

The bill then states, that in pursuance of this agreement, the plaintiff received and carried away all the shells from the summer and fall of 1848, placed near the premises by the defendant, and has continued to receive them from the defendant up to November, 1849, and never heard the agreement denied till now, when the defendant has refused to deliver the shells to the plaintiff, and has prevented him from taking such shells as are now out on the wharf, under the pretence that no contract was ever made by him with the plaintiff, and has, for the first time, set up another and a very different agreement, whereby the plaintiff would be subjected to great loss. That defendant, in violation of his contract, has, under this new and pretended contract thus set up by him, instituted suit against the plaintiff for the value of the shells he has received, and since the institution of said suit, has taken away a part and will carry off all the shells now on the wharf, which are rightfully the property of the plaintiff.

The bill, therefore, prays for an injunction restraining the defendant from taking or carrying away said shells until the suit at law should be determined, and for a specific performance of his part of said contract, by the defendant, and for further relief.

The injunction prayed for was granted, and on the 15th of the same month the defendant filed his answer, in which he alleges that the contract set up in the bill is untrue, and denies that any such contract ever existed, but avers that the plaintiff, on or about the month of March, 1847, became the purchaser at public sale, of a leasehold interest for the term of three years in the premises in question. That defendant, who was then in possession of the premises, a day or two after said sale, offered to the plaintiff for his unexpired term, a monthly rent of \$20, with the privilege to him, said Allen, to take the shells of all oysters opened on said lot at the rate of 2½ cents per bushel. That this offer was made upon condition that the plaintiff would put and keep the premises in good and sufficient repair to enable the defendant to carry on his business, as a dealer and exporter of oysters. That this offer was agreed to