 there was filed with the Clerk of the Circuit Court of Peoria County @ bill of Exceptions in words and figures following, to wit:-

Bill of
Exceptions

John S Moore

vs

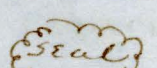
William Morris

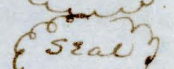
March Term 1858
of Peoria Circuit Court

This cause came on to be heard upon the issues joined & the plaintiff to sustain the issues on his part introduced & read in evidence contract between said parties dated June 27. 1854. as follows. Article of agreement made and entered into this 27th day of June A.D. 1854 between John S Moore of Menard County and State of Illinois of the first part and William Morris of Rock Island County and State of Illinois of the second part, the conditions of the above agreement are such that the above named John S Moore has this day sold to the above named William Morris from Eighty to one hundred head of cattle from three years old upwards including his own and to be the same cattle that the said John S Moore has on hand at this time all of the above cattle are to be steers the said cattle are to graze till feeding time and then to be stall fed through the general feeding time and are to be delivered by the said John S Moore to the said William Morris on the first day of May next at Samuel Carnahan's Scales in Township 14 north

4 west in Mercer County Illinois the said cattle to be fed the usual feed and not watered after they are turned out of the Lot to drive to the Scales and the said John S Moore hereby acknowledges the Receipt of five hundred Dollars on the above agreement and the said William Morris hereby agrees to pay to the said John S Moore three dollars and a quarter per hundred pounds live weight for the above named cattle to be paid in good current money of this State on the delivery of said cattle on the day the cattle are delivered at the Scales the said cattle shall be weighed as soon after arriving at the Scales as possible if the said John S Moore shall add any more cattle to his present stock to raise the number to one hundred head the cattle added shall not be inferior to the cattle on hand whereunto the said John S Moore and the said William Morris have the day and year first above written set their hands and seals in presence of

E. G. Horne

John S. Moore 

William Morris 

also the contract between the parties dated May 3, 1855 as follows.

This agreement witnesseth that whereas on the 27th day of June A.D 1854 an article of agreement was made and entered into in writing, bearing date the day & year aforesaid between John S Moore of Mercer County Illinois of the one part and William Morris of Rock Island County Illinois of the second part, by which said agreement (reference being thereunto had will more fully and at large appear) the said Moore agreed to sell to said Morris from eighty to one hundred head of cattle from three years old and upwards as therein specified the said Moore to keep said cattle until the first day of May 1855 and then deliver the same to the said Morris all of which is particularly specified in said agreement the said Morris having paid at the time of the making of said contract to the said Moore the sum of

Five hundred dollars on said contract of purchase and the said Morris to pay upon delivery of said cattle on the 1st day of May 1855 to said Moore the balance of the money that might be due thereon. upon weighing the same as set out in said contract (the contract price being according to the terms of said agreement three and one fourth cents per pound gross weight) in good current money of this State. And whereas @ difficulty having arisen between the parties to said agreement in reference to the true construction thereof and also in reference to the performance of the terms and conditions thereof by both parties It is therefore hereby understood and agreed between the parties that the said Moore shall & has this day delivered to the said Morris ninety six head (96) of cattle under said agreement averaging about thirteen hundred & twenty nine (1329) pounds gross weight and the said Morris has this day paid the said Moore for the same the price agreed under the contract or agreement above referred to now it is expressly agreed & understood between the parties that the said delivery was & is made upon the above & also in part consideration of the terms & conditions of this contract that the delivery & payment as above specified are not to effect the questions that may arise between the parties hereto in reference to the performance or non-performance of the conditions and terms of the contract or agreement of sale above referred to; But it is agreed and intended by this contract to refer such questions to the decision of the Honorable Ira O Wilkenson of the City and County of Rock Island State of Illinois or if he sees proper to call any person or persons to his assistance in the decision of the same then and in that case to their decision and determination, which said decision shall be final between the parties. If it is determined by said Ira O Wilkenson and any other person or persons called by him to his assistance as aforesaid that the said Morris has not, upon @ full fair and legal ex-

amination of all the agreements & testimony & law.
having reference to the case, has not complied with
his part of the contract or agreement of purchase &
sale before referred to then the said Morris hereby agrees
and binds himself to abide by & pay any reward which
may be made by the said Gra O Wilkinson or by him
& such persons as he may call to his assistance in the
premises. And it is further understood & agreed by
the parties that if the said John S Moore has not
upon his part performed his part of the said con-
tract as he was bound to, then he does on his part
agree thereby binds himself to abide by and pay any
award which may be made by the said Gra O Wilkinson
or by himself & others if he may call them as aforesaid
Provided the said decision is made within three months
from this date or if not within that time then at any
other time to be agreed upon between the parties.

And for the faithful performance of each & every
stipulation herein contained the said parties hereto
bind themselves to each other in the penal sum of
Three Thousand Dollars to be recovered whenever either
party may fail to comply with the terms & conditions
herein contained. Witness our hands & seals this 3rd
day of May AD 1855

Witness
B. C. Taliaferro

John S Moore (Seal)
William Morris (Seal)

It is hereby agreed that the time for holding the reference
mentioned in the agreement of which the above is a copy
shall be & the same is hereby extended to the 20th day of
November next.

Rack Island 3 wit. Jos Knox } William Morris (LS)
June 21st 1855 } Julius Manning } John S Moore (LS)

Also agreement endorsed on the last mentioned contract -
The matters mentioned in the within agreement having been submitted to
Gra O Wilkinson it is agreed that the same may be taken under advis-
ment by him, and his decision be made at any time before the 1st day
of January next. Dated this - day of Dec^r 1855

(Seal)
(Seal)

~~also agreement~~. The Plaintiff then introduced us @ witness Lafayette Evans who testified that he was at Carnahans Scales in Millersburg township in Township 14 north Range 4 west in Mureau County Illinois on first day of May 1855 when the Plaintiff drove there ninety six cattle & had them weighed. both parties agreed that they were the same cattle called for in the contract. I helped Plaintiff to drive the cattle to the scales. Morris told Moore to come to Carnahans house & get the money that the wind blew too hard to count the money there. Moore said he thought the contract called for gold or good current money of the State of Illinois they then went to the house & Morris counted out the money. Moore told him that was not the money the contract called for. John W Miles & I think Judge Gilmore & Martin A Cook helped count the money. I saw some of the money. Some of it was of the State Bank of Indiana some Ohio some Pennsylvania & some Kentucky money. it was all in Bank notes. I did not examine the money myself. Moore told Morris that if he had not the gold or the money the contract called for he would give him @ reasonable time to get it. Morris replied that he had offered him the kind of money the contract called for. Moore said he had not. Morris left & jumped on his horse & forbid Moore taking the cattle out of the lot that day. I think he told him he would make it the dearest lot of cattle he had ever had & mixed it with an oath. that was when they were going from the house to the scales. he jumped on his horse & rode away & said nothing as to where he was going or for what he was going. Moore told Morris that he had paid him some money on the contract which was at @ discount of ten per cent. I think sixty dollars. dont recollect that Morris made any reply to that. on second day of May plaintiff & myself drove the cattle away about two miles east. Moore went back to Carnahans same day. on the third of May in the afternoon the plaintiff & defendant came together & left took away the cattle. Some of the bills tendered

by Morris was on the State Bank of Indiana & some on the Free Banks of Indiana -
on cross examination witness stated that the money was not pulled out at Scales Moore said the contract called for gold or good current money of this State in his opinion gold was what contract called for I did not see contract then think Moore said he wanted gold that his impression was that was what contract called for, I stood four or five feet from table when the money was counted there was money enough to pay for the cattle provided it had been of the right kind - I am sure some of it was on free Banks of Indiana cant tell what Banks - knew very well they had not State Bank of Indiana - I could see that they were Indiana money - I was standing behind the man counting - the money am sure John W Miles counted the money - It was while he was counting that I saw the Free Bank Bills - am not sure about Gilmore & Cook - there was a man by name of Cunningham there, dont think he counted the money - Moore told Morris both in the house & at the scales I believe that he would give him a reasonable time to get the gold Moore said his opinion was the contract called for gold or Illinois currency, and that he wanted gold - Never heard him tell Morris that he wanted notes on Illinois Banks - any more than that he wanted the currency of this State, and he thought that was gold, and that the contract called for gold - The Contract was not present - There were 4 or 5 packages of the money - John W Miles counted it clear through, and all agreed that there was enough to pay for the cattle provided it had been of the right kind, My deposition was taken in this case a few days since in Rock Island County in this case, in that deposition I stated that I did not know that there was any of the money on the Free Banks of Indiana but on reflection I remember and am positive that there was some money of that kind among that offered by

defendant to plaintiff. I understood the Free Banks of Indiana are free institutions, and issue as much money as they please Morris counted the money first then he handed it over to Miles, I did not see Morris count it but he did, of course I am sure all the conversation is true as I have related. I don't know that the State Bank pile of money was any larger than other piles, except the free Bank pile. Some of free Bank money was in @ pile with other piles, don't know that any of it was in @ pile by itself, think all but State Bank was mixed up. Don't know that any thing was said after that. On reexamination witness stated that Morris reply to Morris proposition to give him @ reasonable time to get the money that he had done all that the contract called for the would do no more

Kinzle Cecil was sworn & testified that on the twelfth day of february 1854 witness accompanied plaintiff to the house of defendant, in Rock Island County, where plaintiff told defendant that he had come to see about their matters before Judge Wilkinson & that he had come to get him to extend the time for making the award that the time had run out & showed defendant @ letter from Wilkinson to read & that the Judge would not make an award unless the time was extended by them. Morris said he would not do it, that there was some rascality at the bottom of it. Moore replied that he lived @ good price off & wanted the time extended & see the end of it. Morris said he had made up his mind not to do any thing more about it, & when he came at him he would give him the best fight he could. Moore said if he would go to Rock Island he would take him up and bring him back, or if he would go the next day he would do the same, but Morris said he would not go. Moore & myself then went to Rock Island we arrived there I think about sundown. On cross examination witness stated that Morris came to Rock Island next day & the parties had @ conversation in my presence when Moore told Morris that he had put the matter in Circuit Court, Morris replied he could not have

pleased him better, this conversation was at noon, he said in first conversation if he were at Rock Island he would not do any thing until he had seen his counsel & whatever he said he would do but he was not going to run after it at all Moore told him he did not want him to do any thing until he saw his counsel

3 Plaintiff then read the depositions of Bennett Menifee David Braucht, Joseph C Gilmore, Martin A Cook. John W Miles James Havenfield & John S Thompson as follows

To William Morris Esq

Sir You will take notice that on the 4th day of March AD 1858 at the office of the Circuit County Clerk of the County of Mercer in the State of Illinois at 11 o'clock AM of said said day the depositions of Martin A Cook, Kinney Cecil, David Braucht, John W Miles John S Thompson, Joseph Gilmore Samuel Carnahan Sen James Havenfield & Bennett Menifee will be taken before John L Condon Esq @ Justice of the Peace in & for said County of Mercer to be used in @ suit now pending in the Circuit Court in the County of Peoria in said State of Illinois in which John S Moore is Ply & you are Deft, in behalf of said Ply, and that the taking of said depositions will be continued from day to day until completed.

At the time & place aforesaid you will attend & file cross questions to said witnesses if you see cause.
Feb 17th 1858

J S Beardsley Atty
for J S Moore

(Endorsement)

Served the within notice as I am within commanded by reading the same & leaving @ true copy of it with the within named W^m Morris this the 19th day of February AD 1858

J Kirlin Const

The foregoing return sworn to by the said J Kirlin

this 4th day of March AD 1858 before me

JP



Depositions of witnesses produced, sworn and examined before John L Condon Esq. @ Justice of the Peace in and for the county of Mercer in the State of Illinois, on the 4th day of March AD 1858 at the office of the Clerk of the Circuit Court in and for said County of Mercer; which depositions are taken to be used in @ certain cause now pending in the Circuit Court of the County of Peoria in said State of Illinois wherein John S Moore is Plaintiff and William Morris is Defendant, the said parties Plaintiff and Defendant both appearing & being present at the taking of the following Depositions. Bennett Menefee @ witness produced by said Plaintiff being first duly sworn according to Law, in answer to the following Interrogatories deposes and says as follows:—

Direct

Int 1 What is your name & where do you reside

Ans Bennet Menefee: I reside in Mercer County & State of Illinois.

" 2 Do you know the parties Plff & Deft in this case or either of ~~them~~ & which of them, and how long have you known them or either of them?

Ans I know both parties; I have been acquainted with Moore the Plaintiff about four years;— with Morris, the deft. about four years next June.

" 3 Were you present upon @ certain occasion when the Plff delivered @ drove of cattle to the Deft? If so, state what occurred between the parties at that time in relation to said cattle.

Ans I was present when the Plff was ready to deliver to the Deft ninety six head of cattle; the Plff & deft weighed the cattle; I heard the Plff tell the Deft that he would take nothing but the gold in payment for said cattle, at the time the cattle were being weighed.

Int 4 State at what time the cattle referred to in your last answer, were weighed, and where

Ans The cattle referred to in my last answer were weighed on the first day of May, A D 1855 at Samuel Carnahans scales in Township 14 North 4 West, ^{near} ~~from~~ the town of Millersburgh, in said county of Mercer.

" 5. What was the weight of said cattle?

Ans I do not recollect what the weight of said cattle was.

Int 6 State as near as you can the entire weight of said cattle.

Ans I cannot state

Int 7 How long did said Plff keep said cattle at or near said Huy scales ready to deliver to said Deft?

Ans The Plff kept said cattle there till the next morning - the 2^d day of May - witness, on reflection, says he cannot state how long the Plff kept said cattle at or near said Huy scales, as he (witness) left on the evening of May first

Int 8 Did said Deft take the delivery or possession of said cattle at any time after said second day of May, and if so, when?

Ans I cannot state any thing about the delivery of said cattle from my own knowledge.

Int 9 State the quality of said cattle, as being fat or otherwise -

Ans They were all fat cattle, and had been stall fed through the winter

Cross Int 1. State by what means you know that the Plff was ready to deliver said cattle as mentioned by you in answer to the 3^d Interrogatory as above answered -

Ans All I know of the readiness to deliver said cattle by the Plff to the Deft, is that I help drive said cattle there and assisted in weighing them. I supposed that said cattle were ready for delivery to said Deft by said Plff.

X 2 Do you know of Plff selling @ pair of oxen that he had contracted to sell to said deft, to any other person prior to the weighing of said cattle? if yea, state what you know of such selling and how much said Plff got for said oxen and how they compared in quality with the rest of said cattle.

Question objected to as not being in the nature of @ cross examination of said witness.

Ans The Plff sold @ pair of oxen in the fall after the contract was made, which oxen he, the Plff, had on hand at the time the contract was made; said oxen, I suppose weighed fourteen hundred apiece; I should think said oxen to have been twelve or fourteen years of age. I heard the Plff say that he got one hundred dollars for said oxen. I also heard the Plff say that the Deft objected to taking said oxen.

That part of the above answer which relates to what the said Plff said about the said Deft. objecting to taking said oxen, is objected to on the grounds of not being in answer to the question, objection by Deft.

Bennet Menewa

David Braucht, @ witness produced by the Plaintiff - being first duly sworn according to law, in answer to the following Interrogatories de posuit & says: -

Direct

Int 1 What is your name and where do you reside?

Ans My name is David Braucht; I reside in the County of Mercer & State of Illinois.

" 2 Do you know the parties, Plff and Deft in this case, or either of them, and which of them, and how long have you known them or either of them?

Ans I know both parties in this case, the Plff I have known about seven years, and the Deft I have known about four years.

5/25/69-317
" 3 Were you present when @ certain drove of cattle belonging

to the Plff in this suit, were weighed, and if so, state when and where, the number weighed, and the average weight of the drove, and whether both Plff and Deft were present at that time?

Ans I was not present when the cattle were weighed, but was there immediately after and saw the cattle; it was on the first day of May, 1855, at Mr Carnahan's scales, in Millersburgh Township, in the County of Mercer, being Township 14 North 4 West in said Mercer County; I do not know exactly the number of cattle weighed; from my own knowledge I cannot state the average weight of the drove; both Plff & Deft were present when I arrived there.

Int 4 Did you upon the occasion referred to in your last answer hear the Deft state the number of Plffs cattle then weighed? State as nearly as you can the number.

Ans I did not hear the Deft say how many of the Plffs cattle were weighed. I think there were between ninety and @ hundred weighed - I think ninety seven -

" 5 Did you hear the Deft say anything about his having agreed to purchase said cattle of Plff?

Ans I did not hear the Deft say that he had agreed to purchase said cattle of Plff. I heard him say that he had purchased said cattle of the Plff.

" 6 At what time did you hear Deft say he had purchased said cattle of Plff, as stated by you in your last answer?

Ans on the last of June, or first days of July 1854 I heard the Deft say that he had purchased said cattle of said Plff.

" 7 What did the Deft, on that occasion, say in regard to his having purchased said cattle of Plff?

Ans Deft said he had purchased Eighty head of cattle of the Plff, that Plff was to feed them when feeding time commenced until the first day of May then next; and the Deft was to pay Plff Three dollars and @ quarter @ hundred, gross or live

wright; and the Plff had the privilege of increasing that number to one hundred, if he saw fit; and what cattle the Plff added was to be of an average quality with the number Plff then had on hand; the Plff was to deliver said cattle at Mr Carnahans scales in Millersburgh Township, in the County of Mercer, on the first day of May then next; on the delivery of said cattle by said Plff to said Deft, on said first day of May, the Deft was to pay the Plff there for in Illinois Currency or good current money of Illinois, cant say which.

Int 8 What do you know of Defts taking said cattle into his possession, and what did you hear him say on that subject, and when?

Ans on the third day of May, 1855. I saw the Plf and Deft together, and one of them in the presence thearing of the other, made the remark that they were going out on the prairie to get the said cattle, distant between @ quarter and half @ mile, and they went in the direction of the cattle after them.

" 9 Did you see the Deft make @ tender to Plff in payment for said cattle? if so when and where? and what kind of money?

Ans I did not see Deft make a tender to Plff in payment for said cattle.

Int 10 Did you make @ contract with the Deft, in regard to the sale of cattle to him? and if so, what kind of money were you to receive, and what kind did Deft pay you under such contract, and when was such contract made?

Ans on the last of June or first of July 1854 I made @ contract with the Deft for the sale of cattle to him; Deft was to pay me the same kind of money which he had agreed to pay the Plff, which was Illinois Currency or good current money of Illinois, I do not remember which; on the delivery of the cattle by me to said Deft, said Deft paid me gold, except some little change in silver -

" 11 at what time and where did you deliver your cattle to Deft?

Ans I delivered my cattle to Deft, at Carnahan's scales in Millersburgh Township, in the County of Mercer, on the first day of May, 1855.

" 12 After the time said Deft contracted to buy 80 head of cattle of Plff, as stated by you, do you know that Plff added to that number? and if so, were those added of an average quality (or more or less) with the others?

Ans I know that the plff, added to the number after the Deft contracted to buy 80 head of cattle of Plff, and those added would average better than the 80 head spoken of by me.

Int 13 What was the quality of the cattle brought by Plff to the said Scales of Carnahan on the 1st May 1855. in regard to their condition for beef?

Ans I call^d them very well fatted cattle; - I have seen fatter and I have seen poorer.

Cross Int 1 State whether the Plff had, prior to the weighing of said cattle, received any money from Deft, in payment of said cattle; when he received it; how much and what kind of money.

Ans In March, 1855, the Deft paid the Plff some paper money; Deft pay^d plff several hundred dollars; between three hundred and five hundred dollars; @ part of the money paid by Deft to plff was on the Clinton Banks, Columbus, Ohio; Plff afterwards, as Deft informed me, returned to said Deft, seventy dollars of said money it being depreciated from 5 to 15 per cent, as quoted by Detectors, I think the balance was Eastern money. I think Ohio and Pennsylvania money - the most of it - and some other Eastern States.

X 2 State whether you received any money on your contract prior to delivery of your cattle to Deft, and how much, and what kind of money.

Ans I received Fifty dollars of Deft @ month or two after

I made the contract with him; it was paper money
think Indiana - State Bank of Indiana.

X 3 State whether your contract with Deft. as above
named by you, was @ written or verbal contract.

Ans My contract with the Deft was @ verbal contract;
it was to have been @ written contract, but was never
entered into, and to be similar to one entered into
between the Plff and Deft.

X 4 Do you know of @ second agreement between Deft and
Plff in regard to the 20 head of cattle in addition to
the 80 mentioned you? if yea, state what that agreement
was & when it was entered into.

This Interrogatory objected by Plff because it assumes that
the witness has already sworn to some second agreement -

Ans There was @ difficulty arise between the parties concerning
the number of cattle above the 80 head; the Deft came
to the Plff, as Plff told me, and Deft asked Plff, whether
he intended for him to have the whole of these cattle, and
he Plff said "yes" Deft never made any reply, whether he
would take them or not, and Deft went off that way.

Deft & Plff came together to my house, and they agreed, at
my house, for the Deft to have the cattle at the same price
of the 80 head, with the exception of one yoke that Plff
had bought to feed with, and for this yoke Deft paid Plff
one hundred and fifty Dollars, this yoke not to be weighed
in the lot; there was another yoke which Plff had bought
in the winter, which Plff was to reserve. This agreement
was made in March, 1855,

Int 5 Did you at any time prior to the weighing of said cattle
by Plff & Deft, on the 1st of May, 1855, hear Plff say that
it was his intention to have the gold or not deliver said
cattle? if yea, state all you heard him say in relation thereto.

Ans I heard the Plff say that he would not receive from Deft
such money as had been paid; that he would not give
up the cattle unless the Deft paid such money as the
contract called for; it was in reference to the depre-

ciated money before mentioned by me. in this deposition.

David Brauch.

Joseph C Gilmore, @ witness produced by the Plaintiff being first duly sworn according to Law, in answer to the following interrogatories doth depose and say:

Direct

Int 1 What is your name, and where do you reside?

Ans My name is Joseph C Gilmore, I reside in the County of Mercer and State of Illinois.

" 2 Do you know the parties, Plff & deft, in this case or either of them, and which? and how long have you known them or either of them?

Ans I know both of the parties in this suit; I have known the plff about ten years, and I have known the Deft about four years.

" 3 Were you acquainted with @ certain lot of cattle delivered by the Plf to Deft on or about the 3^d day of May, 1855?

Ans I was.

" 4 What were such cattle worth per hundred pounds live weight at that time, according to the market or going price in said Mercer County?

Ans Four dollars and fifty cents per hundred pounds, live weight,

Gross Int 1 Were such cattle worth the price as stated in your answer to Plff in cash down?

Ans Yes - they were.

X 2 State your means of knowing the price of cattle

Ans I sold @ lot of cattle within @ few days of that time for that price.

Joseph C Gilmore.

The further taking of Depositions in this case was postponed until to-morrow (Friday March 5, 1858)

at 9 o'clock. A.M.

J. L. Condon Justice Peace

Friday, March 5th 1858

The taking of depositions in this cause resumed, Present, the Plf and Defendant and their respective counsel.

J. L. Condon Justice Peace.

Martin A Cook, @ witness produced by said Plaintiff being first duly sworn according to law in answer to the following Interrogatories doth depose and say:-

Direct

Int 1 What is your name and where do you reside?

Ans My name is Martin A Cook; I reside in the County of Mercer and State of Illinois.

" 2 Do you know the parties, Plff and Deft, in this suit - or either & which of them, and how long have you known them or either of them?

Ans I know both parties in this cause; have known the Plff for fifteen years, and the Deft. about four years,

" 3 Do you know any thing about the Plf in this suit having @ drove of beef cattle present at the Scales of Samuel Carnahan in the Town of Millersburgh, in the County of Mercer, sometime in the spring of 1855? if so, state what time in said spring this was.

Ans I was at Saml Carnahan's Scales in the town of Millersburgh, County of Mercer, when @ drove of the Plfs cattle were weighed; this was on the first day of May 1855.

" 4 Did you upon that occasion learn from the conversation of the Plf and Deft together for what purpose Plf brought the cattle there to be weighed?

Ans I gathered from the conversation of Plf and Deft that the cattle had previously been bargained for by Deft and that said cattle were brought there to be weighed & delivered to the Deft by the Plff

Int 5 Were you present when said cattle were weighed? Please state the number of head weighed, if you know, and the average weight of the drove.

Ans I was present the most of the time when said cattle were weighed; I think there were one hundred head of cattle weighed; I do not know the average weight of the drove.

" 6 After said cattle were weighed what occurred between the parties in regard to the delivery of said cattle to the Deft and the payment therefor?

Ans Just before they got through weighing said cattle the Deft told some of his men to turn the cattle into some other lot, or take charge of the cattle in some shape, and the Plf said that he had men to take care of said cattle; Deft spoke, and said he "Mr Moore, I don't consider the cattle mine until you get your money" or "until I pay you for them" They finished weighing the cattle, Deft said he was ready to pay over the money, and said they (the Plf & Deft) had better go to the house, Plf spoke and said "we can count it as well here on the board as any where" Deft said that it was too windy there and that the parties had better go to the house and they finally went to the house. After Plf & Deft got to the house Deft took out his pocket book and commenced operations to count the money. Plf told Deft that that kind of money did not suit him - that he did not consider that that kind of money filled the contract, Deft contended that that kind of money did fill the contract, and demanded the cattle. Deft asked Plf if he was not going to deliver the cattle on that kind of money, and Plf said he was not. Deft then asked me to count the money, I told him that there were men present better acquainted with money than I was, and who could count more correct and quicker than I could - Deft then got Mr Cunningham I believe it was to count the money. The money was counted and the Deft made tender of it to the Plf and demanded his cattle. Plf said he would not deliver the cattle on that money.

but said he "I will give you @ reasonable time. Mr Morris, to get other money" Deft refused to take the time, and said "I'll make it @ dear lot of cattle to you". Plf spoke and said "you have made me @ tender. I'll make you one". Plff pulled out @ little sack of gold and laid it down on the table. John Miles and I counted out Five Hundred and Eighty dollars in gold; and the Plff tendered to the Deft Five Hundred & Seventy Eight dollars, less @ few cents. for what had been advanced by the Deft on the contract for the cattle, as I understood it, Deft refused to accept the Plfs tender Plf & Deft then went from the house to the scales again and Deft got on to his horse. Deft said to Plff "Mr Moore I forbid your moving those cattle" Plf replied "I expect to do as I please with my own property" Deft then rode off.

Int^y On what day did the occurrences and conversations related by you in your last answer, happen?

Ans on the first day of May 1855, same day that the cattle were weighed -

" 8 Please state if you can, what kind of money Deft tendered to Plf, upon the occasion referred to by you - whether paper money, and if so, upon what Bank or Banks, and of what State or States.

Ans I do not know what kind of money Deft tendered to Plf, some Illinois, some Indiana, am sure I cant tell, only it was paper money -

" 9 Can you state positively that there was @ single dollar wany amount of money, so tendered by Deft, on any Illinois Banks?

Ans I think there was. I dont know - I did not run the money over, I cant tell. it was @ mixture of money, it was not all on one Bank, I think there were some Illinois money but cant say -

Cross Int^l When Plff wished to have the money paid over at the Board as stated in your answer to Int^y and Deft suggested it was too windy, did not Plff say that

the wind would not blow away the kind of money he. Plff. wanted?

Ans I do not recollect of that being said by the Plff-

X 2 When Plff refused to receive the money tendered at the house, please state what was said by the parties or either of them about getting the gold.

Int No 2 objected to by Plf because it calls for declarations of Deft. under circumstances where he can make testimony for himself and when what he said might not be admissible in evidence.

Ans Plff said that that kind of money did not suit him - he said he wanted other money; Plf said something about some money which Deft had paid him (Plff) sometime before, and Plf said "how do I know but what this is the same kind of money" -

X 3 Did you hear Plf say to Deft that he wanted the gold in payment of the Cattle, at any time mentioned in your answer to Int 7th? if so - state what he said.

Ans I do not know that he said he wanted the gold; he said he wanted other kind of money, that that money did not suit him.

X 4 Did Plff say what kind of money he wanted?

Ans The nearest that I heard the Plff say any thing about gold was, when he pulled out the gold from his pocket to tender to the Deft. said he "this is what I call money" He (Plf) said the other money did not suit him.

That portion of witness' answer not responsive to Int 4 objected to by Plff.

X 5 Did Plff say to Deft, that he (Plff) would give Deft @ reasonable time to get the gold?

Ans I think not.

X 6 you say that when Plff offered to give Deft time to get other money, the Deft refused, state in what way he refused.

Ans Deft demanded his cattle; did not accept the time;

put the Plff moving the cattle, and went out of the lane and got on to his horse.

X 7 Have you at any time since the said 1st day of May heard Plff say that he had received the gold for said cattle? if yea, state at what time he received it.

Ans I think that I have heard Plf say something to that effect, but cant tell the particulars.

M A Cook.

John W Miles @ witness produced by the Plaintiff being first duly sworn according to law, in answer to the following Interrogations, doth depose and say:

Direct

Int 1 What is your name & where do you reside?

Ans My name is John W Miles; I reside in the County of Mercer and State of Illinois.

" 2 Do you know the parties, Plff and Deft, in this suit, or either of them, and which, and how long have you known them or either of them?

Ans I know both parties in this suit; have known Plff for ten or twelve years and have known the Deft for two or three years.

" 3 Were you present upon @ certain occasion at the town of Millersburgh in said county of Mercer, when the Deft in this suit pretended to make @ tender of money to the Plff? If so, state the time when, and all the circumstances relating to such tender, and the kind of money so tendered.

Ans I was present at the time when the Deft in this suit tendered money to the Plff, in the said town of Millersburgh. I think it was on the first day of May, 1855, that said money was so tendered, after weighing the cattle Plff & Deft, with others went to the house of Mr Carnahan, and spoke of the settlement of the contract and payment of the money. Deft drew out some money, counted it over, and handed it to another gentleman to count. whose name was Cunningham I think. After counting the money either

Mr Cunningham or Deft offered the money to Mr Moore (Plff). my impression is that I did not count the money but looked it over. The money so tendered by Deft to Plff was Ohio, Indiana and Kentucky bills.

Int 4 Did you make an examination of said money with special reference to know on the Banks of what States it was?

Ans I think I did.

" 5 Was there any of said money on the Banks of the State of Illinois?

Ans There was not.

" 6 Did you examine every bill of the money so tendered?

Ans Not ^{as} particularly as I would were I hunting for a counterfeit. I run over all the bills. The money was done up in different parcels each State by itself.

" 7 Was any of said money on the free or Stock Banks of the State of Indiana?

Ans I do not recollect.

" 8 When Deft so made a tender to Plff upon the occasion referred to, what reply did Plff make?

Ans I think Plff said that that was not the money that the contract called for and he wanted other money. Plff said that Deft had previously paid him some bad money, or some money that he (Plff) had to get off at a discount, and he did not want any more such money.

Cross Interrogatories waived.

John W Miles

James Havenfield a witness produced by the Plaintiff being first duly sworn according to law in answer to the following Interrogatories, depose & says:

Direct

Int 1 What is your name and where do you reside?

Ans My name is James Havenfield; I reside in Millersburg

Township, Mercer County, State of Illinois.

" 2 Do you know the parties, Plff & deft. in this suit or either of them; and which of them, and how long have you known them or either of them?

Ans I know both parties in this suit; I have known the Plff upwards of four years, and have known the deft three years.

" 3 Were you present at the house of Sam Carnahan in the Township of Millersburg in Mercer County Ills on the first day of May, A.D. 1855?

Ans I was

Int 4 While at the house of said Carnahan on that day did you witness @ pretended tender of money from Deft to Plf. as @ payment for cattle, present there on that day?

Ans I do not know that I did; don't know that I was present when the tender was made.

" 5 Did you see the money that Deft alleged he had tendered to Plff. on that day, for the purpose mentioned in the next preceding interrogatory?

Ans I saw money counted that day; it was paper money, on different Banks, what I saw of it @ considerable part was on Banks of Indiana. I saw @ part of the money which Deft alleged he had tendered to Plf. that day, and such as I saw is the money I refer to in this answer.

" 6 What was being done with the money when you first saw it?

Ans The Deft was laying the bills down, one after another,

and McCummingham was counting them-

" 7 On the occasion above referred to for what purpose did Deft say he made @ tenders to Plff?

Ans I heard nothing said by Deft

Int 8 Was the Plff at the house of Carnahan when you so saw the Deft and Cummingham counting the money?

Ans I believe he was.

" 9 Did you see John W Miles examine the money?

Ans I do not recollect.

" 10 Was John W Miles present?

Ans I believe he was there.

" 11 State on what Indiana Banks the money you so saw was on -

Ans I cannot state.

" 12 Was any of said money on the Stock or Free Banks of Indiana?

Ans I can state that there was @ part of the money on Indiana Banks which were below par, but cant mention the Banks.

" 13 How much below par?

Ans Five and ten per cent

Cross Int 1 you say that some of the money above mentioned was under par, state by what means you know such money was under par -

Ans From the fact of such money passing in our neighbour-

hood at that time, and not being at par.

X 2 Did not such money as tendered by the Deft to Plff pass at its face in your neighbourhood at and after the time of said tender?

Ans It did not at that time, I believe it did afterwards.

X 3 Did you have the money in your hands, and did you examine said money well enough to know what kind of money it was?

Ans I had not the money in my hands, and did not examine it. I saw the bills sufficiently plain to distinguish the Banks.

X 4 you say you were near enough to distinguish the Banks. State what Banks they were.

Ans I cannot state what Banks they were; do not recollect.

X 5 Was not all the Indiana money on the State Bank of Indiana or Branches of the State Bank of Indiana?

Ans I think not.

X 6 Can you mention any one Bank?

Ans I cannot. I do not recollect. @ good deal of it was on the State Bank, of Indiana, I do not mean that the money which was below par was on the State Bank of Indiana -

X 7 Do you know what kind of money besides Indiana money was tendered? if so, state what kind it was.

Ans In the money which I saw counted there was some Kentucky money, I believe, am certain there was

Kentucky money among it; cant name any other though it strikes me that there was other money-

X 8 Did you see the money which you say was under
paid tendered by Deft to the Plf in payment for said
cattle?

Ans I did not-

X 9 Did you hear the Plf say, in the presence of the
Deft any thing about gold? if so, state all he said-

Ans. I did hear the Plf, in the presence of Deft, say something
about gold; he said that if he could not get the
kind he ~~wanted~~ ^{desired} article for he must get the gold.

X 10 Did you hear Plf tell Deft that he would take the gold
if he would get it in @ reasonable time?

Ans I did not-

X 11 Did Plff say at the said time for what kind of money
he had agreed? if so state what kind -

Ans He did, He said he had agreed for lawful money
of the State of Illinois, or something like that,
or some such expression.

Jas Haverfield

John S Thompson, @ witness produced by the Plain-
tiff, being first duly sworn according to Law, in
answer to the following Interrogatories doth depose
and say;

Direct

Int 1 what is your name and where do you reside?
My name is John S Thompson, and I reside in the
County of Mercer, and State of Illinois -

" 2 Do you know the parties. Plff and Deft in this suit or either of them and which? and how long have you known them, or either of them?

Ans I know both parties in this suit; I have known the Plff fifteen years, and Deft two or three years.

" 3 Were you present sometime in the spring of 1855 at an interview between the Plf & Deft? if so, state the time when & where, and what conversation passed between the parties on that occasion -

Ans on the 3^d of May, 1855, at Keithsburg in Mercer County I was present at an interview between the parties & heard @ conversation pass between the Plf and Deft in relation to @ contract for the sale & purchase of cattle by the Plf to Deft.

" 4 State what was said by Plf to Deft on that occasion in relation to his Plfs having done all that the contract required of him, and what he said to Deft in relation to his not being obliged to deliver Deft the cattle on the original contract and what the Deft replied thereto -

Ans Plf stated that the cattle had been delivered by him at Carnahans hay scales on the first day of May 1855 according to the contract. That the cattle were weighed, and were ready to be delivered to him on the payment of the balance of the money - five hundred dollars I think had been paid. Plf stated that Deft, at the time the cattle were weighed; that he offered him currency in payment of the balance. Indiana. Ohio and Kentucky money. bills on Indiana. Ohio and Kentucky Banks. It was not such money as he thought

he was entitled to under the contract, and he (Plf) refused to take it; and that he was not bound to deliver the cattle and did not deliver them to Deft. The weight of the cattle was stated by both parties, to be thirteen hundred and some pounds @ head live weight, I think the number of cattle was stated by them to be ninety six. Deft replied substantially that he was entitled to the cattle under the contract; that he had tendered such money as the contract required; think he stated that there was no money tendered on any Illinois Banks. Some conversation was had between the parties relative to the value of the cattle on the 1st of May 1855; I think that they agreed that the value was Four dollars and fifty cents @ hundred, live weight, at which price Deft said he had contracted to sell said cattle to some person whose name I do not now remember. The parties finally agreed to submit their ^{disputes} ~~disputes~~ to arbitration.

Int 5 Please examine a paper writing marked "Plaintiffs Exhibit A" attached to this deposition, and state whether the same is in your hand writing, and whether the same was drafted at the mutual request of Plf & Deft, and whether the same was executed by both Plf & Deft, in your presence.

Ans I have examined the paper marked "Plaintiffs Exhibit A" it is in my hand writing; it was drawn up at the request of both parties, and I think both parties signed the same in my presence; my recollection is not very distinct in relation to the signing.

" 6 At the time of the interview aforesaid, did the Plf & Deft agree upon the delivery of the cattle to Deft? And if so, state whether such delivery was to be considered by them as under the original contract for the sale of the cattle, or under the writing marked "Plaintiffs Exhibit A"

Ans They agreed upon the delivery of the cattle on that day; and that delivery was not to be under the old contract for the sale of the cattle but under the writing marked "Plaintiffs Exhibit A" They stated that the cattle were then running at large on the Prairie and Plf & Deft left them for the purpose of getting them.

Int 7 State whether the six lines erased on the second page of the paper marked "Plaintiffs Exhibit A" and the word "shall" next preceeding said erasure, were erased before said writing was executed by Plf & Deft, and whether said paper writing now appears in all respects as when signed by the parties.

Ans All the erasures on the paper now were made before the paper was signed; and the paper is in all respects, the same as when signed by the parties. The six lines on the second page of said paper including the word "shall" next preceeding said six lines, were erased before the said paper was signed by the parties.

Cross Int 1 Were you at the time spoken of by you, in relation to the interview between the parties at Keithsburg, acting as counsel for either of said parties? if so, state for which party you were so acting as counsel

Ans I was acting as counsel for the Plff

X Int 2 Have you at any time since said interview at Keithsburg, heard the Plf say that he had received the gold for said cattle? if so state what amount he said he had received.

Ans I have heard him say since that time that he had received money for said cattle at the rate of Three dollars and @ quarter per hundred pounds; my impression of what he said is that the money paid upon the delivery of the cattle was in gold, but my recollection is not distinct.

Re-examination by Plff.

Int 8 at the time Plf stated to you, as related in your answer to the last cross Interrogatory, what did he say in reference to the balance due him for the cattle over and above three & $\frac{1}{4}$ cents per pound live weight?

Ans The plff told me that there was @ controversy in relation to the balance due.

" 9 Was it agreed between Plf & Deft at the time of the interview at Keithsburg referred to by you in this deposition, that the Deft upon the delivery of the cattle to him, should pay towards them at the rate of three & quarter cents per pound for them, and the question whether Plff should have more for the cattle to be determined by the arbitrators as set forth in said Exhibit?

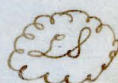
Ans It was so agreed by the parties.

John S. Thompson

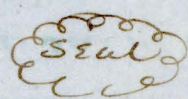
State of Illinois
Mercer County

I the subscriber a Justice
of the Peace in & for said

County of Mercer do certify that the parties plaintiff and Defendant in the suit mentioned in the caption to the foregoing depositions were present by their respective Attorneys and in person at the taking of the same; that the foregoing depositions of Bennett Memfer Layfayette Evans David Brought and Joseph C Gilmore were taken by me at the time & place mentioned in the caption thereof; and that on the 5th day of March A.D. 1858 the foregoing Depositions of Martin A. Cook John Miles James Harvfield and John S Thompson were taken by me at the place mentioned in the caption to these Depositions; that the said Depositions were first severally and duly sworn, and that the said Deposition of each Deponent was carefully read to him and then by him signed in my presence by each deponent respectively, and that each deponent after signing his aforesaid respective deposition was severally sworn to the truth thereof. Given under my hand and seal at said County of Mercer this fifth day of March A.D. 1858.

John L Condon Justice Peace 

State of Illinois }
County of Mercer } ss I John Ramsey Clerk of the
County Court of said County, do hereby certify that John L Condon before whom the annexed Depositions were taken was, at the date thereof, a Justice of the Peace in and for said County, that his signature thereto is genuine. In witness whereof, I have hereunto set my hand and affixed my official seal at Alledo this 5th day of March A.D. 1858.



John Ramsey County Clerk

"Plaintiffs
Exhibit A" This agreement witnesseth that whereas on the 27th day of June A.D. 1854 an article of agreement was made and entered into in writing bearing date the day & year aforesaid, between John S Moore of Mercer County, Illinois of the one part and William Morris of Rock Island County Illinois of the second part, by which said agreement (reference being thereunto had

will more fully and at length appear) the said Moore agreed to sell to said Morris from Eighty to one hundred head of cattle from three years old and upwards as therein specified, the said Moore to keep said cattle until the first day of May 1855 and then deliver the same to the said Morris all of which is particularly specified in said agreement; the said Morris having paid at the time of the making of said contract, to the said Moore, the sum of Five Hundred Dollars on said contract of purchase, and the said Morris to pay upon delivery of said cattle on the 1st day of May 1855 to said Moore the balance of the money that might be due thereon, upon weighing the same as set out in said contract (the contract price being according to the terms of said agreement, three and one fourth cents per hundred gross weight) in "good current money of this State"

And whereas @ difficulty having arisen between the parties to said agreement in reference to the true construction thereof and also in reference to the performance of the terms and conditions thereof by both parties; It is therefore hereby understood and agreed between the parties that the said Moore shall & has this day delivered to the said Morris ninety six head (96) of cattle under said agreement, averaging about thirteen hundred & twenty nine (1329) pounds Gross weight and the said Morris has this day paid the said Moore for the same, the price agreed under the contract or agreement above referred to. Now it is expressly agreed & understood between the parties, that the said delivery was & is made upon the above & also in part consideration of the terms & conditions of this contract; that the delivery & payment as above specified are not to effect the questions that may arise between the parties hereto, in reference to the performance or non-performance of the conditions and terms of the contract or agreement of sale above referred to; But it is agreed and intended by this contract to refer such questions to the decision of the Honorable Ira O. Wilkinson of the City & County of Rock Island, State of Illinois, or, if he sees proper, to call any person or persons to his assistance

in the decision of the same. then and in that case, to their decision and determination, which said decision shall be final between the parties. If it is determined by said Ira O Wilkinson and any other person or persons called by him to his assistance as aforesaid that the said Morris has not, upon a full fair and legal examination of all the arguments & testimonies law, having reference to the case, has not complied with his part of the contract or agreement of purchase & sale before referred to, then the said Morris hereby agrees and binds himself to abide by & pay any award which may be made by the said Ira O Wilkinson or by him & such persons as he may call to his assistance in the premises.

And it is further understood & agreed by the parties that if the said John S Moore has not upon his part performed his part of the said contract as he was bound to, then he does on his part agree & thereby binds himself to abide by and pay any award which may be made by said Ira O Wilkinson or by himself & others if he may call them as aforesaid. Provided the said decision is made within three months from this date or if not within that time then at any other time to be agreed upon between the parties. And for the faithful performance of each & every stipulation herein contained the said parties hereto bind themselves to each other in the penal sum of Three Thousand dollars to be recovered whenever either party may fail to comply with the terms & conditions herein contained. Witness our hands and seals this 3^d day of May A D 1855.

Witness

B. C. Taliaferro

John S Moore

William Morris



The Plaintiff here noted.

Defendant introduced as a witness David L Noble who testified that he was present at time the cattle were weighed at Carnahan's scales. after the cattle were weighed Cunningham said to his hands we will take charge of the cattle. Moore said I will take care of my own cattle, they are mine until paid for.

Morris replied you are right they are yours until paid for. Come let us go to the house & I will pay for them. Moore said they could count the money there on @ board. Morris replied it was too windy. I think Moore replied that such money as he wanted the wind would not affect, they then went to the house where I went in Morris had the money in @ chair, it was in packages. I remember of his calling on Cook to count it. there were two or three more one of whom was Mr Miles who either counted or handled the money. I don't know the kind of money, Morris tendered this money to plaintiff & said that was the kind of money the contract called for. Moore contended it was not, and said he would not take that sort of money that it was not the kind of money the contract called for. Morris said that was just such money as the contract called for and he should not give him any other. About that time Moore pulled out @ purse of gold & said that was what he called money, & found it on the table & said he would pay Morris back the money he had received on the contract Morris said he would not take it & left directly. Moore said Mr Morris I will give you reasonable time to get other money. heard nothing said about gold except when Moore found the gold on the table. Moore at no time told the kind of money wanted on the contract as I know, the contract was not present at the time. about two hours after I met Morris at Millersburg he asked me where he could get gold & I directed him to go to Muscatine. Millersburg about 3 or 4 miles from Carnahans Muscatine some 15 miles from Millersburg on cross examination witness stated that in answer to Moores proposition to give Morris reasonable time to get other money Morris replied that the money he had offered him was according to the contract the should not not get any other for him.

Lucius Horn testified that he was present at the time

the contract of June 1854 between said parties was made, it was in my brother's store in Millersburg. I think the contract was signed there, my brother drew the contract & he has since gone to Kansas. after the contract was made Morris laid down some money & handed over to my brother to count, said \$500 - I understood it was of State Bank of Indiana. I did not examine it. Moore took the money & said that was good enough, this conversation was held at the time the money was counted, the contract had been signed lay on the counter & the money was pushed over by Morris & my brother to Moore. he said he wanted money that he could pay his debts with and if all the money was as good as that he would be satisfied. The plaintiff objected to this evidence but the court overruled the objection & permitted the evidence to the Jury. to the ruling of the Court overruling said objection & permitting said evidence to go to the Jury the plaintiff then & there excepted.

On cross examination said witness testified that the money did not hold out \$500 - there was \$15 short which Morris said he would pay in @ day or two, don't know whether the conversation referred to the balance of the \$500 or to the balance on contract. Nothing was said about the kind of money the contract called for and no talk about changing the written contract.

Samuel Carnahan testified that he was owner of the scales where the cattle were weighed the cattle were weighed on the first day of May. Morris came on morning of second day of May with some gold and left it with me & took it away on the third of May. I think Moore came @ short time after Morris left the gold on third of May about noon both parties came together when Morris got the gold.

John C. Kelly testified that he was @ cattle dealer in 1855 the highest I paid that year was \$4.00 per hundred for cattle the price was from \$3.50 to \$4.00 per hundred. I knew of only two lots that were sold

at \$4.50 per hundred. those were the Gilmore Morris
lots -

Lewis Howell testified that he was @ banker on the
first of May 1855 there was no material difference
between the currency of Ohio, Kentucky & Indiana and
Illinois. If any thing the currency of those States was
worth more than Illinois for the reason that it was
worth more in New York. Specie was worth from
one & @ quarter to one & @ half per cent more than cur-
rency. some of the Free Banks of Indiana very much
discredited, their value depended on their securities.
The deposition of Ira O Wilkenson was offered in
evidence the plaintiff moved to suppress so much
of the same as is contained within brackets on third
page, which motion was overruled. to which ruling
of the court in overruling said motion & permitting
said portion of said deposition to be read to the Jury
the plaintiff then & there excepted - the deposition was
then read in evidence to the Jury as follows -

State of Illinois }
Peoria County } Ira O Wilkenson, of the County
of Rock Island in said State being duly sworn on his
oath states as follows: I am the person to whom certain
matters in dispute between John S Morse and William
Morris, arising out of @ written contract between them
for the sale of @ lot of cattle by Morse to Morris was re-
ferred for arbitrament and decision by the written
agreement of the said parties. The matter was heard
by me on evidence introduced by the parties, at Rock
Island in the month of November 1855. The time
for making the decision as provided in the agreement
of submission had elapsed and by an indorsement by
the parties upon the original agreement (or of @ copy) it
had been extended, and if I recollect correctly the
hearing before me was on the last day or the last but one
of the extended time. It was during the November term
of the Rock Island County Circuit Court and as the

attorneys for the parties as well as myself were engaged in that Court, it was inconvenient then to make an award. it was agreed by the counsel for the parties that I might make an award in the case at any time within thirty days, if I correctly understood them - it was by parol. Upon the same day or the next after hearing the cause I determined generally as to the decision I should give. and within @ few days thereafter intimated to Mr Manning and Mr Goudy (counsel for the parties respectively) my views of the matter, and what the decision would be, not as to amount particularly, but in general terms merely. Upon the adjournment of the Circuit Court I left Rock Island on @ visit to Central & Southern Illinois where by indisposition and other causes I was detained until about, or after, the expiration of thirty days from the time of hearing as aforesaid. It being then suggested whether the parol extension of the time in which the decision might be made. I informed Mr Moore and I think Mr Morris also, but of this I am not certain, that would make an award in the case if the parties would by writing agree to it. I saw Mr Moore several times soon after my return to Rock Island, but seldom (but once I think) saw Mr Morris. About the date of the commencement of the suit by Mr Moore against Mr Morris, and on the same day it was brought I think, I met both the parties. Mr Moore first came to my office and stated that he and Mr Morris were in "town" for the purpose of closing up that matter between them and that he Moore was willing to have me make an award between them, but that he understood Mr Morris as objecting. [Mr Morris came in to see me very soon after Moore left, and inquired what was wanted of him, in the matter. to which I replied that to have an award it was necessary that he & Moore sign an agreement that it might then be made, He then stated his willingness to do so.] and went out to look for Mr Moore - Moore afterwards came in, alone, and stated that Morris thought about agreeing to an award, but that he (Moore) had favored Morris in the matter about

as much as he intended to, and thought he should make no further agreements with him about it. The above is the substance of my conversations with said parties, and as nearly their language as I can now recollect. Upon this last conversation my connection with the matter ended.

In answer to the interrogatories propounded to me by plaintiffs counsel, I answer,

- 1 There was an agreement before me by the attorneys of the parties, made at the conclusion of the hearing, that my award might be thereafter be made. but not within an indefinite time as I understood it, but within thirty days thereafter.
- 2 I dont recollect the precise day in November the matter was heard. I formed @ judgment (opinion) in the case, on the same day of the hearing or within two days thereafter at furthest. From the evidence introduced before me it was my opinion that neither party had strictly conformed to his contract, that Morris should pay to Moore @ nominal sum. I stated this in general terms to each the parties separately after my return to Rock Island, as a f^d. did not state any definite sum that Morris ought to pay. nor do I recollect that I fixed definitely on the precise sum.
- 3 I did write and send to the plaintiff Moore the letter annexed to the p^lffs interrogatories, and now exhibited to me, and the contents of it were true at the time it was written.
- 4 I dont know that any conversation with either of the parties could well be termed @ notification. Mr. Moore met me on the street in Rock Island and stated that he had heard I had concluded to give him only one cent damages, to which I replied that I had thought him not to be entitled to the amount of damages claimed by him, but that he should have @ nominal judgment, but had never named any sum, and had made no mention of the matter except to the counsel and only in general terms to them.

5 The fifth interrogatory will be found answered above

Rock Island Jan'y 10/56

Mr Moore

Dear Sir. I should have made out & sent you an award in the case between you & Mr Morris last week, but I found that the time as extended in which I was to have made the decision had already expired - and any decision I might make without the consent & agreement of both parties would be without any binding force. I have not seen Mr Morris since you were here. If both of you consent that I may yet make the award I am prepared to do it any day. Yours respectfully
Jra O Wilkinson

- 1 Was there any agreement before you by the attorneys of the parties that your award might be reduced to writing at any time?
- 2 Did you before the 20th day of November AD 1855 decide and determine, that the plaintiff Moore had not complied with the contract on his part, and the defendant had not complied with the contract on his part, and that the defendant should pay the plaintiff @ small sum, being merely nominal, and afterwards notify the said parties thereof? that is of the said decision and determination?
- 3 Did you not write and send to the plaintiff the annexed letter? and were not the contents of it true at the time it was written?
- 4 Did you ever notify the plaintiff in any other manner of any decision which you had made or was willing to make?
- 5 Did you ever make any decision or determination in the case. if so what was it?

John S Moore

vs

William Morris

It is agreed that the written statement of Jra O Wilkinson be received as evidence, ex-

cept so far as it may be determined by the court that the same is not competent evidence, and so far as the same is determined not to be competent evidence the same shall be erased, and the party objecting to such decision of the court may retain @ copy thereof and make it @ part of the record to be used in the Supreme Court.

Manning & Merriam
for pef
W. H. Purple
Defts Atty -

This was all the evidence in the cause - The court then instructed the Jury as follows for plaintiff. If the jury believe from the evidence that the plaintiff had the cattle, mentioned in the contract of 27th June 1854 on the 1st May 1855 at Carnahans Scales, that he had said cattle weighed there in presence of the defendant for the purpose of delivery under said contract, and that the defendant understood all this, then the plaintiff had a right to refuse to deliver the cattle unless the defendant then and there ~~first~~ paid him the amount due for said cattle in the kind of money required by the contract.

Although the plaintiff said that the contract called for gold, yet this would not relieve the defendant from offering to pay in the kind of money required by the contract -

The Jury will not consider in evidence any conversation between the said parties that took place at the time of making the written contract and before it was reduced to writing tending to vary the written contract -

If the Jury believe that the said parties submitted the matter in controversy in this suit to the arbitrament of Ira O. Wilkenson to be by him determined within @

specified time, and that said arbitrator never made any award, then neither party were bound by their submission to such arbitration -

The Jury will not find for the defendant on the 3^d plea unless they find that the parties agreed that Wilkinson might reduce his determination & award to writing at his convenience, and that he did decide and determine the case before the 20th day of November and if they find against either of these facts they will not sustain said plea.

If the Jury believe from the evidence that the defendant refused to agree to an extension of time to said arbitrator to make his awards they will find against said defendant on said third plea -

If the Jury shall believe from the evidence that the plaintiff was ready to deliver the cattle mentioned in the contract at the time and place in the contract stipulated and the defendant did not tender to the plaintiff the amount due to him in good current money of the State of Illinois, then they will find the issues for the plaintiff and assess the damages he has sustained by reason of the breach of the contract on the part of the defendant.

If the Jury believe from the evidence that the plaintiff had the cattle at the time and place for delivery according to the contract, and the defendant failed to pay the plaintiff "in good current money of this State" and that the plaintiff did not agree to give the defendant @ reasonable time to procure the gold, and the plaintiff afterwards made @ proposition to defendant to give such reasonable time, which proposition was not accepted, and that the plaintiff afterwards agreed to receive the gold for the cattle at the contract price under @ new contract between the parties and submitted the question of the performance of the contract

to arbitration then if the Jury shall find from the evidence that the defendant failed to fulfil his contract and no agreement to extend the time of payment was made and accepted, then the Jury will find for the plaintiff and assess the damages which would be the difference between the contract price and what the cattle were worth at the time of delivery.

The plaintiff then asked the court to instruct the Jury as follows.

The provision in the contract read in evidence providing for the payment in good current money of this State cannot be satisfied by tender of Bank Bills of Banks of other States than of this State, and the plaintiff was not bound under the provisions of said contract to receive in payment the Bank Bills of Banks located in Indiana, Ohio, Kentucky or Pennsylvania.

Under the contract read in evidence providing for the payment in good current money of this State unless the Jury believe that the defendant tendered the amount of money required by the contract in Bank Bills of solvent Banks of this State, or in specie on the day required by the contract they will consider and determine that no tender was made under said contract, and that a tender of Bank Bills of other States than of this State is not a performance of said contract.

If the Jury find the issues for the plaintiff, the measure of damages will be the value of the cattle at the time of the sale less the amount paid by defendant.

which the Court refused, to the ruling of the Court in refusing ^{said} ~~said~~ instructions the plaintiff then & there excepted. The court then gave the following instructions at the request of the defendant as follows.

John Moore }
vs } Defendant asks the Court to
William Morris } instruct the Jury.

1st That by the terms of the contract between the parties of the 27 June 1854 the Plaintiff was bound to deliver or offer to deliver the cattle in said contract mentioned before he was entitled to pay for the same, and that defendant was only bound to pay or offer to pay immediately upon such delivery.

2nd That the contract aforesaid does not bind the defendant to pay for said cattle in gold or silver; and that if the Jury believe from the evidence that the Plaintiff's offer to deliver the cattle, was accompanied with @ demand for gold and silver or either in payment for the same; and that the offer was made to deliver said cattle only upon condition that the defendant would pay for the same in gold, or silver, this would be no offer to perform on his part, as required by the contract; and @ refusal to pay such money by Morris would be no breach of the contract on his part. And that if in this respect, Moore did not perform or offer to perform his part of said contract. He cannot recover.

3rd If the Jury believe from the evidence that when defendant tendered the Plaintiff the paper money for the cattle, that Moore, said Plaintiff said, he wanted other money or such money as the contract called for; he thereby meant and intended to be understood as demanding gold or silver money, and that the defendant did so understand him; that such @ demand even if accompanied with an offer to deliver the cattle, was @ breach of the contract on the part of the plaintiff, and no breach of the contract on the part of the defendant to refuse to pay such money for said cattle.

4th That the phrase "Good current money of this State"

means that kind of good paper money of specie paying Banks, which at the time it was to be paid was passing current in, and constituted a portion of the currency of this State.

5 If the Jury believe from the evidence that the Plaintiff agreed to give the defendant @ reasonable time to get the gold to pay for said cattle, and that in pursuance of such proposition or agreement the defendant started off to get said gold, and that within @ reasonable time he procured the same, and offered and tendered it to the Plaintiff, the Plaintiff was bound to accept the same, and to deliver the said cattle to the defendant; and that such tender of said gold would be @ good performance of his contract on the part of the said defendant; and that if such is the evidence then any subsequent submission of the matters of the performance or non performance of the contract to arbitration is not for the consideration of the Jury-

6th If the Jury believe from the evidence that the Defendant immediately after the time of the making of said contract of June 27, 1854, paid the Plaintiff Five hundred dollars in Indiana, Ohio and Kentucky money upon said contract, and that the Plaintiff received the same, and then and there declared in substance that such money was good enough and that if the rest was as good as that it would answer his purpose, this is proper evidence for the consideration of the Jury, in determining whether the Plaintiff, had agreed, or was willing or induced the defendant to believe, that he was willing to take and receive that kind of money in payment for the cattle to be delivered upon said contract.

7 If the Jury believe from the evidence that the Plaintiff, only performed or offered to perform his contract upon the conditions mentioned in the second (2) instruction

Then the subsequent agreement of submission to arbitration is not @ matter for the consideration of the Jury.

8 If from the whole evidence, and the instructions of the court, the Jury believe that the Plaintiff is entitled to recover, then he can only recover such damages as he has actually sustained in the premises. And no more damages than he would have been entitled to recover in case the action had been brought on the contract itself

9th That in case the suit had been brought on said contract and the same had been broken by the Defendant, by neglecting to pay the money for three days only, and then the money was paid and received by the Plaintiff, all the damages which he could recover would be, the interest on the money, @ reasonable compensation for taking care of the cattle, and nominal damages for the breach of the contract.

11 If the jury find from the evidence that the defendant's third plea is substantially true they will find for the defendant

to the granting of which instructions the plaintiff then & there excepted.

The Jury returned @ verdict for defendant upon which the Plaintiff moved for @ new trial which motion the Court overruled and rendered judgment against plaintiff upon said verdict. to which ruling of the Court in overruling said motion & in rendering said judgment the plaintiff then & there excepted. and prayed the court to sign & seal this his bill of exceptions which is done.

E. N. Powell Esq

State of Illinois }
 Peoria County } ss I, Enoch P. Sloan, Clerk of the Circuit Court
 in and for the County of Peoria in the State of Illinois do hereby certify
 that the foregoing is a full and correct transcript of papers filed and
 of the proceedings of our said Court in a certain cause wherein
 John L. Moore is plaintiff and William Morris is defendant
 as the same remain on file and of Record in my office

Given under my hand and the
 seal of our said Court hereunto
 affixed at my office in Peoria
 this tenth day of April in the
 year 1858
 Enoch P. Sloan, Clerk

Recd of Mary Therman 36 $\frac{85}{100}$ for mch
 in recd for subseant court C. Sloan, clk

\$36.85

Filed April 21, 1858
 J. L. Delaney
 Clerk

John L. Moore
 vs
 William Morris
 April 1858
 kept in Court

John. J. Moore }
vs }
William Morris }

Forfe. Co.

1st. There was no objection that could be
reasonably made to the testimony of Howitt.

The Object of the Evidence was to show
that the notes tendered were current in this
State— and that they were more valuable
than Notes of Illinois Banks, which the
Plaintiff some times pretended he was entitled
to receive. —

Q. I can see no possible objection to the
Evidence of Wilkinson which is objected to.

It may be that the whole matter of the
arbitration was immaterial — But the
parties had voluntarily made an issue upon
the question, as to which prevented the award
being made in writing
Evidence under the issue was

properly admitted. The conversation
between Wilkinson and Monie, was com-
municated to Moore, and was necessa-
rily given in Evidence for the purpose
of the determination of the issue as to
who was at fault in this respect

If after the issue had been found
by the Jury, it was an immaterial
one, the Court in the Judgment
may have disregarded it - But it
constitutes no objection to the introduction
of the Evidence - especially when the
parties have voluntarily made the issue

3rd

The instructions given by the Court
were all proper and legal.

The instructions embrace two propositions
only.

1st

That under this Contract the words
" Good Current Money of this State "
does not necessarily mean Gold and
Silver

2nd

That it means that Kind of Good paper
Money of Specie paying Banks which
at the time it was to be paid was pas-
sing current in, and constituted a portion
of the Currency of this State — and
not alone Notes of Banks of Illinois

4. The Money tendered was of the State
Banks of Ohio, Indiana & Kentucky all
more valuable than Money of the Banks of
Illinois



If "Good Currency Money of this State"
means Notes of the Bank of this
State — this Construction would
exclude the right of Monie to pay
Specie.

It means. Either. Specie only —
Bank Notes of this State only — or
Currency of this State.

5th If it is true that the Defendant was not to pay Specie under his Contract then whether the instruction was right or wrong - the Plaintiff is not injured; for it is clear from the Evidence that the Plaintiff's offer to deliver the cattle was made only upon Condition that defendant would pay for the same in Specie -

He Violated the Contract first and therefore can have no claim for damages against Defendant.

Q. 2. In no Event could the Plaintiff have recovered any thing more than Nominal Damages - The Court will not provide a Judgment when upon a second trial the Plaintiff could recover Nominal damages -
de minimus non curat lex

3. Graham & Waterman on new Trials
p. 1169. Ex. Sec. & Notes
and Authorities cited.

A new trial will not be granted when
Substantial Justice has been done.

2. Grievance & Water men on cross trials

47-50

[Faint handwritten notes, possibly "Grievance" and "Water men"]

[Faint handwritten notes, possibly "Grievance" and "Water men"]

[Faint handwritten notes, possibly "Grievance" and "Water men"]

Moore 274
Monis 3

Points, ok
187

O. H.

3. Moore 166.

Filed May 4. 1858
L. Leland
CLP

✓