

11978

No. _____

Supreme Court of Illinois

McKean, Admr.

vs.

Moss, et al.

71641  7

Be it remembered that heretofore, to wit, on twenty first day of October in the year of our Lord one thousand eight hundred and forty two there was filed in the office of the clerk of the Circuit Court within and for the county of Peoria in the State of Illinois a Bill of complaint of Samuel Ward against John Watts, William J. Moss and Samuel F. Wood to the Chancery side thereof, which ^{with the exhibits} is in the words and figures following, to wit,

13M To the Honorable John Dean Caton, one of the Judges of the Supreme Court of the State of Illinois and Judge of the Ninth Judicial Circuit of said State in Chancery, sitting.

Humblly complaining sheweth unto your Honor your orator Samuel Ward, that your orator and one John Watts (who is hereby prayed to be made a defendant to this bill) on the 12th day of January A.D. ¹⁸⁴² entered into partnership for the purpose of erecting and carrying on a saw mill to be propelled and worked by wind power - and that for that purpose they leased of one Charles Williams a certain lot of ground near the the Town of Peoria, in the County of Peoria, with the appurtenances - on which were situated (among other things) as appertaining thereto, a certain frame building which had been buier for a steam mill and had been occupied for that purpose and a small dwelling house - That the object of said partnership was to convert said Steam Mill into a Wind Mill to saw lumber for the mutual profit of said parties - all of which will more fully and at large appear by reference to said lease which bears the date aforesaid and is signed, Saml. Ward {seal}

John Watts {seal} Charles Williams {seal} by his attorney in fact W. Williams - a copy of which lease is herewith filed and marked (A) and prayed to be made a part of this bill - and also by reference to the article of copartnership bearing the same date - signed Saml. Ward, John Watts, a copy of which is also filed and marked (B) and prayed to be made a part of this bill - Your orator further sheweth unto your Honor that immediately after said contract was entered into your orator being a married man moved into said dwelling house ^{and} said defendants being unmarried

boarded in the family of your orator - and both for some time worked together harmoniously in erecting the necessary machinery for said Wind Mill - your orator charges that he being an experienced Millwright his services were worth much more than those of said defendant - That your orator and said Watts continued to work together on said Mill from the time of entering into said agreement until the seventh day of September in the year aforesaid during which time your orator furnished to said partnership labor, money, materials, and board of hands, including the board of said Watts, to the amount of six hundred and forty seven dollars and fifty cents and said defendant furnished to said partnership labor and money to an amount unknown to your orator, but which is charged to be much less than the amount furnished by your orator - and that during said time your orator and said Watts as partners as aforesaid contracted debts with divers individuals for the benefit of said firm in purchasing materials, borrowing money and hiring workmen - according to the best estimate your orator can now make to the amount of six hundred and thirty seven dollars and twelve cents. That one of these debts amounting to one hundred and sixty four dollars was contracted with one William T. Moss and another amounting to fifty two dollars and fifty cents with one Samuel H. Underwood - Your Honor further sheweth unto your Honor that all said debts were contracted in good faith, upon the confident assurance that when said Mill should be got into operation it would be in the power of said firm in a short time to pay them off from the proceeds of the sales of lumber and your orator further sheweth to your Honor that at the time of the grievances hereinafter complained of said Mill was almost complete and was nearly ready to be put in operation - and your orator well hoped that without let or hindrance the said partners would have been permitted to progress with their said Machinery and ultimately by the use thereof to pay off said debts and then obtain to themselves great profit thereby - But now so it is may it please your Honor the said William T. Moss (who is hereby prayed to be made a defendant to this bill) being a shrewd speculator and usurer took advantage of the poverty and necessities of said Watts and your orator and represented himself as being favorable to said

enterprise and willing to advance money to your orator and said Watts to enable them to proceed with said business and said partners being in great need of a little money did then and there borrow of said Moss the sum of twenty dollars which he alleged was all the money he had then to spare - but promising however further aid - Shortly after this (but the day is not recollected) said Moss presented to said Watts and your orator a mortgage to himself of said premises which he desired them to execute and which recited that it was to secure the sum of two hundred dollars - Whereupon your orator refused to execute said mortgage - because it was for a much larger sum than was due said Moss - but said Moss replied that it made no difference as he intended to let said partners (from time to time) have what would in all equal that amount - and he wished one mortgage to secure it all and thereupon said Watts and your orator executed said mortgage - Your orator further sheweth unto your Honor that said Moss having obtained said mortgage for two hundred dollars as aforesaid never furnished any money thereon according to said promise, but wholly refused so to do - Nor did he furnish anything to that amount - but said partners not being able to get money, consented to accept goods in lieu thereof - whereupon said Moss furnished them goods to the amount of one hundred and forty four dollars and no more - Nevertheless the said Moss pretends and has stated to divers persons that said partners are justly indebted to him in the sum of two hundred and sixteen dollars - Your orator further sheweth unto your Honor that said Moss combining and confederating with said Samuel H. Underwood (who is hereby also prayed to be made a defendant to this bill) threatened said Watts that if he would not transfer to him and the said Underwood said machinery and the whole of said partnership effects in trust, to dispose of the same and out of the proceeds thereof pay themselves first and the residue if any pay to the order of said Watts, he would foreclose his said mortgage and take the whole of said property - and at the same time said Underwood combining and confederating with said Moss to deceive and defraud said partners threatened said Watts that if he would not convey said property as aforesaid he the said Underwood would enforce his lien ob-

tained under the Mechanics' lien law and thereby take the whole property — Whereupon said Watts signed an instrument of writing purporting in the name of said copartnership to convey to said Moss and Underwood the entire effects of said copartnership in trust as aforesaid — Your orator has not a copy of said pretended transfer but has been informed and believed and therefore charges the above to be the purport of it — said pretended transfer was made on or about the sixth of September A.D. 1842 — and was executed without the knowledge and against the consent of your orator — (Your Orator further charges that as soon as said pretended transfer was executed said Underwood attempted to take possession of said Machinery, and other property — but being forbidden by your orator he procured your orator to be apprehended and taken before one George B. Parker, a Justice of the Peace of said County of Teona and then and there testified upon oath that he was afraid your orator would take his life — and thereby procured your orator (who had no friend at hand to become bail for his good behaviour) to be imprisoned in the County Jail of said county — and while your orator was thus incarcerated said Underwood and others acting under his direction, took possession of said machinery, and tore to pieces and carried off large portions of it. But before they had completed their work of destruction your orator obtained bail for his good behaviour and was liberated — Your Orator further charges that said Moss and Underwood combining and confederating as aforesaid as soon as your orator was liberated charged your orator before Edmund S. Buxton, a Justice of the Peace of said County with having stolen and concealed a number of implements and pieces of machinery (belonging to said Mills) which were on said premises — but which your orator had been advised by his legal counsel neither to give up nor forcibly prevent said Moss and Underwood from taking — Whereupon a warrant was issued to search said premises and if said goods and chattels should be found thereon, to bring them and your orator before said last mentioned Justice and thereupon one Henry Hahn a constable of said county went with said warrant to said premises and said chattels not being concealed were soon

found - and they together with your orator taken by said constable, in pursuance of the requisitions of said warrant, before said Justice - where after an examination had in which both said Meos and said Underwood testified against your orator, your orator was discharged by said Justice and wholly discharged from said prosecution and said goods and chattels were ordered by said Justice to be restored to your orator - But your orator charges that said goods and chattels were not restored to your orator as by the decision of said Justice they should have been - but were taken into possession by said Meos and Underwood and are still retained by them - ~~Your orator charges that said goods and chattels were not restored to your orator as by the decision of said Justice they should have been -~~ Your orator charges that these last mentioned goods and chattels are worth one hundred and twenty three dollars - and that besides these articles (which were detached from said Mill) they the said Meos and Underwood have separated from said Mill and carried away machinery of the value of three hundred and thirty nine dollars and fifty cents and otherwise greatly damaged said Mill - Your orator charges that by means of the premises said Mill is wholly ruined and useless without the restoration of said goods, chattels and machinery - and the machinery being detached is comparatively of but little value - and your orator is thrown out of business and prevented from progressing with said Mill and moreover all the other creditors of said partners are likely to be defrauded of their just debts - All which doings and doings of the said defendants are contrary to equity and good conscience and tend manifestly to injure and impoverish your orator in the premises - In tender consideration whereof and inasmuch as your orator is without remedy by the common law and is relievable only in a court of equity, where matters of this sort are properly cognizable and relievable - To the end therefore that the said John Watts, William V. Meos and Samuel V. Underwood, may upon their several and respective corporal oaths, to the best and utmost of their several and respective knowledge, remembrance, information and belief, full, true, direct and perfect answer make to all and singular the matters aforesaid and ther as fully and particularly as if the same were here repeated and they and every of them distinctly interrogated thereto - and more especially

that the said Watts may in manner aforesaid answer and set forth whether he did not in manner and form aforesaid convey or attempt to convey all or any part of the partnership effects to said Moss and Underwood and particularly what portion of them and for what consideration - and whether it was with or without the consent of this complainant - And that the said Moss may in like manner set forth particularly how and to what extent said partners became indebted to him - how much money and goods he furnished them - and in what the goods consisted - also what implements and machinery or other articles or thing he, or he and said Underwood has or have taken from said Mill or from any other place - being part and parcel of said partnership effects. And that said Underwood may in like manner answer and state what part of said partnership effects are or have been in his possession or control or in the possession and control of him and said Moss jointly and what has since come of them - and that they produce into court the instrument of writing by which the property was attempted to be conveyed to them as aforesaid - May it please your Honor to grant unto your Orator not only a writ of injunction ordering and enjoining said Moss and Underwood to commit no further waste on said premises - but return said implements and machinery to said premises, that the object of said partnership may be effected if in the opinion of your Honor that would be equitable and right - but if not that then said partnership be dissolved by this Honorable Court and a receiver be appointed to take charge of all the effects of said co-partnership with power to sell the same under the direction of this Honorable Court for the liquidation and payments pro rata of all the just debts of said firm except such debts as may have priority in law, which shall be paid first - and the others pro rata and the balance (if any) to pay to said partners as shall appear equitable - and for this purpose that all parties as well this complainant as said defendants be required to deliver to said receiver everything in their possession or control belonging, or which did immediately previously to said transfer belong to said partners - that at all events said Watts be required to account with your Orator and make a fair and honest Settlement with your Orator of all

matters and things relating to said partnership - And that your
Orator may have such other and further relief in the premises as the
nature and circumstances of this case may require and to your
Honor may seem ^{meet} ~~meet~~ - But also a writ of summons directed
to the said John Watts, William H. Hoss and Samuel H. Underwood
thereby commanding them and each of them at a certain day
and under a certain penalty therein to be limited, personally to
be and appear before your Honor in this Honorable Court and
then and there full, true and perfect answer make to all and
singular the premises - and further to stand to perform and abide
such further order and direction therein as to your Honor shall
seem meet - And your Orator shall ever pray to
Dallance & Cooper for Counsel

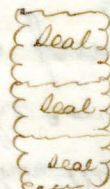
Exhibit A. = It (Copy)

"This Indenture made & entered into this 12th day of January in
the year of our Lord one thousand eight hundred and forty two between
Charles Williams of the one part & Samuel Ward & John Watts of the
other, witnesseth, that the said Charles Williams for the consideration
hereinafter mentioned, hath demised, granted and to farm let unto
said Samuel Ward & John Watts, their heirs, executors, administrators
and assigns all that tract or parcel of land, situate, lying & being
in the county of Teoria being a part of the tract of land formerly pur-
chased by George Morton & Francis Toris of Augustus Langworthy lying &
being as surveyed where the upper line of said Langworthy's survey
intersects the lake - the said survey of Langworthy being a fractional
quarter of section three in Township T. 8. North, Range 8. East - beginning
at a small coffee nut bush on the bank of the Lake Teoria - the point
where the North & South line through the centre of section 3 strikes
the same 37 links at right angles from the upper side of a continua-
tion of Water Street in the Town of Teoria as at present laid out - thence
down the Lake South 49 degrees West 114 feet to a stake between two
oak bushes - thence North 33 1/2 feet to Washington street - thence South
to the place of beginning - containing two acres of land be the same
more or less - together with the frame Steam Mill now standing thereon
and all other privileges & appurtenances thereunto belonging or in
any wise appertaining - To Have and To Hold the said demised
premises with the appurtenances unto the said Samuel & John

their heirs, executors, administrators and assigns for and during the term of 18 months from the 13th day of this month fully to be completed & ended - and the said Samuel & John for themselves, their heirs, executors, administrators & assigns do covenant & agree to pay or cause to be paid to the said Charles Williams his heirs & assigns at the rate of \$ 125 - per annum to be paid quarterly and the parties aforesaid for themselves respectively, each with the other and their respective heirs, executors & administrators do further covenant & agree as follows - That the said Samuel & John shall have quiet & peaceable possession of the said premises for the term aforesaid for the uses & purposes they may see fit to put thereto - and the said Charles doth hereby guaranty them in the same - and the said Samuel & John agree that they will peaceably deliver up possession of said premises at the expiration of said time unless some other arrangements shall before that time be entered into between the parties aforesaid or such other parties as may be duly & legally authorized to act in the case - In witness whereof, the parties aforesaid have hereunto respectively set their hands and affixed their seals the day and year above written.

In presence of)
J. K. Cooper. S

Saml Ward
John Watts
Charles Williams



By his attorney in fact W Williams."

Exhibit B. -

B (Copy)
This agreement made & entered into this 12th day of January A.D. 1842 between Samuel Ward & John Watts, witnesses, that the said Samuel & the said John have this day entered into a partnership in regard to the premises which they have this day rented of Charles Williams - and it is hereby mutually agreed between them that the profits arising from the said premises in the said lease described & the working of the Steam Mill thereon shall be equally divided between them - but whatever money or other property is expended for the benefit of the concern by one more than the amount expended for the same purpose by the other shall be first paid out of the proceeds before the division of profits is made. In witness whereof we have hereunto set

our hands the day & year above written. Sam^l. Ward
Witness J. K. Cooper. ^{Wm} John Watts "

And afterwards, to wit, on the 24th day of April A.D. 1844, there was filed in said cause the answer of the said William S. Moss to said Bill, which with the exhibits therein referred is in the words & figures following, to wit:

Answer
of Moss. } =

Samuel Ward,

John Watts,
William S. Moss,

Samuel S. Underwood.

On the Circuit Court of Teorio County.
In Chancery.

The answer of William S. Moss to the Complainant's bill of complaint in the above cause.

This defendant saving & reserving all exceptions to the many errors & imperfections in the said Complainant's bill for answer thereto or to so much thereof as he is advised that it is necessary for him to make answer to this defendant answering saith

That he presumes the complainant and said Ward entered into a copartnership for purposes and at the time mentioned in said Bill, but of this he has no positive knowledge other than from their statements, he has no knowledge whether they based the ground from the said Williams or not and he calls for the proof thereof.

He admits that complainant was a married man and moved into the dwelling house and that Watts was unmarried and boarded with complainant but how long he cannot say — Nor is he able to state whether they worked together sometime harmoniously or not, nor whether the complainant was or not an experienced Mill right and he calls for the proof. Nor does he know how much his services were worth nor whether they were worth more or less than those of the said Watts, nor whether they worked together until the 7th September A.D. 1842 — he thinks however that they might have done so up to about that time. He has no knowledge what amount of labor, money, materials, board &c was furnished by complainant or the said defendant Watts and he calls for the proof thereof as to the debts contracted by said Watts and Ward, for & on account of said concern; he knows nothing except in relation to the debt due to

himself and he calls for the proof thereof and whether said debts were or were not contracted in "good faith and upon the confident assurance that when said Mill should be got into operation it would be in the power of said firm to pay them off in a short time from the proceeds of the sales of lumber," he is unable to state but he is (most decidedly) of opinion that if any such expectations were entertained they were both foolish and unreasonable and prove to him most satisfactorily that if the said complainant ever was "an experienced Millwright," he was also one of those kind of men who as he grew old "had grown ignorant in spite of experience" As to the charge that he is "a shrewd speculator and usurer," it being so much a matter of Judgment opinion or fancy and there being to his knowledge no fixed and certain rules of law or equity by which questions of this sort are to be tried and ^{no} court before which such matters are properly cognizable and having serious doubts in his own mind in relation to the truth of this charge he most respectfully declined either admitting or denying the same in express terms and hopes this honourable court will excuse him either from directly stultifying himself or from admitting charges which would might render him liable to penalties or obnoxious to the community.

He expressly denies that he ever took advantage of the poverty or necessities of the complainant or the said Watts or represented himself as favorable to their said enterprise to his recollection or belief or that for such reason he was willing to advance money to them to enable them to proceed with their business — and alleges that he never at any time had any confidence that the said Windmill which they were attempting to construct would be of any practical utility — He admits however and states that the said complainant and said Watts made repeated applications to him for money and property to assist them in the erection and construction of the said Windmill and finally he did advance to them in money and other property the sum of about two hundred & twenty eight dollars, that he cannot now remember precisely the amount of each nor the particular items or amounts of

of each nor the particular items or amounts of said money and property, but states that in gross the amount to the sum above stated - nor can he now state the particular dates of the said advances and that on making the same the said complainant and said Ward made, executed and delivered to him a mortgage to secure the payment of the same in the words and figures substantially as follows.

"This Indenture made and entered into this 21st day of June A.D. 1842 between John Wotts and Samuel Ward of the county of Teoria State of Illinois of the first part and William S. Wess of the county aforesaid party of the second part, witnesseth that the said parties of the first part for and in consideration of the sum of Two Hundred dollars lawful money of the United States, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained and sold and by these presents do grant, bargain, sell and convey to said party of the second part a certain building or mill now partially & nearly completed to be propelled by wind and called a wind mill, situate near and a short distance above the Town of Teoria and in the State of Illinois. To Have and To Hold the said Mill with the privileges, fixtures and appurtenances thereunto belonging or in any wise appertaining unto said party of the second part forever. ^{For} Provided always and the above conveyance is upon the express condition that if the said parties of the first part, shall well and truly pay or cause to be paid to said party of the second part, the said sum of two hundred dollars with interest thereon at the rate of twelve per cent per annum from date according to the tenor and effect of a certain note signed by said parties of the first part and bearing even date herewith then the above conveyance and every thing herein contained to be void, else & remain in full force & virtue. And it is further understood and agreed by and between the said parties that the said parties of the first part shall retain the possession and have the use and benefit of the said wind mill and appurtenances until the said note shall become due according to the tenor and effect thereof and at that time if said note shall not be paid, said parties of the first part are to deliver up possession of said Mill and appurtenances to said party of the second part peaceably and quietly. Witness the hands and seals of the said parties of

the first part the day & year first above written.

John Watts ☐

Saml Ward ☐ //

And this defendant further states that the said note referred to in the said mortgage is substantially as follows —

Leoria June 21 1842

Six months after date for value received we jointly and severally promises to pay to the order of William S. Mills two hundred dollars with interest at twelve per cent til paid

John Watts, Saml Ward,

which said mortgage and note are herewith referred to and made part of this answer, the originals of which he will exhibit on the hearing of this cause — and this respondent alleges that the said Mills and fixtures, machinery &c were at all times treated by all the parties as personal property, and that in fact as he is advised and believed was personal property. He denies all combination with Samuel H. Underwood and he states that he never threatened said Watts in any manner to induce him to make a transfer of said property to the said defendant or that he would foreclose said mortgage and take the whole or any part of said property as stated in said bill of complaint. And this respondent further answering says that the whole truth in relation to the transfer by the said Watts to this respon- was as follows — That the said Mills and the work thereof had progressed so far as to enable the said Watts by actual experiments to satisfy himself and almost every other person of common sense or Judgment, that it could never answer any practical use or purpose and that all the money which had been expended thereon or which would thereafter be expended had been and would be thrown away — That there was not the most distant prospect that it could ever answer the purpose for which it had been originally intended — and that knowing this and knowing also that the said Ward was a person of idle and intemperate habits, utterly irresponsible and visionary as the the wind, he said Watts became desirous to put a stop to the further completion, erection or construction of the said Wind Mills and to prevent any further

expense, being incurred by himself and knowing that said Moss this respondent had a lien upon said property by virtue of said Mortgage before recited and that the same must eventually be paid by the forfeiture of all the property as soon as said note become due - he did for the purposes and reasons aforesaid make the assignment or sale to this respondent and said Underwood in manner and form as is stated in a certain instrument of writing, dated Sept 5th 1842 a copy of which is hereto attached marked A and made part of this answer the original of which he will exhibit on the hearing of this cause.

And this respondent further answering saith that that he never entered into any combination or conspiracy with the said Underwood to charge the said complainant with having stolen or concealed any part of said property, nor did he take any part in any such prosecution, except when called on as a witness to testify what he knew in relation to that transaction - He has however been informed and believes that the said Ward complainant did in a fraudulent and clandestine manner in the night time carry off and conceal somewhere about his said complainant's premises a number of implements and pieces of machinery belonging to said Wheel with an intention to deprive others (who at least had an equal right with himself to the possession of said property) of the possession, use and occupation of the same, but that the same had been done by the advice of his legal counsel he never should have known or suspected except from the disclosures made by the complainant in his said bill of complaint. In consideration therefore that this statement is made by the complainant in relation to a matter which he deems entirely immaterial he feels no inclination to dispute it.

He believes also that a warrant was issued by Justice Buxton to a constable of said county to search for said property and that the same was pretty soon found as he is informed concealed under the said complainant's floor and that said goods and complainant were all taken together to the said Justice.

That the said complainant was discharged on the hearing of said cause - and the goods restored to him and retained by him until they were replevied from him by this defendant and said Underwood - He cannot state the value of said goods but denies

that they are worth the sum of one hundred and twenty three dollars - This respondent denies that he ever separated and carried away from said mill or from any other place any machinery of any kind, quantity or value whatever nor did he ever have any of the said property in his possession or ever did any damage or injury to the said Mill. He admits that the said mill is wholly useless either with or without the restoration of the said goods, chattels and machinery and that the said machinery detached is of little value and attached of no value.

He does not know whether the complainant is or is not thrown out of business or not but presumes that if he felt inclined to work and had kept and would continue to keep sober he might find plenty of profitable employment - and he entertains but little doubt that if there are any creditors of the said firm as stated in said bill (of which with the exception of himself and said Underwood he has no positive knowledge and calls for the proof thereof) they will be deprived of their just debts, for the reason that the said complainant by his own shewing is so poor and irresponsible that he is allowed to prosecute this suit in the form of a pauper, and for the further reason, that this respondent believes that he is too dishonest to pay his debts without compulsion even if he had the ability to do so.

And this respondent further answering says that the prayer of the said complainant in relation to the restoration and disposition of the said property or the appointment of a receiver ought not in Justice or in equity to be granted for the reason that for a long time past the said Mill and all the fixtures and machinery thereto belonging or in any wise appertaining ~~belonging or in any wise appertaining~~ have become the sole and absolute property of this defendant, having been forfeited to him by the non payment of the amount of money due upon the said mortgage before set forth; the said mortgage money nor any portion thereof ever having been paid to your orator.

Wm S. Moss.

Subscribed & sworn to before me this 24th Aprile A.D. 1844.

William Mitchell, cl.

Amendment sworn this 25th Oct. 1844. William Mitchell. C

Exhibit A. =

Copy of assignment. A

For and in consideration of the sum of Two hundred + twenty six dollars to us advanced by William Weiss in materials and one hundred + eleven dollars ⁸²100 by Samuel H. Underwood in labour + materials advanced for the building and erecting a certain wind mill situate near and above the Town of Teonia on the Illinois River, we do hereby assign, transfer, sell and set over to said Weiss + Underwood, all of the said Wind Mill + fixtures and all the appurtenances of every description thereto belonging or in any wise appertaining hereby authorising the said Weiss and Underwood to take immediate possession of the said property and to remove the same from the premises whereon it is situate, and to sell or otherwise dispose of the same to their own use, to pay and satisfy the debts above mentioned and the residue if any after paying said debts to be paid to the creditors of the undersigned in such manner as shall be directed by John Watts. In witness whereof we have hereto set our hands this 5th Sept A.D. 1842

Witness W. H. Purple;

Watts + Ward

by John Watts.

The Depositions in said cause, taken on behalf of the complainant, as the same remain on file in my office are in the words and figures following, to wit,

Deposition of Caleb Whitmore, Philander W. Keenwin, Clark Clearland, William Haweridge, John Easton, Charles Sutton, Robert Fletcher, Joseph Haweridge, Isaac Gastill, Christopher Orr, Perry Frazer, Harvey Lightner, Chaney C. Wood, Herman S. Harrell, Alexander M. Park, Michael Koch, John S. Slough, Isaac Underhill, and James H. Hickey of the county of Teonia + State of Illinois, taken on the fourth, fifth + sixth days of June A.D. 1844 between the hours of nine A.M. and six o'clock P.M. at the office of William Hitchcock, clerk of the circuit court of said county before Thomas Bryant a Justice of the Peace of said county pursuant to the enclosed notice to be read in evidence on the trial of a certain suit now pending in the circuit court of Teonia County wherein Samuel Ward is complainant

and John Watts, William S. Moss & Samuel H. Underwood are defendants, on the part and behalf of the said complainant; the said Caleb Whittemore and others in answer to the several interrogatories deposes as follows.

Caleb Whittemore =

Deposition of Caleb Whittemore who being duly sworn deposeseth and saith -

Question 1st by the plaintiff. Do you or do you not know any thing about the building of a wind mill near Teonia by Sam Ward, the complainant in this case & John Watts one of the defendants some time in the year 1842?

Ans. - They were at work upon such a mill about that time and place.

Quest. 2nd. State whether or not you ever furnished any materials for said Mill and if so to what amount.

Ans. I cast a brass plate to go into the step for the shaft to run on, which I afterwards saw in its proper place in the mill, the costs of which was five dollars and fifty cents.

Quest. 3rd. If you have ever been paid for this brass plate state by whom.

Ans. I have been paid for it by Mr. Ward, Caleb Whittemore.

P. C. Mervin =

Deposition of Philander C. Mervin who being duly sworn deposeseth and saith.

Quest 1st by the Plaintiff. Were or were not Saml. Ward the complainant in this case and John Watts one of the defendants, engaged in the building of a wind mill near Teonia some time in the year 1842.

Ans. - I learned from Mr. Watts that they were so engaged.

Quest 2nd. Did you or did you not ever furnish any labour or materials to be used on said on said Mill and if so how much and at whose request.

Ans. I furnished some little material but principally labour to the amount of about Twenty Seven dollars at the request of both Ward & Watts

Int. 3rd Did you or not ever purchase any materials that had been used in the construction of said mill and if yes, what articles were they and from whom did you buy them and where?

Ans. I bought from Capt. Moss & Mr. Underwood about three hundred pounds chain and rods of Iron. I made a contract for the whole amount of iron that was attached to the wheel, they brought a part which they said was about one third for which I paid them Six dollars per hundred, this was sometime in the fall of 1842, the very day they tore it from the mill.

Int. 4.th Did Capt Moss at this or any other time make any statement to you about the mill, and if yes, what were they.

Ans. - He several times in reply to my enquiries about the balance of the Iron, that I contracted for, stated that he would be able to get it all off of the mill in a few days.
T. C. McEnnin.

Clark Cleaveland. Deposition of Clark Cleaveland who being duly sworn deposes and saith.

Quest 1st by the Plaintiff. Have you or not furnished materials or labour for the Wind Mill spoken of by Mr. McEnnin in his deposition, and if so to what amount and at whose request.

Ans. - I did labour at the request of both Ward & Watts to the amount of \$5.50. for which I have not been paid.
Clark Cleaveland.

Wm. Hawridge. Deposition of William Hawridge being duly sworn deposes and saith.

Quest 1st by the plaintiff. Were you or not about this wind mill spoken of by the other witnesses at the time Ward & Watts were engaged in constructing it?

Ans. I was frequently there during that time.

Quest. 2nd Did you or not know of any labour performed on said Mill which has been paid for by Mr Ward and if so by whom was it performed and to what amount?

Ans. I know that my brother Thomas & my son Joseph performed labour to the amount of about \$48.00 for which I have received pay for them to the amount of \$22.96 from Mr Ward and a Cow & calf worth \$16.00. by whom that was furnished I do not know.

Quest. 3rd Where is your brother Thomas now?

Ans. He has been absent in England since the later part part of May 1842.

Quest. 4th Do you or do you not know anything about an assignment of this mill and the property attached thereto, and if yes, state by whom made and about what time and whether or not the complainant Ward was opposed to the same?

Ans. I do know that there was an assignment made by Mr Watts to Capt Moss & Underwood of this wind mill. It was in the beginning of Sept 1842. I saw it in the Justice's office where Mr Ward was examined and heard it read; it was brought there by Moss & Underwood. I heard Mr Ward & Watts both say that Ward was opposed to the assignment.

Quest 5th State if you know in what condition was this Mill at the time of the assignment.

Ans. It was in an unfinished state.

Quest 6th If you heard Watts express any opinion immediately prior to this assignment, state what he said about it.

Ans. Very shortly before the assignment I heard Watts say that he believed that it would do good business.

Quest. 7. State whether or not you have an acquaintance with machinery and if yes for how long and would or would not

this Mill in your opinion if it had been completed have answered the purpose for which it was designed.

Ans. - I have been acquainted with machinery of various kinds, Mill gearing of different descriptions for forty years and think if this Mill had been completed it would have answered the purpose and done well.

Quest 8th. State whether or not the Mill has since been pulled down in whole or in part and were you or were you not present at the time, and if yes by whom was it done and in what manner and what is your opinion of the damage thereby done to the property.

Ans. The machinery has almost all been torn down. I was present at the commencement of the pulling down. I saw Watts & Underwood pulling it down, the property was much injured in the pulling down so far as I saw it and that the damage was equal to the costs of the original construction.
William Hawbridge.

John Easton. Deposition of John Easton who being duly sworn deposes and saith.

Quest 1st by the Plaintiff. Did you or did you not ever perform any labour or furnish any materials for this wind mill spoken of by the other witness, and if yes, state to what amount.

Ans. I laboured on the Mill thirty seven days at \$1.25 pr day.

Quest. 2nd. State where you boarded during the time you were at work upon the mill & what was board worth.

Ans. I boarded a part of the time with Mr. Ward, and the balance of the time at home, my boarding at Mr. Ward's was \$2.00 pr week and I was with him perhaps one third of the time.

Quest. 3rd. Were you or were you not present at the time this Mill was pulled down, and if yes, what damage was done to the property.

Ans. I was present and assisted Watts & Underwood in pulling it down. I know it was torn to pieces and all of the valuables carried off except the top wheel; the amt of damages I cannot estimate with any distinctness.

Quest. 4th. Who superintended the work while building the mill.

Ans. Mr. Ward was the boss of the undertaking.

Quest 5th What kind of a workman was Mr. Watts and what was his services worth per day.

Ans. He was a common labourer his services were worth about one dollar pr day. John Easton.

Deposition of Charles Sutton who being duly sworn deposes and saith.

Charles Sutton = Quest 1st by the Plaintiff. Did you or not furnish any labour or materials for the construction of a wind mill by Mr. Ward & Watts near Leona and if yes, how much of either or both and has or has not the same been paid for and by whom?

Ans. I laboured for the Mill at the request of both Ward & Watts to the amount of six dollars, three dollars of which Ward has paid me; the balance is still unpaid.

Quest. 2nd. State if you know what sort of workman Mr. Ward is and your means of knowledge.

Ans. Mr. Ward has worked a good deal for me on machinery and I consider him a good workman.

Quest 3rd State if you know where Mr. Watts boarded while he and Ward were building the Mill & where he got his washing done.

Ans. He boarded me untill about the last of Febry 1842 and the balance of the time he boarded with Mr. Ward and got his washing done there as he told me.

Int. 2nd. When did they commence working on the Mill and how long did they continue at it.

Ans. They commenced about the middle of January 1842 and continued till some time in August or Sept. 1842.

Int. 3rd. What was boarding & washing worth per week during that time.

Ans. Boarding was worth \$2.00 per week & twenty five cents per week would not be out of the way for washing.
Charles Hutton.

Robert Fletcher. Deposition of Robert Fletcher who being duly sworn deposes and saith.

Quest 1st by the Plaintiff. What do you know about this wind mill spoken by the other witnesses.

Ans. I know that such a mill was building some time in summer & fall of 1842.

Quest. 2nd. Did you or not furnish provisions for the hands employed about the building of said mill and if yes, state how much and at whose request.

Ans. The firm of Fletcher & McKill furnished provisions to the amount of \$97.³⁴ at the request of both Ward & Watts: Ten dollars & ninety seven cts of which was paid by Watts, the balance remains unpaid.
Robert Fletcher.

Joseph Hawcridge. Joseph Hawcridge who being duly sworn deposes & saith.
Quest 1st by the plaintiff. Do you or not know any thing relative to the building of this wind mill spoken of by the other witnesses in this case.

Ans. I did work at the request of Mr. Ward upon a wind mill which Ward & Watts were building near Teoria in the summer 1842.

Quest 2nd. How long did you work upon said mill.
Ans. About four months.

Quest 3rd How many hands were at work on the Mill while you were there and what were their names and how long did each continue there and where did they board during the time they were there.

Ans. William Vergant was there at work about four month and boarded and had his washing done at Mr. Ward. Joseph Hughes worked nearly or about four month boarded with Mr. Ward & had his washing done there also, a mill right by the name of Goodsell worked about three month and boarded at Mr. Ward. Tommy the blacksmith worked a few days and boarded with Mr. Ward while at work there. John Naugh and a man he had hired worked there untill he made ten fans they boarded at home. Saml. H. Underwood worked upon the mill three month and boarded at Mr. Ward and frequently got garden stuffs while there for his family. Ward & Watts worked on the mill all summer untill within a few days of the time it was torn down and boarded & had his washing & mending done at Mr. Ward.

Quest 4th Do you know of any of these men who worked on the mill being paid in whole or in part for their services and if yes, how much, and by whom.

Ans. I know of Hughes getting a pair of shoes and a pair of pants from Mr. Ward and I heard Tommy the blacksmith say, just before he left that he was nearly paid up by Mr. Ward. I know that William Vergant some articles from Mr. Ward but what amount I cannot say.

Quest 5th Were you or not at the mill at the time it was torn down and, if yes, state particularly what took place at that time.

Ans. I was there at the time Watts & Underwood came and took the bolt off, I forbid Watts & Underwood from taking the bolt and I told them that Ward had put me in to take care of the things while he was away, and Underwood & Watts made answer that Watts had signed over the

property to Moss & Underwood and they were going to take it down.
Joseph Haweridge.

Isaac Gaskill - Deposition of Isaac Gaskill who being duly sworn deposes & saith.

Quest. 1st by the plaintiff. Do you or not know any thing of the building of a Wind Mill near Teoria by Hunt. Ward Com-plainant in this case & John Watts one of the defendants.

Ans. I understood they were concerned in the building of a wind mill sometime in the Summer of 1842.

Quest. 2nd Did you or not furnish materials for said Mill, and if so, to what amount and at whose request.

Ans. I did furnish by the request of Ward & Watts a quantity of hewn timber worth from six to ten dollars all of which has been paid some by Ward & some by Watts.

Quest 3rd Have you or not had any conversation with Capt Wm S. Moss in relation to said mill and if yes state at what time and what it was.

Ans. I had some conversation with Mr Moss in presence of Mr Hicks on the subject, sometime in 1843. Mr Moss stated that he had loaned Mr. Watts some money & furnished some materials and he afterwards stated that he took a mortgage on the property, he farther stated that Watts was to let him know if any difficulty should arise and that Watts did give him information that he was dissatisfied and thought the mill would not come to any thing and that he went to town and examined it himself by a breeze of wind and that it was his opinion that it would not be of any consequence and that he had ordered the d-d thing to be torn down and I suppose it is down by this time.

Cross Examination by Wm S. Moss, deft.

Quest. 1. Did you hear me assign any other reason why I had ordered it torn down.

Ans. You stated that he got information from Watts that the property was being destroyed & stolen and squandered away.

Quest. 2nd When was this conversation take place.
Ans. I think some time in the year 1843.

Examination in chief resumed.

Quest. 1st At the time of the conversation you speak of did or did not Capt Moss say any thing about an assignment of the property by Watts to himself & Sam^l J. Underwood.

Ans. I do not recollect any thing of any such talk.

Quest. Might or might not the date of this conversation been as early as the fall of 1842.

Ans. It might, my recollection is not distinct, however at what time. Isaac Gaskill.

Ans. Orr = Deposition of Christopher Orr who being duly sworn deposes and saith.

Quest 1st by the Plaintiff. What are the customary wages of a foreman of a job such as the wind mill spoken of by the other witnesses.

Ans. The wages of a foreman at that time who was competent was worth from two dollars & twenty five cents to \$2.50 per day.

Quest. 2nd What is your occupation.

Ans. For the last eight years the greater part of my time I have been working at the Carpenter & Joiners business.

Cross examination by Wm^o J. Moss, deft.

Quest. 1st State whether in your opinion the mill was worth any thing or ever would have been worth any thing.

Ans. So far as I was able to judge, my opinion was that it never would have done any good if it was then completed.

Quest. 2nd Did you see it after it was finished far enough for it to run and did you see it run?

Ans. I saw it running round but not when the machinery was attached to it.

Quest. 3rd Is it your opinion that it ever would have given power enough to grind or saw?

Ans. I am of opinion that it would not from the motion it give them.

Examination in chief resumed.

Quest. 1st Was this mill in a finish or an unfinished state at the time you speak of?

Ans. I do not know.

Quest. 2nd Are you or not a judge of machinery of of this sort?

Ans. I am not as far as the wind work is concerned or the plan of the sails. I could not build one and do not know how it ought to be built. Christopher Orr.

Deposition of Perry Strager who being duly sworn deposes and saith.

Quest 1st by the Plaintiff. Do you or not know any thing of the building of the wind-mill by Ward & Watts spoken of by the other witnesses if yes, state what and whether you performed labour or furnished materials for said Mill and how much and of what kind.

Ans. I know they were building such a mill. I made chains for the mill and saw them put in to it. I made two hundred feet of chain and when it was measured it was not half enough, and I then made as much more as they wanted.

Quest. 2nd How much in length did it take to make a pound of these chains and what were they worth per pound.

Ans. Chains made in that way could not be furnished for less than thirty cents per pound; one of these chains weighed a pound to every fifteen inches, the other was a trifle smaller, but costs more to make them.

Quest. 3rd Do you or not know that these were the same chains that were afterward purchased by Merwin.
Ans. I saw some of the same chains in Merwin's shop & also some of them in Mr. Underwood's yard.

Quest. 4th Was or Was not this wind mill finished and if not state the cause, if you know.
Ans. I know the mill was not finished but do not know the cause. I know some person took the running gears out.

Quest. 5th How much in your opinion would it cost to furnish the materials and do the work that was done on this mill.
Ans. I think it could not be done for less than one thousand dollars & have no doubt that it costs more than that.

Quest. 6th. State whether or not you are acquainted with machinery such as was used in this mill & if so what is your opinion of its competency to answer the end intended, if the mill had been fully completed.

Ans. I am acquainted with machinery in general and am of opinion, that if it had been finished on the plan it was commenced, it would have run so as to drive a saw and done well. J. P. Grazer.

here the hour of six having arrived the further taking of these depositions is postponed till to-morrow morning at nine o'clock A.M. in pursuance of the notice given to Moss and his atty.

Wednesday Morning June 16th 1844.

Joseph Hawesidge
recalled - Joseph Hawesidge having been recalled by the plaintiff and being duly sworn deposes & saith.

Quest 1st State if you can what was the condition of Samuel Ward the complainant in this case as to his ability to labor & superintend the work on the wind mill spoken of in your first examination & how he was occupied while the said mill was building & whether or not he did labour upon it & how much.

Ans. He was able to work all the time he was about the mill, he was frequently absent on business procuring materials and necessaries to be used about the mill; his chief work while there was to lay out work for the hands and superintend the business generally, besides laying out the work for others he did considerable work himself making drums and other particular work, he often worked whole days and several days at a time.

Quest. 2nd. State if you know how long it was prior to the assignment of the mill property by Watts to Moss & Underwood that the work on the mill was suspended and whether or not up till the time or near the time of the suspension of the work Watts still seemed to be satisfied with the prospects of the mill.

Ans. The last work I know of being done was on Saturday and the assignment was made on Monday & Tuesday following, and in the course of the same week the mill was torn down, about a week before the assignment, I conversed with Watts and he seemed at that time to have great hopes of the mill, and went off to hunt Moss to tell him how well the mill was doing.

Quest. 3rd. Was or was not the complainant Ward to your knowledge opposed to the assignment of the property by Watts to Moss & Underwood.

Ans. Ward has told me that he would not sign it and Moss also told me that Ward could not be got to do it.

Quest. 4th. State what you know if any thing about a note given by Ward & Watts to Joseph Hughes, one of the hands who worked on the mill and whether or not the same was afterwards assigned to Underwood and if so when.

Ans. Joseph Hughes told me that he had a note on Ward & Watts which he had assigned to Underwood since the property had got into the hands of Moss & Underwood.

Quest. 5th. State whether or not Hughes worked upon the mill up till the time it was assigned to Moss & Underwood.

Ans. He worked with me untill Saturday two or three o'clock P.M. and the assignment was made on Monday or Tuesday following.

Joseph Haw-ridge

Mervey Lightner =

Mervey Lightner being duly sworn deposes & saith.

Quest. 1st by the plaintiff. State whether or not you ever furnished to Saml. Ward or John Watts or either of them any materials or goods to be used in the construction of a wind mill, which they were then building near Teonia, and, if yes, state when you furnished them, and to what amount and at whose request and whether the same or any part thereof has been paid and if so by whom.

Ans. We (Walker & Lightner) furnished Ward & Watts during the time they were at work upon the mill materials and goods to the amt of about seventy six dollars, we furnished some fifteen dollars worth - at the request of Capt. Moss & for which he paid - about thirty five dollars worth at the request of Isaac Underhill and for which he has paid, the balance about twenty six dollars worth, we furnished Ward & Watts at their request & which amt is yet unpaid. The thirty five dollars paid by Isaac Underhill includes a note of hand of Ward & Underhill for twenty five dollars.

Quest. 2nd

Quest. 2nd. Did or did not Capt. Moss ever tell you that he thought the Wind mill which Ward & Watts were building would do well, or express himself in any way favorable to their project & if yes state where.

Answer.

My impression is that at the time Capt. Moss told Walker & Lightner to let Ward have fifteen dollars worth of goods on his account & during the progress of the work on the mill, he also expressed himself favorable to the mill project & said he thought it would work. Mervey Lightner.

Perry Frazer.
recalled

Perry Frazer being recalled by the plaintiff and having been duly sworn deposes & saith.

Quest. 1st

State whether or not you ever saw in the possession of Saml. H. Underwood any articles which had been used in the construction of the wind mill spoken of in your first examination in this cause, and, if yes, state at what time and what the articles were and what was their value and your competency to judge of their value and your means of knowing it.

Ans.

I saw in July 1843 and before & since in the seler, house & yard and about the premises which were occupied by Saml. H. Underwood

Two three feet drums worth six dollars, one three feet pulley worth three dollars, one saw gate worth ten dollars, one tunnel head worth \$15.00, one rag wheel & shaft worth 10.00, one belt worth 20.00, saw mill iron worth \$150.00, one car wagon worth 10.00, all of which I saw in the wind mill built by Ward & Watts. I have worked among such machinery for more than fifteen years and have had good opportunity of knowing its value.

Just. 2nd State whether or not you are acquainted with Saml. H. Underwood, and if so how long have you known him, and what is his character for truth and veracity if you know it.

Ans. I have known him some three or four years or longer, his reputation for truth & veracity is not good among those who know him.
P. Hager.

Chauncy Wood - Deposition of Chauncy Wood who being duly sworn deposes & saith.

Just. 1st by the plaintiff. State whether or not you ever performed any labor or furnished any materials for Saml. Ward complainant in this suit or John Watts defendant, if yes, state at what time and for what purpose and to what amount.

Ans. In the summer 1842, I done hauling for Ward & Watts in hauling materials for the wind mill which they were building at that time on the river near Teonia to the amount of fifteen dollars & seventy five cents which has not been paid.

Chauncy C. Wood.

H. G. Farrell - Deposition of Hiram G. Farrell who being duly sworn, deposes & saith.

Just. 1st by the plaintiff. State whether or not any goods or materials were ever furnished by you to Saml. Ward & John Watts or either of them for the use of a certain wind mill which they were building near the town of Teonia, and if so, where and to what amount.

Ans. I furnished some goods to them for the use of that mill to the amount of ~~some~~ some time in the year in these goods were furnished by the firm of W. B. & H. G. Farrell.

A. H. Gash -

Alexander H. Gash being duly sworn deposes & saith.
Just 1st by the Plaintiff. State whether or not you know
the plan upon which the wind mill which was built near
the town of Teoria by Ward & Watts sometime in 1842 was
constructed and if yes, state whether or not you have seen
other mills of the same kind and built upon the same plan
in operation and how they performed.

Ans. I do and have seen three other wind mills built
upon the same plan; two of them grist mills, they were in opera-
tion and were said to perform well and do better than those
upon the old plan of wind mills. Alex H. Gash.

Mich: Roth -

Deposition of Michael Roth who being duly sworn depo-
sith & saith.

Just 1st by the Plaintiff. Did or not Saml Ward ever
settle ^{with} and pay you for a debt due to you from any of the hands
who were at work upon the wind mill which Ward & Watts
were then building near Teoria, and if yes, state what was
the amount due to you from this person and what was his
name and whether or not Ward was indebted to him at the
time and in what way he became so indebted.

Ans. Mr. Ward settled with and paid me a debt
due to me from a man called Lemmy the black smith, he
said he was at that time at work for Ward and Ward &
Watts were then building the mill, the amount of the debt paid
me was \$5.00. Lemmy was working in Evans Black Smith
shop at the time. Michael ^{his} Roth.
mark

Here in consequence of the absence of witnesses the taking of
these depositions was adjourned till to-morrow morning at nine
o'clock A.M.

J. L. Thought -

Deposition of John L. Thought who being duly sworn deposes and
saith.

Just 1st by the Plaintiff. Are you acquainted with Saml Ward the
complainant in this case, if yes, for how long.

Ans. I am and have known him for seven or eight years.

Quest. 2nd. If you know his character as an honest and industrious man state what it is.

Ans. His reputation is good for honesty and since I have known him has always been a hard working & industrious man.

Quest. 3rd. What is his trade or occupation and if you know his reputation as a competent workman state it.

Ans. He is a mill-right I believe, I have known him to work upon mills, his reputation as a mill right was good, he was looked upon as one of the foremost workmen in that section of country and had some of the heaviest jobs in the county.

John C. Fluhrt.

Isaac Underhill = Isaac Underhill being duly sworn deposes and saith.

Quest. 1st by the Plaintiff. State whether or not you know of the building of a wind mill near the town of Teoria by Ward & Watts in the Summer of 1842, and if yes, state whether or not you furnished any money, materials or good work towards the building of said mill, and if any how much and on whose acct.

Ans. I know there was a wind mill building at that time by Ward & Watts, I furnished forty one dollars & seventy five cents in goods at two different places, thirty five dollars at Walker & Lightners & six dollars & seventy five ^{cents} at Curstons & Griswolds & twelve dollars & seventy five ^{cents} in work all of which Mr. Ward has paid me for.

Isaac Underhill.

Geo. S. Hickey = James S. Hickey being first duly sworn deposes & saith.

Quest. 1st by the Plaintiff. State whether or not you know of any goods or materials having been furnished by Messrs Hopkins & Burgess towards the building of a wind-mill near the town of Teoria sometime in 1842 & if so to what amount & if the same have since been paid for, state by whom if you know.

Ans. There were castings made at their foundry in 1842, which were taken to the mill, the amount I do not know which have in part been paid for by Mr. Hiram Ward.

J. S. Hickey.

J. S. Vanortrick = Deposition of Simon S. Van Vortwick who being duly sworn deposes & saith.

Quest. 1st. by the plaintiff. State whether or not you ever saw and examined the wind mill near the Town of Teoria, which was built some time in the year 1842 by Saml Ward & John Watts, and if yes, state whether or not the same has to your knowledge suffered any damage and if any how much & in what way and your means of estimating & knowing the amount of damage sustained.

Ans. I have seen and examined and worked at it while building, and I have seen it since and it has sustained damages at least one thousand dollars in my estimation by being torn to pieces and the loss of the use of it, my business is that of a mill right and I consider myself a judge of such matters.

Quest. 2nd. State if you know whether or not Saml Ward worked upon said mill, and if yes in what capacity and what were his services worth per day.

Ans. I know that he did as Superintendent of the work, his services were worth Two dollars & fifty cts per day.

Simon S. Van Vortwick.

State of Illinois, }
Teoria County, ss. } V. Thomas Bryant a Justice of the Peace
for said county do certify that the foregoing depositions were
by me taken & reduced to writing at the place and times in the
captions, and the said depositions mentioned in the presence of the
complainant Ward, who appeared in person and by his attorney, and
William S. Moss one of the said defendants who was present in
person during a considerable portion of the time while the said
depositions were being taken, and cross-examined some of the said
witnesses and an opportunity being given waived the cross-exam-
ination of others. I further certify that the said Caleb Whitmore,
Philander L. Meerwin, Clark Cleveland, William Clawridge,
John Easton, Charles Sutton, Robert Fletcher, Joseph Clawridge,
Isaac Gaskill, Christopher Orr, Perry Frazer, Henry Lightner,
Chaney G. Wood, Hiram G. Harrell, Alexander M. Hick, Michael
Roch, John L. Hought, Isaac Underhill, & James V. Hickey,
were by me duly sworn previous to their examination to testify the

truth, the whole truth, and nothing but the truth, as witnesses in the above entitled cause, and that the said depositions so taken as aforesaid were by the said witnesses severally subscribed in my presence. Given under my hand and seal this 16th day of June in the year of our Lord one thousand eight hundred and forty four.

Thomas Bryant 23 J.P.

Deposition of Obodiah Oakley, William C. Meason, W. R. Hopkins, Henry W. Stillman, George Winkinton, E. F. Woodland, Frederick Mueller, John H. Lisk, Peter Albert, Konrad Boilling, Evan Davis, Edmon Garnerell, Union S. Van Stortwick, Dennis Blakely, John Schwab, & Mrs. A. Hall, of the county of Peoria & state of Illinois taken on the 21st day of May 1844 between the hours of nine o'clock A.M. and six o'clock P.M. at the office of the clerk of the circuit court of said county before Thomas Bryant a Justice of the Peace for said county, pursuant to notice served upon the defendants Meason according to law; to be read in evidence on the trial of a certain suit in chancery now pending in the Circuit Court for said of Peoria, wherein Samuel Ward is complainant and John Watts, Wm. S. Meason and Saml. H. Underwood are defendants on the part and behalf of the said complainants.

Obodiah Oakley - Deposition of Obodiah Oakley who being first duly sworn deposeseth & saith.

Interrogatory 1st by the plaintiff. Are you acquainted with the parties plaintiff and defendant in this cause?

Answer. I am.

Question 2nd. Did you or did you not furnish to Ward & Watts parties to this suit, plaintiff and defendant any article or articles and what to be used by them in the construction of a wind mill near the town of Peoria.

Ans. I let Mr. Ward have eleven sides of band leather for a belt and also some whang leather.

Question 3rd. What was the whole amount ^{that} you let him have worth?
Ans. The whole amount of the band leather that I let him have was

charged to him at fifty five dollars, I do not know the price of the Whang leather.

Quest. 4.th Were you and Benjamin St. Pierre in partnership and were the goods furnished, partnership goods?
Ans. We were and the goods were partnership goods.

Quest. 5.th Was or was not this leather used in the construction of the said wind mill.
Ans. It was.

Quest 6.th Has or has not the price or any part of the above leather been paid, and if so by whom?
Ans. Mr Ward gave an order on Capt Meese for twenty dollars, which was accepted and paid. Mr Ward paid the balance of thirty five dollars. Obadiah Oakley.

Wm E. Mason. William E. Meason being first duly sworn deposes and saith.
Quest. 1. by the plaintiffs. Do you know the parties plaintiff and defendant to this cause.
Ans. I know them.

Quest. 2.nd Were or were not Ward & Watts to your knowledge engaged in the construction of a wind mill near Peoria and at what time?
Ans. They were in the Spring eighteen hundred and forty two.

Quest. 3.rd Did they or did they not while engaged in the construction of said mill become indebted to you and in what sum and on what account.
Ans. They became indebted to me for boarding one of their hands who worked about the mill in the sum of fifteen dollars & ²⁵/₁₀₀ for which Watts gave me his note at the time bearing interest at 12 per cent from date July 4th 1842,

Quest. 4.th Who was this man who boarded with you and what work did he do about the mill and how long did he continue to work about the mill, and how much did his work for the use of the mill

amount to, and was he or was he not paid in whole or in part to your knowledge, and if so by whom.

Ans. He was called Tommy the blacksmith, he worked as blacksmithing for the mill five or six weeks. I do not know how much his work was worth, I heard him say he was paid I think by Mr. Ward and I saw goods he got on his wagon.

Quest. 5th. Do you know any thing else of benefit to the plaintiff.

Ans. I do not. William E. Meason.

Wm R. Hopkins = William R. Hopkins being first duly sworn deposes and saith.

Quest. 1. by the plaintiff. Do you or do you not know that Saml^r Ward & John Watts parties to this suit were engaged in the construction of a wind mill near the Town of Teona and if so at what time and did they or did they not become indebted to you for articles furnished for the said mill at their request and if so in what amount.

Ans. I know that they were engaged in the construction of a mill to be driven by wind in the Spring of 1842 and at that time they became indebted to me for articles furnished for the said mill in the sum of \$17.67.

Quest. 2nd. By whom were the articles bespoke and how were they charged?

Ans. They were bespoke by Ward & Watts and charged to them jointly and acknowledged to be a joint debt by them.

Quest. 3. Has or has not this debt or any part thereof been paid and if so how much and by whom paid?

Ans. Twelve dollars and thirty one cts has been paid, by whom I do not know. Wm R. Hopkins.

W. B. Stillman = Henry W. Stillman being first duly sworn deposes and saith.

Quest. 1. by the plaintiff. Do you or do you not know that Saml^r Ward and John Watts were engaged in the erection of

a wind mill, near the Town of Peoria and about what time?

Ans. I know that such a mill was building and that these parties were at work at I think in the spring of 1842.

Quest. 2nd Did they or did they not become indebted to you, while so engaged for articles furnished for the said mill and if so to what amount?

Ans. I sold them a crank & some gudgeons and iron for the mill to the amount of \$15.75, to the best of my recollection.

Quest. 3rd Has or has not this debt been paid or any part thereof, and if so, how much and by whom?

Ans. It has all been paid and paid by Ward about the time the castings were got. H. W. Stillman.

Geo. Wilkinson = George Wilkinson being first duly sworn deposes and saith.

Quest 1. by the plaintiff. Do you or do you not know any thing and what, relative to Saml. Ward & John Watts parties to this suit, being engaged as partners in the erection of a mill to be worked by wind near the town of Peoria, and, if yes, at what time and did they or did they not become indebted to you for labour or materials furnished by you for the erection of said mill.

Ans. I know from the statement of both parties that they were engaged as partners in the construction of a wind mill about one mile above town, and I was employed by Watts to labour on said mill and did perform labour to the amount of about nineteen $\frac{25}{100}$ dollars.

Quest. 2nd Where did you board while performing this work?

Ans. I boarded with Mr. Ward.

Quest. 3rd How long did you board with him and had you any other hand working for you on the mill and if so where did he board and how long and what was the boarding worth?

Ans. I boarded there five days and had another hand at work for me who boarded there also six days and board was worth two dollars pr week.

Quer. 3rd What is your occupation?

Ans. I am a carpenter by trade and have frequently worked ^{upon} Mills.

Quer. 4th Have you or have you not any acquaintance with the kind or character of mill that Ward & Watts were erecting at the time you speak of and for what purpose was this mill designed and was it or was it not in your opinion calculated to answer the end intended if it had been fully completed.

Ans. I have seen one mill upon the same plan, with this one, a flouring mill, it run three pair stones and did a good business, this mill was designed for sawing lumber and as to its competency to answer the purpose for which it was designed I do not feel prepared to judge.

Quer. 5th Who superintended the work?

Ans. Mr Ward superintended the work Mr Watts did not appear competent as a workman.

George Wilkinson

Edw. F. Motland - Edward F. Motland being duly sworn deposes and saith,

Quer. 1. by the Plaintiff, Do you or do you not know that James Ward and John Watts were connected together in the building of a mill to be propelled by wind near the town of Teoria, and if so when?

Ans. I do: they were, some time in the Spring of 1842.

Quer. 2nd. Do you or do you not know anything about the ability or willingness of either of these parties to pay the debts of the firm and if so state it.

Ans. Mr Ward has always manifested a willingness to pay, and one demand of between seventy & eighty dollars for the rent of of the mill has been satisfied through me by Ward.

Quest. 3rd State whether or not you are acquainted with
Wm^d Ward, and what is his character as an honest and
industrious man, if you know it.

Ans. I know his character and know him to be an honest
and industrious man. E. H. Howland.

Ed. Miller - Frederick Miller being duly sworn deposes and saith,
Quest. 1. by the Plaintiff - Do you or do you ^{not} know that
Saml^d Ward & John Watts were engaged as partners in the
building of a wind mill in the neighborhood of Teoria and
did they or did they not become indebted to you as a firm
while building said mill.

Ans. I sold beer for the use of the hands working on the
mill by the request of both Ward & Watts, to the amt. of fourteen
dollars & ⁶²/₁₀₀.

Quest. 2nd Has or has not this debt been paid or any portion
thereof, and if so by whom and how much?

Ans. Wm^d Ward paid one in work to the amount of
four dollars. H. Miller.

Amos H. Lisk - John H. Lisk being duly sworn deposes & saith.

Quest. 1. by the plaintiff. Do you or do you not know
whether Saml^d Ward & John Watts were engaged in the
building of a wind mill near Teoria, and did they or did they
not become indebted to you in any manner connected with the
building of said mill, and if yes, state in what manner and
in what amount and whether any part thereof has been
paid, and if so by whom.

Ans. I did blacksmith work at the request of said
Ward for the use of said mill to the amount of from five
to seven dollars the whole of which has been paid by Wm^d Ward.

Quest. 2nd Were you present and did you hear the testimo-
ny of Wm^d E. Meason in this cause.

Ans. I heard, a part of it.

Quest. 3rd. Were you acquainted with the man called Lemmy the blacksmith spoken of by Mr. Meason & by what name was he known, and where is he now, if you know.

Ans. I know the man, he worked for me a month, he was called little ^{Jimmy} or Lemmy the blacksmith, where he now is I have not been able to learn.

Quest 4th. Do you or do you not know that he worked at blacksmithing for the use of the mill which Ward & Watts were building, and if yes, how long and what would his work be reasonably worth and was he or was he not to your knowledge paid for the same & if so by whom?

Ans. I saw him at work making articles intended for the mill and I think I have seen the same articles on the mill since; I should suppose he worked for them a month or more, and his work was worth a dollar a day & found, he told me as he was going away that Mr. Ward had paid ^{him} off like a man.

John H. Lisk.

Peter Albert - Peter Albert being first duly sworn deposed & said.

Quest. 1. by the plaintiff. Do you or do you not know any thing in relation to the building of a windmill near Peoria by Samuel Ward & John Watts, sometime in the spring of 1842.

Ans. I know they were working together on such a mill at that time, and understood from both that they were in partnership.

Quest. 2nd. Did they or did they not become indebted to you in any way connected with said mill and if so state in what manner and in what amount.

Ans. I did labour and lodged hands for the partners in building the mill to the amount of seventeen dollars.

Quest 3rd. Was any part of this debt been paid and if so by whom and how much.

Ans. Thirteen dollars & fifty cents has been paid me by Mr. Ward.

Peter Albert.

C. Boelling =

Conrad Boelling being duly sworn deposeseth & saith.
Quest. 1. by the Plaintiff. Do you or do you not know any thing about the building of a wind-mill by Ward & Watts near Peoria, and if so at what time was it.
Ans. Yes, I know of their building a windmill in the year 1812.

Quest. 2^d. Did you or did you not furnish materials to them or either of them to be used in the construction of said mill, and if yes to what amount and has or has not the same or any part thereof been paid for and, if yes, how much and by whom?

Ans. Yes, I furnished materials for the mill but to what amount I do not now recollect but the partners Ward & Watts became indebted to me in various ways on account of the mill in the sum Twenty six ⁸⁵100 dollars for which sum they give me their ^{joint} note which has since been paid by Ward.

C. Boelling.

Evan Davis =

Evan Davis being duly sworn deposeseth and saith.

Quest. 1. Are you or are you not acquainted with Saml Ward and John Watts parties to this suit, and did you or did you not some time in the Spring of 1812 furnish coal for them or either of them, and if yes, state for what purpose they were used and to what amount.

Ans. I know them, and they got two loads of coal for black-smithing, about the mill containing Sixty six bushels at five cts pr bushel making three dollars & thirty three cents.

Quest. 2nd. Has or has not this debt been paid to you and if so by whom?

Ans. It has and paid by Mr. Ward.
Evan ^{his} _{mark} Davis.

Ed. Hamerell =

Edmond Hamerell being duly sworn deposeseth and saith

Quest. 1. by the Plaintiff. Are you acquainted with Saml Ward complainant in this suit?

Ans. Yes sir.

Quest. 2nd. Is or is not Mr. Ward by trade a mill right and do you or do you not know what his character and reputation as a competent workman in that business and what it is.

Ans. He is a mill right by profession. I am myself a Miller and have worked a mill constructed by Mr. Ward which worked well and people speak well of Mr. Ward's machinery and I know of him having built other mills, all of which worked well.

Edm^d. Garnerell.

J. S. Vanortrick: Simon J. Vanortrick being duly sworn deposeseth and saith.

Quest. 1. by the Plaintiff. Are you acquainted with the parties, plaintiffs and defendant in this cause.

Ans. I am acquainted Mr. Watts. Messrs. Ward, Mr. Ward I have known for eight years or more.

Quest. 2nd. Do you or do you not know what is Mr. Ward's character and reputation as a mill right and if yes state what it is, and your means of knowledge.

Ans. He was generally esteemed a good & competent mill right by good judges, I have known several mills (one steam saw mill) built by him, all of which worked well, one of the mills built by him I did the carpenter & joiners work, and the mill was esteemed the best in country where it was built.

Quest. 3rd. Do you or do you not know anything in relation to the building of a wind mill by Ward & Watts near Peoria, and did you or did you not furnish labour or materials for the building of said mill and if so to what amount, have you or have you not been paid for the same and if yes by whom

Ans. I know of them building such a mill and I did labour on the mill for them to the amount of about four dollars & fifty cts, which Mr Ward has since paid me and boarded me while I worked, which was worth about one dollar. I then went home and Mr Watts came to see me to get me to return to work upon the mill. Mr Watts was at that time in great spirits about the mill and stated to me that Capt Moss wished to become a partner in the concern and would risk one thousand dollars in the concern and had already advanced some but before I could get back which was but a few days I learned that the mill was torn down.

Quest. 4th. Are you or are you not acquainted with machinery, such as is used in the construction of mills and what is your opinion of the competency of the machinery in this mill to answer the purposes designed.

Ans. I am and have no doubt but what if it had been fully completed, it would have run well and done good work.

Simon S. Van Wortwick.

Dennis Blakeley = Denis Blakeley being duly sworn deposes and saith.

Quest. 1. by the Plaintiff. Do you or do you not know any thing in relation to debts due from Ward & Watts on account of the wind mill built by them near Teoria, and if so, what amount and to whom due.

Ans. I know of one debt against the firm due to P. H. Bostwick for the amount of forty dollars or more and also two other debts due on the same account, one to Jacob Plough for seventeen ⁰⁰ dollars, the other to Matthew Sharp for seventeen ⁰⁰ dollars, the two latter are still standing in judgment unsatisfied on my docket; of the payment of the former I know nothing. Dennis Blakeley.

John Schwab = John Schwab being duly sworn deposes and saith.

Quest. 1. by the plaintiff. Do you or do you not know anything

about the building of a wind mill by Nathl. Ward + John Watts near Teoria in the Spring + Summer of 1842.

Ans. I know of the building of such a mill by Ward and some other man at that time.

Quest. 2. Were or were not any debts contracted with you on acct of the building of the saw mill and if so to what amount, and have the same or any part thereof been paid and by whom?

Ans. Provisions were furnished by myself + partner for the hands working on said mill to the amount of ten dollars + fifty cents which has since been paid by Ward.
John Schwab.

Wm. A. Hall = Wm. A. Hall being first duly sworn deposeseth + saith.

Quest. 1. by the plaintiff. Have you or have you not seen and examined the wind mill built near Teoria by Mr. Ward + Watts?

Ans. I have seen the mill and examined it while they were building it.

Quest. 2nd Have you or have you not a knowledge of machinery, such as is used in the construction of mills generally, and what is the extent of your knowledge of such matter - and what is your opinion of the competency of the machinery used in this mill to answer the purpose intended, provided the same had been fully completed.

Ans. I have been acquainted with the machinery of mills both flouring + saw mill of various kinds for thirty years + more + have worked among it and on it for more than thirty years, and I believe that if this wind mill had been completed as it was commenced, it would have worked well.

Quest. 3rd What is the present condition of this mill + what has reduced it to this condition, + what damage if any has been sustained?

Ans. The mill is at present in a very dilapidated condition and has the appearance of having been torn down and I should

estimate the damage done to the mill it self to bear least equal to the costs of construction.

Quest. 4th. What would be the value of the labor & superintendence of the principal workmen on such a mill by the day?

Ans. At that time the foreman of such jobs were getting two dollars & fifty cents pr day and some much more than that.
Wm. A. Hall.

State of Illinois, 3
Peoria County, ss. 3 V. Thomas Bryant a Justice of the Peace,
within and for said county do hereby certify, that Abodiah Cathey,
William C. Mason, Mrs R. Hopkins, Henry B. Stillman,
George Wilkinson, C. H. Howland, Frederick Miller, John H. List,
Peter Albert, Conrad Boling, Evan Davis, Edmond Darnrell,
Simon S. Van Vorstwick, Dennis Blakeley, John Schwab
and William A. Hall, were by me duly sworn previous to their
examination, to testify the truth, the whole truth and nothing but
the truth, as witnesses in the above entitled cause and that
the foregoing depositions by them subscribed were reduced to
writing by me and taken at the time and place in the notice
specified in the caption of these depositions. Given under my
hand and seal this 24th day of May A.D. 1844.
Thomas Bryant J.P.

The deposition of John Waugh of the County of Peoria and State of Illinois taken on the seventh day of October A.D. 1844, between the hours of 9 o'clock A.M. and 7 o'clock P.M. of said day at the office of Ballance & Cooper in the Court House in the Town of Peoria before William Mitchell clerk of the circuit court of said County, to be read in evidence on the trial of a certain suit in Chancery, now pending in the circuit court of said county, wherein Samuel Ward is complainant and John Watts, William S. Moss, and Samuel S. Underwood are defendants, on the part and behalf of the said complainant. The said Waugh in answer to interrogatories deposes as follows.

John Waugh = Int. 1st. Are you acquainted with the parties to this suit, if yea, how long?
Ans. Yes: have known Ward about two or three years and

the others longer time.

Int. 2nd. Do you or not know anything of a Windmill near the town of Peoria built by said Ward & Watts, and if yes, state whether said Mill was ever finished.

Ans. I do know something of the mill, said mill was pretty nearly finished, it would run in the condition it was in provided the weights were put upon it. It lacked half the number of fans, but I believe it would run with what fans were on, with the weights on.

Int. 3. What was the particular use of these weights you speak of, and were they or not necessary to give the machine any power whatever?

Ans. They were necessary to hold the fans to their place against the wind; without which no power could be commanded sufficient to do business with.

Int. 4th If the requisite weights had been upon the machinery, is it your opinion that a man by taking hold of the drum wheel or any other part of the machinery could have stopped the mill when any considerable breeze of wind was blowing.

Ans. I do not think he could, I think a man would be in danger, neither do I think any eight or ten men would be safe in taking hold of it; as they would be in danger their lives by so doing after it had got fairly in motion.

Int. 5th What is your occupation, and are you or not acquainted with machinery of the kind used in this mill; if yes, state your opinion of the workmanship in this mill, and whether or not you believe it would have answered the object intended, if it had been fully completed, and fairly put in operation; and for what object was this mill designed.

Ans. I am a carpenter & joiner by trade, I am somewhat acquainted with machinery of this sort, and have worked some on this mill & have seen mills similar to this in full operation. I think the work in this mill was strong & substantial but rather rough ^{work}. I believe the machinery ran true. I think the mill would have answered the object

for which it was intended, if it had been fully completed.
the mill was designed for a saw mill & I think they also intended to put in burr mill stones.

Int. 6th. Do you or not know Mr. Ward's character as a millwright. If so, what is it.

Ans. I have seen machinery of his putting up and believe him capable of constructing a mill of this description.
John Waugh.

State of Illinois, }
Peoria County, ss. } I, William Mitchell, clerk of the circuit court
of said county, do hereby certify, that the said John Waugh was
by me sworn to testify the truth, the whole truth and nothing but the truth,
as a witness in the above entitled cause, previous to his examination;
and that the foregoing deposition by him subscribed was reduced to
writing by Ralph Hamlin, deputy clerk of said court, a disinterested
person and taken in pursuance of, and at the time and place in the
inclosed notice specified — I also certify that William S. Moss,
one of the defendants in the above entitled suit was present during a part
of the examination of said Waugh and declined cross-exam-
ining said witness. In Testimony whereof, I have hereunto set my
hand and affixed the seal of said court at Peoria this ninth
day of October A.D. 1844. William Mitchell, clerk.
by R. Hamlin, Dep. clerk.

Deposition of William C. Meinfee of the County of Peoria and
State of Illinois, taken on the 8th day of October A.D. 1844 between
the hour of 9 o'clock A.M. and 7 o'clock P.M. of said day by
William Mitchell, clerk of the circuit court of said county at the
office of Ballance & Cooper in the Court House in the Town of Peoria,
pursuant to the enclosed notice, to be read in evidence on the trial
of a certain cause now pending in said circuit court on the
Chancery side thereof, between Samuel Ward, complainant and
John Watts, William S. Moss, and Samuel H. Underwood,
defendants, — on the part and behalf of the said complainant —
the said William C. Meinfee in answer to interrogatories deposes
as follows, to wit

Wm. S. Minifie = Interrogatory 1st. Do you know the parties complainant and defendants to this suit, & if yes, how long have you known them?
Ans. I have been acquainted with Mr. Ward about three years, with Capt. Moss about the same length of time, with Watts about fifteen months and am slightly acquainted with Mr. Underwood.

Int. 2nd. What is your trade & occupation and are you or not acquainted machinery such as is used in the construction of windmills.

Ans. I am a house joiner by trade and have worked some eight or ten years at machinery of different kinds, and am tolerably well acquainted with machinery such as is used in wind-mills & have frequently seen wind mills in operation.

Int. 3rd. Have you or not seen and examined a wind mill said to be built by the complainant Ward and Watts near the Town of Teoria, and if yes, state your opinion of the workmanship & machinery used in said mill and whether or not the said mill if it had been fully completed & put in operation would have answered the purpose for which it was designed, and do you or not know whether said mill was ever fully completed? and for what purpose was it intended?

Ans. I have seen and examined said wind mill. The workmanship generally of said mill and machinery was tolerably fair work. The machinery & mill was never fully completed but my opinion is had it been fully completed it would have answered the purpose for which it was designed. The intention of the mill was for the purpose of sawing & grinding.

Int. 4th. In what did the said wind mill lack of being completed.

Ans. It lacked ten fans or doors more. It was intended for twenty fans, ^{whereas} there was only ten of them hung and those ten had only temporary weights merely for the purposes of experimenting and keeping the chains from getting entangled with the

frame of the mill. The temporary weights on the ten fans were put on for the purpose of ascertaining what the correct weights should be. To give the mill its full power it would have required much heavier weights than any ever were applied. — So far as the power of the machinery was concerned there was nothing else important lacking.

Int. 5th Do you or not know the character of Mr. Ward as a Millwright — If yes state what it is?

Ans. I do. I believe him competent to do any kind of millwrighting or building of mills that might come before him.

Int. 6th Is it your opinion that if the proper weights had been upon this mill and a fair breeze blowing that it could have been stopped by a man taking hold of any part of the machinery.

Ans. I do not think one man or even a dozen men could have stopp'd it. — It would have been apt to have crippled them.

Wm. L. Meniffee

State of Illinois,
Peoria County, ss. }
I, William Mitchell, clerk of the circuit court of said County, do hereby certify, that previous to his examination the said William L. Meniffee was by me duly sworn to testify the truth, the whole truth and nothing but the truth as a witness in the above entitled cause, and that the foregoing deposition by him subscribed was taken at the time and place in the inclosed notice specified and reduced to writing by Ralph Hamlin a disinterested person. In Testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at Peoria, this tenth day of October A.D. 1844.

[23]

William Mitchell, clerk.
by R. Hamlin. Dep't l.k.

The Depositions taken in said cause on behalf of defendant William S. Moss as the same remain on file in my office are in the words and figures following to wit:

The depositions of witnesses taken before William H. Hesselenden Probate Justice of the Peace of Teona County on the 25th day of September A.D. 1924, between the hours of 8 O'clock A.M. + 10 O'clock P.M. of said day at the office of W. H. Turple, Esq. in Teona, in pursuance of the ~~original~~ ^{amended} notice.

Chester Hamlin: Chester Hamlin being duly sworn according to law deposed in answer to the Interrogatories as follows.

1st Interrogatory - Are you acquainted with the parties in this suit?
Ans. I am acquainted with them + have been for two or three years.

2^d Interrogatory - What is your occupation?
Ans. I am a Carpenter.

3rd Int. Are you acquainted with Mills + Machinery?
Ans. I am not particularly acquainted with mill building, but can tell good work when I see it.

4th Int. Have you seen a Windmill constructed by Watts + Ward about one mile above Teona? + if so what is your opinion of its capacity to do business?
Ans. I have seen the mill built by Watts + Ward and should think from what I saw of it after it was put in operation, that it was not capable of doing the business it was intended for, as it lacked power. I worked on the mill, and understood it was intended for a saw mill + some talk was had of putting in Burrs after it was in operation, from what I knew of the mill I should think it would not be of much value to the owner, altho' I may not be a competent judge.

5th Interrogatory — From what you saw of the work on this mill should you think it done by an experienced Mill Wright or one who had a knowledge of his business?

Ans Comparing it with other millwrights work I have been accustomed of seeing, I should not think it was.

1 Interrogatory by Mr. Cooper for the Complainant: Do you know what was the original design of the mill, when Watts & Ward were in partnership.

Ans I understood from either Watts or Ward that the mill was to be put sawing first, & after it was put in operation, they intended to put in Burrs.

2 Interrogatory. In what was this work inferior to other Mills you have seen?

Ans. The work take the mill though appeared roughly done & so far as I am capable of judging it would not do business well, the wheels may have been true & may not. I did not take notice particularly, after it commenced running.

3rd Interrogatory. In order to make a mill run well, must the work all be made smooth?

Ans. Every thing should be made true & all the gearing should be made smooth, it would not be necessary for the arms & those parts where there is no friction to be smooth.

4th Interrogatory. Was the mill ever finished?

Ans I suppose the mill was ^{finished} ready for a saw. I may be mistaken. I cannot say whether the weights were on the mill. I cannot say whether the Bands were on the mill — or whether the Rag Wheel was finished.

Chester Hamlin.

J. William H. Hessenden, Probate Justice of the Peace of Teona County, do certify that the foregoing deposition of Chester Hamlin was taken, sworn to & subscribed before me at the office of N. H. Tupper, Esq. in Teona, Teona Co. Illinois the day and time in the caption to the said deposition. Witness my hand & seal this 24th day of Sept. 14. 1844.

Wm H. Hessenden. J. P.

J. C. Armstrong - James C. Armstrong being duly sworn deposed as follows.

1.st Interrogatory. Are you acquainted with Saw Mills & machinery of that kind built by Watts & Ward near Teoria - have you been engaged in running mills & how long?

Ans. I am acquainted with Saw mills and machinery & have been engaged between four & five years in a Steam Saw mill. I am not acquainted with Wind mills.

2.nd Interrogatory. Was Samuel Ward ever employed by you to repair mills? If so, is he in your opinion a competent Mill Wright?

Ans. He, Sam^l Ward has been employed by me to repair my mill; the work he did, did not prove good all of it.

3.rd Int. Had you seen the wind mill built by Watts & Ward and from your knowledge of machinery & mills what was your opinion of its capacity to do business?

Ans. I did see it & from what I saw, was under the impression it could not do business.

1.st Int. by Mr. Cooper for compt. Whether or not when Mr. Ward was at work on your mill, he was sick part of the time & if so whether part of the work was not done by other hands.

Ans. He was sick part of the time; the work he did for me was done over two or three times & in part by other hands but under his directions.

2.nd Interrogatory. What part of the work was insufficiently done & what that work done by Ward himself or others.

Ans. The work that was insufficiently done was the Saw Gate & the castings belonging to it, all of which he planned & part of which he did.

Int. 3. Did he do some other work about your mill & how was that done?

Ans. ^{all} He did do some other work, which he did to my satisfaction.

Q. No. 4. Was the wind mill built by Watts & Ward, finished when you saw it?

Ans. I believe it was finished as near as it ever was. I supposed it was ready for the saw. I do not know whether the weights & fans were set up.

James C. Armstrong

I, Wm. H. Hessenden, Probate Justice of the Peace of Teoria Co. do certify, that the foregoing deposition of James C. Armstrong was taken, sworn to, and subscribed before me at the office of St. H. Purple in Teoria, Teoria County Illinois at the day and time in the caption to said deposition. Witness my hand & seal this 24th day of Sept A.D. 1844.

Wm. H. Hessenden. J. P. [CS]

Charles Sutton = Charles Sutton being duly sworn deposed as follows.

Interrogatory 1. Did you or not at any time have a conversation with complainant in relation to J. S. Moss, having taken possession of the wind mill property in controversy, if so what did the complainant state?

Ans. Mr. Ward & myself were talking about the windmill property since the commencement of this suit. I said it was too bad for Capt. Moss to lose his money he had lent them. Mr. Ward said he did not blame Capt. Moss, but Underwood & Watts.

Interrogatory 2. Did you or not know a certain log car being part of the wind mill property, if so, state the value.

Ans. I bought a log car, two drums & strap of Underwood. I paid for the car three dollars & fifty cents, which I think is all it was worth.

Interrogatory 3. Were you or not acquainted with the business of said Watts & Ward, if so which advanced the greater amount of funds, in the business - & state your means of knowing it.
Ans. I do not know what Ward advanced. I turned out some shingles on Watts account. Three hundred dollars worth, the proceeds of which went to pay labor done on the mill the most of it. The shingles I advanced was in 1842 I think.

1st Interrogatory. by Mr. Cooper for Compt. Do you know of any of the shingles being turned out to pay any other debt.
Ans. I do not.

Int. 2. Do you know whether this mill was ever completed?
Ans. I believe it was not.

Int. 3. Do you know whether weights were necessary to keep the fans in place to give power?
Ans. I saw Mr. Ward put on the weights & take them off. I never saw a mill of the kind before. I heard Mr. Ward say he was going to get cast iron weights when he was able. I believe the iron weights were never got.

Int. 4. Do you from your own knowledge, or have heard it stated by any Defts. relative to the power of this mill.
Ans. I heard Watts say that the bar fell down when the mill was in motion & broke the cog.

Charles Sutton.

The taking of this depo was objected to by Ballance Atty. for Plff. as the depo. had been taken before.

I. Wm. H. Kessenden, Probate Justice of the Peace for Teona Co. do certify that the foregoing deposition of Charles Sutton was taken, sworn to & subscribed before me at the office of W. H. Turple, Esq. at Teona, Teona Co. Illinois at the day and time named in the caption to said Depo. Witness my hand & Seal this 24th day of Sept. A.D. 1844. Wm. H. Kessenden. J. P. [S]

Ed. Damerell: Edward Damerell being duly sworn deposed as follows.

1.st Interrogatory. Are you acquainted with Samuel Ward & how long have you known him?

Ans. I know Saml Ward & have known him for four or five years.

2.nd Interrogatory. Are you acquainted with mills & machinery belonging to Mills - & do you know whether Saml Ward is a competent Millwright & what facts do you know in relation to it?

Ans. I am acquainted some with Mills & machinery & have worked two years in a mill - The Saml Ward built the mill in Michigan which I worked in - it did a good business - altho' it was not such a mill as I would have built for myself - the plan of the mill is every thing, & cannot say whether Mr Ward planned it or not & cannot say whether Mr Ward is a competent Millwright or not.

1.st Int. by Mr Cooper for Compt. Did you employ Mr Ward to build a mill for you after you had worked in the Mill in Michigan?

Ans. I did, he was to put it up after my plan, but he went to work after his own plan, he did not complete the mill for me as our cash ran out.

Edw^d. Damerell.

I, Wm H. Hissenden, Probate Justice of the Peace for Teona County, do hereby certify, that the foregoing deposition of Edward Damerell was taken, sworn to and subscribed before me at the office of N. H. Turple, Esq. in Teona, Teona Co. Illinois at the day & time named in the caption to said deposition. Witness my hand & seal this 24th day of Sept. 1874.

Wm H. Hissenden. P. J. P. [Signature]

Henry Hahn - Henry Hahn being duly sworn according to law deposed
in answer to the interrogatories as follows.

Interrogatory 1. Do you know the Windmill built by
Ward & Watts near Pella & are you acquainted with Mills &
Machinery?

Ans. I know the mill, am acquainted with
Mills & Machinery & have worked on Machinery for several
years, ever since I was nineteen: never worked on a wind mill
till I helped tear down this.

Int. 2. Whether from your knowledge of mills &
machinery this mill could do any business.

Ans. From the manner in which this work was
done it could not do business. I went after it commenced
running, the wind was blowing pretty brisk & a man could
stop it by putting his hand on the wheel.

3. Int. Would a mill constructed after this man-
ner answer any purpose to the owner for a mill?

Ans. I believe it would, if the work had been
done as it should have been, in a workmanlike manner.

1st Int. by Mr. Cooper for Compt. Did you ever
know of any mill constructed on the same plan & if so
how did they work?

Ans. I never saw one on the same plan till I
saw this.

Int. 3. From your knowledge of machinery, do you think
the defect in this mill was from the general plan on which was
constructed?

Ans. I believe the plan & principles was good & I believe
if the workmanship had been good it would run. I believe he
gathered up all the crooked timber he could find & put it in
without straightening it.

Int. 3. Was the mill completed at the time you saw it?

Ans. I think not, the weights & fan were on it, the saw was not in - I do not know but more weights & fans were to be put on; the gearing out of gear went well enough, but it was rough, I saw it two or three weeks before I went to take it down, & it was then about the same as I saw it before.

Int. 4. Under whose direction did you assist in tearing down the mill?

Ans. Samuel H. Underwood.

Int. 5. Did you ever act under instructions of Capt. Moss?

Ans. I did not. Underwood employed me and was with me all the time I done the work. He did not pay me. I once afterwards asked Capt. Moss and he said if Underwood did not pay me he would see I had my pay.
Henry Hahn.

I, Wm H. Hissenden, Probate Justice of the Peace for Teoria County, do certify, that the foregoing deposition of Henry Hahn was taken, sworn to & subscribed before me at the office of St. W. Purple, Esq. in Teoria, Teoria County, State of Illinois at the day & time named in the caption annexed to said depositions.

Witness my hand & seal this 24th day of Sept A.D. 1844.

Wm H. Hissenden, J. P. [L.S.]

m. M. Dodge - Wm M. Dodge being duly sworn deposed as follows.

Interrogatory 1st. Were you acquainted with the Wind mill built by Watts & Ward near Teoria?

Ans. I have seen it frequently.

Interrogatory 2^d. Did you see the machinery after it was completed, so as it could be put in operation to test its power & what was the result of the experiment.

Ans. I saw it in operation & with a pretty good breeze, my weight could stop it in two minutes.

Interrogatory 3^d From your knowledge of Machinery should you suppose there was sufficient power in said mill to answer any purpose in running a saw?

Ans. I should not.

Interrogatory 1st by Mr Cooper for comp^t. Were the weights & fans all on the mill at the time you saw it?

Ans. I believe all the fans were on that ever were on. Mr^r Watts said he was satisfied it would not run. Mr^r Watts said about half the number of fans on that were intended to be put on. I know nothing about the weights.

Int. 2^d Are you acquainted with machinery & if so what did you think of this machinery?

Ans. I am some acquainted with machinery. I did not take particular notice. I thought the machinery good enough but rather rough & lacked power.

William M. Dodge.

I, Wm^m H. Hessenden, Probate Justice of the Peace for Teona Co. do certify the foregoing deposition of Wm^m M. Dodge was taken, sworn to & subscribed before me at the office of N. H. Purple, Esq in Teona, Teona Co. Illinois, at the day and time named in the caption annexed to said deposition. Witness my hand & Seal this 24th day of Sept. A.D. 1844.

Wm^m H. Hessenden. T. P. J. P. [Seal]

Smith & Coe - Smith & Coe being duly sworn deposed as follows.

Int. 1st Do you know any thing about the wind mill built by Watts & Ward near Teona, & whether, if so, you think it capable of doing business as a saw mill?

Ans. I know the mill, and went there about the time it commenced running, the wheels were running, saw gate was not on.

I took hold of the large drum to see how much power there was & stopped it: this I did seven or eight times, there was a nice breeze blowing at the time. I should think the wheel was running about half as fast as a saw should run.

Int. 2? Do you know any thing about saw mills & from your knowledge of mills, do you think this could do any business?

Ans. I built & owned a saw mill & tended it two years, I am pretty certain without more power this mill could not do much business.

Int. 1. by Mr. Cooper for Compt. Was this Saw Mill finished when you saw it.

Ans. I supposed it was all complete except the Gate & fixtures, & Smith Frye.

I, Wm. H. Hessenden, Probate Justice of the Peace for Teoria Co. do certify, that the foregoing deposition of Smith Frye was taken, sworn to and subscribed before me at the office of N. H. Purple, Esq. in Teoria, Teoria Co. Illinois, at the day and time in the caption annexed to said deposition. Witness my hand & seal, this 24th day of Sept. A.D. 1834.

Wm. H. Hessenden J. J. P.

Samuel Ward,

vs

William S. Moss,

Samuel S. Underwood,

John Watts.

On the Circuit Court of Teoria County.
In chancery.

To Samuel Ward or Messrs. Ballance & Cooper.
his attys.

You are notified that the defendants William S. Moss, will on the 24th & 25th days of September instant between the hours of 8 o'clock A.M. & 10 o'clock P.M. of said days at the office of N. H. Purple in Teoria before William Mitchell, clerk of the circuit court of

Peoria County or before some Justice of the Peace of said county, proceed to take the depositions of William M. Dodge, John Hallwell, Charles Sutton, Henry Hahn, James C. Homestrong, and Davidson & others, to be read in evidence on the trial of the above entitled cause on the part of the said defendant.

Peoria Sept. 13th 1844.

W. H. Purple

Att'y for Moss.

I have served this notice on Charles Ballance this 14th Sept 1844, by copy.
Smith Frye.

Sworn to before me this
14th Sept. 1844.

Wm H. Jessenden.

J. J. P.

State of Illinois
Peoria County

I Jacob Gale clerk of the Circuit Court in and for the County of Peoria in the State of Illinois do hereby certify that the foregoing is a correct copy of the Bill of complaint and exhibits thereto, the answer of William S. Moss and exhibit thereto and of all the depositions of complainant and defendants in a certain cause in said court on the chancery side thereof wherein Samuel Ward was complainant and William S. Moss, Samuel F. Underwood and John Watts were defendants as the same remain of Record and on file in my office. In testimony whereof I hereto set my hand and affix the seal of said court at Peoria this thirteenth day of July A.D. 1852 -

Jacob Gale, Clerk.

Clerk's fees for above transcript, certificate &c. \$19. 00

Received payment of Charles Ballance
Jacob Gale, Clerk.

Peria

McKean adm. &c
"

Wm S. Mops et als.

Recd

Filed July 10th 1852
Celand Ck.

State of Illinois }
Supreme Court set } June Term
AD 1852

Nottley H. McKean

Adm. of Samuel Ward

vs.

Exor to Peoria

William S. Mox et al

Charles Mallard the ~~attorney~~ solicitor of the above complainant suggests to the court here that the record certified in this case is incomplete and that he cannot safely go to trial herein without the bill, the answer of said Mox, and all the deposition used in the trial of said cause ~~wherefore~~ which papers are now on file in the office of the clerk of the circuit court of Peoria county where he prays that a writ be issued to said clerk ordering him to certify said papers to this court

C Mallard

N. H. McKean
Adm. of Saml. Ward

no

Wm. S. Moss

[Faint, illegible handwriting, likely bleed-through from the reverse side of the page.]

Providence May 31st 1852

Samuel Leland Esq.

Sir

Enclosed I send you so much of
an old, and very long record, as may be necessary to raise
the question of jurisdiction; and if the court shall sustain it
I will then bring up the whole record. As Puffer understands
the law, it is now too late for a writ of error; but as I
understand it, I have a few days more. Please send
a writ immediately. I do not know in whose name the
writ should issue. There seems an impropriety in issue-
ing it in the name of a dead man, and also in issue-
ing it in the name of an administrator, without
leave of the court. If you have any doubt how
it should be done, please send two, one in the name
of Ward, and the other under the affidavit, in the
name of the administrator.

I expect to bring up several other cases, when I will
arrange the deposite in all the cases.

Yours in haste

C. Ballance.

Pena
McKean vs. McSp. & Co.

Peripe

Filed May 24, 1852.
Holland City.



Lorenzo Le Land
Clerk Sup. Court
Ottawa
Ill.

PAID 6

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 *Peoria* ~~and~~ *Greene* 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 *Peoria* county, before the Judge thereof, between

Samuel Ward — ~~plaintiff and~~ *Complainant and*
William S. Chop, John Watts & Samuel H.
Underwood

defendants it is said manifest error hath intervened, to the injury of ~~the aforesaid~~ *Stotter*
H. McKean admr. of the aforesaid Ward deceased
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 *22 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 *24th day*
day of *May* — in the year of our Lord one thousand eight
hundred and fifty *two* —

S. Keland Clerk of the Supreme Court.

Peoria

Atty A. McKean adw^{ca}

vs
Wm S. Closs et als.

Writ of Error

Filed May 24. 1852.
Skeland Clk.

STATE OF ILLINOIS, }
Supreme Court.

The People of the State of Illinois,

To the Sheriff of the County of *Peoria* Greeting:

BECAUSE in the record and proceedings, and also in the rendition of the ~~judgment~~ *judgment* of a plea which was in the circuit court of *Peoria* county, before the Judge thereof, between *Samuel Ward Complainant & William S. Moss, John Watts & Samuel F. Underwood*

defendants, it is said that manifest error hath intervened, to the injury of *Walter H. McKeon admr. of said Samuel Ward deceased* - as we are informed by *his* complaint, the record and proceedings of which said judgment, *we* have caused to be brought into our Supreme Court of the state of Illinois, at Ottawa, before the justices thereof, to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county, you give notice to the said *William S. Moss, John Watts & Samuel F. Underwood*

that *they* be and appear before the justices of our said supreme court, at the next term of said court, to be holden at Ottawa, in said state, on the *2^d* Monday in *June* next, to hear the records and proceedings aforesaid, and the errors assigned, if *they* shall see fit; and further to do and receive what said court shall order in this behalf; and have you then there the names of those by whom you shall give the said *Moss, Watts & Underwood* - notice, together with this writ.

Witness, the Hon. SAMUEL H. TREAT, Chief Justice of our said Court, and the seal thereof, at Ottawa, this *24th* day of *May* in the year of our Lord one thousand eight hundred and fifty *two* -

L. Keland Clerk of the Supreme Court.

State of Illinois
Peoria County
May 21st 1852

James L. Rapp & Co.
By 100 hours of duty

Per \$20
My \$40
1852 \$100

Filed July 15. 1852
L. Leland Clerk.

Peoria
Notary A. McKean adms.
of Samuel Ward
William S. Chop et als.
Sci. Fa. to Peoria

Notley McKean adm^r of } In the Supreme
 Samuel Ward } Court
 vs } Term 1852
 William S Mose and
 Others - }

And now comes the said William S. Mose by
 his Solicitor W B Purple and for Plea says
 that the said Plaintiff ought not to have
 and maintain his Writ of Error against this
 defendant, because he says; that more
 than five years had elapsed between the
 time of the rendition of the final decree
 in this Cause in favor of the defendants
 aforesaid, and the filing of the Writ of
 Error in said Cause, and this the said
 defendant is ready to verify; Wherefore
 he prays Judgment &c

W B Purple
 Solicitor for said Def^t

Polley McKean ad,^m
Hemlock Ward

my

Mr. S. Mcintosh

Pha —

Filed July 17th 1852.
J. Seland Clerk
By P. W. Seland Depy.

N. H. McKeen

exam. of S. Ward dec.

vs.

William S. Mox

Supreme Court

July Term 1852.

I Charles Ballance, the attorney for said plaintiff, state under oath, that when I left the Supreme Court, at Ottawa, about three weeks ago, I supposed it would be in my power to return any day, because Holsey L. Meriman Esq. and I were engaged on opposing sides in several important land suits in the United States Circuit Court, which is now in session at Springfield, (where I am at this time) We both also had business in the Supreme Court, of Illinois, and fearing that our business might clash in the two courts, we made an agreement that neither of us should come to this court until the other was ready, or at least without notifying the other; and I fully intended not to come to this court until all the business of both said Meriman and myself should be disposed of in the said Supreme Court, and I presume that was Mr. Meriman's intention also. But when we went down to Peoria, he told me that he was obliged to bring the arrangement to a close on account of having received peremptory orders from his client, one Robert Forayth, to ^{come} down to this court or send his title papers, that said suits might progress without him, and that he had determined immediately to send said

title papers by his brother A. L. Merriman, and let other counsel carry on said suits. Whereupon I came to this place immediately, and ^{have} been ever since attending to those cases, and have got a portion of them disposed of, but not all. One case has been argued, but not yet decided, another has been partly argued, and there is one that has not yet been submitted; but ^{as} I will leave here, and if my ^{present} ~~present~~ shall still be ⁱⁿ need in the said supreme court, I will come there as soon as ^I conveniently can.

When I found I was likely to be detained here, I sent one communication by telegraph, and two by mail to prevent my business from suffering until I could get through here and reach Ottawa, but communications between Springfield and Ottawa seem to be particularly slow and uncertain, ^{at this time}. A letter from H. O. Merriman Esq. informing me of the dismissal of the above suit dated on the 19th and post marked the 20th inst was not received through the mail until to day. Just before said suit was dismissed, I wrote a letter to ^{said} H. O. Merriman Esq. to attend to said cause for me, but if for any reason he could not, ^{to} employ some attorney in my behalf. After this letter was written, I received a telegraphic despatch, informing me that a rule for abstracts had been entered. I went immediately to the mail agent, whose person I know, but do not know his name, and asked him when ^{the} letter I had written on the subject, and had mailed, would in due course of mail arrive at Ottawa

before the expiration of said rule, for abstracts, and
was informed by him, that it would; and but for
this information, I would have telegraphed some
one to obtain an extension of said rule that abstracts
could be filed. This is a case of some importance but
by reason of the poverty (while alive) of Ward and
his death, this cause has been delayed until the statute
of limitations will bar the case if it should not be re-in-
stated. Wherefore I pray that this case may be reinstated
on the docket for trial.

C. Ballance

Subscribed & sworn to
before me this 26th day
of July A. D. 1852

Joseph Clark
Clerk Court U. States
Dist Illinois

McKean admr. of
Hart. v.

William S. Map.

Appot.

Filed July 30, 1852
Shelton Ck.

Samuel Ward

vs

William S. Moff

John Watts

Samuel F. Underwood

In the Supreme Court of
the State of Illinois

June Term A.D. 1852

I Charles Ballance, the solicitor of the complainant in the above entitled cause, do solemnly swear that the above named Samuel Ward is dead, and Volley H. McKeen has administered on his estate in the county of Peoria, and State of Illinois. That said Watts has left this state ^{(as} I have been informed and believe) and removed to Canada, and that said Underwood is dead, but I know of no one who has administered on his estate, nor do I desire any relief against said Watts and Underwood, but against said Moff, and therefore move this Honorable court to be permitted to prosecute this suit in the name of said McKeen.

C. Ballance

State of Illinois
Peoria County

I Jacob Gale clerk of the Circuit Court within and for the said County hereby certify, that on this day, came before me Charles Ballance and subscribed and swore to the foregoing affidavit.

In witness whereof I hereto set my hand and the seal of said court at Peoria this 21st day of May A.D. 1852 -

Jacob Gale, clerk

Poria

McClelland & Co. Proprietors

Sept 17.

Filed May 24. 1852.
J. W. Keland Clerk.

Proceedings in Chancery before the Circuit Court at a term thereof begun and held at the Court-house in Teoria in & for the County of Teoria and State of Illinois on Monday the thirteenth day of October in the year of our Lord one thousand eight hundred and forty five Present the Honorable John Dean Eaton, associate Justice of the Supreme Court and Judge of the Ninth Judicial Circuit.

Friday October 24th 1845,

Samuel Ward

vs For Injunction &
John Watts,
William S Moss,
Samuel S Underwood.

This cause having come on to be heard on the bill of the said complainant and the answers of the said defendants and the evidence of the parties was submitted by counsel without argument and it appearing to the Court that the said complainant Samuel Ward and the said defendant John Watts were partners in business in equal shares of profit and loss as set forth in the said complainant's bill in the construction of a Wind Mill: It is ordered, adjudged and decreed by the Court that it be referred to William S. May as special Master of this Court to take and state an account between the said complainant and the said defendant Watts and that he report to this Court with all convenient speed; and it is further ordered ^{and decreed} by the Court that either party may read as evidence on the hearing before said Master any of the depositions taken in this cause and that he compel the appearance of such witnesses as may be required by either party and within the jurisdiction of this Court and compel the production of such books and papers in the possession of either party

as may in his opinion be necessary to a full hearing on the subject matter of this reference and that said Master give at least ten days notice to both of said parties or their solicitors or in case of their absence then by posting notice in the Clerk's Office of the time and place of said hearing before him - It is farther ordered and decreed that the said bill be dismissed without costs so far as regards the said defendants William H. Moss and Samuel H. Underwood and the questions as to the remainder of the costs and all other questions not hereinbefore determined be reserved until the coming in of said report.

Proceedings in Chancery before the Circuit Court began and held at the Court House in the City of Peoria in and for the County of Peoria in the State of Illinois, on the fourth Monday of May in the year of our Lord one thousand eight hundred and forty seven it being the twenty fourth day of said Month - Present the Honorable John D. Caton associate Justice of the Supreme Court of the State of Illinois and presiding Judge of the Ninth Judicial Circuit in said State, to wit:

Friday June 4th A.D. 1847

Samuel Ward,

vs
John Watts,

For Injunction &c

This day this cause came on for hearing upon the report of the Master on an order of reference to said Master to take and state an account between said complainant and said defendant John Watts and it appearing to the Court that an account had been taken by the said Master between said parties after having given due notice of the time and place of taking the same

by posting written notices thereof for ten days previous-
ly to taking said account in the office of the clerk
of said Circuit Court and it further appearing to
the court that the sum of Three hundred and sixty
six ¹²/₁₀₀ dollars is justly due from said John Watts to said
complainant - It is ordered, adjudged and decreed by
the court that the said complainant have and
recover of the said John Watts the said sum of
\$366.12 and his costs and that execution issue there-
for.

State of Illinois,
Peoria County, Ill. J. Jacob Hale clerk of circuit
court in and for the County of Peoria in the State of
Illinois do hereby certify that the foregoing is correct-
ly copied from the record of proceedings in said
court in a certain cause on the chancery side thereof
wherein Samuel Ward was complainant and John
Watts, William V. Moss & Samuel H. Underwood
were defendants as the same remains of Record
in my office.

In Testimony whereof, I here-
to set my hand and the seal of
said Court at Peoria this eleventh
day of May in the year of our
Lord one thousand eight hun-
dred and fifty two.

Jacob Hale, clerk.

Clerk's fees: for transcript .75-
certificate & seal to do. 25- }

\$1.00 Received payment of
of Charles Ballance

Jacob Hale, clerk.

Said McKeon comes and says that in the decree aforesaid there is manifest error in this to wit said decree ought by the proof and the laws of the land to have been against said Mop ~~and~~ as well as against said Watts 2nd Said Mop ought to have been decreed to pay costs 3rd Said Watts ought to have been decreed to pay costs For which errors and others apparent in said record he prays that said decree be set aside and held for naught and that this court enter up such decree as the circuit court ought to have entered

C. Ballance for
Plff. in Error

And the said Defendant Mop comes and says that in the Records & proceedings filed him and in the rendition of the decree aforesaid there is no error wherefore he prays that said decree may as to him in all things be affirmed -
July 2. 1852

W. H. Mop
for Wm. S. Mop

Georgia
Cotter H. McKeon adv.
cc. J. Saml. Ward decd.
William S. Mop et al.
Record

Filed May 24. 1852.
V. H. Land Clerk.

Peoria

Nolley H. M. Keen admr,
vs. ~~Saml~~ Ward deed

William S. Map et als,

35

1852

11978