

12529

No. _____

Supreme Court of Illinois

Fisher.

vs.

Bowles.

71641  7

1
Be it Remembered that heretofore to wit on the nineteenth day of July in the year of our Lord one thousand eight hundred and fifty six there was filed in the office of the Clerk of the Circuit Court in and for the County of Peoria in the State of Illinois a declaration which with the precept for summons thereto attached is in the words and figures following to wit:

State of Illinois
Peoria County ss

In the Circuit Court of Peoria County
Nov Term AD 1856

Henry Boles plaintiff in this suit complains of Joshua Simpson, William Fisher and Sabely Fisher joint owners and partners in building & running the Steam boat "Lacon" Defendants in a plea of Assumpsit for that whereas the said defendants on the first day of January AD 1856, at the County of Peoria aforesaid were indebted to the said plaintiff in the sum of Ten hundred Dollars, for the wages or salary of the said Plaintiff before that time and then due and payable from the said defendants to the said plaintiff for the service of the said Plaintiff by him before then done and performed as an Engineer of and for the said defendants in & on board of the said Steam Boat Lacon and at their special instance and request and being so indebted they the said defendants in consideration thereof afterwards to wit, on the seventh day of July AD 1856 undertook and then and there faithfully promised the said plaintiff to pay him the said sum of Ten hundred Dollars when they the said defendants should be thereunto afterwards requested.

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And whereas ^{also} the said defendants afterwards, to wit, on the first day of July AD 1856. at the County of Peoria aforesaid were indebted to the said plaintiff in the sum of Ten hundred dollars for other work and labor done and performed by the said plaintiff before that time, for the said defendants which said work & labor was for engineering on the said Steam Boat Lacon, and at the special instance and request of the said defendants, and being so liable and indebted they the said defendants in consideration thereof afterwards, to wit, on the seventeenth day of July AD 1856. at the said County of Peoria undertook and then and there faithfully promised the said plaintiff to pay him the said sum of Ten hundred dollars, when they the said defendants should be thereunto afterwards requested.

And also for that whereas the said defendants on the seventeenth day of July AD 1856. at the County of Peoria aforesaid were indebted unto the said Plaintiff in Ten Hundred Dollars for the price and value of goods before that time there sold and delivered by the plaintiff to the defendants at their request, And in ten hundred Dollars for work and labor before that time there done by the plaintiff for the the defendants at their request, And in ten hundred Dollars for money before that time there lent by the plaintiff to the defendants at their request. And in ten hundred Dollars for money before that time there paid by the plaintiff for the use of the defendants at their request. And in ten hundred Dollars for money before that time there received by the defendants for the use of the plaintiff. And in ten hundred dollars for money found to be due and owing from the defendants to the plaintiff on an account before that time there stated between them. And the defendants afterwards to wit on the seventeenth day of July AD 1856 at the County of Peoria aforesaid in consideration of the premises respectively promised to pay the said plaintiff the several sums of money in this declaration mentioned on request yet the defendants have disregarded their promises nor have not, nor hath either of them paid the said moneys, or any of them or any part thereof to the damage of the said plaintiff ten hundred Dollars, and thereupon he brings suit.

By Grove & H. Coy
his Attorneys

Accept sued on

Joshua Simpson, William Fisher & Sabely Fisher
To Henry Boles Dr

To work as an engineer on the Steam boat Lacon from 10th day of April 1855 to the 10th day of December 1855
at \$125 per month \$1000⁰⁰

To work & labor done & performed on
the Steam boat Lacon between January 1 1855
& July 1 1856 \$1000⁰⁰

To goods sold \$1000⁰⁰

To work & Labor done & performed by the Plaintiff for
the defendants from January 1 1855 to July 1 1856 \$1000⁰⁰

Henry Boles

vs
Joshua Simpson
William Fisher
Sabely Fisher

In the Circuit Court of Peoria
County, Illinois

To November Term AD 1856

In Assumpsit \$1000⁰⁰
Damages \$1000⁰⁰

The clerk will please issue a summons in the above entitled Cause
Returnable according to law, to Sheriff of Peoria & Marshall Counties
To J. S. Barkman Esqr
Grove & M^{rs} boy
Atty for Plaintiff

And thereupon on the same day the clerk of said Court issued out of said
Court under the seal thereof a summons directed to the Sheriff of Marshall County
to serve which is in the words and figures following to wit:

Summons

to Marshal Co.

The People of the State of Illinois, To the Sheriff of Marshall
County - Greeting: We Command you to Summon Joshua
Simpson, William Fisher and Sabely Fisher if they may be
found in your County, to appear before our Circuit Court on
the first day of the term thereof, to be held at Peoria within and
for the said County of Peoria on the 3rd Monday of November
next then and there, in our said Court, to answer unto Henry
Boles of a plea of trespass on the case on promises to his Damage
one thousand dollars as he says and make return of this writ
with an endorsement of the time and manner of serving the same
on or before the first day of the term of the said Court to be held
as aforesaid

Witness James S. Barkman Clerk of our said Court and the
Seal thereof at Peoria, this 19th day of July in the year of our
Lord one thousand eight hundred and fifty six
James S. Barkman Clerk
Which summons was returned by the said Sheriff endorsed as follows.

Return "I have served the within writ by reading the same to the within
named William Fisher the within named J. Simpson & Sabel
Fisher not found in my County November 14th 1856"

Also on the same day the Clerk of said Court issued out of the said Court under
the seal thereof a Summons in said cause directed to the Sheriff of Peoria
County to serve, which is in the words and figures following to wit:

Summons
to Peoria Co. The People of the State of Illinois To the Sheriff of Peoria County
Greeting: We Command you to summon Joshua Simpson William
Fisher and Sabel Fisher if they may be found in your County
to appear before our Circuit Court on the first day of the term
thereof to be held at Peoria, within and for the said County of
Peoria on the 3rd Monday of November next then and there
in our said Court, to answer unto Henry Bales of a plea of
trespass on the case on promises To his damage one thousand
dollars as he says and make return of this writ with an
endorsement of the time and manner of serving the same on or
before the first day of the term of the said Court to be held as
aforesaid

Witness James S. Barkman Clerk of our said Court and
the Seal thereof at Peoria this 19th day of July in the
year of our Lord one thousand eight hundred & fifty six
James S. Barkman Clerk

Returned by the said Sheriff endorsed as follows to wit:
Return Not found in my County Nov 17th 1856
D. D. Irons Shff P.C

And thereupon the defendant William Fisher filed in the Clerks office
of said Court his plea to the plaintiffs declaration which is in the words
and figures following to wit:

Nov. Term 1855

Purple & Salt

For said defendants

And the Plaintiff
doth the like

By Grove & M^{rs} Co
His Attys

Proceedings at a Term of the Circuit Court begun and held at the Court House in the City of Peoria in and for the County of Peoria in the State of Illinois on the third Monday of November in the year of our Lord one thousand eight hundred and fifty six, it being the seventeenth day of said Month— Present the Honorable Elihu N. Powell Judge of the sixteenth Judicial Circuit in the State of Illinois— David D. Irons. Sheriff and Enoch P. Sloan clerk to wit:

Saturday, November 29th AD. 1856.

Henry Boles

By

Assumpsit

Joshua Simpson & others

By agreement of parties this Cause is continued
to next term of Court.

Proceedings at a term of the Circuit Court began and held at the Court house in the City of Peoria in and for the County of Peoria and State of Illinois, on the first Monday of March in the year of our Lord One thousand eight hundred and fifty seven, it being the second day of said month - Present - the Honorable Elihu N. Powell, Judge of the sixteenth Judicial Circuit in the State of Illinois; Francis M. Smith Sheriff and Enoch P. Sloan clerk, to wit: -

⁶
Saturday March 7. A.D. 1857

Henry Boles

vs

Assumpsit

Joshua Simpson, William Fisher & Sabel Fisher

Purple & Pratt attorneys for William Fisher one of the defendants in this cause moved the Court for leave to file additional plea, which motion was allowed ordered that Court adjourn to 2 o'clock on Monday next.

Proceedings in the circuit Court, at a term thereof began and held at the Court House in the City of Peoria in and for the County of Peoria and State of Illinois, on the second Monday of May in the year of our Lord one thousand eight hundred and fifty seven, it being the eleventh day of said month. Present the Honorable Elihu St. Powell Judge of the 16th Judicial Circuit in said State, Francis W. Smith, Sheriff and Enoch P. Sloan, Clerk to wit:

Wednesday, May 20, A.D. 1857

Henry Boles

vs

Assumpsit

Joshua Simpson

William Fisher

Sabel Fisher

By agreement of Parties this cause is continued

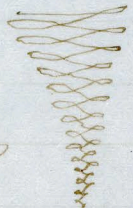
And afterwards to wit on the 30th day of November 1857 the defendant and Fisher filed in the Clerk of said Court his pleas to the plaintiffs declaration which is in the words and figures following to wit:

Henry Boles

vs

Joshua Simpson

William Fisher

 Circuit Court Peoria County
March Term 1857.

And now comes the said defendant William Fisher in his own

Pleas of
Fisher

proper person and as to all causes of action in said declaration mentioned accruing in and about or for services rendered toward the building or construction of said Steamboat Lacon, and upon the said Boat for all time prior to the time of the running of said Boat - This defendant defends the wrong and Injury When &c and for plea says He was not at the said time when &c a Copartner with said defendant Simpson as in and by said declaration is supposed and this the defendant William Fisher prays may be enquired of by the Court &c
W^m Fisher

And the Plff doth the like
State of Illinois By Grove his Atty
Deoria County ss. William Fisher being first duly sworn says the above pled by him pleaded is true in substance and in fact Sworn to before me this 10th day of March 1857. W^m Fisher
Enoch P. Sloan clk.

And for further plea in this behalf as to all Causes of action in said declaration mentioned which accrued during or in and about the running of said Steamboat Lacon after the launching thereof and as to all work and labour and other Causes of action in the third Count of said declaration mentioned the defendant by his Counsel defends the wrong and Injury When &c and for plea says he did not at the time when &c assume and promise in manner and form as alleged in Plaintiffs declaration mentioned and of this the Deft puts himself upon the Court try &c

And the Plff
doth the like

Hurple & Pratt
Defts Atty

By Grove his atty.

And thereupon on the same day the plaintiff filed in the clerks office of said Court his demurrer to the defendants pleas in this cause which is in the words and figures following to wit:

Henry Boles
vs
Joshua Simpson
& others

FILED

In the Circuit Court of Deoria County

And the plaintiff comes and demurs severally & specifically to the plea filed in this cause on this day being Nov 30 1854 by the defendant Fisher and says that said Pleas and each of them are not sufficient in law to hinder or bar the said Plff from having and maintaining his suit & for cause of demurrer he shows here the following

- 1 Said Pleas & each of them amount to the General issue
 - 2 Said Pleas are uncertain as to term place & subject matter
 - 3 They do not answer the declaration
 - 4 Wherefore the Plff demurs severally to each of said Pleas
- by Grove & Mc
his Atty

Proceedings in the Circuit Court at a term thereof began and held in the Court house in the City and County of Peoria, in and for said County, and State of Illinois on the third Monday of November in the year of our Lord One thousand eight hundred and fifty seven, it being the sixteenth day of said Month - Present the Honorable Elihu S. Powell, judge of the 16th Judicial Circuit in the State of Illinois - Francis W. Smith, Sheriff, and Enoch P. Sloan, Clerk to wit:
Tuesday, December 1st AD 1854.

Henry Boles

vs

Assumpsit

Joshua Simpson

William Fisher

Jabez Fisher

This day came the plaintiff by Grove his attorney and the plaintiffs by Turple & Pratt their attorneys, and it is ordered by the Court that a jury be empannelled to try the issues in this cause, whereupon came a Jury of twelve good and lawful men to wit: - Joel B. Gillet, Andrew Lindsay, Edwin Matthews, Thomas B Reed, William Vinson, Daniel Bristol, Matthew Taggart, Alphens Richardson, Henry Keach, A O Garret, Milton Hasbrouck, and Michael Fish,

who were duly chosen, tried and Sworn, to well and truly try
the issues joined in this cause and a true verdict give according
to the evidence, retired to Consider of their Verdict.

Wednesday, December 2^d AD 1857.

Henry Boles

vs
Joshua Simpson
William Fisher
Jabez Fisher

This day came the parties by their attorneys, and also came
the jury empannelled and Sworn on yesterday to well and truly
try the issues joined in this cause and a true verdict give according
to the evidence, and the said Jury upon their oaths aforesaid, do say,
"We the Jury find the issues for the plaintiff and assess his damages
at the sum of six hundred dollars." And Thereupon the said
defendants, by M^r Pratt, one of their attorneys, entered a Motion
for a new trial in this cause.

And thereupon on the same day the defendants filed in the clerks
office of said Court their motion for a new trial which is in the
words and figures following to wit:

Henry Boles

vs
William Fisher
Et al

In the Circuit Court of Peoria County
November Term AD 1857.

And now comes the above named Defendant
William Fisher and moved the Court for a new trial in this cause
for the following Reasons to Wit

- 1st) The Court permitted improper Evidence to be given to the
Jury on behalf of the Plaintiff.
- 2nd) The Court excluded proper testimony and evidence offered by
the defendant
- 3rd) The Court gave improper instructions on behalf ~~on behalf~~ of the
Plaintiff and at his request

- 4^d) The Court refused proper instructions asked by the Defendant
- 5^d) The Court improperly qualified some of Defendant Instructions
- 6^d) The Verdict of the Jury is Contrary to law and against the law
- 7^d) The verdict of the Jury is against the Instructions of the Court
- 8^d) The verdict of the Jury is against the Evidence
- 9^d) The damages given by the Jury are excessive

Proceedings in the Circuit Court at a term thereof began and held in the Court house in the City and County of Florida, in and for said County, and State of Illinois, on the Third Monday of November in the Year of our Lord one thousand eight hundred and fifty seven it being the sixteenth day of said Month. Present the Honorable Elihu N. Powell, Judge of the 16th Judicial Circuit in the State of Illinois - Francis W. Smith, Sheriff and Enoch P. Sloan, Clerk,
to wit: Wednesday, December 16th AD 1857

Henry Boles

vs

Assumpsit

Joshua Simpson

William Fisher

Jabez Fisher

This day this cause came on to be heard on the defendant's motion for a new trial of this cause; and the Court having heard the arguments of counsel, and not being fully satisfied in the premises takes time to consider

Monday December 21 AD 1857.

Henry Boles

vs

Joshua Simpson

William Fisher

Jabez Fisher

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This day came the parties to this suit by their respective attorneys, and the motion for a new trial of this cause having been fully discussed, and the Court now being fully advised in the premises does order a new trial of this cause provided the costs of this proceeding be paid by William Fisher

And there was also filed in the office of the Clerk of the Circuit Court in the above entitled cause before the two last proceedings of the Court ^{were had}, to wit on the 14th day of December A.D. 1857 an affidavit of Lorin G. Pratt in words & figures following to wit:

Affidavit of
Lorin G. Pratt

Henry Boles

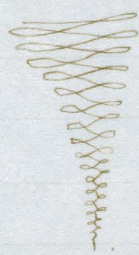
vs

William Fisher

Et als

State of Illinois

Peoria County ff.



Circuit Court of Peoria County
November Term A.D. 1857.

Lorin G. Pratt Counsel for above named Defendant being first duly sworn Says - Jason Chapman was and is a material witness for said Defendant in the above entitled cause - That said Witness was in the employ of said Defendant at the time of the accruing of the supposed causes of action as clerk and is still associated with said Deft in business at Lacon, Illinois That said Witness had been in attendance on this Court the day before the trial of this cause and on the evening before said trial took the cars to go back to Lacon with the express undertaking and promise to deponent to return to this place on the next mornings train - That said Witness did not appear in the Court Room on the opening of Court the morning of the trial - but Deponent supposed he was in town and would be in - That said Witness did not arrive until just after the trial was over That deponent is informed by said Witness and verily believes that he started in due time from Lacon to take the morning train of said day but was hindered on account of newly formed ice in the Illinois river and was too late to take said Cars - That Deponent could have proved by said Witness the advancement by said Fisher to Joshua Simpson of about Two thousand Dollars more money than they were bound to pay by virtue of the contract between Fisher &c & Simpson offered in evidence

The same being secured by said Simpson ¹² to said Fisher & Co
by Chattel Mortgages on said Boat & Lagoon
Sworn to before me
this 14 Dec. 1857

Lorin G. Pratt

N. H. Purple Notary Public
Peoria City Ills

And thereupon on the 15th day of December A D 1857 also before the last
two proceedings of the Court were had in this cause, there was filed in the clerk's
office of said Court the affidavit of Henry Grove, which is in the words
and figures following to wit:

State of Illinois
Peoria County ss

In the Circuit Court

Henry Boles

vs
Wm Fisher
& als

Motion for New Trial

Henry Grove being sworn on oath
says that he was of Counsel for the Plaintiff on the trial of
the above Cause. That some days before said Cause came on
for trial Lorin G. Pratt came to Deponent and wished
some day agreed upon for said trial as he had a witness in
Sacon that he did not wish to compel to remain and Deponent
referred him to the plaintiff. Afterwards and at least one day
before the Cause was reached on the docket - and after the day
agreed upon by Pratt & the plaintiff, before which the trial
was not to be pressed by either side, had passed Pratt informed
deponent that all he expected to prove by the witness from Sacon
and who as deponent understood from Pratt was a clerk in
the employ of defendant Fisher, was the execution of a Contract
between Wm Fisher & Co & the defendant Simpson & said Pratt
then stated that if deponent would allow a copy of said Contract
to go in evidence the same as if it was the original Contract
he Pratt would not need the witness & he would send him home
Deponent further states that on said trial said Pratt did
offer said copy of said Contract in evidence and the same
was read to the Jury & taken by them when they retired

Deponent further states that at the time the said copy was offered in evidence deponent objected to the introduction of the same as irrelevant, but deponent then stated to the Court and Jury that the agreement between Pratt and deponent was, that the copy should stand precisely as though it was the original contract & its execution proved, and the Court thereupon overruled the objection of defendant and admitted the copy as evidence. Deponent further states that said Pratt did not pretend or claim to be able to prove any other matter by said witnesses and further saith not.

H. Grove

Sworn to & subscribed before me Dec. 15 1857

Enoch P. Sloan, Clerk }

Proceedings at a term of the Circuit Court began and held in the Court house in the City of Peoria in and for the County of Peoria and State of Illinois on the first Monday of March in the year of our Lord one thousand eight hundred and fifty eight it being the first day of said month. Present the Honorable Chas. N. Powell Judge of the sixteenth Judicial Circuit in said State, Francis W. Smith Sheriff and Enoch P. Sloan Clerk viz;

Thursday March 11th A.D. 1858

Henry Bales

Assumpsit

vs
William Fisher impleaded
with Joshua Simpson &
Isabel Fisher

This day came the said plaintiff by Goode his attorney, and the said defendant William Fisher by Manning Purple & Pratt his attorneys, and it is ordered by the Court that a Jury be empanelled to try the issues in this cause, whereupon came a Jury of twelve good and lawful men to wit: Jacob Lawrence Albion Jenkins S. B. Todd, Seth Griffin, Sal. Hinman, Isaac Moore, David Goodwin, Thomas Butler, J. H. Sawin, Stephen Clark, John Schock & Robert Pinkerton, who being duly chosen tried and sworn to well and truly try the issues joined in this cause and a true verdict give according to the evidence do say: we the Jury do find the issues for the plaintiff and assess his damages at Five Hundred and thirty five dollars. Therefore it is considered by the Court that the said Henry Bales have and recover of the said William Fisher impleaded with Joshua Simpson and Isabel Fisher the said sum of Five hundred and thirty five

dollars his damages aforesaid and also his costs and charges by him about his suit in this behalf expended and that he have execution therefor. Whereupon the defendant by his attorneys entered a motion for a new trial in this cause.

And ^{on the 12th day of March A.D. 1858} thereupon, the defendant by his attorneys ~~enter~~ filed in the clerk's office of said Court his motion for a new trial in this cause which is in the words and figures following to wit:

Motion for
new trial

" State of Illinois
County of Peoria } Peoria Circuit Court March Term A.D. 1858
Roles

vs

Simpson, Fisher & Fisher. And the said defendant William Fisher comes and moves the Court to set aside the verdict rendered in said cause and grant a new trial therein for reasons:

1. Said verdict is against law
2. Said verdict is against evidence
3. Said verdict is against the weight of evidence given on the trial of said cause

4. The Court permitted material evidence to go to the jury which was improper and was prejudicial to the rights of the defendant William Fisher.

5. The Court gave improper instructions at the request of the plaintiff and which were injurious to the rights of the defendant William Fisher.

6. The damages given in said verdict are excessive

Pratt & Manning
for Deft. Wm. Fisher.

Proceedings at a term of the Circuit Court began and held in the Court House in the City of Peoria in and for the County of Peoria and State of Illinois on the first Monday of March in the year of our Lord one thousand eight hundred and fifty eight it being the first day of said month. Present the Honorable Elisha N. Powell, Judge of the sixteenth Judicial Circuit in said State. Francis W. Smith Sheriff and Enoch S. Sloan Clerk viz;

Tuesday March 16th A.D. 1858

Henry Boles
vs.

Assumpsit

William Fisher
impleaded with
Joshua Simpson
& Jabez Fisher

This ^{day this} cause came on to be heard on motion of defendant for a new trial and the Court having heard the argument of counsel and being satisfied in the premises does overrule said motion whereupon the defendant by his attorney prayed an appeal to the Supreme Court of this State which is allowed on his filing a bond with the clerk of this Court in the penal sum of one thousand dollars with Warren Hall as security to be conditioned as the law directs.

And thereupon to wit on the 18th day of March A.D. 1858 there was filed in the clerks office of said Court an appeal Bond in said cause which is in the words and figures following to wit;

" Now all men by these presents that we William Fisher and Warren Hall are held and firmly bound unto Henry Bales in the penal sum of One thousand dollars lawful money of the United States of America to which payment well and truly to be made and done we bind ourselves our heirs, executors and administrators jointly and severally by these presents. Witness our hands and seals at Peoria this 17th day of March A.D. 1858. The condition of this bond is this. Whereas on the 16th day of March A.D. 1858 in the Circuit Court of Peoria County the above named Henry Bales recovered a judgment against the above bound William Fisher, impleaded with Joshua Simpson and Sabez Fisher for the sum of five hundred and thirty five dollars and costs of suit from which judgment the said William Fisher has prayed an appeal to the Supreme Court, which has been allowed. Now if the said William Fisher shall duly prosecute his said appeal and shall pay the said judgment interest, costs and damages in case the said judgment shall be affirmed in and by the said Supreme Court, then this bond shall be void otherwise in force.

Wm Fisher Seal
Warren Hall Seal

And afterwards to wit on the 20th day of March A.D. 1858 there was filed in the clerks office of said Court a bill of exceptions in the above entitled cause which is in the words and figures following to wit;

Bill of
Exceptions

Bales
vs
William Fisher
impleaded &c

Peoria Circuit Court
March Term 1858
This cause came on to be tried upon the

issues joined and the plaintiff to sustain the issues on his
 part introduced as a witness John H. F. Loyd who testified that
 he knew the plaintiff in 1855, was Engineer & worked on the
 Steam Boat Lacon. I was of firm of Scholey & F. Loyd. We
 had a bill amounting to five hundred dollars for Machinery for
 St. Bt Lacon - for Castings & Machinery furnished in building
 it made out the bill in July A.D. 1855 either against the
 St. Bt Lacon. Fisher & Simpson owner or against Fisher &
 Simpson don't recollect which. I called on William Fisher
 for the money In July 1855 He told me he had given money
 to Simpson to pay the debt & it would be paid against Simpson
 & Fisher he made no objection to it. I showed him the bill as made
 out. I went a second time to Lacon & saw Wm Fisher, & he
 said the Boat had gone to Sasale and Simpson was running
 the boat & he supposed it had been paid - I went a third time
 to Lacon & found the Boat lying at the landing I presented
 the bill to Simpson on the Boat he did not pay it & said it
 was right - I went to Wm Fisher & told him that we made
 the bill upon the Credit of the Fishers. as we did not consider
 Simpson responsible. He said they were goods for all demands
 against them He supposed the bill was paid. I understood
 that William Fisher & Sabel Fisher composed firm of Fisher & Co
 William Fisher paid the account. I told Wm Fisher that a great
 many persons had furnished materials & labor on the Boat on
 account of his firm and on their Credit He answered that Fisher
 & Co were good for all debts that might come against them
 I had a conversation with Sabel Fisher in Peoria - The defendant
 objected to any Evidence of what Sabel had said which objection
 the Court overruled and permitted said Evidence to go to the Jury
 as evidence against Sabel Fisher and not as evidence against
 William Fisher to which decision of the Court in overruling said
 objection and in permitting the same to go to the Jury as
 evidence against Sabel Fisher the defendant then & there
 excepted - Sabel Fisher said I was mistaken in Simpson
 that he was an Honorable Man that he had the money to pay
 our bill & he would bring him up & have him settle it but
 instead of coming up he went off on the boat & sold her
 And the boat has not been in the Illinois river since. I told
 him that if they did not pay we should sue the bill He said

18 He did not want a law suit & had rather lose money than have a law suit think they did not deny any liability until after the Boat was sold. The first conversation with William Fisher was before the Boat was launched, the others were along in 2 or 3 months. Simpson paid me some money & asked a receipt I asked him the name of the firm The Defendant here objected to any statements of Simpson in relation to the partnership with defendant, Wm Fisher which objection the Court overruled and permitted the Evidence to go to the Jury as evidence against the defendant Simpson only to which ruling of the Court in overruling said objection and permitting such Evidence to go to the Jury as evidence against Simpson the defendant then & there excepted - Simpson stated that the Firm was Fisher & Simpson. The Boat was built in Peoria by Simpson -

On Cross Examination Witness stated that Plaintiff first spoke to us for the Castings & Simpson afterwards made contract for them. At the time of my conversation with Sabel Fisher I threatened to tie the Boat up. The Boilers put into the boat came from St Louis & were marked Simpson & Fishers in large letters. Part of the pipes were not needed & we bought them. The amt was credited in the Bill I presented to William Fisher I presented the Bill to William Fisher twice. He did not dispute the bill or deny his liability. H. G. Anderson testified that he knew William & Sabel Fisher who I understood composed firm of Wm Fisher & Co - knew that Steam Boat Lacon was built at Peoria under Superintendence of Simpson. We furnished some lumber for the Boat less than \$100. it was settled by Simpson by note signed Simpson & Co. Simpson said the Fishers were interested in some way, I said Sabel Fisher & he told him we had a claim against the Boat & that we did not purpose to let the Boat go out of the River. He said he did not want the boat stopped, that the claim would surely be paid, he said there were other like claims, but did not say any thing about Bolles (Plaintiff) the declarations of Simpson & Sabel Fisher were objected to by defendant, which objection was overruled and the same

were permitted by the Court to go to the Jury as evidence only against the party making them and the Court decided that the declarations of Simpson and Sabely Fisher were not evidence against William Fisher but the declarations of Simpson were evidence against him only & the declarations of Sabely Fisher were not evidence against William Fisher but were evidence against Sabely Fisher alone to the ruling of said Court in overruling said objection & in permitting said Evidence to go to the Jury the Defendant then & there excepted. Afterwards Witness presented said Note to William Fisher and told him what Sabely had told me - he replied that Sabely was not at home & told me when he would be at home. He made no objection to the note & said he had given Simpson money to pay it and it would be paid. Afterwards said Sabely & presented the notes to him & he declined paying it. He said they & Simpson had run the Harding on joint account for two seasons & had made money & that they were pleased with Simpson that they then wished to build a new boat & they put in the old Boat at the time I told him we intended to attack the Boat I think it was at Peoria laden with Fisher's produce and bound for Saint Louis. I think this was late in the fall. Fisher went down on the Boat & sold her for 7500\$ as he told me. The last conversation with Sabely was in fall of 1855. he told me they had advanced considerable money to Simpson & had taken mortgages to secure themselves. He said as suit had been commenced by plaintiff it would be better for both of us to await the event of this suit. Sabely Fisher never denied the liability of the Fishers for debts contracted by Simpson in building the Steam Boat Lacon. Josiah Le Simpson testified that the Boat Captain E. Harding was torn up in 1855. don't know but supposed she was owned by Sabely & William Fisher. Simpson & Fishers run it two seasons as partners. My brother contracted with plaintiff to work for himself and Sabely & William Fisher in Spring of 1855, to work as engineer during the season at \$75. per month, he commenced in first part of April and worked until late in the fall perhaps in December. He was employed as engineer and worked faithfully. They were running the Harding when the Contract was made. Plaintiff was employed as first engineer. The Boat was owned by the Fishers. My brother run it & after

paying expenses. they were to divide the profits. Some portions of the Harding were put into new Boat. The Boilers were got from St. Louis & came marked Fishers & Simpson. My brother told me that the Fishers were in partnership with him. This Evidence objected to by defendant & the objection was overruled by the Court to which ruling of the Court & the declarations of Simpson admitted against him only and not as evidence against William Fisher the defendant. Then & there excepted. The Fishers knew of the Boat being built. William Fisher was down three times during the summer & named the boat. They advanced Money to my brother Bolles worked on the Boat the year before, knew of my brother paying money to Fisher on account of profits of Harding in 1853 or 1854.

On Cross examination the witness stated the Boat Harding made 2 trips one to Sasalle & one to Browning after lumber for the new Boat these trips were made after the 31st March. Dont know whether the Boat was delivered by the Fishers to Simpson under their Contract or not. I have seen my brother paying Bolles money at several times - Once \$20 & at two other times \$5 or \$10 each. Heard Bolles dunning my brother for money & he said he had none. My brother paid me some dont know how much say \$150, my brother went after the Boilers to St Louis - Plaintiff next introduced E. Morrison who testified that he knew Bolles. He was an engineer - Saw him on the Harding. The Harding was owned by Wm & Isabel Fisher. He was a good Engineer. the wages of 1st Engineers are \$125 & 2nd Engineers \$75. per month. Alexander Hawthorne testified that he is a lumber Merchant. I furnished lumber for Lacon in 1855. understood that Fisher & Simpson were owners without knowing much about it. My bill I sent to Lacon for collection. It was about \$125. I afterwards received a check for \$100, signed by Fisher & Co on Central Bank. the bill was made out in name of Simpson & Fisher. E. G. Johnson testified that he had for collection a claim for Lucas & Simonds against St Boat Lacon. I took the bill to Simpson. he told me to wait a few days & I would receive a draft of Fisher & Co. I waited & received the draft, dont know from whom or how, I received the Draft.

but think that I received it by letter. It was drawn by Wm Fisher & Co. George R. Lee testified that Plaintiff worked on Harding & continued at work until I left in September 1855. Simpson employed me. Never saw Fisher there. I commenced on the Lacon I think the last of April or 1st of May and during that time Plaintiff worked faithfully. Simpson paid me. I never had any conversation with Fisher but had assurance that they would see me paid. Boilers were marked Fisher & Simpson or Simpson & Fisher Peoria. During the time I worked, I understood I was working for Simpson & Wm & Sabel Fisher. I should not have worked there if I had not believed the Fishers were liable for my work which I worked for them. The Fishers sent down the Fox to have her repaired & in repairing her, she belonged to the Fishers. Simpson went after the Boilers don't know that Fishers knew anything about the Boilers. Thomas Scholey testified that he was of firm of Scholey & Floyd. Bolles was Engineer for the Boat & we did the work for the Boat Lacon on his order. Josiah L. Simpson recalled & testified that his brother ran the Lacon from the time she was launched until as she was sold. That he run her in partnership with Sabel & William Fisher. That the Lacon was sold in the Spring or Summer of 1856 by Sabel Fisher for seven thousand five hundred dollars. That after she was sold, his brother continued to run her up in Kansas. That the Contract was made with Plaintiff while Simpson & the Fishers were running the Harding as Partners. The Plaintiff closed his case. The defendant introduced & read in Evidence a Contract dated March 31. 1855. between Fisher & Co & Joshua Simpson.

(Copy)

This Contract made the 31st day of March A.D. 1855. between Wm Fisher & Co of one part and Joshua Simpson of the other part Witnesseth that said Simpson hath this day agreed and hereby agrees to build a new hull for the Steam boat Capt E. Harding (now owned by said Wm Fisher & Co) and have the same ready furnished and completely rigged with all necessary tackle and furniture for running on or before the first day of July next. The said Simpson agrees to furnish all the materials for said hull at his own expense and build the same in a good

Substantial workmanlike Manner, for the building of which hull
 and for removing the furniture, tackle Machinery &c from off the
 Said Steamer Capt E. Harding to and upon the Said new hull
 Said Wm Fisher &c agree to pay said Simpson the sum of \$2500
 in Manner hereinafter specified The said Wm Fisher &c are
 now owners of one half the barge Orleans and also of the barge
 or flat boat "Cbe" Said Simpson hereby agrees to sell to Said
 Wm Fisher &c one eighth of each of said flats or barges so that
 they, said Wm Fisher &c will own five eighths of each of them
 and for said eighths of said flats or barges Said Wm Fisher &c
 agree to pay said Simpson the sum of \$77.77 in Manner herein
 after specified Said new hull shall be from one hundred and
 twenty to one hundred and twenty five feet in length and from
 eighteen to twenty feet beam, and the hold to be not less than three
 and a half feet, Said hull is to be planked on the sides with
 white or burr oak plank two inches thick, and on the bottom with
 two and a half inch white or burr oak plank. It is agreed
 that when Said new hull is completed Said Wm Fisher &c shall
 deliver to said Simpson the Said Steamer Capt E. Harding as
 she now is at the sum of \$2200, 00, which last mentioned sum
 shall be a payment of that amount on the said sum of
 \$2500, 00. The said Steamer Capt. E. Harding and all its
 rigging, tackle and every thing thereon to belonging shall belong
 to said Wm Fisher &c until said new hull is completed
 and delivered to them as aforesaid. Said Simpson agrees
 and said Wm Fisher &c hereby give their consent that when
 said new hull is ready for the same, Said Simpson may
 remove the tackle furniture, Machinery and every thing belong-
 ing thereto except her hull to and upon the said new hull,
 and Said Simpson agrees in consideration of the said sum
 of \$2500, to cut down haul out and caulk and thoroughly
 repair the present hull of the said Steamer Capt E. Harding
 so that the same can be used to advantage for a barge and
 said Wm Fisher &c agree to pay to said Simpson the balance
 which will be due to him after he so receives said Machinery
 &c now belonging to said Steamer "Capt E. Harding" for the
 aforesaid sales and for doing the aforesaid work, which balance
 shall be the sum of \$815.27 which last mentioned sum shall

include and be a payment of the aforesaid sum of \$47.47 and when said new Hull is completed and the Machinery Tackle &c are removed from said "Capt E. Harding" and said new hull is in complete order for running and the same is delivered to said Wm Fisher &c as aforesaid, the said Wm Fisher &c shall be the owners of five eighths of all the aforesaid flats or barges and of said new hull her rigging, tackle, Machinery and every thing belonging to said boat and said Simpson shall be the owner of three eighths of the same property. And it is further agreed that when said new boat is delivered as aforesaid and the same is ready for running the same shall be run by said Simpson as a partner with said Wm Fisher &c until the first day of December in the year 1856 during the boating and towing season, and he said Simpson taking the Charge and Care of said boat when she is laid by, said Simpson shall receive for his services in running said boat the sum of one dollar and fifty cents per day to be taken out of the earnings of said boat and after deducting all expenses in running said boat, the said Wm Fisher &c shall receive five eighths of the net proceeds thereof and the said Simpson three eighths of such proceeds. Said Simpson shall settle and render an account of the proceeds of said boat and her actings and doings as often as once in each month if practicable. Said Wm Fisher &c shall have the privilege of putting a clerk on said boat if they desire so to do at the expense of said Boat. if either said Wm Fisher &c or said Simpson shall desire to transfer their respective interests in said boat each party shall give the other party the first chance of buying such interest. Whenever said boat shall be laid by the same shall be done at Lacon Ill. Said Simpson is to continue running the said "Capt E. Harding" as heretofore under his previous Contract until her Machinery is needed for the said new boat.

Witness our Hands the day and year first above written

(Signed) Wm Fisher &c

(Signed) Joshua Simpson

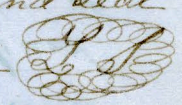
24 Chapman testified that he was present when the said Contract was made the Contract was made about its date I was Book-keeper for Wm Fisher & Co There was no partnership between Simpson & Fisher that I know of. Simpson never claimed in my presence that Fisher was partner or liable for any of the debts of the Boat for building. He came & had a settlement with Fisher & Co after the Boat was sold This is a copy of the account as settled at the time
 Joshua Simpson

In a/c with Wm Fisher & Co

1855					
June	15	To and due us on "Capt E Harding Running a/c"	154	64	
July	20	To light Draft in J. B. Venable & Co	500		
Sept	24	" Cash on a/c	237		
Oct	17	" Draft in D. H. Bailey, Pekin, Ills	563		
Nov	7	" Cash paid by W. F.	25		
	22	" " on a/c	1200		
Dec	7	" Invoice of Boilers &c at St Louis	1068		
1856 April	1	" Cash on a/c	300		
	12	" 60 days Draft on Fishers & Chapin, Boston 336. 63.			
		60 days do do do 600.	936	63	
	31	" Amt of old lumber Bill & old accounts belonging to "Capt Harding" R a/c	142	99	
	"	" our 5/8 of Hardings Hull sold by J. Simpson	187	50	
May	1	" Cash for Balance	421	93	\$5736 69
1855		Ct			
Sept	15	By Boilers & fixtures sold Wm Marshall by W & Co	600	00	
Nov	7	" J. Simpsons Note 1 year date	2000	00	
1856 May	1	" Bill of repairs on Steamer "Iron"	321. 42		
		" Amt allowed for building Steamer "Lacon" as per Contract 815. 27	1136	69	

Note dated Mch 19/56, 1 year 2000 00 \$ 5736 69 which account was then read to the Jury. Simpson said he thought the old man ought to allow him more for the Boat as it was larger than the Contract specified - but nothing was said about partnership. The new Boat was at first to be called Bison but its name was afterwards changed to Lacon. The defendant here offered & read in evidence two chattel mortgages from Simpson to Fisher & Co as follows:

" Know all men by these presents, That I, Joshua Simpson of Peoria of the County of Peoria in the State of Illinois, of the first part, for and in consideration of Two thousand dollars to me in hand paid by William Fisher of Lacon of the second part, (the receipt whereof is hereby acknowledged) do hereby Grant, Bargain and Sell unto the said party of the second part, his heirs and assigns the following Goods and Chattels, to wit: One Steam Boat, lately built by said Simpson at Peoria, and by agreement of parties to be called "Bison" and now lying at the landing in said Peoria To have and to hold, all and singular the said goods and chattels unto the said party of the second part his heirs and assigns forever; And the said party of the first part, for himself, his heirs, executors and administrators, doth hereby covenant to and with the said party of the second part and his assigns, that he is lawfully possessed of the said goods and chattels, as of his own property; that the same are free from all incumbrance, and that he will Warrant and Defend the same to him the said party of the second part and his assigns, against the lawful claims and demands of all persons; Provided Nevertheless, That, if the said party of the first part, his heirs, executors and administrators, shall well and truly pay to the said party of the second part, his heirs, executors, administrators or assigns for the Redemption of the above bargained goods and chattels the just and full sum of Two thousand dollars on or before the 1st day of November next with interest according to the tenor and effect of a certain Promissory Note given by the said party of the first part to the said party of the second part bearing even date herewith then this Mortgage to be void, otherwise to remain in full force and virtue; And Provided further, That until default made by the said party of the first part in the performance of the Condition aforesaid, it shall and may be lawful for him to retain the possession of the said Goods and Chattels and to use and enjoy

26 the same, but if the same or any part thereof shall be attached or claimed by any other person or persons at any time before payment, or if the said party of the first part shall attempt to sell the same without the authority and permission of the said party of the second part, in writing expressed, then it shall and may be lawful for the said party of the second part or his assigns, to take immediate and full possession of the whole of said goods and chattels to his and their own use. In Witness Whereof the said party of the first part has hereunto set his hand and seal this 7th day of November 1855. Joshua Simpson 
State of Illinois Peoria County Ill. This Mortgage was acknowledged before me by Joshua Simpson this 7th day of November A.D. 1855.

Dennis Blakeley 
Justice of the Peace Peoria County
Recorded in Book A page 641. D.B.

State of Illinois }
Peoria County. } Records office

I, Jacob Gale, Clerk of the Circuit Court in and for the County of Peoria in the State of Illinois, and ex officio recorder of deeds in said County, do hereby certify that the annexed Mortgage was filed for record in my office on the 7th day of November A.D. 1855, and has been duly recorded with the accompanying Certificate on pages 129 & 130 in Volume 2, in said Records office. In Witness Whereof I hereto set my hand and affix the seal of the said Circuit Court at my office in Peoria this 17th day of December A.D. 1855.



Jacob Gale Clerk & Recorder

"Know all men by these presents, That I Joshua Simpson of Peoria of the County of Peoria in the State of Illinois, of the first part, for and in consideration of Two thousand dollars to me in hand paid by William Fisher & Co of Lacon of the second part, (the receipt whereof is hereby acknowledged) do hereby Grant, Bargain and Sell unto the said party of the second part, his heirs and assigns, the following Goods and Chattels to wit; One steam Boat called "Pison" now building in the lake at the City of Peoria Peoria County Illinois. To have

and to hold, all and singular, the said goods and Chattels unto the said party of the second part, his heirs and assigns forever; And the said party of the first part, for himself, his heirs, executors and administrators doth hereby covenant to and with the said party of the second part and his assigns, that he is lawfully possessed of the said goods and Chattels as his own property; that the same are free from all encumbrance, and that he will Warrant and Defend the same to him the said party of the second part and his assigns, against the lawful claims and demands of all persons, Provided Nevertheless, That if the said party of the first part, his heirs, executors and administrators shall well and truly pay to the said party of the second part, his heirs, executors, administrators or assigns for the Redemption of the above bargained goods and chattels, the just and full sum of Two Thousand Dollars on or before the 19th day of March next, with interest, according to the tenor and effect of a certain Promissory Note given by the said party of the first part to the said party of the second part bearing even date herewith, then this Mortgage to be void, otherwise to remain in full force and Virtue; And Provided Further, That until Default be made by the said party of the first part in the performance of the Condition aforesaid it shall and may be lawful for him to retain the possession of the said goods and chattels, and to use and enjoy the same, but if the same or any part thereof shall be taken on execution, attached or claimed by any other person or persons at any time before payment, or if the said party of the first part shall attempt to sell the same without the authority and permission of the said party of the second part, in writing expressed, then it shall and may be lawful for the said party of the second part or his assigns to take immediate and full possession of the whole of said goods and Chattels to his and their own use. In Witness Whereof the said party of the first part has hereunto set his hand and Seal this 19th day of March A.D. 1856.

Joshua Simpson

State of Illinois Peoria County: ss. This Mortgage was acknowledged before me by Joshua Simpson this 19th day of March 1856.

Thos. Daugherty Justice of the Peace Peoria County
 State of Illinois }
 Peoria County }

Recorder's office

28 J. Jacob Gale, Clerk of the Circuit Court in and for the County of Peoria in the State of Illinois, and ex officio recorder of deeds in said County, do hereby certify that the annexed Mortgage was filed for record in my office on the 19th day of March A.D. 1856. and has been duly recorded with the accompanying certificates, on page 180 & 181 in book Vol 2. in said recorders office. In Witness Whereof I secretly set my hand and affix the seal of the said Circuit Court at my office in Peoria, this fifth day of April A.D. 1856.



James S. Parkman Dpty Clerk and Recorder
For Jacob Gale Clerk & Recorder

Mr. Chapman further testified that his notes of \$2000 each specified in the account from Simpson to Fisher & Co were not paid about a year ago when witness left. The notes had been sent to Weston Missouri for collection. No other accounts were kept between said parties. The Harding accounts were settled at same time with the accounts for building the new Boat.

On Cross examination he stated that Simpson ran the Harding in 1854 as partner of Fisher & Co Fisher & Co furnished the Boat & Simpson ran the Boat & after paying all expenses the profits were divided between them equally. The old Boiler was not put in new Boat Fisher & Co paid for the new Boilers about \$1100 I think the old boilers were sold by Fisher for \$600. The new boat was I think 160 feet long Simpson & the Fishers run the Harding in the Spring of 1855 cannot tell how long they run it that season cannot tell whether they continued as late as July 1855. They were partners in running the Harding & Plaintiff worked as engineer for the Harding all the time Simpson run her William Fisher went down frequently to see about new boat. The new boat cost several thousand dollars more than the contract price. She was built longer, wider, & finished with a Cabin State rooms.

+ N. H. Purple testified that as attorney for Fisher he advised him to pay Scholey & Floyds account for the reason that the Boat was liable under the Statutes for Mechanics Lien although

29 I advised him that he was not liable personally on the Contract. Purple also stated that at the time he knew nothing about the running of the Harding & knew nothing about the facts except as stated in the Contract & that he told Fisher the boat was liable for the debts and he gave his opinion in June 1856. This was all the evidence. The Court then gave the following instructions to the Jury

1. If the Jury believe from the evidence that the plaintiff performed labor for Simpson & the Fishers the parties defendants to this suit, the Jury should find for the plaintiff the value of such labor as proved. The Plaintiff has only by a preponderance
- 2 of the evidence to show that he performed labor for the benefit of Simpson & the Fishers the parties defendants to this suit
- 4, If the Jury believe from the evidence that the Fishers held themselves out to the plaintiff and others to be joint owners or partners with Simpson in building the boat or if said Fishers put it in the power of Simpson to induce the plaintiff to believe that Simpson & the Fishers were joint owners or partners in the building said boat and if the Jury should further believe that Simpson did so represent to the plaintiff & the plaintiff relied on such representation & did labor on said Boat the Jury should find for the plaintiff for such labor -

8 If the Plaintiff labored for the defendant Simpson & the Fishers the defendants in this suit on the Steamer E Harding the Jury should find for the plaintiff for such labor.

9 If the jury shall believe from the evidence that the defendants held themselves out as partners in the building of the Boat and the Plaintiff did the work and labor for the defendants and relied on them for his pay and was not employed by Simpson one of the defendants alone upon his responsibility the defendants are liable although in fact they were not partners in the building of the Boat.

To the giving of which the defendant there & then excepted. The Court gave the following instructions for defendant

- 1st That the Contract read in Evidence shews that there was no partnership or joint liability on the part of the said Fishers and the said Simpson for the building of the boat "Laccon"

2nd. ³⁰ That the declarations of Simpson as to his being a partner with Fishers are no Evidence to charge the Fishers in this action.

3rd. That unless the Fishers have for a good or valuable Consideration agreed to pay the Plaintiffs claim, or that they were partners with Simpson during the building of the boat and while the Plaintiff was at work thereon, the Plaintiff cannot recover.

4th. That payment of any bill or bills under advice of Counsel by way of compromise is no Evidence of the Existence of any partnership between Fishers and Simpson; and that especially, the payment of any such claim after all the work on the boat was done, would be no evidence of a contract on the part of the said Fishers to pay any thing to the Plaintiff.

If the Jury believe from the Evidence that Simpson was not in fact a Copartner with the Fishers in the building of the Steamboat Lacon - then before they can be made Liable as Copartners with Simpson for the payment of the Plaintiffs claim - the Plaintiff must show that the Fishers permitted and consented to Simpsons representations that they were partners (knowing of such representations) and that the Plaintiff relied upon that fact and was misled thereby.

The evidence given to the jury of the declarations of Joshua Simpson and Sabez Fisher as to their being partners is not evidence against William Fisher. Therefore unless the jury shall believe from the evidence independant of the declarations of Joshua Simpson and Sabez Fisher that William Fisher was a partner of said Simpson and said Sabez Fisher the Jury will find for the defendant. Unless the jury shall further believe from the evidence that said defendant William Fisher held himself out as a partner and the plaintiff did the work and labor and at the time he performed the work he relied upon the parties as being partners."

The Jury brought in a verdict for plaintiff for \$535.00 upon which the defendant moved the Court for a new trial upon the

following reasons

State of Illinois }
County of Peoria }

Peoria Circuit Court
March Term Ad. 1858.

Boles

Simpson, Fisher ^{vs} & Fisher

[Signature]

And the said defendant William Fisher, comes and moves the Court to set aside the verdict rendered in said Cause and grant a new trial therein for reasons:

1. Said verdict is against law.
2. Said verdict is against evidence
3. Said verdict is against the weight of evidence given on the trial of said Cause
4. The Court permitted material evidence to go to the Jury, which was improper and was prejudicial to the rights of the defendant William Fisher
5. The Court gave improper instructions at the request of the plaintiff and which were injurious to the rights of the defendant William Fisher
6. The damages given in said verdict are excessive

Pratt & Manning

for deft Wm Fisher

Which Motion the Court overruled & rendered Judgment for plaintiff upon said verdict to which ruling of the Court in overruling said Motion & in rendering said judgment the defendant then & there excepted & prays the Court to sign & seal this his bill of exceptions which is done

E. N. Powell

[Signature]

State of Illinois }
Peoria County }

I, Enoch P. Sloan, clerk of the Circuit Court of the County of Peoria in the State of Illinois, do hereby certify the foregoing is a full and complete transcript of papers filed and of the proceedings of our said Court in the cause wherein Henry Boles is plaintiff and William Fisher impleaded with Joshua Simpson & Labez Fisher is defendant as the same appears on file and of Record in my office

Given under my hand and the seal of said Court at my office in Peoria this 26th day of March in the year 1858

Enoch Sloan, clk

Henry Bowles	}	In Supreme Court April June 1858.
Joshua Simpson		
William Fisher		
Jobey Fisher		

Appeal from Price

And Now comes the said
Defendant William Fisher who is appellant in
this cause, and says that in the records and
proceedings and in the rendition of the judgment
aforesaid there is Error in this To wit:

- 1st Said circuit court Erred ^{in sustaining said Indict} because the
Indict was against poor Evidence
- 2nd. The Court permitted improper improper
Evidence to be given to the Jury on the
Part of the Appellor
3. The Court gave improper instructions as
asked by the Plaintiff.
4. The Court Erred in Overruling the motion
for a new Trial

For which and other Error in said
Record the defendant prays that said
Judgment may be reversed set aside and
wholly for nothing as tenured

M. P. Triple
Atty for Def.

33 And the Defendant in Error comes
and says that in the above moves
and in the rendition of judgment
in this cause there is no error.
By leave
Atty for App't
Ben

126 \$ 12.25

William Fisher

by

Henry Bowles

Transcript & argu-
ment of errors.

Filed April 15, 1858

L. Leland
Clerk

William Fisher }
vs } In the Supreme
Henry Boles } Court

Defendants Brief and Points

- 1 The printed abstracts filed are not correct

The Court below only allowed the declarations of Jubey Fisher and Joshua Simpson to go as evidence against the party making them

And the Court so expressly decides each time such declarations were proved

- 2 The abstract does not show the instructions asked by Wm Fisher
It is submitted that the instructions should be taken & ~~submitted~~ considered together and if so the issue was correctly given by the Court

The Evidence shows (See Cross Examination of Chapman record page 28) that William Fisher Jubey Fisher and Joshua Simpson run the Steam Boat Harding, as partners during the year 1854 and in 1855 down to the time she was broken up

Boles worked for the defendants below during all the time Fisher ran the Hearding. He was employed during that time as Engineer.

In the Spring of 1853 while Simpson Juby Fisher and Wm Fisher were running the Hearding in partnership, Simpson made a contract with Boles to work for the partners during the season of 1853 - Boles was to work for \$75 per month as Engineer.

See testimony of Josiah S. Simpson pages 19 & 20 of record.

Simpson also states that Wm Fisher Juby Fisher & Josiah Simpson ran the Hearding as partners during the years 1853, 1854 & 1855 or long as she continued to run, and while they were so running the Hearding Boles made the contract & performed it faithfully.

See Josiah S. Simpson's deposition pages 19 & 20 See also George L. Lee deposition page 21 - The contract between Fisher & Co & Simpson provides that Simpson is to continue running the Hearding - See Bottom of record page 23

No notice was given to Boile of any change in the relation of the parties

He labored two years for them while they held themselves out as partners. While they were partners in fact - He commenced in the spring of the third year (1855) and while the partnership continued continued to work for the firm for the season

He performed his undertaking and the Fishers cannot escape from their liability because of some private arrangement between themselves about the building the Boat -

3 Scammorn 138

3 In addition to the foregoing while the Boat Mending was being built - William Fisher was done to see it - Changed the name, had it built - larger, wider & a cabin put on & furnished - The Boilers came marked Fisher and Simpson. Part of the Boilers sold to Floyd & credited on his Bill against Fisher and Simpson

Bills were presented from time to time & no objection ever made

by Fisher to the authorities & raised
and claimed by Simpson

Is not clearly
established that William Fisher
and Jubey Fisher placed Simpson
in a position to make it believed
& understood that they were part-
ners in building the Saco

They never disputed
the fact - until they ran the Boat
out of the state & converted her
into money

The court is requested to exam-
ine the record ^{as} ~~and~~ the abstract
filed does not - present the case
fully or clearly

Grove

for Sept

126-38
William Fisher

vs
Henry Bales

Deft's Brief

126-~~38~~ 38

William Fisher

vs

Henry Bowles

126

12529

~~1858~~

Repaid