

11844

No.

Supreme Court of Illinois

Ward.

vs.

Armstrong.

71641  7

*Ward et al.*  
*vs.*  
*Samuel Armstrong*

50

~~Samuel Armstrong~~

*Prepared*

852

Supreme Court of the State  
of Illinois, June Term, 1853, at  
Attana.

Eben B. Ward &  
Samuel Ward, appellants

v.  
Samuel Armstrong, appellee.

And now at this day come the  
said Appellants by Leamm  
& Shumway, their attorneys, and  
say, that in the record and  
proceeding aforesaid, and  
in the rendition of the  
judgment aforesaid, there  
are manifest errors, and  
for special cause of error they  
Assign the following:

1. The Court erred in giving the se-  
cond instruction asked for by the appellee,  
which were given by the Court below.
2. The Court erred in refusing to give  
said second instruction as asked for  
by the appellants, which were refused  
by the Court below, or modified by said  
Court.

3. The Court erred in giving inconsistent instructions, or instructions which were inconsistent with each other.

4. The Court erred in receiving the verdict of said jury on Sunday.

For the errors aforesaid, the said Appellants pray that the judgment of the Court below may be reversed, annulled, and forever held for naught.

Samuel S. Shumway  
Appellants' Attorney.

The appellee, Saml. Armstrong by  
J. H. Arnold his Atty. Comes &  
says, ~~there~~ <sup>as an objection</sup> there are no such  
Errors, nor any errors, in the record  
& proceedings in this case, nor in  
the record or in the judgment  
at the appellee prays for an

affirmance of said facts  
& for costs

J. R. Arnold  
atty for appellee

Was before the Honorable Hugh  
J. Ricey Judge of the seventh jud-  
icial Circuit of the Illinois at a term  
of the Circuit begun and held at  
Court house in the City of Chicago  
in and for the County of Cook  
in said Circuit on the third  
Monday being the nineteenth  
day of November in the year of  
Our Lord One Thousand Eight  
Hundred and forty nine and  
of the Independence of the United  
States the seventy fourth.

Present

The Honor Hugh J. Ricey Judge  
Daniel McIlroy States attorney  
pro tem Isaac Cook Sheriff

Attest L. M. Board Clerk

Be it remembered that on the tenth day of  
October in the year of Our Lord One Thousand  
Eight hundred and forty nine there issued of the  
Circuit Court of said County of Cook the Peoples  
writ of summons which is in words and figures  
as follows to wit,

State of Illinois,  
Cook County, ss

The People of the State of Illinois to the Sheriff of said County, Greeting,  
We command you that you summon E. B. Ward and Samuel Ward if they 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 the City of Chicago in said County on the third Monday of next November to answer unto Samuel Armstrong in a plea of trespass on the case to the damage of the said plaintiff as he says in the sum of three thousand dollars,

Arms.

And have you then and there this writ an endorsement thereon, in what manner you shall have executed the same.

Witness Louis N. Hoard Clerk of our said Court, and the seal thereof, at Chicago in said County, this tenth day of October, A. D. 1849.

L. N. Hoard Clerk

On the back of which said writ appears the following endorsement,

Cook County, ss. I hereby certify that I executed in part by reading the within summons in presence of the within named E. B. Ward

this 10th day of Oct. 1849.

Fees

1 service 44.50

Mileage 100.00

Return 12.00

S. Hard not found

per. 68.00

J. Cook Shff.

J. H. Penning Deputy

And afterwards to wit on the sixth day of November in the year of our Lord one thousand Eight Hundred and forty nine came the said plaintiff by Isaac H. Arnold his attorney and filed in the Office of the Clerk of said Court his declaration in said cause which is in words and figures as follows to wit,

State of Illinois

Cook Circuit Court,

of the November term in the year of our Lord one thousand eight hundred and forty nine.

Cook County ss: Samuel Armstrong plaintiff in this suit by I. H. Arnold his attorney complains of Samuel Hard & E. B. Hard defendants in the suit of a plea of trespass in the case.

nam -

For that whereas the plaintiff before & at the time of the committing of the said grievances by the said defendant as herein after mentioned to wit on the twenty second day of Sept. A.D. 1849

was lawfully possessed in his own right as owner of Schooner called the "Jane" together with her tackle, apparel, furniture & boats of great value, to wit, of the value of seven hundred dollars & she then having on board a cargo of staves of great value to wit, of the value of one hundred & fifty dollars also bed & bedding, clothing, stores & cooking utensils & other property of great value to wit, of the value of three hundred dollars, which said Schooner was then & there navigating Lake Michigan & proceeding southerly towards the port of Chicago, in said County of Cook - And the said defendant was then & there to wit on the twenty second day of September aforesaid to wit in Lake Michigan aforesaid was possessed as owners of a certain Steam Boat called the Saw Hard in Lake Michigan aforesaid & then & there had the care & direction & management thereof of said Steamer yet the said defendant not regarding his duty in that behalf whilst the said Schooner of the said plaintiff so was in Lake Michigan to wit on the twenty second day of September A.D. 1849, to wit south of a point called Milwaukee's point, to wit in Cook County aforesaid they the said defendants took so little & bad care of his said Steam Boat Samuel Hard of which they were then & there owners in the direction & management of the same, that the same by & through the carelessness misdirection & misman-



gement of the said defendants then & there with  
great force & violence ran foul of and struck against  
the said Schooner of the said plaintiff & thereby  
& there truly carried away her fit booms & bows  
prit & broke damaged & injured the same &  
caused her to sink with her cargo & all prop-  
erty on board as above described thereof &  
& became & was a total wreck & lap to him the  
said plaintiff - and whereas the plaintiff before  
& at the time of the committing of the said  
defendants as herein after <sup>next</sup> mentioned was lawfully  
possessed of a certain other Schooner together with  
her apparel & furniture called "Jane" then run-  
ning on Lake Michigan to wit in said County  
of Cook of great to wit of the value of seven hun-  
dred dollars also her cargo of staves of great value to  
wit. the value of two hundred dollars & the said  
defendants were then & there possessed as owners thereof  
of the Steam Boat called the Samuel Ward also then  
there running on Lake Michigan & the said defendants  
then & there had the management care & direction  
thereof yet the said defendants not regarding his duty  
in that behalf heretofore to wit on the twenty <sup>second</sup> day of  
September A.D. 1849. at a place in Lake Michigan south  
of a point known as Milwaukee's point to wit in said  
County of Cook aforesaid took so little & such bad  
care of said Steamer in the direction & management of the  
same that the same by & through the carelessness mis-

management & misdirection of the defendants & there  
sresents then & there ran foul of said Schooner  
carried away her jib boom & bowsprit & so broke  
& injured said Schooner that she immediately  
sunk and became & was a total wreck & her said  
cargo of staves to wit 500,000 Staves of great value  
to wit of the value of two hundred dollars were  
totally destroyed & also then & there four beds & bedding  
of great value to wit of the value of one hundred  
dollars & one cook stove, utensils & furniture of  
of great value to wit of the value of one hundred  
dollars the goods & chattels of the plaintiff  
then & there on board said Schooner were totally  
destroyed to the great damage & injury of the said  
plaintiff.

And whereas also, for that the said plaintiff  
heretofore to wit on the 22<sup>d</sup> day of September A.D.  
1849, on Lake Michigan, to wit, at Chicago in said  
County the plaintiff was possessed of a certain  
Schooner called the "Jane" together with her tackle  
apparel & furniture & boats of great value to wit of  
the value of eight hundred dollars & she then  
having on board divers goods to wit one million of staves  
of the value of two hundred dollars for freight to  
be conveyed to Chicago aforesaid together with her  
furniture of great value to wit of the value  
of three hundred dollars the Schooner goods  
& chattels of the said plaintiff, and whereas the

Said Defendants were then & there possessed of  
as Steam Boat, called the Samuel Ward, & which  
said Steam Boat then & there was navigating  
Lake Michigan, & was then & there proceeding on  
said Lake Michigan in a northerly direction towards  
Milwaukee which the said Schooner of the said  
plaintiff was endeavouring to sail up Lake Mi-  
chigan towards Chicago, yet the Defendants then  
& there being owners of said Steam Boat, were  
knowing the premises to wit on the 22<sup>nd</sup> day  
of September A.D. 1849, at Lake Michigan to  
wit in said County of Cook so negligently,  
carelessly & unskillfully did by themselves and  
servants, manage, conduct & navigate said Steam  
Boat that by such careless negligence &  
want of skill of said Defendants, & their servants  
the said Steam Boat did forcibly and with  
great violence then & there run foul & against  
said Schooner of the plaintiff, & thereby then &  
there so broke and injured said Schooner as to  
cause her to sink & become a total wreck, together  
with her cargo, & furniture - all of which said  
premises is to the damage of said plaintiff of Two  
Thousand dollars therefore he brings Suit &c.

J. W. Arnold  
Atty for Plff.

And afterwards to wit on the twenty eighth  
day of November in the year of our Lord one  
thousand eight, and forty nine came the said  
defendants by Ballingall & Shumway their Att-  
ornies and filed in the Office of the Clerk of  
said Court this declaration in said cause  
which is in words & figures as follows to wit

In Cook Co. Civ Court }  
E. B. Ward impladed }  
with Samuel Ward }  
                  ads }  
Samuel Armstrong }  
                  " }  
                  " }      And the said deft.

Ward by Ballingall & Shumway his attorneys  
comes & defends the wrong & injury when do  
& says that he is not guilty of the said supp-  
osed greivances above laid to his charge or  
any or either of them in manner & form as  
the said plaintiff hath above thereof complained  
against him; And of this the said deft.  
puts himself upon the Country &c

Ballingall & Shumway  
Dfts attys.

And the said plaintiff doth likewise

Arnold & Lay Pls Atty.

And afterwards to wit on the tenth day of  
May in the year of our Lord one thousand

Ren

eight hundred and fifty it being one of  
the days of the May term of said Circuit Court  
in the year aforesaid the following among other  
proceedings were had to wit.

Samuel Armstrong )  
v ) Case  
E. B. & Samuel Mui )

And now at this day came  
the parties again by their attorneys and the court  
having heard the arguments of Counsel on the  
motion entered in this cause at a former day of  
this term and rule for the said defendant to show  
cause why a security for costs should not be filed  
in this cause it is ordered that the said motion be  
overruled and the said rule discharged.

And thereupon the issue being joined between  
the parties it is ordered that a Jury come thereupon  
to try the issue joined as aforesaid come the jurors  
of a jury of good and lawful men to wit.

Arthur Hitchcock	William Owen
John D. Loudugan	Benjamin Sanders
James McFall	Thomas Cooney
Robert Shan	J. D. Carpenter
Sterling Sherman	Bernard Force
William N. Bishop	George H. Dean

Who being duly elected tried and sworn well  
and truly to try the issue joined as aforesaid  
after hearing part of the testimony adduced,

the further hearing of this cause is postponed  
until tomorrow morning -

And afterwards to wit on the eleventh day  
of may in the year last aforesaid being one  
of the days of the May term of said Circuit  
Court in the year aforesaid the following among  
other proceedings were had to wit -

Samuel Armstrong )  
v ) case  
E. P. & Samuel Haud )

And now at this day  
again came the parties by their Attorneys  
and the Jurors empannelled in this cause also  
came, and after hearing the remainder of the test-  
imony adduced arguments of counsel and  
instructions of the Court retired into charge  
of an officer of the Court to consider of their  
verdict; and by agreement of parties it is order-  
ed that when the Jury shall have agreed  
upon a verdict they may reduce the  
same to writing and seal it and meet  
the Court on Monday morning at nine  
O'clock.

And afterwards to wit on the thirteenth  
day of May in the year aforesaid it being one of  
the days of the May term of said Circuit Court  
in the year aforesaid mentioned the following among  
other proceedings were had to wit,

Samuel Armstrong  
vs  
Eben B Ward &  
Samuel Ward

Case

1<sup>st</sup> trial  
\$575.

This day again  
comes the parties by their Attorneys & the jurors  
aforesaid also come into court and say the of the jury  
find the issue for the plaintiff and assess the damage  
at five hundred and seventy five dollars. Whereupon  
the defendants by their counsel move the court  
for a new trial.

And afterwards to wit on the twenty fourth  
day of May in the year of our Lord one thousand  
eight hundred and fifty came the said defendants  
by Scammon & Shumway their Atty and filed in  
the office of the clerk of said Court this motion for  
a new trial in this case which is in words of law is  
as follows to wit.

Cir Court

Eben B. Ward Compl<sup>d</sup> to

vs

Saml Armstrong

The grounds for the motion  
for a new trial asked for

in this suit are as follows.

- 1<sup>st</sup> The Court erred in giving the instructions asked  
for by the plffs. Atty.
- 2<sup>d</sup> The Court erred in refusing instructions asked  
for by the Defs Attorneys.
- 3<sup>d</sup> The Verdict was contrary to the law and

evidence in the case.

4<sup>th</sup> Damage expires

Seamons & Shumway  
Atty for E. R. Ward

And afterwards to wit on the twenty fifth  
day of May in the year of our Lord one  
thousand Eight hundred & fifty it being  
one of the days of the May term of said  
Circuit Court in the year aforesaid the following  
among other proceedings were had to wit.

Samuel Armstrong }  
E. R. & Samuel Ward } Case

And now at this day  
came the parties by their attorneys and the  
court after hearing the arguments of Counsel  
on the said defendant's motion for a new  
trial herein and not being sufficiently  
advised in the premises takes the matter  
under advisement.

And afterwards to wit on the twenty seventh  
day of May in the year aforesaid it being one  
of the days of the aforesaid term of said Circuit  
Court in the year aforesaid the following among  
other proceedings were had to wit.

Samuel Armstrong }  
E. R. & Samuel Ward } Case

And now at this day  
came the parties by their attorneys and the court



being now fully advised as to the said defendants  
motions for a new trial herein. It is ordered  
that the said motion be sustained and a new  
trial granted on the said defendants paying all  
the costs of this term.

Therefore it is considered  
that the said plaintiff do have and recover of  
said defendants his costs and charges of this term  
by him about his suit in this behalf expended  
and have execution therefor.

And afterwards to wit on the fifth day of dec-  
ember in the year aforesaid it being one of the days  
of the december term of said circuit Court in the  
year aforesaid the following among other proceedings  
were had to wit-

Samuel Anstrony  
vs  
E B Ward impleaded  
with Samuel Ward } Case

And now at this day  
came the parties by their attorneys, and issue being  
joined, it is ordered that a jury come thereupon to  
try the issue joined come the jurors of a jury of  
good and lawful men to wit

Walter Steel	William Morris	Elon Cozand
J. A. Wilcox	Horace Ware	Amos Crane
R. A. Barker	Ira Reynolds	George Reed
Abram Hart	George Glauser	Ezekiel Morrison

Who being duly elected tried and sworn well and truly to try the issue joined, according to Law, and the evidence hear the testimony adduced as well for the defendant as the plaintiff, and thereupon by consent of parties the further hearing of this cause is by order of the court, is postponed till nine O'clock to morrow morning.

And afterwards to wit on the sixth day of December in the year aforesaid it being one of the days of the December term of said Circuit Court in the year aforesaid the following among other proceedings were had to wit,

Samuel Armstrong  
v  
E. B. Ward impleaded  
with Samuel Ward } Counsel

And now again at this day come the said parties by their attorneys and the said jury also come who having heard the arguments of counsel and the instructions of the court herein retire in charge of the Sheriff to consider of their verdict thereupon by consent of parties it is ordered by the court, that when the said jury shall have agreed upon their verdict that the same be reduced to writing, sealed, and presented to the court at nine O'clock to morrow morning.

And afterwards to wit on the seventh day of December in the year last aforesaid it being one of the days of the aforesaid term of said Circuit Court in the year last mentioned the following among other proceedings were had to wit,

Samuel Armstrong

Eben B. Ward & Samuel Ward } Case

This day again came the parties by their attorneys, and the jury aforesaid come into court and say. The verdict of the jury find the issue for the plaintiff and assess his damages at Four Hundred and fifty dollars. Whereupon the defendants move the court for a new trial.

And afterwards to wit on the twenty first day of December in the year last aforesaid came the said defendants by Seaman & Shumway their attorneys and filed in the office of the Clerk of said court their motion in said case for a new trial which is in words and figures as follows to wit -

Cook C. C. Cook

Eben B. Ward

implied with

Saml Ward

As

Saml Armstrong

And now comes the

2<sup>d</sup> find  
\$450.

said defendant Ebn B. Ward implieaded  
as aforesaid moves the court for a new  
trial in the cause for the following reasons  
to wit.

1<sup>st</sup> The verdict of the jury is against the  
law and Evidence in the cause.

2<sup>d</sup> The verdict is against the Instructions  
of the Court

Seammon & Sherman way  
Df's Attys

And afterwards to wit on the ~~twentieth~~ <sup>twentieth</sup> day  
of december in the year aforesaid  
it being one of the days of the december term of said  
Circuit Court in the year aforesaid the following  
among other proceedings were had to wit,

Samuel Armstrong )

vs

E. B. Ward implieaded )  
with Samuel Ward )

This day again came the  
parties by their attorneys, and the Court after hearing  
the arguments of counsel on the said defendant's  
motion for a new trial, and being fully advised  
in the premises it is ordered that the same be  
granted

2 New Trial

And afterwards to wit on the third day of december in the year of our Lord one thousand eight hundred and fifty one it being one of the days of the December term of said Circuit Court in the year last above mentioned the following among other proceedings were had to wit,

Samuel Armstrong  
v  
E. B. Ward & Samuel Ward } Case

This day came the said defendant Samuel Ward by J. Young Scammon his attorney and enters his appearance herein, and moves the court to transfer this cause to the circuit court of the United States.

And afterwards to wit on eighth day of the month and year last above mentioned it being one of the days of the aforesaid term of said Circuit Court in the year aforesaid the following among other proceedings were had to wit,

Samuel Armstrong  
v  
E. B. Ward & Samuel Ward } Case

This day came the parties by their attorneys and the court being now

fully advised as to the said defendants Samuel Ward's motion, for a removal of this cause to the United States Court, It is ordered, that the said motion be overruled, whereupon it is ordered that said defendant Samuel Ward plead to said plaintiffs declaration instantly

And afterwards to wit on the eighth day of December in the year of our Lord one thousand eight hundred and fifty one came the said defendant Samuel Ward impleaded with Eln B Ward by his attorneys Scammon & Shumway, and filed in the office of the Clerk of said Court his declaration in said cause which is in words and figures as follows to wit,

In Cook County's Court	} Dec <sup>r</sup> Term
Samuel Ward	} 1851,
impleaded with	}
Eln B. Ward	}
ads	}
Samuel Armstrong	}

And now at this day comes the said defendant Samuel Ward impleaded with Eln B. Ward in this suit by Scammon & Shumway his attorneys & defends the wrong and injury which he says he is not guilty of the said supposed grievances above laid to his charge or any or either of them

Plca-

in manner and form as the said plaintiff hath  
above thereof complained against him and  
of this the said defendant puts himself upon  
the country &c.

Scammon & Shumway

Attys for S<sup>d</sup> Def<sup>t</sup>,

And the plaintiff doth the like

Arnold & Lay

for A<sup>s</sup>

And afterwards to wit on the Sixth day of May  
in the year of our Lord one thousand eight  
hundred and fifty two it being one of  
the days of the May term of said Circuit  
Court in the year aforesaid the following ~~was~~  
among other proceedings were had to wit,  
Samuel Armstrong

vs } Case  
E. B. & S. Ward

This day come the said  
parties by their attorneys and issues being joined  
it is ordered that a Jury come thereupon come  
the jurors of a jury of good and lawful men  
to wit;

A. S. Fay

George James

George Abel Mayo

Levi Chapin

who being duly elected, tried and sworn well and

Stephen Cray

L. S. Bullard

Ashel A<sup>r</sup>

Thomas May

J. O. Hornum

Samuel Hillard

Charles Sweet

William C. Macey

truly to try the issue joined according to law and  
the evidence, and they having heard a part of  
the evidence by agreement of parties. It is ordered  
that the jury have leave to separate and that  
this cause be postponed till the coming in  
of the court tomorrow morning.

And afterwards to wit on the seventh day  
of the month aforesaid in the year aforesaid  
it being one of the days of the May term of said  
Circuit Court in the year aforesaid the following  
among other proceedings were had to wit,

Samuel Armstrong )

v

Case

E. B. & S. Ward )

This day came again  
the said parties by their attorneys, and the  
jury aforesaid also came and they hearing  
further testimony and arguments of Counsel  
by agreement of parties it is ordered that  
the Jury have leave to separate and that this  
cause be postponed till the coming in of  
the court tomorrow morning.

And afterwards to wit on the eighth day of  
May in the year aforesaid it being one of  
the days of the aforesaid term of said Circuit  
Court in the year aforesaid the following  
among other proceedings were had to wit,



Samuel Armstrong  
vs  
E. B. & S. Ward } Case

This day come the said parties by their attorneys and the jurors aforesaid also come and they having heard all the testimony of witnesses arguments of Counsel and instructions of the Court retire to consider of their verdict under charge of an officer of the court,

And afterwards to wit on the tenth day of May in the year last aforesaid it being one of the days of the above mentioned term of said Circuit Court in the year aforesaid the following among other proceedings were had to wit.

Samuel Armstrong  
vs  
E. B. Ward & Samuel Ward } Case

This day again come the parties by their attorneys and the jurors aforesaid also come into Court & say they cannot give upon a verdict, & thereupon by agreement of parties It is ordered that they be discharged from the further consideration of this cause.

And afterwards to wit on the ninth day of December in the year aforesaid it being one of the days of the December term of said Circuit Court in the year aforesaid the following among other

Primer





Miss  
copy

on the 9<sup>th</sup> day of December A.D. 1852 at the  
December Term of the Circuit Court begun and  
held in and for the County of Cook in the State  
of Illinois on the 6<sup>th</sup> day of December of said  
year the above cause wherein Samuel Armstrong  
is plaintiff and Eben B. Ward and Samuel Ward  
are defendants came on to be heard before Hugh  
J. Sickly Judge of said Court and a jury emp-  
anelled to try said cause and the said plaintiff  
to sustain his said action introduced in evidence  
the following depositions.

Samuel Armstrong }  
" }  
Eben B. & Samuel Ward } Cook Circuit Court

It is agreed by the  
parties that the testimony of Henry Littlefield  
may be taken this 23<sup>d</sup> day of March 1852 taken  
before Louis D. Hoard Clerk of the 2<sup>d</sup> circuit  
court without notice, and used on the trial of  
this cause subject to all legal exceptions, except  
service of notice & affidavit of non residence.  
March 23<sup>d</sup> 1852.

Arnold & Lay  
for Plff  
Seammon & Shumway  
Defts Atty

The depositions of Henry Littlefield a  
witness of lawful age produced sworn and

examined upon his Corporal oath before me  
Louis A. Heard Clerk of the Circuit Court of  
Cook County in the State of Illinois, at my  
office in the City of Chicago in said County on  
the 23<sup>d</sup> day of March A.D. 1852 commencing at  
the hour of two o'clock P.M. of said day, to be  
read as evidence on the trial of a certain cause  
now pending and undetermined in said Court  
wherein Samuel Armstrong is plaintiff and  
Eben B. Ward & Samuel Ward are defendants  
on the part of the said plaintiff. The said  
depositions are taken by agreement of parties,  
and notice waived by defendants counsel  
Messrs. Scammon & Shumway.

The said Henry Littlefield being by me duly  
sworn according to law, in answer to the inter-  
rogatories propounded to him testified and  
deposed as follows.

Int. 1. What is your age & place of residence,

Ans. I live in Waukegan am near forty years  
of age.

Int. 2. What is your occupation & how long have you  
followed it.

Ans. Am a sailor have followed the sea nigh twenty  
years.

Int. 3. Do you know the parties to this suit,

Ans. I know Armstrong, but am not personally  
acquainted with defts. should not know,

them if I saw them.

Int. 4 Did you know the Schooner called the Jane in Sept 1849.

Ans. I did. She was called the Jane when I was in her

Int. 5. What was her size & value.

Ans. She was a small vessel. She was a craft would carry about 14,000 or 15,000. Staves I should think. I suppose she was worth \$400., anyway, may be more may be less.

Int. 6 Who sailed her as master & in whose possession was she, if in Armstrongs possession how long was she in his possession.

Ans. I sailed her, but Armstrong was owner of her she was in Armstrongs possession. I dont know whether he owned her. I dont know how long Armstrong had been in possession of her, but I had been with her about two weeks Armstrong during that time was in possession of her.

Int. 7 Do you know of Armstrongs repairing her

Ans. I dont know, if there were any repairs made they were made before I knew her.

Int. 8 Was there any collision between her & the Steamer Sun Hawk on or about the 23<sup>d</sup> Sept 1849, if so state what time of the night it occurred.

Ans. There was, between 9 & 10 o'clock in the night.

Int. 9 Who was on board the Jane at that time.

Ans. Armstrong, Isaac Stewart, a boy & me.

Int. 10 Who was at the tiller.

Ans I was steering,

Int. 11 How was she heading

Ans About South & by West or South & half West.

Int. 12 How far off was the Steamer when you first saw her

Ans About four miles

Int. 13 How was she steering or heading

Ans She was going to the Northward & Eastward so far as I could judge from my vessel.

Int. 14 If she had kept on that course, state whether she would have passed to the eastward of you.

Ans If she had kept on that course without yawing she might have passed us to the east it is very probable she might one vessel is as likely to yaw as another, you can't steer to a point when the wind is blowing hard

Int. 15 Did the Steamer change her course before the collision if so how.

Ans She headed more in shore, than she was when I first saw her

Int. 16 On seeing her change her course did you alter the course of the Jane

Ans I did.

Int. 17 If you had not changed your course what would have been the consequence

Ans We would have struck both together any way, <sup>for</sup> we could not get clear of each other

Int. 18 If you had not changed the course of the

Jane would or would not the Steamer have gone directly over.

Ans She would have come pretty nigh it any way.

Int. 19 Why did you change her course.

Ans To pass the Steamer to the Eastward

Int. 20 State how the Steamer struck the Jane & what the effect of the collision was

Ans. When I put my helm to starboard we came up close along side & our jib Boom struck her bulwarks or she struck the jib boom nothing happened to the jib boom. The bowsprit of the Jane was knocked on deck. what I mean is that the jib boom was not broke, as we were going along her guards we both cleared the bows of the Jane opened, I saw her ashore that way. I did not go forward to look at her at the time because I was steering all the time.

Int. 21 State whether she began to leak immediately

Ans They said, <sup>20</sup> I did not go down myself one of the men went down & he said he was up to his knees in water. (question & am. objected to)

Int. 22 What did you do.

Ans The man got into the boat hung on a while to the stern & then I went into the boat

Int. 23 Why did you go in the boat

Ans To go ashore of course.



Int 24 Why did you want to go ashore

Ans For food she would water log

Int 25 Did Armstrong or the others save their clothes

Ans There was some saved & some lost. I dont know <sup>exactly to</sup> how much was lost.

Int 26 Was anything saved other than what he had on his body

Ans I dont know how much was saved belonging to the boys. I saved part of mine. I dont know what was saved belonging to the other men. Nothing was saved that night except what he had on his body.

Int 27 Did you or Stewart save any of yours that night

Ans No Sir. not any that I know of only what we had on

Int 28 Had Armstrong a watch on board.

Ans There was a watch on board.

Int Did Armstrong take that ashore with him that night

Ans I dont know.

Int 30 Have you testified on the other trials in this cause & have you not very time testified that Armstrong lost that watch. have you any more information now on that subject than you had at the last trial.

Ans Well so he said. I did not see the watch after I had so testified. he told me so & I did not see the watch after. I have no more information than I had on the last trial.

now about it  
[51844-17]

Int. 31 Whereabouts did this collision take place

Ans I was on the side of Milwaukee near a place called Oak Creek, about 10 or 12 miles south of Milwaukee, between 3 & 4 miles out in the Lake, it was a star light night & I might be deceived in the distance

Int 32 Did the paddle wheels of the Steamer strike the Jane

Ans I did not see the paddle wheel, & I can't say whether it was the paddle wheel or the guard I was at the tiller steering

Int 33 When the Steamer struck you did she stop or did she keep on her course

Ans She's going ahead

Int 34 After she had passed you, did she stop or keep on

Ans She was going on going ahead

Int 35 Did she change her course again to the eastward after the collision, state whether if she had kept on the course she was going when she struck you, she would have struck the shore before she reached Milwaukee point.

Ans She might have changed her course, I did not take much notice, I was getting into the boat very probably she might.

Int 36 Now state if you please whether if the Steamer had kept straight on the course she was going when she struck the Jane without turn-

ing she would not have gone on shore

ans It is very probable she would the way she was heading then, & the way both vessels was,

Int 37 Don't you know she would & hasn't you always testified so up to this time,

ans I don't know whether she would or not, that is more than I could say except I had been aboard of her then I could tell you. I don't recollect whether I have so testified or not.

Int 38 What was the Schooner loaded with & where was she going.

ans She was loaded with staves, she was going to Chicago, we expected, from below, Milwaukee. I think there was about 12,000 or 14,000, can't say exactly

Int 39 What light did the Jane carry where was it hung, & how far could it be seen.

ans A globe lamp, a bright light, it hung in the main rigging, about eight or nine feet high, may be more or less. I don't know exactly how far it could be seen. I should think

Sight half a mile to a mile on each a night. It was not a colored light - It was one of these square lamps I don't know, but it was a six sided lamp it had more than four sides.

Int 40 Was there anything to prevent this light being seen, off the bow of, or in front of the Schooner

Ans Not unless the foresail might shade it now  
& then by the roll of a sea.

Int 41 Did you not swear on the last trial of this  
cause that there was no sail nor anything  
to prevent persons on the steam boat from  
seeing this light as they approached each  
other.

Ans I think it might be seen except it might  
be shaded by the foresail now & then by the  
roll of the sea I cant mind whether I  
so swore or not very probable I might. I cant  
mind it though.

Int 42 How did you get ashore that night & at  
what time.

Ans I sculled ashore. It was between 12 & 1 o'clock  
as near as I can recollect.

Int 43 State whether any persons on the schooner went  
ashore bare headed or bare footed if so who of those.

Ans Stewart went ashore without shoes or hat or cap  
(Ans objected to)

Int 44 What time did the vessel come ashore

Ans About 9 or 10 o'clock next morning.

Int 45 What was her condition

Ans She was full of water, some of the staves  
were in the hold & some washed out on deck,  
some came ashore all along the beach

Int 46 What had Armstrong in the vessel besides  
his wearing apparel at the watch you speak of

of.

ans<sup>r</sup> He had furniture to the vessel.

Int 47 State whether among that furniture there <sup>was</sup> a cooking stove & utensils.

ans<sup>r</sup> There was.

Int 48 Where did you go after you got ashore

ans<sup>r</sup> We went up to a farmers house about half a mile off.

Int 49 How many miles in the woods did you travel before you found it.

ans<sup>r</sup> We did not travel far about a half a mile we were driving through the woods before we found the opening. we wasn't out very long before we got to the house.

Int 50 Did you testify on the last trial of this case that as the steamer approached the Schooner in these words, "She hauled her wind & came athwart us, & bore directly down towards us" - & was such the fact, (objected to)

ans<sup>r</sup> She came along that way. It is very probable I might but I cant mind of everything.

Int 51 Did you testify to the following words, "She (the Steamer)" did not stop nor back water, nor did they stop the Engine" & was such the fact, (objected to)

ans<sup>r</sup> Not that I know of. I cant say. both vessels had headway. one going one way the other the other.

Int 52 Did the Steamer to your Knowledge stop,  
ans. No Sir not that I know of, both were going  
on as I said before, as near as I can recollect,

Int 53 Did she to your Knowledge back water,  
ans. I dont know,

Int 54 Did you see her do it  
ans. I did not,

Int 55 Now answer me upon your oath, whether  
you did not swear on the last trial in these  
words, "If the wheels had been stopped  
we should not have filled, but should  
have escaped any damage but loss of jib  
boom & bomsprit" (objected to)

ans. That might be too, sir;

Int 56 Was the paper now shown to you marked A  
& hereto annexed made by you as a correct  
representation as near as might be of the  
course of the Steamer & Schooner just  
before the collision & did you make it

ans. I did make I do not know whether it is  
correct or not, I made it as correct as I  
could,

Int 57 Did you make it during the progress of one  
of the former trials of this cause

ans. I dont know but I did, I just sketched at  
as near as I could,

Int. 58 Did the lawyers for Messrs Wards object to  
you as a witness at the last trial of the

cause & did Armstrong thereupon execute & deliver to you a release (objected to)

Ans Will I dont know sir I cant say that.

Int 59 Have you the paper that Armstrong delivered at that time.

Ans I dont know of any paper that he gave me & I cant bring it to my recollection.

Int 60 If he did give you any such paper have you lost it.

Ans I dont recollect any paper I think if I got one I would have it.

Int 61 Have you any such paper now by you, Ans I have not.

Int 62 Have you now a release.

Ans I <sup>have</sup> received the paper marked 'B' & attached hereto.

Int 63 Why was master of the Schooner Jane at the time of the collision.

Ans I was of course, I had the whole charge of her by steering.

Int 64 Was Armstrong on deck & how near was he to you at the time of the collision.

Ans He was standing about the main rigging as near as I recollect.

Int 65 How you recollect of Armstrongs asking just before the Steamer changed her course how she bore & what was your reply.

Ans I recollect him asking one & I answered

that she was to leeward

Int 66 Do you recollect your saying to him that she was one or two points clear (objectively)

ans<sup>r</sup> Well I think she was, Yes I guess I did say so.

Int 67 What armistrong was on deck before the collision how many points clear was she

ans<sup>r</sup> I can't say exactly I think one or two points, as I said,

Int 68 Since the paper B has been delivered to you have you heard the foregoing questions & answers read over - do wish to alter the answers in any particular or are they correct

ans<sup>r</sup> They are correct as far as I know.

Henry Littlefield

Crap Examined by defendants Counsel

Int 1 Do you know what became of the chains anchors sails & rigging of the Schooner June after she went ashore state fully.

ans<sup>r</sup> The sails rigging & every thing were put in Mrs. Folds barn by me. I dont know what became of them there. The chains & anchors I left in Milwaukee's

Int 2 Were not the chains anchors & rigging that were saved from the vessel worth much



much more than the hull.

ans<sup>r</sup> I should say they might be worth nearly as much that is to say all her rigging, running gear & tackle.

Int 3 Were they all saved.

ans<sup>r</sup> They were.

Int 4 Was not the June a very old & rotten vessel

ans<sup>r</sup> I don't know, the vessel's age, there was part of her rotten & part sound, was not altogether sound

Int 5 Did she have the appearance of an old vessel

ans<sup>r</sup> She had.

Int 6 Was she not a very weak vessel.

ans<sup>r</sup> I can't say, I didn't see her timbers.

Int 7 Did you examine her after the collision

ans<sup>r</sup> Not till after she went ashore

Int 8 Did you examine her after she went ashore  
or if so what was her condition as to soundness

ans<sup>r</sup> I did examine her, she was part sound  
& part rotten.

Int 9 From her appearance when she was ashore  
should you judge that she would have  
received, very slight if any injury by the  
collision had she been a sound vessel

ans<sup>r</sup> I don't know what happened her before  
she got over the bar, I did not see

Int. 10 From the appearance of the vessel, when  
she got ashore do you think she might

she might have escaped any serious injury in the collision if she had been a sound & seaworthy vessel.

Ans<sup>r</sup> If she was a sound vessel she might receive the same, what she got on the bar I can't say for I did not see it.

Int 11 Was the blow in the collision so severe or so hard as in your opinion to have opened the stem of a sound vessel.

Ans It is very probable it might between two vessels a small stroke would do a great deal of injury especially when the sea was running high.

Int 12 You have spoken of the vessel chumping on the bar in coming on shore. Is it not very likely that the vessel received more injury in crawling the bar to come on shore, than she did in the collision (objected to)

Ans<sup>r</sup> Some times it will happen more & some times less a vessel heavy loading chumping on a bar might receive a good deal of injury & she might not

Int 13 Is it hardly possible for a vessel heavy laden to go ashore on the west side of the lake in rough weather without chumping on the bar & receiving a good deal of injury.

Ans<sup>r</sup> That's according to the weather, in rough weather she will chump more than in smooth.

She must receive injury certainly, if it is  
good weather she will not get over the bar  
but stop before she gets to it,

Int. 14 Did you <sup>look</sup> at the vessel after she came ashore  
at Oak Creek,

Ans I did

Int 15 In answer to a previous interrogatory you spoke  
of the vessel being partly rotten & partly sound  
State what parts of the vessel you noticed as  
being rotten,

Ans Where I saw her opened,

Int 16 Did you notice the timbers about where the  
bowsprit was turned out of its place,

Ans I saw some of them,

Int 17 Did the timbers composing the Knight heads  
where the bowsprit enters the vessel have the  
appearance of being old and decayed,

Ans Some parts of them was,

Int 18 Might not the vessel in your opinion taking  
her condition as to soundness into consideration  
have been injured in a measure by striking  
the bar on coming ashore

Ans It is very probable she might, when the sea  
rises aft if she pitched forward of course her  
bow would come on the bar.

Int 19 When you abandoned the vessel did you leave  
her sails standing,

Ans Two foresails was set.

Int 20 What part of the schooner struck the  
Steam boat first at the time of the col-  
lision

Ansr Awe jib boom & her bulwark came together  
first

Int 21 In what direction was the vessel sailing  
just before the collision,

Ansr About South & by west or about South prob-  
ably.

Int 22 How did the steamer bear from you at  
the time just before the collision.

Ansr I am happy if I can tell that for we both  
altered our course to avoid the collision.  
I put my helm starboard to avoid the  
collision.

Int 23 How did the steamer bear from you when you  
first discovered <sup>her</sup> & until you changed your course

Ansr I think she bore about south & by east from us  
I am not certain but I think so that is she  
was south of us, coming north she would  
be at the opposite point.

Int 24 How many points off of the larboard bow  
of the gun did the steamer bear from you.

Ansr She bore about two points east I think or three  
about.

Int 25 Under what sail was you coming up the lake  
what courses had you on

Ansr The jib & foresail

Int 21. Am which side of the vessel was the jib & foresail & upon what tack were you.

Ans<sup>r</sup> On the larboard side we were on the Starboard tack.

Int 22. What was the color of your light & on which side of the vessel was it hung.

Ans<sup>r</sup> It was a bright light. It was an oil light there were no reflectors to the globe it hung on the larboard side.

Int 28. Wasnt that lamp in fact the ordinary glass lantern that is used by families & such as you see hung up to light the passages upon the decks of Steamboats.

Ans<sup>r</sup> It was similar to them.

Int 29. Had it any reflectors, and was the light either green or red.

Ans<sup>r</sup> It had none except the glass itself. It was neither green nor red.

Int 30. Was not that light hung directly back of the foresail.

Ans<sup>r</sup> It was aft the foresail, the foresail is forward & the main mast is aft.

Int 31. Do you mean by saying that the light was aft the foresail, that it was behind it.

Ans<sup>r</sup> It was after it. If it was before it, it would be in the fore rigging but it was in the main rigging and after it.

Int 32. Was that the only light that could be seen

on board the vessel.

ans<sup>r</sup> Except the binnacle light we had a binnacle light on board.

Int 33 How long before the collision did you see the steam boat light.

ans<sup>r</sup> The steamboat four or five miles ahead of us when I first saw her light I cannot judge of distance exactly in the night.

Int 34 What kind of a light had the steam boat

ans<sup>r</sup> I cant exactly say I think it had different colors but cant say which colors they were

Int 35 Where the lights of the steam boat placed in the most conspicuous place to be seen, & could they be seen at a good distance

ans<sup>r</sup> I cant say what part of the boat they were stationed on but I saw them about four or five miles.

Int 36 Who owned the staves on board of this vessel

ans<sup>r</sup> I dont know

Int 37 Were they Mr Armstrongs staves

ans<sup>r</sup> I cant tell you sir.

Int 38 Did you ever hear Armstrong say that they were Mr. Williams objected to

ans<sup>r</sup> I did sir.

Int 39 How many sailors were on board the vessel. was there any sailors except yourself aboard

ans<sup>r</sup> I dont know about Mr Armstrong I never

saw him tried - there might be others  
aboard.

Int 40 From what you have seen of Mr Armstrong  
as a sailor, is he in your opinion a competent  
seaman & fit to take charge of a vessel,

Ans I dont know, <sup>whether the man knows</sup> navigation to sail a vessel  
that may or not, I cant say as to that.

Int 41 Was there any other man aboard that  
vessel except yourself & Armstrong that  
ever pretended to be a sailor.

Ans I dont believe there was.

Int 42 Was Stewart a hand on the boat or did he  
merely go up to help load or take charge  
of the stores.

Ans I cant say sir I see no contract between  
them.

Int 43 Do you not know that Stewart did not  
pretend to help sail the boat.

Ans Not that I know of.

Int 44 Do you mean by your last answer that he did  
not help sail the boat.

Ans I dont think he did so far as I know.

Int 45 If the light on the vessel had been upon the bow  
or in front of the sails might it not have been  
seen by those in the steam boat in season  
to have avoided the collision.

Ans It might except the sea or the spray would  
be flying about it out.

Inter 46 If a sufficient light had been hung in the shrouds of the foremast at the same height that this lamp was hung in the main rigging would it not be more easily & readily seen by the steam boat than from where it was hung.

Answer It might be ~~more~~ a little easier, the Schooner was out forwards at the same time

Inter 47 Where you sailing before the wind,

Answer Yes sir,

Inter 48 Do vessels sailing before the wind throw much spray forward,

Answer Not a great deal except there is a side sea.

Inter 49 Did you not attempt first to pass the steamer on her west side & then change & attempt to pass her on the east,

Answer I did, but I thought it was best to pass her on the east side,

Inter 50 Was not this just before the collision

Answer It was.

Inter 51 Were you familiar with the regulations of the act of Congress upon the subject of lights on Steamboats & vessels, before or at the time of the collision

Answer I was, not sir

Inter 52 Did Mr Armstrong claim to be master of the vessel, and do you know whether he



Knew what a red or a green light on a Steam boat indicated.

Ans As far as I understood he owned the vessel.

I don't know what Mr Armstrong ~~understands~~  
~~knew~~ about the lights, he didn't let me  
know.

Int 53 Which way was the wind that night

Ans It was from the northward & Eastward,

Int 54 You say you starboarded you but in which  
way did that throw the bow of the vessel  
to the east or west,

Ans It would bring it to the eastward.

Int 55 On which side of the vessel did the  
Steam boat pass & strike

Ans They struck back on the starboard side  
that is the right hand side.

Int 56 How many hours did the Jane drift  
before she came ashore,

Ans About 10 or 11 hours I believe I am not  
certain.

Int 57 Was Armstrong there when she drifted  
ashore, and if so did he go aboard of the vessel

Ans She came ashore on the bar first we came  
up to where she was, & set down a while  
then she got over the bar & came ashore  
he was there when she came ashore along  
with me, & went aboard a while after

Int 58 Was this the next day, & did you see her

drifting out side the bar  
and It was the next day, we did see her drift-  
ing out side the bar

Int 59 How far would she drift in an hour,  
and I suppose she would drift a mile or more

Int 60 Did you & Armstrong take the furniture  
sails & rigging from the boat to the shore

and We did we took every thing out of her,

### Direct Examination resumed.

Int 69 Was not the furniture nearly ruined,

and The bedding was wet of course, every thing was  
wet that was in the cabin, that was all  
that happened.

Int 70 Did you take the stove & cooking utensils  
ashore.

and We did all we could get of them,

Int 71 What part did you get.

and We got the stove & other articles that were  
not damaged with the sea

Int 72 Did you see the watch at that time

and I did not.

Int 73 What else besides the bedding & stove did  
you take ashore

and There was some other utensils I cant exa-  
ctly say what. The crockery was all broke

Int 74 Were any of the articles taken ashore ever  
brought away by Armstrong to you

Knowledge

and Not that I know of, not up here. Some of them were taken away from there that I know of.

Int 75 When you attempted to pass the steamer on the west side was it while the steamer was holding on her course North & by East & before she hauled in towards the land

and We were both pretty close together at that time I passed on the starboard side of her & she on the starboard side of us we were too close together at the time,

Int 76 Was it at the time she hauled her wind & came athwart the Jam, & bore directly down towards her that you put your wheel down to starboard to avoid her (objected to)

and It was,

Int 77 When Armstrong told you the staves were Williams as you stated in your reply to the 38<sup>th</sup> cross interrogatory how much did he say, how much did he say he should lose in consequence of the collision (objected to)

and I didn't hear him say what he would lose by it. I only heard him talk about the staves being Williams.

Int 78 Did you testify on a former trial that the light of the Jam was plain to be seen, & if the Steamer had kept a good look out

there would have been no collision - objected to,  
and I don't know, but I did. I was not on board of  
the steamer & could not say it was.

Int 79 What sort of a blow would a steamer 180 feet  
long & of the size of the Ward running at her  
usual speed, give to a little Schooner the  
size of the June.

and I can't tell you that question. If two vessels came  
stem & stem together it would be hard.

Int 80 Was it or did it prevent them from coming  
stem to stem that you put your helms  
starboard.

and Indeed it was.

Int 81 Did you testify any thing about the schooner  
being a factor on the former trial (objected to)

and I don't recollect.

Int 82 Did you not state on the former trial that  
the June was worth from \$630. to \$650. & have  
you any more information in regard to her  
value at this time than at that (objected to)

and I might have done it but I don't recollect.  
I don't think she was worth so much. I  
think I ought. a vessel would look to  
be worth more on the water than ~~on~~  
~~the~~ ~~land~~ as here.

Int 83 Have you altered your opinion of the value  
of the vessel since the last trial if so  
was it before <sup>or after</sup> you went down the lake.

last summer.

and I don't know that I left any value on the vessel on the last trial, there was others sworn to it. There was others sworn to it. I don't change my opinion on an article I lay value upon.

Int 84 Did you ever testify that the jewel was worth from \$500. to \$1000. (objecting to)

and I don't recollect.

Int 85 If you did was it true (objecting to)

and I might be worth it before that

Int 86 Where is Isaac Stewart?

and I don't know

Int 87 Where & when did you last see him?

and In Chicago, about August 1851.

Int 88 Do you know whether he is in the employ of the Ward on Lake Erie?

and I do not see I don't know anything about him since

Int 89 Are Messrs Shumway & Seummond & Captain Clinton present at this examination?

and They are

Int 90 Do you know James Aoydale?

and Yes I have seen him.

Int 91 Did you sail with him last summer at any time?

and I did not.

Int 92 And what Steamer did you come to Chicago

last (objected to as irrelevant.)  
Ans I came on the Pacific, I think that's <sup>his</sup> name.

Int 93 Did you pay your fare through.

Ans To tell the truth I didn't pay yet, but I have to pay.

Int 94 Were you about to start for the East when you met Armstrong, since you came to town (objected to,

Ans I was not.

Int 95 From what place did you come, on the Pacific (objected to,

Ans From Milwaukee

Int 96 Did you leave Hankigan last week just before the time appointed for taking your deposition if so in whose company & where did you go to (objected to)

Ans I did leave Hankigan last week just before that time. I left with James Dick & went to Milwaukee, I went there, we broke down, she did not go on with me.

Int 97 Do Ward's Steamers run to Dickinson's wharf at Hankigan (objected to,

Ans They are advertised for that I have seen them there.

Int 98 Did you last summer leave Chicago just before the time appointed to take your deposition in the Steamer Pacific, (objected to,

Ans I don't know anything about the depositions.

I did leave, but don't know on which  
boat. I don't think it was the Pacific but don't  
recollect.

Int 99 Did you pay any fare that time objection,  
and I did see.

Int 100 Did you leave Waukegan last winter at the  
time when an effort was made to obtain  
your deposition (objected to)

and I was working 4 or 5 miles out of Waukegan  
I went out to Libertyville to help a man roof  
a house that was about 5 miles further

Int 101 Who told you about that time that Armstrong  
wanted to take your Evidence.

and I didn't know of it till I came home when  
I didn't know it. I understood by Samy  
Blodget that you wanted me but don't  
recollect what he said.

Henry Littlefield

Cross Examination resumed,

Ex Int, Would not a north or by East <sup>Council</sup> from Racine  
point carry a vessel out in the lake ten or  
fifteen miles distant from Milwaukee

and I can't say exactly.

Int 102 Don't the only two Steam boats now running  
on Lake Michigan belong to the Woods.

and I can't tell it.

It is here admitted by the parties that the

Pacific & Sam Ward. are owned by the  
Wards & that they are the only boats now  
running on Lake Michigan

Int 63 Did you leave Waukegan at the time referred  
to (last week) for the purpose of avoiding having  
your deposition taken, or did you go to Mil-  
waukee on business

Ans I did not leave on that account, but went  
on business for James Dickinson.

Int 64 Have not Messrs Arnold Lay & Wm Armstrong  
and a man who said he was on the Inny  
which tried this <sup>cause</sup> before, & that he would  
do all he could at any time to help Mr  
Arnold be present at the taking of this  
deposition,

Ans I don't know who was on the Inny. Be he  
I don't think they were all here to night  
if that's what you mean,

Int 65 Have you ever left Waukegan or Chicago  
for the purpose of avoiding having your  
deposition taken in this cause.

Ans Well I did not or I wouldn't be here,  
Henry Littlefield.

Direct resumed

Int 102 What else did the Inny say that Mr  
Seammon spoke of.

Ans I can't exactly say he began to talk  
something about that honesty but I



don't know what.

Crop Examined by Mr Seaman

Int 66 Who is James Augdale

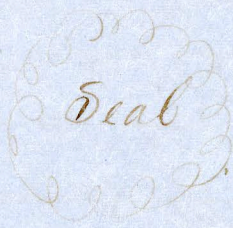
and He lives in Hankygon as a sailor man

Henry Littlefield

State of Illinois  
Cook County } as

J. Louis D. Hoard, <sup>clerk</sup> of the  
Circuit Court of the County of Cook in the  
State of Illinois do hereby certify that  
previous to the commencement of the exam-  
ination of the said Henry Littlefield as a  
witness in said <sup>cause</sup> he was by me duly sworn  
to testify the truth in relation to the matters  
and things in controversy between the said Samuel  
Armstrong and the said Eben B. Ward & Samuel  
Ward so far as he should be interrogated  
concerning the same, that the said deposition  
by consent of parties which said consent or  
stipulation is in writing & here to attached & was  
taken at my office in the City of Chicago in  
said county on the twenty third day of March  
instant that after the same was taken as afo-  
resaid the interrogatories and answers thereto  
as written down by me, were read over to  
the said witness by me and he thereupon signed  
his name to said depositions before me at the

place and on the day and year aforesaid



In testimony whereof I have hereunto  
set my hand and affixed the seal  
of said Court at Chicago in said  
County this 23<sup>d</sup> day of March A.D. 1852

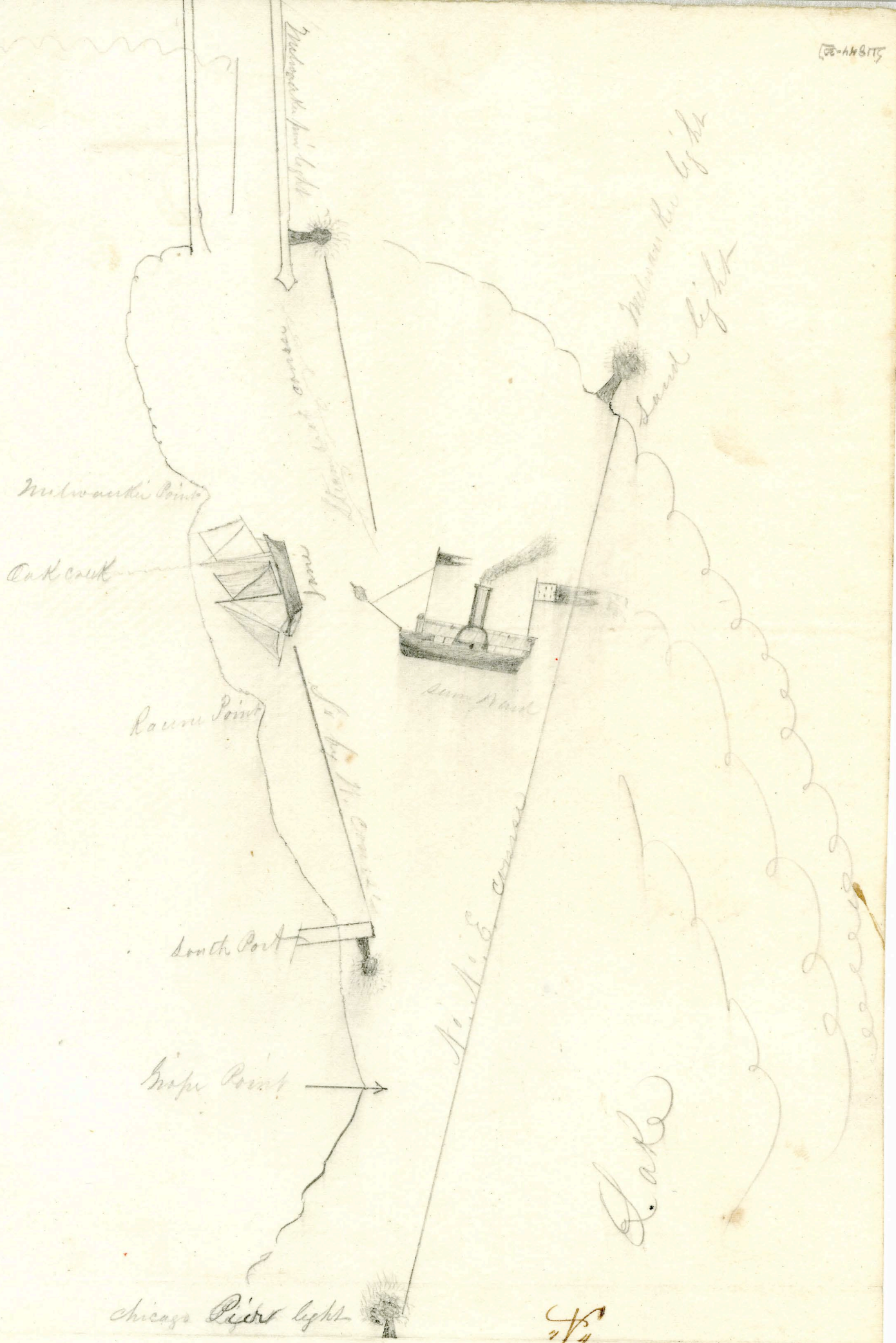
L. D. Hoard Clerk

Cook Co. Circuit Court

Fees \$10.- for taking this deposition

Wls.

L. D. Hoard



Cable

2/4

Cook County Circuit Court

Samuel Armstrong

vs

E. B. S. Ward

For a good and valuable consideration and in consideration of the sum of one dollar to me in hand paid. I do hereby release and discharge Henry Littlefield from all claims and demands, suit or suits or causes of action whatsoever arising from the collision of the Schooner June and the steamer Sam Ward or in any way arising from such collision and from all other matters controversies, liabilities or causes of action from the beginning of the world untill the day of the date of these presents.

Chicago March 23 1852

Samuel Armstrong { Seal

1852

And the counsel for the said defendants then  
and there objected to the interrogatory and answers  
in said deposition contained and numbered 50.  
51. 66. 76. 78. 81. 82. 84. 92. 94. 97. 98. 99. & 100  
direct interrogatories on the part of said plaintiff,  
which objections as to numbers 43. 50. 51. 55. 78.  
& 84. was sustained by the said Judge and as  
to number 66. the said objection was overruled  
by the Judge, and thereupon said plaintiff withdrew  
answer to 66 interrogatory.

The counsel for said plaintiff as further testimony  
in said suit then and there offered and used  
in evidence the following deposition

Cook County Circuit Court A.

Samuel Armstrong

vs

E. Bond Ward

vs  
Isaac Stewart Esq  
Def't Atty.

You will please take notice  
that on Saturday the 16<sup>th</sup> day of October 1852 at  
10 A.M. of that day before Louis S. Howard Esq  
Clerk of the Circuit Court at his office in  
the City of Chicago we shall proceed to take  
the deposition of Isaac Stewart to be used upon  
the trial of the above cause upon interrogatories  
then & there to be administered when & where  
you can appear & cross examine - Yours

Served on H. G. H. 14<sup>th</sup> Oct 1852 } Arnold & Lay, Attys for Plff.

State of Illinois }  
Cook County } } George W. Lay Jr being duly  
sworn deposes & says that he served the within  
notice on W. G. Shumway Esq. Supt Atty, on the  
fourth day of October instant by delivering to  
him a copy of the within —  
Subscribed & Sworn to this } George Lay Jr  
16<sup>th</sup> day of October A.D. 1852 }  
before me. }  
L. A. Hoard Clerk }

State of Illinois }  
Cook County } ss.  
The deposition of Isaac  
Stewart a witness of lawful age produced  
sworn and examined before me Louis A. Hoard  
clerk of the circuit Court of the County of Cook  
in the State of Illinois at my office in the  
City of Chicago in said County on Saturday  
the sixteenth day of October A.D. 1852 at  
10 o'clock A.M. of said day by virtue of the  
notice hereto attached marked "A" said  
deposition to be read in evidence on the trial  
of a certain suit now pending and undetermined  
in the circuit court of said County of Cook  
wherein Samuel Armstrong is plaintiff and  
Eben A. Hoard and Samuel Hoard are def-  
endants on the part of said plaintiff.

The said Isaac Stewart being by me first duly sworn in answer to the several interrogatories propounded to him testified and deposed as follows:

Interrog<sup>1</sup> What is your age, occupation & place of Residence

Answer I am something over thirty, am a laborer & reside at present at Chicago & expect to go south unless I get some permanent employment here soon

Int. 2 Do you know the parties to this suit?

Ans I am acquainted with the plaintiff Armstrong but do not know the defendants.

Int 3 Did you make a trip on the Schooner June in Sept 1849, if so who was on board of her was there a collision with the Steamer Sand Ward if you state all the facts in relation thereto so far as you know them.

Answer I left Chicago on the Schooner June in Sept. 1849 to go to a place below Milwaukee for a load of slaves, Armstrong, Littlefield a boy & myself were on board, there was a collision between the schooner & the steamer Sand Ward I should think about Eleven o'clock at night I was in bed at the time, got up & went on deck immediately on hearing it, asked what the matter was, Armstrong said the vessel was sinking & to make all haste or we should be drowned, he held a lamp in his hand

& said to me hold this while I run & see what the damage is. he came immediately back & told me to run into the cabin & see if there was any water there. I handed the light to him and ran down into the cabin & found water there on the floor. I went down the gangway put down my foot & found water there plenty. came up again. he told me hold the lamp till we would get down the yawl boat. I did so & then threw the lamp into the yawl. - Dept objects to all that part of the answer giving statements of Armstrong.

Int 4 How deep was the water in the Cabin when you went down,

Ans I could not say how deep it was I put down my bare foot felt water considerable way up my leg.

Int 5 Describe the blow at the time the Steamer struck the Yawl

Ans It appeared to me to be quite a shock I was nearly asleep. it woke me up pretty quick

Int 6 State whether you came immediately on deck or otherwise (objected to by Dept)

Ans Immediately, as quick as I could get out of my berth & up. I did not stop to dress.

Int 7 when you reached the deck did you see the steamer. was she moving & did you observe whether her wheels were in motion.



Ans I saw the steamer when I reached the deck she was in motion the wheels were in motion I saw them distinctly.

Int 8 How near was the steamer to you, & did you see any persons on her when you came on deck.

Ans She appeared to me not to be over two rods off at the time I got on deck, & I saw people on her deck.

Int 9 State whether the shore was in sight, & whether the steamer was headed a-morning towards the shore or otherwise. (Question objected by depts)

Ans The shore was in sight, the steamer headed right towards the shore in the first place she was moving.

Int 10 Had you seen the light of the steamer before the collision & if so how long before.

Ans I saw a light which they said was the light of a steamer, before I went to bed I can't say whether it was the ward or not. I can't say how long it was, it could not be long.

Int 11 Who was the owner of the Jane, what was she loaded with, what furniture and utensils were there on board.

Ans I can't tell that. Armstrong called her his, & acted as owner, she was loaded with cooper's timber staves & heading. - There was not much furniture

on board, there were some beds & a cooking stove, & bedding, cooking utensils, I saw some considerable clothing there belonging to the men I suppose, I saw a watch on board.

Int 12 How many staves were there on board & what were they worth (objected to by def.)

ans. There was eleven or twelve thousand, I do not recollect the market price of them, at that time,

Int 13 What was the value of the *Dome* (objected to)

ans. I don't know anything of what her value was.

Int 14 How did you get ashore,

ans. We got ashore in the yawl boat.

Int 15 State whether you took any thing ashore with you.

ans. I had some things on me, some under pants I think I had a coat on had no shoes on & no hat, that is all I got. I saw none of them have any bundles, except the boy he had a little bundle, Armstrong had nothing that I saw, there appeared to be nothing in the boat.

Int 16 What became of the *Dome* & her cargo.

ans. I saw her ashore the next day, with part of the timber there, split up.

Int 17 Did you apply for a passage at the office of the Woods Steamers on the next day, did

you state to them that you had been wrecked on the June, & what was their answer. (objected to by depts)

Ans

I did apply at Ward's office for a passage next day. I told them I had been wrecked on the June they told me if I would not pay for it that I could not have it passage, I wanted to come to Chicago  
Isaac Stewart

### Crap Examined by depts counsel

Int 1 In what capacity were you on the June at the time referred to in your answers above

Ans I was there, sent by Williams to the cooper to see to the stores.

Int 2 At what kind of labor are you engaged

Ans I am at different kinds of work sometimes gardening or anything at which I can get employment. I am not a sailor I don't follow it for a business.

Int 3 Where did you start from when you started for Chicago,

Ans They called it about 15 miles below Milwaukee there was no village.

Int 4 Who was steering when you went to bed

Ans Littlefield was.

Int 5 What did you do when you first came on deck & who did you see

Ans I dont recollect of any thing I done only hold the light lamp for Armstrong, I saw Armstrong, Littlefield & the boy.

Int 6 How long was it after you came on deck before you & the rest of you on board the Inn were in the yawl.

Ans It was very few minutes, I cant know exactly what time it was.

Int 7 Was there a good deal of confusion on board after you came on deck before you got into the yawl running about.

Ans I did not see any running about except Armstrong, Littlefield stood by the helm

Int 8 After you came on deck did you look at the boat particularly, so that you could swear positively that the wheels of the Steamer were in motion.

Ans I did'nt see, I expected the Steamer would send out to save us. I thought there was no danger as long as the Steamer was so convenient.

Int 9 How long was it after the collision before you were on deck.

Ans As quick as I could get out of bed & upon deck. perhaps 3 or 4 minutes & perhaps not.

Int 10 You swear positively do you that when you first came up the wheels of the

steamer were in motion & that she continued to move on from that time, until she was out of sight. (object to)

and When I came up I saw the steamboat & the wheels in motion, whether they got out of motion when I went down to see whether there was water in the cabin I can't tell.

Int 11 How far, was she when you went to look in the cabin.

and She was some distance. I can't say how far but she appeared to be some distance off the schooner then.

Int 12 How far in your best opinion.

and I should think she was much as eight or ten rods off then.

Int 13 Did you go down out of sight of the Steamboat when you went into the cabin

and I did sir.

Int 14 How long were you in the cabin

and I should think not more than a minute

Int 15 When you came up were the wheels of the Steamer still in motion.

and Yes sir.

Int 16 Did they stop at all till they were out of sight.

and They did not appear to me to stop at all in my sight.

Int 17 Do you mean to be understood in answering the

X  
9<sup>th</sup> direct interrogatory that when you first saw the steamer after coming on deck that she was headed directly towards the shore,

Ans Yes - she appeared to run towards the shore,  
Int. 18 Do you know the direction of Milwaukee from the point of collision,

Ans I think it lays some north west from the place where the collision happened,

Int. 19 Was the steamer sailing out of her course for Milwaukee as she left you,

Ans I don't know her course she appeared to run towards the shore,

Int. 20 At the time when you came up just after the collision was there any other light to be seen on the vessel except the one in the binnacle, & if so where was it,

Ans I did not see any other light in the vessel except the one in the binnacle & the one in Armstrong's hand,

Int. 21 When you saw the vessel ashore next morning after the collision did you observe to see the condition of her timbers, & where she was broken,

Ans I saw the wreck but did not examine any of her timbers, she appeared to be split right from one end to the other,

Int. 22 How old a boy was this one aboard of the boat and in what capacity did he act

Ans I should think he was about fourteen or fifteen years of age, & acts in the capacity of Cook.

Int 23 Had Littlefield or Armstrong been drinking any liquer at the time were loading & getting off the vessel, or on board (objected to)

Ans I did not see them drink any sid,

Int 24 Was there any on board the vessel,

Ans I think there was none, there was some dutch-men had some when they were loading the vessel, I think there was none on board coming down,

Int 25 Do you know that Littlefield was in the habit of drinking (objected to)

Ans I did not at that time, I never saw the man previous to going down there.

Int 26 Have you known since that time that he was in the habit of getting the wages for liquer (objected to)

Ans I have not seen the man when in my judgment he was incapable

Int 27 To whom did these staves and heading belong that were on board the Jane

Ans They belonged to Charles Williams

Int 28 Did you go to the forward part of the boat after the collision

Ans I did not,

Int 29 Do you know whether or not Armstrong was the owner of this vessel

Ans I do not.

Direct examination resumed

Int. 18 After the steamer headed for shore did you see her turn again in her course for Milwaukee -

Ans Yes sir.

Int 19 How & in what way did you come from Racine to Chicago after the collision

Ans I came on board of a propeller.

Int 20 Did you pay for your passage

Ans No sir

Int 21 State why you did not pay your passage

Ans I told them I was wrecked & had not money & they took me free.

Cross Ex. resumed

Int. 30 State at what distance the steamer had run towards the land after the collision before she changed her course to the northward.

Ans That I can't tell.

Int 31 How long time was it before she changed her course

Ans I can form no idea

Int 32 Have you had a suit pending against Capt. Cooper for damages on account of this collision. (objected to by plaintiff)

Ans I believe true was, I gave orders to Mr. Arnold to that effect.



Direct resumed

Int. 22 What has become of the suit against Cooper,

Ans I dont know how Mr. Arnold has got along with it

Int 23 Was Capt Cooper or any one for him ever offered  
to pay you any thing to settle your suit against  
him. (objected to)

Ans No sir —

Isaac Stewart

State of Illinois  
Cook County ss.

I Louis A. Board, Clerk of the  
Circuit Court of the County of Cook, in the State  
of Illinois do hereby certify that previous  
to the commencement of the examination  
of the said Isaac Stewart he was by me  
duly sworn as a witness to testify the truth  
in relation to the matter & things in  
controversy between the said plaintiff &  
defendants so far as he should be inter-  
rogated in relation thereto; that the said  
deposition was taken by me at my office  
in the City of Chicago, in said County  
on Saturday the 16th day of October  
A.D. 1852 between the hours of 10 o'clock  
A.M. & 10 o'clock P.M. of said day pur-  
suant to notice that after said depositions  
were taken as aforesaid, the interrogatories &

answers thereto as written down by me were read over to the said witness & he thereupon before me subscribed his name thereto at the place & on the day & year last aforesaid -

Seal

In testimony whereof I have hereunto set my hand & affixed the seal of said Court at Chicago in said County this 16<sup>th</sup> day of October A.D. 1850

S. C. Hoard Clerk

Fees \$5.-

The counsel for the plaintiff further to maintain & prove the said issue on his part called David Barrett who being sworn testified in substance that he was a ship carpenter 17 years that he worked on the Jane in 1849 making some repairs, that he sheathed her sides from light water mark to her bulwarks in inch & a quarter thickness of pine plank, that he put in some new cants and ceiling on the inside that said new cants were two or three on each side of said vessel forward of windlass & near the right heads in place of damaged ones that they were of oak, that the said vessel after being so repaired might have been worth between \$500. & \$600. that the amount of her repairs was about \$60. or \$70. that the distance between her masts was 15 or 20 feet. That

her night heads & timbers appeared to be sound  
I examined her stem it was sound intention was  
to remove every thing unsound put in new oak  
wherever it was decayed.

The counsel for the said plaintiff further to ma-  
intain & prove the said issue on his part then  
call<sup>d</sup> Francis Johnson who being sworn testified  
that he had been a ship carpenter 16 years that he  
assisted in the repairs of the Jane in 1849 that he  
put on plank sheathing from water line up on  
her out side - that he did not examine her condi-  
tion was not inside and did not examine her -  
Witness stated that he thought the vessel was  
\$ 500, that such a vessel was worth  
worth, over \$ 500, -

He worked for Armstrong in making repairs &  
that he was in possession of schooner Jane saw  
him sailing her in & out of Chicago

It was here admitted on the part of the defendants  
that they <sup>were</sup> the owners of the steamer Sam. Stard  
in the season of 1849.

The Council, <sup>for the plaintiff</sup> here rested their cause -

The counsel for the said defendants to maintain & prove the said issue on their part then introduced & read in evidence the deposition of Richard B. Winslow heretofore taken in this cause as follows—

In the Cook Co. Cir. Court  
E. B. & Saml. Ward  
                  vs  
Samuel Armstrong

Same Court  
Charles Cooper  
                  vs  
Isaac Stewart

It is hereby stipulated on the part of the plffs. in each of these two suits that the testimony of Richard B. Winslow a witness for the defendants be taken in the first above mentioned suits by and before Louis M. Board Clerk of said Court at his office in Chicago on the 26<sup>th</sup> day of October inst. at 3 o'clock p.m. to be used on the trial of both of said suits with the same effect as if taken by commission, the said witness being a non-resident of the State of Illinois

Chicago October 23<sup>d</sup>

J. W. Arnold  
for Plffs

Samuel Armstrong)

E. B. & Saml Hard)

The deposition of Richard B. Winslow a witness of lawful age produced sworn and examined on the part of the defendants in the above entitled suit before me Louis A. Hoard Clerk of the circuit Court of Cook County Illinois at my office in Chicago on the 26<sup>th</sup> day of October A. D. 1850. —

Commencing at 3 o'clock p.m. of said day by virtue of the stipulation annexed hereto. The said Richard B. Winslow being by me first duly sworn to testify the truth in relation to the matters in controversy between the said plaintiff and defendants so far as he should be interrogated concerning the same testified and deposed as follows —

Interrog<sup>1</sup> What is your age, occupation, and place of residence

Answer I am thirty five years of age, reside at Cleasland Ohio & am a dealer in vessels, steaming, & produce

Inter<sup>2</sup> Were you ever engaged in boating if yea how long & where & in what capacity?

Ans I have been eleven years on the lakes from Buffalo to Chicago as clerk —

Inter<sup>3</sup> Were you on board the Steamer Saml Hard on or about the 22<sup>d</sup> of September 1849. at the time of the collision with Schooner Jane if yea state where

you were standing at the time of such collision  
the course of the two vessels and all you know  
about said collision.

3-6-41-  
lengths  
of Boat  
off  
Aug. I was, I was standing at the time of the collision on the upper deck forward of the pilot house. The steamer Ward was bound down to Milwaukee & the vessel was bound up the lake. When the vessel was first discovered I should think she was three or four lengths of the boat off heading directly for the steamer. Cooper immediately ordered the man at the wheel to put his helm hard a starboard, and run up to the bells and checked the boat at the time the vessel stopped. I should think the vessel struck the Ward aft of her forward gangway in the forward part of the saloon & passed along them till they cleared the boat & the vessel. The steamer then proceeded on her voyage & the vessel apparently went on her course up the lake.

Int. 4 What direction was the wind

Aug. I should think it was near northward as near as I can recollect.

Int. 5 Was the vessel east or west of the steamer

Aug. She was to the eastward of us when she struck

Int. 6 Who was standing with you when the boat struck

Aug. Capt. Cooper.

Int 7 What time of night was it

Ans I dont recollect, I should think near nine o'clock

Int. 8 What was the weather

Ans The wind was blowing heavy at the time & it was cloudy

Int 9 What part of the vessel did you first discern

Ans ~~I saw her sails first~~

Int 10 What direction did the steamer take when the capt. ordered the helm astarboard

Ans She went off to the westward

Int 11 Did you discover any light on the Jane before the collision.

Ans I did not notice any till about the time of the collision - till the vessel got along side I dont recollect where the light was

Int. 12 Was the light where it could be seen till you got abreast of the vessel.

Ans, I told you I didn't recollect of noticing where abouts the light was or of seeing any light until the time of the collision. if there had been been any light I think I should have seen it. any light that could have been seen from the steamer

Int. 13 What lights did the Ward carry at the time

Ans I did not notice -

Int 14 Was the course the Ward took the only one which could be taken to avoid the vessel, (objected to by plff)

Ans I should think it was. If he had stopped his engine & backed her he would not have had time to back her any before the vessel would have been into her

Int 15 State what injury the Ward received from the collision

Ans. It stove some of her bulwarks and or two stanchions & part of her saloon.

Int 16 Do you know whether the schooner had her starboard or larboard tacks aboard

Ans It seemed to me she was stunged out she had a fair wind.

Int 17 Did you hear any call for assistance from the vessel.

Ans. I did not hear any.

Int 18 What direction could the vessel have taken to avoid the collision (objected to by plff)

Ans If he had put his helm hard astarboard <sup>think</sup> he would have gone clear.

Int 19 From the course of the vessel what way did she appear to have her helm (objected to by plff)

Ans That I could not tell unless I had been on board as all vessels steer differently - some mind their helm better than others - I should think if she steered as ordinary vessels



do she would have her helm a port some.

Int. 20 Are you acquainted with the management of vessels on the lakes.

Ans I know something about it.

Cross examined by the plaintiff

Int 1 Have you ever run a sail vessel or steamer as master

Ans Not to give the courses to steer by I have acted as Capt. having a sailing master to manage the vessel out side - give the courses & so on.

Int. 2 You say when the vessel was first discovered she was heading directly for the steamer towards which point of the compass were they then respectively sailing.

Ans The steamer was sailing to the north'ard & the vessel to south'ard there might have been one or two points variation from north & south

Int. 3 Were they or not about equidistant from the shore.

Ans They were.

Int. 4 If neither had changed their course at all what would have been the result (objected to by self)

Ans They would have come stem on.

Int. 5 After the collision was any observation or inquiry made into the condition of the vessel.

Ans. After the collision I went up on the upper deck to Capt. Cooper and we concluded that the vessel was not damaged so far that she could go on we could see her sails. There was no inquiry made by the officers of the steamer that I know of.

Int. 6 If there was any lookout for signals of distress how long did they continue.

Ans. I was on the upper deck with Capt. Cooper five or 10 minutes I then came down whether they looked out any more or not I cannot say.

Int. 7 When you went on deck was the steamer under weigh again.

Ans. That I am not positive about she was started soon after the collision a few minutes.

Int. 8 What distance was the vessel from the steamer when you left Capt. Cooper on the lookout.

Ans. She was near a quarter of a mile.

Int. 9 At what rate was the steamer <sup>going</sup> at the time of the collision.

Ans. I should judge <sup>from</sup> 4 to 5 miles.

Int. 10 What is the length of the steamer Ward.

Ans. I should think she was from 180 to 190 feet.

Int. 11 You say in your answer to the 14 int. if she had stopped or reversed her engine there would not have been time to prevent a collision - did she reverse her engine?

Ans. Not to my knowledge, that would have made it worse for her if she had because it would have backed her further into the vessels way.

Int. 12 You say you saw the sails of the vessel first as she approached how long did you see her sails before you saw her hull -

Ans. Not more than a minute or two.

Int. 13 How far could a vessel's sails be seen that night?

Ans. Some times they could be seen further than at other times it was a cloudy night sometimes the moon was obscured by a cloud, the moon reflected on her sails when I first saw her

Int. 14 How long before you saw the vessel had you been at the saloon -

Ans. Nearly three hours, I had been at the pantry about an hour before, I had been standing there with Capt. Cooper half or three quarters of an hour.

Int. 14 Do you remember what you and Capt. Cooper were doing or talking about, just before you saw the vessel?

Ans. I don't recollect.

#### Direct examination resumed

Int. 21 In your answer to the 4<sup>th</sup> cross interrogatory you say that if neither vessel had changed its course they would have come stem on, Had the steamer changed its course after turning Milwaukee point before the collision if you know & which way was she running?

Ans. I don't know whether she had altered her course

or not she was running to northward

Int 22 In your answer to the 8<sup>th</sup> cross interrogatory you speak of the vessel being nearly a quarter of a mile when you went below leaving Capt. Cooper on deck, what could <sup>you</sup> see of the vessel or on it at that time -

Ans I could see her light & sails

Int 23 How had sails up the last you saw of her

Ans I think they were,

Int 24 In your answer to the 10<sup>th</sup> cross interrogatory you speak of clouds obscuring the moon will you speak more particularly of the character of the night & the appearance of the clouds

Ans I think it was cloudy & smoky too, if I recollect right, it is a great while & I don't recollect distinctly

Int 25 At the time just before the collision state whether or not it was Capt. Cooper's watch & whether or not he was on the lookout -

Ans I don't know whether it was Capt. Cooper watch or not he was on the lookout

Int 26 Was you a passenger on the Hard that trip or were you employed on the boat,

Ans I was a passenger -

Cross examined by plff.

Int 15 Had the steamer altered her course a short time before you saw the Jane,

Ans That I don't recollect, I don't know

Int. 16 How long was it from the time of the collision before the steamer got under way?

Ans. But a few minutes. I don't recollect. It was but a short time, from 8 to ten minutes.

Int. 17 In your answer to the 6<sup>th</sup> cross Int., you speak of being on the upper deck with Capt. Cooper five or ten minutes - was this after the steamer had got under way?

Ans. I think it was. I believe it was after she started.

Int. 18 At what rate in your judgment was the vessel sailing that night?

Ans. I should say she was going from seven to eight miles an hour.

Int. 19 After the collision & after she had got clear from the steamer & while you were watching did she seem crippled or did she move as before?

Ans. She seemed to <sup>be</sup> going off about her business. She appeared to be on her course. I think if she had been lying side to the ward I should have noticed it.

Int. 20 After she got fairly under way did you observe whether she moved slower than before?

Ans. That I could not tell. She was going directly from us.

Int. 21 Are you sure there was a moon that night?

Ans. I think there was. I am not positive it was.

a very light night at times. I think there was  
a moon.

Int. 22 Can you state about the age of the moon.

Ans I cannot.

Int. 23 Can you state whether it was easterly or west-  
erty of the meridian

Ans I do not recollect-

Direct examination resumed

Int 27 Did the Jane at the time of the collision  
hang on to the steamer, or did she pass off  
after she struck,

Ans She passed off

R. G. Winslow

State of Illinois,  
Cook County ss. J. Louis H. Hoard  
Clerk of the Circuit Court of the County of  
Cook in the State of Illinois do hereby certi-  
fy that previous to the commencement of the  
examination of the said Richard G. Winslow  
as a witness in the above entitled cause he  
was by me duly sworn to testify the truth  
in relation to the matters in controversy  
between the said Samuel Armstrong pla-  
ntiff & E. B. & Samuel Ward defendants  
so far as he should be interrogated con-  
cerning the same, that the said deposition

was taken at my office in Chicago commencing at 3 o'clock p.m. of the 21<sup>st</sup> day of October A.D. 1850 & continued by agreement till the 28<sup>th</sup> of said month, and that after said deposition was taken by me as aforesaid, the interrogatories and answers thereto as written down were read over to the said witness, and were thereupon signed by him ~~at~~ the place and on the day & year last aforesaid.

Seal

In testimony whereof I have hereunto set my hand & the seal of said Court at Chicago this 28<sup>th</sup> day of October A.D. 1850.

Louis H. Hoard Clerk  
Cook Circuit Court

The counsel for the said defendants then called Capt. Charles R. Cooper who being duly sworn testified in substance that he has sailed on the lake 11 years & on steamers 9 or 10 seasons, that he sailed the steamer Sam Ward in 1849 as master that he remembered the circumstances of collision between the Jane & Sam Ward September 1849 that it occurred some 5 or 6 miles off Milwaukee's point that the steamer was bound from Chicago to Milwaukee & intermediate ports, we made our usual landings at Kaukaun, Kenschau & Racine, Racine was our last landing place previous to the collision left Racine

at usual hour about 8 o'clock p.m. our first course from Racine is to steer north east to clear Racine point we hold that course about 4 miles then our course is north west which we hold for about 15 or 16 miles which brings us to the offing off Milwaukee point we then change our course to north west for Milwaukee light which is in Milwaukee bay, this is the usual course & the one we steered that night.

This diagram (produced & shown and which diagram is hereto attached marked "A" represents the course we steered that night we were further out in the lake than usual that night & not on our usual course & show <sup>which was the usual course</sup> also the course of the Dane. It was my watch at the time of collision. I was standing on the <sup>upper deck</sup> forward along side of the pilot house & in a proper place, a proper place to stand watch is any where on forward deck. Pilot house is forward of hurricane deck & 15 to 20 feet from stem. I was on the lookout. Mr. Winslow was standing by me on forward deck we had changed our course for Milwaukee light about 10 or 15 minutes before collision had run on that course about 2 miles when I saw the Dane just under our starboard bow a little ahead, saw her sails first & immed-



3  
Immediately ordered the wheel put a starboard  
& jumped up & rung the stopping bell, the  
wheel was put to starboard which turned bow  
of steamer more in shore & more away from  
Jane, engine was stop'd.

The vessel Jane was sailing up the lake & was  
headed more in shore than usual for vessels  
bound for Chicago -

The vessel ran her bowsprit & jib boom into  
our saloon just forward of wheel & made a  
hole through bulwarks & into saloon. George  
Brown was our wheelman & we consider him  
a competent man, we first saw a light  
on the Jane just as she struck us it  
seem'd to be in a man's hand, saw Jane's  
sails first she was then about a length or  
a length & a half of the steamer ahead of

4  
A  
us. Engine was stop'd but not reversed before  
the collision because there was not time to reverse  
& our way was not sufficiently deadened  
the boats came together before there was time to  
reverse the engine the course we took was the  
best we could take under the circumstances by  
steering off to west with the wheel a starboard  
we turned more away from Jane if we had  
kept our course we should have come in more  
direct collision & if we had put our wheel the  
other way would have run over her the wind was

blowing from the northward and eastward was  
a fair wind for the gun to come this way, the night  
was smoky & what we call a hazy night, some cloudy  
lights at times but mostly hazy. The Ward had  
a triangular light on top of pilot house like one  
produced in Court starboard side shows green light  
on larboard side a red light that had reflector two  
lights hung from each side of hurricane deck  
forward & two forward of main deck & white lights  
hung along sides between decks, all white lights  
but those on top of pilot house these were <sup>hung</sup> as usual  
for signal lights. The green light when seen by  
a vessel ahead indicates to her that we are on  
her starboard side & the red that we are on her  
larboard side. The wards lights could not be  
carried on the stem for it would be wash'd out  
by spray, we carried our triangular light in the  
usual & best place to be seen.

On cross examination by the plaintiff  
counsel the said witness testified that,

That the  
Ward could not carry a light further forward  
than the pilot house so that it could be seen  
that the pilot house is forward of the upper  
deck.

That the Ward had no bowsprit had

X one lamp that show'd two colors right or starboard  
and side green, & larboard side red, no other colored  
light had no single independent green light hung  
from starboard deck nor red light hung from larboard

X witness said that he did not know whether  
the triangular light was placed at an angle of  
60 degrees to the horizon or not, but witness pointed to the  
triangular lamp exhibited in court as being similar to the one on  
steam boat Hard

Hard had a triangular light like the one shown in  
court on pilot house, dont remember whether there  
was a moon that night

think stars might be seen occasionally but am not  
certain it was a hazy night & some clouds -

I was standing with Winslow nearly all the time  
from Racine point on forward part of boat west  
side of pilot house keeping a good look out

3 forward. I know I was standing on the forward deck  
any place on forward deck is a usual & proper

X place for a look out dont remember of leaning against  
pilot house <sup>was on watch</sup> have to stand by it to give orders

to wheelman - dont recollect on which side of  
him Winslow was think I saw the same first  
saw Milwaukee's light plain could see shore, two  
white lights hung at forward corners of our heavy  
cane deck & two hung forward below the 2<sup>d</sup>  
deck 10 feet from stem.

They were perhaps 1/2 mile further out in the  
lake than usual that night when we changed

our course for Milwaukee light - in consequence of the course of the wind, when it blows towards land we work the steamer a little further off from shore than when the wind is of shore.

On direct examination resumed, the witness says, the Jane was not on her true course for Chicago that night she had headed to much towards shore.

The Ward was on her usual and direct course was well manned, and sailed as usual except that we had no second mate on board that night he was sick in Chicago, if there had been a light on the Jane in a proper place I could not have helped seeing it - a light hung in the main rigging could not be seen. The place for the Jane's light should be at the end of the bowsprit - the stem of the Ward 20 feet from pilot house forward of hurray cane deck - we had one triangular colored light, no light colored gun on starboard side, no red light on larboard side except the triangular light colored <sup>on each side</sup> ~~on each side~~ - don't know what the angle of our colored light with horizon was were running at rate of 10 miles per hour. I stood talking with Winslow at time - think I saw Jane before Winslow. If he saw her 11 boats lengths off it would be 600 to 700 feet, was standing at pilot house on larboard side don't remember where Winslow stood - had been there some time - no other persons there. I was on 2<sup>d</sup> deck, Hurray cane deck 8.00 p

600 ft  
700

feet higher than second deck & top of pilot house 2 feet higher than that. No body on hurry came deck. I was on middle or second deck deck.

The counsel for the defendants then called George Brown who being sworn testified - that he was a sailor & now master of Steamer Delphi - was Wheelman on the Sam. Ward in the season of 1849 & was in the pilot house at the wheel steering the Ward at the time of the collision with the Jane can see out of the pilot house forward and at the sides. I was looking out ahead and saw the Jane about her length off from our starboard bow a very short time before she struck - saw her at same time Capt Cooper spoke to me - saw her foresail first - & then almost immediately saw her light as she got abreast of us - a man seemed to be holding it between the rigging & mast. Capt. Cooper ordered me to put the wheel hard a starboard & I did it - When I first saw the Jane she was headed N. N. by N. by N. It was a little smoky & hazy - could probably see a bright light 4 or 5 miles off - if the Jane had had a light any where forward I could have seen it 2 or 3 miles at least We had hauled up for miles a tick 10 to 15 or 20 minutes before collision & from the time we hauled up I kept a lookout that way & I should have noticed a light if it was where it could be seen - if the Jane's light was behind her foresail it could not be seen by any one approaching her -

The Ward showed a number of lights to the

June green, Red, & white, had one triangular light like one produced in Court on top of pilot house with its starboard side green, & Starboard red, one other colored light but this one -

The pilot house is most conspicuous place for steamer lights.

Our engine was stopped.

On cross examination by plaintiffs counsel this witness testified - that we had been going N. N. W. then changed about 3 points to W. N. by N. it was so dark we could not see objects on the water at much distance without lights - could see the out line of the west shore but could not distinguish any thing west.

Ward had her triangular light in best place to be seen - it could be set on the deck further forward but no body could see it there. The ward has no mast on which she could hang such a light

X Jane was out in Lake 3 to 4 miles Steamer further out in Lake than usual - could see the land did not see bushes on shore land is covered with timber there have been in employ of wards last summer until boats laid up had usual head of steam on no other person with me at wheel -

We must always stand out into the lake further when the wind blows in shore -

The June had a fair wind -

I know the Ward stop some minutes for she

would not mind her helm until after she started  
on a whale

Capt. Eras P. Hopkins a witness next produced,  
sworn on the part of the defendant testified,  
As a sailor having sailed 10 seasons, was first  
mate on the Ward in September 1849, at time of  
collision which was between 9 & 10 o'clock P.M.,  
off Milwaukee point from 4 to 5 miles.  
It was Capt. Cooper's watch - I was in the pilot  
house had retired about 15 minutes before coll-  
ision. We had taken our last course & were run-  
ning for Milwaukee light before I went to bed -  
I had been a bed 10 or 15 minutes lying down on  
a board in the pilot house. heard a stir & ran  
at the wheel told me a vessel was under our star-  
board bow. I told him to starboard his wheel  
but found Capt. Cooper was a head of me had  
ordered the wheel astarboard & he had jump'd up  
& stop'd the engine & rung the stopping bell -  
Saw the sail of the Jane just before she struck us  
first saw her foresail & then no light could be seen  
if the Jane's light was in the <sup>mast</sup> rigging behind the  
foresail it could not be seen by the steamer.  
The Jane's light could not be discovered by those on  
the steamer if it was hung as described by witness

Littlefield.

The proper place for a sail vessel's light is at the end of her bowsprit - have always seen them carried there, till within about a year since then some of them carry light on the sum-  
per post. it was a hazy grey night so that we could not see a vessel without lights.

Our light was placed on the pilot house know of no other more conspicuous place for it have seen it carried by steamers & propellers on the lakes on pilot house & not elsewhere - The pilot house is the highest part of the boat 3 or 4 feet higher than the hazy cane deck & stands 8 or 10 feet higher than the stem. we can see land on such a night as this was when we cannot see a vessel.

Capt. Cooper was on watch standing by the pilot house when I went into the pilot house & said down. he was standing where we always stand for look out.

It was the duty of the Jane to put a light where she could have been seen.

Our engine was stop'd 5, 10, or 15 minutes after collision. I ran aft and hailed the Jane to know if anything was the matter, got no answer & heard no hail from her.

She appeared to go off about her business The Jane struck the Starb a little forward of the wheel & stove her bowsprit into our saloon.



she struck us 75 or 80 feet back from stem of the steamer.

The Jane was right under our starboard bows when first discovered. There was not time to rouse the steamers engine before the collision it was all done very quick. There was no mistake of the Mutwankie's light for that of vessel. The course of the steamer & the Jane was as represented on this diagram - (produced in evidence) and hereto attached (marked) "A."

On his cross examination by plaintiff's counsel witness testified that,

X The stem of the steamer was perhaps 12 feet from the water -

First saw the sail of the Jane that night -

She was a vessel of about 50 tons burden,

The end of her bowsprit struck the steamer

She could carry a light on stem but it would be wash'd out. The Jane was sailing before the wind & there was nothing in the world to prevent her carrying her light at the end of her bowsprit.

7 Our course was generally 4 or 5 miles off Mutwankie point - we were a little further out that night on account of the wind blowing some in shore.

He had no second mate on board he was sick

X & as how I did his duty. Captain & Second mate

Had their watch together,  
when I laid down Capt. Cooper was in the  
pilot house.

Don't recollect whether there was moon,  
it was a hazy night and grey - we showed a  
green light & a red one. it was an triangular  
light - was asleep at time.

we could see the shore more distinctly than a  
sail. Am not now in depth employ -

I was lying <sup>down</sup> on south side of the Pilot house -  
was asleep in the pilot house - was awakened by  
the pilot singing out. got up very quick &  
was on deck immediately. Don't recollect what  
I stated the distance to be when I saw her after  
she pass, I think I saw her  $\frac{1}{2}$  to 1 mile or  
more - can't say exactly -

Steamer stop'd from 5. to 15. minutes her engine was  
stop'd tho she was going ahead some -

Am sure I went aft & looked after the vessel  
to see if anything was the matter - saw vessel  
after steamer got under way for 5. or 10 minutes  
might have seen her one or two miles can't say -

1 or 2  
miles

An direct Exam. Resumed

Witness says - Both the captain and 2<sup>d</sup> mate  
are not required to be on watch together. - there  
watch is not at same time - only one man is  
required to be on watch at a time - we don't.

usually station watch at different points on boat  
we had our usual watch in <sup>the</sup> usual place that  
night.

I left Mr. Wards employ before navigation closed  
but the St. Louis of them sail on my own <sup>of</sup>

Jacob Lang a witness produced sworn & Examined  
on the part of Defendants. testified - an  
- engineer was the engineer on the steamer  
Saw Ward at the time of the collision <sup>with Jane</sup> in 1849  
was on duty at the time of collision - the  
stopping bells were rung on Ward & the engine  
was immediately stop<sup>d</sup> by witness - the engine was  
stopped 10 or 15 minutes - did not see the Jane  
saw the hole in our saloon made by the Jane.

It takes some time to reverse an engine when boat  
is under way for it wont pass the center till way  
is deadened.

An cross examination by plfs. Counsel witness  
says - when running at full speed we can  
make from 18 to 22. revolutions per minute. -  
making 18. at that time -

at the time of collision I was by the cylinder  
head ceiling it on the striking of bell I imme-  
diately jumped down & stop<sup>d</sup> Engine I was 5 or 6  
feet from bell. - Buell was Chief Engineer he  
is now at Detroit - he had turned in it was  
my trick - no bell was rung to back her.

Am now in Harbors employ -

O  
An direct examination resumed - Mr. Sayer  
could not reverse the engine in the time  
of making one revolution - Can reverse before  
the headway is entirely deadened - but it must  
be stopped some considerable time before the engine  
can be reversed - It did not take any time  
for me to pump down & stop engine - I did  
not take over a second for me to get hold of  
the hook & stop engine, all I had to do was  
to unhook it, this hook was 6 feet off could  
walk down 6 feet in less than one second -

F  
Captain Sager a witness produced, sworn &  
examined on the part of the defendants testified as  
follows -

Am a sailor on the lakes commenced when 10  
years of age & have sailed in all capacities from  
cook up to master have sailed over 40 years - have  
been master of both steamers & sail vessels and am  
acquainted with the management of both classes.  
The place for a vessel to carry her light is un-  
der the end of her bowsprit it is a safe & most  
proper place & where I always carried mine & have  
always known others to carry them, - it is barely  
possible for spray to put it out - but if it does  
you must light it again - I never had one put  
out there nor never knew of one being put out

The course of the Hard as marked out on the diagram produced & shown to the witness & marked "A" is the proper & ordinary course for the Hard to take in going from Chicago to Milwaukee -

X If the James light hung in the main rigging it could not be seen by a vessel approaching her if there was a sail before it. The main rigging is an imprudent & improper place to hang a light. I would not have one in any of the rigging any where for it would trouble me to see out ahead. I would not have it where it could shine in my face - & would <sup>therefore</sup> place my light at the end of bowsprit then I could see my decks clearly.

One can see land where these vessels were much further and easier than you can see a vessel - It is impossible to say how far a vessel can be seen without lights - depends on weather can see them from twice their length to 2 miles

The most conspicuous & best place for a steamer signal light is on the top of the Pilot House as our lake steamers are built - they should not be far forward - I want to see a steamer light pretty well up & about her midships when I wish to know her position & course -

The act of congress requires too many lights. they always trouble me when a steamer is full

lighted. I never could understand lights of Steamers  
and don't understand them now.

If a steamer is under headway she cannot stop  
& reverse her engine - till considerable time has  
elapsed - I have sailed Steamers since 1838 till year  
before last.

If steamer loaded & going at the rate of  
8 or 10 miles per hour I should stop her engine  
& hold on till she had almost lost her headway  
before I attempted reverse engine - if light I should  
stop 5 minutes before trying to reverse - it could  
be reversed sooner, but it would endanger the  
boat & machinery, would be likely to break the engine  
to pieces to reverse before way was much deadened.

If a craft is sailing the lake in the night we  
expect to see her lights first, this is what we  
look after -

On Cross Examination Witness says supposing  
it to be a very light night a vessel might be seen  
perhaps a mile off or two miles off.

On direct examination resumed, Witness says  
I should want a man in front of Pilot House  
so as to con man at the wheel - One man on  
watch on steamer is enough if in right place & a  
customary & proper lookout - that two <sup>hands</sup> would make  
matters worse for one would depend upon the other

Capt. Rochester a witness produced and sworn on the part of defendants testified that he had been a master of sail vessels a number of years on the lakes -

that the place for lights on sail vessels is at end of bow sprit - they are generally carried there it is the safest place - unless at times when a vessel beating in a storm plunges badly, then the light should be carried on the Sampson post forward of foremast -

### An Orop Examination

If one could see land 4 or 5 miles off should think might see vessel  $\frac{1}{2}$  mile off unless fog lay low or mist or haze which sometimes intervenes should lie close on water, it does so sometimes & then lifts so you can see further at times than others

Capt Johnson a witness produced & sworn on the part of defendants testified - had been master of sail vessels 12 years - since 1848. they have carried lights on Sampson post sometimes but the usual place is under the bowsprit -

The object of a light in the binnacle is to light the compass. such light don't usually show out side - have noticed proppellers & Steamers they sometimes carry lights on stem & sometimes on Pilot House. know the Ward her best place for

signal light is on her Pilot House -

Steam boats do not as a general thing carry lights on stem, to witness knowledge -

Capt. Dobson a witness produced & sworn on the part of defendants. Says he has sailed 16 years on said vessels. The James light as represented by the testimony of Littlefield as read by counsel (& shown by models) could not be seen by a steamer approaching -

The proper place for sail vessels to carry signal lights is at the end of bowsprit & recently some carry on the sampson post -

Samb Romanus a witness produced & sworn on the part of the defendants says - Am. ship carpenter - reside at Oak creek 10 miles this side of Milwaukee - saw the James on the morning of the 23<sup>d</sup> Sept. 1849 the next day after collision Sunday. She was out in the lake off O. creek - was beached on shore - I examined her - she was very old & very rotten - appeared to have been built of all sorts of wood - was very rotten forward where she was opened - could pick spikes out of her timbers with my fingers. Her hull after rigging was taken off. I should say was worth nothing - Knowing her condition as to soundness I should not consider her of any value - Saw no new cargo or timbers a week after she went



ashore before I pulled out spikes -

An Crap examination witness says. live at Oak creek 10 miles from Milwaukee - Dept. sent for me as witness - have been sworn 4 times - cant tell who I have worked for as ship carpenter - nor on what have forgotten names - dont know what became of sails & rigging -

Mr. Fowle a witness produced & sworn on the part of defendant says. I reside at Oak Creek saw the schooner Jane Sept. 23. 1849 - Sunday morning drifting in the lake & water log? - my <sup>own</sup> went out with small boat & got her in shore as well as he could by her sails. I was on her a number of times & examined her she was an old & rotten vessel - Saw Armstrong plf - he ~~took~~ there he took the sails & rigging to my barn - The bedding was taken out & dried - The vessel lay there till she went to pieces by the sea - her bowsprit was turned out & lay around on deck - She was split down the stem, He took down spikes out of her all that would come out easy - we pick'd them out of rotten timber pine & cedar she was very rotten & worthless - The flying jib torn to pieces - & rigging carried away - dont know what vessel was worth anything not a bridge -

Capt. Harding a witness produced sworn & examined on the part of deft says. - have been masters of sail vessels 16 or 17 years - If steamboats have a pilot house that is the <sup>proper</sup> place for their signal lights - Know the Sam Ward - the best & most conspicuous place for her light is her Pilot House ~~think~~ the starboard light would be put out if placed on her stem when going against the wind -

The above is all the evidence given in this case,

Whereupon after arguments of the counsel for the respective parties the said circuit judge submitted the following instructions to the jury on the part & behalf of the said plaintiff -

The Plaintiff asked the following instructions (here clerk will copy) as asked Nos 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13. The court refused to give Nos 2, 3, & 13, and refused to give as asked Nos 1, 5, 6, 8, 10, 11, 12, and gave them as modified as hereinafter set forth -

No. 1 If the jury believe from the evidence that there was negligence and want of care on the part of the officers of the Ward and that the collision and injury was caused by want of such care, and through such negligence, then the

Plaintiff is entitled to recover (provided only that there appears to have been no want of care and no negligence on the part of the Jane)

2  
Refused  
If the jury believe from the evidence that the Steamer Saml. Ward had not at the time of the collision such lights as she was required by the Act of Congress of March 3<sup>d</sup> 1849 to carry; then the burden of proof is on the defendants to show that the injury was not the result of a failure to comply with the Act of Congress.

3  
Refused.  
If the jury believe from the evidence that the Steamer Saml. Ward had not at the time of the collision on the stem or as far forward as possible, a triangular light, at an angle of about sixty degrees with the horizon, and on the starboard side a light shaded green, and on the larboard side red as required by the Act of Congress of March 3, 1849, then the law throws the burden of proof on defendants to show that the collision did not arise from a failure to comply with such Act of Congress.

4  
Given  
If the jury believe from the evidence that by a careful and proper lookout, placed in a proper position the schooner Jane could have been discovered by the officers of the Steamer Ward in time to prevent

5. Of the Jury believe from the evidence that the officers of the Ward  
could have discovered the *Dane* by a proper look out <sup>such as the Law requires placed</sup> in a proper  
<sup>in time to have reversed the Engine.</sup>  
position, ~~when she was from four to six hundred feet off,~~ and if  
they also believe from the evidence, that if she had been so discovered  
there was time to prevent the collision, by reversing the Engine or  
otherwise, then the Law is for the plaintiff. —

#  
Given as altered.

#

have enabled the Ward to have reversed her Engine and prevented the collision and that such collision was caused by an omission to have such a lookout on the Ward, then plaintiff is entitled to recover.

5

If the jury believe from the evidence that the officer of the Ward could have discovered the Jane by a proper look out (such as <sup>red into</sup> the law requiring placed in a proper position (in time to <sup>red into</sup> have reversed the engine) and if they also believe from the evidence, that if she had been so discovered there was time to prevent the collision by reversing the engine or otherwise then the Law is for the plaintiff;

6

Given

If the jury believe from the evidence that the collision between the Steamer Ward and the Jane was caused by the negligence and want of care on the part of the officers of the Ward, in either of the following points to wit -

First Request

If it was caused by the Ward not having such lights as are required by the Act of Congress of March 1849.

Given as altered

#

If it was caused by the Ward not having a proper look out (such as the law requires) or of the person on the watch not being in the best and most favorable position on said Steamer.

#

Third Or if it was caused by the officers of the Steamer not  
improperly failing to reverse the engine of the Steamer  
under circumstances in which they could have  
done so (without endangering the Steamer) and  
thereby (have) prevented the collision, then the  
law is for the plaintiff,

Given as altered #

7  
7 If the Jury believe from the evidence that the  
Jame was sailing up the lake with the wind fair  
and out the Steamer Ward going down, the Jame  
had a right to keep her course and it was the  
duty of the Steamer to use all reasonable precau-  
tions to avoid a collision and if the Jury believe  
from the evidence in this case that the Steamer  
did not use all proper and reasonable precautions  
and in consequence thereof the collision occurred,  
then the law is for the plaintiff,

10 # on  
R. 589

584

Given #

8 If the Jury believe from the evidence that the Steam  
boat of the defendants came in collision with the  
plaintiffs Schooner and sunk her by which she was  
lost and at the time of collision there was no second  
mate on board of said Steamer nor any competent person  
performing his duties then the defendants will be  
liable unless the evidence shows that the accident  
and damages would inevitably have occurred,  
if the second mate had been on board and at  
his post so that said collision and damage was

Revised as written

Given as altered #

#

have enabled the Ward to have reversed her Engine and prevented the collision and that such collision was caused by an omission to have such a lookout on the Ward, this plaintiff is entitled to recover.

5

If the Jury believe from the evidence that the officers of the Ward could have discovered the Jane by a proper look out (such as <sup>read into</sup> the law requires placed in a proper position (in time to <sup>read into</sup> have reversed the engine) and if they also believe from the evidence, that if she had been so discovered there was time to prevent the collision by reversing the Engine or otherwise then the Law is for the plaintiff;

6

Given

If the Jury believe from the evidence that the collision between the Steamer Ward and the Jane was caused by the negligence and want of care on the part of the officers of the Ward, in either of the following points to wit -

First Request

If it was caused by the Ward not having such lights as are required by the Act of Congress of March 1849,

Second

Given as altered

#

If it was caused by the Ward not having a proper look out (such as the law requires) or of the person on the watch not being in the best and most favorable position on said Steamer.

#

Third As if it was caused by the officers of the Ward, not  
improperly failing to reverse the engine of the Ward,  
under circumstances in which they could have  
done so (without endangering the Steamboat) and  
thereby (have) prevented the collision, then the  
law is for the plaintiff,

Given as above #

7  
7 If the Jury believe from the evidence that the  
Jane was sailing up the lake with the wind fair  
and met the Steamer Ward going down, the Jane  
had a right to keep her course and it was the  
duty of the Steamer to use all reasonable precau-  
tions to avoid a collision and if the Jury believe  
from the evidence in this case that the Steamer  
did not use all proper and reasonable precautions  
and in consequence thereof the collision occurred,  
then the law is for the plaintiff,

10 How  
R. 583  
584

Given

#

8 If the Jury believe from the evidence that the Steam  
boat of the defendants came in collision with the  
plaintiffs Schooner and sunk her by which she was  
lost and at the time of collision there was no second  
mate  
on board of said Steamer nor any competent person  
performing his duties then the defendants will be  
liable unless the evidence shows that the accident  
and damages would inevitably have occurred,  
if the second mate had been on board and at  
his fault or that said collision and damage was

Repeared as written

Given as above #



~~not the result of the carelessness or want of skill of  
the defendants or their agents. If the Jury shall be of the  
opinion from the evidence that the absence of the second mate or the  
want of any competent person to perform his duties, contributed in any way  
to the collision.~~

9 <sup>right</sup> A competent and vigilant look out stationed at the  
forward part of the Steamer Saw. Hard and in a position  
but adapted to detect vessels approaching at the ear-  
liest moment, is indispensable to exempt the Steam  
boat from blame in case of accident in the  
right time, while navigating waters on which  
it is accustomed to meet other water craft; and  
if the jury believe from the evidence that the  
Jane was injured in this case for the want  
of such a look out on the defendants Steamer  
then the defendants are liable.

10 If the jury believe from the evidence that the  
Jane had not such light as the law requires,  
yet if they also believe from the evidence that  
if there had been a proper look out (such as  
the law requires) on the Steamer Hard the Jane  
could have been discovered in time to have  
avoided the collision, and that the collision  
was caused by not having such (proper) look out  
then the plaintiff is entitled to recover.

11 If the jury believe from the evidence that the second  
mate of the Steamer was not on board at the time  
nor any person to perform his duties & that it was

Given as altered

#

his duty to be on the lookout at the time, or that the Captain was not in the best position to see ahead, <sup>and the position of the Captain in this respect,</sup> and that he was on one side of the pilot house and not on the upper deck, these are all circumstances proper to be considered by the jury in determining by whose fault the collision took place.

12

# Given as altered

If the jury believe from the evidence that if the second mate of the steamer had been on board, and on duty at the time, <sup>and that it was his duty at the time to be on the lookout,</sup> and that if both he and the Captain of the steamer had been on the lookout on the upper deck, the same in the condition she was in might (by the exercise of proper diligence) have been discovered in time to have prevented a collision and that such collision was caused by their not being so on the lookout then plaintiff is entitled to recover.

13

Refused

If the jury believe from the evidence that if the Captain & second mate and Engineer of Steamer Ward had been where they could have most readily seen the same & the engineer where he could most quickly have stopped the steam and prevented the collision and that the collision was caused by their not being in such position then the plaintiff is entitled to recover.

To the giving of which instructions the said defendants, by their counsel, then and there excepted.

The counsel of the defendants requested the Court to give the following instructions to the jury to wit,

In the Coast Circuit Court

Saml Armstrong } Instructions on the part  
" } of the Defendants Wards  
E. P. v Saml Ward }

First If the jury believe from the evidence that there was no light on the Schooner Jane which could be distinctly seen by boats meeting her, it was negligence on the part of the Jane and if such negligence caused or in any way contributed to the injury the plaintiff cannot recover.

Second It was the duty of the Jane to have a good light placed in a conspicuous position so as to enable it to be seen by other vessels approaching; and if the jury believe from the evidence that the light on the Jane was not thus conspicuously placed at the time of the collision it was negligence on their part and if such negligence caused or contributed to the injury this action cannot be sustained unless the jury shall believe that the defendants intended to injure the Jane.

Third

Given

If the jury believe from the evidence that the collision did not happen for want of lights on the Steamboat, then it is not necessary for the jury to enquire whether the lights of the steam boats were according to the act of congress or not.

Fourth

Given

If the jury believe from the evidence that there was mis-management on the part of the Jane in first attempting to go west of the Steamboat and then changing to the eastward which in any way tended to produce the collision then the plaintiff cannot recover.

Fifth

Given

If the jury believe from the evidence that all proper means were taken by those on the Steamboat to avoid the collision, then it is to be treated as an accident & the plaintiff cannot recover.

Sixth

Given

If the jury believe from the evidence that the Jane had no light conspicuously placed and furnished, with reflectors & that the want of such light tended to bring about the collision then the plaintiff cannot recover.

Seventh

Given

Suits of this kind are governed by the rule of the common law which is that the plaintiff before he can recover must show that there was no fault or negligence on his part which would have caused or contributed to produce the injury.

W Given  
Eighth If the jury believe from the evidence that the plaintiff negligenced either in not showing good lights or in not steering the Jane properly or otherwise in any <sup>way</sup> helped to produce the injury the verdict should be for the defendants

W Given  
Ninth There is no legal presumption from the mere fact that a collision has taken place between a steam boat & a sail vessel that the steam boat is at fault and the plaintiff cannot recover in this case unless it appears that the collision was the fault of the steamboat & <sup>that</sup> there was no fault on the part of the vessel that could have caused or contributed to the injury

W Given  
Tenth It was not the duty of the steam boat to reverse her engine unless the jury shall believe from the evidence that there was a sufficient length of time for her to reverse the same after the Jane was seen (without danger to the engine.)

W Given  
Eleventh Persons navigating Steam boats are obliged to use such care, skill and diligence only as are ordinarily & usually requisite to be used in navigating Steamboats so as to prevent collisions that is to say, such care and diligence as is ordinarily used & exercised to prevent collision by persons having the requisite skill and exercising for such purpose ordinary prudence & discretion

Twelfth The statements read from books to the jury of the time in which a vessel can be stopped are not to be received as facts by the jury, but the jury must be governed in their opinion on this subject not by what is stated in such books but by the facts shown to and proved on the trial of the case.

Given

Shumway & Scammon  
Attorneys for Defts.

Thirteenth Instruction for Defendants

Refused #

If the jury believe from the evidence that the Jaws had not such a light furnished with reflectors as the Act of Congress requires, then the plaintiff must prove to the satisfaction of the jury that the want of such light did not contribute to the injury before he can recover.

Fourteenth If the jury believe from the evidence that neither the Steamboat nor the vessel had lights <sup>strictly</sup> in conformity with the act of congress but that the steamboat had lights furnished with reflectors of a size to insure a good and sufficient light shaded green on the starboard side and red on the larboard side & so placed as to be seen at a distance of ~~400~~ <sup>400</sup> feet ~~and which~~ <sup>and which</sup> were seen at that <sup>a</sup> distance by the Jaws in season to avoid the collision and the Jaws had no light which could be seen by the steamboat at

Given as above

a sufficient distance to enable the steamboat to avoid the collision then the burden of proof is upon the Jane to prove that the collision did not happen through her fault.

Shumway & Scammon

Fifteenth Instructions for Defendants

The Act of Congress requires that sail vessels on the lakes during the night, shall carry lights of a size to insure a good and sufficient light & that they shall be furnished with reflectors, and if the jury believe from the evidence that the schooner Jane had no such sufficient lights or furnished with reflectors placed so as to be seen by those on the steamer, then it was negligence on the part of the Jane and the plaintiff cannot recover if the want of such a light in any way contributed to produce the collision.

Given

16 That while the law governing sailing vessels upon the high seas, does not absolutely require sailing vessels to carry a light in the night, the law does expressly require sail vessels navigating the lakes on all nights, whether light or dark, to carry a good and sufficient light, that this is an express requirement of the Act of Congress, and no vessel who neglects, to comply with this provision can sustain an action for damages resulting from a collision in this Court *unless it appears*

~~without showing~~ that the collision did not happen from that cause; the burden of proof being upon the said vessel, under such circumstances to show that the want of such lights did not tend to produce the collision.

Which said instructions the Court gave except the thirteenth which he refused and marked "refused" and the ninth fourteenth and sixteenth which he refused to give as asked but gave as modified by him the modifications being in red ink and erasures with pen in black ink in the following form, to wit,

9<sup>th</sup>  
as given. There is no legal presumption from the mere fact that a collision has taken place between a steam boat & a sail vessel, that the steam boat is at fault and the plaintiff cannot recover in this case, <sup>unless it appears</sup> without proving that the collision was the fault of the steam boat & that there was no fault on the part of the vessel that could have caused or contributed to the injury -

14<sup>th</sup>  
as given. If the jury believe from the evidence that neither the steam boat nor the vessel had lights strictly in conformity with the act of Congress but that the steam boat had lights furnished with reflectors of a size to insure a good and sufficient light shaded green on the starboard side and red on the larboard side so placed as to be seen at a distance of 400



<sup>and which,</sup>  
~~5 miles and which~~ were seen at that distance by  
the Jane in season to avoid the collision and the  
Jane had no light which could be seen by the steam boat  
at a sufficient distance to enable the steam boat to avoid the  
collision then the burden of proof is upon the Jane to  
prove that the collision did not happen through her  
fault -

16<sup>th</sup>  
as given That the law governing sailing vessels upon the high  
seas, does not absolutely require sailing vessels to carry  
a light in the night, the law does expressly require sai-  
ling vessels navigating the lakes on all nights whether  
light or dark to carry a good and sufficient light;  
that this is an express requirement of the act of Congress  
and no vessel who neglects to comply with this provision  
can sustain an action for damages in this court of  
~~Commons or in any court~~ <sup>and no vessel</sup>  
did not happen from that cause the burden of pro-  
of being upon the said vessel under such circumstan-  
ces to show that the want of such light did not tend  
to produce the collision -

In the refusal of said court to give said ninth, thi-  
rtenth, fourteenth, and sixteenth instructions as asked,  
the said defendants by their counsel, then & there excepted  
and prayed the court to sign & seal this their bill of  
exceptions in open court which is done -

Hugh J. Hickley  
Judge J. C. C.

Seal

And afterwards to wit, on the eleventh day of December in the year of our Lord a thousand eight hundred and fifty two it being the first day of the November term of said Circuit Court the following among other proceedings had to wit

Samuel Armstrong }  
vs. } Case  
E. B. & V. Ward }

This day came the <sup>said</sup> parties by their attorneys and the jurors aforesaid also come, and they hearing further arguments of counsel and instructions from the court retire under charge of an officer of the court to consider of their verdict, and afterwards on Sunday the twelfth day of December A.D. 1852 come into Court and say we of the jury find the issue for the plaintiff and assess his damages at the sum of Five hundred and thirty seven dollars,

11 No of 1  
\$537-

And afterwards to wit, on the seventeenth day of December in the year last aforesaid, it being one of the days of the term last aforesaid of said Circuit court in the year aforesaid the following among other proceedings were had to wit

21144-63

Samuel Armstrong

vs

Eber B. Ward & } case

Samuel Ward } }

This day comes the said Plaintiff, by his attorney and moves the Court to have judgment upon the verdict rendered in this cause, Entered upon the records of the Court which is ordered

Therefore it is considered that the said Plaintiff do have and recover of the said defendants his damages of Five hundred and thirty seven dollars assessed as aforesaid, together with his costs and charges by him about his suit in this behalf expended and have execution therefor.

And thereupon come the said defendants by their attorney and pray an appeal of this suit, which is granted by the Court on the said defendants filing a Bond with the Clerk of this Court within thirty days, in the penal amount of Twelve hundred dollars with E. H. Nudduck or George C. New as security.

And afterwards to wit on the 31<sup>st</sup> day of December A.D. 1852 came the said defendants and filed in said Clerk's office this certain appeal bond in pursuance of said ord. which is in the words & figures as following to wit,

Know all men by these presents that we Eber  
B. Ward and Samuel Ward of Detroit in the  
State of Michigan, and Edward H. Haddock  
of Chicago in the State of Illinois, are held and  
firmly bound unto Samuel Armstrong of  
Chicago aforesaid in the sum of Twelve hun-  
dred dollars lawful money of the United St-  
ates, to be paid to the said Samuel Armstrong  
his Administrators, Executors, or Assigns; for wh-  
ich payment well and truly to be made we  
bind ourselves, our and each of our Executors,  
and administrators jointly and firmly by  
these presents;

Sealed with our seals, dated the thirteenth  
day of December, One thousand eight hundred  
and fifty two.

Whereas judgment has been rendered in  
the Circuit Court in and for the County of  
Cook in the said state of Illinois in favor of  
the said Samuel Armstrong against the said  
Eber B. Ward and Samuel Ward for five hun-  
dred and thirty seven dollars, damages besides  
cost of suit in which judgment and proceedings  
the said Eber B. Ward and Samuel Ward, complain  
that there is error, and have appealed from the  
said judgment to the Supreme Court of the said  
State of Illinois, Now the condition of this ob-  
ligation is such that if the said Eber B. Ward

and Samuel Ward shall duly prosecute their  
 said appeal pay the judgment appealed from  
 and costs, interest and damages in case the  
 said judgment shall be affirmed then this  
 obligation to be void, otherwise to remain in  
 full force and virtue;

Approved & submitted

31. A.D. 1852

L. D. Hoard

clk

Eber B. Ward

Seal

Samuel Ward

Seal

E. M. Haddock

Seal

State of Illinois

County of Cook

I Louis D. Hoard Clerk of the  
 Circuit Court of the County of Cook in said State do  
 hereby certify that the above and foregoing sixty  
 leaves contain a full true and perfect transcript  
 of all the records and proceedings <sup>files</sup> in the case last  
 determined in said Court between Samuel An-  
 strong plaintiff and Eber B. & Samuel Ward defend-  
 ants, now remaining in my office.

In testimony whereof I have hereunto  
 set my hand and affixed the seal  
 of said Court at Chicago in said  
 County this 12<sup>th</sup> day of March  
 A.D. 1853.

Louis D. Hoard  
 Clerk

Due for this record 420 files \$420.00  
 Cost 22.00 25  
 \$442.00

50

E. B. & S. Ward

11

Sand Armstrong

Record

Prepared

Filed June 11. 1853.

L. Selund  
clerk

142, 35

1184-13

Supreme Court

Samuel Armstrong

vs. appellee

E. B. & S. Ward

Appellants

Wm. H. Scammon Esq.

Counsel for appellants.

You will please take notice that on Monday the 11<sup>th</sup> day of July instant at ten A.M. of that day or as soon thereafter as counsel can be heard we shall appear to the judges of the Supreme Court at Ottawa for a rehearing in the above entitled cause upon a petition then and there to be presented.

Yours,

Arnold & Goodrich  
for appellee

July 9, 1853.

State of Illinois

Cook County

George M. Bayles, being duly sworn deposes and says, that he served a copy of the above notice on J. H. Scammon by personally delivering to him a copy of the same on the 9<sup>th</sup> July 1853.

Subscribed & sworn to this

9<sup>th</sup> July 1853 before me

George M. Bayles

L. D. Hoard Clk. Cook County Circuit Court

Supreme Court

---

Samuel Armstrong

vs.

E. B. & S. Ward

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Notice of motion  
for releasing -

J. P.

Filed July 12, 1853.  
S. Clark Clk.



Hard vs Armstrong } Petition for Rehearing

The appellee Armstrong respectfully presents the following Petition for a rehearing in the above entitled cause

The Council for appellee did not argue the question, as to whether the evidence would or would not support the verdict, because there had been four concurring verdicts in favor of Armstrong. The Statute having provided - "that no more than two new trials shall be granted to the same party in the same cause" (vide Rev. Stat. p 417 sec 24) they did not consider it proper to argue the case on its merits. Another reason why they did not consider <sup>that</sup> this question of merits properly raised - was that all the evidence is not contained in the records. Reference is made to certain plots & diagrams procured and used in the Court below and not set forth in the transcript. although the ground assigned for a reversal of the judgment is <sup>not</sup> that the verdict was against evidence. It is manifest that such a conviction in the mind of the Court, was the real cause of reversal. If the Court had been satisfied that substantial justice had been done - it is respectfully submitted that no error - would have been found in the instructions. Now we have not been heard on the merits & we most earnestly ask for a rehearing on this ground.

Mr Arnold made out & placed among the papers  
an abstract of the evidence bearing on ques-  
tion of look out. It is not now among the papers.  
A very full abstract of the evidence, add some to  
Armstrong, <sup>+ omitting</sup> qualifying circumstances, is found.  
The Court knows (as do not) whether the abstract  
prepared by Mr Arnold was seen or considered  
by them. The Council of appellee left before close of  
argument & on the brief filed by appellant are  
points and authorities not presented on the  
argument while we were present. The Council  
for the appellee feel that they have had no fair  
hearing on the merits nor on the new points and  
cases presented.

The ground assigned for a  
reversal of judgment is error in the 12<sup>th</sup> instruct-  
ion "If Jury believe from the evidence that if  
the 2<sup>d</sup> Mate of the Steamer had been on board and on  
deck at the time & that it was his duty at the time  
to be on the lookout <sup>that</sup> ~~if~~ both he and the Captain  
had been on the upper deck, the same in the con-  
dition she was might by the exercise of proper dili-  
gence have been discovered in time to <sup>have</sup> prevented  
a collision & that such collision was caused by their  
not being on the look out - the Plaintiff is entitled  
to recover"

There is evidence in the opinion of the Court  
(it is suggested) that the evidence has <sup>been</sup> misconceived  
or at least that the attention of the Court has not been  
called to certain facts -

1 Capt Cooper was not on upper deck as sup-  
posed in the opinion

He was on the middle deck

The hurricane deck was  
above him

Trinslow

Ques 5

Ans 6

After collision I went up on upper  
deck to Capt Cooper. They had been standing  
below. They went up on upper deck to get a  
better view

See Cross 17

Says when he was on "upper deck"  
with Capt Cooper, was after the  
collision

Art 3

Cooper ran up to the bells &c

Cooper says

"I was standing on upper deck  
forward along side of pilot  
house"

"hurricane deck he speaks of"  
as above -

He jumped up & rang stop-  
ping bells &c



"I was standing with Trinslow on  
forward part of boat west side  
of pilot house Keeping a good  
look out &c

"was standing at pilot house on  
Starboard side"

1 He was on west side of Pilot House.

- 2 He was not on the highest deck
- 3 The Jane was approaching from North East.  
The Pilot-house must to some extent have obstructed his view

Capt Cooper was not in front of Pilot house

12<sup>b</sup> Instructions submitted to the Jury the following propositions.

- 1 Was it the duty of 2<sup>d</sup> Mate to be on board & on the look out at that time?
- 2 If so, & they believed from the evidence that if he and Capt had both been on the look out <sup>at that</sup> they could by the exercise of proper diligence have discovered Jane in the condition she was (that is) with the lights as they were) in time to have prevented collision &c &
- 3 If the collision was caused by their not being on Look out - the Pltff might recover &c

In other words if the Steamer by the exercise of ordinary care could have prevented collision Pltff entitled to recover

It is respectfully submitted that the Court mistakes the instruction when they say "The Court instructs the Jury, that it was the duty of the Steamer whose both Capt & 2<sup>d</sup> Mate on watch &c"

The question whether under all the circumstances, it was the duty of 2<sup>d</sup> Mate to look out at that time was the question submitted to the Jury

It is obvious that the Court has overlooked the inclusion of the 1<sup>st</sup> Instruction. It is that P<sup>l</sup>ff is only entitled to recover on their finding that the collision was caused by Steamer's not having proper look out. These are the words

"And that such collision was caused by their not being so on the look out - Plaintiff entitled to recover."

And yet the Court say

"The instruction says that if two men on the look out stationed in a particular place could with proper diligence have discovered the schooner in time to have avoided the collision then the Steamer is liable no matter what amount of carelessness might be charged to schooner &c. Surely such is not the construction of that instruction. The instruction says if a proper look out by proper diligence could have discovered Schooner in time, the collision was caused by such want of proper care on part of Steamer - plaintiff can recover &c

Whether it was the duty of 2<sup>d</sup> Mate, at that time to look out, or whether two persons were necessary to constitute a proper look out was distinctly submitted to the Jury.

Was this a proper question to be submitted to a jury?

What constitutes a proper look out depends upon all the circumstances of the case

And jury must judge from all the circumstances & evidence in the case. In going into a harbor it is usual to have several persons on Look out - More are required at night than in the day - More in a place where coasting vessels are congregated than out at sea. The Dept introduced evidence tending to show that one person was sufficient - Was it not competent to submit that question to the jury?

In the case of the Europe

2 Eng. Law & Eq. p. 562.

The Court say. "One of the most important questions is - was there a sufficient Look out, that depends on two things. First what would be a sufficient Look out. 2<sup>d</sup> What was the actual Look out? I have no hesitation in saying that a reasonable Look out is the most ample that can be provided

"Whether one man was sufficient in a particular locality of steamer Dr Sushington says" was a question for you &c

2 Law & Equity - 563

See to same effect 10 Howard R. 607

A very important principle is enunciated in the opinion, which is calculated to ~~be~~ <sup>lead</sup> as we think to the production of great evil -

The Court say "she (the Ship) saw the other vessel (steamer) several miles off & might have given her a wide berth & thus avoided the possibility of a collision & under such circumstances the law will not shift the responsibility of a collision from the negligent to the

reasonably vigilant for the want of unusual and extraordinary precautions. &c.

The Court assume that it was the duty of the Sane to have given Grand a wide berth"

Was it duty of Sane to have given Grand a wide berth?

If she had attempted it & a collision had occurred - she would have violated the law.

It is the duty of a sail vessel to keep her course & of the Steamer to get out <sup>her</sup> way

Justice Wilson in discussing decision of Sup Court in

St John vs Payne, 10 Howard

583

"As a general rule therefore when meeting a sail vessel, whether close hauled or with wind free the latter (vessel) has a right to keep her course & it is the duty of steamer to adopt such precautions as will avoid her"

2 Wagg Adm 173

2 Wend R 452

10 Howard R "The Steamer will have right to assume that vessel will keep her course. If the vessel fails to do this the fault will be attributed to her" &c

Now this is the settled Bureau rule in admiralty - It is not only the right but the duty of sail vessels to keep their course.

Sail vessels & Steamers know this and go-  
ron themselves accordingly. If this decision  
is not to be considered it would seem  
to lay down an other rule. I suppose a case  
occurs in which a Steamer acting upon the  
rule in admiralty - and all other Courts  
but this - assuming that vessel will  
keep her course attempts to give vessel  
a "wide berth" & the vessel acting upon  
the intimation of the Court in this case at-  
tempts to give Steamer wide berth. In the  
endeavor each to give the other a wide  
berth - they come together - whose fault is it?

The importance of a uniform and ~~the~~  
known rule is too obvious to need com-  
ment. The Court is most earnestly solicit-  
ed to give this a hearing on this point

The Law as administered by Judge Dum-  
monds in the U. S. District Court for this State  
has been in accordance with Judge Wilson's  
decision & what is established rule in Admiralty  
Courts where questions of this kind are of fre-  
quent occurrence. Which rule are ves-  
sels to follow - the Admiralty rule or the one  
laid down by this Court. If they follow the Ad-  
miralty rule, Plff will sue in this Court &  
recover, if vessel follow the rule in this Court  
then Plff will bring his action in admiralty  
so that they will in all cases be liable in one  
Court or the other.

We have a right from the opin-  
ion to assume that "in the main the law was Cor-



Orally ~~explained~~ <sup>affirmed</sup> to the Judge & jury.

Then, if so why should the Court send us back to renew litigation which has already run through so many years. Can this Court say in the absence of the witnesses, without seeing them, knowing them & hearing them - that substantial justice has not been done? Upon this point we ask to be heard

Supposing the Statute prohibiting more than two new trials was enforced - we forbear to argue this question. A very nice criticism on instructions will always enable this or the Circuit Court to grant new trials ad infinitum.

~~The Statute can be repealed by each judicial legislation, whether it is desirable for this Court to set examples to circuit Judges or not. Ought not this Statute, to be commuted, & prevent endless litigation?~~

But we are prepared to show and ask the privilege of doing it that the evidence requires this verdict. We doubt not, this Court has decided with a single desire to do justice but as the decision is on a point upon which we have ~~not~~ <sup>as we think</sup> been heard & as the Court has been misled as to facts and instructions we respectfully ~~submit~~ ask to be heard and that a re-hearing be granted us.

Armed & Goodrich  
for Appellee

The Appellee has been fully heard by the counsel. As to the evidence there was and can be no pretence that the whole is not substantially in the record.

The pretence that substantial justice is not done by the decision of this Court is too preposterous to require comment.

If the day time is not sufficient to argue such a case as the "Crazy Jane", how much is?

No amount of argument can make a "light shine" on board of the "Little Jane". She had no power of "reflection".

50.  
Ward. v. Armstrong

50

P. for re-hearing.

11844

Filed July 12. 1853.

C. Veland Clerk.

1853