

12283

No. 1

Supreme Court of Illinois

Hough.

vs.

Rawson.

71641  7

David L. Hough }
vs } appeal from
Eustus Rawron } LaSalle Circuit
} Court -

And now comes appellant Hough by T. L. Dickey his attorney and alleges that in said judgment and proceedings there is manifest error - and that said judgment ought to be reversed and for naught held - and as a more particular specification of errors, appellant, assigns the following -

- 1st - The Circuit Court erred in admitting in evidence the contract given in evidence -
- 2nd - The Court erred in admitting each part of plaintiffs evidence
- 3^d - The Court erred in giving each of the instructions given to the jury
- 4 - The Court erred in refusing the instructions asked by defendant and refused by the Court -
5. The Court erred in refusing each of said instructions respectively

6th The Court erred in rendering
judgment for the plaintiff -

J. L. Dickey atty
for appellant.

State of Illinois } Pleas before the Honorable Edwin
Sasalle County } S. S. Sabad Presiding Judge of the
North Judicial District of the State
of Illinois at a Circuit Court Commenced and hold
in and for the County of Sasalle at the Court House in
Ottawa in said County on Monday the 9th day of
May in the year of our Lord One thousand eight
hundred and fifty three

Present

The Honorable Edwin S. Sabad Presiding Judge
Chas Lindley Clerk
W. H. S. Wallace State Atty.
Richard Thorne Sheriff

On the 16th day of March 1883 a process was filed in the
office of the Clerk of the Circuit Court of said County in
the words and figures following viz:

"State of Illinois Sasalle County } In the Circuit
Court To Wm term 1883 - Charles Pearson vs David
S. Wenzel - I Surpass on the case upon promises Damages
\$3000. - Return Summons returnable to me & term
March 15. 1883

Chamman & Taylor Plffs Attorneys
to Chas Lindley Esq Clerk"

And on the same day a summons was issued in the
words and figures following to wit:

"State of Illinois } The People of the State of Illinois vs
Sasalle County } The Sheriff of said County Executing
We command you that you summon
David S. Wenzel 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 Ottawa in said County on the ninth
day of May next to answer with Erastus Pearson in a plea
of trespass on the case upon promises to the damage of the
said plaintiff as he says in the sum of Three thousand
dollars and have for them and there this writ with an
endowment therein in what manner you direct the
same. Witness Myself Clerk of said Court
and the Seal thereof at Ottawa this 16th day of
March Ann Domini 1833
"Clerk".

Which summons was returned and filed in said Clerk's
Office on the 16th day of April 1833 with the following endorsement
thereon made by the Sheriff viz:

"Served this summons of
reading the same to the within named David S. Hough
March 25th 1833. C. Thom Sheriff"
"Served at 10 - 15 miles 75 = \$ 1.35"

On the 28th day of March 1833 the plaintiff filed his
declaration in the words and figures following (the amendments
to said declaration having been made May 8th 1834) to wit:

State of Illinois } LaSalle County and circuit court
LaSalle County } thereof to the May term 1853.

Erastus Pearson by Schumacher & Taylor
his attorneys, complains of David S. Hough in a plea
of trespass on the case upon promises.

For that whereas
heretofore to wit. on the nineteenth day of October
A.D. 1850. at LaSalle in said County the said

plaintiff at the special instance did request of the said defendant, bargained for and agreed to buy of and from the said defendant a large quantity to wit: Fifteen thousand bushels of Corn upon the following terms, that is to say that the said corn should be good Merchantable corn and of the weight of Fifty six pounds to the bushel and should be delivered to the said plaintiff on board Canal Boat at the City of Chicago between the twentieth day of May A.D. 1851. and the twentieth day of July A.D. 1851, and that the said plaintiff should pay the said defendant for the said corn at such times as the same should be delivered at and after the rate of thirty cents per bushel, for each and every bushel thereof, and the said plaintiff also agreed with said defendant to allow him the said defendant to draw upon him said plaintiff at any time after the first day of February A.D. 1851, for such sum or sums of money as he said defendant should desire, provided that such sum or sums of money should not exceed in amount an amount equal to ten cents per bushel for the amount of corn which said Plaintiff might have purchased at the time of making such draft as aforesaid.

And the said plaintiff also agreed with said defendant to pay at one days sight any draft which might be drawn on him said plaintiff by said defendant as aforesaid.

And thereupon in consideration of the premises and also in consideration that the said plaintiff at the like special instance and request of the said defendant, had then and there undertaken and promised the said defendant to accept a delivery of the said corn in Chicago on Board Canal Boat

and to pay the said defendant for the same at the rate in that behalf aforesaid, the said defendant on the said 19th day of October A.D. 1851. at the county aforesaid undertook and then and there faithfully promised the said plaintiff that the said defendant would between the twentieth day of May A.D. 1851. and the twentieth day of July Eighteen hundred and fifty one deliver to the said plaintiff on Board launch Boat at the City of Chicago the said quantity of corn of such weight as aforesaid. and although the said twentieth day of July 1851 has long since elapsed and the said plaintiff was during that time & until the commencement of this action ready and willing to have accepted a delivery of such corn as aforesaid & to have paid the said defendant for the same at the rate in that behalf aforesaid, to wit at the place aforesaid, whereof the said defendant ^{then} had notice - Yet the said defendant not regarding his said promise and undertaking did not nor would (though often requested so to do) between the said twentieth day of May 1851. and the said twentieth day of July 1851. or at any time since deliver to said plaintiff in manner aforesaid or otherwise the said quantity of corn of such weight as aforesaid. or any other corn whatsoever but on the contrary thereof the said defendant has hitherto wholly refused and still refuses so to do. By means whereof the said plaintiff hath been deprived of sundry great gains and profits which he might and would otherwise have acquired to himself by reselling the said corn at much higher and advanced prices to wit at the place & aforesaid. To the plaintiffs damage Three thousand Dollars and there-

For he sees.

Chumason & Taylor.
Plffs Attys

Copy of contract declared on

This agreement made and entered into this Nineteenth day of October A.D. 1850 Eighteen Hundred and Fifty, by and between David T. Hough, of LaSalle, LaSalle County Illinois and Erastus Rawson of Chicago Cook County Illinois, Witnesseseth, That said Hough for and in consideration of the agreement hereinafter made by said Rawson has agreed and does hereby agree with said Rawson to deliver to him the said Rawson on board Canal Boat at said City of Chicago between the 20th day of May A.D. 1851, and the 20th day of July A.D. 1851 Fifteen Thousand bushels of good merchantable corn at the rate of Thirty cents per bushel.

And the said Rawson for and in consideration of the agreement above made by said Hough does hereby agree with said Hough, to pay him the said Hough for any and all of said corn at such times as the same shall be delivered as above, at the rate of thirty cents per bushel of 56 pounds. And the said Rawson does hereby further agree with said Hough to allow him the said Hough to draw upon him the said Rawson at any time after the first day of February A.D. 1851 for such sum or sums of Money as he the said Hough may desire, provided always said sum or sums of money shall not exceed in amount an amount equal to ten cents per bushel for the amount of corn which said Hough may have purchased at the time

of making any such draft as aforesaid.

And the said Rawson does hereby agree with said Hough to pay at one days Notice right any draft which may be drawn on him the said Rawson by said Hough as aforesaid. In Witness whereof the said Hough & Rawson have herunto set their hands the day and year first above written

Signed D. L. Hough,
Signed Erastus Rawson
By H. N. Lease Agent."

On the Eleventh day of May 1833 the defendant filed his demurrer to plaintiff's declaration in the words and figures following viz:

"Erastus Rawson vs David L. Hough
Sasalle County Circuit Court May term 1833 -
Assumpsit - Demurrer to Ver - And now comes the said defendant & as to the declaration of the above named plaintiff demurs & says that the declaration & the matters therein contained as therein stated are not sufficient in law for the plaintiff to maintain his action aforesaid. Wherefore he prays judgment.
David L. Hough
Def."

And afterwards to wit: on Tuesday December 6th 1833 the same being one of the days of the November term of said Court for the year 1833 the following order of Court was entered of record in said cause viz:

"Erastus Rawson vs David L. Hough - Assumpsit -
This day comes the plaintiff of Chumaw & Taylor his

attorneys and the defendant of Dickey & Wallace his
attorneys and after hearing the arguments of counsel
the Court do sustain defendant's demurrer to plaintiff's
declaration."

And afterwards, to wit, on Wednesday December 7th 1833
the same being one of the days of said November term
for said year 1833 the following further order was entered
second in said occurring:

"Erastus Rawson vs David L. Hough - Assumpsit -
On motion of plaintiff by Chambers & Taylor his attorneys
it is ordered that they here leave to amend their declaration
filed herein."

On the 10th day of May 1834 the defendant filed his
plea to plaintiff's declaration in the words and figures following
to wit:

And now comes the said defendant, David L.
Hough, by F. S. Dickey, his Attorney, and says that the
he did not promise and undertake in manner and
form as said plaintiff, Erastus Rawson, hath in
and by his said declaration in that behalf alleged,
and of this he puts himself upon the country.

Dickey for Def.

And for a further plea in this behalf said defendant
says that the agreement & promise supposed, and
mentioned in said declaration is and was in
writing, and is and was in the words and figures
following, viz:

This agreement made and entered

into this nineteenth day of October A.D. 1850. Eighteen hundred and fifty. by and between David S. Hough of LaSalle. LaSalle County, Illinois, and Erastus Rawson of Chicago Cook County Illinois. Witnesses - That said Hough for and in consideration of the agreement hereinafter made by said Rawson, has agreed and does hereby agree with said Rawson, to deliver to him the said Rawson on Board Canal Boat at said City of Chicago between the 20th day of May A.D. 1851, and the 20th day of July A.D. 1851, Fifteen thousand bushels of good Merchantable corn, at the rate of thirty cents per bushel.

And the said Rawson for and in consideration of the agreement above made by said Hough, does hereby agree with said Hough, to pay him the said Hough for any and all of said corn at such times as the same shall be delivered as above, at the rate of thirty cents per bushel of 56 pounds ~~delivered as above~~. And the said Rawson does hereby further agree with said Hough to allow him the said Hough, to draw upon him the said Rawson at any time after the First day of February A.D. 1851, for such sum or sums of money as he the said Hough may desire, provided always, said sum or sums of money shall not exceed in amount, an amount equal to ten cents per bushel for the amount of corn which said Hough may have purchased at the time of making any such draft as aforesaid. And the said Rawson does hereby agree with said Hough to pay at one days sight, any draft which may be drawn on him the said Rawson by said Hough, as aforesaid. In Witness whereof, the said Hough & Rawson have hereunto set their hands the day and year first above written.

"I. V. Hough.
Erastus Rawson
By H. S. Pease agent."

And defendant avers that at and before the making of said instrument in writing - One William Martin had been and was the agent of said defendant - touching the sale and delivery of leorn by defendant with any person or persons. he said Martin might deem it expedient to contract with and upon such terms as he said Martin might deem judicious - and that at and before the making of said writing the said Erastus Rawson by his agent H. S. Pease falsely and fraudulently represented to said defendant that said William Martin as the agent of said defendant and in his said defendants behalf - had made with said H. S. Pease as the agent of said Rawson a bargain in substance and effect as set out in said writing. when in truth and in fact said William Martin had not (as thus falsely represented) made such bargain - but in truth and in fact said Martin, as the agent and in behalf of said defendant, had contracted with said plaintiff thru their agent, H. S. Pease, in substance the same as said writing would show if the words "of 50 pounds" were stricken out of said writing, and thereupon said defendant relying upon the supposed truth of the representations aforesaid - and not having it in his power, without great inconvenience, to consult said Martin ^{in that behalf} and believing said representations to be true, on the faith thereof made said agreement and promise and not otherwise

with full authority from this effort to make such contracts and agreements for and in behalf of said defendant

And plaintiff avers that said Pease well knew said representation to be false at the time of the making of said agreement in writing. Wherefore defendant says that said promise and agreement was fraudulent, and as against this defendant vouches, all which he is ready to verify wherefore he prays judgment &c.

"Dickey for deft."

On the 18th day of May 1854 the plaintiff files his replication to defendant's 1st plea and his demurrer to defendant's 2^d plea in the words and figures following viz:

"Sabbath Circuit Court May Term 1854
Eustis Pease vs David S. Mough - Assumpsit - And now comes the said Pease by Chumarsen & Taylor his attorney and as to the plea of the defendant by him severally above pleaded and whereof he hath put himself upon the Country with the like."

"And as to the plea of the defendant of him severally above pleaded, the said plaintiff says that said plea is insufficient in law, and for cause states

1st Said second plea amounts to the general issue only & the matters in said second plea stated, do not amount to a defence whereof the plaintiff prays judgment &c.

Chumarsen & Taylor plffs Attorneys"

"Dett joins in demurrer"

"Dickey for D"

And again afterwards to wit: on Monday May 22^d 1854 the same being one of the days of the May term of said Court for said year the following further order was entered of record in said Court viz:

"Erastus Ransom vs David S. Hough - Assumpsit
This day comes the plaintiff by Chummar & Taylor his
attorneys and the defendants by Dickey, Wallace & Eastman
his attorneys and after hearing the arguments of counsel
the Court overrules plaintiffs demurrers to defendants
Second plea"

On Thursday November 16th 1854 the same being
one of the days of the November term said Court for said
year the following order was entered & read in said
Court viz:

"Erastus Ransom vs David S. Hough - Assumpsit.
This day the plaintiff comes by Chummar his attorney
and of leave of the Court files his replication to defendants
Second plea. Thereupon the defendant by Dickey &
Wallace his attorneys files his demurrers to plaintiffs
replication to defendants Second plea; And after hearing the
arguments of counsel the Court sustains said demurrers.
And now plaintiffs attorney takes leave of the Court to
file an amended replication herein."

Plaintiffs replication to defendants 2^d plea is in the
words and figures following to wit:

"Erastus Ransom vs David S. Hough - And for
replication to the 2^d plea of Deft. Above pleaded Plff.
says preclude now because he says that the
contract made between the parties as alleged in
said declaration was as the same is so alleged and
as the same is set out in said writing And not
other or different And of this he puts himself
upon the Country &c

Chummar & Taylor Plffs attys"

The defendants demurred last above referred to is
in the words and figures following to wit:

"And the plaintiffs said replication to depts 2nd plea
defendant doth demur & says that he is not bound by
him to join the issue thereby tendered & this he is
wedy to verify wherefore he prays judgment &c

Dickey for Deft"

"Plff joins in demurrer

W. Charners"

On the 17th day of November 1834 the plaintiff filed his
amended replication in words and figures following to wit:

"Parson is Hough - And the plaintiff for
replication says precludi non because he says that he
did not by his agent W. R. Pease represent to said
defendant that said William Martin as the agent
of defendant and in defendants behalf had made
a bargain in substance and effect as set out in
said writing - But he avers that said Pease as his
agent made the said contract with the said defendant
as set out in said writing declared on and of this
he puts himself upon the country &c

Charners & Taylor Plffs Atty"

"And defendant doth the like"

Dickey for Deft"

And afterwards to wit on Tuesday November 21st 1834
the term being one of the days of the November term of said
Court for the year 1834 the following order was entered of
record in said cause viz:

"Erastus Ransom vs David S. Hough - Assumpsit
On motion of the plaintiff by Chumarsen his attorney
it is ordered that this cause be continued at
plaintiffs costs to be taxed."

And again afterwards to wit: on Tuesday May 22nd
1835. the term being one of the days of the May term
of said Court for the year 1835 the following further
proceedings were had in said cause viz:

Erastus Ransom 2
vs 3 On Assumpsit
David S. Hough 3

The parties again appear
the plaintiff by Chumarsen his attorney and the defendant
in person and by Dicker his attorney. Thereupon a
jury to wit: Samuel Lewis, George R. Belford, Edward
Hollands, James Beardsley, John Koffle, William
Simmons, William Mc Cormick, Calvin Eells, Henry
S. Smith, William H. Brown, Edward C. Williams and
E. W. Curtis good and lawful men, are duly impaneled
and sworn well and truly to try the issue joined &c
The jury upon their oaths say We the jury find that
the said defendant did assume and promise in
manner and form as said plaintiff hath in his
declaration alleged, and we assess the plaintiffs
damages by reason of the premises to the sum of
three hundred dollars

And again afterwards to wit: on Wednesday May 23rd
1835 the term being also one of the days of said May
term for said year 1835 the following final proceedings
were had in said cause to wit:

Erastus Ransom

vs

Assumpsit

David S. Hough } The parties again appear as they
 did yesterday, and in view of the
 judgment should not be rendered on the verdict of the
 jury being assigned. It is considered that the said
 Erastus Ransom recover of the said David S. Hough the
 said sum of three hundred dollars, his damages
 assessed by the jury as aforesaid and also his costs in
 this suit expended to be taxed, and he may have
 execution therefor. — The defendant procs an appeal
 to the Supreme Court, and it is allowed upon
 condition that he shall within twenty days file with
 the clerk of this Court an appeal bond, conditioned
 as required by the Statute, in the sum of five hundred
 dollars with George W. Bassett as surety.

On the 7th day of June 1855 the Court being one of the
 days of the said May term of said Court for the year 1855
 the defendant filed his first bill of exceptions in this cause
 in the words and figures following to wit,

State of Illinois

Sadale County } and circuit court thereof at the May
 term A.D. 1855.

Erastus Ransom

vs

Assumpsit

David S. Hough

Be it remembered that on the trial
 of this cause plaintiff offered in evidence a writing in
 the words and figures following to wit,

This agreement made
 and entered into this nineteenth day of October A.D.

1st
(1855) Eighteen hundred and fifty. By and between David
G. Hough, of LaSalle, Wasalle county Illinois, and
Erastus Rawson of Chicago Cook County Illinois,
Witnesseth that said Hough for and in consideration
of the agreement hereinafter made with said Rawson
has agreed and does hereby agree with said Rawson to
deliver to him, the said Rawson, on Board Canal Boat
at said City of Chicago, between the 20th day of May A.D.
1857, and the 20th day of July A.D. 1857, fifteen thousand
bushels of good merchantable corn at the rate of thirty cents
per bushel. And the said Rawson for and in consideration
of the agreement above made by said Hough does hereby
agree with said Hough to pay him, the said Hough for any
and all of said corn at such times as the same shall be
delivered as above at the rate of thirty cents per bushel of
56 pounds, and the said Rawson does hereby further agree
with said Hough to allow him the said Hough, to draw
upon him the said Rawson at any time after the first
day of February A.D. 1857, for such sum or sums of money
as he, the said Hough may desire, provided said sum or
sums of money shall not exceed in amount, an amount
equal to ten cents per bushel for the amount of corn which
said Hough may have purchased at the time of making
any such draft as aforesaid.

And the said Rawson does hereby agree
with said Hough to pay at one days sight any draft which
may be drawn on him, the said Rawson by said
Hough as aforesaid.

In Witness whereof they have hereunto set their hands
(the said Hough and Rawson) the day and year first
above written.

" Erastus Rawson

By H. N. Pease agent
D. G. Hough, "

To which defendant objected upon the ground that there appeared to be a variance between the contract produced and the one described in the declaration. And also upon the ground that it varied from the copy filed with the declaration, as a copy of the instrument sued on and showed to the court the copy filed with the declaration as a copy of the one declared on, which copy was in the words and figures following - viz - This agreement made and entered into this nineteenth day of October A.D. 1850 Eighteen hundred and fifty, by and between David, S. Hough of LaSalle. LaSalle county, Illinois, and Erasmus Hanson of Chicago Cook county, Illinois, Witnesseth that said Hough for and in consideration of the agreement hereinafter made by said Hanson, has agreed and does hereby agree with said Hanson to deliver to him the said Hanson on Board Canal Boat at said city of Chicago, between the 20th day of May A.D. 1851, and the 20th day of July A.D. 1851, Fifteen thousand bushels of good merchantable corn, at the rate of thirty cents per bushel. And the said Hanson for and in consideration of the agreement above made by said Hough, does hereby agree with said Hough to pay ~~the said~~ to him the said Hough for any and all of said corn, at such times as the same shall be delivered, as above, at the rate of thirty cents per bushel of 56 pounds.

And the said Hanson does hereby further agree with said Hough to allow him the said Hough to draw upon him the said Hanson at any time after the first day of February A.D. 1851, for such sum or sums of money as he the said Hough may desire, provided always said sum or sums of money shall not exceed in amount an amount equal to ten cents per bushel for the amount of corn, which said Hough may have purchased at

the time of making any such draft as aforesaid.

And the said Ransom does hereby agree with said Hough to pay at one day's sight any draft which may be drawn on him the said Ransom by said Hough as aforesaid.

In Witness Whereof the said Hough & Ransom have hereunto set their hands the day and year first above written.

Signed J. J. Hough.

Signed Erastus Ransom

By W. N. Pease Agent.

Which objections of defendant were overruled by the court, and said contract so offered by plaintiff was permitted by the court to be read in evidence in the cause and was so read by plaintiff to the jury. To which decision of the court, in overruling each of said objections, and permitting said paper to be read in evidence, defendant excepted when the same was made, and at his request this bill of exceptions was then and there signed sealed and made a part of the record.

Edwin S. Seland ^{seem} Seal
Circuit Judge.

And afterwards to wit: on the 7th day of Jan 1855 the defendant filed his Bill of Exceptions in the words and figures following viz:

State of Illinois

Sabell County and circuit court thereof at the May term thereof A. D. 1855.

Erastus Rawson }
 vs } Action of Assumpsit
 David S. Hough }

Be it remembered that on the trial of said cause at the term aforesaid plaintiff having read in evidence to the jury a contract between the parties. (a copy of which contract is set out in a bill of exceptions already taken in this cause by defendant) then introduced as a witness to sustain the issue on his part, John Aker, who testified that he had followed the business of purchasing grain for a number of years in Chicago - that he was engaged in the employment of Plaintiff during the summer of 1851, as book Keeper, and assisted and was present at the purchase of corn for plaintiff in Chicago - that he was present when an agent of plaintiff purchased a Canal Boat load of corn which was somewhat damaged at the rate of twenty eight cents per bushel - that this purchase was before the 30th of July 1851. and witness thought on the 18th July, that some few days after the 30th of July 1851. and between that time and the 30th of July plaintiff bought another boat load of corn which was somewhat damaged and paid for it at the rate of 30 cents per bushel - that witness is and was acquainted with the difference in actual value between the damaged and merchantable corn, and that the difference in value in the opinion of the witness was from five to seven cents per bushel that plaintiff was loading a vessel with corn for Buffalo at the time of said purchase and that the corn aforesaid was bought for the purpose of helping to make out the cargo.

The plaintiff also introduced Henry F. Eames, as a witness who testified that he was a dealer in

grain in the city of Ottawa in the summer of 1851, that about the 18th or 20th of July, ¹⁸⁵¹ he shipped corn to Chicago for sale and that said corn so shipped by him was sold in Chicago for 35 cents per bushel and that he received that price on said sale. On cross examination said Barnes stated that his knowledge of the sale spoken of by him was derived from letters received from his correspondents in Chicago - that the cargo of corn so shipped by him was not sold by him personally but by such correspondents and that except by reference to his files of correspondence and books of entry he should have no distinct recollection of the transaction testified to by him - Witness Barnes also stated that 35 cents was the whole price for which said corn was sold and that out of that charges and commissions of sale were to be deducted.

The above (with the contract aforesaid) was all the evidence in the case.

After the close of the testimony the court at the request of the plaintiff instructed the jury as follows - that is to say,

Parson }
vs } Plaintiffs Instructions
Hough }

1st The court if asked to instruct the jury that if they believe from the evidence that the defendant contracted with plaintiff to deliver to him in Chicago 15000 bushels of corn that he was bound to offer to deliver the same in accordance with the terms of the contract, or pay the damage occasioned by the non-performance,

20
9th That if it is incumbent on the defendant under such a contract to show an offer of performance or some sufficient excuse for non performance on his part, to excuse himself from liability to pay damages.

3rd If the defendant has not shown such offer of performance or excuse for non-performance then the jury must find for the plaintiff, that is if there is a contract as stated in the 1st instruction.

4th If the jury find for the plaintiff, they will render a verdict in his favor for the difference between the price of said corn as established by the contract & the value at the time it should have been delivered at the place of delivery, to wit - on the canal boat in the city of Chicago.

To each of which instructions when presented by plaintiff, defendant by his counsel objected but the court overruled the objections, and gave the instructions to each of which decisions of the court in overruling the objections of defendant and in giving each of said instructions the defendant then and there excepted.

Defendant by his counsel then asked the court to give the following instructions to the jury, viz:

1 The court is requested to instruct the jury, That in passing upon all the matters submitted to them they will disregard all testimony which has been given in their hearing which is stated by the witnesses to have been derived from the statements of others or from letters from other persons.

Given

Given

They will also disregard all Statements made by witnesses derived from entries in books and which the witnesses do not remember - aside from the fact that it is so entered -

3

Refused

That unless the plaintiff has proved that he was ready to pay for the corn at the place of delivery he can not recover.

11

Refused

That unless he has proven a readiness on his part to perform his part of the contract he can not recover

5 Refused.

That it is equally necessary that plaintiff should prove an offer on his part to perform.

6

Refused.

That contracts made by plaintiff Rawson, for a few particular loads of corn in Chicago, on or about the 20th day of July A.D. 1857, and the price paid by him, are not to be considered by him as establishing the price of corn in Chicago at such date.

The court gave said instructions numbered one &c respectively, and refused to give said instructions numbered 3, 4, 5 & 6 respectively, and wrote the word "refused" in the margin of each of said instructions numbered 3, 4, 5 & 6, as shown above. To which decisions of the court in refusing each of said instructions numbered, 3, 4, 5 & 6, so asked by defendant the defendant by his counsel then & there excepted - Defendant also asked the court to give the following instructions to the jury, viz:

"That contracts made by plaintiff Rawson for a few
" particular loads of corn in Chicago on or about the 20th
" day of July A.D. 1851, and the prices paid by him are
" not to be considered as establishing the price of corn
" in Chicago at such date" which instruction the
court refused to give, and to the decision of the
court in refusing to give said last mentioned
instruction, the defendant by his counsel then and
there excepted, and defendant then and there tendered
this his bill of exceptions and prayed that the same
might be signed and sealed, and made a part of
the record, which is done in open court.

Edwin S. Heland 
Judge sc.

And afterwards to wit: on said 7th day of
June 1855, the defendant filed in the office of the
Clerk of said Court his appeal bond in the words
and figures following to wit:

Know all men by these
presents that we David S. Hough as principal and
George W. Bassett as surety - both of Sabalee county
and State of Illinois, are held and firmly bound
unto Erastus Rawson of Chicago in said State, in
the penal sum of five hundred dollars, good and
lawful money, to the payment of which sum,
well and truly to be made we do bind ourselves, our
heirs executors, and administrators jointly and sever-
ally, firmly by these presents. Witness our hands and
seals this sixth day of June A.D. 1855.

The condition of the
above obligation is such that whereas the above
named Erastus Rawson on the day of May A.D.

1855. at the May term of the Circuit court in and for
said county of LaSalle and State of Illinois A.D. 1855.
by the consideration and judgment of said court did
recover against the above bounden, David S. Hough
a judgment for the sum of three Hundred Dollars
damages, besides costs - and whereas said Hough did
then and there pray an appeal in said cause, to the
Supreme court of said State, and said appeal was
allowed by said court upon condition that said Hough
should within twenty days from the rendering of
said judgment, enter into a bond in the penal sum
of five hundred dollars, with George W. Bassett as
surety, conditioned as the law directs - Now therefore
if the said David S. Hough, shall well and truly
pay said judgment, costs and damages and interest
thereon in case said judgment shall be affirmed
by the said Supreme court - and shall duly pro-
secute said appeal, then the above obligation shall
be void, otherwise to be and remain of Force.

David S. Hough 
Geo. W. Bassett 

State of Illinois } I John A. Cook Clerk of the Circuit
LaSalle County } Court in and for said County and
State do hereby certify that the above &
foregoing comprises a true, full, perfect and complete record
in the case of Erastus Rawn vs David S. Hough as appears
from the files and records in my office
In Testimony Whereof I have hereunto set my
hand and the Seal of said Court at Ottawa this 6th
day of June A.D. 1856
J. A. Cook Clerk

95
David L. Hough

to
Erastus Ransom

Authenticated Copy of Record

Filed June 18. 1856
L. Leland
Clerk

Here for other record \$6.00
paid by D. L. Hough
J. F. Nash
\$6.00

Supreme Court - In the Term 1856
Now on ~~the~~ appeal

ad
Hough vs. Error and now comes
the said ~~appeal~~ Now on by Chinnors
& Elouffe his attys & says there is no
Error in the Record & proceedings
aforesaid or in fixing judgment
aforesaid

Chinnors & Elouffe
attys for appeal

Sup Court

Return

appellate

ad

Honorable

Appellate

order in case

No 95

Filed June 18, 1886

Le Leland

Clerk

Chambers & Eldridge
attys for appellate

95
David L. Hough
Erastus Rawson

95

12283

1856

X