

No. 11964

Supreme Court of Illinois

Melvin.

vs.

King, et al.

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340 32
McHenry Co.
Samuel C. Melvin
vs.
Phoebe King et al. et al. et al.

24

1852

11964

Samuel C. Melvin

vs
Thing & Thing executor & executor

And now comes the plaintiff in error and says that there is manifest error in the record and proceedings in this case in this to wit.

- 1st That the Verdict of the Jury is against the Law
- 2^d That the Verdict of the Jury is against the evidence
- 3^d That the Verdict of the Jury is Contrary to the weight of evidence
- 4th That the Verdict of the Jury is a general verdict on six counts in the plaintiffs declaration. The two last counts in connection with the four first. Therefore bad for uncertainty.
- 5 The misdirection of the Court as to the Law of the Case
- 6 The Court erred in permitting plaintiffs Counsel to ask the witness Libbets whether there existed in the neighborhood where the plaintiff in error purchased the sheep sold to plaintiff (in the Court below) any general report that the seal was fraudulent there. The plaintiff in error objection
- 7th ~~For that Almon W. Beardsley one of the Jurors after having sworn on being asked whether he had made up or expressed any opinion~~
- 8 The Court erred in overruling a motion for a new trial. & rendering Judgment on said verdict.

C. M. Melvin Atty for plaintiff in error

McCleary

L. C. Mulvan

vs

Things & Things

Applicant of Law

Filed July 2d 1852.
J. Leland Clerk
Per J. H. Leland
Deputy

United States of America
State of Illinois

Now before the Hon Theophilus S. Dickey
Judge of the Ninth Judicial Circuit of the
State of Illinois having exchanged Circuits with the
Hon Hugh Henderson Judge of the Eleventh Judicial
Circuit in the State aforesaid; At a Circuit Court
now and held at the Court house in Woodstock in
McHenry County State of Illinois on the 10th day of
September in the Year of our Lord one Thousand Eight
hundred and fifty

Present the Hon Theophilus S. Dickey
Judge

Will Donnelly
Shiriff

Attest

Chas B. Wells

Thimms W Platt

Clarks Pro Toms

State attorney

Be it Remembered that heretofore to wit on the 10th day of
April in the year of our Lord one thousand eight hundred
and forty nine Symon King the plaintiff in this suit
filed in the office of the Clerk of the Circuit Court of
McHenry County his certain affidavit in the words and
figures following to wit:

State of Illinois }
McHenry County }
Symon King }
vs }
McHenry Circuit Court of the
September Term AD 1849

Case Damages \$1000.00

Samuel C. Melvin }
Symon King plaintiff in the
above entitled cause being duly sworn says that
heretofore to wit: the 30th day of June AD 1848 the said
Samuel C. Melvin sold to the said Symon King five

hundred Sheep for which this deponent paid to the said Melvin
one dollar and twenty five cents per head and that before
and at the time of ^{the} Sale of the said Sheep that the said Sheep
were diseased with a certain disease called the Scab and
that before and at the time of selling the said Sheep to this
affiant as aforesaid the said Melvin well knew that the said
Sheep were diseased as aforesaid and this affiant further says
that at the time of selling the said Sheep as aforesaid the
said Melvin fraudulently, maliciously and knowingly
concealed all knowledge of the fact of their disease from this
affiant by reason of which fraudulent concealment this
affiant purchased the said Sheep as aforesaid and further
says that he hath sustained great damage.

And this affiant further says that the benefit of whatever
judgment may be obtained in this suit will be in
danger of being lost unless the said Samuel C Melvin be held
to bail because he says the said Samuel C Melvin as he verily
believes is about to depart from this State with the intention
of removing his effects therefrom.

This affiant therefore prays that a capias may issue out of the
Court and that the said Samuel C Melvin may be required to
give special bail in the sum of one thousand dollars

Sworn and subscribed before me a } Symon King
Justice of the peace in and for said
County this 10th day of April A.D. 1849 }

State of Illinois } Sworn and subscribed before
McHenry Co. } me at Crystal Lake this 10th day
of April 1849 Benjamin Crandall J.P. (Sd)

Which said affidavit has the following endorsed thereon
Filed April 10th 1849

W. H. Johnson cl^k

And thereupon on the 10th day of April in the year last
aforesaid the following writ of Capias ad respondendum

was issued out of the office of the Clerk of the Circuit Court of
said County and which writ is in the words and figures
following to wit:

State of Illinois } p. The People of the State of Illinois to
McHenry County } the Sheriff of said County Greeting
We command you that ~~if~~ you take
the body of Samuel C Melvin if he shall be found in your
County and lawfully keep so that he be and appear
before the Circuit Court of said County on the first day
of the next term thereof to be holden at the Court House in
Woodstock in said County on the fourth Monday of September
next to answer unto Symon King in a plea of Case
to the damage of the said Plaintiff as he says in the sum
of one thousand dollars. And have you that and that this
writ with an Endorsement thereon as to in what manner
you executed the same. Witness Joel H Johnson Clerk
of our said Court and the seal thereof
at Woodstock aforesaid this tenth day
of April in the year of our Lord one
thousand Eight hundred and forty nine
J H Johnson Clerk

Which said writ has Endorsed thereon.

The Sheriff will take bail of the within named defendant
in the sum of one thousand dollars.

April 10th 1849.

J H Johnson Clk

Personally served by reading on hearing & arresting the body
of Samuel C Melvin and releasing it by said Melvin giving
good and sufficient bail. Thereupon return this writ
Executed this 11th day of April A.D. 1849.

Sum 50

Taking 50

in. 50

Retg 25

Will Donnelly Shff
of McHenry County
Jed

Filed April 11th 1849.

J. H. Johnson do

And champion to wit: on the day and year last aforesaid the following Bond was filed in the office of the Clerk of the Circuit Court of said County which is in the words and figures following.

McHenry County, Ill.

State of Illinois }
Know all men by these presents, that
Samuel C. Melvin principal and Major J. J. Irwin
& Benjamin Crandall securities of the County of McHenry
and State of Illinois are held and firmly bound unto
Nell Donnelly Sheriff of said ^{McHenry} County in the
penal sum of two thousand dollars which payment
well and truly to be made in and each of us bind
ourselves our heirs Executors Administrators and assigns
jointly jointly & severally by these presents. Witness our
hands and seals this 11th day of April A.D. 1849.

The condition of the above obligation is such that
whenever Syman King has lately sent out of the Circuit
Court of McHenry County a certain writ Capias ad Re-
spondendum in a certain plea of Case against Samuel
C. Melvin returnable to the next term of the said Court
to be holden at Woodstock on the fourth Monday of
September: and in case the said M. J. Irwin Benjamin
Crandall shall not be received as bail in the said action
shall put in good and sufficient bail which shall be
received by the plaintiff or shall be adjudged
sufficient by the Court or the said M. J. Irwin & Benjamin
Crandall accepted as bail shall pay and satisfy
the costs and condemnation money which may be
incurred ~~and~~ against the body of the said Samuel
C. Melvin in the plea aforesaid; or surrender the body
of the said Samuel Melvin in execution in case

the said Samuel C. Melvin shall not pay and satisfy
the said costs and such surrender is required. ^{and condemnation money or surrender himself in, except as may be law} thing
this obligation to be void, otherwise to remain in full
force and effect.

Taken, entered into and } Samuel C. Melvin Seal
approved by me this day of } Mayor J. J. Swin Seal
11th April A.D. 1849 } Roman Crandall Seal

Shall Connolly Shiff in Henry County Ills
Which said Bond has Endorsed thereon
Dated April 11th 1849.

J. H. Johnson Clerk

And thereafter to wit on the 14th day of September in the
year of our Lord one thousand eight hundred and forty
nine the said plaintiff filed in the office of the
Clerk of the Circuit Court of said County his certain
declaration which declaration is in the words and figures
following to wit

State of Illinois } of McHenry Circuit Court of the
McHenry County } September Term A.D. 1849.

Symon King
plaintiff in this suit by J. S. Church his attorney com-
plains of Samuel C. Melvin defendant in this suit in
custody &c of a plea of trespass on the case for that
whereas the said plaintiff heretofore to wit on the twentieth
day of June in the year of our Lord one thousand eight
hundred and forty eight at McHenry County at the
special instance and request of the said defendant
bargained with the said defendant to bag of the
said defendant a certain number of sheep to
wit: five hundred Sheep at and for the a certain
price or sum of money to wit The sum of six
hundred and twenty five dollars and the said
defendant viz. then and there falsely and fraudulently

warranting the said Sheep to be sound and free from infectious disease then and there sold the said Sheep to the said plaintiff for the said sum of six hundred and twenty five dollars which was then and there paid by the plaintiff to the said defendant whereas in truth and in fact the said Sheep were at the time of the said sale warranty and sale thereof unsound and infected with a certain disease called the scab and have from then hitherto so remained and continued and the said plaintiff in fact saith that the said defendant by means of the promises on the day and year aforesaid at the place aforesaid falsely and fraudulently deceived the said plaintiff on the sale of said Sheep as aforesaid and thereby the said Sheep afterwards to wit on the day and year aforesaid not only became of no use or value to the said plaintiff but also then and there became and were sick with the infectious disease aforesaid and died to wit at McHenry County aforesaid.

And whereas also the said plaintiff afterwards to wit on the day and year aforesaid at McHenry County aforesaid bargained with the said defendant to buy of the said defendant a certain number of other Sheep to wit the further number of five hundred Sheep and the said defendant by then and there falsely and fraudulently warranting the said Sheep lastly mentioned Sheep to be sound falsely and fraudulently induced the said plaintiff then and there to buy and the said plaintiff did then and there buy the said last mentioned Sheep for a certain other large sum of money to wit the sum of six hundred

and twenty five dollars of lawful money whereas in truth and in fact the said last mentioned ship at the time of the said last mentioned warranty and sale was not sound but was and thence hitherto and still ~~is~~ ^{is} unsound and of no use or value to the said plaintiff to wit at the County aforesaid. And so the said plaintiff saith that the said defendant falsely and fraudulently deceived the said plaintiff in the sale of the said last mentioned ship as aforesaid to wit: at McHenry County aforesaid.

And whereas also afterwards to wit on the day and year aforesaid at McHenry County aforesaid the said plaintiff at the special instance and request of the said defendant bargained with the said defendant to exchange with the said defendant a certain number of ship to wit five hundred ship of the said defendant for a certain piece or parcel of Land of the said plaintiff of great value to wit of the value of one thousand dollars to be therefore conveyed by the said plaintiff to the said defendant in exchange for the said five hundred ship of the said defendant and the said defendant by then and there warranting the said ship of the said defendant to be sound and in a healthy condition then and there falsely and fraudulently exchanged the said ship with the said plaintiff for the said piece of land the said plaintiff and the said plaintiff confiding in the said warranty afterwards to wit on the day and year aforesaid caused to be conveyed and delivered the said piece of land to the said defendant in exchange for the said ship of the said defendant whereas in truth and in fact at the time of the making of the said false warranty as aforesaid and of the said exchange

as aforesaid the said Sheep of the said defendants were not
any of them sound or in a healthy condition but on the
contrary thereof they were and still are unsound and
infected with a certain disease called Scab and
have become and are of no use or value to the said
plaintiff and also by means of the promises the said
plaintiff hath lost and been deprived of the use of
his said land to wit at McHenry County aforesaid.
And so the said plaintiff saith that the said defendants
on the said Exchange falsely and fraudulently
deceived and defrauded the said plaintiff as aforesaid
to wit at McHenry County aforesaid.

And whereas also the said plaintiff afterwards to wit on
the day and year aforesaid at McHenry County aforesaid
at the like special instance and request of the said
defendant bargained with the said defendant to
exchange with the said defendant a certain other
piece of land of the said plaintiff of great value
to wit of the value of one thousand dollars for a
large number of sheep to wit a number of five
hundred sheep of the said defendant and the said
defendant thus and then well knowing the said last men-
tioned Sheep of the said defendants to be unsound
diseased they and they by falsely and fraudulently
warranting the said last mentioned sheep to be
sound and free from disease exchanged the same
with the said plaintiff for his said last mentioned
piece of land. Whereas in truth and in fact all of
the said last mentioned Sheep of the said defendants
at the time of the said Exchange thereof were unsound
and diseased and have become and are of no
use or value to the said plaintiff to wit at

In Henry County aforesaid and the said plaintiff saith
that the said defendant on the day and year aforesaid
falsely and fraudulently deceived the said plaintiff
in the said last mentioned Exchange to wit at the
County aforesaid.

Wherefore the said plaintiff says that he is injured
and hath sustained damage to the amount of one
thousand dollars and therefore he brings his Suit &c

L. S. Church

Atty for Plff

Which said declaration has endorsed thereon

Dated Sept 14th 1849

J. H. Schudson clk

And therefore to wit on the 35th day of September
in the year of our Lord one thousand eight hundred
and forty nine said Court being then in session
the following order was entered of record in the
words and figures following.

No 106
Lyman King }
vs }
Samuel C. Melvin } Case

On motion of Church
plaintiffs attorney it
is ordered that the defendant plead herein by tomorrow
morning at 9 o'clock

And therefore to wit on the 38th day of September in
the year last aforesaid the defendant filed in the office
of the Clerk of the Circuit Court of said County his
plea which said plea is in the words and figures
following.

Samuel C. McClure
vs
Symon King

Western Circuit Court
September Term AD 1849.

And the said defendant by
Strode & Bush his attorneys comes and defends the
wrong and injury done where &c. and says that
he is not guilty of the said supposed grievances
above laid to his charge or any or either of them
or any part thereof in manner and form as the
said plaintiff hath above thereof complained
against him. And of this he the said defendant
puts himself upon the country &c.

Strode & Bush

defendants attorneys
And the said deft unto the fifth & sixth counts of
said declaration defends the wrong & injury where &c.
and says that he has is not guilty of the said supposed
grievances in sd count in manner & form as
therein set forth against him and of this he puts himself
upon the Country &c.

Strode & Bush & McClure
Dfts attys

Which said plea has endorsed thereon

Filed Sept 28th 1849

J. H. Johnson cl

And thereafter to wit on the 18th day of April in the year
of our Lord one thousand Eight hundred and
fifty said Circuit Court being then in session the
following order was entered of record. To wit

Symon King

vs
Samuel C. McClure

Case

And now come Church

Attorney for the Plaintiff and on his motion it is ordered
that he have leave to amend his declaration in
thirty days from this date.

And afterwards to wit the sixth day of September in
the year of our Lord one thousand eight hundred and
fifty the following amended plea was filed in the
office of of the Clerk of the Circuit Court of Said
County to wit:

In Circuit Court of McHenry County
Symon King

Samuel & Melvin } Additional Counts filed by leave of Court

5th Count And whereas also afterwards to wit on the day and
year aforesaid in the place aforesaid the said Defendant
was possessed of certain five hundred other sheep
which said sheep before and at the time of the sale
thereof to the said Plaintiff as hereinafter mentioned
had contracted a certain maulady and unsoundness
rendering the said sheep of no use or value to wit
the scab, and which the said defendant well
knew. Yet the said defendant wilfully and maliciously
intending to defraud the said plaintiff in this behalf
by then and there falsely fraudulently and deceitfully
making certain false and fraudulent acts contrivances
and applications to make the said sheep appear
to be sound sheep and not affected with the scab
and by suppressing the appearance of the said scab
then and there sold the said sheep so being unsound
affected with the scab as aforesaid to the said Plaintiff
and the said Plaintiff not knowing that the said

Shup were so unsound and affected with the scab
was thereby induced to buy and then and there bought
the said Shup of the said defendant and then and
there paid to him a large sum to wit: Six hundred
and twenty five dollars as and for the price and value
of the said five hundred Shup whereas in truth
and in fact the said Shup at the time of the said
Sale as aforesaid were unsound and had the scab
and of no use or value whatever.

1st Count. And whereas also afterwards to wit on the day and year
aforesaid, ^{at the place aforesaid} the said defendant sold to the said plaintiff
five hundred other Shup for a price of land in said
County of great value to wit of the value of one thousand
dollars then conveyed therefor the said defendant
then and there well knowing the said Shup to be unsound
and to have the scab which fact was then unknown to
the said plaintiff he the said defendant intending to
defraud the said plaintiff then and there intentionally
falsely and fraudulently concealed the said fact from
the knowledge of the said plaintiff and thereby sold
the said Shup to the said plaintiff for the land aforesaid
which the said plaintiff caused to be conveyed to the said
defendant and the said Shup of the said defendant in
fact at the time of the said Sale thereof to the said
plaintiff were unsound and had the scab which
fact the said defendant then and there well knew
And the said Shup were by reason thereof
ruined and so have since continued of no use
or value whatever

Which said ^{defendant} ~~fact~~ has endorsed thereon

Said Sept 6th 1880

J. H. Johnson etc

And thereafter to wit on the 24th day of September
in the year last aforesaid the said Court being in
session as aforesaid the said defendant filed in the
Clerks office of the Circuit Court of said County his demurrer
to the amended declaration of the said Plaintiff on the
words and figures following that is to say

Samuel Melvin }

vs
Lynnan King }

And the defendant comes and
defends the injury when so
and says that the plaintiff ought not to have and maintain
his aforesaid action charging against him by reason
of anything in said fifth count of said declaration
specified, and the said deft says he is not bound by law
to answer the same wherein he prays judgment

Strover & McClure

The charge is for using false & fraudulent acts & contrivances
& applications to make sheep appear found
which said demurrer has endorsement thereon
Filed this 24th of Sept 1850 At witness

And thereafter to wit on the day and year last aforesaid
the said Court being then in session as aforesaid the
following proceedings were had to wit:

Lynnan King }

Samuel C Melvin }

Case

This day argues the
defendant by Strover
and McClure and moves the Court to strike amended
declaration from the files which motion is resisted
by Church his attorney, the Court being fully advised

sustains said motion. And thereupon comes the plaintiff & asks and obtains leave to file an amended declaration on the terms that defendant may Elect whether he will go to trial at this term or have a continuance whereupon comes the defendant & files his demurrer to amended declaration in which the plaintiff joins after argument of Counsel the Court overrules said demurrer. it is therefore considered by the Court that the plaintiff have and recover against the defendant his costs about this demurrer expended and have Execution therefor.

And thereupon to wit on the day and year last aforesaid the following plea was filed by the said defendant in the words and figures following that is to say.

State of Illinois }
McHenry County } } McHenry Circuit Court
Sept Term A.D. 1850

Samuel C. Melvin }
vs }
Symeon King } Case

And now comes the said defendant by Stroder Bush his attorney and defends the wrong and injury when and where it behoves him to do so and says that he is not guilty of the premises in manner and form as the said plaintiff hath above thereof complained against him nor any or either of them or any part thereof and of this he puts himself upon the Country for trial
Stroder Bush for Deft.
Which said plea has been read thereon
Done Sept 24th 1850 J. A. Johnson Clerk

And thereafter
to wit on the 26th day of September in the year last
aforesaid the said Court being in session as aforesaid
the following proceedings were had to wit.

Symon King

Samuel C. McClure

} Case of

This day comes the
plaintiff by Church and
Arnold his attorneys and the defendant by
Bush Stoddard & McClure his attorney also comes and
upon motion of plaintiff it is ordered by the Court
that a Jury come, whereupon come a Jury of good and
lawful men to wit.

John Donnelly
Alvin H. Parker
Thomas B. Albright
P. B. Enos

Perry Brown Jr. Jacob Talbot
Mr. Barnes John A. Robinson
Tho. McD. Richards Dennis Rich
A. H. Brundley And they

being
legally elected tried and sworn also come and ~~being~~
after hearing a portion of the evidence it is agreed
between the parties to this fact that the Jury disperse
under the instruction of the Court and meet the Court
to-morrow morning at 9^o

And afterwards to wit on
the 27th day of September in the year last aforesaid
the Court being in session at Woodstock aforesaid
the following proceedings were had to wit.

Symon King

Samuel C. McClure

} Case

This day come again the
parties to this fact and the

jury heretofore empannelled also ~~are~~; and after hearing
the ballance of the evidence and arguments of Counsel
retire under charge of an officer of the Court to con-
sider of their verdict. And it is agreed between the
parties to this suit that when the Jury agree they may
reduce their verdict to writing sign and seal the
same and meet the Court at 8 o'clock tomorrow morning.

And thereafter to wit on the 28th day of September
in the year of our Lord one thousand Eight
hundred and fifty the following proceedings were
had to wit

Symon King }
v } Case
Simuel C. Melvin }

This day comes again
the parties to this suit
and the Jury heretofore empannelled herein also come
And for a verdict upon their oaths say that we the
jury find the issues joined in favor of the plaintiff
and assess his damages at the sum of Four hundred
dollars, and thereupon comes Strode & McClure
his attorneys and moves for a new trial.

The following are the instructions given to the
Jury ~~and~~ by the Court on the part of the
plaintiff in said cause.

1
Given If the Jury believe from the evidence that there was
fraud in the sale of the Ship from Melvin to King
then the plaintiff is entitled to recover. That
fraud may be committed either by false

representations or suppression of the truth & if the jury believe that the deft was guilty of fraud either by false statements and fraudulent concealment of facts which he knew then the plaintiff is entitled to recover.

2

Given

If the jury believe from the evidence that the deft represented to the plaintiff the sheep at or about the time of the sale to the plff. to be sound & healthy when he knew them to be diseased & he did not disclose that fact to the purchaser then the law is for the plaintiff, provided that other material allegations of either of the counts are substantiated & proved.

4

Given

If the jury believe from the evidence that the sheep sold by Melvin to King had at the time of such sale the disease of scab, altho not fully developed, that Melvin knew it & did not disclose that fact to King but sold them as good sheep then the plaintiff is entitled to recover provided the existence of the disease could not be observed by an ordinary observer & was unknown to the plaintiff.

5

Given

If the jury believe from the evidence that Melvin at time of sale sought to & did purchase the produce the impression on the mind of King that the sheep were sound & healthy or that they had not the scab when he knew they had it or if he sought to & did create the impression that it was some other disease, when he knew it was scab, then the deft is liable in this action unless the disease was so plain & palpable as to be observed by an ordinary observer.

1 The rule of damages in this case is if the jury believe the plaintiff is entitled to recover is the difference between the value of the ship if sound & good & this value in the condition they were when thus sold & it is immaterial what King received for them

2^m If the Jury believe from the evidence that defendant at the time of sale knew the ship to be diseased & unsound & that such disease was not palpable to an ordinary observer and that defendant fraudulently concealed the fact of disease from plaintiff ^{then the plaintiff} is entitled to recover - if he purchased under belief that the ship were sound

3^m If the Jury believe from the evidence that defendant purchased the ship in question in a part of the Country where Melvin had heard that the disease of scab was prevailing & that defendant treated them for such disease & saw them with sons & which he covered with tar & Sulphur these are circumstances competent to go to the jury & from these & all the other circumstances ~~and~~ the evidence it is for the jury to decide whether Melvin did or did not know of the existence of such disease at the time of said sale
Which said instructions have endorsed thereon
Filed Sept 28th 1850

4^m If the Jury should find for the plaintiff it would be improper for them to agree to

for the damages by each sickness. They
amount he proposes & then divide the
sum thereof by twelve. This mode of proceeding
is unlawful.

Which instruction has endorsed thereon
Filed Sept 28th 1850

S^t Johnson cl^k

The following are the ^{General} instructions given to the jury by the
Court on the ~~part of the defendant~~ ^{trial of} in this cause

1st To make out the plaintiff's case it is necessary that
they have belief from the evidence that defendant sold a
flock of sheep to plaintiff

2nd That at the time of such sale the sheep or some of them
were diseased.

3rd That that disease was at that time of such a character
as would not be detected by a purchaser of ordinary
skill exercising ordinary care in purchasing.

4th That defendant knew that such sheep were so diseased
That in making said sale defendant dishonestly sup-
pressed the fact of such disease and neglected to tell
the plaintiff so for the purpose of fraudulently having
him make the purchase on the supposition ^{that the sheep} were sound.

5th That plaintiff did not know of such disease at the
time of the purchase.

6th That he purchased supposing them sound.
If all these propositions are made out for the plaintiff
then the measure of damages is the real value of the
sheep in their condition at the time of the sale subtracted
from the amount the sheep would have been worth had
they been sound - or the difference between the real
value of the sheep and what they would have been worth
had they been sound. And it is utterly immaterial

what plaintiff sold the ship for; that is a matter for him
and his purchaser with which defendant has nothing to do.
Which said instructions have endorsed thereon

Filed Sept 28th 1850

J. H. Schum

Symon King } M'Henry Circuit Court. Clk
v }
Sept Term AD 1850.
Samuel O. Melvin } Case for debt & warranty.

1 Given
Defendants Counsel asks the Court to instruct the
Jury that in order to authorize them to find a verdict
for the plaintiff in this case they must believe from the
evidence that a fraud was committed by Melvin in the
sale of the ship to King and that a damage has resulted
to King from such fraud of Melvin.

2 Given
That unless they believe from the evidence that Melvin
by fraud & deceitful means deprived the plaintiff of
some benefit which the law entitled him (King) to
demand or expect that the law is for the defendant.

3 Given
That unless the Jury believe from the evidence that there
was fraudulent means used by Melvin by suppressing
truth or otherwise on the sale of said ship to King
such as were likely to impose on a person of ordinary
prudence & circumspection the law is for the defendant.

4 Given
That unless the Jury believe from the evidence
that Melvin on the sale of the ship to the plaintiff
warranted the ship to be sound at the time of the
sale thereof, then they ought to find for the defendant
as to all the counts in the plaintiffs declaration
charging a warranty on the sale.

5th That unless the jury believe from the evidence that Melvin made false and fraudulent representations with the intent to deceive the plaintiff on the sale of said ship or concealed some material fact the law is for the defendant and that it is not sufficient that he intended to deceive others if he did not thereby in fact deceive plaintiff.

6th That the rule of the law in this case is that if the plaintiff has received no damage the jury are not at liberty to give him any, and that fact must be proved by the evidence or fairly inferable from the proof, for the true measure of damages see instruction marked "A"

7th That if the Jury believe from the evidence that King took the ship from Melvin on his own idea of their goodness and was not misled in consequence of false representations or concealment of material facts by Melvin the plaintiff is not entitled to recover in this suit.

8 That if the Jury believe from the evidence that King at the time of purchasing the ship from Melvin had the full means of detecting any fraudulent representations or ~~concealment~~ concealment which might have been made by Melvin at such sale and neglected to avail himself of such means of knowledge the law is for the Defendant which instructions have enclosed therewith
Filed Sept 28th 1850

J. H. Johnson Clk

And thereafter to wit on the 1st day of October in the year last aforesaid the following reasons for a new trial were filed.

Semuel C. Melvin } McHenry Circuit Court
Add } Cage } for 1850
Symon King }

And the said
defendant by Strode Bush &
McClure his attorneys comes and moves the Court for

a new trial on the following grounds to-wit;

- 1st That the verdict of the Jury is against the law.
- 2nd That the verdict of the Jury is against the evidence
- 3rd That the verdict of the jury is contrary to the weight of evidence
- 4th That the damages found by the jury against the deft are excessive.
- 5th That the verdict is a general verdict on six counts in the plaintiffs declaration the two last inconsistent with the first four & therefore bad for uncertainty in this respect
- 6th The finding of the Jury was against the instructions given by the Court on the law of the case
- 7th There was no evidence to prove or tending to prove on the part of the plaintiff any warranty by the defendant of the property sold by the defendant to the plaintiff
- 8th The misdirection of the Court as to the law of the case
- 9th The Court erred in permitting plaintiffs counsel to ask the witness Tibbitts whether there existed in the neighborhood where the deft purchased the Sheep sold to plaintiff any general report that

the scab was prevalent there: against the objection
of Aft. counsel

10th There ~~was~~ was no evidence to prove the defendants
knowledge ^{of} the time of the sale to King or before that
the ship had the scab or was otherwise diseased

11th For that the verdict as returned into court was not and
is not the verdict of all the jury: but that on the contrary
Thomas S. Albright one of the jury never did agree
to the verdict returned into Court and did not go
into Court to render any verdict in the case but as he
understood, to receive further instructions from the Court

12th For that the Court misdirected the Jury on the Law.

13th For that Abner W. Beardsley one of the jurors after
being sworn on being asked whether he had made
up his mind expressed any opinion in regard to the merits
of the case; answered that he had not: when he had
previously expressed an opinion against the defendants
right to recover and in favor of the plaintiffs right to
recover damages of the said defendant.

14th And for other causes than those herein above expressed
which said reasons
have endorsed them.

Filed Oct 1st 1850.

J. H. Johnson Clerk

And thereafter to wit on the day and year last aforesaid
the following affidavits were filed in the office of the
Clerk of the Circuit Court of said County ^{on the part of the said defendant} which
affidavits are in the words and figures following to wit

State of Illinois } ss. Appollos Lincoln being duly sworn
McHenry County } on oath depose and saith that
since the commencement of the
suit Symon King vs Samuel C Melvin tried at this
term of the Circuit Court deponent had a conversation
with Abner W. Beardsley said Beardsley then stated
that he believed said Melvin knew that the ship were
diseased and that Melvin knew it and further said
that he, Beardsley, believed that Melvin would have to
pay for it. This conversation took place the summer
of 1849. And further deponent saith not,
Sworn and Subscribed to before } Appollos Lincoln
me this 30 day of September 1850 }

Benjamin Crandall JP

Said affidavit has endorsed thereon
Filed Oct 1st 1850

J. H. Johnson Clerk

State of Illinois } ss. Lemmi Benjamin being duly
McHenry County } sworn depose and saith
that some time in the month
of July 1850 deponent had a conversation with
Abner W. Beardsley concerning and about the suit
in this Circuit Court between Symon King vs
Samuel C Melvin said Beardsley then and there said
that he, Beardsley, had no doubt but that said Melvin
was guilty, and further said that it had set him
so against matter that he, Beardsley, could not
set any since altho he had killed some since, that
was good and further deponent saith not
Sworn to and Subscribed before } Lemmi Benjamin
me this 30th day of September }
1850 Benjamin Crandall JP

Said affidavit has E. dorsed thereon.
Filed Oct 1st 1850
J. H. Johnson Clerk

State of Illinois } ss. Samuel C. Melvin being duly
McHenry County } sworn saith that he was dist
in a suit tried at this term of
the McHenry Circuit Court wherein Symon King was plaintiff
that ~~that~~ ^{that} Abner W. Beardsley was one of the Jurors who tried
said Cause. that said Beardsley was asked the question
before being sworn as Juror whether he had made
up or expressed an opinion in said Cause, to which
he answered he had not and this affiant further states
that he is informed and truly believes that said Beardsley
had made up and expressed an opinion in said Cause
before that time & before he was sworn as such Juror
against this affiant and that this affiant was not in-
formed that said Beardsley had so made up and
expressed an opinion until after the jury had returned
their verdict into Court. That had he known that
he had so made up his opinion he would have
objected to said Beardsley as a Juror & further
saith not.

Sworn and Subscribed to } Samuel C. Melvin
before me this 1st Oct }
A.D. 1850.

J. H. Johnson Clerk

And which said affidavit has endorsed thereon
Filed Oct 1st 1850

J. H. Johnson Clerk

State of Illinois } ss. James C. Crandall being duly
McHenry County } sworn on oath deposes and
saith that some time in the

month of April in the year 1849. he had a conversation with Abner W. Beardsley concerning the case of Eymann King vs Samuel C Melvin which has been tried at this term of this Court. That said Beardsley then expressed to this deponent that he, (Beardsley) had no doubt ^{that} Melvin was guilty and there was no doubt in his mind but that King would beat him on the trial.

This deponent further says that he frequently during the summer of 1849. heard said Beardsley express an opinion concerning said suit which was then pending in this Court that said Melvin was guilty; and that said King would prevail in the suit; and that said Beardsley was one of the Jurors who tried said Cause and further said not.

Subscribed & sworn to before me

this 30th day of Sept^r A.D. 1850 } James E. Crandall
S. Justice of P.

which said affidavit

has enclosed theron.

Filed Oct 1st 1850

J. H. Johnson Clerk

State of Illinois }
McHenry County }

Thomas B. Albright being duly sworn on oath deposes and says that he was one of the Jurors before whom the case of Eymann King vs Samuel C Melvin was tried at the present term of this Court. that he informed his fellow Jurors about the time they were coming into Court with what purports to be their verdict. that if the Jury were polled he (this deponent) should tell the Court a very different story from that mentioned in the verdict - that this deponent did not agree to said verdict but went into Court at the

time said verdict was rendered under a proposition
from the foreman of the jury to this deponent and with an
understanding on the part of this deponent to get
further instructions from the Judge when contrary
to the expectation of this deponent and contrary to
the fact as this deponent understood the fact the
said foreman told the Court that said jury had agreed
on their verdict; and further this deponent saith not
Subscribed & sworn to before me
this 30th day of Sept 1850 } Tho^s B. Albright
Jt. Johnson Clerk

Which affidavit has Endorsed thereon
Filed Oct 3^d 1850.

Jt. Johnson Clerk

And thereafter to wit on the day and year last aforesaid
the following affidavits were filed in the office of the
Clerk of the Circuit Court of said County on the part
of the plaintiffs which affidavits are in the words and
figures following to wit:

State of Illinois } p. King }
McHenry County } } M Henry Cir Ct
Melvin } Sept 3^d 1850.

Wm H. Beardsley being duly sworn says that he
was one of the Jurymen who tried the Case of Syman
King vs Sennell C. Melvin and that when he went on
to said jury to try said Cause his mind was free
from bias or prejudice towards either party to this suit
and that he was and is not conscious of having at
that time or at any time previous to this trial made
up his mind or formed an opinion in relation to the
merits of this case or as to which party ought to recover
That until the Jury were sworn he did not know
the issue between the parties to the suit. That whatever

he may have heretofore said in regard to the
probabilities of the case if anything at all was in
mere neighborhood talks and were based upon the
hypothesis that what he may have heard was or was
not true. That further than this he had not formed
or expressed any opinion and further saith not.
Sworn & Subscribed before me }
this 3rd day of ^{Oct} ~~Sept~~ 1850 } W. M. Beardsley

W. H. Johnson Clerk
Which affidavit has Endorsed thereon
Filed Oct 3rd 1850
W. H. Johnson Clerk

State of Illinois }
McHenry County } J. Dennis Rider, William Barnes,
P. B. Enos, W. M. Beardsley, Arad
Sly being duly Sworn say that
they were jurymen who tried the case of Symon
King vs Samuel C. Melvin at this term of this Court
and that Thomas B. Albright together with all the
jury agreed to the verdict which was reported to
the Court by the jury as their verdict and these
deponents further say that the affidavit on the opposite
page of this leaf made by Alvin H. Parker their fore-
man is true and these deponents concur in the same
fully and that in his deliberations Alvin H. Beardsley
did not manifest a prejudiced state of mind against
defendants.

Sworn to and Subscribed by all } Wm Barnes
the Subscribers this 3^d day of } W. M. Beardsley
Oct 1850 } Dennis Rider
W. H. Johnson } P. B. Enos
Clerk } Arad Sly

Symon King } W Henry Circuit Court
vs } Sept Term A.D. 1850.
Samuel C Melvin }

Alvin H. Parker being sworn
says that he was the foreman of the jury in the above
entitled cause and that he did not deceive Thomas
Albright in regard to the object of the jury in going
into Court and that said Albright did not understand
from this deponent or from any of the jury in this cause
that said jury were going into Court to get instruc-
tions from the Judge but that said Albright did
agree with this deponent and all the jury before
leaving this room to come into Court to the verdict as
reported by the jury to the Court by this deponent as their
foreman and that the proposition to reduce the verdict
to \$400, and agree on that sum as the verdict of the
jury for plff was made by the said Albright and that
the jury agreed unanimously

Sworn and subscribed before me } Alvin H. Parker
this 3^d day of Octy A.D. 1850 }

J. H. Johnson Clerk }
Which said affidavits have endorsed thereon
Filed Oct 3^d 1850.

J. H. Johnson Clerk
And thereafter to wit on the fourth day of October
in the year last aforesaid the following proceedings
were had to wit:

Symon King } Case.
vs } This day comes on to be
Samuel C. Melvin } heard the defendants motion
heretofore entered for new trial, the Court being fully
advised. decides that said defendant be allowed a

And thereafter to wit on the 4th day of October in the
year of our Lord one thousand Eight hundred and
fifty the said defendant filed in the office of the
Clerk of the Circuit Court of said County the
following his bill of exceptions, which said Bill has
is in the words and figures following to wit:

Be it remembered
that at said term of said Court the above Entitled
cause came on to be tried and was tried by a
Jury and after the Evidence had been closed

on the part of the plaintiff and on the part of the defendant the plaintiff counsel asked the Court to give the jury the following instructions numbered 1 to 8 inclusive which said instructions are in the words of figures following to wit:

1
Given
If the Jury believe from the evidence that there was fraud in the sale of the sheep from Melvin to King then the plaintiff is entitled to recover. That fraud may be committed either by false representations or suppression of the truth. & if the Jury believe that the deft. was guilty of fraud either by false statements & fraudulent concealment of facts which he knew then the plaintiff is entitled to recover.

2
Given
If the Jury believe from the evidence that the deft. represented to the plaintiff the sheep at or about the time of the sale to the plff. to be sound & healthy when he knew them to be diseased & he did not disclose that fact to the purchaser then the law is for the plaintiff provided the other material allegations of either of the counts are substantially proved.

4
Given
If the Jury believe from the evidence that the sheep sold by Melvin to King had at the time of such sale the disease of scab altho not fully developed & that Melvin knew it & did not disclose that fact to King but sold them to King as good sheep then the plaintiff is entitled to recover provided the existence of the disease could not be observed by an ordinary observer & was unknown to the plaintiff.

5
Given
If the Jury believe from the evidence that Melvin

at time of Sale sought to & did produce the impression on the mind of King, that the Sheep were sound & healthy or about that they had not the scab when he knew they had it or if he sought to & did know create the impression that it was some other disease when he knew it was scab then the deft is liable in this action unless the disease was so plain and palpable as to be observed by an ordinary observer

The rule of damages in this case is if the jury believe the plaintiff is entitled to recover is the difference between the value of the Sheep if sound & good & their value in the condition they were when thus sold & it is immaterial what King received for them.

If the Jury believe from the evidence that defendant at the time of sale knew the Sheep to be diseased & unsound & that such disease was not palpable to an ordinary observer & that defendant fraudulently concealed the fact of disease from plaintiff then the plaintiff is entitled to recover - if he purchased under the belief that the sheep were sound.

If the Jury believe from the evidence that defendant purchased the Sheep in question in a part of the Country where Melvin had heard that the disease of scab was prevailing and that deft treated them for such disease & saw them with sores & which he covered with tar & sulphur these are circumstances competent to go to the jury & from these & all the other circumstances in the evidence it is for the jury to decide whether Melvin did

truth or otherwise on the sale of said sheep to King, such as were likely to impose on a ~~or~~ person of ordinary prudence & circumspection the law is for the defendant.

That unless the Jury believe from the evidence that Melvin on the sale of the Sheep to the plaintiff warranted the sheep to be sound at the time of the sale thereof, then they ought to find for the defendant as to all the counts in the plaintiff's declaration charging a warranty on the sale.

That unless the Jury believe from the evidence that Melvin made false and fraudulent representations with the intent to deceive the plaintiff on the sale of said sheep: or concealed some material facts the law is for the defendant, and that it is not sufficient that he intended to deceive others, if he did not thereby in fact deceive plaintiff.

That the rule of law in this case is, that if the plaintiff has received no damage, the jury are not at liberty to give him any; and that fact must be proved by the evidence or fairly inferable from the proof, for the true measure of damages see instruction marked "H".

That if the Jury believe from the evidence that King took the Sheep from Melvin on his own idea of their goodness and was not misled in consequence of false representations or concealment of material facts by Melvin the plaintiff is not entitled to recover in this suit.

Which said last mentioned instruction the said Court refused to give to which said decision of the Court in refusing to give said instruction for defendant

or did not know of the existence of such
disease at the time of such sale.
In the giving of which said several instructions by
the Court for plaintiff the defendant by his Counsel
excepts,

And therefore the defendants Counsel asked the
Court to give to the jury the following the following in-
struction to wit: "That if the Jury believe from the
evidence that King at the time of purchasing the sheep
from Melvin had the full means of detecting the any
fraudulent representations or concealments which
might have been made by Melvin at such sale and
neglected to avail himself of such means of knowledge
the law is for the defendant" & gave the following instructions for
def 1 to 7 inclusive,

Ezraus King	{	McHenry Circuit Court
vs		Sift Term ad 1850
Samuel C. Melvin		Case for deceit & Warranty.

The defendants on
this sixth Counsel asks the Court to instruct the jury that
in order to authorize them to find a verdict for the plaintiff
in this case they must believe from the evidence that a
fraud was committed by Melvin in the sale of the sheep to
King and that a damage has resulted to King from such
fraud of Melvin.

That unless they believe from the evidence that Melvin by
fraud and deceitful means deprived the plaintiff of
some benefit which the law entitled him (King) to, to
demand or expect, that the law is for the defendant

That unless the Jury believe from the evidence that there
was fraudulent means used by Melvin by suppressing

the defendant by his counsel Excepts. whereupon the jury retired to consider of their verdict & afterwards returned into court with a verdict in favor of the plaintiff for \$400.

Whereupon the defendant's counsel moved the court for a new trial for the following reasons to wit:

Samuel Melvin }
ad. Case } McHenry County Circuit Court
Symon King } for A.D. 1850.

And the said defendant by Shrode Bush & McLure his attorneys comes and moves the court for a new trial on the following grounds, to wit:

- 1st That the verdict of the jury is against the law
- 2nd That the verdict of the jury is against the evidence
- 3rd That the verdict of the jury is contrary to the weight of evidence
- 4th That the damages found by the jury against the defendant are excessive
- 5th That the verdict is a general verdict on six counts in the plaintiff's declaration ^{the two last inconsistent with the first four & therefore null} for uncertainty in this respect
- 6th The finding of the jury was against the instructions given by the Court on the law of the case
- 7th There was no evidence to prove or tending to prove on the part of the plaintiff by the deed any warranty by the defendant of the property sold by the defendant to the plaintiff
- 8th The misdirection of the Court as to the law of the case

- 9th The Court Erred in permitting plaintiffs Counsel to ask the witness Sibbitts whether there existed in the neighborhood where the defendant purchased the sheep sold to plaintiff any general report that the scab was prevalent there against the objection of defendant's counsel
- 10th There was no evidence to prove the defendant's knowledge at the time of the sale to King or before that the sheep had the scab or was otherwise diseased.
- 11th For that ~~where~~ the verdict as returned into court was not and is not the verdict of all the jury; but that on the contrary Thomas B Albright one of the jury never did agree to the verdict returned into court and did not go into court to render any verdict in the case, but as he understood to receive further instructions from the court.
- 12th For that the Court misdirected the jury on the law
- 13th For that Abram W Beardsley one of the jurors after being sworn on being asked whether he had made up or expressed any opinion in regard to the merits of the case; answered that he had not; when he had previously expressed an opinion against the defendant's right to recover and in favor of the plaintiff's right to recover damages of the said defendant
- 14th And for other causes then those herein above expressed

The following affidavits were read upon the hearing of said motion for a new trial in support of said motion to wit from 1 to 4 inclusive

State of Illinois	} s. Samuel C Melvin being duly sworn
McHenry County,	

sworn that he was defendant in a suit

tried at this term of the McHenry Circuit Court, ^{and} wherein
Symon King was plaintiff. that Abner W Beardsley was
one of the Jurors who tried said cause that said Beardsley
was asked the question before being sworn as a juror
whether he had made up or expressed an opinion in
said cause to which he answered he had not and this
affiant further states that he is informed and truly
believes that said Beardsley had made up and ex-
pressed an opinion in said cause before that time & before
he was sworn as such Juror against this affiant
and that this affiant was not informed that said Beardsley
had so made up & expressed an opinion until after the
Jury had returned their verdict into Court. that had he
have known that he had so made up his opinion
he would have objected to said Beardsley as a Juror
& further saith not.

Sworn and subscribed to { Samuel C. Melvin
before me this 1st day of Dec 1850

J. H. Johnson Clerk

State of Illinois } ss Apollos Lincoln being sworn on oath
McHenry County } deposes and saith that since the
commencement of the suit Symon
King vs Samuel C. Melvin tried at this term of this Court
deponent had a conversation with Abner W Beardsley.
Said Beardsley then stated that he believed said Melvin
knew that the sheep were diseased and that Melvin knew
it and further said that he, Beardsley, believed that
Melvin would have to pay for it this conversation took
place in the Summer of 1849. and further deponent saith

not
Sworn and subscribed to before { Apollos Lincoln
me this 30 day of September 1850

Berman Crandall

State of Illinois } ss.
McHenry County }

Seni Benjamin being duly sworn
deposeth and saith that sometime
in the month of July 1850 deponent
had a conversation with Abner W. Beardsly concerning
and about the suit in this Circuit Court between
Symon King vs Samuel C. Melvin. Said Beardsly
then and there said that he, Beardsly, had no
doubt but that said Melvin was guilty and further
said that it had set him so against mutton that
he, Beardsly, could not eat any since altho he
had killed some since that was good and further
deponent saith not.

Sworn to and subscribed } Seni Benjamin
before me this 30th day of }
September 1850, Simon Randall TB

State of Illinois } ss.
McHenry County }

James C. Crandall being
duly sworn on oath deposeth
and saith that some time in
the month of April in the year 1849 he had a conversation
with Abner W. Beardsly concerning the case of Symon
King vs Samuel C. Melvin which has been tried at this
term of this Court that said Beardsly then expressed
to this deponent that he (Beardsly) had no doubt but
that Melvin was guilty and there was no doubt in his
mind but that King would beat him on the trial
This deponent further says that he frequently during
the summer of 1849 heard said Beardsly express
an opinion concerning said suit which was then
pending in this Court that said Melvin was
guilty and that said King would prevail in
the suit and that said Beardsly was one of

The Jurors who tried said Cause and further said not.
Subscribed & sworn before me {
this 30th day of Sept A.D. 1880 } James E. Grindall
J. Justice of P.

And the following affidavits were read upon the hearing
of said motion in resistance of said motion to wit

State of Illinois } ^{King v. McHenry et al}
McHenry County } ^{Indictment Sept 1880}
vs } Hon. W. H. Beardsley being duly sworn

says that he was one of the Jurymen
who tried the case of Lyman King
vs Samuel C. Melvin and that when he went on to said Jury
to try said Cause his mind was free from bias or prejudice
towards either party to this suit and that he was and is
not conscious of having at that time or at any time previous
to this trial made up his mind or formed an opinion
in relation to the merits of this case or as to which party
ought to prevail. That until the Jury were sworn he did
not know the issue between the parties to the suit.
That whatever he may have heretofore said in regard
to the probabilities of the case if anything at all
was in mere neighborhood talk and was based
upon the hypothesis that what he may have heard
was or was not true that further than this he had not
formed or expressed any opinion and further said not.

Sworn & Subscribed before me {
this 3^d day of Oct 1880 } W. H. Beardsley
C. H. Johnson clerk

Lyman King } McHenry Circuit Court
vs } Sept Term A.D. 1880
Samuel C. Melvin } Alvin H. Parker being
duly sworn says that he was the
foreman on the Jury in the above entitled Cause and

that he did not deceive Thomas B. Albright in regard
to the object of the jury in going into court and that
said Albright did not understand from this deponent
or from any of the jury in this cause that said jury
were going into court to get instructions from the judge
but that said Albright did agree with this deponent
and all of the jury before leaving their room to come
in to court to the verdict as reported ^{by this jury} to the court
by this deponent as their foreman and that the
proposition to reduce the verdict to \$400 and
agree on that sum as the verdict of the jury for
plff was made by the said Albright and that the
jury agreed unanimously
Sworn and subscribed before } Alvin H. Parker
me this 3^d day of Oct 1850 }
J. H. Johnson Clerk

State of Illinois } Dennis Rider William Barnes
McHenry County } J. B. Enos A. M. Beardsley Grand Jurors
being sworn say that they were jur-
men who tried the case of Seymour Desig as Samuel
McElvin at this term of this Court and that Thomas B
Albright together with all the jury agreed to the verdict
which was reported to the court by the jury as their verdict
And these deponents further say that ~~the~~ the affidavit on
the opposite page of this leaf made by Alvin H. Parker
their foreman is true and these deponents concur in
the same fully and that in his deliberations Alvin
H. Beardsley did not manifest a prejudged state of
mind against defendant.
Sworn to and subscribed by all }
the subscribers this 3^d day of Oct }
1850. J. H. Johnson Clerk }
Wm Barnes
A. M. Beardsley
Dennis Rider
J. B. Enos
Grand Jurors

And the Court having heard the Counsel on said motion. But the Court decided that said defendant might have a new trial upon the following terms to-wit: That said defendant should pay all ^{the} costs in this cause by the 1st of February next & have a judgement entered against him pro forma in this Court for \$400 & give security to be approved by the Sheriff of this County in the penal sum of \$400. conditioned to pay whatever judgement should be recovered against him in this action and not otherwise which conditions the said defendant refused to accept thereupon the Court overruled said motion for new trial.

So which said several decisions of the Court in overruling said motion for a new trial, and imposing the said terms on said defendant, and in rendering judgement on said verdict the clerk by his counsel Excepts and prays the Court to sign and seal this his bill of Exceptions & make it a part of the record which is done

J. L. Dickey (Seal)

Which said Bill of Exceptions has Endorsed thereon,
Filed Oct 4th 1850

J. H. Johnson Clerk

State of Illinois }
McClurg County } I the undersigned Clerk of
the Circuit Court in and
for the said County and
State aforesaid do certify that the foregoing is a
true and perfect copy of the record and proceedings
in the above entitled Cause in this office

Witness Joel H. Johnson Clerk of the
Circuit Court and the Seal thereof
at Woodstock in said County
this 28 day of May A.D. 1837.

Joel H. Johnson
Clerk

McG. Agency Co.
Superior Cal
June Term AD 1851

McLinn dr
Error
King

Filed June 1st 1852.
T. Leland Clk.
By J. W. Leland Depy.

Amos 1312
Car \$13334

June 4th 1852 \$10000
Total paid 25

State of Illinois
Lafayette County

Lemuel C. Melvin

vs
Phoebe Thing et al. et al.

{ Error to Mr. Henry

Charles Melvin

being duly sworn deposes and says that he was Counsel in above entitled Cause in Court below for Melvin - that he filed a transcript of record - in said Cause as appears by enclosure June 1st 1852 - that he found that Lawrence S. Church was Counsel in Court below - but that at the first term of this Court after the filing of said record supposing that he was to appear in the Cause in this Court this affiant requested said Church ^{who was then at large} to join in error - to save the expense of serving process - when L. S. Church informed him that he had read no fee in the Cause and refused to join in error - that this affiant then procured a summons which was served on Phoebe Thing previous to Term Term 1853. that previous to said last Term 1853. he wrote to Mr. Wallace of Ottawa to take a rule to join in error that he would be at Court at an early day & that he wished the Cause ready to be disposed of. that when he arrived at Ottawa on the second or third day of said Term he was informed by Mr. Wallace that he had taken said rule to join by Thursday morning of first week - that L. S. Church & this affiant before this affiant byt Woodstock had made agreements in reference to other Causes. which they were engaged in - but which had no reference to the above entitled Cause - this affiant has no recollection of ever encharging on

with L. S. Church in reference to said cause
after the time of requesting him to join in case
as aforesaid. That on Thursday morning
when the rule to join expired L. S. Church had
not arrived at Ottawa, when this affiant
requested J. S. Wallace not to take default
until S. S. Church arrived. That he did not
believe that he was employed. yet he might
be and to be the case pass over until Friday
morning ~~before~~ which time Church would
be doubtless arrive, and if he was emp-
loyed he would join if not take default
That Mr Church arrived about noon
on Thursday (as this affiant believes) and
that on Friday morning there being no
joinder in Mr Wallace took the default
That at the time of the taking the default
L. S. Church was in the Court Room. That
he had been intimated to Mr Church that
he would not prosecute said cause but that
he always intended so to do and had used
every means to bring the parties into this
Court. and that Philip King resided
or was staying in Woodstock. when Mr
Church & this affiant resided. When she was
served with process. That he never directly or
indirectly said or pretended that he would
abandon said cause & further said he
not

Charles Nelson

Subscribed & sworn to
before me this 19th day
of June, A.D. 1854.
L. Leland Clerk.
By P. H. Leland Depy.

State of Illinois - ss.

W. H. Wallace being
duly sworn according to law, on
oath deposes and says that he
has read the foregoing affidavit
of Charles Mc Clure, and that the
same so far as relates to the
action of affiant in said cause
is true - Affiant distinctly recollects
that Mr Church was in court
at the time the order was taken
reversing the judgment for want
of joinder in error - that at that time
affiant had been informed by Mc Clure
that Church had been counsel
in the cause in the court below
but had declined appearing in
this court -

W. H. Wallace

Subscribed & sworn to
before me this 19th day of
June A.D. 1854
L. Leland Clerk
By P. K. Leland Depy.

3-
Muri
Ying

Julius & William
affidavit

Mr

Filed June 19th 1854.
T. Leland Clk.
By P. H. Leland Sg.

Samuel C. Melvin & Co. v. to
 Phoebe Thing Executive & }
 Almond^W Thing Executive & }
 Lyman Thing Successor of } Court

I do hereby enter myself security for
 costs in this cause and acknowledge
 myself bound to pay or cause to be
 paid all costs which may accrue
 in this action either to the opposite
 party or to any of the officers of this
 Court in pursuance of the laws
 of this state Dated this 22^d day of
 May AD 1852 Beman Randall

Mr Leland. please give proc up in
 the above entitled cause, enclose and
 direct to me at Woodstock. I will
 have it sealed. The security is good
 Charles Melvin

Melvin —
as.
King of al. Ex^{to} Ex^{ve}.
Security for Costs.

Filed June 1st 1852.
J. Leland Clk.
J. Leland Depy.

STATE OF ILLINOIS, }
Supreme Court. }

The People of the State of Illinois,

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

BECAUSE in the record and proceedings, and also in the rendition of the judgment of a plea which was in the circuit court of *McHenry* county, before the Judge thereof, between *Syman King Plaintiff and Samuel C. Melvin*

defendant, it is said that manifest error hath intervened, to the injury of the said

Samuel C. Melvin as we are informed by *his* complaint, the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the state of Illinois, at Ottawa, before the justices thereof, to correct the errors in the same, in due form and manner, according to law; ^{as we have heretofore commanded you} therefore we command you, that by good and lawful men of your county, you give notice to ~~the said~~ *Almond W King and*

Phoebe King Executor and Executrix of said Syman King lately deceased

that ~~they~~ be and appear before the justices of our said supreme court, at the next term of said court, to be holden at Ottawa, in said state, on the *Second Monday* in

June next, to hear the records and proceedings aforesaid, and the errors assigned, if ~~they~~ shall see fit; and further to do and receive what said court shall order in this behalf; and have you then there the names of those by whom you shall give the said

Executor & Executrix notice, together with this writ.

Witness, the Hon. SAMUEL H. TREAT, Chief Justice of our said Court, and the seal thereof, at Ottawa, this *23^d* day of *July* in the year of our Lord one thousand eight hundred and fifty *two*.

S. Siland Clerk of the Supreme Court.
By P. H. Siland Esq.

Executed the within
on the 20th of Dec.
of the defendant
Dec. 20th 1852 by reading
it out in her hearing.

Caroline Hastings
Sheriff

1 service 50
1 mile travel 50
50

After diligent search
Almon W. King cannot
be found in the County

Caroline Hastings
Sheriff

Filed June 9, 1853
Ireland O'R.

W. C. Henry

Samuel C. Melvin

vs.
P. & A. W. King & Frey

Sci; fa. - (alias)

Filed June 9, 1853
Ireland O'R.

State of Illinois, set.

WRIT OF ERROR—FREE TRADER PRINT.

The People of the State of Illinois,
To the Clerk of the Circuit Court for the County of *McHenry* GREETING :
BECAUSE in the record and proceedings, as also in the rendition of the judgment of a plea which
was in the Circuit Court of *McHenry* county, before the Judge thereof, between

Syman King plaintiff and *Samuel C. Melvin*

defendant it is said manifest error hath intervened, to the injury of the aforesaid
Samuel C. Melvin
as we are informed by *his* complaint, and we being willing that error, if any there be, should be
corrected in due form and manner, and that justice be done to the parties aforesaid, command you that
if judgment thereof be given, you distinctly and openly, without delay, send to our Justices of the
Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same,
under your seal, so that we may have the same before our justices aforesaid at Ottawa, in the county
of La Salle, on the *2^d Monday in June* — next, that the record and proceedings,
being inspected, we may cause to be done therein, to correct the error, what of right ought to be done
according to law.

WITNESS, the Hon. SAMUEL H. TREAT, Chief Justice of our said
Court, and the seal thereof, at Ottawa, this *first*
day of *June* in the year of our Lord one thousand eight
hundred and fifty *two* —

S. Liland Clerk of the Supreme Court.
By *P. H. Liland* Depy. Clk.

Samuel C. Melvin
vs.

Phoebe King Ex. try of AW
King Ex. of Lyman Kings

Writ of error.

Filed June 1st 1852.
J. Leland Clk.
By P. H. Leland Depy.

Samuel C. Melvin Plff in Error

vs
Phoebe King et al excc
utors of Lyman King's Efts

Superior Court
June Term 1853

Error to the Honorable Co

State of Illinois

McHenry Court, } vs

Lyman S. Church being duly
sworn deposes to the following Statement

I was counsel in the above cause in the
court below for the testator of the Efts^{in error} and
was employed by the Defendants in error to
defend the same in the Superior Court in case
it should be there prosecuted. The above
facts Mr Charles McClure always knew
During the week previous to the present session
of the Superior Court I had a conversation with
said McClure in regard to the cause which
he proposed to prosecute in the Sup Court
also one that I proposed to take up on error
at his request I proposed to enter my
appearance and join in error in all
cases in which I had been concerned
whether he had service of process or not

With the above understanding, Mr McClure
left to attend court. I reached Ottawa
on Thursday of the first week. Mr Melvin
was in attendance ^{on the court} before me, and requested
that I should join in error in the
Case of William Montgomery vs Harley
Wayne and John Crum during that day
so that he could go home on the next day

Filed July 1. 1853
at the clerk's
office of the
County of McHenry

I asked him if he was not going to prosecute
any other causes wherein I was concerned
he replied that he was not going to prosecute
any other cause and that he was anxious
to go home I did as he requested in the
Montgomery & Wayne case which he argued
and left town on the next day

On the next Monday having submitted
all the causes which I supposed I
had before the Court I went home

I had relied on the statement made
by Mr McClure that he was going
to prosecute no other cause and ^{had} not
made any inquiry into the above cause
of Melvin vs King et al. I heard of
no rule to join in error. Next day
I inquired if there had been any such rule
or even look at the Docket I had relied
on his statement above mentioned

After I came home I learned by the
Newspaper that the case of Melvin vs
King et al had been removed by Default
This was the first time that I ascertained that
any order had been had in the cause or
any steps taken by Mr McClure or any
other person to bring the cause on for trial
If there was a rule to join in error I should
certainly have ascertained and complied with
it had not Mr McClure the counsel for the
Plaintiff in error made the statement above
referred to I further state that I verily believe
that the Defts in error have a good defence and
that there are no errors in the record of said cause

Given and Subscribed to Samuel S Church
before me this 29th June 1838

Witness my hand and the Seal of the Circuit Court of
Middlebury County at Montpelier this day & year aforesaid
J. H. Johnson Clerk