

No. 13437

Supreme Court of Illinois

Sears

vs.

Dodson

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

225
No.

225
225

225

State

vs

Doherty

73437

1861

STATE OF ILLINOIS, }
KANE COUNTY. } ss. KANE COUNTY CIRCUIT COURT.

PETER SEARS
vs.
CHRISTIAN B. DODSON. } *Assumpsit.*

ABSTRACT OF RECORD.

PAGE OF RECORD.

2 Summons issued on third day of October, 1859, and returned served, on the fifth of said October, 1859, action assumpsit, damages two thousand dollars.

3 Declaration filed on the 9th of October, 1859, first count avers that on 1st day of October, 1859, Christian B. Dodson, at Geneva, in Kane County, in the State of Illinois, was indebted to Peter Sears, the Plaintiff, for the use and occupation of certain messuages, tenements, premises, buildings, farm lands, of the said Peter Sears, situated on Section number one and two in the Town of Geneva, in Kane County, and being so indebted, &c., said Dodson in consideration thereof promised said Sears to pay said sum of two thousand dollars upon request, &c.

Second count avers, that said C. B. Dodson, on the first day of October, A. D. 1859, was indebted to said Sears in the sum of two thousand dollars for the price and value of work and labor, journeys and diligence, &c., by said Plaintiff Sears, bestowed as the factor and agent of said Dodson, in and about the renting of the farm and lands of said Dodson, selling grain, goods, wares and merchandise, &c., and then and there promised to pay the Plaintiff upon request.

Third and last count is simply the common counts, with the usual conclusion, and the damages of said Plaintiff of two thousand dollars.

By J. H. MAYBORNE, *Plff's Atty.*

COPY OF ACCOUNT.

6	For use and occupation of land,	\$2,000.
	Work and labor,	2,000.
	Goods, sold and delivered, &c.,	2,000.
	Money lent,	2,000.
	" paid,	2,000.
	" received,	2,000.
	Due on interest,	200.
	On account stated,	2,000.

7 Afterwards on the 25th day of November, A. D. 1859, A. M. Herrington, Dodson's Att'y., filed as pleas to said declaration, 1st. the general issue in the usual form; and 2dly, a plea of set-off which in case reference is required will be found on page seven of the Record; and 3rdly, a plea setting up an arbitration and award between the parties, which plea will be found on page eight of the Record. And afterwards on the 10th day of December, 1859, a general replication was filed to the second plea. And afterwards on the 16th day of December, 1859, the Defendant Sears, by his att'y Wilcox, filed four Replications to the third plea.

1st Replication avers, that there was no reference or submission in manner and form as averred in said third plea.

2nd Replication avers, that said Sears and Dodson did by agreement refer and submit certain matters in difference between them to arbitrament of Dearborn and Curtis, but he avers that said arbitrators did not make any award in pursuance of said submission.

3rd Replication avers, that said Dodson and Sears did submit certain matters and differences to the arbitrament and award of Dearborn and Curtis, but denies

- 10 that the promises and agreements declared upon in the declaration in this case, nor even submitted to said arbitrators.
- 11 And afterwards on the 30th day of May, 1860, which was one of the days of the May term for 1860 of said court, a jury was empanelled to try said cause. And afterwards on the 1st day of June, yet being one of the days of the May
- 12 Term of said court, the Jury found the issues in said cause for the plaintiff Sears, and assessed his damages at the Sum of Seventy Dollars and thirty-three cents.

13 STATE OF ILLINOIS, }
KANE COUNTY. } *Kane County Circuit Court,*
May Term, A. D. 1860.

PETER SEARS }
vs. }
CHRISTIAN B. DODSON. } Be it Remembered that on the trial of the above
entitled cause, before the Hon. Isaac G. Wilson,
Judge, and a Jury, duly sworn to try the issues joined, the Plaintiff, in order to
14 sustain his cause of action, introduced as a witness Thomas A. Scott, who being
sworn, testified as follows:—Was Clerk in Sears' store in 1853 & 1854; began
about middle of June '53; (ac't. shown him) have seen this account before, de-
livered goods out of Plaintiff's store during years 1853 & 1854; he kept on the
west side of the river in those years; delivered goods as charged in the bill, gro-
ceries, shoes, soap, candles, &c., dry goods, but cannot specify the articles par-
ticularly; it is long ago, can't now recollect distinctly, delivered sheetings,
recollect generally of delivering him goods during 1853 & 1854, and charging
them, similar to that charged in the account, it was my business to sell goods
and enter them upon the books, know Defendant's hand writing. (Witness
identifies the following as in Defendant's hand writing.)

\$21, 17 A. No. 1.
P. Sears, Please pay the bearer, W. C. Wilder, twenty-one dollars and
17-100 and charge C. B. DODSON.
Geneva, Dec. 27th, 1853.

\$44,00 A. No. 2.
P. Sears, Please pay the bearer, A. Demonea, Forty-four Doll's. and
chg. to C. B. DODSON.
Geneva, January 16th, 1854.

\$23,38 A. No. 2,
P. Sears, Please pay the bearer, W. G. Webster, Twenty-three 38-100
Dollars and charge to C. B. DODSON.
Geneva, December 29th, 1853.

\$16,99 A. No. 4.
P. Sears, Please pay the bearer, S. Berry, Sixteen 99-100 Dols. and
chge. C. B. DODSON.
Geneva, January 16th, 1854.

\$14,71 No. 5.
P. Sears, Pay the bearer, Williams and Henry, Fourteen Dollars and
71-100 and charge C. B. DODSON.
Geneva, December 27th, 1853.

\$19,00 A. 6.
P. Sears, Pay Mrs. McElwain nineteen Dollars, 19 \$, and charge to
Geneva, December 29th, 1853. C. B. DODSON.

14 \$32,00 A. 7.
P. Sears, Please pay the bearer, Y. Alexander, Thirty-two Dollars and
charge to C. B. DODSON.
Geneva, December 30th, 1853.

\$4,43 A. 8.
P. Sears, Please pay the bearer, John Reed, Four 43-100 Dols., and
chge. to C. B. DODSON.
Geneva, Jan. 16th, 1854.

15 \$28,71 A. 9.
P. Sears, Please pay the bearer, Mrs. A. Clark, Twenty-eight 71-100
Dollars, and charge to C. B. DODSON.
Geneva, December 29th, 1853.

\$7,25 A. No. 10.
P. Sears, Please pay the bearer, Cyreno Tilton, Seven and 25-100 Dol-
lars, and charge to C. B. DODSON.
Geneva, January 5th, 1854.

A. No. 11.
Mr. P. Sears, Please pay J. H. Tickner, Twenty-three Dollars, 23\$,
and chg. to acpt. of C. B. DODSON.
Geneva, July 11th, '54.

A. No. 12. June 22nd, 1854.
Mr. Sears, Please let Peter Smith have One Dollar in goods, and
charge the same to Mr. Dodson in the Pass Book. Mrs. H. N. DODSON.

\$26,60 A. No. 13.
P. Sears, Please pay the bearer, A. B. Moore, Twenty-six 60-100 Dol-
lars, and charge to C. B. DODSON.
Geneva, December 30th, 1853.

\$4,25 A. No. 14.
P. Sears, Please pay the bearer, P. G. Miller, Four Dollars and 25-100,
and chge. C. B. DODSON.
Mar. 21st, 1854.

\$3,50 A. 15.
Mr. P. Sears, Please pay the bearer, T. Middleton, Three Dollars and
50-100, and chge. to acpt. C. B. DODSON.
Geneva, Feb. 24th, 1854.

The Plaintiff then read in evidence, a note given by Defendant to E. Scott,
and by Scott endorsed to Plaintiff.

(COPY OF THE NOTE.)

Ten days after date for value Received, I promise to pay to E. Scott, Seventy-
two Dollars & Seventy-seven cents. C. B. DODSON.
Geneva, Dec. 5th, 1853.

\$72,77

(COPY OF ENDORSEMENT.)

For value received, I assign the within note to Peter Sears. E. SCOTT.

[Book shown witness.] This is Mr. Sears' Ledger, kept while I was there.
[Day book of Plaintiff shown witness.] This is the day book. The following
charges are in Mr. Sears' hand writing:—

PAGE OF RECORD.

15	1854.			
	Jan.	21	Page 401	\$2,00
	Feb.	7	406	1,60
16		9	407	1,47
		15	408	61
		22	410	75
		24	"	3,50
		27	"	63
	March	6	411	08
		8	"	93
		9	412	6,33
		20	414	2,30
		23	415	4,25 Phillin's order.
		25	"	63
		"	"	7,25 C. Tilton's order.
	April	3	418	68
		14	420	34
		21	423	06
		22	"	1,00
		25	424	10
		27	425	06
	May	4	428	80
		15	Book 2nd 1	1,95
		16	2	1,56
		25	5	2,65
	June	16	12	1,52
		22	15	1,00 P. Smith's order.
		"	"	63
		26	"	1,70
	July	3	18	19
		"	21	23,00 J. H. Ticknor's order.
		24	26	76
	Aug.	4	28	38
		10	"	41
	Sept.	18	34	81
		19	35	32
		29	37	75
	Oct.	4	"	41
		9	38	50
		16	40	60
				\$74,51

The following charges are in my hand writing :—

17	1854.			
	Jan.	28	Page 403	\$1,37
	Feb.	15	408	02
		22	410	1,00
		25	"	30
	March	16	413	04
		21	414	20
	April	22	423	1,62
		26	425	16
		28	426	58
	May	1	427	30
		12	430	1,00
		"	"	1,75
		22	Book 2 3	8
		23	4	69
		24	5	40
		25	"	1,19
		31	7	2,07
	June	16	12	60
		24	15	2,33
		26	16	1,00

17	June 30	Page 17	\$0,25
	July 11	21	2,90
	15	24	44
	24	26	30
	Aug. 4	28	70
	18	30	8
	21	"	21
	23	31	20
	31	32	20
	Sept. 5	33	56
	Oct. 16	40	30
			\$22,84

Cannot recollect distinctly, but I delivered about the times of those charges along '53 & '54 goods as there charged, butter, sugar, coffee, tea, soap, candles, &c., &c., dry goods, &c.

Question. State what was your custom while in the store of Sears, (if you had any,) in relation to selling and making charges of goods. To the asking which question the Defendant objected, which objection was overruled by the Court. To the ruling of the Court in allowing such question to be asked and answered, the Defendant then and there excepted.

Ans. The custom was to make the entry on the day book at the time of selling. Think Plaintiff had two clerks in the store in 1854. Mr. Anthony and myself. Mr. Collins was there a short time, but he left in the fall of 1853; it was my particular business to sell goods, and make the entries upon the books. Made the entries at the time of selling. These are the books of account of Plaintiff, (books shown,) kept in his store in the regular course of his business as a merchant. There are entries made in those books in the hand-writing of Sears. Have had an account of my own in these books. Never have had a final settlement, but have looked over the account and found it correct. His books are fairly and honestly kept so far as I know. I think them fair. Anthony was a Clerk part of the time when I was there. Think he was there two or three months. Anthony did not make many entries. Think I and Mr. Sears made most of the entries. Sometimes when we were hurried, we would keep a little memorandum book. Defendant had a pass book, in which we inserted the goods sold to him.

Cross-Examination. Whether Anthony made entries I cannot say. There are some entries, the hand-writing of which I do not know. Mr. Collins was a Clerk a small part of the time. I find charges against other parties not in my hand or Mr. Sears'. Don't know whose writing. It is only during months of March, April, May, & June, 1854, that I find charges that I don't know.

The Plaintiff then introduced J. H. Ticknor, a witness, who being sworn, testified as follows:—Have bought goods of Plaintiff. Settled the account with him. Found the account correct. Think it was in 1853, '54 & '55. It was while he traded, on the east side, and when he was in the stone block on the west side. These are the books out of which we settled. So far as his deal with me, his books correct and fair.

Cross-Examination. My account as it appears here is \$26,00, (book shown and is admitted to be the Ledger into which his account is posted—the Day Book not here.) Settled by this book alone.

The Plaintiff then introduced William B. West, a witness, who being sworn, testified as follows:—Was school treasurer of Blackberry some years ago. There was a note of about fifty dollars due to the school fund from Mr. Dodson. It was taken up by Sears about ten years ago. Mr. Sears took the Note. The interest had been paid half-yearly by Dodson for some time. These are Receipts for interest.

(COPY OF RECEIPTS.)

Geneva, May 21, 1849.

Rec'd of Mr. Sears for C. B. Dodson, \$2,94, being the amt due Treas T. 39, N. R. 7 E., for in. up to Mar. 31 last, being six mo's in advance.

WM. B. WEST, Treas.

Blackberry, Dec. 21, 1849.

Rec'd of Mr. P. Sears for C. B. Dodson, two & 74-100, being the amount of interest due the School fund of T. 39, N. R. 7 E., up to Sept. 5th last, by said Dodson.

WM. B. WEST, Treasurer.

Geneva, April 10, 1850.

- 19 Rec'd of Mr. P. Sears two Dollars and 94-100, in payment of the half-yearly interest, due March 4, on a note against C. B. Dodson, in favor of the School fund of T. 39, N. R. 7 E.

WM. B. WEST.

Blackberry, Dec. 17, 1850.

Received of Peter Sears, Esq., two Dollars and 93-100, being interest due the School fund from C. B. Dodson, up to September 3d, 1850.

WM. B. WEST, Treas. T. 39, N. R. 7 E.

Geneva, May 6, 1851.

Rec'd of C. B. Dodson, Esq., Two Dollars & 93-100, being for half a year's interest due by C. B. Dodson, on his note due the School fund of Blackberry Township, up to March 3d, 1851, by the hand of P. Sears, Esq.

WM. B. WEST.

Blackberry, Jan. 9, 1852.

Rec'd of Peter Sears, Esq., two Dollars and 93-100, being six months' interest due up to September 3d, 1851, on the note against C. B. Dodson and others, due the School fund of Blackberry Township.

WM. B. WEST.

Geneva, May 8, 1852.

Rec'd of Mr. Peter Sears two Dollars & 94-100, for interest due on a note payable to the School fund of Blackberry, by C. B. Dodson and others, due up to Sept. 3d last.

WM. B. WEST.

Cross-Examination. The date of the note cannot say exactly. It had been running three or four years. Think Sears gave his note with Acers in 1852 to take up old note. This is the original note.

COPY OF THE NOTE.

\$48,46

Blackberry, Kane Co., Sep. 23rd, 1843.

We, C. B. Dodson and Amasa White, jointly & severally promise to pay William B. West, treasurer of School fund of T. 39, N. R. 7 E., or his successor in office, the sum of Forty-eight Dollars and 46-100 with twelve per cent Pr. annm, payable half-yearly in advance; we further agree that if additional security be required for the payment of the within note, it shall be forthwith given.

C. B. DODSON.

AMASA WHITE.

JAS. HOTCHKISS.

Direct resumed. The second note has been paid by Mr. Sears.

Cross-Exam. Delivered the old note to Mr. Sears. Dodson was in California at the time.

- 20 The Plaintiff then introduced Alphonzo Yates, a witness, who being sworn, testified as follows—Had some deal with Plaintiff. Traded with him at his store on credit. Have settled with him out of his books. So far as I had any account there I found it correct on the book. I settled from this book. I was satisfied with the account.

Cross-Examination. It was some years ago. Seven or eight years ago. Couldn't say that I remember the book. Good while ago. Can't say that this is

20 the book, nor whether there was no other. There was more than one book.

Resumed. At that time Sears was doing business across the river.

Thomas A. Scott recalled. The footing of my charges is \$22,84.

The Plaintiff then introduced A. W. Glass, a witness, who being sworn, testified as follows. Knows the Plaintiff. Have had running book account with him while he kept in the Yates' store, on the west side. This is his book in which he kept my account, when he was in the store on the east side of the river. It embraces my account from 1847 to 1851. Think his books always fairly kept. He keeps fair books so far as my knowledge extends. My account is \$241.

Cross-Examination. This is the book into which my account is posted from the other books. My best judgment is that this is the hand-writing of Sears. I was clerk for Sears two years or more. When I took articles, I charged to myself in the day book. I think this is the book from which I settled.

Direct Resumed. According to my best recollection and knowledge this book contains all the account I had with Sears. From looking at the Day Book and this Book, I satisfied myself that the account was correct. Sears usually did the posting of the books himself. That was not my part of the business.

Recross-Ex. Don't know that I ever heard any one when settling find any fault with the correctness of the account, or to the correctness of its keeping.

C. B. Wells, a witness on the part of the Plaintiff was called, sworn, and testified as follows:—Have had an account. Can't identify this book, never had any occasion to find fault with the manner in which my account was kept. If it
21 had been wrong think I should have recollected.

Johnson Updike, a witness called on the part of the Plaintiff being sworn, testified as follows:—Have done threshing on Dodson's farm in 1852. Joseph White employed me & paid me for 2-3 of the threshing. He gave me a bill of the other one third, which I took to Mr. Sears, and he gave me credit for it on the books. It was either seven or eight Dollars and some cents. Dodson went to California, and was gone two or three years. Don't know who attended to his business while he was gone.

Cross-Ex. Joseph White raised the grain in 1852, on Dodson's farm.

The Plaintiff then called A. B. Moore, a witness, who being sworn testified as follows:—Had an account with Sears while he was a merchant here. Settled with him. Always found his books correct. (Examines the book.) Have compared his account with my own, and found it to correspond. I believe he keeps fair books from my dealing with him.

Cross-Examination. This book is a ledger. My account is five dollars and thirty cents. This transaction was in 1851. Can't swear that this is the identical book. Don't remember if there was a Clerk in his Store at the time.

The Plaintiff then called William G. Webster, a witness, who being sworn, testified as follows:—Had a running account at the Store of the Plaintiff. Have traded with him from a period as early as 1842. (Examined ledger on page 170.) Have settled with him a number of times. Settled most always from bills. Do not think I ever looked into his books. Bills were rendered and I always paid them. (Various bills exhibited.) Always regarded them correct enough to pay them. This bill was in 1854.

Cross-Examination. Think I began with him in 1842. At that time Cleveland was Clerk. Marshall Clark, Warner and Glass have been Clerks. This bill is Collins' hand-writing. It begins in March and ends in December, 1853. Don't recollect getting the things in the bill myself. Was aware that there was a small account against me. Sears presented another bill, a larger one against me this winter, and I declined to pay it. There was a charge of fifteen dollars' worth of Hay, and interest on the account of six dollars, which I declined to pay.

22 Direct Resumed. The item I objected to was the hay. The facts were that Updike had delivered me the hay, and Sears claimed that he had received an order of fifteen from Updike, but I never got any such order or heard of it.

Recross Ex. My name was used in a suit against Sears. He brought in an account including the charge for hay.

The Plaintiff then called S. H. Todd, a witness, who being sworn, testified as follows: Have had running account with Plaintiff. Have settled with him. Think I have seen this book. My account is in this book. Have settled it with Sears. Found it correct. This account was 1854 and 1855. As far as my knowledge extends Plaintiff keeps fair and correct books.

Cross Ex. This settlement was when Sears kept on the West side. Sometimes Plaintiff had a clerk and sometimes not. Scott, Anthony, Collins, at times were clerks in the store. I think this is the book from which I settled. I think the items in the day book were not looked at. I had in my head about the amount of the account, and the book corresponded. Can't say who was present.

The Plaintiff then called Joseph White, a witness, who being sworn, testified as follows:—Know the parties. Dodson went to California in 1849, and was gone two years the first time. I worked a part of his farm in 1851. I sowed some fall-wheat in the fall of 1851, and harvested it in fall of 1852. Dodson was back in winter of 1851 and 1852. I first spoke to Dodson about renting his farm. He left Mr. Sears in charge of his farm. Sears came to father's with Dodson to talk about renting the farm, and to make out the lease. Sears made out the lease. Sears accepted of the crops and took charge of them for Dodson—Dodson's part of them. I repaired the fences that spring. Mr. Dodson gave directions when he was at home. I consulted with Sears as to the management of the farm after Dodson left. I was to pay $\frac{2}{3}$ and Dodson was to pay $\frac{1}{3}$ for threshing. Updike threshed the fall grain. I gave an order. I gave it upon
23 Sears. Sears had the charge and management of the farm in 1849 and '51. Sears was down to the farm quite often. There was about one hundred acres of tillage land. I did not work all the land. Adams worked a part. I worked from fifty to sixty acres. Mrs. Dodson and family lived at Warrenville at the time.

Cross Examination. Knapp, a brother-in-law of Dodson, worked the farm in 1849. Dodson left early in the spring. Logan worked the farm after Knapp. Logan died on the place. Don't know that he took Knapp's lease. Knapp staid a year. Logan died in the fall of 1850. Think Sears took charge of the grain raised by Logan. Don't know of Dodson selling wheat, raised by Logan, to Derby. I know he sold to Derby wheat raised by me. My impression is that Dodson did not return in the fall of 1850. Upon reflection I think he did return in the fall of 1850, and went back to California in the spring of 1851, and staid until the fall; he was therefore at home in the winter of 1850 and 1851. He was at our house occasionally. I first spoke to Dodson about renting the farm. Dodson was in the habit of attending to and managing his own business. Think I talked twice with Dodson, and the terms of the lease were agreed upon between him and me. I took the oats to father's barn. I kept Dodson's portion of the oats to pay me for repairing the fence. Think there was some grain that Logan raised and which was put into our barn and afterwards took away by Dodson. Can't say who took them there. The corn that I raised was in our barn, and Derby got it from there. Dodson had sold it to him as I understood.

Direct Resumed. Think Sears was there while the harvesting was being done. At the time of the giving of the lease it is spoken about Dodson returned to California. Sears drew the lease.

23 Recross Ex. The lease was drawn at Sears' store. Self, father, Sears, and Dodson present.

24 Julia Dodson sworn, a witness called on behalf of the Plaintiff being sworn testified as follows:—Daughter of the Defendant. We lived at the farm when father went to California. We moved to Warrenton same spring. Can't say who aided in moving. Think Mr. Sears gave Knapp some directions about the farm. Recollect of Sears keeping store on this side of the river in the Yates' building. Recollect of my father buying a pair of Buffalo overshoes, but don't know where he got them. Can't say what year it was. Recollect occasionally of going and getting soap and candles and other goods during 1853 and 1854. Our family bought goods at Sears' store. Think we had a pass book. I was so young that I cannot remember what was got. Recollect getting similar goods to those charged along during 1853 and 1854.

S. H. Todd recalled for the Plaintiff. Know Dodson's farm. Knew of the time when Dodson went to California. He went spring of 1849 and stayed to fall of 1850, and again returned to California in spring of 1851. Sears had charge of Dodson's farm while Dodson was away. Have seen Sears there. Remember on one occasion when some one was plowing up the road and forbid him. Once on another occasion when threshing, and Sears gave some directions. He paid highway taxes. Worth from fifty to one hundred dollars a year to take charge of the farm and Dodson's business in his absence. My house is a little over a half a mile from the nearest corner of Dodson's farm. I have to pass the farm going to Batavia. Frequently passed it. A leased farm requires some looking after. Amasa White and his son are first class tenants.

Lyman German, a witness on the part of the Plaintiff called and sworn, and testified as follows: In 1852 and 1853 was in the warehouse taking in grain for Sears & Dodson. I think Sears bought some grain. Think some barley, whether for Sears or not I do not know. How much I do not know. (Plaintiff claims for barley, July 20th, 1853, 226½ bush. at 50¢ and 68 bush. oats.) The Defendant came to me and told me to deliver up key to J. B. Dodson, and I did so. [The Court rejected the Plaintiff's claim for barley and oats and ruled them out on the ground that it was partnership account.]

25 Amasa White. Know the Dodson farm. Mr. Sears appeared to have the care of the Dodson farm while Dodson was absent in California. Heard Dodson say once at my house that Mr. Sears and his father, who lives at Salt Creek, were to act as agents for him during his absence. Occasionally saw Mr. Sears down there. Don't know that I could fix on any time. Dodson has also a farm in connection with Sears. Five or six hundred acres lying east of the Village. Think Dodson's father was once at my house, with Sears. From what I saw I gathered that Sears had the management and control of Dodson's business during Dodson's absence. It was worth from \$50 to \$100 dollars per year to do it.

Charles Patten, a witness, produced on the part of the prosecution being sworn, testified as follows:—Always understood that Sears had charge of Dodson's affairs while he Dodson was in California. Dodson when he left for California had considerable property. His home farm might have been worth from eight to ten thousand dollars, more or less; the care and responsibility of taking charge of the business worth fifty to one hundred and fifty per year. Sears paid me five dollars for Dodson.

Cross Ex. Lived near these parties. Know nothing about any particular services of Sears. Had no occasion to do so.

The Plaintiff then introduced B. C. Yates, a witness, who being sworn, testified as follows:—Was Sheriff and Collector of Kane County in 1850. Warner

PAGE OF RECORD.

25 was my deputy. [Witness shown two tax receipts.] This was tax receipt. Knew of Sears settling an execution against Dodson in the Todd case. This is another tax receipt.

Received, March, 1850, by the hand of Peter Sears for C. B. Dodson, the tax on the following property for the year 1849 :—

Personal Property.....										\$,55.
Part of S. E. $\frac{1}{4}$, Section 10, Town 39, Range 8, 80 acres.....										5,49.
N. $\frac{1}{2}$ N. W. $\frac{1}{4}$, " 11, " " " " 33 61-100 acres.....										2,66.
S. W. $\frac{1}{4}$ " 11, " " " " 33 16-100 "										2,60.
N. W. $\frac{1}{4}$ " 14, " " " " 51 93-100 "										3,57.
N. E. fr. " 15, " " " " 110 13-100 "										7,58.

\$22,45.

Deduct over charge \$53.16 acres..... 5,13.

\$17,14.

Received payment in full on the above,

C. B. YATES, Col.

By J. L. WARNER, Deputy.

Geneva, Kane Co., May 10, 1850.

Received, March, 1850, of Sears & Dodson the tax on the following property, for the year 1849 :—

Part of N. E. $\frac{1}{4}$, Section 1, Town 39, Range 8, 80 acres.....										3,92.
S. E. $\frac{1}{4}$, " 1, " 39, " " 119 67-100 acres.....										5,87.
N. W. $\frac{1}{4}$, " 1, " " " " 40 40-100 "										1,98.
S. E. $\frac{1}{4}$, " 1, " " " " 143 28-100 "										7,03.
S. E. $\frac{1}{4}$, " 2, " " " " 72 50-100 "										3,56.
S. W. $\frac{1}{4}$, " 2, " " " " 24 50-100 "										1,22.
N. $\frac{1}{2}$ S. W. $\frac{1}{4}$, " 2, " " " " 114 89-100 "										5,64.

29,22.

Received payment in full on the above,

J. L. WARNER, Deputy Col.

Geneva, Kane Co., May 10, 1850.

26 C. B. Wells was then recalled by the Plaintiff. Know J. B. Dodson. He read law in my office in 1853. He kept Mr. C. B. Dodson's books and accounts. Dodson was then building the rail road bridge. [Order shown witness.] Think this is his handwriting, but am not familiar with it.

(COPY OF ORDER.)

No. (16.)

P. Sears:

Please pay Mr. Shanlan Thirty-one and 12-100 Dols. and charge to C. B. Dodson.

J. B. DODSON.

Geneva, Sept. 28, '53.

Ordered admitted, Dated Sept. 28, 1853.

Here the Plaintiff enquired of the Defendant if he would produce the pass book that he had been notified to produce the day before and made by the Plaintiff and kept by him during the years 1853 and 1854, and showing what amount of goods he purchased of the Plaintiff during that time, who replied that he could not produce it, and then made and read to the Court the following affidavit.

[The original affidavit to be inserted here is not found on file.

P. R. WRIGHT, Clerk.]

27 And upon the Court's ruling that the affidavit did not show sufficient facts why he did not produce it he asked of the Court and obtained leave to make and file an additional affidavit, to which the Plaintiff objected. The Court overruled such objection, and Plaintiff excepted. The Defendant then made and read the following additional affidavit. [Here Clerk will copy affidavit.]

27 [The affidavit referred to is not found on the file.

P. R. WRIGHT, Clerk.]

Thereupon the Court ruled that this affidavit stated sufficient facts why he did not produce said pass book, and sufficiently accounted for its non-production, to which ruling of the Court the Plaintiff excepted.

28 The books of account of the Plaintiff, identified by the witnesses, consisting of the ledger and two day books, were then offered in evidence, and so much of the account against the Defendant as was in the handwriting of Sears and Scott, as testified to by Scott, was admitted by the Court to go to the Jury. The Defendant by his Counsel objected to the admission of said books and account being admitted to go to the Jury as evidence in the case, which objection was overruled by the Court, and to the ruling of the Court in overruling such objections, and allowing said books and account to be given in evidence to the Jury, the Defendant, by his Counsel, then and there excepted. The amount in Scott's handwriting was \$22,84. The amount in Sears' handwriting \$

The Plaintiff here rested.

The Defendant then introduced Nathan Dodson, a witness, who being sworn, testified as follows: Am father of the Defendant. My son went to California in 1849. Left March 20. Myself and Mr. Sears were appointed to do certain business for him. My son-in-law, Albert Knapp, had the farm. Heard Defendant giving him directions as to how he should manage the farm. He remained on the farm until February or March, 1850. Defendant came back from California in the fall of 1850. Don't know who rented the farm in 1850. Sears received one thousand dollars at one time on account belonging to the Defendant. I brought the money over and gave it to Mr. Sears in the spring of 1849. The power of attorney was to execute a deed to Latham for land. I hadn't the most distant idea that we had anything to do with the farm. Knapp was on the farm when I came over to pay the money. Question. What did you hear said between the Defendant and Knapp, while Knapp was in possession of the farm, as to how long Knapp had rented it? To the asking and answering the above question the Plaintiff objected, and the Court sustained such objection. To the ruling of the Court in sustaining such objection, and in not allowing such question to be asked and answered by the witness, the Defendant then and there excepted.

Cross Ex. Don't know what the thousand dollars was paid on. Mr. Dodson paid it to us in Mr. Sears' store. After the money was paid over, I took Mr. Sears in my carriage to Elgin. Don't know for what purpose he went to Elgin. The money was raised for some purpose. We came over and the money was paid to Sears, and we went home again, and sometime after he wrote to me to come over, and we went to Elgin, and he had business with Charles Clark. Think the money was brought over to Sears in May 1849. I know the amount, because I counted it. Nothing was said about what the money was to be paid for. Have no recollection about paying out the money or any talk about it. Sears said they had business with Charles Clark.

Silas W. Curtis, a witness produced and sworn on the part of the Defendant, testified as follows;—Was chosen abitrator by Sears. Mr. Dearborn was acting with me.

30 C. B. Wells, a witness heretofore sworn in this case was called by the Defendant who proved the execution of the following Bond of Arbitration.

COPY OF BOND OF ARBITRATION.

Know all men by there presents, that we, Peter Sears and Christian B. Dodson, all of Geneva, Kane County, State of Illinois, are held and firmly bonnd

30 unto each other, his heirs and assigns, in the penal sum of ten thousand dollars. lawful money of the United States, which sum well and truly to be paid one to the other, in case any of the following conditions are broken, we hereby bind ourselves, our heirs, executors and administrators, severally, jointly and firmly by these presents. Witness our hands and seals this 7th day of October, A. D. 1853.

The condition of this obligation is such, that whereas the said Sears and Dodson are anxious to settle their commercial transactions, and no other in Geneva. and whereas the said Sears and Dodson have mutually selected Luther Dearborn and Silas W. Curtis, and in case they cannot agree, they (Dearborn and Curtis) are to select a third man to whom their commercial transactions as aforesaid are to be referred, who are to ascertain how much money said Dodson has paid in for the transaction of the aforesaid business, how much he is entitled for profits, while so engaged, if any, and how much he has drawn out from said business in cash or goods, or both, and make their award in writing (giving a copy to each party) determining how much one shall pay to the other, how soon, and what the security for such payment, and the award thus signed by any two of said arbitrators shall be binding and conclusive, from which there shall be no appeal. Now if the said Sears or Dodson shall well and truly perform all the conditions for each to perform, and shall stand to, abide by, and perform all the conditions aforesaid, and the award of said arbitrators, then this Bond to be void, otherwise to remain in full force and effect; and that this arbitrament shall commence Saturday morning, Oct. 8th, 1853, at 9 o'clock A. M., and continue unnecessary uninterrupted until disposed of; each party may be sworn and tell his story under oath and introduce such other legal evidence as said arbitrators may determine.

Witness by }
C. B. WELLS. }

PETER SEARS, { L. S. }

C. B. DODSON, { L. S. }

31 The commencement of the above arbitration is hereby mutually agreed to be postponed until Wednesday morning, Oct. 12th, 1853, at 9 o'clock, A. M.

Witness by }
JAS. B. DODSON. }

PETER SEARS, [SEAL.]

C. B. DODSON, [SEAL.]

S. W. Curtis recalled by Defendant. The arbitrators met, and the parties also, on the 12th of October, 1853. We heard the testimony and made this award (paper shown witness) in pursuance of the bond of submission. The award is signed by Mr. Dearborn and myself. This is the award:

COPY OF THE AWARD.

To all to whom these presents shall come, we, Silas W. Curtis and Luther Dearborn, send greeting:—Whereas, divers disputes, differences and controversies have arisen and are depending, between Peter Sears of the one part, and Christian B. Dodson of the other part, both of Geneva, Kane County and State of Illinois, in their mercantile transactions, for the ending and determining whereof, the said parties by their bonds of submission, bearing date the 8th day of October, A. D. 1853, have reciprocally bound themselves each to the other, to stand to, abide by, perform and keep the award, order, arbitrament and final determination of us, the said Silas W. Curtis and Luther Dearborn, so as the said award be made under our hands and ready to be delivered to the parties in difference.

Now, therefore, know ye, that we, the said arbitrators, whose names are hereunto subscribed, taking upon ourselves the burthen of said award, and having been first duly sworn according to law, faithfully and fairly to hear and examine the matters of difference between the said parties in question as to their mercan-

31 tile transactions, and none others, and to make a true and just award thereon, according to the best of our skill and understanding, and having fully examined and duly considered the proofs and allegations of both of the said parties, who were duly notified of the time and place, at which the said award would be made, do make and publish this our award between the said parties.

32 First, We do award and order that all controversies had, moved, arisen and depending between the said parties for any manner of cause touching their mercantile transactions to the day of the date hereof shall cease, and that each of the parties pay the arbitrator chosen by himself their fees for this award.

Secondly, We do award and order that Peter Sears shall pay and discharge all of the debts incurred by the said firm of Sears and Dodson in their mercantile transactions.

Thirdly, We do award and order that Peter Sears shall pay to the said Christian B. Dodson the sum of four hundred and ninety dollars, (\$490,) on or before the first day of March, A. D. 1854, said amount is to be secured to be paid to the said Dodson by mortgage or otherwise, as they may agree; but in case the said Peter Sears neglects or refuses to give the necessary security within ten days from the date of this award, at the expiration of that time, the aforesaid sum shall be due and payable.

And lastly, we do award and order that the said Peter Sears and the said Christian B. Dodson shall on the payment of the said sum of four hundred and ninety dollars, execute releases to each other, sufficient for the realizing of all demands connected with their aforesaid mercantile transactions, touching the premises aforesaid.

In testimony whereof we have hereunto set our hands and seals this 15th day of December, A. D. 1853.

SILAS W. CURTIS, [SEAL.]
LUTHER DEARBORN, [SEAL.]

Cross Ex. We acted under this bond of submission, and then made out our award.

James Hotchkiss, a witness produced on the part of the Defendant, being sworn, testified as follows: The Defendant's Counsel asked the following question: (No. 1.) "Do you know of the Defendant Dodson selling to the Plaintiff Sears a wagon, at any time? If yea, state the value." To which question the Plaintiff objected. The Court stated that if the testimony was offered to prove
33 an offset, it was not competent, on the ground that no bill of items was filed with the plea of setoff, but if it was offered to prove payment it was competent. The Counsel for the Defendant declining to state it was offered to prove payment, the testimony was ruled out, to which ruling of the Court the Defendant then and there excepted.

The Defendant's Counsel then asked the witness the following question: (No. 2.) "Do you know whether the Defendant Dodson sold and delivered to Sears, the Plaintiff, in March 1849, one sett of single harness? If yea, state what, if you know, Sears was to pay for the same?" Objected to by Plaintiff's Counsel. The Court overruled the question, and sustained the objection for the same reasons as given for overruling question No. 1, the Defendant's Counsel declining to state that it was offered to prove payment, to which ruling of the Court the Defendant by his Counsel then and there excepted.

The Defendant's Counsel then asked the following question: (No. 3.) "Do you know of Dodson, the Defendant, letting the Plaintiff, Sears, have a twenty dollar County order?" Objected to by Plaintiff, and overruled by the Court for reasons stated by the Court in overruling question No. 1, to which ruling of the Court the Defendant then and there excepted.

Dodson went to California in 1849. His farm was in charge of Knapp, his brother-in-law. He engaged me to overlook his timber land. I did so. I resided here in Geneva, within half or three-quarters of a mile of it.

33 Adolphus Latham, a witness produced on the part of the Defendant, being sworn testified as follows: In the month of December, 1849 or 1850, I paid three hundred and twenty-six or thirty-six dollars to Sears, for which I received a deed for land from C. B. Dodson. Think the deed was executed by Sears as Attorney in fact.

Cross Ex. The money was paid for balance due on land. Sears was acting as agent for Dodson, and I paid the money to him as such agent.

James Hotchkiss recalled by Defendant. Dodson was to give me my firewood for looking after the timber.

Cross Ex. I went down once with Mr. Sears, at his request, with him to look at the plow land, and we talked of the propriety of putting in buckwheat, and I agreed with him. We agreed in opinion.

34 The Defendant then offered in evidence the following note of \$48,46-100. The handwriting of Plaintiff was admitted, and note allowed to go to the Jury.

\$48,46.

Blackberry, Kane Co., Sept. 3d, 1843.

We, C. B. Dodson and Amasa White, jointly and severally promise to pay Wm. B. West, Treasurer of School fund of T. 39, N. R., 7 E., or his successor in office, the sum of forty-eight dollars and 46-100, with twelve per cent. per an'm, payable half yearly in advance. We further agree, that if additional security be required for the payment of the within note it shall be forthwith given.

C. B. DODSON,
AMASA WHITE.
JAS. HOTCHKISS.

The Defendant then offered in evidence the following account for grain had in August 1850, being balance of fifty-five dollars and four cents, which was admitted to the Jury by the Court.

1850. Sale of Winter Wheat for account of C. B. Dodson, Esqr.
Aug. 5, To Mr. Curtis, 20 bushels c. 75,.....15,00.
" Amasa White, 15 do " 75,.....11,25.
" Charles Walker, 59 11-60 bu. 68,.....40,24.

66,49.

Charges.

To Cash paid Threshing account, 4,80,.....
" " " Freight to Chicago, 8,65,.....
" My expenses " " 3,00,..... 16,45.

\$55,04.

Geneva, Aug. 29, 1850.

P. SEARS.

The Defendant then offered in evidence the following letter and accompanying account. The same being admitted by Plaintiff's Counsel to be in the handwriting of the Plaintiff, which were ruled out by the Court, and not permitted to be given in evidence to the Jury. To ruling of the Court in refusing said letter and accompanying account, which was a part of said letter, to be given in evidence to the Jury, the Defendant then and there by his Counsel excepted.

COPY OF LETTER AND ACCOUNT.

Boston, July 21, 1847.

C. B. Dodson, Esqr., Dear Sir:—Since I last wrote you your flour has come to hand. It only arv'd on the 7th inst.,—49 days from Chicago,—all in a damaged condition,—sour, musty and wet. In learning the condition of it I immediately call'd a survey, and the damage appraised by two of our most respectable

34 flour dealers at \$1,75c per bbl. as per their certificate annex'd. I have also the
 33 inspeitory certificate to the same effect. I found also that the only way I could
 dispose of it would be at public sale, all my friends advising that to be the best
 course to adopt, which I accordingly did. It was sold on the 14th inst., after
 advertising for 2 days, and a large company present, for \$4,06½c per bbl., for 95
 bbls. superfine, and \$3,25 for 14 bbls. fine middlings, which I considered a good
 price, considering its damaged state. 2 bbls. of your flour was short at Buffalo,
 and paid for and deducted from bill of charges, say \$13. I feel the greatest dis-
 appointment in the result of this shipment, particularly when the prospect was
 so good for a great profit, and had there not been the most gross neglect on the
 part of the transportation Company it would arrived here and been sold at the
 highest market ————— the whole season. I was offered \$10,25 pr bbl.
 for a part of it, to arrive, predicated upon a reasonable time, and had it come
 through, as it should certainly in 25 days, I should have sold the whole at that
 price, for it would then undoubtedly been in a sound state, and I can see no rea-
 son why you should not recover not only the damage appraised but for the differ-
 ence in price which this delay made,—consequent this difference is \$4,50, per
 bbl., and I shall procure all necessary documents to sustain this claim against the
 Company, and I can see no good reason why it should not be recovered in a few
 days. I will forward you account of sales. I — so much engaged in looking
 after my own affairs that I have only time to say this much to you at this time:
 Be assured I have and shall give every attention to this business that serves to
 promote your interest. I have much more difficulty in disposing of my property
 here than I anticipated, but I hope now soon to accomplish it. The weather is
 extremely warm here. Thermometer ranging from 90 to 100 degrees.

Respectfully yours,
 PETER SEARS.

(COPY OF ACCOUNTS.)

1847. Sales of 109 bbls. Flour on account of C. B. Dodson.

July 14, John Tyler at auction,
 79 bbls. Flour, \$4,1-16,.....\$320,94
 14 " Fine Midlings, 3,½,..... 45,50
 2 " W. Trueman, 5,75,..... 11,50
 1 " A. H. Peirce, " " 5,75
 1 " Damaged,..... 4,50
 1 " Light weight,..... 4,00
 11 " 5,..... 55,00

Dolls. 447,19

36 The Defendant then offered the following accounts which were given to the
 Jury as evidence in the case.

(COPY OF ACCOUNT.)

Dr.	C. B. Dodson, Esqr., in Account with Peter Sears.	Cr.
1851. May 5,	To this amount cash, interest school note	2,93
Aprl 28,	" " " " I. G. Wilson M'tge	250,00
Jun. 9,	" " " " Mrs. Dodson	30,00
" 11,	" " " " Mrs. D. or. Hazeltine	2,00
Jul. 10,	" " " " Mrs. Dodson	11,00
Aug 31,	" " " " Mrs. Dodson	13,00
Sept. 8,	" " " " " "	10,00
1852. Jan. 9,	" interest on school note	2,93
" 30,	" cash paid 25 grain bags	7,50
" " "	" Mrs. Wakefield	2,50
Feb. 7,	" paid taxes on farm	19,66
" 24,	" James White, threshing grain	2,81

36

Apr 13, "	E. Scott for Pork, 202½ lb.	11,81
" " "	1 Pork bbl.	1,13
May 8, "	interest on school note	2,93
		370,20

	Cr.	
1851, Mar. 19,	By balance old account	14,01
Aprl. 28, "	cash	300,00
	" this am't taxes carried to Jan.	
	account	17,80
		331,81

Endorsed on note \$38,39 38,39

Settled as above, PETER SEARS.

Dr. C. B. Dodson, Esqr., in Account with N. Dodson & P. Sears.

1849. May 4,	To cash p'd H. F. Smith, trust deed	1,00
" " "	" " acknowledging deed	,25
" 5, "	" this am't p'd note and in't P. Sears	201,50
" " "	" " I. G. Wilson, land	627,58
" " "	expenses at Elgin on business for him	1,75
" " "	this am't p'd C. Patten for rect	5,00
" 21, "	" W. B. West, in'st sch'l land	2,94
" 28, "	" B. C. Yates, Todd suit	50,00
" " "	" medicine, Mrs. Dodson	2,00
" 30, "	" State and county taxes	22,12
" " "	" Jno Barstow witness fees	4,50
Jun 23, "	" Swarthout recording P. Att'y	,88
" " "	" Cash Mrs. D.	6,00
Oct. 17, "	" " "	5,00
Dec. 21, "	" W. B. West in't sch'l land	2,94
" 22, "	" Jas. Stephens on note	350,00
" " "	" J. J. Brown, bill	8,66
" 27, "	" E. Conant, house rent	47,92
1850. Jan. 16, "	" Jas. Stephens, on note	40,00
" 26, "	" " "	17,00
Apr. 9, "	" W. B. West, in't note S. land	2,94
" 17, "	" Mrs. Dodson,	12,00
May 10, "	" Taxes, B. C. Yates	17,14
July 2, "	" Mrs. D. \$8, postage 40c	8,40
Sept 16, "	" " "	25,00
Oct. 19, "	" " "	30,00
Nov 29, "	" W. B. West in't 2,93, P. 50	3,43
1851. Jan. 1, "	" Postage 93 do 80	1,73
Mar. 1, "	" Taxes on farm	37,00
" " "	" Postage 10 do 10	,20
" 12, "	" " 2 letters Cal.	,80

Carried forward, \$1535,68

Am't brought over \$1535,68

1851. Mar.	To cash p'd threshing spring wheat	2,55
" " "	" Amasa White, ct. C. Wheat	5,00
" " "	" Working road tax	3,12
" " "	" B. C. Yates on Todd's suit say	22,00

\$1568,35

Amasa White on wheat 1,08

1569,43

19 To bal. to new account 14,01

\$1583,44

Cr.

1849. May 4,	By cash per receipt	1000,00
" " "	" County order	20,00
Dec. 22, "	" proceeds Latham's note	330,00
" " "	" cash Mrs. Dodson	18,25

37

1850. Jan. 16, " " "	40,00
" 26, " " "	17,00
Mar. 8, " A. Knapp	3,15
Aug. " sales winter wheat	55,04
1851. Jan. 23, " cash	100,00
	\$1583,44
Am't carried forward	
1851. By am't forward	1583,44
	1583,44
1851. Mar. 19, By bal. of old account	14,01
E. E. Settled as above, Geneva, Mar. 19, 1851.	

PETER SEARS.

Which was all the evidence either offered or given on the trial of said cause.

The Plaintiff then asked the Court to give the following instructions, three in number, which were marked by the Court on the margin, "given," and by the Court read to the Jury.

(COPY OF INSTRUCTIONS.)

Given. That if the Jury believe from the evidence that the matters submitted to arbitration by the parties to this suit, and passed upon by the arbitrators (Curtis & Dearborn) did not include any of the claims or demands which the Plaintiff in this suit, in his declaration and by the proofs, seeks to recover from the Defendant, then the Defendant's special plea that the Plaintiff ought not to recover, because of the said submission and award is not sustained, and the law on that point is for the Plaintiff.

38 Given. If the Jury believe from the evidence that the Defendant was indebted to the Plaintiff, as charged in the declaration, then the Plaintiff is entitled to recover in this suit, unless you also believe from the evidence that the Defendant has paid such indebtedness. And if you believe from the evidence that the award made by Curtis and Dearborn was not in payment of the said indebtedness nor any part thereof, then under the general issue it is of no avail to the Defendant, and then under said issue the Plaintiff (notwithstanding the award) is entitled to recover the said indebtedness, unless the items of the Pl'ff's claim were intended to apply in payment of the award.

In no event under the issues in the case is the Defendant entitled to recover a verdict against the Plaintiff.

To the ruling of the Court, in giving to the Jury said instructions, the Defendant then and there excepted.

The Defendant then asked the Court to give eight instructions. The Court wrote the word "given" on the margin of five of said instructions, and read to the Jury as law in the case.

(DEFENDANT'S INSTRUCTIONS.)

Given. If the Jury believe from the evidence that the parties to this suit on the 7th day of October, 1853, submitted to arbitrators all their commercial transactions, as in the submission bond and award introduced in evidence, is stated, and as described in the third plea of the Defendant, and that the arbitrators awarded as due to the Defendant Dodson the sum of four hundred and ninety dollars. And if the Jury further believe from the evidence that the orders, the Scott note and the book account, given in evidence in this case, by the Plaintiff, were intended as payment of said sum so awarded, and that the sum so awarded, and the interest due thereon, amounts to more than such orders, note and book account, and interest thereon, proven by the Plaintiff, then the Jury will find for the Defendant as to such orders, note and account.

39 If the Jury believe from the evidence that the award of four hundred and ninety dollars, and the interest at 6 per cent. due thereon, exceeds the proven amount of the Plaintiff's demand, the Jury will find the issues for the Defendant, provided the Jury believe from the evidence that such proven demand of the Plaintiff was made in payment of said award and interest.

Given. If the Jury believe from the evidence in this case that Sears the Plaintiff had at the time of the alleged rendering of the services, in attending to the business of the said Defendant Dodson, money belonging to said Defendant, out of which he has paid himself for said services, then the Jury will not allow him anything in this suit for said services.

Given. If the Jury believe from the evidence that said award was rendered in settlement of all the accounts between the parties, and that the Shalor order, dated September 28th, 1853, was prior to said arbitration, the presumption of law is that said order was taken into account by said arbitration, and should be disregarded by the Jury in this case.

Given. That if the Jury believe from all the evidence in this case that the parties to this suit made full settlement of all their accounts in the year 1851, and that no fraud or mistake has been shown in said settlement, then neither party can go behind said settlement, and the Jury must confine their investigations to matters that have accrued between these parties since said settlements.

The Court wrote the word "refused" on the margin of the following three instructions, and refused to give them to the Jury as law in the case.

Refused. But if the Jury shall find that the orders and book account, etc., were in payment of the award, and that the award and interest due thereon amounted to more than the said order and book account, the Jury cannot give a ju'gt for the excess, but may then say, We, the Jury, find the issue for the Defendant.

Refused. If the Jury believe from all the evidence that the Plaintiff Sears is really indebted to the Defendant Dodson, they will then ascertain the true amount of said indebtedness, and find a verdict in favor of said Defendant for said indebtedness.

40 Refused. The Jury are instructed that the award given in evidence in this case is offered by way of payment, and if the Jury believe from the evidence that the orders, note and book account proven by the Plaintiff were in payment of said award, and that said award and the interest due thereon amounts to more than the proven demand of the Plaintiff, then the Jury must find for the Defendant.

To the ruling of the Court in refusing said instructions to be given to the Jury, the Defendant then and there excepted. The Jury then retired and afterwards returned into court with a verdict of seventy dollars and ninety-three cents damages in favor of said Plaintiff, whereupon the Defendant moved the Court for a new trial by written motion filed, in said court, on the second day of June, A. D. 1860, which is in words and figures following:

KANE COUNTY CIRCUIT COURT.

PETER SEARS }
v. } May Term, A. D. 1860.
C. B. DODSON. }

And now comes the said Defendant and moves the Court to set aside the verdict of the Jury herein at the present term of this case rendered against the said Defendant for the following reasons:

First, The Court erred in the admission of evidence offered in favor of the Plaintiff.

Second, The Court erred in refusing to allow the Defendant to give proper and lawful testimony to the Jury.

40 Third, The Court refused to give proper and lawful instructions to the Jury asked for by the Plaintiff.

Fourthly, The verdict as given is contrary to the law and the evidence. All of which is submitted. HERRINGTON & WELLS, for
Dodson.

Which was afterwards overruled by the Court.

To the ruling of the Court in overruling said motion for a new trial, the Defendant then and there excepted and prayed, that this his bill of exceptions might be signed and sealed by the Court, which is done.

ISAAC G. WILSON, [SEAL.]

Errors assigned:—

The Court erred in admitting as evidence the Books offered by the Plaintiff below.

The Court erred in not allowing the questions to be asked to the witness Hotchkiss, and answered.

The Court erred in giving the instructions as asked for by the Plaintiff.

The Court erred in refusing instructions asked for by the Defendant.

The Court erred in overruling the Defendant's motion for new trial.

The Court erred in permitting the Plaintiff to give in evidence the \$48,46 dollar note signed by Dodson, White and Hotchkiss, and dated Sept. 3d, 1843.

A. M. HERRINGTON,
Att'y for Appellant.

225-830-25
Dadson

v

Seas

Abstract

Filed April 18th 1861

L. Helouck

clerk

700 N. 1st St. N. O.
V. H. L. Helouck

United States of America } ss.
State of Illinois - Kane County }

Hear before the Honorable Isaac G. Wilson.
Judge of the Thirteenth Judicial
Circuit of the State of Illinois, and
Sole Presiding Judge of the Circuit
Court of Kane County in the State
aforesaid, and at a regular Term
thereof, begun and held at the
Court House in the village of Geneva
in said County on the third Monday
(being the twenty-first day) of May
in the year of our Lord one thou-
sand eight hundred and sixty, and
of the Independence of the United
States the Eighty-fourth.

Present:- The Hon. Isaac G. Wilson.
Judge of the 13th Judicial Circuit.

Edward S. Jostyn
States Attorney 13th Jud. cir.

Ethan J. Allen,
Sheriff of Kane County.

Attest:
Paul R. Wright, Clerk.

Be it Remembered, that heretofore to-wit: on the third day of October, AD 1859, there was issued from the Office of the Clerk of the Circuit Court aforesaid, a Summons, which is in the words and figures following, to-wit: -

State of Illinois }
Kane County. } ss. The People of the State
of Illinois to the Sheriff
of said County, Greeting: -

We Command you that you summon Christian B. Dodson, Defendant, if he shall be found in your County, personally to be and appear before the Circuit Court of said County, on the first day of the next Term thereof, to be holden at the Court House, in Geneva, in said County, on the third Monday of November next, to answer unto Peter Sears, Plaintiff, in a plea of Trespass on the case upon promises, to the damage of said plaintiff, as he says in the sum of two thousand Dollars. And have you then and there this writ, with an endorsement thereon, in what manner you shall have executed the same.



Witness Paul R. Wright, Clerk of our said Court, and the Seal thereof, at Geneva, in said County, this 3^d day of October, AD 1859
P. R. Wright Clerk

Which summons was filed in the office of the Clerk aforesaid on the 5th day of October, A.D. 1859. and upon which there appears an endorsement, in the words and figures following, to-wit:—

Executed this writ, October 5th 1859, by reading the same to the within named Christian B. Dodson.

Ethan J. Allen
Shff of Kane Corp

And afterwards, to-wit. on the 9th day of November, A.D. 1859, a Declaration was filed in the Clerk's Office aforesaid, which is in the words and figures following, to-wit:—

State of Illinois }
Kane County }^{vs.} Of the November Term
of the Kane County Circuit
Court, for 1859.

Peter Sears, plaintiff in this suit, by J. H. Mayborne his attorney, complains of Christian B. Dodson, defendant, in a plea of Trespass on the case upon promises.

For that whereas, the said defendant on the first day of October, A.D. 1859, at Genoa in the county of Kane, and State of Illinois

was indebted to said plaintiff, in the sum of two thousand dollars for the use and occupation of certain messuages, tenements, premises, buildings, farm & lands with the appurtenances of said plaintiff, situated on Section Number one & two, in the town of Geneva, in the County of Kane, and State of Illinois, by the said defendants, and at his special instance and request, and by the sufferance & permission of the said plaintiff for a long time before then elapsed, had held occupied and enjoyed. And being so indebted ~~to~~ the said defendant in consideration thereof afterwards, to wit, on the day and year last aforesaid at Geneva, in the County of Kane and State aforesaid undertook, and then & there faithfully promised the said plaintiff to pay to him the said mentioned sum of money when he the said defendant should be thereunto afterwards requested.

And for that whereas also the said defendants on the said first day of October, A.D. 1859, at Geneva, in the County of Kane and State of Illinois was indebted to the said plaintiff in another sum of two thousand dollars for the price and value of work and labor, care, diligence, journeys and attendance of the said plaintiff, & by the

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said plaintiff before that time done, performed and bestowed as the factor & agent and of and for the said defendant in and about renting the farm and lands of the said defendants situated in the town of Geneva & Batavia, in the County of Kane & State of Illinois, and in and about selling and disposing of divers large quantities of grain & corn, grown & raised on said farm & lands of the said defendants, and in taking charge of said farm & lands, and seeing that they was properly cultivated, worked, and the fences thereon were kept in good & proper condition and repair, and in and about selling divers goods, merchandize, cattle, horses, hogs & Chattel of said defendant. And in about other the business of the said defendants and for the said defendants, and at his special instance & request. And being so indebted, he the said defendant in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at Geneva, in the said County and State aforesaid undertook, and then & there faithfully promised the said plaintiff to pay the said last mentioned sum of money when he the said defendant should be thereunto requested.

And whereas, the said defendant on the first day of October, A.D. 1859, at Geneva, in the County of Kane and State of Illinois, became and was indebted to the said plaintiff in the sum of two thousand dollars of lawful money of the United States of America, for divers goods, wares, merchandize, lumber, grain and corn, before that time sold and delivered to the said defendant at the special instance and request of the said defendant, and being so indebted to the said plaintiff, the said defendant, in consideration thereof, afterwards, to wit. on the day and year, and at the place last aforesaid, did undertake and then & there faithfully promise the said plaintiff, well and truly to pay unto the said plaintiff, the sum of money last mentioned when the said defendant should be thereunto afterwards requested.

And Whereas, also, the said defendant, afterwards, to wit. on the same day and year and at the place aforesaid, in consideration that the said plaintiff, had before that time at the like special instance and request of the said defendant, sold and delivered to the said defendant, divers other goods, wares, lumber, grain, and merchandise

of the said plaintiff, the said defendants did then and there undertake and faithfully promised the said plaintiff, that the said defendant would well and truly pay to the said plaintiff, so much money as the last aforesaid goods, wares and merchandise, at the time of the sale and delivery thereof, were reasonably worth, when the said defendant should be thereunto afterwards requested; and the said plaintiff aver that the said goods, wares and merchandise last mentioned, at the time of the sale and delivery thereof were reasonably worth the further sum of two thousand dollars, of like lawful money as aforesaid, to wit, at the place aforesaid, whereof the said defendant afterwards, on the same day and year, and at the place aforesaid, had notice. And whereas, also, the said defendants, afterwards, to wit, on the same day and year, and at the place aforesaid was indebted to the said plaintiff in the further sum of two thousand dollars, of like lawful money as aforesaid, for money before that time lent and advanced by the said plaintiff to the said defendants, and at the like request of the said defendants, And in the like sum for other money by

the said plaintiff before that time paid, laid out and expended for the said defendant, and at the like request of the said defendants. And in the like sum for other money by the said defendant before that time had and received to and for the use of the said plaintiff. And in the like sum for other money before that time and then due and owing the said plaintiff for interest upon, and for the forbearance of divers other sums of money before that time, and then ^{due and} owing from said defendants to said plaintiff. And in the like sum for the price and value of work then done, and material for the same, provided by the plaintiff, for the defendant, and at the like request of the defendants. And being so indebted, the said defendants, in consideration thereof, afterwards, to wit, on the same day and year, and at the place aforesaid, did undertake, and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the several sums of money in this Count mentioned, when the said defendants should be thereunto afterwards requested. And Whereas, also, the said defendants, afterwards, to wit,

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on the same day and year, and at the place aforesaid, accounted together with the said plaintiff, of and concerning divers other sums of money, before that time due and owing from the said defendant to the said plaintiff, and then and there being in arrear and unpaid, and upon such accounting, the said defendant then and there was found to be in arrear, and indebted to the said plaintiff in the further sum of two thousand dollars of like lawful money as aforesaid. And being so found in arrear, and indebted to the said plaintiff, the said defendant, in consideration thereof afterwards, to wit, on the same day and year, and at the place aforesaid, did undertake, and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the said sum of money last mentioned, when the said defendant should be thereunto afterwards requested.

Nevertheless, the said defendant (although often requested, etc.) has not yet paid the several sums of money above mentioned, or any or either of them, or any part thereof, to the said plaintiff; but to pay the same, or any part thereof.

6. to the said plaintiff, the said defendant has hitherto altogether refused, and still does refuse, to the damage of the said plaintiff of two thousand dollars, and therefore the said plaintiff bring suit, etc.
By J. H. Maybarn
Plaintiff's Attorney.

Copy of Accounts.

Christian B. Dodson.

To Peter Sears Dr.

For	for use & occupation of land	\$2000.
"	Work & Labor	" 2000
"	Goods sold & delivered &c	" 2000
"	Money lent	" 2000
"	" paid	" 2000
"	" received	" 2000
"	" due on Int.	" 200
On account stated		\$ 2000

J. H. Maybarn

Atty. for Plffs.

And afterwards, to wit, on the 21st day of November, A.D. 1859, the same being one of the days of the November Term of said Court, A.D. 1859, the following, among other proceedings were had and entered of Record in said Court, to wit:—

Peter Sears }
 v }
 Christian B. Dodson } Asumpst

This day comes the defendant
 by Herrington his attorney, and moves
 that the Plaintiff be ruled to file a Bill
 of particulars.

And afterwards, to wit, on the 25th
 day of November, AD 1859. Pleas were filed
 in the office of the Clerk of said Court,
 which are in the words and figures fol-
 lowing, to wit: -

Kane County Circuit Court
 Christian B. Dodson }
 at } November Term, AD 1859.
 Peter Sears. }

The said Defendant by
 Wm Herrington, his attorney, says that he
 did not undertake and promise the said
 Plaintiff in manner and form as the
 said Plaintiff has above thereof complained
 against him; and of this he puts himself
 upon the country, &c.

And the said plaintiff } Wm Herrington
 doth the like by Maybarn & } Defts atty.
 Wilcox, his attorney. }

And for a further plea in this behalf, the said Defendant says, actio non. because, he says, that the Plaintiff before and at the time of the commencement of this suit was and still is indebted to him, the Defendant, in a large sum of money, to wit, the sum of two thousand Dollars, for the price and value of work then done and materials for the same provided by the Defendant for the said Plaintiff and at his request, and also for money before then lent by the Defendant to the Plaintiff and at his request, and also for money before then paid by the Defendant to and for the use of the Plaintiff, and at his request, and also for money before then received by the Plaintiff for the use of the Defendant, and also for money found to be due from the Plaintiff to the Defendant on an account before then stated between them, and also for goods, wares, and merchandize before then received by the Plaintiff for the use of the Defendant, and which ^{said} sum of money so due and owing from the Plaintiff to the Defendant as aforesaid exceeds the damages sustained by the Plaintiff by reason of the non-performance by

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him the Defendant of the said several promises in the declaration mentioned, and out of which said sum of money so due and owing from the Plaintiff to the Defendant, he the said Defendant is ready and willing, and hereby offers to settle off and allow to the Plaintiff the full amount of the said damages according to the form of the Statute in such case made and provided, and this he the said Defendant is ready to verify.

Herrington, Depts. Atty.

And for a further plea in this behalf the said Defendant says actio non, because he says, that after making the several promises in the said declaration mentioned, and before the commencement of this suit. to-wit, on the 7th day of October AD 1853. the said Plaintiff, and the said Defendant by mutual bonds of submission, bearing date the 7th day of October AD 1853. did agree to refer to Luther Dearborn and Silas W. Curtis as arbitrators, as well certain differences which had then arisen between them the said Plaintiff and the said Defendant, as also all, and all manner of commercial transactions, and the said Plaintiff and Defendant did

thereby then agree in all things well and truly to stand to, obey, abide, perform, the award of said arbitrators to be by them afterwards, under their hands and seals made and published, and which said arbitration by said submission was to be commenced on the 8th day of October AD 1853, and the said Peter Sears, and the said Christian B. Dodson afterwards, on the said 8th day of October AD 1853, at the time so limited for the commencing of the said arbitration as aforesaid, by their agreement in writing under their hands and seals, endorsed on said submission, extended the time for the commencing of said arbitration to the 12th day of October AD 1853, at 9 and 1/2 A. M. and the said defendant avers that within the time for commencing, to wit, the 12th day of October, AD 1853, for the commencement of the hearing of said award, was had, and the said arbitrators having at Geneva in Kane County and State of Illinois, as by said submission is specified taken upon themselves the burthen of the said reference, and having heard, examined and considered the allegations witnesses, and evidences of both the said parties did make their

award in writing of and concerning the
premises and of and concerning the
said promises and undertakings in the
said declaration mentioned, and did there-
by award that the said Peter Sears pay
to the said Christian B. Dodson the
sum of four hundred and ninety dollars
on or before the first day of March, AD 1854,
as by the said award reference being there-
unto had will more fully appear which
said sum of four hundred and ninety
dollars, the said Sears has not paid, nor
any part nor parcel thereof to said Chris-
tian B. Dodson as by said award he was
to have done, and this the said Depend-
ants is ready to verify.

A. M. Herrington
Depts Atty

And afterwards, to wit, on the 15th day
of December, AD. 1859, a replication was
filed in the Office of the Clerk of the
Circuit Court aforesaid, which is in the
words and figures following, to wit:

Roane Co. Cir. Court.

Peter Sears }
 " } Of the November Term.
 Christian B. Dodson } of said Court for 1859.

And the said plaintiff as to the said plea of the said defendant by him secondly above pleaded saith that the said plaintiff by reason of anything by the said defendants in that plea alledged ought not to be barred from having and maintaining his aforesaid action thereof against him the said defendants because he says that the said plaintiff was not nor is indebted to the said defendant in manner and form as the said plaintiff hath above in his said plea in that behalf alledged. And this said plaintiff prays may be enquired of by the Country, &c.

J. H. Mayborne
 Atty for Plffs.

And the said depts }
 doth the like. }

A M Herrington

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And afterwards, to-wit. on the 16th day of December AD 1859, a Replication was filed in the office of the Clerk aforesaid which is in the words and figures following, to-wit: -

State of Illinois }
Kane County }
Kane County Circuit Court
November Term AD 1859.

Peter Sears

Christian B. Dodson }
v }
And the said plaintiff by Mayborn & Wilcox his attorneys for replication unto the third plea of the said defendant above pleaded says precludi now because he says that he and said defendant did not refer and submit to arbitration any matters of difference between them in manner and form as the said defendant has in his said plea alleged, and this he prays may be enquired of by the Country, &c.

And for a further replication unto said third plea by leave &c. the said plaintiff says precludi now because he says true it is he & said defendant did by agreement refer & submit certain matters in difference between them to the arbitrament of said

Dearborn & Curtis, but he avers that said Dearborn & Curtis did not make any award in pursuance of said submission, and did not award that said plaintiff should pay to said defendants four hundred & ninety dollars, or any other sum - And this he prays may be enquired of by the country, &c.

And for a further replication unto said third plea by leave, & the said plaintiff says precludi non, because he says true it is he & said defendants did by agreement refer and submit certain matters in difference between them to the arbitrament of said Dearborn & Curtis, and that said arbitrators made their award - but the plaintiff avers that the matters in difference thus submitted were other and different from, and did not include the promises and undertakings or any or either of them in the said plaintiff's declaration complained of, and he further avers that said promise and undertakings were not, nor were either of them brought before said arbitrators and in any manner taken into consideration in making their said award, and this he prays may be enquired of by the country, &c.

And for a further replication in

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this behalf to said third plea, the said plaintiff says, preclude now, because he says, he, before the commencement of this suit, paid to the said defendant, the said award and this he prays may be enquired of by the country, &c.

Maybome & Wilcox
Attys for Plff.

And afterwards, to-wit, on the 22nd day of February, AD 1860, the same being one of the days of the February Term of said Court, 1860, the following, among other proceedings, were had and entered of Record in said Court, to-wit:—

Peter Sears. }
" }
Christian B. Dodson } Appraisers

This day comes the defendant by Kerrington, his attorney, and moves for a continuance of this suit, whereupon comes the Plaintiff by Wilcox & Maybome his attorneys and resists said motion, after argument of counsel, the Court being fully advised, sustains said motion and orders this suit continued at the defendants costs of term. It is therefore considered by the

Court, that the Plaintiff have ^{and} recover of the defendant his costs herein at this term of the Court expended, and that he have execution therefor.

And afterwards, to-wit, on the 30th day of May, A.D. 1860, the same being one of the days of the May Term of said Court 1860, the following among other proceedings were had and entered of Record in said Court. to-wit:

Peter Sears	} Asumpsit
Christian B. Dodson	

This day comes the plaintiff by Mayborn ^{and} Wilcox his attorneys ^{and} the defendant by Herrington ^{and} Wells his attorneys also comes, and on motion of the Plaintiff it is ordered by the Court that a jury come, whereupon come a jury of good and lawful men of the county, to-wit: James W. Evans, William H. Rowe, Timothy A. Wheeler, S. W. Durant, Henry Sawyer, A. W. Ball, William Brophy, Adolphus Latham, John D. Easter, B. C. Yates, B. J. Swoner, & Ansel Hall, who are duly tried, elected ^{and} sworn, to try the issues joined between the parties

to this suit, and after hearing a portion of the evidence, by consent of the parties the jury are allowed to disperse to meet the Court at the coming in thereof tomorrow morning.

And afterwards, to-wit, on the 31st day of May, A.D. 1860, the same being one of the days of the May term of said Court 1860, the following among other proceedings were had and entered of record in said Court to-wit:

Peter Sears	}	Assumpits
Christian B. Dodson		

This day, come again the parties to this suit by their respective attorneys, and the jury heretofore empaneled herein also come, and after listening to further evidence, by consent of the parties the jury are allowed to disperse to meet the Court tomorrow morning.

And afterwards, to-wit, on the 1st day of June, A.D. 1860, the same being one of the days of the May Term of said Court, A.D. 1860, the following, among

other proceedings were had and entered of record in said Court, to-wit: -

Peter Sears	} Asumpsit
Christian B. Dodson.	

This day come again the parties by their respective attorneys and the jury heretofore impaneled herein, also come, and after listening to the remainder of the evidence, the arguments of counsel and instructions of the Court, the jury retire under the charge of a sworn officer of this Court, to consider of their verdict. Subsequently the jury return into Court and for a verdict upon their oaths do say, we the jury find the issues joined for the plaintiff and assess his damages at the sum of Seventy dollars and thirty three cents, which is ordered by the Court to be entered of record. Thereupon comes the defendant, and moves for a new trial.

And afterwards, to-wit, on the 5th day of June, A.D. 1860, the same being one of the days of the May Term of said Court 1860, the following among other proceedings were had and entered of

Record in said Court. to-wit:—

Peter Sears }
Christian B. Dodson } Assumpsit

This day comes the plaintiff by Mayborn his attorney, and the defendants by Wells and Herrington his attorneys also comes, and the defendants motion for a new trial heretofore entered herein, coming on to be heard, after arguments of counsel, the Court being fully advised, overrules said motion and orders judgment upon the verdict of the Jury herein, to which ruling of the Court the defendants by his counsel excepts. It is therefore considered by the Court that the Plaintiff have and recover of the defendants the sum of Seventy dollars and thirty three cents damages, and also his costs in this suit expended, and that he have execution therefor. Thereupon the defendants by his attorneys aforesaid prays an appeal from the Judgment herein to the Supreme Court of the State of Illinois, which is allowed by the Court, on condition that the defendants file his Appeal bond herein with the Clerk of this Court in thirty days in the penal sum of Five Hundred dollars

conditioned as required by law. with James Herrington as surety.

And afterwards, to-wit, on the 7th day of June, A.D. 1860. an Appeal Bond was filed in the Office of the Clerk of said Court which is in the words and figures following, to-wit:—

Know all men by these presents that we, Christian B. Dodson, and James Herrington are held and firmly bound unto Peter Sears in the penal sum of Five Hundred dollars for the payment of which sum, well and truly to be paid we bind ourselves, our heirs, executors and administrators, jointly, severally & firmly by these presents. Sealed with our seals, and dated this 7th day of June, A.D. 1860.

The condition of the above obligation is such, that whereas, the said Peter Sears, at the May Term, A.D. 1860, of the Kane County Circuit Court recovered a judgment against the said Christian B. Dodson for the sum of Seventy dollars, and thirty three cents damages and costs of such from which said judgment the said Christian B. Dodson has taken an appeal to the

Supreme Court of the State of Illinois
now, if the said Christian B. Dodson
shall prosecute his said appeal with
effect, and shall pay said judgment
and all interest, damages and costs in case
said judgment shall be affirmed, then
this obligation to be void, otherwise to
remain in full force and effect.

C. B. Dodson (Seal)

James Kerrington (Seal)

And afterwards, to-wit, on the 22^d
day of June, AD 1860, a Bill of Exceptions
was filed in the Clerk's Office aforesaid,
which is in the words and figures follow-
ing, to-wit:—

State of Illinois }
Kane County } Kane County Circuit Court.
May Term, AD 1860.

Peter Sears

Christian B. Dodson } Be it Remembered
that on the trial of the
above entitled cause, before the Hon. Isaac
G. Wilson, Judge, and a jury, duly sworn
to try the issues joined, the Plaintiff, in
order to sustain his cause of action, in—

introduced as a witness Thomas A Scott, who being sworn, testified as follows:—Was Clerk in Sears' store in 1853 & 1854; began about middle of June '53; (ask show him) have seen this account before, delivered goods out of Plaintiffs' store during years 1853 & 1854; he kept on the west side of the river in those years; delivered goods as charged in the bill, groceries, shoes, soap, candles &c. dry goods, but cannot specify the articles particularly; it is long ago, can't now recollect distinctly, delivered sheetings, recollect generally of delivering him goods during 1853 & '54, and charging them, similar to that charged in the account it was my business to sell goods and enter them upon the books, know defendants hand writing. (Witness identifies the following as in Defendants hand writing:)

\$21.17

A. No. 1.

P. Sears, Please pay the bearer W. C. Wilder, twenty one dollars and $\frac{7}{100}$ and charge
Geneva Dec 27th 1853. C. B. Dodson.

\$44 =

A. No. 2.

P. Sears, Please pay the bearer A. Demonea Forty four Dollars and chg. to
Geneva January 16th 1854 C. B. Dodson

\$23.38

A. No. 2

P. Sears, Please pay the bearer
W. G. Webster, Twenty three $\frac{38}{100}$ dollars. and charge
to
Geneva December 29th 1853. C. B. Dodson

\$16.99

A. No. 4.

P. Sears, Please pay the bearer S. Berry
Sixteen $\frac{99}{100}$ Dols. and chge.
Geneva January 16th 1854. C. B. Dodson

\$14.71

No. 5.

P. Sears, Pay the bearer Williams and Henry
Fourteen dollars and $\frac{71}{100}$ and charge
Geneva, December 27th 1853. C. B. Dodson

\$19.00

A. 6

P. Sears, Pay Mrs M. Elwin nineteen
dollars 19 $\frac{00}{100}$ and charge to
Geneva, December 29th 1853. C. B. Dodson.

\$32 =

A. 7.

P. Sears, Please pay the bearer Z.
Alexander Thirty two dollars and charge to
Geneva December 30th 1853. C. B. Dodson.

\$4.43

A. 8.

P. Sears, Please pay the bearer John Reed
Four $\frac{43}{100}$ Dols. and chge to
Geneva, Jan 16th 1854. C. B. Dodson

15.

\$28.71 A. 9.
P. Sears. Please pay the bearer Mrs. A.
Clark twenty eight $7\frac{1}{100}$ dollars and charge to
Geneva, December 29th 1853 C. B. Dodson

\$7.25 A. No. 10.
P. Sears. Please pay the bearer Cyrene Lillon
Seven and $\frac{25}{100}$ dollars and charge to
Geneva January 5th 1854. C. B. Dodson

A. No 11.
Mr. P. Sears. Please pay J. H. Dickner twenty
three Dollars 23⁸ and chg to acct of
Geneva. July 11th 54 C. B. Dodson

A. No. 12 June 22nd 1854
Mr. Sears. Please let Peter Smith have one
dollar in goods, and charge the same to Mr.
Dodson in the Pass Book. Mrs H. N. Dodson

\$26.60 A. No 13.
P. Sears. Please pay the bearer A. B. Moore
Twenty six $60\frac{0}{100}$ dollars and charge to
Geneva, December 30th 1853 C. B. Dodson

\$4.25 A. No. 14.
P. Sears. Please pay the bearer P. G.
Miller four dollars and $\frac{25}{100}$ and chge
Mar. 21, 1854. C. B. Dodson

\$3.50

A. 15.

Mr. P. Sears, Please pay the bearer
D. Middleton Three Dollars and $\frac{54}{100}$ and chge
to acct. C. B. Dodson
Geneva Feb 24th 1854.

The plaintiff then read in evidence a
note given by Defendants to E. Scott and by
Scott endorsed to Plaintiff

(Copy of the Note)

Ten days after date for value Received
I promise to pay to E. Scott, Seventy two
dollars & Seventy seven cents
Geneva, Dec. 5, 1853.

C. B. Dodson

\$72.77 -

(Copy of Endorsements.)

For value received I assign the within
note to Peter Sears. E. Scott.

[Book shown witness] This is Mr.
Sears Ledger, kept while I was there.

[Day book of Plaintiff shown witness]
This is the day book: The following char-
ges are in Mr. Sears hand writing: -
1854.

Jan. 21

Page 401

\$2.00

Feb 7.

" 406

1.60

16.

Feb. 9

Page 407

\$1.47

" 15.

" 408

.61

" 22.

" 410

.75

" 24.

" "

3.50

" 27.

" "

.63

March 6^d

" 411

8

" 8

" "

93

" 9

412

6.33

" 20

414

2.30

" 23

415

Phid. 425 order

" 25

" "

63

" "

" "

Cotton 725 order

April. 3^d

418

68

" 14

420

34

" 21

423

6

" 22

" "

1.00

" 25

424

10

27

425

6

May 4

428

80

" 15 Book 2 =

1 =

1.95

" 16

2 =

1.56

25

5

2.65

June 16

12

1.52

" 22

15

P. Smith 1.00 order

"

"

63

26

"

1.70

July 3

18

19

" "

21

J. E. Dickson 23.00 order

24

26

76

9)

1854			
Aug 4	Book 2	Page 28	38
10	"	"	41
Sept 18	"	34	81
19		35	32
29		37	75
Oct. 4		"	41
9		38	50
16		40	60
			<u>\$74.51</u>

The following charges are in my handwriting:-

1854			
Jan. 28	Page 403		\$1.37
Feb. 15	" 408		2
" 22	" 410		1.00
" 25	"		30
March 16	413		4
" 21	414		20
April 22	423		1.62
" 26	425		16
" 28	426		58
May 1.	427		30
" 12.	430		1.00
" "	"		1.75
" 22	Book 2 =	3	8
" 23		4	69

17,	May 24	Book 2. Page 5	40
	" 25	"	119
	" 31	7.	2,07
	June 16	12	60
	" 24	15	2,33
	26	16	1,00
	30	17	25
	July 11	21	2,90
	15	24	44
	24	26	30
	Aug 4	28	70
	18	30	8
	21	"	21
	23	31	20
	31	32	20
	Sept 5	33	56
	Oct 16	40	30
			22,84

Cannot recollect distinctly, but I delivered about the times of those charges along during '53 & '54 goods as there charged, butter, sugar, coffee, tea, soap, candles, &c., &c., dry goods, &c; -

10
Question - State what was your custom while in the store of Sears, (if you had any) in relation to selling and making charges of goods, to the asking which question the defendants objected, which objection was overruled by the Court, to the ruling of the Court in allowing such question to be asked and answered, the Defendants then and there excepted.

Ans. The custom was to make the entry on the day book at the time of selling; I think plaintiff had two clerks in the store in 1854. Mr. Anthony and myself. Mr. Collins was there a short time, but he left in the fall of 1853; it was my particular business to sell goods, and make the entries upon the books. made the entries at the time of selling; These are the books of accounts of plaintiff, (books shown). Kept in his store in the regular course of his business as a merchant, there are entries made in those books in the handwriting of Sears; I have had an account of my own in these books, never have had a final settlement, but have looked over the accounts and found it correct. His books are fairly and honestly kept so far as I know. I think them fair. Anthony was a Clerk part

18.

of the time when I was there; think he was there two or three months. Anthony did not make many entries; think I and Mr. Sears made most of the entries, sometimes when we were hurried we would keep a little memorandum book; Defendants had a pass book in which we inserted the goods sold to him.

Crop Examination. Whether Anthony made entries I cannot say; there are some entries the handwriting of which I do not know. Mr. Collins was a Clerk a small part of the time; I find charges against other parties not in my hand or Mr. Sears; don't know whose writing; it is only during months of March, April, May & June, 1854. that I find charges that I don't know.

The Plaintiff then introduced J. H. Dickenor, a witness who being sworn, testified as follows: Have bought goods of plaintiff; settled the account with him; found the account correct; think it was in 1853, 4 & 5; it was while he traded on the east side, and when he was in the stone block on the west side; these are the books out of which we settled; so far as his deal with me his books correct and fair.

Crop Examination. My account as it appears here is \$26.00 (book shown and is admitted to be the Ledger into which his account is posted - the Day Book not here) Settled by this book alone.

The Plaintiffs then introduced William B. West, a witness, who being sworn, testified as follows: - Was school treasurer of Blackberry some years ago, there was a note of about fifty dollars due to the school fund from Mr. Dodson; it was taken up by Sears about ten years ago; - Mr. Sears took the note; the interest had been paid half yearly by Dodson for some time, these are receipts for interest

(Copy of Receipts)

Geneva May 21 1849

Recd of Mr Sears for C. B. Dodson \$2.94/100 being the amount due Inas J. 39 A. R 7 E. for in up to Mar 31 last being six mos in advance
Wm B West = Inas

Blackberry Dec 21 1849

Recd of Mr P. Sears for C. B. Dodson two r 94/100 being the amount of interest due the school fund of @. 39. A R 7 E. up to Sept 5th last by said Dodson
Wm B. West

Treasurer

19

Genoa April 10 1830

Recd of Mr. P. Sears two Dollars and $94/100$ in payment of the half yearly interest due March 4 on a note against C. B. Dodson in favor of the school fund of $\$39 \text{ N. R. } 7 \text{ C.}$ Wm B West

Blackbury Dec 17 1830

Received of Peter Sears Esq two Dollars and $93/100$ being interest due the school fund from C. B. Dodson up to September 5th 1830

Wm B West - $\$39 \text{ N. R. } 7 \text{ C.}$

Genoa May 6 1851

Rec^d of C. B. Dodson Esq two Dollars & $93/100$ being for $1/2$ a year interest due by C. B. Dodson on his note due the school fund of Blackbury Township up to March 3^d 1851 by the hand of P. Sears Esq

Wm B West

Blackbury Jan 9 1832

Recd of P. Sears Esq two Dollars and $93/100$ being six months interest due up to September 5th 1831 on the note against C. B. Dodson & others due the school fund of Blackbury Township

Wm B West

Genoa May 8 1832

Rec^d of Mr Peter Sears two Dollars & $94/100$ for interest due on a note payable to the school fund of Blackbury by C. B. Dodson & others due up to Sept 5th last

Wm B West

11
Crop Examination. The date of the note cannot say exactly. It had been running three or four years; think Sears gave this note with Acres in 1852 to take up old note. This is the original note.

Copy of the Note.

#48-46

Blackberry Run Co Sept 23-1843

We C. B. Dodson and Amasa White jointly & severally promise to pay William B. Nash, treasurer of School fund of D. 39. N. R. 7 E. or his successor in office the sum of forty eight dollars and $\frac{46}{100}$ with twelve n cents p^{er} ann^{um} payable half yearly in advance. we further agree that if additional security be required for the payment of the within note it shall be forthwith given.

C. B. Dodson
" Amasa White
Jat Hotchkiss.

Direct resumed. - The second note has been paid by Mr. Sears.

Crop Exam. Delivered the old note to Mr. Sears Dodson was in California at the time.

The Plaintiff then introduced Alphonso Yates, a witness, who being sworn, testified as follows - Read some

deal with plaintiff; traded with him at his store on credit; have settled with him out of his books, so far as I had any account there I found it correct on the book; I settled from this book; I was satisfied with the accounts.

Cross Examination. It was some years ago, seven or eight years ago; couldn't say that I remember the book; good while ago; can't say that this is the book, nor whether there was no other; there was more than one book.

Re-examined. - At that time Sears was doing business across the river.

Thomas A Scott recalled. The footing of my charges is \$22,84.

The Plaintiff then introduced McGlass a witness, who being sworn, testified as follows, Knows the Plaintiff, have had running book accounts with him while he kept in the Yates store, on the west side, this is his book in which he kept my accounts when he was in the store on the east side of the river; it embraces my account from 1847 to 1851; think his books always fairly kept; he keeps fair books so far as my knowledge extends;

my account is \$241 —
Cross Examination. This is the book into which
my account is posted from the other
books; my best judgment is that this
is the handwriting of Sears; I was Clerk
for Sears two years or more; when I took
articles I charged to myself in the day-
book; think I did not do any of the
posting; I think this is the book from
which I settled.

Direct Resumed. According to my best recollection
and knowledge this book contains all
the account I had with Sears. From look-
ing at the Day Book and this Book, I
satisfied myself that the account was
correct; Sears usually did the posting of
the books himself; that was not my part
of the business.

Recross Ex. Don't know that I ever heard anyone
when settling find any fault with the
correctness of the account or to the cor-
rectness of its keeping.

C. B. Wells, a witness on the part of
the plaintiff was called, sworn, and
testified as follows:— Heave had an ac-
count; can't identify this book, never
had any occasion to find fault with

21-

the manner in which my account was kept; if it had been wrong think I should have recollected.

John Updike, a witness called on the part of the plaintiff being sworn, testified as follows: - Have done threshing on Dodson's farm in 1852; Joseph White employed me & paid me for $\frac{2}{3}$ of the threshing, he gave me a bill of the other one third which I took to Mr. Sears and he gave me credit for it on the books; it was either seven or eight dollars and some cents; Dodson went to California, and was gone two or three years, don't know who attended to his business while he was gone.

Crop Ex.

Joseph White raised the grain in 1852 on Dodson's farm -

The Plaintiff then called A. B. Moore a witness, who being sworn testified as follows: Had an account with Sears while he was a merchant here; settled with him, always found his books correct; (examines the book) have compared his accounts with my own, and found it to correspond; I believe he keeps fair books from my dealing with him.

12.
Crop Exam. - This Book is a ledger; my account is five dollars and thirty cts. this transaction was in 1851; can't swear that this is the identical book; don't remember if there was a clerk in his store at the time.

The Plaintiff then called William G. Webster, a witness who being sworn testified as follows: - Had a running account at the store of the plaintiff, have traded with him from a period as early as 1842; (examines ledger on page 178.) have settled with him a number of times, settled most always from bills; don't think I ever looked into his books; bills were rendered and I always paid them; (various bills exhibited, always regarded them correct enough to pay them; this bill was in 1854.

Crop Examination. - Think I began with him in 1842; at that time Cleveland was Clerk; Marshall Clark, Warner and Glasp have been Clerks; this bill is Collins handwriting; it begins in March and ends in December 1853, don't recollect getting the things in the bill myself; was aware that there was a small account against me; Sears presented another bill, a larger one, against me this winter, and I declined to pay it; there was a charge of fifteen

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dollars worth of Hay, and interest on the account of six dollars, which I declined to pay.

Direct Resumed. The item I objected to was the hay; the facts were that Updike had delivered me the hay, and Sears claimed that he had received an order of fifteen from Updike, but I never got any such order or heard of it.

Recrop Ex. - My name was used in a suit against Sears; he brought in an account including the charge for hay. The Plaintiff then called S. W. Dodd, a witness, who being sworn, testified as follows. Have had running apc with plaintiff; have settled with him, think I have seen this book; my account is in this book; have settled it with Sears; found it correct; this account was 1854 and 1855, as far as my knowledge extends plaintiff keeps fair and correct books.

Crop Ex. - This settlement was when Sears kept on the west side; sometimes plaintiff had a clerk and sometimes not: Scott, Anthony, Collins, at times were clerks in the store. I think this is the book from which I settled, I think the

items in the day book were not looked at I had in my head about the amount of the account, and the book corresponded, can't say who was present.

The plaintiff then called Joseph White, a witness, who being sworn, testified as follows: - Know the parties, Dodson went to California in 1849, and was gone two years the first time; I worked a part of his farm in 1851; I sowed some fall wheat in the fall of 1851, and harvested it in fall of 1852; Dodson was back in winter of 1851 and 1852; I first spoke to Dodson about renting his farm, he left Mr. Sears in charge of his farm, Sears came to father's with Dodson to talk about renting the farm, and to make out the lease; Sears made out the lease; Sears accepted of the crops and took charge of them for Dodson - Dodson's part of them. I repaired the fences that Spring; Mr. Dodson gave directions when he was at home. I consulted with Sears as to the management of the farm after Dodson left. I was to pay $\frac{2}{3}$ and Dodson was to pay $\frac{1}{3}$ for threshing; Updike threshed the fall grain; If I gave an order I gave it upon Sears; Sears had the charge

and management of the farm in 1849, and 51; Sears was down to the farm quite often; there was about one hundred acres of tillage land. I did not work all the land. Adams worked a part; I worked from fifty to sixty acres; Mrs. Dodson and family lived at Warrenville at the time.

Crop Examination — Knapp, a brother-in-law of Dodson, worked the farm in 1849; Dodson left early in the Spring; Logan worked the farm after Knapp; Logan died on the place; don't know that he took Knapp's lease; Knapp staid a year, Logan died in the fall of 1850; think Sears took charge of the grain raised by Logan; don't know of Dodson selling wheat raised by Logan to Derby; I know he sold to Derby wheat raised by me; my impression is that Dodson did not return in the fall of 1850; upon reflection I think he did return in the fall of 1850, and went back to California, in the Spring of 1851, and staid until the fall; he was therefore at home in the winter of 1850 & 1851; he was at our house occasionally. I first spoke to Dodson about renting the farm. Dodson was in the habit of attending to

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and managing his own business, think I talked twice with Dodson, and the terms of the lease were agreed upon between him and me; I took the oats to Father's barn; I kept Dodson's portion of the oats to pay me for repairing the fence; think there was some grain that Logan raised and which was put into our barn and afterwards took away by Dodson; can't say who took them there; the corn that I raised was in our barn, and Derby got it from there; Dodson had sold it to him as I understood.

Direct Resumed. Think Sears was there while the harvesting was being done, at the time of the giving of the lease it is spoken about Dodson returned to California. Sears drew the lease.

Recross Ex. - The lease was drawn at Sears' store. Self, Father, Sears, and Dodson present.

Julia Dodson sworn, a witness called on behalf of the plaintiff being sworn testified as follows - Daughter of the Defendants, we lived at the farm when father went to California, we moved to Warrenville same Spring; can't say who

aided in moving, think Mr. Sears gave Knapp some directions about the farm, recollect of Sears Keeping store on this side of the river in the Yates building; - recollect of my father buying a pair of Buffalo overshoes, but don't know where he got them; can't say what year it was; recollect occasionally of going and getting soap and candles and other goods during 1853 & 1854; our family bought goods at Sears' store; think we had a pass book. I was so young that I cannot remember what was got; recollect getting similar goods to those charged along during 1853 & 1854.

S. W. Dodd, recalled for the Plaintiff - Knew Dodson's farm; Knew of the time when Dodson went to California; he went Spring of 1849 and stayed to fall of 1850, and again returned to California in Spring of 1851. Sears had charge of Dodson's farm while Dodson was away; have seen Sears there; remember on one occasion when someone was plowing up the road and forbid him; once on another occasion when threshing, and Sears gave some directions; he paid highway taxes; worth

from fifty to one hundred dollars a year to take charge of the farm and Dodson's business in his absence; my house is a little over a half a mile from the nearest corner of Dodson's farm; I have to pass the farm going to Batavia; frequently passed it; a leased farm requires some looking after; Amasa White and his son are first class tenants.

Lyman German, a witness on the part of the Plaintiff, called and sworn, and testified as follows: In 1852 & 1853 was in the warehouse taking in grain for Sears & Dodson. I think Sears bought some grain; think some barley whether for Sears or not I do not know, how much I do not know. (Plaintiff claims for barley July 20th 1853, 226 $\frac{1}{2}$ bush. at 50¢ and 68 bush. oats;) the Defendants came to me and told me to deliver up key to J. B. Dodson and I did so [The Court rejected the plaintiff's claim for barley and oats and ruled them out on the ground that it was partnership accounts.

Amasa White, Know the Dodson farm. Mr. Sears appeared to have the care of the Dodson farm while

(Dodson was absent in California, heard Dodson say once at my house that Mr. Sears and his father, who lives at Salt Creek were to act as agents for him during his absence; occasionally saw Mr. Sears down there, don't know that I could fix on anytime; Dodson has also a farm in connection with Sears; five or six hundred acres lying east of the village, think Dodson's father was once at my house, with Sears; from what I saw I gathered that Sears had the management ^{and} control of Dodson's business during Dodson's absence; it was worth from \$50 to \$100. dollars per year to do it.

Charles Patten, a witness produced on the part of the prosecution being sworn, testified as follows:— Always understood that Sears had charge of Dodson's affairs, while he Dodson was in California; Dodson, when he left for California had considerable property; his home farm might have been worth from eight to ten thousand dollars, more or less; the care and responsibility of taking charge of the business worth fifty to one hundred and fifty per year; Sears paid me five dollars for Dodson.

111.
 Crop Ex. Lived near these parties; know nothing about any particular services of Sears, had no occasion to do so.

The Plaintiff then introduced B. C. Yates, a witness, who being sworn, testified as follows: - Was Sheriff and Collector of Kane County in 1850; Warner was my deputy. [Witness shown two tax receipts] This was tax receipt; knew of Sears settling an Execution against Dodson in the Todd case; this is another tax receipt.

Received March - 1850 by the hand of Peter Sears for B. C. Dodson the tax on the following property for the year 1849 - Personal property

Personal property						
Part of S.E. 1/4	Section 10	Down 39	Range 8	80 acres		5.49
N. 1/2 S.W. 1/4	"	11	"	33 1/2 "		2.66
S.W. 1/4	"	11	"	33 1/2 "		2.60
N.W. 1/4	"	14	"	57 1/2 "		3.57
S.E. 1/4	"	15	"	110 1/2 "		7.58
						<u>22.45</u>
Deduct over charge \$53.16 acres						5.31
Recd payment in full on the above						17.14

Givena Kane county May 10 1850

B. C. Yates col.
 By J. S. Warner Deputy

Received March 1850 of Sears & Dodson the tax on the following property for the year 1849

Part of N.E. 1/4	Section 1	Down 39	Range 8	80 acres		8.92
S.E. 1/4	"	1	"	119 1/2 "		5.87
N.W. 1/4	"	1	"	40 1/2 "		1.98
S.E. 1/4	"	1	"	143 1/2 "		7.03
S.E. 1/4	"	2	"	72 1/2 "		3.56
S.W. 1/4	"	2	"	24 1/2 "		1.22
N.W. 1/4	"	2	"	114 1/2 "		5.64
						<u>29.22</u>

Recd payment in full on the above
 Givena Kane co May 10 1850

J. S. Warner Deputy col.

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Geo Wells was then recalled by the plaintiff. Know J. B. Dodson; he read law in my office in 1853; he kept Mr. J. B. Dodson's books and accounts. Dodson was then building the rail road bridge; [orders shown witnesses] think this is his handwriting, but are not familiar with it.

(Copy of Order)

No. (16)

P. Sears:

Please pay Mr. Shanley
Thirty one & $\frac{12}{100}$ Dolls & charge to J. B.
Dodson

J. B. Dodson

Geneva Sept. 28th/53.

Ordered admitted Dated Sept
28th AD 1853 ~~~~~

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Here the plaintiff Enquired of the Defendants if he would produce the passbook that he had been notified to produce the day before and made by the Plaintiff and kept by him during the years 1853^{and} 1854. and showing what amounts of goods he purchased of the plaintiff during that time, who replied that he could not produce it, and then made and read to the Court the following affidavits.

[The original affidavit to be inserted here is not found on file. RRMight Clerk]

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And upon the Court's ruling that the affidavit did show sufficient facts why he did not produce it he asked of the Court and obtained leave to make and file an additional affidavit, to which the plaintiff objected. The Court overruled such objection and Plaintiff excepted. The Defendant then made and read the following additional affidavit. [Here Clerk will copy affidavit]

[The affidavit referred to is not found on the file. PR Wright Clerk]

Thereupon the Court ruled that this affidavit stated sufficient facts why he did not produce said Pass Book and sufficiently accounted for its non-production, to which ruling of the Court the Plaintiff excepted.

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The Books of account of the Plaintiff identified by the witnesses, consisting of the Ledger, and two day books, were then offered in evidence, and so much of the accounts against the Defendants as was in the handwriting of Sears and Scott, as testified to by Scott was admitted by the Court to go to the jury. The Defendants by his counsel objected to the admission of said Books and accounts being admitted to go to the jury as evidence in the case, which objection was overruled by the Court, and to the ruling of the Court in overruling such objections, and allowing said Books and accounts to be given in evidence to the jury, the Defendants by his counsel, then and there excepted. The amount in Scott's handwriting was \$22,84. The amount in Sears handwriting \$

The Plaintiff here rested.)

The Defendants then introduced Nathan Dodson, a witness, who being sworn, testified as follows: Am father of the Defendants, my son went to California in 1849. Left March 20; myself and Mr. Sears were appointed to do

certain business for him; my son-in-law Albert Knapp had the farm, heard Defendants giving him directions as to how he should manage the farm, he remained on the farm until February or March, 1850. Defendants came back from California in the fall of 1850; don't know who rented the farm in 1850; Sears received one thousand dollars at one time on account belonging to the Defendants. I brought the money over and gave it to Mr. Sears in the Spring of 1849; the power of attorney was to execute a deed to Latham for land; I hadn't the most distant idea that we had anything to do with the farm, Knapp was on the farm when I came over to pay ^{the} money. Question. What did you hear said between the defendants and Knapp, while Knapp was in possession of the farm as to how long Knapp had rented it? To the asking and answering the above question the Plaintiff objected, and the Court sustained such objection. To the ruling of the Court in sustaining such objection ^{and} in not allowing such question to be asked and answered by the witness, the Defendant then and there excepted.

Crop Ex. Don't know what the thousand dollars was paid on. Mrs Dodson paid it to us in Mr. Sears store; after the money was paid over, I took Mr. Sears in my carriage to Elgin; don't know for what purpose, he went to Elgin; the money was raised for some purpose; we came over and the money was paid to Sears and we went home again and sometime after he wrote to me to come over and we went to Elgin and he had business with Charles Clark; think the money was brought over to Sears in May 1849; I know the amount because I counted it; nothing was said about what the money was to be paid for; - have no recollection about paying out the money or any talk about it; Sears said they had business with Charles Clark.

Silas W. Curtis, a witness produced and sworn on the part of the Defendants testified as follows: - Was chosen arbitrator by Sears. Mr. Dearborn was acting with me.

C. B. Wells, a witness heretofore sworn in this case was called by the defendants

who proved the execution of the following
Bond of Arbitration

Copy of Bond of Arbitration.

Know all men by these presents that we Peter Sears and Christian B. Dodson, all of Geneva, Kane County, State of Illinois, are held and firmly bound unto each other his heirs and assigns, in the penal sum of Ten Thousand dollars, lawful money of the United States, which sum well and truly to be paid one to the other, in case any of the following conditions are broken, we hereby bind ourselves, our heirs, executors and administrators, severally, jointly and firmly by these presents. Witness our hands and seals this 7th day of October, A.D. 1853.

The condition of this obligation is such that whereas the said Sears and Dodson are anxious to settle their commercial transactions, and no other in Geneva, and whereas the said Sears and Dodson have mutually selected Luther Dearborn and Silas W. Curtis, and in case they cannot agree, they (Dearborn & Curtis) are to select a third man to whom their

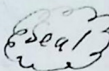
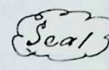
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commercial transactions as aforesaid are to be referred, who are to ascertain how much money said Dodson has paid in for the transaction of the aforesaid business, how much he is entitled for profits while so engaged, if any, and how much he has drawn out from said business in cash or Goods, or both, and make their award in writing (giving a copy to each party) determining how much one shall pay to the other, how soon, and what shall be the security for such payment, and the award thus signed by any two of said Arbitrators shall be binding & conclusive from which there shall be no appeal. - Now if the said Sears or Dodson shall well and truly perform all the conditions for each to perform, and shall stand to, abide by, and perform all the conditions aforesaid, and the award of said arbitrators, then this Bond to be void, otherwise to remain in full force and effect; and that this arbitrament shall commence Saturday morning, Oct. 8th 1853 at 9 o'clock A.M. & continue ^{uninterrupted} until disposed of; each party may be sworn & tell his story under oath & introduce such other legal evidence, as said arbitrators may determine.

Witness by }
Chas. B. Wells }

Peter Sears (L.S.)
C. B. Dodson (L.S.)

The commencement of the above arbitration is hereby mutually agreed to be postponed until Wednesday morning, Oct. 12th 1853, at 9 o'clock A.M.

Witness by }
 Jas. B. Dodson }

Peter Sears 
 C. B. Dodson 

S. W. Curtis recalled by Defendants
 The Arbitrators met, and the parties also on the 12th of October 1853; we heard the testimony and made this award (paper shown witness) in pursuance of the bond of Submission. The award is signed by Mr. Dearborn and myself - this is the award.

Copy of the Award.

To all to whom these presents shall come, We, Silas W. Curtis and Luther Dearborn send, Greeting:-

Whereas, divers disputes differences, and controversies have arisen and are depending between Peter Sears of the one part, and Christian B. Dodson of the other part, both of Geneva Kane County and State of Illinois, in their mercantile transactions, for the ending^{and} determining whereof, the said parties by their Bonds of Submission, bearing date the 8th day

of October AD 1853, have reciprocally bound themselves each to the other, to stand to, abide by, perform and keep the award, order, arbitrament and final determination of us the said Silas W. Curtis and Luther Dearborn, so as the said award be made under our hands and ready to be delivered to the parties in difference.

Now, therefore, know ye, that we, the said arbitrators, whose names are hereunto subscribed, taking upon ourselves the burthen of said award, and having been first duly sworn according to law, faithfully and fairly to hear and examine the matters of difference between the said parties in question as to their mercantile transactions, and none others, and to make a true and just award thereon, according to the best of our skill and understanding, and having fully examined and duly considered the proofs and allegations of both of the said parties who were duly notified of the time and place, at which the said award would be made, do make and publish this our award between the said parties.

First, We do award and order that all controversies had, moved, arisen and

depending between the said parties for any manner of cause touching their mercantile transactions to the day of the date hereof shall cease, and that each of the parties pay the arbitrators chosen by himself their fees for ~~their~~ this award.

Secondly, We do award and order that Peter Sears shall pay and discharge all of the debts incurred by the said firm of Sears and Dodson in their mercantile transactions.

Thirdly, We do award and order that Peter Sears shall pay to the said Christian B. Dodson, the sum of Four Hundred and ninety dollars (\$490) on or before the first day of March A.D. 1854, said amount is to be secured to be paid to the said Dodson by mortgage or otherwise, as they may agree; but in case the said Peter Sears neglects or refuses to give the necessary security within ten days from the date of this award, at the expiration of that time, the aforesaid sum shall be due and payable.

And lastly, we do award and order that the said Peter Sears and the said Christian B. Dodson shall on the

payments of the said sum of Four Hundred and Ninety dollars, execute releases to each other, sufficient for the releasing of all demands connected with their aforesaid mercantile transactions, touching the premises aforesaid.

In Testimony whereof we have hereunto set our hands and seals this 15th day of December AD 1853.

Silas W. Curtis (Seal)

Luther Dearborn (Seal)

Crop Ex We acted under this Bond of Submission, and then made out our award.

James Hotchkiss, a witness produced on the part of the Defendant being sworn, testified as follows: The Defendants counsel asked the following question (No 1) "Do you know of the Defendant Dodson selling to the plaintiff Sears, a wagon, at any time. If yea, state the value," to which question the Plaintiff objected. The Court stated that if the testimony was offered to prove an offset, it was not competent, on the ground that no bill of

items was filed with the plea of set off, but if it was offered to prove payments it was competent. The counsel for the Defendants declining to state it was offered to prove payments the testimony was ruled out, to which ruling of the Court the defendants then and there excepted.

The Defendants counsel then asked the witness the following

Question (No 2) "Do you know whether the defendant Dodson sold and delivered to Sears the plaintiff in March 1849, one set of single harness? If yea, - state what, if you know, Sears was to pay for the same?" Objected to by Plaintiff's counsel. The Court overruled the question, and sustained the objection for the same reasons as given ^{the Defendants counsel declining to state that it was offered to prove payments.} for overruling questions No. 1, to which ruling of the Court the Defendants by his counsel then and there excepted.

The defendants Counsel then asked the following question No. 3 "Do you know if Dodson the defendant letting the Plaintiff Sears have a twenty Dollar County order?" Objected to by plaintiff and overruled by the Court for reasons stated by the Court.

in overruling question No. 1 to which
ruling of the Court the defendant then
and then accepted

Dodson went to California in 1849 his
farm was in charge of Knapp his brother^{in law}
he engaged me to overlook his timberland I
did so I resided here in Genoa within half
or three quarters of a mile of it

Adolphus Sathau a witness produced on the
part of the Defendant being sworn testified
as follows In the month of December 1849
or 1850 I paid three hundred and twenty six
or thirty six dollars to Sears for which I received
a deed for land from C. B. Dodson
I think the Deed was executed by Sears as
attorney in fact

Cross Examination The money was paid for balance due on
land Sears was acting as agent for Dodson
and I paid the money for him as such agent

James Hotchkiss recalled by Defendant
Dodson was to give me my firewood for looking
after the timber

Cross Ex I went down once with Mr. Sears at
his request with him to look at the flow land
and we talked of the propriety of putting in
Buck Wheat and I agreed with him the

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agreed in opinion

The Defendant then offered in evidence the following note ~~against the~~ plaintiff of \$48.46¹⁰⁰ the hand writing of plaintiff was admitted and note allowed to go to the jury

48-46

Blackbury Kane Co Sept-3^d 1843

We C. B. Dodson and Amasa^{White} jointly and severally promise to pay William B. West Treasurer of the School fund of S. 39. N. R. 7. E. or his successor in office the sum of Forty Eight Dollars & 46¹⁰⁰ with twelve per cent ^{per Annu} payable half yearly in advance we further agree that if additional security be required for the payment of the within note it shall be forthwith given

C. B. Dodson
Amasa White
Jas. Hotchkiss

The Defendant then offered in evidence the following account for grain had in August 1850 being balance of fifty five Dollars and four cents which was admitted to the jury by the Court

1850 Sale of Winter Wheat for a/c of C. B. Dodson Esqr

Aug. 5	do Mr. Curtis	20 bushels @ 75	15.00
"	Amasa White	15 do @ 75	11.25
"	Charles Walker	59 1/2 do @ 68	40.24
			<u>66.49</u>

Charges

To Cash p^d Threshing a/c 4.80

" " Freight to Chicago 8.65

" " My expenses " " 3.00

Summa Aug 29. 1850 P. Sears

16.45
55.04

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The Defendant then offered in evidence the following letter and accompanying account the same being admitted by plaintiffs counsel to be in the hand writing of the Plaintiff which were ruled out by the court and not permitted to be given in evidence to the jury to ruling of the court in ~~not~~ refusing said letter & accompanying account which was a part of said letter to be given in evidence to the jury the defendant then and there by his counsel excepted

(Copy of Letter & account)

Boston July 21st 1847.
C. B. Dodson Esqr

Dr Sir -

Since I last wrote you your flour has come to hand it only arrived on the 7 inst. 49 days from Chicago all in a damaged condition Sour Musty & Wet. In learning ~~of~~ the condition of it I immediately called a Survey and the damage appraised by two of our most respectable flour Dealers ^{at} \$1.75 per Bbl as per their certificate annex^d. I have also the inspectory certificate to the same effect. I found also that the only way I could dispose of it would be at public Sale all my friends advising that

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to be the best course to adopt which I accordingly did it was sold on the 14 instant after advertising for 2 days & a large company present for \$4.06 1/4 per Bbl for 25 Hls superfine & \$5.25 for 14 Bbls fine Middlings which I considered a good price considering its damaged state 2 Bbls of your flour was short at Buffalo & paid for and deducted from Bill of charges say \$13. I feel the greatest disappointment in the Result of this shipment particularly when the prospect was so good for a great profit & had then not been the most gross neglect on the part of the transportation company it would have arrived here & been sold at the highest Market — — — the whole season I was offered \$10.25 ^{per Bbl} for a part of it to arrive undamaged upon a reasonable time & had it come through as it should certainly in 25 days I should have sold the whole at that price for it would then undoubtedly be in a sound state & I can see no reason why you should not recover not only the damage appraised but for the difference in price which this delay made consequent this difference is \$4.50 per Bbl & I shall procure all necessary documents to sustain this claim against

the company and I can see no good reason why it should not be received in a few days I will forward you of Sales I — so much engaged in looking after my own affairs that I have only time to say this much to you at this time be assured I have and shall give every attention to this business that serves to promote your interest I have much more difficulty in disposing of my property here than I anticipated but I hope now soon to accomplish it The weather is extremely warm here Thermometer ranging from 90 to 100 degrees

Respectfully Yours

Peter Sears

(copy of account)

1847

Sales of 109 Bbls Flour on a/c of C. P. Dorem Esqr
 July 14 Jno Dyer at auction

79	Bbls Flour	\$4. ¹ / ₁₆	320.94
14	do Fine Middlings	3. ¹ / ₄	45.50
2	" St. Truman	5.75	11.50
1	" A. H. Pierce	" "	5.75
1	" Damaged		4.50
1	" Lt Wright		4.00
11	"	8	55.00
	Dolls		447.19

The Defendant then offered the following accounts which were given to the jury as evidence in the case

(Copy of accounts)
Dr C. B. Dodson Esqr in a/c with Peter Sears Cr
1851

May 5	Do this amt. cash	Interest School note	2.93
April 28	" do do	" J. G. Wilson on Mortgage	250.00
June 9	" do do	" Mrs Dodson	50.00
" 11	" do do	" Mrs Dodson order Hazelton	2.00
July 10	" do do	" Mrs Dodson	11.00
August 31	" do do	" Mrs Dodson	13.00
Sept 8	" do do	" do do	10.00
1852			

Jan 9	" Interest on School note	2.93
" 30	" cash p ^d 25 grain Bags	7.50
" "	" do Mrs Wakefield	2.50
Feb 7	" cash p ^d Taxes on farm	19.66
" 24	" do Jas. White Thrusting grain	2.81
Apr 13	" E Scott for Pork 262 $\frac{7}{8}$ H	11.81
" "	" 1 pork Bbl	1.13
May 8	" Interest on School note	2.93
		<u>370.20</u>

Cr

1851

Mar 19	By Balance old a/c	14.01
Apr 28	" Cash	300.00
	" this amt. Taxes on farm a/c 17.80 =	331.81
	endorsed on note #38.59	<u>3859</u>
	settled as above	Peter Sears

D_N

C. P. Dodson Exr in account with A. Dodson & P. Sears

1849	May 4	Do cash p ^d H. P. Smith Trust Deed	1.00
"	"	" Acknowledging Deed	.25
"	5	" This amt p ^d note & int P. Sears	20.50
"	"	" This amt p ^d J. E. Wilson Land	627.58
"	"	" Expenses at Elgin on business for him	1.75
"	"	" This amt. p ^d C. Patten for last acct	5.00
"	21	" This amt. W. B. West Int. School Land	2.94
"	28	" This amt B. C. Yates Todd Suit	50.00
"	"	" Medicine Mrs Dodson	2.00
"	30	" State & County Taxes	22.12
"	"	" For Barton Witness fee	4.50
Jan	23	" Smartt Recording P. Attorney	.88
"	"	" Cash Mrs. Dodson	6.00
Oct	17	" do do	5.00
Dec	21	" W. B. West int School land	2.94
"	22	" Jas Stephens on note	350.00
"	"	" J. J. Brown Bill	8.66
"	27	" E. Covant House Rent	47.92
1850	Jan 16	" Jas Stephens on Note	40.00
"	26	" do do do do	17.00
Apr	9	" W. B. West Int on Note S. Land	2.94
Apr	17	" Mrs. Dodson	12.00
May	10	" Taxes B. C. Yates	17.14
July	2	" Mrs D ^r postage 40	8.40
Sept	16	" do do	25.00
Oct	19	" do do	30.00
Nov	29	" W. B. West Int 2.98 P ^{co} 40	3.43

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185	Jan 1	" " "	Postage 1/2 93 do 80	1.73
	Mar 1	" " "	Dances on Farm	87.00
	"	" " "	Postage 10 0 10	20
	12	" " "	Postage 2 letters Cal.	80
			Carried for d	\$1525.68

1851			Amt. Brought over	1535.68
	Mar		Do cash for Thrushy Spring wheat	2.55
	"	"	Amasa White N. C. Wheat	5.00
	"	"	Making Road day	3.12
	"	"	B. C. Yates on Todds Suit Day	22.00
				<u>1568.55</u>

			Amasa White on Wheat	1.08
				<u>1569.43</u>

19			To Bal to Van ofc	14 01
				<u>\$1583.44</u>

Co

1849 May

	May 4	By	cash for receipt	1000.00
	"	"	County order	20.00
	Dec 22	"	Proendo Lathams note	330.00
	"	"	Cash Mrs Dodson	18.25

1850	Jan 16	"	do do do	40.00
	" 26	"	do do do	17.00
	Mar 8	"	A Knapp	3.15
	Aug	"	Sales Hunter Wheat	55.04
1851	Jan 23	"	Cash	100.00
				<u>1583.44</u>

Amt carried forward

1851

By Amt Award

1583.44

1583.44

1851 Mar 19

By Bal of old acf
EE Settled as above Given Mar 19 1851

14.01

Peter Sears

Which was all the evidence either offered or
given on the trial of said cause

The Plaintiff then asked the court to
give the following instructions then in
number which were marked by the court
on the margin "given" and by the court read
to the jury

(Copy of Instructions)

That if the jury believe from the evidence that
the matters submitted to arbitration by the
parties to this suit and passed upon by the
arbitrators (Curtis & Dearborn) did not include
any of the claims or demands which the
Plaintiff in this suit in his declaration and
by the proofs seeks to recover from the defend-
ant then the defendant's special plea that
the Plaintiff ought not to recover because of
the said submission & Award is not sustain-
ed and the law on that point is for the
Plaintiff

Given

If the jury believe from the evidence that the defendant was indebted to the plaintiff as charged in the declaration then the plaintiff is entitled to recover in this suit unless you also believe from the evidence that the defendant has paid such indebtedness. And if you believe from the evidence that the award made by Curtis & Dearborn was not in payment of the said indebtedness nor any part thereof then under the general issue it is of no avail to the defendant and then under said issue the Plaintiff (notwithstanding the award) is entitled to recover the said indebtedness unless the items of the plaintiff's claim were intended to apply in payment of the award.

Given

In no event under the issues in this case is the defendant entitled to ^{recover} a verdict against the plaintiff.

So the Ruling of the Court in giving to the jury said instructions the defendant then and there excepted.

The Defendant then asked the Court to give Eight instructions. The Court wrote the word "Given" on the margin of five of

Read instructions and read to the jury as
Law in the Case

(Dyke Inst.)

Shew
If the jury believe from the evidence that the
parties to this suit on the 7th day of October
1853 Submitted to Arbitrators all their com-
mercial transactions as in the submission
Bond and award introduced in evidence
is stated and as described in the third
plea of the defendant and that the arbi-
trators awarded as due to the defendant
Dodgeon the sum of Four Hundred and
thirty ^{Dollars} and if the jury further believe from
the evidence that the orders The Scott note
and the Book account given in evidence
in this case by the plaintiff were intended
as payment of said sum so awarded
and that the sum so awarded and the interest
due thereon amounts to more than such orders
note and Book account & interest thereon
proven by the Plaintiff then the jury will
find for the defendant as to such orders
note and account

Shew
If the jury believe from the evidence that the
award of four Hundred and thirty Dollars
and the interest at 6 per cent due thereon

and thereon it ends the proven amount
~~amount~~ of the plaintiffs demand the jury
 will find the issues for the defendant provided
 the jury believe from the evidence that such proven
 demand of the plaintiff was made in pay-
 ment of said award & interest

If the jury believe from the evidence in this case
 that Sears the plaintiff had at the time of
 the alleged rendering of the services in attending
 to the business of the said defendant Dodson
 money belonging to said defendant out of which
 he has paid himself for said services then
 the jury will not allow him any thing in this
 suit for said services

If the jury believe from the Evidence that said
 award was rendered in settlement of all of
 the accounts between the parties and that the
 Shalor order dated September 28th 1853
 was prior to said Arbitration the presumption
 of law is that said order was taken into
 account by said Arbitration and should
 be disregarded by the jury in this case

That if the jury believe from ^{all} the evidence in this case
 that the parties to this suit made full settlement of
 all their accounts in the year 1851 and that

no fraud or mistake has been shown in
said settlement then neither party can go
behind said settlement - and the jury must
confine their ^{investigation} ~~instructions~~ to matters that have
arisen between these parties since said
settlements

This court wrote the word refused on the margin
of the following three instructions and refused
to give them to the jury as law in the case

Refused But if the jury shall find that the orders
and Book account ~~are~~ are in payment
of the award and that the award and
interest due thereon amounted to more than
the said orders and book accounts the
jury cannot give a judgment for the excess but
may then say that the jury find the issue
for the defendant.

Refused If the jury believe from all the evidence that
the Plaintiff Sears is really indebted to the
defendant Dodson they will then ascertain
the true amount of said indebtedness and
find a verdict in favor of said defendant
for said indebtedness

If the jury are instructed that the award
given in evidence in this case is offered

Referred

by way of payment and if the jury believe from the evidence that the Orders Note and Book account proven by the plaintiff were in payment of said award and that said award and the interest due thereon amounts to more than the proven demand of the plaintiff then the jury must find for the defendant—

So the Ruling of the Court in refusing said instructions to be given to the jury the defendant then and then excepted. The jury then Retired and afterwards returned into court with a verdict of Seventy Dollars and Twenty three cents damages in favor of said plaintiff whereupon the defendant moved the Court for a new trial by written Motion filed in said Court on the second day of June A.D. 1860 which is in words and figures following

Lane County Circuit Court
Peter Sears

^v
~~Christian~~ B. Dodson } May Term
A.D. 1860

And now comes the said defendant & moves the court to set aside the verdict of the jury herein at the present term of this case rendered against

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the said defendant for the following reasons

First The Court Erred in the admission of Evidence offered by in favor of the Plaintiff

Second — The Court Erred in refusing to allow the deft to give proper and lawful testimony to the jury

Third — The Court Refused to give proper and lawful instructions to the jury asked for by the plaintiff

Fourthly The verdict as given is contrary to the law & the evidence all of which is submitted

Herrington & Wells for
Dodson

Which was afterwards overruled by the Court —

So the Ruling of the court in overruling said Motion for a new trial the defendant then and there excepted and prayed that this his bill of exceptions might be signed and sealed by the court which is done

Isaac G. Nelson (Seal)

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State of Illinois }
Kane County } ss I Paul R. Wright Clerk of
the Circuit Court of said County
in the State aforesaid, do hereby certify that the foregoing
is a true and correct transcript of the Record of said
Court in a certain suit between Peter Sears, Plaintiff
and Christian B. Dodson, Defendant, including the
Original Summons, & return thereon, all the pleadings of
the parties in the case, the Judgment & all the orders of the
Court made in said suit, the Appeal Bond & Rice
of Exceptions, as appears by the Record & files of
said Court in said Cause.

Witness my name & the Seal of
said Court at Geneseo in said County
this first day of December A.D. 1860.
P. R. Wright
Clerk

Supreme Court State of Illinois April
Term AD 1861. Third General Division
Christian B Dodson
v Appellant
Peter Sears

And now comes
the said Christian B Dodson Appellant
by Hennington & Wells his Attorneys, and
assign the following errors in the above
entitled Cause

- 1st The Court erred in admitting in evidence
the Books offered by the plaintiff below.
- 2^d The Court erred in allowing the questions
to be asked to the Witnesses Hotchkiss and
answers
- 3^d The Court erred in giving the instructions
asked for by the plaintiff.
- 4th The Court erred in refusing instructions
asked for by the defendant
- 5th The Court erred in overruling the
defendants Motion for a new trial
- 6th The Court erred in permitting the plaintiff
to give in evidence the \$48.46 Dollar Note
signed by Dodson White & Hotchkiss & dated
September 3^d 1843

And the said Appellant therefore
prays the said Judgment may be reversed
&c

A M Hennington
Chas B Wells
Atty for Appellant

And now comes Peter
Lars the said applicant
by Mayben Seland & Seland
his attorneys and says that
there is no error in the
Records he prays that
the Judge would say he
appears to

Mayben Seland &
Seland

Attorneys for
applicant

C. B. Bodson

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Peter Lars

Assignment of Errors

225-83

Kane Co. Liv. Court

Peter Sears

vs.

Christian B. Dodson

Transcript

Filed Apr 17, 1861
L. Deland
Clk.

Clk. Fees. for Court \$15.50