

12133

No. _____

Supreme Court of Illinois

Clark, owner of Steamboat "Uncle
Toby"

vs.

Smith

State of Illinois
Fourteenth Judicial Circuit
So Daviess County

3

Pleas in the Circuit
Court, begun and held within and for the
County of So Daviess, aforesaid, on the fourth
monday of November A.D. 1857 before the
Judge of the said fourteenth Judicial Circuit
to wit, the Hon. Benjamin R. Sheldon
Christopher E. Sanders Sheriff
W^m H. Bradley Clerk

Nathaniel Smith } Plaintiff
vs. }
Steam Boat Uncle Toby } Defendant

Be it remembered that
heretofore, to wit, on the 20th day of October A.D.
1857, the said Plaintiff Nathaniel Smith
by his Attorney filed in the Clerk's Office of the
Circuit Court, for said So Daviess County, his
affidavit and Precept, which are in the words
and figures following, to wit;

State of Illinois } Circuit Court of So Daviess
So Daviess County } County November Term 1857

Nathaniel Smith the Plaintiff
in this suit, after being duly sworn, makes oath
and states that the Steam Boat Uncle Toby and
owners are justly indebted to this Plaintiff in
the just and full sum of three hundred
and eighty seven $\frac{3}{100}$ dollars, now due and owing
said Plaintiff, by a certain promissory note of

2 said Steam Boat Uncle Toby, made and executed by Samuel Greysen, the Clerk of said Boat, due and payable two days after date, and dated the 13th day of October A.D. 1851, and also in the further sum of six dollars on account, for work and labor done and performed on said Steam Boat Uncle Toby, in taking charge of Barges, making in all, due and unpaid from said Steam Boat Uncle Toby, to this affiant, the sum of three hundred and ninety three dollars, and thirty cents. That said debt is justly the debt of said Boat, and the amount herein claimed is now due in Justice from said Steam Boat Uncle Toby to this affiant. Wherefore he prays an attachment against said Boat in conformity to law, and further saith not &c

Subscribed & sworn to
before me this the 20th day
of Oct. A.D. 1851

Wm H. Bradley
Clerk

Nathaniel Smith

Nathaniel Smith
vs
Steam Boat Uncle Toby }

Circuit Court So. Davis
County Nov. Term 1851

Attacht \$393.30^{ts} demand
Clerk of Circuit Court,

On filing the within affidavit
and a bond, let an attacht issue in conformity
to law returnable to the next Term

M. Y. Johnson, atty of Plff

Filed 20th Oct. 1851

Wm H. Bradley Clk.

And afterwards, to wit, on the same day, to wit, on the 20th day of October A.D. 1857, the said Plaintiff filed in said Clerk's office, his attachment Bond; and also, on same day sued out of said Clerk's Office his writ of Attachment in said entitled cause, which said Bond and Writ are in the words and figures following to wit;

Know all men by these presents that we, Nathaniel Smith, and Madison G. Johnson, of the County of Jo Daviess and State of Illinois, are held and firmly bound unto the People of the State of Illinois, in the penal sum of seven hundred and eighty six $\frac{6}{100}$ dollars lawful money of the United States to be paid to the said People of the State of Illinois, for the use and benefit of the owners of the Steam Boat Uncle Toby, for which payment well and truly to be made we bind ourselves, our heirs, executors and Administrators, jointly, and severally, firmly by these presents. Sealed with our seals. Dated this 20th day of October A.D. 1857

The condition of this obligation is such, that whereas the above bounden Nathaniel Smith, has, on the day of the date hereof, prayed an attachment at the suit of himself, against the Estate of the above named Steam Boat Uncle Toby, for the sum of three hundred and ninety three dollars and thirty cents, and the same being about to be sued out of the Circuit Court for the County of Jo Daviess, in the State of Illinois returnable on the 4th Monday in November next to the term of the said Court then to be holden

4 Now if the said Nathaniel Smith, shall prosecute his said suit with effect, or in case of failure therein, shall well and truly pay and satisfy unto the said People of the State of Illinois for the use of the owners of the Steam Boat Uncle Toby, all such costs in said suit, and such damages as shall be awarded against the said Nathaniel Smith, his heirs, executors or administrators, in any suit or suits, which may hereafter be brought for wrongfully suing out the said Attachment, then the above obligation to be void, otherwise to remain in full force and effect

Nathaniel Smith *LS*
M Y Johnson *LS*

Taken & acknowledged
before me this 20th day of
October 1857

W^m H. Bradley Clerk,
Filed 20th Oct 1857
W^m H. Bradley *CK*

State of Illinois } ss.
So Daviess County }

The People of the State of Illinois to the Sheriff of said County, Greeting

Whereas Nathaniel Smith Plaintiff, has complained on oath, to the Clerk of our Circuit Court, for the County aforesaid, that the Steam Boat Uncle Toby defendant is justly indebted unto the said Plaintiff, to the amount of three hundred and ninety three dollars, and thirty cents. And the said Nathaniel Smith Plaintiff having ^{given} bond and security according to the direc-

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-tions of the Act in such case made and provided.

We therefore command you, that you attach so much of the Estate real, or personal of the said defendant, to be found in your County as shall be of value sufficient to satisfy the said debt and costs, according to the said complaint; and such estate, so attached, in your hands to secure, or so to provide, that the same may be liable to further proceedings thereupon, according to law, at the term of the Circuit Court of S. Davis County to be holden in and for the County aforesaid at Galena, in said County, on the 4th Monday in November next; when and where you shall make known to said Court, how you have executed this writ. And have you then and there this writ.

Seal

Witness William H. Bradley
Clerk of the Circuit Court of S. Davis
County Ills. and the seal thereof,
at Galena, this 20th day of October
A. D. 1857

Wm H. Bradley Clerk

I have this 20th day of October A. D. 1857, levied this writ upon the Steam Boat Uncle Toby, and also two (2) Keel Boats, named S. Thomas and So Luskett. the name of the last named Keel ~~boat~~ not visible, also the following described property, to wit; seventy two (72) Matraspes, fifty one (51) quilts, Eighty five (85) Sheets, thirty eight (38) Pillows, five (5) old blankets, nine (9) Table Cloths, One (1) Table spread, forty (40) Common chairs twelve (12) arm chairs, three (3) Chandaliers lamps three (3) side Lamps, four (4) Dining Tables, four (4)

6 Looking glasses, ^{one (1)} One (1) Coal stove, a lot of Crockery
 including knives forks &c, one (1) Iron safe and papers,
 Two (2) part Boxes Coffee, ten (10) pounds, more or
 less, fifty (50) pounds of sugar, $\frac{1}{2}$ Box of soap, and a
 lot of Boat stores, four (4) Old Tarpoleans, one (1)
 broken platform Scales, One (1) small cable, a
 lot of blocks and Tackles in forward Hatch, four
 (4) Large Bars or Crocks, Two (2) Sugs, Two duck pairs
 a lot of Blacksmith tools, such as Bellows, anvil, vise,
 Sledge, forge &c. Four (4) Globe Lamps, one (1) Reel of
 Packing yarn, One (1) Grind Stone, a lot of Block and
 Tackle aft, one (1) small Block with rope or cable
 with the same, seven (7) cords of wood, One (1) Cooking
 Stove and furniture, two (2) Iron furnace poker
 and scraper, with all of the appurtenances on said
 Uncle Toby used in running the same, and also
 by reading ~~the same~~ to D. H. Root, Captain of
 said Boat. C. E. Sanders Sheriff of
 St Davids County Ills.

Sheriffs fees
 Levy .50
 Sums Captain .50
 Mileage & Returning, 20
 Expenses Continued $\$ 1.20$
 Taking Inventory 1.25
 Delivering Boat &c 1.00
 $\$ 3.45$

The above named Steam Boat
 Uncle Toby, and all the above
 described property was after-
 wards, to wit, on the 8th day of
 November A.D. 1851 delivered
 by me to Warner L. Clark, by
 order of the Clerk of the Circuit
 Court of St. Davids County Illinois
 the said Clerk taking bond of the
 said W. L. Clark & Adrian H.
 Davenport & Sherwood S. Brown
 as security
 C. E. Sanders Sheriff

And afterwards, to wit, on the 25th day of October A.D. 1857, the said Plaintiff by his attorney filed in the Clerk's Office of said Court, his declaration against the said defendant, which said declaration is in the words and figures following, to wit;

State of Illinois } Circuit Court of Jo Daviess
Jo Daviess County } County

Nov. Term A.D. 1857

Nathaniel Smith, the Plaintiff in this suit complains of the Steam Boat Uncle Toby attached by the Sheriff &c. to answer said Plaintiff in a plea, that she render unto the said plaintiff the sum of three hundred and ninety three dollars and thirty cents now due and owing from said Boat unto this Plaintiff.

For that whereas the said Steam Boat Uncle Toby became liable to, and indebted to this Plaintiff in the just and full sum of three hundred and eighty seven ³⁰/₁₀₀ dollars, in the month of October A.D. 1857, for materials furnished, firewood, stone coal and provisions furnished said Boat, by this plaintiff at the request and under the direction of the Master of said Boat, And this Plaintiff avers, that the said Boat being so indebted, on the 13th day of October A.D. 1857, at the County and Circuit aforesaid, this Plaintiff with one Samuel Greyless, then being Clerk thereof, to wit, of the Steam Boat Uncle Toby, accounted together, and on said accounting together, there was found to be due and owing from said Boat to this Plaintiff for supplies and materials furnished, the said sum of three hundred and eighty seven dollars and thirty cents for which said amount the said Clerk then and

8 there executed the due bill of said Boat, due and payable in two days, after date, which time has long since elapsed, and the same and every part thereof remains unpaid. And this Plaintiff further complains, that said Steam Boat Uncle Toby is justly indebted to him in the further sum of six dollars for services to said Boat in attending to the Barges of said boat, at the request of the Master thereof. And this affiant avers that at the time of furnishing the materials, firewood stone coal and supplies and when the labor was performed and at the commencement of this suit, said Boat ~~was~~ was running and navigating the waters within the jurisdiction of the State of Illinois. And that said whole amount of three hundred and ninety three $\frac{30}{100}$ dollars, is now justly due and unpaid. Wherefore he prays judgment, and that the property attached may be sold and the Plaintiffs demand paid in accordance to law

M. V. Johnson

Plff atty

Filed 25th Oct 1857

Wm. H. Bradley clk

And afterwards to wit, on the 28th day of November A. D. 1857, in the November Term of said Circuit Court A. D. 1857 the said defendant by his attorneys filed in said Court with said clerk his motion to dissign, which said motion is in the words and figures following, to wit:

Nathaniel Smith

vs

Steam Boat Uncle Toby

In &c Davis Circuit Court Nov. Term 1857

Attaxingent

Copy of Due Bill and acct^d sued on

7 \$387.30

Due by the Steamer Uncle Toby two days after
date to Nathaniel Smith Three Hundred and eighty
seven dollars and thirty cents for value received
October 13th 1851

Samuel Greysler

Clerk

Steamer Uncle Toby to Nathaniel Smith Dr
For services for Boat attending & Cargo \$6.00
Galena Oct 19th 1851

The above account is correct

V R Roubt

Capt of St^d Mule Toby

Which said declaration is endorsed as follows and

Filed 25th Oct 1851

Wm H. Hadley Clerk

and afterwards went on the 28th day of
November AD 1851 in the November Term of
said Circuit Court AD 1851 the said defend-
-ant by his Attorneys filed in said Court
with said Clerk his motion to dismiss
which said motion is in the words
and figures following to wit

Nathaniel Smith

vs
Steam Boat Uncle Toby

In said Circuit Court

November Term 1851

Attachment

11 The defendants by their attorneys move
the Court to dismiss this attachment because
there is no sufficient affidavit or attach-
ment bond filed as required by law.

Hoge & Wilson &
Higgins & Strother
for Steam Boat Uncle Toby
and Owners

Filed Nov 28th 1857

Wmth H. Bradley CLK

And afterwards, to wit, on the 17th day of
December A.D. 1857, as yet of the November
Term A.D. 1857 of said Circuit Court in the
Record of the proceedings thereof in said cause
is the following Entry, to wit,

Nathaniel Smith

vs

Steam Boat Uncle Toby

} attachment

Now came on to be heard
the motion of the Defendant heretofore filed
by his attorney to dismiss this suit, which
after argument of Counsel is taken under
advisement by the Court.

And afterwards, to wit, on the 18th day of Dec-
ember, as yet of said November Term of
said Court A.D. 1857, in the Record of the pro-
ceedings thereof in said cause is the following
Entry, to wit,

Nathaniel Smith

vs

Steam Boat Uncle Toby

} attachment

12 The Plaintiff by his attorney comes and files a cross motion for leave to amend his affidavit, which leave is granted by the Court.

And afterwards, to wit, on the same day, to wit, on the 18th day of December A.D. 1857 the said Plaintiff, by his attorney filed in said Court with the Clerk thereof his amended affidavit, which is in the words and figures following to wit;

State of Illinois } In the Circuit Court
So Davis County } Nov. Term 1857

Nathaniel Smith the Plaintiff in this suit, after being duly sworn, makes oath and states, that the Steam Boat Uncle Toby & owners, are justly indebted to this Plaintiff, in the full sum of three hundred and ninety three $\frac{30}{100}$ dollars, now due and owing said Plaintiff from said Boat. That three hundred and eighty seven $\frac{30}{100}$ dollars of said debt, is due by a certain promissory note or due bill of said Steam Boat Uncle Toby made and executed by Samuel Gregster, the Clerk of said Boat, due and payable in two days after date, and dated the 13th day of October A.D. 1857. That said debt aforesaid is justly the debt of said Boat, and the same was contracted by the Master thereof in the month of October 1857 and was for materials furnish Stone coal and provisions furnished said Boat, by this Plaintiff, at the request and

by the direction of the said Master of said Boat; And the said Boat being so indebted to this Plaintiff on the 13th day of October 1857 at the County and Circuit aforesaid, the said Samuel Gregslew, ^{then} being the Clerk of said Boat made and executed, ^{said} note sued on, for the amount due this Plaintiff as the note of said Boat, for supplies and materials so furnished said Boat; And also in the further sum of six dollars on account of work and labor done and performed for said Boat in taking charge of the Barge of said Boat as a hand, And this affiant further states that at the time of furnishing the materials supplies and Stone coal, as well as when said labor was done and performed, and at the commencement of this suit, the said Steam Boat Uncle Toby, was engaged in running and navigating the waters of the Mississippi and Lone Rivers, navigable waters within the jurisdiction of the State of Illinois; And that the owners of said Boat are not known to this affiant, and was not when said materials and supplies were furnished and labor performed

That said debt sued for is justly the debt of said Boat, and is now due in Justice to this Plaintiff from said Boat.

Wherefore he prays as in his former affidavit, that an attachment may issue against said Boat in conformity to law And further saith not

Nathaniel Smith
Sworn to and subscribed

before me this 18th day
of Decr. A.D. 1857

Wm H. Bradley Clk

Filed Decr 18th 1857

Wm H. Bradley Clk

And afterwards, to wit, on the 19th day of
December, as yet of the November Term of said
Court A.D. 1857, the said Defendants by
attorneys, filed in said Court, with the clerk
of said Court his motion to dismiss, which
said motion is in the words and figures
following, to wit;

Steam Boat Uncle Toby	} Attachment
& owners	
ads	
Nathaniel Smith	} In Jo Davies Circuit Court Nov. Term 1857

The said defds, by their
attys, moves the Court to dismiss this suit
because there is no sufficient affidavit
or attachment bond filed as required
by law, and for other reasons-

Filed Decr 19 th 1857	Hoge & Wilson
Wm H. Bradley	Higgins & Strother
clk	for defndts

And on the same day, to wit, on the 19th day
of December A.D. 1857, the said Plaintiff
by his attorney, filed in said Court with the
clerk thereof, his amended affidavit, which
is in the words and figures following, to wit,

15-
State of Illinois } In the Circuit Court of
So Daviess County } So Daviess County
Nov. Term A.D. 1857

Nathaniel Smith the Plaintiff in this
suit after being duly sworn, makes oath
and States, that the Steam Boat Uncle
Toby and owners are now, and were before
and at the commencement of this suit
by attachment justly indebted to this
Plaintiff, in the full and just sum
of three hundred and ninety three $\frac{30}{100}$ dollars
which said sum was due and owing at
and before the commencement of this suit
and yet remains due and unpaid.

That three hundred and eighty seven $\frac{30}{100}$
dollars of said debt is due by a certain
promissory note or due bill of said Steam
Boat Uncle Toby, made and executed by
one Samuel Gregson the Clerk of said
Steam Boat, due and payable in two
days after date, and dated the 13th day
of October A.D. 1857. That said debt aforesaid
is justly the debt of said Boat and the
same was contracted within the State of
Illinois by the Master of said Boat, with
the Plaintiff herein in the month of Oc-
tober A.D. 1857, and was for materials
furnished, stone coal, and provisions fur-
nished and delivered to said Boat, while
said Boat was navigating the waters of the
Rivers of the Mississippi and Seven River, nav-
igable waters within the Jurisdiction of the
State of Illinois, and was delivered to said
Boat, at the request and by the directions

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16 of the master of said Boat.

And this affiant further states, that said Boat, being so indebted to this Plaintiff on the 13th day of October A.D. 1857 at the County and Circuit aforesaid, the said Samuel Greglew, then being the Clerk of said Boat, made and executed said note sued on, for the amount then due this Plaintiff, as the note of said Boat, for the supplies and materials so furnished said Boat as aforesaid at the request and by the direction of the Master of said Boat.

And also in the further sum of six dollars on account of work and labor done and performed for said Boat, in taking charge of the Barges of said Boat, as a hand at the request of the Master of said Boat.

And this affiant further states, that at the time of furnishing said provisions, supplies, stone coal and materials, to said Boat, as well as when said labor was done and performed - and at and before the commencement of this suit, the said Steam Boat Uncle Toby, was engaged in running and navigating the waters of the Mississippi and Lower Rivers navigable waters within the Jurisdiction of the State of Illinois, and that the owners of said Boat, are not, and was not known to this affiant when said Materials and supplies were furnished and labor performed, and at the commencement of this suit -

That said debt sued on, was at the commencement of this suit and now

is due in Justice from said Boat to this Plaintiff

17

Wherefore he prays as in his former affidavit, and that said attachment may be sustained and allowed in conformity to Law as in duty bound &c.

Nathaniel Smith

Sworn to and subscribed

before me this 19th Decr 1851 }

Wm H. Bradley Clk

Filed 19th Decr 1851 }

Wm H. Bradley Clk

And afterwards, to wit, on 20th day of December, as yet of the said November Term of said Court A.D. 1851 in the Record of the proceedings thereof in said cause is the following Entry to wit,

Nathaniel Smith

vs

Steam Boat Uncle Toby

} attachment

On motion of the Plaintiff by his attorney, It is ordered by the Court that publication be made, according to law, to the unknown Owners of the Steam Boat Uncle Toby; and the Plaintiff, by his attorney, takes leave to amend his declaration -

And afterwards, to wit, on the 23^d day of January A.D. 1852. the ^{said} Plaintiff by his attorney filed in the office of the Clerk of

18 the said Circuit Court his amended declaration, which is in the words and figures following, to wit;

State of Illinois } In the Circuit Court of
So (Daviss County) } So (Daviss County)
March Term A.D. 1852

Nathaniel Smith, the Plaintiff in this suit by his attorney, complains of the Steam Boat Uncle Toby, attached by the Sheriff &c. to answer said Plaintiff in a plea, that she render unto him the sum of three hundred and ninety three dollars and thirty cents due and owing from said Boat unto this Plaintiff

For that whereas the said Steam Boat Uncle Toby, became liable to and indebted to this Plaintiff in the month of October A.D. 1851, in the just and full sum of three hundred and eighty seven dollars and thirty cents for materials furnished, firewood stone coal and provisions furnished said Boat by this Plaintiff at the request and by the direction of the Master thereof. And this Plaintiff avers that said Boat being so indebted on the 13th day of October A.D. 1851, at the County and Circuit aforesaid, this Plaintiff with one Samuel Gregolew, then being Clerk of said Boat, and ^{known} full, power and competent authority to act in the premises accounted together, and on said accounting together there was found to be due and owing from said Boat unto this Plaintiff for supplies

19 and materials furnished said Boat the sum of three hundred and eighty seven dollars and thirty cents, for which said amount the said Clerk aforesaid, then and there executed the due bill in writing of said Boat due and payable in two days after date which time has long since elapsed and the same and every part thereof remains due and unpaid. And this Plaintiff further complains, that the said Steam Boat Uncle Toby is justly indebted to him in the further sum of six dollars for services as a hand on said Boat in attending to the Barges of said Boat at the request and by the direction of the Master thereof. And this Plaintiff avers, that at the time of the furnishing the materials firewood stone coal and supplies and when the labor and services were performed and before and at the commencement of this suit the said Steam Boat Uncle Toby was running and navigating upon the waters of the Mississippi and Teon Rivers navigable waters within the Jurisdiction of the State of Illinois, and that the owners of said Boat are and was at the ~~time~~ commencement of this suit unknown to this Plaintiff. And that no part of said indebtedness has been paid, but the same is wholly due and unpaid to the Plaintiff, and was due and unpaid at the commencement of this suit in Justice from said Boat. Wherefore he prays Judgment, and that the property attached may be sold and this your Plaintiff's

demand paid according to law.
M. Y. Johnson Tiff atty

Copy of due bill and acct. sued on
\$387.30

(Due by the Steamer Uncle Toby two
days after date to Nathaniel Smith three
hundred and eighty seven dollars and
thirty cents, for value received
October 13th 1857 Samuel Greysler Clerk

Steam Boat Uncle Toby

To Nathaniel Smith Dr.
For services for Boat attending to Barges
\$6.00

Galena Oct 19th 1857

The above account is correct
V. K. Roult

Capt S. B. Uncle Toby

Steam Boat Uncle Toby

To Nathaniel Smith Dr.

To 10,000 Bush Stone Coal @ 7 cts	700.00
" 20 Bbls Flour - @ \$5	100.00
" 100 cords of Wood " 3.50	350.00
" 10,000 feet of Lumber " 10.00	100.00
To Butter 100.00 Eggs 10.00 Milk 50 -	160.00
To 1000 ^{lb} Beef @ 6 cts, 1000 ^{lb} Bacon @ 20 cts	260.00
To 1 ^{doz} Chickens 3.00 1 ^{doz} Staples for pumps on boat 20.00	
Boarding hands while loading Boat & Barge or keel, infurnishing ^{and supplying} said Boat Uncle Toby	50.00

And afterwards, to wit, on the 8th day of
March A.D. 1852 in March Term A.D. 1852

Amended Declaration indorsed
Filed January 23^d 1852
John W. Bradley Clerk

At filed March 17th
1852 J. W. Bradley Clerk

of said Circuit Court, the said defendant
by his attorney filed in open Court with the
Clerk of said Court his motion to dismiss,
which said motion is in the words and fig-
ures following, to wit;

State of Illinois }
In Daviess County }
Steam Boat Uncle Toby } Circuit Court
ads } March Term
Nathaniel Smith } 1852

The said Defendant comes
and moves the Court to dismiss this suit
and quash the attachment for the fol-
lowing reasons, to wit;

- 1st Because of the insufficiency of the last
amended affidavit—
- 2^d Because there is no good and sufficient
Attachment Bond
- 3^d Because of the irregularities & insufficiencies
of the writ apparent on its face.
- 4th Because of other good reasons apparent
on the Record.

Higgins & Strother }
Hoge & Watson }

Filed March 8th 1852 } attys for Uncle Toby
Wm. H. Bradley (Clerk)

And afterwards, to wit, on the 12th day of March
A.D. 1852, in said March Term of said Circuit
Court in the Record of the proceedings thereof in
said cause is the following entry, to wit,

Nathaniel Smith

vs

Steam Boat Uncle Toby

} Attachment

Now at this day came on to be heard, the motion of the defendant, heretofore filed by his attorneys, to quash this attachment and dismiss this suit, which after argument by counsel is taken under advisement by the Court, and the Plaintiff comes by his attorney and files proof of publication to the unknown owners of the Steam Boat Uncle Toby

And afterwards on the same day, to wit, on the 12th day of March, A.D. 1852, the said Plaintiff by his attorney filed in open Court with the Clerk thereof his proof of notice, which is in the words and figures following, to wit,

State of Illinois } In the So Daviess County Circuit
So Daviess County } Court of said County, to March
Term A.D. 1852

Nathaniel Smith

vs

Steam Boat Uncle Toby

} Attachment

Public Notice is hereby given to the Unknown Owners of the Steam Boat Uncle Toby that a writ of Attachment issued out of the Clerk's Office of the So Daviess County Circuit Court, in and for the County of So Daviess and State of Illinois at the suit of Nathaniel Smith, and against the said Steam Boat Uncle Toby for the sum of three hundred and ninety three dollars and thirty cents dated the 20th October A.D. 1851, directed to the Sheriff of said County to execute, which said

22 Writ has been returned by the said Sheriff into the said Clerk's Office, executed by levying upon said Steam Boat Uncle Toby, two Keel Boats and sundry articles of furniture &c. Now unless you, the said unknown owners of said Steam Boat Uncle Toby shall personally be and appear before the Judge of the said Circuit Court, on the first day of the next Term thereof, to be holden at the Court House in Galena, on the second Monday of the month of March next give special bail, and plead to the said Plaintiffs' action, Judgment will be rendered against you, in favor of the said Nathaniel Smith, and the said Estate so attached, will be sold to satisfy the sum with costs

Wm H. Bradley, Clerk

M. V. Johnson, Attorney for Plaintiff
Galena January 6. 1852

We hereby certify that the annexed advertisement was published in the Galena Daily Advertiser and North Western Gazette, five weeks successively, the first of which publication was on the 8th day of January A.D. 1852 and the last on the sixth day of February 1852. H. H. Houghton & Co.

Publishers of said Papers, in Galena
So Davis County Ill.

Filed March 12th 1852

Wm H. Bradley Clerk

And afterwards, to wit on the 16th day of March A.D. 1852, in March Term A.D. 1852 of said Court, in the Record of the proceedings thereof in said cause, is the following Entry, to wit,

Nathaniel Smith

vs

Steam Boat Uncle Toby

} attachment

The Court having fully considered, and being fully advised upon the motion of the defendant, heretofore filed to quash this attachment, and dismiss this suit, and intimating an opinion; the Plaintiff by his attorney makes his cross motion to the Court for leave to amend his attachment Bond, which motion is sustained by the Court, and leave is granted him by the Court to amend, which amendment is accordingly made, and the defendant's motion aforesaid to quash the attachment and dismiss this suit, is overruled by the Court. To which decision of the Court, in overruling said motion, the defendant by his atty excepts. And now comes Warner L. Clark, who represents himself to be one of the owners of the Steam Boat Uncle Toby, and by Hoge & Wilson, & Higgins & others his attorneys, enters his appearance herein. And on motion of the Plaintiff by his attorney, the said Warner L. Clark is ruled by the Court to plead by tomorrow noon-

And afterwards, to wit, on the next day, to wit on the 17th day of March A.D. 1852 in the Record of the proceedings of said Court in said cause is the following entry, to wit,

Nathaniel Smith

vs

Steam Boat Uncle Toby

} Attachment

The defendant by his attorney comes and moves the Court, for a rule on the Plaintiff to file a bill of Particulars, of the items of

24 materials ^{fire wood,} ~~passage~~, stone coal and provisions in the declaration mentioned, and for which said suit was brought, and also for an extension of the time to plead in this cause until such bill of particulars be filed. And the Plaintiff by his attorney moves the Court for leave to amend his declaration, by adding the word "dollars" in his declaration, which leave is granted and the amendment is accordingly made and the Plaintiff by his attorney files his bill of particulars, with his declaration

And afterwards, to wit, on the 19th day of March in said March Term A.D. 1852 of said Court, in the Record of the proceedings thereof in said cause, is the following Entry, to wit;

Nathaniel Smith

vs

Steam Boat Uncle Toby

} Attachment

The Plaintiff by his attorney having amended his declaration, It is ordered by the Court, on motion of the defendant by his attorney that the cause be continued until the next Term And on motion of the Plaintiff by his attorney the defendant Warner S. Clark, as one of the owners of the Steam Boat Uncle Toby is ruled by the Court to plead by the first day of the next term thereof—

And afterwards, to wit, on the 12th day of May, in May Term A.D. 1852 of said Circuit Court, the defendant by his attorney, files in said Court, with the clerk thereof, his demurrer in the words, and figures following, to wit,

25 Steam Boat Uncle Toby In So Davids Circuit Court
ads } March Term 1852
Nathaniel Smith

And the said defendant
by Hoge & Wilson, & Higgins & Brother attys comes
and says that the said Plaintiff ought not to have
and maintain this action aforesaid because he says
that the said declaration and the matters and things
therein contained, are not sufficient in law to main-
tain the action aforesaid, and that he is not bound
in law to answer the same; wherefore he prays judg-
ment, and for causes of demurrer assigns the fol-
lowing

1st Because the said declaration does not aver that
~~said debt was contracted on account of work done~~
the supplies or materials in said declaration, or that
any of said debt, was contracted by the owner or owners,
Master, supercargo, or consignee, of said boat-

2nd That said declaration does not aver that said
debt was contracted on account of work done, suppli-
es, or materials furnished by mechanics, tradesmen
or others for, on account of, or towards the building,
repairing, fitting, furnishing, equipping said Boat
her engine, machinery, sails, ^{Rigging} ~~rigging~~, tackle, apparel
or furniture-

3rd Because said declaration does not aver the
place where said contract in said declaration
mentioned was made, or where the debt in said
declaration mentioned was contracted

4th Because said declaration does not aver
definitely any time when said debt was
contracted, either giving day or date

5th Because said declaration does not aver who
the Master of said Boat was at the time said

26 debt was contracted -

6th Because said declaration does aver that the contract for said materials, firewood, stone coal and supplies, as therein mentioned, was made within the State of Illinois -

7th Because said declaration does not aver that the ~~name~~ and style of the Copartnership, of the owners of said Boat, was unknown at the time said attachment was sued out

8th Because said declaration does not aver that said debt was contracted in the State of Illinois, but only that the ^{firewood, stone coal and provisions} materials furnished, were furnished to said Boat while navigating the Mississippi and Ten Rivers, navigable waters within the Jurisdiction of the State of Illinois; the averment is, that said Rivers are within the State of Illinois, and that said Steam Boat was navigating said waters; but does not state whether said Boat was at Galena, St Louis, or New Orleans (all of which said places are on said waters) at the time said debt was contracted, or any of said supplies was furnished

9th Because it is the contract that creates the lien and no contract is averred to have been made

10th Because said declaration is vague and uncertain as to times and places, and it would be perfectly consistent with the averment therein that said debt was contracted in Missouri, Louisiana, or any other State in the Union -

11th And for other manifold reasons, apparent on the face of said declaration -

12th And for other and sufficient reasons

Hoge & Wilson &

Higgins & Strother

for defdt.

Joinder in demurrer

Filed May 12th 1852

Wm H. Bradley Clerk

Johnson atty
of Plffs

47 and afterwards, to wit, on the 14th day of May in said May Term A.D. 1852 of said Court in the Record of the proceedings thereof in said cause, is the following entry, to wit,

Nathaniel Smith

vs.

Steam Boat Uncle Toby

} Attachment

Now at this day came on to be heard the demurrer of the defendant filed, to the declaration of the Plaintiff, which is overruled by the Court, and on motion of the defendant by his attorney, leave is granted him by the Court to withdraw his demurrer and plead. And the defendant by his attorney, moves the Court to rule the Plaintiff to file a bill of particulars of the items of supplies provisions &c. for which this suit is brought. And the defendant by his attorney files his exceptions to the depositions on file, and also comes and enters appearance of Warren Clark as owner of Steam Boat Uncle Toby, and files his plea.

The exceptions of the defendants to the depositions on file referred to in foregoing last recited order of said Court, and also the appearance ^{and plea} of said Warren Clark are in the words and figures following, to wit,

Steam Boat Uncle Toby In Circuit Court May Term 1852

ads.

Nathaniel Smith

}

The said defendant moves the Court to suppress the deposition in this cause of P^lff, to wit, deposition of

John Schorly, William Davis, William Ray & Samuel

28 Gregsley for the following reasons
1st said depositions are not entitled in any cause -

2nd The (Jedimus Potestatum, or Commission by virtue of which said depositions are taken is not attached to said depositions or either of them

3^d The original interrogatories and cross interrogatories are not attached to said depositions or either of them

4th Said depositions are all improperly taken

5th There is no caption, or any thing to indicate in what cause said depositions are taken -

6th Said depositions, and each of them, are improperly certified by the Commissioner

Filed May 14th 1852
Wm H Bradley Clerk } Hoge & Wilson &
Higgins & Strother, for defts

State of Illinois } Circuit Court
St Davids County & May Term A.D. 1852

Nathaniel Smith

vs.

Steam Boat Uncle Toby }

Warren Clark, owner of said Steam Boat Uncle Toby, comes and enters his appearance as defendant in this cause and comes and defends it, and says that he is not indebted to said Plaintiff, in manner and form as is in said declaration alleged, and of this he puts himself upon the country

Higgins & Strother

30 what manner said depositions were taken or by
virtue of what authority said depositions were taken

6th Said depositions and each of them, are im-
properly certified

7th And for other good and sufficient reasons
apparent upon the face of said depositions

Higgins & Shrother

Hoge & Wilton, for depts

Filed Augt 26th 1852
Wm H. Bradley CLK

And afterwards, to wit, on the 27th day of August
A.D. 1852, in said August Term A.D. 1852 of said Court
in the Record of the proceedings thereof in the said
cause, is the following Entry, to wit:

Nathaniel Smith

vs

Steam Boat Wm. T.oby

} Attachment

Now at this day, came on
to be heard the motion of the defendant, heretofore filed
by his attorney, to suppress the depositions of William
Davis, John Schooley, William Ray and Samuel Gregory
on file, which motion after argument by counsel is over-
ruled by the Court. and now came the parties by their
attorneys, and upon issue joined thereupon came a
jury of good and lawful men, to wit, Henry Minans,
Pyam Jacobs, Samuel Blake, Samuel Titus, Hugh
Monks, Henry J. Morris, William J. Morris, William C.
Smith, John P. Dezoya, Wm J. Moore, John Gill, A. C.
Swan, and Jonathan Holcomb, who were duly elected
tried and sworn, and after hearing the evidence
and arguments of counsel, and receiving

31 instructions from the Court, the jury retired to consider of their verdict. And it is ordered by the Court by agreement of the parties by their attorneys, that the jury when they shall have agreed upon their verdict may sign and seal the same, and deliver it to the clerk and disperse and meet the Court at 8 O'clock tomorrow morning.

And afterwards, to wit, on the next day, to wit, on the 28th day of August A.D. 1852 in said August term of said Court, in the Record of the proceedings thereof in said cause, is the following entry, to wit;

Nathaniel Smith
vs
Steam Boat Uncle Toby } Attachment

The jury yesterday, impannelled in this cause this morning returned into Court and presented the following Verdict, to wit; We the jury find a Verdict for the Plaintiff of three hundred and eighty seven dollars and thirty cents debt and twenty six dollars and twenty four cents damages and the defendant by his attorney moves for a new trial.

The motion of the deft for a new trial referred to in the ^{said} last recited order of Court, is in the words and figures following, to wit,

Steam Boat Uncle Toby } In Circuit Court So Davis
ads } County August Term 1852
Nathaniel Smith

And the defendant moves the Court for a new trial in this cause for the following

reasons

52

1st The Verdict of the jury is contrary to law—

2^d It is contrary to evidence —

3^d It is contrary to the instructions of the Court—

4th Because the jury were improperly allowed to retain and examine all the papers in the above cause including the affidavit of indebtedness made by the Plaintiff, during the time they were finding their Verdict, and after they had retired from the bar

5th Because the jury, after they had once rendered a Verdict were allowed to retire and materially alter and amend the same, and in effect find a new Verdict

6th Because the amount of the verdict exceeds the ~~ad damnum~~ laid in the declaration

7th Because the damages are excessive, and shew that the jury were under the influence of strong prejudice and excitement

8th And for other good and sufficient causes

Filed 30th Augt 1852
W H. Bradley Clk

Higgins & Strother
Hoge & Wilson
for defds

And afterwards, to wit, on the 30th day of August, in the said August Term of said Circuit Court A.D. 1852 in the Record of the proceedings

of said Court, in said cause, is the following Entry, to wit;

Nathaniel Smith

vs

Steam Boat Uncle Toby

} Attachment

The Defendant by his attorney, comes and files his motion for a new trial herein, and the Plaintiff by his attorney remitting the excess over three hundred and eighty seven dollars and thirty cents, the motion for a new trial is overruled by the Court. To which ruling and decision of the Court, the Defendant by his attorney excepts. And the Plaintiff by his attorney moves the Court for judgment upon the verdict, heretofore entered. It is thereupon considered by the Court that the Plaintiff, have and recover of the Steam Boat Uncle Toby and Warner L. Clark the owner of the said Steam Boat Uncle Toby, the sum of three hundred and eighty seven dollars and thirty cents, together with his costs, by him about his suit in this behalf expended, and that execution issue therefor against Warner L. Clark, the owner aforesaid to which ruling and decision of the Court, the Defendant Warner L. Clark, by his attorney excepts. and prays an appeal to the Supreme Court, which is granted conditioned that Warner L. Clark enter into Bond in the sum of eight hundred dollars, with Sherwood S. Brown as security, within twenty days from this date.

On the trial of said cause the following exceptions were made and allowed, to wit,

Steam Boat Uncle Toby } In S^d District Circuit Court
ads } August Term 1852

34 Nathaniel Smith }

Be it remembered, that on the
day of August A.D. 1852 the Jury heretofore impanel-
led in this case, came into Court whereupon their names
being called by the Clerk the following jurors were present
to wit. (Ten)

and the following were absent, to wit, (Two)

and by agreement of parties, by their Counsel, the ten jurors
present, should deliver the Verdict as of the twelve, which
said Verdict, so delivered, was in the words & figures following
to wit, We the jury find for the Plaintiff & assess the damages at
four hundred & thirteen dollars and fifty four cents and the
costs of this suit. W^m C. Smith, W^m J. Moore, Samuel Blake,
Samuel J. Titus, John Gill, J. Holcomb, Hugh Mowbray, H. J. Morris,
John P. Pozoga, A. C. Swan, Pyram Jacobs, H. B. Thomas, where-
upon, the Plff by his attorney, moves the Court, the two absent jurors
coming in, that the jury retire, and render a Verdict in debt
to correspond with the action, for so much debt, and so much
damages, to which said motion, the said defendant by his
attorney then & there objected & insisted on the Verdict being record-
ed as delivered. Shortly afterwards the absent jurors came into
Court, and under the ruling of the Court, retired to alter their
Verdict in compliance with said Plff's motion, to which rul-
ing of the Court and allowing said jury to alter their Verdict
so rendered as aforesaid, the defendant by his attorney
then and there excepted and prayed that this
his bill of exceptions may be allowed and sealed
and made a part of the Record, which is done.
Agreed to as amended

Berj R. Sheldon Clerk

M. V. Johnson Plffs atty

35 Filed August 28th 1852
Wm H. Bradley Clerk

State of Illinois
So Daviess County

Steam Boat Uncle Toby } In Circuit Court
ad. } August Term 1852
Nathaniel Smith }

Be it remembered, that on
the day of August A.D. 1852, came on to
be heard the defendants motion for a new trial
of this cause, which said motion is in the words &
figures following, to wit,

Steam ^{Boat} Uncle Toby } In Circuit Court So Daviess
ad. } County August Term 1852
Nathaniel Smith }

And the Defendant moves the
Court for a new trial, in this cause for the following
reasons

- 1st The Verdict of the jury is contrary to law
- 2nd It is contrary to evidence -
- 3^d It is contrary to the instructions of the Court -
- 4th Because the jury were improperly allowed
to retain and examine all the papers in the
above cause, including the affidavit of indolent-
edness, made by the Plaintiff, during the time
they were finding their Verdict and after
they had

retired from the Bar.

34

- 5th Because the jury after they had once rendered a Verdict, were allowed to retire and materially alter and amend the same, and in effect find a new Verdict—
- 6th Because the amount of the verdict exceeds the ad damnum laid in the declaration
- 7th Because the damages are excessive, and show that the jury were under the influence of strong prejudices and excitement
- 8th and for other good and sufficient causes—

Higgins & Strother
Rogers & Wilson
for defds

Filed 30th Augt 1852 }
Wm H. Bradley Clk }

And the defendant in support of his motion read the depositions of John Schooley and V. K. Rout which said depositions are in the words and figures following, to wit,

Nathaniel Smith

vs.

Steam Boat Uncle Toby

} Attachment

The deposition of V. K. Rout, taken by consent of parties, to be read in evidence in the above entitled cause

Questⁿ 1st are you acquainted with the Steam Boat Uncle Toby and the Plaintiff in this suit

Ans^r I am acquainted with the Steam Boat Uncle

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Toby and also with the Plaintiff in this suit

Quest 2 Who was the Master of the S. B. Uncle Toby during the month of September and part of October 1857

Answer. I think I took charge of her in September as Master, and remained on her during a part of ^{months} of October, if not the whole.

Quest 3 State if you know of any materials stone coal supplies and provisions being furnished said Boat by the Plaintiff during the time you were Master? if yes, what were furnished and by whose direction, and where was said Boat running at said time

Answer We got some stores and some coal from the Plaintiff. I don't recollect the articles of stores furnished nor the number of Bushels of Coal the contract for the coal was made by myself. The Clark and Anderson, a man who claimed to be part owner of the said Boat with the Plaintiff the coal was furnished at Mr. Smith's coal yard above Rock Island in Illinois. The Boat was running on the Upper Mississippi, from Rock Island to Dubuque, and from Galena to St. Peters and to St. Peters River

Quest 4.th Was said Stores and coal furnished by said Plaintiff for the use of said Boat.

Answer The stores were got for the use of said Boat the coal was got to sell again, the profits to pay expenses of the Boat, and if any thing over paying

Ans X =
2183-22

39 expenses it was to go to the owners of said Boat, or to pay debts against said Boat

Quest 5th Was any of said coal purchased from the Plaintiff used by said Boat, if yes what amount

Answer There was some of it used by the Boat, what amount I don't know

Quest 6th What was the value of the supplies furnished and by whose directions

Answer My opinion it amounted to about four hundred dollars for stores & Coal, I cannot separate them

Quest 5th State who was the Clerk and owners of said Boat at said time

Answer Samuel Gregsten was Clerk. I was placed upon the Boat by Samuel Gregsten and Anderson who claimed to be the owners of said Boat

Quest 6th Have you examined the promissory note given in this case. By whom was the same executed.

Answer I have examined it and believe it to have been executed by Samuel Gregsten the Clerk of said Boat

Quest 7 Who kept the Books and accounts of said Boat

Ans. The Clerk, Gregsten

Quest 8th What was the consideration of said note and

do you know by whose authority the same was executed

Ans: The consideration was for coal and stores furnished to S. B. Uncle Toby. I was consulted about executing the note, and I ^{directed} ~~advised~~ the Clerk to give Mr. Smith a note for the balance due him and he executed this note I believe

Quest 9th What do you know of any labor or services being performed by the Plaintiff for said Boat and by whose directions was the same done and when performed -

Ans: I recollect of telling Mr. Smith to take care of our Barges, and I would pay him for it he furnished a bill of six dollars and I told him it was correct and certified the same

Quest 10th What were the services, and for whom performed.

Ans: Taking care of Barges for Steam Boat Uncle Toby

Quest 11th Was there a settlement between the Clerk of said Boat and the Plaintiff, and an adjustment of accounts, and how was the same closed and what amt was found due -

Ans: I told Mr. Gregston, the Clerk to make a settlement with Mr. Smith, and give him a note for the balance due him. I think the note closed the account, and I believe whatever the note calls for was the amount

due but I was not present at the settlement
but think I seen the note at the time

Cross Interrogatories

Quest. 1.st What amount of coal was got by the S. B.
Uncle Toby from the Plaintiff for the purposes
mentioned in your answer to question four

Ans. Ans. I don't know what amount of coal was got
but the note was nearly all given for coal

Quest 2.^d When was the coal sold by said Boat and
to whom

Ans. I know a portion was sold in Galena
and a portion in Dubuque I believe -

Quest 3.^d State whether the Plaintiff came up on the
Boat with the coal and knew of the sales

Ans. I think he came up on the Boat, and I think
he knew of the sales

Quest 4.th Was the contract of sale made with the parties
at Galena before the coal was received ^{from} of the
Plaintiff

Ans. I believe it was -

Quest. 5.th Was not the Plaintiff informed, and did he not
know at the time the coal was received at his
landing, that the same was contracted for
at Galena, ^{or was to be sold in Galena} or other places, and was not that

the purpose for which the coal was shipped

42 Ans. In the first place it was understood in making
a bargain with Mr. Smith that we were buying
the coal for the purpose of taking it to Galena and
Dubuque, or other points on the River for the pur-
-pose of selling it

Quest 6.th Can you state positively that any portion
of that coal was consumed on the Boat as
fuel, and if so state the amount as near
as you can fix it—

Ans. There was some used. the amount I do not
know, it was not a large amount.

Quest 7.th Was there any more used than such as might
have been consumed from the landing of the
Plaintiff to Galena or Dubuque

Ans. I dont believe there was any of that coal used
below Smith's Landing, nor above Dubuque

Quest 8.th Prior to the 13.th October 1857, how many trips
of said Boat, while you were the master
was made between the landing of the Plain-
-tiff and Galena or Dubuque in which you
carried any of the coal referred to in your
preceding answers—

Ans. I dont know how many trips we took coal
from Smith, but I think more than one

Quest 9.th Was the note spoken of by you given for the

coal which was brought up the last trip or was it for coal delivered to said Boat before you were placed in charge as Master

Ans. The note given was on settlement for coal and stores had from Smith. I don't know whether it was for the coal got at that time or not—

Quest 10.th How many Barge loads of coal did you bring up on the last trip prior to 13th October 1851, and was it all brought in the barges—

Ans. It was brought in Barges—perhaps a small quantity on the Steam Boat. I think on the last trip from Smith's Landing there was two barges brought up—

Quest 11.th Were said Barges loaded with coal and how much would each Barge carry. State as near as you can what amount of coal was in said barges taken from Smith's Landing—

Ans. There was coal in the Barges; they would carry between 2500 and 4000 Bushels each; I don't know whether the Barges were full or not—but I know we had great difficulty in getting over the rapids

Quest 12.th Was there water enough on the Rapids or was it by reason of the load that you experienced the difficulty in getting over—

Ans. There was water enough, a strong current and the Barges was the cause of the difficulty—

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Quest 13.th Can you state positively whether one hundred bushels of the Plaintiffs coal was consumed on said Boat while you were Master and prior to the 13.th October and state whether you did not burn large quantities of wood during said trip up on said Boat.

Ans. I cant state positively whether we burned less than one hundred bushels, or over one hundred bushels, the principal portion of the fuel was wood

Quest 14.th How much coal did the Uncle Toby ordinarily consume between the Plaintiffs Landing and Galena & Dubuque on one trip while you were Master, and was there not other coal on the Boat besides the Plaintiffs for the purpose of fuel.

Ans. I dont know how much coal the Boat ordinarily used, but she could use one hundred bushels on that trip towing two barges

Quest. 15.th Was there not an understanding between the Plaintiff and the officers of the Boat, that a large quantity coal should be furnished by the Plaintiff to be brought to Galena and Dubuque for the purposes of sale only and was not said coal furnished for that purpose Was any agreement made by the officers of the Boat with said Plaintiff about furnishing supplies to be used or consumed on the Boat

Ans. The Boat bought the coal from Mr Smith for the purpose of carrying ^{it} to Galena and Dubuque and other points on the River to be sold, and to use what the Boat wanted for her own use, there was no special contract made with the Plaintiff to furnish supplies to be used by the boat. We bought the coal and expected to use what we wanted of it and to make sale of the balance

Quest 16th. What was the contract made with the Plaintiff did the Boat buy the coal at so much per bushel; if so how much; if not state the contract between Plaintiff and officers of the Boat with regard to said coal -

Ans. The Boat bought the coal from the Plaintiff at so much per bushell, the number to be determined when the coal was taken ^{out} or sold by the Boat. I dont now recollect the price, but think it was six or seven cents per bushel -

Quest. 17th. Was it the understanding, that the Plaintiff should go along with the coal and see to the sale or delivery of it, and when was he to be paid for it

Ans. It was the understanding with the Plaintiff, that if he chose he could go along with it, or if he did not go, we would give him a certificate of the number of bushels and pay him at home, if he went along he was to be paid as soon as the number of bushels was ascertained -

Quest 18.th When was said coal to be measured.

~~Ans.~~ When it was delivered to the purchaser

Quest 19.th In case you measured when you sold it how did you determine how much coal had been consumed by the boat

Ans. I think there was a coal box for the purpose of measuring what was used on the Boat and the Clerk kept an account of it

Direct question

Quest 20.th Where was said note above referred to given

Ans. My present impression is that it was given at Smith's Landing

Cross interrogatories

Quest. 21.st you stated in your direct examination that a settlement was had with said Plaintiff by your direction as Master of said Boat you also stated that said coal was to be measured when delivered. How could said note have been given on settlement for said coal when the measurement was not known at the time

Ans. I suppose that the Plaintiff said he had a certain amount of coal on board, and that the settlement was made according to his statement & if found to be incorrect

to be adjusted when the coal was measured

Quest. 22^d Was there not an understanding between the Plaintiff and the officers of said boat that some coal was to be brought up for the Plaintiff in which the ~~Plaintiff~~ Boat was to have an interest for the carriage

Ans. There was a conversation relative to bringing coal by the bushel as freight, but I don't recollect that any was brought
V. K. Rount.

State of Illinois }
So Davess County }

I do hereby certify that the above deposition of V. K. Rount was ~~sworn~~ sworn to and signed, ~~by the deponent~~ before me and in my presence and that the said deposition was taken by me on the 14th day of May A. D. 1852 at the office of the Clerk of the Circuit Court in said County, between the hours of eleven O'clock in the morning and one O'clock P. M. of said day.

Given under my hand and seal of said Court, at my office in Galena this 14th day of May
A. D. 1852

Seal

Filed 14th May 1852
Wm. H. Bradley Clk
By Geo. M. Mitchell depy

Attest Wm. H. Bradley Clerk
By Geo. M. Mitchell Depy

State of Illinois }
Rock Island County }

48

Before Joseph Jacksonman
Commissioner

Answer of John Schooley to Interrogatories
pertaining to Mattus in a certain suit at law
now pending and undetermined in the
Circuit Court of Jo Davis County and State
of Illinois, wherein Nathaniel Smith is Plaintiff
and the Steam Boat Uncle Toby is defendant

Question 1st Do you know the ^{parties} Plaintiff and
defendant in the title of interrogatories
mentioned, or either, and which of
them, and how long have you known
them respectively?

Answer I know the Plaintiff Nathaniel Smith, and
the defendant, the Steam Boat Uncle Toby.
I have known the Plaintiff Nathaniel Smith
since about the first of July A.D. 1851
I have known the defendant, the Steam Boat
Uncle Toby, from about the twenty third day
of September A.D. 1851, until the tenth or
eleventh day of October of same year

Quest 2^d If you state you know the Steam Boat Uncle
Toby, state all you know of the Plaintiff fur-
nishing any coal, wood, provisions, ma-
terials and supplies &c. to said Boat, state
the items, quantity, and value of each-
when and where the same was furnished
and by whose direction and authority, and
if the same was for the use of the Boat
or other persons

49 Answer. I know that said Plaintiff Nathaniel Smith furnished coal and provisions to said Boat, the quantity of said coal furnished was not less than three thousand bushels, and I verily believe the quantity of said coal furnished was very near four thousand bushels. said coal was worth seven cents a bushel for common coal, and ten cents per bushel for blacksmith coal, that said coal furnished was a mixture of the two kinds of coal, said Plaintiff furnished flour, bacon, milk, beef and chickens to said Boat. Cannot say as to the quantity of flour or beef. two chickens were furnished to said Boat, by said Plaintiff the chickens were worth twenty cents. All of the above articles furnished, were furnished between the 23^d of September A.D. 1851 and the 11th of October of same year. said articles were furnished at the dwelling house of said Nathaniel Smith about 2½ miles above Motine, in the County of Rock Island and State of Illinois, on the bank of the Mississippi River. said articles were furnished by the direction and authority of the officers, to wit, the Captain and Clerk of said boat. said articles were for the use of said Boat.

Quest.ⁿ 3^d If you state articles were furnished, state the time and place. Where was said Boat ^{engaged in} running at that time, who was the Master, and who was the Clerk at that time. If any contract was made by whom made. Was the articles furnished to the boat as supplies and materials for the use of the Boat, or for other persons. How were they furnished? are such articles usually

used and consumed on Boats navigating
on western Rivers.

50

Answer Said articles furnished, were furnished as stated
in the above answer, to wit, between the 23^d of
September A. D. 1857, and the 11th of October of
same year, and were furnished at the dwelling
house of Nathaniel Smith, about 2½ miles above
Moline, in Rock Island County, State of Illinois
on the bank of the Mississippi River. Said Boat
at that time was running from Rock Island
Illinois to St. Paul M. T. as I verily believe.
Masters name was Rout. Clerk's name was
Gridley or Gregsley or some similar name
A contract was made for coal and provision
and boarding by Master of said boat, and by
Clerk of said boat, with Nathaniel Smith
The articles furnished to said Boat, were fur-
nished as supplies and materials for the
use of said Boat. Said articles were furnished
by the coal being put into ^{the} said Boat, and
into a barge in company with said Boat
by said Nathaniel Smith, with help from the
hands of said Boat. The provisions were
furnished by being delivered to the hands
of said Boat. The articles furnished are such
as are usually used and consumed on Boats
navigating our western Rivers.

Quest. 4th What reason did the Master give for pur-
chasing such quantities of coal (if any was
purchased) was any thing said about running
in any particular trade with the Boat; if so
what trade. was any thing said about fuel

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being hard or easy to be procured; State all that was said about supplying said boat with fuel, and whether the coal purchased was for the use of the Boat

Ans. Master said that he had been disappointed in obtaining other coal that he expected, and gave it as a reason for purchasing such quantity of coal; It was a general talk among officers and hands of said Boat, that said boat was about running in the upper trade, to wit, from Galena Ill. to ports above. Officers of Boat said that it was hard to procure wood. Officers of said Boat said they wanted all the coal they could get, would pay said Smith money for the coal. Officers of said Boat stated that the coal purchased was for the use of said Boat.

Quest. 5.th State particularly the contract, where made, with whom, the amount of coal & other articles delivered, in what County and State, and what kind of fuel the Uncle Toby is adapted to use

Ans. Officers of said Boat wanted all the coal that said Nathaniel Smith could deliver, agreed to pay seven or eight cents per bushel for all the coal said Smith could furnish and put into their barges; Cannot say whether it was seven or eight cents. Said Nathaniel Smith agreed to deliver all the coal that he could, said contract was made at said Smith's dwelling house about 2 1/2 miles above Moline, in the County of Rock Island Illinois. Said contract was made by the Officers Master and Clerk of said Boat, with Nathaniel Smith. The amount

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of coal delivered was between, one thousand and six thousand bushels. Cannot say as to the amount of articles furnished, except the coal and two chickens. The articles furnished were delivered in the state of Illinois and in the County of Rock Island. Cannot say what kind of fuel the Unile Loby is adapted to use, have seen both wood and coal used as fuel on said boat.

Quest.th Q. If you state Sam^l. Gregster, was Clerk of said Boat. Have you ever seen him. Where have you ever seen the promissory note sued on in this case. If so give a copy of said note, and state who executed the same. State if you know who kept the books of the Unile Loby and adjusted the accounts.

Ans. I have seen the Clerk of said Boat. He was called Gridley, Grisly, or something of that sort. Saw him at Smith's dwelling about 2 1/2 miles above Moline. I never saw said promissory note. I do not know who executed said note. Saw the Clerk of said Boat, said Gridley or Grisly &c. doing the writing for said Boat, do not know who kept the books, and adjusted the accounts of said boat.

Questth Q. State any other fact you may know in regard to the furnishing of supplies to the Unile Loby by the Plaintiff, and any thing else you may know, of advantage to the Plaintiff.

Ans. I know of nothing else in relation to furnishing supplies to said boat, or any thing else that may be of advantage to the Plaintiff.

Cross Interrogatories on part of
the Steam Boat Uncle Toby

Questⁿ 1st Have you any interest in the count of ~~this~~^{said} suit or in the matters involved in it. If yea state what.

Ans: I have no interest in the count of this suit, or in the matters involved in it.

Questⁿ 2^d Are you connected in business with, or in the employment of the Plaintiff in this suit. If yea, state how connected or employed.

Ans: I am employed by said Plaintiff by the month, am now so employed, and was so employed at the time of the transaction respecting the coal.

Questⁿ 3^d What is your present and past occupation or business, how pursued & where, what town, County and State.

Ans: Driving team in the County of Rock Island & State of Illinois, at present. Past occupation farming & teaming, for the last nine years, in said County of Rock Island & State of Illinois.

Questⁿ 4th Were you present at the making of a contract by said Plaintiff, for the items for which this suit is brought, or relating to said items, or any of them. If yea, state when & where such contract was made. State fully the terms of the contract as made by the parties. Who made the same on the part of the said Steam Boat, and who were present at the time of making the contract.

Ans: I was not present all the time they were making the contract, was backwards and forwards when they were talking about it, was present a part of the time; said contract was made at the dwelling of Nathaniel Smith, was made about the 20th day of September A. D. 1851. am sure it was in September. Said Boat wanted all the coal, he Smith could furnish, agreed to give ~~Smith~~ seven or eight cents per bushel for the coal, agreed to pay the money as soon as the coal was measured. Cannot say whether it was 7 or 8 cents. Smith agreed to furnish all he could. The Captain or Clerk, not certain which, was at Smiths, and made the contract on the part of said Boat, a few days before the Boat came for the coal, immediately after the Boat came. The Clerk and Cook told Smith to let the hands have such provision as they wanted. Do not know that any person was present when contract was made except officers of Boat & Smith

Questⁿ 5th If you have stated that you know of any coal, wood, provision, materials and supplies furnished said Boat, state particularly how you know that the Plaintiff furnished them or any of them, and if you state for what use they were furnished state how you know the use for which they were furnished —

Ans: I helped Smith weigh beef and flour, helped take it towards the Boat, and saw it taken onto the Boat, by the hands of the Boat. Saw the hands of the Boat take bacon from Smith Plaintiffs house to the boat, saw Cook of said boat get

milk at Plaintiff's house. Heard the cook once tell Plaintiff's daughter to take milk to Boat. Saw her take it to the Boat; I hauled a considerable quantity of coal for Plaintiff and put some of it in the barge myself; saw Plaintiff help load the barge; saw the hands of the boat take coal from the bank of the River - and put said coal into the barge, and some of it on the Boat; saw some of the coal used as fuel on the Boat; heard the Captain & Clerk of Boat say they wanted the coal for fuel, to be used up the River; heard the cook & hands on Boat say they wanted the provision to use on Boat.

Quest. 6.th State whether the coal to which you refer, or any part thereof was towed up the Mississippi River, by the Steam Boat Uncle Toby at the same time that the Boat brought away a barge with about 1700 bushels of Pitts & Babbitt's coal.

If yea, what became of the same

Ans. A part of the coal was taken at the same time that coal of Pitts & Babbitt was taken. Do not know what became of said coal.

Quest. 7 Where did said Boat take in ^{tow or} charge any coal to which you may refer, and to what place did she take it; was the Plaintiff a passenger on the Boat at the same time; and where did he go to at that time, and for what purpose and what finally became of said coal -

Ans. Said Boat took in tow or charge all the coal that I refer to at Smith Plaintiff's Landing about 2 1/2 miles above Moline, started for Galena & Dubuque, took it to Galena. Smith

Plaintiff was a passenger at the same time, he went with Boat to Galena; ~~he~~ went to get his money for the coal, do not know what finally became of said coal

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Questⁿ 8th Did not the officer or captain of the Steam Boat Uncle Toby during the fall or time spoken of by you, purchase coal for the purpose of speculating on the same or of reselling it at some place or places on the Upper Mississippi; if yea, state particulars of the same.

Ans^r Do not know that the officers or Captain of said Boat purchased coal for the purpose of speculating or reselling at the times referred to; heard them talking with Babbitt about the matter; cant say that they purchased for that purpose

Questⁿ 9th Were any of the articles mentioned by you contracted for by the owner or owners, master, supercargo or consignee of said Steam Boat Uncle Toby, if yea, state what articles & by whom contracted

Ans^r The coal referred to was contracted for by the Captain or master of said Boat, or by the Clerk cant say positively which; provision referred to were contracted for by clerk of Boat.

Questⁿ 10th Were any of the materials or supplies mentioned by you & for which this suit is brought, furnished for, or on account of, or towards the building, repairing, fitting or furnishing or equipping the Steam Boat

Uncle Toby, or his machinery, sails, rigging, tackle, apparel and furniture; if yea, state for which furnished; how you know it, when you first knew and from whom you learned it; give the details of your means of knowledge

Ans. Do not know that any of the materials or supplies were furnished by Plaintiff for the purposes above mentioned

Question 11.th Did not the Captain of the said Steam Boat Uncle Toby, or some other officer on said Boat, purchase the coal involved in this suit, or to which you refer, for the purpose of selling the same again at Galena or Dubuque; if yea, state by whom purchased & to whom sold?

Ans. Do not know that they did buy for aforesaid purpose, or that any of them did so.

Quest.ⁿ 12.th Was not the coal brought to Galena & sold to some person there; if yea, to whom sold and when; state whether the Plaintiff did not go up on the Boat the same trip—

Answer. Said coal was taken to Galena, do not know that it was sold, believe I have heard Plaintiff say some of it was sold in Galena, Do not know to whom it was sold, Plaintiff went up on the Boat the time the Boat took the coal from Plaintiff & from Pitts & Babbitt do not know when it was sold—

Quest.ⁿ 13.th Was any portion of the coal to which you refer or of the coal for which this suit is

bought sold to Mr. Redman of Dubuque; if yes;
how much, & when, & by whom?

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Ansr. Believe I have heard Plaintiff speak of some
coal being sold to Redman of Dubuque
Can't say it was coal furnished by Plaintiff
Do not know how much, when, or by whom

Question 14th. Do you not know that the coal, for which
this suit was brought, was bought by the of-
ficers of said Boat, or some of them, on
their own account, or for speculation?

Answer I do not know that, that said officers or
any of them, bought said coal on their own
account, or for the purpose of resale or specula-
-tion

Question 15th. Did not some of the officers of said Boat
make contracts with various persons
at Galena to furnish them with coal, and
did not the said officers, or some of them
buy the coal involved this suit or to which
you refer, for the purpose of furnishing said
persons at Galena with coal, & did not the
Plaintiff in this suit know that it was pur-
-chased for that purpose?

Answer I do not know that said officers made con-
-tract above referred to in Galena, & do not
know that said officers, or any of them, pur-
-chased the coal referred to, or any part of it
for aforesaid purpose. & do not know whether
or no, Plaintiff knew that it was purchased
for said purpose—

2133-32
Question 16th. Did not the Plaintiff at the time of

furnishing the coal, to which you refer, know that the officers of said Boat, or some of them, had contracted for the same, for the purpose of resale again?

Answer I do not know, whether or not said Plaintiff knew, that said officers, or any of them purchased said coal for the purpose of re-sale

Question 17.th Was not the note signed by Samuel Gregster, given in part, or whole, for coal bought by some of said officers for resale where was said note given, at what time? was it before, or after, the coal was sold by said officers

Answer. I do not know personally any thing about said note, have heard Plaintiff say that after he got on the Boat, & had started away, a note was given to him the Plaintiff for the articles furnished to the Boat by him (Do not know, that it was given in part or whole, for coal bought by said officers for resale. Do not know whether note was given before or after the coal was sold by said officers.

Question 18.th Where was said coal delivered to said Boat, that is, any coal you may mention as furnished said Boat, at what town of landing, state also how much coal altogether, was towed or carried away from said landing or town during the fall of 1857, by said Boat, including the amount furnished by the Plaintiff and all other persons, state also when the amount was taken, where taken, and what became of it, state

the same fully.

Answer. Said coal was delivered to said Boat
at Smiths Landing, in the County of
Rock Island & State of Illinois, about
2½ miles above Moline, on the bank of the
Mississippi River. Between 1000 & 11000
bushels of coal from Plaintiff, nearly 6000
bushels I believe, & some 1700 bushels from
Pitts & Babbitt, I believe a little upwards
of that quantity were taken from said
Landing by said Boat, in the fall of 1851
said amounts were taken in part on the
10th or eleventh of October, in said 1851 in two
barges, and a part of said coal was taken
previous to the 10th of October. Can't say precisely
what time, but between the 23^d of September and
10th of October of said 1851. Said coal was taken
up the Mississippi River. Do not know to what
place up the River it was taken, have ^{heard} Plaintiff
say some of said coal was taken to Galena
have heard Plaintiff ^{say} some of it was sold at Ga-
lena I believe. What became of said coal farther
than here stated, I do not know.

John Schooley

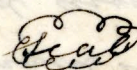
State of Illinois

Rock Island

Smiths Landing County

I, Joseph Sackman, Commissioner
do certify, that John Schooley whose

name appears above, was duly sworn by me, to the above
answers, that he signed the same in my presence, on
this tenth day of April A. D. 1852, at my office in
Moline in said County of Rock Island and State
of Illinois. Witness my hand and seal

Joseph Sackman 
Commissioner

11 And the defendant also in support of his said motion read the promissory note and account referred to in said Rout's deposition, which said note and account are in the words and figures following, to wit,

\$387.30

Due by Steamer Uncle Toby two days after date, to Nathaniel Smith, three hundred and eighty seven dollars and thirty cents, for value received.

October 13th 1857

Samuel Gregson
Clerk

Steamer Uncle Toby

To Nathaniel Smith Dr.
Do services for Boat attending to Barge \$6.00
Galena Oct 19th 1857

The above account is correct

V. K. Routt

Capt of S. B. Uncle Toby —

And this with what follows, was all the evidence offered to the jury upon which their verdict was rendered on the trial, either on behalf of the Plaintiff or defendant. The said defendant also in support of said motion read the following instructions which were given by the Court to the jury in said cause on behalf of the defendant

1st In order for the Plaintiff to recover in this form of action, the jury must be satisfied, that the articles mentioned in the Plaintiff's declaration, were supplies and provisions furnished to the master, owner, supercargo or consignee of the S. B. Uncle Toby for the use and consumption of said Boat. Decem 157 —

Given

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Given
2nd If the jury believe that the stone coal, in said declaration mentioned was furnished for any purpose, other than the actual use of said Boat then said stone coal cannot be recovered in this form of action. SSamm 157 XY Mis - 848 - 8 Eng.

Given
3rd It is the contract that creates the lien, and the jury must believe satisfied, that the articles mentioned in the declaration, were contracted for in the State of Illinois.

Given
5th The Steam Boat Uncle Toby and owners are not bound in this form of action, for any articles which are furnished to the Captain, Clerk or Owner of said Boat for speculation, or for sale again; but they are only bound for the articles supplied for the use, or the furnishing of said Boat.

Given
6th If the jury believe from the evidence, that said coal was sold by said Smith to said officers of said Boat, with a knowledge on Smith's part, that said coal was bought for speculation and resale & not "on account of, or towards the building, repairing, fitting, furnishing or Equipping said Boat, or her machinery, rigging, tackle, apparel or furniture", and that said coal was sold, and not used on said Boat, then the coal or such parts of it as was sold by the officers of said Boat, cannot be recovered in this form of action.

Given
7th That any of the articles furnished said boat by the Plaintiff, not for the use of said Boat but for speculation or sale cannot be recovered in this action -

Given

That the cause of action in this suit, is not the notes signed by said Gregsler, but the items in the account annexed to the declaration, and no one of those items should be allowed by the jury, unless they shall believe from the evidence that such item was furnished towards, and for, and on account of, the use or consumption of said boat

9th

Given

If the jury believe, that any part of the items in the account were brought by the boat, or Officers to Galena, (Dubuque, or any other place, and sold by said Officers, and that said Smith knew at the time of furnishing said coal, that it was bought for such purpose of resale, then such portions of the items, so procured for resale cannot be recovered by the Plaintiff in this suit

10th

Given

That form of action is for a lien on the boat ^{when the supplies or provisions furnished are} and will only lie for the use of, & consumption by, said Boat.

11th

Given

That if the coal furnished was purchased by the Officers of the Boat for resale or speculation, and Smith knew they were bought for that purpose, the Boat is not liable in this form of action, but the Plaintiff has his remedy against the persons who bought the coal from him by another suit

12th

Refused

If the jury believe that said Boat, Captain of said boat contracted any portion of the indebtedness, for any other thing than supplies or provisions for said boat, to be used by said boat, or in a case where he had no authority to bind the boat, then he is personally liable for said items, & is interested

in this cause, and the jury should disregard his evidence -

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13th Given The situation of the Officers of said Boat is a matter for the consideration of the jury in determining what weight is to be given to their evidence -

14th Given The fact that said Rout contracted the said indebtedness (if believed by the jury) goes to his credibility before the jury

And after argument of said motion the Court overrules the same, and refuses to grant a new trial of this cause; to which said ruling and decision of the Court in overruling said motion for a new trial, the defendant, by his attorney, then and there excepted, and prays that this his bill of exceptions may be allowed and sealed and made a part of the Record, which is done -

The defendant on the trial admitted that the said note and account were the same note and account, spoken of by said Rout in his said deposition

Benj. R. Sheldon *CLERK*

Filed August 30th 1852

Wm. H. Bradley *CLERK*

State of Illinois
Jesse's County

I William H. Bradley Clerk
of the Circuit Court in and for said County do
muly certify the foregoing transcript to be a true

65- just and perfect Copy from the record and
files in my Office of all the proceedings which
were had in said Court in said case of
Nathaniel Smith vs Steam Boat Uncle Toby
In testimony whereof I have
hereunto set my hand and affixed
the seal of said Court at my
Office in Galena in said County
this 18th day of October A.D. 1852
Attest William A. Brady Ck

State of Illinois.

Warner L. Clark owner
of the Steam Boat Uncle Toby,
Plaintiff in error

vs
Nathaniel Smith Defendant
in error

Supreme Court 3rd
Grand Division
A June Term 1853.

Error from Jackson
County.

The plaintiff in error comes and assigns in the foregoing transcript the following errors of the Circuit Court.

- 1st The Court erred in overruling the motion of the Dft below to quash the attachment
 - 2nd The Court erred in overruling the motion to suppress the depositions.
 - 3rd And in ^{not} receiving the verdict of the jurors as first presented sealed up by the ten jurors.
 - 4th And in directing the jury to retire after they had found their verdict to again consider the same & to find in debt & damages.
 - 5th The Court erred in giving parol instructions to the jury as to the form of verdict to be rendered.
 - 6th And in sustaining the motion of the Plaintiff that the jury should retire the second time & render a verdict for so much debt & so much damages.
 - 7th The Court erred in overruling the motion for a new trial -
 - 8th And in rendering judgment in manner & form, as rendered against said S. B. Uncle Toby
 - 9th And in rendering a judgment in rem, when the property was not in the custody of the law, but had been released on a bond by the owner.
 - 10th And in rendering a judgment in rem and in personam.
 - 11th And in rendering a judgment in favor of the plaintiff below, when by the laws of the land judgment should have been rendered for the Defendant below
- Hoge & Wilson for plaintiff in error.

No. 31
Clark owner of Steamer
Bont Uncle Toby
as
Cathaul. Smith
Record & Errors -

Filed Apl. 14. 1853,
L. Leland Clk.

State of Illinois &c. Let the writ of Error in this
Cause be made a supersedeas upon the
Validity in Error filing a bond conditioned
as the laws connect with Admonest & Brown
as decreed, in the second term of 1852
monetary dollars
Alanna Nov. 30th 1852. L. L. Leland

State of Illinois, set.

WRIT OF ERROR—FREE TRADER PRINT.

The People of the State of Illinois,

To the Clerk of the Circuit Court for the County of *Jo Daviess* — 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 *Jo Daviess* county, before the Judge thereof, between *Nathaniel Smith*

_____ plaintiff, and *Warner L. Clark*
owner of the Steamboat Uncle Toby

defendant it is said manifest error hath intervened, to the injury of the aforesaid *defendants*

as we are informed by *his* 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 the 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 Ottawa, in the county of La Salle, on the *2^d Monday in June* — 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. SAMUEL H. TREAT, Chief Justice of our said Court, and the seal thereof, at Ottawa, this *14th* day of *April* in the year of our Lord one thousand eight hundred and fifty *three*.

S. Leland
Clerk of the Supreme Court.
By P. H. Leland Depy. Clerk.

In Davices No. 31.

Warner S. Clark owner
of Steam Boat Uncle Toby
vs.
Nathl. Smith.

Writ of error.

Filed April 14th 1853.

Leland Clk.
By P. K. Leland dftg.

Nathaniel Smith

and

Wm L. Clark owner
of the steam boat Mole
Caly

Error from J. Davis
County

And now comes the said
Nathaniel Smith by his Atty & says
there are no such Errors in the said
Record and proceedings as above
alleged nor any nor either of them
Therefore he prays that said judgment
may in all things be affirmed

Manning Douglass
Atty for Deft. in Error

Nathaniel Smith

S. B. Noble To By

} The principal errors relied on are that the Court erred in not receiving the verdict of the ten jurors as sealed up & delivered by them - and in sending the jury back to find a new verdict.

8th In rendering judgment in manner and form as rendered - The verdict being in cost & damages the judgment must follow the verdict. The remittitur does not aid the matter because it is uncertain whether cost or damages were remitted, & besides the judgment is for neither.

9th Rendering judgment in rem & in personam 6 Bluff. 291 = 2 Carter & a 535 = 1 id 240 = 1 id 121 5 id 539 11 Mis. 295 it judgment should have been rendered by default against the Boat - The Boat should have been called.

10th Coal was ~~not~~ bought for the use of the Boat 5 Eng. 411 - 5 Wend 570 = 20 Wend 177-181 = 12 Mis. 571 - A statute which gives a new remedy ought to be construed strictly - 2 id. 65 = 40 id 24 - 10 Ren 75 - 5 Strange 258 -

11th The verdict was contrary to evidence & ~~was~~ was not supported by evidence - And the Court ought to have granted a new trial - 12 N. H. 171 = 27 Maine 557 = 11 Ill 142 = 5 Sumner 170 = 1 Met 221 = 15 Pick. 291 - 11 Mis 629 - 12 S. M. 536 20 Maine 156 13 Ill 697 =

The testimony of Scholer is negative testimony, he swears he does not know whether the coal was purchased for the use of the boat or not - He swears he does not know whether plaintiff knew that it was bought to sell again - He swears & examination - But Rant swears positively that the coal was bought to sell again & that Smith knew it - he is their sworn witness & not called or impeached - as to negative testimony - 12 S. M. 368 =

The evidence of Runt is not inconclusive con-
= trictory or doubtful = He swears positively & consistently.

Some reasons why Runt is right =

= Runt made the contract & was interested
in seeing being it =

= Runt knew the whole contract Scholey
knew only a part of it =

= Runt swears positively that plaintiff
knew that the coal was bought for sale =

= Scholey swears he did not know whether
plaintiff knew the coal was bought for sale or
not = But he swears that plaintiff went up on
the boat to get his pay = that he was to be paid
when the coal was measured = That Pills & Babbitt
sent along also 1700 bushels of coal at the same
time = that it was understood that was for sale by
the Boat = the immense quantity of coal furnished
by plaintiff = the length of the season = the im-
= possibility of consuming the quantity during
the season all confirm Runt & contradict
Scholey, or rather show that when he swears he
did not know whether plaintiff knew or not
that at least it is only negative testimony which
is opposed by positive testimony supported &
corroborated by all the facts =

= Runt is corroborated by the fact, that he
swears, that plaintiff was to go along to see the coal
measured & get his pay = Now since he did go along
for that purpose = both witnesses swear to this =

= Again the enormous quantity of coal shows
of itself, that it was not bought for the use of the
Boat = The contract was made 25th Sept. The Boat
could not run more than 60 days at most = They
had another barge of 1700 bush of coal belonging to
Pills & Babbitt furnished in the same way, making
in all 8000 bushels, more than the Boat could consume
in a whole year =

= Scholey heard only a part of the contract =
Cannell swears whether the contract was made
by the Clerk or Captain = don't know whether

The price was 7 or 8 cents = don't know whether
plaintiff knew that the coal was bought for
sale = don't know whether it was furnished
as supplies =

✓ Rand swears positively, he made the contract
himself = knows the whole of it = & swears that
the coal was bought to sell again and
that plaintiff understood it so =

✓ Rand swears that nearly all of the note
was given for coal & there is no conflict
in the testimony =

// A large portion of Scholey's testimony is what
Officers B. said; & of talk among hands & officers
& officer may be an Engineer, Clerk, Pilot
or Steward or Mate & yet none of these
persons can make a contract binding on
a Boat so as to give a lien under our Statute
upon the Boat =

✓ The instructions given by the Court
below were correct, but were entirely disregarded
by the Jury =

✓ The instructions under the evidence entitled
the defendant to a verdict

Plaintiff in order to recover had to show a contract
with the Captain supercargo &c for coals for the use
of the boat and for resale = Scholey swears that
by direction & authority of Captain Clark said coal
was furnished Ans 2^d & 3^d Said articles were
furnished "as supplies" by putting the coal in Barges:-

Officers of the Boat stated that the coal purchased
was for the use of the Boat = Ans 4th Agreed to pay
7 or 8 cents per bushel for all Smith's coal delivered
& put in Barges = Contract was made with the
Officers, Captain Clark = Captain Gammation =

Was not present all the time they were making
contract = was present part of the time = Smith
was to have the money as soon as coal was meas-
= ured

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Clark owner of Steam
Boat Uncle Toby

Nathaniel Smith

1853

31

12/33

Prepared

1853