

8565

No. _____

Supreme Court of Illinois

Armstead Ward

vs.

S. Musgrove

71641  7

1. Pleas had at a Circuit Court
began and held in, and for the
County of Gasper and State of Illinois
at the Court house in the Town
of Newton, in said County on the 17th
day of October A.D. 1859, before
the Honorable Alfred Kitchel,
Sole Judge of the twenty-fifth
Judicial Circuit of the State of Illinois.

Be it remembered, that
heretofore to wit, at a Circuit Court
began and held at the Court house
in the Town of Newton, County of
Gasper and State of Illinois,
on the 28th day of March
A.D. 1856, before the Honorable
Justin Harlan, Sole Judge of
the fourth Judicial Circuit of the
State of Illinois, Wiram Wade, Clerk,
& John Kern Sheriff, the following
proceedings among other things
appear of Record to wit.

Stephen Musgrove }
 vs } Bill in
 Armistea Ward, & } Chancery to
 David Hammer } settle Partnership.

(Copy of Bill.)

To the Honorable Justice Harlan
 Solo Judge of the Gasper County
 Circuit Court in Chancery sitting.

Your Orator, Stephen Musgrove,
 of the County of Gasper and
 State of Illinois, Humbly Complai-
 ing unto your Honor, Respectfully
 sheweth that, about the tenth day
 of May A.D. 1855, One Armistea-
 Ward of the said County of Gasper
 purchased of one Catlin Preston & Co. of the
 County of Crawford and State of Illinois,
 One hundred and ten head of Cattle, two of
 which lot of Cattle were yearling Steers, four
 were two year old heifers, and the balance
 were
 Cows, some of said Cows had Calves, but the
 Calves passed with the Cows, uncounted, for
 which lot of Cattle the said Armistea Ward
 was to pay the said Catlin Preston & Co.

On the 20th day of November AD, 1855;
 but of the amount your Orator is not
 advised; your Orator would further
 represent that said Armisted Ward left
 said Cattle in a pasture in said Crawford
 County where they were purchased; and
 on the 20th day of May AD 1855, at, and
 within the said County of Jasper your
 Orator and the said Armisted Ward
 made a Contract which conveyed to your
 Orator an equal and undivided interest
 in said Cattle, and constituted your
 Orator and the said Armisted Ward
 partners therein, and on that occasion
 your Orator and the said Armisted Ward
 estimated said Cows, (Calves thrown in) at
 seventeen Dollars and fifty cents per head,
 said heifers at twelve Dollars per head,
 and the Steers at ten dollars per head,
 one half of the aggregate amount at the
 aforesaid estimates your Orator agreed
 to pay to the said Armisted Ward, on
 the 20th day of November AD 1855,
 without interest, for an equal interest
 in said Cattle, which said Cattle your
 Orator and the said Armisted Ward, then

4. Agreed to drive to Chicago in the State of Illinois, to Market, and your Orator and the said Armsted Ward were to bear an equal ~~portion~~ proportion of the expenses, of driving & Marketing said Cattle, and were to share equal in the loss and gain in the enterprise, and as soon as practicable invest the proceeds of said stock in Other Cattle which were to be marketed in like manner, and so make as many turns as they could so that the money could be realised on the last draw in time to meet the engagements of your Orator, and the said Armsted Ward relative to the first payment of the first lot of Cattle on the 20th day of November A D, 1855, as aforesaid; your Orator would further represent that in pursuance of said contract your Orator immediately repaired with the necessary assistance which your Orator then employed for that purpose, to where said Cattle were being agitated in said Crawford County, and started them so for said Chicago with said Cattle whilst the said Armsted Ward remained behind to complete some further arrangements relative to said enterprise,

and was to overtake your Orator on the way. - your Orator would further show that the said Armstedward overtook your Orator, as your Orator was proceeding with said Cattle in the County of Clark. and when the said Armstedward came to your Orator he informed your Orator that he, the said Armstedward had sold one half of said Cattle to one David Hammer of said County of Jasper, and that the said David Hammer would meet your Orator & the said Armstedward at said Chicago. But the said Armstedward utterly refused to inform your Orator of the terms of said Sale, or of the necessity of making it; your Orator would further represent that on arriving at said Chicago with said Cattle your Orator ascertained that the said Armstedward had undertaken to convey to the said David Hammer one equal undivided half of said Cattle, and to make ^{the said} David Hammer an equal partner in said Cattle with the said Armstedward, to the entire exclusion of your Orator,

6. and your Orator avers, that the said pretended Sale by the said Armistead Ward, to the David Hammer of said Cattle, was made without the knowledge or consent of your Orator, and that he has never assented thereto, and that the same was devised & had and executed by the said Armistead Ward and David Hammer for the purpose of defrauding your Orator of his lawful interest in said Cattle, and the gains and profits arising from the Sale thereof, your Orator would further represent that the said Cattle were sold at said Chicago, except some six or eight which were sold on the way, and all at a great advance upon the price at which they were estimated at the time your Orator purchased his interest therein of the said Armistead Ward as aforesaid, and that great gains were made by said Sale, and that said Cows which were sold on the way brought from \$20, to \$30,00 a head, and that those sold at said Chicago Cows & heifers together at \$25,00, per head, and the Steers at ten dollars per head.

7. And your Orator expressly Charges, that the said Armsted Ward and David Hammer received the money for said Cattle on the sale as aforesaid, and that they utterly refused to account to your Orator for any share of said Money so received as aforesaid, and expressly deny that your Orator had any interest in said Cattle, and assert that your Orator shall have no compensation except as a servant in assisting to drive and Market said Cattle, your Orator further Charges that the said Armsted Ward entirely denies having entered into said agreement, & partnership with your Orator, relative to said Cattle, and absolutely refuses to reinvest the proceeds of the said sale of said Cattle in the purchase of other Cattle, as agreed as aforesaid, and your Orator also Charges that the said David Hammer when he made said pretended purchase of an interest in said Cattle, well knew that your Orator owned one equal undivided half of said Cattle, and that your

8. Orator and the Said Armsted Ward were in partnership in relation to the driving and marketing of them, and that by the said David Hammer acquired whatever interest he said Cattle if any subject to your Orators said interest therein; your Orator therefore prays that the said Armsted Ward and David Hammer be made parties defendants to this his bill of Complaint, that process may issue and said Defendants be required to answer as fully hereto, as though the substance hereof were recapitulated by way of interrogatories, but your Orator expressly waives the necessity of the said defendants answering under oath. And on the final hearing your Orator prays that your Honor will order and decree that the said partnership so entered into by and between your Orator and the said Armsted Ward be now terminated, that an account be taken between your Orator and the said Defendants relative to the driving and marketing of said Cattle, and also relative to all the moneys received

9. On account of the sale of said Cattle,
and that said Defendants be ordered
and decreed to pay over to your Orator
one ^{equal} half of all the money received
on account of the sale of any and all
of said Cattle less your Orator's just
Share of the said expenses, and also
less the amount which your Orator
agreed to pay to the said Amsted-
ward on the said 20th day of Nov-
ember A.D. 1855 as aforesaid for an
interest in said Cattle as aforesaid,
And that your Honor will grant
your Orator such other and a
further Relief as to equity may apper-
tain, and if your Petitioner as in
duly bound will ever pray, &c.

Constable, Starkweather,
and Peterson, Solicitors
for Complainant.

11. (Endorsement of Officer on Summons,
Served by reading to, and also by leaving
a Copy with both the Defendants,
March 17th 1856.

John Kern Sheriff,
By W. Maxwell, Deputy

(Case coming on to be heard)

Stephen Musgrove

vs

Armsted Ward, &

David Hammer

} Bill in Chancery
} to settle partnership.

} now at this
} day comes the

Complainant by his solicitor, and
the Defendant by his attorney, and
the Court having adjourned before this
Cause could be heard, therefore
this Cause stands continued until the
next term by operation of Law,

the said defendants having filed their
answers to said Complainants Bill.

(Copy of answer of Armsted Ward)

State of Illinois

Gasper County


} Answer of Armsted
} Ward, the defendant
to a Bill in Chancery of Stephen Musgrove

12. in the Jasper Circuit Court exhibited.
The defendant saving and reserving to himself the
benefit of exceptions &c. for answer to so much
of Complainant's Bill as it is material for
him to answer, answereth and saith that,
true it is, that the purchase from the respondents
a lot of Cows & other Cattle for the Northern
Market, and true it is he was willing to have
given the said Musgrove an interest in said
Cattle at seventeen Dollars & fifty cents
per head, provided the said Musgrove would
make him secure in the purchase money and
also furnish an equal proportion of the
expense money in putting said Cattle into
Market, but said Stephen Musgrove
after exerting himself to do so entirely
failed to procure the expense money and
never gave any security for the purchase
money aforesaid, after the said Stephen
had so failed this respondent being
desirous of dividing the expense and
Responsibility, sold to David Hammer
the undivided half of said Cattle on
the terms and conditions of the said
Hammer, furnishing half the expense


13. Money and dividing the profit and loss of the enterprise, thereupon the said Stephen abandoned all pretense of having an interest in said Cattle, and hired himself as a hand to said Hammer to assist in driving and Marketing said Cattle; This Respondant further states that said Stephen was not responsible for his debts, and that this Respondant could not with safety sell him an interest in said Cattle without being made secure, and repeatedly offered the said Stephen an interest in one half of the Cattle aforesaid on condition that he would make him secure and furnish one half the expense money, which the said Stephen was never able to do, but on the contrary this Respondant advanced the said Stephen Money and other articles which the said Stephen has never been able to pay. Your Respondant would further state that considering the loss of Cattle, and expenses of every kind connected with putting said Cattle into market there was but small profits over the ~~cost~~

14.

The Costs at Seventeen Dollars and fifty
cents per head; Your respondent expressly
denies all the allegations of said Bill
not heretofore specially admitted or
denied; and calls upon Complainant
for proof. Your respondent having
answered this Bill, prays to be dismissed
with Costs.

Sicklin & Mayo,  Armistead Ward,
Solicitors.

(Answer of David Hammer, Copy)

Ward & Hammer 

vs

Stephen Musgrove 

Bill in Chancery,

The separate

answer of David

Hammer, one of said Defendants.

The said Respondent for answer
says that, saving and reserving all
Objections to the defects and insufficiencies
of Plaintiffs Bill, he knows nothing
of his own knowledge of the purchase
of the said Cattle by Ward in Cranford
County, nor does he know any thing
of any bargain and sale of one
half thereof, or of any interest in them

15.

by said Ward to Plaintiff, as alleged
in the Plff's Bill, and Respondant denies
all knowledge of any such bargain or
sale except as he has learned since his
purchase of an undivided half from
Ward, and he has no further knowledge
of any such transaction since, except
by the statement of said Plff, but
which statements have always been denied
by ^{said} Ward; This Respondant says that it is
true as stated in said Bill that he did
purchase of said Ward one half
interest in said Cattle, and did sell the
same in Market, and did settle with said
Ward, &c. that as to any profits on said
Cattle over and above the costs,
expenses and travell, there was but little
if anything; Respondant says that the
allegations of said Plff's Bill as to a
partnership interest in said Cattle with
Ward, and as to his devoting his time
and services as a partner in the driving
the same, they cannot be true, for the
reason that the plff, was long before
the time of said pretended purchase
of Plff, from Ward, continuously

from that time up to the day of
16. long after the driving and marketing
of said cattle in the employ and service
of this Respondant, under contract to
work and labor at an agreed rate
of wages, and that in the driving of
said cattle, and in all the services un-
dered by him about them, said Plff.,
was working and performing services
for this Respondant, under his said en-
gagement, and for all which said
Plaintiff has been fully paid by this
Respondant, according to the terms
of their said Contract, and this
Respondant insists that said Plff.,
could not while so engaged and in
the employ of this Respondant, make
or carry on any such partnership
arrangement as in his said Bill
is set forth, and ^{that} if he did so un-
dertake and devote his time & services,
such labour and services incurred
to the benefit of this Respondant,
and was paid for by him as afore-
said, and having fully answered
said Respondant begs to be dismissed.

David Hammer,

A. Titchel, Solicitor.

(Pltffs. Replication to Deffts, answers)

Stephen Musgrove,

vs

Armstead Ward

& David Hammer

Of the Jasper
County Circuit
Court, April
Term AD 1856,

And the said Complainant for
Replication to the said Defendants
Several answers to said Complainants
Bill of Complaint says that the said
answers so far as they admit the truth
of the allegations contained in said
Bill are true, and so far as they
contravert the truth of said ~~answers~~
Allegations of said Bill, the same
are untrue. And said Complainant
therefore prays as in his said bill
before prayed for.

Starkweather & Peterson,

Solicitors. S

(Proceedings in said Cause, at Sept. Term 1856.)

Stephen Musgrove

vs

Amstede Ward, &

Lucia Hammer.

Bill in Chancery

to settle

Partnership.

Honorable J. Harlan presiding, now at this day came the parties by their attorneys, When on motion of Defendants attorney this Cause is continued until the next Term of this Court, the said Plaintiff appearing thereto.

(Proceedings had in said Cause, at the April Term A.D. 1857. —)

At a Circuit Court Commenced and held at the Court house in the Town of Newton, County of Jasper and State of Illinois, on the 27th day of April A.D. 1857.

Present the Honorable J. Harlan, Judge,

The Court being regularly opened by the Sheriff.

And at said Term among other things the following Cause came on for hearing to wit,

19. Stephen Musgrove, }
vs } Bill in Chancery
Annstedt Wava, & } to settle Partnership,
David Hammer } Now at this
} day came the
Parties by their attorneys, When by
agreement of the parties this Cause is
Continued until the next term of this
Court, at the Costs of the said defendant.

(Proceedings had in said Cause at Sept. Term 1857)

Stephen Musgrove }
vs } Bill in Chancery,
Annstedt Wava, & } to settle
David Hammer } Partnership.
} Honorable J. Horlan
Presiding; the Court being regularly
opened by the Sheriff. }
Now at this day came the
Parties by their attorneys, When by agreement
of the parties this Cause is Continued until
the next term of this Court, at the Costs
of the said Defendant. }

20. Be it remembered, that heretore to wit,
at a Circuit Court began and
held at the Court house in the Town
of Newton, County of Jasper and
State of Illinois, on the 26th day of
April 1858, before the honorable
Justin Harlan, sole judge of the
4th Judicial Circuit of the State
of Illinois; Hiram Wade Clerk, and
James E. James, Sheriff, the following
proceedings appear of Record to wit;

Stephen Musgrove
vs
Arastea Ward &
David Hammer

Bill in Chancery
to settle Partnership.
Now at

this day came
the parties by their attorneys, and this
Cause having been submitted to
Arbitrators by the parties themselves,
in respect of any order of Court to
that effect, whereupon came the said
Defendant his attorney, and moved
the Court to set aside the award of
the said Arbitrators, for the reason
that said Cause had been taken

21.

Out Of Court. Contrary to law &c,
 Which motion is sustained by the Court,
 and the said Award set aside;
 Whereupon it is Ordered by the Court,
 the parties assenting thereto, that this
 Cause be continued until the next
 Term of this Court. —

Proceedings here at the Sept. Term 1858
 in said Cause, the Honorable Justice
 Harlan Presiding; The Court being
 regularly Opened by the Sheriff. —

Stephen Musgrove, —
 vs. — } Bill to settle
 Armsted Ward, and } Partnership.
 David Hammer — } Now at
 this day came

the parties by their attorneys, and after
 being joined, and this Cause submitted
 to be tried by the Court, when on motion
 leave is granted to Open Depositions;
 when by agreement this Cause is
 continued until the next term of
 this Court, at the costs of the
 said Defendant.

May Term, Jasper County
Circuit Court, Ad 1859.

At a Circuit Court, begun
and held at the Court house in
the Town of Newton, County of
Jasper and State of Illinois, on the
16th day of May 1859,

Present the Honorable

A. Kitchel, Judge,
Heriam Wacker, Clerk, &
Thomas C. Melton, Sheriff.

The Court being regularly opened by the Sheriff.
Stephen Musgrove,

vs } Bill to settle
Arnsted Wacker } Partnership
David Hammer } now at
this day came

the parties by their attorneys, when an
motion leave is granted to open
depositions, and on further motion
of Defendant, & Affiant filed
this cause is continued until the
next term of this Court, at the
costs of the said Defendant,

(Copy of Defendants affidavit for
continuance, see next page)

(Copy of Affidavit for Continuance)

State of Illinois
 Jasper County

Stephen Musgrave

vs

Armisted Ward, &

David Hamner

Suit pending
 in the Jasper
 Circuit Court,

Armisted Ward, one
 of the Defendants in the above
 entitled Cause being duly sworn
 Deposeth & Saith, that the said Defen-
 dants cannot safely proceed to trial
 in said Cause at the present term
 of this Court, on account of the
 absence of Barton Rexford, H. H. Prady,
 and Norman Rexford, who are ma-
 terial witnesses for said Defendants,
 by whom he expects to prove that in
 or about the month of June
 A. D. 1855, and after the battles
 mentioned in the said Complainants
 Bill of Complaint have been
 driven to the County of Cook,

and State of Illinois, the said Com-
plainant stated to the said witnesses
that he the said complainant owned
no interest in said cattle. This deponent
further states further stated that he is
advised and verily believes that said
Complainant will introduce witnesses
on the trial of said cause that will tes-
tify that they heard this deponent say
before said cattle had been started for
Chicago, that the said complainant
was a partner with this deponent in
said cattle, and this deponent denies
that there ever was any partnership in
said cattle with said complainant
but only an agreement to enter into
partnership on the conditions men-
tioned in his answer, and the tes-
timony of the said Barton, Rexford
H. Massey and Norman Rexford is
material to the said defendants for
the purpose of rebutting the evidence
to be introduced on the part of the com-
plainant for the purpose of proving
such partnership. And this de-
ponent further said that said

witnesses whose testimony he seeks to procure reside in the county of Cook and State of Illinois, a distance of about two hundred miles from the place of holding this Court, that he has used due diligence for the procuring the testimony of said witnesses, for the present term of this Court, by giving notice to said complainant, that the depositions of said witnesses would be taken at the office of Weber Kexford a Justice of the peace of said Cook county on the 3rd day of February A.D. 1859 which said notice was served on the said complainant on the 8th day of January A.D. 1859, that the said Justice of the peace took the depositions of the said witnesses at the time and place mentioned in said notice and returned the same unto this Court, and the same were offered on the 1st day of the present term of this Court, when for the first time it was discovered by the solicitors of the defendants in this cause that the

depositions would be unavailing
to said defendants, because the same
were not certified to by said Justice
of the peace in conformity with the
Statutes of the State of Illinois.

This deponent further states that
he knows of no other persons in at-
tendance at this present Term
of this Court by whom he can prove
the above facts, and that he expects
to be able to procure the depositions
of said witnesses at the next term
of this Court, duly certified as re-
quired by law to which time he
prays that this cause may be
continued, that this affidavit
is not filed for mere delay, but for
the furtherance of justice.

Subscribed and
sworn to before me Frank Ward
the undersigned clerk
of said Court this 17th
day of May A. D. 1859
of William Wade clerk

27

October Term Gasper County
Circuit Court, A.D. 1859. —

At a Circuit Court begun
and held at the Court house in the town
of Newton, County of Gasper and State
of Illinois on the 17th day of October
A.D. 1859. = Present the honorable
A. Fitchel Judge.

Hiram Wade, Clerk, and
Thomas C. Melton Sheriff.

The following proceedings among
other things appear of Record to wit;
The Court being regularly opened
by the Sheriff.

(First day)

Stephen Musgrove, }
vs }
Arrested Ward. }
Bill to settle
Partnership,
now at

this day came the parties by their at-
-tornies, when on motion leave is granted
to open Depositions, filed herein by
Defendant.

And now again on the 6th day
 at this term again comes the parties
 by their Solicitors, and the Defendant
 having heretofore filed his answer,
 and the Complainant also hereto-
 fore filed his replication thereto,
 and this Cause being now ready for a
 hearing, it is Ordered and adjudged
 by the Court, that a Jury be empanelled
 in this Cause, to ascertain by trial
 the following Issues, that is, whether
 a partnership did or did not exist
 between the said Complainant and
 the said Defendant in the Cattle, as
 in said bill alleged; And secondly,
 if the Jury shall find the Issues as
 above in favor of Complainant,
 then that they find what profit if
 any was realized on said Cattle,
 and how much is due therein
 to said Complainant if any on an
 agreement thereof &c; And the said
 Parties ~~Complainant~~ ^{Complainant} and defendant
 being mutually advised by the Court
 of such Issues, and having proceeded

to a trial thereof, after the evidence heard the jury were charged and retired to consider of their verdict upon said issues, and returned into Court their verdict as follows to wit; We the jury find the first issue in favor of the Complainant, and on the second issue we the jury find for the plaintiff the sum of three hundred and forty seven Dollars and fifty cents; And the Court being now sufficiently advised of, and concerning the premises, does Order and decree that said partnership be taken and considered and estimated as now settled and fully adjusted between said Complainant and said Defendant, and that all the rights and liabilities growing out of the same be fully closed and all things determined, and that the said Defendant pay to the said Complainant the sum of three hundred and forty seven Dollars and fifty cents so found as aforesaid, as the next

Balance due the Complainant from
said Defendant on a final settle-
ment of said partnerships and that
said Defendant pay to the Complain-
ant the said sum of Money so found
as aforesaid within sixty days
from the rendition of this decree,
and in default of the payment
in the time aforesaid that an Execu-
tion issue against the goods and
Chattels, lands and tenements of said
Defendant for said sum, to be levied
and satisfied as provided by law
for levying and satisfying Executions
as in other Cases; And it is also
further ordered and decreed, that
the Defendant pay the Costs of
this Cause, to be levied as aforesaid;
It is also ordered that the Defendant
have leave to tender a Bill of ex-
ceptions herein by the first day of
the next term of this Court.

31. May Term Jasper Circuit Court, 1860,
(Deponents Bill of exceptions, Copy.)
State of Illinois } of the October
Jasper County } Term Ad 1859, of
the Jasper County
Circuit Court.

Stephen Musgrove }
vs } In Chancery
Armisted Ward, } Be it
} remembered,

that on the day of October Ad
1859, being the sixth day of said
Term of said Court, aforesaid the
above entitled cause came on to be
tried, before the Hon. Alfred Kitch-
ell, Judge and a jury and the
Plaintiff introduced the deposition
of H. F. Groff, which deposition is
in words and figures following
to wit: The deposition of William
Groff a witness produced, examined
and sworn before the undersigned
Clerk of the County Court in and for
the County of Crawford in the
State of Illinois at my office in
the Town of Robinson in said

County on the 2nd day of September A.D. 1886 taken and subscribed at the time and place aforesaid for the purpose of being read in evidence in the cause now pending in the Jasper Circuit Court in said State wherein Stephen Musgrove is Plaintiff and Accepted Ward and David Hammer are defendants on the part of said Plaintiff;

Question 1st by Plff: are you acquainted with the parties to this suit
Answer: I am, have known them for some year or two

Question 2nd by Plff: Do you know anything about the Plaintiff and Accepted Ward Defendant, being in partnership in a drove of cattle and driving them to Chicago; and if so, state all you know about that transaction;

Answer: I was employed about a year ago last Spring by Stephen Musgrove the Plaintiff to help drive the drove to Chicago; I under-

stood from both Stephen Purgrove and Amos Tard that they were partners in the crowd of cattle.

Question 3rd by Jeff: about what time and where from did you start from with the crowd, and how many cattle were there.

Answer: He started about the 16th day of May 1856 with the crowd from the neighborhood of Hart's Ford in Crawford County Illinois and there were about one hundred and eleven head of cattle in the crowd.

Question 4th by Jeff: How far did you go with them, and what were done with the cattle so far as you know?

Answer: I went to Chicago with them, the point we started for we sold six or 7 head on the road at prices varying from \$20.00 to \$35.00 the rest were sold at Chicago Market excepting three lost on the road, if there were any more lost, I do not recollect

it they were sold at twenty-five
dollars a head all round except-
ing two yearlings which I think
were sold for ten dollars a piece
Custom to the Old Mr. Pungrow
and Mr. Hard each to conduct
the business together and were
they both with the drove until it
was sold out.

Answer: They did, and were
both with the drove until sold
out excepting that Mr. Hard
occasionally absent. I kept their
book and accounts for them, and
by their direction kept an account
of the amount of expenses each
one had on the road.

J. H. Proff.

State of Illinois

Crawford County

J. James H.

Just. Clerk of the county court, in
and for the county of Crawford
in the State of Illinois hereby
certify that the foregoing dep-
osition was sworn to and sub-

by said deponent Wm. Prof. and
 that said deposition was taken
 in pursuance of notice hereto an-
 nex'd, at my office at the court
 house in Robinson in said Craw-
 ford county on the second day of
 September A.D. 1860,

GIVEN under my hand and
 seal of said court at Robins-
 on this 2nd day of September
 1860: J. K. Steel clerk

Clerks fee on foregoing	
affd of writ:	10
150 words & fig	75
certificate & seal	35
Printing Sub	25
Total	\$1,415

Clerks fee paid by
 Plaintiff

Shff fee on Sub:	
J. H. Taylor	\$150
William Troop in fee	\$1,000
Total	\$3,465

And the following in and to wit,
 Paul Souers, first witness
 on the part of Complainant,

States, he was employed by the parties,
 that Ward asked Musgrove if he
 would not like to go into Partner-
 ship, they then stepped aside and had a
 secret conversation together, the purport
 of which conversation ^{witness} ~~is~~ not un-
 derstand, that Ward afterwards stated
 that they had agreed to go into partner-
 ship, that Musgrove, Ward & witness
 all started with the Cattle together, that
 they went as far as Cumberland County
 together, that Ward came home from
 Cumberland County, and left witness
 and Musgrove with the Cattle, & that
 Ward returned in three days, that Musgrove
 employed three hands, that the Cattle
 were the same that Ward purchased
 of Prestons, that Musgrove paid hands
 employed in taking care of said Cattle,
 and here the evidence of this ^{in chief} witness &
 Class D. On Cross examination stated
 that Musgrove & Ward were both
 present when the three hands were
 hired, and that both hired them,
 that these hands had been hired
 before Musgrove saw the Cattle,

37. Could not state certainly that he saw Ward pay these hands, that he did not see Hammer, while with the cattle.

Samuel Kinsgrove was then called. Second Witness on the part of Kinsgrove: also stated that he was present, at the conversation spoken of, by Sowers the first witness, and heard Ward ask Kinsgrove, if he would not like to go into a speculation, in which he could make a thousand or fifteen hundred dollars. Ward was on horse back, but he then got off and he and Kinsgrove talked awhile together, that ward asked witness to remain until they (Ward and Kinsgrove) went to Crawford county to look at the cattle that he afterwards heard a conversation between Ward and Hammer about said cattle, that Hammer seemed to ^{be} mad at Ward, that Ward said he would make it

all right with Hammer, that he also heard Ward say that he had taken the Plaintiff in as a partner, and that was now on his way to Chicago, that Ward also stated that he was to give Preston's \$12,000 per head for the cattle with the exception of two yearlings; that Mangrove went away but don't know whether he went to Chicago or not, does not know whether they got all the cattle from Preston or not. that he (witness) had nothing to do with the cattle: hear the testimony of second witness closed on the part of Mangrove

And Witness, Robert H. Jones on the part of Mangrove stated that after the cattle were sold at Chicago, Ward came to him and said he would have to give Mangrove \$2,500 as he had sold the cattle to Hammer, that he had went to Keuben Carr to enter into partnership with him, (Ward) and that Carr declined

doing so, and that he had then
 proposed a partnership to Mungrove
 that they were to give \$17,500 purchase
 for the cattle with the exception of
 two yearling heifers, and that he
 thought that \$12,000 for the yearling
 heifers; that he (Ward) was to have
 the selling of the cattle and hand-
 ling the money as security because he
 (Mungrove) was not responsible;
 but Corp. Examination states
 that Hammer paid Mungrove
 \$18.00 per month for all the time
 he (Mungrove) was gone with the
 cattle to Chicago. The payment of
 said \$25.00 was by crediting an ac-
 count held by Ward against Mungrove,
 don't know that Mungrove
 assented to it.

Fourth Witness, Henry Dulgar
 was then introduced by Mungrove
 who states that he had a conver-
 sation with Ward directly after
 the return of Ward and Mungrove
 from Chicago, and to the best of

In recollection, said that if they succeeded in collecting their money they would make about \$800, that they had sold the cattle on "credit" with the exception of the profits which they had taken in their goods, mostly in knitting needles, that was all the conversation he ever heard Ward say about the cattle:

Witness, William Smith was then introduced by Musgrove, who states that he had Ward say, once, that he had taken Musgrove in as a partner,

Cross Examination, states that he thinks he (witness) and Ward might have had a laugh over the idea of a partnership with Musgrove, but don't remember for certain.

Witness, Perry Singer was then introduced by Musgrove, who states that he had a conversation with Ward and heard him say they had sold out, and made a small profit,

about \$800, if they ever got their money, that they had sold the cattle on time, that he heard Ward say, that about the time the cattle were taken off, that he, (Ward) had sold the cattle to Hammer, and in the operation that he had made about \$25, for his grove, that he heard Ward say that the contract between Musgrove and him was that Musgrove should share half the losses, half the profits, and pay half the expenses, and in this sale to Hammer Musgrove would be entitled to \$25, as his profit on the cattle that he Ward was to do the trading and Musgrove was to stay with the cattle, that him and Musgrove was to meet in Chamberland camp, that he could not see Musgrove for some three days, that during said time he, (Ward) had sold said cattle to Hammer being Cross examined states that he (Ward) told him he had sold the

42. Cattle to Hammer at fifty cents
profits per head and in the op-
eration he had made \$25⁰⁰ for
Newgrove, that the profits spoken
of by Ward were paid in store goods
dont remember that ward spoke
of other cattle besides the cattle
bought of Preston, that he (witness)
had nothing to do with the cattle

Seventh Witness, Newgrove
then introduced Ch. O'Leary who
states that he is not sufficiently
acquainted with the cost of dri-
ving cattle to Chicago to say what
it would have been ⁱⁿ 1855 per head
in 1855 for driving that he had
not drove any cattle to Chicago
for a number of years

The Defendant then introduced
^{and} Francis Fuller who states that he
had drove cattle in 1856, 1857 & 1858
that all the cost in driving cattle
would be in the price of hands and
provisions, and that it cost him
about one dollar per head that
there would be a small addition

almost in driving beef cattle, has the defendant closed his case.

The defendant Ward then introduced James E. James who states that he had a conversation with Kingrove about these cattle, that Kingrove took him into a hotel in the city of Chicago while he (Kingrove) was with these cattle, that Kingrove stated to witness that in the first place he, Kingrove contracted for and was to have an interest in said cattle but now Ward had took the cattle and sold them he (Kingrove) was only a hired hand and had no interest in the cattle whatever just here Mr. Hammer came in and the conversation was interrupted before Kingrove was through.

Prof. Examination, by complainant, states there was no established price as to the worth of such cattle, that cattle sold from

44. \$18.00 to \$25.00 per head in Chicago that year.

The Defendant then introduced the depositions of Norman Rexford, Barton Rexford and H. H. Massey of which depositions the questions and answers Nos 5 & 8 of Deposition of Norman Rexford and answer No 6 and questions and answer of No 8 of H. H. Massey and questions and answers of Nos 5, 6, & 7 of Barton Rexford were suppressed before trial on motion of Plaintiff, and which said depositions are as follows to-wit:

(The clerk will here insert the depositions full except the several questions and answers suppressed.)

The depositions of Norman Rexford, Barton Rexford, and H. H. Massey of the County of Cook and State of Illinois witnesses produced sworn and examined before me Heber S. Rexford a Justice of the Peace in and for

the said county of Cook and State aforesaid on the 8th day of October A. D. 1859 at my office in the said county of Cook and State aforesaid, in pursuance of the notice hereto attached to read as testimony on the trial of a certain suit in Chancery now pending & undetermined in the Circuit Court of Jasper County and State aforesaid wherein Stephen Mangrove is Complainant and Armsted Ward and David Hammer are defendants, on the part and behalf of the said Armsted Ward

Deposition of Storman Rexford to said Storman Rexford being first duly sworn according to law deposed and said witness to the several interrogatories propounded on the part of the said defendant, (Armsted Ward) as follows to-wit:

Quest^{1st} What is your name, place of residence, and occupation.

Answer my name is Norman Rexford
 my residence is Town of North
 County of Cook and State of Illi-
 nois and my occupation is farm-
 ing.

Ques^{2nd} Are you acquainted with the par-
 ties Complainant and defendant
 in this suit

Ans: I am not much acquainted with
 said parties I have seen a man
 whose name I understood to be
 Stephen Murgrow, and have
 likewise seen Amos Ward &
 David Hamner.

Ques^{3rd} Where did you first see Stephen
 Murgrow

Ans: In the Spring or summer of
 1858;

Ques^{4th} Did you in company with Bar-
 ton Rexford and W. W. Massey
 have talk with said Murgrow
 in the Spring of 1858 respecting
 purchasing a lot of cattle

Ans: I did;

Ques^{5th} Do you recollect of any other

Conversation had with Mungrove
at the time:

Ans: I do not:

Ques 7 Can you say what time in the
year of 1855 this occurred?

Ans: Late in the Spring, or, early in
the Summer of 1855: and further
this deponent saith not.

Norman Rexford

Answer No 5 & 8. questions and an-
swers, suppressed by the Court
of Mitchell J.

The deposition of H. H. Massey
H. H. Massey being duly sworn
according to law, deponent saith:
in answer to the following question
propounded on the part of the
said defendant Amsted Bond
as follows to-wit:

Ques 1st What is your name, where your
residence, and what is your oc-
cupation?

Ans: My name is H. H. Massey, I
live in the Town of North Cook

48. County and State of Illinois
and am engaged in the merchan-
tile business.

Ques: Are you acquainted with the
parties, complainant and de-
fendant in this suit?

Ans: I went with a man whose I
understood to be Stephen Mungrove
in the Spring of 1853 to look at a
lot of cattle with a view of buying
them, and I have seen David
Hammer and Amsted Hard.

Ques: What conversation had you, if any,
with said Mungrove respecting
said cattle?

Ans: I had a conversation with said
Mungrove, respecting buying
said cattle, much of which I
do not recollect, I finally made
him an offer for the cattle, he
the said Mungrove said to me
that he had not the right to sell
as he did not own any interest
in said cattle.

Ques: Did any one accompany you
when you went to look at said

Cattle except Montgomery

Ans: Norman Rexford, and Barton Rexford accompanied us, said Norman Rexford and Barton Rexford and myself talked of buying the cattle together.

Ques: Do you recollect any other conversation had with said Montgomery at the time.

Ans: After Montgomery told us he could not sell us the cattle, he said there was a man at the Stage who could sell us the cattle.

Ques: What time in the year 1855 was it that you had the above conversation respecting buying said cattle of said Montgomery?

Ans: I think it was in the month of June 1855 and further this deponent saith not.

H. H. Massey.

Answer to No. 6 and questions and answer to No. 8 suppressed of deposition of H. H. Massey by court
 J. Kitchell J.

50. The Deposition of Barton Rexford
the said Barton Rexford being first
duly sworn according to law. de-
posed and saith, in answer to
the several interrogatories propoun-
ded on the part of the said defend-
ant Amsted Ward, as follows
to-wit:

Ques¹ What is your name, where your res-
idence and what your occupation.

Ans: My name is Barton Rexford, I
live in the town of North County of
Cook and State of Illinois, and
my occupation is farming.

Ques² Are you acquainted with par-
ties defendants and Complainant
in this suit.

Ans I am somewhat acquainted
with them.

Ques³ How long have you known them.

Ans: I have known them about three
or four years.

Ques⁴ Did you have any conversation
with Stephen Mangrove in the
Spring or Summer of 1855?
Respecting buying a certain

lot of Coors: which he was helping
to drive to Chicago, accompanied
by the defendant, Armisted Ward,
at or near your father's farm.

Ans. I did, and further this depo-
nent saith not.

Answer of Nos 5, 6 & 7, interrogatories
and answer of Deposition of Bar-
tin Rexford, suppressed by the
Court

Ritchell J.
State of Illinois }
Cook County } O. Heber
S. Rexford

a Justice of the peace in and for
the County of Cook and State of fore-
said do hereby certify that the above
and foregoing depositions of Nor-
man Rexford, Barton Rexford, W.

W. Mussey were severally sworn to
and signed by the Deponents res-
pectively before me and in my
presence and that the said depo-
sitions were taken by me on the
3rd day of October A.D. 1889 at my

office in the said County of Cook
and State of aforesaid, between the
hours of ten o'clock in the morning
and five in the evening of each
day: I was under my hand and
read this 5th day of October A.D.
1859

W. S. Rexford

State of Illinois Justice of the Peace
Cook County Ill.

W. S. Rexford
Charles B. Garwell

Clerk of the County Court in and for
said County, do hereby certify that
W. S. Rexford Esquire, whose name
is subscribed to the deposition en-
nixed hereto, was at the time of
Subscribing the same an acting
Justice of the Peace, in and for
said County, duly commissioned,
sworn and authorized to take the
same. And full faith and cred-
it are due to all his official acts
& In testimony whereof, I
& have hereunto set my hand
& and affixed the official seal
of said Court this 5th day of October A.D. 1859
C. B. Garwell clk

This being all the evidence in this case, the jury returned a verdict into Court in favor of the Complainant for \$850.50 whereupon the defendant moved to set aside said verdict and for a new trial, on the ground that said verdict was contrary to law and evidence, and the Court overruled said motion, and rendered a decree in favor of the complainant against defendant Ward for the aforesaid sum of three hundred and fifty dollars and fifty cents, to which decision of the Court in overruling said motion and rendering said decree the said defendant by his Counsel at the time excepted, and he prays that this his bill of exceptions may be signed and sealed by the Court, and made a part of the record in this cause, which is according to law this 22nd day of October A.D. 1887.

A. Hitchell J. G. [unclear]
[unclear]

State of Illinois
 Jasper County, S.S.

I Hiram Wadew,
 Clerk of Circuit Court in, and for
 the County of Jasper and State
 of Illinois, hereby certify the fore-
 going to be a true copy of the Record
 and proceedings had in the foregoing
 Cause, the same being taken from
 the files and Books of my office,
 excepting however such papers as
 are not essential thereto; Notices given
 by the parties to take Depositions, written
 instructions to go to the jury, & also the
 award of Arbitrators Chosen by the
 Parties out of Court which was set
 aside by the Court as herein set forth, &c.

In Testimony whereof, I have hereunto
 subscribed my name, and affixed
 the Seal of said Court, at my
 Office in Newton in said County,
 this 7th day of August, A.D., 1860.
 Hiram Wadew, Clerk

Clerks Fees, eight thousand words,	\$8,00
Certificate and Seal	25
Total	\$8,25

Stephen Musgrave
Bill to
W^m Scott Partnership
Amsted Ward &
Davies Hammer

Copy of Record



And the said plaintiff's counsel say they said records is erroneous
in this. 1st The court is not in entering a judgment against
defendant below the common.

2nd The court is in entering a judgment against
said record is in other respects information a number.

E. Beecher, City
per Hopt.

Filed October 8th 1861.
N. Johnston C.M.
Paid by Judge Beecher \$5.00

State of Illinois,
SUPREME COURT,
First Grand Division. } SS

The People of the State of Illinois,

To the Clerk of the Circuit Court for the County of Jasper Greeting:

Because, In the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of Jasper county, before the Judge thereof between

Stephen Musgrove plaintiff and

Amstead Mann and David Hamner

defendants it is said manifest

error hath intervened to the injury of the aforesaid Amstead Mann and David Hamner as we are informed by their complaint, and we being willing that error, if any there be, should be corrected in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly without delay send to our Justices of our Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at **Mount Vernon**, in the County of Jefferson, on the first Sunday after 2^d Monday of November next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

WITNESS, the Hon. John D. Catron Chief Justice of the Supreme Court and the seal thereof, at MOUNT VERNON, this eightth day of October in the year of our Lord one thousand eight hundred and Sixty-One.

Noah Johnston
Clerk of the Supreme Court.

State of Illinois, p.
Supreme Court of Illinois, at Mount Vernon
November Term, A. D. 1861.

Arnold Ward &
David Hammer
v.
Stephen Mesgrove

Error to Jasper County.

The Clerk of the said court
will issue a writ of error in the above entitled cause
to the sheriff of Jasper county, (in a case lately tried
in the circuit court of said Jasper county wherein
said Mesgrove was complainant and said Ward
and Hammer were defendants), returnable accor-
ding to law. & oblige, &c.

October 8, 1861.

E. Beecher, Ctz.
for P'ty. in Error.

23

Sup. Court.

Nov. Term 1861.

Arnstead Ward &
David Hamner
vs.

Stephen Musgrove

Precept.

Filed Oct. 8. 1861-

N. Johnston Ck

State of Illinois,
SUPREME COURT,
First Grand Division. } SS

The People of the State of Illinois,

To the Sheriff of Jasper County.

Because, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the Circuit Court of Jasper county, before the Judge thereof between

Stephen Musgrove plaintiff and

Amustean Ward and David Hamner defendants it is said that manifest error hath intervened to the injury of said Amustean Ward and David Hamner as we are informed by this complaint, the record and proceedings of which said judgment, we have caused to be brought into our Supreme Court of the State of Illinois, at Mount Vernon, before the justices thereof, to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county, you give notice to the said Stephen Musgrove

that he be and appear before the justices of our said Supreme Court; at the next term of said Court, to be holden at **Mount Vernon**, in said State, on the first Tuesday after the second Monday in November next, to hear the records and proceedings aforesaid, and the errors assigned, if he shall think fit; and further to do and receive what the said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said Stephen Musgrove notice together with this writ.

WITNESS, the Hon. John D. Catron Chief Justice of the Supreme Court and the seal thereof, at MOUNT VERNON, this eighth day of October in the year of our Lord one thousand eight hundred and Sixty-One.

Noah Johnston
Clerk of the Supreme Court.

SUPREME COURT.
First Grand Division.

Amstus Hays and
David Hammer

Plaintiff in Error,

vs.

Stephen Musgrove

Defendant in Error.

SCIRE FACIAS.

FILED.

Shiriff fee	
Serving	9 00
8 Miles travel	4 00
Returning	1 00
	\$15 00

I have served the within scire facias on the
within named Stephen Musgrove by reading
the same to him this 18th day of October
1841 William J. Huff Sheriff of
Washtenaw County Michigan

23

1861

Ward & Hammer

By

J. Musgrove

sent to Jasper

Received for
nonjoinder - at
cost of gifts -

Costs as page 474 -

8565