

No. 11993

Supreme Court of Illinois

Scholes, et al.

vs.

Ackerl, et al.

71641  7

Illinois

Benjamin Scholes et al.
vs
Abraham Ackerland et al.

37

11993

1852

Prepared

Be it remembered that heretofore, to wit, on the 25th day of October A.D. 1850, there was issued out of the office of the clerk of the Circuit Court in and for the county of Peoria in the State of Illinois under the seal of said court a summons in the words and figures, following, to wit.

Summons =

The People of the State of Illinois To the Sheriff of Peoria County, Greeting: We command You to summon Benjamin Scholes and W. March if they may be found in your county, to appear before our Circuit Court on the first day of the term thereof, to be held at Peoria, within and for the said county of Peoria, on the third Monday of November next then and there, in our said Court, to answer unto Abraham Ackerland, Arnold Goodheart, Jacob Goodheart of the firm of Ackerland, Goodheart & Co. of a plea of trespass on the case, To their damage three hundred dollars as they say and make return of this writ, with an endorsement of the time and manner of serving the same, on or before the first day of the term of the said Court to be held at aforesaid. Witness Jacob Gale, Clerk of our said Court and the seal thereof, at Peoria, this 25th day of October in the year of our Lord one thousand Eight hundred and fifty.

LS

Jacob Gale, Clerk.

which was returned by the Sheriff of said county, endorsed as follows.

Return =

State of Illinois,
Peoria County, ss. } Served the within writ by reading the same to the named Benjamin Scholes and W. March Oct 26th 1850.

Wm Compher Sheriff P.C.

by C. Cleveland, Deputy.

And afterwards on the eighth day of November A.D. 1850 there was filed a declaration & copy of Bill of Lading, which with the amendment of said declaration made May 18th 1852 are as follows.

declaration:

In the Circuit Court within and
for County of Peoria and State
of Illinois.

Of the Nov. Term, 1850.

State of Illinois, }
Peoria County, ss. }

Benjamin Scholes and W. March
the defendants in this suit were summoned
to answer unto Abraham Hesterland, Arnold Goodheart and
Jacob Goodheart, Merchants trading under the firm and
style of Hesterland, Goodheart & Co. the plaintiffs in this cause,
of a plea of Trespass on the Case. And thereupon said plain-
tiff by H. C. & A. L. Kerniman their attorneys complain.

For that whereas heretofore; to wit on the 22nd day
of October A.D. 1850. at the City of Saint Louis, to wit: in the
County of Peoria aforesaid, said defendants being owners of a
certain Steam Boat then running and navigated upon the
Illinois and Mississippi Rivers, and accustomed to
carry freight for compensation upon said rivers, and on
the day & year aforesaid at the said City of Saint Louis,
said defendants received on said boat Six Boxes of
Merchandise of said plaintiffs of great value, to wit:
Three Thousand dollars, to be by them transported to Peoria
aforesaid on said Steam Boat Mcvaster from said
Saint Louis to said Peoria in reasonable time and
which said Goods were received by said defendants in
good order from Wm. L. Ewing & Co. agents of said plaintiffs
and to be delivered at Peoria aforesaid to said plaintiffs
(unavoidable dangers of navigation and fire only excepted)
in like good order for and in consideration of the sum
Twelve & one half cents per hundred pounds freight
therefor, which said plaintiffs then and there agreed to pay -
and the said plaintiffs aver that said defendants did not

nor would deliver said Merchandize in said good order to said plaintiffs although a reasonable time has elapsed therefor, but on the contrary a large portion of said merchandize, to wit: One fancy Silk Vest of the value of three dollars and fifty cents, Two fine cloth Dress coats of the value of Thirty Two dollars, Seventeen pairs of ties of the value of (\$12.75) Twelve dollars and Seventy five cents, Ten pairs the value of forty five dollars, one pair of fancy cassimered pants of the value of five dollars, Five fine black satin Vests of the value of Twenty dollars, and one pair of Satinett pants of the value of Two dollars and Seventy five cents. Said defendants failed to deliver to said plaintiffs at said Teoria and which are and have been lost to said Plaintiffs and to deliver the same said defendants have hitherto wholly neglected and refused and still do neglect and refuse, to the damage of said plaintiffs of dollars and therefore they sue &c.

Also for that whereas the said defendants before and at the time of making their promise and undertaking hereinafter mentioned were the owners of a certain Steam Boat called the Novastar then in the Mississippi River at Saint Louis and bound from thence to Teoria in the State of Illinois, to wit: at the County of Teoria aforesaid. And thereupon the said plaintiffs, to wit: on the 22nd day of October A.D. 1850, at Saint Louis, on said Mississippi river caused to be shipped and loaded in and on board of said Steam Boat, Whereof said defendants were such owners as aforesaid divers goods & merchandizes, to wit: Six Boxes of Merchandize then in good order and condition of great value, to wit: Three Thousand dollars to be taken care of and safely & securely carried and conveyed by the said defendants in on board the said Steam Boat from said Saint Louis to said Teoria and then to wit at Teoria aforesaid

said to be safely & securely delivered without delay in like good order unto said Plaintiffs on their arrival, the danger of River Navigation and Fire only excepted and in consideration thereof and of certain freight and reward to the said defendants in that behalf, they the said defendants then and there undertook and faithfully promised said plaintiffs to take care of and safely carry and convey and deliver the said Goods and Merchandize as aforesaid, (the dangers of River navigation and fire only excepted) and although said defendants so being owners of said Boat as aforesaid, then and there had & received the said goods and Merchandize to be carried, conveyed and delivered as aforesaid and although a reasonable time for the carrying, conveying & delivering of the said goods as aforesaid had long since elapsed and the said defendants have delivered a part of said goods & Merchandize to the said plaintiffs at said ^{City} Teoria, Yet the said defendants so being owners as aforesaid of said Boat, not regarding their duty in this respect nor their said promise and undertaking did not nor would take care of & safely & securely carry or convey the residue of said Goods & Merchandize so shipped on board said Boat as aforesaid from Saint Louis aforesaid to Teoria aforesaid and there to wit: at Teoria aforesaid safely or securely deliver the same unto the said plaintiffs although no dangers of the River navigation or fire prevented them from so doing, but on the contrary thereof the said defendants so carelessly & negligently conducted and behaved themselves with respect to the said residue of said goods & Merchandize, that by & through the said carelessness & negligence & misconduct of said defendants and their servants and agents in this behalf the said residue, to wit: One Silk Vest, of the value of Three dollars and fifty cents, Two fine cloth dress coats of great value to wit: of the value of forty

dollars, Seventeen pair of ties of great value to wit: of the value of Twenty dollars, ten pairs of fancy Cassimere pants of great value, to wit: of the value of fifty dollars, One pair of fancy Pants of great value, to wit: of the value of Ten dollars, Five fine Black Satin Vests of great value to wit: of the value of Thirty dollars; One Pair of Satinest Pants of great value, to wit: of the value of five dollars and other of said Goods & Merchandize, in all of great value to wit: Three hundred dollars, being and were wholly lost to the said Plaintiffs, to wit: at the County of Teona aforesaid.

Wherefore the said Plaintiffs say that they are injured and have sustained damages to a large amount to wit the sum of dollars and therefore they sue &c. H. O. & A. S. Merriman,
for Plffs.

amend. to Declaration: Abraham Ackerland,
and others.

vs Teona Circuit Court,
Benjamin Scholes, May Term A.D. 1852.
Waldo Marsh.

And said Plaintiffs by leave of the court on their motion by way of amendment to the said declaration on file in this cause, insert in the Blanks left on the last line of the second page and the second line from bottom of 5th page of said declaration between the words "of" & "dollars" the words "three hundred dollars" — being the amount stated in the original summons issued in this cause

H. O. & A. S. Merriman,
May 18, 1852. for Plffs.

Copy Bill of Lading.
Shipped in good order and condition by Wm L. Ewing
the on account and risk of whom it may concern, on
board the good Steam Boat called the Novastar whereof

is Master for the present voyage the following articles marked as below, which are to be delivered without delay in like good order at the Port of Peoria, unavoidable dangers of river navigation and fire only excepted unto A. Ackerland Goodheart & Co or assigns, he or they paying freight for said goods at the rate of 12 1/2 ct per 100 lbs — In witness whereof, the owner, Master or Clerk of said Steam Boat hath affirmed to three bills of lading all of this tenor and date, one of which being accomplished the others to stand void — Dated at St Louis this 22th day of October 1850.

Marks	Articles	Weight	Articles	Weight
Ackerland, Goodheart, & Co. Peoria	6 Boxes Malle	723	Charged Paid St Ben West ft	362
			for receiving for warding, drayage — —	1 5-0
			chgs last trip of thorator	2 5-0
			Benj ⁿ Scholes, Clerk.	
			1 Days, 2.00, etc.	

Proceedings at a Circuit Court begun and held at the Court House in the City of Peoria, in and for the County of Peoria, in the State of Illinois, on the second Monday of May in the year of our Lord one thousand eight hundred and fifty two, it being the tenth day of said month. Present the Honorable William Kellogg, Judge of the Tenth Judicial Circuit in said State, to wit:

Tuesday May 11th A.D. 1852.

trial = Abraham Ackerland
Arnold Goodheart
Jacob Goodheart

vs Trespass on the Case
Benjamin Scholes, Walter Marsh.

This day came the plaintiffs by

And afterwards on the 15th day of May A.D. 185-1, the defendants
filed their plea in said cause in the words & figures following, to wit,

Abraham Ackeland

Arnold Goodheart

Isaiah Goodheart

vs

Benjamin Schales & Waldo Marsh

}
} In the Circuit Court of Peoria County =
} Assumpsit

And the said defendants by their attorneys
People & Sanger come and defend the wrong and injury when &c, and say,
that they did not assume and promise in manner and form as the
said plaintiff hath in his declaration complained & of this they put themselves on
the country, &c. = May 15th 185-1 = People & Sanger for depts.

W. C. Merriman their attorney and the defendants by H. Purple
their attorney and this cause came on to be heard on the exceptions
of the defendants to the deposition of Seigmund Rank taken on
behalf of the plaintiffs in this cause, In consideration whereof,
the Court being fully advised in the premises overruled said ex-
ceptions, and issue being joined between the parties, it is
ordered by the Court that a Jury be empannelled to try
said issue. Whereupon came a Jury of twelve good and
lawful men, to wit: Jacob Filzeel, Joseph Sturm, Elias
Pratt, M. J. Owen, Nelson Clark, John Rathbun,
Jerome S. Sloan, Peter C. Redding, John Evans, Joseph
Dennis, Austin H. Gordon and James M^r Kay, who
were duly chosen, tried and sworn well and truly to try
the issue joined and a true verdict give according to
evidence. The defendants moved the court to exclude
from the evidence to the Jury the deposition of Seigmund
Rank whereupon the Court over-ruled said motion.
The evidence having been fully heard the Jury retired
to consider of their verdict.

Wednesday May 12th A. D. 1852.

verdict:-

This day came the Jury empannelled in this cause on
yesterday and on their oaths aforesaid do say, we of the Jury
do find the issue in this cause for the plaintiffs and do assess
their damages by reason of the premises to the sum of Eighty
four dollars and fifty eight cents. Therefore it is consid-
ered that the said Abraham A. Perland, Arnold Goodheart
and Jacob Goodheart have and recover of the said
Benjamin Scholes and Waldo Marsh the sum of Eighty
four dollars and fifty eight cents their damages aforesaid
by the Jury aforesaid assessed together with their costs and
charges by them about their suit in this behalf expended
and that they have execution therefore.

judgment:-

mo. in arrest:-

The defendants in this case by Purple & Langer their attorneys

Enter a motion in arrest of Judgment herein for the following reasons —
1st Because the verdict exceeds the amount of damages claimed in the declaration in the case. 2nd Because no damages whatever are stated or claimed in said declaration. 3rd Because it is not stated in said declaration that said plaintiffs had sustained any damages whatsoever on account of the causes of action stated in this case.

Tuesday May 18th 1852

mo. in arrest =
overruled =

This day came on to be heard the motion of the defendants in arrest of judgment, whereupon the plaintiffs by Meunier their attorney entered a cross-motion for leave to amend their declaration by filling the blanks in the claim for damages with the amount of damages specified in the writ — On consideration whereof, the court allowed said cross-motion on condition that the plaintiffs pay all the costs which have accrued in this cause up to the day of the trial herein; And now the declaration having been amended by the plaintiffs in manner aforesaid, the court over-ruled the motion of the defendants in arrest of judgment; Thereupon the defendants entered a motion for a new trial in this cause for the following reasons — 1st Because the verdict was against law. 2nd Because the verdict was against evidence. — 3rd Because the court admitted the deposition of Sigmund Plank to be read in evidence, 4th Because the court gave the instructions asked by plaintiffs 5th Because the court refused the instructions asked by defendants.

Wednesday May 19th 1852

mo. for new trial
overruled =

This day came on to be heard the motion of the defendants for a new trial in this cause and the court being fully advised in the premises overruled said motion.

appeal =

The defendants prayed an appeal in this cause to the Supreme Court of this State, which is allowed on their filing in thirty days in the office of the clerk of this court an appeal bond payable to the plaintiffs in the penal sum of two hundred dollars with William S. Moss as surety and conditioned according to law.

And afterwards on the 2th day of May A.D. 1852, the defendants filed their Bill of exceptions in said cause, as follows, to wit.

Abraham Ackersland,
Arnold Goodheart,
Jacob Goodheart,

vs

Benjamin Scholes &
Waldo Mearsh.

Be it remembered that on the 26th day of August 1851 the defendants in this suit filed their exceptions to the deposition of Sigmund Rank taken in this cause, which said exceptions are as follows.

exception to
deposition

Abraham Ackersland,
Arnold Goodheart,
Jacob Goodheart,

vs

Benjamin Scholes &
Waldo Mearsh.

In the Circuit Court of Teona County.

Exceptions to the deposition of Sigmund Rank filed in this cause.

1st Because said deposition does not appear to be taken in this cause.

2nd Because it appears from said deposition that Goodheart & Ackersland instead of Plaintiffs forwarded said goods & were the owners thereof.

3rd Because no notice was given to take the deposition of said witness but to take the deposition of Seymour Rank instead of Sigmund Rank whose deposition is taken

Purple & Vanger
for Defts.

At the May Term A.D. 1852 after said cause was called for trial and before the Jury was sworn the court over-ruled the

said exceptions to said Deposition and the defendants counsel them and there excepted to the opinion of the Court.

Upon the trial of the cause the plaintiffs maintain the issue on their part; after having proved that Benjamin Scholes was clerk of the Steam Boat *McVistar* at the time the bill of lading hereinafter stated and set forth was signed by the said Scholes; read the said bill of lading in evidence which is as follows:

Shipped, in good order and condition, by *Wm L. Ewing & Co.* in account and risk of whom it may concern, on board the good Steam Boat called the *McVistar* whereof *Wm L. Ewing* is Master for the present voyage, the following articles marked as below, which are to be delivered without delay, in like good order, at the Port of *Peoria* (unavoidable dangers of river navigation and fire only excepted,) unto *McKerland, Goodheart & Co* or assigns, he or they paying freight for said goods at the rate of $12\frac{1}{2}$ ¢ per 100 lbs.

In witness whereof, the Owner, Master or Clerk of said Steam Boat hath affirmed to three Bills of lading, all of this tenor and date; one of which being accomplished the others to stand void.

Dated at *St Louis* this 22th day of October 1850.

Stamps	Articles	Weight	Articles	Weight
<i>McKerland,</i>				
<i>Goodheart & Co</i>	<i>Boxes Medice</i>	<i>723</i>		
<i>Peoria</i>			Charges	
			<i>Paid St. "Ben West," frt</i>	<i>362</i>
			<i>Receiving Forwarding</i>	
			<i>Drayage</i>	<i>150</i>
			<i>Chgs last trip by McVistar</i>	<i>250</i>
			<i>Benjamin Scholes, Clerk.</i>	<i>102.</i>

Cents in the ship you by Moorestar last trip, the Boat left before we could not get Bl. L. signed; the charges were \$2⁵⁰/₁₀₀ which we put in this Bill Lading.

Yr Mt

W L Ewing & Co.

Deposition of
S. Rank =

The Plaintiff then offered in evidence the deposition of the said Sigmund Rank which was objected to by the Defendants for the reasons stated in the exceptions aforesaid: The Court over-ruled said objection & the deposition and the same was read to the Jury, to which said defendants then & there excepted; said deposition is as follows.

Abraham Ackland,
Arnold Goodheart,
Jacob Goodheart,

vs

Peoria Circuit Court.

Benjamin Scholes,
W Marsh.

To said defendants or

Duple & Sanger their Attys.

Take notice

that on the 20th day of April inst. we shall cause to be issued from the office of the Clerk of said court a ^{subpoena} ~~dedimus potestatem~~ or commission directed to some commissioner of the city of Cincinnati, Ohio, to take the deposition of Seymour Rank of said city in answer to the following interrogatories, to be read in evidence on part of plaintiffs in above cause, you can file cross interrogatories if you deem proper.

Yours &c

Peoria April 18. 1851.

H. O. & W. L. Merriman.

Interrogatories to be propounded to above named witness

- 1 Are you acquainted with the parties to this suit? If yea, how long have you known them respectively.

2 What is your age, residence, occupation & what was your occupation on the 12th October A.D. 1850.

3 If in answer to the last preceding interrogatory you state that you were on said day a clerk in the house of Goodheart & Hesterland Lincolnville, state whether or not, on or about that day the said firm shipped to said plaintiffs at Peoria, Ills, an invoice of goods, if yea, state on what day such goods were shipped and attached to your deposition a copy of the invoice so shipped at that time with the prices of the same, the manner in which said goods were packed, whether in new or old boxes, to what commission merchants they were consigned, and your means of knowledge.

H. P. H. L. Merriam
For Jeff.

"State of Illinois, Peoria County, ss: The People of the State of Illinois. To John W. Applegate, Commissioner of Illinois of the City of Lincolnville in the State of Ohio as commissioner to take deposition.

We having confidence in your skill and fidelity, have appointed you, and by these presents do authorize and require you, at a certain time and place to be by you appointed for that purpose, to cause the witness whose name is mentioned in the caption of the annexed interrogatories, to come before you, and then and there diligently and faithfully to examine him on oath upon the said interrogatories and you will cause the said interrogatories, as they are propounded, together with the answers of the witness thereto, to be reduced to writing in the order in which they shall be proposed and answered; and you will then cause the witness to sign his name to the same in your presence. You will also annex a certificate, subscribed by yourself at the foot of the deposition stating

that it was sworn to and signed by the deponent and the time and place when and where the same was taken. The deposition thus taken and subscribed and all exhibits produced or referred to by the witness together with this commission and the annexed interrogatories, you will enclose, seal up and direct to the clerk of the Circuit Court of the County of Peoria, in the State of Illinois with the names of the parties litigant endorsed thereon.



Witness Jacob Gale, clerk of the Circuit Court of the County of Peoria and the seal of said Court this first day of May in the year of our Lord one thousand eight hundred and fifty one.
Jacob Gale, clerk.

Interrogatories to be propounded to Seymour Rank of the City of Cincinnati in the State of Illinois witness to be produced, sworn and examined in a certain cause at common law now pending and undetermined in the Circuit Court in and for the County of Peoria in the State of Illinois, wherein Abraham Westland, Arnold Goodheart and Jacob Goodheart are plaintiffs and Benjamin Scholes and W. Marsh are defendants.
On the part and behalf of the said plaintiffs as follows, to wit:

- 1st Are you acquainted with the parties to this suit?
If yea, how long have you known them respectively?
- 2nd What is your age, name & occupation and what was your occupation on the 12th October A.D. 1850?
- 3rd If in answer to the last preceding interrogatory, you state that you were on said day a clerk in the house of Goodheart & Westland, Cincinnati — State whether or not on or about that day the said firm shipped to said plaintiffs at Peoria Ill., an invoice of goods, If yea, state on what day such goods were shipped

and attach to your deposition a copy of the invoice & shipped at that time, with the price of the same, the manner in which said goods were packed, whether in new or old boxes, to what commission Merchants they were consigned and your means of Knowledge.

On the part and behalf of the defendants, cross-interrogatories, as follows, to wit,

- 1st On what boat were the goods you speak of shipped?
- 2nd Did you see them delivered on board the boat after they were packed?
- 3rd How do you know that the invoice is correct? did you count the articles packed and put up in the boxes? Have you any recollection of the number and kind of articles sent except by reference to the invoice or the plaintiffs books?
- 4th Who made the entry in the said Plaintiffs Book of the said articles originally?
- 5th Did the Boat on which the goods were shipped give a Bill of Lading for the same? if so, attach a copy thereof to your deposition.
- 6th Have you any interest in this suit, or in the firm of Ackerland & Co.?

The Deposition of Sigmund Rank taken at the Law Office of John W. Applegate in the City of Cincinnati, the County of Hamilton and State of Ohio on Wednesday the fourteenth day of May Anno Domini Eighteen hundred and fifty one

in pursuance of and agreeably to the commission hereto attached, to be read in evidence on the behalf of the Plaintiffs, in a suit at Common Law, now pending in the Circuit Court in and for the County of Peoria in the State of Illinois, wherein Abraham McRistland, Arnold Goodheart and Jacob Goodheart are plaintiffs and Benjamin Scholes and W. Marsh are defendants. The deponent being of lawful age and first duly sworn, in answer to interrogatories, deposes and says, as follows, to wit:

1st Q^y Are you acquainted with the parties to this suit?

Answer. I am acquainted with them.

2nd Q^y What is your age, name and occupation and what was your occupation the 12th October A. D. 1850?

Answer. My age is Twenty years, My name is Sigmund Kank. I am a clerk in the Commercial House of Goodheart & McRistland in Cincinnati Ohio, I was clerking for them in said house on the 12th October A. D. 1850.

3rd Q^y In answer to the last preceding interrogatory you state that you were on said day a clerk in the house of Goodheart & McRistland Cincinnati, state whether or not on or about that day the said firm shipped to said plaintiffs to Peoria, Ills, an invoice of goods, If yes, state on what day said goods were shipped and attach to your deposition a copy of the invoice so shipped at that time, with the prices of the same, the manner in which said goods were packed, whether in new or old boxes, to what commission Merchants they were consigned and your means of knowledge,

Answer. On or about the 12th October A. D. 1850, the house of Goodheart & McRistland, in Cincinnati shipped one box of Merchandise consisting of Mens ready made clothing, for the house of

A. Herland, Goodheart & Co of Peoria, Illinois, consigned to W. E. Ewing & Co of St. Louis, Missouri, via, the Steam Boat Ben West, on the 14th of the same month, they shipped five other boxes of Merchandise, consisting of Mens ready made clothing on the same boat, to the same Commission House in St. Louis for the same house in Peoria as the former box of goods; The exhibit marked "A", is a copy of the invoice of said goods, with the price of each article carried out opposite the same, which invoice is made a part of this my deposition, I care-fully entered each article mentioned in the invoice, on the day book of said Goodheart & A. Herland as they were taken down to be packed; I made out the bills of lading and saw the goods all taken away to the Boat Ben West.

On the part and behalf of the defendant's cross-interrogatories, as follows, to wit:

1st Q. On what Boat were the goods you speak of shipped?
Answer. The goods were shipped on the Steam Boat Ben West.

2nd Q. Did you see them delivered on board the boat after they were packed?
Answer. I did not see the goods delivered on board the boat.

3rd Q. How do you know that the invoice is correct? Did you count the articles packed and put up in the boxes, have you any recollection of the number and kind of articles sent except by reference to the invoice on the plaintiffs books?

Answer. I have no recollection of the number and kind of goods sent except by reference to the books of Goodheart & A. Herland: As before stated I made the original entry on the day book of said goods.

4th Who made the entry on the said Plaintiffs books originally?
Answer: I made the original entry of said goods on the day book of Goodheart & McReland.

5th Did the boat on which the goods were shipped give a bill of lading for the same? If so, attach a copy thereof to your deposition.

Answer: The Boat on which the goods were shipped gave two Bills of Lading for the same, true copies of which respectively designated as exhibit "C" and "D" are hereto attached and made part of this deposition.

6th Have you any interest in this suit, or in the firm of McReland & Co.?

Answer: I have no interest in this suit; or in the firm of McReland & Co.

And further the deponent says not.

Sigmund Rank.

State of Ohio, } ss.

Hamilton County, }
City of Cincinnati. } 3

I do hereby certify that the foregoing deposition was sworn to and signed by the deponent, and the same was taken by me, at the law office of John W. Applegate in the City of Cincinnati, Hamilton County and State of Ohio, between the hours of 9 O'clock and 11 O'clock A.M., on Wednesday the 14th day of May A.D. 1851; All which is done by the authority vested in me by me, ^{by the} de-
crees, dated May 12th 1851, issued to me by the Clerk, Jacob Gale, of the Circuit Court for Peoria County, State of Illinois, hereto attached; and by that certain commission issued to me John W. Applegate by his excellency Thomas Ford, Governor of the State of Illinois, dated October 7th Eighteen hundred and forty six, authorizing me to administer

oaths, take depositions and the proof and a knowledge-
 ment of deeds and other instruments in writing to be used
 or recorded in the State of Illinois," and I do further cer-
 tify that I am duly sworn in office, under said latter
 commission and a copy of said oath of office is duly
 deposited in the office of the Secretary of State for the State
 of Illinois. Given under my hand and Official seal
 this fourteenth day of May Anno Domini eighteen hun-
 dred & fifty one at my office, in the city
 of Cincinnati in the State of Ohio

L.S.

John W. Applegate.

Commissioner of Illinois in and for Ham-
 ilton County, in the State of Ohio.

Messrs. Goodheart & Co.

Bought of Goodheart & Westland,

Successors to A. Neiler & Co.

36 Pr fancy Cass Pants	3.15	113.40
12 " " " "	3.50	42.00
4 " " " "	2.25	9.00
8 Blk Latin Vests	2.25	18.00
9 " "	1.30	11.70
5 " "	2.70	13.50
13 Blk Latin Vests	2.50	32.50
2 Tweed Coats	3.37 ²	6.75
5 " "	3.00	15.00
8 Pilot " "	3.00	24.00
8 " "	4.50	36.00
10 Cloth Coats " "	6.00	60.00
8 Sack " "	5.25	42.00
7 " Pants	1.87 ²	13.13
46 Heavy Shirts	37 ²	17.25
12 pr " Pants	1.37 ²	16.50

10 pr	Sheeps Grey pants	1 75	17 50
7 "	Blk bush "	3 25	22 75
5 fancy	Vests	2 30	11 50
18	Blk Vatin "	2 00	36 00
10 "	" " "	2 50	25 00
14 "	" " "	1 80	25 20
4	Blk Felt Over coats	5 75	23 00
3	cloth Dress "	9 00	
2	Brown Hack "	5 25	10 50
6	Blue Felt "	5 37 ²	32 25
6	" " "	4 50	27 00
3	Blue Blanket "	4 00	12 00
6	" " "	4 50	27 00
7	Blanket "	7 00	49 00
1	" " "		
1	" " "		9 25
6	Boys Pilot "	2 00	12 00
2	Blk Felt "	5 00	10 00
6	cloaks	8 00	48 00
1/2 doz	cloth Caps	5 77	2 88
1	" Diamond cut "		4 72
1/2 "	" " "	6 82	3 41
1/2 "	Hoop Top "	6 82	3 41
1/2 "	Infant Liberty "	5 77	2 88
1/2 "	Flush Trimmed "	9 45	4 73
1/2 "	" " "	13 65	6 83
1	" " Gold Diggins "		16 25
1/2 "	" " " " "	16 80	8 40
1 1/2 "	" " 2 nd " " "	14 20	21 30
2/3 "	chable " " "	19 95	13 30
8	" Opera	5 00	40 00
1/4	" keravats	16 50	4 12
			1036 68

Amount forwarded		1036	68
6 doz brown S Bell B. V. Hats	7 87 ²	47	25
1 " Black Angola "		11	55
2	4 85	9	70
3 Blouses	13 75	27	50
add 10 %		1132	68
6 Boxes + Drge		113	26
		3	25

[Endorse] The within foregoing is Exhibit "A" referred to in the accompanying deposition. Dated May 13th 1851. John W. Applegate, Comr.

"Shipped in good order and well conditioned by Goodheart & Ackland, on board the good Steam Boat Ben West the following articles marked or numbered as below, which are to be delivered, without delay, in like good orders at the Port of St Louis, Mo, (the unavoidable dangers of the River and fire excepted) unto W. L. Ewing & Co. or assigns, he or they paying freight for the said goods, at the rate of 50 cts pr 100 lbs. In Witness whereof the Owner, Master or Clerk of said Boat hath affirmed to three Bills of Lading, of this tenor and date, one of which being accomplished, the others to stand void. — Dated at Cincinnati, this 12 day of October 1850.

Marks	Articles	Weights
Ackland, Goodheart & Co. Storia Mo	One box of ready made clothing.	265
Case of, W. L. Ewing & Co. St Louis, Mo.		Furnish. Clk.

[Endorse] The within is exhibit "B." John W. Applegate, Comr. Dated May 13. 1851.

Shipped, in good order and well conditioned by Goodheart & Akerland on board the good Steam Boat Ben West, the following articles, marked and numbered as below, which are to be delivered, without delay, in like good order at the Port of St Louis, Mo. (the unavoidable dangers of the River and Fire only excepted,) unto N. L. Ewing & Co. or assigns, he or they paying Freight for the said goods at the rate of 50cts per 100 lbs. In witness whereof, the Owner, Master or Clerk of said Boat has affirmed to three bills of lading, of this tenor and date, one of which being accomplished, the others to stand void. — Dated at Cincinnati, this 14th day of October 1850.

Marks	Articles	Weight
Akerland Goodheart & Co. Peoria Ill	2 Boxes of Hats 1 " " Caps 2 " " Meckdse	458
	Wm G. Sumner, Clk.	
Care of N. L. Ewing & Co. St Louis, Mo.	[Endorse] The within is exhibit "D" John W. Applegate, Comr. Cirt. May 13th 1851.	

all of which were exhibited & shown to the Court upon the hearing of the motion to exclude said deposition.

The Plaintiff then read in evidence the depositions of John Rankin and Sylvester Freeman, which said depositions are as follows.

The Deposition of John Rankin of the City and County of Peoria & State of Illinois taken on the sixteenth day of February A. D. 1852, between the hours of ten o'clock in the morning & six o'clock in the evening of said day at the office of Peters & Blakeley in said Peoria by agreement of parties, to be read in evidence in a cause pending in the Circuit Court of the County of Peoria & State of Illinois; wherein Abraham Akerland & Arnold Goodheart are plaintiffs and Benjamin Scholes & N. Marsh,

Deposition of John Rankin

are defendants. Said John Rankin doth depose & say as follows.

First. Are you acquainted with the parties to this suit?

Answer. I am acquainted with said A. Perland and Goodheart, but not the other parties.

Second. What is the residence and occupation of the plaintiffs in this suit?

Ans. Their place of business is in Peoria, Illinois; their occupation is that of selling Ready made clothing.

Third. Did you or not see a box of clothing shipped to said plaintiffs on the Steam Boat Movastar in the month of October A.D. 1850. If yea, state the condition of said box, particularly & the conversation if any, between the said plaintiffs or which of them and Officers of said Steam Boat Movastar and which of said Officers.

Answer. I was down at the Levee in the City of Peoria, Illinois in the Month of October A.D. 1850 and one of the plaintiffs or one of their clerks called my attention to a box on the levee, said plaintiffs or their clerk having refused to receive said box, when the Captain or Clerk of said Movastar, said to him, to take the box up to their store & he would call up & see about it. The box cover was partly off; one of the coats was hanging partly out of it; Box badly damaged; said Steamer Movastar was lying at the Wharf at said Peoria at the time of the conversation above referred to.

Cross Interrogatories by Defts

First. Who was Captain of the Steam Boat Movastar at the time referred?

Answer. I do not know.

Second. Who was Clerk at said time?

Answer. I do not know.

John Patton.

State of Illinois, 3^d ss.

County of Peoria, 3^d ss. George S. Blakeley, Notary Public in and for said County, & State do hereby certify, that John Patton, was was by me sworn to testify the truth, the whole truth and nothing but the truth, as a witness in the above named cause and that the foregoing deposition by him subscribed, was reduced to writing by me and taken at the time and place in the caption hereof mentioned.

§ 3

Given under my hand & seal Notarial at Peoria, the day & year aforesaid.

George S. Blakeley.
Notary Public.

Deposition of
Silvester Freeman

Abraham Ackerland,
Arnold Goodheart &
Jacob Goodheart.

vs

Benjamin Scholes &
Waldo Mearsh.

In the Circuit Court in & for the
County of Peoria, State of Illinois.

Interrogatories propounded to Silvester Freeman to which are affixed the answers thereto.

Interrogatory 1st

Are you acquainted with the parties to this suit? If yea how long have you known them respectively?

Answer.

I do not know any of the parties to this suit.

Int: 2nd

What is your age, residence and occupation and what was your occupation in month of October A.D. 1850?

Answer.

I was twenty years old last December; My occupation is shipping clerk. In the month of October 1850, I was shipping clerk at the house of Mrs. L. Ewing & Co.

Int: 3rd

Did you or not receive in the month of October A.D. 1850, as

Commission Merchants by Steam Boat Ben West from Goodheart, McReland & Co of Cincinnati, one box of ready made clothing, marked McReland, Goodheart & Co, Teonia, Ills. care of Wm L. Ewing & Co, St Louis, Mo., purporting to have been shipped on the 14th of October 1850? If yea, state on what day you received the same whether or not the said boxes were received in good order and what was the general appearance of said boxes and whether or not you shipped the same in good order and to whom: on what boat and on what day you shipped the same, and attach a copy of the bill of lading to your deposition.

Answer.

As clerk for Wm L. Ewing & Co, I received during the month of October, six boxes of Merchandise, marked Goodheart, McReland & Co, Teonia, Ills. These boxes were shipped on the Steamer Ben West from McReland & Goodheart, Cincinnati, on the 14th day of October and were marked to the care of Wm L. Ewing & Co, St Louis, Mo. These boxes purported from the bill of lading to be one box of clothing, one box of caps, two boxes of Hats and two boxes of Merchandise. I do not know what the boxes really contained. I cannot recollect on what day I received these boxes. The Boxes as far as I could judge were in good order. I did not examine them closely & don't recollect their general appearance. I shipped the said boxes in good order to McReland, Goodheart & Co, Teonia, Ills, on the Steamer Novastar, on the 22nd day of October A.D. 1850.

Exhibit A attached is a true copy of the bill of Lading.

Cross Interrogatories on the part and behalf of defendants.

Int: 1st

If in answer to the third interrogatory of the plaintiffs you state

that you did ship the boxes and goods therein mentioned, please state whether you examined said goods particularly so as to be able to state positively that they were in good order, did you open the boxes & examine the goods, did you examine the boxes particularly to see if they had been opened since packing, might not said boxes have been opened on their way from Cincinnati to St Louis, do you know any thing about the contents of said boxes except from the marks on the outside.

Ans: The Boxes appeared to be in good order, I did not examine them particularly, I did not open the boxes & examine the goods. I did not examine the boxes particularly to see if they had been opened since packing. I cannot tell whether said boxes might or might not have been opened on their way from Cincinnati to St Louis. I know nothing about the contents of said boxes except from the marks on the outside.

Int: 2nd Have you any recollection of having shipped any boxes of goods to the plaintiffs at the time stated in your direct examination, except from the books of your said company and if so what kind of boxes were they, how long, of what wood were they made, were they bound with wooden or iron hoops or otherwise?

Answer. I recollect that I shipped the boxes to Jeff at the time stated without referring to W. L. Curing & Co. books. The boxes of hats & caps were of the usually used in shipping those kind of goods. The boxes of clothing & merchandise were of the medium size as near as I can recollect. They appeared to be made of pine. I cannot state whether the boxes were bound with either wooden or iron hoops or with any hoops at all.

3rd Int:

How many boxes of goods did you ship for the Illinois River & the Towns or Cities along the same during the year 1850? State to the best of your judgment without reference to your books and then state whether you have any distinct recollection about these particular boxes independent of the books.

Answer:

I really cannot state how many boxes I shipped during the time and to the places mentioned mentioned in the interrogatory preceding. I shipped a great number probably four or five hundred. I have a distinct recollection of these ^{particular} boxes independent of the books.

Int: 4th

Did you ship any goods for the Illinois River which were not in good order and if so when and to whom during said year and do you pretend to state from recollection the condition of all the goods shipped by you.

Answer:

I do not recollect having shipped any goods for the Illinois River during the year 1850 which were not in good order. I do not pretend to state from recollection the condition of all the goods shipped by me since I have been with Mr. L. Ewing & Co. I may have shipped goods in bad order up the Illinois River during the year 1852, but I do not recollect having done so.

Sylvester Freeman.

State of Missouri,
County of St. Louis.

I, George A. Hyde, the commissioner named in the commission hereto attached do hereby certify, that in pursuance thereof, I caused the witness named in the caption to the interrogatories hereto annexed to appear before me on the 2nd day of April A. D. 1852 between the hours of 8 O'clock A. M. & 5 O'clock P. M. of said day at the counting room of Messrs W. L. Ewing & Co. in the City of St. Louis, County & State aforesaid; a time and place by me appointed for that purpose and having first caused him to be duly sworn on his corporal oath to testify

the truth in relation to the matter in controversy so far as he should be interrogated, I proceeded to examine said witness upon the said interrogatories to said commission attached and none others, as well on the part of said defts as of said plaintiff, and caused all of the said interrogatories together with the answers of the witness thereto to be reduced to writing in the order in which they were proposed and answered & signed by said witness and that the same as they now appear hereunto annexed were sworn to & signed by the said witness at the time and place mentioned: In witness whereof, I have hereunto set my hand this 20th day of April A.D. 1852

Geo A. Hyde.
Commissioner.

Shipped in good order and condition by Wm S. Ewing & Co. On account and risk of whom it may concern, on board the good Steam Boat called the Neova Star whereof Wm S. Ewing is Master for the present voyage, now lying at the Port of St Louis, the following articles marked as below, which are to be delivered, without delay, in like good order at the Port of Feoria (unavoidable dangers of the river navigation and fire only excepted) unto Ackerland, Goodheart & Co or assigns, he or they paying freight for said goods at the rate of 7 charges ^{per 100} \$5.12

In witness whereof, the Owner, Master or Clerk of said Steam Boat hath affirmed to three bills of lading, all of this tenor and date one of which being accomplished the others to stand void. Dated at St Louis this 22th day of October 1850

Marks	Articles	Charges	
Ackerland,	Boxes Mase	Freight paid Ben West	3.62
Goodheart & Co.		Drayage	.25
Feoria,		Commission for Forwarding	1.25
	Exhibit A.		\$5.12

The Plaintiff then called John Warner who testified that at the time said Goods in Plaintiffs declaration mentioned were supposed to have been lost, he was clerk for ^{the} said Plaintiffs. That there were six or seven boxes received by Plaintiffs from the defendants at the same time. That he saw said boxes opened and assisted in opening them. That he did not see them until they were lying on the pavement in front of the Plaintiffs store. That three or four of the boxes contained clothing of various kinds and the others caps, Hats, Boots & Shoes. That one of the boxes containing clothing when he first saw it appeared to be in bad order. It was an old box looking as though it had been used before. That the Cover appeared to have been pried up with a hatchet or other instrument and had the appearance of having been opened. That when opened it was not full. That the articles upon the top of the box appeared to have been disturbed and were not lying smoothly as ordinarily packed. That in his opinion the box might have contained originally all the articles herein after mentioned not corresponding with the bills forwarded from Cincinnati. That after the boxes were opened and the goods had been indiscriminately placed upon the counter, he and the plaintiffs upon examining the goods and comparing them with the invoices and bills received from Cincinnati ascertained that the following articles were missing.

19	Black Ties	worth	\$ 8.00
2	Black Dress cloth coats	with	24.00
1	Fancy Silk Vest	"	3.00
5	Black Satin Vests	"	22.50
1	Pair Casimer Pants	"	4.50
1	Pair Pants	"	2.50
10	Pair Casimer Pants	"	45.00

The witness further stated that there were three boxes which contained the same kind of articles of clothing as the one

which appeared to have been opened and that nothing on the invoice from Cincinnati indicated in what box any particular goods were packed that all but the one box appeared to be full, complete and in good order.

The defendants admitted that they were at the time alleged in the declaration when said goods were alleged to have been lost, Owners of the Steam Boat *Mcovistar*.

The Defendants then read in evidence the depositions of John Skillman, George Mc Lewis, and Calvin Grady, which are as follows.

Interrogatories to be propounded to George Lewis, John Skillman, Edward Fitz, Edward Marsh & Calvin Grady, citizens and residents of St Louis, in the State of Missouri, witnesses to be produced, sworn and examined in certain cause at law now pending and undetermined in the Circuit Court, in and for the County of ^{to} Peoria and State of Illinois wherein Abraham Hesterland, Arnold Goodheart and Jacob Goodheart are plaintiffs and Benjamin Scholes and Waldo Marsh are defendants.

On the part and behalf of the said defendants as follows to wit:
1st Are you acquainted with the parties to this suit? if so how long have you known them.

2nd What was your occupation during the year A.D. 1850 and particularly in the month of August, September, October, & November of said year?

3rd Do you know whether during said time & if so about what time the Defendants carried any and if so what goods for the plaintiffs from St Louis to Peoria, from whom were said goods received and were there any other goods received by said defendants to be carried to the plaintiffs from the same person or company.

4th State whether the said goods were or were not delivered to the plaintiffs

Deposition of
John Skillman

at Peoria, in the same order & condition in which they were received & all your means of knowledge upon the subject.

5th Do you know any thing further of benefit to the Defendant.

Cross-interrogatories on the part and behalf of the said plaintiffs, as follows, to wit:

1st If in answer to 3rd direct interrogatory, you state that Defendants carried goods for Plaintiffs, state on what Boat they were so carried & if on the Movastar, state, on what part of said Steam Boat such goods were stored.

2nd Could not any person aboard said Boat have had access to said Goods at any time during said trip?

State of Missouri,
County of St. Louis.

Depositions of witnesses to be read on behalf of the defendants in a certain cause now pending in the Circuit Court for the County of Peoria, in the State of Illinois, wherein Abraham Stenderland, Arnold Goodheart and Jacob Goodheart are the plaintiffs and Benjamin Coles and Waldo Marsh are the defendants.

John Skillman being produced, sworn and examined on behalf of the defendants, on his oath, states in answer to Interrogatories as follows, to wit:

To the first interrogatory he states
I am not acquainted with the plaintiffs in this suit.
I am acquainted with the defendants and have known them for the past four years.

To the second interrogatory deponent states,
I have been an engineer for the past six years, I was engaged

such during the year 1850 and during the months of August, September, October and November of said year.

To the third interrogatory deponent states

That according to the best of his recollection in the month of November or October 1850, there was received Goods & Merchandise on the Steam Boat "Novastar" at St Louis in Missouri, but from whom received or the quantity thereof, deponent does not know. I do not know how much was received on said boat at said time, nor from where received.

In answer to the fourth interrogatory deponent states

That all the goods which were received on said boat at St Louis aforesaid for the plaintiffs to be delivered at Peoria, were delivered at Peoria in the State of Illinois, in the same order and condition as when the same were received on board said Boat. I know that they were in the same condition when delivered as when received, from the fact that I saw them when received and they were placed just aft of the boilers, where I could see them all the time while I was on watch and saw them continually while on the passage from St Louis to Peoria.

In answer to the fifth Interrogatory, deponent states

From the position of the goods and my means of seeing them the whole time I was on watch, I do not believe they could have been injured without my seeing the injury. The Boxes did not appear new or in good order when they came on board of the boat.

In answer to the first interrogatory the deponent states

The goods were carried on the Steam Boat "Novastar", they were stowed just aft of the boilers.

To the second cross interrogatory deponent stated —
That access could be had to said boxes of goods during
said trip, but no one could have opened said boxes or
removed the same without being seen by the Engineer on
Watch.

John Skillman

Sworn & subscribed before me at my office this 22^d day of March 1852.
Thos B. Hudson, commissioner.

Not being able to procure the attendance of any other of the
witnesses named on this day, I adjourn the taking of said
depositions until April 19th 1852.

Thos B. Hudson, commissioner.

George M. Lewis -

George M. Lewis of lawful age being produced and sworn
by the undersigned. In answer to interrogatories hereto
annexed, on his oath answers and states. —

For answer to the first interrogatory, he says —
I am not acquainted with the plaintiffs. I am acquaint-
ed with the defendants. I have known them over two
years.

In answer to second interrogatory deponent says —
I was Engineer on the Steam Boat Movastar in the
months of August, September and October in the year 1850.

In answer to the third Interrogatory deponent states. —
I do not know or recollect of the defendants at any time
whatever carrying any goods for the plaintiffs from St
Louis, Missouri to Leoria, Illinois, except one lot which
was according to my best recollection in the fall of the
year 1850.

In answer to the fourth interrogatory deponent states —
That the lot of goods above referred were stowed at the after
end of the boilers on said boat and were continually in my

sight while I was on duty. I stowed my regular watch while on the trip from St Louis to Vioria aforesaid. The Boxes were not moved, opened or in any way disturbed while I was on watch. I feel confident that the boxes were delivered in the same condition as when received on said boat. The reason I am ^{thus} confident is from the fact that said boxes were all the time while on watch under my personal observation and they could not have been opened without my seeing it done.

In answer to the fifth Interrogatory deponent states -
On the trip referred to John Stillman was one of the Engineers of said boat; he stood his regular watch as such, he and myself were the only engineers of said Boat on said Trip.

To the first cross-interrogatory deponent states -
I have already stated that the goods carried by defendants for Plaintiffs were carried on the Steam Boat Novastar and were stowed at the after end of the boilers of said Boat.

In answer to the second Cross interrogatory deponent states that from the position said goods occupied on said Boat they were accessible at any time to persons on boat, but no one could have had access to them without being observed by the Engineer on duty.

And farther deponent saith not

Geo M. Lewis

Sworn to and subscribed before me this 19th April 1852,
Thos B. Hudson, Commissioner.

Calvin Grady - Calvin Grady of lawful age being duly sworn on his oath in answer to the interrogatories hereto annexed says -

In answer to first interrogatory deponent states -
I am not acquainted with the plaintiffs in this suit; I am

acquainted with the defendants, I have known Waldo Marsh about fourteen years and the said Benjamin Holed over two years.

In answer to second interrogatory deponent stated -
I was Carpenter on board Steam Boat Novastar in the year 1850 and in the months of August, September & October of that year.

In answer to the third Interrogatory the deponent stated -
The defendants carried some boxes of Goods for plaintiffs in the month of September 1850 or about that month from St Louis to Teoria. I do not know from whom said goods were received. I do not know of the defendants having at any time carried for the plaintiffs any other lot of goods. I cannot describe the goods; they were boxed up; except one box which bursted open by rolling it ashore at Teoria, that box contained clothing. As Carpenter I was called on to nail up the box. I found some difficulty in nailing it up owing to the fact that it was so full, I had to get a man to stand on it until I could drive in the nails.

To the fourth Interrogatory deponent stated.
The Boxes when put off at Teoria appeared to be in as good condition as when received. I saw them when they were taken ashore, they all appeared to be sound, and tight except the one which bursted as above stated, which I nailed up as before stated.

In answer to the fifth interrogatory deponent stated -
I know nothing further of benefit to the defendants.

To the first cross interrogatory deponent stated -

The Goods or Boxes above referred to by me were carried on Steam Boat Meovastar, they were stowed in the Engine room at the after end of the Boilers.

To the second cross-interrogatory deponent stated -
I suppose any person on said boat could have had access to said Boxes on the said trip. To far as I know no one did have access to said boxes; from the fact that said boxes were stowed just at the after end of the boilers, I feel certain no one could have disturbed said boxes without being observed by the Engineer on duty - And further this deponent saith not.
Calvin Grady.

Sworn to and subscribed before me this 19th day of April 1852.
Thos. W. Hudson, Commissioner.

State of Missouri,
County of St Louis.

I, Thomas W. Hudson, Commissioner, under and by virtue of the commission hereto annexed, issued out of the office of the clerk of the Circuit Court for the County of Peoria, in the State of Illinois and to me directed do hereby certify, that on the 21st day of March 1850, I caused to come before me at my office in the City and County of St Louis and State of Missouri, John Skillman and on the 19th day of April ¹⁸⁵² I caused to come before me at my office, in the City, County & State aforesaid George M. Lewis and Calvin Grady, that said witnesses were on the days aforesaid respectively by me duly sworn and examined by me, upon the annexed interrogatories, in the order therein set out and the answers of said witnesses to each of said interrogatories in the order in which they were propounded were by me then and there written down and the answers after being reduced to writing were read to each of said witnesses, who subscribed their names to the same in my presence and

swore to the same before me, at my office in St Louis aforesaid the said John Millman on the 24 March 1852 and the said Calvin Grady and George M. Lewis on the 19th April 1852. Given under my hand at St Louis, Missouri this 19th day of April 1852.

Thos P. Hudson, Commissioner.

The Defendant then called Thomas Cheyney who testified that he saw the box of goods in which the alleged missing goods were supposed to have been contained opened at the store of the Plaintiffs in Teoria, that it appeared to him to be nearly full and that in his opinion the Box in which said goods were packed could not have contained the alleged missing articles in addition to those already in said box.

This was all the material evidence in the case.

The Jury found a verdict for the plaintiffs for \$24.58

Before the Jury retired the Court at the instance of the Plaintiffs instructed the Jury as follows - The fact that the goods were abstracted from the boxes on the Mcvaster may be proved by circumstances and if the goods were put in the Box at Cincinnati and shipped for Teoria and the Defendants received the same in good order at Saint Louis and when delivered a Box was open and in bad order; these facts if proved would throw the burden of proof of the loss at some other place than on the Mcvaster on the defendants. ~~asked by the Plaintiffs~~ to the giving of which said instruction the Defendants then & there excepted.

The defendants entered a motion in arrest of Judgment for the reasons following -

1st Because the verdict exceeds the amount of damages claimed in the declaration in the case.

2nd Because no damages whatever are stated or claimed

in said declarations.

3rd Because it not stated in said declaration that said Plaintiffs, had sustained any damages whatever, on account of the causes of action stated in this case.

Purple & Fanger, Attys for Def.

Whereupon the Plaintiff entered a cross motion for leave to amend his declaration by inserting in the blank claim for damages, the amount of damages claimed in the writ in this case; there having been up to the time of said cross motion no claim for any specific amount of damages inserted in said Plaintiffs declaration.

The cross motion of the said Plaintiff was allowed upon the condition that said plaintiffs pay the costs of this suit up to the time said cause was called for trial; and the Defendants motion in arrest of judgment was overruled. To which decisions of the court the counsel for the Defendants then & there excepted.

The Defendants then entered a motion for a new trial in this cause for the following reasons

1st Because the verdict was against law.

2 Because the verdict was against evidence.

3 Because the court admitted the deposition of Sigmund Rank to be read in evidence.

4, Because the court gave the instructions asked by Plaintiffs

5. Because the court refused the instructions asked by Defs.

Purple & Fanger.

which said motion was overruled by the court (the plaintiff objecting to said motion being entertained for the reason that the same was waived and improperly made after the motion made & decided as above stated in arrest of judgment.

The Defendants counsel excepted then and there to the opinion of the court in over-ruling said motion for a new trial and requested the court to seal this bill of Exceptions which is done.

Wm Kellogg {seal}

And afterwards on the 28th day of May A.D. 1852 the defendants filed an appeal bond in said cause in the words & figures following,

Know all Men by these presents that we Walds Marsh, Benjamin Scholes and William S. Moss are held and firmly bound unto Abraham McReland, Arnold Goodheart & Jacob Goodheart in the penal sum of two hundred dollars lawful money of the United States, To which payment well and truly to be made and done, we do bind ourselves, our heirs, executors and administrators jointly & severally by these presents. Witness our hands and seals this 28th day of May A.D. 1852.

The condition of this bond is this, Whereas at the May Term A.D. 1852 of the Teoria County Circuit Court the above named McReland, Goodheart and Goodheart obtained a judgment in said Court against the above bounden Marsh & Scholes, for the sum of eighty four dollars and fifty eight cents, from which said Judgment the said Marsh & Scholes have appealed to the Supreme Court of the State of Illinois;

Now if the said Marsh & Scholes shall duly prosecute their said appeal and shall pay the Judgment, costs, interest and damages in case the said the said Judgment of the said Circuit shall be affirmed, then this obligation shall be void, otherwise in force.

Walds Marsh {seal}

Benjamin Scholes {seal}

by W. H. Turple, their Atty in fact

Wm S. Moss {seal}

State of Illinois
Prona county: I, Jacob Gale clerk of the circuit court
within and for the county of Prona in the State of Illinois
do hereby certify, that ^{the} foregoing is a correct transcript from
the Records of the proceedings in a certain cause in the
said court wherein Abraham Ackeland, Arnold Goodheart
and Jacob Goodheart are plaintiffs and Benjamin Scholes and
Waldo Marsh are defendants truly copied from the Records
and files in my office.

In witness whereof I hereto set my
hand and the seal of said court at
my office in Prona this ninth day of
June in the year of our Lord one
thousand eight hundred and fifty
two -

Jacob Gale, clerk.

Clerks fees: for transcript \$12.75 -
certipiate Seal .25 } \$13.00 - Received payment
of Purple Slangur defendants attorneys -
Jacob Gale, clerk.

Benjamin Scholes } Appellants
Waldo Marsh &
no }
Abraham Ackeland } Appellat
Arnold Goodheart }
Jacob Goodheart } Appeal from Prona

And now come the said Appellants
and say that in the Records & proceedings
of said and in the rendition of the
Judgment of said there is man-
ifest error in this to wit

- 1st. The Circuit Court Erred in granting the exception to the deposition of Trimmell Rank and in permitting said deposition to be read in evidence
2. In allowing the Cross motion to amend the declaration after verdict
3. In Refusing to arrest the Judgment
4. In overruling the motion for a new trial
- 5th - In giving the instruction asked by Appellee

6. In rendering Judgment on the verdict
 For these and other manifest errors in the Record & proceedings and in the rendition of the Judgment aforesaid they pray that the same may be set aside annulled & wholly for nothing returned June 10th 1852.

J. P. Pyle
 Atty for Appellants

In Writ Est Exortione
 H. O. P. M. M. M. M. M.
 for Appellee

Filed June 12. 1852.
 A. Deland Clk.

Record and
 Assignment of errors

Proia
 Benjamin Scholes &
 Waldo Marsh
 vs
 Abraham Ackland
 et al.