

No. 12052

Supreme Court of Illinois

Ankeny

vs.

McGoon

71641  7

State of Illinois }
Fifth Judicial Circuit }
Stephenson County } set.

Pleas in the Circuit Court within
and for the said County of Stephenson, before the Honorable
Benjamin R. Sheldon presiding Judge of the Fifth Judicial
Circuit in said State, begun and held at Freeport in said
County on the fourth Monday in the month of October
A.D. 1849 by Special appointment of the Judge aforesaid
in pursuance of Law

Benjamin F. Ankney } Plaintiff
vs }
Richard H. McGoon } Change of venue from to Daviess
} Defendant

Be it remembered that heretofore to wit: on
the 23^d day of June A.D. 1849 the Clerk of the to Daviess
County Court filed in the office of the Clerk of the Circuit
Court of said County of Stephenson, a transcript of the
Records of the to Daviess County Court in the said cause
together with the at papers filed and with issued in the
said cause - which transcript is in the words and
figures following to wit:

transcript State of Illinois }
to Daviess County } set

Pleas in the to Daviess County
Court of said County before the Hon Hugh
T. Dickery Presiding Judge of said Court at
the May Term of said Court begun and
held at Galena in said County on the second
Monday of May A.D. 1849 -

Benjamin F. Ankney } Plaintiff
vs }
Richard H. McGoon } Defendant

Be it remembered that heretofore to wit,
on the 11th day of May A.D. 1849 in the Record
of the proceedings of said court in May
Term thereof A.D. 1849 in the above en-
-titled cause appears the following entry
to wit.

Defts - Benjamin F. Arkney
Motion for } vs } Case
Change of Venue } Richard H. McGoan }

The Defendant
by his attorney comes and moves the
Court upon petition verified by his affidavit
for a change of venue herein which motion
is sustained by the Court and the venue herein
ordered to be changed to Stephenson County
at the costs of the Defendant and that
Execution issue therefor -

State of Illinois }
Do Darius County } 8
I, George M. Mitchell
Clerk of Do Darius County Court in and
for said County, do hereby certify that
foregoing transcript to be a true and
correct copy from the Record of all the
orders and entries of said Court as appears
of record in said cause of Benjamin F. Arkney
against Richard H. McGoan and that the
original summons marked "A." the Declaration
marked "B." the Plea marked "C." and the af-
-favit and motion for change of venue
marked "D." are herewith enclosed and
transmitted to the said Stephenson County

Court with this transcript -

V.S.

In testimony whereof I have
hereunto set my hand and
affixed the seal of said Court
at my office in Galena
in said Jo Daviess County
this 22^d day of June A.D. 1849 -
Attest Geo. M. Mitchell
Clerk -

Benjamin F. Anthony }
vs } Fee Bill -
Richard H. McGoon }

Entering appearance of Plt & Atty	\$.25
Fily Pns for & issuing sums & fily do	.62 1/4
Docky suit 2 Pns & fily. nam.	.31 1/4
Fily Pns for fily. & fily Supr.	1.87 1/2
Maky & enty Bill costs	.37 1/2
	<u>\$ 3.43 3/4</u>

Shft for Executing & Atty. Sulp. (Pins) 5.06 1/4
\$ 8.50

Defendants for Bill

Enty app. of Deft & atty	.25
Enty & fily Pns	.31 1/4
Maky & enty Bill of Costs	.37 1/2
Certificates & seal	.50
	<u>\$ 1.43 3/4</u>
	<u>\$ 9.93 3/4</u>
Shft "Milled" Ex & Atty Sums	.68 3/4
	<u>\$ 10.62 1/2</u>

{ Endorsed, "Filed June 23^d 1849

John A Clark
clerk" }

The Summons referred to in the foregoing

transcript and marked "A" is in the words and figures following to wit:
"State of Illinois }
Summons } So Davis County } set.

The People of the State
of Illinois, to the Sheriff of the County
of So Davis - Greeting -

We command you to summon
Richard H. McGoon to appear before the
So Davis County Court at the Court
House in Galena at the next term, to
be holden at Galena on the 1st Monday of
July next to answer Benjamin F. Ankney
in a plea of trespass on the case or promiss
damages One thousand dollars - And have
you return this writ -

Witness the Hon. Hugh T. Dickery
Judge of said Court at Galena
L.S. Illinois this 12th day of April
1848 -

attest - Geo. M. Mitchell clerk
And on the back of said Summons appears the fol-
lowing Endorsement "Served the within Summons
this 8th of May 1848 by reading
the same to the within named
Richard H McGoon -

Fees. 68³/₄

W. P. Millard Sheriff

also endorsed. "Filed June 23^d 1849"

John A. Clark clk" (Stephenson Co.)

The Declaration referred to in the fore-
going transcript and marked "B." is in
the words and figures following, to wit:

State of Illinois } Jodavisp Co. Court
Jodavisp County } S. Nov. Term 1848-

Declaration.

Richard H. McGoan Defendant in this suit was summoned to answer Benjamin F. Arkney plaintiff in a plea of Trespass on the case upon promises - And thereupon the said plaintiff complains - For that whereas the said Defendant heretofore to wit, on the first day of April A.D. 1848 at the County and State aforesaid was indebted to the said plaintiff in the sum of one thousand dollars for so much money by the said Defendant before that time had and received to and for the use of the said plaintiff - And being so indebted he the said Defendant in consideration thereof afterwards to wit on the day and year aforesaid and at the County aforesaid undertook and then and there faithfully promised the said plaintiff to pay him the said sum of money when he should be therunto afterwards requested - For that whereas also the said Defendant afterwards to wit, on the day and year aforesaid at the County aforesaid was indebted to the said plaintiff in the further sum of one thousand dollars for so much money before that time and then due & payable from the said debt to the said plff for interest upon & for the forbearance of divers large sums of money

before then lent and advanced by the said plaintiff to the said defendant at his special instance and request, and by him ~~the~~ plaintiff forbore to ~~the~~ said defendant for divers long spaces of time before then elapsed at the like special instance and request of the said defendant - And also for other money before that time and then due and payable from the said defendant to the said plaintiff for interest upon and for the forbearance of divers other large sums of money before then due and owing from the said defendant to the said plaintiff and by him forbore to the said defendant for divers long spaces of time before then elapsed at the like special instance and request of the said defendant and being so indebted by the said defendant in consideration thereof afterwards to wit, on the day and year last aforesaid and at the County aforesaid undertook and then and there faithfully promised to pay him the said last mentioned sum of money when by the said defendant should be thunto afterwards requested.

Nevertheless the said defendant not regarding his said several promises and undertakings but contriving and fraudulently intending to deceive said plaintiff hath not as yet paid the said several sums of money or any part thereof although often requested so to do, but to pay the same or any part thereof hath

Baker & Merriam
for plfb -

Account declared on to wit,
1845 - July - For money received by Deft
from H. H. Gear for & on account of
190000 lbs of Ash Furnace Slagg
belonging to plbb \$660.00

To interest on same 127.00
~~787.00~~ " 787.00 "

Endorsed "Filed Oct 7th 1848

Geo. M. Mitchell clerk (St. Louis Co.)

Endorsed also "Filed June 23" 1849

John A Clark clk " (Stimpson Co.)

Pha.

Benjamin F. Ankney }
as } In So Davie's
Richard H McGoon } County Court
 } So Davie's County,
State of Illinois -

And the said Defendant
by J. M. Douglass his attorney comes
and defends the wrong and injury where
to and says that he did not undertake
or promise in manner and form as the
said plaintiff hath alleged against him
in his said declaration - and of this

the said Defendant puts himself upon
the country -

J. M. Douglass

Atty for Plff

Upon the back of said plea is written
a similitur in the words and figures following
to wit -

Similitur . }

"And the plff doth the like"

(signed) "Baker jry"

(Endorsed on said plea, "Filed May 8th 1849

Geo M Mitchell clk (S.D. Co.

(also ind., "Filed June 23rd 1849

John A. Clark clk (S. Co.

The Motion and affidavit referred to in
the foregoing transcript and marked "D."
are in the words and figures following
to wit:

Petition
of Defr. }

Benjamin F. Ankney } In Ss. Daviess
vs } County Court, Ss.
Richard H. McGoon } Daviess County, State
of Illinois - May Term
A.D. 1849. -

To the Hon. Hugh P. Dickray Judge
of said court - Your Petitioner Richard
H. McGoon humbly petitioning represents
unto your Honor that he is Defendant
in the above entitled cause which is now
pending and still undetermined in said
Court and your petitioner has caused
a notice of this application to be
served upon said plaintiffs attorney
in said cause, which said notice was
served upon the 1st day of May A.D. 1849

And your Petitioner further states that
he fears that he will not receive a
fair and impartial ^{trial} of said cause in
said court on account that the minds
of the inhabitants of said So Daviess
County are prejudiced against him -
And your Petitioner further states
that the same cause exists in the
County of Carroll in said state -
Whereupon your Petitioner prays
that the venue in said cause be changed
and that said cause be removed for
trial to some county where said causes
complained of do not exist -

R. H. McGoon

affidavit of }
to Petitioner, } State of Illinois }
So Daviess County } So Daviess County
Court - Illinois

Richard H. McGoon the defend-
ant in the above cause being duly
sworn states that the facts as stated
in the above petition are true -

Geo. M. Mitchell clk

indorsed, "Filed 11th May 1849"

Geo. M. Mitchell clk (S.D. Co.)

indorsed also, "Filed June 23^d 1849"

John A. Clark clk (S. Co.)

And afterwards to wit, in the Circuit Court
of Stephenson County aforesaid, on the 15th
day of August in the Term of August A.D.
1849 of said Circuit Court, The said defend-
ant by his attorneys filed in said court a
motion and affidavit to compel plaintiff

to give security for costs in said suit
which motion and affidavit are in the
words and figures following, to wit:

Motion.

Richard H. McGoon }
ads } Change of venue from
Benjamin F. Ankney } So Davis County -
In the Circuit court of
Stephenson County of the
August Term A.D. 1849 -

And the said defendant by
Douglass, Sweet and Brandley his attorneys
comes and moves the court for a rule
on the plaintiff in said cause to give
security for the payment of costs in said
suit for reasons on file with the papers
in this cause -

Douglass, Sweet & Brandley
attys for Defendant "

Endorsed, "Filed Aug 15" 1849

John A. Clark clerk "

Affidavit.

Richard H. McGoon } Change of venue from
ads } So Davis Co.
Benjamin F. Ankney } In the circuit court
of Stephenson County of
State of Illinois } the August Term A.D.
Stephenson County } " 1849 -

Richard H. McGoon
the defendant in the above entitled
cause being first duly sworn deposes and
says that Benjamin F. Ankney the plaintiff
in the said cause is wholly unable to pay
the costs which may accrue in this
action either to the opposite party or to the

Officers of this court in pursuance of
the laws of this state and that the said
Benjamin F. Ankney is wholly irrespon-
sible according to the best of the knowl-
edge and belief of this deponent -
and further swith not -
subscribed and sworn to } R. H. McGoon "
before me clerk of the }
Circuit Court of said }
County this fifteenth day }
of August A.D. 1849. John A. Clark clerk "

endorsed, "Filed Aug 15 1849

John A. Clark clerk "

Whereupon said motion was entered of
record on the sixteenth day of August in
said term of August, and is in the words
and begins following to wit,

"Benjamin F. Ankney

vs

vs

} Case

Richard H. McGoon

"Now at this day

comes the defendant by his attorney and
moves the court for rule to compel the
plaintiff to file security for costs herein "

Afterwards, to wit, on the 17 "day of August
in said Term of August the said defendant
filed in said court his an approved bond
giving security for costs in said cause
which bond is in the words and figures
following, to wit;

"Benjamin F. Ankney } Circuit Court

vs

} Stipthinson County.

Richard H. McGoon

} Change of Venue from
Adams county -

Bond -

Security for costs.

5/2052-6

I hereby enter myself Secured for all costs in this cause, and acknowledge myself bound to pay or cause to be paid all costs which has accrued or 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 on this 17th day of August A.D. 1849 -
(signed) John Ankney (Seal)

"Approved

John A. Clark clerk "

endorsed, "Filed Aug 17 "1849 "

John A. Clark clerk "

Afterwards, and on said 17th day of August in said Term of August - On motion of plaintiffs attorney an Order was made by said Court granting leave to open depositions on file in this cause; which order is in the words and figures following to wit:

"Benjamin F. Ankney

vs

} Case -

Richard H. McGoon

Order to

open depositions

on file

On motion of plaintiff by his attorney. It is ordered by the court that the clerk open the depositions on file in this cause -

Afterwards, to wit, on the 24th day of October of the October Special Term of said Circuit Court A.D. 1849 the Defendant by his attorney comes into court and files exceptions to depositions

"Benjamin F. Arkney

25

{ Case - Change of Venue
from St. Dennis County

Which said exceptions to depositions are in the words and figures following to wit,

ad

Benj. F. Arkney

October Special Term A.D. 1849

1st To the Deposition of William P. Wood
Because said Wood is a nonresident of this
State and no dedimus potestatem or Com-
mission was sued out to take his Deposi-
tion -

2^d Because the questions and answers in said deposition are impertinent irrelevant and immaterial to the issues

in this cause -

4th Because by said depositions oral testimony is offered in evidence in relation to the subject matter of another and different suit between different parties from those in this case -

To the depositions of Hezekiah H. Gear, George Foster & Cyrus Sibtinbeger -

1st Because the questions and answers in said depositions are impertinent irrelevant and immaterial, and because by said deposition evidence is offered upon subject matter foreign to this suit -

To the Deposition of Amos F Culver for the same reasons as in the case of the deposition of William P. Hood -

Sweet & Brantley
Attys for Deft

Endorsed, "Filed Oct 24, 1849".

John A Clark clk."

Afterwards, on the 25th day of October in said Term of October - The plaintiff by his attorney moves the court to open deposition in this cause, whereupon an order is made by said court to that effect, which order, as entered of record, is in the words and figures following to wit;

Order to
open deposition
on file &c

"Benjamin F. Ankney

as

Richard H. McGoan

} Change of name from
to Davis Courtis

On motion of plaintiff by his attorney

It is ordered by the court that the deposition on file in this cause be opened, which is done".

Afterwards, to wit, on the day last aforesaid in the Term last aforesaid, The plaintiff by his attorney excepts to deposition, and files his motion to exclude ^{part of} the same. Whereupon said notice of Exception is entered of record and is in the words and figures following, to wit,

Order -

"Benjamin F. Ankney }
vs } Change of venue from
Richard H Mc Goon } to Daviess County.
Now at this ~~day~~ time
comes the plaintiff by his attorney and
excepts to deposition on file in this cause -"

Which said motion to exclude part of said Deposition is in the words and figures following to wit, -

Motion to
exclude part
of deposition of
Ann Kilso.

"Ankney } In the Circuit Court.
vs } of Stephenson County
Mc Goon } Special Term 1849 -

And now at this day comes the said plaintiff and moves the court to exclude from ^{the} deposition of Mrs Ann Kilso on file in this cause, all that part of the answer to the fifth Interrogatory and the Exhibit B. therein referred to & commencing on the fifth line with "Mr. Washburn paid three thousand dolls" &c and ending with the words "One thousand dollars" and all that part of said answer to said 5 Interrogatory commencing with the words "So far as my knowledge extend" and to the end

of said interrogatory - and that the same
may be excluded in pursuance of the
Statute -

Goodhue & Johnson

Plff. atty &c.

" And also all of the said answer to the
fifth Interrogatory not specified in
the above motion together with ^{all or} that
part of the answer to the said sixth In-
terrogatory commencing at the word
"Except" in the second line, and ending with
the words "as in exhibit B" in the fourth
line from the top, and that the same may
be excluded in pursuance to the statute -

endorsed,

Goodhue & Johnson

"Filed Oct. 26. 1849

Plff atty &c."

John A Clark clk"

Afterwards to wit, and on the first day of
November in the said October Special Term of
said Circuit Court of Stephenson County
aforesaid, came on to be tried, before a jury, the
issue joined in said cause as appears of
record in the words and figures following
to wit,

" Benjamin F Ankney -

vs

Richard H. McGoon

Case - Change of Venue
from Iodanis County

Order.

Trial.

And now at this day came the said
parties and their attorneys and upon issue
joined thereupon came a jury of twelve good
and lawful men to try the same between
the parties, to wit: James Barber, W. Gettman,
E. S. Harichett, W. Van Winkle, Samuel Leonard,

Richard Parriott, the Carrifix, Norman Brace
Thomas Rodabaugh, James J Rogers, W. Patterson
and George Bancroft who were severally
duly elected, tried and sworn and after hearing
part of the evidence - By agreement of parties
the further hearing of the said cause is ad-
journed until tomorrow morning at 8, O,
Clock, and the jury retired under the charge
of the court. "

In pursuance of the foregoing, the following
appears entered of record November 2^d in the
Term aforesaid - to wit,

"Benjamin F. Ankney
as } Case, Charge & Verdict
Richard H McGoan } from todays Court -

And now again came the parties
and their attorneys and the jury yesterday
empannelled to try this cause, And the
jury after hearing all of the evidence and
arguments of counsel, retired to consider
of their verdict and after a short time
returned into court with the following
verdict, to wit, - "We find the issue for the
plaintiff, and assess his damages at the sum
of Five hundred and twenty three dollars and
sixty cents "

Verdict.

Motion in Arrest } Whereupon the said Defendant by his attorney
for new Trial } moves the court in arrest of judgment and
also moves for a new trial of this cause" -

and afterwards, to wit, on the same day, and
the same term last aforesaid, the plaintiff
by his attorney comes and moves the court

"that the parties hereto have leave to withdraw
their exhibits filed herein" upon leaving with
the clerk correct copies of the same" which
motion and order is in the words and figures
following, to wit,

"Benjamin F. Ankney

vs

Richard H. McGoon

} Case -

Motion.

On motion of the

Order.

plaintiff by his attorney - It is Ordered
by the Court that the parties hereto have
leave to withdraw their exhibits filed
herein upon leaving with the clerk correct
copies of the same -

Afterwards and on said 2^d day of November
aforesaid the said defendant by his attorney
comes into court and files his causes
for arrest of judgment and for a new trial
in said cause - which are in the words
and figures following, to wit,

"Richard H. McGoon

ads

Def's Causes }
for arrest of judgment }
& for New Trial }

Benjamin F. Ankney

} In the Stepterson
Co. Cir. Court of the

October Special Term A.D. 1849

The defendant by his attorney
comes and moves the Court for a new trial
and in arrest of judgment, for the following
causes, to wit,

1st - Because the verdict is contrary
to ^{the} Law -

2^d - Because the verdict is against the
Evidence -

3^d - Because the Court misinstructed the jury

upon the law as applicable in this case

4th Because the court refused to instruct the jury as asked by the defendant in his 1st 2^d 3^d 4th 5th 6th 7th and 8th instructions -

5th Because the verdict is excessive -

6th Because the court refused to allow proper and legal evidence offered by the defendant, to go to the jury, that should have been allowed -

7th Because the court allowed improper and illegal evidence to go to the jury that was offered by the plaintiff and objected to by the defendant -

(endorsed)

Sweet and Bravley
Depts attys
"Filed Nov 2^d 1849"
John A. Clark clk "

Afterwards to wit, on the 5th day of November in the Term of October aforesaid, came on to be heard before said court, the arguments of counsel on the motion in arrest of judgment and for new trial, in said cause - which proceeding, is entered of record and is in the words and figures following to wit: -

"Benjamin F. Hinkley

vs

Richard H McGoon

} Case - Change of venue
from So Davis -

Order -
On motion in
arrest & for
new trial

And now at this day the arguments of counsel having been fully heard by the court upon the motion in arrest of judgment and also upon the motion for a new

trial of this cause - And the court having fully considered and being fully advised in the premises order and adjudge that unless the plaintiff in this cause shall enter his remittitur of damages in the said cause to the amount of two hundred and twenty dollars the said motion for a new trial will be granted, and thereupon the said plaintiff rather than that a new trial should be granted consents that a remittitur be entered to the amount of two hundred and twenty dollars - Whereupon the Court order and adjudge that the said motion for a new trial be overruled - To which ruling of the Court the said defendant excepts and prays that this his exception may be entered and made a part of the record of this Court, which is done -

And it is further ordered by the Court that the motion in arrest of judgment be overruled -

It is thereupon considered and adjudged by the Court that the said plaintiff have and recover of the said defendant the sum of Three hundred and three dollars and sixty cents his damages, so as by the jury aforesaid ascertained together with his costs by him about his suit in this behalf expended and that he have execution for the same -

And thereupon the said defendant prays an appeal to the Supreme Court, which is granted by the Court upon condition that he enter into bond with

Albion Hall as security properly conditioned in the sum of six hundred dollars."

And thereupon, afterwards, to wit, on the 5th day of November in the said October Special Term, and in pursuance of the foregoing prayer ~~and~~ of the defendant for an appeal in said cause and the order of Court therein made the defendant by his attorneys aforesaid makes his Bill of Exceptions in said cause - ^{is signed and sealed by His Honor, Judge of said Cr. Court, and} which Bill of Exception ^{is} in the words and figures following to wit:

"State of Illinois } In the Circuit Court
Stephenson County } ^{of} of said County of
the October Special Term
Richard H. McGoon } A.D. 1849 -
 } } Change of venue
Benjamin F. Anthony } from Jo Davis County

Be it remembered that on the trial of this cause the counsel for the plaintiff to sustain, maintain and prove the issue on his part produced and had sworn are William B. Hood and proved by him.

That his (witnesses) father made slag in the year of our Lord 1832 at the White oak Springs about 150 yards from Geans Cupola furnace on the east side of the

Bill of
Exceptions. }
by Deph.

Witnesses }
Wm. B. Hood.

branch - That Julius Gibson worked as a laborer for his (witness's) father at the time and made the slagg - Julius Gibson took possession of the slagg and exercised acts of ownership over it without any objection on the part of witness's father, often witness's father left off making slagg - The slagg in controversy between Gear & McGoon was on the east side of the branch three or four yards from the branch -

The defendant asked the ^{witness} if he (witness) had any objection ^{to his} (defendant's) taking the slagg? Witness told the defendant he had none - The defendant said he wanted the witness to testify who made the slag. Witness's father died in A.D. 1832 - The suit was at Mineral Point in which defendant wanted witness to testify between Gear and the defendant -

On the cross examination said witness said that Julius Gibson worked for (witness's) father in the fall of 1832 and occupied the furnace as a hand of his father, that Gibson commenced said work in the spring of 1831 - There were nine hundred thousand pounds of mineral smelted while Gibson worked for witness's father - There was a large pile of slag when witness's father quit - James Bennett smelted before witness's father smelted and Phelps smelted before Bennett - a part of Bennett's slagg was used to fill up a mud hole - and the most of Phelps slagg was thrown

into the branch - Some of Phelps slag was in the a pile by itself witnesses cannot say how much, witnesses cannot recollect how much of Bennett slag was used in the mud hole - Phelps was the lessee of the United States, Phelps first occupied the furnace on the premises Bennett bought of Phelps and witnesses father leased the premises of Bennett thinks it was a verbal lease from Bennett. Bennett after his purchase from Phelps leased the premises of the United States - Witnesses thought the greatest proportion of slag that was in controversy between Gear and the defendant was made by witnesses' father - The greater part of Phelps slag was thrown in the branch - twenty five thousand pounds of slag may have been made by Phelps, Bennett and father. That remained over was in controversy between Gear and defendant, may have been more than 75000 pounds and may have been less. cannot say the amount should think as much as that - The defendant requested witnesses to take care of the slag before any of it had been taken away - Gibson's pile of slag was on witnesses premises, about two thirds as large as witnesses and fathers pile -

Witnesses
Henry Smith examined as a witness on the part of the plaintiff to further maintain the issues on his part - He said that Johnny

and himself run an ash furnace from A.D. 1833 to 1834 - They run about eight hundred thousand pounds of mineral - Hood and Gibson run the two last furnaces before nitrocs and Journey commenced with their furnace and Hood and Gibson made considerable slag - The slag made by Hood, Gibson and Journey and Smith composed as nitrocs supposes the most of the slag that Year got -

On the Cross Examination by Defendants Counsel the nitrocs said that he and Journey occupied the furnace in 1833 and in 1834 that they were the last that smelted there - They quit the furnace in 1834, no person had since used or occupied the furnace - When nitrocs commenced smelting Journey and nitrocs held as lessees of Clark who had leased of the Government, Clark sold to Stowbridge and McConnell and nitrocs and Journey paid rent for mineral to the Government, and furnace rent for the ash furnace to Stowbridge and McConnell - Nitrocs never knew of any general custom in the mines in relation to who become the owner of slag when the tenant quit the occupancy of the furnace - Since nitrocs quit the furnace he had never done any thing with the slag, he left it on the ground -

The said witness was then re-examined by the plaintiff to prove a sale of slag from Jomney and witness to the plaintiff the first day of June A.D. 1843. The slag was on the south west quarter of section 32 Town one Range two (2) in Iowa County in the state of Wisconsin - Witness said that he recognized the signature to the bill of sale shown to him as his own - He did not sign it - Mr. Jomney signed his own and witness' name, witness has seen Jomney write, knows his hand writing and believes the signature to be Jomneys the said bill of sale was given with his authority & consent -

To the recalling said witness and re-examining by the plaintiff counsel, the Defendant by his counsel objected, which objection is overruled by the court, To which ruling of the court the defendant by his counsel excepts and prays that this his bill of exceptions be allowed, signed, sealed and made a part of the record herein and it is done so -

The plaintiff then offered to read in evidence the bill of sale aforesaid, which said bill of sale is in the words and figures following, to wit,

"Know all men by these presents that we S. M. Jomney and Henry Smith of the state of Illinois for and in consideration of the sum of fifty dollars to them in hand paid the receipt of which is hereby acknowledged from Benjamin Flankum

of Iowa County, Wisconsin Territory, have
this day granted bargained and sold and
by these presents do grant bargain, sell,
deliver and convey unto the said B. F.
Ankney his heirs and assigns all of our
right title claim and interest in and to
a certain ash Furnace clearing slag
and ashes of all and every description, which
Furnace slag and clearings from said
furnace was situated and the slag and
clearings of the same now on the south
west quarter of section no 32 Township
one Range two east of the fourth principal
meridian in Iowa County in sd Territory
to have and to hold the same to his own
proper use and behoof forever.

In witness whereof we have hereunto
set our hands and seals this the 1st of June
A.D. 1843 -

Intervening done before } S M Jomney (Seal)
signing - By Jomney - H. Smith (Seal)
Jest D. T. Anderson

(indorsed on the back,

"Quit Claim deed from S M Jomney & Henry
Smith To Benjamin F. Ankney."

(Exhibit marked (C.)

to the jury and the defendant by his
counsel objected to the reading of the same
which objection was overruled by the court
and said bill of sale was permitted to be
read to the jury, to which ruling of the
court the defendant excepts and prays
that this his bill of exceptions may be
allowed signed sealed and made a part of

Witness
George Foster?

the record herein and it is done - The bill of sale is thereupon read to the jury by the plaintiff - The plaintiff still further to maintain the issue on his part called and examined as a witness -

Exhibit
"B."

"Know all men by these presents that I, Julius Gibson of Lo Davis County & State of Illinois for and in consideration of the sum of one hundred and fifty dollars to me in hand paid the receipt of which is hereby acknowledged from Benjamin Farkney of Iowa County Wisconsin Territory have this first day of June A.D. 1843 granted, bargained and sold and by these presents do grant, bargain sell, deliver and convey unto the said B. Farkney his heirs and assigns all of my right title claim and interest in and to two two Ash Furnace Cleanings Slagg and ashes of all and every description which Furnace slagg and cleanings from said Furnaces was situated and the slagg & cleanings of the same were are on the south west quarter of section no. (32) thirty two Township one, Range two east of the fourth principal meridian in Iowa County Wisconsin Territory to have and to hold the same to his own proper use and behoof forever -

In witness whereof I have hereunto
set my hand and seal this day and date
as above -

attest, Intubining done before signed)

Daniel Bowtell

George Foster

Julius Gibson (seal)
cc

indorsed on the back

"Exhibit marked (B.)"

Witness told the defendant that the plain-
tiff bought the slag of Gibson near white
oak springs - The defendant told witness
to tell the plaintiff to come over and see
him he defendant wanted to make some
arrangement with him - in regard to his
defence in the suit of Gear against deft.

The said witness was then cross ex-
amined by counsel for Defendant -
Witness said he was present at the signing
of the sale bill from Gibson to Ankney
He said he saw Ankney take the sale
bill - To the question asked by the
defendant's counsel "Did you see Gibson
deliver the sale bill to Ankney?" The
witness said he saw Ankney pick it
up and go away - The counsel for
the defendant asked the witness to state
if any thing was said or agreed to be paid
by Ankney to Gibson for the slag named
in the bill of sale? To which question
the plaintiff by his counsel objected
to the witness answering, and the Court
sustained the said objection and refused
to allow an answer thereto, whereupon
the Defendant by his counsel excepts to

the ruling of the court in overruling
an answer to said question, and prays
that this his bill of exceptions be allowed
signed sealed and made a part of the
record herein, and it is so done.

The plaintiff then read in evidence
the said last mentioned bill of sale.

The plaintiff then offered in evidence
a record of proceedings had before the Hon-
orable Charles Dunn Judge of the first
Judicial District in and for the Territory
of Wisconsin and presiding Judge of the
District Court in and for Iowa County
in said Territory, wherein Hezekiah H.
Gear was plaintiff and Richard H. McGowan
was defendant in an action of Replevin
which said record is in the words and
figures following, to wit;

"Pleas before the Honorable
Charles Dunn Judge of the
first Judicial District in and
for the Territory of Wisconsin
and presiding Judge of the
District Court in and for
Iowa County in said Territory
to September Term A.D. 1843 -

George Messersmith Shurtle -

Edward McSherry Clerk

Be it remembered that heretofore, to
wit, on the 20th day of May A.D. 1843 came
Hezekiah H. Gear by Moses M. Strong & his
attorney before the clerk of the District
Court in and for Iowa County County in said

Territory at his office in the town of
Mineral Point in said County and filed
with the said clerk his certain affidavit
and precept in an action of Replevin
against Richard H. McGoon which
said affidavit and precept are in the
words and figures following, to wit,
"Territory of Wisconsin }
County of Iowa - }

Hezekiah H. Gear being
duly sworn deposes and says that he is
the owner of three hundred thousand pounds
of slag and that he is now lawfully en-
titled to the possession thereof and that
the same has not been taken for any tax
levied by virtue of any law of this Territory
nor seized under any execution or attach-
ment against the goods or chattels of
him the said Hezekiah H. Gear liable to
execution - And that Richard H. McGoon
has unlawfully taken and unjustly
detains the same

Subscribed and sworn to } H. H. Gear
before me this 20th day of }

May A.D. 1843 -

attest Edward McSherry }
clerk D.C. & Co.

Hezekiah H. Gear }

vs

Richard H. McGoon }

The Clerk of the
District Court for Iowa County will
issue a writ of Replevin in the above

entitled cause to correspond with the foregoing affidavit -

Moses M. Strong

att'y for J. H. H.

Therefore there issued from and out of the office of the clerk of the District Court aforesaid a writ of Replevin in the above entitled cause, which said writ of Replevin is in the words and figures following, to wit,

District Court U.S.

September Term A.D. 1843

Territory of Wisconsin
County of Iowa - { 83

The United States of
America -

To the Sheriff of the said County

Greeting -

Whereas, Hezekiah H. Gear complains that Richard H. McGoon has taken and does unjustly detain three hundred thousand pounds of slag and that he is now lawfully entitled to the possession thereof

Therefore you are commanded that if the said Hezekiah H. Gear shall give you security as required by law to prosecute his said complaint and to return the aforesaid goods and chattels if return thereof shall be adjudged, and to pay all such sums of money as may be recovered against him hereupon that you cause the same goods and chattels to be replevied and delivered to the said Hezekiah H.

Year without delay, and also that
you summon the said Richard H.
McGoon to appear before the District
Court at the Court house in Mineral
Point on the first Monday in the
month of September A.D. 1843 to answer
to the said Hezekiah H. Gear in the
premises -

Witness the Hon. Charles
Dunn Judge of our said
Seal } Court at Mineral Point
this 20th day of May A.D.
1843 -

attest Edward McSherry
Ck D.C. & Co.

And on the back of said writ is endorsed
the following, to wit,

"Affidavit and Juror filed in the
Clerks office before issuing this writ -

attest Edward McSherry
Clerk D.C. & Co."

And afterwards, to wit, on the same day
of the year last aforesaid, the Sheriff of
our said County made his return of said
writ into the office of the clerk aforesaid
together with the appraisement and Replev
in bond by him taken in this cause which
said return appraisement and bond
are in the words and figures following
to wit,

As Commanded by the within writ
to me directed I have executed the same

by levying on the following described prop-
erty, to wit, three hundred ^{+ fifty} thousand
pounds of slag (supposed to be by the ap-
praisers) admitted by the parties to be the
same intended to be described in this writ
which said slag was appraised at two
dollars and fifty cents per thousand pounds
which said property was delivered to the
plaintiff Hezekiah H. Gear he having
given bond therefor ~~to~~ answers George
Messersmith Sheriff -

May 20th 1843.

I have also summoned the within
named R. H. McGoon personally to appear
and answer to at the time and place herein
required by reading this writ to him and
leaving in his hands a written notice
of the time and place ~~to~~ answer -

May 20th 1843

George Messersmith Sheriff

The above mentioned appraisement is
in the words and figures following, to wit,

Territory of Wisconsin District Court U.S.
Iowa County } September Term A.D. 1843

H. H. Gear

vs

Richard H. McGoon

} In Replevin -

We the undersigned citizens
Samuel H. Seales and James Collins
two freeholders of the aforesaid County
after being duly sworn do estimate and
appraise the property heretofore described

as follows, to wit, about Three hundred and fifty thousand pounds of slag at two dollars and fifty cents per thousand pounds being the same replied at the suit of Hezekiah H. Gear as ~~Richard H. McGoon~~.

Given under our hands this 20th day of May A.D. 1843 -

S. A. Seales

James Collins

The bond heretofore mentioned herein is in the words and figures following, to wit,

Know all men by these presents that we Hezekiah H. Gear as principal and Solomon Oliver & Robert H. Champion as sureties are held and firmly bound unto Richard H. McGoon or his assigns in the penal sum of seven hundred and fifty dollars the payment whereof well and truly to be made we bind ourselves our heirs executors and administrators jointly severally and firmly by these presents -
Sealed with our seals and dated this 20th day of May A.D. 1843 -

The condition of the above obligation is such that whereas on the 20 day of May A.D. 1843 a writ of replevin issued out of the office of the clerk of the District Court in and for the County of Iowa and Territory of Wisconsin at the suit of Hezekiah H. Gear against the goods and chattels of Richard H. McGoon to wit, Three hundred thousand pounds slag which said writ was directed to George Messersmith Sheriff of the aforesaid County

of Iowa and Territory of Wisconsin
to execute and was afterwards to wit
on the 20th day of May A.D. 1843 lived
by him the said ^{shrift} ~~Missouri~~ ^{of} ~~Missouri~~
said on the following described prop-
erty to wit, Three hundred and fifty
thousand pounds of slag supposed to
be estimated and appraised at eight
hundred and seventy five dollars -
Now if the said Hezekiah H. Gear
plaintiff in said suit will prosecute
his said suit to effect and without
delay and if the said defendant Richard
H. McGoen recover judgment against
him the said Hezekiah H. Gear Plain-
tiff will return the same property
if return thereof be adjudged and will
pay to the defendant all such sums
of money as may be recovered against
him by the said Richard H. McGoen
defendant in the aforesaid action
then this obligation to be null and
void otherwise to remain in full
force with effect in law -

signed sealed and	H. H. Gear	Seal
delivered in presence of	Solomon Oliver	Seal
R. Blakely	A. H. Champion	Seal
Thompson R. Hippen	"	"
George Mousmouth	"	"

And afterwards to wit, on the fourth
day of September A.D. 1843 came the
said plaintiff by Messrs Strong & Davis
his attorneys and filed in the office of the

Clark of the District Court aforesaid his
Declaration herein which said Declaration
is in the words and figures following, to wit:-

Hezekiah M. Gann complains of
Richard H. McGoan of a plea, For that the
said Richard H. McGoan on the first of April
A. D. 1843 at the County of Iowa and
within the jurisdiction of this Court
took the goods and chattels to wit;

Three hundred and fifty thousand pounds
of slag of him the said Hezekiah H. Gear
of great value, to wit, of the value of
one thousand dollars and unjustly
detained the same against services
and pledges untill &c wherefore the said
Hezekiah H. Gear saith that he is in-
jured, and hath sustained damages
to the value of one ^{hundred} thousand dollars

and therefore he brings his suit &c

Strong & Parrie's

Attorneys for Hbb

And afterwards to wit, at a Term of our said Court begun and held at the Court House in the Town of Mineral Point on the first Monday in the month of September A.D. 1843 and on the third day of the Term the same being the sixth day of the same month, the

following proceedings were had in this
Cause, to wit:

Hezekiah H. Gear

vs

Richard H. McGoon

} Replevin -

This day came the said
Defendant by Thomas W. Sutherland and
Francis J. Dime Esquires his attorneys and
filed his plea to the plaintiffs declaration
herein -

Which said plea is in the words
and figures following, to wit,

Territory of Wisconsin

Lowa County -

} In the District

Court for Iowa County

} Wisconsin Territory

Hezekiah H. Gear

} of September Term ad 1843.

vs

} Replevin -

Richard H. McGoon

And the said Defendant
by Thomas W. Sutherland his attorney comes
and defends the wrong and injury where
and says that he did not take the said slag
in the said declaration mentioned or any
part thereof in manner and form as as the
said plaintiff hath above thereof complained
against him - And of this he puts
himself upon the country &c -

Thomas W. Sutherland

attorney for Defendant

And the plaintiff doth the like -

Strong & Paris

attys for plff

And for a further plea in this behalf by

leave of the Court first had and obtained according to the Statute &c the said Defendant saith the said Plaintiff ought not to have and maintain his aforesaid action thereof against him because he says that the slag in the said Declaration mentioned at the time when &c was the property of him the said Defendant and that he was lawfully entitled to the possession thereof, and not of the said Plaintiff as by the said Declaration is above supposed, and this the said Defendant is ready to verify, wherefore he prays judgment if the said Defendant ought to have or maintain his aforesaid action thereof against him and he also prays a return of the said slag together with his costs and charges in this behalf according to the form of the Statute in such case made and provided to be adjudged to him &c -

Thomas H. Sutherland
Atty for Deft

And afterwards, to wit, at the same term of said Court and on the eighth day of the Term that is to say on the 12th day of September The following further proceedings were had, to wit,

Ezekiah H. Gear }

vs

{ Replevin -

Richard H. McGoon

This day came the said Defendant by Thomas H. Sutherland Esquire his attorney and by leave of the Court here had filed an additional plea

to the plaintiff declaration herein -

Which said additional plea is in the words and figures following, to wit,

Iowa District Court

Wesley H. Gear 3 September Term A.D. 1843

vs

Replevin -

Richard H McGoon

And for a further plea in this behalf by like leave of the Court here for this purpose had and obtained according to the form of the statute in such case made and provided, says that the plaintiff ought not to have or maintain his aforesaid action thereof against him because he says that the said slag in the said declaration mentioned at the said time when he was the property of one Benjamin Parkers and not of the said plaintiff as by the said declaration is above supposed and this he the said defendant is ready to verify wherefore he prays judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against him and he also prays a return of the said slag together with his costs in this behalf, according to the form of the statute in such case made and provided to be adjudged to him &c -

And for a further plea in this behalf by like leave of the Court here for this purpose first had and obtained according to the form of the statute in such case made and provided

says that the plaintiff ought not to have
or maintain his aforesaid action thereof
against him because he says that the said
slag in the said declaration mentioned at
the said time when &c was the property
of the said defendant and one Benjamin
F. Ankney and not of the said plaintiff
as by the said declaration is above sup-
posed. And this he the said defendant is
wady to verify wherefore he prays judg-
ment if the said plaintiff ought to
have or maintain his aforesaid action
thereof against him and he also prays
a return of the said slag together with
his costs in this behalf according
to the form of the statute in such
case made and provided to be adjug-
ed to him &c

Wm & Sutherland
Attys for Defendant

And afterwards to wit, at the same
term of said court and on the 11th day
of the term being the being the 15th day
of September the following still further
proceedings amongst others were had
to wit,

Hezekiah H. Gear &
as } Replwin -
Richard H. McGoon

Richard H. McGoon This day came the
said parties by their attorneys aforesaid
and issue having been joined upon
the replication filed herein and which

said replication and joinder are in the words and figures following, to wit,

Ezekiah H. Gear

vs

Richard H. McGoon

And now the said plaintiff by Strong & Parrie his attorneys comes and says that the plaintiff ought not to be barred &c because he says that the slag in the said declaration mentioned at the time when &c was the property of him the said plaintiff and that he was lawfully entitled to the possession thereof - without this that the said slag was the property of the said defendant &c as the defendant in his said plea hath avowed and this he prays may be inquired of by the Country &c - Strong & Parrie

attys for plff

Defendant doth the like

Sutherland & Drum

attys for Def.

And the said plaintiff by his said attorney as to the said defendant's 1st additional plea says that he ought not to be barred &c by reason of any thing in that plea contained because he says that the said slag in the said declaration mentioned at the time when &c was the property of him the said plaintiff and that he was lawfully entitled to the possession thereof without this that the said slag was the property

of Benjamin F. Arkney as in the said
additional plea avers - and this he
prays may be inquired of by the
Court -

Strong & Parris
Attys for plff

Defendants doth the like

Sutherland and Dunn
attys for Deft

2^d plea. }
2^d additional plea.

And the said plaintiff by his said attor-
ney Strong & Parris as to the defendant
2^d additional plea says that he ought
not to be barred &c by reason of anything
in that plea contained because he says
that the said slag in the said declaration
mentioned, at the time when &c
was the property of him the said plaintiff
and that he was lawfully entitled to the
possession thereof, without this, that
the said slag was the property of the
said defendant and one Benjamin F
Arkney as in and by said plea alleged
and this he prays may be inquired
of by the Court &c -

Strong & Parris atty
for plff

Defendants doth the like

Sutherland & Dunn
his attys

Thurman came a jury to wit,
Birnoting Burns, Samuel Baker, John
Burrill, William F Jenkins, Noah Clough
Oscar Williams, Joseph Jones, Edward M. Parnoy
Grant Cunklin, Peter W. Farley, Alfred Newman

and John Jenkins, twelve good and law-
ful men elected, tried charged and
sworn well and truly to try the issue
aforesaid between the parties aforesaid
and thereupon evidence was given to
them by the plaintiff aforesaid which
being insufficient to maintain the
said issue on his part and the said plaintiff
being thereupon solemnly called to produce
further evidence to support and maintain
his said action, the said plaintiff comes
not but makes default nor doth he
further prosecute his suit against
the said defendant, therefore it is con-
sidered that the said plaintiff take nothing
by his said suit and that the said defen-
dant go thereof without day, and the
said defendant waives his right to a
return of the property replevied and asks
Judgment for the value thereof accord-
ing to the statute in such case made
and provided - It is therefore considered
and adjudged by the court that the
said defendant do have and recover of
the plaintiff the value of the property
replevied herein and his damages by reason
of the detention thereof and because it is
unknown to the said court now here
what the value of the said property
replevied is and the damages for the de-
tention of the same by reason of the
premises - therefore let a jury come at
this present term of this court to assess
the value of the property replevied and

the damage sustained as aforesaid by the said defendant by the detention of his goods and chattels aforesaid, thereupon on motion of the said plaintiff by his said attorneys upon affidavit filed, which said affidavit is in the words and figures following, to wit,

Hegukiah H. Gear being duly sworn deposes and says that he is not prepared at this time to proceed with the execution of the writ of inquiry awarded in this case, in consequence of the absence of Russell Blakely and Thomas Herin by whom he can prove the true quantity of slag that was replevied in this case they being the persons who weighed the said slag, and that I can prove by them that the quantity did not exceed one hundred and ninety two thousand pounds to the best of my knowledge and belief, and I can also prove by them what was the damage for the detention of the said slag, if any said witnesses live in Galena Jodavies County, Illinois and if this cause is continued until the next term - I can procure their testimony, I further say that I am not prepared with their testimony at this time, because I did not expect that any issue would arise in which their testimony would be material -

Subscribed and sworn of H. H. Gear.
to before me in open

count this 13th September
A.D. 1843 -

attest Edward McSherry clk
D. C. J. Co.

It is ordered that the writ of inquiry
herein awarded be executed and made
returnable the next term of this Court
and that this cause be continued to the
next term of this Court.

And afterwards to wit, at the same
term of said Court and on the 12th day
of the term the same being the sixteenth
day of September A.D. 1843 - The following
still further proceedings amongst others
were had to wit.

Hezekiah H. Gear

vs

Richard H. McGoon

} Replewin -

This day came the
said plaintiff by Thomas P. Burnett
Esqr his attorney and moved the Court
here to set aside the nonsuit of the
plaintiff herein - Which said motion
appears to have been based on the following
deposition filed in open Court Sept 16th
1843 which said deposition is in the
words and figures following, to wit,

Hezekiah H. Gear

vs

Richard H. McGoon

} District Court
Iowa County N. T.
September Term 1843

I, Hezekiah H. Gear
plaintiff in the above entitled case

being duly sworn depose and say that I was surprised by the decision of the Court excluding all testimony offered by me on the trial of the above case showing the agreement between H. R. Corton and myself in relation to the slag which was the subject matter of controversy in this suit upon which agreement I confidently relied to show my right to the said slag. I further say that if the nonsuit in this case is set aside and a new trial granted that I shall be able to prove by the testimony of John Atchison that in the year 1835 he owned and was in the possession of said slag and that at that time he sold it to me, and by the testimony of Hugh R. Corton that after I purchased from Atchison I continued in the possession of said slag and owned it previous to, at the time of and long subsequent to my sale to said Corton of the real estate on which it was situated. I can also prove by Joseph M. Brewster and one Mr. Harwick that from time to time during the last seven or eight years, that I have continued to exercise acts of ownership over said slag by removing portions of it, I did not procure the testimony of said witnesses because I did not suppose until the decision of the Court aforesaid, that their testimony would be important. Said Atchison and Brewster reside at

Galena Illinois and said Coulter in
Grant County and said Warwick at
New Diggings in this County on an apple
river, and I can procure their tes-
timony by the next term of this
Court -

Sworn & subscribed } H. H. Gear
this 15th day of September }

A.D. 1843 at Mineral Point.

W.T. before me Thos R Smith

Sup^r. Ct. Com. Iowa Co. W.T.

And on the same day of the time
there was filed with the proceeding
affidavit the following motion
to wit -

Hazekiah H. Gear } District Court
vs } Iowa County W.T.
Richard H. McGoan } September Term 1843 -

And now comes the
said plaintiff by Strong & Burnett his
attorneys and moves the Court to set aside
the order of non suit made in this cause
and to grant a new trial for reasons
contained in the affidavit of the plaintiff
filed herewith - Strong & Burnett
Atty for plffs

And afterwards to wit at the same time
of said Court and on the fifteenth day of
the Term being the 20th day of September
the following further proceeding a-
mongst others were had in said cause
to wit,

Hezekiah H. Gear }
as } Replevin -
Richard H. McGoon }

This day came the said parties by their attorneys and argued the motion to set aside the non-suit herein, and submit it to the Court and the Court not now being sufficiently advised takes time to consider of its opinion -

And afterwards to wit, at the same term of said Court and on the 17th day of the term the same being the 22^d day of September the following further proceedings were had in said Cause - to wit,

Hezekiah H. Gear }
as } Replevin -
Richard H. McGoon }

This day came the plaintiff by his attorney and moved the Court for a new trial for reasons on file and the Court being now sufficiently advised of and concerning the said motion doth consider that the said motion be overruled -

And afterwards to wit, at a subsequent Term of said Court begun and held at the Court house in the town of Mineral Point on the second Monday in the month of April A.D. 1844. and on the 10th day of the Term the same being the 18th day of April in the year aforesaid the following further proceedings amongst others

was had in said cause, to wit,

Hegakiah H. Gear

vs

Richard H. McGoon

} Replevin or writ
of inquiry -

This day came the said parties by their attorneys and the writ of inquiry awarded herein at a previous term of this Court having been returned executid - Thereupon came a jury to wit, John Conway, Job Cash, Eber Polk, Anthony Mc Knight, James Yarker, Ashford Rollins, Samuel S. Hall, William Sublett, Nicholas Wynn, Thomas McKnight, Almer Nichols and John Milton, twelve good and lawful men elected tried charged and sworn well and truly to inquire of the value of the property replevied and to assess the damages for the detention of the same and the jurors aforesaid of the Jury aforesaid having heard the testimony as well on the part of the plaintiff as of the defendant and the argument of Counsel thereon and having been instructed in the law by the Court, retired to their Chamber to deliberate on their verdict Thereupon the Jurors of the Jury aforesaid returned into Court here, and on their oaths do say that they assess the value of the Slag detained at Three hundred and eighty three dollars and seven tenths cents, and that they also find the sum of thirty five dollars and thirteen cents damages for the detention thereof - It is

therefore considered and adjudged by the Court that the said defendant do have and recover against the said plaintiff the sum of Three hundred and eighty three dollars and seventeen cents, the value of the property aforesaid together with the further sum of thirty five dollars and thirteen cents for the detention thereof by the verdict of the jurors of the Jury aforesaid assessed as well as his costs and charges by him about his said defence in this behalf expended, and that he may have execution therefor -

And afterwards to wit, on the 25th day of May A.D. 1844 the following fee bill was made out and is in the words and figures following, to wit,

Hezekiah H. Gear }
 as } Replevin -
 Richard H McGoon }

To Edward M Sherry clerk

To issuing & sealing writ	.75
" Docketing cause	.19
" Filing 12 papers	.75
" Entering appearance 12 $\frac{1}{2}$ & plea 6 $\frac{1}{4}$ & issue 12 $\frac{1}{2}$	.50
" Affidavit for writ 12 $\frac{1}{2}$ filing same 6 $\frac{1}{4}$	.25
" issuing subp	.19
" entering additional plea 6 $\frac{1}{4}$	.25
" swearing and empanneling jury	.50
" Witnesses	.25
" Entry non suit	.25
" " Judgment	.50

" 4 motions &c

75
5.14

George W. Jones clk

On writ of Enquiry
To Cocketing cause

" entering appearance & 122	.37
" Filing 2 papers	.13
" Issuing 3 Supas	.57
" Swearing and empanelling Jury	.50
" " " 11 Witnesses	.66
" Entering Judgment	.50
" recording verdict	.19
" taxing cost	.37
	<u>3.41</u>

Satisfaction

12 1/2

Jury fee

3.00

6.53 1/2

Recd \$ $6 \frac{53 \frac{1}{2}}{100}$ my fee as above this
14th Sept 1844 - George W. Jones

Sheriff's fee

George Mason Smith service of writ &c	4.80
W. E. Dodge serving supra	.19
J. P. Morrison do	.55
W. Lloyd "	.43
ap Court & app Parties & Fees	.76
	<u>6.73</u>

Witnesses

Julius Gibson	2 days	30 miles	2.80
Wm P. Hood	3 "	25 "	3.00
F. Washburn	3 "	25 "	3.00
Wm Spaulding	4 "	60	5.60
James Collins	1 "	30	2.30
			<u>16.70</u>

Examined and allowed May 25th 1844,

Charles Drum Judge 1st Ind Dist. N.T.

The following is a copy of the judgment
record in this cause, to wit,

Hezekiah H. Gear

vs

Richard H. McGoon

} Plaintiff -

Judgment for Defendant

April the 18th 1844 for \$ 418. 30 cts \$ 31.98
total \$ 450.28 -

And afterwards to wit, on the 4th
day of June A.D. 1844 came Francis J.
Drum Esqr and filed in the office of the
Clerk aforesaid his certain precept which
said precept is in the words and figures
following to wit,

Richard H. McGoon

vs

H. H. Gear

} The clerk will

please issue an execution in the above
case -

June 4th 1844

Francis J. Drum atty
for Plff

And afterwards to wit on the same
day and year of the filing of the pre-
cept aforesaid there issued from the
office of the clerk aforesaid an ex-
ecution - which said execution is
in the words and figures following
to wit,

Territory of Wisconsin
County of Iowa

} District Court
U.S.

The United States of America.
To the Sheriff of the said County
Greeting

We command you that of the goods and chattels (except such as are by law exempt) of Hezekiah H. Gear in your bailiwick, you cause to be made the sum of three hundred and eighty three dollars and seventeen cents which Richard H. McGoon lately in our District Court before our Judge thereof at the court house in Mineral Point in said County recovered against him for the value of certain property mentioned in a certain action of Replevin lately determined in our said District Court in which said Hezekiah H. Gear was Plaintiff and said Richard H. McGoon was Defendant and also the sum of thirty five dollars and thirteen cents for his damages by him sustained by reason of the detention of the said property and also the further sum of thirty one dollars and ninety eight cents which was adjudged to the said Richard H. McGoon for his costs and charges by him about his defence in the said suit expended whereof the said Hezekiah H. Gear is convicted as appears to us of record and if sufficient goods and chattels of the said Hezekiah H. Gear cannot be found in your bailiwick that then you cause the said several sums of money above mentioned to be made of the lands ~~and~~ tenements, real

estate and chattels real whereof the said
Hezekiah H. Gear was seized on the eight-
teenth day of April A.D. 1844 or at any
time thereafter in whose hands soever
the same may be, And have you those
monies before our Judge of our District
Court at the clerks office in Mineral
Point in said county in ninety days
from the date hereof together with twenty
five cents for this writ, to render unto
the said Richard H. McGoon for the value
of the property damages and costs and
charges aforesaid, and have you then
and there this writ. -



Witness the Honorable Charles
Dunn Judge of our said Court
at Mineral Point this 4th day
of June A.D. 1844-

attest

George W. Jones Clerk
D. C. D. Co.

The following appears endorsed on
the back of said execution. to wit,

By virtue of the within writ
I have this day laid on following
described lands, to wit, The east half
of the south west qr Section No. one (1.)
Town No one (1) of Range No. two (2) east,
and the south east qr of section No thirty
one (31) Town No one (1) of Range No. two
(2) east all East of the fourth principal
meridian as the property of Hezekiah
H. Gear -

W. L. Dodge Sheriff

July 3^d 1844

By E. P. Morrison under Sheriff

The following appears attached to the back of said execution -

Shrift Sale

Notice is hereby given that by virtue of a writ of fieri facias issued out of the office of the clerk of the District Court in and for the county of Iowa Wisconsin Territory and to me directed against the goods and chattels, lands and tenements of Hezekiah W. Gear in favor of Richard W. McGoon, I have levied on all the right title and interest of the defendant of in and to the following described lands viz: The east half of the south west quarter of section no one (1) of range no 1. of Range No two (2) East - also on ~~on~~ the south east quarter of section No thirty one (31) Town no one (1) of Range no two (2) East. all east of the fourth principal meridian and in Iowa county W.T. all of which I shall expose to sale by public outcry on the 3^d day of September A.D. 1844 at the front door of the Court house in the town of Mineral Point between the hour of 10 O'clock A.M. and 4 O'clock P.M. of said day to the highest and best bidder for cash to satisfy said writ and costs

D/S Dodge Sheriff

By S. P. Morrison undersheriff

Shrifts office July 16th 1844

Sutherland & Orrin
attorneys

The following deposition appears annexed to the foregoing notice of Sheriff sale -

I, Henry Plowman do hereby certify that I am the Editor and publisher of a newspaper in the town of Mineral Point Iowa County Wisconsin Territory called the Mineral Point Free Press and that the annexed advertisement was published in said paper six successive weeks prior to the 3^d day of September A.D. 1844 -

Subscribed & sworn to } Henry Plowman
before me October 17th

A.D. 1844 att. George H. Jones

Clark J.C. J. Co.

The following also appears endorsed on the back of said execution, to wit,

I do hereby certify that I did on the 3^d day of September A.D. 1844 after giving the legal notice of sale, by public auction sell all the lands contained in the above levy and for which Richard H. McGoon bid the sum of four hundred and eighty five dollars and seventy nine cents he being the highest and best bidder all the above lands were fairly struck off to him the said Richard H. McGoon -

so answers

C. P. Morrison under Sheriff

And afterwards to wit, at a still subsequent term of said court begun and held at the Court House in the town of Mineral Point in said county and Territory on the second Monday in the

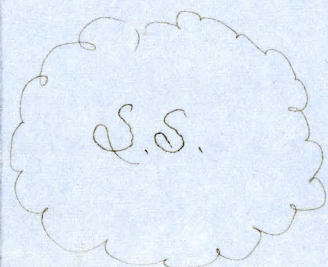
month of April A.D. 1845 the same being
the 14th day of April in the year aforesaid
and on the 8th day of the term being the
22^d day of April A.D. 1845 the following
further proceedings amongst others
were had in said cause to wit,

Hezekiah H. Gear }
vs } Replevin
Richard H McGoan

This day came the
said defendant by Nelson Dime, Jones
and Crawford his attorneys and by leave
of the Court has had filed his motion
to quash the levy and set aside the sale
on the execution herein for reasons
on file -

State of Wisconsin }
County of Iowa }

I, James Hutchison
Clerk of the Circuit Court in and for
Iowa County and State of Wisconsin
do hereby certify that the within and
foregoing is a true and correct transcript
of all the papers on file also the record
of judgment record and execution in the
cause wherein Hezekiah H Gear was plain-
tiff and Richard H McGoan was defend-
ant as the same remains on file and
on record in my office -



In witness whereof I have
hereunto set my name and
the seal of the Circuit Court
at the clerk's office in Mineral

Done in said County this 15th day of
August A. D. 1849

attest James Hutchison Clerk
Circuit Iowa Co. Wis.

State of Wisconsin }
County of Iowa }

I, Mortimer M. Jackson
Judge of the 5th Judicial Circuit of the
State of Wisconsin including Iowa County
aforesaid do hereby certify that James
Hutchison whose name appears to the
above certificate is and was at the
making and signing thereof Clerk
of the Circuit Court of said County in
said State duly elected and qualified
and the above signature is genuine
and his said certificate in due form
of law -

Given under my hand this
fifteenth day of August in the year
of our Lord one thousand eight hundred
and forty nine -

Mortimer M. Jackson
Judge of the fifth Judicial
Circuit & Presiding Judge
of the Circuit Court for
Iowa County State of
Wisconsin - "

End. Clerk's fee for transcript \$ 8.80 }

To the reading of which said record the
Defendant objected which objection after

argument of counsel is sustained by the court -

The plaintiff then produced and offered to read in evidence the deposition of Hezekiah H. Gear. which said deposition is in the words and figures following to wit.

notice of
Deposition
of H.H. Gear }

"Benjamin F. Ankney

vs

Richard H. McGoon

} Stiptonson County
Circuit Court, Change
of venue from LoDarius
County, Illinois

To John M. Douglass Esqr

Atty for Defendant

Sir. You are hereby notified that the above named plaintiff will proceed by himself or his attorney to take the deposition of Hezekiah H. Gear before Charles G. Thomas Probate Justice of the peace in and for said County of LoDarius at his office in the town of Galena on the 25th day of July A.D. 1849 between the hours of 10 O. Clock A.M. and 6 O. Clock P.M. of said day to be continued from day to day if not taken within the time of same between the same hours until taken, to be used as evidence on the trial of the above entitled cause on the part and behalf of the plaintiff when and where you may appear if you see fit & put cross interrogatories -

To the above named } Benjamin F. Ankney
Defendant or John M. }

Douglass his attorney

(Endorsed), "Recd copy of within July 6th 1849"

Galena Ills, J.M. Douglass atty. Supt "

Deposition
of H. H. Gear.

Deposition of H. H. Gear a witness
produced sworn and examined before
Charles G. Thomas Probate Justice of the
peace in and for the County of Jo Daviess
and State of Illinois to be used in a certain
suit now pending in the Circuit Court of Stephen-
son County State of Illinois in which Benja-
min F. Minkus is Plaintiff and Richard H. Mc
Goon is Defendant to be used on the part of the
Plaintiff taken agreeable to the annexed no-
tice.

Int. 1 - Are you acquainted with the parties
Plaintiff and Defendant to the above mentioned
suit -

Ans. - I am acquainted with both the parties.

Int. 2^d State whether you paid the Defendant
at any time a certain sum of money if so
how much and what for and at what time?

Ans. - I paid the said Defendant at least four
hundred and eighty dollars in A.D. 1843, 44 or
45 in payment of a judgment in the District
Court of the Territory of Wisconsin, County
of Iowa in said Ter. rendered in a suit of
Replevin brot. by me against said above
named Defendant in the year of A.D. 1843 or
44 as near as I can now remember -

Int. 3^d State what the judgment paid by
you above referred to was for?

Answer. - The judgment and payment
was for the value of some Ash Furnace
Slagg say about one hundred and ninety
thousand pounds which was got by me
near the White Oak Springs about fifty
yards southwesterly from the Cupola Furn

-nace - Known as Gear's Cupula Furnace -
Int. 4 - Was there any other ash Furnace
slagg near White Oak Springs?

Ans. - There was not nearer than about
one half mile, to my knowledge -

Int. - State whether or not the slagg
above referred to was the slagg in con-
troversy in the suit aforesaid between
you and the said above named defendant

Ans. - It was the same -

J. H. Gear

P. Justice }
Certificate.

State of Illinois }
Jadavis County } &

I, Charles G. Thomas
Probate Justice of the Peace in and for the
said County and State do certify that the
forgoing depositions of Hezekiah H. Gear
were taken before me and sworn to and subscribed
by him on the 25th day of July A.D. 1849
at my office in the City of Galena
in said County and between the hours
of ten O'clock A.M. and six O'clock P.M.
of that day - That the said witness was
by me first duly sworn and that the
forgoing questions and ^{the} answers thereto
were taken down in writing by me on
said day and between the said hours -

In testimony whereof I have hereunto
set my hand and seal of
office this 25th day of
July A.D. 1849 -

Charles G. Thomas
Probate Justice
of the Peace

L.S.

To the reading of the answers of said
Hezekiah H. Gear to the second and third
interrogatories in said deposition, The
Defendant by his counsel objected, and
after argument of Counsel the Court
sustains said objection, unless the record
of the judgment referred to in said deposition
was produced - Therefore the plffs counsel again
offered in evidence the above named record
and the Court decided that in connection
with said deposition it was admissible in
evidence for the purpose of showing that
the slagg in controversy in said suit between
Gear and the Defendant had been converted
into money or moneys worth and that
the Deft had received such money or moneys
worth & for no other purpose & that it was
not evidence of any other facts and so expressly
charged the jury when the said record was
read as evidence - The Court then permitted
the said record above set forth and the said
deposition of Gear to be read in evidence
to the jury - To which decisions of the
Court and each of them admitting said
record & deposition to be read in evidence to
the jury. The Defendant by his counsel
excepts & prays that this his bill of exceptions
may be allowed signed sealed and made
a part of the record which is done - The
said Record & Deposition were then read in
evidence to the jury - Defendant also at
same time excepted to the ruling of the
Court that the record was admissible as tending
to prove the said facts as stated by the Court.

because it was erroneous and not because given verbally - and prays that this his bill of exceptions may be allowed signed sealed and made a part of the record herein and it is done so.

And afterwards on the same day in the further progress of the trial of said cause the Plaintiff to further maintain the issue on his part produced Amos F. Culver who after being sworn testified that he called on the Defendant at his house in company with the Plaintiff. The Plaintiff told the Defendant that he wanted to get the money he had received on the judgment against Gear.

The Defendant said "Don't be so fast". The witness said that they the parties had some conversation about some proceedings that Ankney or Ankney & McGoan together had or were about to institute against Gear, which of them was to proceed against Gear the witness does not recollect or what proceedings were to be had, but something was said about proceedings against Gear and the Defendant said that if he paid the Plaintiff it would interfere with or prejudice that proceeding - that counsel had so advised him - Ankney said in reply that the Plaintiff and Defendant had agreed to leave it to some man in Mineral Point whether such payment would prejudice said proceeding against Gear. Witness forgets who it was

Witness
Amos F. Culver

and he said differently -

Plaintiff
Submits
his cause

The Counsel for the Plaintiff here submits his cause and says the evidence is closed on the part of the Plaintiff.

And afterwards, to wit, on the second day of November at this next term of this Court in the further progress of the trial of this cause the Defendant to sustain maintain and prove the issue on his part called produced and had sworn.

Defendants
Witness -

Dennis Murphy

Dennis Murphy who testified that he had resided in the mines near where the slag in controversy was made since A.D. 1827 that he is well acquainted with smelting has been himself engaged in smelting from the year 1827 to the year 1843, that from the year 1827 to the year 1837 - Slagg was entirely valueless, no more the subject of sale than loose rocks - It was used to fill up ^{road} ruts, and gutters in the, and to fill up weed holes, and smelters would be thankful for having it carried away to get it out of the way of the furnace - It was valueless and abandoned by outgoing tenants, and incoming tenants received ^{it} as connected with the premises - The custom was general and universal for the outgoing tenant to leave the slag on the premises and the incoming tenant to receive it with the premises furnace loose scattering

mineral and ashes left on the ground

The counsel for the defendant asked the witness if he knew of any general or universal custom in the mines among smelters in relation to who came into possession of the slag when a person purchased from the lessee of the Government ash furnaces with the lessee's privileges in the premises in which the furnaces were situated

Question
objected to
and
sustained

The question was objected to by the counsel for the plaintiff and the court sustained the said objection and refused to let the question be answered by the witness, to which ruling of the court the counsel for the defendant did then and there except and pray that his bill of exceptions might be allowed signed, sealed and made a part of the record herein, and it was so done - The witness was then cross-examined by counsel for the plaintiff and said that - Slagg was considered useless until 1837 in buying and selling and leasing smelting establishments - Witness does not know that slagg was considered at all - The ashes and mineral were considered valuable, but the slagg was as valueless as loose rocks, because there were no means then known to separate the pure lead from the other material of which it was composed -

The Defendant then to further

Witnesses {
Julius Gibson {

maintain the issue on his part called
and examined on his part, as a wit-
ness Julius Gibson who testified that
he sold to the Defendant in the winter
of 1844 his interest in the slag if he
had any for twenty five dollars, did not
sell it by direction of the Plaintiff
sold to the Defendant after a representation
had been made to witness by Solomon Gib-
son which purported to come from the
Plaintiff - The slag was near White
Oak Springs and was made in the
years 1829, 1830, 1831, 1832, 1833, 1834 or in 1835
a part of the slag was made by witness
while employed by Harper and Hudson.
They took the ashes of James Bennett
to smelt or shaves - John Phelps was
the first one that smelted, he began
as witness thinks in 1827 - Bennett began
in 1829, witness smelted as a labourer -
Jacob Woods smelted next from the
fall of A.D. 1831 to A.D. 1832 - Witness la-
bored for Woods until Woods death in A.D.
1832. A good deal of Bennetts slag was
hauled into a mud hole - After Woods death
witness commenced smelting as lessee un-
der Captain Clark, smelted under him by
verbal contract - The contract was that
witness was to have the use of the furnace
the houses the timber and lot and establishment
the whole smelting establishment, and
witness was to pay as consideration the
Government rent on all lead made from
mineral in the ~~big~~ furnace to the Govern-

-ment and was to pay to Clark the one third of all the lead made from ashes in the ash furnace, Clark's share to be delivered to him at the furnace, and Clark was to pay the government rent on his third and Witnief was to pay the government rent on his two thirds =
From A.D. 1827 to ^{A.D.} 1837 Slagg was of no value. It was entirely useless - Witnief never regarded himself as the owner of slagg - Jonney & Smith and Witnief smelted in company in the summer of A.D. 1833 in A.D. 1834 Jonney and Smith smelted in the fifth and last furnace used on the premises, cannot say how much of slagg made by Jonney and Smith was carried off by Bear - Two furnaces that were used made each of them more slagg than the one made by Smith and Jonney. The slagg made by Phelps was mostly taken away before Witnief saw the place, Witnief, Jonney and Smith run a log furnace together but did not run an ash furnace. Witnief helped make all the slagg made there except what was made by Phelps. It was a general custom when a tenant left for him to take all he deemed valuable from the premises. This custom was general among smelters - The lands where this slagg was ~~made~~ ^{was} brought into market in A.D. 1835 or A.D. 1836 by the Government. Witnief, Jonney and Smith paid rent to and occupied the premises under Stroubridge and McConnell and paid rent to

them - They had purchased of Clark - A little more than one fifth of the slag made there was made by ~~Don~~ and Smith. There had been four furnaces before they commenced smelting ashes -

Witness
Solomon Gibson

The said defendant further to maintain the issue on his part called and examined Solomon Gibson as a witness who testified that Julius Gibson sent him to the plaintiff for pay for slag with directions to tell the plaintiff that he Julius Gibson would sell the slag to Gear if the plaintiff did not pay for it - Witness told the plaintiff at White Oak Springs what Julius Gibson had said, The plaintiff said in reply. That "it is all in my eye about his selling to Gear" Witness was afterwards sent again by Julius Gibson to the plaintiff to get the pay for the slag - Julius Gibson directed witness to tell the plaintiff that he was very much in want of money to buy him some clothes, and that he wanted his pay for the slag - that he would take it out of a store and that if he did not pay he would sell the slag to the defendant - The witness stated to the plaintiff what Julius Gibson requested him to and the plaintiff replied "let McGoon take it and pay for it and I will see him about it." Witness told Julius Gibson what Ankney had said to him -

Julius Gibson was here recalled by defendant and said that the communication from Solomon Gibson from Ankney to wit

that witness alluded to in his direct examination was the same one sworn to by said

Witness - { Solomon Gibson above -

Robert M^d Council Robert M^d Council was then produced and sworn to further maintain the issue on the part of the Defendant - Witness said that Hugh R. Colter lived on the premises on which the slagg was made in ad. 1832 Witness never occupied the premises in person Jounny and Smith occupied under witness and Stronbridge and paid them rent -

Deposition - {
Ann Kelso

The Defendant further to maintain the issue on his part produced and offered in evidence the deposition of Ann Kelso which deposition is in the words and figures following to wit:

State of Illinois {
Stephenson County { per Benjamin F. Auking

as

Richard H. M^d Goon

Sixth Judicial Circuit

Appointments
of James Knowlton
Commissioner

To James Knowlton a Special Commissioner in and for the County of Lafayette and State of Wisconsin - Know you that we in confidence of your prudence and fidelity have appointed you and by these presents do give unto you full power and authority and do hereby authorize you and require you that at a certain time and place to be designated and appointed by you for that purpose you do cause the witnesses whose names are mentioned in the caption of the enclosed interrogatories on the part of said Benjamin F. Auking

plaintiff as well as of Richard H Mc Gown
said defendant to come before you and
then and there diligently and faithfully
examine each of them apart upon the
said interrogatories, on their respective
corporal oaths first taken before you
both on the part of the said plaintiff
and defendant and none other and
that you do take such their examination
and cause their said interrogatories as
they are propounded together with
the answers of the said witnesses thereto
to be reduced to writing in the order in
which they shall be proposed and answered
and when you shall have so taken
them you shall cause the said witnesses
to sign the same in their proper places
in your presence and thereupon you
will annex at the foot thereof a certificate
subscribed by yourself in which you
must state that they were sworn to
and signed by ^{the} defendants and the time
and place when and where the same
were taken - After which you are
to send the said depositions together with
this Commission and the enclosed
interrogatories carefully enclosed and
sealed up to the Clerk of the Circuit Court
in and for the County of Stephenson and
State of Illinois with the names of the
said parties litigant endorsed thereon
and this you shall in no wise omit -

{ S.S. }

Witness John A. Clark.

Clerk

"The Execution of the within writ appears
by the exhibits and schedule hereto annexed
August 17th 1849 James H. Kronton

Commissioner

State of Illinois }

Stephenson County }

In the Circuit Court
of said County of the August
Term A.D. 1849 -

Benjamin F. Ankney }

vs

Richard H. McGoon }

Case Change of
venue from
to Davis Co.

To Mr. Benjamin F. Ankney or
Messrs Baker and Merriam his atty.

I have taken notice that on
Thursday the sixteenth day of August
in the year of our Lord one thousand
eight hundred and forty nine between
the hours of five and ten in the morning
of that day I will by myself or attorney
attend at the Clerk's office of the Circuit
Court in and for said County of Stephenson
and state of Illinois for the purpose of
serving out a dedimus potestatem or
commission under the seal of the said
court directed to James Kronton a
Commissioner in and for the County
of Lafayette in the state of Wisconsin
to take the deposition of Ann Kelso a
citizen of the said last mentioned County
and state at the house of James D. Kelso
at White Oak Springs in the said last
mentioned County and state on the
annexed interrogatories to be read as

Notice to fillet
of
Disposition &c.

testimony on the trial of a certain suit
at Common Law now pending and
undetermined in the said Circuit Court
wherein I am the Defendant and you
the said Benjamin F. Ankney are plaintiff
when and where you may attend if
you think proper and file Cross inter-
rogatories - Yours &c

Richard M. Goon
By Douglas Sweet & Brawley
his attorneys

Interrogatories,
Adm^d to Ann Kelso.

Interrogatories to be administered to
Ann Kelso of the county of Lafayette
in the state of Wisconsin, a witness
to be produced sworn and examined
in a certain cause at Common Law
now pending and undetermined in the
Circuit Court in and for the County
of Stephenson in the state of Illinois wherein
Benjamin F. Ankney is plaintiff and Richard
M. Goon is Defendant on the part and be-
half of said Defendant, as follows -

Q. 1. - What is your name, age, and where
do you reside?

Q. 2^d - Do you know the parties plaintiff
and Defendant in the title of these inter-
rogatories ^{named} or either and which of them
and how long have you known them
respectively?

Q. 3^d - Have you any knowledge of
the Defendants having purchased of one
Frank Washburn a quantity of ashes
and slag? if yes, State the time when
and the place where he purchased the

same, what and how much did he pay for the same, when, where, and to whom was the same delivered? State particularly all the terms of the agreement between the said parties -

Q. 4. Look on the exhibit or sale bill dated "White oak Springs Jan'y 7th 1841" now produced and shown to you at this the time of your examination marked with the letter "A." Are you or not, and by any and what means acquainted with the character or manner of hand writing of the person in whose hand writing the said exhibit or sale bill purports to be? If yes, of whose hand writing is such exhibit or sale bill and who made an executed such exhibit or sale bill or occasioned it to be made as you know or for any and what reason believe? and is such person who made and executed such exhibit or sale bill living or dead? What knowledge if any have you of the payment of the consideration money in said exhibit or sale bill mentioned to the person who made and executed the said exhibit or sale bill? if yes, by whom and to whom was said ^{pay} ~~payment~~ made -

Q. 5. - Have you any knowledge of whom said Washburn purchased the said ashes & slag, mention in your answers to the foregoing interrogations. If yes state particularly what knowledge you have? Look to exhibit

marked with the letter "B." State what knowledge you have if any of the execution of the same and what connexion if any there was at the time of the executing the same of the said ashes & slagg with the execution of the same and state particularly all the knowledge you have of the title or claim of the said Washburn to the said ashes & slag and the various persons from whom the said title or claim is derived by him -

Q. 5. - Do you know of any other matter or thing that may tend to the benefit and advantage of the defendant in this cause? if yea, disclose the same as fully as if you had been particularly interrogated thereunto -

(Endorsed on the back of the foregoing the following
"State of Illinois")
Jas Davis County }

Service of
Notice, Int.

Served the within notice
interrogatories and exhibits
A. & B. by delivering the within
plaintiff B. F. Ankney a copy
thereof in Galena the 4th
day of August A.D. 1849

Subscribed and sworn } John C Gear
to before me this 10th day
of August A.D. 1849

Charles G. Thomas

(also endorsed the following)

Received note the within this 4th day
of Aug 1849. Galena, B. F. Ankney

Recpt. of
notice by self.

Deposition.

James H. Knowlton, Commissioner.

Deposition of Ann Kelso of White oak Springs in the County of La Fayette in the state of Wisconsin, a witness produced sworn and examined on oath the seventeenth day of August in the year of our Lord one thousand eight hundred and forty nine at the house of Milo Kelso in the village of White Oak Springs in the County aforesaid by me James H. Knowlton by virtue of a dedimus potestatum or commission issuing out of the Circuit Court of the County of Stephenson in the state of Illinois to me James H. Knowlton directed for the examination of Ann Kelso a witness in a cause in said court depending between Benjamin F. Ankney Plaintiff and Richard H. McGoon Defendant that is to say Ann Kelso of the village of White Oak Springs in the County of La Fayette aforesaid aged thirty eight years or thereabouts, a witness produced, sworn and examined on the part and behalf of the defendant Richard H. McGoon, deposes and saith as follows.

Deposition

Witnesses }
Ann Kelso }

Interrogatories - To the first interrogatory this deponent saith - "My name is Ann Kelso, my age thirty seven and I reside at White Oak Springs in La Fayette County"

Item - To the second interrogatory this deponent saith "Mr. Ankney I only know by sight, I don't recollect that I ever spoke to him, I have known Mr.

Mr Goon I should think fourteen years

James H. Knollton Commissioner -
I true - To the third interrogatory this
deponent saith "I have a knowledge
" of Mr Washburn's selling a quantity of
" drofs or slagg as he termed it to Mr. McGoen
" the dependant, I think the sale was
" made in the year eighteen hundred
" and forty, or forty one, Mr. McGoen gave
" one hundred and fifty dollars for the
" slagg, the money was counted out in
" my presence, and a paper of some kind
" was given by Mr. Washburn to Mr. McGoen
" I suppose it was a receipt or bill of sale
" Upon looking at the paper writing
" marked exhibit "A" now shown to me
" I think the same is the paper given to
" Mr. McGoen and spoken of by me just
" a few moments ago, I have no doubt
" of it, the whole is in the hand writing
" of Mr. Washburn and the place mentioned
" in this paper is where the slagg was that
" Mr. McGoen bought -

I true - To the fourth interrogatory this
deponent saith "I have a full knowledge
" of Mr. Washburn's hand writing, I have
" seen him write a great deal and have
" quite a large number of his signatures
" now in my possession, and as I stated
" in answer to the last interrogatory
" the paper termed a sale bill, is in the
" hand writing of Mr. Washburn and the
" signature thereto "Frank Washburn" is
" genuine and I do not know as I can

James H. Knowlton Commissioner

" make any further answer to this inter-
"rogatory without recapitulation except
" that I can definitely state that the
" one hundred and fifty dollars mentioned
" by me in answer to the third interrog-
"atories was paid by Mr. McGowan the
" defendant to Mr. Frank Washburn my
" late husband, who is now dead - He died
" in the month of August in the year
" eighteen hundred and forty six -"

Exception.

Item - To the fifth interrogatory this
defendant saith - ("Mr. Washburn bought
" the slagg of one Hugh R Colter with
" the eighty acres of land described in the
" deed executed by said Hugh R Colter and
" Almira R Colter his wife to Mr. Washburn
" now shown to me marked exhibit "B."
" Mr. Washburn paid three thousand dollars
" for the said land and slagg and forty acres
" of timber land conveyed by another deed
" and in order to induce Mr. Washburn to
" give three thousand dollars Mr. Colter
" told Mr. Washburn whilst they were
" talking about the trade that the slagg
" that was on the land would bring him
" (Mr. Washburn) one third of the purchase
" money which would be one thousand
" dollars. The deed marked exhibit "B."
" was not executed in any furnace, and
" the slagg of which I have been speaking
" was upon the land described in said deed
" exhibit "B.")

" The smelters at the furnace where this

Exception.

" Slagg was made that is Samples Journey
" Henry Smith, McConnell and Strawbridge
" were all aware of the sale from Colton
" to ^{Mr. Washburn} ^{of which I have first}
" before ^{ever} ^{spoken} and no one of them in
" any conversation in relation to said sale
" and property so far as my knowledge
" extends, even pretended that they had any
" the least title or claim to this slagg and
" I have heard frequent conversations in
" relation thereto between those men
" and Mr Washburn. (Mr. Colton repre-
" sented this slagg ^{to be} ^{the} ^{land} as much so
" as the log cabins that were upon it ")

Exception.

Exception.

James H. Knowlton Commissioner

Inter. To the sixth interrogatory this
deponent saith - "I do not know of
" any thing except that (Mr. Washburn
" bought this slagg of Mr. Colton in
" the year ^{eighteen} ^{hundred} ^{and} ^{thirty}
" seven as in exhibit "B.") and Mr. ^{Mc}Loon
" had been in possession of the same three
" years or more before I ever heard of Mr.
" Ankney or any one else setting up any
" claim or title to this slagg, when I under-
" stood that Mr. Ankney set up a claim to
" it by gift from Mr. Samples Journey
" before mentioned by me in ~~my~~ con-
" nection with my testimony -
" subscribed and sworn 2 " Ann Kelso "
" to before me this 17th
" day of August A.D. 1849

James H. Knowlton Commissioner

Exhibit.
"A."

Copy of Exhibit marked "A."

White Oak Springs July 2^d 1841

In consideration of the sum of one hundred and fifty dollars paid to me by R. H. McGoon, I have sold all the ashes & slagg lying on my ground near Sears premises but on the opposite ~~or~~ south west side of the branch - There have been some loads of slag taken by Baldwin which I agree to be replaced -

Frank Washburn

Exhibit
"B."

Copy of Exhibit marked "B."

This indenture made and entered into this ninth day of June A.D. Eighteen hundred and thirty seven between Hugh R. Corlton and Almira R. his wife of the County of Iowa Territory of Wisconsin of the first part and Franklin Washburn of the same county and territory of the second part Witnesseth that the said party of the first part for and in consideration of the sum of fifteen hundred dollars to them in hand paid the receipt whereof is hereby acknowledged have granted bargained and sold and by these presents do grant bargain and sell unto the said party of the second part his heirs and assigns forever the following piece or parcel of land lying in the County of Iowa and Territory of Wisconsin known and described as follows all that part of the south west quarter of section No thirty two in Township one and

Range two east of the fourth principal
meridian lying east of a brook running
north and south through the said
quarter section above named agreeably
to an agreement existing between M^r
Connell and Stronbridge and Hugh R.
Coulter who made a joint entry of the
above named quarter section excepting
and reserving the tracts of land which
the party of the first part has heretofore
sold (being parcels of the above) to wit,
to John Hanes thirty six feet in front
running ~~south~~ south to the branch to Hm.
C. Bryant thirty feet running back fifty
feet together with all the privileges
therunto belonging to have and to hold
the premises aforesaid (except the tracts
aforesaid) unto the said party of the
second part his heirs and assigns for-
ever and the said party of the first part
the said premises (except as above)
will forever warrant and are defend
against all claims whatsoever except
those of the United States -

In witness whereof the said parties
have herunto set their hands and seals
the day and year above written -

signed sealed and } H. M. Coulter. (Seal)
delivered in presence of } Almira W. Coulter (Seal)
Thomas Drimmer

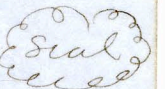
J. M. Blackstone Esq

E. Cox

Justice of the State of Illinois }
certificates. } do David set } J. Elijah Charles a

Justice of the peace for said county do
certify that Hugh R Coulter whose
signature appears to the foregoing deed
and who is personally known to me to
be the person described in and who ex-
ecuted the same did acknowledge the
same to be his free act and deed for the
purposes therein mentioned -

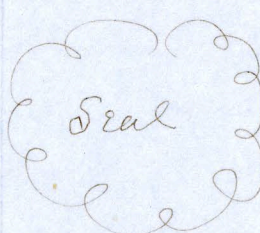
Given under my hand and seal this
9th day of June A.D. 1837 -

Elijah Charles J. P. 

State of Illinois }
In Davis County }

clerk's
certificate }

I, W. B. Green Clerk of
the County Court of said County -
do hereby certify that the above subscribed
Elijah Charles is and was at the time
of making the within certificate an acting
justice of the peace in and for said County
duly commissioned and qualified and
that as such full faith and credit are
due to his official acts

 In testimony whereof I have
hereunto set my name and
affixed the seal of said County
Court this 10th June 1837 -
W. B. Green clk

Territory of Wisconsin }
County of Iowa }

Justice
certificate. }

This day personally
appeared before me Almira K Coulter
the within named wife of H. R. Coulter
to me known as the person who executed

the within dcd who being examined
separate and apart from her husband
acknowledged that she executed the
same without any fear or compulsion
from him and that the same was ^{her} ~~an~~
voluntarily act and deed -

June 13 ~ 1857

J. W. Blackstone J. C.

Iowa County

Endorsement on the back of said dcd

Hugh R. Coulter & wife

do

Franklin Nashburne

Deed - Exhibit "B"

State of Missouri }
Va Fayette County } ss.

Commissioners

J. James H. Knowlton

Certificate

of the village of Shellsburg in the aforesaid
County the Commissioner named in the
annexed Commission do hereby certify
that the above and foregoing disposition
of "Anne Kelso" was taken by me, in pur-
suance and by virtue of the annexed com-
mission and on the several interrogatories
annexed thereto on the sworn truth day of
August A.D. 1849 at the Home of Milo Kelso
situate in the village of White Oak Springs
in the said County of Va Fayette - and I
further certify that I propounded to
said "Anne Kelso" all of the said inter-
rogatories in the order in which they are
arranged, putting one at a time; &
that she the said Anne gave answer
thereto in the order they were put, that
I carefully reduced her answers to writing

and read said answers with the interrogatories in order cautiously to said Ann after which she subscribed said deposition as the same appears in my presence with her own hand -

I further certify that said deposition was taken upon oath which oath I administered to said Ann Kelso immediately previous to the commencement of the taking of the same which oath was in the following form that is to say

"You do solemnly swear in the presence
"of Almighty God that you will testify
"the truth, the whole truth and nothing
"but the truth in relation to the matter
"in controversy, so far as you may be
"interrogated in a certain cause now de-
"pending in the Circuit Court of the County
"of Stephenson in the State of Illinois, to-wit:
"Benjamin F. Ankney is plaintiff and
"Richard H. McGoon is defendant, so
"help you God."

This done the 17th day of August
A.D. 1849 as by me appointed -

James H. Knowlton 
Commissioner

Endorsed, Filed Oct 26. 1849.

John A. Clark clk

And the plaintiff by his counsel thereupon moves to exclude from the jury all that portion of said deposition mentioned in a notice of a motion, which said notice is in the words and figures following to-wit,

Ankney } In the Circuit Court
as } of Stephenson County
McGoan } Special Term 1849

Plaintiff
motion to
exclude part
Deposition

And now at this day comes
the said plaintiff and moves the Court
to exclude from the deposition of Mrs
Ann Kelso on file in this cause, all
that part of the answer to the fifth
interrogatory (and the exhibit "B" thence
referred to and, commencing on the fifth
line with "Mr. Washburne paid three
thousand dollars &c" and ending with the
words "one thousand dollars" and all that
part of said answer to said 5th interrogatory
commencing with the words "So far
as my knowledge extends" and to the
end of said interrogatory - And that
the same may be excluded in pur-
suance to the Statute -

Goodhue & Johnson
Plff atty &c

And also ^{all} that of the said answer to
the fifth interrogatory not specified in
the above motions together with all of that
part of the answer to the said sixth in-
terrogatory commencing at the word
"Except" in the second line, and ending
with the words "as in exhibit B." in the
fourth line from the top - and that the
same may be excluded in pursuance
to the Statute - Goodhue & Johnson
endorses;

Plff atty &c

"Filed Oct 26, 1849

John A. Clark clk

Which said first above named motion was sustained by the court in part and the defendant was not permitted by the court to read any part of said deposition mentioned in the foregoing notice of motion except that part of the 5th interrogatory in relation to the smelters burning, Smith McConnell & Stronbridge & their acts and conversation which was permitted to be read embracing all that part of said interrogatory not included within brackets, the portion within brackets being excluded, To which ruling of the court in not permitting the aforesaid portion of said deposition to be read in evidence to the jury, no exception was taken at the time of said ruling nor until after the trial of the cause, but now at the time of the signing of this bill of exceptions - The defendant excepts to the said last named ruling of the court prays that this his bill of exceptions may be allowed, signed, sealed and made a part of the record which is done -

The defendant then read in evidence a part of said deposition not excluded from the jury by the ruling of the court as aforesaid -

The foregoing being all the evidence in the said cause the Defendant asked the Court to instruct the jury as follows, to wit, -

2052-43

Defendants }
Instruction }

"Counsel for Deft asks the Court to instruct the jury

1st That if they believe from the evidence that the property in dispute was the plaintiff's and that the defendant was guilty of taking and carrying it away so that the plaintiff could maintain an action of trespass or trover against him for his tortious acts they will find for the defendant, unless they also find that the defendant has disposed of said property and received the money therefor or its equivalent without that the plaintiff could not ~~waive~~ waive the tort and sue in assumpsit "

Which said instruction the Court refused to give to the jury to which opinion of the Court in refusing to give the said instruction to the jury. The Defendant by his counsel excepts and prays that this his bill of exceptions may be allowed signed, sealed and made a part of the record herein and it is done - The Court then instructed the jury in writing

Give
 " That if they believe from the evidence that the property in dispute was the plaintiff's and that the defendant was guilty of taking and carrying it away so that the plaintiff could maintain an action of trespass or trover against him for his tortious acts they will find for the defendant unless they also find that the defendant has received the money for the property or its equivalent for, without that the plaintiff could not waive the tort and sue in assumpsit "—

Defendant
excepts to
opinion of
court

To the opinion of the Court in giving which said instruction the defendant by his counsel excepts and prays that this his bill of exceptions may be allowed signed, sealed and made a part of the record herein, and it is done -

The counsel for the defendant then asked the court to instruct the jury further as follows to wit,

No 2.

2^d "That if they believe from the evidence that the property in dispute belonged to the plaintiff and was taken on a writ of Replevin in favor of H. H. Gear against the defendant and that the defendant merely defended that action they will find for the defendant although they should also believe from the evidence that the defendant obtained a judgment in that action against Gear - The plaintiff would not be concluded or in any way affected by the judgment in that case whatever it was, unless he were a party or privy thereto - The defendant cannot be made liable by relation on the ground that the defendant was successful against Gear - The remedy of the plaintiff if any, under such circumstances would be against Gear and not against defendant McGoan -"

No. 3.

3^d "That if they believe from the evidence that the property in dispute was originally the absolute property of the person or persons through whom the plaintiff claims title and that the property was taken and carried away from

such person or persons by the defendant so that he or they could have maintained an action of Replevin trespass or trover before knowing the plaintiff acquired any right to it they will find for the defendant so far as this point is concerned

The cause of action being one of tort and having accrued prior to the plaintiff's interest in the property could not be assigned so as to enable the plaintiff to recover therefor in his own name"

No. 4.

4th "That if they believe from the evidence that the plaintiff has proved a promise from the defendant to pay him the plaintiff any part or the whole of the judgment obtained against Gear for the slagg they must find for the defendant, such promise being without consideration" -

No. 5.

5th "That if they believe from the evidence that the plaintiff or the person or persons through whom he claims title to the property in dispute were the real owners thereof and that they were present and cognizant of the fact that the defendant or his vendors were without knowledge of their title and in good faith for a valuable consideration about purchasing and did then purchase said property from one selling it as his own they will find for the defendant unless they also believe from the evidence that such owners or owner set up or disclosed

their right or title at the time, this they were bound to do, and not allow an innocent person to purchase and so an impression that he was buying from the true owner or owner - by the latter course they and their vendors would afterwards be stopped from setting up their title against such purchaser and his vendors -

No. 6.

Given -
6th "That if they believe from the evidence that the slagg had remained on the premises from A.D. 1834 to A.D. 1843 without any person having the actual possession of the same and that Gear before the Plaintiff had any claim to the same, took and converted the same to his own use, and if they believe further that the Defendant never had any actual possession of said slagg they must find for the Defendant -"

No. 7.

7th "That if they believe from the evidence that Gear replevied the slagg and made Mr Goon Defendant without his consent and that Mr Goon merely defended himself in that suit, by operation of law Ankeny could not have had any benefit right title or interest in that judgment unless such right was derived by an express contract and agreement between Ankeny and Mr Goon, and before Plaintiff would be entitled to recover he must show by proof such express agreement -"

No. 8.

8th That the Plaintiff must prove before he will be entitled to recover, that he was the owner of the slagg, and as he claims it by virtue of a purchase from third persons he cannot show ownership unless he has proved that his purchase was accompanied with actual or constructive possession for without such possession there was no delivery to the plff from his vendors, and if they further believe from the evidence that there was no delivery to anybody from his vendors they will find for the Defendant -

No. 9.

9th "Actual possession is only evidence by acts of ownership such as taking charge of the property and doing something in relation to the property claimed to be possessed"

And which said sixth and ninth instructions so asked, the court gave to the jury, but which said, second, third, fourth, fifth, seventh and eighth instructions so asked the Court refused to give to the jury - The 3^d and 5th ones because they were inapplicable and in refusing the 8^d & 2^d instruction the court instructed the Jury that the said record was evidence for no other purpose than that stated by the court as aforesaid when said record was read in evidence - To which opinion of the Court in refusing to give the 2^d, 3^d, 4th, 5th, 7th and 8th instructions to the

Defendant. }
Excepts to }
opinion of court }

jury as asked, the defendant by his counsel
excepts and prays that this his bill
of exceptions may be allowed, signed
sealed and made a part of the record
herein and it is done -

Plaintiff's
Instructions.

The Plaintiff then asked the Court
to instruct the jury as follows, to wit,

No. 1.

"The plaintiff asks the Court to
instruct the jury - 1st If they believe
jury believe from the evidence that
the defendant received the money
of the plaintiff under the pleadings
in this case, the jury may allow
interest on the amount received by
the defendant up to this time"

No. 2.

2^d "This is in its nature an equitable
action and if the jury believe from
the evidence the defendant has money
the proceeds of the plaintiff's property then
the law raises an implied promise on the
part of the defendant to pay the same
to the plaintiff and the jury will
find for the plff" -

No. 3.

3^d The plaintiff to maintain his action
must show his title to the money or
the property for which he claims the
proceeds must have belonged to him
and if the jury believe from the evi-
dence that McGoon received money as
the proceeds of Ankungs property, This
is the proper form of action to recover the
same, and they will find for the plff
such amount as they believe from the
evidence he received of plff's money"

No. 4.

4th " The action in this form is maintainable where one person receives the money of another which in equity and good conscience he ought not to retain "

No. 5.

5th It is not necessary to give positive evidence that the defendant had received money belonging to the plaintiff when from the facts proved it may be fairly presumed the defendant has received the plaintiffs money, the action for money had and received is maintainable - Douglas Rept 137.7 Johnson Rept 132 Vol 7 - H. Johnson Rept. 464 - "

To the giving of which said 1.st 2.^d 3.^d 4.th and 5th instructions so asked by the plaintiff to be given to and which said instructions were given by the Court to the jury the defendant by his counsel excepted and prays that this his bill of exceptions may be allowed, signed, sealed and made a part of the record herein, and it is so done -

Defr.
excepts

{

And thereupon the jury selected to try the issue in said case having retired to consider upon their verdict in said case returned with a verdict of five hundred and twenty three dollars and sixty cents in favor of the plaintiff -

Verdict - ?

Defendants }
motion for }
new trial & }
in arrest of }
judgment }

Whereupon the Defendant by his
Counsel comes and files his motion
in arrest of judgment and for a
new trial, which motion and
the reasons therefor were in the
words and figures following, to
wit;

"Richard H. McGoon } In the Stephens
ads } County Civ. Court
Benjamin F. Ankney } of the October
Special Term A.D.,
1879 -

Defendants }
Reasons for }
new trial & }
in arrest of }
judgment }

The Defendant by his attorney
comes and moves the court for a new
trial and in arrest of judgment for
the following reasons, to wit,

1st Because the verdict is contrary
to law -

2^d Because the verdict is against the
evidence -

3^d Because the Court misinstructed
the jury upon the law as applicable
in this case -

4th Because the Court refused to instruct
the jury as asked by the defendant in
his 1st 2^d 3^d 4th 5th 6th 7th and 8th instructions
so asked -

5th Because the verdict is excessive -

6th Because the Court refused to allow
proper and legal evidence offered by
the defendant to go to the jury that
should have been allowed -

my ^{10th} Because the court allowed improper and illegal evidence to go to the jury that was offered by the plaintiff and objected to by the Defendant -

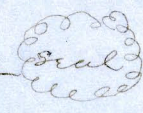
Sweet & Brawley
Defendant attys "

new trial to be }
granted unless }
remittitur by }
plaintiff - }
And thereupon after argument of Counsel the court ordered that a new trial should be granted unless the Defendant (plaintiff) would enter a remittitur of two hundred and twenty dollars of the damages heretofore assessed by the jury sworn to try the issue in this cause -

Plaintiffs }
Remittitur }
And now comes the plaintiff by his attorneys and enters a remittitur of two hundred and twenty dollars of the damages heretofore assessed by the jury in their verdict heretofore rendered in this cause - whereupon it is ordered by the Court that the motion heretofore filed in this cause for a new trial and in arrest of judgment be overruled -

Order }
overruling Mo. }
for new trial &c }
To which opinion of the court in overruling the said motion, the Defendant by his attorneys excepts and prays that this his bill of exceptions may be allowed, signed, sealed, and made a part of the record herein pursuant to the statute in such

case made and provided, and it is done -

Benj. R. Sheldon 

Appeal Bond
filed Nov 5, 1949

Afterwards, to wit, on the fifth day of November in the october special Term of said Circuit Court aforesaid comes into said court the said defendant, Richard H. McGoan, and files his appeal bond herein, with Alben Hall as surety in the sum of six hundred dollars as more fully appears by reference to the record thereof which is in the words and figures following, to wit,

Benjamin F. Aubrey

vs

Richard H. McGoan

} Case

Order.

And now at this time comes the defendant and files his appeal bond with Alben Hall as surety in the sum of six hundred dollars which is approved by the Court and ordered filed -

Which said appeal bond filed as aforesaid, is in the words and figures following to wit:

Appeal
Bond

"Know all men by these presents, that we Richard H. McGoan of the County of LaFayette Wisconsin and Alben Hall of the County of Stephenson and state of Illinois are held and firmly bound unto Benjamin F. Aubrey

of the County of Jo Daviess and State of Illinois in the penal sum of Six hundred dollars for the payment of which well and truly to be made we and each of us bind ourselves our heirs executors and administrators jointly and severally and firmly by these presents - Sealed with our seals and dated at Freeport this fifth day of November Anno Domini one thousand eight hundred and forty nine -

The Condition of the above obligation is such, that whereas Benjamin F. McKung did on the fifth day of November 1849 in the Circuit Court within and for the County of Stephenson and State of Illinois obtain a judgment against the above bounden Richard H. McGoon for the sum of three hundred and three dollars and sixty cents and costs of suit from which judgment the said Richard H. McGoon has prayed for and obtained an Appeal to the Supreme Court of said State -

Now if the said Richard H. McGoon shall duly prosecute said appeal, and shall moreover pay the amount of the judgment, costs, interest, and damages, rendered and to be rendered against him the said Richard H. McGoon in case the said judgment shall be affirmed in the said Supreme Court then the above obligation to be null and void, otherwise to remain in

full force and virtue. -

R. H. McGoon

Albon Hall

Witness

John A. Clark "

(endorsed) " Filed Nov 5, 1849 &

approved in open court

John A. Clark clerk



State of Illinois 3
Stephenson County 3p.

I, John A. Clark clerk of the Circuit
Court within and for the said County do hereby certify that
the foregoing is a full, true and complete record of all
the pleas and proceedings in the said suit between
the said Benjamin F. Ankney plaintiff and the
said Richard H. McGoon defendant as appears
from the files and records in my office

In witness whereof I have hereunto
set my hand and affixed the seal
of the said Court at Freeport this first
day of December A.D. 1849

Attest John A. Clark Clerk

B. F. Arkney } October Special Term Cir. Court 1849

vs

Richard H. McGoon } Plffs Costs record of Dep
Plffs Costs — Clerk fees

Fily 10 paper 62^c Docket Cause & Terms 25 .87^c
Issuing 1 Sub 50 Enty app. 12^c atty 12^c Fily 9 papers 55^c 1.31^c
Swg 2 with to aff. 25 Taking Bond for costs 25 enty mo. to op. Dep 25 .75^c
Enty order to op. Dep. 25 Opening Dep. 12^c .37^c
Enty order to op. Dep 25 Opening Dep. 12^c .37^c
Enty ex. to Dep 25 Calling & Swg Jury 18^c 43^c
Swg with 12^c Enty agreement to adjourn 25 Enty Order do 25 .62^c
Reg & enty verdict 12^c Enty mo. to withdraw exhibits 25 .37^c
Enty order for do 25 Enty commitment 25 enty judgment 25 .75^c
Docket 25 Enty sat 25. Making & enty Bill costs 37^c .87^c

Copy 25 Cnt. & seal 50

~~7.50~~ \$ 7.50

County for Docket fee 1.25 Do for Jury fee 3.00 4.25

Witness fees George Foster (from Co. Danc) 3 days, & 90 miles travel 7.50

Do Do Henry Smith (from Carroll Co.) 9 days & 60 miles travel 12.00 \$ 19.50

Plffs fee Bill from Co. Davids County

Clerk fees Wm. H. Bradley

3.43^c

Sheriff fees Pierce

~~5.06~~ \$ 8.50

Defendants fee Bill

Enty app. 12^c atty 12^c Fily 25 paper 1.31^c Issuing 7 Subs 3.50 5.06^c

Issuing 1 Dep. 50^c 1 aff. 12^c 4 affs. & writs 50 1.12^c

Enty mo. to compel plff to file security for costs 25 .25

Enty ex. to Dep. 25 Enty mo. in arrest of judgment 25 Defendant's trial 25 .75

Enty order overruling mo. for neutral 25 enty ex. 25 .50

Enty order overruling mo. in arrest 25 enty ex 25 .50

Enty prayer for appeal 25 enty order granting do 25 .50

Taking Bond 50 Enty approval do 25 Making & enty Bill cost 37^c 1.12^c

Copy 25 Cnt. 25 Seal 25

~~7.50~~ \$ 10.50

Sheriff fees F. A. Stucky Sheriff for ex & aty 2 Subs

2.25

Sheriff fees (Ogle Co.) J. B. Rhodes enty 1 sub 12^c E. W. Dutcher ex & enty 1 sub 43^c .56^c

Defendants fee Bill } Clerk fees

1.43^c

In Jodavids County } Sheriff fees

.68^c

~~2.12~~ \$ 2.12

Am't carried over. Total Costs \$ 55.25

and not over

\$58.25

James H. Knowlton Commt. for taking deposition of

Ann Kelso (paid by defendant)

\$10.00

C. S. Thomas P. P. for taking deposition of

H. H. Gear paid by Plaintiff

1.37² 11.37²

\$66.62²

Complete Record & certifying same 326 fol. — \$41.25

State of Illinois

Rec^d of R. H. Mc Gown \$41.25 in full for transcripts
John A. Clark clk

Stephenson Commt.

I, John A. Clark clerk of the Circuit Court

in and for the said County do hereby certify that the foregoing is a true & complete copy from my fee Book of the costs and charges taxes against the plaintiff in the said cause and I also certify that the said Bill contains a true copy from my said fee Book of the costs & charges taxed against the said defendant in the said above entitled cause of B. J. Ankney vs. Rich^d H. Mc Gown as appears of record in my Office

In witness whereof I have hereunto set my hand and the seal of the said Court at Springfield this 1st Day of December 1829
Attest John A. Clark Clerk

State of Illinois Supreme Court for the Third
Grand division June Term 1830

Richard H. Mc Gown

vs

Benjamin F. Ankney

And now comes the plaintiff by
C. S. Leland his attorney & saith that in the record
in this cause there is manifest error in this to wit
that the Court Erred in rendering judgment for the plaintiff below

2^d The verdict was against the laws & the evidence

3^d The verdict was excessive

4th The Court erred in admitting the bill of sale from Smith & Janning to the plaintiffs below

5th The Court erred in sustaining the objection to the question asked Foster to wit "State if any thing was said, or agreed to be paid by Anthony to Gibbon for the Slaves named in the bill of sale"

6th The Court erred in sustaining the objection to the question asked Dennis Murphy to wit "If he knew of any general or universal custom in the mines among smelters in relation to who came into possession of the Slaves when one person purchased from the lessee of the Government ash furnaces with the lessee's privileges in the premises on which the furnaces were situated"

7th The Court erred in refusing to give the 1st 2^d 3^d 4th 5th 7th & 8th instructions of defendants & in refusing each of them

8th The Court erred in giving the 1st 2^d 3^d 4th & 5th instructions of plaintiffs & in giving each of ~~the~~ them

~~9th The Court erred in not writing the word "refused" on the margin of the instructions which he gave and given & in not writing the word "given" on the margin of each as he approved~~

10th 9th The Court erred in overruling the motion for a new trial
B. S. Ireland for ~~plaintiffs~~ ^{Appellants}

And now at this time comes the
said defendant in error and
says in the record & proceedings
aforesaid there is no error but
the same should be affirmed

My Johnson
Atty of Defendant

Stephenson County
Circuit Court

Benjamin F. Ankney

vs

Richard H. McGoon

Record.

John A. Clark

Clark

Filed May 14. 1880.
S. Seland Clerk.

31

Richard H. McGrou
vs
Benjamin F. Anthony

1850

1850

Prepaid
CO

12052