

and accepted by the complainant, who set about making the necessary repairs, but in such an insufficient manner were said repairs made, that defendant sustained great loss by reason of the freezing of oysters placed upon said premises. That at the time this contract was made, it was believed by both parties thereto, that the amount of shells would far exceed the monied rent agreed to be paid. That this contract was continued from its formation until the summer of 1848, when respondent wishing to enlarge his business, made propositions to the plaintiff, that if he, the plaintiff, would make certain specified additional repairs, he, the defendant, would increase the rent to \$25 per month, with the same privilege of taking all the shells made upon the premises, at 2½ cents per bushel. That the plaintiff accepted this proposition, and thereupon commenced the required repairs, but failed to complete the same, and respondent was forced to go on and finish them at his own expense.

The answer then states, that some time in November, 1849, respondent presented a bill to plaintiffs for the shells so taken away by him, and demanded a settlement with said plaintiff, when, for the first time, and to the great surprise of defendant, he set up the agreement alleged in his bill of complaint, which respondent then, and has always since, denied. That defendant then instituted the suit at law, to coerce the plaintiff into compliance with the agreement really entered into by them. That at the time the agreement was entered into, both parties believed the amount of shells produced would not be less than 20,000 bushels per year. That the market value of such shells is from 3 to 4 cents per bushel, with a steady demand and increasing value. That at such estimate, the yearly value of the shells, taken by the plaintiff, would amount to the sum of \$700, but that, in fact, the amount of shells made, exceeded 30,000 bushels per annum. The answer then prays for a dissolution of the injunction, and that the parties may be permitted to proceed, at law, to settle their disputes.

The motion to dissolve was entered, and an order passed, setting the cause down for hearing upon five days notice, given to the one party by the other, with leave for either party to