

12203

No. _____

Supreme Court of Illinois

Sherman

vs.

Dutch

71641  7

United States of America
State of Illinois S.S.
County of Cook

Now before the Hon-
orable John M. Wilson Judge of the Cook County
Court of Common Pleas. within and for the county
of Cook and State of Illinois. at a regular
Term of said Cook County Court of Common Pleas
begun and holden at the Court House in the City
of Chicago, in said County and State, on the first
Monday being the sixth day of February in the
year of Our Lord One Thousand Eight Hundred
and Fifty four and of the Independence of the
United States the Seventy Eighth
Present the Honorable John M. Wilson Judge

David M. Troy Managing Attorney
Cyrus B. Bally Sheriff
Walter Kimball Clerk.

Attest

Be it Remembered that heretofore to wit;
On the Seventy Eighth day of May in the year our
Lord One Thousand Eight Hundred and Fifty
four came Alfred Dutch by Henry Clarkson
his attorneys, and filed in the Office of the Clerk
of the Cook County Court of Common Pleas, a precept
which said precept is in words and figures
as follows to wit;

Cook County Court of Common Pleas
Alfred Dutch

Francis C. Sherman, Mary
Whitke and Michael Regan } Trespass
Damages \$5000

The clerk will please issue Summons
in the above Cause directed to the Sheriff of Cook
County and returnable to the first term of this Court
Henry & Clarkson
Plffs attys.

And thereupon Summons issued out of the clerk's
Office aforesaid in said cause which said
Summons is in words and figures as follows
to wit:

State of Illinois
Cook County SS

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

We Command you that you Summon Francis
C. Sherman, Mary Whitke and Michael Regan
if they shall be found in your County, personally
to be and appear before the Cook County Court
of Common Pleas, of said County, on the first day
of the next term thereof, to be holden at the Court
House, in the City of Chicago, in said County, on the
first Monday of July, next, to answer unto Alfred
Dutch in a plea of Trespass to the damage of
the said plaintiffs as he says in the sum of Five
Thousand Dollars. And have you then and
there this writ with and endorsement thereon

in what manner you shall have Executed
the same.

Seal
Cur

Witness Walter Kimball clerk of our
Said Court and the Seal thereof at the
City of Chicago in said County this
Twenty Eighth day of May. A.D. 1853.
Walter Kimball
Clerk

Which said summons was afterwards ~~to wit:~~
on the 12th day of September in the year aforesaid
returned into the Office of the Clerk of said Court with
the following endorsement thereon

Served by reading to H. Sherman Junr.^r
and to Michl Regan June 8th 1853.

Further Served by reading to Mary Updike
June 15th 1853.

C. P. Bradley Sheriff
By Michael Regan
Deputy

And Afterwards to wit on the Twenty fourth day of
August in the year aforesaid came the said
Alfred Dutch by Henry Helakson his attorney
and files therein his ~~warrant~~ of attorney declaration
which said declaration is in words and figures as
follows to wit

In the Cook County Court of Common Pleas
Of the September Term A.D. 1853.
Cook County

vs
Alfred Dutch by Henry Helakson
his attorney complains of Francis C. Sherman,
Mary Updike and Michael Regan in a plea of
Incap.

For that the said defendants on the Twenty Second day of March in the year of Our Lord One Thousand Eight Hundred and Fifty Three. at Chicago in Said County with force and arms &c broke and entered a certain printing Office of the said plaintiff Situate and being in Randolph Street in the said City of Chicago and County of Cook and then and there made a great noise and disturbance. therein used Statized and continued therein making such noise and disturbance for a long space of time to wit for the space of ten hours. then went galloping and then and there forced and broke open. broke to pieces. damaged and spoiled two doors of the said plaintiff of and belonging to the said printing Office. and whereinto the same was then and there fastened with the appurtenances to wit of the value of Ten Dollars of lawful money of the United States. and also during during the time before said to wit on the said Twenty Second day of March aforesaid with force and arms &c seized and took divers goods and chattels to wit Two Thousand Nine hundred pounds of assorted Type Twenty cases. Ten Chairs. Two composing Stones. Four Gallens. Ten Gallies five Reqs of Ink Ten Reams of paper. Three Stoves and pipes. Two Hundred Eight One Hundred plates Five Hundred leads Five hundred Rules Twenty Composing sticks Six Stands Ten Chairs. Two Tables one sofa. one writing Desk Ten Book Cases. One Hundred and Fifty volumes of books. and Twenty five Splines of heavy paper files of the said plaintiff then being found and being in the said printing Office and being of great value to wit of the value of Three Thousand

Outlets of like Lawful Money of the United States
and carried away the same and converted and
disposed thereof to their own use. - By Means of
which said Several premises the said plaintiff
was during all the time aforesaid not only greatly
disturbed and annoyed in the peaceable possession
of the said printing Office of the said plaintiff but
also the said Plaintiff was during ^{all} the time aforesaid
hindred and prevented from carrying on
and transacting therein his lawful and necessary
affairs and business to wit at Chicago aforesaid
in the County aforesaid.

And also for that the said defendant
on the day and year aforesaid at Chicago aforesaid
with force and arms &c. broke and entered a certain
other printing Office of the said plaintiff situated
in Chicago aforesaid in the County aforesaid and
then and there Ejected expelled put out and drove
the said plaintiff from the peaceful use, occu-
pation and enjoyment of the said last mentioned
printing Office and kept and continued him
so Ejected expelled put out and drove for a
long space of time to wit from thence thitherto
whereby the said Plaintiff during all that
time lost and was deprived of the use and
benefit of the said last mentioned printing office
to wit at Chicago aforesaid in the County
aforesaid.

And also for that the said defendant
on the day and year aforesaid at Chicago aforesaid
in the County aforesaid with force and arms &c.
Seized took and carried away certain goods,
Chattels and effects to wit: Two thousand Five hundred

four hundred of assorted Types, Twenty cases, Ten chains
Two Composing Stones Four Rods, Ten Galleys.
Nine Kegs of Ink Ten Reams, of paper, Three Stones
and pipes. Two Hundred cuts, One Hundred Plates
Five Hundred leads, Five Hundred rules, Twenty
Composing Stick Six stands, Ten Chains, Two tables
One Sofa One writing desk Two Book Cases
One Hundred and fifty Volumes of books
and fifty volumes of newspapers, files of the
said plaintiff of great value to wit of the value
of Three Thousand Dollars, and converted and
disposed of the same to their own use.

By means whereof the publication
of a certain Daily and Weekly Newspapers of
the said plaintiff published in the City of Chicago
aforesaid, and named the Daily Commercial
Advertiser and the Weekly Commercial Advertiser,
was suspended for a long space of time to wit for
the space of three months then next following, and
the said plaintiff was thereby then and there put
to and did necessity in his great expense in
obtaining and procuring the necessary materials
and other necessary things to resume and continue the
publication of the said newspapers, and during
all the time of said suspension of the publication
thereof, and afterwards for a long space of time
from thence thence to the said plaintiff hath thereby
suffered great loss and damage in and by the
loss of large quantities of advertising for the General
Government of the United States, and particularly
the publication of certain laws of the United
States, which were printed and published by
authority of said General Government in the

said Daily Commercial advertisement so published
by the said plaintiff as aforesaid. and also in
and by the loss of the advertisements of various
departments of the said General Government of
the United States. and also in and by the loss of
the advertisements of private persons. Merchants and
Others in the cities of New York, Boston, Philadelphia
and Chicago and other places in the United States
which were at the time of the committing of the said
Trespasses inserted, or would have been inserted in
the said Daily Newspaper of the said plaintiff
and in and by the loss of lining large gains and
profits, which otherwise would have accrued
to the said plaintiff therefrom - all of which became
and were wholly lost to the said plaintiff and were
of great value to wit of the value of Two thousand
Dollars to wit at Chicago, aforesaid in the County aforesaid.

And also for that the said Defendants
on the day and year last aforesaid, at Chicago aforesaid
in the County aforesaid, with force and arms
& seized, took and carried away certain goods, chattels
and effects of the said plaintiff of the like number
quantity, quality, description and value, as the said
goods, Chattels and effects in the said First Count
mentioned and converted, and disposed of the same
to their own use, and other wrongs to the said plaintiff
there and there did to the great damage of the said
Plaintiff and against the peace of the people of
the State of Illinois, wherefore the said plaintiff
says that he is injured and has sustained damage
to the value of Twenty thousand dollars and therefore he
brings this suit &c.

Henry & Clarkson Plffs attys

And afterwards to wit: On the fourteenth day of
September in the year aforesaid came the said defendants
by Judd & Smith their attorney, and files with the
Clerk aforesaid their plea and notice, which said
plea & notice were words and figures, as follows to wit:
Clerk County Court of Common Pleas.

Francis C. Sherman Mary
Wpdike & Michael Regan

Alfred Dutch

And the said defendants
by Judd & Smith their attorney
came and defended the young
Loring when &c. and say they are not guilty of the said
supposed injuries as in said declaration alleged
against them or any or either of them in manner
and form as the said plaintiff hath above thereof
in declaring alleged against them and of this they
put themselves upon the County &c.

Judd & Smith

Attys for Defs

To
The Plaintiff & his attys

Take Notice that upon the
trial of this cause the defendants will go in evidence
under the general issue above pleaded and insist
on a complete defence to the plaintiffs action that the
building and premises mentioned in the plaintiffs
declaration at the time mentioned in said declaration
was the property and belonged to the Estate of Peter
D. Wpdike late of Chicago deceased, and that the
defendants Mary Wpdike was administratrix, and
Francis C. Sherman, administrator upon the Estate of
said Peter D. Wpdike, and that Mary Wpdike widow
of said Peter D. Wpdike, deceased as administratrix and

said Francis C. Sherman administrator had the Charge and Management of the said building and rooms in said declaration mentioned, and that the said plaintiff in this suit was in the possession and occupancy of said building & rooms, as a tenant and lessee of said defendants Mary Updike Administratrix and Francis C. Sherman administrator of said Estate having held over under a lease Executed by Mary Updike of the one part and Alfred Dutch of the Other part, and bearing date the twenty Sixth day of January 1852, whereby said rooms were demised to said Alfred Dutch from the first day of February 1852. for and during and until the first day of May 1852. at the rent of ten dollars per month payable on the last day of each and every month and that the said plaintiff having held over under said lease as aforesaid was indebted unto said Mary Updike, administratrix and Francis C. Sherman administrators for upon said estate of Peter S. Updike for rent of said rooms in the sum of fifty One dollars and Sixty Six Cents and being so indebted for said said plaintiff had and did refuse and neglect to pay said rent to said defendants Mary Updike and Francis C. Sherman, and they for the purpose of collecting said rent before the commencement of this suit to wit on the twenty first day of March 1853. made and signed in, granting their warrant directed to any Constable of said County of Cook or to any person of said County directing him or them to distrain the goods and chattels of said plaintiff wheresoever the same might be found in said County sufficient to satisfy and pay said sum for rent which said warrant was afterwards to wit on the day and year last aforesaid, delivered by said defendants Mary Updike and Francis C. Sherman

to the said defendant Michael Regan to be by him executed in due form of law and the said defendant Michael Regan in pursuance thereof did afterwards to wit on the twenty first day of March 1853 enter said rooms and distrain and take said goods & Chattels (being the property of said plaintiff) found in said County of Cook in virtue of said distress warrant to collect said rent as he lawfully might do and which is the same act complained of and alleged against said defendants in said plaintiffs declaration.

And the said defendants will for the good in evidence and insist evidence under the general issue above pleaded as a defence to the plaintiffs action that said plaintiff heretofore to wit on the twenty first day of March 1853 was indebted unto the said defendants in the sum of fifty, four dollars and Sixty Six cents for the rent of three rooms in the second story of building numbered Ninety One on Randolph Street in the City of Chicago in the County of Cook and State of Illinois which said sum was due from said plaintiff to said defendants Mary Widge and Francis Le Sherman and was wholly unpaid at the date and place last aforesaid and which said rent the said plaintiff had and did then and there refuse to pay to the said defendants and that the said defendants for the purpose of collecting said rent did then and there to wit on the twenty first day of March 1853 at Chicago aforesaid make out and sign their warrant in writing as follows Namely:

State of Illinois
County of Cook

To any Constable of said County of Cook or to any other person of said County, Within the goods and Chattels of Alfred Dutch which are liable to be distrained whenever the same may be found in the County of Cook for the sum of fifty one dollars, and Sixty six cents, being for rent due us as administrators of the Estate of Peter D. Updike late of said County, for the premises hereinafter as follows, namely the three rooms in the Second Story of the building numbered Ninety (90) on Randolph Street in the City of Chicago, said sum of fifty one dollars, and Sixty six cents being the balance due for rent for the use of said rooms from the first day of May last until the present time which said rooms are now occupied by the said Alfred Dutch he having held over from the first day of May last under a lease of said rooms from Mrs Mary Updike administratrix of the Estate of Peter D. Updike

Dated Chicago March 21, 1853.

J. C. Sherman, Administrator
Mary Updike, Administratrix

Which said Harrow was afterwards to wit on the day and year last aforesaid delivered by said defendants Mary Updike and Francis C. Sherman to the said defendant Michael Regan to be by him executed in due form of law, and the said defendant Michael Regan in pursuance thereof did afterwards to wit on the twenty first day of March in the year 1853. at Chicago in said County of Cook enter said rooms and distrain and take said goods and Chattels (being the property of said plaintiffs

found in said rooms in virtue of said distress
Warrant, and to collect said rent as he lawfully
might do and which is the same act complained
of and alleged against said defendants in said
plaintiffs declaration

Judd & Smith
Attys for Defts.

And afterwards to wit: On the Thirtieth day of
September in the year aforesaid, came the said plaintiff
by his attorneys and filed in the Office of the Clerk
of said Court their Replication, which said
Replication is in words and figures as follows
to wit:

In the Court County Court of Common Pleas
September Term A.D. 1853.

Alfred Dutch Plaintiff

Francis C. Sherman Henry
Uphike and Michael Regan
Defendants

And the said plaintiff as
to the plea of the defendants by them above pleaded
and whereof they have put themselves upon the Country
to take the issue.

Henry Heland
for Plff

And afterwards to wit: On the Eighth day of October
said day being one of the days of the September Term of said Court A.D.
in the year aforesaid, the following proceedings were
had and entered of Record in said Cause to wit:

Alfred Dutch

Francis C. Sherman May
Hedrick & Michl Regan

By agreement of parties it is ordered that the above entitled suit be tried by a jury at the next November vacation term of this Court

And afterwards to wit On the Sixteenth day of February in the year of Our Lord One Thousand Eight Hundred and Fifty four - said day being one of the days of the February Term of said Court for A.D. 1854 the following proceedings were had and entered of Record in said Cause To wit
Alfred Dutch

Francis C. Sherman May
Hedrick & Michael Regan

Indorsed

And now at this day Court the said plaintiff by Henry & Clarkson his attorneys and the said defendants by Trunk & Collins also come and upon being joined herein it is ordered that a jury come and thereupon come the jurors of a jury of good and lawful men To wit: Michael McQuinn, Sylvester Blendean, B. Butchelder, Thomas Hill, Francis Ellis, William P. Eaton, Elon, Gray, B. Hutchinson, Jacob Guiler, Martin Brannan, J. D. Snydergrass, and Michael Ford who being duly sworn and thereupon sworn well and truly to the issue joined as aforesaid, and after hearing a part of the evidence herein, the jurors of agreement have arrived by agreement of parties the jurors are free to separate to wait the court, to morrow morning.

time the further hearing of this cause is past,

And afterwards to wit: On the Seventeenth day of February, in the year aforesaid, said day being one of the days of the February Term of said Court of Common Pleas for the year aforesaid, the following proceedings were had and entered of Record in said Cause to wit:

Alfred Dutch

Spencer C. Sherman May Trespass.
Hedrick & Michael Regan

And now again come the said parties by their said attorneys and the jury empanelled in this cause on yesterday also come and after hearing a part of the testimony by agreement of said parties the further hearing of this cause is postponed to Monday next to which time the jury are permitted to separate

And afterwards to wit: On the Twentieth day of February in the year aforesaid, said day being one of the days of the February Term of said Court in the year aforesaid, the following proceedings were had and entered of Record in said Cause to wit:

Alfred Dutch

Spencer C. Sherman May Trespass.
Hedrick & Michael Regan

And now again come the said parties by their said attorneys, and the jury empanelled in this cause on Monday last also come and after hearing a part of the evidence herein the hour adjournment having arrived the further hearing of this

cause is postponed until tomorrow morning, and by
agreement of parties the jury are permitted to separate

And afterwards to wit: On the twenty first day of
February in the year aforesaid: said day being one of
the days of the aforesaid February Term of said Court.
in the year aforesaid the following proceedings were
had and entered of Record in said cause to wit:
Signed Dutch

Francis W. Sherman, Mary
Widdie & Michael Regan } Inespass.

And now at this day come the
parties aforesaid by their said attorneys, and the jury
empanelled in this cause also come and after hearing
the Evidence adduced the hour of adjournment having
thereupon arrived the further hearing of this cause is
postponed until tomorrow morning to which time
by agreement of parties the jury are permitted
to separate

And afterwards to wit: On the Twenty Second day
of February in the year aforesaid, said day being
one of the days of the aforesaid February Term of
said Court in the year aforesaid, the following proc-
- dings were had and entered of Record in said
cause to wit:
Signed Dutch

Francis W. Sherman, Mary } Inespass.
Widdie & Michael Regan

And now again come the said
parties by their attorneys aforesaid, and the jury

empannelled in this cause also come, and after
hearing the argument of Counsel and instructions
of the Court retire under charge of an officer of the
Court to consider of their verdict, and afterwards
come into Court and say me the Jury find the
said defendants guilty as charged in said plaintiff
Declaration, and we award the said plaintiff damages
to the sum of Four Thousand Five Hundred dollars
Such thereupon the said defendants by
their said attorneys enter their Motion therein for a
New trial in this cause

Which said Motion is
in words and figures as follows, to wit;

Case County Court of Common Pleas.
Francis C. Sherman Mary
Uphike & Michael Regan

Alfred Dutch

The defendants by said
& their attorneys.

Move the Court that the verdict of the Jury in this case
be set aside for the reason:

- First said verdict is against the Evidence
2^d The verdict is against the law
3^d The Court Erred in giving the instructions for the
plaintiff, numbered One Two Three and Five
4th The Court Erred in sustaining each of the several questions
put to the witnesses by the defendants counsel in not permitting
defendants to prove that the plff. was tenant to Mary Uphike
and Francis C. Sherman, What rent was due to them from
the plaintiff at the time of the distress, and in not allowing
defendants to prove the execution of the distress
warrant, and the judgment before the Justice of
the peace thereon for the rent given in evidence by the

Plaintiff

Defendants for Defts

And Afterwards to-wit: on the fourth day of March in the year of Afore said said day being one of the days of the February Term of said Court. for said Year the following proceedings were had and entered of Record in said Cause. to-wit:

Shifred Hetch

Francis C. Sherman, Mary
Hedrick & Michael Regan

(Inexpast)

And now again come the parties aforesaid by their said attorney, and after argument of Counsel. heard on the said defendants Motion for a new trial in this Cause. the Court being now fully advised in the premises overrules said Motion. Therefore it is considered that the said plaintiff do have and recover of the said defendants his damages of Four Thousand and five hundred dollars in form aforesaid by the jury here specified, and also his costs and Charges by him about his suit in this behalf expended and have Execution therefore.

And thereupon the said defendants enter their exceptions to the opinion of the Court in overruling their said Motion. and pray an appeal to the Supreme Court of this State, which is allowed on their giving bond in the sum of nine Thousand Dollars. to be approved by the Court said bond and bill of exceptions to be filed with the Clerk of this Court by the fifteenth day of March instant.

And afterwards to wit On the fourteenth
day of March, in the year last aforesaid, there
was filed in the Clerk's Office of said Cook
County Court of Common Pleas, an appeal bond
which said appeal bond, is in words and figures
as follows to wit;

Know all men by these presents that we Francis C
Shenman and W. H. Husted and well and firmly
bound unto Alfred Dutch in the penal sum of nine
thousand dollars, lawful money for the payment
of which yell and muty to be made we bind our
elves, our heirs, and administrators, jointly generally,
and firmly by these presents. Witness our hands and seals
this 13th day of March in the year 1854.

The condition of this obligation is such,
that if whereas, the said Alfred Dutch did on the
twenty second day of February, in the year 1854,
before a jury in the said County Court of Common
Pleas, the Honorable John M. Wilson presiding, render
a judgment, against the above named Francis C
Shenman, impleaded, with Mary Ndike and Michael
Regan from which judgment, the said defendants
Francis C. Shenman, Mary Ndike and Michael
Regan have taken an appeal, to the Supreme Court
of the State of Illinois now if the said Francis C
Shenman, with the other defendants above named
shall prosecute said appeal with effect, and shall
pay as came to be paid the judgment costs, interest and
damages, in case the said judgment shall be affirmed
then this obligation, with the said Shenman, remain in
full force and effect

Appraised March 14 1854
John M. Wilson

F. C. Shenman
W. H. Husted (Seal)

And Afterwards to wit: On the same day was
filed in the Office of the Clerk of said Court, a bill
of exceptions which said bill of exceptions is in words
and figures as follows to wit:

In the said County Court of Common Pleas. Sd.
J. A. H. 1854.
Alfred Lutch

Francis W. Sherman, Manager
Lynch and Michael
Regan

Trespass.

Be it Remembered that at the
February Term of said Court, the above entitled
Case came on to be tried, and in support of the issue
therein joined between the said plaintiff and the said
defendant, the plaintiff called the following Witness
First Joseph Haines who stated that at the time of the
commission of the alleged trespass in March 1853
he was employed as an apprentice in the printing
business of Mr. Lutch and as such assisted in
his printing Office to print the Commercial Advertiser
he remembered Mr. Lutch being present in attendance
at the Celebration of the opening of the Chicago & Rock
Island Rail Road on the 27th day of March 1853. the
printing office of Mr. Lutch was on Randolph Street, it
comprised a composing room, and Editorial room
and a little side room, occupied as a bed room, in
the composing room were type, cases, and the necessary
articles for publishing a newspaper but no printing press
in the Editors room were books, files of the newspapers,
signatures, chairs, table, Lamps, Stone book case
On the composing room were two stones, chains, two composing

stones used by printers, did not know how many type cases there were. The type used in printing the paper, was mostly Brierly & Rowland, there was type for head letters and Shaw type of the Brierly and Rowland type there was about two thousand pounds, about one thousand pounds each. there was some type that had not been used. I was in the Office in the Evening of 22nd March 1853, when Regan came there, it was between Seven and Eight O'clock: had been to supper & returned, the Office was lighted with candles. Regan spoke to Mr Scott, a carpenter. Regan came alone He then went down stairs was gone ten or fifteen minutes, when he came back with three or four men. They then took hold of the cases, in which the type for the paper about set up, and began moving them they moved it off the stones, and piled the type Regan took the men, that were with him to take it down stairs, and put it into a waggon which was standing before the door in the Street, this was a lumber waggon. Witness saw the type in the waggon, but did not see, the men put it into the waggon. It was piled, they took away besides the type, cases, carrying rules, one Rack two Carpsawing Stones one rack, and a standing galleys in all that were left in that room, that night, there was type enough to print two such papers, as the Commercial Advertiser, it was printed daily and weekly nothing was taken out of the Editors room that night, went down stairs and looked in the waggon, type was all piled cases turned up side down. the men handled the printing materials roughly, type is usually tied up carefully before moved, saw some type that was scattered on the stairs and side rack. that in the waggon was taken off & put into the Prisoner House Stable

Saw it there mixed with dirt and horse manure, in
a large dry goods box. the Cases. Column rules were also
in the box. Saw Regan with one or two men the next
Morning at the Office he had a drag with him he
took away some of the remaining things, some of
them were taken away by Dutch. does not remember
all things, all things he took away, thinks he took the stone
from the Editors room and the Furniture. he took
every thing out of the Editors room to foot of stairs
but don't know how he took away with him. witness
afterwards saw some type, cases, Column rules, in
some box in Dale & Kearsage warehouse. Does not know
who took it there. this was about a week or so. Can't
state positively. did not hear Scott say any thing to
Regan - Witness offered to help them to move the type as
it should be moved. did not see Shennan at or after the
time the engine was made. This Witness upon his cross
Examination stated, that he had been in Mr Dutch
employ. three or four months, when this took place
Mr Dutch's son was at the Office when Regan came
with the hands. Young Dutch and Regan went
out to see Mr Shennan or Mrs Updike. She was
then managing the things when they came back, they
were an hour and a half in managing the things. don't
neglect that Regan asked any of the hands in the office
to help to move the things. after the daily was printed
they used to distribute so much of one side as was
not wanted to make up the weekly. some of the type
was new some between new & old. many weighted type
Can't tell how many chains there were. they were old there
was a plain table. One book case. does not know whether
it had glass or not. it was a plain book case. saw perhaps
a handful of type scattered on the side walk. Saw some

on the floor. The type for the daily paper, was set up pretty much.

The Second Witness Called was John S. Scott who stated he was a printer by business, was employed by Mr Dutch as a compositor in his office, when this Deposition was made. Mr Dutch was away at the time, at the Celebration of the Opening of the Rock Island Rail Road. Regan enquired for Mr Dutch, it was between Six and Seven O'clock in the Evening, when Regan came in. He called me out of the Compositors Room & said he had orders to take the Office. I asked if he would not wait for Mr Dutch's return. He enquired for Mr Dutch, Mr Joseph Dutch was not there in the Office. Regan went ~~away~~ and soon after came back with more men. They began removing the materials from the back room, which was used for a Compositing room, none of them being printers they handled it roughly, none but a practical printer can manage it properly. I remarked to them that it would ruin the type to remove it unless it was tied up. I alluded to loose type in the case. I observed I had better look up the type in the galleys. I looked round for the cords, but I could not find it. to tie the type up with. some of the type had been carried down before this, some of the type was shaped off into the box and was lost. I saw one case turned up side down, what I saw occurred in the Office. I did not see any of the type put into the wagon what became of the type after it was taken away I do not know. The type was put into a box. I saw some type on the pavement the next morning. In carrying the type out of the Office a good deal was lost. Throwing the type that was set up into a box would

pie it. Cant tell how many cases there were. fine hands
were usually employed in the Office each had
a case for themselves. there was rather more of the Non
paniel than of the Panerist. the Non paniel is the Finer
Valuable. There was type enough in the Office to
print two such papers, as the Commercial Advertiser
daily and weekly. The laws of the United States were pub-
lished in the paper. Matter for the laws were set up
in the galley at the time of the seizure. The paper
was set up but not made up. Sometimes Editorials
Matter was brought in late. There was some minimum type
in the Office. I stayed till Regan locked up the office
I did not see any matter destroyed. there was none on
the Stone except. for the weekly. There might have been a
case of type on the floor, of the composing room.
I dont think there was any on the floor of the com-
posing room. I have assisted in setting type. If
any, we removed with out injury, when carefully hand-
led some of the type was put by the removal of it;
Cant examine

I had worked in the Office from the previous
November. Regan said he had a distrip warrant.
from Chapman & Mrs. Updike. Regan said he had
waited for Mr. Dutch to come home. the paper was printed
in the Journal press. Joseph Dutch came back before
they began to remove the Material. I talk when they
came that Joseph Dutch would remain pretty
soon. Regan held on; requested me to help to move
the type. I saw about a handful on the pavement
There was a book in the kind to move. time at fault
but high. it would stand on a table.
Thirdly Thomas J. Shack who stated that he knew the
Commercial advertiser office in March 1853. He

was passing by it one Evening last March after
having left off work. on his way to the Theatre Sup-
per then engaged in lining down a form from the
Printing Office & saw them put it into a waggon
standing by in such a manner that the type fell
out of the form & into the waggon. the rattling
of the type arrested my attention. so that I turned
back to see the type. went up stairs and found
every thing up side down. saw some type lying
on the stairs. some on the floor. about a handful
here or less. This witness stated on his cross
Examination. that he did not see Regan. he saw what
was put in it was a square of plating matter
what is usually called a galle.

Joseph Dutch was the fourth witness that was called
by the plaintiff. He stated that he was a son of
the plaintiff and had been employed about
his Father's Office when the seizure took place.
It was on the day of the Rock Island Rail Road
Celebration. Mr Dutch was gone to attend at
it. He went to Supper that Evening about six
o'clock. and came back to the Office again about
half past six or after to seven. left the
Office again about seven or a little after
left Scott and Haines there he thinks. did not
Hattie who was there believe Scott & Haines. the
comprising room contained type. Cases. standing galley
stages. Stands. Column rules. Sticks. leads. all
things usually belonging to a printing Office, of
Barnes type. there was about a thousand pounds.
and as much of non parcel a quantity of heads
letters in addition. there was more than enough material
to print one paper. part of the material was new, part

was all some had been used some time. There
must have been ten pair of cases. there was
type besides in stone in standing galleys and
more in boxes a large quantity of which had
not been used. I was absent about fifteen minutes
when I went away about Seven O'clock. I
saw a waggon. Before the door when I came back
which struck me as a farmers waggon standing
there an ordinary business. I went up stairs saw a
man coming down with two cases. saw Mr Regan
and two other men they were clearing up type
taking cases down from off the stands. asked
Regan what it meant. He replied that he had
orders to clear out the office. He said they
were handed to him by Mr Henry Smith. had
orders given him to clear out the office. went
for Mr Smith but could not find him went
back to the office. the men were conveying out
the type as usual. I asked Regan if he would
tell the men to stop carrying out the type until
he could see Mr Sherman. pretty much all the cases
had then been removed. He ordered the men to stop. we
went to find Mr Sherman. but did not find him.
I went back and found the men at work. saw them
at work but did not see what they did. Regan
was not with them when I came back from see-
ing Sherman. but Regan returned alone about
a minute afterwards. when Regan came back
as soon after one of the men was scraping the
type into a box or pair. I asked Regan to wait
till I could see Mr Smith. he made no answer. but
one of the men said he would. he damned if I will
stay here all night. and he went on with his

work. when I come back from Mrs Updikes
I found most of the property in the composing room
removed. I did not look into the waggon. it was a
lumber wagon. I asked Regan if he would
let me have the Key of the Room. to sleep there
that night. He said I might do so. He did not
want the Key that night. I slept in the little
room adjoining the Editors Room. There were in
that room a table, washstand, lounge one or two
Chairs, bed clothes, book case, with open shelves
without doors. there were between sixty and seventy
Volumes in it, it was divided the lower division
contained books of a larger size, and the upper
shelves, books of a smaller size. the books were of
pretty much every kind of Subject. Many of the
books were Holy Scriptures, and some were my
papers. I cant state how much they were worth
I paid \$100 dollars for one book, the plaintiffs
counsel then put this question to the Witness. Do you
know of any books there that were of particular
value to the plaintiff, from any circumstances in your
knowledge, and if so state the circumstances, and the value
of the books, to this question, depts counsel objected, and
they cant overrule the objection. to which opinion
of the Court. in so overruling the said objection
the defendants counsel then said there is cepted.

Answer.

There were many books there which it took a great
deal of time to get together I cannot place a cash
value upon them. The volumes in the lower shelves
were of the size of law books, some of the books were
upon the subject of Banking the books treated of most
every subject which the plaintiff used to write of in
his paper. There were a great many little books

there were some which he got in Boston two or
three years ago. He used to refer to them. There
was one French Book and a Latin Quotation book
There were tables stores chains files of the paper
Since it was started. accounts books two or three
books, and there were some other books in a
heap, under the stairs. There were Hunts Merchants
Magazine, and all the the Quarters, all the British
quarters, and American monthlies, when received
being placed there, they were some of them bound. They
had been receiving these magazines for three or four
years. there were thirty or forty volumes, in all besides
the periodicals in the heap. Including the maga-
zines there were from three hundred and fifty
to four hundred volumes. The plaintiff was in
the habit of receiving books and new publications
The files of the paper from January 21st 1852 being
in the Editors Room, the files of the paper for five
years, or five years and a half were in a closet off
from my bed room, we had the files of the paper
for five years and a half as near as I can recollect
it. No type had been disposed of for five or six months
before. The plaintiff counsel then asked of the witness
the following question. "Do you know anything
of the advertising patronage of the Commercial Adver-
tiser at the time of the seizure of the printing materials?"
The defendants counsel objected to the question the objection
was overruled, and the defendants counsel then took an
exception to the ruling of the court. answering. The paper
was full of advertisement foreign and local. they
were paying advertisements, and were from New
York, and Boston, and from the business of the
City.

the witness stated on his cross examination that he was not a practical printer, had set type for about three months, was the local Reprinter, Mailing Clerk and general Overseer, the paper had been established some six or seven years, was printed once when Sherman's Cause for went down after they moved into the Office. Regan told me that his Office was in Warrners Hall. Regan would not promise not to take anything away. I don't think that he said to me that he had a list of the amount. Some of the property was removed before Regan went to look for Sherman. I met a man when I first went preparing to take away the property they had two cases of type. I asked Regan to order the men not to take the property. I held on till I came back, when I went back the men had got the property down. I had no actual knowledge of the weight of the type, a part of it had been use five or six years in printing a daily paper. I can't tell how much there was in the boxes. They were removed the next I saw a galley taken down and put into a delivery wagon. I saw one or two handfuls of type on the side walk. There were three or four handfuls on the floor, and on the stairs. I did not take much notice of the type scattered on the floor. The book case was about five feet long. There were eight or ten bound books on the table, Webster's Dictionary Cassin's Essay on Political Economy. In the large book case were two or three very heavy books. I can't say what subjects were treated of in the others. I did not see Regan take any. I have since seen some of the books in plaintiff's possession. I slept in the little room that night. The books were there then I do not

Know that Regan took away a single book or file
of papers. I don't know that he took away a single
Magazine, or periodical or pamphlet. The Office
was cleaned out the next morning, the table was
Cleared out of the Office in the afternoon of the next day,
I have seen some of the books at Stephens, since that
time. I had the key of the Office the night the seizure
was made.

Henry D. Wheeler was the first witness called
by the plaintiff, who stated that his place of business
was in the same building in which Mr. Blutch's
Office was at the time of the seizure. He remembers seeing
a waggon in the street standing opposite to Mr. Blutch's
door, in the evening of the day on which the Rock Island
Rail Road Celebration took place the waggon was pretty
loaded with type cases. Saw men about the premises
one came down with a frame in his hand
without type, and threw it into the waggon, one
had a lot of under sticks in his hands, saw him
saw him pick up type at the bottom of the stairs
and throw it into the waggon. Saw Regan doing
nothing, nor giving orders, this was between eight
and nine o'clock in the evening. Saw some type
scattered on the sidewalk, and some in the street
saw some frames in the composing rooms, and some
type on the floor. Heard Joseph Blutch tell one
man to handle the things careful, the type and things
were lying in confusion in the bottom of the waggon.
did not see Regan there the next day, looked into the
rooms about noon, saw some paper flying about
the street. I saw three drays there the next day, loaded up
one had galleys, and the other had led galleys &
galleys. Upon being cross examined this witness

said that he did not know whether Dutch kept his office
Open in the Evening or not. He did not see Regan
unloading the drays to be loaded. There was just
enough type on the side walk to say there was type
Spent were two of blutches more than the next day
I saw two Dutch go up to the Office about noon of the
next day. I think two drays were there at the time
J. H. Ballantine was then called by the plaintiff I knew the
Commercial Advertiser Office when it was destroyed
I saw some of the type afterwards in a box in the Sherman
house stable. Then I saw it again in Dale & Runway
ware house. I purchased it in the latter part of July
bought it of Mr. Smith and paid him for it & took
his receipt. It purported to be a receipt for money
paid for property sold at the sale of blutches property
under a distress Warrant against blutches for rent
The type which I bought and paid for were in pie
it was broken and injured. Ques Examined
I saw this property sold at Auction at Dale & Runway
ware house. It was sold by a constable, not Regan.
It was bid off by Smiths name for Sherman. I had
talked of buying from Dutch. I did not acquire
the type. I do not know how much of it I bought. There
were cases of type. Stands, stones. if had been broken
injured piece if it was pretty old. The type said was
Paler or non panel. There were three stones two old ones
and one good one. Cant tell the exact time of the auction
sale. it was before I bought of Smith. Re Examined
The type was all mixed up together
The plaintiff then called Joseph S. Bennett, who stated
he was a printer, was employed in the Office of the
Commercial Advertiser in Fall of 1852. I know
what materials were in the Office at that time

The Type was Benier and Non panic. There was sufficient
type in the Office to get out a daily paper larger
than the daily advertiser, two or three columns, and a
weekly paper larger than the weekly advertiser by
two columns. The Witness was then shown the Michigan
Republican, a paper of eleven columns, date of Feb
10, 1854, and said the type was sufficient to print a
paper of that size. thinks there was from five to six
hundred pounds of Benier type in the Office, and
from eight hundred to one thousand pounds of
non panic type. Witness worked in the Office, there
was a good deal of type in the office, that had
never been used, it was tied up in bags. The
Office was well supplied with Chalmers Column
Rules, Stands. It was a complete Office, as far
as I know. I don't know the value of the adver-
tising, considerable from Boston, some some local
the paper was full. One hand was employed to set
up the advertisements. The advertisements were of
all descriptions. The laws of the United States were
published in the paper. About two columns used to
be taken up with Government advertisements. I always
thought the advertising patronage very good. Cross
Examined. There has been a printer fifteen years there
has been a foreman three years, was foreman one week
for Mr. Hatch. Andrew S. Mapkins, was a
printer, worked in Mr. Hatch's Office, three months in
the summer of 1852. has been seven years a printer
There was materials enough in the Office to print
any paper in the City. The type was non panic and
Benier. There was a weekly published in the Office
besides the daily. the weekly contained eight columns.
The Office was supplied with all the articles necessary

in a printing Office. There were about nine hundred
pounds of each sort of body type, and also some Head
letter type. The advertising was from the city and from
Eastern Cities. I don't know if the advertising was paying
or not. The United States Laws were published in the
paper. They had often to leave advertisements out. one
man was employed to set up advertisements. part of
the time had to have extra help for that. (Cross Examination)
went into Dutcher's Office in July 1852. Spent was about
nine hundred pounds of each kind Series and Non
series. Not all the type was in cases, part of it was
in boxes, there was three boxes full of type not
in use. A quarter of the Non series was in boxes.
Don't know how many papers were printed. Don't
know how many subscribers the paper had. Don't
know the circulation of the paper. The Series was
half worn. The Non series was mostly new.

The next Witness Benjamin H. Seaton testified
that he was a practical printer. Had published
a daily paper himself for nine months. Had been
in an Office two years. In September 1852 being
about to make an arrangement with Mr. Dutcher
to publish the paper, I examined into the conditions
of the Office. I examined the advertisements. The
plaintiff's Counsel then proposed to ask the Witness
"From the Examination which you made what
estimate did you set upon the advertisement business
at that time of the plaintiff?" Objected by the depts
Counsel. Objection was overruled by the Court
allowed the plaintiff to give the evidence as matter
of aggravation - Answer. I came to the conclusion
that the advertisement business of the paper was
worth eight thousand dollars a year. The Pliffs

Could then asked what was the ^{value of the} business as an
Establishment to buy at that time. The question was
Objected to and the Objection overruled, and an
Exception was taken to the ruling of the court. An
Establishment so old as that was and doing as well
as I think that was, ought to be worth ten thousand
dollars. I spoke of the value of the good will of
the Establishment, not of the value of the materials
but of the good will including the Circulation
of the paper. I could not tell how much material
there was there was in the Office. I can say
how much it would take to print such a paper
as the Commercial Advertiser was. It would take
nine hundred dollars worth of plain type to
print such a paper as that was. the other necessary
articles of furniture &c would be of the value
of three hundred dollars. The files of a paper
published would be invaluable. Can't fix their
value in dollars and cents. The Plaintiff, counsel
then asked the witness to state the grounds of his
estimate of the valuation. The Defts counsel
Objected to this. Objection was overruled by the
Court. And an Exception taken. "Hearings." I spent
upon the advertising patronage the length of time
the paper had been established. and its circulation.

It requires the outlay of a large amount of
Capital to get a newspaper into a paying condition
when it once begins to pay. There is then no difficulty
from the Examination I made in 1852. I knew the
condition of the paper in March 1853. Chap Examined
I was connected with the daily Argus of this City for
about two years. I do not know that a single advertisement
in Dutche paper was a paying advertisement

Yelina, Eastman the next witness said, that he
had been in the printing business for eighteen
years. has published the Western Citizen and the
Star West for eleven years, also has published
a daily paper for some time. He has known the adver-
tiser from the time it was first published by
Mr Dutch but was not familiar with it. It
was more frequently in that Office than in any
other Office in the City beside his own. I know
the paper during the winter of 1853. and 1854 Mr
Dutch had obtained a lot of new type about a
year before the seizure was made it was of both
Kinds Galleys and Non galley. there was more type in the
Office than was in use. there must have been from ten
to fifteen hundred pounds in all in the Office. Two
such papers such as the Commercial Advertiser might
have been printed with the materials used in the Office
but with some inconvenience. The material was sufficient
to print a paper larger than Mr Dutch's by three columns
on each page. I think the whole of the materials in the Office
were worth from twelve to fifteen hundred dollars.
The plaintiff's counsel then asked the witness the following
question, assuming the advertisements that were in the
paper in March 1853. to be paying advertisements
what would the paper independent of the materials
be worth. Defts counsel objected to this question.
Objection overruled. but the Defts is left to the
ruling of the court. Answer it would be worth from
ten to fifteen thousand dollars. Cross examined
I had no personal knowledge of what the receipts
of the Office were. I had no personal knowledge
whether the paper was paying for it. The new type in
use at the time of the seizure could not have been

depreciated more than twenty five per cent, type will
wear out in two or three years. I did the press work
for Mr Dutch paper in 1852. William Duane Wilson
Editor & publisher of the Chicago daily Courier, was then
called, lived in Chicago two years. Knew the paper,
which Mr Dutch used to publish. I contemplated
at one time purchasing the advertiser I made an
examination of the paper, from its appearance. The witness
was then asked the following questions. Admitting
the circulation of the daily paper to have been five
hundred copies, and the weekly fifteen hundred
copies, and that the advertisements were paying and
taking the length of time the paper had been printed
what would the paper be worth besides the materials?
Looking at the number of advertisements in the paper
and taking the circulation as stated, deducting two per
cent, the paper would be worth twenty thousand
dollars. Separate from the value of the materials
used to print it. There was more materials in the office
than was sufficient to print the paper. There was a good
deal of type in boxes, and tied up in paper. The value
of the printing materials was about fifteen hundred dollars,
including everything. There was no press in the establishment
at a sale of the paper the files would pay without
mention. The newspaper business has been fifty per
cent more profitable in 1853, than it was in 1852.

Thomas W Stewart was then called he tes-
tified. I am Editor of the Chicago daily and weekly
Tribune, have published a paper in Chicago for
nine years. Have been a printer over twenty three years.
Know the type on which it was printed as Revier
and Non pariel. I never made an examination
of the printing materials in Mr Dutches Office

had been in the Office it was a year last June. Never
Examined it further than by a near glance. It was in
the ordinary condition of printing offices should I say
the type was half worn. It becomes so in about one year
old. The wear of the type is not so much caused by the
printing as by the way in which it is handled by the
printers. Type will last two years. I have known the
Advertiser since it was first published in 1847. The
plaintiffs Counsel then asked the witness the following
question, "Assuming the daily circulation was about
five thousand, and the weekly circulation about
fifteen thousand, that the paper had been established
for six years, that it contained fourteen columns
of twenty two squares and a half each, that all the
advertisements in the paper were paying, advertisements
at the usual rates, what would the advertising business
of the paper be worth by the year." Defendants Counsel
Objected to this question the Objection was overruled
by the Court, and an Exception taken to the ruling
of the Court. Answer. It would be worth about
five thousand dollars, exclusive of the transient
business. The plaintiffs Counsel then asked this witness
what the good will of such a paper as that mentioned
in the last question would be worth. This question
was Objected to. Objection overruled, and an exception
taken to the ruling of the Court. Answer. From my knowledge
of the business I should say that in a city like this the
good will of that paper, conducted with a proper
liberality of expenditure, and not dependant upon a
political party for support, would be worth from
ten to twenty five thousand dollars. The witness was
then asked by the plaintiffs Counsel the following
question, "What effect is produced upon a daily

paper by a Suspension of publication for a week
or for a month." This question was Objected to by
Deft Counsel. Objection overruled by the Court. Said
the ruling of the Court is excepted to. Answer. Such a
Suspension would be detrimental. My answer is un-
Conjectural. I should think the damages would be
such a Suspension. would not be less than One
Thousand Dollars. The Witness was then asked what
Effect would the Suspension spoken of have upon the
Collection of the debts due to the Newspaper. Objection
Overruled by the Court. and exception taken. Answer.
The effect would be disastrous it renders
the debt difficult of Collection. I include
the loss of subscribers in my estimate of damages.
from a Suspension. when a paper is sold out the debts
are depreciated from twenty five to seventy five per cent
Examined I had no knowledge of the actual
financial condition of the paper. Dutch wanted to
form a connection with me in the Newspaper business
I do not know whether the advertising in the paper
or the subscribers to it were paying. Ones or Not.

I found my estimate of the value of the paper
and of its good will upon the supposition that they
were paying. If the plaintiff was unable to pay his
rent from the profits of his business. I should not
consider it to be worth much. I should not like
to take an office & agree to carry it on without in-
gining into its receipts & the state of its affairs I
have no knowledge of what was the state of the Com-
mercial Advertiser's Office Re-examined. A paper
may not be remunerative, or making money, and yet
be valuable.

William L. Hall, Test. Witness called stated that

He knew the Commercial Advertiser Office was
called upon by Mr Dutch saw what was going
on at the Office was everything in confusion saw
things moved from the Office saw Regan there can't
state that he did any thing I asked if he knew what
damage he was doing he said he knew what he was
about did not know him give any orders, nor see him
move any thing away, nor see any people were
they doing nothing but standing still. I asked
Regan if his employers knew what damage
he was doing - he said he knew what he was about
Crap Examined. did not see Regan touch anything
Helina Custum, recalled. The advertiser appeared
again about the 18 or 19. of April after the Singsons
Plaintiffs Counsel then asked, "What if any exertion
was made by Mr Dutch to resume his paper, and
was it possible to get it out sooner than he did
Objected to. Objection overruled by the Court.
Defendants, excepted to the ruling of the Court, and he
made considerable exception to start it again
It would have been difficult to get it started
again, the Offices in the city were but scantily supplied
with materials to print it with offered to lend Mr
Dutch type to get out his paper. Some time after he
had ^{accepted the offer} ~~accepted the offer~~ ^{materials offered him were found to get out the}
~~accepted the offer~~ ^{materials offered him were found to get out the}
could have been found to get out the paper. Crap
Examined. But think such a job could have been
done at other Offices. Such a job could have
been done at the Offices. The publisher of the
Chicago Daily Journal offered to assist Mr Dutch
in getting out his paper. James Campbell stated
was spanner from October 1852 until the
paper stopped

Benjamin M. Seaton, recalled I was at the
Advertiser Office the next day between ten and
twelve O'clock in the morning. I saw some engaged
in carrying out papers. books Boxes, small Boxes
Saw Regan there he was not doing anything only
walking around. I asked him if he knew what
business he was doing. he said he understood
his business seemed to be there doing nothing
Regan gave no directions. The men I saw were
just the proper men to handle printing materials
Regan said he was responsible for whatever he
did. I saw some carts standing in the street there
were some rocks cases & boxes of papers. it was
a miscellaneous heap. I saw some men putting
some things on the carts the things that I have
mentioned. I met the men carrying things down
stairs Regan was in Dutch Editorial Room
it was nearly empty there was a broken down
setty in it. Saw some type on the Bicknells
and some lying scattered on the stairs. Mrs.
Dutch was in the room walking about, heard
her give no directions. Saw a cart going along Clark
Street partly loaded. there was a load of type on it
there were books and papers. on the dray I saw
position that the dray I saw on Clark Street was the
same. That I saw before the door of the advertiser
Office I stood at the office about half an hour.

The Plaintiffs Counsel then gave in
evidence the distress Warrant. of which the following
is a copy.
State of Illinois)
County of Cook } To any constable of said County

Took as to any other person of said County. Distress
the goods and chattels of Alfred Hatch. Which
are liable to be distressed. whenever the same
may be found in the County of Cook for
the sum of fifty One dollars. and Sixty Six
Cents, being for rent due us as administrators and
Administratrix of the Estate of Peter L. Updike
late of said County, for the premises described as
follows. Namely the three rooms in the Second story
of the building numbered Ninety (90) on Randolph
Street in the City of Chicago. said sum of fifty
one dollars and Sixty Six cents being the rent
due for rent for the use of said rooms. from the first
day of May last. until the present time. which
said Rooms are now occupied by the said
Alfred Hatch he having held over from the
first day of May last under a lease of said rooms
Mrs. Mary Updike Administratrix of the Estate of
P. L. Updike.

Dated Chicago March 21st 1853.

Signed. J. C. Sherman, Administrator
Mary Updike, Administratrix

Henry J. Smith being sworn stated that he did not
know whose waggon was employed in removing
the goods. John Smith the next Witness called
stated he remembered hearing of the Rock Island celebra-
tion thinks he was in town when the distress was
made. Don't know of my waggon being used to remove
the goods.

Stephen Bronson. the paper shown to me was
given me by Mr. Hatch. The Plaintiff then offered
in evidence, certain papers which purported to

Contain an authority from the Secretary of State of the United States to Mr. Dutch to publish in this paper for thirteen consecutive weeks, on each week's notice of sales of Government Lands in this country dated Feb'y 16, 1853. Defendants counsel objected to this evidence. Objection overruled by the Court, and exceptions taken by defendants Counsel the Court permitted it to be given in evidence to show that the Commercial Advertiser was appointed to publish notice of Government sales. Witness stated there had been two publications of sale of Government Lands. This was all the evidence offered by the plaintiff.

The defendants counsel called and examined Walter Churchill who proved Regan's hand writing to the return to the distress warrant. They then offered in evidence the return made by Regan to the distress warrant above mentioned which was in these words.. "On perusal of the within warrant I have distrained and taken into my possession a quantity of type, cases, galleys, stores, benches, and printers materials, which I now have subject to the order to made upon said warrant, also a few chairs and two marble slabs. March 22^d 1853. (Signed) Michael Regan

Calvin H. Hall, I know Dutch's Office but had not been in his Office until the day of the distress. I had some means of knowing his business. Some of the books were carried to May's Office. think they were all account books. a bundle was taken away by Mr. Dutch. could not recollect whether there was any other books, than account books.

I saw Regan there on the morning of the distress
two or three times or more. There were some men
there taking away stands and type. It was while
Regan was gone. I saw books, and newspapers
in front room. Next that, case of books. Two by far.
Just square two or more shelves of books. I saw them
there when Regan left. and Mrs. Dutch was in
the room where the books were. I do not know
Dutch's son. Mrs. Dutch was bringing the books
and papers. Chap. Examined was there early. went
away. and was gone half an hour. when last
there. it must have been near noon. Regan's men were
moving the stores and stands. Mrs. Dutch was picking
up files of the paper. Books &c. men were troubled to get
out the stores. the front & back rooms were nearly clear.

Frederick A. Name. Stated that he was an acting
justice of the peace in 1853. The defendants then
offered to give in evidence a copy of the dist. p.
Warrant, above set out. and a judgment received
before Frederick A. Name a Justice of the peace
in Chicago in the year 1853 for the sum of \$51.66
by Mary L. Updike and Francis W. Sherman against
the plaintiff Alfred Dutch for the purpose of
showing that rent was due from the plaintiff
to the defendants Updike & Sherman. The plaintiff
Counsel objected to this being given in evidence
on the ground that no tenancy could be shown between
the plaintiff & the defendants Sherman & Updike and
on account of a variance between the warrant and
the judgment. and between the notice and judgment
and the Court sustained the objection. and refused to
allow the defendants to give the judgment. and
record of proceedings before the said justice for

H. A. Brown

Edw. Sherman
Deft writing

rent against Dutch in evidence and to this
ruling of the Court the defendants excepted. Edward
Sherman the first Witness called, stated that he was deft.
Sherman's son. Knew the rooms occupied by Dutch
for nine months before the distress was made. There
was a written lease of them to the plaintiff which
expired on the first of May 1852. The plaintiff occupied
these rooms from May 1852, till the time of the distress
21st March 1853. I had acted as the agent of Mrs
Whitely and of Mr Sherman in collecting rents from
the plaintiff. The defendants Counsel then asked
the Witness, State whether Mr Dutch at any time
between the first of May 1852. and the 21st of March
1853. sent a message by you to the defendant Sherman
in regard to his occupancy of the rooms, or the payment
of rent for them. Plaintiffs Counsel objected to this
question, the Court sustained the objection, and
the Defts Counsel excepted to the ruling of the Court
in sustaining it. They then asked "Do you know
whether any, and if any, what amount of rent
was due to the defendants, Sherman and Whitely
on the 21st of March 1853. Plaintiffs Counsel ob-
jected to this question. On the ground that a written
lease had been proved, and should have been
produced as the best evidence, and the Court
sustained the objection. The Defts Counsel then
asked, Do you know, and if so State, what
amount Dutch was to pay for the use of the rooms
from May 1 1852 to 21st of March 1853. and to
whom he was to pay the rent. This question
was objected to, and the Court sustained
the objection. The Witness was then asked "Do you
know who rented the rooms to Dutch from and after

the first day of May 1852, upon what terms and
for how long time. Objected to by the plaintiffs
Counsel & Objection Sustained. State whether or not
Dutch at any time prior to March 21. 1853. paid you
anything for Mary & Updike and Francis C.
Shannon Administrators and Administratrix of Peter
& Updike. any rent for the use of the rooms after
the first of May 1852, and if so State when and
how much he so paid. Objected to by plaintiffs
Counsel & Objection Sustained by the Court. and
to the ruling of the Court in not permitting the witness
to answer. the said questions aforesaid. the defendants by
their Counsel then and there excepted.

The defendants then called John Frink as a
witness also stated that Mr Dutch had made State-
ments to me about the profitability of his business
as publisher of his newspaper. First time at Washington
during Fillmore's Administration, when Wilson was
postmaster and when they were trying to get him
out of the post Office. And a second time in this
City something more than a year ago. Can't State the
precise day. nor the exact words used. but in Sub-
stance. he spoke of the difficulty he met with in
carrying on his paper. That he came to the city
with money which he had exhausted in carrying
on his paper. and said things like witness ought
to help him. that if his friends abroad had not helped
him. he should not be able to carry on his paper
said that friends abroad helped him. because they
had an interest in his place. Witness told him to
make out and send him his bill for the paper. what
was in arrears, and he would pay it. and stop taking
his paper. Cross Examined. by plaintiffs Counsel. In

Leitch said to me that he had lost a great deal in carrying
on his paper. that he had worked hard. that his paper
was unprofitable and unless his friends helped him
the paper must go down. Witcup stated that he was a
stock holder in the Macomb County Bank. and did
not cry when he heard the paper was stopped. The next
next called Richard S Wilson one of the Editors
of the Chicago Journal. knows Mr Leitch and
his paper. went to the office of the advertiser, next
morning after the distress went to offer assistance
to him to carry on his paper. Mr Leitch thanked
me for the offer. I had plenty of material to
print a paper after the size of Mr Leitch's. he did
not accept my offer. Crap Examined. I have
published the Journal nearly ten years. daily and
weekly. I don't know the quantity of material Mr
Leitch had. Daniel M Bradley the next
Witcup said he had been a printer 20 years. had
been connected with the Chicago Democrat
for nearly seventeen years there was, amply suffi-
-cient material in the Democrat Office to print
and publish such a paper. as the advertiser in
addition to that used in printing the Democrat.
The material could have been obtained in the
City by Mr Leitch to continue his paper. Does
not know the amount of the material used in
printing the advertiser. Should think from the size
of the advertiser, that it required from seven to nine
hundred pounds of type. Type that has been ⁱⁿ use for
two or three years. is not worth more than from nine
to ten cents a pound. I have had conversations with
Mr Leitch. about the profitability of his business
and he gave me to understand that it was not

profitable. From what I learned from Mr Dutch. I would not give much for it. would not make an investment in it. Cross Examined. I don't know the amount of its absolute receipts.

J J Ballentine has been a printer twelve years purchased the materials of Smith in last July. the marked value of the type which I bought. was from six to nine hundred dollars. in which including every thing that was sold. Smith the type I bought was the same that was taken from the Office of the advertiser. Cross Examined I never inspected it carefully I have never opened it; it is all piece. It is in the same condition it was in when I bought it. The type which I bought might have weighed within two hundred pounds. My estimate of the value I included the cases. Stones. chains. & three Stones.

Robert Ferguson. next called testified I have been a printer twenty two years. and about fifty years pretty much all the time. a printer in this City have worked in Dutches printing Office nine or ten weeks in December 1850. and January 1851. I had no conversation with Dutch about his paper for a year before the distress.

John Stauchman knew Mr Dutch Mr Dutches Foreman brought some things to my place. News papers & pamphlets I think did not examine when he came with things several times. there was books scattered about. The things brought to my place for storage. and remained there till Dutch took them away. There was a trunk or two among them they were brought there on a drag. Cross Examined The things were taken off a drag and carried up stairs. I saw two or three books.

handed up in newspapers. I saw now and then
some boats lying about in my lot where
the things were taken to. Which was all the Evidence given in
the said case as well on the part of the plaintiff
as of the defendants.

1 And the said defendants then rested their case
and after the arguments of counsel for the respective
parties, the judge of said Court at the request of
said plaintiff gave the following instructions
to the jury to wit:

The distress warrant of itself consti-
tutes no defence to the plaintiffs action

The defendants excepted to said instru-
ctions

2 If the jury believe from the Evidence that
the warrant was executed in the right time it was
a trespass, and the plaintiff is entitled to recover
provided the jury believe from the Evidence that the
plaintiff has made out his case

Doft Excepted to said instru-
-tion

3 The manner in which the warrant was executed
and the plaintiffs property used is evidence for the
consideration of the jury to show malice on the part
of the defendants and may be taken into consideration
by them in enhancement of the damages, (and the defen-
dants except to said instruction).

And the judge of said Court, at the request of the said defendants, gave the following instructions to the jury:

The distress Warrant having been read in Evidence by the plaintiffs Counsel for the purpose of connecting the defendants Mrs. Sherman and Mrs. Updike with the taking the distress it is proper Evidence to be considered by the jury in deciding upon the Motives of the defendants. Whether they acted from improper motives or in good faith in doing the acts complained of so far as the same are proved by the witnesses.

The distress Warrant issued by Mr. Sherman and Mrs. Updike having been given in Evidence by the plaintiffs is to be taken and regarded as Evidence by the jury as well when it makes for the defendants as against them.

And thereupon the cause having been submitted to the jury and they having retired under charge of the proper Officer of the Court found a Verdict for the plaintiffs and assessed the damages at four thousand and five hundred dollars.

Whereupon the defendants by their attorneys move the Court that the verdict of the jury in this Cause be set aside for the reasons:
First that said verdict is against the Evidence
Second the Verdict is against the Law.

Third the Court Erred in giving the instructions
for the plaintiff numbered One, Two, & Three.

Fourth the Court Erred in sustaining Each of the
Several Objections made by the plaintiffs caused
to the several questions put to the witnesses by the
defendants. Counsel erred in not permitting the
defendants to prove that the plaintiff was tenant
to many. White and Francis C. Sherman and
that rent was due to them from the plaintiff
at the time of the distress and in not allowing
defendants to prove the Execution of the distress
Warrant given in Credence by the plaintiff
and the judgment before the Justice of the peace
thereon for the rent.

And for these reasons the defendants
move that the verdict be set aside and a new
trial granted.

and the defendants Court overruled
said Motion & ~~disposed~~ Exception to the decision of
the Court, and pray the Court to Sign & Seal this their
Bill of Exceptions which is done.

John M. Wilson (Seal)

State of Illinois
County of Cook S.D.

I Walter Kimball Clerk of the
Cook County Court of Common Pleas within
and for the County of Cook and State aforesaid
do hereby certify that the foregoing is a
full true and correct copy and trans-
cript of the papers and all of the orders
entered of Record in said Court, in the case
of Alfred Dutch plaintiff and Francis
C. Sherman Mary Updike and Michael
Regan defendants, as appears from the
Original papers filed in said Court, and
from the Records of said Court, now in my
office.

In Testimony Whereof I have
hereunto set my hand and
affixed the Seal of said Court
at the City of Chicago in said
County this 12th day of May
A.D. 1854

Walter Kimball, Clerk



Supreme Court of the
State of Illinois. 3^d Division

Francis C. Sherman

Marv Updike & Michael } Plffs. in Error

Regan

vs.

Alfred Dutch Deft. in Error

1. The Court erred in admitting improper evidence.
2. The Court erred in admitting evidence of the value of the advertising business of the newspaper of the Deft. in Error & of the value of the business as an establishment to buy & also of the good will of the business & of the circulation of the paper & the value of its patronage.
3. The Court erred in admitting the evidence of the Witnesses Seaton, Eastman, Wilson & Stewart in regard to the value of the paper & in regard to the value of its business and patronage & also in overruling the objections to the interrogatories put to said Witnesses respectively which assumed the existence of facts not proved to exist in the case.
4. The Court erred in admitting evidence of the effect of the suspension of a daily paper for a week or a month & also in allowing the witness Stewart to testify as to the effect such a suspension would have on the collection of the debts due the paper.
5. The Court erred in admitting evidence of the

exertions of Deft. in Error in procuring his paper & of the difficulty of starting it again.

6. The Court erred in admitting the evidence of the witness Bronson & the notices of Government Sales.
7. The Court erred in excluding the evidence of F. A. Howe to prove the rendition of a judgment in favor of Sherman & W. Updike for rent due.
8. The Court erred in overruling the several questions put by Plffs. in Error to the witness Edward Sherman.
9. The Court erred in giving the instructions asked for by Alfred Dutch the Plff. below.
10. The Court erred in not granting a new trial for the reasons set forth in the motion therefor.

Wherefore & for other Errors appearing in the record proceedings & judgment aforesaid the said Plffs. in Error pray that the judgment aforesaid may be set aside & altogether held for naught.

Arthur W. Windett
of Counsel for Plaintiff in Error.

For Answer ~~And~~ the said Defendant in Error comes and says there is no error wherefore he prays that the judgment of the Court below may be affirmed.
Hervey Clarkson and
J. W. Arnold of Counsel for
Defendant in error.

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Reverend

Dr. H. A. H.

Filed June 26, 1855.
L. Leland Ch.

Filed June 14, 1854.
L. Leland Ch.

12203

1855

12203-2

Thompson & Co }
" }
Alfred Smith. }

As to Dalton's negligence contributing to produce
the consequential damages which were sought
to be recovered in the action herein, and
the effect of such negligence upon the
present action, and upon the questions
of right, there arising between the
parties to this cause, I will refer the
Court to the volume of reports lately
published by the Justice Center of the
First United States Circuit, and to
the case of Hyman & Bullard there reported
at page 104.

It was an action for an infringement of a
patent right the Master and jury agreed
upon showing, that before the said date,
the defendant sold to the plaintiff's agent
4000 lbs of the value of six cents. The agent
having been employed to purchase the
wheat.

Curtis, J. says, Two inquiries arise in
this case, The first is a matter, upon the facts
stated, the law is plain, either the damage
or the injury both of which are recoverable
by the Commission. So to support an action
on this case.

As to the injury. The general rule of the Com-
mission is, volente non fit injuria

and in accordance with this maxim, no one
can maintain ~~the~~ action, for a wrong
where he has committed a contumacious
act, or at least he complains of - and
this ^{principle} ~~has~~ has been applied to
numerous cases in which though the
defendant was in the wrong, the plaintiff's
negligence had contaminated produced
the consequential damages which were
sought to be recovered in the action -
Here the Plffs not only committed but cooperated;
or though their agents they were themselves the
purchasers. As to the damages in question,
that in general the law compensates damage
from a violation of a right - but I am
not aware that damage has ever been
recovered by law from an act in which
the plaintiff cooperated, and which
therefore should be supposed to have been
done for his own benefit, or at least that
for his loss.

Arthur P. Windett,

Attended into Plffs in Error,

In the Supreme Court of the State of
Illinois.
June Term AD 1855

Francis C. Sherman
Mary Updike and

Michael Regan *Plffs in Error*

vs

Alfred Dutch *Defrs in Error*

} It is hereby stipu-
lated and agreed
between the
Attorneys for the

parties in this cause that the order
of this Honorable Court made in June
Term 1854 transferring this cause
to Springfield be vacated. That
this cause be restored to the docket
of this Court & be submitted on
written argument by both parties
& disposed of when reached on final
call of the docket at this present
Term.

Chicago 28 June 1855

Arthur W. Wendell.
for *Plffs in Error*

Henry & Jackson
for *Defrs in Error*

Supreme Court
 & Circuit
 Francis C. Sherman
 et al. Appellants
 vs
 Alfred Hatch Appellee

Stipulation

Filed July 12, 1885.
 L. Seland Clk.