

Fifth, That he did board Campbell, according to the covenant.

Sixth, That he did find any pay a hand to assist in framing and planking the mill; and,

Seventh, That he did find hands to assist in raising the mill.

To the four last pleas, which concluded to the country, Campbell joined issue. To the first, second, and third, he filed replications, specially denying in terms the allegations of each, concluding to the country; and to each of these replications the defendant Manuel joined issue.

At the March Term, 1840, the case was tried, on these issues, by a jury, who found for Campbell \$70, for which judgment was rendered. The bill of exceptions sets out all the evidence in the case, which is as follows:

Jones, witness for Campbell, stated that, in the spring of 1836, Manuel came to him and told him that Campbell had engaged to build a mill for him, and had not done it; that they had agreed that Campbell should quit, and leave it to Stephen Cotter and *Jones* what Manuel should pay him. Cotter and himself then examined the mill. Manuel said he wanted them to make a final settlement between him and Campbell. That two receipts, one for \$80 and the other \$15, were produced, and admitted by Campbell to be correct; and Campbell refused to admit certain accounts which Manuel had against him. They awarded that Manuel should pay Campbell \$90. The lower works of the mill were under water, so that they could not see them. The upper works did not look well. Thought they had been put together when the timber was green. Manuel had before told him that the frame was good, or would answer; but it was not good. Did not see any good work about the mill. The running gear was bad, and he did not consider the work to have been done in a workmanlike manner. Manuel said the mill had been put in according to his directions, but that Campbell had not done the planking faithfully.

Stephen Cotter stated the same. He said that he understood that the award was to be final, and that it was on that account Campbell quit working at the mill. That the work was very indifferent, and not done in a workmanlike manner; that the running gear was very indifferent, the carriage bad, and the running gear would not carry

on the work to any purpose. That if any body had made the mill, and given it to him, he would not have had it. That he has had experience in such matters, and a man would lose money in running such a mill.

Felix G. Peyton stated that, in March or April, 1836, Campbell sent word by him to Manuel, that he wanted to finish the mill, and wished him to get the materials. He delivered the message, and Manuel said that Campbell had not done the work to suit him, (or, as he wanted it), and should not finish it; that Campbell was a damned rascal, and he would get the materials when he got ready. That Manuel once told him that his mill had braces enough in the frame, and that the flutter wheel, which he had been compelled to have made of unseasoned timber, answered very well, and was the only thing about the mill which did him any service. Had seen Manuel seasoning some timber, obtained from Danner's mill, with which, he said, he was obliged to put up, because he had been unable to get seasoned timber.

James Mills stated, that he was at Manuel's when Campbell was making the rag wheel and told Manuel that he would not have it made of unseasoned timber. Manuel said that he could not help it; that he had got it from Danner's mill, and had been seasoning it three or four days, and that the wheel would do till he could get the mill going, and saw timber himself for another. Manuel said, a day or two before the arbitration, that Campbell was not at work at his mill; that he was a damned rascal, and should have nothing more to do with it. Manuel told him that he had to have his wheel and running gear made out of the best timber he could get. Was at the mill a week or ten days after she started, and Manuel said she cut as fast as Fisher's mill, and seemed satisfied with her.

That was all the evidence on the part of the plaintiff below. On the part of the defendant, George Brodie stated, that he was employed by Manuel to build a grist-mill; and being himself a millwright, he frequently examined the sam-mill spoken of, repaired it, and instructed Manuel how to have it repaired. It was a very poor mill. The frame was pretty good, but as to the running works, he would rather have had the timber of which they were made. The de-

JOHN MANUEL *against* WILLIAM G. CAMPBELL.ERROR to *Pulaski Circuit Court.*

The rules for the construction of conditions in covenants, laid down by Sergeant Williams, in his note to *Pordage vs. Cole*, recognized and applied.

Where, by articles of agreement between C. and M., C. covenanted, in consideration of the sum of money and other considerations after mentioned, to build a saw-mill for M., and do all the work necessary to put it in full operation, without unnecessary delay, to the best of his knowledge, skill, and ability; and that he would not, during the time, absent himself, or do any work for any other person, without the consent of M.; and M. agreed to pay \$260 immediately on the completion of the work; the building of the mill is a condition precedent to the payment.

The further covenants of M. to board C. during the work, to find and pay a hand to assist in framing and planking, and to find hands to assist in raising the mill, are concurrent and dependent covenants.

The fact that a party remains in possession of a mill built for him on his own land, does not prove an acceptance of the work; for he could not divest himself of it, without surrendering a portion of his freehold.

In an action by C. upon such covenant as is stated above, in which he charges M. with a refusal to board him, &c., he must show that, up to the time of such refusal, he had himself complied with every thing which on his part he had promised to do.

Upon doing that, he could claim the stipulated price; for M. being in such case in fault, would be compelled to conform to the covenant, and pay the price.

In an action of covenant on such an instrument, in case it is ascertained that the work was done in a workmanlike manner, or in the manner specified in the contract, C. can recover nothing for the actual or reasonable value of his labor. He must recover on the covenant, or not at all.

The parties have made the contract the law by which they are to be governed, and have fixed the criterion of damages to which C. is entitled; and a jury cannot annul the contract, by giving damages commensurate with the labor.

This is not so in the cases where contracts have been enlarged, changed, or rescinded, by mutual consent, or where extra work has been done, in which cases the party may claim a reasonable compensation, or a *quantum meruit*, in assumpsit.

Where a mechanic contracts to do work to the best of his knowledge, skill, and ability, the obligation is imposed on him to do it in a workmanlike manner. The offer to do the work, pre-supposes the capacity.

Every award should be so plainly expressed, that there may be no uncertainty in what manner and when the parties may put it into execution, but that they may certainly know what it is they are to do. An uncertain award is useless.

Campbell complained of Manuel, in covenant. The conditions of the covenant sued on, as set out in the declaration, were, that *Campbell* agreed that he would, as soon as could reasonably be done, frame and build for *Manuel* a saw-mill, with all the appurtenances and machinery necessary and requisite to the full operation of said saw-mill, near the dwelling-house of Manuel; and would well and truly do and perform all the work of said mill, requisite to putting the same in full operation, without unnecessary delay, and to the

best of his knowledge, skill, and ability; that he would not, during the time of building said mill, at any time, absent himself from building the same, or do any other work for any other person or persons in his trade, without the consent of Manuel. And Manuel covenanted to pay Campbell two hundred and sixty dollars in money, immediately on the completion of the mill; to board him during the time of his employment; to feed and pay one hand to assist in framing and planking the mill, and to find hands to assist in raising it.

The declaration then alleged that Campbell had performed and kept every portion of the covenant on his part; and assigned as breaches, that Manuel did not feed and pay a hand to assist in framing and planking the mill, or find hands to assist in raising it, although Campbell commenced and continued to frame and build the mill specially as stated in the covenant, until he was hindered and obstructed by Manuel, and to find hands, &c.; that Campbell did not absent himself, or work for any other person, without the consent of Manuel, but was always ready, and offered to perform all his covenants; that Manuel has failed to pay the sum of \$260 agreed on, or the penal sum or five hundred dollars, &c.

To this declaration Manuel pleaded several pleas:

First, That Campbell did absent himself for ten days, without Manuel's consent, and during that time refused to do any work.

Second, That Campbell did not frame and build the mill, with all apparatus and machinery necessary and requisite to its full operation, or well and truly do and perform all the work of the mill, necessary and requisite to put the same in full operation, without unnecessary delay, and to the best of his knowledge, skill and ability, until he was hindered and obstructed by Manuel, but refused to do it, and to complete and finish it.

Third, That Campbell did not do or perform all or any of the work of said mill, requisite to putting the same in full operation, according to the best of his skill, knowledge, and ability; but so negligently and unskilfully did said work, and in so unworkmanlike a manner, that it was entirely useless and worthless.

Fourth, That Manuel had paid the whole sum of \$260.