

12560

No. _____

Supreme Court of Illinois

^R
Hurd

vs.

Shaw

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45. ~~1858~~

Harvey B. F.

vs
Bullock
Hurd
vs
Shaw

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12560

1858

X

Shaw

State of Illinois,
County of Cook, } ss.

Hear before the Honorable John
M. Wilson Judge of the Cook County Court of Common
Pleas within and for the County of Cook and State of
Illinois, at a regular term of the Cook County Court
of Common Pleas, begun and holden at the Court House
in the City of Chicago in said County and State,
on the second Monday being the eighth day of
September in the year of our Lord One thousand
eight hundred and fifty six, and of the Independence
of the United States the eighty first.

Present the Hon. John M. Wilson Judge
Daniel McIlroy Prosecuting Attorney
James Beach Coroner and Acting
Sheriff of Cook County.
Walter Kimball, Clerk.

Attest

Be it remembered that heretofore to wit, on the eighth day of April in the year of our Lord one thousand eight hundred and fifty-two, came Calist Shaw plaintiff by Collins & Williams his Attorney and filed in the Office of the Clerk of the Cook County Court of Common Pleas, his precipe for a summons against Harvey B. Hurd in a plea of Trespass on the Case, which precipe is in the words and figures as follows, to wit:

Cook County Court of Common Pleas	
Calist Shaw	}
vs	
Harvey B. Hurd	}
Trespass on the Case.	
	Damages \$5000.00

The Clerk will please issue summons in the above cause to the Sheriff of Cook County, returnable at the next Term of this Court.

Chicago April 8, 1852.

Collins & Williams
Plffs Atty.

And thereupon on the same day and year last aforesaid there issued out of the Office of the Clerk of said Court, the Peoples writ of summons, which said writ of summons and the endorsement thereon is in the words and figures as follows, to wit:

State of Illinois,
Cook County, ss.

The People of the State of Illinois,
To the Sheriff of said County, Greeting:

We command you that you summon Harveey
B. Murd if he shall be found in your County, per-
sonally to be and appear before the Cook County
Court of Common Pleas of said County, on the first
day of the next term thereof, to be holden at the Court-
House, in the City of Chicago, in said County, on the
first Monday of September next, to answer unto Caleb
Shaw in a plea of Trespass on the Case, to the dam-
age of the said plaintiff as he says in the sum of
Five thousand dollars. And have you then
and there this writ, with an endorsement thereon,
in what manner you shall have executed the same.

Witness, Walter Kimball, Clerk of our said
Court, and the seal thereof, at the City of
Chicago, in said County, this 8th day of April
A.D. 1852



Walter Kimball, Clerk.

Served by reading to H. B. Murd April 8, 1852

Wm S. Church Sheriff

by D. F. Wood Dep. J.

And afterwards to wit, on the fourteenth day of
September in the year last aforesaid, came the said
plaintiff by his Attorneys aforesaid, and filed in

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in the Clerks office of said Court, his declaration,
^{which, said declaration}
is in the words and figures as follows, to wit.

Cook County, Court of Common Pleas
of the September Term of the Cook County
Court of Common Pleas in the year of our
Lord One thousand eight hundred and
fifty two.

State of Illinois, f.
County of Cook, f.

Calist Shaw plaintiff in this suit
by Collins and Williams his Attorneys, complains of
Harvey B. Hurd defendant in this case who has
been duly summoned &c of a plea of Trespass on
the case &c.

For that whereas heretofore, to wit, at the
September Term of the Cook County, Court of Common
Pleas holden in and for the County of Cook at the
Court House in the City of Chicago in said County
before the Judge of said Court in the year of our
Lord One thousand eight hundred and fifty one,
the said defendant contriving & maliciously inten-
ding to injure the said plaintiff and to cause him
to be imprisoned and kept and detained in prison
and to put him to great charge and expense of his
money, and to vex, harass, oppress and impoverish
& wholly ruin him the said plaintiff heretofore,
to wit, at the said Term of Court holden as aforesaid

before the said Judge he the said defendant
falsely & maliciously & without any reasonable or
probable cause whatsoever indicted & caused &
procured to be indicted the said plaintiff for
that the said plaintiff on the seventh day of July,
in the year of our Lord one thousand eight hundred
and fifty one at the County of Cook aforesaid,
four screws with nuts belonging of the value of
twelve dollars, One chain of the value of four dol-
lars & two Crow-bars of the value of one dollar
each, of the personal goods of one John M. Bates
then & there feloniously did steal take and carry
away contrary to the Statute in such case made
and provided & against the peace & dignity of the
People of the State of Illinois. And the said plaintiff
further says that the said defendant falsely and
maliciously without any reasonable or probable
cause whatsoever prosecuted and caused & procured
to be prosecuted the said indictment against the
said plaintiff, to wit, at the County of Cook afore-
said until the said plaintiff afterwards, to wit,
at the February Term A.D. 1852 of the said Cook
County Court of Common Pleas holden in and for
said County of Cook, at the place aforesaid, before
the Judge thereof was in due manner & according
to due course of law by a jury of said County ac-
quitted of the premises in the said indictment
charged upon him the said plaintiff in manner

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of form aforesaid, whereupon it was then and
then considered by the said Court that the said
plaintiff of the premises in the said indictment
specified should be discharged & should go
without day as by the record & proceedings there-
of remaining in the said Court reference being
thereunto had will more fully appear, by means
of which said premises he the said plaintiff
hath been forced & obliged to undergo & hath
undergone many great troubles & labors both
of body & mind & to lay out & expend divers large
sums of money in the whole amounting to a large
sum, to wit, the sum of Five hundred dollars
in and about the defending himself in the prem-
ises & the manifestation of his innocence therein
& hath been imprisoned and kept and detained
in prison for a great length of time, to wit, for
sixty days & the said plaintiff was also by means
of the premises greatly hindered & prevented from
transacting his necessary business, & lawful affairs
for divers long spaces of time & hath been & is otherwise
greatly injured & damaged, & being much impover-
ished, to wit, at Chicago in the County of Cook afore-
said

2^d Count

And whereas also the said defendant further
contriving & intending as aforesaid heretofore to wit,
at the said September Term of the Cook County
Court of Common Pleas holden at the place aforesaid

before the Judge of said Court in the year first
above mentioned he the said Defendant falsely
& maliciously without any reasonable or probable
cause whatsoever indicted & caused & procured
to be indicted the said Plaintiff for that the
said Plaintiff on the seventh day of July in the
year of our Lord One thousand eight hundred
& fifty one at the County of Cook aforesaid, Four
screws with the nuts belonging, of the value of
twenty dollars each, One chain of the value of
twelve, One chain of the value of four dollars and
two Crow-bars of the value of one dollar each, of
the personal goods of one Richard Lappin then
and there being found then and there feloniously
did steal, take and carry away contrary to the
Statute in such case made & provided and against
the peace and dignity of the people of the State of
Illinois. And the said Plaintiff further says that the
said Defendant further contriving and intending as aforesaid
and without any reasonable or probable cause whatsoever
prosecuted & caused and procured to be prosecuted the
said last mentioned indictment against the said plain-
tiff, to wit, at the County of Cook aforesaid until the said
plaintiff afterwards, to wit, at the February Term of the said
Cook County Court of Common Pleas holden in and for
said County of Cook aforesaid in the year of our Lord
one thousand eight hundred and fifty-two before the
Judge of said Court was in due manner & according to

due course of law by a jury of the said County acquitted of the premises in the said Indictment charged upon him the said plaintiff as aforesaid, to wit, at the County of Cook aforesaid: And by means of which last mentioned premises he the said plaintiff hath been forced and obliged to undergo & hath undergone many great hardships, troubles & labors both of mind & body and hath been forced and obliged to pay lay out and expend & hath necessarily paid, laid out and expended divers large sums of money, amounting in the whole to a large sum of money to wit, the sum of Five hundred dollars in & about the defending himself in said last mentioned premises & the manifestation of his innocence therein; And the said plaintiff hath by means of the same premises been greatly hindered & prevented from transacting his lawful affairs & business for divers long spaces of time, & hath been & is greatly injured & damnified, & greatly impoverished, to wit, at the County of Cook aforesaid.

3^d Count

And whereas, also, the said plaintiff further contriving & intending as aforesaid heretofore to wit, at the September Term of the Cook County Court of Common Pleas holden at the Court House in the City of Chicago in the year of our Lord One thousand eight hundred & fifty one in and for the County of Cook in the State of Illinois before the Judge of said Court assigned to hear & determine divers felonies, trespasses & misdemeanors committed in the same County, he the said defendant falsely, maliciously & without any reasonable or probable cause what-

soever indicted & caused & procured to be indicted
the said plaintiff for that the said Caleb Shaw (the
plaintiff) on the seventh day of July in the year of our
Lord one thousand eight hundred & fifty one at the County
of Cook aforesaid, four screws with nuts belonging of the
value of Twenty dollars each, One chain of the value of
twelve dollars, One chain of the value of four dollars &
two Crow-bars of the value of one dollar each of the personal
goods of one John M. Bates And also, four screws with
the nuts belonging of the value of Twenty dollars each,
One chain of the value of twelve, One chain of the value
of four dollars and two Crow-bars of the value of One
dollar each of the personal goods of one Richard Lappin
then and then being found, then and there felonious-
ly did steal, take and carry away contrary to the
Statute in such case made & provided, and against
the peace and dignity of the people of the State of Illi-
nois. And the said plaintiff further says that the
said defendant falsely and maliciously and without
any reasonable or probable cause whatsoever persecuted
& caused to be prosecuted the said indictment against
the said plaintiff to wit, at the County of Cook aforesaid
until the said plaintiff afterwards, to wit, at the Febru-
ary Term A.D. 1852. of the said Cook County Court of Com-
mon Pleas holden in and for said County of Cook at
the place aforesaid before the Judge thereof was in due
manner and according to due course of law by a jury of
said County acquitted of the premises in the said indictment.

charged upon him the said plaintiff in manner & form aforesaid whereupon it was then and there considered by the said Court that the said Plaintiff of the premises in the said indictment specified should be discharged & should go without day as by the record & proceedings thereof remaining in the said Court reference being thereunto had will more fully appear by means of which said premises he the said plaintiff hath been forced & obliged to undergo & hath undergone many great troubles & labors both of body & mind & to lay out and expend divers large sums of money in the whole amounting to a large sum, to wit, the sum of Five hundred dollars in and about the defending himself in the premises & the manifestation of his innocence therein, & hath been imprisoned & kept & detained in prison for a great length of time, to wit, for sixty days & the said plaintiff was also by means of the premises greatly hindered & prevented from transacting his necessary business & lawful affairs for divers long spaces of time & hath been & is otherwise greatly injured & damaged & much impoverished to wit, at Chicago in the County of Cook aforesaid.

11th Court

And whereas also, the said defendant further contriving and intending as aforesaid, heretofore, to wit, at the September term of the Cook County Court of Common Pleas in the year of our Lord one thousand eight hundred and fifty-one holden at the place above mentioned before the Judge of said Court in the year last

above mentioned he the said defendant falsely and maliciously and without any reasonable or probable cause whatsoever indicted & caused & procured to be indicted the said plaintiff for that the said plaintiff on the twenty fourth day of October in the year of our Lord One thousand eight hundred and fifty at the County of Cook aforesaid devising & intending to cheat & defraud one Harvey B. Murd (the defendant meaning) then & being of his goods chattels & property did then & there unlawfully knowingly and designedly & falsely pretend to said Harvey B. Murd (the defendant meaning) that he the said plaintiff was out of debt & that he the said Shaw was the owner of forty acres of Land situated within five miles of the City of Chicago & that he the said plaintiff was then and there the owner of other real estate to a large amount & also that he the said plaintiff was then and there worth property to the amount of Four thousand dollars, whereas in truth & in fact he the said plaintiff was not then & there out of debt but on the contrary was in debt, And whereas in truth & in fact he the said plaintiff was not then & there the owner of forty acres of land ^{situated} within five miles of the City of Chicago, And whereas in truth & in fact he the said plaintiff was not then & there the owner of other real estate to a large amount or to any amount, And whereas in truth and in fact he the said plaintiff was not then & there worth property to the amount of four thousand dollars nor to any considerable amount

whatever which false pretences he the said plaintiff then & there well knew to be false by means of which said false pretences he the said plaintiff did then & there unlawfully obtain from the said defendant twelve pieces of Calico of the value of three dollars a piece, One hundred and ninety yards of Calico of the value of nine cents per yard, Sixty seven yards of Calico of the value of nine cents per yard, One hundred & thirty seven yards of Alpaca of the value of twenty three cents per yard, Fifty nine yards of Alpaca of the value of twenty six cents per yard, One hundred and eight yards of Mouseline de Laine of the value of eighteen cents per yard of the personal goods of the said defendant with intent then & to defraud the said defendant of the same contrary to the Statute in such case made & provided, and against the peace & dignity of the people of the State of Illinois.

And the said plaintiff further says that the said defendant falsely and maliciously, and without any reasonable or probable cause whatsoever prosecuted & caused & procured to be prosecuted the said indictment against the said plaintiff; to wit, at the County of Cook aforesaid until the said plaintiff afterwards, to wit, at the February Term A.D. 1852, of the said Cook County Court of Common Pleas holden in and for said County of Cook at the place aforesaid before the Judge thereof was in due manner & according to due course of Law acquitted of the premises in the said indictment charged upon him the said plaintiff in manner & form aforesaid

whereupon it was then & there considered by the said Court that the said plaintiff of the premises in the said Indictment specified should be discharged & should go without day as by the record & proceedings thereof remaining in the said Court reference being thereunto had will more fully appear by means whereof he the said plaintiff hath been forced & obliged to undergo & hath undergone many great troubles and labors both of body & mind and to lay out and expend divers large sums of money in the whole amounting to a large sum, to wit, the sum of Five hundred dollars in and about the defending himself in the premises & the manifestation of his innocence therein and hath been imprisoned & kept & detained in prison for a great length of time to wit, for sixty days and the said plaintiff was also by means of the premises greatly hindered & prevented from transacting his necessary business for divers long spaces of time & hath been & is otherwise greatly injured and damaged & very much impoverished, to wit, at Chicago in the County of Cook aforesaid.

5th Count

And whereas also the said defendant further contriving and intending as aforesaid heretofore to wit, at the said September Term of the Cook County Court of Common Pleas holden at the place aforesaid before the Judge of said Court in the year Eighteen hundred and fifty one aforesaid he the said Defendant falsely & maliciously & without any reasonable or probable cause whatsoever indicted & caused & procured

to be indicted the said plaintiff for that the said plaintiff on the twenty fourth day of October in the year of our Lord One thousand eight hundred and fifty at the County of Cook aforesaid devising & intending to cheat and defraud the said defendant then and there being of his goods, chattels & property did then & there unlawfully, knowingly & designedly and falsely pretend to said defendant that he said plaintiff was out of debt, & that he said plaintiff was the owner of forty acres of land situated within five miles of the City of Chicago, & that the said plaintiff was then & there the owner of other real estate to a large amount and. Also that the said plaintiff was then and there worth property to the amount of Four thousand dollars, whereas in truth and in fact he the said Shaw (the plaintiff) was not then and there out of debt but on the contrary was in debt, And whereas in truth and in fact he the said plaintiff was not then and there the owner of forty acres of land situated within five miles of the City of Chicago and whereas in truth & in fact he the said plaintiff was not then & there the owner of other real estate to a large Amount nor to any amount, And whereas in truth and in fact he the said plaintiff was not then and there worth property to the amount of Four thousand dollars nor to any considerable amount whatever which said false pretences he the said plaintiff then & there well knew to be false by means of which said false pretences he the

said plaintiff did then and there unlawfully obtain from said Defendant twelve pieces of Calico of the value of three dollars a piece, One hundred and ninety yards of Calico of the value of nine cents per yard, Sixty seven yards of Calico of the value of nine cents per yard, One hundred & thirty seven yards of Alpaca of the value of twenty three cents per yard, Fifty nine yards of Alpaca of the value of twenty six cents per yard, One hundred & eight yards of Mousline de Saine of the value of eighteen cents per yard of the personal goods of the said Hurd (the defendant) with intent then and there to defraud the said Hurd of the same contrary to the Statute in such case made and provided and against the peace & dignity of the People of the State of Illinois, And the said Plaintiff further says that the said Defendant falsely and maliciously & without any reasonable or probable cause whatsoever prosecuted and caused & procured to be prosecuted the said indictment against the said Plaintiff, to wit, at the County of Cook aforesaid, until afterwards, to wit, at the February Term A.D. 1852 of the said Cook County Court of Common Pleas holden in and for said County of Cook at the place aforesaid before the Judge thereof & after hearing the evidence adduced, the People by their prosecuting Attorney said they would no further prosecute their said Indictment against the said plaintiff in that behalf, and thereupon it was then & there ordered & considered by said Court that the Jury —

^{therein}
 impannelled, be discharged from rendering a verdict
 in said cause, and that the said Shaw (the plaintiff)
 be discharged from his recognizance therein and
 should go thereof without day as by the record &
 proceedings thereof thereunto had will more fully ap-
 pear, thereupon the said suit was determined in favor
 of said plaintiff & was at an end, by means whereof
 he the said plaintiff hath been forced and obliged
 to undergo & hath undergone many great troubles &
 labors both of body and mind & to lay out and expend
 divers large sums of money in the whole amounting
 to a large sum, to wit, the sum of One thousand dol-
 lars in and about defending himself in the premises
 and the manifestation of his innocence therein &
 hath been imprisoned & kept and detained in prison
 for a great length of time, to wit, for ninety days, and
 the said plaintiff was also by means of the premises
 greatly hindered and prevented from transacting
 his necessary business for divers long spaces of time &
 hath been & is otherwise greatly injured and damni-
 fied & very much impoverished, to wit, at Chicago in
 the County of Cook aforesaid, To the damage of the
 plaintiff of Five thousand dollars & therefore he brings
 suit &c.

Collins & Williams

Plffs. Attys.

To the above named Defendant.

Take notice that a dec-
 laration of which this within is a copy has been duly

filed in the office of the Clerk of the Cook County
Court of Common Pleas, and that upon the filing thereof
a rule was entered in the above entitled cause in
the common Rule Book in said Office requiring you
to plead to said declaration within ten days after
the service of a copy thereof & notice of said rule or
that Judgment by default will be entered against
you for want of such plea.

Dated September 14th 1852.

Thos^{ts}. Collins & Williams
Atty^s for Plff.

And afterwards to wit, on the twenty fourth day
of September in the year last aforesaid, the said
defendant by Andrew J. Brown and C. Haven his
attorneys filed his Plea and Demurra to Plaintiffs
declaration, which said plea and demurra is in
the words and figures as follows, to wit.

✓ Harry B. Murd
ads
Calist Shaw } }

And the said defendant by
Andrew J. Brown his Attorney comes and defends
the wrong and injury, when &c. And as to all of said
plaintiffs declaration except the last Count says
he is not guilty of the said supposed grievances above
laid to his charge, or any or either of them in manner

and form as the said hath above thereof complained against him. And of this the said defendant puts himself upon the Country, &c.

Andrew J. Brown, Deft. Att'y

And the said Plaintiff doth the like

Collins & Williams Plffs. Attys.

Harvey B. Nurd

ads

Caleb Shaw

And the said defendant by Andrew J. Brown his Attorney comes and defends the wrong and injury when &c. and as to the last Count in the said declaration mentioned and the matters therein contained in manner and form as the same are above stated and set forth, are not sufficient in law for the said plaintiff to have or maintain his aforesaid action thereof against him the said defendant, and that the said defendant is not bound by law to answer the same, And this he is ready to verify, Wherefore by reason of the insufficiency of the said last Count in this behalf the said defendant prays judgment and that the said plaintiff may be barred from having or maintaining his aforesaid action thereof against him &c.

Andrew J. Brown Deft. Att'y.

Harvey B. Nurd

ads

Caleb Shaw

And the said Deft. by C. Nurd

his Atty. comes & defends the wrong & injury, when &c.
in the said last Count of the said Plff. declaration
& says he is not guilty of the said supposed grievance
above laid to his charge in the said last Count of the
said declaration or any or either of them in manner
& form as the said plff. hath above in the said last
Count complain' against him, and of this the said
Def't puts himself upon the Country

C. Haven Def't Atty.

And the said Plaintiff doth the like.

Collins & Williams Plff' Atty's.

And afterwards, to wit, on the sixth day of Decem-
ber in the year of our Lord One thousand eight hundred
and fifty two, the following among other proceedings
were had in said Court and entered of record, to wit.

Calist Shaw

vs

Harvey B. Hurd

}

Trespas on Case

And now at this day came the
said parties by their Attorneys, And after argument
of Counsel heard on the said defendants demurrer
to the last Count in the said plaintiffs declaration
herein, the Court being now fully advised in the
premises, sustains said demurrer, And thereupon
leave is given the said plaintiff to amend his said
declaration.

And afterwards, to wit, On the tenth day of February in the year of our Lord One thousand eight hundred and fifty three, the said Defendant by C. Haven his Attorney, filed in the Office of the Clerk of said Court his demurrer, which said demurrer is in the words and figures as follows, to wit,

In the Cook County Court of Common Pleas
of the February Term 1853.

Harvey B. Nurd

ads

Calist Shaw.

And the said Def^t. by C. Haven his Att^y. comes and defends the wrong and injury, when &c. and says that the said last Count in the said declaration and the matters therein contained in manner and form as the same are above stated and set forth are not sufficient in law for the said Plff. to have or maintain his aforesaid action thereof against the said Def^t. and he the said Def^t. is not bound to answer the same.

And that he is ready to verify, wherefore by reason of the insufficiency of the said Count of the said declaration in this behalf the said Def^t. prays judgment and that the said Plff. be barred from having or maintaining his aforesaid action thereof against him &c.

And the said Def^t. shows to the Court the following causes of demurrer to the last Count of the said declaration, that is to say that the said Count is argumentative

and also in other respects uncertain and informal
& insufficient.

C. Haven Deft^s Atty.

And afterwards, to wit, on the twenty sixth day of
February in the year aforesaid, the following among
other proceedings were had in said Court, and entered
of record as follows, to wit,

Calit Shaw	}	Prespap on Case
vs		
Harvey B. Murd		

And now come the said parties
by their Attorneys, And after Argument heard on
the said defendants demurrer to the last count in
said Plaintiffs declaration herein, the Court being
fully advised thereon sustains said demurrer, And
leave is given said plaintiff to amend his declaration,
And by agreement it is ordered that this cause be
continued to next term.

And afterwards, to wit, On the fourth day of
February in the year of our Lord one thousand eight
hundred and fifty six, the following among other
proceedings were had in said Court and entered of
record, to wit.

Calit Shaw	}	Prespap on Case
vs		
Harvey B. Murd		

And now at this day comes the said parties by their said Attorneys, and issue being joined herein it is ordered that a jury come, And thereupon come a jury of good and lawful men to wit:

M. O'Neil, S. Beckwith, M. A. Gilman, H. H. Yates
S. McCotter, James Duffey, R. J. Coone, J. F. Bendubach
H. H. Semarany, W. B. Whitman, James McKee, and Ira Reynolds who being duly elected tried and sworn well and truly to try the issue joined as aforesaid, and after hearing the evidence adduced the hour of adjournment having thereupon arrived, the further hearing of this cause is postponed until tomorrow morning, to which time the jury are permitted to separate, by agreement of said parties.

And afterwards, to wit, on the fifth day of February in the year last aforesaid, the following among other proceedings were also had in said Court, and entered of record, to wit.

Calist Shaw

vs

Harvey B. Hurd

} Pleadings on Case.

And now again come the said parties by their said Attorneys, and the jury empannelled in this cause also come, And after hearing the Argument of Counsel and instructions of the Court retire under charge of an Officer of the Court to consider of their verdict, And afterwards come into

Court and say we the jury cannot agree upon a verdict, And thereupon it is ordered by the Court that the jury be discharged from rendering a verdict herein, and that this cause be continued to next term.

And afterwards to wit, on the eighth day of September in the year last aforesaid, the following ^{among} other proceedings were had in said Court and entered of record, to wit,

Calist Shaw

vs

Harvey B. Hurd

} Piesap on lease.

And now again come the said parties by their said Attorneys, and issue being joined in this cause, it is ordered that a jury come, and thereupon come a jury of good and lawful men, to wit. R. K. Huntley, Theodore Hubbard, John Casey, William Sawyer, G. W. Spofford, J. A. Carpenter, Asa Gaines, E. W. Grannis, Ira Headstrom, H. Hastings Wm Wiggins & C. A. Warner, who were duly elected tried & sworn well & truly to try the issue joined as aforesaid, And after hearing the testimony adduced, the hour of adjournment having thereupon arrived, the further hearing of this cause is postponed until tomorrow morning, to which time the jury are permitted to separate.

And also afterwards, to wit, on the ninth day of September in the year last aforesaid, the following among other proceedings were had in said Court and entered of record, to wit.

Calist Shaw	}	Trespas on Case.
vs		
Harvey B. Hurd		

And now again come the said parties by their said Attorneys, and the jury empannelled in this cause also come, and after hearing the argument of Counsel and instructions of the Court, retire under charge of an Officer of the Court to consider of their verdict.

And afterwards, to wit, on the tenth day of September in the year last aforesaid, the following among other proceedings were had in said Court and entered of record, to wit.

Calist Shaw	}	Trespas on Case.
vs		
Harvey B. Hurd		

And now again come the said parties by their said Attorneys, and the jury empannelled in this cause also come and say we the Jury find the defendant guilty as charged in said plaintiffs declaration, and we assess

the said plaintiffs damages to the sum of Four hundred dollars.

And thereupon the said Defendant enters his motion herein for a new trial in this cause.

And afterwards, to wit, on the twenty ninth day of October in the year last aforesaid, the following among other proceedings were had in said Court and entered of record, to wit.

Callet Shaw

vs

Harvey B. Murd

} Trespas on Case.

And now again come the said parties by their ^{said} Attorneys aforesaid, And the Court after hearing the Argument of counsel on said Defendants motion for a new trial in this cause being now fully advised in the premises Overrules said motion.

Therefore it is considered that the said plaintiff do have and recover of the said defendant his damages of Four hundred dollars in form aforesaid by the jury here aforesaid, and also his costs and charges by him about his suit in this behalf expended and have execution therefor.

And thereupon the said Defendant enters his exceptions herein to the opinion of the Court in overruling his said motion for a new trial, and

prays an appeal to the Supreme Court of the State of Illinois, which is allowed by the Court upon his filing his appeal bond herein in the sum of Five hundred dollars with security to be approved by the Judge of this Court, and thirty days time from this day is given said defend to file his appeal bond, and his bill of exceptions herein.

And afterwards, to wit, on the twenty sixth day of November in the year last aforesaid, the said Harvey B. Hurd filed his appeal bond, which said bond is in the words and figures as follows, to wit.

Know all men by these presents that we, Harvey B. Hurd as principal and Francis M. Benson as security are held and firmly bound to Caleb Shaw his heirs, administrators & assigns in the sum of Five hundred dollars for the payment of which we bind ourselves, heirs & administrators firmly by these presents. Witness our hands and seals this twenty-fifth day of November A.D. 1856.

The Condition of this Obligation is such that whereas the said Caleb Shaw did at the September term of the Cook County Court of Common Pleas obtain a judgment against the said Harvey B. Hurd in an action therein pending for Trespass on the Case wherein the said Caleb Shaw was plaintiff & the said Harvey B. Hurd was defendant, which said

judgment was for the sum of four hundred dollars damages and costs of suit, and whereas the said defendant Harvey B. Hurd has prayed an appeal from said judgment to the Supreme Court of the State of Illinois, which has been allowed upon the filing of this bond.

Now therefore if the said Harvey B. Hurd shall duly prosecute his said appeal and shall pay the said judgment, costs & interest & damages in case the judgment shall be affirmed, then this bond to be null and void, otherwise to remain in full force & effect.

H. B. Hurd

Seal

Approved

F. M. Benson

Seal

John M. Wilson Judge etc.

And afterwards to wit, on the same day and year last aforesaid, the parties filed with the Clerk of said Court their stipulation, which stipulation is in the words and figures as follows, to wit.

Calist Shaw

vs

Harvey B. Hurd

}

Cook County Court of Common Pleas.

It is hereby stipulated that the time for filing the bill of exceptions in this cause be extended for one week from this date & that they may be filed at any time up to said

date with the like force & effect as if filed within the time limited by the rule of Court.

Nov 26, 1856.

Williams & Woodbridge
for Plff.

H. B. Hurd.

And afterwards, to wit, on the tenth day of December in the year of our Lord one thousand eight hundred and fifty-six, Harvey B. Hurd defendant filed in the Office of the Clerk of said Court his bill of exceptions, which said Bill of Exceptions is in the words and figures as follows, to wit.

State of Illinois, }

Cook County, p. } Cook County Court of Common Pleas.

Calist Shaw

vs

Harvey B. Hurd }

Be it remembered that on the 8th day of September A.D. 1856. in the said Cook County Court of Common Pleas, his Honor John M. Wilson presiding as Judge thereof, a certain action of trespass on the Case &c for malicious prosecution wherein Calist Shaw was plaintiff and Harvey B. Hurd was defendant came on to be tried in its order, and issue being joined the said cause was tried before a jury duly empannelled

and sworn to try the issue in said cause.

And to maintain the issue on the part of the said plaintiff the following evidence was adduced to wit.

Walter Kimball being sworn, saith I am Clerk of Cook County Court of Common Pleas, The records now shown me & the papers in the Case of the People vs Calib Shaw for larceny and the People vs Calib Shaw for obtaining goods upon false pretences and the records & papers belonging to my Office are now in my custody as Clerk.

The following Indictment, State of Illinois
Cook County, ss.

Of the September Term of the Cook County Court of Common Pleas, in the year of our Lord one thousand eight hundred and fifty-one.

The Grand Jurors, chosen, selected and sworn, in and for the County of Cook, in the name and by the Authority of the People of the State of Illinois, upon their Oaths present Calib Shaw late of said County, On the seventh day of July in the year of Our Lord One thousand eight hundred and fifty-one, at the County of Cook aforesaid, Four screws with nuts belonging, of the value of twenty dollars each, One chain of the value of twelve dollars, One Chain of the value of four dollars and two Crow-bars of the value of one dollar each of the personal goods of one John M. Bates then and there being found, —

then and there feloniously did steal, take and carry away contrary to the Statute in such case made and provided and against the Peace and dignity of the same people of the State of Illinois.

And the Grand Jurors aforesaid upon their oaths aforesaid, in the name and by the authority of the People aforesaid do further present that said Caleb Shaw on the day and year last aforesaid, at the County aforesaid, Four screws with nuts belonging of the value of twenty dollars each - One chain of the value of twelve dollars, One chain of the value of four dollars, and two Crow-bars of the value of One dollar each, of the personal goods of one Richard Lappin, then and there being found, then and there feloniously did steal, take and carry away contrary to the Statute in such case made and provided, and against the peace and dignity of the same People of the State of Illinois

Daniel Mc Hroy Pros. Atty.

Endorsed on the back.

St. Cook Co. Ct. Com. Pleas. September Term 1851

The People of Illinois vs Caleb Shaw, Indict. Larceny.
A. True Bill, Eli B. Williams Foreman of the Grand Jury.
Filed Sept. 15, 1851. W. Kimball, Clk. - Witnesses John H. Bates,
Rich^d Lappin, - - - Martin.

And the following writ and Bond,
State of Illinois,
County of Cook, } p. The People of the State of Illinois, to the
Sheriff of said County, - Greeting

We command you, That you take the body of Caleb Shaw if he shall be found in your County, and safely him keep, so that he be and appear before the Cook County Court of Common Pleas of said County, on the first day of the next term thereof, to be holden at the Court House in Chicago in said County, on the first Monday of February next, to answer unto The People of the State of Illinois on an Indictment for Larceny.

And have you then and there this writ, with an endorsement thereon, in what manner you shall have executed the same.

Witness, Walter Kimball, Clerk of our said Court, and the seal thereof, at Chicago, in said County, this 30th day of Dec^r. A.D. 1851.
Walter Kimball, Clerk.

Endorsed on the back.

G. D. N^o. Cook County Court Com. Pleas. Fifth Term, A.D. 1852. People v. vs Caleb Shaw - Capias,

The Sheriff will hold the Defendant to bail in the sum of Four hundred dollars by order of the Cook Co. Circuit Court.
E. L. Hoard, clk.

Executed by arresting the body of the within named Caleb Shaw the having executed the annexed Bond he discharged from arrest Jan'y 3^d 1852

Wm. E. Church Sheriff
by D. T. Wood Dep'y.

State of Illinois, }
County of Cook, p. 3 }

We Calist Shaw, Thomas C. Hamilton and David Hamilton, do jointly and severally acknowledge ourselves to owe, and be indebted unto the People of the State of Illinois in the sum of Eight hundred dollars, to be levied of our goods and chattels, lands and tenements, if default be made in the premises and conditions following, to wit:

Whereas, the Grand Jury of the County of Cook, in the State of Illinois, lately presented to the Cook County Court of Common Pleas of the said County, a certain bill of Indictment against the above named Calist Shaw for Larceny whereupon the said Court did make an order fixing the amount of bail to said offence, to be the sum of Four hundred dollars; And the Clerk of said Court thereupon issued process of Capias, directed to the Sheriff of said County, for the apprehension of the said Calist Shaw so indicted, and endorsed on the said process the said Amount of bail so fixed by said Court; by virtue of which process the said Sheriff arrested the said defendant and is about to let him to bail, as provided by law;

Now, the condition of this recognizance is such, that if the said Calist Shaw shall personally be and appear before the said Court on the first day of the next term thereof, to be holden at the Court House, in Chicago, in said County, on the first Monday of February next, to answer the said Indictment, and not depart the Court without leave, then

this recognizance to be void; otherwise to remain in full force and effect.

Witness our hands and seals this 2nd day of January eighteen hundred and fifty two.

Entered into and taken before me,	Calist Shaw	Seal
this 3 ^d day of January 1852	J E Hamilton	Seal
W ^m L. Church Sheriff	David Hamilton	Seal
by A. T. Wood Depy.		

And record of proceedings thereon
The People &c. }
vs } Indictment Larceny
Calist Shaw. }

And now at this day come the said People by McIlroy Prosecuting Attorney, and the said defendant in his own proper person as well as by Collins & Williams his counsel also come, And he being furnished with a copy of the Indictment a list of the names of the jurors and witnesses and being arraigned in due form of law and forthwith demanded of and concerning the crime alleged against him in said indictment how he would acquit himself thereof, for Plea in this behalf says he is not guilty in manner and form as charged in said Indictment, and of this he puts himself upon the Country, and the said People by their Prosecuting Attorney do the like.

Feb 20, 1852

The People of the State of Illinois }
 vs } Indict Larceny
 Caleb Shaw.

And now at this day
 came the said People by Mr. Arroy prosecuting Attorney
 And the said defendant in his own proper person, as
 well as by Collins & Williams his Attorneys also come,
 And issue having been heretofore joined herein,
 it is ordered that a Jury come and thereupon come
 the Jurors of a Jury of good and lawful men, to wit:
 Daniel Day, Wm. A. Crippen, N. B. Day, R. Huganin
 Wm. A. Adams, Robt. Bradford, M. L. Gilman, Saml. Rattle
 W. B. Fentbrook, Reuben Taylor, J. M. Ward and Wm. Carr
 who being duly elected, tried and sworn well and truly
 to try the issue joined as aforesaid, after hearing the
 evidence adduced, argument of Counsel and instructions
 of the Court retire under charge of a sworn officer of
 the Court to consider of their verdict, And afterwards
 come into Court and say we the Jury find the defen-
 dant not guilty in manner and form as charged in
 said Indictment.

And thereupon it is ordered that the said defendant
 be discharged from his Recognizance herein and go hence
 without day.

And also the following Indictment, writ, Bond
 & record of proceedings thereon

State of Illinois }
Cook County, } p.

of the September Term of the Cook
County Court of Common Pleas in the year of our
Lord One thousand eight hundred and fifty-one.

The Grand Jurors chosen, selected and sworn
in and for the County of Cook, in the name and by
the authority of The People of the State of Illinois, upon
their Oaths present, that Calist Shaw late of said County
on the twenty fourth day of October in the year of our
Lord One thousand eight hundred and fifty, at the
County of Cook aforesaid devising and intending to
cheat and defraud one Harvey B. Murd then and
there being of his goods chattels and property, did
then and there unlawfully knowingly and designedly
and falsely pretend to the said Harvey B. Murd that
^{was out of debt and that he the said Shaw}
he the said Shaw was the owner of forty acres of land
situated within five miles of the City of Chicago, And
that he the said Shaw was then and there the owner of
other real estate to a large amount, And also that
he the said Shaw was then and there worth property
to the amount of Four thousand dollars; Whereas in
truth and in fact he the said Shaw was not then and
there out of debt, but on the Contrary was in debt.

And whereas in truth and in fact he the said Shaw
was not then and there the owner of forty acres of
land situated within five miles of the City of Chicago;
And whereas in truth and in fact he the said Shaw

was not then and there the owner of other real estate to a large amount nor to any amount: And whereas in truth and in fact he the said Shaw was not then and there worth property to the amount of Four thousand ~~dollars~~ nor to any considerable amount whatever, which said false pretences he the said Shaw then and there well knew to be false, by means of which said false pretences he the said Shaw did then and there unlawfully obtain from the said Harvey B. Murd, Twelve pieces of Calico of the value of three dollars a piece, One hundred and ninety yards of Calico of the value of nine cents per yard, Sixty seven yards of Calico of the value of nine cents per yard, One hundred and thirty seven yards of Alpaca of the value of twenty three cents per yard, Fifty nine yards of Alpaca of the value of twenty six cents per yard, One hundred and eight yards of Muslin de Saine of the value of eighteen cents per yard, of the personal goods of the said Harvey B. Murd with intent then and there to defraud the said Harvey B. Murd of the same contrary to the Statute in such case made and provided and against the peace and dignity of the same People of the State of Illinois.

Sam^l McAlroy Pros. Atty.

Endorsed on the back

57. Cook County Court of Common Pleas Sept Term 1851.

People vs Calist Shaw, Indict^d for obtaining goods on false pretences - A. True Bill, Eli B. Williams foreman of the Grand Jury - Witnesses, Harvey B. Murd, W. D. S. Larimer - Filed Sept 15. 1851, W. Kimball clk.

State of Illinois, }
County, of Cook, p. } The People of the State of Illinois,
To the Sheriff of said County-Greeting:

We command you, that you take the body of
Calist Shaw if he shall be found in your County,
and safely him keep, so that he be and appear before
the Cook County Court of Common Pleas of said County,
on the first day of the next term thereof, to be holden at
the Court House in Chicago in said County, on the first
Monday of February next, to answer unto the People of
the State of Illinois, on an Indictment for obtaining
goods on false pretences.

And have you then and there this writ, with an
endorsement thereon, in what manner you shall have executed
the same.

Witness, Walter Kimball, Clerk of our said Court,
and the seal thereof, at Chicago in said County,
this 30th day of December A.D. 1851.

Walter Kimball, Clerk.

Endorsed on back

G. D. N.^o Cook County Court. Com. Pleas. Feb'y
Term A.D. 1852.

People &c. vs Calist Shaw. - Capias - The Sheriff will
hold the defendant to bail in the sum of Two hundred
dollars by order of the Cook Co. Circuit Court. S. D. Hoard
Clk. - Executed by arresting the within named Calist
Shaw, & he having executed the annexed bond he dis-
charged from arrest Jan'y 3^d, 1852. W^m L. Church, Sheriff
by D. T. Wood, Dep'y.

State of Illinois, }
County of Cook, p. 3

We Caleb Shaw, Thomas E. Hamilton and David Hamilton do jointly and severally acknowledge ourselves to owe, and be indebted unto the People of the State of Illinois, in the sum of Four hundred dollars, to be levied of our goods and chattels, lands and tenements, if default be made in the premises and conditions following, to wit:

Whereas, the Grand Jury of the County of Cook, in the State of Illinois, lately, presented to the Cook County Court of Common Pleas of the said County, a certain bill of Indictment against the above named Caleb Shaw for obtaining goods on false pretences, whereupon the said Court did make an order fixing the amount of bail to said offence, to be the sum of two hundred dollars; and the Clerk of said Court thereupon issued process of Capias, directed to the Sheriff of said County, for the apprehension of the said Caleb Shaw so indicted, and endorsed on the said process the said amount of bail so fixed by said Court; by virtue of which process the said Sheriff has arrested the said defendant and is about to let him to bail, as provided by law.

Now the condition of this recognizance is such, that if the said Caleb Shaw shall personally be and appear before the said Court on the first day of the next term thereof, to be holden at the Court House, in Chicago, in said County, on the first Monday of February next,

to answer the said Indictment, and not depart
the Court without leave, then this recognizance to be
void; otherwise to remain in full force and effect.

Witness our hands and seals this 2^d day of January
Eighteen hundred and fifty-two.

Entered into, and taken before me,	Calist Shaw	Seal
this 3 ^d day of January 1852.	J. E. Hamiltow	Seal
W ^m L. Church, Sheriff.	David Hamilton	Seal
by A. T. Wood Depy.		

Samuel Rattle was sworn and testified as follows,
I was one of the jurors in the trial of the plaintiff for
obtaining goods under false pretences, and also for
larceny. Hurd the defendant was a witness in both
cases. - The larceny case was tried first. - Shaw was
acquitted on that charge. - I do not remember the
particular circumstances of the case, it was a great while
ago & there was nothing in this case to call my recol-
lection. - I do not remember how long the jury were out.
The verdict was unanimous. - I guess there was not
much deliberation. - I would not say whether there was
deliberation. - The false pretence case was brought on
for trial immediately after the larceny case. - My
particular attention was called to that case on account
of Mr Collins' excited manner in examining Hurd.
I have testified in this case before that is one reason
I remember, I think it appeared in evidence that Hurd
had some goods which belonged to Conkling Hoo of -

New York City which Shaw wanted to purchase.-

I think something was said about what Shaw represented himself to be worth, and something about land, I don't know what, it was a long time ago, it seems that the goods were delivered by the endorsement of note, by the firm of Hamilton & White or Robert P. Hamilton. Probably, it would be difficult to tell the manner Mr. Collins put the questions. Mr. Collins repeated his questions to Nurd several times, the repeated question was whether he (Nurd) let Shaw have the goods on his property, on the land, or on the endorsement of Hamilton, Nurd did not answer the question for some time, - He Collins appealed to the Court, - the contest between Mr. Collins and Mr. Nurd was about whether he let the goods go to Shaw upon his representations in regard to the land or whether it was upon the endorsement of Hamilton, - Nurd would not answer the question as Mr. Collins wanted him to, - at any rate Collins was not satisfied with his answer, I understood Nurd finally to answer that he let the goods go on the endorsement of Hamilton and would not let them go without.

And upon his Cross examination he testified as follows Nurd said it was upon the endorsement of Hamilton that he let the goods go, - I do not recollect that Nurd said he did not believe Shaw's statement. - After Nurd was examined Lavinia was examined, while Lavinia was on the stand the case was dismissed, -

It is taxing memory rather closer than I like to
to undertake to remember what Hurd swore on his
direct examination, I think he swore that Shaw
obtained the goods upon the representations in regard
to the land and his responsibility, and upon the endorse-
ment of Hamilton, - I do not recollect what Hurd
said about time. - I cannot recollect the exact
language Hurd used in his answer to Collins, he said
he should not have let the goods go had it not
been for the endorsement of Hamilton, - This is as I
understood his words. - Hurd did not make direct
answers to Collins' questions. Re-examined, Mr Collins
^{appealed to the Court once at least, for the purpose of getting a direct answer from}
^{Hurd.} Robert Bradford, swore on the part of the plaintiff,
I was a juror on both cases - The jury found a
verdict of not guilty on the first case. - I heard the
defendants testimony in the false pretence case,
I do not remember all his testimony, don't remem-
ber what he said on direct examination. - There was
some misunderstanding between Mr Collins & Mr Hurd,
Mr C. became excited and stood up, he put the
same question to Hurd several times, he did not
answer it to Collins' satisfaction. - I understood him
finally to say that he should not have let the goods
go without Hamiltons endorsement, - I remember a
portion of the case about false pretences on account
of Mr Collins' endeavor to get Hurd to answer questions,
Collins appealed to the Court because he thought the
witness was evading his questions. - The Court directed

the witness to answer, - Murd seemed to answer the questions put by Collins reluctantly. - Murd said he let goods go on Hamilton's signature. - I think he said Shaw stated to him he owned Land South of Chicago. - In the larceny case we were out no time, we took the vote in the Jury Room by raising the right hand, I think we did not even close the door of our Jury Room. - In the false pretence case Mr. Troy prosecuting Attorney said there was no use in preparing the matter any further & dismissed it while Larvinia was on the stand.

And upon his cross examination he testified, There was something said about the land, Mr. Collins wanted Murd to give a direct answer, but he insisted upon making a long statement, I cannot now remember his words, but as I understood it he would not let the goods go without Hamilton's endorsement.

Miss Octavia Shaw, testified upon the part of the plaintiff as follows,

I am the daughter of plaintiffs about 17 years of age, sometime about the year 1851 or 1852 before my father was indicted, I think it was in July, Mr. Murd came to our House and asked for father, Mother told - that he was away, Mr. Murd told her that the house was going to be sold and he wanted possession, Mother said that father was away and she did not know

where to go, Mr Hurd said he would get her another house, Mother said she would not leave till father came home, he was down on the Canal, Mr. Hurd told her she might write to him. After father came back Mr. Hurd came to the house with another man, I suppose he was the Sheriff, the Sheriff sold the house on an execution I suppose & Mr Hurd bid it off for five dollars, The Sheriff & Mr Hurd came into the house & the Sheriff said he gave Mr Hurd possession; they got some men & went to moving things out of the house, Father went away down town. They moved things out of the lower part of the house, and when Father came back they were up stairs in Mother's room, Father told them to go out, & they went out doors, while they were in the house Mr Hurd went to the door of the room where my sister was sleeping, she asked him not to come in & he went away, - When they went out doors Mr Hurd said if they could not work inside they could work outside & Mr Bates' men went to work to move the house, they took away the front fence & the steps at the front door & put some screws under the house to raise it up. The Sheriff & Mr Hurd staid there all the while, they worked till six o'clock and went away.

Upon her cross examination she testified
When the men left there was two or three screws put under the North side of the house, one under

the front door, one or two under the South side, and the front steps and fence were torn up, Father was at home that night, he went out that evening and was gone sometime, I heard Father say that he would give ten dollars if the House was back in the condition that it was before - This was said in the house - there was a man present, I don't remember his name, he was boarding with us, he was one of the hands on Father's Canal-Boat, He & Father went out together, The next morning the screws were gone from under the house and the tools were taken away, - I don't know where they went to, don't know what became of them, - I have not heard my Father say where they were, I testified on the former trial, - I did not testify to this before. I did not say that I did not know what had become of the screws & tools. I did not say Father was in the house all the time, You did not ask me who took out the screws, I don't know where that man is, I think the screws were screwed up tight and the house was raised up a little. I have never seen the screws since, don't know where they went to.

Miss Ellen Shaw.

Mr Murd & the Officer came to our house, I think it was some time in 1851, or 1852. they sold the House and Mr Murd bid it in for twenty dollars, Mr Hempster the Sheriff told Mr.

Hurd that he gave him possession, - Father went down town, Mr Hurd told the men to move out the things, - When Father came back they were up stairs in Mother's room, - Father told them to go out & they went out, - Mr Hurd said if they could not work inside they could work outside, and they went to work to move the house, - Mr Hurd went to my Sister's room where she was dressing & my Sister asked him to go out, - her room was up stairs, front room next to Mother's, - There were two rooms up stairs, - They moved nearly all the things out of the lower part of the house first. - The Sister spoken of is older than either of us, she is not here to day.

And upon her cross examination she testified as follows,

I did not testify on the former trial of my Father, I was too young then, - I do not know what became of the screws.

F. H. Benson, sworn testified,

I do not know whether Hurd & Shaw were members of the Chicago Building Assⁿ together, - Hurd is worth about thirty thousand dollars I should think, may be worth more & may be left don't what debts he may owe.

PPp
The Defendant then read in evidence the following depositions

The deposition of R. P. Hamilton, otherwise called Robert P. Hamilton of the Town of Saratoga Springs in the County of Saratoga and State of New York, a witness of lawful age produced, sworn and examined upon his Corporal Oath on the twenty third, twenty fourth, twenty fifth and twenty sixth days respectively of January in the year of our Lord one thousand eight hundred and fifty six, at his dwelling house in the said town of Saratoga Springs in the said County of Saratoga and State aforesaid, by me William May a Commissioner duly appointed by a dedimus protestatum or Commission issued out of the Clerk's Office of the Cook County Court of Common Pleas in the State of Illinois bearing teste in the name of Walter Kimball Esq. Clerk of the said County Court of Common Pleas, with the Seal of said Court affixed thereto, and to me directed as such Commissioner for the examination of the said R. P. Hamilton a witness in a certain suit and matter in controversy, now pending and undetermined in the said County Court of Common Pleas, wherein Caleb Shaw is plaintiff and M. B. Murd is defendant, in behalf of the said Caleb Shaw, as well upon the Cross-interrogatories of the said M. B. Murd as on the interrogatories of the said Caleb Shaw which were attached to, and enclosed with the said Commission, and upon none others. The said R. P. Hamilton being first duly sworn by me as a witness in the

said cause previous to the commencement of his examination to testify the truth as well on the part of the plaintiff as the defendant in relation to the matters in controversy between the said plaintiff and defendant so far as he should be interrogated, testified and deposed as follows: -

Interrogatory first.

What is your age, occupation and place of residence?

Answer to first Interrogatory.

I am thirty six years of age - I am a physician & reside at Saratoga Springs

Interrogatory second,

Do you know the parties plaintiff and defendant in the above entitled cause or either of them, and how long have you known them or either of them?

Answer to second interrogatory

I know both parties, I have known the plaintiff six or eight years, and defendant about the same length of time.

Interrogatory third, State whether or not you did about the fifth of October A.D. 1850 sign a promissory note for \$330. or thereabouts payable to Conkling & Co, & deliver the same to N. D. Murd?

Answer to third Interrogatory - I did.

Answer to fourth interrogatory, I executed said note

Interrogatory fourth. If in answer to the third interrogatory you say yes, state how said note was executed by you, whether as surety or otherwise, and if as surety for whom?

as one of the makers, but as surety only for the other maker Calist Shaw the said plaintiff.

Interrogatory fifth. If in answer to the fourth you say that said note was executed by you as surety for the plaintiff in this cause, state how the debt for which such security was given was contracted; if you have any knowledge on the subject state when and for what and with whom such debt was contracted and all the circumstances connected with the transaction?

Answer to fifth interrogatory. The consideration of said indebtedness was Dry Goods, sold and delivered by Conkling & Co. Merchants in the City of New York, to the said plaintiff in manner and under the circumstances hereinafter described -

The said Conkling & Co. sent the said dry-goods to Chicago and to the care of the defendant their agent in that behalf & with instructions to deliver the same dry-goods to said plaintiff if he satisfactorily secured payment of the purchase price thereof, wherefore on plaintiffs application to this disponent he executed in conjunction with said plaintiff the said promissory note which was thereupon delivered to the said defendant on or about the day of its date, to wit, On or about the first of October in the year One thousand eight hundred and fifty, and thereupon the said dry-

goods which are the only consideration of said note were by the said defendant delivered to the said plaintiff who had either selected them in New York or desired to purchase them after they had arrived at Chicago, I know of no circumstances connected with the transaction except those above & hereinafter related.

Interrogatory sixth. State whether or not you did about the first of October A.D. 1850 converse with the defendant about the security that should be given for said debt?

Answer to sixth interrogatory. I did.

Interrogatory seventh. State whether or not any other security was given or demanded for such debt at that time or at any other time to your knowledge?

Answer to seventh interrogatory. I know of none.

Interrogatory eighth. If in answer to the fifth interrogatory you say that said note was given as security for a debt contracted for goods delivered to the plaintiff by the defendant, state whether or not the goods were delivered upon the security of the note alone; state the conversation and agreement between the parties in full, and whether or not Murd refused to deliver the goods except upon such secured note.

Answer to eighth interrogatory. The said goods were delivered upon the security alone of the above mentioned note so far as I know, and without that security Murd refused to deliver the goods to said Shaw,

I do not recollect any other conversation or agreement between the parties than those which I have above stated.

Interrogatory ninth. Were you or not present at the trial of the plaintiff in the year 1851 on Indictment for obtaining said goods on false pretences - And if so state whether or not the defendant was examined as a witness on said trial.

Answer to ninth interrogatory. I was not present at any such trial.

Interrogatory tenth. If you say yea to the ninth interrogatory, state Sturd's testimony in regard to that transaction and the security upon which the goods were sold to the plaintiff, state fully.

Answer to tenth interrogatory. I was not present at such trial, and am ignorant of the testimony of said Sturd if he was a witness on that occasion.

Interrogatory eleventh. State who was the prosecutor in said indictment, if you have any knowledge on the subject.

Answer to eleventh interrogatory. I have no knowledge on that subject.

Interrogatory twelfth. If in answer to the eleventh interrogatory, you say that the defendant was the prosecutor, state whether or not said defendant has ever in your presence used expressions or made declarations showing the motives or feelings with which such prosecution was commenced and carried

on, if you state them fully.

Answer to twelfth interrogatory. In my presence the said defendant said that he would have Calist Shaw indicted and put into the penitentiary if he did not pay that note.

Interrogatory thirteenth. Do you know whether the plaintiff and defendant were acquainted with each other prior to October 1850 and if so how long? State whether the defendant knew the circumstances, condition and pecuniary ability of the plaintiff at that time. State fully the means of knowledge which the defendant possessed so far as you know the same.

Answer to thirteenth interrogatory. I know that the defendant and plaintiff were acquainted with each other some two or three years prior to October 1850, I do not know that the defendant knew at that time either the circumstances or condition or pecuniary ability of the plaintiff; but the said Sturd was as he informed deponent at that time a reporter to some person or persons in the City of New York as to the pecuniary responsibility of those who might become the customers of such person or persons.

Interrogatory fourteenth. Do you know of any other matter or thing which will be of benefit or advantage to the plaintiff in this suit?

I do not now recollect of any other such matter or thing.

Cross-Interrogatories & answers thereto, by the witness on the part of the defendant.

1st Cross Interrogatory. Do you remember where the conversation in regard to the note given for the goods was had; whether in your store or not?

Answer to the first Cross-interrogatory. The said conversation was in my store.

2^d Cross interrogatory. Did not Calist Shaw say at that time that he was the owner of a piece of land South of Chicago?

Answer to the second cross-interrogatory. I do not recollect that he did.

3^d Cross interrogatory. Was it or not understood by you from the conversation to be the same piece of land about which Shaw & Murd previously had a conversation - And whether Murd and yourself did not each take a judgment note due one day after date in further security for the goods?

Answer to the third Cross interrogatory. I do not recollect that at the time of the making of the note there was any conversation concerning land, but I had from previous conversation between the parties understood that Shaw had such land. - I took from Shaw a judgment note for my security or indemnity against the first above mentioned note, and also against another note which I as Shaw's security had signed for him - That judgment note was I

believe payable one day after date - I know of no judgment note to Hurd.

4th Cross interrogatory. Did or did not Hurd take you one side and talk with you about taking security on said land to indemnify you on this and another note which you had signed for Shaw, and did you take such security, and if not, why did you not take it?

Answer to the fourth cross interrogatory. I do not recollect of Hurd's taking me aside and talking with me about taking security on land at the time when the said first above mentioned note was executed, but before that time I had conversations with Hurd about taking such security. - I said to Mr Hurd that he ought to take the security on the land & not trouble me, Hurd said he did not wish any thing of the kind, but would rather have me as security which would be less trouble, and he did not know any thing about the land - Hurd said he was ordered to take security before he parted with the goods, but presumed Shaw was good enough, and that as I had signed one note for Shaw I might take security on the land for both if I wished it. - I took the said judgment note only, and no other security because I thought the note sufficient, it covered both surety-ships.

5th Cross interrogatory. Did not Shaw represent in the conversation above referred to that he was worth several thousand dollars or some large sum of money

besides the land and blame Murd because he did not let Shaw have a bill of goods which he Shaw had picked out in New York at the Store of Conkling & Co. and insist that Murd ought to take his note unsecured for this small sum.

Answer to the fifth Cross-interrogatory. Shaw did not in my presence make such representation, but said he was good for that amount or any other he would contract. Shaw said to Murd that he ought to let him Shaw have the goods upon his own note because he was good enough for it and Murd would get his pay - This conversation was before the day of executing the note.

11th Cross-interrogatory. State whether a short time before the note was taken Murd did not meet you in front of the Sherman House on Clark Street and tell you that Shaw had proposed to give you as a signer on his note for the goods referred to, and whether it was not expressly understood that you would not sign a note with him for said goods, and whether Murd did not say to you that he would tell Shaw that he Murd would take such a note if you would promise not to sign it & whether you did not so promise Murd. - If you remember any such conversation at any place or time before the note was given state it.

Answer to the sixth Cross-interrogatory. I had a conversation with Murd in which he said Shaw

proposed to give me as security for said goods. I replied that Shaw had no authority to offer my name, neither should I let my name go upon any man's paper. Hurd answered that he did not know that Shaw offered me, but had merely asked if the goods could be got on my name - And Hurd had told Shaw that the goods could be got on my name or that of my brother. I stated that if Shaw applied to me I should decline lending my note or name. The above is all the conversation or understanding on the subject of this the sixth crop-interrogatory, afterwards the said Hurd requested me to sign said note for Shaw - because he Hurd said he wished to avoid trouble of investigating title to the land & therefore preferred personal security, - I then thought Shaw good, and Hurd said he thought the same.

7th Crop-interrogatory. Did Shaw and yourself fail soon after the giving of said note - If yes, how soon?

Answer to the seventh Crop-interrogatory. We did about three months after the giving of said note.

8th Crop-interrogatory. Did you not then enter up the judgment note you had against Shaw and which you took to secure yourself against the note to Coukling & Co. and to another person. -

Answer to the eighth interrogatory. I did, or it was done in my behalf by some other person, judgment was perfected.

9th Cross-interrogatory. Do you know of your own knowledge whether Shaw was the owner of the land South of Chicago which he represented was his, and if so how long did he own it - did you request him to give you security upon it against those notes that you had signed: - If yea, what was his reply -

Answer to the 9th Cross-interrogatory. I know nothing about the ownership of or title to that land, I do not recollect requesting security on the land although we conversed about it and I finally preferred the note; because Shaw assured me he was good for the note and would pay it as a confidential honorary debt.

10th Cross-interrogatory. After judgment was entered upon the note you took from Shaw, what property had he? Do you know - if yea, state what property Shaw had at the time the note to Conklin & Co was given?

Answer to the tenth Cross-interrogatory. When the last mentioned note was given Shaw had a store of goods, he occupied a dwelling house and claimed an interest in said land. I do not know what change afterwards occurred as to said Shaw's property, except that it was sold by virtue of executions.

11th Cross-interrogatory. If in your direct examination you state you were present at the trial of said Shaw for obtaining goods on false pretences, and that you heard the said Hurd testify, state

whether he did not then testify that he did not state to the Grand Jury that the goods belonged to him Murd as was charged in the indictment; but that he had stated that they were the goods of Bouklin & Co.

Answer to the eleventh cross-interrogatory. I was not present at said trial and know not whether Murd testified thereon.

[The words "to" & "of" & "and" & "plaint" & "on or" & "above" & "answer to eighth interrogatory" & "of the above" & "eye" & "may" & "such" & "defendant and" & "would" & "personally" & "Murd" & "he wishing him" & "sums of money" & "other other sum" & "sh" & "do not" & "Murd" & "did" & "note" & "said land" having been obliterated and the words "in" & "payable" & "goods" & "either" & "alone" & "alone" & "the above" & "so far as I know" & "said" & "and defendant" & "wife" & "to the plaintiff" & "previously" & "land" & "Shaw" & "conversation at any" & "Shaw" & "cross" & "note or name" & "ten" & "then" having been interlined before the witness on taking the second oath signed his name next hereinafter]

R. P. Hamilton

I, William May of the village and town of Saratoga Springs in the County of Saratoga and State of New York, a Commissioner duly appointed to take the deposition of the said R. P. Hamilton, a witness whose name is subscribed to the foregoing

deposition do hereby certify that previous to the commencement of the examination of the said R. P. Hamblton as a witness in the suit between the said Calist Shaw plaintiff and the said N. B. Hurd defendant he (the said R. P. Hamblton) was duly sworn by me as such Commissioner to testify the truth in relation to the matters in controversy between the said Calist Shaw plaintiff and the said N. B. Hurd defendant so far as he (the said R. P. Hamblton) should be interrogated concerning the same; that the said deposition was taken at the dwelling house of the said R. P. Hamblton in the said village and town of Saratoga Springs in the said County of Saratoga and State aforesaid of New-York on the twenty third, twenty fourth, twenty fifth and twenty sixth days respectively of January in the year of our Lord one thousand eight hundred and fifty six; and that after said deposition was taken by me as aforesaid the interrogatories and answers thereto as written down were read over to the said witness, and that thereupon the same was signed and sworn to by the said deponent R. P. Hamblton before me, the oath being administered by me as such Commissioner at the place and on the day and year last aforesaid, Jan'y 26. 1856

W^m May, Commissioner &c.
 Opened & filed by stipulation Feb'y 1st 1856. W Kimball, Clk.

Calit Shaw

vs

M. B. Murd

} Cook Co. Com. Pleas.

Deposition of W. T. B. Garinia taken before A. C. Beattie at the residence of said witness in the City of Chicago on the _____ day of November 1855 by consent of parties, to be read in evidence in a certain cause now pending in the Cook County Court of Com Pleas, wherein Calit Shaw is plff & M. B. Murd is defendant, on the part of the Plff.

William T. B. Garinia, a witness produced sworn & examined, deposes & says, in answer to

Interrogatory 1st Do you know the parties plaintiff and defendant in the title to these interrogatories named, or either and which of them and how long have you known them respectively, or such one of them as you do know. - declare the truth &c.
He says in Answer to 1st Int. I know both of the parties to this suit & have known them several years.

Interrogatory 2^d Did you at any time in the year 1850 or at any other time convey a tract of land lying South of the City of Chicago to the plaintiff in this cause? If yes - state when you made such conveyance - the description of such land and its value at that time.

He says in Answer to 2^d Int. I did.

Interrogatory 3^d Do you or not know whether the plaintiff was the owner of such land, or

about the 24th day of October A.D. 1850?

He says in answer to 3^d Int. It was previous to the time Mr Shaw tried to purchase some goods of Mr. Hurd. I presume it was about the year 1855. I could not give the description of said land any further, that it as forty acres in Section ten, we reckoned it worth from \$35 to \$40 - an acre.

He says in answer to 3^d Int. I could not say, the reason why I cannot say is that I have nothing to date from.

Interrogatory 4th. Did you or not go as a witness before the grand jury which found a bill of indictment against the plaintiff Calist Shaw for obtaining goods under false pretences in September A.D. 1851. If yes - State at whose request you went before the jury - if at the request of any one.

He says in answer to 4th Int. I could not say whether I did or not, I was up as a witness, but whether it was before the grand-jury or court, I do not recollect, I do not know at whose request I went.

Cross Interrogatories

1st Cross. Did Mr Shaw pay you anything for that land, if so what.

Ans. He did not - If he sold the land for goods or money he was to pay \$40. an acre & for that purpose he had an entire deed of the property.

2^d Cross Int.

Did the deed ever go on record?
(objected to)

Ans.

I believe not, it was returned to me afterwards.

3^d Cross Int.

Did that end Shaw's interest in the land?

Ans.

Of course it did.

4th Cross Int.

Do you remember how long he kept the deed, or about the time?

Ans.

I don't know.

5th Cross Int.

Was it one, two or three months, give your best impression.

Ans.

I should think not more than two months, I could not say positively.

6th Cross Int.

Do you remember of saying to Deft. at any time after the goods were bought that Shaw was not the owner of said land, and say or intimate that all was not right in regard to that matter.

(Objected to)

Ans.

I don't recollect - If I did it on the ground of the deed's having been returned & the Contract rescinded.

7th Cr. Int.

Did you state any such reasons to the Deft.

Ans.

I don't know that I did, I don't recollect any such conversation.

8th Crop Int. Do you remember of the Deft.
coming to you while your Office was on Clark St.
& calling you aside & asking you about that mat-
ter? (objected to.)

Ans. I don't recollect.

W. T. B. Larinia

State of Illinois }
County of Cook, } J. D. C. Beattie Justice of
the Peace in & for said County,
do hereby certify that previous to the commencement
of the examination of W. T. B. Larinia the witness
whose name is subscribed to the foregoing deposition,
he was duly sworn by me to testify to the whole truth
so far as he should be interrogated. - That said
deposition was taken in pursuance of notice duly
given at the residence of said witness in the City of
Chicago & the interrogatories & answers thereto as
written down were read over to the said witness,
and that thereupon the same was & sworn to by
the said deponent the Oath being administered
by me at the time & place of taking the same.

Given under my hand this 4th day of February
1856.

A. C. Beattie J.P.

Opened & filed Feb 4 1856 W. Kimball clk

After which the defendant closed his case.

The defendant then adduced the following testimony.

Calvin McWolf being sworn on the part of the defendant testified, I am an Attorney at law, and was present at the trial of Caleb Shaw for obtaining goods under false pretences. It was a long time ago & I cannot pretend to give all the testimony of Murd. I do not remember all. I remember a contest between Mr Collins & Mr Murd, Mr Collins became quite excited, He was not satisfied with Murd's answers, the point between them was whether Murd sold the goods upon the representations of Shaw or upon the security of the note, Murd stated that he sold the goods upon the representations and upon the note, He made the same answer to all the questions, I do not remember all that was testified, but I remember this point on account of the manner of Mr Collins' examination, Murd answered promptly and in his usual manner, I observed nothing out of the way in his manner of testifying, he generally speaks slow. - Mr Murd^{Shaw} had a conversation in my office after the trial Shaw said that Murd testified fairly. I think on the direct examination Murd testified that Shaw made some representations in regard to owning land South of the City

which proved not to be his. He not remember about other property, my recollection in regard to the direct testimony is vague.

Cross. Murd stated at all times that he sold the goods both upon the representations in regard to the land & the endorsement of Hamilton. I paid particular attention, Mr Collins tried to make him say that he sold them upon the name of Hamilton alone.

Andrew J. Brown, being sworn on the part of the defendant testified. I was partner of Mr Murd at the time the goods were sold to Shaw. Mr Murd had some goods belonging to Conkling & Co. which Shaw wished to purchase. He was very earnest in the matter and blamed Murd a great deal because he would not let him have the goods without security, he wanted to buy a much larger bill of goods than the one that was finally sold to him, & he took Mr Murd down South to see a piece of land which he claimed to own & which he wanted Murd to take security upon. Murd was not satisfied to take the security for so large a sum as Shaw wanted but was willing to take it for a smaller amount, but Shaw would not encumber it for that amount, some time elapsed between the first conversation & the final sale. Shaw proposed a great many ways to secure the amount, which Mr Murd was not

satisfied with. He became quite angry at Mr
Murd because he would not let him have the
goods. He said he was good and would pay for
them, he offered Hamiltons name which Murd
finally agreed to take if he Shaw would execute
a judgement note due One day after date for
the amount of the goods which he might enter
up at any time he should think fit, and being
shown the notes of which the following are copies

\$330.00

Chicago October 24, 1850

Ten months after date, we promise to
pay jointly & severally to Conkling & Co or order, the
sum of Three hundred & thirty dollars, for value
received, with interest after six months.

Calist Shaw.

R. P. Hamilton.

\$330.-

Chicago Oct 24. 1850

One day after date, for value received
I promise to pay to Conkling & Co. or order the sum
of Three hundred and thirty dollars with interest

Calist Shaw.

Know all men by these presents, That I, Calist
Shaw the subscriber am justly indebted unto
Conkling & Co. upon a certain promissory note, bear-
ing date herewith, for the sum of Three hundred
& thirty dollars and - cents, made payable to
said Conkling & Co. or order, and due one day after

date, Now therefore, in consideration of the premises, I do hereby make, constitute and appoint Andrew J. Brown or any Attorney in any Court of Record, to be my true and lawful attorney irrevocable, for me and in my name, place and stead, to appear in any Court of Record, in term time or vacation, in any of the States or Territories of the United States, at any time after the said note becomes due, to waive service of process, and confess a judgment in favor of said Conkling & Co. or their assignee or assignees, upon the said note for the above sum, or for as much as appears to be due, according to the tenor and effect of said note, with interest thereon, together with costs; also for Ten dollars Attorneys fees to amount of ten dollars; to be added to the amount due on entering up judgment; also to file a cognovit for the amount that may be so due, with an agreement therein that no writ of error or appeal shall be prosecuted upon the judgment entered by virtue hereof, nor any bill in equity filed, to interfere in any manner with the operation of said judgment, and to release all errors that may intervene in the entering up of said judgment, or issuing the execution thereon.

Hereby ratifying and confirming all that my said Attorney may do by virtue hereof.

Witness my hand and seal this twenty fourth day of October A.D. 1850. Caleb Shaw 
In presence of H.B. Hurd.

State of Illinois, }
Cook County, Ill. }

Harvey B. Hurd being duly sworn
says that Caleb Shaw executed the within power
of Attorney in the presence of this deponent for
the uses & purposes therein set forth, and said
deponent subscribed his name as witness thereto
in the presence and at the request of said Shaw.

H. B. Hurd.

Subscribed & sworn to before me

this 26th Dec. 1857.

Andrew J. Brown

Notary Public.

The witness testified they are both in my hand
writing. They were both made out by me, and
signed at the same time. I do not recollect all
the conversation that passed between Mr Hurd
& Shaw. I know that Shaw was in a great many
times and made many statements about his re-
sponsibility. The negotiations lasted several weeks,
the representations were all made to Mr Hurd, I
had nothing to do with it but to draw the notes

Crops

Hurd & Shaw were both
members of the Building Association. - They were
not intimate; Shaw was frequently in the office,
came monthly to pay his dues, - I was a member
also, being a member of that association would
not give him a knowledge of Shaw's circumstances.
I do not know that the goods were sold and

* It is stipulated & agreed that this Bill of exceptions
may be filed at any time before the 10 day of
December instant with the same effect as if filed
within the thirty days mentioned in the order
of Court Dec'r 5. 1856.
Williams & Woodbridge Plffs Atty's.

Hamilton's note alone but believe it was upon
the representations & the note, that they all con-
duced to produce the transfer.

Mr Murd may be worth Thirty thousand
dollars, I think that would be a fair estimate
of his property. At the time of these negotiations
Shaw was in Mercantile business at Chicago.
R. P. Hamilton was also in Mercantile business
here at that time having a large stock of goods
doing a large business.

Richard Lappin, testified, I was the
owner of the screws & tools in question, I loaned
them to Mr Bates to move this house, He owed
me & thought he could earn some money by
this job, I went to Mr Shaw's house the next
morning and found the screws and Crow-bars
chains & tools gone, four screws were lost, they
would each weigh a hundred pounds or more,
they were what we called Jack screws, I have
never found any of them since, I found
the nut to one, it was found in the South
Branch river, I never heard any thing about
them till some time after the trial for larceny,
Mr Shaw thought they could be found, I
afterwards heard that some one had sold
three screws & nuts and one screw without a
nut in Detroit, I went down there after them

but did not find them, They were worth one hundred dollars or more. The Miss Shaw that testified first testified on the former trial of this case, I was present & heard her, she testified that she did not know what became of the screws, she said nothing about their being any affair like the one now testified to, she said her father was at home all the evening

W. L. Church testified, I was Sheriff of this County at the time these indictments were found, Was not the person who made sale of the House of Shaw, that was Dexter one of my Deputies. I hardly know what a knowledge of general reputation consists of. At some time previous to the finding of the indictment I heard several persons speak of Mr Shaw. They spoke of his character. I think the persons I conversed with were the parties in several executions I had against him. - I levied upon his stock of goods with these executions, and a transaction occurred in reference to these goods that brought up his character. That character was bad. I consulted Mr Collins in regard to him. He said and I could send him to the penitentiary. I will tell the whole story if desired. Mr Murd represented one of the judgments on which execution had issued. I closed up Mr Shaw on these executions on or about the — day of — A.D. 1856. I closed up Hamilton about the same time. The judgment in favor of Conkling & Co. was in no part

satisfied. The property did not sell for enough to pay the other executions which were put into my hands first.

The defendant having closed his case the plaintiff called

Daniel McIlroy who testified as follows:
I was prosecuting Attorney at the time these indictments were tried. Shaw was acquitted on the larceny case & I entered a nolle prosequi on the other. I don't have any recollection of what was testified on either case, I don't know whether Hurd was before the grand jury or not, if his name was on the back of the indictment I should think he was, I have no recollection about it. Hurd & Larinia were the witnesses for the people before the petit jury in the false pretence case.

Cross Examination. I think if the goods were charged to be the goods of N. B. Hurd & they proved to be the goods of Conkling & Co. I dismissed the case on that ground. That would have been the only course for me to take. I know that Hurd testified something about Shaw's getting some goods of him or that he had belonging to some New York firm, & representing he owned some land or something. I do not remember anything out of the way in Hurd's manner or testimony. Hurd took no part in the matter that I recollect but to be sworn as a witness.

After argument of Counsel the case was submitted to the Jury on the following instructions.

Instructions asked for by the plaintiff & those ^{were refused} marked refused, & those marked given were given as follows.

Given
First. If the Jury shall believe from the evidence that there had been conversations between the plaintiff and the defendant about the land and the value of the plaintiffs property, yet if they further believe that after such conversations the defendant refused to accept of the security of plaintiffs property and sold & delivered to him the goods relying solely upon the personal credit of Hamilton and Shaw and their note, and not upon the property then there was not probable cause for the procuring of the indictment for obtaining goods under false pretences, and if they further believe that said indictment was procured by the defendant then the plaintiff is entitled to recover damages.

Given
If the Jury believe from the evidence that the defendant is guilty, then in estimating the plaintiffs damages the Jury may take into consideration the condition in life and the circumstances of the parties, the expenses incurred by the plaintiff and the time lost by him (if any) in defending the prosecutions, the injury to his reputation feelings and credit which he sustained (if any) in consequence of the malicious

prosecution and the arrest under the same.

Given
1 If the Jury shall believe from the evidence that the defendant was guilty upon the legal principles laid down in the other instructions given in this case, of maliciously prosecuting the plaintiff, then the Jury may give damages to compensate the plaintiff, and in addition thereto exemplary damages.

Instructions as on behalf of defendant which were given as amended by the Court.

Given
1 In order to show probable cause it is not necessary to exhibit proof of guilt in respect to the party accused, but the belief of guilt on the part of the accusing party against the accused founded upon circumstances tending to show guilt is sufficient evidence to show probable cause. And if there was probable cause for causing Shaw to be indicted then the Jury should find for the Deft.

2
Given If the Jury believe that Hurd testified before the petty jury that Shaw obtained the goods upon the faith of Shaws representations in regard to his ownership of the land and that he was good for the goods, or other representations laid in the indictment as well as upon the security of the note, such testimony is competent in favor of the defendant, and if

they believe that such representations were false or that Hurd had reason from the circumstances known to him to believe that Shaw made false representations then he was justifiable in causing Shaw to be indicted.

3

Refused

The jury are instructed that the endorsement upon the back of the Capias is not evidence before them to show that Shaw was arrested upon the indictments in question.

4

The jury are instructed that to find for the Plaintiff they must believe from the evidence that Hurd prosecuted Shaw or procured him to be prosecuted maliciously and without probable cause.

Refused

That both malice & want of probable cause must concur - that want of probable cause must be clearly proved, and although malice may be implied from want of probable cause yet it does not necessarily follow.

And although the jury believe there was no probable cause for the prosecution against Shaw yet if they believe from the evidence that Hurd had reasonable ground of belief that Shaw was guilty of the crime alleged and acted in good faith, they will find for the defendant.

5

Although the jury may believe that Hurd threatened to prosecute Shaw, and that he acted maliciously towards Shaw in other matters and was

sworn as a witness on the trial of Shaw on the indictment for obtaining goods under false pretences, and although they shall also believe that such prosecution was entirely unfounded and without probable cause, yet unless it has been proved to the jury that Hurd caused Shaw to be indicted by employing an attorney or agent to conduct the prosecution giving instructions concerning it, paying the expenses, requesting the witness to appear before the grand jury or was otherwise instrumental in procuring or causing Shaw to be indicted they will find for the defendant on all those counts in the declaration founded upon that indictment.

Given

6 The jury are instructed that it was incumbent upon the plaintiff in this cause to have shown affirmatively that the indictments were found upon the testimony of Hurd and to have shown what that testimony was before the grand jury, and if they shall find that no such testimony was introduced before them they will find for the defendant.

Refused

7 Unless the jury shall believe from the evidence that Hurd did some act or took some part in the procuring of the indictments charged in the declaration they will find for the defendant.

Given

8

Refused

If the jury believe that the prosecuting Attorney entered a nolle prosequi in the case for obtaining goods under false pretences without consent of the prosecuting witness then they will find for the defendant on the counts in declaration said counts being founded upon that prosecution.

1

Instructions given by the Court.

If the jury believe from the evidence that the Defendant prosecuted the Plaintiff by obtaining an indictment to be found against the Plaintiff for obtaining goods under false pretences set forth in the declaration & without probable cause, then the Plaintiff is entitled to recover.

2

Probable cause consists in a belief entertained based upon a knowledge of facts & circumstances which would induce a reasonable man to believe that the offense has been committed by the party charged, so that if in this case if the jury believe from the evidence that there were no circumstances known to the defendant which would induce a reasonable man to believe that the plaintiff was guilty of the offence charged in the indictment for obtaining goods by false pretences set forth in the declaration then the Plaintiff is entitled to recover: But if on the other hand the jury believe from the evidence that the Defendant swore to facts upon which the indictment for obtaining goods by

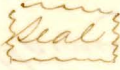
16
false pretences was found and that at that time
he knew facts & circumstances which would induce
a reasonable man to believe that the Plaintiff
was guilty of the offence, and that Hurd believed
that Shaw was, then the Plff cannot recover in this
case.

And the jury retired and afterwards returned
into Court & rendered the following verdict.

We the jury find for the Plaintiff and
assess the damage at the sum of Four hundred
dollars.
Asa Gaines, foreman.

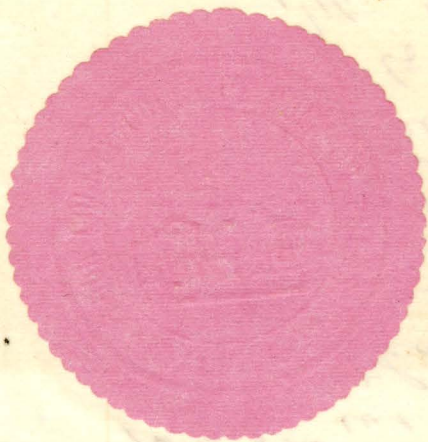
Whereupon the defendant entered his motion
for a new trial which on agreement of Counsel.
was over-ruled and a final judgment was entered
upon the said verdict, to the over-ruling of which
motion & the entering of said judgment the said Defen-
dant excepted and prayed an appeal, which was
allowed by the Court on the defendants giving bond
with security to be approved by the Court in the sum of
\$500. — Said defendant was allowed thirty days to
file his bill of exceptions and bond, said bond being
filed pursuant to the order of the Court herein.

The above contains all the evidence given in
the above cause.

John M Wilson 

State of Illinois
County of Cook } S.S.

I. Walter Kimball Clerk of Cook
County Court of Common Pleas. in and for said
County, do hereby certify that the above and fore-
going is a full and true transcript of all the
papers as they now remain on file in my office and
of the proceedings Entered of Record in said Court
in the case of Caleb Shaw plaintiff and Harvey
B Hurd defendant.



In testimony whereof I hereunto
subscribe my name and affix
the Seal of said Court at the
City of Chicago this 17th day
of April A.D. 1857

Walter Kimball Clerk

Harvey B. Hurd }
 or
 Caleb Shaw }

Supreme Court of State of
 Illinois April Term 1857.

Special for Cook Co. Ill.

And now comes the said plaintiff
 and assigns the following for error in
 the above entitled Cause.

1st That the Court Erred in giving the
 1st & 2nd instructions of the said Shaw.

2nd That the Court Erred in refusing
 to give to the jury the 3^d 4th 5th & 8th
 instruction asked for by the defendant.

3^d The verdict of the jury was
 contrary to the law.

4th That the verdict was contrary
 to the evidence.

5th That the Court Erred in refusing
 to grant a new trial in the above
 Cause.

5th The evidence did not warrant
 the judges verdict.

6th There are numerous other &
 manifest errors in the said record &
 judgment & proceedings.

H. B. Hurd
 Pro Pr.

Caleb Shaw
 as

Harvey B. Hurd }

And now comes the appellee

by William Woodbridge his Attorney & says that
 in the record & proceedings in the above entitled
 Cause there is not any error wherefore he prays
 that the judgment heretofore rendered in said Cause be af-
 firmed.

William Woodbridge
 for appellee.

75 H~~X~~
 Harvey B. Hurd
 P^{res}
 Caleb Shaw

Filed April 21, 1857
 Leland
 Clerk

New York Transcript
 paid by H. B. Hurd
 \$19.50
 Walter Hurd & Co.

State of Illinois---Supreme Court, 3d G. D.

HARVEY B. HURD
vs.
CALEB SHAW.

} APPEAL FROM COOK COUNTY COURT
OF COMMON PLEAS.

This was an action of trespass on the case for malicious prosecution.

4 The 1st and 3d counts in the declaration are for causing and procuring
& 8] Shaw to be indicted for stealing a lot of screws, nuts, chains, crowbars,
&c. of John H. Bates, and for prosecuting and causing the same to be prosecuted.

6 The 2d count is upon the 2d count in the indictment, charging the property stolen to be the property of Richard Lappin.

10 & The 4th and 5th counts are for causing the said Shaw to be indicted for
13 obtaining goods, the property of said Hurd, by means of false pretences.

The cause was tried at the September Term, A. D. 1856, before John M. Wilson, judge and a jury. Verdict \$400 vs. Pl'ff. in Error.

TESTIMONY OF PLAINTIFF BELOW.

29 WALTER KEMBLE, *Testified*.—The records shown to him were the records of the Court in the case of the People vs. Caleb Shaw, for Larceny, and the People vs. Caleb Shaw for obtaining goods under false pretences.

Indictment found September Term of Cook county Court of C. P. 1857. The indictment sets out that on the 7th day of July, 1851, at the county of Cook, 4 screws with nuts of value of \$20 each, one chain value of \$12, one chain of the value of \$4, and two crow-bars of the value of \$1 each, of the personal property of John H. Bates, then and there feloniously did steal and take away, &c., in the usual form.

30 The second count of this indictment is same, except it charges the goods to be Richard Lappin.

Endorsed on the back "A True Bill" &c. "Witnesses John H. Bates Rich'd. Lappin" — Martin. The name of the defendant below, Hurd is not endorsed.

Writ in usual form commanding Sheriff to arrest Shaw, dated 30th December, 1851, on which is endorsed,

31 "The Sheriff will hold the defendant to bail in the sum of four hundred dollars, by order of the Cook county Circuit Court."

"Executed by arresting the body of the within named Caleb Shaw, and he having executed the annexed Bond, he is discharged from arrest, Jan. 3, 1852."

32 The Bond is in usual form.

- 33 The record introduced in the trial of this cause showed that day
of Shaw was arraigned in due form of law and pleaded not guilty.
- 34 Shaw was tried on this indictment and acquitted. The record here does
not show the date.
- 35 The other indictment is for obtaining a large amount of goods from the
said Hurd upon the false pretence that he (Shaw) "was the owner of
forty acres of land situated within five miles of the city of Chicago, and
that he was owner of other real estate to a large amount, and also that
he the said Shaw, was then and there worth property to the amount of
four thousand dollars."
- The indictment charges the goods to be the property of Harvey B. Hurd
on the trial they proved to be the goods of Conkling of N. Y.
- 36 The witnesses endorsed on the back of this indictment are Harvey B.
Hurd, W. T. S. Lavinia.
- 37 Writ in usual form for Shaw's arrest, dated 30th December, 1851, and
directs the Sheriff to hold Shaw to bail in \$200 and was endorsed "Exe-
cuted by arresting the within named Caleb Shaw, and he having executed
the annexed bond, he discharged from arrest, January 3d, 1852.
- 38 The Bond is in the usual form.
Both writs were returned to the February Term, A. D. 1852.
Samuel Rattle testified in substance as follows;
- 39 Was one of the jurors on case of false pretences and larceny; Hurd
was a witness in both cases; Larceny case tried first; Shaw acquitted on
that charge; Don't remember the circumstances well; it was a great while
ago; nothing to call my recollection; don't remember how long the jury
were out; verdict unanimous; the false pretence case was brought on for
trial immediately after the larceny case; my particular attention was call-
to that case on account of Mr. Collins excited manner in examining Hurd;
I have testified in this cnse again that is one reason I remember; I think
it appeared in evidence that Hurd had some goods which belonged to
Conkling & Co. of N. Y. City which Shaw wanted to purchase; think
something was said about what Shaw represented himself to be worth, and
something about land; don't know what; it was a long time ago; it seems
that the goods were delivered, the endorsement of note by the firm of Ha-
milton and White or Robt. P. Hamilton; probably it would be difficult to
tell the manner; Mr. Collins put the questions; Mr. Collins repeated his
questions to Hurd several times; the repeated question was whether
Hurd let Shaw have the goods on his property, on the land or on the en-
dorsement of Hamilton; Hurd did not answer the question for some time;
Collins appealed to the Court; the contest between Hurd and Collins was
about whether he let the goods go to Shaw upon his representations in re-
gard to the land or whether it was upon the endorsement of Hamilton;
Hurd would not answer the question as Collins wanted him to; at any rate
Collins was not satisfied with his answer; I understood Hurd finally to an-
swer that he let the goods go on the endorsement of Hamilton and would
not let them go without.
- 40 Cross.—Hurd said it was upon the endorsement of Hamilton that he
let the goods go; Lavinia was examined after; Hurd's case was dismissed
while Lavinia was on the stand; it is taxing memory rather closer than I
like to undertake to remember what Hurd swore on his direct examination;
I think he swore that Shaw obtained the goods upon the representations in
regard to the land and his responsibility, and upon the endorsement of Ha-
milton; don't remember what Hurd said about time; cannot recollect the
exact language Hurd used in his answers to Collins; he said he should

not have let the goods gone had it not been for the endorsement of Hamilton : this is as I understood his words ; Hurd did not make direct answers to Collins questions.

- 41 *Re-Examined.*—Collins appealed to the Court once at least, for the purpose of getting a direct answer from *Hurd*.

ROBERT BRADFORD.—Was a Juror on both cases. Verdict on 1st case. I heard *Hurd's* testimony in the false pretense case ; do not remember his testimony ; don't remember what he said on direct examination. There was some misunderstanding between Collins and *Hurd* ; Collins became excited and stood up ; he put some question to *H.* several times ; he did not answer to Collins' satisfaction. I understood him to say finally that he would not have let the goods go without *Hamilton's* endorsement. I remember a portion of the case about false pretenses, on account of Mr. Collins' endeavor to get *Hurd* to answer questions. Collins appealed to Court, because he thought the witness was evading his questions. The Court directed *Hurd* to answer. *He* seemed to answer reluctantly. *Hurd* said he let goods go on *Hamilton's* signature. I think he said *Shaw* stated to him he owned land south of Chicago. In the larceny case we were out no time ; took vote by raising the right hand ; did not even close door. In the false pretense case *McIlroy*, Pros. Att'y, said there was no use in pressing the matter any further, and dismissed it while *Lavinia* was on the stand.

Cross.—There was something said about the land. Mr. Collins wanted *Hurd* to give a direct answer, but he insisted on making a long statement. I cannot remember his words, but as I understood it he would not let the goods go without *Hamilton's* endorsement.

- 42 MISS OCTAVIA SHAW.—Daughter of Plaintiff ; 17 years of age ; about 1851 or 1852, before father was indicted, I think in July, *Hurd* came to our house and asked for father. Mother told *H.* he was absent. *H.* told her the house was going to be sold, and he wanted possession. Mother said father was away, and she did not know where to go. *H.* said he would get her another house. Mother said she would not leave till father came back ; he was down the canal. *Hurd* told her she might write to him. After father came back, *Hurd* came to house with def't., Sheriff. The Sheriff sold the house on an execution, I suppose, and *Hurd* bid it off for five dollars. The Sheriff and *Hurd* came into the house, and the Sheriff said to *Hurd*, I give you possession. They got some men and went to moving things out of the house. Father went away down town. They moved things out of the lower part of the house, and when father came back they were up stairs in mother's room. Father told them to go out, and they went out doors. While they were in the house *Hurd* went to the door of the room where my sister was dressing ; she asked him not to come in, and he went away. When they went out doors *Hurd* said if they could not work inside they could work outside, and Mr. Bates' men went to work to move the house ; they took away the front fence and the steps at the front door, and put some screws under the house to raise it up. The Sheriff and Mr. *Hurd* staid there all the while they worked, until six o'clock, and went away.

- 43 *Cross.*—When men left there were two or three screws put under the north side of the house, one under the front door, one or two under the south side, and the front fence and steps were torn up ; father was at home that night ; he went out that evening and was gone some time. I heard father say that he would give ten dollars if the house was back in the condition that it was before ; this was said in the house ; there was a man pre-

sent; I don't remember his name; he was a boarder; was one of the hands on father's canal boat; he and father went out together. The next morning the screws were gone from under the house, and the tools were taken away; I don't know where they went to; don't know what became of them; I have not heard my father say where they were. I testified on the first trial; I did not testify to this before. I did not say I did not know what had become of the screws and tools. I did not say that father was in the house all the time. You did not ask me who took out the screws. I don't know where the man is. I think the screws were screwed up tight, and the house was raised up a little. I have never seen the screws since. Don't know where they went to.

44 MISS ELLEN SHAW.—Hurd and officer came to house in 1851 or 1852; they sold the house to Hurd for \$20; Dempster told Hurd he gave him possession; father went down town; Hurd told men to move out things; when father came back they were up stairs in mother's room; father told them to go out and they went out; Hurd said if they could not work inside they could work outside, and they went to work to move the house; Hurd went up stairs where my sister was dressing in front room next to mothers; she asked him to go out; there were two rooms up stairs; they moved nearly all the things out of the lower part of the house first; the sister spoken of is older than either of us; she is not here to day.

45 Cross—I did not testify on the trial of my father; I was too young then; I do not know what became of the screws.

46 F. H. BENSON—I do not know whether Hurd and Shaw were members of the Chicago Building Association together; Hurd is worth about thirty thousand dollars I should think; may be worth more and may be less, don't know what debts he may owe.

47 ROBT. P. HAMILTON—30 years old; am a physician, and reside at Saratoga Springs; have known pl'ff and def't 6 or 8 years; I signed a promissory note for \$330, 5th Oct., 1850, payable to Conkling & Co.; I signed the note as one of the makers, but as surety only for the other maker, Caleb Shaw; the consideration of the note was dry goods sold by Conkling & Co., N. Y. to Shaw; the goods were sent to Chicago by Conkling & Co. to care of Hurd, with instructions to deliver them to Shaw if he satisfactorily secured the payment of the purchase price, whereupon Shaw applied to deponent to sign said note with him, which was signed and delivered on or about the 1st Oct. 1850; dry goods were the only consideration of the note, and know no further circumstances, except the foregoing and following statements:

I conversed with Hurd about the security that should be given for said debt; I know of no other security being given or demanded for the debt at that time or at any other time; the said goods were delivered upon the security alone, of the above mentioned note so far as I know, and without that security Hurd refused to deliver the goods to said Shaw; I do not recollect any other conversation or agreement between Hurd and Shaw than I have above stated; was not present on trial of Shaw on indictment; am ignorant of Hurd's testimony on that occasion; I have no knowledge who was the prosecutor of said indictment; in my presence Hurd said he would have Shaw indicted and put into the penitentiary if he did not pay that note; the parties were acquainted with each other 2 or three years previous to Oct. 1850; I do not know that def't knew at that time, either the circumstances, or condition, or pecuniary ability of the plaintiff, but the said Hurd was, as he informed deponent at that time, a reporter to some person or persons in N. Y., as to the pecuniary responsibility of those who might become the customers of such person or persons.

52 *Cross.*—The conversation in regard to the note was had in my store ; I do not recollect that at that time Shaw represented that he was owner of a piece of land south of Chicago ; I do not recollect that there was any conversation concerning the land at the time the note was given but I had from previous conversation between the parties understood that Shaw had such land ; I took from Shaw a judgment note for my security or indemnity against the first above mentioned note, and also against another note ; I, as Shaw's security had signed for him ; that note was, I believe, payable one day after date ; I knew of no judgment note to Hurd ; I do not recollect of Hurd's taking me aside and talking with me about taking security on land at the time when the said first above note was executed, but before that time I had conversations with Hurd about taking such security. I said to Hurd that he ought to take the security on the land and not trouble me ; Hurd said he did not wish anything of the kind, but would rather have me as security, which would be less trouble, and he did not know anything about the land ; Hurd said he was ordered to take security before he parted with the goods, but presumed Shaw was good enough, and that as I had signed one note for Shaw I might take security on the land for both if I wished it ; I took said judgment note only and no other security, because I thought the note sufficient ; it covered both suretyships.

Shaw did not, in the conversation referred to in my presence, represent that he was worth several thousand dollars besides the land, but he said he was good for that amount or any other he would contract ; Shaw said to Hurd that he ought to let him, Shaw, have the goods upon his own note, because he was good enough for it, and Hurd would get his pay ; this conversation was before the day of the execution of the note.

I had a conversation with Hurd, in which he said Shaw proposed to give me as security for said goods ; I replied that Shaw had no authority to offer my name, neither should I let my name go upon any man's note : Hurd answered that he did not know what Shaw offered me, but had merely asked if the goods could be got on my name, and Hurd had told him that they could, or on that of my brother ; I stated that if Shaw applied to me I should decline lending my note or name ; the above is all the conversation or understanding on the subject of this cross interrogatory ; afterwards Hurd requested me to sign said note for Shaw, because he, Hurd said he wished to avoid trouble of investigating title to the land, and therefore preferred personal security ; I then thought Shaw good, and Hurd said he thought the same.

Shaw and myself failed about three months after the giving of said note.

I entered up my judgment note vs. Shaw, or it was done in my behalf by some other person ; judgment was *per futio*.

I know nothing about the ownership of or title to that land ; I do not recollect requesting security on the land, although we conversed about it and I finally preferred the note, because Shaw assured me he was good for the note and would pay it as a confidential honorary debt.

10th Cross Int.—After judgment was entered upon the note you took from Shaw what property had he ? Do you know ? if yea, state what property Shaw had at the time the note to Conkling & Co. was given ?

When the note to Conkling & Co. was given, Shaw had a store of goods ; he occupied a dwelling house and *claimed an interest in said land* ; I do not know what change afterwards occurred as to Shaw's property, except it was sold by virtue of executions. (It will be perceived that this is an evasive answer and is not responsive to the question.)

59 W. T. S. LAVINIA.—Has known the parties several years ; I conveyed

a tract of land lying south of the city of Chicago some time in 1850 ; It was before the time Shaw tried to purchase goods of *Hurd*, that the land was conveyed ; I presume it was about the year 1855 ; I could not give the description of said land any further than it was 40 acres in See. 10 ; we reckoned it worth \$35 to \$40 an acre.

I was up as a witness, but whether it was before the grand jury or court I do not recollect ; I do not know at whose request I went.

- 60 *Cross*—Shaw did not pay me anything for the land ; if he sold the land for goods or money, he was to pay \$40 an acre, and for that purpose he had entire deed of the property. *The deed did not go on record but was returned to me afterwards.* Of course that ended Shaw's interest in the land ; I don't know how long he kept the deed ; I should think it was no more than two or three months ; I could not say positively.

If I said to *Hurd* that Shaw was not the owner of the land it was because the deed had been returned and the contract rescinded ; I do not recollect that any such reason was given to *Hurd*, and don't recollect such conversation.

This was all the testimony on the part of the plaintiff below.

There was no evidence that *Hurd* appeared before the grand jury, except the endorsement of his name on the back of the indictment, in the false pretense case.

None, that he had anything to do with either of the cases, except to testify on the trial.

DEFENDANT'S TESTIMONY.

- 63 CALVIN DEWOLF.—I am an attorney at law ; was present at the trial of Caleb Shaw, for obtaining goods under false pretences. It was a long time ago, and I cannot pretend to give all the testimony of *Hurd*. I remember a contest between Collins and *Hurd* ; Collins became quite excited ; he was not satisfied with *Hurd*'s answers ; the point between them was whether *Hurd* sold the goods upon the representations of Shaw, or upon the security of the note. *Hurd* stated that he sold the goods upon the representations and upon the note. He made the same answer to all the questions. I do not remember all that was testified, but I remember this point, on account of the manner of Collins' examination. *Hurd* answered promptly and in his usual manner ; I observed nothing out of the way in his manner of testifying ; he generally speaks slow. *Hurd* and Shaw had a conversation in my office after the trial ; Shaw said *Hurd* testified fairly. I think, on the direct examination, *Hurd* testified that Shaw made some representations in regard to owning land south of the city, which proved not to be his.

- 64 *Cross*.—*Hurd* stated at all times that he sold the goods both upon the representations in regard to the land and the endorsement of Hamilton. I paid particular attention ; Collins tried to make him say he sold them on the name of Hamilton alone.

- 64 ANDREW J. BROWN.—Was a partner of *Hurd*, when goods were sold to Shaw. *Hurd* had some goods belonging to Conkling & Co., which Shaw wished to purchase. He was very earnest in the matter, and blamed *Hurd* a great deal because he would not let him have them without security. He wished to buy a much larger bill than the one finally sold, and he took *Hurd* down south to see a piece of land which he claimed to own, and which he wanted *Hurd* to take security upon. *Hurd* was not satisfied to take the security for so large a sum as Shaw wanted, but was willing to take it for a small amount ; but Shaw would not encumber it for that amount ; some

time elapsed between the first conversation and the final sale. Shaw proposed a great many ways to secure the amount, which Mr. Hurd was not satisfied with. He became quite angry at Hurd because he would not let him have the goods; he said he was good and would pay for them. He offered Hamilton's name, which Hurd finally agreed to take if he, Shaw, would execute a judgment note, due one day after date, for the amount of the goods, which he might enter up at any time he should think fit.

The notes of which the following are copies:

65 \$330.00.

Chicago, October 24, 1850.

Ten months after date we promise to pay, jointly and severally, to Conkling & Co., or order, the sum of three hundred and thirty dollars, for value received, with interest after six months.

CALEB SHAW,

R. P. HAMILTON.

\$330.

Chicago, Oct. 24th, 1850.

One day after date, for value received, I promise to pay to Conkling & Co., or order, the sum of three hundred and thirty dollars, with interest.

CALEB SHAW.

Attached to this last note was a power of Attorney, in usual form, authorizing judgment to be entered on the note.

67 MR. BROWN *also testified further*.—They are both in my hand writing; were both made out by me, and signed at same time. I do not recollect all the conversation that passed between Hurd and Shaw. I know that Shaw was in a great many times, and made many statements about his responsibility. The negotiations lasted several weeks; the representations were all made to Mr. Hurd. I had nothing to do with it but to draw the notes.

67 *Cross*.—H. and S. were both members of Chicago Building Association; they were not intimate; Shaw came to the office monthly to pay his dues; being a member of that Association would not give Hurd a knowledge of Shaw's circumstances. I do not know that the goods were sold on Hamilton's note alone, but upon the representations and the note; that they all conduced to produce the transfer; Hurd worth thirty thousand dollars. At time of negotiation, Shaw was in mercantile business at Chicago; R. P. Hamilton was also in mercantile business here at same time, having a large stock of goods—doing a large business,

68 RICHARD LAPPIN.—Was the owner of the screws and tools in question. I loaned them to Mr. Bates to move this house. I went to Shaw's house the next morning, and found the screws and crow-bars, chains and tools gone; 4 screws were lost; they would each weigh 100 lbs. or more; were jack screws; I have never found any of them since; found the nut of one; it was found in South Branch river. Never heard anything about them till some time after the trial for larceny. Mr. Shaw thought they could be found; I afterwards heard that some one had sold three screws and nuts and one screw without a nut, in Detroit; went there but did not find them. They were worth one hundred dollars or more. The Miss Shaw that testified first, testified on the former trial of this case; I was present and heard her; she testified *that she did not know what became of the screws; she said nothing about their being any affair like the one now testified to; she said her father was at home all the evening.*

69 W. L. CHURCH.—Was Sheriff of Cook county at time indictments were found; was not the person who made sale of house of Shaw, it was Dexter, a deputy; some time previous to the finding of indictments I heard several persons speak of Shaw's character; I think the persons I

conversed with were the parties in several executions I had against Shaw; I levied upon his stock of goods with those executions, and a transaction occurred in reference to those goods that brought up his character; that character was bad; I consulted Mr. Collins in regard to him; he said I could send him to the penitentiary; I will tell the whole story if desired; Mr. Hurd represented one of the judgments on which execution had issued; I closed up Shaw on — day of — 1856; closed up Hamilton about same time; the judgment of Conkling & Co. was in no part satisfied; the goods did not sell for enough to pay executions previously put into my hand.

- 90 DANIEL McILROY (on part of plaintiff;) Was Prosecuting Attorney at time indictments were tried; Shaw was acquitted on larceny case; I entered a *nole prosequi* in the other; do't remember testimony; don't know whether Hurd was before the Grand Jury or not; if his name is on the back of the indictment, I should think he was; I have no recollection about it; Hurd and Lavinia were witness for the people before the petit jury in the false pretense case.

CROSS.—I think if the goods were charged to be Hurd's and they proved to be the goods of Conkling & Co., I dismissed the case on that ground; that would have been the only cause; I know Hurd testified something about Shaw's getting some goods of him or that he had belonging to some firm in New York, and representing he owned some land or something; I do not remember any thing out of the way in Hurd's manner or testimony; *Hurd took no part in the matter that I recollect but to be sworn as a witness.*

71 *PLAINTIFF'S INSTRUCTION—Objected to.*

If the Jury believe from the evidence that there had been conversations between the plaintiff and the defendant about the land and the value of the plaintiff's property, yet if they further believe that after such conversations the defendant refused to accept the security of plaintiff's property and sold and delivered to him the goods, relying solely upon the personal credit of Hamilton and Shaw and their note, and not upon the property, then there was not probable cause of the procuring of the indictment for obtaining goods under false pretenses, and if they further believe that said indictment was procured by the defendant, then the plaintiff is entitled to recover damages.

- 75 The following are the instructions of defendant below, erroneously refused by the Court.

3d Inst. The Jury are instructed that the endorsement upon the back of the *capias* is not evidence before them to show that Shaw was arrested upon the indictments in question.

4. Inst. The Jury are instructed that to find for the plaintiff they must believe from the evidence that Hurd prosecuted Shaw or procured him to be prosecuted *maliciously and without probable cause*; that both malice and want of probable cause must concur—that want of probable cause must be clearly proved, and although malice may be implied from want of probable cause, yet it does not necessarily follow; and although the jury believe there is no probable cause for the prosecution against Shaw, yet if they believe from the evidence that Hurd had reasonable ground of belief that Shaw was guilty of the crime alleged and acted in good faith, they will find for the defendant.

- 74 6th Inst. If the jury believe that the prosecuting Attorney entered a

nolle prosequi in the case for obtaining goods under false pretences without consent of the prosecuting witness, then they will find for the defendant on the counts in the declaration, said counts being founded on that prosecution.

76 The Jury found for Plaintiff, \$400. The def't moved for a new trial, which was overruled, and exceptions taken.

78

ERRORS ASSIGNED:

- 1st. Giving 1 and 2 of Pl'ff's Instructions.
- 2d. Refusing the 3d, 4th, 6th and 8th of Def't's Instructions.
- 3d. The verdict of Jury was contrary to the law.
- 4th. Verdict of Jury against the evidence.
- 5th. The Court erred in refusing a new trial.
- 6th. The evidence does not warrant the verdict.

The People of the State
of Illinois

as
Calist Shaw

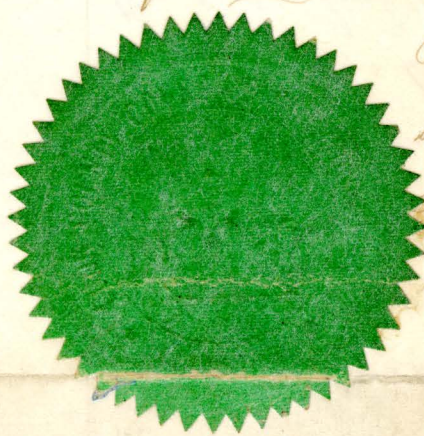
} Indict for obtaining
Goods on false pretences

And now at this day again come
the said People by their said Prosecuting attorney, and the
said defendant in his own proper person, as well as by
Callins & McIlrains his attorneys also comes, and issue
having been heretofore joined herein, it is Ordered that
a Jury come, ^{and thereupon do} the Jurors of a Jury of good and lawful
men, to wit.

Clark Remyon, James Stinson, Wm White,
W. R. Gould, David Wilson, Wm H. Crippen, J. M. Hard,
Robt. Bradford, Reuben Taylor, Daniel Day, Samuel
Rattle and William Carr, who being duly elected,
tried and sworn well and truly to try the issue joined
as aforesaid: And after hearing the evidence adduced,
the said People by their said Prosecuting attorney say
they will no further prosecute their said Indictment
in this behalf: And thereupon it is ordered by the
Court, that the Jury unpaiuelled herein be discharged
from rendering a verdict in this cause, and that the
said Defendant be discharged from his Recognizance
herein and go henceof without day.

1 Court. The record is part of the
Record, and should have been entered
in the "inacript" now in the Supreme
Court.

State of Illinois }
County of Cook }
I, J. Walter Kimball Clerk of the
Cook County Court of Common
Pleas within and for said County do hereby certify
that the foregoing is a true copy of an order had and
entered of Record in said Court on the 20th day of
February A.D. 1852, in the case of the People of the
State of Illinois vs. Caleb Shaw, and that the same is
referred to in the Bill of Exceptions in the case wherein
said Caleb Shaw is plaintiff and Henry B. Hurd
Defendant, which cause has been appealed to the Supreme



In Testimony Whereof I hereunto
subscribe my name and affix the
Seal of said Court at Chicago in
said County this 26th day of April
A.D. 1858. Walter Kimball
Clerk

45: 45-8

Hurd.

Shaw

Additional record

Filed April 29
1858
De la Lande
Clerk

And }
or } Appeal
Shall }

"The plaintiff was bound to prove
1st That there was a prosecution
2nd That it terminated in favor of the
plaintiff

3rd That he was actually by reason

4th That the act was the prosecution

5th That there was a want of

Probable Cause

6th The damages that the plt has
sustained."

x Wells v Parsons 3 Harrington 505

2 Merrihew Evidence 449.

y 7 Texas 603.

2 Starkes p 910. 912

The evidence in this cause does not
show that Hunt was the prosecutor
in the two indictments.

If the record shows any thing or of any
thing is to be presumed from the endorsement
of the names of witnesses on the indictment
in the larceny case he appears not to
have been the prosecutor. His name is
not on that indictment

if the verdict of acquittal was not returned in
the trial before then that part of the cause
is fatally defective

In the false pretense case
The evidence is that Hurd was sworn on
the trial. & his name is on the back of
the indictment. The prosecuting
attorney testified that "Hurd took no active
part in the prosecution but to be sworn
as a witness". This is all that connects him with the
case. This testimony is insufficient to show
Hurd was the prosecutor.

"The indorsement of the defendants
name on the bill of indictment as a witness
is no evidence that he was the prosecu-
tor. If the defendant employed an attorney
or counsel to conduct the prosecution
or was active in forwarding or carrying
on the prosecution such as giving instructions
concerning it paying expenses or procuring
the attendance of witnesses it is sufficient
proof of the defendants being prosecutor.

x Mills v Peck, 3 Harrington 503-

Stephens N.P. 2286

x 21 Conn. 432

2 Greenleaf on Evidence § 449

It is known that these cases are
generally got up & prosecuted by ~~distinctions~~
officers of the court in Cook County. The evidence
should exclude a reasonable doubt Hurd
was the prosecutor.

This testimony is also important in the question of Malice

Malice may be presumed but it cannot be presumed against the facts. If it is to be presumed it must be so consistently with the facts. Malice is an ~~an~~ ~~action~~ presumption

x *Goodrich v. Warner* 21 Connecticut 442.

The want of probable cause must be affirmatively proved by plaintiff below

2 *Greenleaf Evidence* § 454

+ 7 *Texas* 603 good case

8 *Crown* 141. authorities all collect

then

Stephens N.P. 2281.

x 3 *Washington* CC R 31

Wright R (N.P.) 494 good case

x 13 *Ill* 701

x 17 *Ill* 63

Reasonable & probable cause must be that which exists in the mind of the party at the time of the present

Stephens N.P. 2281.

3 *Bray* N.C. 950

x 13 *Ill* 701.

The defect in the declaration is a sufficient ground for the acquittal & in fact caused it. See *McIlroy's Evidence*.

The refusal to give the depts.
instructions & the growing of the plaintiffs
are covered by the above points & au-
thorities.

The evidence shows a strong case
against Shaw in both cases.

Shaw rests much upon the proof
by Lariviera that Shaw had a deed at
the time of the procuring of the goods
which was afterwards destroyed. It
does not help to make out a case of
probable cause. There is no evidence
that Hund knew of these facts when
the suit was prosecuted. This case
is to be judged by what Hund knew

Want of probable cause & malice
must both concur and although there
may be no probable cause if there is

no malice shown the debt is not liable
but malice is not a necessary consequence of want of probable cause

7 Texas 614 & 615 & 616

13 Illinois 603

17 Illinois 63

~~If the facts are peculiarly within the
knowledge of the defendant slight evidence
on the~~

Supreme Court

Harvey B. Hunt

v

Calvin Shaw

Plffs. Resp.

✓

Supreme Court

Shaw
and
Hind

} Points & authorities
on the part of the appellee

1st As to the termination of prosecution —

If the Criminal proceeding is abandoned, that is if it cannot be revived but the prosecutor must be put to a new proceeding that is enough to sustain an action for malicious prosecution.

Clark vs. Cleveland 6 Hill 345

An entry of not guilty on which the Court renders a judgment of discharge is sufficient.

Chapman vs. Woods 6 Black 504

Yocum vs. Gally 1 B. Monroe 356.

8 B. Monroe 225 — 7 Fedell 390. 3rd Kelly 53.

II Malice

It is not necessary to prove malice in the ordinary sense of the word, any improper or unjust motive is sufficient.

Am. Law Cases 1 Vol page 226

3rd Greenleaf's note page 450.

3 As to what is reasonable &
probable cause

Mann v Dupont et al 3 Hall C.C. 31

1701 Am Lead Cases 221.

Board v Hare & King N.C. 722

Harris v Clark 3 B. Monier 4-6

If the facts on which the prosecution was
grounded were peculiarly within the knowledge of
the defendant slight evidence on the part of
the plaintiff of the absence of probable cause
will be deemed sufficient.

Jackson v Kemp 1 Camp 203

Bull N.L. 14

Nicholson v Cogill 4 B.C. 21

6 Dougl. & Ry. 12, 14

4th As to damages

3 Seam 372, 2nd ed. Gil 432

Vedg on dam 96-

The indictment with Hurd's name
endorsed as a witness is evidence that
he was sworn to the Bill -
2nd ed. Gil 454.

Supreme Court

Shaw
and

Hand

Points for attention
steps for appeal

"A"

V

118

And
as
Shaw

Filed May 1, 1887
J. Selous
Clerk

Harvey B. Hunt }
118 }
Caleb Shaw }

The abstract was prepared in this cause as soon as it could be after it was joined in and was placed in the hands of the printer immediately and every effort in my power has been made to get it printed before the cause should be reached but as near as I can ascertain will not be completed before Tuesday afternoon of next week. This is on account of its length & the press of work on abstracts for nearly engaged to be printed.

I desire to argue the cause orally & to have the abstracts before the Court at the time of argument. H. B. Hunt
April 30 1887.

State of Illinois

I the Subscrib

do hereby swear the foregoing
Statement is true in form &
substance, H. B. Howard

Subscribed & sworn

before me this 7th day

of May A.D. 1857

L. Leland Clerk of Sup. Court

By J. B. Rice Deputy

811
Book
no
111

2421 1/2
Book 111
Page 111

Know all men by these presents that we
J. Tilden Moulton, Van H. Higgins and Condon
Beckwith of the City of Chicago and State of
Illinois are by these presents held and firmly
bound unto Harvey B. Hurd as Guardian &c
in the sum of Four Thousand Dollars lawful
money of the United States to be paid to the said
Harvey B. Hurd, his executors Administrators
or legal representatives, for the payment of
which well and truly to be made we hereby
bind ourselves, our heirs, executors and
Administrators. Given under our hands
and seals this 27th day February A.D. 1856.

The condition of the above obligation
is such that whereas on the 12th day of
January A.D. 1856 a decree was rendered
by the Circuit Court of Cook County, in favor
of Harvey B. Hurd as Guardian &c and
against J. Tilden Moulton and Charlotte
Hardin Moulton; and whereas the said J. Tilden
Moulton and Charlotte Hardin Moulton have
sued out of the Supreme Court of the State of
Illinois for the third Grand Division of said
State, a writ of Error returnable to the next
term of said Supreme Court, and have ap-
plied for a Supersedeas agreeably to the statu-
te in such case made and provided,
which has been allowed, Now if the

Said J. Tilden Moulton and Charles
Harden Moulton shall duly pro-
secute said writ of Error and pay the
said decree and all costs, interest and
damages in case the said decree shall
be affirmed, then the above obligation
shall be void, otherwise to be or remain
in full force and virtue.

J. Tilden Moulton, *Test*
Tim H. Higgins *Test*
Conyons Breckinridge *Test*

⁵⁴
J. Tilden Cloutton
& Charlotte H. Cloutton

Harvey B. Doud
Guardian's Sec.

Supds. Bond

12560

Filed Feb. 29. 1856.
L. Kelam C.R.

~~12470~~