

13482

No. _____

Supreme Court of Illinois

Stevens.

vs.

Irvin.

71641  7

STATE OF ILLINOIS

SUPREME COURT,

Third Grand Division.

No. 290.

Chapman
75
Chapman

1867

James M. Irwin
vs Transcript
Isaac P. Stevens

OK'd per 87 35

1
State of Illinois
So Daviess County
14th Judicial Circuit - Pleas in the Circuit Court
began and held within and
for the County of So Daviess aforesaid on the third
Monday in the month of May A.D. 1860 before
the Hon^{ble} Benjamin R. Sheldon Judge of the
said fourteenth judicial Circuit of the State
of Illinois
W. D. Meacham Prosecuting Attorney
John A. Conlee Sheriff
Thos. R. Rowley Clerk.

James W. Irvin
vs
Isaac P. Stevens } Appeal
Be it remembered
that heretofore to wit. on
the 28th day of November A.D. 1859 the Defendant
above named filed in the office of the Clerk
of the Circuit Court in and for said County
his appeal Bond which is in the words and
figures following To wit-

Know all men by these presents that we
Isaac P. Stevens and John A. Rawlins. are
held and firmly bound unto James W.
Irvin in the penal sum of ~~one~~ Two hundred
and twenty Dollars for the payment of which

3

Upon the filing of which there was issued
out of the office ^{of the clerk} of said Circuit Court
a Supersedeas which is in the words
and figures following to wit:

State of Illinois }
Jo Daviess County } set The People of the State
of Illinois. To Nesbit
Baughen a Justice of the Peace and Thomas
McNulty a Constable in and for said
County Greeting Whereas in a certain
suit lately depending before you the
said Nesbit Baughen wherein James
McIrvin was plaintiff and Isaac P. Stevens
was defendant judgment has been
rendered in favor of the said James Mc
Irvin for the sum of ~~Thirty~~ Eighty nine
dollars and Thirty four cents & costs
as by the ~~costs~~ transcript of the said judg-
ment from the Docket of ^{the} said Justice
filed in the Clerk's office of our Circuit
Court in and for said County by the
said Isaac P. Stevens in this behalf
appears. And whereas the said Isaac
P. Stevens has taken an appeal from
the said judgment and has given
Bond with security to the said James
McIrvin for the due prosecution thereof
according to law which said bond

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is filed as of Record in the said Clerk's office. We therefore command and enjoin you the said Nesbit Baughen and Tho's McNulty, so being Justice and Constable as aforesaid, that you do entirely supersede and desist from proceeding any further in said suit. And that you do forthwith suspend all proceedings in relation thereto, and cease from molesting the ^{said} Isaac P. Stevens in any wise on that account until the said Circuit Court shall make ^{other} order to the contrary. And this you are in no wise to omit - at your peril.

To the Sheriff of said County to execute.
Witness Wm Rowley Clerk of the Circuit Court of Cook County Illinois
at Galena this 28th day of November
AD 1859

Seal

Attest Wm Rowley Clerk

Endorsed

Executed the within Writ by reading the same to the within named Nesbit Baughen & Thomas McNulty this 28th day of Jan'y 1860

Shiff fees \$3.60

John A Conlee Sheriff

By S R Miner Deputy

The summons issued in the above entitled cause is in the words and figures following To wit

5. State of Illinois }
 Jo Daviess County } The People of the State of Illinois
 to the Sheriff of said County Greeting
 Whereas in a certain cause lately pending before
 N. Baughner Esquire one of the Justices of the
 Peace within and for said County wherein
 James M Irwin is Plaintiff and Isaac
 P Stevens is defendant judgment was
 rendered by said Justice against the
 said Isaac P Stevens from which judgm-
 ent the said Isaac P Stevens has
 appealed to the Circuit Court of said
 County. We therefore Command you that
 you summon the said James M Irwin
 to be and appear before the said Circuit
 Court on the first day of the next term
 thereof to be held at the Court House in
 Galena on the 2nd Monday in March
 next at ten o'clock in the forenoon and
 abide by and perform the judgment of said
 Court in the premises

Witness W. R. Rowley, Clerk of said
 Court and the seal thereof at Galena
 in said County, this 28th day of
 November A.D. 1859.

W. R. Rowley Clerk
 Upon which summons is endorsed the
 following return. To. Wit:

5 State of Illinois }
 Jo Daviess County } The People of the State of Illinois
 to the Sheriff of said County Greeting
 Whereas in a certain cause lately pending before
 N. Baughner Esquire one of the Justices of the
 Peace within and for said County wherein
 James M Irwin is Plaintiff and Isaac
 P Stevens is defendant judgment was
 rendered by said Justice against the
 said Isaac P Stevens from which judgm-
 ent the said Isaac P Stevens has
 appealed to the Circuit Court of said
 County. We therefore Command you that
 you summon the said James M Irwin
 to be and appear before the said Circuit
 Court on the first day of the next term
 thereof to be held at the Court House in
 Galena on the 2nd Monday in March
 next at ten o'clock in the forenoon and
 abide by and perform the judgment of said
 Court in the premises

Witness W. R. Rowley, Clerk of said
 Court and the seal thereof at Galena
 in said County, this 28th day of
 November A.D. 1859.

W. R. Rowley Clerk
 Upon which summons is endorsed the
 following return. To. Wit:

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State of Illinois }
 Jo Daviess County } I have duly served this writ by
 reading the same to the within named
 James M Ervin this 27th day of Jan Ad 1860
 John H Conlee Sheriff
 By S. K. Miner Deft

The Transcript sent up by the Justice of the
 Peace is in the words and figures following
 To wit:

Transcript of proceedings lately
 had before Nesbitt Baughen a Justice of
 the Peace in and for the County of Jo Daviess in
 the State of Illinois between James M Ervin
 plaintiff and Isaac P Stevens defendant
 State of Illinois

Jo Daviess County } The People of the State of
 Illinois to any Constable of
 said County; You are hereby commanded
 to summon Isaac P Stevens to appear
 before me at my office in Warren, on the
 4th day of November Ad 1859. at 10 O'clock
 A.M. to answer the complaint of James
 M Ervin for a failure to pay him a certain
 sum not exceeding One hundred Dollars
 and hereof make due return as the law directs
 Given under my hand & seal this 27th day of Oct
 Ad 1859.

Nesbitt Baughen Deft
 Justice of the Peace

7 Upon which summons there appears the following
indorsement, Served by reading to the
within named defendant, J P Stevens. this
29th day of October 1859.

J. M. Sully - Constable

James M Irvin

vs

Isaac P Stevens

} Demand \$100

} Oct. 27th 1859 Summons Issued
returnable November 4th at 10

O'clock A M. and delivered to Const M Sully
to serve.

Nov 2nd Summons returned by reading the 29th of Oct 1859.

Subpoena issued on part of Plff for Chas McCarty
Hannah McCarty. Rich Quinn & James Murray

Nov 2nd Subpoena returned served on James
Murray & Hannah McCarty. Rich & Quinn
& Chas McCarty not found.

Nov 4th Suit called and continued by consent
of parties to Nov 10th at 9 O'clock A M. Two subpoenas
issued on part of Plff.

Nov 10th Subpoenas returned served on James
Murray, C McCarty, H McCarty, & H Copperham.
Rich Quinn not found. Also served on
James Ranton & Geo. Downs.

Nov. 10th 1859. Parties appear and Plaintiff
declares on running account in his store
to date of & file Bill of Items
Defendant. Demurs to the Declaration

generally & specially for insufficiency. Demurrer overruled. Defendant pleads the general issue.

Evidence being introduced it is considered by the Court that the plaintiff have and recover of the Defendant the sum of Eighty Nine Dollars and Thirty four cents for his demand against the said Defendant, and Costs of Suit herein taxed at Eighteen Dollars and Seventy six cents.

A. Baughen C.P.

Bill of Costs

Justice fees

On Summons	18 ³ / ₄
Two Subpoenas	37 ¹ / ₂
Docket	12 ¹ / ₂
Continuance	12 ¹ / ₂
Two Subpoenas	37 ¹ / ₂
Judgment	25-
Six Oaths	37 ¹ / ₂
Transcript	25-
Total	206 ¹ / ₄

Constables fees

On Summons	\$ 1.75
Subpoenas	3.00
" "	6.33 ¹ / ₂
" "	85
Total	\$ 11.93 ¹ / ₂

Witness fees

Robt. Hall one day	\$.50
And McLaughlin two days	1.00
John Buckley two days	1.00
Wm Buckley two days	1.00
Nugh McCarney two days	1.00
James Ranton one day	.50
Total	\$ 5.00

9 State of Illinois }
 Jo Daviess County } J. P. Nesbitt Baugher a. Justice
 of the peace in and for said
 County. do certify that the foregoing Trans-
 -cript is truly copied from the files and
 books of my office and that herewith enc-
 -losed are all the papers and documents
 belonging to said suit. In witness whereof
 I have hereunto set my hand this 2nd day
 of December A.D. 1859.

Nesbitt Baugher J. P.

Endorsed

Filed Decr 16th 1859

W. H. Rowley clk

And afterwards to wit on the 23rd day of May
 A.D. 1860 at the May Term A.D. 1860 of said Jo
 Daviess County Circuit Court in the record
 of the proceedings thereof in said cause appe-
 -ars the following entry to wit-

James McIrvine }
 vs } Appeal
 Isaac P. Stevens }
 Now at this day came
 the parties by their Attorneys
 and upon issue joined thereupon came a jury
 of good and lawful men. To wit. Wm. Stainer
 James Grindy. Thomas Simpson. N. H. Myers.

Henry Brunninger W. L. Jackson James Matthews
John C. Maupin. John Horane. Wm Supton
James Talbert and D. H. Dildine who were
duly elected tried, and sworn, and after
hearing part of the evidence the further
consideration of this cause is postponed
until to morrow morning

And afterwards To wit on
the 24th day of May A.D. 1860 as yet of the
said May Term 1860 of said Jo Davies
County Circuit Court in the Record of
the proceedings thereof in said Cause
appears the following entry To wit:

James McArrin

vs
Isaac P. Stevens

} Appeal
Now at this

day, came again
the jury heretofore impaneled in
this cause and after hearing the
remainder of the evidence and the
arguments of Counsel retire to
consider of their verdict. And
after a short absence they return
into court with the following
verdict To wit: We the jury find the
issue for the plaintiff and assess his
damages at the sum of Eighty one Dollars

11
and thirty six cents and the Defendant
by his Attorney Moves the Court for a new
trial.

The Motion for a new trial filed by
the Defendant is in the words and
figures following To wit:

James M. Drinn } In Circuit Court of
vs } Jo Davie County at the
Isaac P. Stevens } May Term thereof Ad 1860

And the said defendant comes and
moves the Court for a new trial in this cause
for the following reasons. To wit:

1st The Court erred in admitting as evidence
the Books of the Plaintiff.

2nd The Verdict of the jury is contrary to the
evidence and contrary to Law and the
Instructions given by the Court.

3rd Because the verdict of the jury is manifestly
against right and justice. And for divers
other good and sufficient reasons.

J. A. Rawlins & J. P. Stevens
for Deft.

Endorsed

Filed May 28th 1860.
W. R. Rowley clerk

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And afterwards to wit on the Eleventh day of June A.D. 1860. as yet of the said May Term 1860 of said for David County Circuit Court. in the record of the proceedings thereof in said cause appears the following entry to wit.

James McIrvin

vs

Isaac P. Stevens

} Appeal

Now at this day came on to be heard the motion heretofore filed by defendant by his Attorney for a new trial. Which motion after argument by Counsel is overruled by the court; to which the defendant by his counsel excepts. It is thereupon considered by the court that the plaintiff have and recover of the defendant the sum of Eighty-one Dollars and thirty six cents. that being the amount heretofore assessed by the Jury in this cause together with his costs by him about his suit herein expended. And that he have execution therefor. And the Defendant prays for an appeal to the Supreme Court which is granted. Conditioned that he enter into and file with the clerk of this Court an appeal Bond properly conditioned in the sum of One hundred

13 and fifty Dollars. with either Cyrenus B Denis or Seth Partridge as surety within thirty days from this date, and by agreement of the parties by their attorneys. It is ordered that thirty days be allowed in which to settle a Bill of exceptions.

The Bill of Exceptions filed in the above entitled Cause is in the words and figures following To Wit:

James McSwain vs Isaac P Stevens } In the Circuit Court of
So Davis County of the
May Term AD 1860

Be it remembered that at said term of said Court came on to be heard this cause before the Hon^{ble} Benjⁿ R Sheldon and a jury. And the plaintiff to support his said cause, called as a witness one Robert Hall, who having been duly sworn, testified that he then was and had been for more than one year a clerk in the said plaintiffs store at Apple River. That on or about the 20th day of May. AD 1859. said defendant brought Charles McCarty and James Murry in to the store of said plffs at Apple River. Plffs was not then in the store when deft came in with McCarty and Murry but came

14 in soon after. Deft. then said to Plff. these men are going to work on my diggings let them have what goods they want and I will see it all right. Plff. said to Deft. Well Mr Stevens if you say so it will be all right. I will do so. Witness thinks this was at dinner or supper time on the 20th or 21st day of May A.D. 1859. This was the only time witness remembers seeing Deft. and McCarty and Murry all in Plffs. store together. Said witness also further testifies that from or soon after that time said Charles McCarty began to get goods out of the Plffs. store same as are charged in the Plffs. bill filed in this cause against defendant as per Charles McCarty and said goods are charged to Deft. Stevens per McCarty on Plffs. books of account except a few items charged by witness himself who charged to McCarty and not to Stevens per McCarty & most of the articles charged in said bill. Witness put up and delivered to McCarty and knows of Plff. delivering others. McCarty kept a pass book in which those articles were entered. Witness also testified that these articles were charged on Plffs. books of accounts to Deft. mostly by Plff. and some few by witness. That Plff.

15 keeps honest and correct books. Witness had settled with plff by plff's books and found them correct. Plff was his own book keeper. Witness put up articles and called them off. and plff entered them on his books. Witness sometimes charged a few articles on the blotter or daybook but never on the Ledger.

On cross examination. that he never heard but the one conversation between Plff & Deft at which both Mary and McCarty were present. and he thinks that was on the 20 of May A.D. 1859. at dinner or supper time. Defendant then asked witness if he did not know that Plff made out the bill against McCarty (being the same bill as now filed in this cause. against the Deft) and tried to collect it from said McCarty. which question said witness did not answer. And also. said witness further said that Plff sent several dunning letters to Deft during the time McCarty was getting the goods. and about the time McCarty finally quit working on Deft's "Digging" Deft came into Plff's store and said to plff. I want you to

16 make out those mens bills separately as I cannot settle with them until I have your bills. That Plff did make out the bills of Mc Carthy Murry and Quinn and sent them by mail to Galena Witnep also testified that Murry did not stop long on the Diggins. Mc Carthy was there most of the time until last of Sept. 1859. or first of Oct. 59. The Plff. then called Mrs Mc Carthy who testified that she was the wife of Charles Mc Carthy That she knew that her husband got goods from the Store of plaintiff during the summer of 1859.. That she got some articles herself and that all were entered upon a pap book. kept by her husband and the hand writing of plaintiff and she knew nothing more about the matter The Plaintiff then called D. Swore and examined James Murry who testified he was the same James Murry who went with Def 1 & Mc Carthy into the Store of Plff as testified to by Robert Hall. That Stevens Mc Carthy & myself went into the Store of the plaintiff in the latter part of May 1859 when there Stevens said to Plff. These men are going to work on my digging if they want anything let them have it

7 and I will see it all right. That neither of them got anything out of the store of Plaintiff that day and that he (Witness) and McCarty when together never got anything from store of Plaintiff except a few crackers and some tobacco about 40 or 50 cents worth that he (Witness) McCarty and Deft were never in the store of Plaintiff together except that one time. That was in the morning and he (Witness) never heard but the one conversation between Plffs Deft about letting him & McCarty have goods on crop examination of said witness. The Deft asked him said witness this question: "Were not the words used by me to Plff. These men are going to work for me on my diggings. and if they want any powder and fuse or any thing of the kind for the diggings let them have it and I will see it all right?" To which Witness replied. yes. or words. Witness on re-examination by Plff said he could not be positive just what words were used by Deft. Witness further testified on cross examination that neither Powder or fuse or any thing of the kind was got by him and McCarty before he - Witness quit work on the diggings and that on leaving Galena ~~and~~ that morning

18 to go out to the diggings. they left in a hurry and forgot powder & fuse. & witness told deft. they would need powder & fuse. before he would come out to the diggings again & they went into plffs store to secure those articles if they should be needed. Witness & McCarty both quit work on the diggings in three or four days and the witness, did not return again but went down the river

Plff then called swore and examined Alexander Gordon who testified that he had settled his accounts with plff with & by plffs books of accounts and found it all correct. That plff kept honest and correct books of accounts.

Plff then called ^{swore} and examined as witness to prove the correctness of plffs Books of accounts Wankie and one Goldaborough each of whom testified substantially as did the witness Gordon

Plff also called swore and examined one John Trevartham who testified that he had dealt with plaintiff in his store and had settled with him but never by the Books of plff always by Bills made out by plff. Plaintiff then swore and

19 examined other witnesses who ~~said~~ testified
that in July of 1859. Deft borrowed ^{of Plff} a horse
and buggy and on his return Deft. said
to plff. the buggy is broken and you get
it repaired and I will pay for it. Plff did
get the buggy repaired. repairs were worth
14⁰⁰/₁₀₀ or 15⁰⁰/₁₀₀.

Plff then offered in evidence
his books of accounts. Plffs Atty read
from said books of accounts the
items got by McCarty & charged to Deft -
same as charged in the bill filed in
this cause as per McCarty as follows

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20 J P Stevens Es Chas M Carty
1859 Dr to J M Irvin

May 20	To	2 lbs Crackers 25¢ $\frac{1}{2}$ # Tobacco 25¢	50
" 28	"	$\frac{1}{2}$ bush Potatoes 45¢ $2\frac{3}{4}$ # Butter 28¢ 1. Pan 15¢	88
" "	"	Vinegar & Flour 41¢ Sugar 1 ⁰⁰ Tea 38¢	5 48
" "	"	Pepper 5¢ Cod fish 50¢ 1 tin Cup 5¢	60
" "	"	Coffee 25¢ Broom 25¢	50
" 30	"	1 paper Saleratus	10
" "	"	3 Bars Soap 25¢ 2 # Nails 12¢	37
" 31	"	1 # Nails	06
June 1	"	16 # Pork 2 ⁰⁰ 1 Tin pail 60¢ Garden seeds 10¢	2 70
" "	"	$\frac{1}{4}$ Bush Potatoes 80¢	20
" 3	"	4 # Butter 50¢ 3 doz Eggs 25¢ Spoon & Bowl 18¢	93
" 8	"	3 doz Eggs 25¢ Thread 5¢ Tobacco 25¢	55
" 10	"	$\frac{1}{4}$ # Pepper 20¢	05
" 11	"	1 Plug Tobacco 2¢	10
" 14	"	$\frac{1}{2}$ Gal Vinegar 25¢	12
" 15	"	3 doz Eggs 25¢ Corn meal 35¢	60
" 16	"	Butter 25¢ Spoon 5¢ Coffee 25¢	55
" 18	"	Plates 25¢ Spoons 10¢	35
" 20	"	100 # Flour	3 75
" 22	"	Eggs 20¢ Candles 20¢	40
" 23	"	Eggs 30¢ Salt & Starch 10¢	40
" "	"	Safety Pins	18
" 27	"	2 # Butter 20¢ Sugar 50¢ Mustard 10¢	80
" 28	"	$\frac{1}{4}$ # Tea 81 ⁰⁰	25
" 30	"	$\frac{1}{4}$ # Tea 25¢ Eggs 20¢	45
			<u>20.87</u>

21	Amount carried over	20 87
July 2 nd	To Coffee 25. Butter 20 ^c Soap 25 ^c Matches 10 ^c	80
" 4	" 1 Plug Tobacco	15
" 6	" Eggs 20 ^c Butter 20 ^c 1 wash board 5 ^c Rice 25 ^c	100
" 9	" Sugar	50
" "	" 1/2 Gal Vinegar	10
" 13	" 100 # Flour 3 ³⁰ Eggs 20 ^c Butter 20 ^c	3 90
" "	" Mending Boots	80
" 16	" 5 yds Cambric 50 ^c Silk 5 ^c Vinegar 12 ^c	67
" 19	" Coffee & Sugar 1 ⁰⁰ Dried Apples 25 ^c	1 25
" 20	" Tobacco & Hair Pins	15
" 23	" Soap Indigo & Salt 20 ^c 1 # Candle 40 ^c	60
" 27	" 4 # Butter 40 ^c Salt 5 ^c Tin Pan 20 ^c Eggs 20 ^c	85
" 30	" Soda & Salt 20 ^c Thread & Oil 15 ^c	35
Aug 2	" Butter 20 ^c 1/2 Gal Vinegar 10 ^c	30
" 6	" 2 yds Ticking 40 ^c Sugar 25 ^c Cask 20 ^c	85
" 8	" Soap 25 ^c Butter 25 ^c Coffee 25 ^c	75
" 9	" 2 Doz Eggs 10 ^c	20
" 10	" 5 yds Shirting 10 ^c	50
" 12	" Butter 32 ^c Eggs 50 ^c Fish 5 ^c	1 32
" 16	" Market Basket 60 ^c Sugar 25 ^c Coffee 50 ^c Saleratus 1 ^c	1 45
" "	" 10 Doz Eggs 1 ⁰⁰ Salt 5 ^c Butter 31 ^c	1 36
" 21	" Calico 1 ⁰⁰ Do 4 ^c Shirting 88 ^c Shirting 55 ^c	2 85
" "	" Socks 25 ^c Shirting 66 ^c Ribbon 30 ^c Tea 38 ^c	1 59
" "	" Cheese 20 ^c Sicorice 5 ^c	25
" 22	" Butter 44 ^c Eggs 50 ^c	94
" 31	" Eggs 30 ^c Cheese 20 ^c Salt 5 ^c Tobacco Soap 40 ^c	95
		45 30

22	Amount Carried Over	45 30
Aug 2	To 1 yd Shirting 15 ^c Eggs 20 ^c Sugar 25 ^c	60
" "	To 100 ^{lb} Flour	2 75
Sept 1 st	" 2 1/2 ^{lb} Butter	33
" 3	" Sugar	25
" "	" Glap 25 ^c Thread + silk 10 ^c Soap 5 ^c	40
" 5	" Calico 45 ^c Batting 10 ^c Shoes 70 ^c Thread 5 ^c	1 30
" 10	" Flannel 1 ²⁰ Shirting 44 ^c Sinen 75 ^c Sugar 1 ⁰⁰	3 39
" "	" Tea 75 ^c Eggs 20 ^c Thread 10 ^c	1 05
" 16	" 4 yds Flannel 2 ⁰⁰ Coffee 50 ^c Butter 38 ^c	2 82
		<u>5 819</u>

I P Stevens per Self + Charles M Carty + per R Quinn
To J M Irvin Dr

May 30	" Powder + Candles for digging	54
June 3	" Tins + Powder	37
" 6	" Tins + Matches	35
" 10	" 2 ^{lb} Candles 20 ^c	40
" 15	" 1 ^{lb} Do "	20
" 28	" 2 ^{lb} Do "	40
July 8	" 2 ^{lb} Do "	40
" 13	" Tins	20
" 16	" Do	40
" 18	" 2 ^{lb} Candles	40
Aug 2	" 2 ^{lb} Candles	40
" 6	" Tins	07
" 9	" Candles + Tins	50
" 12	" Tins	20
" 16	" Tins + Candles	1 85
" 17	" Matches	15
" 27	" Candles	35
Sept 1	" Dutch Henry order	95
" "	" Candles	35
	Repairing Buggy	1469
		<u>\$ 23 17</u>

23

J. P. Stevens for P. Quinn as per Exp Book Dr

May 25	"	1 Knife	60
" 28	"	3 Plugs Tobacco	15
June 1	"	Overalls 60 ^c 1 Jug 10 ^c	70
" 3	"	Combs Candy + Tobacco	35
" 10	"	Tobacco	15
" 11	"	Shirting 38 ^c Linen 75 ^c	113
" "	"	Thread 5 ^c Mustard 10 ^c	15
" 15	"	Shaving —	05
" 18	"	Tobacco —	15
" 30	"	" "	15
July 4	"	Candy	25
" 8	"	Tobacco	15
" 9	"	Pair Socks	25
" "	"	Hair Oil	15
" 13	"	Tobacco	15
" 16	"	1 Cravat	150
" 27	"	Plug Tobacco	05
Aug 29	"	Mending Boots	150
Sept 1	"	Tobacco	10
" 20	"	" "	15
" 29	"	Tobacco + Flask	30
Taken from McCarty Exp Book			\$ 8.13
Powder, Guns + Candles + Buggy			5819
Whole amount due from Stevens			2317
			89.44

24 Plaintiff here closed his testimony and the Defendant declined to offer any testimony whatever. And this was all the testimony offered or given in said Cause by either party. The Court then asked the Court to instruct the jury as follows

If the jury believe from the manner appearance and conduct of the witness Robert Hall while upon the witness stand and from his evidence that he was the Clerk of plaintiff in his employ and under his influence and control then the jury are at liberty to take these matters into consideration in determining what weight if any to be given to his testimony

If the jury believe that the witness Hall has corruptly sworn falsely as to any one material fact then the jury may reject the whole of his testimony as unworthy of belief

If the jury believe that James Murry was a fair witness one not under the influence & control of ~~the influence~~

25 plaintiff. then the Jury are at liberty
to believe the evidence of said Murry
and reject the statements made by
the clerk as untrue

If the jury believe from the evidence
of Mrs McCarty that the plaintiff charged
a large part of the account sued upon
to said Charles McCarty in a Pass Book
kept between said plaintiff & McCarty
that is a circumstance in favor
of the Defendant and tending to disprove
the statements of witness Hall.

Which the Court gave after modifying as
follows.

If the jury believe from the mannered app-
earance and conduct of the witness
Robert Hall while upon the witness stand
and from his evidence that he was
the Clerk of Plaintiff & in his employ
and under his control then the jury are
at liberty to take these matters into
consideration in determining what
weight if any to be given to his testi-
mony.

26

Given

If the jury believe that the witness Hall has corruptly sworn falsely as to any ^{one} material fact, then the jury may reject the whole of his testimony as unworthy of belief

Given

If the jury believe ~~from the evidence~~ that James Murry was a fair witness, one not under the influence & control of the plaintiff and had equal means of knowing what was said by defendant in the Store of Plaintiff then the jury are at liberty to believe the evidence of said Murry and reject the statements made by the clerk as untrue, provided they believe the testimony of Murry and disbelieve that of the clerk

Given

If the jury believe from the evidence of Mrs McCarty that the plaintiff charged a large part of the account now sued upon to said Charles McCarty in a Gap Book kept between said plaintiff & McCarty, that is a circumstance in favor of the defendant and tending to disprove the statements of the witness Hall

Def then moved for a new trial, as follows

27 James M Croin } In Circuit Court of So Dacot
vs } County at the May Term
Isaac P Stevens } thereof AD 1860

And the said Defendant comes and moves the Court for a new trial in this cause for the following reasons to wit:

- 1st The Court erred in admitting as evidence the Books of the plaintiff.
- 2nd The verdict of the jury is contrary to the evidence and contrary to Law and the Instructions given by the Court.
- 3^d Because the verdict of the jury is manifestly against right and justice and for divers other good and sufficient reasons.

J A Rawlins & I P Stevens
For Deft

Which motion the Court overruled and rendered judgment on the verdict of the jury. To all of which rulings and overrulings and judgments of the Court the Defendant excepts and prays this his bill of exceptions be signed by the Court. Which is done

(signed) Benj R Sheldon (Seal)

Endorsed.

Filed June 11th 1860

W. D. Rawley, clk

The Appeal Bond filed by the Defendant is in the words and figures following. To wit:

Know all men by these presents that we Isaac P Stevens and Seth Partridge of the County of Jo Daviess and State of Illinois are held and firmly bound unto James W Irwin of also the same County and State in the penal sum of One hundred ^{and fifty} Dollars lawful "Money" of the United States for the payment of which well and truly to be made we bind ourselves, our heirs executors and Administrators jointly severally and firmly by these presents. Witness our hands and seals this 25th day of June AD 1860

The conditions of this above obligation is such that Whereas the said James W Irwin did at May term of the Circuit Court in and for the County and State aforesaid recover a judgment against the above bounden Isaac P Stevens for the sum of Eighty one ³⁶/₁₀₀ Dollars. And costs of suit from which said judgment of said Circuit Court the said Isaac P Stevens has prayed for and obtained an appeal to the Supreme Court of said Court. Now if the said Isaac P Stevens shall duly prosecute his

29 said appeal with effect. And shall moreover
pay the amount of the judgment - costs,
interest - and damages rendered and
to be rendered against him in case
said judgment shall be affirmed in the
said Supreme Court. then the above
obligation to be void. otherwise to remain
in full force and virtue

Isaac P Stevens *Seal*
Seth Partridge *Seal*

Endorsed

Filed June 27th 1860

Wm R. Rowley clerk

State of Illinois }
Jo Daviess County } I William R Rowley
Clerk of the Circuit Court

in and for said County do hereby certify
the foregoing transcript to be a full and
perfect copy from the records of the Jo
Daviess County Circuit Court - of all the pro-
ceedings which were had in said Court in said
cause of James M Irwin vs. Isaac P Stevens as
the same appear of record in my office

In testimony whereof I have hereunto set
my hand and affixed the seal of said
Court at my office in Galena this 17th day of
January 1861

Attest - Wm R. Rowley clerk

Transcript No 725

Rec'd pay of Deft Stevens Wm R Rowley clerk

290-115
Isaac R. Stevens
vs
James McIrvin

Recd

Filed April 18, 1861
L. Leland
Clerk

\$5.00. by Dickey