

13639

No. \_\_\_\_\_

# Supreme Court of Illinois

Nichols

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vs.

Foote

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71641  7

STATE OF ILLINOIS,  
SUPREME COURT,  
Third Grand Division.

No. 62

*John  
W  
Muhaly*

*13629*

*1002*

*Repealed*

Benjamin F. Foot } In the Supreme Court  
vs } of the State of Illinois  
Wilson Nichols } Third Grand Division  
April Term A.D. 1861

Appeal from Henderson

It is hereby agreed that the above  
Cause be continued until the next  
Term of said Court.

May 1<sup>st</sup> 1861 Attest for appellant  
Geo. H. Widing for appellee

Supreme Court Illinois

~~62~~  
~~179-257~~

B. F. Foot

<sup>vs</sup>  
Wilson Nichols

Stipulation

Filed May 2 1861  
L. Leland  
Clerk

1  
Pleas held at the Court House at  
Aquadra in and for the County of Henderson  
and State of Illinois Before the Honorable John  
S. Thompson Judge of the South Judicial Circuit  
of said State Commencing on the 4<sup>th</sup> Monday  
of November A.D. 1859 to wit on the 28<sup>th</sup> day of  
November A.D. 1859

Present Hon. John S. Thompson Judge  
" James H. Stewart States atty  
" Hugh L. Thomson Clerk  
" George W. Curdew Sheriff  
Wilson Nichols }  
" } Trespass  
Benjamin F. Foote }

Be it known that  
on the 9<sup>th</sup> day of April 1859 the following Summons  
was issued to wit

State of Illinois } The People of the State of Illinois  
Henderson County } To the Sheriff of said County greeting  
We Command You to Summon  
Benjamin F. Foote if he can be found in your  
County to be and appear before the Circuit Court  
of said County on the first day of the next  
Term thereof to be holden at Aquadra in the County  
aforesaid on the 9<sup>th</sup> day of May next to answer to  
Wilson Nichols of a Plea of Trespass on his person  
to his damage the sum of Two Thousand Dollars  
as he says And of this writ make legal service

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and due return at the time and place aforesaid

Witness He S. Thomson Clerk of our said Court at Aquawka this 9<sup>th</sup> day of April 1859 the seal of said Court being hereto affixed

Wm. L. Thomson Clerk  
Said Summons was afterwards returned Enclosed as follows to wit,

State of Illinois Henderson County

I acknowledge Service on the within Summons this 9<sup>th</sup> day of April 4<sup>th</sup> 1859  
B. J. Fool

And afterwards to wit on the 29<sup>th</sup> day of April 1859 The following declaration was filed in the Clerk's Office of said Court in vacation to wit

State of Illinois } Of the May Term of the Circuit Court  
Henderson County } in & for said County 4<sup>th</sup> 1859

Wilson Nichols the Plaintiff in the said Complaint of Benjamin S. Fool the defendant in this suit of a plea of Trespass For that the said defendant on the first day of January in the Year of our Lord one thousand Eight Hundred and fifty Nine with force and arms &c assaulted the said Plaintiff to wit at the County of Henderson aforesaid and then and there with his fists gave and struck the said Plaintiff a great many violent

blows and strokes on and about divers parts of his body; and also then and there with great force and violence shook and pulled about the said plaintiff and cast and threw the said plaintiff down to and upon the ground and then and there violently beat and struck the said plaintiff and also then and there with great force and violence with his fists gave and struck the said plaintiff a great many violent blows and strokes on his said plaintiff's nose and face and gave and struck him a great many other blows and strokes. By means of which said several premises the said plaintiff was then and there greatly hurt bruised and wounded and disordered and so remained and continued for a long space of time to wit for the space of four Weeks then next following during all which time the said plaintiff thereby suffered and underwent great pain and was hindered and prevented from performing and transacting his necessary affairs and business by him during that time to be performed and transacted. And also thereby the said plaintiff was forced and obliged to and did necessarily pay lay out and expended a large sum of Money to wit the sum of \$1000 of lawful Money of the United States in and about endeavoring to be cured of the bruising, wounds, sickness soreness lameness and disorder aforesaid occasioned as aforesaid to wit at the County aforesaid. And also for that the said defendant, on the day and Year aforesaid with force and arms &c again assaulted

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the said plaintiff to wit at the County aforesaid  
and then and there again beat bruised wounded and  
ill-treated him in so much that his life was thereby then  
and there greatly despaired of and other wrongs to the said  
plaintiff then and there did against the peace of the people  
of the State of Illinois to the damage of the said Plaintiff  
of \$2000<sup>00</sup> And therefore he brings suit &c

Stewart & Wolfe Attys for Plff

### Pleadings

And the said defendant by Jonathan Simpson his  
attorney on the 17<sup>th</sup> day of May 1859 at the May Term  
1859 of said Court filed his pleas to wit

And the said defendant by J  
Simpson his attorney comes and defends the force and  
infamy where &c And says that he is not guilty of  
the supposed trespasses above laid to his damage  
or any or either of them or any part thereof in manner  
and form as the said plaintiff hath above thereof  
complained against him and of this he the said defen  
dant puts himself upon the Country &c

J Simpson Esq. Atty P.D

And plaintiff doth the like

Stewart & Wolfe P.D

And for a further plea in this cause the said  
defendant saith that he the said plaintiff ought  
not to have or maintain his aforesaid action thereof  
against him. because he says that the said plaintiff  
just before the said time when the said several

supposed trespassers were committed in said Plaintiff's declaration mentioned to wit on the day and Year in said declaration mentioned at the County aforesaid with force and arms he made an assault upon the said defendant and would then and there have beat bruised and ill-treated the said defendant if he had not immediately defended himself against the said plaintiff. Wherefore he the said defendant did then and there defend himself against the said plaintiff as he lawfully might do for the cause aforesaid and in so doing did necessarily and unavoidably a little beat bruise, wound and ill-treat the said plaintiff doing no unnecessary damage to the said plaintiff on the occasion aforesaid which are the same supposed trespassers whereof the said Plaintiff hath above complained against him the said defendant and this the said defendant is ready to verify. Wherefore he prays Judgment &c.

J. Simpson P.S.

And afterwards to wit on the 29<sup>th</sup> day of November 1859 at the November Term 1859 of said Court, the plaintiff filed his Rejoinder to the defendant's Second Plea to wit

And the said plaintiff as to the said plea of the said defendant by secondly above pleaded as to the said several trespasses in the introductory part of that plea mentioned and therein attempted to be justified saith "Procludi Non" Because

he saith that the<sup>6</sup> said defendants at the said  
time when &c of his own wrong and without the  
cause by him in his said second plea alleged com-  
mitted the said several trespasses in the said  
plea attempted to be justified in manner and  
form as the said plaintiffs hath above in the said  
declaration complained against the said defendant  
and thus the said plaintiff prays may be enquired  
of by the Country &c

Stewart & Wolfe attys for Plff

And afterwards to wit on the 2<sup>nd</sup> day of Decem-  
ber 1859 at the November Term 1859 of said Court  
The said plaintiff by Stewart & Wolfe his Attorneys  
comes And the said defendant by Simpson, Harris  
& Waters & Rice his Attorneys comes also And the  
issues being joined for trial put themselves upon the  
Country Thereupon a jury is called to try the  
same to wit Harrison Bell Hugh G Woodrider  
B. S. Ramage Malachi W Titus Henry McFee  
George Cunningham Sidney Owens Perry Roberts  
Jeremiah Pivens James H Halsey Jacob Effort  
& William Mills who being elected tried and sworn  
to well and truly try the issue joined herein  
And after hearing the evidence Argument of Counsel  
and charge of the Court retired to consider of  
their Verdict

And afterwards to wit on the 3<sup>rd</sup> day  
of December of said Court, The parties by

their Attorneys come And the jury heretofore empaneled  
 herein upon their oaths do say We the jury find  
 the defendant guilty and assess the Plaintiffs damages  
 at Six Hundred and Eighty three Dollars  
 Thereupon the defendant moves the Court for a  
 New trial

And afterwards to wit on the 9<sup>th</sup> day  
 of December 1859 at said term of said Court  
 The parties by their Attorneys come And the motion  
 for a New trial in this cause heretofore made  
 by the defendants Counsel is heard by the Court  
 and overruled It is therefore considered by  
 the Court that the said Plaintiff recover of the  
 said defendant the sum of Six Hundred and Eighty  
 three Dollars the amount of the damages the amount  
 of the damages found by the jury And also his  
 costs and charges in this suit laid out and  
 expended And may have execution therefor Thereupon  
 the defendant prayed an appeal to the Supreme  
 Court which is allowed on condition that the  
 defendant file a bond in the penal sum of  
 One thousand Dollars with security to be approved  
 of the Clerk And by agreement of the parties  
 to be filed in Sixty days And also that the  
 said defendant file his bill of exceptions in  
 thirty days

And whereas afterwards to wit  
 on the Sixth day of January 1860 The defen

8<sup>th</sup>

dant filed his bill of exceptions to wit  
State of Illinois } Member Term 1859 of the Circuit  
County of Henderson } Court of said County

Wesley Nichols }  
25 } I swear to the person  
Benjamin Foote }

Be it Remembered that on  
the trial of said cause at said Term of said Court at said  
Term of said Court - Elijah Obin, a Witness on behalf  
of said plaintiff after being duly sworn testified as follows  
for said plaintiff on his examination in chief to wit

He is acquainted with the parties to the suit  
for two or three years. Remembers the occasion of the injuries.  
it was the last of last December I did not see it myself  
his hired man came into the house when I came out I saw  
them, think Nichols was a little a head. Nichols was  
bruised up and bloody, injuries in the face mostly  
swelled pretty bad I think Nichols came out of the  
field alone but his father led him into the house He  
was thirty or forty yards from the house when I saw him First  
did not hear anything said between them Foote went  
towards home Nichols clothes were bloody did not see  
how Footes clothes came, I was in the Lot afterwards  
and saw blood, there was blood in the ground  
the Lot was 80 or 100 acres divided, Cannot tell  
how much blood there was the blood was between  
two corn rows It was some 25 yards from the fence

Do not recollect how far they were apart when I first saw them I was living at Nichols at the time Nichols was sick some two weeks after that. The bruises could be seen after two weeks did not notice any injuries except in the face. Have heard Foor's remark that he did not think Nichols could be much hurt to go out the next day. It was near Foor's House. Do not recollect how the conversation came about. Do not recollect to have heard Foor say anything about it afterwards. I was at the trial at Terre Haute. Nichols staid at his fathers two weeks. Nichols boarded with me while he was sick. Do not know how much it was worth to board him. Have not settled. My daughter took care of him. Do not know how much it was worth (it is worth four Dollars per week) think it is. The Doctor came to see him three times. Nichols lives in Warren County and was at his fathers to take care of grain and stock. Nichols Cattle were pasturing in the field was hurt over the face mostly under the eye. Face swelled considerably afterwards.

And on Cross examination by defendant as follows to wit: The field was a stubfield. The stake on the North of the quarter was of the Corn raised by Green. There was a hedge between. But it did not turn stock. Saw two Catts of Nichols in the North stock field and turned them out. Turned Foor's stock two or three times out of the field. Nichols stock ran in the field. Nichols directed me to turn Foor's stock

out Do not know who turned Stock in first. My dog went with me and barked at Footes Stock. Knew of Nichol driving stock out of the field two or three times do not recollect, certainly turned Footes Stock out of the field through the bars. When the stock was drove out there was no corn in the field. Do not recollect certainly whether it was Monday or Tuesday ensuing next after the hurt Nichol went out. Think it was to Chaudlers. The next day he went to the trial. He was there three or four hours. Did not come directly back. Think he went to Mr. Brodtmans and staid there four or five days. Think he was from my house four or five days. Do not know when he was at Aqueduct. It was within two weeks from the hurt. Think he went one day and returned the next. It was pretty cold weather when he was away. He staid at my house the balance of the time. He went home on Saturday. Have not charged him anything for taking care of him. Do not know that I will. Do not know what he paid my daughter for taking care of him. He gave her a Calico dress. Do not know that he has ever made any charge.

And on the examination by Plaintiff as follows to wit: There is a hedge through the Quarter leaving one Eighty North the other South. Green farmed the North Eighty. Nichol was hurt on Saturday. He went to Chaudlers on Monday or Tuesday ensuing. He went in a Wagon to testify as a witness. Nichol staid at Chaudlers all night and attended the trial next day. Chaudlers is about two Miles from Nichol. Came back and staid at Brodtmans four or five days. Do not recollect of his lying down during the trial. Went in a

wagon to the trial and back to Stockmans. Think it was a week from the next Tuesday from the time he was hurt that he went to Aquasco his father took him in a buggy the hedge was so that cattle could pass Saw Nichols fix the fence once. When Nichols went to Chaudlers we knew that the trial was to be on next day Biggs was at the house before he left.

Elisha Rastkin Another Witness on behalf of said plaintiff being duly sworn testified as follows on his examination for said plaintiff to wit Has resided in Terre Haute since a year ago the fourth of August was sent for to go and see Nichols I went to see him about four o'clock I was acquainted with Nichols and when I saw him I did not know him, his face was swollen and his eyes nearly closed. He had a gash over right eye, was a cut cannot tell whether it was made with a sharp instrument. It might have been made by striking the flesh against the bone there was a bruise on the back of his head. He seemed to be uncomfortable. The injury on the back of the head and on the temple as if made with the fist. He had some fever and seemed to need medical attendance I went to see him and promised for him at the trial. I saw him here first on the 8<sup>th</sup> January. Do not recollect the day of the week understood it was same day of the injury. Nichols complained of pain in the breast at the trial seemed to be in pain. Saw him on the

Eight and Ninth and at the trial charged him ten dollars Saw Foote at the trial did not see any injury on Foote nor hear him say anything thought the injuries would disable Nichol for a week or ten days think the cut in the eye went nearly to the bone

And on Cross Examination by said defendant as follows to wit,

The worst hurts were on the temple and back of the head, these were made with the fist, the trial was on the seventh I prescribed for him on that day gave him liniment for his breast

George R Archer another witness on behalf of said plaintiff on his examination in Chief by said plaintiff after being duly sworn testified as follows to wit

During last Winter at the trial Nichol face was considerably bruised and disfigured Saw Mr Foote Saw no bruises on him did not hear him say anything about the fight did not see Nichol lie down, thought he was feeble Foote asked me to examine the witness Nichol was there and stood most of the time of the trial and took an unusual part in it

Peter Nichol another witness on behalf of said plaintiff after being duly sworn on examination in Chief by said plaintiff testified as follows to wit

I was not out when the alarm was raised I heard the alarm and went out, the first thing

I saw was my son bloody I led him in the house and made him as comfortable as possible as I could and sent for the Doctor. He came in a reasonable time cannot tell about seeing Foote. Nichols was bruised and cut and bled pretty freely. I did not take a very active part in the examination thought the Doctor was the one to do it.

He was at my house two or three weeks before he was able to go home. I was at the trial. Do not recollect whether my son was a witness or not. Did not hear Foote say he had beat my son. I was standing near the door as Foote paced and heard him say I wonder what he will charge me to let me have another chance at him. This was just after the trial. He had marks of the beating when he left my house. When I first saw him it was at my house in this County. After I got Wilson put away I went to the place of the fight and about four rods in the field I saw blood.

And on Cross Examination by said defendant testified as follows to wit. There was a hedge fence through the field it was not strong enough for heavy cattle. Melipa Nichols, another witness on behalf of said plaintiff being duly sworn testified on examination in chief by said plaintiff as follows to wit.

Early in the morning I saw Mr Foote going out of the field and Mr. Nichols coming. He looked frightful. That I went in the house his face was badly swelled and he had a cut over his right eye. He was at our house eight

or nine days. He was gone some of the time. When he left our house he went to Mr Chaudlers and on the next day went to the trial. He went home just two weeks after the fight. His hired man carried him home. He looked black and his eyes I attended on him at our house. He seemed in pain and was confined to the bed part of the time.

And on Cross Examination by defendant as follows to wit. He was at Strathmans four or five days.

John Marshall another Witness on behalf of said Plaintiff being duly sworn on Examination in Chief by said Plaintiff. Said Plaintiff on said trial then asked said Marshall the following question to wit,

What did the defendant say about having been fined in the assault and battery case at Cerrachante. To the asking of which said question said defendant then and there on the trial of said cause objected. But the Court then and there overruled his said objection and permitted the said Plaintiff, which said Plaintiff then and there did. To the overruling of said objection and asking said question said defendant then and there in open Court and on the trial of said cause except. Said Marshall, then answered, said question as follows to wit, Mr. Foote told

me he was fined Fifty Dollars and thought he would appeal. That is about the substance of the conversation. Which answer of said Marshall the Court then and there excluded. Said Marshall then testified as follows to wit Shroter did not say anything about wanting to whip Nichol again. I met Shroter on the road saw Nichol his face was considerably bruised He was in Warren He told me he was going to Aquawka

And on Cross Examination by said defendant testified as follows to wit Nichol appeared to be going about business as usual so far as going about was concerned walking or riding.

And that said defendant then on his part introduced as a witness Thomas Green, who after being duly sworn testified on his examination in chief as follows to wit. I saw Nichol last winter I think the next day after he was hurt He was sitting up reading or figuring He did not manifest any pain Said he was afflicted Saw him at the trial He walked around pretty much as usual did not see him again for a month or two I am one of the men who cultivated the North Eighty of the Quarter The North end had stubble and corn stalks in it so had the South half I had the right under my lease which was for five years to pasture the field the lease had not expired. My brother

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made the bargain with the consent of all of us that  
made the bargain with Foots with the consent of  
all of us that had the lease for pasturing the  
Stall field This was in the forepart of the winter  
a week or two before Nichol was hurt The partition  
hedge would not turn stock I think I saw Nichol  
hands fixing up the hedge hauling rails and fixing  
it up after Nichol was hurt Mr Foots used the  
North Eighty for pasturing his cattle Saw Foots  
cattle part outside and part inside before the  
time of the fight And on Cross Examination  
by said plaintiff testified as follows to wit

I lived down in the bottom by Andersons about  
miles from Foots. Said plaintiff then and  
while said Green was testifying as last aforesaid put  
the following Cross Question to ~~him~~ said Green to wit  
What did defendant say about being fined at  
the trial for assault and battery at Terre Haute  
to the asking of which said Cross Question said  
defendant then and there in open Court on the  
trial of said cause objected, which said objection  
the Court then and there overruled And then and  
there permitted said Cross Question to be asked said  
Green by said plaintiff which said plaintiff then  
and there did Said defendant then and  
there in open Court on the trial of said cause ex-  
cepted to the order of the Court overruling his objection  
last aforesaid and that permitting said plaintiff

to ask said Green the Cross Question last aforesaid  
 Said Green then and then while testifying as last  
 aforesaid answered the Cross Question last aforesaid as  
 follows to wit I had a conversation with Hoote  
 he said he had been fined and would appeal it  
 did not hear him say anything about the fight  
 heard a good many laughing at him about  
 fighting Did not hear Hoote say anything  
 about the fight. To which answer of said  
 Green last aforesaid Said defendant then and  
 then in open Court on the trial of said cause  
 objected and asked the Court to have it excluded  
 from the jury which last said objection the Court  
 then and then overruled And permitted the  
 said last named answer to go to the jury for  
 their consideration to the overruling of said last  
 mentioned objection and the permitting of said  
 last mentioned answer to go to the jury for their  
 consideration the defendant then and then in  
 open Court on the trial of said cause excepted

And said Green then proceeded to testify on his  
 said Cross Examination as follows to wit I told  
 Hoote that I had heard that my antagonist had  
 got whipped and asked him if he had seen him  
 He said he had seen him and that he had got  
 about enough He did not say anything about  
 the fight or how

Biggs, a Witness on behalf of said defendant  
 after being duly sworn testified as such for said defen-  
 dant on his examination in chief as follows to wit  
 I saw Nichol on Saturday previous to the trial  
 at Stone House. He appeared to have been bruised  
 up when I saw him he was in bed I soon started  
 and went to Footes and then returned to Nichol  
 and was there when the Doctor came Nichol got  
 up himself. That night I staid at Footes I went  
 back on Monday Morning to Nichol Nichol  
 was walking about the house on Sunday and  
 Monday. I saw him at the trial he went about  
 as usual. Did not see him go to bed. He seemed  
 as usual except the bruises. Nichol went to Chaudless  
 Monday Night do not know that Nichol knew  
 what the trial was when he went did not  
 know myself. Said plaintiff then and there  
 and while said Biggs was testifying in said  
 cause put to him the following Cross Question  
 to wit Didnt you go to defendants house  
 with a States Warrant for the purpose of arresting  
 him for an assault and battery on the plaintiff  
 in the asking of which said defendant then and  
 there in open Court and on the trial of said cause  
 objected. But the Court then and there overruled  
 his objection and permitted said Cross Question  
 to be asked which was then and there asked

To the overruling his objection and permitted said  
 Prop Question to be asked which was then and there  
 asked To the overruling of which objection and  
 permitting said Prop Question to be asked said defen-  
 dant then and there in open Court and on the trial  
 of said cause excepted Said Biggs then when  
 testifying in said cause answered said last mentioned  
 Prop Question as follows to wit I had a Warrant  
 for Foote and went to his house He came in and  
 I made the arrest I took him to the Justice  
 and then went for Nichols Had no conversation  
 with Foote about the matter To which said  
 last mentioned answer said defendant then and there  
 in open Court on the trial of said cause objected and  
 ask the Court to exclude it from the consideration of  
 the jury But the Court then and there overruled  
 said last mentioned objection and refused to exclude  
 the answer last aforesaid from the jury To the overruling  
 of which said last mentioned objection and refusal  
 of the Court to exclude it from the jury said defendant  
 then and there in open Court on the trial of said cause  
 excepted Said plaintiff then and while said Biggs  
 was testifying in said cause put to him the following  
 Prop Question to wit Didn't the defendant attempt to  
 make his escape when you went to arrest him To the  
 putting of which said defendant then and there in  
 open Court on the trial of said cause objected which  
 objection was then and there overruled by the Court

and the Cross question permitted by the Court to be put and was put to the overruling of which objection and putting of said Cross question said defendant then and there on the trial of said cause in open Court excepted. To which said question said Biggs in testifying in said Cause then made the following answer to wit I told him I had a warrant for him. He said he was ready to go. He made no attempt to avoid an arrest then. To which said answer said defendant then and there in open Court on the trial of said cause objected and asked the Court to exclude it from the jury. But the Court then and there overruled said last mentioned objection and refused to exclude said answer but aforesaid from the jury. Said defendant then and there in open Court on the trial of said cause excepted to the ruling of the Court in overruling his last mentioned objection and not excluding the answer last aforesaid from the jury. This was all the evidence in the case. The Court then gave to the jury the following instructions on the part of the Plaintiff,

That if they believe from the evidence that defendant shot assaulted and beat the Plaintiff Nichols within two years prior to the commencement of this suit they will render a verdict for Plaintiff and assess his damage at some sum not more than \$2000 <sup>00</sup>/<sub>100</sub>. Unless they further believe from the evidence and nothing else that such assault

and beating was done by defendant in necessary self defence of his person and that such violence was no more than a reasonable man would use in such self defence

*Jury* That if the jury find for the defendant upon the ground that he assaulted and beat plaintiff in necessary self defence they must be satisfied from evidence of that fact introduced on the trial and from nothing else that such assault and beating of plaintiff by defendant was done in necessary self defence

*Jury* The Court instructs the jury that if they believe from the evidence that the defendant assaulted the plaintiff without provocation & that such assault was an aggravated one and that the public good or justice to the plaintiff or both demand it then the law is that they are not confined in their verdict to the actual damages proved but may give exemplary damages not only to compensate the plaintiff but to furnish the defendant for such wanton injury not exceeding the amount claimed in the declaration.

To which said defendant then and then in open Court on the trial of said cause excepted Said defendant then asked the Court to give on his behalf to the jury the following instruction, (no instruction lost or misread during Court and can't be found "else")



Said defendant then filed the following Motion  
 for a New trial and the following reasons to wit  
 State of Illinois }  
 County of Henderson } Court of said County  
 Wilson Nichols }

vs }  
 Sherpass. }  
 Benjamin C. Scott }

Said defendant moves the  
 Court for a New trial for the reasons following  
 to wit

- 1<sup>st</sup> That the Verdict is contrary to law
- 2<sup>nd</sup> That the Verdict is contrary to the instructions  
of the Court
- 3<sup>rd</sup> That the Verdict is contrary to the evidence  
in the case
- 4<sup>th</sup> That the damages are excessive
- 5<sup>th</sup> That the Court on behalf of the plaintiff  
gave the jury erroneous instructions
- 6<sup>th</sup> That the Court erroneously modified the instruc-  
tions given to the jury on behalf of defendant
- 7<sup>th</sup> That the Court refused to give to the jury  
proper instructions on behalf of defendant  
which were asked to be given by the defendant
- 8<sup>th</sup> That the Court permitted the plaintiff  
to ask the witnesses in the case improper Questions
- 9<sup>th</sup> That the Court on behalf of plaintiff admitted  
improper evidence to the jury
- 10<sup>th</sup> That the Court refused to permit the

defendant to ask the witnesses in the case  
questions which were proper and legal then  
Simpson Rice Harris & Waters

Attys for defd

And afterwards to wit on the 30<sup>th</sup> day of  
January 1860 the defendant filed his Bond to wit

Know all men by these presents That we  
Benjamin F. Foote as principal and George M. Foote  
as security of the County of Henderson and State of  
Illinois are held and firmly bound unto Wilson  
Nichols in the penal sum of One thousand dollars  
for the payment of which well and truly to be made  
we and each of us bind ourselves our heirs executors  
and administrators. jointly and severally and jointly  
by these presents sealed with our seals and dated at  
Oganska this 27<sup>th</sup> day of January 1860

The condition of the above obligation  
is such that Whereas on the third day of December  
1859 Wilson Nichols recovered a judgment  
against Benjamin F. Foote before John S  
Simpson Judge of the tenth judicial circuit and for the  
County of Henderson State of Illinois in a suit brought  
by the said Wilson Nichols against the said  
Benjamin F. Foote for the sum of Six Hundred  
and Eighty three Dollars and cost of suit  
from which judgment the said Benjamin F.  
Foote has taken an appeal to the Supreme  
Court held at Ottawa in the State of Illinois

Now if the said Benjamin F. Gooch shall pay and satisfy whatever judgment may be rendered by the said Supreme Court upon the dismissal or trial of the appeal then this obligation to be void otherwise to remain in full force

Taken and acted unto before me at my office and the security approved by me this 30<sup>th</sup> day of January 1860  
Hugh L. Thomson Clerk

B. F. Gooch (S)  
George M. Gooch (S)

State of Illinois }  
Henderson County } }

I Hugh L. Thomson Clerk of the Henderson Circuit Court hereby certify that the foregoing is a full and correct transcript of the proceedings and judgment in the above entitled cause from the Order Book and files in the office of said Court

Witness my name and the Seal of said Court this 10<sup>th</sup> day of July 1860  
Hugh L. Thomson Clerk

Benjamin F. Foote } In the Supreme Court of the State  
vs } of Illinois  
Wilson Nichols } Third Grand Division  
April Term AD 1861  
Appeal from Henderson

And now comes the said Benjamin F. Foote  
by H. M. Weed his atty. and says that in the record and  
proceedings aforesaid manifest error hath intervened  
to his injury in this

- 1<sup>st</sup> That the verdict of the Jury was contrary to law
- 2<sup>d</sup> That the verdict was contrary to the instructions given
- 3<sup>d</sup> That the verdict was contrary to the evidence
- 4<sup>th</sup> That the damages are excessive
- 5<sup>th</sup> That the Court on behalf of the Appellee gave  
the Jury erroneous instructions
- 6<sup>th</sup> That the Court erroneously modified the  
instructions given to the Jury on behalf  
of Appellant
- 7<sup>th</sup> That the Court refused to give to the Jury  
proper instructions on behalf of Appellant which  
were asked to be given by him

8<sup>th</sup> That the Court permitted the appellee  
to ask the witnesses improper questions

9<sup>th</sup> That the Court on behalf of appellee admitted  
improper evidence to the jury

10<sup>th</sup> That the Court refused to permit the appellee  
to ask the witnesses questions which were proper  
& legal therein

11<sup>th</sup> That the Court refused to grant appellant  
a new trial in said cause

Therefore said appellant prays that  
said judgment be reversed &c

H. M. Wood

Atty for Appellant

In nullo est erratum

Geo. H. Handry

Atty for appellee

Filed Apr. 25 - 1891

G. Leland

Clerk

177  
Benjamin F. Foulke

W. Nichols  
Record

Filed April 13, 1861  
L. Leland  
clerk

Wrote to Clerk of Cir. Court  
for D.R. for March 27, 1861