

8634

No. _____

Supreme Court of Illinois

Malenski et al

vs.

E.Block et al

71641  7

The State of Illinois }
City of Cairo } ss.
County of Alexander }

Shew before the Honorable Court of Common Pleas of the City of Cairo held at the Court House in said City on the 8th day of January, at the January Term of said Court AD 1857.

E. Block and Brothers }

vs.

Malinski & Westerman }

It is remembered that heretofore to wit on the 21st day of July AD 1856 came the Plaintiffs by Robert E. Yost their attorney and sued out of the clerks office of said Court a writ of summons against the said Defendants which said writ reads in the following words and figures: to wit:

Writ

State of Illinois }
City of Cairo } ss.
Alexander County }

To the people of the State of Illinois To the Town Constable of said City Greeting We Command you that you Summon John Malinski and William Westerman or either doing business under the name and style and firm of Malinski & Westerman if they may be found in said City or in Township Seventeen South Range one West of the Meridian Meridian. penalty

[14-31]

to be and appear before the Court of Common Pleas
of said City on the first day of the next term
thereof to be holden at the Court House
in the City of Cairns on the first Monday
in the month of October next to answer Emil
Block Leopold Block and Julius Block copar-
tners trading and doing business under the
name and style of E. Block and brothers of a
plea of Assumpsit damages \$320.00 and this
you shall in no wise omit under the penalty of
the law and have you then and there this writ
and make appear thereon how you have executed
the same



Witness, John B. Harman, Clerk of
the said Court of Common Pleas
and the seal thereof hereunto
affixed at office in Cairns this
twenty first day of July 1856

John B. Harman clk

Which said writ was duly returned with the
following endorsement thereon to wit "Served
by reading to the within named Felix Wolinski
on the 16th day of August 1856. Hesterman as not
found in my Parish"

Fees serv & ret. 60

James Kennedy

Serving notice to take

John Low stable

deposition 50
of 1.10

And afterwards to wit on the 6th day of Septem-
ber

1856 came the plaintiffs by R. E. West Esquire their attorney and filed herein their declaration which said declaration reads in the following words and figures, to wit;

State of Illinois }
City of Cairo }
County of Alexander } October Term A. D. 1856 of
the County Court Pleas
of the City of Cairo

Emil Block, Leopold Block
and Julius Block copartners trading and
doing business under the name style and
firm of E. Block and Brothers, plaintiffs in this
suit by R. E. West their attorney complain of
Felix Malinski and William Westerman copartners
doing business under the name style and firm
of Malinski & Westerman defendants in this
suit of a plea of ~~trespass~~ trespass on the
case upon promises &c. or that whereas the said de-
fendants on the first day of April in the year of
our Lord one thousand eight hundred and fifty
six at the City of Cincinnati in the State
Ohio that is to say at the City of Cairo County
of Alexander and State of Illinois and
within the jurisdiction of this court were in-
debted to the said plaintiffs in the sum of
two hundred and twenty dollars and a forty
five cents lawful money for divers goods
wares and merchandise by the said plaintiffs
before that time sold and delivered to the said

defendants and at the special instance and request of the said defendants and being indebted to the said plaintiffs the said defendants in consideration thereof afterwards to wit, on the same day and year last aforesaid and at the City County & State last aforesaid undertook and then and there faithfully ~~promised~~ promised the said plaintiffs well and truly to pay unto the said plaintiffs the said sum of money last mentioned when the said defendants should be therunto afterwards requested. Nevertheless the said defendants (although often requested so to do) have not yet paid the said sum of money above mentioned or any part thereof to the said plaintiffs but to pay the same or any part thereof to the said plaintiffs, the said defendants have herunto altogether refused and still do refuse to the damage of the said plaintiffs of One Hundred and Twenty Dollars and forty five cents and therefore they bring this Suit

R. C. Vest

Atty for Plaintiffs

The Plaintiffs in pursuance of the Statute of made and Provided herewith filed copy of account send upon to wit Molinski & Westerman Bought of C. Brass & Brothers

Feb, 14/1856. 12 papers nailed \$ 1.00
 Sum Atatic 50

2	4 dry pig awls	\$ 40
	2 Balls. Pepp	.36
	1 Pair lacts	.40
	233 lbs Sole leather @ 25%	66.41
	Drayage + Bot	.35
March 12 1856	2 dry calf skins @ 33.	66.00
	1 " " "	30.00
	1 " Hip skins	10.50
	2 " Currys \$650	13.00
	1 wearn Sheep	.10
	2 Bolts Boot Web	.50
	1 dry French Skins	52.00
	Bot dray ago & measure	3.50

March 11th 1856

145 1/2 lbs Sole Leather @ 30	44.55
Drayage	.35
Total	<u>\$520.45</u>

And afterwards to wit, on the 7th day of October, at the October Term of said Court AD 1857, the following order was made by the Court in this cause to, wit;

"In this cause leave is given to open Depositions and defendant ruled to plead by 8 O'clock A.M. tomorrow morning."

And afterwards to wit; on the 9th day of October AD 1857 came the Gift Melinski by Cyrus G. Lemons his atty and filed herein the following his plea and notice of set of to wit;

Plea,

C. Block & Bros

vs

Maculski & Westerman

Assumpsit

Pleas of the October

Term of the Court of Common

Pleas of the City of Cairo in the year
of our Lord one thousand eight

hundred and fifty six. And the said def-
endant Philip Maculski impleaded with William
Westerman by Cyrus G. Simons his Attorney comes
and defends the wrong and injury when &c and says
that they did not undertake or promise in man-
ner and form as the said plaintiffs have
above thereof complained against them and of
this they put themselves upon the country &c

Cyrus G. Simons

Defendants Attorney

C. Block & Bros

vs

Maculski & Westerman

Notice set off

Notice set off

The Plaintiffs in the above styled cause will please
take notice that upon the trial thereof the said
defendants will give in evidence and insist
that the above mentioned plaintiffs before and at
the time of the commencement of this suit were
indebted to the said defendants in the sum
of \$320.45 and still are indebted to the
said defendants in the sum of two hundred &
twenty & ⁴⁵/₁₀₀ Dollars lawful money of the United
States for the work and labor care diligence
and attendance of the said defendants by

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them the said defendants before that time done, pro-
formed and bestowed in and about the busi-
ness of the said plaintiffs and for the said
plaintiff, and at their special instance
and request and for divers materials and
other necessary things by the said defendants
before that time found and provided and
used and applied in and about the said
work and labor for the said plaintiffs and
at their like special instance and request
and also for divers goods wares and merchan-
dise by the said defendants before that time
sold and delivered to the said plaintiffs and
at their like special instance and request: and
also for the use and occupation of a certain dwel-
ling house buildings and land with the appur-
tenances of the said defendants by the said
plaintiffs and at their special instance and
request by the sufferance and permission of the
said defendants for a long time then elapsed
had held used occupied possessed and enjoyed
and also for money by the said defendants before the
time lent and advanced to and paid laid out
and expended for the said plaintiffs and at
their special instance and request and also for
other money by the said plaintiffs before that
time had and received to and for the use of
the said defendants for interest upon and
for the forbearance divers large sums of

money due and owing from the said plaintiffs to the said defendants and by the said defendants forborne to the said plaintiffs for divers long spaces of time before then elapsed; and for other money due and owing from the said plaintiffs to the said defendants upon an account stated between them and that the said defendants will set off and allow to the said plaintiffs on the said trial so much of the said sum of Two hundred & twenty dollars and forty five cents so due and owing from the said plaintiffs to be proved on the said trial as will be sufficient to satisfy and discharge such Demand according to the form of the statute in such case made and provided dated the 9th day of Oct. AD 1856

Courts etc. Cyrus G. Simons

To the above Plaintiffs

Defendants et al

And now to wit: on the 9th day of October AD 1857, at the October Term of said Court, the following order was made herein to wit:

"This day this cause again came on to be heard, upon motion of Defendant to continue this cause, which said motion is allowed at the costs of Defendant, and cause continued until Court in course."

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And now to wit: at the time and place first
herein aforesaid "This day there was
and heard, came the parties by their Attorneys
and thereupon to try the issue joined between
them came a jury to wit Miles ~~W.~~ Parker
William Loring J. B. Swan W. Bridges
Matthew Burns George D. Gordon George
W. Prudden P. Corcoran Charles Schmet-
torff J. E. Smith William Hackett and
Barney Mooney who being duly empannelled
and sworn according to law well and truly
to try the issue joined between the parties after
having heard the evidences arguments of counsel
and received the instructions of the Court
ret~~urned~~ and brought hereto over the fol-
lowing verdict to wit "we the jury find for
the Plaintiffs and assess their damages at
Two Hundred and Twenty Dollars and Seventy
Cents Thereupon came the Deft Malcolm by
his Atty and moved the Court for a new trial
herein And thereupon came the plaintiffs by their
Atty and entered a remittance herein of $269 \frac{32}{100}$
dollars This cause was then heard upon
Motion for new trial only upon remainder
of the Judgment and the Court being ^{now} fully
advised on the premises is of opinion that
said motion is and ought to be and the

same is hereby overruled It is therefore con- sidered that the said plaintiff recover of the said defendant Malinski the sum of one hundred and fifty one dollars and forty five cents their damages and also their costs in this behalf expended taxed at \$ and in default the payment thereof that execution issue therefor where- upon Law is given defendant to file Bill of Exception in vacation within thirty days.

appeal by debt Prayed for and allowed by executing Bond with Martin Surcorick as security within the time allowed by Law. Appeal Bond filed February 2^d 1857. to wit;

Bonds.

" Know all men by these presents that we Felix Malinski Martin Papevich J. Sheel and J. Prop of the city of Cairo County of Alexander and State of Illinois are held and firmly bound unto Emil Block Julius Block and Leopold Block mer- chants and partners in fact doing business and- or the name and Style of E Block & Brothers in the penal sum of three hundred and three dollars lawful money of the United States for the payment of which well and truly to make we bind ourselves our heirs executors and administrators jointly severally and firmly by these presents Sealed with and seals and dated this sixteenth day of January In The

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year of our Lord one thousand eight hundred
and fifty seven. The condition of the above
obligation is such that whereas the said Cecil
Block Julius Block and Leopold Block
merchants and copartners in trade doing business
under the name and style of C Block & Bros
did at the January term of the Court of Com-
mon Pleas of the City of Cairo in the year of
our Lord 1857 recover a Judgment against the
above bounded Felix Malinski impleaded with
William Westerman for the sum of one hundred
and fifty one dollars and forty five cents besides
costs of suit from which Judgment the said
Felix Malinski wishes to take an appeal to the
Supreme Court of the State of Illinois And
if the said Felix Malinski prosecute his said
suit with effect or in case of failure therein
shall well and truly pay or cause to be paid
what ever judgment may be rendered by the
Court upon the trial or dismissal of said
appeal then this obligation to be void otherwise
to remain in full force and virtue"

" F Malinski Seal

" F Bros Seal

" F Scheel Seal

" W Lansom Seal

And afterwards, to wit, on the sixth day of April
A D 1857, came the Defendant, Westerman by
Cyrus S. Seniors his Atty and filed herein his

Bill of
Exceptions

Bill of Exceptions which said Bill reads in
the following words and figures to wit

"Emil Block Leopold Block
and Julius Block copartners
in trade under the name and
style of 'E. Block & Brothers'

Pleas of the January
Term of the Court of
Common Pleas of the
City of Cairo in the

vs

Assumpit year of our Lord one

Felix Molinski and William
Westmore copartners in
trade under the name and style
of Molinski & Westmore

thousand eight hun-
dred and fifty
seven (1857)

So it remembered that

at the January Term of the Court of Common
Pleas of the City of Cairo in a certain case pen-
ding and undetermined therein wherein Emil
Block Leopold Block and Julius Block merchan-
ts and copartners in trade under the name
and style of "E. Block and Brothers" were the pla-
intiffs and Felix Molinski and William West-
more merchants and copartners in trade under
the name and style of Molinski & Westmore
were defendants the following proceedings
were had The Plaintiffs declared for goods
and merchandises and also on the Common Court
in assumpit to which the defendant Felix Mol-
inski impleaded with William Westmore (the
former having served with process and the
latter not served nor his ~~appearance~~ appearance

entered) plead the general issue your notice
of set off upon which plea and notice issue
was taken a jury called and the case tried
Upon the trial the plaintiffs offered in evidence the fol-
lowing depositions and they were read to the Jury
as follows "Deposition of a witness taken on
the 10th day of September A.D. 1856 between the
hours of 10 6 P.M. at my office in the City of
Cincinnati and State of Ohio before me a Com-
missioner upon the enclosed interrogatories and
by virtue of the enclosed Commission to be read
in evidence in a certain suit now pending
in the Court of Common Pleas of the City of Carro
in the State of Illinois wherein ^{Plaintiffs} ~~Plaintiffs~~ are plain-
tiffs and "Polinski and Westerman are defendants.
I, Abraham Commissioner Jacob Levi being first
solely sworn to testify the truth the whole truth
and nothing but the truth depose as follows
Deposition "To the first direct interrogatory he says I am acqu-
ainted with the plaintiffs and have known them
"about four years" the defendants I have never seen
"to my knowledge." "To the second interrogatory in
which he replies "I am ^{now} engaged as book keeper in
the months of February and March 1856. I was
engaged in the same occupation for the plaintiffs
wherein" "To the third interrogatory he responds as
follows on the fourteenth of February 1856 Iundry goods
and merchandise in value duty nine ³⁷ \$00 Dollars ^{inc} include

"25¢ for drayage was shipped to Malinski and
 "Hesterman Cairo Illinois per Adams Express
 "by the plaintiffs agreeably to the instructions of one
 "of the firm. The name of the firm was given to
 "us as Malinski & Hesterman consequently the
 "package was addressed to Malinski & Hesterman
 "the receipt of the goods was acknowledged Malinski
 "Hesterman and a payment made thereon
 "by them I annex hereto marked A the letter of the
 "defendants acknowledging the receipt of the
 "goods addressed as above to Malinski & Hesterman
 "On March 15th & 18th 1856 the plaintiffs shipped
 "to the same address at Cairo two bills of merchandise
 "and dice amounting in the aggregate to two hundred
 "and nineteen dollars. These goods were shipped
 "and charged to the same account as the ones
 "shipped on February 14th 1856 and were shipped
 "upon the order of one of the firm of Malinski &
 "Hesterman. We have no knowledge at any time of
 "any change or dissolution of said firm. No notice
 "has been sent to the plaintiffs by mail as I see
 "all letters mailed to them concerning their business
 "of I annex hereto marked B the letter ordering the
 "goods shipped there. In the fourth direct interrogatory
 "he says "I annex hereto marked C" a bill of the
 "goods as shipped to the defendants charges in the
 "bill and ^{are} correct value of the goods shipped and
 "the fair market price the aggregate amount now

"now due from the defendants to the plaintiffs is
"Two hundred and twenty dollars & the value
"of each item is correctly stated in said bill marked
"C" "To the fifth interrogatory he says the
"firm of C. Bloss & Brothers consists of Cass
"Block Julius Block & Leopold Block "To the
"sixth interrogatory he says the only
"business that the plaintiff have done in Cairn
"Selling leather was to one B. Sische and he sold out
"to Molinski & Westerman and with the successors
"of B. Sische did we transact our business as
"before stated" Cross Interrogations

"To the first cross interrogatory he says I at-
"tended to the book keeping and making out the
"bills of Lading for goods after they were mar-
"ked" "To the second cross interrogatory he says I did
"not receive all orders, some are sent in German or
"letters which I cannot read but all letters come
"into my possession Money orders are given for
"goods without my cognizance in the places
"where the parties reside. I generally made out the
"bills of Lading and Dray tickets that is & was
"my duty. Prior to making out the bills of La-
"ding I examined the marks of the pack-
"ages from which I make out the bills of Lading & it
"was not my duty to mark and direct the goods goods
"can be marked without my cognizance but not
"shipped I never give orders to mark or brand the

goods for shipment, ^{neither} ~~was~~ was it my duty
 "to do I have the means of ascertaining the marks
 "on goods shipped by referring to the bills of Lading
 "or receipts to the third Cross interrogatory he says

"In the month of March A.D. 1856 I
 "was in the employ of E. B. West & Brothers in
 "Cincinnati I did not see the bills of goods
 "They were shipped on the strength of the letter marked
 "B" hereto annexed " To the fourth Cross interrogatory he
 "replies The goods were ordered by letter

"To the fifth Cross interrogatory he answers
 "They were ordered by the letter "B"

"To the sixth Cross interrogatory he says
 "The original letter is filed herewith marked "B"

"To the seventh Cross interrogatory he
 "says Certainly not " To the eighth Cross interrogatory he says
 "The order as I have before stated was by letter.

"To the ninth Cross interrogatory he says I am
 "not personally acquainted with the defendants
 "and do not know that I ever saw either of them

"To the tenth Cross interrogatory he says I can
 "not " To the eleventh Cross interrogatory he says The
 "first order was sent by a German letter and the
 "second order by the letter marked "B" I annex
 "marked "D" the first order all the instructions
 "for shipment are contained in these letters "

"To the twelfth Cross interrogatory he says No
 "order was specially given as to shipment

"No shipped to the old firm not having heard of the
 "disolution" To the thirteenth crop interrogatory he
 "says I can only speak from what the
 "letter contains the goods were shipped on the 14th
 "of February and March 15th & 18th 1856 I cant say
 "what time of the day. the shipment on March
 "15th was on the Memphis and on the eighteenth
 "on the Kendall I cannot say when they would arrive
 "at Cairo" To the fourteenth crop interrogatory
 "he says I kept their books and know what they
 "are in partnership I have been with them ever
 "since they commenced business together
 "and know they act as partners doing business
 "as such & dividing their losses & profits.

"To the fifteenth crop interrogatory he says
 "I only know what the letter shows I only know the
 "writing of the defenants by the letters as newsed
 "there to" (Signed) Jacob Levi

The State of Ohio ^{summons} ss
 Hamilton County 3

I Joseph Ashom a Commissioner
 do hereby certify that ^{said} Witness Jacob Levi
 prior to the taking of the above depositions and on
 said tenth day of September AD 1856 was by me duly
 sworn to testify the truth in relation to the
 matter in controversy in the said mentioned in the cop's
 tion to these depositions and in the enclosed.

"Commission so far as he might be authorized
 "hereto and that said deposition was on the
 "tenth day of September A.D. 1856 at my office
 "in said County and State taken and reduced
 "to writing and signed and sworn to by said
 "W. Sturges in my presence. Given under my hand
 "and seal this 11th day of September A.D. 1856

Commissioners fees

The following is a copy of the letter alluded to
 in the foregoing deposition exhibit "A" and the
 original is so marked in the same -
 signed Joseph Abraham
 Commissioner

"Cairo the 30th of February 1856

"Messrs. C. Black & Brothers"

"We the undersigned acknowledge
 "doth we received the leather consigned to us at Cairo
 "and I send you the amount of duty nine dollars
 "by Adams Express And we are very thankful
 "that you complied with our request"

"Cairo the 30th of February 1856

J. Motuatu. Nabbe Westerman } Rec'd but \$69.00
 "A" } paid expense 75
 } 68.25

After the foregoing had been read to the jury
 Henry W. Wepson was called as a witness
 by the said plaintiffs and sworn well and
 truly to interpret in the case between the parties in
 the case and interpreted into the English the letter
 attached to the aforesaid deposition styled by

the witness a "German Letter" alluded to by him as exhibit "B" and the original is so marked It was interpreted by the said witness as follows

"Cairo Illinois 28th February 1856"

"I thank you kindly ~~for~~ that you sent it after our letter what we ordered And now I beg you that you will send me ^{two dozen} ~~two~~ French calf skins from the best. one ^{dozen} French slip leather and two rolls of sole leather with a Steam Boot We would have sent for more the last time but it is too expensful by railwad and one dozen toping skins, two dozen lining and one measure bond and two rolls of strip bonds Send it as soon as possible

(Signed) "W. Westmore" "Cairo Illinois"

The said witness next interpreted a letter written in the German Language attached to and forming part of the said depositions alluded to therein as exhibit "D" and the original is so marked ~~which~~ interpretation was as follows

"The 11th February 1856"

"My dear friend Emil Block & Co"

You may have the kindness to send us two rolls sole leather one Roll from one hundred to one hundred and fifteteen pounds and one other Roll from one hundred to one hundred and ^{good} eighteen pounds ^{good} tailor by Adams Express And twelve papers but nails for

and one set Patent peg awls
 fifty cents worth green and two gallons 5 and $\frac{1}{4}$ lbs
 paid for 5 $\frac{1}{2}$ pairs
 One pair of lasts for Slip boots number nine And please
 send me a letter with an account in it Write in German
 so we can read it and let us know if we shall send the money
 or if you are coming down yourself it makes no dif-
 ference to us the money is ready for it In the close
 of my letter and to you dear friends"

Moluski & N. Westerman
 Cairo Illinois

The following is a copy of the account attached to
 the said Depositories and referred to therein
 "Linnacate"

"Messrs Moluski & Westerman"

"Brought of C. Block & Bros"

"Importers and dealers in Leather and finishings"

Feb. 14 th 1856	12 papers nails		1.00	
	Gum arabic	forwarded	.50	
	4 dog foot peg awls	for Adams	36	
	1 pair lasts	Expres	40	
	235 lbs Sole Leather @ 28c		66.40	
		Buying & voyage	25	69.32
March 1 st	2 dog skin Fresh calf Skins	for Adams	66.00	
	1 " A.C. " " "	for Adams	31.00	
	1 " Top Skins	Memphis	10.50	
	2 " Lining	Expres	13.00	
	1 Mearow Strip		10	
	2 Rolls Boot Webb		80	
	1 dog French Slip		52.00	
	Buy & voyage 50 Insurance	200	350	174.90

18	148 th Mr. Oak New Sole Leather 30	111.55
	Don or ded for Glendale 2004	25
	or	141.80
		<hr/> \$289.02
1856 Feb 28 th	By Cash for Adams Express in	
	Payment of Bills of Feb 14	69.00
	Less paid express on same	75
		<hr/> 68.25
		220.77

The following is a copy of the depositions used in the case

State of Illinois }
 City of Cairo } ss
 County of Alexander }

The people of the State of Illinois to Joseph Abraham Commissioner of the City of Cincinnati County of Hamilton and State of Ohio Greeting Know ye that we in confidence of your prudence & fidelity have appointed you and by these presents do give unto you full power and authority and do hereby authorize and require you that at a certain time and place to be designated and appointed by you for that purpose you do cause the witnesses whose names are mentioned in the caption of the enclosed interrogatories as well on the part of the said Emu Block & Brothers plaintiffs as on the part of Molins & Westerman defendant to come before you and them and there diligently and faithfully examine

"each of them apart upon the said interrogatories
 on their respective several oaths first taken
 before you on the part of the said plaintiffs and
 defendants and now others And that you
 do take such their examinations and cause
 the said interrogatories as they are propounded
 together with the answers of the said wit-
 nesses thereto to be reduced to writing in the
 order in which they shall be propounded and
 answered and when you shall have so taken
 them you shall cause the said witnesses to sign
 their names to the same in their proper places in your
 presence and therefore you will annex at the foot
 thereof a certificate subscribed by yourself in which
 you must state that they were sworn to and signed
 by the deponents and the time and place where
 and when the same were taken After which
 you are to send the said depositions together
 with this commission and the enclosed interro-
 gatories carefully enclosed and sealed up to the
 Clerk of the Court of Common Pleas of the City
 of Cairo in the County of Alexander and State
 of Illinois with the names of the said par-
 ties litigant and used therein And this year
 shall in no wise omit"

Witness my hand & seal of office at Cairo this 28th
 day of June 1858
 J. Harmon Clerk of
 the Court of Common Pleas and the vice thereof

day of August A D 1856

"John R Harmon as Clerk"

The following is a copy of the said plaintiffs
Petition and interrogatories.

"Emil Block Leopold Block
& Julius Block Copartners in
Trading and doing business in
der the name and style of E Block & Bros

October Term 1856

"of the Court of
Common Pleas
of the City of Cairo"

Assumpit

"John Koluski and William Westerman
partners doing business
under the name and
style of Koluski & Westerman

The defendant in the above
stated cause will please take notice that the plaintiff
in said cause will on the 28th day of August
1856 apply to John R Harmon Clerk of the Court of Com-
mon Pleas of the City of Cairo in the County of
Alexander and State of Illinois at his office
in Cairo for a subpoena or commission directed
to Joseph Abraham of the City of Cincinnati
in County of Hamilton and State of Ohio
as Commissioner, authorizing and requiring
him to take the depositions of Jacob Levi
to be read in evidence on the trial
of said cause when and where you can attend
and file such cross interrogatories as you
may deem proper.

"Lain 15th August 1856"

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"R E Cost Atty
for Plaintiff"

"The following are the interrogatories to be put
to said witness"

"Interrogatory 1st Are you acquainted with the parties plain-
tiffs and defendants if so how long has
you known them respectively."

"Int 2nd What is your occupation at present and in what
business were you engaged about the
months of February and March 1856 for
whom were you doing business if any person
or firm at that time State fully."

"Int 3rd Do you or not know any thing about bills
of goods wares and Merchandise being sold
by the plaintiffs to defendants upon the order
and request of defendants about the fourteenth
of February 13th & 18th of March 1856 if so please
state fully all you know about the same"

"Int 4th If you know of any Merchandise having
been ordered by the defendants (if the Plaintiffs)
and forwarded by the plaintiffs to defendants
about the months of February & March 1856
please to state all the particulars what the
Merchandise consisted of the value thereof
and please attach bills of the items and state

25
"value of each item and the value of the whole
"in the aggregate" Answer fully

July 5th "If you know please state the names of the
"firm of E. Block & Brothers or of whom does
"the firm of E. Block & Brothers consist

July 6th "If you know any thing more of importance
"or advantage to the plaintiffs in the cause please
"to state same fully as though Interrogated
"thereto
B. E. West Atty
for Plaintiff

State of Illinois
City of Cairo
County of Alexander

"I James Kennedy Town Const-
"able of the town of Cairo Illinois do hereby certify that
"I delivered a true and correct copy of the above
"and foregoing notice and interrogatories to
"Jelis Molinski one of the above named defendants
"on the 16th day of August 1856"

(Signed)

James Kennedy
Town Constable

"Sworn to and subscribed
"before me this 16th day of August 1856
"Almo L. Harman Clerk"

The following are copies of the cross Interrogatories
propounded to the said witness.

"Cross Interrogatories to be propounded on behalf of Defendants."

1st What particular branch of business did you attend to about the months of February and March 1856

2nd Do you or did you receive all orders sent or given for goods to E. Black & Bro. How orders were given for goods without your cognizance Was it your duty to see goods bought of Black & Bro. shipped was it your duty to mark and direct all goods bought of them shipped could not goods bought of them be marked without your cognizance If you gave orders for marking or branding goods for shipment did you on all occasions stand by to see that they were marked or directed according to your instructions Have you means ascertaining at this day the particular mark or directions placed upon any particular bale or box of goods shipped by Black & Bro. designate the means fully and particularly

3 Where were you in March 1856 Did you sell the bill of goods in question to the defendant

4 How was the bill ordered by parcel or in writing

5 By whom was it ordered in alms or in writing or both

6 If the bill was ordered in writing please send a copy of such order

7 Do you always recollect a conversation with

Months after it occurred

- 8 If the order was by parol please state the language used the words used directing the
- 9 said goods please be explicit: Are you personally acquainted with the defendant Malvin Ni
Wettermann described therein both or either of them
- 10 Describe the man who gave the order How tall
 how was he ^{dressed} ~~clothed~~ does he speak fluently
 or not was his language broken or not was
 he heavy built or lightly built did he walk
 straight or bent describe his ^{nose} ~~head~~, eyes, hair,
 moustache and contour of his face
- 11 What part of a Book did the order of said
 goods read the order from
- 12 What order did the order or give into directing
 the said goods I mean the shipping directions
 and to whom was said order given do you know
 that the goods were directed as ordered what
 were the shipping directions
- 13 On what particular day of the year 1856 was
 this order given what hour of the day when and
 where the goods shipped what day on what
 Boat when would said goods arrive at Cal
Illinois = 90
- 14 How do you know of whom the firm
 of C. Becker & Brothers consists have you
 seen the article of copartnership
- 15 If the order for said goods was in writing
 by whom was it written how do you know by

Whom it was written can you swear it was genuine are you acquainted with the handwriting of Marmok of Westerman could you recognize either at any time describe any peculiarities of either if you recollect any

C. A. Smoos

Deft Atty

To the interpretation of the said letters enclosed with said depositions the defendant by his counsel then & there objected But the objection was overruled defendant objected and they were read to the jury as aforesaid The foregoing was all the testimony introduced on the part of the plaintiff the defendant introduced no evidence

1st The court then instructed the jury for the said plaintiff as follows

1st "If the jury should find from the evidence that both or either one of the defendants ordered the goods specified on the plaintiff's account and ordered them to be shipped or sent to Cairn and the plaintiff pursuant to such request did ship said goods to the defendants then the jury must allow the plaintiff's account deducting therefrom such credits as the plaintiff have by their account admitted or has been proven by defendants to have been paid by them on the account" "and on" "Given"

To the giving of the foregoing instruction the defendant by his counsel then and there excepted

2nd The plaintiff also asked the following instruction which was given by the court

"The court instructs the jury that the fact as to whether the defendants were copartners is not in issue in this cause and they cannot enquire into any such fact." Given

The defendant by his counsel also excepted to the giving of the foregoing instruction

3rd The defendant then asked the court to instruct the jury as follows which she did


1st "The defendant asks the court to instruct the jury that if they believe from the evidence that any portion of the account mentioned in the plaintiffs declaration was not sold to the firm of Molinski & Westerman or to one of the firms in the firm name therein charged, the Plaintiff is not entitled to a verdict therefor"

2nd "That it is incumbent upon the plaintiffs to show that they sold the goods to the firm of Molinski & Westerman as charged in the plaintiffs declaration or to one of said firms acting in the firm name" Given

Whereupon the jury retired and soon after returned

into the court with a verdict for the plaintiffs
 for the \$230 77. The defendant ^{Malinski} ~~returned~~ then
 entered his motion for a new trial. Whereupon
 the plaintiffs entered a remittitur for the sum of
 fifty nine dollars & 3 cents. The court then overruled the
 motion for a new trial and entered judgment for
 the plaintiff for the sum of \$151.45

And the said defendant Malinski now prays
 that this his bill of exceptions may be signed
 sealed and become a part of the record
 which is done.

J. W. Haynie 
 Judge

The State of Illinois
 City of Cairo
 County of Alexander

I, John D. Harman clerk of the Court of
 Common Pleas of the City of Cairo do
 hereby certify that the foregoing is a true
 and correct copy of the Record of the
 proceedings had in said cause in said
 court, as taken and copied by me from
 the original papers and Records of said
 court now remaining in my office.

By Testimony whereof I have
 hereunto set my hand and affixed
 the seal of said Court at office in
 Cairo this 15th day of June A.D. 1857
 John D. Harman clerk

Felix Malinski impleadee
 with William Westmore
 as appellants
 O. Black & Brothers
 Appellants

Appeal from
 Circuit

Term of the November
 Term of the Supreme
 Court in the year
 of our Lord one thousand
 eight hundred & fifty
 seven

And the said Plaintiff and Appellants comes
 and assigns the following causes of error in the
 record and proceedings aforesaid and prays that they
 may be considered by the Court

- First That the verdict of the jury was against the law
- Second That the verdict was against the law and the
 evidence
- Third That the Court erred in overruling the Plaintiff's
 motion for a new trial and in rendering judgment
- Fourth That the verdict of the jury was against the instructions
 of the Court
- Fifth That the Court erred in overruling the
 defendants exceptions to the interpretation of letters
 marked B. & C. and refused to in joining deposition
 taken and in permitting the same to go to the jury
- Sixth That the Court erred in giving the 1st and 2^d instructions
 asked for by the Defendants

W. G. Sumner
 Plaintiff's Attorney
~~W. G. Sumner~~
 Plaintiff's Attorney

Nov 6 1857

E. Block & Bros

at

Malinski et al

^{by}
E. Block & Bros

Transcript

Filed 25th Nov. 1857.

A. Johnston clk

Received \$5.00 by G. G.

Simons exp

Filed 1st Dec. 1857.

A. Johnston clk

FELIX MALINSKI, impleaded with
 WILLIAM WESTERMAN, *Appellant*,
 v s.
 EMIL BLOCK, and others,
Appellees.

A S S U M P S I T .
 Appeal from
 ALEXANDER COUNTY.

{ Pleas of the November Term of the Supreme
 Court of the State of Illinois, in the year
 of our Lord One Thousand Eight Hun-
 dred and Fifty-seven.

Page 1 of Record.

The above entitled cause was instituted by the Appellees against the Appellant, impleaded with one William Westerman, prior to the October Term of the Court of Common Pleas of the City of Cairo, A. D. 1856, and was tried before Isham N. Haynie, Judge of said Court, and a jury, at the January Term of said Court, A. D. 1857.

Page 3.

Page 4.

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Page 13.

The Declaration was in Assumpsit for "goods, wares and merchandize," to which the defendant, Felix Malinski, pleaded the general issue, and filed notice of set off, and on which issue was joined. There was no service on William Westerman, and his appearance was not entered.

Page 14.

Upon said trial, the plaintiffs introduced as evidence the Depositions of Jacob Levi, taken at Cincinnati, Ohio, who testified as follows, as therein appeared: "That he has known the plaintiffs for about four years, but does not know defendants. He is now, and was in the months of February and March, 1856, book-keeper for plaintiffs. On the 14th of February, 1856, plaintiff shipped, per Adams' Express, to Malinski & Westerman, Cairo, Illinois, agreeably to the instructions of the firm, sundry goods, in value, \$69 32-100, including 25c. for drayage. The receipt of the goods was acknowledged, and a payment thereon made by Malinski & Westerman. Witness annexes, marked "A," the letter acknowledging the receipt of the goods. On March 12th and 18th, 1856, plaintiff shipped to same address, two bills of merchandize, amounting to \$219 70-100. They were shipped on the order of one of the firm of Malinski & Westerman. Witness annexes, marked "B," the letter ordering the goods; and also, marked "C," a bill of said goods. The value of each article is correctly stated in said bill; the whole amount now due plaintiff by defendants is \$220 77-100. Witness sees all business letters mailed to E. Block & Bro's. They had no knowledge or notice of any change or dissolution of the firm of Malinski & Westerman. The firm of E. Block & Bro's., consists of Emil Block, Julius Block and Leopold Block. Plaintiffs formerly sold leather in Cairo only to B. Disch. He sold out to Malinski & Westerman; and with Disch's successors, plaintiff transacted their business. Witness attended to the book-keeping and making out the bills of lading after the goods were sold. He did not receive all orders for goods. Some were sent in German letters, which he cannot read, but all letters came into his possession. Many orders for goods were given without his knowledge in the places where the parties reside. He generally made out the bills of lading and dray tickets. Prior to making the bills of lading, he examined the marks of the packages, and from them made out his bills of lading. Goods could be marked, but not shipped, without his knowledge. He had the means of learning the marks on the goods shipped by referring to the bills of lading. He did not sell the bill of goods marked "C." Said goods were shipped on the strength of the letter marked "B." No order was specially given as to the shipment. Witness annexes, marked "D," the first order for goods from Malinski & Westerman. The shipment of March 12th, was on the "Memphis;" that of March 18th, was on the "Glendale" He only knows the writing of the defendants by the letters above referred to.

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Page 16.

Page 17.

The plaintiffs then introduced as evidence the letter marked "A," and referred to in the foregoing Depositions, and which was in the words and figures following, to-wit :

"Mr. E. BLOCK & BROTHERS :

"CAIRO, the 25th of February, 1856.

" We, the undersigned, acknowledge doth we received the leather consigned to us at Cairo; and I send you the amount of Sixty-nine Dollars by the Adams Express. And we are very thankful that you complied with our request.

" CAIRO, the 25th of February, 1856.

(Signed,)

"F. MALINSKI, W. WESTERMAN "

The plaintiffs then called Henry To Aspern as a witness, and he was sworn well and truly to interpret between the parties in the case. Whereupon he interpreted into English the letter referred to in the foregoing Depositions as exhibit " B," as follows, to-wit :

" CAIRO, ILLINOIS, the 28th February, 1856.

" I thank you kindly that you sent it after our letter what we ordered. And now I beg you that you will send me two dozen French Calf Skins from the best, one dozen French Kip leather and two rolls of sole leather with a Steam Boat. We would have sent for more the last time but it is too expensive by rail road and one dozen topping skins, two dozen of lining and one measure band and two rolls of strip bands. Send it as soon as possible.

(Signed,)

"W. WESTERMAN—Cairo Illinois."

Witness next interpreted the letter referred to in the following Depositions as exhibit " D," as follows, to-wit :

" The 10th February, 1856."

"My Dear Friend EMIL BLOCK & Co."

" You may have the kindness to send us two rolls sole leather, one roll from one hundred to one hundred and sixteen pounds and one other roll from one hundred to one hundred and eighteen pounds good tailor by Adams Express. And twelve papers heel nails for fifty cents worth gum and two gallons 5 and 1-8th pegs and one sett patent peg awls used for 5 1-8 pegs one pair of lasts for Kip boots number nine. And please send me a letter with an account in it. Write in German so we can read it and let us know if we shall send the money or if you are coming down yourself it makes no difference to us the money is ready for it. In the close of my letter and to you dear friends.

(Signed.)

"MALINSKI & W. WESTERMAN,

" CAIRO, ILLINOIS."

To the interpretation of said letters marked " B" and " D," the defendant by his counsel then and there objected. But the objection was over-ruled, defendant excepted, and they were read to the jury as aforesaid.

The foregoing was all the testimony introduced by the plaintiffs. The defendants introduced no evidence.

The Court then instructed the jury for said plaintiffs as follows :

1st. "If the jury should find from the evidence that both or either one of the defendants ordered the goods specified in the plaintiffs' account, and ordered them to be shipped or sent to Cairo, and the plaintiffs, pursuant to such request, did ship said goods to the defendants, then the jury must

Page 29.

“ allow the plaintiffs’ account, deducting therefrom such credits as the plaintiffs have by their account admitted, or has been proven by defendants to have been paid by them on the account sued on.”

2d. “The Court instructs the jury that the fact as to whether the defendants were co-partners is not in issue in this cause, and they cannot inquire into any such fact.”

To the giving of the foregoing instructions, 1st and 2nd, the defendant, by his counsel, then and there excepted.

Page 29.

The Court then instructed the jury for the said defendant, as follows :

1st. “The defendant asks the Court to instruct the jury that if they believe, from the evidence, that any portion of the account mentioned in the plaintiffs’ declaration, was not sold to of Malinski & Westerman, or to one of the firm in the firm name therein charged, the plaintiff is not entitled to a verdict therefor.”

2d. “That it is incumbent upon the plaintiffs to show that they sold the goods to the firm of Malinski & Westerman, as charged in the plaintiffs’ declaration, or to one of said firm, acting in the firm name.”

Whereupon the cause was submitted. The jury retired, and returned with a verdict for the plaintiffs, for \$220 77-100. The defendant, Malinski, then entered his motion for a new trial, and thereupon the plaintiffs entered a *remittitur* for \$69 32-100. The Court then over-ruled the motion for a new trial, and entered judgment for the plaintiffs for the sum of \$151 45-100, and costs. Defendant appealed to this Court; and now assigns the following cause of error :

- 1st. That the verdict was against the law.
- 2d. That the verdict was against the law and the evidence.
- 3d. That the verdict was against the evidence and the instructions of the Court.
- 4th. That the Court erred in refusing to grant a new trial and in rendering judgment.
- 5th. That the Court erred in over-ruling the exceptions of the defendant to the interpretation of the letters marked “B,” and “D,” and referred to in the foregoing depositions; and in permitting the same to go to the jury.
- 6th. That the Court erred in giving the 1st and 2nd instructions for the plaintiffs.

C. G. SIMONS,
Attorney for Appellant.

15
In the Supreme Court
November Term A.D. 1857

Felix Malinski implorant
contra Willian Westmore

vs
Emil Block and others

Abstract

W. G. Simons
Plffs Attorney

Filed 25th November 1857.
A. Johnston Clk
" "
Refiled Dec. 1. 1857
A. Johnston Clk
" "

G. O. SIMONS
Attorney for Plaintiff

Felix Aleksinski impleaded with
William Westerman, Plff. in error but
defendant below = Appellant
as
Emil Black, Leopold Black and
Julius Black, Copartners trading and
doing business under the name and
style of "E. Black and Brothers," defendants
in error and Plaintiffs below

Appeal from
the court of
Common Pleas
of the city of
Levin

Pleas of the November
Term of the Supreme
Court, in the year
of Our Lord eighteen
hundred and fifty
seven

Will the Clerk of the Su-
preme Court please issue a scire facias for the defend-
ants in the above styled Cause, directed to the Marshall
of the city of Levin for Levin and returnable on the
first day of the next term of this Court.

Cyrus H. Lemons
Plaintiffs Attorney

In the Supreme Court
November Term A.D. 1857

15

Felix Violinisti complainant
vs. William Weston
respondent

vs.

Emil Block and others
appellants

Præcipe

W. G. Linnous

Plff's Attorney

Filed 25th November 1857.

A. S. Johnston Ck

Refiled Dec. 1. 1857.

A. S. Johnston Ck

FELIX MALINSKI, impleaded with
 WILLIAM WESTERMAN, *Appellant*,
 v s.
 EMIL BLOCK, and others,
Appellees.

ASSUMPSIT.

Appeal from
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Witness next interpreted the letter referred to in the following Depositions as exhibit "D," as follows, to-wit :

" My Dear Friend EMIL BLOCK & Co." "The 10th February, 1856."

" You may have the kindness to send us two rolls sole leather, " one roll from one hundred to one hundred and sixteen pounds and one other roll from one hun- " dred to one hundred and eighteen pounds good tailor by Adams Express. And twelve papers " heel nails for fifty cents worth gum and two gallons 5 and 1-8th pegs and one set patent peg " awls used for 5 1-8 pegs one pair of lasts for Kip boots number nine. And please send me a " letter with an account in it. Write in German so we can read it and let us know if we shall send " the money or if you are coming down yourself it makes no difference to us the money is ready " for it. In the close of my letter and to you dear friends.

(Signed,) "MALINSKI & W. WESTERMAN, " CAIRO, ILLINOIS."

To the interpretation of said letters marked "B" and "D," the defendant by his counsel then and there objected. But the objection was over-ruled, defendant excepted, and they were read to the jury as aforesaid.

The foregoing was all the testimony introduced by the plaintiffs. The defendants introduced no evidence.

The Court then instructed the jury for said plaintiffs as follows :

1st. "If the jury should find from the evidence that both or either one of the defendants ordered " the goods specified in the plaintiffs' account, and ordered them to be shipped or sent to Cairo, and " the plaintiffs, pursuant to such request, did ship said goods to the defendants, then the jury must

“ allow the plaintiffs’ account, deducting therefrom such credits as the plaintiffs have by their account admitted, or has been proven by defendants to have been paid by them on the account sued on.”

2d. “ The Court instructs the jury that the fact as to whether the defendants were co-partners is not in issue in this cause, and they cannot inquire into any such fact.”

To the giving of the foregoing instructions, 1st and 2nd, the defendant, by his counsel, then and there excepted.

The Court then instructed the jury for the said defendant, as follows :

1st. “ The defendant asks the Court to instruct the jury that if they believe, from the evidence, that any portion of the account mentioned in the plaintiffs’ declaration, was not sold to the firm of Malinski & Westerman, or to one of the firm in the firm name therein charged, the plaintiff is not entitled to a verdict therefor.”

2d. “ That it is incumbent upon the plaintiffs to show that they sold the goods to the firm of Malinski & Westerman, as charged in the plaintiffs’ declaration, or to one of said firm, acting in the firm name.”

Whereupon the cause was submitted. The jury retired, and returned with a verdict for the plaintiffs, for \$220 77-100. The defendant, Malinski, then entered his motion for a new trial, and thereupon the plaintiffs entered a *remittitur* for \$69 32-100. The Court then over-ruled the motion for a new trial, and entered judgment for the plaintiffs for the sum of \$151 45-100, and costs. Defendant appealed to this Court; and now assigns the following cause of error :

- 1st. That the verdict was against the law.
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- 3d. That the verdict was against the evidence and the instructions of the Court.
- 4th. That the Court erred in refusing to grant a new trial and in rendering judgment.
- 5th. That the Court erred in over-ruling the exceptions of the defendant to the interpretation of the letters marked “B,” and “D,” and referred to in the foregoing depositions; and in permitting the same to go to the jury.
- 6th. That the Court erred in giving the 1st and 2nd instructions for the plaintiffs.

C. G. SIMONS,
Attorney for Appellant.

In the Supreme Court
November Term A.D. 1857

Felix Molewski, complainant
vs.
William Westerman
appellee

E. Black & Brothers
appellees

chestnut

C. G. Simms

Plaintiff's Atty

Filed 25. November 1857.

N. Johnston Clerk

Filed Dec. 1. 1857

N. Johnston Clerk

C. G. SIMMS

Attorney for Appellant

15

Maliński & Co

Defts in Error

by

Black & others

Defts in Error

Error to Account of

Common Pleas of City
of Cairo.

8634

Dismissed Nov. 1858. for
want of assignment of Error