

No. 12540

# Supreme Court of Illinois

Chapman, et al.

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vs.

McGrew.

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71641  7



Plas to a term of the County Court  
begun and held at the Court House in  
the City of Illinois within and for the County  
of Tazewell and State of Illinois. on  
the 2<sup>nd</sup> Monday of the month of  
July in the Year of our Lord one Thousand  
Eight Hundred and fifty Seven. before  
the Honorable John M. Bush Judge of  
said Court.

It is remembered that on the 15<sup>th</sup> day of  
June in the year of our Lord one Thousand  
Eight Hundred and fifty Seven. a Transcript. Affidavit  
Bonds. Summons and Subpoena from Mr. Jackson,  
a Justice of the Peace were filed in the words and  
figures following, to wit:

Transcript F. B. Chapman vs of John Nightman

" Nathaniel C. Selby and James M. Shaw

- " May 6<sup>th</sup> 1857. Suit on an account of \$54.27 returnable
- " on the 12<sup>th</sup> day of May 1857 at one O'clock P.M. Summons
- " returned endorsed Served by reading James A. Mc Grew
- " May 6<sup>th</sup> 1857. Selby not found J. B. Orr C. J. C. Cert
- " 25 May 12.15 1857 Case Continued by agreement till
- " May 27 1857 at one O'clock P.M. May 27 1857
- " one O'clock P.M. Parties appeared and James A
- " Williams and John Henderson sworn as Witnesses
- " and after hearing all the Proof and allegation of Parties
- " Judgement rendered in favor of Plaintiff against said
- " defendant for Fifty four dollars and Twenty Seven cents
- " debt and costs of Suit



|                                                            |                     |             |
|------------------------------------------------------------|---------------------|-------------|
| June 8 <sup>th</sup> 1857 a Bond for<br>an appeal approved | Justice             | 56          |
|                                                            | Subt                | 18          |
|                                                            | Deacons & Witnesses | 12          |
|                                                            | Contingence         | 12          |
|                                                            | Can Summas          | 25          |
|                                                            | To Subpoena         | 38          |
|                                                            | Bond & Transcript   | 75          |
|                                                            |                     | <u>\$36</u> |

"State of Illinois"  
 "Pazewell County" } I Certify that the foregoing is  
 "Correct transcript of all Proceedings  
 "had before me in the above entitled cause. Given under  
 "My hand and Seal this 13<sup>th</sup> day of June 1857  
 "H. Packaberry, J.P.

"Appeal Bond" Know all men by these Presents that we James A. McGrew  
 "J. Williams Pinney are held and firmly Bound into  
 "J. B. Chapman use of John Wightman in the Penal sum of  
 "One hundred and Thirteen Dollars lawful money of  
 "the United States for the Payment of which well and  
 "truly to be made we Bind Ourselves Our heirs and  
 "administrators Jointly, Severally and firmly by these  
 "presents. Witness our hands and seals this 8<sup>th</sup> day of June  
 "A.D. 1857. The condition of the above obligation is such  
 "that whereas the said J. B. Chapman use of John  
 "Wightman did on the 27<sup>th</sup> day of May 1857, before  
 "H. Packaberry a Justice of the Peace for the County  
 "of Pazewell recover a Judgement against the above  
 "bondmen James A. McGrew for the sum of \$54 <sup>2</sup>/<sub>100</sub> Dollars  
 " & \$1.61 cts. cost. from which Judgement the said  
 "James A. McGrew has taken an appeal to the County  
 "Court of the County of Pazewell aforesaid and State  
 "of Illinois. Now if the said James A. McGrew  
 "shall prosecute his appeal with and shall pay whatever  
 "Judgement may be rendered by the Court upon dismissal  
 "or trial of said appeal then the above obligation to



" be void. Otherwise to remain in full force and effect

" Bond for an appeal

" Approved before me

" this 8<sup>th</sup> day of June 1854

M. Packabury

James A. McGrew

Wm A Tinney

Seal

Seal

Summons

" State of Illinois } The People of the State of Illinois

" Casswell County } To any Constable of said County  
Grating

" You are hereby Commanded to Summon Nathaniel

" C Selby & James A McGrew to appear before me at

" my Office in Pekin on the 12<sup>th</sup> day of May 1854 at

" 1 O'clock P.M. to answer the complaint of F.B

" Chapman use of John Wrightman for a failure to

" pay him a certain demand not exceeding one hundred

" Dollars; And hereof make due return of the Law direct

" Given under my hand and seal this 6<sup>th</sup> day of May 1854

M. Packabury J.P. { S.S. }

Subpoena

" State of Illinois } The People of the State of Illinois to

" Casswell County } James A Williams with his article

of agreement & lease. John J Hamilton  
with receipt. & C Williamson

" You are hereby required to appear before me at my Office

" in Pekin on the 2<sup>nd</sup> day of May at 1 O'clock P.M. then and

" there to testify the truth in a matter in Suit, wherein F.B.

" Chapman use of John Wrightman plaintiff and M.C.

" Selby & James A McGrew defendant and this you are not

" to omit under the penalty of the Law. Given under my

" hand and seal this 25<sup>th</sup> day of May 1854

M. Packabury J.P.



Summons "State of Illinois }  
 "Pazewell County } to the Sheriff of Said County  
 Greeting

"We command you that you summon F. B. Chapman  
 "who sues to use of John Wightman. If he shall be  
 "found in your County. personally to be and appear before  
 "the County Court of said County on the first day of the  
 "next term thereof to be held at the Court House in Pekin  
 "in said County on the Third (Monday) of July next  
 "to prosecute his suit against James A. McGrew lately  
 "appealed from before Mr Packabury Esq

"And have you then and there this writ with and  
 "arrestment thereon in what manner you shall have executed  
 "the same

"Witness John Gridley Clerk of said Court  
 "and the seal thereof at Pekin aforesaid  
 "this 15th day of June A.D. 1854

John Gridley Clerk County Court  
 And

"And now afterwards to wit on the  
 "18th day of July 1854 said summons  
 "was returned Endorsed as follows. to wit. "Served by  
 "reading to the within named F. B. Chapman: June  
 "19th 1854 O Williamson S. J. C."

And now afterwards to wit at a term of  
 said County Court begun and held at Pekin  
 within and for the County and State aforesaid. on  
 the Third Monday of the Month of July in the  
 year of our Lord one thousand Eight hundred  
 and fifty Seven it being the 18th day of said month  
 of July Present the Hon John W. Bush, County  
 Judge of said County. Chapman Williamson



Shrift on John Widly Clark the  
following proceedings were had in said Court  
to wit

Wednesday July 22<sup>nd</sup> 1837 }  
" F.B. Chapman for }  
" use of John Mightman }  
53 117 } Appeal  
" James A. McNew app't }  
" & C. B. Selby }  
}

And now on this day came as well  
the Plaintiff by his attorney Roberts as the defendants  
by their attorneys Mc Intire and Peltypson and trial  
by Jury having been waived this cause is submitted  
to the Court and the Court having heard the allegations  
and proofs of the parties and arguments of Counsel  
therein is of opinion that the Plaintiff have nothing  
by his said Suit. It is therefore ordered and  
adjudged by the Court that the defendants recover  
of the said Plaintiff the costs and charges by them  
about their defence expended and that Execution  
be issued therefor.

And now afterwards to wit, on the Twenty  
fourth day of July A.D. One Thousand Eight Hundred  
and Fifty Seven. The said Plaintiff by his attorney  
Roberts filed his Bill of Exceptions in the words  
and figures following to wit

" State of Illinois } In Patewell County Court  
" Patewell County } July Term A.D. 1837

" Franklin B. Chapman who sue }  
" for the use of John Mightman }



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" James Mc Grew & } Bill of Exceptions  
" Nathaniel C Selby }

" This was an action brought by Chapman for the  
" use of Wrightman before a Justice of the Peace  
" where a Judgement was rendered for the Plaintiff  
" from which Mc Grew appealed to the County Court

" The Case being called for trial,  
" a Jury was waived and trial by the Court by agreement  
" When the following evidence was  
" introduced

" The plaintiff read in evidence the  
" following Lease to wit

" This Indenture made this first  
" day of November in the Year of our Lord One Thousand  
" Eight Hundred and fifty six. between Franklin  
" B Chapman party of the first part and Nathaniel  
" C. Selby party of the second part. Witnesseth that  
" the said party of the first part. doth hereby lease  
" rent and demise to the said party of the second part  
" the Hotel known as the Chapman House in the City  
" of Pekin for the Term of one year with the privilege  
" of keeping it two years. The premises leased are the  
" Hotel building Wood house and all other  
" buildings appertenant thereto except the Stables and  
" the frame building East of the brick hotel. and the  
" said Chapman is to Lease to the said Selby the said  
" frame house East of the brick hotel to said party  
" of the second part if he should want it at reasonable  
" rates said party of the first part is to furnish said  
" hotel with all necessary furniture, beds, bedding,  
" Cooking Utensils table ware Carpeting and all neces-  
" sary things and articles for carrying on and



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" Conducting said hotel. Said furnishing to be of a  
" good and sufficient quality, and to be furnished  
" by the said party of the first part for the use of the  
" said party of the second part by the first day of  
" November A.D. 1856 or as soon thereafter as the said  
" Selby shall need said articles of furnishing for said  
" hotel and the said party further agree to keep said  
" premises and furniture in good repair for the use of  
" the said party of the second part, and to quit  
" keeping the Paywell House which he is now keeping  
" and throw his patronage to said Chapman House, and  
" to keep said party of the second part in quiet and  
" peaceable possession of said premises and furniture

" The said party of the second part agrees to pay  
" said party of the first part Seven hundred dollars  
" per year payable monthly, and to take good care of  
" said premises and articles of furniture and return  
" the said premises to the said Chapman his heirs or  
" assigns in as good order as they are furnished to him  
" reasonable wear and tear fire and other casualties  
" excepted. And it is mutually agreed between them that  
" persons names attached after the names of the Lessor  
" and Lessee are to be the securities of the said party of  
" the second part for his performance of this contract  
" and the said lease to commence from and after the first  
" day of November A.D. 1856 and to continue one year  
" and the said party of the second part to have the  
" privilege of holding it two years if he should see cause to

" We the said Franklin B. Chapman and Nathaniel  
" C. Selby have herunto set our hands and seals, binding  
" ourselves our heirs and executors administrators and  
" assigns This 11<sup>th</sup> day of October A.D. 1856.



L. B. Chapman

N. C. Selby

James A. McGrew, <sup>Selby</sup> Security of Nathaniel C.

" which was proved by the Defendant to have been duly  
 " assigned to John Wightman for whose use this  
 " suit was brought.

" It was then admitted on the part of the Defendants  
 " that the sum of Fifty four  $2\frac{1}{2}$  Dollars was still  
 " unpaid upon said lease, the plaintiff there rested his  
 " case.

" The Defendant then introduced an agreement in  
 " the words and figure following To wit

" Article of agreement entered into by and between  
 " Nathaniel C Selby and John Wightman assignee of  
 " Franklin B. Chapman of a certain lease dated 1<sup>st</sup> Nov  
 " 1856 in which N C Selby is Lessee of the City Hotel  
 " in the City of Pekin.

" It is hereby agreed on the  
 " part of the said Selby that he releases the said  
 " John Wightman from furnishing any more furniture  
 " or fixtures for keeping said Hotel and he is also released  
 " from keeping the same in repair. And the said  
 " Wightman agrees that during the time that he is  
 " the assignee of the said Chapman or during the term  
 " of said Lease to the said Selby he Charges anely five  
 " hundred dollars per Year (payable Monthly) rent  
 " to Commence from the date of said Lease. And this  
 " deduction of two hundred dollars a Year is specially  
 " made in Consideration that the said Selby Call on  
 " the said Wightman for no further furniture fixtures  
 " or repairs of what is already furnished.

" Dated this 28<sup>th</sup> January 1857

N. C. Selby  
 J Wightman



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" To which the Defendant objected, but it was admitted  
 " by the Court to which the plaintiff excepted. The  
 " Defendant then proved by three witnesses that it would  
 " be fifty per cent more profitable to the Lessee to rent  
 " a Hotel at Seven hundred Dollars per year and have  
 " the same furnished and kept in repair at the expense  
 " of the Lessor, than to rent one at five hundred  
 " Dollars and the Lessee (furnish it and) keep it in  
 " repair at his (the Lessor) Expense, and that any  
 " change in that manner would be a great injury to  
 " the Lessee.

" The foregoing was all <sup>the</sup> Evidence given in  
 " the Cause, the Court rendered a judgment for the  
 " Defendant for costs to which finding and judgment  
 " of the Court the plaintiff by his Counsel at the time  
 " excepted. And now pray that this bill of exceptions  
 " may be signed <sup>and</sup> Sealed and which is accordingly done  
 " Geo M Bush C.J. T.C. {Seal}

State of Illinois }  
 Tazewell County }

I John Gridley Clerk of the County  
 Court within and for said County  
 do hereby certify that the foregoing nine pages  
 contain a true <sup>and complete</sup> perfect Copy of all the papers  
 and the record of the proceedings had in the cause  
 therein named as the same appears of Record  
 in my Office.

Witness John Gridley Clerk of the said  
 County Court and the Seal thereof hereunto  
 affixed at Pekin this 1<sup>st</sup> day of January  
 A.D. 1858

John Gridley Clerk  
 per Erastus Rhodes, Deft



And now comes the second  
fellant Chapman, who says that there  
is an error in the record, proceedings  
judgment of said County Court, and has  
tended in this case, to his prejudice in the  
1. Said Court admitted improper evidence  
on behalf of said defendants:-

2. The finding and judgment of the said Court, is  
against law.
3. Said judgment is against the evidence in  
the case:-
4. Said judgment should have been in fa-  
vor of the plaintiff and not in favor of said  
defendant:-

Wherefore for other good suffi-  
cient reasons appearing in said record  
appellant prays that the judgment of  
said Court herein, may be set aside  
reversed & wholly for naught esteemed  
for the ~~same~~ <sup>same</sup> ~~same~~  
for appellant

And the said respondents  
come & say that <sup>in the</sup> in the record  
& proceedings aforesaid nor in the  
giving of the judgment aforesaid  
is there any error



Wherefore he prays that the  
judgment, aforesaid in form aforesaid  
given may be by the Court now here  
in all things affirmed.

J. L. Davison  
for appellee



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T. B. Chapman  
use of John Nightman  
vs  
James A. McGrew

Transcript

Filed March 12, 1888  
L. Leland  
R. L. K.  
by J. B. Nightman

Fees \$3.00



Supreme Court 3<sup>d</sup> Div.

F. B. Chapman for  
the use of J. Wightman

James A. McCreary

Error to Tazewell Co  
Court

Arguments for  
Sept. in error

This action was brought by the  
plff in error against Sept in error  
and one A. C. Selby (who was not  
sewed) before a justice to recover  
in arrears upon a lease made by  
F. B. Chapman error to Selby lease  
upon which lease McCreary (Sept in  
error) was security for Selby —  
The lease purports to be made 1<sup>st</sup>  
Nov. 1866 & at the bottom to be  
Dated 11<sup>th</sup> Oct. same year —

The lease was of a Hotel known  
as the Chapman house in Pekin for  
a year with the privilege of two years  
All necessary things for carrying on the  
tavern to be furnished by & kept in  
repair by Chapman to be furnished  
by the 1<sup>st</sup> Nov 1866 or as soon thereafter  
as Selby should need them — For  
which Selby was to pay \$700.00



per year payable monthly — Chapman  
the landlord assigned the lease to  
Wightman for whom use this action  
was brought — Wightman & Selby  
(the tenant) without the knowledge  
or Consent of McGrew (the security)  
then entered into an agreement dated  
~~1 Nov. 1884~~ <sup>28 Jan 1887</sup> by which Selby released  
Wightman from furnishing any more  
furniture &c for said Hotel & from  
keeping the same in repair and  
Wightman in consideration thereof  
reduced the rent to \$500. per year.

It is claimed by the deft. & proved  
by him that the Contract as altered  
was much less beneficial to Selby  
than the original agreement thereby  
greatly increasing his risk as  
security for the performance of  
Selby and that having been made  
without his assent he was thereby  
discharged from liability —

The principle that if the Creditor  
do any act which may put the surety  
in a worse condition or increase his  
risk without his Consent he is discharged  
is fully sustained in this Court in



Warner v Helm 1 Gilman 230  
 And the Cases there Cited —

That the alteration in the lease  
 would have that effect is clearly  
 proved by the deff & not controverted  
 by the plff —

To avoid the force of  
 this objection it is contended by  
 the plff in error that Chapman  
 is the plaintiff in this action and  
 that at law Wrightman has no  
 interest in it — That he can not  
 make or consent to any alterations  
 that will bind the nominal  
 plaintiff and that having the  
whole interest which Chapman  
 ever had he can not at law  
 discharge the lessee in part or  
 in the whole nor can he make  
 any valid alterations in its terms

Surely Chapman has no remaining  
 interest in the rent he neither gains  
 nor loses by the fact of McLew  
 being released as surety of Selby  
 and although in this action he is a  
 necessary party he is only so by  
 virtue of a mere rule of pleading  
 which at law requires the parties



to whom the promise was made to bring the action, whether he continues to have any interest in the suit or not. And this suit may be prosecuted by Wrightman in his name either without, or against his consent. Even if he desired to do so he could not dismiss this suit nor release the demand for which it is brought nor would an actual payment of the demand by the defendant to Chapman either before or after judgment be available for the debt but he would remain just as liable to pay it over again to Wrightman as he was before payment.

Wrightman can not be considered a stranger to this contract. He is the assignee of Chapman & by him substituted & stands in his place and is herein a party in contract.

But it is contended that the agreement between Wrightman & Selby referred to a different Hotel & therefore was inadmissible because it was in this agreement referring to the

\* Wrightman really owning the whole & Chapman has no interest in this loan  
if would be charge doctrine that Wrightman cannot control the loan  
if it would be incursions to allow Wrightman to object to the party of his  
own act, on the principle of ground with study, the nominal debt who  
in an interest in the property



5  
Lease said to be dated of a different day from that on which the lease bears date - This agreement speaks of the lease as dated 1<sup>st</sup> Nov 1856 of which Wightman was assignee -

Now this lease starts off by saying at its commencement that it was ~~made~~ that day - Again we prove that Wightman was the assignee of the lease given in Evidence let the date be as it will - Then again the lease & this agreement both agree as to the price or rent for year both agree that Chapman was bound to provide & keep in repair the furniture &c But it is also said that in the Lease the Chapman house was demised & in this lease the City Hotel being different houses -

Now in order to raise even a doubt of the agreement between Wightman & Selby referring to the lease given in Evidence you must assume this most improbable state of facts that Chapman in the same fall rented to the same tenant two Hotels in Pekin for the same rent



binding himself to furnish & keep  
them furnished in the same  
manner And that Wightman  
was the assignee of Chapman  
of both said leases! <sup>or to assume</sup>  
what was really the truth that the  
one Hotel rented was known &  
called by both names indistin-  
guishably —

Besides even if this position  
of the plea in error was much more  
plausible than it is it would be  
too late to raise it in this Court  
for the first time. It should  
have been raised if at all in the  
Court below & thus have given the  
defendant an opportunity to offer  
proof to show that both instruments  
really named the same Hotel —

The objection to the giving this  
contract in evidence is stated generally  
and was only claimed upon the ground  
that Wightman could make no valid  
legal alteration in the contract —

It is presumed that an objection  
to evidence which <sup>conspires</sup> have been obviated  
by further proof will be disregarded



in this Court unless the ground of objection was then pointed out so that the party offering it had the opportunity to supply such proof—

But it is urged by the pff. that there was no consideration for Wrightman's agreement because as is said the lease required all the articles furniture &c to be furnished by the 1<sup>st</sup> Nov 1856 by Chapman & that he was not bound to keep them in repair so that Selby relinquished no right & the attestation abating the rent \$200. was really so much gain

Now the lease provides that Chapman shall furnish all these things by the first Nov 1856 "or as soon thereafter as said Selby shall need said articles" And "to keep said premises & furniture in good repair for the use of the said party of the second part" Plainly showing that it was not the expectation of the parties that the articles should be furnished all at once but along from



time to time as experience might demonstrate what was needed and also during the term <sup>Chapman was</sup> to see to it that the furnishing of the house was kept in good repair —

Again the plff contends that whether the agreement with Wrightman was valid or not the security was not injured inasmuch as he had bound himself to pay \$700 a year which might now be discharged for \$500 And that whether the business was profitable or not makes no difference with the security his liability was so much no more nor less — This idea I think is based upon too narrow a view of the rights & liabilities & responsibilities of sureties — When one enters into an agreement as surety for another he does it with the hope & expectation that the principal will be able to & will discharge the obligations — It is most commonly entered into by a friend to assist the principal to commence a business



as was the case here And before a  
 prudent man will consent to do so  
 he will know & understand the Contract  
 he is entering into And his becoming  
 security will depend upon his  
 faith in the honesty of the principal  
 as well as in the benefit which his  
 principal may reasonably be expected  
 to derive from the Contract <sup>to be</sup> signed  
 by the security and he equally with  
 the principal judges of the goodness  
 or badness of the Contract, which  
 he is asked to enter into before  
 he becomes bound — His liability  
 being merely contingent & depending  
 upon the profits or losses of his  
 principal and his consequent ability  
 or inability to <sup>make the payment</sup> pay himself. No  
 alteration can be made in it  
 to the detriment of the principal  
 without increasing the hazard  
 of the security And if any such  
 be made he ought according to the  
 dictates of equity & reason to be  
 discharged unless done with his  
 consent



The form of this action & the time  
of bringing it shows that it was  
for rent accruing after the assignment  
by Chapman to Wrightman

A L Divison  
for Sept in Enor

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Chapman as form  
of Wrightman

as  
James A McGraw

Assignment for

Sept in Enor

Filed May 1st 1858

L. Leland  
clerk



State of Illinois } 3<sup>rd</sup> Grand session  
Supreme Court } April Term  
} 1858

Franklin B. Chapman }  
v.  
James A. McGrew }

Argument for plaintiff in  
error.

The question attempted to be  
raised in the Court below was  
that McGrew the surety was disch-  
arged by the agreement between  
Selby and Wightman.

The plaintiff in error insists  
that the agreement between  
Wightman and Selby had  
nothing to <sup>do</sup> with the case  
and was wholly irrelevant. The  
legal interest in the suit was in  
Chapman, and no agreement between  
Selby and Wightman could  
affect his rights in a Court of  
law.

If the agreement <sup>v. between</sup> Selby



and Wightman was so injurious  
to the surety or such an alteration  
of the contract as would discharge  
him, and was done by the equitable  
beneficiary in the lease, the matter  
could only have been reached by  
bill in equity, showing the  
beneficial interest of Wightman  
in the lease, and that such an  
alteration was made by the  
beneficiary as would discharge  
him <sup>from the debt</sup> from further liability.

As the case now stands ~~the~~  
the court allowed ~~allowed~~  
the introduction of a contract  
between a stranger to the lease  
and the lessor to discharge  
the surety, without showing  
any knowledge, privity or assent  
of Chapman to any such ar-  
rangement. They did not prove  
that Wightman had even  
any beneficial interest in the  
lease relation, further than  
that it had been assigned to  
him; nor could Wightman have



had any other than an equitable  
interest in the lease. If this  
be the law any contract made  
between strangers without  
the assent of the obligor will  
discharge the surety.

The contract therefore between  
Selby and Wightman being  
being between the lessor and  
a stranger could not affect  
the legal rights of Chapman  
and prove nothing in the  
case.

The last contract between  
Wightman and Selby proved  
nothing for the reason that  
the lease referred to in that con-  
tract was of a different date  
and for a different Hotel from  
the lease upon which suit  
was brought. One was a  
lease of the Chapman house,  
the other for a lease of the  
City Hotel.



But if the contract between  
Wrightman and Selby were  
such as could be properly  
introduced in this suit, for  
the purpose of showing such  
an alteration as would dis-  
charge the surety, the agreement  
between Wrightman and  
Selby is not such an agreement  
~~is not such an agreement~~ as  
will discharge the surety, and  
consequently proved nothing in  
the case, this agreement betw-  
een Wrightman and  
Selby will by reference to the  
record be found to be dated  
the 27<sup>th</sup> of January 1857, By the  
terms of the original lease  
between Chapman and Selby  
Chapman was to do all the  
furnishing by the first of Nov-  
ember 1856, and there is noth-  
ing in the lease that gives  
the remotest color, that it  
was by him to be kept furn-  
ished during the whole term



The Court will not presume that Chapman had failed to do so without some evidence to that effect.

Other the argument between Wrightson and Selby, only shows a release from what the contract did not require him to do and the rent was valued at \$200, for releasing the obligation to keep in repair.

How this could in any manner discharge the duty is more than I can comprehend. And the evidence of the witnesses that it would be fifty per cent more profitable to have it furnished and kept in repair has nothing to do with the case, for Chapman was not to keep the hotel furnished but only to keep the furniture in repair.

This alteration takes it in the strongest light



did not in any manner  
alter or change the contract  
in respect to the sum, He  
was bound by the original  
lease to pay \$700 Dollars  
per annum, by the new  
contract \$500 satisfied  
the agreement between Selfy  
and Wightman.

Whether the  
lease was profitable or  
unprofitable to the lessee  
would not make the  
responsibility of the sum  
any greater or less it was  
so much and no more  
whether the lease was  
profitable or unprofitable

James Roberts  
att'y for plaintiff  
in error



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F. B. Chapinon  
vs.  
James A. McGee

argument for  
Plaintiff in  
error.

Filed May 6, 1858  
L. Libbey  
CLP



STATE OF ILLINOIS, }  
SUPREME COURT, } ss.

The People of the State of Illinois,  
TO THE CLERK OF THE CIRCUIT COURT FOR THE COUNTY OF *Sangwell* GREETING:

BECAUSE, In the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of *Sangwell* County, before the Judge thereof, between *Franklin B. Chapman who sues for the use of John Wightman*

plaintiff, and *James A. McGrew*

defendant it is said manifest error hath intervened, to the injury of the aforesaid

*plaintiff* as we are informed by *his* complaint, and we being willing that error should be corrected if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the County of La Salle, on the *first Tuesday after the third Monday in April* next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

*John D. Barton*  
WITNESS, The Hon. **WALTER B. SCATES**, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this *twelfth* day of *March* in the Year of Our Lord One Thousand Eight Hundred and Fifty-*eight*

*L. Leland*  
Clerk of the Supreme Court.  
*by J. B. Rice Deputy*



Clerk of the Supreme Court.

of Our Lord One Thousand Eight Hundred and Fifty-  
four, this 1st day of March, 1854, in the Year  
Justice of our said Court, and the Seal thereof at Ot-  
tawa, in the County of La Salle, on the

WILLIAM R. SCOTT, Chief

be done according to law.

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the same before our Justices aforesaid at Ottawa, in the County of La Salle, on the  
aforesaid, with things touching the same, under your seal, so that we may have  
sent to our Justices of the Supreme Court the record and proceedings of the plain-  
tiff, in the manner and form of judgment thereof, be given, you distinctly and openly, without delay,  
in the manner and form of judgment thereof, and that Justice be done to the parties aforesaid, com-  
plaint, and we being willing that error should be corrected if any there  
it said manifest error hath intervened, to the injury of the aforesaid  
as we are informed

74  
Franklin B. Chapman  
James A. McGraw

Writ of error

plaintiff, and

the Judge thereof, between

County, before

of a piece which was in the Circuit Court of

BECAUSE, In the record and proceedings, as also in the rendition of the judgment  
TO THE CLERK OF THE CIRCUIT COURT FOR THE COUNTY OF  
SHERIFF COURT, }  
STATE OF ILLINOIS, }  
The People of the State of Illinois,



STATE OF ILLINOIS,  
SUPREME COURT,

ss. The People of the State of Illinois,

TO THE SHERIFF OF THE COUNTY OF *Tazewell*

GREETING:

BECAUSE, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the Circuit Court of *Tazewell* county, before the Judge thereof, between *Franklin B. Chapman* who sues for the use of *John Wightman* plaintiffs and *James A. McGrew*

defendant, it is said that manifest error hath intervened, to the injury of the said

*plaintiff*  
as we are informed by *his* complaint, the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; THEREFORE, WE COMMAND YOU, that by good and lawful men of your county, you give notice to the said *James A. McGrew*

that *he* be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the *first Tuesday after the* Monday in *April* next, to hear the records and proceedings aforesaid, and the errors assigned, if *he* shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said *James A. McGrew*

notice, together with this writ.

*John D. Barton*  
WITNESS, The Hon. WALTER B. SCATES, Chief Justice of our said Court, and the Seal thereof at Ottawa, this *twelfth* day of *March* in the Year of Our Lord One Thousand Eight Hundred and Fiftv-*eight*.

*Leland*  
Clerk of the Supreme Court,  
by *J. B. Rice* Deputy





Know all men by these presents, that I, the Clerk of the Supreme Court of the State of Illinois, do hereby certify that the within and foregoing is a true and correct copy of the original of the same as the same is now on file in the office of the Clerk of the Supreme Court of the State of Illinois, and the Seal thereof is hereunto affixed.

Witness my hand and the Seal of the Supreme Court of the State of Illinois, this 1st day of April, 1858.

Franklin B. Chapman  
for answer  
vs  
James H. McGrew

Service 500  
Mileage 100  
Total 600  
Net of writ \$ 5.60

Filed April 1st 1858  
L. Deland  
Clerk

Executed this writ March 17th 1858  
By reading to James McGrew

before the Judge thereof present.  
C. Williamson  
By J. C. Hunt  
STATE OF ILLINOIS



**State of Illinois. }**  
**SUPREME COURT, }**

**2d GRAND DIVISION.**

**JANUARY TERM, 1858.**

**FRANKLIN B. CHAPMAN for the use of JOHN WIGHTMAN, VS : }**  
**JAMES A. McGREW. }**

**ERROR TO TAZEWELL.**

**Evidence for Plaintiff**

This was an action brought for rent by Chapman for the use of Wightman, against N. C. Selby and James A. McGrew, before a Justice of the Peace, where a Judgement was rendered for the Plaintiff, and by McGrew appealed to the County Court of Tazewell county. At the July Term, 1857 said cause was submitted to the court without the intermention of a Jury.

The plaintiff introduced a lease, bearing date Oct. 11th, 1856, under seal, from Chapman to Selby, signed by Selby and McGrew, reciting that Chapman had leased to Selby the Hotel, known as the Chapman House, in the city of Pekin, for the Term of one year, with the privilege of keeping it two, said Chapman to furnish the hotel with all necessary furniture, beds, bedding, cooking utensils, tableware, carpeting, and all necessary things and articles, for carrying on and conducting said hotel, said furnishing to be of a good and sufficient quality, to be furnished by Chapman by the first day of November, 1856, or as soon thereafter as Selby should need the articles, which were all to be kept in repair by Chapman; For which Selby was to pay Chapman seven hundred dollars per year, payable monthly, That the names of the persons attached after the names of the Lessor and Lessee were to be considered securities of Selby for the performance of the contract.

The defendant then proved that said lease was assigned to Wightman.

It was then admitted on the part of the Defendant that the sum of fifty-four 27-100 dollars was still unpaid upon said lease, the plaintiff then rested, pages of Record, 6 to 8.

**Evid. for Defendant.**

The defendant then introduced an agreement between N. C. Selby and John Wightman, assignee of Franklin B. Chapman, of a certain lease, dated Nov. 1st, 1856, in which N. C. Selby is lessee of the City Hotel in the city of Pekin, in which it was agreed that Selby should release Wightman from furnishing any more furniture for keeping said Hotel and from keeping the same in repair, and that Wightman during the time that Wightman was assignee of Chapman, was to charge Selby only five hundred dollars per year, and that the deduction was specially made in consideration that Selby called on Wightman for no more furniture or repairs to the same. To the introduction of said agreement in evidence, the plaintiff objected, but the same was admitted by the court to which the plaintiff excepted; The Defendant then proved that it would be fifty per cent. more profitable to the lessee to rent a hotel at seven hundred dollars per year, and have the same furnished and kept in repair at the expense of the lessor, than to rent one at five hundred dollars and kept in repair, at his (the Lessee's) expense; that any change made in that respect would be a great injury to the lessee. The foregoing was all the evidence in the cause. The court rendered judgment for the defendant, to which the plaintiff excepted. Page 8 and 9.

**JAMES ROBERTS,**  
*Att'y for Plaintiff, In Error.*







State of Illinois. }  
SUPREME COURT, }

2d GRAND DIVISION.

JANUARY TERM, 1858.

FRANKLIN B. CHAPMAN for the use of JOHN WIGHTMAN, VS: } ERROR TO TAZE-  
JAMES A. MCGREW. } WELL.

Evidence for Plaintiff

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The defendant then proved that said lease was assigned to Wightman.

It was then admitted on the part of the Defendant that the sum of fifty-four 27-100 dollars was still unpaid upon said lease, the plaintiff then rested, pages of Record, 6 to 8.

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JAMES ROBERTS,  
*Att'y for Plaintiff, In Error.*



State of Illinois } 3<sup>rd</sup> Grand Division  
Supreme Court } April Term 1858

Franklin B. Chapman }  
who sues for the use of } Error to  
John Nightman } Laramie County  
vs. }  
James A. McGraw }

The Hon. Clerk  
will please issue a sub poena to the  
sheriff of Laramie County in the above  
entitled cause & for James A. McGraw

James Roberts  
att'y for plaintiff in  
Error.



Front to B. Chapman  
for the use of future  
nightman  
11.

James A. McGrew

manuscript for Scirpoceras

Filed March 12, 1889

L. Leland  
Clk.



~~88~~

Chapman

v3

McBrien

94 25

Abstract

Filed Mar 12.  
1838

L. Leland  
Clerk

13510-25



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Franklin B. Chapman

by

James A McGrew

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1858