

No. **11886**

Supreme Court of Illinois

Ward, et al.

vs.

Salsbury.

71641 7

Cook

Eber B. Ward et al.
vs.
Orney Salsbury

41

851

Prepared

11886

United States of America
State of Illinois
County of Cook

Sp.

I was before the Honorable Giles Spring
Judge of the Cook County Court of Common Pleas
within and for the County of Cook and State of Illinois
as a Special Term of said Court begun and holden
at the Court House in the City of Chicago in said
County and State on the second Monday being
the fourteenth day of October in the Year of Our
Lord One thousand eight hundred and fifty and
of the Independence of the United States the twenty
fourth.

Present the Honorable Giles Spring Judge
Daniel W. Troy Prosecuting Attorney
Isaac Cook Sheriff
Attest: Walter Kimball Clerk

It is Remembered, that heretofore
to wit on the third day of October in the Year of
Our Lord One thousand eight hundred and fifty
nine came Oney Salisbury Plaintiff by James
McCollins Esquire his Attorney and filed in the
office of the Clerk of said Cook County Court of
Common Pleas his affidavit for Attachment, which

said affidavit is in the words and figures as follows to wit.

State of Illinois }
Cook County } p.

Orin Salisbury being duly sworn doth depose and say that Samuel Ward Eben B Ward & David Gallagher are justly indebted to this deponent in the sum of Three hundred forty eight Dollars & eleven Cents being the balance due this deponent for work labor and services rendered by this deponent for the said Samuel & E B Ward & David Gallagher as master of the Steam boat Pacific on board of said Steam Boat Pacific for and during the season of the year 1848 at their special instance & request, & in the further sum of Seventeen Dollars & forty Cents for interest on said balance from the 29th day of November 1848 to the present time, making in the whole the sum of Three hundred sixty five Dollars & fifty two Cents, which said last mentioned sum is now justly due to this deponent as near as he is able to estimate the same over & above all discount or set off. And this deponent further saith that said Samuel & E B Ward & David Gallagher are non residents of the State of Illinois, & both reside at Newport in the State of Michigan so that service of process emanating from the Courts of this State cannot be personally had or made upon them or either of them, And deponent further saith that said Samuel & E B Ward & David Gallagher have property to wit Steam Boats within the County of Cook liable to attachment.

wherefore he prays process of attachment to be issued
against them pursuant to the Statute in such case
made & provided.

Smorn & Subscribed
this 24th day of September
A.D. 1849 before me
Walter Kimball
Clerk

Oney Salisbury,

And upon the same day to wit the third day
of October A.D. 1849 the said Plaintiff filed in the office
of the Clerk of said Court, Security for Costs, and
also an Attachment Bond, which said Security for
Costs, and Attachment Bond, are in the words &
figures as follows, to wit,

" Oney Salisbury
" Daniel Ward Clerk
" Ward & David Gallagher } Cook County Court

I do hereby enter myself
Security for Costs in this Cause and acknowledge myself
bound to pay or cause to be paid all costs which
may accrue in this action either to the opposite
parties or to any of the officers of this Court in pursu-
ance of the laws of this State.


E. H. Rogers

Chicago Sept 29th 1849

" Know all men by these presents that me Oney
Salisbury and E. H. Rogers are held and firmly

bound unto Samuel Ward Eben B Ward and
David Gallagher in the penal sum of Six Hundred
and Ninety Six Dollars & twenty four cents, lawful
money of the United States, for the payment of which
said sum, well and truly to be made, we bind
ourselves, our heirs, executors, and Administrators,
jointly and severally, by these presents, Sealed
with our Seals, and dated this third day of October
A D 1849.

The Condition of the above obligation is such
That whereas the above bounden Oney Salisbury has
on the day of the date hereof, prayed an Attachment
out of the Cook County Court of said County, at the
suit of the said Oney Salisbury against the estate of
the above named Samuel Ward Eben B Ward and
David Gallagher for the sum of Three hundred &
forty eight Dollars and twelve cents, and the same
being about to be sued out of said Court, returnable
on the first Monday of February next, to the term
of the said Court, then to be holden, Now, if the said
Oney Salisbury shall prosecute his said suit with
effect, or in case of failure therein, shall well and
truly pay and satisfy the said Samuel Ward
Eben B Ward and David Gallagher all such
costs in said suit, and such Damages as shall be
awarded against the said Oney Salisbury his heirs
executors, or Administrators, in any suit or suits
which may hereafter be brought for wrongfully
suing out the said attachment, then the above ob-
ligation to be void, otherwise to remain in full
force and effect.

Oney Salisbury 

Signed, Sealed and delivered
in presence of W. Kimball,
Approved by me
W. Kimball Cln

E. H. Rogers

Seal

And upon the same day, to wit, on the third
day of October A. D. 1849, there was issued out of the office
of the Clerk of said Court an Attachment Writ in said
Cause, which said Writ is in the words and figures as
follows, to wit,

State of Illinois }
Cook County } of The People of the State of Illinois

to the Sheriff of said County, Greeting -
Whereas Oney Salisbury hath complained on oath to
Walter Kimball Clerk of the Cook County Court of
Cook County, that Samuel Ward, Eber B Ward and
David Gallagher are justly indebted to the said Oney
Salisbury to the amount of Three Hundred & Sixty five
dollars and fifty two cents: and oath having been also
made, that the said Samuel Ward, Eber B Ward and
David Gallagher reside out of this State, and are residing
in the State of Michigan, so that the ordinary process
of law cannot be served upon them, And the said
Oney Salisbury having given bond and Security ac-
cording to the directions of the act in such case made
and provided. We, therefore, command you,
that you attach so much of the Estate, real or personal,
of the said Samuel Ward, Eber B Ward and David Gal-
lagher to be found in your County, as shall be of value
sufficient to satisfy the said debt and costs, according

to the said Complaint; and such estate so attached
in your hands to secure, or so to provide that the same
may be liable to further proceedings thereon, according
to law, at a term of said Cook County Court, to be holden
at Chicago, within and for the County of Cook on the first
Monday of February next: so to compel the said
Samuel Ward, Ober B. Ward and Sarah Gallagher
to appear and answer the complaint of the said
Oney Salisbury against them: When and where
you shall make known to the said Court, how you
have executed this writ. And have you then and
there this writ.

Witness, Walter Kimball Clerk of our said
Court, and the Seal thereof at Chicago in said
County, this third day of October in the year
of our Lord one thousand eight hundred
and forty nine.

Walter Kimball, Clerk.

Which said writ of Attachment was afterwards to
wit, on the Eighth day of October A.D. 1849 returned
into the office of the Clerk of said Court, by the Sheriff
of said County, with an indorsement thereon in the
words and figures as follows, to wit:

"Executed by attaching the following describe prop-
erty to wit, the Steam Boat Pacific the 5th day of
October 1849 and afterwards discharging the same
after taking Bond as hereto attached this 8th day
of October A.D. 1849, and also by reading the return
in the presence of Samuel Ward the 8th day of October
A.D. 1849. Isaac Cook Sheriff of Cook County Ill
by Owen McCarthy Deputy,

And attached to, and returned with said writ is a Bond, which said Bond is in the words and figures as follows, to wit.

Know all men by these presents, that we Eber B. Ward James A. Welch and James Peck of the City of Chicago in the County of Cook and State of Illinois are held and firmly bound unto Isaac Cook Sheriff of the County of Cook in the State of Illinois in the penal sum of Seven hundred and thirty one Dollars and four Cents lawful Money of the United States of America for the payment of which well and truly to be made to the said Isaac Cook his heirs executors administrators and assigns we do bind ourselves our heirs executors and administrators jointly and severally firmly by these presents. Sealed with our Seals and dated this Eighth day of October A.D. 1849.

The Condition of the above obligation is such that whereas a writ of Attachment has been issued out of the Clerk's office of the Cook County Court of Cook County in the State of Illinois, dated the third day of October inst. out in favour of One, Salisbury and against the estate of Samuel Ward and Eber Ward and David Gallagher for the sum of Three hundred and sixty five Dollars and fifty two Cents and returnable on the first Monday of February next, and whereas the said Sheriff has levied said writ of Attachment upon the Steam Boat Pacific now lying in the Chicago River as the property of the said Samuel Ward and Eber Ward and David Gallagher Now therefore if the said Obligees shall have the said Steam Boat Pacific forthcoming in a good condition as it is now or to answer the judgment of the Court in

in said suit then this obligation to be void otherwise to
be and remain in full force and virtue
sealed and delivered in presence of
C. B. Ward
James McNeill
Jas. Peck

Seal
Seal
Seal

And hereafter to wit on the twenty sixth day of
October A. D. 1849. Came the said Plaintiff by James
McCollins his attorney and filed in the office of the clerk
of said Court his Declaration in said cause which
said Declaration is in the words and figures as follows
to wit;

State of Illinois
Cook County, I. p.
Cook County Court
of October Term A. D. 1849

Oney Salisbury plaintiff in this suit
by James McCollins his attorney complains of Samuel
Ward Eber B. Ward and David Gallagher Defendants
in this suit who have been duly attached &c. For that
whereas the said Defendants heretofore to wit on the
first day of September in the year of our Lord Eighteen
Hundred and forty nine, to wit, at Chicago in the County
of Cook and State aforesaid were indebted to the said Plaintiff
in a large sum of money, to wit, in the sum of Eight Hun-
dred Dollars for the work and labor care and diligence
of the said Plaintiff by the said Plaintiff before that
time done, performed and bestowed in and about the
business of the said Defendants & for the said Defendants
at their special instance & request: And being so inde-
bted & in consideration thereof they the said Defendants

Afterwards to wit on the same day & year last aforesaid at
the place to wit at Chicago aforesaid undertook & then
& there faithfully promised the said Plaintiff to pay
him the said sum of money when they the said
Defendants should be thereunto afterwards re-
quested; And whereas ^{also} afterwards, to wit on
the day and year last aforesaid to wit at Chicago
aforesaid in consideration that the said Plaintiff at the
Special instance & request of the said Defendants had
before that time done performed, bestowed other his
work, labor, care & diligence in about the sailing man-
aging & Commanding divers Steam Boats of the said
Defendants, as the master & Commander thereof, &
in about other the business of the said Defendants
& for the said Defendants, & at their like instance & re-
quest, they the said Defendants undertook & faith-
fully promised the said Plaintiff, to pay him so much
Money as he thereof reasonably deserved to have
of the said Defendants, when they the said Defendants should
be thereunto afterwards requested. And the said Plaintiff
avens that he therefor reasonably deserved to have of the
said Defendants the full sum of Eight thousand Dollars
to wit at Chicago aforesaid, whereof the said Defendants
afterwards to wit on the day and year last aforesaid
at the place aforesaid had notice,

But the said Defendants although often requested so to
do, have not paid the said several sums of Money aforesaid
or any or either of them or any part thereof to the
said Plaintiff, they the said Defendants have hitherto what
by neglected & refused & still do deny & refuse to the
damages of the said Plaintiff of Eight thousand Dollars
& therefore he brings suit &c. J. S. Collins
Plffs atty

Samuel Ward, Esq
 vs
 B Ward & Daniel Gallagher
 Do Ony Salisbury 100
 Do Services as Master of the Steam Boat
 Pacific for the Season of 1848 \$800.
 Or. By Cash in the whole 451.88
 \$ 348.12
 Int from 25th Nov 1848

And afterwards to wit on the Ninth day of
 February A D 1850 the said day being one of the
 days of the February Term of said Court for the year
 last aforesaid the following proceeding was had in
 said cause and entered of Record to wit

Ony Salisbury
 vs
 Samuel Ward et al } A.A.

And now comes Sherman
 and enters his appearance in this cause for said
 Defendants, and it is on his motion Ordered that
 this cause stand continued.

And afterwards to wit on the Twenty Second
 day of March A D 1850 the said day being one of the
 days of the March Special Term of said Court for the
 year last aforesaid the following proceeding was had
 in said cause and entered of Record to wit

Ony Salisbury
 vs
 Samuel Ward et al } A.A.
 This cause coming

now to be heard in its regular Order on the docket for
trial, an Parties not being ready, It is Ordered that
it be continued to the next term of this Court,

And afterwards to wit on the Sixteenth
day of October A.D. 1850. came the said defend-
ants Samuel Ward Eben B Ward and David
Gallagher by W.E. Shumway their attorney and
filed their Pleas in said Cause, which said Pleas
are in the following words to wit

Cook County Court of Common Pleas
Eben B Ward & Sam
Ward & David Gallagher }
vs }
Orney Salisbury }

And the said Defendants
by W.E. Shumway their Attorney come and defend the
wrong and injury when to and severally say that they
did not undertake & promise in manner & form as
the said Plaintiff hath above hereof complained
against them and of this they put themselves upon the
Country &c

W.E. Shumway
Def. Atty

"Plff doth the like &c

J. Collins atty for Plff

"And for a further plea
the said Defendants as aforesaid by leave of the Court have
first had and obtained days Actio Non because they say
that the said Plaintiff before & at the time of the com-
mencement of this suit to wit at Chicago in the County

of Court aforesaid was & still is indebted to the said Defendants in a large Sum of Money to wit the Sum of Eight hundred Dollars lawful Money of the United States for Money by the said Defendants before that time lent & advanced to & paid laid out and expended for the said Plaintiff & at his special instance & request and for Money before that time due & owing to the said Defendants from the said Plaintiff for Money over paid him by said Defendants by Mistake, and for Money by the said Plaintiff before that time had & received to & for the use of the use of the said Defendants which said Sum of Money so due & owing to the said Defendants as aforesaid exceeds the Damages sustained by the said Plaintiff by reason of the Non performance by the said Defendants of the said several Supports promises & undertakings in the said Declaration mentioned & out of which said Sum of Money so due & owing from the said Plaintiff to the said Defendants the said Defendants are ready & willing thereby offer to set off & allow to the said Plaintiff the full amount of the said Damages according to the Statute in such Case made & provided, and this he is ready so to verify. Wherefore he prays judgment of the said Plaintiff ought to have or maintain his aforesaid action thereof against him &c

W. J. Shumway
(Plff's Atty)

And upon the same day to wit the sixteenth day of October 1850 the said Plaintiff by his attorney as aforesaid filed in said Cause his Replication to

The said Defendant Second Plea, in words as follows
to wit

Salisbury

vs
Ward et al

Said Plea comes and as to Second
Plea says preclude now because he says that he is not
indebted in manner and form as in that behalf
alleged and of this he puts himself upon the Country
to do the like &c

J. H. Collins

Atty for Plea

And upon the same day to wit the Sixteenth
day of October A.D. 1850 there was filed in said Cause
the Deposition of O. Hyde, with a Notice therein at-
tached, which said Notice and Deposition, under the
words and figures as follows to wit (the Decimus
attached to said Deposition, is not copied in this Record) -

Cook County Court of Common Pleas

Oney Salisbury

vs
Samuel Ward, Clerk of
Wm. F. & David Callaghan

Sir, Please take notice that
I shall apply to the Clerk of this Court to see out a commis-
sion in this Cause, on the 22^d day of August instant at
10 O'Clock A.M. to be directed to Samuel Douglas
of the City of Detroit to take the Deposition of O. Hyde
Clerk of said City of Detroit, on Interrogatories, Copies whereof

are herewith annexed

Aug 20 1850
W. E. Hummery Esq. Depts. Atty

Yours &c. James W. Collins
Plff. Atty

Cook County Court of Com Pleas
Oney Salisbury

vs
Samuel Ward, Eber B
Ward & David Gallagher

Interrogatories to be administered to Oney
Esq a non resident witness to be produced & sworn
Examiné in this cause on the part of the said
Plaintiff.

First. What is your age, and present business or occu-
pation and where do you reside?

Second. Do you know the parties Plaintiff and de-
fendants in the title of these interrogatories named,
or any or either of them & which & how long have
you known them or either & which?

Third. Are you the collector of the port of Detroit
or connected with the collector office in that city?
If yes, please look at the records of said office, and
state whether the Steam Boat Pacific was enrolled
or registered in said office at Detroit in the year
1848 or prior to that year, and state in whose name
or names the said Steam Boat Pacific was enrolled
or registered in said year or prior thereto, and if
in the names of the said Defendants, please make
out and annex to your deposition a true copy of
said enrollment or register.

J. W. Collins Plff. Atty

I hereby consent that a Commission issue to Samuel
Douglass Esq on the above interrogatories on the
22nd day of August inst at 10 O'Clock Subject to all
legal exceptions except as to Service of Copies of
Notice & Interrogatories which is hereby waived
Dated August 21st 1850

W. G. Sherman

Deft's Atty

In Cook Co Court of
Common Pleas

Saml & Eber B Ward
and David Gallagher

vs
Oney Salisbury

Cross Interrogatories to be
administered to O'Hyde Esq a Witness
for the Plaintiff by & before Saml
Douglass Esq as Commissioner

1st Cross Interrogatory If in answer to any of the direct
Interrogatories you say that the Steamer "Pacific"
was enrolled or licensed in the names of all of said
Defendants prior to 1848, you will please state
whether or not she was so enrolled or licensed
during that year and if during any part thereof,
what part of said year.

2^d Interrog. Do you know or can you state any
other matter or things beneficial to the
Defendants? If you state the same as fully
as if particularly interrogated thereunto.

W. G. Sherman

The Deposition of Oliver M Hyde of Detroit in the County of Wayne and State of Michigan a Witness of lawful age produced sworn & examined upon his Oath and oath on the twenty first day of September in the Year Eighteen Hundred & fifty at the office of Douglass & Campbell in the City of Detroit aforesaid by me Samuel J Douglas a Commissioner duly appointed by a Decree in potestatum or Commission issued out of the Clerk's office of the Cook County Court of Common Pleas in the State of Illinois bearing test in the name of Walter Kimball Esq Clerk of the Said County Court with the Seal of Said Court affixed thereto and to me directed as such Commissioner for the examination of Said Oliver M Hyde (named in said Commission O Hyde) a Witness in a certain Suit and Matter in Controversy now pending and undetermined in said County Court wherein One Salisbury is Plaintiff and Samuel Ward, Eben B Ward, and David Gallagher are defendants in behalf of said Plaintiff, as well upon the Cross interrogatories of the Defendants as on the interrogatories of the Plaintiff which are attached to or enclosed with the said Commission and upon those others.

The said Oliver M Hyde being first duly sworn by me as a Witness in the said Cause previous to the commencement of his examination to testify the truth as well on the part of the Plaintiff, as the Defendants in relation to the matters in Controversy between the said Plaintiff and Defendants so far as he should be interrogated, testified and deposed as follows:
Answer to the first Interrogatory - My age is forty five years. My business or occupation is that of Collector

of the Port of Detroit, and I reside in the said City
of Detroit.

Answer to the Second Interrogatory - I do not know the
plaintiff. I have known the Defendants Daniel & Eben
B Ward for ten years past or thereabouts - The Defendant
David Gallagher I have known slightly for about five
years past.

3
Answer to the Third Interrogatory - I am Collector
of the Port of Detroit. I have just looked at the Records
of said Collector's office - It appears therefrom that the
Steam Boat Pacific was enrolled or registered in
said office at Detroit on the third day of June
in the year eighteen hundred & forty eight. There is no re-
cord in said office of any other enrolment or registry
of said Steam Boat Pacific during the said year or prior
thereto. The said enrolment or registry is in the names of
the Defendants Eben B Ward, Daniel Ward & David
Gallagher and the exhibit herewith annexed marked
"Exhibit A" is a true copy of the record thereof in my
office, by me compared with the Original record.

Answer to the First Cross Interrogatory - The said
Steamer Pacific was not enrolled or registered in the
Collector's office of the Port of Detroit prior to 1848, but
she was enrolled or registered during that year from
the third day of June to the close of the year, in the
manner I have stated in my answer to the third di-
rect interrogatory.

Answer to the Second Cross Interrogatory - No, not
to my recollection.

Oliver M. Hyde.
I Samuel McLaughlin of the City of Detroit

in the County of Wayne and State of Michigan a Commissioner duly appointed (under the name of Samuel Douglass) to take the deposition of Oliver M Hyde a witness whose name is subscribed to the foregoing deposition do hereby certify that previous to the commencement of the examination of the said Oliver M Hyde as a witness in the said suit between the said Oney Salisbury Plaintiff, and the said Samuel Ward, Eben B Ward & David Gallagher Defendants he was duly sworn by me as such Commissioner to testify the truth in relation to the matters in controversy between the said Oney Salisbury Plaintiff and the said Samuel Ward Eben B Ward & David Gallagher Defendants so far as he should be interrogated concerning the same that the said deposition was taken at the office of Douglas & Campbell in the City of Detroit County of Wayne & State of Michigan on the 21st day of September A.D. 1850. 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 & that thereupon the same was signed & sworn to by the said deponent before me, the oath being administered by me as such Commissioner, at the place and on the day & year last aforesaid.

Samuel J Douglass Commissioner

Port of Detroit, Enrollment No 23, (treaty third)
in conformity to an act of the Congress of the
United States of America, entitled, "An act for Enrollment
and Licensing Ships or Vessels," &c. passed the 18th
February, 1793 And An Act to regulate the Foreign
and Coasting Trade on the Northern, Northeastern

"Exhibit A"
referred to in
foregoing deposition.

and Northwestern Frontiers of the United States, and
for other purposes," passed the 2^d March 1831. and Acts
passed the 7th of July 1838. and "3^d of March 1843.
regulating vessels propelled in whole or in part by Steam.

Samuel Ward of Newport Michigan having
taken or subscribed the oath required by the said Act
and having sworn that he together with E. B. Ward
and Hezekiah Gallagher of Newport Michigan are Cit-
izens of the United States sole owners of the Steam
Boat or Vessel called the Pacific of Newport whereof
O. Gallisburg is at present Master, and as he has
sworn, is a Citizen of the United States, and that the
said Steam Boat or Vessel was built at Newport Mich-
igan in 1848, as appears by the Certificate of J. L.
Hobbeson Master builder located at Newport June 6th
A. D. 1848. and J. C. Hammond Special Surveyor having
certified that the said Steam Boat or Vessel has one
Deck and one Mast, and that her length is One hundred
thirty six feet ten inches, her breadth twenty seven
feet six inches, her depth ten feet one & a half inches
and that she measures four hundred & sixty two tons and
thirty nine ninety fifths, that she is a Steam Boat has
no Galleries and a screw head. And the said Samuel
Ward having agreed to the description and admeasure-
ment above specified, and sufficient Security having
been given in conformity with the terms of the said
acts, the said Steam Boat has been duly enrolled at
the Port of Detroit.

Given under my Hand and Seal at the
Port of Detroit this third day of June in the year
of Our Lord one thousand eight hundred and
forty eight. - (Signed) J. C. Hammond.

Which said Deposition of Oliver in Hyde was not used or
read in evidence on the trial of said cause.

And afterwards to wit on the Sixteenth day of October A.D. 1850. the said day being one of the days of the October Special Term of said Court for the year aforesaid the following proceedings were had in said Cause and entered of Record to wit

Oney Salisbury

vs
Samuel Ward Eber B
Ward & David Gallagher

} Attachment

And now comes the said plaintiff by Collins his attorney, and the said defendants by Shumway their attorney also come, and the said defendants enter their motion to exclude the depositions filed in this cause, which after being heard is ordered overruled by the Court, and issue being joined therein, let a Jury come and thereupon come the Jurors for a Jury of good and lawful men to wit, John Lyttle, Saml Peterson, Wellington John A Oliver, S. B. Wacker, George Brady, C. H. Colby, W. S. Wheeler, Samuel Vial, John D. Londergan, John McGrath, and Henry Hawkins who were duly selected, tried and sworn well and truly to try the issue joined as aforesaid, after hearing the evidence adduced, argument of Counsel and instructions of the Court retire under charge of an officer of the Court to consider of their verdict, And afterwards come into Court and say that the Jury find the issue for the Plaintiff and assess his Damages to the sum of One hundred and Twenty Dollars. And thereupon the said defendants enter their motion for a new trial therein.

And afterwards to wit on the Sixth day of November in the Year last aforesaid the said day being one of the days of the said October Special term of said Court, the following proceedings were had in said Cause and entered of Record, to wit,

Oney Salisbury
vs
Samuel Ward Eben B
Ward & David Callaghan } Attachment

And now again come the said parties by their attorneys, and after argument heard on the said Defendants Motion for a new trial heretofore entered in this Cause, the Court being now fully advised in the premises it is Ordered that said Motion be overruled.

Therefore it is considered that the said Plaintiff do have and recover of the said Defendants his Damages of One Hundred and Seventy Dollars in form aforesaid assessed and also his Costs and Charges by him in this behalf expended and have Execution against the property attached to satisfy the same.

And thereupon the said Defendants by their Attorney enter their exceptions to the overruling of their said Motion for a new trial herein by the Court. And pray an appeal to the Supreme Court of the State of Illinois, which is granted by the

Court, upon their filing Bond in the sum of
Five Hundred Dollars, with the usual conditions
with B. H. Wadduck as surety within forty days
from the day of the adjournment of this Court.

And afterwards to wit on the Eighteenth
day of November A D 1850 there was filed in said
Cause a Bill of Exceptions, which said Bill of Ex-
ceptions is in the words and figures as follows to wit,

Cook County Court of
Common Pleas.

Eber B. Ward, Samuel
Ward & David Gallagher } October Special
vs } Term A D 1850
Oney Salisbury }

Be it Remembered, that on
the 16th day of October A D 1850 at a Special Term
of the Cook County Court of Common Pleas begun
and held at the Court House in the City of Chicago
by and before Hon Giles Spring Judge of said Court
a certain Cause therein depending and at issue between
the said Oney Salisbury plaintiff, and the said Eber B
Ward, Samuel Ward & David Gallagher defendants
came on to be heard before the said Court and a Jury
empannelled to try the issues therein.

The Counsel for the plaintiff to sustain the issues on
behalf of said Plaintiff, after having first admitted

The payment of the sum of \$457.88. by the defendants on account of the services claimed for in this suit, introduced as evidence to the Jury the following paper written by E. B. Ward one of the defendants to the plaintiff of which the following is a copy.

" Bell River Dec 31st 1847

Capt O Salisbury

Dear Sir

Your favor of the 20th inst came duly to hand. In reply I would state that I suppose I had engaged you before you left the Ward for next season for the S. B. Pacific. We are depending upon you. I wrote to Capt Benjamin a few days since and expect him to take charge of the S. B. & Detroit. The Pacific is ready to receive her engine as soon as that is ready.

Respectfully

E. B. Ward

The said Counsel then introduced the depositions of Calvin W. Appleby, Carna Denton and Marshall Caperon as follows to wit,

" The depositions of Carna Denton, Calvin W. Appleby and Marshall Caperon of the County of Ashtabula and State of Ohio, taken & sworn to & produced in open court and examined on their respective Corporal Oaths on the day of March in the year of our Lord one thousand eight hundred and fifty at the office of Horace Milder Esq in the Borough of Conneaut, in the County of Ashtabula and State of Ohio by us Horace

Letter

Welden and Benjamin Carpenter, Commissioners
duly appointed by a *Wedimus Substatum* or Com-
mission issued out of the Clerk's office of the Court of
Cook County in the State of Illinois bearing Teste in
the name of Walter Kimball Esq Clerk of the said
Court with the seal of said Court affixed thereto, and
so directed as such Commissioners for the exam-
ination of the said Carnot Denton, Calvin W Appleby
by and Marshall Capron: Witnesses in a *Certanduit*
and Matter in Controversy now pending and unde-
termined in the said Court wherein Orey Salisbury
is plaintiff and Samuel Ward, Ober B Ward and
David Gallagher are defendants in behalf of the
said plaintiff, as well upon the Cross interrogatories
of the defendants, as on the interrogatories of the
plaintiff which were attached to, or enclosed with,
the said Commission, and upon none other, the said
Carnot Denton, Calvin W Appleby and Marshall Ca-
peron, being first duly sworn by Benjamin Carpenter
one of the said Commissioners, as witness in the said
cause, previous to the commencement of their exam-
ination to testify the truth as well on the part of the
plaintiff as the defendant in relation to the matter
in Controversy between the said Plaintiff and
Defendant so far as they should be interrogated, tes-
tified and deposed as follows.

Interrogatories propounded to the said Calvin W
Appleby a witness produced and sworn as aforesaid
on the part of the said plaintiff, and his answers thereto as follows.

First Interrogatory, What is your age, occupation and place of Residence?

Answer. That he is about sixty years of age. Has followed sailing upon the Lakes some twelve or fifteen years. and resides in Conneaut, Ashtabula County & State of Ohio.

Second Interrogatory, Do you know the ^{parties} plaintiff & defendants in the title of these interrogatories named or any or either and which of them and how long have you known them or either of them.

Answer. That he has known the Plaintiff some twenty five years - and has known the defendants Samuel & Eben B. Ward from fifteen to twenty years. that he is not acquainted with the defendant Gallagher.

Third Interrogatory, Do you know whether the said plaintiff was in the service or employ of the said defendants as Master of the Steam Boat or any other boat belonging to said defendants? If yes, when and how long, state when said plaintiff commenced or entered into the said defendants service or employment, and when he left, and how long he remained in the said defendants service and in what capacity.

Answer. That he knows that the Plaintiff sailed the Steam Boat Pacific, as Master during a portion of the season of the year 1848. that the plaintiff commenced sailing some time in the spring, should think in the fore part of May of said year, cannot say when plaintiff left the Pacific nor how long he remained in Defendants service.

Fourth Interrogatory, Please state what said

Plaintiff's Services were worth per month
Answer. That his Services were worth one
thousand dollars per month.

Lastly, Do you know and can you state any
other matter or thing of benefit or advantage
to the said plaintiff, if you, please state and set
forth as fully and particularly as if thereunto in-
terrogated.

Answer. He does not.

Cross Interrogatories and answers thereto
by the Witness on the part of the Defendants.
Cross Interrogatory first, If you answer the third
direct interrogatory affirmatively, state how you
know that the plaintiff was in the Service or employ-
ment of the Defendants, Did you hear any contract
made, or do you know personally of any being made
with the Defendants or either of them? If you, state
with which of the Defendants the same was made &
whether it was by parol or in writing.

Answer. That he occasionally, during the year
of 1848 saw the plaintiff acting as Master of
the Pacific, did not hear any contract made, nor
does not know of any contract being made, either
parol or in writing between the parties.

Second Cross Interrogatory, Do you know of
your own knowledge that the Defendant
David Gallagher was part owner of, or had any
interest whatever in the Steamer "Pacific" or other Boat
on which the plaintiff may have been employed,
at the time of such Service or employment? If
you, state in what way he was interested - what
his interest consisted in & particularly how you know.

Answer. That he does not know that the defendant David Gallagher has, or had, any interest in the Steam Boat Pacific, or any other Boat on which the Plaintiff was employed.

Third Cross Interrogatory. Do you know of the defendant Gallagher being connected in any way in the business of boating, with the defendants Samuel & Eber B Ward other than as a Clerk or other hand in their employment? If yes, state in what way, he is and was, at the time referred to by you, so connected and how you know.

Answer. That he does not know that the defendant Gallagher is, or was, connected with the defendants Samuel & Eber B Ward in the boating business - or as Clerk, hand or otherwise.

Fourth Cross Interrogatory. What was your occupation, and where were you employed during the time you say the plaintiff was employed on the "Pacific" or other Boat? How often and when and where did you see him on board such Boat, and where was she running at the time of the Plaintiff's employment thereon.

Answer. That he was master of the Steamer "Indiana" at the time he saw Plaintiff on the Pacific, saw him frequently, at Buffalo, Cleveland, & Sandusky, the Pacific was running at the time between the ports of Buffalo and Detroit.

Fifth Cross Interrogatory. Do you know of the Plaintiff leaving the said Steam Boat Pacific, or other Boat, for any length of time, during the season of navigation, during the time, you say he was employed thereon? If yes, how many times & for how long

a time did he sail & where & how long each time?

Answer. That some time in the Month of September, while the Pacific was broke down, or being repaired, the Plaintiff went from Cleveland to Conneaut, on the "Indiana" but cannot say how long he was absent from the Pacific.

Sixth Cross Interrogatory. How long have you been Captain of a Steam Boat and where, (if you ever were one), what Steam Boats did you ever own and how many Captains of Steam Boats did you ever employ, and when and when were they employed by you.

Answer. That he was Captain of a Steam Boat one season on Lake Erie, that he never was owner of a Steam Boat, and never employed a Master for one.

Seventh Cross Interrogatory. When you speak of the value of Plaintiff's services per month, do you speak from your knowledge of his qualifications as a Captain, or from what was paid other persons in similar situations? Was the Plaintiff ever in your service? If yes when and how long, and in what capacity?

Answer. That he estimates the Plaintiff's services per month, both from his knowledge of his qualifications as a Captain, and from what other persons received in similar situations. That the Plaintiff sailed for him in the capacity of Master, on the Schooner "Conneaut Packet" a part of a season some fifteen years since.

Lastly? Do you know any other matter or thing beneficial to the defendants? If you state the same fully as if particularly interrogated thereto.

Answer. That he does Not. C. H. Appleby

Interrogatories propounded to the said Capt
Henton a witness produced an answer as aforesaid
on the part of the said Plaintiff and his answer stands

First Interrogatory. What is your age occupation
and place of residence?

Answer. That he is about Twenty Five Years of
age and has for a number of years followed sail-
ing upon the Lakes, and resides in Conneaut Ashta-
bula County, and State of Ohio,

Second. Do you know the parties Plaintiff and
Defendants in the title of these interrogatories
named and or any or either and which of them, and
how long have you known them, or either of them

Answer. That he is acquainted with the
parties, Plaintiff and Defendants, in the title
of these interrogatories named, and has known the plain-
tiff for many years - and that he has known the
Defendants for several years.

Third. Do you know whether the said plain-
tiff was in the service or employ of the said
Defendants as Master of the Steam Boat, or any
other Boat belonging to said Defendants, If yes,
when and how long, state when said Plaintiff
commenced or entered into the said Defendants ser-
vice or employment, and when he left and how
long he remained in the said Defendants service
and in what capacity,

Answer. That he was in the service or employ of
the Defendants as Master of the Steam Boat Pacific,
that he left Conneaut to go to Cleveland to take charge
of her on the Eleventh of May A. D. 1848. The Boat was

not ready to sail and did not come out until the 20th or 21st of May. The Pacific broke down July 22^d 1848, and resumed her trips the 7th of August during that time the Plaintiff went home, but how long he was absent he cannot say. She broke down again on the 9th of September and came out the 16th October the Plaintiff again went home, but how long he was then absent cannot say. That he remained on board of the Boat until the 23^d or 24th of November.

How much, Please state what said Plaintiff services were worth per month.

Answer. That he cannot say what Plaintiff services were worth per month on the Pacific. Thinks that Plaintiff received white master of the "Samuel Ward" in the Year 1847 from sixty five to seventy Dollars.

65.70

Lastly, Do you know, and can you state, any other matter or thing of benefit or advantage to the said Plaintiff, If Yes, please state and set forth as fully and particularly as if specially thereunto interrogated.

Answer. That he does not.

Cross Interrogatories and answers thereto by the witness on the part of the Defendants.

Cross Interrogatory first. — If you answer the third Direct Interrogatory affirmatively, state how long you know that the Plaintiff was in the Service or employment of the Defendants, did you hear any contract made or do you know personally of any being made with the Defendants or either of them? If Yes, state with

which of the defendants the same was made & whether it was by parol or in writing.

Answer. That he (witness) was Saloon Keeper on the Pacific during the season of 1848 the time that Plaintiff was Master of her. Does not know of any Contract having been made between the parties, Plaintiff & Defendants, either by parol or in writing.

Second Cross Interrogatory - Do you know of your own knowledge that the defendant David Gallagher was part owner of, or had any interest whatever in the Steamer "Pacific" or other Boat on which the Plaintiff may have been employed at the time of such service or employment? If yes, state in what way he was interested, what his interest consisted in and particularly how you know.

Answer - That he does not know that Defendant Gallagher was part owner of the Pacific or owned any interest in her.

Third Cross Interrogatory - Do you know of the defendant Gallagher being connected in any way in the business of Boating, with the defendants Samuel Ward & Eber Ward, other than as a Clerk or other hand in their employment? If yes state in what way he was and was, at the time referred to by you so connected and how you know.

Answer. That he does not.

Fourth Cross Interrogatory. What was your occupation and when were you employed during the time you say the Plaintiff was employed on the Pacific or other Boat? How often and when & where did you see him on board such Boat & when was he running at the time of the Plaintiff's employment thereon.

Answer That he was keeping the Saloon on board of the Pacific during the time Plaintiff was Master of the Pacific - that she was running between Detroit Sandusky & Buffalo until October, after that time between Chicago St Joseph & Milwaukee - Fifth Cross Interrogatory - Do you know of the Plaintiff leaving the said Steam Boat Pacific or other Boat, for any length of time, during the season of navigation, during the time you say he was employed thereon? Answer, how many times & for how long a time did he so leave & when and how long each time.

Answer That on two occasions while the Pacific was broke down, Plaintiff went home, but how long he was absent each time cannot say.

Sixth Cross Interrogatory How long have you been Captain of a Steam Boat & when (if you ever were one) What Steam Boat did you ever own, and how many Captains of Steam Boats did you ever employ, & when & when were they employed by you.

Answer That he never was Captain of, or owned a Steam Boat, & never employed a Captain - Seventh Cross Interrogatory. When you speak of the value of Plaintiff's services per month, do you speak from your knowledge of his qualifications as a Captain, or from what was paid other persons in similar situations? Was the Plaintiff ever in your service? Answer, when and how long and in what capacity.

Answer That he does not speak from his knowledge of his qualifications as a Captain - But from his recollection as to what Plaintiff received the year previous for services as Master of the Steamer Samuel Ward,

Lastly, Do you know any other matter or thing beneficial to the defendant? If yes, state the same as fully as if particularly interrogated thereto.

Answer, That he does not.

Carnot J. Stanton,

Interrogatories propounded to the said Marshall Capron a Witness produced and sworn as aforesaid on the part of the said plaintiff and his answers thereto as follows.

First Interrogatory. What is your age occupation and place of Residence?

Answer, That he is about thirty three years of age. Has followed the Lakes as a business for about twenty years and resides in Cassport Ashabula County & State of Ohio.

Second Interrogatory. Do you know the parties plaintiff and defendant in the title of these interrogatories mentioned, or any or either and which of them, and how long have you known them or either of them.

Answer, That he does, has known the Plaintiff for twenty years and has known the Defendant Samuel & Eber B. Mar? Some fifteen years is not acquainted with the defendant Gallagher.

Third Interrogatory. Do you know whether the said plaintiff was in the service or employ of the said Defendants as Master of the Steam Boat, or any other boat belonging to said Defendants, If yes, when and how long, state when said Plaintiff commenced or entered into the said Defendants service or employment, and when he left, and how long he remained in the said Defendants service and in what capacity.

Answer. That he knows that Plaintiff sailed the Steam Boat Pacific some part of the season of 1848 as Master does not know the time precisely that he commenced, should think in the month of May of that year, and left in the latter part of November.

Fourth Interrogatory - Please state what said Plaintiff's services were worth per month.

Answer. Should think his services were worth one hundred and twenty five dollars per month.

Lastly. Do you know and can you state any other matter or thing of benefit or advantage to the said Plaintiff. If yes, please state and set forth as fully and particularly as if specially thereto interrogated.

Answer. That he does not.

Cross Interrogatories and answers thereto by the witness on the part of the defendants -

First Cross Interrogatory - If you answer the third direct interrogatory affirmatively, state how you know that the plaintiff was in the service or employment of the defendants, did you hear any contract made, or do you know personally of any being made with the defendants or either of them? If yes, state with which of the defendants the same was made whether it was by parol or in writing.

Answer. That he occasionally saw the Plaintiff on the Pacific, acting as master, and made one trip with plaintiff, from Buffalo to Detroit, that he does not know of any contract having been made between the parties, either by parol or in writing.

Second Cross Interrogatory - Do you know of your

own knowledge that the defendant David Gallagher was part owner of, or had any interest whatever in the Steamer Pacific, or other Boat on which the plaintiff may have been employed, at the time of such service or employment? If you state in what way he was interested, what his interest consisted in, and particularly how you know

Answer. That he does not.

Third Cross Interrogatory. Do you know of the defendant Gallagher being connected in any way in the business of Boating with the defendants Samuel & Eber B Ward other than as a Clerk or other hand in their employment? If you state in what way he is and was, at the time referred to by you, so connected and how you know

Answer. That he does not know of the defendant Gallagher being connected with the defendants Samuel and Eber B Ward in the business of Boating other than as Clerk.

Fourth Cross Interrogatory. What was your occupation and when were you employed during the time you say the Plaintiff was employed on the Pacific, or other Boat? How often and when and when did you see him on board of such boat and when was she running at the time of the plaintiff's employment thereon?

Answer. The fore part of the season of 1848 he was in Conneaut engaged about his farm, saw the plaintiff occasionally when the "Pacific" came into Conneaut Harbour. At the times that he saw Plaintiff on said boat she was running on Lake Erie between Buffalo and Detroit. He went one

trip with plaintiff on the Pacific
Fifth Cross Interrogatory. Do you know of the
plaintiff leaving the said Steam Boat Pacific
or other Boat, for any length of time during the season
of navigation during the time you say he was em-
ployed thereon? If yes, how many times and for
how long a time did he so leave and when and
how long each time?

Answer. That he knows that Plaintiff was at
home at the time the Pacific was broke down
at Cleveland, but how long he remained at home
cannot say.

Sixth Cross Interrogatory. How long have you
been Captain of a Steam Boat and when (if you
ever were one) what Steam Boat did you ever own
and how many Captains of Steam Boats did you
ever employ and when and when were they so employed
by you.

Answer. That he has been Captain of Steam Boats
about three years on Lake Erie, that he never
owned a Steam Boat or employed a Captain for one.

Seventh Cross Interrogatory. When you speak of
the value of Plaintiff's services per month do
you speak from your knowledge of his qualifications
as a Captain, or from what was paid other persons
in similar situations? Was the Plaintiff ever in your
service? If yes, when, and how long and in what
capacity.

Answer. That he speaks of the value of Plaintiff's
services per month, both from his knowledge
of Plaintiff's qualifications as a Captain and from what
other Captains receive in similar situations, Plaintiff

never was in his service,

Lastly, Do you know any other matter or thing
Beneficial to the Defendant? If you, state the
same as fully as if particularly interrogated thereto,
Answer. That he does not.

Marshall Capron.

We Horace Wilder and Benjamin Carpenter
of the County of Ashtabula and State of Ohio Commis-
sioners duly appointed to take the depositions of the said
Cannt Newton, Calvin Wappleby and Marshall Capron
Witness whose names are subscribed to the foregoing depi-
sitions do hereby Certify that previous to the commence-
ment of the examination of the said Cannt Newton, Calvin
Wappleby and Marshall Capron as witnesses in the said
Suit between the said Ony Salisbury Plaintiff, and the
said Samuel Ward Eber B Ward and David Gallagher
Defendants they were duly sworn by me (Benjamin
Carpenter) one of said Commissioners to testify the truth
in relation to the matters in controversy between the
said Samuel ~~Ward~~ Ony Salisbury Plaintiff, and the said
Samuel Ward Eber B Ward and David Gallagher
Defendants so far as they should be interrogated con-
cerning the same: That the said Depositions were taken
at the office of Horace Wilder Esq in the Borough of
Cousneant in the County of Ashtabula and State of
Ohio on the 25th & 26th days of March A D 1850 and that
after said depositions were taken by us as aforesaid the
interrogatories and answers thereto, as matters of course
read over to the said witnesses and that thereupon the
same were signed and sworn to by the said Defendants
Cannt Newton Calvin Wappleby & Marshall Capron
before us, the oath being administered by B Carpenter

one of said Commissioners, as such Commissioner at the
place. and on the day and Year last aforesaid
Horace Wilder
Benjamin Caspater } Commissioners

And thereupon the plaintiff rested his cause.

The Counsel for the said Defendants to
sustain his defence to said action introduced the following
testimony, viz:

Stephen Clement after having been first duly sworn
testified as follows.

I have known Capt Salisbury eleven or twelve years. My
employment has been Captain of Steam boats for the last
six or eight years. Capt Salisbury's services were worth
from sixty five dollars to seventy dollars per month -
On his Cross examination he testified - I am in the
employment of the Wardens. I have the general charge
of their business in Chicago and on Lake Michigan. I
never sailed on a Steam boat with Mr Salisbury but
have seen him on vessels frequently.

Thomas Butlin called for the Defendants &
having been sworn said,

I am a Sailor. I command the Steam boat "Samuel Ward"
this season. I have been a Captain three years. I know
the Plaintiff - I was on the Pacific at the time he
sailed her - I was mate part of the season - I went
on board of her as Captains mate about the twenty
first day of June 1848 - I have seen men handle
Boats better than Capt Salisbury did the Pacific.
He was not any thing above ordinary as a Captain.
Capt Salisbury's services were worth from sixty five to
seventy dollars per month - Capt Salisbury was

absent from the Pacific once while I was on board.
I cannot say for how long a time.

On his Cross examination he testified - I am
in the Defendants Wards employ and have been for
some time, Sixty, Sixty five, and Seventy Dollars is
as much as is ever paid for Commanders of Steam
boats of the size of the Pacific - She is one of the smaller
class of boats. I do not think Capt Salisbury managed
the Pacific well, particularly in going in and out
of harbors.

Carua Denton Having been called by Defend-
ants & sworn testified as follows.

I am one of the witnesses whose depositions were taken
in this suit at Cincinnati Ohio, I left Cincinnati with
Capt Salisbury to go on to the Pacific - I went as Saloon
Keeper - We left Cincinnati on the Eleventh day of
May 1848, we went to Cleveland where the Pacific was
getting ready to sail - we did not get out of Cleveland till
the twentieth or twenty first of May. The Pacific broke
down twice that season - the first time in July and the
second time in September - the second time was about
the ninth of September and she came out the sixteenth
of October, Capt Salisbury was absent both times
after she was laid up for repairs, I cannot say
positively how long - He was building a Mill at
Cincinnati that year & went home to see to it - I
cannot say how much Capt Salisbury's services were
worth per month - I am not acquainted with the
business - He ran the Steam boat "Samb Ward" part
of year before and I paid him off for Capt Ward, I
think at the rate of Sixty five dollars or Seventy
dollars per month - the latter part of this answer was

ruled out by the Court as improper testimony for the Jury - Capt Salisbury and myself left the Pacific at St Joseph on the twentieth of November or about that time -

On his Cross examination he testified as follows. The Mate left the boat at St Joseph with the Captain & myself the hands on the Boat took her from St Joseph to Chicago. She was going to lie up for the winter at Chicago on her return there - I should think Capt Salisbury was gone three or four weeks from the Pacific when she was broke down the last time - some of the machinery of the boat was broken, a portion of the Engine -

Charles Cooper for the Defendants called and sworn testified as follows -

I sail the Steam boat "Pacific" the present season, I have been acting as Commander two or three years the services of a Captain on Steam boat of the Class and size of the Pacific men worth from sixty to seventy dollars per month - When a Steam Boat is broke down it is necessary that the Captain should be on board to see that the work is hurried through. It is as much his duty as to sail the boat -

On his Cross examination he testified as follows -

Although the Captain may know nothing about Machinery, his duty when the Machinery is broken, to see that the work is put ahead by those engaged in making the repairs - good Captains can be procured for from sixty dollars to seventy dollars per month on boats of the size of the Pacific -

Sidney S. Duffee, called for the Defendants testified

I am Harbor Master of the Port of Chicago - I was such
in 1848 at the time the Pacific ran on Lake Michigan
I have never sailed a Steam Boat or a Vessel but I know
something about sailing - I have been acquainted a good
deal with Vessels but am not acquainted with the Science
of Navigation nor am I a practical Sailor.

The Counsel for the Defendants then asked this witness
this Interrogatory - How did Capt Salisbury manage
the Pacific in coming in and going out of the Chicago
Harbor? - The Plaintiffs Counsel objected to the
interrogatory upon the ground that the witness was
incompetent to answer for want of knowledge of Naviga-
tion - The Court sustained the objection and the
Defendants Counsel excepted to the ruling of the
Court.

Horatio James a Witness called for the Defen-
dants being sworn testified as follows -
I was on board the "Pacific" all the time she
ran in 1848. She sailed out of Cleveland Harbor about
the first of June and was laid up at Chicago on
the twenty fourth day of November - The Captain
Mate and Second Mate left the Pacific at St Joseph
on her last trip - we were then running between
Milwaukee Chicago & St Joseph - I do not think Capt
Salisbury managed a Steam boat well - He was not
anything more than a common Captain - Capt Salis-
bury was absent twice when the Pacific was broke
down - the first time eight days and the second time
four weeks - I am not in the employ of the Defen-
dants. I reside at Naukegan and am in the em-
ploy of Mr Posters.

On his Cross examination he testified as follows -

The Cylinder and walking beam of the Pacific were broken - the Chygoza Iron works made the repairs. It was in Cleveland when the work was done. - The repairs were commenced when the Captain left, and he returned before she came out, I think before the repairs were entirely completed. This was the second time he was absent. I understood he went home to Connaught. There was some joiner work needed to be done at the time of the other repairs. I was a hand on the boat. I never was a Captain. She was to lay up at Chicago on her return from St Paul at the time the Captain left. he left to go home.

Easterbrook. - Called for the Defendants & having been sworn testified as follows.

I am Captain of the Steam Boat Detroit the services of a captain on the Pacific in 1848 were worth from sixty dollars to seventy dollars per month. I think it necessary for the Captain to be present on board when repairs are being made. He should see that the work is hurried on.

On his Cross Examination this witness testified as follows.

I have sailed a Steam Boat three years. the Detroit belongs to the Wards - It is the duty of the Captain to oversee work done on the boat although he may know nothing about machinery - to see that those employed to do the work do the best for the interest of the owners.

Stephen Clement recalled by the Defendants, testified, that it was necessary for the Captain to oversee repairs when they were going on. It is part of his

duty as Captain, as much as it is to row the Boat,

The Testimony having been concluded here and after Arguments of Counsel, the Counsel for the Defendants request the Court to give the following instructions in Writing to the jury, to wit,

1st That unless the Plaintiff has proved a contract with the defendant for the whole Season of Navigation he can recover only for the length of time he was actually in the Defendants Service at such wages as the Jury may think him entitled to from the testimony.

2^d That the Jury in arriving at their verdict have a right to take the Capacity of the Plaintiff as Captain into Consideration as shown by the testimony in the case.

3^d That if the Jury believe from the evidence, that the Plaintiff at any time left the Pacific while he was Captain, for the purpose of visiting his friends or attending to his own private business without having obtained the Consent of the Defendants, he cannot recover for the time he was so absent.

4th That the Jury in estimating the Value of the plaintiffs Services can take into Consideration the faithfulness of the plaintiff to the interests of the Defendants while in their employ.

5th That if the Jury believe from the evidence that more has been received from the Defendants by the plaintiff than his Services were worth, then the Defendants, under the pleadings, should recover

a Verdict for such an amount as he may have received
over and above the amount of the value of his
services as proved.

6th That unless the plaintiff has in the opinion
of the Jury proved the joint liability of all the de-
fendants they should under the pleadings render
a Verdict for the Defendants -

And upon giving the above instructions to
the jury the Court refused to charge the jury as request-
ed in and by the Sixth of said instructions, and
the Counsel for the Defendants excepted to the de-
cision of the Court in refusing to give said Sixth in-
struction, and thereupon the cause was submitted
to the Jury who after retiring to consider of their
Verdict return into Court and by their Foreman
render a Verdict for the Plaintiff and assessed
his damages at One Hundred and Seventy (\$170)
Dollars. And thereupon the Counsel for the
Defendants moved the Court for a new trial of
the said cause, and filed his motion as follows.

Edw. Hart &
David Gallagher
vs
Oney Salisbury

In Cooks Court of Common Pleas

And said Defendants by Shum-
may their Attorney comes & moves the Court here for a
new trial in this cause for the following reasons. (viz)
1st The Court erred in refusing to hear the testimo-
ny of S. S. Deufe -

2nd - The Court erred in refusing to give the 6th
Instruction asked for by Defendants Counsel to the Jury

3^d The Verdict of the Jury is against the Law and
evidence in the case

W. G. Shumway

Which said motion coming on to be heard after
argument of Counsel, the Court denied the said mo-
tion & refused a new trial of said cause, to which
decision of the Court the defendants Counsel excepts
and prays an appeal and that this his bill of ex-
ceptions may be signed & sealed and it is done
accordingly.

Viles Spring Dec 3rd

And afterwards, to wit on the twenty first
day of December A D 1850 the said defendants
joined in the office of the Clerk of said Court their
appeal Bond which said Bond is in the words &
figures as follows to wit,

"Know all men by these presents, That we
Samuel Ward Eber B Ward David Gallagher
and Benjamin J Wadduck are held & firmly
bound unto Orrey Salisbury in the penal sum of
Five Hundred Dollars lawful money of the
United States to be paid to the said Salisbury his heirs,
executors & administrators for the which payment
well and truly to be made we bind ourselves our
heirs & administrators jointly
by an^d severally firmly by these presents.

Sealed with our seals and dated this 7th day of
November A D 1850

The Condition of this obligation is such that
whereas at a Special Term of the Cook County

Court of Common Pleas held in and for the County
of Cook State of Illinois on the 2nd Monday of
October A.D. 1850 in a certain cause depending and
at issue in said Court wherein the said Salisbury
was plaintiff and the said Samuel Ward Eber B
Ward & David Gallagher were defendants, judg-
ment was rendered by the said Court upon a Ver-
dict rendered by the jury empannelled to try
said Cause against the said Defendants for
the sum of One Hundred and Seventy Dollars
damages besides costs of Suit, from which said
judgment the said Defendants have prayed an
appeal to the Supreme Court of the State of Illinois
Now Therefore if the said Samuel Ward Eber B
Ward and David Gallagher shall well and truly
pay or cause to be paid the said judgment together
with all costs interest and damages in case the
judgment so as aforesaid rendered shall be affirm-
ed and shall also with all due diligence prosecute
their said appeal then this obligation to be void,
and of no effect otherwise of full force and effect

Eber B Ward Seal
Samuel Ward Seal
David Gallagher Seal
Ben J. Haddock Seal

State of Illinois }
County of Cook } P.

I Walter Kimball Clerk of the Cook
County Court of Common Pleas within and for the
County and State aforesaid do hereby certify that
the foregoing is a full true and correct copy
and Transcript of the papers and of the Records of
said Court, in the case of Oney Salisbury Plaintiff
and Samuel Ward Eber B Ward & David Gallagher
Defendants, now on file in my office.

In Testimony whereof I have hereunto
set my hand and affixed the seal of
said Court at the City of Chicago in said
County this 15th day of May A.D. 1854

Walter Kimball
Clerk

In said Court

Ward et al

Salisbury

} appeal

And now come here into Court
the said Appellants by H. G. Shumway
their Attorney & assign the following
causes of error in the Court below
and of the Record of said Cause to wit

- 1 The said Court erred in refusing
to permit the testimony of S. S. Duffer
as to the manner in which the Steam-
Boat Pacific was managed, ^{by the appeller} to go to the Jury

2^d The said Court erred in refusing to give to the jury the 6th instruction asked for by the Counsel for the Appellants.

3^d The verdict of Jury is contrary to the evidence in the case

4th The said Court erred in refusing to grant a new trial on the motion of the said Appellants.

Wherefore on account of the errors above assigned and other manifest errors in the proceedings in said Court of the Record thereof the said appellants pray that the judgment of said Court may be set aside, reversed & held for naught.

H. G. Shumway
Atty for Appellants

And appra says there is no error
& says affirmance of verdict

Transcript

S. R. Bond
J. R. Bond
J. R. Bond

Wm. H. Bond
Wm. H. Bond
Wm. H. Bond

Shumway

^{to go to}
In Sup. Court

Eben B. Ward
Samuel Ward
David Gallagher
appellants

Oliver Salisbury
appellee

Transcript

Filed June 10. 1854
S. Heland
Clerk.

Enclosed June 13. 1854.
S. Heland Clerk.

Eber B. Ward, Samuel
Ward & David Gallagher

vs
Oney Salisbury

Appeal from Cook County Court of
Common Pleas -

Appellants costs =

Fil. conceit. & cons 20, Dh. conce 10, apper. 25, Rule to join cons 25,	.80
Prep. & fil. abstr. 7.25, Ent. angt. 25, sub. 25, under adv. 25,	8.00
Ord. rev. 25, rem. dg. 25, fil. Apr. 5, Ent. jud. & pms. 2.00	2.55
Copy of same 2.00, Cert. & seal 25, jud. for costs 25, Ord. for ex. 25,	2.75
Dh. jud. 25, extr. 25, fil. & Dh. 15, Shffs. ret. 10, bill of costs 25,	1.00
Copy 25, Postg. 20, Trans. of pt. re. 15.75, Ent. & copy 25,	16.45
Bill of costs 25, copy 25, cert. & seal 25, fil. & Dh. 15, Shffs. ret. 10,	31.55
Returning execution	.00
	<u>Am't. \$32.65</u>

A true copy from my fee book as taxed & recorded therein.
L. Deland Clk.

State of Illinois, Lt.

Supreme Court - Third Grand Division, at Ottawa,

The People of the State of Illinois to the
Sheriff of Cook County, - Greeting;

We command you, that of the goods and
chattels, lands and tenements of Eber B Ward,
Samuel Ward & David Gallagher, you cause
to be made the sum of thirty two dollars and
sixty five cents, the amount of the foregoing bill,
which is due and unpaid, and is a true copy from
the Fee Book in my office; and hereof make due
return in ninety days.

Witness, the Hon. Samuel H Treat,
Chief Justice of our said Court, and
the Seal thereof, at Ottawa, this twenty
fourth day of October A.D. 1857.

L. Deland Clerk of the Supreme Court
By J. W. Deland Deputy.

Rec^d Chicago Nov. 16th 1850 of Mr. Charles J. Hoff Cook
County Jail Warden the amt paid by me on delivery papers
in above suit -
H. E. Sturtevant

Rec^d of Chicago Nov. 12th 1851 of W. L. Church Sheriff Deft^r
The dect^r in full for my paper manuscript charges in
1175th printing per bill
Walter Kimball Clk and
C at of cum. sum

1171) ✓
Eben B. Ward et al.
vs
Oney Salisbury

~~Bill of costs~~
Fee Bill vs. Plffs. - \$32,65
Recd full amt of damages
& costs of J. Clement & therefore
return this amt satisfied
in full Nov 12th 1851

Wm L Church Sheriff
By A. A. Dexter Deft

Sherridge 75.00
Kimball 57.30
Recd of W. L.

Dect put on
Sheriff's costs

Filed May 17th 1852.
L. Keland Clerk
By G. K. Keland
Deft.