

No. 13461

Supreme Court of Illinois

Ros^S~~X~~

vs.

^E
Inn^E~~X~~ss

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 276.

Ross

vs

Weber

285

1861

13461

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Pleas, before the Honorable, the Judges of the Superior Court of Chicago, within and for the County of Cook and State of Illinois, at a regular Term of said Superior Court of Chicago, begun and holden at the Court House, in the City of Chicago, in said County and State, on the first Monday, being the first day of April in the year of our Lord One Thousand Eight Hundred and Sixty one and of the Independence of the United States of America the Eighty fifth

Present, The Honorable Sam M Wilson Chief Justice of the }
Superior Court of Chicago. }

Page 1

Van H. Higgins }
Isaac Goodrich } Judges.

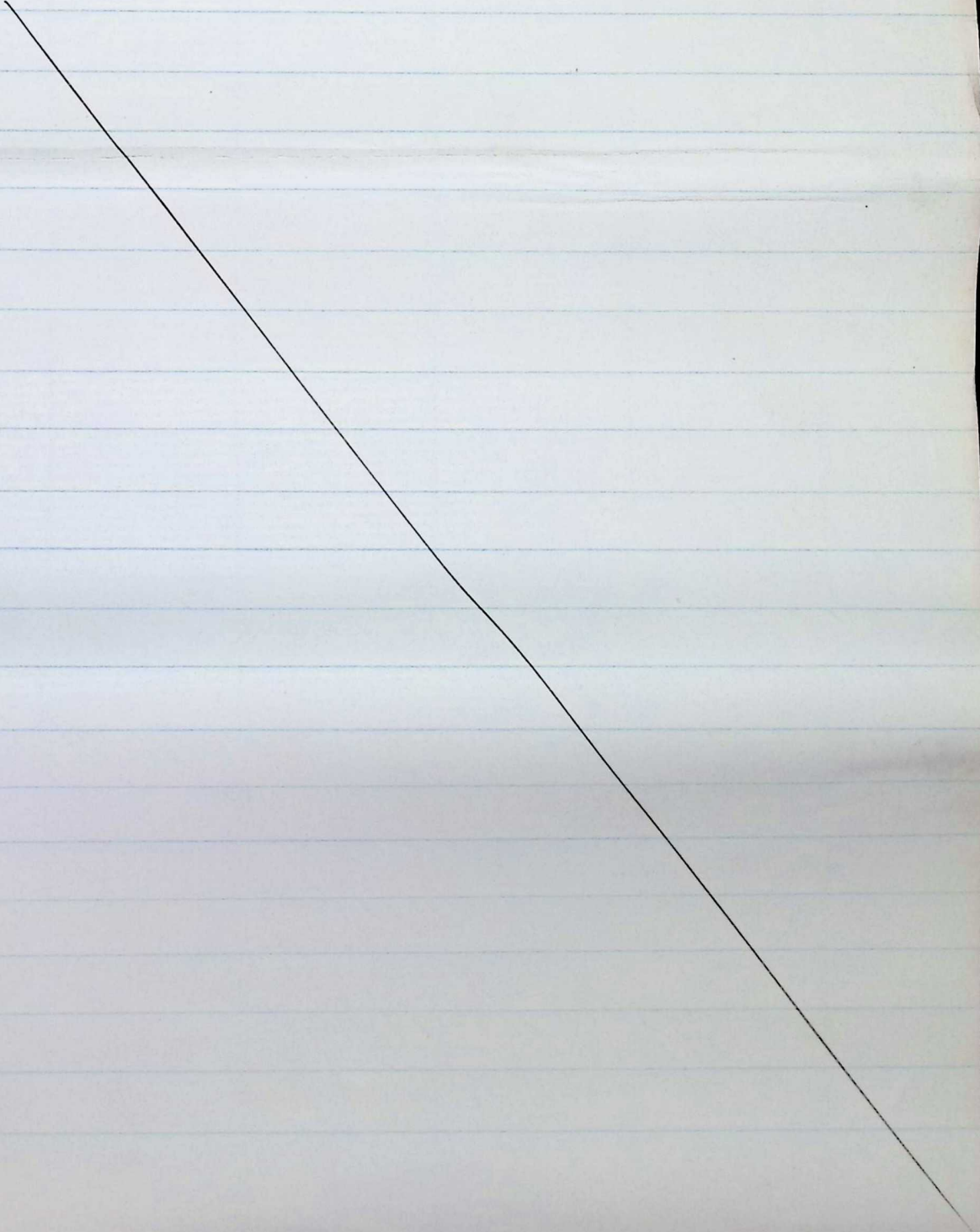
Charles Warren Prosecuting Attorney.

Anthony Hering Sheriff of Cook County.

Attest, Matt Kimball Clerk.

So it is remembered that heretofore to wit
on the thirty first day of December in the year
of our Lord One Thousand eight hundred and
Fifty nine then issued out of the Office of the
Clerk of the Superior Court of Chicago the
proper writ of Summons which with the
Sheriff's return thereon endorsed is in the
words and figures following to wit

And afterwards to wit on the Twenty fourth day
of February in the year Eighteen hundred and sixty
Adam G Immiss filed in the Office of the
Clerk aforesaid his Declaration in words and
figures following to wit



13
Page 4

The Superior Court of Chicago
of the February Term 1860

State of Illinois }
Cook County } f

Adam S. Innis Plaintiff in this case.
by Hervey Anthony & Stett his Attorneys, complains of
William M. Rof and John H. Rof Defendants in this
suit who are summoned &c of a plea of trespass on
the case ~

For that whereas the said Plaintiff now
is a good, true, honest, just and faithful Citizen
of the State of Illinois and as such hath always
behaved and conducted himself, and hath not even been
guilty or until the time of the committing of the
several grievances by the said Defendants as here-
in after mentioned been suspected to have been guilty
of embezzlement or of any other such crime by means
whereof the said Plaintiff before the committing of the
said several grievances by the said Defendants as
herein after mentioned, had deservedly obtained and
acquired the good opinion and credit of all his neigh-
bors, and other good and worthy Citizens of this State
to wit at the County of Cook; Yet the said Defendant
well knowing the premises but conspiring and combining
together and contriving, and maliciously intending to in-
jure the said Plaintiff in his aforesaid good name

same & credit, and to bring him into public scandal,
infamy and disgrace and to cause the said Plaintiff
to be imprisoned for a long space of time, and thereby to
imprison oppress and wholly ruin him hereafter to wit
on the twenty seventh day of December A.D. 1859 at the
County of Cook, and in pursuance of their said un-
lawful combination and conspiracy caused and procured
the said Defendant William M. Rop to go and appear,
and said William M. Rop in further pursuance of
the unlawful combination and conspiracy of said
Defendants, went and appeared before one Isaac L. Milliken
Esquire, then and there being one of the Justices of the Peace
for the County of Cook & State of Illinois, assigned to
keep the peace of the people of the State of Illinois
in and for the County of Cook and also to hear and
determine claims felonies, trespasses and other misdemeanors
or committed in the said County and the said Will-
iam M. Rop did in further pursuance of the said un-
lawful conspiracy of the said Defendants then
and there before the said Isaac L. Milliken so bring
such justice as aforesaid to wit at the County of
Cook aforesaid falsely and maliciously and without
any reasonable or probable cause whatsoever. Charge
the said Plaintiff with having embezzled the sum
of one hundred and Sixty Six Dollars of the moneys of
the said Defendants and upon such charge the said
falsely and maliciously and without any reasonable or
probable cause whatsoever And in further pursuance

107

Page 8

upon such last mentioned charge they the said Defendants then and there to wit on the same day and year last aforesaid at the County of Cook aforesaid falsely and maliciously and without any reasonable or probable cause ^{whatsoever cause} and procured the said Plaintiff to be arrested by his body and to be kept and detained in custody for a long space of time. to wit for the space of two days then next following and at the expiration of ^{of} which said time he the said Plaintiff was duly discharged and fully acquitted of the said last mentioned Offence to wit at the County of Cook aforesaid

By means of which said several premises. he the said Plaintiff hath been and is greatly injured in his said credit and reputation and brought into public scandal - infamy and disgrace. with and amongst all his neighbors and other good and worthy Citizens of this State and divers of those neighbors and Citizens to whom his innocence in the premises was unknown have on occasion of the premises suspected and believed and still do suspect and believe that the said Plaintiff hath been and is guilty of Embezzlement and also the said Plaintiff hath by means of the premises suffered great anxiety and pain of body and mind and hath been forced and obliged to lay out and expend ^{and hath laid out and expended} divers large sums of money in the whole amounting to a large sum of money to wit the sum of Five hundred dollars in and about ^{the} procuring his discharge from the said arrest. and defending of

h. g. 10
himself in the premises and the manifestation of his
innocence ^{in that behalf} and in prosecuting this suit for Council
fees and expenses and hath been greatly hindered and
prevented by reason of the premises, from following
and transacting his lawful and necessary affairs and
trading and has been hindered and prevented from get-
ting a situation in business for a long time to wit from
thence hitherto and also by reason and by means of
the said premises the said Plaintiff hath been and
is otherwise greatly injured in his credit and circum-
stances to wit at the County of Cook aforesaid -

Wherefore the said Plaintiff saith that he is injured
and hath sustained damage to the amount of twenty
Thousand Dollars and therefore he brings his suit etc

Hervey Anthony & Galt
Attys for Plff

15

Page 6

of this said unlawful conspiracy and combination caused and procured the said Isaac L'Milliken so bring such Justice as aforesaid, to make and grant his certain warrant under his hand and seal, for the apprehending and taking of the said Plaintiff, and for bringing the said Plaintiff before him the said Isaac L'Milliken or some other Justice of the Peace in and for the said County of Cook to be dealt with according to law for the said supposed offence

And the said Defendants in further pursuance of this said unlawful combination and conspiracy against the said Plaintiff under and by virtue of the said warrant, afterwards to wit on the day and year aforesaid, to wit at the County of Cook aforesaid wrongfully and unjustly and without any reasonable or probable cause whatsoever and in further pursuance of the said unlawful conspiracy of said Defendants caused and procured the said Plaintiff to be arrested by his body and to be kept and detained under arrest, for a long space of time to wit for the space of two days then next following, and until they the said Defendants afterwards to wit on the day and year aforesaid, to wit at the County of Cook aforesaid falsely and maliciously and without any reasonable or probable cause whatsoever and in further pursuance of this said unlawful combination and conspiracy caused and procured the said Plaintiff to be carried and conveyed

46
Page 7

in custody before the said Isaac Sellikien so being -
such justice as aforesaid. to be examined before the said
justice touching and concerning the said supposed
Crimes

Which said justice having heard and consid-
ered all that the said Defendants could say or
allege against the said Plaintiff touching and concern-
ing the said supposed offence then and there to wit.
on the day and year last aforesaid at the County
of Cook aforesaid adjudged and determined -
that the said Plaintiff was not guilty of the said
supposed offence and then and there caused the
said Plaintiff to be discharged out of custody.
fully acquitted and discharged of the said supposed
offence: And the said Defendants have not further pro-
secuted the said complaint against the said Plaintiff
so made by the said Wm W. Cap in pursuance of the said un-
lawful conspiracy and combination of the said Defendants
but have deserted and abandoned the same, and ^{that} the said
complainant and prosecution is wholly ended and
determined to wit at the County of Cook aforesaid

And whereas also the said Defendants further
contriving and maliciously and wickedly intending as aforesaid
heretofore to wit on the day and year aforesaid at the
County of Cook aforesaid falsely and maliciously by
and without any reasonable or probable cause whatsoever
charged the said Plaintiff with having committed a certain
offence punishable by law to wit Embezzlement and

R 100

And afterwards to wit on the Seventh day of March in the year aforesaid Wm H Rof and Mrs H Rof Filed in the Office of the Clerk of said Court their Demures in words and figures following to wit

Adam J Inness	{	Superior Court of Chicago
vs		
Wm M Ross et al		

And the said defendants by Beekwith Murdock & Cassin comes and defends the wrong & injury when &c. & says that the said declaration & the matters and things therein contained in manner and form as the same are above stated & set forth are not sufficient for the said plaintiff to have and maintain his aforesaid action thereof against them

And the said defendants shew & show to the Court here the following causes of demure to the said declaration

1st That said plaintiff claims the Counsel fees & expenses in the prosecution of this suit as part of the special damages resulting to him from the premises in said declaration set forth

~~Page 10~~
Page 11 and also that said declaration
is in other respects uncertain informal & insufficient
And said defendants pray judgment & that
said plaintiff may be bound from having & main-
taining his aforesaid action against them &c
Beckwith Murick & Cousin
Attys for Defts

And afterwards to wit on the eleventh day June in
the year aforesaid said day being one of the
days of the June Term of said Court the
following among other proceedings was had and
Entered of record to wit

Adam G Inness

vs

Trespas on case

William M Ross & John H Ross

This day comes said plaintiff by Henry Anthony
and ~~Satt~~^{his attorney} and defendants by Beckwith Murick
& Cousin their attorneys also come and defendants
withdraw^{their} demurr herein pleaded to plaintiffs
declaration in this cause and it is ordered that
~~the rule~~ that the rule to plead herein be and is
hereby extended to the tenth day of July next upon
agreement of the parties

1212

And afterwards to wit on the tenth day of July in the year aforesaid William M Ross and John A Ross filed in the Office of the Clerk of said Court their plea in words and figures following to wit

William M Ross	}	Superior Court of Chicago
and John A Ross		
at		
Adam J Inness		
		July Term AD 1860

And the said Defendants by Beckwith Minick & Cassin their Attorneys come and defend the wrong and injury when &c and say that they are not nor is either of them guilty of the said supposed grievances above laid to their charge or any or either of them or any part thereof, in manner and form as the said Plaintiff hath above thereof complained against them. And of this they put themselves upon the Country &c

Beckwith Minick & Cassin
Attys for Defts

And the said Plff doth
the like

Hervey Anthony & Galt
Attys for Plff

p 13ⁿ And afterwards took on the nineteenth day of
Nov in the year ofnsaid said day being one
of the days of the Nov Term of said Court
the following among other proceedings was had
and entered of record

Adam G Innes

of Trespas case
William M Ross and
John H Ross

This day comes the said Plaintiff by Henry Anthony
and met his Attorneys and the said defendants
by Eckwith Minick and Cassin their Attorneys also
come and issues being joined herein it is ordered that a
jury come ~~thence~~ from comes the jury of good and lawful
men to wit Major Noble Edward Weston J F Deane
George Moore Calvin Hill J P Cook S P Phillips John
G Skelden S S Lewis E P Haven Q J Graunig
and John Minton who being duly elected tried
and sworn to try the issues joined as aforesaid -
after hearing part of the testimony and the hour of
adjournment having arrived it is ordered upon
agreement of the parties that the jury separate
and meet the Court on coming ^{thereof} on ^{tomorrow morning}

R 124

And afterwards to wit on the Twentieth day of Nov in the year aforesaid said day being one of the days of the November Term of said Court the following among other proceedings - was had and entered of record to wit

Adam G Innes

vs

Turpans on case

William M Ross

and John H Ross

And now again comes the parties to this cause and the jury empanelled ^{on yesterday} remain^{ing} for the trial of this cause also come and after hearing all the testimony ~~given~~ and the hour of adjournment having arrived ~~it is ordered~~ upon agreement of the parties ^{it is ordered} that the jury ~~again~~ separate and that the Court ^{do come in and} ~~again~~ ^{open} ~~at~~ ^{the} opening of ~~next~~ tomorrow morning

And afterwards to wit on the Twenty first day of Nov in the year aforesaid said day being one of the days of the Nov Term of said Court the following among other proceedings were had and entered of record to wit

~~Pl 14th~~ Adam G Inness
Pl 13th

vs
Trespas on case
William M Ross Esq
John A Ross

And now again comes the parties to this cause and the jury empannelled herein for the trial of this cause also come and arguments of Counsel being heard and the time of adjournment having arrived it is ordered upon agreement ~~of~~ the parties that the Jury again separate and meet the Court again on opening of the Court tomorrow morning

And afterwards to wit on the Twenty second day of November in the year aforesaid said day being one of the days of the November Term of said Court The following among other proceedings was had and entered of record to wit

Adam G Inness
vs
Trespas on case
William M Ross
John A Ross

And now again comes the said plaintiff by Harvey Anthony and Salt his Attorneys and the said defendants by Beckwith Munick & Cassin their attorneys also come and the jury empannelled herein

per 18 for the trial of said cause also comes as on
yesterday and testimony and arguments of Council
being heard and instructions of the Court given the
Cause is now submitted and the jury return to Con-
sider of their verdict and afterwards return into
Court ^{and} submit their verdict and say we the jury
find the said defendants guilty and we assess
plaintiffs damages at five thousand dollars against
each of the said defendants

And thereupon the said defendants submit their motion
herein for a new trial in said cause

And afterwards to-wit on the Twenty sixth day of
December in the year aforesaid said day being
one of the days of the December Term of said
Court, the following among other proceedings
was had and entered of record to-wit

Adam G Innes

v.s

Trespas on Case

William McCass

John A Cass

And now again comes the said plaintiff
by Henry Anthony & Galt his Attorneys and the said
defendants by Beckwith Merrick & Cassin their
Attorneys also ^{come} and the Court upon hearing of Council

Pr 19

upon the motion heretofore submitted herein by
the said defendants for a new trial in said cause
takes the matter under advisement

And afterwards to wit on the nineteenth day of January
in the year of our Lord one thousand eight hundred and
sixty one said day be one of the days of the January
Term of said Court the following among other pro-
ceedings was had and entered of record to wit

Adam J. Innes

vs

Trespass on Case

William M. Rags ^{q. d.}

John H. Ross

And now again comes the said plaintiff by Henry
Anthony & Galt and Buckner S. Morris his Attorney and
the said defendants by Beckwith Merrick & Cassin
and E. Van Buren their Attorneys also comes and this
cause ~~now~~ coming on now to be heard on the mo-
tion heretofore submitted herein by the said defe-
ndants for a new trial in said cause and counsel
being heard and the Court being fully advised
in the premises it is considered by the Court that
defendants said motion for a new trial herein
be sustained on payments of all costs which have

1884
accrued him to be paid within ten days
from this day

And afterwards to wit on the Twenty fifth
day of March in the year aforesaid said
day being one of the days of the March
Term of said Court the following among
other proceedings was had and entered of
record to wit

Adam G Innes

vs

Trespas in case

William M Ross &

John H Ross

And now again comes the said Plaintiff by Attorney
Anthony Gatt and Melvin S Morris his Att-
orneys and the said defendants by Beckwith -
Merrick and Cassin and E. A. Van Buren their
Attorneys also comes and issues being joined
herein it is ordered that a jury come wherein
comes the jury of good and lawful men to wit
Mr Gray S B Carrall Henry W Wright J G Dudley
B L Hall J W Cobb Philander Eddy O S Sal-
bury A H Hald Stephen Chum Asabel
Harris and William Dorsett who being duly
elected tried and sworn to try the issues
joined as aforesaid and part of testimony
being heard and the time of adjournment

p 19^h Having arrived it is ruled upon agreement
of the parties that the jury separate and
meet the Court tomorrow morning on coming
in and opening thereof

out.
H. Himsall
Clerk

~~accrued herein to be paid within ten days from
this day~~

~~p 27~~

p 28

And afterwards to wit on the Twenty sixth day
of March in the year aforesaid said day
being one of the days of the March Term
of said Court the following among other
proceedings was had and entered of record
to wit

Adam G Innis

vs

Trespass on case

William M Ross &

John A Ross

And now again comes the said plaintiffs
by Hervey Anthony & Galt & Buckner S Morris
his Attorney and the ^{said} defendants by Beckwith
Merrick & Cassen and Ed Van Duren their att-
orneys also come and the jury empanelled -
herein on yesterday for the trial of said cause
also come and after hearing testimony and the
hour of adjournment having arrived it is ordered
upon agreement of the parties that the jury
separate and meet the Court tomorrow morning
on coming and opening thereof

~~Adm~~
p 22

And afterwards to wit on the Twenty eighth day of March in the year aforesaid said day being one of the days of the March Term of said Court the following among other proceedings was had and entered of record to wit

Adam G Inness

vs

Trespass on case

William M Bass & Co

John H Bass

And now again comes the said plaintiff by Henry Anthony and Galt and Buckner S Monis his attorneys and the said defendants by Merrick and Van Buren their attorneys also come and the jury empanelled herein for the trial of said cause also come as on yesterday and submit their verdict and say that the jury find the said defendants guilty and we assess plaintiffs damages herein against both of the said defendants to the sum of Three Thousand ^{dollars} And thereupon the said defendants submit their motion herein for a new trial in said cause

p 23

And afterwards to wit on the first day of April in the year aforesaid said day being one of the days of the April Term of said Court the following among other proceedings was had and entered of record to wit

Adam G. Innes

vs. Trespas on case
William M. Rass & y
John N. Rass

And now again comes the said plaintiff by Henry Anthony & Galt and Buckle & Morris his attorneys and the said defendants by Minick & Van Buren their attorneys also come and this cause coming on to be heard upon the motion of the said defendants heretofore submitted herein for a new trial in said cause was argued by Council and the Court being fully advised in the premises overrules the motion of the said defendants for a new trial Whereupon the said defendants enter their exceptions to the ruling and the decision of the Court in overruling their said motion Wherefore the said plaintiff ought to have a judgment entered on the verdict of the jury of guilty rendered herein and for his damages assessed

427

thereon Therefore it is considered that the said plaintiff do have and recover of and from the said defendants his damages of three thousand dollars in favor aforesaid by the jury here found and assessed together with his costs and charges in this behalf expended and thereof have execution

And therefore the said defendants having entered their exceptions pray an appeal here in to the Supreme Court of this state from the judgments of this Court which is allowed upon filing their appeal bond in the penalty of four thousand dollars with security to be approved by a judge of this Court and to be filed with their bill of exceptions during this term of ^{the} Court

p 28

And afterwards to wit on the fiftenth day of
April in the year aforesaid the defendants filed
in the Office ^{of the clerk} of said Court their bill of exceptions
which are in the words and figures following to wit

~~Page~~
p 25^r

Adam G. Innep Superior Court of Chicago
vs March Term 1861.
William M. Rop^r } Before Hon Wm H. Higgins one
John H. Rop } of the Judges of said Court

Bill of Exceptions

In empanelling a jury to try the above entitled cause E. H. Haddock was called, and on being examined as to his competency testified, that he had heard something of this case, that he had not formed or expressed any opinion as to the merits of the case, but had expressed an opinion as to the amount of the former verdict. Was served on the Grand Jury in the United States Court within the year. He was challenged for cause by the Plaintiff and discharged by the Court, and to the ruling of the Court in that behalf the Defendants excepted.

On the trial of the above entitled cause the Plaintiff to maintain the issues on his part called as a witness Samuel Strauss who testified as follows: I am a notary Public and was in the month of December A D 1859. [The affidavit next herein mentioned was here shown to witness] This is my signature and seal and this affidavit

p 26 was sworn to before me at the time therein mentioned.

The plaintiff then offered and read in evidence the affidavit of the defendant, William M. Rop on which the plaintiff was arrested which is as follows.

State of Illinois
Cook County } ss.

William M. Rop one of the firm of William M. Rop & Co a merchants co partnership in the City of Chicago in said County and State composed of the said William M. Rop and John H. Rop being duly sworn upon his oath deposes and says: that on the 29th day of September AD 1855 the said firm of William M. Rop & Co employed in their said service one Adam G. Innes as their Cashier, and the said Adam G. Innes continued in their said employment as such Cashier from the said 29th day of September AD 1855 until and including the 12th day of December AD 1859. and this affiant further deposes and says that it then and there became and was and continued to be during the said service or employment

p 31
K 27 of the said Adam G. Innes his duty to receive, safely keep and disburse all monies which came to the possession of the said William M. Rop & Co for the use and benefit of the said William M. Rop & Co and under their direction, and in pursuance of their orders. and affiant further deposes and says that by means of the premises the said Adam G. Innes then and there became and was the servant clerk or agent of the said William M. Rop & Co. And affiant further deposes and says that afterwards and during the continuance of the said employment the said Adam G. Innes was entrusted by the said William M. Rop & Co with the sum of one hundred and Sixty Six dollars in bank bills or notes upon various banks and of various denominations which are severally unknown to this affiant and to his said firm; and that afterwards to wit, on the 12th day of December A.D. 1859, the said Adam G. Innes did then and there without the knowledge or consent of the said William M. Rop & Co, and against their will feloniously convert and appropriate

128

to his own use, and embezzle from the
Said William M. Ropes with intent
then and there to steal the same the sum
of one hundred and sixty six dollars,
which said sum of one hundred and
sixty six dollars in bank bills or notes
was then and there the property of the said
William M. Ropes. Contrary to the form
of the Statute in such case made and
provided and against the peace and
dignity of the People of the said State
of Illinois, and further this affiant
saith not

Subscribed & sworn

W. M. Ropes

to before me this 2nd

day of December A.D. 1859

Samuel Straus

Notary Public



The plaintiff then called as a
witness Isaac L. Milliken who testified as
follows. I am a Justice of the Peace in the
City of Chicago and was on the 2nd day of
December A.D. 1859. Witness here looks at
affidavit last herein mentioned. I have
seen this affidavit before. it was used

~~188~~

N 29

before me and I issued a warrant upon it. A warrant is here shown to the witness. This is the warrant issued by me. The witness then read the warrant which is as follows.

State of Illinois }
Cork County } ss.

The People of the State of Illinois to all Sheriffs Coroners and Constables within Said State Greeting:

Whereas Complaint under oath has this day entered before the undersigned a Justice of the Peace within and for said County by William W. Rop that the Crime of Embezzlement has been committed in said State, and that said Complaint has just and reasonable grounds to suspect that Adam G. Innes is guilty of said Embezzlement. You are therefore hereby Commanded forthwith to arrest the said Adam G. Innes and bring him before me (or in my absence, before some other Justice of the Peace in said County) to answer to the people of the State of Illinois, on said charge, and abide such further order as may be made concerning him and hereof make due service and return

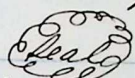
430

Exonerated

as the law directs. Given under my
hand and seal at my office in South
Chicago this 27th day of December AD 1889

Served by Resting the within named deft-
and bringing him into Court this 27th of
December 1889 John Gray Sheriff by H. M. Douglas

L. L. Milliken



Justice of the Peace

I think I delivered the warrant to William
M. Rof, but am not positive. I don't reco-
lect whether I delivered it to Rof or to
an officer. I issued the warrant at my
office in the Court House. Plaintiff came to
my house same day in charge of an Officer
and gave bail to appear at a future day.
Witness here looks at bond. He gave this bond
The Witness then read the bond which is as
follows-

State of Illinois
Cook County ss.

This day personally appeared before
the undersigned one of the Justices of Peace
in and for said County Adam G. Barnes and
Adam Murray and jointly and severally
acknowledged themselves to owe and be
indebted unto the people of the State of Illinois
the sum of Two Thousand Dollars, to be
levied of their goods and chattels, lands and
tenements if default be made in the
premises and conditions following to wit,

134
p31

Whereas the above bounded Adam G. Sumes
on the 27th day of December 1859 was brought
and examined by and before Isaac L. Mulliken
a Justice of the Peace in and for the County
aforesaid on a charge preferred against him
for Embezzlement and upon hearing the
testimony of all the witnesses present (they
having been duly sworn) the further examin-
ation of said Adam G. Sumes having been
continued to the 28th day of December 1859
at 10 o'clock a.m. and the said Adam G.
Sumes was adjudged and required by said
Justice to give bonds as required by the
Statute in such case made and provided
for his appearance, to answer to said charge
Now the condition of this recognizance is
such that if the above bounded Adam G.
Sumes shall personally appear before the
undersigned at the Police Court Room in
the said City of Chicago in the said County
of Cook on the 28th day of December AD 1859
at 10 o'clock a.m. and from day to day
thereafter, until discharged by order of said
Court, then and there to answer to the said
People of the State of Illinois, on said charge
of Embezzlement and abide the order and
judgment of said Court, and not depart

p 32 the same without leave, then and in that
case this recognizance to become void;
otherwise to be and remain in full force
and virtue. As witness our hands and
Seals this 27th day of December A.D. 1859
Taken, entered into and — A. G. Ames
acknowledged before me — A. Murray
this 27th day of December A.D. 1859
J. L. Millerken J. P.

Plaintiff was afterwards examined before
me and discharged. Upon Cross examination
by Counsel for defendants the witness
testified as follows, The affidavit is in the
hand writing of R. S. Blackwell. I went into
a full investigation of the charge, there were
several witnesses examined, the charge
was Embezzlement and I thought the people
had not made out a case. It did not
appear to me to be such a case of embezzlement
as to make a crime I did not think there
was an intent to steal. [The defendants here
offered to prove by the witness what defendants
testified before witness on examination.
The plaintiff objected, and the Court decided
that witness might be asked whether defendants
testified to any thing not testified by others,
that what defendant testified to not testified

2
p 36
p 33

by others was competent; to which ruling of the Court the plaintiff excepted. I do not recollect whether the defendants testified to any other fact than was testified to by other witnesses. I cannot recollect precisely, there was evidence of a conversation between the Rosses and Inness my impression is that it was the evidence of one of the defendants to the best of my recollection was that there was an agreement that Inness should assume a certain debt contracted by his brother. I cannot recollect the amount. It was more than two hundred dollars perhaps more than three hundred. The debt was to be paid by his services, or out of his salary. I don't recollect that any other witness testified to these facts. The defendants were testifying to an agreement they had with plaintiff and stated this as the agreement. Mr Hervey appeared as Counsel for Inness at examination.

Re Examined by plaintiffs Counsel -

I cannot state whether same facts might not have been stated by other witnesses John Ross was examined as a witness.

The plaintiff then called as a witness William M. Douglass who testified as follows. [The warrant above mentioned is here shown

237

234

to the witness] I have seen this warrant before I was then an officer and the warrant was delivered to me. I arrested the plaintiff on it on West Lake Street on the 27th day of December 1859 near sundown and brought him to the Court House to Justice Mulliken. He had gone home. I met one of Ross's clerks and told him to send Ross up. I met William M. Ross as I was leaving the Court House and told him his case could not be tried that night. Ross said he could not be ready until next day. I then went with Plaintiff to Hervey's office. I took Inness with me. We then went to Mulliken's office, and went to Murray and brought Murray and gave bail. Hervey went with me. I got the warrant from the City Marshall. He and Ross wanted it served. I went before service to Ross's store. Saw defendants there. They told me where plaintiff ^{lived} and sent a boy with me. Plaintiff was not in. The boy described plaintiff to me and returned. I waited a while and found plaintiff on the street and arrested him. The defendants were both at the store when I went there with the warrant. I spoke to both defendants about it. I think it was 9 or 10 o'clock at night before plaintiff was

P. 35
W35- released on bail. I was present at the examination of plaintiff before Eg Milliken plaintiff was discharged.

The plaintiff here offered to prove by the witness a conversation had with defendant William M. Ross at the time of and after the discharge of plaintiff. The defendants objected, the Court overruled the objection and the defendants Excepted.

The witness further testified as follows. At the time of plaintiff's discharge William M. Ross said if any body came to him for any references he should say that James was a scoundrel and a thief. The defendants moved to strike out the last answer on the ground that the words form a substantial cause of action and for irrelevancy. The Court overruled the motion and the defendants excepted.

The plaintiff then called as a witness Adam Murray who testified as follows. The plaintiff and defendants are Cousins. I have known them from infancy. After plaintiff left defendants Store John H. Ross wrote me a note desiring to see me on very particular business. I went and saw him in the store. He told

~~Aug~~ me he had a telegram from his brother
p 36 William in New York. He said Inness had
taken \$166. from the desk, and that he had
telegraphed to his brother in New York and
had just received a telegram from him to
arrest Inness for Embezzlement for taking
this money, for it was the same as stealing.
I said I had not seen Inness for some days.
He said he would bring him from Texas if he
went there, I told him he need not go so far,
he would find him at his father on the
West side. He read to me the telegram from
William I think or told me its contents. I
don't know which. He said I had better see
Inness. I said I would, that some one must
be wrong. Either the truth was not told, or
Inness was wrong. I could not believe Inness
would do such a thing, I took the first
opportunity to see Inness and told him what
Ross said. I saw John & Ross a day or two
after the first interview about the 18th or 20th
of December, I told him I had a message
from Inness to him. I delivered the message.
On hearing the message Ross said he would
arrest Inness immediately, I told him he
had better be cautious; he might be putting
Inness in a better position than he was in

p 140
p 37
before. He said, nonsense! You don't suppose he would fight such a horse as this. Ross wanted me to see Inness to tell him he would arrest him unless he paid back the money.

Counsel for plaintiff then asked the witness what was the message sent by Inness to Ross and delivered to Ross by you? The defendants objected to the question, the Court overruled the objection and the defendants then and there ~~objected~~ accepted.

The witness then further testified as follows Inness desired me to tell Ross that the money he took was no more than was justly due him, and was the balance of his salary and he would not pay it back. That he could not arrest him without he committed perjury and if he did commit perjury he would punish him, I told Ross this, and that Inness said that any understanding about his brother's debt was based on paying out of the assignment of his brother. Ross said there was an account of Inness' brother in the books which was charged to Adam Inness.

William M. Ross returned from New York within 8 or 10 days and before the arrest I went to the Store on some business.

~~Ref 38~~ William Ross told me that Adam Imness
had taken \$166 from the desk and he was
Ref 38 determined to make an example of him,
that it was against the rules of the store
that any one should take any money without
his leave or in the way he had taken it.
That he would ruin him in Chicago and he
would never get a situation in Chicago as
long as he lived, that he would bring
him before the police justice, and if he did
not convict him he would get him indi-
cated before the Grand jury. I asked him
what did he want Imness to do; He said
to pay back that money. He said he would
make an example of him, it was not
the money but to make an example. I
told him I would see Imness and let
him know next day. I saw Imness and told
him the very words above stated. I was
expecting to bring about peace and told each
of them what the other had said. Imness
told me to say to William Ross that he took
no money except the balance of his salary
and no more; that he could not arrest
him without committing perjury, and that
if he committed perjury he would take
him up for it. I told this to William Ross

~~page 39~~
page 39

I don't recollect what he said, except that he said he would furnish him. One correction I would make in the message from Inness to John Ross, that is, "I took only the money coming to me, and entered it in the book and showed it to John Ross". Inness was arrested about four days after my talk with William Ross. John said he would land him in Solict or State Penitentiary before he got through with him. I was present at the examination before Milliken. John & William Ross were both present, immediately after Inness was discharged and in presence of Justice William Rof said if any one asked him for a character of Inness he would say he stole \$166. of him, and was a liar and a thief, to this portion of the witnesses testimony the defendants objected, the Court overruled the objection and the defendants then and there excepted.

The witness further testified as follows. Inness had been employed 4 to 6 years by Rof & Co up to the 12th of December 1859. Up to this time William Rof had always spoken well of Inness and said he was an honorable young man, and lately he made the same remark, and that he Inness must

§ 40th have had bad advisers or he would not have done what he did.

Upon Cross examination by defendants Counsel the Witness testified as follows. It was the second interview when John Ross said he would send him to Solist. William Ross said in reply to Inness's message that he would have him furnished. William Ross may have said that Inness had guaranteed his brother's debt. I would rather say that he said so than he did not. I cannot remember what I swore to on the former trial as to this matter of guarantee. I did not testify on the former trial that Ross said the effect of arresting Inness would be to ruin him in Chicago. I did not say so before the Justice.

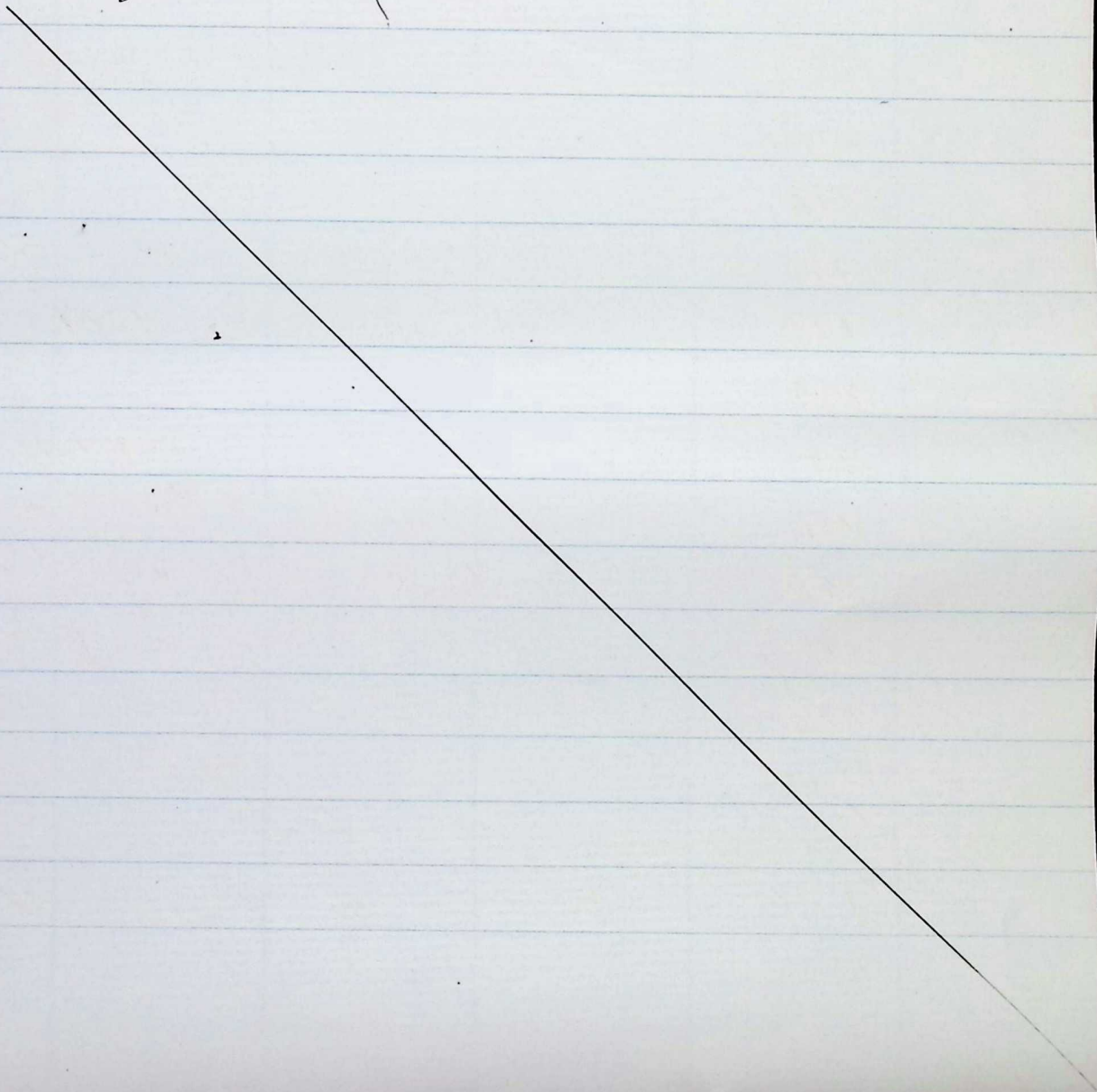
Re Examined by plaintiffs Counsel. The last conversation with William Ross when I took Inness's message was to the effect that he would furnish him. I saw William Ross three days before the last conversation. He then said plaintiff had taken \$166. against the rule of the Store. The statement that plaintiff had guaranteed his brother's debt was in the first conversation.

5
~~Page 1~~
p41 The plaintiff then called as a witness George Kennedy who testified as follows.

I am book keeper for defendants and have been for Six Years. and during all the time plaintiff was Cashier,

On Saturday evening December 10th previous to his leaving plaintiff asked me to make out his account. I made out a copy for him and handed it to him. according to our books there was a balance against him of about \$70.
[The plaintiff then offered in evidence the account of the plaintiff on the books of the defendants as shown by defendants' Ledger page 344. which

is as follows.



1.1.1

1242

1857

Mr Adam G. Innep
In ac with Mr M Rof sco

Nov 5	To Cash	1.00
" 9	" "	7.00
" 13	" "	2.00
" 16	" "	1.50
" 18	" "	1.00
" "	Mhdise	88
" 23	" "	4.55
Dec 14	Cash	1.00
" 19	" "	50
" 24	" "	1.00
" 26	" "	2.00
" 28	" "	50

1858

Jan. 4	Mhdise	4.00
" 8	" "	2.38
" 9	Cash	10.00
" 16	" "	7.00
" 20	" "	8.00
" 21	Mhdise	6.88
" 23	Alex Innep ac	189.42
" 25	Cash	7.00
" 26	" "	1.00
" 28	" "	12.00
" 30	" "	4.00
Feb. 4		3.00

1858 ~~Feb 4~~ page 43

Feb 4	Mhdise	\$ 1.00
" 9	Cash	10.00
" 16	" "	4.00
" 17	" "	10.00
" 19	Mhdise	4.41
" 20	Cash	2.00
" 24	" "	2.00
" 25	" "	10.00
" "	Mhdise	1.00
March 1	Cash	5.00
" 9	" "	4.00
" 12	" "	4.00
" "	Mhdise	63
" 17	Cash	6.00
" 19	" "	3.00
" 20	" "	4.00
" 24	" "	7.00
" 26	" "	4.00
" 27	" "	3.00
April 1	Mhdise	5.00
" 5	Cash	5.00
" 7	Mhdise	8.00
" 9	Cash	10.00
" 10	" "	4.00
" 19	" "	13.00
" 23	" "	1.00
" 24	" "	2.00

P 44

April 26	Cash	4.00
" "	Merchandise	1.00
May 3	Cash	5.00
" 10	" "	5.00
" 17	" "	3.00
" 18	" "	17.00
" 26	" "	1.00
June 3	" "	3.00
" 7	" "	4.00
" 8	" "	10.00
" 11	" "	63
" 14	" "	50
" 16	" "	1.50
" 22	" "	50.00
" 23	Merchandise	25
" 25	" "	3.00
" 26	Cash	5.00
July 3	" "	5.50
" 21	" "	30.00
" "	Merchandise	2.48
" 26	" "	31
" 31	Cash	20.00
Sept. 22	" "	2.00
Oct. 4	" "	2.00
" 6	" "	1.00
" 7	" "	30.00
" "	Merchandise	9.81

45			
Oct 13	117 Mhdise		4.00
" 15	" "		11.37
" 25	" "		1.00
" "	Mhdise		1.00
" 26	Cash		5.00
" 28	" "		25.00
Nov 16	Mhdise		2.50
" 24	Cash		2.00
" 25	" "		25.00
" "	Mhdise		14.13
Dec 1	Cash		3.00
" 2	" "		2.50
" 4	" "		1.00
" 10	" "		25.00
" 11	" "		4.00
" 13	" "		1.00
" 20	" "		7.00
" 22	" "		5.00
" "	Mhdise		1.00
" 27	Cash		7.00
" 31	" "		7.00
1855			
Jan 3	Mhdise		40
" 4	Cash		2.50
" 5	" "		25.00
" 15	" "		5.50
" 18	" "		30.00
" 26	" "		5.00

2770

Page 46

1859

Jan 26	Mhdise	1.00
" 29	Cash	25.00
Feb 1	" "	30.00
" 13	" Absence	25.00
" 15	" Cash	20.00
March 1	" "	30.00
" 3	" "	5.00
" "	Mhdise	2.50
" 14	Cash	10.00
" "	Mhdise	1.00
" 26	Cash	50.00
" 28	" "	10.00
April 1	" "	25.00
" 13	" "	5.00
" 14	Mhdise	5.77
" "	" "	3.00
" 19	Cash	5.00
" 22	" "	1.00
" 29	" "	25.00
May 3	" "	5.00
" 19	Mhdise	9.50
" 24	Cash	6.00
" 25	" "	25.00
June 7	" "	25.00
" 10	" "	3.00
" "	" "	8.95
" 13	" "	20.00

# 4)	June 29	Cash	
June 29		Cash	5.00
" 30	"	"	15.00
July 5	"	"	10.00
" 6	"	"	11.00
" 7		Mhdise	31
" 9		Cash	15.00
" 13	"	"	11.00
" 14	"	Mhdise	14.00
" 18		Mhdise	1.00
" 19	"	"	1.50
" 20		Cash	5.50
" 22	"	"	25
" 25	"	"	3.00
" 30	"	"	10.00
Aug 10	"	"	15.00
" "		Mhdise	1.50
" 12		Cash	11.31
" 16	"	"	25.00
" 22	"	"	10.00
" 30	"	"	15.00
Sept 1	"	"	25.00
" 8	"	"	6.00
" 22		Mhdise	50
" 27		Cash	25.00
Oct. 15		Mhdise	400
" 31		Alex Snnefs	241.04
Nov 15		Cash	5.00

p42 ~~1.00~~

Nov-16	Mkdiso	50
" 25	Cash	5.00
" 26	Mkdiso	50

\$1820.65

The attention of the witness being called to the account he testified as follows. One item of the account is \$241.04; the amount due from plaintiffs brother Alexander Inness charged to plaintiff the date of that charge is Oct 31. 1859. The charge was made by me by the direction of William Rop, and the books balanced at that time. Including this charge made plaintiff ^{debtor} about \$77.00. Excluding this charge he had \$166. to his credit. The balance against Alexander Inness was struck October 31st but it had been standing since. The account with Alexander Inness commenced in January 1857. I did not notify the plaintiff that this charge was made he was at the other end of the desk at the time Rop directed the charge to be made. The desk is a long one, sixteen feet long or more. Inness was at one end

~~4th~~

R49

and I at the center. I was there when the order to make the charge was given & I think Inness was there, but Rops did not direct his attention to the entry. I made the entry immediately.

I never communicated to plaintiff that I had made this charge, when I first presented plaintiff with this account containing this charge, it was the first time to my knowledge that he knew of the entry.

Question - What did he say when the account was presented to him concerning this charge? The question was objected to by the defendants the objection was sustained by the court, and the plaintiff excepted.

The plaintiff then offered in evidence the account of Alexander Inness with the defendants as shown by the defendants books & the Ledger page 86, which is as follows -

150

1856

Mr Alex Snrups

In acc With W. M. Ross Esq

June 12	To Merchise	75.20
" 25	" "	7.00
July 7	" "	13.20
" 18	" "	15.00
" 25	" "	15.85
Aug. 1	" "	108.28
" 8	" "	10.13
" 13	" "	23.35
" 23	" "	53.75
Sept 9	" "	719.61
" 11	" "	72.14
" 16	" "	1.32
" 25	" "	60.38
" 28	" "	37.40
" 29	" "	12.87
" 29	" "	100.80
Oct 2	" "	49.00
" 6	" "	167.50
" 8	" "	65.94
" 22	" "	274.81
" 30	" "	16.83
Nov 5	" "	50.23
" 10	" "	289.1
" 13	" "	51.16
Dec 12	" "	43.22
" 13	" "	43.57

Dec 17 1857	1255	Mkhouse	25.24
Jan 7	"	"	2.00
" 19	"	"	21.69
March 31	"	"	119.16
April 1	"	"	187.50
May 14	"	"	8.65
" 28	"	"	184.45
June 16	"	"	2.50
" 19	"	"	79.72
" 24	"	"	28.43
July 1	"	"	65.18
Aug 21	"	"	56.01
Oct 30	"	"	110.04
Dec 8	"	"	111.56
" 28	"	"	77.86
April 17 1858	"	"	191.31
" 28	"	"	32.62
" 30	"	"	21.56
May 13	"	"	27.36
June 7	"	"	33.52
" 14	"	"	53.25
" 18	"	"	9.56
" 19	"	"	80
July 16	"	"	21.27
" 30	"	"	40.15
July 18	1856	By Cash	157.11
Aug 23	"	"	128.12

~~1255~~

~~Page 52~~ Page 52

Sept 10	By Cash	250.00
" 16	" "	533.83
Oct 22	" "	90.00
Nov 7	" "	250.00
Dec 11	" "	400.00
Jan 7	" "	337.57
" "	" Merchise	4.86
May 27	" Cash	200.00
June 15	" "	150.00
Sept. 7	" "	200.00
Oct 15	" "	149.00
Dec 4	" "	165.69
" "	" Merchise	64
Jan 23	Adam G. Inness	189.42
June 5	" Merchise	6.10
" 16	" Cash	175.00
Oct. 31	" Adam G. Inness	241.04
		<u>\$3628.28</u>

The attention of the witness being called to the account he testified as follows
 This is the account of Alexander Inness the last item of debit is in July 1858
 The last item of Credit is October 31. 1859 by Adam G. Inness \$241.⁰⁴, the next to the last item of Credit is June 16th 1858 \$175 cash. The writing in pencil on this book is "Canada John Ross" who is

105
pg 53

cashier of Defendants, the words in pencil are "On Adam Murray's Security". These words appear across Alexander Inness's account, after the account was delivered to Adam Inness both Defendants were absent. Inness did not take the money on Saturday because the Defendants were not at home. I advised him not to take the money until the Rosses came back. He came back and worked on Monday in his place as Cashier. Inness charged himself with the \$166 on the books of Ross on Monday and took that amount of money from their funds. The witness here referred to the book in which it was charged and it was called on the trial the big book, one column contains all monies received on sales: the other all money paid out. It is in the handwriting of Canada John Ross. The footing is in Inness's handwriting, there was one charge of \$166⁰⁰/₁₀₀ A. G. Inness \$166.00 in Inness's handwriting. I erased this charge by direction of William Ross after his return from New York. I found the entry made on Tuesday morning. William Ross returned from New York about

~~Page 54~~
Page 54

Ten or twelve days after the charge was made, I transferred it to the other books on the Tuesday morning, and when Ross returned he ordered them all erased.

It may have been overlooked in some of the books. The clerks were all paid once a fortnight, a list was made out showing the amount due each Salesman and Clerk, after deducting the amount of goods purchased by him, and the balance was paid by Inness as Cashier, my name was not on the pay roll, nor was Inness's.

When I wanted money I got Inness to draw a check and get one of the Rosses to endorse it. Inness got money in the same way. Inness left Monday night and did not return. I made no enquiry about the entry of \$166.00.

Upon Cross examination by defendants Counsel the Witness testified as follows.

The entry of Alexander Inness account to Adam Inness was made Oct 31, 1859. Inness was Cashier and it was his duty to receive and pay out all cash and to deposit it in bank to the Credit of the defendants, William Ross had given instructions that no amount over \$5. was to be paid without a check

Page 55

drawn by Inness and endorsed by one of the Rosses, all money received into the Store, passed into the custody of Inness. These instructions were given two or three months before Inness left there, when I drew over \$5. on my salary. I got his check and got Ross to endorse it - and Inness did the same. Inness had access to the Ledger and to all the books. I have seen him looking at the ledger frequently, and looking at his own account in it. I cannot state what month, have seen him look at it frequently. The desk was about 16 feet long. Plaintiff could have heard the directions given to charge his account with Alexander Inness' account unless he was busy. I cannot recollect in what time he directed me to enter this charge. I presume he spoke in his ordinary tone of voice. His ordinary tone was low. I think he had just come into the Store. [The witness here looks at plaintiff's account on books of defendants - at page 41 of petty ledger] I find charged to plaintiff's account on books of defendants - January 23^d 1857 Alexander Inness account of \$189⁴² which was deducted from plaintiff's salary on page 206 of large Ledger.

The pencil marks in petty Ledger are in the handwriting of John Ross the Cashier. This is the first time I ever saw

~~page 55~~ them. They must have been made early [Mitrop
page 56 here looks at checks] they are in the hand writing
of plaintiff drawn by him to order of Rop and
by him endorsed. The following are the checks
referred to by Mitrop and proved.

No 221 Chicago Aug 16th 1859.
Chicago Marine & Fire Insurance Co. Pay to
Clark Salinas, John H. Rop or order Three hundred
& fourteen ¹⁴/₁₀₀ dollars.
W M Rop & Co
A. G. Inness.

No 226. Chicago Aug 20 1859
Chicago Marine & Fire Insurance Co. Pay to
Freight. John H. Rop or order Seven ⁶⁴/₁₀₀ dollars
W. M. Rop & Co
A. G. Inness

No 235. Chicago Sept 1. 1859
Chicago Marine & Fire Insurance Co. Pay to
A. G. I. John H. Rop or order Twenty five
dollars
W. M. Rop & Co
A. G. Inness

No 240 Chicago Sep 21. 1859
Chicago Marine & Fire Insurance Co. Pay to Clark
Fire John H. Rop or order Two hundred & ninety
five ⁴/₁₀₀ dollars
W. M. Rop & Co
A. G. Inness.

~~#57~~ Page 57

No 243.

Chicago Sep 5th 1859

Chicago Marine & Fire Insurance Co.

#57

Pay to Freight J. H. Rop or order Nine

\$100 dollars

W. M. Rop & Co

\$98⁰⁰/₁₀₀

A. G. Inness

No 244

Chicago Sep 6th 1859

Chicago Marine & Fire Insurance Co.

Pay to express. John H Rop or order

Ten ⁸⁰/₁₀₀ dollars

W. M. Rop & Co

\$10⁸⁰/₁₀₀

A. G. Inness

No 252

Chicago Sep 9 1859

Chicago Marine & Fire Insurance Co

Pay to Express. John H Rop or order

Twelve dollars

\$12⁰⁰/₁₀₀

W. M. Rop & Co

A. G. Inness

No 253

Chicago Sep 12 1859

Chicago Marine & Fire Insurance Co

Pay to Express John H Rop or order

Ten ⁰⁵/₁₀₀ dollars

\$10⁰⁵/₁₀₀

W. M. Rop & Co

A. G. Inness

27-

~~Feb 60~~

No 287

Chicago Jan 29. 1859

Chicago Marine & Fire Insurance Co

Pay 58

Pay to A. G. S. John H Rops or Order
Twenty five Dollars

\$25-

W M Rops & Co

A G Inness

No

Chicago Mar 26 1859

Chicago Marine & Fire Insurance Co

Pay to A. G. S. John H Rops or Order
Fifty Dollars

\$50

W M Rops & Co

A G Inness

No 68

Chicago April 2. 1859

Chicago Marine & Fire Insurance Co

Pay to Geo Kennedy John H Rops or Order
Thirty Dollars

\$30

W M Rops & Co

A G Inness

No

Chicago June 7. 1859

Chicago Marine & Fire Insurance Co

Pay to A. G. S. John H Rops or Order
Twenty five Dollars

\$25-

W M Rops & Co

A G Inness

No 144

Chicago June 10. 1859

~~407~~
p 59

Chicago Marine & Fire Insurance Co
Pay to Geo Kennedy John H Rofs or Order
Fifty eight 58/100 Dollars

\$58 58/100

W M Rofs Jr

A G Inness

No 186

Chicago July 16 1859

Chicago Marine & Fire Insurance Co
Pay to Galerio John H Rofs or Order
Three hundred & thirty six 80/100 Dollars

\$336.80/100

W. M Rofs Jr

A G Inness

No 216

Chicago Aug 11. 1859

Chicago Marine & Fire Insurance Co
Pay to Freight John H Rofs or Order
Six 8/100 Dollars

\$6.8/100

W M Rofs Jr

A G Inness

No 220

Chicago Aug 13. 1859

Chicago Marine & Fire Insurance Co
Pay to Merchandise John H Rofs or Order
Thirteen Dollars

\$13.

W M Rofs Jr

A G Inness

~~Page 54~~
Page 54

Ten or twelve days after the charge was made, I transferred it to the other books on the Tuesday morning, and when Ross returned he ordered them all erased.

It may have been overlooked in some of the books. The clerks were all paid once a fortnight, a list was made out showing the amount due each salesman and clerk, after deducting the amount of goods purchased by him, and the balance was paid by Inness as Cashier, my name was not on the pay roll, nor was Inness.

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47
page 55

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Chicago Marine & Fire Insurance Co. Pay to
Clark Salinas, John H. Rop or order Three hundred
& fourteen ¹⁴/₁₀₀ dollars.
\$314 ¹⁴/₁₀₀. W M Rop & Co
A. G. Inness.

No 226. Chicago Aug 20 1859
Chicago Marine & Fire Insurance Co. Pay to
Freight. John H. Rop or order Seven ⁶⁴/₁₀₀ dollars
\$7 ⁶⁴/₁₀₀. W. M. Rop & Co
A. G. Inness

No 235. Chicago Sept 1. 1859
Chicago Marine & Fire Insurance Co. Pay to
A. G. I. John H Rop or order Twenty five
dollars \$25 W. M. Rop & Co
A. G. Inness

No 240 Chicago Sep 21. 1859
Chicago Marine & Fire Insurance Co. Pay to Clark
Fire John H Rop or order Two hundred & ninety
five ²⁴/₁₀₀ dollars
\$295 ²⁴/₁₀₀. W. M. Rop & Co
A. G. Inness.

~~#57~~ Page 57

No 243.

Chicago Sep 5th 1859

Chicago Marine & Fire Insurance Co.

p 57

Pay to Freight J. H. Rop or order Nine

\$100 dollars

\$98⁰⁰/₁₀₀

W. M. Rop & Co

A. G. Inness

No 244

Chicago Sept 6th 1859

Chicago Marine & Fire Insurance Co.

Pay to express. John H Rop or order

Ten ⁸⁰/₁₀₀ dollars

\$10⁸⁰/₁₀₀

W. M. Rop & Co

A. G. Inness

No 252

Chicago Sep 9 1859

Chicago Marine & Fire Insurance Co

Pay to Express. John H Rop or order

Twelve dollars

\$12⁰⁰/₁₀₀

W. M. Rop & Co

A. G. Inness

No 253

Chicago Sep 12 1859

Chicago Marine & Fire Insurance Co

Pay to Express John H Rop or order

Ten ⁰⁵/₁₀₀ dollars

\$10⁰⁵/₁₀₀

W. M. Rop & Co

A. G. Inness

24-

~~1260~~

No 287

Chicago Jan 29. 1859

Chicago Marine & Fire Insurance Co

Page 58

Pay to A. G. S. John H Rops or Order
Twenty five Dollars

\$25-

W M Rops & Co

A G S. Mess

No

Chicago Mar 26 1859

Chicago Marine & Fire Insurance Co

Pay to A. G. S. John H Rops or Order
Fifty Dollars

\$50

W M Rops & Co

A G S. Mess

No 68

Chicago April 2. 1859

Chicago Marine & Fire Insurance Co

Pay to Geo Kennedy John H Rops or Order
Thirty Dollars

\$30

W M Rops & Co

A G S. Mess

No

Chicago June 7. 1859

Chicago Marine & Fire Insurance Co

Pay to A. G. S. John H Rops or Order
Twenty five Dollars

\$25-

W M Rops & Co

A G S. Mess

No 144

Chicago June 10. 1853

~~50~~
p 59

Chicago Marine & Fire Insurance Co
Pay to Geo Kennedy John H Rofs or Order
Eighty eight 58/100 Dollars

#58 58/100

W M Rofs Jr
A G Inness

No 186

Chicago July 16 1853

Chicago Marine & Fire Insurance Co
Pay to Galen John H Rofs or Order
Three hundred & thirty six 80/100 Dollars

#336.80/100

W. M Rofs Jr
A G Inness

No 216

Chicago Aug 11. 1853

Chicago Marine & Fire Insurance Co
Pay to Knight John H Rofs or Order
Six 8/100 Dollars

#6.8/100

W M Rofs Jr
A G Inness

No 220

Chicago Aug 13. 1853

Chicago Marine & Fire Insurance Co
Pay to Merchandise John H Rofs or Order
Thirteen Dollars

#13.

W M Rofs Jr
A G Inness

~~167~~

No 280

Chicago Sept 28, 1853

Sept 60

Chicago Marine & Fire Insurance Co
Pay to A & S. John H. Rops or Order
Twenty five Dollars

\$25

W. M. Rops Ho

A & S. Insurers

No 334

Chicago Oct 23, 1853

Chicago Marine & Fire Insurance Co
Pay to Lett Ho John H. Rops or Order
Five 54/100 Dollars

\$5.54/100

W. M. Rops Ho

A & S. Insurers

The foregoing checks are all indorsed
John H. Rops

at the time Insess left, there
were 28 clerks, The Cash Sales are
ranged \$1500 per day. All this money
passed through Insess's hands.

On reexamination by Counsel
for Plaintiff the Witness testified as
follows.

The direction not to pay out
over five Dollars without drawing
check was not always regarded.

It was many times disregarded.

By this Sales Book it appears to

1862

1862 ~~1867~~

1853

Aug 1.	Night	22.37
" "	" "	5.34
" "	W ^m Henry	12.00
" 2	M. C. Foster	10.00
" "	A. L. Barrett	20.00
" 3	Miss Drake	12.25
" "	M. W. Le Wolfe	15.00
" "	Parvity Shuttles	11.00
" "	W. M. Rops	15.00
" 4	W ^m Rops	25.00
" 5	R. H. Byington	5.20
" 6	Gen. Kennedy	6.00
" "	Night	20.23
" 10	A. G. Innes	15.00
" "	J. H. Rops	20.00
" 12	A. G. Innes	11.81
" 13	Mhdise	5.00
" "	W ^m Henry	12.00
" "	Gen. Kennedy	15.00
" "	J. H. Rops	6.00
" 16	Night	6.65
" "	J. R. Scott	10.50
" "	J. R. Emiley	10.00
" 17	J. H. Rops	10.00
" 18	Night	7.80
" "	" "	8.08
" 19	Mhdise	13.00

1859	1863		
Aug. 20	L. G. Sluffy		7.50
" "	Freight		5.10
" "	" "		16.52
" 22	A. G. Inneps		10.00
" 23	" " "		7.95
" 26	Jos. Lurcan		6.25
" "	Mhdise		24.50
" "	" "		5.50
" "	Freight		7.18
" 27	J. H. Rops		15.00
" "	Mhdise		7.25
" 30	Freight		22.38
" "	A. G. Inneps		15.00
" 31	Mhdise		12.80
Sept 1	Freight		8.25
" "	Wm. Henry		10.00
" 2	Mhdise		7.00
" "	Francis Clark		10.00
" "	Geo Kennedy		6.00
" 3	Mhdise		6.50
" 7	Freight		10.80
" "	Mhdise		10.00
" "	J. H. Rops		10.00
" 8	A. G. Inneps		6.00
" 10	G. R. Rutter		5.39
" "	J. H. Rops		12.75
" "	Geo Kennedy		10.00

W.A.

1864
1853

1866

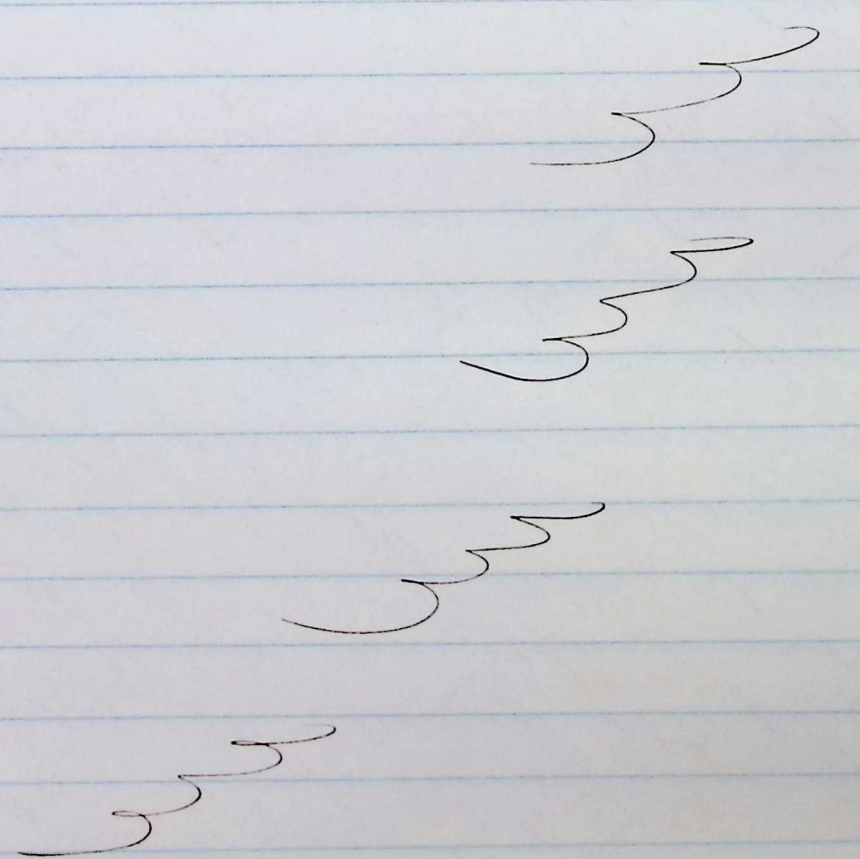
Sept 14	Geo Kennedy	10.00
" 15	J. H. Rofs	10.00
" "	Matting	16.15
" 16	M ^{rs} Henry	11.00
" 19	J. H. Rofs	10.00
" "	" " "	20.00
" "	Mhdise	52.47
" 20	" "	5.50
" 21	Freight	6.00
" "	Exchange	6.37
" "	W. M. Rofs	14.37
" 22	A. G. Fair	10.00
" 26	M ^{rs} Henry	10.00
" 27	John M Rofs	11.50
" 28	John H Rofs	25.00
" 29	John M Rofs	10.00
" 30	Freight	11.70
Oct 1	A. Pinch	12.50
" 4	Freight	9.85
" "	W M Rofs	11.00
" "	Mhdise	5.50
" 11	" "	7.50
" "	John Gink	20.00
" 15	J. H. Rofs	15.00
" 18	J A Cutler	15.80
" 20	Wesley Shaws	8.00
" 21	A B Boulton	12.00

1859	page 65	
Oct 21	Exchange	9.62
" 22	Ice Bill	7.20
" "	Jos. Luncann	7.94
" 26	J. H. Rops	10.00
" 29	J. W. Smith	10.00
" "	Geo Kennedy	6.00
" "	Freight	5.45
" "	J. H. Rops	10.00
Nov 1	J. H. Rops	10.00
" 3	J. A. Stricklen	8.00
" "	J. H. Rops	7.50
" 5	M M Rops	20.00
" "	J. H. Rops	10.00
" 7	Charity	10.00
" "	Building up	6.13
" 9	J. H. Rops	16.02
" 10	M M Rops	50.00
" 11	J. H. Rops	11.25
" 12	" " "	10.00
" 14	Mhdise	9.93
" 15	Freight	43.47
" 16	M F Foster	13.00
" 17	Jos Luncann	30.00
" 18	J. W. Smith	10.00
Nov 19	M M Rops	7.00
" 29	J. H. Rops	11.00
Dec. 2	Wm Henry	11.30

h 66
7839

Lec. 2	Mhdise	20 98
" 3	W M Rops	10.00
" "	J M Rops	6.00
" "	Freight	6.00
" "	J H Rops	10.00
" "	Robt Rops	5.50
" 8	W M Rops	25.00
" 9	Jos Lurcan	11.59
" "	J. H Rops	9.00
" 10	Geo Kennedy	7.50
" "	Mhdise	6.36
" "	Miss Graham	6.81
" 12	Jos. Lurcan	12.75
" "	Freight	8.36

h 66



P. 48
Page 67

On the Cross Examination by Defendants Counsel the Witness testified as follows

Inness was absent at Collingwood in the Summer of 1858. I don't know how long. Inness sometimes paid freight bills, and incidental expenses when Ross was not present.

Question. So You not know that in that store no one had any right to pay out money except by Ross's direction?

The question was objected to by plaintiff, the Court sustained the objection - and the Defendants excepted then and there.

The plaintiff then called as a witness
A. J. Galt who testified as follows

I know the plaintiff and know of his arrest in 1859. He was represented by Counsel before Judge Mulliken, he paid my firm \$25 - Counsel fee.

~~Page 67~~
Page 68

The plaintiff then called as a witness Alexander Inness who testified as follows. I am a brother of plaintiff. I was in business in Quincy Illinois in 1857 & 1858. 23rd January 1857. The item of \$189⁴² was charged to me on defendants books.

Question - State to the jury the circumstances under which the charge above was made to your brother the plaintiff - The question was objected to by defendants and objection overruled - The defendants then and there accepted - I was short of money at the time and wrote to my brother. I settled with the defendants after the payment by my brother of the \$189⁴². The payment was made by my brother at my request, and I afterwards paid him. The defendants never required any guarantee of my account, and my brother never guaranteed the claim to my knowledge. I never requested my brother to assume the debt. My transactions with the defendants amounted to about \$5000 - it was all settled except \$160 - I failed in August 1858 and made an assignment to my brother.

On Cross examination by defendants Counsel the witness testified as follows -

~~Page 5~~
p 69

I had a number of settlements with the Rosses. I requested my brother to pay this \$189.00. because I had not the money at the time. The account had been due about two weeks. The account was due and ought to have been paid and I wanted to keep up my credit, at the time I incurred that liability - there was no obligation on the part of my brother to pay it. I sometimes sent orders for goods to my brother to be filled, and sometimes bought the goods myself. Most of them were bought through orders, because of the peculiar nature of the arrangement. I only bought such goods as would make up my assortment. was to have credit of thirty days from defendants. of all the goods I purchased of the Rosses. I selected personally only about \$800 to \$1000. worth, the rest were purchased through my brother the plaintiff. The amount of assets transferred to my brother was about \$3000 or \$4000 - ^{and some more. I presume greater part was available} some were available. Adam Murray never guaranteed my account to the Rosses to my knowledge, I now reside in Milman-Ke. The plaintiff has no interest in my store.

On re examination by plaintiffs Counsel the witness testified as follows.

I bought the goods of the Rosses, plaintiff

~~Page 71~~
Page 70
has loaned me money, I don't know how much, I still owe him, I paid him the \$189 item charged to him. The plaintiff here rested his case.

The defendants to maintain the issues on their part recalled as a witness George Kennedy who testified as follows.

Jurress was absent in August 1858. I don't know how long he was absent.

The defendants then called as a witness Robert S. Blackwell who testified as follows.

I am an attorney and counsellor at law and have been for many years. William Ross consulted me in 1859, the affidavit for arrest is in my hand writing, I saw it. This paper was sworn to Dec 27th 1859, the first person who consulted me about this transaction was John H. Ross, He consulted me with reference to the course which the firm should pursue in connection with Mr. Jurress at that time one of their clerks. In the course of my cross examination as I am in the habit with my clients. I found out that Adam Murray was an uncle of plaintiffs and also a relative of the Rosses. I suggested to John H. Ross that he had better consult with Mr. Murray about it, before taking any

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p 71

steps, and said that I would think the matter over and give him further advice after he had conferred with Mr Murray. During this interview John H. Ross said to me that on the discovery of the deficit he had telegraphed to his brother William M. Ross in New York, in reference to it. He stated at the same time that William had directed him to consult Counsel in reference to the matter.

This ended my intercourse with John H. Ross. This was before the 27th December, less than two weeks I think not long. Between this conversation and the date of the affidavit William M. Ross came home from New York, he called on me on his arrival to consult me about this same matter. I stated to him substantially the interview I had had with John H. Ross. About this matter, he desired my opinion as to whether he should proceed civilly or criminally against Sumner. I listened to his statement of facts and told him I could not give him an opinion upon the question submitted to me unless I examined the account of Mr Sumner, and learned the rules of his business by which the clerks in the Establishment were governed, and the usages of the Establishment, and conversed with the

~~73~~

W 72

clerks who were cognizant of the rules and usages, with reference to the question of evidence involved in the case, I thereupon suggested to him that I should go down to the store and talk with the clerks and examine the books and find out the facts. He then left me after making an appointment to meet me at his store after 12 o'clock of the same day. I accordingly went to the store between 12 and 2 P.M. William M. Ross was not in the store at the time. I spoke to the book keeper and asked him if William M. Ross was in. He said no but John was. Soon John Ross came up. I told him my business, and the books were produced before me, and I made an examination. I then ^{inquired} ~~requested~~ of John Ross the bookkeeper, the Cashier and two or three other clerks in reference to the rules of the store as to the payment of money, and comparing the facts I had learned at the store with the statement of the Rosses, I advised William Ross to proceed criminally against Mr Innes. I state in this connection that I gave my opinion in good faith.

I learned from John Ross that it was a sort of family affair. The statement made to me by William Ross was that Innes

~~p 74~~

N73

was some kind of a clerk or Cashier, that he had charge in the store of the funds which were received from the daily sales of the establishment; that it was his duty to deposit the money on hand each afternoon as the hour of the bank closed. That no money should be paid to any person over \$5 except on a check on the bank these checks over \$5. were to be signed by Inness and indorsed by William M. Ross if at home, and if absent by John H. Ross that no clerk or employee of the establishment could receive a greater sum than \$5. without conforming to the rules. They further stated that Mr Inness was cognizant of this rule, and had acted upon it, that Inness had a brother residing in Quincy, who had occasionally bought goods from the Rosses for his store at Quincy that they were not satisfied with their course of dealing with Alexander Inness and declined to sell him further until some satisfactory arrangement was made. They then stated that these facts were brought home to the knowledge of Adam Inness and that he agreed with them, the Rosses, that he would guarantee such bills of

p 74

goods or balances as might exist between the parties from time to time, as they were willing to sell him. William Ross stated that in pursuance of this oral guarantee of Adam Inness, goods were delivered to Alexander Inness and shipped to Quincy that Alexander Inness had not performed his agreement with them and that they had so informed Adam Inness, and that no complaint was made as to the question of his liability. Mr Ross then said that these facts transpired prior to or about the time that he was starting for New York that is just before he went to New York he told Adam ~~Inness~~ that these debts had not been paid and he made no complaint as to his liability. He said he then told John to see that the rule was strictly observed with reference to drawing money from the Bank. That while in New York he received a telegram from John informing him of the overdraft by Plaintiff. This is substantially the statement made to me by William M. Ross. I afterwards examined the books and questioned the clerks. Ross then asked me whether I would advise a civil or criminal proceeding. I advised

~~27~~
p 75

a Criminal proceeding, and thereupon wrote the affidavit and Inness was arrested, examined and discharged. Before the Magistrate the Rosses swore to the same facts substantially that they had stated to me, after William Ross left for New York as I understood from John. Inness had threatened to take this money being the balance of his salary, and he had told him that he would prosecute him criminally if he did. I was present at the examination before Esq. Milliken Adam Murray was called for defence before Milliken, and testified in substance in his examination in Chief that William Ross in a conversation with him stated that if Inness did not settle the matter he would ruin him. I then at Ropes suggestion put a particular question to Murray whether Ross had stated that he would ruin Inness or that the effect of a Criminal prosecution would be to ruin him, Murray replied he was not certain which form of expression was used, but his impression was that it was that a Criminal prosecution would have the effect to ruin him.

~~1077~~

P 76

Upon Cross examination by Counsel for Plaintiff the witness testified as follows.

Before I drew the affidavit I went to the Store and examined the books, the account of Inness particularly, and the then Cashier the bookkeeper and several clerks. The book I examined was like the one here shown me, I have no doubt I was told in what book the entry was made. I think the affidavit was written the next day after I went to the store. I found the entry in the books of the money in controversy, at that time. I then found out the real amount in controversy. I don't remember whether I examined the large book as to the entry of \$166. I know I was shown the very entry of plaintiff himself, in his handwriting as I was told in that book (pointing to the Sales book) William Ross did not tell me that plaintiff assumed this debt to be paid out of the effects assigned to him. This fact was never communicated to me, nor did I ever hear of it until after the examination I heard before the Magistrate for the first time of the assignment. I could not say that I asked Mr Kennedy about what

177

Plaintiff said in regard to his conduct, John Ross directed Kennedy to facilitate my examination of the books, and he showed me the accounts of both Inness and I examined them. I was told by both the Rosses that they had the right to charge the account to Inness. I made an enquiry as to Adams guarantee of Alexanders debt, and received a reply from some one I dont know who, corroborating the statement of the Rosses. I learned from all parties clerks and partners that the rule was not to pay out more than \$5. without a check, persons there pointed out to me certain items and gave me instances to show that this was the rule, and they pointed out entries to show that this was the rule, this was to corroborate their statements as to the rule. I found on examination this was the rule, I was not told that the rule was violated every day, I learned that it had in pressing instances been violated; but every one understood that was the rule William Ross did not tell me that plaintiff assumed his debt to be paid out of the effects assigned to him Inness, I never heard of this until

~~157~~
after the examination.

p 78 The Defendants then called on a witness John Ross who testified as follows.

I was in the employ of Defendants in 1859. The night of the 12th December. Monday John H Ross came to me and told me he wanted me to hear what he had to say to Mr Suness, and while there John H Ross. forbid Suness from taking money without his authority, and told him if he took any money without his consent he would hold him subject to a Criminal action. Suness left the Store that evening and never came afterwards. They were talking of a balance of Salary claimed by Suness. This was \$166. according to the books. Again Cross Examination by Counsel for plaintiff the witness testified as follows.

This conversation must have been about 8 o'clock P.M. I had no particular position in the Store at that time. I was employed to superintend the Clerk. to see that things went on right. Mr Ross said in New York that he wanted to get an easier situation. My employment was to see that the proper entries were made

~~p 10~~

p 79

in the books, I was sitting by the store near the desk, John H Ross told me to come to the desk and hear what he had to say to Mr Inness. I don't know whether the entry of \$166.00 on the sales book was made at that time. I understood that Inness asked Ross for the money. I don't know at what time. I don't know that Ross had then seen the entry. Inness told Ross that he could not prevent him taking his salary. I left 15 or 20 minutes after this conversation and went to the store. Inness was in the desk then. I think Inness left the store before I did. I knew of the regulation not to pay over \$5 without a check. I went to the store in September 1859. I was told of the rule afterwards when making a charge to myself. Subsequent to being told of it. I have violated the rule I presume. Mr Ross was standing by at the time and directed me to charge it. I have spoken to Kennedy of the propriety of his being absent at the time of the examination. The circumstances were these. Mr Kennedy felt hurt about some conversation had with Mr Ross. who claimed that Kennedy was prejudiced in favor of plaintiff. I then advised him to go away

p 20

17
p. 80

so as not to place himself in the power of the party. The entry in pencil in Petty Ledger was made by me by mistake. The books were in our room: He doomed together. He had this book together. In looking over the accounts John H. Ross said the Inness's never got goods without guarantee. I wrote this by mistake. It should have been written opposite William Inness's account which is on the same page and just below Alexander Inness's account. Adam Murray had guaranteed William's account as I understood it and so wrote it. This entry was made on Friday last.

On re Examination by Defendants Counsel the witness testified as follows.

When Inness said they could not prevent his taking his salary, John H. Ross replied that if they owed him anything to present his bill and when his brother returned from New York he could settle it as he understood from William. He and Inness had an arrangement.

The defendant then recalled as a George Kennedy who testified as follows
Adam Murray guaranteed the debt of William Inness, or notes, and they were paid.

752 I don't know who paid them.

nap81 The defendant then called as a witness Joseph Scott who testified as follows.

Inness told me of being engaged in shipping hay. That he had done better by shipping hay since he left defendants than while he was with them, that he made more in one trip than it would have amounted to in a month in the store.

The defendants then called as a witness Lacy McJee who testified as follows

Plaintiff told me he had made successful shipments of hay South, and had made \$1300 to \$1500. This was 7 to 10 months ago.

The defendants then offered and read in evidence the checks heretofore referred to and inserted.

The defendants then proved that the following telegram was received by John Rop one of the defendants on the 13th December A.D. 1859 "New York Dec 13-1859. To W. M. Rop & Co.

If Harvey advises arrest Inness for embezzlement. I have telegraphed Carrer to pay for your signature
Wm McRoss.

~~183~~
Page 82

The above being all the evidence offered in the case the plaintiff asked the Court to give to the jury the following instructions.

1
If the jury are satisfied by the evidence, that the defendants knew at the time they advised with their attorney, that the plaintiff in good faith claimed and had at least a prima facie right to pay himself the money on his salary, and that he had often done so before, and did not state that fact to their attorney, then the attorney's advice is no protection to them, nor was there probable cause for causing the plaintiff's arrest and trial on the alleged charge of stealing the money, if such claim was made honestly and in good faith.

2
The Jury are instructed as matter of law. That if the jury shall find from the evidence, that the fact that the plaintiff in this case disputed the right of the defendants to charge him with his brother's account, and that the defendants knew that fact, and that they shall also find that the plaintiff claimed the right to pay himself the \$166. for his

3
Given
Page 3 Salary, and that that fact was known to the defendants at the time they consulted Blackwell, then the jury are instructed that these were material facts to be communicated to the Counsel.

3
Given
The Jury are further instructed that the fact that the rule as to payment of sums over \$5. was frequently violated (if that fact be found by the jury) was a material fact to be communicated to the Counsel when his advice was sought. This is so if defendants knew and remembered the fact at the time of taking Counsel.

4
Given
The Jury are instructed as matter of law - that to entitle the defence of advice of Counsel to avail the defendants, all the facts and circumstances known to the party seeking the advice, or which he ought to have ascertained, by careful and diligent enquiry, must be fairly and in good faith laid before the Counsel for his opinion - and if the jury shall believe from the evidence that any material and important fact known to the defendants, or which he could have

p 84

ascertained by careful enquiry was kept back from the Counsel, then that the advice given by Counsel on such a partial statement is not a protection,

5- If the Jury should find from the evidence that the plaintiff Adam G. Lunce up to the time of his arrest for Embezzlement bore uniformly a good reputation for honesty and integrity; and the defendants acknowledged that the plaintiff bore such character in their estimation up to the time of his arrest for Embezzlement; then that is strong evidence that the defendants had no probable cause for causing the arrest of the plaintiff for Embezzlement. 23^d Illinois 575. Unless very strong circumstances of fact existed to base a criminal charge upon as against plaintiff Lunce.

6- If the Jury believe from the evidence that the plaintiff was charged arrested and treated as stated in his declaration and that the defendants knew at the time of making the charge that the plaintiff as their cashier paid himself the money in

Page 86

Given in

Embezzlement falsely maliciously and without probable cause, to destroy the plaintiffs reputation for honesty in Chicago and to prevent his getting employment in Chicago, and that they obtained the opinion of Counsel upon a false or partial statement of the facts as they understood them, then such opinion if so obtained would offer no protection to them, and the plaintiff in such case ought to recover and the jury in such case may give exemplary damages

Given in

9. That in order to render the advice of Counsel any protection to the defendants in this action, the jury must be satisfied from the evidence that such advice was sought in good faith and that a fair full and true statement of all the facts was then submitted to the Counsel, and that they in instructing the prosecution were induced to act and acted on such advice without a previous determination to prosecute the plaintiff whether so advised or not.

10. If the Jury believe from the evidence that the defendants instituted the

88
page 87
Given

Criminal prosecution from a fixed determination of their own, rather than from the opinion of legal counsel, or that a full fair and true statement of all the facts was not submitted to the counsel, then in either case the opinion given by the counsel is no defense to this action; if the charge was false and made without probable cause.

Given

11 If the jury from the evidence find the defendants or either of them guilty as charged in the declaration they will assess the plaintiffs damages, and they are not confined to the actual damages proved but may give reasonable exemplary damages.

which were given, so the giving of each of which instructions by the Court the defendants then and there excepted.

The defendants then asked the Court to give to the jury the following instructions.

Left
If the defendants had any probable cause to institute the criminal proceedings then the plaintiff cannot recover. Probable cause is defined to be reasonable ground

~~87~~
Page 88

Given -

of Suspicion Supported by Circumstances Sufficiently Strong in themselves to warrant a Cautious Man in the belief that the person accused is guilty of the offence with which he is charged.

Or

Given -

If the Jury believe from the evidence in this case that the defendants fully and fairly stated all the facts and circumstances in relation to the Criminal Prosecution to respectable Counsel and that such Counsel advised them to institute the Criminal proceedings and the defendants in good faith acted upon such advice, then the plaintiff cannot maintain this action, whether such advice was correct or not, and whether the defendant in the Criminal prosecution was guilty or not.

If the jury believe from the evidence that the

page 89

#3

Given -

defendants or either of them testified before the Magistrate to facts peculiarly within their knowledge in the communication of the charge made by them against the plaintiff, that plaintiff had agreed to assume and pay the debt of Alexander Inness, and if they further believe that said defendants in good faith believed that the plaintiff had so agreed to pay and assume the same, then the testimony so given by said defendants or either of them is evidence in this case as to the existence of probable cause for making the criminal charge complained of by the plaintiff.

#4
Refused -

There is no evidence in the case that the plaintiff did not make an arrangement with the defendants or one of them by which he assumed to pay and become personally liable to pay the debt due defendants by Alexander Inness.

Probable cause is a question of law and there being no dispute as to the

490

for
Refused

fact of this case the court instruct the jury as a matter of law that there was probable cause for the prosecution of the criminal action in this case and therefore the plaintiff cannot recover

490

46

Refused

If the Jury ^{shall} believe from the evidence that there was an agreement between either of the defendants and the plaintiff by which the defendants in good faith understood and believed that the plaintiff had stipulated and assumed to pay the debt of Alexander Inness, and thereby become personally liable for the same then there was probable cause for the prosecution instituted by the defendants, and plaintiff is not entitled to recover, provided the jury further find that said plaintiff took any money belonging to defendants without their consent and permission, and the evidence of the defendants before the magistrate on the examination of the plaintiff upon the criminal charge is to be considered by the jury as evidence in this case as to the facts testified to by said defendants,

4 If the Jury shall believe from the evidence that the defendants had a rule that no employee in their store should take or pay out any money over \$5. without a check drawn by the Cashier and countersigned by one of the Ropes and that the plaintiff had guaranteed his brother Alexander's debt of \$241. and that the same was charged to him on Defendants books, and that plaintiff while a clerk in Defendants store came into possession of \$166. money received from sales of Defendants goods, and while the rule was in force and with knowledge of it, refused to pay over money or deposit it, but against the remonstrance of Defendants or either of them appropriated the money to his own use, there was probable cause, and this action cannot be maintained.

To the refusing of each of which instructions by the Court the Defendants then and there Excepted.

The Court thereupon gave the following instruction.

1291

47

Refused

4 If the Jury shall believe from the evidence that the defendants had a rule that no employee in their store should take or pay out any money over \$5. without a check drawn by the Cashier and countersigned by one of the Ropes and that the plaintiff had guaranteed his brother Alexander's debt of \$241. and that the same was charged to him on Defendants books, and that plaintiff while a clerk in Defendants store came into possession of \$166. money received from sales of Defendants goods, and while the rule was in force and with knowledge of it, refused to pay over money or deposit it, but against the remonstrance of Defendants or either of them appropriated the money to his own use, there was probable cause, and this action cannot be maintained.

To the refusing of each of which instructions by the Court the Defendants then and there Excepted.

The Court thereupon gave the following instruction.

1291

47

Refused

~~1994~~

192

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3-

This is an action for a malicious prosecution and to entitle the plaintiff to recover he ought to show first that the prosecution was ended.

That the proceedings were malicious

That it was without probable cause

There seems to be no contradictory evidence in regard to the termination of the criminal proceedings against the plaintiff and the jury will need no particular instruction on this point beyond this that a discharge of the justice of the party arrested would be a sufficient termination of the proceedings under a warrant issued by such justice. The second proposition necessary to be established by the plaintiff is that the proceedings were maliciously instituted or set on foot by the defendants. The term malice in this form of action is not to be considered in the sense of spite or hatred against an individual but of an evil disposed mind and as denoting that the party was actuated by improper and sinister motives. The jury will determine from all the facts and circumstances proven in this case whether the defendants were actuated by malice in their procuring the arrest of the plaintiff or not. The third point necessary for the plaintiff to establish in order to entitle recover is that the criminal proceedings

The Leg
Counsel

~~1994~~

194
p93

instituted against him & the defendants was without
any probable cause. Proof express malice is not enough
without showing also the want of a probable cause.
The burden of proof in this case is upon the
plaintiff and the jury ought to presume that the
defendants believed in the truth of information
and evidence given by them and of the statements
contained in the affidavit for arrest unless it
clearly appears from the evidence that the credence
of defendants was false and that ~~the~~ defendants
knew it to be so or by reasonable diligence could
have ascertained that it was false. What is
probable cause where the facts are not disputed
is a question of law but in this case the facts are
disputed and it is proper for the court to instruct
you as to the law concerning probable cause and
the jury should find whether the necessary facts
have been proved on the part of the plaintiff
to make out a want of probable cause. If the
plaintiff was cashier of the defendants and as
such cashier received money belonging to the
defendants and without the knowledge or consent
of the defendants or either of them and against
their will and consent the said plaintiff
did feloniously convert and appropriate to his
own use and embezzle from the said William
M. Ross ^{the defendant} ~~the~~ with an intent then and there

~~Page 95~~
Page 94

To steal the same (the said sum of one hundred and sixty six dollars) as stated in the affidavit of said Wm Ross and that the said money then and there was the property of the said defendants at the time of the said conversion this would be a sufficient probable cause to justify the defendants in causing the arrest of the plaintiff. But if the jury believe from the testimony that the plaintiff honestly believed that he had a right to take the money and charge it to himself. and he did so take such money and charge himself with the amount on the books of the defendants then even if he had guaranteed the debt of Alexander Inness he would not be guilty of embezzlement and such taking of the money under such circumstances would not constitute probable cause for the prosecution of the plaintiff criminally for such taking of the money of the plaintiff from the defendants even if the plaintiff had ^{verbally} agreed to pay the debt of his brother Alexander Inness and took money belonging to Ross & Co in his possession believing that he had a good right so to do and made the proper entries in the books of Ross & Co charging himself with the money so taken by plaintiff he would not be criminally liable and such conduct would not constitute probable cause for

114
pg 5-

a criminal prosecution for embezzlement. probable cause is justly defined to be a suspicion or belief founded upon circumstances sufficiently strong to warrant a reasonable man in the belief that the charge is true a belief that is groundless or which could not have been formed without the proper ignorance or negligence would not constitute probable cause within the meaning of the law. The jury ought to apply to all the evidence in the case the test. The rules of law given to them by the court ask yourselves conscientiously are the facts and circumstance that you have found to exist so strong in themselves as to warrant an impartial and ingenuous ^{and} reasonable man of common capacity with the caution usually exercised by such a man in the defendant's situation. but not under the influence of any improper motive to believe the plaintiff guilty of ^{the} crime charged against him. if they are sufficient to warrant that belief in such a mind that conclusion when deliberately arrived at by you will entitle the defendant to a verdict of not guilty.

if you find otherwise then you will find whether defendant is guilty and if guilty then you will assess the damages for the plaintiff.

The defendant's claim protection in this case by reason of having been advised to prosecute

Page 96

the plaintiff by counsel. The true rule in this matter seems to be this that the defendants may give in evidence to show probable cause and to negative malice that she proceeded in the case in good faith upon the advice of counsel learned in the law given upon a full representation of the facts. it must appear to make this a good defence that defendants communicated to such counsel all the facts bearing upon the guilt or innocence of the accused which he knew or by reasonable diligence could have ascertained and that he in good faith acted under such advice. if the jury are satisfied from the evidence that the defendants in good faith fairly submitted to their counsel all the facts that they knew were capable of proof as above stated and acted in good faith on the advice given, and did only follow such advice as given then they are not liable to an action for malicious prosecution even if the facts did not warrant the advice and prosecution.

to the giving of which instruction the defendant, ^{then & there} excepted that is to so much thereof as relates to probable cause and the courts definition of the same.

The defendants moved the Court to set aside the verdict and grant

98
pg 7 a new trial upon the following grounds
viz:
Adam Jones
No
William M Pop Etc
Superior Court of Chicago

And now comes the defendants
by R. J. Merrick his attorney and moves
the Court for a new trial upon the
following grounds

1. The Court erred in not giving the Instructions asked for by the Defendants.
2. The Court erred in altering and amending the Defendants instructions, and also in the instructions given by the Court.
3. The Court erred in giving the instructions on the part of the plaintiff.
4. The Verdict is against evidence.
5. The Verdict is against law.
6. The damages are excessive.

R. J. Merrick depts Atty
which motion was overruled by the Court
and the Defendants Excepted. The Counsel
for the Defendants in his argument to
the jury offered to read certain authorities
to the Court in support of the propositions
of law to be submitted as proper to the
Court for its determination. But the Court

89
p 98 refused to allow the same to be read
-ence thereto or hand him the books - the
Court stating that it was a rule of practice
in the Court not to read authority in civil
cases. To which ruling of the Court the
defendant by his Counsel then and there
excepted. The Counsel for the defendants
in his argument to the jury proposed to
read to the jury by way of illustration
of his argument certain opinions of the
Supreme Court of this State in the publis-
-hed volumes of the Illinois Reports - but
the Court refused to allow the same to
be read. Stating that the Court would
instruct them in writing as to the law
of the case to which ruling of the Court
the defendant by his Counsel then and
there excepted.

And for as much as the several matters
and things above mentioned do not appear
of record in the said cause, the defendants
by their Counsel pray the Court to sign
and seal this their bill of exceptions
which is done

Saml. H. Higgins Esq.
Judge in

And afterwards to wit on the fifteenth day of April in the year aforesaid William M Rass and John H Rass filed in the Office of the Clerk of said Court their appeal bond which is in the words and figures following to wit

Know all men by these presents that we William M Rass John H Rass and B F Carver are held and firmly bound to Adam Insip in the sum of Four Thousand dollars to be paid to said Adam Insip his executors administrators or assigns For which payment well & truly to be made we bind ourselves our heirs Executors & Administrators jointly & severally firmly by these presents sealed with our Seals & dated this 14th day of April A D 1861 —

Whereas William M Rass and John H Rass have appealed to the Supreme Court of the state of Illinois from a judgment rendered in the Superior Court of Chicago on the second day of April A D 1861 For the sum of Three Thousand dollars damages besides costs in a cause in which the said Adam Insip was plaintiff and William M Rass & John H Rass were defendants now — therefore the condition of this obligation is such that if the said William M Rass & John H Rass shall duly prosecute said appeal and pay or cause

to be paid the said judgment interests costs &
p 100 damages which may be awarded against them
in case said appeal should be affirmed then this
obligation to be void otherwise to be and remain
in full force and effect

J. F. Carver Seal

W. M. Rap Seal

John H. Ross Seal

approved by me

April 15th 1861

Van H. Higgins

Judge

State of Illinois }
Cook County } I Walter Kimball Clerk of the
Superior Court of Chicago in and for said County
do hereby certify that the foregoing is a full true
and complete transcript of all the pleadings on file
in my Office and of the orders and judgment entered
of record in said Court together with bill of exceptions
and appeal bond in a certain Suit wherein Adam
J Emmet is Plaintiff and William M Ross and John
H Ross are Defendants

In testimony whereof I hereunto sub-
scribe my name and affix the seal
of said Court at the City of Chicago
in said County this 17th day of
April A.D. 1861

Walter Kimball Clerk



Supreme Court	}	April Term
Thurs Oct 1861		AD 1861
William M Ross and John H Ross		} Affirmance of error
Appellants		
or Adam G Lewis	}	
Appellees		

And hereupon after reading out of the term of April 1861 comes the said William M Ross & John H Ross by their Y March 1861 Attorney and say that it ~~is~~ error in the Record & proceeding in this cause, and in giving of the judgment in said cause appears that is manifest error in this to wit First. The Court erred in giving the Instructions on the part of the plaintiffs

Second The Court erred in giving its Instructions to the Jury

Third The Court erred in refusing the Instructions

asked by defendant

Fourth The Court erred in the Instruction given by the Court to the Jury

Fifth The Court erred in refusing to allow defendant's Attorney to read Law to the Court upon propositions of Law proposed & submitted

Sixth The verdict & judgment are against Law

Seventh The damages are excessive

Eighth The Court erred in overruling the motion for a new trial in the case

Ninth There is also error in this trial, that by the record and proceedings aforesaid it appears that the judgment aforesaid in form aforesaid given was given for the said Appellee whereas by the Law of the Land the said judgment ought to have been given for the said appellants and against the said Appellee, and the said appellants pray ^{that the} judgment aforesaid for the error aforesaid and other errors in the record and

proceedings aforesaid may be reversed
annulled and altogether held for nothing
and that the appellants may be restored
to all things which they have lost by
reason of said Judgment

R Y Munich

Attys for Appellants

And now comes the
said appellee David Hervey Anthony
& Galt his attorney & says
that there is no error on the
record & proceedings in this
case and he asks therefore
that said judgment be
affirmed with costs

Hervey Anthony &
Galt

Attys for Appellee

276-71
William M. Ross et al
by
Adam Inness
Record

Innis

Filed Apr. 18, 1861
L. Deland
Clk.

Van Buren Atty
\$5.00 pd.

Fees \$22.00 paid by.

Deft. W. Kimball clerk